

June 9, 2015

Steve A Watts
NYSDEC Region 2 Headquarters
47-40 21st St
Long Island City, NY 11101
DEP.R2@dec.ny.gov

Comments Regarding Application ID: 2-6304-00157/00007

Dear Mr. Watts,

The Newtown Creek Alliance (NCA) welcomes the opportunity to comment on the proposed NC-3 aeration project for East Branch and the main channel of Newtown Creek. NCA, along with our partners at Riverkeeper, have expressed numerous concerns about the aeration project to-date and we strongly feel that the project should not advance until the following concerns are appropriately addressed.

Disruption and resuspension of contaminated sediments

We are aware that a significant portion of the NC-3 contract, extending from approximately Meeker Avenue and running southeast through the Turning Basin section, will only be activated at a later date due to concern over sediment contamination from former industrial operations such as the Phelps Dodge site. We feel that this is a prudent decision to prevent disruption and resuspension of chemical contaminants known to exist in the surface sediments of this area. However, given that high levels of hazardous contaminants exist elsewhere in Newtown Creek, as currently being analyzed as part of the Superfund Remedial Investigation (RI), we feel that the same cautious approach should apply to the entire Creek, not just the Turning Basin section. At the very least the build out of the aeration system should be delayed until the completed RI definitively shows higher sediment contamination in the Turning Basin section than other areas of the Creek.

Potential for aerosolizing harmful bacteria and inorganic particulates

As noted in previous letters to the NYCDEP and NYSDEC¹, the aeration system presents a potential hazard for aerosolizing inorganic particulates, given on-site data that demonstrates benthic microbes are aerosolized when the system is in operation. Given the above concerns, and admitted risks of installing an aeration system in portions with highly contaminated sediments, we urge that no further aeration system should be installed in Newtown Creek until a study of the impacts of aerosolizing on air quality is conducted.

Re-evaluation of current dissolved oxygen levels and need for aeration

While we fully appreciate efforts to raise dissolved oxygen levels above the 3 mg/L standard that is driving the consent order, we would like to point out that the main channel of Newtown

¹https://newtowncreekcag.files.wordpress.com/2014/01/riverkeeper-nycdep-ltr-newtown-aeration-1_10_14.pdf

Creek regularly meets this standard from May through September (when DO levels are typically lower and the system would be in operation). From last year's Harbor Survey conducted during this period by the NYCDEP, we find that a large majority of the readings from the two sampling sites within the proposed NC-3 area, NC1 (the Turning Basin) and NC2 (Meeker Avenue), measured above the 3 mg/L DO standard; respectively 87% and 84%. To offer comparison to other waterways with conditions similar to Newtown Creek (poor circulation and heavy CSO discharge), we examined NYCDEP data from the Harbor Survey for sites CIC2, WC2, HC1 and BR3. In contrast to the NC sites, records for BR3 and HC1 show that a minority of samples measured above 3 mg/L DO: respectively, 41% and 48%. For sites WC2 and CIC2, the standard was exceeded in only 65% and 73%, respectively, of recorded samples.² In sum, the NYCDEP's own data reveal that conditions are measurably worse at sites where no aeration system is currently proposed. Given these data, the community of Newtown Creek is owed an explanation for the speed with which the aeration project is being implemented, especially in light of the community's growing concerns.

Given that water quality conditions continue to improve throughout NY Harbor (in large part due to significant investments from both NYSDEC and NYCDEP to reduce CSO volume) one would only expect these DO numbers to improve, as they have already done so from 1992 when this consent order was originally initiated.

Incorporation of new NYSDEC water quality standards and Long Term Control Plan

A Long Term Control Plan (LTCP) for Newtown Creek will be submitted (2017) well before construction of NC-3 is completed (June 2018) and would ostensibly drive all future initiatives to improve water quality conditions. Thus we find it prudent to delay the aeration expansion until the LTCP is put in place. As no timeline has been given for how long the aeration project would remain installed and operating within the Creek, it seems that an LTCP would be the appropriate time to plan and identify such a timeline, incorporating goals beyond a 3mg/L threshold. For instance, we are hopeful that the LTCP will take significant steps to address CSO discharge into the Creek, which again will improve and stabilize DO levels.

Lastly, as NYSDEC has proposed to revise the very Water Quality Classifications that are driving the consent order we strongly recommend a re-evaluation of solutions to bring water quality to the new standards, not the old ones. The present consent order is to bring conditions within the Creek up to current SD standards to accommodate fish survival with DO levels greater than 3mg/L. In the new standards, SD waters are to be suitable for primary and secondary contact and would be measured by bacteria standards, as well as DO levels. While it is unclear if the consent order will be updated to reflect new classifications it is reasonable to re-evaluate the approach to improving water quality in the Creek so that both DO and bacteria levels will meet the new standard. In other words, if the new standards are adopted aeration alone will not fulfill the original consent order, which is to meet SD classification.

²See NYCDEP Harbor Survey data referenced here:
http://www.newtowncreekalliance.org/wp-content/uploads/2015/02/DO_ncversus.jpg



In closing, we fully appreciate the thousands of hours that DEP, DEC and numerous contractors have spent to date on the aeration project, as well as the tremendous budget for the project, including some \$17 million to be spent on NC-3. However, we feel that the improving conditions on the Creek and upcoming planning opportunities have changed the very nature of the consent order and that the NC-3 expansion should not advance without a serious re-evaluation of alternatives that can offer long term solutions to improving water quality without risk of adding extra environmental hazards. We look forward to a continued dialog that engages the agencies and all members of the Newtown Creek community.

Sincerely,
Willis Elkins
Newtown Creek Alliance

cc:
Angela Licata, NYCDEP
Gary E. Kline, P.E., NYSDEC
Venetia Lannon, NYSDEC