



THE CITY OF NEW YORK **COMMUNITY BOARD SIX**

Marty Markowitz
Borough President

Daniel M. Kummer
Chairperson

Craig Hammerman
District Manager

April 23, 2013

Christos Tsiamis
Remedial Project Manager
Central New York Remediation Section
U.S. Environmental Protection Agency
290 Broadway, 20th floor
New York, New York 10007-1866

Re: Proposed Remedial Action Plan for Gowanus Canal Superfund Site

Dear Mr. Tsiamos:

I am writing to advise you that at its April 8, 2013 general meeting Brooklyn Community Board 6 resolved unanimously to conditionally approve of the Environmental Protection Agency's (EPA's) Proposed Remedial Action Plan (PRAP) for the Gowanus Canal Superfund Site in our district, as released by the agency in December 2012, and to submit the following comments concerning the PRAP in connection with the current public comment process.

Before turning to the substance of our comments, it is important that we take a moment to acknowledge the extraordinary lengths, depths and breadths you and your colleagues have gone to in working with us and our community. Many members of our community have commented on the energy, care and accessibility your team has demonstrated by attending numerous meetings, patiently educating us and generally raising awareness about the importance of remediating the Gowanus Canal environment. We also commend the EPA for adhering to the timeframes it projected when it launched this undertaking. The speed, accessibility and transparency with which the EPA has approached this project has set a high bar and a great example to which other agencies and projects should aspire.

The following substantive comments are primarily the result of careful consideration, discussion and drafting by the dedicated members of our Environmental Protection Committee and our District Office staff. However, it is also important to note that in submitting these comments, we are not writing on a blank slate. Indeed, many of the comments below are drawn from or built upon prior resolutions and positions that Brooklyn CB6 has taken in a variety of contexts as we have dealt with Gowanus Canal issues and proposals. Some of our comments are presented in the form of questions to which we respectfully request that EPA provide responses in due course.

1. Our initial comments concern the EPA's remedial action objectives (PRAP, page 15):

Comment 1(A): *We generally concur with the EPA's Remedial Action Objectives, with the exceptions noted in the next two comments.*

Comment 1(B): *Brooklyn CB6 has consistently supported Gowanus Canal water quality improvement to SC (secondary contact) standards with regular pathogen monitoring. We urge the City, State and Federal government to commit that this will be the standard achieved for water quality in the Canal.*

Comment 1(C): *We are very concerned that this PRAP may not eliminate migration of Nonaqueous Phase Liquid (NAPL) into the canal, nor prevent/minimize NAPL serving as a source of future contamination, given that (i) two of the three Manufactured Gas Plant (MGP) sites do not have remedial plan commitments, and (ii) the dredge/cap options do not include native sediment, where NAPL is found in its greatest concentration.*

2. With regard to the proposed Remedial Action Alternatives relating to Dredging/Capping Sediment Alternatives (PRAP, page 18, pp 20-22):

Comment 2(A): *NAPL that is less dense than water, or LNAPL, has a tendency to rise to the height of the water table over time. The majority of the NAPL constituents are LNAPL, and it was found to be in greatest concentration in the native sediment in RTA 2. We question why all of the remedies only suggest going as deep as the soft sediment and not include portions of the native sediment where NAPL may be a source of recontamination over time; we have no assurances that the treatment, isolation and armor layers as generically described will be effective. We would like more specificity regarding the layers, particularly the type(s) of treatment that would be considered for this location.*

Comment 2(B): *Capital Costs include assumption that cost of bulkhead upgrade/stabilization will be included (Table 9, Note 1). We assume these costs to be expensive. We believe that Potentially Responsible Parties (PRPs) should bear those costs, and that non-PRP property owners should not have to shoulder the cost of bulkhead work that is necessary because of the remedies selected, and would like assurances that non-PRPs will not be responsible for them.*

Comment 2(C): *Bulkhead upgrade and stabilization work also has the potential to be extremely disruptive to existing property owners and businesses. What is the plan for minimizing interruptions to existing businesses and compensating for temporary relocations if needed, business losses and other undue negative economic impacts?*

Comment 2(D): *We urge the integration of soft edges as an alternative to metal bulkheads wherever practicable, and the introduction of flora and fauna appropriate for the absorption of run-off and natural treatment of contaminants and toxins that may be present.*

Comment 2(E): *We understand that the PRP's under EPA oversight will be responsible for contracting the actual remediation work. In that connection, we highlight that Brooklyn CB6 has a responsible development policy which recommends, among other things, the use of local*

and diverse contractors, local hiring, prevailing wages, employing green practices, etc. To the extent practicable, we urge the EPA to insist that any work done under this remedial action plan adheres to the Brooklyn CB6 Responsible Development Policy (attached).

Comment 2(F): We ask that the EPA ensure that the community is meaningfully involved in the siting and ultimate selection of any upland staging area(s) that would be used as part of the PRAP. It is our strong view that criteria for the selection of staging areas should include (i) minimizing negative impacts on surrounding communities, and (ii) not impeding progress on any other existing and contemplated projects. We also request more descriptive detail concerning the actual dredging and treatment operations.

Comment 2(G): In considering proposed remedial alternatives, the lack of access to professional and objective technical assistance for members of our community in Gowanus and in the adjacent Red Hook community, especially at this critical juncture, has become a significant constraint. We would appreciate a written response to the Technical Assistance Grant application that we previously submitted through Friends of Brooklyn CB6, Inc. (the Community Board's affiliate 501c3 organization), which would have given us access to such resources.

3. With regard to the proposed Remedial Action Alternatives relating to Sediment Treatment/Disposal Options (PRAP, pages 18-19; 20-24):

Comment 3(A): We regret that there has not been a greater opportunity to engage the broader community to fully understand and explore the impacts of the various options on our neighborhoods. There remains considerable opposition, and lack of community acceptance, to on-site stabilization and treatment, especially in the absence of any well-defined public benefits that the impacted community would derive.

Comment 3(B): Is there a limitation, a radius, on how far the dredged sediment could be transported to a local, on-site dewatering and transfer facility? Who would own/operate/monitor the dewatering and transfer facility? What are the associated impacts from such an operation?

Comment 3(C): It becomes somewhat of an academic exercise to consider Options A, B and C without factoring in the surrounding context as a frame of reference. To that extent, we are curious and would like to know what sites were under active consideration and what criteria the EPA uses to evaluate them.

Comment 3(D): Can the end product from Options D and E be used locally in flooding remediation projects (like the DEP high-level storm sewer Capital project), distributed green infrastructure projects (like the construction of bioswales, etc.), and other Capital projects similarly supported and requested by Brooklyn CB6 to reduce project costs? Can it be used for construction of other projects under consideration as Source Control Remedial Components (such as in-line storage tanks, etc.) and associated impacts from former Manufactured Gas Plant remediation efforts (such as a replacement pool facility, etc.)? Knowing the ultimate end use possibilities would better illustrate any possible public benefits and give the community vital information to make better, informed recommendations.

Comment 3(E): Does having an abundance of construction product available to the community under Options D and E make the necessary Capital work in the Gowanus area more attractive to the City as a cost-savings? Who owns the product? Can it be given back to the community in the form of making it available for Capital projects?

Comment 3(F): The Confined Disposal Facility (CDF) in Options F and G would only be considered further based on community acceptance and approval by NYSDEC and other agencies. “Community acceptance” is a highly subjective measure. How will the EPA evaluate and measure “community acceptance”?

Comment 3(G): Of the three concrete mixing facilities located at the canal, two have expressed an interest in providing stabilization services for the project (PRAP, page 24). How will EPA evaluate them? Can the stabilization services component be subject to the same applicable provisions of the Brooklyn CB6 Responsible Development Policy in terms of hiring locally, use of local and diverse contractors, prevailing wages, green practices, etc.?

Comment 3(H): With regard to Option G, how will the EPA guarantee that the public is protected from possible exposure pathways being created by the impact of storm and tidal surge events on the on-site processing equipment at the CDF? Who owns the existing waterbody at the CDF? Could an equal amount of land at the north end of the CDF property be ceded to the Parks Department and become part of the existing public park as a public benefit? What is the public benefit in the current concept? Can the CDF activities be subject to the same applicable provisions of the Brooklyn CB6 Responsible Development Policy in terms of local hiring, use of local contractors, prevailing wages, green processes, etc.? What are the costs and the benefits of Option G, specifically with regard to the impact and the risks of the CDF on the Red Hook community?

4. With regard to the proposed Remedial Action Alternatives relating to the Manufactured Gas Plant Source Control Measures (PRAP page 19):

Comment 4(A): As noted above in Comment 2A, LNAPL was found to be in greatest concentration in the native sediment in RTA 2, particularly in areas around the three MGP sites. Without knowing the MGP remedies, there is no way to ensure that the elimination of NAPL migration into the canal will be accomplished, which are two of the EPA’s Remedial Action Objectives. How will the EPA guarantee that its remedial strategies will effectively prevent or minimize the recontamination of the canal without having remedial commitments in place for all three MGP sites?

Comment 4(B): What contingencies will the EPA be prepared to employ in the event of subsequent recontamination coming from MGP sites? What role will the EPA play in the future monitoring of this potential source of recontamination?

Comment 4(C): What is the statute of limitations for how long a potential responsible party is responsible after the oversight agency has signed off on their proposed remedy and it has been implemented?

5. With regard to the proposed Remedial Action Alternatives relating to Combined Sewer Overflow (CSO) Solids Control Measures (PRAP, pages 19-20):

Comment 5(A): *On its face, the proposed use of large in-line storage tanks appears to have great merit; however, to fully and fairly evaluate this concept, we request additional information about the proposed in-line storage tanks, including, at a minimum, (i) a detailed explanation how their respective recommended sizes were determined, (ii) projections modeling their anticipated impact on retaining CSO solids, and (iii) a basis for cost estimates.*

Comment 5(B): *If in-line storage tanks are added to the City's existing sewage infrastructure we request inclusion of other beneficial elements that would add further value to the system, such as deodorization treatment and other possible in-vessel pre-treatments.*

Comment 5(C): *Brooklyn CB6 finds the separation of CERCLA remedies from CWA concerns troubling and invites an even more aggressive approach to CSO abatement provided that sufficient modeling and justification is presented and included in the discussion. To that end, what influences will EPA have over the development of an LTCP that fully reflects the community's goals, particularly as it applies to water quality standards?*

Comment 5(D): *Can the EPA insist that a "demand response" campaign be included amongst the proposed remedies to raise awareness, affect normative behaviors, and include a community action component to reduce CSO impacts? Can the EPA demonstrate its support by making resources available to implement such a campaign?*

Comment 5(E): *If an in-line storage tank is sited at the Thomas Greene Park and Douglass-Degraw Pool, will the EPA help offset the resulting temporary loss of access to this public facility?*

6. Lastly, with regard to the EPA's Proposed Remedies by Remedial Target Areas (PRAP, pages 29-31?):

Comment 6(A): *Brooklyn CB6 would like to see the Fifth Street Basin included in the scope of the remedial action plan for environmental remediation as it was originally an integral part of the canal and its inclusion would eliminate its potential as a source of recontamination in the future.*

Comment 6(B): *Overall, Brooklyn CB6 would like to support the PRAP, but cannot yet endorse the plan fully without addressing the many concerns and unanswered questions raised in our comments. In particular, we are not convinced that the disposal options as set forth in Options D and G are appropriate, without a clear demonstration of community acceptance for either option. We believe the EPA must first offer a positive finding that the social, economic and political implications of each option have been considered so that this exercise becomes more about real, contextual community planning.*

* * *

Thank you for the opportunity to comment on the PRAP. Again, we deeply appreciate the EPA's efforts to date and look forward to our continued work together on this critical long-term remedial project.

Sincerely,

/ S /

Daniel M. Kummer
Chairperson

cc: Hon. Michael Bloomberg
Hon. Marty Markowitz
Hon. Charles E. Schumer
Hon. Kirsten Gillibrand
Hon. Nydia Velázquez
Hon. Jerrold Nadler
Hon. Joan Millman
Hon. Félix Ortiz
Hon. Velmanette Montgomery
Hon. Eric Adams
Hon. Steve Levin
Hon. Sara M. Gonzalez
Hon. Brad Lander
Deputy Mayor Caswell Holloway
Judith A. Enck, Administrator, EPA/Region 2
Venetia Lannon, Region Director, NYS DEC/Region 2
President Seth W. Pinsky, NYC EDC + SIRR
Commissioner Carter Strickland, NYC DEP
Commissioner Veronica M. White, NYC DPR
Daniel Walsh, Director, NYC OER

Brooklyn Community Board 6
RESPONSIBLE DEVELOPMENT POLICY

*Adopted by a unanimous vote of the Community Board at its December 9, 2009 general meeting;
Revised at its February 9, 2011 general meeting*

WHEREAS Brooklyn Community Board 6 is deeply concerned about the quality of life, health and safety, the quality of construction, and working conditions and employment opportunities on construction projects in our district, the preservation of the “essential character of the community”, and our environment, and the avoidance of actions “detrimental to the public welfare”; and

WHEREAS, too often, our community has seen developers, contractors and subcontractors who violate the health, safety, buildings, noise, and workplace laws and standards of New York City, jeopardize the health and lives of their workers, and permit dangerous and severe nuisances for adjacent property owners; and

WHEREAS we believe that responsible developers and contractors can deliver quality construction projects and operate quality developments to benefit and not unnecessarily harm the community or the environment; and

WHEREAS governing law contemplates a broad role for the Community Board in weighing the interests of public welfare within its community district regarding land use, development and improvement matters (“Land Use Matters”) in general, and in particular regarding Land Use Matters that come before the Community Board for findings and recommendations in connection with an application for a variance, a zoning change, an amendment of an urban renewal plan, a disposition of City-owned property or another action under the City’s Uniform Land Use Review Procedures (“ULURP”)¹;

COMMUNITY BOARD 6 of the BOROUGH OF BROOKLYN hereby RESOLVES to encourage all developers, contractors, subcontractors, architects, and engineers working in our district to abide by as many of the Responsible Development Standards outlined below as possible, to the greatest extent possible, with the understanding that it may not be possible to meet all standards due to the cost constraints inherent in particular

¹ The Community Board, as the first of its many enumerated duties, must “consider the needs of the district which it serves” (Charter of the City of New York, Chapter 70, Section 2800(d)(1)).

The Community Board exercises “the initial review of applications and proposals of public agencies and private entities for the use, development or improvement of land located in the community district, including the conduct of a public hearing and the preparation and submission to the city planning commission of a written recommendation” (City Charter, Chapter 70, Section 2800(d)(17)).

The Community Board and, in turn, the Board of Standards and Appeals, in reviewing any application for a variance of zoning provisions governing such land use, must make specific findings “so that the spirit of the law shall be observed, public safety secured, and substantial justice done” (Zoning Resolution of the City of New York, Article VII, Chapter 2, Section 72-21). The “Board of Standards and Appeals may prescribe such conditions or restrictions applying to the grant of a variance as it may deem necessary in the specific case, in order to minimize the adverse effects of such variance upon other property in the neighborhood” (Zoning Resolution, Article VII, Chapter 2, Section 72-22).

Among the specific findings required as a condition to the grant of any such variance is “that the variance, if granted, will not alter the essential character of the neighborhood or district in which the zoning lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare” (Zoning Resolution, Article VII, Chapter 2, Section 72-21(c)).

projects, and with the understanding that fulfillment of some of the standards may involve tradeoffs that make fulfillment of other standards difficult or impossible to attain.

COMMUNITY BOARD 6 hereby further RESOLVES, in connection with any Land Use Matter involving new construction, substantial renovations or additions totaling at least 10,000 square feet that comes before it for findings and recommendations in connection with an application for a variance, a zoning change, an amendment of an urban renewal plan, a disposition of City-owned property or another action under ULURP, Community Board 6 shall take the following actions (collectively, the “Large Project Review Process”):

1. request information from the applicant regarding the extent to which the applicant intends to comply, and has complied, with the standards herein, with respect to the applicant, the developer, the contractor, the subcontractors, the architect, and the engineer, including information documenting their respective track records; and
2. request that the applicant make a commitment that it, the developer, the contractor, the subcontractors, the architect, and the engineer will comply with these Responsible Development Standards to the greatest possible extent (subject to the limitations expressed above); and
3. ask the applicant to identify the developer, the contractor, major subcontractors, the architect, and the engineer, at the time of the application, rather than after project approval; but where this is not feasible, to ask the applicant and developer to commit to selecting responsible contractors, architects, and engineers; require contractors to select responsible subcontractors; and provide CB6 with documentation of compliance, when determined; and
4. consider such information and the track records of the applicant and the developer, contractor, subcontractors, architect, and engineer, in each case to the extent that they relate to safety issues, in determining whether the intended course of action may be detrimental to the public welfare or instead likely to secure public safety and minimize adverse effects on our district.

To facilitate the Large Project Review Process, Community Board 6 will ask the applicants and developers to submit documentation to the Community Board documenting their track records and commitment, and that of their contractor, major subcontractors, architect, and engineer in the areas above. Where possible, we will accept and consider reports, licensing, registration, or other information provided by the relevant parties to the City of New York, or collected and provided by the City. In each of these areas, we are looking for both a documented track record, and a stated commitment to operate in a responsible way on the project.

Flexibility in documenting a multi-year track record will be given to new businesses which provide evidence of commitment to these Responsible Development Standards, but do not yet have a multi-year track record. Construction managers (and others who shall perform a role similar to, or in supervision of, a general contractor) should be treated as contractors for all purposes under these Responsible Development Standards.

CB6 shall make a form with a checklist for this policy available on its website, so that applicants and developers can learn of it as early as possible, and shall advise applicants of this policy at the initial meeting (if one is held prior to the official review process), or as soon as we receive notice that an application has been filed with a public agency. Applicants and developers should submit their responses in writing at least one (1) week prior to the Land Use or other CB6 committee meeting at which the project will be reviewed, including copies of all responses and attachments by email, so that they may be forwarded easily to committees.

If information is not supplied, we may consider that failure in making our findings and recommendations.

Responsible Development Standards

Category	Evidenced by:
Experience/ capacity	<ul style="list-style-type: none"> • Track record of successfully performing the services at issue, on projects of similar size and scope. • References from other communities that provide evidence of past compliance with these standards.
Compliance with local laws	<ul style="list-style-type: none"> • A history (generally of at least five years) of, and a commitment to, complying with applicable public laws, including health and safety, wage & hour, insurance and bonding, and anti-discrimination/equal employment opportunity laws.
Good neighbor policies	<ul style="list-style-type: none"> • A commitment to meeting with neighboring residents and businesses on a regular basis to discuss and plan schedules, equipment routings, traffic impacts, and other disruptions, and the handling of complaints. • A 24-hour contact number for neighbors • A commitment to notify local precincts of street closures well in advance. • References from other communities that provide evidence of past compliance with these standards.
Construction safety	<ul style="list-style-type: none"> • A track record of, and commitment to, operating worksites that are safe and healthy, for both workers and neighbors, as evidenced by OSHA-10 (all workers) and OSHA-30 (supervisors) forms, as well as other information provided by the City, State, or Federal government.
Wage & benefits standards	<ul style="list-style-type: none"> • A track record of, and a commitment to, paying prevailing wages and benefits, area-standard wages & benefits, or living wages & benefits, as applicable.
Hiring & training	<ul style="list-style-type: none"> • Documented participation (and commitment to continued participation) in New York State-certified apprenticeship programs in trades in which they are working. • A track record of, and commitment to, giving local residents, women, and minorities an affirmative opportunity to obtain and retain employment.
Disclosure	<ul style="list-style-type: none"> • Willingness to disclose the necessary information for the community board to consider the applicant/developer/contractor's track record and commitment to these Responsible Development Standards.
Union contractor or comparable safety records	<ul style="list-style-type: none"> • Establishment of safe worksites, appropriate safety training, and fair worker treatment (including an opportunity for workers to organize and express grievances), to ensure compliance with safety rules and safe working conditions.
Locally-owned and locally-based businesses	<ul style="list-style-type: none"> • Support the use of local contractors and other businesses to maximize the positive economic impact of development investment in our community, and make it more likely that local employees will be hired.
Affirmative opportunities	<ul style="list-style-type: none"> • Support women-owned, minority-owned and veteran-owned, developers, contractors, subcontractors, architects, engineers, and other businesses.
Affordable housing	<ul style="list-style-type: none"> • Wherever possible, incorporate affordable housing to the greatest extent possible.
Contextual development; commercial and residential streets	<ul style="list-style-type: none"> • Development should fit in with its surroundings in a reasonable manner. • We encourage active streetscapes on commercial blocks, and encourage the maintenance of quiet residential side streets.
Environmental Impact/Sustainability	<ul style="list-style-type: none"> • Compliance with the standards of applicable green rating programs, such as the Energy Star Plus Indoor Air Package; Energy Star Advanced New Home Construction; Enterprise Green Communities Initiative; NAHB Green Building Standards; and/or the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Certification program.