The District Department of the Environment (“DDOE”) filed a Complaint in this action against Defendants, Pepco Energy Services, Inc., and Potomac Electric Power Company (collectively, “Pepco” or “Defendant”), alleging liability under the Resource Conservation and Recovery Act (“RCRA”), and under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), and under Section 401(a)(2) of the District of Columbia Brownfield Revitalization Act of 2000 (“DCBRA”)(collectively “the Acts”). The Complaint alleges that between 1985 and 2003 there were six (6) documented releases of polychlorinated biphenyls (“PCBs”) at the Pepco’s Facility (Facility). Although Pepco conducted remedial actions in response to each of these releases, because of the Facility’s proximate location to the Anacostia River, the PCBs were detected in the sediment of the adjacent Anacostia River. The most plausible pathways for the PCBs were via the storm water system, overland flow or groundwater discharge.

EPA Region 3’s reported Biological Technical Assistance Groups (BTAG) levels for Aroclor-1254 and Aroclor-1260 is 59.8 μg/kg. The lowest values of PCBs found in the Anacostia sediment were reported in samples immediately upstream from the Facility. The maximum concentration reported was 1,700 μg/kg of Aroclor-1260, detected from a sediment sample collected in an inlet located along the Anacostia River where two or more storm water outfalls discharge, one of which receives storm water drainage from the Facility. The second highest concentration of PCBs (Aroclor-1254 of 1,000 μg/kg and Aroclor-1260 of 1,100 μg/kg) were detected directly downstream of the storm water system outfalls.

In response to these detections, the parties entered into the Consent Decree whose stated purpose is to investigate the nature and extent of contamination from these releases. *See* ¶ 2. To accomplish that task, the Consent Decree obligates Pepco to perform a Remedial Investigation and Feasibility Study (“RI/FS”) and Natural Resources Damages Assessment in accordance with all applicable federal standards and regulations. *See* ¶ 8. The RI/FS is also set on a schedule whereby Pepco is obligated to meet certain milestones at designated time intervals. *See ¶* 8(c). Each of these milestones are subject to DDOE approval, and DDOE oversight, which is paid for by Pepco. *See ¶¶* 7 and 8. In the event that Pepco fails to meet one of these deadlines, they are subject to liquidated damages that are calculated per day, and per violation. *See* ¶ 9. Similarly, the Consent Decree obligates Pepco to provide Financial Assurance in the amount of $1.1 million dollars, which becomes forfeit in the event Pepco abandons work on the RI/FS. *See*  ¶4.

In exchange for performance of the RI/FS and reimbursement of the District’s costs of oversight, Pepco received a Covenant not to Sue from the District. *See ¶* 12. The covenant provides Pepco assurance that the District will not take enforcement action against it for matters expressly resolved in the Consent Decree. *Id.* However, it is also important to note that the Consent Decree obligates Pepco to comply with all applicable laws and regulations, and that the performance of the RI/FS does not shield Pepco from penalties for new violations. *See* ¶ 11.

Originally, the Consent Decree was lodged with the United States District Court for the District of Columbia on February 1, 2011. In response to public comments received, the Consent Decree was revised and re-lodged with the Court on August 17, 2011. After a hearing, the Consent Decree was entered by the Court on December 1, 2011.