

# Newtown Creek Community Advisory Group (CAG)

## TECHNICAL MEETING SUMMARY

February 19, 2020  
Sunnyside, NY

### Summary of Presentations and Discussion<sup>1</sup>

Questions and discussion regarding the material presented are included in bullets in the sections below.

- *Direct responses from EPA are in italics.*

### Brief Site Updates

Per CAG request, Stephanie Vaughn, EPA Region 2 shared updates and activity on the site since November 2019. She provided general background noting it became a superfund site in 2010, and until 2018 was being addressed as one home site. In 2018, the site was broken into 2 operable units (OUs). In late 2018, OU 2 was started in order to examine combined sewer outflow, which is currently in the midst of a comment period. In late 2019, a third operable unit – OU 3 – was created via an order with the potentially responsible parties (PRPs) to evaluate early action for the lower two miles of the creek. PRPs proposed that they have enough information to make an interim decision on this portion of the creek. This would ultimately need to be reviewed with confirmation that it is consistent with the entire creek clean up, would not delay work on the overall RI/FS, and can be technically justified.

To view EPA's presentations with detailed status updates on OUs 1, 2, and 3 please [click here](#), or visit the [Newtown Creek CAG website](#). The questions asked by CAG members after each OU update follow below in **bolded text**.

#### OU 1 Q&A

**When do you expect NCG will do their experiment in the East Branch?**

- *Over the summer we will be in work-planning mode.*

**Regarding the 6 experts who reviewed the model, what sources of contamination does the model allow to be considered?**

- *These sections of the model do not look at contaminations; it is hydrodynamic and looks at surface water. There is a point-source component of the model that is not focused on contamination, but water movement. The next component involves taking the hydrodynamic results and looking at how the sediment will move based on these water dynamics. Once you have this, then it feeds into the next component of the modeling, which*

<sup>1</sup>For additional detail of the presentations, refer to the slides found at <https://newtowncreekcag.wordpress.com/presentation-slides/>

*examines contaminants. Contamination binds with sediment and so once we know this, it is easier to know how the contamination will move. With the first two components it is a bio-accumulation model, which is when we know how it moves with sediment and then we look at biota that are feeding in the sediment. Through this we can then determine how much contamination biota are intaking and accumulating in their systems and which helps us determine risks over time to both human health and ecological health.*

#### OU 2 and 3 Q&A:

##### **What is the benefit of early action?**

- *Three reasons: 1) We would be removing contamination from the creek and reducing risk sooner; 2) It would give us an opportunity to get in the creek sooner, learning about the logistics of practical operations in a slightly less difficult part of the creek to get started; 3) This requires that there is significant performance monitoring to show that early action is indeed doing what it is intended to do, which is a great benefit. Our assumptions and position going into this are based on the data: this cleanup portion would not be re-contaminated in any significant way, but when they go out and sample we can see if the creek is re-contaminating and not behaving as anticipated, and identify if any and which sources are leading to this?*

##### **If contamination is detected, then would additional remediation ensue?**

- *Yes, this would be considered an interim action, and would need to be consistent with the clean-up of the entire creek. If more action is needed, then more action is needed.*

##### **Will the CAG have an opportunity to weigh in on any remediation plan in this proposal?**

- *Yes.*

##### **What is the depth into the bed of the creek that was proposed, how deep into the sediments of the action be?**

- *This has not been decided yet.*

## **2020 CAG Work Planning**

To begin planning for 2020, EPA provided a Preview of the Work Ahead for the year ahead. This review included expected key technical activities, documents, milestones, and considerations for each OU in 2020. With this overview, the CAG would be able to plan their monthly meetings, topics, months off and schedule around other activities as needed. Participant questions following the Work Ahead preview for each OU can be found after the table.

	<b>Date</b>	<b>Item</b>	<b>Details</b>
OU1	<b>March 2020 (released)</b>	Modeling Peer Review Report	<ul style="list-style-type: none"> <li>• EPA will issue this report as written with a cover letter that has EPA's direction to PRPs on how they should address each item.</li> <li>• This item could be discussed at an April/May CAG meeting.</li> </ul>
	<b>Summer 2020</b>	Revised Remedial Investigation (RI) Report	<ul style="list-style-type: none"> <li>• RI Report will be in good enough shape for the CAG to review and provide comments.</li> <li>• EPA could do a walk-through of the sections, review conceptual site models, and could discuss on-going inputs to the system, background &amp; references, and difficult issues for the site.</li> </ul>
	<b>Design plans in Spring/Summer</b>	Treatability Study	<ul style="list-style-type: none"> <li>• EPA could present the Treatability Study to the CAG to help provide information for the feasibility study.</li> <li>• EPA could provide details regarding what responsible parties are trying to do and lay out time frames.</li> </ul>
	<b>End of the year</b>	Preliminary discussion of Cleanup Alternatives	<ul style="list-style-type: none"> <li>• This discussion would be used to review all options for the entire site. EPA will have gone through the initial options, understanding that it might not be a one-size-fits-all plan.</li> </ul>
OU2	<b>N/A</b>	N/A	<ul style="list-style-type: none"> <li>• EPA will keep updating the CAG on OU 2.</li> </ul>
OU3	<b>Spring 2020</b>	Early Action	<ul style="list-style-type: none"> <li>• There is a new process being developed for the CSTAG review, of which a piece has always been stakeholder input. EPA needs to confirm the details b/c this process is under review. OU1 is the priority of the CAG and EPA will not evaluate OU3 to the detriment of OU1.</li> <li>• The CAG would be asked to review the details of the Early Action and provide thoughts/comments, possibly with the opportunity to do this in person/in writing in front of the review board.</li> </ul>

## Discussion & Questions

### **Are we getting closer to a time when EPA would be offering de minimis settlements to residents?**

- *I'm not a lawyer, but that would likely be post record of decision (after signing for early action). The next step would be designing the action and conducting it and when we get to this point, that would be when settlements are discussed.*

### **Those settlements would only be for residents on that part of the creek?**

- *I don't know.*

### **Regarding the technical work then, who is responsible and who is paying, and are they synchronized?**

- *It does not matter who causes the contamination. EPA wants to know what needs to be done, and then once there is a decision on how the creek needs to be cleaned up, attorneys and PRPs will work towards figuring out who will pay for cleanup. We will have to develop for the remedial action itself a consent decree that goes through DOJ. The remedial design work may be done under consent decree or could be expedited under an Administrative Order of Conditions. All of this will happen after sign ROD. We also have recently named one more responsible party – **Irving Subway**.*

### **There will be two public hearings when the OU3 is released, correct?**

- *Yes, but prior to this there will be opportunity to go in front of the CSTAG review body.*

### **The CAG won't see the revised draft of the feasibility study before?**

- *No, EPA will write a condensed summary to give the CAG an idea of what it contains. This is not about withholding information, it is because the goal is to get to CSTAG before submitting comments so they and the CAG can give input into the process to be incorporated early on. Can the CAG Steering Committee chart out rough meeting schedule and then final dates?*

## **Presentation of Draft Community Information Slide Deck**

Elizabeth Cooper, CBI Facilitator, briefly reviewed the Community Information slide deck and provided an idea of what the presentation script might be were a community member were giving it. Following this presentation, participants provided comments, suggestions, and one question for the finalization of the presentation for distribution.

### **To Do for Finalization**

- Develop the presentation script (Willis, Mitch, and Sarah will review)
- Update the list of PRPs
- Adjust and zoom in on the map that so the different features are more visible and contrasting.
- Add one slide that could identify how the government might respond and what are the options: list what would be possible for cleanup, different methods like dredging,

eliminating influx of contamination, etc. (e.g. “For a typical sediment site these are the options...”).

- Strike laws about regulation and be more diplomatic presenting this.
- Provide a clearer explanation of the various legislations
- Include some remediation that would be a part of the billion-dollar storage tunnel plan

A member also asked:

- **How do you arrive at the figure regarding CSOs? Is the official number used for CSO discharge volume 1.2 billion? Is that the number that we are using? What is the hard number? Instead of saying 1.2 billion, is it possible to provide what the bacteria levels are and how that compares to federal safety to give people a sense of the severity/amount of contamination? Can you discuss the tunnel for storage?**

Following this presentation only CAG members, residents and elected official representatives were present.

## CAG Comments on Long-Term Control Plan for combined sewer overflows in the Creek

Willis Elkins, CAG Co-Chair, gave a presentation reviewing the final comments provided on the Long-Term Control Plan for combined sewer overflows in the creek. He noted that comments had been compiled into ten pages with nine main comments made. He reminded CAG members and the public that the comment period would end February 28, 2020. Guidance for how to submit their own comments, sign on, or echo others can be found on NCA’s website as well as on Riverkeeper’s website. CAG members said they were doing outreach to friends and neighbors up until the stated deadline. Mr. Elkins also highlighted, per the CAG technical advisor, that it would be important to get as many people as possible to submit their comments because this is the first formal decision on which the community has had the opportunity to provide input. He also expressed frustration with the overall process feeling rushed and not a part of the full remediation plan, which felt as if opportunities to evaluate in the context of full pollution sources were being eliminated.

The CAG offered the following comments and questions after the presentation:

### Gowanus & Superfund Designation:

- If the plan had been approved with past assumptions about precipitation, with the increasing rate of change with respect to the water volume the system must accommodate in storm events; we will have another or many Sandy’s. The archival data is not as useful as it was because of the amount of change over time due to climate change.
- I was impressed with the Gowanus work. If we have fixed tanks, it is hard to expand, but it is easier to expand a tunnel system. This is still a valuable component of the design that the creek has been afforded, yet we do not have a mechanism in place for the community to monitor. Could we have a well-monitored citizen science program and consistent meetings?

Everything was left too vague for approval and no capacity for the community to work with the city agency.

- In Gowanus, [their process] had the reverse order: first, the superfund did a full evaluation, examining which and how many chemicals. Then EPA came up with a target and the city had to capture a certain amount of CSO. Following this, EPA then utilized the Clean Water Act and determined if it was capturing enough. In Gowanus, they did a proper evaluation with superfund first.
- All pollution sources need to be addressed, including CSOs and pollution leading into them.
- Is what EPA is saying attempting to kick the can down the road via the Clean Water Act? New York State is not enforcing current Clean Water Act standards.
  - Mr. Elkins: It is not necessarily kicking the can, but there is an opportunity for the city to solidify that they do not need to do more [remediation] now, as opposed to waiting 2 years to get a full solution.
  - Pat Field, CBI: The general argument is that the differential in superfund contaminants versus CWA is so little that there is basically no difference in impact and thus on choices on what to do. Superfund is not a driver of the CSO remedy, according to the City's argument.
- Am I understanding that Superfund would allow for more, and Clean Water Act less? In terms of funding, the city would still have to apply for this as the responsible party for the sewer system, which is only with respect to specific chemicals. CERCLA focuses strictly on industrial contaminants and known carcinogens. The level of CERCLA has been deemed roughly comparable to what is coming in from the East River and would potentially be reduced with the proposed 61%. Therefore, the EPA is ready to sign off on what is being done under the Clean Water Act because it is sufficient for CERCLA.
- Regarding OU3, I have been particularly disturbed by the deposition of PCBs and PAHs; the biggest contributor to OU2 is the East River. There is less coming out of the Newtown Bulk heads, so should we talk to EPA about naming East River as Superfund? The whole early process is being politically driven.

#### EPA, DEP, and Paths Forward

- I was upset about the fact that EPA has reviewed the DEP approach and said it would meet standards. This does not bode well for a complete clean up.
- Is the end result that if the standards are not up to the EPA approval, then DEP has to go back to the drawing board?
  - Mr. Elkins: Right now DEP is moving forward with capturing 61%. If EPA were to say "81% capture is necessary", then DEP has to go back and do it. Another criticism of the plan is that they do not have any target guidelines. EPA has not said "this is an acceptable amount of PCBs in the creek," yet they have not set those for the creek so how can a pollution source be removed without a standard?

#### New business, future agenda items, meeting reflections

The CAG and members of the public made additional comments regarding Early Action FFS process being proposed by the Newtown Creek Group. In general, there was concern about the

scope, timing, and motivation behind this EA. In particular, frustration was expressed with the choice of site and potentially cleaning a piece of the creek that was the least polluted and using data that were gathered from that process to inform models that determined the cleanup of the most contaminated and upstream portions of the creek. Wouldn't it be better to do it the other way?

The group then agreed that once the abridged version of the EA FFS was sent for CAG review, that it would be important for both the CAG Steering Committee and Technical committee to review in concert to help design their presentation for the CSTAG in the end of April.

The discussion then turned to work planning for the year, CAG membership and other matters. The following action items were suggested, some for immediate action and others to be further considered for future agendas.

**For immediate action:**

- *EA FFS & CSTAG Presentation:*
  - CBI/CAG Co-Chair talk to EPA about clearer timeline on EA to facilitate inclusive decision-making on the part of the whole CAG, not just the Steering Committee
  
- Comments on Long-Term Control Plan for combined sewer overflows
  - **CAG Letter is posted as a PDF; people may and are encouraged to send their own individual letters.**

**For future discussion**

- **De Minimis Settlements:** What are the benefits of this proceeding and what are the risks? Some good things, and some dangerous things?

The meeting adjourned at 8:30 PM.