

# TECHNICAL MEETING SUMMARY

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July 20, 2022 | Virtual Meeting No. 21

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

A full recording of the meeting is available here: <https://youtu.be/cIMOMJxWm60>

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.

### NCG RESPONSE TO ENGAGEMENT WITH THE TRUSTEES

Tyquana Henderson-Rivers, representative for the Newtown Creek Group, and David Haury, Anchor QEA, joined to give a response to the comment from the Trustees at the previous meeting that the PRPs had not agreed to do a joint assessment.

Mr. Haury shared that there had been initial discussions between NCG and the Trustees about beginning a cooperative Natural Resource Damages Assessment. For that to happen, the parties would need to have much more information about the site in order to credibly ascertain injuries to resources on the site. In 2013, NCG did not understand much about the Creek, but there is significantly more information now. The Trustees are regular attendees of meetings with NCG and EPA and also review materials. As the feasibility study (FS) gets further under way the parties will have a better sense of remedial alternatives. NCG expects to fully engage with the Trustees at some point in the future. NCG is also gauging bringing in participation of other liable parties.

### UPDATE ON ALTERNATIVE STAGING AREAS FOR SHALLOW GROUNDWATER STUDY

Caroline Kwan, US EPA Region 2 remedial project manager, shared that NYS DEC was able to provide a staging area for the shallow groundwater study and shared images.

### UPDATE ON THE 29<sup>TH</sup> STREET BULKHEAD

Willis Elkins, CAG co-chair and Newtown Creek Alliance Executive Director, shared that community leaders, advocates, and elected officials gathered at 29<sup>th</sup> Street to push forward a

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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/>

vision of ecological restoration, public reclamation, and community access for the street. He will be reaching out to MTA and NYS DEC to follow up about the proposal.

### UPDATE ON SIGNAGE AROUND THE CREEK

Ms. Kwan also shared current locations of fish consumption advisory signs on the Creek and invited participants to share additional locations where signs are needed.

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

- **One additional location would be on the eastern bank of Dutch Kills nearby the DB Cabin rail bridge. This might acknowledge trespassing onto private (MTA) property, but the fact is that there is a population of people who move through that area on a regular basis. I would recommend EPA have an internal discussion about that.**
- **For the record, I would like to point out that the yellow pigment used for the signs is not sunfast, and so all the signs installed initially have faded. Many have also been defaced with graffiti and stickers.**
- **What do the actual signs say?**
  - *[An example is [here](#).]*

### SUPPLEMENTAL FIELDWORK

Mark Schmidt, US EPA Region 2 remedial project manager, shared that EPA will be carrying out a bathymetry study. This will be a survey to understand the bottom surface of the Creek. The last such survey was done 10 years ago in the aftermath Hurricane Sandy in 2012. A boat will travel up and down the Creek to carry out the survey.

Mr. Schmidt also shared that EPA will be carrying out surface sediment sampling of Creek miles 0-2. The sampling will help improve datasets and will help understand sediments coming into the Creek.

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

- **What is the rationale for the bathymetry survey, given that US ACE carried out a similar study recently?**
  - *EPA: That was not a full survey. The last full survey was carried out 10 years ago.*

### NAVIGATION, AUTHORIZED DEPTHS, AND SUPERFUND

Stephanie Vaughn, US EPA Region 2 remedial project manager, provided clarifications around US Army Corps of Engineers' commercial navigation study and its relation to the Superfund process. US ACE has jurisdiction over navigable waters in the US and has authority through Congress to determine the navigable depths of water bodies. Their role is to determine what the navigable depths should be then to review their findings periodically. US ACE looks at

navigable depths through the lens of commercial uses (shipping of goods and related uses), not recreational uses.

US ACE had not done a review of the navigable depths for Newtown Creek in some time. EPA asked that US ACE review and determine navigable depths sooner. EPA passed funding to US ACE to conduct the study but otherwise had no influence on the study.

The navigation depths are ultimately enacted by Congress, and any remedy must honor those depths. At the same time, whatever depths are selected, EPA will need to select a remedy that is protective of human health and the environment.

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

- **Are the navigable depths minimum depths?**
  - *EPA: Yes, US ACE conducts maintenance dredging but will only dredge to the authorized depths.*
- **Is there a timeline for periodic dredging?**
  - *EPA: That would be a question for US ACE, but the last time dredging of the Creek took place was in the 1950s.*
  - **Would it be feasible to force US ACE to review the depths in a periodic manner?**
  - *EPA: That is essentially what we did in this case. Their findings suggest that certain places will remain at their present depths (noting that much of the Creek has silted over since the last dredging). There are other areas where users indicated that they did not need as much depth and yet other sections that are not being used for commercial uses that can be deauthorized. These would ultimately go through the congressional Water Resource Development Act process.*
- **Do we know where the Creek is net depositional and what the natural increase and decrease in depth is?**
  - *EPA: That is a reason for the bathymetry study. Any water body will have some areas with deposition and some without. We will share the results of that study with the CAG when the time comes.*
- **CBI: Could a remedy require dredging deeper than the authorized depths in order to be protective of human health and the environment?**
  - *EPA: Yes, if that is needed (hypothetically speaking).*

## **FUTURE USES AND ENGAGING THE COMMUNITY**

Natalie Loney, US EPA Region 2 community involvement coordinator, shared an overview of the process around determining reasonably anticipated future uses of the site. EPA's goal for the remediation process is to reduce risks to human health and the environment from contamination on the site. Nonetheless, there may be opportunities for the needs of the community to "mesh" with remediation of the site. Therefore, EPA would like to capture from the community what their future uses are. Examples like the 29<sup>th</sup> Street shoreline restoration

proposals and uses by the maritime community would all play a role in the visioning process going forward. EPA does not have authority over the end use of the site, but the remedy could factor in anticipated future uses. In some cases, this would require the support of the property owner (as in the case of 29<sup>th</sup> Street).

EPA shared several potential points of involvement, which could involve the CAG, the steering committee, and community groups. There may be an opportunity for a visioning subgroup to capture the community vision.

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

- *CBI: Could community input on anticipated future use drive remedy selection?*
  - *EPA: For example, a property is currently zoned in an industrial area, the reasonably anticipated future use could incorporate rezoning into residential.*
- **Much of the property around the Creek (on both the Brooklyn and Queens sides) is private property, and a conversion to residential use is unlikely, given land use concerns.**
- **Would present property owners need to “buy into” the vision that you are looking to have a subgroup create for the Creek?**
  - *EPA: We want to capture what the vision currently is. The recent comments around upland properties give us an idea of that vision, as does the vision statement regarding 29<sup>th</sup> Street.*
- **Today’s end use may differ from posterity’s future end use. How do you account for that potential difference?**
  - *EPA: That is why we consider the reasonably anticipated future use. It would involve an evidence-based decision based on consultation with individuals who understand land use around the Creek. We would base our decision on the best information currently available.*
  - **Should the community’s end use change 50 years from now, is there a process to incorporate such a change?**
  - *EPA: That would be hypothetical, but the remedy would remain the driving force, and whatever happens on the site, the remedy would have to be protective. The Superfund process has a built-in 5-year review mechanism. Therefore, if hypothetical significant change or unanticipated uses become clear, a process exists to address those.*
  - **The north Brooklyn waterfront had once been considered an “untouchable” industrial zone (for fossil fuel refining and storage) and is now being redeveloped for mass residential properties. It is important to keep examples like this in mind.**
- **Communities in Long Island City and Greenpoint have been attempting to obtain access for the community that has long been denied by commercial interests. They would like to restore the community’s right to use and engage with an ecosystem. Industrial use does not mean we do not have to strive for a swimmable river. Industry and full engagement with the community can coincide.**

- We ought to be nuanced with what we call industrial. With recent “last-mile” issues and the push for multimodal last-mile delivery, industry is being encouraged to use the waterways in new ways.
- Would visions specific to particular areas of the Creek (like the 29<sup>th</sup> Street vision) be useful? We already have NCA & Riverkeeper’s Vision Plan for the whole Creek, but would it be useful to address specific areas?
  - EPA: *What we are trying to capture is the vision from the community. An example from the Gowanus Canal is that many of the properties will have corrugated steel bulkheads. However, in one of the turning basins, the property owner is supporting soft edges, so that area will not have corrugated bulkheads. There are ways to tweak the remedy in a way that is still protective.*
  - CBI: *If the community wants a soft shoreline can that be factored in?*
  - EPA: *EPA cannot dictate to any property owner how they use their property. However, we are looking to find the “sweet spot” of the reasonably anticipated future use for incorporation into the remedy.*
- As an example, we are working with a commercial company in Long Island City to use their sheet pile bulkhead as a foundation for installing habitat units. The company is funding the installation. People may have limited outlooks at the moment, but the opportunities are much broader (as are the opportunities for engagement).
- It should be clear to EPA what the vision is. The Newtown Creek Vision Plan was based on 12 principles developed by the CAG, including that the Creek should be mixed use. A lot of “future use” is actually going on at the moment. The Newtown Creek Nature Walk is a good example of doing this without pressure on land use concerns. Similar opportunities can take place across the rest of the Creek, but they need investment.

## FEASIBILITY STUDY UPDATES

Mr. Schmidt shared that NCG submitted the alternatives memorandum, which will commence the screening process of remedial alternatives for the Creek ranging from no action to full remediation. (EPA is required to consider the no action alternative.) EPA just received the document and are beginning their review.

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

- **I have seen a lot of oil and NAPL on the Creek and was sensitive to a comment from CBI that the remedial investigation is “wrapped up” and thought that this was an open document that can be modified as new sources of NAPL are found (such as through NYS DEC’s upland site characterization). Many questions remain hanging regarding the protocols used and the extent of NAPL contamination. There are questions that remain hanging and remain a concern as the feasibility study progresses. I would be happy to document those and share them with the CAG before forwarding to EPA.**
  - *[CBI shared the following from EPA’s website as clarification - “The RI and FS are conducted concurrently - data collected in the RI influence the development of*

*remedial alternatives in the FS, which in turn affect the data needs and scope of treatability studies and additional field investigations. This phased approach encourages the continual scoping of the site characterization effort, which minimizes the collection of unnecessary data and maximizes data quality.”*

[\[https://www.epa.gov/superfund/superfund-remedial-investigationfeasibility-study-site-characterization\]](https://www.epa.gov/superfund/superfund-remedial-investigationfeasibility-study-site-characterization)

#### **OTHER UPDATES**

Mr. Elkins shared that as CAG co-chair he would like an update on the timeline of the investigation and cleanup (given that the goalposts have been shifting). As co-chair of the CAG he would like to know when a record of decision (ROD) would be forthcoming.

CAG members also noted that Long Island Railroad (a PRP) neglected to send a representative to the meeting to discuss the 29<sup>th</sup> Street bulkhead collapse. Members also noted that the [Kingsland Wildflowers Festival](#) would be taking place on July 23.

#### **NEXT STEPS**

<b>Upcoming CAG Meeting Dates (proposed)</b>	September 21, 2022
	October 19, 2022
	November 16, 2022
	December 21, 2022
<b>CAG Items to cover at future meetings</b>	Update on Upland Site Characterization (Fall)
	NAPL Way Forward (Fall)