

TECHNICAL MEETING SUMMARY

May 18, 2022 | Virtual Meeting No. 20

Summary of Presentations and Discussion¹

A full recording of the meeting is available here: <https://youtu.be/bRJtSBtFie0>

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.

UPDATES FROM NYC DEP

Mikelle Adgate, NYC Department of Environmental Protection Acting Deputy Commissioner for Public Affairs & Communications, gave an update on the Long-Term Control Plan (LTCP) for Newtown Creek. The 3 components of the LTCP which have been approved by the state are:

1. Expansion of Borden Avenue Pump Station from 3.9 million gallons per day (MGD) to 26 MGD and construction of wet weather force main to Kent Avenue;
2. Elimination of Aeration System for Dutch Kills & Main Trunk; and
3. Construction of Deep Rock CSO Tunnel to capture 62.5% of combined sewage overflow (CSO) volume from CSO outfalls NCQ-077, NCB-083, & NCB-015.

A significant change since the last update from NYC DEP to the CAG is that funding for the pump station expansion and CSO tunnel projects has been allocated and procurement is under way.

Firstly, Ms. Adgate overviewed current plans around the CSO tunnel. The tunnel would be designed to capture a large amount of stormwater and sewage volume (similar to a tank) and pump it to a treatment facility. The milestones for that project are outlined in the consent order. As of May 2022, NYC DEP has approved design funding in its latest capital plan and a consultant candidate has been selected with contract negotiations underway. The planning and design phase will take place over 6.5 years. NYC DEP is currently on track to meet the approved project schedule outlined in the LTCP for the CSO tunnel. Key longer-term milestones are as follows:

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

- June 2025 – Initiate final design
- May 2028 – Final design completion
- August 2030 – Construction notice to proceed (NTP)
- June 2042 – Construction completion

Secondly, Ms. Adgate gave an update on the Borden Avenue Pump Station expansion project. The expansion project will reduce CSO discharge from outfall BB-026 by 75% by diverting 24 MGD to the pump station via a new 42" gravity sewer. The project will increase the capacity of the pump station to 26 MGD (from 3.9 MGD at present). Dry weather flow will continue to be conveyed to Bowery Bay through an existing 14" force main. However, wet weather flow will be conveyed to the Newtown Creek Wastewater Resource Recovery Facility (WRRF) via a new 36" force main.

The schedule outlined in the LTCP for expansion of the pump station is as follows:

- July 2021 – Initiation of final design
- December 2024 – Completion of final design
- September 2025 – Construction NTP
- September 2029 – Construction completion

As of May 2022, design of the replacement of the pump station has been completed, with construction to commence on May 31, 2022. Design of the upgrade of pumping capacity was initiated in July 2021 with an anticipated completion date of September 2021. NYC DEP completed survey work to assist in determining optimal alignments for sewer & force mains. Design for this portion (which involves the NYC Department of Design & Construction) will progress concurrently and in coordination with design of the upgrade of pumping capacity.

Overall, the implementation of the LTCP is expected to result in a 72% reduction of CSO discharges into the Creek.

Ms. Adgate also gave an update on the aeration system of the Creek. She shared that NYC DEP and NYS DEC took the decision to take the aeration systems in the lower legs of English Kills and the East Branch out of operation. Instead, NYC DEP is focusing on the upper legs of both English Kills and East Branch, where worse levels of dissolved oxygen are present, and will maintain one blower in operation for each side. This would reduce the redundancy of blowers and limit interference with barge traffic. NYC DEP also revised the sampling locations that would trigger the aeration system for either side. (NYC DEP will also maintain sampling under the Harbor Water Quality program, data for which are available on NYC OpenData.)

NYC DEP is also working with their diving contractor, the state, and their manufacturer to get all parties up to speed with the revised approach. The department is also carrying out pre-season maintenance for English Kills. Ms. Adgate also noted that NYC DEP completed a noise reduction project last summer in response to complaints about noise caused by the English Kills system. She also shared that there had been a power failure at the East Branch, which NYC DEP is

managing while undertaking preseason repairs and maintenance. She shared that NYC DEP is aware of the operational challenges of the aeration system and is working with NYS DEC to build a reliable system for all going forward.

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 opportunities for other improvements in the area surrounding the Borden Avenue Pump Station? The project may be a ‘Percent for Art’ opportunity. Is there any way to move these ideas forward?**
 - *NYC DEP: I am not sure if this project triggers ‘Percent for Art’ requirements – I can follow up with a colleague on that question. There will be opportunities for community engagement and feedback from the Design Commission and the community on design renderings. There can be challenges around balancing safety & operational needs with aesthetic concerns. My colleague Alicia West works closely with our internal design team and consultants to meet the improved aesthetic and look of the community. I am also not sure how much of the surrounding property is owned by NYC DEP vis-à-vis other agencies and entities, but that may require coordination.*
- **The cost savings from revisions to the aeration system will be in the region of \$30.8 million, which will be able to support the Borden Avenue Pump Station project. We should be pushing for real improvements as part of that project.**
- **[Appendix D: Supplemental Documentation](#) from the LTCP has never been discussed at a community meeting. It would be worth following up on at a future CAG meeting.**
 - *NYC DEP: We can prepare a deeper discussion on that document for a future meeting, along with a follow-up on floatables and how the LTCP will address MS4-related issues.*

US ACE NAVIGATION STUDY

Willis Elkins and Mike Dulong shared an update on Steering Committee conversations since the last meeting, at which the Lisa Baron, US Army Corps of Engineers NY District project manager, shared the preliminary results of US ACE’s commercial navigation study for Newtown Creek. The Steering Committee heard from Rep. Carolyn Maloney’s office that it is too late to get proposals around deauthorization of channels into the Water Resources Development Act 2022 bill, and so the next opportunity will be in 2 years. The bill passed through committee stage without mention of Newtown Creek, which suggests that WRDA 2022 would pass without affecting authorized depths on Creek. The Steering Committee is concerned that the CAG did not have a chance to discuss the proposals. There are concerns about the effect of deauthorizing channels on the amount of sediment that would be dredged. The Steering Committee’s position is that deauthorization of tributaries should not impact dredging requirements under a remedy. The Steering Committee also thinks that de-navigation of channels should lead to wetland restoration (as outlined in Newtown Creek Alliance and Riverkeeper’s Vision Plan).

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

- ***CBI: If a channel were to be required to be dredged under a remedy, would the PRPs be required to dredge to the authorized channel depth?***
 - ***EPA: Firstly, it is understanding that there may be an opportunity to get language into WRDA 2022, though this may not be desirable. Secondly, it is too soon to tell how authorized depths. Whatever remedy we select will be protective of human health and the environment. We cannot speak for US ACE and are not sure if US ACE has the ability to put restoration language into a WRDA bill. US ACE conducted the commercial navigation study under contract to EPA as part of the Remedial Investigation/Feasibility Study process in order to understand the reasonably anticipated future use of the Creek. Their purview under the study is to look at commercial users and not recreational users. Some of the matters raised relate to the role of the Trustees, and it would be good to have their input. EPA has come up with some thoughts on how to discuss reasonably anticipated future use (beyond commercial users) with the CAG and would like to discuss those thoughts at the next meeting. We are aware of NCA and Riverkeeper's Vision Plan but need to have that discussion as a group.***
- **I am curious about the number of monitoring wells around the National Grid property. There may be the potential to incorporate existing data for upland properties from NYS DEC data sets.**

NATURAL RESOURCE TRUSTEES UPDATE

Representatives of federal trustees for natural resources joined to update the CAG on the Natural Resource Damages Assessment (NRDA) process for the site. Representatives present were:

- Patrick Foster, Esq., NYS DEC Region 2 Regional Director
- Reyhan Mehran, NOAA Regional Resource Coordinator
- Carl Alderson, NOAA restoration ecologist/landscape architect
- Dan Gefell, US FWS biologist
- Mark Barash, Esq., Counsel for US DOI Office of the Solicitor (supporting US FWS)

Mr. Barash gave an overview of the NRDA process on the Creek. The NRDA process is designed to determine natural resource injuries and service losses and the appropriate amount and type of restoration needed to address those injuries and losses. The trustees act on behalf of the public to “make public whole” following the release of contaminants.

Both US EPA and the trustees’ roles arise within the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), their focuses are different. US EPA’s remediation process is directed at protecting human health and the environment by reducing or stopping further adverse impact from toxic substances. The trustees’ NRDA process is focused on

assessing the impact of contamination on natural resources in the past and continuing into the future, quantifying a loss, and then outlining what can and should be restored in terms of what has been lost through a damages process.

The outline of the NRDA process is as follows:

1. Preassessment
 - a. Preassessment screen
 - b. Preliminary determinations of injuries and damages
2. Planning and assessment
 - a. Injury assessment
 - b. Determination of damages
3. Restoration (damages) claim
4. Settlement or litigation
5. Restoration
 - a. Planning
 - b. Implementation
 - c. Monitoring

(Both the planning and assessment and restoration phases involve opportunities for public input.)

The trustees can recover damages for injuries to natural resources, which include:

- Land
- Fish
- Wildlife
- Biota
- Air
- Water
- Groundwater
- Drinking water supplies

Human beings are not considered natural resources. The key natural resources for Newtown Creek include surface water, sediments, and aquatic-dependent biota. US EPA has already collected significant data for these natural resources.

Resource services are the physical and biological functions performed by a resource, including the human uses of those functions, as a result of resource quality. Human uses include fishing, boating, and trail walking. Examples of ecological resources are nutrient cycling, provision of habitat, predator-prey interactions, organism viability, and ecosystem sustainability.

Natural resource injuries are the adverse effects on the viability of a resource such that they result in a loss in resource services. Examples of this include:

- Death

- Disease
- Cancer
- Genetic mutations
- Physiological malfunctions
- Physical deformities
- Behavioral abnormalities
- Reproductive impairment

As part of the injury determination, the trustees are required to establish a causation pathway to connect the release of a toxic substance to exposure of a resource to the toxic substance. This burden lies on the trustees. Trustees then seek to quantify the injury by determining the baseline condition of the resource (based on pre-release/historical and/or reference data) and calculating a reduction in services over time (delta) while factoring the time needed for restoration.

After these have been completed, the determination of damages takes place, which involves determining the cost to restore the resources and services to an equivalent value based on what has been lost. In determining damages, the trustees would not undertake an activity as restoration that is already or otherwise required. At the same time, the process strives for cost-effectiveness and efficiency.

Mr. Barash shared that the 3 federal agencies established a trustee council (via a memorandum of understanding) to act as a final decisionmaker. He also shared that the trustees are aware of the community's hopes and visions for the site outlined in NCA & Riverkeeper's *Vision Plan* and hope to work collaboratively with the community going forward.

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

- **Is the NRDA process undertaken at all federal Superfund sites?**
 - *Trustees: The NRDA can potentially be undertaken if there is a natural resource identified that has been injured. A key criterion is that there is a responsible party that is financially viable, as trustees can only collect damages in such a case.*
- **Why do losses need to be quantified in terms of dollars?**
 - *Trustees: Ultimately it is a feature of the legal process – we quantify in terms of dollars as an “alternative” to restoration projects. For settlement negotiations and litigation options, we need to have a quantified claim.*
- **What is the relationship between the trustees and the PRPs?**
 - *Trustees: We reached out to the PRPs to potentially undertake assessment work cooperatively. That did not transpire, and so the trustees have been engaging in assessment work independently over the past 6 years.*
- **Would ecological services include the loss of vegetation?**

- *Trustees: Potentially, to the extent that the loss of vegetation results from release of a toxic substance.*
- **What is the pre-entry/baseline state?**
 - *Trustees: Conceptually, it is what the conditions would be if one were to be able to remove all the molecules of hazardous substances at the site (and nothing else) and stabilize that condition. Other claims and possible, but not under NRDA.*
- **Could you provide examples of other sites that have reached the stage of restoration projects?**
 - *Trustees: The state has independent authority to bring natural resource damage claims under common law and state law (dealing with petroleum). I was involved in the natural resource damages claim for the Greenpoint oil spill, part of which was funneled into a fund for restoration projects (the Greenpoint Community Environmental Fund). The outcome was broader than that potentially available under the federal process and will be focused on ecological restoration and recreational projects.*
The trustees were also involved in a recent settlement for the Buffalo River.
- **I am concerned that the criteria for determining an injury can be so high that it excludes certain ecosystem functions. I discovered several egg-laden horseshoe crabs coming up in spring-summer and pulled several juveniles from tributaries. The Creek still contains breeding spaces for endangered animals in the food chain. How would you determine a loss for such a resource and the impact of hazardous chemicals?**
 - *Trustees: That demonstrates the requirement that we work hard to do our job well. It is also worth noting that recovering damages for certain key injuries may also cover others.*
- **Does the statutory mandate limit your abilities to address environmental justice through your decision-making processes? It seems like the principle and the mandate could be in conflict at times.**
 - *Trustees: Environmental justice is a concern for the trustees, though it is not necessarily spelled out in statute. We do not necessarily see a conflict – we want to be as inclusive and reach as many communities and members as possible and ensure that we do not miss key groups.*
- **Could the federal government be a PRP?**
 - *Trustees: Yes, though that would be a fairly complicated process*
- **Can concrete and steel be defined as hazardous substances given their effects on the original state of the Creek?**
 - *Trustees: Hazardous substances are defined and listed in statute, so unfortunately the answer is no. Waste defined under the Resource Conservation and Recovery Act (RCRA) waste is also considered hazardous waste. The fact that a substance causes harm does not make it a hazardous substance under the NRDA process.*
 - **Can the trustees consider Clean Water Act contaminants?**
 - *Trustees: That starts to get into the specifics of particular substances, but as a general rule – no.*
- **CBI: How often would the trustees like to check in with the CAG?**

- *Trustees: We are happy to join whenever helpful. This will be a long process, and we are in a good place with our work. We would like to focus on utilizing the CAG for outreach.*

UPDATE ON ALTERNATIVE STAGING AREAS FOR SHALLOW GROUNDWATER STUDY

Caroline Kwan, US EPA Region 2 remedial project manager, shared that EPA has so far been unsuccessful with finding an alternative staging area for equipment for the shallow groundwater study. EPA reached out to the PRPs, but none have been able to provide space for a trailer. EPA also followed up on the options suggested by CAG members at the last meeting, but these have not been forthcoming. The agency is considering potentially engaging with Anchor QEA for temporary use of their Vernon Boulevard location. The shallow groundwater study is on hold until July as a result. CAG members shared that it is unfortunate that no PRPs can provide space for a trailer and offered to share the request through local real estate networks.

Ms. Kwan also shared that EPA may issue orders for properties that have not yet consented to access for groundwater sampling.

NYS DEC UPLAND SITE CHARACTERIZATION (PART I)

Michael Haggerty, NYS DEC project manager, shared updates on NYS DEC's seep and shoreline observation as part of the upland site characterization. NYS DEC conducted observations between August and September 2021 and issued a Data Summary Report on March 31, 2022. The goal of part 1 is to determine which properties need further action or remediation.

Mr. Haggerty shared updates on sites with an obvious source of contamination with non-aqueous phase liquids (NAPL) and/or a sheen. The sites are as follows:

- Former Morgan Oil property – The property had a capacity of over 200 million gallons and is the site of an ongoing leak. The bulkhead itself needs to be replaced, and the owner has applied for a permit for replacement. NYS DEC is working to make bulkhead replacement a part of the remedy, which would include hydraulic control to prevent NAPL discharge (which is quicker than a bulkhead replacement). The current owner has been responsive and hopes to have a remedy in operation by the end of June. NYS DEC will continue ongoing oversight after the remedy has been instituted.
- Former Manhattan Polybag property – The property did not have a viable responsible party. NYS DEC decided internally to allocate funds from the Oil Spill Fund and performed an investigation, which uncovered 22 wells with a fair amount of oil. A bulkhead replacement is needed. NYS DEC is currently evaluating options for preventing oil seeps/discharge and may implement hydraulic control.
- 58-08 48th Street – This property is located in Maspeth near the turning basin across from Greenpoint Energy. Mr. Haggerty has not yet visited the property to determine whether there are in fact point sources of contamination. He is concerned that the sheen observed could be groundwater discharging through contaminated sediment. Installation of wells is scheduled for late June.

- Kinder Morgan Terminal – The property is an active major oil storage facility (MOSF). A sheen has been observed at the junction of 2 types of bulkheads within the permanent hard boom. This is a site where the issue is maintenance of the existing remedy.

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- **What was the historical use of the Maspeth site?**
 - *NYS DEC: The property was owned by the US Navy during World War II, but we do not have much more that was pertinent. Sandborn maps for that area are limited (perhaps because it was a federal property).*
 - **Is there a way to determine whether the seep is coming from the bulkhead or from the turning basin (perhaps a boom)?**
 - *NYS DEC: Implementing a boom would be difficult – our plan to install wells should yield an answer.*
- **What kind of penalties has the property owner at 200 Morgan faced for ongoing pollution (and poor management of their booms)?**
 - *NYS DEC: That is a legal question that I am not the best person to answer. We have a consent order for bulkhead replacement and implementing a remedy. I do not know of anything specific about the maintenance of booms, it is good practice. I can follow up on that matter.*
- **Is there a reason for the seepage at Kinder Morgan (given the high level of investment in the remedy so far)? Is there reason to believe that adjacent properties have seepage from the Greenpoint oil spill?**
 - *NYS DEC: There is a consent order with Kinder Morgan to prevent such this happening. I am not an attorney, so I do not want to get into legal ramifications; my colleague is working to address this issue. Paragon and Exxon Mobil do not appear to have any operational issues (which suggests that they are not contributing).*

NEXT STEPS

Upcoming CAG Meeting Dates (proposed)	June 15, 2022
	July 20, 2022
	September 21, 2022
	October 19, 2022
CAG Items to cover at future meetings	Reasonably Anticipated Future Use
	Update on Upland Site Characterization (Fall)