



**Department of
Environmental
Conservation**

Shoreline Stabilization

Regulatory Authority & Agency Coordination

Presentation to Newtown Creek Community Advisory Group, March 16, 2022

With you this evening

- Joanna Field, Marine Resources Manager (Region 2, LIC)
- Heidi Dudek, Div. of Environmental Remediation, Section Chief (Albany)
- Mike Haggerty, Div. of Environmental Remediation, Project Manager (Albany)
- Udo Drescher, Associate Attorney (Region 2, LIC)

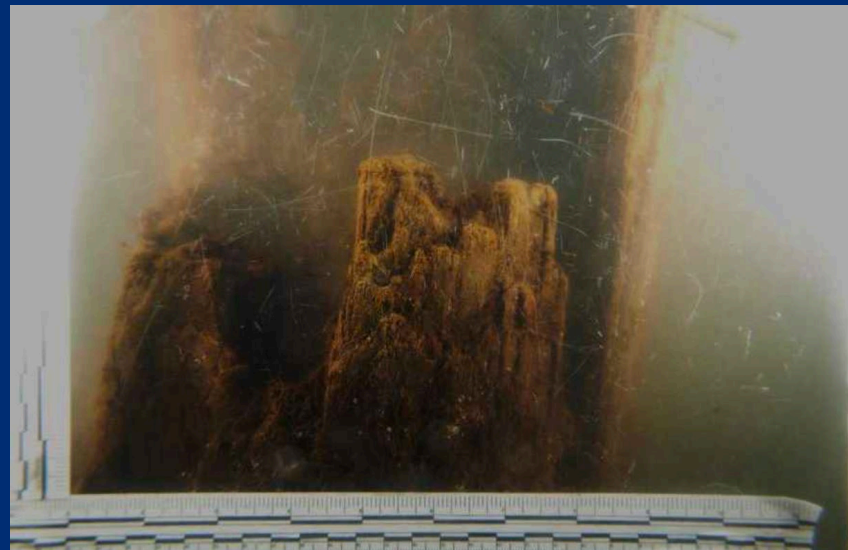


Failing Bulkheads = A Regionwide Issue

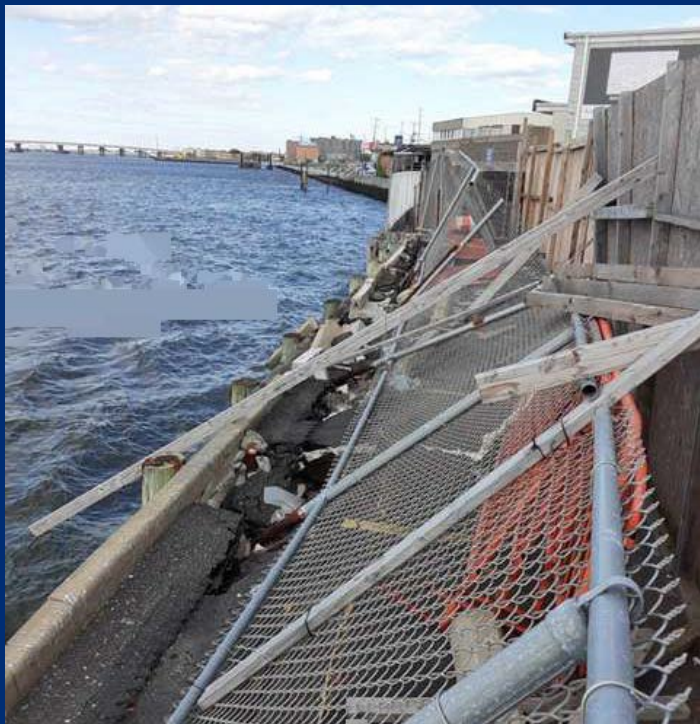
Failing Bulkheads – Harlem River, BX



Failing Bulkheads – NY



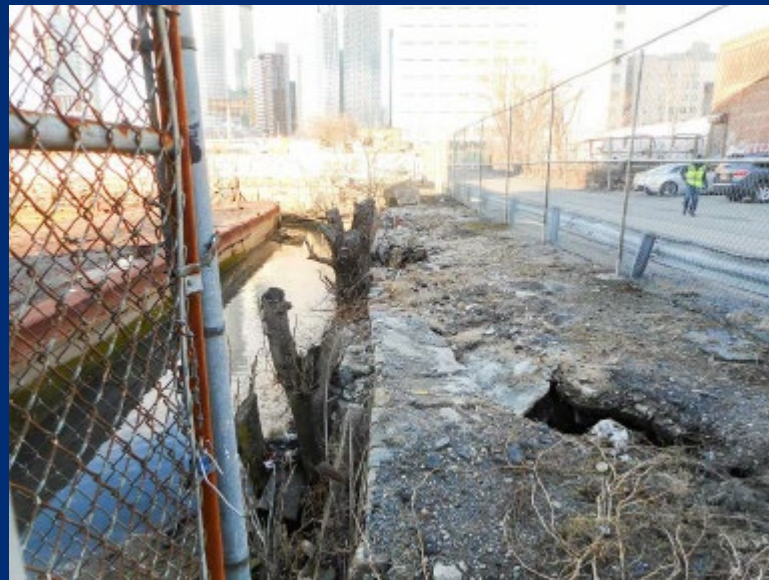
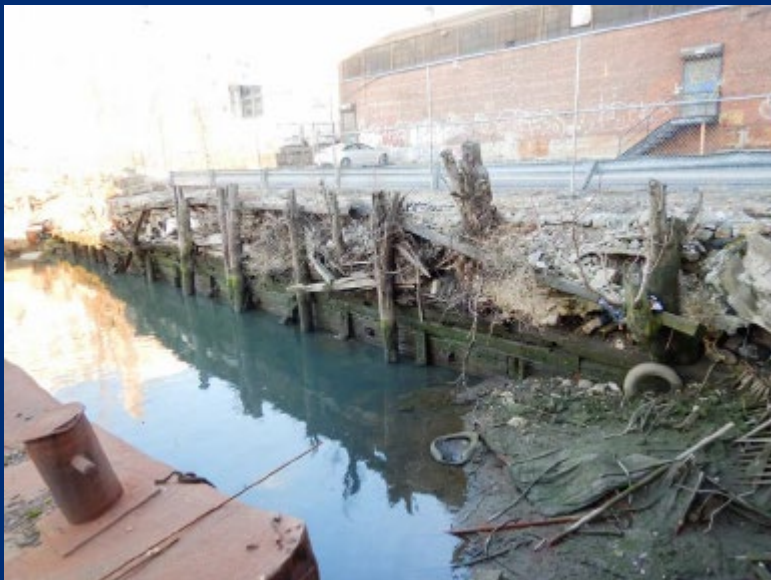
Failing Bulkheads – Beach 113th St., QN



Failing Bulkheads – Gerritsen Beach, BK



Failing Bulkheads – 29th St. & 47th Ave., QN



DEC's Regulatory Authority

Related to Shoreline Structures

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



DEC's Regulatory Authority (cont.)

Permits are generally* required for “regulated activities”:

- Construction, reconstruction, and non-ordinary repair of shoreline stabilization structures
 - Bulkheads, riprap, seawalls, living shorelines, NNBFs, combos
- Placement of fill in, and excavation from, tidal wetlands and navigable waters of the state
 - Tidal wetlands: shallow tidal waters (≤ 6 ft. at mean low tide) and tidal marshes
 - Waters of the state (irrespective of depth)

* = there are exceptions

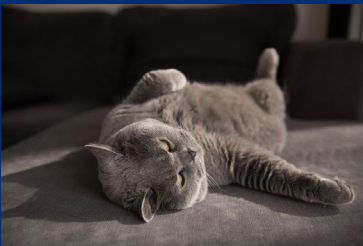


DEC's Regulatory Authority (cont.)

- Regulated *activities* (*commission*) without a permit = violation



- Passivity (neglect/omission) not explicitly regulated



DEC's Regulatory Authority (cont.)



Indirect placement of fill?

6 NYCRR 608.1(o) *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.

DEC's Regulatory Authority (cont.)

* = there are exceptions

The MTA is a state public corporation and as such not subject to DEC's jurisdiction under the Protection of Waters Act (ECL Art. 15 Title 5)

ECL § 15-0107. Definitions as used in this article

- 1. "Person" means any individual, firm, co-partnership, association or corporation **other than** the state and a "public corporation."**
- 2. "Public corporation" means "public corporation" as defined in subdivision one of Section 3 of the General Corporation Law and includes all public authorities, except the Power Authority of the State of New York.**



DEC's Regulatory Authority (cont.)

- = there are exceptions

Section 1266-c of the Public Authorities Law:

11. **No transit project to be constructed upon real property theretofore used for a transit or transportation purpose**, or on an insubstantial addition to such property contiguous thereto, which will not change in a material respect the general character of such prior transit or transportation use, nor any acts or activities in connection with such project, **shall be subject to the provisions of article eight, nineteen, twenty-four or twenty-five** of the environmental conservation law, or to any local law or ordinance adopted pursuant to any such article. Nor shall any transit project or any acts activities in connection therewith taken by any person or entity, public or private, pursuant to this section be subject to the provisions of article eight of the environmental conservation law if such project, acts or activities require the preparation of a statement under or pursuant to any federal law or regulation as to the environmental impact thereof.



DEC's Regulatory Authority (cont.)



- DEC's Division of Marine Resources' policy generally prefers living shorelines as alternative to hard structures
- If bulkheads are reconstructed, the policy provides for in-place/in-kind reconstruction
- If in-place reconstruction is not feasible and the structure is moved seaward, mitigation will likely be required
- Contamination may affect design and placement

Inter-Agency Cooperation

Involved agencies:



NYC
Small Business
Services

careers
businesses
neighborhoods



NYC
PLANNING



Department of
Environmental
Conservation

Thank You

- Udo Drescher
- Joanna Field
- Mike Haggerty
- Heidi Dudek

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