

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA)	
A municipal corporation)	
1200 First St., N.E., 5 th Floor)	
Washington, DC 20002)	
)	
Plaintiff,)	
)	Civil Action No. 1:11-cv-00282 (BAH)
v.)	
)	
Potomac Electric Power Company)	
701 Ninth Street, N.W.)	
Washington, DC 20068)	
)	
Pepco Energy Services, Inc.)	
701 Ninth Street, N.W.)	
Washington, DC 20068)	
)	
Defendants.)	
)	

JOINT STATUS REPORT AND REQUEST FOR EXTENSION OF DEADLINE TO COMPLETE FINAL FEASIBILITY STUDY REPORT

Plaintiff District of Columbia (the “District”) and Defendants Potomac Electric Power Company and Pepco Energy Services, Inc. (collectively, “Pepco”) (and together with the District of Columbia Department of Energy and Environment (“DOEE”), the “Parties”) submit the following joint status report on the implementation of the Consent Decree entered in this matter regarding the investigation of environmental conditions at the Benning Service Center site and adjacent portion of the Anacostia River, and request for extension of the deadline to complete the final Feasibility Study report:

Procedural History

On December 1, 2011, the Court entered a Consent Decree between the District, acting by and through DOEE, and Pepco. Electronic Case File (“ECF”) No. 32. The Consent Decree

obligated Pepco to perform a Remedial Investigation/Feasibility Study (“RI/FS”) at the Benning Service Center site at 3400 Benning Road NE, Washington, D.C., and a nearby portion of the Anacostia River (the “Site”).

On February 3, 2022, the Parties submitted a joint status report to the Court regarding their progress on the RI/FS. ECF No. 61. In that report, the Parties advised that DOEE had approved a proposed plan submitted by Pepco for supplemental sampling within a cove of the Anacostia River located within the waterside area of the Site (the “Cove”) as a follow up to the Treatability Study undertaken to evaluate the effectiveness of certain remedial technologies to address contaminated sediments in the Cove, and that Pepco’s contractor, AECOM, was in the process of obtaining the necessary permits for those sampling activities from the National Park Service, the U.S. Army Corps of Engineers, and the District. The Parties further advised that Pepco had submitted a technical memorandum to DOEE documenting the results of its supplemental field investigation regarding potential sources of perchloroethylene (“PCE”) detected in Site groundwater.

The Parties also reported that AECOM continued to make progress on the Feasibility Study, including the development of remedial alternatives to address conditions identified in the Remedial Investigation as posing actionable risk within the landside area of the Site and in the Cove, as well as to incorporate possible ecological enhancements into the remedial action for the Cove. The Parties further reported that, in parallel with the Feasibility Study, Pepco was continuing to coordinate with the public entities who act as “trustees” for the public resources in question (including the District, the National Park Service, the U.S. Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration (“NOAA”)) regarding the possible ecological enhancements for the Cove, and had submitted a proposed cooperative agreement

with the Trustees to address the parties' respective roles and responsibilities in assessing natural resource damages and implementing off-setting ecological enhancements.

In response to the February 3, 2022, joint status report, the Court issued a Minute Order directing the Parties to submit their next joint status report by August 3, 2022. Minute Order (Feb. 3, 2022). This joint status report is submitted in compliance with that Minute Order.

Status of RI/FS Activities Since February 3, 2022 Joint Status Report

On May 5, 2022, Pepco submitted a draft Feasibility Study report to DOEE for review and comment. The draft Feasibility Study report presented the results of Pepco's evaluation of several remedial alternatives to address soil and groundwater contamination within the landside area of the Site as well as a separate set of remedial alternatives focused on contaminated sediments in the Cove. The remedial technologies evaluated for the landside area include containment, removal, and *in situ* treatment of contaminants. The remedial technologies evaluated for the Cove include dredging and/or capping of contaminated sediments, as well as possible amendments to capping materials designed to sequester contaminants. The draft report included three appendices documenting various technical analyses undertaken to support the overall evaluation of the different remedial alternatives under consideration. The report also included an additional appendix presenting the details of restoration and ecological enhancement that potentially could be integrated into the remedial action for the Cove.

On June 15, 2022, DOEE provided an initial set of high level comments on the draft Feasibility Report, and on June 22, 2022, Pepco and DOEE convened a conference call to discuss DOEE's comments. During that call, DOEE also provided additional input regarding the ecological enhancements that potentially could be integrated into the remedial action for the Cove, as described in the draft Feasibility Study report and supporting appendix. Pepco has been

working on revisions to the draft Feasibility Study report to address DOEE's initial comments. DOEE expects to provide its further comments on the draft Feasibility Study by August 22, 2022. Pepco will revise the draft Feasibility Study report in response to DOEE's comments and submit a revised report. Following DOEE's determination that its comments have been addressed, the draft Feasibility Study report will be released for public review and comment in accordance with this Court's order entering the Consent Decree. ECF No. 32.

In parallel with the work on the Feasibility Study, Pepco has continued work on additional field investigations. In March of 2022, DOEE requested that Pepco collect additional confirmatory water level measurements at certain groundwater wells installed as part of the PCE groundwater investigation. AECOM conducted the requested sampling in March and June of 2022 and expects to provide a report to DOEE within the next 30 days once it has completed its evaluation of the additional sampling data. In addition, AECOM has completed the process of obtaining permits from the National Park Service, the U.S. Army Corps of Engineers, and the District required for additional sampling in the Cove to supplement the Treatability Study. The field sampling work is scheduled to be completed in August of 2022, after which Pepco will submit an addendum to the Treatability Study report to document the findings from the supplemental sampling.

Finally, Pepco has continued to work on an expanded forensics analysis and source identification assessment as part of the Feasibility Study phase of work. As described in prior status reports to the Court, this effort involves a comprehensive statistical analysis of the Remedial Investigation sampling data together with a detailed evaluation, based on multiple lines of evidence, of the extent to which contaminants in the river sediments may be attributable to activities at the Pepco Benning Road facility. Pepco expects to submit an updated report

documenting the results of this expanded forensic evaluation for review by DOEE within the next 30 days. Thereafter, the Parties will work to resolve all forensics issues prior to the completion of the Feasibility Study.

Request for Extension of Deadline for Completion of Feasibility Study

The current Court-approved schedule calls for the Parties to complete the final Feasibility Study report by September 16, 2022. Although the parties have made substantial progress on the Feasibility Study, additional time is needed for (i) Pepco to consider and address DOEE's full comments on the draft report submitted by Pepco on May 5, 2022, (ii) public review and comment on the draft report, and (iii) Pepco and DOEE to address public comments and then finalize the report and supporting materials and appendices.

The Parties anticipate that a draft Feasibility Study report can be released for public review by early October 2022. The Court's order entering the Consent Decree requires a public review period of at least 30 days, but stakeholders have typically asked for additional time, and the Parties believe a period of at least 45 days is warranted for the Feasibility Study report. To allow time for adequate consideration of public comments, the Parties request that the deadline for completing the final report be extended by six months to March 16, 2023.

The Parties further propose to submit the next status report to the Court by February 3, 2023, six months from the date of this status report.

Dated: August 3, 2022

Respectfully submitted,

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