



REGION 2

NEW YORK, N.Y. 10007

March 19, 2024

VIA EMAIL

Willis Elkins
Co-Chair Newtown Creek CAG
Executive Director
Newtown Creek Alliance
welkins@newtowncreekalliance.org

Re: Boundaries of the Newtown Creek Superfund Site

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

Thank you for your letter dated January 11, 2024, in which you requested clarification on the boundaries of the Newtown Creek Superfund Site vis-à-vis upland properties.

A Superfund site is best defined as that portion of a facility that includes the location of a release (or releases) of hazardous substances and wherever hazardous substances have come to be located.¹ In other words, a Superfund site is defined by the extent of contamination. At the time of listing on the National Priorities List, the precise nature and extent of contamination at a site are typically not known. The geographical extent can grow (or shrink) during the process and is data driven. As such, Superfund sites are not defined by specific boundaries, but rather are defined by where contamination is found.

It should be noted that the geographic extent or scope of a Superfund site may differ from the specific scope or study area that may be addressed under different phases, or operable units (OUs), of a Superfund site cleanup. As you know, EPA has elected to address the conditions at the Newtown Creek Superfund Site in separate OUs. OU1 concerns the ongoing, broad remedial investigation/feasibility study ("RI/FS") for a Study Area at the Site, which is being performed pursuant to a 2011 administrative order on consent executed by EPA and six respondents (the 2011 AOC). Under the 2011 AOC, the OU1 "Study Area" is defined as follows:

"Study Area" shall mean the portion of the Newtown Creek Superfund Site that encompasses the body of water known as Newtown Creek, situated at the border of the boroughs of Brooklyn (Kings County) and Queens (Queens County) in the City of New York and the State of New York, roughly centered at the geographic coordinates of 40° 42'.54.69" north latitude

¹ See Clarifying the Definition of "Site" Under the National Priorities List, USEPA, OSWER Directive 9820,2-10FS (May 1996), available at <https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P100M2L8.TXT>.

(40.715192°) and 73° 55' 50.74" west longitude (-73.930762°), having an approximate 3.8-mile reach, including Newtown Creek proper and its five branches (or tributaries) known respectively as Dutch Kills, Maspeth Creek, Whale Creek, East Branch and English Kills, as well as the sediments below the water, and the water column above the sediments, up to and including the landward edge of the shoreline, and including also any bulkheads or riprap containing the water body, except where no bulkhead or riprap exists, then the Study Area shall extend to the ordinary high water mark, as defined in 33 C.F.R. §328.3(e), of Newtown Creek, and the areal extent of the contamination from such area, but not including upland areas beyond the landward edge of the shoreline (notwithstanding that such upland areas may subsequently be identified as sources of contamination to the water body and its sediments or that such upland areas may be included within the scope of the Newtown Creek Superfund Site as listed pursuant to Section 105(a)(8) of CERCLA). The Study Area is depicted generally on the map attached as Appendix B.

As outlined above, the OU1 Study Area includes Newtown Creek, as well as the sediments below the water, the water column above the sediments, up to and including the landward edge of the shoreline, and any bulkheads or riprap containing the water body, except where no bulkhead or riprap exists, then the Study Area shall extend to the ordinary high-water mark. The OU1 Study Area does not include upland areas beyond the landward edge of the shoreline, although such upland areas may be identified as sources of contamination to the Creek and its sediments and thus may fall within the scope of the Newtown Creek Superfund Site.

In your 1/11/24 letter, you also inquired about the State of New York's role in addressing uplands. In general, the State has indicated that it wants to retain the lead role for the upland properties at Newtown Creek. NYSDEC recently referred one property to EPA and may end up asking EPA to look at more upland properties, but the general understanding is that the State would address upland impacts through State programs. Thus, while upland properties that are contributing contamination to the Creek may be considered part of the Newtown Creek Superfund Site, it is envisioned that the State would be the lead entity in terms of addressing those upland properties.

Finally, please note that, if after a Record of Decision (ROD) is signed, new information is received or generated that could affect how a remedy selected in the ROD should be implemented, EPA has authority to modify or amend the ROD pursuant to the procedure envisioned in section 117 of CERCLA.

If you have any questions regarding this matter, you may contact me at leshak.andrea@epa.gov or (212) 637-3197.

Sincerely yours,

Andrea Leshak
Assistant Regional Counsel
EPA Region 2