

Newtown Creek Community Advisory Group Meeting
Thursday, October 20, 2016
6:30 p.m. – 8:30 p.m.
McCarren Park Community Center

Meeting Attendees: 66 people (see attendee list in Appendix)

Agenda

1. CAG Business
2. Remarks – EPA Regional Administrator Judith Enck
3. EPA Presentation
4. Q&A (related to EPA presentation)
5. Open Forum with Judith Enck, Walter Mugdan and the EPA Site Team

1. CAG Business

CAG co-chair Willis Elkins welcomed attendees, reviewed the agenda and mentioned the Technical Committee. Anyone interested in helping the Steering Committee review technical documents – a commitment of several hours a month – should contact Kryisia Solheim (kasolheim@gmail.com).

Media representatives, elected officials and potentially responsible parties (PRPs) in attendance:

- Phelps Dodge
- NYC Department of Environmental Protection (NYC DEP)
- Louis Berger Group
- Newtown Creek Group (NCG)
- Congresswoman Maloney's Office
- Anchor, QEA

2. Remarks – EPA Regional Administrator Judith Enck

- Judith Enck is the Environmental Protection Agency (EPA) Region Two Regional Administrator. Region Two covers New York, New Jersey, Puerto Rico and the U.S. Virgin Islands. Judith introduced herself and then gave an overview of EPA, its work cleaning up urban water bodies, and why urban water bodies are important. She discussed some of the differences between Newtown Creek and the Gowanus Canal and how lessons can be learned from both projects.
- She discussed how important it is to EPA to hear from Newtown Creek community members and for EPA to share information about past work and future plans for the creek. EPA will be releasing the site's remedial investigation (RI) study in November. Sampling for the site's feasibility study will start in the spring and summer of 2017 and finish by 2019. EPA will share the draft proposed plan for the site's cleanup in late 2019. EPA is expecting a lot of input on the proposal and wants to be very transparent about the process. The site's final cleanup plan will be released in 2020.
- Newtown Creek is a complicated site. Design, engineering, and sampling work needs to be done effectively to inform the cleanup decision. Judith acknowledged that the Superfund process may move slowly at times from the community's perspective. The

more cooperation EPA receives from the site's PRPs, the faster the process will be. EPA is reviewing all of the PRPs' work at the site.

- For EPA, cleaning up the toxic legacy of Newtown Creek is paramount. Addressing combined sewer overflow (CSO) pollution is also a priority.
- Another important issue is incoming plastic pollution in Newtown Creek. EPA is working hard on trash-free waters. About 80 percent of debris in oceans comes from inland sources, not from ship dumping. Unless the situation changes significantly, EPA expects that within the next decade, there will be one pound of plastic for every three pounds of fish in the ocean. EPA wants to engage with communities to work on plastic waste and sewage issues as well as sustainability initiatives in general. If you are interested in plastics and the ocean, please contact Josh Kogan at EPA.

3. EPA Presentation

To view the presentation, click on the presentation title above. Presentations are also available on the Resources page of the CAG website. The notes below do not repeat the content of the presentation slides.

- EPA's Walter Mugdan covered the Superfund process and the status of the Newtown Creek site.
- New York has some of the largest and most complicated Superfund sites in the country. Many of these sites are urban waterways with 200 years of industrial pollution in their sediments. New York is at the forefront of dealing with contaminated urban waterways. EPA's water program has done a good job of preventing ongoing discharges from pollution, but legacy pollution remains. The Superfund program deals with legacy pollution. Many parts of the country have background levels of pollution – Superfund does not clean up beyond background levels of pollution.
- The Newtown Creek CAG provides a helpful way for EPA to interact with the community. The EPA site team recently met with the Steering Committee to improve communications.
- The site's risk assessment reports (human and ecological) are an iterative process. They are written by site PRPs. EPA reviews the reports and then provides extensive comments.
- At the Gowanus Canal, EPA was able to evaluate the waterway quickly because a lot of baseline data was already available by the time the canal became a Superfund site. The Gowanus Canal is simpler in some ways. For example, Newtown Creek is longer and also has tributaries, which complicate the process. EPA also elected to do a remedial investigation and feasibility study (RI/FS) for the Gowanus Canal in house because it had the information and the funds to do it. EPA did not need to work with PRPs and their different perspectives. EPA also did not create a model for the Gowanus Canal, which takes a long time. Models are related to the complexity of the waterway and the interests of PRPs because they help determine responsibility for investigations and cleanup.

4. Q&A (related to EPA presentation)

Walter responded to several questions from CAG members.

Q: Is mercury a non-aqueous phase liquid (NAPL)?

A: That is not how mercury is found in sediment. NAPLs are oily – in Newtown Creek, they come mostly from old petroleum facilities and oil spills.

Q: Can you explain the ranking of different criteria in the FS?

A: There are nine criteria, which are set by law. The top two are threshold criteria. The alternative must satisfy both criteria to be selected. Then there are five balancing criteria, which help guide selection among the different alternatives that satisfy the top two threshold criteria. The five balancing criteria each have equal weight. Cost is one of those criteria. If there are two similar alternatives, cost may be a determining factor. However, cost is not a dominant factor; EPA does not simply select the cheapest alternative. Once an alternative is identified as effective, then EPA looks at the cost. The last two criteria are modifying criteria. If two alternatives remain, for example, EPA may prefer one option for technical reasons but it may not be what the community wants. That is why it is important to hear from the public, so that EPA can address community concerns. All nine criteria are important, but they are sequenced in different ways.

Q: What agencies are part of the “state acceptance” process?

A: The New York State Department of Environmental Conservation (NYS DEC) is the main agency. Other agencies may provide input through NYS DEC.

Q: What kind of measures are available to EPA to ensure that site PRPs are doing what they should be doing?

A: EPA has very detailed information (methods, procedures) on what PRPs will be doing and has the legal obligation to oversee PRPs work. While some things go wrong occasionally, EPA generally has enough checks and balances to keep PRPs in line. PRPs also keep each other in line because they often have different perspectives.

Q: When will EPA talk to property owners located on Newtown Creek?

A: After the Record of Decision (ROD), EPA will know what needs to be done. If EPA concludes that something needs to be done on private property, EPA will approach each property owner and discuss their potential responsibilities. For the Newtown Creek site, this would not happen until 2020.

Q: Superfund is addressing sediments in the creek. If ongoing pollution is coming into the creek, program authorities could be extended onto the land. Have you found other sites that are still polluting the creek?

A: There is still incoming pollution that needs to be considered, in addition to movement of pollution, such as the migration of coal tar and CSOs. The RI will address that. With any cleanup of sediment, EPA must be reasonably assured that the sediment will not be immediately recontaminated by ongoing pollution. EPA is working closely with the State to find smaller discharge sources, such as the continued release of legacy pollution through groundwater and the

sewage system. Ideally, by the time the remedy is complete, ongoing pollution will be brought under control. Sometimes, there is a lag of several years.

To stop ongoing pollution, it is necessary to figure out the pollution source, dig it out, and then stabilize it or solidify it. Coal tar, for example, never hardens or goes away. It can either be dug out or solidified in place. In the Gowanus Canal, EPA mixed tar with a concrete-like material to stabilize it.

Q: Can you discuss the latest in terms of the risk assessment time schedule, and EPA's thinking in terms of the 3Ps (personal care products, pharmaceuticals, pathogens) and if they will be considered in the risk assessment report? Draft reports from PRP consultants suggest that the 3Ps pose ecological risk but are not being considered in the Superfund process. Why is EPA not addressing them in Newtown Creek?

A: EPA will release the human health risk assessment in upcoming weeks. The document will not address the 3Ps because EPA has no Superfund guidance for 3Ps. This is where there may be disagreement with community. EPA's obligation is to collect data that will help inform a remedy decision. EPA can only make a decision if it has baseline data on 3Ps. Since it does not, if EPA collected the data, it would not be able to assess the data.

EPA will identify what is not evaluated in the report and discuss how, as a result, the results may be underestimate risk. Some potentially hazardous substances, such as 3Ps, are co-located with other substances that EPA does have baseline data on. Those co-located substances may therefore be addressed with others, such as CSOs.

Q: To what extent can residential property owners be PRPs?

A: If an owner's property is discharging a hazardous substance that is contributing to the overall problem that Superfund is trying to address, then it is possible that the property owner could be a PRP. The owner could be a small PRP, or be exempt from liability, depending on when they acquired the property. EPA does not generally pursue owners of residential properties, though owners may need to cooperate with EPA. It is not a priority for EPA to go after them because they do not usually contribute significantly to Superfund-related problems.

5. Open Forum with Judith Enck, Walter Mugdan and the EPA Site Team

Q: Can you talk about how CSOs played out in the Gowanus Canal, and whether there is a difference between Gowanus Canal and Newtown Creek?

A: We are not at a remedy selection phase for Newtown Creek. We cannot say what we will or will not do. Having recently seen data on contaminants in CSOs in Newtown Creek, there is a difference between these contaminants and contaminants in the Gowanus Canal. The dominant legacy contaminant in the Gowanus Canal is coal tar-related, from a family of chemicals called polycyclic aromatic hydrocarbons, or PAHs. Some PAHs come into the Gowanus Canal through CSOs, storm sewers and runoff. EPA is concerned with low levels of PAH contamination continuously seeping into the canal after the cleanup.

The long-term control plan (LTCP), which proposes how to deal with pollution, came two years after the ROD for the Gowanus Canal. The process will be different for Newtown Creek. By early next year, Newtown Creek should have a draft LTCP, long before the ROD is finalized. At Newtown Creek, the Superfund remedy can be informed by the LTCP, which will likely address CSOs. This is a big difference between the two sites.

Q: How could the aeration project impact sediments? Is the aeration stirring up sediment and affecting the distribution of contaminants?

A: Aerators do not appear to be disturbing the creek bottom. They are set above the bottom; they do not sit on it. There have been some concerns regarding bubbles coming to surface and causing air pollution, but that is not a Superfund issue because it is not part of the contaminated sediment at the bottom. It is important for the City and State to look into it, but it will not happen through Superfund.

Q: Can EPA works with the City and State on a community air monitoring study under the Clean Air Act or another authority? People fish and recreate on the creek. What are they being exposed to?

A: There are grants that may be available for community consultants or community monitoring. Aeration is mandated by NYS DEC. NYC DEP is complying. During ebullition sampling, the aerators had to be turned back on because samplers noticed distressed species when it was off. Aerators are good for the ecosystem. There will be extensive air monitoring during cleanup work, which will necessitate a baseline air monitoring study and may address air pollution concerns.

Q: This is a community concern. Barges go through and kick up sediment, making the aerators a potential mechanism of contamination transport.

A: The design remedy will take commercial navigation into account. If sediment is capped, the cap needs to be deep and strong enough so that it will not be affected by navigation. The remedy will make sure contaminated sediments are not being resuspended into the water column, which should deal with the concerns about aerators and contamination. EPA will reach out to NYC DEP and NYS DEC to discuss the question separate from Superfund. The aerators may be a competing interest between ecological health mandated by the State and community concerns.

Q: Certain species in the intertidal communities such as mussels and oysters have not been acknowledged in creek surveys. If there is interest in seeding more of them in the future, they should be acknowledged.

A: For a Superfund RI, EPA does not typically look at all important biota. EPA looks at indicator species that are representative of larger communities. Species may not be captured in surveys for two reasons. First, the wildlife survey focuses on larger birds and animals at the top of the food chain. Second, when collecting sediments from the creek, some animals do not live in that area;

they live in intertidal zones. EPA has identified this fact and has asked that other animals be surveyed. However, due to costs, EPA cannot do a complete population survey.

EPA needs to demonstrate that there is enough risk to require a remedy. EPA's job is to deal with risks to human and environmental health and clean up sites to reduce those risks to an acceptable level. There have historically been many damages to natural resources. Even once sites are cleaned up, there may still be some residual contamination. It is the Natural Resource Trustees' (National Oceanic and Atmospheric Association, Federal Fish and Wildlife Services, NYS DEC) jurisdiction, through natural resources damages claims, to address the historical burden of natural resource damages and the potential cleanup of remaining contamination at sites.

Bivalves are important. Mussels survive better in contaminated water while oysters are pickier. EPA wanted to use indicator species that would survive so that EPA can actually monitor them and harvest their tissue. Oyster populations may increase in the future, as the creek becomes cleaner. As EPA looks at the levels that sediments need to be cleaned up to, EPA will plan for future species composition and choose a remedy that would enable those species to thrive in the future.

APPENDIX A

List of Meeting Attendees

Adrienne Downey, Pratt Student
Andrew Lascar, NBBC
Alison Dell, Resident
Anthony Aryanto, Broadway Stages
Caroline Kwan, EPA Remedial Project Manager
Charles Yu, LIC Partnership
Charlotte Binns, Go Green Brooklyn
Chester Dols
Chris Lenard, Brooklyn Chamber
Chuck Nace, EPA Eco Risk Assessor
Damion Lawyer, NCA
Dawn Heffride, NYS DOH
Dewey Thompson, North Brooklyn Boat Club
Dorothy Morehead, CB2 Queens
Ed Babor, Office of Congresswoman Carolyn Maloney
Ed Garvey, Louis Berger
Eileen Mahoney, NYC DEP
G Hugen, DNA Info
Greg Lindquiso
Jan Mun, NCA
Jeremy Cherson, Riverkeeper
Johanna Boman, LFS
Johanna Phelps
John Mauer, CBS

Newtown Creek Superfund Community Advisory Group (CAG)

www.newtowncreekcag.wordpress.com

Judith Enck, EPA Regional Administrator
Krycia Solheim, Skeo Solutions
LaShaun Lesley, PDRC
Laura Senkeviteh, Fortune Society
Leah Archibald, Evergreen
Lisa Bloodgood, CM Levin
Maggie Macdonald, CAG
Maralla Ecels, NYC DEP
Mark Schmidt, EPA Co-Remedial Project Manager
Marina Zurkuw, FSDE
Marilyn Jerome, EPA Intern
Michael Haskell, NBCC
Michael Mintzer, EPA Site Attorney
Mike Colin
Mikelle Adgato, NYC DEP
Nermin Kijosi, Community Member
Nikki Adame-Winningham, Lowenstein Sandler
P Fend, Ocean Earth
Patricia Dobosz, Outrage
Patterson Beckwith, CAG Member
Paul Pullo, NCMC
Randy Austin, NYS DEC
Rebecca Lieberman, FSDE
Rita Pasarel, Neighbors Allied for Good Growth
Rameera Robbala, NCG
Robert Niespor, LaGuardia Community College
Ryan Kuonen, CAG/CB #1 Brooklyn, CAG co-chair
Sam Newbold, NBCC
Sarah Durand, LaGuardia Community College
Sarah Womer, Riverkeeper
Scott Enman, BK Eagle
Stephanie Vaughn, EPA Acting Section Chief for Mega Projects
Stephanie Ververs, Greenpoint Resident
Steve Lang, NCA
Susan Boehme, PDRC
Supinderjit Kaur, EPA Remedial Project Manager
Tanya Bley, NBCP
Tyquana Parsons, Newtown Creek Group
Vincent Bonami, NBCC
Walter Mugdan, EPA Director of the Emergency and Remedial Response Division
(Superfund)
Wanda Ayala, EPA
Willis Elkins, North Brooklyn Boat Club, Newtown Creek Alliance, CAG co-chair