

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA )  
A municipal corporation )  
1200 First St., N.E., 5<sup>th</sup> Floor )  
Washington, DC 20002 )  
 )  
Plaintiff, )  
 )  
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. )  
 )

Civil Action No. 1:11-cv-00282 (BAH)

---

**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 August 3, 2022, the Parties submitted a joint status report to the Court regarding their progress on the RI/FS. ECF No. 62. In that report, the Parties advised that, on May 5, 2022, Pepco had submitted an initial draft Feasibility Study report to DOEE presenting 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 within a cove of the Anacostia River located within the waterside area of the Site (the “Cove”). The parties further reported that, on June 15, 2022, DOEE had provided an initial set of high-level comments on the draft Feasibility Study report, and that on June 22, 2022, Pepco and DOEE convened a conference call to discuss DOEE’s comments.<sup>1</sup> At the time of the August 3, 2022, status report, DOEE was still in the process of preparing detailed written comments on the draft Feasibility Study report, but Pepco had begun working on revisions to the draft Feasibility Study report pending receipt of DOEE’s detailed written comments.

The parties further advised in the August 3, 2022, status report that, in March and June of 2022, Pepco’s environmental contractor AECOM had collected additional confirmatory water level measurements at certain groundwater wells at the Site as part of a supplemental field investigation regarding potential sources of perchloroethylene (“PCE”), and would provide a report to DOEE once it had completed its evaluation of the additional sampling data. In addition,

---

<sup>1</sup> The August 3, 2022, status report incorrectly stated that the date of this call was June 22, 2022. The call actually took place on June 21, 2022.

the parties advised the Court that (i) AECOM had completed the process of obtaining the necessary permits and approvals from the National Park Service, the U.S. Army Corps of Engineers, and DOEE to perform additional sampling in the Cove to supplement the Treatability Study in order to evaluate the effectiveness of certain sediment remediation technologies, and (ii) after AECOM completes the additional sampling, Pepco would submit an addendum to the Treatability Study report to document the findings from the supplemental sampling. Finally, the Parties reported that Pepco was continuing to work on an expanded forensics analysis and source identification assessment as part of the Feasibility Study phase of work.

In the August 3, 2022, status report, the Parties requested a six-month extension of the deadline for completing the final Feasibility Study from September 16, 2022, to March 16, 2023, to provide time needed for: (i) Pepco to consider and address DOEE's full comments on the initial 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.

In response to the August 3, 2022, joint status report, the Court issued a Minute Order extending the deadline for completing the Feasibility Study to March 16, 2023, and directed the Parties to submit their next joint status report by February 3, 2023. Minute Order (Aug. 4, 2022). This joint status report is submitted in compliance with that Minute Order.

#### **Status of RI/FS Activities Since August 3, 2022, Joint Status Report**

The Parties have continued to make progress on the Feasibility Study. On August 30, 2022, DOEE provided Pepco with detailed written comments on the initial draft Feasibility Study report. Reflecting the many technical issues to be addressed by the Feasibility Study, DOEE's comments were extensive, as summarized in a 39-page table and additional margin

comments within the main text of the draft report and the multiple supporting appendices. On the same day, DOEE also forwarded additional comments received from the U.S. Department of the Interior and the National Oceanic and Atmospheric Administration (“NOAA”). Many of the more complex issues raised by these comments related to the evaluation of remedial alternatives for the contaminated sediments in the Cove within the waterside area. Based on the nature and extent of its comments, DOEE determined that the most expeditious approach for completing the Feasibility Study would be to divide the Site into two separate “Operable Units” for the purpose of evaluating, selecting and implementing remedial actions. The landside area has been designated “Operable Unit 1,” and the waterside area has been designated “Operable Unit 2.”

The decision to manage the Site through two separate operable units reflects the fact that the remedial actions being evaluated for the landside area are distinct from the remedial actions being evaluated for the waterside area and the remedial actions for each operable unit can be implemented independently. This approach also aligns better with the different remedial objectives for each operable unit – the landside remedy is intended to be the final remedy, whereas the waterside remedy is intended to be an interim remedy, with the need for possible additional remedial action to be evaluated based on the results of the interim action pursuant to the same adaptive management approach adopted for the rest of the Anacostia River under the Anacostia River Sediment Project. Finally, this approach allows the Feasibility Study for both operable units to proceed in parallel but on different schedules. As discussed further below, the Feasibility Study for the waterside area involves many challenging technical issues and will require coordination among multiple regulatory and resource management agencies, thus taking longer to complete than the Feasibility Study for the landside area. As a result, dividing the Site into these two operable units will expedite the completion of the landside Feasibility Study.

The Parties have been moving forward with the separate Feasibility Studies for the two operable units. On October 20, 2022, the Parties discussed DOEE's comments on the initial draft Feasibility Study report with respect to the landside area. Based on those discussions, on January 6, 2023, Pepco submitted detailed written responses to DOEE's comments with respect to the landside area. Following DOEE's review of these responses, Pepco will prepare a revised draft Feasibility Study for the landside area that will be released for public review and comment. Following receipt of public comments and revisions needed to address those comments, Pepco will prepare a final Feasibility Study for the landside area. With respect to the waterside area, the Parties met on January 26, 2023, to discuss DOEE's detailed comments on the initial draft Feasibility Study. Similar to the approach for the landside area, Pepco will prepare detailed responses to DOEE's comments based on this discussion, and after DOEE's review of these responses, Pepco will prepare a revised draft Feasibility Study for the waterside area for release to the public for review and comment.

In parallel with the foregoing efforts to address DOEE's comments on the initial draft Feasibility Study, Pepco has continued work on related field investigations. On September 9, 2022, Pepco submitted a report to DOEE documenting the results of its additional groundwater monitoring and risk evaluations related to the PCE groundwater plume at the Site. On October 25, 2022, DOEE provided written comments on the report, requesting additional analysis of groundwater flow patterns. On December 7, 2022, the Parties discussed Pepco's initial responses to DOEE's comments on the PCE investigation report. Following the discussion with DOEE, Pepco completed this additional analysis, and submitted a final report on January 17, 2023.

Pepco also has continued to implement the supplemental sampling for the Treatability Study. One round of stormwater samples was collected from all six Cove outfalls on December 12, 2022. AECOM conducted a site visit on December 14, 2022 with the National Park Service (“NPS”) representatives and DOEE to review field sampling locations on the Kenilworth Park Landfill site, and soil samples were collected from various locations at the site on December 19, 2022. The remaining field work for the supplemental sampling was completed on January 17, 2023. Pepco expects to submit an addendum to the Treatability Study report to document the findings from the supplemental sampling by March 15, 2023.

Finally, Pepco continues 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 90 days. Thereafter, the Parties will work to resolve all forensics issues in parallel with the completion of the Feasibility Studies.

**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 March 16, 2023. In light of the substantial work required to address DOEE’s extensive technical comments on the initial draft Feasibility Study, as well as DOEE’s recent determination that the Site response actions should be managed through two separate operable

units, the Parties respectfully request a further modification to the schedule for completing the Feasibility Studies, as described below.

The Parties anticipate that a draft Feasibility Study report for the landside area (Operable Unit 1) can be released for public review by May 2023. 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 Operable Unit 1 Feasibility Study report. To allow time for adequate consideration of public comments, the Parties request that the deadline for completing the final report for the landside area operable unit be extended to September 30, 2023.

The Feasibility Study report for the waterside area (Operable Unit 2) is expected to take more time than the landside area (Operable Unit 1). Not only does the waterside area present more challenging technical issues, including the goal, if feasible, to integrate cleanup of the sediments in the Cove with ecological enhancement of the area, but also the evaluation of remedial alternatives for the waterside area requires input from a number of additional regulatory agencies, such as the NPS, NOAA, and the U.S. Fish and Wildlife Service. An extended schedule for the waterside area Feasibility Study also will allow time to incorporate the findings of the supplemental Treatability Study for which the field sampling work was recently completed. The Parties anticipate that a draft Feasibility Study report for the waterside area can be released for public review by September 2023. The Parties believe a public review period of at least 45 days, like the recommended 45-day public review period for the Operable Unit 1 Feasibility Study report, also is warranted for the Operable Unit 2 Feasibility Study report. To allow time for adequate consideration of public comments, the Parties request that the deadline

for completing the final report for the waterside area operable unit be extended to March 31, 2024.

During a meeting on December 14, 2022, DOEE advised the Community Advisory Group (“CAG”) of its determination to manage the Site under two separate operable units and outlined the foregoing proposed schedule. The CAG members expressed the view that targeting the spring and fall of this year for the public review and comment would be conducive to public input (in contrast to the summer or winter, when holidays and vacation schedules pose problems).

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

Dated: January 30, 2023

Respectfully submitted,

BRIAN L. SCHWALB  
Attorney General for the  
District of Columbia

JENNIFER C. JONES  
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](mailto:Brian.Caldwell@dc.gov)



*/s/ David Dickman*

David Dickman (DC Bar #465010)  
General Counsel  
Department of Energy and Environment  
1200 First Street, N.E., 5<sup>th</sup> 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.*