ATTACHMENT

4.4.C. 1984 MEMORANDUM OF UNDERSTANDING BETWEEN FEDERAL HIGHWAY ADMINISTRATION, REGION 1 AND ENVIRONMENTAL PROTECTION AGENCY, REGION 2
MEMORANDUM OF UNDERSTANDING

Between

FEDERAL HIGHWAY ADMINISTRATION, REGION 1

and

ENVIRONMENTAL PROTECTION AGENCY, REGION II

This memorandum represents an agreement between the regional offices of the Environmental Protection Agency (EPA) and the Federal Highway Administration (FHWA) concerning the review of projects for which Federal financial assistance is sought that may affect sole source aquifers designated pursuant to Section 1424(e) of the Safe Drinking Water Act (P.L. 93-523). This memorandum serves two primary purposes: (1) to set forth the types of projects that will necessitate review, (2) to describe the notification and review procedures that will be employed.

Pursuant to Section 1424(e), EPA has determined that the aquifer systems listed on Attachment No. 1 are the principal sources of drinking water for its residents. As such, no commitment for Federal financial assistance may be entered into for any project which EPA determines may contaminate an aquifer through its recharge zone as to create a significant hazard to public health.

The EPA will notify FHWA of all future 1424(e) aquifer designations in EPA Region II. This memorandum will apply to all future sole source aquifer designations in EPA Region II.

Goal and Definitions

The goal of this memorandum is to ensure that each project that is to receive Federal financial assistance is designed in a manner that will prevent the introduction of contaminants into the aquifer in quantities that may create a public health hazard, or otherwise contaminate a sole source aquifer to a level which would require additional treatment facilities by an existing or planned public water system in order to meet the National Interim Primary Drinking Water Regulations.

A "significant hazard to public health" will be deemed to occur if the level of contaminants in an aquifer would:

(a) exceed any maximum contaminant level set forth in any promulgated National Primary Drinking Water Standard at any point where the water may be used for drinking purposes, or
(b) otherwise threaten public health.

In determining whether a level of contaminant would threaten public health, the following factors at a minimum shall be considered:

(1) the toxicity of the contaminants involved;

(2) the volume of contaminants which may enter the aquifer; and

(3) aquifer characteristics, i.e., geochemical, hydrological, geological, etc., and attenuation capability of the aquifer.

**Early Notification**

In order to achieve the above goal, the FHWA, at the time of Intergovernmental Review per Executive Order 12372, or when preliminary engineering funds are authorized, will provide EPA with early notification of projects for which one of the following criteria apply:

1. Construction of additional through-traffic lanes, or interchanges, or rotaries on existing roadways.

2. Construction of a two or more lane highway on new alignment.

3. Construction of rest areas with on-site sewage disposal facilities.

4. Other projects which, in the opinion of FHWA, may have an effect on the water quality of the aquifer to the extent that the goal outlined above would not be achieved.

This early notification will serve to initiate consultation to determine the scope of study for any required water quality assessment.

**1424(e) Review**

For those projects requiring a 1424(e) review, FHWA will provide EPA with a ground water quality assessment as soon as practicable following the early notification to permit EPA to make an early determination on the impact of the project on the quality of the ground water. If a determination has not been made prior to the circulation of the draft environmental impact statement (DEIS), the 1424(e) review will be performed by EPA concurrently with the National Environmental Policy Act NEPA review. For those projects which do not require an EIS, EPA agrees to complete the 1424(e) review within 45 days after receipt of the ground water quality assessment. For those projects being considered for Federal-aid highway funding at the time of the sole source determination, the liaison officers will meet to determine the information needed for review (scope) and EPA agrees in turn to complete any needed reviews within 30 days after receipt of this information.
The FHWA and EPA will each assign a representative to serve as liaison. The liaison officers are:

FHWA
Region 1 - Director, Office of Planning and Program Development
U.S. Department of Transportation
Federal Highway Administration
Leo W. O'Brien Federal Building, 7th Floor
Albany, New York 12207

Region II - Environmental Protection Agency, Region II
26 Federal Plaza, Room 907
New York, New York 10278

Representatives will meet as needed to update this memorandum. This memorandum is subject to revision upon agreement of both parties.

Federal Highway Administration  U.S. Environmental Protection Agency

__________________________  __________________________
Regional Administrator        Regional Administrator

Date:______________________  Date:______________________