



November 18, 2011

Gary Kline
NYS DEC, Division of Water
625 Broadway, 4th Floor
Albany, NY 12233-3506

Re: **2011 Modification to Order on Consent between the City of New York and the New York City Department of Environmental Protection (NYC DEP) and the New York State Department of Environmental Conservation (NYS DEC) DEC Case # CO2-20000107-8, (a.k.a. NYC CSO Order)**

Dear Mr. Kline,

On behalf of the Newtown Creek Alliance, I would like to acknowledge the great efforts and renewed collaborative spirit that is represented by this historic effort to formally integrate Green Infrastructure in to the Long Term Control planning process for CSO control. As I have expressed to many of my colleagues at NYC DEP and NYS DEC, we have witnessed a profound shift in thinking that is technical as well as cultural. The concerns we raise in these comments are framed by this optimism and a commitment to roll up our sleeves and work with our membership alongside city and state agencies toward comprehensive, long-term water quality improvements on Newtown Creek.

At the Newtown Creek Alliance we have grappled with exactly what the proposed 2011 CSO Order Modification means to our waterbody and watershed. Our context is complex, with CSO pollution alongside challenges inherited from centuries of industrial contamination. In terms of our planning framework, we deal with layered remediation efforts such as the Superfund process, Greenpoint Oil Spill cleanup and a massive Brownfield Opportunity Area plan.

Newtown Creek is home to over twenty CSO outfalls that discharge over 1.5 billion gallons of CSO annually. Of these 20 outfalls, only 5 are responsible for the vast majority of CSO volume (93%). These five CSO outfalls are located at tributary headwaters, where tidal flushing is weak, sedimentation is apparent and water quality is among the lowest in the NY/NJ harbor estuary. We advocate for focused public investment and private incentives for Green Infrastructure that are meaningful in the communities that drain to these top-tier CSOs on the Creek, namely East Williamsburg, Bushwick, Ridgewood, Maspeth and Sunnyside.

In addition to Green Infrastructure in upland communities, Newtown Creek Alliance envisions parallel strategies appropriate for industrial lots adjacent to the creek that are

separately sewered or directly drain to the creek. Moreover, we support the integration of wetland restoration into the working waterfront in a way that helps control erosion, improve water quality, treat contaminated effluents and “bank” habitat. By taking a holistic view, together we will arrive at a new standard for what a 21st century industrial waterway in the heart of New York City can be.

The efforts of the NYC DEP so far in implementing their 2010 NYC Green Infrastructure Plan have demonstrated that we have shared and expanding goals for Newtown Creek. DEP awarded one of its first Green Infrastructure Grants to a collaboration between Newtown Creek Alliance, design/build company Highview Creations and industrial partner AWISCO to build a 15,000 sq ft green roof in Maspeth, Queens. Most recently, DEP sited one of its GI Demonstration Areas in Bushwick, where they will monitor a “scaled up” investment in GI while we reap the direct benefit of locating this work in the drainage area of one of our top-tier CSOs. The excellent work of DEP’s Office of Green Infrastructure is already being felt in our watershed.

We hope that the proposed 2011 CSO Order Modification will provide a clear roadmap that carries this momentum to a final Long Term Control Plan that includes widespread implementation of Green Infrastructure and, if needed, compatible grey efforts that fulfill the letter and spirit of the Clean Water Act for Newtown Creek.

Newtown Creek stakeholders must be assured that short term “losses” in CSO reduction will be recouped through solid commitments to comparable Green Infrastructure investment. In order to leverage funding for Green Infrastructure citywide, the proposed 2011 CSO Order Modification will drop a 9 million gallon tunnel planned for CSO detention on Newtown Creek, resulting in 136 million gallons per year more CSO in the creek than was expected in the 2005 Order. This “gray to gray” comparison lacks definition on a watershed scale for expected GI investments, and backslides from commitments made in later modifications to the Order. Monitoring data from the Newtown Creek Demonstration Area, finalized performance metrics and modeling will eventually provide clarity on how much CSO volume reduction we can expect for Newtown Creek through Green Infrastructure. While we work in good faith that GI opportunities will be maximized and, if necessary, scaled-down grey infrastructure will be implemented to meet or exceed water quality goals, the 2011 CSO Order Modification should include clear assurances that this initial shortfall will be recouped, including clarification on a mechanism for adaptive management that integrates emerging information into goals-driven planning efforts.

We find it particularly troubling that the City would choose to soften its goals for CSO reductions on Newtown Creek when continued sewage discharges jeopardize the long-term effectiveness of the Superfund cleanup. While the creek is currently designated as an SD waterbody, the continued presence of recreational watercraft on the Creek (including people living in their boats at the mouth and in English Kills), the pending construction of a boathouse at the mouth of the Creek, the documented presence of subsistence fishing, and the planned investment of in excess of \$500 million in Superfund clean up money all indicate that more ambitious CSO control is needed and possible.

While it is critical to reach certain baseline water quality parameters for fish survivorship, we hope the DEP and DEC will take a more robust, ecosystem-driven approach for improving dissolved oxygen levels in Newtown Creek.

Aeration is the ecological version of “teaching to the test”, with investment directed at providing a measurable result but little comprehensive ecological improvement. One concern expressed by our members is the potential for aeration to create an aerosol spray that mobilizes pathogens and contamination present in the creek into the air. As an active working waterfront with increasing public access and recreational boating activity, there are significant opportunities for aspirated material to potentially impact human health. The 2011 CSO Order Modification should include an investigation of public health impacts in advance of full-scale aeration as well as consideration of ecosystem-based alternatives for increasing dissolved oxygen levels on Newtown Creek.

Newtown Creek stakeholders must retain the right to directly enforce the city’s CSO obligations through Section 505 of the Clean Water Act. One of our overarching concerns is that the proposed 2011 Order will not be incorporated into the current SPDES permits for the 14 sewage treatment plants in the city, as a result it won’t be directly enforceable by the public as a permit term under federal law. The Consent Order must be incorporated into the city’s SPDES permits as enforceable terms of the permits. As administrations change and political climates become more or less progressive, the community stakeholders will remain as sentinel to these regulations, and their access to enforcement must be retained.

Thank you for the opportunity to provide comments on this issue. It is our hope that the above concerns are addressed in the 2011 Order.

Sincerely,

Kate Zidar

A handwritten signature in black ink, appearing to read 'K. Zidar', written in a cursive style.

Executive Director
Newtown Creek Alliance

Cc:

USEPA Regional Administrator Judith Enck, USEPA Region 2
NYSDEC Regional Director, Venetia Lannon, NYS DEC Region 2
NYCDEP Commissioner, Carter Strickland