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Seminar**

**NARPM Presents...Superfund on Tribal Lands: Issues,  
Challenges and Solutions**

Delivered: October 12, 2011, 1:00 PM - 3:00 PM, EDT (17:00-19:00 GMT)

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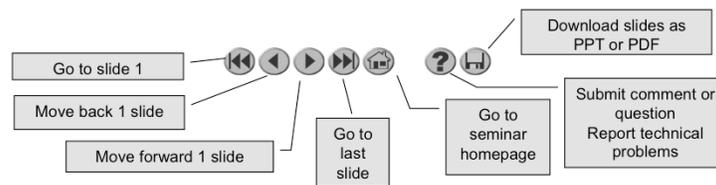
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Visit the Clean Up Information Network online at [www.cluin.org](http://www.cluin.org)

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# Housekeeping

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- Q&A
- Turn off any pop-up blockers
- Move through slides using # links on left or buttons



- This event is being recorded
- Archives accessed for free <http://clu.in.org/live/archive/>

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Although I'm sure that some of you have these rules memorized from previous CLU-IN events, let's run through them quickly for our new participants.

Please mute your phone lines during the seminar to minimize disruption and background noise. If you do not have a mute button, press \*6 to mute #6 to unmute your lines at anytime. Also, please do NOT put this call on hold as this may bring delightful, but unwanted background music over the lines and interrupt the seminar.

You should note that throughout the seminar, we will ask for your feedback. You do not need to wait for Q&A breaks to ask questions or provide comments. To submit comments/questions and report technical problems, please use the ? Icon at the top of your screen. You can move forward/backward in the slides by using the single arrow buttons (left moves back 1 slide, right moves advances 1 slide). The double arrowed buttons will take you to 1<sup>st</sup> and last slides respectively. You may also advance to any slide using the numbered links that appear on the left side of your screen. The button with a house icon will take you back to main seminar page which displays our agenda, speaker information, links to the slides and additional resources. Lastly, the button with a computer disc can be used to download and save today's presentation materials.

With that, please move to slide 3.

# SUPERFUND ON TRIBAL LANDS

Issues, Challenges, and Solutions

Anna Abbey and Teresa Michelsen

Oct. 12, 2011

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## Introduction

CPRC and the Assessment

# Introduction to CPRC

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The purpose of EPA's Conflict Prevention and Resolution Center is to make agreement easier and engage the public.

We do this by:

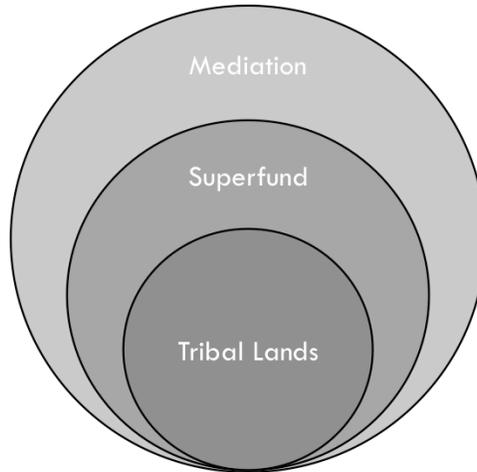
- Coaching, advising and consulting with clients about environmental cases.
- Providing access to mediators and facilitators through our contract.
- Teaching EPA staff and managers skills to help prevent and defuse conflicts in their environmental projects.

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# Scope of the Assessment

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## Goals of the Assessment

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- Identify how ADR is being applied at Superfund sites on tribal lands
- Identify common issues and challenges
- Describe ADR approaches and whether they were effective
- Learn about successful and unsuccessful outcomes
- Gather recommendations

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## Assessment Methods

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- 7 Superfund sites (out of 9 identified)
- 27 interviewees
  - EPA staff
  - Tribal members and representatives
  - Mediators and facilitators
- Anonymous interviews were abstracted for the report

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# Interviews

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- Interviews looked at:
  - ▣ Site-specific issues, challenges
  - ▣ Personal involvement
  - ▣ Structure of the process
  - ▣ What worked and what didn't
  - ▣ Benefits, risks of the mediation process
  - ▣ Recommendations to EPA and mediators

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## Goals of ADR

Why was it used?

## Reasons for Initiating ADR

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- Increasing trust between agencies and tribes
- Find better ways to communicate and share information
- Improve working relationships
- Reduce conflict
- Better understand issues
- Better explain decisions
- Educate parties/public

Nearly all were **relationship** or  
**communication-based**

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## Substantive Goals of ADR

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- Complete RI/FS or ROD
- Establish Community Advisory Group
- Identify and resolve specific issues
- Identify priorities for interim actions
- Allocation of liability
- Obtaining buy-in from tribes and/or public on EPA decisions
- Meet tribal goals for risk assessment, land use, and remedy selection

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Questions?

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## Substantive Issues

Where tensions lie

## Substantive Issues

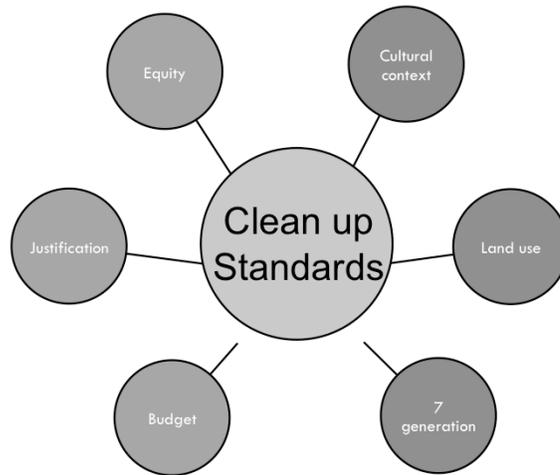
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- Stewardship of tribal lands
- Fairness and consistency with non-tribal Superfund sites
- Incorporation of tribal lifestyles, culture, and spiritual practices into risk assessments
- Completeness and expense of the remedy, especially at mining sites
- Application of tribal soil and land-use standards to decision-making
- Permanency and protectiveness of tribal uses

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# Cleanup Standards

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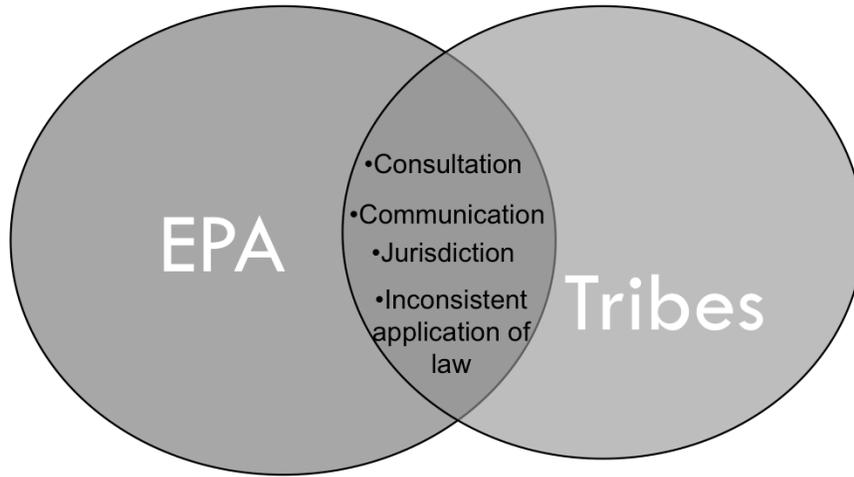
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## ADR Process issues

Aspects to consider

# Shared Issues

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# Process Issues

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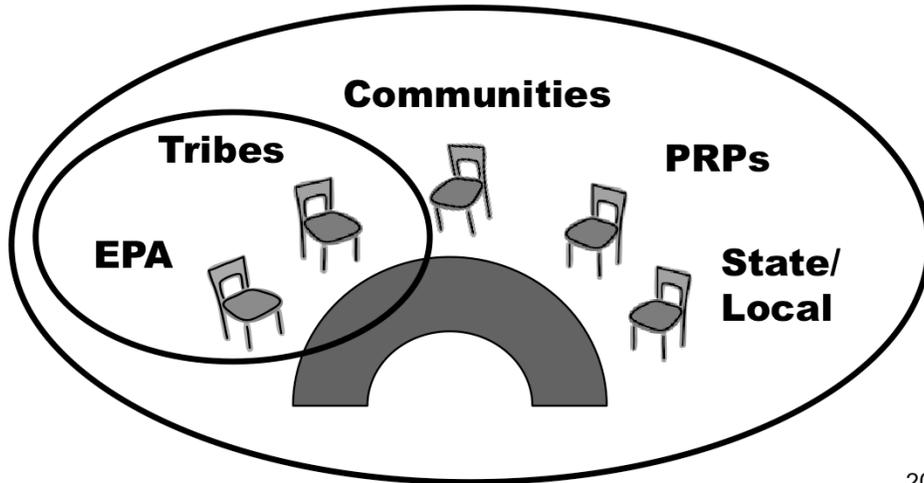
- Consultation
  - ▣ What does it look like?
  - ▣ Who really makes the decisions?
- Tribal trust responsibilities & treaty rights
- Cultural missteps
- Sacred information
- Oral histories/ways of knowing
- Tribal government/decision processes

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# Consultation vs. Facilitation

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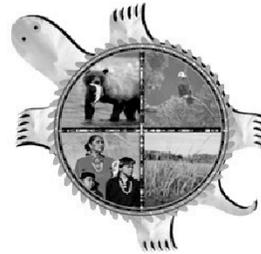
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# Historical Context

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- EPA and Tribes
  - ▣ Historic injustices by federal government
  - ▣ Long memory
  - ▣ Trust issues
  - ▣ Relationship building
  - ▣ “Just a job” vs. a stewardship lifestyle
  - ▣ Place-based governance
  - ▣ History is always present in processes



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# Community Context

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- PRPs and Tribes
  - ▣ Trust issues – conduct of RI/FS
  - ▣ Poor enforcement
  - ▣ Emotional, cultural and economic impacts
  
- Tribes and communities
  - ▣ Economic and development issues
  - ▣ Racial prejudice
  - ▣ Different priorities

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Questions?

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## Results

Benefits/challenges of ADR processes

# ADR Best Practices

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- Mediators produced positive results by:
  - ▣ Managing negative behaviors in meetings
  - ▣ Bringing structure to the process
  - ▣ Demonstrating empathy and neutrality
  - ▣ Helping parties move beyond the past
  - ▣ Working with parties to build and maintain commitment to the process

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## ADR Results - Positive

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- Improved communication
  - Better understanding of each other/issues
- More positive relationships
  - Participants felt heard and built mutual respect
- Substantive achievements
- ADR could be phased out

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## ADR Risks/Concerns

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- Time and cost of the process
- Resistance from management
- Address short-term objectives rather than resolving long-term issues
- Process not lasting long enough to establish lasting relationships
- Unable to resolve issues due to fixed positions, leading to parties considering the process a failure

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## Recommendations

National, Regional and Site Managers

# Convening Recommendations

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- Situation assessment is critical
  - ▣ Assess issues and ripeness
  - ▣ Assess willingness to work together
  - ▣ Learn tribe-specific history and cultural information
  - ▣ Design customized process
  - ▣ Prepare parties for ADR from an emotional, process, and substantive standpoint
- Include tribe in selection of practitioner who has the trust of the community
- Use a practitioner with tribal experience and/or a native practitioner

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## Recommendations: National Level

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- Get clear on consultation
  - ▣ Ensure that the goals of consultation are clear
  - ▣ Ensure that proper protocol is followed; plan well in advance
  - ▣ Bring the right level of participants together
  - ▣ Make effective use of participants' time
  - ▣ Define ground rules and structure the discussion
  - ▣ Identify and carry out followup actions
  
- Define tribal trust responsibilities in the context of Superfund

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## Recommendations: Regional Level

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- Develop Inclusive Culture
  - Training
  - Hiring
  - Flexibility and responsiveness

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## Recommendations: Site Managers

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- Spend time upfront
- Understand each tribe's government
- Seek parity in government to government
- Provide technical, financial resources for the tribe to participate
- Listen, be open-minded

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## Recommendations: Site Managers

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- Take a longer-term view of protecting human health and the environment
- Emphasize teamwork
- Address environmental justice issues
- Engage the tribe in work
- Avoid giving cultural offense or breaching protocol

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## Conclusion

Next steps?

# Conclusion

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- Next Steps?
  - ▣ What tools, resources, etc. are needed?
  - ▣ What can we do to continue the conversation?



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## Resources and Communication

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- Study available online:

[http://intranet.epa.gov/adr/downloads/superfund/  
SuperfundonTribalLands.pdf](http://intranet.epa.gov/adr/downloads/superfund/SuperfundonTribalLands.pdf)

Or, contact Anna Abbey: [abbey.anna@epa.gov](mailto:abbey.anna@epa.gov)

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To read the entire report, please follow the link in this presentation to a pdf version. This is posted through EPA's intranet, so if you don't work for the EPA and would like a copy, please email me at [abbey.anna@epa.gov](mailto:abbey.anna@epa.gov) and I will be happy to send you a copy.

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Questions?

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# Resources & Feedback

- To view a complete list of resources for this seminar, please visit the [Additional Resources](#)
- Please complete the [Feedback Form](#) to help ensure events like this are offered in the future

U.S. EPA Technical Support Project Engineering Forum  
*Green Remediation: Opening the Door to Field Use Session C (Green Remediation: Tools and Examples)*  
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