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Vice Chairman

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Commissioner

February 9, 2011

PARTIES OF RECORD

Re: Case No. 2010-00049

Attached is a copy of the memorandum which is being filed in the record of the above-referenced case. If you have any questions, please contact M. Todd Osterloh at 502/564-3940, Extension 439.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen".

Jeff Derouen  
Executive Director

Attachment



**INTRA-AGENCY MEMORANDUM**  
**KENTUCKY PUBLIC SERVICE COMMISSION**

**TO:** Case File

**FROM:** Todd Osterloh, Staff Attorney <sup>TO</sup>

**DATE:** February 9, 2011

**RE:** Case No. 2010-00049  
Post Hearing Data Response

On February 8, 2011, Commission Staff received the attached Maxey Flats Consent Decree from the Division of Waste Management, Department for Environmental Protection in the Energy and Environment Cabinet. This document was produced in response to the question of Scott Wilburn at the hearing on February 2, 2011.

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COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET

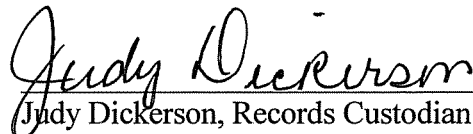
In re: Maxey Flats Disposal Site  
Agency Interest No. 1125

**CERTIFICATION OF PUBLIC RECORD**

\*\*\*\*\*

I, Judy Dickerson, Custodian of public records for the Division of Waste Management, Department for Environmental Protection, Energy and Environment Cabinet, do hereby certify that attached is a true and correct copy of the 1996 Maxey Flats Consent Decree, Appendix A – the Record of Decision, Appendix B – Statement of Work, Appendix C – Settlement Agreement between Federal Agencies and Private Parties, Appendix D – List of Settling Federal Agencies and Appendix E – List of Settling Private Parties.

These documents are official records of the Energy and Environment Cabinet compiled in the ordinary course of business, and appear of record and on file in my office.



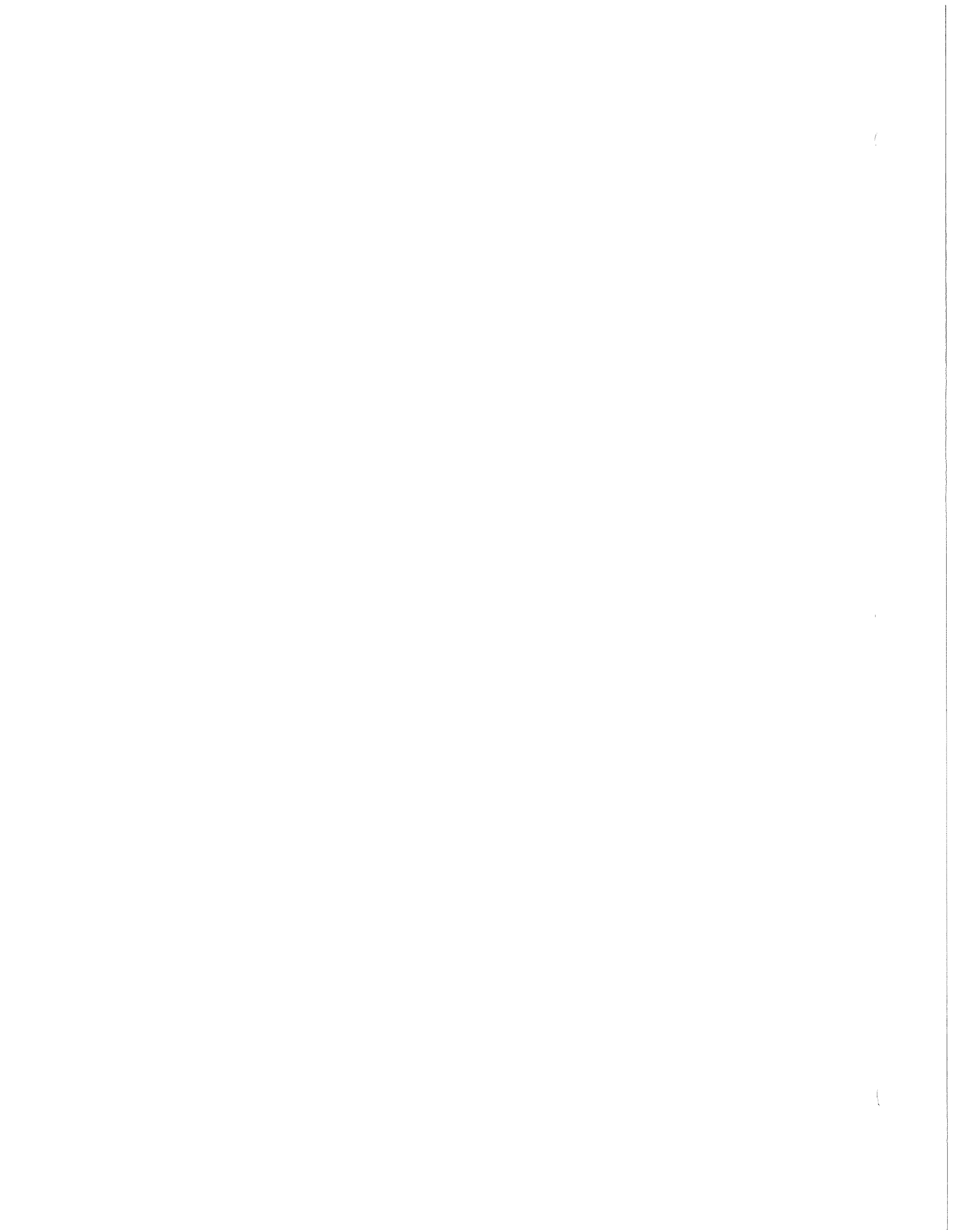
Judy Dickerson, Records Custodian  
Division for Waste Management  
200 Fair Oaks Lane  
Frankfort, Kentucky 40601

Subscribed and sworn to before me by Judy Dickerson, this the 8th day of February, 2011.

  
NOTARY PUBLIC

My Commission Expires:

August 26, 2012



29917

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
FRANKFORT DIVISION

Eastern District of Kentucky  
**FILED**

APR 18 1996

AT PIKEVILLE  
LESLIE G. WHITMER  
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

U.S. Ecology, Inc., et al.,

Defendants.

CIVIL ACTION NO. 95-58

CONSENT DECREE

*Maxey flats  
RD/2A CD*

*04-96-0016  
04-92-0024*

KYD 980 729107





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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
CERCLA CONSENT DECREE FOR REMEDIAL  
DESIGN, REMEDIAL ACTION, AND  
PARTIAL REIMBURSEMENT OF RESPONSE  
COSTS FOR THE MAXEY FLATS DISPOSAL  
SUPERFUND SITE  
FLEMING COUNTY, KENTUCKY



I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Maxey Flats Disposal Superfund Site (the "Site") in Fleming County, Kentucky, together with accrued interest; and (2) performance of studies and response work by the Settling Defendants at the Site consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. The Maxey Flats Disposal Site is a low-level radioactive waste site licensed under the Atomic Energy Act ("AEA"). Pursuant to the requirements of the AEA, the Site is owned by the Commonwealth of Kentucky ("Commonwealth"). The Commonwealth, through the Cabinet for Human Resources, exercises regulatory authority over the Site pursuant to its status as an "Agreement State" under the AEA and the Kentucky Cabinet for Natural Resources and Environmental Protection is the current licensee of the Site. Nuclear Engineering Company (now known as "U.S. Ecology, Inc.") operated the Site under a license granted by the





Commonwealth from 1963-1978, during which time 4-5 million cubic feet of radioactive waste was disposed of at the Site.

D. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth of Kentucky on June 30, 1992 of negotiations with potentially responsible parties ("PRPs") regarding the implementation of the remedial design and remedial action ("RD/RA") for the Site.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Department of the Interior and the United States Department of Agriculture on June 30, 1992 of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

F. Participation by the ~~Settling~~ Defendants in the settlement represented by this Consent Decree shall not be construed as an acknowledgement by the Settling Defendants that releases or threatened releases of hazardous substances at or from the Site constitute an imminent and substantial endangerment to the public health or welfare or to the environment. Except as otherwise provided in the Federal Rules of Evidence, participation by the Settling Parties in the settlement represented by this Consent Decree shall not be considered an admission of liability for any purpose. By consenting to the entry of the Consent Decree, the Settling Defendants do not admit



any statement in the administrative record. The Settling Parties reserve their rights to raise any defense and to challenge any fact or liability in any proceeding except one to enforce this Consent Decree.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 10, 1986, at 51 Fed. Reg. 21,055 and 21,095.

H. In response to an alleged release or substantial threat of a release of hazardous substances at or from the Site, the Maxey Flats Steering Committee, composed of 82 PRPs, commenced on March 24, 1987, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430 under the Administrative Order by Consent ("AOC") for the Site dated March 24, 1987.

I. The Remedial Investigation ("RI") Report for the Site was finalized on July 21, 1989, and the Feasibility Study ("FS") Report was finalized, with an Addendum, on May 31, 1991. The Maxey Flats Steering Committee has completed the work required under the AOC.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on June 3 and June 4, 1991, in major local newspapers of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of

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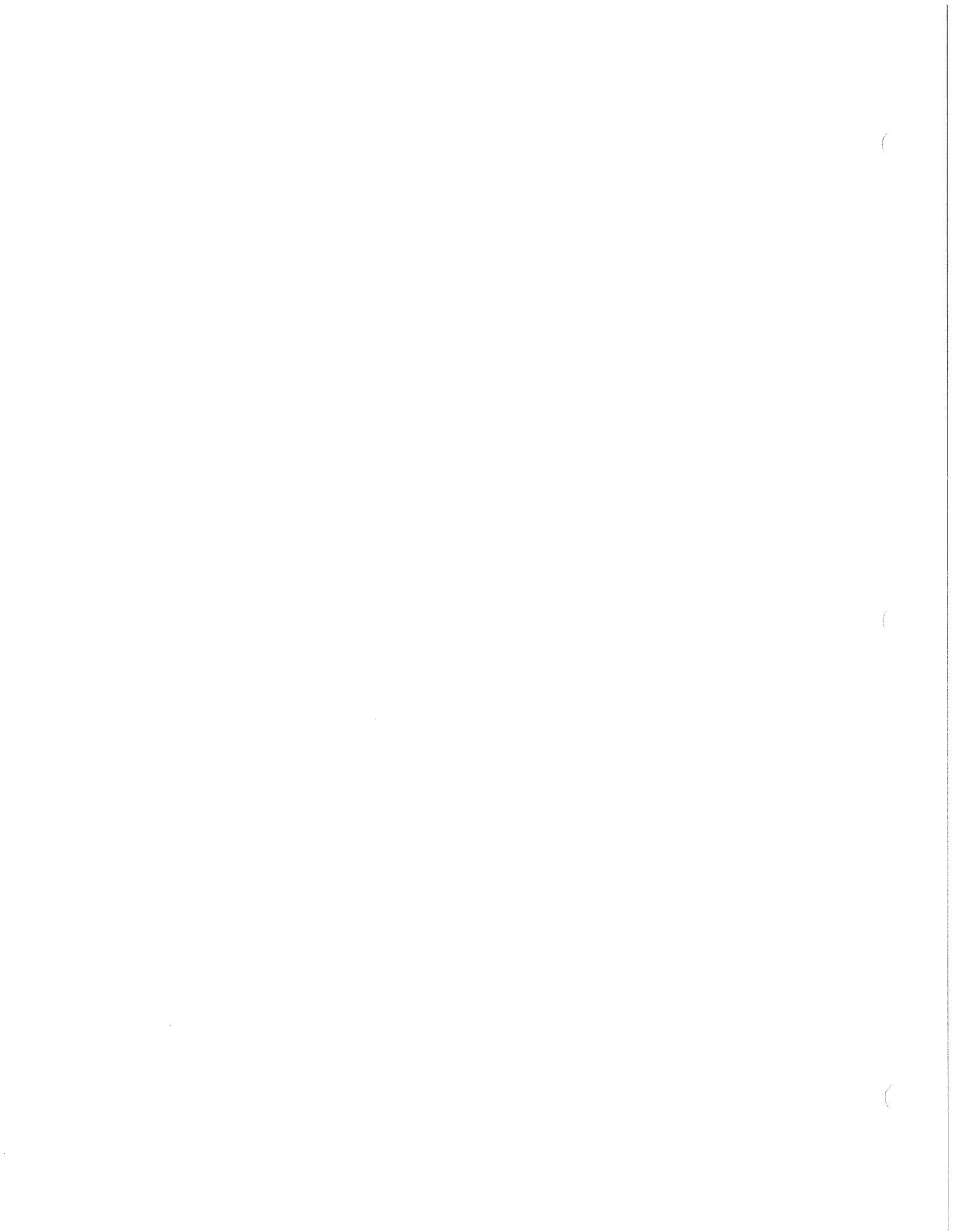
the public meeting held on the proposed plan is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), issued on September 30, 1991, (attached as Appendix A), on which the Commonwealth had a reasonable opportunity to review and comment and has given its general concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

L. Based on the information currently available to EPA, EPA believes that the Work as defined herein will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and the Statement of Work ("SOW").

M. Solely for the purposes of Section 113(j) of CERCLA, the remedial action selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

N. The Parties represent, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation among the



Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Parties. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Settling Parties shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

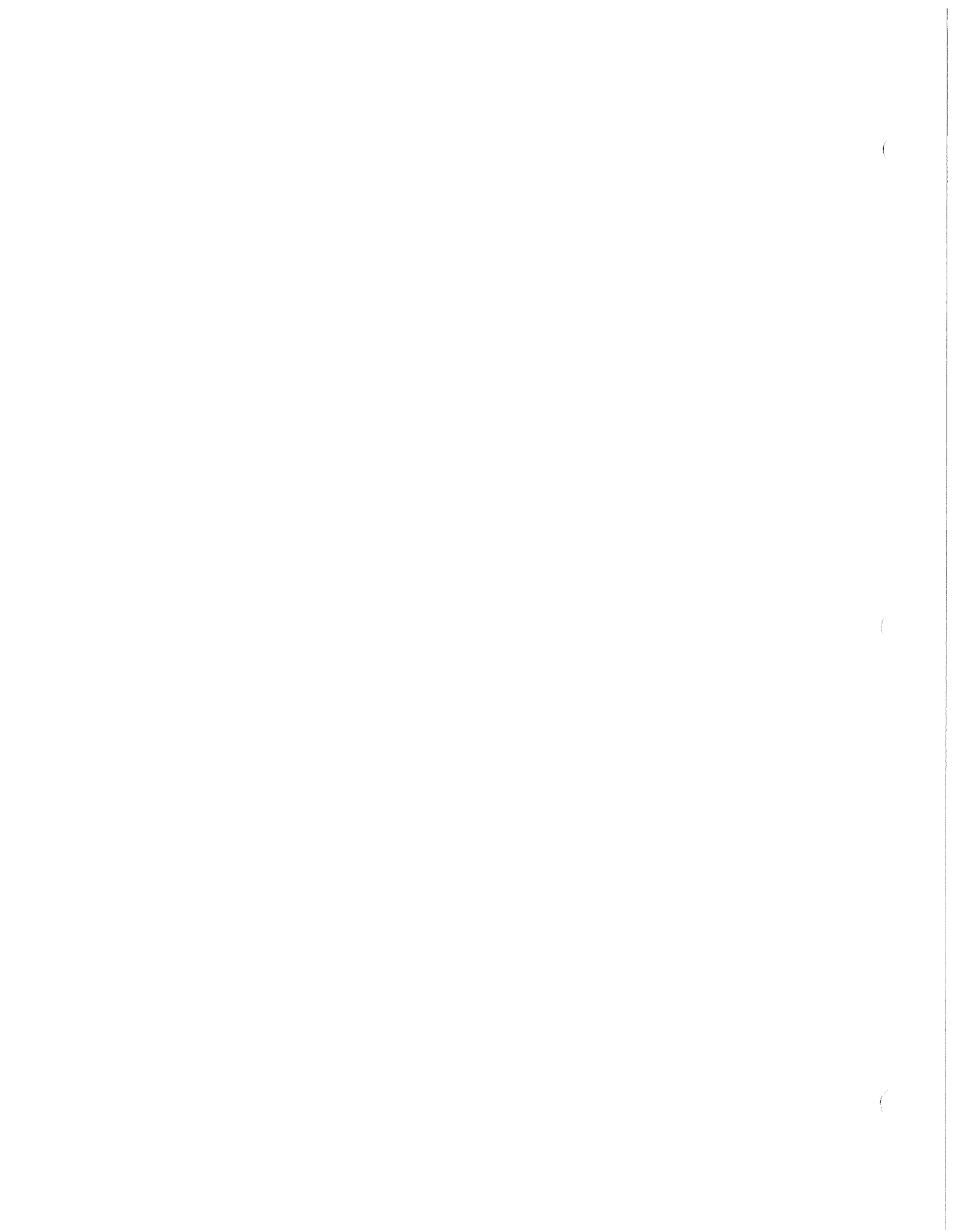
2. This Consent Decree applies to and is binding upon the United States, the Settling Defendants, and their successors and assigns. Any reorganization, abolition, size reduction, transfer of function, or change in the existence or authority of a Settling Federal Agency or the Commonwealth, or change in ownership or corporate status of a Settling Private Party including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the responsibilities under this Consent Decree of the Settling Federal Agency, Settling Private Party, or the Commonwealth.





3. Settling Private Parties shall provide a copy of this Consent Decree to each contractor hired to perform the IRP Work (as defined below) and to each person representing any Settling Private Party with respect to the Site or the IRP Work and shall condition all contracts entered into hereunder upon performance of the IRP Work in conformity with the terms of this Consent Decree. Settling Private Parties or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the IRP Work required by this Consent Decree. Settling Private Parties shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the IRP Work in accordance with this Consent Decree. With regard to the IRP Work, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Private Parties within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

4. The Commonwealth shall provide a copy of this Consent Decree to each contractor hired to perform the BoRP Work (as defined below) and to each person representing the Commonwealth with respect to the Site or the BoRP Work and shall condition all contracts entered into hereunder upon performance of the BoRP Work in conformity with the terms of this Consent Decree. The Commonwealth or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the BoRP Work. The Commonwealth shall nonetheless be responsible for ensuring that its contractors and



subcontractors perform the BoRP Work in accordance with this Consent Decree. With regard to the BoRP Work, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Commonwealth within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

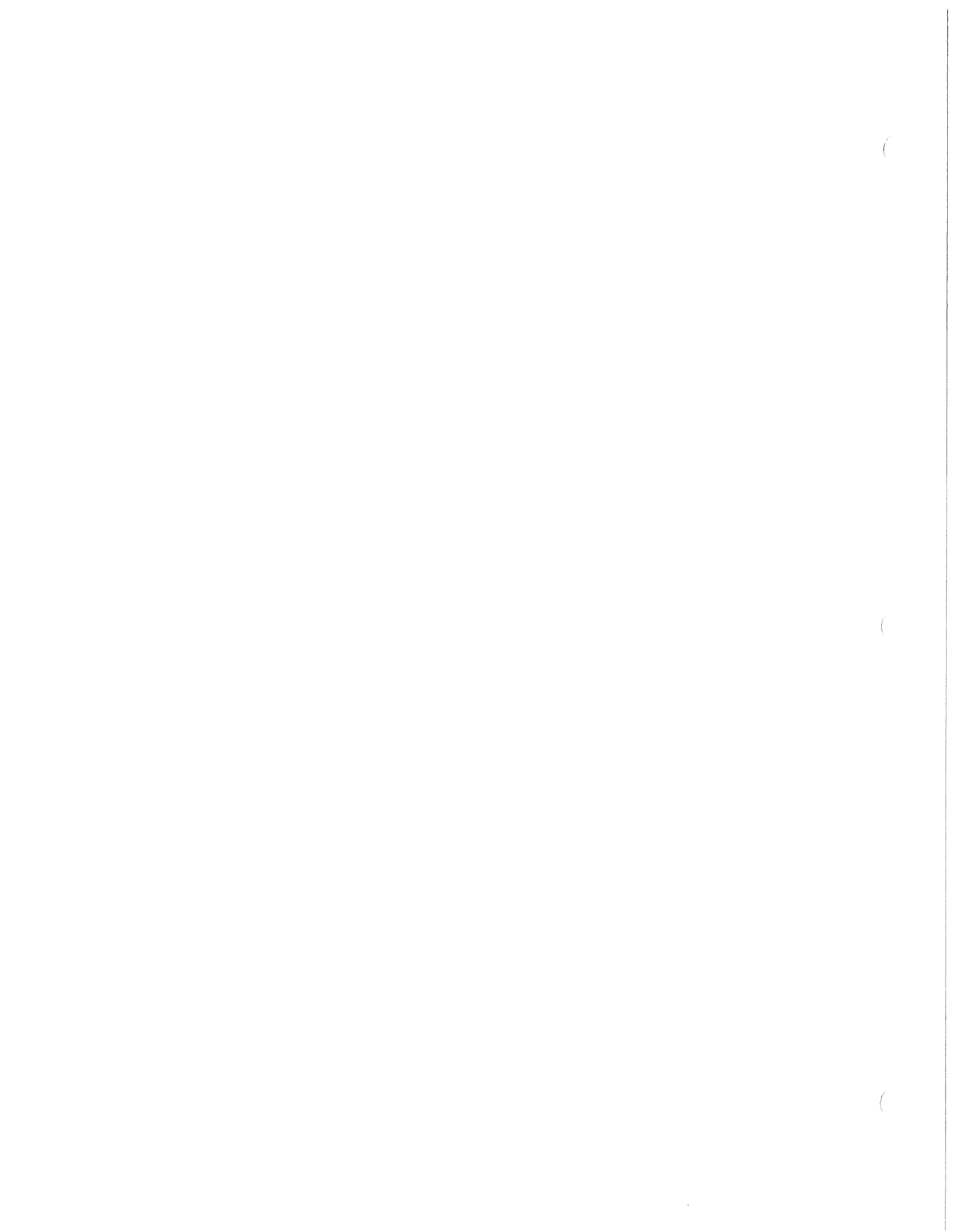
#### IV. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the Statement of Work or appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"~~AEA~~" shall mean the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201 et seq.

\*"~~Balance of Remedial Phase~~" (~~BoRP~~) shall mean that portion of the remedy for the Site described in Tasks IV and V of Section IV of the Statement of Work for the Site (SOW), attached as Appendix B, and which is equivalent to the tasks comprising the "Interim Maintenance Period" (IMP) and "Final Closure Period" (FCP) as described in the ROD.

\*"~~BoRP Activities~~" shall mean those activities to be undertaken ~~by the Commonwealth~~ to implement the final plans and specifications submitted by the Commonwealth pursuant to the IMP and FCP work plans as described in the SOW and this Consent Decree and approved by EPA.



\*"BoRP Remedial Design" shall mean those activities to be undertaken by the Commonwealth to develop the final plans and specifications for the BoRP Activities as required in the SOW and this Consent Decree.

\*"BoRP Work" shall mean all activities the Commonwealth is required to perform under this Consent Decree, including the Commonwealth IRP Obligations and other remedial tasks and O & M (as defined below) specified in the SOW, except those required by Section XXVIII (Retention of Records).

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

"Chemical and Radiological Monitoring" shall mean all monitoring, including monitoring for RCRA hazardous wastes or hazardous constituents, as specified in Section III.A.4.e.-j. of the SOW.

\*"Commonwealth IRP Obligations" shall mean the Commonwealth's responsibility to perform the following tasks until Certification of Completion of the IRP: Chemical and Radiological Monitoring; access control and security; and Site maintenance, including grass cutting, fence repair, routine cap repairs, subsidence monitoring and repair, and ditch cleaning.

"Commonwealth" or "State" shall mean the Commonwealth of Kentucky, its various State cabinets and agencies, and related entities including the State university system.



"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXXII). In the event of conflict between this Decree and any appendix, this Decree shall control.

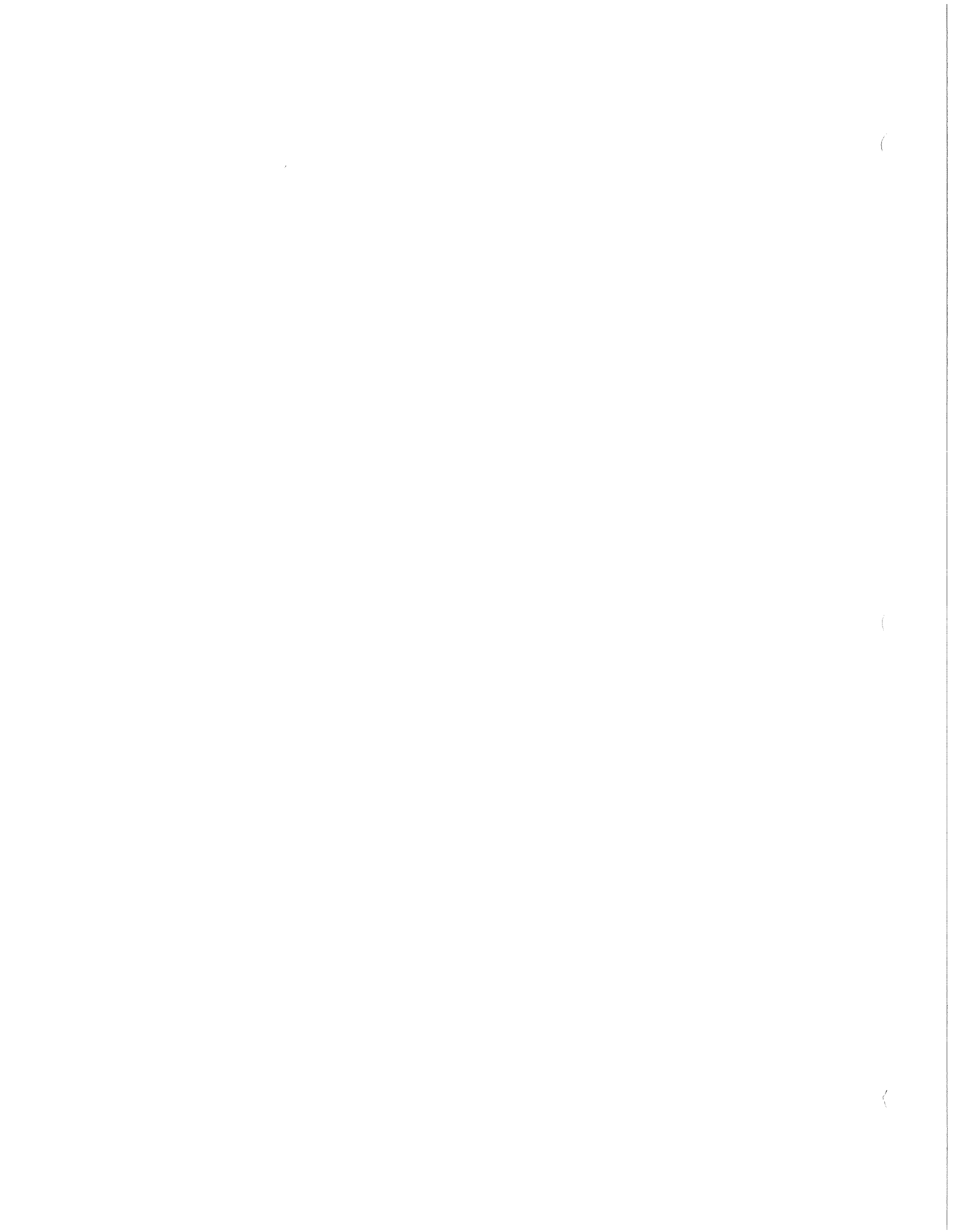
"Construction Standards" shall mean those requirements designated as Construction Standards in the Statement of Work and those construction-related criteria and standards developed during IRP Remedial Design or BoRP Remedial Design which are consistent with the remedy outlined in the SOW.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"De Minimis Consent Decree" shall mean the consent decree lodged herewith to which the United States, the De Minimis Settlers and the Settling Privates Parties are signatories.

"De Minimis Settlers" shall mean, collectively, the "Non-Federal De Minimis Settlers" and the "Federal De Minimis Settlers," as listed in Exhibits 1 and 4 of the "De Minimis Consent Decree" for the Site lodged with this Consent Decree.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.



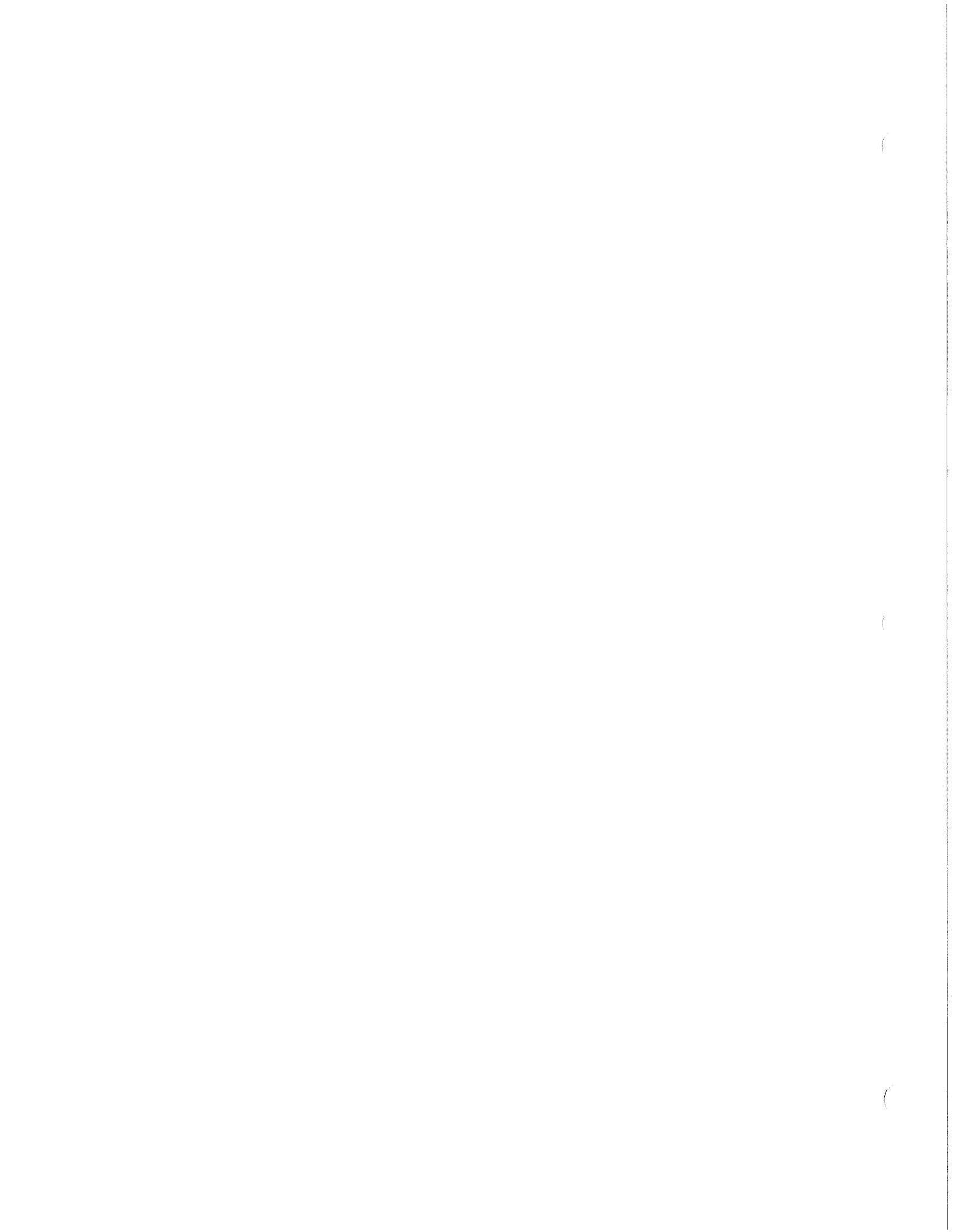


"Final Closure Period" (FCP) shall mean that portion of the remedy described in Section IV, Task IV.B. of the SOW and identified as the Final Closure Period in the ROD.

"Future Response Costs" shall mean the costs that EPA or the United States Department of Justice incur in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise overseeing this Consent Decree, including payroll costs, contractor costs, travel costs, and laboratory costs; but shall not include i) costs EPA incurs in performing Emergency Response pursuant to Section XVIII; ii) costs EPA incurs in performing Work in accordance with Paragraph 126 of Section XXIV (Covenants Not to Sue or Take Administrative Action by Plaintiff) or in performing additional response actions as provided in Section IX (Additional Response Actions) or Section X (EPA Periodic Review); or iii) any other costs which are reserved or subject to reopeners under Section XXIV (Covenants Not to Sue or Take Administrative Action by Plaintiff).

"Interim Maintenance Period" (IMP) shall mean the period of natural subsidence, and Site maintenance and monitoring, commencing upon Certification of Completion of the IRP and concluding with the attainment of the trench stabilization criteria established in accordance with the SOW.

"Initial Remedial Phase" (IRP) shall mean that portion of the remedy described in the Record of Decision as the Initial Closure Period, which consists of Tasks I-III of the SOW and the



performance monitoring requirements relating to Tasks I-III in Task V of Section IV of the SOW.

"~~IRP Activities~~" shall mean those activities to be undertaken by the Settling Private Parties to implement the final plans and specifications submitted by the Settling Private Parties pursuant to the IRP Remedial Action Work Plan and approved by EPA.

"~~IRP Remedial Design~~" shall mean those activities to be undertaken by the Settling Private Parties to develop the final plans and specifications for the IRP Activities pursuant to the IRP Remedial Design Work Plan.

"~~IRP Work~~" shall mean all activities Settling Private Parties are required to perform under this Consent Decree, including the IRP tasks specified in the SOW, except those required by Section XXVIII (Retention of Records).

"~~National Contingency Plan~~" or (NCP) shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

\*"~~Operation and Maintenance~~" or (O & M) shall mean all activities to maintain the effectiveness of the remedial action which are described in the Record of Decision for the Site as the Custodial Maintenance Period, including all institutional control, perpetual care, and maintenance and monitoring activities as required under the Institutional Control Period



(ICP) and Post-Institutional Control Period Work Plans and Operation and Maintenance Manuals developed pursuant to this Consent Decree and the Statement of Work (SOW) and approved by EPA.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the Plaintiff, the Settling Defendants, and the Settling Federal Agencies.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs that the United States (excluding the Settling Federal Agencies) incurred and paid with regard to the Site prior to the date of entry of this Consent Decree, plus interest on those costs.

"Performance Standards" shall mean the performance standards specifically identified in Section III of the SOW and such other cleanup standards, standards of control, and other substantive requirements, criteria or limitations that EPA identifies as a result of IRP Remedial Design or BoRP Remedial Design that are consistent with the standards specified in Section III of the SOW and are required due to significant monitoring or sampling data developed during the IRP Remedial Design or BoRP Remedial Design which are materially different from previously existing data.

"Plaintiff" shall mean the United States on behalf of EPA.



"RCRA" shall mean the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq., which is in effect on the effective date of this Consent Decree.

"Record of Decision" (ROD) shall mean the EPA Record of Decision relating to the Site dated September 30, 1991, issued by EPA Region IV, and all attachments thereto.

"Remedial Activities" shall mean the IRP Activities and the BoRP Activities.

"Remedial Measures" shall mean the "Remedial Measures" designated in Section III of the SOW.

"Remedial Standards" shall mean the "Performance Standards" as defined in this Consent Decree and the Construction Standards and Remedial Measures described in Section III of the SOW, as may be modified by EPA during IRP Remedial Design and BoRP Remedial Design.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settlement Agreement" shall mean the agreement between the Settling Private Parties and Settling Federal Agencies, which is attached to this Consent Decree as Appendix C and which is made an enforceable part hereof.

"Settling Defendants" shall mean the Settling Private Parties and the Commonwealth.

"Settling Federal Agencies" shall mean those agencies or departments of the United States identified in Appendix D hereto.





"Settling Parties" shall mean the Settling Private Parties, the Settling Federal Agencies, and the Commonwealth.

"Settling Private Parties" shall mean those parties identified in Appendix E hereto.

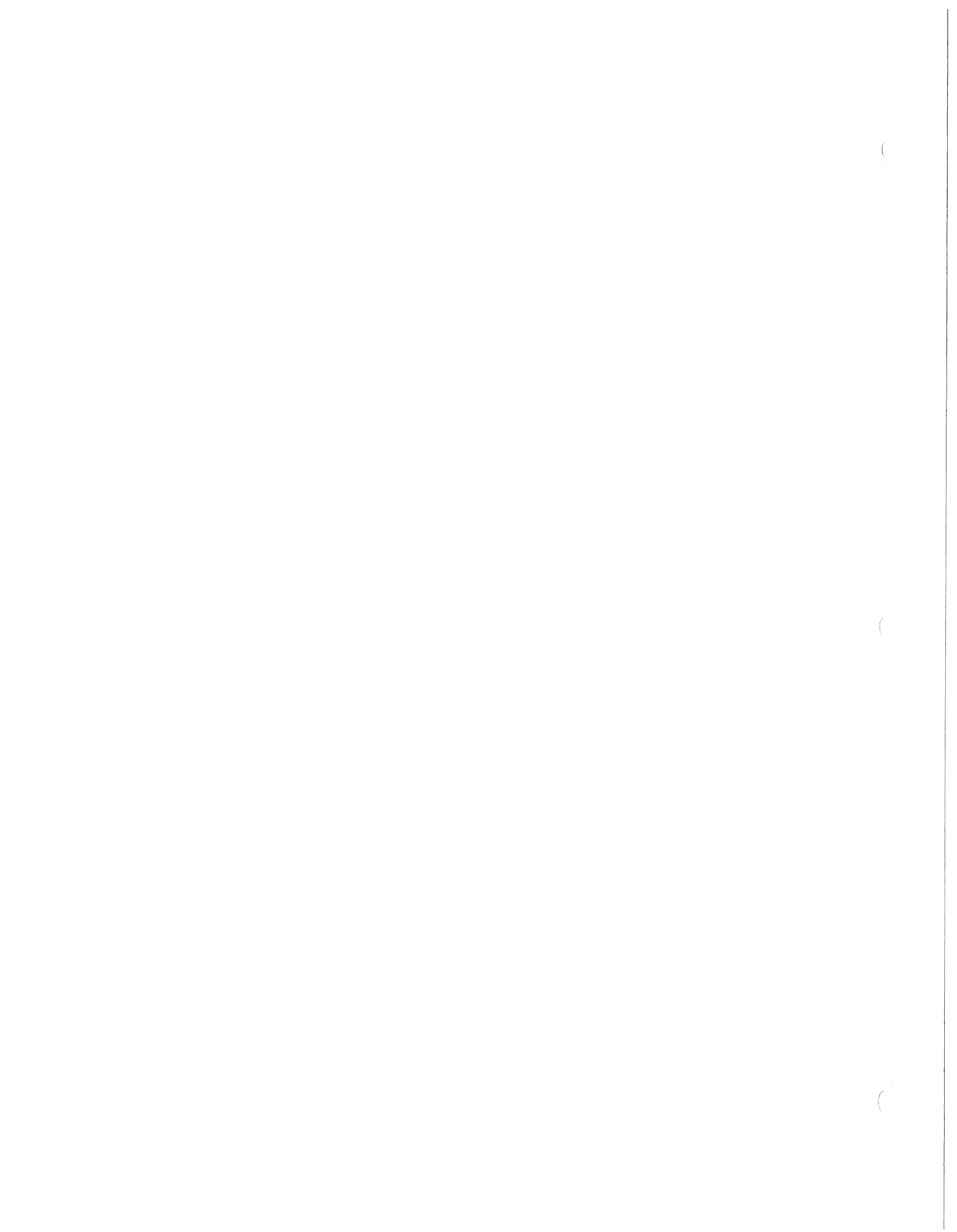
"Site" shall mean the Maxey Flats Disposal Superfund Site, encompassing approximately 280 acres, located on County Road 1895, approximately 10 miles northwest of the City of Morehead, in southeastern Fleming County, Kentucky and depicted generally on the map attached as Appendix F.

"Statement of Work" (SOW) shall mean the document attached as Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor or contractors retained by the Settling Defendants to supervise and direct the design and/or implementation of their respective Work under this Consent Decree.

"United States" shall mean the United States of America, including its agencies, departments, and instrumentalities, except that, for purposes of Sections XIX, XX, XXIII, XXIV and XXV of this Consent Decree (Reimbursement of Response Costs, Indemnification and Insurance, Stipulated Penalties, Covenants Not to Sue or Take Administrative Action by Plaintiff, and Covenants by Settling Defendants), "United States" shall not include the Settling Federal Agencies.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any



pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean the IRP Work and the BoRP Work.

V. GENERAL PROVISIONS

6. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health and welfare and the environment at the Site through the funding, design and implementation of response actions at the Site by the Settling Parties and to partially reimburse response costs of the Plaintiff.

7. Commitments by Settling Parties

a. Settling Private Parties shall perform and, together with Settling Federal Agencies, shall finance the IRP Work in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in the SOW, as well as the schedules developed and approved by EPA pursuant to this Consent Decree. Settling Private Parties and the Settling Federal Agencies shall also reimburse the United States for response costs as provided in this Consent Decree.

⊗ b. ~~The Commonwealth shall perform and finance the BoRP Work and the Commonwealth IRP Obligations~~ in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in the SOW, as well as the schedules developed and approved by EPA pursuant to this Consent Decree.



This Consent Decree does not purport to settle any liability the Commonwealth may have to Plaintiff for any response costs the United States (other than the Settling Federal Agencies) has incurred as of the date of entry of the Consent Decree or which the United States will incur after the date of entry of this Consent Decree, except those costs the Commonwealth has agreed to pay under Sections XII and XVIII (Access and Emergency Response), and Paragraph 126 of Section XXIV (Covenants Not To Sue or Take Administrative Action by Plaintiff).

c. Whenever the Settling Private Parties and Settling Federal Agencies are obligated to pay money to the Plaintiff under this Consent Decree, the Settling Private Parties are jointly and severally obligated for the entire amount. The Settling Private Parties and Settling Federal Agencies have allocated the payment obligations under this Consent Decree among themselves as specified in the Settlement Agreement. The Settling Private Parties are jointly and severally obligated to perform the IRP Work and to finance all IRP Work, but the obligations to finance the IRP Work are allocated among the Settling Private Parties and the Settling Federal Agencies as specified in the Settlement Agreement.

d. Except as provided in Section XXI (Force Majeure), the failure or delay of any Settling Party to pay or otherwise perform its respective obligations shall not relieve any of the Parties of their obligations under this Consent Decree.



e. No provision of this Consent Decree shall be interpreted as or constitute a commitment or requirement that the Settling Federal Agencies obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C., §§ 1301, 1341, 1342, 1349-51, 1511-19.

8. Compliance With Applicable Law. All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants shall also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

9. Permits

a. As provided in ~~Section~~ 121(e) of CERCLA and § 300.400(e)(1) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. In particular, the Settling Private Parties and Commonwealth agree that, by performing or paying for the IRP Work or any other response actions that are on-site, as defined at 40 C.F.R. § 300.400(e)(1)(1993), the Settling Private Parties and Settling Federal Agencies do not become subject to any existing or future State permittee or licensee obligations arising under any State statutes or regulations that implement or are the basis for delegation under the AEA, the Clean Air Act, the Clean Water Act,





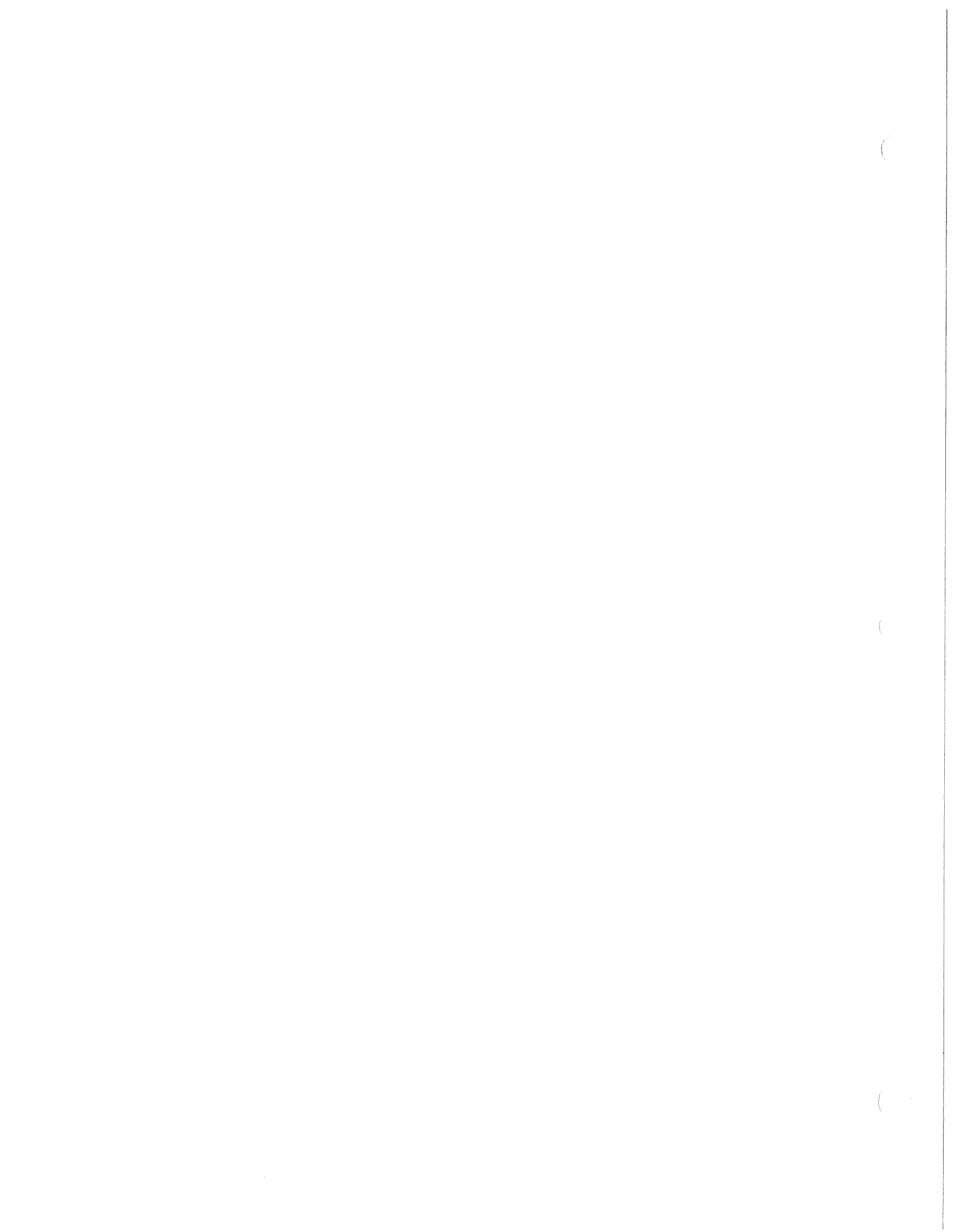
RCRA, the Safe Drinking Water Act, and the Solid Waste Disposal Act; or based on any independent State statutes or regulations, existing now or in the future, that apply to the same media or Waste Material as such federal statutes. However, this Paragraph does not relieve Settling Private Parties or Settling Federal Agencies from complying with the applicable or relevant and appropriate requirements of federal and state environmental laws as set forth in the ROD. When any portion of the Work requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Settling Defendants may seek relief under the provisions of Section XXI (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

10. Notice of Obligations to Successors-in-Title

a. Within 15 days after the entry of this Consent Decree, the Commonwealth of Kentucky, as owner of the Site property, shall record a certified copy of this Consent Decree with the Recorder's Office (or Registry of Deeds or other appropriate office), Fleming County, Commonwealth of Kentucky. Thereafter, each deed, title, or other instrument conveying an



interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of the Commonwealth with respect to the provision of access under Section XII (Access) and the implementation of institutional controls as required by the ROD and the SOW shall be binding upon any and all departments or agencies of the Commonwealth and any and all persons who subsequently acquire any ownership interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, the Commonwealth shall record at the Recorder's Office (or Registry of Deeds or other appropriate office where land ownership and transfer records are maintained for the property) a notice of obligation to provide access under Section XII (Access) and related covenants. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. The Commonwealth and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In

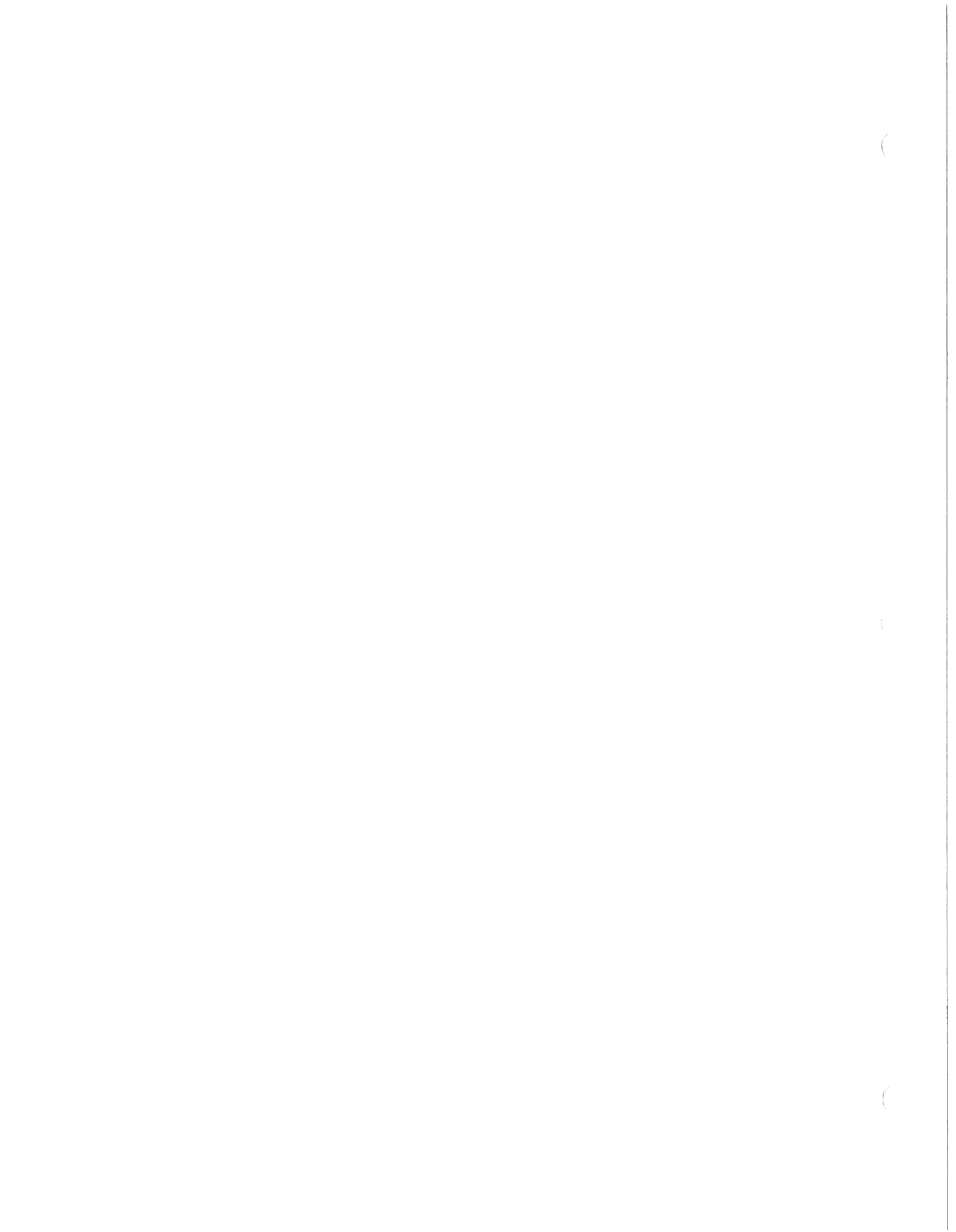


the event of any such conveyance, the Commonwealth's obligations under this Consent Decree, including its obligations to provide or secure access pursuant to Section XII, shall continue to be met by the Commonwealth. In addition, if the United States approves, the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Settling Parties to comply with the Consent Decree.

d. In the event that additional parcels of property are acquired for a buffer zone pursuant to the SOW, the party acquiring such property shall comply with the provisions of subparagraphs a-c above, with all obligations running from the closing date of the acquisition of any such parcel of property.

#### VI. DE MINIMIS CONSENT DECREE

11. In consideration of the covenants not to sue the Commonwealth of the De Minimis Settlers under the terms of the De Minimis Consent Decree, and except as specifically provided in Paragraph 12 of this Consent Decree, the Commonwealth covenants not to sue or to take administrative action against any of the De Minimis Settlers for any and all civil liability pursuant to Sections 107(a) or 113(f) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, state law or common law, relating to the Site. The covenants not to sue or to take administrative action of the Commonwealth shall take effect for the De Minimis Settlers upon their respective payments in



accordance with the De Minimis Consent Decree. These covenants not to sue extend to the De Minimis Settlers and do not extend to any other person.

12. The covenants by the Commonwealth set forth in Paragraph 11 above do not pertain to any matters other than those expressly specified therein. The Commonwealth reserves, and this Consent Decree is without prejudice to, all rights against the De Minimis Settlers with respect to all other matters, including, but not limited to:

a. claims based on failure to make the payments required by Section XIX (Reimbursement of Response Costs) and the De Minimis Consent Decree;

b. criminal liability;

c. liability for injury to, destruction of, or loss of natural resources for which there are federal trustees.

d. liability for response costs that have been or may have been incurred by the U.S. Department of Interior or U.S. Department of Agriculture in their role as natural resource trustees.

13. Nothing in this Section or the De Minimis Consent Decree shall affect the obligations of the Settling Parties or their successors or assigns to the Plaintiff under the terms of this Consent Decree, or the rights of the Plaintiff against the Settling Parties or their successors or assigns as provided or reserved under the terms of this Consent Decree.

**VII. OBLIGATIONS OWED BY THE SETTLING PRIVATE PARTIES AND THE SETTLING FEDERAL AGENCIES TO EACH OTHER**

14. The Settling Private Parties and the Settling Federal Agencies have set forth their obligations to each other





in the Settlement Agreement, which is incorporated herein by reference and made an enforceable part hereof.

VIII. PERFORMANCE OF THE WORK

15. Selection of Supervising Contractor.

a. All aspects of the IRP Work to be performed by Settling Private Parties pursuant to this Section or Sections IX, X, and XI (Additional Response Actions, EPA Periodic Review, and Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of a Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 15 days after the entry of this Consent Decree, Settling Private Parties shall notify EPA and the Commonwealth in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor for the IRP Activities. EPA will issue a notice of disapproval or an authorization to proceed upon notification of the identity of the Supervising Contractor. EPA will not disapprove a proposed Supervising Contractor on the ground that the proposed Supervising Contractor is, or is affiliated with, a Settling Private Party or a De Minimis Settlor. If, at any time after a Supervising Contractor is approved, Settling Private Parties propose to change a Supervising Contractor, the Settling Private Parties shall again notify EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any IRP Work under this Consent Decree.



b. If EPA disapproves a proposed Supervising Contractor, EPA will notify the Settling Private Parties in writing and the Settling Private Parties shall then submit to EPA and the Commonwealth a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor that it disapproves and an authorization to proceed with respect to any of the other contractors. EPA will not disapprove a proposed Supervising Contractor on the ground that the proposed Supervising Contractor is, or is affiliated with, a Settling Private Party or a De Minimis Settlor. Settling Private Parties may select any contractor from that list that is not disapproved and shall notify EPA and the Commonwealth of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. All aspects of the BoRP Work to be performed by the Commonwealth pursuant to this Section or Sections IX, X, and XI (Additional Response Actions, EPA Periodic Review, and Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of a Supervising Contractor or an agency or employee of the Commonwealth. The selection of a Supervising Contractor or agency or employee of the Commonwealth to serve in that capacity shall be subject to disapproval by EPA. ~~Within 180 days prior to the scheduled completion of IRP Activities, the Commonwealth~~



shall notify EPA in writing of the name, title, and qualifications of any contractor, person, or agency proposed to direct and supervise the BoRP Work. EPA will issue a notice of disapproval or an authorization to proceed upon notification of the identity of the Supervising Contractor or agency or employee serving in that capacity. After EPA authorizes the BORP Work to proceed, the Commonwealth shall not replace the Supervising Contractor or agency or employee serving in that capacity without notifying EPA and obtaining a new authorization to proceed.

d. If EPA disapproves the contractor, person, or agency selected by the Commonwealth to supervise and direct the BoRP Work, EPA will notify the Commonwealth in writing. Within 30 days after receipt of EPA's disapproval, the Commonwealth shall submit to EPA a list of other contractors, persons, or agencies proposed by the Commonwealth to supervise the BoRP Work. EPA will provide written notice of the names of any contractor, person or agency that it disapproves and an authorization to proceed with respect to any of the other listed candidates. The Commonwealth may select any contractor, person or agency from that list that is not disapproved and shall notify EPA of its selection within 21 days of EPA's authorization to proceed.

e. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Settling Private Parties or the Commonwealth from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling



Private Parties or the Commonwealth may seek relief under the provisions of Section XXI (Force Majeure) hereof.

16. Commonwealth IRP Obligations. Within 45 days after entry of this Consent Decree, the Commonwealth shall submit to EPA a work plan detailing the Commonwealth IRP Obligations (IRP Monitoring and Maintenance Plan). Upon approval of the IRP Monitoring and Maintenance Plan by EPA, the Commonwealth shall implement the plan. The fact that the IRP Monitoring and Maintenance Plan has not been submitted or approved shall not prevent the Commonwealth from performing its obligations under the AEA license for the Site.

17. Remedial Design

a. Within 60 days after EPA's issuance of an authorization to proceed to Settling Private Parties pursuant to Paragraph 15, Settling Private Parties shall submit to EPA and the Commonwealth a work plan for the design of the Initial Remedial Phase at the Site ("IRP RD Work Plan") or that portion of the work plan related to the leachate removal, solidification, and disposal. At the same time, Settling Private Parties shall also submit to EPA and the Commonwealth a health and safety plan for the IRP Remedial Design which conforms to the applicable Occupational Safety and Health Administration regulations including, but not limited to, 29 C.F.R. § 1910.120, and Commonwealth of Kentucky regulations relating to worker exposure to radiation. The health and safety plan shall specify a safety officer to ensure that work procedures are carried out in

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accordance with state and federal health and safety requirements. Settling Private Parties shall submit the complete IRP RD Work Plan (or the remainder thereof, if they have submitted that portion of the IRP RD Work Plan related to leachate removal, solidification, and disposal) no later than 90 days following initiation of full scale leachate removal and solidification operations.

b. Within 60 days after EPA determines that trench stabilization criteria established in accordance with the SOW have been attained, the Commonwealth shall submit to EPA a work plan for the design of the FCP ("FCP RD Work Plan"). At the same time, the Commonwealth shall submit to EPA a health and safety plan for the FCP activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120, and Commonwealth regulations relating to worker exposure to radiation. To satisfy this requirement the Commonwealth may submit to EPA a supplemented version of the health and safety plan in effect for the Site under its AEA license. The FCP health and safety plan shall specify a radiation safety officer to ensure that work procedures are carried out in accordance with state and federal health and safety requirements.

c. The work plans specified in subparagraphs 17.a and 17.b above shall provide for design of the remedy set forth in the ROD in accordance with the SOW and, upon their approval by



EPA, shall be incorporated into and become enforceable under this Consent Decree.

d. The IRP RD Work Plan shall include plans and schedules for implementation of all IRP Remedial Design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) IRP Remedial Design sampling and analysis plans including, but not limited to, an IRP Remedial Design Quality Assurance Project Plan in accordance with Section XI (Quality Assurance, Sampling and Data Analysis); (2) a preliminary IRP Remedial Design report; and (3) pre-final and final IRP Remedial Design reports. In addition, the IRP RD Work Plan shall include a schedule for completion of the IRP RA Work Plan.

e. The ~~FCP RD Work Plan~~ shall include, without being limited to, plans and schedules for completing: (1) design sampling and analysis plans, including but not limited to, an FCP Quality Assurance Project Plan in accordance with Section XI (Quality Assurance, Sampling, and Data Analysis); (2) an FCP preliminary Remedial Design report; and (3) FCP pre-final and final Remedial Design reports. In addition, the FCP RD Work Plan shall include a schedule for completion of the FCP RA Work Plan.

f. Upon approval of the IRP RD Work Plan and health and safety plans for all field activities by EPA, after a reasonable opportunity for review and comment by the Commonwealth, ~~the Settling Private Parties shall implement the IRP RD Work Plan.~~ Settling Private Parties shall submit to EPA



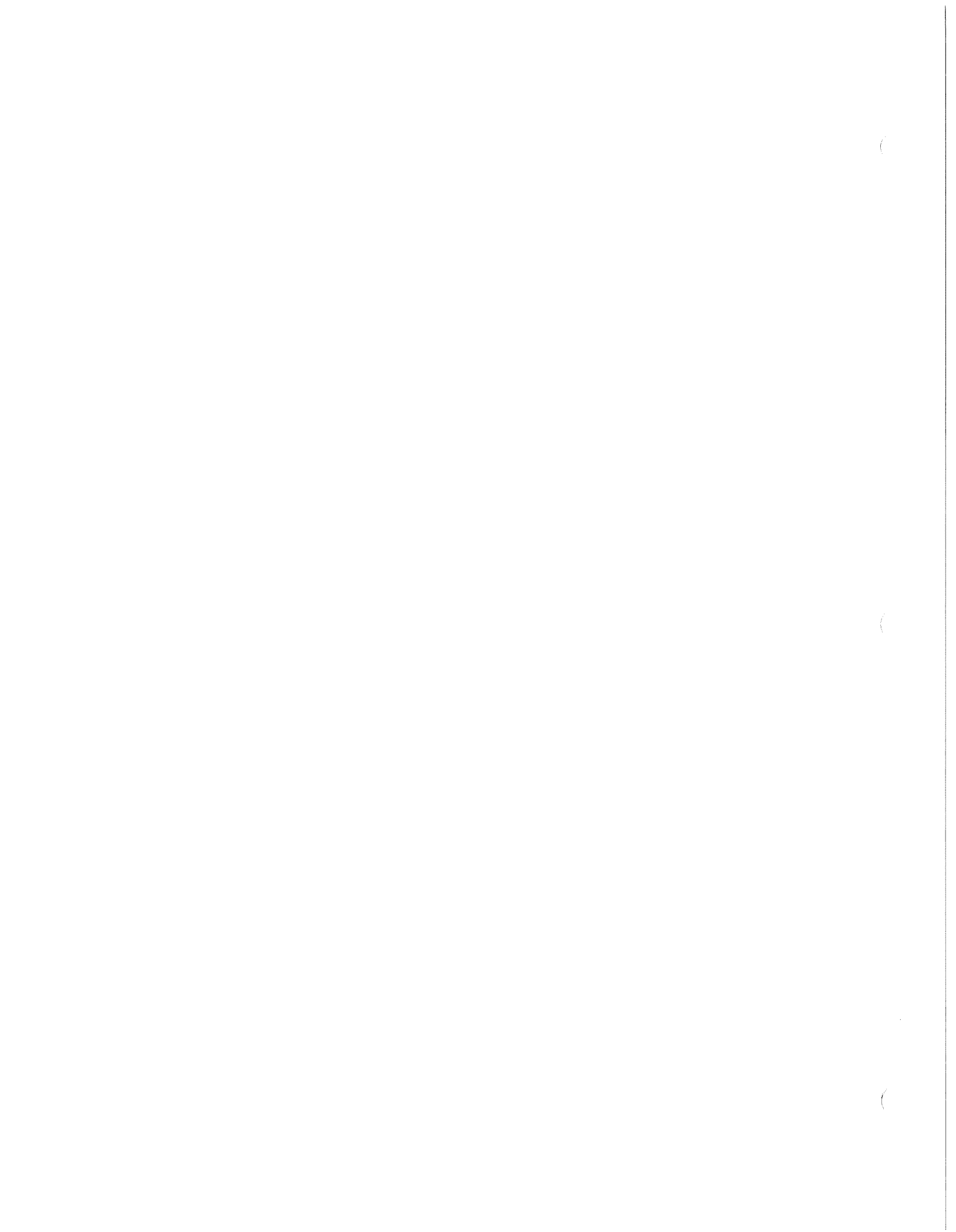
and the Commonwealth all plans, submittals and other deliverables required under the approved IRP RD Work Plan in accordance with the schedule for review and approval pursuant to Section XIV (Submissions Requiring Agency Approval).

g. Upon approval of the FCP RD Work Plan and health and safety plans for all field activities by EPA, the Commonwealth shall implement the FCP RD Work Plan. The Commonwealth shall submit to EPA all plans, submittals and other deliverables required under the approved FCP RD Work Plan in accordance with the schedule for review and approval pursuant to Section XIV (Submissions Requiring Agency Approval).

h. The IRP preliminary Remedial Design and FCP preliminary Remedial Design reports shall include, at a minimum, the following: (1) design criteria; (2) results of additional field sampling and pre-design work; (3) preliminary plans, drawings and sketches; (4) required specifications in outline form; and (5) a preliminary construction schedule.

i. The IRP pre-final and final Remedial Design reports shall include, at a minimum, those items specified in Section IV, Task II of the SOW, which include the following: (1) final plans and specifications; (2) a complete design analysis; (3) a final IRP construction schedule; and (4) a field sampling plan (directed at measuring attainment of Performance Standards).

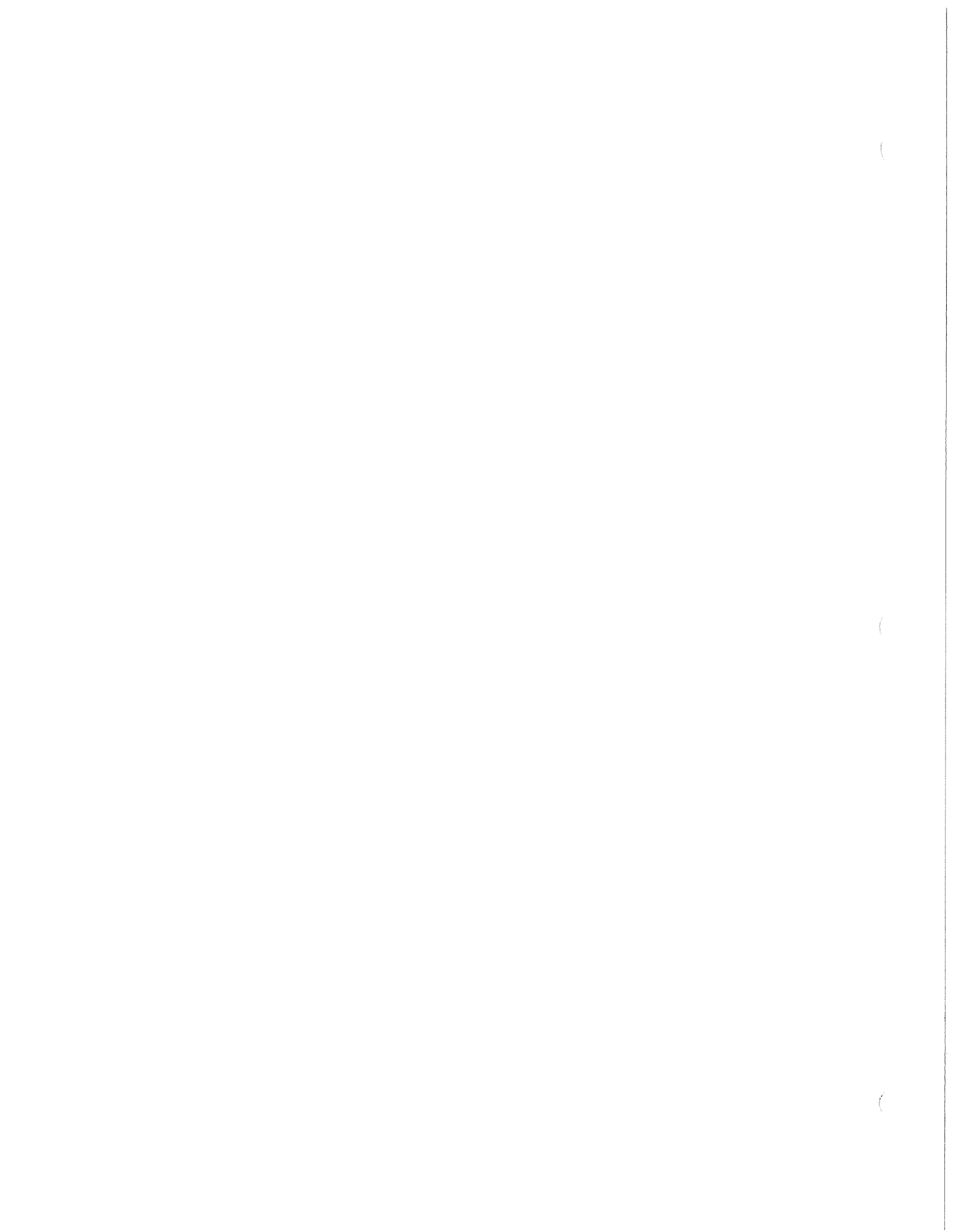
j. The FCP pre-final and final Remedial Design reports shall include, at a minimum: (1) final plans and



specifications; (2) a complete design analysis; (3) a final FCP construction schedule; (4) a final overall construction cost estimate; and (5) a field sampling plan (directed at measuring attainment of Performance Standards).

18. Remedial Activities.

a. Concurrent with the submittal of the IRP final Remedial Design Report, ~~Settling Private Parties shall submit to EPA and the Commonwealth a work plan for the performance of the IRP at the Site ("IRP RA Work Plan").~~ The IRP RA Work Plan shall provide for implementation of the IRP in accordance with the design plans and specifications in the IRP final Remedial Design Report. Upon its approval by EPA, the IRP RA Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time that they submit the IRP RA Work Plan, ~~Settling Private Parties shall submit to EPA and the Commonwealth a Construction Health and Safety Plan/Contingency Plan for field activities required by the IRP RA Work Plan which conforms to the applicable Occupational Safety and Health Administration and Commonwealth requirements including, but not limited to, 29 C.F.R. § 1910.120, and Commonwealth regulations relating to worker exposure to radiation.~~ The health and safety plan shall specify a safety officer to ensure that work procedures are carried out in accordance with state and federal health and safety requirements. In addition to the IRP Construction Health and Safety Plan/Contingency plan, Settling Private Parties shall submit, at the same time, an IRP Construction Management Plan and





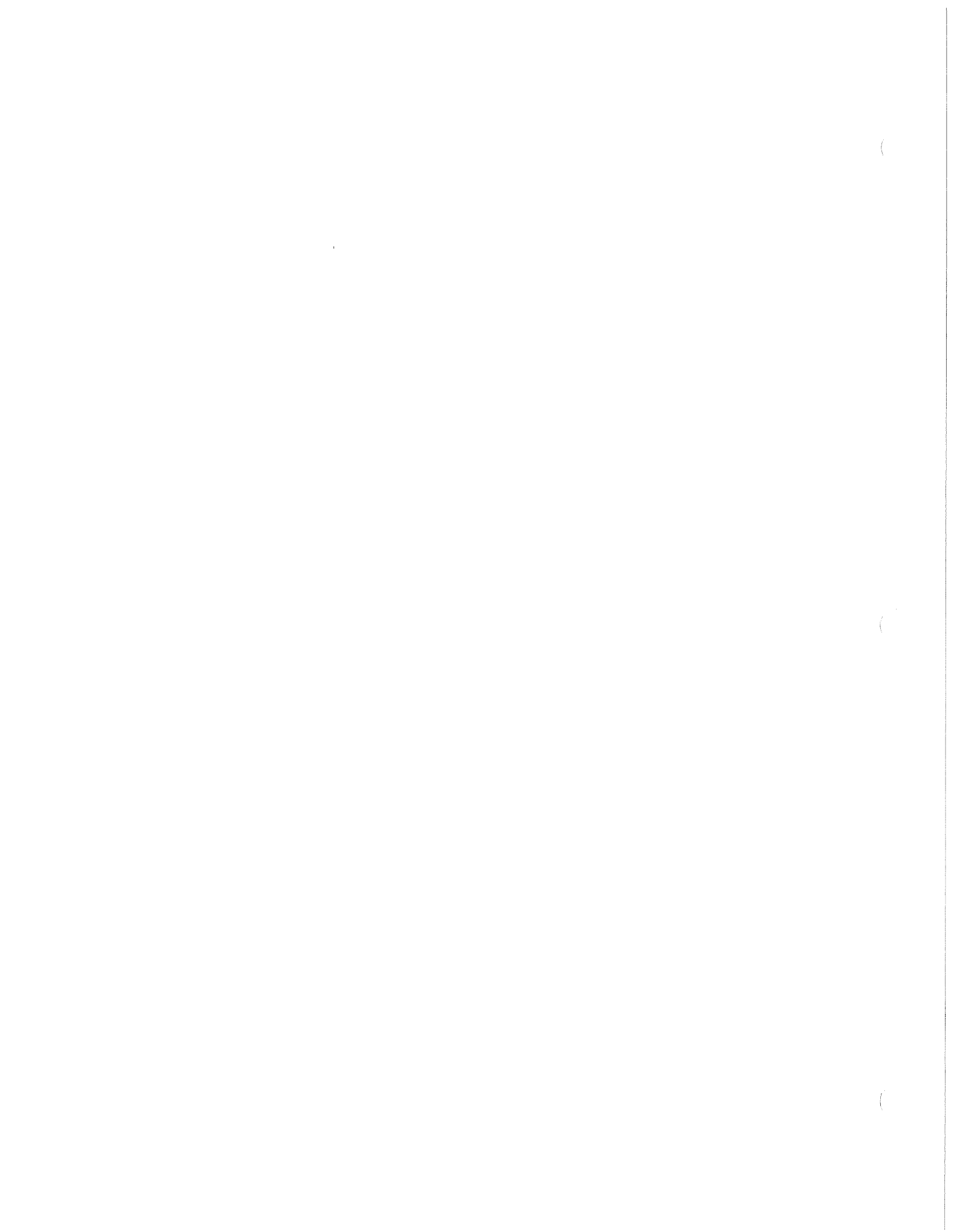
an IRP Construction Quality Assurance Plan, both of which shall encompass the tasks detailed in the IRP RA Work Plan. The Settling Private Parties may submit that portion of the IRP final Remedial Design report pertaining to leachate removal, solidification, and disposal before the complete report is due if they also submit, at the same time, those portions of the IRP RA Work Plan, Construction Health and Safety Plan/Contingency Plan, IRP Construction Management Plan, and IRP Construction Quality Assurance Plan pertaining to leachate removal, solidification, and disposal.

b. The IRP RA Work Plan shall include, or be accompanied by, the following: (1) a detailed description of the IRP tasks to be performed and deliverables to be submitted to EPA; (2) the schedule for completion of the IRP; (3) a method for selecting contractors; (4) a schedule for developing and submitting other required plans for performing IRP Activities; (5) a method for implementing the IRP Construction Quality Assurance Plan; (6) a method for implementing the IRP Health and Safety Plan/Contingency Plan; (7) a method for implementing the IRP Construction Management Plan; (8) a description of the strategy for delivery of the IRP (Project Delivery Strategy); (9) the identity of the members of an "IRP Construction Project Team" and their qualifications; and (10) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The IRP RA Work Plan also shall include a schedule



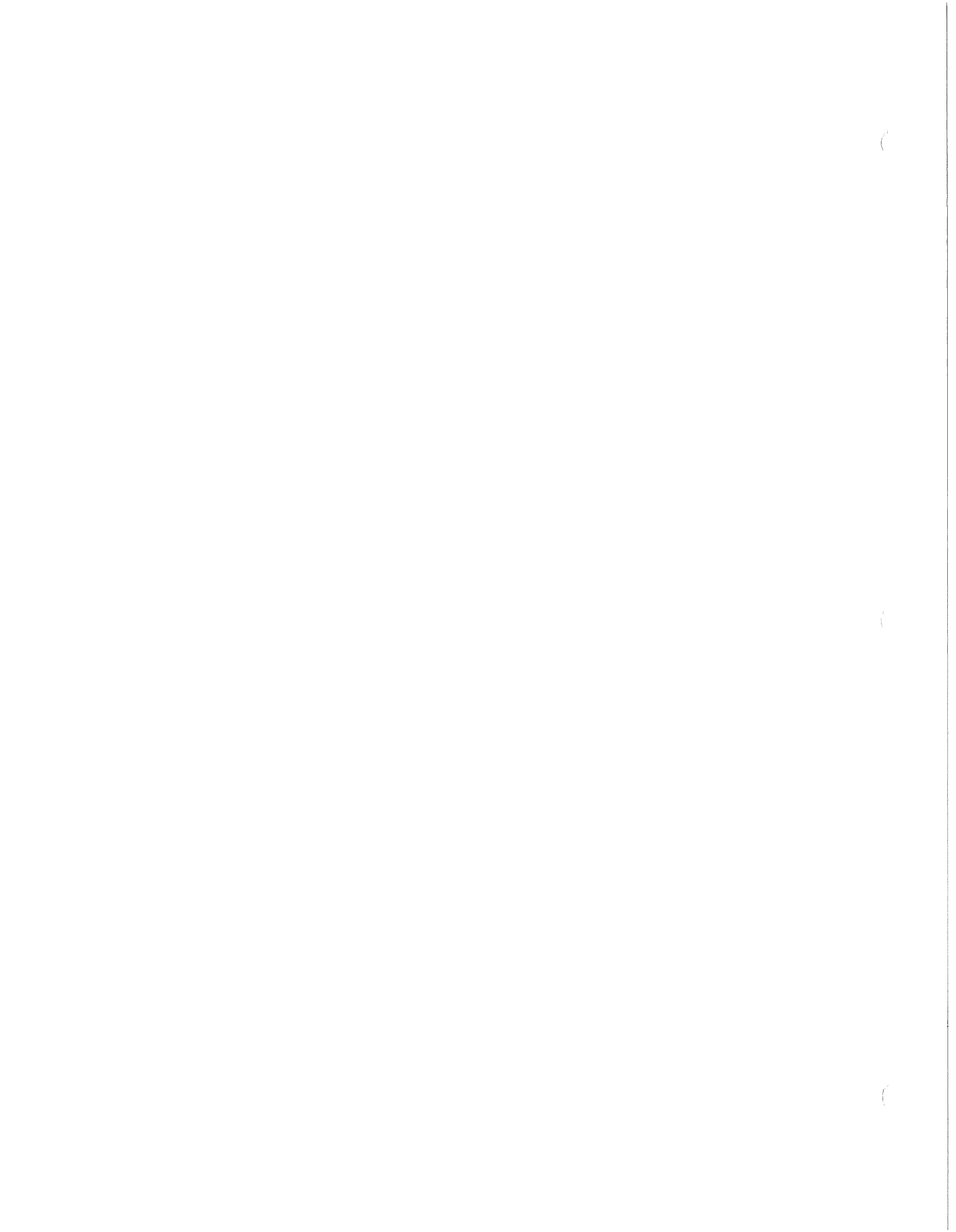
for implementing all IRP tasks identified in the IRP final Remedial Design report.

c. Within 180 days before scheduled completion of the IRP Activities, the Commonwealth shall submit to EPA a work plan for the performance of the IMP activities at the Site ("IMP Work Plan"). Upon its approval by EPA, the IMP Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time, the Commonwealth shall submit to EPA a health and safety plan for the IMP activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910:120, and Commonwealth regulations relating to worker exposure to radiation. To satisfy this requirement the Commonwealth may submit to EPA a supplemented version of the health and safety plan in effect for the Site under its AEA license. The IMP health and safety plan shall specify a radiation safety officer to ensure that work procedures are carried out in accordance with state and federal health and safety requirements. The IMP Work Plan shall include the following: (1) a preliminary list of tasks to be performed during the IMP and major deliverables to be submitted to EPA; (2) an IMP Sampling and Analysis Plan describing the projected sample collection and analytical activities; (3) a method for implementing the IMP Quality Assurance Plan; (4) a method for implementing the IMP Health and Safety Plan; (5) a tentative schedule for completion of the IMP and development and submittal



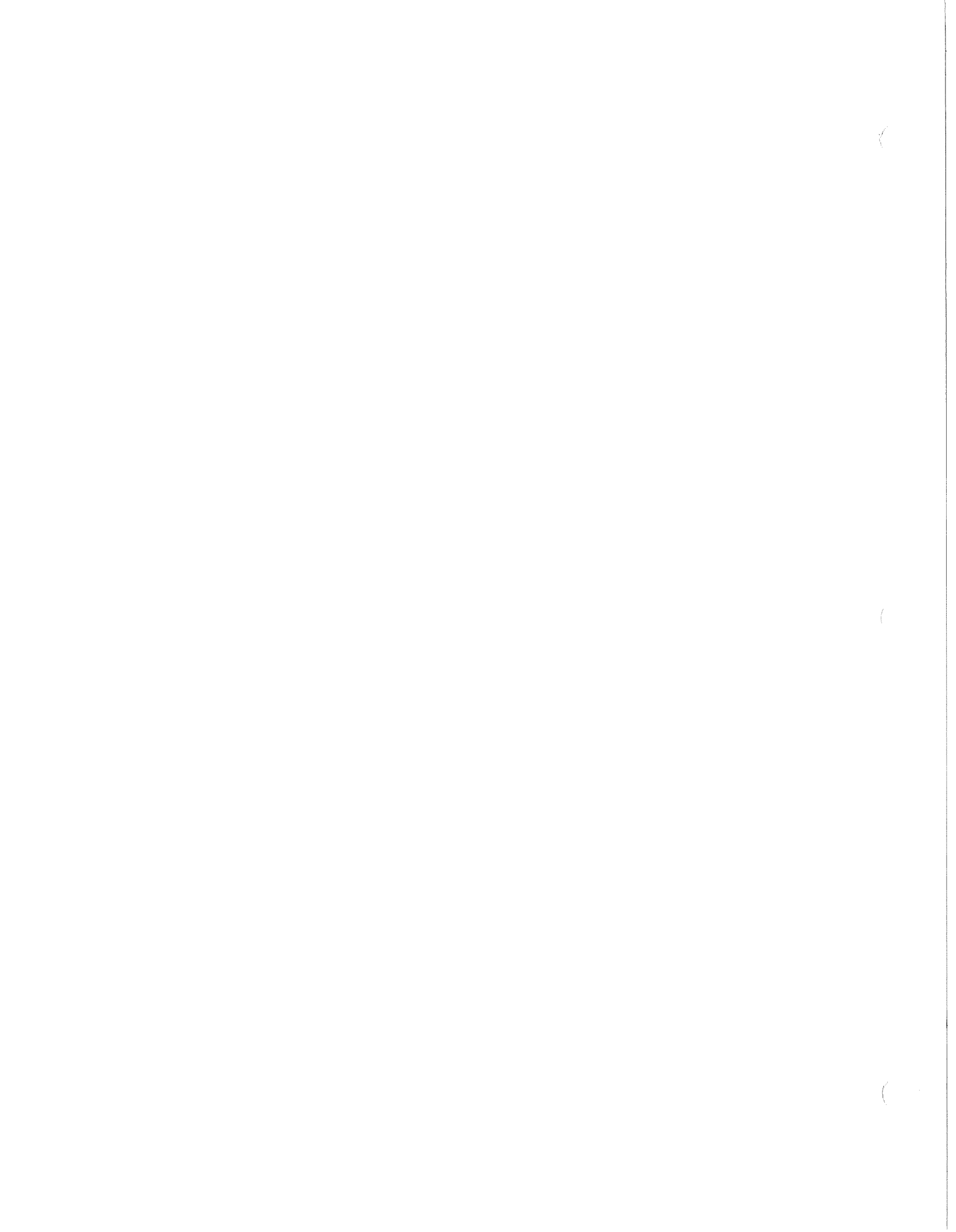
of IMP deliverables; (6) a tentative formulation of the IMP team along with methods for replacing IMP team members and roles and responsibilities of IMP team members; and (7) procedures and plans for the decontamination of equipment and disposal of contaminated materials.

d. Concurrent with the submittal of the draft FCP Final Remedial Design report, the Commonwealth shall submit to EPA a work plan for the performance of the FCP ("FCP RA Work Plan"). The FCP RA Work Plan shall provide for implementation of the FCP in accordance with the SOW, as set forth in the design plans and specifications in the FCP pre-final Remedial Design report, as modified and approved by EPA. Upon its approval by EPA, the FCP RA Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time that it submits the FCP RA Work Plan, the Commonwealth shall submit to EPA a FCP Construction Health and Safety Plan/Contingency Plan for field activities required by the FCP RA Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120 and Commonwealth regulations relating to worker exposure to radiation. In addition to the FCP Construction Health and Safety Plan/Contingency Plan, the Commonwealth shall submit, at the same time, a FCP Construction Management Plan and a FCP Construction Quality Assurance Plan, both of which shall encompass the tasks detailed in the FCP RA Work Plan.



e. The FCP RA Work Plan shall include, or be accompanied by, the following: (1) a detailed description of the FCP tasks to be performed and deliverables to be submitted to EPA; (2) the schedule for completion of the FCP; (3) a procedure for selection of the contractor; (4) a schedule for developing and submitting other required plans for performing the FCP RA Work plan; (5) a method for implementing the FCP Construction Quality Assurance Plan; (6) a method for implementing the FCP Construction Health and Safety Plan/Contingency Plan; (7) a method for implementing the FCP Construction Management Plan; (8) a description of the strategy for delivering the FCP (Project Delivery Strategy); (9) methods for developing, and tasks to be included in, the Institutional Control Work Plan and Operation and Maintenance Manual; (10) tentative formulation of the FCP Construction Project Team and a description of their qualifications; and (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The FCP RA Work Plan also shall include a schedule for implementation of all FCP tasks identified in the FCP pre-final and final Remedial Design reports.

f. Upon approval of the IRP RA Work Plan specified in subparagraph 18.a. by EPA or that portion pertaining to leachate removal, solidification, and disposal, after a reasonable opportunity for review and comment by the Commonwealth, ~~the Settling Private Parties shall implement the activities required under the plan.~~ To the extent that title to





any facilities constructed as a result of the IRP Work or additional response actions under Section IX performed by or on behalf of the Settling Private Parties does not vest automatically in the Commonwealth by virtue of the Commonwealth's ownership of Site property, ~~the Commonwealth shall, consistent with state law, take title to such facilities as the facilities are constructed.~~ The Settling Private Parties shall submit to EPA for review and approval pursuant to Section XIV (Submissions Requiring Agency Approval), with a reasonable opportunity for review and comment by the Commonwealth, all plans, submittals, or other deliverables required under the approved work plan in accordance with the schedule therein. Unless otherwise directed by EPA, the Settling Private Parties shall not commence physical on-site activities prior to approval of the IRP RA Work Plan by EPA or that portion pertaining to leachate removal, solidification, and disposal.

g. Upon approval of the IMP Work Plan specified in subparagraph 18.c. by EPA, ~~the Commonwealth shall implement the activities required under the IMP Work Plan.~~ The Commonwealth shall submit to EPA for review and approval pursuant to Section XIV (Submissions Requiring Agency Approval) all plans, submittals, or other deliverables required under the approved work plan in accordance with the schedule therein. In the event EPA has not approved the IMP Work Plan before Certification of Completion of the IRP, the Commonwealth shall undertake the activities specified in the IMP Work Plan it submitted to EPA

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until EPA approves the IMP Work Plan unless directed not to do so by EPA.

h. Upon approval of the FCP RA Work Plan specified in subparagraph 18.d. by EPA, the Commonwealth shall implement the activities required under the plan. The Commonwealth shall submit to EPA all plans, submittals, or other deliverables required under the approved work plan in accordance with the schedule for review and approval pursuant to Section XIV (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, the Commonwealth shall not commence activities described in the proposed FCP RA Work Plan prior to approval of the FCP RA Work Plan.

19. Operation and Maintenance. Within 180 days before the scheduled completion of FCP construction, the Commonwealth shall submit to EPA a work plan for performance of the Institutional Control Period activities (Institutional Control Work Plan) along with the Institutional Control O & M Manual, as described in the SOW, which together shall describe the nature and timing of activities to be performed during the Institutional Control Period (ICP). The Commonwealth shall implement the Institutional Control Work Plan in accordance with the Institutional Control O & M Manual upon approval by EPA. Within 180 days before the scheduled completion of the ICP, the Commonwealth shall submit to EPA a work plan for performance of the Post-Institutional Control Period activities (Post-Institutional Control Work Plan), along with the Post-



Institutional Control O & M Manual, as described in the SOW, which together shall describe the nature and timing of activities to be performed during the Post-Institutional Control Period. The Commonwealth shall implement the Post-Institutional Control Work Plan in accordance with the Post-Institutional Control O & M Manual upon approval by EPA.

20. The portion of the Work performed by Settling Private Parties pursuant to this Consent Decree shall include the obligation to achieve the Construction Standards and Performance Standards applying to the IRP Work at the time of Certification of Completion of the IRP.

21. The portion of the Work performed by the Commonwealth pursuant to this Consent Decree shall include the obligation to achieve the Construction Standards applicable to the BoRP and the Performance Standards.

22. Settling Parties acknowledge and agree that nothing in this Consent Decree, the SOW, the IRP RD or RA Work Plans, the IMP Work Plan, or the FCP RD or RA Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the work plans will achieve the Performance Standards. Moreover, compliance by Settling Defendants with their respective Work requirements shall not foreclose Plaintiff from seeking compliance with all other applicable terms and conditions of this Consent Decree, including but not limited to, the Performance Standards.

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23. Settling Private Parties shall, prior to any off-Site shipment of Waste Material, other than analytical samples, from the Site, provide written notification to the EPA Project Coordinator of such shipment of Waste Material. In addition, prior to any off-Site shipment of Waste Material, other than analytical samples, from the Site to an out-of-state waste management facility, Settling Private Parties shall provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material.

a. The written notification shall include the following information, when available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Settling Private Parties shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Private Parties prior to commencing IRP construction. Settling Private Parties shall provide the information required by subparagraph 23.a as soon as practicable after the receiving facility and state are determined and before the Waste Material is actually shipped.

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24. The Commonwealth shall, prior to any off-Site shipment of Waste Material, other than analytical samples, from the Site, provide written notification to the EPA Project Coordinator of such shipment of Waste Material. In addition, prior to any off-Site shipment of Waste Material, other than analytical samples, from the Site to an out-of-state waste management facility, the Commonwealth shall provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material.

a. The written notification shall include the following information, when available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Commonwealth shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Commonwealth prior to commencing BoRP Activities. The Commonwealth shall provide the information required by subparagraph 24.a as soon as practicable after determining which facility and state will receive the Waste Material and before the Waste Material is actually shipped.



IX. ADDITIONAL RESPONSE ACTIONS

25. a. In the event that, prior to Certification of Completion of the IRP, EPA determines or the Settling Private Parties or Settling Federal Agencies propose that additional response actions are necessary to meet the Construction Standards or Performance Standards applicable to the IRP or to implement the IRP Activities, the Party that makes the determination or proposal shall notify the Project Coordinator for the other Parties.

b. In the event that, after Certification of Completion of the IRP but prior to ten years after Certification of Completion of the IRP, EPA determines or the Settling Private Parties or Settling Federal Agencies propose that additional response actions are necessary to meet the Performance Standards of the IRP due to a failure in the design or implementation of the IRP Work by the Settling Private Parties, the Party that makes the determination or proposal shall notify the Project Coordinator for the other Parties.

c. In the event that, prior to ten years after Certification of Completion of the IRP, EPA determines that a horizontal flow barrier (HFB) is necessary to prevent substantial ground water inflow, as determined by the criteria in the SOW and the criteria developed during the IRP Remedial Design, EPA shall notify the Project Coordinators for the Settling Private Parties and the Commonwealth. ~~The design and implementation of the HFB shall be performed by the Settling Private Parties.~~ All costs of



designing and installing the HFB shall be borne in the following manner: 70% by the Settling Private Parties and Settling Federal Agencies in the proportions specified in the Settlement Agreement, and 30% by the Commonwealth. The Settling Private Parties shall submit monthly invoices and available supporting cost documentation to the Commonwealth for payment of its 30% share of the costs, and the Commonwealth shall, as necessary, verify the amount of the costs incurred and shall make full payment of its share within 30 days after receipt of the invoice and available supporting cost documentation. In the event that the Commonwealth fails to pay an invoice within the thirty day period, the Commonwealth shall also be liable to the Settling Private Parties for interest on the unpaid balance calculated at the rate specified in Section 107(a) of CERCLA and accruing on a daily basis. The Commonwealth's obligation to pay its share of the HFB costs and any accrued interest thereon shall be enforceable by this Court upon application by the Settling Private Parties or the Settling Federal Agencies and, in any such enforcement proceeding, the Commonwealth may contest payment of such costs and interest only on the grounds that there is an accounting error or that the amount of the HFB cost is not supported by the invoice or other supporting cost documentation. The failure of the Settling Private Parties to receive payment from the Commonwealth or the Settling Federal Agencies shall not affect their obligation to construct the HFB.



26. Within 30 days of receipt of notice from EPA or Settling Private Parties pursuant to Paragraph 25 that additional response actions are necessary (or such longer time as may be specified by EPA), Settling Private Parties shall submit for approval by EPA, after reasonable opportunity for review and comment by the Commonwealth, a work plan for the additional response actions. The plan shall conform to the applicable requirements of Paragraphs 17 and 18. Upon approval of the plan pursuant to Section XIV (Submissions Requiring Agency Approval), Settling Private Parties shall implement the plan for additional response actions in accordance with the schedule contained therein.

27. Any additional response actions that Settling Private Parties or Settling Federal Agencies propose are necessary to meet the Construction Standards or Performance Standards or to implement the IRP Activities shall be subject to approval by EPA, after reasonable opportunity for review and comment by the Commonwealth and, if authorized by EPA, shall be completed by Settling Private Parties in accordance with plans, specifications, and schedules approved or established by EPA pursuant to Section XIV (Submissions Requiring Agency Approval).

28. Except as provided in Paragraphs 25-27 above, all other additional response actions required or proposed after Certification of Completion of the IRP shall be the financial responsibility of the Commonwealth and shall be performed pursuant to Paragraphs 29-31, below. These response actions





shall include construction of the HFB and response actions based upon a failure of design or implementation of the IRP if EPA's determination that such response actions are needed is made more than ten years after Certification of Completion of the IRP.

29. In the event that, after Certification of Completion of the IRP, EPA determines or the Commonwealth proposes that additional response actions are necessary to meet the Construction Standards or Performance Standards or to implement the Work, the Party that makes the determination or proposal shall notify the Project Coordinator for the other Party.

30. Within 30 days of receipt of notice from EPA or the Commonwealth pursuant to Paragraph 29 that additional response actions are necessary (or such longer time as may be specified by EPA), except as provided in Paragraphs 25-27, above, the Commonwealth shall submit for approval by EPA a work plan for the additional response actions. The plan shall conform to the applicable requirements of Paragraphs 17 and 18. Upon approval of the plan pursuant to Section XIV (Submissions Requiring Agency Approval), the Commonwealth shall implement the plan for additional response actions in accordance with the schedule contained therein.

31. Any additional response actions that the Commonwealth proposes are necessary to meet the Construction Standards or Performance Standards or to implement the Work shall be subject to approval by EPA and, if authorized by EPA, shall be

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completed by the Commonwealth in accordance with plans, specifications, and schedules approved or established by EPA pursuant to Section XIV (Submissions Requiring Agency Approval).

32. Settling Defendants may invoke the procedures set forth in Section XXII (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary. Such a dispute shall be resolved pursuant to Section XXII (Dispute Resolution) of this Consent Decree.

33. Notwithstanding the provisions of Paragraph 32, neither EPA's initial determination under Paragraph 25.b that a failure in the design or implementation of the IRP Work is the cause of additional response actions nor the absence of such a determination shall be subject to judicial review or dispute resolution. The Settling Parties may invoke the procedures of Paragraph 34, however, to allocate among themselves the costs of certain additional response actions that are required in the 10 year period after Certification of Completion of the IRP.

34. Regardless of EPA's initial determination under Paragraph 25.b, the Settling Private Parties' and Settling Federal Agencies' responsibility under this Consent Decree to pay for response actions under this Section (other than the horizontal flow barrier) that are required in the 10 year period after Certification of Completion of the IRP shall be limited to the costs attributable to a failure in the design or implementation of the IRP Work. The following procedures shall apply for determining the responsibilities of the Settling



Private Parties and Settling Federal Agencies or the Commonwealth to pay for response actions under this Section required within 10 years following Certification of Completion of the IRP. In any proceeding under this Paragraph, a preliminary determination by EPA to seek performance from the Settling Private Parties, Settling Federal Agencies, or the Commonwealth shall have no evidentiary weight. The preliminary determination by EPA shall initiate a 30-day period of informal negotiation between a designee of the Chairman of the Maxey Flats Steering Committee, a designee of the Secretary of the Cabinet for Natural Resources and Environmental Protection, and a designee of the Settling Federal Agencies. In the event that an informal negotiation does not result in a settlement, an aggrieved party may move this Court to resolve the dispute by filing a motion setting forth the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The other parties may file a response to the motion. In the proceeding before this Court, the Court will: (1) determine the extent to which the payment of costs or damages or the performance of additional response activities is attributable, in whole or in part, to the responsibilities imposed on the Settling Private Parties and Settling Federal Agencies due to a failure in the design or implementation of the IRP Work or is otherwise the financial responsibility of the Commonwealth; and (2) order the Commonwealth, the Settling Private Parties and the Settling Federal Agencies to pay the



costs of any shares of responsibility that may be allocated to them or to provide any other appropriate relief.

X. EPA PERIODIC REVIEW

35. Until Certification of Completion of the IRP, Settling Private Parties shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

36. After Certification of Completion of the IRP, the Commonwealth shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

37. If required by Sections 113(k)(2) or 117 of CERCLA, Settling Parties and the public will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of any review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region IV, or his or her delegate, will determine in writing whether further response actions are appropriate.

38. If, prior to Certification of Completion of the IRP, the Regional Administrator, EPA Region IV, or his or her delegate, determines that information received, in whole or in





part, during the review conducted pursuant to Section 121(c) of CERCLA, indicates that the IRP is not protective of human health and the environment, Settling Private Parties shall undertake any further response actions EPA has determined are appropriate, unless their liability for such further response actions is barred by the Covenants Not to Sue set forth in Section XXIV. Settling Private Parties shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VIII (Performance of the Work) and shall implement the plan approved by EPA. Settling Private Parties may invoke the procedures set forth in Section XXII (Dispute Resolution) to dispute (1) EPA's determination that implementation of the IRP Work is not protective of human health and the environment, (2) EPA's selection of the further response actions ordered as arbitrary and capricious or otherwise not in accordance with law, or (3) EPA's determination that the Settling Private Parties' liability for the further response actions requested is reserved in Paragraphs 121, 122, or 124 or otherwise not barred by the Covenants Not to Sue set forth in Section XXIV.

39. If, after Certification of Completion of the IRP, the Regional Administrator, EPA Region IV, or his delegate, determines that information received, in whole or in part, during any review conducted pursuant to Section 121(c) of CERCLA, indicates that the Work is not protective of human health and the environment, and determines that any further response actions are appropriate, the Commonwealth shall undertake any further



response actions EPA has determined are appropriate, unless its liability for such further response actions is barred by the Covenants Not to Sue set forth in Section XXIV. The Commonwealth shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VIII (Performance of the Work) and shall implement the plan approved by EPA. The Commonwealth may invoke the procedures set forth in Section XXII (Dispute Resolution) to dispute (1) EPA's determination that implementation of the Work is not protective of human health and the environment, (2) EPA's selection of the further response actions ordered as arbitrary and capricious or otherwise not in accordance with law, or (3) EPA's determination that the Commonwealth's liability for the further response actions requested is reserved in Paragraphs 122 or 124 or is otherwise not barred by the Covenants Not to Sue set forth in Section XXIV.

XI. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

Settling Private Parties.

40. Settling Private Parties shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objectives Process for Superfund (Interim Final Guidance)," (EPA/540/G-93/071); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent amendments to such



guidelines upon notification by EPA to Settling Private Parties of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Private Parties shall submit to EPA for approval a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and the EPA Region IV Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual (dated April 1, 1986). If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Private Parties shall ensure that EPA and Commonwealth personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Private Parties in implementing this Consent Decree. In addition, Settling Private Parties shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPPs for quality assurance monitoring. Settling Private Parties shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "U.S. EPA Contract Laboratory Program Document No. OLM02.0 (for Inorganic Analyses)" and the "U.S. EPA Contract Laboratory Program Document No. OLM02.0 (for Organic Analyses)" and all revisions thereto,



including any amendments made thereto during the course of the implementation of this Decree. Settling Private Parties shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

41. Upon request, Settling Private Parties shall allow split or duplicate samples to be taken by EPA and the Commonwealth or their authorized representatives. Settling Private Parties shall notify EPA and the Commonwealth, as appropriate, not less than 21 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the Commonwealth shall have the right to take any additional samples that EPA or the Commonwealth deem necessary. Upon request, EPA and the Commonwealth shall allow the Settling Private Parties to take split or duplicate samples of any samples taken as part of Plaintiff's oversight of Settling Private Parties' implementation of the Work.

42. Settling Private Parties shall submit to EPA and the Commonwealth two copies of the results of all validated sampling and/or tests or other data obtained or generated by or on behalf of Settling Private Parties with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

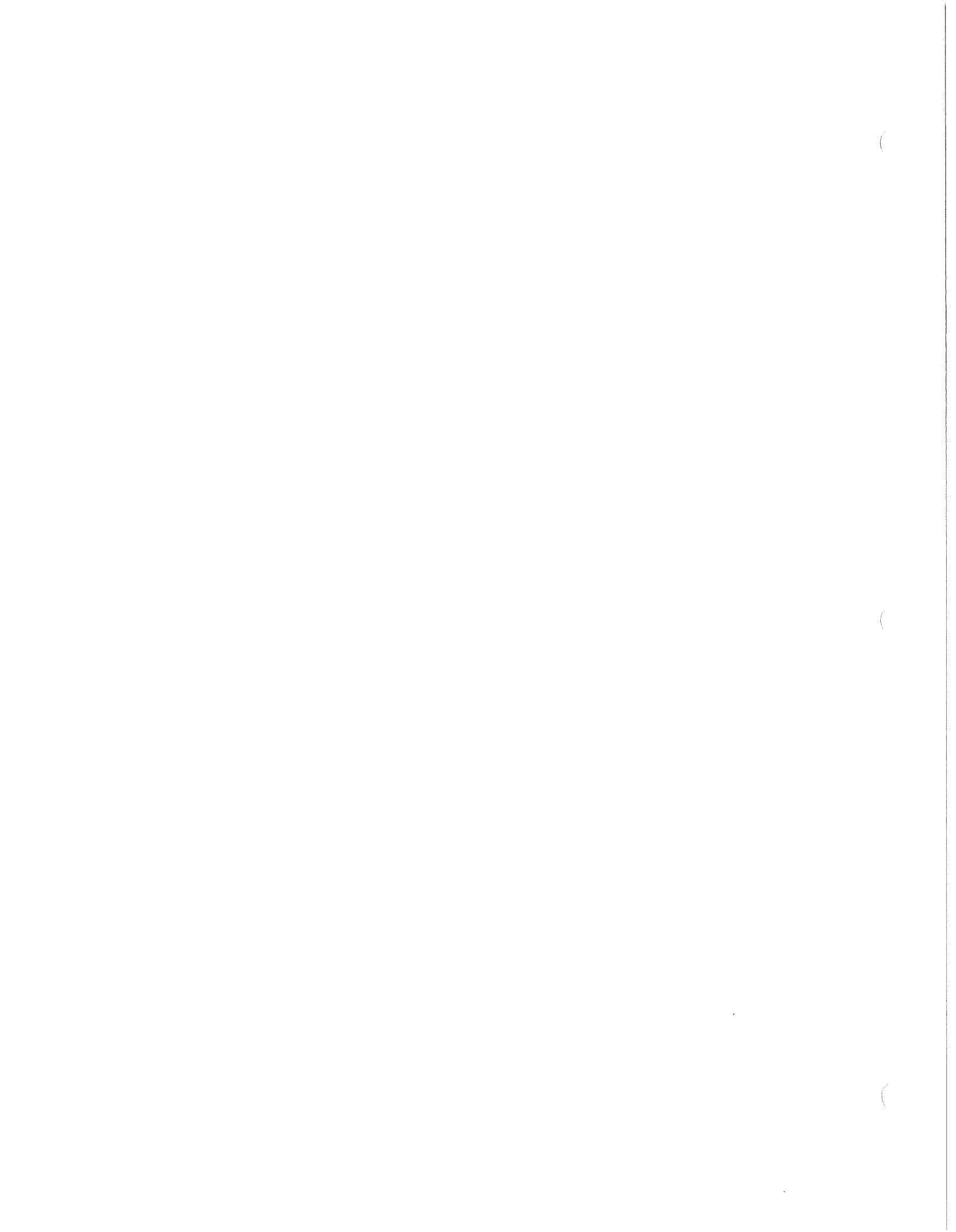
Commonwealth.

43. The Commonwealth shall use quality assurance, quality control, and chain of custody procedures for all samples





in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objectives Process for Superfund (Interim Final Guidance)," (EPA/540/G-93/071); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, the Commonwealth shall submit to EPA for approval a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and the EPA Region IV Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual (dated April 1, 1986). If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. The Commonwealth shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by the Commonwealth in implementing this Consent Decree. In addition, the Commonwealth shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPPs for quality assurance monitoring. The Commonwealth shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Decree perform all



analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "U.S. EPA Contract Laboratory Program Document No. OLM02.0 (for Inorganic Analyses)" and the "U.S. EPA Contract Laboratory Program Document No. OLM02.0 (for Organic Analyses)" and all revisions thereto, including any amendments made thereto during the course of the implementation of this Decree. The Commonwealth shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

44. Upon request, the Commonwealth shall allow split or duplicate samples to be taken by EPA and other Settling Parties or their authorized representatives. When such a request is made, the Commonwealth shall give the requesting Party at least two weeks notice of the day and time of the next sampling event. In addition, EPA and other Settling Parties shall have the right to take any additional samples that they deem necessary. Upon request, EPA shall allow Settling Parties to take split or duplicate samples of any samples taken as part of the EPA's oversight of the Commonwealth's implementation of the Work.

45. The Commonwealth shall submit to EPA two copies of the results of all validated sampling and/or tests or other data obtained or generated by or on behalf of the Commonwealth with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise. All sampling results, tests,

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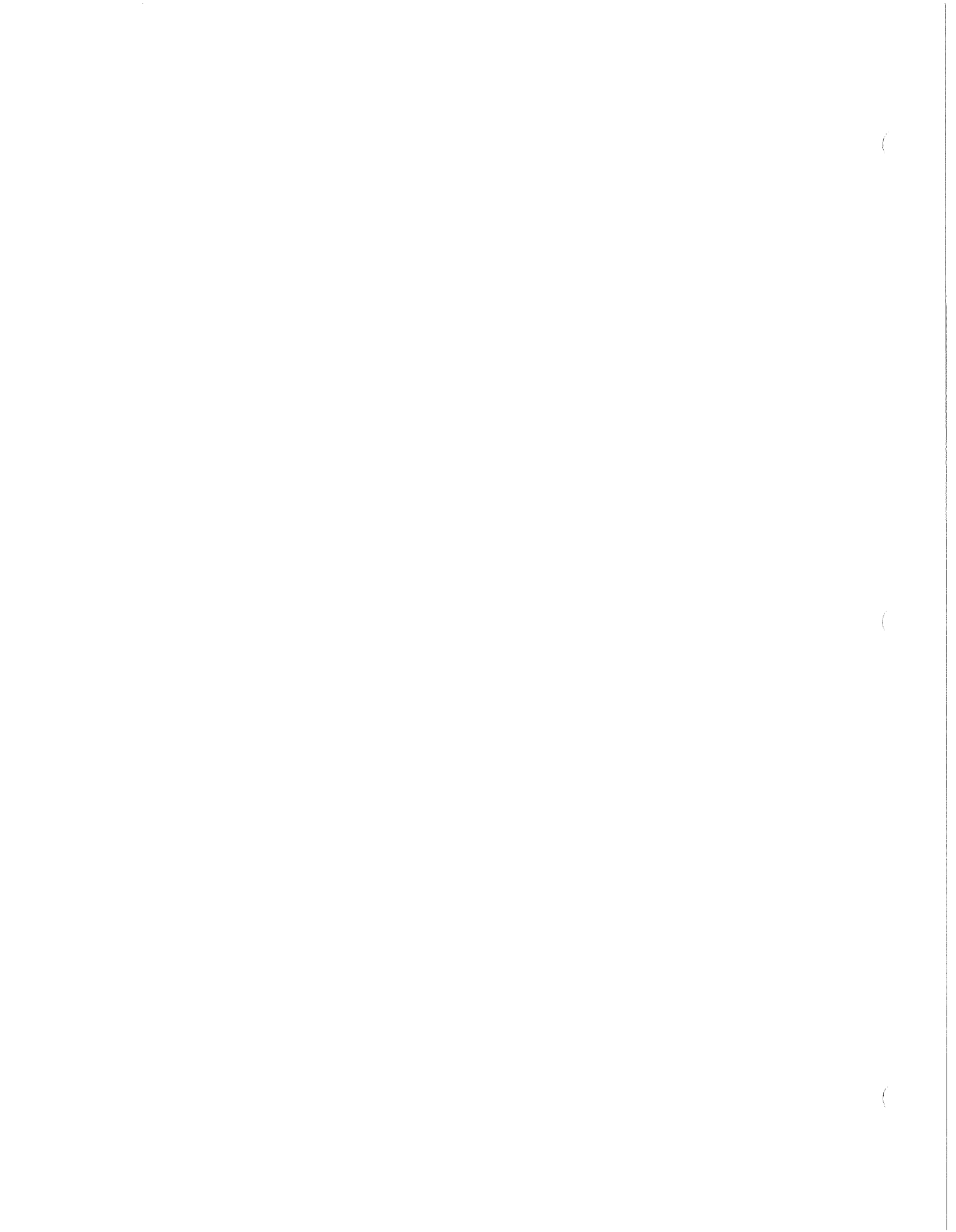
and/or data obtained by or on behalf of the Commonwealth that are subject to the Open Records Act shall be available to the Settling Parties upon request.

46. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

#### XII. ACCESS

47. Commencing upon the date of lodging of this Consent Decree, the Commonwealth agrees, without condition, qualification, or payment of any fee, cost, or charge, and subject only to the health and safety plan developed pursuant to the SOW in effect at the time access is required, to provide the Settling Private Parties and their representatives, contractors, and subcontractors, and the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Site and any property to which access is required for the implementation of this Consent Decree (to the extent access to the property is controlled by the Commonwealth) for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

- a. Monitoring or implementing the Work;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to



contamination at or near the Site;

d. Obtaining samples;

e. Assessing the need for, planning, or implementing additional response actions at or near the Site.

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXVIII (Retention of Records); and

g. Assessing compliance by Settling Defendants with this Consent Decree.

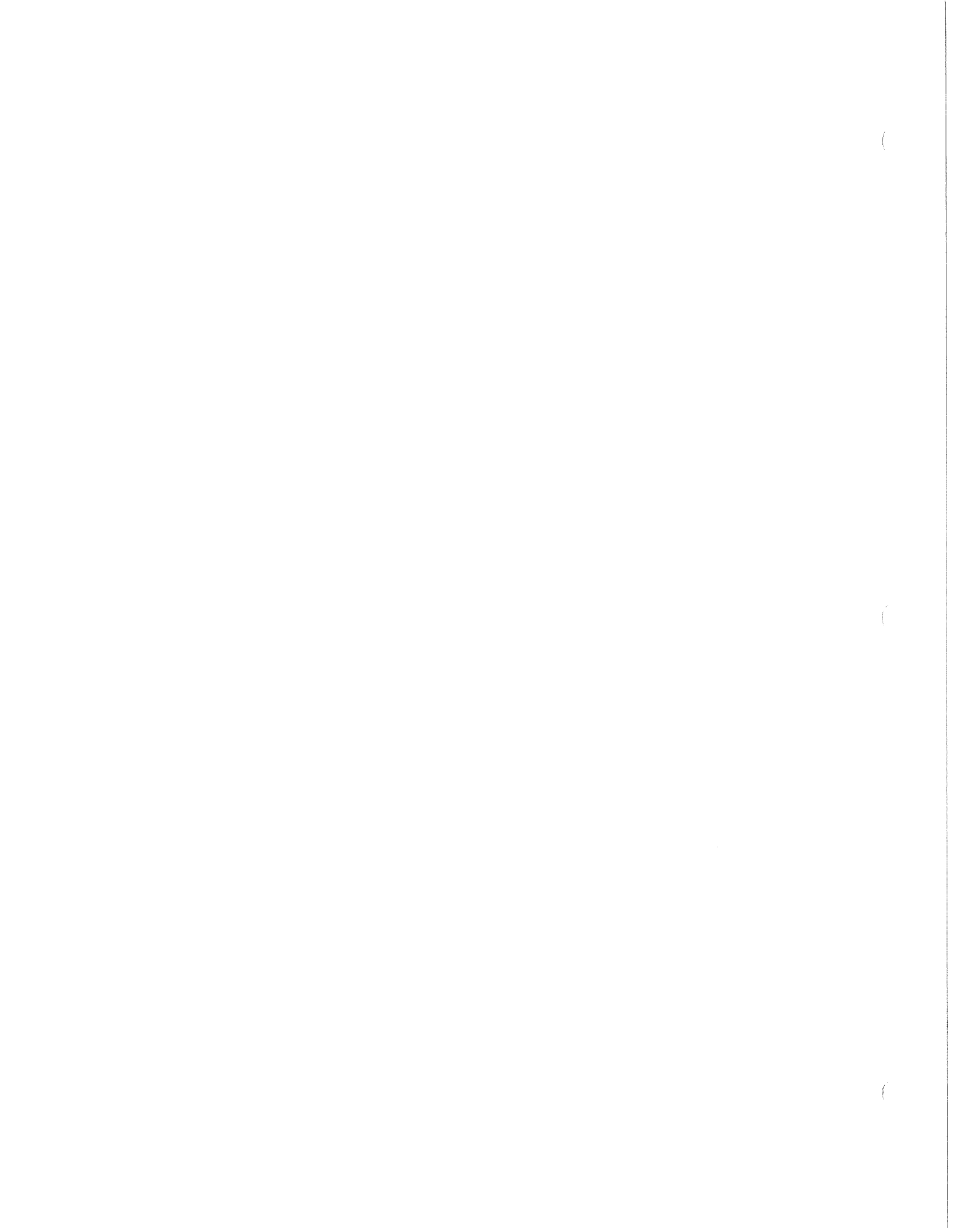
The Commonwealth may raise disputes concerning its obligations under this Section in accordance with Section XXII (Dispute Resolution).

48. To the extent that the Site or any other property to which access is required for implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for Settling Defendants as well as for the United States and its representatives, including, but not limited to, EPA and its contractors, as necessary to effectuate their respective obligations under this Consent Decree. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Such access shall include, but is not limited to, acquiring the "buffer zone," as described in the SOW. The Commonwealth shall obtain and hold title to the buffer zone. Settling Private





Parties shall fund the acquisition of the buffer zone as specified in the SOW up to a total cost of \$750,000. In the event the acquisition price for the buffer zone as specified in the SOW exceeds \$750,000, the Commonwealth shall pay any amount above \$750,000. If any access required to complete the Work is not obtained within 45 days of the date of entry of this Consent Decree, or within 45 days of the date EPA notifies the Settling Defendants in writing that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify the United States, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain access. In the event the United States determines that the Settling Defendants have been unable to obtain access, the United States may, as it deems appropriate, assist the Settling Defendants in obtaining access. Settling Private Parties shall reimburse the United States, in accordance with the procedures in Section XIX (Reimbursement of Response Costs), for the costs incurred by the United States in obtaining access, but Settling Private Parties' obligation to pay for the buffer zone and reimburse EPA's costs hereunder shall not exceed \$750,000. In the event that the cost of paying for the buffer zone and reimbursing EPA hereunder exceeds \$750,000, the Commonwealth shall pay all additional costs incurred for the buffer zone or by the United States in obtaining access.



49. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

XIII. REPORTING REQUIREMENTS

Settling Private Parties

50. In addition to any other requirement of this Consent Decree, Settling Private Parties shall submit to EPA and the Commonwealth during performance of the IRP two copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all validated results of sampling and tests and all other data received or generated by Settling Private Parties or their contractors or agents in the previous month; (c) identify all work plans, and other plans and deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the IRP Work, and a description of efforts



made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Private Parties have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of EPA's revised Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Private Parties shall submit these progress reports to EPA and the Commonwealth by the tenth day of every month following the entry of this Consent Decree until the issuance of the Certification of Completion of the IRP. If requested by EPA, the Parties shall also provide briefings for EPA to discuss the progress of the Work.

51. Settling Private Parties shall notify EPA of any material change in the schedule described in the required progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

52. Upon the occurrence of any event during performance of the Work that Settling Private Parties are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), or Kentucky statutory and regulatory requirements for the notification of releases of hazardous substances, pollutants or contaminants, Settling Private Parties shall, within 24 hours of the onset of such event, orally notify the EPA Project



Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator) or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region IV, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

53. Within 20 days of the onset of such an event, Settling Private Parties shall furnish to Plaintiff a written report, signed by the Settling Private Parties' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto and shall comply with Kentucky statutory and regulatory requirements for the notification of releases of hazardous substances, pollutants, or contaminants. Within 30 days of the conclusion of such an event, Settling Private Parties shall submit a report setting forth all actions taken in response thereto.

54. Settling Private Parties shall submit seven copies of all plans, reports, and data required by the SOW, the IRP RD and RA Work Plans or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Private Parties shall simultaneously submit two copies of all such plans, reports and data to the Commonwealth.





Commonwealth.

55. In addition to any other requirement of this Consent Decree, the Commonwealth shall submit to EPA every six months during performance of the BoRP two copies of written progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous six month period; (b) include a summary of all validated results of sampling and tests and all other data received or generated by the Commonwealth or its contractors or agents in the previous six month period; (c) identify all work plans, and other plans and deliverables required by this Consent Decree completed and submitted during the previous six month period; (d) describe all actions including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six month period and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the BoRP Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that the Commonwealth has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of EPA's revised Community Relations Plan during the previous six month period and those to

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be undertaken in the next six month period. The Commonwealth shall submit these progress reports to EPA by the thirtieth day of every six month period following the entry of this Consent Decree until the issuance of the Certification of Completion of the BoRP. If requested by EPA, the Parties shall also provide briefings for EPA to discuss the progress of the Work.

56. The Commonwealth shall notify EPA of any change in the schedule described in the required progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

57. Upon the occurrence of any event during performance of the Work that the Commonwealth is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), or Kentucky statutory and regulatory requirements for the notification of releases of hazardous substances, pollutants or contaminants, the Commonwealth shall, within 24 hours of the onset of such event, orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator) or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region IV, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

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58. Within 20 days of the onset of such an event, the Commonwealth shall furnish to Plaintiff a written report, signed by the Commonwealth's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto and shall comply with Kentucky statutory and regulatory requirements for the notification of releases of hazardous substances, pollutants, or contaminants. Within 30 days of the conclusion of such an event, the Commonwealth shall submit a report setting forth all actions taken in response thereto.

59. The Commonwealth shall submit seven copies of all plans, reports, and data required by the SOW, the BoRP Work Plans or any other approved plans to EPA in accordance with the schedules set forth in such plans.

60. All reports and other documents submitted by Settling Defendants to EPA (other than the required progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the respective Settling Defendants.

XIV. SUBMISSIONS REQUIRING AGENCY APPROVAL

Settling Private Parties.

61. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the Commonwealth, shall: (a) approve, in whole or in



part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Private Parties modify the submission; or (e) any combination of the above.

62. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 61(a), (b), or (c), Settling Private Parties shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA, subject only to their right to invoke the dispute resolution procedures set forth in Section XXII with respect to the modifications or conditions made by EPA. If such submission has a material defect and EPA modifies the submission to cure the deficiencies pursuant to Paragraph 61(c), EPA retains its right to seek stipulated penalties, as provided in Section XXIII.

63. a. Upon receipt of a notice of disapproval pursuant to Paragraph 61, Settling Private Parties shall, within 14 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Except as provided in Paragraph 67, below, any stipulated penalties applicable to the submission, as provided in Section XXIII, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 61.

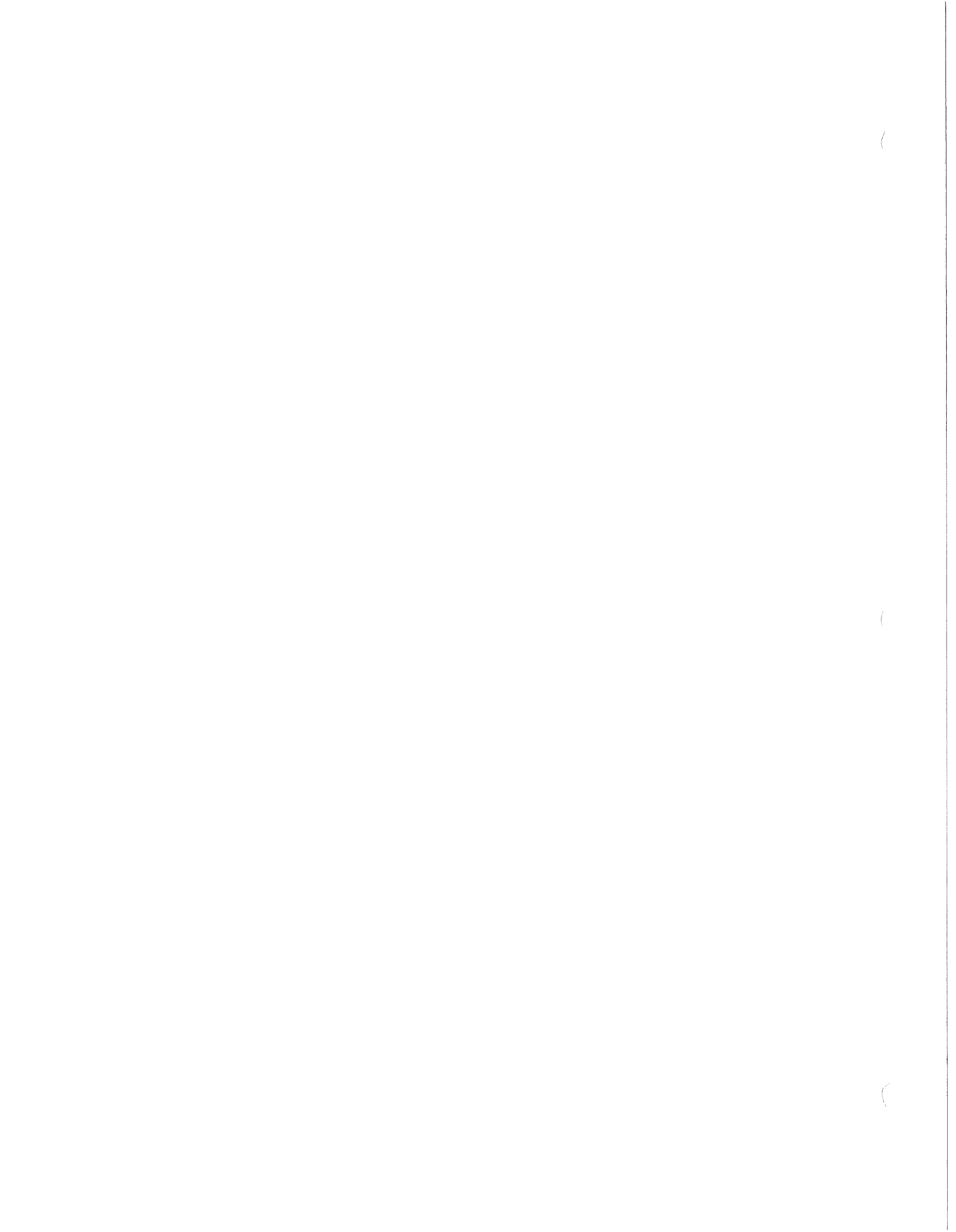




b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 61, Settling Private Parties shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission that does not depend upon the disapproved portion for implementation. Implementation of any non-deficient portion of a submission shall not relieve Settling Private Parties of any liability for stipulated penalties under Section XXIII.

64. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Private Parties to correct the deficiencies, in accordance with the preceding Paragraphs. EPA shall also have the right to amend or develop the plan, report or other item. Settling Private Parties shall implement any such plan, report, or item as amended or developed by EPA subject only to their right to invoke the procedures set forth in Section XXII (Dispute Resolution).

65. If, upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Private Parties shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Settling Private Parties invoke the dispute resolution procedures set forth in Section XXII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XXII (Dispute Resolution) and Section XXIII (Stipulated Penalties) shall govern the implementation of the Work and



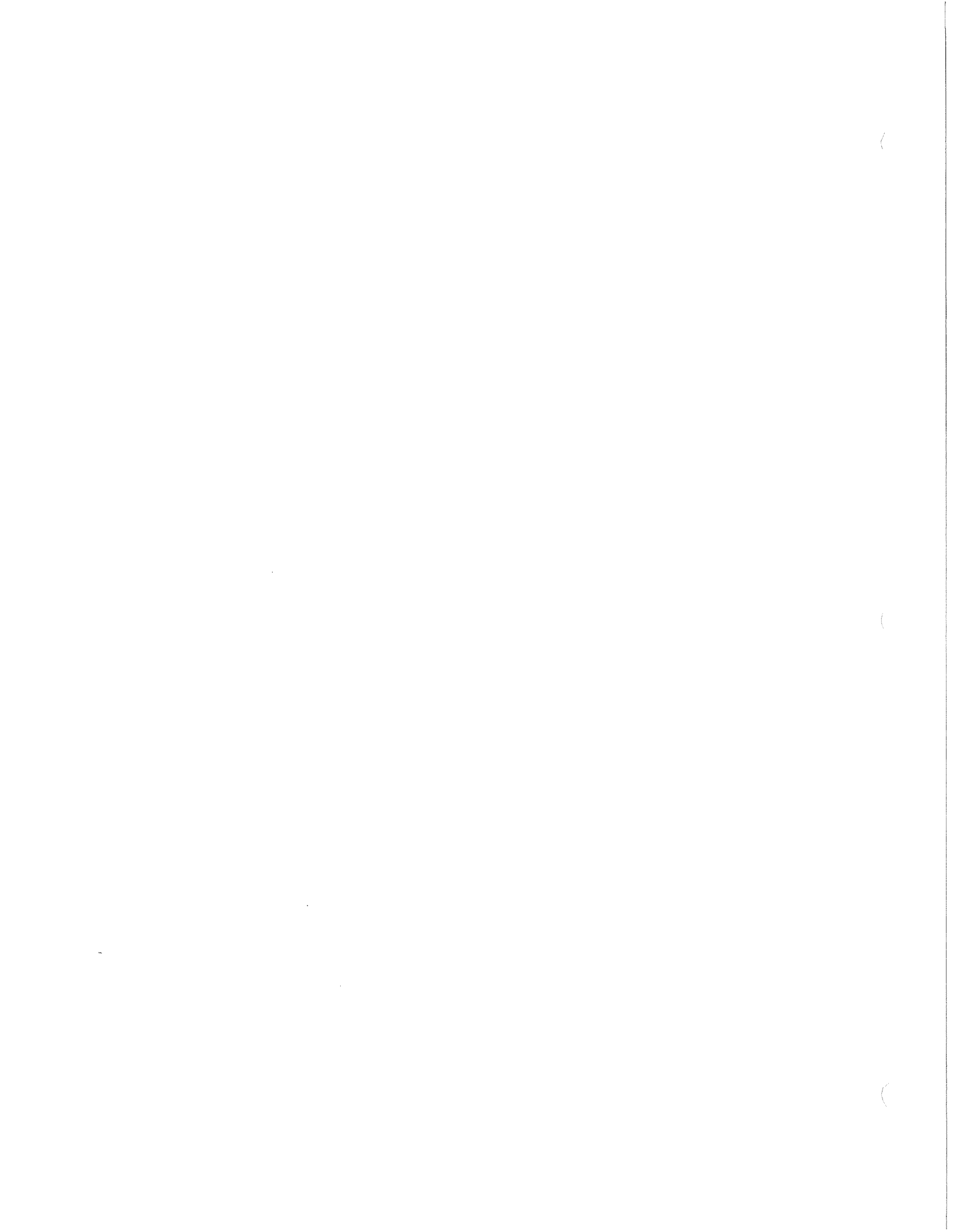
accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXIII (Stipulated Penalties).

66. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

67. Notwithstanding the foregoing provisions of this Section, EPA will not unilaterally modify a deficient initial submittal unless it has first given the Settling Private Parties one opportunity to correct the deficiency. Stipulated penalties shall not accrue during the period provided to Settling Private Parties in this Paragraph to correct deficiencies in an initial submittal if EPA determines that the initial submittal was made in good faith and was timely.

Commonwealth.

68. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the Commonwealth, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified



conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Commonwealth modify the submission; or (e) any combination of the above.

69. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 68 (a), (b), or (c), the Commonwealth shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA, subject only to its right to invoke the dispute resolution procedures set forth in Section XXIII with respect to the modifications or conditions made by EPA. If such submission has a material defect and EPA modifies the submission to cure the deficiencies pursuant to Paragraph 68(c), EPA retains its right to seek stipulated penalties, as provided in Section XXIII.

70. a. Upon receipt of a notice of disapproval pursuant to Paragraph 68, the Commonwealth shall, within 14 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Except as provided in Paragraph 74, below, any stipulated penalties applicable to the submission, as provided in Section XXIII, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 68.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 68, the Commonwealth shall



proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission that does not depend upon the disapproved portion for implementation. Implementation of any non-deficient portion of a submission shall not relieve the Commonwealth of any liability for stipulated penalties under Section XXIII.

71. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Commonwealth to correct the deficiencies, in accordance with the preceding Paragraphs. EPA shall also have the right to amend or develop the plan, report or other item. The Commonwealth shall implement any such plan, report, or item as amended or developed by EPA subject only to the Commonwealth's right to invoke the procedures set forth in Section XXII (Dispute Resolution).

72. If, upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, the Commonwealth shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Commonwealth invokes the dispute resolution procedures set forth in Section XXII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XXII (Dispute Resolution) and Section XXIII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall

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accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXIII (Stipulated Penalties).

73. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

74. Notwithstanding the foregoing provisions of this Section, EPA will not unilaterally modify a deficient initial submittal unless it has first given the Commonwealth an opportunity to correct the deficiency. Stipulated penalties shall not accrue during the period provided to the Commonwealth in this Paragraph to correct deficiencies in an initial submittal if EPA determines that the initial submittal was made in good faith and was timely.

#### XV. PROJECT COORDINATORS

75. ~~Within 15 days of entry of this Consent Decree, Settling Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators.~~ If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five



working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinators shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinators shall not be attorneys for any of the Parties in this matter. Settling Defendants' Project Coordinators may assign other representatives, including other contractors, to serve as Site representatives for oversight of performance of daily operations during Remedial Activities.

76. Plaintiff may designate other representatives, including, but not limited to, EPA employees and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when he/she determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material. EPA

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shall use its best efforts to avoid or minimize any work stoppage ordered under this Consent Decree.

XVI. ASSURANCE OF ABILITY TO COMPLETE WORK

77. Settling Private Parties. Within 30 days of entry of this Consent Decree, Settling Private Parties shall establish and maintain financial security of at least \$18 million, in one of the following forms:

a. A surety bond guaranteeing performance of the IRP Work;

b. One or more irrevocable letters of credit;

c. A trust fund;

d. A guarantee to perform the IRP Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Private Parties;

or

e. A demonstration that one or more of the Settling Private Parties satisfies the requirements of 40 C.F.R. § 264.143(f).

78. If the Settling Private Parties seek to demonstrate financial assurance as set forth in Paragraph 77 through a guarantee by a third party, Settling Private Parties shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Settling Private Parties seek to demonstrate financial assurance by means of the corporate guarantee or financial test pursuant to Paragraph 77.d or 77.e,

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they shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided by the Settling Private Parties pursuant to this Section are inadequate, Settling Private Parties shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 77 of this Consent Decree. Settling Private Parties' inability to demonstrate financial ability to complete the IRP Work shall not excuse performance of any activities required under this Consent Decree.

79. Obligations of the Commonwealth, DOE and DOD.

a. Pursuant to Paragraph 82.b of this Decree, in the event of any action or occurrence after Certification of Completion of the IRP which causes or threatens to cause a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Commonwealth shall immediately take all appropriate action to prevent, abate or minimize such release or threat of release, and to give such notifications as set forth in Paragraph 82.b.

b. Pursuant to Paragraph 39 of this Consent Decree, the Commonwealth shall, after Certification of Completion of the IRP, perform any further response actions EPA determines are appropriate in the event that EPA's review conducted pursuant

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the failure of the Commonwealth to perform its obligations under the Consent Decree due to lack of funds or for any other reason, or as the result of remedy (including design and/or implementation) failure, or the failure of O & M. The Parties agree that they intend the term "catastrophic emergency" as used in this Section to be read strictly and narrowly, in light of the purpose of the Parties that assistance be provided under the terms of this Paragraph only in the event of a truly catastrophic emergency.

(2) Periodic Review. The assistance described below shall also be made available in the event that, after Certification of Completion of the IRP, the Commonwealth is required by EPA to perform further response actions under Section X of this Consent Decree (EPA Periodic Review), and the further response actions are the direct result of a change in performance criteria applied to the Site, other than the Performance Standards, due to new federal regulations or policy. The assistance described below shall not be made available in the event that the Commonwealth is required to perform (i) any further response actions pursuant to Section IX (Additional Response Actions) based on any reason specified therein, including that the Work does not meet Performance Standards or (ii) any further response actions pursuant to Section X (EPA Periodic Review) because EPA determines that the remedy as designed or implemented is not sufficiently protective of human health or the environment based on additional site-specific data.

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to Section 121(c) of CERCLA indicates that the Work is not protective of human health or the environment.

c. Pursuant to the terms of this Paragraph, the United States Department of Energy ("DOE") and the United States Department of Defense ("DOD") agree to provide certain financial assistance to the Commonwealth in particular circumstances arising after the Certification of Completion of the IRP. The assistance, to be described below, shall be provided by DOE and DOD only in the following circumstances (the "Circumstances"):

(1) Emergency Response: The assistance to be described below shall be made available by DOE and DOD in the event of a catastrophic emergency after Certification of Completion of the IRP which presents an immediate threat to the public health or welfare or the environment as the result of the release or threatened release of Waste Material from the Site requiring appropriate action pursuant to Paragraph 82.b. "Catastrophic emergency" shall mean an emergency which cannot be prevented by due diligence on the part of the Commonwealth, such as a natural disaster which affects the Site, including but not limited to, an earthquake, high winds, tornado, landslide, or forest fire. The term "catastrophic emergency" shall also include emergencies resulting from unforeseeable human cause which cannot be prevented by due diligence on the part of the Commonwealth, including but not limited to, vandalism, act of war, arson, or insurrection. The term "catastrophic emergency" specifically does not include emergencies that are the result of

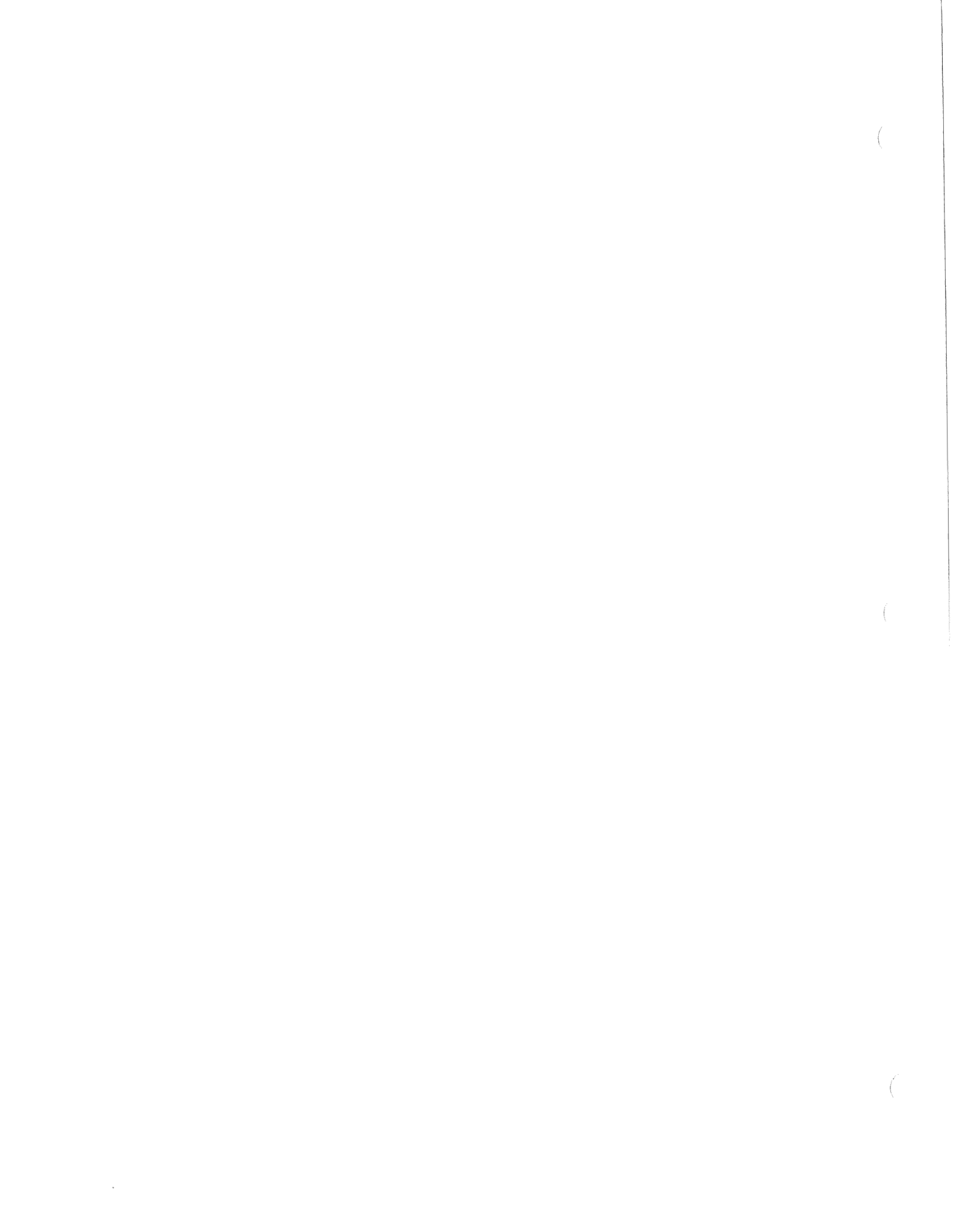
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the failure of the Commonwealth to perform its obligations under the Consent Decree due to lack of funds or for any other reason, or as the result of remedy (including design and/or implementation) failure, or the failure of O & M. The Parties agree that they intend the term "catastrophic emergency" as used in this Section to be read strictly and narrowly, in light of the purpose of the Parties that assistance be provided under the terms of this Paragraph only in the event of a truly catastrophic emergency.

(2) Periodic Review. The assistance described below shall also be made available in the event that, after Certification of Completion of the IRP, the Commonwealth is required by EPA to perform further response actions under Section X of this Consent Decree (EPA Periodic Review), and the further response actions are the direct result of a change in performance criteria applied to the Site, other than the Performance Standards, due to new federal regulations or policy. The assistance described below shall not be made available in the event that the Commonwealth is required to perform (i) any further response actions pursuant to Section IX (Additional Response Actions) based on any reason specified therein, including that the Work does not meet Performance Standards or (ii) any further response actions pursuant to Section X (EPA Periodic Review) because EPA determines that the remedy as designed or implemented is not sufficiently protective of human health or the environment based on additional site-specific data.



The Commonwealth, DOE and DOD agree that they intend that the Circumstances under which assistance will be rendered as set forth below are to be read strictly and narrowly.

d. Trust Fund.

(1) Within 180 days after the entry of the Consent Decree, the Commonwealth will establish a trust under an agreement the specific terms of which must be approved in advance by DOE, DOD and EPA ("Trust Agreement"). The Trust shall be administered by a trustee approved in advance by DOE, DOD and EPA. The corpus of the Trust shall include two separate interest-bearing accounts. One account (the "Emergency Account"), shall be used exclusively for Work performed in accordance with paragraph 79.c for catastrophic emergencies and periodic reviews until completion of the IMP. The Commonwealth shall fund the account initially with \$2 million and fully fund the account as set forth in 79.d.(3), below. A second account ("the Capital Account") shall be established with \$3 million, to be used to fund the cost of the FCP and any capital construction projects required of the Commonwealth by EPA that are not "catastrophic emergencies" or Work required pursuant to periodic review under subparagraph c of this Paragraph. The corpus of the Fund shall be invested in an appropriate fashion so that interest or other appropriate return on investment is earned on the amount placed in the Fund.

(2) If the Commonwealth is unable to establish the Trust Agreement within 180 days of entry of this Consent Decree

