

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 March 7, 2019, the Parties submitted a joint status report to the Court regarding their progress on the RI/FS. ECF No. 50. In that report, the Parties advised that Pepco submitted a draft Final Remedial Investigation (“RI”) Report to DOEE on November 5, 2018. 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 field sampling program and 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, and a Background Data Evaluation. The Parties further explained that DOEE had provided Pepco with its initial comments on the draft Final RI Report and supporting documents and the Parties had 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.

The last status report included an updated version of the detailed project schedule (ECF No. 50-1). This schedule calls for the Final RI Report to be completed by February 3, 2020, following a period for public review and comments, and the Final Feasibility ("FS") Report to be completed by September 16, 2021. On March 11, 2019, the Court issued a minute order adopting the foregoing dates for completing the RI and FS Reports and directing the Parties to file a joint status report by September 6, 2019. The Parties submit this Joint Status Report in accordance with that order.

Since the last status report on March 7, 2019, the Parties have held a series of additional meetings and calls to discuss DOEE's comments and review Pepco's revisions to the various RI Report documents. Pepco completed several interim tasks over the past several months to keep the work proceeding expeditiously, including the following:

- Background Evaluation: Pepco conducted a series of additional evaluations of the background data set. Pepco submitted the results of those evaluations to DOEE on May 30, 2019, and DOEE issued its approval for these evaluations on June 28, 2019.

On August 30, 2019, Pepco submitted a revised background evaluation report incorporating the results of these evaluations.

- Risk Assessments: Pepco made revisions to the Human Health Risk Assessment and Baseline Ecological Risk Assessment and submitted revised risk assessment reports to DOEE on May 24, 2019, and then again on July 2, 2019, to address DOEE's further comments.
- RI Report: Following further discussions with DOEE, Pepco submitted a revised version of the RI Report to DOEE on July 2, 2019, to address comments on the initial draft report. DOEE provided further comments on the revised draft RI Report on August 12, 2019, and Pepco submitted a further revised draft of the RI Report to DOEE on August 30, 2019.

Currently, DOEE is reviewing the revised Draft RI Report and supporting documents. It is anticipated that these latest revisions to the Draft RI Report will resolve all remaining comments, and that DOEE will be in a position to release the Draft RI Report and supporting documents for public comment by September 27, 2019. Although this is a few weeks later than the date specified in the most recent detailed project schedule, the Parties do not anticipate that this short delay will affect their ability to meet the February 3, 2020, deadline for completion of the Final RI Report established by the Court's March 11, 2019, minute order.

The Parties have also been working on the forensics analysis and source identification assessment as part of the FS phase of work. 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 is 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. The Parties held Web Ex conference calls on May 31 and July 2, 2019, to review interim results of Pepco's additional evaluation. On July 12, 2019, Pepco submitted a revised draft forensic analysis and source identification report to DOEE. The Parties held another Web Ex conference on August 13, 2019, to discuss DOEE's preliminary comments on the revised report. The Parties are continuing these efforts and at this time anticipate that this document will be completed by November 21, 2019, as provided in the current detailed project schedule. 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. 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. The Parties expect to complete the final FS Report by September 16, 2021, in accordance with the Court's March 11, 2019, minute order.

In sum, since the submittal of the last joint status report to the Court on March 7, 2019, the Parties have worked diligently to make necessary revisions to the draft RI Report and supporting documents so the documents will be ready for public review and comment. 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 propose to file the next status report to the

Court by February 3, 2020, which is the date that corresponds to the completion of the Final RI Report in accordance with the Court's March 11, 2019, minute order.

Dated: September 6, 2019

Respectfully submitted,

KARL A. RACINE
Attorney General for the
District of Columbia

KATHLEEN KONOPKA
Deputy Attorney General
Public Advocacy Division

/s/ Jimmy Rock
JIMMY ROCK (D.C. Bar #493521)
Assistant Deputy Attorney General

/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
441 4th Street, N.W., Suite 600-S
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.*