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**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

No. 90-2-13283-8 SEA

**AMENDMENT NO. 1 TO  
CONSENT DECREE  
(MIDWAY LANDFILL SITE)**

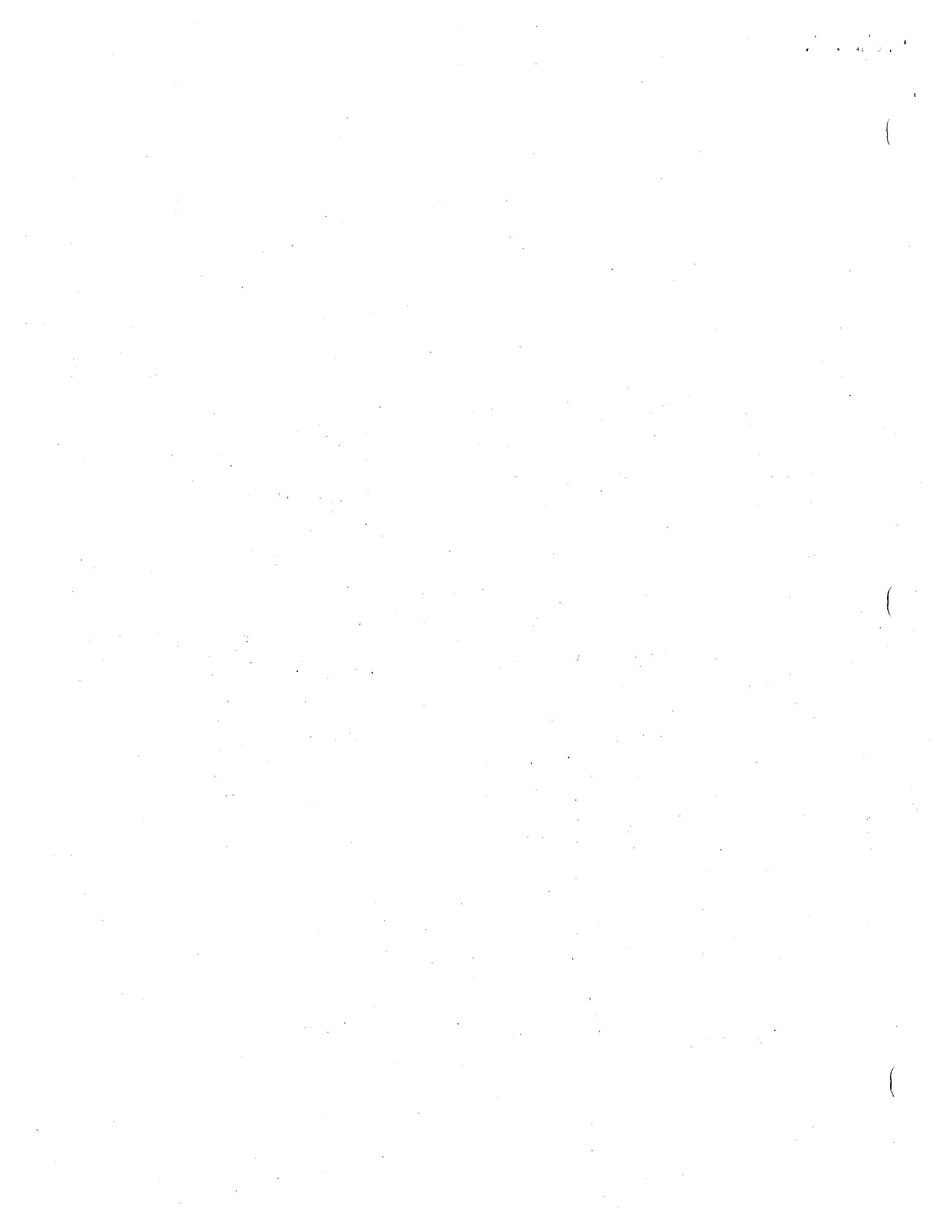
This amendment to Consent Decree No. 90-2-13283-8 is issued pursuant to the authority of RCW 70.105D, the Model Toxics Control Act (MTCA).

**STATEMENT OF CURRENT CONDITIONS**

A. Consent Decree No. 90-2-13283-8 was signed by the Court and filed on June 29, 1990. The Decree was a negotiated settlement between the Washington State Department of Ecology ("Ecology") and the City of Seattle ("Seattle").

B. At the time the above Consent Decree was negotiated and filed, Seattle had already undertaken some actions intended to remedy the release of hazardous substances from the Midway Landfill Site ("Site"), which is the subject of the Consent Decree. The Consent Decree included provisions for the implementation of additional actions aimed at remedying the release of hazardous substances at the site. Based upon Ecology's determination that the remedial actions in the Consent Decree would provide immediate protection to the public health, welfare

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1 and environment, the Consent Decree was negotiated and filed before Ecology had completed a  
2 Cleanup Action Plan (CAP) under WAC 173-340-380 regarding a chosen cleanup alternative.

3 C. Since the time the Consent Decree was negotiated and filed, the United States  
4 Environmental Protection Agency (EPA) has issued a Record of Decision (ROD) for the Site.  
5 The ROD evaluates the status of work to be performed under the Consent Decree and identifies  
6 remedial actions and components that are not expressly described in the Consent Decree,  
7 including establishing groundwater cleanup levels, requiring Seattle to sample groundwater in  
8 order to monitor progress toward cleanup levels, and requiring Seattle to implement certain  
9 institutional controls to ensure the protection of human health until groundwater cleanup levels  
10 are achieved. Ecology reviewed and recommended approval of the ROD.

11 D. Ecology has chosen to utilize EPA's ROD for the Site as a CAP, pursuant to  
12 WAC 173-340-380(4).

13 E. This amendment to the Consent Decree is for the purpose of integrating the full  
14 remedies set forth in EPA's ROD for the Site into the existing Consent Decree, as well as for the  
15 purpose of making changes to clarify the intent of the existing Consent Decree.

#### 16 **AMENDMENT TO CONSENT DECREE**

17 Based on the foregoing, the parties stipulate and agree that the Decree should be  
18 amended, pursuant to the provisions of Section XXI. AMENDMENT OF CONSENT DECREE,  
19 as follows:

20 A. All of the terms of the Consent Decree remain in effect unless expressly amended  
21 herein.

22 B. Section III. PARTIES BOUND, Heading A shall be amended to add a new  
23 Paragraph 3A (inserted between current Paragraphs 3 and 4) as follows:

24 3A. Implement the remedy selected in Section 11.2 of the Record of Decision (ROD)  
25 for the Midway Landfill, CERCLIS Identification Number WAD 980638910, issued by the  
26 United States Environmental Protection Agency (EPA) on September 6, 2000 (Exhibit B to this

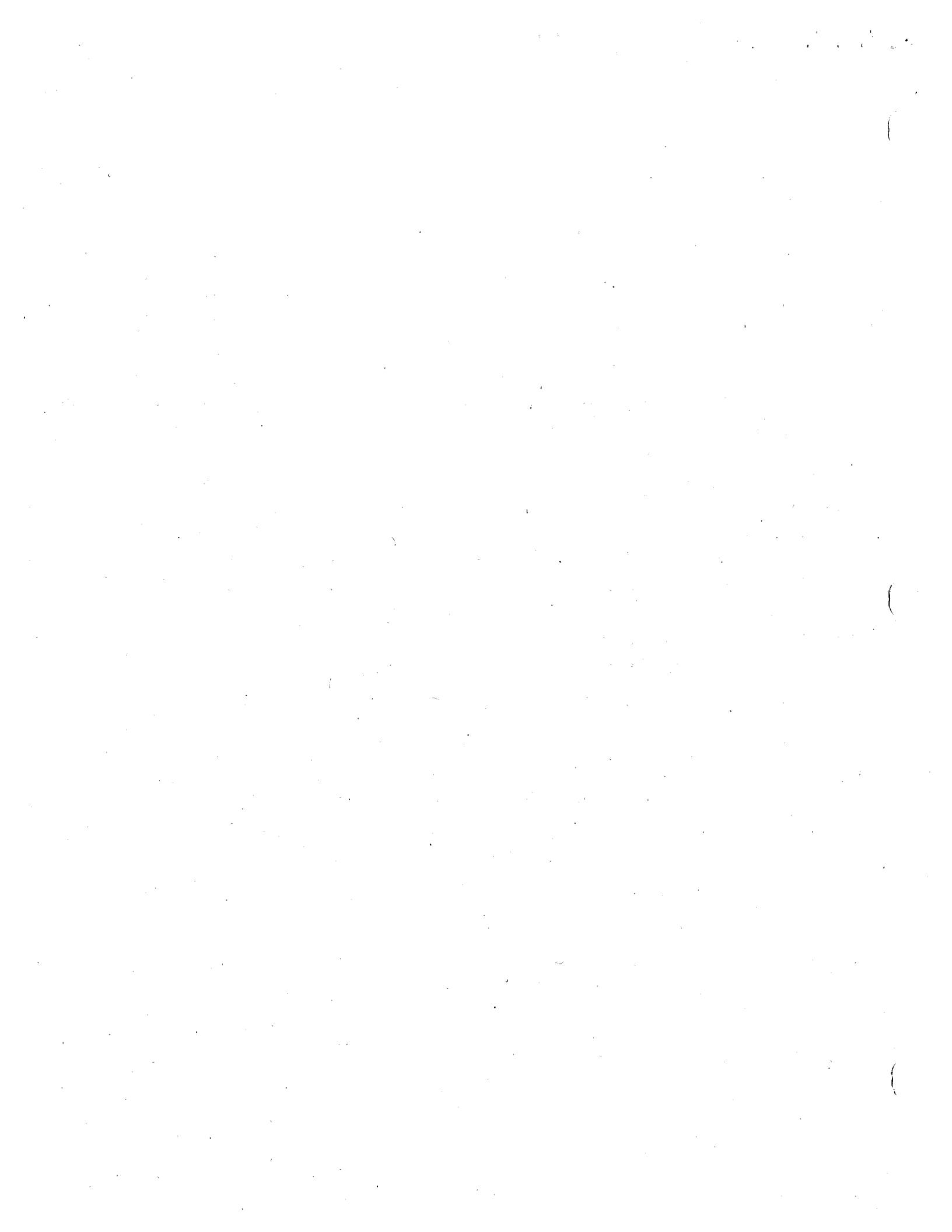


1 Amendment, incorporated herein by reference and enforceable under this Consent Decree), as  
2 utilized by Ecology as a cleanup action plan (CAP) pursuant to WAC 173-340-380(4), in  
3 accordance with the remedial action objectives and cleanup standards identified in that ROD. In  
4 summary, implementing the remedy selected in Section 11.2 of the ROD requires Seattle to:

- 5 a. Implement a Compliance Monitoring Plan approved by Ecology, as described in  
6 Section XI, Heading B, Paragraph 5 of the Consent Decree as amended herein;
- 7 b. Continue to operate and maintain all remedial elements required by the Consent  
8 Decree by implementing the Operations and Maintenance Manual described in  
9 Section XI, Heading B, Paragraph 4 of the Consent Decree as amended herein;
- 10 c. As described in Section XIX of the Consent Decree as modified herein, within six  
11 (6) months of the effective date of this Amendment, place a notice in the records  
12 of real property kept by the King County Recorder alerting any future purchaser of  
13 the landfill property, in perpetuity, that the property has been used as a landfill, is  
14 or was on EPA's National Priorities List, and is restricted in its future use in  
15 accordance with the terms of Washington's Criteria for Municipal Solid Waste  
16 Landfills (WAC 173-351-500(1)(i) and (2)(c)(iii)); and
- 17 d. As described in Section XI, Heading B, Paragraph 6 of the Consent Decree as  
18 modified herein, send an annual written notice to the Seattle-King County  
19 Department of Public Health (or its successor); local water districts; locally active  
20 well drillers; and the owner of Well #37 regarding groundwater conditions in  
21 affected areas downgradient of the landfill.

22 C. Section V. PURPOSE, Paragraph 1 shall be amended as follows:

- 23 1. To provide for an expeditious cleanup of the Midway Landfill facility by  
24 completing work on the final remedial action at the landfill, including capping the landfill,  
25 completing a surface water management system, completing a gas extraction system, and  
26



1 implementing the remedy selected in EPA's September 6, 2000 ROD, as utilized by Ecology as a  
2 CAP.

3 D. Section VI. COVENANT NOT TO SUE shall be amended as follows:

4 Subject to the Covenant Reopeners and Reservation of Rights herein, in consideration for  
5 Seattle's satisfactory performance and completion of the terms and conditions of this Consent  
6 Decree, Ecology covenants not to sue Seattle, or seek any administrative, legal, or equitable  
7 remedy against Seattle, for the performance, conduct, completion, or appropriateness of the  
8 remedial actions performed pursuant to this Decree, which include the surface water management  
9 system, the final cover, the landfill gas extraction systems, and implementation of the remedy  
10 selected in EPA's September 6, 2000 ROD, as utilized by Ecology as a CAP. This covenant not  
11 to sue is of a scope commensurate with this Decree and Amendment No. 1 thereto.

12 E. Section IX. DEFINITIONS shall be amended as follows:

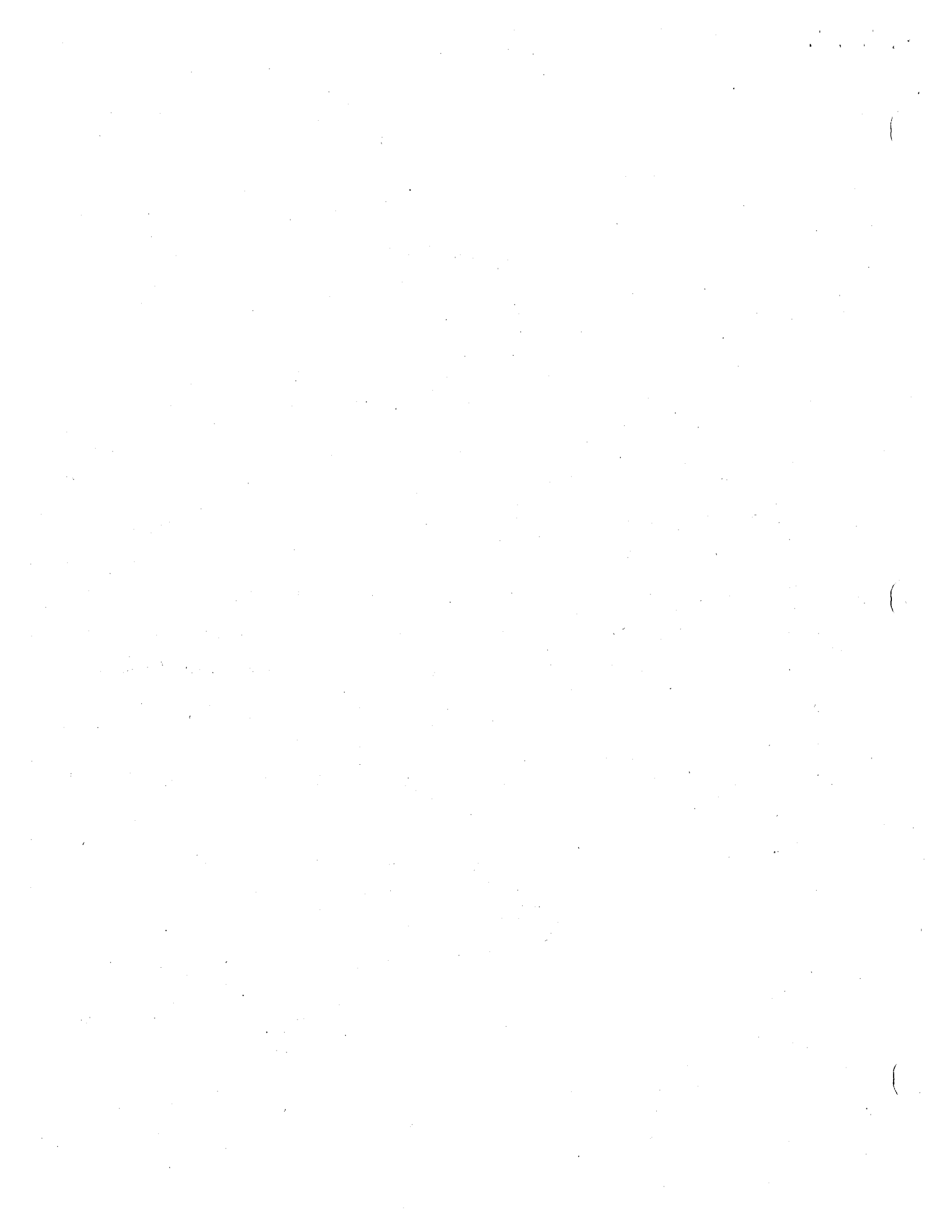
13 P. "EPA" means the United States Environmental Protection Agency.

14 Q. "ROD" means a Record of Decision issued by EPA under the Comprehensive  
15 Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et  
16 seq., which can be utilized as a Cleanup Action Plan by Ecology pursuant to WAC 173-340-  
17 380(4).

18 F. Section X STATEMENT OF FACTS, Heading A, first paragraph, shall be  
19 amended to delete the reference to "Appendix A" and substitute a reference to "Exhibit A,"  
20 attached hereto and incorporated herein by reference and enforceable under this Consent Decree.

21 G. Section XI. SCOPE OF WORK shall be amended to add a new Paragraph 3A  
22 (inserted between current Paragraphs 3 and 4), as well as amended to add language to Paragraph  
23 4, as follows:

24 3A. Implementation of the remedy selected in Section 11.2 of the September 6, 2000  
25 ROD, as utilized by Ecology as CAP.





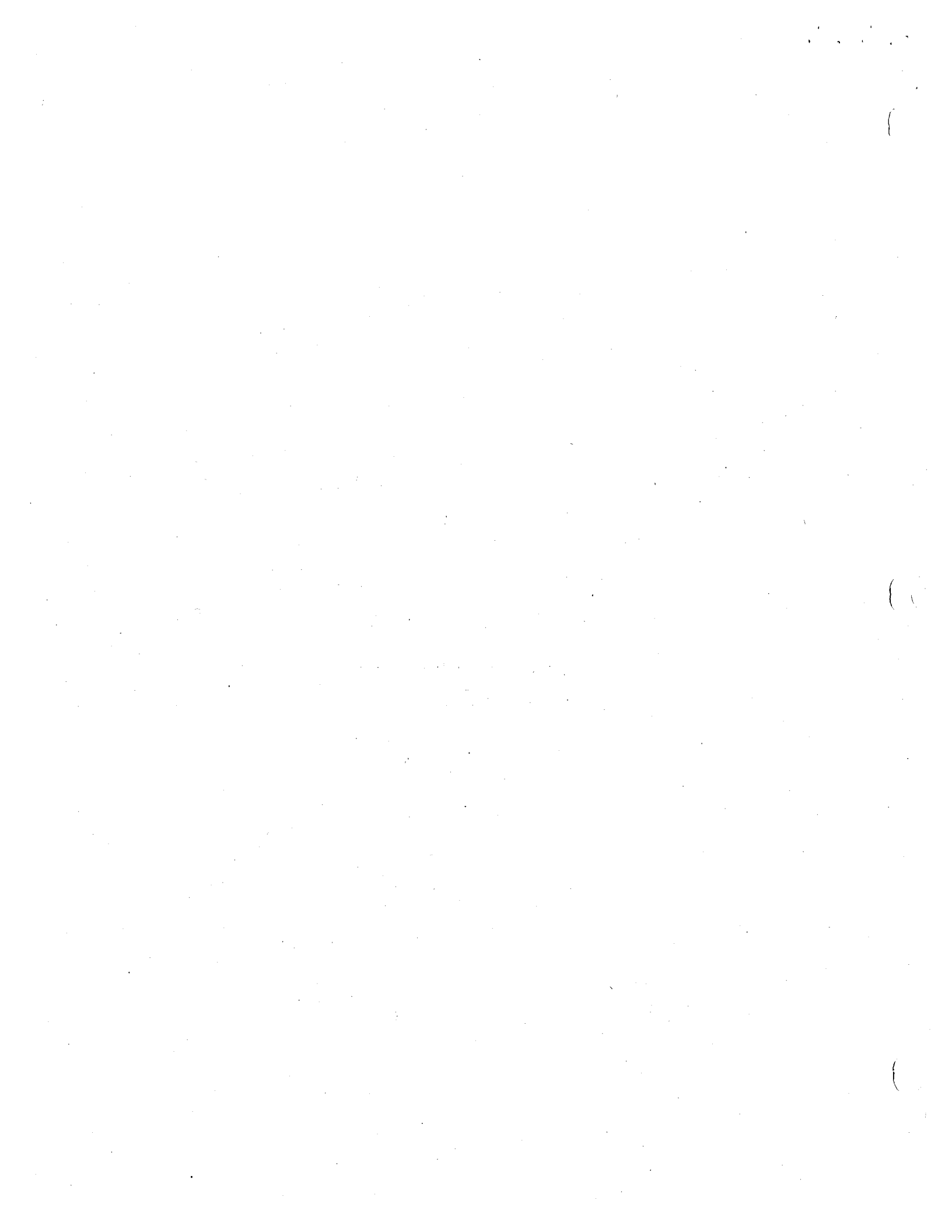
1           4.       Preparation and implementation of an Operation and Maintenance Manual for all  
2 remedial action projects implemented at the landfill as part of this Decree.

3           H.       Section XI. SCOPE OF WORK, Heading B, Paragraph 4 shall be amended, and  
4 new Paragraphs 5 and 6 shall be added, as follows:

5           4.       Landfill Operation and Maintenance Manual. Seattle shall implement the  
6 comprehensive Operation and Maintenance Manual prepared by Seattle and approved by Ecology  
7 in December 1992 (Exhibit C to this Amendment, incorporated herein by reference and  
8 enforceable under this Consent Decree), which incorporates both short-term and long-term  
9 operation and maintenance requirements for all remedial action projects constructed at the  
10 Midway Landfill under the terms of this Decree. Changes to the requirements and provisions of  
11 the Operation and Maintenance Manual may be made without amending this Decree and shall be  
12 incorporated herein by reference.

13          5.       Compliance Monitoring. Seattle shall monitor groundwater, surface water, and  
14 gas as described in Section 11.2 of the September 6, 2000 ROD and in accordance with the  
15 requirements and provisions of a Compliance Monitoring Plan (CMP) prepared by Seattle and  
16 approved by Ecology April 2000 (Exhibit D to this Amendment, incorporated herein by reference  
17 and enforceable under this Consent Decree). Additional monitoring under the CMP may be  
18 required by Ecology, if needed in accordance with Section 11.2 of the September 6, 2000 ROD,  
19 and reduced monitoring under the CMP may be requested by Seattle and approved by Ecology,  
20 based upon Site conditions. Changes to the requirements and provisions of the CMP may be  
21 made without amending this Decree and shall be incorporated herein by reference.

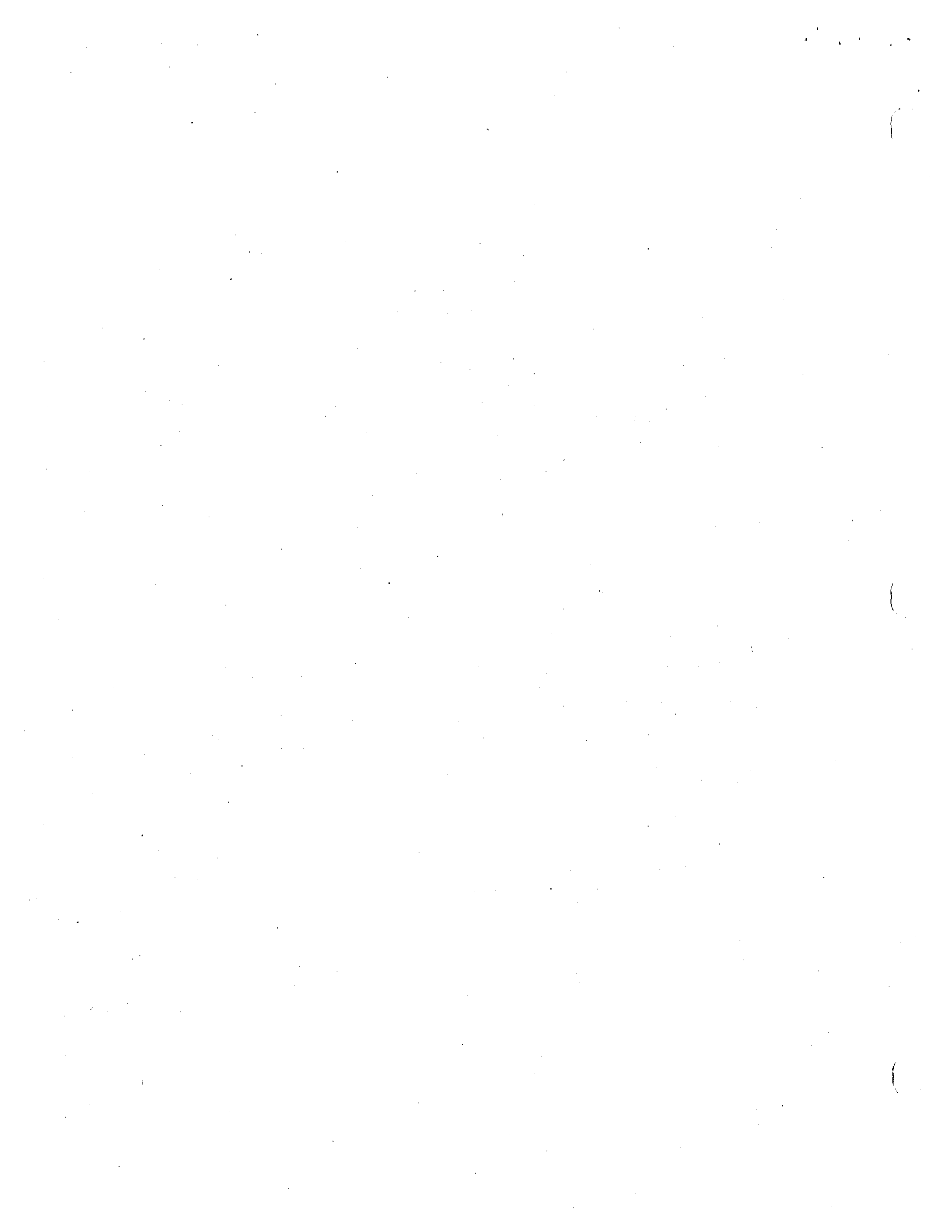
22          6.       Institutional Controls. Until such time as compliance with applicable  
23 groundwater cleanup standards is met, and in addition to the notice and restrictions described in  
24 Section XIX, Seattle shall implement the institutional controls described in Section 11.2 of the  
25 September 6, 2000 ROD to notify well drillers of the groundwater contamination in the vicinity  
26 of the landfill for the purpose of discouraging wells from being drilled in the identified area.



1 Seattle shall comply with this requirement by providing annual written notification to the  
2 following entities and persons concerning groundwater conditions in affected areas downgradient  
3 of the Midway Landfill:

- 4 a. Seattle-King County Department of Public Health, or its successor agency;
- 5 b. All local water districts potentially affected (currently the Kent and Highline  
6 Water Districts);
- 7 c. All "locally active well drillers," which are defined as those well drillers that have  
8 drilled wells within King County in the calendar year prior to the notice, as  
9 provided by Ecology to Seattle; and
- 10 d. The owner of record of the real property where Well #37 is located, as identified  
11 in figure 6-1 of the September 6, 2000 ROD, unless Seattle provides Ecology with  
12 adequate assurances that this well has been abandoned.

13 Seattle shall provide such annual notification on or before July 15 of each year, unless another  
14 notification date is approved by Ecology. With the exception of notice to the owner of record of  
15 the real property where Well #37 is located, the above annual notices shall include a map  
16 showing the location of the affected areas with indication of the affected aquifers and their  
17 elevations. Notice to the owner of Well #37 need only inform the owner of groundwater  
18 conditions in the area of that well. Notices to all of the above entities and persons should include  
19 reference to WAC 173-160-171 (or any succeeding regulation if recodified), which provides that  
20 a water well cannot be located within one thousand feet from the property boundary of a solid  
21 waste landfill, or within one hundred feet from all other sources or potential sources of  
22 contamination. The notice may be part of an annual groundwater monitoring report. The notice  
23 requirement may be removed or modified by Ecology in the future if compliance with cleanup  
24 standards in groundwater monitoring wells downgradient from the Midway Landfill is attained.  
25 Changes to these notice requirements approved by Ecology may be made without amending this  
26 Decree and shall be incorporated herein by reference.



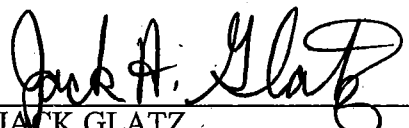
1 I. Section XIX. TRANSFER OF INTEREST IN PROPERTY shall be amended as  
2 follows:

3 No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest  
4 in any portion of the landfill shall be consummated without provision for continued operation  
5 and maintenance of any containment system, treatment system, or monitoring system installed or  
6 implemented pursuant to this Decree, unless Ecology has approved of the retirement or  
7 abandonment of any such systems or part thereof.

8 Within six (6) months of the entry of this amendment to the Consent Decree, and to the  
9 extent Seattle is the owner of the real property described in Exhibit A to this Consent Decree, as  
10 amended, after review and approval by Ecology, Seattle shall place a notice in the records of real  
11 property kept by the county records office alerting any future purchaser of the landfill property, in  
12 perpetuity, that said property was on the National Priorities List. In addition, such notice shall  
13 contain the post-closure use restrictions and conform to the requirements of WAC 173-351-  
14 500(1)(i) and (2)(c)(iii), including providing notice that the property was used as a landfill. The  
15 notice shall further contain a restriction that no water supply wells may be installed on the  
16 property. Prior to transfer of any legal or equitable interest in all or any portion of the landfill  
17 real property, Seattle shall serve a copy of this Decree upon any prospective purchaser, lessee,  
18 transferee, assignee, or other successor in interest of the property; and, at least thirty (30) days  
19 prior to the transfer, Seattle shall notify Ecology of said contemplated transfer.

20 DEPARTMENT OF ECOLOGY

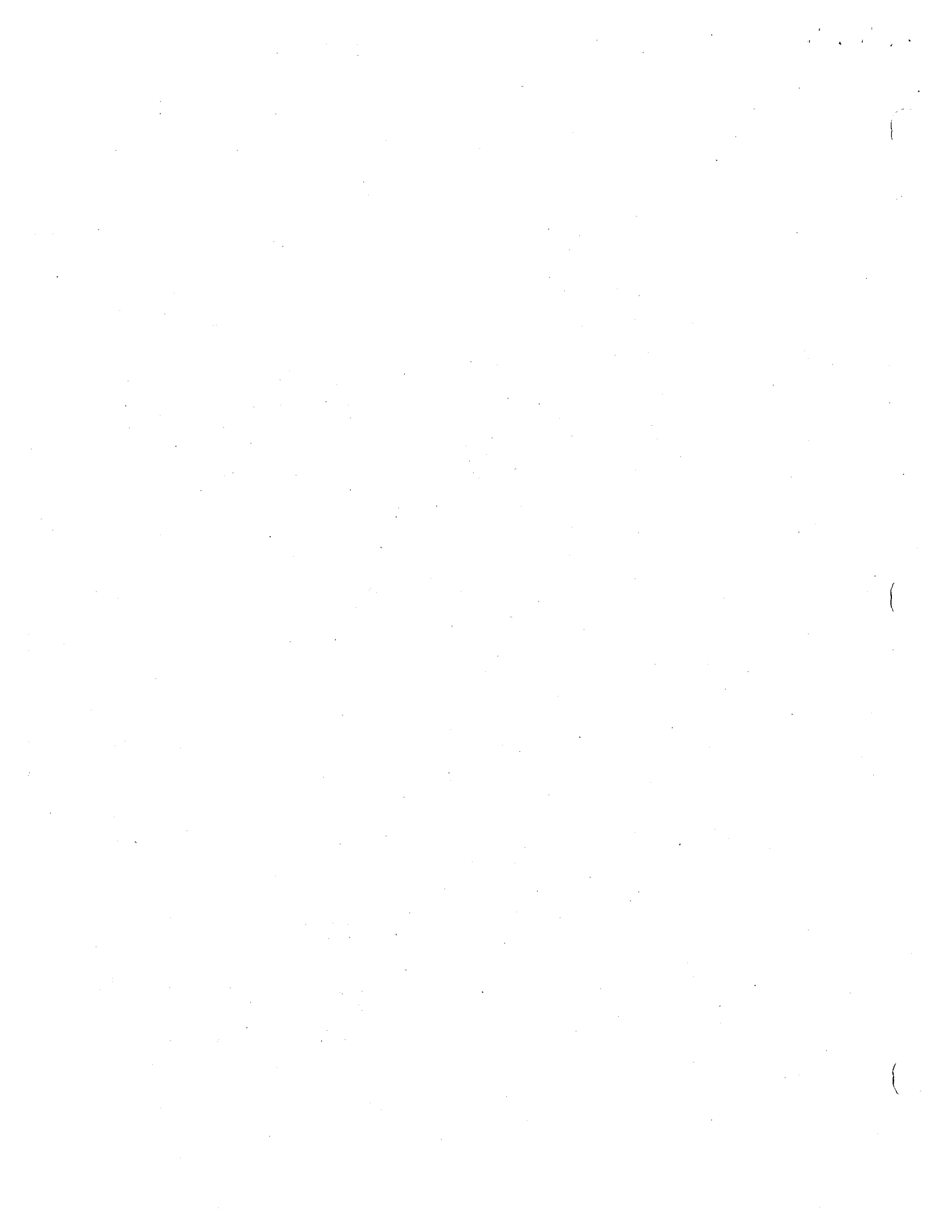
ROB MCKENNA  
Attorney General

21  
22   
23 JACK GLATZ  
Acting Program Manager  
24 Toxics Cleanup Program

  
25 ANDREW A. FITZ, WSBA #22169  
Assistant Attorney General  
Attorneys for Plaintiff

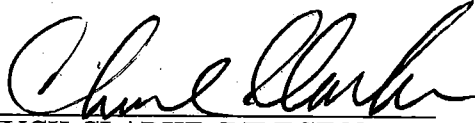
26 Date: 12/01/05

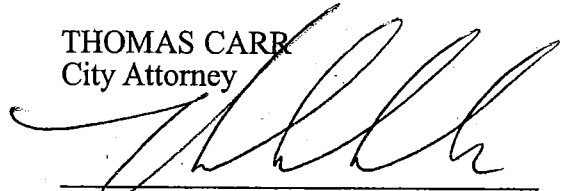
Date: December 1, 2005



1 CITY OF SEATTLE

THOMAS CARR  
City Attorney

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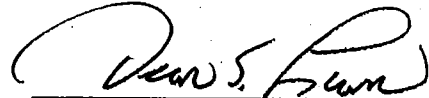
4 CHUCK CLARKE, DIRECTOR  
SEATTLE PUBLIC UTILITIES

MARYA J. SILVERNALE, WSBA #14525  
Assistant City Attorney  
Attorney for Defendant

5  
6 Date: 07/12/05

Date: July 1, 2005

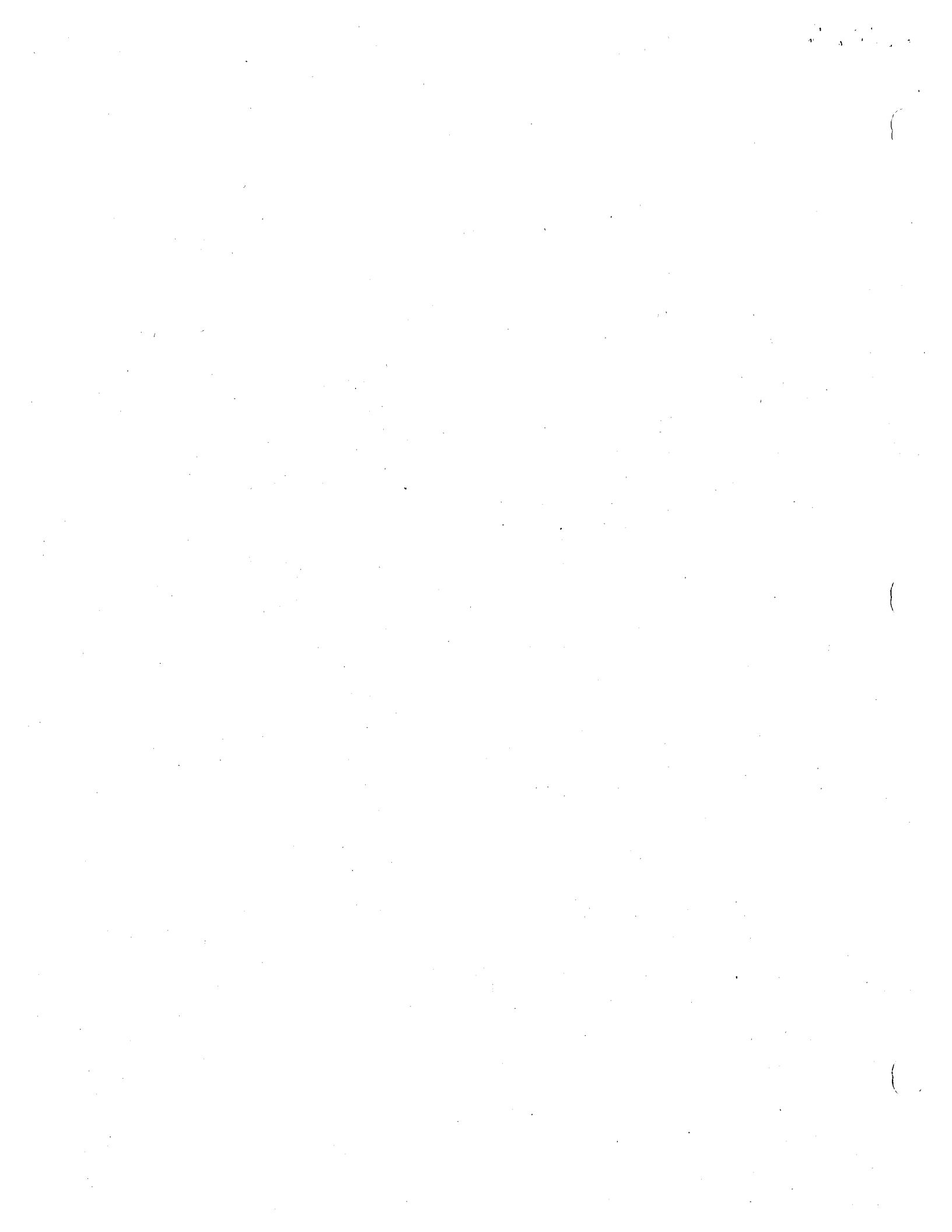
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9 DATED this 3 day of February, 2006.

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12 JUDGE Dean S. Lum  
King County Superior Court

13  
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15  
16 ATTACHED EXHIBITS:

- 17 EXHIBIT A – Midway Landfill Legal Description [Revised]
- 18 EXHIBIT B – EPA Record of Decision (ROD) for Midway Landfill, September 6, 2000
- 19 EXHIBIT C – Operations & Maintenance Manual for Midway Landfill, December 1992
- 20 EXHIBIT D – Compliance Monitoring Plan (CMP) for Midway Landfill, April 2000

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Exhibit A

**MIDWAY LANDFILL LEGAL DESCRIPTION [Revised]**

PARCEL A: Tax lot # 222204-9168-03

That portion of the west half of the southwest quarter of the northwest quarter of Section 22, Township 22 North, Range 4 East, W.M., in King County, Washington, lying westerly of the Primary State Highway Number #1, (Interstate Highway No. 5) as condemned in King County Superior Court Cause No. 535009, and between the north and south lines of the south half of the north half of the southeast quarter of the northeast quarter of Section 21, Township 22 North, Range 4 East, W.M., in King County, Washington, extending easterly to the west margin of Primary Sate Highway #1.

PARCEL B: Tax lot # 212204-9025-07, and # 212204-9014-00, and a portion of # 212204-9033-07

The south half of the southeast quarter of the northeast quarter and the west half of the west half of the northeast quarter of the southeast quarter of Section 21, Township 22 North, Range 4 East, W.M., in King County, Washington, lying westerly of Primary State Highway Number 1 (Interstate Highway No. 5);

EXCEPT that portion described as follows:

Beginning at the southwest corner of the southeast quarter of the northeast quarter of said section;

thence north 01°07'09" east 363.64 feet along the west line of said subdivision;

thence south 87°53'39" east 602.44 feet ;

thence south 01°07'09" west 202.70 feet ;

thence south 81°19'39" west 447.99 feet ;

thence south 39°19'39" west 260.00 feet to the west line of the northeast quarter of the southeast quarter of said Section;

thence north 01°05'25" east 130.03 feet along said west line to the point of beginning;

AND EXCEPT that portion of the north half of the southwest quarter of the southeast quarter of the northeast quarter of said Section 21, lying north of the south 40 feet and west of the east 60 feet .

AND EXCEPT the north 100 feet of the south 130 feet of the west 95 feet of the west half of the west half of the northeast quarter of the southeast quarter, of said Section 21;

AND EXCEPT the south 30 feet thereof for South 252nd Street.

PARCEL C: Tax lot # 212204-9026-06

Those portions of the southeast quarter of the northeast quarter and the northeast quarter of the southeast quarter of Section 21, Township 22 North, Range 4 East, W.M., in King County, Washington, more particularly described as follows:

Beginning at the southwest corner of the southeast quarter of the northeast quarter of said

section; thence north 01°07'09" east 363.64 feet along the west line of said subdivision;

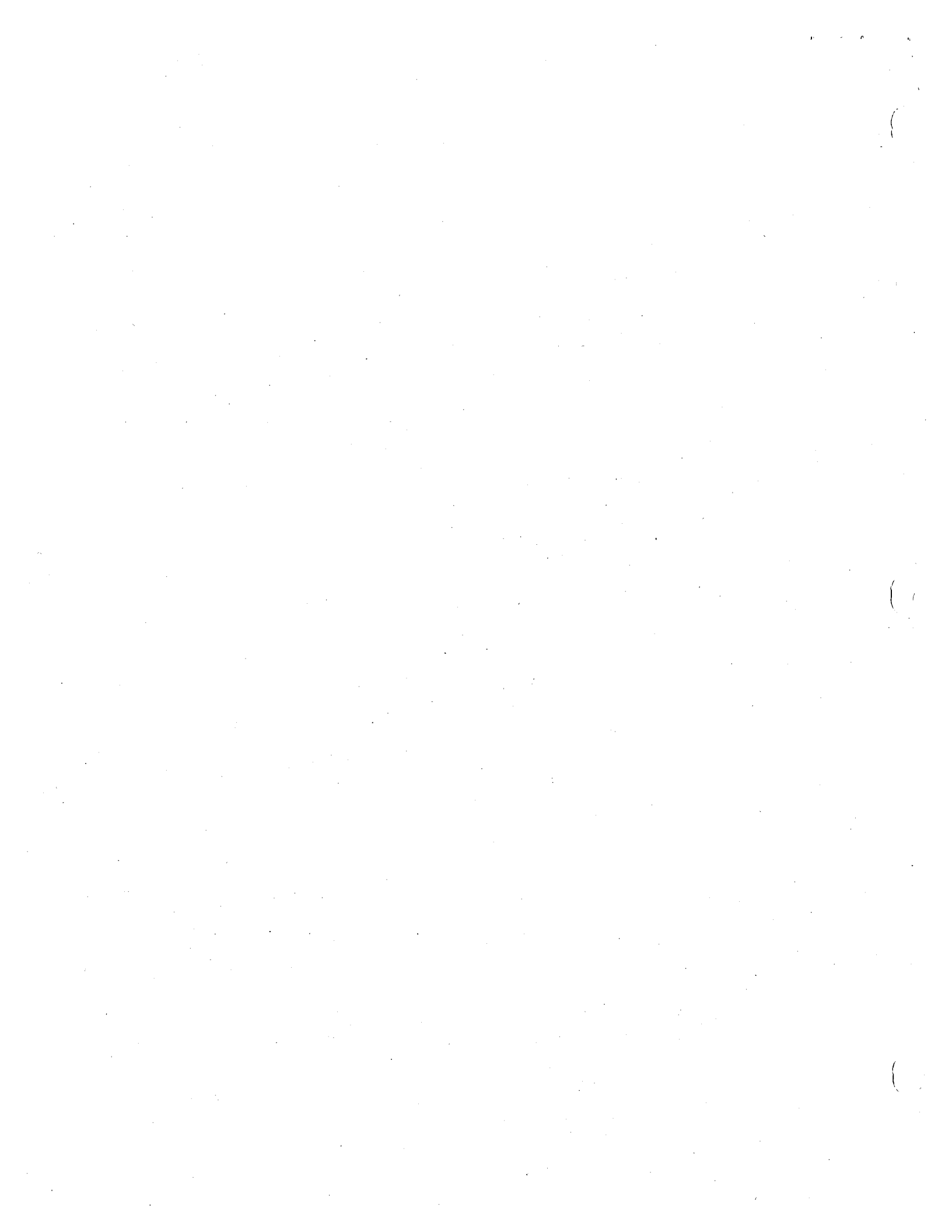
thence south 87°53'39" east 602.44 feet;

thence south 01°07'09" west 202.70 feet;

thence south 81°19'39" west 447.99 feet;

thence south 39°19'39" west 260.00 feet to the west line of the northeast quarter of the southeast quarter of said section;

thence north 01°05'25" east 130.03 feet along said west line to the point of beginning;



1 EXCEPT that portion, if any, lying north of the south 40 feet and west of the east 60 feet of the  
2 north half of the southwest quarter of the southeast quarter of the northeast quarter of said  
3 Section 21.

4 PARCEL D: Tax lot # 212204-9033-07 (portion)

5 The north 535.83 feet of the northeast quarter of the southeast quarter of Section 21, Township  
6 22 North, Range 4 East, W.M., in King County, Washington, lying westerly of Primary State  
7 Highway Number 1 (Interstate Highway No. 5);

8 EXCEPT that portion within the west half of the northwest quarter of the northeast quarter of the  
9 southeast quarter of said Section 21.

10 SOUTHEAST PARCEL: Tax Lot #2122049137-02

11 That portion of the NE ¼ of the SE ¼ of Section 21, Township 22 North, Range 4 East, W. M.,  
12 in King County, Washington, described as follows:

13 Beginning at the NE corner of the above described subdivision; thence South along the East  
14 section line of said Section 21, 535.83 feet to the True point of Beginning; thence West parallel  
15 with the South line of said subdivision 987.6 feet to the East line of the West ¼ of the NE ¼ of  
16 the SE ¼; thence South along said East line 780 feet to the South line of said subdivision; thence  
17 East along said South line 987.6 feet to the SE corner of said subdivision; thence North along  
18 said Section line 780 feet to the True Point of Beginning;

19 EXCEPT that portion lying within Primary State Highway Number #1 (Interstate Highway No.  
20 5); and EXCEPT that portion lying within South 252<sup>nd</sup> Street.

21 NORTH PARCEL: Tax Lot # 2122049021-01

22 Beginning at the southeast corner of the south half of the north half of the southeast quarter of the  
23 northeast quarter of Section 21, Township 22 North, Range 4 East, W.M., in King County,  
24 Washington;

25 Thence north 89°41'00" west along the south line of said south half of the north half of the  
26 southeast quarter of the northeast quarter 1318.90 feet to the southwest corner thereof;

Thence continuing north 89°41'00" west along the prolongation of said south line 79.98 feet,

more or less, to an intersection with the easterly line of State Road Number 1 (Highway 99);

Thence north 08°54'00" east along said easterly line of State Road Number 1, 327.02 feet to a  
point where said easterly line of State Road Number 1 is intersected by the westerly prolongation  
of said north line of said south half of the north half of the southeast quarter of the northeast  
quarter;

Thence south 89°49'07" east along said westerly prolongation of said north line 25.91 feet, more  
or less, to the northwest corner of said south half of the north half of the southeast quarter of the  
northeast quarter;

Thence continuing south 89°49'07" east along the said north line 1319.25 feet to the northeast  
corner of said south half of the north half of the southeast quarter of the northeast quarter;

Thence south 00°28'18" east along the east line thereof 326.72 feet to the point of beginning;

EXCEPT the westerly 250 feet (as measured along the north line of said property), and parallel to  
the east line of State Road Number 1 (Highway 99).

