

Gowanus Canal Community Advisory Group  
Water Quality Committee  
April 11, 2011 – Meeting Summary

Attending: Katia Kelly, Jerry Armer, Eymund Diegel, Rita Miller, Marlene Donnelly, Steven Miller, Josh Verleun, Cynthia Simmons, Diane Buxbaum, Hans Hesselein  
Guests: Michael Weiss, Natalie Loney  
Facilitator: Jeff Edelstein  
Notetaker: Beth Bingham

Jeff Edelstein opened the meeting with a brief outline of the meeting agenda and a reminder about the April 14<sup>th</sup> Green Infrastructure Plan meeting hosted by Councilmember Brad Lander. At this public meeting, the NYC DEP will present the Green Infrastructure Plan and take questions from the community. The deadline for DEP's Green Infrastructure Grant Applications is April 29<sup>th</sup>.

There was an update from the Operating Procedures Committee, which is prepared to bring the Charter draft before the full CAG at the April 26th meeting. Also, Christos has agreed to attend the May meeting of the full CAG to discuss the Feasibility Study and answer any questions from the group.

*NYS DEC and Reclassification*

Jeff reported some findings following a phone discussion with Scott Stoner at DEC. The state agency is nearing the end of a 25-year effort to reclassify all of the 17 watersheds of New York State. The New York City Marine Watershed is one of the final three that remain to be reclassified. The other two are Lake Champlain and the Sr. Lawrence River. DEC expects to complete those in the next couple of years and then address New York City. DEC's reclassification staff has been cut from five full-time to less than one fulltime. Because of these staff cuts, DEC said it is unlikely that the NYC watersheds would be able to jump the queue. The application for requesting reclassification that is currently available online is outdated and the DEC is planning the release of a new application.

Scott also answered the question about whether a Total Maximum Daily Load (TMDL) plan would be developed for the canal. He said that because nearly all of the loading of pollutants is from CSO's, there is no real need for a TMDL, which typically is used to allocate pollutant discharges amongst multiple generators.

Though it is understood that DEC will eventually examine possible reclassification of the canal, all in the group agreed that the CAG is in a position to present the community's desire for improved water quality standards and to go on record with a reclassification request. A committee member suggested that the CAG adopt a position to use for a letter, statement or demand.

Some questions that came up for DEC:

- Is it an automatic step that the canal will be part of a reclassification process, or does someone have to submit a request?
- While the application process is in transition, is there anything the community can do to get involved or to move the reclassification process more quickly?
- Do the two Superfund designations in NYC have any impact on the reclassification or the reclassification process?
- Will the DEP's Long-term Control Plan become the TMDL? As meeting TMDLs are required by law, how can the agencies bypass this requirement? How do existing water quality regulations, and consent orders, tie into a TMDL?
- Why is the NYC Watershed last on the list? Can more staff be requested to expedite the process?
- What work goes into the reclassification process? What criteria are applied? What is the timeframe for the process once it begins? Can the existing data about the Gowanus be used here? Can the community help the process move forward in a timelier manner?
- How do the substances address in a reclassification or TMDL relate to the substances addressed in the Superfund cleanup?
- Would a reclassification or TMDL impact on the Superfund process and vice versa?
- Can DEC send a representative to explain the process and inform the CAG about resources that the CAG may be able to organize or supply to the agency?
- Is there someone that the CAG can find to help the group navigate the complex territory of the Clean Water Act (CWA)?

Jeff said he would follow up with DEC regarding these questions.

There was a brief discussion about contamination caused by heating oil runoff (at 2<sup>nd</sup> Street, Sackett Street, 576 Degraw Street and other sites). Josh Verleun offered to investigate what may be done to enforce the illegal runoff.

One committee member referenced the State Climate Action Plan, which recommends that cities move away from development along shorelines and expressed the opinion that the developments favored by NYC at this time are all in contradiction to these recommendations from the State.

### *EPA Support of the CAG*

Natalie raised the issue that EPA's support of facilitation and EPA staff time can only be used for Superfund-related issues, because the EPA staff involved and the facilitation funding come from the Superfund program. The committee members generally see the Superfund cleanup of the Gowanus as having connections to many aspects of the canal and the community, and would like to be able to discuss the issues as part of an integrated whole. Natalie sees some elements of the CAG's work to date as being non-SF and therefore outside of the agency's ability to staff for meetings or support facilitation. There is a need for clarity from EPA, but the CAG members present, in general, would

like to see EPA taking a more holistic approach to these issues. Concerns that were raised were:

- Separating the issues according to Superfund vs. non-Superfund does not meet the community's desire for a holistic comprehensive clean-up of the canal.
- This compartmentalized approach could have negative impacts on the Superfund aspects of the CAG, since the facilitator and EPA staff will be unaware of issues that the community believe are relevant to the Superfund clean-up.
- Some issues are difficult to know whether they are directly related to the Superfund process until discussion takes place.

Some possible solutions that were discussed, but not necessarily agreed to, were:

- Structure meeting agendas to include EPA and Jeff for the first part of meetings, who would then leave allowing for non-SF discussion to proceed without them present.
- EPA needs to make clear what it considers Superfund and non-Superfund.
- CAG members could position all discussion in meetings to tie in clearly with the SF activity
- If the CAG thinks that these controversial issues are SF-related, then that needs to be clearly communicated in advance of meetings.
- EPA could take a more holistic view towards the Superfund process, acknowledging that, at least for the Gowanus Canal, it is part of an integrated approach to watershed restoration and community redevelopment.
- Other facilitators, perhaps provided by other arms of the EPA, could facilitate discussions on clean water issues that the agency feels are not related to Superfund.
- EPA could send staff from the appropriate other arms of the agency to discuss non-Superfund issues, such as enforcement of the Clean Water Act.

Marlene Donnelly and Katia Kelly volunteered to draft a statement that speaks to the Water Quality Committee's desire to take a holistic approach to the cleanup that integrates the Clean Water Act, CERCLA, and other relevant statutes, as well as the various relevant agencies, and that allows for the presence of EPA (as lead agency of the complex undertaking) staff and facilitation to support these discussions. Other committee may want to draft such documents, and together these might be combined into a full CAG perspective.

#### *CSOs, EPA and DEP*

In response to a discussion at the last committee meeting about the need for the committee to better understand the regulatory background with CSOs, Jeff circulated printed materials including a timeline of NYC's CSO activities and EPA policy on enforcement of CSOs and SSOs.

There was then discussion about the upcoming DEP meeting on Green Infrastructure, which NYC DEP is proposing to use as part of its approach to cleaning up CSOs, with the goal of identifying questions to email to DEP in advance. The group briefly discussed how the Federal and State partnership for CSOs works and how/when federal enforcement of water quality standards is invoked. A recent Riverkeeper lawsuit challenged the 2004 NYC CSO consent order (which is the most recent DEC directive to NYC) in order to attempt to allow groups to sue the city or state if the schedule for compliance is not met.

As there are several sets of figures and data sets for the outfall by CSOs in Gowanus, one committee member would like to see EPA install real-time meters on the CSOs, allowing the agency to comprehensively measure industrial contaminants. If EPA used real-time meters to measure contaminants, then the community would be able to use the data to support Green Infrastructure interventions in targeted geographic areas of the Gowanus watershed. Another committee member commented that one of the roles of the CAG should be to sort through the discrepancies in data presented, etc.

There was some concern that the Gowanus, a massively polluted waterway, is a low priority for both DEP and DEC and that there is not enough political will to change this. Some members of the committee are interested in working more closely with Brad Lander's office to address this.

Jeff presented to the group the list of questions for DEP that CAG members had already submitted to him at or after the March 8 CAG meeting. The committee then discussed and brainstormed a number of additional questions. The complete list of questions that was generated is as follows:

**Gowanus Canal CAG-related:**

If the CAG were to invite DEP and the appropriate technical and engineering staff to a meeting, would the agency respond in the affirmative?

Green Infrastructure promises a 10% decrease in runoff. While this may be a good step, when will the DEP be available to discuss with the CAG the other 90% of the CSO problem, including the impacts of continued new development?

This is a citywide plan, so what is the benefit of the Green Infrastructure Plan for the Gowanus area specifically?

How can DEP expect the named PRPs and the EPA to spend on the order of \$300 - \$500 million to clean up the Gowanus sediments, when the CSOs will continue to contaminate the waterway?

**Unintended Consequences:**

What are some possible negative effects of raising the water table in lower-lying areas by increasing infiltration through Green Infrastructure, such as increased flooding or basement problems?

How will changes to the water table affect the sub-surface pollutants? Would increased head accelerate the movement of existing plumes and/or in any other way increase contamination or re-contamination of the Gowanus Canal?

**GI Grants and funding issues:**

Are there small grants available (one homeowner-sized)? What process for applications for these?

Could Public Street ends be reclassified as hybrid public / private (Community Gardens) property titles to be eligible for Green Infrastructure Grants?

How will DEP learn from the grant-funded projects? What sorts of monitoring or assessment will be done?

Why is the Green Infrastructure grant money restricted to private property and not to streets or other public properties? Is DEP pursuing Green Infrastructure projects on any public properties?

**Technical:**

What are DEP's 20 year and 50 year plans for Gowanus Water Quality?

Does DEP ever intend to eliminate CSOs for 1-year storm and/or 3-year storm from the Gowanus Canal?

Will DEP be prioritizing its GI efforts on certain CSO drainage areas?

How will the proposed Green Infrastructure approach in the Gowanus affect the city's plans for Grey Infrastructure?

How will Green Infrastructure affect CSOs during large rain events, such as those that produce the "brown tsunamis"?

**Regulatory and Funding:**

Would any federal budget cuts (EPA/Clean Water) will have any impact on the Green Initiative and if so what does DEP anticipate those impacts might be?

Will Green Infrastructure Plan include regulating the design of future large-scale developments?

Are the interventions described – like rainwater barrels – too small scale for the high-density developments either planned, proposed, or possible, for areas like the Gowanus?

**Data:**

Could the DEP make available PDFs or even the raw GIS data pertaining to storm water inlets (and the sewer / CSO systems they connect to) available to the general public for the Gowanus area?

What CSO data will be used – by DEP, EPA, and groups or individuals seeking grants – for the Green Infrastructure discussion? The figures provided in a DEP report from 2006 are different from the figures that appear in EPA's recent Remedial Investigation? How will this conflicting data be reconciled? (This data would help communities focus advocacy efforts towards applications or actions that would improve runoff scenarios in neighborhoods generating the most runoff, etc.)

There was one additional question that is not included in the list above about new development and climate change because, while of interest to the group, it was agreed it was not directly relevant to Green Infrastructure and CSOs.

*Operating Procedures and Committee Communications*

After the above list of questions intended for DEP in advance of the April 14 meeting was complete, the committee began to debate whether the questions should be sent to the agency or not. All on the committee are interested in developing a more open relationship with DEP, and were interested in having DEP come to meet with the CAG, but some were hesitant to submit the questions to the agency in advance.

Some committee members were concerned about whether CAG Committees that develop questions for outside entities need to seek approval of the full CAG, or is the committee authorized to go forward with the communication?

Some committee members wanted to wait until after the April 14<sup>th</sup> meeting to see if the questions got answered there. There was concern that submitting the questions in advance might be detrimental to the goal of getting DEP to meet with the CAG. Alternately, other members expressed that giving the agency an advance set of questions about community concerns, as a courtesy, would be a good step towards building a better relationship. There was a concern expressed by all about whether DEP would choose to take a respectful approach to the community, but the way forward is unclear. Natalie from EPA reminded the group that DEP has been meeting with EPA to discuss the CSOs, the SF process, and what the City's role will be in the cleanup. She emphasized that DEP is taking steps to understand the agency's role within the SF process, and that the City has fully accepted that the debate over the Superfund listing is over.

Some objections to sending the questions in advance:

- Not all of the questions are about Green Infrastructure
- This allows DEP to continue with the bureaucratic tendency to claim to have heard the community's concerns, without actually addressing them
- Sending the questions is just "playing the game" at an "overly orchestrated PR event"
- Meetings with boundaries have been the status quo, the CAG needs to try a new approach

Some reasons to send the questions in advance:

- As a courtesy to the agency, this begins to advance the goal of fostering a better relationship
- Assumptions that DEP won't answer the questions keep the relationship trapped in the past.
- The CAG needs to try new approaches, keep improving relationships with any/all agencies, even if DEP can't change
- The strength of the CAG will be demonstrated by its ability to organize its thinking and act cohesively
- If the CAG doesn't send questions to the agency, then it will appear that the community has no questions or issues with the DEP plan
- Not sending the questions may be squandering an opportunity to build the relationship with DEP that is so crucial to the fix

Because the CAG Charter has not been circulated or approved by the full CAG, there was some debate regarding the protocol to employ in the interim in order to reach a decision. The committee agreed to Jeff's suggestion to take a non-binding straw vote on whether to send the questions to DEP. The vote was 7 in favor; 1 opposed; and 1 abstaining. Subsequently one in favor changed their vote to opposed. Because there were still strong concerns by those opposed or abstaining, more deliberations took place to see if their concerns might be addressed, and it was suggested by a committee member to do a non-binding straw vote using the "level of consensus" method, which resulted in 15 points for sending the questions and 15 points against, with three "blocking votes" against sending them. Jeff announced that it appeared that the 3 blocking votes would decide the matter in favor of not sending the questions. The meeting adjourned an hour over time with the committee appearing uncertain whether the outcome was appropriate, and some dissatisfaction with the "levels of consensus" approach. Subsequent to the meeting, one of the blocking voters notified Jeff they were switching their vote from a block (zero) to a "1" breaking the deadlock in this method. Jeff then emailed all committee members, as well as speaking directly to the two remaining blocking voters, and based on input it appeared that a strong consensus still remained in favor of sending the questions and Jeff then informed the committee via email that he would proceed with sending the questions. This complex decision-making process appeared to reinforce the need to establish clear agreed-upon procedures for future decision-making.

*Committee's Next Steps:*

1. Reclassification: Jeff will follow up with DEC regarding the questions generated by the committee regarding reclassification.
2. Contaminated runoff: Josh Verleun will investigate what may be done to enforce against illegal runoff from sites around the canal.
3. EPA Support of the CAG: Marlene Donnelly and Katia Kelly will draft a statement that speaks to the Water Quality Committee's desire to take a holistic approach to the cleanup that integrates the Clean Water Act, CERCLA, and other relevant statutes, as well as the various relevant agencies, and that allows for the presence of EPA (as lead agency of the complex undertaking) staff and facilitation to support these discussions. Jeff will circulate this to the committee.
4. NYC DEP: The Committee will follow up, as appropriate, after the April 14 DEP meeting, to invite DEP to present to the WQ Committee and/or the full CAG.