Petroleum Brownfields: Oneida’s Experience

Defining Challenges and Exploring Opportunities
Outline

- Purpose and Goals
- Oneida Reservation Facts
- Environmental Regulatory Challenges
- Tribal Environmental Response Programs
- Challenges with Petroleum Brownfields
- Conclusion
Purpose & Goals

Purpose:
- Present the Oneida’s experience with petroleum brownfields.
- Identify the unique regulatory challenges to assessment, cleanup and redevelopment.

Goals:
- Create awareness of the complex nature of petroleum brownfields.
- Identify cooperative opportunities.
Oneida Reservation is about 65,400 acres (approximately 100 square miles)

Tribe currently owns 37% of the land base

16,478 members, 6946 tribal members live on or near the Reservation (2009)

Multi-jurisdictional issues - Counties, Cities, Villages, and Towns within the Reservation
Oneida Land Use

The main land use is Agriculture & non-developed lands areas are typically wooded wetlands.

The northeast corner is primarily urban, with some industry.

Duck Creek valley bisects in SW-NE direction.

233 miles of rivers, creeks, & streams.

Austin Straubel International Airport is within the Reservation boundary.
Oneida Facts
(urban setting)

• Oneida employs over 3,000 people (second largest employer in Northeastern Wisconsin)

• 156 commercial leases including Thornberry Creek at Oneida (golf course) Walmart, Home Depot, Sam’s Club and other commercial businesses.

• Main Casino & Bingo, Mason Street Casino, and five “One-Stop” gas stations.

• Oneida supports surrounding communities with sponsorships to connect to worthy causes in the area.
Oneida Facts
(rural setting)

- 16,000 acres of agricultural land
- 4200 acre Oneida Nation Farm
  - November 2005 awarded the Highest Award from the Governance of American Indian Nations
  - maintains over 300 head angus beef cattle & 100 grazed buffalo
  - participates in the Wisconsin On-Farm Testing Corn Trials and are ranked as one of the higher yielding test plots
- Tsyunhehkwa is an organic farm that maintains a seed bank of heirloom white corn.
Developing the Oneida Tribal Environmental Response Program (TERP)

- Eligible entity to administer an environmental response program with potential to receive same status as a state.
- Able to define the universe of sites considered as environmental risks.
- Create regulations, SOPs and procedures for implementation.
- Capacity to overcome regulatory challenges.
Oneida TERP Activities

Since 2004 Oneida has received 128(a) funding to develop a response program.

- Identified approximately 200 petroleum impacted sites;
- Received approval for assessment on 14 potential petroleum impacted properties that totalled 10 acres;
- Created a database to track activities, contaminated properties, and response actions.
RCRA versus CERCLA

- Petroleum programs are administered under RCRA
- Brownfield programs are administered under CERCLA
- Opposing definitions create challenges
- Tribes are not delegated authority under RCRA
Tribal Government Roles (RCRA vs CERCLA)

- RCRA defines Tribes as a municipality
- CERCLA recognizes Tribes as a government entity similar to a state
Oneida’s Petroleum Brownfield Challenges

- State closed sites that utilized state LUST funding

- Capacity to navigate federal and state regulations

- AST versus UST definition & regulations
Petroleum Brownfield Challenges in Oneida

Petroleum response actions conducted under state response programs

- No formal input on target clean up levels and when clean is clean
- Creates obstacles for accessing federal funds
- State ranking system doesn’t match federal ranking
- Remaining soil and groundwater contamination
Petroleum Brownfield Challenges in Oneida

- Universe of eligible tanks
  - ASTs, agricultural tanks and smaller private use tanks not covered by federal LUST regulations.

- Property ownership (past/present)
  - Unable to regulate non-Tribal entities within the Reservation

- Land use decisions
  - Zoning, Comprehensive Plans

- Fee & trust issues
  - If land acquired, potential trust issues
Petroleum Brownfield Challenges in Oneida

- Records of ownership
- BIA leases
- Unresponsive to Tribe’s requests
- Enforcement over non-Tribal entities by the Tribe is a challenge
Summary

Road blocks to addressing Petroleum Brownfields are complicated due to jurisdiction issues and tank status.

Developing the capacity to address petroleum sites requires knowledge outside of the Brownfield Law.

Limited resources to address RPs.
  - generally involves the courts

AST regulations and enforcement
Questions?