NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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VIA EMAIL

MAR 26 2019

John Prince, Deputy Director
USEPA REGION 2
290 Broadway
Mail Code: 19TH FL
New York, NY 10007-1866

Re: Newtown Creek – NCG Early Action
Site ID No. 241117

Dear Mr. Prince:

The New York State Department of Environmental Conservation (DEC) met with you along with other EPA staff and with representatives of the Newtown Creek Group (NCG) on November 30, 2018 via conference call. During that meeting, NCG presented the "Newtown Creek Early Action (EA) Concept Briefing" and EPA explained its position on the proposal, current state of review and conceptually, how the EA would be implemented through execution of an Administrative Order on Consent (AOC) between EPA and NCG.

At this time, DEC generally supports NCG's interest to enter an AOC to implement a remedy that will begin to address the contamination in Newtown Creek, however, the information presented at the November meeting is not sufficient to persuade DEC that the EA approach outlined in the presentation is appropriate given the overall project uncertainties and the resources required to complete the EA.

DEC is providing the following summary of concerns in response to the EA concept as it was presented in November 2018:

1. **Key contaminants of concern - PCBs, PAHs, and copper:** Clarification is required on whether other contaminants are being considered as drivers for the EA by EPA at this time. If others are being given consideration, will these be further investigated during the focused feasibility study (FFS) with action levels defined during the EA remedy selection?

2. **Listed Remedial Action Level (RAL) Ranges:**

   a. DEC requests clarification as to whether these levels are based on the Background Threshold Values prepared by CDM Smith for EPA, or if they were developed by NCG.

b. Are the RAL ranges listed in the presentation (PCBs: 1.2-1.4 ppm; PAHs: 65-85 ppm; Copper: 400-500 ppm) acceptable, considering the human health and baseline ecological risk assessments? Establishing remedial action levels that achieve urban-background concentrations may not be sufficient to protect human health and the environment, considering potential future use of the creek. DEC understands the goal of the EA is not to create a "clean island", but are the RALs appropriate ("Urban Background") for a risk-driven remedy that must meet the threshold criteria of the NCP?

c. Are the means and methods for establishing the RAL ranges consistent with process used in developing preliminary remedial goals for the final cleanup levels? Do they comply with Applicable or Relevant and Appropriate Requirements (ARARs)? The EA should be consistent with long-term actions, including cleanup goals.

3. **Navigation Channel:** The US Army Corps of Engineers is presently evaluating the current and future use of the navigation channel. The evaluation will not be complete at the time of EA remedy implementation. DEC is concerned that results of this evaluation will require dredging of the channel in areas of the implemented cap.

4. **Future use and expectations of the community:** It is DEC's recommendation that EPA engage the community and stakeholders (public, commercial, municipal) to determine what the expectations and aspirations for Newtown Creek are prior to EA remedy selection. EPA informed DEC that this process has already begun. Given this, what are the anticipated future uses of the creek? Opportunity for permanence of EA should be fully evaluated.

5. **Potential Recontamination Pathways:**

a. **Groundwater:** There are many unknowns regarding groundwater as a pathway for recontamination to Newtown Creek. The Conceptual Site Model (CSM) for the site area has not yet been fully developed. It is critical that an accurate CSM is developed that illustrates the mechanisms, exposure pathways and migration of contamination, prior to selecting a remedy. As NCG stated during the briefing presentation, further investigation of groundwater as a potential recontamination pathway will be completed during the Feasibility Study (FS). In order to ensure effectiveness of the EA remedy, the CSM be must be refined prior to implementation of the EA remedy and incorporation of FS results.

b. **NAPL**: Per Anchor QEA's "Current Understanding of NAPL Nature and Extent in Newtown Creek, RI/FS, Newtown Creek," 2017, Category 2/3 NAPL was found in a discontinuous extent within CM 1.7. How or will this finding be addressed during the EA?

c. **Point-source:** Con Edison and Hugo Neu are the greatest point source contributors of contamination to the creek. NCG stated during the presentation

"...any localized effects will be identified through a monitoring program, although not anticipated to affect remedy success" (slide 18). The DEC is greatly concerned about devoting resources toward EA remedy implementation, when the potential for recontamination is unknown.

d. **East River Influence**: It was stated by NCG and EPA that CM 0-2 is influenced exclusively by the East River, minimizing impacts from point sources and other pathways of recontamination from the Newtown Creek Site. DEC is requesting that data, models, assumptions, etc. that support this assertion be provided. One line of evidence reviewed by DEC (RI sediment trap data) appears to be inconsistent with that assertion whereby concentrations of PCBs in recently deposited sediments increase with distance from the East River confluence. Do the hydrodynamic and chemical fate and transport models agree with this pattern of contamination in surface sediments?

e. **CM 2+ Contamination:** Has recontamination via CM 2+ during the interim, prior to final remedy implementation, been considered? Will sampling of the western end of CM 0-2 be completed prior to implementation of final remedy to monitor performance of EA remedy, and confirm the area was not recontaminated by CM 2+ contaminants?

f. **Upland Source Contamination**: Upland sources of contamination were not discussed during the presentation (briefly mentioned by NCG). DEC is greatly concerned that potential upland sites are being neglected as a source of contamination to the creek. This issue has been previously raised by DEC. Development of a framework for identifying, screening, and controlling upland sources is necessary prior to EA remedy selection.

6. **Performance Monitoring:** NCG stated that surface weighed average concentrations (SWACs) will be used to determine if RALs have been attained by remedy implementation. Clarification is required on what geostatistical procedure will be applied to determine SWACs.

7. **Remedy Considerations:** It is DEC's understanding that the final depth of dredging will be area-dependent. The basis for determining final depths of each cell is not clear.

8. **Other**:

   a. What is the mechanism to require additional actions if the EA is not effective?

   b. Is the approach consistent amongst the multiple parties requesting EA's?

Comments/Concerns not raised in the Meeting

9. Newtown Creek is currently one OU. Does EPA feel this is appropriate? Are there additional contaminants of concern (COCs) if the site is broken into reaches or smaller scale regions?

As a follow up to the November meeting, EPA and DEC held a conference call on February 6, 2019 during which the above issues and others were discussed. During that call, EPA conveyed that a Focused Feasibility Study (FFS) would be required of NCG in the AOC as a component of the EA process. DEC agrees that an FFS should be performed that addresses these issues, including the remedial potential recontamination from all sources of COCs.

Upon review of these issues/concerns, please feel free to reach out to the DEC Project Manager, Ian Beilby, if you would like to schedule a follow-up discussion.

Sincerely,

Michael J. Ryan, P.E.
Director
Division of Environmental Remediation

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