ATTACHMENT

5.2.A MEMORANDUM OF UNDERSTANDING

THE TEXT OF THIS MOU IS RETYPED HERE BECAUSE THE ORIGINAL COPY WAS TOO FAINT TO BE REPRODUCED. THE LAST PAGE OF THAT MOU (SIGNATURE PAGE) IS ATTACHED TO THIS COPY.

MEMORANDUM OF UNDERSTANDING

BETWEEN THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION

IMPLEMENTATION OF MINED LAND RECLAMATION LAW RULES AND REGULATIONS RELATING TO MINING OPERATIONS SUBJECT TO DEPARTMENT OF TRANSPORTATION CONTRACT SPECIFICATIONS

This Agreement is entered into the 12th day of May, 1977, between the New York State Department of Environmental Conservation and the New York State Department of Transportation

WHEREFORE, 6 NYCRR Part 422.1 (e) provides as follows:

"(e) An applicant proposing to conduct a mining operation in conjunction with a department of transportation contract, in accordance with the requirements of said agency’s contract documents and specifications, may submit a copy of the contract agreement to the department in lieu of a mined land-use plan. If a mining permit is issued, the contract documents and specifications shall satisfy the requirements of this part and shall be enforceable as such. The department will monitor the mining operation in cooperation with the engineer-in-charge to insure conformance with the title and these
rules and regulations."; and

WHEREFORE, the Departments of Environmental Conservation and Transportation mutually recognize the need to cooperate in both the enforcement of Department of Transportation contract specifications relating to the restoration of disturbed areas outside of the right-of-way where contract documents and specifications have been accepted by the Department of Environmental Conservation in satisfaction of the requirements of Part 422, and the determination of necessity for, and implementation of, any more stringent standard set forth in Part 422 of the Mind Land Reclamation Rules and Regulations deemed necessary by both Departments.

NOW THEREFORE, the New York State Department of Environmental Conservation and the New York State Department of Transportation do agree as follows:

1. The engineer-in-charge employed by the Department of Transportation on any project shall insure that the contractor has obtained a mining permit from the Department of Environmental Conservation before work is authorized on any proposed borrow source, gravel source, or the like, subject to the engineer-in-charge’s approval and control from which more than 1,000 tons of material is to be removed within any twelve successive calendar months.

2. The restoration of borrow source, gravel source, or the like, for which the Department of Transportation’s contract documents and specifications have been accepted by the Department of Environmental Conservation in satisfaction of Part 422, shall be accomplished in accordance with the contract specifications of the Department of Transportation relating to the restoration of disturbed areas outside of the right-of-way. However, should the engineer-in-charge and the appropriate representative of the Department of Environmental Conservation mutually decide that a more stringent standard for the operation of a mine or reclamation as
contained in the Mined Land Reclamation Rules and Regulations is necessary for a particular borrow source, gravel source, or the like, the engineer-in-charge shall order the contractor to comply with such standard.

3. A waiver of revegetation may be considered if other use of the borrow source, gravel source, or the like, is planned within six months. However, in no instance shall the revegetation requirements of the Department of Transportation’s specification be waived by the engineer-in-charge without the written consent of both the affected property owner and the appropriate representative of the Department of Environmental Conservation.

4. The submission of a grading plan by the contractor for a mining operation to be carried out in conjunction with a Department of Transportation contract where the contract documents and specifications have been accepted by the Department of Environmental Conservation in satisfaction of the requirements of Part 422 may be deemed desirable where quantities of borrow, gravel, or the like, will be removed such that genuine concerns with the future aesthetic or stability of the remaining terrain are raised. Such submission shall be required by the engineer-in-charge and the appropriate representative of the Department of Environmental Conservation mutually agree as to the necessity of such grading plan.

5. Should it come to the attention of the engineer-in-charge or any other official of the Department of Transportation that construction materials to be used or being used on a Department of Transportation project will be obtained or are being obtained from a mine which is subject to the permit requirements specified in the Mined Land Reclamation Law Rules and Regulations and for which no permit has been obtained, the engineer-in-charge or other such Department of Transportation official shall immediately notify the appropriate official of the Department of Environmental Conservation at the Regional Office which has jurisdiction over
such mining operations.

6. In the case of disputes between the engineer-in-charge and the appropriate representative of the Department of Environmental Conservation regarding any of the foregoing provisions or other matters relating to the administration of the Mined Land Reclamation Law, the engineer-in-charge shall defer action with respect to the disputed issue until such dispute is settled as follows: The disputed matter shall be referred for resolution to the appropriate Regional Directors of both Departments. In the event that the matter cannot be resolved by the Regional Directors the dispute shall be referred to the First Deputy Commissioner of the Department of Environmental Conservation and the Executive Deputy Commissioner of the Department of Transportation for resolutions.

7. This agreement may be terminated by either Department upon 30 days’ written notice.

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Commissioner of the NYSDEC

William C. Henessy

Commissioner of the NYSDOT

(Originals signed)