

SETTLEMENT AGREEMENT AMONG
THE UNITED STATES DEPARTMENT OF THE INTERIOR, THE UNITED STATES
DEPARTMENT OF COMMERCE, THE DISTRICT OF COLUMBIA,
AND
POTOMAC ELECTRIC POWER COMPANY
FOR THE
PEPCO POTOMAC RIVER SUBSTATION OIL SPILL

I. Introduction

A. The United States of America, on behalf of the Department of Commerce acting through the National Oceanic and Atmospheric Administration (“NOAA”) and the Department of the Interior (“DOI”) acting through the Fish and Wildlife Service (“FWS”) and the National Park Service (“NPS”), and the District of Columbia, on behalf of the Department of Energy and Environment (“DOEE”) (collectively referred to as the “Trustees”), and the Potomac Electric Power Company (“Pepco” or “Settling Defendant”), enter into this Settlement Agreement (“Agreement” or “Settlement Agreement”) to resolve, without litigation, the Trustees’ civil claims under the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2702; the Clean Water Act (“CWA”), 33 U.S.C. § 1321(f)(4) and (5); and the District of Columbia Water Pollution Control Act (“WPCA”), D.C. Official Code § 8-103.17(e), for injury to, impairment of, destruction of, loss of, diminution of value of, and/or loss of use of natural resources, including the reasonable costs of assessing the injuries, resulting from the Pepco Potomac River Substation Oil Spill, as defined below.

B. In addition, DOI, on behalf of the National Park Service, enters into this Settlement Agreement to resolve, without litigation, the NPS’ civil claims under the System Unit Resource Protection Act (“SURPA”), 54 U.S.C. § 100723, for the destruction of, loss of, or injuries to resources located within the boundaries of the national park, George Washington Memorial Parkway, including the cost of the damage assessment.

C. The Trustees have shared jurisdiction for the natural resources and their services injured as a result of the Pepco Potomac River Substation Oil Spill, and this Settlement Agreement is executed by the governmental agencies in their capacity as Natural Resource Trustees under OPA, CWA, and the National Contingency Plan, 40 C.F.R. §§ 300.600-300.605, D.C. Code § 8-151.08(8), and District of Columbia Mayor’s Order 2011-96.

D. Under OPA, each responsible party for a facility from which oil is discharged into or upon navigable waters is liable for damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the injuries. 33 U.S.C. § 2702.

E. Under the CWA, the owner or operator of a facility from which oil or a hazardous substance is discharged to a water of the United States is liable for any costs incurred by the Federal or State government in the restoration or replacement of natural resources damaged or destroyed as a result of the discharge. 33 U.S.C. § 1321(f)(4).

F. Under SURPA, any person that destroys, causes the loss of, or injures any living or non-living resource located within the boundaries of a System Unit of a National Park is liable for damages for the cost of restoring, replacing, or acquiring the equivalent of the injured resources, including the costs of assessing the damages. 54 U.S.C. §§ 100721-100722.

G. Under the WPCA, the owner or operator of a facility from which a hazardous substance or pollutant is discharged is liable for the full costs of removal, or for the cost of any assistance provided by the District, and such amount as represents the damage to water quality and aquatic life. D.C. Official Code § 8-103.17(e).

H. The execution of this Agreement shall not constitute, nor is it in any way an admission by Settling Defendant of any liability, and shall not be used in any other action against Settling Defendant as proof of liability.

II. Parties Bound

1. The provisions of this Settlement Agreement shall apply to and be binding upon Settling Defendant and all of its successors and assigns, and upon the Trustees.

III. Definitions

2. Except as otherwise expressly provided herein, the terms used in this Settlement Agreement which are used in OPA or in its Natural Resource Damage Assessment regulations promulgated by NOAA pursuant to OPA (15 C.F.R. Part 990) shall have the meanings assigned to them by OPA or by its regulations. Terms which are not used in OPA but are used in the CWA shall have the meanings assigned to them by the CWA and its regulations. Terms which are not used in OPA or the CWA shall have the meaning assigned to them by SURPA. Terms which are not used in OPA, the CWA, or SURPA shall have the meanings assigned to them by the WPCA.

a. “Boundary Channel” shall mean the channel forming the boundary line between the Commonwealth of Virginia and the District of Columbia that connects the Potomac River and

Pentagon Lagoon between Columbia Island and Virginia in Arlington, Virginia that is located within the national park, George Washington Memorial Parkway.

b. “Natural resources” shall mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), or any State government.

c. “Parties” shall mean the Trustees and Settling Defendant.

d. “Pepco Potomac River Substation Oil Spill” shall mean the January 23, 2011 discharge of mineral oil at or from the PEPCO Potomac River Substation located at 1400 North Royal Street, Alexandria, Virginia.

e. “Potomac River Boundary Channel Rehabilitation Project” shall mean the improvement of riparian buffer and native upland meadow through the removal of invasive, non-native plants along approximately 11,000 feet of shoreline and adjacent uplands. The treated area then will be planted with native shrubs, grasses, and flowers beneficial to wildlife and pollinators.

f. “Settlement Agreement” or “Agreement” shall mean this Settlement Agreement among DOI, United States Department of Commerce, the District of Columbia, and Pepco.

g. “Site” shall mean the Pepco Potomac River Substation located at 1400 North Royal Street, Alexandria, Virginia, and the geographic area where the discharged oil came to be located, including but not limited to the Potomac River and the George Washington Memorial Parkway.

IV. Payment of Certain Costs and Damages

3. Payment to the United States for Assessment Costs. Within 30 days after the Effective Date, Settling Defendant shall pay a total of \$78,259 to the United States for the following:

a. \$23,329 will reimburse DOI for the natural resource damage assessment (“NRDA”) costs which it has incurred relating to this Site;

b. \$29,930 will reimburse NOAA for the NRDA costs which it has incurred relating to this Site; and

c. \$25,000 will be paid to DOI to fund the preparation of a draft restoration plan to be published for public review and comment and a final restoration plan, and to oversee restoration implementation.

4. Payment to the District of Columbia for Restoration Activities. Within 30 days after the Effective Date, Settling Defendant shall pay \$25,000 to the District of Columbia to fund the

preparation of a draft restoration plan to be published for public review and comment and a final restoration plan, and to oversee restoration implementation.

5. Payment for Natural Resource Restoration Projects. Within 30 days after the Effective Date, Settling Defendant shall pay \$326,532 to the United States. The total amount paid pursuant to this Paragraph shall be deposited into segregated, case-specific sub-accounts within the DOI Natural Resource Damage Assessment and Restoration Fund (“NRDAR Fund”), and shall be used for the following:

- a. \$156,500 for use by the DOI to fund the Potomac River Boundary Channel Rehabilitation Project; and

- b. \$170,032 for joint use by the Trustees to restore, replace, rehabilitate, or acquire the equivalent of natural resources and their services injured by the Pepco Potomac River Substation Oil Spill consistent with the final damage assessment and restoration plan, and any amendments thereto, for the Pepco Potomac River Oil Spill.

6. Payment of the amount set forth in Paragraphs 3 and 5 shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of 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 Settling Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Aneta Bejna
Senior Business Analyst
Environmental Programs & Services
abejna@pepco.com

on behalf of Settling Defendant.

At the time of payment, Settling Defendant shall send a written notice of payment and a copy of any transmittal documentation to:

Amy Horner Hanley, Senior Attorney
Division of Parks and Wildlife (MS 6316)
Office of the Solicitor
U.S. Department of the interior
1849 C Street NW

Washington, DC 20240

With a copy to:

Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
DJ # 90-5-1-1-11456

7. Payment of the amount set forth in Paragraph 4 shall be in the form of a check, certified check, money order or cashier's check made payable to "D.C. Treasurer," with a reference to "PEPCO NRD Settlement," and delivered to:

Department of Energy and Environment
Attn: Office of Enforcement and Environmental Justice
1200 First Street NE, 5th Floor
Washington, DC 20002

At the time of payment, Settling Defendant shall send a written notice of payment and a copy of any transmittal documentation to:

Beth Mullin, Deputy General Counsel
Office of the General Counsel
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002

DOEE shall deposit the payment into the Clean Land Fund (Account 0663) for the uses specified in this Agreement.

8. If Settling Defendant fails to make any of the payments specified in Paragraphs 3-5 when due, Settling Defendant shall pay interest on those payments at the rate specified in 33 U.S.C. § 2705(b)(4). Interest shall be calculated from the Effective Date to the date of payment.
9. In addition, if Settling Defendant fails to make any of the payments specified in Paragraphs 3-5 when due, it shall pay \$500 as a stipulated penalty for each day or portion thereof that each payment is overdue until all overdue payments (including stipulated penalties) are paid in full. Separate stipulated penalties shall accrue for failure to make each such payment.

10. A stipulated penalty for failure to make the payment specified in Paragraphs 3 and 5 shall be paid to the case specific, segregated sub-accounts in the DOI NRDAR Fund in accordance with the payment instructions in Paragraph 6. A stipulated penalty for failure to make the payment specified in Paragraph 4 shall be paid to the District of Columbia in accordance with the payment instructions in Paragraph 7.
11. The stipulated penalty is due and payable within 30 days of the date of the demand for payment of the stipulated penalty by the relevant Trustee. A Trustee making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Trustees.
12. Payments made under Paragraphs 8 and 9 shall be in addition to any other remedies or sanctions available to the Trustees by virtue of Settling Defendant's failure to comply with the requirements of this Settlement Agreement.
13. Notwithstanding any other provisions of this Section IV, the Trustees may, in their unreviewable discretion, waive payment of any portion of the stipulated penalty that has accrued pursuant to this Settlement Agreement. Such waiver of payment shall not be construed as a waiver of any other payment(s) required under this Settlement Agreement.
14. Settling Defendant shall be liable for attorneys' fees and costs incurred by the Trustees to collect any amount due under this Settlement Agreement that is not timely paid.

V. Covenant Not to Sue and Reservation of Rights by the Trustees

15. In consideration of the payments to be made by Settling Defendant pursuant to Section IV (Payment of Certain Costs and Damages), the Trustees covenant not to sue or maintain any lawsuit, action, administrative proceeding, or other proceeding against Settling Defendant pursuant to OPA, 33 U.S.C. § 2702, the CWA, 33 U.S.C. § 1321(f)(4) and (5), or the WPCA, D.C. Official Code § 8-103.17(e), for (i) injury to, impairment of, destruction of, loss of, diminution in value of, or loss of use of natural resources caused by the Pepco Potomac River Substation Oil Spill, known as of the date of execution of this Settlement Agreement by Trustees, and (ii) costs (including NRDA costs), attorneys' fees, other fees, or expenses incurred by the Trustees to recover such natural resource damages relating to injuries at or from the Site, including damage assessment costs.
16. In consideration of the payments to be made by Settling Defendant, the DOI, on behalf of NPS, covenants not to sue or maintain any lawsuit, action, administrative proceeding, or other proceeding against Settling Defendant pursuant to SURPA, 54 U.S.C. § 100722, for

destruction of, loss of, or injury to resources within the boundaries of the George Washington Memorial Parkway caused by the Pepco Potomac River Substation Oil Spill or for any costs of the damages assessment related to the Pepco Potomac River Substation Oil Spill.

17. The covenants not to sue in Paragraphs 15 and 16 are not effective until, and are conditioned upon, complete and satisfactory performance by Settling Defendant of its obligations under Section IV (Payment of Certain Costs and Damages) of this Settlement Agreement. These covenants not to sue extend only to Settling Defendant and do not extend to any other person.
18. Notwithstanding any other provision of this Settlement Agreement, the United States and the District of Columbia reserve, and this Settlement Agreement is without prejudice to, any claims not expressly included in Paragraphs 15 and 16, including, but not limited to:
 - a. Claims based upon a failure of Settling Defendant to meet a requirement of this Settlement Agreement;
 - b. Criminal claims;
 - c. Claims for costs of removal or remedial action at the Site;
 - d. Claims for injury to, destruction of, or loss of natural resources that the United States, other than DOI or the Department of Commerce, may have under applicable law;
 - e. Claims for injury to, destruction of, or loss of natural resource that the District of Columbia, other than DOEE, may have under applicable law; and
 - f. Claims for damages for injury to, destruction of, or loss of natural resources unrelated to the Pepco Potomac River Substation Oil Spill.
19. Notwithstanding any other provision of this Settlement Agreement, the United States and the District of Columbia each reserves the right to file claims against Pepco seeking recovery of natural resource damages caused by the Pepco Potomac River Substation Oil Spill if conditions are discovered or information is received by the Trustees, not known to the Trustees at the time of execution of this Settlement Agreement, that, together with any other relevant information, indicates that there is injury to, impairment of, destruction of, loss of, diminution of value of, or loss of use of natural resources of a type unknown or of a magnitude that is substantially greater than was known by the Trustees, as of the date of their execution of this Settlement Agreement.

VI. Covenant Not to Sue by Settling Defendant

20. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the Trustees or the National Park Service, including their departments, agencies or instrumentalities, or their employees, agents, experts or contractors, for:

- a. Claims related to natural resource damages at the Site;
- b. Any direct or indirect claim for reimbursement from the Oil Spill Liability Trustee Fund or any District of Columbia Fund; and
- c. Any claim for costs, attorneys' fees, other fees, or expenses incurred in connection with this Settlement Agreement or claims resolved herein.

21. In any subsequent administrative or judicial proceeding initiated by the United States or the District of Columbia related to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defense based upon any contention that the claims raised by the United States or the District of Columbia in the subsequent proceeding were or should have been settled in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section V (Covenant Not to Sue and Reservation of Rights by the Trustees) herein.

VII. Signatories

22. Each of the undersigned representatives of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and bind legally such Party to this document.

VIII. Entire Agreement

23. This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Agreement and supersedes all prior agreements and understanding, whether oral or written. No other document, nor any representation, inducement, agreement, understanding or promise constitutes any part of this Agreement or the settlement it represents, nor shall it be used in construing the terms of this Agreement.

IX. Modification

24. The terms of this Agreement may be modified only by a subsequent written agreement signed by all of the Parties.

X. Execution

25. This Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument.

XI. Public Comment

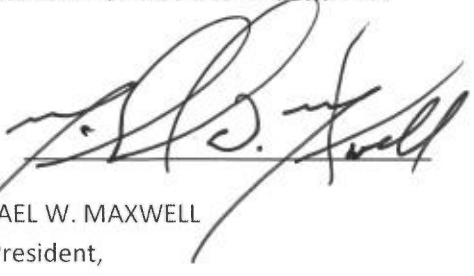
26. Final approval by the United States and the effectiveness of this Settlement Agreement are subject to public notice and comment for a period of not less than 30 days after publication of notice of this Settlement Agreement in the Federal Register. Settling Defendant agrees not to withdraw its consent to the Settlement Agreement pending consideration of public comments and approval of the United States. If public comments disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate, the United States or the District of Columbia may withdraw their approval of the Settlement Agreement. Should the United States or the District of Columbia withdraw their approval, this Agreement shall be null and void.

XII. Effective Date

27. The Effective Date of this Settlement Agreement shall be the date upon which the United States issues written notice to the Settling Defendant that the public comment period pursuant to Section XI (Public Comment) has closed and that comments received, if any, do not require modification or withdrawal from this Settlement Agreement.

SETTLEMENT AGREEMENT AMONG THE UNITED STATES DEPARTMENT OF THE INTERIOR, THE UNITED STATES DEPARTMENT OF COMMERCE, THE DISTRICT OF COLUMBIA, AND POTOMAC ELECTRIC POWER COMPANY FOR THE PEPCO POTOMAC RIVER SUBSTATION OIL SPILL

POTOMAC ELECTRIC POWER COMPANY

By: 

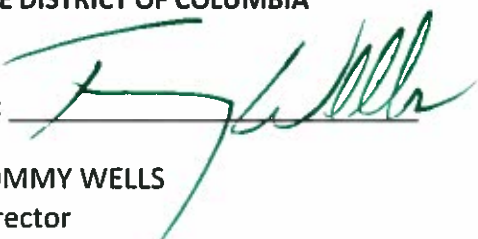
Date: 6/4/2018

MICHAEL W. MAXWELL

Vice President,
Support Services

SETTLEMENT AGREEMENT AMONG THE UNITED STATES DEPARTMENT OF THE INTERIOR, THE UNITED STATES DEPARTMENT OF COMMERCE, THE DISTRICT OF COLUMBIA, AND POTOMAC ELECTRIC POWER COMPANY FOR THE PEPCO POTOMAC RIVER SUBSTATION OIL SPILL

**DISTRICT OF COLUMBIA DEPARTMENT OF ENERGY AND ENVIRONMENT ON BEHALF OF
THE DISTRICT OF COLUMBIA**

By: 

Date: 6/12/19

TOMMY WELLS
Director
Department of Energy and Environment

ROBYN BENDER
Deputy Attorney General
Public Advocacy Division

BRIAN R. CALDWELL
Assistant Attorney General
441 4th Street NW, Suite 650-N
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ELIZABETH D. MULLIN (DC Bar # 435180)
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SETTLEMENT AGREEMENT AMONG THE UNITED STATES DEPARTMENT OF THE INTERIOR, THE UNITED STATES DEPARTMENT OF COMMERCE, THE DISTRICT OF COLUMBIA, AND POTOMAC ELECTRIC POWER COMPANY FOR THE PEPCO POTOMAC RIVER SUBSTATION OIL SPILL

FOR THE UNITED STATES OF AMERICA, ON BEHALF OF THE DEPARTMENT OF THE INTERIOR AND THE DEPARTMENT OF COMMERCE

By:  Date: 10/4/18

NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section