



December 13, 2024

Ryan Waldron
NYS DEC - Division of Water
Bureau of Water Compliance
625 Broadway, 4th Floor
Albany, NY 12233-3506

Re: Comments on 2024 Newtown Creek CSO Storage Tunnel Modification to the Order on Consent between the City of New York and the New York City Department of Environmental Protection and the New York State Department of Environmental Conservation; DEC Case No. CO2-20000107-8

Dear Mr. Waldron:

We submit the following comments regarding the 2024 Newtown Creek CSO Storage Tunnel Modification to the Order on Consent between the City of New York and the New York City Department of Environmental Protection (DEP) and the New York State Department of Environmental Conservation (DEC); DEC Case No. CO2-20000107-8 (the Newtown Creek Long Term Control Plan (LTCP) Modification). We appreciate that this modification represents an overall improvement on the existing LTCP and that DEC and DEP are continuing to look for ways to increase storage capacity to capture and treat sewage and reduce combined sewage overflows (CSOs) in and around Newtown Creek.

Riverkeeper protects and restores the Hudson River from source to sea and safeguards drinking water supplies, through advocacy rooted in community partnerships, science and law. Riverkeeper has stopped polluters, championed public access to our waters, influenced land use decisions, worked with and advocated for communities, and restored habitat, benefiting the natural and human communities of the Hudson River watershed and throughout New York City. Riverkeeper has decades of experience patrolling, sampling and protecting water up and down the Hudson River as well as on the East River, Bronx River, Newtown Creek, Flushing Bay, Flushing Creek, and Gowanus Canal.

The Newtown Creek Alliance (NCA) is a community-based organization dedicated to restoring, revealing, and revitalizing Newtown Creek. NCA works to restore community health, water quality, habitat, access, and vibrant commerce along Newtown Creek. Since 2002, the Alliance has served as a catalyst for effective community action.

I. Background

Newtown Creek receives roughly 1.2 billion gallons of CSOs every year, leading to poor water quality throughout the creek, limiting habitat for fish and wildlife and putting the health of human users of the water and waterfront at risk. The tributaries of the Creek are particularly impacted, with their waters frequently unable to recover from a past CSO discharge before a new one occurs.

In June of 2018, DEC approved the initial Newtown Creek CSO LTCP. The plan included two projects, an expansion of the Borden Avenue pump station in Long Island City by 26 million gallons per day, and the construction of a new CSO storage tunnel to capture 62.5 percent of the CSO from the three remaining largest outfalls of the Creek. The pump station would have relocated CSO discharges from Dutch Kills to the East River at Wallabout Channel (roughly 57 million gallons per year) and at Bushwick Inlet (roughly 13 million gallons per year). At the time it was proposed, Riverkeeper and NCA objected to the plan to displace sewage discharges from Dutch Kills to the East River. Instead, we called for greater sewage capture.

New York City has now proposed to modify the original LTCP by eliminating the Borden Avenue pump station expansion in exchange for upsizing the CSO storage tunnel from the originally estimated capacity of 39 million gallons to 50 million gallons. This modification would allow for more CSO capture for the Dutch Kills tributary for Newtown Creek and eliminate the displacement of about 70 million gallons of CSOs from Newtown Creek to the East River. According to the preliminary information estimates discussed by DEP last night, the proposed modification would also increase CSO capture overall throughout the Creek from 62.5 to 67%, leaving an estimated 377 million gallons of annual CSO once the tunnel is complete in 2040 (based on 2008 rainfall data).

II. Support for the Planned Modification

Riverkeeper and NCA appreciate that through this modification DEP and DEC staff and contractors are responding to the community's objection to displacing sewage discharges and are continuing to optimize improvements to the Newtown Creek LTCP. We support the modification because it will increase storage capacity to capture and treat sewage and reduce combined sewage overflows rather than relocate them to the East River.

Of course, there is a significant tradeoff in this modification, in that relief to Dutch Kills and the surrounding community, including those affiliated with LaGuardia Community College, will be delayed by nearly a decade. While the 54-inch gravity interceptor proposed by DEP will work to rectify some of that lost benefit while the CSO storage tunnel is being built, the modification would result in only a 20 million gallon year (MGY) CSO reduction in Dutch Kills by 2032, as compared to the approved LTCP which called for a 90 MGY reduction by 2030.

DEP should continue work with the Queens community to identify and support potential green infrastructure opportunities or other community-led stormwater projects. Previously suggested projects include:

1. Separating out the stormwater discharge from cemeteries from the combined sewer system. Per the LTCP Supplemental Report (emphasis added):

As a partial separation alternative, DEP considered redirecting the stormwater runoff generated on the large area of cemeteries along the northeastern edge of the Newtown Creek watershed. IW modeling indicated that about ***a 12 percent basin-wide CSO volume reduction could possibly be achieved by rerouting that stormwater directly to Newtown Creek.***

2. Capturing runoff from the elevated Long Island Expressway (from Van Dam Street to 23rd Street) via above ground storage systems. Current drainage pipes lead directly into CSO catch basins that overflow to Dutch Kills during rain events.
3. Pursuing installation of Green and Blue Roofs as well as parking lot permeable pavement in the numerous city owned buildings and properties in the Dutch Kills sewersheds.
4. Pursuing Green Infrastructure projects in the three parking lots along 47th Ave owned by CUNY-LaGuardia Community College/NYS Dormitory Authority that lie within the BB-026 sewershed.

A 10 year delay in Dutch Kills is significant and needs to be properly rectified by this modification. We are eager to work with both agencies and community stakeholders to make improvement projects, like the ones mentioned above, a reality.

III. 90% CSO Capture and Treatment

While the proposed CSO storage tunnel enlargement is an important improvement on the plan, we urge DEP and DEC to take even stronger action than is now being proposed and permanently improve water quality in the historically polluted Creek by reducing CSOs by 90 percent. It is the City's goal to completely eliminate CSOs citywide by 2060, and the most readily available path to move towards that goal in Newtown Creek is to further increase the tunnel's storage capacity to allow for a greater sewage capture. Allowing 377 million gallons of CSO to continue to enter Newtown Creek annually is unacceptable. A significant investment of time and resources are required to bring a storage tunnel online no matter the size; we urge DEP and DEC to ensure that the resulting benefits to the ecosystem and surrounding communities obtain the full benefit of that investment.

We are also concerned that this modification still does not address the 18 other CSO outfalls on Newtown Creek. While we appreciate that the volume from the smaller CSOs pales in comparison to the big four located at the tributary heads, they still present an ongoing source of water quality impairment and the LTCP will not reduce the number of activations from these other CSOs. According to the 2008 model in the approved LTCP, CSOs such as NCQ-029 and BB-009 discharge 38 and 27 times per year, respectively. We urge DEC and DEP to consider interventions to address not just the volume of CSO into Newtown Creek but the number of times per year that CSO is entering the waterbody. Additionally, we strongly urge DEC to pursue these specific potential projects mentioned in the LTCP supplemental report (**bold italics added**):

As a supplemental evaluation, the feasibility of providing floatables control via underflow baffles at outfalls BB-009, BB-013, and NCQ-029 was assessed. This evaluation did not affect the cost, performance, or WQS attainment of the preferred alternative described above. The supplemental floatables control evaluation determined that modifications to the regulator structures associated with each of the three outfalls would be required in order to maintain hydraulic neutrality with the underflow baffles in place. At BB-009 and BB-013, raising and lengthening the static weir would be required, while at NCQ-029, lengthening the weir and providing a bending weir would be required. Based on a preliminary siting assessment, ***the modifications at BB-009 appear to be feasible***, but siting limitations would make the regulator modifications needed at BB-013 infeasible. ***For NCQ-029, more detailed information on existing utilities in the vicinity of the regulator structure is required*** in order to confirm the feasibility of the required regulator modifications. The NPW of providing underflow baffles at BB-009 and NCQ-029 (if feasible) was estimated at \$25.5M. This estimate reflects \$36,400 of annual O&M cost over the course of 20 years, and an unescalated PBC of \$25.0M.

IV. Public Participation

There has been limited public input into this proposed modification — the notice for the proposed modification was not advertised widely, and the calls and instructions for public comment and questions were unclear. This has had the effect of limiting public participation in these important decisions that will affect the creek for generations.

We appreciate that DEP gave a presentation and answered questions during a Zoom teleconference hosted by Riverkeeper and NCA last night, and that DEC staff attended. There were 65 attendees despite the fact that we first posted notice of the event only three days in advance. Our organizations determined to host the event only when it was confirmed that neither DEP nor DEC would host its own hearing on the modification. The wide attendance at the teleconference shows the deep interest of the communities in

improving their water bodies. We recorded the meeting and incorporate it by reference herein. We request that DEP and DEC formally respond to the questions asked.

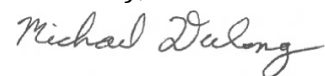
The Consent Order that is being modified, and the timelines, effluent limitations, and other requirements set forth therein, are expressly incorporated into the State Pollution Discharge Elimination System (SPDES) permits for fourteen NYC New York City Wastewater Resource Recovery Facilities. This modification also changes the LTCP, a decision which triggers requirements for public involvement in the decision-making process, according to the federal CSO Control Policy:

In developing its long-term CSO control plan, the permittee will employ a public participation process that actively involves the affected public in the decision-making to select the long-term CSO controls. The affected public includes rate payers, industrial users of the sewer system, persons who reside downstream from the CSOs, persons who use and enjoy these downstream waters, and any other interested persons.¹

There are many New Yorkers who are being affected by this change, both positively in the case of Bushwick Inlet and Wallabout Channel stakeholders, and negatively in the case of Dutch Kills stakeholders. Last night, we heard from commenters about the localized flooding impacts in Blissville, Long Island City, Greenpoint and other neighborhoods connected to Dutch Kills and Newtown Creek CSOs. These are the types of local knowledge that the CSO Control Policy is meant to incorporate and consider in the decision-making process. We look forward to a response to these comments and questions, and we urge DEP and DEC to host formal public comment periods with corresponding public hearings for any future LTCP modifications.

We appreciate your consideration of these comments.

Sincerely,



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¹ U.S. Env'tl. Protection Agency, 59 Fed. Reg. 18,688, 18,692 (Apr. 19, 1994)
<https://www.epa.gov/sites/default/files/2015-10/documents/owm0111.pdf>.

Cc (via email):

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