

TECHNICAL MEETING SUMMARY

February 16, 2022 | Virtual Meeting No. 17

Summary of Presentations and Discussion¹

A full recording of the meeting is available here: <https://youtu.be/vKKVUFcn2uU>

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

CAG PROCESS AND REVIEW OF MEMBERSHIP

Pat Field, CBI Facilitator, welcomed CAG members and led a review of current membership. One member suggested reaching out to Brooklyn Chamber of Commerce to see if they would like a representative.

ISSUES RELATED TO 29TH STREET BULKHEAD

Willis Elkins, CAG Co-Chair, led a review of issues related to the bulkhead at 29th Street along the Dutch Kills tributary. 29th Street is the property of the Metropolitan Transportation Authority (MTA) and Long Island Railroad (LIRR). He shared that a major concern is the presence of sunken barges which were a blank spot during successive phases of sampling. There have also been instances of tires, sediment, and sections of the shoreline falling into the Creek.

He highlighted a letter signed by borough, city council, state, and federal elected representatives urging the relevant authorities to act. Mr. Elkins encouraged NYS DEC to force the arm of the authority to restore the shoreline and address the sunken barges. He also raised the immediate need of ensuring that no further struts of the bulkhead collapse into the Creek.

Other CAG members shared that the deterioration of the shoreline has increased and accelerated very recently. There is the short term need to prevent damage or harm to pedestrians and the long term need to control the shoreline.

Michael Haggerty, NYSDEC project manager, shared that NYSDEC relayed information received from the community to LIRR who conferment that they are the owner. He shared that they have committed to replacing the bulkhead. EPA, NYSDEC, LIRR, and NYCDOT met onsite to view the bulkhead, and there was alignment among parties. LIRR will have to secure funding through

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

their Capital Program. Mr. Haggerty also shared that LIRR and NYCDOT have been in conversation about preventing further deterioration of the bulkhead by limiting load on the bulkhead. Options would include eliminating parking on the Creek side of 29th Street and limiting overweight vehicular traffic on 29th Street in the vicinity of the bulkhead. These discussions are at a preliminary stage and the parties are also evaluating other action.

Caroline Kwan, EPA Region 2 remedial project manager, shared that EPA asked LIRR about their timeline for near-term measures and hopes that NYC DOT and LIRR will be forthcoming with their plans. EPA will expedite review on their end when that time comes. She also noted that Anchor QEA (technical consultant to Newtown Creek Group) took sediment samples around the barges, which did not display contamination above general levels in the Creek. These results are part of the remedial investigation (RI) report.

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

- **Are there any contaminants on the barges themselves?**
 - *EPA: We do not know, as we have not taken samples on the barges.*
- **What does LIRR mean by “replace the bulkhead”? Will they extend the existing bulkhead? Are there engineering requirements?**
 - *NYSDEC: The property owner will submit an application/workplan to NYSDEC and the Army Corps of Engineers for their review. In cases where the work involves taking land from underwater, the property owner would have to otherwise compensate for the loss of habitat. Ideally the replacement would be installed in the location of the current bulkhead. There are also materials requirements involving locations of native materials and hydraulic relief for steel bulkheads, which NYSDEC is currently looking into.*
- **Is there any sort of regulatory power that NYSDEC can leverage on the property owner to replace the bulkhead?**
 - *NYSDEC: I am not aware of any and would defer to someone else in my agency who specializes in permits.*
- **Regarding establishing habitat as compensation, NYC DEP established a salt marsh habitat in the terminal basin of Dutch Kills. If the barges could be removed, then that habitat could be extended.**
- **Future meetings with the relevant parties could be opportunities to bring in CAG representatives and representatives from community groups with boots on the ground. In the future, these conversations should not be limited to civil servants.**
 - *NYSDEC: There are several parties involved, but that may be possible.*
- **Where does responsibility lie for negligence for city or state-owned properties. We would expect EPA and NYSDEC to hold private parties’ feet to the fire and expect the same for property owned by public agencies. Nothing is done until the situation becomes a public health hazard, and the community ends up prevented from accessing the site.**

- **MTA's negligence is allowing uninspected property to endanger human life. Regulatory agencies should police this inaction just as they would for a moneyed potentially responsible party (PRP). We need a solution in the near term.**
- **What responsibility does EPA have when shoreline falls as sediment into the Creek?**
 - *EPA: The first step is to reach out to the relevant parties. We then go back to our management to see what further action we can take given that the site is a Superfund site.*
- **What levers does the state have to require action on a certain timeframe?**
 - *NYSDEC: Given that it is not exactly remediation, our options are limited. The system is set up such that the property owner is responsible for bulkheads. I would think that NYSDEC would have some powers to enforce bulkheads and I will follow up.*
 - **All we would need is a Consent Order with project milestones. The matter could also be subject to a citizens' suit.**
 - *NYSDEC: I can reach out to our enforcement division and get back to the group. Our goal is to have the bulkhead replaced.*
- **NYSDEC should look into the bulkhead replacement regulations and give us a briefing on what they say. A new bulkhead would likely be in front of the existing one, which would claim valuable water space. We also know that water-levels will rise because of climate change. Is there a possibility of requesting higher building requirements?**
 - *NYSDEC: The bulkhead would be designed to accommodate storm surge, and that is not something that is overlooked. Regarding regulations, several entities come into play, and we would have to discuss with EPA and ACE. We will go back and have someone answer these questions at either the next or the following CAG meeting.*

SITE UPDATE AND LIKELY FEASIBILITY STUDY ACTIVITIES IN 2022

Mark Schmidt, EPA Region 2 remedial project manager, provided an overview of upcoming FS-related activities for 2022, as follows:

- **Remedial Action Objectives (RAOs)** - provide a general description of what the remedial action intends to accomplish
- **Alternatives Memorandum** - develop remedial alternatives that will achieve the RAOs
- **Applicable or Relevant and Appropriate Requirements (ARARs)** – any alternative considered by EPA must comply with all federal and state environmental standards, requirements, criteria, or limitations, unless waived under certain specific conditions
- **NAPL White Paper** – this white paper will serve as a guide as to how non-aqueous phase liquids (NAPL) will be addressed on the road to cleanup at Newtown Creek
- **Background Development** – as part of its investigations and analyses of the Newtown Creek site, EPA needs to determine how background conditions that are relevant to the Creek may influence the remedial decision-making process for the site
- **Chemical Fate and Transport (CFT) Calibration Report** – a CFT model is being developed that will be used as one of several lines of evidence to inform site decision-making and assist in alternative evaluations
- **Lateral Groundwater Study** – As the OU1 RI/FS progressed and the understanding of the conceptual site model (CSM) improved, it was determined that there is a need for additional characterization of shallow lateral groundwater discharge to the Newtown Creek study area

EPA's contractor will be conducting sampling of groundwater monitoring wells, beginning in fall 2022.

Other on-going FS-related activities include –

- **OU2 monitoring** – EPA is working to develop an Administrative Order of Consent (AOC) with New York City to initiate monitoring of the combined sewerage overflows (CSOs) as described by the 2021 OU2 Record of Decision (ROD)
- **NYS DEC Uplands Evaluation**
- **Treatability Study in the East Branch**

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

- **How will the potentially responsible parties (PRPs) be involved?**
 - *EPA: EPA has an Administrative Settlement Agreement and Order on Consent with 6 PRPs (5 of which operate under the Newtown Creek Group). We and our partner agencies meet with the PRPs regularly to set forth these processes. For each item, once we agree on a process, NCG and its contractors develop work plans for those alternatives, which EPA and partner agencies review.*

- **Will EPA report to the CAG regularly on developments?**
 - *EPA: Yes, we will have a great deal to discuss this year. Several of these items could be standalone topics for upcoming CAG meetings.*
- **Are you considering sea-level rise in the lateral groundwater study?**
 - *EPA: The study is fairly short in terms of work expected to be done. We are considering tidal influences and how those could affect monitoring. The decisions will be made in the next couple of years. During the design of a remedy (once selected), anticipated sea-level rise and frequency of storm conditions would be incorporated as much as possible.*
- **Is the chemical data collected during the RI available in a database?**
 - *EPA: We provided the CAG with the RI report in pdf form which contains the relevant data. EPA has not yet published data from the FS investigations.*
- **Would an ultimate remedy be scalable to climate change impacts that we do not yet fully understand?**
 - *EPA: We would attempt to design a sufficiently robust remedy. Whatever remedy or combination thereof we select would involve operations and maintenance requirements in perpetuity. Though it is difficult to plan for hypotheticals, the decisions EPA makes are driven by the science (which is one reason why these processes take long).*
- **What does the Chemical Fate and Transport model entail?**
 - *EPA: In essence, we know that there are chemicals in the water, but we want to understand what the fate of those chemicals is, that is, do they remain in the Creek or move throughout the water column and how do they do so. The model will estimate those conditions and provide a line of evidence for future decisions. Newtown Creek is somewhat unique in that it is a dead-end system connected to an active East River. There are not many similar systems, which makes modelling important.*
- **The CAG has a legitimate interest in the petrochemical study done by the City. The whole CAG has a right to review that data. The CAG should hear EPA's comments on the City's study.**

Afterward, Stephanie Vaughan, EPA Region 2 Remedial Project Manager, announced that EPA is considering options for expediting work on certain portions of the Creek within the OU1 framework. EPA plans to share updates at the March CAG meeting.

OTHER CAG UPDATES

Louis Kleinman shared that the SWIM coalition will be hosting a [2-day symposium](#) this month.

NEXT STEPS

Upcoming CAG Meeting Dates (proposed)	March 16, 2022
	April 20, 2022
	May 18, 2022

	June 15, 2022
CAG Items to cover at future meetings	Updates on FS and expedited cleanup (continued)
	Updates on 29 th Street Bulkhead