Criteria

for the

Sanitation Facilities Construction Program

June 1999
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Prepared by

Office of Environmental Health and Engineering
Division of Sanitation Facilities Construction

Department of Health and Human Services
Public Health Service
Indian Health Service

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Indian Health Service
Rockville MD 20852

TO: Associate Directors, Office of Environmental Health and Engineering
Directors, Division of Sanitation Facilities Construction
All Areas

FROM: Director,
Division of Sanitation Facilities Construction

SUBJECT: Criteria for the Sanitation Facilities Construction Program

This printing of the Criteria for the Sanitation Facilities Construction Program contains minor revisions that reflect the administrative and organizational changes that occurred since the June 1999 version was distributed.

Since the June 1999 printing of the Criteria, Public Law (P.L.) 106-260, the Tribal Self-Governance Amendments of 2000, added Title V to P.L. 93-638. The regulations implementing Title V were promulgated at 42 CFR Part 137-Tribal Self-Governance, and the sections addressing construction are in Subpart N beginning with section 137.270. Title V is not discussed in this printing of the Criteria. A major revision of the Criteria will be considered after the reauthorization of P.L. 94-437, the Indian Health Care Improvement Act, and will include a discussion of Title V.

It should be noted that Title V replaces Title III of P.L. 93-638 and while Title V provides a new option for a construction agreement (described in P.L. 106-260 and its implementing regulations), the options described in this publication are still valid.

Ronald C. Ferguson, P.E.

DEPARTMENT OF HEALTH & HUMAN SERVICES Public Health Service

Indian Health Service
Rockville MD 20857

MAY 3 1 1999

TO: Associate Directors, Office of Environmental Health
Directors, Division of Sanitation Facilities Construction
All Areas

FROM: Acting Director
Division of Facilities and Environmental Engineering
Headquarters

SUBJECT: Updated "Criteria for the Sanitation Facilities Construction Program"

Many changes affecting the Indian Health Service (IHS) Sanitation Facilities Construction (SFC) Program have occurred since the last update of this important document back in 1984. Most notable are the amendments to Public Law (P.L.) 94-437, the Indian Health Care Improvement Act, and the amendments to P.L. 93-638, the Indian Self-Determination and Education Assistance Act. For example, these laws have resulted in the development of comprehensive tribal needs data and improved opportunities for tribes to administer their own programs. Since 1984, the SFC Program has developed many policy guidance documents regarding environmental compliance, Memorandums of Agreement, needs data bases, project data bases, and for accomplishing projects under self governance compacts and self determination contracts. Additionally, eligibility criteria and funding methodologies have been further refined through tribal consultation. Therefore, this document, which is considered the foundation document for the SFC Program, needed to be revised. All other SFC Program documents are referenced throughout this revision.

This "Criteria Document" is intended for use by SFC Program staff and by tribes. In essence, it is a compilation of previously approved guidance policies. However, this version is a working document until such time as P.L. 94-437 is reauthorized and Congress passes Title V of P.L. 93-638. Afterwards, if necessary, the policies herein will be appropriately updated and this document will be changed and finalized.

This new version took more than 2 years by the IHS Environmental Engineering Branch to complete. Much effort was put into improved descriptions of the Program and funding processes. Special thanks to Stephen Aoyama, who pulled it all together and prepared most of the informative tables and figures.

Richard F. Barror, Ph.D., P.E.

PREFACE

This document is intended for use by all SFC Programs and is a compilation of previously approved guidance policies. It summarizes those policies and procedures and provides a the history of the Indian Health Service, Sanitation Facilities Construction Program.

The foresight of the U.S. Public Health Service and the Congress four decades ago, helped a generation of American Indian and Alaska Native children to escape the hardship and poor health that accompany life without a safe and adequate water supply. Today, most elderly Indian people need not fear becoming unable to carry water into their homes. A major step toward addressing this deficiency was enactment in 1959 of Public Law 86-121 which authorized the Surgeon General to construct safe water supplies and sanitary waste disposal facilities for American Indian and Alaska Native homes and communities. The law's passage came only four years after creation of the Division of Indian Health, which later became the Indian Health Service. Public Law 86-121 was a milestone in Indian health legislation and is the basic enabling legislation for the Indian Health Service's Sanitation Facilities Construction Program. Efforts by other public health specialists such as nutritionists and public health nurses are much more effective when safe water and adequate wastewater disposal systems are available in the home. In addition, the availability of such facilities is of fundamental importance to social and economic development, which leads to an improved quality of life and an improved sense of well-being.

INDIAN HEALTH SERVICE

CRITERIA FOR THE SANITATION FACILITIES CONSTRUCTION PROGRAM

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ABBREVIATIONS AND ACRONYMS

108 contract	Title I services contract under the authority of Section 108, P.L. 93-638.
A-87	Office of Management and Budget. OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments. Latest copy.
ACHP	Advisory Council on Historic Preservation
AFA	Annual Funding Agreement
AFAA	Annual Funding Agreement addendum
AI/AN	American Indian and Alaska Native
BIA	Bureau of Indian Affairs
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CHSDA	Contract Health Services Delivery Area
CWA	Clean Water Act
CWF	Consolidated Working Fund account
DEH	Division of Environmental Health (reorganized into OEHE)
DFEE	Division of Facilities and Environmental Engineering (reorganized into IHS HQ, OEHE)
DFS	Dental Fluoride Tracking System
DHEW	Department of Health, Education, and Welfare (reorganized into DHHS or HHS)
DHHS	Department of Health and Human Services
DOI	Department of the Interior
DOJ	Department of Justice
DOL	Department of Labor
DOT	Department of Transportation
DSFC	Division of Sanitation Facilities Construction
E.O.	Executive Order
EA	Environmental Assessment
EEB	Environmental Engineering Branch (reorganized and renamed DSFC)
EFA	Engineering Funding Agreement
EIS	Environmental Impact Statement
Environmental Review Manual	Indian Health Service. Environmental Review Manual. DEH, OEHE. March 1993.
EPA	Environmental Protection Agency
FAR	Federal Acquisition Regulations
FDS	Facility Data System
FMB	Financial Management Branch
FOIA	Freedom of Information Act
FONSI	Finding of No Significant Impact
FR	Federal Register
FY	Fiscal Year
GAO	General Accounting Office
Gray Book	see Grey Book
Grey Book	Indian Health Service. "Guidance for Title I Self-Determination Contract Negotiations for the Sanitation Facilities Construction Program and/or Projects." EEB, DFEE, OPH. Latest copy.
HIP	Home Improvement Program of the Bureau of Indian Affairs
HPS	Housing Priority System
HQ	Headquarters
HUD	Department of Housing and Urban Development
IAG	Interagency Agreement
IHS	Indian Health Service
IPA	Intergovernmental Personnel Act - Temporary assignments of employees between federal agencies, State, local, Indian tribal governments, institutions of higher learning, and other eligible organizations

IPAC . . . . . Intra-governmental Payment and Collection System. IPAC replaced OPAC. It accomplishes the same functions (payments and collection transfers), but it is an internet based system.
ISDEA . . . . . Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended
ISO . . . . . International Organization for Standardization
MOA . . . . . Memorandum of Agreement
MOA Guidelines . . . . . Indian Health Service. Guidelines for the Utilization of the Memorandum of Agreement by the Indian Health Service Sanitation Facilities Construction Program, Working Draft. IHS. Latest copy.
MOU . . . . . Memorandum of Understanding
NAGPRA . . . . . Native American Graves Protection and Repatriation Act
NAHASDA . . . . . Native American Housing Assistance and Self-Determination Act of 1996 (P. L. 104-330; 25 U.S.C. 4101 et. seq.)
NEPA . . . . . National Environmental Policy Act
NHPA . . . . . National Historic Preservation Act
NPDES . . . . . National Pollutant Discharge Elimination System
NPDWR . . . . . National Primary Drinking Water Regulations
O&M . . . . . Operation and Maintenance
OEHE . . . . . Office of Environmental Health and Engineering
OGC . . . . . Office of the General Counsel
OMB . . . . . Office of Management and Budget
OMB Circular A-87 . . . . . Office of Management and Budget. Cost Principles for State, Local and Indian Tribal Governments. Latest copy.
OPAC . . . . . Online Payment and Collection
OPDIVs . . . . . Operating Divisions
OPH . . . . . Office of Public Health, IHS
OSHA . . . . . Occupational Safety and Health Administration, U.S. Department of Labor
OTSG . . . . . Office of Tribal Self-Governance, IHS
P.L. 86-121 . . . . . sometimes called the Indian Sanitation Facilities Act
P.L. 93-638 . . . . . Indian Self-Determination and Education Assistance Act
P.L. 94-437 . . . . . Indian Health Care Improvement Act
P.L. 100-713 . . . . . Indian Health Care Amendments of 1988
P.L. 103-399 . . . . . Indian Lands Open Dump Cleanup Act
PDS . . . . . Project Data System
PFA . . . . . Project Funding Agreement
PSFA . . . . . Programs, Services, Functions, and Activities
PHS . . . . . Public Health Service
POR . . . . . Program of Requirements
PWSID . . . . . EPA Public Water System identification
RCRA . . . . . Resource Conservation and Recovery Act
ROW . . . . . right-of-way
RRM . . . . . Resources Requirement Methodology
RUS . . . . . Rural Utilities Service, USDA (one of several agencies that were formerly Farmer's Home Administration)
SDI . . . . . Sanitation Deficiency Inventory
SDS . . . . . Sanitation Deficiency System
SD/SG . . . . . Self-Determination/Self-Governance. Refers to tribes that assume responsibility for an IHS program under P.L. 93-638 Title I (SD) or Title III (SG).
SDWA . . . . . Safe Drinking Water Act
SFC . . . . . Sanitation Facilities Construction
SFCB . . . . . Sanitation Facilities Construction Branch
SFCP . . . . . Sanitation Facilities Construction Program
SGDP . . . . . Self-Governance Demonstration Project
SHPO . . . . . State Historic Preservation Officer

Subpart J	Code of Federal Regulations, Title 25, Chapter V, Part 900, Contracts under the Indian Self-determination And Education Assistance Act (25 CFR 900); Subpart J--Construction, Sections 900.110 to 900.148.
TAC	Tribal Advisory Committee
THPO	Tribal Historic Preservation Officer
TDHE	Tribally Designated Housing Entity (formerly Indian Housing Authority)
USC	United States Code
USDA	U.S. Department of Agriculture
Yellow Book	Indian Health Service. "Guideline for the Sanitation Facilities Construction Program under the Title III Self-Governance Demonstration Project." EEB, DFEE, OPH. Latest copy.

INDIAN HEALTH SERVICE

CRITERIA FOR THE SANITATION FACILITIES CONSTRUCTION PROGRAM

CHAPTER 1. Organization and Content

I. Introduction

This document (also known as the "Criteria Document") describes the criteria used by the Indian Health Service (IHS) Sanitation Facilities Construction (SFC) Program to develop, design, fund, and construct sanitation facilities for American Indian and Alaska Native homes. The Criteria Document also describes the technical assistance available to Tribes to help them properly operate and maintain those facilities. The sanitation facilities provided by IHS include safe drinking water and sanitary waste disposal systems. This Criteria Document replaces the Division of Indian Health Circular No. 62-15 (Method of Conduct), dated October 1959, revised August 1962, which established the policy and procedures for implementation and administration of Public Law 86-121. This document also supersedes the "Criteria for Sanitation Facility Construction" issued in 1984 and referenced in the Indian Health Service Manual, Chapter 11.

These criteria will help the SFC Program achieve its goal to improve the health of the American Indian and Alaska Native people by improving the environment in which they live. The SFC Program accomplishes that goal by providing the American Indian and Alaska Native people with safe water supplies, adequate means of waste disposal, and other essential sanitation facilities. An additional goal is to build tribal capability to operate and maintain the facilities provided in a safe and effective manner to assure continued health protection and benefits into the future.

II. Purpose

The Criteria Document sets forth, for both IHS staff and tribes, the policies, procedures, and legal requirements of the SFC Program. It defines who can be served, what facilities can be provided, and how the services are provided. It also describes the different types of funds and how they are allocated for projects and other program related activities. Program administrators and project managers (both federal and tribal) must adhere to these criteria in order to assure effective, equitable, and consistent utilization of resources available for sanitation facilities construction among all tribes.

III. Organization of SFC Program Policies

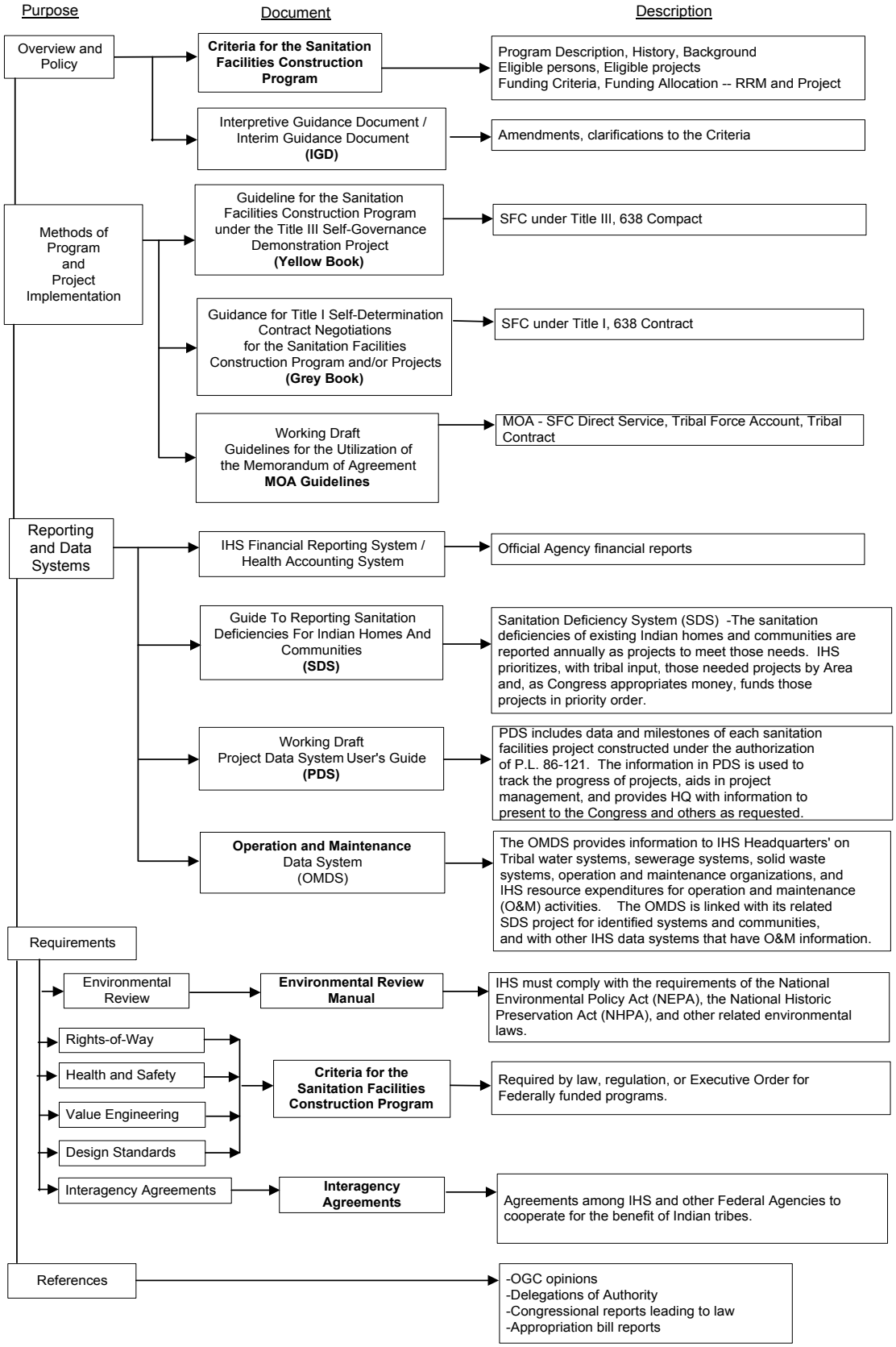
The SFC Program is a nation-wide program responsible for the delivery of environmental engineering services and sanitation facilities to tribes through the allocation of available resources to twelve (12) IHS Area Offices (Table 2-2). Nearly all the information exchange occurs at the Area level by Area program staff in consultation with tribal officials.

The Criteria Document provides an overview of the SFC Program and references other IHS and SFC Program documents that give more detailed explanations of specific procedures. The relationship to those other documents is shown in Figure 1-1.

Chapters 1 through 3 present an overview of the SFC Program describing its organization, funding, history, services, and program delivery methods. Subsequent chapters describe eligibility requirements for services, resource allocation policies, and methods of program and project implementation including program operations under the Indian Self-Determination and Educational Assistance Act (ISDEA), Public Law 93-638, as amended. Other chapters describe reporting systems including the Sanitation Deficiency System and other program operation data systems. Program technical requirements including right-of-way, environmental review, historic preservation review, and health and safety issues are also discussed. A list of reference documents is in the Appendix.

This document is applicable to all SFC Programs whether managed by Self-Determination or Self-Governance tribes under the provisions of P.L. 93-638, Titles I or III, as amended, or by IHS direct service.

Figure 1-1
Sanitation Facilities Construction (SFC) Program
Policy & Procedure
Documents & References



CHAPTER 2. SFC Program Overview

On July 31, 1959, Public Law (P.L.) 86-121 was signed into law creating the Indian Health Service (IHS) Sanitation Facilities Construction Program. P.L. 86-121 gives the SFC Program the authority for providing essential water supply, sewage, and solid waste disposal facilities for American Indian and Alaska Native homes and communities. This authority was reaffirmed by Congress in the Indian Health Care Amendments of 1988 (P.L. 100-713), which amended the Indian Health Care Improvement Act (P.L. 94-437). (See Appendix 1 for copies of the Acts.)

I. SFC Program Mission

The mission of the IHS is to raise the health status of the American Indian and Alaska Native people to the highest possible level. To carry out this mission, the IHS provides comprehensive primary health care and disease prevention services.

The SFC Program is the environmental engineering component of the IHS health delivery system. The SFC Program provides technical and financial assistance to Indian tribes and Alaska Native communities (tribes) for the cooperative development and continuing operation of safe water, wastewater, and solid waste systems, and related support facilities.

Services provided by the SFC Program in partnership with the tribes are shown in Table 2-1. These are described in detail in Section IV of this Chapter.

Table 2-1
SFC Program
Mission Activities*

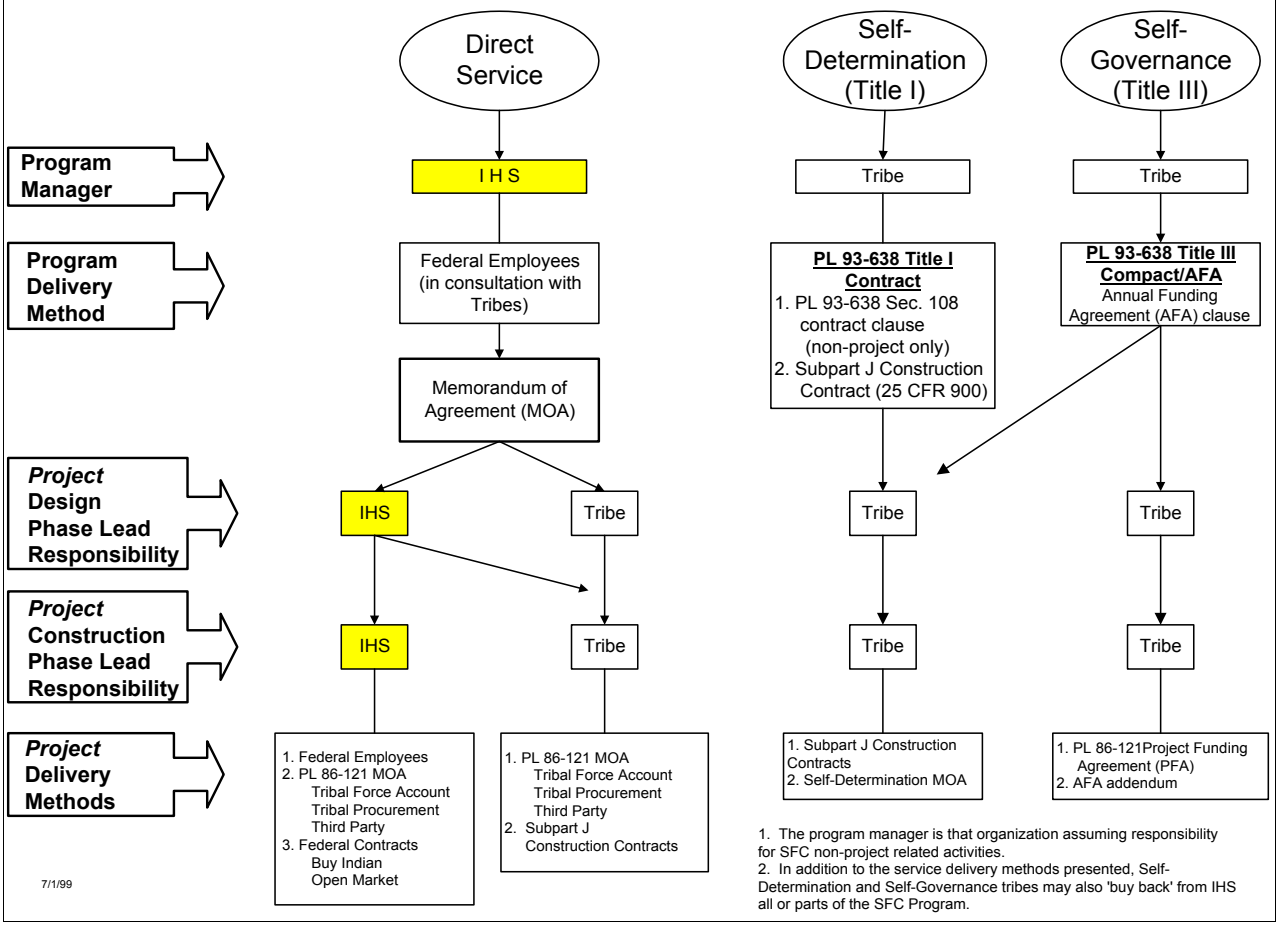
In partnership with the tribes, the SFC Program provides the following services:

1. Develops and maintains an inventory of sanitation deficiencies in Indian and Alaska Native communities for use by IHS and the Congress.
2. Provides environmental engineering assistance with utility master planning and sanitary surveys.
3. Develops multi-agency funded sanitation projects; accomplishes interagency coordination, assistance with grant applications, and leveraging of IHS funds.
4. Provides funding for water supply and waste disposal facilities.
5. Provides professional engineering design and/or construction services for water supply and waste disposal facilities.
6. Provides technical consultation and training to improve the operation and maintenance of tribally owned water supply and waste disposal systems.
7. Advocates for tribes during the development of policies, regulations, and programs.
8. Assists tribes with sanitation facility emergencies.

*(See Section IV for a comprehensive description.)

Figure 2-1.

Service Delivery Options for SFC Construction Projects and Programs



II. Overview of SFC Program Delivery Methods

One of three program delivery methods may be used to provide services to Indian communities. The SFC program can be managed by the IHS directly (Direct Service), or it can be managed by a tribe that has elected to use Title I or Title III authorization under P.L. 93-638, the Indian Self-Determination and Education Assistance Act. Those methods are described below. The overall SFC Program goals, eligibility criteria, and project funding priorities remain the same, regardless of the program delivery methods chosen by a Tribe. Figure 2-1 is an illustration of the three delivery options for operating the SFC Program and funding SFC projects.

Direct Service

As shown in Figure 2-1, when IHS administers the SFC Program, sanitation facilities can be constructed by IHS Federal employees, by transferring project funds using a P.L. 86-121 Memorandum of Agreement (MOA) to establish tribal or third party project commitments, and by using Federal contracts.

1. Federal employees. Under the Federal employees delivery method, IHS provides the sanitation facilities using IHS employed construction workers, sometimes called Government force account.

2. P.L. 86-121 MOA. The MOA allows the SFC Program to work with tribes to develop and construct sanitation facilities. An MOA, among the IHS and one or more interested parties (e.g., Tribally Designated Housing Entities, HUD, or EPA), is an agreement that establishes the overall relationship between the interested parties in accomplishing the work authorized under P.L. 86-121. The work can be funded through the MOA instrument itself, or the work can be accomplished through other instruments, such as a federal contract or Title I construction contract which are executed subsequent to the MOA. The MOA itself is not a contract. Almost every SFC project activity administered by the IHS requires an MOA, because the MOA obligates those funds for the project and provides the means by which the funds can be contributed or transferred between parties. The other purposes of an MOA are as follows:

- The MOA identifies the parties participating in a project and describes their responsibilities when performing the work described in the Project Summary which is incorporated into the MOA.

- The MOA specifies the rules and procedures which govern the conduct of the parties in performing the work to accomplish the project.

- The MOA designates the ownership of the completed sanitation facilities and designates the responsible party for operation and maintenance of completed sanitation facilities.

After the MOA is executed (signed by all participating parties) and after approval of environmental documents, IHS may construct the sanitation facilities using its own construction personnel (Government force account), or transfer funds to a third party that signed the MOA, to construct the sanitation facilities for the tribe. Third parties can be States, counties, municipalities, housing authorities, rural water districts, non-IHS Indian health clinics, or other non-profit organizations as defined in the MOA Guidelines. If a third party procures facilities, ownership vests in the third party upon final acceptance of the completed construction. The third party may own and operate the facilities, or transfer the facilities to the tribe or individual Indian recipients, as stipulated in the MOA.

Rather than have IHS construct the sanitation facilities, tribes could construct a project either with their own employees (tribal force account), by contracting with construction companies (tribal procurement), or they could transfer the project funds to a third party. Also, tribes may use a Title I construction contract to construct their own sanitation facilities, either by tribal force account or by tribal procurement. MOA fund transfers are relatively simple, which makes this unique authority an extremely valuable mechanism for providing direct service assistance to tribes. However, an MOA may not be relevant for tribes who manage their own SFC programs under the terms of Title I contract or Title III compact.

3. Federal Contracts. IHS can provide the sanitation facilities through a Federal government contract. Federal contracts with Indian-owned enterprises (Buy-Indian) or others (commercial) are considered to be direct service by the IHS. The products (sanitation facilities) of such contracts usually are transferred to the Indian Tribe (or other responsible non-Federal entity) as provided for in the P.L. 86-121 MOA. For commercial and 638 Federal contracts, the contractor may be the Tribe or tribal enterprise that entered into the MOA, and as the contractor, the Tribe would design and/or construct the sanitation facilities. Most recent MOAs and contracts stipulate that the Tribe (or the third party operational entity) will own the completed sanitation facilities upon transfer from the Federal government.

Public Law 93-638, Title I (Contract)

Under the authority of the Indian Self Determination and Education Assistance Act (ISDEA) [Public Law 93-638, as amended], tribes and tribal organizations have the opportunity to participate more fully in health services delivery programs and services that are provided through government funding. Under Title I of the ISDEA, Indian tribes can contract with IHS to provide the program, services, functions, and activities of IHS (Title I contract). Tribes may contract for the entire SFC program including the design and construction of sanitation facilities; typically, they contract for only construction activities, which is the Direct Service method. Title I construction contract requirements are listed in the 638 construction regulations (Code of Federal Regulations, Title 25, Chapter V, Part 900, Contracts under the Indian Self-determination And Education Assistance Act; Subpart J-Construction, Sections 900.110 to 900.148.). Under P.L. 93-638, Section 108, a tribe may also use a Title I contract for the non-project activities necessary to support the SFC construction projects. More specific information on the Title I contract delivery method is in the "Guidance for Title I Self-Determination Contract Negotiations for the Sanitation Facilities Construction Program and/or Projects" (also called the "Grey Book.").

Public Law 93-638, Title III (Compact)

Under Title III, the Tribal Self-Governance Demonstration Project (SGDP), participating tribes and tribal organizations are authorized to plan, conduct, consolidate, and administer programs, services, functions, and activities of the IHS as negotiated in a Title III compact. Fund transfers under Title III are executed using an Annual Funding Agreement (AFA) for program funds. SFC project funds are transferred using an Annual Funding Agreement addendum (AFAA) or Project Funding Agreement (PFA) provisions. SFC project funds also may be transferred to Title III tribe using a Subpart J construction contract or a Self-Determination MOA. More specific instructions on Title III compacting of the SFC Program is in the "Guideline for the Sanitation Facilities Construction Program under the Title III Self-Governance Demonstration Project" (also called the "Yellow Book").

Public Law 93-638, Title V. Legislation introduced in the U.S. Congress in 1997 proposes to add a Title V to the Act to make the Tribal Self-Governance Project permanent within the Department of Health and Human Services (DHHS) and specifically, the IHS. If enacted, guidance will be developed accordingly.

III. SFC Program Organizational Structure

The SFC Program is an operating component of the Office of Environmental Health and Engineering (OEHE), IHS. Program oversight at the IHS Headquarters level is provided by the Division of Sanitation Facilities Construction (DSFC), and the SFC Program's mission is carried out at the Area and service unit levels. Services can be delivered directly by Federal employees, or by Self-Determination tribes. SFC Program activities are supported by engineers, sanitarians, technicians, clerical staff, and skilled construction workers. A schematic of the Headquarters and Area structure is provided in Figure 2-2.

Headquarters. The Headquarters component of the SFC Program, located in Rockville, Maryland, assists and supports the Area Offices by establishing policies and provides guidance to ensure high quality, consistent, and equitable program implementation nationwide. It also assists the Areas in carrying out the SFC Program mission activities (described above). Headquarters SFC Program management activities include national policy development and implementation; budget formulation; allocation of resources (including monitoring); congressional report preparation; management control reviews; quality assurance; long range planning; coordination with other federal agencies, and meetings with tribes, congressional staff, and other Federal agencies. Headquarters SFC Program staff do not perform any project specific activities.

Area Level. The IHS SFC Program is implemented throughout the country by the twelve Area Offices shown in Table 2-2. The size of the programs in each Area depends on the program scope, the sanitation deficiency needs, the size and complexity of construction projects, the number and location of Indian communities served, transportation and other logistical considerations, and the methods of providing technical services within the Area.
Area SFC Program personnel devote much of their time and effort to providing direct support to tribal organizations and their staffs, as well as to IHS service unit and district office personnel. Typical of direct support functions are services performed by Area-based technical experts who visit Indian communities to provide technical assistance and train operators. The management functions performed by Area SFC Program personnel parallel Headquarters responsibilities and also include Area policy development and implementation, budget formulation, allocation of resources, project development, project funding, quality assurance in the provision of services and facilities, technical assistance, long-range planning, and personnel recruitment and retention.

District, Field, and/or Service Unit Level. SFC Program district and field offices are established:

- when professional/technical services are needed at two or more service units or reservations, the Area office is too distant, and neither service unit is large enough to merit full-time staff coverage,
- when the Area is geographically too large to provide these services to Indian communities from one office, or
- when the workload distribution dictates that a remote field office would be more effective.

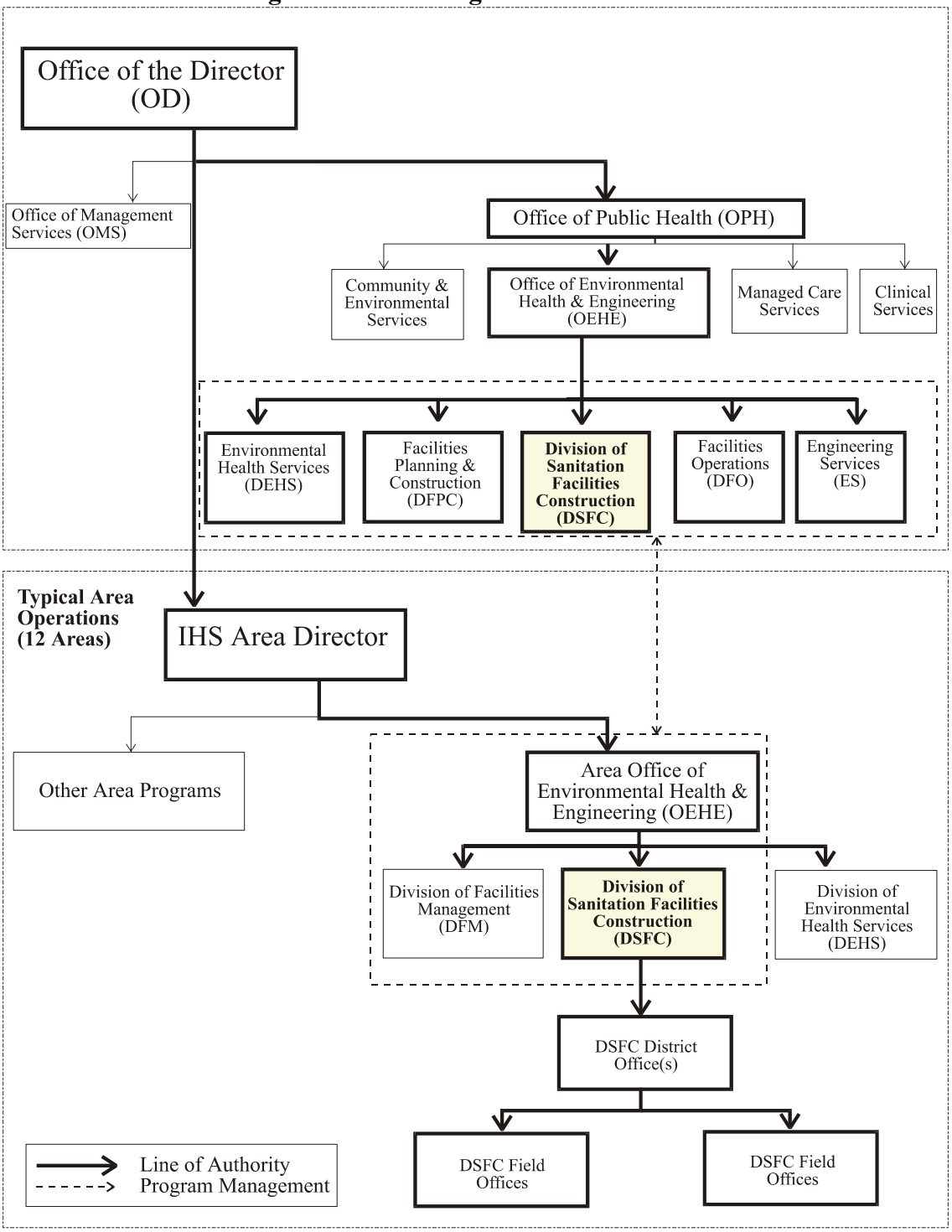
Those offices may be staffed by engineers, sanitarians, construction inspectors, land surveyors, draftspersons, construction technicians, skilled construction workers, and clerical personnel.

SFC Program personnel are located in district, field, and service unit locations to enhance the opportunity for tribes and communities to participate in project development and construction, and to increase the availability of technical assistance and guidance in the operation and maintenance of essential water supply and waste disposal facilities. The availability of close technical assistance from IHS has contributed significantly to the ability of small communities and rural families to utilize their facilities effectively and to keep their facilities in working condition and thus sustain the health benefits of properly operated sanitation facilities.

Table 2-2
IHS Area Offices

Aberdeen
Albuquerque
Alaska
Bemidji
Billings
California
Nashville
Navajo
Oklahoma City
Phoenix
Portland
Tucson

Figure 2-2. IHS Organizational Structure



IV. SFC Program Services

The SFC Program provides a wide range of environmental engineering services to protect and improve the health of American Indians and Alaska Natives. The following descriptions of SFC Program services expand the mission activities listed in Table 2-1:

1. Maintain Sanitation Deficiency Inventories. The 1988 amendments to the Indian Health Care Improvement Act (IHCIA), P.L. 94-437, require IHS to maintain inventories of sanitation deficiencies for new and existing Indian homes and communities, to prioritize those deficiencies, and to annually report them to Congress. Since 1989, IHS has annually reported to Congress these needs in the form of community deficiencies and projects to address those deficiencies. Projects are identified in terms of the facilities to be provided, the cost, and the number of homes to be served by the facilities.

The inventory of sanitation facilities needs for existing homes is maintained in the IHS Sanitation Deficiency System (SDS). The data are updated annually to account for inflation, changing state and Federal regulations, to add new deficiencies, and to delete the deficiencies addressed by projects funded by IHS and others. Sanitation needs for new and like-new homes are maintained and updated semi-annually. These sanitation deficiency inventories are necessary for internal program management, budget formulation and justification for appropriations, and are a basis for resource allocation to Areas and tribes. The deficiency inventories are used to provide a wide variety of information to members of Congress, the Office of Management and Budget (OMB), the General Accounting Office (GAO), the Environmental Protection Agency (EPA), and various other Federal entities who are interested in the needs of tribes.

As part of the inventory of needs, the IHS SFC Program maintains Community Deficiency Profiles which estimate the number of homes with sanitation deficiencies at various deficiency levels. These profiles are used to monitor and evaluate the progress in eliminating and correcting deficiencies and provides a reliable estimate of the number of existing homes eligible for assistance through the SFC Program. As such, the Community Deficiency Profiles may be used as a SFC baseline measure. (Refer to the Yellow Book and Baseline Measures Workgroup Final Report for further information concerning baseline measures.)

2. Provides Environmental Engineering Services. Professional environmental engineering services, such as the review of engineering plans and specifications for sanitation facilities, are often provided to tribes, tribal enterprises, and Tribally Designated Housing Entities (TDHEs) whether the project is funded by IHS or not. The SFC Program also provides other types of technical assistance to tribes for environmentally-related public health issues, such as sanitary surveys and utility master planning, both short range and long range. Technical reviews of feasibility studies and grant proposals may be provided to tribes by the SFC Program for a wide range of civil and sanitation facilities projects, if IHS resources are available.

With increasing and more stringent environmental regulations regarding safe drinking water, sewage treatment and disposal, and solid waste disposal, the IHS provides tribes with ongoing technical support and consultation about how to meet these new challenges.

3. Project Development. After a need for a sanitation facilities project is identified, a viable project is developed and constructed to address the need. This often requires many months or years of complex coordination and planning. Archeological and other environmental clearances or waivers must be obtained; land must be secured; funding must be located and secured; and legal problems might need to be resolved. During project development, the schedule may be adjusted for other issues including legal, economic, or cultural reasons. In the course of developing projects to meet sanitation deficiencies, IHS works cooperatively with tribes to identify the funding sources, provide interagency coordination, and assist the tribes to meet the program requirements of the various agencies which provide the funding.

Meeting the diverse sanitation needs of Indian communities and homes often requires funds from different sources, which may result in complex multi-agency funded projects. In these situations, IHS will provide necessary technical assistance with grant application descriptions and justifications. If successful, the diverse needs of tribes and varied requirements of other agencies can be coordinated into a single efficient and effective project.

The SFC Program routinely works cooperatively with the tribes, TDHEs, and with many other governmental agencies, such as the Department of Housing and Urban Development (HUD), the Bureau of Indian Affairs (BIA), and the Environmental Protection Agency (EPA), toward achieving objectives of all the agencies, especially when it involves the provision of sanitation facilities. For example, HUD funding for sanitation facilities construction in support of new HUD homes is often

provided to the SFC program by tribes through their Tribally Designated Housing Entities (TDHEs). Similarly, agreements involving the tribes, the IHS, and the EPA Indian Set-Aside Wastewater Grants Program have resulted in EPA grant funds being transferred at tribal request to the SFC Program for administration of the projects.

4. Fund Water, Wastewater, and Solid Waste Projects. The types of sanitation facilities projects funded with IHS appropriations generally are spelled out in the language of the appropriation bills and bill reports. In recent years, four types of projects have been defined. They are (1) projects to serve new or like-new housing, such as Indian homes being constructed or rehabilitated by the BIA-Home Improvement Program (HIP), tribes, individual homeowners, or other nonprofit organizations, (2) projects to serve existing housing, (3) special projects (studies, training, or other needs related to sanitation facilities construction), and (4) emergency projects. Special and Emergency Project funding total approximately $1 million annually.

5. Provide Professional Design and Construction Services. Standard engineering design and construction services provided by the SFC Program include (in broad terms); (1) selecting appropriate alternatives (for example, those affordable to operate and maintain), (2) soils testing, (3) surveying, (4) obtaining construction permits, (5) preparing drawings, (6) preparing specifications and other contract documents, (7) managing the construction, and (8) start-up of the facilities, including training.

The design of sanitation facilities requires good judgment. A deficient design can have an adverse impact on the health and safety of a population. Therefore, design and construction services are performed and/or supervised by a licensed engineer. All SFC Program engineers at or above the level of district engineer are licensed in at least one state.

6. Provide O&M Training and Technical Consultation. Section 302 (b)2 of the Indian Health Care Improvement Act authorizes operation and maintenance (O&M) technical assistance in the form of (1) financial and technical assistance to Indian tribes and communities in the establishment, training, and equipping of utility organizations to operate and maintain Indian sanitation facilities; (2) ongoing technical assistance and training in the management of utility organizations which will operate and maintain sanitation facilities; and (3) O&M assistance for emergency repairs to tribal sanitation facilities when necessary to avoid a health hazard.

Upon completion of a project, the facilities constructed are either owned by or transferred to the tribe, individual homeowner, or other responsible non-Federal entity. Often, construction projects include funds for training operators, initial start-up, and for equipment needed for maintenance. The IHS provides technical assistance to the new owners of the facilities and provides training for the proper operation and maintenance of the new facilities. For example, tribal operators are instructed on the operation and maintenance of chlorination and fluoridation equipment, pumps, motor control systems, sewage collection systems, lift stations, and wastewater treatment facilities.

The SFC Program also provides technical assistance to tribes in the development of tribal utility organizations for the operation, maintenance, and management of community water and sewer facilities. This assistance may include the provision of equipment and tools for the utility organizations (as part of a project) and development of a rate structure to determine appropriate customer water and sewer fees. It may also include O&M manuals, as-built drawings, and technical handbooks.

IHS sanitation facilities construction monies cannot be used for O&M assistance (e.g., to pay operator wages or electric power bills) except when providing training, technical assistance, and/or equipment in conjunction with a construction project for facilities provided under that project. However, O&M training also can be provided with program funding. Often IHS uses program funds for classroom training of operators from multiple tribes. It also provides O&M technical assistance at the site of the sanitation facility.

7. Advocates for Indian People on Environmental Issues. The SFC Program seeks to meet the sanitation needs of American Indians and Alaska Natives not only with IHS appropriated funds, but by advocating for making non-IHS resources available to the Indian people. The SFC Program also advocates for tribes during the development of laws, regulations, and programs at the Federal level. In addition, the SFC Program advocates for tribes and provides technical assistance during regulatory enforcement actions taken against tribes.

Because of its organizational structure and routine communication from field offices up through Headquarters offices, the SFC Program is able to assist tribes quickly and efficiently by linking decision makers at all levels of government to resolve important issues quickly or otherwise advocate for tribes.

8. Provide Emergency Response Services. The IHS

SFC Program provides both technical assistance and limited financial assistance in the event of a public health emergency. Typically, this involves assisting the Tribe to restore and/or assure the continued safe operation of water supply and wastewater disposal systems after a natural disaster or other unforeseen event. When necessary, the SFC Program can quickly mobilize personnel and equipment from other districts and Areas for short periods of time to address an emergency situation of a single tribe.

V. Participation in Program Activities by Tribes and Others

The IHS consults with and encourages the participation of tribes, States, other federal agencies, and other political subdivisions in all phases of a sanitation facilities project.

1. Participation by Tribes. Section 7(c) of P.L. 86-121, requires the IHS to consult with and to encourage the participation of American Indian and Alaska Native leaders and tribal members in the planning, development, construction, and final acceptance of SFC projects. Public Law 93-638 and Public Law 94-437 also require consultation with tribes.

- **Headquarters Level**: Tribes participate as members of national workgroups and committees, advising the IHS on matters that affect their members and their public health programs. Tribes participate directly by committee or as a reviewer in the formulation of HQ policies, standards, and procedures.

- **Area Level:** Each Area encourages tribal participation in the management of the SFC Program at the Area level by having an Area-level SFC tribal advisory committee (TAC) for the sanitation facilities construction program, or, have another means of tribal participation, such as assigning SFC advisory responsibility to an existing Area-level tribal committee. The TAC will provide advice and recommendations on Area specific guidelines, on eligibility for housing support funding, and on Area specific criteria for establishing priority within the Housing Priority System (HPS) and SDS. The TAC may review needs data submitted by tribes and IHS staff, make recommendations to IHS regarding the quality and validity of the data, recommend priority criteria for SFC project funding, and recommend solutions to disputes.

- **Tribal Level**: As shown in Figure 2-1, Tribes participate in the SFC Program and SFC projects in the three service delivery options; direct service by IHS, Title I contract, and Title III compacts. Each option requires the participation of the Tribe in negotiating and agreeing to provisions to implement the programs and projects under each service option. The Tribe is the originator or a signatory to the MOA, the Project Scope, construction contract, AFA, AFAA, PFA, or other obligating document.

- **Project Level**: In accordance with P.L. 93-638, P.L. 94-437, and P.L. 86-121, Indian tribes, firms, and individuals should be utilized in the construction of sanitation facilities projects. As was shown in Figure 2-1 and discussed in Section II, the SFC Program uses the MOA and Buy Indian contracts to the fullest extent in the direct service construction of sanitation facilities. In addition, Section 7(a)(3) of P.L. 86-121 authorizes the making of arrangements and agreements with the Indians regarding contributions toward the projects. The Area Director considers tribal resources in soliciting equitable contributions, which could include labor, finances, equipment, materials, and other relevant factors. Tribes, states, and other agencies contribute funds to IHS for construction of sanitation facilities on a project specific basis.

2. Participation by Other Federal Agencies. Participation by other Federal agencies is to be encouraged both for their technical support and for financial contributions they may be able to make toward the project. Through coordination of agency efforts, better utilization of the limited resources can be made. To effect this, contacts should be developed and maintained with various agencies for the following reasons; (1) to honor the interagency agreements which have been established, (2) to utilize technical consultation (e.g., U.S. Geological Survey), (3) to exchange professional personnel on a temporary basis, (4) to obtain grants for tribes, (5) to share funding of projects, (6) to clear rights-of-way, (7) to secure environmental approvals (from EPA or Corps of Engineers), and (8) to utilize training funds, materials, and equipment.

3. Participation by States and Local Governments. Activities in which their participation should be encouraged include (1) funding, (2) joint and long-range planning to meet the needs of the Indian group, (3) review of project plans, keeping in mind the need for practical and economical facilities for the Indians to be served, (4) bacteriological and chemical laboratory services, (5) assistance in the training of water and sewage operators, (6) provision of geological, hydrological, and topographical survey services, (7) provision of professional engineers, sanitarians, or other personnel on a scheduled and reimbursable basis for particular activities related to construction, (8) provision of equipment, (9) assistance obtaining local permits, (10) inspections, (11) ownership, installation, and regionalization of water and

sewer lines, and (12) assistance with other facilities by trained crews of local public works authorities (e.g., rural water districts).

4. Participation by Others. Head start schools, tribal and non-tribal businesses, tribal trailer courts, churches, and owners of rental units often request service when they are aware of a proposed sanitation facilities project. The request for sanitation facilities generally must come from a Federally recognized tribal government in keeping with the government-to-government relationship of the Federal Government to tribes. A determination of eligibility for IHS-funded services must be made.

IHS projects that also include service to commercial establishments or non-Indians must be primarily for the benefit of Indians homes. Other non-Indian persons, organizations, or enterprises can also be included in approved IHS projects provided they contribute funds to IHS to cover the prorated cost of the facilities required to serve them. However, those parties are normally not a party to the MOA between the IHS and the tribe. (see Chapter 5 for specific eligibility criteria.)

CHAPTER 3. Sanitation Facilities for Tribes A Historical Perspective

The foresight of the U.S. Public Health Service (PHS) and the Congress four decades ago, helped a generation of American Indian and Alaska Native children to escape the hardship and poor health that accompany life without a safe and adequate water supply. Today, most elderly Indian people need not fear becoming unable to carry water into their homes.

I. Introduction

In the mid-1950's, the PHS assumed responsibility for Indian health care. The newly created Division of Indian Health recognized immediately that inadequate water supplies and unsanitary waste disposal for Indian homes and communities was contributing to high rates of enteric, respiratory, and skin diseases. They also noted alarming levels of post-neonatal infant mortality from diarrhea and other causes. Other traditional preventive health measures, such as immunizations, were incapable of addressing this problem. Those early health providers realized that the most effective means of improving Indian health would be to improve the environment in which the Indian people lived. The primary target environment was the household, and the greatest health deficiency in that setting was the lack of essential sanitation facilities. A major step toward addressing this deficiency was enactment, in 1959, of P.L. 86-121. Its passage came only four years after creation of the Division of Indian Health, later to become the Indian Health Service. Public Law 86-121 was a milestone in Indian health legislation and is the basic enabling legislation for the IHS SFC Program.

Figure 3-1. Hauling water in an Alaska village.

Although a sharp decline in waterborne diseases has occurred in Indian country, much remains to be accomplished. While safe drinking water is now available in each home in most Indian communities, many smaller, more remote communities and thousands of scattered homes still need to be served.

Despite the IHS emphasis on designing systems that are simple and economical to operate and maintain, the reliability of most community water and sewer systems in Indian country needs to be improved. In addition, the number of Indian families is increasing faster than new homes are being constructed, making it especially difficult to meet critical sanitation needs in many Indian communities.

Most Indian families obtain their drinking water from underground sources. In many areas of Indian country, these sources are becoming increasingly threatened by the introduction of hazardous chemicals such as pesticides and improperly handled hazardous wastes. As new drinking water regulations are implemented in the future, costly, "high-tech" solutions to groundwater contamination problems may be required. Technical assistance and training to tribes in the operation and maintenance of sanitation facilities and monitoring of environmental factors will become an ever more important IHS activity.

Protecting the health of, and preventing disease among, American Indian and Alaska Native populations are primary IHS objectives. In the clinical environment, physicians, dentists, nurses, and other medical care providers work to restore the health of ill patients. However, a more effective way to improve the health status of Indian people is to prevent illness. Improving the environment in which people live and sensitizing them to interact positively with that environment can be expected to result in significantly healthier populations. Providing sanitation facilities and better quality housing certainly can be considered positive steps toward meeting these IHS goals.

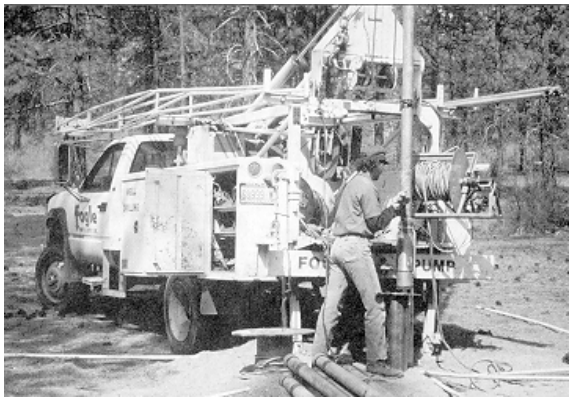


Figure 3-2. Well drilling equipment.

The IHS considers the provision of sanitation facilities to be an extension of its primary health care delivery efforts. The availability of essential sanitation facilities can be a major factor in breaking the chain of waterborne communicable disease episodes but by no means is their value limited to disease intervention. Safe drinking water supplies and adequate waste disposal facilities are essential preconditions for most health promotion and disease prevention efforts. Consistently and optimally fluoridated drinking water can virtually eliminate tooth decay among children. Efforts by other public health specialists such as nutritionists and alcoholism counselors are enhanced if safe water is readily available, and home health care nursing services are much more effective when safe water and adequate wastewater disposal systems are in place.

The provision of sanitation facilities also has other far-reaching, positive effects. The availability of such facilities is of fundamental importance to social and economic development. In turn, such development leads to an improved quality of life and an improved sense of well-being.

II. Legislative History of the SFC Program

Treaties committing the Federal Government to the provision of health services to Indians date back at least to 1832 when a group of Winnebago Indians was provided physician's care as partial payment for arid property ceded. Subsequently, various treaties provided for the interim services of local doctors. The transfer of Indian program responsibility from the War Department to the Department of the Interior in 1849 stimulated the extension of health services to Indians. The number of physicians increased and, in 1873, a Division of Education and Medicine was established within the Bureau of Indian Affairs. By 1890, 83 full- and part-time physicians were providing medical care to Indians. This increased number, in part, coincided with construction, in the early 1880s, of hospitals and infirmaries to serve students at Indian boarding schools. It was not until later that general hospitals on reservations were constructed. About 1910, the BIA began a health education campaign to inform Indians that improved personal hygiene, waste disposal, and diets could prevent disease.

In 1912, PHS personnel became associated, in a significant way, with the Indian health program. Pursuant to an Act of Congress approved on August 24, 1912, PHS medical officers undertook a study of the prevalence of certain diseases among the Indian people. Generally, sanitation conditions on reservations were found to be unsatisfactory, contributing to the spread of disease. Although the need for a specific program to improve sanitation conditions was cited in the PHS report to Congress, it was not until the late 1920s that sanitation efforts extended beyond occasional "clean up" campaigns and physician's inspections of homes, schools, and Indian agencies. Beginning in 1927, PHS sanitary engineers assisted BIA staff in surveying water and waste disposal systems and investigating other basic sanitation problems. However, PHS officers usually concentrated their efforts on BIA compounds, e.g., schools, hospitals, and agency headquarters. Little attention was devoted to conditions in Indian houses and communities.

In 1950, the need to improve basic sanitation on Indian reservations began to receive more attention. The BIA obtained the services of a full-time PHS sanitary engineer who was asked to develop a sanitation program for reservation Indians. This officer is given credit for developing the concept of hiring and training local Indian people to work as sanitarian aides. The first 12 aides were employed in 1952 and, together with others hired later, they conducted reservation-wide surveys to define and catalog environmental conditions in Indian homes. While conducting the survey visit and at other times, the aides attempted to explain how better sanitation practices could improve health on the reservation.

Information collected from the surveys showed that more than 80 percent of all Indian (and Alaska Native) families were hauling or carrying water for household use, and 70 percent of the water they were using came from contaminated or potentially contaminated sources. More than 80 percent of the dwellings surveyed had inadequate waste disposal facilities, including 12 percent with no facilities at all. It was concluded that these gross environmental deficiencies were, in large measure, responsible for the high incidence of certain preventable diseases among Indians, particularly among infants.

Figure 3-3. Southwest Indian home with water barrel in the foreground.

The survey revealed that tens of thousands of Indians and Alaska Natives were hauling water for domestic use from open ditches, creeks, stock ponds, and unprotected shallow wells and springs. Many were hauling water for distances of one mile or more. As a result, water usage of as little as one gallon per person per day was commonplace. This usage was particularly troubling when considering that, at this time, the average urban resident used 50 to 60 gallons of water every day. In the face of these shocking findings, and as a first step, PHS health education efforts and "do it yourself" home and community sanitation projects were emphasized. Most Indian families had little, if any, extra money for such projects; however, small improvements were made when technical help was provided by the Government. It was apparent that the educational and motivational approach would not be enough to correct basic sanitation deficiencies in Indian communities. The cost of correcting those deficiencies represented an impossible financial burden for the people. Some form of direct Federal assistance was required to compliment the health education and motivation processes.

As early as 1919, the U.S. House of Representatives, Committee on Indian Affairs considered transferring Indian functions from the Department of the Interior (DOI) to the PHS. Although action was not taken then, the proposal was renewed in the late 1930s and in the late 1940s. Again in 1954, the DOI opposed the transfer during House hearings on the Transfer Act, but reversed its stand at the Senate Committee hearings. Legislation transferring Indian health care functions to the PHS was signed into law in August 1954 (P.L. 83-568, the Indian Health Transfer Act) and became effective on July 1, 1955.

After many meetings and discussions between the PHS, the Department of Health, Education and Welfare (HEW), the DOI, and the Bureau of the Budget (now the Office of Management and Budget), it was decided that new legislative authority for the construction of sanitation facilities for Indian homes and communities would be sought from the Congress. To this end, a meeting was held on January 17, 1956, at the request of the Secretary, HEW, with selected members of the House of Representatives to solicit bipartisan support for the introduction of this legislation. As a result of the interest developed during this meeting and in response to requests from individual tribal groups, several bills were introduced in the 85th Congress to provide for the construction of water and sewer facilities on certain Indian lands. One such bill was enacted on August 14, 1957. P.L. 85-137 authorized the Surgeon General to construct sanitation facilities for the Elko Indian Colony in Nevada. Funds ($34,000) for this purpose were included in the Supplemental Appropriation Act of 1958 (P.L. 85-170).

The Act that authorized construction of sanitation facilities at Elko did not address the broader need for such facilities on other Indian reservations and in Indian communities. On April 22, 1958, Elliot L. Richardson, the Acting Secretary, HEW, wrote to the Congress requesting consideration of a bill which would authorize the Surgeon General to construct or otherwise provide essential sanitation facilities for all Indian homes and communities. Although the bill was introduced in the 85th Congress and was passed by the Senate, it died in the House when the second session closed.

On April 24, 1959, HEW Secretary Arthur S. Fleming asked leaders of the new 86th Congress to consider a bill authorizing the PHS Surgeon General to construct sanitation facilities for Indian homes and communities. Eight similar bills were introduced and, following hearings, reports were made to the House and Senate recommending enactment of legislation as proposed by the Secretary. P.L. 86-121 (42 USC 2004a), was passed and signed by the President on July 31, 1959. This Act is the basic enabling legislation for the Indian Sanitation Facilities Construction Program. Under the direction of the Sanitation Facilities Construction Program, many homes have received water and sewer service for first time. The health of American Indians and Alaska Natives is markedly improved as a direct result of the sanitation facilities constructed in Indian country.

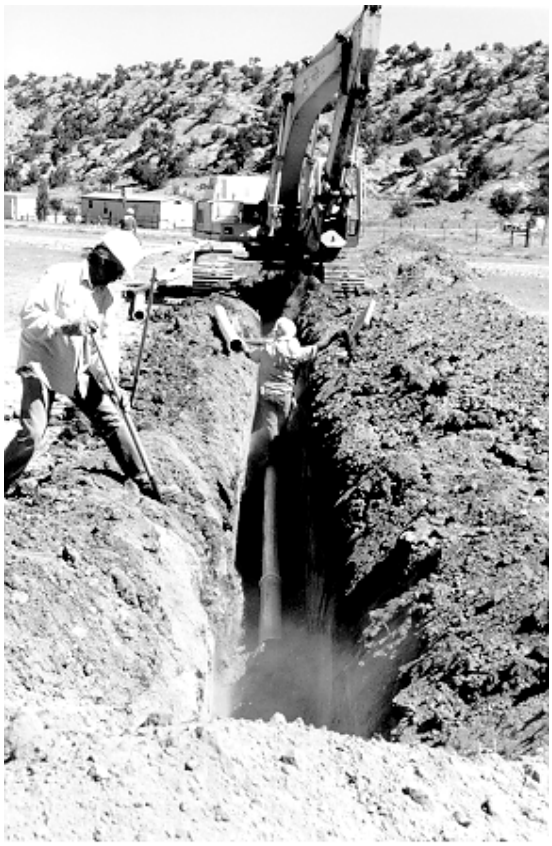


Figure 3-4. Construction of a water line on a reservation by Tribal construction crew.

The Congress, in the Indian Health Care Amendments of 1988 (P.L. 100-713) declared that "...it is in the interest of the United States, and it is the policy of the United States, that all Indian communities and Indian homes, new and existing, be provided with safe and adequate water supply systems and sanitary sewage waste disposal systems as soon as possible." Citing this policy, the Congress reaffirmed the primary responsibility and authority of the Indian Health Service "...to provide the necessary sanitation facilities..." as provided for in Public Law 86-121. Accordingly, the SFC Program will continue to provide assistance to the American Indian and Alaska Native people in eliminating sanitation facilities deficiencies in Indian homes and communities.

Table 3-1 summarizes the legislative history of the Sanitation Facilities Construction Program.

Table 3-1. Summary of Laws Addressing Indian Sanitation Facilities Construction

Date	Cite	Name	Description
1787	The Constitution of the United States Article I, Section 8	"The Congress shall have Power . . . To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;" (emphasis added)	The provision of health services to members of federally-recognized tribes grew out of the special government-to-government relationship between the federal government and Indian tribes.
Nov 2, 1921	ch. 115, 42 Stat 208; 25 U.S.C. 13	Snyder Act	Established that BIA provide for the benefit, care, and assistance of Indians including health care.
Aug 5, 1954	(ch. 658, 68 Stat. 674; 42 U.S.C. 2001 et seq)	Transfer Act	Transferred Indian health responsibility from Department of the Interior to the Public Health Service.
Mid-1950s		Kentucky Study	Supported the relationship between inadequate sanitation facilities and disease.
Aug 14, 1957	P.L. 85-137		Authorized the Surgeon General to construct sanitation facilities for the Elko Indian Colony in Nevada.
	P.L. 85-170	Supplemental Appropriations Act of 1958	Appropriated $34,000 for construction of sanitation facilities at Elko Indian Colony.
July 31, 1959	**P.L. 86-121** (42 U.S.C. 2004a)	**Section 7 of the Transfer Act**	**Authorizing legislation for the SFC Program**
Jan. 4, 1975	P.L. 93-638, as amended [25 U.S.C. 450 et seq.]	Indian Self-Determination and Education Assistance Act	Authorizes Indian Self-Determination and Self-Governance
Sept 30, 1976	P.L. 94-437, as amended [25 U.S.C. 1601 et seq]	Indian Health Care Improvement Act	Implement Federal responsibility for care and education of Indian people by raising the health status of Indians to the highest possible level.
Jan. 4, 1988	(52 FR 47053)	Reorganization Order	Elevated IHS to PHS Agency status
Oct. 5, 1988	P.L. 100-472, title II, Sec. 209; added Title III of P.L. 93-638	Tribal Self-Governance Demonstration Project	Allowed Tribes to negotiate a compact with BIA for programs they want to operate.
Nov. 23, 1988	P.L. 100-713, title III, Sec. 302; amended P.L. 94-437	Indian Health Care Amendments of 1988	Congress reaffirms the primary authority of the IHS to provide sanitation facilities and services under P.L. 86-121. Replaced the language of Sec. 302 to the current version; mandated sanitation deficiency levels.
Oct. 29, 1992	P.L. 102-573, title III, Sec. 302, 307(b)(1); amended P.L. 94-437	Indian Health Amendments of 1992	Authorized, but did not appropriate, funds for Federal share of the costs of operating, managing, and maintaining sanitation facilities.
Oct. 22, 1994	P.L. 103-399 108 Stat. 4164, 25 U.S.C. 3901 et seq.	Indian Lands Open Dump Cleanup Act of 1994	Authorized the IHS to assist tribes to close their open dumps but did not appropriate funds for implementation.
Oct. 25, 1994	P.L. 103-413, title II, Sec. 201; amended P.L. 93-638	Indian Self-Determination Act Amendments of 1994; Tribal Self-Governance Act of 1994	Made Self-Governance permanent for Department of the Interior.
Aug. 18, 2000	P.L. 106-260	Tribal Self-Governance Amendments of 2000 [25 U.S.C. 458aaa]	Added Title V to P.L. 93-638

III. Relationship of Inadequate Sanitation to Disease

For some time, public health authorities have understood that a causative relationship exists between inadequate sanitation and gastrointestinal disease. The report resulting from a PHS study entitled, Relationship of Environmental Factors to the Occurrence of Enteric Disease in Areas of Eastern Kentucky, provided data to support the premise that the incidence of acute infectious diarrheal disease could be reduced significantly by selectively modifying specific environmental factors.

The study compared the incidence of enteric diseases in human populations in areas differing from one another in one or more measurable environmental sanitation characteristics, most notably whether or not flush toilets and hot and cold piped water were available in homes. This study was completed in the mid 1950's, at the time the Division of Indian Health was established, and has become known as the "Kentucky Study."

Beginning in the early and through the mid-1900's, studies were done on Indian reservations to assess, among other things, sanitary conditions in and around Indian homes. All such studies revealed major sanitation deficiencies; however, in spite of this knowledge, potable water supplies and adequate sewage disposal systems were not provided. In a 1936 PHS survey, the survey team stated that "improvement of the Indian physical surroundings remain the problem to be solved if diseases associated with defective environments are to be controlled."

When PHS assumed responsibility for Indian health care in 1955, only 13 sanitary engineers and sanitarians (most of whom were PHS commissioned officers) were working in the program. They were assisted by 31 sanitarian aides, i.e., Indians and Alaska Natives who had received basic training in water supply protection, sewage disposal, vector control, food sanitation, and other essential sanitation principles. These individuals worked on and near their home reservations and communities primarily as educators and trainers, since no Federal resources were available to mitigate the glaring environmental deficiencies that existed. Their best hope was to convince their people to use personal funds to protect water sources, build or relocate privies, screen windows and doors, and improve environmental conditions in general. Because the people were so poor, the sanitarian aide's efforts, even when successful in creating better understanding, seldom resulted in actual improvements.

Figure 3-5 Home owner training on maintenance of bathroom fixtures.

As mentioned previously, all surveys of health needs in Indian country attributed the high rates of infectious and contagious disease to the lack of adequate housing, water supplies, and waste disposal facilities. P.L. 86-121 amended the Indian Health Transfer Act and authorized the IHS to undertake projects to provide essential sanitation facilities for Indian homes and communities. With passage of P.L. 86-121, an ambitious construction program was initiated to provide adequate drinking water systems and sewage and solid waste disposal systems for Indian homes and communities.

Several diseases are readily transmitted by contaminated water supplies. Among those of greatest importance are infectious hepatitis, typhoid, cholera, paratyphoid fever, and dysentery. In 1955, the age adjusted gastrointestinal disease death rate for American Indians and Alaska Natives in reservation States was 15.4 per 100,000 population. This rate was 4.3 times higher than that for all other races in the United States. In contrast, the age adjusted gastrointestinal disease death rate for American Indians and Alaska Natives was 1.6 per 100,000 in 1992-1994. The factor that had the greatest impact in reducing the gastrointestinal disease rate was the IHS SFC Program.

As a direct result of the dramatic decrease in gastrointestinal disease rates, significant progress has been made in raising American Indian and Alaska Native life expectancies at birth. The increase in life expectancy is attributable largely to a decrease in the infant mortality rate. The development of new, safe water supplies and installation of indoor plumbing in Indian homes helped to decrease the infant mortality rate by reducing the incidence of waterborne-disease induced diarrhea, which is a life threatening condition in infants. In 1950, the life expectancy, at birth, for American Indians and Alaska Natives was 60 years, compared to 69.1 years for the U.S. White population. According to the 1997 Trends in Indian Health life expectancy at birth for Indians has risen to 73.2 years for the period 1992-1994 compared to U.S. White life expectancy of 76.3 years for 1993.

Figure 3-6. Installing a kitchen sink in an Indian home.

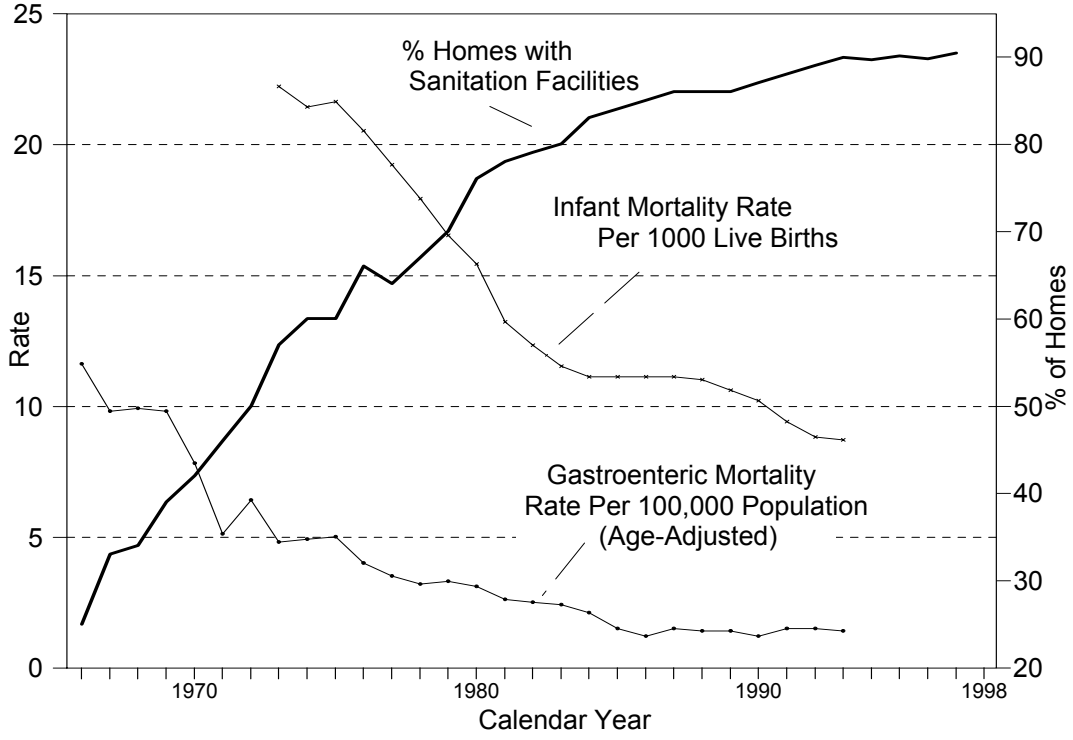
Improvements in other health statistics for American Indians and Alaska Natives are similarly impressive. Mortality rates for several conditions have decreased from 1955 through 1993, as shown in Table 3-2 and Figure 3-7.

While a direct correlation between improved environmental conditions and this decreased mortality might not be obvious, the availability of sanitation facilities and improved housing most certainly has been a major factor. The SFC Program has been a significant contributor to the improved health status of American Indians and Alaska Natives, which is most clearly indicated by the decrease in the gastrointestinal disease death rate and a concurrent increase in life expectancy.

Table 3-2. Selected Mortality Rates for American Indians and Alaska Natives

Cause of Death	1955 (1954- 1956)	1992 (1991-1993)
Infant Mortality (per 1,000 Live Births)	62.7	8.7
Gastrointestinal Disease Death and Mortality (per 100,000 Population)	15.4	1.4
Tuberculosis Death and Mortality (per 100,000 Population)	57.9	2.3

Figure 3-7.
Gastroenteric and Infant Mortality Rates Compared with
Percent of Homes with Sanitation Facilities
for American Indians and Alaska Natives



IV. The SFC Program Today

From the beginning, the goal of the SFC Program of the IHS has been to work with tribes, communities, and/or American Indians and Alaska Natives to improve their health status by, (1) cooperatively providing water supplies and adequate waste disposal; (2) providing technical assistance to tribal governments and to the Indian people who operate and maintain completed facilities thereby assuring continued health protection and benefits in the future; and (3) providing engineering consultation regarding environmentally related public health problems. These activities are an integral component of the comprehensive IHS preventive health effort being conducted for the Indian people.

The sanitarians and environmental health technicians (EHT) of the IHS Environmental Health Services (EHS) Program have contributed significantly to the success of the IHS SFC Program. Many of the first sanitation facilities projects undertaken resulted from surveys of existing sanitation conditions by the EHS Program staff. The EHTs played a particularly significant role in the early years by motivating home owners to construct bathroom additions to existing houses. Information from routine EHS Program surveys continues to be used in the planning of sanitation facilities today. From the beginning, the EHS Program staff also has been involved in many other aspects of the SFC Program including site reviews, inspections, homeowner training, and operator training.

From 1959 through 1998, over 9,100 sanitation facilities projects provided water supply and waste disposal facilities for about 230,000 Indian homes. All IHS sanitation facilities construction projects are carried out cooperatively with the people who will be served by the completed facilities. Once completed, community facilities are owned by or transferred to the tribe or other appropriate authority for operation and maintenance, and individual on-site facilities are transferred to the homeowner. The continued operation and maintenance of these facilities is accomplished by the Indian people with ongoing technical assistance from IHS, but without Federal financial assistance.

Figure 3-8. Test pumping a new well.

Today, the IHS SFC Program is managed by the DSFC, OEHE, and its activities provide support to engineers, sanitarians, full- and part-time technicians, clerical staff, and skilled construction workers in Field and Area Offices. Those IHS and tribal staff who live on Indian reservations, rancherias, and in Alaska Native villages, and who have participated in the SFC Program, deserve recognition because many SFC Program accomplishments are a direct result of their efforts.

As noted previously, the IHS goal has not been fully realized. Although enormous challenges remain, the resources to meet them are finite. Existing facilities require upgrading and efforts are needed to provide service to many yet unserved and mostly isolated Indian homes. Cost-effective and practical approaches to meet these needs must be developed. Our technical skills and our ability to develop and implement mutually agreeable solutions to these problems will be tested. If we are to meet these challenges successfully, even more extensive cooperation between IHS and American Indian and Alaska Native people will be necessary.

CHAPTER 4. SFC Funding Overview

The SFC Program budget falls within the budget of the IHS Headquarters OEHE. The OEHE programs are funded by Congressional appropriation. The funding is part of the Department of the Interior and Related Agencies Appropriations Bill under Indian Health Facilities, while nearly all of the rest of the IHS is funded from the Indian Health Services appropriation. The funding is part of the Interior appropriations bill, because, as discussed earlier, Indian health programs were initially in the Department of Interior. OEHE receives an annual appropriation for programs, which is separate from appropriations for SFC projects. The budget organization is illustrated in Figure 4-1 and Figure 4-2.

I. Program Versus Project Budgets

A program is an organized, often continuous, undertaking designed to accomplish ongoing objectives. Within the context of this document, the outcome of a program is ongoing delivery of services to a tribe. SFC Program services include such things as technical assistance and training. A major portion of program funds are used for the cost of permanent Federal or Self-Determination tribal employees, including salaries, benefits, travel and training. Appropriations for programs generally are recurring; however, at the Area service unit and tribal levels, program funds will not be recurring due to shifting project workloads among different geographic locations.

A project is an organized non-continuous undertaking to complete a specific set of predetermined objectives. A project is characterized by defined start and completion dates, specific objectives, and a budget, all of which are spelled out in a project-specific scope of work. Within IHS, project managers are paid from program funds, not project funds. Within the context of the SFC Program, a project almost always adds value to property by either constructing or improving a facility. Project funds generally are used to purchase materials, construction labor, and contract services to provide facilities or to improve existing facilities. Appropriations for projects are not recurring but are justified on the basis of discrete needs to be addressed by specific project scopes.

Program Budgets

SFC Program funds come from the "Facilities and Environmental Health Support Activity" (FEHSA) budget. This budget activity provides the resources that the IHS uses to staff and support its Headquarters, regional, Area, district, and service unit activities. In order to maintain a clear distinction between the three major categories of costs included in this activity, the IHS has established these subactivities: 1) Facilities Support; 2) Environmental Health Support; and 3) Office of Environmental Health and Engineering Support.

The Facilities Support subactivity funds permanent personnel costs at the Area and Service unit level related to planning, designing, construction, improving, and operating health care facilities.

Figure 4-1

Sanitation Facilities Construction Program Budget Organization

Program Funds

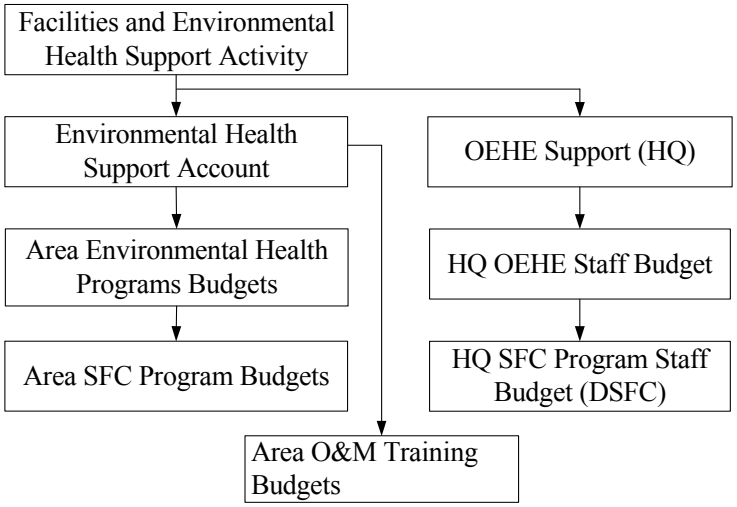
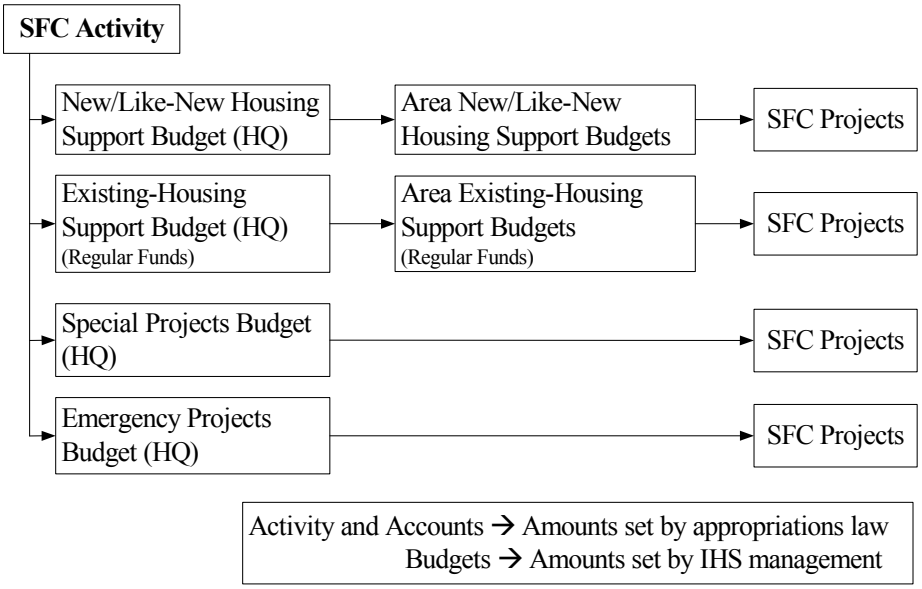


Figure 4-2

Sanitation Facilities Construction Project Budget

Project Funds



The Environmental Health Support Account (EHSA) subactivity funds personnel and other costs at the Area, district, service unit, and field office levels, for services provided by the Area Environmental Health Services (EHS), and the SFC Programs. These funds are not for construction projects; however, some of the funds have been earmarked by Congress for tribal operator training and injury prevention.

The Office of Environmental Health and Engineering (OEHE) Support subactivity funds the permanent personnel costs at the IHS Headquarters OEHE and for two regional Engineering Services (ES) offices, one located in Dallas and the other in Seattle. The SFC Program staff at Headquarters is funded from this subactivity. The regional ES's currently perform limited functions associated with the SFC Program (ES provides contracting services for some Area SFC Programs. This service may be expanded to other Areas in the future).

Project Budgets

Within the IHS Facilities appropriation, there are three different budget activities for projects: Maintenance and Improvement (M&I) Activity; Health Care Facilities Construction (HCFC) Activity; and SFC Activity. M&I funds are used to keep existing Federal and tribal health care facilities in good repair and to make needed improvements. HCFC funds are for the construction of new hospitals, health centers, staff quarters, and additional space to existing facilities. The SFC funds are used by the SFC Program to fund projects for water supply and waste disposal facilities to serve Indian homes and communities.

Project funds are used to purchase project materials, fund construction project labor costs, and fund contract services. Except for very limited situations, these funds are not used to cover the cost of permanent government personnel. However, temporary employees who work directly on projects are normally funded from project budgets.

II. Types of SFC Projects

The Indian Health Care Improvement Act, Section 302 b(1), reaffirmed the authority of the IHS to provide facilities in accordance with Section 7 of the Transfer Act of August 5, 1954 (42 U.S.C. 2004a). Section 7 was added by P.L. 86-121 and is generally referred to as "P.L. 86-121." P.L. 86-121 authorizes the IHS to construct, improve, extend, or otherwise provide by contract or otherwise, essential sanitation facilities including domestic and community water supplies and facilities, drainage facilities, and sewage and waste disposal facilities together with necessary appurtenances and fixtures for Indian homes, communities, and lands. Since 1960, this authority has been interpreted through various Office of the General Counsel (OGC) opinions. Projects must serve American Indian or Alaska Native housing. For example, IHS project funds cannot be used for sanitation facilities to serve commercial or industrial buildings even if Indian owned. However, IHS projects to serve housing can include service to these other buildings if non-IHS funds are obtained to cover the additional cost. That is one reason why IHS is involved with many multi-agency funded projects.

As shown in Table 4-1, four types of SFC projects are defined. They are (1) housing support projects to serve new or like-new housing, (2) regular projects to serve existing housing, (3) special projects, and (4) emergency projects. Housing support and regular projects are allocated at the Area Office level. Special projects and emergency projects are allocated at the HQ level.

Table 4-1. Types of SFC Projects

Type of Project	Allocated at:
• Housing Support Projects	Area Office
• Regular Projects	Area Office
• Special Projects	HQ*
• Emergency Projects	HQ*
*Require HQ approval to allocate funds, in addition to the usual methods to obligate funds; e.g., contracts, MOA.	

1. New/Like-new Housing Support Projects: Congress appropriates funds to provide adequate sanitation facilities for newly constructed homes or recently renovated existing (like-new) homes. The sanitation facilities provided can include (1) a well and septic tank for a single new/like-new home, (2) water and sewer service lines from the house to a community water and sewer system, respectively, and (3) often in addition to service lines for new/like-new homes, upgrades to existing Indian community water systems, sewer systems, drinking water treatment plants, and sewage treatment facilities. Those upgrades are generally kept to a minimum and provided only when needed to increase capacity to accommodate only the newly connected new/like-new homes. Fixtures and plumbing that are needed inside the home are not eligible for housing support funds, except for houses served under the Area SFC Program's medical referral policy.

There are several benefits to targeting limited funds for sanitation facilities directly at new and like-new homes rather than using all encompassing priority lists. The housing support funding assures that safe sanitation facilities are provided for new and like-new homes. Without those funds, homeowners often provide their own makeshift, unsafe, and inadequate sanitation facilities, which impact the health of the occupants as well as other members of the community.

Housing support funds prevent a deterioration in existing sanitation facilities, which would result if no commensurate improvements to the central system were made to accommodate the additional new or like-new homes. Before IHS approves and provides funds for sanitation facilities projects, environmental regulations and engineering requirements, including site approvals, soil testing requirements, etc., must be met. Therefore, the involvement of IHS limits new home construction in unacceptable locations where adequate sanitation facilities would be technically unfeasible. IHS participation in coordinating and funding of sanitation facilities projects may, in effect, be an incentive for steering community growth away from locations that would create environmental or public health problems in the future.

IHS funding to serve new/like-new housing may be used by tribes as leverage to obtain funds from other agencies for new housing and housing improvements. The availability of IHS engineering services and sanitation facilities is identified by tribes on applications they make for grant funds for new and like-new housing. This potential IHS contribution toward a future project usually enhances a tribe's application score and can be the deciding factor for obtaining the required funding.

HUD funded Indian housing projects, grants to Tribally Designated Housing Entities (TDHEs) or state and county governments for new houses (financed by HUD) are not eligible for funds appropriated to the IHS under the authority of P.L. 86-121.

2. Regular Projects: Congress appropriates funds to serve existing Indian homes. The amount of funding for this purpose has varied considerably over the last two decades. The sanitation deficiencies of existing Indian homes and communities are determined and reported annually by IHS in terms of projects to meet these needs. These projects form the basis of the SDS inventory. IHS annually prioritizes, with tribal input, these needed projects by Area and, as Congress appropriates money, funds these projects in priority order. Fixtures and indoor plumbing may be eligible for regular project funds, if they are provided as part of the sanitation facilities project to serve existing Indian homes.

3. Special Projects: Each fiscal year, IHS administratively reprograms a small portion of the sanitation facilities appropriation (up to the Congressionally imposed limit of $500,000) for special projects. Special project funds are used to pay for research studies, training, or other needs related to sanitation facilities construction, but which are not eligible for construction funds. Special projects include those to conduct solid waste feasibility studies, to provide additional O&M operator training courses, and to assist some tribes in alleviating public health problems at tribal community buildings.

4. Emergency Projects: A small portion of the appropriation is also set aside from the Sanitation Facilities funds for emergency projects. These funds are provided to address water supply and waste disposal emergencies caused by natural disasters or other unanticipated situations that require immediate attention to minimize or eliminate real and potential threats to the public health.

O&M Financial Assistance

IHS may provide O&M training, technical assistance, and/or equipment in conjunction with a sanitation facilities construction project for facilities provided under that project. However, IHS does not provide direct financial assistance for the day-to-day operation or maintenance of a sanitation facility.

As stated in Chapter 2, under Section 302(e)(1) of the IHCIA, the Secretary is authorized to provide financial assistance to Indian tribes and communities in an amount equal to the Federal share of the costs of operating, managing and maintaining the facilities provided. No funds have been appropriated for this authorization. Congress has specifically limited the use of SFC project funds for construction of sanitation facilities only. No appropriated SFC project funds have ever been earmarked by Congress specifically for direct O&M financial assistance (e.g., paying utility bills). The FY 1994 House Appropriations Bill Report specifically stated that IHS was not authorized to expend the sanitation facilities project funds for the purposes stated in Section 302(e)(1) of the IHCIA.

However, in FY 1994, the Congress earmarked $1 million from the Environmental Health Support Account (program funds) ". . . for tribal training on the operation and maintenance of sanitation facilities . . . ." The Congress has continued to provide the additional program funding amount for O&M training in subsequent fiscal years. O&M training will be provided until that funding stops.

III. IHS Services Using Non-IHS Program or Project Funds

IHS policies and practices have long reflected a principle that IHS is a backup resource and that IHS also consider and advocate for all non-IHS resources available to Indian people. Funds appropriated for sanitation facilities construction often have maximum flexibility and therefore are used when and where other funds are not available to meet tribal sanitation needs. For example, in P.L. 93-638 Section 103(c) [25 U.S.C. 450h(c)], Congress directed that IHS construction funds could be used as the local share to match other Federal money.

IHS has a long standing relationship with the Department of Housing and Urban Development to provide engineering services to HUD housing projects at the request of the Tribally Designated Housing Entity (TDHE) and the tribe. Often, TDHEs, with the approval of tribes, transfer funds for sanitation facilities for HUD homes to IHS to administer. Likewise, it is not uncommon for tribes to transfer grant funds from the HUD CDBG program, EPA, the Department of Energy (DOE), Rural Utility Service (RUS) (formally the Farmers Home Administration), the state, etc., to IHS to administer.

In FY 1998, IHS received over $40 million in contributions for sanitation facilities construction from tribes, other agencies, and states in addition to IHS's appropriation of $89 million. About 78 percent of the construction, by total funds expended, was performed by Indian tribes and tribal enterprises. About 475 new projects were developed with these funds. Projects funded with contributions are a direct result of IHS's ability to develop workable projects with multiple funding sources. Other agencies are more likely to participate because of IHS's local presence to ensure that the project does not become delayed for any of a variety reasons.

CHAPTER 5. Eligibility for IHS SFC Program Services and IHS-Funded Projects

The IHS SFC Program sets criteria for eligibility for sanitation facilities based on Congressional intent and legislative mandates. As stated earlier, P.L. 86-121 authorized the IHS:

> ". . . to construct, improve, extend, or otherwise provide and maintain, by contract or otherwise, essential sanitation facilities, including domestic and community water supplies and facilities, drainage facilities, and sewage- and waste-disposal facilities, together with necessary appurtenances and fixtures, for Indian homes, communities, and lands . . ."

Projects must serve American Indian or Alaska Native housing. To determine the eligibility of a project for IHS funds, many eligibility criteria must be reviewed, including:

- Are the persons to be served eligible?
- Are the homes and communities to be served eligible?
- Are the services to be provided eligible?
- Are the sanitation facilities to be provided eligible?

Each of those aspects of eligibility will be reviewed in this chapter. Eligibility is summarized in Table 5-1.

I. Eligible persons for SFC Program services

Any member of a Federally recognized tribe (25 U.S.C. 479a-1), band, group, or community of American Indians/Alaska Native persons is eligible for SFC Program services, provided they are within the scope of the IHS program as determined by the policies, standards, and procedures set forth in Part II, Chapter I, of the IHS Manual. Eligibility is also extended to certain unaffiliated California Indians per Section 809 of P.L. 102-573, the Amendments to the Indian Health Care Improvement Act. The request for sanitation facilities generally must come from a Federally recognized tribal government in keeping with the government-to-government relationship between the Federal Government and tribes.

Other non-Indian persons, organizations, or enterprises can also be included in approved IHS projects provided they contribute funds to IHS to cover the prorated cost of the facilities required to serve them. Projects that include service to non-Indians must be primarily for the benefit of Indians. (see also Section V for additional criteria.)

Geographical boundaries (service area). The SFC program can provide sanitation facilities to eligible persons on or near Indian reservations, but only in counties labeled IHS Contract Health Services Delivery Area (CHSDA). A CHSDA is defined in the Federal Register and normally consists of a county which includes all or part of a reservation, and any county or counties which have a common boundary with the reservation. The entire states of Alaska, Oklahoma, and Nevada are CHSDAs. (See Federal Register notice in Appendix 4). In order for IHS to serve a home or community that is off-reservation but within a particular CHSDA, the request for sanitation facilities must come from the appropriate tribal government associated with that CHSDA. IHS cannot serve Indian homes that are outside a CHSDA, including BIA HIP homes.

II. What sanitation facilities can the SFC Program provide?

In general, an IHS SFC project can provide water supply, water treatment, water storage, water distribution, sewage collection, sewage treatment, and sewage disposal facilities. As part of a regular SFC project, IHS can furnish indoor plumbing, kitchen sink, and bathroom fixtures for existing homes, provided any structural improvements to the house (e.g., a separate room) are furnished by the homeowner. IHS can provide funds for service connection fees and other tie-in or buy-in costs on a negotiated prorated basis, when those fees are included as part of a SFC project.

IHS can provide solid waste containers, solid waste collection vehicles, solid waste transfer stations, solid waste landfills, and for landfill closure. IHS can provide a tribally owned community washeteria (a facility with a water point, showers, and laundry). IHS can make drainage improvements. IHS can provide engineering studies associated with providing the above facilities. IHS can also provide tools, equipment, supplies (generally, up to a year's supply), and training necessary for start-up for all the above facilities.

In the course of designing a new water system, IHS can design for fire fighting capability provided there is an organized fire department in the community. However, IHS is not bound by the International Organization for Standardization (ISO) criteria. IHS cannot fund a project solely to upgrade an existing water system for fire-fighting capacity.

SFC funds can be used to purchase land or make site improvements if necessary for the provision of sanitation facilities. However, IHS will not fund the purchase of trust land or land owned by the tribe or a project participant who benefits from the project. Normally, land is provided by the tribe as stated the MOA agreement provisions.

IHS does not fund the relocation of a house so it can be provided sanitation facilities.

IHS does not have funds for the day-to-day operation and maintenance of sanitation facilities. As stated previously, all IHS constructed sanitation facilities are either owned by or transferred to the tribe upon completion.

Table 5-1. Basic Eligibility Criteria for Service by the SFC Program*

Eligible Persons • Any member of a Federally recognized tribe, band, group, or community of American Indians/Alaska Native persons who are within the scope of the IHS program. Eligibility is also extended to certain unaffiliated California Indians. • Other non-Indian persons, organizations, or enterprises can also be included in approved IHS projects provided they contribute funds to IHS to cover the prorated cost of the facilities required to serve them. • SFC projects must be primarily for the benefit of Indians. The request for sanitation facilities generally must come from a Federally recognized tribal government.
Eligible homes: IHS funds sanitation facilities projects to serve homes only. Homes are defined as 24-hour year-round family dwellings. • *Existing homes* that do not meet housing support project eligibility criteria may be served with regular project funds. • *New homes* (non-HUD funded), *like-new homes*, and *homes of referred patients with medical conditions* are eligible for IHS housing support funds. • Existing homes renovated with *HUD Community Development Block Grants (CDBG) funds* are eligible for housing support provided they meet the like-new home eligibility criteria for that project. • Eligible homes must be in counties that are IHS CHSDAs. **Ineligible homes**: • HUD funded new homes are not eligible for IHS funded construction of sanitation facilities.
Eligible sanitation facilities that the IHS SFC Program can provide include water supply, water treatment, water storage, water distribution, sewage collection, sewage treatment, and sewage disposal facilities for homes in communities and for scattered homes. IHS can provide solid waste containers, solid waste collection vehicles, solid waste transfer stations, solid waste landfills, O&M equipment, and O&M training. • Eligible Indian communities that are organized communities that are 50 percent or more Federally recognized AI/AN people can be provided assistance using IHS sanitation facilities construction funds. • In non-Indian communities (less than 50 percent Indian population, IHS can provide sanitation facilities to Indian homes if the homes (new or existing) are not currently served by the community system. • In non-Indian communities with a total population of less than 10,000 people, IHS can provide a prorated amount of funds toward the construction of upgrades to existing community water supply and waste disposal facilities.
Eligible services • *Emergency project funds* may be used where an actual or imminent public health problem caused by a natural or man-made incident that adversely affects sanitation facilities serving Indian homes. • *Special project funds* may be used for activities that usually do not directly provide sanitation facilities to Indian homes and communities. Examples include engineering investigations, service to certain existing non-domestic facilities (limit per facility is $10,000), O&M projects, special studies, and training projects. Schools typically are not eligible, and new tribal facilities and buildings are not eligible for special project funds. • *O&M technical assistance* projects may be funded with special project funds to improve the ability of tribal utility authorities to provide operation and maintenance of sanitation facilities. • *Other non-project engineering services*. SFC funds can be used to develop small pre-design projects (e.g., for archeological surveys, etc.) in preparation of a much larger housing support or regular project the next year. Only regular or special funds can be used to develop solid waste management plans. All other technical assistance must be done with program or special project funds.
Area specific eligibility criteria. An Area office may require additional technical, environmental, and economic criteria established by each Area in consultation with the Area Tribal Advisory Committee (TAC)

*Read the specific criteria in this Chapter for full eligibility requirements.

III. What homes are eligible for SFC Program funded sanitation facilities projects?

IHS can provide sanitation facilities to American Indian and Alaska Native homes and communities. IHS funds sanitation facilities to serve homes only. Homes are defined as 24-hour year-round family dwellings. The status of the land, either trust or non-trust, does not affect eligibility.

IHS does not provide funds to serve commercial, industrial, or agricultural establishments including office buildings, nursing homes, health clinics, schools, hospitals, and hospital quarters with IHS SFC funds (they can be included in a project if they pay their own cost). IHS can serve homes for the elderly if they are tribally owned, non-profit, and not a health care facility.

As discussed in Chapter 4, Section II, IHS can serve eligible homes under a housing support project or a regular project. New and like-new homes are served with housing support project funds and existing homes are served with regular project funds.

An eligible participant may be served more than once if that person/family changes principal dwelling places. However, those cases should be reviewed carefully to ensure that the participant does not take unfair advantage of the SFC program. The same house may be served twice if the original service was marginal or the system needs upgrading as a result of a house expansion. Service cannot be provided twice as a result of homeowner neglect.

The SFC Program does not have a national per-home cost cap. Areas have their own cost caps for housing support projects. Areas may have separate unit cost thresholds for water, sewer, and solid waste. Proposed SDS projects that exceed an average Area-specific per-unit cost threshold are considered infeasible and are not funded.

Houses rented or leased to Indians that are tribally owned are eligible, provided that the primary purpose is not to produce a profit. Indian owned homes leased to Indians are eligible provided the time remaining on the lease is at least 5 years and the lease price is not increased because of the newly installed facilities. Indian homes leased to non-Indians are not eligible. Non-Indian owned homes are ineligible even if rented to an Indian family. (See OGC opinion, 11/20/61).

Mobile homes can be served if they are permanently located, owned by or rented to Indians, in sound condition (per Area criteria), and the trailer court is a non-profit operation. Mobile homes do not have to be new, but the mobile home must meet acceptable standards and other criteria, which show that the mobile home will be a permanent residence. IHS cannot serve travel trailers.

Homes Eligible for Housing Support Funds

When new homes are constructed or existing homes renovated, the necessary sanitation facilities for these homes should also be part of that development and funded by the same source providing the funds for the new home or renovation. The exception is a home constructed under the Bureau of Indian Affairs (BIA) Home Improvement Program (HIP). Housing support funds may be used to serve homes constructed or renovated under the BIA HIP program, except for HIP Category A homes. HIP Category A homes are homes that do not meet acceptable building standards. In the FY 1998 House Bill Report, the Congress stated that: "Funds for sanitation facilities for new and renovated housing should be used to serve housing provided by the Bureau of Indian Affairs Housing Improvement Program, new homes, and homes renovated to like-new condition. Onsite sanitation facilities may also be provided for homes occupied by the disabled or sick who have physician referrals indicating an immediate medical need for adequate sanitation facilities at home. IHS project funds shall not be used to provide sanitation facilities for new homes funded by the housing programs of the Department of Housing and Urban Development." All sanitation facilities obligations and expenditures must comply with the language in the appropriations bill report.

Generally, IHS will not serve a home that is considered substandard. However, if it is determined that the house is permanent and that the residents will continue to occupy it year-round indefinitely, then the home can be served under a regular project. It may be served under a housing support project when it meets the like-new eligibility criteria for that program.

Eligible housing types for the expenditure of IHS housing support funds for construction of sanitation facilities are new homes (non-HUD funded), like-new homes, and homes of referred patients with medical conditions.

Eligible New Homes: These are new homes for0 Indians constructed with Bureau of Indian Affairs Housing Improvement Program funds, homeowner funds, or non-HUD housing program tribal funds. New homes are defined as newly constructed or newly manufactured.

Like-New Homes: These are existing homes that are certified by a qualified inspector or engineer to meet basic regional standards that determine the home to be as functional and long-lasting (i.e., more than 20 years) as a new home. The structure and all the mechanical systems must be fully functional. Prior to service, the existing home must be permanent, must include a plumbed kitchen, at least one bathroom with toilet (flush toilet is required except in arctic Alaska), adequate insulation, permanently installed heating (unless the house is in a location where pipes could never freeze), electricity if available in the community, an adequate roof, and must also meet other locally set criteria. Any existing onsite sanitation facilities serving the home must be certified by a qualified inspector or engineer to be unsafe and/or non-functional and not caused by homeowner neglect. The Area may have additional Area-specific criteria.

Homes of Patients With Medical Conditions: These are existing homes of Indian patients with medical conditions requiring immediate sanitation facility improvements. These homes may or may not meet the like-new eligibility criteria. As an extraordinary exception to the eligibility criteria above, housing support funds can be used to provide these otherwise ineligible homes with <u>onsite</u> water supply and sewage disposal facilities (e.g., water service line, sewer connection, septic tank system, etc.). Service to the home of a patient with a medical condition cannot be used to justify construction of any expansions or capital improvements to community water or sewer facilities. A physician must certify in writing that the patient has a medical condition that requires adequate sanitation facilities at the patient's home. The Area may have additional Area-specific criteria.

To be served, the home must meet the eligibility criteria for like-new homes above, except for the following: (1) If it is not up to standards, and the homeowner agrees to be responsible for bringing the home up to like-new standards in the near future (to be taken on good faith), the sanitation facilities can be provided to the home before renovation of the home, and, (2) the IHS can provide very limited indoor plumbing/fixtures if necessary to serve the patient prior to the renovation.

Existing Homes: A limited number of existing Indian homes (considered not to be "like-new") may be included in housing support projects only when they are located next to planned community-type water distribution or sewage collection systems for housing project sites; provided: (1) Inclusion of the existing homes is practicable and feasible after considering engineering, logistical, and cost factors; (2) the total cost of serving the existing homes is less than 10-percent of the total project cost; and (3) the homes meet all other national and Area eligibility criteria.

<u>If a tribe has a housing project that mixes HIP, HUD (not CDBG), and tribal funds</u>, IHS will fund a prorated share of the sanitation facilities for the project based on the non-HUD portion.

<u>HUD Community Development Block Grants (CDBG) funds</u>. Although CDBG new homes and renovations are funded by HUD, the CDBG program is not a <u>housing</u> program, because CDBG housing renovation grants compete with other non-housing project grants. The assurance of IHS assistance helps to improve the chances of the housing project receiving a grant. Since housing renovations with improved sanitation systems improve health, an IHS goal, IHS funds can be used for these types of HUD funded projects.

<u>Existing homes</u> that are newly purchased and occupied by eligible persons, are titled solely in the occupant's name, and have sanitation needs can be served under a housing project, provided the home is renovated per renovation criteria (i.e., made like-new). If it does not meet the like-new criteria, the home may be served under a regular funding (SDS) project.

<u>Commercial home loans</u>. IHS may assist eligible homeowners that assume personal homeowner mortgages guaranteed by HUD under Section 184 of the Housing and Community Development Act of 1992 or others provided the home is titled solely in the occupant's name.

<u>Homes that do not meet housing support project eligibility criteria</u> may be included in SDS and addressed in priority order, if they meet SDS and Area eligibility criteria. Existing homes and communities are served with regular project funds, which were discussed in Chapter 4, section II. SDS is discussed in the chapter on project priority.

IV. Homes not eligible for housing support funds

HUD funded Indian housing projects, grants to Tribally Designated Housing Entities (TDHE's) or state and county governments for new houses (financed by HUD) are **not eligible** for funds appropriated to the IHS under the authority of P.L. 86-121. IHS cannot use construction funds appropriated to IHS to serve any new homes funded under HUD housing programs. In the fiscal year (FY) 1998 House appropriations bill report, the Congress reaffirmed it's position and stated, "IHS project funds shall not be used to provide sanitation facilities for new homes funded by the housing programs of the Department of Housing and Urban Development."

HUD provides funds for sanitation facilities when HUD funds the housing units. The HUD funds may be transferred to IHS for construction of sanitation facilities.

HUD homes managed by TDHEs. IHS cannot provide (with IHS funds) on-site facilities for HUD homes managed by TDHE's where the homeowner doesn't hold title. HUD homes managed by a TDHE are usually not eligible for IHS-funded sanitation facilities. When an SDS project is identified to correct deficiencies in sanitation facilities serving TDHE-managed HUD homes, the following should be considered to determine if the TDHE should contribute toward the project:

- If the HUD homes that will benefit from the project are under TDHE management and these homes clearly created or contributed to the sanitation deficiency when they were built, then the TDHE is responsible for a pro-rata portion of the cost of any new or improved sanitation facilities serving those homes.

- If the TDHE originally contributed toward the construction of the sanitation facilities and the deficiency is due to the addition of non-HUD homes to the system, the TDHE will not be required to make a contribution to the SDS project.

If it is determined that the TDHE should contribute to the SDS project, the deficiencies (the cost and the number of houses) must be pro-rated between the IHS and the TDHE when entered into SDS. The SDS score for Contributions should be adjusted to reflect the likelihood of the TDHE contributions being received.

The Reportable Deficiencies section of the "Guidelines for Reporting Sanitation Deficiencies for Indian Homes and Communities" states: "Deficiencies for individual sanitation facilities serving HUD housing units still under Housing Authority [TDHE] management are the responsibility of HUD through the local housing authority [TDHE]. These deficiencies should not be reported [in SDS]."

Generally, IHS does not provide sanitation facilities for any Federal housing program that is authorized to fund the sanitation facilities along with the houses it provides. However, IHS will serve existing homes renovated with HUD CDBG funds.

Second homes or vacation homes are not eligible for SFC Program services. Homes served by IHS must be the principal residence.

V. Sanitation Facilities for Homes in Non-Indian Communities

Definition of Indian and Non-Indian Communities.

Historically, IHS has defined an American Indian and Alaska Native (AI/AN) community as a community where the majority of the residents to be served are within the scope of the Federal Indian health program. Organized communities that are 50 percent or more Federally recognized AI/AN people can be provided assistance using IHS sanitation facilities construction funds. IHS assistance is limited for communities with an Indian population less than 50 percent.

Note that for the purposes of defining a community with an existing (or planned) community water or sewer system, the 50 percent criterion applies to the population served (or to be served) by the community system. For example, a rural water system serving 500 homes along 10 miles of a highway in a rural county would be considered a "non-Indian community" if the population served by the rural water system is less than 50 percent Indian. If the community was 50 percent or more Indian, the community could be served; however, only the Indian owned homes would be provided with service or service connections. Non-Indian homeowners that contributed the cost of their service connections could be served by the project.

Providing Services to Non-Indians in Indian Communities

Although IHS may provide SFC services beyond reservation boundaries, as described in Section I of this Chapter, the request for sanitation facilities generally must come from a Federally recognized tribal government in keeping with the government-to-government relationship between the Federal government and tribes. As previously stated in Chapter 2, other non-Indian persons, organizations, or enterprises can also be included in approved IHS projects provided they contribute funds to IHS to cover the prorated cost of the facilities required to serve them or get funds from other sources. In any event, IHS projects that also include service to non-Indians must be primarily for the benefit of Indian homes. Generally, IHS will fund the pro rata cost of improvements in these communities but will not provide the cost of service lines and on-site facilities to non-Indian homes.

Providing Services to Indians in Non-Indian Communities

IHS historically has provided many Indian homes in non-Indian communities with first service sanitation facilities and will continue to provide this service to eligible homes within available funding.

New connections/services: IHS can provide sanitation facilities to Indian homes in any non-Indian community if the homes (new or existing) are currently not served by the community system.

- IHS can fund the construction of a service line between an Indian home and an existing water main, and IHS can pay the connection fee.
- If a subdivision of Indian homes is constructed, IHS can fund the sanitation facilities for the homes inside the subdivision and can fund the pro rata share of the cost to upgrade the central treatment and storage systems that are necessary to accommodate the added Indian homes.
- IHS can fund a connection between an Indian and non-Indian community to provide improved service to the Indian community.
- IHS can fund a prorated amount for a new regional solid waste facility in locations where there was no existing solid waste collection and disposal system.

Improvements to existing sanitation facilities: The proportion of the Indian population in the non-Indian community is particularly applicable when requests are received for IHS SFC Program funding for improvements to or replacement of existing sanitation facilities in non-Indian communities that are not associated with new Indian housing or new service connections. All of these types of projects are regular projects funded from the SDS priority list.

IHS can provide funds to construct upgrades to existing community water supply and waste disposal facilities for predominantly non-Indian communities (still defined as communities with less than 50 percent Indian population) with a total population of less than 10,000 people. These projects typically are providing funding contributions towards community projects not managed by IHS.

Consider the example of a community where 25 percent of the population is Indian. The Indian people live in houses scattered throughout the community and are served by the community's water system. The community is considered **non-Indian**, because the Indian population is less than 50 percent of the total community population.

- The community's existing water treatment plant must be upgraded to meet new Federal drinking water standards. Since no new Indian homes will be connected to this system, this deficiency would not qualify as an eligible P.L. 86-121 project if the community (or project beneficiaries) exceeds 10,000 people; or

- The community wants to replace smaller water mains with larger water mains and add additional water storage tanks to the community water system. Again, since no new Indian homes will be connected to this water system, this project would not qualify as a project eligible for IHS funds if the community (or project beneficiaries) exceeds 10,000 people.

The maximum funds provided by IHS would be the project cost minus (1) the portion of the project cost to serve all of the commercial, industrial, institutional, and governmental establishments benefitting from the project, minus (2) the cost to serve the non-Indian homes, which can be determined by the ratio of the community's non-Indian population benefitting by the project to total population benefitting by the project. Note that IHS funding of projects in non-Indian communities still must be requested by the appropriate Federally recognized tribe(s). When entering that project into the SDS system, a tribal score (it could be zero) is required and the SDS deficiency level (DL) of the Indian portion of the project must be determined. Typically, the DL will be DL 2.

Facilities other than full-time family dwelling places are not eligible for services under housing support projects. This includes Indian churches, Headstart schools, ceremonial (pow-wow) grounds, or campgrounds. SFC project funds cannot be used for facilities for public campgrounds and other commercial ventures. Schools typically are not eligible. Those facilities are generally not eligible for services under regular projects, either. Existing AI/AN ceremonial areas and existing Tribal buildings may be served by existing regular projects subject to the criteria in the special projects discussion below only if they represent an incidental cost to that regular project, such as a service line connection. Otherwise, special project funds must be used.

VI. Special Projects

As briefly discussed in Chapter 4, Headquarters administratively reprograms up to $500,000 for special and emergency projects, when possible. Because of the nature of special projects, Areas cannot fund special projects from current or prior year regular or housing support funds. All special projects must be funded by Headquarters from the special projects allotment.

Special projects include activities related to tribal sanitation facilities but usually do not directly provide sanitation facilities to Indian homes and communities. Special projects can support the tribal sanitation facilities component, lay the ground work for future sanitation facilities, or determine the feasibility of providing sanitation facilities. Examples include engineering investigations, service to non-domestic facilities, operation and maintenance projects, special studies, and training projects.

Engineering investigations. Engineering investigations to directly support funded Regular or Housing Support projects should be funded by those projects in accordance with the appropriate guidelines. Those engineering investigations not associated with a funded construction project, or otherwise do not qualify under these categories, may be considered for Special Project funding. Engineering investigation projects provide preliminary planning for future projects and provide solutions to design and construction problems. Engineering investigation projects could be developed into future Housing Support or Regular projects.

Sanitation Facilities for AI/AN Ceremonial Areas and Tribal Buildings. Special project funds may be used to serve these facilities if they meet the following criteria:

- *Cost limitations*: Projects to provide sanitation facilities for existing AI/AN ceremonial areas and for existing Tribal buildings shall be limited to $10,000 per project.

- Funding for projects of this nature shall be for existing, tribally owned, non-commercial, community buildings which are used for assemblies and meetings of American Indians/Alaska Natives. Tribally owned facilities used for Headstart classes which are principally for American Indians/Alaska Natives also fall within this category. Schools typically are not eligible.

- New tribal facilities and buildings are not eligible for special project funds. For new tribal buildings or ceremonial areas, the cost of needed sanitation facilities should be included in the total funding amount for the new buildings or the ceremonial areas.

- Campgrounds and other possible commercial ventures for the use of non-Indian tourists are not eligible for special project funds.

Operation and maintenance projects: Special project funds can be made available for projects that utilize a variety of methods to improve the ability of an AI/AN utility authority to conduct the operation and maintenance of sanitation facilities.

Special studies and training projects: Funding may be provided for special studies, training or the development of training aids, which will improve the construction, operation, maintenance, or utilization of sanitation facilities.

VII. Emergency Projects

In the event of an eligible emergency (as described below) Areas are to utilize the current year emergency funds pool managed by Headquarters. If the Headquarters funding pool is depleted, the Area, in consultation with Headquarters, may utilize unspent prior-year project funds.

Emergencies could occur due to severe drought conditions; failure of community wells and pumping equipment, water and sewer main breaks; and other sudden major interruptions of the normal operation of sanitation facilities. The lack of sanitation facilities is not considered an emergency.

- The incident must be an actual or imminent public health problem caused by a natural or man-made incident that adversely affects sanitation facilities serving American Indians/Alaska Natives.
- Financial participation shall be limited to those cases for which the needed correction is beyond the ability and resources of the Indian tribe or group to undertake, as determined by the Area SFC Program manager.
- If appropriate, tribes will be requested to provide some of their own resources to add to the contributed IHS funds. An appropriate case includes an emergency that is a result of failure to properly operate and maintain a sanitation facilities system.
- The criteria for providing sanitation facilities to persons with medical conditions or medical emergencies was stated in Section III.

The lack of O&M cannot be a reason to prevent a needed project; however, projects will not be developed solely for lack of proper O&M. IHS will work with the affected tribe to mitigate a public health hazard if one develops, and emergency project funds can be used for that purpose.

VIII. Other types of projects and related questions

Future growth or economic development projects: IHS can participate in any project on a pro rata basis if eligible homes are to be served. IHS does not provide sanitation facilities for future homes, or unused excess capacity, unless there is a funding commitment to build the homes within the next year. In the course of designing a new facility, some future demand can be considered in the design and sizing requirements. IHS will mostly build in flexibility to accommodate future growth rather than build excess capacity.

How much funding for professional engineering services or project technical support services can be included in a project? The highest priority for SFC funds is to purchase materials, equipment, and labor for the construction of sanitation facilities. Professional engineering services can be funded on an as-needed basis only if sufficient program (non-project) funds are not available. SFC projects funds are used to pay for technical support services; e.g., drafting, inspections. The proportion of SFC project funds that can be allocated for those services are discussed in Chapter 9, Section VI.

Can housing support funds be used to fund capital improvements to an existing sanitation system? Only if absolutely needed to serve only new connections to the system for homes eligible for housing support funds.

Can IHS fund projects that provide only technical assistance (i.e., projects that do not provide sanitation facilities)? SFC funds can be used to develop small pre-design projects (e.g., for archeological surveys, etc.) in preparation of a much larger housing support or regular project the next year. Only regular funds can be used to develop solid waste management plans. All other technical assistance must be done with program or special project funds.

Can IHS provide solid waste recycling equipment, a recycle facility, recycle bins, solid waste to energy facility, or sludge processing facility? If a tribe has an IHS approved solid waste management plan, IHS can, (a) provide recycle bins if they replace standard home receptacles, and/or (b) make a prorated contribution (amount of a standard project to meet domestic needs) to other types of solid waste disposal facilities if they are a tribally owned and ultimately properly dispose of the domestic solid waste.

Can IHS fund contingencies for projects? Yes, the amount for contingencies is typically limited to 10-15 percent of the project cost. A more detailed explanation of contingencies and contingency pools is in Chapter 7 on managing project funds.

Can IHS fund roads? IHS can fund minor roads/road improvements necessary for a vehicle to reach a sanitation facility, such as a lagoon. IHS otherwise is not authorized to build or fund roads.

IX. Area Specific Eligibility Criteria

The feasibility of serving new and like-new homes also may be based on additional technical, environmental, and economic criteria established by each Area in consultation with the Area Tribal Advisory Committee (TAC). As a part of each Area's Housing Priority System (HPS) (see Chapter 6 on project priority), each Area shall adhere to the required national criteria in this chapter and shall develop additional Area-specific eligibility criteria, in consultation with Area TAC, which may include the factors in Table 5-2.

Table 5-2.
Area Specific Eligibility Criteria

- Eligibility - either by tribal recommendation or by criteria established by Area and/or Tribe.
- Process - information and documentation needed by applicants, processing steps, and internal control measures needed to prevent duplication of funding/services.
- Definition of Primary and Secondary Residence.
- Structural and Building Requirements - additional basis for judging the home to be new or like-new; availability of electrical power, permanence of structure (properly skirted and anchored mobile homes), adequacy of home (meet applicable codes and standards), heating system, etc.
- Site/Lot Feasibility Requirements - favorable technical, environmental, archeological, and economic feasibility requirements for installing sanitation facilities.
- Site Control Requirements - documentation requirements for land owned or leased by the applicant; access and/or right-of-ways. An Office of the General Counsel (OGC) Opinion on rental housing, dated November 20, 1961, limits eligibility to specific cases when units are Indian owned and Indian occupied.

CHAPTER 6. Funding Methodology and Project Priority Criteria

I. Funding Methodology

SFC resource allocation methodologies are based on two fundamental principles, (1) the unmet needs principle and (2) the project based funding principle. Knowledge of these guiding principles is helpful for understanding the SFC Program resource distribution methodologies.

1. Unmet Needs Principle

The IHS is charged by Congress to prepare and submit an annual report to Congress on the sanitation needs of Indians by degree of need and to prioritize those needs. In accordance with the intent of Congress, IHS funding and services are allocated based on needs. In practice, this has generally meant providing resources first and in greater degree to those homes and communities with the greatest needs. Therefore, equity is achieved in terms of equivalent outcomes rather than equal shares of any allocation. More funds will go where the need is greatest to bring sanitation facilities to an acceptable level of service.

Sanitation needs of different reservations, different IHS service units, and different IHS Areas vary considerably. In addition, sanitation needs at the same location can change over time. Needs can be met (through funding of a project) by any one of several non-IHS sources. Or, they can be created gradually as a result of population growth or suddenly, as a result of a natural disaster, equipment failure, or a change in Federal regulations. Specific sanitation facilities needs are not ongoing or continuous. Needs are defined in terms of a project to meet those needs. A project is defined in terms of total cost and number of homes to be served. IHS reassesses these needs every year and with tribal input updates the priority list of projects to meet those needs. IHS then proceeds to fund projects on the list with resources appropriated by Congress.

2. Project-Based Funding Principle

The fundamental premise for conducting all aspects of the P.L. 86-121 Sanitation Facilities Construction Program, is the concept of the "project", which is used to define and to meet needs. The Congress appropriates the total amount of sanitation facilities construction funds to IHS. Those funds are allocated at the local level based on well defined projects (scopes of work) and an executed Memorandum of Agreement (MOA), which spells out responsibilities of the parties in carrying out the cooperative project, or by P.L. 93-638 contract or compact.

SFC Program's funds (both program and project) are allocated based on a project concept, for which workload and accomplishments can be measured.

There is a legal basis for using projects:

- P.L. 94-437, as amended, Section 302 (g)(1)(C) requires "the level of sanitation deficiency for each sanitation facilities project of each Indian tribe or community;"
- P.L. 94-437, as amended, Section 302 (g)(1)(A) requires the Secretary to report "the current Indian sanitation facilities priority system of the Service." The intent is to prioritize projects.
- IHS budget justification language clearly states that work will be accomplished through projects in priority order.
- The appropriations language uses the term "project" and requires IHS to use its sanitation deficiency priority system, which defines deficiencies in terms of projects.
- IHS is responsible for the NEPA determination of all construction work performed by or with IHS appropriations; i.e., NEPA determinations are a residual IHS function.
    - NEPA determinations are based on environmental reviews of well defined project scopes of work.
    - Usually, funds for construction (not including funds for project pre-design) are expended only after NEPA approval.
    - If something other than what is in the original scope of work is to be constructed, the NEPA review must be redone and approved by IHS.
    - The construction work must be well defined in a project scope of work with enough information to verify that the requirements of NEPA and related environmental laws and regulations are met.

The requests for sanitation facilities projects generally exceed the number which can be funded with available appropriations. The large number of requests requires that there be an orderly method of determining the priority order for funding and approving projects.

II. Prioritizing Projects For New or Like-New Houses

Housing support funds are allocated based on needs using the methodology described in this section. The intent of the Housing Priority System (HPS) is to prioritize housing support projects. This requires clear and consistent national as well as Area-specific criteria. The HPS is used by all Areas. Those tribes that manage their own Sanitation Facilities Construction (SFC) Program under Title I or III of P.L. 93-638 (as amended) participate in their Area HPS. New and like-new homes needing sanitation facilities must at least comply with the national eligibility requirements provided in the previous chapter.

The national priority classification for eligible new and like-new homes for sanitation facilities funded by the IHS is provided in Table 6-1. Needed facilities for homes not meeting HPS eligibility criteria should be included in the Sanitation Deficiency System (SDS) and addressed in priority order as regular projects (see Section V), if they meet SDS eligibility criteria.

Each Area shall establish an Area-specific HPS consistent with national SFC Program policies in consultation with the tribes in the Area. The Area HPS guidance shall describe in detail (a) eligibility requirements (see Chapter 5) and (b) the method of prioritizing projects for funding. Other information and/or requirements can be added to the HPS as needed to meet the unique aspects of each Area. In this manner the HPS can be tailored to better meet regional priorities. Each Area HPS will be reviewed by the Director, Division of Sanitation Facilities Construction (DSFC), OEHE, OPH, IHS Headquarters (HQ), for consistency with this section.

Area-Specific Priority Criteria: The SFC Program recognizes that there are unique Area factors that will affect prioritizing Area projects within each Group in Table 6-1. Table 6-2 shows a list of possible Area specific factors.

Every Area should review these and other applicable criteria in consultation with the Area Tribal Advisory Committee and add appropriate criteria to the national criteria.

Area Unit Cost Caps: Each Area must establish a unit cost cap for housing support projects, which is a maximum average funding amount per house for each housing support project within the Area. For all projects using housing support funds, the project cost divided by the number of homes served will not exceed this predetermined unit cost cap. This cost cap will be set by the IHS Area Office, in consultation with Area tribes and IHS Headquarters. The cost cap shall be comparable to actual historical unit costs for the Area and shall be less than the total allowable unit cost as established by the SDS guidelines. The need for an exception to the Area's unit cost cap must be approved at the HQ level. The unit cost cap will help to limit large capital expenditures using housing support funds (regular funds are available for serious capital deficiencies) and allow housing support funds to be used to serve more new and like-new houses. Areas also may wish to establish a maximum cost for any single house served under a project, and/or, an Area may wish to have cost caps for different types of services (e.g., cost caps for septic tank/drainfields would differ from those for sewer service lines).

Table 6-1
IHS SFC Program
Housing Priority System

The priority of service for new or like-new homes determined eligible for housing support projects is as presented in this table, with the highest priority listed first:

HOUSING CLASSIFICATION	GROUP PRIORITY	PDS PRIORITY DESIGNATION
BIA HIP new home and eligible like-new home projects.	I.	A
New homes completed in the previous fiscal years.	II.	B
New homes to be completed during the **funding** year.		C
Existing eligible "like-new" homes.	III.	D

1. A new home is one that is newly constructed or newly manufactured.
2. Eligibility is established by each Area; however, an eligible like-new home must meet the eligibility criteria in Chapter 5, Section III (including a plumbed kitchen, one bathroom with toilet, insulation, heat, etc.). If a home is considered to be substandard after a BIA-HIP renovation, it is ineligible for service.
3. This housing classification system is to be used in Project Data System (PDS) Housing Reports.
4. Homes of patients with certified medical conditions may be provided with sanitation facilities using housing support funds under any housing support project if the home meets the criteria specified in Chapter 5, Section III, on eligible homes for housing support projects.

Table 6-2
Potential Area-Specific Priority Criteria

- Documented health issues
- Date of application
- Timing of house/renovation construction
- Date of occupancy
- Tribal population or population changes
- Percentage of SDS DL 4 or DL 5 homes (homes without water and/or sewer) in the community relative to the total number of new and like-new homes in the project
- Tribal operation and maintenance (O&M) criteria/performance history
- Home construction or renovation funding source
- Relative unit cost (within the constraints of Appendix A of the SDS manual)
- Availability of local contributions

III. Establishing Area Housing Support Project Priority Lists

The steps for allocating housing support funds are as follows:

1. Prior to the beginning of each fiscal year, the IHS Area office contacts each tribe in the Area, preferably in writing, to request the number of homes that are eligible to be served with IHS housing support funds. Self-Governance/Self-Determination (SG/SD) tribes that assumed the responsibility for the SFC Program would develop project cost estimates using their own engineering staff. IHS would develop the project cost estimates for direct service tribes.

2. At the time tribes and IHS staff develop the estimated needs for new housing support funds, they shall also provide a project status report which identifies how previously distributed housing support funds were spent. At a minimum, this report shall show house identification numbers or homeowner names and location information for each home committed for service from the project. The report shall be submitted to the IHS Area Office and made available to the Area Tribal Advisory Committee (TAC) and to IHS Headquarters, if requested. The purpose of the report is to inform the IHS Area Office and the Area TAC of how previously distributed funds were committed and spent, and to record specifically which homes were served with IHS funding. This information is needed to justify the new funding requests, and may be used to assist the TAC in recommending Area specific project funding policies. The TAC may wish to request that additional information be provided in the report to better enable the TAC to form these recommendations.

3. The Area SFC Program Director reviews the estimated needs for new housing support projects, and the status reports for previously funded projects.

4. At the Area office level, the SFC Program Director presents the projected needs and estimated costs for new housing support projects to the Area TAC, if requested. The SFC Program Director also provides comments and recommendations to the TAC. The SFC Program Director, with any feedback from the TAC, reviews the tribal needs and cost estimates and may elect to solicit additional supporting information prior to preparing an aggregate project funding request to Headquarters. The TAC may evaluate each proposed project using the Housing Priority System criteria for that Area and recommend a preliminary priority listing for the Area.

5. Each Area provides its projects and cost estimates to IHS Headquarters using the project funding report in the Project Data System (PDS)[1].

6. The Areas will allocate the IHS funds received using their Area specific priority system based on HPS and Area specific priority criteria developed in consultation with the Area TAC. Throughout the year, the Area SFC Program managers will have the latitude to adjust a project's priority for funding and amount of funding to meet changing tribal needs, fairly and equitably. All Group I projects shall be ranked higher than all Group II projects. All Group II projects shall be ranked higher than all Group III projects. Projects shall be funded in priority order except that an Area may elect not to "reserve" funds for tribes beyond the end of each FY, either because the tribes did not approve the project documents or the projects are not ready to be constructed.

Exceeding the Area's unit cost: If a housing support project to serve new/like-new homes with IHS funding (or partial funding) exceeds the Area's unit cost cap, the projects will be considered infeasible and cannot be prioritized for funding.

Projects fully funded with non-IHS funds that serve new/like-new homes are not subject to the HPS. Projects to serve unfunded future new homes and renovations will not be considered for funding.

Needs for homes not meeting HPS eligibility or feasibility criteria may be included in the Sanitation Deficiency System (SDS) and addressed in priority order as regular projects (see SDS Guide), if they meet SDS eligibility criteria.

[1]PDS includes data and milestones of each sanitation facilities project funded under the authorization of P.L. 86-121. The information in PDS is used to track the progress of projects, aids in project management, and provides HQ with information to present to the Congress and others as requested. Within Area SFC programs, PDS is used to schedule, budget, and evaluate general performance of projects.

IV. Headquarters Distribution of Housing Support Funds to Areas

The amount of funds available for housing support projects to serve new or like-new homes will be identified by the Director, DSFC, Headquarters, from the Sanitation Facilities Construction appropriation.

1. Headquarters summarizes the Area's request for all projects and compares the total requested amount with previous allocations. If an Area's request increases by more than 10 percent, it must be accompanied by written supporting documentation.

2. Headquarters consults with the SFC Program Directors both individually and collectively prior to making the final allocation of the appropriated housing support funds. Whenever possible, the allocation amounts shall be established during the first quarter of the fiscal year for the full appropriation amount.

3. If the total of funds requested by all Areas exceeds the amount appropriated, each Area's allocation will be reduced as follows:

   - Each Area will be allocated 90 percent of its previous year's funding level. If appropriations are not sufficient to fund each Area at 90 percent of its previous year's funding level, the new appropriation will be allocated proportionate to the previous year's allocation. In no case will an Area be allocated funds in excess of its identified funding need.

   - Any remaining appropriation amount will be allocated according to each Area's current unfunded need. The determination of the final allocation amounts shall be made by IHS Headquarters.

V. Projects For Existing Houses

Congress appropriates funds to serve existing Indian homes, often called "regular funds". Funding for this purpose has varied considerably over the last decade. The sanitation deficiencies of existing Indian homes and communities are determined and reported annually by IHS in terms of projects to meet these needs. These projects form the basis of the SDS inventory. IHS annually prioritizes, with tribal input, these needed projects by Area and, as Congress appropriates money, funds these projects in priority order.

The 1988 Indian Health Care Amendments (P.L. 100-713) amended the Indian Health Care Improvement Act (P.L. 94-437) and requires the IHS to submit to the Congress an annual report on Indian sanitation deficiencies (See Appendix 1). Congress requires that IHS have and use a priority system, the Sanitation Deficiency System (SDS). This priority setting procedure has been used since 1989. The SDS was established to ensure comparable Area criteria and procedures for identifying deficiencies, and in planning and prioritizing projects. Priority shall be established in accordance with the latest issuance of "Guide to Reporting Sanitation Deficiencies for Indian Homes and Communities," and will be entered into the SDS. Any deviation from these practices must be approved by IHS Headquarters. (See Chapter 10 on reporting systems, or the SDS guide, for information on how to submit a project for inclusion in SDS.)

Regular Funding Allocation Formula. Funding is distributed in bulk, quarterly, from Headquarters to the Areas based upon an allocation formula that takes into account the relative needs identified for each Area's SDS inventory. The allocation formula uses two factors calculated from information in the SDS–project cost factor and homes factor. The project cost factor is the total estimated cost of feasible projects at deficiency levels (DL) 3 through 5 (by dollar amount) of each Area's priority list. DL 3, 4 and 5 includes homes without a safe water supply or sewer facilities, or without both. The homes factor is the total number of Area homes at DL 3 through 5 listed in the SDS community deficiency profile. In each Area, each project is funded in the order of their priority on the Area SDS inventory.

Prior to FY 1998, feasible projects at DL 2, 3, 4, and 5 were used to compute the dollar limit for the project cost factor. In 1996, an Allocation Workgroup of tribal and federal representatives concluded that the inclusion of DL 2 projects in the allocation formula can exaggerate the degree of need for those Areas which have identified large numbers of DL 2 projects in the SDS. Beginning in FY 1998, only feasible projects at DL 3, 4 and 5 were used to determine that dollar limit. The net result of the change was to allocate a greater share of the "regular" funds to those Areas with large numbers of DL 3, 4, and 5 (greater) needs, and a smaller proportion to those Areas with large DL 2 needs. The change does not affect the funding of DL 2 projects that rise to the top the Area's SDS priority list.

VI. Special Projects and Emergency Projects

All emergency projects and special projects are funded by the Director, DSFC, in Headquarters on a project-by-project basis. The procedure for requesting emergency and special project funds from Headquarters is as follows:

1. The Area will prepare a short one-page report to verify how a proposed project meets the appropriate criteria, what the Area/tribe intends to do, and the cost of the project.

2. If a tribe makes a solicitation for special or emergency funds, the Area shall prepare a report as in Item 1, and make a written recommendation as to the appropriateness of the project.

3. The Area will assign the proposal a project number and forward the solicitation, report, and recommendation to Headquarters.

4. Headquarters will review the project report together with the Area, prioritize the project(s), and provide funding, if available. Since funds for emergency and special projects are limited and requests for emergency and special projects occur throughout the year, Headquarters will use its discretion in approving these projects for funding.

5. All special and emergency projects shall follow standard project document requirements. Headquarters may request copies. The current status of these projects shall be provided in the Area's year-end report to Headquarters. Upon completion of the project, the Area shall prepare a brief final report which states the reasons the emergency situation developed, what was accomplished, and the contributions of all participants in bringing about a temporary or permanent solution to the emergency. A copy of the report shall be forwarded to Headquarters.

CHAPTER 7. Program Funding Criteria and Allocation Methodology

SFC funds (both program and project) are allocated based on a project concept, for which workload and accomplishments can be measured. The two principles described in Chapter 6, the unmet needs principle and the project based principle, set the foundation for allocating funds for both projects and Area-level programs within the national SFC Program. Program staffing requirements are related to the number and size of projects developed and administered. Project funds are allocated proportional to need, and needs are not always proportional to population size. Therefore, the staff workload for an Area is proportional to need, not population size. As a result of these principles, SFC staff workload allocations to any one Area, district, or service unit are a function of the number and size of SFC projects in that geographic location, as well as the number of communities, O&M systems, and sanitation deficiencies.

Program funds generally are for salary, benefits, travel, training, and related costs of permanent staff in the SFC Program and Environmental Health Services Program at the Area Office level and below. Program funds are appropriated and allocated to the Environmental Health Support Account (EHSA). Headquarters OEHE distributes EHSA funds to each Area OEHE based on a workload model, known as the Environmental Health Application of the Resources Requirement Methodology (RRM). The RRM is used to distribute program funds after the project funds are distributed to Areas. The relationship of workload to Area EHSA program funding for only the SFC program, only, is shown in Figure 7-1.

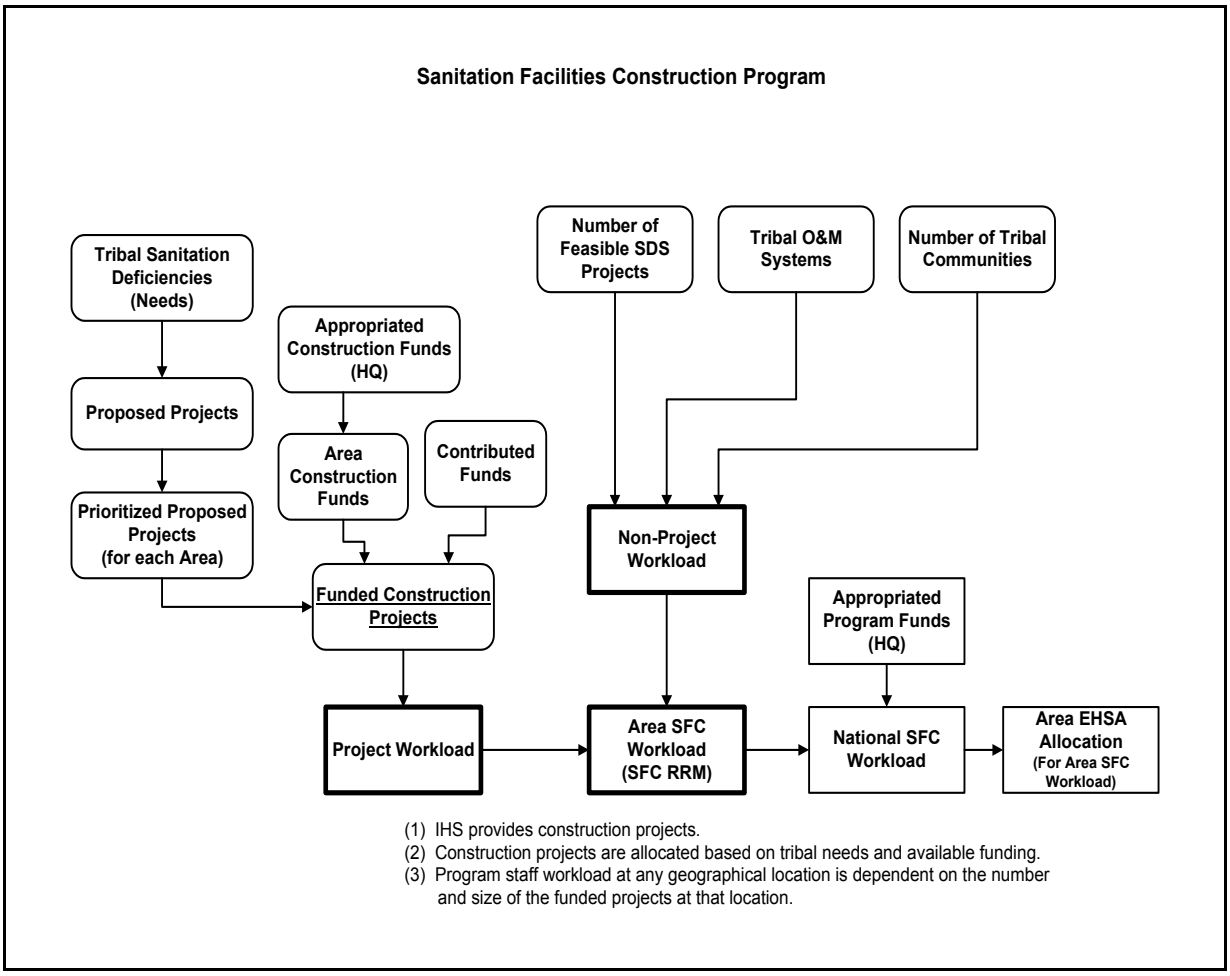


Figure 7-1. Relation of SFC Workload to Area EHSA program funding.

I. SFC Resources Requirement Methodology (RRM)

The SFC Program RRM originally was developed in the early 1980's as an in-house staff-workload-estimate model and has since been used successfully to determine the relative SFC Program staff workload among all the IHS Areas. The results of the annual RRM calculations are used to allocate Environmental Health Support Account funds to the Areas. The Area managers then in turn allocate the funds as needed within the Area. More recently, the RRM has been used to calculate the relative workload for tribes that have elected to manage their portion of the SFC Program at the local level under the Self-Determination or Self-Governance provisions of the Indian Self Determination and Assistance Act (P.L. 93-638, as amended). Therefore, all tribes are interested in the RRM formulas because of the funding implications.

Table 7-1

Typical Functions and Services Associated With Field-Level **Project** Workload

- Project site review, surveying, pre-design
- Archeological and other environmental review activities at the site
- Obtaining construction and environmental permits
- Engineering designs including, data collection, and preparing specifications and drawings
- Preparation of contract documents
- Coordination with all funding and regulatory agencies
- Attending tribal meetings; meeting individual homeowners
- Construction project management and inspection services
- Project start-up and training (operators and homeowners)
- Transfer documents and final reports
- Project Data System inputting and reports
- Clerical support, project employee training, and project related travel time
- Administrative and supervision/support for project related employees
- Preparation of as-builts and O&M manuals

The RRM includes a project and non-project workload component. The non-project workload accounts for functions and services provided by the SFC Program that are not directly project related, such as providing technical assistance to tribal water system operators.

Table 7-2

Typical Functions and Services Associated With Field-Level **Non-Project** Workload

1. Determining Sanitation Deficiencies/ Project Planning
   - Field data collection for the IHS Sanitation Deficiency System (SDS), Housing Support Project database, and Community Deficiency Profiles
   - Preparation of project summary/scope documents
   - Community planning and site evaluation (that may lead to a future IHS project)
2. Operation and Maintenance (O&M) Assistance to Tribes
   - O&M training
   - O&M annual surveys
   - Technical assistance for O&M organizations
   - Local response to emergencies; providing assistance
   - Safety training and safety inspections
   - The number of O&M systems is reported annually in the Operation and Maintenance Data System (OMDS).
     - A Tribal O&M system is a tribally operated and maintained water or sewer system. They are reported annually in the IHS OMDS.
3. Other Non-Project Services and Functions
   - Local program coordination with other Federal, State and local programs
   - Locating non-IHS project funding sources for tribes
   - Staying current of new developments in laws, regulations, and programs
   - Ongoing technical assistance to tribes on environmentally related public health issues
   - Review of engineering plans and specifications for non-IHS funded sanitation facilities construction projects
   - Preparation and technical review of non-IHS sanitation grant proposals and feasibility studies
   - Administration, supervision, support, and training for non-project related employees
   - Non-Project related travel time

Scope of the RRM

The RRM essentially provides a relative measure of the staff time necessary to plan, implement, and complete a construction project and provide other essential non-project activities at the field level. The RRM does not calculate workload by a specific position but is an aggregate of the workload required by several types of positions to perform a set of generally described functions and services associated with direct work on projects, non-project workload at the field level, and providing training and technical assistance. RRM is a measure of the workload by staff that may include engineers, surveyors, draftspersons, and inspectors. It does not include the workload of those who actually construct the project (laborers, foremen, carpenters, etc.,) and does not include the workload necessary for program administration at the Area office level and above. The workload can be divided into project (Table 7-1) and non-project (Table 7-2) workloads, and into the functions and services associated with them. Note that many of the functions and services listed under the "Other" category in Table 7-2 are provided only when local resources are available.

Determining the Total SFC Project Workload

The workload for any project is defined in terms of staff-days of relative staff time needed to complete the functions and services, listed in Table 7-1, associated with the project. A figure of 220 staff-days is used to determine one staff-year (accounts for weekends, sick leave, and vacations). The total workload for any SFC project is a function of the total project construction cost and is determined using the piece-wise linear curve shown in Figure 7-2. For example, from Figure 7-2, a $3 million construction project requires approximately 1,340 staff-days (or 6.1 staff-years) of relative effort to complete. Note that all projects start with 40 staff-days, and the maximum number of 1,540 staff-days is used for all SFC projects costing $5 million or more. Smaller projects require a proportionally higher amount of time and effort because of the proportionally higher amount of time traveling to and from remote scattered sites, attending meetings, and preparing documents. The precise SFC Project Workload Formula is provided in Table 7-3.

Distributing the Project Workload Over Time

On the average, once funded, sanitation facilities construction projects take four years from preliminary planning to completion. For the SFC Program, the RRM project workload credit associated with any project is spread over a 3-year period. Also, the workload for a specific project is not assumed to be spread evenly, as shown in Table 7-4.

Project Phases

As shown in the distribution of project workload in Table 7-4, a project is divided into four distinct phases: Pre-planning, planning, pre-design, design, and construction. Each phase is defined in general terms by its activities and products as described below:

- Pre-Planning. These are SFC Program functions that are non-project workload activities such as gathering data for the SDS and Housing Support databases and preliminary site evaluations, prior to project funding.
- Planning. Prior to a project being funded, products include preparation of a Project Summary or Project Scope (also called a Program of Requirements or POR). Note that under Title I of the Indian Self-Determination Act (PL 93-638), planning functions are treated differently than construction functions.
- Pre-Design. Pre-design phase activities typically include community meetings, project site testing such as soils testing, and surveys such as a land survey and archeological survey. Products include conceptual drawings, cost estimates, right-of-way identification, and NEPA reviews and environmental assessments. Note that projects that do not fall under a NEPA categorical exclusion shall only be funded through the pre-design or design phases until the NEPA determination is made by the IHS.
- Design. Design phase activities include design calculations, preparing drawings and specifications, applying for permits, filing legal documents (e.g., easements), obtaining design approvals. Products include complete contract documents and bid packages, including plans and specifications, detailed engineering cost estimates, and permits.
- Construction. Construction phase activities include project construction management, quality control activities such as testing and inspections, and training. Products include as-built drawings, operation and maintenance manuals, cost accounting, warranty protection, and trained operators.

Table 7-3. SFC Project Workload Formula (RRM)

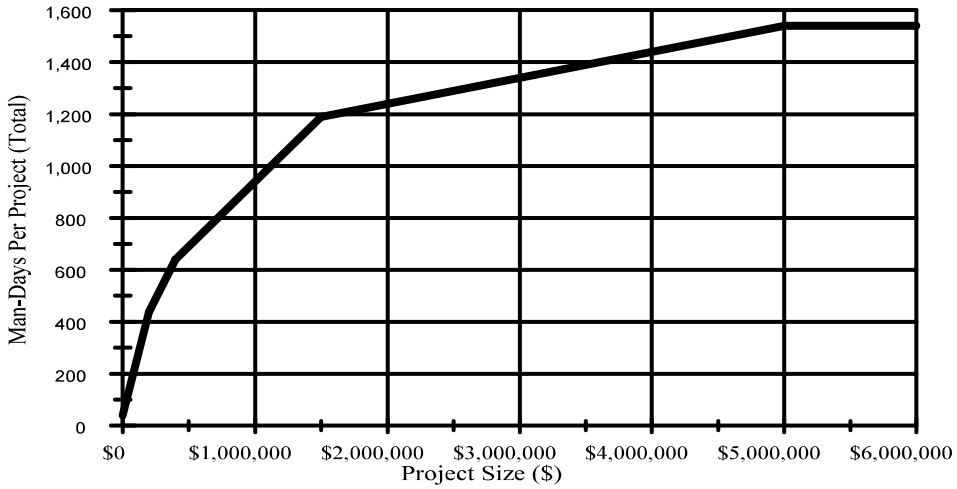
Project Funding Ranges	Funding Range Workload Rate	Total Project Workload (relative to other projects)
($)	(staff-days per $1,000)	(staff-days)
$0	Minimum staff-days per eligible project	40
first $0 - 200,000	2 staff-days per $1,000	40 - 440
next $200,000 - 400,000	add 1 staff-day per $1,000	440 - 640
next $400,000 - 1.5 million	add 0.5 staff-day per $1,000	640 - 1,190
next $1.5 million - 5 million	add 0.1 staff-day per $1,000	1,190 - 1,540
greater than $5 million	add 0 staff-day per $1,000	1,540 (maximum)

Table 7-4. Distribution of Project Workload By Year

If FY98 is "Current Year, then this ➜ is the distribution of project workload	94 ▼	95 ▼	96 ▼	97 ▼	98 ▼	←Fiscal Year of Projects
	4	3	2	1	0*	←RRM Year
	30	**50**	**20**	**0**	**0**	←**Percent of Project Workload**
	Construction / Project Closure	Design / Construction	Pre-Design	Planning**	Pre-Planning**	←Project Phase
* begins the year when the project is funded						
** considered to be a portion of the Non-Project Workload						

Figure 7-2

SFC Project Workload Formula



Determining the Project Workload at Any Location

The workload for any location for any given year is determined by the number and size of projects funded in the first three of the four previous fiscal years at that location. An example RRM calculation is shown in Section II of this chapter.

How the Source/Type of Project Funds Affects Project Workload RRM Credit

The RRM formula for total workload associated with a construction project is based on a single variable, the total cost to construct the project (generally considered to be labor, materials, and equipment) plus the cost of project support services, such as drafting and inspection. For the purposes of RRM credit, the costs in Table 7-5, which are normally IHS eligible costs, will not be considered for RRM credit.

Table 7-5

Costs **not** eligible for RRM credit:

- Cost of land.
- Funds passed through to other agencies, rural water districts, etc. where the IHS/tribe does not perform engineering services.
- Funds passed through to other agencies, rural water districts, municipalities, etc. for capitalization costs, such as system connection fees or development charges.
- Project funds used to purchase professional engineering services such as general planning, design, and construction management. (Note: Projects of this type may not receive any RRM credit.) Specialty engineering services incidental to the cost of the project are exempt (e.g., electrical controls, seismic design).
- All costs that would otherwise be ineligible for IHS funding.

These projects are reviewed on a case-by-case basis. There must be engineering involvement to obtain project RRM credit. The project, or portion thereof eligible for RRM credit, must be actively designed and managed by IHS or the tribe to obtain RRM credit. Minimal engineer involvement, such as plan reviews and comments alone, will not receive partial or pro-rated RRM credit. However, if contract engineering services, purchased with project funds, are used to actively design and manage the project, no RRM credit is needed and therefore cannot be obtained.

Project technical support services may be a RRM-eligible cost. Project technical support services can include some specialty engineering services (usually contracted with project funds). They also include functions/services directly related to the specific project performed by some non-permanent technicians, clerical, inspectors, and other technicians. These project technical support costs are eligible for RRM consideration if less than 15 percent of the total project cost. Typical specialty engineering services are for unusual situations and might include seismic design, complex land surveying, or sophisticated soils investigations. Thus, professional engineering services are a RRM-eligible cost only to the extent they are project technical support services as described above.

How Multi-Year Funding Affects Project Workload RRM Credit

Funding for some projects is received over a period of two or more years. For example, a $1 million project may only be funded for $50,000 at first to gather necessary design data and the remaining funds ($950,000) will come later when the project is ready to be constructed. If a project is phase-funded, that is, funding is provided over more than one fiscal year, the project obtains RRM credit as follows:

- RRM credit is tied to the year of the appropriated IHS funds or the year that IHS receives the contributed funds (it is no longer tied to the project number). The RRM credit sequence will start separately for each set of funds (a set is all funds received in one fiscal year) placed into the project. No project will obtain more total RRM credit by piecemealing the funds over several years than they would if the funds were all received in one year.

All projects of the same total cost will receive the same total amount of RRM credit over time no matter when the funds are appropriated/received. The only difference will be the years they receive the incremental credit.

How Non-IHS Funds Affect Project Workload RRM Credit

RRM credit may be allowed for a sanitation facilities construction project funded with non-IHS appropriated funds. The funding source can be another Federal agency, a state, or the tribe's own funds. The funds do not necessarily have to be deposited in the IHS finance system. However, the project(s) must be identified in the IHS Project Data System (PDS). Full RRM credit is received only if the project is within the scope of the IHS legislative authorizations and the homes served would otherwise be eligible for IHS-provided engineering services. For example, the project must serve IHS-eligible Indian homes (and HUD housing program homes) with appropriate sanitation facilities. Combined projects, such as those that provide water service to non-Indians or commercial establishments, or that construct more than sanitation facilities, such as roads and houses, receive only a proportional RRM credit. Construction funds that come with dedicated funds for necessary engineering services also should not be given RRM credit.

Any tribe that obtains non-IHS funds for sanitation facilities construction projects to serve Indian homes, may be eligible to receive RRM credit (and hence obtain EHSA funds) if IHS does not participate in the project. This is most applicable to self-determination and self-governance (SD/SG) tribes. The project, however, must meet certain criteria.

The criteria necessary for a tribe to obtain RRM credit (and hence program funds for professional engineering services) for a non-IHS funded project are shown in Table 7-6. The criteria assumes that the Area review of non-IHS funded SD/SG projects, needed to determine tribal RRM credit, normally would be covered by the Area's existing resources, if resources are available. For unusual or complex projects requiring considerable effort to review, the Area should retain an appropriate amount of project RRM credit to cover the workload associated with reviewing and verifying non-IHS funded projects (to be negotiated up front).

Non-IHS funded projects administered by the tribes (no funds come to IHS) must be included and tracked in PDS to obtain RRM credit. Funds must be coded appropriately to indicate if the are eligible for RRM credit.

Table 7-6
Criteria to Obtain RRM Credit for Non-IHS Funded Projects

- The project or portion thereof must meet all the IHS eligibility criteria, (e.g., the project is not for economic development, fire protection, etc.)
- The tribe cannot obtain RRM credit unless it is actively involved in the management of the project (either in-house or by subcontract). For example, no RRM credit will be given for construction funds passed through to a rural water district.
- Since RRM credit is for distribution of program funds, if project funds are available to fund the professional engineering services, then RRM credit is not necessary and will not be given.
- No RRM credit will be given for projects to make O&M repairs or fund Deficiency Level 1 needs.
- The tribe must describe the project in sufficient detail for the IHS Area to determine if it is eligible.
- Projects must be consolidated to the maximum extent feasible. For example, a tribe should only submit a maximum of one project per community per year.
- The Area office must review the project to evaluate/verify what portions are eligible.
- The tribes must follow the IHS NEPA requirements; IHS must make a NEPA determination. (Note: A NEPA determination by IHS may be needed even if IHS contributes only engineering funds towards the project.)

The Non-Project RRM Workload Formula

The SFC Program staff non-project workload

occurs when providing the services and functions described previously in Table 7-2. These services and functions are provided or available to all tribes whether or not they have funded SFC projects (subject to available resources). The non-project workload is divided into three categories: (1) SDS/Project Planning workload, (2) O&M workload, and (3) other workload as shown in Table 7-2. Because this workload is independent of funded projects, a different type of formula is used. The non-project workload formula for any geographical location is shown in Table 7-7.

All of the variables for the non-project workload are available from existing SFC Program data systems. The number of feasible SDS projects is reported annually in the SDS (Sanitation Deficiency System). The number of O&M (operation and maintenance) systems is reported annually in the Operation and Maintenance Data System (OMDS). The number of tribal communities is reported in the community deficiencies profile portion of the SDS. Full RRM credit for non-project workload is provided annually based on information within the data systems cited. In general, the non-project workload will not vary greatly from year to year.

The factors used in the non-project workload formula are extracted as follows:

- Number of SDS Projects. The number of SDS projects counted is the number of economically feasible SDS projects and project phases reported annually in the SDS. Each phase is a stand-alone project that results in an operational facility that improves community environmental health. O&M projects and Deficiency Level 1 projects are not included in this number.

- Tribal O&M Systems. A Tribal O&M system is a tribally operated and maintained water or sewer system. They are reported annually in the IHS OMDS. Systems are counted and not O&M organizations, because some tribes have one organization to cover many systems.

- Tribal Communities. Tribal communities are reported in the SDS under the community deficiency profile section. Homes by deficiency level are counted for each tribal community. In some cases, they are not actual communities but other designated geographic areas, such as counties.

Application of the RRM

The RRM workload for the SFC Program is a component of the entire RRM workload for the IHS Environmental Health Program. The SFC RRM is designed for allocating bulk funding to the Areas based on an aggregate of many different-sized projects. Figure 7-1, at the beginning of this Chapter, showed the relationship between funded projects to Area SFC program funding (EHSA) allocations, using the RRM. The RRM is used to relate funded projects to Area SFC program funding (EHSA) allocations. SFC projects vary in size and complexity, which affects actual workload. Since the project RRM uses only project cost as a driving variable, and projects of similar construction cost can require vastly different amounts of engineering, the RRM is not a good measure of the absolute workload of an individual project. From experience, the actual workload for a single project will fall to one side or the other side of the RRM formula prediction. This means that on a project by project basis, some projects would be allocated more or less staff-days than needed.

However, if many projects that vary in type, size, and complexity are grouped together, the total RRM staff-days needed for the group of projects more accurately reflects the total workload predicted. If RRM is calculated for each of several groups of mixed projects (e.g., all projects for one Area), the RRM can be used to determine the "relative" workload among the groups of projects.

Environmental Health Support Account (EHSA) funds are appropriated each fiscal year and are distributed to the Areas to pay for the permanent staff necessary to carry out the projects, training, and technical assistance. The appropriated EHSA funds historically have never been adequate to meet the needs predicted by RRM. In recent years, the gap has widened. The SFC RRM is used to allocate limited resources on a proportional basis with all Areas receiving approximately the same level of need funded (LNF).

How does the application of RRM relate to residual workload?

The Title III residual staffing level determined for each Area office is based on 100 percent of the tribes in the Area compacting. The SFC Program RRM is a measure of the project and non-project workload at the field/project level. It is not a direct measure of Area-level administrative functions and services, which is what remains, in part, with the residual. Therefore, the Area Title III residual functions and the RRM services and functions listed in Tables 7-1 and 7-2 do not overlap. However, the Title I contracting "add-on" residual functions and the RRM services and

functions do overlap somewhat. This is described in more detail in other SFC Program guidance documents.

Since RRM is used on a relative basis to distribute all EHSA funds to each Area, in effect the RRM has been used to fund the administrative services and functions for an Area office in direct proportion to the Area's field/project level workload. It is important to keep in mind that the residual staffing formula developed by and for the SFC Program is an "absolute" measure of needed administrative staff whereas the RRM formula is a measure of "relative" workload for non-administrative staff. Therefore, they are not directly related. Also, Area office staff often perform many field and project level services and functions.

Alternative (Discretionary) Accelerated Distribution of Program Funds to Self-Determination and Self-Governance Tribes for Small Intermittent SFC Projects

There are occasions when SD/SG tribes, typically very small ones, obtain SFC project funds infrequently (e.g., one small project every three years). Under the RRM, they would receive RRM credit and corresponding program funds over the 4-5 years following the project funds transfer. For small projects, the amount of program funds received in any one year would be small. When an IHS-managed Area program is of sufficient size to accommodate such advanced payments, it is practical and more efficient to allow for an accelerated distribution of EHSA program funds for specified SFC projects in this situation.

The relationship between RRM credit and distributed EHSA program funds is not exact. The RRM credit, in terms of staff-years, is constant based on project size and is independent of how the EHSA funds are appropriated or distributed. EHSA funds are appropriated annually, at varying amounts and are distributed to Areas on the basis of relative RRM credit; therefore the amount of EHSA funds an Area will receive in future years is not exactly predictable. Consequently, the exact monetary "value" of the RRM credit if spread over multiple years is unknown, but it can be reasonably estimated if it is assumed Congress will continue to appropriate EHSA funds at the same funding level. Thus, an alternative accelerated EHSA payment is an approximation of the total amount to be received if the EHSA payments were made over multiple years as assumed in the RRM model.

Table 7-7. SFC Non-Project Workload Formula (RRM)

Non-Project Services and Functions (from Table 7-2)	Data Source	Non-Project Workload Factor
Determining Sanitation Deficiencies/Project Planning	SDS	3 staff-days per feasible SDS Project
O&M Assistance to the Tribes	OMDS	4 staff-days per tribal O&M system
Other Non-Project Services and Functions	SDS Community Deficiency Profiles	7 staff-days per tribal community

Tribes are not entitled to an accelerated payment of EHSA program funds. Accelerated payments must be negotiated between the Area and the tribe. The tribe and the IHS agree to an accelerated payment process and the terms and conditions of the process are included in the SFC Project Funding Agreement (PFA)/AFAA or Title I Subpart J contract.

IHS Areas may make an accelerated payment (ahead of RRM credit) of EHSA program funds for specified SFC projects under the following criteria:

1. The Headquarters distribution of EHSA program funds to an Area will continue to follow the RRM process and will not be adjusted or accelerated if an Area elects to make an accelerated EHSA payment to a tribe.

2. The tribe can receive an accelerated EHSA payment only if the tribe received no funded project in the prior fiscal year and the sum total of all projects to be funded for that tribe in the current fiscal year does not exceed $250,000.

3. The Area must have the additional funds available to make the accelerated payment. An accelerated payment cannot result in an adverse affect upon any other tribe in the Area.

4. The total amount of RRM credit does not exceed what would have otherwise been received over the 5-year period. The actual EHSA payment is made on the basis of the current year allocation of EHSA funds to the Area. No subsequent adjustments will be made based on actual appropriations and EHSA allocations to the Areas in future years.

5. When an SD/SG tribe assumes program responsibility for projects started under IHS program administration, the EHSA payment amount to the SD/SG tribe for specified projects will be adjusted downward proportional to the amount of actual work remaining regardless of the remaining RRM credit.

6. The Areas have the ability to keep track of the payments and RRM credit using appropriate accounting processes.

II. Example RRM Calculation for a Specific Geographic Location

In Table 7-8, for a given geographic location (e.g., Area, district, reservation, service unit), the total RRM workload for FY 1998 is determined by adding 20 percent of the workload associated with projects funded in FY 1996 plus 50 percent of the workload associated with projects funded in FY 1995 plus 30 percent of the workload associated with projects funded in FY 1994. Note that no RRM workload "credit" is given for any projects at that location funded in FY 1997. Any "credit" is used for obtaining program (EHSA) funds.

Table 7-8. Example FY 1998 RRM Calculation

Year Funded	No. of Projects	Total Project Cost	RRM Formula (from Fig 7-2 or Table 7-3)	Annual Distribution Factor (Table 7-4)	FY 98 Project Workload (staff-days)
FY 98	1	$40,000	120 staff-days	0	120x 0 = 0 staff-days
FY 97	1	$50,000	140 staff-days	0	140x 0 = 0 staff-days
FY 96	1	$650,000	765 staff-days	0.20	765 x 0.2 = 153 staff-days
FY 95	1	$390,000	630 staff-days	0.50	630 x 0.5 = 315 staff-days
FY 94	1	$125,000	290 staff-days	0.30	290 x 0.3 = 87 staff-days
FY 93	1	$350,000	590 staff-days	0	590 x 0 = 0 staff-days
				Sub- total for Project Workload	555 staff-days (2.52 staff-years)
Non-Project Workload Element			**RRM Formula (Table 7-7)**		**Non-Project Workload (staff-days)**
9 Feasible Projects in SDS			9 x 3 staff-days/project =		27 staff-days
2 Tribal O&M Systems			2 x 4 staff-days/system =		8 staff-days
15 Tribal Communities			15 x 7 staff-days/community =		105 staff-days
Sub-total for Non-Project Workload					140 staff-days (0.64 staff-years)
TOTAL RRM WORKLOAD AT LOCATION = 3.16 staff-years					

CHAPTER 8. Methods of Program and Project Implementation

In the course of developing projects to correct sanitation deficiencies, IHS works cooperatively with tribes to identify the project scope, identify funding sources, provide interagency coordination, and assist the tribes to meet the program requirements of the various funding/permitting agencies which have responsibilities under the project. The successful implementation of an SFC project requires knowing the roles and responsibilities of each party and understanding the applicable policies and procedures. That principle applies whether the project is constructed under direct service, Title I contract, or Title III Compact. Those program funding methods were introduced in Chapter 2. Chapter 9 provides further discussion of the management of funds within a project.

This chapter will provide an overview of the various stages of project implementation from inception to project closeout, for the various funding options with the emphasis on project documents. Table 8-1 shows the sequence of events and project documents that are needed to implement a typical SFC project under the various funding options. The first implementation method discussed will be direct service and this will contain the most detail, since the other options under P.L. 93-638, as amended, are described in detail in other guidance documents (Yellow Book and Grey Book). It should be noted that regardless of the delivery option, the steps to implement a project are very similar.

I. Direct Service

American Indians and Alaska Native homes can be provided with sanitation facilities by IHS direct service under the Federal Acquisition Regulations (FAR) system using a Federal construction contract. More typically, the sanitation facilities projects are implemented through tribes using the MOA as the funding instrument and the obligating document. When utilizing Federal contracts, MOAs are still necessary to obligate funds, but the requirements dictated by the Area procurement office are to be followed; the funding is provided through the contract. In either case, most of the documents and the process are the same. Since most sanitation facilities construction projects are administered by IHS through an MOA, the project documents and the process used in the direct service method are discussed here first.

There are four phases to each SFC Project, beginning with a pre-design and planning phase. This phase starts with the inception of the project and continues through the development of the Project Summary and MOA. This is also where the method of construction is determined, either by MOA as the funding and obligating instrument, Federal construction contract or Title I, 25 CFR 900, Subpart J Construction Contract. Then, the second or design phase begins. Various permits and rights-of-way are acquired, and the construction documents are completed. The design phase can also be executed under a Subpart J Construction Contract. More discussion about Subpart J contracts will be covered in Section II of this chapter, and reference will be made to that Section throughout this Chapter. The third phase is the actual project construction. The fourth and final phase is the project closeout phase. During the final phase, the Transfer Agreement is executed, each individual agreement is finalized, application is made and acquired for the as-built Right-of-Way or easement, and the Final Report is written and published. After publication of the Final Report, the project is closed.

Project Planning and Predesign Phase
(Under Direct Service)

Project Request

A request by a Tribe for a sanitation facilities project is made prior to preparation of the project documents required for approval. The primary purpose of a formal project request is to document the request for IHS assistance. The request for the construction of sanitation facilities may be on tribal forms or by letter. When acknowledging receipt of the project request, the response should be signed by the appropriate IHS official, as designated by Area policy.

Preliminary Planning

Upon acceptance of the project request, the Area SFC Program will consult with the Tribe on the eligibility, needs, and priority of the proposed project. The SFC program will typically develop a feasibility study which includes a list of eligible participants, the facilities needed, alternatives for service considered, schematic plan (usually on a map base), and a cost estimate. The feasibility study will allow for a determination of the feasibility of the project and will serve as back-up information for the proposed project when it is

entered into the SFC data system.

The SFC database to which the project will be added is dependent upon the type of project and the type of housing. If the project is for existing homes, it will be placed in the SDS database which is updated annually. If the project is feasible it will be funded when the project rises to the top of the Area priority list based on its score and the availability of funds. If the project is for new housing and meets the eligibility criteria for funding, it will be prioritized in the Area's HPS which is updated as needed and will be funded as soon as funding is available.

Planning Agreements

For projects that are large in scope, for locations that are archeologically sensitive, or where endangered species may be a concern and where dealing with these issues may require a long lead time, some Area SFC Programs enter into planning agreements. Planning agreements allow the Area SFC Program to address NEPA and NHPA concerns immediately without committing and obligating funds for the entire project. These agreements can also be used to do hydrogeologic studies, including exploratory drilling for water or soil testing to determine the adequacy of the soils for the proposed project; e.g., for sewage lagoons. Planning agreements allow predesign activities to take place prior to entering into an MOA.

A planning agreement is a funding and obligation document but does not authorize construction to take place. This document is executed between IHS and the Tribe for the purposes of funding predesign activities. This agreement can also include a Tribal permission for field surveying activities. These agreements are especially helpful if the program suspects that the result of the predesign activities will be a determination that the project is not feasible. The data collected and the results of predesign activities will be used to assist the SFC Program to perform a more thorough environmental review and determination. A similar agreement is available within Title I and Title III delivery methods to meet NEPA requirements.

Project Summary

Once the SFC Area makes a determination that the proposed project will be funded, a Project Summary is written. The Project Summary is a detailed report which provides information about the proposed project and demographic information about the community. The following information, in appropriate detail, shall be included in all Project Summaries for sanitation facilities construction projects. The "appropriate detail" means providing sufficient information to allow all MOA signatories to understand the scope and nature of the project.

1. An introduction that references the project request and includes adequate information for determining that a proposed project qualifies for funding, in accordance with IHS authorities, policies, and procedures.
2. Description of the existing sanitation facilities, including the number and type of homes served.
3. Description of the recommended sanitation facilities with brief discussions of reasonable alternatives considered and the number and type of homes to be served by the project.
4. Identify the O&M organization and O&M responsibilities including estimated costs, funding sources, and homeowner costs.
5. A brief paragraph stating that an environmental review was performed in accordance with the environmental review requirements in the IHS Environmental Review Manual. The paragraph should include the conclusion or determination of that review. The environmental review should be attached as appropriate to the Project Summary. If an environmental review was not performed, briefly state the reasons why a review was not done.
6. Detailed engineering cost estimate of the proposed project and a project implementation schedule. At minimum, the project schedule should include the proposed start date, completion date of construction, and the project completion date. The format of the project schedule is decided by the Area SFC program. Examples of project schedules include the format in Appendix 9 and the schedule in PDS.
7. Funding sources and amounts by source.
8. Value engineering studies, as required.
9. Signature page. At minimum, signatories should include the preparer of the document, the appropriate project officer, and the recommendation of the district engineer or supervisor. The approving official is the Area SFC Director. Areas may require that higher level Area officials approve the Project Summary.

Table 8-1. Typical SFC Program Project Sequence and Project Documents

Direct Service	**Direct Service**	**Tribal 638 Contracts** (Title I)	**Tribal 638 Compacts** (Title III w/ P.L. 86-121 Project Agreement)
[MOA Guidelines] (FAR contract)	**[MOA Guidelines] (Tribe Constructs)**	**[Grey Book]**	**[Yellow Book]**
Project Request (Tribe)	Project Request (Tribe)	Notify tribe of HPS/SDS update schedule *(IHS)*	Notify tribe of HPS/SDS update schedule *(IHS)*
Tribal consultation *(IHS)*	Tribal consultation *(IHS)*	Tribe notifies IHS of HPS/SDS needs (Tribe)	Tribe notifies IHS of HPS/SDS needs (Tribe)
HPS/SDS needs identified and ranked *(IHS)*	HPS/SDS needs identified and ranked *(IHS)*	HPS/SDS needs validated and ranked *(IHS)*	HPS/SDS needs validated and ranked *(IHS)*
Project Summary *(IHS)*	Project Summary *(IHS)*	Project Scope (PS) and Tribal Environmental Review (umbrella MOA optional) (Tribe)	Project Scope and Tribal Environmental Review (Tribe)
Environmental Review and Determination *(IHS)*	Environmental Review and Determination *(IHS)*	PS & Environmental review approval/determination *(IHS)*	PS & Environmental review approval/determination *(IHS)*
Project Funding Notification Letter *(IHS)*	Project Funding Notification Letter *(IHS)*	Project Funding Notification Letter *(IHS)*	AFAA or PFA (Tribe)
Memorandum of Agreement w/ Tribal Resolution *(IHS)* ○ Project Approval *(IHS)*	Memorandum of Agreement w/ Tribal Resolution *(IHS)* ○ Project Approval *(IHS)*	Notice of Intent to assume project (Tribal option)	Statement of Funds Availability *(IHS)*
		Project Proposal w/ Tribal Resolution (Tribe)	AFAA/PFA approved by HQ/Area *(IHS)*
		Acknowledge receipt of proposal and schedule negotiations *(IHS)*	OTSG approves funds transfer by Area to Tribe via AFA/PFA provisions *(IHS)*
		Final Proposal (Tribe)	
		Construction Contract *(IHS)* or Declination *(IHS)*	
Obtains permits, easements, clearances *(IHS)*	Obtains permits, easements, clearances (*IHS* or Tribe)	Obtains permits, easements, clearances (Tribe)	Obtains permits, easements, clearances (Tribe)
Archeological Clearances *(IHS)*	Archeological Clearances *(IHS)*	Archeological Clearances (Tribe)	Archeological Clearances (Tribe)
Design & Construction Documents *(IHS)* ○ Project Schedule *(IHS)*	Design & Construction Documents (*IHS* or Tribe) ○ Project Schedule (*IHS* or Tribe)	Design & Construction Documents (Tribe) ○ Project Schedule (Tribe)	Design & Construction Documents (Tribe) ○ Project Schedule (Tribe)
Advertise *(IHS)* (Use FAR)	Tribe constructs with own employees and/or advertises and awards contracts using tribal procurement policies.	Quarterly progress reports (Tribe)	Semi-annual progress reports (Tribe)
Award contract *(IHS)* (Use FAR)		Notice of Completion (Tribe)	Notice of Completion (Tribe)
Final Inspection *(IHS)*	Final Inspection *(IHS)*	Invite IHS for final inspection (Tribe)	
Transfer Agreement *(IHS)*	Transfer Agreement (unless transfer specified in MOA) *(IHS)*		
Final Report *(IHS)*	Final Report *(IHS)*	Final Report (Tribe)	Final Report (Tribe)

In addition, if not incorporated into the narrative of the Project Summary, the non-mandatory data (e.g., environmental disease morbidity) may be incorporated by reference and be available on file at the Area office. Those documents and information incorporated by reference may be cited in the Project Summary with adequate information to identify the exact document and its location. Appropriate consideration should be given to the Privacy Act and the Freedom of Information Act (FOIA) when allowing other parties to review the project documents.

The comparable document to the Project Summary under Title I and Title III of P.L. 93-638 would be the Project Scope, which will be discussed in Sections II and III of this Chapter.

Environmental Review and Determination

An environmental review and determination shall be completed prior to the start of construction on every sanitation facilities construction project. The Environmental Review and Documentation form was developed to assist Area SFC Programs in determining if the proposed project will significantly impact the environment. The original version of the form is in Appendix 3 of the Environmental Review Manual, published by the HQ Division of Environmental Health, OEHE, IHS. *(The Division of Environmental Health was merged into OEHE.)* The form was modified to expand the scope of the environmental review and to assist Area programs (see Appendix 13). The completed environmental review and determination document shall be signed by the Director of the Area SFC Program, or this responsibility may be delegated to the Area Environmental Coordinator. The procedures for complying with NEPA, NHPA, and other related environmental requirements are stated in the Environmental Review Manual. Environmental reviews are discussed in more detail in Chapter 11. The collection of data can be completed using a planning agreement as discussed earlier in this section.

Project Funding Notification

When the sanitation facilities project funds are allocated by IHS HQ, the Director, Area SFC Program, shall notify the appropriate Indian tribes or tribal organizations that will benefit, by certified mail with return receipt, in accordance with Subpart J, 25 CFR 900. Samples of notification letters are in the Grey Book and Yellow Book. The SFC Program will furnish the affected Indian tribes or tribal organizations with all information available about the funded projects including construction drawings, maps, engineering reports, design reports, cost estimates, environmental assessments and impact statements, and archeological reports. This will allow tribes to determine if they would like to provide the design and/or the construction of the project under a Subpart J contract. If the Tribe is interested in a Title I contract for the project, then the process defined in Section II is followed; if not, then the project proceeds under a MOA.

Memorandum of Agreement (MOA)

The MOA is the funding and obligating document used for direct service by IHS. Since sanitation facilities projects are cooperative in nature, it is essential that all parties involved in the project have a clear understanding of the responsibilities they must fulfill in order to carry out the project, and this is the main purpose of the MOA. These concepts and requirements are further discussed in the MOA Guidelines.

A MOA shall be executed with the appropriate tribe or group and all other principal parties involved in the project prior to project initiation or funding. Utilization, contents, and execution of the MOA shall comply with the latest issuance of the MOA Guidelines. The MOA shall cover such items as contributions of the parties toward the project and responsibilities for actions to be taken, with specific time limits before, during, and following construction. All MOAs must have a heading, preamble, agreement provisions, signature blocks, and the project summary as described in the MOA Guidelines. In addition, all MOAs must have certain agreement provisions, which are listed and explained in the MOA Guidelines. Table 8-2 lists the required MOA provisions. Some of the critical MOA guidelines are summarized in the following paragraphs.

Inappropriate activities: A list of typical appropriate and inappropriate IHS activities, relating to projects where the tribe has contracted for construction, is in the MOA Guidelines. Prohibited activities also will be discussed in the obligations section of Chapter 9. Examples of inappropriate activities include acting as the Tribal Contracting officer's representative, performing procurement functions (obtaining quotes), being the receiving agent, issuing change orders, or any other activity which may be interpreted as IHS acting as an agent of the tribe or other party.

Contractual Relationship: Technical services, technical assistance or oversight responsibilities outlined in the MOA and provided by IHS staff cannot create, or appear to create, a contractual relationship with a tribal contractor, supplier or other entity who is not a party to the MOA.

Table 8-2.
Required Memorandum of Agreement (MOA) Provisions*

- Designated representatives for each MOA party;
- Permission to enter upon tribal lands (tort claims);
- Contributions of each party (monetary and/or non-monetary);
- Method(s) of accomplishing the work;
- Degree of involvement/control by each party;
- Ownership and transfer of facilities/ services/Federal interest;
- Specific performance periods;
- Termination for inactivity;
- Standard MOA Termination Procedure
- IHS MOA disputes resolution.
- Designation of party(s) responsible for rights-of-way;
- Fund control/expenditure provisions/cost principles;
- Responsibility for operation and maintenance; development and enforcement of operation and maintenance ordinances.
- Minimum construction standards, if tribe or third-party doing the work.
- IHS Role in construction inspection.

* Citations in this table refer to the MOA Guidelines.

Comparable Expertise: IHS staff providing technical assistance or technical services shall have training and experience comparable to that required of Government employees who are authorized to act for the Government on similar matters; e.g. engineers should not be charged to provide technical assistance on contract administration without adequate training.

IHS Oversight Responsibility: The IHS has the responsibility to assure that tribal procurement procedures are adequate to protect the Federal government's interest and ensure that the purposes for which IHS funds were appropriated are accomplished. The MOA Guidelines outline the factors which are to be considered prior to making a determination to utilize tribal procurement. The IHS may assist the tribe with tribal procurement. Examples include assisting with: Contract administration, construction inspection, supply and material purchases, construction staking, preparation of plans and specifications, etc. IHS technical assistance must be adequately detailed to minimize agency and employee liability.

Inspection of Tribal Contractor's Work: IHS employees can inspect the construction and advise the tribe and/or the tribal contractor whether the construction meets the design intent and minimum applicable standards. However, all direction to the contractor must come from the Tribe.

MOA Provisions on IHS Inspection: The MOA must clearly identify the IHS role in construction inspection and require that tribal procurement documents also include the right of IHS employees to inspect the work. References to IHS rights and responsibilities should not identify specific individuals by either job title or name.

Communication Between IHS and Tribal Contractors: In order to minimize the possibility of creating or appearing to create a contractual relationship between the IHS and the contractor, or the possibility of IHS employees representing the tribe, the IHS must submit any and all inspection recommendations to the tribe for its decision. All direction to the contractor shall come from the tribe. Additional guidance on this issue is in the MOA Guidelines. IHS Area procedures should be such that any recommendation to a tribe by an IHS official, that involves a change in scope or a cost increase, is adequately reviewed to ensure that it will be approved if submitted through IHS channels.

Project Approval. The MOA may be signed by all parties to the Agreement with the exception of the IHS Area Director prior to the official approval of

the project by the Area Director (signature on the Project Approval Form which is covered in more detail in Chapter 9) under the following conditions:

1. The Project Summary has been reviewed and approved by the Director of the Area SFC Program and is available for review by each person signing the MOA.
2. The MOA includes the following or similar provision: "It is understood by all parties that this agreement is contingent upon approval of this project by the IHS Area Director or his designee and execution of this agreement by all parties."

The last signatory to the MOA document shall routinely be the IHS Area Director, when IHS appropriations are obligated. Exceptions include:

1. On letter amendments for minor modifications, the IHS Area Director may sign the letter prior to receiving concurrence and signature from other parties. The letter amendments should include the following or similar provision: "It is understood by all parties that this agreement is contingent upon the approval and the execution of this agreement by all parties."

2. When HUD housing funds are being obligated, the TDHE will usually sign last.

Copies of Project Summaries and MOA's for projects exceeding $1 million must be sent to Headquarters. The past practice was that these agreements would receive the final signature at the HQ level. This authority was delegated to the Area Directors in 1995. The Area Office is the repository for all original project documents. Copies of amendments should be attached to the original copies of the MOA to prevent later misunderstandings.

MOA Amendments

Whenever field conditions or other factors require changes in the commitments of the parties, an amendment to the MOA shall be executed. MOA amendments shall also comply with requirements defined in the MOA Guidelines. Also, if there is a change in the scope of the project, the Project Summary and the MOA shall be amended and the concurrence of the parties shall be obtained.

Non-Specific MOA, or Memorandum of Understanding (MOU)

Some tribes, communities, and other organizations participate in several P.L. 86-121 projects during a fiscal year or within a three- or four-fiscal year period. The participation of these entities and the agreement provisions covering their participation are often identical for all projects. Some examples of these recurring activities include power line extensions, archeological services, tribal procurement procedures, and cooperative relationships between IHS and another organization (e.g., a TDHE) engaged in providing sanitation facilities for American Indians and Alaska Natives. Use of a non-specific MOA to define the scope, activities, and relationships of the respective parties may increase efficiency and reduce paperwork for numerous specific projects which may follow. A non-specific MOA may be used under the following conditions:

1. The agreements shall not obligate any project funds or other IHS funds or resources.
2. All actions or fund obligations must be activated by clauses in an MOA executed for implementation of a specific project.
3. All non-specific MOA's which are to be applied to a specific project must be referenced in and attached to the project specific MOA.
4. Non-specific MOA's must include provisions for renewal at intervals which do not exceed five years.

Project Design Phase

This phase includes several tasks including acquiring permits, easements, and other clearances; archeological clearances, signatures on individual agreements, setting up homeowner files, design of the facilities, and the preparation of construction plans and specifications. It is also wise at this point to begin project scheduling.

Permits, easements, and other clearances

Prior to many construction activities, the IHS, the tribe, and/or the contractor must comply with applicable federal, state, tribal, and local requirements. Those requirements are in addition to the NEPA determination that must accompany a Project Summary or Project Scope document. Clauses in the MOA usually place the responsibility for obtaining land and right-of-way clearances on the Tribe as part of their contribution to the sanitation facilities construction project. Rights-of-way will be discussed in more detail in Chapter 11.

1. Permits and clearances are needed for various construction activities including construction in wetlands and floodplains, construction that impacts endangered species, wastewater discharges, and some storm water discharges.

2. Permits and easements are needed in various situations including crossing utility lines, crossing or boring under roads, and crossing private property.

Archeological Clearances

All Federally funded projects must comply with applicable historic and cultural preservation laws including the National Historic Preservation Act. This requirement is in addition to NEPA determination requirements. Under the direct service method, the IHS reviews the proposed construction project in consultation with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), or Advisory Council on Historic Preservation (ACHP), as appropriate, prior to construction. The contract or MOA may include clauses that place the responsibility for archeological clearances on the contractor or the Tribe. The IHS will make the final determination as to whether the project will have an effect on a historic or cultural property. The Environmental Review Manual discusses the historic and cultural preservation requirements in more detail.

Other Project Implementation Documents and Activities

Individual Homeowner Agreements, Individual Homeowner Files, and Participant Training activities are usually done under the traditional Direct Service implementation. However, the IHS recommends that tribes consider implementing the same or similar system under Title I and Title III.

Individual Homeowner Agreements. Under direct service, Individual Agreements are required for each individual home except as specified in the list below. Following the execution of the project MOA, the signature of the homeowner or his representative must be obtained on the Individual Agreement, which allows the IHS to enter his property to install the agreed upon sanitation facilities. Area-developed Individual Agreement forms may be used in lieu of the standard Individual Agreement form (PHS Form 4063, see Appendix 7) when the provisions on the standard form are included in the Area form.

The following list shows the requirements for individual agreements and also describes the exceptions for not needing to complete them:

1. The homeowner's signature on this form constitutes a commitment to participate in the project. Language on the form must explicitly grant consent to the entrance upon the owner's premises by IHS and/or tribal personnel and contractors for the purpose of installing facilities.

2. When construction is completed, the agreement is signed by the homeowner again. This document also serves as a supporting record of the facilities constructed and/or provided to the homeowner and subsequently transferred to the homeowner.

3. Individual Agreement forms need not be executed for new homes being constructed by the local housing authority, since the housing authority is the legal owner of the home and has a leasehold on the premises.

4. Individual Agreement forms are not required by the IHS for programs (not projects) managed by Tribal organizations under 638 contracts, compacts, or other agreements. IHS is not a party to agreements between the homeowner and the tribal organization.

Individual Homeowner Project Files. Homeowner files for the Area SFC Programs are highly recommended but not required. These can start with the application for service by the homeowner, but at the very least should be started during the design phase and then maintained through the construction and closeout phases. Homeowner information, such as name and location or address, may be entered in project records; i.e., included in project summaries, final reports, and other project documents, as appropriate. All project information related to the sanitation facilities constructed at an individual site should be documented in the project files. The information should include where appropriate:

1. Individual Agreement form.

2. Well data, including location, diameter, type and length of casing; information on perforations or screens, gravel packs, grouting; formations encountered and developed; total depth; test pump data; and bacteriological and water quality analyses results.

3. Pumps installed, including date of installation, depth, size, make, model, serial number, and warranty.

4. Waste disposal information, including location tied to permanent markers; type, size, and manufacturer of septic tank and drain field; design data; percolation tests; length and depth of lines; etc.

5. Statement of training and operation manuals, etc., given to homeowner.

6. Record of all home visits and purpose of visit.

7. As-builts with permanent ties of facilities installed.

If an Area SFC Program determines that the information in homeowner files is essential for effective management of a public health program, which includes technical assistance with operation and maintenance, the Area should contact the Area person responsible for compliance with the Privacy Act. The Privacy Act requires the establishment of a system of records in accordance with the Privacy Act and Department of Health and Human Services (HHS) requirements, for any group of records or files that allows access based on an individuals name (or other personal identifier). The SFC Program should follow guidelines developed in the Area for establishing or maintaining those files.

Areas may wish to investigate alternatives to IHS maintained homeowner files for management of the data and for access to necessary information in a timely manner. One alternative is for the Tribe's O&M organization to manage and maintain the information on homeowners.

Participant Training Requirements. An assessment of the training needs of Indian participants shall be completed prior to project approval of each sanitation facilities project. Training to be provided may include proper utilization, operation, maintenance, and management of individual/on-site facilities. The training identified by the assessment shall be made part of the project schedule, shall commence as early in the project as is practicable, and shall be completed before transfer of the facilities to the participant.

Design and Construction Documents

Under Direct Service, the design and construction documents usually are created by the IHS, including plans and specifications, procurement of materials, and project construction schedules. The contract or MOA may designate that some or all of those functions will be done by the contractor or the Tribe. A more specific discussion of the technical design requirements is in Chapter 11. If a Federal contract is used, the proposed construction project is advertised through the IHS Area contracts and procurement office.

Project Scheduling

Although primarily a construction endeavor, the SFC activity requires the support of other Headquarters, Area, and field office staff to implement projects in an efficient and timely manner. Projects also require the cooperation and support of the tribal groups involved and often other participants, such as water or sanitation districts, non-Indian communities, and other agencies. It is essential that projects be carried out in an orderly manner and that all participants be informed of the schedule of project activities.

A Project Schedule shall be prepared for each approved project, setting forth major action items and the projected target dates for these actions. An example Project Schedule is shown in Appendix 9. A copy of the Project Schedule should be distributed to the appropriate tribal leaders, other major participants, Service Unit Directors, and other IHS and BIA units having a role to play in the implementation of the project.

Some Areas use commercially available project scheduling products that work on personal computers. Some Areas use these schedules beginning with the planning phases of the projects to ensure that all work is done in an orderly manner. This type of scheduling software can also lend itself to scheduling of actual construction work.

Project Construction Phase

This is usually the shortest phase of a project, and entails getting the proposed facilities constructed. The major responsibilities vary depending on the method used for construction whether that be through a Federal contract, force account, or some form of tribal MOA procurement system.

The main concern during the construction is construction inspection. For Federal contracts, the guidance of the Area procurement office should be followed. For Tribal MOA construction, the terms of the MOA should be followed for guidance on the responsibilities of the IHS inspector. The inspections, regardless of the method of construction, should be used to insure that materials and their installation meet the specifications and construction drawings, that facilities are constructed within the acquired right-of-way, all permit conditions are followed, and as-built drawings are maintained. Changes should be well documented, and if changing conditions warrant, MOA amendments may be necessary. At the same time, the inspector should maintain a record of the construction through the use of inspection logs and marked up construction plans to ensure that as-built drawings are correct.

Project Closeout Phase

Once the construction is completed the next task is to get the facilities into operation and transferred to the Tribe and individual homeowners. The typical steps in this process for community facilities are to have a final inspection of the facilities, process a beneficial use agreement, execute a Transfer Agreement, and write a Final Report. Once the final inspection is completed and any punchlist items are corrected, Individual Agreements should be signed to transfer individual facilities to the homeowner. Transfer Agreements and beneficial use agreements may not be necessary when a Tribe constructs a facility using MOA contributed funds.

Final Inspections

A final inspection shall be conducted on all completed sanitation facilities construction projects. A final inspection shall also be performed on a project component completed and scheduled for transfer prior to the remainder of the project. The Project Engineer/Officer shall perform a pre-final inspection of each project, preparing a punch list of items to be finished prior to scheduling the final inspection. The final inspection should be conducted within 60 days of the completion of' construction on a project. The as-built drawings shall be available to the inspection team whose members consist of a senior IHS engineer, project personnel, tribal and community leaders or their representatives, and appropriate operation and maintenance personnel.

Final Inspection Requirements for Individual Facilities: Individual facilities are inspected during construction, and construction inspection reports are maintained in project records. Formal final inspection and documentation is recommended, but not required, for all individual facilities constructed on a project. A randomly selected number of individual facilities should be included in a final inspection, and the results should be documented with a report in the project file.

Beneficial Use Agreements (or Permits)

Beneficial use agreements or permits are agreements between the IHS Area and a Tribe or a tribal organization, which allow the Tribe to utilize sanitation facilities prior to completion and formal transfer. The beneficial use is requested by the Tribe and is to the benefit of the Tribe and all of the project participants.

Beneficial use agreements or permits should be used sparingly and do not replace Transfer Agreements. Beneficial use agreements should be used where there is a capable O&M organization to accept the responsibility to operate and maintain the sanitation facilities:

Requirements to enter into a Beneficial Use Agreement:

1. The O&M organization must concur with the request.

2. The warranty period begins when beneficial use begins.

3. IHS is not responsible for O&M of sanitation facilities under beneficial use.

4. IHS is not responsible for payment for any utilities, fuels, or chemicals associated with the sanitation facility under beneficial use.

5. The MOA should contain a clause to reference the beneficial use, for example:

   "That when acceptable to all parties, the operation, maintenance and repair responsibilities for the community facilities or operational unit will be assigned to the [Tribe/Utility Authority] or a Beneficial Use Permit will be issued to the [Tribe/Utility Authority] and the facilities or operational unit will be started so as to provide services to the consumer. When started, the operation and maintenance of the facilities will become the responsibility of the [Tribe/Utility Authority]."

The suggested procedure to enter into a beneficial use agreement is as follows:

1. Complete construction of the sanitation facilities

project.

2. Perform the final inspection and develop a punch list of items to correct.

3. Set conditions for the Beneficial Use Agreement. These conditions are taken from the punch list in consultation with the Tribe, but do not include every item identified on it.

4. Work on punch list. When all conditions for beneficial use are fulfilled, the Tribe requests beneficial use of the completed system with the concurrence of the O&M organization.

5. The beneficial use agreement transfers O&M responsibility to the O&M organization.

6. The 1-year warranty starts upon execution of the beneficial use agreement.

7. Do the rest of punch list.

8. Do other project completion activities including submitting the as-built easement application to BIA where required.

9. Execute a Transfer Agreement.

Transfer Agreements (under Direct Service)

A project is completed when all rights, title, and interest of the United States ends, in accordance with the Memorandum of Agreement (MOA) provisions. All sanitation facilities, provided in accordance with an MOA, constructed under IHS contract, or where some of the materials, supplies, or equipment were purchased by IHS must be transferred to the appropriate MOA party. An example transfer agreement format is in Appendix 8.

As soon as facilities have been constructed or provided, the punch list completed, and the participants adequately trained in the utilization and operation and maintenance of the facilities, all right, title, and interest of the United States shall be transferred to the Tribe or individual project participants in accordance with the provisions of the MOA. The transfer to the participants should occur prior to any sustained use (30 days) of the facilities unless there is a beneficial use agreement (see above). Authority for such transfer may be found in Section 7(a)(4) of Public Law 86-121 [42 U.S.C. 2004a].

The sanitation facilities may also be transferred from IHS to a tribe; to nearby non-Indian cities or towns; to public authorities, such as water, sanitation, or improvement districts operating under State law; and to nonprofit organizations serving Indians. Transfer agreements should be similar in form to that shown in Appendix 8 and include the following:

1. In all cases, the facilities to be transferred shall be sufficiently described to account for the major facilities being transferred.

2. Items such as vehicles and specialized equipment shall be listed together with property number and other identification numbers, if available, and transferred, where applicable, in accordance with established property management guidelines.

3. As-builts and operation and maintenance manuals shall accompany the Transfer Agreement or a specific reasonable date is established in the Transfer Agreement to complete and provide these items.

4. A 1-year warranty for latent defects in materials and workmanship shall extend from the first day of beneficial use.

5. This document may also be used by tribes to transfer individual facilities constructed by tribes to individual homeowners. Individual-type facilities shall be transferred to the homeowner or his representative.
   a. Where the premises on which the facilities are located are owned by the tribe, a housing authority, or a nonprofit organization, special arrangements regarding the transfer of facilities may be necessary.

Partial Transfer Agreement (substantial completion of system components): In situations where useable facilities are completed, personnel trained, as-built plans and operation and maintenance manuals completed, but there are other provisions of the project that are not completed, the completed facilities shall be transferred as soon as possible through a Partial Transfer Agreement.

Project Completion Notice. Where none of the facilities, provided in accordance with an MOA, were procured by IHS, a formal transfer agreement is not required. However, it is essential that all parties to the agreement be notified and if possible concur that the project is complete; i.e., projects procured by tribes or other entities utilizing IHS funds. The range of acceptable methods for dealing with that situation include the following:

1. A letter of notification from the IHS Area Director to the appropriate parties indicating the date of project completion and requesting the appropriate official to sign the letter indicating

concurrence, or to advise the Area Director within a specified number of days of any reason the project should not be considered complete, and to return of the letter to IHS.

2. Such a notice should not indicate that the facilities are or were the property of the United States; however, transfer of all rights, title, and interest of the United States in such facilities is appropriate.

Final Report

A Final Report shall be prepared and published for each sanitation facilities project within 12 months of the date that the project is transferred. This report will serve two purposes: (1) As a supplement to the official file of all important documents pertinent to the technical and legal execution of the project; and (2) Provide a descriptive summary of the work undertaken and completed. An example Final Report is provided in Appendix 12. All Final Reports shall include the following information in appropriate detail:

1. An explanation of any differences between the proposed facilities and facilities provided, including differences in the number of homes served.

2. Sources and amounts of all project funding including the disposition of unused funds.

3. Project expenditures detailed by type of expenditure and/or expenditures by type of facility provided.

4. Description and listing of facilities installed including quantities such as feet of pipe by size, numbers of water service lines, etc.

5. A list of homeowners and addresses of homes served by the project, if available.

6. Copies of official documents, including at minimum, the project proposal document, the Project Summary, Memoranda of Agreement (MOA), Project Summary amendments, MOA amendments, and transfer documents.

Minimum approval requirements. All Final Reports shall be approved by the Director, Area SFC Program, and by the highest level IHS official that signed the Project Summary. Areas may require that higher level Area officials approve the Final Report.

Distribution and Project Records Maintenance. Two copies of final reports should be submitted to Headquarters; one copy should be loose-leaf for electronic filing. Attachments to the loose-leaf copy should not be larger than 11 x 17 inches. An electronic copy in lieu of the loose-leaf copy is acceptable provided all forms, illustrations, drawings, and photographs are included in the electronic document file. The electronic document file will be in an image processing format to be determined by Headquarters. The completeness and accuracy of the Final Reports are an Area responsibility.

The Area Office is the repository for project documents and decides when to send their project documents to a Federal Records Center. Under current records maintenance requirements, the IHS sends Final Reports, that are no longer needed for current activities, to a Federal Records Center.

II. Tribal 638 Contracts for Program and/or Project Activities

(See the "Guidance for Title I Self-Determination Contract Negotiations for the Sanitation Facilities Construction Program and/or Projects", also called the "Grey Book", for more complete information.)

Public Law 93-638, as amended by P.L. 103-413, envisioned a negotiation process based on a tribe's "Contract Proposal." The regulations, Indian Self-Determination and Education Assistance Act Amendments Final Rule, 25 CFR 900, Subpart J, dated June 24, 1996, state the requirements for a construction contract proposal. There is a process and document flow that parallels direct service. The same phase headings will be inserted to allow the reader to see the phases.

This section is written based on the documents needed for constructing projects when a tribe has assumed responsibility for the entire SFC program including those functions mentioned in Chapter 7, under non-project RRM. Generally, these non-project RRM activities cover the planning and predesign phase of a project. The non-project activities can be assumed under a Section 108 (of P.L. 93-638, as amended) services contract. These are the only activities tied to the SFC program which lend themselves to a traditional 108 services contract. The remainder of the program funding and project funding can only be provided under a 25 CFR 900, Subpart J construction contract. The same construction contract can also be used for the non-project RRM activation of a 108 services contract. Subpart J construction contracts can be design contracts for program funds and construction phase contracts for actual project funds or contracts that combine both project and program funds.

The Title I and Direct Service tracks intersect at the end of the planning and predesign phase when IHS sends out the Notification of Funding Availability letter. If a Tribe which is currently receiving service from IHS chooses to contract for design or construction under Subpart J, the document track then follows the one listed in this section beginning with the Notification of Funding Availability.

Table 8-1 lists the project sequence and project documents for sanitation facilities constructed using 638 contracts (Title I).

Project Planning and Predesign Phase

Project Request and Tribal Consultation
(Title I contract)

The comparable sequence to Direct Service is the HPS and SDS update process. Each year, the Area SFC Program will notify each tribe of the HPS and SDS update schedules to request tribes to notify the Area of their new, like-new, and existing housing needs. The tribal program should give consideration to performing feasibility studies in the manner described in direct service and providing these studies as back-up information for the HPS and SDS submittals to IHS. The HPS and SDS needs that are submitted by the tribes are reviewed by the SFC Program. The resulting eligible projects will be incorporated into the HPS or SDS inventories and are prioritized according to the criteria for each inventory system. The Area SFC program should stay in regular contact with the tribes to keep them updated on projects that may soon be within the fundable range for SDS and HPS. When it is clear that a project will soon be funded, the Tribe should prepare the Project Scope and Tribal Environmental Review.

Predesign Contracts

This contract uses a small amount of project funds to perform the same functions as planning agreements under direct service. These contracts should not be confused with planning phase projects as described in 25 CFR 900, Subpart J. The planning phase activities defined in Subpart J are funded as part of the non-project RRM activities for the SFC program.

Project Scope and Tribal Environmental Review

A Project Scope is similar to the Project Summary, but not as detailed. An example of a Project Scope may be found in the Yellow Book. The Project Scope is a multi-page document that includes the reasons for the project (synopsis of the sanitation deficiencies); a description, location, schedule, and cost estimate for the proposed sanitation facilities; a listing by community of the number and type of homes to be served, and a recommendation on how to proceed with the project based, in part, on the findings of an attached Environmental Review. In addition, the Project Scope should include the following:

1. A project schedule that includes the expected start date and completion date of the project and each project phase.
2. Environmental considerations. A brief paragraph stating that an environmental review was performed in accordance with IHS requirements and the outcome of the review. The tribe should perform a NEPA review in accordance with the IHS's Environment Review Manual and state its conclusions. The environmental review should be attached to the Project Scope document. The Tribe must also certify that it will comply with all environmental and related laws and requirements.
3. A statement identifying the Tribe's operation and maintenance entity and the owner of the proposed facilities.
4. Signature of the preparer, reviewing tribal officer, and the Tribal Chairman or chief executive officer.

Project Scope and Environmental Review Approval/Determination

The Project Scope with attached environmental review is submitted to the IHS Area SFC Program. The Project Scope is reviewed by the Area SFC Director. The SFC Director ensures that the document is complete and that unit costs reflect historical experience or are otherwise appropriately justified. The SFC Program will review the Tribe's environmental review and conclusions and either perform its own environmental review or accept the Tribe's. The IHS SFC Program will make the determination whether the proposed project will adversely affect the environment (a residual function). If additional information is needed, a written request is typically made to the tribe for specific additional data. Upon completion of this review process the Area SFC Director, (1) approves the Project Scope, confirming the scope and cost of the Project Scope and, (2) prepares environmental review determination documents.

MOA: An umbrella MOA is not required for execution of the project under Title I service delivery method. The IHS and the Tribe may execute an umbrella MOA that identifies all of the parties that are involved in the proposed sanitation facilities project and the responsibilities of each party during construction of the project. The umbrella MOA does not transfer or obligate any funds, but it could commit another agency to contribute funds to the project. The MOA could include some of the items in Tables 8-2 and 8-3 with the exception of monetary contributions and fund control items. It could also be similar to the Non-Specific MOA discussed under Direct Service.

Project Funding Notification

When the funds are allocated to projects the Area SFC Program Director will formally notify the tribes in the Area of the availability of project funds, by certified mail with return receipt, in accordance with 25 CFR 900, Subpart J. Examples of notification letters may be found in the Grey Book.

Proposal and Contract Process

Subsequent to project funding notification, the following takes place:
1. Notice of Intent. The Tribe notifies IHS that it has elected to assume the sanitation facilities project and accomplish the work. (Optional, but highly recommended.)
2. Project Proposal with Tribal Resolution. The Tribe submits a proposal to IHS to accomplish the sanitation facilities project construction.
3. IHS acknowledges the receipt of the project proposal and schedules negotiations.
4. Negotiations result in a construction contract, or the Tribe submits a final proposal.
5. IHS awards the construction contract to the Tribe, or declines. If IHS declines, the declination process is initiated, which is discussed and explained in other documents.

The Title I Construction Contract

The two main sections of a construction contract are referred to as the “Contract Cover,” and the “Contract Proposal.” The proposal is prepared by the Tribe and the contract cover is prepared by IHS, and the two parts combined through negotiations become the contract. As outlined in the 638 regulations at 25 CFR 900.129, the Tribe and the IHS come to a negotiated mutual agreement on a construction project without the need for the Tribe to submit a "final" contract proposal. Table 8-3 shows some typical contract options and their characteristic features. Additional information on the details of a construction contract may be found in the Grey Book.

Table 8-3. Contract Options and Some Characteristic Features *

Typical Fixed Price Contracts:

- The projects are less complex, lower cost.
- The projects are shorter term
- The projects are generally residential in nature
- More risk assumed by Tribe
- Potential for profit

Typical Cost Reimbursement Contracts:

- The projects are more complex, higher cost
- The projects are longer term
- The projects involve community systems and other utility services
- Less risk assumed by the Tribe
- Potential for project savings

*Whether to use a fixed price vs. cost reimbursement contract is a decision based on the Tribe's desire to accept risk to make a profit.

Project Design Phase

The design phase basically follows the same track as Direct Service; however, some things are optional such as the individual agreements. Although not required, it is recommended that the requirements of the direct service method be used, except for the items discussed below.

Permits, easements, and other clearances

The requirements are the same as for Direct Service, except that obtaining permits, easements, and clearances are the responsibility of the Tribe.

Archeological Clearances

The requirements are the same as for Direct Service, except that the Tribe assumes the responsibility for complying with the historic and cultural preservation requirements during construction. The IHS SFC Program will make the determination whether the proposed project will adversely affect the historic or cultural property based on information provided by the Tribe. The IHS may have to independently establish that there will be no impacts through site visits and independent archeological review of the project site. IHS must make its determination prior to transferring any funds to the Tribe.

Design and Construction Documents

The drafting of plans and specification, materials procurement, and project schedules are the responsibility of the contractor, the Title I Tribe. The Contract will specify the review by IHS of design and construction documents and the timelines for providing that review.

Project Construction Phase

During the construction of the sanitation facilities, the Tribe will provide the IHS with quarterly progress reports. Additionally IHS will perform monthly site visits or perform visits as often as negotiated in the contract. Upon completion of the sanitation facilities construction project, the Tribe will provide the IHS with a notice of completion.

Project Closeout Phase

Final Inspections

IHS is not responsible for arranging or conducting final inspections for non-IHS managed construction; i.e., a construction program managed by a Tribe under a 638 contract or under a Self-Governance compact.

1. The Tribe should invite the IHS Area SFC Program to participate in the final inspection.
2. IHS may participate in final inspections in accordance with provisions included in the contract or as requested by the Tribe, participating agencies, or regulatory bodies.
3. The contract or other document used to initiate the project, should contain language specifying the parties responsible for performing the final inspection.

Transfer Agreements

No separate transfer documents are needed. As stated in the contract, all constructed sanitation facilities are the property of the Tribe.

Final Report

The Title I contract should stipulate that the Tribe will prepare a final report and state the format for the final report. The final report should contain the items enumerated under Direct Service, or as otherwise negotiated in the contract. If there are no stipulations in the contract, the IHS can request that the Tribe provide a final report. Sample Final Report formats are in Appendix 12 and in the Grey Book and the Yellow Book.

III. Tribal 638 Compacts (Title III)

(See the "Yellow Book" for more complete information on the SFC Program under Self-Governance.)

The principal agreements of Self Governance are the Compact and the Annual Funding Agreement (AFA). The Compact is the agreement which states the responsibilities of the Tribe and the IHS and in many ways is similar to a MOA. The AFA states that the Tribe agrees to assume responsibility for specified IHS programs and agrees to the terms for payment. After the signing of a Compact, an AFA is negotiated by the IHS and the Tribe. By statute, the AFA is required to include the following program related information:

1. identifies the programs the tribe will operate
2. specifies the services to be provided and functions to be performed
3. specifies procedures to be used to reallocate funds or modify allocations
4. establish annual funding amount and method of payment to the tribe (often a lump sum in advance).

The AFA is signed by the IHS Director, or his designee, for the United States. Program funds are transferred to the tribe in accordance with the terms and conditions of the AFA. Program funds information is provided in a standard IHS budget spreadsheet and incorporated into the AFA by reference.

As currently implemented by the IHS, if a Title III tribe elects to construct a sanitation facilities project under P.L. 93-638, then it must follow the procedure in the Title I implementation process (per OGC opinion). However, under Title III, P.L. 86-121, in conjunction with P.L. 93-638, does allow the use of the agreements described below. This section will address the program and project implementation where a Title III tribe elects to construct a sanitation facilities project under P.L. 86-121 authority; i.e., Title III with a P.L. 86-121 Project Agreement. The Project Agreement could be either an Annual Funding Agreement addendum (AFAA) or Project Funding Agreement (PFA).

Under the Project Scope/AFAA (PS/AFAA), a footnote is added to the SFC Program line item which indicates that project funds will be transferred to the tribe on a project basis as they become available. The PS/AFAA process builds on the procedures established in the AFA. Because the AFA is signed by the IHS Director, or his designee, and the AFAA is an amendment to this base agreement, it must also be signed by the Director or his designee.
Note: Program funds are transferred via the AFA provisions while project funds are transferred via the AFAA or PFA provisions.

Under Self-Governance, the authority to represent the United States has been delegated to the IHS Director. Through FY 1996, the IHS Director has signed all compacts and AFAs. In a Delegation of Authority dated March 14, 1996 (Program #5), the IHS Director delegated authority to the Director of Headquarters Operations to sign AFAs, AFAAs and compact amendments. The IHS has formulated a process to delegate to Area Directors conditional authority to award contracts, to issue AFAs, and to sign amendments to Compacts. Once an Area is delegated this authority, most of or all of the Office of Tribal Self-Governance (OTSG) processing responsibilities will be assumed by the Area Finance Office.

Table 8-1 lists the project sequence and project documents for sanitation facilities constructed by 638 compacting tribes (Title III).

Project Planning and Predesign Phase

Project Request and Tribal Consultation

This sequence and documents are the same as that under a Title I contract.

Predesign Agreements

The Tribe and IHS can enter into a predesign PFA similar to the planning agreement described under direct service.

Project Scope and Tribal Environmental Review

This sequence and documents are the same as that under a Title I contract. There is no umbrella MOA option under Title III.

Project Scope and Environmental Review approval/determination

The procedure is the same as for Title I, but the IHS Area SFC Program prepares and sends recommended clauses and formats for the AFAA to the tribe, together with copies the of completed Project Scope and environmental review and determination. It is envisioned that the tribe will develop the terms and conditions of the AFAA jointly with their respective Area Program based on this information.

Preparation and Presentation of the AFAA or PFA by the Tribe.

The Tribe will forward the completed AFAA packets to the Director, OTSG, in Rockville, Maryland, for IHS approval. If the Tribe elects to use a PFA, the documents remain in the Area and are reviewed by the Area SFC Program and signed by the Area Director.

In both cases, the review and approval process is expedited if the Tribe and the Area SFC Program work together to develop the AFAA or PFA prior to the Tribe submitting the documents for approval.

Statement of Funds Availability

The Area SFC Program Director prepares a "Statement of Funds Availability" (see the Appendix of the Yellow Book) for each approved Project Scope. When AFAAs are prepared by tribes in concert with their Area Program, copies of the completed funds availability statement should be provided to the tribe so that it can be included in the tribe's AFAA package sent to the Director, OTSG. The Area SFC Director should provide the original funds availability statement, along with copies of the other documents contained in the tribes packet to the Headquarters SFC Program Office to facilitate the Headquarters review process, when applicable.

In instances where the Area SFC Program has no role in the AFAA development, the funds availability statement and Project Scope should be forwarded to the Headquarters SFC Program Office, independent of other documentation. As part of the OTSG AFAA review process, the OTSG confirms P.L. 86-121 project AFAA content and funding availability with the Headquarters SFC Program Office. The Headquarters SFC Program Office review includes confirming Area concurrence with the AFAA and requesting a "Statement of Funds Availability" from the Area.

Approval of the AFAA by the Director, IHS or the PFA by the Area Director

As part of the OTSG AFAA review, the OTSG confirms P.L. 86-121 project AFAA content and funding availability with the Headquarters SFC Program Office. When the Area is not consulted in advance, the Headquarters SFC Program Office forwards the documents for review and comment to the Area SFC Program, as part of its review process. Any Area comments and corrections are then provided back to OTSG by Headquarters SFC Program Office. The OTSG, in turn, forwards them back to the Tribe for a response. The AFAAs are reviewed and recommended for approval by the OTSG. They are signed by the IHS Director or his designee. The OTSG returns executed copies of the package to the tribe and provides copies to the Area and Associate Directors.

This review process is time consuming. The preferred solution is a joint preparation effort that is completed in the Area prior to the Tribe's submittal of the AFAA packet to the OTSG, or the use of a PFA which does not involve the Headquarters SFC Program Office.

The PFA approval process is very similar to the Project Scope/AFAA approval process with these differences:

1. The PFA can be approved and funded at the Area level. The PFA does not have to be submitted to the IHS Director through the OTSG.
2. The Area SFC Director prepares the Environmental Review Determination document (see Appendix of the Yellow Book) and submits this and the "Statement of Funds Availability" (with no HQ SFC Program signature block) document with the Tribes Project Scope and Environmental Review to the Area Director for approval.
3. The Tribe can then expect to receive the project funds within 60 days.
4. The PFA process does not require Headquarters SFC Program approval.

The AFAA process does not allow for phased or staged payments. Under the PFA process, phased or staged payments (similar to the MOA process) are allowable if the respective Area Finance Offices can develop internal mechanisms to accommodate more than one payment per document.

Project Design Phase and Construction Phase

Permits, easements, and other clearances

The requirements are the same as for Direct Service, except that obtaining permits, easements, and clearances are the responsibility of the Tribe.

Archeological Clearances

The requirements are the same as for Title I.

Design and Construction Documents

The drafting of plans and specification, materials procurement, and project schedules are the responsibility of the Title III Tribe. During the construction of the sanitation facilities, the Tribe will provide the IHS with semi-annual progress reports. Upon completion of the sanitation facilities construction project, the Tribe will provide the IHS with a notice of completion.

Project Closeout Phase

Final Inspections

The requirements are the same as for Title I; the IHS has no required involvement unless invited by the Tribe. The IHS will participate in final inspections upon request by the tribe or per agreement in the PFA.

Transfer Agreements

No separate transfer documents are needed, as in Title I. As stated in the AFAA or PFA, all constructed sanitation facilities are the property of the Tribe.

Final Report

The AFAA or PFA should stipulate whether there will be a final report and the format of the final report. If there are no stipulations, the IHS can request that the Tribe provide a final report. A sample Final Report is in the Yellow Book.

IV. Compliance With Interagency Agreements, Laws, Regulations

Interagency Agreements (IAGs) and Memoranda of Understanding

These documents are agreements between two or more agencies of government to define, identify, and coordinate responsibilities and activities to be performed by each agency, and to further the mission of the agencies. IHS enters into IAGs and MOUs with various federal agencies including HUD, EPA, and BIA that define the methods of implementation. The Memorandum of Understanding (MOU) does not contain any funding provisions and is normally used to present the purpose of the issues and missions and list the duties and responsibilities of each agency. The Interagency Agreement (IAG) also can be used to define and identify responsibilities and activities to be performed by agencies, and it may be used to transfer funds from one agency to another. An IAG is often combined with a MOU.

Agencies use the IAG to transfer funds, where one agency may have the personnel, equipment, or other resources available to assist with the other agency's mission. An example is the Clean Water Act Indian set-aside grants that the IHS administers for the EPA under an annual IAG and MOU; the EPA transfers funds to the IHS to reimburse it for some of its costs to administer the grants. IAGs and MOUs may be executed at the National level between the Headquarters components of agencies, or they can be executed at the Regional or Area Office level. The IAG and MOU are used to meet the diverse sanitation needs of Indian communities and homes, which often requires funds from different sources. Often complex multi-agency funded projects result. In these situations, IHS will provide necessary technical assistance with grant application descriptions and justifications. If successful, the needs of tribes and varied requirements of other agencies can be coordinated into a single efficient and effective project.

Interagency Agreements and Memoranda of Understanding for Self Governance Programs

The residual responsibilities of the IHS include advocating for all tribes (collectively) during the development of environmental health policies, regulations, and programs. IHS has a national public health role included in its residual responsibilities. However, activities such as individual project coordination with other agencies, assistance with grant applications, and development of multi-agency funded sanitation projects, including solid waste projects, are not considered to be inherently governmental functions. When Self-Governance tribes assume the programs, services, functions, and activities associated with the transfer of SFC program funds, they assume full responsibility for developing projects with other agencies, like the EPA. Entering into agreements directly with other funding agencies is a natural extension of this responsibility.

Laws and Regulations

As a Federal agency, IHS must comply with additional laws and regulations beyond those that normally affect tribes. Those laws and regulations include the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and various Presidential Executive Orders that pertain to NEPA, NHPA, and other environmental laws. Responsibility for complying with those laws and regulations cannot be delegated to the tribes. More specific procedures for compliance with NEPA will be discussed in Chapter 11 or may be found in the Environmental Review Manual (DEH, OEHE, IHS; published March 1993), which contains the IHS's policies and procedures to comply with NEPA and related environmental laws, Executive Orders, and regulations.

Both IHS and Tribes must comply with other substantive laws and regulations that often have civil and criminal penalties for non-compliance. IHS and the Tribes are individually bound to comply with those laws, which include Occupational Safety and Health Act, Clean Water Act (CWA), Safe Drinking Water Act (SDWA), Resource Conservation and Recovery Act (RCRA), Clean Air Act (CAA), Endangered Species Act (ESA), and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Other laws may apply depending upon the project and its location. The IHS must also comply with other Federal, tribal, state, and local laws and regulations if they are applicable, and the IHS is compelled by those laws to retain sufficient resources to comply with them.

CHAPTER 9. Managing Project Funds

This chapter reviews the methods of managing and obligating project funds under direct service, Title I contracts, and Title III compacts. Chapter 8 discussed the implementation of the SFC Program and SFC projects. Since the funding and obligating instruments are discussed in both chapters, the reader must review both chapters.

Funds for management of the SFC Program and for construction of sanitation facilities are provided by congressional appropriations, fund transfers from other agencies, and contributions from tribes, communities, and other sources. Most authorities and responsibilities for program implementation are delegated to the Area Offices. The SFC Program must be managed and implemented in accordance with Agency policies and procedures and in compliance with applicable Federal, tribal, state, and local laws; Executive Orders, and regulations for construction programs.

I. Obligating Funds

The instrument used to obligate funds depends on who benefits from the expenditure, the amount of involvement of the government, and whether the action is an inherently Federal function. The designated official for IHS who may enter into an agreement to obligate IHS funds varies with the instrument. Under direct service by IHS the MOA is the obligating document for P.L. 86-121 construction funds.

Title I (contract) and Title III (compacting) tribes have the administrative or technical capability to accomplish the project through a Federal construction contract or compact. The Indian Self-Determination and Education Assistance Act (P.L. 93-638) requires the IHS to continue providing direct services until such time as a Tribe freely chooses to contract to operate those services. At that point, the IHS is required to transfer the administration of those programs and associated resources to the Tribe. For those Tribes that choose to assume the responsibility under P.L. 93-638 for sanitation facilities construction projects there are two choices of obligating instruments. There is the 25 CFR 900, Subpart J Construction Contract that is used under P.L. 93-638. Another possibility is to use a P.L. 86-121 instrument, called a Project Funding Agreement.

Based on the discussion above, one of three types of agreements must be entered into to obligate funds for a SFC project. While SFC project funds may be identified in an Annual Funding Agreement (AFA) for sanitation facilities construction, such funds must be obligated and used under an appropriate instrument pursuant to the terms of provision of the instrument and statutory authority, e.g., Title I contract, Title I grant, agreement authorized by P.L. 86-121, or federal contract. A prohibited fund transfer would occur if funds from the IHS Services appropriation were used for purposes for which funds from the IHS Facilities appropriation are authorized to be used, or vice versa this includes both SFC project and program funds.

Policies and Procedures for Direct Service (MOAs)

For Direct Service provision of sanitation facilities (which may include some Title I construction contracts), the IHS Area Director approves sanitation facilities projects that are on the Area priority lists, recommended by the SFC program, and concurred by the Director, Area OEHE. Such approvals shall be made in writing, utilizing the format set forth in the Project Approval Form (Appendix 5) for direct service projects. Each project approval shall be supported by a signed Project Summary prepared in accordance with the provisions of this document. In some Areas, the Project Approval Form is signed by the Area Director after the MOA is executed. Regardless, when the Project Approval Form is signed, the obligating and funding document is still the MOA. Funds cannot be expended from a project account without an executed agreement such as the MOA.

The Area Director is delegated the authority from the Director of the Indian Health Service to enter into MOAs. This delegation cannot be redelegated. The Area Director relies on the SFC Program and the Area financial management staff for funds accountability. The MOA is an obligating document used by the SFC Program and Area finance officers as documentary evidence for obligating funds for project construction. This policy was reaffirmed in a 1980 General Accounting Office (GAO) study of the IHS P.L. 86-121 program. The Area Director and the Area finance office provide an external check to the SFC Program. The Area Director approves, monitors, and enforces the MOAs and the internal fund control system.

The MOA provides the means by which funds can be contributed or transferred between MOA parties. When funds are contributed by the IHS to non-Federal recipients (e.g., Tribes) under an MOA,

special procurement and fund control requirements must be followed by the recipient of the funds. Those requirements are outlined in a separate document called the "MOA Guidelines."

If the executed MOA contains provisions for a fund contribution, the party that will receive and administer the funds must request the funds in writing in accordance with the provisions of the MOA, as stated in the MOA Guidelines and outlined in Chapter 8. The sum total of all fund contributions cannot exceed the amount stated in the MOA. The MOA must specify the maximum dollar amount that may be contributed by the IHS to the tribe, community, or other organization for the purposes specified in the MOA. The Tribe, or other party, is to be provided copies of OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments" and copies of applicable guidelines when funds are transferred to them.

If IHS funds are part or all of the contribution of any project, the maximum amount of IHS funds stated in the MOA, not to exceed the funds available, shall be obligated in the Area SFC project commitment register following project approval and IHS funding. Funds transferred to IHS from other organizations designated for contribution to a sanitation facilities project shall be obligated when received. The Area Financial Management Branch or Area finance office should be advised of the amount of funds committed.

All actions and funding obligations must be activated by clauses in an MOA executed for implementation of a specific project. Fund requests submitted to IHS by tribes or other MOA parties should be sent to the appropriate IHS field office for forwarding to the Area Office SFC Program Director with appropriate documentation and approval recommendations as required by the Area Office guidelines. MOA contribution requests may be processed only after the signed approval of the SFC Program Director (see also, "MOA Contribution Payments", in the MOA Guidelines).

In order to maintain internal checks at all times, Area SFC Program Directors and Associate OEHE Directors, acting in their respective capacities, shall not sign MOAs or provide final Area approval for fund obligations. This approval shall be executed by the Area Director.

Prohibited Practices. IHS employees, with the exception of those on an Intergovernmental Personnel Act (IPA) assignment or MOA detail to a tribe, are prohibited from explicit or implicit obligations on behalf of a tribe (or other MOA party), including directives to the tribe's employees or tribe's contractors. IHS employees are prohibited from signing (or co-signing) any tribal checks or having signatory authority on bank accounts, or signing contract documents including tribal purchase orders, requests for quotation (RFQ's), etc. Checks, either from the Government or the Tribe, shall not include a Federal employee's name. Federal government letterhead paper and envelopes are not to be used by a Tribe or Federal employees on behalf of a Tribe. Original tribal contract documents, including bids, shall be kept and processed at tribal offices, not at IHS offices. Verbal and written contact between IHS employees and the tribe's contractors shall be prefaced with a statement that "IHS is providing technical assistance only and is not an agent of the Tribe".

Policies and Procedures for Managing Funds for Title I Contracts

P.L. 86-121 sanitation facilities project funds and project-related program funds will be provided to the Tribe on a project by project basis, through construction contracts under Subpart J of 25 CFR 900; or Self-Determination MOAs under P.L. 86-121. As implemented by IHS, a compacting tribe (Title III) that elects to construct a sanitation facilities project under P.L. 93-638 must also follow the requirements under Subpart J of 25 CFR 900. Title I contracts are discussed in more detail in the "Grey Book".

The Title I contract is the obligating document for sanitation facilities project funds when signed by the IHS Area Director (this agreement is generally also signed by the Area Contracting Officer and in some cases just by the Contracting Officer). The IHS will monitor the progress of the sanitation facilities project through quarterly reports that the tribe submits. Payments to the tribe will be made quarterly based on the progress of the project. In some cases an MOA may also be required for the project. This is especially true if funds from other parties are contributed to the project. In this case the MOA becomes an agreement obligating funds to the project and sets the responsibilities of each party. The construction contract is then the instrument for the transfer of construction responsibilities to the tribes and obligates the funds to allow payment in accordance with the terms of the contract.

The funding requirements of the Title I contract include:

1. A "not to exceed" dollar amount applicable to performance of the scope of work. This "not to exceed" dollar amount is defined as the total cost

proposed to complete the scope of work.

2. A scope of work, as described in the Project Summary, incorporated into the proposal as an attachment and completed within the available funding, in accordance with 25 CFR 900. (The Project Summary can be in the proposal or the contract).
3. For cost-reimbursement projects, the Indian tribe or tribal organization shall not be obligated to continue performance that requires an expenditure of more funds than were awarded under the contract. If the Indian tribe or tribal organization has a reason to believe that the total amount required for performance of the contract will be greater than the amount of funds awarded, it shall provide notice to the IHS within 10 days of discovery. If the IHS does not increase the amount of funds awarded under the contract, the Indian tribe or tribal organization may suspend performance of the contract until sufficient additional funds are awarded.
4. The Tribe will expend and account for the contract funds in accordance with all applicable tribal laws, regulations, and procedures. The Tribe will prepare reports that allow tracing the project funds to a level of expenditure that will ensure the funds were not used in violation of any restrictions or prohibitions.
5. All accounting records will be supported by source documents. The source documents shall include canceled checks, paid bills, payrolls, time and attendance records, purchasing documents, and financial records.
6. All project records will be maintained by the tribe for a period of not less than 3 years following completion of the project.
7. Applicable OMB cost principles (OMB Circular A-87) shall govern in determining the reasonableness, allowability, and allocability of all costs under the project.
8. Payments shall be made to the Indian tribe or tribal organization according to the payment schedule negotiated in the contract and provided as an attachment. The payment schedule may be adjusted as negotiated by the parties during the course of the project based on progress and need.

9. No construction funds will be released until the NEPA review and determination are completed.

Policies and Procedures for Managing Funds for Compacts (AFAs)

Construction of sanitation facilities by tribes either using funds transferred with an MOA or Project Scope (PS)/Annual Funding Agreement addendum (AFAA) or Project Funding Agreement (PFA) is considered to be Federally assisted construction, but not construction of Federal facilities. Although the funds are identified in the AFAA, the AFAA must specify that such funds may only be obligated and expended under the specific statutory requirements of P.L. 86-121.

For projects requiring an environmental assessment, the AFAA is prepared to fund a preliminary design project only, with the understanding that a future project may be funded for construction, pending the outcome of the current project. The current process, where the OTSG approves the transfer of project funds by the Area IHS to a tribe that has compacted a program, does not provide for staged or phased AFAA funds transfers. Therefore, the full amount of each AFAA is transferred to a tribe following execution of the document. Current NEPA law requires a determination from the designated Federal official prior to the transfer of construction funds.

However, where appropriate a single PS may be used to fund a multi-phased project. While an AFAA is required for each phase, funding for future phases can be obligated or deobligated without actual transfer to a tribe, using a Miscellaneous Obligating Document (see discussion of the MOD, below).

In rare instances, the AFAA or PFA instruments may be used to transfer non-IHS funds to Self-Governance tribes for the construction of sanitation facilities provided:

1. The sanitation facilities project meets all IHS criteria for projects serving new, like-new, or existing housing. For projects funded with only contributions (no IHS appropriated funds included), the IHS will still be a signatory to the Project Scope, which would have to establish that those criteria are met.

2. The basic provisions of the model AFAA or the PFA are required; other provisions may be included on a project-by-project basis. If the funding agency (original source of funds) required more provisions (e.g., controls, approvals, requirements), that agency would have to negotiate with the tribe regarding the additional AFAA or PFA provisions, and the IHS would have to approve those provisions.

3. There will have to be a continuing services agreement for all IHS involvement in the project to cover the IHS's costs for the administration of the project documents and funds and the costs of activities associated with any NEPA responsibilities. The "buy-back" amount for the workload associated with the non-IHS funded

portion of a project will reduce the Environmental Health Support Account (EHSA) funds available to the tribe in the following FY's, calculated in accordance with the RRM workload methodology on a project-by-project basis.

Given the above, acceptance of non-IHS funds would be subject to the availability of residual and/or retained tribal shares resources in each IHS Area office.

The benefits of such an interim policy are as follows:

(1) It allows IHS to maintain its current obligations under MOAs signed prior to the tribe's compact, regarding the administration of non-IHS appropriated funds;

(2) It is a potential mechanism for managing the distribution of EHSA funds for projects which include non-IHS funds; and

(3) It is a mechanism for tribes to continue to have IHS broker or pool funds from several agencies, a role that has historically been a great benefit to the tribes and to the mission of the IHS.

Miscellaneous Obligation Document

The miscellaneous obligation document (MOD) may be used to establish obligations at the beginning or during an accounting period associated with a specific approved project, for estimated costs for personnel, travel, communications, and other costs for which a MOA, AFA, AFAA, or contract, is not currently available. The use of the MOD in this manner provides a means of identifying and obligating funds immediately for fund control purposes. For example, an Area finance office may receive an allowance for several sanitation facilities construction projects; however, the program may not be able to obtain the necessary tribal signatures to complete execution of an MOA for a project, for reasons beyond its control. If the project is approved by the Area Director, an MOD could be executed until the program can obtain the necessary signatures on the MOA.

Each MOD should be accompanied by a written administrative determination that contains a description of the transaction, refers (where appropriate) to the document initially authorizing the transaction, and be signed by the Director, Area SFC Program, or an official who is vested with the authority to make such administrative determination. The administrative determinations may be written as part of the MOD. Upon receipt of a properly executed MOA, AFA, AFAA, or contract, the amount of the original obligation should be adjusted accordingly.

II. Establishing a Project Account

The Congress appropriates funds for the SFC Program based on the request in the President's budget. Those appropriated SFC funds are placed into bulk allowances at each IHS Area, one for housing support funds and another for regular funds. In each Area, a separate project account shall be established for each project either at the time advance planning funds are assigned by the Area SFC Program or when the project approval form is signed by the Area Director. All obligations and expenditures related to the project shall be charged to this project account. The maintenance of the project account within the established project scope shall be the joint responsibility of the Area OEHE and the Area Financial Management Branch (FMB). (A commitment register for each project shall be maintained by the Area OEHE and reconciled to FMB records.) The project accounting practices must comply with the requirements in the IHS manual issuances relative to management of these accounts.

SFC construction project funds are accounted for in the IHS finance system by fiscal year appropriated; therefore, an SFC project may have multiple fund accounts if funds are allocated to it in different fiscal years. A project may have more than one account if it receives contributions from other agencies or the tribe. Contributions to a project are placed into separate project finance accounts from sanitation facilities project funds appropriated by the Congress. A separate Consolidated Working Fund (CWF) account for the project could also be created if non-IHS funds were transferred from another agency to reimburse the SFC Program for program work that was done or will be done that accomplishes the objectives stated in an agreement with that other agency. An example of the CWF would be the funds transferred according to an interagency agreement between IHS and EPA to reimburse IHS for costs to administer EPA Indian Set-Aside Clean Water Act grants to tribes.

Managing Non-IHS Funds (Contributions)

Contributed funds shall be utilized before appropriated funds, unless otherwise stated in the MOA. Contributed funds shall not be available for transfer to other project accounts unless the contributing agency, group, or participant has agreed to such a transfer in writing or approval is obtained from the Director, IHS, in writing in advance. Unused contributed funds shall be returned to the contributing source.

Funds Transferred From Other Agencies

Funds may be transferred from one agency to another for the provision of sanitation facilities. The method of transfer may vary, but will normally be through the U.S. Treasury's Online Payment and Collection (OPAC) system. Area Finance Offices may require the execution of an SF 1081, Voucher and Schedule of Withdrawal and Credits. Expenditure records of these funds shall be maintained separate from Public Law 86-121 appropriated project funds and reports prepared in accordance with agreed upon procedures. Other agency funds shall not be transferred to another project unless otherwise agreed upon in writing, or unless retention of those funds is authorized by law.

III.Fund Transfers

Fund transfers between Direct Service projects are not allowed. All excess project funds must be transferred to bulk accounts (housing - 099 or regular - 098); all project funding must be from the bulk accounts. SFC project funds retain their identity as housing support funds or as regular funds, no matter how many times they are transferred.

Some Areas establish accounts using P.L. 86-121 project numbers to monitor and control engineering support costs (see Section VI). These are not sanitation facilities construction projects, and there are no restrictions on transfer of funds between projects and these accounts. Such transfers do not change project funding commitments; i.e., they do not change the amount in the project summary.

All fund transfers into or out of bulk accounts must be approved by the Director of the Area SFC Program or higher line authority. The format set forth in Appendix 6, "Request for Transfer of Funds From and To Public Law 86-121 Project Bulk Accounts," shall be utilized in making fund transfers. Transfers shall be initiated by the Area SFC Program by forwarding two signed copies of the Request for Transfer of Funds form to the Area Finance Office. If, after checking the project account, the Area Finance Office effects transfer of the requested amount, they shall return one of the signed Transfer Request copies to the Area SFC Program. A copy of the completed document shall be placed in the project files of all projects involved in the fund transfer.

1. All Public Law 86-121 fund transfers shall, in addition to the Request for Transfer of Funds form, be documented by one of the following:
   - Memorandum for the Record (for advance planning funds)
   - Planning Agreement, Memorandum of Agreement or an Amendment
   - Approved Project Summary or Amendment, or Project Scope
   - Approved Revised Cost Estimate
   - Approved Final Report

2. Funds shall not be withdrawn from any project account unless the project is (1) completed, (2) terminated, or (3) has approved documentation showing sufficient funds will remain after transfer to complete the project.

3. Sanitation facilities construction funds shall not be transferred to any other IHS account for any purpose other than sanitation facilities construction unless approval is granted in writing by the Director, IHS, in advance.

4. Any increases in project funding requires approval of the Area Director or his designee on the Project Approval Form (Appendix 5), including documentation supporting the increases.

Unexpended Project Funds

Unexpended project funds are sanitation facilities funds remaining in an IHS project account after a project is completed, terminated, or for other documented reasons. Under Direct Service by IHS, leftover funds in housing support and regular project accounts shall be transferred to the appropriate bulk fund accounts and used by the Area to fund the Area's next highest priority project for the type of funds available, unless Headquarters requests those funds be returned to Headquarters. The priority of funding is as follows:

1. Additional funding needs of previously approved projects have the highest priority.
2. Priority of unfunded projects is determined in accordance with the most recent Sanitation Deficiency System (SDS) priority list for regular projects and established Area procedures for housing support projects.

Headquarters notification and approval are not required for housing support and regular project excess fund transfers; however, care must be taken to prevent over funding projects. The Director, Area SFC Program, will reconcile project accounts, periodically, to review an Area's funding history for project funding exceedences and take corrective action to prevent future occurrences. The Director, DSFC Headquarters will review an Area's project funding practices during Area consultations.

The disposition of remaining funds (savings) for Title I and Title III tribes is shown in Figure 9-1 Additional discussion of Title I and Title III project savings is found in Section V, Contingencies.

Advance Planning Funds

Funds requested for advance planning must be approved by the Director, Area SFC Program or higher line authority. Planning Agreements also were discussed in Chapter 8. Advance planning funds shall not exceed the funds required for advance planning as justified by a written cost estimate approved by the Director, Area SFC Program. They cannot be used for construction.

IV. Indirect Costs

The Working Draft Memorandum of Agreement (MOA) Guidelines that were distributed to the Area SFC Programs are now being used for the implementation of most P.L. 86-121 SFC projects. The MOA Guidelines provide for the payment of project Administrative Support Fees (ASF) from project funds to tribes in lieu of program administration indirect costs (see MOA Guidelines, Chapter 6, Part A). However, now most of the tribes have Tribal Organization Indirect Cost Negotiation (IDC) Agreements with the Federal Government that establish standard rates to cover indirect costs of tribes that administer their own programs. IDC Agreements are negotiated with a tribe by the cognizant Federal agency on behalf of all the Federal agencies that provide eligible Federal funds to that tribe. The cost principles for IDC Agreements are presented in Office of Management and Budget (OMB) Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments". IDC rates are often different from the ASF rates established in the MOA Guidelines. Typically, during the drafting of the Project Summary and the development of the cost estimate, the Tribe and the IHS agree whether ASF or IDC Agreement rates will be used for the project. Both rates cannot be used. Clarification on the use of ASF and IDC Agreement rates is provided herein.

In calculating the indirect cost rates, only those costs associated with the administration of the project shall be considered, including bookkeeping costs, photocopying costs, some travel costs, and some personnel costs. Money passed through by the tribe to construction contractors and subcontractors are typically not included, some IDC Agreement's may allow the rate to apply to pass through funds. Table 9-1 defines the terms used in describing indirect costs and Table 9-2 identifies the standards for direct and indirect costs for tribal governments.

In calculating the indirect costs associated with a Self-Determination contract for a construction program, an initial contract proposal must contain the amount of funds requested, including an identification of funds the Indian tribe or tribal organization requests to recover for indirect contract support costs.

The funding request must include either a copy of the most recent negotiated IDC Agreement; or an estimated amount requested for indirect costs, pending timely establishment of a rate or negotiation of administrative overhead costs.

Predetermined rates for computing indirect costs (including pass-through costs) are negotiated only where cost experience and other pertinent facts are available to allow the tribe and the cognizant Federal agency to reach an informed judgment. The parties must agree (a) on the probable level of indirect costs during the period covered by the negotiated rate, and (b) on the probability that the amount allowable under the rate will not exceed the actual indirect cost.

An IDC Agreement establishes an indirect cost rate for a tribe to apply toward Federal funds used to administer tribal programs. Tribal indirect costs are charged against individual programs at a predetermined rate. The rate is calculated by expressing the overall tribal allowable indirect cost pool as a percentage of the total allowable direct cost base for the administration of all tribal programs. This procedure was developed to allocate common services costs which may otherwise be difficult to charge directly to programs. This assists tribes by reducing accounting transactions and lessening administrative burdens, as the indirect rates are uniformly applied against all tribal programs. Tribes can renegotiate rates for projects, where the cost greatly exceeds their normal annual budget for Federal contracts. Also, the IHS can request that the IDC agreement be amended to include an IHS project in the direct cost base. This can lower the indirect cost rate.

All programs contributing to a tribe's indirect cost pool (including but not limited to those listed in a tribe's allowable direct cost base) are expected to pay their fair share of the tribal indirect cost using the indirect cost rate. A tribe may elect not to charge an eligible Federal program for indirect expenses at the indirect cost rate. However, that tribe must then contribute the difference in indirect cost collections with funds from non-Federal sources, because the under-recovery of costs from one agreement is an unallowable cost to other agreements. Failure to follow the procedures established in OMB Circular A-87 (or other cost principles which may be agreed to by the cognizant Federal agency) creates audit problems for a tribe during subsequent reviews by the cognizant Federal agency, as well as for the tribe's annual audit as specified in OMB Circular A-128, Audits of State and Local Governments.

Table 9-1. Definitions

Capital expenditures are defined as the cost of the asset including the cost to put it in place. (See also Attachment B of OMB Circular A-87). Within the SFC Program capital expenditures would include the cost of materials, equipment, labor and professional services directly related to the work necessary to provide the new or improved sanitation facility, which would be capitalized as a part of the total project cost. [Note: An example of an applicable labor cost would be force account construction crew members working directly on a facility. However, the cost of construction administration services provided by a tribe (e.g. payroll preparation) in support of the crew would not be a capital expenditure. Such costs would be considered an allowable direct cost.]

The cognizant Federal agency for negotiating IDC Agreements with federally recognized Indian tribes and Alaska Native villages is the Department of the Interior, Office of the Inspector General or the Department of Health and Human Services Cost Allocation Group. The cognizant Federal agency is typically that agency contributing the most Federal funds.

Direct costs are those activities and operations of a tribe that can be identified and allocated to a particular cost objective, which are necessary to administer and carry out the program.

Indirect costs are (a) costs incurred for a common or joint purpose benefitting more than one cost objective and (b) costs not readily assignable to the cost objective specifically benefitted. (Note: A typical example of an indirect cost is the retainer fee for an attorney who works for several tribal programs. The actual time an attorney spends preparing paperwork for a specific project is generally treated as a direct cost.)

Pass-through (Flow-through) rates are indirect rates which are applied against specific funding for such items as major subcontracts, payments to participants, stipends to eligible recipients, capital expenditures, and subgrants, which normally require minimal administrative effort.

Table 9-2

OMB Circular A-87 identifies standards for direct and indirect costs for tribal governments:

1. Indirect cost rates are only chargeable against an allowable direct cost:
2. The test for allowable indirect costs centers on the use of the funds and if that use reflects a direct cost to a tribe.
3. The test for allowable indirect costs does not depend on whether the funding originates from program funds or from project funds.
4. Capital expenditures, such as those experienced in the construction of sanitation facilities by the SFC Program, are normally an unallowable direct cost against which IDC rates are applied.
5. The cost of contracted professional services, such as engineering planning, design, construction management, and operations and maintenance (O&M) training are also normally considered unallowable direct costs.

- For example, if a tribe receives EHSA funds to operate a SFC Program and uses those funds to hire engineers as permanent tribal employees, the entire cost is typically a direct cost against which an IDC rate may be applied. If, on the other hand, the funds are used to hire an engineering firm to provide engineering services, the cost of a professional services contract is generally not an allowable direct cost. In such a case, only the cost of tribal management of the engineering contract is considered a direct cost against which the IDC rate may be applied.

6. Indirect costs do not apply to tribes that have fixed-price contracts to construct sanitation facilities through P.L. 93-638, Buy-Indian or other type of Federal contract. These indirect costs and any other fee or profit must be included in the accepted bid price.

As shown in Table 9-2, OMB Circular A-87 identifies the allowable and unallowable direct costs for tribal governments. When available and applicable, indirect rates established by IDC Agreements should be used by the SFC Program. Each IDC Agreement is a unique document which establishes tribal accounting principles and the basis by which tribal allowable direct and indirect costs are identified.

As part of SFC Program and/or project development, tribes having IDC Agreements should be identified and complete copies of those agreements (including exhibits) acquired. Applicable IDC Agreement requirements should be reviewed early in the planning process. Copies of the agreements are usually available through Area Contracting Office or the HQ Office of Tribal Activities, Division of Self-Determination Services.

When a tribe does not have an IDC Agreement, the ASF in the MOA Guidelines is used to establish all tribal administrative fees for P.L. 86-121 construction projects. When an indirect cost rate established by IDC Agreement is used, the ASF is not used.

When the SFC Program has been contracted (Title I) or compacted (Title III) to a tribe under P.L. 93-638, EHSA funds are transferred to the tribe. When a portion of the EHSA funds are identified by the tribe and IHS as being an allowable direct cost, a fair share of tribal indirect costs will be paid using the IDC rate. These funds would be provided from the IHS Services Appropriation funding for contract support. To the extent feasible, the amount of the EHSA funds considered to be allowable direct costs and the resulting allowable indirect cost should be identified in the funding instrument [e.g. contract, annual funding agreement (AFA), or AFA Addendum (AFAA)].

When a tribe is administering an individual P.L. 86-121 construction project as part of a contracted or compacted SFC Program, or under an MOA, a pass-through indirect cost rate may apply. Only a few IDC Agreements have established pass-through rates. The application of a pass-through rate will be described in the IDC Agreement itself. Each IDC Agreement, contract, AFAA, and/or MOA must be reviewed prior to the application of this IDC rate.

In smaller tribal organizations, construction projects are often infrequent events of short duration and high dollar value relative to other tribal programs. Thus, the allowable direct cost base on which the IDC rates are established may be quite small, when compared to the proposed project budget. Under such conditions it may be appropriate to contact the tribe and the cognizant Federal agency and request that the IDC rate be reviewed and up-dated as part of the proposed project planning sequence so that estimated direct costs for the project can be included in the tribal allowable direct cost base.

V. Contingencies

Public Law 86-121 sanitation facilities projects historically have identified a percentage of project cost that could be utilized to fund work associated with unanticipated conditions of the construction work. By regulation, Subpart J construction contracts have specific requirements for handling contingency funds. Areas must have project contingency funds allocation policies and principles which meet those requirements and which can be consistently and fairly applied among all three delivery options, direct service, Title I, and Title III. Contingencies are described in more detail in the Grey Book.

The methodology for contingency is to be applied to all sanitation facilities projects, including federally managed force account projects and Title I contracts. The Federal government would not hold contingency funds for Title III tribes. Under this methodology a Title III tribe would act as the government (as in government managed force account). The Title III tribe would develop and manage a tribal contingency risk pool.

For Title I contracts, all IHS fund transfers will be based on allowable costs as delineated in the Project Scope and agreed upon by the IHS and the Tribe. Any potential project cost overruns will be brought to the attention of IHS by the Tribe at the earliest possible time, in accordance with procedures established in the Subpart J contract. The Tribe and IHS will cooperatively share the risk of increased project costs, by placing 50 percent of the available contingency funds in the contract and 50 percent in the Area-wide "Risk Pool" (see Figure 9-1). If a Risk Pool is not available, a reduction of the scope of services provided is negotiated. The IHS will make available the contingency funds retained for this project for IHS approved cost increases to the original scope of the project, but not for cost increases associated with project enhancements. Contingency funds in excess of the amount retained from this project may be available from the "Risk Pool" for contingency cost increases approved by IHS. If the Tribe completes the project at a cost below the contract amount, including 50 percent of the contingency, remaining contract funds may be utilized by the Tribe for IHS approved project enhancements.

Contingency applies to construction funding; contingency for the design phase is not referred to in the Title I regulations. P.L. 93-638, Section 106 (1), states: "The amount of funds provided under the terms of self-determination contracts entered into pursuant to this Act shall not be less than the appropriate Secretary would have otherwise provided...." It is suggested that design phase contingency be negotiated and included in the contract, so that it is consistent with the Area's historical practice.

The sum of project costs (materials, labor, equipment, services) listed in the Project Scope or Project Summary cost estimate table identifies the amount of funding needed to complete the anticipated work. A contingency amount is calculated as a percentage of the project cost estimate and is then added to the estimate. The resulting cost figure is the funding (the amount requested) that is normally identified for the proposed project.

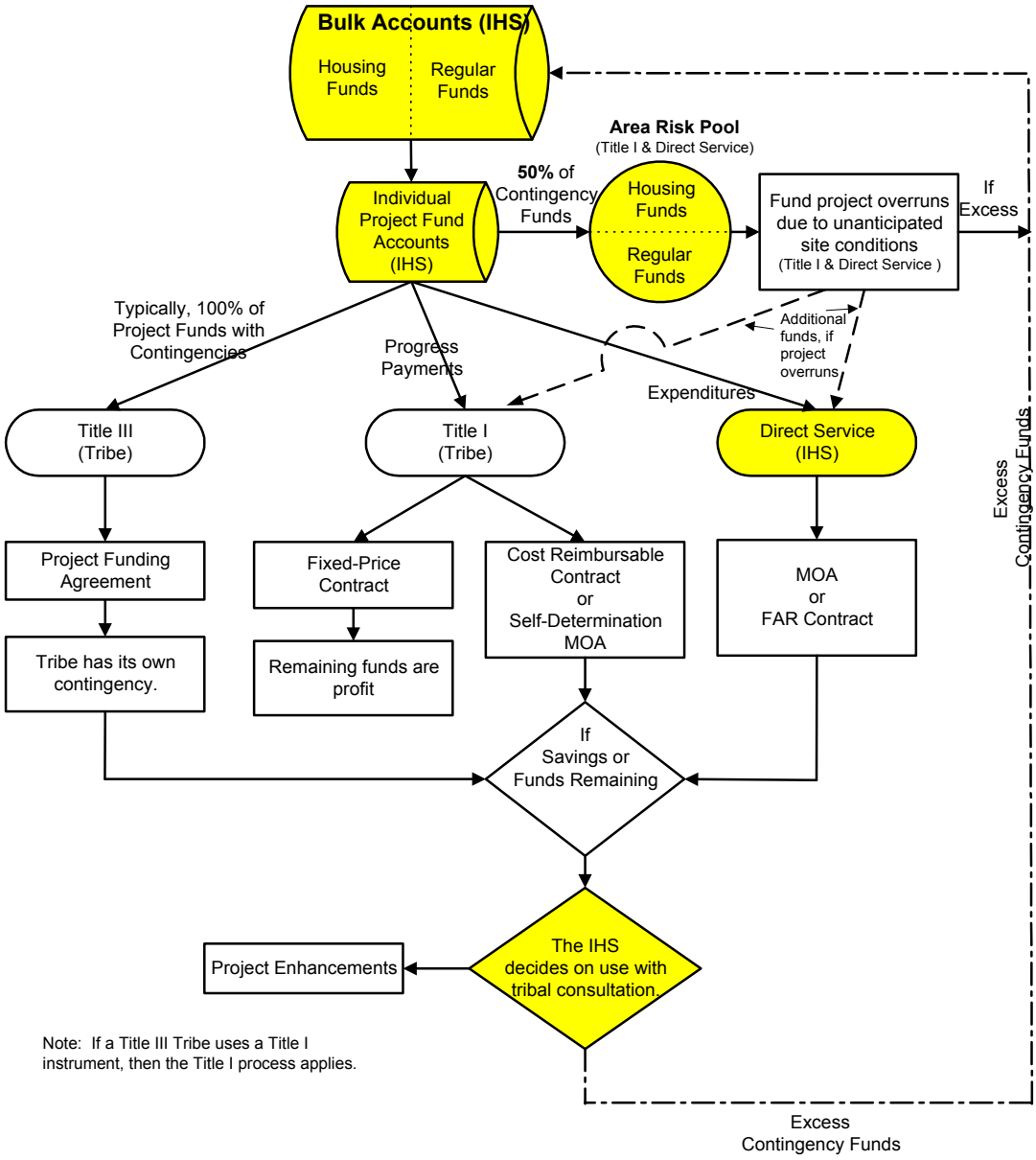
For project enhancements beyond the work defined in the Project Scope, only the identified contingency amount plus remaining project funds (savings) can be used with the approval of the Secretary. If contingency funds remaining cannot cover anticipated enhancement costs then the savings would be returned to IHS to first be kept for the risk pool and second, to be combined with other savings and used for new projects.

Historically contingency amounts have ranged from 7 percent to 15 percent. The percentage identified as contingency is usually based on the nature of the work (e.g., complexity) and the lack of exact knowledge of the estimator (e.g., unknown subsurface conditions or adequacy of source).

Most projects involve a degree of risk. If a contingency fund amount is allowed, then this fund provides a sum of money that would provide for items or services needed to overcome the unanticipated conditions and complete the work.

Figure 9-1

Disposition of Savings and Excess Contingency Funds



Project Savings

Project savings are the remaining project funds after a project is completed as described in the Project Scope. If the savings are great and depending on the project, the risk, and the funding amount, the use of the savings shall be determined by the IHS after consultation with the tribe, as provided in Title III, Section 310 in the following laws:

- H.R. 3019/Public Law 104-134 Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Approved Apr. 26, 1996; 110 Stat. 1321)

- H.R. 3610/Public Law 104-208 Omnibus Consolidated Appropriations Act, 1997 (Approved Sep. 30, 1996; 110 Stat. 3009)

- H.R. 2107/Public Law 105-84: A bill making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1998, and for other purposes.

Section 310 states: "Where the actual costs of construction projects under self-determination contracts, compacts, or grants, pursuant to Public Laws 93–638, 103–413, or 100–297, are less than the estimated costs thereof, use of the resulting excess funds shall be determined by the appropriate Secretary after consultation with the tribes."

Project budget savings is discussed in more detail in the Grey Book.

Contingency Needs Exceeding the Amount Identified for a Project

The Director, Area SFC Program will determine if funding in excess of the project amount plus contingency identified for a project will be provided. An analysis of the project scope, the initial estimate, and the unforeseen circumstances which lead to the exceedences will assist the Director, SFC Program, to determine what is needed to complete the project. This also is discussed in more detail in the Grey Book. Solutions may include a reduction in scope of the project, use of additional contingency funds, or justifying new funding by meeting funding criteria (i.e., SDS or HPS) of other agency contributors or IHS.

Excess Contingency Risk Pool Amounts

The funds in the contingency risk pool are identified with a project but are not defined as part of that project. As projects are completed and some funds are retained, the amount in the pool could increase as more projects are completed at or under the amount of project available funds.

The SFC Program Director shall regularly review the status of the contingency pool, at a minimum of once per year, to determine if any adjustments are needed to maintain it at an acceptable level for the active projects under construction. Typically, this pool shall range from 2 to 5 percent of the total amount of undisbursed project funds for the Area. If the pool falls below an acceptable level, the Director should consider methods for increasing the pool, such as adding unexpended funds from completed sanitation facility projects to the pool. If the pool exceeds the necessary level, the Director should consider withdrawing excess funds from the pool to fund additional new projects. Any additional projects shall be selected using normal Area procedures for prioritization of projects.

VI. Allowable Program and Project Expenses

Under the "Indian Health Facilities" appropriation, Congress designates program funds and project funds separately as noted previously. Although there is no definitive list of allowable costs for each type of appropriated funds, the fact that Congress has separated them implies that Congress expects the IHS to use SFC project funds only for sanitation facilities for homes of American Indians and Alaska Natives. Program funds (Environmental Health Support Account) are appropriated to operate environmental health programs and pay for IHS staff salaries, benefits, training, travel, rent, office equipment, and other recurring expenses associated with program operations. Project funds generally are for expenses associated with non-recurring construction projects. Both program funds and project funds are used to plan, design, and construct SFC projects. Also, contributed funds from other agencies and tribes are used to both reimburse program expenses and to construct sanitation facilities. The differences in funding sources make it necessary to provide policy guidance describing what expenses can be charged to each type of fund.

Allowable Expenses For Contributed Funds

The use of funds contributed to the IHS from other Federal or non-Federal sources is primarily dependent on the written agreement between IHS and the contributor (original source of the contribution), which must explicitly designate the use of the funds. Depending on the specific agreement, it may be possible to fund expenses from contributed funds that would not be allowable if charged to IHS appropriated project funds. One example is the salaries, benefits, and travel of permanently employed IHS Federal engineers. The key test is that the tribe and the contributor (original funding source) both agree that the specific expenses are allowable. For example, if another Federal agency makes a grant to a tribe for construction of sanitation facilities, the tribe may forward the grant funds to IHS for administration and engineering of the project. IHS may use the funds to pay the wages of a permanent IHS engineer, the GSA vehicle the engineer drives, and the computer for that engineer only if the tribe and source agency explicitly agree in the written agreement (e.g., Interagency Agreement (IAG), MOA, or in letters thereafter) that the salary, vehicle cost, and computer each are allowable costs against the grants funds. If a flat-rate project support cost is charged to those same grant funds, the tribe and source agency must agree in writing to the amount of the project support costs and the specific use of the funds. For example, if the 10 percent project support costs (also known as technical support or engineering support costs) are used to purchase computers for engineers or pay salaries for staff in the IHS contracting office, IHS must first obtain the written approval (e.g., IAG, MOA) of the tribe and contribution source. The agreements must also state the post-project disposition of any personal property, equipment, and leftover construction materials purchased with contributed funds. Unused contributed funds must be returned to the source contributor unless otherwise agreed to by the parties.

Allowable Expenses for IHS-Appropriated Project Funds

IHS-appropriated project funds are used to purchase construction materials, skilled and unskilled construction labor, construction equipment, and/or construction contracts for materials, labor and equipment. IHS project funds may be used for certain other expenses if certain tests are met. IHS project funds may not be allowable for other expenses. These categories are outlined below in Tables 9-3 through 9-5.

Using IHS-Appropriated Project Funds for IHS or Tribal Personnel

Historically, the IHS, at the direction of Congress, has not funded permanent staff with project funds. Congressional intention is to fund the cost of permanent staff from recurring program funds. Because of the non-recurring nature of project funds, only project-funded temporary staff appointments or term appointments were allowed. In the FY 1994 IHS budget to Congress, the problem with limitations on extensions of term appointments for valuable temporary employees was addressed. The Senate Appropriations Committee responded favorably, but with the following cautionary language:

> "The Committee expects the IHS to move with caution in converting temporary construction workers to permanent Federal status. In particular, the Committee is concerned that changing regional demand for construction projects could result in a large number of employee relocations over the years."

Table 9-3
Allowable Expenses With IHS-Appropriated Project Funds

- Construction materials
- Construction equipment, tools (backhoes, surveying equipment)
- Construction contracts
- Design contracts
- Construction inspection contracts
- Wages, travel, training, for project foremen, equipment operators
- Wages, travel, training, for skilled and unskilled laborers
- Vehicles used for planning and managing SFC projects
- Temporary warehousing of construction materials and equipment
- Tribal capacity building (e.g., O&M training) when associated with a specific project

Table 9-4
Conditionally Allowable Expenses With IHS-Appropriated Project Funds
(See Test Criteria Below)

- Wages, travel, training for project inspectors/representatives/technicians
- Wages, travel, training for surveyors, draftspersons, clerical staff, office technicians
- Tribal Indirect costs or tribal administrative fees (See Chapter 8, Section IV)
- Personal property such as computers, office equipment, and field radios
- Books and other technical references

Table 9-5
Prohibited Expenses With IHS-Appropriated Project Funds

- Salaries, benefits, non-project travel, and training of permanent engineers and sanitarians
- Most other permanent Federal/tribal employees, except as noted below in this section (i.e.,permanent tribal employees of SD/SG tribes who have contracted or compacted for the SFC program)
- Rent, utilities, and other recurring expenses for permanent office space.
- Operation of tribal water and sewer systems

Therefore, as of 1994, we believe that Congress has no absolute prohibition against using SFC appropriations for permanent construction personnel. However, the following definitions and conditions apply:

1. The use of sanitation facilities construction project funds to pay for permanent IHS or tribal personnel is not to become a standard practice. It is prohibited to fund from project funds permanent personnel that will or must be relocated or terminated when a project at a particular location is completed. Permanent construction workers must possess knowledge and skills needed on a continuing basis for both current and future projects. Before converting temporary employees to permanent employees, IHS managers need to be aware of Reduction in Force (RIF) expenses that could be charged to projects.
2. Only personnel in certain positions (either permanent or temporary) working directly on sanitation facilities construction projects can be funded (wages, travel, training) from project funds. These persons must be engaged in only sanitation facilities construction support activities on one or more SFC projects at any time. This is limited to the following types of positions: Engineering technicians, construction representatives, construction inspectors, equipment operators, and clerical support staff who work on project activities at the field level. It may also include project clerks, project accounting technicians, logistical support staff , construction contracting specialists, and other Area support staff who work exclusively on SFC project related activities. <u>The key test is that these positions (funded from projects) would not</u>

exist if there was no SFC Program.

3. IHS appropriated SFC project funds cannot be used to pay for permanent professional engineering staff and other professional environmental health personnel who develop and design sanitation facilities projects; oversee the work of engineering technicians, construction inspectors, and other support staff noted above; manage program budgets; provide recurring technical assistance or training to tribal operators or others; and all other environmental health program managers.
4. IHS appropriated SFC project funds can be used to pay for personal services contractors who work solely on SFC projects. This includes professional engineers under a personal services contract.

Purchase of Equipment, Personal Property, and Other Items with IHS-Appropriated Project Funds

IHS appropriated project funds may be used to purchase necessary items directly related to the planning, design, construction, and management of sanitation facilities projects. These items could include construction tools, surveying equipment, backhoes, printing, computers, software, plotters, temporary project-site offices, hard hats, and technical reference materials. Whether or not such items can be purchased with project funds must meet the following test criteria:

1. The items purchased are necessary for one or more SFC projects, and their use in program management activities will be negligible. Note that project activities and non-project (program) activities are described in Tables 7-1 and 7-2 of this document.
2. The types of goods to be purchased are to be listed in each project summary in sufficient detail for review and approval by the IHS program managers and the tribe. Such major expense items as construction equipment, computers, surveying equipment, and drafting software must be explicitly listed (not necessarily described). These proposed expenses cannot be hidden. Sufficient information, including total cost to the project, must be presented in the Project Summary so that IHS managers and tribes are aware of what these funds will be used to purchase, whether it's personnel and/or equipment. An example Project Summary line-item cost with a statement (as a footnote) may be as shown in Table 9-6.
3. When project(s) are completed, the items purchased with project support funds can either remain with the SFC Program to be used on another project, or be transferred to the tribe unless otherwise specified. The post-project disposition of the items must be established in the agreements for each project. An example MOA clause is as follows:

"That from the total amount of funds made available to this project, an amount up to $100,000 will be reserved [by IHS] for project support activities, personnel, and/or equipment as described in the Project Summary. Upon completion of the project, the IHS will retain any computers purchased for use on future SFC projects, and all other equipment, including the surveying equipment, will be transferred to the Tribe, unless the parties otherwise decide on the disposition of remaining property purchased from the Project Technical Support funds for this project."

Alternatively, the Area may develop a detailed policy describing what is allowable and what is prohibited using project funds. The policy should also include the disposition of property upon the completion of the projects. This policy must be incorporated into the project

Table 9-6
Example Project Summary line-item for Project Support

Project Support *:	$100,000

* The Project Support amount will be used to fund IHS personnel and equipment that directly support this project. The IHS personnel include a contracting specialist, draftsman, construction inspector; it does not include IHS professional engineers' salary. The equipment that may be purchased includes surveying instrument, computers and software for the project engineer and draftsman, and vehicle charges. The Abcalnavji Area will follow its Project Support Funds Policy No. 98-12 for all purchases made with Project Support funds.

agreements by reference and provided to the parties to the project agreements for their approval along with the project agreements.

Project Technical Support Accounts

While technical support expenditures (also known as project support or engineering support expenditures) for SFC technicians, equipment, etc., may be directly identified with a specific project, some technical support activities/equipment often benefit multiple construction projects, and the costs are not easily assignable to one project. Rather than pro-rate these expenses to each project, a specified percentage of each SFC project's funds may be transferred to a Project Support Account to cover shared costs associated with the planning, design, and construction of multiple projects. The percentage normally ranges from 8 to 15 percent. Often, the funds from multiple projects are combined into a single account. Project support accounts can be Area-wide or District-wide. However, regular funds, housing support funds, and contributed funds should not be commingled. Thus each Area should have separate project support accounts for regular, housing support, and contributed funds.

Note that expenses charged against project support accounts must comply with the criteria for allowable costs noted above. Project support accounts are not for so-called indirect costs that indirectly support the operation of the Federal or tribal government (i.e., taps for legal departments and other overhead expenses).

Each Area shall develop its own policy for administering project support accounts. The amount of project support funds, in terms of a percentage of each project, is determined locally and should be reviewed and approved annually by the Area SFC Program Chief with input from the Area Tribal Advisory Committee. The annual review should determine whether there are adequate project support funds in reserve to complete all funded construction projects on the premise that no additional construction funds are appropriated by Congress. Conversely, the percentage should be lowered if it is determined that the reserve is larger than needed.

CHAPTER 10. Reporting Systems

A number of reports are required by IHS Headquarters to monitor program status, to prepare budget requests and justifications, and to respond to Congressional and other inquiries. Reports are required to comply with agreements made with other agencies and to comply with many Federal environmental laws and regulations. The frequency, content, and format of such reports shall conform with the latest headquarters guidance relative to the specific report. Table 10-1 lists the major data systems and reports that are used by the SFC Program for management of the program at the Area and HQ levels.

Table 10-1. Data Systems and Reports

Data Systems used by SFC Program:
- Sanitation Deficiency System (SDS)
- Project Data System (PDS)
- Operation and Maintenance Data System (OMDS)

Required Reports from Areas:
- Annual SDS Report
- Semi-Annual PDS Reports
- Annual Housing Support Funds Report
- Year-End Report
- CWA Indian Set-Aside Program Progress Reports
- Federal Archeology Program Questionnaire
- Housing Priority System (HPS) Report

I. SDS Requirements

The 1988 amendments to the Indian Health Care Improvement Act (IHCIA), P.L. 94-437, require IHS to maintain inventories of sanitation deficiencies for new and existing Indian homes and communities, to prioritize those deficiencies, and to annually report them to Congress. Since 1989, IHS has annually reported these needs to Congress in the form of needed projects. Projects are identified in terms of the facilities to be provided, the cost of those facilities, and the number of homes to be served by the facilities. The inventory of sanitation facilities needs for existing homes is maintained in the IHS Sanitation Deficiency System (SDS). The data are updated annually to account for inflation, changing state and Federal regulations, to add new deficiencies, and to delete the deficiencies addressed by projects funded by IHS and others. Sanitation needs for new and like-new homes are maintained and up-dated annually. These sanitation deficiency inventories are primarily used for internal program management, budget formulation and justification for appropriations, and are a basis for resource allocation to Areas and tribes. Just as important, they also are used to provide a wide variety of information to members of Congress, the Office of Management and Budget (OMB), the General Accounting Office (GAO), the Environmental Protection Agency (EPA), and various other Federal entities who are interested in the needs of tribes.

Guidelines are required to ensure uniform Area standards and procedures for identifying deficiencies, and in planning and prioritizing projects. Priority shall be established in accordance with the latest issuance of "Guidelines for Reporting Sanitation Deficiencies for Indian Homes and Communities," and will be entered into the SDS. Any deviation from these practices must be approved by the IHS Headquarters SFC Program.

Note that all tribes, regardless of SFC Program delivery method, report their SDS needs similarly and participate equally in the allocation process, in accordance with Sections 302(g)(2) and 302(g)(3) of P.L. 94-437, as amended. (See Appendix 1 for the citations.)

<u>How to Submit a Project to the Sanitation Deficiency System (SDS)</u>

Each Area Office's SDS project requests must be submitted to the IHS Headquarters SFC Program by August 1st of each year. The SDS project information will be used to update the SDS priority list of projects that IHS submits to Congress, as required by the Indian Health Care Improvement Act, P.L. 94-437, as amended. See Appendix 2 for a discussion of the SDS reporting procedure. Figure 10-1 summarizes the SDS process. Table 10-2 lists key dates.

In general, only deficiencies which can be corrected by projects or project phases eligible for funding under the current eligibility policies of the SFC program can be included in the SDS. The only exception is projects to serve HUD homes. These projects can be prioritized but cannot be funded with IHS appropriations. The HUD contributions should not be entered in the same fields as IHS appropriations. The SDS program's data input screens have separate fields for IHS costs, HUD contributions, and other contributions. Some non-eligible homes or businesses can be included in an

SDS project (primarily for the benefit of Indian homes), but the prorated cost to serve them must be identified in the SDS as coming from contributions.

Do not include economic development projects in the SDS data, even if they involve water, sewer, or solid waste. For example, fertilizer processing from sludge or power generation from solid waste are normally not eligible projects.

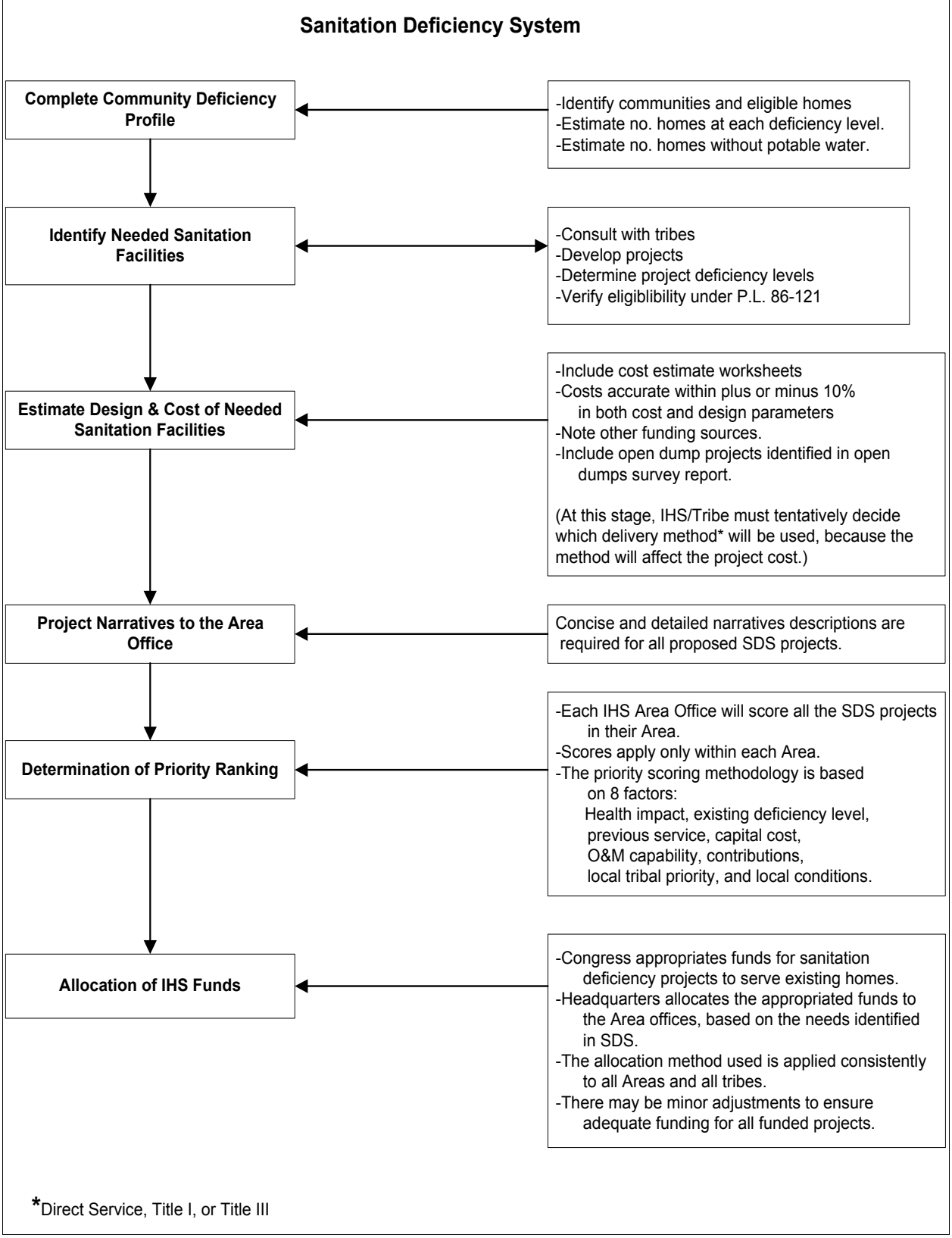
Table 10-2

Date	SDS Milestone
April-May	Identify sanitation needs to IHS Area Offices
June	Deadline for submission of needs (Check with your Area Office to determine the exact date.)
August 1	SDS project information due in IHS Headquarters
September-November	IHS Headquarters reviews SDS project submissions

To enter their respective projects into the SFC project priority systems, Self-Governance tribes must provide the required SDS data to the IHS SFC Program. Sanitation deficiencies must be reported annually by Self-Governance tribes for their projects to be ranked and prioritized with the projects of all tribes in the Area. The deficiency levels, listed in Section 302 of P.L. 94-437, are determined for each project or project phase and applied uniformly to all SDS projects in the Area, as required by Section 302. Based on the data provided, the IHS determines the project scores for all SDS projects in the Area.

On an annual basis, the Area SFC Program Directors should transmit to the Self-Governance tribes the schedules for submitting, SDS and housing support project needs data. (See the Appendix of the Yellow Book for an example of a transmittal letter to tribes.)

Figure 1. SDS Flow Chart



II. PDS Requirements

(See the latest version of the Working Draft of the "Project Data System (PDS) User's Guide" and "Project Data System (PDS) Technical Manual" for more complete information.)

PDS includes data and milestones for each sanitation facilities project constructed under the authorization of P.L. 86-121. PDS is the only source of information readily available to Headquarters on active projects. The information in PDS is used to track the progress of projects, aids in project management, and provides Headquarters with information to present to the Congress and others as requested. The report on new and like-new housing support funds is part of PDS. Within Area SFC programs, PDS is used to schedule, budget, and evaluate the general status of projects.

Data in PDS includes project identifiers, geographical information, financial information, target and completion dates, type of service, types of homes, location of homes, and information on related projects such as HUD housing projects. PDS is used to determine relative project workloads under the Resource Requirements Methodology (RRM), which was discussed in Chapter 7. It provides the number of projects and funding amounts, by project years and funding levels. The RRM is calculated automatically in the Reports section of PDS (see PDS User's Guide). The accuracy of the Project RRM is contingent on the accuracy of the PDS data.

Area SFC Programs are requested to maintain and update PDS semi-annually to keep it accurate and current. Tribes are encouraged to provide their respective Areas with data to update the PDS, because the allocation of the IHS appropriated program funds among IHS Areas is determined by Headquarters utilizing mostly PDS data.

III. OMDS Requirements

(See the latest version instructions for the "Operation and Maintenance Data System.")

The Operation and Maintenance Data System (OMDS) is an inventory of all reported tribal water systems, sewerage systems, solid waste systems, operation and maintenance organizations, and IHS resource expenditures for operation and maintenance (O&M) activities.

The OMDS links SDS projects to identified water, sewer, and solid waste systems and with other IHS data systems that have O&M type information; e.g., the Facility Data System (FDS) and the Dental Fluoride Tracking System (DFS). FDS is used by IHS sanitarians to track data from inspections of health clinics, hospital, food service activities, Headstart schools, and other health related facilities. FDS is also used to record information obtained from sanitary surveys. DFS is used by the IHS dental program to track fluoridated Indian water systems and the maintenance of effective fluoride levels in those water systems.

IHS encourages all Tribes or Alaskan Native Organizations that have O&M responsibility, direct National Primary Drinking Water Regulation (NPDWR) compliance responsibility, NPDES compliance responsibility, or RCRA compliance responsibility, to provide data to their respective Area offices. Drinking water systems should be included even if they have not been assigned an EPA Public Water System identification number (PWSID).

Non-Indian owned systems for which a Tribe has no legal or operational responsibility should not be included in the OMDS even if they serve substantial Indian populations. Those systems normally do not require any O&M technical assistance from IHS or tribes and receive their operating revenue from other sources.

IV. Other Required Reports

HPS Report. The Housing Priority System (HPS) report is a project status report which identifies how housing support funds were allocated by the Area SFC Programs to new and like-new housing sanitation facilities projects. As a minimum, this report shall show house identification numbers and location information for each home to be served by the project. The report shall be submitted to the IHS Area Office and made available to the Area Tribal Advisory Committee (TAC), if requested. The purpose of the report is to inform the IHS Area Office and the Area TAC of how previously allocated funds were committed and to record specifically which homes were served with IHS funding. This information is needed to justify new funding requests and to assist the TAC to recommend policies for project funding priorities. The TAC may wish to request that additional information be provided in the report to better enable the TAC to form these recommendations.

Federal Archeology Program Questionnaire. Annually, the Secretary of the Interior requests all Federal agencies to provide program and financial data on their archeology programs and projects for the previous fiscal year. Submitting the information is required by the Archeological and Historic Preservation Act and the Archeological Resource Protection Act. The IHS SFC Program must submit data on the archeological clearance work that occurs prior to construction of sanitation facilities construction projects. The data are compiled by DOI and published annually in a national report.

CWA Indian Set-Aside Program Progress Reports. In compliance with the CWA IAG and MOU between the IHS and the EPA, the Headquarters SFC Program must provide the EPA with an annual progress report that shows what sanitation facilities projects were funded or partially funded with CWA Indian Set-Aside grant funds. The report is used to justify the EPA's reimbursement of the IHS SFC Program for assisting the EPA by administering the grants, which is stipulated in the IAG. Area SFC Programs provide the data to Headquarters for forwarding to the EPA.

Year-End Report. The annual year-end report contains data from each Area SFC Program on the status of funded sanitation facilities projects, fund status, and ongoing major activities. The information in the year-end report is used to justify the sanitation facilities construction program budget requests during testimony for the subsequent Congressional budget hearings. An example year-end report is shown in Appendix 11. Table 10-3 shows the minimum requirements for the year-end report.

Table 10-3

Year-End Report Contents

A. Project Status
- Unexpended funds in projects older than four years
- Projects awaiting Final Report
  - Number at beginning of year
  - Number submitted to HQ
  - Number at end of year
- Unserved New Housing
  (Include number of new homes, by tribe, which are complete, but without sanitation facilities due to inadequate project funding.)
- Solid Waste Management Plans
  - No. Tribes With Plans
  - No. Tribes Requiring Plans
- Solid Waste Projects Funded

B. Update on the status of Special And Other Projects funded (Current fiscal year)
- Update on status of Emergency/Special Projects (Funded in last 4 years)

C. Fund Status
- Construction project contributions
  - Source of Contributions
  - Amount Received
- Consolidated Working Funds
- Disbursements
- Total Unexpended funds
- Regular funds and Housing Support funds
- Obligations--Regular funds, Housing Support funds, Special/Emergency funds
- Obligations by State

D. Supporting Data
- PDS reports
- Reasons for unobligated funds
- Explanations for entries above

[See Appendix 11 for more information.]

CHAPTER 11. Technical Requirements

Essential sanitation facilities include individual and community water supplies and facilities, sewage and solid waste disposal facilities together with necessary appurtenances and fixtures. Provision of sanitation facilities also should include training and equipment required to help establish an organization to accept the responsibilities for the future operation and maintenance of the facilities in an effective and safe manner. Projects shall be planned to provide or improve all water supplies, waste disposal (liquid and solid), and other sanitation facilities authorized by P.L. 86-121, which are deemed necessary to correct sanitation deficiencies unless economic or engineering considerations require a modification of this approach.

I. Minimum Design Standards

Table 11-1 lists the general design guidance for sanitation facilities construction projects. In addition:

1. Community-type facilities shall be given preference over individual facilities when they are feasible and economical and when the operation and maintenance of such facilities can be assured by a functioning organized body with jurisdiction.
2. Water systems shall be designed so as to provide a dependable supply of potable water to meet the domestic needs of those to be served. The needs may include water for drinking, culinary purposes, dishwashing, laundry, personal hygiene, waste carrying, and household cleaning purposes. The inclusion of fire flow is optional. The water supply shall meet the requirements of the National Primary Drinking Water Regulations.
3. The construction of community sewers shall be considered when density of population, proximity to adjacent sewered communities, anticipated future housing construction, soil conditions, economic, or other reasons support this approach.
4. Solid waste collection and disposal facilities shall be considered when the density of population and/or other factors indicate the desirability of such a system and a self-sustaining mechanism for continued operation and maintenance can be established.
5. Drainage facilities shall only be considered (1) as a means of mosquito control procedures when vectors of health significance are a problem; or (2) as a means of lowering a high groundwater table sufficiently to permit the installation of subsurface waste disposal facilities.

Table 11-1. General Design Guidance

- A registered professional engineer on each Area, District, or field office environmental health staff shall be designated to furnish technical direction and approval of all design and construction work.
- Plans and specifications for all community-type facilities shall be prepared under the direction of, reviewed by, and stamped and signed by a registered professional engineer.
- Compliance with recognized industry or National standards is required.
- Compliance with any applicable state and local (tribal) standards is required.
- Plans and specifications shall be submitted to the appropriate state agency, where the state has jurisdiction over the facilities provided.
- Compliance with state standards shall always be evaluated as an alternative during the design process. With tribal consultation, plans and specifications should be submitted, if the state agency is willing to review the plans and specifications as a service.

6. Water fluoridation units should be installed on all community water supplies constructed under P.L. 86-121 whenever the natural fluoridation concentration is below recommended levels for the location, in accordance with IHS National and Area policies. The Centers for Disease Control and Prevention published a fluoridation manual, "Engineering and Administrative Recommendations for Water Fluoridation." Fluoridation units shall not be installed if a tribal or community resolution prohibits fluoridation, or where a utility organization cannot operate and maintain the fluoridation system. Where fluoridation is not installed initially, electrical circuitry and plumbing fittings will be installed to facilitate installation of fluoridation units should the tribe or community decide to provide it in the future.

II. Minimum Worker Health and Safety Standards

The responsibility to follow policies and procedures established by the IHS and the IHS Area health and safety programs is shared by supervisors and employees. Each Area has the responsibility to implement and enforce the IHS and Area health and safety programs. Each Area SFC Program is responsible for evaluating and ensuring the effectiveness of the Area health and safety program.

Program managers, Tribes, and construction contractors should consult the Occupational Safety and Health Administration (OSHA) regulations in Title 29 of the Code of Federal Regulations (29 CFR) for a complete list of worker health and safety standards. Title 29 includes 29 CFR 1910, the standards for general industry, and 29 CFR 1926, the standards for the construction industry. Federal managers should also consult 29 CFR 1960 on Federal employees.

Program Directors and supervisors have the responsibility when assigning a construction activity to an individual employee, to ensure the purchase and issuance of employee safety equipment, to ensure the training of each employee concerning the use of personal protective equipment (PPE), to maintain employee safety and training records, and to maintain personnel rosters of employee certifications. Program Directors and supervisors have the responsibility to inform employees of the procedures to report a health and safety violation and for filing a workman's compensation report.

The Director of the SFC Program in each Area has the responsibility to coordinate and direct the health and safety program. This includes all appropriate record keeping necessary to comply with all federal requirements.

Project managers and supervisors (project engineers and foremen) who are involved in construction projects should receive appropriate training in all applicable construction safety categories. Suggested training topics are listed in Table 11-2. The type of and level of training shall be consistent with supervisor's and the employee's job function and responsibilities.

Supervisors are required to communicate the hazards associated with the workplace to their employees as specified by OSHA regulations at 29 CFR 1910.1200. The workplace is defined to include those areas where the employee performs assigned tasks either at the official duty station or in temporary duty assignments. At a minimum, IHS employees and contractors and their representatives must be informed of the physical and health hazards in the work area and measures employees can take to protect themselves from the hazards.

Each employee has the right to request of the immediate supervisor, reassignment from a designated job should the employee feel unprepared to complete the assignment in a safe manner due to the lack of equipment, training, or some other existing situation. Each request will be handled on an individual basis. The supervisor must contact program management regarding the request and develop a formal response to the employee.

<u>IHS Force Account Construction</u>

Policies governing government employees doing construction work are provided by the Office of Personnel Management [or the current federal government personnel agency]. Detailed specific procedures regarding injuries to force account construction workers must be provided in Area guidelines in those Areas that use this method of construction.

1. If the construction is done by MOA with IHS and tribal employees working together at a job site, the roles and limits of government supervision and responsibilities and authorities for construction safety should be clearly stated in the MOA.
2. In IHS force account work, an IHS project manager or foreman oversees the execution of the project, and schedules and directs the day to day operations at the job site.
3. All IHS project personnel should have training appropriate to the level of supervision and type of work being performed. Each working day of the project should begin with a review of proper safety practices (tailgate sessions). At the end of the day, safety practices during the day should be reviewed, also.
4. The foreman has the authority to remove any worker whose performance or conduct creates an safety hazard.

Tribal or Third Party Force Account

Safety at a Tribal or Third Party force account project site is the responsibility of the Tribal or Third Party construction supervisor. The Tribal or Third Party construction supervisor is responsible for complying with all applicable construction safety regulations.

1. The responsibilities and authorities of on-site IHS, Tribal, or Third Party personnel shall be discussed during the project planning phase and will be defined in the MOA.
2. IHS, as an observer, will be available to provide technical assistance to the Tribe on construction safety measures. If IHS officials observe any obvious health and safety problems, they will notify the Tribe, so the Tribe may take appropriate action. However, such advice will not relieve the Tribe of its liability if an accident occurs.
3. The Tribe or Third Party should obtain general liability insurance for the duration of the project.

Tribal or Third Party Procurement of Construction

When the Tribe or Third Party elects to construct the sanitation facilities project under an MOA and procures the construction, they administer the construction contract. The formal contract relationship lies between the Tribe/Third Party and the contractor.

- IHS is not a party to the contract. IHS's role is to act as technical advisor to the Tribe. IHS notifications and recommendations regarding safety issues should be made to the Tribe or the Third Party.

Contractor Responsibilities

The contractor has primary responsibility for work site safety on HHS, IHS contracts, including 638-contracts. The terms of contracts issued by the Area shall require each Contractor to comply with applicable provisions of tribal, federal, state, and local laws and regulations, including the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), "Safety and Health Regulations for Construction", (29 CFR Part 1926).

IHS Responsibilities–Work-Site Hazards

If an IHS official observes an obvious work-site hazard that could cause injury or death to construction workers, that official will verbally notify the construction supervisor or foreman and the contractor about those hazards. The official will request abatement of those hazards by a given time. The IHS official will also notify the contractor in writing and request compliance with the health and safety provisions of the contract. Where imminent danger[2] exists, the IHS official will request, either through the Federal or Tribal contracting officer, that the contractor stop construction at the danger point and take immediate action to remedy the danger. The incident should be documented including date, location, contract number, contractor, date and time of official notification, standard and regulation, recommended corrective action, and official signature.

On an IHS force account and IHS contracted jobs, the report will be sent to the Contracting Officer through the Director, Office of Environmental Health and Engineering (OEHE) at the Area.

The contractor's failure or refusal to comply with occupational safety and health standards and regulations following written notification will be cause for the Contracting Officer to issue a written order to the contractor to suspend all work on the contract. When the contractor corrects the safety deficiency to the satisfaction of the Contracting Officer or his Representative, a written work order to resume work will be issued by the Contracting Officer. It may be necessary to involve OSHA officials as well.

Insurance

Some form of insurance must be provided and maintained during the project including workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as may be required by applicable laws and regulations. Tribes should make sure they have adequate protection since all work-related injuries are considered compensable. Employers are charged with the responsibility for compensation of the employee and depending on the method of funding the project, the contractor, the Tribe, or the Federal government will be the responsible party. The appropriate amount of insurance will defray any legal fees and settlements in cases of serious accidents.

[2]Imminent Danger. Any conditions or practices in any place of employment which are such that it could be reasonable to expect these to cause death or serious physical harm immediately or before these conditions or practices can be eliminated through normal enforcement procedures. [29 CFR 1908.2]

III. Construction Site Safety for the Community

Attractive Nuisance. An attractive nuisance is defined as something that will attract the attention of children or onlookers to a project site. Construction project supervisors, foremen, and employees should take measures to keep children and onlookers out of and away from the construction site using necessary measures including barriers, signs, signals, flagmen, and public/community education.

A team should be established consisting at a minimum of the project Foreman and a Community Representative such as the mayor, system operator, or administrator. Additional members should be encouraged to participate including interested council members, school representatives, and project employees. The team shall conduct a walk through of the project site, material storage yard, shop, and other project areas attempting to identify attractive nuisances. The team should note potential injury hazards to children and onlookers, describe the safety concern or hazard, and identify reasonable solutions to keep children and onlookers away from the hazards.

The site inspection team shall meet with the community to discuss project safety. If a meeting of the entire community cannot be held, then meetings with smaller groups or door-to-door communication may be necessary. A summary report of the findings of the safety inspection will be presented at the meetings. The need to keep children and other onlookers away from the project site must be stressed emphatically at the community meetings.

The project Foreman and the community representatives shall develop a plan to formally notify the community of when/where future project related work will occur. Posting information at the Post Office and the community building is an example as well as announcing the information over the radio or publishing it in the local paper.

The project Foreman shall discuss at length with the project crew their safety and the need to keep children and onlookers away from the project sites.

If in the determination of the IHS Foreman or Project Engineer and the community, there are safety concerns or hazards that must be addressed before proceeding with a project, then that portion of the project shall be stopped until the safety concerns can be addressed. The Foreman and Project Engineer shall develop a plan to address the safety concern or hazard and implement it prior to starting up a project or a portion of a project.

Table 11-2. Safety Training*

Type of Training	Regulation (29 CFR)	Who	How Often
Safety & Health Regulation for Construction	1926	All†	Annual
Right-To-Know	1910.1200	All	Annual
Hearing Protection	1910.95	All exposed to 85 dBA	Annual
Confined Space	1910.146	Entry personnel	Annual
Respiratory Protection	1910.134	Anyone who might wear a respirator	Annual
Laboratory Safety	1910.145	All lab types	Annual
Flammable & Combustible Liquids	1910.106	All personnel who handle	Annual
Fire Extinguishers	1910.157	All	Annual
Lockout/tagout	1910.147	All	Annual
Forklifts	1910.178	Designated Drivers	Annual
Electrical Safety	1910.332	Any employee who could receive electrical shock	Annual
Welding, cutting, brazing	1910.252	Any employee who performs welding	Annual
Hazardous Materials	1910.120	All responders	Annual
Process Safety Management of Highly Hazardous Chemicals	1910.119	Affected persons	Annual
Compressed Gas	1910.101	Affected persons	Annual
Emergency eyewash/shower	Common Sense	All	Annual
New Employee Safety Orientation	Common Sense	All first aid responders	New Hires
OSHA Bloodborne Pathogen Standard	1910.1030	All	
Federal Employee Occupational Safety and Health	1960	All	
Personal Protective Equipment (PPE)	1910.132	All	
Hazards to the Hands	1910.138	All	

*This is not an all inclusive list. Consult the OSHA regulations in 29 CFR for complete safety requirements.

†Appropriate personnel and contractors.

IV. Rights of Way

The Area SFC Program has several different procedures that it may use to comply with the right-of-way (ROW) requirements. Tribal wishes and local BIA operating procedures are major considerations.

Permission to survey on tribal lands is adequately covered in the MOA where the Tribe grants permission for the IHS and its representatives to enter upon or across tribal lands for the purpose of carrying out the project outlined in the Project Summary. Coordination of such activities between the project engineer and the designated tribal representatives are necessary for effective implementation. Permission to survey must be obtained from the private landowners including owners of allotments, unless otherwise specified. A statement similar to the one included in the MOA should be adequate such as "____hereby grants permission to survey across___property for locating water and sewer mains etc." Permission shall be in writing.

Formal rights-of-way across tribal land are not required. The MOA provisions provide the authority to construct. This clause and coordination between the project engineer, the tribe, and the BIA should be adequate if the tribe is well informed and approves of the location of all facilities. Approval in writing is preferred by tribal signature on the project plans. Coordination with the BIA is required to identify any encumbrances which may exist on the land where the facilities are to be located.

Formal rights-of-way are required for community facilities located on private fee land or land held in trust for individuals by the BIA. The preferred approach is to obtain all such rights-of-way in the name of the Tribe, designated Tribal organization or other organization that will own the completed facilities. IHS should follow this approach and include the MOA clause that the Tribe will obtain all rights-of-way on or over Tribal lands that IHS requires for the provision and operation of any sanitation facilities, unless the Tribe has reasons for objecting to this procedure. The MOA clauses should be modified to include permission to enter both "tribal lands and tribal rights-of-way".

Rights-of-way for facilities constructed on fee land or allotments, which are to be owned, operated, and maintained by the homeowner are obtained using individual homeowner agreements (see Appendix 7). Any community facilities located on such land or individual facilities owned and operated by the tribe require a formal right-of-way, unless otherwise stipulated.

The BIA, under 25 CFR 150.3, has the responsibility to record and maintain records that affect titles to Indian land. Bureau policies determine the procedures IHS or the tribe must follow to record the location of sanitation facilities on Indian lands; local BIA offices should be contacted to determine the proper procedures. The preferred approach is for the tribe to submit the necessary maps of definite location to the Bureau for recording in official BIA records. This approach should be followed for facilities located on tribal land and individual allotments. The tribe should also submit the necessary documentation to record any rights-of-way on private land to the appropriate public land offices.

1. Rights-of-way or encroachment permits necessary for construction and operation and maintenance must be obtained prior to initiation of construction. Formal rights-of-way are not required when the owner/operator of the facility is the property owner; e.g., the tribe for tribal land, the individual homeowner or the allottee for individually owned facilities.
2. Rights-of-way obtained in name of IHS must be transferable. The recommended method is to have the tribe obtain the right-of-way in its name.
3. Rights-of-way for non-trust land must be recorded in the same public office where other land title records are kept in that locality.
4. Maps of definite location and/or official rights-of-way for facilities located on trust land must be submitted to the BIA for recording.
5. Rights-of-way requested in name of IHS shall not include indemnity and/or damages provisions.
6. Standards for right-of-way surveying and documentation should generally conform to the recommendations of the American Society of Civil Engineers Manuals and Reports on Engineering Practice No. 75, Right-of-Way Surveying.

[Editor's note: A *right-of-way* is a type of *easement*; however, they are not equivalent. Examples of easements include rights to tunnel under another's land and rights to access a well.]

V. Value Engineering (VE)

The Director, DSFC, OEHE, OPH, IHS Headquarters, is designated as the IHS official responsible for coordinating and monitoring the VE program for the IHS Sanitation Facilities Construction Program.

The Director of each Area SFC Program is designated as the IHS official responsible for coordinating and monitoring the VE program for the Area and has authority to waive the requirement to conduct a VE study on any specific sanitation facilities project in the Area based on the criteria below.

1. Selection of Projects for VE studies:
   - There is no requirement to conduct VE Studies for projects with construction cost estimates of less than $1 million.
   - For projects with construction cost estimates greater than $1 million (regardless of funding source), the Director of the Area SFC Program shall complete the "VE Project Selection Form" (see Appendix 10) for each such project. Projects with a score of greater than 25 points require a VE analysis.
   - For construction solicitations and contracts where the contract amount is estimated to be $100,000 or more, Federal Acquisition Regulations System (FARS) states that the contracting officer shall insert a value engineering clause in the solicitations and contracts. The contracting officer may include the clause in contracts of lesser value if the contracting officer sees a potential for significant savings. The contracting officer and the value engineering coordinator must review and accept or reject the value engineering change proposals within 45 days of receipt or advise the contractor in writing of the anticipated decision date.
2. Record Requirement. Completed VE Project Selection Forms shall be maintained in a VE file for reference. Documentation on all VE studies shall be maintained in project files.
3. Training. The Director of the Area SFC Program is responsible for ensuring that Area SFC staff have adequate training to carry out VE responsibilities.
4. Annual Value Engineering Plans. The Director, DSFC, of the Area shall review existing and new projects planned for the fiscal year at the beginning of the fiscal year to identify any projects which will include VE studies. The Chief, Headquarters SFC Program, shall be notified of any planned VE studies and will include such studies in the agency annual plan.
5. Reporting. The SFC Program Director from each Area shall provide information on VE activities and accomplishments to the Director, DSFC Headquarters, as requested, for inclusion in the required annual report to OMB.

As required by OMB Circular No. A-131, Value Engineering, each federal agency must report the Fiscal Year results of using VE annually to OMB, except those agencies whose total budget is under $10 million or whose total procurement obligations do not exceed $10 million in a given fiscal year. The reports are due to OMB by December 31st of the calendar year, and should include the current name, address, and telephone number of the agency's VE manager.

VI. Environmental Protection, and Historic and Cultural Preservation Requirements

As a federal agency, the IHS must comply with National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) and related environmental regulatory requirements (see Appendix 13 for additional information). The procedures for complying those environmental requirements are stated in the Environmental Review Manual, as previously stated. The NEPA process is illustrated in Figure 11-1. Authority for compliance with environmental laws and regulations was delegated to the Area Director with authority to re-delegate. When the Area Director signs the MOA and project approval form, he is the responsible Federal official and states that the SFC project complies with applicable environmental requirements.

A list of classes of IHS actions which are categorically excluded from requirements to conduct further evaluation under NEPA were published in the Federal Register on January 6, 1993 (see Environmental Review Manual).
The documentation of an environmental review is required to justify categorical exclusions for [58 FR 570, paragraph no. 7.]:

1. Construction of sanitation facilities;
2. Funding by IHS or other Federal agencies of sanitation facilities construction projects.

Appendix 13, Section II, contains a more detailed discussion of the IHS categorical exclusions.

Area SFC Program Directors and NEPA personnel should evaluate the specific project to establish the level of effort necessary to document the "Determinations" on the various environmental categories. The Area (or Title I and Title III tribes) should be able to justify that the "Basis for Determination" and the "Determination" were appropriate considering the type of project and other relative circumstances.

Each Area shall designate an Environmental Coordinator for the SFC Program. This individual shall be provided necessary training on NEPA and related environmental regulations to assure that the Area SFC Program has the knowledge and expertise required to effectively comply with those regulatory requirements.

An Environmental Review and Documentation form (Appendix A-3 of the Environmental Review Manual and Appendix 13) shall be completed during the project proposal/planning phase and definitely must be completed prior to the start of construction on every SFC project. The completed form shall be signed by the Director of the Area SFC Program or this responsibility may be delegated to the Area Environmental Coordinator.

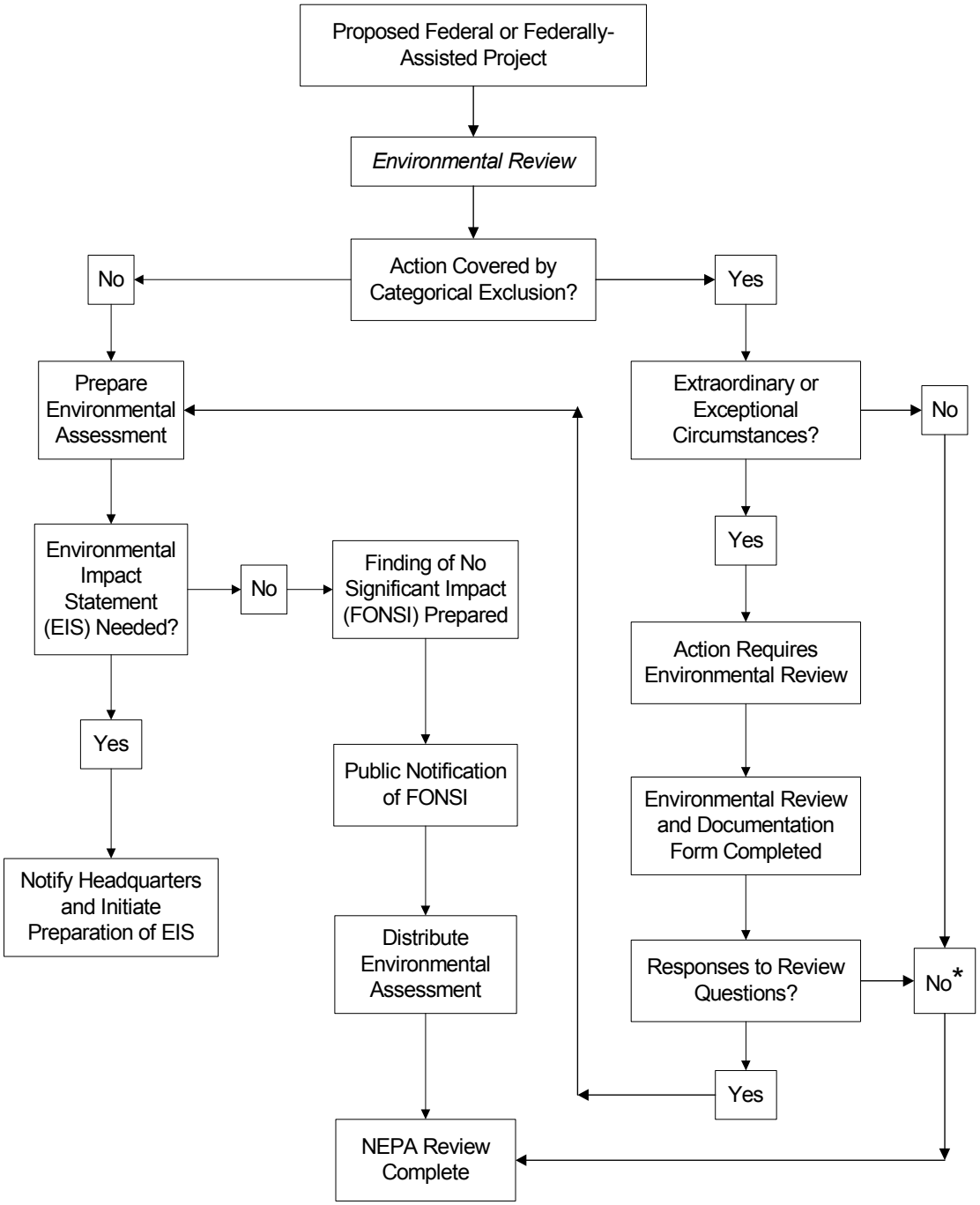
- Performing an environmental review means applying the criteria and guidelines stated in the Environmental Review Manual to a proposed project. The program must be able to provide adequate documentation that it has considered the project's potential impacts on each environmental category.

As shown in Figure 11-1 for a sanitation facilities project, the result of the environmental review is either a categorical exclusion or an Environmental Assessment. When an Environmental Assessment is required, the format shall generally conform to the typical outline provided in Appendix A-4 of the Environmental Review Manual. All Environmental Assessments shall include, as an attachment, a completed Environmental Assessment Checklist Form (Appendix A-4 of the Environmental Review Manual).

The outcome of an Environmental Assessment is either a Finding of No Significant Impact (FONSI) or decision to prepare an Environmental Impact Statement (EIS). FONSIs for SFC projects must be signed by an authorized non-SFC program official. The Director of the Area Environmental Health and Engineering Program is the appropriate official in most Areas. If the decision is to prepare an EIS, then the Area SFC Program will notify IHS Headquarters and proceed with the EIS process as stated in the Environmental Review Manual.

Public notification of a FONSI is required. Public notification shall follow the procedures outlined in the Environmental Review Manual which includes publication in a local newspaper or posting of a notice with other legal notices when there is no local newspaper.

Figure 11-1
Environmental Review Procedure



*i.e., the responses to all of the questions on the Environmental Review Form are "No".

REFERENCES

This list includes the major references and authorities used by the Indian Health Service to develop the policies and procedures stated in this Criteria document.

Code of Federal Regulations, Title 25, Chapter V, Part 900, Contracts under the Indian Self-determination And Education Assistance Act (25 CFR 900); Subpart J--Construction, Sections 900.110 to 900.148.

Indian Health Service. Environmental Review Manual. DEH, OEHE. March 1993.
Second printing, DFEE, OPH. January 2000.

Indian Health Service. Guidelines for the Utilization of the Memorandum of Agreement by the Indian Health Service. Sanitation Facilities Construction Program, Working Draft. IHS. Latest copy.

Indian Health Service. Guidelines for the Sanitation Facilities Construction Program under the Title III Self-Governance Demonstration Project. EEB, DFEE, OPH.. Latest copy.

Indian Health Service. Guide To Reporting Sanitation Deficiencies For Indian Homes And Communities. Revised, July 1993, February 1993.

Indian Health Service. Indian Health Manual.

Indian Health Service. Guidance for Title I Self-Determination Contract Negotiations for the Sanitation Facilities Construction Program and/or Projects. EEB, DFEE, OPH. Latest copy.

Indian Health Service. Project Data System (PDS) Technical Manual. Working Draft, August 1990.

Indian Health Service. Project Data System (PDS) User's Guide. Working Draft, August 1990.

Office of Management and Budget. OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments. Latest copy.

Public Law 86-121.

Public Law 93-638, as amended. *Indian Self-Determination and Education Assistance Act.*

Public Law 94-437, as amended. *Indian Health Care Improvement Act*

Public Law 100-713. *Indian Health Care Amendments of 1988*

Public Law 104-330. *Native American Housing Assistance and Self-Determination Act of 1996* (25 U.S.C. 4101 et. seq.)

APPENDIX 1. Copies of the Authorization Acts
(P.L. 86-121, P.L. 94-437 Section 302)

INDIAN HEALTH SERVICE · PHS · 1955 ·

Public Law 86-121

86th Congress, S. 56
July 31, 1959

AN ACT

73 Stat. 267.

To amend the Act of August 5, 1954 (68 Stat. 674), and for other purposes.

Be it enacted by the Senate and House Representatives of the United States of America in Congress assembled, That the Act of August 5, 1954 (68 Stat. 674), is amended by adding at the end thereof the following new section:

Indians, sanitation facilities. 42 USC 2004a

"Sec. 7. (a) In carrying out his functions under this subchapter with respect to the provision of sanitation facilities and services, the Surgeon General is authorized -

Surgeon General. Powers.

(1) to construct, improve, extend, or otherwise provide and maintain, by contract or otherwise, essential sanitation facilities, including domestic and community water supplies and facilities, drainage facilities, and sewage- and waste-disposal facilities, together with necessary appurtenances and fixtures, for Indian homes, communities, and lands;

(2) to acquire lands, or rights or interests therein, including sites, rights-of-way, and easements, and to acquire rights to the use of water, by purchase, lease, gift, exchange, or otherwise, when necessary for the purposes of this section, except that no lands or rights or interests therein may be acquired from an Indian tribe, band, group, community, or individual other than by gift or for nominal consideration, if the facility for which such lands or rights or interests therein are acquired is for the exclusive benefit of such tribe, band, group, community, or individual, respectively;

Acquisition of lands.

(3) to make such arrangements and agreements with appropriate public authorities and nonprofit organizations or agencies and with the Indians to be served by such sanitation facilities (and any other person so served) regarding contributions toward the construction, improvement, extension and provision thereof, and responsibilities for maintenance thereof, as in his judgment are equitable and will best assure the future maintenance of facilities in an effective and operating condition; and

Construction and maintenance.

(4) to transfer any facilities provided under this section, together with appurtenant interests in land, with or without a money consideration, and under such terms and conditions as in his judgment are appropriate, having regard to the contributions made and the maintenance responsibilities undertaken, and the special health needs of the Indians concerned, to any State or Territory or subdivision or public authority thereof, or to any Indian tribe, group, band, or community or, in the case of domestic appurtenances and fixtures, to any one or more of the occupants of the Indian home served thereby.

Transfer and reversion of lands

(b)The Secretary of the Interior is authorized to transfer to the Surgeon General for use in carrying out the purposes of this section such interest and rights in federally owned lands under the jurisdiction of the Department of the Interior, and in Indian-owned lands that either are held by the United States in trust for Indians or are subject to a restriction against alienation imposed by the United States, including appurtenances and improvements thereto, as may be requested by the Surgeon General. Any land or interest therein, including appurtenances and improvements to such land, so transferred shall be subject to disposition by the Surgeon General in accordance with paragraph (4) of subsection (a) of this section: *Provided*, That, in any case where a beneficial interest in such land is in any Indian, or Indian tribe, band, or group, the consent of such beneficial owner to any such transfer or disposition shall first be obtained: *Provided further*, That where deemed appropriate by the Secretary of the Interior provisions shall be made for a reversion of title to such land if it ceases to be used for the purpose for which it is transferred or disposed.

Transfer of U.S. land.

(c) Project consultation and participation The Surgeon General shall consult with, and encourage the participation of, the Indians concerned, States and political subdivisions thereof, in carrying out the provisions of this section.

SOURCE (Aug. 5, 1954, ch. 658, Sec. 7, as added July 31, 1959, Pub. L. 86-121, Sec. 1, 73 Stat. 267.)

INDIAN HEALTH SERVICE · PHS · 1955 ·

[Public Law 94-437, Section 302; 25 U.S.C. 1632]

UNITED STATES CODE
TITLE 25 - INDIANS
CHAPTER 18 - INDIAN HEALTH CARE
SUBCHAPTER III - HEALTH FACILITIES

Sec. 1632. Safe water and sanitary waste disposal facilities

(a) Congressional findings

The Congress hereby finds and declares that -

(1) the provision of safe water supply systems and sanitary sewage and solid waste disposal systems is primarily a health consideration and function;

(2) Indian people suffer an inordinately high incidence of disease, injury, and illness directly attributable to the absence or inadequacy of such systems;

(3) the long-term cost to the United States of treating and curing such disease, injury, and illness is substantially greater than the short-term cost of providing such systems and other preventive health measures;

(4) many Indian homes and communities still lack safe water supply systems and sanitary sewage and solid waste disposal systems; and

(5) it is in the interest of the United States, and it is the policy of the United States, that all Indian communities and Indian homes, new and existing, be provided with safe and adequate water supply systems and sanitary sewage waste disposal systems as soon as possible.

(b) Authority; assistance; transfer of funds

(1) In furtherance of the findings and declarations made in subsection (a) of this section, Congress reaffirms the primary responsibility and authority of the Service to provide the necessary sanitation facilities and services as provided in section 2004a of title 42.

(2) The Secretary, acting through the Service, is authorized to provide under section 2004a of title 42 -

(A) financial and technical assistance to Indian tribes and communities in the establishment, training, and equipping of utility organizations to operate and maintain Indian sanitation facilities;

(B) ongoing technical assistance and training in the management of utility organizations which operate and maintain sanitation facilities; and

(C) operation and maintenance assistance for, and emergency repairs to, tribal sanitation facilities when necessary to avoid a health hazard or to protect the Federal investment in sanitation facilities.

(3) Notwithstanding any other provision of law -

(A) the Secretary of Housing and Urban Affairs is authorized to transfer funds appropriated under the Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.) to the Secretary of Health and Human Services, and

(B) the Secretary of Health and Human Services is authorized to accept and use such funds for the purpose of providing sanitation facilities and services for Indians under section 2004a of title 42.

(c) 10-year plan

Beginning in fiscal year 1990, the Secretary, acting through the Service, shall develop and begin implementation of a 10-year plan to provide safe water supply and sanitation sewage and solid waste disposal facilities to existing Indian homes and communities and to new and renovated Indian homes.

(d) Tribal capability

The financial and technical capability of an Indian tribe or community to safely operate and maintain a sanitation facility shall not be a prerequisite to the provision or construction of sanitation facilities by the Secretary.

(e) Amount of assistance

(1) The Secretary is authorized to provide financial assistance to Indian tribes and communities in an amount equal to the Federal share of the costs of operating, managing, and maintaining the facilities provided under the plan described in subsection (c) of this section.

(2) For the purposes of paragraph (1), the term "Federal share" means 80 percent of the costs described in paragraph (1).
(3) With respect to Indian tribes with fewer than 1,000 enrolled members, the non-Federal portion of the costs of operating, managing, and maintaining such facilities may be provided, in part, through cash donations or in kind property, fairly evaluated.

(f) Eligibility of programs administered by Indian tribes

Programs administered by Indian tribes or tribal organizations under the authority of the Indian Self-Determination Act (25 U.S.C. 450f et seq.) shall be eligible for -
(1) any funds appropriated pursuant to this section, and
(2) any funds appropriated for the purpose of providing water supply or sewage disposal services, on an equal basis with programs that are administered directly by the Service.

(g) Annual report; sanitation deficiency levels
(1) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, a report which sets forth -
(A) the current Indian sanitation facility priority system of the Service;
(B) the methodology for determining sanitation deficiencies;
(C) the level of sanitation deficiency for each sanitation facilities project of each Indian tribe or community;
(D) the amount of funds necessary to raise all Indian tribes and communities to a level I sanitation deficiency; and
(E) the amount of funds necessary to raise all Indian tribes and communities to zero sanitation deficiency.
(2) In preparing each report required under paragraph (1) (other than the initial report), the Secretary shall consult with Indian tribes and tribal organizations (including those tribes or tribal organizations operating health care programs or facilities under any contract entered into with the Service under the Indian Self-Determination Act (25 U.S.C. 450f et seq.)) to determine the sanitation needs of each tribe.
(3) The methodology used by the Secretary in determining sanitation deficiencies for purposes of paragraph (1) shall be applied uniformly to all Indian tribes and communities.
(4) For purposes of this subsection, the sanitation deficiency levels for an Indian tribe or community are as follows:
(A) level I is an Indian tribe or community with a sanitation system -
(i) which complies with all applicable water supply and pollution control laws, and
(ii) in which the deficiencies relate to routine replacement, repair, or maintenance needs;
(B) level II is an Indian tribe or community with a sanitation system -
(i) which complies with all applicable water supply and pollution control laws, and
(ii) in which the deficiencies relate to capital improvements that are necessary to improve the facilities in order to meet the needs of such tribe or community for domestic sanitation facilities;
(C) level III is an Indian tribe or community with a sanitation system which -
(i) has an inadequate or partial water supply and a sewage disposal facility that does not comply with applicable water supply and pollution control laws, or
(ii) has no solid waste disposal facility;
(D) level IV is an Indian tribe or community with a sanitation system which lacks either a safe water supply system or a sewage disposal system; and
(E) level V is an Indian tribe or community that lacks a safe water supply and a sewage disposal system.
(5) For purposes of this subsection, any Indian tribe or community that lacks the operation and maintenance capability to enable its sanitation system to meet pollution control laws may not be treated as having a level I or II sanitation deficiency.

APPENDIX 2. Process to Enter Data into the Sanitation Deficiency System

INDIAN HEALTH SERVICE · PHS · 1955 ·

Process to Enter Data into the **Sanitation Deficiency System** to Obtain Funding for Eligible Existing Homes

Sanitation Deficiency System (SDS) project requests must be submitted to the appropriate Area office. Each Area will set its own submission date; however, the SDS project list from the Area must be in IHS Headquarters by **August 1** of each year. The SDS project information will be used to update the SDS priority list of projects that IHS submits to Congress, as required by the Indian Health Care Improvement Act, P.L. 94-437, as amended. All homes in a project must be eligible for assistance under P.L. 86-121; contact the appropriate Area Office for eligibility guidelines.

Sanitation Deficiency Reporting Procedure. Tribes should consult with and provide the following information to update the SDS to the appropriate Area Office. Tribes may obtain the reference manual -- *Sanitation Deficiency System, Guide to Reporting Sanitation Deficiencies for Indian Homes and Communities* -- from their respective Area offices, to assist them in identifying and presenting a project proposal. Each tribe that has compacted the Sanitation Facilities Construction (SFC) Program must provide the data on the sanitation deficiencies of existing homes for the SDS report to be eligible to obtain funding for SFC projects. (An example copy of the report used to update and enter data into SDS is attached.)

1. Identify Sanitation Deficiencies
   a. Identify projects.
   b. Identify project deficiency levels.
   c. Estimated costs to address the deficiencies.
   d. Complete required Community Deficiency Profiles
   e. Identify "communities".
   f. Estimate of the number of homes within the community at each deficiency level.
   g. Estimate of the number of homes requiring the different types of service at deficiency level II and higher.
   h. Estimate of the number of homes without potable water.

2. Estimate Design & Cost of Needed Sanitation Facilities
   a. Only the top 20 percent of submitted projects (based on dollar volume) are considered for funding under SDS. Those projects will become part of the "Priority Listing".
   b. The top 20 percent of the projects must include cost estimate worksheets, which will be retained in the Area Office.
   c. The top 20 percent must be accurate to within plus or minus 10 percent in both cost estimates and design parameters (lagoon sizing, pipe line lengths, etc.).
   d. Sufficient documentation on those projects should be maintained by the Tribe to assure continuity from one engineer to another.
   e. Other Funding Sources
   f. Submit Project Narratives to the Area Office
   g. Concise and detailed narratives descriptions are required for all proposed SDS projects.

3. Determination of Priority Ranking
   a. Each Area Office will score the SDS projects in their Area. Scores apply only within each Area.
   b. The priority scoring methodology is based on 8 factors. (6 minimum)
   c. Areas may develop additional or replacement benchmark scores as appropriate.

4. Distribution of IHS Funds
   a. Congress appropriates funds for sanitation deficiency projects to serve existing homes.
   b. Headquarters distributes the appropriated funds to the Area offices.
   c. The distribution method used is applied consistently to all Areas; however, there may be minor adjustments to ensure adequate funding for all funded projects.

[Example]

12/30/98
REPORT 1.1

INDIAN HEALTH SERVICE

SANITATION DEFICIENCY SYSTEM - SDS
NARRATIVE REPORT

NAME: KAAAWA COMM WATER SYS
NUMBER: HI54321-0001 **PRIORITY:** 25
COMMUNITY: KAAAWA **PROJECT:** 0
AREA: HI **Economically Feasible:** N **DISTRICT:** Windward **PHASE:** 1
TRIBE: KAMAAINA **LOCAL CODE:**
EPA PWS ID: None

DEFICIENCY LEVELS

Initial: 3 Final: 1

RATING SCORES

Health Impact:	10	Capital Cost:	-20	Tribal:	16
Deficiency	12	O & M Cap:	0	Other Consid.:	
First Service:	0	Contribution:	0	**Total Score:**	**18**

COST DATA

	IHS FUNDS:	UNIT COST:	%AUC:	HUD FUNDS:	OTHER FUNDS:
WATER (W):	$180,000	$22,500	61		
SEWER (S):	$0	$0	0		
SOLID (L):	$0	$0	0		
O & M (O):	$0	$0	0		
TOTAL COST:	$180,000	$22,500	61		

ENGINEER: ***Lil Kahuna*** ***UPDATED BY:*** ***Big Kahuna*** ***UPDATE:*** ***12/4/1998***

NUMBER OF HOMES	COM. STAT CODE:	I.D.L	F.D.L	FIRST SERVICE:	WATER SERVICE:	SEWER SERVICE:	SOLID WASTE SERVICE:	O & M SERVICE:
8	HI54321	3	1	N	Y	N	N	N

TOTAL HOMES: 8

EXISTING:

W: Well pump inoperable several times each year. Data source: (Field visit and consultation)

S: Individual septic tank/drainfield systems are adequate.

L: Individual Disposal.

O: None.

PROPOSED:

W: Pumping backup upgrade and water tank rehab. and fencing.

S: None.

L: None.

O: Training.

COMMENTS:

[This is an example of the Narrative Report from SDS.]

APPENDIX 3. Understanding The Various Forms of Indian Land Ownership

INDIAN HEALTH SERVICE · PHS · 1955 ·

Understanding The Various Forms of Indian Land Ownership

Trust Land - Land or any interest therein held in trust by the United States Government for an individual Indian or Tribe.

Assignments - Assignments are an internal Tribal assignment of Tribal/trust/restricted lands to a Tribal member for his/her use. These assignments are not normally recorded against title to the land and are not normally recognized as valid unless they are recorded.

Restricted Land - Land or any interest therein, the title to which is held by an individual Indian or Tribe, subject to Federal restrictions against alienation or encumbrance. This land can be alienated or encumbered only by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal law directly imposing such limitations.

Individually Owned Land - Land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

Tribal Land - Land or any interest therein, held by the United States in trust for a Tribe, band, community, group, pueblo of Indians subject to Federal restrictions against alienation or encumbrance including such land reserved for Indian Bureau administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under Section 17 of the Act of June 18, 1934 (48 Stat. 984, 24 U.S.C. 476). The term also includes assignment of Tribal land. Unless the terms of assignment provide for the leasing of the land by the holder of the assignment, the Tribe must join with the assignee in the grant of the lease.

Public Domain Allotments - Trust/restricted property located outside the exterior boundaries of a Federally recognized reservation. Public Domain property is generally considered to be either the original allotted tract or may also be purchased tracts where title has been accepted in trust/ restricted status.

Fee Simple Absolute - Fee simple absolute is also known as "fee simple" or "fee" and in regard to Indian lands, is sometimes called "fee patent". A person who has all the rights relating to a parcel of land in one bundle would have an unencumbered fee simple interest in real estate.

Fee Land - The term "fee title" or "fee simple title" generally denotes an estate in land that is absolute and unrestricted. The owner is entitled to dispose of the entire property or various interests in the property during his or her lifetime without hindrance. Upon his or her death, the land, or his or her remaining interests, pass to his or her heirs or those to whom he or she has given it by will.

a. Within Indian Reservations, lands may be owned in fee simple by both Indian and non-Indians. The former may have received a fee patent or some other document removing the restrictions against alienation on land formerly held in trust or restricted status.

b. The latter may have entered the reservation by purchasing allotted land at an advertised sale from an Indian having the fee or unrestricted title to his/her land, or from the Federal Government at a sale of the ceded and surplus Tribal land that remained after allotments were granted to individual Tribal members. In some cases fee ownership within an Indian reservation may predate the establishment of the reservation.

c. The fact that fee owned land, whether owned by an Indian or non-Indian is located within the Indian reservation does not give the Tribe any property interest in the land.

Unrestricted Fee - The removal of Federal restrictions from a piece of property that will no longer have Federal control.

Purchased Property - Trust/restricted property that had previously been converted to fee status, then it is sold and purchased by another party in fee status and the new owner has the property converted back to trust/restricted status.

Allotted Lands - Allotted lands are those that have been removed from Tribal ownership (generally), and given to individual members of the Tribe. The Tribe loses all property interests in the land, which becomes the private property of the allottee.

Alaskan Native Land - Alaskan Natives (Indians, Eskimos, and Aleuts) hold their land under a unique system imposed by the Alaska Natives Claims Settlement Act of 1971 (Act) and "Technical Amendments" passed in 1987 that extended the Act. The Act expressly extinguished all aboriginal rights to lands in Alaska and established under State law, village and regional corporations in which enrolled Natives would receive corporate stock. Those corporations then select lands set aside under the Act for the Alaska Natives and, through corporate bylaws, protect alienation of the land.

New Mexico Pueblos - Pueblo lands are held communally, but title is unique because the Pueblos hold their lands in fee, rather than having the United States Government hold it for them.

[from - OUR HOME : Achieving the Native American Dream of Homeownership]

APPENDIX 4. Contract Health Services Delivery Area (CHSDA) Federal Register notice

Contract Health Service Delivery Areas (CHSDAs)

Contract health service delivery areas or CHSDAs consists of a county which includes all or part of a reservation, and any county or counties which have a common boundary with the reservation.

The list in this Appendix is not up-to-date, since CHSDAs are added or their delivery areas may change. Contact the IHS Area, Managed Care Office, for the most recent list.

Geographic Composition of the Contract Health Service Delivery Areas (CHSDA's) Established by Regulations of the Indian Health Service

On October 23, 1980, a notice was published in the Federal Register (45 FR 70320) of our best assessment of CHSDA's established by 42 CFR 36.22(a). As noted then, corrections of mistaken inclusions or exclusions of a county or counties would be made administratively and included in a later notice.

The purpose of this notice is to revise and update the October 23, 1980, list. Final regulations for Indian Health Service (IHS) Contract Health Services were published in the Federal Register on August 4, 1978 (43 FR 34659).

The regulation at 42 CFR 36.22(a)(6) provides that:

> With respect to all other reservations [i.e., other than those not specifically listed in 42 CFR 36.22] within the funded scope of the Indian health program, the contract health service delivery area shall consist of a county which includes all or part of a reservation, and any county or counties which have a common boundary with the reservation.

This is the geographic area within which contract health services may be made available by the IHS to eligible individuals who reside within the area, subject to the provisions of the regulation. This list presents reservations within the funded scope of the IHS program, and includes exceptions to the rule specifically provided for by the regulation at 42 CFR 36.22(a), several exceptions covering areas which have been traditionally served by IHS and are within the funded scope and exceptions provided by legislation. Listed for each reservation are the counties comprising the CHSDA.

It should be clearly understood that residence within a CHSDA by a person who is within the scope of the Indian health program, as set forth in 42 CFR 36.12, creates no legal entitlement to contract health services but only potential eligibility for services. Services needed but not available at an IHS facility are provided under the Contract Health Services program dependent upon the availability of funds, the person's relative medical priority, and the actual availability and accessibility of alternate resources in accordance with the regulations.

Counties included or excluded from the following list of CHSDA's were determined by applying the regulation quoted above (42 CFR 36.22(a)(6)) except where otherwise provided for by regulations, public laws or congressional action in the appropriations process. Any mistakes in the list of CHSDA's should be brought to the attention of: Mr. Richard J. McCloskey, Indian Health Service, Room 6A-14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Any corrections of mistaken inclusions or exclusions of a county or counties in a CHSDA may be made administratively and included in a later Federal Register notice. However, as explained in the October 23, 1980, notice, redesignations of areas included or excluded from a CHSDA for reasons other than a mistake in applying the regulations is governed by the procedures in 42 CFR 36.22(b) and may only be made by the Secretary and must conform with the Procedures of the Administrative Procedure Act (5 U.S.C. 553).

The CHSDA's for all reservations within the funded scope of the IHS program are as follows:

CONTRACT HEALTH SERVICE DELIVERY AREAS

Reservation	CHSDA (County/State)
Acoma Pueblo	Valencia, NM.
Aqua Caliente Indian Reservation.	Riverside, CA.
Ak Chin	Pinal, AZ.
Alaska	(1).
Alturas Indian Ranchers.	Modoc, CA.
Augustine Reservation	Riverside, CA.
Bad River	Ashland, WI, Iron, WI.
Barona Reservation	San Diego, CA.
Bay Mills	Chippewa, MI.
Benton Paiute Reservation.	Mono, CA.
Berry Creek Rancheria	Butte, CA.
Big Bend Rancheria	Shasta, CA.
Big Lagoon Rancheria	Humboldt, CA.
Big Pine Reservation	Inyo, CA.
Bishop Colony	Inyo, CA.
Blackfeet	Glacier, MT. Pondera, MT
Bridgeport Indian Colony.	Mono, CA.
Burns Paiute	Harney, OR.
Cabazon Reservation	Riverside, CA.
Cahuilla Reservation	Riverside, CA.
Campe Verde	Yavapai, AZ.
Campo Indian Reservation.	San Diego, CA.

CONTRACT HEALTH SERVICE DELIVERY AREAS—Continued

Reservation	CHSDA (County/State)
Capitan Grande Reservation.	San Diego, CA.
Cedarville Rancheria	Modoc, CA.
Chehalis	Grays Harbor, WA, Thurston, WA.
Chemehuevi Reservation.	San Bernardino, CA, Mohave, AZ.
Cheyenne River	Corson, SD, Dewey, SD, Haakon, SD, Meade, SD, Perkins, SD, Potter, SD, Stanley, SD, Sully, SD, Walworth, SD, Ziebach, SD.
Chitimacha	St. Mary Parish, LA.
Choctaw	Attala, Ms, Jasper, MS,[8], Jones, MS, Kemper, MS, Leake, MS, Neshoba, MS, Newton, MS, Noxubee, MS.[8]
Cochiti Pueblo	Sandoval, NM.
Cocopah	Yuma, AZ.
Coeur d'Alene	Benewah, ID, Kootenai, ID, Latah, ID, Spokane, WA, Whitman, WA.
Cold Springs Rancheria	Fresno, CA.
Colville	Douglas, WA, Ferry, WA, Grant, WA, Lincoln, WA, Okanogan, WA, Stevens, WA.
Colorado River	Yuma, AZ, Riverside, CA, San Bernardino, CA.
Colusa Rancheria	Colusa, CA.
Cortina Indian Rancheria.	Colusa, CA.
Coushatta	Allen Parish, LA.
Cow Creek Band of Umpqua.	Douglas, OR,[8], Jackson, OR[8], Josephine, OR.[8].
Coyote Valley Rancheria.	Mendocino, CA.
Crow	Big Horn, MT, Carbon, MT, Yellowstone, MT, Big Horn, WY, Sheridan, WY.
Crow Creek	Brule, SD, Buffalo, SD, Hand, SD, Hughes, SD, Hyde, SD, Lyman, SD, Stanley, SD.
Cuyapaipe Reservation	San Diego, CA.
Dry Creek Rancheria	Sonoma, CA.
Duck Valley	Nevada (see Nevada below), Owyhee, ID.
Eastern Band of Cherokees.	Cherokee, NC, Graham, NC, Haywood, NC, Jackson, NC, Swain, NC.
Enterprise Rancheria	Butte, CA.
Flandreau	Moody, SD.
Flathead	Flathead, MT, Lake, Mt. Missoula, MT, Sanders, MT.
Fond Du Lac	Carlton, MN, St. Louis, MN.
Fort Apache	Apache, AZ, Coconino, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Navajo, AZ.
Fort Belknap	Blaine, MT, Phillips, MT.
Fort Berthold	Dunn, ND, Mercer, ND, McKenzie, ND, McLean, ND, Mountrail, ND, Ward, ND.
Fort Bidwell Reservation.	Modoc, CA.
Fort Hall	Bannock, ID, Bingham, ID, Caribou, ID, Power, ID.
Fort Independence Reservation.	Inyo, CA.
Fort McDermitt	Nevada (see Nevada below), Malheur, OR.
Fort McDowell	Maricopa, AZ.
Fort Mohave	Nevada (see Nevada below), Mohave, AZ, San Bernardino, CA.
Fort Peck	Daniels, MT, McCone, MT, Richland, MT, Roosevelt, MT, Sheridan, MT, Valley, MT.
Fort Totten (Devil's Lake Sioux Reservation).	Benson, ND, Eddy, ND, Nelson, ND, Ramsey, ND.
Fort Yuma (Quechan)	Imperial, CA, Yuma, AZ
Gila River	Maricopa, AZ, Pinal, AZ.
Goshute	Nevada (see Nevada below), Juab, UT, Tooele, UT.
Grand Portage	Cook, MN.
Grand Ronde	Polk, OR,[4] Washington, OR,[4] Marion, OR,[4] Yamhill, OR,[4] Tillamook, OR,[4] Multnomah, OR,[4].
Grand Traverse Band of Ottawa and Chippewa.	Leelanau, MI.
Grindstone Indian Rancheria.	Glenn, CA.
Hannahville	Delta, MI, Menominee, MI

CONTRACT HEALTH SERVICE DELIVERY AREAS—Continued

Reservation	CHSDA (County/State)
Havasupai	Coconino, AZ.
Hoh	Jefferson, WA.
Hoopa Valley Reservation.	Humboldt, CA.
Hopi	Apache, AZ, Coconino, AZ, Navajo, AZ.
Hopland Rancheria	Mendocino, CA.
Houlton Band of Maliseet.	Aroostook, ME.[8]
Hualapai	Coconino, AZ, Mohave, AZ, Yavapai, AZ.
Inaja and Cosmit Reservation.	San Diego, CA.
Iowa	Brown, KS, Doniphan, KS, Richardson, NE.
Isabella	Clare, MI, Isabella, MI, Midland, MI.
Isleta Pueblo	Bernalillo, NM, Torrance, NM, Valencia, NM.
Jackson Rancheria	Amador, CA.
Jamestown Band of Clallam.	Clallam, WA.
Jemez Pueblo	Sandoval, NM.
Jicarilla Apache	Archuleta, CO, Rio Arriba, NM, Sandoval, NM.
Kaibab	Coconino, AZ, Mohave, AZ, Kane, UT.
Kalispel	Pend Oreille, WA.
Karok Tribe of California.	Humboldt, CA, Siskiyou, CA.
Kataktegoning (Watersmeet) or Lac Vieux Desert Band.	Gogebic, MI.
Keweenaw Bay	Baraga, MI, Houghton, MI, Ontonagon, MI.
Kickapoo	Brown, KS, Jackson, KS
Kootenai	Boundary, ID.
Lac Courte Oreilles	Sawyer, WI.
Lac du Flambeau	Iron, WI, Oneida, WI, Vilas, WI.
La Jolla Reservation	San Diego, CA.
Laguna Pueblo	Bernalillo, NM, Sandoval, NM, Valencia, NM.
La Posta Indian Reservation.	San Diego, CA.
Laytonville Rancheria	Mendocino, CA.
Leech Lake	Beltrami, MN, Cass, MN, Hubbard, MN, Itasca, MN.
Lone Pine Reservation	Inyo, CA.
Lookout Rancheria	Modoc, CA.
Los Coyotes Reservation.	San Diego, CA.
Lower Brule	Brule, SD, Buffalo, SD, Hughes, SD, Lyman, SD, Stanley, SD.
Lower Elwha	Clallam, WA.
Lower Sioux	Redwood, MN, Renville, MN.
Lummi	Whatcom, WA.
Makah	Clallam, WA.
Manchester—Pt. Arena Rancheria.	Mendocino, CA
Manzanita Reservation	San Diego, CA.
Nashantucket Pequot	New London, CT.[6]
Menominee	Langlade, WI, Menominee, WI, Oconto, WI, Shawano, WI
Mesa Grande Reservation.	San Diego, CA.
Mescalero	Chaves, NM, Lincoln, NM, Otero, NM.
Middletown Rancheria	Lake, CA.
Mille Lacs	Aitkin, MN, Kanebec, MN, Mille Lacs, MN, Pine, MN.
Mole Lake	Forest, WI.
Montgomery Creek Rancheria.	Shasta, CA.
Morongo Reservation	Riverside, CA.
Muckleshoot	King, WA, Pierce, WA.
Nambe Pueblo	Santa Fe, MN.
Narragansett	Washington, RI. [7]
Navajo (including Alamo Navajo, Coconino Navajo and Ramah Navajo).	Apache, AZ, Bernalillo, NM, Coconino, AZ, Kane, UT, McKinley, NM, Montezuma, CO, Navajo, AZ, Sandoval, NM, San Juan, NM, San Juan, UT, Socorro, NM, Valencia, NM.
Nett Lake	Itasca, MN, Koochiching, MN, St. Louis, MN.
Nevada	(*).
Nez Perce	Clearwater, ID, Idaho, ID, Latah, ID, Lewis, ID, Nez Perce, ID.
Nisqually	Pierce, WA, Thurston, WA.
Nooksack	Whatcom, WA

CONTRACT HEALTH SERVICE DELIVERY AREAS—Continued

Reservation	CHSDA (County/State)
Northern Cheyenne	Big Horn, MT, Rosebud, MT.
Oklahoma	(*).
Omaha	Burt, NE, Cuming, NE, Monona, IA, Thurston, NE, Wayne, NE.
Oneida	Brown, WI, Outagamie, WI.
Paiute Indian Tribe of Utah.	Iron, UT,[10] Millard, UT,[10] Sevier, UT,[10] Washington, UT.[10]
Pala Reservation	San Diego, CA.
Papago	Maricopa, AZ, Pima, AZ, Pinal, AZ.
Pasqua-Yaqui	Pima, AZ.[11]
Passamaquoddy	Aroostook, ME,[12] Washington, ME.
Pauma and Yuima Reservation.	San Diego, CA.
Payson Community (Tonto-Apache).	Gila, AZ.
Pechanga Reservation	Riverside, CA, San Diego, CA.
Penobscot	Aroostook, ME,[12] Penobscot, ME
Picuris Pueblo	Taos, NM.
Pine Ridge	Bennett, SD, Cherry, NE, Custer, SD, Dawes, NE, Fall River, SD, Jackson, SD, Mellette, SD, Pennington, SD, Shannon, SD, Sheridan, NE, Todd, SD, Washabaugh, SD.
Pit River Indian Tribe of the X-L Ranch Reservation.	Modoc, CA.
Popoaque Pueblo	Rio Arriba, NM, Santa Fe, NM.
Port Gamble	Kitsap, WA.
Port Madison	Kitsap, WA.
Potawatomi	Forest, WI, Marinette, WI, Oconto, WI.
Potawatomi	Jackson, KS.
Prairie Island	Goodhue, MN.
Prior Lake	Scott, MN.
Puyallup	King, WA, Pierce, WA.
Quileute	Clallam, WA, Jefferson, WA.
Quinault	Grays Harbor, WA, Jefferson, WA.
Ramona Reservation	Riverside, CA.
Red Cliff	Bayfield, WI.
Red Lake	Beltrami, MN, Clearwater, MN, Koochiching, MN, Lake of the Woods, MN, Marshall, MN, Pennington, MN, Polk, MN, Roseau, MN.
Resighini Rancheria	Del Norte, CA.
Rincon Reservation	San Diego, CA.
Roaring Creek Rancheria.	Shasta, CA.
Robinson Rancheria	Lake, CA.
Rocky Boy's	Chouteau, MT, Hill, MT.
Rosebud	Bennett, SD, Cherry, NE, Mellette, SD, Todd, SD, Tripp, SD.
Round Valley Reservation.	Mendocino, CA.
Rumsey Indian Rancheria.	Yolo, CA.
Sac and Fox (Iowa)	Tama, IA.
Sac and Fox (Kansas)	Brown, KS, Richardson, NE.
Salt River	Maricopa, AZ.
Sandia Pueblo	Bernalillo, NM, Sandoval, NM.
San Carlos	Apache, AZ, Cochise, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Pinal, AZ.
San Felipe Pueblo	Sandoval, NM.
San Ildefonso	Los Alamos, NM, Rio Arriba, NM, Sandoval, NM, Santa Fe, NM.
San Juan Pueblo	Rio Arriba, NM.
San Manual Reservation.	San Bernardino, CA.
San Pasqual Reservation.	San Diego, CA.
Santa Ana Pueblo	Sandoval, NM.
Santa Clara Pueblo	Los Alamos, NM, Rio Arriba, NM, Sandoval, NM, Santa Fe, NM
Santa Rosa Rancheria	Kings, CA.
Santa Rosa Reservation	Riverside, CA.
Santa Ynez Reservation.	Santa Barbara, CA.
Santa Ysabel Reservation.	San Diego, CA.
Santee	Bon Homme, SD, Knox, NE.
Santo Domingo Pueblo	Sandoval, NM, Santa Fe, NM.
Sauk-Suiattle	Snohomish, WA.
Seneca	Allegany, NY, Cattaraugus, NY, Chautauqua, NY, Erie, NY, Warren PA.

CONTRACT HEALTH SERVICE DELIVERY AREAS—Continued

Reservation	CHSDA (County/State)
Sheep Ranch Ranchers.	Calaveras, CA.
Sherwood Valley Ranchers.	Mendocino, CA.
Shingle Springs Ranchers (Veronica Tract).	El Dorado, CA.
Shoalwater	Pacific, WA.
Siletz	Benton, OR,[14] Lane, OR,[14] Lincoln, OR,[14] Linn, OR,[14] Marion, OR,[14] Polk, OR,[14] Tillamook, OR,[14] Yam Hill, OR.[14]
Sisseton	Codington, SD, Day, SD, Grant, SD, Marshall, SD, Richland, ND, Roberts, SD, Sargent, ND, Traverse, MN.
Skokomish	Mason, WA.
Skull Valley	Tooele, UT.
Sobobe Reservation	Riverside, CA.
South Florida (including Brighton, Florida State, Hollywood, and Miccosukee).	Broward, FL, Collier, FL, Dade, FL, Glades, FL, Hendry, FL.
Southern Ute	Archuleta, CO, La Plata, CO, Montezuma, CO, Rio Arriba, NM, San Juan, NM.
Spokane	Ferry, WA, Lincoln, WA, Stevens, WA.
Squaxin Island	Mason, WA.
St. Croix	Barron, WI, Burnett, WI, Pine, MN, Polk, WI, Washburn, WI.
St. Regis Mohawk	Franklin, NY, St. Lawrence, NY.
Standing Rock	Adams, ND, Campbell, SD, Corson, SD, Dewey, SD, Emmons, ND, Grant, ND, Morton, ND, Perkins, SD, Sioux, ND, Walworth, SD, Ziebach, SD.
Stewarts Point Ranchers.	Sonoma, CA.
Swinomish	Snohomish, WA.
Stockbridge-Munsee	Menominee, WI, Shawano, WI.
Surfer Bank Ranchers	Lake, CA.
Susanville Indian Ranchers.	Lassen, CA.
Swinomish	Skagit, WA.
Sycuan Reservation	San Diego, CA.
Table Bluff Ranchers	Humboldt, CA.
Table Mountain Ranchers.	Fresno, CA.
Taos Pueblo	Colfax, NM, Taos, NM.
Tesque Pueblo	Santa Fe, NM.
Texas Band of Kickapoo.	Maverick, TX.[16]
Torres-Martinez Reservation.	Riverside, CA., Imperial, CA.
Trinidad Ranchers	Humboldt, CA.
Tulalip	Snohomish, WA.
Tule River Indian Reservation.	Tulare, CA.
Tunica-Biloxi	Avoyelles, LA.
Tuolumne Ranchers	Tuolumne, CA.
Turtle Mountain	Rolette, ND.
Twenty-Nine Palms Reservation.	San Bernardino, CA.
Uintah and Ouray	Carbon, UT, Duchesne, UT, Emery, UT, Grant, UT, Rio Blanco, CO, Uintah, UT, Wasatch, UT.
Umatilla	Umatilla, OR, Union, OR.
Upper Lake Ranchers	Lake, CA.
Upper Sioux	Chippewa, MN, Yellow Medicine, MN.
Ute Mountain Ute	La Plata, CO, Montezuma, CO.
Viejas Reservation	San Diego, CA.
Warm Springs	Clackamas, OR, Jefferson, OR, Linn, OR, Marion, OR, Wasco, OR.
Washoe River (Dresslerville Colony).	Alpine, CA, Nevada (see Nevada).
White Earth	Becker, MN, Clearwater, MN, Mahnomen, MN, Norman, MN, Polk, MN.
Wind River	Hot Springs, WY, Freemont, NY, Sublette, WY.
Winnebago (Nebraska)	Dakota, NE, Dixon, NE, Monona, IA, Thurston, NE, Wayne, NE, Woodbury, IA.

CONTRACT HEALTH SERVICE DELIVERY AREAS—Continued

Reservation	CHSDA (County/State)
Winnebago (Wisconsin)	Adams, WI,[10] Clark, WI,[10] Columbia, WI,[10] Crawford, WI,[10] Eau Claire, WI,[10] Houston, MN,[1] Jackson, WI,[10] Juneau, WI,[10] La Crosse, WI,[10] Marathon, WI,[10] Monroe, WI,[10] Sauk, WI,[10] Shawano, WI,[10] Vernon, WI,[10] Wood, WI.[10]
Yakima	Klickitat, WA, Lewis, WA, Yakima, WA.
Yankton	Bon Homme, SD, Boyd, NE, Charles Mix, SD, Douglas, SD, Gregory, SD, Hutchison, SD, Knox, NE.
Yavapai-Prescott	Yavapai, AZ.
Zia Pueblo	Sandoval, NM.
Zuni Pueblo	Apache, AZ, McKinley, NM, Valencia, NM.

[1] Alaska Native Regions are reservations (42 CFR 36.21(i)) and the entire State of Alaska is included as a CHSDA by regulation (42 CFR 36.22(a)(1)).

[2] Choctaw Indians residing in Jasper and Neshoba Counties, MS, will continue to be eligible for contract health services pending correction of the inadvertent omission of these two counties from section 36.22 of the regulations.

[3] Cow Creek Band of Umpqua recognized by Pub. L. 97-391, signed into law on December 29, 1983. House Rept. No. 97-862 designates Douglas, Jackson, and Josephine Counties as a service area notwithstanding existence of a reservation.

[4] Grand Ronde Tribe of Oregon recognized by Pub. L. 98-165, signed into law on six counties without regard to the existence of a reservation.

[5] Pub. L. 97-428 provides for eligibility in or near the Town of Houlton without regard to existence of a reservation.

[6] Mashantucket Pequot Indian Claims Settlement Act, Pub. L. 98-134, signed into law on October 18, 1983, provides for a reservation in New London.

[7] Narragansett Indians recognized by Pub. L. 95-395, signed into law September 30, 1978. Lands in Washington County are now federally restricted and the Bureau of Indian Affairs considers them as the Narragansett Indian Reservation.

[8] The entire State of Nevada is designated a CHSDA by regulation (42 CFR 36.22(a)(2)).

[9] Former reservations in the State of Oklahoma are reservations by regulation (42 CFR 36.21(i)). The entire State of Oklahoma is a CHSDA by regulation (42 CFR 36.22(a)(3)).

[10] Paiute Indian Tribe of Utah Restoration Act, Pub. L. 98-227, provides for extension of services to these four counties without regard to the existence of a reservation.

[11] Legislative history (H.R. Report No. 95-1021) to Pub. L. 95-375, Extension of Federal Benefits to Pascua Yaqui Indians, Arizona, expresses congressional intent that lands conveyed to the tribes pursuant to Act of October 8, 1964, (Pub. L. 88-350) shall be deemed a Federal Indian Reservation.

[12] Included to carry out the intention of Congress to fund and provide contract health services to Penobscot and Passamaquoddy Indians in Aroostook County.

[13] The counties included in this CHSDA were designated by regulation (42 CFR 36.22(a)(4)).

[14] In order to carry out the congressional intent under the Siletz Restoration Act, Pub. L. 95-195, as expressed in H.R. Report No. 95-623, at page 4, Siletz tribal members residing in these counties are eligible for contract health services.

[15] Texas Band of Kickapoo was recognized by Pub. L. 97-429, signed into law on January 8, 1983. The Act provides for eligibility in Maverick County without regard to the existence of a reservation.

[16] The counties included in this CHSDA were designated by regulation (42 CFR 36.22(a)(5)).

Dated: January 4, 1984.

Robert Graham,

Administrator.

[FR Doc. 84-610 Filed 1-9-84; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

National Center for Health Services Research; Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, and use (indication) of apheresis for the treatment of chronic relapsing polyneuropathy. Specifically, we are interested in knowing whether this method has significant advantages or disadvantages when compared with other methods of immunosuppression in the treatment of chronic relapsing polyneuropathy in general, and steroid resistant cases in particular. If it proves to be safe and clinically effective, what are specific indications for its use and how many courses of therapy are reasonable and necessary? In addition, this assessment seeks to determine whether this specific application of apheresis is regarded as investigational, or generally accepted treatment.

For the purposes of this announcement, apheresis is defined as a procedure utilizing specialized equipment to remove selected blood constituents (plasma or cells) from whole blood and returning the remaining constituents to the person from whom the blood was taken.

This method of treatment has been used alone or in conjunction with other immunosuppressive modalities in treating severe systemic autoimmune diseases, macro and hyperglobulinemias, acute renal allograft rejection, myasthenia gravis, and leukemia. This assessment addresses primarily the use of apheresis in the treatment of chronic relapsing polyneuropathy.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technolgy. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than March 15, 1984 or within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies and other information related to the characterization of the patient population most likely to benefit from it, and the clinical acceptability and the effectiveness of this technology.

Written material should be submitted to: Harry Handelsman, D.O., National

APPENDIX 5. Project Approval Form
(Direct Service)

INDIAN HEALTH SERVICE · PHS · 1955 ·

NEW PROJECT OR MODIFIED PROJECT APPROVAL FORM

_____ AREA INDIAN HEALTH SERVICE SANITATION FACILITIES PROJECT

Assigned Project Number	Project Title and Date	Total Project Estimated Cost
		IHS . . . . . $_____
		Tribal . . . . . $_____
		L.H.A. . . . . $_____
		Others . . . . . $_____
		TOTAL . . . . . $_____

Under and pursuant to Public Law 86-121 and the authority delegated to me, I hereby approve the sanitation facilities project or modified project outlined in the attached project summary or amended project summary described above.

This Action: _____ Approves a new Sanitation Facilities Construction project

_____ Approves an Amendment to a previously approved project

_____ Increases the Cost Estimate of a previously approved project

Negotiation of necessary agreements or agreement amendments related to project execution, contributions, and responsibilities for operation and maintenance of the planned facilities may now be initiated. Negotiations shall be based upon the project summary or amended project summary as approved. Indian Health Service commitments shall not exceed the estimate set forth above.

The assigned project number shall be utilized on all correspondence and documents related to this project.

_____ is hereby designated as Project Officer and shall responsible for the coordination of all activities related to the execution of the project.

Upon receipt of a "Request for Transfer of Funds From and To Public Law 86-121 Project Bulk Accounts" from the Area Office of Environmental Health and Engineering, the Area Financial Management Officer is hereby instructed to establish a new project account if necessary and to transfer into such account or previously established account an amount equal to the estimated cost set forth above less amounts previously transferred. Obligations and expenditures related to the project are to be charged to this account.

Fund Certification:

Date: _____

Funds in the amount of the IHS estimated cost less amounts previously transferred to this project are available in the Area and reserved for this project.

_____

Area Financial Management Officer

Approval Recommended:

_____

Director, Sanitation Facilities Construction Program Date

Concurrence:

_____

Director, Area Office of Environmental Health and Engineering Date

APPROVED:

_____

Area Director, Indian Health Service Date

cc: Service Unit Director
Area Financial Management Officer
Project Officer

INDIAN HEALTH SERVICE · PHS · 1955 ·

APPENDIX 6. Request for Transfer of Funds From and To Public Law 86-121 Project Bulk Accounts

INDIAN HEALTH SERVICE · PHS · 1955 ·

Request for Transfer of Funds From and To Public Law 86-121 Project Bulk Accounts

TO: Financial Management Branch DATE: _____
FROM: Office of Environmental Health and Engineering

You are requested to make the following fund transfers to
PROJECT ACCOUNT NO.: _____

After transfer, funds are obligated under a previously executed
Memorandum of Agreement: Yes_____ No_____

PROJECT CATEGORY: ___Housing; ___Regular; ___Special
AMOUNT NOW IN PROJECT ACCOUNT: $_____
AMOUNT TO BE TRANSFERRED: $_____
REVISED TOTAL: $_____

PURPOSE:

_____ Advance for planning and/or Procurement
_____ Initiation of Approved Project
_____ Additional Funds Required to Complete Project
_____ Funds in Excess of Project Needs
_____ Additional Funds for Amended Scope of Work
_____ Other: _____

DOCUMENTATION:

_____ Approved Summary or Amendment
_____ Revised Cost Estimate
_____ Advanced Planning Cost Estimate
_____ Project Completed (Memo)
_____ Other: _____

ACCOUNTS FROM WHICH FUNDS ARE TO BE TRANSFERRED:

Project Number	CAN Number	Fiscal Year	Allowance Number	Current Total	Amount to be Transferred	Revised Total

SIGNATURE:_____ _____
Director, DSFC Area

DATE: _____
TO: Office of Environmental Health and Engineering
FROM: Financial Management Branch

_____ Requested Action Taken
_____ Requested Action Not Taken for Following Reason(s):

_____

_____

SIGNATURE: _____ TITLE: _____

INDIAN HEALTH SERVICE · PHS · 1955 ·

APPENDIX 7. Standard individual agreement form (PHS Form 4063)

INDIAN HEALTH SERVICE · PHS · 1955 ·

PHS-4063

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
INDIAN HEALTH SERVICE

INDIVIDUAL AGREEMENT

Between Head of Household and U.S. Public Health Service
Under Public Law 86-121

I hereby agree to accept upon completion of installation the following described facilities to be installed on the premise located herein and on land occupied by me. I also agree to operate, maintain, and keep these facilities in good repair at my own expense.

_____

_____

_____

_____

_____

Premise Location: _____

_____ _____
(Date) (Signature of Head of Household)

I hereby certify that the above-described facilities have been installed.

_____ _____
(Date) (Signature of Project Engineer)

I hereby certify that the above-described facilities have been installed, accepted, and are in good operating condition, and agree to operate, maintain, and repair these facilities at my own expense.

_____ _____
(Date) (Signature of Head of Household)

DISTRIBUTION: Original -- Homeowner File

cc: Homeowner
Area Sanitation Facilities Construction Branch

INDIAN HEALTH SERVICE · PHS · 1955 ·

APPENDIX 8. Transfer Agreement Example

INDIAN HEALTH SERVICE · PHS · 1955 ·

Transfer Agreement Example

Transfer Agreement
Between
The United States of America
And

_____
(TRIBE, BAND, GROUP, OR COMMUNITY)

_____
(RESERVATION AND STATE)

WHEREAS, the United States of America, acting through the Indian Health Service, Department of Health and Human Services, under and pursuant to the provisions of Public Law 86-121 (73 Stat. 267) and the (INDIAN TRIBE, BAND, GROUP, OR COMMUNITY) , (RESERVATION, STATE) hereinafter called the (TRIBE)(BAND)(GROUP)(COMMUNITY), acting through the (ORGANIZATION DESIGNATED TO REPRESENT THE INDIANS), entered into an agreement executed for the Indian Health Service on (DATE) and for the (TRIBE)(BAND)(GROUP)(COMMUNITY) on (DATE) regarding the provision of sanitation facilities in the (COMMUNITY OR AREA) on the (RESERVATION) . and[1]

WHEREAS, the project provided for in that agreement has been completed, and

WHEREAS, the domestic water supply and waste disposal facilities and the appurtenances thereto, and the materials, supplies, and equipment provided for and incorporated therein pursuant to that agreement are the property of the United States: and

WHEREAS, the parties are desirous of providing for and assuring the proper and efficient maintenance and continued operation of said water supply and waste disposal facilities; and

WHEREAS, under Section 7(a)(4) of P.L. 86-121, the Indian Health Service, on behalf of the United States of America is authorized to transfer the completed facilities with or without a money consideration, and under such terms and conditions as in its judgment are appropriate, having regard to the contributions made, the maintenance responsibility undertaken, and the special health needs of the Indians.

NOW THEREFORE, in accordance with the terms of said agreement and pursuant to to Section 7(a)(4) of P.L. 86-121,

1. The Indian Health Service hereby transfers, assigns, and conveys to the (TRIBE)(BAND)(GROUP)(COMMUNITY), without a money consideration and under the terms and conditions set forth in the aforesaid agreement, all of the right, title, and interest of the United States of America in all community facilities and appurtenances thereto constructed, including all materials, supplies, and equipment provided for and incorporated in such facilities. These facilities include but are not limited to (Enumerate major facilities: e.g., (1) a new drilled well, with necessary pumping equipment appurtenances and pumphouse; (2) one 30,000-gallon, concrete water storage reservoir and necessary appurtenances thereto, and water distribution system consisting of approximately 7,900 lineal feet of 3/4-inch service lines and all appurtenances thereto.) [*Omit if project involves individual facilities only*.]

2. The (TRIBE)(BAND)(GROUP)(COMMUNITY) hereby accepts such transfer under the terms and conditions set forth in the aforesaid agreement and agrees to operate, maintain, and repair such community facilities as the property of the (TRIBE)(BAND)(GROUP)(COMMUNITY) so as to keep the facilities in an effective and operating condition. [*Omit if project involves individual facilities only*.]

3. The Indian Health Service hereby transfers, assigns, and conveys to the head of each household,

[1]For agreements covering emergency projects for which a Memorandum of Agreement was not executed, this paragraph should set forth the appropriate names and dates of the request for emergency assistance, and the paragraphs following should be revised wherever appropriate.

without a money consideration, all of the right, title, and interest of the United States of America in all individual facilities and appurtenances thereto constructed and installed on his premises in accordance with the project summary pursuant to the aforesaid Memorandum of Agreement, including materials, supplies, and equipment provided for and incorporated in such facilities. [*Omit if project involves community facilities only*.]

4. The (TRIBE)(BAND)(GROUP)(COMMUNITY) agrees to enact appropriate ordinances or regulations to assure continued operation, maintenance, and repair of individual facilities by the person served thereby. [*Omit if project involves community facilities only*.]

IN WITNESS WHEREOF, the parties have subscribed their names.

For the _____(NAME OF TRIBE, BAND, GROUP, COMMUNITY)_____ [2]

_____ (Date)

_____ (Signature)

_____(TITLE OF SIGNER)_____, (ORGANIZATION DESIGNATED TO REPRESENT THE INDIANS), having been duly authorized to enter into this agreement on behalf of the _ (TRIBE, BAND, GROUP, COMMUNITY) as evidenced by the attached certified copy of the resolution made by the (ORGANIZATION DESIGNATED TO REPRESENT THE INDIANS)

For the United States of America:

_____ (Date)

_____ (Signature and Title)

in (DESIGNATE AREA) Area, Indian Health Service, Department of Health and Human Services.

[2]This should be identical to the name of the tribe, band, group, or community set forth in the heading and first "*WHEREAS*" paragraph.

APPENDIX 9. Project Schedule format

INDIAN HEALTH SERVICE · PHS · 1955 ·

Example PROJECT SCHEDULE
Indian Health Service
Sanitation Facilities Construction Program
(under Public Law 86-121)

AREA: _____ PROJECT ENGINEER/OFFICER: _____

PROJECT TITLE: _____

PROJECT LOCATION: _____

PROJECT NO.: _____ CAN NO.: _____ ALLOWANCE NO.: _____

PROJECT DESCRIPTION: _____

NO. HOMES TO BE SERVED: _____ DATE PROJECT APPROVED: _____

ESTIMATED COST:

IHS: $ _____

TRIBE: $ _____

TDHE: $ _____

OTHER: $ _____

TOTAL: $ _____

ACTION ITEM	TARGET DATE	ACTUAL DATE	REMARKS
MEMORANDUM OF AGREEMENT SIGNED:			
ENVIRONMENTAL REVIEW:			
ENGINEERING DESIGN INITIATED:			
ENGINEERING DESIGN COMPLETED:			
STATE HEALTH DEPARTMENT REVIEW:			
EPA NOTIFICATION:			
ARCHEOLOGIC & HISTORIC CLEARANCES:			
RIGHTS-OF-WAY REQUESTED:			
PROCUREMENT INITIATED:			
CONSTRUCTION STARTED:			
CONSTRUCTION COMPLETED:			
AS-BUILTS COMPLETED:			
O&M MANUAL COMPLETED:			
FINAL INSPECTION:			
HOMEOWNER TRAINING COMPLETED:			
FACILITIES TRANSFERRED:			
FINAL REPORT COMPLETED:			

SIGNED: _____ DATE: _____
SFC PROGRAM DIRECTOR

INDIAN HEALTH SERVICE · PHS · 1955 ·

APPENDIX 10. Value Engineering Project Selection Form

INDIAN HEALTH SERVICE · PHS · 1955 ·

Sanitation Facilities Construction Program

Value Engineering (VE) Project Selection Form

Project: _____ Construction Amount: _____

Project Manager: _____ Date: _____

Formal VE analysis is required when: **VE Required?**

(1) Project construction amount is $5 Million or greater.

(2) VE Rating Index (VERI) is 25 points or greater. (See calculation below) . . Yes: _____

Formal VE analysis is not required if the Value Engineering Rating Index is less than 25 points. . . . . No: _____

VE Rating Index (VERI)

								Score
Project Cost (Construction)	*$Millions*	*0*	*0.3*	*1*	*3*	*4*	*5*	
	Pts.	0	2	4	8	9	25	_____
No. of Engineering Disciplines[1]	*No.*	*1*	*2*	*3*	*4*	*5*	*6*	
	Pts.	2	5	8	9	10	10	_____
Type of Project[2]		*Routine*				*Unusual*		
	Pts.	0	2	4	6	8	10	_____
Design Complexity[3]		*Routine*				*Intricate*		
	Pts.	2	4	5	7	9	10	_____

VERI Total Score: _____

_____

Value Engineering Coordinator Date

---

[1]Civil, electrical, mechanical, etc.

[2]Drainfield = routine; New solid waste landfill = unusual

[3]Pipeline extension = routine; Mechanical sewage plant = intricate

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APPENDIX 11. Year-End Report

Recommended Format

YEAR-END REPORT
STATUS OF SANITATION FACILITIES CONSTRUCTION PROJECTS

A. PROJECT STATUS

1. **Unexpended funds** in projects older than four years: $ _____.

2. **Projects awaiting Final Report** (see attached PDS report for list).

   Number at beginning of year: __
   Number submitted to HQ: __
   Number at end of year: __

3. **Unserved New Housing**
   (Include number of new homes, by tribe, which are complete, but without sanitation facilities due to inadequate project funding.)

4. **Solid Waste Management Plans**

   No. Tribes With Plans ____
   No. Tribes Requiring Plans ____

5. **Solid Waste Projects Funded During Current Fiscal Year, FY XX:**

Project Number	Project Name	Number of Homes	Amount for Solid Waste only	Description
			$	(management plan, closure, transfer station, off-reservation disposal, etc.)

6. **Total Homes and Total Cost to Provide Water/Wastewater with Current FY Appropriation, FY XX:**

	Number of Projects:	Total Number Homes Provided with:	Total Cost to Provide:
Water			$
Wastewater			$

B. SPECIAL AND OTHER PROJECTS

Emergency/Special Projects (Funded in last 4 years)

Project Number	Project Name	Total Project Cost	Amount Obligated	Description/Status
		$_____	$_____	

C. FUND STATUS

1. **Construction project contributions**: Received this fiscal year (List only those amounts reflected in Advices of Allowance during the past fiscal year)

Source of Contributions	Amount Received This FY
DHUD Housing	$
DHUD CDBG (direct from HUD)	
Businesses	
TDHEs, Housing Authorities (Excluding HSC, Including CIAP)	
Individuals	
Local Governments (other than tribes)	
States	
Tribes (including CDBG and other funds which are passed through tribes)	
Navajo-Hopi Indian Relocation Commission	
Bureau of Indian Affairs	
IHS Div. of Facilities Management	
Environmental Protection Agency	
TOTAL:	$

2. **Consolidated Working Funds**: Received this fiscal year (funds received from other agencies for non-construction projects, such as O&M training). List only those amounts reflected in Advices of Allowance during the fiscal year just ended.

Project Number	Agency	Purpose/ Update	Amount
			$_____

3. **Disbursements**:

Total disbursed during FY: $_____

Disbursed to Indian Tribes and firms:	
MOA	$
Buy-Indian	
638 Contract	
638 S.G. Compact	
Open Market	
Purchase Order	
TOTAL	$

4. **Total Unexpended**:

	Regular	Housing Support
Beginning of Year:	$	$
End of Year:	$	$

5. **Obligations**:

If the year-end IHS finance reports show an obligated funds amount for the previous fiscal year which differs from your records, please provide the correct amount and attempt to explain the difference (e.g., the Area did not record some obligations).

6. **Obligations by State:**

Actual For The Fiscal Year Just Ended:

	AMOUNTS		
State	Housing	Regular	Spec./Emergency
	$	$	$
Totals	$	$	$

Projected This Fiscal Year:

	AMOUNTS		
State	Housing	Regular	Spec./Emergency
	$	$	$
Totals	$	$	$

D. ATTACHMENTS

(Include any supporting PDS reports or other pertinent data.)

INDIAN HEALTH SERVICE
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APPENDIX 12. Final Report Example

INDIAN HEALTH SERVICE · PHS · 1955 ·

FINAL REPORT
DOMESTIC WATER AND WASTE DISPOSAL FACILITIES
_____ VILLAGE
_____ INDIAN RESERVATION
PROJECT NO. _____

PUBLIC LAW 86-121

COMPILED BY: _____

RECOMMENDED BY:

_____
Director, SFC Program

APPROVED BY:

_____
Director, OEHE

U.S. Department of Health and Human Services
Public Health Service
Indian Health Service
(AREA OFFICE)

(DATE)

INDIAN HEALTH SERVICE · PHS · 1955 ·

FINAL REPORT
DOMESTIC WATER AND WASTE DISPOSAL FACILITIES
_____ VILLAGE
_____ INDIAN RESERVATION
PROJECT NO. _____

PUBLIC LAW 86-121

Table of Contents

Description Page

Introduction . . . . . .
Summary of Facilities Installed . . . . . .
Chronology of Events . . . . . .
Problems Encountered During Construction . . . . . .
Analysis of Project Construction Cost . . . . . .
Value of Indian-Contributed Labor . . . . . .
Training . . . . . .
Operation and Maintenance . . . . . .
Transfer of Facilities . . . . . .

Tables

Domestic Water Sources . . . . . .
Waste Disposal Facilities . . . . . .
Summary of Sanitation Facilities . . . . . .
Chronology of Events . . . . . .
Analysis of Project Construction . . . . . .
Analysis of Project Cost by General Contract . . . . . .

Appendix

Pictorial Material . . . . . .
Transfer Documents . . . . . .
Rights-of-Way . . . . . .
Engineering Report . . . . . .
Project Summary . . . . . .
Memorandum of Agreement . . . . . .
Environmental and Archeological Clearances . . . . . .

Final Report

Domestic Water and Waste Disposal Facilities
__(NAME OF PROJECT)__
_____ Indian Reservation
Project No. _____

Introduction

___(NAME OF PROJECT)___ is a segment of the ___(NAME)____ Reservation. The total reservation encompasses _____ square miles located in (PORTION OF STATE). The Project Area (Describe the location of the Project with respect to the total Reservation). The Project Area covers approximately ____ square miles which represents _____ percent of the total Reservation. (Highlight the number of homes and Indians served in the project. Underscore those figures.)

A Project Proposal/request was submitted by _____ to the Indian Health Service on ___ __(DATE)_____. The Project Proposal requested assistance under the provisions of Public Law 86-121 for the installation of _____. In fiscal year _____, funds were appropriated for this Project.

A Memorandum of Agreement was signed _____(DATE)_____by the Indian Health Service and _____ _____. This Agreement sets forth the various provisions of the Project, including types of facilities, contributions, and method of construction.

Construction of this Project started on _____(DATE)_____and was essentially completed in_____(DATE)_____. The completed Project included (Brief description of major elements). The total cost of this Project was approximately $_____, including a contribution of (Dollar contribution, land, labor, equipment, materials, etc., by the Indian Tribe). (Highlight total cost of project and cash contribution from other sources.)

Summary of Facilities Installed

(Describe community facilities, such as community water system--source, storage treatment, distribution system. Include "As Built" Map. If Individual System--type of well, pump, pressure system, and standard drawing of typical units.)

(Include Following Tables as Applicable)

Table ____. Domestic Water Source

_____ Indian Reservation

(COMMUNITY NAME)

Type of System	No. Systems	Population Served	No. of Dwellings Served
Cisterns			
Watering Points			
Springs			
Wells/Pressure System			
Service Connections			
Distribution System			
Total			

Describe community sewerage system, including As-Built Maps or type of Individual Systems. Include the following tables:

Table ____. Waste Disposal Facilities

_____ Indian Reservation

(COMMUNITY NAME)

Type	Population Served	No. of Dwellings Served
Privies		
Individual Septic Tank Units		
Sewerage Connections		
Lagoons		
Landfills		
Transfer Station		
Garbage Trucks		
Refuse Storage Units		
Total		

Table ____. Summary of Sanitation Facilities

_____ Indian Reservation

(COMMUNITY NAME)

Item (Water in Home)	No. of Dwellings Served		Population Served	
	Individual System	Community System	Individual System	Community System
Kitchen Sink				
Bathtub or Shower				
Hot Water Heaters				
Water Closets				
Lavatories				

Chronology of Events

(This table summarizes the chronology of pertinent events that occurred during the Project.)

Table _____. Chronology of Events

Domestic Water and Waste Disposal Facilities
_____[COMMUNITY]_____
_____[RESERVATION]_____

Event (in chronological order)	Date
Project Proposal Received	
Reply to Proposal by Area Office	
Planning and Investigation Funds Allotted	
Initial Site Investigations.	
Project Summary Approved	
Environmental Clearances Received (NEPA determination, Archeological)	
Initial Construction Activities	
Memorandum of Agreement	
Funds Allotted	
Final Plans & Specifications Completed	
EPA and State Health Department Reviews	
Rights-Of-Way Obtained	
Construction Items:	
Initial Invitation to Bid (First Contract)	
Source Development Started	
Trenching Started	
Trenching Completed	
Installation of Sewer Mains Started	
Installation of Water Mains Started	
Source Development Completed	
Lagoon Construction Started	
On-Premise Work Started	
Water Plans Completed	
Lagoon Construction Completed	
Sewer Mains Completed	
Landfill Construction Started	
Transfer Station Construction Started	
Landfill Construction Completed	
Transfer Station Construction Completed	
On-Premise Work Completed	
Training Activities Initiated	
Training Activities Completed	
Construction Completed	
As-Builts and O&M Manual Completed	
Final Inspection	
EPA and State Notification of Completion	
Project Transferred	

Analysis of Project Construction Cost

The total cost of the project was $ _____, or an average of $ _____ per household served. Table _____ gives a breakdown of the major costs of the project.

Table _____. Analysis of Project Costs

Domestic Water and Waste Disposal Facilities
_____[COMMUNITY]_____
_____[RESERVATION]_____

Item	Quantity	Unit Cost	Actual Cost
Source Development, Including Pumps			
Drenching			
Types of Water Distribution Pipe, Valves, & Fittings			
Types of Sewer Pipe & Manholes			
Lagoon Construction			
Septic Tanks & Fields			
Water Tank Repair			
Landfill Construction			
Transfer Station Construction			
O&M of Government Equipment			
Material for On-Premise Water, Including Pipe & Fittings, Sink & Sink Stands, Water Closets			
Waste Plumbing			
Miscellaneous (Not to Exceed 10% of Total)			
Engineering (Consulting Engineer)			
Total			

Unusual Project Construction Experience

Statement on unusual problems, such as extensive rock, poor water quality, "dry holes," high water table.

Summary of construction contracts and/or supply contracts and problems, if any, with contractors.

Training

Briefly describe type of training, number of persons trained, and hours; should include statement on individual and community operation and maintenance training. Discussion on arrangements for educational program on water utilization, together with types of health staff participation.

Operation and Maintenance

Water, sewer, or solid waste rates; maintenance organization, tools, and equipment left with project, "follow up" services.

Transfer of Facilities

A brief paragraph on the parties to the Agreement, dates of signatures, and facilities transferred.

Indian Contribution

Include a paragraph on cooperative participation by Tribe and members and financial contribution, with an evaluation of value of Indian-contributed labor for both "off-site" and "on-site." Monetary value should be placed where appropriate on bathroom additions and housing improvements. Explain types of labor and material furnished.

Table _____. Summary of Project Contributions *[Mandatory Table]*

(PROJECT NAME AND NUMBER)

Indian Contributions:		Amount
Tribe (or community, where appropriate):		$
Financial		
Labor (Estimate)		
Materials, Equipment, Land, etc. (Estimate)		
Total Tribal Contribution		$
Individual:	Number	Amount
Financial (toward above minimal facilities)		$
On-Premise Labor (Estimate)		
Total Individual Contribution		$
Non-Indian Contributions:		Amount
Financial		$
Labor (Estimate)		
Materials, Equipment, Land, etc. (Estimate)		
Total Non-Indian Contributions		$
Total Contributions to Project		$
Summary of Housing Construction and Improvements Undertaken by Indians During Project:		
	Number of Homes	Estimated Cost
New Homes		$
Additions		
Bathrooms		
Kitchens		
Bedrooms		
Other Improvements (hot water, bathing facilities, electricity, heating)		
Total Homes Constructed and Improved		$
Date:		

Pictorial Material

Suggested Pictorial Coverage
(Modify to suit individual projects.)

Conditions Before Project:
- Water Source
- Waste Disposal
- Housing
- General Site Prior to Construction

Preliminary to Construction:
- Community and Water Committee Meetings
- Field Layout and Surveying

Construction:
- Water Source Development (Wells and Pumps)
- Water Storage
- Trenching (Water and Sewer)
- Installing Pipe and Fittings (Water and Sewer)
- Lagoons and Septic Tanks
- House Plumbing
- Landfill

Training:
- Main Systems
- Household
- Water Utilization

NOTE: When taking pictures, show people doing things, particularly participants.

Transfer Documents

- Copy of the Transfer Documents
- Beneficial Use Agreements

Rights-of-way Applications And Maps of Definite Location

Application for Rights-of-Way
Maps of Definite Location
Affidavit of Completion
Application for Permits:
- Highway
- Railroad
- City, etc.

Letters from BIA - Authorize Use of Rights-of-Way, etc.
Assignment of Rights-of-Way (after completion of work)
Correspondence pertaining to above.

Engineering Report

- Copy of Engineering Report (or reference to it)
- Letter of Transmittal of Engineering Report, Plans and Specifications to EPA, State Health Department, and/or Local Health Department
- All Letters from EPA, State, or Local Health Department
- Copies of Chemical, Bacteriological, and Radiological Analyses of New Water Sources
- Well Logs
- Letters on Final Inspection
- Letters on Transmittal of As-Built Drawings, O&M Manuals, etc.
- Correspondence from Municipal Water System on Rate Structure, etc.

Memorandum of Agreement And Related Legal Documents

- Project Proposal
- Letter From Area to Tribe Acknowledging Project
- Memorandum of Agreement
- Tribal Resolution Authorizing Signature of Memorandum of Agreement
- Accepted Project Summary, Amendments, Environmental Determinations
- Any Modifications to Memorandum of Agreement
- Letters from BIA Authorizing Tribal Resolutions, Tribal Ability to Contribute
- All Project Approval and Fund Transfer Documents

Environmental and Archeological Clearances

- Brief description of any significant environmental or archeological issues. Include documents such as:
  - Finding of No Significant Impact (FONSI)
  - Record of Decision (ROD)
  - Clearance letters from National Park Service, archaeologist, etc.

APPENDIX 13. NEPA and Related Environmental Requirements

INDIAN HEALTH SERVICE · PHS · 1955 ·

NEPA and Related Environmental Requirements

I. General

Indian Health Service Area Directors were delegated the authority "to carry out the requirements of Federal environmental laws, executive orders, and regulations . . ." [Delegation of Authority from Director of Headquarters Operations, IHS. June 11, 1990.] Those requirements include laws, executive orders, and regulations that require substantive compliance such as the Clean Water Act (CWA), Safe Drinking Water Act (SDWA), Resource Conservation and Recovery Act (RCRA), as well as the National Historic Preservation Act (NHPA), and National Environmental Policy Act (NEPA). More of those requirements are listed in Table 1.

If Federal money is used in any project, the funding Federal agency (i.e., IHS) must review and determine the environmental impact of the proposed action. [NEPA, Sec. 102; 40 CFR 1508.18; NHPA ; 36 CFR 800.] NEPA states that Federal agencies will do an environmental review to determine if the action they are proposing to execute will have an impact (adverse or beneficial) on the environment. NHPA requires a review to determine if the proposed undertaking will have an effect on any archeological or historic property.

The Office of the General Counsel's current opinion is that there is nothing in any of the authorizing legislation (P.L. 86-121, P.L. 93-638, or P.L. 94-437) that relieves the Federal government (i.e., IHS) of its responsibilities under NEPA and NHPA. The NEPA/NHPA determinations are not negotiable; they are required by statute (law). Making those determinations are a residual function, and Area SFC program managers should retain adequate funding and resources to execute their environmental responsibilities. Courts historically do not recognize the lack of personnel or funds as reasons for not complying with the environmental laws and regulations, especially those that have fines or criminal penalties for failure to comply. In a P.L. 93-638 contract or compact document, the responsibilities of the Tribe and the responsibilities of IHS should be explicitly stated, although IHS will always make the final NEPA determination unless the applicable laws are changed.

Field information typically provided by SGDP tribes to assist IHS in making NEPA determinations include:

- Providing IHS with an environmental review of the project, which certifies that the Tribe's actions will not have a significant effect on the environment.
- Certifying that the Tribe will obtain any permits that are needed.
- Stating any mitigation actions the Tribe will take to avoid significant impacts to the environment.
- The environmental review certification must be signed by a responsible and authorized tribal official or representative.
- If any portion of the project is contingent on the Tribe obtaining a permit or the Tribe performing any mitigation, IHS must state in its determination that the determination is contingent on the Tribe fulfilling the appropriate requirements and mitigation activities. The stated contingencies must be enforceable. [40 CFR 1505.3, 1506.1(b)]
- The Tribe has agreed to notify the appropriate authority and the IHS in the event of an unforeseen discovery or change in the project, which could change the environmental determination.

IHS must independently verify that the information supplied by the Tribe is accurate. Areas should retain adequate funding and resources to execute that environmental responsibility. IHS makes the final determination as to whether there will be a significant impact on the human environment, whether the project is categorically excluded, or whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). Only IHS can make the determination that a project is categorically excluded from environmental review. Each Area Director was delegated the full responsibility for IHS compliance with all environmental laws and regulations, including NEPA. [40 CFR 1506.1]

Note: Incorporation of the environmental review form, found in the Environmental Review Manual, into any document does not by itself satisfy the requirements of NEPA or NHPA. Performing an environmental review means applying all of the criteria and guidelines stated in the entire Environmental Review Manual to a proposed project.

II. Clarification on using Categorical Exclusions

After consulting with appropriate agencies with jurisdiction concerning NEPA requirements, the IHS made the decision to utilize categorical exclusions (CATEXs). As required by law, this decision was published in the Federal Register. The Council on Environmental Quality (CEQ) was one of the agencies consulted, and their comments were incorporated into the final document. **A CATEX does not exempt the Agency or the Tribe from any environmental law, regulation, or requirement.**

CATEXs are generally designed to exclude environmental review of routine Federal actions such as routine management of programs, training, data processing, providing technical assistance, and transferring personnel; not construction. Because of the SFC program's exemplary historical record complying with NEPA, IHS decided to include the SFC program's sanitation facilities construction projects in the agency's categorical exclusions except for solid waste projects and wastewater projects such as lagoons and sewage treatment plants.

The Area Director, or his designated Environmental/NEPA Coordinator, must decide whether to designate a project as categorically excluded from further environmental review. That means that IHS must perform an environmental review of the project to determine if any extraordinary or exceptional circumstances exist that could preclude the use of a categorical exclusion. For example, the construction of 300 feet of water main and service lines might be categorically excluded provided, after a thorough environmental review, it was determined that there would be no significant impact on any environmental category including no impact on any archeological sites, wetlands, endangered species, and there is no public controversy. The IHS reviewer needs to be aware that public controversy could occur after construction starts, which could lead to a court review of the record to examine if IHS's environmental review justified the categorical exclusion. The use of CATEXs for construction projects is not recommended, although it is an available option under current IHS policy as stated in the Federal Register publication of IHS categorical exclusions (Federal Register; Vol. 58, No. 3; January 6, 1993; pp. 569-572).

The decision to categorically exclude a proposed project from environmental review must be justifiable, based on the available record, because it may be challenged during the public notice period, or in court. Also, any changes in scope or any discovery situations that occur during execution of a project may preclude the CATEX determination and require a supplementary environmental review to decide if the original environmental determination is still valid.

There are certain categories of actions that IHS believes will not have any adverse effect on the environment. For example, sending tribal or Federal personnel to training will not have an adverse effect on the environment; therefore, training is categorically excluded. The IHS SFC Program historically has a good environmental record regarding constructed sanitation facilities. The IHS included sanitation facilities construction in its categorical exclusions because the SFC Program:

- Does a thorough environmental review during the project proposal stage;
- Requests or obtains all necessary permits prior to construction;
- Does a thorough archeological and historical records review prior to construction;
- Does a thorough site investigation prior to construction;
- Informs all appropriate agencies of jurisdiction prior to construction; e.g., State Historic Preservation Officer (SHPO), State, Tribe, U.S. Army Corps of Engineers (USACE); etc.
- Obtains permission from appropriate entities prior to construction; e.g., SHPO, State, Tribe, USACE;
- Avoids all situations that could have an adverse impact by rerouting and redesigning;
- Trains its personnel to recognize potential adverse impacts during construction; and
- Trains its personnel to react appropriately in a discovery situation.

See the Federal Register notice in the Environmental Review Manual for more information on the conditions under which CATEXs may be used.

The SFC Program agreed to the IHS determination above when the IHS published its categorical exclusions in the Federal Register in order to satisfy the Council on Environmental Quality (CEQ) and other agencies of jurisdiction. Essentially, the SFC Program plans and designs its projects so that there will be no impact on the human environment. Where appropriate, the SFC Program can sometimes mitigate potential adverse impacts where avoidance is not possible; however, the CEQ only considers such mitigation valid

when it is part of the overall planning and design of the project.

There are no criminal penalties for failing to comply with NEPA alone. However, some of the associated environmental laws and regulations do have criminal penalties and fines; e.g., Clean Water Act, Archeological Resource Protection Act, Endangered Species Act, etc. That is why the IHS SFC Program consults with the appropriate agencies of jurisdiction and obtains appropriate and applicable permits.

Table 1 includes some of the environmental laws that must be considered in a NEPA review.

III. Future Developments

Tribal, state and local agencies that receive funds from HUD under the housing programs or the Community Development Block Grant program assume the Federal NEPA/NHPA responsibilities when they agree to accept the applicable HUD program's funds, because there is a law enabling them to do so. The IHS has proposed an amendment to P.L. 93-638 to allow tribes to assume the Federal NEPA/NHPA responsibility when they accept Federal funding for a program under P.L. 93-638, as amended. Until the law is amended, IHS is the responsible agency for NEPA/NHPA compliance purposes.

Table 1
NEPA and Related Environmental Requirements[1]

Project Phase	Action	Authority	Federal Enforcement Agency
Project Proposal	**If federal money is used in any project or if the proposed action is a federal project, IHS[2] must review and determine the environmental impact of the proposed action.**	NEPA[3] Sec. 102; 40 CFR 1508.18	CEQ[4], EPA[5]
		NHPA[6]; 36 CFR 800	ACHP[7], SHPO[8], NPS[9]
Project Scope	•A Tribe (or tribal organization) provides IHS with an environmental review of the project, which certifies that the Tribe's actions will not have a significant effect on the environment. •A Tribe certifies that it will obtain any permits that are needed. •A Tribe states any mitigation actions it will take to avoid significant impacts to the environment. **•The environmental review certification must be signed by a responsible and authorized tribal representative**. •Items that a Tribe must consider include:		
	wetlands and water resources	E.O. 11990[10]; FWCA[11]; CWA[12]	ACE[13], EPA, FWS[14]
	floodplains	E.O. 11988[15]; NFIA[16]; FDPA[17]	FEMA[18]; EPA
	endangered and threatened species and critical habitats	ESA[19]	FWS; NMFS[20]
	cultural resources	HSA[21]; NHPA; AHPA[22]; ARPA[23]; E.O. 11593[24]; NAGPRA[25], E.O. 13007[26]	SHPO, NPS, ACHP; Tribes
	wild and scenic rivers	WSRA[27]	USDA[28]; DOI[29]
	coastal zones, coastal barriers	CZMA[30]; CBRA[31]	NOAA[32], FWS, States
	wilderness areas	WA[33]	USDA; DOI
	significant agricultural lands	FPPA[34]	USDA
	sole source aquifers	SDWA[35]	EPA
	storage of hazardous wastes and/or petroleum products	CERCLA[36]; CERFA[37]	EPA
		40 CFR 1503, 1506.5	
IHS review of Project Scope	○If federal money is used in the project or if the proposed action is a federal project, IHS must determine if there will be any adverse effect on the environment if the project is executed. ○**IHS must make an environmental determination prior to committing funds to or releasing funds for the project.** 40 CFR 1505.1, 1506.1 ○If any portion of the project is contingent on the Tribe obtaining a permit or the Tribe performing any mitigation, IHS must state in its determination that the determination is contingent on the Tribe fulfilling the appropriate requirements and mitigation activities. 40 CFR 1505.3 ○The stated contingencies must be enforceable. 40 CFR 1505.3, 1506.1(b)		
	○IHS review may determine that an Environmental Assessment (EA) is needed prior to project funding. The EA process could take from 45 to 90 days, or more.		
Project Approval	•If IHS determines that the proposed project will not have a significant impact on the environment, then the project may be considered for funding, provided it meets applicable qualifications and eligibility requirements. [8/6/98]		

Notes for Table 1, NEPA and Related Environmental Requirements

1. **Area Directors** are delegated with the authority "to carry out the requirements of Federal environmental laws, executive orders, and regulations in accordance with the Department of Health and Human Services policies and procedures contained in revised Part 30 of the General Administration Manual, Environmental Protection within [their] respective areas." [Delegation of Authority from Director of Headquarters Operations, IHS. June 11, 1990.]
2. Indian Health Service
3. National Environmental Policy Act of 1969 as amended, P.L. 91-190, 42 USC 4321-4347
4. Council on Environmental Quality
5. Environmental Protection Agency
6. National Historic Preservation Act (NHPA), P.L. 89-665; 80 Stat. 915; 16 USC 470 et seq.
7. Advisory Council on Historic Preservation
8. State Historic Preservation Office
9. National Park Service, Department of Interior
10. Executive Order 11990, Protection of Wetlands
11. Fish and Wildlife Coordination Act of 1958; 16 USC 661
12. Clean Water Act, P.L. 92-500, P.L. 95-217; 33 USC 466
13. U.S. Army Corps of Engineers
14. U.S. Fish and Wildlife Service
15. Executive Order 11988, Floodplain Management, May 24, 1977
16. National Flood Insurance Act; 42 USC 4001
17. Flood Disaster Protection Act; 42 USC 4401
18. Federal Emergency Management Agency
19. Endangered Species Act; 16 USC 1531
20. National Marine Fisheries Service
21. Historic Sites Act; 16 USC 461 et seq
22. Archeological and Historic Preservation Act; 16 USC 469 et seq
23. Archeological Resource Protection Act; 16 USC 470
24. Executive Order 11593, Protection of and Enhancement of the Cultural Environment
25. Native American Graves Protection and Repatriation Act, 25 USC 3001
26. Executive Order 13007, Indian Sacred Sites
27. Wild and Scenic Rivers Act, 16 USC 1277 et seq
28. U.S. Department of Agriculture
29. Department of the Interior
30. Coastal Zone Management Act; 16 USC 1451
31. Coastal Barrier Resource Act; 16 USC 3501
32. National Oceanic and Atmospheric Administration, Department of Commerce
33. Wilderness Act, 16 USC 1131-1132
34. Farmland Protection Policy Act; 7 USC 4201 et seq
35. Safe Drinking Water Act, 42 USC 300f et seq.
36. Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC 9601 et seq
37. Community Environmental Response Facilitation Act, 42 USC 9620

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