Newtown Creek Community Advisory Group (CAG)

TECHNICAL MEETING SUMMARY

May 19, 2021 | Virtual Meeting No. 10

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.*

OU2 RECORD OF DECISION (ROD) AND RESPONSIVENESS SUMMARY REVIEW

Following the release of the OU2 ROD, Angela Carpenter, EPA Region 2 Special Projects Branch Chief, and John Prince, Region 2 Superfund Program Deputy Director, joined the May 2021 CAG meeting to briefly address the CAG's concerns and provide clarity on the OU2 ROD release, as well as some additional perspective on the differences and commonalities of the Newtown Creek CAG to other regional CAGs (re: Gowanus).

EPA Region 2 staff reminded the CAG that they gave an overview of the OU2 ROD and provided suggestions on reviewing the document itself at the previous CAG meeting. EPA highlighted that they had reviewed the selected remedy for OU2 and the map of the study area, as well as the responsiveness summary, which had received 78 unique comments in addition to the 41 CAG members who had jointly signed a detailed letter together. CAG Facilitators also specifically relayed concerns expressed by CAG members regarding the general process and fairness of the OU2 ROD development. In addition to this, CAG members raised additional concerns about the future of Newtown Creek with respect to the effects of climate change and population growth, and the adequacy of Superfund cleanup for the Creek's use versus instead working to meet Clean Water Act standards.

Following this brief overview of the CAGs concerns and frustration about OU2 and the ROD release, Deputy Director John Prince gave some remarks in response. He first acknowledged that the circumstances were an unfortunate way to begin the remedy selection process, particularly one like OU2 that he underscored was unlike any other selection with which he had been involved. Regarding the process concerns, he reiterated the important role of CAGs and public input for any superfund process, and explained that the OU2 ROD, again, was a unique decision to consider. He then provided an explanation regarding the timing choice for this ROD and that the choice for doing it now had to do with the fact that in 2018 the Long-Term Control Plan (LTCP) was approved for a substantial amount of work. This approval was to build the pump station at the head of Dutch Kills and a 39-mililon gallon storage tank to capture the city's

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

stormwater. Given that this would take many years to implement, NYC Department of Environmental Protection expressed concerns to NY State Department of Environmental Control (DEC) about doing such a significant amount of work in service of these projects with the potential of having to do more for EPA requirements. So, to mitigate this concern, EPA took under consideration whether it would be possible to determine if the LTCP for Newtown Creek assigns enough work to meet the expectations of NYS water quality standards.

Regarding Gowanus Canal, EPA first reiterated that Gowanus is a smaller waterway relative to NTC with different conditions, in particularly a major difference is that it is an artificial waterway. Gowanus pumps bay water into the top of the creek, which makes it a lot like English Kills, which is problematic from a water quality standpoint. The head of Gowanus is like bay water and the tidal effects of the bay itself affect the harbor end of Gowanus and issues with water quality, dissolved oxygen, and others are a challenge in the middle. Irrespective of this, Gowanus is also an industrial waterway, so it has a lot of contamination in the sediments itself. Therefore, EPA concluded it was necessary to remove all the soft sediments and, in some cases, solidify coal tar contaminated native sediments underneath the soft sediment, and then put a cap on the whole waterway. EPA had concluded that because the Gowanus system is so dominated by CSO loading of solids, particularly from one at the head of the creek, these solids would end up on top of the clean cap and disperse, re-contaminating the surface. This was unacceptable would prevent completion of the remedy if no action was taken to reduce solids. So, for Gowanus, one tank is for the head, and one is for the tail to manage the 13 CSOs flowing into the canal. Of these, EPA is adjusting 2 and reducing the overall loading by 60-75% reduction and the city said they could get to 80% reduction.

Stephanie Vaugh, EPA Region 2 Project Manager, further explained that for NTC, if it were clean and released a certain CSO volume of solids, not very much would happen at the surface and the loading from the CSOs while greater than Gowanus, relative to the size of the waterway was deemed less important. She then reiterated that Gowanus was not the best model to think about with respect to Newtown Creek, instead suggesting that CAG look at the Passaic River site, which is tidal, large, and a broader waterway. Asan example, for the Passaic, EPA selected a big remedy for this site: a bank-to-bank cap of the lower 8.3 miles of the river (640 acres of waterway). To decide on this, EPA worked to understand new inputs, as well as what was discharging through examining stormwater, CSOs, potential upland processes, etc. From this, EPA concluded that the problems in the Passaic were the sediments themselves, which would continue to re-contaminate the waterway (rather than inputs from other places), leading to the massive capping.

- **To my mind, what this fundamentally comes down to is: is there something written into the Superfund/CERCLA law that says that ONLY those chemicals are of "potential concern"? Why can't biological pathogens be of "potential concern" to the federal agency charged with cleaning up the Creek? Especially when these pathogens are given entry to the Creek by one of the *already identified* PRPs? EPA decisions here keep seeming to imply that there is a codified reason in law, but EPA actions at**

Gowanus seem to belie that, so which is the case? Why are biological pathogens excluded? Does this mean that CSO biological pathogens are potentially within Superfund's remit, and for all the reasons John laid out, EPA *decided* not to tell the city to do more? The CAG is saying that you need to tell the city to do more because that is the only way to get the Creek cleaned, which is the point.

- **The bottom line here is that after all the time,work, and money being spent on this Superfund, we will not have a swimmable canal as a result. "Fishable" is dependent on polluted sediments that will require much more effort, "swimmable" should certainly be an attainable goal. This really angers me. You have a real public relations problem with the community. Most of this community will not understand the difference between bacteriological and heavy metals and you are putting time and money into something the community will not be able to use.**
    - *<u>EPA:</u> I hear you. One of the challenges that we all face, and we talk about this at the agency, is that we have different programs with different laws and expectations. One where the process is delegable by law if they are qualified, at which point the EPA's responsibility is to ensure the state's qualifications are perpetuated and efficient. With respect to the Clean Water Act, EPA's role is important, but the state leads. NYS has made decisions around water around the city that many are dissatisfied with. The water quality standards the city is expected to meet are not satisfactory, and these are the rules. NYS has earnestly developed these standards, they hear these criticisms, and there is a lot at play beyond the scope of EPA's role. Yet, it is something EPA is attuned to and there are a lot of environmentalists who live here and echo similar sentiments. The standards should be under CWA fishable and swimmable, and this should be the benchmark. The fact that there are other factors, like burden on ratepayers, weighs into these decisions. None of this is fully resolved even when the LTCP is being built. These discussions are unfinished, and EPA will keep talking about this as it is a very complicated issue.*
        - So, we need to start a grassroots movement to put pressure on our electeds.
- **With the flushing tunnel and the smaller size (i.e., lower residence time) in Gowanus, wouldn't CSOs be less of an issue there? In contrast, CSOs would have a longer residence time in Newtown Creek.**
    - *<u>EPA:</u> Good questions. If you read the two LTCPs, they did come to different conclusions. NTC fails, it cannot meet dissolved oxygen (DO) standards in large portions of the water, and this is because of the organic fraction of the CSOs. Newtown Creek also fails on other water quality parameters. Gowanus would complain about the LTCPs conclusions made about Newtown Creek, but the conclusions were that if some changes are made, except for a few days in summer, Gowanus will meet the DO/pathogen standards expected for its class of waterway (which is what NYS is holding the City up to in terms of use).*
- **A) I don't care what is going on in other Superfund sites. I have been to Gowanus and Passaic; I only care about NTC; B) I want some clean water for the benefit of NTC residents and NYC residents as a whole. I understand that by law you cannot work out**

the biological bacteria. The idea that we won't have a swimmable canal is upsetting to me.

- **The more I listen to EPA explain the reasons for this decision, the more frustrating it is on a personal level, and on behalf of everyone who interacts and works on the creek. It is very frustrating and regarding all these comparisons, at the end of the day this decision was about giving a PRP a path. The city came and said, "we don't want to waste our time give us a path so we can get started". I frankly cannot understand the rationale. How can we talk about this, how you didn't evaluate this and the notion that CSOs were framed as a minimal source of contamination compared to atmospheric disposition? We can control the amount of CSO and chemicals of concern! I'm flustered about how to ask a question, and this is just really frustrating.**
    - *EPA: Under the Superfund program we are interested in what happens at the beginning of a rainstorm with respect to CSO. We're interested in the solids that reside in the pipes and then are suddenly washed out. This happens in the first flush of a rainstorm. As much as you might be dissatisfied with the decision that NYS made. I am not offering a position about this and I am not challenging your wish that this was more. EPA as an agency believes that reducing those CSOs by that amount is a good thing, and the sooner it gets done the better. The agency decided against allowing the Superfund process to drag back the start of their long process. There was a value to getting started and not having this question that the Superfund process could move ahead without affecting the size of this capture system that it should be done ASAP.*
- **Let me assure you moving forward that in our relationship that this group is entirely aware of how CSO operates. You may also presume that this group has read the LTCP, and you can bet that the comments that DEP/DEC received illustrated this. What is the number that EPA is operating under that says how many gallons of untreated sewage enters Newtown Creek per year? LTCP has it at 1.4 billion gallons. Our decision points about this are based on the LTCP. So, if we assume 1.2 billion, would the headline then read "40% of 1.2B is ok to go into the Creek"?**
    - CBI: To clarify, the results, for whatever the reason, say that there will still be 40% going into the creek.
    - *EPA: NYC faces an issue writ-large for which they need an overhaul. The problems that need to be solved are infrastructure writ-large (e.g., impervious surfaces). The challenges the city faces are bigger, but this is what everyone, including the City, is periodically doing their best to try and solve.*
- **The issue is not with the LTCP, the issue is that EPA said 0% capture would also be sufficient for Superfund. It is the way that OU2 played out and EPA said 60% is fine and also 0% is fine. You can sit there and watch the point-source pollution that could be solved, it's that the LTCP was used as cover.**
- **Will this factor in when Nat Grid passes superfund costs onto their customers?**
- **Actually, OU-2 says 100% of 1.2 billion gallons is ok. NYS is literally not following current EPA standards for clean water.**
    - *EPA: EPA stands behind this analysis and that it was sufficient to make this decision. I want to re-emphasize that the city is worried about what they need to*

capture. It is a big nut to build all the CSOs, and there is not a large enough water treatment plant to do this. Reducing the amount of water is probably a big part of how they solve this problem. When EPA is selecting a remedy and there is an end-of-pipe CSO that will still be there in 2024, and will be implementing a remedy 5-8 years later, there are material changes we can require as part of the remedy that would create paths that slow down and trap solids, or devices that allow us to capture gasoline or other floating volatiles as they come out of the pipe.

    - **EPA has the chance to demand a solution to this point of the city, EPA – we are not talking to a group that has the whole city in its remit. But you *do* have Newtown Creek. We are saying you're failing to do what must be done in your specific remit through a lack of will – not because of law or science. You won't demand that state and city do more.**

- **Regarding the Passaic, was the environmental agency in charge of CSOs a PRP to the Superfund site?**
    - *EPA: Yes, they are.*
- **Was the issue of bringing in the CSO primarily chemical of concern issue, or a physical parameters issue, or perhaps both?**
    - *EPA: In the remedy for the Gowanus and the Passaic we worry about the second notion. In both those cases we will have a cap leaving some contamination behind and will need to manage it in perpetuity. EPA has expectations about the viability of a cap over a long period of time; it is expected to need maintenance. However, there are certain areas of waterways where we can expect flows to be greater or sudden as you are suggesting and therefor need to build features into capping or make decisions about how we address one area of a water way, because of the concerns of long-term viability. This is not really what we were looking at because we haven't' selected a remedy. It is not unreasonable to speculate that capping will happen at NTC, and when this is decided, the flows will be known, and expectations would be built into an OU1 remedy that if there is capping, it is long-lasting. Over the history of NTC, NYC has discharged contaminants into the creek.*
        - Thanks for clarifying that Gowanus and Passaic reduced CSOs because they are sources of contaminants of concern.
        - So primarily a physical consideration to cause the environmental agency to be a PRP and it was not based on chemicals of concern?
- **We appreciate you and the EPA team talking with us. You mentioned that NYS is earnestly pursuing water qualifications, which they are not. So, we are not getting the benefit of the LTCP. One thing the state is not good at is holding feet to the fire, so EPA is now driving forward the schedule for Gowanus. Going forward, we are stuck with this schedule and with no help to get the LTCP into place. The differences between Gowanus and NTC are not just geography, geomorphology, etc., they are being analyzed differently (e.g., reference areas, etc.). We hope through the RI process, that this will be addressed. One pressing question, Gowanus has a flushing tunnel and English Kills does not, so, isn't English Kills worse off?**

- *EPA: I work with NYS, and their personnel are earnest, and I know they believe in this process. There are reasons to critique what NYS has been doing, so I wanted to emphasize my experience of NYS is not of disinterested folks. Second, I got the briefest download from the team of the comments of the RI and we rarely get comments that are this sophisticated and valued, and we have a lot to talk about. The CAG has touched on a couple of things for us to dig in and whether we sufficiently understand the site and are comprehensive to make a remedy selection.*
- *EPA: For English kills the flushing tunnel makes a significant difference in water quality. In terms of DO there is some, but English Kills is a dead-end water way with no chance. I would not want to give a comparison that I think English Kills has a chance and it would make a difference to have a tunnel.*
    - I don't understand that point. We have the same sediment mounds in all the tributaries of NTC? It is the same system as Gowanus minus the flushing tunnel, and I do not understand how the flushing tunnel is an impairment and that NTC is different?

- **The 'city' is us. And we must find an organization who is willing to bring sufficient political pressure on Fed/State/Local politicos to bring a result at the end of 20 years, so that our grandchildren will be able to use the creek. If we can't get clean water, what are we doing here except rearranging the deck chairs? Some possible organizations are: NCA, Riverkeeper, Swim Coalition, and there are others. The character of the governmental people is not in question. What the community cares about are the actions that will lead to an acceptable result.**

It is important to underscore the CAG and larger community's expressed frustration with the OU2 process and how it unfolded and affects the larger Superfund cleanup. CAG Facilitator, Pat Field, summarized that the CAG would continue to watch for things that EPA might do aside from its current actions, would continue working to do more with respect to the creek and seek out more ways to engage on all fronts. Finally, there was general acknowledgement that a concerted effort would be made to connect with elected officials who might be able to affect policy and/or regulatory change at a higher level.

TRANSITIONING FROM A REMEDIAL INVESTIGATION TO A FEASIBILITY STUDY

Anne Rosenblatt, EPA Region 2 Remedial Project Manager, provided a brief overview of the superfund process through a presentation of two case studies. The first case study was an example of a chemical manufacturing site with benzyne and napelline as the contaminants. Ms. Rosenblatt highlighted that in general the Feasibility Study (FS) is the most anticipated document because once it is complete development of the remedy for a site and any alternatives can begin. However, she underscored that the Superfund process is stepwise: the RI is used to determine the extent of contamination and risks, then these data are used within the FS to make decisions about how to address the risks, and finally once the remedy is selected, the decision is memorialized in the form of the ROD. Once the ROD is signed there is still more work to be done to execute the remedy. Ms. Rosenblatt then highlighted in response

to concerns expressed by the CAG, that even if every detail is not included in the RI, that is necessary and not a red flag given the progressive nature of the Superfund process.
Caroline Kwan, EPA Region 2 Remedial Project Manager, then presented a second case study. In this second scenario, contaminations from a pesticide manufacturer were found in a residential community. For this case, decisions were made quickly on limited information due to the emergent nature of cleaning contaminants around occupied homes. This was provided as an example of a site where EPA started cleaning up and continued the design and investigation process even after the ROD was signed. Ms. Kwan underscored those decisions were phased to facilitate addressing the complexities of these sites. She concluded that despite EPA's naming bounded phases, there is always additional investigation work that continues outside of these.

Due to time constraints, it is important to note that CAG members requested a continuation of this presentation in more depth at a later meeting. No questions in response to this presentation were asked.

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.

- **Can we see the Permit Application for National Grid? Understanding EPA's concerns would be helpful.**
  - *EPA: We're aware of the project and EPA wants to know some info as part of the RI/FS process for NTC. We were not able to collect samples under the deck and we have asked National Grid and Newtown Creek Group. EPA wants to try and collect sediment samples given our concern with what is underneath that dock.*

Brief Items & Next Steps

Upcoming CAG Meeting Dates (proposed)	June 16, 2021
	July 21, 2021
	August - BREAK
CAG Items to cover at future meetings	OU2 ROD (continued)
	Transitioning from RI to FS (continued)
	OU1 Update; Status of OU1 RI comments
	National Grid bulkhead project & impacts/opportunities for Superfund