

**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,	)	
	)	Civil Action No. 1:11-cv-00282 (BAH)
v.	)	
	)	
Potomac Electric Power Company	)	
701 Ninth Street, N.W.	)	
Washington, D.C. 20068	)	
	)	
Pepco Energy Services, Inc.	)	
1300 North 17 <sup>th</sup> Street	)	
Suite 1600	)	
Arlington, VA 22209	)	
	)	
Defendants.	)	

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**JOINT STATUS REPORT**  
**AND**  
**REQUEST TO ADJUST SCHEDULE FOR REMEDIAL**  
**INVESTIGATION/FEASIBILITY STUDY**

**A. Introduction**

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. 20019 (the “Site”) and the adjacent segment of the Anacostia River.

Beginning in May of 2013, the Parties have submitted annual status reports to the Court regarding their progress on the RI/FS and the implementation of the requirements of the Consent Decree. *See* ECF Nos. 33, 34, 35 and 38. In the last status report filed on May 24, 2016, the Parties advised the Court that Pepco had completed a draft report of the Phase I Remedial Investigation which was released for public comment on March 1, 2016, and that the Parties were then considering comments received from the public. ECF No. 38. DOEE and Pepco completed that review and DOEE published a 52-page detailed response to public comments on its website on August 23, 2016.<sup>1</sup>

The Parties further advised the Court in May 2016 that Pepco was preparing an addendum to the RI/FS Work Plan to describe the tasks needed to complete the Remedial Investigation (“RI”) phase of the project, including: additional field sampling; updates to the Conceptual Site Model (“CSM”); evaluation of additional risk assessment scenarios; and a revised study to develop appropriate site-specific background data for comparison to constituent concentrations in samples collected from the study area. At that time, Pepco had already prepared and submitted to DOEE three draft technical memoranda to guide the remaining RI work: one technical memorandum updating the CSM, a second memorandum presenting an updated approach for evaluating background conditions along with a schedule to conduct the remaining investigation to complete the RI, and a third memorandum presenting an updated approach for conducting the final human health and ecological risk assessments.

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<sup>1</sup> *See* “Responses to Public Comments on Draft Remedial Investigation Report” at <https://doee.dc.gov/page/pepco-benning-road-facility-plans-and-deliverables>.

Following the last status report, in response to a motion filed by *amici curiae* Natural Resources Defense Council, Anacostia Watershed Society, and Anacostia Riverkeeper, the Court issued an order on June 24, 2016, setting the following schedule for completing the RI/FS:

- (1) Completion of the field work for the Phase II RI by May 31, 2017;
- (2) Completion of the final Phase II RI Report by January 31, 2018; and
- (3) Completion of the final Feasibility Study by March 31, 2018 (or June 30, 2018, if a Treatability Study is required).

ECF No. 42 at 5. The order directed the parties to submit a joint status report by May 31, 2017, advising the Court of the progress of the RI/FS and whether the Parties are on track to meet the foregoing deadlines. The order further stated that the Parties may request approval from the Court to adjust the schedule “based on unforeseen circumstances or other good cause shown.”

*Id.*

As described below, the Parties continue to work diligently and have made significant progress on the Phase II RI since the last status report. Despite the Parties’ diligent efforts, they will not be able to complete all of the Phase II RI field sampling and laboratory analysis by the May 31, 2017, deadline specified in the Court’s order.<sup>2</sup> One key permit required for sampling in the river, for which approval has been pending for several months, has not yet been issued. The Parties expect that this permit will be received before the end of this month, and Pepco is prepared to proceed with the associated sampling as soon as the permit is received.

In addition, the results of the initial Phase II sampling have indicated the need for follow up sampling in certain areas. The Parties are currently preparing the necessary sampling plan for

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<sup>2</sup> The Parties elected to file this status report in advance of the May 31 deadline for the report so that their request for an extension of time to complete the Phase II RI field work would be filed in advance of the same May 31 deadline for that task.

this additional data collection. Assuming that the final river sampling permit is issued later this month as anticipated, the Parties expect to be able to complete the remaining RI field work, laboratory analysis, and data validation by the end of September 2017. The Parties therefore request a four-month extension of the deadline for completing the Phase II RI field work -- from May 31 to September 30, 2017. They also request a corresponding four-month extension of the deadlines for completing the final Phase II RI Report and the final Feasibility Study.

**B. Status of RI/FS Activities**

Following the last status report on May 24, 2016, the Parties engaged in a series of technical discussions and exchanges of technical documents to prepare the work plan for the Phase II RI Work (the “Work Plan Addendum #3). DOEE approved the final Work Plan Addendum #3 on October 11, 2016. A copy of the Work Plan Addendum #3 is attached as Exhibit 1.<sup>3</sup> This work plan called for the collection of additional soil, groundwater, and sediment samples and other field investigations at the Benning Service Center site and the adjacent National Park Service (“NPS”) Kenilworth Maintenance Yard, at certain off-site background locations, and in the Anacostia River.

The additional sample collection for the Phase II RI required twenty-one different permits and approvals from multiple federal, state, and District of Columbia regulatory agencies. A list of these permits and approvals is attached hereto as Exhibit 2. Pepco began applying for these permits in October of 2016 immediately following DOEE’s approval of Work Plan Addendum #3, which established the locations and requirements for the additional sampling. As shown on Exhibit 2, most of these permit applications were filed within 45 days after approval of the work

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<sup>3</sup> The entire Addendum #3, including figures, tables and appendices, is posted to the DOEE website at: <https://doee.dc.gov/publication/rifs-workplan-addendum-3>.

plan, although certain application filings took longer because of the need to conduct field studies as part of the application process (such as the delineation of wetlands at the Anacostia Park property). To date, all but one of these permits have been received (as discussed further below).

Pepco moved forward with the Phase II RI field activities in parallel with these permitting efforts, starting with work for which no permits were necessary and followed by work for which permits were promptly issued. Pepco completed the repair, redevelopment, and sampling of 27 on-site groundwater monitoring wells in December of 2016, followed by field marking of additional on-site sampling locations, utility clearance, and collection of soil and groundwater samples in January and February of 2017. All of the primary on-site sampling was completed by mid-February except for locations for which authorization was required from the Washington Metropolitan Area Transit Authority (“WMATA”). Additional sampling and related field activities occurred as permits were received from WMATA and other agencies. All of the primary on-site soil and groundwater sampling specified in Work Plan Addendum #3 was completed by the end of March 2017. All off-site soil sampling was completed by the end of April 2017. Pepco also completed groundwater sampling activities at each of 12 additional off-site locations, although six of the planned sampling locations did not yield water and alternate locations remain to be sampled. To date, Pepco has collected 414 soil and groundwater samples as part of the Phase II RI Work from 352 on-site and off-site locations.

Two tasks remain to complete the “landside” field work. The first task is the collection of groundwater samples from up to six alternate off-site background locations (in place of the initial locations that did not yield water). The second task is the collection of “secondary” landside samples needed to complete a full delineation of the nature and extent of the contaminated soil and groundwater at the Site. In several locations, the primary sampling

showed concentrations of some contaminants above applicable screening levels. DOEE determined that additional sampling at these locations is necessary to ensure that its decision regarding potential remedial actions will be fully informed. It was not possible to predict that additional sampling would be necessary until the initial samples were collected and analyzed and the results evaluated. The Parties are close to completing technical discussions regarding the scope of the secondary sampling program. It is currently anticipated that the secondary sampling will require approximately 40 to 50 additional borings. The alternate background groundwater sampling locations and a number of the secondary boring locations are on NPS property. This sampling cannot begin until the existing NPS permits are amended to reflect these additional locations. The Parties estimate that it will take approximately four to six weeks to complete the sampling plan and secure the necessary permit amendments for the follow up sampling and approximately another ten weeks thereafter to complete the follow up sampling and lab analysis.

In addition to the landside soil and groundwater sampling described above, Work Plan Addendum #3 includes a “waterside” sampling program consisting of a sediment profile imaging survey (to identify the depth of the bioactive zone and better understand the physical characteristics of the sediment), followed by sampling of sediments, pore water, and benthic macroinvertebrate organisms from 15 locations within the Anacostia River in close proximity to the Site. Similar sampling is required at five upstream locations more distant from the Site to assess background conditions. As shown on Exhibit 2, the waterside sampling activities required eight separate regulatory permits and approvals. One of the required permits has not yet been issued – the Wetland License from the Maryland Board of Public Works. The application for this permit is processed first by the Maryland Department of the Environment (“MDE”) which must issue a recommendation to the Board.

Pepco attempted to obtain this permit beginning in October of 2016, first by seeking to extend a permit previously obtained for the Phase I RI sampling program and then by seeking to use an expedited process to obtain the permit on an emergency basis. After MDE rejected these approaches, Pepco promptly filed a new permit application on February 7, 2017. The application was subject to a 30-day public comment period (which ran from March 15 to April 15) after which MDE issued a recommendation in support of the permit to the Board of Public Works. The application has been pending before the Board since that time. Although this Wetland License relates to only three of the background sampling locations, the delay in the issuance of that permit has held up the entire waterside sampling program because the background samples must be collected at approximately the same time as the near-site samples to allow for a valid comparison of the results.

The Parties were recently advised that the permit application has been scheduled for consideration by the Maryland Board of Public Works during its meeting on May 24, 2017. The Parties expect the Board to authorize this permit at its May 24 meeting. Pepco has already paid the required permit fee to expedite that process. Once the permit is received, it will take approximately three weeks to complete the sampling, followed by a period of ten days to complete the toxicity testing, and another four to six weeks for lab analysis, data validation, and reporting. In anticipation of the issuance of the MDE permit, and to be ready to proceed immediately thereafter with the waterside sampling work, Pepco last week conducted the sediment profile imaging survey as well as turbidity sampling and pilot testing of benthic sampling methods to confirm that the proposed methods will prove satisfactory in the field.

In view of the foregoing, the Parties request the Court to extend the deadline for the completion of the Phase II RI field work by four months to September 30, 2017. The additional

landside and waterside sampling data remaining to be collected are essential to the assessment of human health and ecological risks and other data analysis that must be presented in the Phase II RI report and that will provide the basis for the identification and assessment of potential remedial action alternatives in the Feasibility Study. The Parties therefore also request a corresponding four month extension of the deadlines for the completion of the final Phase II RI Report and final Feasibility Study.

**C. Public Participation and Community Advisory Group**

The Benning RI/FS Community Advisory Group (“CAG”) continues to be an active participant in the project, playing a leading role in facilitating public participation in the RI/FS process. The CAG includes representatives from civic associations and environmental groups who are active in the area around the Site. The CAG meets on a monthly basis to receive updates from the Parties on the progress of the RI/FS, and to provide input to the Parties on technical issues and community concerns. The CAG also publishes quarterly community newsletters that provide updates on the status of the RI/FS and report on related activities concerning the Benning Site. As it has done for previous project deliverables, the CAG will be prepared to review and comment on the draft Phase II RI report and draft Feasibility Study, and will help facilitate and publicize public meetings to brief the community about these documents. As a complement to the CAG’s activities, the Parties continue to maintain public websites where relevant documents and information are posted.

**D. Conclusion**

The Parties have worked diligently and made significant progress towards completion of the Phase II RI since the last status report. However, due to permitting delays beyond their control and the determination by DOEE that additional sampling is necessary to complete the



background data set and fully characterize the Site, the Parties request an extension of four months to the deadlines for completing the RI field investigation and thereafter for completing the final Phase II RI report and final Feasibility Study.

Dated: May 24, 2017

Respectfully submitted,

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