

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

**DISTRICT OF COLUMBIA,**  
a municipal corporation,  
400 6<sup>th</sup> Street NW,  
Washington, D.C. 20001

Plaintiff,

v.

**POTOMAC ELECTRIC POWER  
COMPANY D/B/A PEPCO**  
701 Ninth Street, NW  
Washington, D.C. 20068

*Serve on:*

Corporate Creations Network Inc.  
1659 K Street, N.W. #300  
Washington, D.C. 20006

Defendant.

**COMPLAINT**

**JURY TRIAL DEMANDED**

**COMPLAINT FOR VIOLATIONS OF THE DISTRICT OF COLUMBIA’S WATER  
POLLUTION CONTROL ACT, HAZARDOUS WASTE MANAGEMENT ACT, AND  
BROWNFIELD REVITALIZATION ACT**

The District of Columbia’s environmental laws impose significant penalties against violators to protect the environment and vital public resources such as rivers and streams. Plaintiff District of Columbia (“District”), through the Office of the Attorney General, brings this action against Defendant Potomac Electric Power Company (“Pepco”) for civil penalties and other relief, due to Pepco’s past, continuing, persistent, and intentional violations of the District’s environmental laws. Pepco’s operations have resulted and, if not enjoined and stopped, will continue to result in illegal pollutant discharges into District Waters and contamination of property

within the District, including the Anacostia River. In support of its claims, the District states, claims and alleges as follows:

### **INTRODUCTION**

1. Pepco is a wholly owned subsidiary of Exelon Corporation, which in turn is the largest electric utility company in the nation. Pepco proudly and prominently advertises its commitment to environmental compliance, proclaiming itself to be a “steward” of the environment. However, for over four decades, Pepco has willfully and routinely discharged pollutants into District land, groundwater, storm sewers, streams, and rivers. Most of these illegal pollutant discharges ended up in the Anacostia River, a once pristine waterway teeming with fish and other wildlife.

2. The victim of a long legacy of indiscriminate dumping and pollutant discharges, the Anacostia River is now fouled and contaminated, saddled with ongoing fishing advisories and “no swimming” bans. The degradation and unsafe condition of the Anacostia River have had a disproportionate adverse impact on underserved minority residents, many of whom have a long relationship with and connection to the polluted River and some of whom continue to subsist on contaminated fish.

3. By treating the District’s waterways as a cost-free dumping ground, Pepco has played a prominent role in the current and historically degraded condition of the Anacostia River.

4. Pepco illegally polluted land within the District and District Waters in at least three ways: first, by discharging pollutants into the groundwater and soil at its Buzzard Point Facility; second, by pumping pollutants from Buzzard Point Facility containment structures into storm sewers that connect to the Anacostia River; and third, by pumping pollutants from the vaults in its

underground, District-wide electrical distribution system into storm sewers that connect to District rivers and streams.

5. *Discharges into groundwater and soil from Buzzard Point Facility operations.*

Beginning in 1938, Pepco operated a power generating station at its Buzzard Point Facility, which is located near the confluence of the Anacostia and Potomac Rivers. During its many decades of operations at the Buzzard Point Facility, Pepco spilled or released petroleum and hazardous substances—including chlorinated solvents and polychlorinated biphenyls (“PCBs”), a toxic, carcinogenic chemical—into the underlying soil and groundwater.

6. *Discharges into storm sewers from Buzzard Point Facility containment structures.*

Pepco used secondary containment structures at the Buzzard Point Facility to contain spills and leaks from petroleum-filled transformers and other equipment. Rainwater and sediment entered these containment structures and mixed with leaks and spills from equipment and operations to create a solution of PCBs, petroleum, and other pollutants. Despite its actual knowledge of the pollutants in the containment structures, Pepco elected not to safely dispose of this contaminated waste. Instead, for decades, at a rate of at least twice per month, Pepco’s employees routinely and intentionally pumped the pollutants in the containment structures into storm sewers that emptied into the Anacostia River. Pepco knowingly continued its illegal dumping from these containment structures into storm sewers until 2013, when the District’s Department of Energy and Environment caught Pepco in the act and issued a cease-and-desist order.

7. *Discharges into storm sewers from District-wide underground electrical distribution vault system.* Pepco also polluted District rivers and streams for decades when operating its electrical distribution vault system—an underground network of manholes and vaults located throughout the District that contain transformers and other electrical equipment (“Vault

System”). Pepco understood that polluted rainwater entered its vaults and that vault transformers, which routinely leak and spill, further polluted the runoff in the Vault System. Despite this knowledge, Pepco regularly pumped polluted water, including PCBs, petroleum, and sediment, at least once per business day for decades, from its Vault System into nearby storm sewers that empty into the District’s rivers and streams.

8. From at least 2001, Pepco’s discharges from its Buzzard Point facility containment structures and its Vault System were willful. Given its sophistication as a long-time regulated public utility, Pepco knew the above operations violated District laws when those laws became effective. It was apparent that Pepco knew its discharge practices were illegal as early as April 2001 when Pepco issued a draft Manhole Pumping Procedure that clearly stated the “Discharge to storm sewers is prohibited.” Nevertheless, Pepco continued to discharge from the Vault System into the storm sewer until at least 2007, when it issued a revised manhole pumping procedure. As noted, Pepco also continued discharging from the Buzzard Point secondary containment structures into the storm sewer until 2013 when the District’s Department of Energy and Environment issued its cease-and-desist Order.

9. Pepco’s illegal discharges from both its Buzzard Point Facility and its District-wide Vault System have contributed to the pollution and degradation of the Anacostia River. Some of the highly toxic pollutants Pepco has discharged, like PCBs, take decades to breakdown, so they have remained in the River long after Pepco discharged them, causing long-lasting harmful effects to human health and the environment.

10. The District’s environmental laws are vital to protecting the District’s land and waterways. To maintain and improve these public resources and to maximally deter potential polluters, these laws impose significant civil penalties, D.C Code § 8-103.18 (b)(2) (\$250,000

penalty per discharge for willful violations, and \$50,000 per discharge for non-willful violations); § 8-1311 (\$25,000 penalty per day per violation), and impose no statute of limitations on the ability of the Office of the Attorney General, charged with upholding the public interest, to enforce them.

11. The Attorney General brings this action to protect the District's vital public resources, to recover statutory penalties for each of Pepco's illegal discharges under the District's environmental laws, for injunctive and declaratory relief, to recover the District's costs and fees, and to deter any future illegal discharges.

### **JURISDICTION**

12. This Court has subject matter jurisdiction over this matter pursuant to D.C. Code §§ 1-301.81(a)(1), 8-103.07(a) and (c), 8-103.08(b), 8-301.18(b)(1), and 8-634.07.

13. This Court has personal jurisdiction over the Defendant pursuant to D.C. Code § 13-423(a).

### **PARTIES**

14. Plaintiff, the District of Columbia, is a municipal corporation empowered to sue and be sued. The District is represented by and through its chief legal officer, the elected, independent Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Water Pollution Control Act, the Hazardous Waste Management Act, and the Brownfield Revitalization Act each authorize the Attorney General to institute an action for civil penalties or for other appropriate relief in the Superior Court of the District of Columbia. D.C. Code §§ 8-103.07(a) and (c), 8-103.08(b)(1), 8-103.18(a)(1), 8-1310 and 8-1311, 8-634.07; and 21 DCMR § 505.4.

15. Pepco is a District of Columbia corporation that regularly conducts business in the District, including electricity production, distribution, and transmission, as well as marketing and selling electricity to District consumers and businesses. Pepco is a wholly owned subsidiary of Pepco Holdings, which in turn, is a wholly owned subsidiary of Exelon Utilities, a wholly owned subsidiary of Exelon Corporation. Pepco's business office is at 701 Ninth Street NW, Washington, D.C. 20068.

### **FACTUAL ALLEGATIONS**

#### **I. Pepco Is a Large Public Utility That Touts Its Commitment to Environmental Compliance.**

16. Pepco, incorporated in the District of Columbia in 1896, is an electric utility company that provides electricity service to approximately 900,000 customers in the District of Columbia and Maryland.

17. For over a century, Pepco has operated power plants and electrical distribution systems throughout the District and Maryland. Currently, Pepco has over 1,400 employees and operates and maintains multiple power plants and approximately 156 electrical substations.

18. As a long-time electric utility, Pepco has had actual knowledge of applicable federal and District environmental laws and regulations since their passage, including but not limited to the District's Water Pollution Control Act, the District's Hazardous Waste Management Act, the District's Brownfield Revitalization Act, and their federal counterparts.

19. In representations to the public and its investors, Pepco prominently touts that "[c]ompliance with applicable environmental laws and regulations is a critical aspect of our corporate values" and that its "employees, contractors, and business partners are responsible and will be held accountable for implementing this policy and ensuring ongoing environmental compliance and protection."

20. Despite these assurances of environmental compliance and accountability, over the course of several decades, Pepco repeatedly and persistently violated the District's Water Pollution Control Act, the Hazardous Waste Management Act, and other environmental laws. These violations have resulted in severe environmental harm to District Waters, including but not limited to the Anacostia River, and to property in the District.

## **II. Pepco's Operations Resulted in Illegal Pollutant Discharges to Groundwater and Contamination at the Buzzard Point Facility.**

21. Pepco acquired the Buzzard Point Facility property in 1932. From approximately 1933 to 1968, Pepco constructed and then owned and operated at Buzzard Point a coal-fired steam electric generating plant that included coal piles, large oil-cooled transformers, a combustion turbine yard, a switch yard, a fuel oil tank yard, and a gasoline fueling station.

22. In approximately 1968, Pepco converted the coal-fired steam generating plant to an oil-fired plant and added a 1.9-million-gallon aboveground oil storage tank to provide the plant with fuel via an underground pipeline. That same year, Pepco constructed a peaking plant—a plant that only operates when there is high demand—consisting of 16 oil-fired combustion turbines with two 450-thousand-gallon storage tanks to provide fuel to the turbines.

23. In or about 2012, Pepco discontinued all generating operations at the Buzzard Point Facility and converted the Facility to an electrical substation.

24. Pepco's operations at Buzzard Point resulted in spills, equipment leaks, and releases of petroleum and hazardous substances into the underlying soil and into groundwater in and around the Facility. Pepco consultants documented many of these incidents, a few of which are listed below, in environmental assessments of the Buzzard Point Facility property:

- Failure of a fuel oil pipeline beneath the site in the 1970s.
- Release of 770 gallons of "lube oil" in August 1992.

- Failure of two 2,000-gallon capacity underground tanks, used for the storage of drain fluids and rainwater, to contain their contents, confirmed by structural integrity testing in approximately 1990.
- Releases of petroleum and coal combustion products including heavy metals during years of operation.

25. Pepco has performed limited environmental assessments of the Buzzard Point Facility, including physical sampling and analysis of the soil and groundwater beneath the property, to determine the presence of petroleum and hazardous substances. The results of those physical investigations further document the widespread contamination at the Buzzard Point Facility property, including but not limited to:

- One or more plumes of free-phase petroleum in groundwater.
- Diesel and gasoline-derived hydrocarbons, heavy metals, volatile organic compounds, PCBs, and other hazardous materials in soil.
- Potential risks from exposure to human health and the environment.

26. However, Pepco has not performed a comprehensive environmental assessment of Buzzard Point to determine what contaminants remain in the soil and groundwater, the extent of contamination, and whether that contamination poses a threat to human health and the environment. Pepco's failure to take these steps has resulted in ongoing uncertainty in knowing whether harmful levels of contaminants remain in the soil and groundwater at the Buzzard Point Facility and whether those contaminants pose ongoing risks to the District's Waters and environment—and ultimately to human health.



### **III. For Decades, Pepco Intentionally and Illegally Discharged Pollutants from Oil Reclaiming Pits at the Buzzard Point Facility into District Waters.**

27. In or before 1973, Pepco constructed and maintained concrete retention dikes at the base of large transformers at the Buzzard Point Facility. These retention dikes function as secondary containment structures to contain and prevent accidental spills, releases, and leaks from the transformers and other equipment.

28. The retention dikes drained into ten underground concrete reservoirs, which Pepco referred to as “Oil Reclaiming Pits” or “ORPs.” Pepco periodically drained the ORPs of their contents to maintain their capacity to contain future spills and releases.

29. From approximately 1973 until 2013, at the rate of several times per month, Pepco collected the accumulated water and pollutants from the ORPs and discharged them into the municipal storm water sewer system (“MS4” or “MS4 System”), owned and operated by the District.

30. The MS4 is a series of drains and pipes that collect stormwater from the urban environment and convey the stormwater to nearby rivers and streams. Discharges into the MS4 other than stormwater are prohibited without prior authorization from the District.

31. In April 2001, Pepco issued a draft manhole pumping procedure that stated clearly: “Discharges to the storm sewer are prohibited.” From no later than that point, Pepco’s ongoing discharges of ORP contents into the MS4 were knowingly and intentionally in violation of District laws.

32. The part of the District’s MS4 System that drains the Buzzard Point Facility discharges through pipes or outfalls directly into the Anacostia River. The discharges from those MS4 System outfalls are subject to strict federal wastewater permit requirements that are designed to maintain water quality standards and protect against further degradation of the Anacostia River.

33. In stark contrast to its illegal conduct related to discharges from its ORPs at the Buzzard Point Facility, Pepco obtained pollutant discharge permits to discharge once-through cooling water from the Buzzard Point Facility steam generating plant to the MS4. It obtained one such permit as early as 1976. In 2005, it obtained another, which expressly allowed it to discharge stormwater and condensate from the turbine generating plant to the combined sanitary sewer system (“CSS”), owned and operated by DC Water. The CSS, which is separate from the MS4, collects sanitary waste and overflow stormwater in the District and conveys it to DC Water’s Blue Plains wastewater treatment plant. But Pepco never sought a discharge permit from the District or DC Water for discharges from the Buzzard Point Facility ORPs to the MS4 or the CSS.

34. It was not until April 17, 2013, after the District’s Department of Environment (“DDOE,” now known as the Department of Energy and Environment or “DOEE”), issued a Compliance Directive to Pepco to “immediately cease the discharge of all ORP water that does not comply with the District’s water quality standards” that Pepco purportedly ceased illegally discharging pollutants from the Buzzard Point Facility ORPs into the MS4.

35. The April 2013 Compliance Directive also directed Pepco to sample and determine the presence of pollutants in the ORP discharge water. In response, Pepco confirmed the presence of petroleum and other contaminants, including PCBs, all of which exceeded the District’s water quality standards. The discharge water sampled from every ORP confirmed the presence of these pollutants.

36. PCBs are toxic and highly carcinogenic. Transformer manufacturers added them to transformer cooling oil as a fire retardant before the United States Environmental Protection Agency banned their production in 1979 due to their toxicity and persistence in the environment.

37. PCBs preferentially attach to soil or sediment particles. Pepco has understood the characteristics of this toxic chemical for decades. Pepco reaffirmed its scientific understanding of PCB chemistry after sampling the Buzzard Point Facility ORPs in 2013, stating that two ORPs:

. . . which exhibited the highest PCB concentrations, each also had an observable accumulation of solids at the bottom. It was suspected that these solids might include residual PCBs that are re-suspended in the water when it is pumped from the ORP, thus potentially accounting for the higher PCB concentrations in the samples collected from these ORPs.

38. Because PCBs do not break down easily in the environment, they bio-accumulate in the food chain, where they cause, in both humans and animals, immunological alterations, neuro-developmental and neurobehavioral changes, reduced birth weight, reproductive toxicity, and cancer.

39. Pepco has been aware of the dangers of PCBs for many years. Indeed, an internal Pepco white paper from the 1980s stated:

Public concern over PCBs began in 1969, when evidence became available that suggested chronic exposure to PCBs might result in hazards to human health. . . The extensive production of PCBs since 1929, however, left a significant reservoir of PCBs in use. . . Investigations then found PCBs widely distributed in the United States, with accumulations detected in the fatty tissues of fish and wildlife.

40. EPA has not banned existing uses of PCBs but strictly regulates the management and disposal of PCB-containing materials. To this day, Pepco continues to use PCBs in its transformers.

#### **IV. For Decades, Pepco Illegally Discharged Pollutants from Its Vault System into District Waters.**

41. As part of its area-wide electrical distribution system in the District and Maryland, Pepco operates its Vault System—a network of approximately 60,000 subsurface vaults and manholes. Approximately 10,000 of these vaults house transformers. Most of these vaults were constructed during the 1940s and 1950s; some date back to the late 1920s.

42. A typical vault is approximately 6 feet wide, 18 feet long and 10 feet deep. The vaults have grated openings at the top and are frequently infiltrated with storm water runoff, including petroleum and sediment from the urban landscape. Indeed, a 1992 Pepco internal document recognized that many sources contributed to oil or petroleum pollution in the vaults, including Pepco's own transformers and equipment:

**Source of Oil:**

**Oil can be present in the manhole due to the following:**

- 1 - Leaking transformer and equipment.**
- 2 - Oil from roadways washed into the manhole.**
- 3 - Illegal dumping of waste oil.**
- 4 - Past splicing operations of paper cable system.**

43. Prior to 1980, Pepco used floor drains and sump pumps to dispose of vault contents—storm water and pollutants—directly to the MS4 or CSS. For vaults without drains or sump pumps, Pepco manually pumped the contents into the MS4 or CSS.

44. Beginning in 1980, Pepco began removing the floor drains and sumps from the vaults and moved toward a manual pumping procedure. By 1992, Pepco estimated that 1,700 vaults with transformers still had floor drains or sump pumps that discharged directly to the MS4 or CSS.

45. Prior to March 1992, Pepco's manual vault dewatering procedure required employees to initially determine whether there was a visible sheen on top of water in the vault indicating the presence of oil. If a sheen was present, employees used a hose to pump the water from the bottom of the vault into the nearest MS4 or CSS until approximately 8 to 12 inches below the surface layer remained.

46. This dewatering procedure did not employ any filtering system. As a result, the below-surface layer water that Pepco employees pumped from the vaults into the nearest MS4 or

CSS contained sediment, suspended petroleum, and other pollutants, including PCBs. Pepco did not sample or analyze the content of either this discharged water or the non-discharged surface layer water.

47. In March 1992, presumably because PCBs were becoming an increasing concern to the company, Pepco modified its vault dewatering procedure by requiring employees to sample and determine the PCB content of the oily surface layer—but still not the vault contents below the surface layer. If the PCB content of the oil/water mixture of the surface layer was less than 50 parts per million, employees would continue to discharge the vault contents below the surface layer “onto the street” and into the nearest MS4 or CSS sewer. Pepco estimated that, at that time, approximately 25% of the vaults had visible sheens on top of the water in the vaults.

48. That procedural modification, however, did not alter the well-established scientific fact that contaminants will remain below the surface layer because some of them, including PCBs, bind to sediment, while others remain in suspension or partially dissolve in water.

49. Until approximately 2007, Pepco routinely drained accumulated water and pollutants, including PCBs, from vaults and discharged the contents to the MS4 or CSS at a rate of about 20 to 40 vaults per day.

50. Pepco continued these practices despite being aware that vault discharges required permits. For example, in 2000, Pepco applied for and received a Temporary Discharge Authorization Permit from DC Water to discharge vault contents to the CSS. Pepco did not take similar steps for the ongoing discharges from its system of underground vaults to the MS4.

51. In April 2001, Pepco issued a draft manhole pumping procedure that stated clearly: “Discharges to the storm sewer are prohibited.” From that point forward, similar to Pepco’s decision to continue to discharge ORP contents from the Buzzard Point Facility, Pepco’s ongoing

discharges of vault contents into the MS4 were knowingly and intentionally in violation of District laws.

52. It wasn't until December 2008 that Pepco prohibited all further discharges of vault contents to the MS4. From that point forward, Pepco employees were directed to remove all vault contents to a vacuum truck for transport to a waste disposal or water treatment facility.

53. Even after implementation of the new dewatering vault procedure in 2008, on at least two occasions, Pepco violated not only its own policy, but District law prohibiting unauthorized pollutant discharges: (1) on June 18, 2015, Pepco discharged approximately 5,000 gallons of vault contents to the District's MS4 sewer near 1944 Bladensburg Road NE; and (2) on March 28, 2018, Pepco discharged vault contents to the MS4 sewer near 402 Tingley Street SE.

**V. Pepco's Decades of Illegal Pollutant Discharges Have Contributed to the Historical and Ongoing Degradation of District Waters.**

54. Generations of residents living in the District have not known what it is like to have healthy rivers and streams. Due to the actions of Pepco and other polluters, District rivers and streams do not meet basic water safety and quality standards—standards established to protect the safe use and enjoyment of these public resources.

55. To meet water quality standards, the District has spent tens of millions of dollars addressing excess sediment, petroleum, PCBs, and other hazardous substances in District rivers and streams, including but not limited to the Anacostia River. For example, the District has established daily maximum loads for PCBs and other pollutants and installed pollution reduction infrastructure to reduce sediment, petroleum, and PCBs from entering District Waters. Meanwhile, Pepco undermined those efforts by continuing to routinely and illegally discharge these same pollutants to District Waters, contributing to the poor condition of these resources.

56. Pepco’s discharges of oil and PCBs have adversely affected District residents for decades. For example, in 1989, the District issued a public health fishing advisory, notifying residents not to eat fish found in the Anacostia River because PCB concentrations in fish tissue exceeded acceptable levels established by the federal Food and Drug Administration. The fishing advisory, which continues in effect to this day, has had a disparate impact on low-income and Black communities that depend on subsistence fishing in the Anacostia River.

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

#### **Violations of the Water Pollution Control Act**

57. The District realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if each allegation were separately restated here.

58. At all relevant times, Pepco has been and is a “person” within the meaning of the Water Pollution Control Act (“WPCA”).

59. The WPCA, effective March 16, 1985, prohibits the discharge of “pollutants” into the Waters of the District, except in accordance with a permit. D.C. Code §§ 8-103.02, 8-103.06.

60. “Pollutants” are broadly defined to include “any substance which may alter or interfere with the restoration or maintenance of the chemical, physical, radiological, and biological integrity of the waters of the District; . . . any dredged spoil, solid waste, . . ., chemicals, chemical wastes, hazardous wastes, biological materials, . . ., sand, cellar dirt, oil, gasoline and related petroleum products, and industrial, municipal, and agricultural wastes.” D.C. Code § 8-103.01(19).

61. District Waters are also broadly defined to include “flowing and still bodies of water, whether artificial or natural, whether underground or on land, so long as in the District of Columbia . . . .” D.C. Code § 8-103.01(26).

62. Since the effective date of the WPCA to at least April 2013, Pepco, without a permit and at least twice per month, willfully and intentionally discharged a pollutant or pollutants from the ORPs at the Buzzard Point Facility into District Waters through the District's MS4. Upon information and belief, the District estimates Pepco committed at least 500 discharge violations from the Buzzard Point Facility's ORPs.

63. Since the effective date of the WPCA to at least December 2007, Pepco, without a permit and at least daily, willfully and intentionally discharged a pollutant or pollutants from its Vault System into District Waters through the District's MS4. On information and belief, the District estimates Pepco committed at least 6,200 discharge violations from the Vault System.

64. On at least two other occasions, Pepco, without a permit, willfully and intentionally discharged a pollutant or pollutants from its Vault System into District Waters through the District's MS4: on June 16, 2015, from a vault located near 1944 Bladensburg Road NE; and on March 28, 2018, from a vault located near 402 Tingley Street SE.

65. Since the effective date of the WPCA to the present, Pepco, without a permit, discharged and continues to discharge pollutants from the Buzzard Point Facility to groundwater or District Waters beneath the Facility.

66. As detailed herein, Pepco discharged and continues to discharge pollutant or pollutants into District Waters, in violation of the Water Pollution Control Act, D.C. Code §§ 8-103.01 *et seq.*

## **COUNT TWO**

### **VIOLATIONS OF THE HAZARDOUS WASTE MANAGEMENT ACT**

67. The District realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if each allegation were separately restated here.



68. The Hazardous Waste Management Act (“HWMA”), effective March 16, 1978, prohibits the operation of any hazardous waste storage or disposal facility and prohibits the storage and disposal of any hazardous waste, except in accordance with a permit. D.C. Code § 8-1303(a).

69. Since the effective date of the HWMA to at least April 2013, Pepco, without a permit and at least several times per month, disposed of hazardous wastes, including but not limited to PCBs, from the Buzzard Point facility’s ORPs into District waters. Upon information and belief, Pepco committed at least 630 disposal violations from the Buzzard Point Facility’s ORPs.

70. Since the effective date of the HWMA, Pepco has operated and continues to operate a disposal facility without a permit at its Buzzard Point facility by discarding or abandoning hazardous waste, including but not limited to PCBs and chlorinated solvents, at its Buzzard Point facility and allowing such hazardous waste to enter the environment, including soil and groundwater.

71. From the effective date of the HWMA to at least December 2007, Pepco, without a permit and at least daily, disposed of hazardous wastes, including but not limited to PCBs, from its Vault System into District waters. Upon information and belief, Pepco committed at least 8,000 disposal violations from the Vault System.

72. As detailed herein, Pepco disposed and continues to dispose of hazardous wastes into the environment and District Waters, in violation of the Hazardous Waste Management Act, D.C. Code §§ 8-1301.01 *et seq.*

### **COUNT THREE**

#### **Violations of the Brownfield Revitalization Act**

73. The District realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if each allegation were separately restated here.

74. The Brownfield Revitalization Act (“BRA”) establishes a comprehensive program for the cleanup of contaminated property in the District.

75. The BRA prohibits the release of hazardous substances in the District, unless the release is in permitted quantities.

76. At all relevant times, Pepco has been and is a “person” within the meaning of the BRA.

77. Under the BRA, a “responsible” person is a person who, with regard to a property from which there is an unpermitted release or threatened release of a hazardous substance, causes or contributes to the incurrence of a response cost and is the current owner or operator of the property or at the time of contamination was the owner or operator at the property.

78. As detailed herein, Pepco is and was at all relevant times a responsible person that caused or contributed to the release of hazardous substances in the District, in violation of the Brownfield Revitalization Act, D.C. Code §§ 8-631.01 *et seq.*

79. Pepco is a responsible person under the BRA because it owned or operated the Buzzard Point Facility and released hazardous substances, including PCBs and chlorinated solvents, without a permit at the Facility.

80. Pepco is a responsible person under the BRA because it owned or operated its Vault System and released hazardous substances, including PCBs, without a permit from the vaults.

81. As a responsible person under the BRA, Pepco is strictly liable, jointly and severally, for abatement costs, response costs (which include costs of cleanup and investigation), and costs for health or other risk assessments that have been and are necessitated by its violations of the BRA.

82. As a responsible person under the BRA, Pepco is strictly liable, jointly and severally, for the substantial response costs the District has incurred, and will continue to incur, to clean up or otherwise investigate, prevent, minimize, or mitigate damage to the public health or welfare or to the environment from the unpermitted release or threatened release of hazardous substances from the Buzzard Point Facility and Vault System.

**PRAYER FOR RELIEF**

The District prays for judgment in its favor and against Pepco and seeks relief as follows:

1. Statutory civil penalties against Pepco as authorized by the WPCA, D.C. Code § 8-103.18(b)(2)(A), (B) and (C), the exact amount to be proven at trial;
2. Statutory civil penalties against Pepco as authorized by the HWMA, D.C. Code § 8-1311(b)(1), the exact amount to be proven at trial;
3. Pursuant to the BRA, D.C. Code § 8-634.07(2), an award of the District's past response costs to investigate, assess, analyze, monitor, and remediate the hazardous substances that Pepco released on or about land and to groundwater from its Buzzard Point Facility and its Vault System and that remained on these properties;
4. Pursuant to the BRA, D.C. Code § 8-634.07(3), a declaration that Pepco is liable for future response costs of investigation and potential remediation of the hazardous substances that Pepco released on or about lands and to groundwater from its Buzzard Point Facility and Vault System and that has remained on these properties;
5. Pursuant to the HWMA and the WPCA, D.C. Code § 8-1310, § 8-103.18(a), injunctive relief requiring Pepco to investigate and potentially remediate hazardous waste that Pepco released on or about lands and to groundwater from its Buzzard Point Facility and Vault System and that has remained on these properties;

6. Litigation costs, expert fees and attorneys' fees as permitted by law;
7. Pre-judgment and post-judgment interest on all monies awarded, as permitted by law; and
8. Such other relief as the Court deems just and proper.

**JURY DEMAND**

The District demands a trial by jury on all issues triable of right by a jury in this matter.

Dated: October 3, 2023

Respectfully submitted,

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Attorney General for the District of Columbia

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