

January 11, 2024

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U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007

Dear US EPA Region 2 Superfund Team:

The Steering Committee of the Newtown Creek Community Advisory Group (CAG) for the Newtown Creek Superfund Cleanup respectfully asks for clarification on the boundaries of the Superfund site vis-à-vis upland properties. We would appreciate a presentation at the February CAG meeting.

The recent permit application for National Grid's Pumphouse (NYSDEC Application 2-6101-00071/00025 for a pump house for the Greenpoint Energy Center, Article 15 Title 5 Excavation & Fill in Navigable Waters | Article 25 Tidal Wetlands) brought to our attention our uncertainty as to how the Superfund boundaries (and thus jurisdiction) are drawn at the interface between the Creek and upland abutting properties.

While the below are not all questions that may arise as to this topic, the bulleted list captures several of our questions.

- Where, how, and why is the boundary drawn between the Creek and its sediments at the banks of the shoreline? Does the Creek as designated Superfund extend to the low or high tide line? Does it extend to the top of the physical bank, regardless of the tide line?
- Where, how, and why is the boundary drawn for different bank "treatments?" Some banks remain somewhat natural, gentle sloping, riprapped, and vegetated to some extent. Most of the banks are bulkheaded. Does the Superfund site include the bulkheads? What about bulkheads that are antiquated and essentially "spilling" material into the Creek?
- The CAG understands that the upland sites regulated by NYDEC may contribute to contamination of the Creek, hence the extensive work around lateral groundwater flow and seeps. At the same time, there is likely significant contaminated bank material. Thus, does EPA's jurisdiction include some measure of the bank itself closely adjacent to the Creek, or are these materials solely subject to DEC's jurisdiction.
- Some banks, like at National Grid site, are actual a decking over the Creek itself with pylons or beams driven into the Creek's sediments. Is the decking, given its location, subject to jurisdiction by EPA under Superfund, given the structures are over the Creek, embedded in the Creek, and may overdeck significant sediment contamination?

- If additional Creek or upland contamination is found that is outside of the current territorial boundaries but contiguous to those current boundaries of the Superfund, can those boundaries be extended to be included in the Superfund remediation. And if that is possible is there:
 - a. An extension possible after the ROD is published and
 - b. A time limit after the ROD is published to extend those boundaries?

As we move into the feasibility studies, and in 2024, a decision about the expedited work on the East Branch, we realize clarity for all on this matter will help us consider and develop informed and useful comments.

Should you have any questions about our comments, please do not hesitate to respond to the CAG's Co-Chair, Willis Elkins.

Sincerely,

The Newtown Creek Community Advisory Group Steering Committee

CC:

Marnie DeLuke, NYS DEC

Michael Haggerty, NYS DEC