


ERO SITE

DEPARTMENT OF ECOLOGY

Date: November 30, 2005
TO: Debbie Iness, Fiscal
FROM: Katherine Scott, TCP 
SUBJECT: Consent Decree No. 03-2-00422-1 (Second Consent Decree with this number)

Avista Development (PCBS/Spokane River) Site, Project #8686
The PCB-contaminated sediments are located upstream and are hydraulically
influenced by the Upriver Dam near the Centennial Trail Footbridge in Spokane
County, Washington

I have attached the Consent Decree for the Avista Development (PCBS/Spokane River) Site cost recovery project file. The Consent Decree was effective August 10, 2005. This Consent Decree has the same number as the one vacated on this date. Please initiate cost recovery. There is only one PLP on this decree.

Address invoices to the Project Coordinator for the PLP:

Mr. Douglas K. Pottratz
Avista Corporation
P.O. Box 3727
Spokane, WA 99220-3727

Telephone numbers: none provided

Ecology's Site Manager (Project Coordinator) is:

Zachary Hedgpath, Telephone Number: (509) 329-3484
Project Number 8686, and SIC J1AK6

If you have any questions regarding this project, please call me at 407-7213.

Attachments



RECEIVED
SEP 26 2005
DEPARTMENT OF...

Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

Ecology Division

2425 Bristol Court SW 2nd Floor • Olympia WA 98502
Mailing Address: PO Box 40117 • Olympia WA 98504-0117
(360) 586-6770

September 23, 2005

John L. Roland
Eastern Regional Office
N 4601 Monroe Suite 202
Spokane WA 99205-1295

RE: *Upriver Dam Signed Consent Documents*

Dear John:

This letter is a follow-up to our e-mail conversations today. Per your request, I am enclosing copies of the signed document pages for the Consent Decree and Order Vacating 2003 Consent Decree.

Sincerely,

JANET L. OLSON
Legal Assistant to:
Leslie R. Seffern
(360) 586-9189

:jlo
Enclosures





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SEP 26 2005
DEPARTMENT OF ECOLOGY
EASTERN REGIONAL OFFICE

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AUG 16 2005

STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

SUPERIOR COURT
SPOKANE COUNTY, WA.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

NO. 03-2-00422-1

ORDER VACATING
2003 CONSENT DECREE

Having reviewed the Joint Motion to Vacate 2003 Consent Decree, it is hereby
ORDERED AND ADJUDGED that the Consent Decree in this matter signed by the State of
Washington, Department of Ecology, Avista Development, Inc., and Kaiser Aluminum and
Chemical Corporation, and approved by this Court on February 6, 2003, is VACATED.

DATED this 10th day of August, 2005.

WM. FRED ARONOW
COURT COMMISSIONER

JUDGE/COMMISSIONER
Spokane County



1 Presented by:

2 ROB McKENNA
3 Attorney General

4 

5 STEVEN J. THIELE, WSBA #20275
6 Assistant Attorney General
7 Attorneys for Plaintiff
8 Department of Ecology
9 (360) 586-4619


10 Approved as to form,
11 Notice of presentation waived:

12 CASCADIA LAW GROUP PLLC

13 

14 TANYA BARNETT, WSBA #17491
15 Attorneys for Defendant
16 Avista Development, Inc.
17 (360) 786-5247

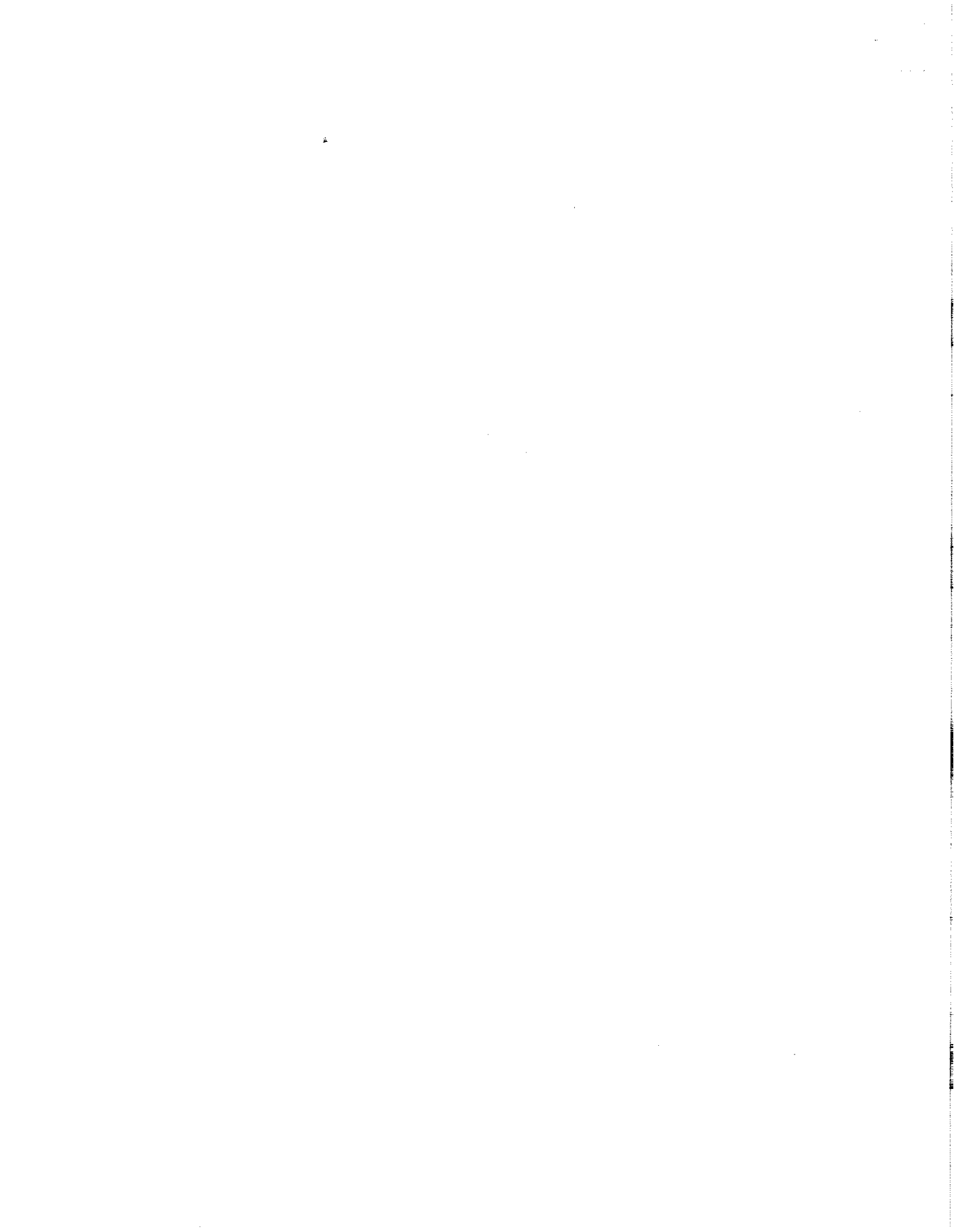
18 HELLER EHRMAN WHITE & MCAULIFFE

19  per email authorization
20 8/5/05

21 R. PAUL BEVERIDGE, WSBA #16732
22 Attorneys for Defendant
23 Kaiser Aluminum & Chemical Corporation
24 (206) 447-0900

25

26



1 *Note: Signed document signed by Court Commissioner on August 10, 2005*
 2 *Trigger date for schedule: 8-26-05 as per Kaiser Federal Settlement* *AK*
 3
 4
 5
 6
 7

8 **STATE OF WASHINGTON**
SPOKANE COUNTY SUPERIOR COURT

9 STATE OF WASHINGTON,
 10 DEPARTMENT OF ECOLOGY,

NO. 03-2-00422-1

11 Plaintiff,

CONSENT DECREE

12 v.

13 AVISTA DEVELOPMENT, INC.,

14 Defendant.
 15

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- Exhibit E – Public Participation Plan

11 I. INTRODUCTION

12 A. In entering into this Consent Decree (Decree), the mutual objective of the
13 Washington State Department of Ecology (the Department) and of Avista Development, Inc.
14 (the Respondent) is to provide for remedial action at a location where there has been a release
15 of hazardous substances. This Decree requires the Respondent to undertake the remedial
16 actions specified in the Cleanup Action Plan attached as Exhibit A to this Decree. The
17 Department has determined that the actions described in the Cleanup Action Plan are necessary
18 to protect public health and the environment.

19 B. The Respondent and the Department have also entered into a consent decree
20 with several Debtors (defined below) in the U.S. Bankruptcy Court matter styled, *In re Kaiser*
21 *Aluminum Corporation, et al.*, Bankr. D. Del, Case No. 02-10429 (JFK) (the Bankruptcy
22 Consent Decree). Under the Bankruptcy Consent Decree, the Debtors agree to contribute to
23 the funding of the remedial action called for by this Decree, in exchange for certain releases,
24 covenants not to sue, and other consideration from Avista and the Department as more fully
25 described in the Bankruptcy Consent Decree. The Parties to this Decree acknowledge that the
26 United States Environmental Protection Agency (USEPA) under the authority of CERCLA

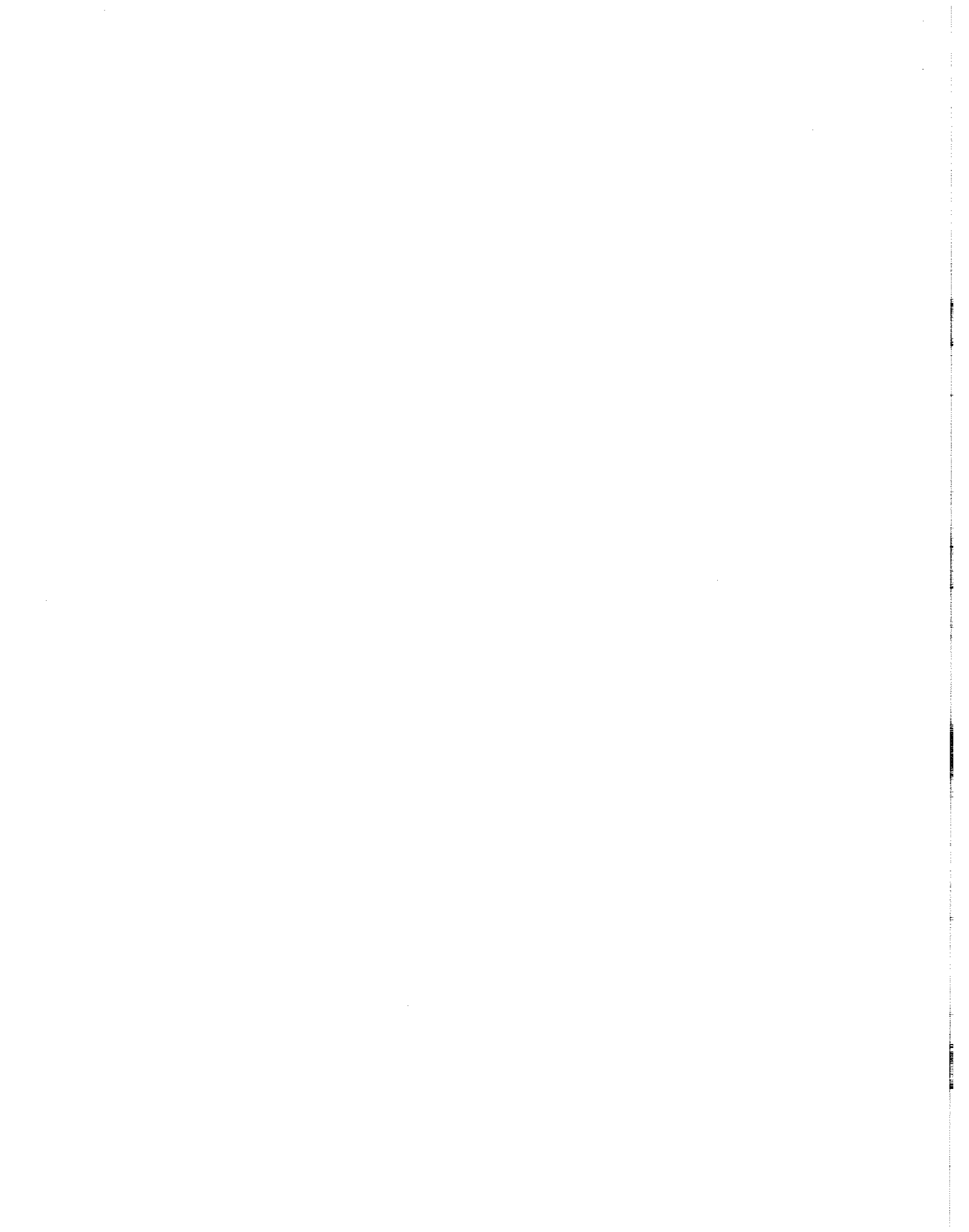
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26 described in the Bankruptcy Consent Decree. The Parties to this Decree acknowledge that the
United States Environmental Protection Agency (USEPA) under the authority of CERCLA



1 (i.e. Superfund) is investigating hazardous substance contamination in the Coeur d' Alene
2 basin and the upper Spokane River, focusing on metals contamination associated with historic
3 mining operations in Idaho. USEPA has designated the Spokane River as part of Operable
4 Unit 3 in its Record of Decision (ROD). Remedy selection and evaluation in Washington
5 addressed by the USEPA in the ROD encompasses the river from the Idaho state line
6 downstream to Upriver Dam, including the entire Upriver Dam PCB Sediment Site. Metals-
7 related contamination associated with historic mining operations has been determined to be
8 broadly distributed within Operable Unit 3, including areas at the Site. The USEPA ROD
9 (September 2002) proposed capping or dredging as remedy alternatives to reduce metals risks
10 in sediments immediately behind Upriver Dam. The USEPA also concluded that further
11 investigation and coordination with the State of Washington is appropriate before selection of
12 the final remedy for metals contamination.

13 C. USEPA was provided with a draft of the Cleanup Action Plan and of this
14 Decree, and given an opportunity to comment on both documents. The Parties agree that the
15 remedial actions required by this Decree are consistent with the remedy alternatives that
16 USEPA has proposed for metals-related contamination in sediments behind Upriver Dam.

17 D. A complaint in this action was filed on January 17, 2003. An earlier Consent
18 Decree was entered by this Court on February 6, 2003, and required Avista and Kaiser
19 Aluminum and Chemical Corporation to perform certain studies and investigations, which
20 have now been completed. An answer has not been filed, and there has not been a trial on any
21 issue of fact or law in this case. However, the Parties wish to resolve the issues raised by the
22 Department's complaint. In addition, the Parties agree that settlement of these matters without
23 litigation is reasonable and in the public interest and that entry of this Decree is the most
24 appropriate means of resolving these matters.

25 E. In signing this Decree, Avista agrees to its entry and agrees to be bound by its
26 terms.

1 F. By entering into this Decree, the Parties do not intend to discharge non-settling
2 parties from any liability they may have with respect to matters alleged in the complaint other
3 than as provided in the Bankruptcy Consent Decree. The Parties retain the right to seek
4 reimbursement, in whole or in part, from any liable persons (except as provided in the
5 Bankruptcy Consent Decree) for sums expended under this Decree.

6 G. This Decree shall not be construed as proof of liability or responsibility for any
7 releases of hazardous substances or cost for remedial action nor an admission of any facts;
8 provided, however, that the Respondent shall not challenge the authority of the Attorney
9 General and the Department to enforce this Decree.

10 H. The Court is fully advised of the reasons for entry of this Decree, and good
11 cause having been shown: Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND
12 DECREED:

13 II. JURISDICTION

14 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
15 to Chapter 70.105D RCW, the Model Toxics Control Act (MTCA). Authority is conferred
16 upon the Washington State Attorney General by RCW 70.105D.040(4)(a) to agree to a
17 settlement with any potentially liable person if, after public notice and any required hearing,
18 Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous
19 substances. RCW 70.105D.040(4)(b) requires that such a settlement be entered as a Consent
20 Decree issued by a court of competent jurisdiction.

21 B. The Department has determined that a release or threatened release of hazardous
22 substances has occurred at the Site that is the subject of this Decree.

23 C. The Department has given notice to the Respondent, as set forth in RCW
24 70.105D.020(15), of the Department's determination that the Respondent is a potentially liable
25 person for the Site and that there has been a release or threatened release of hazardous
26 substances at the Site.

1 F. By entering into this Decree, the Parties do not intend to discharge non-settling
2 parties from any liability they may have with respect to matters alleged in the complaint other
3 than as provided in the Bankruptcy Consent Decree. The Parties retain the right to seek
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23 C. The Department has given notice to the Respondent, as set forth in RCW
24 70.105D.020(15), of the Department's determination that the Respondent is a potentially liable
25 person for the Site and that there has been a release or threatened release of hazardous
26 substances at the Site.

1 D. The actions to be taken pursuant to this Decree are necessary to protect public
2 health and the environment.

3 E. This Decree has been subject to public notice and comment.

4 F. Ecology finds that this Decree will lead to a more expeditious cleanup of
5 hazardous substances at the Site in compliance with the cleanup standards established under
6 RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

7 G. The Respondent has agreed to undertake the actions specified in this Decree and
8 consents to the entry of this Decree under MTCA.

9 **III. PARTIES BOUND**

10 This Decree shall apply to and be binding upon the Parties, their successors and
11 assigns. The undersigned representative of each Party hereby certifies that he or she is fully
12 authorized to enter into this Decree and to execute and legally bind such party to comply with
13 the Decree. The Respondent agrees to undertake all actions required by the terms and
14 conditions of this Decree. No change in ownership or corporate status shall alter the
15 responsibility of the Respondent under this Decree. Respondent shall provide a copy of this
16 Decree to all agents, contractors, and subcontractors retained to perform work required by this
17 Decree, and shall ensure that all work undertaken by such agents, contractors, and
18 subcontractors complies with this Decree.

19 **IV. DEFINITIONS**

20 Unless otherwise specified, the definitions set forth in Chapter 70.105D RCW and
21 Chapter 173-340 WAC shall control the meanings of the terms used in this Decree.

22 A. Site: The Site consists of the areal extent of PCB-contaminated sediments in
23 that area of the Spokane River located upstream of and hydraulically influenced by the Upriver
24 Dam between approximate river mile (RM) 80 (near the Upriver dam) and RM 85 (upstream of
25 the dam near the Centennial Trail footbridge). The Site is more particularly described in
26

1 Exhibit B to this Decree, which is a detailed site diagram. The Site constitutes a "facility"
2 under RCW 70.105D.020(4).

3 B. Parties: Refers to the Washington State Department of Ecology (the
4 Department) and the Respondent, collectively.

5 C. Respondent: Refers to Avista Development, Inc.

6 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
7 exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent Decree.
8 The terms "Consent Decree" or "Decree" shall include all Exhibits to the Consent Decree.

9 E. Day or Days: Refers to a calendar day(s) unless otherwise specified. In
10 computing any period of time under this Decree, if the last day falls on a Saturday, Sunday, or
11 a state or federal holiday, the period shall run until the end of the next day which is not a
12 Saturday, Sunday, or a state or federal holiday. Any time period scheduled to begin on the
13 occurrence of an act or event shall begin on the day after the act or event.

14 F. Section: Refers to a portion of this Consent Decree identified by a Roman
15 numeral.

16 G. Debtors: Refers to the several debtors in the bankruptcy case styled *In re*
17 *Kaiser Aluminum Corporation, et al.*, Bankr. D. Del., Case No, 02-10429 (JKF), including
18 Kaiser Aluminum & Chemical Corporation (Kaiser), owner and operator of the Kaiser
19 Trentwood Works in Spokane, Washington. The Debtors are not Parties to this Consent
20 Decree.

21 V. STATEMENT OF FACTS

22 The Department makes the following findings of fact without any express or implied
23 admissions by the Respondent.

24 1. Avista Development, Inc. (Avista) (a subsidiary of Avista Corporation, formerly
25 Washington Water Power Company) is successor to Pentzer Development Corporation
26

1 Exhibit B to this Decree, which is a detailed site diagram. The Site constitutes a "facility"
2 under RCW 70.105D.020(4).

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4 Department) and the Respondent, collectively.

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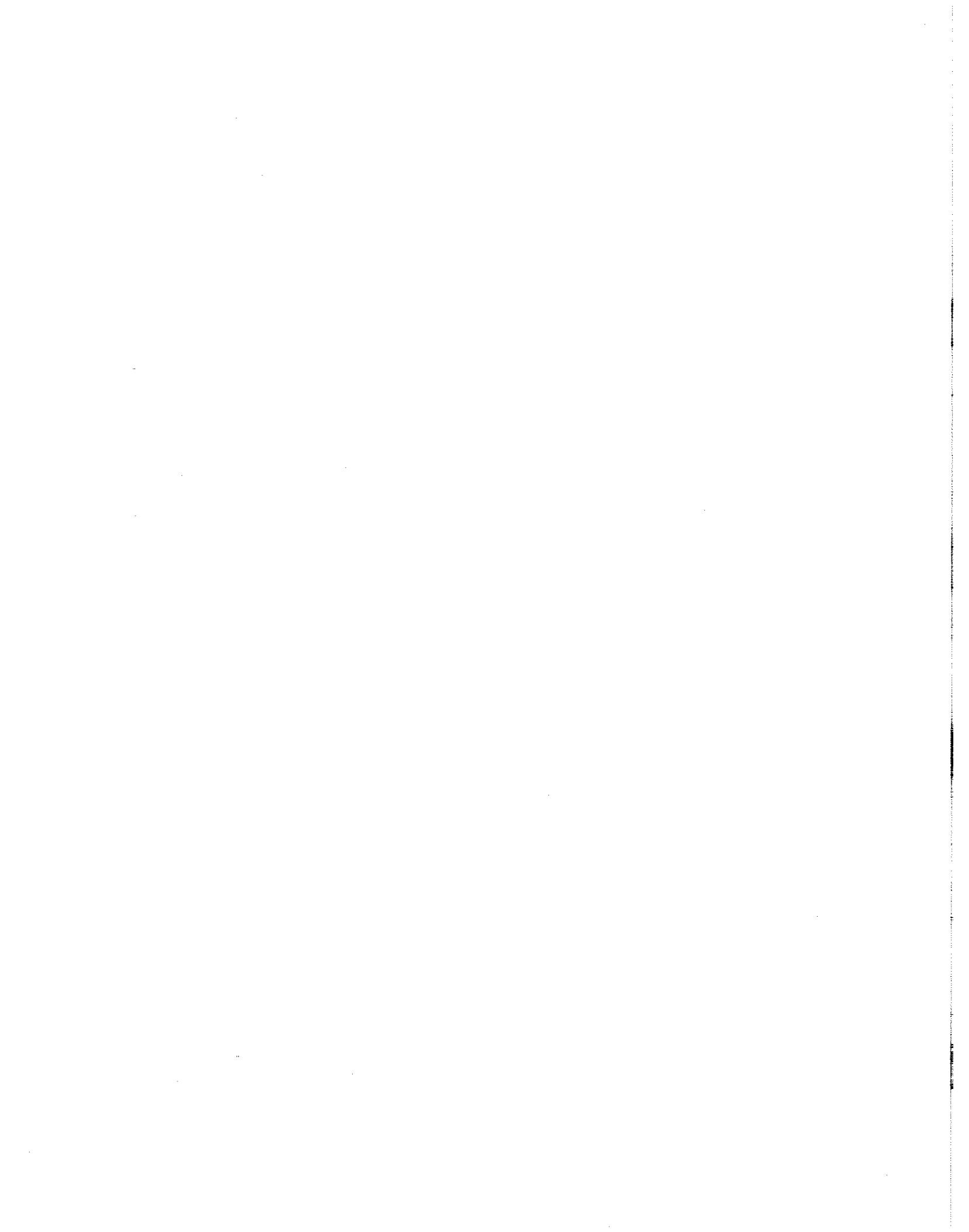
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20 Decree.

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22 The Department makes the following findings of fact without any express or implied
23 admissions by the Respondent.

24 1. Avista Development, Inc. (Avista) (a subsidiary of Avista Corporation, formerly
25 Washington Water Power Company) is successor to Pentzer Development Corporation
26



1 (Pentzer). Pentzer is the past owner and operator of the Spokane Industrial Park, which is
2 located on the Spokane River at approximately RM 87.

3 2. Avista's predecessor Pentzer discharged industrial effluent wastewater to the
4 Spokane River in Washington prior to 1994, under the provisions of the State of Washington
5 Water Pollution Control Law and the federal Water Pollution Control Act, or predecessor laws.

6 3. Polychlorinated biphenyls, or PCBs, have been found in fish, sediment, and
7 water of the upper Spokane River, upstream of RM 80, which approximately marks the
8 location of Upriver Dam. PCBs have been documented in effluent waters and solids associated
9 with Spokane Industrial Park.

10 4. In certified correspondences dated June 1, 2001, the Department notified Avista,
11 Kaiser, and Liberty Lake Sewer District of a preliminary finding of potential liability for PCBs
12 in sediments behind Upriver Dam and requested comment on those findings. In subsequent
13 certified correspondence, the Department notified Inland Empire Paper Company of a
14 preliminary finding of potential liability for PCBs in sediments behind Upriver Dam and
15 requested comment on those findings. Liberty Lake Sewer District and Inland Empire Paper
16 Company have declined to participate in remedial actions at the Site and are not signatories to
17 this Decree.

18 5. Respondent has designated a project coordinator to implement the Work to be
19 Performed. By execution of this Decree, the Respondent agrees to be bound by the terms
20 thereof and not to contest the same.

21 VI. WORK TO BE PERFORMED

22 This Decree contains a program designed to protect human health and the environment
23 from the known release, or threatened release, of hazardous substances or contaminants at, on,
24 or from the Site.

25 1. The Respondent shall furnish all personnel, materials and services necessary
26 for, or incidental to, the planning, initiation, completion, and reporting upon the Cleanup

1 Action Plan, attached as Exhibit A. The work to be performed is the completion of the
2 remedial action described in the attached Cleanup Action Plan.

3 2. The Cleanup Action Plan and each element thereof are designed and shall be
4 implemented and completed in accordance with the Model Toxics Control Act (Chapter
5 70.105D RCW) and its implementing regulation (Chapter 173-340 WAC) as amended, and all
6 applicable federal, state, and local laws and regulations.

7 3. As provided in the agreed upon schedule, attached as Exhibit C, the Respondent
8 shall commence work and thereafter complete all tasks in Exhibit A in the time frames and
9 framework indicated unless the Department grants an extension in accordance with Section
10 XV.

11 4. The Respondent agrees not to perform any remedial actions at the Site that are
12 outside the scope of this Decree unless the Parties agree to amend the Cleanup Action Plan to
13 cover these actions. All work conducted by the Respondent under this Decree shall be done in
14 accordance with Chapter 173-340 WAC unless otherwise provided herein.

15 **VII. DESIGNATED PROJECT COORDINATORS**

16 The project coordinator for the Department is:

17 Zachary Hedgpeth
18 Department of Ecology
19 Eastern Regional Office
20 4601 N. Monroe
Spokane, WA 99205-1295

21 The project coordinator for the Respondent is:

22 Douglas K. Pottratz
23 Avista Corporation
24 PO Box 3727
Spokane, WA 99220-3727

25 Each project coordinator shall be responsible for overseeing the implementation of this
26 Decree. The Department project coordinator will be the Department's designated
representative at the Site. To the maximum extent possible, communications between the

1 Action Plan, attached as Exhibit A. The work to be performed is the completion of the
2 remedial action described in the attached Cleanup Action Plan.

3 2. The Cleanup Action Plan and each element thereof are designed and shall be
4 implemented and completed in accordance with the Model Toxics Control Act (Chapter
5 70.105D RCW) and its implementing regulation (Chapter 173-340 WAC) as amended, and all
6 applicable federal, state, and local laws and regulations.

7 3. As provided in the agreed upon schedule, attached as Exhibit C, the Respondent
8 shall commence work and thereafter complete all tasks in Exhibit A in the time frames and
9 framework indicated unless the Department grants an extension in accordance with Section
10 XV.

11 4. The Respondent agrees not to perform any remedial actions at the Site that are
12 outside the scope of this Decree unless the Parties agree to amend the Cleanup Action Plan to
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25 Each project coordinator shall be responsible for overseeing the implementation of this
26 Decree. The Department project coordinator will be the Department's designated
representative at the Site. To the maximum extent possible, communications between the



1 Department and the Respondent and all documents, including reports, approvals, and other
2 correspondence concerning the activities performed pursuant to the terms and conditions of
3 this Decree, shall be directed through the project coordinators. The project coordinators may
4 designate, in writing, working level staff contacts for all or portions of the implementation of
5 the remedial work required by this Decree. The project coordinators may agree to minor
6 modifications to the work to be performed without formal amendments to this Decree. Minor
7 modifications will be documented in writing by the Department. Substantial changes shall
8 require amendment of this Decree.

9 Any Party may change its respective project coordinator. Written notification shall be
10 given to the other Party at least ten (10) calendar days prior to the change.

11 **VIII. PERFORMANCE**

12 All work performed pursuant to this Decree shall be under the direction and
13 supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or
14 equivalent, with experience and expertise in hazardous waste site investigation and cleanup.
15 The Respondent shall notify the Department in writing of the identity of such engineer(s) or
16 hydrogeologist(s), or others and of any contractors and subcontractors to be used in carrying
17 out the terms of this Decree, in advance of their involvement at the Site. Any construction
18 work performed pursuant to this Decree shall be under the supervision of a professional
19 engineer or a qualified technician under the direct supervision of a professional engineer. The
20 professional engineer must be registered in the State of Washington, except as provided in
21 RCW 18.43.130.

22 **IX. ACCESS**

23 The Department or any Department-authorized representative shall have the authority
24 to enter and freely move about portions of the Site over which the Respondent has control and
25 all associated field investigation operations at all reasonable times for the purposes of, inter
26 alia: inspecting records, operation logs, and contracts related to the work being performed

1 pursuant to this Decree; reviewing the progress in carrying out the terms of this Decree;
2 conducting such tests or collecting samples as the Department may deem necessary; using a
3 camera, sound recording, or other documentary type equipment to record work done pursuant
4 to this Decree; and verifying the data submitted to the Department by the Respondent. By
5 signing this Decree, the Respondent agrees that this Decree constitutes reasonable notice of
6 access, and agree to allow access to site-related field operations at all reasonable times for
7 purposes of overseeing work performed under this Decree. Without limitation on the
8 Department's rights under this Section IX, the Department agrees to endeavor to notify
9 Respondent at least 2 days in advance of intended access.

10 The Department and the Respondent acknowledge that Avista does not own any of the
11 properties that compose the Site. The Respondent will use reasonable efforts to obtain access
12 to the Site. If necessary, the Department will exercise its authority under Chapter 70.105D
13 RCW to ensure access to the Site or to facilitate remedial action at the Site.

14 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

15 With respect to the implementation of this Decree, the Respondent shall make the
16 results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf
17 available to the Department and shall submit these results in accordance with Section XI of this
18 Decree.

19 In accordance with WAC 173-340-840(5), sampling data shall be submitted according
20 to the Department's sampling data submittal requirements as set forth in Exhibit D to this
21 Decree. In addition, in accordance with the Department's Sediment Quality Information
22 System software (SEDQUAL) needs, sediment or bioassay sampling data shall be submitted to
23 Ecology in a electronic format compatible for entry into the SEDQUAL database using the
24 system's *data entry templates*.

25 If requested by the Department, the Respondent shall allow split or duplicate samples to
26 be taken by the Department and/or its authorized representatives of any samples collected by

1 pursuant to this Decree; reviewing the progress in carrying out the terms of this Decree;
2 conducting such tests or collecting samples as the Department may deem necessary; using a
3 camera, sound recording, or other documentary type equipment to record work done pursuant
4 to this Decree; and verifying the data submitted to the Department by the Respondent. By
5 signing this Decree, the Respondent agrees that this Decree constitutes reasonable notice of
6 access, and agree to allow access to site-related field operations at all reasonable times for
7 purposes of overseeing work performed under this Decree. Without limitation on the
8 Department's rights under this Section IX, the Department agrees to endeavor to notify
9 Respondent at least 2 days in advance of intended access.

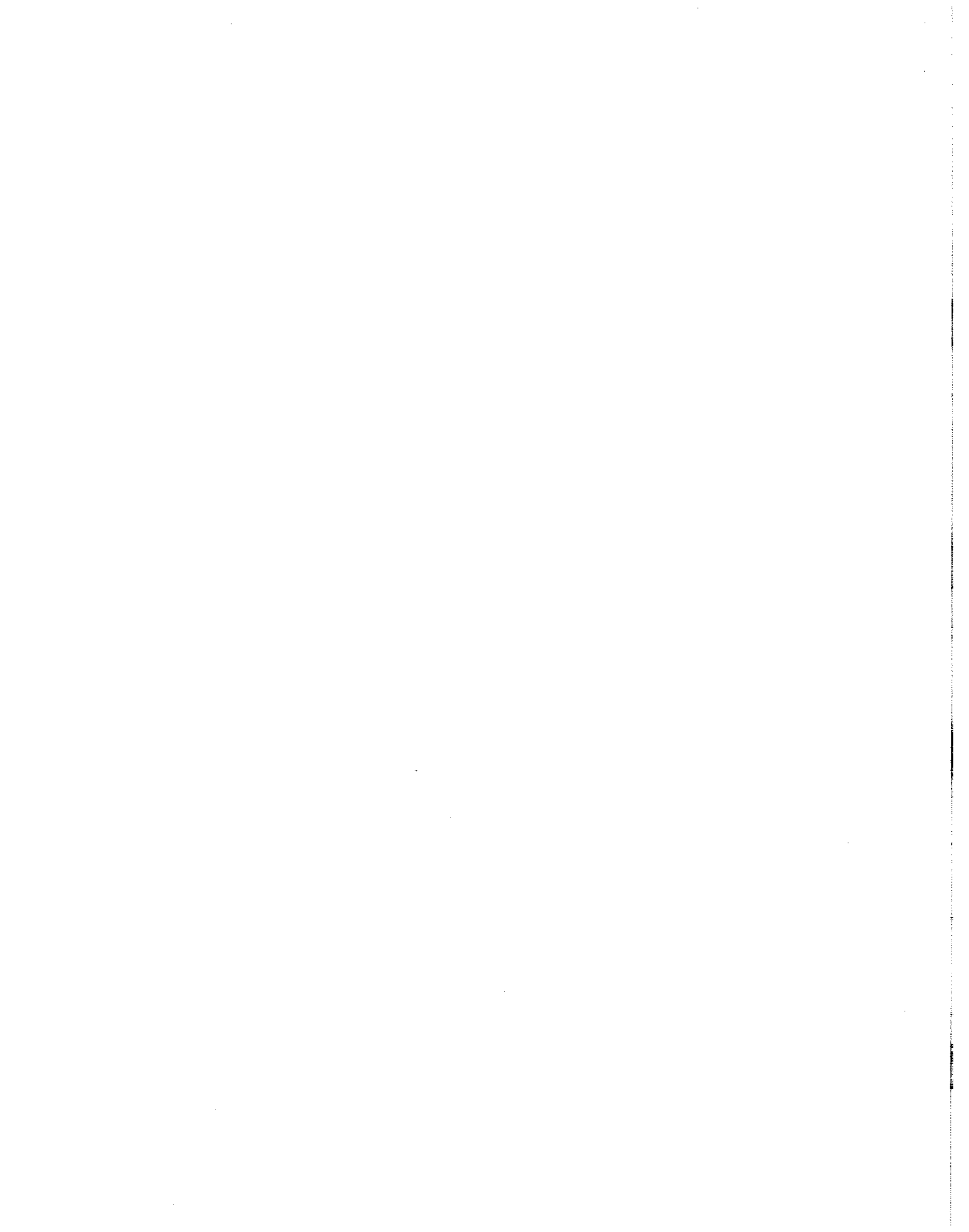
10 The Department and the Respondent acknowledge that Avista does not own any of the
11 properties that compose the Site. The Respondent will use reasonable efforts to obtain access
12 to the Site. If necessary, the Department will exercise its authority under Chapter 70.105D
13 RCW to ensure access to the Site or to facilitate remedial action at the Site.

14 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

15 With respect to the implementation of this Decree, the Respondent shall make the
16 results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf
17 available to the Department and shall submit these results in accordance with Section XI of this
18 Decree.

19 In accordance with WAC 173-340-840(5), sampling data shall be submitted according
20 to the Department's sampling data submittal requirements as set forth in Exhibit D to this
21 Decree. In addition, in accordance with the Department's Sediment Quality Information
22 System software (SEDQUAL) needs, sediment or bioassay sampling data shall be submitted to
23 Ecology in a electronic format compatible for entry into the SEDQUAL database using the
24 system's *data entry templates*.

25 If requested by the Department, the Respondent shall allow split or duplicate samples to
26 be taken by the Department and/or its authorized representatives of any samples collected by



1 Respondent pursuant to the implementation of this Decree. Respondent shall notify the
2 Department seven (7) working days in advance of any planned field sample collection or work
3 activity at the Site. The Department shall, upon request, allow split or duplicate samples to be
4 taken by Respondent or its authorized representatives of any samples collected by the
5 Department pursuant to the implementation of this Decree provided it does not interfere with
6 the Department's sampling. Without limitation on the Department's rights under Section IX,
7 the Department shall endeavor to notify Respondent at least seven (7) days prior to any
8 scheduled sample collection activity. This will not apply to emergencies or time-critical
9 actions.

10 In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be
11 conducted by a laboratory accredited under Chapter 173-350 for the specific analyses to be
12 conducted, unless otherwise approved by Ecology.

13 **XI. PROGRESS REPORTS**

14 Respondent shall submit to the Department written progress reports as provided in the
15 Cleanup Action Plan, Exhibit A to this Decree.

16 **XII. RETENTION OF RECORDS**

17 Respondent shall preserve, during the pendency of this Decree and for ten (10) years
18 from the date this Decree is no longer in effect as provided in Section XXVI, all records,
19 reports, documents, and underlying data in its possession relevant to the implementation of this
20 Decree and shall insert in contracts with project contractors and subcontractors a similar record
21 retention requirement. Upon request of the Department, Respondent shall make all non-
22 archived records available to the Department and allow access for review. All archived records
23 shall be made available to the Department within a reasonable period of time.

1 **XIII. RESOLUTION OF DISPUTES**

2 In the event a dispute arises as to an approval, disapproval, proposed modification or
3 other decision or action by the Department or the Department's project coordinator, the Parties
4 shall utilize the dispute resolution procedure set forth below.

5 A. Upon receipt of the Department's or Department project coordinator's decision,
6 or upon notice of the Department's or Department project coordinator's action, the Respondent
7 has fourteen (14) days within which to notify the Department's project coordinator of its
8 objection to the decision or action.

9 (1) The Parties' project coordinators shall then confer in an effort to resolve the
10 dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, the
11 Department's project coordinator shall issue a written decision.

12 (2) Respondent may then request regional management review of the decision.
13 This request shall be submitted in writing to the Eastern Region Toxics Cleanup Program
14 Section Manager within seven (7) days of receipt of the Department's project coordinator's
15 decision.

16 (3) Ecology's Regional Section Manager shall conduct a review of the dispute and
17 shall issue a written decision regarding the dispute within thirty (30) days of the Respondent's
18 request for review.

19 (4) If the Respondent finds Ecology's Regional Section Manager's decision
20 unacceptable, the Respondent may request final management review of the decision. This
21 request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7)
22 days of receipt of the Regional Manager's decision.

23 (5) The Department's Program Manager shall conduct a review of the dispute and
24 shall issue a written decision regarding the dispute within thirty (30) days of the Respondent's
25 request for review. The Program Manager's decision shall be the Department's final decision
26 on the disputed matter.

XIII. RESOLUTION OF DISPUTES

In the event a dispute arises as to an approval, disapproval, proposed modification or other decision or action by the Department or the Department's project coordinator, the Parties shall utilize the dispute resolution procedure set forth below.

A. Upon receipt of the Department's or Department project coordinator's decision, or upon notice of the Department's or Department project coordinator's action, the Respondent has fourteen (14) days within which to notify the Department's project coordinator of its objection to the decision or action.

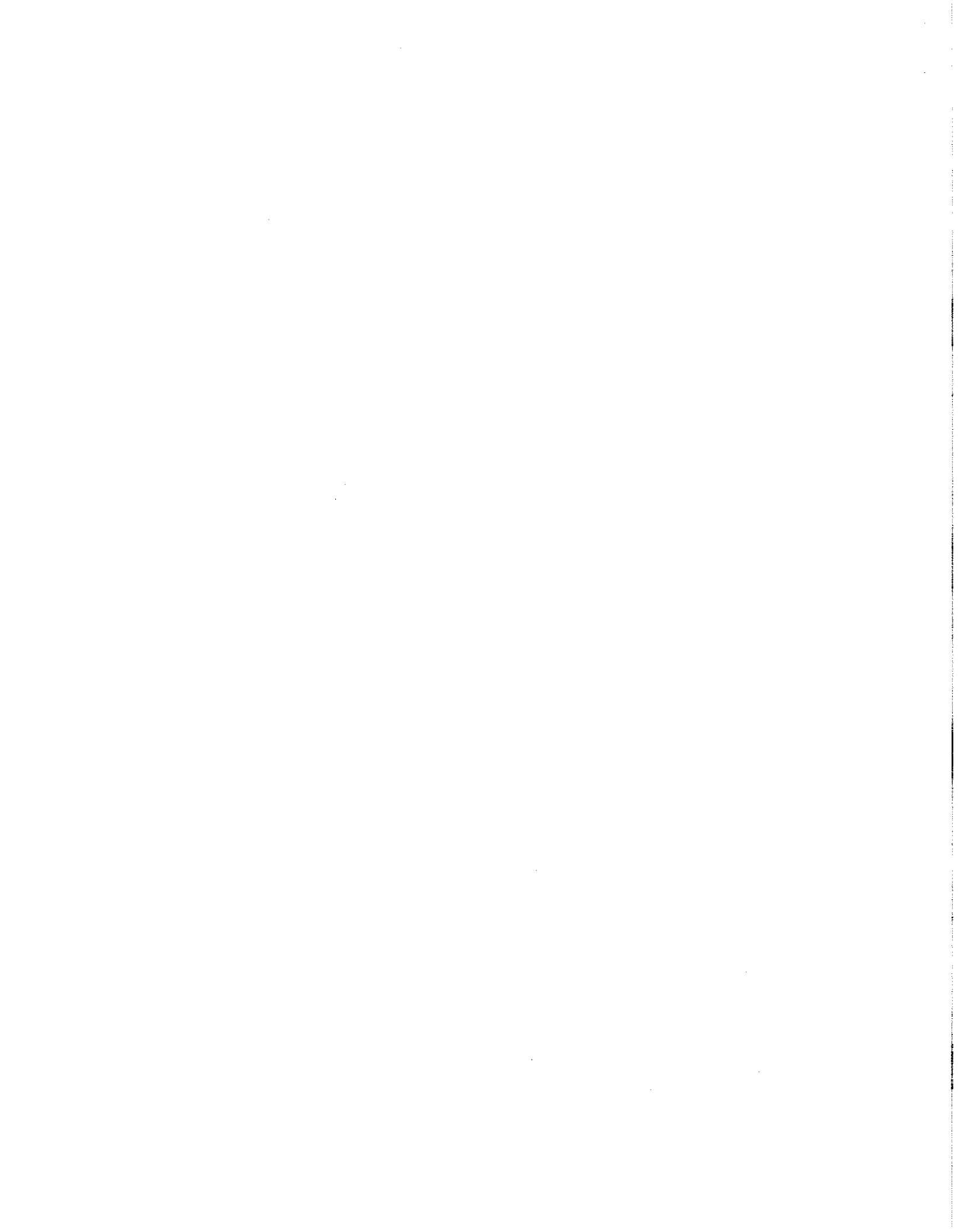
(1) The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, the Department's project coordinator shall issue a written decision.

(2) Respondent may then request regional management review of the decision. This request shall be submitted in writing to the Eastern Region Toxics Cleanup Program Section Manager within seven (7) days of receipt of the Department's project coordinator's decision.

(3) Ecology's Regional Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute within thirty (30) days of the Respondent's request for review.

(4) If the Respondent finds Ecology's Regional Section Manager's decision unacceptable, the Respondent may request final management review of the decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7) days of receipt of the Regional Manager's decision.

(5) The Department's Program Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute within thirty (30) days of the Respondent's request for review. The Program Manager's decision shall be the Department's final decision on the disputed matter.



1 B. If the Department's final written decision is unacceptable to the Respondent, it
2 has the right to submit the dispute to this Court (the Court) for resolution. The Parties agree
3 that one judge should retain jurisdiction over this case and shall, as necessary, resolve any
4 dispute arising under this Decree. In the event the Respondent presents an issue to the Court
5 for review, the Court shall review any investigative or remedial action or decision of the
6 Department on the basis of whether such action or decision was arbitrary and capricious and
7 render a decision based on such standard of review.

8 C. The Parties agree to only utilize the dispute resolution process in good faith and
9 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
10 Where either Party utilizes the dispute resolution process in bad faith or for purposes of delay,
11 the other Party may seek sanctions.

12 D. Implementation of these dispute resolution procedures shall not provide a basis
13 for delay of any activities required in this Decree, unless the Department agrees in writing to a
14 schedule extension or the Court so orders.

15 **XIV. AMENDMENT OF CONSENT DECREE**

16 Except for minor modifications agreed to pursuant to Section VII and extensions that
17 do not constitute a substantial change granted in accordance with Section XV, this Decree may
18 only be amended by a written stipulation among the parties to this Decree that is entered by the
19 Court or by order of the Court. All amendments shall become effective upon entry by the
20 Court. Agreement to amend shall not be unreasonably withheld by any party to the Decree.

21 Any party may propose an amendment to the Decree. A party that receives a request
22 for amendment shall indicate its approval or disapproval in a timely manner after the request
23 for amendment is received. If the amendment to the Decree is substantial, the Department will
24 provide public notice and opportunity for comment. Reasons for the disapproval shall be
25 stated in writing. If any party does not agree to any proposed amendment, the disagreement
26

1 may be addressed through the dispute resolution procedures described in Section XIII of this
2 Decree.

3 **XV. EXTENSION OF SCHEDULE**

4 A. An extension of schedule shall be considered when a request for an extension is
5 submitted in a timely fashion, generally at least 30 days prior to expiration of the deadline for
6 which the extension is requested, and good cause exists for granting the extension. All
7 extensions shall be requested in writing. The request shall specify the reason(s) the extension
8 is needed, the deadline that is sought to be extended, the length of the extension sought, and
9 any related deadline or schedule that would be affected if the extension were granted.

10 B. An extension shall be granted for such period of time as the Department
11 determines is reasonable under the circumstances. A requested extension shall not be effective
12 until approved by the Department or the Court. The Department shall act upon any written
13 request for extension in a timely fashion. It shall not be necessary to formally amend this
14 Decree pursuant to Section XIV when a schedule extension is granted unless the extension
15 constitutes a substantial change.

16 C. The burden shall be on the Respondent to demonstrate to the satisfaction of the
17 Department that the request for such extension has been submitted in a timely fashion and that
18 good cause exists for granting the extension. Good cause includes, but is not limited to, the
19 following:

20 (1) Circumstances beyond the reasonable control and despite the due diligence of
21 the Respondent including delays caused by unrelated third parties or the Department, such as
22 (but not limited to) delays by the Department in reviewing, approving, or modifying documents
23 submitted by the Respondent; or

24 (2) Acts of God or war, including fire, flood, blizzard, extreme temperatures, storm,
25 earthquake, terrorist attack, or other unavoidable casualty; or

26 (3) Endangerment as described in Section XVI; or

1 | may be addressed through the dispute resolution procedures described in Section XIII of this
2 | Decree.

3 | **XV. EXTENSION OF SCHEDULE**

4 | A. An extension of schedule shall be considered when a request for an extension is
5 | submitted in a timely fashion, generally at least 30 days prior to expiration of the deadline for
6 | which the extension is requested, and good cause exists for granting the extension. All
7 | extensions shall be requested in writing. The request shall specify the reason(s) the extension
8 | is needed, the deadline that is sought to be extended, the length of the extension sought, and
9 | any related deadline or schedule that would be affected if the extension were granted.

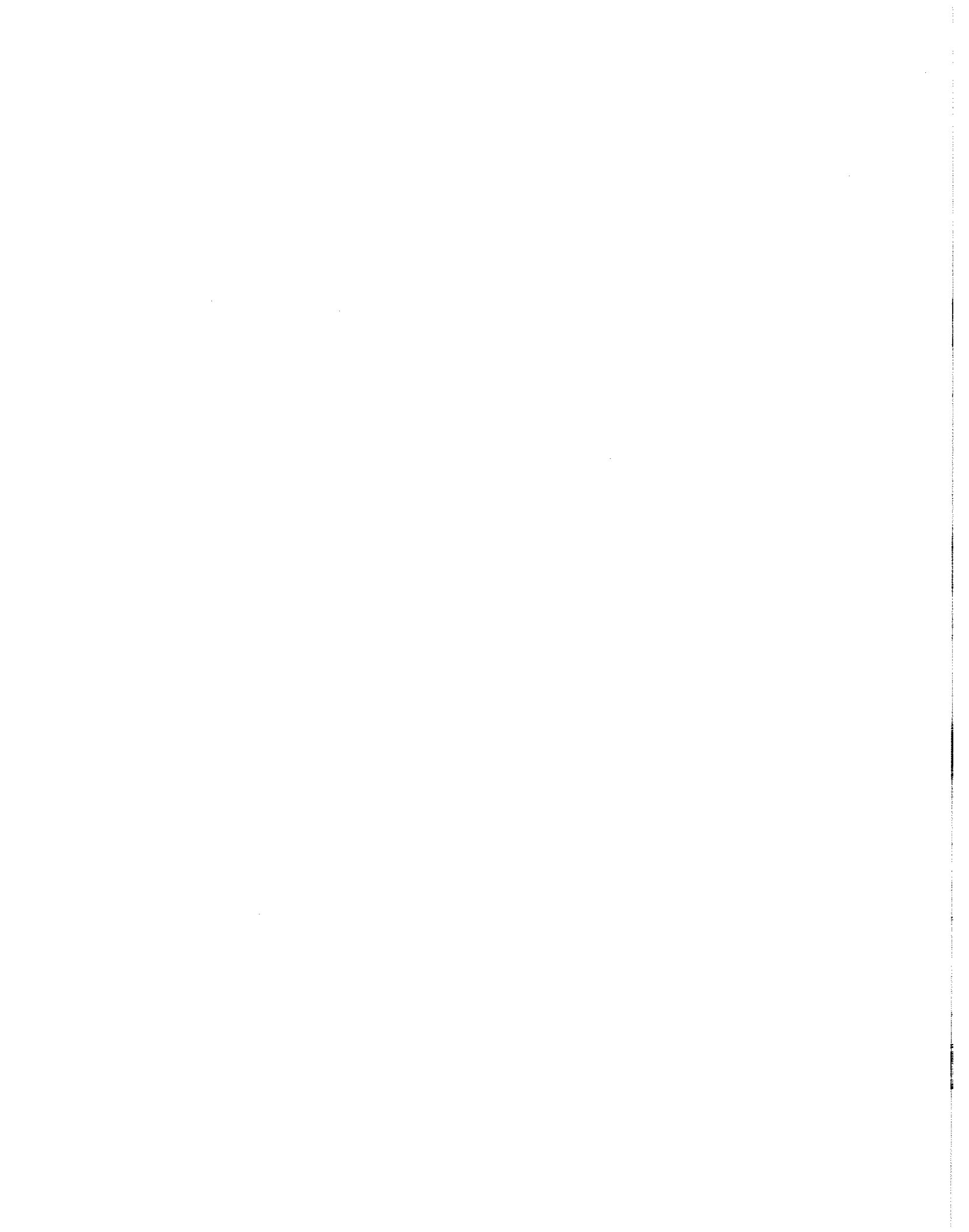
10 | B. An extension shall be granted for such period of time as the Department
11 | determines is reasonable under the circumstances. A requested extension shall not be effective
12 | until approved by the Department or the Court. The Department shall act upon any written
13 | request for extension in a timely fashion. It shall not be necessary to formally amend this
14 | Decree pursuant to Section XIV when a schedule extension is granted unless the extension
15 | constitutes a substantial change.

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17 | Department that the request for such extension has been submitted in a timely fashion and that
18 | good cause exists for granting the extension. Good cause includes, but is not limited to, the
19 | following:

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21 | the Respondent including delays caused by unrelated third parties or the Department, such as
22 | (but not limited to) delays by the Department in reviewing, approving, or modifying documents
23 | submitted by the Respondent; or

24 | (2) Acts of God or war, including fire, flood, blizzard, extreme temperatures, storm,
25 | earthquake, terrorist attack, or other unavoidable casualty; or

26 | (3) Endangerment as described in Section XVI; or



1 (4) Other circumstances agreed to by the Department to be exceptional or
2 extraordinary.

3 However, neither increased costs of performance of the terms of the Decree nor
4 changed economic circumstances shall be considered circumstances beyond the reasonable
5 control of the Respondent.

6 D. An extension shall be granted only for such period as Ecology determines is
7 reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety
8 (90) days only as a result of:

9 (1) Delays in the issuance of a necessary permit which was applied for in a timely
10 manner; or

11 (2) Other circumstances deemed exceptional or extraordinary by the Department; or

12 (3) Endangerment as described in Section XVI.

13 The Department shall give the Respondent written notification in a timely fashion of
14 any extensions granted pursuant to this Decree.

15 **XVI. ENDANGERMENT**

16 In the event the Department determines that any activities being performed at the Site
17 pursuant to this Decree are creating or have the potential to create a danger to human health or
18 the environment, the Department may order the Respondent to cease such activities for such
19 period of time as needed to abate the danger or may petition the Court for an order as
20 appropriate. During any stoppage of work under this section, the obligations of the
21 Respondent with respect to the work under this Decree which is ordered to be stopped shall be
22 suspended and the time periods for performance of that work, as well as the time period for any
23 other work dependent upon the work which is stopped, shall be extended, pursuant to Section
24 XV of this Decree, for such period of time as the Department determines is reasonable under
25 the circumstances.

1 In the event the Respondent determines that any activities being performed at the Site
2 pursuant to this Decree are creating or have the potential to create a danger to human health or
3 the environment, the Respondent may cease such activities for such period of time necessary
4 for the Department to evaluate the situation and determine whether the Respondent should
5 proceed with implementation of the Decree or whether the work stoppage should be continued
6 until the danger is abated. The Respondent shall notify the Department's project coordinator as
7 soon as possible, but no later than twenty-four (24) hours after such stoppage of work, and
8 thereafter provide the Department with documentation of the basis for the work stoppage. If
9 the Department disagrees with the Respondent's determination, it may order the Respondent to
10 resume implementation of this Decree. If the Department concurs with the work stoppage, the
11 Respondent's obligations shall be suspended and the time period for performance of that work,
12 as well as the time period for any other work dependent upon the work which was stopped,
13 shall be extended, pursuant to Section XV of this Decree, for such period of time as the
14 Department determines is reasonable under the circumstances.

15 **XVII. COVENANT NOT TO SUE**

16 A. Covenant Not to Sue: In consideration of Respondent's compliance with the
17 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative
18 actions against Respondent regarding the release or threatened release of hazardous substances
19 covered by this Decree.

20 This Decree covers only the Site and those hazardous substances that Ecology knows
21 are located at the Site as of the date of entry of this Decree. This Decree does not cover any
22 other hazardous substance or area. Ecology retains all of its authority relative to any substance
23 or area not covered by this Decree.

24 This Covenant Not to Sue shall have no applicability whatsoever to:

- 25 (1) Criminal liability;
- 26 (2) Liability for damages to natural resources; or

1 In the event the Respondent determines that any activities being performed at the Site
2 pursuant to this Decree are creating or have the potential to create a danger to human health or
3 the environment, the Respondent may cease such activities for such period of time necessary
4 for the Department to evaluate the situation and determine whether the Respondent should
5 proceed with implementation of the Decree or whether the work stoppage should be continued
6 until the danger is abated. The Respondent shall notify the Department's project coordinator as
7 soon as possible, but no later than twenty-four (24) hours after such stoppage of work, and
8 thereafter provide the Department with documentation of the basis for the work stoppage. If
9 the Department disagrees with the Respondent's determination, it may order the Respondent to
10 resume implementation of this Decree. If the Department concurs with the work stoppage, the
11 Respondent's obligations shall be suspended and the time period for performance of that work,
12 as well as the time period for any other work dependent upon the work which was stopped,
13 shall be extended, pursuant to Section XV of this Decree, for such period of time as the
14 Department determines is reasonable under the circumstances.

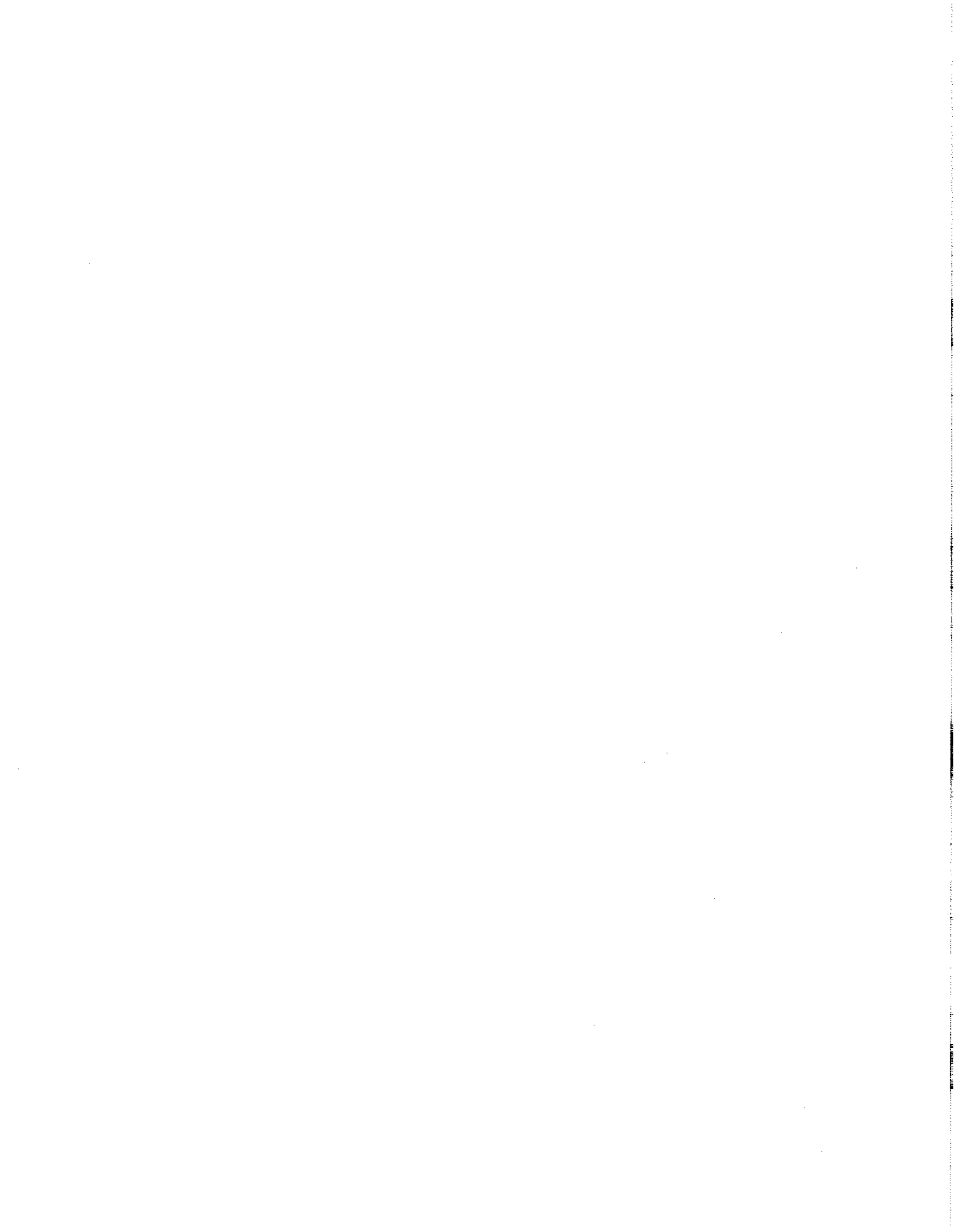
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21 are located at the Site as of the date of entry of this Decree. This Decree does not cover any
22 other hazardous substance or area. Ecology retains all of its authority relative to any substance
23 or area not covered by this Decree.

24 This Covenant Not to Sue shall have no applicability whatsoever to:

- 25 (1) Criminal liability;
26 (2) Liability for damages to natural resources; or



1 (3) Any Ecology action, including cost recovery, against potentially liable persons
2 not a party to this Decree.

3 If factors not known to Ecology at the time of entry of the settlement agreement are
4 discovered and present a previously unknown threat to human health or the environment, the
5 Court shall amend this covenant not to sue.

6 B. Reopeners: Ecology specifically reserves the right to institute legal or
7 administrative action against Respondent to require it to perform additional remedial actions at
8 the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the
9 following circumstances:

10 (1) Upon Respondent's failure to meet the requirements of this Decree, including,
11 but not limited to, failure of the remedial action to meet the cleanup standards identified in the
12 Cleanup Action Plan (Exhibit A);

13 (2) Upon Ecology's determination that remedial action beyond the terms of this
14 Decree is necessary to abate an imminent and substantial endangerment to human health or the
15 environment;

16 (3) Upon the discovery of factors unknown at the time of entry of this Decree,
17 including the nature or quantity of hazardous substances at the Site, that present a previously
18 unknown threat to human health or the environment and Ecology's determination, in light of
19 these factors, that further remedial action is necessary at the Site to protect human health or the
20 environment; or

21 (4) Upon Ecology's determination based on factors unknown at the time of entry of
22 this Decree that additional remedial actions are necessary to achieve cleanup standards within
23 the reasonable restoration time frame set forth in the Cleanup Action Plan.

24 C. Except in the case of an emergency, prior to instituting legal or administrative
25 action against the Respondent pursuant to paragraph B. above, Ecology shall provide the
26 Respondent with fifteen (15) calendar days notice of such action.

1 **XVIII. CONTRIBUTION PROTECTION**

2 With regard to claims for contribution against the Respondent, the Parties agree that the
3 Respondent is entitled to protection against claims for contribution for matters addressed in this
4 Decree as provided by RCW 70.105D.040(4)(d). For the purposes of this section, "matters
5 addressed" include all remedial actions undertaken at the Site pursuant to this Decree.
6 "Matters addressed" also include all remedial actions previously undertaken at the Site to
7 characterize the contamination or to enable the selection of a cleanup action, and all oversight
8 costs paid to Ecology.

9 **XIX. FINANCIAL ASSURANCES**

10 Pursuant to WAC 173-340-440(11), Respondent shall maintain sufficient and adequate
11 financial assurance mechanisms to cover all costs associated with the operation and
12 maintenance of the remedial action at the Site, including institutional controls, compliance
13 monitoring, and corrective measures.

14 Within sixty (60) days of the effective date of this Decree, Respondent shall submit to
15 Ecology for review and approval an estimate of the costs that it will incur in carrying out the
16 terms of this Decree, including operation and maintenance and compliance monitoring. Within
17 sixty (60) days after Ecology approves the aforementioned cost estimate, the Respondent shall
18 provide proof of financial assurances sufficient to cover all such costs in a form acceptable to
19 Ecology.

20 Respondent shall adjust the financial assurance coverage and provide Ecology's project
21 manager with documentation of the updated financial assurance for:

22 1. Inflation, annually, within thirty (30) days of the anniversary date of the entry of
23 this Decree; or if applicable, the modified anniversary date established in accordance with the
24 following subparagraph, or if applicable, ninety (90) days after the close of the Respondent's
25 fiscal year if the financial test or corporate guarantee is used, and
26

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3 Respondent is entitled to protection against claims for contribution for matters addressed in this
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13 monitoring, and corrective measures.

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15 Ecology for review and approval an estimate of the costs that it will incur in carrying out the
16 terms of this Decree, including operation and maintenance and compliance monitoring. Within
17 sixty (60) days after Ecology approves the aforementioned cost estimate, the Respondent shall
18 provide proof of financial assurances sufficient to cover all such costs in a form acceptable to
19 Ecology.

20 Respondent shall adjust the financial assurance coverage and provide Ecology's project
21 manager with documentation of the updated financial assurance for:

22 1. Inflation, annually, within thirty (30) days of the anniversary date of the entry of
23 this Decree; or if applicable, the modified anniversary date established in accordance with the
24 following subparagraph, or if applicable, ninety (90) days after the close of the Respondent's
25 fiscal year if the financial test or corporate guarantee is used, and
26



1 2. Changes in cost estimates, within thirty (30) days of issuance of Ecology's
2 approval of a modification or revision to the CAP that results in increases to the cost or
3 expected duration of remedial actions. Any adjustments for inflation since the most recent
4 preceding anniversary date shall be made concurrent with adjustments for changes in cost
5 estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the
6 anniversary date established in subparagraph (1) above to become the date of issuance of such
7 revised or modified CAP.

8 XX. INDEMNIFICATION

9 The Respondent agrees to indemnify and save and hold the State of Washington, its
10 employees, and agents harmless from any and all claims or causes of action for death or
11 injuries to persons or for loss or damage to property arising from or on account of acts or
12 omissions of the Respondent, its officers, employees, agents, or contractors in entering into and
13 implementing this Decree. However, the Respondent shall not indemnify the State of
14 Washington nor save nor hold its employees and agents harmless from any claims or causes of
15 action arising out of either the State of Washington's or any of its agencies' status as
16 potentially liable persons with respect to contamination at the Site or the intentional, reckless,
17 or negligent acts or omissions of the State of Washington, or the employees or agents of the
18 State, in implementing the activities pursuant to this Decree.

19 XXI. COMPLIANCE WITH APPLICABLE LAWS

20 A. All actions carried out by the Respondent pursuant to this Decree shall be done
21 in accordance with all applicable federal, state, and local requirements, including requirements
22 to obtain necessary permits, except as provided in paragraph B. of this section.

23 B. Pursuant to RCW 70.105D.090(I), the substantive requirements of chapters
24 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing
25 local government permits or approvals for the remedial action under this Decree that are
26

1 known to be applicable at the time of entry of the Decree are binding and enforceable
2 requirements of the Decree.

3 The Respondent has a continuing obligation to determine whether additional permits or
4 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
5 action under this Decree. In the event either the Respondent or the Department determines that
6 additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be
7 required for the remedial action under this Decree, it shall promptly notify the other party of
8 this determination. The Department shall determine whether the Department or the
9 Respondent shall be responsible to contact the appropriate state and/or local agencies. If the
10 Department so requires, the Respondent shall promptly consult with the appropriate state
11 and/or local agencies and provide the Department with written documentation from those
12 agencies of the substantive requirements those agencies believe are applicable to the remedial
13 action. The Department shall make the final determination on the additional substantive
14 requirements that must be met by the Respondent and on how the Respondent must meet those
15 requirements. The Department shall inform the Respondent in writing of these requirements.
16 Once established by the Department, the additional requirements shall be enforceable
17 requirements of this Decree. The Respondent shall not begin or continue the remedial action
18 potentially subject to the additional requirements until the Department makes its final
19 determination.

20 The Department shall ensure that notice and opportunity for comment is provided to the
21 public and appropriate agencies prior to establishing the substantive requirements under this
22 section.

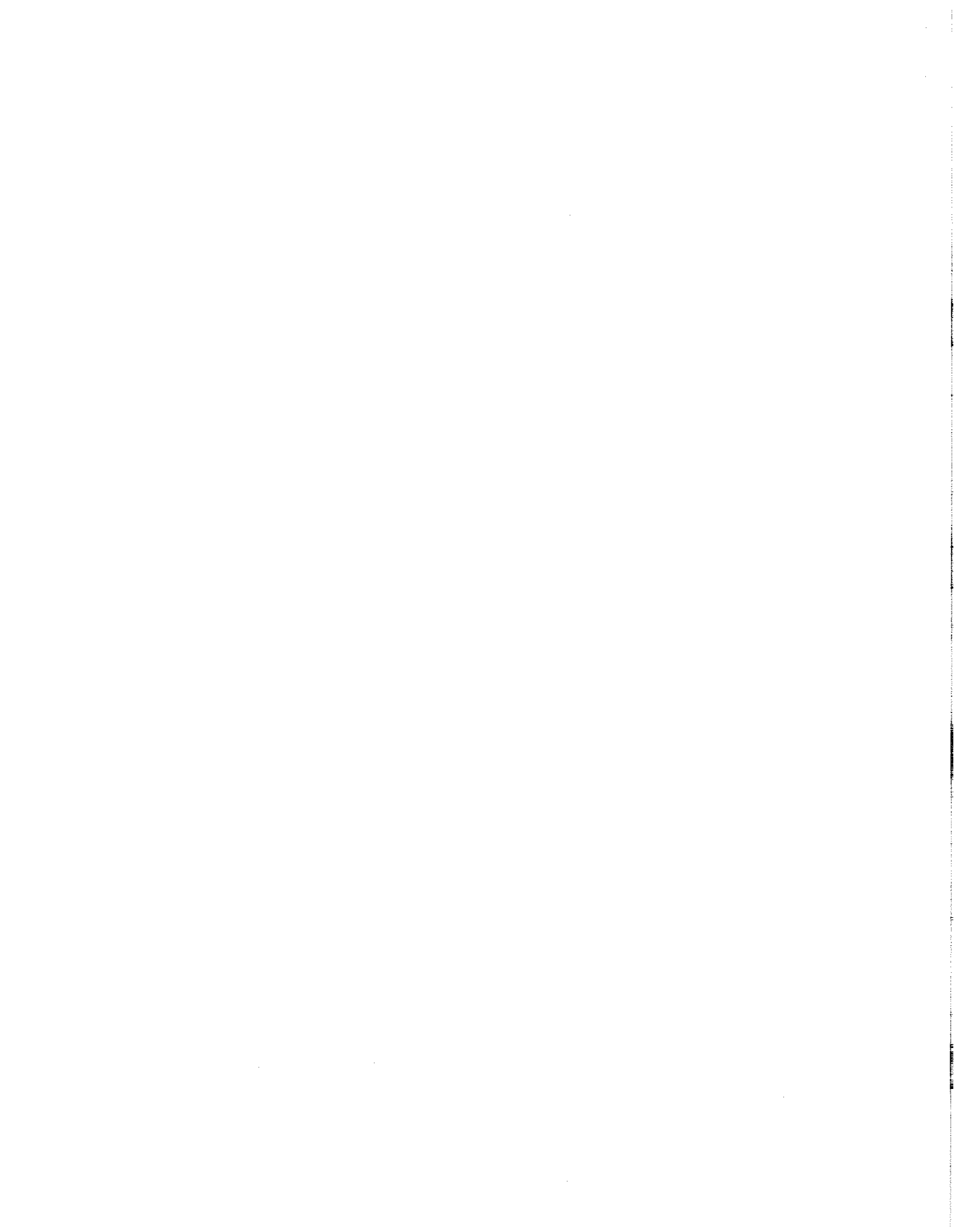
23 C. Pursuant to RCW 70.105D.090(2), in the event the Department determines that
24 the exemption from complying with the procedural requirements of the laws referenced in
25 RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is
26 necessary for the State to administer any federal law, the exemption shall not apply and the

1 known to be applicable at the time of entry of the Decree are binding and enforceable
2 requirements of the Decree.

3 The Respondent has a continuing obligation to determine whether additional permits or
4 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
5 action under this Decree. In the event either the Respondent or the Department determines that
6 additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be
7 required for the remedial action under this Decree, it shall promptly notify the other party of
8 this determination. The Department shall determine whether the Department or the
9 Respondent shall be responsible to contact the appropriate state and/or local agencies. If the
10 Department so requires, the Respondent shall promptly consult with the appropriate state
11 and/or local agencies and provide the Department with written documentation from those
12 agencies of the substantive requirements those agencies believe are applicable to the remedial
13 action. The Department shall make the final determination on the additional substantive
14 requirements that must be met by the Respondent and on how the Respondent must meet those
15 requirements. The Department shall inform the Respondent in writing of these requirements.
16 Once established by the Department, the additional requirements shall be enforceable
17 requirements of this Decree. The Respondent shall not begin or continue the remedial action
18 potentially subject to the additional requirements until the Department makes its final
19 determination.

20 The Department shall ensure that notice and opportunity for comment is provided to the
21 public and appropriate agencies prior to establishing the substantive requirements under this
22 section.

23 C. Pursuant to RCW 70.105D.090(2), in the event the Department determines that
24 the exemption from complying with the procedural requirements of the laws referenced in
25 RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is
26 necessary for the State to administer any federal law, the exemption shall not apply and the



1 Respondent shall comply with both the procedural and substantive requirements of the laws
2 referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

3 **XXII. REMEDIAL AND INVESTIGATIVE COSTS**

4 The Respondent agrees to pay the remedial action costs incurred by the Department for
5 the Site pursuant to this Decree that are consistent with WAC 173-340-550, provided that such
6 costs shall not exceed a total of \$75,000.

7 The Respondent agrees to pay the required amount within ninety (90) days of receiving
8 from the Department an itemized statement of costs that includes a summary of costs incurred,
9 an identification of involved staff, and the amount of time spent by involved staff members on
10 the project. A general statement of work performed will be provided upon request. Itemized
11 statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay
12 Ecology's costs within ninety (90) days of receipt of the itemized statement will result in
13 interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

14 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

15 If the Department determines that the Respondent has failed without good cause to
16 implement the remedial action required by this Decree, the Department may, after written
17 notice to the Respondent and a reasonable opportunity for Respondent to cure the failure,
18 perform any or all portions of the remedial action required by this Decree that remain
19 incomplete. If the Department performs all or portions of the remedial action because of the
20 Respondent's failure to comply with its obligations under this Decree, the Respondent shall
21 reimburse the Department for the costs of doing such work in accordance with Section XX,
22 provided that the Respondent is not obligated under this section to reimburse the Department
23 for costs incurred for work inconsistent with or beyond the scope of this Decree.

24 **XXIV. PERIODIC REVIEW**

25 As remedial action, including monitoring, continues at the Site, the Parties agree to
26 review the progress of remedial action at the Site, and to review the data accumulated as a

1 result of monitoring the Site as often as is necessary and appropriate under the circumstances.
2 At least every five years after the initiation of cleanup action at the Site, the Parties shall meet
3 to discuss the status of the Site and the need, if any, for further remedial action at the Site. The
4 Department reserves the right to require further remedial action at the Site under appropriate
5 circumstances. With respect to the Respondent, however, the Department may require further
6 remedial action at the Site only as provided under Section XVII (Covenant Not to Sue). This
7 provision shall remain in effect for the duration of the Decree. A report, which addresses the
8 review criteria in WAC 173-340-420, shall be submitted by Respondent ninety (90) days
9 before every 5-year anniversary of the completion of construction.

10 **XXV. PUBLIC PARTICIPATION**

11 The Department shall maintain the responsibility for public participation at the Site. However,
12 the Respondent shall cooperate with the Department, and shall:

13 A. If agreed to by the Department, prepare drafts of public notices and fact sheets
14 at important stages of the remedial action, such as the submission of work plans, remedial
15 investigation/feasibility study reports, cleanup action plans, and engineering design reports. As
16 appropriate, the Department will edit, finalize, and distribute such fact sheets and prepare and
17 distribute public notices of the Department's presentations and meetings;

18 B. Notify the Department's project coordinator prior to the preparation of all press
19 releases and fact sheets, and before major meetings with the interested public and local
20 governments. Likewise, the Department shall notify the Respondent prior to the issuance of all
21 press releases and fact sheets, and before major meetings with the interested public and local
22 governments. The Department shall also endeavor to provide Respondent with an opportunity
23 to review and comment on all press releases, fact sheets, and other materials that will be
24 distributed to the public and local governments prior to issuance. For all press releases, fact
25 sheets, meetings, and other outreach efforts by the Respondent that do not receive prior
26 Department approval, the Respondent shall clearly indicate to its audience that the press

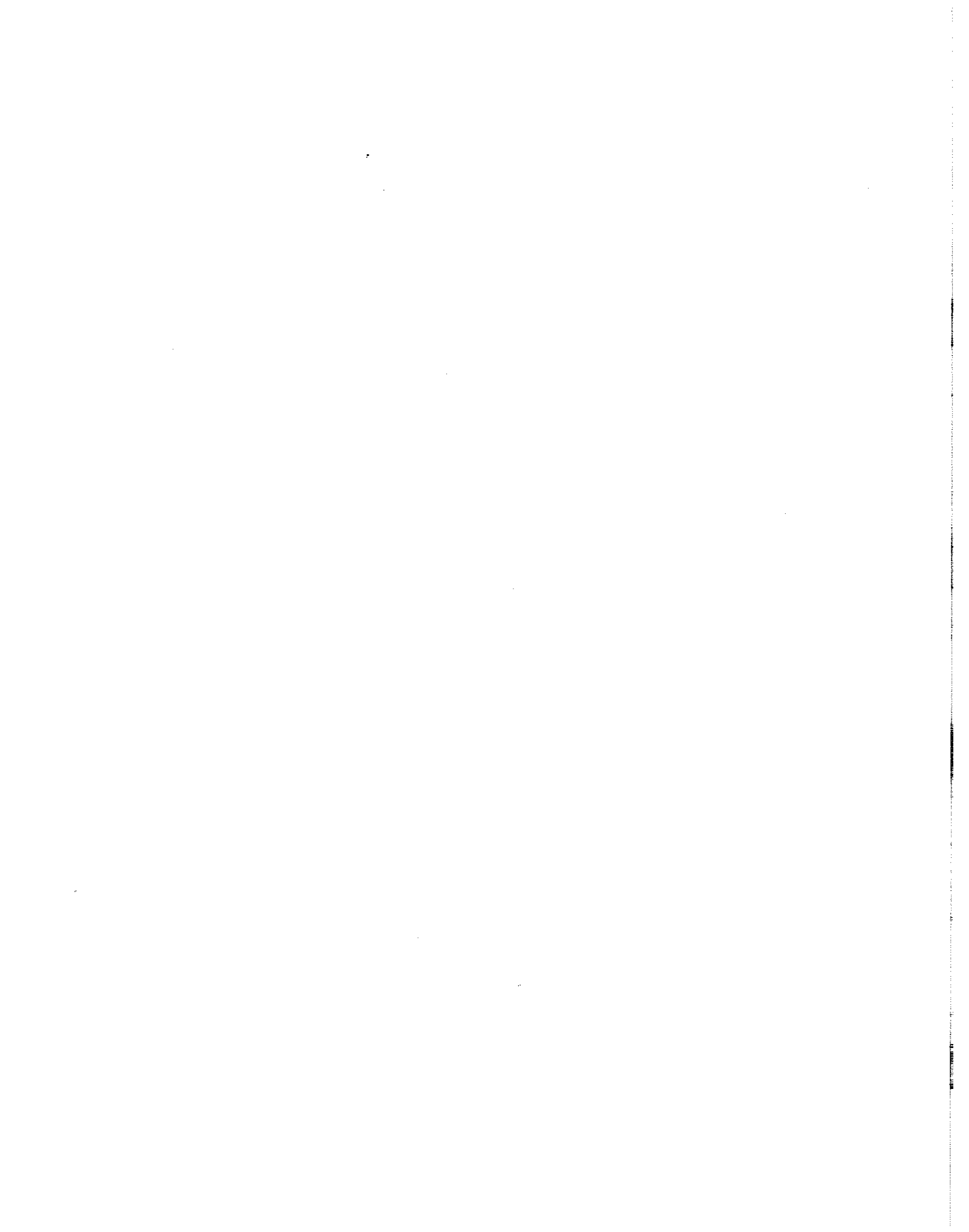
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24 distributed to the public and local governments prior to issuance. For all press releases, fact
25 sheets, meetings, and other outreach efforts by the Respondent that do not receive prior
26 Department approval, the Respondent shall clearly indicate to its audience that the press



1 release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by the
2 Department;

3 C. Participate in public presentations on the progress of the remedial action at the
4 Site. Participation may be through attendance at public meetings to assist in answering
5 questions, or as a presenter;

6 D. In cooperation with the Department, arrange and/or continue information
7 repositories at the following locations:

8 (1) The Spokane Public Library, Downtown Branch;

9 (2) The Department's Eastern Regional Office at North 4601 Monroe Street in
10 Spokane.

11 At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured
12 monitoring data; remedial actions plans and reports, supplemental remedial planning
13 documents, and all other similar documents relating to performance of the remedial action
14 required by this Decree shall be promptly placed in these repositories.

15 **XXVI. DURATION OF DECREE**

16 This Decree shall remain in effect until the Respondent has received written
17 notification from the Department that the requirements of this Decree have been satisfactorily
18 completed. The Department shall issue such notification within 60 days after the requirements
19 of this Decree have been satisfactorily completed. Thereafter, the parties within thirty (30)
20 days shall jointly request that the Court vacate this Consent Decree. After the Decree is
21 vacated, Section XVII (Covenant Not to Sue) and XVIII (Contribution Protection) shall
22 survive.

23 **XXVII. CLAIMS AGAINST THE STATE**

24 The Respondent hereby agrees that it will not seek to recover any costs accrued in
25 implementing the remedial action required by this Decree from the State of Washington or any
26 of its agencies, except to the extent they are potentially liable persons with respect to

1 | contamination at the Site; and further, that the Respondent will make no claim against the State
2 | Toxics Control Account or any Local Toxics Control Account for any costs incurred in
3 | implementing this Decree. Except as provided above, however, the Respondent expressly
4 | reserves its right to seek to recover any costs incurred in implementing this Decree from any
5 | other potentially liable person; however, nothing in this Decree shall affect any claims between
6 | Avista and the Debtors, which shall be governed solely by the Bankruptcy Consent Decree.

7 | **XXVIII. EFFECTIVE DATE**

8 | This Decree is effective upon the later of (1) the date it is entered by the Court, (2) the
9 | Effective Date of the Bankruptcy Consent Decree, or (3) the date that Debtors make the
10 | payment to the Respondent required by the Bankruptcy Consent Decree.

11 | **XXIX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

12 | This Decree has been the subject of public notice and comment under RCW
13 | 70.105D.040(4)(a). As a result of this process, the Department has found that this Decree will
14 | lead to a more expeditious cleanup of hazardous substances at the Site in compliance with the
15 | cleanup standards established under Chapter 173-340 WAC.

16 | If the Court withholds or withdraws its consent to this Decree, if the Bankruptcy Court
17 | declines to enter the Bankruptcy Consent Decree, or if Debtors fail to make the payment to the
18 | Respondent required by the Bankruptcy Consent Decree, this Decree shall be null and void at
19 | the option of any Party and the accompanying Complaint shall be dismissed without costs and
20 | without prejudice. In such an event, no Party shall be bound by the requirements of this
21 | Decree.

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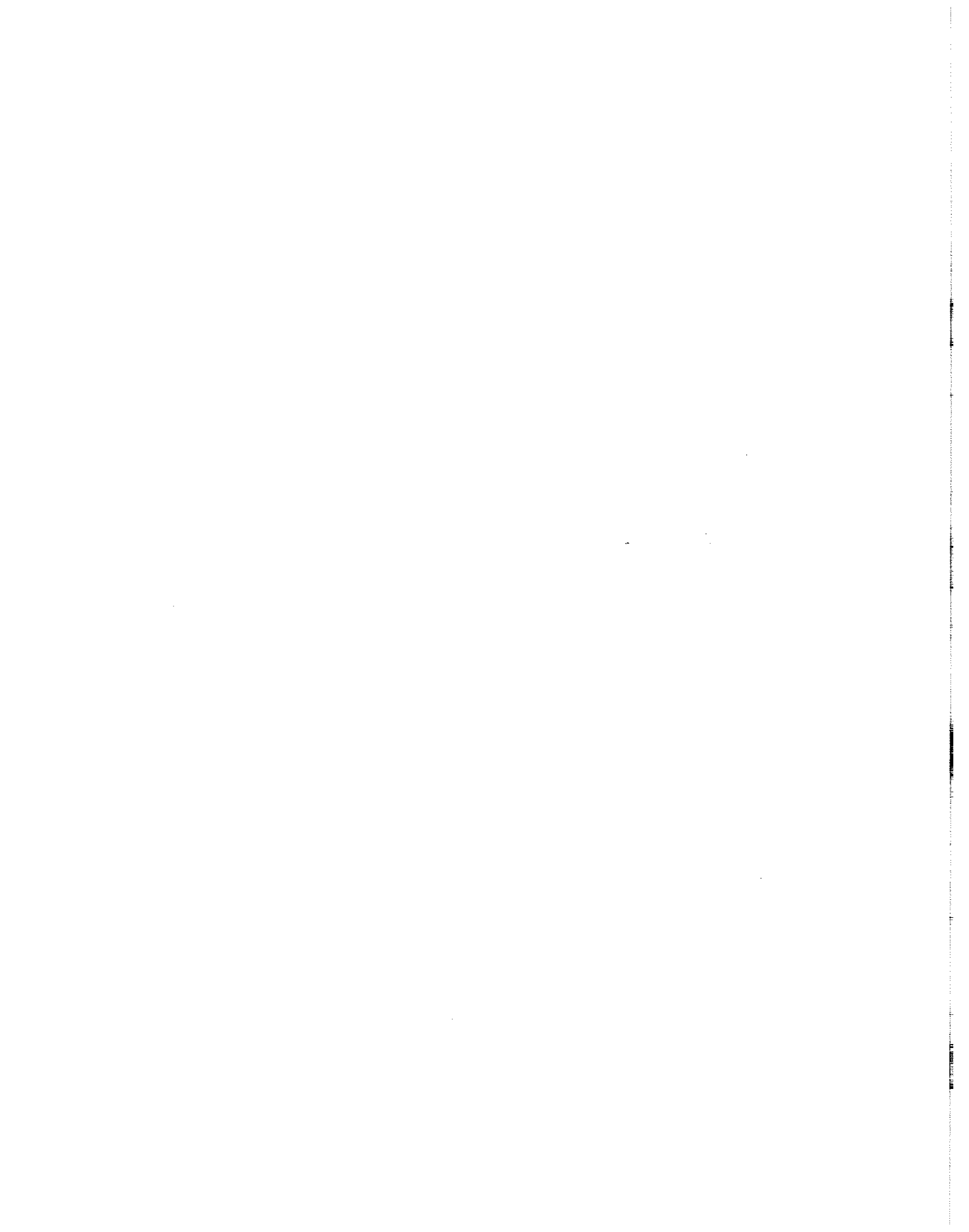
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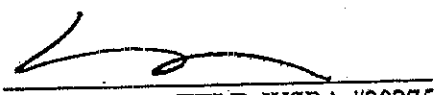
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17 | declines to enter the Bankruptcy Consent Decree, or if Debtors fail to make the payment to the
18 | Respondent required by the Bankruptcy Consent Decree, this Decree shall be null and void at
19 | the option of any Party and the accompanying Complaint shall be dismissed without costs and
20 | without prejudice. In such an event, no Party shall be bound by the requirements of this
21 | Decree.



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DEPARTMENT OF ECOLOGY

ROB McKENNA
Attorney General



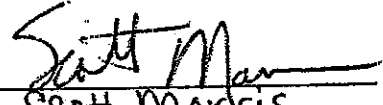
JIM PENDOWSKI
Program Manager
Washington Department of Ecology
Toxics Cleanup Program

STEVEN J. THIELE, WSBA #20275
Assistant Attorney General
Attorneys for Plaintiff
State of Washington, Department of Ecology

Date: 7/28/05

Date: 7-19-05

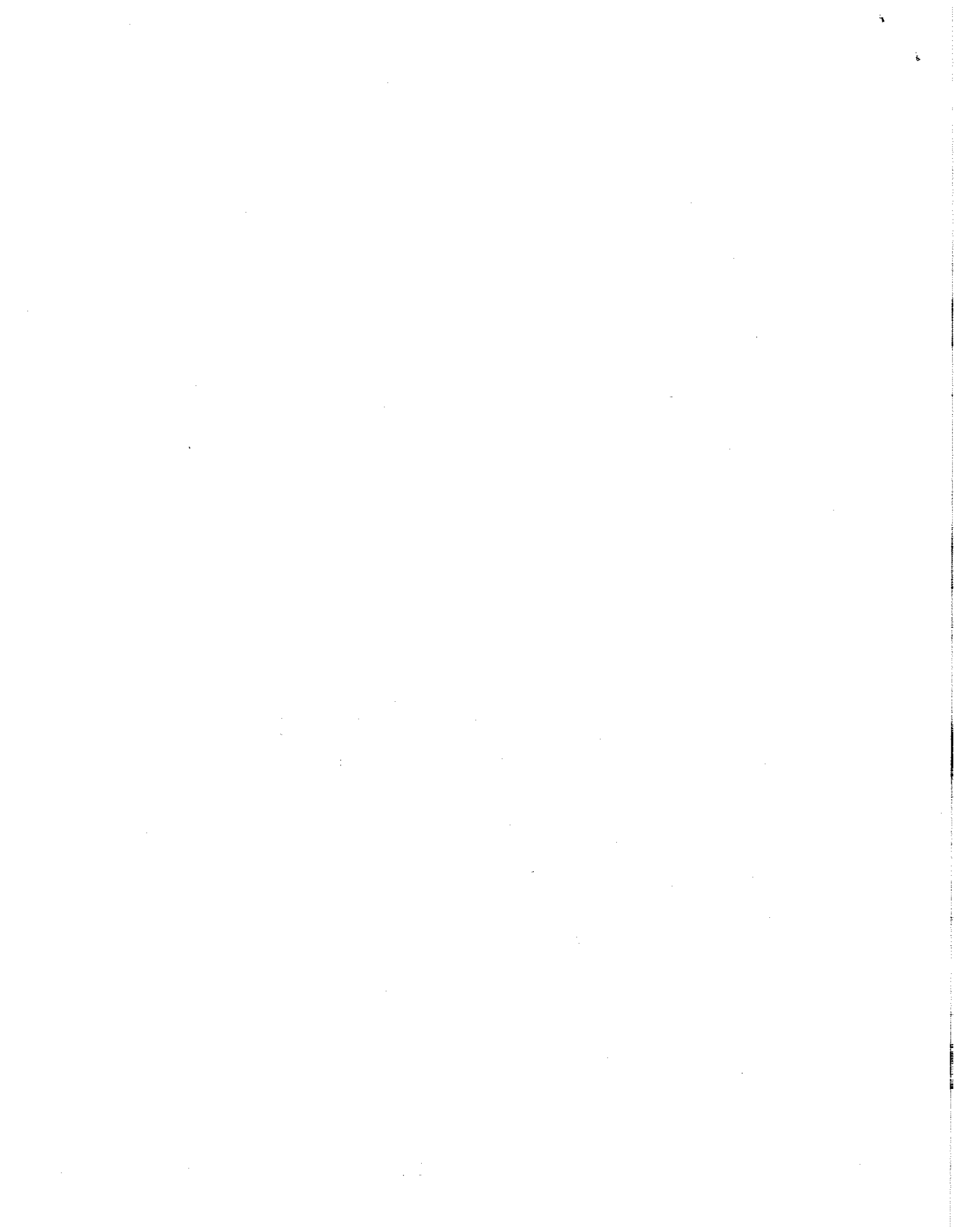
AVISTA DEVELOPMENT, INC.


By: Scott Morris
Title: Senior Vice President

Date: 8-9-05

DATED this 10 day of August, 2005.

ROYCE H. MOE
~~COURT COMMISSIONER~~
~~JUDGE~~
Spokane County Superior Court



ERO SITE

DEPARTMENT OF ECOLOGY

Date: May 5, 2005
TO: Debbie Iness, Fiscal
FROM: Katherine Scott, ICP
SUBJECT: Consent Decree No. 03-2-00422-1



PCBS/Spokane River Site, Project #8686
The PCB-contaminated sediments are located upstream and are hydraulically influenced by the Upriver Dam near the Centennial Trail Footbridge in Spokane County, Washington

I have attached the Consent Decree for the PCBS/Spokane River Site cost recovery project file. The Consent Decree was effective February 5, 2003. Please initiate cost recovery. The Site Manager only asked about the status of Cost Recovery for this site on May 2. Invoicing will start two years late.

Address invoices to the Project Coordinators for the PLPs:

AA Mr. Patrick J. Blau
Kaiser Aluminum & Chemical Corporation
P.O. Box 15108
Spokane, WA 99215-5108

Mr. Douglas K. Pottratz
Avista Corporation
P.O. Box 3727
Spokane, WA 99220-3727

AE

Telephone numbers: none provided

Ecology's Site Manager (Project Coordinator) is:

John Roland, Telephone Number: (509) 329-3581
Project Number 8686, and SIC J1AK6

If you have any questions regarding this project, please call me at 407-7213.

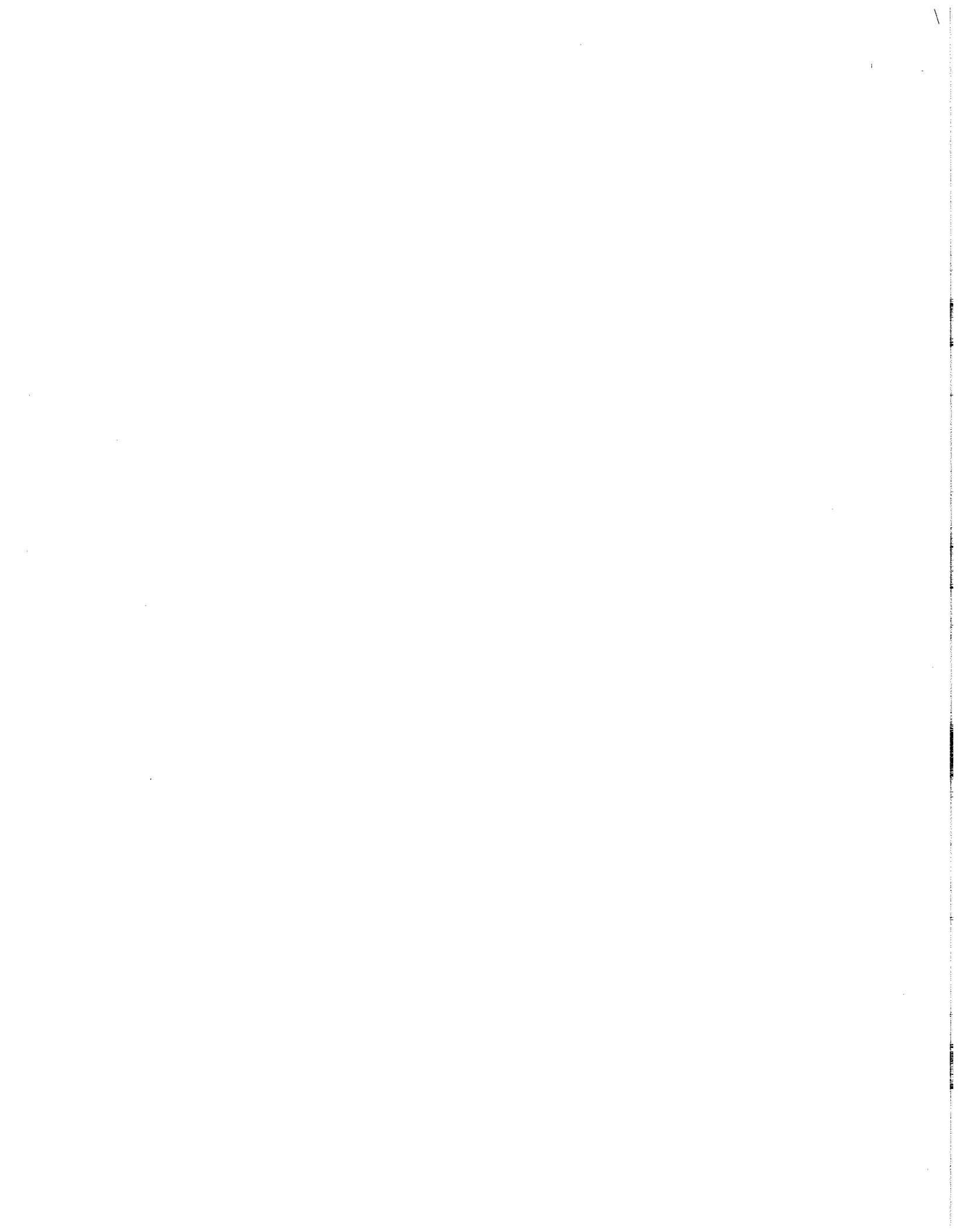
Attachments

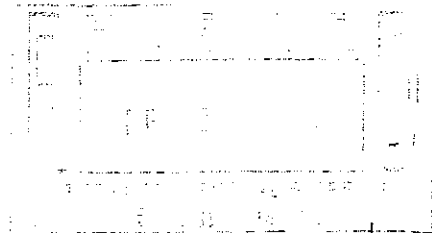
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**STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

NO. 03-2-00422-1

DECLARATION OF
JOHN L. ROLAND

I, JOHN L. ROLAND, declare as follows:

1. I am over twenty-one years of age and am competent to testify herein. The facts set forth in this declaration are from my personal knowledge.

2. I am employed as a hydrogeologist at the Washington State Department of Ecology (Ecology), Eastern Regional Office, Toxics Cleanup Program. I am the project coordinator and am knowledgeable on matters relating to the site involving the area of the Spokane River directly upstream of the Upriver Dam.

3. On behalf of Ecology and the Attorney General's Office, I took part in the negotiations which led to the Consent Decree that is being presented to the Court.

4. The Consent Decree was the subject of public notice and public comment as required by RCW 70.105D.040(4)(a).

1 5. Ecology received three letters during the public comment period. Ecology
2 considered the comments and determined that no changes to the Consent Decree were
3 necessary based on those comments. The public comments and Ecology's responses to those
4 comments are attached to this declaration as Attachment A.

5 6. Ecology has determined that no additional public comment period under WAC
6 173-340-600(9)(e) is required.

7 7. Ecology has determined that the proposed remedial action will lead to a more
8 expeditious cleanup of hazardous substances in compliance with cleanup standards under
9 RCW 70.105D.030(2)(e).

10 8. I declare under penalty of perjury of the laws of the State of Washington that
11 the foregoing is true and correct.

12 RESPECTFULLY SUBMITTED this 27th day of January, 2003.

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14 
15 _____
16 JOHN L. ROLAND
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From: C:\file\Spokane River PCB\Case\License Final Roland Decision

RECEIVED
JAN 22 2003
ATTORNEY GENERAL'S OFFICE
Ecology Division

COPY
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JAN 17 2003

THOMAS R. FALLQUIST
SPOKANE COUNTY
CLERK

STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

NO. **03200422-1**
COMPLAINT

Plaintiff, State of Washington, Department of Ecology (Ecology) alleges as follows:

I. DESCRIPTION OF ACTION

1. This action is brought on behalf of the State of Washington, Department of Ecology, pursuant to RCW 70.105D.050(4) of the Model Toxics Control Act (MTCA), for a remedial action at a location where there have been releases and/or threatened releases of hazardous substances.

2. The Complaint is limited in scope to a Remedial Investigation and Feasibility Study (RI/FS) at the Site. The location, or Site, consists of sediments containing PCBs in the portion of the Spokane River directly upstream of Upriver Dam as further described in paragraph 6 below.

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II. JURISDICTION

3. On February 12, 2002, Kaiser filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code"). This jointly administered bankruptcy case, *In re Kaiser Aluminum Corporation, et al.*, Case No. 02-10429 (JKF), is pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). Pursuant to the Bankruptcy Court's Order of November 26, 2002 (attached as Exhibit A) authorizing Kaiser to enter into a Consent Decree with Ecology and Avista Development Inc. and allowing a limited lifting of the automatic stay imposed by Section 362 of the Bankruptcy Code, this Court has jurisdiction over the subject matter and over the parties under RCW 70.105D, the Model Toxics Control Act (MTCA). Venue is proper in Spokane County, the location of the property at issue.

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III. PARTIES

4. Plaintiff Ecology is an agency of the State of Washington responsible for overseeing remedial action at sites contaminated with hazardous substances under RCW 70.105D.

5. Defendants are Avista Development, Inc., and Kaiser Aluminum & Chemical Corporation.

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IV. FACTUAL ALLEGATIONS

6. The Site consists of the areal extent of PCB-contaminated sediments upstream of and hydraulically influenced by the Upriver Dam between approximately United States Geologic Survey River Mile (RM) 80 (near the Upriver Dam) and RM 85 (upstream of the dam near the Centennial Trail footbridge) in Spokane County, Washington.

7. Ecology has determined that a release or threatened release of a hazardous substance has occurred at the Site.

1 8. Kaiser Aluminum & Chemical Corporation (Kaiser) is owner and operator of the
2 Kaiser Trentwood Works (Trentwood) in Spokane, Washington. Trentwood is located on the
3 Spokane River at approximately United States Geologic Survey RM 86.

4 9. Avista Development, Inc. (Avista) (a subsidiary of Avista Corporation, formerly
5 Washington Water Power Company) is successor to Pentzer Development Corporation
6 (Pentzer). Pentzer is the past owner and operator of the Spokane Industrial Park, which is
7 located on the Spokane River at approximately RM 87.

8 10. Kaiser Trentwood discharges industrial effluent wastewater to the Spokane River in
9 Washington. The discharge is permitted under the provisions of the State of Washington
10 Water Pollution Control Law and the federal Water Pollution Control Act.

11 11. Avista's predecessor Pentzer discharged industrial effluent wastewater to the
12 Spokane River in Washington prior to 1994, under the provisions of the State of Washington
13 Water Pollution Control Law and the federal Water Pollution Control Act, or predecessor laws.

14 12. Polychlorinated biphenyls, or PCBs, have been found in fish, sediment, and water
15 of the upper Spokane River, upstream of RM 80, which approximately marks the location of
16 Upriver Dam.

17 13. Ecology has given notice to Avista and Kaiser of Ecology's determination as
18 provided in RCW 70.105D.020(12), that they are potentially liable persons as current or past
19 owners and/or operators (defined in 70.105D.020(12)) of the Site, and that there has been a
20 release and/or threatened release of hazardous substances at the Site.

21 V. CAUSES OF ACTION

22 14. Plaintiff realleges paragraphs 1 through 13, above.

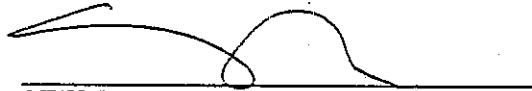
23 15 Ecology alleges that the Defendants will be responsible for remedial action at the
24 Site pursuant to WAC 173-340.

1 VI. PRAYER FOR RELIEF

2 WHEREFORE, Ecology respectfully requests that the Court order Defendants to
3 perform a RI/FS at the Site.

4 DATED this 10th day of January, 2003.

5 CHRISTINE O. GREGOIRE
6 Attorney General

7 
8 STEVEN J. THIELE, WSBA #20275
9 Assistant Attorney General
10 Attorney for Plaintiff
11 State of Washington
12 Department of Ecology
13 (360) 586-4619

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SUPERIOR COURT
SPOKANE COUNTY, WN

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STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

NO. 03-2-00422-1

JOINT MOTION FOR ENTRY OF
CONSENT DECREE

I. INTRODUCTION

Plaintiff, State of Washington, Department of Ecology (Ecology), and Defendants, Avista Development, Inc., and Kaiser Aluminum & Chemical Corporation (the Defendants) bring this motion seeking entry of the attached Consent Decree (Decree). This motion is based upon the pleadings filed in this matter.

II. RELIEF REQUESTED

The Parties request that the Court approve and enter the attached Decree. The Decree fully disposes of all issues in this matter. See attached Affidavit of John Roland.

III. FACTS

The Decree between the Defendants and Ecology resolves the claims raised in Ecology's Complaint by providing for an investigation of known and suspected contamination along a portion of the Spokane River directly upstream of Upriver Dam (the Site) arising from

1 a release or threatened release of hazardous substances, and a study of remedial alternatives for
2 the Site. The Decree promotes the public interest by expediting cleanup activities at the Site.

3 **IV. AUTHORITY**

4 RCW 70.105D.040(4)(a) authorizes the attorney general to agree to a settlement with
5 any potentially liable person if Ecology finds that the proposed settlement would lead to a
6 more expeditious cleanup of hazardous substances in compliance with cleanup standards under
7 RCW 70.105D.030(2)(e) and with any remedial orders issued by Ecology.

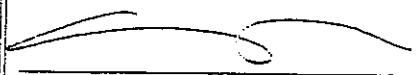
8 Ecology has found that the attached Consent Decree meets these statutory
9 requirements, and believes it is appropriate for the Court to approve the attached Decree.

10 **V. CONCLUSION**

11 The parties request that the Court approve and enter the attached Decree in full
12 resolution of the matters involved in this action. Subject to the Bankruptcy Court's Order of
13 November 26, 2002 authorizing Kaiser to enter into a Consent Decree with Ecology and Avista
14 and allowing a limited lifting of the automatic stay imposed by Section 362 of the Bankruptcy
15 Code, and subject to all terms and conditions of the Consent Decree, the parties also request
16 that the Court retain jurisdiction over this action until the work required by the Consent Decree
17 is completed, at which time the parties anticipate seeking dismissal of this action. See attached
18 Bankruptcy Court Order of November 2002.

19 DATED this 21st day of January, 2003.


20
21 CHRISTINE O. GREGOIRE
22 Attorney General

23 
24 STEVEN J. THIELE, WSBA #20275
25 Assistant Attorney General
26 Attorneys for Plaintiff
Department of Ecology
(360) 586-4619

1
2 BROWN REAVIS & MANNING PLLC

3
4
5 TANYA BARNETT, WSBA #17491
6 Attorneys for Defendant
7 Avista Development, Inc.
8 (360) 786-5247

9
10 HELLER EHRMAN WHITE & MCAULIFFE

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12 
13 R. PAUL BEVERIDGE, WSBA #16732
14 MADELINE KASS, WSBA #18952
15 Attorneys for Defendant
16 Kaiser Aluminum & Chemical Corporation
17 (206) 447-0900

18
19 SE 508089 v6
20 1/28/03 3:54 PM (11289.0003)

ORDER AUTHORIZING KAISER TO ENTER INTO CONSENT DECREE
WITH DEPT. OF ECOLOGY AND AVISTA (November 2002)

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PCBS/Spokane River
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Project # 8686

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JAN 22 2003
ATTORNEY GENERAL'S OFFICE
Ecology Division

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JAN 17 2003
THOMAS R. FALLQUIST
SPOKANE COUNTY
CLERK

STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

NO. **03200422-1**
SUMMONS

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

TO: AVISTA DEVELOPMENT, INC.
AND TO: KAISER ALUMINUM & CHEMICAL CORPORATION

A lawsuit has been started against you in the above-entitled Court by the State of Washington, Department of Ecology. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

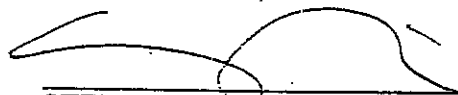
In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and by serving a copy upon the person signing this Summons within 20 days after the service of this Summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where the Plaintiff is entitled to what has been asked for because you have not responded. If you serve a notice of

1 appearance on the undersigned person, you are entitled to notice before a default judgment
2 may be entered.

3 THIS SUMMONS is issued pursuant to Rule 4 of the Washington Superior Court
4 Civil Rules.

5 DATED this 10th day of January, 2003.

6 CHRISTINE O. GREGOIRE
7 Attorney General

8 
9 STEVEN J. THIELE, WSBA #20275
10 Assistant Attorney General
11 Attorneys for Plaintiff
12 Department of Ecology
13 (360) 586-4619

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8 STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

9 STATE OF WASHINGTON,
10 DEPARTMENT OF ECOLOGY,

11 Plaintiff,

12 v.

13 AVISTA DEVELOPMENT, INC., and
14 KAISER ALUMINUM & CHEMICAL
CORPORATION,

15 Defendants.

NO. 03-2-00422-1

CONSENT DECREE

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1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the mutual objective of the
3 Washington State Department of Ecology (the Department) and of Avista Development, Inc.
4 and Kaiser Aluminum & Chemical Corporation (the Respondents) is to provide for remedial
5 action at a location where there has been a release of hazardous substances. This Decree
6 requires the Respondents to undertake the remedial actions specified in Section VI of this
7 Decree and in Exhibit A to the Decree. The work to be performed is a focused remedial
8 investigation (RI) to evaluate the extent of polychlorinated biphenyls (PCBs) in sediments
9 deposited along a portion of the Spokane River directly upstream of Upriver Dam and
10 elsewhere defined in Exhibit B, and a focused feasibility study (FS) to evaluate potential
11 cleanup actions in this area of the river as may be needed to address PCBs. A site diagram
12 depicting the Site is attached to this Decree as Exhibit B. In accordance with WAC 173-340-
13 350(6), the work scope is intended to generate timely information by requiring accelerated
14 investigative actions. The Department has determined that these actions are necessary to
15 protect public health and the environment.

16 B. The parties to this Decree acknowledge that the United States Environmental
17 Protection Agency (USEPA) under the authority of CERCLA (i.e. Superfund) is investigating
18 hazardous substance contamination in the Coeur d' Alene basin and the upper Spokane River,
19 focusing on metals contamination associated with historic mining operations in Idaho. USEPA
20 has designated the Spokane River as part of Operable Unit 3 in its Record of Decision (ROD).
21 Remedy selection and evaluation in Washington addressed by the USEPA in the ROD
22 encompasses the river from the Idaho state line downstream to Upriver Dam, including the
23 entire Upriver Dam PCB Sediment Site. Metals-related contamination associated with historic
24 mining operations has been determined to be broadly distributed within Operable Unit 3,
25 including areas at the Site. The USEPA ROD (September 2002) proposed capping or dredging
26 as remedy alternatives to reduce metals risks in sediments immediately behind Upriver Dam.

1 The USEPA also concluded that further investigation and coordination with the State of
2 Washington is appropriate before selection of the final remedy.

3 C. The parties to this Decree acknowledge that the Department is developing a
4 Total Maximum Daily Load (TMDL) to address PCBs in the Spokane River. The
5 development of the TMDL requires estimates of the current and future loads from background,
6 point source NPDES, storm-water and historic sediment sources to establish future Waste Load
7 Allocations (WLA). TMDL field work and river studies (potentially including outfall, surface
8 water, and other sampling) are scheduled to occur in the summer 2003. Completion of a draft
9 PCB TMDL Report is expected in the summer of 2004.

10 D. The parties agree that the Work to be Performed pursuant to this Decree will be
11 coordinated to the extent possible with the EPA Basin Cleanup and other ongoing information
12 collection efforts.

13 E. A complaint in this action was filed on January 17, 2003 prior to filing of this
14 Decree. An answer has not been filed, and there has not been a trial on any issue of fact or law
15 in this case. However, the parties wish to resolve the issues raised by the Department's
16 complaint. In addition, the parties agree that settlement of these matters without litigation is
17 reasonable and in the public interest and that entry of this Decree is the most appropriate means
18 of resolving these matters.

19 F. In signing this Decree, Avista agrees to its entry and agrees to be bound by its
20 terms. In signing this Decree, Kaiser agrees to its entry and agrees to be bound by its terms,
21 subject to the terms of the order of the United States Bankruptcy Court (District of Delaware)
22 (the Bankruptcy Court) entered on November 26, 2002, approving such agreement by Kaiser.

23 G. By entering into this Decree, the parties do not intend to discharge non-settling
24 parties from any liability they may have with respect to matters alleged in the complaint. The
25 parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
26 sums expended under this Decree.

1 H. This Decree shall not be construed as proof of liability or responsibility for any
2 releases of hazardous substances or cost for remedial action nor an admission of any facts;
3 provided, however, that the Respondents shall not challenge the jurisdiction of the Department
4 in any proceeding to enforce this Decree.

5 I. The Court is fully advised of the reasons for entry of this Decree, and good
6 cause having been shown: IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS
7 FOLLOWS:

8 II. JURISDICTION

9 A. This Court has jurisdiction over the subject matter and over the parties pursuant
10 to Chapter 70.105D RCW, the Model Toxics Control Act (MTCA), provided however, nothing
11 in this Consent Decree shall deprive the Bankruptcy Court of jurisdiction derived under Title
12 11 or Title 28 of the United States Code.

13 B. The Department has determined that a release or threatened release of
14 hazardous substances has occurred at the Site which is the subject of this Decree.

15 C. The Department has given notice to the Respondents, as set forth in RCW
16 70.105D.020(15), of the Department's determination that the Respondents are potentially liable
17 persons for the Site and that there has been a release or threatened release of hazardous
18 substances at the Site.

19 D. The actions to be taken pursuant to this Decree are necessary to protect public
20 health, welfare, and the environment.

21 E. The Respondents have agreed to undertake the actions specified in this Decree
22 and consent to the entry of this Decree under the MTCA.

23 III. PARTIES BOUND

24 This Decree shall apply to and be binding upon the signatories to this Decree (Parties),
25 their successors and assigns. The undersigned representative of each party hereby certifies
26 that he or she is fully authorized to enter into this Decree and to execute and legally bind such

1 party to comply with the Decree. The Respondents agree to undertake all actions required by
2 the terms and conditions of this Decree, and not to contest state jurisdiction regarding this
3 Decree. No change in ownership or corporate status shall alter the responsibility of the
4 Respondents under this Decree.

5 IV. DEFINITIONS

6 Unless otherwise specified, the definitions set forth in Chapter 70.105D RCW and
7 Chapter 173-340 WAC shall control the meanings of the terms used in this Decree.

8 A. Site: The Site, also referred to as the Upriver Dam PCB Sediments Site,
9 consists of the areal extent of PCB-contaminated sediments upstream of and hydraulically
10 influenced by the Upriver Dam between approximate river mile (RM) 80 (near the Upriver
11 dam) and RM 85 (upstream of the dam near the Centennial Trail footbridge). The Site is
12 further described in Exhibit B to this Decree, which is a detailed site diagram.

13 B. Parties: Refers to the State of Washington Department of Ecology (the
14 Department) and the Respondents, collectively.

15 C. Respondents: Refers collectively to Avista Development, Inc. and Kaiser
16 Aluminum & Chemical Corporation.

17 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
18 exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent Decree.
19 The terms "Consent Decree" or "Decree" shall include all Exhibits to the Consent Decree.

20 E. Day or Days: Refers to a calendar day(s) unless otherwise specified. In
21 computing any period of time under this Decree, if the last day falls on a Saturday, Sunday, or
22 a state or federal holiday, the period shall run until the end of the next day which is not a
23 Saturday, Sunday, or a state or federal holiday. Any time period scheduled to begin on the
24 occurrence of an act or event shall begin on the day after the act or event.

25 F. Section: Refers to a portion of this Consent Decree identified by a Roman
26 numeral.

1 V. STATEMENT OF FACTS

2 The Department makes the following finding of facts without any express or implied
3 admissions by the Respondents.

4 A. Kaiser Aluminum & Chemical Corporation (Kaiser) is owner and operator of
5 the Kaiser Trentwood Works (Trentwood) in Spokane, Washington. Trentwood is located on
6 the Spokane River at approximately Unites States Geologic Survey RM 86 (See Site Diagram,
7 attached as Exhibit B to this Decree). On February 12, 2002, Kaiser filed a voluntary petition
8 for relief under Chapter 11 of the United States Bankruptcy Code. Kaiser's Chapter 11 case is
9 pending before the Bankruptcy Court.

10 B. Avista Development, Inc. (Avista) (a subsidiary of Avista Corporation, formerly
11 Washington Water Power Company) is successor to Pentzer Development Corporation
12 (Pentzer). Pentzer is the past owner and operator of the Spokane Industrial Park, which is
13 located on the Spokane River at approximately RM 87 (See Site Diagram, attached as Exhibit
14 B to this Decree).

15 C. Kaiser Trentwood discharges industrial effluent wastewater to the Spokane
16 River in Washington. The discharge is permitted under the provisions of the State of
17 Washington Water Pollution Control Law and the federal Water Pollution Control Act.

18 D. Avista's predecessor Pentzer discharged industrial effluent wastewater to the
19 Spokane River in Washington prior to 1994, under the provisions of the State of Washington
20 Water Pollution Control Law and the federal Water Pollution Control Act, or predecessor laws.

21 E. Polychlorinated biphenyls, or PCBs, have been found in fish, sediment, and
22 water of the upper Spokane River, upstream of RM 80, which approximately marks the
23 location of Upriver Dam

24 F. PCBs and metals have been documented in fish in the Spokane River. A health
25 advisory has been issued by the Spokane Regional Health District and state Department of
26

1 Health advising individuals not to eat sport fish caught from the Spokane River between
2 Upriver Dam and the Idaho border.

3 G. PCBs have been documented in effluent waters and solids associated with
4 Kaiser Trentwood and Spokane Industrial Park.

5 H. PCBs have been documented in groundwater underlying Kaiser Trentwood.

6 I. Ground water beneath the Spokane River near Upriver Dam occurs in the
7 Spokane Valley-Rathdrum Prairie Aquifer. In 1978 the United States Environmental
8 Protection Agency (EPA) designated this aquifer as a "Sole Source" Aquifer. The aquifer
9 serves as the main drinking water supply for at least 400,000 people in the City and County of
10 Spokane.

11 J. In certified correspondences dated June 1, 2001, the Department notified Kaiser
12 and Avista of a preliminary finding of potential liability for PCBs in sediments behind Upriver
13 Dam and requested comment on those findings. Also by certified correspondences dated June
14 1, 2001, Ecology notified the Liberty Lake Sewer District of a preliminary finding of potential
15 liability for PCBs in sediments behind Upriver Dam based on Liberty Lake's discharge of
16 PCBs from its municipal wastewater treatment plant to the Spokane River. Liberty Lake
17 subsequently declined to enter into consent decree negotiations with Ecology.

18 K. Collectively the signing Respondents have formed a work group and have
19 designated two project coordinators to implement the Work to be Performed. By execution of
20 this Decree, the Respondents agree to be bound by the terms thereof and not to contest the
21 same.

22 VI. WORK TO BE PERFORMED

23 This Decree contains a program designed to protect public health, welfare, and the
24 environment from the known release, or threatened release, of hazardous substances or
25 contaminants at, on, or from the Site.

1 A. The Respondents shall furnish all personnel, materials and services necessary
2 for, or incidental to, the planning, initiation, completion, and reporting upon the Scope of
3 Work, attached as Exhibit A. The work to be performed is the completion of the Remedial
4 Investigation (RI) and the Feasibility Study (FS) described in the attached Scope of Work.

5 B. The Scope of Work and each element thereof are designed and shall be
6 implemented and completed in accordance with the Model Toxics Control Act (Chapter
7 70.105D RCW) and its implementing regulation (Chapter 173-340 WAC) as amended, and all
8 applicable federal, state, and local laws and regulations.

9 C. As provided in the agreed upon schedule, attached as Exhibit C, the
10 Respondents shall commence work and thereafter complete all tasks in Attachment A in the
11 time frames and framework indicated unless the Department grants an extension in accordance
12 with Section XV.

13 D. The Respondents agree not to perform any remedial actions at the Site that are
14 outside the scope of this Decree unless the parties agree to amend the scope of work to cover
15 these actions.

16 VII. DESIGNATED PROJECT COORDINATORS

17 The project coordinator for the Department is:

18 John L. Roland
19 Department of Ecology
20 Eastern Regional Office
4601 N. Monroe
Spokane, WA 99205-1295

21 The project coordinators for the Respondents are:

22 Patrick J. Blau
23 Kaiser Aluminum & Chemical Corp.
24 PO Box 15108
Spokane, WA 99215-5108

Zachary Hedgpeth

25 Douglas K. Pottratz
26 Avista Corporation
PO Box 3727
Spokane, WA 99220-3727

1 Each project coordinator shall be responsible for overseeing the implementation of this
2 Decree. The Department project coordinator will be the Department's designated
3 representative at the Site. To the maximum extent possible, communications between the
4 Department and the Respondents and all documents, including reports, approvals, and other
5 correspondence concerning the activities performed pursuant to the terms and conditions of
6 this Decree, shall be directed through the project coordinators. The project coordinators may
7 agree to minor modifications to the work to be performed without formal amendments to this
8 Decree. Minor modifications will be documented in writing by the Department.

9 Any party may change its respective project coordinator. Written notification shall be
10 given to the other parties at least ten (10) calendar days prior to the change.

11 VIII. PERFORMANCE

12 All work performed pursuant to this Decree shall be under the direction and
13 supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with
14 experience and expertise in hazardous waste site investigation and cleanup. Any construction
15 work must be under the supervision of a professional engineer. The Respondents shall notify
16 the Department in writing as to the identity of such engineer(s) or hydrogeologist(s), or others
17 and of any contractors and subcontractors to be used in carrying out the terms of this Decree, in
18 advance of their involvement at the Site. The Respondents shall provide a copy of this Decree
19 to all agents, contractors and subcontractors retained to perform work required by this Decree
20 and shall require that all work undertaken by such contractors and subcontractors will be in
21 compliance with this Decree.

22 IX. ACCESS

23 The Department or any Department-authorized representative shall have the authority
24 to enter and freely move about portions of the Site over which the Respondents have control
25 and all associated field investigation operations at all reasonable times for the purposes of,
26 inter alia: inspecting records, operation logs, and contracts related to the work being performed

1 pursuant to this Decree; reviewing the progress in carrying out the terms of this Decree;
2 conducting such tests or collecting samples as the Department or the project coordinator may
3 deem necessary; using a camera, sound recording, or other documentary type equipment to
4 record work done pursuant to this Decree; and verifying the data submitted to the Department
5 by the Respondents. By signing this Decree, the Respondents agree that this Decree constitutes
6 reasonable notice of access, and agree to allow access to site-related field operations at all
7 reasonable times for purposes of overseeing work performed under this Decree. Without
8 limitation on the Department's rights under this Section IX, the Department agrees to endeavor
9 to notify Respondents at least 2 days in advance of intended access.

10 The Department and the Respondents acknowledge that Avista and Kaiser do not own
11 any of the properties that compose the Site. The Respondents will use reasonable efforts to
12 obtain access to the Site. If necessary, the Department will exercise its authority under Chapter
13 70.105D RCW to ensure access to the Site or to facilitate remedial action at the Site.

14 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

15 With respect to the implementation of this Decree, the Respondents shall make the
16 results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf
17 available to the Department and shall submit these results in accordance with Section XI of this
18 Decree.

19 In accordance with WAC 173-340-840(5), sampling data shall be submitted according
20 to the Department's sampling data submittal requirements as set forth in Exhibit D to this
21 Decree. In addition, in accordance with the Departments Sediment Quality Information
22 System software (SEDQUAL) needs, sediment or bioassay sampling data shall be submitted to
23 Ecology in a electronic format compatible for entry into the SEDQUAL database using the
24 system's *data entry templates*.

25 If requested by the Department, the Respondents shall allow split or duplicate samples
26 to be taken by the Department and/or its authorized representatives of any samples collected by

1 Respondents pursuant to the implementation of this Decree. Respondents shall notify the
2 Department fourteen (14) working days in advance of any planned field sample collection or
3 work activity at the Site. No sampling, analysis, or field activities shall be performed within
4 the Site boundaries by the Respondents unless approved by the Department. The Department
5 shall, upon request, allow split or duplicate samples to be taken by Respondents or its
6 authorized representatives of any samples collected by the Department pursuant to the
7 implementation of this Decree provided it does not interfere with the Department's sampling.
8 Without limitation on the Department's rights under Section IX, the Department shall endeavor
9 to notify Respondents at least fourteen (14) days prior to any scheduled sample collection
10 activity. This will not apply to emergencies or time-critical actions.

11 **XI. PROGRESS REPORTS**

12 Respondents shall submit to the Department written progress reports as provided in the
13 Scope of Work, Exhibit A to this Decree.

14 **XII. RETENTION OF RECORDS**

15 Respondents shall preserve, during the pendency of this Decree and for ten (10) years
16 from the date this Decree is no longer in effect as provided in Section XXV, all records,
17 reports, documents, and underlying data in their possession relevant to the implementation of
18 this Decree and shall insert in contracts with project contractors and subcontractors a similar
19 record retention requirement. Upon request of the Department, Respondents shall make all
20 non-archived records available to the Department and allow access for review. All archived
21 records shall be made available to the Department within a reasonable period of time.

22 **XIII. RESOLUTION OF DISPUTES**

23 A. In the event a dispute arises as to an approval, disapproval, proposed
24 modification or other decision or action by the Department or the Department's project
25 coordinator, the parties shall utilize the dispute resolution procedure set forth below.
26

1 (1) Upon receipt of the Department's or Department project coordinator's decision,
2 the Respondents have fourteen (14) days within which to notify the Department's project
3 coordinator of their objection to the decision or action.

4 (2) The parties' project coordinators shall then confer in an effort to resolve the
5 dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, the
6 Department's project coordinator shall issue a written decision.

7 (3) Respondents may then request the Department management review of the
8 decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager
9 within seven (7) days of receipt of the Department's project coordinator's decision.

10 (4) The Department's Program Manager shall conduct a review of the dispute and
11 shall issue a written decision regarding the dispute within thirty (30) days of the Respondents'
12 request for review. The Program Manager's decision shall be the Department's final decision
13 on the disputed matter.

14 B. If the Department's final written decision is unacceptable to the Respondents,
15 they have the right to submit the dispute to this Court (the Court) for resolution. The parties
16 agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve
17 any dispute arising under this Decree. In the event the Respondents present an issue to the
18 Court for review, the Court shall review any investigative or remedial action or decision of the
19 Department on the basis of whether such action or decision was arbitrary and capricious and
20 render a decision based on such standard of review.

21 C. The parties agree to only utilize the dispute resolution process in good faith and
22 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
23 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
24 the other party may seek sanctions.

1 D. Implementation of these dispute resolution procedures shall not provide a basis
2 for delay of any activities required in this Decree, unless the Department agrees in writing to a
3 schedule extension or the Court so orders.

4 **XIV. AMENDMENT OF CONSENT DECREE**

5 Except for minor modifications agreed to pursuant to Section VII and extensions
6 granted in accordance with Section XV, this Decree may only be amended by a written
7 stipulation among the parties to this Decree that is entered by the Court or by order of the
8 Court. If the stipulation includes more costly remedial action by Kaiser, the stipulation must
9 be approved by the Bankruptcy Court prior to entry unless at the time the stipulation is entered
10 the Bankruptcy Court no longer has jurisdiction over Kaiser. Any other stipulation by Kaiser
11 may require approval by the Bankruptcy Court prior to entry. All amendments shall become
12 effective upon entry by the Court. Agreement to amend shall not be unreasonably withheld by
13 any party to the decree.

14 Any party may propose an amendment to the Decree. A party that receives a request
15 for amendment shall indicate its approval or disapproval in a timely manner after the request
16 for amendment is received. If the amendment to the Decree is substantial, the Department will
17 provide public notice and opportunity for comment. Reasons for the disapproval shall be
18 stated in writing. If any party does not agree to any proposed amendment, the disagreement
19 may be addressed through the dispute resolution procedures described in Section XIII of this
20 Decree.

21 **XV. EXTENSION OF SCHEDULE**

22 A. An extension of schedule shall be considered when a request for an extension is
23 submitted in a timely fashion, generally at least 30 days prior to expiration of the deadline for
24 which the extension is requested, and good cause exists for granting the extension. All
25 extensions shall be requested in writing. The request shall specify the reason(s) the extension
26 is needed.

1 An extension shall be granted for such period of time as the Department determines is
2 reasonable under the circumstances. A requested extension shall not be effective until
3 approved by the Department or the Court. The Department shall act upon any written request
4 for extension in a timely fashion. It shall not be necessary to formally amend this Decree
5 pursuant to Section XIV when a schedule extension is granted.

6 B. The burden shall be on the Respondents to demonstrate to the satisfaction of the
7 Department that the request for such extension has been submitted in a timely fashion and that
8 good cause exists for granting the extension. Good cause includes, but is not limited to, the
9 following:

10 (1) Circumstances beyond the reasonable control and despite the due diligence of
11 the Respondents including delays caused by unrelated third parties or the Department, such as
12 (but not limited to) delays by the Department in reviewing, approving, or modifying
13 documents submitted by the Respondents; or

14 (2) Acts of God or war, including fire, flood, blizzard, extreme temperatures, storm,
15 earthquake, terrorist attack, or other unavoidable casualty;

16 (3) Endangerment as described in Section XVI; or

17 (4) Other circumstances agreed to by the Department to be exceptional or
18 extraordinary.

19 However, neither increased costs of performance of the terms of the Decree nor
20 changed economic circumstances shall be considered circumstances beyond the reasonable
21 control of the Respondents.

22 C. The Department may extend the schedule for a period not to exceed ninety (90)
23 days, except where an extension is needed as a result of:

24 (1) Delays in the issuance of a necessary permit which was applied for in a timely
25 manner; or

26 (2) Other circumstances deemed exceptional or extraordinary by the Department; or

1 (3) Endangerment as described in Section XVI.

2 The Department shall give the Respondents written notification in a timely fashion of
3 any extensions granted pursuant to this Decree.

4 XVI. ENDANGERMENT

5 In the event the Department determines that activities implementing or in compliance
6 with this Decree, or any other circumstances or activities, are creating or have the potential to
7 create a danger to the health or welfare of the people on the Site or in the surrounding area or
8 to the environment, the Department may order the Respondents to stop further implementation
9 of this Decree for such period of time as needed to abate the danger or may petition the Court
10 for an order as appropriate. During any stoppage of work under this section, the obligations of
11 the Respondents with respect to the work under this Decree which is ordered to be stopped
12 shall be suspended and the time periods for performance of that work, as well as the time
13 period for any other work dependent upon the work which is stopped, shall be extended,
14 pursuant to Section XV of this Decree, for such period of time as the Department determines is
15 reasonable under the circumstances.

16 In the event the Respondents determine that activities undertaken in furtherance of this
17 Decree or any other circumstances or activities are creating an endangerment to the people on
18 the Site or in the surrounding area or to the environment, the Respondents may stop
19 implementation of this Decree for such period of time necessary for the Department to evaluate
20 the situation and determine whether the Respondents should proceed with implementation of
21 the Decree or whether the work stoppage should be continued until the danger is abated. The
22 Respondents shall notify the Department's project coordinator as soon as possible, but no later
23 than twenty-four (24) hours after such stoppage of work, and thereafter provide the Department
24 with documentation of the basis for the work stoppage. If the Department disagrees with the
25 Respondents' determination, it may order the Respondents to resume implementation of this
26 Decree. If the Department concurs with the work stoppage, the Respondents' obligations shall

1 be suspended and the time period for performance of that work, as well as the time period for
2 any other work dependent upon the work which was stopped, shall be extended, pursuant to
3 Section XV of this Decree, for such period of time as the Department determines is reasonable
4 under the circumstances.

5 **XVII. OTHER ACTIONS**

6 A. The Department reserves its rights to institute remedial action(s) at the Site and
7 subsequently pursue cost recovery, and the Department reserves its rights to issue orders
8 and/or seek penalties or take any other enforcement action pursuant to available statutory
9 authority under the following circumstances:

10 (1) Where the Respondents fail, after notice, to comply with any requirement of this
11 Decree;

12 (2) In the event or upon the discovery of a release or threatened release not
13 addressed by this Decree;

14 (3) Upon the Department's determination that action beyond the terms of this
15 Decree is necessary to abate an emergency situation which threatens public health or welfare or
16 the environment; or

17 (4) Upon the occurrence or discovery of a situation beyond the scope of this Decree
18 as to which the Department would be empowered to perform any remedial action or to issue an
19 order and/or seek a penalty, or to take any other enforcement action. This Decree is limited in
20 scope to the geographic Site described in Exhibit B and to those contaminants which the
21 Department knows to be at the Site when this Decree is entered.

22 The Department reserves all rights regarding the injury to, destruction of, or loss of
23 natural resources resulting from the release or threatened release of hazardous substances from
24 the Upriver Dam Sediment Site.

25 The Department reserves the right to take any enforcement action whatsoever,
26 including a cost recovery action, against potentially liable persons not party to this Decree.

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XVIII. INDEMNIFICATION

The Respondents agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of the Respondents, its officers, employees, agents, or contractors in entering into and implementing this Decree. However, the Respondents shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of either the State of Washington's or any of its agencies' status as potentially liable persons with respect to contamination at the Site or the intentional, reckless, or negligent acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Decree.

XIX. COMPLIANCE WITH APPLICABLE LAWS

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A. All actions carried out by the Respondents pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B. of this section.

B. Pursuant to RCW 70.105D.090(I), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Decree that are known to be applicable at the time of entry of the Decree are binding and enforceable requirements of the Decree.

The Respondents have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(I) would otherwise be required for the remedial action under this Decree. In the event either the Respondents or the Department determines that additional permits or approvals addressed in RCW 70.105D.090(I) would otherwise be required for the remedial action under this Decree, it shall promptly notify the other party of this determination. The Department shall determine whether the Department or the

1 Respondents shall be responsible to contact the appropriate state and/or local agencies. If the
2 Department so requires, the Respondents shall promptly consult with the appropriate state
3 and/or local agencies and provide the Department with written documentation from those
4 agencies of the substantive requirements those agencies believe are applicable to the remedial
5 action. The Department shall make the final determination on the additional substantive
6 requirements that must be met by the Respondents and on how the Respondents must meet
7 those requirements. The Department shall inform the Respondents in writing of these
8 requirements. Once established by the Department, the additional requirements shall be
9 enforceable requirements of this Decree. The Respondents shall not begin or continue the
10 remedial action potentially subject to the additional requirements until the Department makes
11 its final determination.

12 The Department shall ensure that notice and opportunity for comment is provided to the
13 public and appropriate agencies prior to establishing the substantive requirements under this
14 section.

15 C. Pursuant to RCW 70.105D.090(2), in the event the Department determines that
16 the exemption from complying with the procedural requirements of the laws referenced in
17 RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is
18 necessary for the State to administer any federal law, the exemption shall not apply and the
19 Respondents shall comply with both the procedural and substantive requirements of the laws
20 referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

21 XX. REMEDIAL AND INVESTIGATIVE COSTS

22 The Respondents agree to pay the remedial action costs (as defined in
23 WAC 173-340-550) incurred by the Department for the Site pursuant to this decree. Kaiser
24 and Avista's obligations regarding remedial action costs incurred by Ecology prior to entry of
25 this Decree shall be determined subsequent to completion of this Decree.
26

1 The Respondents agree to pay the required amount within ninety (90) days of receiving
2 from the Department an itemized statement of costs that includes a summary of costs incurred,
3 an identification of involved staff, and the amount of time spent by involved staff members on
4 the project. A general statement of work performed will be provided with the statement of
5 costs. Itemized statements shall be prepared quarterly. Failure to pay the Department's costs
6 within ninety (90) days of receipt of the itemized statement will result in interest charges,
7 unless such costs are disputed by Respondents in accordance with the dispute resolution
8 procedures in Section XIII. Respondents reserve the right to review and approve any charges
9 prior to payment and not to pay any disputed portion of the itemized statement.

10 **XXI. IMPLEMENTATION OF REMEDIAL ACTION**

11 If the Department determines that the Respondents have failed without good cause to
12 implement the remedial action required by this Decree, the Department may, after written
13 notice to the Respondents and a reasonable opportunity for Respondents to cure the failure,
14 perform any or all portions of the remedial action required by this Decree that remain
15 incomplete. If the Department performs all or portions of the remedial action because of the
16 Respondents' failure to comply with its obligations under this Decree, the Respondents shall
17 reimburse the Department for the costs of doing such work in accordance with Section XX,
18 provided that the Respondents are not obligated under this section to reimburse the Department
19 for costs incurred for work inconsistent with or beyond the scope of this Decree.

20 **XXII. PUBLIC PARTICIPATION**

21 The Department shall maintain the responsibility for public participation at the Site.
22 However, the Respondents shall continue to cooperate with the Department and, if requested
23 by the Department, may choose to assist the Department:

24 A. Prepare drafts of public notices and fact sheets at important stages of the
25 remedial action, such as the submission of work plans, Remedial Investigation/Feasibility
26 Study reports and engineering design reports. The Department will finalize (including editing

1 if necessary) and distribute such fact sheets and prepare and distribute public notices of the
2 Department's presentations and meetings.

3 B. Participate in public presentations on the progress of the remedial action
4 required by this Decree at the Site. Participation may be through attendance at public meetings
5 to assist in answering questions, or as a presenter.

6 C. In cooperation with the Department, arrange and/or continue information
7 repositories to be located at the Spokane City Library in downtown Spokane and the
8 Department's Eastern Regional Office at North 4601 Monroe Street in Spokane. At a
9 minimum, copies of all public notices, fact sheets, and press releases; all quality assured
10 ground water, surface water, soil sediment, and air monitoring data; remedial action plans,
11 supplemental planning documents, and all other similar documents relating to performance of
12 the remedial actions required by this Decree shall be promptly placed in these repositories.

13 D. The Department shall notify the Respondents before major meetings with the
14 interested public and local governments. The Department shall also endeavor to provide
15 Respondents with an opportunity to review and comment on all press releases, fact sheets, and
16 other materials that will be distributed to the public and local governments prior to issuance.

17 **XXIII. DURATION OF DECREE**

18 This Decree shall remain in effect until the Respondents have received written
19 notification from the Department that the requirements of this Decree have been satisfactorily
20 completed. The Department shall issue such notification within 60 days after the requirements
21 of this Decree have been satisfactorily completed. Thereafter, the parties within thirty (30)
22 days shall jointly request that the Court vacate this Consent Decree.

23 **XXIV. CLAIMS AGAINST THE STATE**

24 The Respondents hereby agree that they will not seek to recover any costs accrued in
25 implementing the remedial actions required by this Decree from the State of Washington or
26 any of its agencies, except to the extent they are potentially liable persons with respect to

1 contamination at the Site; and further, that the Respondents will make no claim against the
2 State Toxics Control Account or any Local Toxics Control Account for any costs incurred in
3 implementing this Decree. Except as provided above, however, the Respondents expressly
4 reserve their rights to seek to recover any costs incurred in implementing this Decree from any
5 other potentially liable person.

6 **XXV. EFFECTIVE DATE**

7 This Decree is effective upon the date it is entered by the Court.


8 **XXVI. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**


9 This Decree has been the subject of public notice and comment under RCW
10 70.105D.040(4)(a). As a result of this process, the Department has found that this Decree will
11 lead to a more expeditious cleanup of hazardous substances at the Site.

12 If the Court withholds or withdraws its consent to this Decree, it shall be null and void
13 at the option of any party and the accompanying Complaint shall be dismissed without costs
14 and without prejudice. In such an event, no party shall be bound by the requirements of this
15 Decree.

16 DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE
Attorney General

17
18 
19 JIM PENDOWSKI
20 Program Manager
Washington Department of Ecology
Toxics Cleanup Program


21 STEVEN J. THIELE, WSBA #20275
22 Assistant Attorney General
23 Attorneys for Plaintiff
State of Washington, Department of Ecology

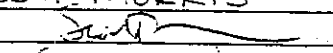
24 Date: _____

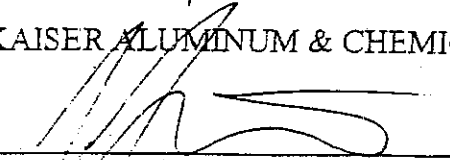
Date: 1/29/03

25 AVISTA DEVELOPMENT, INC.

KAISER ALUMINUM & CHEMICAL CORP.

26 SCOTT MORRIS

By: 
Title: Senior Vice President

By: 
Title: Assistant General Counsel

Date: 1/23/03

Date: 01/27/03

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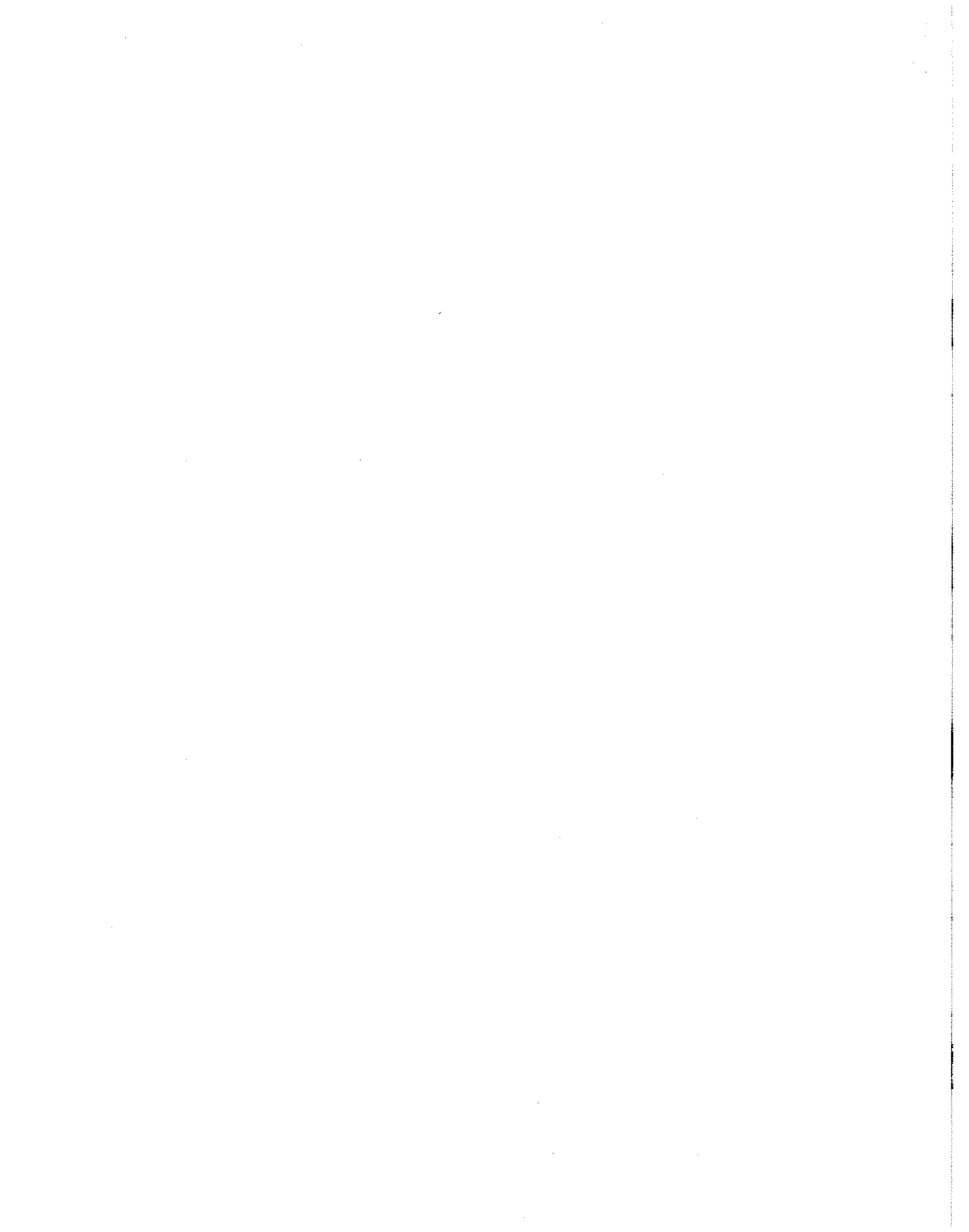
DATED this _____ day of _____, 2003.

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[Handwritten signature]

JUDGE
Spokane County Superior Court

~~Spokane County Superior Court Case No. 03-2-1234~~



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THOMAS R. FALLOUSET
SPOKANE COUNTY CLERK

**STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

NO. 03-2-00422-1

ORDER ENTERING CONSENT
DECREE

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

Having reviewed the Joint Motion for Entry of the Consent Decree, it is hereby
ORDERED AND ADJUDGED that the Consent Decree in this matter is entered and that,
subject to the Bankruptcy Court's Order of November 26, 2002 authorizing Kaiser to enter into
a Consent Decree with Ecology and Avista and allowing a limited lifting of the automatic stay
imposed by Section 362 of the Bankruptcy Code, and subject to all terms and conditions of the
Consent Decree, the Court shall retain jurisdiction over the Consent Decree to enforce its
terms.


DATED this 5th day of Feb, 2003.



JUDGE/COMMISSIONER
Spokane County

1 Presented by:


2 CHRISTINE O. GREGOIRE
3 Attorney General

4 
5 STEVEN J. THIELE, WSBA #20275
6 Assistant Attorney General
7 Attorneys for Plaintiff
8 Department of Ecology
9 (360) 586-4619

10 Dated: January 29, 2003

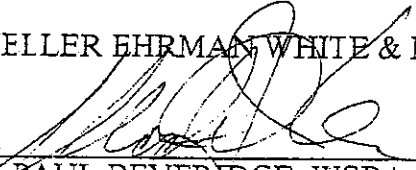
11 Approved as to form,
12 notice of presentation waived:

13 BROWN REAVIS & MANNING PLLC

14 
15 TANYA BARNETT, WSBA #17491
16 Attorneys for Defendant
17 Avista Development, Inc.
18 (360) 786-5247

19 Dated: January 29, 2003

20 HELLER EHRMAN, WHITE & MCAULIFFE

21 
22 R. PAUL BEVERIDGE, WSBA # 16732
23 MADELINE KASS, WSBA # 18952
24 Attorneys for Defendant
25 Kaiser Aluminum & Chemical Corporation
26 (206) 447-0900

Dated: JANUARY 28, 2003

ORIGINAL

Re item 1

*Bench Filed
on 4/26/10*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Jointly Administered
	:	Case No. 02-10429 (JKF)
KAISER ALUMINUM CORPORATION,	:	
a Delaware corporation, <u>et al.</u> ,	:	Chapter 11
	:	
Debtors.	:	Re: [Docket No. 1261], Agenda Item No. 1

**ORDER AUTHORIZING KAISER ALUMINUM & CHEMICAL CORPORATION
TO (A) ENTER INTO A CONSENT DECREE WITH THE STATE OF
WASHINGTON DEPARTMENT OF ECOLOGY AND AVISTA
DEVELOPMENT, INC. AND (B) ENTER INTO A RELATED AGREEMENT**

This matter coming before the Court on the motion for an order authorizing Kaiser Aluminum & Chemical Corporation to (a) enter into a consent decree with the State of Washington Department of Ecology and Avista Development, Inc. and (b) enter into a related agreement with Avista Development Inc. (the "Motion"), filed by Kaiser Aluminum & Chemical Corporation ("KACC"), one of the above-captioned debtors and debtor in possession (collectively, the "Debtors"); the Court having reviewed the Motion and all pleadings related thereto; the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) notice of the Motion was sufficient under the circumstances; (d) the relief requested in the Motion is reasonable, in the best interest of KACC's estate and is appropriate under Rule 9019 of the Federal Rules of Bankruptcy Procedure and section 363(b) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause of the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is Granted.

#1294
1161102

2. Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

3. KACC is authorized to enter into a consent decree with the State of Washington Department of Ecology and Avista Development, Inc. substantially and materially in the form of the Consent Decree and the automatic stay is lifted for the limited and sole purpose of filing and entry of the consent decree in the State Court.

4. KACC is authorized to enter into a PLP agreement with Avista Development, Inc. substantially and materially in the form of the PLP Agreement.

5. KACC is authorized to enter into any other agreements, perform any activities, and expend any resources necessary to implement the Remedial Investigation and Feasibility Study and otherwise comply with any other requirements of the Consent Decree.

Dated: 11/26, 2002


UNITED STATES BANKRUPTCY JUDGE

ORIGINAL

Re item 1

*Bench Filed
on 4/24/02*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Jointly Administered
	:	Case No. 02-10429 (JKF)
KAISER ALUMINUM CORPORATION,	:	
a Delaware corporation, <u>et al.</u> ,	:	Chapter 11
	:	
Debtors.	:	Re: [Docket No. 1261], Agenda Item No. 1

**ORDER AUTHORIZING KAISER ALUMINUM & CHEMICAL CORPORATION
TO (A) ENTER INTO A CONSENT DECREE WITH THE STATE OF
WASHINGTON DEPARTMENT OF ECOLOGY AND AVISTA
DEVELOPMENT, INC. AND (B) ENTER INTO A RELATED AGREEMENT**

This matter coming before the Court on the motion for an order authorizing Kaiser Aluminum & Chemical Corporation to (a) enter into a consent decree with the State of Washington Department of Ecology and Avista Development, Inc. and (b) enter into a related agreement with Avista Development Inc. (the "Motion"), filed by Kaiser Aluminum & Chemical Corporation ("KACC"), one of the above-captioned debtors and debtor in possession (collectively, the "Debtors"); the Court having reviewed the Motion and all pleadings related thereto; the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) notice of the Motion was sufficient under the circumstances; (d) the relief requested in the Motion is reasonable, in the best interest of KACC's estate and is appropriate under Rule 9019 of the Federal Rules of Bankruptcy Procedure and section 363(b) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause of the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is Granted.

10/22/02 126

2. Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

3. KACC is authorized to enter into a consent decree with the State of Washington Department of Ecology and Avista Development, Inc. substantially and materially in the form of the Consent Decree and the automatic stay is lifted for the limited and sole purpose of filing and entry of the consent decree in the State Court.

4. KACC is authorized to enter into a PLP agreement with Avista Development, Inc. substantially and materially in the form of the PLP Agreement.

5. KACC is authorized to enter into any other agreements, perform any activities, and expend any resources necessary to implement the Remedial Investigation and Feasibility Study and otherwise comply with any other requirements of the Consent Decree.

Dated: 11/26, 2002


UNITED STATES BANKRUPTCY JUDGE

ERO SITE

DEPARTMENT OF ECOLOGY

Date: May 5, 2005
TO: Debbie Iness, Fiscal
FROM: Katherine Scott, ICP *Katherine Scott*
SUBJECT: Consent Decree No. 03-2-00422-1

PCBS/Spokane River Site, Project #8686
The PCB-contaminated sediments are located upstream and are hydraulically influenced by the Upriver Dam near the Centennial Trail Footbridge in Spokane County, Washington

I have attached the Consent Decree for the PCBS/Spokane River Site cost recovery project file. The Consent Decree was effective February 5, 2003. Please initiate cost recovery. The Site Manager only asked about the status of Cost Recovery for this site on May 2. Invoicing will start two years late.

Address invoices to the Project Coordinators for the PLPs:

Mr. Patrick J. Blau
Kaiser Aluminum & Chemical Corporation
P O. Box 15108
Spokane, WA 99215-5108

Mr. Douglas K. Pottratz
Avista Corporation
P O. Box 3727
Spokane, WA 99220-3727

Telephone numbers: none provided

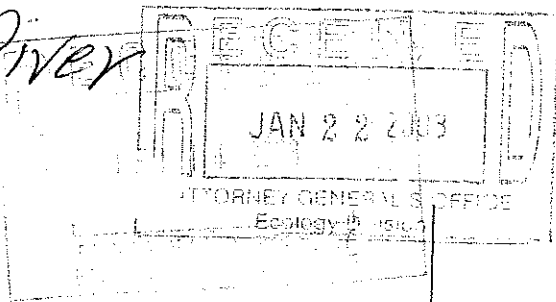
Ecology's Site Manager (Project Coordinator) is:

John Roland, Telephone Number: (509) 329-3581
Project Number 8686, and SIC J1AK6

If you have any questions regarding this project, please call me at 407-7213.

Attachments

PCBS/Spokane River
SIC JIAB
Project # 8686



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JAN 17 2003

THOMAS R. FALLOQUIST
SPOKANE COUNTY
CLERK

STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

NO. **03200422-1**
SUMMONS

TO: AVISTA DEVELOPMENT, INC.
AND TO: KAISER ALUMINUM & CHEMICAL CORPORATION

A lawsuit has been started against you in the above-entitled Court by the State of Washington, Department of Ecology. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.


In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and by serving a copy upon the person signing this Summons within 20 days after the service of this Summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where the Plaintiff is entitled to what has been asked for because you have not responded. If you serve a notice of

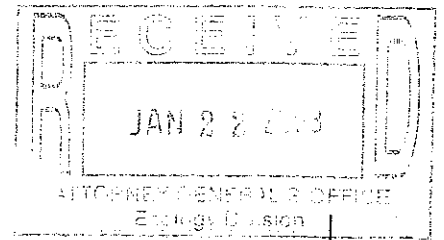
1 appearance on the undersigned person, you are entitled to notice before a default judgment
2 may be entered.

3 THIS SUMMONS is issued pursuant to Rule 4 of the Washington Superior Court
4 Civil Rules

5 DATED this 10th day of January, 2003.

6 CHRISTINE O. GREGOIRE
7 Attorney General

8 
9 STEVEN J. THIELE, WSBA #20275
10 Assistant Attorney General
11 Attorneys for Plaintiff
12 Department of Ecology
13 (360) 586-4619



COPY
ORIGINAL FILED

JAN 17 2003

THOMAS R. FALLQUIST
SPOKANE COUNTY
CLERK

STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

NO. **03200422-1**
COMPLAINT

Plaintiff, State of Washington, Department of Ecology (Ecology) alleges as follows:

I. DESCRIPTION OF ACTION

1. This action is brought on behalf of the State of Washington, Department of Ecology, pursuant to RCW 70.105D.050(4) of the Model Toxics Control Act (MTCA), for a remedial action at a location where there have been releases and/or threatened releases of hazardous substances.

2. The Complaint is limited in scope to a Remedial Investigation and Feasibility Study (RI/FS) at the Site. The location, or Site, consists of sediments containing PCBs in the portion of the Spokane River directly upstream of Upriver Dam as further described in paragraph 6 below.

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II. JURISDICTION

3. On February 12, 2002, Kaiser filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code"). This jointly administered bankruptcy case, *In re Kaiser Aluminum Corporation, et al.*, Case No. 02-10429 (JKF), is pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). Pursuant to the Bankruptcy Court's Order of November 26, 2002 (attached as Exhibit A) authorizing Kaiser to enter into a Consent Decree with Ecology and Avista Development Inc. and allowing a limited lifting of the automatic stay imposed by Section 362 of the Bankruptcy Code, this Court has jurisdiction over the subject matter and over the parties under RCW 70.105D, the Model Toxics Control Act (MTCA). Venue is proper in Spokane County, the location of the property at issue

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III. PARTIES

4. Plaintiff Ecology is an agency of the State of Washington responsible for overseeing remedial action at sites contaminated with hazardous substances under RCW 70.105D.

5. Defendants are Avista Development, Inc., and Kaiser Aluminum & Chemical Corporation.

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IV. FACTUAL ALLEGATIONS

6. The Site consists of the areal extent of PCB-contaminated sediments upstream of and hydraulically influenced by the Upriver Dam between approximately United States Geologic Survey River Mile (RM) 80 (near the Upriver Dam) and RM 85 (upstream of the dam near the Centennial Trail footbridge) in Spokane County, Washington.

7. Ecology has determined that a release or threatened release of a hazardous substance has occurred at the Site.

1 8. Kaiser Aluminum & Chemical Corporation (Kaiser) is owner and operator of the
2 Kaiser Trentwood Works (Trentwood) in Spokane, Washington. Trentwood is located on the
3 Spokane River at approximately United States Geologic Survey RM 86.

4 9. Avista Development, Inc. (Avista) (a subsidiary of Avista Corporation, formerly
5 Washington Water Power Company) is successor to Pentzer Development Corporation
6 (Pentzer). Pentzer is the past owner and operator of the Spokane Industrial Park, which is
7 located on the Spokane River at approximately RM 87

8 10. Kaiser Trentwood discharges industrial effluent wastewater to the Spokane River in
9 Washington. The discharge is permitted under the provisions of the State of Washington
10 Water Pollution Control Law and the federal Water Pollution Control Act.

11 11. Avista's predecessor Pentzer discharged industrial effluent wastewater to the
12 Spokane River in Washington prior to 1994, under the provisions of the State of Washington
13 Water Pollution Control Law and the federal Water Pollution Control Act, or predecessor laws.

14 12. Polychlorinated biphenyls, or PCBs, have been found in fish, sediment, and water
15 of the upper Spokane River, upstream of RM 80, which approximately marks the location of
16 Upriver Dam.

17 13. Ecology has given notice to Avista and Kaiser of Ecology's determination as
18 provided in RCW 70.105D.020(12), that they are potentially liable persons as current or past
19 owners and/or operators (defined in 70.105D 020(12)) of the Site, and that there has been a
20 release and/or threatened release of hazardous substances at the Site.

21 V. CAUSES OF ACTION

22 14. Plaintiff realleges paragraphs 1 through 13, above.

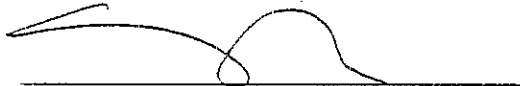
23 15. Ecology alleges that the Defendants will be responsible for remedial action at the
24 Site pursuant to WAC 173-340.

VI. PRAYER FOR RELIEF

WHEREFORE, Ecology respectfully requests that the Court order Defendants to perform a RI/FS at the Site.

DATED this 10th day of January, 2003.

CHRISTINE O. GREGOIRE
Attorney General



STEVEN J. THIELE, WSBA #20275
Assistant Attorney General
Attorney for Plaintiff
State of Washington
Department of Ecology
(360) 586-4619

ORIGINAL

Re item 1

*Bench Filed
on 4/26/02*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: : Jointly Administered
: Case No. 02-10429 (JKF)
KAISER ALUMINUM CORPORATION, :
: Chapter 11
a Delaware corporation, et al., :
: Debtors. : Re: [Docket No. 1261], Agenda Item No. 1

ORDER AUTHORIZING KAISER ALUMINUM & CHEMICAL CORPORATION
TO (A) ENTER INTO A CONSENT DECREE WITH THE STATE OF
WASHINGTON DEPARTMENT OF ECOLOGY AND AVISTA
DEVELOPMENT, INC. AND (B) ENTER INTO A RELATED AGREEMENT

This matter coming before the Court on the motion for an order authorizing Kaiser Aluminum & Chemical Corporation to (a) enter into a consent decree with the State of Washington Department of Ecology and Avista Development, Inc. and (b) enter into a related agreement with Avista Development Inc. (the "Motion"), filed by Kaiser Aluminum & Chemical Corporation ("KACC"), one of the above-captioned debtors and debtor in possession (collectively, the "Debtors"); the Court having reviewed the Motion and all pleadings related thereto; the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) notice of the Motion was sufficient under the circumstances; (d) the relief requested in the Motion is reasonable, in the best interest of KACC's estate and is appropriate under Rule 9019 of the Federal Rules of Bankruptcy Procedure and section 363(b) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause of the relief granted herein;

IT IS HEREBY ORDERED THAT:

1 The Motion is Granted

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2 Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

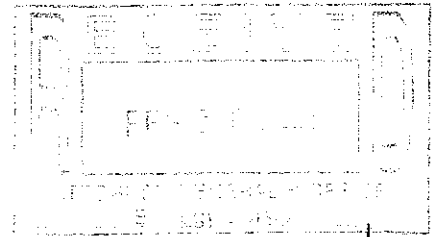
3. KACC is authorized to enter into a consent decree with the State of Washington Department of Ecology and Avista Development, Inc. substantially and materially in the form of the Consent Decree and the automatic stay is lifted for the limited and sole purpose of filing and entry of the consent decree in the State Court.

4. KACC is authorized to enter into a PLP agreement with Avista Development, Inc. substantially and materially in the form of the PLP Agreement.

5. KACC is authorized to enter into any other agreements, perform any activities, and expend any resources necessary to implement the Remedial Investigation and Feasibility Study and otherwise comply with any other requirements of the Consent Decree.

Dated: 11/26, 2002


UNITED STATES BANKRUPTCY JUDGE



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FEB 06 2003
SUPERIOR COURT
SPOKANE COUNTY, WA

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**STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

NO 03-2-00422-1

DECLARATION OF
JOHN L. ROLAND

I, JOHN L. ROLAND, declare as follows:

1. I am over twenty-one years of age and am competent to testify herein. The facts set forth in this declaration are from my personal knowledge.

2. I am employed as a hydrogeologist at the Washington State Department of Ecology (Ecology), Eastern Regional Office, Toxics Cleanup Program. I am the project coordinator and am knowledgeable on matters relating to the site involving the area of the Spokane River directly upstream of the Upriver Dam.

3. On behalf of Ecology and the Attorney General's Office, I took part in the negotiations which led to the Consent Decree that is being presented to the Court.

4. The Consent Decree was the subject of public notice and public comment as required by RCW 70.105D.040(4)(a)

1 5. Ecology received three letters during the public comment period. Ecology
2 considered the comments and determined that no changes to the Consent Decree were
3 necessary based on those comments. The public comments and Ecology's responses to those
4 comments are attached to this declaration as Attachment A.

5 6. Ecology has determined that no additional public comment period under WAC
6 173-340-600(9)(e) is required

7 7. Ecology has determined that the proposed remedial action will lead to a more
8 expeditious cleanup of hazardous substances in compliance with cleanup standards under
9 RCW 70 105D.030(2)(e).

10 8 I declare under penalty of perjury of the laws of the State of Washington that
11 the foregoing is true and correct.

12 RESPECTFULLY SUBMITTED this 27th day of January, 2003.

13
14 
15 _____
16 JOHN L. ROLAND

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STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

NO. 03-2-00422-1

CONSENT DECREE

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- Exhibit A - Scope of Work
- Exhibit B - Site Diagram
- Exhibit C - Schedule for Completing Work
- Exhibit D - Sampling Data Submittal Requirements
- Exhibit E - Public Participation Plan

1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the mutual objective of the
3 Washington State Department of Ecology (the Department) and of Avista Development, Inc.
4 and Kaiser Aluminum & Chemical Corporation (the Respondents) is to provide for remedial
5 action at a location where there has been a release of hazardous substances. This Decree
6 requires the Respondents to undertake the remedial actions specified in Section VI of this
7 Decree and in Exhibit A to the Decree. The work to be performed is a focused remedial
8 investigation (RI) to evaluate the extent of polychlorinated biphenyls (PCBs) in sediments
9 deposited along a portion of the Spokane River directly upstream of Upriver Dam and
10 elsewhere defined in Exhibit B, and a focused feasibility study (FS) to evaluate potential
11 cleanup actions in this area of the river as may be needed to address PCBs. A site diagram
12 depicting the Site is attached to this Decree as Exhibit B. In accordance with WAC 173-340-
13 350(6), the work scope is intended to generate timely information by requiring accelerated
14 investigative actions. The Department has determined that these actions are necessary to
15 protect public health and the environment.

16 B. The parties to this Decree acknowledge that the United States Environmental
17 Protection Agency (USEPA) under the authority of CERCLA (i.e. Superfund) is investigating
18 hazardous substance contamination in the Coeur d' Alene basin and the upper Spokane River,
19 focusing on metals contamination associated with historic mining operations in Idaho. USEPA
20 has designated the Spokane River as part of Operable Unit 3 in its Record of Decision (ROD).
21 Remedy selection and evaluation in Washington addressed by the USEPA in the ROD
22 encompasses the river from the Idaho state line downstream to Upriver Dam, including the
23 entire Upriver Dam PCB Sediment Site. Metals-related contamination associated with historic
24 mining operations has been determined to be broadly distributed within Operable Unit 3,
25 including areas at the Site. The USEPA ROD (September 2002) proposed capping or dredging
26 as remedy alternatives to reduce metals risks in sediments immediately behind Upriver Dam.

1 The USEPA also concluded that further investigation and coordination with the State of
2 Washington is appropriate before selection of the final remedy.

3 C. The parties to this Decree acknowledge that the Department is developing a
4 Total Maximum Daily Load (TMDL) to address PCBs in the Spokane River. The
5 development of the TMDL requires estimates of the current and future loads from background,
6 point source NPDES, storm-water and historic sediment sources to establish future Waste Load
7 Allocations (WLA). TMDL field work and river studies (potentially including outfall, surface
8 water, and other sampling) are scheduled to occur in the summer 2003. Completion of a draft
9 PCB TMDL Report is expected in the summer of 2004.

10 D. The parties agree that the Work to be Performed pursuant to this Decree will be
11 coordinated to the extent possible with the EPA Basin Cleanup and other ongoing information
12 collection efforts.

13 E. A complaint in this action was filed on January 17, 2003 prior to filing of this
14 Decree. An answer has not been filed, and there has not been a trial on any issue of fact or law
15 in this case. However, the parties wish to resolve the issues raised by the Department's
16 complaint. In addition, the parties agree that settlement of these matters without litigation is
17 reasonable and in the public interest and that entry of this Decree is the most appropriate means
18 of resolving these matters.

19 F. In signing this Decree, Avista agrees to its entry and agrees to be bound by its
20 terms. In signing this Decree, Kaiser agrees to its entry and agrees to be bound by its terms,
21 subject to the terms of the order of the United States Bankruptcy Court (District of Delaware)
22 (the Bankruptcy Court) entered on November 26, 2002, approving such agreement by Kaiser.

23 G. By entering into this Decree, the parties do not intend to discharge non-settling
24 parties from any liability they may have with respect to matters alleged in the complaint. The
25 parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
26 sums expended under this Decree

1 H. This Decree shall not be construed as proof of liability or responsibility for any
2 releases of hazardous substances or cost for remedial action nor an admission of any facts;
3 provided, however, that the Respondents shall not challenge the jurisdiction of the Department
4 in any proceeding to enforce this Decree.

5 I. The Court is fully advised of the reasons for entry of this Decree, and good
6 cause having been shown: IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS
7 FOLLOWS:

8 II. JURISDICTION

9 A. This Court has jurisdiction over the subject matter and over the parties pursuant
10 to Chapter 70.105D RCW, the Model Toxics Control Act (MTCA), provided however, nothing
11 in this Consent Decree shall deprive the Bankruptcy Court of jurisdiction derived under Title
12 11 or Title 28 of the United States Code.

13 B. The Department has determined that a release or threatened release of
14 hazardous substances has occurred at the Site which is the subject of this Decree.

15 C. The Department has given notice to the Respondents, as set forth in RCW
16 70.105D 020(15), of the Department's determination that the Respondents are potentially liable
17 persons for the Site and that there has been a release or threatened release of hazardous
18 substances at the Site.

19 D. The actions to be taken pursuant to this Decree are necessary to protect public
20 health, welfare, and the environment.

21 E. The Respondents have agreed to undertake the actions specified in this Decree
22 and consent to the entry of this Decree under the MTCA.

23 III. PARTIES BOUND

24 This Decree shall apply to and be binding upon the signatories to this Decree (Parties),
25 their successors and assigns. The undersigned representative of each party hereby certifies
26 that he or she is fully authorized to enter into this Decree and to execute and legally bind such

1 party to comply with the Decree. The Respondents agree to undertake all actions required by
2 the terms and conditions of this Decree, and not to contest state jurisdiction regarding this
3 Decree. No change in ownership or corporate status shall alter the responsibility of the
4 Respondents under this Decree.

5 IV. DEFINITIONS

6 Unless otherwise specified, the definitions set forth in Chapter 70.105D RCW and
7 Chapter 173-340 WAC shall control the meanings of the terms used in this Decree

8 A. Site: The Site, also referred to as the Upriver Dam PCB Sediments Site,
9 consists of the areal extent of PCB-contaminated sediments upstream of and hydraulically
10 influenced by the Upriver Dam between approximate river mile (RM) 80 (near the Upriver
11 dam) and RM 85 (upstream of the dam near the Centennial Trail footbridge). The Site is
12 further described in Exhibit B to this Decree, which is a detailed site diagram.

13 B. Parties: Refers to the State of Washington Department of Ecology (the
14 Department) and the Respondents, collectively.

15 C. Respondents: Refers collectively to Avista Development, Inc. and Kaiser
16 Aluminum & Chemical Corporation

17 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
18 exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent Decree.
19 The terms "Consent Decree" or "Decree" shall include all Exhibits to the Consent Decree.

20 E. Day or Days: Refers to a calendar day(s) unless otherwise specified. In
21 computing any period of time under this Decree, if the last day falls on a Saturday, Sunday, or
22 a state or federal holiday, the period shall run until the end of the next day which is not a
23 Saturday, Sunday, or a state or federal holiday. Any time period scheduled to begin on the
24 occurrence of an act or event shall begin on the day after the act or event.

25 F. Section: Refers to a portion of this Consent Decree identified by a Roman
26 numeral.

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V. STATEMENT OF FACTS

The Department makes the following finding of facts without any express or implied admissions by the Respondents.

A. Kaiser Aluminum & Chemical Corporation (Kaiser) is owner and operator of the Kaiser Trentwood Works (Trentwood) in Spokane, Washington. Trentwood is located on the Spokane River at approximately United States Geologic Survey RM 86 (See Site Diagram, attached as Exhibit B to this Decree). On February 12, 2002, Kaiser filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. Kaiser's Chapter 11 case is pending before the Bankruptcy Court.

B. Avista Development, Inc (Avista) (a subsidiary of Avista Corporation, formerly Washington Water Power Company) is successor to Pentzer Development Corporation (Pentzer). Pentzer is the past owner and operator of the Spokane Industrial Park, which is located on the Spokane River at approximately RM 87 (See Site Diagram, attached as Exhibit B to this Decree).

C. Kaiser Trentwood discharges industrial effluent wastewater to the Spokane River in Washington. The discharge is permitted under the provisions of the State of Washington Water Pollution Control Law and the federal Water Pollution Control Act.

D. Avista's predecessor Pentzer discharged industrial effluent wastewater to the Spokane River in Washington prior to 1994, under the provisions of the State of Washington Water Pollution Control Law and the federal Water Pollution Control Act, or predecessor laws.

E. Polychlorinated biphenyls, or PCBs, have been found in fish, sediment, and water of the upper Spokane River, upstream of RM 80, which approximately marks the location of Upriver Dam

F. PCBs and metals have been documented in fish in the Spokane River. A health advisory has been issued by the Spokane Regional Health District and state Department of

1 Health advising individuals not to eat sport fish caught from the Spokane River between
2 Upriver Dam and the Idaho border.

3 G PCBs have been documented in effluent waters and solids associated with
4 Kaiser Trentwood and Spokane Industrial Park.

5 H. PCBs have been documented in groundwater underlying Kaiser Trentwood.

6 I. Ground water beneath the Spokane River near Upriver Dam occurs in the
7 Spokane Valley-Rathdrum Prairie Aquifer. In 1978 the United States Environmental
8 Protection Agency (EPA) designated this aquifer as a "Sole Source" Aquifer. The aquifer
9 serves as the main drinking water supply for at least 400,000 people in the City and County of
10 Spokane

11 J. In certified correspondences dated June 1, 2001, the Department notified Kaiser
12 and Avista of a preliminary finding of potential liability for PCBs in sediments behind Upriver
13 Dam and requested comment on those findings. Also by certified correspondences dated June
14 1, 2001, Ecology notified the Liberty Lake Sewer District of a preliminary finding of potential
15 liability for PCBs in sediments behind Upriver Dam based on Liberty Lake's discharge of
16 PCBs from its municipal wastewater treatment plant to the Spokane River. Liberty Lake
17 subsequently declined to enter into consent decree negotiations with Ecology.

18 K. Collectively the signing Respondents have formed a work group and have
19 designated two project coordinators to implement the Work to be Performed. By execution of
20 this Decree, the Respondents agree to be bound by the terms thereof and not to contest the
21 same.

22 VI. WORK TO BE PERFORMED

23 This Decree contains a program designed to protect public health, welfare, and the
24 environment from the known release, or threatened release, of hazardous substances or
25 contaminants at, on, or from the Site.
26

1 A. The Respondents shall furnish all personnel, materials and services necessary
2 for, or incidental to, the planning, initiation, completion, and reporting upon the Scope of
3 Work, attached as Exhibit A. The work to be performed is the completion of the Remedial
4 Investigation (RI) and the Feasibility Study (FS) described in the attached Scope of Work.

5 B. The Scope of Work and each element thereof are designed and shall be
6 implemented and completed in accordance with the Model Toxics Control Act (Chapter
7 70.105D RCW) and its implementing regulation (Chapter 173-340 WAC) as amended, and all
8 applicable federal, state, and local laws and regulations.

9 C. As provided in the agreed upon schedule, attached as Exhibit C, the
10 Respondents shall commence work and thereafter complete all tasks in Attachment A in the
11 time frames and framework indicated unless the Department grants an extension in accordance
12 with Section XV.

13 D. The Respondents agree not to perform any remedial actions at the Site that are
14 outside the scope of this Decree unless the parties agree to amend the scope of work to cover
15 these actions.

16 VII. DESIGNATED PROJECT COORDINATORS

17 The project coordinator for the Department is:

18 John L. Roland
19 Department of Ecology
20 Eastern Regional Office
4601 N. Monroe
Spokane, WA 99205-1295

21 The project coordinators for the Respondents are:

22 Patrick J. Blau
23 Kaiser Aluminum & Chemical Corp
PO Box 15108
24 Spokane, WA 99215-5108

25 Douglas K. Pottratz
26 Avista Corporation
PO Box 3727
Spokane, WA 99220-3727

1 Each project coordinator shall be responsible for overseeing the implementation of this
2 Decree. The Department project coordinator will be the Department's designated
3 representative at the Site. To the maximum extent possible, communications between the
4 Department and the Respondents and all documents, including reports, approvals, and other
5 correspondence concerning the activities performed pursuant to the terms and conditions of
6 this Decree, shall be directed through the project coordinators. The project coordinators may
7 agree to minor modifications to the work to be performed without formal amendments to this
8 Decree. Minor modifications will be documented in writing by the Department.

9 Any party may change its respective project coordinator. Written notification shall be
10 given to the other parties at least ten (10) calendar days prior to the change.

11 **VIII. PERFORMANCE**

12 All work performed pursuant to this Decree shall be under the direction and
13 supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with
14 experience and expertise in hazardous waste site investigation and cleanup. Any construction
15 work must be under the supervision of a professional engineer. The Respondents shall notify
16 the Department in writing as to the identity of such engineer(s) or hydrogeologist(s), or others
17 and of any contractors and subcontractors to be used in carrying out the terms of this Decree, in
18 advance of their involvement at the Site. The Respondents shall provide a copy of this Decree
19 to all agents, contractors and subcontractors retained to perform work required by this Decree
20 and shall require that all work undertaken by such contractors and subcontractors will be in
21 compliance with this Decree.

22 **IX. ACCESS**

23 The Department or any Department-authorized representative shall have the authority
24 to enter and freely move about portions of the Site over which the Respondents have control
25 and all associated field investigation operations at all reasonable times for the purposes of,
26 inter alia: inspecting records, operation logs, and contracts related to the work being performed

1 pursuant to this Decree; reviewing the progress in carrying out the terms of this Decree;
2 conducting such tests or collecting samples as the Department or the project coordinator may
3 deem necessary; using a camera, sound recording, or other documentary type equipment to
4 record work done pursuant to this Decree; and verifying the data submitted to the Department
5 by the Respondents. By signing this Decree, the Respondents agree that this Decree constitutes
6 reasonable notice of access, and agree to allow access to site-related field operations at all
7 reasonable times for purposes of overseeing work performed under this Decree. Without
8 limitation on the Department's rights under this Section IX, the Department agrees to endeavor
9 to notify Respondents at least 2 days in advance of intended access.

10 The Department and the Respondents acknowledge that Avista and Kaiser do not own
11 any of the properties that compose the Site. The Respondents will use reasonable efforts to
12 obtain access to the Site. If necessary, the Department will exercise its authority under Chapter
13 70.105D RCW to ensure access to the Site or to facilitate remedial action at the Site.

14 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

15 With respect to the implementation of this Decree, the Respondents shall make the
16 results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf
17 available to the Department and shall submit these results in accordance with Section XI of this
18 Decree.

19 In accordance with WAC 173-340-840(5), sampling data shall be submitted according
20 to the Department's sampling data submittal requirements as set forth in Exhibit D to this
21 Decree. In addition, in accordance with the Departments Sediment Quality Information
22 System software (SEDQUAL) needs, sediment or bioassay sampling data shall be submitted to
23 Ecology in a electronic format compatible for entry into the SEDQUAL database using the
24 system's *data entry templates*

25 If requested by the Department, the Respondents shall allow split or duplicate samples
26 to be taken by the Department and/or its authorized representatives of any samples collected by

1 Respondents pursuant to the implementation of this Decree. Respondents shall notify the
2 Department fourteen (14) working days in advance of any planned field sample collection or
3 work activity at the Site. No sampling, analysis, or field activities shall be performed within
4 the Site boundaries by the Respondents unless approved by the Department. The Department
5 shall, upon request, allow split or duplicate samples to be taken by Respondents or its
6 authorized representatives of any samples collected by the Department pursuant to the
7 implementation of this Decree provided it does not interfere with the Department's sampling.
8 Without limitation on the Department's rights under Section IX, the Department shall endeavor
9 to notify Respondents at least fourteen (14) days prior to any scheduled sample collection
10 activity. This will not apply to emergencies or time-critical actions.

11 **XI. PROGRESS REPORTS**

12 Respondents shall submit to the Department written progress reports as provided in the
13 Scope of Work, Exhibit A to this Decree.

14 **XII. RETENTION OF RECORDS**

15 Respondents shall preserve, during the pendency of this Decree and for ten (10) years
16 from the date this Decree is no longer in effect as provided in Section XXV, all records,
17 reports, documents, and underlying data in their possession relevant to the implementation of
18 this Decree and shall insert in contracts with project contractors and subcontractors a similar
19 record retention requirement. Upon request of the Department, Respondents shall make all
20 non-archived records available to the Department and allow access for review. All archived
21 records shall be made available to the Department within a reasonable period of time.

22 **XIII. RESOLUTION OF DISPUTES**

23 A. In the event a dispute arises as to an approval, disapproval, proposed
24 modification or other decision or action by the Department or the Department's project
25 coordinator, the parties shall utilize the dispute resolution procedure set forth below
26

1 (1) Upon receipt of the Department's or Department project coordinator's decision,
2 the Respondents have fourteen (14) days within which to notify the Department's project
3 coordinator of their objection to the decision or action.

4 (2) The parties' project coordinators shall then confer in an effort to resolve the
5 dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, the
6 Department's project coordinator shall issue a written decision.

7 (3) Respondents may then request the Department management review of the
8 decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager
9 within seven (7) days of receipt of the Department's project coordinator's decision.

10 (4) The Department's Program Manager shall conduct a review of the dispute and
11 shall issue a written decision regarding the dispute within thirty (30) days of the Respondents'
12 request for review. The Program Manager's decision shall be the Department's final decision
13 on the disputed matter.

14 B. If the Department's final written decision is unacceptable to the Respondents,
15 they have the right to submit the dispute to this Court (the Court) for resolution. The parties
16 agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve
17 any dispute arising under this Decree. In the event the Respondents present an issue to the
18 Court for review, the Court shall review any investigative or remedial action or decision of the
19 Department on the basis of whether such action or decision was arbitrary and capricious and
20 render a decision based on such standard of review.

21 C. The parties agree to only utilize the dispute resolution process in good faith and
22 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
23 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
24 the other party may seek sanctions.

1 D. Implementation of these dispute resolution procedures shall not provide a basis
2 for delay of any activities required in this Decree, unless the Department agrees in writing to a
3 schedule extension or the Court so orders.

4 **XIV. AMENDMENT OF CONSENT DECREE**

5 Except for minor modifications agreed to pursuant to Section VII and extensions
6 granted in accordance with Section XV, this Decree may only be amended by a written
7 stipulation among the parties to this Decree that is entered by the Court or by order of the
8 Court. If the stipulation includes more costly remedial action by Kaiser, the stipulation must
9 be approved by the Bankruptcy Court prior to entry unless at the time the stipulation is entered
10 the Bankruptcy Court no longer has jurisdiction over Kaiser. Any other stipulation by Kaiser
11 may require approval by the Bankruptcy Court prior to entry. All amendments shall become
12 effective upon entry by the Court. Agreement to amend shall not be unreasonably withheld by
13 any party to the decree.

14 Any party may propose an amendment to the Decree. A party that receives a request
15 for amendment shall indicate its approval or disapproval in a timely manner after the request
16 for amendment is received. If the amendment to the Decree is substantial, the Department will
17 provide public notice and opportunity for comment. Reasons for the disapproval shall be
18 stated in writing. If any party does not agree to any proposed amendment, the disagreement
19 may be addressed through the dispute resolution procedures described in Section XIII of this
20 Decree.

21 **XV. EXTENSION OF SCHEDULE**

22 A. An extension of schedule shall be considered when a request for an extension is
23 submitted in a timely fashion, generally at least 30 days prior to expiration of the deadline for
24 which the extension is requested, and good cause exists for granting the extension. All
25 extensions shall be requested in writing. The request shall specify the reason(s) the extension
26 is needed.

1 An extension shall be granted for such period of time as the Department determines is
2 reasonable under the circumstances. A requested extension shall not be effective until
3 approved by the Department or the Court. The Department shall act upon any written request
4 for extension in a timely fashion. It shall not be necessary to formally amend this Decree
5 pursuant to Section XIV when a schedule extension is granted.

6 B. The burden shall be on the Respondents to demonstrate to the satisfaction of the
7 Department that the request for such extension has been submitted in a timely fashion and that
8 good cause exists for granting the extension. Good cause includes, but is not limited to, the
9 following:

10 (1) Circumstances beyond the reasonable control and despite the due diligence of
11 the Respondents including delays caused by unrelated third parties or the Department, such as
12 (but not limited to) delays by the Department in reviewing, approving, or modifying
13 documents submitted by the Respondents; or

14 (2) Acts of God or war, including fire, flood, blizzard, extreme temperatures, storm,
15 earthquake, terrorist attack, or other unavoidable casualty;

16 (3) Endangerment as described in Section XVI; or

17 (4) Other circumstances agreed to by the Department to be exceptional or
18 extraordinary.

19 However, neither increased costs of performance of the terms of the Decree nor
20 changed economic circumstances shall be considered circumstances beyond the reasonable
21 control of the Respondents.

22 C. The Department may extend the schedule for a period not to exceed ninety (90)
23 days, except where an extension is needed as a result of:

24 (1) Delays in the issuance of a necessary permit which was applied for in a timely
25 manner; or

26 (2) Other circumstances deemed exceptional or extraordinary by the Department; or

1 (3) Endangerment as described in Section XVI.

2 The Department shall give the Respondents written notification in a timely fashion of
3 any extensions granted pursuant to this Decree.

4 **XVI. ENDANGERMENT**

5 In the event the Department determines that activities implementing or in compliance
6 with this Decree, or any other circumstances or activities, are creating or have the potential to
7 create a danger to the health or welfare of the people on the Site or in the surrounding area or
8 to the environment, the Department may order the Respondents to stop further implementation
9 of this Decree for such period of time as needed to abate the danger or may petition the Court
10 for an order as appropriate. During any stoppage of work under this section, the obligations of
11 the Respondents with respect to the work under this Decree which is ordered to be stopped
12 shall be suspended and the time periods for performance of that work, as well as the time
13 period for any other work dependent upon the work which is stopped, shall be extended,
14 pursuant to Section XV of this Decree, for such period of time as the Department determines is
15 reasonable under the circumstances.

16 In the event the Respondents determine that activities undertaken in furtherance of this
17 Decree or any other circumstances or activities are creating an endangerment to the people on
18 the Site or in the surrounding area or to the environment, the Respondents may stop
19 implementation of this Decree for such period of time necessary for the Department to evaluate
20 the situation and determine whether the Respondents should proceed with implementation of
21 the Decree or whether the work stoppage should be continued until the danger is abated. The
22 Respondents shall notify the Department's project coordinator as soon as possible, but no later
23 than twenty-four (24) hours after such stoppage of work, and thereafter provide the Department
24 with documentation of the basis for the work stoppage. If the Department disagrees with the
25 Respondents' determination, it may order the Respondents to resume implementation of this
26 Decree. If the Department concurs with the work stoppage, the Respondents' obligations shall

1 be suspended and the time period for performance of that work, as well as the time period for
2 any other work dependent upon the work which was stopped, shall be extended, pursuant to
3 Section XV of this Decree, for such period of time as the Department determines is reasonable
4 under the circumstances.

5 **XVII. OTHER ACTIONS**

6 A. The Department reserves its rights to institute remedial action(s) at the Site and
7 subsequently pursue cost recovery, and the Department reserves its rights to issue orders
8 and/or seek penalties or take any other enforcement action pursuant to available statutory
9 authority under the following circumstances:

10 (1) Where the Respondents fail, after notice, to comply with any requirement of this
11 Decree;

12 (2) In the event or upon the discovery of a release or threatened release not
13 addressed by this Decree;

14 (3) Upon the Department's determination that action beyond the terms of this
15 Decree is necessary to abate an emergency situation which threatens public health or welfare or
16 the environment; or

17 (4) Upon the occurrence or discovery of a situation beyond the scope of this Decree
18 as to which the Department would be empowered to perform any remedial action or to issue an
19 order and/or seek a penalty, or to take any other enforcement action. This Decree is limited in
20 scope to the geographic Site described in Exhibit B and to those contaminants which the
21 Department knows to be at the Site when this Decree is entered.

22 The Department reserves all rights regarding the injury to, destruction of, or loss of
23 natural resources resulting from the release or threatened release of hazardous substances from
24 the Upriver Dam Sediment Site.

25 The Department reserves the right to take any enforcement action whatsoever,
26 including a cost recovery action, against potentially liable persons not party to this Decree.

1 **XVIII. INDEMNIFICATION**

2 The Respondents agree to indemnify and save and hold the State of Washington, its
3 employees, and agents harmless from any and all claims or causes of action for death or
4 injuries to persons or for loss or damage to property arising from or on account of acts or
5 omissions of the Respondents, its officers, employees, agents, or contractors in entering into
6 and implementing this Decree. However, the Respondents shall not indemnify the State of
7 Washington nor save nor hold its employees and agents harmless from any claims or causes of
8 action arising out of either the State of Washington's or any of its agencies' status as
9 potentially liable persons with respect to contamination at the Site or the intentional, reckless,
10 or negligent acts or omissions of the State of Washington, or the employees or agents of the
11 State, in implementing the activities pursuant to this Decree.

12 **XIX. COMPLIANCE WITH APPLICABLE LAWS**

13 A. All actions carried out by the Respondents pursuant to this Decree shall be done
14 in accordance with all applicable federal, state, and local requirements, including requirements
15 to obtain necessary permits, except as provided in paragraph B. of this section.

16 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters
17 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing
18 local government permits or approvals for the remedial action under this Decree that are
19 known to be applicable at the time of entry of the Decree are binding and enforceable
20 requirements of the Decree.

21 The Respondents have a continuing obligation to determine whether additional permits
22 or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
23 action under this Decree. In the event either the Respondents or the Department determines
24 that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be
25 required for the remedial action under this Decree, it shall promptly notify the other party of
26 this determination. The Department shall determine whether the Department or the

1 Respondents shall be responsible to contact the appropriate state and/or local agencies. If the
2 Department so requires, the Respondents shall promptly consult with the appropriate state
3 and/or local agencies and provide the Department with written documentation from those
4 agencies of the substantive requirements those agencies believe are applicable to the remedial
5 action. The Department shall make the final determination on the additional substantive
6 requirements that must be met by the Respondents and on how the Respondents must meet
7 those requirements. The Department shall inform the Respondents in writing of these
8 requirements. Once established by the Department, the additional requirements shall be
9 enforceable requirements of this Decree. The Respondents shall not begin or continue the
10 remedial action potentially subject to the additional requirements until the Department makes
11 its final determination.

12 The Department shall ensure that notice and opportunity for comment is provided to the
13 public and appropriate agencies prior to establishing the substantive requirements under this
14 section.

15 C. Pursuant to RCW 70.105D.090(2), in the event the Department determines that
16 the exemption from complying with the procedural requirements of the laws referenced in
17 RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is
18 necessary for the State to administer any federal law, the exemption shall not apply and the
19 Respondents shall comply with both the procedural and substantive requirements of the laws
20 referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

21 XX. REMEDIAL AND INVESTIGATIVE COSTS

22 The Respondents agree to pay the remedial action costs (as defined in
23 WAC 173-340-550) incurred by the Department for the Site pursuant to this decree. Kaiser
24 and Avista's obligations regarding remedial action costs incurred by Ecology prior to entry of
25 this Decree shall be determined subsequent to completion of this Decree.
26

1 The Respondents agree to pay the required amount within ninety (90) days of receiving
2 from the Department an itemized statement of costs that includes a summary of costs incurred,
3 an identification of involved staff, and the amount of time spent by involved staff members on
4 the project. A general statement of work performed will be provided with the statement of
5 costs. Itemized statements shall be prepared quarterly. Failure to pay the Department's costs
6 within ninety (90) days of receipt of the itemized statement will result in interest charges,
7 unless such costs are disputed by Respondents in accordance with the dispute resolution
8 procedures in Section XIII. Respondents reserve the right to review and approve any charges
9 prior to payment and not to pay any disputed portion of the itemized statement.

10 **XXI. IMPLEMENTATION OF REMEDIAL ACTION**

11 If the Department determines that the Respondents have failed without good cause to
12 implement the remedial action required by this Decree, the Department may, after written
13 notice to the Respondents and a reasonable opportunity for Respondents to cure the failure,
14 perform any or all portions of the remedial action required by this Decree that remain
15 incomplete. If the Department performs all or portions of the remedial action because of the
16 Respondents' failure to comply with its obligations under this Decree, the Respondents shall
17 reimburse the Department for the costs of doing such work in accordance with Section XX,
18 provided that the Respondents are not obligated under this section to reimburse the Department
19 for costs incurred for work inconsistent with or beyond the scope of this Decree.

20 **XXII. PUBLIC PARTICIPATION**

21 The Department shall maintain the responsibility for public participation at the Site.
22 However, the Respondents shall continue to cooperate with the Department and, if requested
23 by the Department, may choose to assist the Department:

24 A. Prepare drafts of public notices and fact sheets at important stages of the
25 remedial action, such as the submission of work plans, Remedial Investigation/Feasibility
26 Study reports and engineering design reports. The Department will finalize (including editing

1 if necessary) and distribute such fact sheets and prepare and distribute public notices of the
2 Department's presentations and meetings.

3 B. Participate in public presentations on the progress of the remedial action
4 required by this Decree at the Site. Participation may be through attendance at public meetings
5 to assist in answering questions, or as a presenter.

6 C In cooperation with the Department, arrange and/or continue information
7 repositories to be located at the Spokane City Library in downtown Spokane and the
8 Department's Eastern Regional Office at North 4601 Monroe Street in Spokane. At a
9 minimum, copies of all public notices, fact sheets, and press releases; all quality assured
10 ground water, surface water, soil sediment, and air monitoring data; remedial action plans,
11 supplemental planning documents, and all other similar documents relating to performance of
12 the remedial actions required by this Decree shall be promptly placed in these repositories.

13 D. The Department shall notify the Respondents before major meetings with the
14 interested public and local governments. The Department shall also endeavor to provide
15 Respondents with an opportunity to review and comment on all press releases, fact sheets, and
16 other materials that will be distributed to the public and local governments prior to issuance.

17 **XXIII. DURATION OF DECREE**

18 This Decree shall remain in effect until the Respondents have received written
19 notification from the Department that the requirements of this Decree have been satisfactorily
20 completed. The Department shall issue such notification within 60 days after the requirements
21 of this Decree have been satisfactorily completed. Thereafter, the parties within thirty (30)
22 days shall jointly request that the Court vacate this Consent Decree.

23 **XXIV. CLAIMS AGAINST THE STATE**

24 The Respondents hereby agree that they will not seek to recover any costs accrued in
25 implementing the remedial actions required by this Decree from the State of Washington or
26 any of its agencies, except to the extent they are potentially liable persons with respect to

1 | contamination at the Site; and further, that the Respondents will make no claim against the
2 | State Toxics Control Account or any Local Toxics Control Account for any costs incurred in
3 | implementing this Decree. Except as provided above, however, the Respondents expressly
4 | reserve their rights to seek to recover any costs incurred in implementing this Decree from any
5 | other potentially liable person.

6 | **XXV. EFFECTIVE DATE**

7 | This Decree is effective upon the date it is entered by the Court.

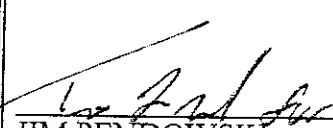
8 | **XXVI. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

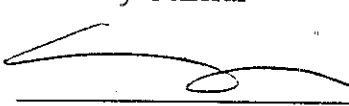
9 | This Decree has been the subject of public notice and comment under RCW
10 | 70.105D.040(4)(a). As a result of this process, the Department has found that this Decree will
11 | lead to a more expeditious cleanup of hazardous substances at the Site.

12 | If the Court withholds or withdraws its consent to this Decree, it shall be null and void
13 | at the option of any party and the accompanying Complaint shall be dismissed without costs
14 | and without prejudice. In such an event, no party shall be bound by the requirements of this
15 | Decree.

16 | DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE
Attorney General

17 | 
18 | _____
19 | JIM PENDOWSKI
20 | Program Manager
21 | Washington Department of Ecology
22 | Toxics Cleanup Program

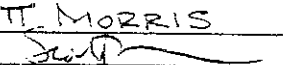

23 | _____
24 | STEVEN J. THIELE, WSBA #20275
25 | Assistant Attorney General
26 | Attorneys for Plaintiff
State of Washington, Department of Ecology

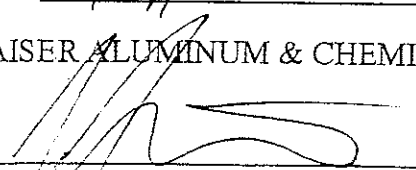
21 | Date: _____

Date: 1/29/03

22 | AVISTA DEVELOPMENT, INC.

KAISER ALUMINUM & CHEMICAL CORP

23 | SCOTT MORRIS
24 | By: 
25 | Title: Senior Vice President


26 | By: JOSEPH A. FISCHER, III
Title: Assistant General Counsel

Date: 1/23/03

Date: 01/27/03

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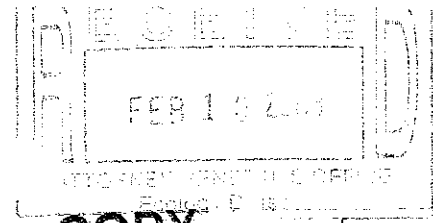
DATED this _____ day of _____ 2003.

2/5

[Handwritten signature]

JUDGE
Spokane County Superior Court

Spokane County Superior Court Case No. 03-2-0117-00000-00000-00000



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SUPERIOR COURT
SPOKANE COUNTY, WN

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**STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

NO. 03-2-00422-1

JOINT MOTION FOR ENTRY OF
CONSENT DECREE

I. INTRODUCTION

Plaintiff, State of Washington, Department of Ecology (Ecology), and Defendants, Avista Development, Inc., and Kaiser Aluminum & Chemical Corporation (the Defendants) bring this motion seeking entry of the attached Consent Decree (Decree). This motion is based upon the pleadings filed in this matter.

II. RELIEF REQUESTED

The Parties request that the Court approve and enter the attached Decree. The Decree fully disposes of all issues in this matter. See attached Affidavit of John Roland.

III. FACTS

The Decree between the Defendants and Ecology resolves the claims raised in Ecology's Complaint by providing for an investigation of known and suspected contamination along a portion of the Spokane River directly upstream of Upriver Dam (the Site) arising from

1 a release or threatened release of hazardous substances, and a study of remedial alternatives for
2 the Site. The Decree promotes the public interest by expediting cleanup activities at the Site.

3 **IV. AUTHORITY**

4 RCW 70.105D.040(4)(a) authorizes the attorney general to agree to a settlement with
5 any potentially liable person if Ecology finds that the proposed settlement would lead to a
6 more expeditious cleanup of hazardous substances in compliance with cleanup standards under
7 RCW 70.105D.030(2)(e) and with any remedial orders issued by Ecology.

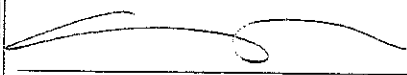
8 Ecology has found that the attached Consent Decree meets these statutory
9 requirements, and believes it is appropriate for the Court to approve the attached Decree

10 **V. CONCLUSION**

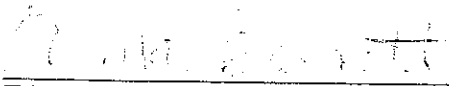
11 The parties request that the Court approve and enter the attached Decree in full
12 resolution of the matters involved in this action. Subject to the Bankruptcy Court's Order of
13 November 26, 2002 authorizing Kaiser to enter into a Consent Decree with Ecology and Avista
14 and allowing a limited lifting of the automatic stay imposed by Section 362 of the Bankruptcy
15 Code, and subject to all terms and conditions of the Consent Decree, the parties also request
16 that the Court retain jurisdiction over this action until the work required by the Consent Decree
17 is completed, at which time the parties anticipate seeking dismissal of this action. See attached
18 Bankruptcy Court Order of November 2002.

19 DATED this 21st day of January, 2003

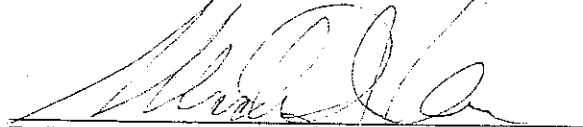
20
21 CHRISTINE O. GREGOIRE
22 Attorney General

23 
24 STEVEN J. THIELE, WSBA #20275
25 Assistant Attorney General
26 Attorneys for Plaintiff
Department of Ecology
(360) 586-4619

1
2 BROWN REAVIS & MANNING PLLC

3
4 
5 TANYA BARNETT, WSBA #17491
6 Attorneys for Defendant
7 Avista Development, Inc.
8 (360) 786-5247

9
10 HELLER EHRMAN WHITE & MCAULIFFE

11 
12 R. PAUL BEVERIDGE, WSBA # 16732
13 MADELINE KASS, WSBA # 18952
14 Attorneys for Defendant
15 Kaiser Aluminum & Chemical Corporation
16 (206) 447-0900

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1/28/03 3:54 PM (11289 0003)

ORDER AUTHORIZING KAISER TO ENTER INTO CONSENT DECREE
WITH DEPT OF ECOLOGY AND AVISTA (November 2002)

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ORIGINAL

Re items

Bench Filed
on 11/24/02

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Jointly Administered
	:	Case No. 02-10429 (JKF)
KAISER ALUMINUM CORPORATION,	:	
a Delaware corporation, <u>et al.</u> ,	:	Chapter 11
	:	
Debtors.	:	Re: [Docket No. 1261], Agenda Item No. 1

**ORDER AUTHORIZING KAISER ALUMINUM & CHEMICAL CORPORATION
TO (A) ENTER INTO A CONSENT DECREE WITH THE STATE OF
WASHINGTON DEPARTMENT OF ECOLOGY AND AVISTA
DEVELOPMENT, INC. AND (B) ENTER INTO A RELATED AGREEMENT**

This matter coming before the Court on the motion for an order authorizing Kaiser Aluminum & Chemical Corporation to (a) enter into a consent decree with the State of Washington Department of Ecology and Avista Development, Inc. and (b) enter into a related agreement with Avista Development Inc. (the "Motion"), filed by Kaiser Aluminum & Chemical Corporation ("KACC"), one of the above-captioned debtors and debtor in possession (collectively, the "Debtors"); the Court having reviewed the Motion and all pleadings related thereto; the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) notice of the Motion was sufficient under the circumstances; (d) the relief requested in the Motion is reasonable, in the best interest of KACC's estate and is appropriate under Rule 9019 of the Federal Rules of Bankruptcy Procedure and section 363(b) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause of the relief granted herein;

IT IS HEREBY ORDERED THAT:

- I. The Motion is Granted.

10/22/02 12.61

2. Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

3. KACC is authorized to enter into a consent decree with the State of Washington Department of Ecology and Avista Development, Inc. substantially and materially in the form of the Consent Decree and the automatic stay is lifted for the limited and sole purpose of filing and entry of the consent decree in the State Court.

4. KACC is authorized to enter into a PLP agreement with Avista Development, Inc. substantially and materially in the form of the PLP Agreement.

5. KACC is authorized to enter into any other agreements, perform any activities, and expend any resources necessary to implement the Remedial Investigation and Feasibility Study and otherwise comply with any other requirements of the Consent Decree.

Dated: 11/26, 2002


UNITED STATES BANKRUPTCY JUDGE

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FILED
FEB 08 2003
THOMAS R. FALLOUSET
SPOKANE COUNTY CLERK

**STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

NO. 03-2-00422-1

ORDER ENTERING CONSENT
DECREE

Having reviewed the Joint Motion for Entry of the Consent Decree, it is hereby
ORDERED AND ADJUDGED that the Consent Decree in this matter is entered and that,
subject to the Bankruptcy Court's Order of November 26, 2002 authorizing Kaiser to enter into
a Consent Decree with Ecology and Avista and allowing a limited lifting of the automatic stay
imposed by Section 362 of the Bankruptcy Code, and subject to all terms and conditions of the
Consent Decree, the Court shall retain jurisdiction over the Consent Decree to enforce its
terms.

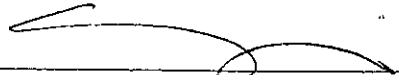
DATED this 5th day of Feb, 2003.



JUDGE/COMMISSIONER
Spokane County

1 Presented by:

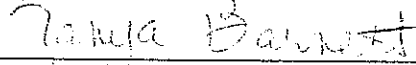
2 CHRISTINE O GREGOIRE
3 Attorney General

4 
5 STEVEN J. THIELE, WSBA #20275
6 Assistant Attorney General
7 Attorneys for Plaintiff
8 Department of Ecology
9 (360) 586-4619

10 Dated: January 29, 2003

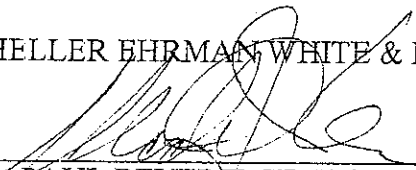
11 Approved as to form,
12 notice of presentation waived:

13 BROWN REAVIS & MANNING PLLC

14 
15 TANYA BARNETT, WSBA #17491
16 Attorneys for Defendant
17 Avista Development, Inc.
18 (360) 786-5247

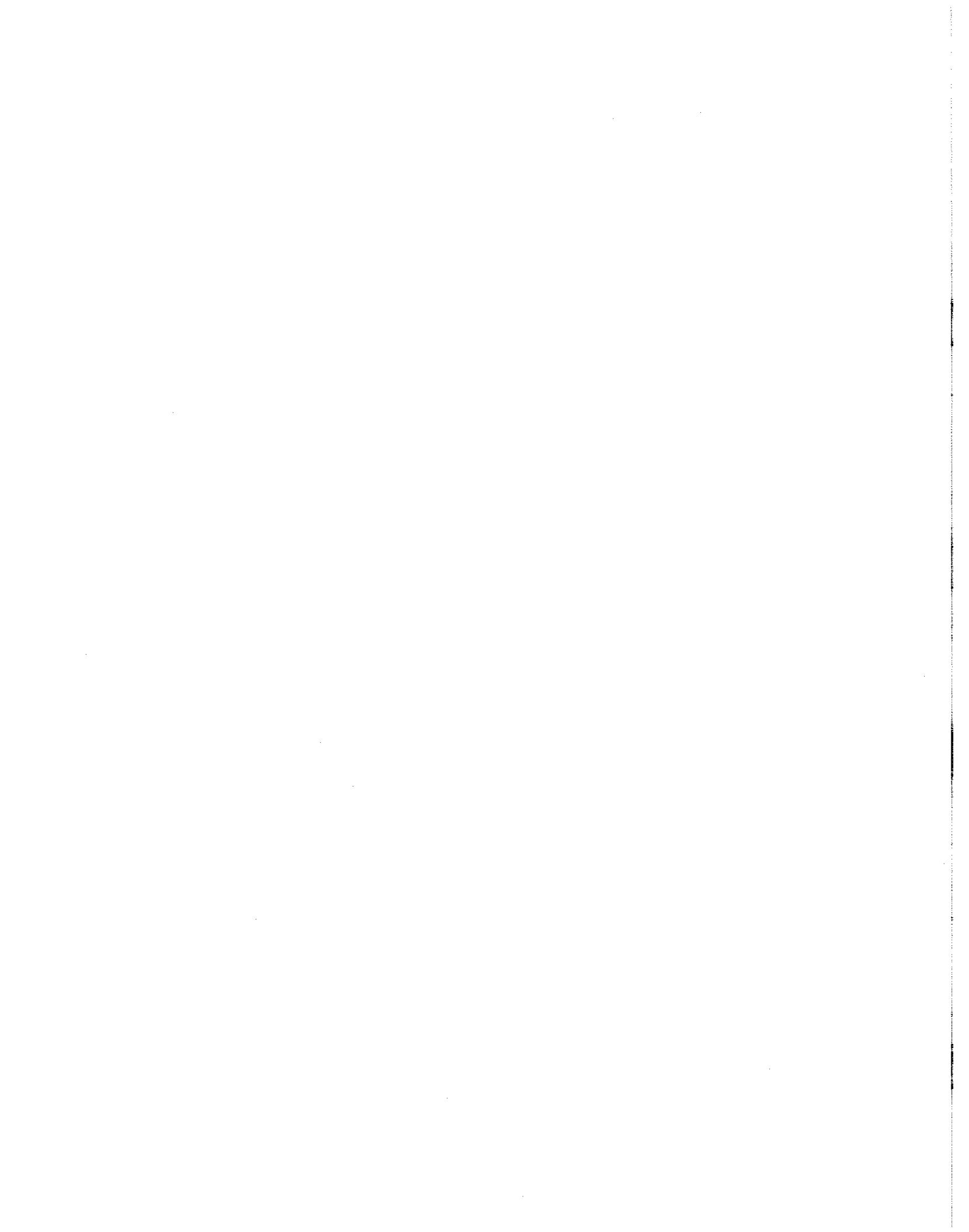
19 Dated: January 29, 2003

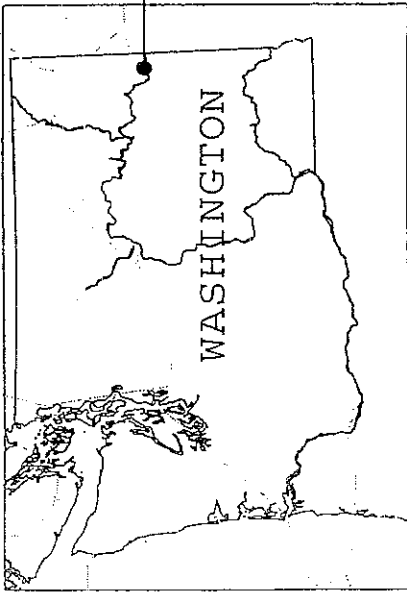
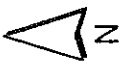
20 HELLER EHRMAN WHITE & MCAULIFFE

21 
22 R. PAUL BEVERIDGE, WSBA # 16732
23 MADELINE KASS, WSBA # 18952
24 Attorneys for Defendant
25 Kaiser Aluminum & Chemical Corporation
26 (206) 447-0900

Dated: JANUARY 28, 2003

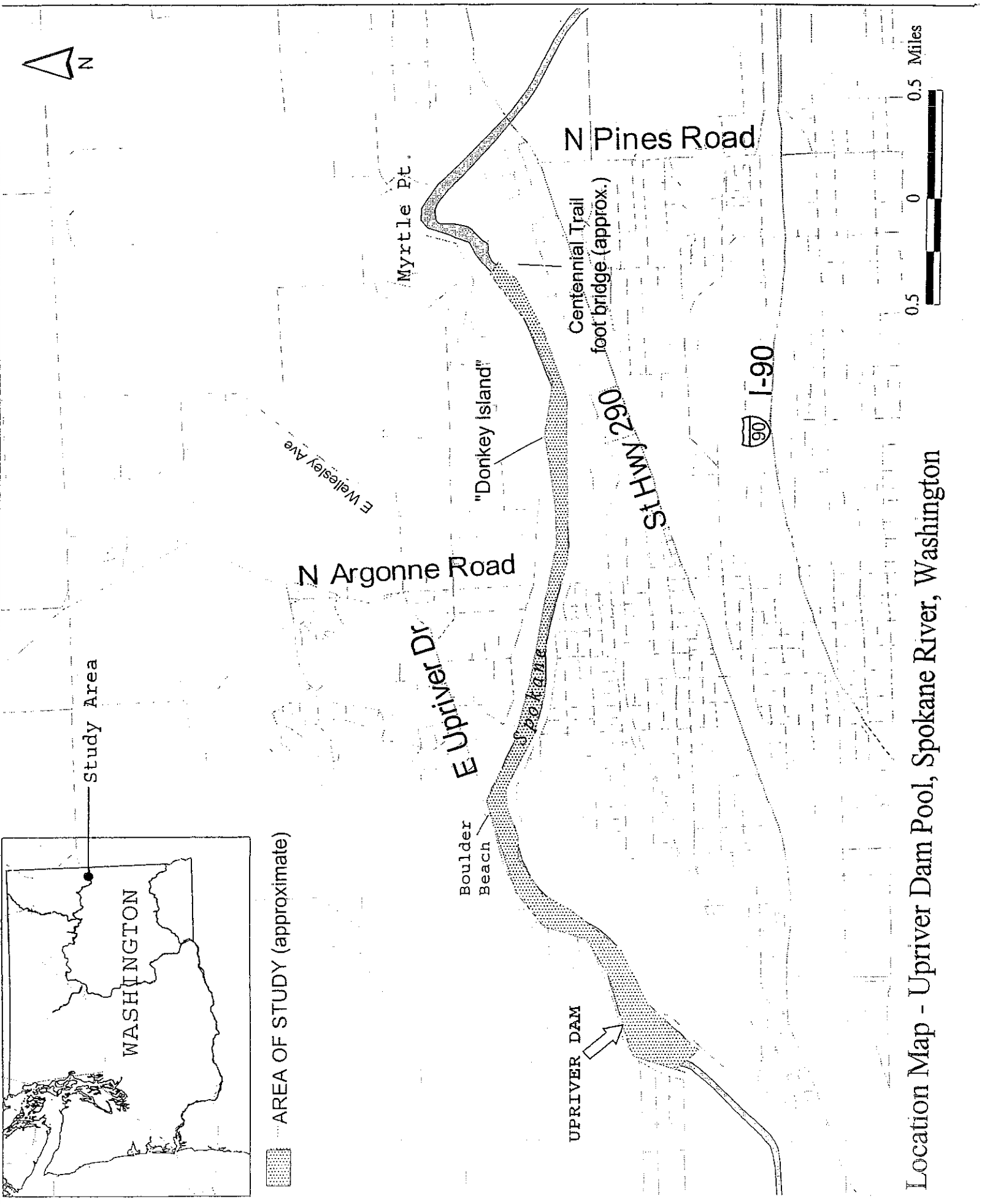
EXHIBIT B – SITE DIAGRAM





Study Area

AREA OF STUDY (approximate)



Location Map - Upriver Dam Pool, Spokane River, Washington

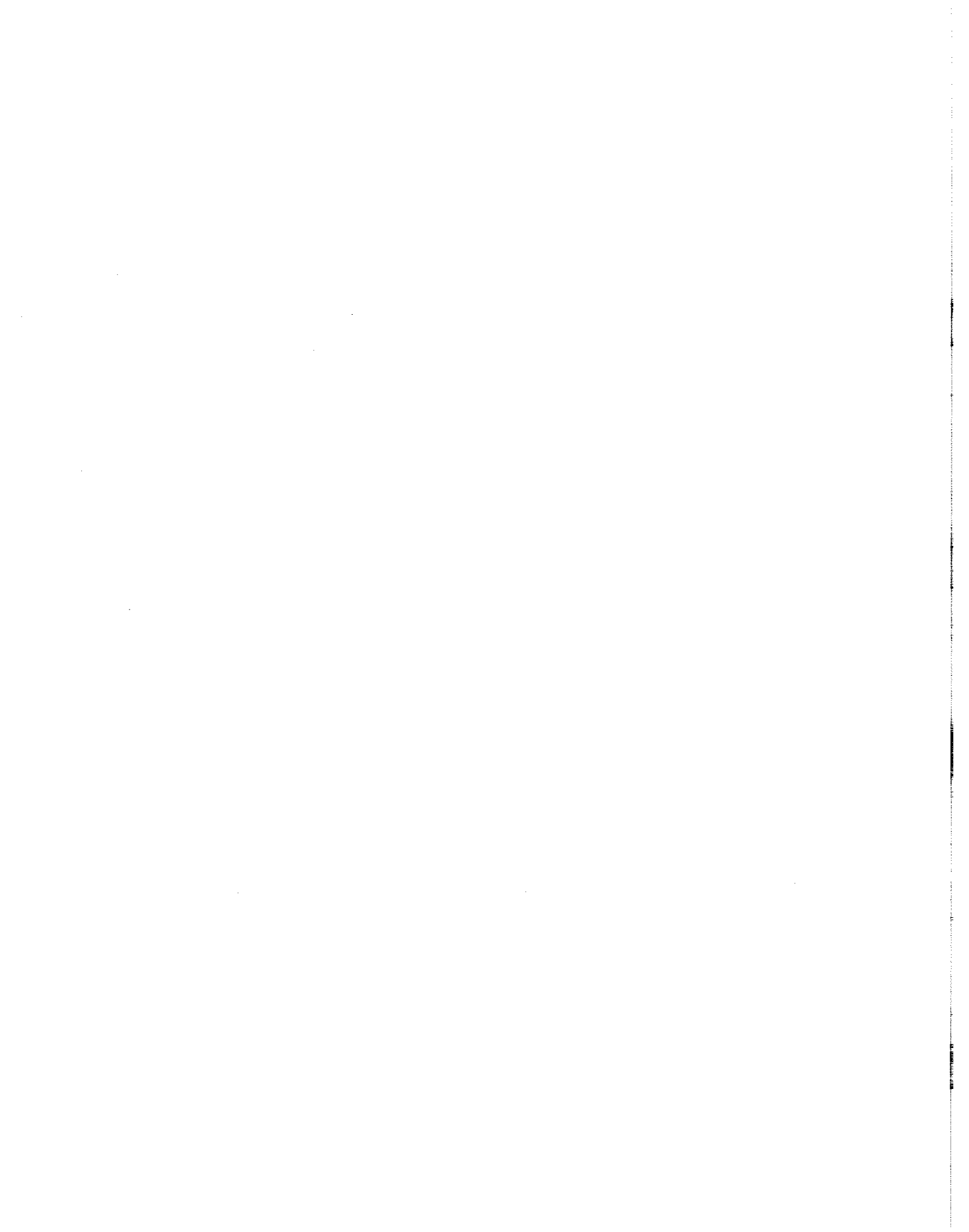
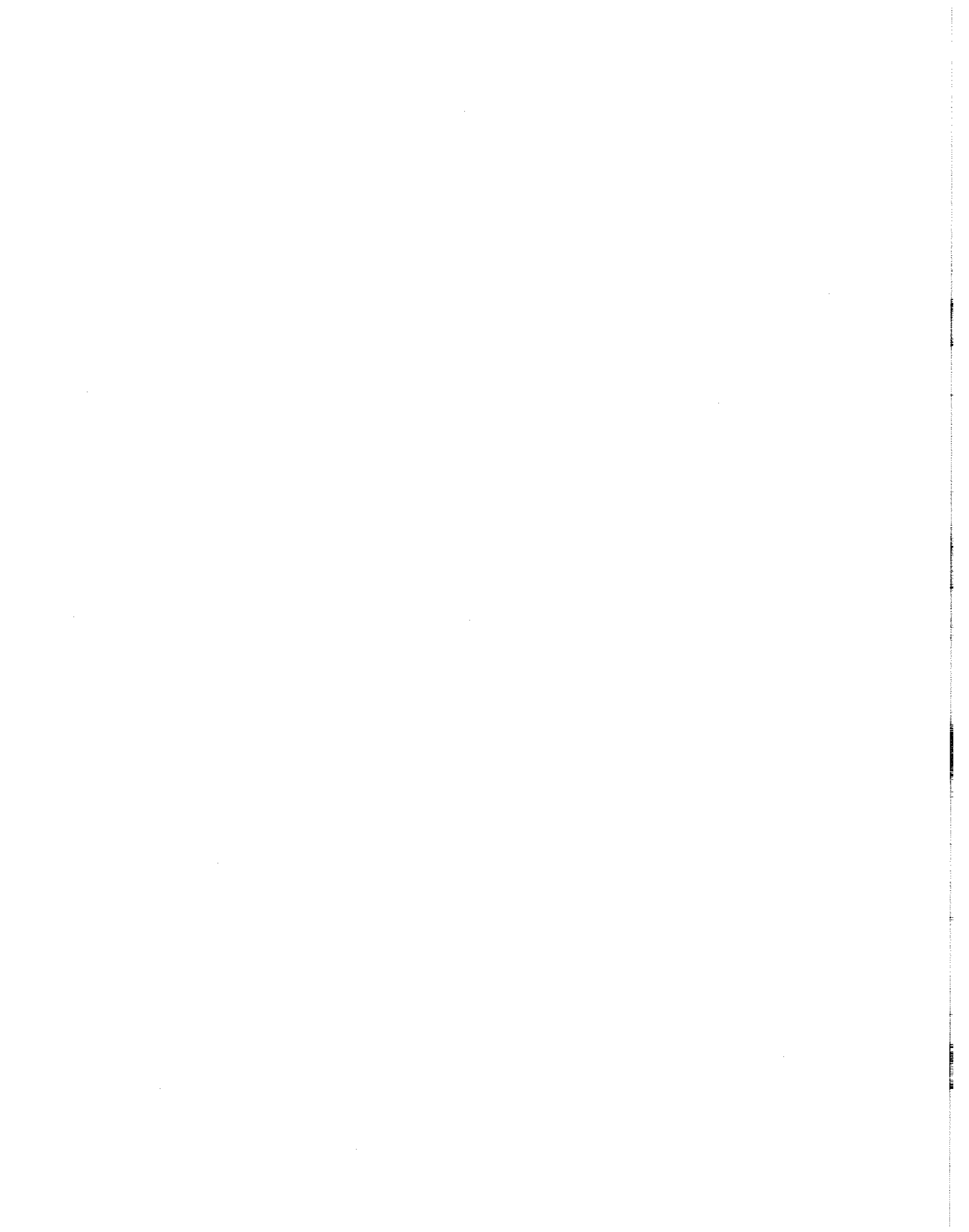


EXHIBIT A – SCOPE OF WORK

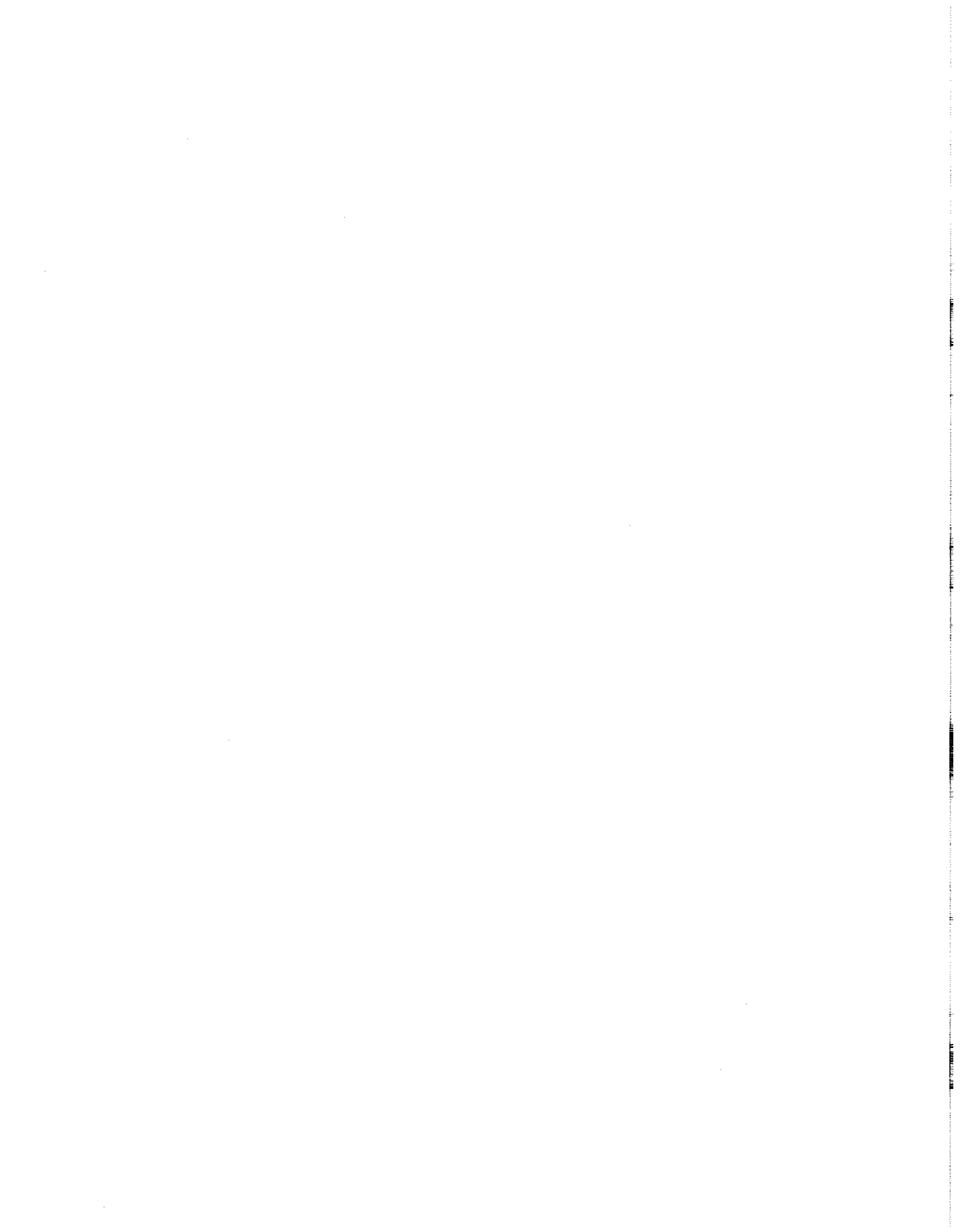


SCOPE OF WORK Upriver Dam PCB Sediments Site

I. INTRODUCTION

The Washington State Department of Ecology (the Department), Avista Development, Inc. and Kaiser Aluminum & Chemical Corporation (collectively Avista and Kaiser are referred to as the Respondents) have entered into a Consent Decree with the Department to evaluate site conditions at the Upriver Dam PCB Sediments Site and perform a focused evaluation of remedial alternatives. The Decree requires the Respondents to perform the work specified in this focused Scope of Work (SOW).

Recent investigation data indicate that polychlorinated biphenyls (PCBs) upstream of and hydraulically influenced by the Upriver Dam appear to be limited to the fine grained sediments behind the dam that are located in a narrow strip adjacent to the north bank of the impoundment. The work to be performed in accordance with this SOW is a focused remedial investigation (RI) to further evaluate the extent of PCBs in sediments deposited in and along a portion of the Spokane River influenced by the Upriver Dam and focused feasibility study (FS) tasks to evaluate potential cleanup actions to address PCBs. A site diagram depicting the Upriver Dam PCB Sediments Site is attached to the Consent Decree as Exhibit B. The work will incorporate, as appropriate, existing data and evaluations for this reach of the Spokane River, including pertinent information from the remedial investigation/feasibility study (RI/FS) recently prepared by the United States Environmental Protection Agency (USEPA) for the Coeur d'Alene Basin. Selection and implementation of a cleanup action by the Department is beyond the scope of the Consent Decree and this SOW. Amendments to this Scope of Work may be proposed and considered by the Department and Respondents in accordance with the provisions of Section XIV of the Decree. Any cleanup action alternatives directed at PCBs in sediments at the Upriver Dam site will be coordinated to the extent possible with USEPA's cleanup plans for the Spokane River, and with other river remedial efforts that may affect the feasibility of any such cleanup action.

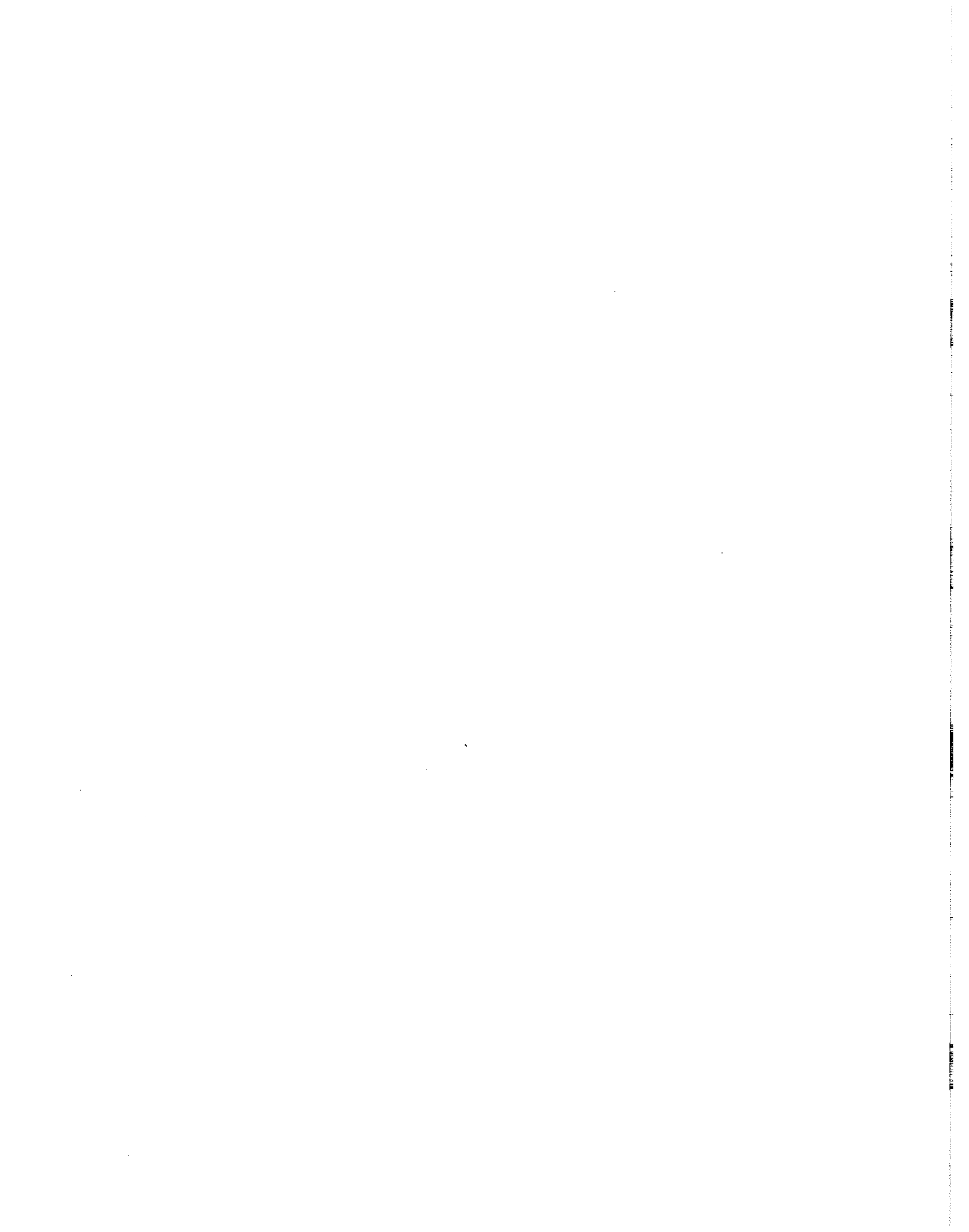


Concurrent with the work to be performed under this SOW, the Department is developing a Total Maximum Daily Load (TMDL) assessment to address PCBs in the Spokane River. The development of the TMDL requires estimates of the current and future loads from background, point source NPDES, storm-water and historic sediment sources to establish future Waste Load Allocations (WLA). TMDL field work and river studies (potentially including outfall, surface water, and other sampling) are scheduled to occur in the summer 2003. Kaiser is preparing a significant upstream industrial wastewater treatment plant upgrade project that will be implemented by spring 2003 and should positively impact the TMDL evaluation. Completion of a draft PCB TMDL Report is expected in the summer of 2004

Other hazardous substance investigation activities by the Department and USEPA are also proceeding in the Spokane River. Current information indicates the presence of hazardous substances (other than PCBs) at and upstream of the Site that are not associated with the Respondents. These other hazardous substances include, but are not limited to, organic wood waste decomposition products (such as 4-methylphenol and retene) and metals (such as zinc, arsenic, cadmium and lead). With respect to such metals contamination, the USEPA under the authority of CERCLA has independently investigated metals in the upper Spokane River. USEPA has designated the Spokane River as part of Operable Unit 3 in their Record of Decision. Metals-related contamination has been determined to be broadly distributed within the upper Spokane River including areas co-located with PCB-contaminated sediments behind Upriver Dam. The USEPA Record of Decision acknowledges that adequate information is not currently available to make decisions regarding final remedial action for subaqueous sediments at the Upriver Dam area. The remedies identified and anticipated by USEPA for metals contamination are capping or removal.

II. FOCUSED REMEDIAL INVESTIGATION/FEASIBILITY STUDY TASKS APPROACH

In accordance with WAC 173-340-350, the overall approach set out in this SOW involves focused sampling efforts followed by data compilation, development, evaluation, and report preparation. The work scope is intended to generate data for further development of the site conceptual model by



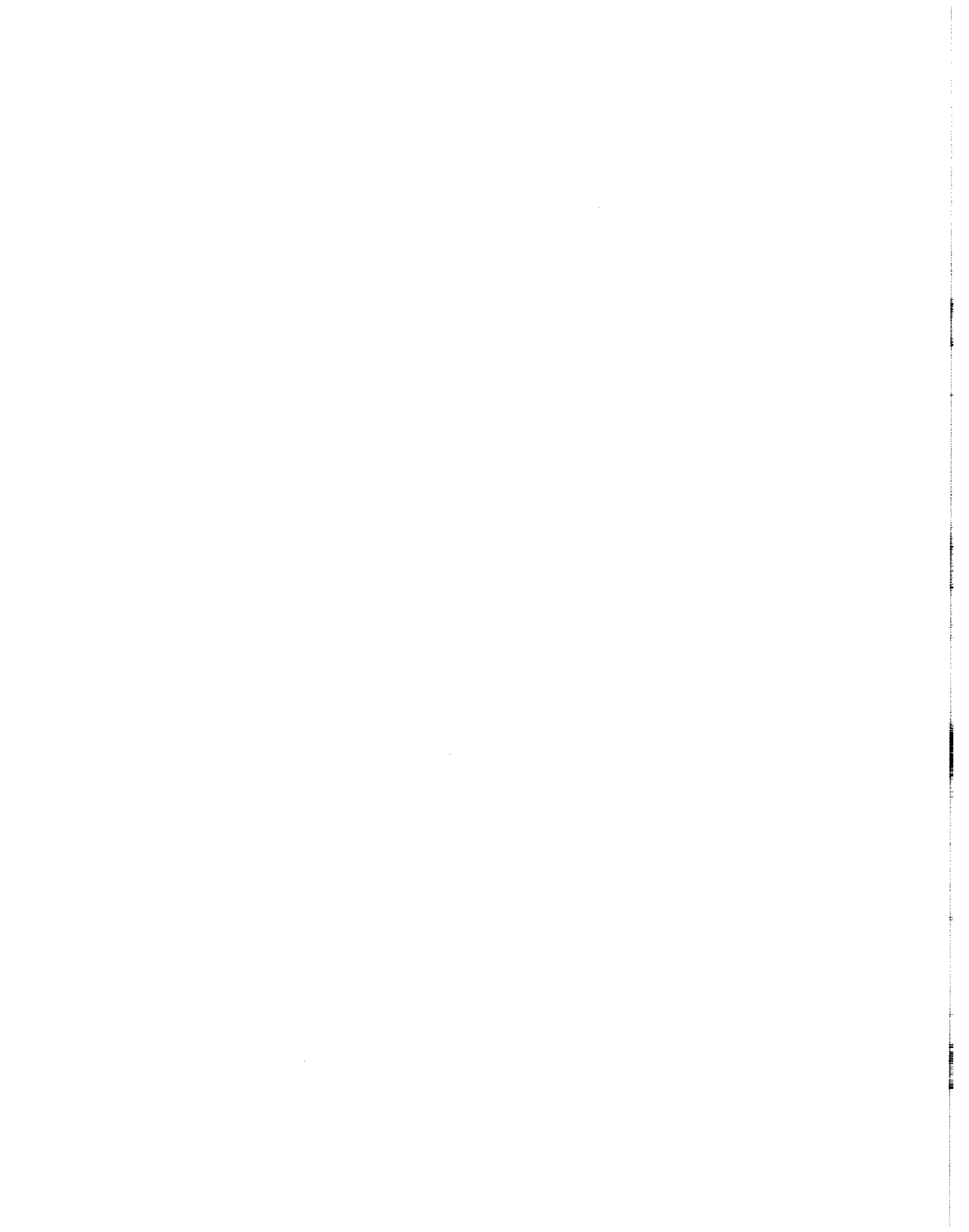
requiring targeted field sampling. To achieve this objective the work to be performed will be both focused and phased. In the initial phase, the Respondents will perform five focused field sampling investigation activities that will be staged according to the implementation Schedule (Exhibit C).

The focused Phase 1 approach is intended to provide sufficient data for characterizing sediments containing PCBs at the Site. The focused Phase 1 work will also provide information to assess baseline low-flow surface water quality conditions and groundwater quality conditions.

In Phase 2, information collected from the field investigations and existing information sources will be compiled to develop a conceptual model of the Site and for reporting the current understanding of PCBs at the Site. This information will be presented in a focused RI report.

In addition, a focused Feasibility Study (FS) to evaluate the effectiveness, implementability, cost, and other factors associated with PCB sediment cleanup action alternatives will be conducted consistent with WAC 173-340-350 and -360 as applicable. Alternatives will be screened, evaluated and refined based on data collected during Phase 1 and relevant and available information from USEPA's previous RI/FS for the Coeur d'Alene Basin. Remedial action technologies will be considered in the context of the general response actions and specific site conditions and screened using criteria in WAC 173-340-350(8). Appropriate technology and representative process option alternatives will be screened for implementation difficulty, applicability to the site conditions, reliability, ability to meet the remedial action objectives, preliminary cleanup standards, timeliness, and general cost. The screening and evaluation information will be presented in a focused FS report.

In view, however, of the different general sediment contaminant classes in the Spokane River sediment (e.g. PCBs and metals), future cleanup action decisions will to the extent possible consider how cleanup actions proposed for one class of contaminants may exacerbate or preclude remedial actions potentially



required for other classes of contaminants, or conversely consider complementary aspects. As a consequence, it may not be possible for the Department to select a remedy as described in WAC 173-340-360 until the USEPA coordinates with the Department to identify a remedy for Spokane River sediments as part of the Coeur d'Alene Basin Cleanup. Therefore, the focused FS for sediments will be undertaken as part of this SOW and the Department will not require a recommended preferred remedy in the FS report.

III. WORK TO BE PERFORMED

PHASE 1: CONDUCT INITIAL RI FIELD SAMPLING WORK

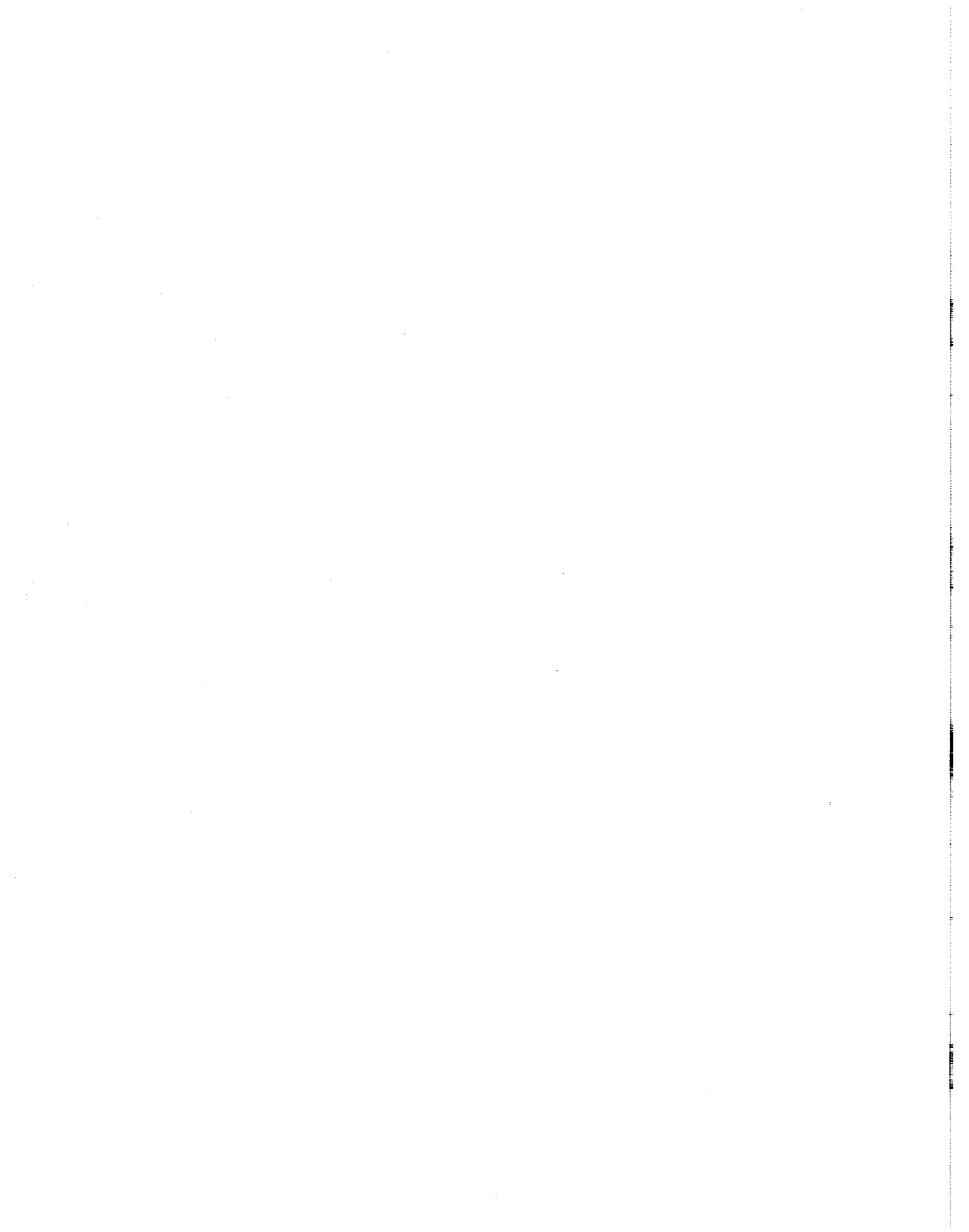
A. TASK DESCRIPTION

The Respondents will complete the focused RI/FS tasks set out in this SOW in a phased manner. Phase 1 tasks will include targeted RI field sampling tasks timed to coincide with the seasonal river flow and investigate undefined conditions. Phase 2 tasks will include the compilation and review of existing data and Phase 1 RI field sampling data. Information collected will be used to develop a current understanding of conditions at the Site. Phase 2 will also include the preparation of the focused RI and FS reports. The corresponding project schedule for the activities presented in this Scope of Work (SOW) is presented in the Schedule attached to the Consent Decree as Exhibit C.

Based on available data, an initial targeted RI field program will be implemented to assess sediment and selected water conditions at the site. Dependent on the task, the field work will be timed to coincide with seasonal low river flow conditions (summer), seasonal precipitation run-off conditions (fall), or peak river flow conditions (spring).

The following five Phase 1 RI field sampling activities will be performed:

- (1) Baseline seasonal surface water monitoring;
- (2) Bathymetric survey, bottom profiling, and structural summary;
- (3) Surface sediment sampling of potential fine sediment deposition areas between Upriver



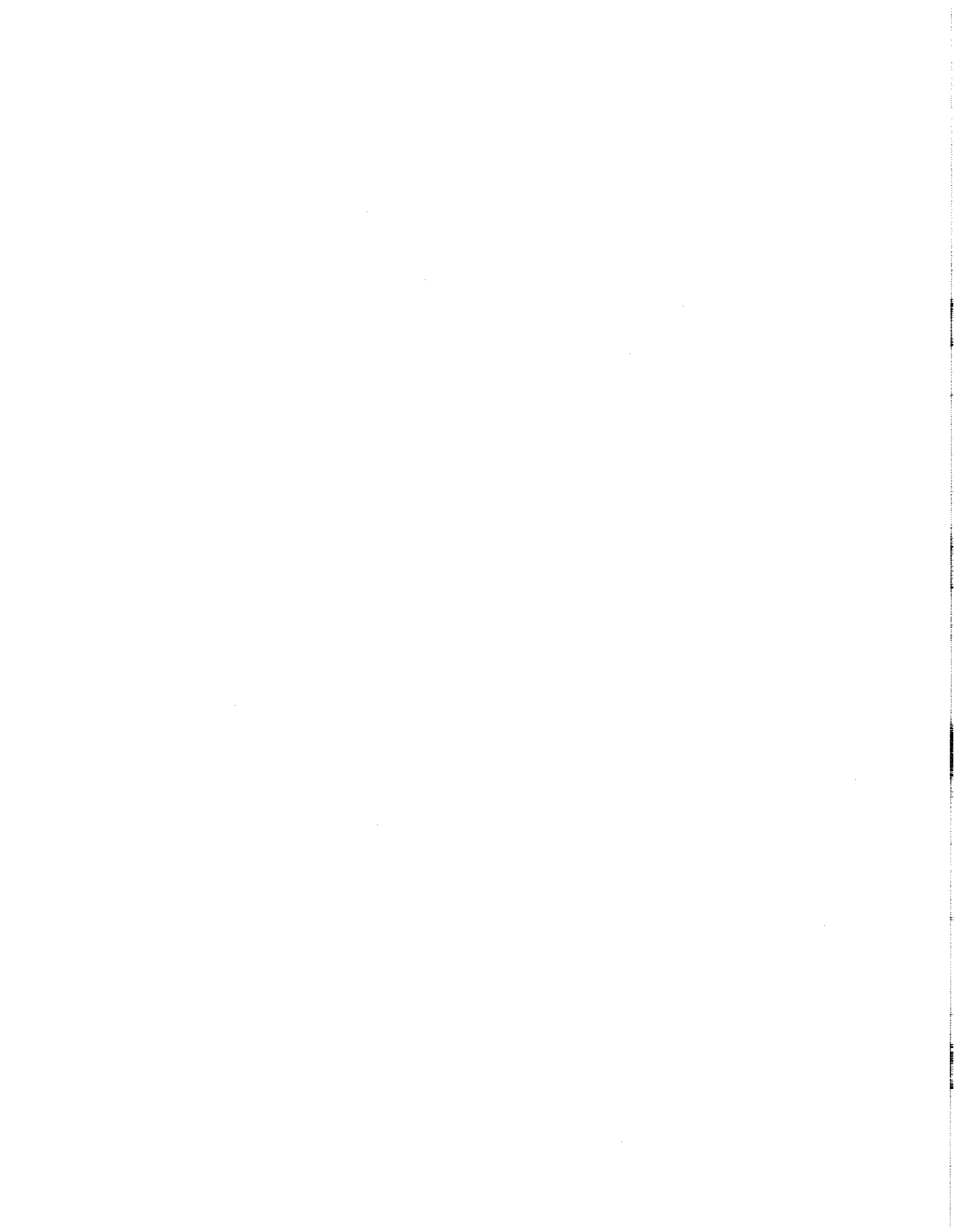
Dam and RM 81.5 (referred to as “Dam to RM 81.5 Sediment Sampling”);

- (4) Surface sediment sampling of potential fine sediment deposition areas near RM 84 (referred to as “Donkey Island Area Sediment Sampling”); and
- (5) Sampling of City of Spokane production well and representative monitoring well in hydraulic connection with the Upriver Dam area and potentially other wells to be identified that may be influenced by the river in this area

Activity 1. *Baseline Seasonal Surface Water Monitoring.*

The purpose of this task is to provide estimates of current PCB instantaneous and average concentrations and loadings in the river to establish baseline conditions. The sampling may also assist in determining if the sediment deposit behind Upriver Dam is a readily measurable source area for PCBs to the river water column. The monitoring will consist of one round of summer low flow surface water sampling and one round of fall/winter precipitation period surface water sampling. The use of permeable membrane devices (e.g., lipid bags or similar) also will be applied. Analyses will include appropriate secondary parameters such as total suspended solids and may include filtered and non-filtered samples. Three sampling sites have been selected for monitoring. The specific locations and rationales for the selected sampling sites are as follows:

- a. **Plante’s Ferry (approximately RM 84.8)*** will provide water quality data downstream of known or potential industrial and municipal discharge points and aquifer inputs, and upstream of the Upriver Dam impoundment study area. For each of the sampling events (low flow and fall/winter rainy season) one grab sample and associated duplicate will be collected for analysis from the center of the channel in a free flowing segment
- b. **Upriver Dam River Channel at Approximately RM 82.*** This will provide a station immediately upgradient of PCB-contaminated fine-grained sediments residing near the dam. For each of the sampling events (low flow and fall/winter rainy season) up to 3 samples will be collected in a representative manner for analysis (e.g., one from the center and one from each side of the channel in the Upriver Dam pool segment)

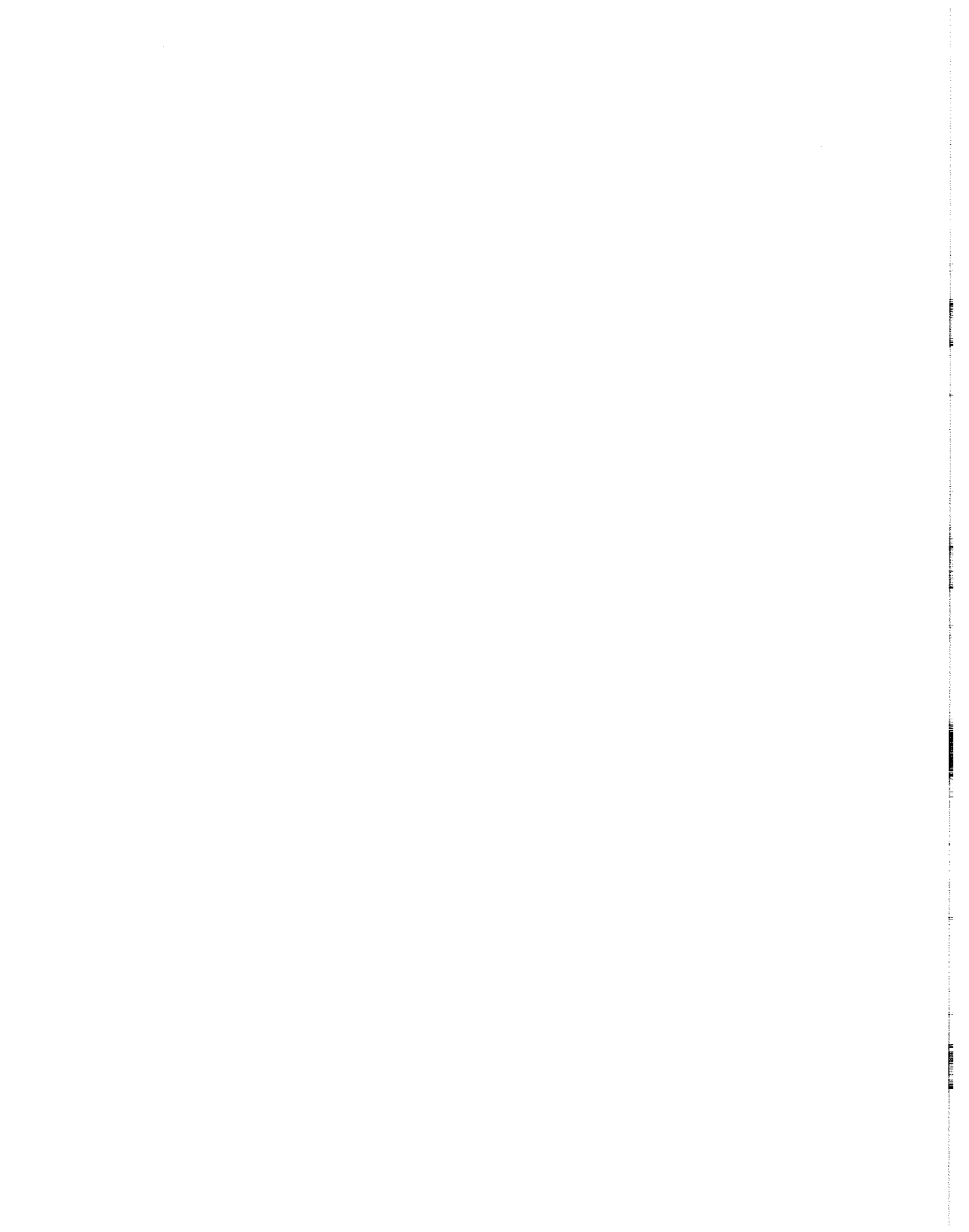


- c. **Downstream of Upriver Dam Powerhouse (approximately RM 79.5) or Near the Pen Stock Intake.** This sampling station will provide downstream water quality data to assess changes that may result from the Upriver Dam sediments. For each of the sampling events (low flow and fall/winter rainy season) one grab sample and an associated duplicate will be collected for analysis from the center of the channel or diversion channel in a flowing segment

PCBs will be measured directly from grab samples collected at the sampling sites utilizing EPA Method 1668A to provide detailed information on all PCB congeners. Permeable membrane sampling devices also will be installed either coincident with the grab samples or independently. Two permeable membrane devices will be deployed for each of the three locations (Plante's Ferry, Upriver Dam River Channel/RM82, and either Downstream of the Powerhouse or near the Pen Stock Intake). Using available flow gaging information and powerhouse records, river flow will be estimated at each sampling location.

Activity 2. *Bathymetric Survey, Bottom Profiling and Structural Summary.*

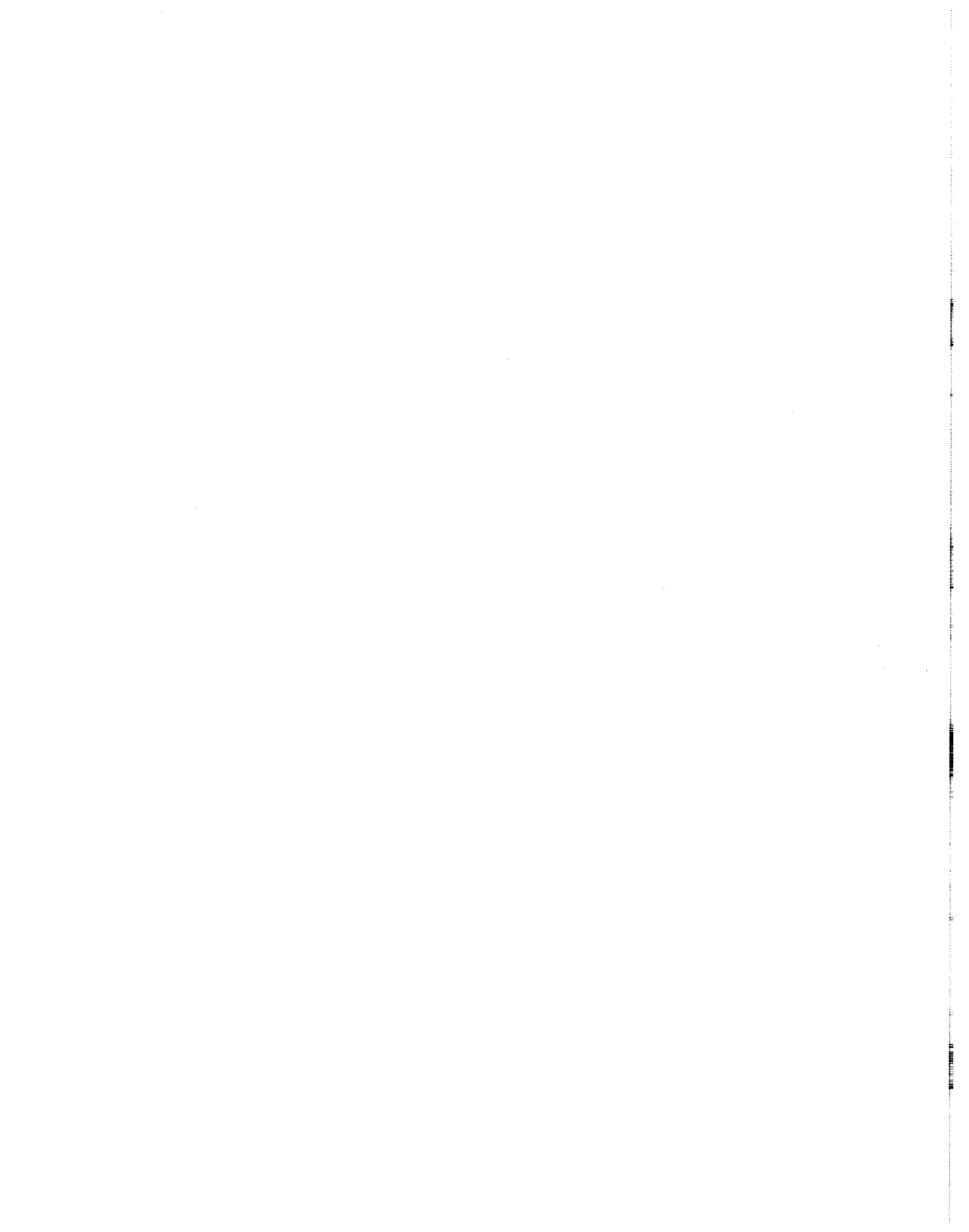
The purpose of this task is to develop a timely, detailed description of the bathymetry in the study area near the known PCB-containing sediments located behind Upriver Dam. This information will assist in the preparation of direct, physical sampling and testing of sediments. The bathymetry of this area has been investigated during other field investigations, and this existing information will be reviewed and compiled. As necessary, the additional bathymetric data will be collected following US Army Corps of Engineers specifications (Class I survey - EM 1110 2 1003; Corps 1994). As needed, bathymetric surveys will be performed between the Upriver Dam structure and RM 81.5, and between RM 83.5 and RM 84 (Donkey Island area). Coincident with the bathymetric work, bottom profiling will be conducted with available and appropriate radar/sonar technique to distinguish hard-bottom substrates (i.e., cobble and gravel) from softer, finer-grained silt and sand substrates that could retain PCBs. Skilled divers also will drift the channel between the dam structure and RM 81.5 to directly investigate local fine-grained deposits that are appropriate for further assessment of PCBs. Coverage based on the combined approaches will have a resolution goal of identifying substrate deposits having a generally continuous dimension in any direction of 50 feet or greater, or a minimum surface area of 250 square feet. This will



be pursued using primarily a 100-foot remote sensing transect line spacing approach combined with visual surveys and/or physical sampling. Following the surveys the thickness, texture, and extent of fine-grained sediments identified will be investigated using coring, grab, visual, and/or other appropriate techniques to assess the extent and magnitude of PCBs in sediments. Information on near dam features such as the concrete slab installed in the early 1990s shall be incorporated into the data base. Plan and cross sectional drawings shall be developed of the combined data. This information will be used to provide plan and cross sectional drawings, including contamination and textural overlays to describe current site conditions.

Activity 3. *Dam to RM 81.5 Sediment Sampling*

The existing data indicate that PCB-containing sediments are limited to a relatively narrow, fine-grained deposit located behind Upriver Dam. The objective of this task is to investigate other depositional areas between the dam structure and RM 81.5, and where present, to determine if the depositional areas contain PCBs above preliminary cleanup levels. The results of the bathymetry survey, bottom profiling and/or visual examination shall be used to identify potential depositional areas and sediments in the channel between the dam structure and RM 81.5. If depositional areas are found, 1 to 6 samples will be collected from each of the areas. Surface samples shall be collected from the upper 0 to 10 cm layer and analyzed for PCB Aroclors (using EPA Method 8080), total organic carbon, and grain size. TPH and semi-volatile compounds will be evaluated from selected samples based on visual inspection with up to 2 samples selected for analysis from each area with 10 or less samples anticipated. Laboratory samples will be archived to allow for additional focused follow-up analysis for organic analytes, if appropriate. In addition, a congener-specific analysis will be performed on selected, representative sediment samples to further an understanding of the fate and transport and potential risks of PCBs in the river system. Results shall be indicated as overlays on plan drawings of the area. This sampling and coring work will only be conducted during safe weather, river flow, and visibility conditions.



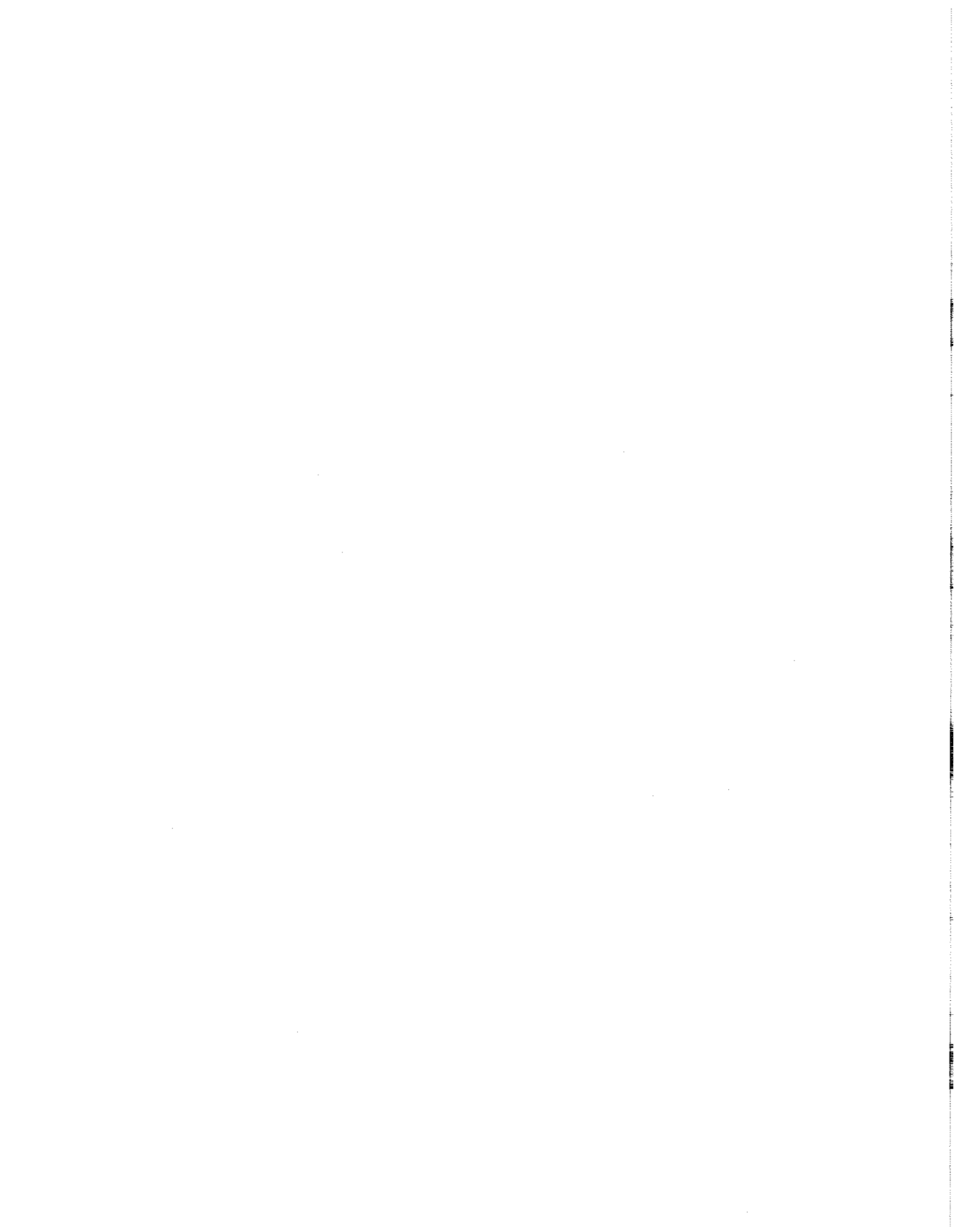
Activity 4. *Donkey Island Sediment Sampling.*

The objective of this task is to determine if there are depositional areas near Donkey Island, and if so, to determine if any depositional area contains PCBs above preliminary cleanup levels. The results of the bathymetry survey, bottom profiling and/or visual examination shall be used to identify potential depositional areas and sediments near Donkey Island. If depositional areas are found, up to 6 samples will be collected from such areas. Surface samples shall be collected from the upper 0 to 10 cm layer and analyzed for PCB Aroclors (using EPA Method 8080), total organic carbon and grain size. TPH and semi-volatile compounds will be evaluated from selected samples based on visual inspection; up to 2 samples may be selected for analysis from each area. In addition, a congener-specific analysis will be performed on selected samples. Up to 2 core samples to a maximum thickness of 100 cm may also be collected in a side channel or from shoreline soils

Results shall be indicated as overlays on plan drawings of the area. This work will likely need to be conducted before high seasonal river flows which frequently inundate the flood channel

Activity 5. *Sampling of City of Spokane Production Well, Representative Monitoring Well, or Other Wells of Interest.*

The City of Spokane operates production wells in the vicinity of the Spokane River that may be hydraulically influenced by the river. Specifically, surface water may seep from the river bed into groundwater under the influence of the City of Spokane production wells. The objective of this task is to evaluate the potential for contaminant mass transfer from the river bed to wells by testing for PCBs in water from the City of Spokane drinking water or monitoring wells during summer low flow conditions and spring peak run-off conditions. Existing information from previous TMDL studies of the Spokane River (e.g., phosphorus attenuation study and TMDL development, and well head protection studies) may assist in the selection of appropriate monitoring/production wells for sampling. Duplicated EPA Method 1668A 2-liter extraction samples shall be collected from at least one anticipated city production well and an anticipated one representative monitoring well. Further, a well inventory within a ½-mile



radius of the Upriver Dam will be conducted. Up to 3 additional wells may be sampled if appropriate, based on this inventory.

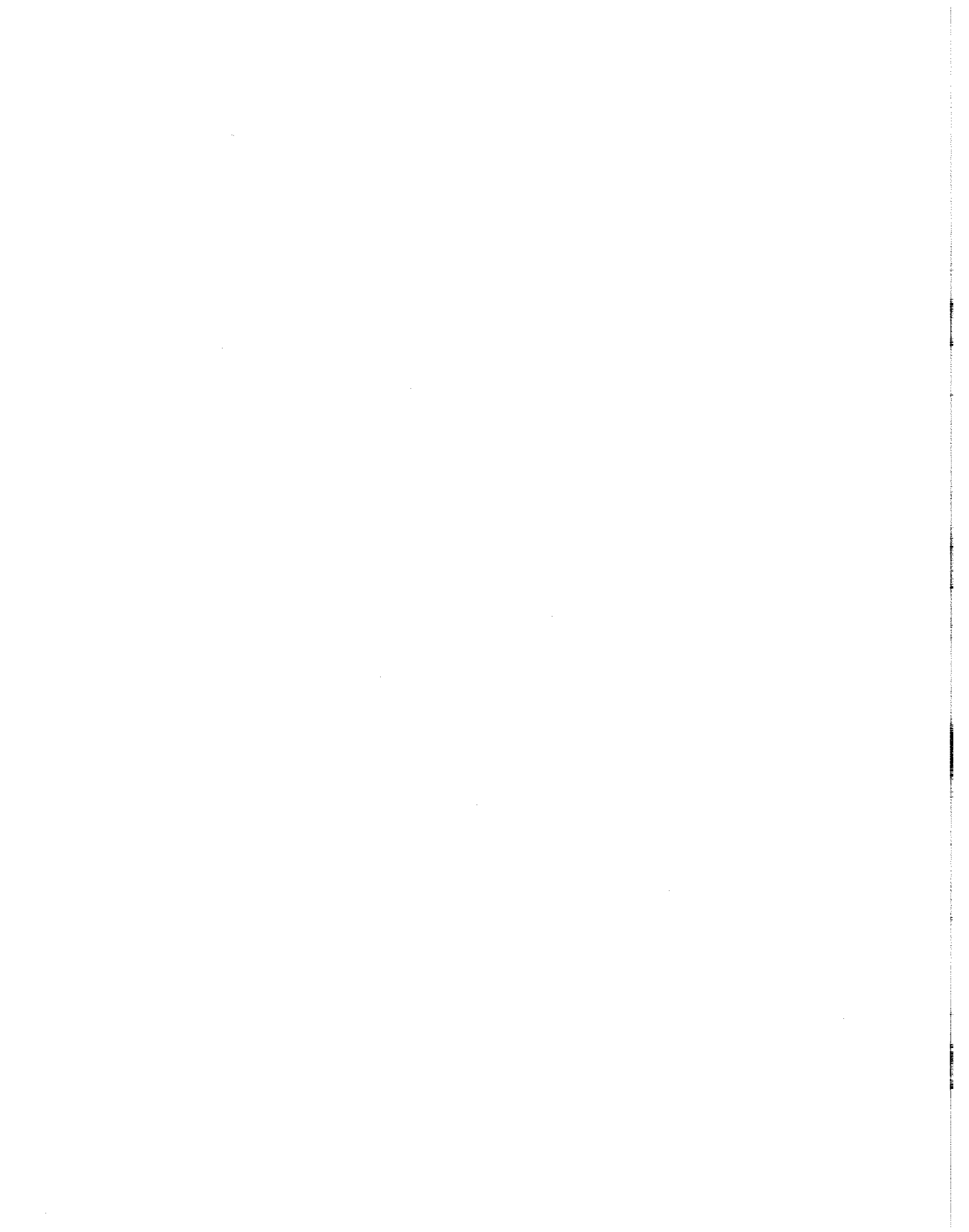
B. TASK DELIVERABLES

The Phase 1 deliverables are sampling and analysis plans (SAPs) and quality assurance project plans (QAPPs) for the investigation (outlined in the preceding section of this SOW), progress reports and the timely delivery of data summary tables from the five Phase 1 RI activities. The field activities and plan submittals are further defined and summarized in the Schedule (Exhibit C). The initial sampling and analysis plan and quality assurance project plan (SAP 1 and QAPP 1) will incorporate activities 1, 2, and 5. A second set of plans (SAP 2 and QAPP 2) will address activities 3 and 4 and other appropriate or potentially outstanding RI action items identified by the Respondents and Department.

The SAP and QAPP Planning documents will be developed in accordance with MTCA regulatory requirements and applicable guidance. The progress reports will be prepared and submitted to the Department in accordance with requirements for progress reports in the Consent Decree, Section XI. The SAPs, QAPPs, and the progress report submittals will include the following information:

1. *Phase 1 RI Field Investigation Sampling and Analysis Plans (SAPs)*. Draft and final SAPs will be prepared for the Phase 1 RI field sampling investigations. Project-specific activities may be incorporated into a single Phase 1 SAP document. The SAPs will serve as field sampling plans and will include, as applicable, sections and subsections addressing:

- Specific sampling protocols and procedures
- Sampling types, locations, and frequency
- Field screening and analyses
- Physical parameter measurements
- Equipment and procedures
- Sample handling and analysis
- Tasks and schedules
- Access considerations
- Decontamination procedures
- Proposed Subcontractors
- Investigation-derived waste handling, storage, and disposal



Draft and final SAPs will be submitted to the Department for review and approval in accordance with the Schedule attached as Exhibit C to the Consent Decree.

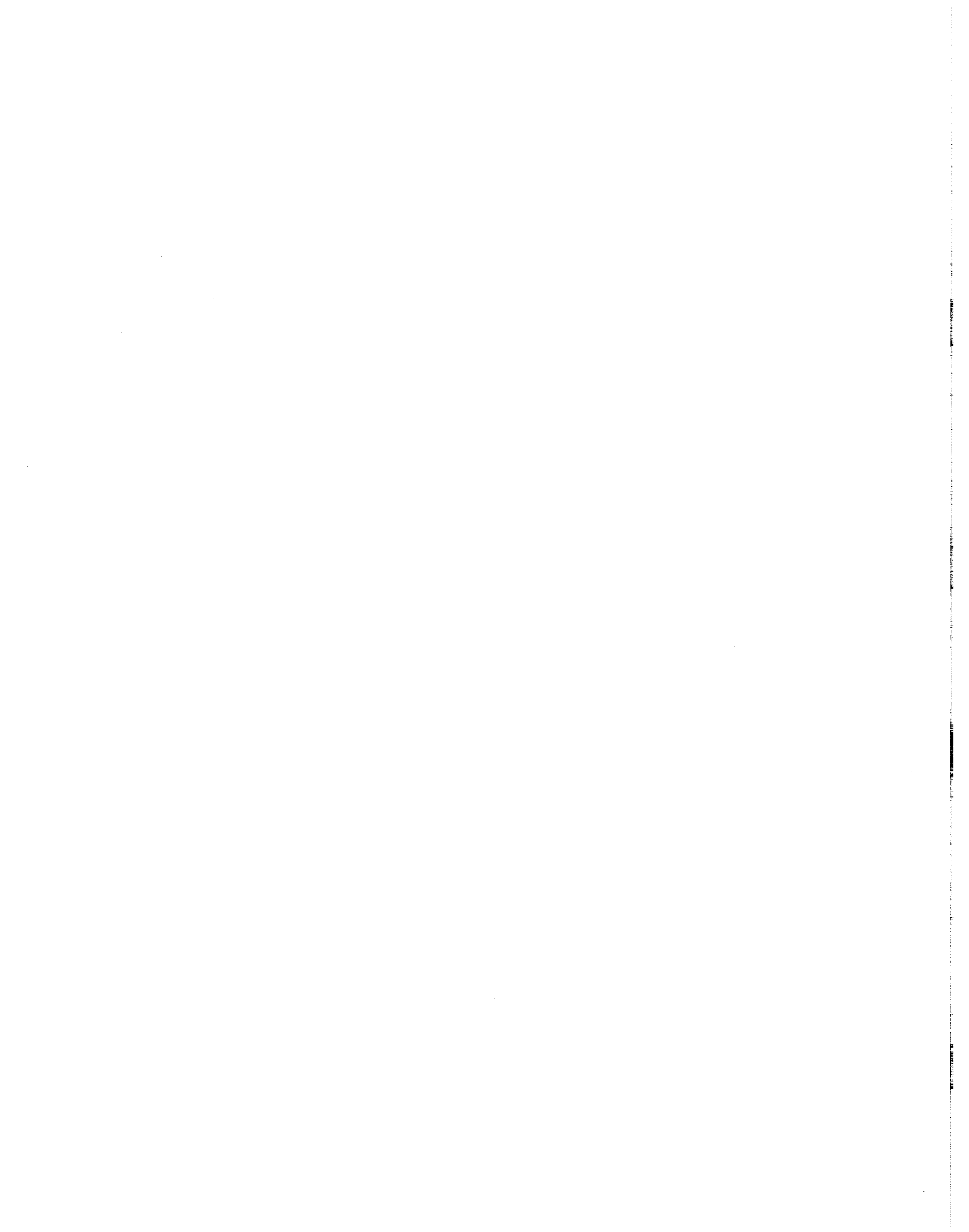
2. ***Phase 1 RI Field Investigation Quality Assurance Project Plan and Amendments.*** Draft and final QAPPs will be prepared for the Phase 1 RI field sampling investigations. As applicable, the QAPPs and amendments will describe the purpose, objectives, organization, responsibilities, activities, measurement requirements, and quality assurance control procedures that will be used to complete the Phase 1 RI field investigation. The QAPPs may be incorporated into the SAP documents. The QAPPs will include, as applicable, sections and subsections addressing:

- Sample custody procedures
- Data Quality Objectives
- Calibration procedures for field and laboratory testing
- Analytical procedures
- Internal quality control
- Data reduction, validation, and reporting
- Performance and system audit considerations
- Preventative maintenance
- Procedures and project goals for precision, accuracy
- Representativeness, completeness, and comparability (PARCC) parameters

Draft and final QAPPs will be submitted to the Department for review and approval in accordance with the Schedule attached as Exhibit C to the Consent Decree

3. ***Progress Reports.*** Progress reports will be prepared and submitted to Ecology every other month during implementation of this SOW. Progress reports will include the following information as appropriate:

- A list of on-site activities that have taken place during the previous two months
- Description of any deviations from required tasks not otherwise documented in project plans or amendment requests
- Description of all deviations from the Schedule during the previous two months and any planned deviations in the upcoming two months
- For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule



- All raw data (including laboratory analysis and data summary tables) received during the past two months and an identification of the source of the samples (Data also will be provided to the Department promptly upon request)
- A list of deliverables submitted during the previous two months and to be submitted in the upcoming two months

Progress reports will be submitted to the Department's project coordinator by the fifteenth day of the month in which they are due after the effective date of the Consent Decree

PHASE 2/TASK 1 — CONDUCT DATA REVIEW AND DEVELOP CONCEPTUAL SITE MODEL

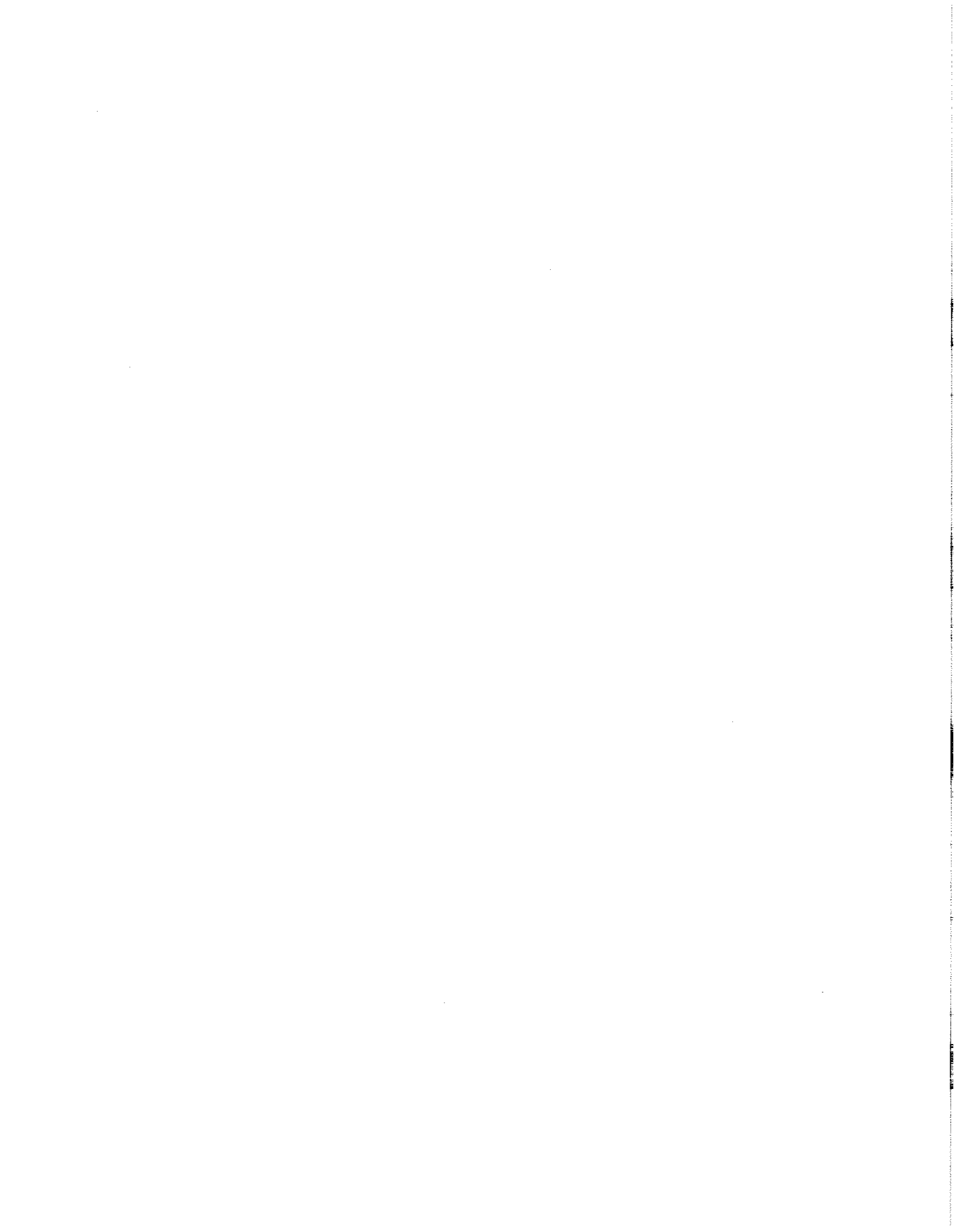
The first Phase 2 task will be the compilation, assessment and review of existing information and data, including information obtained from the Phase 1 RI field sampling investigations. The following information sources will be reviewed to compile and update previously collected or existing data:

- Department of Ecology records
- City of Spokane documents
- Department TMDL development information as available
- EPA Basin Cleanup documents
- Other relevant public agency repositories or records
- Well Records

Data review will include a usability and quality assessment of existing analytical records, documentation, hydrogeologic data, and geophysical data. The compiled data and information obtained from Phase 1 will be used to develop the conceptual model of site conditions for incorporation in a focused RI report. Knowledge gained by data review and development of a conceptual model will be used to identify potential data gaps, support subsequent focused FS tasks, guide further actions which may be needed at the site, and be made available to support coordinated decision-making with EPA Coeur d'Alene Basin cleanup and Department TMDL efforts.

PHASE 2/TASK 2 — PREPARE FOCUSED REMEDIAL INVESTIGATION REPORT

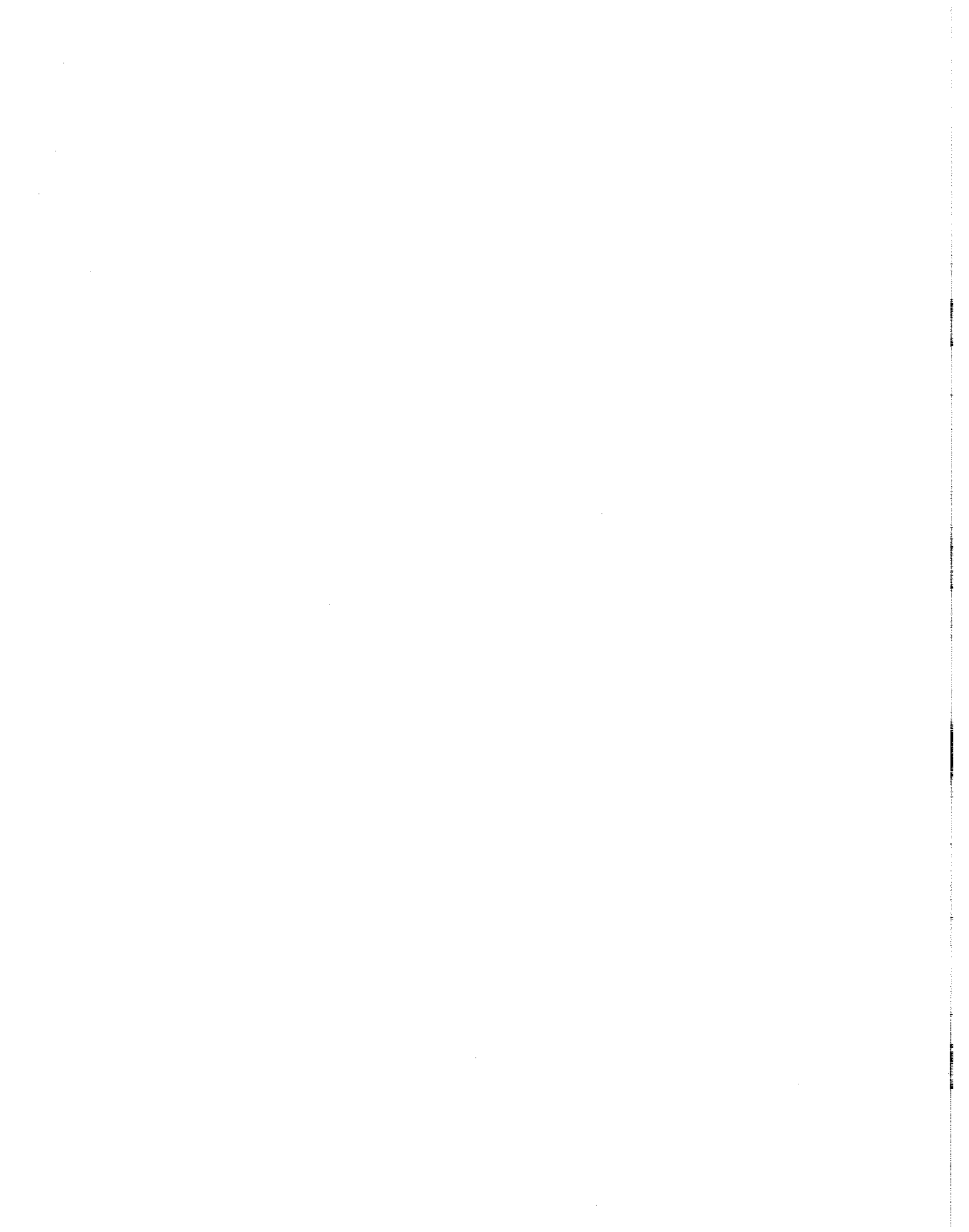
The results of the Phase 1 and Phase 2 tasks will be documented in a focused RI report and submitted to the Department for review, editing, and modification prior to approval. As described below, a focused FS Report will sequentially follow the RI Report. The draft-final focused RI report and FS (see Task 3)



will be published for public comment as defined under WAC 173-340-600 and in the Public Participation Plan, Exhibit D of the decree. Following public comment the report will be finalized or revised, as required by the Department. At a minimum the report will include sections and subsections addressing:

- Environmental Concerns
- Site Description and History
- Previous Investigations and Spills Summary
- Purpose and Objective of the Focused RI
- Site Features and Conditions (including engineered structures)
- Focused RI Activities and Results
- Interpretation and Discussion of Results
- Conceptual Site Models
- Contaminants of Concern
- Potential Receptors
- Conclusions
- Recommendations

The report will include quantities, locations, and concentrations of identified analytes. A recommendations section will identify data gaps, evaluate the need for additional RI or feasibility study related field or laboratory tasks, and recommend further actions which may be needed at the Site. Additional tasks may be performed by the Respondents if they are first agreed upon by the Department and Respondents. For performance of additional tasks the Respondents or Department may require a written stipulation entered by the Court in accordance with Section XIV of the Consent Decree. All applicable analytical laboratory records, data validation reports, logs, and similar documentation will be provided as appendices to the report or delivered in manageable, organized packages and formats to the Department for addition to the project site file, and for entry into the Department's SEDQUAL data management system. The data will meet the submittal requirements defined in Section X of the Consent Decree and also will be of an appropriate accuracy and format to be readily integrated in the GIS-based format Arcview (or similar compatible software).

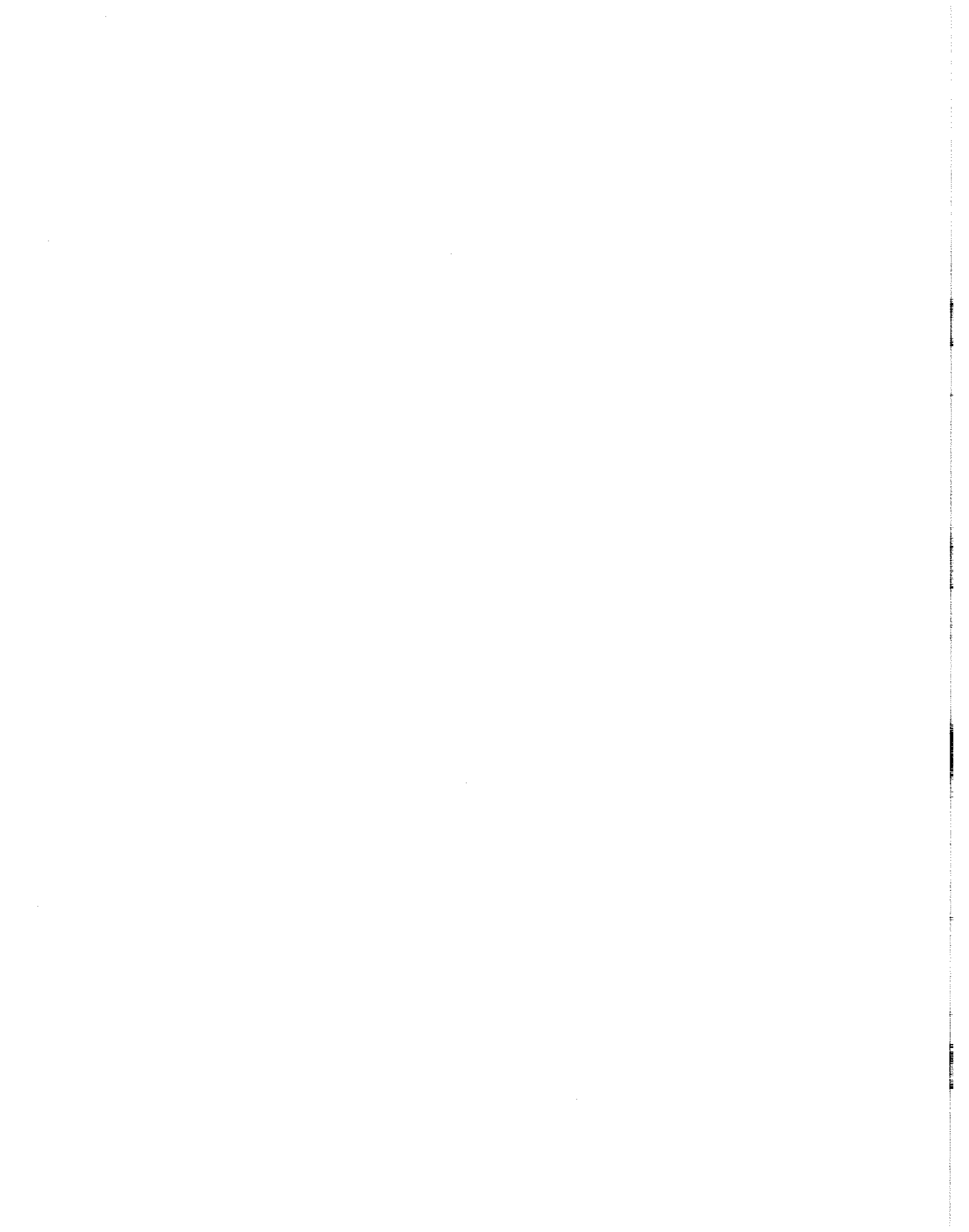


PHASE 2/TASK 3: FOCUSED FEASIBILITY STUDY

A. TASK DESCRIPTIONS.

A Focused FS will be initiated concurrently with Phase 2 data review and report preparation activities. Current information indicates that PCB accumulations of potential concern appear to be limited to the fine grained sediments behind the dam that are located in a narrow strip adjacent to the north bank of the impoundment. The focused FS will consider source control/natural recovery, capping, and dredging options for this area and other areas that may be discovered based on data collected during the preceding phases and, as applicable, USEPA's recent RI/FS for the Coeur d'Alene Basin. A focused evaluation of the effectiveness, implementability, cost, and other factors consistent with WAC 173-340-350 and -360 associated with appropriate sediment remedy options (based on data collected during Phase 1 and applicable information from USEPA's previous RI/FS for the Coeur d'Alene Basin) will be conducted. In conjunction with the focused FS evaluation, a conceptual design-level cost estimate (-30/+50) will be developed for each of the options. The focused FS evaluation of the feasibility and costs associated with source control/natural recovery, capping, and dredging will provide information on potential future cleanup actions for the Upriver Dam area that potentially can be integrated with USEPA's Coeur d'Alene Basin RI/FS, and, as necessary or appropriate, with other remedial activities occurring in the Spokane River.

The focused FS will include a presentation of remedial action objectives (RAOs), a presentation of preliminary cleanup levels, an ARARs assessment, recommendations for treatability studies if appropriate, and a focused assessment of alternatives using requirements defined by the Model Toxics Control Act and implementing regulations, including WAC 173-340-350(8) and 370 as applicable. The remedial alternatives will be grouped into those actions which address contaminant treatment and reduction, management of migration, institutional controls, or other actions to satisfy sediment cleanup requirements. Screening will be performed to potentially reduce the number of alternatives for the final



evaluation in accordance with WAC 173-340-350(8)(b). This screening will describe technologies or remedial action alternatives to be carried forward or eliminated from further evaluation.

B. TASK DELIVERABLES

A technical memorandum, to be approved by the Department, will summarize the results of a preliminary FS screening of alternatives consistent with the RAOs. The memorandum will address RAOs and present technologies or remedial action alternatives to be carried forward in the focused FS and evaluated. Actions which may have some marginal applicability will be evaluated in the technical memorandum to the degree necessary to support a decision to either include or exclude the action from further consideration. The technical memorandum will be submitted to the Department prior to preparing the focused FS report and will be reviewed and refined as appropriate by the Department prior to drafting of the FS report.

The focused FS report discussing the results of the FS tasks will be prepared and submitted to the Department for review, editing, and modification prior to approval. The focused FS report may incorporate, by reference, pertinent sections of the USEPA's recent RI/FS and other USEPA documents prepared for the Coeur d'Alene Basin as appropriate. The evaluation will incorporate threshold and other requirements defined under WAC 173-340-360(2)(a)&(b) to the extent practicable given the availability of information concerning remedy selection for the USEPA Basin cleanup. The focused FS report will also include a section summarizing or referencing the results of the preliminary screening of alternatives consistent with WAC 173-340-350(8)(b). The Department may require that the draft-final FS report undergo further revision following public comment, prior to becoming finalized.

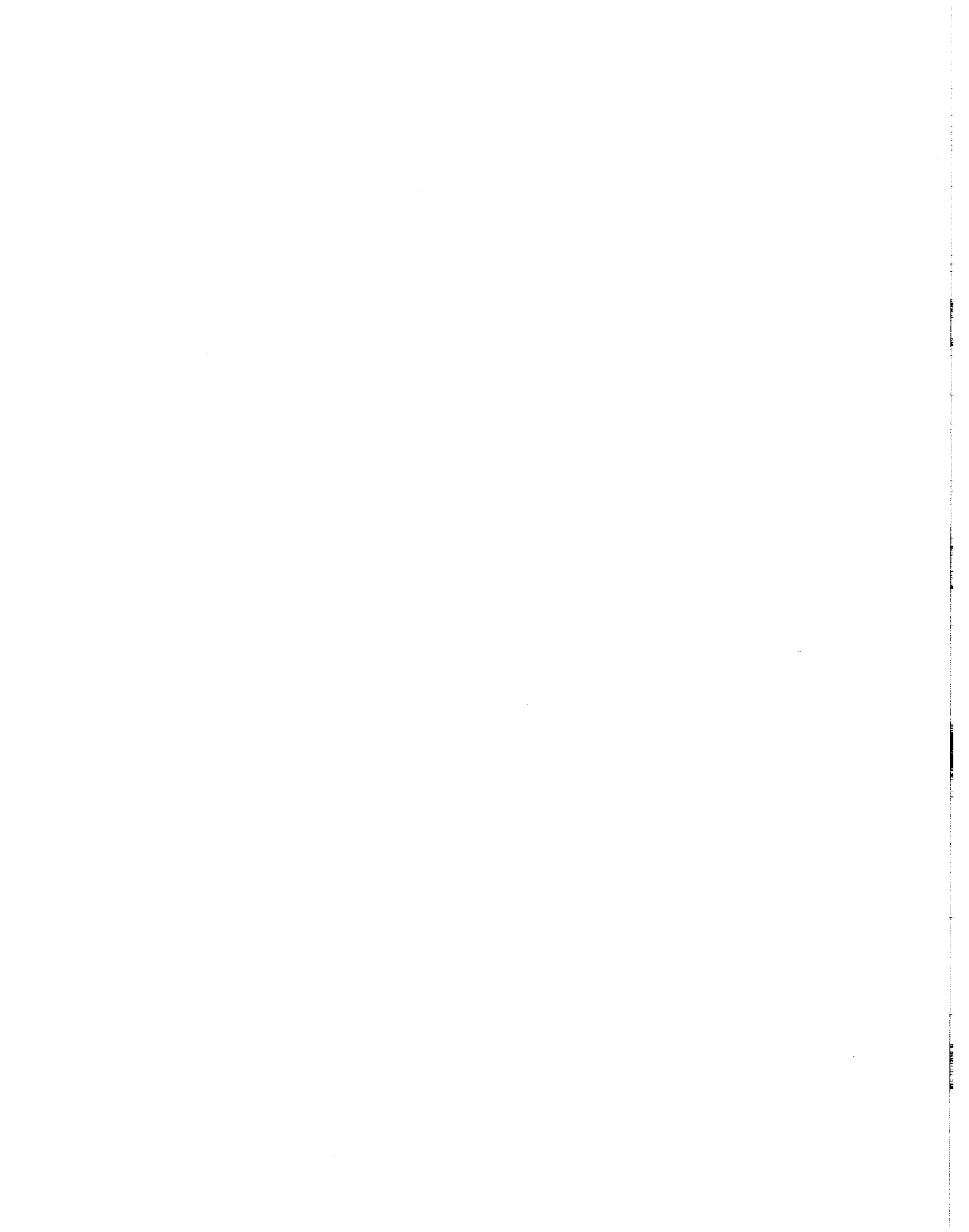


EXHIBIT C - SCHEDULE FOR COMPLETING WORK

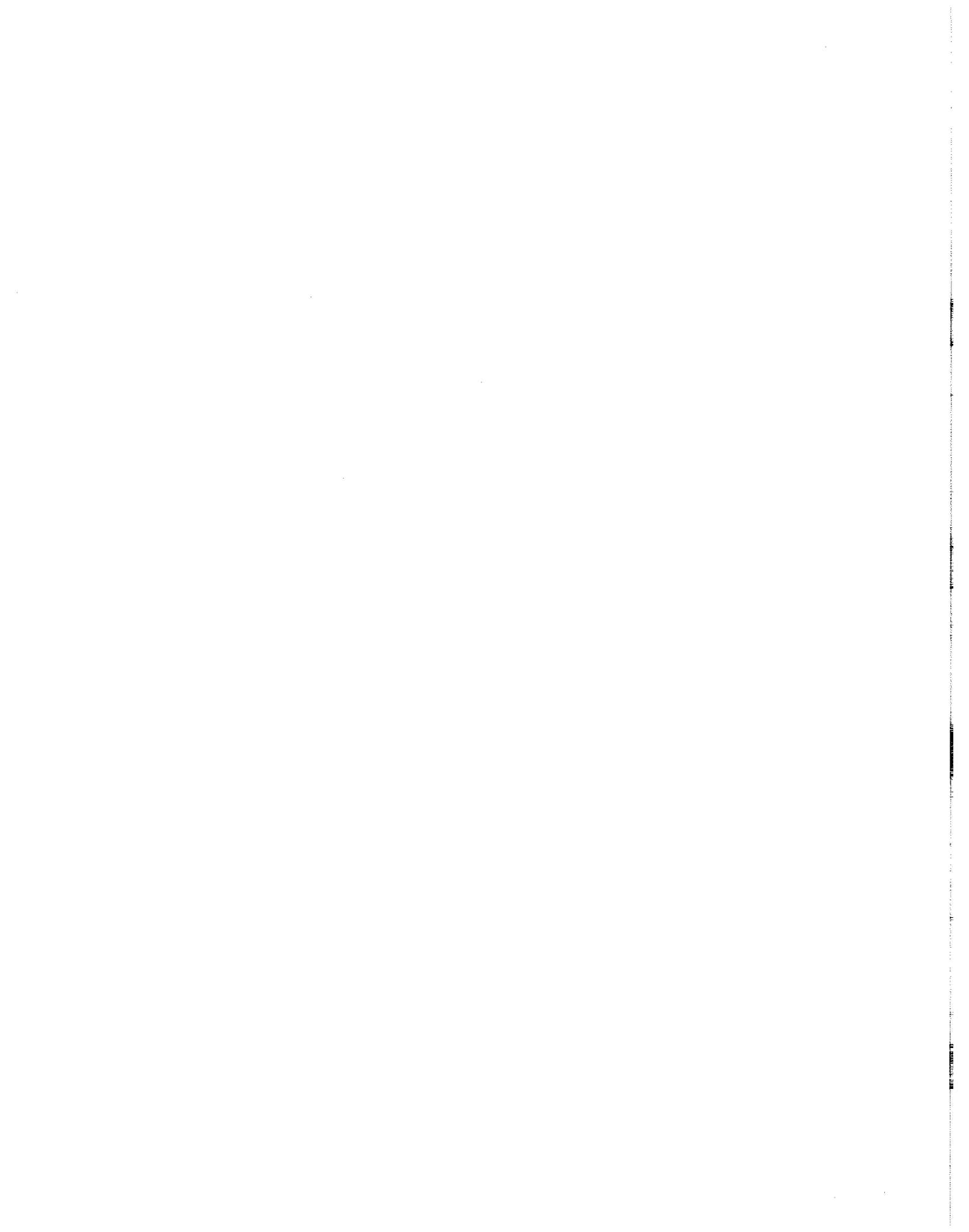


EXHIBIT C – Schedule

SCHEDULE AND DELIVERY REQUIREMENTS FOR SCOPE OF WORK¹

FOCUSED RI/FS TASKS	TIMELINE
<p>1. Respondents submit the initial Sampling and Analysis Plan (SAP 1) and Quality Assurance Project Plan (QAPP 1) drafts for the collection and analysis of the following RI activities:</p> <ul style="list-style-type: none"> • Activity 1: Baseline Surface Water Monitoring • Activity 2: Bathymetric Survey, Bottom Profiling, And Structural Summary • Activity 5: City Production and Representative Monitoring Well Sampling and Well Inventory 	<p>1. Deliver draft SAP 1 and QAPP 1 within 45 days of consent decree effective date.</p>
<p>2. Respondents submit final SAP 1 and QAPP 1 for:</p> <ul style="list-style-type: none"> • Activity 1: Baseline Surface Water Monitoring • Activity 2: Bathymetric Survey, Bottom Profiling, And Structural Summary • Activity 5: City Production and Representative Monitoring Well Sampling and Well Inventory 	<p>2. Deliver final SAP 1 and QAPP 1 for Department approval within 30 days of receiving Department comments on the drafts.</p>
<p>3. Respondents perform the following winter/spring season RI field activity:</p> <ul style="list-style-type: none"> • Activity 2: Bathymetric Survey, bottom profiling, and structural summary 	<p>3. Perform bathymetric survey, profilings and structural summary field work prior to water year spring freshet (peak river flow) in 2003 following Department approval of the final SAP 1 and QAPP 1 components concerning Activity 2. If Department approval of these components of the plans occurs on or after March 30, the activity may be performed during the following summer low river flow conditions, if necessary ².</p>

¹ The times shown are deadlines for completing the actions. The parties to this Consent Decree may, but are not required to, complete the actions listed in this Schedule earlier than the deadline shown

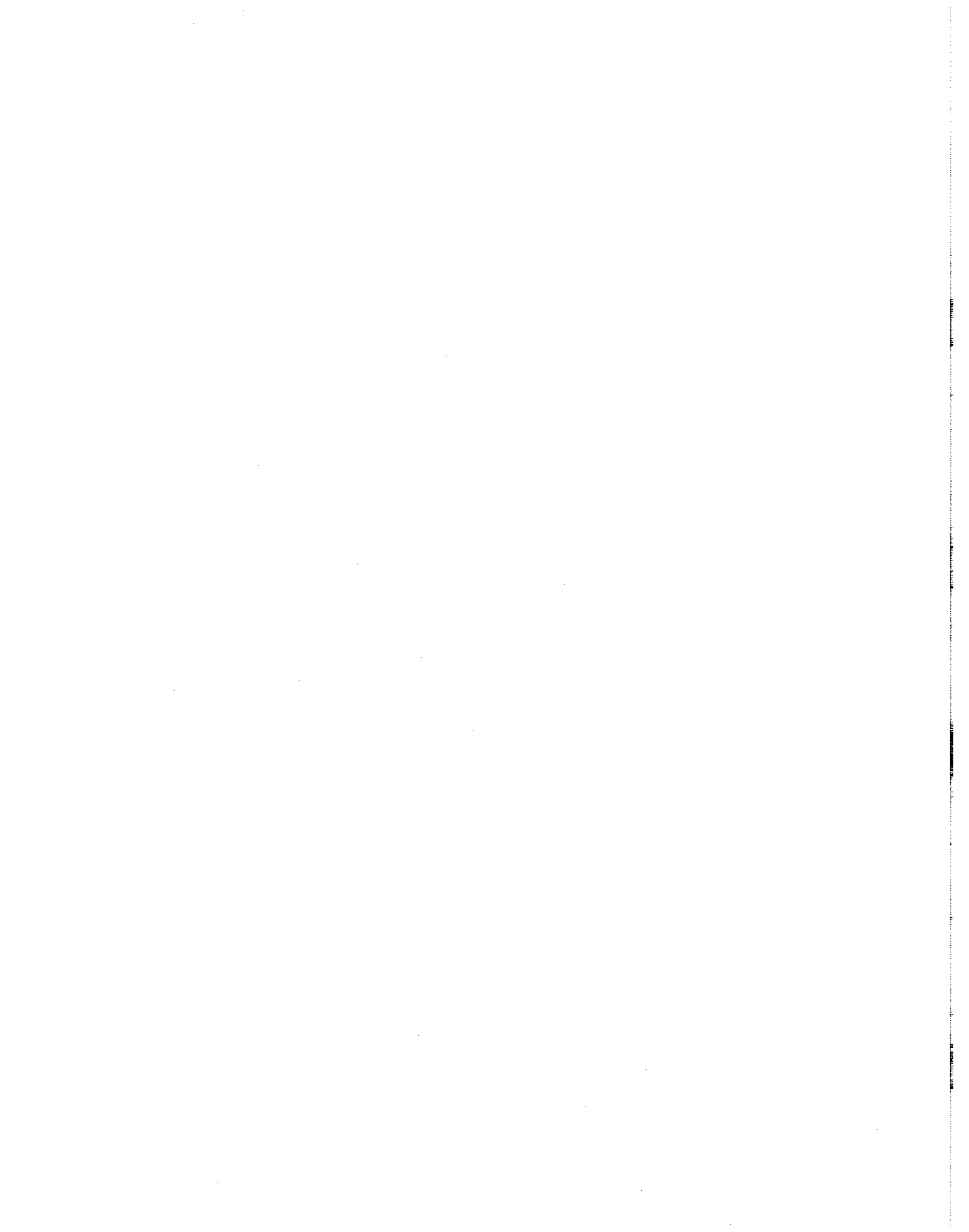
² If Ecology's final approval occurs on or after March 30, Respondents will perform these activities prior to summer low river flow conditions during March, April, or May, provided weather and river level conditions allow the activities to be performed safely



<p>4. Respondents perform the following spring season RI field activity :</p> <ul style="list-style-type: none"> • Activity 5: City Production and Representative Monitoring Well Sampling and Well Inventory – Spring Peak River Flow Sampling 	<p>4 Perform sampling during spring peak river flow conditions (anticipated ideally between March 31 and May 31) following Department approval of the final SAP 1 and QAPP 1 components concerning the groundwater sampling activity (Activity 5). If Department approval of the plans occurs on or after April 15, the field task may be completed during spring peak river flow conditions during the following year, if necessary.³</p>
<p>5. Respondents perform the following summer season RI field activity tasks:</p> <ul style="list-style-type: none"> • Activity 1: Baseline Surface Water Monitoring – summer low flow sampling (surface water grab and permeable membrane sampling) • Activity 5: City Production and Representative Monitoring Well Sampling and Well Inventory – summer low flow sampling 	<p>5. Perform sampling during summer low river flow conditions (ideally between June 1 and August 31) following Department approval of the final SAP 1 and QAPP 1 tasks addressing the surface water sampling (Activity 1) If Department approval of the SAP and QAPP activities occurs on or after July 15, the field task may be completed during summer low river flow conditions in the following year, if necessary.⁴</p>
<p>6. Respondents submit draft SAP 2 and QAPP 2 for the collection and analysis of the following RI activities:</p> <ul style="list-style-type: none"> • Activity 3: Dam to RM 81.5 Sediment Sampling • Activity 4: Donkey Island Sediment Sampling 	<p>6 Deliver draft SAP 2 and QAPP 2 within 45 days of performance of bathymetric survey and bottom profiling RI field activities.</p>
<p>7. Respondents submit final SAP 2 and QAPP 2 for:</p> <ul style="list-style-type: none"> • Activity 3: Dam to RM 81.5 Sediment Sampling • Activity 4: Donkey Island Sediment Sampling 	<p>7. Deliver final SAP 2 and QAPP 2 for Department approval within 30 days of receiving Department comments on the drafts</p>

³ If Ecology's final approval occurs on or after April 15, Respondents will perform this activity in June or early July provided snow melt conditions extend the seasonally high spring runoff river flow period past May 31.

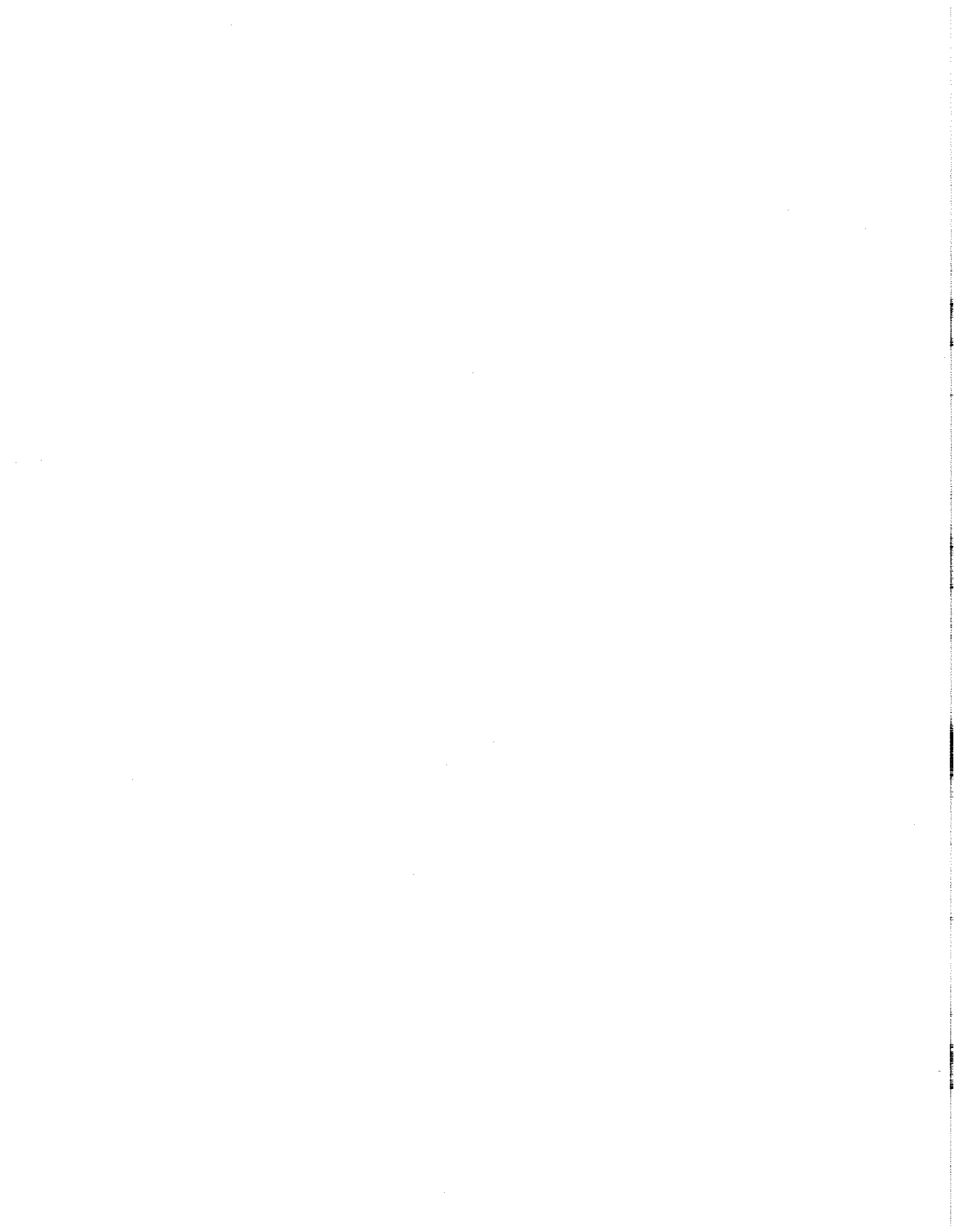
⁴ If Ecology's final approval occurs on or after July 15, Respondents will perform this activity in August, September or the first half of October, provided seasonably normal precipitation conditions exist during this period.



<p>8. Respondents perform the following summer/fall RI field activities:</p> <ul style="list-style-type: none"> • Activity 3: Dam to RM 81.5 Sediment Sampling • Activity 4: Donkey Island Sediment Sampling 	<p>8. Perform sampling during summer or fall river flow conditions following Department approval of the final SAP 2 and QAPP 2. If Department approval of the SAP 2 and QAPP 2 occurs on or after October 15, the field activities may be completed during low river flow conditions in the following year, if necessary ⁵</p>
<p>9. Respondents perform the following fall/winter season RI field activity subtask:</p> <ul style="list-style-type: none"> • Activity 1: Baseline Surface Water Monitoring – fall/winter precipitation run-off conditions sampling (surface water grab and permeable membrane sampling) 	<p>9. Perform sampling during fall/winter precipitation run-off conditions (ideally between October 1 and November 30) following Department approval of the final SAP and QAPP. If Department approval of the SAP 1 and QAPP 1 surface water sampling activity occurs on or after October 15, the field tasks may be completed during fall/winter precipitation run-off conditions in the following year, if necessary ⁶</p>
<p>10. Respondents deliver first draft RI Report and first draft FS Technical (Screening) Memorandum to the Department (Phase 2/Task 2)</p>	<p>10. Deliver draft RI Report and draft FS Technical (Screening) Memorandum to the Department within 70 days following Respondents receipt of final analysis results from the laboratory but not more than 100 days after the performance of the final RI field sampling activity.</p>
<p>11. Respondents deliver final draft RI Report and final draft FS Technical (Screening) Memorandum to the Department (Phase 2/Task 2).</p>	<p>11. Deliver final draft RI Report and final draft FS Technical (Screening) Memorandum for Department approval within 70 days of receiving Department comments on the draft RI report and Technical Memorandum.</p>
<p>12. Respondents deliver first draft FS report to the Department (Phase 2/Task 3)</p>	<p>12. Deliver first draft FS report to the Department within 60 days of Department approval of the Final Draft RI Report and Final Draft FS Technical (Screening) Memorandum.</p>

⁵ If Ecology's final approval occurs on or after October 15, Respondents will perform these activities in late fall or early winter, provided weather and river level conditions allow the activities to be performed safely

⁶ If Ecology's final approval occurs on or after October 15, Respondents will perform this activity by the end of December, provided local climatic conditions extend the targeted local fall/winter precipitation period



<p>13. Respondents deliver final draft FS report to the Department (Phase 2/Task 3).</p>	<p>13. Deliver final draft FS report for Department approval within 60 days of receiving Department comments on the draft FS report.</p>
<p>14 Respondents deliver final RI and FS reports following Public Comment Opportunity on the RI and FS deliverables.</p>	<p>14. Incorporate final revisions within 30 days of being notified by the Department of any required changes as a result of the Public Comment period.</p>

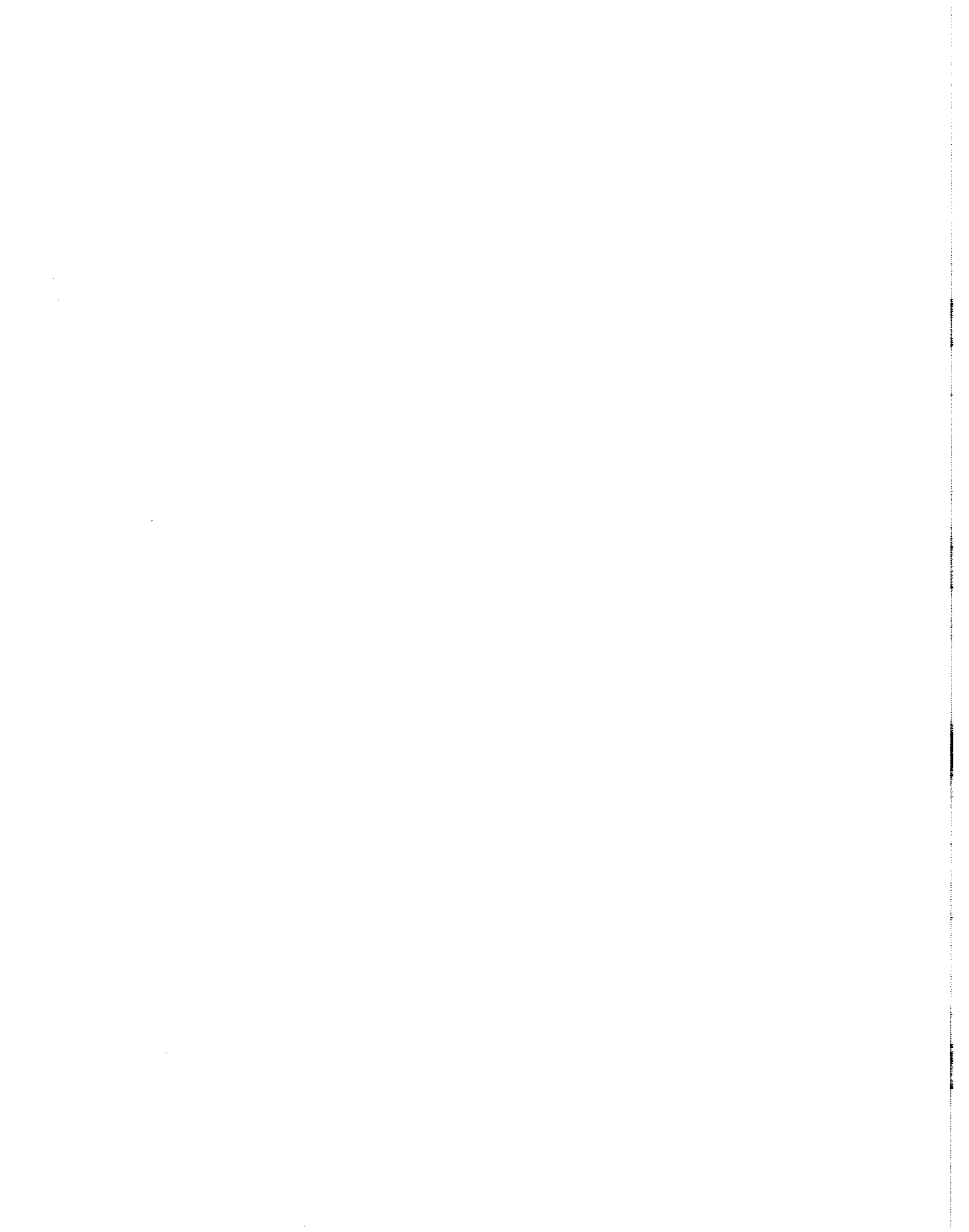


EXHIBIT D
SAMPLING DATA SUBMITTAL REQUIREMENTS

DATA ON A CD
AVAILABLE UPON REQUEST

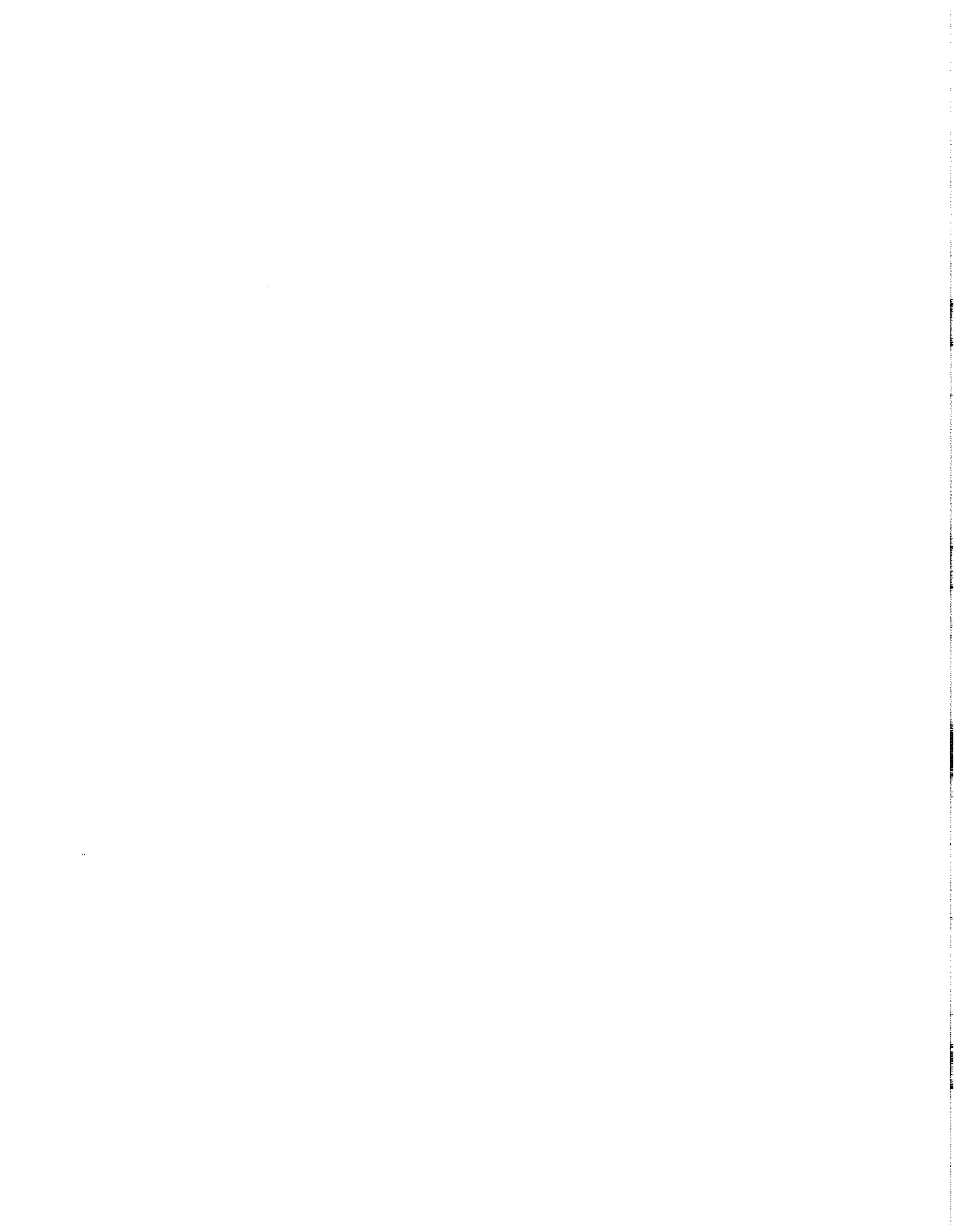
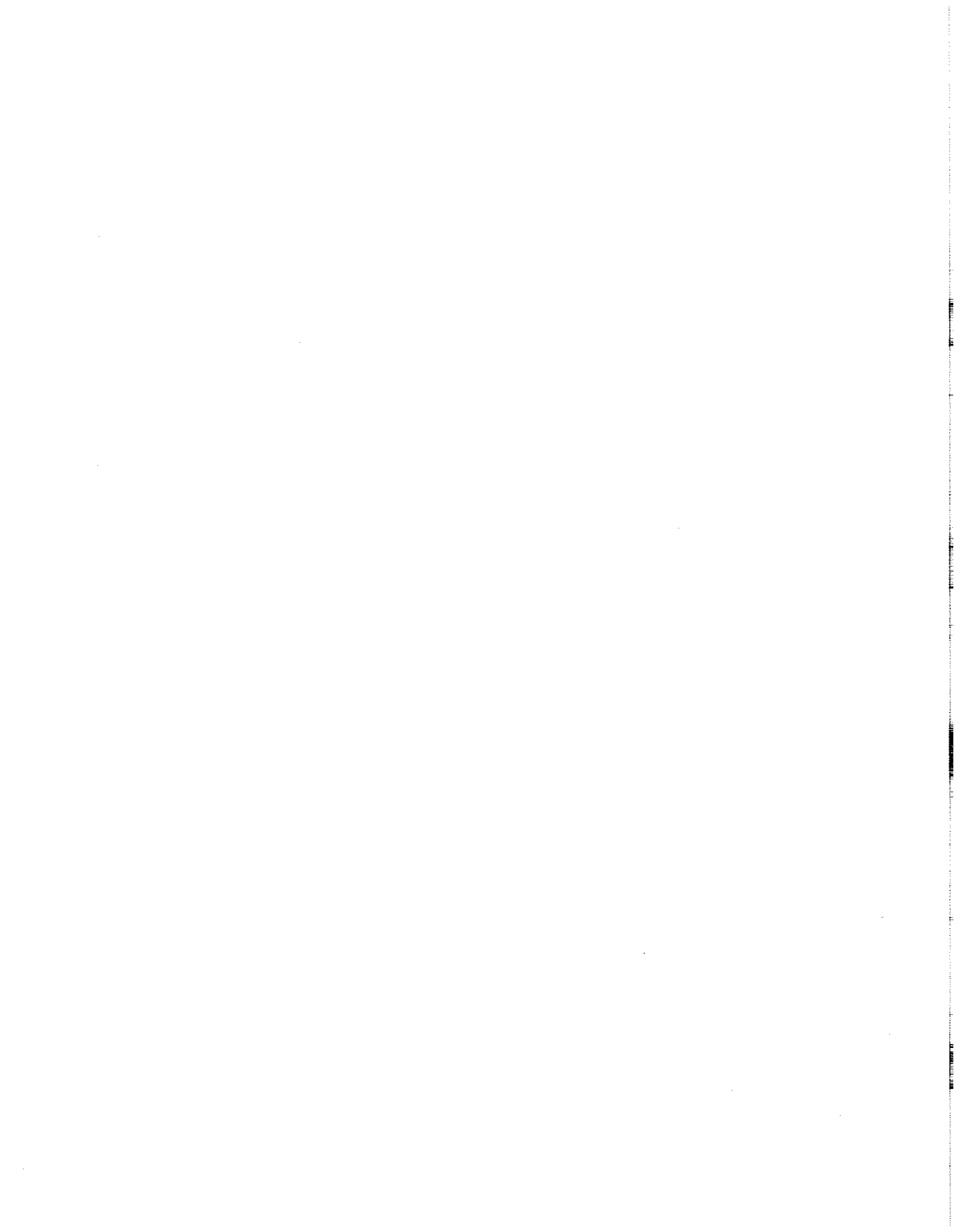


EXHIBIT E – PUBLIC PARTICIPATION PLAN



UPRIVER DAM SEDIMENTS SITE

DRAFT PUBLIC PARTICIPATION PLAN FOR THE REMEDIAL INVESTIGATION/FEASIBILITY STUDY CONSENT DECREE

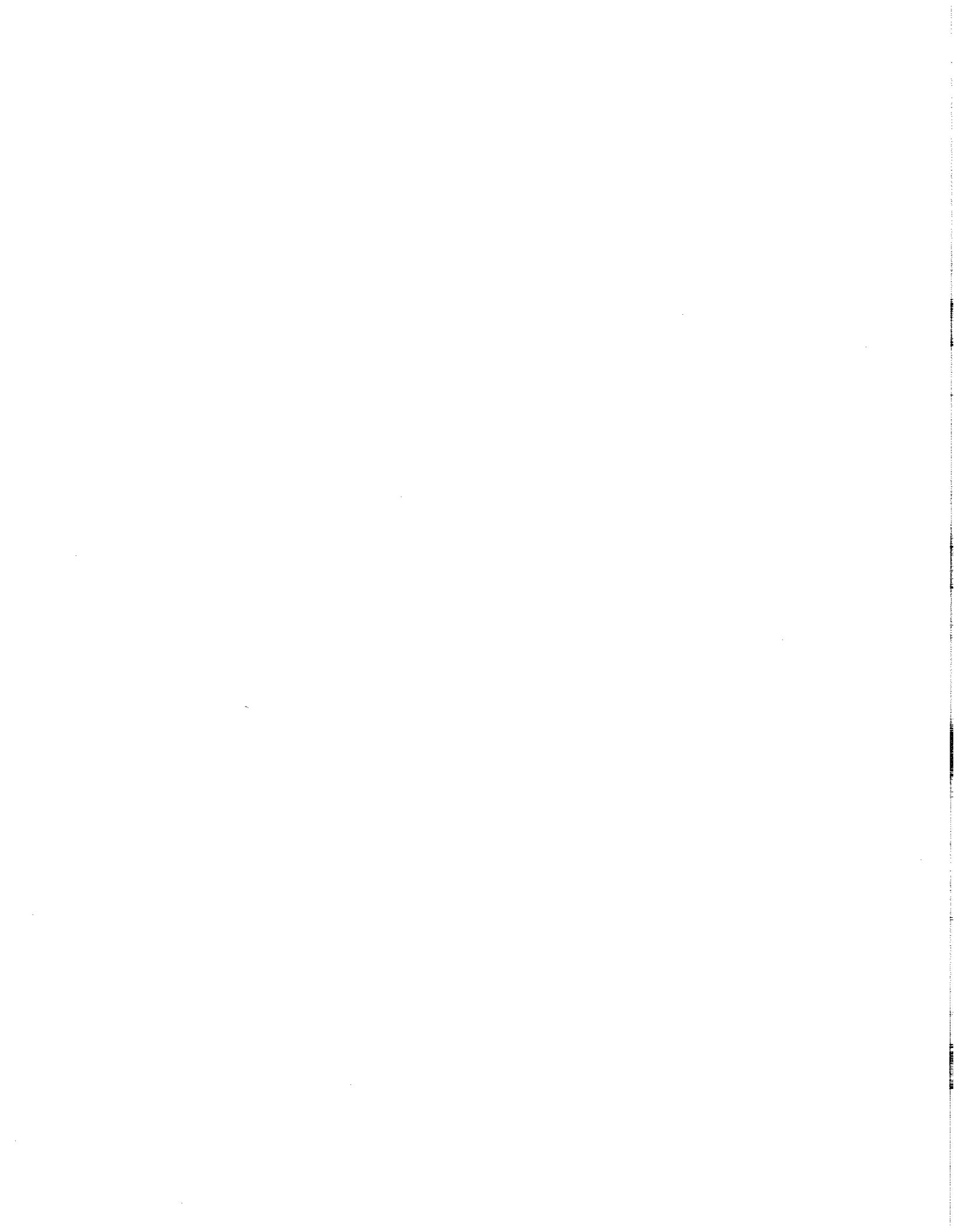
PREPARED BY:

WASHINGTON STATE DEPARTMENT OF ECOLOGY

**Para asistencia Espanol
Antonio Valero (509) 454-7840
aval461@ecy.wa.gov**

**Для помощи на Русском звоните
Павлу Герасимчуку (509) 893-3723
Элек.-Почта: Gerasimchuk@Msn.Com**

October 2002



INTRODUCTION

Overview of the Public Participation Plan

This Public Participation Plan (Plan) focuses on public participation activities that are part of the Remedial Investigation/Feasibility Study Consent Decree to be conducted at the Upriver Dam Sediments Site. Details about the location and background of the Site, companies involved in the project and contaminants of concern are found on pages 4-7.

The purpose of the Public Participation Plan is to promote public understanding of the Washington Department of Ecology's responsibilities, planning, and cleanup activities at the Site. It also serves as a way of gathering information from the public that will assist Ecology, Kaiser Aluminum & Chemical Corporation and Avista Development, Inc. to conduct the investigation and cleanup planning in a manner that is protective of human health and the environment. The Plan will help the community living near the Upriver Dam Sediments Site, as well as the general public of Spokane, to be informed regarding Site cleanup activities and contribute to the decision making process.

This Plan has been developed by the Washington Department of Ecology (Ecology) and complies with the Washington State Model Toxics Control Act (MTCA) regulations (Chapter 173-340-600 WAC). It will be reviewed as cleanup progresses and may be amended if necessary. Ecology will determine final approval of the Plan as well as any amendments.

Documents relating to the cleanup may be reviewed at the repositories listed on page 8 of this Plan. If individuals are interested in knowing more about the



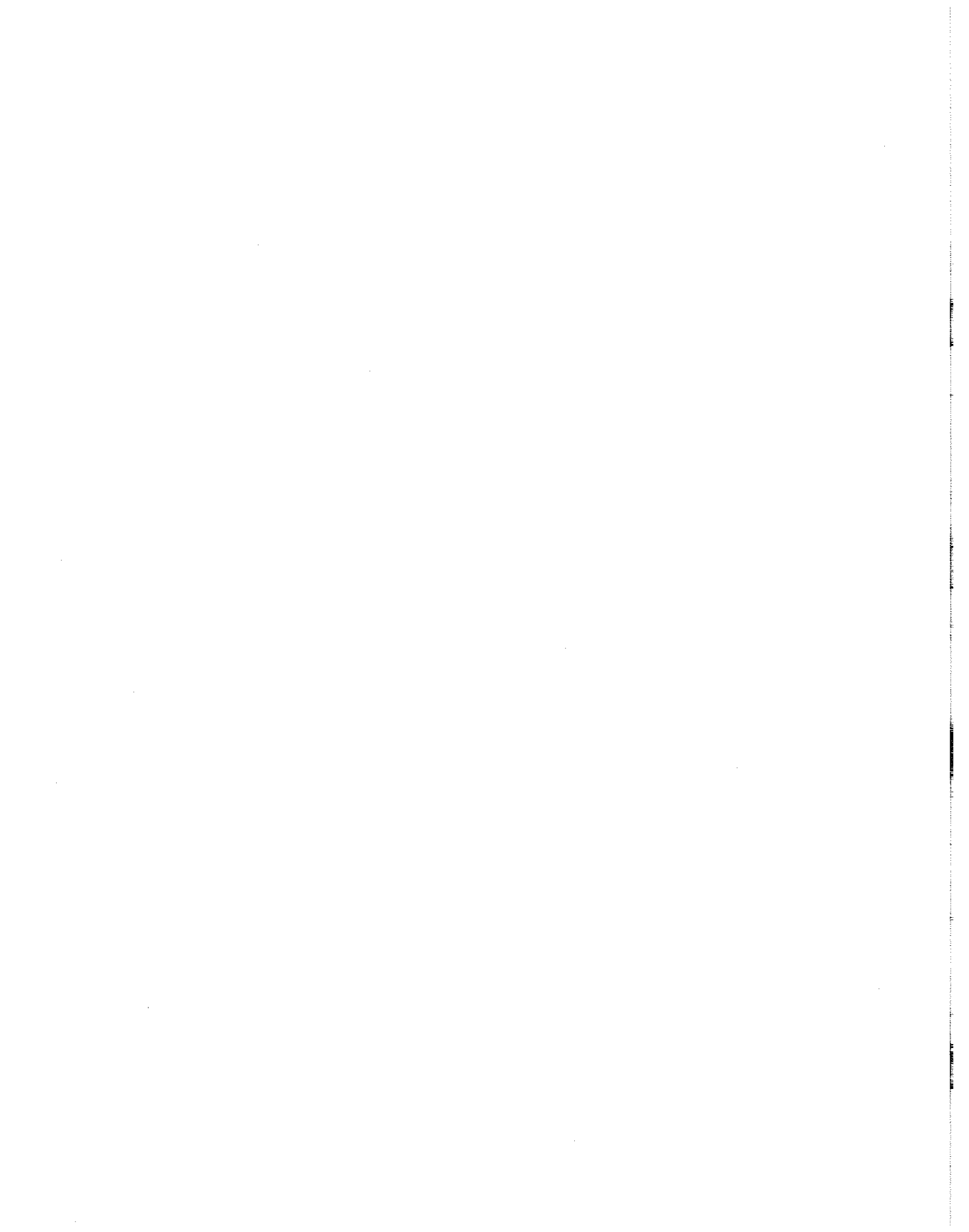
Site or have comments regarding the Public Participation Plan, please contact one of the individuals listed below:

<p>Mr. John Roland Site Manager WA State Department of Ecology Toxics Cleanup Program 4601 North Monroe Spokane, WA 99205 (509) 625-5182 E-mail: jrol461@ecy.wa.gov</p> <p>Ms. Johnnie Harris Public Disclosure WA State Department of Ecology 4601 North Monroe Spokane, WA 99205 (509) 456-2751 E-mail: johh@ecy.wa.gov</p> <p>For Russian translation: Pavel Gerasimchuck (509) 893-3723</p>	<p>Ms. Carol Bergin Public Involvement WA State Department of Ecology Toxics Cleanup Program 4601 North Monroe Spokane, WA 99205 (509) 456-6360 E-mail: cabe461@ecy.wa.gov</p> <p>Para asistencia Espanol:</p> <p>Sr. Antonio Valero WA State Department of Ecology Toxics Cleanup Program 15 West Yakima Avenue, Suite 200 Yakima, WA 98902-3401 (509) 454-7840 E-mail: aval461@ecy.wa.gov</p>
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Public Participation and the Model Toxics Control Act

The Model Toxics Control Act (MTCA) is a "citizen-mandated" law that became effective in 1989 to provide guidelines for the clean up of contaminated sites in Washington State. This law sets up standards to make sure the clean up of sites is protective of human health and the environment. Ecology's Toxic Cleanup Program investigates reports of contamination that may threaten human health and/or the environment. If an investigation confirms the presence of contaminants, the site is generally ranked and placed on a Hazardous Sites List. Current or former owner(s) or operator(s), as well as any other potentially liable persons (PLPs), of a site may be held responsible for cleanup of contamination according to the standards set under MTCA. The PLPs identified by Ecology to date for this Site are Avista Development, Inc., a subsidiary of Avista Corporation (Avista); Kaiser Aluminum & Chemical Corporation (Kaiser) and Liberty Lake Sewer District (Liberty Lake).

Public participation is an important part of cleanup under the MTCA process. The participation needs are assessed at each site according to the level of public interest and degree of risk posed by contaminants. Individuals who live near the site, community groups, businesses, government, other organizations and interested parties are provided an opportunity to become involved in



commenting on the cleanup process. The Public Participation Plan includes requirements for public notice such as: identifying reports about the site and the repositories where reports may be read; providing public comment periods; and holding public meetings or hearings. Other forms of participation may be interviews, citizen advisory groups, questionnaires, or workshops. Additionally, citizen groups living near contaminated sites may apply for public participation grants (during open application periods) to receive technical assistance in understanding the cleanup process and to create additional public participation avenues.

SITE BACKGROUND

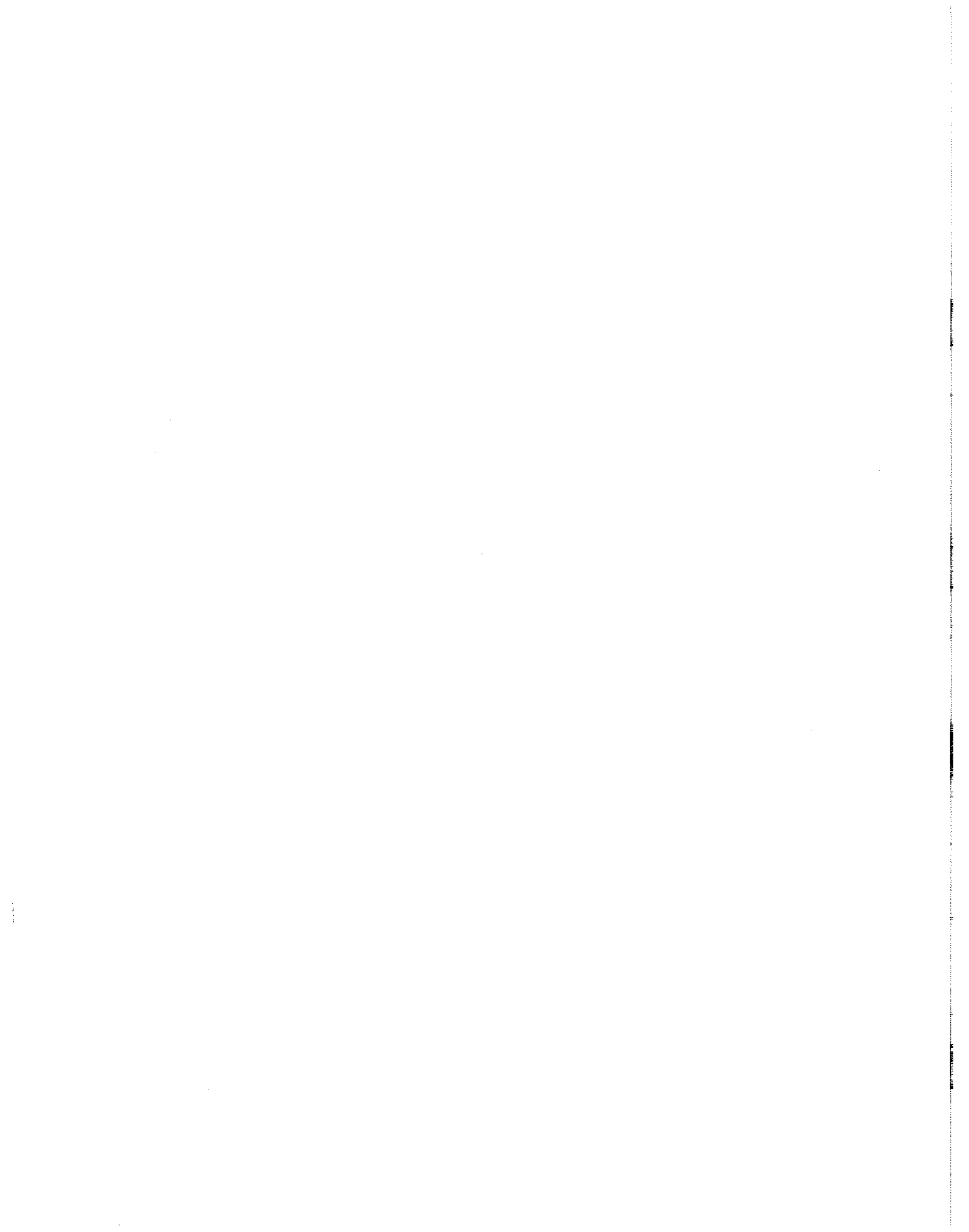
Site Description and History

The Washington State Department of Ecology is proposing to enter into a Consent Decree with Avista and Kaiser. At this time, Liberty Lake Sewer District is not participating in the Consent Decree. The Consent Decree is a legal agreement between parties, which provides the basis for completing a Remedial Investigation and Feasibility Study of polychlorinated biphenyls (PCBs) in sediments at the Upriver Dam Sediments Site. The Site study area begins at approximately rivermile 80 near the Upriver Dam and continues to approximately rivermile 85 upstream of the Dam near the Centennial Trail footbridge. The Site is in the County of Spokane, Washington (Appendix A Site Map).

The purpose of the Remedial Investigation (RI) is to evaluate the extent of PCBs in sediments at the Site that are in and along the Spokane River at and upstream of Upriver Dam. The Feasibility Study (FS) will identify and evaluate potential alternatives for cleanup of PCBs in sediments at the Site. Prior to finalization, the RI/FS reports will be made available to the public for comment. After a 30-day public comment period Ecology will address input received from the community and make modifications to the RI/FS, if appropriate.

Between 1978 and 1984 PCBs were found in fish samples collected from the Spokane River by the Washington State Department of Ecology. Additional studies conducted in the 1990s showed that fish collected from portions of the river continued to show significant contamination.

In August 1999 a health advisory was issued by the Spokane Regional Health District, in cooperation with state Departments of Health and Ecology, advising people not to eat three species of fish because of higher than normal lead levels. In March 2001 the health advisory was revised



to include PCBs. A copy of the updated 2002 advisory is attached as Appendix B.

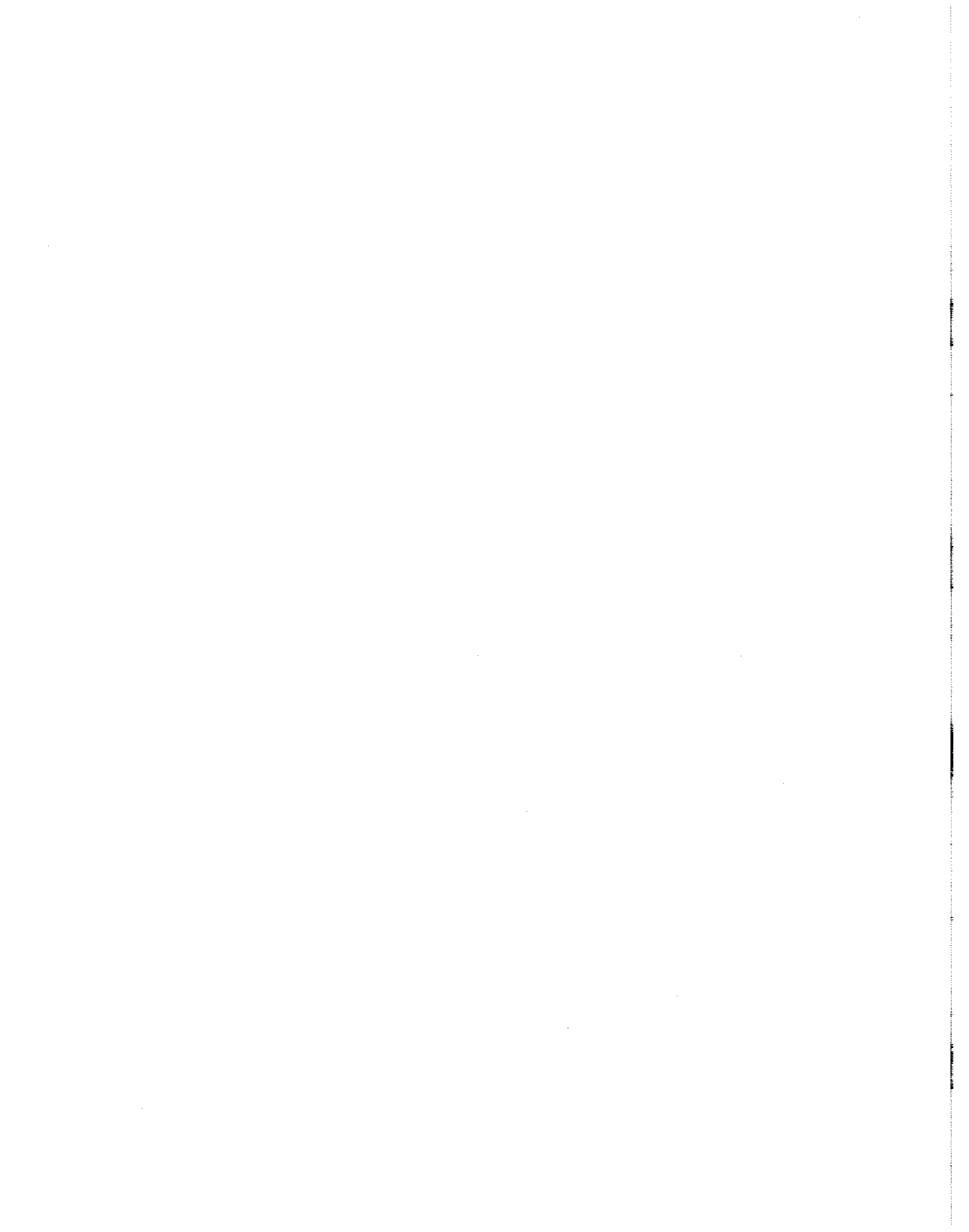
The information collected from recent studies also resulted in a further understanding of PCBs in sediments and PCBs coming from Spokane area point sources (i.e., industrial and municipal permitted discharges). Avista, Kaiser and Liberty Lake Sewer District have been identified as potential contributors to PCB contamination through discharges of effluent wastewater to the Spokane River.

Avista is the successor to the Pentzer Development Corporation which owned Spokane Industrial Park located on the Spokane River at approximately rivermile 87. The United States government is the past owner of the Spokane Industrial Park property, which was originally constructed as a naval supply depot for use during World War II. Pentzer discharged industrial effluent wastewater to the Spokane River prior to 1994, under provisions of the State of Washington Water Pollution Control Law and the federal Water Pollution Control Act, or predecessor laws. Since 1994 Industrial Park wastewater is discharged to the City of Spokane municipal treatment plant.

Kaiser is the owner and operator of the Kaiser Trentwood Works in Spokane, Washington. Kaiser filed a petition for relief under Chapter 11 of the United States Bankruptcy Code in February 2002. The United States government is the past owner and operator of the Trentwood Works, which was originally constructed for the United States Defense Plant Corporation for use during World War II. Trentwood is located on the Spokane River at approximately rivermile 86. Kaiser discharges treated industrial effluent wastewater to the Spokane River. The discharges are permitted under the provisions of the State of Washington Water Pollution Control Law and the federal Water Pollution Control Act. Kaiser has implemented numerous improvements to dramatically reduce PCBs in the facility's waste stream.

Recent investigations have shown PCB contamination at and upstream of Upriver Dam may be limited to fine grained sediments behind the dam in a narrow strip adjacent to the north bank of the impoundment. Ecology has determined that the Remedial Investigation and Feasibility Study are necessary to protect human health and the environment.

The United States Environmental Protection Agency (USEPA) under the authority of CERCLA (the federal Superfund) is concurrently investigating metals contamination in the Coeur d'Alene basin and the upper Spokane River associated with historic mining operations in Idaho. The USEPA effort



focuses on heavy metals contamination in the river such as zinc, arsenic, cadmium and lead. Metals-related contamination associated with Idaho's historic mining operations has been determined to be broadly distributed throughout the upper Spokane River including and extending beyond the fine grained sediment areas behind Upriver Dam where PCBs may be located. The USEPA Record of Decision (September 2002) selects capping or dredging as the remedial alternatives to reduce metals risks in sediments at and upstream of Upriver Dam, but USEPA has not yet selected between these two alternatives.

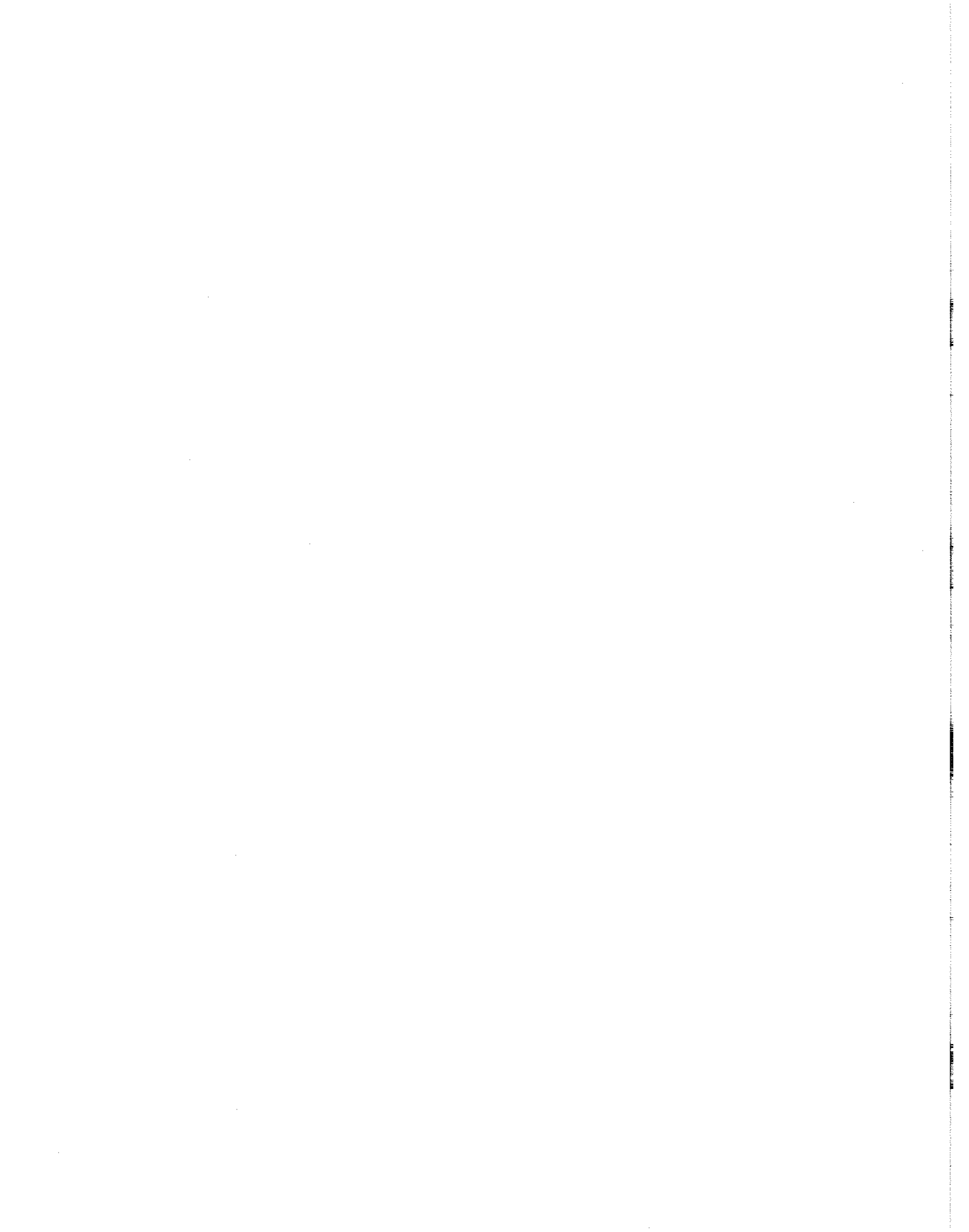
The PCB RI/FS to be carried out by Kaiser and Avista is expected to be done in 2004. The metals RI/FS by USEPA has been completed, but additional work is necessary in the Spokane River. Ecology will work to integrate the results of the PCB and metals studies. Cleanup actions focused on PCBs in sediments at the Upriver Dam Site will be coordinated to the extent possible with USEPA's cleanup plans for the Spokane River to provide for consistent remedy selection for the different contaminants.

Ecology is also developing a Total Maximum Daily Load (TMDL) assessment consistent with the federal Clean Water Act to address PCBs in the Spokane River. This issue deals with PCBs and water quality rather than PCBs in sediments. A draft report of this TMDL assessment is expected in the summer of 2004.

Contaminants of Concern

Polychlorinated biphenyl's (PCBs) are a group of manufactured synthetic chemicals, either solids or oily liquids. They may range from colorless to light yellow in color and have no smell or taste. These chemicals were historically used as insulating fluids, coolants and lubricants in transformers, capacitors or other electrical equipment; as heat transfer and hydraulic fluids; in inks and carbonless paper. The manufacture of PCBs stopped in the United States in 1977 because of evidence they build up in the environment and may cause harmful health effects.

Common routes of human exposure to PCBs may include drinking contaminated well water; eating contaminated foods such as dairy, fish, and meat; breathing air contaminated with PCBs; conducting maintenance on electrical transformers containing PCB fluids or handling materials containing PCBs. For details regarding PCB health effects, please see the Agency for Toxic Substances and Disease Registry (ATSDR) website at www.atsdr.cdc.gov/tfacts17.html.



Potential human exposure risks for the Spokane River are primarily through the eating of fish caught in the river (see Appendix B for health advisory). No contamination of drinking water has been observed, though the study will include the testing of vulnerable wells to confirm this is not a problem. There are currently no known or suspected airborne exposure risks as the contaminated sediments are under water and the known contaminated sediments are not associated with community swimming locations.

COMMUNITY BACKGROUND

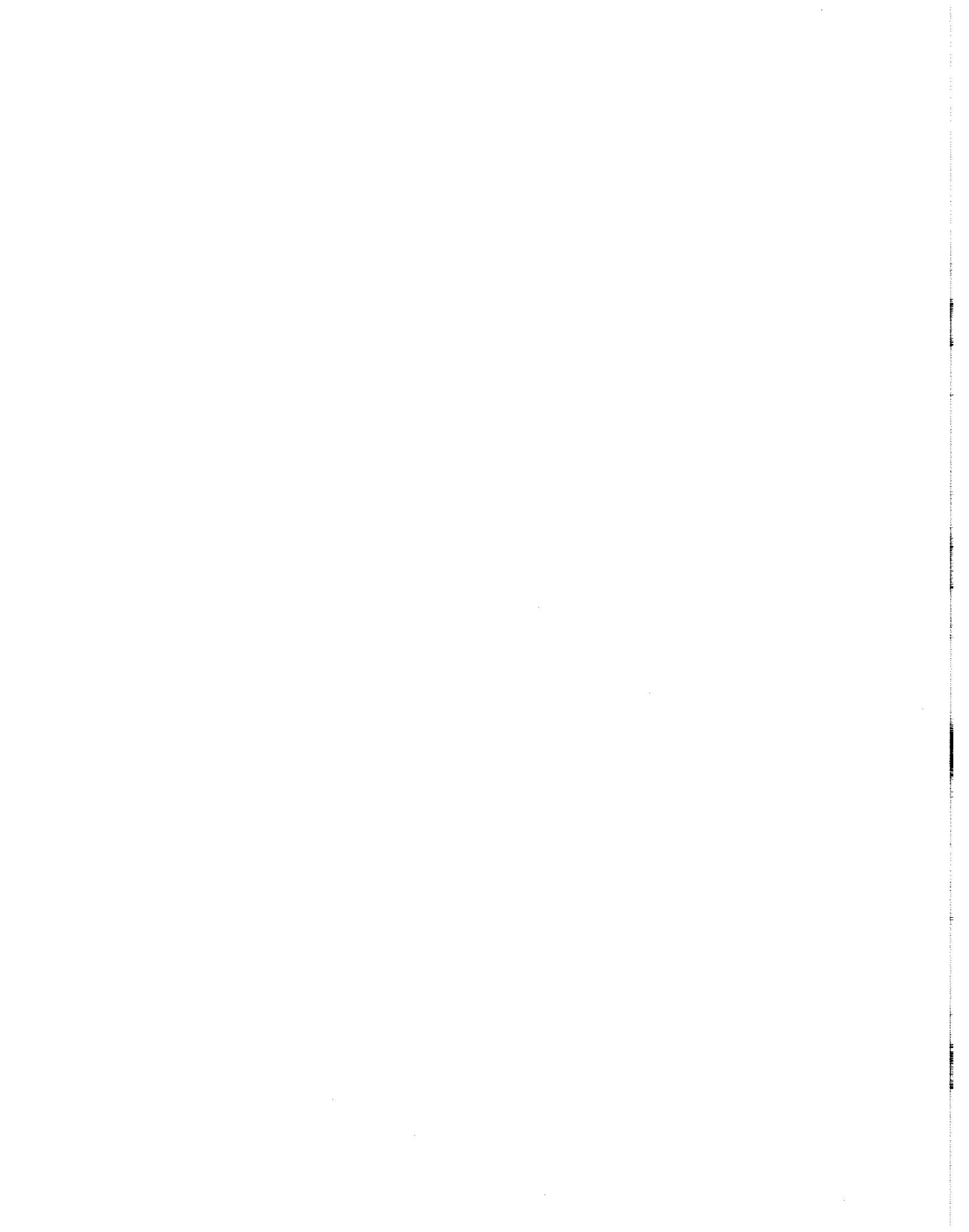
Community Profile and Concerns

The Site is located just upstream of the Upriver Dam in the Spokane River in the County of Spokane, Washington and is surrounded by industrial/commercial businesses and residential homes. Parts of the Spokane River are widely used for recreational activities including swimming, boating and fishing. Certain areas of the River are also used by the Spokane Tribe, Russian and Hmong communities for subsistence fishing.

The neighborhood population, although predominantly Caucasian, continues to become more diverse as the area grows. Russians, Vietnamese, Native Americans, Asians and Hispanics add to the rich culture of people living and recreating in this area.

As a result of community interviews, the following are some of the primary concerns expressed regarding cleanup of PCB contamination in sediments behind Upriver Dam:

- Some individuals expressed concerned about potential negative economic impacts to home/property values.
- There is concern about how access to the river for recreation may be affected during cleanup.
- Property owners, users of the river and others interested in this Site raised questions about whether disturbance to sediments during cleanup will reduce contamination versus increase it or move it to areas not currently contaminated. They are also concerned about recontamination issues.
- Keeping the aquifer/drinking water clean is a priority.
- People living along or near the river want to be informed about the work taking place and have an opportunity to contribute their opinions in the decision-making process.
- People want to be informed of any health risks for children, adults and pets that use the river.



- A coordinated effort to clean up the heavy metals contamination, address Total Maximum Daily Loads (TMDLs) and PCBs is preferred.

Ecology will focus on addressing these concerns through the activities listed in the Public Participation Activities and Timeline section below.

Public Participation Activities and Timeline

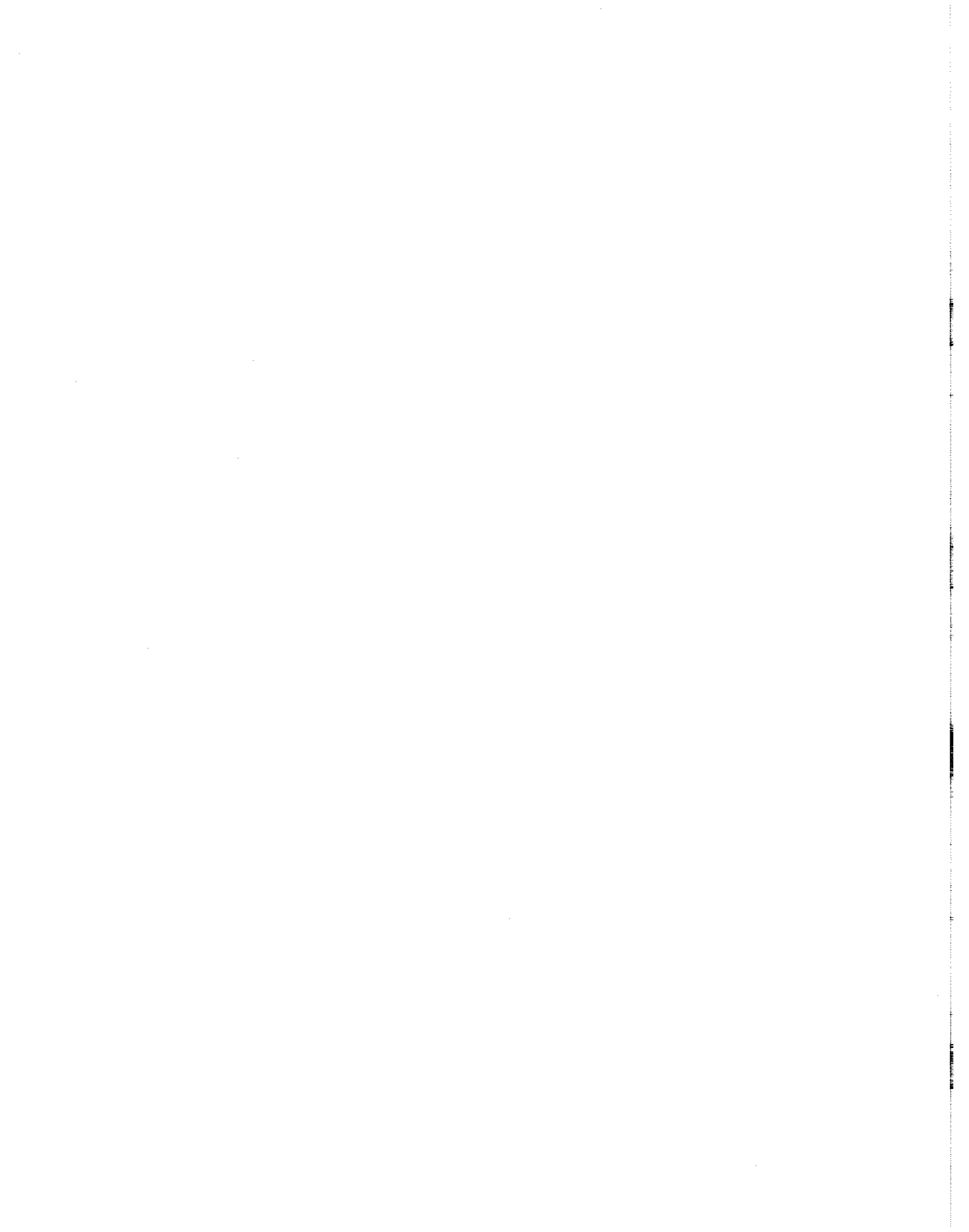
Some public participation efforts which will occur until the cleanup actions are completed are as follows:

- ❖ A **mailing list** is being developed for individuals who live near the Site. The potentially affected vicinity covers the adjacent properties and homes and/or businesses within close proximity to the Site and areas to be investigated. These persons along with Avista and Kaiser will receive copies of all fact sheets developed regarding the cleanup process via first class mail. Additionally, individuals, organizations, local, state and federal governments, and any other interested parties will be added to the mailing list as requested. Other interested persons may request to be on the mailing list at any time by contacting Carol Bergin at the Department of Ecology (see page 3 for details).
- ❖ **Public Repositories** have been established and documents may be reviewed at the following offices:

Washington Department of Ecology
4601 North Monroe
Spokane, WA 99205-1295
Contact: Ms. Johnnie Harris, Public Disclosure Coordinator
(509) 456-2751

Spokane Public Library
906 West Main
Spokane, WA 99201
Contact: Ms. Dana Darylmpfle
(509) 444-5300

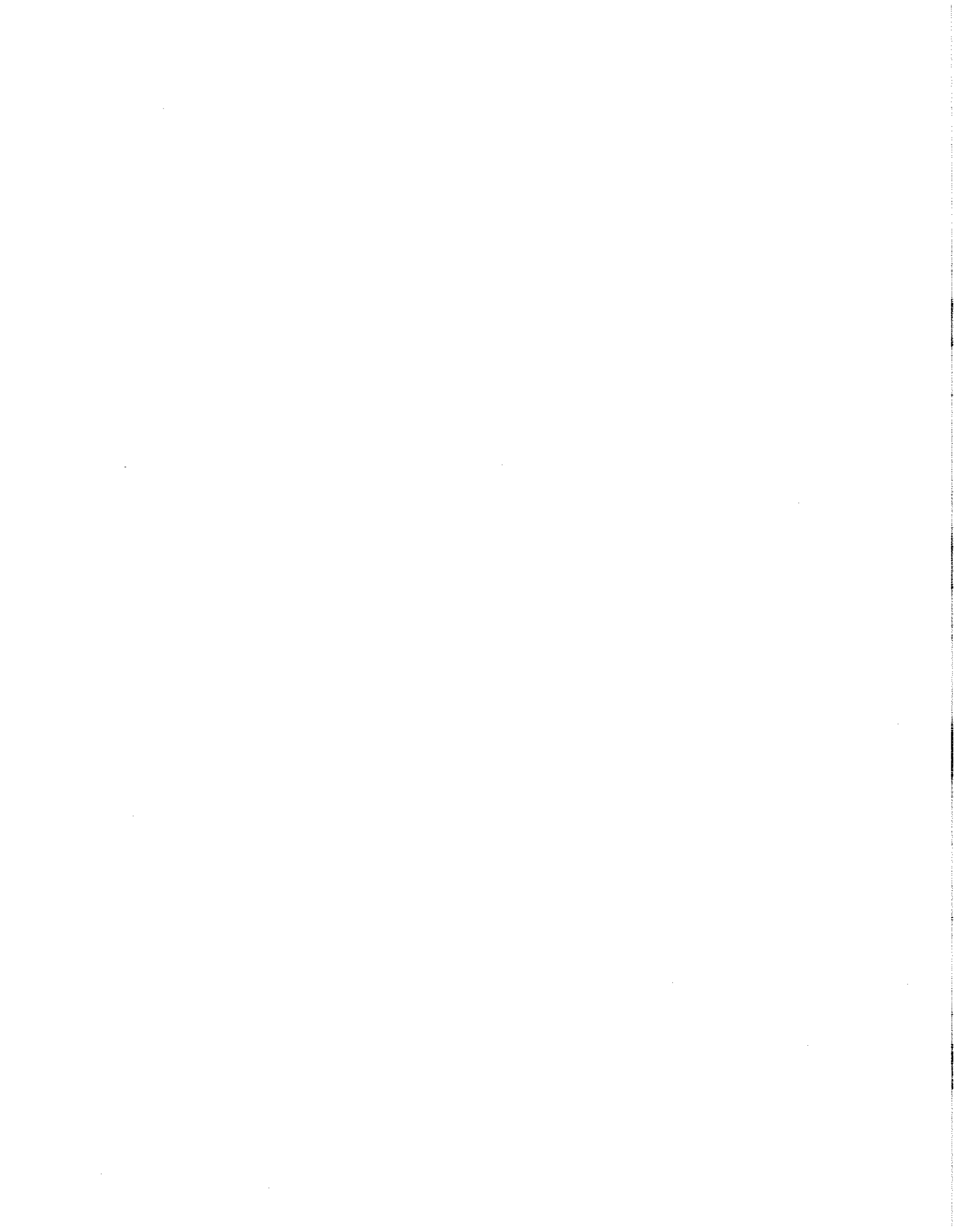
Argonne County Library
4322 North Argonne Road
Spokane, WA 99206
Contact: Ms. Judy Luck
(509) 926-4334



- ❖ During each stage of cleanup **fact sheets** are created by Ecology then distributed to individuals on the mailing list. These fact sheets explain the stage of cleanup, the Site background, what happens next in the cleanup process and ask for comments from the public. A **30-day comment period** allows interested parties time to comment on the process. The information from these fact sheets is also published in a statewide **Site Register** which is sent to those who request to be on that mailing list. Persons interested in receiving the Site Register should contact Sherrie Minnick of Ecology at (360) 407-7200 or e-mail smin461@ecy.wa.gov. The fact sheets are also posted on Ecology's web page under the Toxics Cleanup Program at www.ecy.wa.gov/programs/tcp/sites/sites.html.
- ❖ **Display ads or legal notices** are published in the Spokesman Review to inform the general public. These notices are published at the beginning of the 30-day comment period for the public notices. They are also used to announce public meetings and workshops or public hearings.
- ❖ **Public meetings, workshops, open houses and public hearings** are held based upon the level of community interest. If ten or more persons request a public meeting or hearing based on the subject of the public notice, Ecology will hold a meeting or hearing and gather comments. **These meetings, workshops or hearings will be held at a location close for the community living near the Site to attend.**
- ❖ Flyers may also be made available in various locations throughout the community (e.g., postings near Boulder Beach, at schools, libraries, etc.) to announce public comment periods, meetings, workshops, etc.
- ❖ Written comments which are received during the 30-day comment period may be responded to in a **Responsiveness Summary**. The Responsiveness Summary will be sent to those who make the written comments and will be available for public review at the Repositories.

Answering Questions from the Public

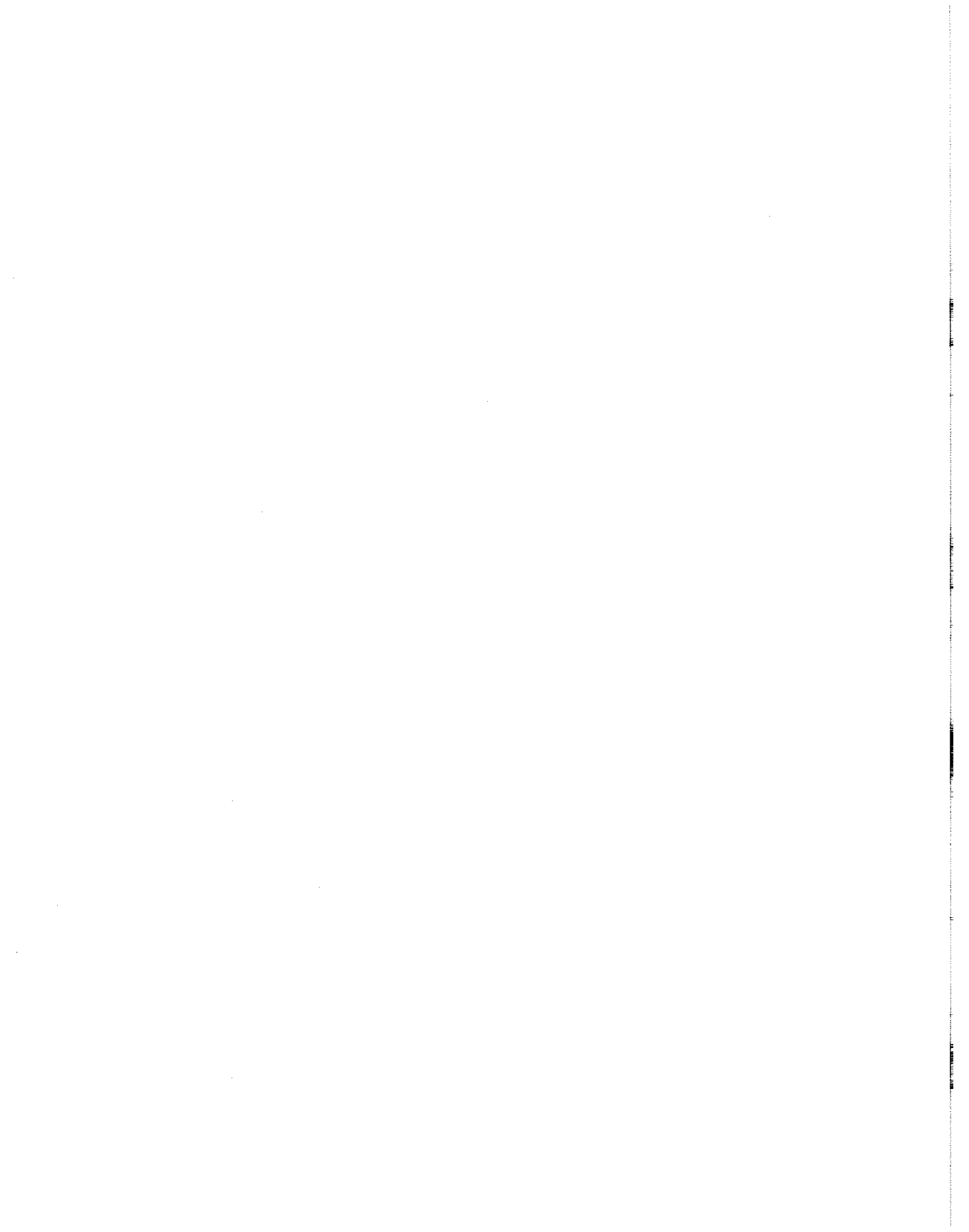
Individuals in the community may want to ask questions to better understand the cleanup process. Page 3 lists the contacts for the Upriver Dam Sediments Site. Interested persons are encouraged to contact these persons by phone or e-mail to obtain information about the Site, the process and potential decisions.



Public Notice and Comment Periods

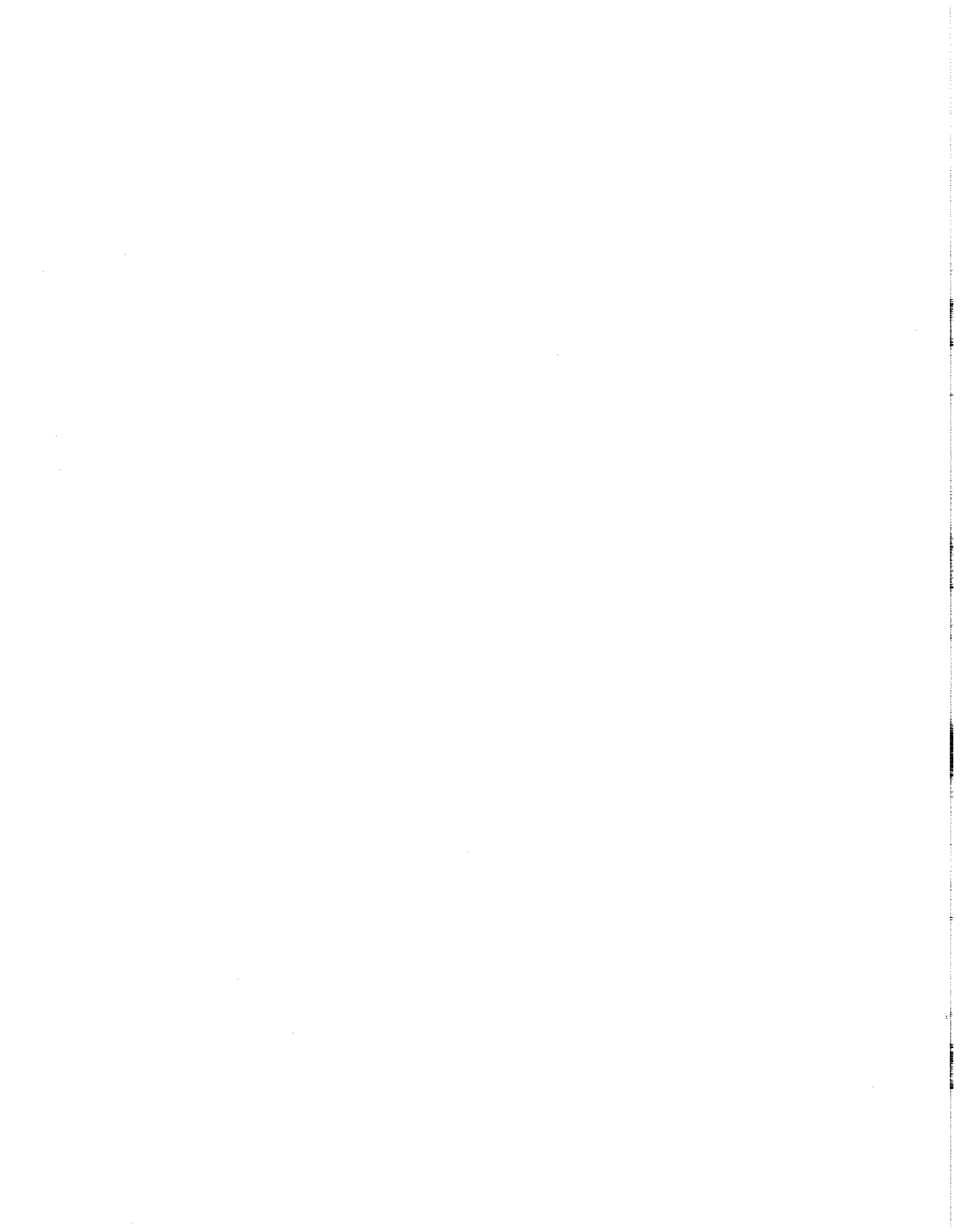
Timeline

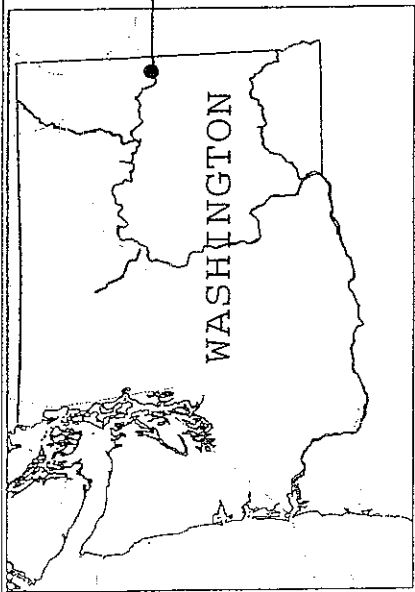
DATE	ACTION TAKEN
July and August 2002	Community Interviews
October 2002 through November 2002	Fact Sheet and 30-day comment period for the Consent Decree for the Remedial Investigation/Feasibility Study 30-day comment period
Late November or early December 2002	Responsiveness Summary for Consent Decree (no associated comment period), as appropriate
2004	RI/FS Report and 30-day comment period
To be announced	Draft Cleanup Action Plan and 30-day comment period



APPENDIX A

SITE MAP

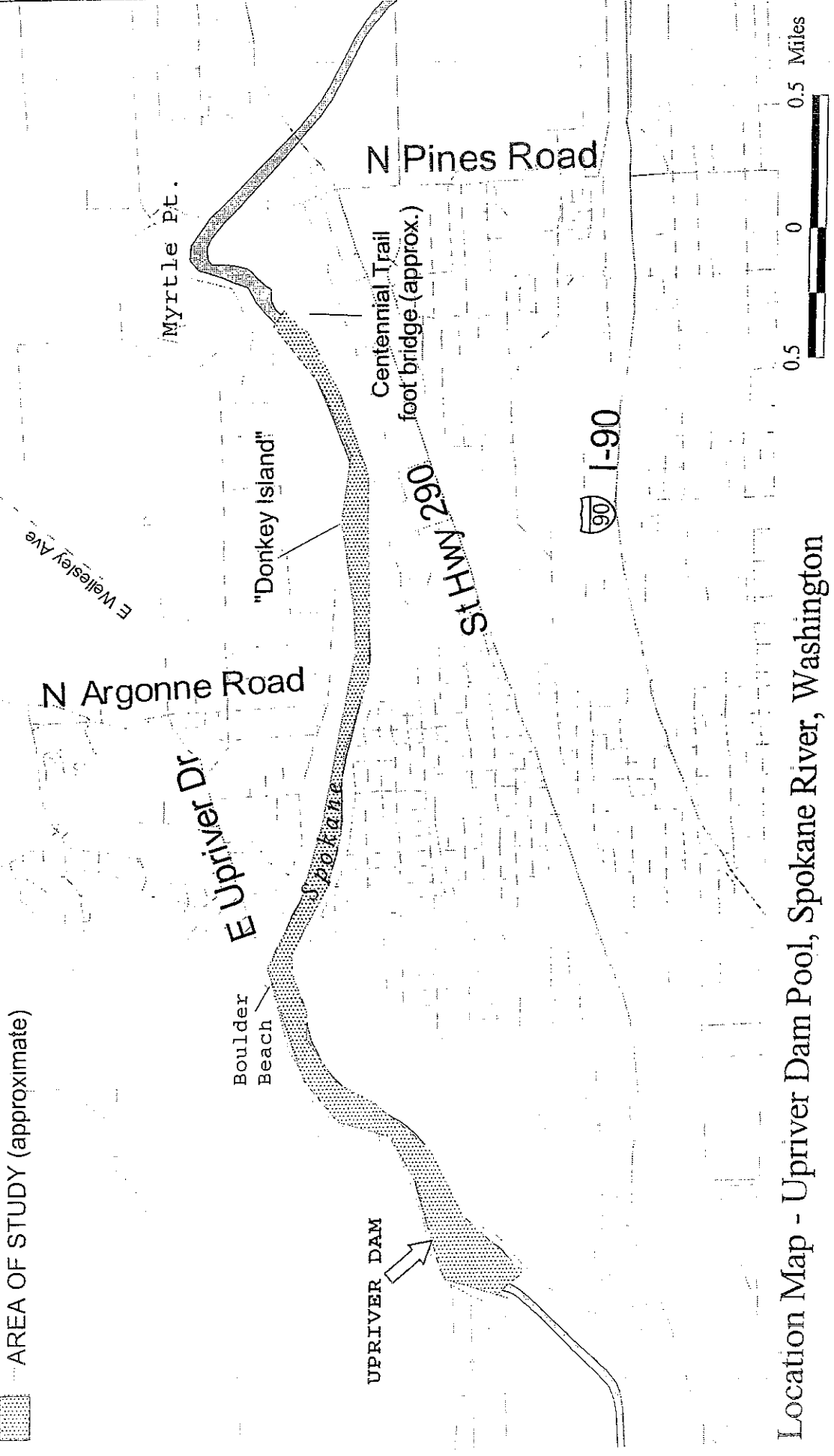




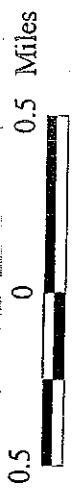
Study Area

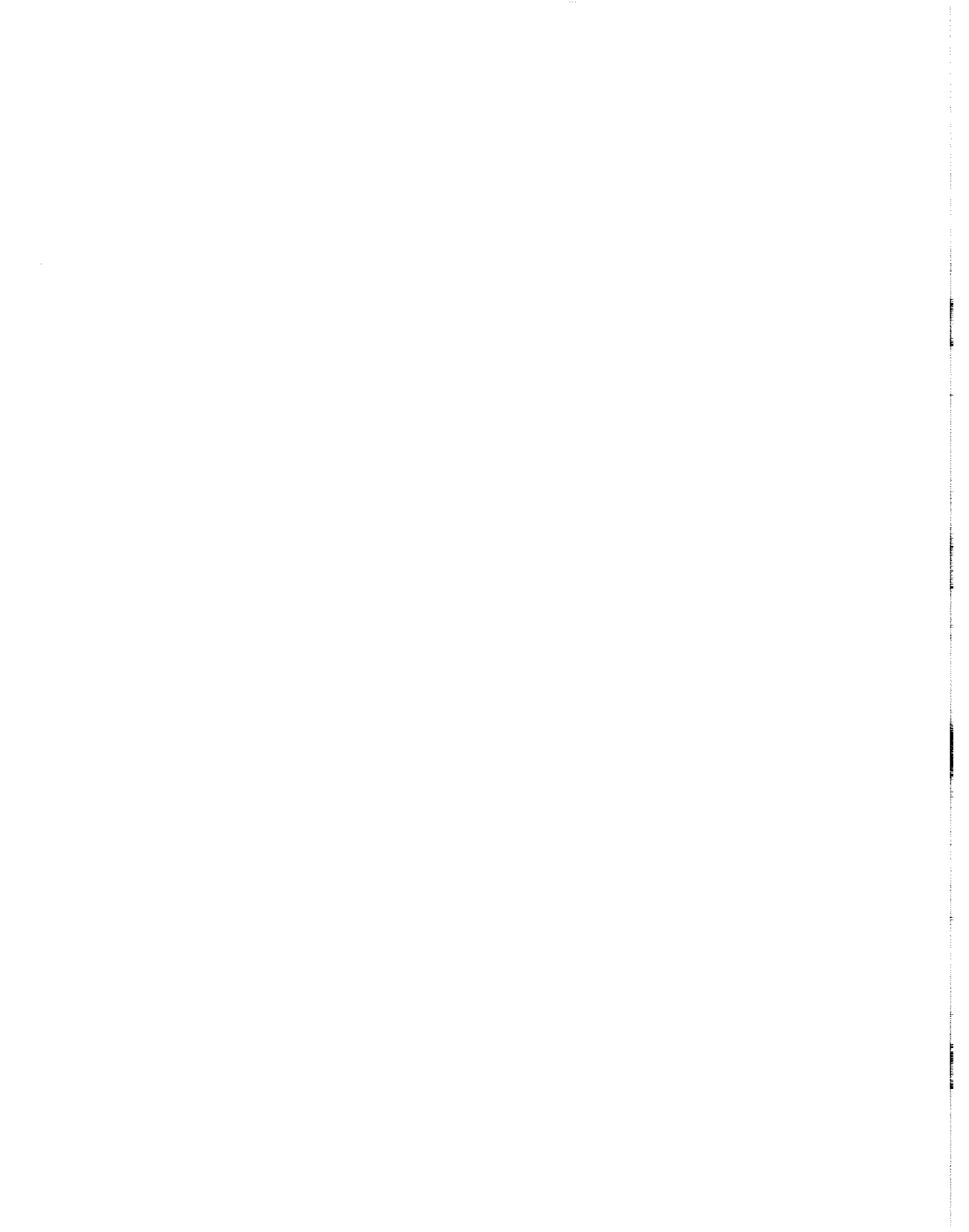
WASHINGTON

AREA OF STUDY (approximate)



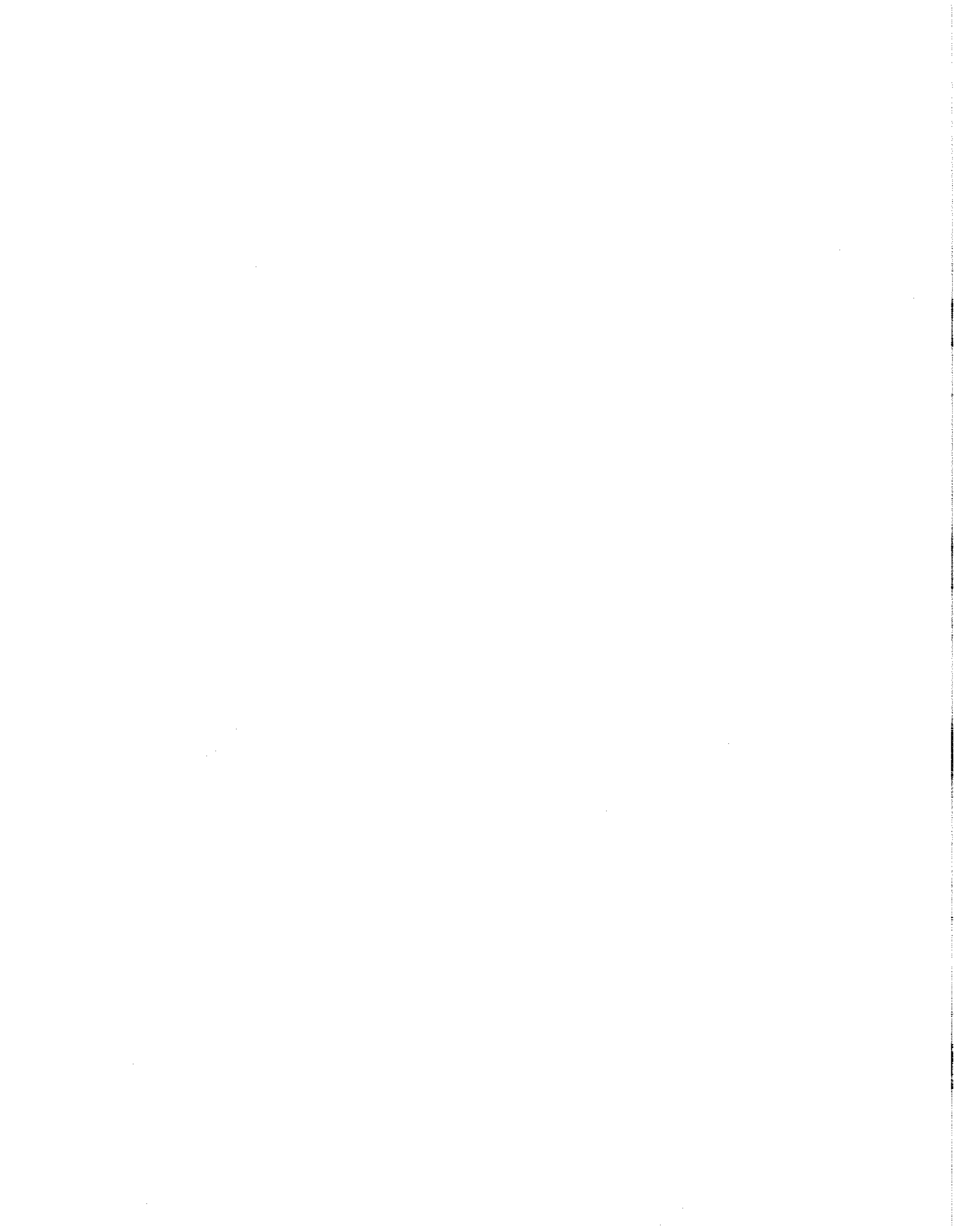
Location Map - Upriver Dam Pool, Spokane River, Washington





APPENDIX B

MARCH 2001 FISH ADVISORY



Health Advisory for Spokane River Fish Consumption

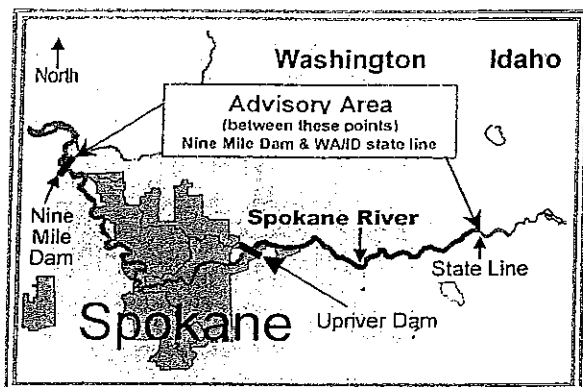
Update, March 2001

Background

In August 1999, the Washington State Departments of Ecology and Health, along with the Spokane Regional Health District, advised the public to limit consumption of Spokane River fish. The advisory addressed three fish species found to contain higher than normal lead levels and spanned the river from the Washington/Idaho state line to Seven Mile Bridge (just upstream of Nine Mile Dam).

You also should be aware that, although this advisory specifically addresses certain species of fish from the Spokane River, other bodies of water within Washington State might also have advisories suggesting limits on the amount of fish that can be safely eaten.

Check with the local health department for current fish advisories that may pertain to areas where you fish.



Further testing of Spokane River fish showed the presence of polychlorinated biphenyls (PCBs). As a result, the fish advisory has been revised to include the PCB findings. To protect public health, your state and local health departments established new limits on the amount of fish that can be safely eaten from the area between the Washington/Idaho state line and Nine Mile Dam. See Table 1.

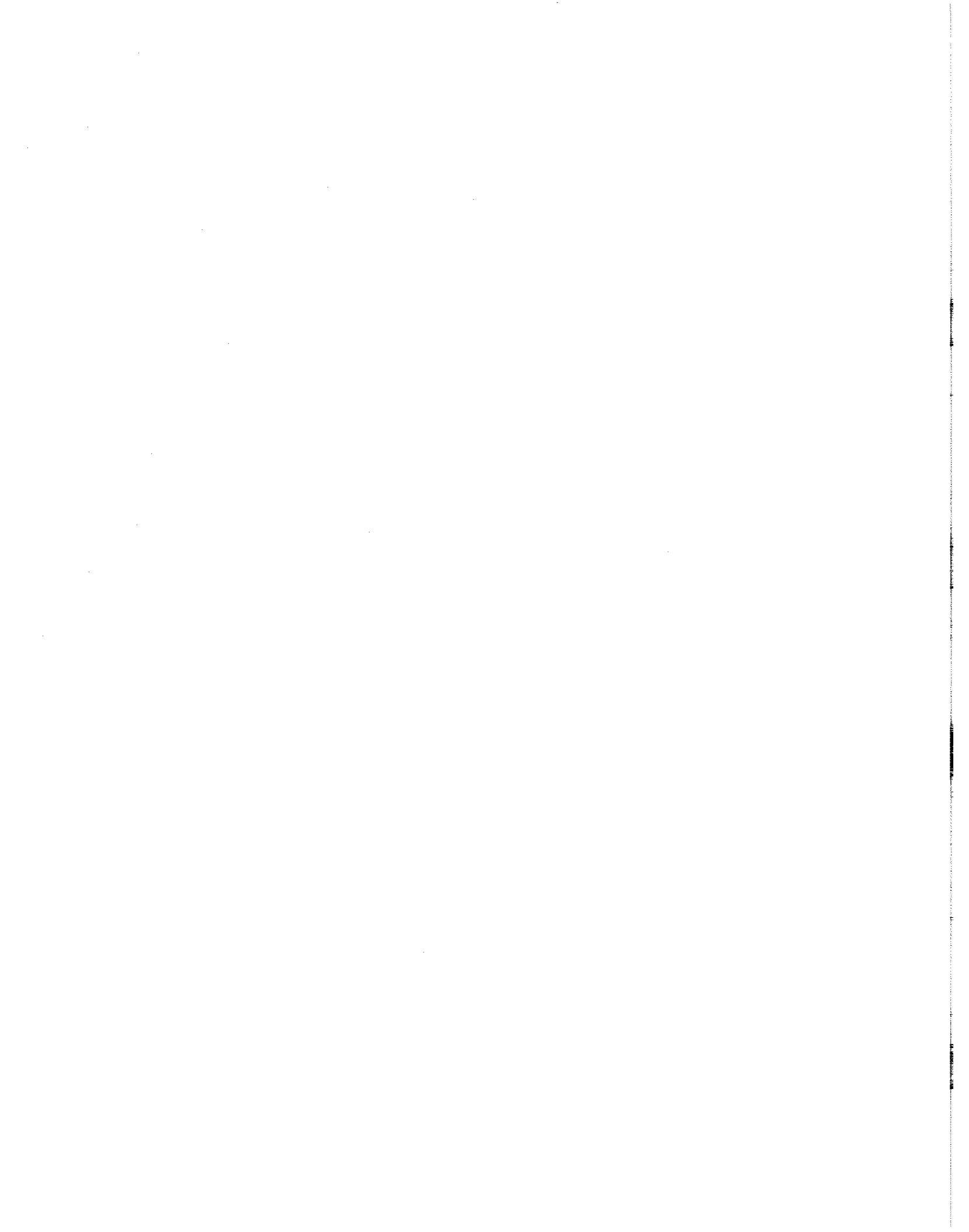
This information is not intended to discourage you from including fish in your diet, which is a good source of low-fat protein and essential fatty acids. A diet that includes fish every week can help lower your risk for heart disease. Use this advisory as a guide to help you plan which Spokane River fish to keep, as well as how often and how much to eat.

Important health messages:

- **No one should eat any rainbow trout or mountain whitefish caught between Upriver Dam and the WA/ID state line.**
- **Suggested limits for the amount of fish that can be safely eaten have been set for areas above and below Upriver Dam.** See Table 1.
- **Pregnant women, women considering pregnancy and children through six years of age should carefully follow the meal limits given in Table 1.**

Contaminants of concern

Lead and PCBs were found at elevated levels in three fish species tested: **rainbow trout, mountain whitefish, and large scale suckers.** These fish were caught in the Spokane River between Nine Mile Dam and the Washington-Idaho state line. The area that is of most concern, where higher levels of PCBs are found in fish and sediment, is the stretch of river between Upriver Dam and the WA/ID state line. See the map. The red highlighted area shows the portion of the river above Upriver Dam. The metals cadmium and zinc were also found in fish but at levels that do not pose a health concern.

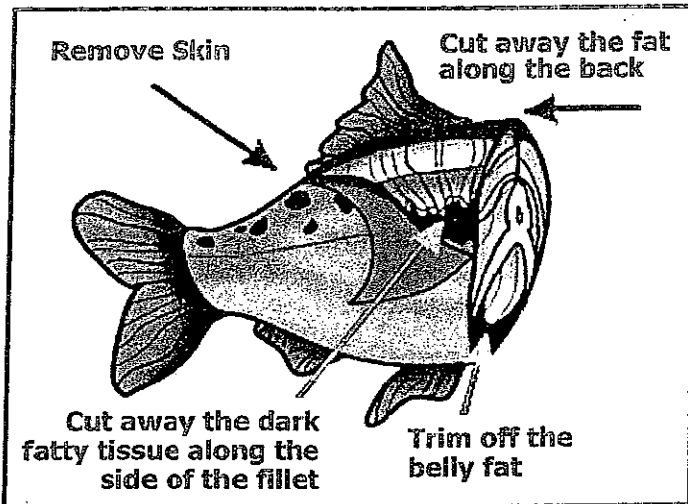


Fillet Preparation

Remove the head, guts and bone of the fish (filleting), to reduce your lead exposure. PCBs, however, accumulate in the fat of the fish, so remove the skin and trim away the fat from your fillet to reduce PCB exposure.

Cooking Methods

Cooking does not destroy these types of contaminants, but the cooking method can help reduce your PCB exposure. Prepare your fish according to the diagram below then broil, grill, or bake it on a rack so the contaminated fat drips off the fish. Do not use the drippings for sauces or gravies.



Other health issues concerning the Spokane River

Elevated levels of metals have been found in sandy beach soils along portions of the upper Spokane River, from Plantes Ferry upstream to the Washington/Idaho state line. The Spokane Regional Health District has issued an advisory on ways to enjoy the river yet limit contact with shoreline beach soils that contain lead. For a copy of that advisory call the Spokane Regional Health District at (509) 324 1560 ext 3.

For additional information

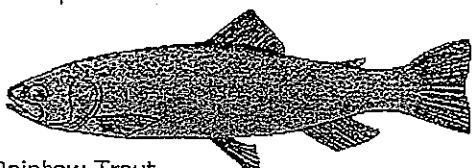
For additional information about health issues related to Spokane River fish consumption, please contact the Washington State Department of Health toll free at 1-877-485-7316. You may also call the Spokane Regional Health District at (509) 324 1560 ext 3.

Other Sources of Lead Exposure

Most lead exposure occurs in and around the home, through hobbies or use of lead-based paint. If your home was constructed before 1978, there is a possibility that your home contains lead-based paint. For more information on lead, lead-based paint and ways to reduce your exposure, please contact the Spokane Regional Health District at (509) 324-1560 ext 3.

What do the fish of concern look like?

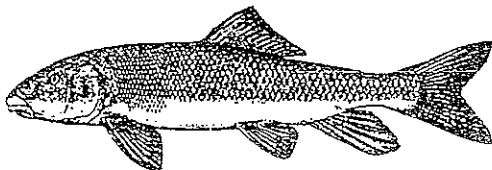
The Washington State Department of Fish and Wildlife provided the following pictures of the fish species discussed in this advisory.



Rainbow Trout



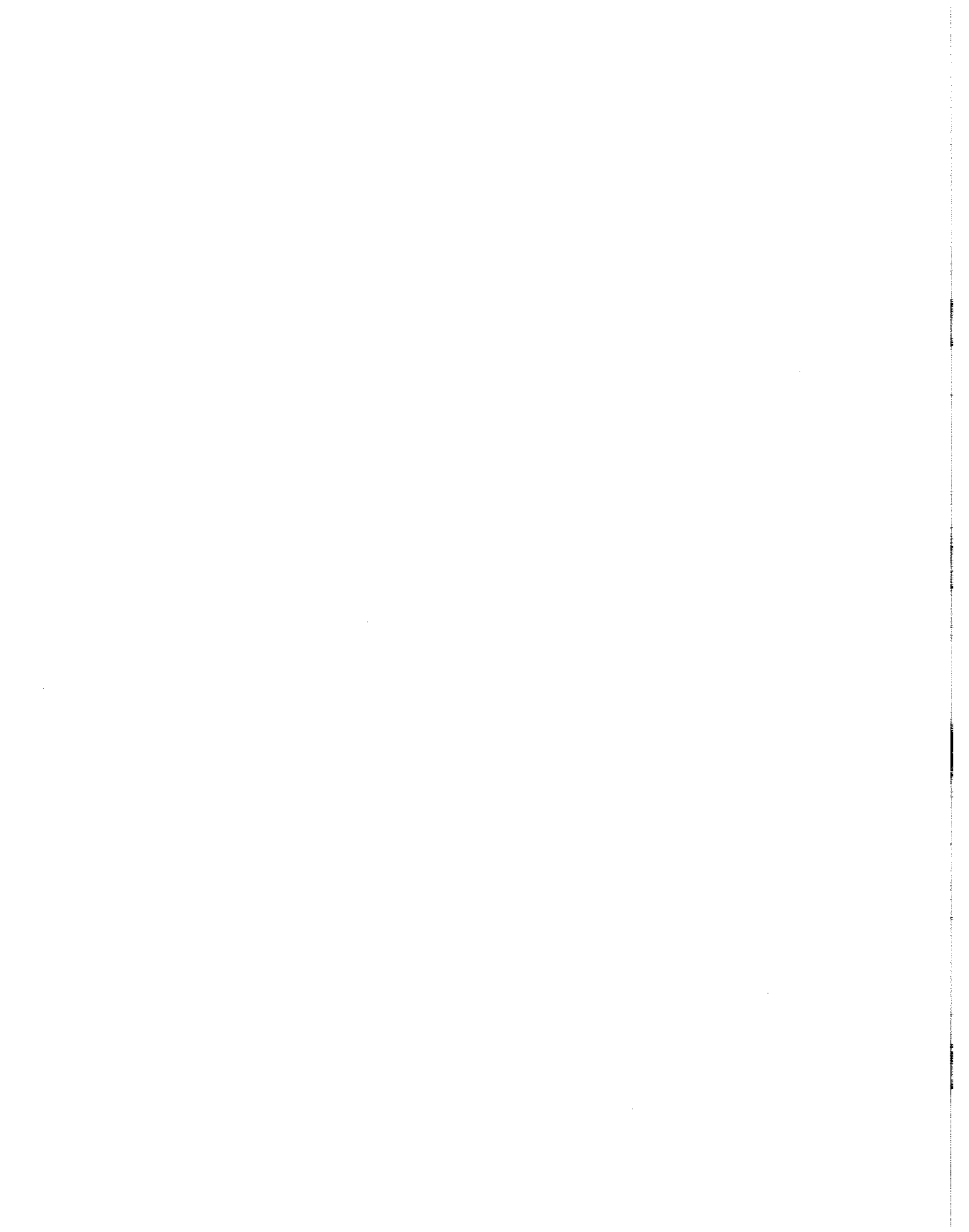
Mountain Whitefish



Large scale sucker



201063



APPENDIX C
CURRENT MAILING LIST
UPRIVER DAM SEDIMENTS SITE