



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 Broadway  
New York, NY 10007-1866

September 20, 2023

*VIA EMAIL*

Willis Elkins  
Co-Chair Newtown Creek CAG  
Executive Director  
Newtown Creek Alliance  
[welkins@newtowncreekalliance.org](mailto:welkins@newtowncreekalliance.org)

RE: Request for Draft Documents, Newtown Creek Superfund Site

Dear Mr. Elkins and the Newtown Creek CAG Steering Committee:

Thank you for your letter dated August 8, 2023, which is enclosed and in which you highlight the strong interest of the Newtown Creek Community Advisory Group (CAG) in the Newtown Creek Superfund Site (Site) and request that EPA share specific draft documents and other records (documents) with the CAG.

In recognition of the high community interest in the Site and consistent with relevant EPA guidance,<sup>1</sup> EPA is willing to provide the requested documents to the CAG. We understand that the EPA review process often can be quite extensive and time consuming and that the CAG is requesting to be more involved in that review process. We welcome your involvement and look forward to continuing our collaborative efforts.

Please be aware that it is EPA's position that many of the documents that you have requested may very well fall under an enumerated statutory exemption from public release under the Freedom of Information Act (FOIA). Notwithstanding the potential for EPA to withhold documents that we may deem to be exempt, we also may choose to release them even if they do fall within certain exemptions. When Agency documents are released publicly, EPA may lose the right to protect the documents in future FOIA matters. We mention this because we want to emphasize our willingness to collaborate with the CAG, on the one hand, and make it clear that we are not waiving our right to determine in the future

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<sup>1</sup> *Making Superfund Documents Available to the Public Throughout the Cleanup Process, and Discussing Site Findings and Decisions as They are Developed (Superfund Management Review: #43 G, H, Q, R, T)*, November 5, 1990 (OSWER Directive 9230.0-16), pp. H-24 and H-25. <http://semspub.epa.gov/src/document/HQ/174057>

that other, similar documents may be deemed to be exempt from release under FOIA, and therefore may not be voluntarily released to the CAG (not the documents that we are currently releasing that are the subject of your request). Furthermore, we wish to emphasize the *non-final status* of the draft documents and note that they are subject to further EPA deliberation and revision. EPA is available and willing to discuss the documents should any questions arise.

We intend to share the requested documents through a dedicated SharePoint site that will be available to CAG members. Please note that while we will endeavor to provide documents within the requested timeframe, there may be delays as a result of ongoing internal deliberations that prevent us from providing the documents in the timeframe described in your August 8, 2023 letter. We will do our best to keep you apprised of such delays and update you when we expect to be able to provide the requested documents.

Thank you for your interest in the Site. We look forward to continuing our productive partnership with the CAG.

Sincerely,

*Andrea Leshak*

Andrea Leshak  
Assistant Regional Counsel

Enclosure

## NEWTOWN CREEK SUPERFUND COMMUNITY ADVISORY GROUP

August 8, 2023

Rupika Ketu, Caroline Kwan, Mark Schmidt, Stephanie Vaughn  
U.S. Environmental Protection Agency  
290 Broadway  
New York, NY 10007

<sent via email>

Dear EPA Newtown Creek Project Managers,

We are writing to provide greater clarity on our request to increase transparency among the US EPA and the Newtown Creek Community Advisory Group (CAG) and the many affected residents of Brooklyn and Queens it includes and represents.

First, we want to emphasize we appreciate your collaboration on the cleanup of a site central to our communities' present and future. We share many goals: expediting the remedial action, characterizing the site thoroughly and accurately, protecting human health and the environment, and securing a safe, clean multi-use Creek for the future, etc. At the same time, we also want to continuously improve how we interact with you; especially as long-term investigation begins to move toward decision-making and clean up action. We do not want to increase your already heavy workload, but rather, we respectfully ask you to share with us drafts of documents important to understanding this site, its potential cleanup alternatives, and the conditions required to achieve effective cleanup.

To that end, we need to find a reasonable accommodation as to the transparency and speed in which EPA shares documents with us. We are the affected parties. We have shown a strong interest and commitment in engaging with you and this site. We do our homework, take our role seriously, invest significant volunteer time to attend meetings, review documents, and prepare comments. We are deeply invested in and engaged in this site and its cleanup.

We ask for the following drafts at the following times through the remainder of 2023. We will update this list for later dates and documents for 2024 later this year. We would select a limited number of these to discuss in detail at our CAG meetings. Others we will review and provide questions if we have them from time to time. We will keep the documents transmitted to us in a permissions-only Google folder that will be available to CAG members. These documents are as follows.

<b>OU</b>	<b>EST DATE OF RELEASE</b>	<b>DOCUMENT</b>
OU1	July/August	EPA comments on the draft CFT
	July/August	Revised draft final PRG/RAO Memo
	December	Lateral Groundwater Study Round 1 Data
	December	NGC Revised Draft Alternatives Memo
OU1 East Branch Early Action	July/August	Alternatives Tech Memo revised with EPA comments

## NEWTOWN CREEK SUPERFUND COMMUNITY ADVISORY GROUP

	July/August	NCG Revised FFS Outline
	September	CSTAG comments from the July CSTAG review
	October	NCG Draft Focused Feasibility Draft Report and EPA comments
	December	NCG Revised FFS
OU2	November	NYC Final Work Plan and EPA comments
All	As available	Any and all dispute resolution letters between PRP entities and EPA

We ask that you respond in writing by our September 20th CAG meeting whether you agree to provide each of these documents in the time frame described in the draft six-month schedule (understanding estimated deadlines may change), and if not, why not. We would be glad to discuss this request with you.

We look forward to your response.

Sincerely,

The Newtown Creek CAG Steering Committee, on behalf of the full CAG

CC:

Michael Haggerty, NYS DEC  
Heidi Dudek, NYS DEC  
Ron Weissbard, NYC DEP  
David Haurly, Anchor QEA  
Tyquana Henderson, Newtown Creek Group  
Lisa Garcia, Administration, EPA Region 2  
John Prince, Deputy Director Superfund & Emergency Management Division, EPA Region 2  
Angela Carpenter, Emergency and Remedial Response Division, EPA Region 2  
Pat Evangelista, Division Director Superfund and Emergency Management Division, EPA Region 2  
Councilmember Julie Won, District 26  
Councilmember Robert Holden, District 30  
Councilmember Lincoln Restler, District 33  
Councilmember Jennifer Gutierrez, District 34  
Brooklyn Borough President, Antonio Reynoso  
Queens Borough President, Donovan Richards  
State Assemblymember Juan Ardila, District 37  
State Assemblymember Emily Gallagher, District 50  
State Assemblymember Maritza Davila, District 53  
State Senator Michael Gianaris, District 12  
State Senator Julia Salazar, District 18  
State Senator Kristen Gonzalez, District 59  
Congressmember Nydia Velazquez, District 7  
US Senator Chuck Schumer  
US Senator Kristen Gillibrand