

October 23rd, 2017

Basil Seggos
Commissioner
NYS Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Vincent Sapienza, P.E.
Commissioner
NYC Department of Environmental Protection
59-17 Junction Boulevard
Flushing, NY 11373

Dear Commissioners Seggos and Sapienza,

Following review of the Long Term Control Plan (LTCP) for Newtown Creek (submitted to New York State on June 30th, 2017)¹ we submit the following comments. Many of our concerns are similar to comments we submitted to the NYC Department of Environmental Protection (NYCDEP) on May 31st, 2017, a letter which was also signed by NYC Council Members Crowley, Levin and Reynoso.²

Timeline

While we appreciate the complications and scope of building out a massive underground storage tunnel to collect some 62.5% of CSO discharge from the 3 largest outfalls on Newtown Creek, we believe the timeline proposed is of unnecessary, and frankly disappointing, length. An estimated completion date of 2042 means the significant impacts of ongoing CSOs, including the severe ecological stresses and threats to human health will be borne by the surrounding communities for the next 25 years (or more).

Additionally, with a federal Superfund investigation underway and Record of Decision expected in the next few years, there is risk that a prolonged delay of CSO pollution control may deleteriously affect the process and ultimate outcome of the Superfund remediation. Recontamination and remedial action delays are very real risks given the LTCPs 25-year planning horizon. These communities have suffered a polluted Newtown Creek for too long; we deserve real reduction of CSO and remediation of contaminated sediments in a timely fashion. In

¹ http://www.nyc.gov/html/dep/pdf/cso_long_term_control_plan/ltcp-newtown-creek-cso.pdf

² <http://www.newtowncreekalliance.org/wp-content/uploads/2016/12/LTCP-comments-5.31.17.pdf>

order to effectively remediate Newtown Creek, ongoing sources of contamination and pollution - including the annual, extreme Combined Sewer System discharges into the Creek - must be controlled. Only when we've stopped making matters worse can we truly begin to turn the corner toward restoration. We ask that the timeline for this vital project be accelerated, and for action toward construction to begin immediately.

East River Discharges

The LTCP proposes the construction of a pumping station to transport approximately 75% of the combined sewage from the largest Dutch Kills CSO (BB-026) to the Newtown Creek Water Pollution Control Plant. To allow for increased capacity at the Plant there will be an increase (i.e., displaced discharge) in CSO volume from a number of outfalls on the East River, including in Wallabout Basin and the Navy Yard. While this will - according to the LTCP - improve the water quality in Dutch Kills, it is far from ideal for NY Harbor and the many boaters, fishermen, businesses and industries along the receiving waters of these redirected sewage discharges (including the waters around and under many of the City's expanded ferry docks). With emerging communities of water users in these areas and reinvestments in both the aquatic ecosystems and economies of these waterfronts, not to mention new NYC Ferry hubs, increased CSO discharges to those areas are unacceptable.

We firmly believe that Dutch Kills CSOs need to be eliminated - but they should not just be transported or redirected (or cause displacement within the system effectively leading to a gallon-to-gallon discharge displacement) into neighboring waterways. As stated in our original comments on the proposed LTCP, we believe that CSO storage tanks adjacent to Dutch Kills should be part of the LTCP. We do not believe that this issue will be adequately or fairly treated in the city-wide LTCP. We ask that the City and State reopen the LTCP with respect to the need to capture CSO discharges, not redistribute them.

Additional Green Infrastructure

Based on modeling numbers within the LTCP, total CSO volume entering Newtown Creek will be approximately 486 million gallons per year. This represents a 58% decrease from the baseline of 1,161 million gallons per year. There will thus continue to be a tremendous amount of untreated sewage and stormwater entering our waterway every year.

The LTCP should incorporate greater commitments to Green Infrastructure (GI) and stormwater capture. Many of the industrial areas that surround Newtown Creek have ample sidewalk space for rain gardens and rain barrels and large rooftops for blue and green roofs. We fully appreciate the value in targeting the 4 largest CSOs on Newtown Creek, but the LTCP does not offer

reductions for the 18 other CSOs on the Creek. For instance, outfall BB-009 in Dutch Kills releases approximately 49 MGY and drains a large industrial area with little storm water mitigation currently in place. We believe increased financial investments and incentives for stormwater capture, as well as improved community planning, is necessary in improving long term water quality conditions in Newtown Creek.

While the DEP noted that it reviewed as part of its toolbox “additional green infrastructure” (i.e., beyond the minimum targets established by the currently enforceable green infrastructure consent order), the DEP failed to put into the LTCP any evidence whatsoever to this effect. In fact, at public meetings, the DEP indicated that the existing consent order GI work has already saturated the places it’s feasible to install GI - a contention we thoroughly disagree with.

The LTCP contains no engineering assessments of green roof potential, no reviews of bioswales in entire sections of the Creek sewershed, and no analysis of the potential for aboveground rainwater capture along elevated highways or along manufacturing corridors. Nor was there any review of private property GI potential, opportunities to require more GI in redevelopment projects, or strategies that DEP separately has been exploring to massively scale-up a private property GI grant program. Weak allusions to existing actions and green-streets potential do not count as a *thorough review* of potential additional GI projects. There is a vast difference between meeting the 2012 GI Consent Order terms and reviewing the potential for additional GI in the Newtown Creek sewershed, and the DEP failed to fill that gap. This issue is even more timely given the State’s decision to approve the GI Contingency Plan for the City in August 2017. The LTCP and the community deserve an actually thorough review of Newtown Creek specific GI potential - above the currently-mandated citywide minimum - not the DEP’s immediate dismissal of GI program expansion. We ask that the LTCP be held as incomplete until such time as the DEP does a thorough GI review of the public and private GI potential in this drainage area.

Superfund Needs

CSOs are currently being investigated as sources of chemical contamination under the Superfund process. As with the Gowanus Canal, it is more than likely that the EPA will require CSO reductions and capture in Newtown Creek. We are concerned that the proposed LTCP may not satisfy potential EPA requirements, nor be flexible or adaptive enough to scale up should the EPA remediation plan so require. We ask that NYSDEC, NYCDEP and USEPA discuss and provide transparency to the community about this issue - specifically, how the proposed LTCP action would be expanded in the event that the EPA decision would require additional (or even complete) CSO capture as part of the Superfund process.

When we asked about this issue at a recent CAG meeting, the DEP stated that, in short, it had not developed this LTCP in a manner where it could be enlarged should the EPA so order. If this is incorrect, this must be clarified with the community and the EPA. Best management practices would dictate that planning one large infrastructure project be made with another one in mind - and this is certainly no exception.



We are encouraged to see both agencies commit resources to seriously reduce CSO volumes in Newtown Creek. We are further encouraged to see previous plans (that only treat symptoms of CSOs, not the causes) re-examined and excluded in the new LTCP; specifically, the in-stream aeration for Dutch Kills and the main channel of Newtown Creek. We agree with NYCDEP that expanded aeration is a poor investment of resources and look forward to NYS DEC's decision to formally modify the existing consent order to reflect this.

We would be happy to discuss this letter, and anything else related to the Newtown Creek Superfund or CSO plans and processes, at your convenience.

Sincerely,

Willis Elkins
Program Manager
Newtown Creek Alliance

Sean Dixon
Senior Attorney
Riverkeeper

CC:

NYC Councilmember Elizabeth Crowley
NYC Councilmember Stephen Levin
NYC Councilmember Antonio Reynoso
NYC Councilmember Jimmy Van Bramer
Brooklyn Community Board 1
Queens Community Board 2
Queens Community Board 5
Brooklyn Borough President Eric Adams
Queens Borough President Melinda Katz
NYC Mayor Bill de Blasio
NYS Assemblymember Joseph Lentol
NYS Assemblymember Catherine Nolan
NYS Senator Martin Dilan
NYS Senator Michael Gianaris
U.S. Congresswoman Carolyn Maloney

U.S. Congresswoman Nydia Velazquez
Steve Zahn, NYSDEC Region 2 Director
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