MEMORANDUM of UNDERSTANDING
Between the
U.S. ENVIRONMENTAL PROTECTION AGENCY - REGION 10
and
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT - NORTHWEST/ALASKA AREA
and
IDAHO DEPARTMENT OF COMMERCE
and
IDAHO HOUSING AND FINANCE ASSOCIATION

Sole Source Aquifers
State of Idaho

INTRODUCTION:

The purpose of this memorandum is to develop an understanding between the U.S. Environmental Protection Agency (EPA) Region 10, U.S. Department of Housing and Urban Development (HUD), Idaho Department of Commerce (IDOC), and the Idaho Housing and Finance Association (IHFA) in order to protect EPA designated Sole Source Aquifers (SSAs) in the State of Idaho. This Memorandum of Understanding (MOU) is the third MOU that has been signed between the two federal agencies mentioned above. The last one was signed in 1989.

This new MOU was developed by EPA, HUD, IDOC, and IHFA because of the need to create an efficient process for identifying, reviewing, modifying, and approving proposed federal financially assisted projects located over SSAs in the State of Idaho. While the SSA Protection Program is only one way to assist the State, local communities, and the private sector in protecting and managing ground water resources, it is the intention of this MOU to help ensure that: (1) federal government sponsored development projects will not have a significant adverse impact to human health and the environment; (2) public health and ground water concerns are communicated to federal and state agencies and other organizations involved with proposing federal financially assisted projects; (3) federal government sponsored development projects can serve as models for the private sector in terms of ground water protection and management.

This planned partnership approach will capitalize on the continuing efforts by local and state economic planning and development agencies and/or organizations which comply with the National Environmental Policy Act (NEPA).

GOALS:

The goals of this MOU are to (1) ensure that each project receiving federal financial assistance is designed to prevent the introduction of contaminants into the SSA in quantities that may create a significant hazard to public health, interfere with the public welfare, or otherwise contaminate the aquifer to a level which would require additional treatment facilities by a public water system in order to meet the National Primary Drinking Water Regulations, and to (2) formalize the process by which review of federal financially assisted projects are to be coordinated between the EPA, HUD, IDOC, and IHFA.

OBJECTIVES:

1. Develop an agreement for implementing Section 1424(e) of the Safe Drinking Water Act, the Sole Source Aquifer Protection Program, involving federal financially assisted projects within EPA designated SSAs in the State of Idaho.

2. Protect all EPA Region 10 SSAs in Idaho through project specific performance measures as agreed upon by EPA, HUD, IDOC, and IHFA. See attached map and EPA SSA website for up-to-date information on current and future aquifer designations.

3. Establish a working agreement between the three agencies which establishes a streamlined mechanism for identifying, reviewing, modifying, and approving federally financially assisted projects.

4. Encourage increased communication, cooperation, and coordination, through the community ground water protection programs, local health departments/districts, State, and federal governmental agencies regarding ground water protection issues within all SSAs.

AUTHORITIES:

EPA: The Sole Source Aquifer Protection Program is authorized under Section 1424(e) of the federal Safe Drinking Water Act. The provision allows EPA to declare that an aquifer is a "sole or principal drinking water source" for an area if contamination of the aquifer could create a significant hazard to public health. A sole source aquifer designation can be initiated by a petition submitted to EPA from any interested party, such as a public water purveyor, local health department, or an environmental group.

Following a designation, federal financially assisted projects proposed over the aquifer are subject to EPA review. EPA can negotiate modifications to improve a project or seek that funding be withheld for a project which poses a significant risk to public health by contamination of the sole source aquifer.

HUD: Federal financial assistance provided by HUD is subject to the National Environmental Policy Act (NEPA) of 1969, as amended, and NEPA's implementing regulations. EPA reviews under Section 1424(e) of the Safe Drinking Water Act are coordinated in the process of conducting NEPA reviews. For activities categorically excluded from NEPA, EPA reviews are coordinated as part of the process of determining the categorically excluded status of the activity. Commitment of federal financial assistance may not be provided in designated SSAs until completion of the appropriate review.

IDOC: The IDOC is the state agency which implements the federal Community Development Block Grant program. The primary mission of this department is to work with local communities to explore community and economic development needs and solutions.

IHFA: The IHFA is a not-for-profit financial services and housing organization in the State of Idaho . This organization has the primary responsibility to implement the HOME program which provides financial services to develop affordable multifamily housing within the state.

SSA REVIEW ASSUMPTIONS:

The process for EPA's review of federal projects is based on the following assumptions:

1. EPA, HUD, IDOC, and IHFA will work together cooperatively to implement the Sole Source Aquifer Protection Program.

2. Under this new agreement, HUD, IDOC, and IHFA will review projects to determine if the project proponent has met the performance measures agreed upon by the three agencies. If the project meets the performance measures (contained in this MOU), the project proponents may continue with the project as planned.

3. If the project cannot meet the agreed upon performance measures and/or if the delegated parties cannot make a determination with regards to the project's specific impact to ground water quality, the delegated parties may consult with and/or refer the project to EPA for review and approval.

4. EPA will be responsible for overseeing SSA review, will serve as the point of contact/coordination with other federal, state, and local agencies, and continue to be the focal point for any appeals.

5. For projects that were reviewed, but not referred to EPA, HUD, IDOC, and IHFA will provide EPA with an annual report on the number and type of federal financially assisted projects that were approved so that the appropriate reporting requirements can be met by EPA. The report should contain: project name, project location, type of project, federal funding agency, and amount of federal funding.

5. SSA REVIEW PROCESS & PERFORMANCE STANDARDS:

EPA approves all federal financially assisted projects which will meet or comply with the following performance measures:

1. Storm Water:

All projects that may generate, increase, collect, or dispose of storm and surface water run off from impervious surfaces, e.g., parking lots and roof stops, must use the Division of Environmental Quality (DEQ) developed storm and surface water management manual to design all storm water treatment and disposal systems, for example, State of Idaho's Catalog of Storm Water Best Management Practices. In addition, the use of shallow injection wells, e.g., dry wells, french drains, or a drainfield system, must be avoided whenever possible.

In those cases where treatment and disposal systems must utilize a shallow injection well, they must (1) notify and register the shallow injection well with the Department of Water Resources' (DWR) Underground Injection Control (UIC) Program to ensure that the shallow injection well(s) does not dispose any fluids that do not meet the State's Ground Water Quality Standards, and (3) pay any applicable fees for registering the shallow injection wells. For more information on protection measures for storm water treatment and disposal, please contact:

Idaho: Department of Water Resources
Underground Injection Control Program
1301 N. Orchard Street
Boise, ID 83706
(208) 327-7900

2. Sanitary Waste:

Whenever feasible, connections to the Publicly Owned Treatment Works (POTW), i.e., the sewage treatment plant, should be made. In cases where connections to a POTW cannot be made, onsite sewage disposal systems can be utilized if (1) DEQ or local health department or district is notified and a permit is issued, and if applicable (2) DWR should be notified if the onsite sewage system (OSS) is designed to treat and dispose of equal to or more than 2000 gallons per day.

In addition, in facilities that do not have connections to a POTW, garage bay and other floor/shop drains will not be allowed to be connected to an OSS. Best Management Practices should be utilized to provide an alternative to installing garage bay and other drains, e.g., sloped garage bay and holding tanks. For more information on protection measures for onsite sanitary waste treatment and disposal, please contact DWR as listed above.

3. Potable Water:

Whenever feasible, connections to a community water supply should be made. In cases where connections to a community water system cannot be made, a private well may be used to supply potable water if (1) the appropriate State or local health department or district is notified, (2) water is tested for contaminants, such as bacteria, nitrate, (3) all applicable pollution prevention techniques are used to protect the private well from contamination. For more information on protection measures for users of private wells, please contact:

Idaho: Idaho Association of Soil Conservation Districts
Home*A*Syst Program
P.O. Box 2637
Boise, ID 83701
(208) 338-4321

4. Underground Storage Tanks:

All underground storage tank (UST) systems will meet the performance standards as specified in Volume 40 of the Code of Federal Regulations (CFR), Part 280, Subpart B of the Federal UST Regulations. These performance standards include tank and pipe design and construction, spill, and overfill equipment operating specifications, and proper installation procedures which must be followed. In

addition, all UST systems will (1) register with EPA by completing the Notification for Underground Storage Tanks Form, (2) be in accordance with Subpart D of the Federal UST Regulations where leak detection must be performed once petroleum products area added to the tanks, (3) obtain an approved financial responsibility mechanism, in accordance with Subpart H of the Federal UST regulations, prior to putting the UST system into service. This mechanism will ensure that clean-up funds will be made available if/when needed to mitigate ground and drinking water or soil contamination. For more information on protection requirements for USTs, please contact:

Idaho: EPA- Region 10
Idaho Operations Office
Underground Storage Tank Program
1401 North Orchard Street
Boise, ID 83706
(208) 378-5765

5. Community Water System Improvement:

For community water systems that are requesting federal financial assistance for new improved water systems, the community must be participating in the State of Idaho's Wellhead Protection Program as a condition of receiving funding. Since all community water systems will be receiving a complete Source Water Assessment by the State of Idaho Division of Environmental Quality, the community water system must incorporate the use of relevant non-regulatory and/or regulatory approaches to protect their drinking water supply if they want federal dollars for improvement projects. For more information on the State of Idaho's Wellhead Protection Program, please contact:

Idaho: Division of Environmental Quality
Wellhead Protection Program
1401 North Hilton Street
Boise, ID 83706
(208) 373-0542

If any of these conditions cannot be met by the project proponent, HUD, IDOC, and/or IHFA will (1) request technical and informational assistance and/or (2) request EPA to conduct an independent review of the proposed project for impacts to ground water quality and recommend alternatives, if necessary.

DEFINITIONS:

Aquifer: Geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or a spring. Aquifer in this Memorandum refers to the Spokane Valley Rathdrum Prairie, Lewiston Basin, and Eastern Snake River Plain aquifers.

Commitment of federal financial assistance: A written agreement entered into by a department, agency, or instrumentality of the Federal Government to provide financial assistance as defined under "Federal financial assistance". Renewal of a commitment which the issuing agency determines has lapsed shall not constitute a new commitment unless the Regional Administrator determines that the project's impact on the aquifer has not been previously reviewed under Section 1424(e) of the Safe Drinking Water Act. The determination of a Federal agency that a certain written agreement constitutes a commitment shall be conclusive with respect to the existence of such a commitment.

Federal financial assistance: Any financial benefits provided directly as aid to a project by a department, agency, or instrumentality of the Federal government in any form including contracts, grants, and loan guarantees. Actions or programs carried out by the Federal government itself such as dredging performed by the Army Corps of Engineers do not involve Federal financial assistance. Actions performed for the Federal government by contractors, such as construction of roads on Federal lands by a contractor under the supervision of the Bureau of Land Management, should be distinguished from the contracts entered into specifically for the purpose of providing financial assistance, and will not be considered programs or actions receiving Federal financial assistance. Federal financial assistance is limited to benefits earmarked for a specific program or action and directly awarded to the program or action. Indirect assistance, e.g., in the form of a loan to a developer by a lending institution which in turn receives Federal assistance not specifically related to the project in question is not Federal financial assistance under Section 1424(e). When in doubt, EPA will consult with EPA Region 10, Office of Regional Counsel.

Impervious area: Impermeable surfaces, such as parking lots and rooftops, that are covered with materials, such as concrete, asphalt, shingles, and tile, which prevents the infiltration of water into the soil.

Maximum Contaminant Level (MCL): The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. MCLs are listed in the National Primary Drinking Water Regulations (40 CFR 141).

Significant hazard to public health: Any level of contamination which causes or may cause the aquifer to exceed any maximum contaminant level (MCL) set forth in the promulgated National Primary Drinking Water Regulations at any point where the water may be used for drinking purposes or which may otherwise adversely affect the health of persons, or which may require a public water system to install additional treatment to prevent such adverse effect.

Shallow Injection Well: Devices that are designed to emplace storm and surface water run off directly into the subsurface, also known as, french drains, trench drains, dry wells, and sumps.

Sole Source Aquifer: An aquifer or aquifer system that supplies 50% or more of the drinking water for a given service area and for which there are no reasonably available alternative sources should the aquifer become contaminated and the possibility of contamination exists. Section 1424(e) of the Safe Drinking Water Act is the statutory authority for the SSA Protection Program.

Storm Water Best Management Practices (BMPs): Structural devices that temporarily store, treat, and dispose storm and surface water run off to remove pollutants, recharge ground water, and reduce flooding.

PRIMARY PROGRAM CONTACTS:

The following agency representatives will be responsible for maintaining communications as to procedures and activities of their respective agencies. The liaison officers are:

EPA:
Manager
Ground Water Protection Unit
U.S. Environmental Protection Agency
1200 Sixth Avenue, OW-137
Seattle, WA 98101
(800) 424-4372

HUD:
Environmental Clearance Officer
U.S. Department of Housing and Urban Development
400 Southwest Sixth Avenue, Suite 700
Portland, OR 97204
(503) 326-2701

IDOC:
Administrator, Divison of Community Development
Idaho Department of Commerce
P.O. Box 93
Boise, ID 83720-0093
(208) 345-2470

IHFA:
Grant Programs Manager
Community Housing Services
P.O. Box 7899
Boise, ID 83707-1899
(208) 331-4712

MOU AMENDMENT PROCEDURES:

This Memorandum of Understanding is subject to revision upon receiving a letter from a signatory agency to modify the conditions and/or terms understood by this MOU. Upon concurrence from the signatory agencies to modify the conditions and/or terms of this MOU, the subject letter will be recognized as an Addendum to this MOU.

SIGNATURES:

U. S. EPA - Region 10

Chuck Clarke 7-5-00
Regional Administrator **Date**

U.S. HUD - Northwest/Alaska Area

6/26/00
Date

Secretary's Representative

Idaho Department of Commerce

5-24-2000
For **Gary Mahn** **Date**
Director

Idaho Housing and Finance Association

3-20-00
Julie H. Williams **Date**
Vice President