

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 and)
)
 ANACOSTIA RIVERKEEPER,)
)
 Plaintiff-Intervenor)
)
 v.)
)
 POTOMAC ELECTRIC POWER COMPANY,)
)
 Defendant.)
 _____)

Civil Action No. 1:15-cv-01845

CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint in this action on October 30, 2015, alleging that Potomac Electric Power Company (“Pepco”) violated Section 309(b) and (d) of the Federal Water Pollution Control Act (“Clean Water Act” or “CWA”), 33 U.S.C. § 1319(b) and (d).

The Complaint against Pepco alleges that Pepco violated the terms and conditions of its National Pollutant Discharge Elimination System (“NPDES”) permit, issued by EPA to Pepco in 2009 pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), for Pepco’s facility located at 3400 Benning Road N.E., Washington, D.C (“Facility”). Specifically, the United States alleges that on numerous occasions Pepco exceeded the permit effluent limitations for metals and Total Suspended Solids (“TSS”) in its stormwater discharges through Outfall 013 into the Anacostia River.

Pursuant to CWA regulations at 40 C.F.R § 122.6(a) the 2009 Permit is administratively extended and its provisions remain in effect pending EPA’s issuance of a subsequent NPDES Permit for the Facility.

The Facility functions as the Service Center for Pepco’s electric distribution system in the District of Columbia. A portion of the Facility also was formerly the site of an electric generating station. The generating station ceased operation in June 2012, and by May 2015 the generating station structures were demolished, the building debris was removed, and the building footprint was backfilled to grade with stone.

Pepco independently is conducting a Remedial Investigation and Feasibility Study of the Facility and the adjacent segment of the Anacostia River pursuant to other environmental statutes, and in 2011 entered into a judicial consent decree with the District of Columbia for that work in the case, *District of Columbia v. Potomac Electric Power Company et al.*, Civil Action No. 1:11-cv-00282 (BAH)(D.D.C).

Notice of the United States' Complaint in this matter was provided to the District of Columbia at the time of filing.

On March 11, 2016, Anacostia Riverkeeper filed an uncontested Motion to Intervene in the pending lawsuit (Rec. Doc. 7), and the Court in a minute order granted that Motion on March 14, 2016.

Pepco does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b) and over the Parties. Venue lies in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391 (b) and (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and Pepco is located and conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Pepco consents to the Court's jurisdiction over this Decree and any such action and over Pepco and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Pepco agrees that the Complaint states claims upon which relief may be granted pursuant to Section 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), but does not admit any liability under these claims.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon Pepco and any successors, assigns, or other entities or persons otherwise bound by law, and the United States.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Pepco of its obligation to ensure that the terms of the Decree are implemented. At least 60 Days prior to such transfer, Pepco shall

provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a summary of the principal terms of the prospective transfer, to EPA Region III, the United States Attorney for the District of Columbia, and the United States Department of Justice, in accordance with Section XVII (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Pepco shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Pepco shall advise such contractor that its performance of the work must be in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Pepco shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVES

7. The objectives of the Parties in entering into this Consent Decree are to ensure that Pepco continues to take measures, and performs additional measures, necessary to achieve compliance with the Clean Water Act and its NPDES permit with respect to discharges of metals and other pollutants from the Facility into the Anacostia River. The obligations of this Consent Decree to treat and control stormwater run-off have the objective of causing Pepco to attain, and

thereafter maintain, full compliance with the foregoing standards and requirements on a permanent and sustainable basis.

IV. DEFINITIONS

8. Terms used in this Consent decree that are defined in the CWA or in regulations promulgated pursuant to the CWA shall have the meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“BMP” or “Best Management Practice” shall mean measures to reduce or eliminate pollutant loads in stormwater flows entering into the Facility’s stormwater Drainage System.

“Complaint” shall mean the complaint filed by the United States in this action;

“Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto listed in Section XXVI;

“Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

“Drainage System” shall mean the system of pipes, manholes, other inlets, and any other connected components and appurtenances, used to carry stormwater or permitted process

water flows from within the Facility to the Anacostia River through Outfalls 013 and 101.

“Effluent Limits” shall mean the limits imposed by Pepco’s NPDES Permit on discharges from the Facility, including the concentration-based limits for discharges of metals and Total Suspended Solids from Outfall 013.

“EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

“Effective Date” shall have the definition provided in Section XVIII;

“Facility” shall mean the Service Center and former Generating Station owned and operated by Pepco, located at 3400 Benning Road N.E., Washington, D.C.;

“NPDES Permit” shall mean National Pollutant Discharge Elimination System Industrial Permit No. DC0000094, issued by EPA Region III to Pepco on June 19, 2009, and effective July 19, 2009, which has been administratively extended from July 19, 2014, and any subsequent NPDES Permits issued to Pepco at this Facility.

“Operating Group” shall mean the various functional departments within Pepco’s organizational structure, and, in the event of a corporate reorganization, any comparable operational units that subsequently may be formed.

“Paragraph” shall mean a portion of this Decree identified by an arabic numeral;

“Parties” shall mean the United States and Pepco;

“Pepco” shall mean defendant Potomac Electric Power Company and any successors thereto;

“Performance Standards” shall mean the standards to be developed pursuant to Section VI.B., Paragraph 37.d to govern the design of the Treatment System.

“Place into Operation” shall mean to achieve steady-state operation and to operate consistently in such a way as to accomplish the intended function (i.e., following acceptance testing), even though all construction close-out activities (such as completion of a punchlist and resolution of contract disputes or close-outs) may not yet be completed.

“Section” shall mean a portion of this Decree identified by a roman numeral;

“State” shall mean the District of Columbia;

“Storm Drain Inlets” shall mean manholes, drains and any other constructed opening at the surface through which stormwater and other flows enter the Drainage System.

“Storm Drain Inlet Controls” shall mean the booms, filters, and other devices deployed in and around each Storm Drain Inlet at the Facility to prevent and filter metals, TSS, and other pollutants from entering the Drainage System at the Facility.

“Stormwater” shall have the meaning set forth in 40 C.F.R. § 122.26(b)(13).

“Stormwater Retention Project Abandonment” shall mean, solely for purposes of the stipulated penalty in Paragraph 82.b associated with the Stormwater Retention Project, that prior to satisfactory completion of the project: (1) Pepco notifies EPA that it will no longer pursue the Stormwater Retention Project, because it is technically infeasible or for any other reason; or (2) EPA determines that Pepco is not diligently pursuing the Stormwater Retention Project; or (3) more than nine months have elapsed after the deadline in Section VIII, Paragraph 54 for completion of the Stormwater Retention Project.

“SWPPP” or “SWP3” shall mean the Stormwater Pollution Prevention Plan required by Section II.C of Pepco’s NPDES Permit and Section VI.D of this Consent Decree, to serve as a complete and comprehensive compendium of all material stormwater related activities, procedures, and records at the Facility.

“TMDL” or “Total Maximum Daily Load” shall mean the total maximum daily loads of various pollutants and wasteload allocations for the Anacostia and Chesapeake Bay, developed pursuant to CWA Section 303(d)(1)(C), 33 U.S.C. § 1313(d)(1)(C);

“Treatment System” shall mean the control technology to be selected and installed permanently pursuant to Section VI.B to filter and remove metals and suspended solids from the stormwater in the Drainage System prior to discharge to the Anacostia River. Such technology may be applied at multiple locations within the Drainage System.

“United States” shall mean the United States of America, acting on behalf of EPA;

“Work” shall mean Pepco’s obligations set forth in Section VI (Compliance Requirements);

V. CIVIL PENALTY

9. Within 30 Days after the Effective Date, Pepco shall pay the sum of \$1,600,000.00 (One Million Six Hundred Thousand Dollars) as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

10. Pepco shall pay the civil penalty due via FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Pepco by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Columbia after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Pepco shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Jeffrey Snyder
Assistant Treasurer
Pepco Holdings, Inc.
500 N. Wakefield Drive
Newark, DE 19702
Jeff.snyder@pepcoholdings.com

on behalf of Pepco. Pepco may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XVII (Notices).

At the time of payment, Pepco shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XVII and (iii) to EPA in accordance with Section XVII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States et al. v. Potomac Electric Power Company*, and shall reference the civil action number, CDCS Number and DOJ case number 90-5-1-1-11336.

11. Pepco shall not deduct any penalties paid under this Decree pursuant to this Section or Section XI (Stipulated Penalties) in calculating its federal income tax.

VI. COMPLIANCE REQUIREMENTS

12. Overview. Pepco shall continue to implement Best Management Practices that it has adopted to reduce pollutants in stormwater discharged into the Drainage System; adopt new BMPs and other measures as necessary to attain compliance with the NPDES Permit limits and requirements applicable to its stormwater discharges; and install and operate stormwater treatment system(s) as set forth in this Section.

A. Stormwater System Best Management Practices.

13. Drainage System Maintenance and Integrity: Pepco certifies that it has developed a map and characterization of its Drainage System at the Facility and has identified the areas that contribute to or drain into each manhole and inlet. Pepco shall update its Drainage System map as changes are made to that system, and shall maintain an up-to-date map as part of the SWPPP.

14. Pepco shall maintain its Drainage System in accordance with good engineering practices. Pepco shall take reasonable actions to minimize sediment build-up in the laterals and trunk lines so as to eliminate that potential source of metals contamination of the stormwater and to sustain flow through the system and also shall maintain the structural integrity of the system.

15. Pepco certifies that in 2015 it performed a closed circuit television (CCTV) inspection of the main trunk line of the Drainage System and subsequently cleaned out the trunk and lateral lines and made necessary repairs to the underground pipes.

16. Pepco shall perform, using a qualified contractor, an annual internal visual inspection of the Drainage System, including the main trunk line and laterals, using CCTV or other appropriate technology. Pepco shall remove sediments and other pollutants from the Drainage System to ensure that the sediments are not discharged through Outfall 013, and shall repair and replace pipes as necessary, consistent with EPA Guidance Document EPA/625/6-91/030 – Sewer System Infrastructure Analysis and Rehabilitation.

17. Pepco shall prepare a written summary of the results of the annual Facility Drainage System inspection and sediment removal activities, and a schedule for all additional structural repairs that ensures their completion as soon as practicable after identification. For any corrective actions requiring more than six months from the date of the inspection to complete, Pepco shall provide EPA with a notice describing the actions and explaining the reasons that completion will require more than six months, and such actions shall be subject to EPA review and approval. The summary shall be included as an appendix to the next quarterly report that is due at least 30 days following the annual inspection as set forth in Section X (Reporting Requirements) below.

18. Storm Drain Inlet Controls: Pepco certifies that it has worked with vendors and consultants to install Storm Drain Inlet Controls on all Storm Drain Inlets leading to Outfall 013 and Outfall 101 at the Facility.

19. Pepco shall continue to use Storm Drain Inlet Controls on all Storm Drain Inlets. Pepco shall ensure that each inlet filter is properly sized and fitted to the inlet and shall operate and maintain the filters or booms as per the manufacturer's or vendor's specifications.

20. Pepco shall maintain adequate staff and/or funding for qualified stormwater contractor support and shall have dedicated staff or contractors on-site during business hours. Pepco shall maintain a back-up supply of appropriately graded, heavy-duty metal sorbent inlet filters, including custom-fitted inlet filters, and booms, to ensure that replacements are made within 48 hours of discovery of the need for replacements.

