

**Newtown Creek**

**Natural Resource Damage Assessment Plan**

Public comments received on the draft Plan

ExxonMobil Environmental & Property Solutions Company  
22777 Springwoods Village Parkway  
Spring TX, 77389



May 30, 2024

New York State Department of Environmental Conservation  
Natural Resource Damages (NRD) Section  
c/o Alicia Pasos  
625 Broadway, 14th Floor  
Albany, NY 12233  
Submitted to: nrd@dec.ny.gov

Re: Newtown Creek Draft *Natural Resource Damage Assessment Plan* Comments

To whom it may concern:

ExxonMobil appreciates the opportunity to provide comments on the Trustee's draft *Natural Resources Damages Assessment Plan* (NRDA Plan) for Newtown Creek.

The attached document outlines several key areas in which the Trustees' draft NRDA Plan lacks sufficient detail or where further specificity is needed to progress with the analysis. ExxonMobil looks forward to reviewing future drafts of the NRDA Plan.

If you have any questions or would like to discuss further, please feel free to contact me at [REDACTED]

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan Grapski".

Dan Grapski

Senior Project Manager  
ExxonMobil Environmental & Property Solutions Company  
[REDACTED]



# Comments in Response to the Draft Newtown Creek Natural Resource Damage Assessment Plan (March 1, 2024)

---

Newtown Creek, New York

May 30, 2024

Prepared for:

**ExxonMobil Environmental & Property Solutions  
Company**

Prepared by:

**Roux Environmental Engineering  
and Geology, D.P.C.**  
209 Shafter Street  
Islandia, New York 11749

# Table of Contents

1. Introduction .....	2
2. Lack of Detail and Specificity to Newtown Creek .....	2
3. Establishing Baseline .....	2
3.1 Maritime and Industrial Area Designation .....	3
3.2 Non-CERCLA Contaminants .....	3
3.3 Ongoing Sources .....	4
4. Reference Conditions.....	4
5. Human Use Quantification and Damage Determination .....	5
6. Incomplete Contaminant List .....	5
7. Geographic Scope and Timing.....	6
8. Completeness and Accuracy of Contamination and Remediation Events List.....	7
9. Preliminary Estimate of Damages.....	8
References .....	9

# 1. Introduction

Roux is pleased to provide comments on the content of the *Newtown Creek Natural Resource Damage Assessment Plan* (NRDA Plan), which was released on March 1, 2024, by the Newtown Creek Natural Resource Damage Assessment Trustee Council (Trustees) for public comment. The comments are provided to ExxonMobil for consideration for inclusion in a response to the Trustees during the public open comment period.

An overarching concern is that the NRDA Plan lacks necessary details for the potentially responsible parties (PRPs) and other stakeholders to understand the process for damages assessment and, therefore, to effectively participate in the open comment process. In addition, the NRDA Plan fails to adequately consider the findings in the Trustee's 2012 *Preassessment Screen for Newtown Creek* and the *Baseline Ecological Risk Assessment* by Anchor QEA in 2018. These and other critical topics are covered in subsequent sections of this document.

## 2. Lack of Detail and Specificity to Newtown Creek

The NRDA Plan does not contain sufficient specific information on data and methods to be used for damages evaluation and does not appear to make use of the large body of historical information and the extensive data and reporting for Newtown Creek. For example, Chapter 5 “Studies and Analysis,” states that the Trustees work to date has “enabled the Trustees to identify preliminary data gaps” and that *“this Chapter describes efforts the Trustees are presently undertaking or considering to fill these data gaps.”* This general statement is not supported by the identification of any specific gaps, or by description of any specific efforts the Trustees are presently undertaking or planning in order to address these identified data gaps. Instead, Chapter 5 provides only non-specific lists and tables of “information that may be needed” and “potential types of analyses and studies.”

Notably, other than switching the location name and the COCs of focus, Chapter 5 in the NRDA Plan is word for word identical to the Gowanus Canal NRDA Plan submitted by the same Trustees on the same date. The NRDA Plan is therefore too generic to inform stakeholders of what is being specifically proposed to allow for an effective, site-specific assessment by stakeholders at Newtown Creek. Chapter 5 of the NRDA Plan should be revised to specify the gaps that have been identified in the available data for the Newtown Creek site and, at minimum, provide an overview of anticipated efforts necessary to fill such data gaps. Specifically, the NRDA Plan should provide a preliminary plan for resolution through studies or data collection efforts to obtain any missing data for this site. Additional examples of the lack of specificity and suggestions for a more informative NRDA Plan are presented in subsequent sections of this document.

## 3. Establishing Baseline

One of the most critical issues in the NRDA Plan is the need for clarification of the baseline condition. Chapter 4 of the NRDA Plan defines baseline in a general sense, but does not provide specific information for how baseline will be established for the Newtown Creek NRDA. Because baseline sets the foundation for injury quantification, without a clearer statement of the definition of and plan to establish a baseline, the stakeholders are significantly restricted in their ability to provide feedback during this comment period. For example, the Trustees state they have been unable to locate historical site-specific data for establishing

baseline for Newtown Creek and will default to data from reference areas and control groups. The Trustees need to examine all of the information regarding structural alterations to the Creek and pollutant discharges to the Creek prior to any discharge of CERCLA hazardous substances. Filling and bulkheading of the Creek, indiscriminate hunting, and discharges of raw sewage, offal and wastewater from rendering, glue and acid factories destroyed habitat areas and avian and aquatic life years before any discharge of CERCLA hazardous substances. Furthermore, the definition of baseline in the NRDA Plan must account for these historical impacts or the NRDA Plan will include an inadequately defined baseline, resulting in an inaccurate and potentially inequitable determination of natural resource damages.

The NRDA Plan should, at a minimum, explicitly address the following three critical factors for setting baseline conditions in Newtown Creek: 1) the designation of Newtown Creek as a Significant Maritime and Industrial Area; 2) Newtown Creek's long history as a recipient of raw sewage, which resulted in significant natural resource damages, including impacts resulting from non-CERCLA contaminants; and 3) the ongoing discharges from CSOs and other sources that will continue to impact with CERCLA hazardous substances and non-CERCLA pollutants even following completion of the New York State Department of Environmental Protection's Operable Unit 2 Long Term Control Plan (NYCDEP OU-2 LTCP) in 2042.

### 3.1 Maritime and Industrial Area Designation

The NRDA Plan should state how New York City's designation of Newtown Creek as a Significant Maritime and Industrial Area factors into the baseline assessment. In defining baseline, Section 4.1 of the NRDA Plan states the baseline reflects changes that result from human activities that are not contaminant-related (e.g., structural alterations to Newtown Creek). Relatedly, Section 1.1 of the NRDA Plan states that *"NYC has designated 780 acres surrounding Newtown Creek as a Significant Maritime and Industrial Area, suggesting that in the future much of the land near Newtown Creek will remain largely industrial... In addition, there is a federally designated navigational channel... and... bridges... designed... to allow maritime traffic."* However, Section 1.2 of the NRDA Plan notes *"Prior to the nineteenth century, Newtown Creek was a dynamic saline tributary fed by freshwater streams that overflowed into salt marshes,"* indicating that a preindustrial or possibly a pre-settlement baseline may be under consideration by the Trustees. Such a baseline would be inappropriate given the Creek's history and Significant Maritime and Industrial Area designation. The NRDA Plan must specifically state the Trustees' intention regarding whether historical morphology changes as well as ongoing and future construction to the Creek that are needed to maintain its current designation (e.g., filling and channelization, bulkheading, maintenance dredging, bridge demolition and construction) will be considered to be baseline or whether a pre-industrial morphology will be utilized- as baseline.

### 3.2 Non-CERCLA Contaminants

Limiting the assessment of damages to hazardous substances is vital to the equitability and defensibility of the NRDA. As noted in Chapter 1.4 of the NRDA Plan, *"the goal of the Trustees is to restore natural resources ....to their baseline condition (defined as the condition of the resource that would have existed if the hazardous substances or oil were not released. [43 CFR 11.14(e)]..."* Baseline must, therefore, account for discharges of contaminants not covered by Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Damages and service losses in the Creek cannot be attributed solely to releases of CERCLA hazardous substances. Therefore, damages attributed to the CERCLA PRPs must account for the preexisting and ongoing damages and service losses from non-CERCLA stressors. To accomplish this, non-CERCLA

stressors should be included as part of the baseline condition of the Creek against which impacts from hazardous substances are measured. For example had CERCLA hazardous substance releases not occurred, damages from raw sewage releases would still have historically destroyed or significantly degraded most natural resources of Newtown Creek. Documentation of low DO concentrations, elevated bacteria counts, and other water and sediment quality impairments in Newtown Creek resulting from CSOs can be found in public health reports beginning in the early 1900s and continue to the present (e.g., Metropolitan Sewerage Commission 1910; Hazen and Sawyer 1960; NYSDOH 2014).

Even with current waste management practices, non-CERCLA stressors currently impact and will continue to impact ecological and human services in Newtown Creek. For example, a depauperate biotic community may be more likely to have resulted from low oxygen than from high levels of CERCLA COCs; and human recreational activities, which were historically prevented by sewage before the implementation of wastewater treatment, are still periodically restricted by recreational water quality criteria exceedances. These non-CERCLA impacts would have been by far the dominant stressors on the Creek for approximately 200 years prior to the 1967 initiation of the wastewater treatment plant noted in Exhibit 1.3 of the NRDA Plan; however, Exhibit 1.3 makes no note of this impact. The NRDA Plan should directly acknowledge these non-CERCLA service losses and indicate that they will be accounted for in baseline conditions such that the CERCLA COCs are not implicated in ecological and human use service loss due to water quality stressors.

### 3.3 Ongoing Sources

The NRDA Plan should note that continuing injury from ongoing sources outside the scope of OU1 of hazardous substances releases will occur and will be accounted for when quantifying natural resource damages caused by CERCLA hazardous wastes. The NRDA Plan states that Newtown Creek will “likely to continue to be injured in the future” and USEPA Region 2’s *Framework for the Operable Unit One Remedial Action Objective and Preliminary Remediation Goal Approach* (Framework Memorandum; USEPA 2023) states, “*there are many external ongoing sources of contamination to the Creek, including MS4s, WWTP effluent, permitted and non-permitted discharges, overland flow, groundwater, seeps and the East River that may be outside the scope of OU1 of the site.*” The NRDA Plan should state that these continuing injuries from releases outside the scope of OU1 will be considered part of the baseline for purposes of quantifying damages attributable to discharges of CERCLA hazardous substances. Furthermore, the NRDA Plan should acknowledge and incorporate as appropriate the approach outlined in the Framework Memorandum whereby “interim evaluation measures” will be developed by the EPA to compare conditions in the Creek to expected recontamination levels from external, uncontrolled sources.

## 4. Reference Conditions

A topic related to the definition of baseline is the identification of reference locations against which Newtown Creek will be compared. Information in the NRDA Plan regarding availability of reference locations is contradictory. The NRDA Plan cites reference locations several times (e.g., “Fish community studies in the Assessment Area indicate significantly lower species richness and diversity than in the reference area [Anchor QEA 2013, 2018]”) but in Section 4.1 states “*site-specific historical data applicable to establishing baseline have not been located for Newtown Creek.*” This apparent contradiction should be resolved and factors important to the selection of a reference location should be directly addressed. These factors include but are not limited to: the specific resources for which other locations will be referenced, the methods for selecting reference locations, the characteristics of those reference conditions that will be considered, the geographic extent of the search for reference locations, and whether reference areas identified in cited prior

reports will be considered. Furthermore, the NRDA Plan should acknowledge that a comparable reference location may not be identified specifically because there are very few industrially utilized waterways with extensive raw sewage and CSO contributions over many decades that do not also contain hazardous substances. The NRDA Plan should be revised to (1) specify a robust framework for identifying and selecting reference locations; or (2) commit to preparing a detailed work plan specifically focused on addressing reference location selection that will be made available for public review and comment before finalization.

## 5. Human Use Quantification and Damage Determination

The Plan lacks specifics on whether and how human use injury quantification will account for the factors unrelated to the release of CERCLA hazardous substances — e.g., limited water access, marine traffic, sewage discharges, CSO releases, offal and floating trash, and other unpleasant aesthetic impacts, as well as industrialization and commercialization of the waterway — that have limited and will continue to limit baseline recreational use and community connections in Newtown Creek. As just one example, recreational activity attempted in the vicinity of the Green Asphalt facility could be impaired by the sight, sound, and odors of large backhoes operating on piles of recycled asphalt waste. Separating impacts from other sources from hazardous substance-related impacts requires a detailed methodology that is not identified anywhere in the Plan.

The Plan lacks specifics for evaluating if recreational fishing and crabbing losses can be assessed for a reasonable cost. First, it is unclear whether benefits transfer analysis is viable. The Trustees *“anticipate that existing data on angler effort and relevant economic values may be adequate,”* but neither identify specific data sources nor describe criteria for evaluating their adequacy. For example, reference sites in studies valuing angler response to consumption advisories should be industrial maritime waterways with historical raw sewage contamination and ongoing CSO and MS4 water quality impairments. Second, the Plan should define thresholds for the “significant sources of uncertainty” with the benefits transfer analysis that would warrant considering a more costly primary study and describe the types that will be considered.<sup>1</sup>

The Plan should identify all “existing information” on boating, birding, and wildlife viewing recreation, and both explain the decision criteria for conducting interviews and focus groups and describe how their outcomes would *“determine whether further evaluation and potential data collection [...] is warranted.”* Similarly, the Plan should describe the outcomes from *“background research, interviews, and/or other qualitative methods”* that would constitute *“a basis for pursuing related service losses and damages”* in the form of disrupted community connections.

## 6. Incomplete Contaminant List

The USEPA-approved OU1 Baseline Ecological Risk Assessment (BERA; Anchor QEA 2018), which is frequently cited in the NRDA Plan, identified five COCs posing unacceptable risk to organisms in Newtown Creek: total polycyclic aromatic hydrocarbon (34) (TPAH [34]), total polychlorinated biphenyl (TCPB), total dioxin/furan toxic equivalence quotient 2005 (mammal; D/F TEQ), copper (Cu), and lead (Pb). Moreover, the Trustees 2012 Preassessment Screen report identified additional metals, dioxins and furans and pesticides as COCs for aquatic life in Newtown Creek. However, Section 3.1 of the NRDA Plan states that

---

<sup>1</sup> Although benefits transfer is recognized as cost-effective compared to primary studies, their valuations can differ by 100 percent or more (Rosenberger and Stanley, 2006).

the Trustees will “*focus on PAHs, PCBs and copper as primary COCs for assessing injury,*” thus omitting two of the five COCs identified in the BERA. The Plan’s stated rationale for truncating the list of COCs is that “*selection of these three COCs is consistent with EPA’s Record of Decision for OU2.*” Reliance upon the OU2 Record of Decision to identify Newtown Creek OU1 NRDA COCs inappropriately omits consideration of other sources of hazardous substance releases and the BERA (Anchor QEA 2018).

Other information supporting the inclusion of additional COCs is included in the NRDA Plan. Chapter 3.4 notes a crab consumption advisory for “*PCBs and other contaminants (per- and polyfluoroalkyl substances (PFAS), dioxin, and cadmium).*” Section 3.3.1 of the Plan notes “*hazardous substance inputs from CSOs: levels of PAHs, PCBs, copper, and other compounds typically associated with CSOs (e.g., nonylphenols and the bacterium *Clostridium perfringens*) are elevated in the upstream portions of the Assessment Area and tributaries.*” There is no justification for omitting COCs identified in the Preassessment Screen or in the BERA, especially those posing unacceptable risk and, in addition to including all BERA COCs, at a minimum the Trustees should provide a comprehensive list of current wildlife consumption advisories that impact Newtown Creek and include all COCs leading to those advisories in the focused damages assessment.

For COCs that are included, available site-specific studies about specific damages should be incorporated into the NRDA Plan. Currently, injury thresholds for ecological injuries in the NRDA Plan are generic (e.g., statewide NYSDEC 2014 sediment guidance values)<sup>2</sup>. The NRDA Plan should be updated to clearly indicate whether there is an intent to use the site-specific ecological risk thresholds available for the Newtown Creek Site.

## 7. Geographic Scope and Timing

Some critical aspects of scope and timing of the injury assessment should be clarified. For example, Section 3.5 of the Plan states, “*the Trustees will identify and quantify the extent to which remediation affects natural resources.*” The Plan should be updated to clarify further that a final determination of damages will not precede release of EPA’s OU1 Proposed Remedial Action Plan (PRAP) and recognize that such approval may be a conditional approval due to an adaptive management approach. The NRDA Plan should also note the anticipated timing and nature of actions related to the NYCDEP OU-2 LTCP.

Furthermore, the geographic scope of the assessment needs to be more fully defined. Whereas Exhibit 2-1 clearly defines the geographic scope of the Assessment Area as limited to Newtown Creek, the Plan’s text is less committal. For example, Section 2.1 defines the Assessment Area “*as the area within which natural resources have been directly or indirectly affected by industrial and municipal-related oil and hazardous substances in Newtown Creek*” [emphasis added]. “Indirectly affected” implies resources outside of Newtown Creek are also included. Expansion of the physical scope outside of Newtown Creek is similarly illustrated by the subsequent statement, “*Groundwater and air have been exposed to Creek-related contaminants, and the Trustees reserve the right to quantify distinct injuries to these resources at a future time. However, for the purposes of this Plan, the Trustees currently consider air and groundwater as primary pathways of hazardous substances to sediment, surface water, and biological resources*” [emphasis added]. The Plan should either commit to an Assessment Area limited to Newtown Creek, its adjacent shoreline and

---

<sup>2</sup> If generic thresholds are retained, the NRDA Plan should be updated to correct the Class C PAH sediment guidance value concentration from 45 mg/kg to 35 mg/kg.

its overlying waters, or identify the area in which any and all resources may be assessed for damages at any time, now or in the future, and the basis for including those resources.

## 8. Completeness and Accuracy of Contamination and Remediation Events List

Exhibit 1.3, “Timeline of Major Contamination and Remediation Events” and other references to contamination in the NRDA Plan should be substantially improved for completeness, to remove bias and to provide citations. Currently, Exhibit 1.3 provides a somewhat arbitrary list of events, mixing minor specific events (contrary to the title of the exhibit) with decadal trends, omitting many critical events entirely, and providing inconsistent inclusion or exclusion of owner/operator names, specific released chemicals or materials, and scope or volume of releases. For example, release of raw sewage prior to the initiation of wastewater treatment is an appropriate inclusion. As documented in the Remedial Investigation Report (Anchor QEA 2023; RI Report), in the late 1800s and the first half of the 1900s, direct discharges from sewers operated by NYC regularly added raw sewage and other pollutants into the Creek. Additionally, the NYSDEC registered spills of sewage into Newtown Creek should be noted. A comparison of Section 3.2.6 of the RI Report to Exhibit 1.3 of the NRDA Plan finds numerous other high impact industries/releases are not included in Exhibit 1.3. For example, extensive water quality impacts from contaminants discharged by animal rendering, glue factories, acid production and fertilizer plants. Nor does the Plan reference creosoting operations that were a major source of PAHs in the Creek. All of the industries and discharge omitted from Exhibit 1.3. should be included. The Trustees are referred to Section 3.2, Human Use, of the RI Report for a comprehensive summary of human impacts.

Some inaccurate information is included for petroleum operations in Exhibit 1.3 and elsewhere in the NRDA Plan. The exhibit states that, in the mid-1800s, “[m]ultiple oil refineries began operations, eventually consolidating into Mobil Oil Brooklyn Refinery in 1892.” However, the exhibit fails to mention the numerous refineries, not incorporated into the Mobil Brooklyn Refinery, which continued to operate independently or were consolidated into other facilities. The Trustees are referred to Section 3.2.6.15.4 of the RI (Summary of Ownership History and Petroleum Operations at Newtown Creek) for an extensive list of petroleum operators other than Mobil Oil, which is currently the only named petroleum operator in Exhibit 1.3. The statement that the Greenpoint oil spill released “*approximately 17-30 million gallons of petroleum*” in Exhibit 1.3 and in Section 3.2.2 of the NRDA Plan is incorrect. Based on several available studies the correct amount should be approximately 16.8-19.4 million gallons (Geraghty and Miller 1979; USEPA 2007; Ecology and Environment Engineering 2009).

Additionally, in Section 3.3.1, the sentence “*in the late 1800s, over 100 distilleries operated by Standard Oil discharged up to 30,000 gallons of effluent per week into Newtown Creek (EPA 2007, NCA 2023a)*” has several inaccuracies that should be corrected as follows: 1) the “NCA 2023a” source is the website of a community action group, the Newtown Creek Alliance, which provides no citations for its information – any information initially identified from such a source should then be corroborated by appropriately documented sources; 2) the term “Standard Oil” lacks definition, does not signify one specific entity, and could include entities that are not affiliated with ExxonMobil; 3) “100 distilleries” is inconsistent with EPA (2007), which instead notes that “*By 1870 more than 50 refineries were located along the banks of Newtown Creek*”; 4) no effluent volume, 30,000 gallons or otherwise, is provided by EPA (2007). This submission is not intended to identify all historical inaccuracies in the NRDA Plan, and silence here about any particular item presented as historical fact in the NRDA Plan should not be read as agreement or a commentary on that item’s accuracy;

all historical information provided in the NRDA Plan should be reviewed for accuracy while preparing an updated NRDA Plan.

## 9. Preliminary Estimate of Damages

The Plan neither contains nor is accompanied by the Preliminary Estimate of Damages (PED). A PED is required by statute when performing a Type B assessment for *“for reference in the scoping of the Assessment Plan to ensure that the choice of the scientific, cost estimating, and valuation methodologies expected to be used in the damage assessment fulfills the requirements of reasonable cost”* (43 CFR §11.38(a),(b)). Unless the existing data are insufficient, the PED should precede issuance of the Assessment Plan (43 CFR §11.38(d)(2)) and the Plan has provided no such justification.

## References

- Anchor QEA, 2013. Draft Phase 1 Remedial Investigation Field Program Data Summary Report –Submittal No. 1. Remedial Investigation/Feasibility Study, Newtown Creek.
- Anchor QEA, 2018. Baseline Ecological Risk Assessment, Remedial Investigation/Feasibility Study, Newtown Creek.
- Anchor QEA, 2023. Remedial Investigation Report: Remedial Investigation/Feasibility Study, Newtown Creek. January 2023.
- Ecology and Environment Engineering, P.C., 2009. LNAPL Volume Estimation for the Greenpoint Petroleum Remediation Site, Brooklyn, New York.
- Geraghty and Miller, Inc., 1979. Investigation of Underground Accumulation of Hydrocarbons Along Newtown Creek, Brooklyn, New York.
- Hazen and Sawyer, 1960. Report and Surveys on Studies of the Lower East River and Tributaries. Prepared for New York State Department of Health, Water Pollution Control Board. June 30, 1960.
- Metropolitan Sewerage Commission (Metropolitan Sewerage Commission of New York), 1910. Sewerage and Sewage Disposal in the Metropolitan District of New York and New Jersey. April 30, 1910.
- NYSDOH, 2014. Public Health Assessment – Final Release – Newtown Creek. EPA Facility ID NYN000206282. February 24, 2014.
- Rosenberger and Stanley, 2006. Measurement, generalization, and publication: Sources of error in benefit transfers and their management. *Ecological Economics* Volume 60, Issue 2, pp. 372-378.
- USDOI BLM, 2008. BLM Natural Resource Damage Assessment and Restoration Handbook. May 27, 2008.
- USEPA, 2007. Newtown Creek/Greenpoint Oil Spill Study Brooklyn, New York, September 12, 2007.
- USEPA, 2023. Framework for the Operable Unit One Remedial Action Objective and Preliminary Remediation Goal Approach. Revised Draft Final Memorandum. Newtown Creek Superfund Site, New York, New York. November 2023.



811 Louisiana Street, Suite 1200  
Houston, TX 77002

New York State Department of Environmental Conservation  
Natural Resource Damages (NRD) Section  
625 Broadway, 14th Floor  
Albany, NY 12233

Dear Alicia Pasos,

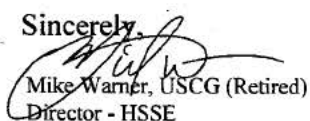
March 21, 2024

Maintaining the authorized depth of Newton Creek in New York through dredging is essential for ensuring safe navigation for vessels and facilitating the smooth flow of critical cargo to the area's facilities. Here are several supporting arguments to underscore the importance of this endeavor:

1. **Safety of Navigation:** Newton Creek serves as a vital artery for maritime transportation, facilitating the movement of vessels to and from crucial facilities in the region. Failure to maintain the channel depths poses significant risks to safe navigation, potentially leading to groundings, collisions, or other accidents. By dredging the creek to its authorized depth, we can minimize these risks and ensure the safety of both maritime traffic and the surrounding environment.
2. **Economic Impact:** Any disruption to vessel operations due to inadequate channel depths can have severe financial consequences. Delays in cargo delivery, increased maintenance costs, and potential damage to vessels all contribute to significant financial losses. Moreover, the businesses and industries reliant on the timely delivery of goods through Newton Creek may suffer from supply chain disruptions, leading to further economic repercussions for the region. Dredging the creek is a proactive measure to safeguard against these negative impacts and sustain the economic vitality of the area.
3. **Environmental Considerations:** Proper maintenance of Newton Creek through dredging also has environmental benefits. Sediment buildup in the creek can lead to decreased water quality, habitat degradation, and disruption of aquatic ecosystems. By dredging to the authorized depth, we can remove excess sediment and restore natural flow patterns, thereby promoting the health and resilience of the surrounding environment.
4. **Regulatory Compliance:** Dredging Newton Creek to its authorized depth ensures compliance with regulatory requirements and permits governing maritime navigation and environmental protection. Failure to adhere to these regulations not only exposes our operations to potential legal liabilities but also reflects poorly on our commitment to responsible stewardship of natural resources and adherence to industry standards.

In conclusion, dredging Newton Creek to its authorized depth is a prudent investment in safety, economic prosperity, environmental sustainability, and regulatory compliance. By proactively maintaining the channel depths, we can mitigate risks to navigation, preserve the flow of critical cargo, protect the environment, and demonstrate our commitment to upholding the highest standards of maritime operations.

Sincerely,



Mike Warner, USCG (Retired)  
Director - HSSE

---

**From:** Adam Lipowicz [REDACTED]  
**Sent:** Tuesday, May 28, 2024 7:57 PM  
**To:** dec.sm.nrd  
**Subject:** Newtown Creek future hopes

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

You don't often get email from [REDACTED]. [Learn why this is important](#)

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Hi there!

I wanted to contribute some of my thoughts about Newtown Creek.

1: Natural resources are important to me because I believe that living in a clean, healthy city should be a right. And cleaning up and improving the area around the Creek to the point that certain wildlife is starting to take notice is a good start. But there's still much more to be done.

3: Activities I'd like to be able to do on the Creek are to be able to bike along it completely separated from the cars and trucks nearby.

I would also like to be able to see more wildlife.

I think the Creek could, in time, turn into a great place to practice crew or to kayak.

Sincerely,


Adam

**From:** [REDACTED]  
**Sent:** Wednesday, May 29, 2024 6:02 PM  
**To:** dec.sm.nrd

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

[You don't often get email from [REDACTED]. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification> ]

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

**The Future of Newtown Creek** 

Government agencies drafted a **Natural Resource Damage Assessment (NRDA) Plan** to seek compensation for **restoring the health of wildlife, plants, and waterways** of Newtown Creek that have been devastated by industrial activities that released oil, toxins, and chemicals.

The plan will **collect money from polluting companies** and be used for restoration projects, which can include:

- Constructing salt marsh wetlands (More plants!)
- Creating fish + shellfish + bird habitat (More animals!)
- Enhancing public access (More parks!)
- Improving recreational opportunities like fishing & boating (More fun!)

The natural resources on Newtown Creek, like the birds, fishes, plants, and waterways, provide invaluable benefits to both the environment and us humans.

We want to learn about how **you** interact with these natural resources so we can drive better plans to clean up the Creek, restore more habitat for wildlife, and increase access for humans living and working around the area. Your thoughts will be submitted to the agencies as a public comment for the draft NRDA plan. The comment period ends on **May 30th, 2024**.


---

**Name:** ALESSANDRA MOLL  
**Age:** LIC (SINCE 1985)  
**My neighborhood is:** LIC (SINCE 1985)

**Natural Resources on Newtown Creek are important to me because...**  
LIC is polluted land, water and air.  
LIC continues for decades to be a construction site.  
LIC was once upon a time wetlands.  
**I want to access the Creek because...**  
Open sky, light and water is a gift from nature we must take care of.

**Activities I would like to do ~~maneuver~~ on the Creek include....**  
Walk, rollerskate, horseback riding and a sanctuary for retired and abused horses.

**Anything else you'd like to share about the Creek?**  
Human activities should not be hugging all along the Creek. Wildlife needs its space away from humans to flourish. I would be willing to not have human

active spaces at the expense of wildlife 

Sent from my iPhone

---

**From:** Bradley Kerr [REDACTED]  
**Sent:** Thursday, May 30, 2024 8:15 AM  
**To:** dec.sm.nrd  
**Subject:** NRDA plan for Newtown Creek

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

[You don't often get email from [REDACTED]. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification> ]

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hello,

As a longtime member of the North Brooklyn Community Boathouse, I spend a lot of time enjoying the natural resources of Newtown Creek from the seat of a canoe. The creek is an industrial waterway, and I hope it will continue that way, but it is also an excellent place to watch birds and runs of fish, enjoy sunsets, and note the passing of the seasons. I hope the NRDA will facilitate access for canoes and kayaks in the creek and will foster its natural resources through habitat restoration in the unused tributaries.

Sincerely,  
Bradley Kerr  
[REDACTED]

---

**From:** Daigo Kawasaki [REDACTED]  
**Sent:** Wednesday, May 29, 2024 6:59 PM  
**To:** dec.sm.nrd  
**Subject:** Regarding our use of Newtown Creek as per the Natural Resource Damage Assessment

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

You don't often get email from [REDACTED] [Learn why this is important](#)

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Hello,

My name is Daigo and I am a resident of Greenpoint, Brooklyn. I'd like to submit a public comment about our use of Newtown Creek as a public, natural resource in order to assist in properly generating and allocating funding.

As a member of the North Brooklyn Community Boathouse, I primarily use the creek via recreational canoe. In this regard, there are often situations when the creek becomes unusable to us due to a particularly heavy CSO discharge, and any form of remediation to remedy this situation would be greatly appreciated by all of us recreational boaters. I would also point out, however, that even without a CSO discharge event, the creek's natural state can often lead it to become quite unpleasant to boat down just from a particularly low tide. A bad smell or a large amount of visible contamination in the creek can be particularly harmful toward getting people out on the water, especially for public outreach and education events.

I also walk along the creek with my dog, and we would love for there to be more walkable infrastructure along the creek!

Thanks for the opportunity to chip in - I wish you all the best of luck in cleaning up Newtown Creek and hope you'll be able to obtain the restitution that the creek deserves.

thanks,  
-daigo

---

**From:** Darren Lipman [REDACTED]  
**Sent:** Thursday, May 30, 2024 1:25 PM  
**To:** dec.sm.nrd  
**Subject:** Conservation Natural Resource Damages Section

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

You don't often get email from [REDACTED]. [Learn why this is important](#)

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

NYS Department of Environmental Conservation Natural Resource Damages Section c/o Alicia Pasos

Dear Alicia,

I would like to propose the following improvements for Newtown Creek:

1. Implementation of publicly accessible walking paths along the creek.
2. Establishment of easements to provide upland connections to these paths.
3. Creation of a public performing space for plays and music, - small basic
4. Natural restoration of aquatic and land-based plants, considering the needs of local wildlife and birds.
5. Priority on expediting remediation efforts.
6. Rerouting of Combined Sewer Overflows (CSOs) in stagnant areas of the creek to the East River.
7. Cleanup of all sunken objects, including cars, boats, etc.
8. Allocation of additional grant money for local community groups dedicated to creek preservation.
9. Installation of a public boat ramp on the creek, as there are currently zero ramps in the area.

Thank you for considering these proposals.

•

---

**From:** Katherine Thompson [REDACTED]  
**Sent:** Thursday, May 30, 2024 9:06 PM  
**To:** dec.sm.nrd  
**Cc:** welkins  
**Subject:** Re: Natural Resources Damages Assessment (NRDA) happening on Newtown Creek

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

You don't often get email from [REDACTED]. [Learn why this is important](#)

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

To whom it may concern,

I have lived near by Newtown Creek since 1987 and in Greenpoint since 1996 where my husband and I raised 3 children and have been active community members. We founded the Greenpoint/ Williamsburg Youth Soccer League in 1999 and I am currently the President of the Bushwick Inlet Park.

Before my husband, Dewey, founded the North Brooklyn Community Boathouse alongside other passionate human powered boating aficionados which brought access to these waterways, he and I spent years slipping into the East River and Newtown Creek in our kayaks from abandoned street ends to paddle along and explore the degraded shorelines- I've seen its toxic and dilapidated bulkheads where birds, crabs and other wildlife struggle to co-exist with the heavy industry of the Newtown Creek. I fought with my neighbors to demand justice for the Exxon Oil SPill and I am fighting now to halt the expansion of fossil fuel infrastructure in Greenpoint and the globe. I feel like I am fighting for the future of all of our children.

I am writing to you today today let you know that Natural Resources on Newtown Creek are important to me because ecological restoration of these polluted areas will create space for the creatures that have been displaced by years of toxic industry to repopulate the shoreline and redevelop a habitat for biodiversity. I want to expand access to the Newtown Creek because it is a public waterway that has been sequestered by heavy industry. We need to be watch dogs and daylight the often illegal polluting activities that happen here and protect our neighbors and reemerging natural ecology. But we need access to this unique and historic waterway so people will learn about it and be inspired to care for it. I would like to see more restoration of natural marshes for bird habitats. At low tide, when paddling up into the creek I see that the mudflats are home to clams and other mollusks. I would like to see an abundance of these creatures that filter the water for us and feed shoreline birds.

But I especially would like to see creative ways for the ecological restoration of the Newtown Creek to work hand in hand to support a vibrant economy of workforce development, traditional recycling and green infrastructure jobs so that we can also sustain good employment opportunities that will bring us forth into a decarbonized, ecological robust future.

Many thanks,  
Katherine

[REDACTED]  
[www.bushwickinletpark.org](http://www.bushwickinletpark.org)

Pronouns: She/ Her/ Hers

---

**From:** Maggie Lee [REDACTED]  
**Sent:** Wednesday, May 29, 2024 3:05 PM  
**To:** dec.sm.nrd  
**Subject:** public comments for Newtown Creek

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

You don't often get email from [REDACTED]. [Learn why this is important](#)

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Hello,

Protection and restoration of natural resources on Newtown Creek is important to me in order to right a historic wrong. I lived in East Williamsburg for >30 years where we face the consequences of pollution every day. Despite over 150 years of exploitation of the waterway, it is fascinating that life continues to eke out an existence in the creek. I dream of a future where birds, fish, insects and native plants will thrive, and humans living in Brooklyn and Queens do not have to venture out of the city to recreate on the water and be in nature.

I would love to take my future children and grandchildren to picnic and kayak along Newtown Creek. I would love to show them the shore birds and migrating fish. Most of all, I want to share that we were able to restore an ecosystem by holding corporate polluters accountable because nature heals but we must help it along.

Maggie Lee

--

Maggie Lee  
[REDACTED]

---

**From:** No One's Arks [REDACTED]  
**Sent:** Thursday, May 30, 2024 12:28 PM  
**To:** dec.sm.nrd  
**Subject:** Newtown Creek | Lenape-Brooklyn National Park

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

You don't often get email from [REDACTED]. [Learn why this is important](#)

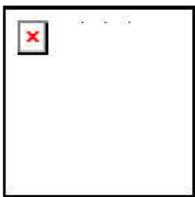
*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Hello,

I am going to keep this short and brief. Newtown Creek is one of the last waterways and areas in New York City that has yet to be claimed and gentrified by the powerful real estate lobby. We live in a city with more coastline than LA, Miami, and Chicago combined...and yet have hardly any access to it, and when we do, most of that water is highly contaminated, polluted, and poisonous. We have a once in a lifetime opportunity, not only to clean the creek, but to transform it into something special for the community, to give back to the people who make this place so great.

Our dream is simple: rewild Newtown Creek into the **Lenape-Brooklyn National Park**, New York State's first National Park. Restoring Newtown Creek to its former salt water estuary, before it was stolen and decimated, in the epicenter of capitalism and greed, would reverberate throughout the world. This is our chance to reclaim our land, our water, and power to the people. The seed has already been planted; this is happening. We just hope you join our journey and help us along the way.

Stay Floating,  
No One



How well can  
you stay afloat?

[www.noonesarks.com](http://www.noonesarks.com)

---

**From:** Ray Achan [REDACTED]  
**Sent:** Wednesday, May 29, 2024 3:33 PM  
**To:** dec.sm.nrd  
**Subject:** Ray Achan Public Comment to Newtown Creek Natural Resources Damage Assessment Plan

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

You don't often get email from [REDACTED]. [Learn why this is important](#)

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Hello,

In response to your request for public comments, here are some I have regarding this plan.

1) I have lived in this community for nearly 3 decades, and it was extremely difficult to access a hard copy of this Plan, at both locations listed on page 10 & 24 of the document:

-At the Queens Public Library, there was only one public copy available, and could not be taken out of the library.

-At NYS Department of Environmental Conservation- Region 2, I visited the office in person. The person in the office sitting behind the desk would not look at me or respond to any questions I had. I called the number on the NRDA document (718) 482-4900, with no response. Next, I called the number in your office to ask for the plan, (718) 482-7593, the administrative person who picked up had no idea what I was talking about, and directed me to another phone number (718) 482-6464, who did not pick up or call back to respond to my message.

Needless to say, it was nearly impossible to get access to this document, and I hope in the future, you will do a better job at outreach in the community, and having HARD COPY resources for the community to read.

2) Referring to page 35 of the document: When will the Trustees inform the public on whether or not additional information is available to focus on hazardous substances such as lead and mercury in assessing natural resource injury? Will it ever be possible to address injuries related to these hazardous metals in the future or at all?

Please ensure a thorough and complete review of all studies. Protect the Creek from future harm. The Creek needs to be more accessible to people from the local community.

Best,

Ray Jordan Achan

pronouns: he/him/his ([what's this?](#))

[rayjordanachan.com](http://rayjordanachan.com)



**DARE TO DO MORE**

May 30, 2024

Via E-Mail to [nrd@dec.ny.gov](mailto:nrd@dec.ny.gov)

NYS Department of Environmental Conservation (NYSDEC)  
Natural Resource Damages Section  
c/o Alicia Pasos  
625 Broadway, 14th Floor  
Albany, NY 12233

Dear Alicia Pasos and Trustees of the Natural Resources Damages Assessment (NRDA),

Thank you for the opportunity to comment on the Newtown Creek NRDA Plan.

I write on behalf of the expanding engagement of LaGuardia Community College with the waterway that extends to the “backdoor” of our college. This year, our college president, in collaboration with students and faculty mentors of the President’s Society for Environment, established a [greenway](#) on 29<sup>th</sup> Street in Long Island City. This street traverses the west edge of our campus and has become a walkway to the Dutch Kills tributary of Newtown Creek, the waterbody behind LaGuardia’s Central (C) building.

In [2022](#), President Adams, students and faculty of our Environmental Science program, elected officials and the Newtown Creek Alliance staff, gathered along the continuation of 29<sup>th</sup> street that runs along the east shore of Dutch Kills to demand shoreline restoration and access for the area’s thousands of college and high school students. In addition to the college, seven high schools are within 2-4 city blocks of the Dutch Kills tributary. Our area of Queens, District 2, ranks number 57 out of 59 community board districts ranked for percent greenspace, according to 2021 data collected by the independent citywide research and advocacy organization, New York for Parks.

Our effort to open the estuary shore to students is ongoing. It is the goal of our college to obtain unimpeded and safe access to the tidal basin behind the LaGuardia campus, now blocked via fencing, a collapsing bulkhead and marine debris. With the expected redesignation of the Dutch Kills tributary as a non-navigable waterway, the college is positioned to offer an expanded program of education, research and shoreline remediation. Ultimately, the tributary stands as a magnificent opportunity for intertidal wetland restoration and the engagement of a community in stewardship of its local ecosystem.

Despite access challenges, environmental science students have already [demonstrated](#) the potential to expand intertidal habitat along Newtown Creek. We ask the Trustees to consider the numerous opportunities for restoring the estuary’s living edge beyond use of

existing seawalls for habitat suspension or flotation, the extent of remediation work thus far available to the college community.

To this end, we urge consideration of the numerous injuries to natural shoreline communities inflicted by commercial interests. The Newtown Creek Alliance has presented a comprehensive outline of these injuries. Of particular concern are poorly defined coal tar and other petrochemical contaminants in the region of the Newtown Creek "turning basin," site of Maspeth Creek and former Mussel Island. Maspeth Creek is another tributary of the waterway with exceptional potential for restoration of tidal wetland.

We thank you for the opportunity to comment and look forward to engaging with you in the effort to restore Newtown Creek natural resources.

Sincerely,



Dr. Sarah E Durand  
Professor  
Department of Natural Sciences



CC:

President Kenneth Adams, LaGuardia Community College  
Dr. Na Xu, Chair, Department of Natural Sciences



**ArentFox Schiff LLP**

233 South Wacker Drive  
Suite 7100  
Chicago, IL 60606

[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

[afslaw.com](http://afslaw.com)

[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]

May 30, 2024

VIA E-MAIL

Alicia Pasos  
New York State Department of Environmental  
Conservation, Natural Resource Damages Section  
625 Broadway, 14th Floor  
Albany, NY 12233

Re: Comments on the Draft Newtown Creek Natural Resource Damage Assessment Plan  
from National Grid

Dear Ms. Pasos:

I write to provide the attached comments on the Draft Newtown Creek Natural Resource Damage Assessment Plan. These comments were prepared by GEI Consultants, Inc., on behalf of The Brooklyn Union Gas Company d/b/a National Grid NY ("National Grid"). If the Trustees have any questions or would like to discuss our comments, National Grid welcomes the opportunity to speak further on the Draft Assessment Plan.

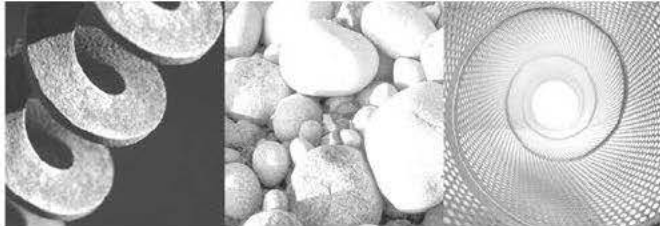
National Grid appreciates your consideration of these comments.

Sincerely,

*/s/ Bradley S. Rochlen*

Bradley S. Rochlen

Attachment



## **Response to the Newtown Creek Natural Resource Damage Assessment Plan**

Newtown Creek Superfund Site, New York, New York

**Submitted to:**

National Grid  
2 Hanson Place  
Brooklyn, NY 11217

**Submitted by:**

GEI Consultants, Inc. DBA GEI Consultants Engineering,  
Geology, Architecture & Landscape Architecture  
18000 Horizon Parkway, Suite 200  
Mt Laurel, NJ 08057  
856.608.6860

May 30, 2024  
Project No. 2404115



Steve E. Michalanko  
Senior Ecologist

Bjorn A. Bjorkman  
Senior Toxicologist

## Table of Contents

---

<b>1.</b>	<b>Introduction</b>	<b>1</b>
<b>2.</b>	<b>Key Issue 1: Lack of Sufficient Detail</b>	<b>2</b>
<b>3.</b>	<b>Key Issue 2: Establishing Baseline</b>	<b>3</b>
<b>4.</b>	<b>Key Issue 3: Hazardous Substances</b>	<b>6</b>
<b>5.</b>	<b>Key Issue 4: Selection of Reference Areas</b>	<b>8</b>
<b>6.</b>	<b>Key Issue 5: Methods for Evaluating Injury and Service Loss</b>	<b>9</b>
<b>7.</b>	<b>Additional Specific Comments</b>	<b>11</b>
7.1.	Purpose and Overview of the Assessment Plan (Section 1.1)	11
7.2.	Injury Caused by Remedial Actions (Section 3.5)	11
7.3.	Human Use Services and Human Use Quantification and Damage Determination Approach (Section 2.4.2 & Section 4.3)	11
7.4.	Section 3.3 Pathway (Section 3.3)	12
7.5.	Ecological Injury Quantification and Damage Determination Approach (Section 4.2)	12
7.6.	Temporal Scope (Section 4.4)	13
7.7.	Quality Assurance (Appendix A)	13

SEM/BAB:vjb  
\\bos1v-FS02\Data\_Storage\Working\NATIONAL GRID\2404115 Newtown Creek NRDA Support\Working Files\2404115 Response to the NC NRDA Plan\_FINAL 2024-05-30 .docx

# 1. Introduction

---

GEI Consultants Engineering, Geology, Architecture & Landscape Architecture (GEI), on behalf of The Brooklyn Union Gas Company d/b/a National Grid NY (“National Grid”), is pleased to provide comments on the Draft Newtown Creek Natural Resource Damage Assessment (NRDA) Plan (the Plan) prepared by the Newtown Creek Natural Resource Damage Assessment Trustee Council (the Trustees) dated March 1, 2024. National Grid presents the following general comments on the Plan. Specific comments on procedures, metrics, and data needs cannot be provided at this time because the Plan lacks the necessary specifics. We look forward to providing future additional comments once adequate details of the Plan have been developed and provided for public comment.

We appreciate the Trustees’ adherence to the generally accepted NRDA process in the Plan. There are, however, significant concerns about the omission or inadequate presentation of several key factors which could have a significant effect on the quantification of damages to natural resources in Newtown Creek. While it may not be uncommon for NRDA assessment plans to be kept at a high level with decision points and procedures that are open-ended and subject to modification, some key issues for properly scoping the assessment need to be fully defined prior to finalization of the Plan and further development of the NRDA process.

Establishing consistent definitions and scope early in the NRDA process is critical for the assessment process, the proper quantification of injuries, the conversion of injuries to compensable damages and to allow for resource restoration and compensation to address the resource losses. Based on our review of the Plan and its current deficiencies, we recommend the Plan be revised to include more detail on the items prescribed for the assessment plan by 43 C.F.R. Part 11. The following sections pertain to these key issues:

- Determination of baseline.
- Hazardous substances to address.
- Selection and use of reference areas in injury quantification.
- Approaches to injury quantification and conversion to natural resource service loss.

In addition to our broad comments, Section 7 of this document presents additional specific concerns that should be addressed in the updated Assessment Plan.

## 2. Key Issue 1: Lack of Sufficient Detail

---

Per 43 C.F.R. § 11.31(a)(2) specifies that “(t)he Assessment Plan shall be of sufficient detail to serve as a means of evaluating whether the approach used for assessing the damage is likely to be cost-effective and meets the definition of reasonable cost, as those terms are used in this part,” and “the Assessment Plan shall include the sampling locations within those geographical areas, sample and survey design, numbers and types of samples to be collected, analyses to be performed, preliminary determination of the recovery period, and other such information required to perform the selected methodologies.” The Plan as presented does not provide sufficient detail to meet this standard.

The Plan has two overarching deficiencies in its current form:

- The lack of sufficient detailed information on injury quantification and damage determination provided by the Plan.
- The lack of detail about additional studies necessary to complement existing information derived from the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Newtown Creek Remedial Investigation and Feasibility Study investigations and reports (RI/FS) or other sources to fully identify the causes of injury and loss of service beyond the CERCLA impacts identified in the RI/FS.

The data sets collected for the RI/FS, while adequate to quantify ecological and human health risk for purposes of the RI/FS, are not adequate to quantify the metrics needed to assess and appraise natural resource injury and damage. The data does not fully account for the extensive anthropogenic alterations to Newtown Creek and the surrounding area from:

- urban development,
- shoreline modifications,
- channelization, and
- purposeful use of the Creek as an industrial maritime waterway, historic and on-going sewage discharges via combined sewer overflows, and other inputs that have and continue to impair the natural resources in Newtown Creek.

We further note that unacceptable risk, as evaluated in the Newtown Creek baseline ecological risk assessment (BERA) is not necessarily comparable or easily convertible to a quantifiable service loss to a natural resource. While these data are, as noted in the Plan, good indicators for potential injury to natural resources, quantifying actual injury and converting to service losses will require collection of additional data beyond what is available in the RI/FS data sets.

The Plan as written provides insufficient insight into the decision process that will be followed beyond generalities, especially when it comes to metrics for damage and loss assessment. National Grid fully expects to have the opportunity to provide additional detailed comments, suggestions, and concerns at each subsequent stage of the NRDA process as the process progresses.

### 3. Key Issue 2: Establishing Baseline

---

Baseline is defined by 43 C.F.R §11.14(e) and “means the condition or conditions that would have existed at the assessment area had the discharge of oil or release of the hazardous substance under investigation not occurred.” The NRDA process utilizes this “but for” rule to define baseline conditions to be used to quantify injuries to natural resources and to establish the scope of a compensable natural services loss. The “but for” rule is correctly stated in Section 1.4 of the Plan. The Plan goes on to further elaborate on baseline in Section 4.1:

*“[B]aseline should reflect expected conditions in the Assessment Area had the release of the contaminants not occurred,”*

and

*“the baseline condition of natural resources reflects natural processes and changes that result from human activities that are not contaminant-related (e.g., structural alterations to Newtown Creek).”*

We agree with this interpretation. However, in the very next sentence the draft NRDA states that:

*Because site-specific historical data applicable to establishing baseline have not been located for Newtown Creek, the Trustees plan to use, in order of priority, data from reference areas/control groups (43 C.F.R § 11.72(d)) and/or relevant literature (43 C.F.R § 11.72(c)(2))*

National Grid questions whether in fact applicable data establishing pre-CERCLA conditions are truly unavailable. Studies predating 1980 relating to conditions in Newtown Creek are known to exist and need to be assessed to determine if they have the potential to demonstrate injuries to natural resources (e.g. studies on eutrophication and oxygen depletion) that may be useful in determining appropriate baseline conditions.

The Plan presents no further discussion of the nature of the baseline condition and is silent on the substantial degradation of natural resources in Newtown Creek that would exist in the absence of any CERCLA hazardous substance releases. The vagueness of the Plan creates significant uncertainty regarding the establishment of appropriate baseline conditions. It is critical to the NRDA to be able to quantify a baseline condition that considers the extensive impact to natural resource services in Newtown Creek from non-CERCLA hazardous substances, especially discharges from the surrounding urban environment such as combined sewer overflows (CSOs) and stormwater discharges. The extensive structural alteration of Newtown Creek, consistent with its active and intended use and New York City’s Waterfront Revitalization program (WRP) special designation of Newtown Creek as a significant maritime and industrial area (SMIA)<sup>1</sup>, also needs to be considered and quantified in establishment of an appropriate baseline. Such a designation identifies and ensures that future industrial waterway use of Newtown Creek will result in extensive disturbance and degradation of potential habitat from ship m

---

<sup>1</sup> <https://www.nyc.gov/site/planning/planning-level/waterfront/wrp/wrp-2.page>

ovement and other disturbances. Not properly accounting for these influences on the baseline for Newtown Creek would greatly distort the damage estimates and allocations associated with releases of CERCLA hazardous substances.

Use of reference areas/control groups and “relevant literature” (which Trustees acknowledge “have not been located”) would not fully capture these other non-CERCLA related factors that have impacted baseline natural resources in Newtown Creek. Trustees must expand on how a quantifiable baseline that captures conditions in Newtown Creek “but for” the release of CERCLA hazardous substances is calculated and how those damages will be accounted for in establishing the baseline. These non-CERCLA factors, including but not limited to, Newtown Creek’s role as a SMIA waterway, alterations to the shoreline, and as a receiving waterbody for urban CSO have not only been present for over 150 years but are ongoing. We are open to various options that may be considered that either quantify baseline in the assessment stage or otherwise to account for baseline effects on natural resources when calculating compensable service losses.

For example: Section 1.2 & Exhibit 1-4 of the Plan discuss Newtown Creek’s status as a “Significant Maritime Industrial Area” and that it contains a federal navigation channel. In addition, the Executive Summary of the Plan states:

*Over time, the bed and shorelines of Newtown Creek have been altered by dredging and channelization, and the Creek has a long history of oil and hazardous substance contamination resulting from industrial and commercial operations. Wastewater discharges and surface runoff from surrounding urban communities have also contributed to contamination in Newtown Creek.*

We agree with this characterization of conditions in Newtown Creek and with the Plan’s initial identification of factors that will influence the baseline conditions of Newtown Creek “but for” the presence of site related CERCLA hazardous substances. But it is noticeable that these conditions are not addressed further when discussing baseline conditions prior to COC releases. These are significant factors when discussing establishment and definition of baseline conditions. As the draft plan is currently prepared, it is not clear how non-CERCLA related impacts [e.g., maritime use, engineered alterations or urban (CSO and stormwater) discharges to Newtown Creek will be included in applying a baseline standard to Newtown Creek.

To correctly establish the baseline for Newtown Creek, the Trustees should consider the following:

- The utilization of Newtown Creek as a SMIA implies that habitat maintenance cannot be a sole goal. This utilization has and will continue to constrain the habitat quality in Newtown Creek
- Restricted or missing habitat to allow a diverse and abundant biota due to historic dredging, channelization, and engineered banks as well as influences from the surrounding urban industrial environment inherent in the condition of Newtown Creek as an active SMIA. This means that fringing wetlands, saltmarsh habitats, and other intertidal habitat characteristic of unmodified estuaries have been absent since the 19th century and will remain absent under the current and intended future use of the area. Therefore, any established baseline condition must consider the lack of many conditions that could otherwise result in a diverse ecological community.

- Newtown Creek is the recipient of heavy influence from “non-CERCLA hazardous substances” and other direct and indirect influence. Newtown Creek is also a receiving water body for both CSO discharges and stormwater runoff from the surrounding industrial and urban areas. The long-established use of Newtown Creek as a recipient of untreated or partially treated sewage has severely impacted the aquatic community due to eutrophication, oxygen depletion, and pathogens. The Long-Term Control Plan (LTCP)<sup>2</sup> for the CSO discharges affirms that the release of sewage discharges is intended to be reduced over time but will continue to some degree in the future. These historic, current, and future discharges must be included in any formula for the establishment of baseline conditions.
- In Section 3.4.2, the Plan discusses the existence of consumption advisories as indicators of injury at Newtown Creek. Fish advisories in urban waterways are not uncommon. As noted in Exhibit 3-6 fish advisories are in effect throughout the New York/New Jersey Harbor. This factor needs to be considered with respect to the baseline for human resource (fish and shellfish) use in Newtown Creek. Also, the presence of fish advisories, especially in waterways receiving various urban discharges (e.g. CSOs and stormwater runoff), are often due to cumulative impacts from multiple sources, not just from the release of CERCLA hazardous substances from any one site.

The Plan further describes the results of the BERA and notes that several metrics (e.g., benthic toxicity testing, quantification of fish and crab tissue residues) are benchmarked by comparison to Gerritsen Creek as a reference area. Gerritsen Creek lacks many of the non-CERCLA factors identified above that have caused injury on Newtown Creek, and thus would not correspond to the baseline conditions. The absence of consideration for these issues recurs throughout the Plan. Therefore, it is imperative that Section 3 (Injury Determination Approach), and in particular Section 3.4 (Injury to Natural Resources) discuss how the Trustees intend to consider impacts to Newtown Creek from human activities that are not associated with CERCLA hazardous substance releases.

---

<sup>2</sup> AECOM. 2017. Combined Sewer Overflow Long Term Control Plan for Newtown Creek. Prepared for the New York City Department of Environmental Protection Bureau of Engineering Design and Construction. June 2017.

## 4. Key Issue 3: Hazardous Substances

---

The Plan provides the definition for hazardous substance as defined in 43 C.F.R. § 11.14(u) – “a hazardous substance as defined in section 101(14) of CERCLA” that can be used to determine compensable damages. This definition does not aid in establishing a comprehensive list of chemical constituents and other stressors which have significant negative impacts to Newtown Creek. The Plan goes on to state in Section 3.1:

*This assessment will focus on injuries resulting from exposure to hazardous substances released into Newtown Creek from past and current industrial activities, as well as CSOs. These contaminants include, but are not limited to, polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), hazardous pesticides, and metals such as lead, mercury, and copper. Currently, the Trustees plan to focus on PAHs, PCBs, and copper as the primary contaminants of concern (COCs) for assessing natural resource injury.*

A focus on these three COCs unacceptably restricts the scope of hazardous substances released that have the potential to result in injury to natural resources and will lead to misallocation of damages if other sources of injury are ignored. Incorporation of other COCs is left as an option in the draft Plan.

The Plan has not identified all the releases addressed under CERCLA as part of the RI/FS at Newtown Creek (e.g. dioxins and furans). At a minimum, the Plan also needs to include aliphatic hydrocarbons (C19-C36), which have been identified by the United States Environmental Protection Agency (USEPA) as CERCLA-regulated constituents as part of the Newtown Creek RI/FS and have been shown to significantly impact biological receptors.

The Plan in Section 3.1 specifically calls out that “not all sewage discharges from CSOs are considered CERCLA hazardous substances.” Considering this, establishing a baseline condition for Newtown Creek that does not take into account impacts from these common urban sources would not properly account for the adverse impacts of such non-CERCLA hazardous substances on natural resources. Later in Section 3.3.1, the Plan again discusses direct discharges Newtown Creek and in doing so, briefly mentions CSO impacts:

*Spatial patterns of surface sediment contamination also provide evidence of hazardous substance inputs from CSOs: levels of PAHs, PCBs, copper, and other compounds typically associated with CSOs (e.g., nonylphenols and the bacterium Clostridium perfringens) are elevated in the upstream portions of the Assessment Area and tributaries (i.e., in the vicinity of major CSO outfalls) compared to more downstream areas of Newtown Creek*

Nonylphenols and pathogens such as Clostridium are not, to our knowledge, considered to be CERCLA hazardous substances. The Plan does not address how the presences of non-CERCLA hazardous substances, physico-chemical and biological characteristics from surrounding urban discharges (e.g. stormwater runoff and CSO discharges are major impacts to natural resources in Newtown Creek will be incorporated into calculation for establishing baseline conditions. The lack of full accounting of all sources of injury will misallocate damages by overestimating the contribution of COCs to injury.

Therefore, it is imperative that this service loss from the surrounding urban discharge contributions is fully accounted for in the baseline (if exempt as a hazardous substance) or measured as a cause of service loss (if included in hazardous substance) and allocated accordingly. The Plan must include the strategy for considering these factors.

## 5. Key Issue 4: Selection of Reference Areas

---

Throughout the Plan, the Trustees commonly reference comparison of Newtown Creek to unidentified “reference areas.” Footnote 16 in Section 3.4.2 states that “Reference areas are located outside of the Assessment Area and reflect environmental conditions similar to the Assessment Area but without contamination.” Section 3.4 of Plan then goes on to identify probable injury to natural resources in Newtown Creek by referencing the Newtown Creek BERA results defining significant effects when compared with a relatively unimpacted reference area (Gerritsen Creek). It needs to be made clear that service losses may be overestimated if defined by injuries relative to a “reference area” that is not representative of the “but for” baseline condition. This is especially so when considering the high degree of impact constraint to natural resources represented by non-hazardous substances, physical habitat alterations, and lack of riparian buffer or interfaces, and ongoing disturbance from navigation and industrial activity as discussed previously in Section 3 of this report. To properly evaluate the Plan to define and assess damages from service losses at Newtown Creek, it is vital to understand how appropriate reference areas will be identified, evaluated, and selected for inclusion in the NRDA for Newtown Creek.

To correctly allow allocation of natural service losses for the Site, any use of proposed reference areas should be subject to similar sources of natural resource stressors. If reference areas are used that differ in stressors relative to Site (apart from the defined COCs), these differences must be quantified and included in the service loss calculations.

We suggest that when considering reference area(s) for comparison to Newtown Creek, the Trustee’s leverage the larger data sets from multiple potential reference locations developed in the earlier stages of the RI/FS. The reference sites identified and utilized in the early stages of the RI/FS included locations with similar habitat alteration and similar levels of influence from urban CSO and urban stormwater discharges as the Site. Avoiding reference areas that do not share these characteristics with Newtown Creek, and instead relying on a reference area such as Gerritsen Creek would be inconsistent with NRDA regulations which clearly call for reference area that is representative of the assessment area’s “but for” baseline condition.

## 6. Key Issue 5: Methods for Evaluating Injury and Service Loss

---

The Plan discusses the Trustees' proposed approach for assessing injury and service loss by noting it will consider the use of existing information and, if necessary following identification of data gaps, implementation of new studies to address these data gaps.

In 43 C.F.R § 11.14(v) "injury" is defined as *"a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource."* And in 43 C.F.R § 11.14(nn) "services" are defined as *"the physical and biological functions performed by the resource including the human uses of those functions. These services are the result of the physical, chemical, or biological quality of the resource."* An "injury" (e.g., an increased mortality in key species due to exposure to COCs in sediment) is by itself not a service. The "service" is the value (in terms of function or perceived use value) provided by the sediment "but for" the hazardous substance in terms of food source (direct and indirect), shelter, reproduction substrate, flood control, cycling of nutrients, etc. The service "loss" must be quantified as the amount of those services lost due to the release – generally expressed in units such as DSAY ("discounted service acre years") as proposed in the Plan. Conversion from "% mortality" in a sediment toxicity test relative to a reference location to a DSAY is not obvious.

An analogous situation can be observed in Exhibit 3.5 where Hazard Quotients (HQs) from the BERA are discussed as evidence of likely injury to ecological receptors. A HQ is intended to evaluate if there is unacceptable ecological risk present. HQs are a ratio of risk threshold compared to exposure concentrations. An HQ is not a scalar quantity and is not a calculable metric for quantifying injury. Based on this, it is not evident how a HQ exceedance from the BERA could be interpreted as a quantified injury to a natural resource. More detail on how existing information will be utilized is required before providing further comment.

The general approach proposed in the Plan is acceptable for evaluating data pertaining to potential injury. Section 4.2 of the Plan states that *"existing data, in combination with the potential analyses and studies described in Chapter 5, would generate data appropriate for quantifying losses for each resource and endpoint over time"* and *"to determine damages required to compensate for ecological injuries ... Trustees intend to use appropriate equivalency analyses ... to scale restoration projects."* And, in the introduction to Section 3, the Trustee's state they will *"consider the relationship between injury and restoration to ensure that the metrics used to assess each type of natural resources are comparable."* This appears to be just general statements with no details with respect to how the critical conversion of a natural resource injury to a corresponding service loss is to be performed. The Plan needs to clearly state how the Trustees will apply habitat equivalency analysis or other approaches to deriving service losses from the injury estimates. Measured injury is not equivalent to a resource loss, i.e. a reduction in a natural resource function or service relative to the baseline.

Additional detail on how existing information; much of which consists of data that was not collected or was intended to be used to calculate natural resource injuries; will be used to quantify resource injury service loss is necessary to evaluate the Plan.

Overall, we find the Plan to be unacceptably vague on many of these critical issues regarding assessment of injury and determination of service losses. The Plan should be revised to clearly define the procedures for quantification in service loss as this is essential to the NRDA and needs to be developed to allow proper feedback from the public.

## **7. Additional Specific Comments**

---

In addition to the broad comments set forth above, GEI has the following specific comments on the draft Plan.

### **7.1. Purpose and Overview of the Assessment Plan (Section 1.1)**

In Section 1.1, the Trustees state that the Plan will “*ensure efforts are conducted in a systematic manner and at a reasonable cost as required by CERCLA*” and cite the definition of ‘reasonable cost’ in 43 C.F.R § 11.14(ee)). We agree with the application of this definition, but we emphasize that this should not be in lieu of or in disregard for effective and accurate determination of services losses for Newtown Creek. All avenues necessary to ensure accurate quantification of injury, conversion to service loss to natural resources, and estimation of damages at Newtown Creek, but for the impact of Site COCs must be utilized. This requires proper accounting for baseline conditions, and a robust way to evaluate loss in terms of natural resource service loss.

### **7.2. Injury Caused by Remedial Actions (Section 3.5)**

The Trustee’s state that “Remedial actions often do not fully return natural resources and/or lost services to baseline conditions” or remedial actions under the CERCLA process “may also result in unavoidable, additional injury that is compensable under the CERCLA NRDA regulations (43 C.F.R § 11.15(a)(1)). ” Compensable injuries due to the ongoing RI/FS process and other interim measures need to consider Newtown Creek’s designation as a SMIA including a federal navigation channel as described in Section 1.2. Use of Newtown Creek was essential to the development of both Brooklyn and Queens as the world-wide industrial centers that they became. Based on its history, industrial activities and the associated inadvertent habitat and vegetation removal from navigation and installation of engineered bulkheads and shorelines in addition to and preceding the future remedial actions have occurred within Newtown Creek. Furthermore, as stated in Section 2.2, Newtown Creek’s shorelines are comprised of bulkheads, riprap, or rock, with sparse coverage of non-native vegetation. Channelization and shoreline hardening have contributed to stagnation (lack of flow) in Newtown Creek’s tributaries. It should be clearly discussed in Section 3.5 that in the process of establishing a proper baseline these non-Site related activities and injuries be included in the process.

### **7.3. Human Use Services and Human Use Quantification and Damage Determination Approach (Section 2.4.2 & Section 4.3)**

This section lists human recreational uses for Newtown Creek that may have been injured, because Newtown Creek “supports a variety of recreational activities such as fishing, crabbing, boating, canoeing, kayaking, swimming, and scuba diving.” It also mentions non-recreational community losses due to Newtown Creek being an “essential part of the culture of local neighborhoods” with benefits and values to community enjoyment. This discussion is a tendentious approach as it highlights uses that have never been present and are highly unlikely to ever be present (swimming, scuba diving) in Newtown Creek and omits the primary use of Newtown Creek which is and will remain navigational and industrial. The

industrial designation (inherent in the SMIA designation), the high degree of physical modifications, historic navigational dredging, and large vessel traffic in Newtown Creek must be fully acknowledged when defining the potential scope of human use losses. The Plan indicates that the focus of the evaluation “addresses recreational fishing and crabbing,” but that “the Trustees may consider additional recreational losses as the assessment proceeds.” When evaluating injury human resource use, the baseline for human use and any studies on human use loss must consider these ongoing uses, the historic and continued existence of discharges from the surrounding urban environments (CSO/stormwater) discharges, and the existence of similar restrictions to fishing and crabbing throughout the New York harbor.

#### **7.4. Section 3.3 Pathway (Section 3.3)**

The Conceptual Site Model presented in Exhibit 3-1 and discussed in Section 3.3 needs to be further refined. A complete pathway per 43 C.F.R § 11.14(dd) from a release or source to a natural resource is necessary to identify an injury resulting in a loss of service of a resource. The Plan states that main pathways to Newtown Creek include direct discharge to surface water and groundwater transport. However, Exhibit 3-1 omits the important distinction between surficial sediments and deep sediments. This distinction is implicitly acknowledged, e.g., in Section 3.3.1 where it is said that “*spatial patterns of surface sediment concentration also provide evidence of hazardous substance inputs*” (emphasis added). Surficial sediments in the biotic zone, the interval in sediment that corresponds to the highest level of biological activity, indeed are a pathway to be considered when evaluating injury to the sediment natural resource. However, deep sediments would not represent potential injury to sediment as a natural resource as benthic biota lack exposure to such sediments. The Plan should provide further detail on the sediment pathway to distinguish these pathways when it comes to quantifying injury or service loss.

Section 3.3.2 further notes that NAPL issues from “*several adjacent properties*” “*seeps through the Assessment Area*” and exist “*in the sediments.*” There is no discussion of the location/depth of these impacted sediments in relation to exposures leading to injury to natural resources. Deep sediment impacts lack the potential for injury to the sediment resource due to absence of complete exposure (and thus injury) to biota.

#### **7.5. Ecological Injury Quantification and Damage Determination Approach (Section 4.2)**

This section (p. 37) notes that “the Trustees will ensure that there is no double-counting of losses in the quantification process (43 C.F.R § 11.83(c)(20)).” The NRDA Plan should include measures or guidelines that will be utilized to prevent “double counting” of services losses. We note for example that Section 3.4,1, Subsections “Crabs and Bivalves” and “Fish” that fish consumption advisories are noted as lines of evidence of injury to these resources. However, fish consumption advisories are also noted in Section 4.3 as a cause of injury to human use of these resources. This is an evident risk that consumption advisory evaluations could be double counted as an injury to the fish resource and an injury to human use of the fish resource.

## **7.6. Temporal Scope (Section 4.4)**

The Plan incorrectly establishes that “the Trustees would quantify injury after the enactment of CERCLA.” Per NRDA regulations, a resource loss is only compensable from the enactment of CERCLA (December 1980) forward. But the next sentence states: “Where injuries are not distinguishable, injury would be quantified for all years that injury occurred in the past and is expected to occur in the future.”

We note that while a release occurring prior to 1980 may be compensable, only the natural resource injuries and their service loss manifesting since 1980 should be components of the service loss equation. The statements of the Trustees regarding the temporal scope of the Plan are contradictory and need to be qualified so it is clear and established that only injuries manifesting since 1980 can be quantified. A method to distinguish pre-1980 injuries (non-compensable) from post-1980 injuries (potentially compensable) must be detailed in the Plan.

## **7.7. Quality Assurance (Appendix A)**

The Quality Assurance appendix presents very general guidelines related to project management, data generation and acquisition, assessment and oversight, data validation and usability and reporting and documentation and defers the methods for ensuring quality assurance and quality control to individual task QAPPs. 43 C.F.R. §11.31(c)(2) specifies that “[a] Quality Assurance Plan that satisfies the requirements listed in the NCP and applicable EPA guidance for quality control and quality assurance plans” should be included with the Assessment Plan. The current version does not meet this standard. The Plan should clearly state that appropriate opportunity for comment will be granted to all interested parties following issuance of quality assurance plans consistent with NCP and EPA guidelines for any future studies.

May 30, 2024

Via E-Mail to [nrd@dec.ny.gov](mailto:nrd@dec.ny.gov)

NYS Department of Environmental Conservation (NYSDEC)  
Natural Resource Damages Section  
c/o Alicia Pasos  
625 Broadway, 14th Floor  
Albany, NY 12233

**RE: Comments on the Newtown Creek Draft  
Natural Resource Damage Assessment Plan**

Dear Alicia Pasos and Trustees of the Natural Resources Damages Assessment (NRDA),

We appreciate the opportunity to comment on the Newtown Creek NRDA Plan. Since 2002, the Newtown Creek Alliance (NCA) has advocated for a healthier, cleaner, more accessible, and ecologically vibrant Newtown Creek. Through our 20+ years of working with community members, local stakeholders, and agency officials we have come to first hand witness both the ecological devastation that has occurred on the waterway, but also the ecosystems that have returned to the area, and significant potential to increase natural resources and the community's enjoyment of those resources through habitat restoration, green infrastructure, and public access. We have outlined feedback on the NRDA plan here and look forward to ongoing dialog about these critical issues.

**Baseline**

We appreciate the legal limitations of evaluating injuries which occurred before CERCLA; there are a number of well documented sources and sites that have injured natural resources on Newtown Creek since 1980. Agencies like NYSDEC are well aware of these sources, and we urge the trustees to do a proper evaluation of both NYSDEC remedial sites and the oil spill reports database, but here are some key ones we believe that the Trustees need to properly evaluate in the NRDA process:

- **Greenpoint Oil Spill:** Country's largest terrestrial oil spill that has seeped significant amounts of petroleum product into Newtown Creek since its discovery in 1978. Multiple lawsuits and remediation operations have significantly reduced the potential harms of the spill, but product has still been identified on the shoreline side of control booms as recently as 2023.
- **400 Kingsland Ave Barge Slip:** In 1977, [NYSDEC permitted Mobil Oil to fill in a section of the waterway](#) along their property in order to allow for easier bulkhead construction and not create an economic hardship for the company. The Greenpoint Oil Spill was discovered the following year and Mobil soon transitioned the site away from fuel storage

to remediation. The filing of the former wetlands was not completed until 1982. The timing and ramifications of NYSDEC permitting decisions are unfortunate and we believe that the Trustees need to examine this site/issue specifically in the context of NRDA harms and opportunities.

- **460 Kingsland Ave:** On or about August 29, 1981, a former site owner reported that the bulkhead had collapsed into Newtown Creek, along with considerable amounts of fill/soil, asphalt parking lot and concrete curb stop. The bulkhead collapse was repaired with fill which turned out to be highly contaminated with PCBs. Both the bulkhead collapse and subsequent upland fill had a direct impact on natural resources.
- **Pratt Oil Works Site:** Shoreline petroleum seep that was active and well documented from at least 2009 to 2021. Photo documentation showed oil impacting natural resources along the shoreline, such as ribbed mussels and shore birds like green herons, as well as the larger Creek through product escape past floating boom controls.
- **Phelps Dodge Site:** Former copper refinery that underwent extensive investigation and cleanup beginning in the early 1980s. The company is named as a Potentially Responsible Party in the Superfund investigation.
- **Greenpoint Energy Center (National Grid):** 117 acre former manufactured gas plant with extensive upland contamination where ongoing seeps and impact on Newtown Creek have not been fully/properly evaluated because of existing pier structure. The company has been named as a Potentially Responsible Party in the Superfund investigation.
- **Frito Lay site:** Remedial site along English Kills with elevated levels of arsenic, lead, mercury and PCB contamination.
- **200 Morgan Ave:** Active shoreline petroleum seep, has been well documented since approximately 2016.
- **Manhattan Polybag:** Active shoreline petroleum seep, has been well documented since approximately 2016.
- **Equity Works:** A former Manufactured Gas Plant next to English Kills contaminated with coal tar and associated chemicals (VOCs, BTEX, SVOCs, PAHs).
- **Irving Subway Grate:** This former metal production operation on 27th street in Long Island City, borders the Dutch Kills tributary has been identified as a Potentially Responsible Party in the Superfund investigation and warrants further investigation in regards to the types and extent of contamination that may have harmed natural resources on Newtown Creek.
- **Meeker Ave Plume:** A federally designated Superfund site that borders Newtown Creek, where chemicals in the groundwater have potentially impacted natural resources within the waterway.
- **Arch Street Yards (LIRR):** NYSDEC has investigated PCE contamination at this site which may have entered the Dutch Kills tributary through drainage pipes and damaged natural resources. The company has been named as a Potentially Responsible Party in the Superfund investigation.
- **Sims Recycling:** EPA has investigated sources of contamination from this facility (located on Railroad Avenue) that may have impacted natural resources in recent years.

The company has been named as a Potentially Responsible Party in the Superfund investigation.

- **Con-Ed Discharge:** NYSDEC and EPA have investigated sources of contamination from this facility (located on McGuinness Blvd.) that may have impacted natural resources in recent years. Petroleum laced discharges were also observed from this outfall by community members in 2013. The company has been named as a Potentially Responsible Party in the Superfund investigation.
- **Buckeye Pipeline:** NYSDEC has investigated petroleum spills from this facility (located on Railroad Avenue) that may have impacted natural resources in recent years.
- **Combined Sewer Overflows and MS4s:** Through the Superfund investigation, EPA has documented the numerous chemical contaminants that continue to enter Newtown Creek through Combined Sewer Overflow and Municipal Separate Storm Sewer Systems (MS4). These chemical discharges have a direct impact on the natural resources of Newtown Creek including habitat, ecological health risks, human health risks, and limiting interest and opportunities for surrounding communities to safely engage with natural resources.

## Human Use Services

We urge the Trustees to account and address the myriad of social, health, and educational services loss in addition to fishing and crabbing as a part of the NRDA plan.

There is ample evidence that people in and around New York engage in recreational activities at Newtown Creek beyond just fishing and boating in the past, present, and will likely continue to do so well into the future. Many if not all human use services have been lost due to toxic releases to the Creek. NCA has listed three main human uses that need to be included and addressed beyond fishing and crabbing in the NRDA plan.

- **Loss of Education**

For decades, the pollution in Newtown Creek has deprived New York City students of the opportunity to explore its diverse plant life, wildlife, marine ecosystem, and tributaries. In spite of this, local schools have shown a strong interest in introducing their students to the unique waterway and its ecology, given its close proximity to their schools and homes. In 2023, NCA alone hosted over 2800 students who visited the Creek to learn about marine ecology, plant species, Creek history, and environmental sciences.

The desire of students to learn about local history and ecology is evident and the loss of valuable education for generations of New York City students needs to be recognized and compensated.

- **Loss of Recreation and Social Connections**

Waterways and natural spaces, such as Newtown Creek, offer a valuable, free, public space for people to connect with nature and each other. They provide opportunities for

socializing, playing, and relaxing, as well as engaging in various recreational activities. These spaces also serve as a hub for nature interest groups and events such as birdwatching, wildlife observation, foraging, gardening, shoreline walking, and a variety of water sports like canoeing, rowing, kayaking, boating, tidepooling, and swimming.

For young people, the Creek can be a place for play, promoting positive youth development and fostering environmental stewardship. For elderly populations, the Creek can be a place for physical activity and social interactions, improving physical health and social well-being.

However, due to the historical and ongoing pollution of the Creek, these activities and events for people to recreate and form social connections have been incredibly difficult, unsafe, and almost impossible. But people's desire to get close to Newtown Creek and form a relationship with it was never diminished.

In 2023, over 2900 people visited the Creek, participated in NCA activities to observe wildflowers, birds, and aquatic life, volunteered for cleanup, weeding, and planting activities, and participated in nature-focused arts and cultural events. Additionally, NCA has observed skating, picnics, and family outings near the Creek.

Additionally, boating activities on the Creek have increased significantly in the past 15 years, with multiple city sanctioned kayak/canoe launches as well as informed access points like the Plank Road site in Maspeth. Organizations like the [North Brooklyn Community Boathouse](#) have taken thousands of participants out onto the Creek since 2012 in canoes and kayaks.

The NRDA plan must account for the recreational activities and the social connections lost due to the heavily contaminated Creek and its environment and work towards restoring these opportunities for the community. We urge the trustees to properly consider the current and potential future recreational uses of Newtown Creek through surveys and conversations with community members.

- **Loss of Health and Equity**

The NRDA plan must account for the impact of pollution in Newtown Creek on public health and equity.

Access to clean, safe, and well-maintained natural spaces is crucial for public health. According to The Nature Conservancy's [Outside Our Doors](#) report, nature offers numerous health benefits and plays a vital role in disease prevention and health promotion for urban dwellers. Natural areas like Newtown Creek can promote active lifestyles, contribute to mental and cognitive well-being, alleviate urban stress, enhance learning outcomes, and improve mental performance.

According to the NYC Mayor's Office Environmental Justice NYC Map, the neighborhoods surrounding Newtown Creek are predominantly Environmental Justice Areas and Federal Disadvantaged Communities. The EJNYC Map indicates that communities near the Creek have low tree canopy coverage (in the bottom 25th percentile), limited access to NYC parks, and few playgrounds and recreational centers. Furthermore, the U.S. Department of Housing and Urban Development has reported that Superfund sites have been associated with [adverse health effects](#), including infant mortality, mental health issues, water and food-borne illnesses, and cancer.

People who live, work and go to school in the vicinity of the Creek are unable to enjoy the health benefits of a clean and safe natural area. These communities bear a disproportionate burden of the historical and ongoing pollution in Newtown Creek. Living next to a Superfund site comes with an increased risk of adverse health impacts, which leads to exorbitant healthcare expenses, as well as secondary/tertiary costs such as loss of income, education due to illness, the entirety of which is not addressed in the NRDA plan.

The NRDA process must assess the adverse health effects of hazardous substance releases to the generations of people who have lived and worked by this site. Furthermore, the plan needs to address the historical and ongoing economic, educational, and health inequities exacerbated by the pollution.

## **Ecological Services in the Face of Climate Change**

The Trustees must address the lost ecosystem services that Newtown Creek can provide as a tidal waterbody. NCA has listed two main ecological service losses in relation to climate change that need to be included and addressed in the NRDA plan.

- **Loss of Climate Resilience**

According to the US Geological Survey, healthy wetlands can help [protect](#) communities, infrastructure, and ecosystems from storms and flooding by absorbing waves and slowing water flows. Unfortunately, the industrial operations on Newtown Creek have impaired the waterway's health to effectively buffer against rain and storm events in New York, which will only be made more frequent and severe by climate change.

It is crucial that the NRDA plan accounts for the loss of the Creek's capacity to mitigate storm and climate stressors for nearby homes, businesses, schools, churches, and more.

- **Loss of Carbon Storage and Sink**

According to one of the Trustees—the National Oceanic and Atmospheric Administration (NOAA), coastal wetland ecosystems are incredibly [efficient](#) at capturing and storing large quantities of carbon.

Current studies suggest that coastal wetlands annually sequester carbon at a rate [ten times greater](#) than mature tropical forests. They also store [three to five times](#) more carbon per equivalent area than tropical forests. When these habitats are damaged or destroyed, it is not only their carbon sequestration capacity that is lost. Carbon stored in the habitats can also be released, contributing to the climate crisis.

The NRDA plan must account for the lost carbon storage abilities of baseline ecosystems of the Creek and address the amount of carbon that was released to the atmosphere as a result of industrial pollution to the Creek.

## **Defining the Creek Boundaries**

NCA wants to stress the importance of properly assessing the intertidal zone of Newtown Creek. The Assessment Area must include at least the adjacent areas at the shoreline and marshes where the contaminated Creek water can reach during high tide and flooding events. The shoreline along Newtown Creek has been both directly and indirectly affected by oil and hazardous substances, where it once provided key foraging, nesting, hunting and resting habitat for wading birds and mammals as well as human uses.

These additional intertidal areas, which have already been impacted by contaminants, will again be disrupted by the remedy that will require replacement of bulkheads and riprap in some areas. Restoring habitats, groundwater drainage and community access throughout and following the remedy will be crucial to re-establish functional ecosystems and clean waters, fully usable by local communities. For these reasons, the Assessment Area should be expanded to include adjacent shoreline areas and brackish and freshwater tidal marshes.

One particular site where defining the Creek Boundary has been a priority for the community is the National Grid site located at 287 Maspeth Avenue. The shoreline is over 1800 linear feet and is built as a pier structure so that water still exists behind the pier facade (which looks like a normal bulkhead from the water). The pier extends approximately 30' from solid land out to the bulkhead facade, and we are concerned that this space is not being considered as part of the Superfund investigation and remedy. Given the [extensive contamination of the property](#), extreme levels of sediment contamination off the shore from the site, and presence of ebullition and coal tar near the shore we believe the entirety of water and sediment underneath the shoreline structure needs to be fully investigated and addressed, both for Superfund and NRDA.

## **Restoration Opportunities and Community Input**

We are eager to engage with the Trustees around opportunities for restoration projects on Newtown Creek. Our organization has a long history of identifying potential sites where upland, shoreline, and in-water restoration would be most feasible and of most value. This dates back to our [2012 Brownfield Opportunity Area Report](#); [direct correspondence with NRDA trustees in 2016](#); and our [2017 Newtown Creek Vision Plan w/ Riverkeeper](#). While some sites have changed since the publication of these documents, they still contain substantial project ideas and viable opportunities to enhance natural resources on Newtown Creek, and the communities

ability to access and engage with those natural resources. We urge the Trustees to not just consider existing community supported plans, but to also actively engage communities, through forums like the Newtown Creek Superfund Community Advisory Group.

## **Data Collection**

We appreciate the Trustees for considering outdoor recreational use interviews and focus groups. NCA considers lived experiences of community as a crucial part of the Creek restoration process. We urge the trustees to form focus groups with residents in each Creekside neighborhood to learn about how they interact and use the Creek, or how the contamination deterred them to do so.

## **Aeration**

Since 2010, NCA, Riverkeeper and various Newtown Creek stakeholders and users have raised [concerns about the NYCDEP Aeration system](#), which is currently installed in/near English Kills and the East Branch tributaries. The system can potentially aerosolize chemical contaminants from the sediments (disrupted via prop wash) and subsurface waters, creating a potential health risk from wildlife and humans. Concerns over potential exposure have resulted in some waterway users avoiding these sections of the Creek when the aeration system is operation. This issue is documented in a [2018 news article from The City](#):

“Brad Kerr, a Greenpoint resident and a member of the North Brooklyn Boat Club, said the members of the group take precautions to avoid contact with the water while paddling or canoeing. Recreationalists also avoid going too close to the aeration system. Kerr said passers-by who are unaware of what the aeration system is often think a water main has broken or that the water just looks “gross,” because of the bubbling.

“It’s a little counterintuitive for the city to be making Newtown Creek look creepy as part of its responsibility to make Newtown Creek fishable and swimmable,” he said. “Those words can’t just mean a certain bacteria count. That has to mean making Newtown Creek a place where you might want to fish or might want to swim or walk over the Creek without saying, ‘Something’s wrong here.’

“And that’s what they’re doing – making the Creek repellant to people who live near it and might want to use it.”

We believe that the Aeration system needs to be addressed as part of an NRDA process because of the impacts it has on surrounding communities, primarily restricting and inhibiting the public’s interest and ability to access Natural Resources on Newtown Creek.

## Species

We want to ensure that all species present on Newtown Creek are properly evaluated as part of the NRDA process. Numerous species were not included in earlier drafts of the EPA's Baseline Ecological Risk Assessment (BERA), or only identified in certain reaches which did not align with what community members have seen. Key species worth evaluating and considering in NRDA include:

- **Wading Birds:** Great Blue Herons, Great Egrets, Green Herons, Black Crowned and Yellow Crowned Night Herons, Spotted Sandpiper, and American Bittern
- **Diving Birds:** Osprey, Kingfishers, Cormorants, Buffleheads, Red-breasted mergansers, Red Throated Loons
- **Mollusks:** Oysters, Ribbed Mussels, Blue Mussels, Soft Shelled Clams
- **Crustaceans:** Blue Crabs, Green Crabs, Mud Crabs, Fiddler Crabs; Horseshoe Crabs; Grass Shrimp
- **Fish:** American Eel, Atlantic Menhaden, Atlantic Silverside, Killifish, Bluefish, Mummichog, Striped Bass, Flounder, Perch, Skilletfish, Dogfish

## Conclusion

NCA has distributed questionnaires to community members who visited the Creek in May of 2024. Many nearby residents and students expressed their desire<sup>1</sup> to walk, play, swim, fish, and boat at Newtown Creek. This waterway is a valuable resource for these communities to access nature, learn about local ecology, exercise physical activities, and create social connections with neighbors.

We thank you for the opportunity to comment and look forward to ongoing conversations and planning efforts to restore Natural Resources in Newtown Creek.

Sincerely,



Willis Elkins  
*Executive Director*



Shangtong Li  
*Community Engagement Coordinator*



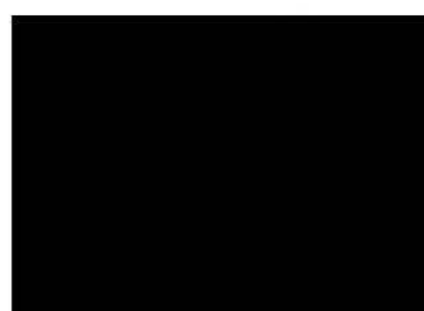
---

<sup>1</sup> Responses collected by NCA via postcard questionnaire distributed to community members about the importance of Newtown Creek natural resources and desired use of the Creek. Attached to the appendix.

Name:



Age:



My neighborhood is: Maspeh

**Natural Resources on Newtown Creek are important to me because...**

the wildlife would have a chance to  
Re-grow.

**I want to access the Creek because...**

It will be cool.

**Activities I would like to do more of on the Creek include....**

Cleaning, Re-planting.

**Anything else you'd like to share about the Creek?**

I don't know.



Name: Kyle  
Karnuta

Age: 32

My neighborhood is:  
E. Williamsburg

**Natural Resources on Newtown Creek are important to me because...**

They improve quality of life, they build human connection to nature, they improve ecosystems of the city at large, they increase NYC biodiversity.

**I want to access the Creek because...**

I live nearby, and believe it is my right as a tax payer; access to water improves my quality of life; public experiences in nature are affordable community activities

**Activities I would like to do more of on the Creek include....**

Nature walks and care around the shores; swimming (maybe no time soon, lol), walking my dog, picnicing

**Anything else you'd like to share about the Creek?**

It deserves our respect and care, especially in an industrial area where residents have few community spaces and little access to nature.



Name:



Age:



My neighborhood is: Middle  
village

**Natural Resources on Newtown Creek are important to me because...**

They are important to me  
because I love to learn  
about plants and nature.

**I want to access the Creek because...**

I want to access the  
Creek because I want  
to teach my brother about Plan-

**Activities I would like to do more of on the Creek include....**

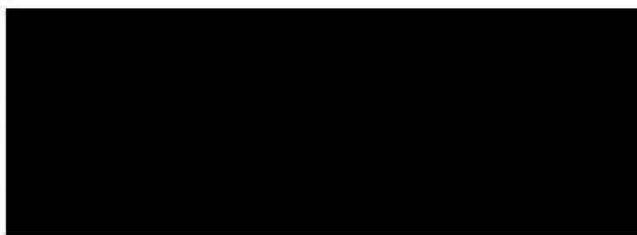
Activities I would like to  
do is Plants, leaves and  
Plants.

**Anything else you'd like to share about the Creek?**

One thing I want to  
Share about the Creek  
that it is amazing and  
great to learn things



Name:



Age:



My neighborhood is: Eliot Avenue

Natural Resources on Newtown Creek are important to me because... They are helpful to humans.

I want to access the Creek because... It's a wonderful place

Activities I would like to do more of on the Creek include....

Planting.

Anything else you'd like to share about the Creek?

I recommend going there because it's a wonderful place,



Name:

Age:

My neighborhood is: maspeth

**Natural Resources on Newtown Creek are important to me because...**

They help the animals get food from the plants and make the world a better place by cleaning the creek.

**I want to access the Creek because...**

I want to learn more about the plants and the creek and what the plants DO or make.

**Activities I would like to do more of on the Creek include....**

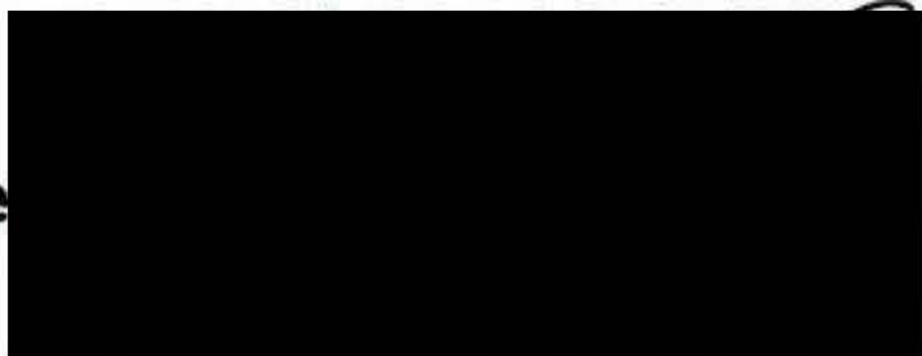
planting plants, learning about plants, going on the Roof (all Roofs).

**Anything else you'd like to share about the Creek?**

the creek



Name



Age:



My neighborhood is:

Brooke

Natural Resources on Newtown Creek are important to me because...

soft

I want to access the Creek because...

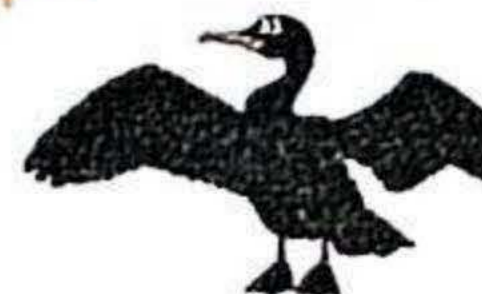
will

Activities I would like to do more of on the Creek include....

Play with the  
water

Anything else you'd like to share about the Creek?

no



Name:



Age:



My neighborhood is:

**Natural Resources on Newtown Creek are important to me because...**

it could be possible ntip to  
the natural Resources.

**I want to access the Creek because...**

because it's important

**Activities I would like to do more of on the Creek include....**

to kayaking

**Anything else you'd like to share about the Creek?**

~~we can~~

We can drive better plans to  
clean up the Creek, restore  
more habitat for wildlife.



Name:



Age:



My neighborhood is:

Bed Stuy

**Natural Resources on Newtown Creek are important to me because...**

Because it's water creatures  
home

**I want to access the Creek because...**

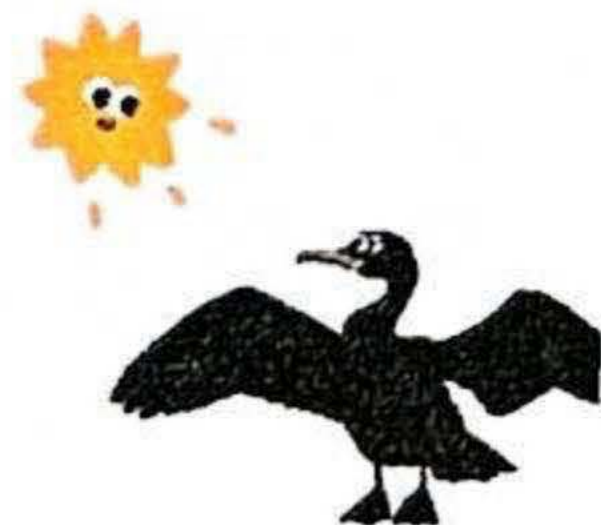
Because it fun and  
water

**Activities I would like to do more of on the Creek include....**

Kayak, fishing, canoeing, swimming,

**Anything else you'd like to share about the Creek?**

The creek can be saved  
with many groups, individuals helping



Name:



Age:

My neighborhood is:

Bed-Stuy

Natural Resources on Newtown Creek are important to me because...

I want to drink clean water

I want to access the Creek because...

I want to see the fishes

Activities I would like to do more of on the Creek include....

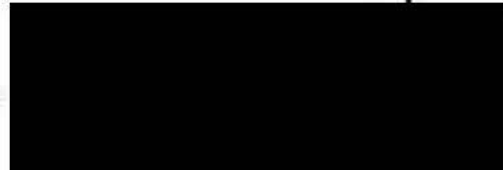
Fishing

Anything else you'd like to share about the Creek?

No.



Name:



Age:



My neighborhood is: Bad Stuy

Natural Resources on Newtown Creek are important to me because...

I like Clean Things  
and clean nature

I want to access the Creek because...

It's fun

Activities I would like to do more of on the Creek include....

Boating and other stuff like  
that / swimming

Anything else you'd like to share about the Creek?

No



Name:



Age:



My neighborhood is: bed St

Natural Resources on Newtown Creek are important to me because...

it fun and i enjoy  
kayaking

I want to access the Creek because...

because its fun

Activities I would like to do more of on the Creek include....

swimming

Anything else you'd like to share about the Creek?



Name:



Age:



My neighborhood is:

Bedstuy

**Natural Resources on Newtown Creek are important to me because...**

Creeks and other water sources are being contaminated and polluted, It's better to have clean water and have a healthy earth than what we have now.

**I want to access the Creek because...**

I want to go kayaking in the summer.

**Activities I would like to do more of on the Creek include....**

Swimming and Boats

**Anything else you'd like to share about the Creek?**

No.



Names:

Age:

My neighborhood is:

Bedstuy, Brooklyn

Natural Resources on Newtown Creek are important to me because...

I want our city to be clean

I want to access the Creek because...

it's very pretty & i would like to one day go kayaking

Activities I would like to do more of on the Creek include....

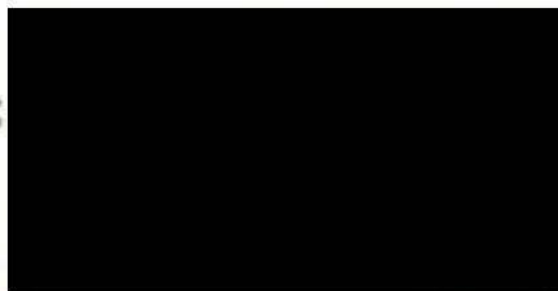
Swimming & boating

Anything else you'd like to share about the Creek?

it's a waterway & we should be able to swim in it & keep it clean



Name:



Age:



My neighborhood is:



Natural Resources on Newtown Creek are important to me because...

It helps the environment  
save animals / sea animals

I want to access the Creek because...

We can have access  
to water ways, and its fun

Activities I would like to do more of on the Creek include....

Swimming, fishing

Anything else you'd like to share about the Creek?

I want them to help the  
creek be clean for the  
environment



Name:



Age:



My neighborhood is:

Natural Resources on Newtown Creek are important to me because...

Because the water is dirty and it  
can kill the fishes, so I want the  
water to be clean

I want to access the Creek because...

Activities I would like to do more of on the Creek include....

Anything else you'd like to share about the Creek?



Name:

Age:

My neighborhood is:

LES

Natural Resources on Newtown Creek are important to me because...

its fun

MUCH 2 learn

I want to access the Creek because...

Because AMAZING

Activities I would like to do more of on the Creek include....

boating/

clean up

Anything else you'd like to share about the Creek?

No!!



Name:



Age:



My neighborhood is:

Bed-Stuy

Natural Resources on Newtown Creek are important to me because...

I want to be able to  
win

I want to access the Creek because...

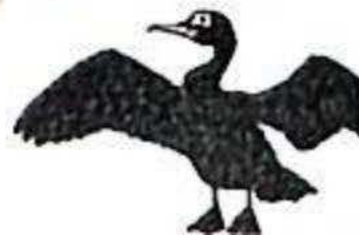
I like to  
fish

Activities I would like to do more of on the Creek include....

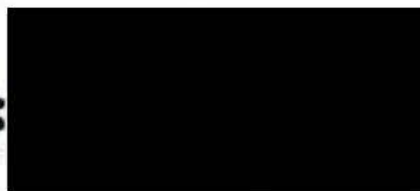
bathing ~~and~~

Anything else you'd like to share about the Creek?

Its a body  
of water?



Name:



Age:



My neighborhood is: *harlem*

Natural Resources on Newtown Creek are important to me because... *we*

*want A Clean Environment.*

I want to access the Creek because...

*I want to be clean.*

Activities I would like to do more of on the Creek include....

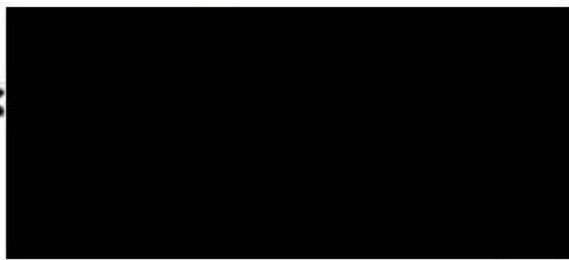
 *Swimming.*

Anything else you'd like to share about the Creek?

*?*



Name:



Age:



My neighborhood is:

Redkey

Natural Resources on Newtown Creek are important to me because...

pollution is bad.

I want to access the Creek because...

Its fun

Activities I would like to do more of on the Creek include....

Fishing and boating.

Anything else you'd like to share about the Creek?

Its pretty Awesome 😊  
B3



Name:

Age:

My neighborhood is:

Bel5747

Natural Resources on Newtown Creek are important to me because...

I Hate ~~to~~ think that when  
Im going to the beach im  
swimming in feces

I want to access the Creek because...

it would be beautiful again

Activities I would like to do more of on the Creek include....

Swimming and  
seeing the animals

Anything else you'd like to share about the Creek?

free it!!!



Name: Kyle Turner Age: 32 My neighborhood is: Greenpoint

**Natural Resources on Newtown Creek are important to me because...**

They give our neighborhood beauty and vibrance amidst so much industry and pollution.

**I want to access the Creek because...**

It brings me happiness to be on the water.

**Activities I would like to do more of on the Creek include....**

Would be nice to swim!!

**Anything else you'd like to share about the Creek?**

Even the most polluted waterways deserve protection, and can be revived, with life + joy along with them.



**Name:** Elizabeth  
Waldram

**Age:** 26

**My neighborhood is:**  
Park Slope

**Natural Resources on Newtown Creek are important to me because...**

they have a tangible impact on community health, well-being; & connection to nature

**I want to access the Creek because...**

I want to engage with natural systems  
& to be able to enjoy recreation w/  
community

**Activities I would like to do more of on the Creek include....**

Kayaking, enjoying waterfront

**Anything else you'd like to share about the Creek?**



Name: Meryl L

Age: 40

My neighborhood is:

Greenpoint

Natural Resources on Newtown Creek are important to me because...

all natural resources are  
important & the creek is in my  
neighborhood

I want to access the Creek because...

great views, fun animal sitting,  
I would like to be able to boat

Activities I would like to do more of on the Creek include....

quiet contemplation

around green  
point

gardening

animal watching  
boating

Anything else you'd like to share about the Creek?

I ♥ Newtown Creek  
and the nature walk



Name: Sarah

Age: 31

My neighborhood is:

Ridgewood

**Natural Resources on Newtown Creek are important to me because...**

I believe its important to restore  
the health of the creek for the  
good of humans plants and animals  
alike!

**I want to access the Creek because...**

it is a nice retreat to  
get away from the  
main area of Greenpoint.  
it shows  
the  
history of  
this area  
of brooklyn

**Activities I would like to do more of on the Creek include....**

I would love to get out  
on the creek and help clean up. walking.  
watching birds and other animals.

**Anything else you'd like to share about the Creek?**

I love walking around the  
Park here!



Name: **MORGAN JONES**

Age: **26**

My neighborhood is: **WILLIAMSBURG**

**Natural Resources on Newtown Creek are important to me because...**

SEEMS GENERALLY GOOD FOR  
EVERYONE — WOULD LOVE TO HAVE  
ACCESSIBLE GREEN/WATER SPACE IN  
THE NEIGHBORHOOD

**I want to access the Creek because...**

SEEMS LIKE A NICE LOCAL  
RESOURCE

**Activities I would like to do more of on the Creek include....**

KAYAKING

**Anything else you'd like to share about the Creek?**

SO COOL! ☺



Name:

Vanessa  
Napoli

Age:

35

My neighborhood is:

E-Wing  
of Kingsland

**Natural Resources on Newtown Creek are important to me because...**

It's the closest access to nature  
along water, the closest "quiet" I can  
find in ME

**I want to access the Creek because...**

Same as above

**Activities I would like to do more of on the Creek include....**

long walks along the Creek,  
both BK & Queens side

**Anything else you'd like to share about the Creek?**

I love the secret bit of nature  
@ Plank Road Public shoreline.  
Better access & clean it up!



Name: Heidi Vandertee Age: 38

My neighborhood is: Greenpoint

**Natural Resources on Newtown Creek are important to me because...**

There are animals + plants who depend on those resources.

**I want to access the Creek because...**

I want to kayak!

**Activities I would like to do more of on the Creek include....**

Bird/animal watching

**Anything else you'd like to share about the Creek?**

She's worth it! ♥





May 30, 2024

Via E-Mail to [nrd@dec.ny.gov](mailto:nrd@dec.ny.gov)

NYS Department of Environmental Conservation  
Natural Resource Damages Section  
c/o Alicia Pasos  
625 Broadway, 14th Floor  
Albany, NY 12233

**RE: Comments on the Newtown Creek Draft  
Natural Resource Damage Assessment Plan**

Dear Newtown Creek Natural Resource Damages Assessment Trustees Council:

Riverkeeper, Inc., respectfully submits the following comments on the draft Natural Resource Damage Assessment (NRDA) Plan for the Newtown Creek Superfund Site. Riverkeeper thanks the Trustees for providing an extended 45-day public comment period on the draft NRDA Plan.

Riverkeeper is a member-supported watchdog organization dedicated to protecting and restoring the Hudson River from source to sea and safeguarding drinking water supplies through advocacy rooted in community partnerships, science and law. For more than 50 years, Riverkeeper has defended the Hudson River Estuary, its fisheries, and the entire Hudson River ecosystem. Riverkeeper has established itself as a leading pollution enforcer, exemplified by its citizen suits against oil companies, cement manufacturers and other polluters.

Riverkeeper has been active on Newtown Creek since 2002, when its first boat patrol discovered oil seeps, abandoned cars and floating garbage littering the creek, and has been a vocal advocate for a thorough Superfund cleanup for Newtown Creek since the U.S. Environmental Protection Agency (EPA) announced that it was considering the creek for the federal Superfund program in December 2009. Riverkeeper also helped found the Newtown Creek Alliance, a coalition of elected officials, local residents, business owners and other non-profit organizations working to improve the creek and adjoining neighborhoods. Riverkeeper currently serves on the Steering Committee of the Newtown Creek Superfund

Community Advisory Group and remains dedicated to achieving a remediated, restored, resilient and recreation-friendly Newtown Creek.

The natural resources on Newtown Creek, including birds, fish, and aquatic plants, provide invaluable benefits to both humans and the environment. These natural resources have been grievously injured by industrial activities along Newtown Creek over the last several hundred years. Through the NRDA, the Trustees—on behalf of the public—can ensure adequate damages are awarded to fund restoration within this waterway that will benefit the environment and community for generations to come. To achieve this goal, Riverkeeper urges the Trustees to adopt a comprehensive NRDA Plan for Newtown Creek and calls upon the Trustees to expand the scope of injuries and damages considered in the NRDA Plan, correctly identify the designated use of Newtown Creek for primary contact recreation, utilize public engagement opportunities and community knowledge to inform the NRDA Plan, and ensure meaningful restoration in Newtown Creek and the adjacent community.

Riverkeeper thanks the Trustees for their time, insight and interest in Newtown Creek and for their many contributions to the [2018 Newtown Creek Vision Plan](#)<sup>1</sup> and the [2019 Maspeth Creek Marsh Report](#)<sup>2</sup> in helping to identify ecological and policy dynamics in and around the Creek. Riverkeeper looks forward to continuing to work with the Trustees to review and hone the draft NRDA Plan to advance projects that support comprehensive restoration in Newtown Creek.

### **Expand the Scope of the NRDA Plan**

#### *a. Timeline of Major Contamination:*

Riverkeeper urges the Trustees to amend Exhibit 1-3, Timeline of Major Contamination and Remediation Events. As drafted, the chronology of events is incomplete. This timeline is meant to present historic events or milestones that impacted Newtown Creek and are important to the Trustees. While Riverkeeper recognizes that this timeline is not intended to provide a comprehensive history of the Newtown Creek Superfund Site, Riverkeeper urges the Trustees to amend the timeline of major contamination and remediation events to include a specific reference to at least the following events:

1. 1885: The City of Brooklyn began dumping raw sewage into Newtown Creek via the sewer system.
2. 1892: 30 million gallons of oil burned away or seeped into the ground from the Locus Hill Oil refinery, located on the banks of Newtown Creek.
3. 1919: The Sone & Flemings Standard Oil Company of NY burnt down and 110 million gallons of oil was lost.

---

<sup>1</sup> Riverkeeper, Inc. and Newtown Creek Alliance, *Newtown Creek 2018 Vision Plan* (January 2018), <https://view.publitas.com/riverkeeper/newtown-creek-vision-plan-2018/page/1>.

<sup>2</sup> Riverkeeper, Inc. and Newtown Creek Alliance, *Maspeth Marsh: A Case for Intertidal Restoration in Newtown Creek* (January 2019), [https://drive.google.com/file/d/1bJ-YLuHytBOKDV-tJVKds\\_ljy1CqXvJz/view](https://drive.google.com/file/d/1bJ-YLuHytBOKDV-tJVKds_ljy1CqXvJz/view).

4. 1950: Manhole covers in Greenpoint exploded into the air as a result of massive underground oil contamination.
5. 2001: Keyspan demolished The Maspeth Holders, two enormous gas tanks constructed in 1927 and 1948.

The events referenced above released significant hazardous chemicals into Newtown Creek and had detrimental impacts on the aquatic species that live in or rely upon the creek. Therefore, they should be referenced in the NRDA Plan.

*b. Assessment Area:*

As a result of heavy industrial development and governmental activities dating as far back as the 1800s, the wetlands and marshes have been filled, Newtown Creek has been channelized, and its banks have been stabilized with bulkheads and riprap. This historic development has resulted in changes in the nature of Newtown Creek from a natural drainage condition to one that is governed largely by engineered and institutional systems. The remedy is expected to further damage the creek by disrupting benthic habitats through dredging and/or capping, mobilizing suspended sediments, and replacing intertidal habitats with new riprap or bulkheads.

Riverkeeper is pleased to see that the Assessment Area includes the intertidal zone but believes the Assessment Area must be expanded to explicitly include at least the adjacent areas at the shoreline and marshes. The shoreline along Newtown Creek has been both directly and indirectly affected by oil and hazardous substances, where it once provided key foraging, nesting, hunting and resting habitat for wading birds and mammals. To adequately assess the impacts to these important habitats from the decades of pollution, the Assessment Area should incorporate the Study Area as defined in the 2011 Administrative Order on Consent (2011 AOC).<sup>3</sup> The Study Area was defined generally, as the waterbody and sediment of Newtown Creek and its tributaries, up to and including the landward edge of the shoreline:

The body of water known as Newtown Creek, situated at the border of the boroughs of Brooklyn (Kings County) and Queens (Queens County) in the City of New York and the State of New York, roughly centered at the geographic coordinates of 40° 42' 54.69" north latitude (40.715192°) and 73° 55' 50.74" west longitude (-73.930762°), having an approximate 3.8-mile reach, including Newtown Creek proper and its five branches (or tributaries) known respectively as Dutch Kills, Maspeth Creek, Whale Creek, East Branch and English Kills, as well as the sediments below the water, and the water column above the sediments, up to and including the landward edge of the shoreline, and including also any bulkheads or riprap containing the water body, except where no bulkhead or riprap exists, then the Study

---

<sup>3</sup> U.S.EPA Region 2, Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study (June 2011), <https://newtowncreek.info/docs2/3%20Administrative/USEPA%20AOC%20Newtown%20Creek%20USEPA%20Final%202011-06-30.pdf>,

Area shall extend to the ordinary high water mark, as defined in 33 C.F.R. §328.3(e), of Newtown Creek, and the areal extent of the contamination from such area, but not including upland areas beyond the landward edge of the shoreline (notwithstanding that such upland areas may subsequently be identified as sources of contamination to the water body and its sediments or that such upland areas may be included within the scope of the Newtown Creek Superfund Site as listed pursuant to Section 105(a)(8) of CERCLA).

These additional areas, which have already been impacted by contaminants, will again be disrupted by the remedy that will require replacement of bulkheads and riprap in some areas. Restoring habitats, groundwater drainage and community access throughout and following the remedy will be crucial to reestablish functional ecosystems and clean waters, fully usable by local communities. For these reasons, the Assessment Area should be expanded to include adjacent shoreline areas and brackish and freshwater tidal marshes.

*c. Contaminants of Concern (COCs)*

We recognize that the Superfund investigation is focused on contaminants of concern (COCs) including PAHs, PCBs and Copper. Riverkeeper urges the Trustees to consider whether other contaminants have had additional or compounding impacts on biological receptors.

Regarding surface water, the EPA Baseline Ecological Risk Assessment states, "Six chemicals were identified as contaminants of potential ecological concern (COPECs) with HQs based on 95% UCL concentrations greater than 110. These COPECs are aluminum, barium, copper, cyanide, carbon disulfide, and total DDx."<sup>4</sup>

Regarding sediment, the Baseline Ecological Risk Assessment identifies:

- “• Thirteen metals: antimony, arsenic, barium, cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, tin, and zinc
- One conventional: cyanide
- Two volatile organic compounds (VOCs): isopropylbenzene and carbon disulfide
- Four SVOCs: biphenyl (1,1-biphenyl), bis(2-ethylhexyl)phthalate (BEHP), di-n-octylphthalate, and dimethylphthalate
- Low-molecular-weight PAHs (LPAHs), high-molecular-weight PAHs (HPAHs), and total PAHs (TPAH)

---

<sup>4</sup> Anchor QEA, LLC, Final Baseline Ecological Risk Assessment Remedial Investigation/Feasibility Study, Newtown Creek 53 (2018), available at <https://semspub.epa.gov/work/02/544529.pdf> (citation omitted). Please note that according to the Baseline Ecological Risk Assessment, aluminum's spatial distribution makes it unlikely to be present in significant quantities due to pollution sources.

- Eight pesticides: aldrin, dieldrin, endrin, heptachlor epoxide, hexachlorocyclohexane (BHC), and isomers of dichlorodiphenyldichloroethane (DDD), dichlorodiphenyldichloroethylene (DDE), and dichlorodiphenyltrichloroethane (DDT)
- Total PCB congeners.<sup>5</sup>

Other known contaminants include 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8 TCDD). Please note also that it is likely that per- and polyfluoroalkyl substances (PFAS) chemicals, specifically perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), which were recently designated as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), are present in the area and have been impacting biological receptors. Due to the large amount of sewage being released into the creek, the Trustees should include PFAS as a COC in the assessment due to its ubiquity in wastewater effluent (treated and untreated).

*d. Natural Resources:*

The Trustees should quantify injuries to groundwater and air as part of their NRDA Plan. The Trustees acknowledge in the draft Plan that groundwater and air have been exposed to Creek-related contaminants, so they must quantify these distinct injuries to these resources.

PCBs, PAHs, and metals have been detected in the groundwater flowing from underneath industrial facilities to the Assessment Area. Contaminated groundwater is a significant concern for a healthy Newtown Creek due to the industrial history and resulting spills, leaks, and seeps of various hazardous materials throughout the watershed. Contaminated groundwater flowing towards the Creek's edges and bulkheads is a principal issue facing the Superfund clean-up planning process. The groundwater surrounding Newtown Creek is unusable, cut off from use as a water supply in the mid-1900s as underground plumes of oil seep into the waterway and other toxic plumes threaten the health of residential communities. The Trustees must quantify the distinct injuries to groundwater during the initial assessment given the significance of the impacts.

Upland in Newtown Creek's watershed, industrial and commercial corridors bake in the summer sun, leading to air quality impacts – endangering wildlife, workers and residents alike. In addition, studies have determined that PCBs will volatilize.<sup>6</sup> The volatility of PCBs increases

<sup>5</sup> *Id.* at 54.

<sup>6</sup> Agency for Toxic Substances and Disease Registry, *Case Studies in Environmental Medicine Polychlorinated Biphenyls (PCBs) Toxicity* (May 2014), <https://www.atsdr.cdc.gov/csem/pcb/docs/pcb.pdf>; U.S.EPA, *Technical Factsheet on: Polychlorinated Biphenyls (PCBs)*, <https://archive.epa.gov/water/archive/web/pdf/archived-technical-fact-sheet-on-polychlorinated-biphenyls.pdf>; Carpenter, David Orlo, *Exposure to and health effects of volatile PCBs*, *Reviews on Environmental Health* 30(2)(March 2015), [https://www.researchgate.net/publication/274262698\\_Exposure\\_to\\_and\\_health\\_effects\\_of\\_volatile\\_PCBs](https://www.researchgate.net/publication/274262698_Exposure_to_and_health_effects_of_volatile_PCBs)

dramatically with even a small rise in temperature. Volatilization of PCBs is a pathway for PCBs to other resources, including certain receptors that are at locations extremely distant from the source of the release. Long-term impacts on plant and animal species throughout the food chain from volatilized PCBs should be reviewed inside and outside the Newtown Creek assessment area. Such an analysis could include review of existing literature on volatilization and an air monitoring program in targeted areas along Newtown Creek.

Moreover, the volatilization of PCBs and other toxins at the site affects human health and limits or prevents use of the creek for recreation, education and other activities. The odors from the volatilized chemicals are nauseating at times, especially during the summer near the water's surface where paddlers and small boaters are. The Trustees must evaluate injuries to air quality and their impacts on the environment and use of the creek as a result of volatilized hazardous chemicals.

*e. Ecological Resources:*

The Trustees must clarify what species constitute aquatic vegetation and aquatic-based mammals. The draft NRDA Plan states that the "assessment of ecological resources and resource services includes review and analysis of existing information from available sources that will be able to substantially characterize contaminant pathways, describe and quantify contaminant-related exposure and effects of ecological resources such as surface water, sediment, invertebrates, **aquatic vegetation**, birds, fish, and **aquatic-based mammals**"(emphasis added). The NRDA Plan qualifies the types of vegetation and mammals to be assessed and as a result excludes key species that have been injured as a result of the release of oil and hazardous substances. Ecological risks to wildlife received from long-term exposure to contaminated waters and substrates in the Newtown Creek have had severe biological and ecological ramifications. The public must be compensated for the loss of a wide variety of flora and fauna.

The Newtown Creek Alliance previously cataloged and mapped the plants and trees in Maspeth Creek. In this area, there is a diverse array of native and non-native species, including several endangered Ash trees. Ash trees are not generally considered aquatic vegetation, but they grow along Newtown Creek and have suffered from the release of hazardous chemicals. The Trustees should expand the scope of the assessment to quantify contaminant-related exposure and effects to plants and tree species that are not considered aquatic-based, including but not limited to, Red Maple, Mugwort, Froster Aster, Seaside Goldenrod and Oriental Bittersweet.

*f. Baseline:*

The Trustees should provide additional information as to how baseline conditions and services will be determined or provide a specific baseline year. Natural resources have been exposed to and injured by contaminants since the early 1800s and are likely to continue to be injured. The Trustees currently advise that they "plan to use, in order of priority, data from reference areas/control groups and/or use relevant literature." This statement is vague. Riverkeeper requests additional information and clarification as to how the baseline will be

established. What reference areas/control groups will be reviewed? What literature will be referenced and relied upon?

*g. Injury Assessment Studies:*

The Trustees must amend the Plan to provide more details on the studies planned. While Riverkeeper recognizes that the scope of this Plan does not preclude additional or alternative studies from being undertaken during the assessment, the draft NRDA Plan does not provide the level of scientific detail necessary to provide meaningful technical comments on the studies being proposed and does not reach the level of specificity called for in the Department of Interior regulations at 43 C.F.R. Section 11.31. The public is not adequately apprised of the studies the Trustees will or may undertake.

The suite of migratory fishes that potentially utilized the creek are now shadows of their former populations. Some have been extirpated and most are barely present. Most methods of research would tend to underestimate the biotic potential of the former ecosystems and attendant degradation of the various resources. The NRDA Plan must include additional details on the injury assessment studies to ensure damages are not underestimated.

*h. Future Contamination:*

Based on EPA's public statements, no matter how effective the remediation is, experts expect the eventual recontamination of the creek from sources such as the ongoing combined sewer overflow discharges, industrial runoff, and Municipal Separate Storm Sewer System (MS4) discharges. The damages caused by the contaminants are expected to continue in perpetuity, even with further periodic remedial actions. Not only does the continued presence of contaminants harm wildlife, but it will also harm the reputation of the creek and impact human recreation. These future ecological and ecosystem services harms should be quantified in the NRDA process.

**Correctly Identify the Designated Use of Newtown Creek for Primary Contact Recreation**

The draft Plan characterizes the designated use of Newtown Creek as "suitable for fishing and for fish, shellfish, and wildlife survival, but does not meet requirements for fish propagation." The plan must also acknowledge that the creek is designated for primary contact recreation. As explained by EPA Region 2 Clean Water Division Director Javier Laureano, New York State Department of Environmental Conservation promulgated, and EPA approved, the recreational use in 2015 and 2016, respectively:

On February 24, 2016, the U.S. Environmental Protection Agency (EPA) received the New York State Department of Environmental Conservation (NYSDEC) revisions to New York State's water quality standards (NYSWQS). These revised water quality standards (WQS), adopted by the NYSDEC on November 4, 2015, amended the designated uses of Class I and Class SD saline surface waters [including Newtown Creek] to include a designated use of primary contact recreation (6 NYCRR §§ 701.13

and 701.14). Additionally, these revised WQS amended the water quality criteria for Class I and Class SD saline surface waters (6 NYCRR Part 703). In a letter dated May 9, 2016, the EPA approved, pursuant to Section 303(c) of the Clean Water Act (CWA), 33 U.S.C. §1313(c), the revised designated uses of Class I and Class SD saline surface waters at 6 NYCRR Part 701.<sup>7</sup>

For the purposes of federal law, and for actions taken pursuant to and especially the Clean Water Act, the Trustees must incorporate the designated use.

### **Utilize Public Engagement Opportunities and Community Knowledge**

The Trustees must consider pilot restoration projects along Newtown Creek using existing community knowledge and priorities to do so. The neighborhoods surrounding the waterway are being extensively redeveloped, providing opportunities for stormwater maintenance, habitat restoration, and community amenities. The remedy itself will require the replacement of shoreline riprap and bulkheads which could be optimized for habitat. The Trustees must ensure restoration opportunities that become available during new development are not missed.

The Trustees must also incorporate community knowledge and prior work into the NRDA where appropriate. There is considerable community knowledge of existing shorelines and community use of Newtown Creek. Newtown Creek Alliance and Riverkeeper have published a detailed vision plan to guide restoration efforts in Newtown Creek. The [2018 Newtown Creek Vision Plan](#) details local knowledge of intertidal habitat, species usage within the creek, and community use. Many of the projects highlighted therein should be made a part of any future restoration plan developed for the creek.

In 2019, the Newtown Creek Alliance and Riverkeeper published a more specific vision plan for [Maspeth Creek Marsh](#). A restored Maspeth Creek could improve water quality and wildlife habitat as well as provide a buffer for storm surge events. Capturing combined sewer overflows, remediating legacy contamination, and improving bulkhead and waterfront edge designs would be necessary to realize the ecological potential.

### **Ensure Meaningful Restoration**

Restoration of waterways can be conceived as healing ecosystems that can no longer perform essential ecological and fluvial functions such as mitigating excessive levels of nutrients and sediments and supporting aquatic life and wildlife that is supported by a healthy ecosystem. Clean water protects public health, supports fishing, swimming, boating, and other recreational uses, and provides critical wildlife habitat. Clean water also attracts visitors and protects property values. Healthy waterways are community focal points and provide societal benefit through the enhancement of property values, as recreational hubs, and improved human psyche. Clearly, degraded rivers and streams need to be repaired.

---

<sup>7</sup> Letter from Javier Laureano, Director of Clean Water Division at EPA, to Mark Klotz, N.Y. DEC (Mar. 7, 2018) (citation omitted).

Newtown Creek is an iconic New York City waterway that has withstood generations of industrial, commercial, and residential development and contamination. The NRDA Plan provides a unique opportunity to ensure that damages to this famously polluted area are properly assessed and used to restore the environment and improve the surrounding communities. Riverkeeper urges the Trustees to work closely with relevant agencies and stakeholders, including the Environmental Protection Agency, the City of New York, and the local community to ensure the NRDA Plan for Newtown Creek will provide the maximum restoration benefit within the creek in a timely fashion. The community's clear preference for Newtown Creek is that restoration activities under the NRDA and Superfund remediation run simultaneously; there is no need to wait until the Superfund remediation is completed to begin planning for a restored ecosystem. For example, work restoring specific shoreline edges or waterfront parks can be part of the NRDA process and begin more quickly. In addition, the Army Corps has proposed to denavigate the Newtown Creek tributaries, including Dutch Kills, Maspeth Creek, East Branch, and English Kills.<sup>8</sup> Riverkeeper believes that this plan could create an opportunity for considerable restoration in the creek, improving water and sediment quality and creating new habitats. At the same time, denavigation might result in significantly less dredging of contaminated sediments. We hope that with this major change, the Trustees will diligently pursue damages and take what measures are necessary to ensure that these areas of the creek are fully restored.

Serious remediation requires strict pollution prevention measures and restoration of wetlands affected by decades of pollution and contamination. Such measures can include initiatives such as reclamation of land alongside the canal to accommodate re-vegetation, the creation of wetlands to filter pollutants, and reintroduction of native plant and animal species to restore biodiversity. Overall, Riverkeeper urges the Trustees to take an ecosystem-wide approach to restoration and encourages the Trustees to create restoration criteria to maximize the impact of restoration efforts along each section of the creek. The Trustees should consider long-term wildlife and habitat monitoring as part of this approach.

## **Conclusion**

Before the industrial revolution, Newtown Creek was home to a diverse array of marine wildlife typical of salt marsh estuaries. Over the past 150 years, however, chemical pollution and sewage dumping severely affected the ecosystem of Newtown Creek. Newtown Creek is now a toxic shadow of the profusion of life that once existed. As one of the most polluted waterways in the country, the creek is burdened by toxic contamination and organic pollution, and, in turn, the wildlife that could be expected in an estuarine arm of New York Harbor is severely limited. The creek also remains generally unsafe and unwelcoming for human recreation, severely limiting its role as an asset to the City's residents and visitors. Humans have suffered extensively from the loss of cultural, economic, or recreational activities, degraded and polluted habitat, and negative health consequences from consuming contaminated

---

<sup>8</sup> U.S. Army Corps of Engineers, Newtown Creek Commercial Navigation Analysis 34-37 (2024), <https://semspub.epa.gov/work/02/700886.pdf>.

organisms or breathing in noxious air and harmful airborne particulates. The NRD plan must provide a thorough assessment of damages to help restore this valuable resource.

Respectfully submitted,

*Drew Gamils*

Drew Gamils, Esq.  
Staff Attorney  
Riverkeeper, Inc.

A large black rectangular redaction box covering the bottom portion of the signature block, likely obscuring a title or contact information.

---

**From:** info@riverkeeper.org  
**Sent:** Wednesday, May 29, 2024 4:21 PM  
**To:** dec.sm.nrd  
**Subject:** Restore the Newtown Creek

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

May 29, 2024

Alicia Pasos, NYS DEC, Natural Resource Damages Section  
625 Broadway, 14th Floor  
Albany, NY 12233

Dear: Pasos, NYS DEC, Natural Resource Damages Section,

I am one of a growing number of New Yorkers who regularly paddle up the Newtown Creek. It is a remarkable and vital natural feature; an important and thriving (given the circumstances) estuary ecology and an historic and increasingly visible urban waterway. I write to express my support for comprehensive Natural Resource Damages Assessment (NRDA) Plans for Newtown Creek and, for that matter, the Gowanus Canal, and to urge the natural resource Trustees to expand the scope of natural resource injuries and damages considered in the NRDA Plans, increase public engagement, and ensure meaningful restoration in these waterways and communities.

I know firsthand, from my canoe expeditions up the creek and canal that the natural resources on these waterways, including the birds, fishes, and aquatic plants, provide invaluable benefits to both humans and the environment. These natural resources have been grievously injured by industrial activities on both waterways over the last several hundred years. Through the NRDA, the Trustees--on behalf of the public--can ensure adequate damages are awarded to fund restoration within these waterways that will benefit the environment and community for generations to come.

However, there is a danger that the draft NRDA Plans could prematurely narrow the scope of the assessments and omit timely community assessment and monitoring that could inform assessed shoreline types and community use. To ensure meaningful restoration within Gowanus Canal and Newtown Creek, the draft NRDA Plans must be revised to address the following concerns:

1. Expand the scope of the NRDA Plans to:

- Address known contamination from other types of contaminants such as volatile organic compounds (VOCs), polychlorinated biphenyls (PCBs), hazardous pesticides, and metals such as lead, mercury, and copper. The draft NRDA Plan for Gowanus Canal only considers polycyclic aromatic hydrocarbons (PAHs) as the primary contaminant of concern for assessing ecological injury to natural resources in Gowanus Canal.

There are multiple hazardous substances to which natural resources have been exposed as a result of discharges or releases into Gowanus Canal, which can have a compounding effect on aquatic organisms. These other contaminants must also be considered primary contaminants of concern in the NRDA.

- Assessing impacts to the intertidal habitat in Gowanus Canal. The NRDA plan appears to consider impacts solely to the aquatic environment. Even if constrained by bulkheads and other development, the intertidal habitat must be included in the NRDA Plan for Gowanus Canal because it represents critical habitat and has been severely impacted by decades of contamination.

- Avoid the use of bioindicators. Bioindicators are living organisms that represent a single tool to assess environmental health.

Their use does not fully capture the accumulated impacts and ecosystem changes that have occurred over the course of nearly 200 years and cannot fully evaluate species richness, biodiversity, biotic potential, species long extirpated from an ecosystem, or alternative stable states that effectively limit keystone species. The use of bioindicators provides a narrow lens of limited scope that cannot accurately assess species absence, especially those that vary seasonally. Consequently, with such limited capacity using bioindicators, more conventional methods need to be utilized to determine environmental damages.

2. Utilize public engagement opportunities and community knowledge to inform the NRDA Plan:

- Consider pilot restoration projects along the waterways using existing community knowledge and priorities to do so. The neighborhoods surrounding both waterways are being extensively redeveloped, providing opportunities for stormwater maintenance, habitat restoration, and community amenities. The Trustees must ensure restoration opportunities that become available during new development are not missed.

- Incorporate community knowledge and prior work into the NRDA where appropriate. There is considerable community knowledge of existing shorelines and community use of the Gowanus Canal and Newtown Creek. Newtown Creek Alliance, Gowanus Canal Conservancy, Riverkeeper, and others have published detailed vision plans for restoration, and some of those plans could be implemented prior to remediation, or pilot studies beginning now could lay the groundwork for future restoration efforts. These plans detail local knowledge of intertidal habitat, species usage within the waterways, and community use.

Newtown Creek and the Gowanus Canal are iconic New York City waterways and have withstood generations of industrial, commercial, and residential development and contamination. The NRDA Plans for each waterway provide a unique opportunity to ensure that damages to these famously polluted areas are properly assessed and used to restore the environment and improve the surrounding communities. I urge the Trustees to work closely with relevant agencies and stakeholders, including the Environmental Protection Agency, the City of New York, and the local community to ensure the NRDA Plans will provide the maximum restoration benefit within each waterway in a timely fashion.

I appreciate your attention to this important matter.

Thank you,

Dewey Thompson

A large black rectangular redaction box covering the signature and any handwritten notes or dates that might have been present.

---

**From:** info@riverkeeper.org  
**Sent:** Thursday, May 30, 2024 10:24 PM  
**To:** dec.sm.nrd  
**Subject:** Utilize Ongoing Community Dialogue to Ensure a thorough assessment of natural resource injuries and damages to Newtown Creek ...

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

May 30, 2024

Alicia Pasos, NYS DEC, Natural Resource Damages Section  
625 Broadway, 14th Floor  
Albany, NY 12233

Dear: Pasos, NYS DEC, Natural Resource Damages Section,

To the NYSDEC and associated parties:

As a member of the Brooklyn community who intends to continue to build my life, businesses, and family in the vicinity of Newtown Creek, I am writing to urge the Trustees and relevant administrative bodies to support and expand the Natural Resource Damages Assessment (NRDA) by continuing to engage the local community and utilize the wealth of knowledge and research of community members and organizations such as Riverkeeper and the Newtown Creek Alliance. While the scope of projects and concerns of the NYSDEC, EPA, NOAA, and other responsible organizations is understandably broad and multi-faceted, local community groups have a much more specific and invested understanding of the impact of the Newtown Creek and Gowanus Canal Superfund projects, as well as a wealth of highly educated and experienced minds who have and continue to commit their efforts to research and community involvement in these important issues. It is my hope as an engaged New York City resident, that the voices of these communities and organizations continue to be heard, supported, amplified, and answered as the planning and implementation of these projects take place.

As a maritime professional, environmental advocate, and cultural innovator, it is my hope to see the NYC waterfronts transcend generations of neglect, and begin a new chapter as a vibrant and engaging asset to New York City's residents, visitors, and wildlife.

New York City is often referred to as the greatest city in the world, but its level of pollution and failure to provide healthy ecosystems for humans and wildlife alike, is a harsh disconnect from that ideal.

It is high time that we follow the lead of many greener international cities, and prioritize the true evolution of the environmental and cultural health of our 520 miles of coastline and associated waterways.

My personal vision includes greener bulkheads and coastlines to support biodiversity, increased accessibility for recreation and boating, and support for waterfront projects aboard permanently-moored vessels.

Permanently-moored vessel venues and attractions are a huge opportunity for the re-developing of the waterfront. In this moment, there are numerous historic vessels, including multiple decommissioned Staten Island ferries, that while no longer viable as voyaging, passenger-carrying vessels, can still provide valuable space for entertainment, education, and

environmental studies. I see a huge opportunity in utilizing these vessels as adaptable, floating environments, since they provide direct access to the waterways, while also maintaining the ability to relocate as needed as coastlines continue to adapt and change over the coming years. At present, many of these potentially powerful vessel restoration projects are being hindered by complicated jurisdictional parameters, and the lack of precedent for their legal and commercially viable use. It is my hope that with the support of the City and the organizations associated with the leadership of the Superfund cleanup projects, that we can explore new possibilities for the success of these important and timely projects.

Thank you for your time and attention to this pressing matter. The future of our City starts now, and it is up to all of us to make it cleaner and brighter for the next generations.

Sincerely,  
Lindsay Cooper  
Brooklyn, NY

Thank you,

Lindsay Cooper



## **The Trustees also received comments from 349 individuals, sharing the following common remarks:**

I write to express my support for comprehensive Natural Resource Damages Assessment (NRDA) Plans for Newtown Creek and the Gowanus Canal, and to urge the natural resource Trustees to expand the scope of natural resource injuries and damages considered in the NRDA Plans, increase public engagement, and ensure meaningful restoration in these waterways and communities.

The natural resources on Newtown Creek and the Gowanus Canal, including the birds, fishes, and aquatic plants, provide invaluable benefits to both humans and the environment. These natural resources have been grievously injured by industrial activities on both waterways over the last several hundred years. Through the NRDA, the Trustees--on behalf of the public--can ensure adequate damages are awarded to fund restoration within these waterways that will benefit the environment and community for generations to come.

However, there is a danger that the draft NRDA Plans could prematurely narrow the scope of the assessments and omit timely community assessment and monitoring that could inform assessed shoreline types and community use. To ensure meaningful restoration within Gowanus Canal and Newtown Creek, the draft NRDA Plans must be revised to address the following concerns:

### **1. Expand the scope of the NRDA Plans to:**

- Address known contamination from other types of contaminants such as volatile organic compounds (VOCs), polychlorinated biphenyls (PCBs), hazardous pesticides, and metals such as lead, mercury, and copper. The draft NRDA Plan for Gowanus Canal only considers polycyclic aromatic hydrocarbons (PAHs) as the primary contaminant of concern for assessing ecological injury to natural resources in Gowanus Canal.

There are multiple hazardous substances to which natural resources have been exposed as a result of discharges or releases into Gowanus Canal, which can have a compounding effect on aquatic organisms. These other contaminants must also be considered primary contaminants of concern in the NRDA.

- Assessing impacts to the intertidal habitat in Gowanus Canal. The NRDA plan appears to consider impacts solely to the aquatic environment. Even if constrained by bulkheads and other development, the intertidal habitat must be included in the NRDA Plan for Gowanus Canal because it represents critical habitat and has been severely impacted by decades of contamination.

- Avoid the use of bioindicators. Bioindicators are living organisms that represent a single tool to assess environmental health.

Their use does not fully capture the accumulated impacts and ecosystem changes that have occurred over the course of nearly 200 years and cannot fully evaluate species richness, biodiversity, biotic potential, species long extirpated from an ecosystem, or alternative stable states that effectively limit keystone species. The use of bioindicators provides a narrow lens of limited scope that cannot accurately assess species absence,

especially those that vary seasonally. Consequently, with such limited capacity using bioindicators, more conventional methods need to be utilized to determine environmental damages.

2. Utilize public engagement opportunities and community knowledge to inform the NRDA Plan:

- Consider pilot restoration projects along the waterways using existing community knowledge and priorities to do so. The neighborhoods surrounding both waterways are being extensively redeveloped, providing opportunities for stormwater maintenance, habitat restoration, and community amenities. The Trustees must ensure restoration opportunities that become available during new development are not missed.

- Incorporate community knowledge and prior work into the NRDA where appropriate. There is considerable community knowledge of existing shorelines and community use of the Gowanus Canal and Newtown Creek. Newtown Creek Alliance, Gowanus Canal Conservancy, Riverkeeper, and others have published detailed vision plans for restoration, and some of those plans could be implemented prior to remediation, or pilot studies beginning now could lay the groundwork for future restoration efforts. These plans detail local knowledge of intertidal habitat, species usage within the waterways, and community use.

Newtown Creek and the Gowanus Canal are iconic New York City waterways and have withstood generations of industrial, commercial, and residential development and contamination. The NRDA Plans for each waterway provide a unique opportunity to ensure that damages to these famously polluted areas are properly assessed and used to restore the environment and improve the surrounding communities. I urge the Trustees to work closely with relevant agencies and stakeholders, including the Environmental Protection Agency, the City of New York, and the local community to ensure the NRDA Plans will provide the maximum restoration benefit within each waterway in a timely fashion.

I appreciate your attention to this important matter.

Thank you,