

TECHNICAL MEETING SUMMARY

October 10, 2021 | Virtual Meeting No. 15

Summary of Presentations and Discussion¹

A full recording of the meeting is available here: <https://youtu.be/B37xYJH6K2I>

Questions and discussion regarding the material presented are included in bullets in the sections below. *Direct responses are in italics.*

UPDATE FROM THE TRUSTEES

Representatives from the Trustees gave a brief overview of the Trustees' role on the site and the Natural Resource Damage Assessment (NRDA) program. The representatives present were:

- Kate Barfield, National Oceanic and Atmospheric Administration (NOAA) General Attorney,
- Dan Gefell, US Fish and Wildlife Service (US FWS) on behalf of the Department of the Interior (DOI),
- Simeon Hahn, NOAA Environmental Scientist,
- Carl Alderson, NOAA Restoration Ecologist, and
- Patrick Foster, New York State Department of Environmental Conservation (NYS DEC) Regional Director

The Trustees have statutory authority to manage and restore several natural resources related to the site, with DOI being the lead trustee. The Trustees work closely with EPA to track and review the data from the remedial investigation (RI) and feasibility study (FS). They are also hoping to engage with the public on restoration components related to the remedial work. They are early in that process but still invited the CAG to share future ideas. They are also keen to learn about what kinds of issues the CAG would like them to present on, including a potential 'NRDA 101' presentation. They also highlighted that they have been in conversations with Newtown Creek Alliance (NCA) around the 2018 Vision Plan and enjoyed the level of passion demonstrated by members of the CAG. They encouraged members of the CAG to continue to work closely with the Trustees.

The questions asked by CAG members follow **bolded** with presenter answers in *italics* and additional CAG commentary on that question in regular text.

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

- **Is the Trustees' role only advisory?**
 - *Trustees:* No, we have separate authority from EPA. Each agency represented has specific authority to deal with particular trust resources, and we come together to make decisions to best serve those trust resources. We deal with questions related to damages and injuries from releases and the kinds of restoration that could address these injuries. We assist EPA with their decisions, and EPA can assist us as well. There are also practical considerations, e.g., availability of EPA equipment on-site.
- **What happens if there is a conflict of opinion?**
 - *Trustees:* We will get into this more in our NRDA 101, but each agency has a particular authority, e.g., NOAA looks more at marine and coastal species and habitats, while DOI looks at inland resources, and the state looks at groundwater. There are not clear lines between these roles, but on cleanup matters, EPA gets priority. There are not many instances when EPA has objected to Trustee opinions.
- **Where in the process are we? When do we begin to look at specific projects? When can we provide input on projects?**
 - *Trustees:* There are legal restrictions on formal public comment, but we usually welcome public involvement. We have spent a lot of time looking at CERCLA data and the Vision Plan for the site. If there are projects not included in the Vision Plan that you would like us to consider, please let us know.
 - *CBI:* Can the NRDA process take place alongside remedial work, or must it wait until the end?
 - *Trustees:* This would be a topic for the NRDA 101, but it is possible for restoration to take place simultaneously with the remedy. However, that would have to satisfy a range of technical and legal requirements – a lot of things would have to go hand in hand.
- **Is the Army Corps of Engineers a trustee? Do trustees have to be specifically invited or is it an automatic process?**
 - *Trustees:* No, the Army Corps of Engineers is not a trustee. They tend to come into play when there is a technical matter within their expertise, e.g., wetlands, dredging, etc.

UPDATE FROM NYS DEC

Michael Haggerty, NYS DEC Project Manager, shared an update on the completion of field work in the Creek. The field work is part of the larger uplands assessment to identify the sources of contamination in the Creek. The specific goal is to identify properties that need action, whether that be containment, investigation, remediation, or a reevaluation of the current remedy. That assessment is still ongoing. The fieldwork involved observations along the shoreline and the collection of groundwater samples and achieved its objectives which was collecting data of sound quality.

Several sites were identified for action. A bulkhead seep was identified at the Morgan Oil site (200 Morgan Avenue). NYS DEC engaged the property owner, who will be replacing the bulkhead. Hydraulic containment was put in place in the interim. A seep was also identified at

the Manhattan Poly Bag site. In this case, NYS DEC took over containment at the site and is investigating the property with a technical consultant. A new spill was identified in Turning Basin, across from Green Point Energy. (Mr. Haggerty later clarified that it is Spill No. 2105899 at 5808 48th Street, Flushing.) The spill was a petroleum discharge, and at low tide a groundwater seep could be seen generating a sheen on the surface of the Creek.

NYS DEC expects to have complete its report on the work in around 6 months.

The questions asked by CAG members follow **bolded** with presenter answers in *italics* and additional CAG commentary on that question in regular text.

- **200 Morgan has been a major issue for years. Are we relying on the property owner's good faith to correct the issue? Has DEC penalized them?**
 - *NYS DEC: I cannot get into a legal discussion, but we are negotiating with them. My job is to bring sites into compliance, and I can say that I have made progress in the 2 weeks that I have been managing the case. We do have a Consent Order which we intend to enforce.*
- **Is it not the case that any discharge into the Creek is considered to be illegal?**
 - *NYS DEC: I would say unlawful, but yes.*
 - **CBI:** Is it not the case that permits are granted for discharge into the river?
 - *NYS DEC: Yes, permits are granted for the discharge of treated substances*

UPDATE ON FEASIBILITY STUDY (FS) PROCESS AND OTHER ACTIVITIES

Mark Schmidt, EPA Region 2 Remedial Project Manager, provided an update on the timeline for the FS process and key components. These include completing the modeling framework, particularly the hydrodynamic and sediment transport and chemical fate and transport. The process also involves documenting and reporting data captured (NAPL data, ebullition data, and lateral groundwater study). This information will refine the Conceptual Site Model (CSM). EPA is also currently advancing the Treatability Study, for which a work plan was approved. Next steps will be developing background sediment concentrations, remedial action objectives (RAOs) and interim risk-based preliminary remediation goals (PRGs).

The questions asked by CAG members follow **bolded** with presenter answers in *italics* and additional CAG commentary on that question in regular text.

- **CBI:** The CAG would be interested in new data on NAPL and ebullition whenever ready.
 - *EPA: We would be happy to share those when ready.*
- **Is there a timeline for the treatability study?**
 - *EPA: Ideally, we get the design done this year, and develop a construction schedule into the spring and summer of next year. The work itself should only take a few months, but monitoring will take place over several years.*
- **Do you foresee any impediments to the process?**
 - *EPA: Hopefully we will not have to deal with the bridge. We will be doing water-based work, and do not anticipate any impediment to the Creek and recreational users.*
- **When is this work estimated to be finalized?**

- *EPA: Much will go through 2022 into 2023. The components are interrelated, so we will be moving through them over the next couple years. We have meetings scheduled with NCG and the city to work through the schedule and timeline for completing the FS process.*

FOLLOW-UP DISCUSSION ON NAPL FROM THE EPA RESPONSE TO CAG COMMENTS ON THE RI

CAG members engaged in a discussion on NAPL in the RI. The main concerns from the CAG's perspective were:

- The results of the City's (NYC DEP's) ebullition study were not made available for CAG evaluation
- As a result of EPA's process for including data in its reports, no ebullition study was approved that could determine NAPL or ebullition in the RI
- The City had concerns that the approved work plan was underestimating NAPL extent and, therefore, pursued its own investigation outside the work plan
- Anchor and NCG attempted to discredit the City's ebullition study, which led EPA to request Anchor/NCG to modify their report to include NAPL
- The City data is the only study containing the data which would legally require NAPL to be fully included in the CSM
- The City is uncomfortable with the second ebullition study pursued by Anchor-NCG because it is based on limited data, and will end up causing the FS to be rushed
- PCBs and PAHs are more soluble in NAPL than in water and the city study shows a much larger extent of NAPL contamination than the data in the RI
- City data should be available to every CAG member in the interest of democratic governance.

Stephanie Vaughn, EPA Region 2 Project Manager, expressed thanks for the comments. She replied that the NCG data collection effort was reviewed and approved by both EPA and NYS DEC. She agreed that the City data should be accessible to the community and encouraged CAG members to ask NYC DEP for their data. She also highlighted that while the data in the RI is used to select a remedy, once a remedy is selected then extensive investigation is done to inform that remedy. Data collection is by no means over.

Joseph Mayo, technical consultant to EPA for the Newtown Creek site, highlighted the draft RI report contains information for the volatile organic compounds (VOCs) studied, particularly benzene, toluene, ethylbenzene, and xylene (BTEX). Early findings suggested that there were not many VOC contaminants in sediments and surface water, which is plausible because these compounds are typically the first to chemically degrade, leaving heavier fractions behind. Table 2a of the RI lists the compounds sampled for. Evaluations are also a part of the NCG data.

He further highlighted that the ebullition data is the only data thus far that analyses NAPL as a separate phase. The study used strong solvents to extract all organic compounds from homogenized core samples. The VOCs were quantified, and it is clear that they are present. A visible study was carried out as well. He also clarified that samples were taken at times when

activity would be at its peak (in the summer) and focused on areas where NAPL had been previously identified. He also pointed out that NYC DEP had not done an ebullition study, but rather a survey.

Daby Marulanda, NYC DEP Project Manager, clarified that the City's report has not yet been released.

Stephanie Vaughn closed by clarifying that EPA takes a systematic approach to Superfund site investigations, starting with the first phase which grows into the next phase based on what is learnt, and so on. The questions and comments from by CAG members follow **bolded** with presenter answers in *italics* and additional CAG commentary on that question in regular text.

- **It would be helpful (for the sake of transparency and explanation to more community members) to clearly lay out the different studies, what they have looked at, what they have found, where they part of approved work plan, who conducted the study, etc.**

UPDATE ON GRAND STREET BRIDGE REPAIR PROJECT

Joannene Kidder, NYC Department of Transportation (NYC DOT) Executive Director of Community Affairs, gave a presentation on the Grand Street Bridge Repair Project. The bridge was designed for the traffic needs of its day and is no longer compatible with modern trucks, pedestrian and bicycle routes, and ADA requirements. There are also structural concerns with the bridge, which have led to several closures over the past couple years. Bridge navigation openings have resultantly decreased over the past couple years.

She highlighted that the Coast Guard determines whether it can be made a fixed bridge or if it must remain a moveable bridge. DOT is collecting data on topography and traffic flow and is looking at potential alternatives. They have not yet started the environmental assessment process. They are early in the stage, and the process has been delayed by the pandemic. The status of the City Environmental Quality Review (CEQR) process is still to be determined. She also highlighted that federal funding is expected for the project. She also shared that Stephanie Brooks will be managing outreach for the project and encouraged CAG members to contact thenewgrandstreetbridge@gmail.com to be added to the Listserv.

The questions and comments from by CAG members follow **bolded** with presenter answers in *italics* and additional CAG commentary on that question in regular text.

- **Is data available for which types of operators requested openings over the past few years?**
 - *NYC DOT: We can provide that information at a future CAG meeting.*
- **There has been a lot of conversation about the upper tributaries, sources of historic and ongoing pollution, and stagnant conditions in tributaries while the waterways are still designated as navigable. There are requirements to dredge to 18ft depth in these cases. If the CAG and the Coast Guard are considering removing navigable waterways, why is DOT proceeding as is?**

- *NYC DOT: We anticipate many permits (Coast Guard, NYC DOT, DEC, etc.) and the intent is to work in concert with the community. Should the opportunity arise for a fixed bridge, we would look favorably upon that, but it is not within our jurisdiction to decide. Abutters maintain Riparian rights, and therefore have different standing. While it appears that the preference is for a moveable bridge, we are in deep discussions with the Coast Guard on the matter. The navigation studies are ongoing, and we have made no decisions on design. However, it is clear that a fixed bridge would render a wider range of alternatives.*
- **Is NYC DOT considering temporary bridges, and how would these impact the Creek and traffic flow?**
 - *NYC DOT: We have a blank slate right now but that would be a very expensive and difficult option to select. Correspondence from Community Board 1 advocating against that option is public record.*
- **Which government agencies must approve the final design?**
 - *NYC DOT: Alternatives will have to be approved by a cohort of agencies.*
- **Does the Army Corps of Engineers have to have a position?**
 - *NYC DOT: Yes, and they will be very important for the conversation.*
- **Is it too early for the CAG to take a position on the fixed vs moveable question?**
 - *NYC DOT: I do not think you need to do that now. We will have a scoping meeting early next year, which will be an opportunity for the CAG to do that in a formal way.*

NEXT STEPS

Upcoming CAG Meeting Dates (proposed)	November 17, 2021
	December -- OFF
	January 19, 2022
	February 16, 2022
CAG Items to cover at future meetings	OU2 ROD (continued)
	Transitioning from RI to FS (continued)