

February 11, 2015

Angela Licata  
Deputy Commissioner for Sustainability  
NYC Department of Environmental Protection

Gary E. Kline, P.E.  
NYC Municipal Compliance Section Chief  
NYS Department of Environmental Conservation

Dear Ms. Licata and Mr. Kline,

I am writing in regards to the aeration project within Newtown Creek, especially phase NC-4 that expands the project into the lower stretches of the main channel and the Dutch Kills tributary. Much of our previous conversation has focused on the failure to collect on-site data that demonstrate the safety of inorganic particulates aerosolized by the aeration; an omission of particular concern, given on-site data that demonstrates benthic microbes are aerosolized. We now wish to shift focus to other vital concerns regarding the expansion of the project. For reasons stated below we request a delay of the NC-4 expansion.

### **Dissolved Oxygen Levels in the Main Channel**

The proposed expansion of the aeration project includes the greater part of the main channel of Newtown Creek (extending 4500 feet eastward from the mouth of Dutch Kills and about one mile north from the Maspeth blower building). 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 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 New York City Department of Environmental Protection (NYCDEP), we find that a large majority of the samples from three main channel sites proposed for inclusion in the aeration project - NC3, NC2 and NC1 measured above the 3 mg/L DO standard; respectively 97%, 84% and 87%. 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.<sup>1</sup> 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.

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<sup>1</sup> See NYCDEP Harbor Survey data referenced here:  
[http://www.newtowncreekalliance.org/wp-content/uploads/2015/02/DO\\_ncversus.jpg](http://www.newtowncreekalliance.org/wp-content/uploads/2015/02/DO_ncversus.jpg)

To this point, at a recent meeting with the Environmental Committee of Queens Community Board 2, DEP officials clearly stated that the system would “only run during times when DO concentrations are below the 3 mg/L threshold”. If this is indeed to be the case then the some 2 miles of piping within the main channel would only need to run 11% of the time during summer months (using the average of the three test sites given above). Given that water quality conditions continue to improve throughout NY Harbor (in large part due to significant investments from both your agencies to reduce CSO volume) one would only expect these numbers to improve, as they have already done so from 1992 when this consent order was originally initiated.

### **Alternative ‘Green’ Strategies for Dutch Kills**

There are numerous advantages to implementing a natural system (*i.e.* wetland habitat) for water quality remediation over an engineered aeration strategy. These advantages include:

- no energy footprint
- no greenhouse gas emissions
- no health risk
- long-term self-sustaining environmental services in addition to increasing DO levels
- habitat creation for wildlife
- social benefit to local businesses and residents

No area of Newtown Creek would be better suited for such a strategy as the Dutch Kills tributary. There has been documented interest, effort and progress in the reintroduction of marsh habitat here, given the proximity of the tributary to LaGuardia Community College and community support for funding wetland remediation through the NYS Environmental Benefits Fund. Pilot habitat modules, installed and monitored with the help of LaGuardia students, have now demonstrated the viability of cordgrass and ribbed mussel along the bulkhead of the upper tributary. A local business, American Storage, is soon to remove an abandoned barge and associated structures from the adjacent shore, thereby rendering this shoreline available for habitat remediation. A salt marsh constructed here could be designed so as to serve the function of a treatment wetland, given the proximity of a Tier 3 CSO. Unlike the main channel and English Kills, this tributary is totally void of commercial maritime traffic and many areas have already become too shallow for navigation, presenting great potential conditions for wetland restoration as identified in the Newtown Creek BOA report (2011) as well as DEP Ecological Services.

Additionally, aeration within Dutch Kills will have a more pronounced impact on local communities than areas like English Kills and East Branch. The waterway has become a focused area of study for environmental science students at LaGuardia, is a frequent destination for environmental education canoe trips led by the North Brooklyn Boat Club and is only a few hundred feet from several high schools and community gardens. Additionally, plans for a Dutch Kills Basin Park at the tributary’s edge are still being actively pursued (via City Parks Foundation). As with other parts of the waterway, a number of businesses border the Creek, many here with the tributary as their personal backyard. The installation of a loud and disruptive aeration system will directly impact current uses as well as the calm nature of the water that

makes for safer boating and better observations of wildlife. In regards to local interest in restoring natural systems, the community has twice supported wetland development in Newtown Creek by voting to pursue such efforts with NYS Environmental Benefit Funds. While we appreciate that consent orders are issued to effect compliance with environmental legislation on behalf of the public good; we urge your agencies to allow public feedback to guide how consent orders are addressed. We see an amazing opportunity in Dutch Kills to implement a project that can provide significant long lasting improvements, and urge the Departments of Environmental Conservation and Protection to consider employing green alternatives to the planned gray infrastructure project.

### **Long Term Control Plan (LTCP) and Water Quality Standards and Classifications**

As a LTCP for Newtown Creek will be submitted (2017) well before construction of NC-4 is completed (December 2019) and would ostensibly drive all future initiatives to improve water quality conditions, 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.

And there is yet another argument to temper the pursuit of gray infrastructure construction, given that the DEC is considering a revision this year of Water Quality Classifications (the basis of the consent order). 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.

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 \$20 million to be spent on NC-4. 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-4 expansion should not advance without a serious re-evaluation of alternatives that can offer long term solutions to improving water quality. We look forward to a continued dialog that engages both agencies and respects all members of the Newtown Creek community.

Sincerely,  
Willis Elkins  
Newtown Creek Alliance

**CC:**

Venetia Lannon, DEC

Emily Lloyd, DEP

Eileen Mahoney, DEP

Carolyn Kwan, EPA

Peter Washburn, NY State Attorney General's Office

Mike Schade, Superfund Community Advisory Group

Sean Dixon, Riverkeeper

Dr. Sarah Durand, LaGuardia Community College

Dr. Eli Dueker, Queens College

Dr. Greg O'Mullen, Queens College

Council Member Antonio Reynoso

Council Member Stephen Levin

Council Member Jimmy Van Bramer

Council Member Elizabeth Crowley

Assemblywoman Catherine Nolan

Assemblyman Joseph Lentol

Joseph Conley, Queens Community Board 2 Chair

Dorothy Moorehead, Queens Community Board 2 Environmental Chair

Vincent Arcuri, Jr., Queens Community Board 5 Chair

Walter Sanchez, Queens Community Board 5 Land Use Chair

Dealice Fuller, Brooklyn Community Board 1 Chair

Ryan Kuonen, Brooklyn Community Board 1 Environmental Chair

Dewey Thompson, North Brooklyn Boat Club

Noah Kauffman, LIC Roots