

# TECHNICAL MEETING SUMMARY

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March 16, 2022 | Virtual Meeting No. 18

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

A full recording of the meeting is available here: <https://youtu.be/Oyl-nqSx-dk>

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

### WELCOME & REVIEW OF CAG PROCESS

Pat Field, CBI Facilitator, welcomed CAG members, led an overview of the agenda, and reviewed the Superfund process related to the site. Willis Elkins, CAG Co-Chair, also updated the CAG on a recent event hosted by Sen. Schumer's office highlighting increased federal funding for Superfund, along with issues related to Newtown Creek. Dan Wiley, district director for Rep. Velázquez' office, and Lincoln Restler, City Council member for the 33<sup>rd</sup> district, also shared that they attended the event and are hoping that federal infrastructure funding can expedite cleanup on the Creek and at other sites.

Mr. Elkins also shared that the steering committee is hoping to fill vacancies and appoint an additional co-chair. He encouraged interested CAG members to reach out.

Mr. Elkins also shared that the steering committee will be going through and cleaning up the current list of CAG members.

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

- **What is the relationship between Superfund and Brownfield?**
  - *EPA: There are properties adjacent to the site which are under the state's brownfield program, meaning that the state has jurisdiction for those properties. If there are any instances of state brownfield properties which impact the Superfund site, then we can work with the state to manage those issues. The Superfund site extends to wherever contamination has reached. At the Gowanus Superfund site, there is an upland site for which a remedy had already been addressed under brownfield. In that case, EPA sought to ensure that the remedy under the state program was supportive*

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

*of the remedy under Superfund. It is not yet clear whether similar instances would arise for Newtown Creek.*

## ISSUES RELATED TO 29<sup>TH</sup> STREET BULKHEAD

Udo Drescher, New York State Department of Environmental Conservation Associate Attorney, and Joanna Field, NYS DEC Marine Resources Supervisor, provided an overview of NYS DEC's role in the bulkhead collapse at 29<sup>th</sup> Street. Ms. Field shared that bulkhead failure is an issue across the state and outlined several examples from other sites.

The relevant statutes and regulations related to NYS DEC's regulatory authority are –

1. New York State Environmental Conservation Law (ECL) Article 15 Title 5 (Protection of Waters Act) and 6 NYCRR Part 608
2. ECL Art. 25 (Tidal Wetlands Act) and 6 NYCRR Part 661

Permits are generally required for “regulated activities”, though there may be exceptions. “Regulated activities” include:

1. Construction, reconstruction, and non-ordinary repair of shoreline stabilization structures
2. Placement of fill in, and excavation from, tidal wetlands and navigable waters of the state

Whereas NYS DEC has regulatory authority over instances of *commission* of regulated activities without a permit (which constitutes a violation), instances of *omission* (that is, passivity or neglect) are not explicitly regulated.

One potential inroad for NYS DEC to get involved at 29<sup>th</sup> Street concerns “indirect placement of fill” which is explicitly outlined in the regulations under the Tidal Wetlands Act.<sup>2</sup> However, the MTA as a state public corporation is not subject from NYS DEC's jurisdiction under the Protection of Waters Act. NYS DEC can also potentially file a nuisance claim in instances of serious potential impacts on health and safety of people using the roadway (which would be pursued through the Attorney General's Office in civil litigation).

The NYS DEC Division of Marine Resources' policy generally prefers living shorelines as an alternative to hard structures. In cases in which bulkheads are reconstructed, the policy provides for in-place or in-kind reconstruction that would be environmentally beneficial. Mitigation will likely be required for cases in which in-place reconstruction is not feasible and the structure is moved seaward. Contamination would also be a factor in the decision-making process around design and placement.

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<sup>2</sup> “*Indirect placement of fill* means positioning material landward and in close proximity to the mean high water elevation of a waterbody such that the material is introduced into the waterbody by natural erosive forces thereby creating a fill below the mean high water elevation.” (6 NYCRR 608.1(o))

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

- **How does NYS DEC define in-place/in-kind reconstruction given rising water levels?**
  - *NYS DEC: We keep sea-level rise in mind when assessing requests and expect that permit requests will consider all the relevant permitting requirements.*
- **The road is effectively being excavated at the moment. Has there been any discussion of NYC DOT going out and placing bollards to restrict parking? We need to pursue short-term solutions like these rapidly.**
  - *Kathleen Green (Long Island Railroad): We have reached out to NYC DOT and have procured jersey barriers to either restrict parking or shut down the road entirely. We will be scheduling a meeting with NYC DOT in short order. We would also need to notify the community, businesses, the fire department, and other interests.*
- **What other permits might be applicable for bulkhead replacements in navigable waters (US Army Corps of Engineers, US Coast Guard, or others)?**
  - *NYS DEC: There may be some jurisdiction at the federal level, but the project would be relatively small. If NYS DEC's efforts are not fruitful, then involving those entities may be an option, a nationwide permit is unlikely for such a small project.*
- **Does NYS DEC have authority to replace a bulkhead with an on-water access point?**
  - *NYS DEC: That can be entertained if an applicant proposes such a design. It would need to be generated from the applicant, though we like to entertain features that would be advantageous for the community.*
- **What responsibility does an easement holder (in this case NYC DOT) have in relation to a bulkhead collapse? Is NYS DEC aware of NYC DOT having an easement from MTA for use of this area?**
  - *NYS DEC: I have not seen such an easement and would be interested to see whether such an easement applies only to the roadway or to the bulkhead as well.*
- **Has the presence of the scuttled barges arisen in conversations? I assume they would interfere with construction work.**
  - *NYS DEC: They have not. Construction would likely be done via the roadway, though water access may be an option.*
- **After the immediate danger is addressed in terms of shoreline stability, what kind of jurisdictional steps could lead to consideration of intertidal marsh construction?**
  - *NYS DEC: Assuming that we had jurisdiction over the property owner, we would be able to entertain a permit for a new shoreline if erosion occurs and the tidal line moves. If the property owner were willing to stabilize the shoreline with a slope or tidal marsh, we would entertain such a proposal and seek to ensure that it would be stable over time. We always welcome a green solution and would require that any solution for 29<sup>th</sup> Street be stable.*

#### **UPDATE ON PROPOSED EXPEDITED ACTION FOR THE EAST BRANCH**

Stephanie Vaughn, EPA Region 2 remedial project manager, shared details of EPA's considerations for expedited action on the East Branch of Newtown Creek. She outlined that

this is an EPA-led initiative, which Region 2 came up with following the decision against the proposed Operable Unit 3. Region 2 consulted EPA Headquarters and Contaminated Sediments Technical Advisory Group (CSTAG) along with NYS DEC, who thought the concept was good. Newtown Creek Group and New York City are also in support of the proposal. The goal of the expedited action would be to begin cleanup of a targeted portion of the Creek, while also learning more about the Creek and how it functions.

EPA would proceed with a focused feasibility study for the East Branch to determine the efficacy of expedited action and would decide whether to move forward based on the results of the focused FS. This focused FS would take place under the existing legal agreement and would be aimed at accelerating remediation. If the focused FS finds expedited action to be effective, then it will be used to remediate that portion of the site in advance of the full FS and remediation.

EPA selected the East Branch because contamination at that location is widespread, and cleanup of that portion would lead to significant risk reduction. Many of the complicated features of the Creek are present in the East Branch, namely mobile non-aqueous phase liquids (NAPL), bulkheads, PCBs, and bridges that would be difficult to navigate. Understanding how to manage these features in the East Branch would help inform future action. The East Branch is also the location where a smaller scale pilot study was planned. The focused FS would subsume the treatability study, and some other aspects of the FS process would be incorporated into the expedited action.

The expedited action would not hinder action on the full site. Testing and modelling work, along with considerations around navigation and control of ongoing sources of contamination, would all continue.

Potential challenges include determining what level of remedy constitutes a success and developing and implementing a post-action monitoring plan. Success would also require close coordination with several parties and stakeholders (including NYS DEC, the PRPs, and the community and CAG). The EPA is still discussing the details with PRPs and is moving toward a more concrete proposal.

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- **Could you expand on what the treatability study is?**
  - *EPA: We have mentioned that we have been planning to conduct a treatability study in the East Branch, particularly in the vicinity of the Western Beef slip. The Study involves carrying out experiments in the field to determine the efficacy in situ stabilization (solidifying contamination in the Creek in place).*
  - **Would that eliminate the dredging option?**
  - *EPA: No, both could be used in conjunction.*

- **Can you clarify whether the treatability study will move forward as part of this expedited action?**
  - *EPA: The important aspects will move forward.*
- **Are you coordinating with US ACE about potential delisting of navigation as part of the expedited action?**
  - *EPA: Yes, we are actively consulting with US ACE. The East Branch is much simpler than other parts of the Creek in terms of navigational concerns.*
- **Are you also coordinating with NYC DOT about their Grand Street Bridge replacement project?**
  - *EPA: That is also under consideration. The schedule is not yet finalized, but we anticipate that if all goes well there should be good coordination of timelines. The reconstruction is not scheduled to take place in the immediate future, which would give us time to coordinate*
- **We are aware that CSOs in the East Branch are significant. Would EPA use the expedited action as a way to better understand the impact of CSOs on long-term contamination?**
  - *EPA: We are aware of one of the main CSOs on the East Branch. The post-action monitoring plan would seek to address those concerns.*
- **Have you been coordinating with the Trustees on their involvement, impacts on restoration, and the long-term needs of the Creek?**
  - *EPA: The Trustees are all aware of the proposal. We have not entered into NRDA conversations specifically, but we are both aware of the Visioning Plan for the Creek. The community's thoughts for the East Branch should be under consideration, whether within or outside the Superfund process.*
- **In terms of CSOs and potential for recontamination, are you referring to current contaminations from that particular CSO or the potential for hydrodynamic disruption of sediments from that CSO?**
  - *EPA: We would need evaluate both, in terms of the effect of CSOs on loading into the Creek and potential hydrodynamic disruption and erosion.*
  - **Is there any information about chemical discharge from that CSO?**
  - *EPA: The data from OU2 showed contaminants of concern (COCs) coming from CSOs. The question is whether the loading and concentration is sufficient to cause recontamination.*
  - **What data do we have on the CSO in question?**
  - *EPA: All of that data is in the remedial investigation (RI) report. Some new data will become available as part of ongoing monitoring (as required under the OU2 record of decision). Intensive data collection would be a part of design of a remedy, and we would need to prepare a comprehensive performance monitoring plan as part of the FS.*
- **We heard that EPA is planning to use a local NYC DEP facility for staging of equipment for testing. What testing is that and what is the timeline for that study?**
  - *EPA: That testing is for the lateral groundwater study. We are hoping to mobilize operations this spring, which will consist of installing monitoring wells and collecting*

groundwater samples. We needed a place to store equipment and set up an office. We reached out to NYC DEP for assistance in providing facilities.

- **Some of those locations are long-promised community amenity parcels, and we would rather those locations be used for community good than for staging equipment.**
- **How long would EPA be in that area and need to stage equipment?**
- *EPA: Approximately a year-and-a-half, we hope to conclude operations by the end of 2023.*
- **We would like to follow up with EPA on this. It is not acceptable to ask a PRP for use of a community site for such a prolonged period.**

## NEXT STEPS

<b>Upcoming CAG Meeting Dates (proposed)</b>	April 20, 2022
	May 18, 2022
	June 15, 2022
	July 20, 2022
<b>CAG Items to cover at future meetings</b>	Update from the Trustees
	Update from NYC DEP on the LTCP