

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 AND
REQUEST TO MODIFY SCHEDULING ORDER**

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 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 March 7, 2019 status report included an updated version of the detailed project schedule (ECF No. 50-1), which called for the Final RI Report to be completed by February 3, 2020, following a period for public review and comment, and the Final FS Report to be completed by September 16, 2021. On March 8, 2019, the Court entered a minute order directing the Parties to submit a proposed order in support of their updated project schedule.

As directed, the Parties filed a proposed order that the final RI be completed by February 3, 2020, the final FS be completed by September 16, 2021, and the next status report be filed by September 6, 2019. ECF No. 51. The proposed order states that “[t]he Parties may request approval from the Court to adjust the foregoing schedule based on unforeseen circumstances or other good cause.” On March 11, 2019, the Court issued a scheduling order adopting the deadlines proposed by the Parties in the March 8, 2019 proposed order.

On September 6, 2019, the Parties filed another status report. The report discussed the Parties' efforts to reach agreement on the content of various RI Report documents, including additional evaluations on the background data set, revisions to the Human Health Risk Assessment and Baseline Ecological Risk Assessment, and various other revisions to the RI

Report and numerous appendices. The Parties worked to resolve all issues as expeditiously as possible. However, DOEE submitted a significant number of comments on the draft RI to Pepco, and resolving these comments took several weeks longer than expected. The RI report was released for public comment on October 4, 2019, approximately one month later than proposed in the Parties' detailed project schedule filed with the Court on March 7, 2019. Additionally, to accommodate requests from the public, the comment period was extended to December 6, 2019—18 days later than the 45-day comment period originally proposed. That left the Parties with only two months (including the holidays) to address the public comments by the February 3, 2020 date specified in the Court's March 11 scheduling order instead of the 3 ½ months contemplated in the March 2019 detailed project schedule.

DOEE received approximately 140 comments on the RI and its appendices, addressing complex issues such as the Background Data Evaluation and the Baseline Human Health and Ecological Risk Assessments. Pepco reviewed and timely responded to the public comments from December 6, 2019 to January 21, 2020. Since January 21, 2020, DOEE has been reviewing Pepco's responses, including consulting with its technical experts, but due to the significant number of comments received and the schedule delay noted above, DOEE requires a short amount of additional time to complete this review.¹ DOEE expects that it will present its comments to Pepco for further response by February 5, 2020. The Parties anticipate that all

¹ During the same time that DOEE has been reviewing public comments and Pepco's responses regarding the RI Report on for the Benning site, DOEE also has been devoting substantial resources to the river-wide cleanup effort that is proceeding in parallel with the Benning RI/FS. On December 27, 2019, DOEE released a Proposed Plan for public comment that presents the first phase of proposed remedial actions in various segments of the lower nine miles of the Anacostia River. DOEE released a number of lengthy technical supporting documents along with the Proposed Plan, including a Focused Feasibility Study for the proposed early actions, a River-wide Feasibility Study and a River-wide Remedial Investigation Report. Following the release of these documents, DOEE has been conducting a series of public meetings to solicit input and answer questions regarding the Proposed Plan.

public comments on the RI will be fully considered, responded to, and, as appropriate, incorporated into a Final RI Report by February 28, 2020.

As discussed below, the Parties do not anticipate that this three-week delay in finalizing the RI Report will delay the schedule for the FS. DOEE therefore respectfully request that the Court modify the scheduling order entered on March 11, 2019 and permit the final RI Report to be completed on February 28, 2020 instead of February 3, 2020.

The Parties have accomplished much additional work necessary to the RI/FS process while working to finalize the RI Report. As noted in the September 6, 2019 status report, the Parties have 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 substantially more detailed evaluation of the extent to which contaminants in the river sediments may be attributable to 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 have had ongoing discussions regarding Pepco's forensics work since early 2019, including several in-person meetings. Most recently, DOEE submitted detailed questions to Pepco in August 2019, to which Pepco is in the process of responding. The Parties did not complete a final forensics report by November 21, 2019, as stated in the detailed project schedule filed with the Court, due to extensive ongoing discussions regarding the scope of the work and DOEE's request for additional collection and evaluation of historical information regarding Site operations. However, the Parties are working to resolve all forensics issues prior to issuing the FS.

Pepco submitted a revised Treatability Study Work Plan to DOEE on December 20, 2019, consistent with the Parties' project schedule. On January 22, 2020, DOEE submitted comments on the Treatability Study Work Plan to Pepco, and the revised plan is due to DOEE on February 21, 2020. Following DOEE's approval, 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 September 6, 2019, the Parties completed the process of addressing DOEE's comments on the RI and released the draft RI Report and supporting documents for public comment. The Parties now are finalizing the RI to incorporate the comments and expect to complete this work by February 28, 2020.

The Parties have also made significant process on tasks relevant to the FS, including the forensics analysis and the Treatability Study Work Plan. 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 a notice with the court by February 28, 2020, to confirm the finalization of the RI Report, and to file the next status report to the Court by August 3, 2020, six months from the date of this status report.

Dated: February 3, 2020

Respectfully submitted,

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