

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
REGION 5, CHICAGO, ILLINOIS

AND

THE ENVIRONMENTAL PROTECTION AGENCY, REGION 5,
CHICAGO, ILLINOIS

INTRODUCTION

This memorandum of understanding (“MOU”) is intended to memorialize an understanding between the Environmental Protection Agency (“EPA”) Region 5 and the Department of Housing and Urban Development (“HUD”) Region 5 concerning the review of proposed Federal financially assisted projects located in whole or in part in project review areas of designated sole source aquifers (“SSAs”) in Region 5 (Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio), which include any recharge zone, streamflow source area, or artesian zone. These SSAs are described and depicted on the maps in **Attachment A** (attached hereto and incorporated herein).

This MOU is a voluntary agreement that expresses the good-faith intentions of HUD and EPA, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party. This MOU does not obligate and will not result in an exchange of funds, personnel, property, services, or any kind of financial commitment. This memorandum outlines procedures to be followed by HUD in determining which projects should be forwarded to EPA for review. It also outlines the procedures to be followed and the general criteria EPA will use in such review.

This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against HUD or EPA, their officers or employees, or any other person. This MOU does not apply to any person outside of HUD and EPA, except that the exclusions in **Attachment B** (attached hereto and incorporated herein) and the procedures for submission to EPA under this MOU (and any modification thereof by HUD and EPA) may be followed by Responsible Entities (RE) – as defined below – during the term of the MOU, unless otherwise instructed by EPA.

BACKGROUND

Pursuant to Section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. § 300h-3(e), EPA designated several aquifers located within Region 5 as SSAs because they are the sole or principal drinking water source for their areas and contamination of any of them would create a significant hazard to public health. As such, no commitment for Federal financial assistance may be entered into for any project which EPA determines may contaminate any of these SSAs so as to create a significant hazard to public health. “Federal financial assistance” is defined in part as “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.” 40 C.F.R. § 149.101(g).

HUD administers funds under programs subject to its National Environmental Policy Act (NEPA) implementing regulations in 24 C.F.R. Part 50 ("Part 50"), Protection and Enhancement of Environmental Quality. HUD is the responsible Federal agency for NEPA purposes for these regulations. 24 C.F.R. § 50.4(d) of these regulations requires compliance with Section 1424(e) of the Safe Drinking Water Act.

HUD regulations at 24 C.F.R. Part 58 ("Part 58"), Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities, allow the assumption of authority to perform the environmental reviews by REs, which are units of general local government, such as a town, city, or county, or a tribe or state. The RE is responsible for the scope and content of the review and making the finding. The certifying officer of the RE, usually the mayor, signs the review and takes legal responsibility for the review. Part 58 applies when legislation for a program allows States, tribes, and/or local governments to assume authority (see 24 C.F.R. 58.1(b) for a list of programs authorized under Part 58). Local governments must assume responsibility for grants made directly to the local government when legislation permits. They are encouraged to be responsible for the environmental review in cases where the grants are made to other entities, such as nonprofit organizations and public housing authorities. 24 C.F.R. § 58.5(d) of these regulations requires compliance with Section 1424(e) of the Safe Drinking Water Act.

GOALS

The goals of this MOU are to ensure that each project receiving Federal financial assistance is designed and constructed in a manner that will not contaminate an SSA so as to create a significant hazard to public health, and to formalize the process by which review of Federal financially assisted projects is to be coordinated between EPA and HUD.

GUIDING PRINCIPLES FOR PROJECT REVIEW

For the purposes of this MOU, in determining whether the act of constructing a proposed project would create a significant hazard to public health, the following factors, at a minimum, shall be considered with guidance from appropriate EPA staff:

1. The toxicity and migration/transformation potential of the contaminants involved;
2. The volume of contaminants that may enter any of the Aquifers; and
3. Characteristics of the SSAs in the area affected by the project (i.e., geochemical, hydrological, geological, etc.), and attenuation capability of the SSAs.

PROJECTS SUBJECT TO PART 50

HUD will review projects requesting Federal financial assistance that are subject to the Part 50 regulations to assure that each project located in whole or in part within an SSA project review area, as depicted in **Attachment A**, is referred to the EPA Region 5 Sole Source Aquifer Coordinator for review, as follows:

EPA and HUD agree that projects of the types listed in **Attachment B** would not normally affect water quality in the SSAs, and generally need not be referred to EPA for review prior to funding.

HUD agrees to refer to EPA for review the types of projects listed in **Attachment C** (attached hereto and incorporated herein), which are located in whole or in part within an SSA project review area. For any of the proposed projects which are of the types listed in **Attachment C** and which are located in whole or in part within an SSA project review area, HUD will ensure that the following information is submitted to EPA:

1. A copy of the application (if appropriate).
2. Project location and its relationship to any SSA.
3. Description and objective of project or activity, including project design, materials to be used, and any alteration of natural topography.
4. Names/addresses/telephone numbers of any city or county, state or other Federal agency's personnel that are involved.
5. Responses to "Sole Source Aquifer Project Review Information" found in **Attachment D** (attached hereto and incorporated herein).

PROJECTS SUBJECT TO PART 58

For projects located in whole or in part within any SSA project review area, as depicted in **Attachment A**, it is agreed that projects of the types listed in **Attachment B** would not normally affect water quality in the SSAs, and generally need not be referred by REs to EPA for review prior to funding.

HUD will inform its Part 58 RE in SSA areas of the exclusions in **Attachment B** and the requirement to seek EPA's review for the projects of the types listed in **Attachment C** that are located in whole or in part within an SSA project review area.

EPA RESPONSIBILITIES

1. EPA agrees that all requests for Region 5 SSA reviews shall be responded to within thirty (30) calendar days of receipt unless:
 - a) Supplemental documentation is needed to make a determination, in which case EPA notifies HUD or the RE, within thirty (30) calendar days of receipt, that supplemental documentation is needed to make a determination. The thirty (30) calendar day clock for EPA's decision will then start once all necessary documentation has been received by EPA.
 - b) There are comments (with substantiating data) arising from review by the public, interested agencies, and/or tribes, indicating potential adverse impacts on the SSAs.
 - i) HUD or the RE will immediately send these comments to EPA.
 - ii) EPA will notify HUD or the RE, within thirty (30) calendar days of receipt of the comments, regarding EPA's decision. The EPA reserves the right to extend this time period when it finds that additional information is needed, that additional administrative review is necessary, or that it will be in the public interest to hold a public meeting. The EPA will notify HUD or the RE of any extension of the review time period.
 - c) EPA requests additional review time either by telephone or in writing. If EPA requests additional time, EPA will inform HUD or the RE within thirty (30) additional calendar days, or any other reasonable period of time needed to conduct the review, of the results of this review.
2. EPA's formal review will result in one of the following outcomes, which will be submitted in writing to HUD or the RE:

- a) A determination that the proposed project as designed most likely will not result in contamination of any SSA so as to create a significant hazard to public health and no further assessment or evaluation related to the SSA program is required.
 - b) A determination that the project has the potential to result in contamination of an SSA so as to create a significant hazard to public health, and a *Detailed Ground Water Impact Assessment*, approved by EPA, is required.
 - i. EPA and HUD or the RE will agree on measures that must be implemented to assure that no contamination of the SSA that would result in a significant hazard to the public health will occur;
 - ii. HUD or the RE will submit a revised project description to EPA for review and approval; and
 - iii. HUD or the RE will inspect and monitor to ensure that such measures are implemented and update EPA as necessary.
3. HUD or a RE may advance the project after notifying in writing the EPA Region 5 Sole Source Aquifer Coordinator that the formal review period has concluded. HUD will not commit funds to a project before notifying EPA that the formal review period has concluded. Although comments from EPA will be accepted at any time, HUD or the RE will consider to the maximum extent practicable those comments that are submitted after the review period has concluded, and will accept EPA's final determination (which will be announced after consultation with HUD or the RE) if received prior to HUD's commitment of funds.

GENERAL PROCEDURAL MATTERS

Materials provided to EPA by HUD (or the RE) under this MOU will be addressed to the attention of the EPA Region 5 Sole Source Aquifer Coordinator at 77 W. Jackson Blvd. (WG-15J), Chicago, IL 60604.

HUD and EPA will each assign a liaison officer to serve as a central contact point to be responsible for maintaining communications as to procedures and activities of their respective agency. The liaison officers are:

HUD: Regional Environmental Officer, Region 5, US Department of Housing and Urban Development
77 W. Jackson Blvd., Chicago, IL

EPA: Sole Source Aquifer Coordinator, Region 5, US Environmental Protection Agency
77 W. Jackson Blvd., Chicago, IL

The liaison officers accompanied by appropriate staff will hold meetings as needed to discuss matters of concern related to the SSAs and this MOU.

MODIFICATION AND DURATION

This MOU is to take effect upon signature and remain in effect for a period of five (5) years. This MOU may be extended or modified at any time through the mutual written consent of EPA and HUD. Additionally, either party may terminate its participation in this MOU at any time by providing written notice to the other party, at least ninety (90) days in advance of the desired termination date.

COMPLIANCE WITH APPLICABLE LAWS

It is understood and agreed by EPA and HUD that changes in local, state, and Federal rules, regulations, or laws applicable hereto, may occur during the term of this MOU and that any such changes are automatically incorporated as of the effective date of the rule, regulation, or law into this MOU without written amendment hereto. EPA and HUD expressly agree to comply with all applicable Federal, state, and local laws.

When any other Aquifers in Region 5 are designated as SSAs, EPA will notify HUD, and **Attachment A** will be updated as necessary. Following such notice to HUD, this MOU will apply to the review of all projects located within the newly designated SSAs in addition to all current designated SSA project review areas in Region 5.

ENTIRE MOU

This MOU constitutes the complete and entire MOU between the EPA Region 5 and HUD Region 5 and replaces all prior agreements or understandings, if any. HUD and EPA are not bound by any statement, promise, condition or stipulation not specifically set forth in this MOU. No representative of HUD or EPA has the authority to make any oral statements that modify or change the terms and conditions of this MOU.

U.S. Department of Housing and
Urban Development

U.S. Environmental Protection Agency,
Region 5


(Signature)


(Signature)

Name: Danielle Schopp
Title: Departmental Clearance Officer
Date: 7/17/18

Name: Cathy Stepp
Title: Regional Administrator
Date: 8-16-18

ATTACHMENT A – DESIGNATED SOLE SOURCE AQUIFERS IN EPA REGION 5

<https://www3.epa.gov/region5/water/gwdw/solesourceaquifer/>

ILLINOIS

1. Mahomet Aquifer, 80 FR 14370, Designated 03/19/15

INDIANA

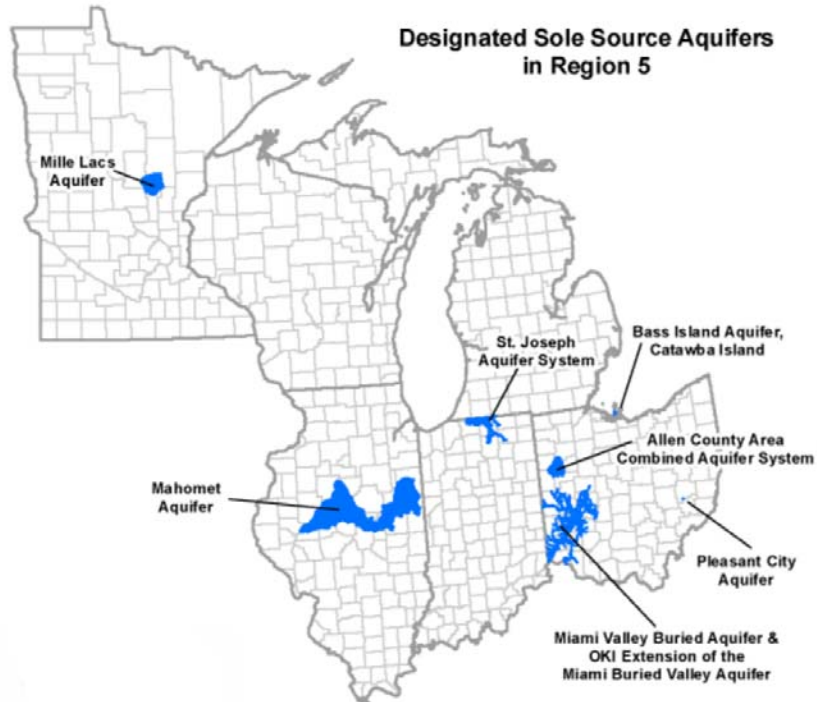
1. St. Joseph Aquifer, 53 FR 23682, Designated 06/23/88

MINNESOTA

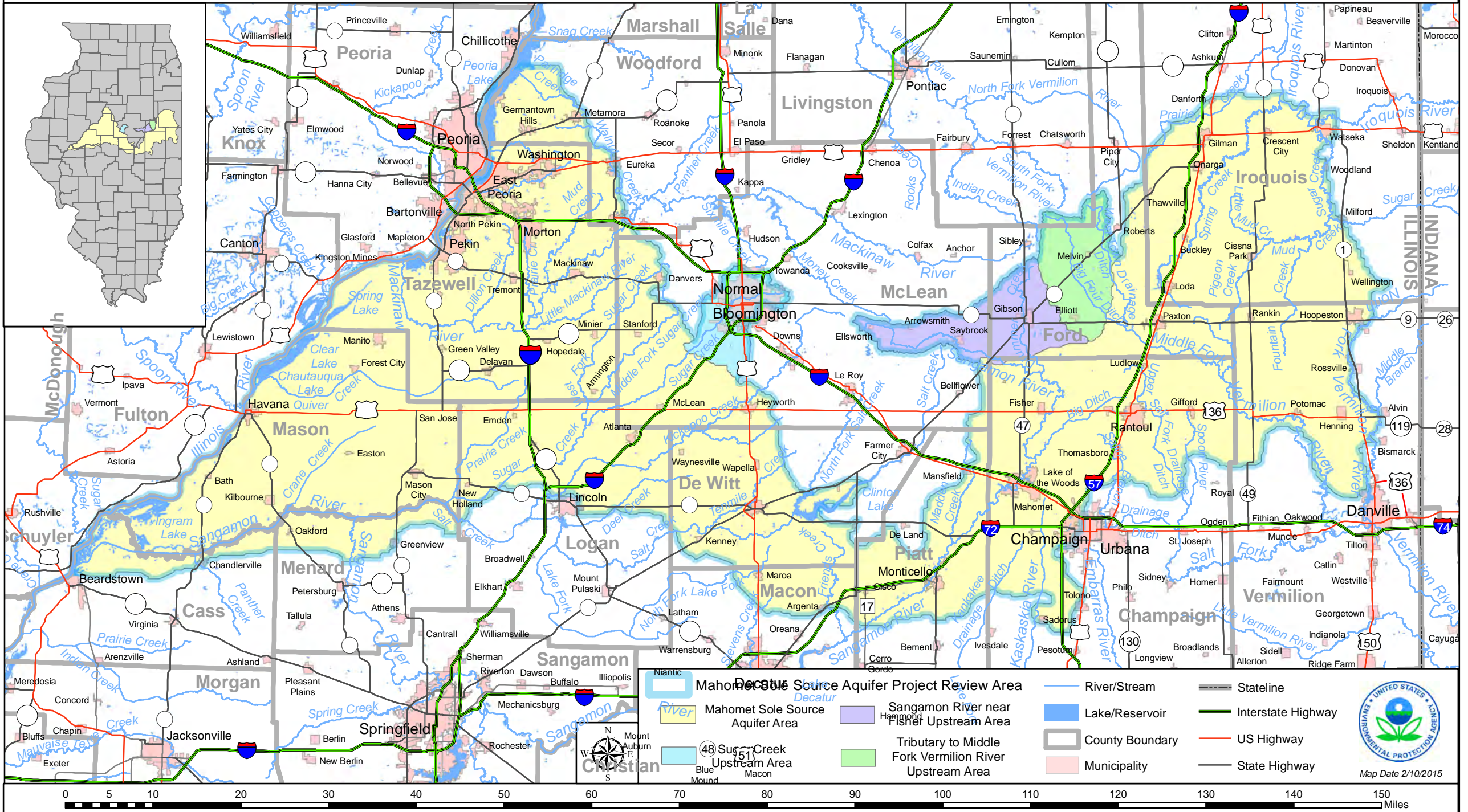
1. Mille Lacs Aquifer, 55 FR 43407, Designated 10/29/90

OHIO

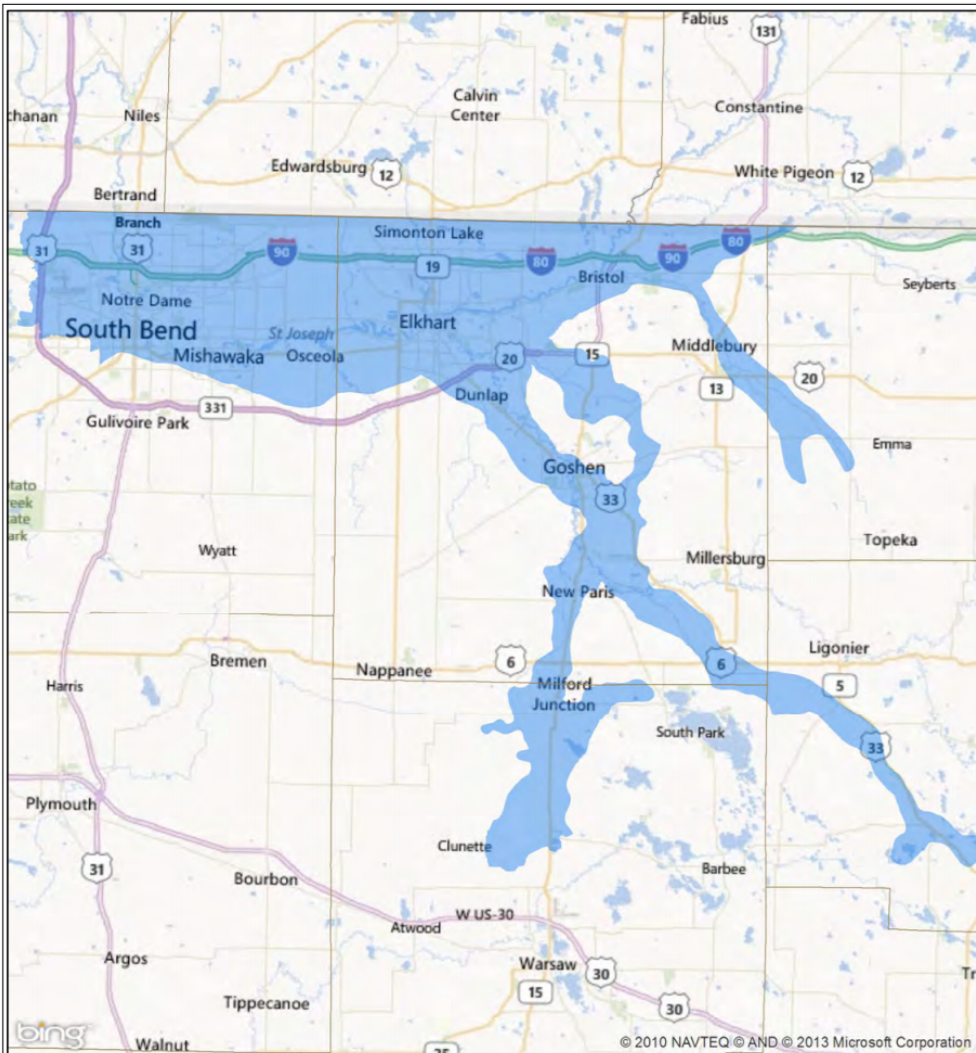
1. Allen County Combined Aquifer, 57 FR 53111, Designated 11/06/92
2. Bass Island Aquifer (Catawba Island), 52 FR 37009, Designated 10/02/87
3. Great Miami Buried Valley Aquifer, 53 FR 15876 and 53 FR 25670, Designated 05/04/88 and 07/08/88
4. Pleasant City Aquifer, 52 FR 32342, Designated 08/27/87



Mahomet Sole Source Aquifer Project Review Area



Map Date 2/10/2015



Designated Sole Source Aquifers in Region 5

St. Joseph Aquifer System Indiana

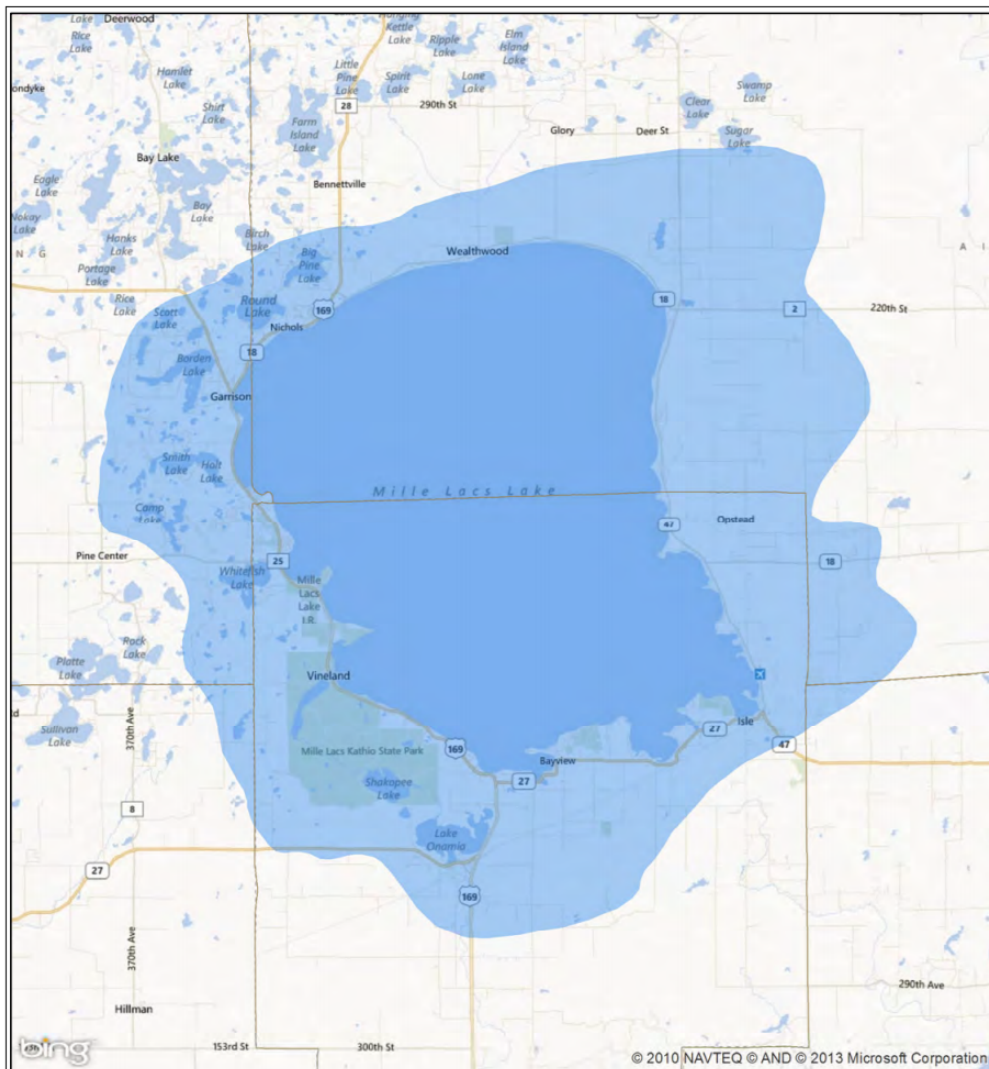
Notes and Explanation:

The St. Joseph Aquifer System was designated under the authority of Sect. 1424(e) of the Safe Drinking Water Act, Federal Register Citation-53 FR 23682, Publication Date - 06/23/88. For more information, please contact USEPA, Region 5 (William Spaulding) at 312-886-9262.

Map Status and Disclaimer:

Please note that this working map is a computer representation compiled by the Environmental Protection Agency (EPA) from sources which have supplied data or information that may not have been verified by the EPA. This data is offered here as a general representation only and is not to be used for commercial purposes without verification by an independent professional qualified to verify such data or information. The EPA does not guarantee the accuracy, completeness, or timeliness of the information shown, and shall not be liable for any loss or injury resulting from reliance upon the information shown.





Designated Sole Source Aquifers in Region 5

Mille Lacs Aquifer Minnesota

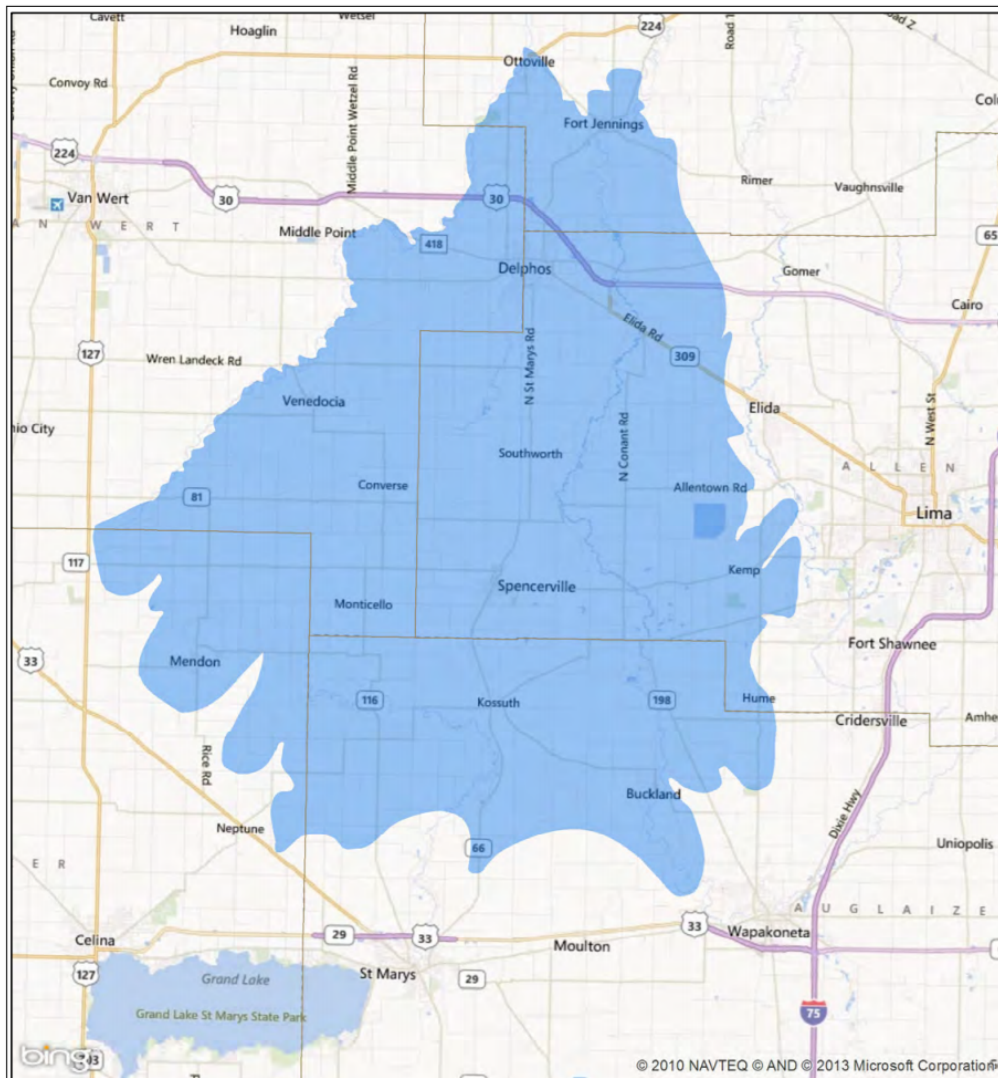
Notes and Explanation:

The Mille Lacs Aquifer was designated under the authority of Sect. 1424(e) of the Safe Drinking Water Act, Federal Register Citation-55 FR 43407, Publication Date - 10/29/90. For more information, please contact USEPA, Region 5 (William Spaulding) at 312-886-9262.

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**Designated
Sole Source Aquifers
in Region 5**

**Allen County Area
Combined
Aquifer System
Ohio**

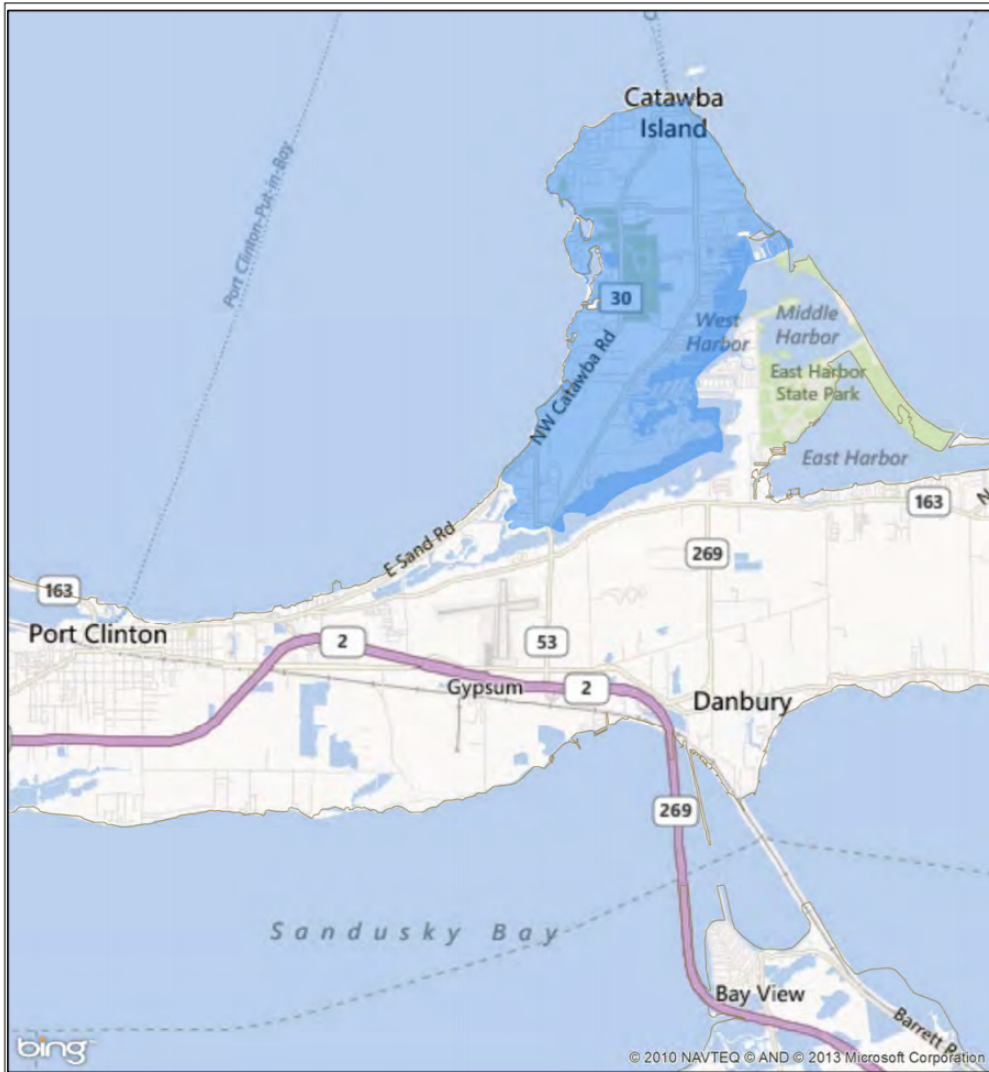
Notes and Explanation:

The Allen County Area Combined Aquifer System was designated under the authority of Sect. 1424(e) of the Safe Drinking Water Act, Federal Register Citation-57 FR 53111, Publication Date - 11/06/92. For more information, please contact USEPA, Region 5 (William Spaulding) at 312-886-9262.

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**Designated
Sole Source Aquifers
in Region 5**

**Bass Island Aquifer,
Catawba Island
Ohio**

Notes and Explanation:

The Bass Island Aquifer, Catawba Island was designated under the authority of Sect. 1424(e) of the Safe Drinking Water Act, Federal Register Citation-52 FR 37009, Publication Date - 10/02/87. For more information, please contact USEPA, Region 5 (William Spaulding) at 312-886-9262.

Map Status and Disclaimer:

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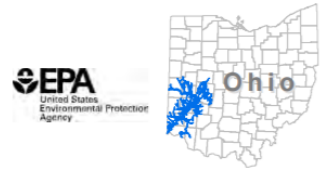


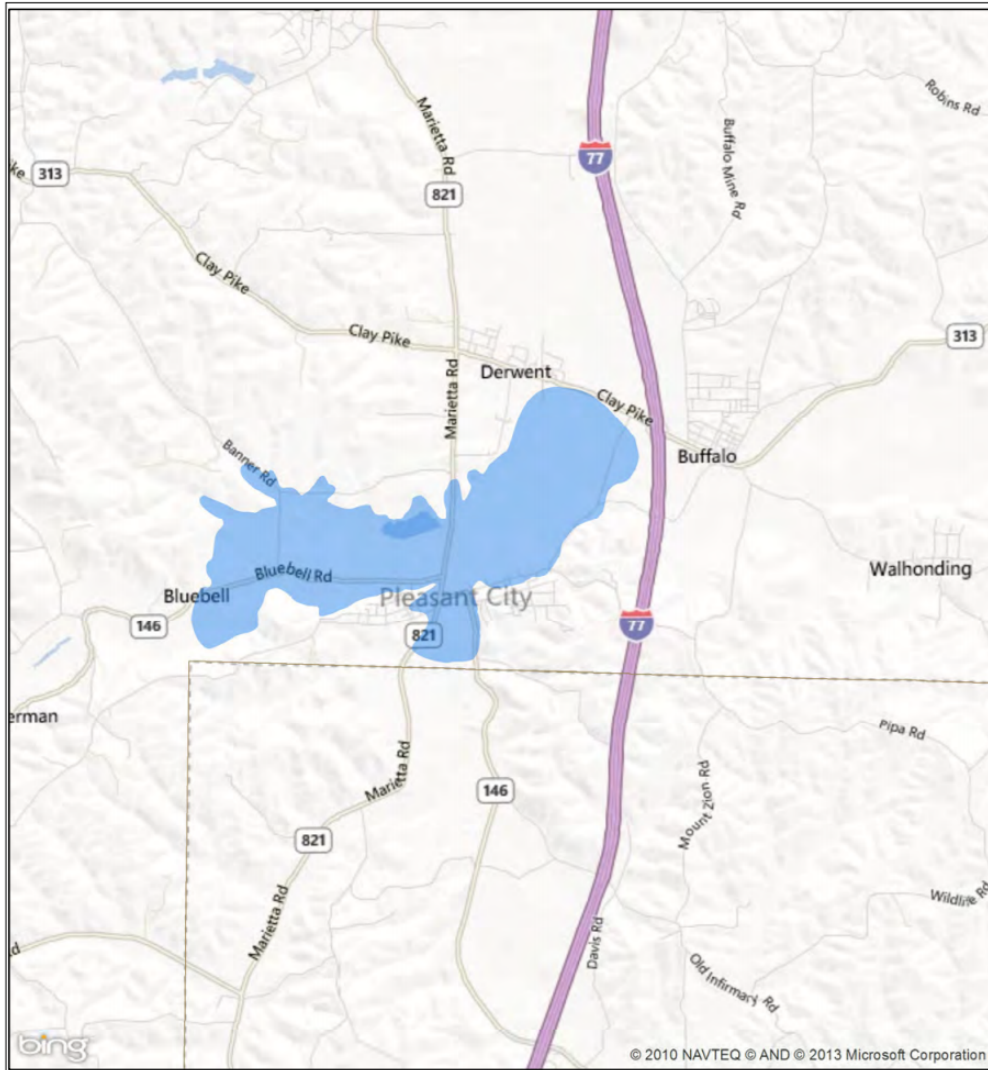
**Designated
Sole Source Aquifers
in Region 5**

**Greater
Miami Buried Aquifer,
and OKI Extension
Ohio**

Notes and Explanation:
 The Greater Miami Buried Aquifer, and the OKI Extension of the Miami Buried Valley Aquifer was designated under the authority of Sect. 1424(e) of the Safe Drinking Water Act, Federal Register Citation-53 FR 15876 and 53 FR 25670, Publication Dates - 05/04/88 and 07/08/88.
 For more information, please contact USEPA, Region 5 (William Spaulding) at 312-886-9262.

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Designated Sole Source Aquifers in Region 5

Pleasant City Aquifer Ohio

Notes and Explanation:

The Pleasant City Aquifer was designated under the authority of Sect. 1424(e) of the Safe Drinking Water Act, Federal Register Citation-52 FR 32342, Publication Date - 08/27/87. For more information, please contact USEPA, Region 5 (William Spaulding) at 312-886-9262.

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ATTACHMENT B – PROJECTS ASSUMED NOT TO POSE A SIGNIFICANT HAZARD TO PUBLIC HEALTH IN ANY SSA PROJECT REVIEW AREAS

Listed below are the types of projects which are assumed not to pose a significant hazard to public health, and which will NOT be referred to EPA.

1. All projects whose legal boundaries of the subject property are located wholly outside the SSA project review areas.
2. New construction, acquisition, or rehabilitation of residential housing that involves no more than four dwelling units (unless such project involves activities listed in **Attachment C, items 2-13**).
3. Construction of (or additions to) residential, commercial, industrial projects, public facilities or land developments that will be served by a municipally or publicly owned and operated sewage treatment plant which is operating within the capacity for which it was designed and is not subject to any local, state, or EPA imposed moratorium (unless such project involves activities listed in **Attachment C**).
4. Rehabilitation or modernization of residential structures, commercial, industrial or publicly owned buildings that are served by a municipally or publicly owned sanitary sewer system operating in compliance with its authorized permit (unless such project involves activities listed in **Attachment C**).
5. Acquisition of, or financial assistance including refinancing, provision of mortgage insurance, and rental assistance on existing projects, properties, buildings or developments where no alterations, additions, or expansions are to take place, and all expenses listed as operating costs in 24 C.F.R. §§ 50.19(b)(13) and 58.35(b)(3).
6. Funding of public services, planning activities, technical assistance, training, payment/repayment or reimbursement of either loans or interest.
7. Projects which do not require the use or storage of chemicals listed in the National Primary Drinking Water Regulations 40 C.F.R. Part 141 (unless such project involves activities listed in **Attachment C**).

ATTACHMENT C – PROJECTS REQUIRING REFERRAL TO EPA FOR REVIEW

- A. The following projects located in whole or in part within the SSA project review areas will be referred to the EPA for review prior to any commitment of Federal financial assistance:
1. Construction or rehabilitation of residential (with the exception of single one-to-four-unit family structures excluded under **Attachment B**), commercial or industrial projects, public facilities, or land developments whose sanitation facilities will consist of individual disposal systems such as cesspools, septic tanks with leach fields or seepage areas, pit toilets, or privately-owned sewerage systems including those owned by a homeowners' association.
 2. Any project or activity for an existing or proposed facility that manufactures, stores, transports, spreads, or disposes of radioactive materials or toxic, noxious, or hazardous chemicals (beyond household quantities), including insecticides, fungicides, and fertilizers.
 3. Any project or activity within or directly adjacent to an area with known soil or groundwater contamination, such as within the boundaries of a site listed on the EPA National Priorities List (i.e., a Superfund site) or of a state-designated brownfield or clean-up site.
 4. Acquisition, disposition, rehabilitation or new construction of a site intended as a landfill or other waste storage, transfer, disposal, or treatment facility.
 5. Acquisition, disposition, rehabilitation or new construction of any facility or operation which disposes of its waste water into dry wells, retention ponds, or methods other than a treatment plant.
 6. Projects that involve new development and redevelopment projects involving addition of new impervious area greater than one acre.
 7. Acquisition, disposition, rehabilitation or new construction of storm water drainage facilities that might contaminate the SSAs, significant modifications to existing wetlands, or significant modifications or new construction of shallow injection wells (i.e., dry wells, French drains, sumps, and drain fields).
 8. Any project or activity involved in agricultural activities or related operations employed in the production, raising, processing, and marketing of crops or livestock.
 9. Projects for which a NEPA Environmental Impact Statement (EIS) is required.
 10. Projects that involve the storage or handling of hazardous or toxic materials or petroleum products, including but not limited to aboveground or underground storage tanks, and oil and gas pipelines (other than service lateral extensions for 4 or fewer residential units, or service lateral extensions where trenching and excavation is no deeper than 10 feet below ground surface).

11. Projects that involve new wells (of any use type, including groundwater wells as well as wells for geothermal, oil, gas, or mineral exploration), modifications to existing wells (including abandonment), or any deep pilings or other deep foundations (i.e., greater than 10 feet below ground surface).
 12. Projects that involve construction or expansion of publicly-owned treatment works, new wastewater sewers (other than service extension laterals to 4 or fewer residential units, or service lateral extensions where trenching and excavation is no deeper than 10 feet below ground surface), or an amount of domestic waste that could potentially create a significant hazard to public health.
 13. Any other project or activity which HUD, the RE or EPA determines could be a potential source of contamination to the SSAs.
- B. Any project located in whole or in part within the SSA project review areas for which EPA makes a written request for information will be referred to EPA for review prior to any commitment of Federal financial assistance.

ATTACHMENT D – SOLE SOURCE AQUIFER PROJECT REVIEW INFORMATION

HUD or the RE will provide the information below at the time of submittal of the project to EPA in order to assist the EPA's Sole Source Aquifer Program in timely evaluating whether proposed projects have the potential to contaminate an SSA. EPA may request additional information as necessary.

1. Confirm an SSA project review is needed.
 - a. Is any portion of the project or the property(ies) involved located within a designated SSA project review area? A searchable interactive map of designated SSA project review areas is available at <https://www.epa.gov/dwssa>. **If the answer to this question is no, EPA does not need to review the project under the SSA program.**
 - b. What Federal funding source is being sought or proposed? **If no Federal financial assistance is sought or proposed, EPA does not need to review the project under the SSA program.**
2. Provide location of the project, a map, and the name of the SSA within which the project is located. Descriptions or maps with the information below would be helpful if available and applicable.
 - a. What is known about local hydrogeology in the project review area (e.g., soil types, depth to groundwater, groundwater flow direction)?
 - b. Are there any known wells in the project review area (including groundwater wells; shallow injection wells; and oil, geothermal, and mineral exploration wells) and how close are they to the project?
 - c. Are there any wetlands within the project review area? If applicable, describe any discharge to, loss of, or creation of wetlands by the project.
3. Provide project description, including but not limited to answers to the applicable questions below.
 - a. Will the project result in any increase of impervious surface (e.g., concrete, asphalt)? If so, what is the area (e.g., square feet or acres)?
 - b. What is the depth of excavation?
 - c. Will any wells be installed or modified as part of the project (of any use type, including groundwater wells as well as wells for geothermal, oil, gas, or mineral exploration)? For new/proposed wells, indicate depth of wells, depth of casing, casing diameter, and (for water wells) anticipated average and maximum water demand from the wells during normal operation (gallons per minute).
 - d. Are there any deep pilings or foundations (e.g., greater than 10 feet below land surface) that will be installed, modified, or disturbed during the project?
4. Describe storm water management for the project area.
 - a. Will the project require the use of shallow injection wells (i.e., dry wells, French drains, sumps, and drainfields)? **If the answer to this question is yes, please provide EPA with an explanation as to why these shallow injection wells are required.**
 - b. How will storm water be managed on this site during construction and after the project is complete, including treatment if applicable?
5. Describe chemical use and storage associated with the project.

- a. Will any quantities of hazardous chemicals or petroleum (above routine household quantities) be used or stored in the project review area?
 - b. Are there any aboveground storage tanks or underground storage tanks present or to be installed? Fuel tanks are often involved in projects that include generators and/or pump stations. If applicable, include details of such tanks, including spill containment and spill response plans.
6. Describe waste management related to the project, including but not limited to answers to the applicable questions below.
 - a. Will any liquid or solid waste be generated during construction (e.g., construction/drilling fluids, excavation dewatering fluids, demolition debris)? If so, how will it be managed?
 - b. How will liquid or solid waste be managed after project completion, other than routine quantities of household wastes to a permitted sanitary landfill or publicly-owned treatment works (e.g., describe any on-site treatment/disposal, industrial wastewater, or other waste generation)? If applicable, provide details about any individual disposal systems such as cesspools, septic tanks with leach fields or seepage areas, pit toilets, or privately-owned sewerage systems including those owned by a homeowners' association.
 - c. Are there any known brownfield or hazardous waste sites in close proximity to the project review area (e.g., sites listed on the EPA National Priorities List [i.e., Superfund sites], state-designated brownfield or clean-up sites)? Do any such contaminated sites have underground contamination plumes, monitoring wells, or soil contamination that may be disturbed by the project? Include details including the name(s) and location(s) of the brownfield or hazardous waste site(s).
 - d. For agricultural projects involving animals, how will animal wastes be managed?
7. Provide any other available information (examples below) that could be helpful in determining if this project may potentially create a significant hazard to public health.
 - a. Are Best Management Practices (BMPs) planned to address any possible risks or concerns? If so, which BMPs will be used?
 - b. Does the project include any improvements that may be beneficial to any SSA, such as improvements to the publicly-owned treatment works?
 - c. Are any previous environmental assessments available regarding the project or project area?