



Tribal SW Code Development & TRP

- **Solid Waste**
- **Hazardous/Special Waste**
- **Tribal Response Program**





Growing SW Concerns





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Gaps in EPA Solid Waste Regs.?

EPA Does NOT have a solid waste regulatory program (only HW) except for RCRA 7003 Orders for imminent hazards.

➤ 40 CFR Part 258 & 257 “Criteria” for landfills

All wastes generated directly from oil & gas exploration & production are exempt from EPA Regulations (solid waste and hazardous waste)



Purpose of a SW Code?

Can serve as a mechanism that will:

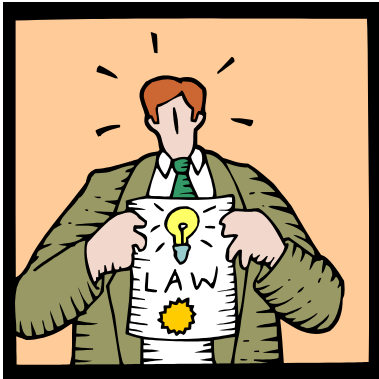
- Protect human health & environment
- Protect natural resources
- Prevent open dumping
- Address waste management issues
- Fill a regulatory gap

(U.S. EPA cannot directly enforce solid waste rules or regulate Oil & Gas wastes)



Wording?

ORDINANCE



CODES



REGULATIONS



Jurisdiction vs. Authority

Understand the difference between:

- Jurisdiction: Established by Treaty and federal laws and legal precedents
and
- Authority: Established by Tribal laws and Codes



Where to begin?

- Form a Solid Waste Working Group
- Scheduled meetings to:
 - Discuss solid waste issues
 - Decide on Priorities
 - Information exchange/facilitate discussions on solid waste issues
 - Participation by all working group members-learn about each other's roles and responsibilities concerning solid waste



What Issues Need to be Addressed?

- Waste management practices
- Funding for solid waste management
- Roles and responsibilities
- Enforcement and oversight
- Collection fees



SW Code Working Group

- Tribal Construction
- Fish & Game
- BIA
- Environmental Department
- TERO
- Utilities Board
- Planning Department
- Tribal Environmental Health
- Housing Department
- Law Enforcement
- Courts



Workgroup Participation

- **Examples**
 - **Environmental Department:** General Provisions, Solid Waste Plan, Hazardous Wastes, Permitting, Compliance & Enforcement
 - **Utility:** Collection, Transport, and Disposal
 - **Housing & Tribal Construction:** Construction and Demo Debris
 - **Courts:** Enforcement-Penalties and Fines



Workgroup Participation

- Hold meetings to review/discuss contents and wording of the code
- Workgroup complete revisions to code
- Review Tribal Administrative Procedures for Code Proposal and Adoption
- Workgroup met to review tribal and public comments/incorporated into code



Review existing Tribal SW or other Environmental Codes

- Any past or existing SW Codes drafted or developed? & adopted.
- Were any of them formally adopted?
- If adopted, were they incorporated into tribal laws & codes?
- If Adopted, have they been revised?
- Was SW addressed in any other tribal codes?
- “Repeal Clause” in new codes



Structure of the SW Code

- Research and review different Tribal Laws and codes/ordinances - Note Formats
(beware of codes on the web!)
- State & Local Solid Waste Codes
- Working Group(s)-each assigned a section of the code.
- What to include in the code?



Legal Review

- Send to Tribal Attorney* for Legal Review
- Workgroup meet to review legal comments
- Revise Draft as needed – meet with attorney as needed to resolve questions.

*Note: Need Attorney with knowledge & experience



Contents of Code

- General Provisions
 - **Authority:** Decision Maker(s)
 - **Jurisdiction***: Tribal sovereignty to exercise civil authority and jurisdiction under this code over:
 - Tribal Members
 - All other persons on all lands within the exterior boundaries of the Reservation

***Ultimately decided by the Courts**

Contents of Code

- **Environmental Department Roles & Responsibilities** (enforcement & permitting)
- **Utilities Roles & Responsibilities** (solid waste management, fees, collection, transport, and disposal)
- **Separation of Roles under the Code**

Special Wastes

- Hazardous Wastes
- Septic Tank Disposal
- Construction & Demo Debris
- Junk Vehicles
- White Goods
- Asbestos
- Medical Wastes
- Tires
- Carcasses
- Agricultural Wastes
- Open Burning
- Oil & Gas E&P Wastes





Permitting

- Who will be responsible for permitting?
 - Has the authority to issue or deny permit
 - Appeal process if a permit is denied
- What kind of Permits?
 - Reg. long term permits
 - Permits by Rule
 - Temporary or Emergency permits
 - Specific permits (open burning – burn barrel)
- Permits for what?
 - Waste Treatment, Storage or Disposal
 - Waste Hauling



Fees

- Permit Application & Processing Fees
- Permit Issuance Fees
- Inspection Fees
- Individual Collection Fees & roll-off Transfer Station fees-
- Who determines & approves fees?
- Who gets and/or controls the money?
- What can it be used for?



Enforcement

- Compliance Officer-duties and responsibilities
- Enforcement actions (due process comes first)
- Compliance Officer responsibilities
- Compliance Officer can issue citations
- Who else: other tribal departments?



Penalties?

- authority to impose civil penalties/fines
- Other Types of Penalties?
 - Community Service
 - Contract/Business restrictions?
 - Banishment?
- Criminal penalties and/or Jail time?
(not recommended in SW Civil Codes)
- Separate “Penalty Policy” & matrix



Prohibitions in Codes?

- No Littering?
- No Open Burning or Burn Barrels?
- No Landfills?
- No Tire Piles? (quantity limit)
- Limit on “Junk Vehicles”?



Summary

- Positive Outcomes during code development
 - Everyone familiar with the code
 - Know each others roles & responsibilities
 - Issues ironed out
- Obstacles during code development
 - Some programs could not attend meetings
 - Tedious process



TRP Element 2: Oversight and Enforcement Authorities

CERCLA 128(a) Tribal Response Program





TRP Element 2

Indian tribes must include, or be taking reasonable steps to include, in their response programs:

- 1) Oversight and enforcement authorities or other mechanisms, and resources that are adequate to ensure that a response action will protect human health and the environment and be conducted in accordance with applicable federal and tribal law.





Element 2

2) Oversight and enforcement authorities **or other mechanisms, and resources** that are adequate to ensure that the necessary response activities are completed if the person conducting the response activities, including operation and maintenance or long-term monitoring activities, fails to complete the activity (such as enforcement, funding, or other programmatic resources, including staff).





Tribal Laws & Codes

- Improved internal procedures, policies and protocols needed to implement Tribal laws, codes and ordinances (SOP)?
- Are there still gaps in the Tribal laws, codes and ordinances or new issues to be addressed?
- Are there new Federal or State laws/regs. that need to be considered and perhaps added to tribal laws & codes? (e.g. EPA Lead Paint Rules)



Tribal Response Enforcement

- U.S. EPA: Eligible TRP grant activities include, but are not limited to, development of legislation, regulations, procedures, ordinances, guidance, etc. that would establish or enhance the administrative and legal structure of their response programs.



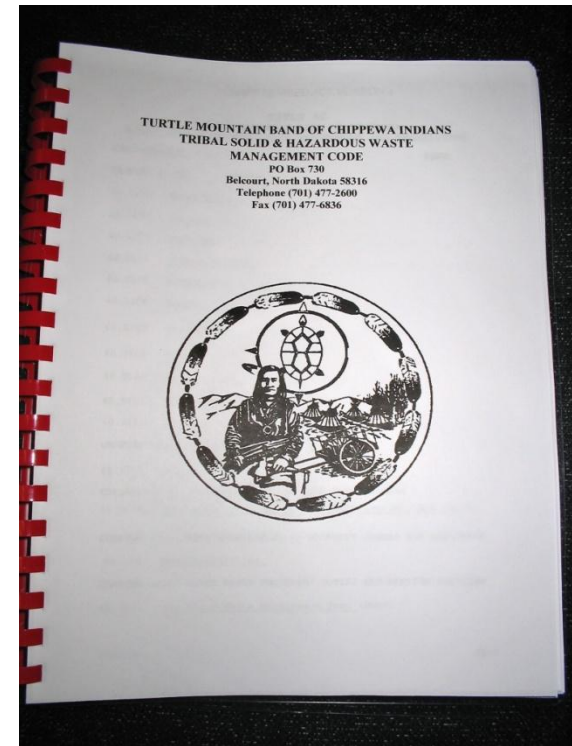
Stephanie Wallace,
formerly of US EPA Region 8 MT Office



Tribal Laws & Codes

Tribal Solid & Hazard Waste Laws/Codes may include Tribal Response Program Requirements such as:

- ✓ Responses to releases
- ✓ Oversight of responses
- ✓ Conducting responses
- ✓ Cleanup Standards
- ✓ Verification & Certification
- ✓ Institutional Controls
- ✓ Public Participation
- ✓ Tribal Permits & Fees



Shawn Lahr: TRP Coordinator Blackfeet Tribe, MT





TRP Oversight Examples

- Turtle Mtn. conducted oversight of a cleanup of fee property purchased under an IRS Tax Lien.



New Grocery Store on the Site





Example: Tribal Oversight

The Leech Lake Tribe, MN conducted oversight of the cleanup of a building owned by a church group and imposed tribal cleanup standards for Lead and Asbestos.





Tribal Lessons Learned

- It is important to determine and document site ownership, responsibility and jurisdiction;
- Adopting and implementing tribal laws and codes to establish the tribal authority to conduct these actions is necessary;
- Need to have appropriate internal policies & procedures in place;



Lessons Learned

- There is a significant need for more training, experience and real-time on-scene technical assistance in this area.

and

- Implementation of these actions can be costly and may not be an eligible use of TRP grant funds.



Tribal Issues

- Lack of existing Tribal civil compliance and enforcement authorities, policies and procedures in place for environmental programs.
- Federal officials not aware of tribal laws and requirements.
- The tribal sovereignty and civil case law is constantly evolving.



Tribal Implementation

- Identify existing response sites where Tribal oversight is necessary and appropriate.
- Determine what tribal or other authorities exist or need to be improved or created to fully implement this Element.
- Where Tribe does not have jurisdiction, determine tribal role(s) and means for input or oversight.





Tribal Implementation

- Collaboration and sharing among tribes of codes, case studies and situations;
and
- More opportunities for tribal staff to learn in the field and shadow or observe experienced EPA/State response staff and contractors.



LaDonna Brave Bull Allard – Standing Rock Sioux Tribe, ND/SD



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