

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

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:

Procedural History

On December 1, 2011, the Court entered a Consent Decree between Plaintiff District of Columbia (the “District”), acting by and through the District of Columbia Department of Energy and Environment (“DOEE”), and Defendants Potomac Electric Power Company and Pepco Energy Services, Inc. (collectively, “Pepco” and together with DOEE, the “Parties”). 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 August 3, 2021, the Parties submitted a joint status report to the Court regarding their progress on the RI/FS. ECF No. 59. In that report, the Parties advised that Pepco had completed the Treatability Study to evaluate the effectiveness of certain remedial technologies to address contaminated sediments within a cove of the Anacostia River located within the Waterside Investigation Area of the Site (the “Cove”), except for certain supplemental monitoring to address newly available information about sources of discharge to a Cove, and that DOEE had approved the Treatability Study report on May 11, 2021, with the understanding that Pepco would submit an addendum to the Treatability Study report to document the findings from the supplemental sampling.¹ The parties also advised that Pepco’s consultant, AECOM, had completed the field work for a supplemental evaluation of perchloroethylene (“PCE”) detected in groundwater at Pepco’s Benning Road facility, which involved installation and sampling of groundwater wells at the Pepco property and on the south side of Benning Road across from the Pepco property, and would be preparing a technical memorandum for submission to DOEE documenting the results of the supplemental evaluation.

Finally, the parties also advised that Pepco has been proceeding with the Feasibility Study to identify and evaluate remedial alternatives to address contaminated sediments within the Cove. The remedial technologies under consideration include dredging and/or capping of contaminated sediments in the Cove, as well as amendments to capping materials designed to sequester contaminants. As part of the alternatives to be considered in the Feasibility Study, Pepco had proposed the possibility of combining these remedial actions with the construction of

¹ In August of 2021, DOEE provided a few additional minor comments regarding the nomenclature used in the Treatability Study report. Pepco revised the report and submitted a revised final version to DOEE on August 27, 2021. This version has been published to the DOEE public website for the Benning RI/FS.

ecological enhancements within the Cove, such as a tidal marsh, that would provide higher quality habitat and present a more attractive appearance than the currently existing mud flat. To allow additional time for Pepco to develop specific plans for such ecological enhancements, and to coordinate those efforts with 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), the parties requested that the Court grant a six-month extension to the deadline for completing the final Feasibility Study. The Court granted the requested extension and set a new deadline of September 22, 2022, for completion of the final Feasibility Study. Minute Order (Aug. 4, 2021). The Court’s Minute Order also directed the parties to submit their next joint status report by February 3, 2022. This report is submitted in compliance with that Minute Order.

Status of RI/FS Activities Since August 3, 2021 Joint Status Report

On July 30, 2021, Pepco submitted a proposed plan to DOEE for supplemental monitoring in the Cove as a follow up to the Treatability study. DOEE reviewed and commented on the plan, and Pepco submitted a final plan to DOEE on November 17, 2021, which was approved by DOEE on December 9, 2021. AECOM is in the process of obtaining the necessary permits for the sampling activities from the National Park Service, the U.S. Army Corps of Engineers, and the District. It is anticipated that field sampling will commence during the first quarter of 2022. Following its evaluation of the sampling data, Pepco will prepare an addendum to the Treatability Study to document the findings of this supplemental field investigation.

On October 4, 2021, Pepco submitted a draft technical memorandum to DOEE documenting the results of its supplemental PCE groundwater field investigation. DOEE provided comments on the draft technical memo on November 1, 2021, and Pepco submitted a

revised memo on January 5, 2022. The memo concluded that the source of PCE in groundwater could not be definitively identified from the available sampling data and information regarding historical operations on and off the Pepco Benning Road property. PCE concentrations in off-site groundwater are below risk-based screening levels. The Feasibility Study therefore will focus on potential remedial actions for groundwater within the Pepco property.

In addition to work on the Treatability Study and the PCE groundwater evaluation, AECOM has continued to make progress on the Feasibility Study. In particular, AECOM has developed several remedial alternatives to address conditions identified in the Remedial Investigation as posing actionable risk both on the landside at Pepco's Benning Road facility and in the Cove, including alternatives that would incorporate ecological enhancements in the Cove. AECOM is currently completing a detailed assessment of these remedial alternatives and preparing a draft Feasibility Study report and supporting materials. Pepco anticipates submitting the initial draft Feasibility Study report to DOEE by the end of March 2022. Following DOEE's review and any revisions needed to address DOEE's comments, the draft Feasibility Study will be made available for public comment prior to being finalized.

In parallel with the Feasibility Study, Pepco has continued to coordinate with the natural resource Trustees regarding the possible integration of ecological enhancements into remedial actions in the Cove. On August 9, 2021, Pepco met with the technical working group for the Trustee Council to discuss the sufficiency of the data already collected during the Benning Remedial Investigation to support an assessment of damages to natural resources within the Waterside Investigation Area. In addition, Pepco provided a briefing to the Trustees on November 15, 2021, during which Pepco presented additional detail regarding the ecological enhancements that are being considered for the Cove, and outlined the framework for 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. Following this briefing, Pepco submitted a draft of a proposed cooperative agreement, which is currently under review by the Trustees.

Finally, Pepco also has continued to work on a 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 as well as a detailed evaluation of the extent to which contaminants in the river sediments may be attributable to activities at the Pepco Benning Road facility based on multiple lines of evidence, including information regarding known or suspected historical spills and releases at the Site, the distribution of contaminants in the environment, and the potential migration pathways and mechanisms. In support of the forensics evaluation, Pepco has continued to search for and review historical documents regarding its operations at its Benning Road facility dating back to the early decades of the 20th Century. Pepco is nearing completion of a revised and expanded draft report to document the forensics evaluation. Following submission of the revised draft forensics report, the Parties will work to resolve all forensics issues prior to the completion of the Feasibility Study.

In sum, the Parties have continued to make good progress on the key elements of the Feasibility Study, and they are currently on track to complete the Feasibility Study by the current Court-approved deadline of September 16, 2022.

The Parties propose to submit the next status report to the Court by August 3, 2022, six months from the date of this status report.

Dated: February 3, 2022

Respectfully submitted,

KARL A. RACINE
Attorney General for the
District of Columbia

KATHLEEN KONOPKA
Deputy Attorney General
Public Advocacy Division

/s/ Jennifer L. Berger
JENNIFER L. BERGER (D.C. Bar No. 490809)
Chief, Social Justice Section

/s/ Brian Caldwell
BRIAN CALDWELL (D.C. Bar #979680)
Assistant Attorney General
Office of the Attorney General for the District of
Columbia
Public Integrity Section
400 6th Street, N.W., 10th Floor
Washington, D.C. 20001
Tel: (202) 727-6211
Email: Brian.Caldwell@dc.gov

/s/ David Dickman
David Dickman (DC Bar #465010)
General Counsel
Department of Energy and Environment
1200 First Street, N.E., 5th Floor
Washington, D.C. 20002
Telephone Number: (202) 481-3845
david.dickman@dc.gov

Attorneys for the District of Columbia

/s/ Eric J. Murdock
Eric J. Murdock (D.C. Bar No. 443194)
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
Telephone Number: (202) 955-1500
emurdock@huntonak.com

*Attorney for Potomac Electric Power Company
and Pepco Energy Services.*