



Clean Water Indian Set-Aside Grant Program

Answers to Frequently Asked Questions



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PROGRAM OVERVIEW

1. What is the Clean Water Indian-Set Aside (CWISA) Program?

The CWISA Program provides funding for wastewater infrastructure to Indian tribes and Alaska Native Villages. Funds may be used for planning, design, and construction of wastewater collection and treatment systems. The CWISA Program is administered by the Environmental Protection Agency (EPA) in cooperation with the Indian Health Service (IHS) Sanitation Facilities Construction Program.

2. Who is eligible to receive CWISA Program funding?

All federally recognized tribes, Alaska Native Villages, and tribes on former reservations in Oklahoma are eligible for CWISA Program funds.

3. When and how was the CWISA Program established?

The CWISA Program was established by the 1987 Amendments to the Clean Water Act, in Section 518(c).

4. How does one obtain funding from the CWISA Program?

Tribes must first contact their IHS Area office to determine if their wastewater needs are eligible to be entered into the IHS Sanitation Deficiency System (SDS) priority list. EPA uses the SDS priority list to identify priority wastewater projects for funding. CWISA Program coordinators in each EPA Region and IHS work together to determine the projects to be funded, based on the ranking of projects in the SDS and available CWISA Program funding. The amount of CWISA Program funding available to each EPA Region is based on each Region's tribal wastewater needs, as identified by the IHS Sanitation Deficiency System. Refer to Questions 11 and 12 for more information on the project selection process.

EPA Regional CWISA Program coordinators will notify the tribe when a project is tentatively selected for funding. The tribe may receive grants directly and manage the project itself, or, if IHS agrees, the tribe may request project funds to be transferred to IHS to administer the project on the tribe's behalf.

5. How does a tribe get its wastewater needs into the Indian Health Service Sanitation Deficiency System?

IHS has 12 Area offices that collect data for the Sanitation Deficiency System annually. Local IHS Area office representatives can help tribes identify their wastewater needs for this purpose. During the data collection process, IHS personnel may meet with or contact tribal representatives to discuss or obtain specific project proposals. Refer to pages 17 and 18 for IHS Area office contacts.

6. What is the deadline for getting wastewater needs into the Indian Health Service Sanitation Deficiency System? What is the timeframe for obtaining CWISA Program funds?

The table at the top of the following page provides a general timeframe for getting wastewater needs into the IHS Sanitation Deficiency System and for obtaining CWISA Program funds. For exact dates, please contact your local IHS Area office or your EPA Regional CWISA Program coordinator; refer to pages 15-18.

At the time that EPA notifies the tribe that a project has been selected for funding, EPA will specify the amount of time the tribe will have to meet certain requirements (refer to Question 27). If these requirements are not met within a reasonable period of time (as determined by EPA) the money allocated for that project will be returned to the CWISA Program.

Timeframe for Project Identification and Project Selection	
Date:	Milestone:
February – May 2007	Tribes identify sanitation needs to IHS Area offices.
June 1, 2007	Deadline for submission of tribal needs to IHS Area offices. (Check with your IHS Area office to determine the exact date. IHS Area office contacts are listed on pages 17-18).
June – July, 2007	IHS Area offices review and rank projects submitted to the Sanitation Deficiency System (SDS).
August – December 2007	IHS Headquarters reviews IHS Area office SDS project submissions.
December 2007	Final SDS lists are made available to EPA Regional CWISA Program coordinators.
February – May 2008	EPA Regional CWISA Program coordinators select projects from SDS.
April - September 2008	EPA Regional CWISA Program coordinators notify tribes that have been selected for funding and award CWISA Program funds.

7. How many tribal wastewater projects receive CWISA Program funding each year?

The number of projects funded depends on the amount of CWISA Program funding available each year. In Fiscal Year 2006, 45 tribal projects were funded with CWISA Program funds.

8. How many tribal wastewater projects in my EPA Region have received funding from the CWISA Program?

The table below provides a summary of the number of tribal projects that have been awarded in each EPA Region between 1987 and 2006 with CWISA Program funding.

Summary of Tribal Projects Awarded by Region	
EPA Region	<i>Number of tribal projects awarded between 1987 - 2006</i>
Region 1 (CT, ME, MA, NH, RI, VT)	10
Region 2 (NJ, NY)	7
Region 4 (AL, FL, GA, KY, MS, NC, SC, TN)	28
Region 5 (IL, IN, MI, MN, OH, WI)	31
Region 6 (AR, LA, NM, OK, TX)	52
Region 7 (IA, KS, MO, NE)	15
Region 8 (CO, MT, ND, SD, UT, WY)	55
Region 9 (AZ, CA, HI, NV)	263
Region 10 (AK, ID, OR, WA)	150
Total:	611

Note: EPA Region 3 does not have any federally recognized tribes.

The amount of CWISA Program funding distributed to each EPA Region is based on each Region's tribal wastewater needs, as identified by the IHS SDS. Certain EPA Regions, such as Region 9 (which includes AZ, CA, and NV) and Region 10 (AK, ID, OR, WA), tend to receive more CWISA Program funding because they have relatively larger tribal wastewater needs.

PROJECT ELIGIBILITY

9. What types of projects are funded by the CWISA Program? Do they have to be wastewater-related?

All projects funded by the CWISA Program must be wastewater-related. Project components that are eligible for funding include:

- Interceptor sewers
- Wastewater treatment facilities (conventional or alternative)
- Infiltration/inflow correction
- Collector sewers
- Major sewer rehabilitation
- On-site treatment systems (e.g., septic systems)

10. Can CWISA Program funds be used to pay for the operations and maintenance of a wastewater treatment facility?

No. CWISA Program funds can only be used to pay for the planning, design, and construction of wastewater projects. They cannot be used to pay for the cost of operation and maintenance (O&M) of the wastewater facility. Nor can they be used to pay for repairs to the treatment system in emergency situations. This prohibition against using CWISA Program funds for O&M projects arises because the Clean Water Act does not define the term “construction” to include operation and maintenance.

11. How does EPA select projects from the IHS Sanitation Deficiency System?

CWISA Program coordinators in each EPA Region and IHS work together to determine the projects to be funded, based on the ranking of projects in the SDS and available CWISA Program funding. Final funding decisions are made by EPA.

12. How are projects ranked in the Indian Health Service Sanitation Deficiency System?

Projects are ranked in the Sanitation Deficiency System based on eight factors: health impact, existing deficiency level, previous service, capital cost, O&M capability, contributions, local tribal priority, and local conditions. Contact your IHS Area office for additional information about each of these factors, or check the IHS guidelines for the SDS at: <http://www.dsfc.ihs.gov/Documents/SDSWorkingDraft2003.pdf> , p. 25 - 29.

13. Does the CWISA Program specifically address water quality problems? Are water quality needs identified in the Indian Health Service’s Sanitation Deficiency System?

Yes. Water quality needs can be addressed through the CWISA Program. As stated in Section 216 of the Clean Water Act, EPA’s water quality goals are first to rectify deficiencies that are causing, or could potentially cause, human health

problems. Once public health goals are attained, EPA will then concentrate on projects that address water quality goals, such as meeting effluent permit limits or loading criteria.

This is also reflected in EPA's use of the IHS Sanitation Deficiency System (SDS) to prioritize projects. The SDS scoring criteria give more weight to public health needs than to water quality needs. Projects necessary to solve public health problems would have higher SDS scores than projects designed to rectify water quality problems. EPA would most likely give higher priority to a wastewater treatment project which addressed environmental and human health needs over a project which addressed only environmental needs.

14. Can future needs be addressed through the Indian Health Service's Sanitation Deficiency System?

Generally, no. The Sanitation Deficiency System identifies current sanitation deficiencies for existing Indian homes. Therefore, a project that was submitted primarily to meet future needs (such as projects necessary to meet projected population growth) will not be considered. However, facilities constructed to meet existing needs are usually designed with flexibility to accommodate some future expansions.

15. Can CWISA Program funds be used for wastewater projects that are linked to economic development projects?

No. These projects are not eligible for CWISA Program funds. EPA currently uses the Indian Health Service's Sanitation Deficiency System (SDS) to prioritize wastewater needs. The SDS considers only immediate needs for sanitation facilities and not those needs that will spur economic development or growth. However, federal programs such as the Department of Housing and Urban Development's Indian Community Development Block Grant Program; the Department of Agriculture's Water and Waste Disposal Program; and the Department of Commerce's Economic Development Grants for Public Works and Development Facilities Program do fund economic development projects. Additional information about these programs can be found in the Tribal Resource Directory for Drinking Water and Wastewater Treatment, available at: <http://www.epa.gov/owm/mab/indian/tribal-resource-directory.html> .

FUNDING

16. How much funding is available each year for the CWISA Program? What is the average CWISA Program award amount?

The amount of funding available varies each year. In Fiscal Year 2006, approximately \$13 million in total was made available for the CWISA Program.

The average award amount for individual projects is \$300,000. In recent years, award amounts have ranged from \$16,000 to \$1,600,000. Award amounts will vary depending on the type of project.

CWISA Program funding is distributed annually to EPA Regions after the Regions identify which projects to fund from the IHS Sanitation Deficiency System (SDS). The amount of CWISA Program funding distributed to each EPA Region is based on each Region's tribal wastewater needs, as identified by the IHS SDS. Certain EPA Regions, such as Region 9 (includes AZ, CA, and NV) and Region 10 (AK, ID, OR, WA), tend to receive more CWISA Program funding because they have relatively larger tribal wastewater needs.

17. How much funding has the CWISA Program provided to-date?

Between 1987 and 2006, the CWISA Program has provided over \$202 million in funding and 611 projects have been funded. The table below provides a summary of the funding that has been provided to-date and the number of projects that have been funded each year:

CWISA Program Annual Funding Levels (1987 - 2006)		
Fiscal Year	Appropriation Amount	Projects Funded
1987	\$5,805,000	7
1988	\$11,520,000	19
1989	\$4,705,000	5
1990	\$4,867,600	8
1991	no funds appropriated	-
1992	\$9,743,000	14
1993	\$9,637,500	12
1994	\$6,090,000	8
1995	\$6,175,000	24
1996	\$6,742,500	25
1997	\$6,750,000	29
1998	\$6,750,000	25
1999	\$6,750,000	28
2000	\$6,727,100	31
2001	\$20,205,500	57
2002	\$20,250,000	61
2003	\$20,118,300	95
2004	\$20,130,500	57
2005	\$16,368,000	61
2006	\$13,301,300	45
Total	\$202,636,300	611

18. Where does funding for the CWISA Program come from?

Congress provides funding for the CWISA Program each year through its appropriation for the Clean Water State Revolving Fund (CWSRF). The CWISA Program receives a 1.5% “set-aside” from the CWSRF annual appropriation.

19. Are matching funds required?

No. The purpose of the CWISA Program is to provide an opportunity for tribes to obtain wastewater treatment funds through a simplified priority process that does not require any matching funds. Up to 100 percent of eligible project costs can be funded.

20. Can CWISA Program funds be combined with other sources of funding?

Yes. CWISA Program funds can be used alone or can be used in conjunction with other funding sources. For example, EPA and the Indian Health Service often provide joint funding for projects in the Sanitation Deficiency System.

21. When do CWISA Program funds become available?

EPA Regional CWISA Program coordinators select projects from the IHS Sanitation Deficiency System (SDS) between February and May of each year, using the final SDS priority list from the previous year. EPA Regional CWISA Program coordinators will notify the tribe when a project is selected for funding, generally between April and September of each year. Refer to the Timeframe for Project Identification and Project Selection table on page 5.

22. Are pre-award costs (prior to the award of funding) eligible for CWISA Program funding?

Generally, no. Pre-award costs for projects selected for funding are eligible only with prior approval from the Regional CWISA Program coordinator and only for emergency or other exceptional circumstances (see 40 CFR 35.2118, available at <http://www.gpoaccess.gov/cfr/index.html> . For example, in emergencies or instances where delay could result in significant cost increases, the Regional EPA Administrator may approve preliminary building work, such as procurement of major equipment requiring long lead times.

23. How are multi-phase wastewater treatment project costs covered by the CWISA Program?

Multi-phase projects are considered as separate projects. Tribes must apply for CWISA Program funds for each phase of each project. The project must be listed and ranked within the IHS Sanitation Deficiency System to be eligible to receive funding. All phases must be independently operational and beneficial, because the next phase(s) of the project may not rank high enough to be funded in subsequent years.

24. Does the CWISA Program cover cost overruns on projects?

No. There are no additional CWISA Program funds for projects that exceed their budget. Projects which have cost overruns must be addressed by reducing the scope or restructuring the project, applying for additional funding under any subsequent set-aside priority list, or seeking additional funds from other sources.

25. Are wastewater system costs for homes built with the Department of Housing and Urban Development (HUD) funds eligible under the CWISA Program?

Yes. Wastewater systems for HUD-funded homes are eligible for funding under the CWISA Program. However, funding cannot be used for indoor plumbing or lateral connections to individual homes.

26. What options are available for administering CWISA Program funds?

There are two ways in which CWISA Program funds may be administered:

- 1) A grant from the CWISA Program may be made directly to the tribe. The tribe will be responsible for administering the grant.
- 2) If IHS agrees, CWISA Program funding may be transferred to IHS. IHS will be responsible for administering the funding for the benefit of the tribe.

This choice is left up to the tribe. The differences between these two options are described in more depth in Questions 27 through 29. The chart on the following page provides a comparison of these two options.

27. What program requirements and regulations must the tribe meet in order to receive a direct grant from EPA? What are the tribe's responsibilities in administering a direct grant?

If the tribe chooses to receive a direct grant from EPA, the tribe must submit a formal grant application to the EPA Regional CWISA Program coordinator. The tribe is responsible for meeting all applicable grant regulations and requirements, including procurement procedures, environmental review (including National Environmental Protection Act (NEPA) requirements), audit procedures, accounting principles, and progress reporting. Through a competitive process, the tribe is responsible for choosing an architectural/engineering (A/E) firm to design the project and a construction contractor to build the facility.

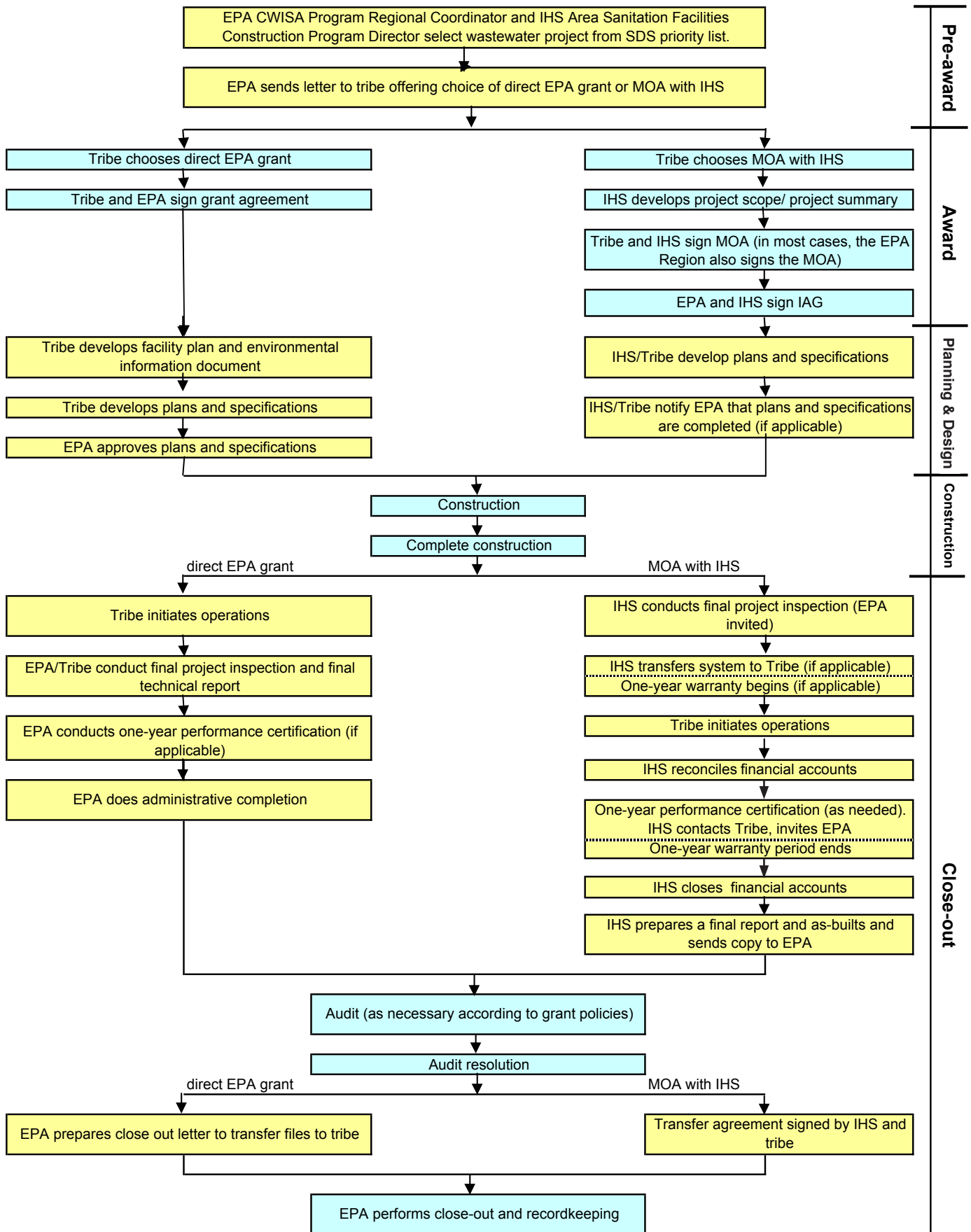
The requirements for a tribe to receive a CWISA Program grant directly from EPA are discussed in the EPA's 1989 Guidelines and Requirements for Applying for Grants from the Indian Set-Aside Program, available at <http://www.epa.gov/owm/mab/indian/cwisa.html>. While the requirements are designed specifically for the CWISA Program, they are based on the regulations contained in 40 CFR Part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) and 40 CFR Part 35 Subpart I (Grants for Construction of Treatment Works), available at <http://www.gpoaccess.gov/cfr/index.html>. Tribes should work closely with their EPA Regional CWISA Program coordinator to determine which regulations apply to their project, as well as to ensure that all of the regulations are followed properly.

28. What program requirements and regulations must the tribe meet if the Indian Health Service administers the CWISA Program funds?

If the tribe chooses to have the IHS Area office administer the CWISA Program funds, the tribe would sign a Memorandum of Agreement (MOA) with IHS (in most cases, the EPA Region also signs the MOA). The MOA ensures a mutual understanding of each party's responsibilities for the construction of the project and the subsequent operation and maintenance of the constructed sanitation facilities.

The CWISA Program funds are transferred by the EPA Region to the IHS Area office using an Inter-Agency Agreement (IAG) signed by both EPA and IHS. CWISA Program funds that are transferred to the IHS Area office will be administered by IHS under its policies and guidelines, including applicable Federal requirements, such as environmental review, and subject to its authorizing statutes (including the Indian Self-Determination Act, Indian Health Care Improvement Act, and P.L. 86-121 (42 U.S.C. 2004a)).

Comparison of CWISA Project Procedures: EPA Direct Grant vs. MOA with Indian Health Service



29. If the tribe requests the Indian Health Service to administer CWISA Program funds, can the tribe request an outside A/E to design the project and an outside construction contractor to build the facility?

Yes, if the IHS agrees, since there may be additional resources required to administer the project in that manner. If the tribe requests IHS to administer CWISA Program funds, the tribe has two options for designing and/or building its wastewater project:

- 1) The tribe can have IHS administer the grant but request an outside architectural/engineering (A/E) firm to design the project and/or an outside construction contractor to build the facility. IHS would work with the tribe and the A/E to ensure (to the greatest extent possible) that all applicable EPA and/or IHS guidelines regarding the project are followed. (Refer to Question 30 for additional information about this option.)
- 2) The tribe can have IHS design and build the project according to IHS's administrative and construction policies and procedures (i.e., procurement, environmental review, audit procedures, and accounting principles).

30. Does the Indian Health Service's Sanitation Deficiency System project cost estimate recognize the additional costs of using a non-governmental engineer to design/ manage the project? If not, how are these costs covered?

Generally, no. IHS, with tribal consultation, provides the project cost estimate that is included in the Sanitation Deficiency System (SDS). Any award of CWISA Program funds will be based on the SDS project cost estimate. Because of the method by which IHS structures its project cost estimate, the estimate could be low relative to what it would cost a non-governmental engineering firm to design/manage the same project. The tribe needs to let IHS know during the SDS cycle if they desire an outside engineering organization, so that, if possible, an additional cost can be incorporated. However, the additional cost could lower the priority of the project, since capital cost is one of the priority ranking factors. If the tribe chooses to hire an outside engineering firm to do the work after the grant is approved, the project cost might be higher than the cost estimate contained in the SDS. In some cases when this has occurred, EPA Regional CWISA Program coordinators and the tribes have worked together to offset the increased project costs by scaling back the scope of the project.

31. What percentage of CWISA Program recipients have requested the Indian Health Service to administer their CWISA Program funds? What percentage of recipients administered the grants themselves?

To date, approximately 96% of CWISA Program recipients have requested the Indian Health Service to administer their CWISA Program funds. The remaining 4% of recipients have opted to administer the grants themselves (as a direct grant from EPA).

32. Can tribes who have assumed the Indian Health Service Sanitation Facilities Construction Program responsibility under Title I or Title III of P.L. 93-638 (Indian Self-Determination Act) have CWISA Program funds transferred into their IHS compacts or contracts?

No. EPA does not have the authority within the Clean Water Act to enter into P.L. 93-638 contracts or compacts with tribes directly nor through inter-agency agreements with IHS for tribes. If a tribe chooses to receive CWISA Program funds as a direct grant from EPA, all of EPA's grant conditions and regulations must be fulfilled. If, on the other hand, the tribe chooses to have IHS administer the CWISA Program funds through an inter-agency agreement, then the funds will be administered by IHS as a P.L. 86-121 sanitation facilities construction project under IHS's policies and regulations.

33. What is the relationship between the Environmental Protection Agency and the Indian Health Service in the administration of the CWISA Program?

The 1987 Amendments to the Clean Water Act (Section 518(e)), directed EPA to work with IHS to identify and address the sanitation needs of tribes. To accomplish this, EPA entered into an inter-agency agreement and memorandum of understanding with IHS in 1988 to provide help with the administration of the CWISA Program. Because EPA does not have the resources necessary at the field level to administer project grants by itself, this partnership has allowed EPA and IHS to work together to leverage the technical resources available through both agencies to address tribal sanitation needs. However, final decisions to fund CWISA Program projects are made by the EPA.

34. How will disputes between EPA and the Indian Health Service, or EPA and the tribes, be settled?

Some disputes arise as a result of a misunderstanding of the project scope or program requirements. Problems may occur if the tribe is not involved in the project's development from the beginning. Disputes can often be avoided by emphasizing communications and developing a joint understanding of the technical, administrative and programmatic aspects of the project.

An agreement on the resolution of disputes should be part of the Project Scope and/or the Memorandum of Agreement (MOA) signed by the parties for each project. In many MOAs, the disputing parties are required to try to work out their differences among themselves. If no resolution can be achieved using this method, then the dispute is often turned over to a review board appointed by the lead agency (EPA or IHS) for resolution. Many of these MOAs also give IHS and EPA the right to cancel projects if they feel that their requirements are not being met.

SOURCES OF ADDITIONAL INFORMATION

35. Where can I find additional information about the CWISA Program?

The CWISA Program website contains program information, including program guidance documents and program contact information. The website address is: <http://www.epa.gov/owm/mab/indian/cwisa.html> . Information about the IHS Sanitation Facilities Construction program can be found at: <http://www.dsfc.ihs.gov/index.cfm> .

36. Where can tribes obtain technical assistance?

The Environmental Protection Agency and the Indian Health Service can provide technical assistance on a variety of topics, from complying with regulations to choosing low-cost alternative wastewater treatment technologies to administering CWISA Program funds. In addition, there are a variety of technical assistance providers, including the Rural Community Assistance Partnership, the National Environmental Service Center, the Native American Water Association, and other federal agencies, all of which may be able to assist tribes in specific areas. More information on these and other resources is available in the Tribal Resource Directory for Drinking Water and Wastewater Treatment, available at: <http://www.epa.gov/owm/mab/indian/tribal-resource-directory.html> .

PROGRAM CONTACTS

EPA Regional CWISA Program Coordinators:

EPA Region 1

(CT, ME, MA, NH, RI, VT)

Website: <http://www.epa.gov/region01/>

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EPA Region 2

(NJ, NY)

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EPA Region 3

(DC, DE, MD, PA, VA, WV)

There are no federally recognized tribes in Region 3.

EPA Region 4

(AL, GA, FL, MS, NC, SC, TN, KY)

Website: <http://www.epa.gov/region4/>

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EPA Region 5

(IL, IN, OH, MI, MN, WI)

Website: <http://www.epa.gov/region5/>

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CWISA Program contact information was up-to-date as of February 2007. Updated contact information can be found at:
http://www.epa.gov/owm/mab/indian/cwisa_co.html.

Indian Health Service Area Sanitation Facilities Construction Program Directors:

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(NE, IA, ND, SD)

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*IHS contact information was up-to-date as of February 2007. Updated contact information can be found at:
<http://www.dsfc.ihs.gov/staff.cfm>.*

