DEC Organization
Site Intake
Reporting/Response
Cleanup
Responsibility
Brownfields
Example
Site Intake

- Release
  - Initial Response - PPR
  - Long term - CS

- DEC Prevention Preparedness and Response (PPR) oversees initial response
Definition of “Release”

...any spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any hazardous substance.
Historical Activities

- Initial notification – PPR
- Long term - CS
Reporting

- Key Alaska Regulations
  - 18 AAC 75 – Oil and Hazardous Substance Pollution Control
  - 18 AAC 78 – Underground Storage Tanks
Reporting Requirements

- Immediate for
  - Hazardous substance release
  - Oil to water
  - >55 gallons of oil to land

- Within 48 hrs for 10-55 gallons of oil

- Monthly for smaller oil releases
CSRAs, Response Equipment Containers, & Emergency Towing Packages

[Map of Alaska with various locations marked and categories represented by symbols and colors: Community Spill Response Agreements (46), State Emergency Towing Packages (10), Non-State Emergency Towing Packages (1), State Response Equipment Sites (57), Non-State Owned Response Equipment Containers (5).]
Statutory Requirements for Cleanup

- “A person causing or permitting the discharge of oil shall immediately contain and clean up the discharge…”

- “A person who causes a release of a hazardous substance shall make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release…”
Site Cleanup Rules

- Oil/hazardous substance releases that aren’t adequately cleaned-up under initial response

- Historic releases from past activities

- Responsible Persons and anyone else who undertakes a cleanup activity at a site subject to the rules
Site Cleanup Rules

- Work must be conducted by a “Qualified Environmental Professional” following DEC approved plans

- Site Characterization
  - Define the nature and extent of contamination
  - Propose cleanup levels
Cleanup Operations

- Cleanup Workplan
  - Schedule for cleanup, monitoring, and reporting
  - Sampling and analysis plan
  - Waste management plan

- Cleanup Report

- Long Term O&M, Monitoring
Site Closure

- Cleanup Complete: Unrestricted use
- Cleanup Complete with ICs
  - Limitations on land use or activity
  - Conditions noted in publicly available locations and land management systems
  - Periodic inspections and reporting
Alaska’s Mini-CERCLA Statute

- **Strict Liability**
  - Liable without regard to fault or negligence

- **Joint and Several Liability**
  - One party may be held liable for the entire amount
  - May be able to apportion liability between parties

- **Retroactive**
  - Liability extends back to before law was adopted
Liabilities

- Response and cleanup costs incurred by the state, municipality, or a village
- Damages
- Increased costs of certain government projects and services
Who is liable?

- Owner and persons with control over hazardous substance at time of the release
- Owner and operator at the time of release
- Current owner and operator
- Generators or Arrangers
- Transporters
# Liability Defenses

## State of Alaska
- Act of war
- Act of God
- Innocent Landowner – “Due Diligence”
- Involuntary Acquisition of Property by a State or Local Government Unit
- Native Corporations – ANCSA
- State government – Alaska Statehood Act

## CERCLA 107
- Act of war
- Act of God
- Innocent landowner
- Contiguous property owner
- Bona fide prospective purchasers
- Units of state or local government that acquire ownership or control involuntarily through bankruptcy, tax, delinquency, or abandonment
- Government entities that acquire property through eminent domain
<table>
<thead>
<tr>
<th>Grant Program</th>
<th>Brownfields Assessment Funding</th>
<th>Brownfields Cleanup Revolving Loan Capitalization Funding</th>
<th>Brownfields Cleanup Funding</th>
<th>Environmental Workforce Development &amp; Job Training Funding</th>
<th>Targeted Brownfields Assessments (TBA) Technical Assistance</th>
<th>State/Tribal Response Programs (Capacity Building to Address Contaminated Sites)</th>
<th>Area Wide Planning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose</td>
<td>To promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, and to establish or enhance State and Tribal response programs. Brownfields are real properties, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant as defined in Public Law 107-118.</td>
<td>Local Governments, Land Clearance Authorities, or similar quasi-governmental agencies under control of local government. Government entities created by State legislatures, Regional Councils, state chartered Redevelopment Agencies, States, and Federally-recognized Tribes other than in Alaska. Alaska Native Regional Corporations, Alaska Native Village Corporations, Metlakatla Indian Community, and Intertribal Consortia are eligible. <strong>Alaskan Tribes can work with other eligible entities to obtain assistance for their communities.</strong></td>
<td>Colleges, universities, nonprofit training centers exempt from property taxation under 26 U.S.C. 501(c)(3), community job training organizations; Local government entities, states, cities, counties, or other authorities created by State legislatures, i.e. Regional Councils, state chartered Redevelopment Agencies, or similar quasi-governmental agencies under control of local government. - Federally-recognized Indian Tribes are eligible other than in Alaska except for the Metlakatla Indian Community. Intertribal Consortia comprised of eligible tribes are eligible. - Alaska Native Regional Corporations, Alaska Native Village Corporations.</td>
<td>States, cities, towns, counties, U.S. Territories, Federally-recognized Tribes and nonprofit organizations</td>
<td>States and Federally-recognized Tribes that are focused on establishing or enhancing existing programs that address contaminated sites in their jurisdiction. Projects that include, or are taking reasonable steps to include the following elements: - Timely survey and inventory of brownfield properties - Oversight/enforcement mechanisms to ensure that necessary response activities are completed, protected human health and the environment, and are conducted in accordance with State and Federal laws. - Provide opportunity for public participation - Have mechanism to approve cleanup plans and certify response completion</td>
<td>Local government entities, states, cities, counties, or other authorities created by State legislatures, i.e. Regional Councils, state chartered Redevelopment Agencies, or similar quasi-governmental agencies under control of local government. A state that is serving in a fiscal and administrative capacity on behalf of a local community, where the local community leads the BF AWP process. Indian Tribe other than in Alaska. (The exclusion of Alaskan tribes from brownfields grant eligibility is statutory at CERCLA §104(k)(1). Intertribal Consortia, comprised of eligible Indian Tribes, are eligible for funding in accordance with the EPA’s policy for funding intertribal consortia published in the Federal Register on 11/4/02, at 67 Fed. Reg. 67181.) - Alaska Native Regional Corporation, Alaska Native Village Corporation, and Metlakatla Indian Community. - Nonprofit organizations, including institutions of higher education. Nonprofit organizations must meet the definition of that term in Section 4(d) of the Federal Financial Assistance Management Improvement Act of 1999.</td>
<td></td>
</tr>
<tr>
<td>Award Amount</td>
<td>Initially up to $200,000 per property/community</td>
<td>Initially up to $1,000,000 additional funding possible</td>
<td>Up to $200,000 per property</td>
<td>Initially up to $200,000, additional funding possible</td>
<td>Varies with project need: Direct technical assistance (not)</td>
<td>Up to $1,200,000 - Tribal programs average from $65,000 to $150,000 depending on number of sites and</td>
<td>Up to $200,000</td>
</tr>
<tr>
<td>Matching Share</td>
<td>No Matching Share</td>
<td>20% Matching Share</td>
<td>20% Matching Share</td>
<td>No Matching Share</td>
<td>Not applicable</td>
<td>No Matching Share</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Call for Proposals</td>
<td>September/October (fedgrants.gov; varies)</td>
<td>September/October (fedgrants.gov; varies)</td>
<td>September/October (fedgrants.gov; varies)</td>
<td>October/January (fedgrants.gov; varies)</td>
<td>Ongoing</td>
<td>Contact Region 10 prior to submitting a request to ensure goals and activities meet criteria.</td>
<td>September/October</td>
</tr>
<tr>
<td>Application Due Date</td>
<td>November/December (varies)</td>
<td>November/December (varies)</td>
<td>November/December (varies)</td>
<td>December/February (varies)</td>
<td>Ongoing</td>
<td>Guidance out</td>
<td>FY15 Deadline is September 22, 2014</td>
</tr>
<tr>
<td>Selections Announced</td>
<td>May/June (varies)</td>
<td>May/June (varies)</td>
<td>May/June (varies)</td>
<td>June/July (varies)</td>
<td>Ongoing</td>
<td>Funding requests due January 31, Selection result expected within 30 days</td>
<td>April/May</td>
</tr>
</tbody>
</table>
The thing about liability defenses...

- To obtain the defenses above...
  - upon discovery of contamination, must report and being operations to contain and cleanup; so these are partial defenses as to past cleanup costs/damages
Now what?!

- Brownfields
- Native American Lands Environmental Mitigation Program (NALEMP)
- Indian General Assistance Program (IGAP)
- ASTDR
- HUD
- USDA
Prevention/Preparedness
Byford Salvage Yard 1988

An estimated 1,500 automobiles were disposed on site
Smashed batteries and fragments present throughout the property.
Leaking petroleum and/or other liquids (POL)
Wrangell Junk Yard

Ubiquitous Scrap Metal and Auto Parts
Wrangell Junk Yard

Effort to remove scrap metal underway in 2012
2014 aerial photo of the property cleared of debris by City and Borough of Wrangell for the EPA Targeted Brownfield Assessment
Figure 4-4
XRF Lead Field Screening
Concentrations Map
Wrangell Junkyard Site
August 2014
Wrangell Junk Yard

Impacts extend to the intertidal area across Zimovia Highway
Wrangell Junk Yard

Access Road and Equipment Pads Constructed
Wrangell Junk Yard

- Based on test pits and trenching, contamination extends uniformly to the glacial till or hard pan layer throughout the site.
- Glacial till is found at depths ranging from 2-6 feet throughout the site.
  - Contamination extends onto at least four adjacent properties.
- Contamination consists of a mixture of lead and petroleum mixed with buried junkyard debris.

New estimated volume is 18,350 cubic yards, or more than 4.5 times the original estimate by EPA.
Future Land Use for the Site

- City’s Highest Priority and Best Use:
  - Sell entire parcel for residential development; or
  - Subdivide parcel and sell individual residential lots.

- Other uses considered:
  - Community Cemetery
  - Possible rezone for commercial or community use such as a Community Greenhouse

- All future development of City land is subject to a public master planning process
Thank you!

- Questions?