

Newtown Creek Community Advisory Group (CAG)

TECHNICAL MEETING SUMMARY

October 21, 2020 | Virtual Meeting No. 6

Summary of Presentations and Discussion¹

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

LONG TERM CONTROL PLAN (LTCP)

Per CAG request, Mikelle Adgate, NYC DEP Senior Advisor for Strategic, provided the CAG with an update on the LTCP regarding future milestones and the schedule given Covid-19 and other factors. Ms. Adgate presented on the DEC-approved LTCP, and its three components. She reminded the CAG of the anticipated benefits of this work for the Creek, in particular that there would be a 72% reduction in Combined Sewer Overflow from existing conditions. Ms. Mikelle then discussed the 2020 status of the LTCP noting that Covid-19 had created financial uncertainties leading several entities to work on understanding the fiscal implications of the pandemic from both a revenue and long-term capital planning sides. She concluded by highlighting despite these complicating factors, DEP remains on track to meet its Newtown Creek LTCP milestones and will continue monitoring the situation and informing regulators. Finally, Ms. Mikelle provided specific updates on the Borden Avenue Pump stations and the CSO storage tunnel both of which also remained on schedule.

To view the full presentation, visit the [Newtown Creek CAG website](#). The questions asked by CAG members after the presentation follow **bolded** with presenter answers in *italics* and additional CAG commentary on that question in regular text.

- **It is nice to think about this in the context of Covid. The next benchmark looks like 2024, correct? Is the idea that we will hopefully have “recovered” from the impacts of Covid and remain on track?**

DEP: For the dates that are in the letter, their approval solidified those that are in the recommended plan and became the milestones we have to meet. Since this time, we’ve been working to meet the milestones in the LTCP schedule. Where we’re looking at now is sort of potential risk. There have been challenges in the engineering design community, so we are just now starting to gauge our RFP design/procurement process. We are fortunate in the sense that our budget is different than our other sister agencies, because we are a utility and work with the water board. DEP is still like everyone looking

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

at the horizon and trying to take the challenges on as they come and hoping that the design/engineering community is still at the level that we anticipated in 2016.

- **Are all of the construction firms you have under contract in currently in decent financial condition?**

DEP: We work closely with the contracts office that chooses the firms that are doing work with the City of New York. We work with the Mayor's Office and our chief contracting office does the same thing. There are opportunities for firms to tell us if they are having challenges, and if there are design delays, we can notify them what the cause of the delay is.

- **Once you let out a contract and have checked out the condition, do you periodically go back and look at them?**

DEP: We are unaware of the specific details of how the contracting office does this, but there is lots of paperwork that firms are required to submit. I do not know about the content, but I do know there are periodic reviews.

- **There is something seriously wrong with the pump in Maspeth; it is so loud. I'm able to hear it as far away as the Metropolitan Avenue bridge on the sidewalk. This falls under your purview, wanted to ensure it is on your ledger because this is problematic when the blower is on.**

DEP: We had our noise inspectors go out with our BWT folks. They have come up with a small construction build but have not checked back on the status. Willis and I were talking about it over the summer. We ran 311 data to see how far it could be heard. We will check and send CBI an update on the sound.

- **Could you clarify for the storage tunnel that the initiating final design doesn't begin until 2025, and 8 years from when the plan was approved? Why has there been so much time for initiating that final design work?**

DEP: It shouldn't be that there is no work happening until 2025. This CSO tunnel is different because it is the deep rock tunnel, which requires extensive detail in terms of the feasibility and the actual components. This includes any land acquisition that needs to happen, depends on size, scale, as well as the route. This process will nail down half of the routes. Looking at all the possibilities requires multiple design firms. I liken this to what you see with MCA projects, which are different than DEP's typical projects. Additionally, we are not talking about one CSO tank, you're looking at multiple tanks and sites. I appreciate the frustration that it is long, but it is a long timeline because it is so big.

- **Any opportunities to have dialogue along the way would be great.**

DEP: This is a concern of mine; we have not built a tunnel like this in the City of New York before. We have had a couple of conversations with other cities to see how they did their engagement and are worried about the impact construction will have. We will need help from the CAG and the community because it is an extremely long construction timeline in ways that are going to be very tough. I appreciate that.

- **Get some videos when you do a presentation on the tunnel so people can see what it looks like.**
Would love to have a celebrity spokesperson.
- **I know there have been extension requests on Gowanus and Flushing. Are there any others?**
DEP: It has just been those two. In March/April we asked for an extension, but this was submitted September 30th. There was an overall notification to the state about design delays, but those were the only two.

FEASIBILITY STUDY (FS) 101 BRIEFING

Stephanie Vaughn, USEPA Region 2, provided the CAG with an introduction to Superfund Feasibility Studies as the Newtown Creek site as the project moves into this phase of the process. She noted that the Feasibility Study takes place in the middle of the Superfund process and is conducted to illustrate if something can be done for the site by assessing the extent of contamination and then determining the best way to address it. She then reviewed the five iterative steps of the FS process, reminded the CAG of the contaminants of concern (e.g., PCBs, hydrocarbons, copper, lead, and dioxins/furans), and provided a look ahead at the process to come. She noted the immediate next steps would be to complete the modeling framework, incorporate the remaining upcoming data into documentation, refine the conceptual site model, develop the remedial action objectives (RAOs) and preliminary remediation goals (PRGs), and then begin the process of developing and screening the remedial alternatives (RAs).

To view the full presentation, visit the [Newtown Creek CAG website](#). The questions asked by CAG members after the presentation follow **bolded** with presenter answers in *italics* and additional CAG commentary on that question in regular text.

- **Would EPA accept or consider additional information related to the Human Health Assessment should new info arise now or later?**
EPA: We will always look at new information. Let's say a new toxicity value arose -- we would look at this to see if it affects our conclusions. If there is something you are aware of, please let us know and we'd be happy to look at it.
- **Regarding the additional limited fieldwork anticipated, looking at old and new, they both refer to the need to collect additional data to improve the accuracy of the model. The CSTAG did refer to the existing data gaps, and something they referred to is leaking bulkheads. We do not seem to have sufficient data on this to determine the risk of decontamination from these sources. If the data doesn't exist than the modeling cannot include that source.**
EPA: Thank you for your question. The reason I put "limited field data collected" is based on our understanding from the RI and additional data collected; we know there are some data gaps. Part of the FS is to assess whether we have enough information to make a

decision, or if we need additional data. This is all still a work in progress. Right now, we have lateral groundwater, fish sampling, geotechnical, etc. The door is not closed.

- **The way I read this sentence about crab is that if you did not consume fish/crab there would not be unacceptable risk to human health, which means there is not a risk to human health? If you were to fall into the creek would that not be a risk? I think that the general public could easily be misled by that human health statement. I would not like to see folks in the water using the reasoning that it is OK because they are not eating any fish/crabs. Furthermore, what about fish and crab that migrate? If I caught fish from the creek in an area that that's not contaminated, wouldn't my health still be at risk? Has a tag and release study ever been conducted to assess this risk?**

EPA: The answer to this question is a separate presentation. We put in details about how people might be exposed to the creek. When talking about baseline risk assessment we are talking specifically about exposure to people interacting with the creek (e.g., boating/swimming). We try to be conservative (i.e., someone might go swimming in the creek x months per year for x hours). Based on these assumptions, the Superfund related risks are not elevated. This says nothing about the non-Superfund related risks. There are likely risks associated with Clean Water Act parameters of concern, but they are not related to CERCLA. We are strictly talking about Superfund here. There are two different ways of looking at the water body

- **You mentioned the feasibility of implementation. I'm wondering if you could specify the implementation obstacles of NTC relative to other places?**

EPA: We are still early in the process, but its location in a densely populated environment is a differentiator. If we were dredging, something might need to occur in the water versus on land. This is a simple example of the kind of implementability concerns that we take into consideration. Are these insurmountable? No. For another simple concrete example let's say the soil contamination is very deep if it goes 10 ft, we could dig it out, but if it goes 20ft to the water table, as you go down further it becomes harder to implement. It will be challenging no matter what.

- **That balancing criterion scares me. I don't believe that everything will be equal when looking at cost. I can see if someone in charge says, "this is too costly" even though we can't meet the requirement to protect human health and save money, they will rule the day. I would hope that everyone would look at requirements; costs should be factored in, but not equal.**

- **Are the balancing criteria built into the law, or is this EPA? Is there no way to reduce those balancing criteria and use it as a modifier?**

EPA: These criteria are part of Superfund law. We have to go through each of these criteria for every superfund site. Cost is considered, but Superfund is not like air/water in this situation. In this situation, we have a polluter pay the process that we would adhere to, so the argument that you are making isn't necessarily applicable. In my experience, the determining factor in the selection of a remedy is its implementability and

effectiveness. IF you have two that are identical, then cost may be used to determine, but it is not a driving factor in how we select or implement a remedy.

- **When you make your decision, will you be able to advise the community?**

EPA: Yes, this is the proposed process plan. Once we complete the FS/RI, then we will put out a proposed remedial action plan, and this will outline the entire thought process behind the preferred alternative, which is when we solicit community input. Will have cost, discussion of balancing criteria, contamination, nature/extent, risks, etc. There will be a public meeting and the documents will be available for everyone to review.

- **What is the EPA process for weighing community input (re: community acceptance)?**

EPA: This could be lots of things. Community acceptance is a modifying criterion; “modifying” means: if the community does not like the remedy, but it meets all the appropriate criteria/effectiveness/implementability, we will not change it based on community acceptance. However, if the change they are recommending is something specific to a community that EPA is not aware of, we need to take that into consideration. For instance, the community may identify something of cultural significance that would be impacted by the way we implement the remedy. There have been cases where a community may not like the remedy, but the driving force is really the science. We would modify as best we can to meet the community expectations without compromising the effectiveness.

EPA: Please note that the process that allows for this issue of community acceptance, we are going through this now. We are working step-by-step through the whole process, so when EPA presents our preferred remedy, it will not be a great surprise because the science will be familiar. However, during the process of presenting the remedy there is a comment period where people can weigh in. There is a thorough discussion about what the remedy is, why it was selected, the basis of selection, etc. Everything is presented so that everyone has the information necessary to evaluate and comment before the final selection takes place.

- **What is the actual disposition of the dredged materials out of Newtown Creek? If you are doing terrestrial-based removal, we’re talking about odor issues, and this is something I’ve been talking about for a while.**

EPA: Thank you for asking this. The good news is that we are getting closer to being able to answer your questions.

- **As for 'community' how is it defined? The CAG certainly does not represent the entire community.**

EPA: The CAG represents a piece of the community but not all of it. When we do outreach, we are looking to do additional outreach outside of this group and to organizations that may not be represented. We have reached out to the Polish/Spanish/Chinese-speaking communities, too. The CAG plays an important role in terms of community involvement and engagement as well.

- The predictions are based on the model that was constructed based on the data collected. There is no way to validate what that the model is based on. The entities who do the model have clients for whom cost may be the most important. So, if you have a major corporation whose sole reason is profiting, to say that there is no pressure on a contractor to please the client is not realistic. The modelers have different pressures than EPA/community *and* given the current situation of our government and culture, these major monied interests and massive corporation involved as PRPs have major dominance over our government. All of these truths must be kept in our heads. This has no reflection on the individual. We're seeing the power of the model to determine the choices of the cleanup strategy that will be made.**

EPA: The value of this figure (presentation pg. 19) is to compare the various alternatives relative to each other. Do not get hung up on the numbers, it is to look at relative performance. As you know, models are not perfect. Regarding the models themselves, they are one line of evidence, and the data are a more important line of evidence. Yes, the PRPs are conducting the modeling. However, EPA is reviewing everything they do, pushing back, and providing critical comments. The first draft of RI report had over one thousand comments, a large portion of which were about modeling. We had an independent peer review team to provide comments as well. My point is that we are not blindly trusting what we get from the PRPs; we are comparing it to empirical data. Finally, we have to find a way to select a remedy for the site, but once this is implemented, we will continue sampling to determine if it is effective. If it is not, this will need to be addressed (how depends on the source). Superfund is flexible enough that if a problem is detected we will address it.

NEXT STEPS

Upcoming CAG Meeting Dates	November 18, 2020
	December - OFF (unless otherwise indicated)
CAG Items to cover at future meetings	Groundwater Study
	CSTAG Comments on OU3 (and any update on OU3 if needed)
	OUs update (1 and 2)
	Treatability Study (tentative)
	Human Health Risk Assessment & Remedial Investigation