

Newtown Creek Community Advisory Group (CAG)

November 11, 2024

Caroline Kwan
Remedial Project Manager
U.S. Environmental Protection Agency
290 Broadway, 18th Floor
New York, NY 10007
email: kwan.caroline@epa.gov.

Re: Proposed Early Action Plan for East Branch Tributary of Newtown Creek

Dear Ms. Kwan and EPA Team:

Thank you for the careful consideration of the following commentary on the proposed early action plan for the East Branch tributary of Newtown Creek (the Proposed Plan). Since the designation of the site on the National Priorities List in 2010, the communities have eagerly awaited a comprehensive remediation plan to address the extensive levels of chemicals of concern present within the sediments of Newtown Creek. Over the past 14 years the Newtown Creek Community Advisory Group (CAG) has expressed significant concerns over key issues including poorly delineated sources of upland contamination, inadequate assessment of contaminant mobility, and disregard of available data for follow-up analyses of principal threat waste (PTW) composition and extent. Only if these issues are addressed can the site be properly remediated.

After extensive review and rigorous discussion amongst members of the CAG and relevant stakeholders we have come to the conclusion that alternative EB-D fails to meet the core Superfund goal of protecting human and ecological health. As is presented in the Focussed Feasibility Study (FFS) alternative EB-F is the only option that we can trust given the above concerns. These concerns can be addressed by:

- Coordination with NYSDEC on use of currently available upland data to quantify and remediate sources PTW sources of ongoing contamination;
- Coordination with NYSDEC to develop a map of upland seep locations that will provide clarity on how any proposed bulkhead will address inflow of contamination from the shore;
- Re-evaluation of cap design following comprehensive analysis of PTW in the tributary – it is recognized that native sediments may also be contaminated and require capping;

- Use of currently available NYCDEP pilot data on NAPL principal threat waste in the East Branch in order to guide these follow-up actions:
 - NAPL compositional analysis that will confirm or invalidate existence of specific chemicals of concern (COCs) and their measured concentrations at seep locations and LIF-identified sediment pools
 - NAPL migration measures out of sediment pools and seeps with methods successfully applied at the Gowanus Canal Superfund site¹²
- Assignment of a Pre Design Investigation (PDI) plan to an independent party overseen by EPA;
- Development of a post remediation restoration plan that sets targets for and identifies potential sites of ecological restoration in the East Branch.

In addition to the key concerns outlined above we have compiled the following comments and questions for your consideration:

1. Scope of Early Action

The EPA has indicated that the focus of the early action plan is to clean up the contaminated sediments currently within the East Branch. Restricting the plan's focus to existing sediment contamination while disregarding comprehensive investigation of potential PTW contamination from upland sites ensures remedy failure; hence, the necessity of NYSDEC collaboration on development of a site map and rigorous testing protocol for PTW composition and migration rate/volume measures from upland sources.

- *Can EPA clearly state the objective of the early action plan and to convey the EPA's overall site strategy to achieve cleanup?*
- *Can EPA clearly define the boundaries of each operable unit and the cleanup status of each operable unit?*
- *Can EPA clearly define the responsibilities and boundaries of each agency (city, state and federal) that is involved with the cleanup of the overall site (OU-1)?*
- *Who will conduct each step in the pre-design investigation (EPA, CDM Smith, Anchor QEA, etc.)?*

2. Evaluation of Alternatives

¹ I. Gee, G. L., Grubb, D. G., Gentry, J. L., Tsiamis, C. D., & Hess, J. (2022). Gowanus canal superfund site. IV: Delineation of potentially migrating NAPL layers for ISS treatment. *Journal of Hazardous, Toxic, and Radioactive Waste*, 26(3), 04022020.

² Niemet, M. R., Gentry, J. L., Bruno, M., Berggren, D. R., & Tsiamis, C. D. (2015). Gowanus Canal Superfund site. I: NAPL mobility testing of MGP-impacted sediments. *Journal of Hazardous, Toxic, and Radioactive Waste*, 19(1), C4014003.

The CAG has stated its preference for alternative EB-F given that the associated FFS reveals little PTW data was collected, that existing PTW data was disregarded and that inappropriate methods were applied to determination of NAPL migration (as noted below). Additionally, the CAG and its technical advisors have concerns regarding the EPA's argument presented for selection of EB-D as the preferred alternative instead of EB-F.

The Proposed Plan states that alternative EB-D is the EPA's preferred alternative because it meets the threshold criteria of protecting human health and the environment and complying with applicable or relevant and appropriate requirements. It also states this alternative provides the best balance of the remaining criteria. However, when reviewing table 7-2 in the Focused Feasibility Study (FFS), TASC assigned a ranking of 0 to 4 for the balancing criteria (none to low = 0, low to moderate = 1, moderate = 2, moderate to high = 3, high = 4) and in doing so, alternatives EB-B, EB-D and EB-E have the same numerical score of 12.

The Proposed Plan states that EB-D would provide more reduction in toxicity, mobility or volume through treatment than Alternatives EB-B or EB-C. It is clear to the CAG that greater contaminated sediment removal is directly correlated to a reduction in those three factors so the ultimate conclusion is correct. It is improbable that the scores for reduction of toxicity, mobility or volume through treatment could result in the same combined score for all three alternatives.

In addition, Table 5-3 in the FFS shows that EB-D would leave 16,000 cubic yards of Sediment With Observations of NAPL in East Branch, meanwhile EB-A (No Action) would leave 16,200 cubic yards. This means that the preferred alternative EB-D would only remove 200 cubic yards of Sediment With Observations of NAPL, which is only 1.2% out of the total estimated Sediment With Observations of NAPL in East Branch. NAPL is a PTW; this miniscule amount of reduction would not be protective of human health and the environment.

- *Can EPA further explain how EB-D will provide more reduction in toxicity, mobility or volume than EB-B and EB-C? Does one criterion on the rating matrix carry more weight than another criterion? Why does it appear that EB-C scores equivalently to EB-D on this balancing criterion, and EB-B has a higher treatment score than EB-C and EB-D but a slightly lower score for ex situ treatment.*

3. Pre-design Investigation (PDI)

The CAG is very concerned about the lack of comprehensive data in the Proposed Plan, which fails to provide sufficient information for a remedy that would adequately protect human and environmental health.

As indicated in Table 1, the maximum number of core samples collected for any one Contaminant of Concern (COC) is 17, which is grossly inadequate for the 11 acres of East Branch. Furthermore, as illustrated in Figure 1, while Total PAH (34) has 17 core samples, the collection of these samples does not follow a geospatial pattern. This has resulted in many areas of East Branch lacking any core samples altogether.

COC	# of Core Samples Collected
Total PCBs	17
Dioxin/Furan TEQ	9
Copper	17
Lead	17
PAH (34)	17
C19-C36 Aliphatic Petroleum Hydrocarbons	2

Table 1. Total number of core samples collected for each Contaminants of Concern in the East Branch, based on Figures in the FFS.

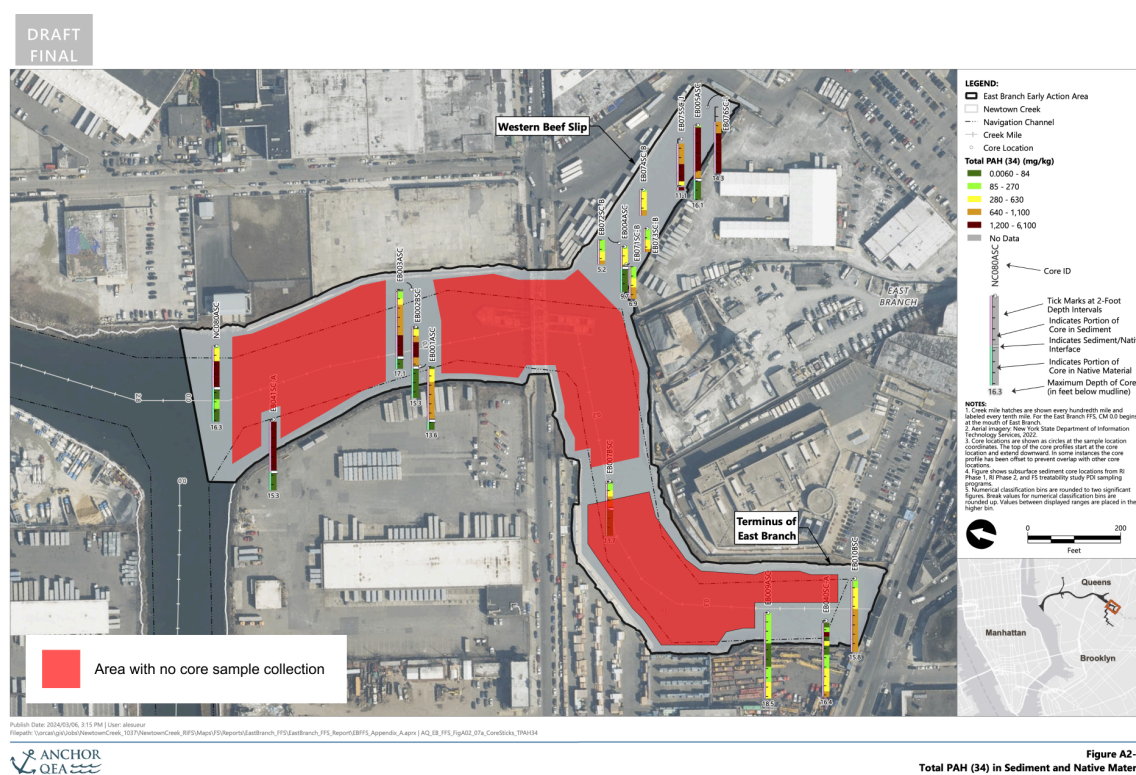


Figure 1. Total PAH (34) in Sediment and Native Material (Figure A2-7a of FFS) with area of core sample gaps highlighted in red.

The lack of data in the Proposed Plan further stresses the need for a robust, comprehensive, and systemic Pre-Design Investigation plan (PDI). The CAG requests a PDI that is completed by an independent party overseen by the EPA, and presented to the Community Advisory Group and community at large for comments.

Additionally, the CAG has the following questions regarding the lack of robust and comprehensive sampling:

- *Will a sampling plan be released for public review and comment prior to the start of the pre-design investigation?*
- *Does EPA have an estimate of the time frame for the pre-design investigation and will results from the investigation be shared with the community?*
- *Will the cleanup alternatives be reevaluated based on findings from the pre-design investigation? The Proposed Plan states there is a relatively large degree of uncertainty associated with the potential of ongoing contamination. For example, the pre-design investigation may identify larger volumes of contaminated sediments that may require additional dredging. This waste material will require planning for dewatering and decontamination. Another example is that the pre-design investigation may identify a greater contribution of inflowing contamination from upland areas, thus reducing the effectiveness of an early action cleanup.*

4. Ongoing Studies

The Proposed Plan states that there are several investigative activities related to the OU-1 study area that are ongoing including:

- Characterization of lateral groundwater discharge along the shoreline of the creek to refine the groundwater contaminant loading estimates to the creek.
- Collection of more sediment and water quality samples from the creek and the East River to supplement previously collected data.
- Collection of more data from ongoing point sources and the East River as part of the OU-2 post-Record of Decision monitoring program.

The Proposed Plan notes that “These data will be considered, as appropriate, in the design for the East Branch portion of OU1 remedy.”

- *Can EPA provide clarification on whether the findings of ongoing studies relating to OU-1 will be available during the public comment period to determine if any modifications are necessary to the preferred alternative.*
- *Will any of the alternatives change significantly if these sitewide studies suggest that external sources are still contributing to significant ongoing contaminant loading to Newtown Creek and the East Branch?*
- *One of the fundamental objectives for the early action is, “to inform the OUI site-wide FS alternative development”. However the footnote on page 2 of the FFS states “The project*

schedule as of April 2024 will not allow for incorporation of evaluation monitoring data to inform the draft OUI FS.” Can EPA clarify if a site-wide feasibility study will be drafted before any Early Action post-construction evaluation information is available?

5. Concerns About Non-Aqueous Phase Liquids (NAPL)

Throughout the Focused Feasibility Study there is routine mention that the presence of NAPL has been identified only as blebs or sheens in sediment and that NAPL or principal threat waste warranting treatment using ISS have not been identified to date in the East Branch. These documents do not appear to acknowledge the results of the New York City Department of Environmental Protection laser-induced fluorescence study and seep investigations.

The CAG disapproves the characterization of NAPL locations in the FFS and Proposed Response Action Plan (PP) as they are based solely on “visual observations,” and not on systematic sampling and quantitative analysis. Precision is required in locating NAPL contamination sources.—Opportunistic and subjective sampling is unacceptable for a waste that can carry high-concentrations of multiple COCs, and is listed by the EPA as a Principal Threat Waste for the Newtown Creek Superfund site.

Quantitative, comprehensive, and reliable analysis of NAPL **composition and distribution** is the foundation for a remedy that is protective of human and ecological health for generations to come. The FFS and Proposed Plan has failed to establish this critical foundation. Thus, the CAG rejects the claims in the Proposed Plan that states “existing data does not indicate this remedy component [ISS] will be necessary” and that “the need for sealed bulkheads is not currently indicated by the existing data.”

A remedy that is protective of human and ecological health must effectively address the threat of NAPL. The CAG demands:

- Systematic low-tide surveys of NAPL seeps;
- Comprehensive chemical analysis of NAPL composition across all sources: sediment reservoirs, seeps, water surface sheens;
- Quantitative mapping of aerial and vertical distribution of NAPL across East Branch sediments using optical scanning technology employed in the Gowanus Canal Superfund Site and by the NYCDEP;
- Accurate assessment of sediment NAPL mobility as opposed to the use of centrifugation on fine-grain sediment samples – a technique wherein rotation speed, rotation period and particle size are biased towards the finding of low NAPL mobility.

The Focused Feasibility Study and Proposed Plan appear to rely on blebs and sheen detection via observations and shake tests of sediment samples evaluated by the NCG contractor Anchor QEA but omits the data collected by the NYCDEP, such as the 2016 NYCDEP laser-induced fluorescence data and the NYCDEP 2017 *Upland NAPL Seep Sampling Data Summary Report*.

The 2017 NYCDEP report observed NAPL values in upland areas that were several orders of magnitude greater than all other sampled sources to the creek, which indicates the importance of this study in understanding the sources of ecological and human health risk drivers and for development of the conceptual site model for the study area.

The Focused Feasibility Study emphasizes the need for further NAPL characterization during the pre-design investigation to determine if NAPL even exists and if it is mobile. The Proposed Plan states that “existing data does not indicate this remedy component [ISS] will be necessary, for costing purposes the Focused Feasibility Study assumes that ISS to treat NAPL and/or [principal threat waste] will be needed to address 0.6 acres of the East Branch, which equates to 5.5 percent of the total surface area of the East Branch.” Furthermore, the Proposed Plan states that “the need for sealed bulkheads is not currently indicated by the existing data, for cost estimating purposes the Focused Feasibility Study assumes that 20 percent of the length of bulkheads required for each alternative will need to be sealed.” In sum, the Proposed Plan dismisses quantitative data that addresses NAPL composition, seep location and sediment distribution.

Throughout the Focused Feasibility Study there is an acknowledgment of a significant amount of uncertainty in estimating the volume of sediment that contains observations of NAPL. The Focused Feasibility Study estimates the volume of sediment containing NAPL based on shake tests and visual observations.

To date, the CAG has expressed grave concern about underestimating contamination caused by NAPL, specifically outlined in comments by the CAG on the Remedial Investigation report. The East Branch PP does not alleviate the CAG’s concerns that rigorous investigation of NAPL contamination, with technologies successfully implemented at the Gowanus Superfund site, will replace the inadequate methods of the Remedial Investigation (RI) that excluded:

- Systematic low-tide surveys of NAPL seeps, sources of ongoing contamination (references are made to “opportunistic” observations);
- Comprehensive chemical analysis of NAPL composition across all sources: sediment reservoirs, seeps, water surface sheens (NAPL sheens arbitrarily classified as *not* NAPL);
- Aerial Mapping and vertical distribution of NAPL across Creek sediments (>130 sediment cores not assessed for NAPL contamination; remaining cores assessed qualitatively instead of quantitatively with optical scanning for induced fluorescence, as for Gowanus cores);
- Accurate assessment of sediment NAPL mobility.

The PP for the East Branch tributary of Newtown Creek fails to propose a PDI that eliminates current practices for avoiding NAPL discovery and analysis. These practices must be replaced with rigorous methods for quantifying NAPL extent, composition, migration and loading from the shoreline seeps that were identified by municipal and state environmental agencies, respectively, the NYCDEP and NYSDEC. Appropriate technologies for meeting this goal have been successfully employed by the EPA for the Gowanus Superfund^{1,2} and by the NYCDEP at

Newtown Creek (2016-2017). Core samples from the latter investigation were made available to the EPA for further testing, but have remained unanalyzed for seven years.

Additionally, we take great concern with what is included and excluded from the FFS. For instance within the FFS is included an unreviewed AQ/NCG report (Appendix B, Section 3.4.4) that concludes NAPL seeps are a “minor source of COCs to sediments in East Branch.” This report refers to a seep study without a single low tide survey of potential seep outfalls, without a NAPL sample analysis and with data restricted to sampling a single COC, TPAH34. A NAPL sample can contain multiple contaminants. *What stakeholders reviewed this study and why was the CAG not appraised of this study?*

This above omission is in stark contrast to the NYCDEP East Branch NAPL seep study released in 2017, which represents the most extensive data set available to characterize East Branch NAPL seeps. Placement of the NYCDEP NAPL seep study and associated NAPL sediment studies in an Appendix of the RI/FS of FFS does not constitute either the use of these data as a guide to more extensive follow-up analysis nor as a guide to inform a remedy design.

- *How will the previous NYCDEP Seep Study and laser-induced fluorescence data be used as another line of evidence as a basis to design further pre-design investigations of NAPL to confirm the presence or absence of any NAPL reservoir(s)? What definitive methods will be used to assess the presence of NAPL or principal threat waste? If the pre-design investigation shows larger areas of NAPL, what remedy components can address the NAPL beyond ISS or amended capping and dredging for the early action?*
- *What quantitative methods will be used during the pre-design investigation beyond sheen/bleb observations or shaker tests to determine the extent of NAPL? The NYCDEP laser-induced fluorescence and upland seep data documented seeps emanating from the shoreline of 11 upland sites and from in-creek structures. These data represent only a small subset of the NAPL seeps that occur throughout the study area. The 2020 NYCDEP seep study recommended that more studies are needed to develop a robust understanding of upland properties that are a source of NAPL to the creek. Currently, the Proposed Plan defers cleanup of the upland sources either to voluntary actions or through federal and/or state of New York enforcement authorities. If such actions are deferred, clarification is warranted in the Proposed Plan to understand how such actions will be integrated with the planned Superfund cleanup.*
- *Is ISS the only option for addressing NAPL based on the minimal NAPL information cited in the Focused Feasibility Study and Proposed Plan? Would additional remedy components be considered if NAPL reservoirs are discovered (ex. extraction of NAPL from behind bulkheads)?*
- *Will any additional ISS be needed if deeper dredging cannot remove all the NAPL-contaminated sediment due to structures or other limitations (e.g., the Grand Street bridge structure)?*

- *Why are the estimated dredging volumes the same for alternatives EB-C and EB-D? The Focused Feasibility Study and Proposed Plan show the same volume of sediment for NAPL treatment (9,900 cubic yards) for alternatives EB-C and EB-D; however, alternative EB-D includes deeper dredging, possibly to remove more NAPL-impacted sediments.*

6. Upland Source Control

The Newtown Creek community has expressed concern about the mobility of NAPL and the inflow of new contamination into the East Branch after completion of the early action cleanup. Community members are particularly concerned about the mobility of NAPL. The Focused Feasibility Study indicates that NAPL within the East Branch sediments is not mobile. However, community members are concerned with the occurrence of blebs and sheens, which indicate the presence of NAPL. The Proposed Plan does not address potential NAPL areas and sources upgradient from the East Branch.

As noted above, the early action study area is bounded by the bulkheads and riprap at the water's edge. The Proposed Plan indicates the study area will be temporarily isolated from upland contamination by repairing and sealing bulkheads, where needed.

- *How will seeps be addressed in the long-term, and does the Long-term Equilibrium model consider the limited effect of bulkhead sealing? How will discontinuous shoreline controls be connected? We are concerned that unless controlled or reduced, the contamination from upland sources will continue to enter the East Branch at the same rate that it currently does. Additionally, sealing sections of bulkheads may address localized areas of known seeps but may not prevent the lateral migration of NAPL to adjacent seeps and non-bulkheaded shoreline.*
- *Can EPA provide an inventory of the bulkhead status around the East Branch early action area, identifying areas that need bulkhead repairs as well as areas of concentrated inflows from potential upland sources? This information can be included for the community in the suggested site map to be developed in collaboration with State and City agencies.*
- *Can EPA provide construction details on the existing bulkheads? Because it is likely that bulkheads were historically installed for bank stabilization and not for groundwater control, they may not extend to the lower confining layer to impede NAPL migration, and the CAG seeks further details on existing bulkhead ability to prevent potential migration/recontamination.*
- *Will banks that are currently stabilized by riprap be replaced or enhanced by an impervious barrier? By study area definition this amendment to the riprap to prevent NAPL seeps would need to be at the riprap. Adding a slurry wall behind the riprap would technically fall beyond the boundaries of the early action area.*

- *Can EPA provide details on how bulkhead replacement will happen? We are concerned about new bulkheads being installed on the waterside of upland properties, thus reducing the footprint of the public waterway.*

7. Capping Evaluation Report

Within the Focused Feasibility Study, the Newtown Creek Group also released a Capping Evaluation Study (Appendix C of the *Early Action Focused Feasibility* report). This report evaluates various cap configurations to address channel-bed contamination. Channel-bed contamination includes contaminated soils that remain after dredging operations and the future inflow of contamination from groundwater and seeps into the East Branch.

The report provides recommendations for cap construction, taking into account erosion and strategies for contamination isolation and containment. In summary, the Capping Evaluation Study suggests a three-layer cap: the top erosion layer would be 12 to 20 inches of sand, gravel or cobbles, the middle filter layer would be up to 9 inches of gravel and the lower chemical isolation layer would comprise 15 inches of sand mixed with activated carbon. In addition, the cap over contaminated sediments would include 9 inches of sand with an organoclay.

- *During the EPA's public meeting about the Proposed Plan on September 18, 2024, the EPA indicated that further studies are needed to evaluate upland sources. Considering this statement, are the groundwater flow rates and contaminant concentrations published in the Capping Evaluation Study only preliminary at this time? Further, if there are inaccuracies how easily can these inaccuracies serve to modify the cap recommendation? A 2011 Administrative Order on Consent identified numerous upland sources that are or will be addressed under a variety of cleanup programs. Will the status of these other cleanup programs be used in future upland sources and groundwater inflow evaluations, and how will this affect the early action?*
- *Has the Capping Evaluation Study been reviewed? How will the cap construction recommendations be implemented?*
- *What studies have demonstrated that a cap topped with 12 to 20 inches of sand, gravel or cobbles satisfies the requirement for a biologically active zone at the top of the cap? Can EPA clarify if the cap will require a 6-inch biologically active layer or a 20-inch biologically active layer as required by the New York State Department of Environmental Conservation?*
- *The CAG is concerned about the effectiveness of capping remedies. Can EPA provide details on similar Superfund remedies that have utilized caps, including details such as depth of cap, type of cap, was the cap on native sediment or contaminated sediment, etc? Please describe the risk of cap failure in as much detail as possible so that the CAG can fully understand potential risks. The CAG is aware of past cap failures, including sites worked on by AnchorQEA.³⁴*

³ <https://semspub.epa.gov/work/06/9384668.pdf>

⁴ <https://semspub.epa.gov/work/02/372861.pdf>

8. In Situ Stabilization/Solidification

The FFS states that:

For the purposes of technology evaluation in this FFS, application of the three technology options was assumed within a 0.6-acre evaluation area within the western beef slip. Note that other factors, such as the concentration of COCs in remaining sediment and constructability, may be taken into account during the design of the remedy when evaluating where to apply ISS as well.

In situ stabilization and solidification (ISS). where needed to reduce migration and for treating NAPL or PTW. While existing data does not indicate this option will be necessary for costing purposes the FFS assumes that ISS to treat NAPL and/or PTW will be needed to address 0.6 acres of the East Branch, which equates to 5.5 percent of the total surface area of the East Branch.

Does the 0.6-acre ISS estimate include the proposed ISS testing in the Western Beef slip, or does this estimate incorporate ISS needed as necessary where EPA identifies and delineates NAPL?

Despite EPA's response to CSTAG's comment, it remains unclear what determining factors EPA will rely on when confronting non-aqueous phase liquids and/or principal threat waste to decide between additional dredging and in situ stabilization/solidification. The CAG prefers dredging and removal of the hazardous chemicals unless impossible.

This monitoring program will allow EPA to identify the specific, ongoing sources that may cause IEM exceedances before IEM exceedances actually occur and will enable EPA to develop an appropriate course of action to ideally prevent IEM exceedances from ever occurring.

Based on EPA's more than decade timeline for studying groundwater, identifying seeps, and delineating NAPL, all of which are still not done, the CAG questions whether EPA could possibly identify sources of contamination prior to IEM exceedances, if such contamination sources are not to be blamed on CSO and MS4 inputs.

9. Cleanup Logistics

- *Considering that the preferred cleanup plan maintains existing water depths, the EPA is assuming that the waters will be removed from the navigational waterway designation.*

Would the Proposed Plan and evaluation of cleanup alternatives need to be re-evaluated if this navigational delisting is not passed? Does the initiation of the cleanup action or the issuance of a Record of Decision require this navigational delisting?

- *How will the cleanup and the Grand Street bridge replacement projects be scheduled (simultaneous or sequential scheduling) and which would be done first? How might the early action cleanup impact the bridge replacement project and vice versa? If the DOT implements a non-movable bridge in the future, which is possible with a navigation delisting, how will this impact dredging, capping, bulkhead replacement work, and all other components of an early action? Will any potential bridge construction after the cleanup damage the caps and other remediation techniques?*
- *Will EPA consider prioritizing working with a contractor who can transport dredged materials and remediation equipment with vessels less than a 25' air draft to avoid ongoing openings of the Pulaski and Greenpoint Avenue bridges? This would significantly help mitigate local impacts through increased local traffic, congestion, and resulting air quality.*
- *Can EPA provide a more detailed overview of the dredging process? EPA identifies "slot dredging" in the Proposed Plan. The EPA further clarified that dredging would likely be with a clamshell-style mechanical dredger.*
- *Will a suction dredge be considered? A suction dredge may reduce contaminated sediment resuspension and reduce contaminated sediments from leaving the project area. As the EPA has proposed a suction-style dredging removal operation at a similar site in Baltimore to remove similar contaminants (Bear Creek Sediments site), can EPA explain to the community the pros and cons of various dredging techniques?*
- *We have a series of questions about potential on-site waste management of dredged sediments:*
 - *Will the waste be staged on land next to the dredging operation before removal by barge?*
 - *Will the waste sediments be dewatered on site and how would the water removed from the waste be handled? Would the EPA consider a dewatering facility and water treatment plant on site?*
 - *If staged on land for dewatering, will there be controls in place for dust control?*
 - *Does the EPA have a plan to move sediment from the dredge site to a barge downstream of the Grand Street bridge? We are concerned about the operation of the Grand Street bridge for barge navigation not being highly feasible, whether for new bridge construction, excessive impact to local road traffic or due to possibly inoperable bridge rotating machinery.*
- *How will the EPA address the pipeline crossing at the East Branch? Are there any other buried utilities and structures in the proposed dredging area?*

- *What controls will be in place if the dredging operation results in increased resuspension of the sediments? Does the EPA plan to use sediment controls like a silt fence to contain turbid water at the site?*
- *Has a contingency plan been developed if that contamination moves beyond the site boundaries during dredging and waste handling?*
- *What happens if more contamination, or more toxic contamination, is exposed during dredging, which was not identified during the pre-design investigation study?*
- *Does the EPA have a contingency plan if a storm surge/flooding event occurs during cleanup?*
- *Will EPA have a point of contact if community members have concerns about noise, dust or other cleanup-related issues? How will the EPA provide periodic updates to keep community members informed of cleanup progress and any issues encountered? We are concerned about having access to real time monitoring and protocols in place for getting quick and thorough responses to concerns as they arise.*

10. Post-Construction Evaluation Monitoring

The long-term remedy evaluation monitoring appears to generally address the monitoring specifics requested by the EPA Contaminated Sediments Technical Advisory Group (CSTAG) September 2023 memo, by including multiple lines of evidence for evaluating cap performance. However, the Focused Feasibility Study and Proposed Plan are vague in the monitoring required to evaluate the effectiveness of ISS or bulkheads as the long-term monitoring component.

- *What long-term monitoring is required for evaluating ISS or bulkhead remedy components?*
- *Who will be conducting the long-term monitoring (EPA, CDM Smith, Anchor QEA, etc.)?*
- *How will the evaluation process be conducted during the long-term monitoring? Is there a period of time for monitoring that must pass before “lessons have been learned” and the next stage of Newtown Creek cleanup can begin?*
- *Who is responsible for addressing and paying for repair and damages if there is an issue with the remedy, including post OU-1 ROD? This question is of critical importance given the outcome of US District Court Case 1:19-CV-1029, wherein the NYSDEC lost its argument that the EPA improperly issued a Certificate of Completion to GE. New York State residents are now required to fund remediation of remaining PCB contamination in the Hudson River.*

11. Future Use and Ecological Restoration

- *Please explain the EPA’s rationale for determining a biologically active zone (BAZ) to be 6 inches (15 centimeters). The NYSDEC states that it: “does not accept the 0 to 6-inch*

interval of sediment as an appropriate definition of the Biologically Active Zone (BAZ) in Newtown Creek or basis for remedial decision making. The 0 to 6-inch interval fails to provide adequate ecological protection in Newtown Creek. To appropriately characterize ecological exposure and evaluate long-term effectiveness of remedial technologies, NYSDEC recommends 2 feet (~60 centimeters) as the zone of surface sediment used to evaluate remedial alternatives.” This discrepancy represents a significant disagreement in the plan between EPA and DEC. The definition of the BAZ is at the crux of the remedy, and completely defines it. Why has EPA limited the definition of the BAZ to 6 inches? Given that EPA expects net deposition of sediments from the East River, the measurement of only the top 6 inches (or potentially less, as EPA has allowed GE to measure only the top 2 inches of sediment, to be representative of the top 12 inches defined as the bio-available zone in the Hudson River PCB cleanup) will almost certainly underestimate the contaminant levels in the bioavailable sediments. If EPA believes that the average depth of plants in Newtown Creek are only six inches, has it considered the possibility that this reduced depth is due to the contamination?

- *How is this early action plan incorporating potential Natural Resources Damages projects and the potential for shoreline and intertidal restoration? The community firmly believes in the opportunity and value of pursuing restoration within the East Branch tributary and rejects a remedy that may limit the options for future restoration work.*
- *Will EPA consider bulkheads that integrated intertidal habitat into their design? The community has repeatedly raised concerns about the sterile surfaces that sheet pile structures present and rejects a plan that does not incorporate ecological value.*
- *Will mitigation be required for any shoreline plants and trees that must be removed for remediation? If so, where will this mitigation occur?*
- *If in-situ stabilization is used, how will that affect restoration of that part of the Creek to more natural functions?*
- *Will EPA consider the bathymetry of East Branch and prioritize a depth that is more naturalized (shallowed in the head end areas, and deeper downstream as it connects to the navigable main channel? The community is very concerned about the damage that will be done in maintaining arbitrary depths in East Branch that do not help with flow and circulation of water and create severely impacted water quality issues, for which the DEP aeration system is required to mitigate.*
- *The Proposed Plan characterizes the designated use of Newtown Creek as “suitable for fish survival only,” but that is incorrect. The plan must also acknowledge that the creek is designated for primary contact recreation. As explained by EPA Region 2 Clean Water Division Director Javier Laureano, New York State Department of Environmental Conservation promulgated, and EPA approved, the recreational use in 2015 and 2016, respectively:*

“On February 24, 2016, the U.S. Environmental Protection Agency (EPA) received the New York State Department of Environmental Conservation (NYSDEC) revisions to New York State's water quality standards (NYSWQS). These revised water quality standards (WQS), adopted by the NYSDEC on November 4, 2015, amended the designated uses of Class I and Class SD saline surface waters [including Newtown Creek] to include a designated use of primary contact recreation (6 NYCRR §§ 701.13 and 701.14). Additionally, these revised WQS amended the water quality criteria for Class I and Class SD saline surface waters (6 NYCRR Part 703). In a letter dated May 9, 2016, the EPA approved, pursuant to Section 303(c) of the Clean Water Act (CWA), 33 U.S.C. §1313(c), the revised designated uses of Class I and Class SD saline surface waters at 6 NYCRR Part 701.”

For the purposes of federal law, and especially for actions taken pursuant to EPA oversight, EPA must incorporate the designated use approved by its own Region 2 office.

- *The East Branch tributary currently features an in-stream aeration system installed and operated by NYCDEP to elevate dissolved oxygen levels during summer months. Can EPA weigh in on plans to temporarily or permanently remove the system as part of a proposed remedy in East Branch. Additionally, will EPA evaluate how current bathymetric conditions in East Branch contribute to stagnant water and low dissolved oxygen levels that require mechanical intervention such as an in-stream aeration system?*

12. Additional Topics

- *What is the status of the delisting for navigation for the East Branch via the Water Resource Development Act (WRDA) and how will this affect the remedy?*
- *Can EPA address potential recontamination shown within the Long Term Equilibrium Model via CSO and MS4 discharges? The FFS states that “Current estimates of the LTE concentrations for certain COCs indicate that LTE concentrations within East Branch may, over time, be greater than some risk-based PRGs (specifically D/F TEQ and C19-C36 and potentially TPCB), regardless of the remedy selected due to ongoing external inputs.” The CAG opposed the OU-2 decision by EPA precisely because it would continue to allow COC discharges in amounts that would obviously lead to recontamination. The CAG continues to oppose EPA’s inaction to address and reduce CSO and MS4 discharges that will inevitably result in recontamination.*
- *Could EPA provide in its final decision, a clear graphic or workflow that shows all the variety of actions here and the coordinate/integrate/sequence: 1) East Branch early action; 2) whole site FS and PP; 3) Grand Street Bridge replacement; 4) Delisting of*

some areas; 5) CSO monitoring; 6) National Grid Pump House; 7) NYSDEC upland work?

12. CAG Preference for Alternative EB-F

Lastly, we would like to close by expanding upon the case as to why the community is obliged to recommend the most comprehensive remedy, EB-F:

- EB-F eliminates all contaminated fine-grained sediments overlying the native sandy substrate, thereby reducing opportunity for further biased investigation of contamination and risk of inadequate remedy.
- EB-F can render shoreline NAPL seeps more easily identifiable because removal of fine sediment (“black mayonnaise”) will expose more shore boundaries, increasing the opportunity to map seep sites.
- EB-F removal of contaminated sediment can be followed by sand deposition onto native sediment, restoring naturalized water depths. Increased sand deposit depth provides a more effective barrier to contamination and greater opportunity for restoration of the benthic invertebrate community. Sand filling to raise sediment surface level has been successfully implemented elsewhere.⁵
- EB-F protects Creek communities by maximizing up-front remediation funding from the potentially responsible parties. Maximizing the initial funding and duration of the remediation effort reduces probability of recontamination. Recontamination after a Record of Decision (ROD) is completed would likely shift clean-up costs onto chronically underfunded government departments to pursue a continued remediation effort lasting generational time. It is worth noting the scenario unfolding around the Hudson River PCB Superfund Cleanup. Widespread PCB contamination was discovered after the EPA awarded the GE corporation a “Certificate of Completion” for PCB remediation. New York State (NYSDEC & Basil Seggos as NYSDEC Commissioner, *Plaintiffs*) lost its case against the EPA (EPA & GE, *Defendants*) for allowing GE to abrogate its responsibility for the contamination by improperly awarding GE certification. The case was heard in US District Court before Judge David N. Hurd, who made the following statement: “*In short, CERCLA does not squarely impose a requirement of a finding of protectiveness before a remedial action may be considered complete.*”⁶

⁵ Jamaica Bay Marsh Islands, 10-26-2024, <https://www.nan.usace.army.mil/Missions/Environmental/Environmental-Restoration/Elders-Point-Jamaica-Bay-Salt-Marsh-Islands/>, US Army Corps of Engineers

⁶ Case 1:19-cv-01029-DNH-CFH Document 103 Filed 03/11/21 https://stateimpactcenter.org/files/State-of-New-York-et-al-v.-United-States-Environmental-Protection-Agency-et-al-No.-1_19-cv-01029-Decision-Order.pdf

In closing, we appreciate the opportunity to comment on this proposed plan and greatly look forward to ongoing communication and collaboration in creating a cleaner, safer, and healthier Newtown Creek.

Sincerely,

Steering Committee of the Newtown Creek Community Advisory Group, on behalf of the full Newtown Creek Community Advisory Group

Leah Archibald, Evergreen Exchange
Kendall Charter, Greenpoint YMCA
Mike Dulong, Riverkeeper
Sarah Durand, LaGuardia Community College - CUNY
Willis Elkins, Newtown Creek Alliance
Quincy Ely-Cate, Maspeth Industrial Business Association
Christine Holowacz
Louis Kleinman
Paul Pullo
Shangtong 'Sandy' Li, Newtown Creek Alliance
Charles Yu, Long Island City Partnership

CC:

Stephanie Vaughn, US EPA
Rupika Ketu, US EPA
Taylor Hard, US EPA
Natalie Loney, US EPA
Pat Evagelista, US EPA
John Prince, US EPA
Marnie DeLuke, NYS DEC
Michael Haggerty, NYS DEC
Patrick Foster, NYS DEC
Ron Weissbard, NYC DEP
David Haury, AnchorQEA
David Bridgers, Newtown Creek Group
US Congresswoman Nydia Velazquez
NYS Assembly Member Emily Gallagher
NYS Assembly Member Maritza Davila
NYS Assembly Member Elect Claire Valdez
NYS Senator Julia Salazar
NYS Senator Michael Gianaris
NYS Senator Kristen Gonzalez
NYC Council Member Jennifer Gutierrez
NYC Council Member Robert Holden
NYC Council Member Julie Won
NYC Council Member Lincoln Restler
Brooklyn Borough President Antonio Reynoso
Queens Borough President Donovan Richards