Newtown Creek Community Advisory Group (CAG)

TECHNICAL MEETING SUMMARY

April 21, 2021 | Virtual Meeting No. 9

Summary of Presentations and Discussion[1]

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

US EPA BRIEF ON THE OPERABLE UNIT 2 (OU2) RECORD OF DECISION (ROD)

Stephanie Vaughn, Region 2 Project Manager, provided the CAG with an overview of the process that preceded the final decision and release of on the OU2 ROD on April 12, 2021. She explained that the ROD for OU2 was a discrete and focused decision with limited scope and relates to current and reasonably anticipated future volume of combined sewer overflow (CSO) discharges to the water and sediment of the Newtown Creek. Ms. Vaughn emphasized that the evaluation related only to the volume of CSO discharge and that the goal of OU2 was to determine if the volume control prescribed by the LTCP is sufficient to meet the requirements of an eventual Superfund cleanup. She further provided the context that outside of the Superfund process, New York City is under order by New York State to implement this Long-Term Control Plan (LTCP) for Newtown Creek, and that designing a plan of such magnitude would take many, many years. She then clarified that the remedial investigation and feasibility study for OU1 of the Newtown Creek site are ongoing.

Ms. Vaughn further detailed that OU2 decision process timeline beginning in November of 2019 and concluding with the release of the ROD on April 12th, provided a description of the selected remedy for OU2, required monitoring, and highlighted several important aspects of the OU2 ROD, including (but not limited to) the following:

- The decision applies only to the volume of CSO discharge
- The Superfund decision process did not evaluate the adequacy of the LTCP in meeting the Clean Water Act (CWA) needs of Newtown Creek
- It may be determined that additional CSO-discharge related actions may be needed
- Any decision regarding potential additional CSO-discharge related actions that may be needed would be memorialized in a future decision document(s)
- This was a unique and limited decision, and not necessarily indicative of future work

Ms. Vaughn then reviewed the structure of the ROD and gave an overview of the Responsiveness Summary, which she underscored for the CAG was a key place to focus their

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

reading. Finally, she closed by listing some of the formal comments from the CAG regarding OU2.

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 should have been noted how many CAG members signed our comment letter on OU2. Thank you to everyone who did for submitting comments. You should note the letter had 40+ signatures, and that Riverkeeper also had a petition with 500 more signatures. It is incredibly disheartening for the process that this has been thrown out. The process for OU2 was very flawed in that you basically took what NYC worked out with the Stace for the LTCP, which has nothing to do with CERCLA chemicals, and you didn't do your own and separate evaluation. It seems bizarre that the whole process is staged on arbitrary 60% reduction without saying what EPA feels in terms of actual volume and chemical loading.**
    - *EPA: The CAG letter starts on pg. 197 of the PDF of the ROD and all the signatures are listed on pg. 206 of the PDF of the ROD. Riverkeeper's letter is about 100 pages later. All the CAG's comments are within the document.*
- CBI: Is it more important for the CAG to send one letter with 40 signatures, or 40 letters each with their own signature? What carries more weight?
    - *EPA: I'm not sure this would have made a difference for the decision. The decision is very limited, and EPA is limited by its Superfund authority on our case. One of the findings of our evaluation was that the amount of volume control did not significantly affect the future protectiveness of the remedy. We understand there was concern for this evaluation. However, it is defensible. If the analysis had shown that going to 80% volume control was necessary, then we could have required more, but we could only do so if it made a significant difference in anticipated Superfund contaminants to the site. We looked at the superfund site specific aspects of this and saw no basis to increase from 60%, again, only from a Superfund perspective (i.e., not from a biological contaminants perspective regulated under CWA).*
- **How did you come up with a figure for a site like Gowanus, when here you said there is no percentage?**
    - *EPA: That is not quite correct. The volume reduction is not making a difference. At this point in time, EPA does not have the ability to make the determination if additional upland control is needed.*
- **Could you clarify if this decision essentially is saying that at this time the EPA does not see CSOs as a significant source of CERCLA chemicals, but that it could become a significant source, and at that time action would be taken and you would know because there would be monitoring?**
    - *EPA: EPA sampled discharge from CSO as part of the OU1 Remedial Investigation (RI). We are still evaluating what the cleanup goals will be for OU1. If CSOs will adversely affect the effectiveness of the remedy, then additional action would need to be taken on the CSOs, but that action does*

not need to be volume control. It could be various technologies to reduce contaminants from the CSOs prior to entering the Creek. I know Gowanus is brought up a lot as a comparison, but it is important to underscore there are a lot of differences between these sites; every site needs to be evaluated independently.

- **Will EPA be comparing what is found monitoring the CSOs to see if they need remediation, or will they be an ongoing look to keep determining if there are changes? Also, will this be publicly shared?**
    - *EPA: Yes, monitoring of the CSOs is required quarterly for the first 2 years, and then EPA will evaluate the data and determine if this should be changed (increased or decreased in frequency). EPA will also keep track of watershed-wide metrics (e.g., volume, no. of discharge events, etc.) to see if there are any affects due to factors like climate change and population growth.*
- **I also would like to express my frustration as well. The timing of this is basically a gift to the PRPs. Why did we go through this whole OU2 process to get no change or cleanup? Why couldn't we just wait until OU1 is done? It is striking that the decision seems to say that CSO doesn't matter in Newtown Creek; it is wild to think about EPA is saying the volume doesn't matter, and that the volume and the solids are related. You could do something to separate them. If you're going to reduce solids later, then why not keep volume reduction as one way to keep solids from the creek? Gowanus has a flushing tunnel to flush out CSO (one purpose), Newtown Creek doesn't have this, it has a lot of 90-degree turns that are filthy after CSO discharges. EPA in Gowanus is driving the remedy/LTCP, but EPA is even monitoring the rezoning to look at what could happen in the future if you build proportional homes and have so many more toilets. This is how closely they are looking at CSO and how impactful it is to the remedy. We are disappointed. We want more action and to see more on CSO work in the Creek.**

TRANSITIONING FROM A REMEDIAL INVESTIGATION (RI) TO A FEASIBILITY STUDY (FS)

Anne Rosenblatt, Region 2 Remedial Project Manager, Superfund and Emergency Management Division, provided the CAG with a short overview of the transition from the RI phase of the Superfund process to the FS phase. She reiterated that the purpose of the RI process was to determine if sufficient data exist to characterize contamination and then reviewed the goals of the RI, and risk assessments. She then briefly reviewed the primary goals of the FS, which are to review the RI Report and the risk assessments, determine Remedial Action Objectives (RAO) focused on reducing unacceptable risk, develop remedial alternatives to achieve the RAOs and achieve preliminary remediation Goals for the site, and finally to conduct a formal evaluation and comparison of the remedial alternatives. Due to time this presentation was truncated, Ms. Rosenblatt briefly skimmed over the next steps once a ROD is released for the entire site (OU1), outstanding key topics to be addressed, and anticipated post-ROD activities for the Creek. EPA agreed to present the rest of this material at the May 2021 CAG meeting including some examples from other sites.

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.

Estimate of the finish time for these key topics? A shoot-for date?

- *EPA: Our estimate for the FS completion is 2023. However, these timelines can expand as additional data needs come up. The ROD will come sometime after that.*

CAG-Only Session: Draft Final Comments for OU1 Remedial Investigation

Agency staff and PRP representatives were asked to sign-off from the meeting while the CAG and interested community members went into a closed session to discuss the final OU1 RI comments. The Technical Committee presented their draft final comments by section and asked for comments and revisions from those present. There were no major edits to any of the comments. This constituted the CAGs approval of the comments. Final minor revisions and a copy edit were to be taken forward by the Steering Committee and comments will be sent before the end of April 2021.

Next Steps

Upcoming CAG Meeting Dates (proposed)	May 19, 2021
	June 16, 2021
	July 21, 2021
	August - BREAK
CAG Items to cover at future meetings	OU2 ROD (continued)
	Transitioning from RI to FS (continued)