

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, D.C. 20068)	
)	
Pepco Energy Services, Inc.)	
1300 North 17 th Street)	
Suite 1600)	
Arlington, VA 22209)	
)	
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 Department of the Environment (“DDOE”), and Defendants Potomac Electric Power Company and Pepco Energy Services, Inc. (collectively, “Pepco” and together with DDOE, the “Parties”). The Consent Decree obligated Pepco to perform a Remedial Investigation / Feasibility Study (“RI/FS”) for its facility at 3400 Benning Road N.E., Washington, D.C. 20019 (“Facility” or “Site”).

The entry of the Consent Decree was subject to three conditions: (1) before approving certain key documents to be prepared as part of the RI/FS, DDOE was required to make drafts of these documents available for public review for a period of at least 30 days, and to give due consideration to any comments received from the public during that period; (2) DDOE was required to make the final versions of these documents available to the public; and (3) the Parties

were directed to submit a written status report to the Court no later than May 24, 2013.

Electronic Case File (“ECF”) No. 32. In accordance with the last of these three conditions, the parties submitted a status report on May 23, 2013, describing the progress to that date in implementing the terms of the Consent Decree. The Court issued a Minute Order on May 31, 2013, directing the parties to file another joint status report on or before May 24, 2014, regarding the implementation of the requirements of the Consent Decree and any related plans for remediation of environmental contamination. ECF No. 34. The parties are submitting this joint status report in accordance with the Minute Order.

Pepco and DDOE have made significant progress on the RI/FS. The field work for the Remedial Investigation began in January of 2013, within 30 days after DDOE’s approval of the final RI/FS Work Plan in accordance with the schedule specified in the Consent Decree. The field work has proceeded expeditiously through several phases in accordance with the planned iterative approach to site characterization, and is currently expected to be completed by the fourth quarter of 2014. Upon completion of the field work, Pepco will prepare a draft Remedial Investigation (“RI”) Report and a draft Feasibility Study (“FS”) Report in accordance with the deadlines specified in the Consent Decree.

As described in the previous status report, involving the public early in the RI/FS process has helped to ensure project transparency and has resulted in improved planning documents, but at the tradeoff of a longer period of time required to complete the project. Nonetheless, the project continues to proceed as expeditiously as possible consistent with a thorough sampling program and a robust public participation process. The Parties currently expect the final RI and FS reports will be completed and approved within the next 18 to 24 months.

I. Public Review and Comment on RI/FS Documents

The Order entering the Consent Decree obligated DDOE to make each draft document listed in Paragraph 8 of the Consent Decree available for public review and comment for a period of not less than 30 days. ECF No. 32. DDOE has completed this task for the Statement of Work, the Community Involvement Plan, the Work Plan, the Conceptual Site Model, the Health and Safety Plan, the Field Sampling Plan, and the Quality Assurance Project Plan. The only outstanding deliverables for which public review and comment are required are the RI and FS Reports.

A. Community Involvement Plan and the Community Advisory Group.

The Community Involvement Plan (“CIP”) describes Pepco’s and DDOE’s plans for involving the community in the RI/FS project. In accordance with the CIP, a Community Advisory Group (“CAG”) was formed to facilitate public participation in the RI/FS process for the Site. Since the last status report, the CAG has continued to meet monthly to receive reports from DDOE and Pepco on the progress of the RI/FS and provide input to DDOE and Pepco on community concerns. In coordination with the CAG, DDOE and Pepco have undertaken a variety of community outreach efforts to keep the community informed about the project, including the preparation of fact sheets and Q&A documents posted to the DDOE website and the dedicated project website established and maintained by Pepco; mail and email notifications to local residents and other interested parties; placement of informative materials in local community libraries, churches, and local businesses; presentations to Advisory Neighborhood Commissions and other civic groups and to elected officials; and announcements via social media. In the late summer and fall of 2013, the CAG, in coordination with Pepco, DDOE, and the Anacostia Watershed Society, organized three boat tours of the Anacostia River to provide

members of the CAG and the Council of the District of Columbia with an opportunity to observe the waterside sampling activities and receive a briefing from Pepco's RI/FS contractor.

B. Remedial Investigation Report.

The Consent Decree requires Pepco to prepare and submit a draft RI Report to DDOE within 120 days after completion of RI field activities. DDOE will review the draft RI report to ensure it is in an appropriate form for public distribution, and then release the report for public comment. DDOE anticipates that the draft RI Report will be of great interest to the community and thus expects to provide a comment period of at least 45 days. After the comment period, Pepco will revise the draft RI Report as appropriate to address comments from DDOE, other regulatory agencies, and the public. Pepco will then submit a final RI Report, which will then be made available on the DDOE and Pepco websites. In addition, paper copies will be provided to local public libraries.

C. The Feasibility Study.

Within 180 days after completion of the RI field work (or 120 days following DDOE's approval of a final treatability study report, if a treatability study is deemed warranted), Pepco must submit a draft FS Report to DDOE. After a preliminary review of the Draft FS Report, DDOE will release the draft FS Report for public comment. After public review and comment, Pepco will submit a Final FS Report to DDOE for approval.

II. Delays in Completion of RI/FS.

The Parties have worked diligently to make progress on the RI/FS from the date the Court approved the Consent Decree. As specified in the approved RI/FS Work Plan, the field sampling is being conducted in an iterative manner in which the results of each phase of sampling determines the nature and scope of subsequent sampling efforts until all of the

necessary data has been collected. As stated in the last status report, the Parties expected to complete the field work by November of 2013. ECF No. 33. Although the first phases of field work were completed by that date, the final phase of field work (installation and sampling of groundwater wells) did not begin until April 2014, and may take several more months to be completed if the results of the initial groundwater sampling indicate the need for further groundwater investigation (in accordance with the phased approach to the site characterization outlined in the RI/FS Workplan).

To a large extent, slippage in the anticipated schedule for the field work is attributable to the need to obtain permits for the field investigation work from multiple local, State, and federal regulatory agencies. The sampling program required permits from the United States Army Corps of Engineers, the Maryland Board of Public Works – Wetlands Administration, DDOE, and National Park Service. Pepco's contractor submitted applications for these permits in August, 2012 based on the draft RI/FS Work Plan. As noted in the previous status report, however, most of the permits and approvals were not received until the first quarter of 2013. The final permit for the river sediment sampling from the National Park Service was not issued until September 10, 2013. Pepco mobilized and commenced waterside investigation activities on September 14, 2013. However, the Park Service permit was suspended shortly after it was issued due to the federal government shut down. Field work stopped on September 30, 2013 and could not be resumed until November 14, 2013. The field work for the waterside investigation thus was not completed until the end of January 2014.

Weather also contributed to delays in completing the field work. For example Phase I and Phase II landside investigation field activities started in January 2013 and were completed in June 2013 except for the storm drain sampling, which was delayed due to the absence of a

qualifying rain event (0.1 inch or greater of rainfall). The storm drain sampling ultimately could not be completed until October 2013. This sampling was a critical part of the RI, as the storm drain is one suspected pathway by which contaminants from the Facility may make their way to the Anacostia River. In addition, field work was shut down during one week in November 2013 due to unusually cold weather.

In addition, it took longer than anticipated for DDOE and Pepco to evaluate the results of the initial phases of field work on the landside portion of the investigation and develop a thorough and technically sound work plan addendum for the final phase of the landside investigation. Based on the results of the Phase II landside field activities, Pepco submitted an RI Work Plan Addendum for Phase III activities (installation and sampling of groundwater monitoring wells) in October 2013 after the storm drain sampling was completed. The addendum was approved by DDOE on March 25, 2014. By that time, DDOE had engaged a contractor (Tetrtech) to assist in reviewing the deliverables and assessing the results of the RI/FS, but supplementing DDOE's technical resources for the project involved an initial learning curve for Tetrtech. The work plan addendum was the first comprehensive groundwater investigation proposed for the Site. Consequently, the frequency of sampling, list of analytes for each well, number and location of the monitoring wells were the subject of extensive technical discussions between Pepco, DDOE and Tetrtech. Also, there were several discussions regarding the proper scope of further investigation regarding a contaminant detected in groundwater at the site, Perchloroethylene ("PCE"), which was not expected to be discovered on the Facility, and appears to have originated from an off-site source.

Overall, the sampling work has been performed as expeditiously as possible, given the time required to obtain all of the necessary permits from state and federal regulatory agencies. To date, Pepco has provided all of the deliverables in a timely fashion, and the deliverables have

been of acceptable quality. DDOE has also conducted its reviews in a timely fashion, and has worked diligently to keep the project on schedule. The Parties have also worked in a cooperative and efficient manner to resolve technical disagreements, and will continue to do so. Further, DDOE's engagement of Tetrattech will help expedite DDOE's reviews and as well enhance the quality of the technical oversight for the project.

III. Demolition of the Power Plant.

One significant development since the last status report to the Court is that Pepco has decided to demolish the power plant at the Facility. Pepco shut down the power plant in June of 2012, and planned to maintain the structures in a state of indefinite "cold closure" after decommissioning the equipment. At the end of May 2013, Pepco officials met with DDOE officials to discuss the possibility that Pepco would demolish the power plant structures, including the smoke stacks. DDOE supported the planned demolition, and Pepco announced its decision to proceed with the demolition in June of 2013. Pepco has coordinated its plans for demolition with a number of stakeholders, including DDOE and the CAG, and is voluntarily implementing an air monitoring plan, in coordination with DDOE, to control dust exposure during the demolition of the main power plant buildings. Demolition work is underway and is currently expected to be complete by the end of 2014.

One benefit to the RI/FS from the decision to demolish the power plant is that the areas from which the power plant structures will be removed can now be sampled. On May 19, 2014, Pepco submitted a second Work Plan addendum outlining a plan for additional sampling as the demolition work is completed in these areas. Sampling data collected from these previously inaccessible areas will enhance the overall Site characterization –which will help inform the ultimate decision on a remedy. Pepco's decision to demolish the power plant is also viewed as a

benefit to the community. Not only does the demolition underscore the permanence of the plant shut down, it also will remove the stacks from the viewshed of the surrounding residential communities.

IV. Anticipated Schedule for Completion of the RI/FS.

The field work is currently expected to be completed by the fourth quarter of 2014. Upon completion of the field work, Pepco will prepare a draft RI Report and a draft FS Report in accordance with the deadlines specified in the Consent Decree. The Parties anticipate that these draft reports will be the subject of great interest to the community, and thus will require public meetings along with extended comment periods. Taking all of these factors into account, the Parties anticipate the RI/FS will be complete (i.e., DDOE will have approved the final RI Report and Feasibility Study) within the next 18 to 24 months. Upon DDOE's approval of the final RI and FS reports, Pepco's obligations under the Consent Decree will be at an end, and DDOE will proceed with a Proposed Plan, and Record of Decision, regarding further response actions. The Parties anticipate that the Proposed Plan will be released within one year from DDOE's approval of the FS, and that the Record of Decision will be released within one year after that.

V. Conclusion.

For the foregoing reasons, the Parties respectfully submit that the Court should find that the Parties have complied to date with the requirements of the Consent Decree and the Court's order approving the Consent Decree. Further, the Parties propose to submit another status report to the Court on or before May 24, 2015.

Dated: May 23, 2014

Respectfully submitted,

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