

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

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 N.E., Washington, D.C., (the “Site”) and a nearby portion of the Anacostia River.

On July 9, 2018, the Parties submitted a joint status report to the Court regarding their progress on the RI/FS. ECF No. 49. In that report, the Parties explained that they had completed nearly all of the field sampling, laboratory analysis, and data validation and evaluation for the Phase II Remedial Investigation (“RI”), and that the remaining sampling work would be

completed within a short time thereafter. The Parties further advised that they expected that the Final RI Report would be completed by March 8, 2019, and the final Feasibility Study (“FS”) would be completed by May 6, 2019 (with this latter date to be adjusted as necessary if a Treatability Study were required) in accordance with the schedule previously approved by the Court by minute order dated December 19, 2017. The Parties proposed in their July 9 status report to submit their next status report to the Court on or before March 8, 2019.

The detailed project schedule submitted to the Court with the Parties’ joint status report filed on December 15, 2017, ECF No. 47-1, called for Pepco to submit a draft Final RI Report to DOEE by November 5, 2018. At the time the Parties prepared this schedule, they contemplated that this would provide sufficient time for Pepco to make any revisions to the draft Final RI Report in response to comments from DOEE and to publish the draft report for public review and thereafter to finalize the report by March 8, 2019.

Pepco submitted the draft Final RI Report to DOEE on November 5, 2018, in accordance with this schedule. This submission consisted of a main report containing over two hundred pages of text, along with 619 pages of tables and 70 pages of figures presenting the results of the entire field sampling program and associated data evaluations. The draft RI Report submission also included 28 separate appendices providing additional sampling and technical data and presenting the results of additional analysis required by the RI/FS work plans, including a Baseline Human Health Risk Assessment, a Baseline Ecological Risk Assessment, a Background Data Evaluation, and a Forensics Evaluation. These four appendices alone consisted of more than 5000 pages of text, tables, and figures.

DOEE commenced its review of the draft Final RI Report as soon as these documents were received and provided initial “high level” comments to Pepco on December 3, 2018.

DOEE subsequently provided a 59-page memorandum to Pepco on December 13, 2018, containing additional general comments along with detailed specific comments on each section of the draft Final RI Report and the supporting appendices. Many of DOEE's comments were focused on technical questions about the various analytical and statistical evaluations of the sampling data conducted by Pepco. In addition, certain of DOEE's comments requested that Pepco conduct additional evaluations or utilize analytical or statistical procedures different from those specified in the approved work plans based on DOEE's subsequent experience in conducting the RI for the entire tidal reach of the Anacostia River as part of the Anacostia River Sediment Project ("ARSP").

Pepco provided responses to DOEE's high level and general comments on January 17, 2019, and proposed a meeting to review those responses prior to completing its responses to DOEE's specific comments. DOEE and Pepco met on February 4, 2019, to discuss Pepco's responses to the high-level and general comments. Based on that discussion, DOEE and Pepco have agreed on a path forward to complete the revised and supplemental analyses necessary to respond to DOEE's comments and to make corresponding revisions to the RI Report text and the supporting appendices. This path forward includes a schedule for completing several interim tasks to ensure that work is proceeding expeditiously and provides opportunities for further technical discussions between DOEE and Pepco with the objective of avoiding the need for additional formal comments and responses.

To expedite the completion of the draft RI Report and its release for public comment, Pepco and DOEE have agreed to defer completion of the forensics analysis and source identification assessment to the FS phase, and to include the report of that assessment as an appendix to the FS report (consistent with the approach that has been adopted for the ARSP). In

addition to revising and expanding the statistical analysis of the sampling data that was presented in the forensics appendix submitted with the draft RI Report, Pepco also will be conducting a more detailed evaluation of the extent to which contaminants in the river sediments are attributable activities at the Site 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. While Pepco will be conducting this work in parallel with the other work to revise the RI Report in response to DOEE's comments, the expanded forensics analysis and source identification evaluation is expected to take more time to complete. Because this evaluation is not necessary to the completion of the other elements of the draft RI Report, deferring this work to the FS phase allows the draft RI Report to be released for public comment several months sooner.

Attached hereto as Exhibit 1 is a revised schedule for the RI/FS based on the current status of the work and the decision to defer the completion of the forensics analysis and source identification assessment to the FS phase. Under this schedule, a revised draft Final RI Report will be ready for release for public review and comment by September 6, 2019. Allowing time for submission of public comments (including an expanded period for public comment from 30 to 45 days), consideration of those comments, and final revisions to the report based on the public comments, DOEE and Pepco expect the Final RI Report will be completed by February 3, 2020.

Pepco and DOEE have been proceeding with activities necessary for the FS in parallel with the efforts to complete the RI Report. Pepco submitted a Treatability Study Work Plan to DOEE on November 30, 2018. This work plan outlines several laboratory studies to evaluate the technical feasibility and effectiveness of various technologies for remediating contaminated

sediments in the portion of the Anacostia River within the scope of the RI/FS. DOEE provided its initial comments on the Treatability Study Work Plan on February 7, 2019. DOEE has determined, however, that the Treatability Study should not commence until after Pepco has completed the revised and expanded forensics analysis and source identification assessment to ensure that the Treatability Study addresses all areas where remediation may be necessary to address contamination attributable to Pepco's historical operations or activities at the Benning Site. As indicated on the revised project schedule at Exhibit 1, Pepco has already commenced work on the revised forensics analysis and source identification assessment, and a final DOEE-approved report documenting the results of that work is scheduled to be completed by November 21, 2019.

Pepco will submit a revised Treatability Study Work Plan one month later on December 23, 2019. Following DOEE's approval of the work plan, Pepco will conduct the field sampling and laboratory testing from March through July of 2020, and will submit a draft Treatability Study report by August 21, 2020. DOEE is expected to approve the final Treatability Study report by October 21, 2020.

In accordance with the timeline specified in Paragraph 7.c.v. of the Consent Decree, Pepco will submit a draft FS Report to DOEE within 120 days after DOEE's approval of the final treatability study report, *i.e.*, by February 18, 2021. Allowing time for DOEE review, a draft FS Report is scheduled to be released for public comment by April 19, 2021. Allowing a 45-day period for public comment and subsequent responses to comments and revisions to the report, the final approved FS Report is scheduled to be completed by September 16, 2021.

In sum, since the submittal of the last joint status report to the Court on July 9, 2018, the Parties have worked diligently to complete all of the field sampling and associated laboratory

analyses, prepare a voluminous draft Final RI Report and supporting appendices, and conduct a detailed technical regulatory review of those materials. They will continue to work diligently to complete the remaining RI/FS tasks as expeditiously as possible consistent with the need to ensure sound technical evaluation and to provide continued opportunity for public participation. The Parties therefore respectfully request the Court's approval of the revised schedule for completion of the Final RI Report by February 3, 2020, and completion of the final FS Report by September 16, 2021. The Parties propose to file the next status report to the Court by September 6, 2019, which is the date that corresponds to the public release of the draft RI Report as shown on the revised project schedule at Exhibit 1.

Dated: March 7, 2019

Respectfully submitted,

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