

Newtown Creek CAG Comments OU-3 FFS



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CAG Co-Chair
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Newtown Creek Community Advisory Group (CAG):

The CAG, formed in 2012, consists of:

- + Local residents
- + Local business owners
- + IBZ non-profits
- + Recreational waterway users
- + Commercial waterway users
- + Local educators
- + Community organizations
- + Regional environmental orgs



Vision Principles for Newtown Creek

Developed by Newtown Creek CAG (2016)

1. Remove all Contaminated Sediment
2. Address CSO and Stormwater Discharge
3. Make Safe for Fish Consumption
4. Improve Water Quality to Swimmable Levels
5. Protect and Promote Marine Ecosystems
6. Shoreline Restoration in Tributaries
7. Allow for Navigational Channels
8. Preserve Industrial Core
9. Continued Mixed Use of Waterway
10. Robust Community Participation
11. Increased Public Access for Education + Recreation
12. Plan for Climate Change

After review of the FFS, presentations by EPA and NCG and discussion with our technical advisor, **the CAG opposes the proposed Early Action Plan** for the following 13 reasons:

- + No Clear Benefit to the Community
- + Focused on the Cleanest Area of Newtown Creek
- + Fails to Address Areas with More Immediate Needs/Opportunity
- + A Diversion of Superfund Resources
- + Leaves Contamination in Subsurface Sediments
- + Uses Most Contaminated Waterways for Reference Areas
- + Potential for Recontamination
- + Unclear Plan for Long-term Navigability in Lower Two Miles
- + Concern for Community Impacts
- + Use of Incomplete and Unvalidated Models
- + Too Early to Determine Cleanup Goals
- + Issues with Cleanup Goals
- + Unreasonable Future Uses of the Creek

No Clear Benefit to the Community

The CAG is concerned that the proposed Early Action does not offer any clear tangible benefits to the ecology of the Creek, the communities surrounding it, or the overall Superfund process. An unsuccessful Early Action would pointlessly burden communities with noise, dust, destruction of benthic habitat and navigational restrictions, only to be redone later.

Furthermore, because this early action is being proposed by the responsible parties group we must question the motivations. From December 2019 CAG Meeting:

CAG: Why would the PRPs want to do this, given the risk of needing to go back?

Anchor QEA: Some companies live with Superfund sites that go on and on. If a significant portion can reasonably be removed, a benefit would be able to show people that they are trying to do something, get a little good will, and show progress internally to their own organizations.

Focussed on the Cleanest Area of Newtown Creek

Our understanding is that Superfund early actions are typically implemented to deal with areas that pose immediate/severe risk to ecological and human health. All data collected to date clearly establishes the lower 2 miles of Newtown Creek as containing the least contaminated sediments and posing the lowest health risks.

While this section may represent half the geographic scope of the site, we know the vast majority of contaminated sediments are in the upper reaches. The CAG does not understand why this area would be chosen for an early action, or why it is warranted.

Other Areas with More Immediate Needs/Opportunity

The CAG is interested in working with the EPA on projects that could bring quick benefit to areas of the Creek most in need. There are a few sections that could actually benefit from an Early Action:

Dutch Kills and Maspeth Creek are shallow water tributaries optimal for shoreline/salt marsh restoration, as well as the creation of public access. Both of these community priorities are jeopardized until existing sediment contamination is addressed.

The Turning Basin and lower section of English Kills contain the highest concentrations of COPCs and arguably pose the greatest human health and benthic habitat risks through migration of chemicals via ebullition and seepage.

A Diversion of Superfund Resources

The CAG believes that the EPA should focus all resources and time on completing the RI/FS and reaching a Record of Decision for the entire site. We have been told that OU-3 will not divert from the current efforts but given the amount of time the CAG alone has already spent on this, it seems unwise.

We believe EPA should arrive at a plan for OU-1 first and then use that to inform early and intermediate actions. This is how it has been done on many other complex sites and it provides the benefit of any early or initial action being done in the context of an agreed-upon and overarching framework for cleanup goals and methods.

Leaves Contamination in SubSurface Sediments

OU3 only proposes the removal of surface sediments. The CAG is deeply concerned about pursuing any plan that leaves contamination in the deeper sediments, particularly those of higher concentrations.

We worry that this path forward may:

- A) Be used by the PRP's as rationale for mere surface sediment removal throughout the entire site, and
- B) Render OU3 useless if EPA determines the need for deeper dredging as part of the OU1 ROD, leading to additional ecological and community impacts from dredging.

OU3 Uses Most Contaminated Waters for Reference Areas

In seeking to determine appropriate background levels that would inform remediation goals, the FFS references four other NYC waterways: Westchester Creek, Flushing Creek, Navy Yard and Steinway (Luyster) Creek. All four of these sites represent the worst conditions imaginable: a severe history of industrial contamination; limited exchange with the East River; massive CSO outfalls at the head; and an almost entire lack of public access and use.

Furthermore, we question these site selections given that the RI used a variety of non/industrial and non/CSO sites as reference areas. Additionally, the Gowanus Canal used upper New York Bay and Gowanus Bay as reference areas. If the lower 2 miles is mostly influenced by deposition from the East River, than why not use that as a reference?

Potential for Recontamination

The CAG remains concerned that downstream transport of COCs from the upper Creek could re-contaminate Creek miles 0-2 after an early action. On page 16, the draft OU3 FFS states that all potential external inputs will likely continue to contribute COCs to the study area and OU3 into the future to varying degrees. We believe these sources need to be fully addressed:

Dredging: The majority of ultimate dredging will occur in the upper areas that are adjacent to and only accessible via the lower 2 miles, it seems futile to clean this entry area first.

Seeps: To what degree will further seep investigation or monitoring be required in the final design data collection effort after the ROD is signed given that these could be sources of recontamination and all may not have been fully identified or characterized?

Ebullition: The CAG is not reassured that ebullition couldn't cause NAPL transport as the document suggests. The CAG believes the ebullition study cited has flaws and is not sufficient to conclude ebullition couldn't cause meaningful NAPL releases.

Unclear Plan for Long-term Navigability in Lower Two Miles

It appears that the dredging plan is only based upon chemical concentrations within the top 2 feet of miles 0-2. There is no accounting for the federally required navigation depths in this area and how dredging will impact navigability now and future dredging needs.

The CAG is deeply concerned that this plan will either:

- A) Require the same area to be dredged twice if OU1 takes into account navigational depths; or
- B) Prevent navigational dredging to occur in the future for fear of disturbing contaminated sediments below two feet.

Concern for Community Impacts

There is concern about how this proposed action will impact:

- A. Commercial navigation on Newtown Creek (especially since it is the most trafficked area of the Creek);
- B. Recreational uses of the Creek; and
- C. Local traffic through increased openings of local bridges.*

Given that this early action is a risk and the area may need to be re-dredged in accordance with the ROD, the community will suffer these impacts twice over.

*We highly recommend that this proposed plan and any future dredging of the Creek consider the use of tug boats with low enough air draft to fit underneath the Greenpoint Avenue and Pulaski Bridges and minimize impacts on car/truck/public bus/pedestrian/bicycle traffic in the local neighborhoods.

Use of Incomplete and Unvalidated Models

On page ES-4, the report states that a series of linked models (hydrodynamic, sediment transport, chemical fate and transport [CFT], and bioaccumulation), which will be used to predict long-term sediment COC concentrations, are not yet complete. Yet, current versions of the models were used to develop preliminary estimates of expected long-term equilibrium for OU3.

We believe the models should be completed and validated before being used to justify an early action.

Too Early to Determine Cleanup Goals

The CAG is concerned about implementing a cleanup of the Creek that does not use the official Preliminary Remediation Goals (PRGs), in determining which levels of contamination are acceptable. The PRGs which will only be determined as part of OU-1 which comes after this proposed early action.

Not only are these goals not yet established, there has been no substantial conversation with the community on what these goals might be, the rationale for their selection and how they would protect community health.

Issues with Cleanup Goals

- + What are the anticipated study area-wide RAOs? The CAG would like EPA to share the study area-wide RAOs and confirm that the OU3 RAO helps achieve them.
- + Is the RAL developed for D/F based on sufficient data?
- + What level of risk and to whom remain at the proposed Risk Action Levels (RALs) for the four COCs? What is the risk difference and to whom/what between the high and low range for those four compounds?
- + What is the risk difference and to whom between Alt 3 and 4, especially for TPAHs?
- + Will EPA will provide an RAL for lead (Pb) for OU3?
- + How likely is it that these RALs will result in achievement of the projected preliminary estimated long-term sediment equilibrium concentrations shown in Table 7-1 of the document?
- + How likely is it that the remedy for OU1 will incorporate these long-term sediment equilibrium concentrations in the final remedy?
- + Why hasn't deeper dredging been evaluated as an alternative?

Unreasonable Future Uses of the Creek

Language in OU3, including much of the rationale for a limited cleanup, presumes that the Creek is and will forever be strictly for industrial uses. While the CAG is interested in maintaining Industrial use on and around the Creek, that is part of a larger shared-use approach where recreation and restoration accompany industrial operations. This concept is not just an idea, but currently exists today and will only increase with a proper cleanup. In the past 12 years the Creek has seen:

- + Completion of official access points: The Newtown Creek Nature Walk (2007), Manhattan Avenue Street End Park (2009), Hunters Point Park (2018)
- + Rapid growth of recreational boating with thousands of people paddling on the waterway each year and two planned boathouses underway
- + Numerous street-end cleanup and public space projects in the works, including the Under the K Park (2020)
- + [The Newtown Creek Vision Plan](#) authored by Riverkeeper and Newtown Creek Alliance (2018)

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***Red font indicates principles that OU3 Early Action Fails to Adequately Address**



Thank You