

RESPONSIVENESS SUMMARY
FOR
PROPOSED AGREEMENT BETWEEN ENVIRONMENTAL PROTECTION AGENCY
AND NEW YORK CITY RELATED TO SITING AND DESIGN OF GOWANUS CANAL
SEWAGE AND STORM WATER RETENTION TANKS
GOWANUS CANAL SUPERFUND SITE
BROOKLYN, KINGS COUNTY, NEW YORK

INTRODUCTION

This Responsiveness Summary provides a summary of comments and concerns received during the public comment period associated with the proposed agreement between the Environmental Protection Agency (EPA) and New York City (NYC) for siting and designing the Gowanus Canal outfall RH-034 sewage and storm water (Combined Sewer Overflow or “CSO”) retention tank and provides EPA’s responses to those comments and concerns. All comments received during the comment period and summarized in this document have been considered in EPA’s final decision to enter into the agreement with NYC.

SUMMARY OF COMMUNITY RELATIONS ACTIVITIES

The 2013 Record of Decision (ROD) for the Gowanus Canal site called for, among other things, the construction of CSO retention tanks to significantly reduce CSO discharges from two outfalls in the upper portion of the Canal. These discharges are not being addressed by current NYC upgrades to the sewer system. Without these controls, contaminated sewage discharges would recontaminate the Canal after its cleanup. In its cleanup plan, EPA estimated that a reduction of 58% to 74% of these discharges will be needed to maintain the effectiveness of the cleanup, and the new tanks are being designed to achieve that goal.

EPA negotiated an agreement with NYC that, among other things, selects the location for the largest of the two CSO retention tanks and provides for the preparation of that site, the design of that tank, and a schedule for the work. Under the proposed agreement, while NYC will continue with the design for placing the eight million gallon tank on two private parcels, 234 Butler Street and 242 Nevins Street (hereinafter, “Head-of-Canal”), it will concurrently prepare a design for the placement of the CSO retention tank at the Thomas Greene Park (“Park”) as a contingency. NYC will be required to place the tank in the Park location if it is not able to acquire the land at the Head-of-Canal location by April 2020. The proposed agreement also calls for the acquisition of 270 Nevins Street to be used as a staging area.

Prior to finalizing the agreement with NYC, EPA solicited public comment on the proposed agreement. A press release was issued to the media and the Gowanus Canal email list on April 14, 2016, announcing a public comment period from April 14, 2016 to May 16, 2016 and a public meeting on April 25, 2016. The public meeting was conducted at P.S. 32 located at 317 Hoyt St., Brooklyn, NY to explain the work being secured under the proposed agreement. At the public meeting, a request to extend the public comment was made. EPA agreed to extend the public comment period to May 31, 2016. On April 26, 2016, a press release was issued to the media and the Gowanus Canal email list extending the public comment period to May 31, 2016.

See Appendix 1 for press releases announcing the comment period and the comment period extension and Appendix 2 for the public meeting transcript.

On April 26, 2016, EPA met with the Gowanus Canal Community Advisory Group (“CAG”) to further discuss the proposed agreement.

In a May 27, 2016 email, Craig R. Hammerman, District Manager, Brooklyn Community Board 6, indicated that Brooklyn Community Board 6 had only recently learned of the proposed agreement with NYC and asked that it be afforded the opportunity to submit comments by June 10, 2016. In a May 27, 2016 email, Walter Mugdan, Director, Emergency & Remedial Response Division, replied that EPA held a well-publicized and very well attended public meeting on April 25, 2016. He stated further that in response to a request at the meeting for an extension of the comment period, it was extended 15 days to May 31, 2016. He also noted that EPA attended the April 26, 2016 CAG meeting and discussed this proposal at considerable length and that these two meetings followed earlier meetings at which EPA had discussed the issues in quite a bit of detail, including the October 26, 2015 Community Board 6 meeting and the January 19, 2016 CAG meeting. Under the circumstances, and given the importance of finally bringing this matter to a resolution, Mr. Mugdan indicated that EPA would not extend the comment period further.

SUMMARY OF COMMENTS AND RESPONSES

Comments were received at the public meeting and in writing. Written comments in the form of letters and emails were received from:

- April 27, 2016 email from Marion Yuen
- April 29, 2016 letter from Patrick O’Donnell
- May 3, 2016 email from Abigail Bedrick
- May 3, 2016 email from Talya Boston
- May 3, 2016 email from Evonne Cho
- May 5, 2016 email from Tricia McGinnis

- May 23, 2016 email from Sal Tagliavia
- Two May 23, 2016 emails from Meredith Davis
- May 24, 2016 email from Katia Kelly
- May 24, 2016 email from Carroll Gardens-Gowanus Coalition for Respectful Development
- May 25, 2016 email from Mark Shames
- May 25, 2016 email from Linda Mariano on behalf of Friends and Residents of Greater Gowanus
- May 26, 2016 email from Rita and Gerry Miller
- May 26, 2016 email from Carey Ascenzo
- May 26, 2016 email from Frederic Gindrey
- May 26, 2016 email from Lucy DeCarlo, Rita Miller, and Triada Samaras on behalf of Carroll Gardens-Gowanus Coalition for Respectful Development
- May 26, 2016 email from Warren Cohen
- May 26, 2016 email from Triada Samaras
- May 26, 2016 letter from David Meade, Executive Director, Southwest Brooklyn Industrial Development Corporation, and Paul Basile, President, Gowanus Alliance
- May 30, 2016 email and letter from Marlene Donnelly, Friends & Residents of Greater Gowanus, Officer
- May 31, 2016 email from Ashley Thompson, Vice President, Capalino+Company and letter from Scott Levy, Founder and President, Eastern Effects, Inc.
- May 31, 2016 email and letter from Jerry Armer, Gowanus community; Paul Basile, Gowanus Alliance; David Briggs, Gowanus by Design; Diane Buxbaum, local resident and conservation chair Sierra Club, New York City Group; Justin Collins, Director of Strategic Partnerships & Development, Southwest Brooklyn Industrial Development Corporation; Michelle de la Uz, Fifth Avenue Committee; Eymund Diegel, Gowanus resident; Marlene Donnelly and Benjamin Ellis, Gowanus community, local business owner, and members of Friends and Residents of Greater Gowanus; George Fiala, Gowanus community; Rafael Gomez Luna, Gowanus community; Katia Kelly, Gowanus community; Louis Kleinman, Gowanus community; Stephen Kondaks, Gowanus community; Sayar Lonial, Gowanus community; Linda and Joseph Mariano, Gowanus community members and members of Friends and Residents of Greater Gowanus; Margaret Maugenest, Gowanus community; Rita Miller, Gowanus community and CORD Co-Founder; Lizzie Olesker & Blaise Corrigan, Gowanus community; Andrea Parker, Gowanus Canal Conservancy; Mike Racioppo, Gowanus community; Peter Reich, 280 Nevins Street Tenants; Triada Samaras, Gowanus community and Carroll Gardens-Gowanus Coalition for Respectful Development Co-Founder; Sue Wolfe, Gowanus community and Friends of Thomas Greene Park; and Maryann Young, Gowanus community on behalf of The Gowanus Canal

Community, a consortium of residents, community organizations, and key stakeholders

- Two May 31, 2016 emails from Marlene Donnelly, Gowanus resident and local business owner and officer with Friends and Residents of Greater Gowanus
- May 31, 2016 email from Maryann Young, owner/resident Carroll Gardens and Carroll Gardens-Gowanus Coalition for Respectful Development Alternate, CAG
- May 28, 2016 email from Eunice and Joachim Auer
- May 29, 2016 email from Linda Mariano and Margaret Maugenest
- May 29, 2016 email from Peter Reich, Karen Gibbons, Anne Twitty, David Waitz, Fanni Kozek, Janice Everett, William Touchet, Denise Touchet, Margaret Maugenest, and David Schlegel for the 280 Nevins St. Tenants Association
- May 30, 2016 email from Diane D. Buxbaum, MPH, Conservation Co-Chair, NYC Group of the Sierra Club
- May 31, 2016 email from Mark Karwowski
- May 31, 2016 email from Rick Luftglass
- May 31, 2016 email from Sabine Aronowsky transmitting a Friends of Thomas Greene Park comment letter and petitions
- May 31, 2016 letter from Sue Wolfe, President, Friends of Thomas Greene Park and Sabine Aronowsky, Friends of Thomas Greene Park Board, Member and Organizational Representative, Friends of Thomas Greene Park, EPA Region 2 Gowanus Canal Superfund Community Advisory Group, on behalf of Friends of Thomas Greene Park
- May 31, 2016 email from George Fiala providing a copy of an article written by Mr. Fiala for The Red Hook Star-Review
- May 31, 2016 email from David Briggs transmitting a letter
- May 31, 2016 email from Sue Wolfe, forwarding Sabine Aronowsky's May 31, 2016 email.
- May 31 email from Christina Duque-Estrada transmitting a May 31, 2016 letter from Fox21 Television Studios
- May 31, 2016 email from Lucy DeCarlo, Rita Miller, and Triada Samaras, Co-Founders, CG CORD/Carroll Gardens-Gowanus Coalition for Respectful Development
- May 31, 2016 email from Mark Shames on behalf of Deb Scotto
- May 31, 2016 email from Triada Samaras
- May 31, 2016 email from Jared Della Valle transmitting a letter
- May 31, 2016 email from Al Tagliavia
- May 31, 2016 email and letter from Theodore O. Leissing, Manager - Long Island/New York City Area, Site Investigation & Remediation, National Grid
- May 31, 2016 email from Stephen Levin, Councilmember, 33rd District
- May 31, 2016 email from Patricia Constantino

- May 31, 2016 email from Michael Stinson Chief of Staff, Assemblymember Jo Anne Simon, New York State Assembly-District 52, transmitting a letter from Assemblymember Simon
- Two May 31, 2016 emails from David Briggs, AIA LEED AP, Executive Director, Gowanus by Design, transmitting a letter from Jerry Armer, Gowanus community; Paul Basile, Gowanus Alliance; David Briggs, Gowanus by Design; Diane Buxbaum, local resident and conservation chair Sierra Club, New York City Group; Justin Collins, Director of Strategic Partnerships & Development, Southwest Brooklyn Industrial Development Corporation; Michelle de la Uz, Fifth Avenue Committee; Eymund Diegel, Gowanus resident; Marlene Donnelly and Benjamin Ellis, Gowanus community, local business owner, and members of Friends and Residents of Greater Gowanus; George Fiala, Gowanus community; Rafael Gomez Luna, Gowanus community; Katia Kelly, Gowanus community; Louis Kleinman, Gowanus community; Stephen Kondaks, Gowanus community; Sayar Lonial, Gowanus community; Linda and Joseph Mariano, Gowanus community members and members of Friends and Residents of Greater Gowanus; Margaret Maugenest, Gowanus community; Rita Miller, Gowanus community and CORD Co-Founder; Lizzie Olesker & Blaise Corrigan, Gowanus community; Andrea Parker, Gowanus Canal Conservancy; Mike Racioppo, Gowanus community; Peter Reich, 280 Nevins Street Tenants; Triada Samaras, Gowanus community and Carroll Gardens-Gowanus Coalition for Respectful Development, Co-Founder; Sue Wolfe, Gowanus community and Friends of Thomas Greene Park; and Maryann Young, Gowanus community on behalf of The Gowanus Canal Community, a consortium of residents, community organizations, and key stakeholders
- May 31, 2016 letter from Mike Racioppo, Executive Director, Gowanus Canal Community Development Corporation
- May 31, 2016 letter from Jeffrey Paul Bennett, Executive Director, New York & Chief Deputy Counsel, SAG-AFTRA
- May 31, 2016 letter from Genevieve DeLaurier, Managing Director, Rooftop Films
- May 31, 2016 letter from Rob York, Director of Media Production and Distribution, Scenarios USA
- May 31, 2016 letter from Andy Lassman, Work Based Learning Coordinator, Production Teacher, Academy For Careers in Television and Film
- May 31, 2016 letter from Steven Hagerman
- May 31, 2016 email from Joe Weisberg and Joel Fields, Executive Producers, The Americans
- May 31, 2016 letter from Lowell Peterson, Executive Director, Writers Guild of America, East
- May 31, 2016 letter from Mike Jackman, FilmNation Entertainment, Co-Chair, New York Production Alliance
- May 31, 2016 email from David Congdon and Nancy Golladay

- May 31, 2016 email and letter from Michelle de la Uz, Executive Director, Fifth Avenue Committee, Inc.
- May 31, 2016 email from John Parker transmitting comments from Riverkeeper
- May 31, 2016 email from Oscar Jonas, Community Liaison, Senator Velmanette Montgomery, transmitting comments from Senator Montgomery
- May 31, 2016 email from David Rosen
- May 31, 2016 email from Owen Foote, Gowanus Dredgers Canoe Club
- May 31, 2016 email from Michael Higgins, community organizer, transmitting a letter from Families United for Racial & Economic Equality
- May 31, 2016 email from Peter Reich
- May 31, 2016 email from Anthony Marchese
- June 1, 2016 letter from Steven Mesner, Co-Producer
- June 7, 2016 letter from Edie Falco
- Undated letter (received June 8, 2016) from Thomas Burr Dodd, President, Brooklyn Fire Proof, Inc.

The written comments submitted during the public comment period can be found in Appendix 3.

On May 31, 2016, Friends of Thomas Greene Park submitted a petition with 248 signatures. The petition supports the proposed agreement, because it would reduce the length of time that the Park would be disrupted and it would present an opportunity to augment open space. The petition also asked that EPA ensure that the responsible parties conduct a timely cleanup of the Canal and the Park, guarantee continuity of Park amenities and services, provide clear requirements for the temporary Park and Park reconstruction and allow community participation in the planning of the temporary Park and Park reconstruction.

On May 31, 2016, Friends of Thomas Greene Park submitted a petition with individual comments from 278 parties and opposing the placement of a CSO retention tank under the Douglass and Degraw community pool and asking for guarantees that any displacement or disruption to the Thomas Greene Park and Double D Pool deemed necessary as a result of forthcoming cleanup efforts be met with enforceable measures to provide for the funding and seamless transition of the Park facilities (pool, playground, skate park, basketball courts) and services (the School Food Lunch, Learn to Swim, cooling centers, etc.) at a nearby temporary location, and full restoration and permanent replacement of all the community services and Park amenities.

On May 31, 2016, Friends of Thomas Greene Park submitted a petition with individual comments from 27 parties and expressing support for the proposed agreement because it should reduce the length of planned disruption for remediation efforts within the Park, avoid any permanent alienation of Park space and present an opportunity to increase the parkland. The petitioners also ask EPA to continue to hold NYC, National Grid, and all

other responsible parties accountable to ensure a timely cleanup of the Canal and Park and to guarantee continuity of the Park's amenities and services. They urged EPA to include clear requirements for a temporary Park and Park reconstruction, as well as community participation in those processes.

Five hundred fifty-one employees from the film and television industry, 54 local small business owners, 140 representatives of film production companies, and 768 individuals signed four petitions that object to utilizing the Eastern Effects' soundstage as a staging area.

The petitions can be found in Appendix 4.

A summary of the comments provided at the public meeting and in writing, as well as EPA's responses to them, are provided below.

Tank Location

Comment #1: Expressing concern that placement of the tank at the Head-of-Canal location would be more complex, more costly, and would delay the completion of the tank construction, seven commenters encouraged the construction of the tank in the Park as was originally proposed. Two commenters opined that the New York City Department of Environmental Protection (DEP) is trying to delay the Superfund cleanup by using eminent domain to acquire 234 Butler Street and 242 Nevins Street for the RH-034 CSO retention tank. One of these commenters expressed concern that the Regional Administrator's support for this location is not based on science. A commenter questioned the logic of taking private properties against the wishes of the owners when other properties that are for sale exist across the street. Four commenters suggest that this effort is simply a land grab by NYC that is tied to an imminent rezoning of the Gowanus corridor. Two other commenters opine that the acquisition of the Head-of-Canal through eminent domain is a mechanism for doing an end-run around the rezoning process.

Response #1: While EPA believes that construction of the RH-034 CSO retention tank at the Park could be done more quickly and at less expense than at the Head-of-Canal location, EPA also understands NYC's strong policy reasons for avoiding the longer disruption and potential permanent loss of space at the Park were the tank and head house to be built there. NYC asserted that if the tank were going to be placed into the Park, then the head house,¹ would be located above the tank in the Park and would permanently occupy a segment of space in the Park. EPA also recognizes that building the tank at the Head-of-Canal location would result in creation of additional open space for the community.

¹ An aboveground structure that houses screens to remove floatables from incoming wastewater, machines to remove and dewater grit that accumulates in the tank, carbon filtration odor control, and truck access points for deliveries and solids disposal.

While EPA assumed locations for the CSO retention tanks in its ROD, EPA gave NYC the opportunity to identify the tank locations. NYC identified properties that will likely require utilizing eminent domain to acquire.

Alternative Tank Locations

Comment #2: An owner of one of the properties proposed for the RH-034 CSO retention tank noted that while DEP Commission Emily Lloyd and Parks Department Commissioner Mitchel Silver met with EPA Regional Administrator Judith Enck in support of their proposal to construct the tank on his property, he was not given the same opportunity. He noted that he and the other owners have owned these properties for over 45 years and they will not willingly relinquish them. The development plans for these properties will generate money for NYC. Several commenters noted that there are other properties on Nevins Street that are for sale, asking why those properties were not selected, rather than property that the owners do not want to be taken? Another commenter expressed dismay that private properties are to be taken by eminent domain when there are properties for sale right across the street.

Another commenter suggested that if DEP wants to increase the parkland, it should purchase either 233-239 Nevins Street or 537 Sackett Street, both of which are currently for sale and are located adjacent to the parcels that NYC plans on acquiring.

Response #2: As noted in Response #1, above, EPA gave DEP the opportunity to identify the CSO retention tank locations. While there are other properties that could be used, according to DEP, the proximity of the Head-of-Canal location to the RH-034 outfall significantly reduces the need to install piping in streets that already have significant utilities present.

Excessive Cost and Time Related to Head-of-Canal Location

Comment #3: A commenter noted that Councilman Brad Lander recently indicated that \$510 million was allocated by NYC for the RH-034 CSO retention tank project. The commenter noted that this amount is greater than the ROD-estimated cost of the entire remedy of \$506 million. The commenter opined that that is an excessive amount of money being spent to prevent an extended temporary loss of the use of the Park.

Riverkeeper noted that EPA's preference for the Park location was based on its assessment that construction of the CSO retention tank at the Head-of-Canal location entails technical difficulties and associated increased costs and delays.

Two commenters noted that EPA has stated that the placement of the CSO retention tank at the Park would be faster, less expensive, and less complicated than the placement of the tank at the Head-of-Canal. In addition, the commenters noted that EPA has stated that the contamination underlying the pool needs to be remediated. Therefore, the Park

will be disrupted regardless of where the CSO retention tank is sited. That being the case, the commenter asked why EPA is considering siting the CSO retention tank at the Head-of-Canal.

Another commenter noted that NYC, which is a major potentially responsible party (PRP) for the site, has opposed the Park location ostensibly because it would require the building of a head house in the Park. Instead, NYC has proposed, and EPA has now tentatively agreed, to take by eminent domain two properties for the location of the CSO retention tank. The commenter noted that NYC's motives are unclear. It fought against the designation of the Canal as a Superfund site and has subsequently worked to delay the cleanup as long as possible. Another commenter opined that the use of eminent domain is inappropriate in this situation, when other sites are viable alternatives.

Another commenter recollected that when the Canal was nominated to the Superfund National Priorities List (NPL), NYC, as well as many business owners, residents, and local organizations claimed that listing the site on the NPL would delay the cleanup, cost too much, endanger property and business, and adversely affect local employment. The commenter opined that the proposed agreement, which is supported by NYC and many of the same people and organizations that opposed the NPL listing, will ultimately result in exactly what the naysayers predicted. This commenter, Riverkeeper, and another commenter note that the cleanup will take longer, cost taxpayers much more money, properties will be seized, jobs will be lost, and businesses will leave. Riverkeeper also opined that the proposed agreement is not in the public interest for the reasons noted above and because the penalty provisions of the proposed agreement will further increase the financial burden on NYC.

Riverkeeper opined that the proposed agreement represents a needless delay to the implementation of the remedy that the Canal and the community cannot afford, recommending that EPA amend the proposed agreement to require that the Park site be selected for the RH-034 CSO retention tank and that NYC and National Grid begin site preparation as soon as possible.

Riverkeeper also noted that EPA has repeatedly expressed the opinion that the Park would be the quickest, most feasible, and least costly site choice. EPA has, however, acceded to NYC's preference to site the CSO retention tank at the Head-of-Canal, allowing NYC four years to acquire the site. Once acquired, National Grid and NYC will have approximately three additional years to prepare and excavate the hole for the tank. Adding the time necessary to construct the tank, the commenter noted that the tank would not be in service until many years after the completion of the dredging of the Canal, allowing recontamination of the areas that were dredged. In summary, the proposed agreement binds EPA to approving a less effective CSO retention tank in a more difficult location, for higher costs, and no benefit.

Riverkeeper opined that because a CSO retention tank at the Head-of-Canal cannot be built nor be operational within the timeframes and targets of the ROD, EPA's decision to accept this location does not comply with the terms of CERCLA and the ROD. Further,

eliminating the Park site without a clear and convincing technical reason, given that it will mean delays in remediation and knowing that it will cost potentially hundreds of millions more than planned does not comport with CERCLA, EPA's policies and positions for other Superfund Sites, and common sense.

Riverkeeper noted that a Park site CSO retention tank would lead to a discrete, single-block removal and remediation process with full Park replacement facilities for the community in five years. A Head-of-Canal location would require at least seven years of acquisition, preparation, and excavation before construction begins on the CSO retention tank. The Head-of-Canal location also requires two years of Park excavation contemporaneously with the Canal-side work. Therefore, if NYC is worried about the length of disruption to be caused by CSO retention tank work, the Head-of-Canal location option is clearly the worst-case scenario.

Response #3: NYC, which is entering into this agreement with EPA voluntarily, has, on its own accord, selected the Head-of-Canal location for the tank and is fully cognizant of all of the pros and cons. EPA presumes that NYC has assessed all factors, including the loss of jobs, tax revenue, and the other financial considerations, and has concluded that this agreement is beneficial to NYC.

The ROD estimated that an eight-million gallon tank and a four-million gallon tank would be required to address CSOs from outfalls RH-034 and OH-007, respectively. The ROD estimated the cost of constructing the eight-million-gallon CSO retention tank at the Park location to be \$46,429,000. The cost of NYC's response actions under the proposed agreement is estimated by EPA to be \$230 million, and NYC estimates it will cost \$510 million to construct the CSO retention tank. A substantial portion of the increase in the cost estimate appears to be attributable to acquiring the property at the Head-of-Canal. EPA is not relying upon NYC's cost estimates. While EPA believes that construction of this tank at the Park could be done more quickly and at less cost than at the Head-of-Canal location, EPA understands NYC's strong policy reasons for avoiding the longer disruption and potential permanent loss of space at the Park were the tank and the associated infrastructure to be built there. EPA also recognizes that building the tank at the Head-of-Canal location would result in the creation of additional open space for the community. EPA's acceptance of NYC's strong preference for the Head-of-Canal location resulted in NYC's willingness to consent to entering into an agreement with EPA that includes a number of provisions that EPA considers to be of considerable importance and value in furthering the Agency's objectives and achieving the environmental and public health benefits that formed the basis for the EPA's ROD.

EPA acknowledges that the Head-of-Canal location presents additional technical challenges in constructing the CSO retention tank, additional costs associated with land acquisition, and a lengthened schedule.

While the time it will take to build the RH-034 CSO retention tank will be lengthened considerably when compared to the time it would take to build the tank at the Park, as envisioned in the ROD, this is not true for the OH-007 CSO retention tank, which is covered by the unilateral administrative order (UAO) that EPA issued to NYC after the ROD was signed. EPA anticipates that construction of the OH-007 CSO retention tank can be completed in a timeframe more closely corresponding to the timeframe for the completion of the dredging and capping remedy in the middle of the Canal where this CSO retention tank will be located.

Capital Plan

Comment #4: A commenter noted that the cost to acquire the private property for the construction of the CSO retention tank and the construction of the tank would come from the water rate, which is paid for by the water customers. The commenter asked whether or not the cost was incorporated into the capital plan.

Response #4: NYC has a ten-year capital plan that is updated every two years. When a commitment is legally made to carry out a certain capital project, at that point the ten-year plan has to include the cost estimate for that activity. EPA believes that the costs for this tank were included in the ten-year plan issued in April 2016.

Excessive Delays Attributable to Head-of-Canal Location

Comment #5: A commenter expressed concern about NYC's intention to acquire the Head-of-Canal property through eminent domain and the delay that will be attributable to the Uniform Land Use Review Procedure (ULURP) and City Environmental Quality Review (CEQR) processes. A commenter suggested that while eminent domain litigation seems inevitable given the conflict between NYC and the property owners and the lessee at the "Eastern Effects" site, and that commenter, as well as two other commenters, suggest that the property acquisition process be expedited through the use of federal authorities, rather than through the ULURP process. A third commenter opined that EPA has been unduly influenced by NYC's assertion that using the Park for the siting of the CSO retention tank would constitute park alienation.

Response #5: The placement of the tank at the Head-of-Canal location would require NYC to acquire privately-owned land, possibly through condemnation. NYC has informed EPA that it will carry out the ULURP and CEQR processes before initiating acquisition or condemnation proceedings. The condemnation process is subject to litigation prior to the time that NYC can take title to condemned properties, and such litigation will likely cause a delay compared with the Park location.

The use of the Park for the RH-034 CSO retention tank is considered by NYC to constitute alienation of parkland. Parkland alienation would normally require NYC to follow the

ULURP and CEQR process and it would require approval by the State legislature. If carried out in furtherance of a Superfund cleanup, it is EPA's view that these procedural steps would not be needed on land NYC already owns. NYC does not agree and would plan to follow the ULURP and CEQR processes for either location.

The Head-of-Canal location selection decision is contingent on NYC meeting certain conditions that are detailed in the proposed agreement. If these conditions are not met, EPA can require NYC to construct the CSO retention tank at the Park. Under the proposed agreement, NYC will work concurrently on tank designs for both locations, as a contingency.

Delays associated with the eminent domain process would primarily be attributable to litigation. City officials have indicated to EPA that there are two possible circumstances in which litigation can take place in the eminent domain proceeding. One is if the administrative process (*i.e.*, ULURP and CEQR) was not properly followed. The schedule in the order allows EPA to require NYC to construct the CSO retention tank at the Park if this litigation takes longer than four years. The second opportunity for litigation is after NYC exercises eminent domain. At the moment that the exercise of eminent domain occurs, NYC owns the property and it has to put up a certain percentage of the assessed value of the property. If the landowner disputes the assessed value, there can be litigation about the value. This litigation would not affect the transfer of title to NYC. The title will have change from the landowner to NYC at the moment NYC exercises eminent domain. There can be arguments for a long time thereafter about the actual amount of compensation. This would not slow down the Superfund project.

Comment #6: A commenter asked for an assurance that the ULURP process that would be required as part of eminent domain or voluntary acquisition would be specific to the Head-of-Canal properties and would not be expanded to include area-wide rezoning.

Response #6: EPA has no role in NYC's rezoning process. Hypothetically, NYC could try to expand the ULURP process to include area-wide rezoning. However, because it will be required to adhere to the schedule for completing the ULURP process in the proposed agreement, if NYC goes through the process as a general area-wide rezoning, it is highly likely that the deadline will not be met. Therefore, it is unlikely that the ULURP process will be expanded.

Alienation of Parkland

Comment #7: A commenter asked if the State legislature is involved in the alienation of parkland.

Riverkeeper noted that the City is concerned that the potentially permanent loss of park space will delay the entire remedy because of New York State's parkland alienation process. While such efforts normally require approval by the State legislature, EPA has indicated that it does not agree with this conclusion, noting that if it is carried out in

furtherance of a Superfund cleanup, it is EPA's view that such approval would not be needed. Disagreeing, the City suggested avoiding alienation with the Head-of-Canal location which requires, instead, an entire eminent domain process (including land use review and environmental impact review). Thus, suggested Riverkeeper, EPA should dismiss the City's concerns and site the CSO retention tank under the Park because, as EPA argues, there is no cause for concern that the Park site would result in alienation process delays.

Response #7: While State Legislature approval of the alienation of parkland typically applies, EPA has taken the position that if the RH-034 CSO retention tank were placed in the Park, it would be in furtherance of a federal Superfund mandate; and, therefore, there would be no need to go to the State Legislature. It is, however, possible (perhaps, even probable) that there could be litigation over this question. NYC's disagreement with EPA's position regarding the need to bring the matter to the State Legislature could complicate such litigation.

Nonetheless, for the reasons noted in Response #1, above, EPA has accepted NYC's decision to use the Head-of-Canal location for the RH-034 CSO retention tank.

Exposure to Contaminants at the Park

Comment #8: A commenter noted that NYC chose to build the Park and pool on a heavily-contaminated former manufactured gas plant (MGP) site, thereby exposing generations of children to possible harm.

Response #8: The former Fulton MGP State Superfund site remedial investigation (RI) report prepared by National Grid under New York State Department of Environmental Conservation (NYSDEC) oversight assessed current and future human health risks associated with the site. The RI report concluded that under current conditions, the contaminated soils pose no risk to human health because the contamination is located underground and is, thus, not readily accessible. The RI report also concluded that there are potential future pathways by which human receptors could come into contact with contaminated soils and groundwater, soil vapor, and indoor air. In addition, utility and construction workers may come into contact with contaminants in subsurface soils and beneath the streets during excavation activities.

Pathogen Exposure Risk

Comment #9: Riverkeeper noted that in the ROD, EPA identified a screening level risk assessment for CSO pathogens that was performed by National Grid. This risk assessment found significant risk to child and adult recreational users and workers from CSO-related pathogen exposure. By allowing such significant delays in tank construction,

Riverkeeper opined that EPA is allowing continued potential pathogen exposure of the public.

Response #9: EPA agrees that by reducing CSO discharges, pathogen exposure levels will be significantly reduced. In the interim, exposures to pathogens in the Canal waters should continue to be avoided.

Park Disruption

Comment #10: A commenter asked if the “green” portion of the Park (the area closest to Third Avenue) will be affected by remedial activities.

Response #10: The green part of the Park is located to the east of the area that will be excavated to remove the coal tar and where the CSO retention tank might be located if that location is selected. While this portion of the Park would be unaffected in the sense that there would be no remedial measures taken, because of its proximity to the active work area, the work might be too disruptive and could raise safety issues if it were to remain open during construction.

Comment #11: A commenter opined that it would be an insult to those that use the pool for the CSO retention tank to be constructed under the pool. In support of protecting the Park, another commenter provided a link to an April 14, 2016 Harvard T.H. Chan School of Public Health, Department of Epidemiology study entitled *Exposure to Greenness and Mortality in a Nationwide Prospective Cohort Study of Women*. This study concludes that higher levels of green vegetation were associated with decreased mortality; suggests pursuit of policies to increase vegetation may provide opportunities for physical activity, reduce harmful exposures, increase social engagement, and improve mental health; and while planting vegetation may mitigate effects of climate change, evidence of an association between vegetation and lower mortality rates suggests it also might be used to improve health.

Response #11: The Park is part of the former Fulton MGP State Superfund site. Gas storage tanks and other operations were located on the parcels from 1879 until approximately 1938. The coal tar at the Park parcel and surrounding parcels is a major ongoing source of contamination to the Canal. Although the contamination poses no risk to current users of the Park, any future renovation project in this area that involves extensive excavation would encounter contaminated soils and in some places could encounter soils with free liquid tar. NYSDEC selected a remedy for the former Fulton MGP facility that calls for the excavation and/or in-situ stabilization of source areas under the Park. Placing the CSO retention tank in the excavation after the removal of the contamination would significantly reduce the cost of the remedy. Placing the CSO retention tank in the excavation after the removal of the contamination would significantly

reduce the cost of the Superfund remedy. There are a number of instances throughout the country where recreational facilities have been constructed over sewage-related facilities. Whether the CSO retention tank is constructed at the Head-of-Canal location or under the pool, the pool will need to be dismantled so that the underlying contaminated soil can be removed. The Park, including the vegetation, would be restored once the work has been completed.

Permanent Relocation of Pool to Head-Of-Canal

Comment #12: A commenter suggested that the pool be permanently relocated on top of the CSO retention tank at the Head-of-Canal.

Response #12: EPA anticipates that the excavation of the Park, which is going to be required to remove the coal tar-contaminated soil regardless of where the CSO retention tank is placed, will be completed much sooner than the building demolition and soil excavation and deep foundation and associated elements of the tank work at the Head-of-Canal and, thus, the replacement pool could be provided much sooner than if it were at the Head-of-Canal location.

Comptroller Approval

Comment #13: Considering the significant cost to acquire the properties at the Head-of-Canal, a commenter asked about the role that the NYC Comptroller will play in the process. Another commenter asked what would happen if the Comptroller does not support the proposed expenditure.

Response #13: When EPA was negotiating the proposed agreement with DEP, DEP was initially under the impression that the final agreement would need to be reviewed by the Comptroller's office. However, based upon advice from DEP's Law Department, DEP has concluded that Comptroller approval is not necessary.

CSO retention tank Sizes

Comment #14: The ROD estimated that an eight-million gallon tank and a four-million gallon tank would be required to address CSOs from outfalls RH-034 and OH-007, respectively. Recognizing that NYC has publically proposed smaller capacity CSO retention tanks, a commenter expressed concern that the proposed agreement does not specify the size of the two CSO retention tanks.

Response #14: EPA has determined that the sizes of the two CSO retention tanks will be eight million and four million gallons, respectively. The DEP Commissioner has accepted EPA's decision. EPA has memorialized this decision, and DEP's acceptance

thereof, in a memorandum that is part of the Administrative Record associated with this matter.

Tank Construction Enforcement Agreement

Comment #15: A commenter expressed concern that while the proposed agreement addresses the performance of the design of the RH-034 CSO retention tank, it does not cover the construction of the tank. Another commenter noted that a construction completion date for the tank is not provided in the order.

Response #15: The excavation of the contaminated soils in the CSO retention tank footprint will be designed and implemented as a removal action. Such removal action decisions can be memorialized with a consent order. While the design of a long-term remedy can be performed under a consent order, under the Superfund law, only judicial consent decrees can be used to implement remedies that are performed consensually. The settlement is then presented to the United States District Court and is subject to public comment. Ultimately, the court, if it agrees, enters the settlement as an order of the court. If a consensual agreement cannot be achieved, EPA has the authority to issue a UAO. The construction of and schedule for the CSO retention tank will be addressed in a judicial consent decree or UAO.

Comment #16: A commenter asked about the timeframe for negotiating a judicial consent decree with NYC to construct the CSO retention tank.

Response #16: : It is EPA's expectation that negotiations related to the dredging, as well as the tank construction, will commence in late 2016 or early 2017, so that the settlement is negotiated and then approved by the federal court in time for dredging to commence in early 2018.

RH-034 CSO Retention Tank Setback

Comment #17: At the former Fulton MGP State Superfund site, a cutoff wall is needed along the bank of the Canal to prevent the migration of contamination to the Canal. Tiebacks are needed to stabilize the cutoff wall. A commenter asked about the length of the setback of the RH-034 CSO retention tank from the Canal bulkhead so as to accommodate the placement of the cutoff wall tiebacks.

Response #17: EPA has discussed its preference for the use of tiebacks to support the cutoff wall with National Grid and NYSDEC. National Grid's contractor has indicated to EPA that the tiebacks may need a setback 80 feet. NYC has indicated that it will use a 100-foot setback for the RH-034 retention tank. The remedial design of the cut-off wall configuration is underway.

OH-007 CSO Retention Tank Placement

Comment #18: A commenter asked if the four-million gallon OH-007 CSO retention tank could be placed at the Head-of-Canal, rather than at NYC-owned parcel of land located at 5th Street and Second Avenue known as the “Salt Lot.”

Response #18: It should be noted that the OH-007 CSO retention tank is not the subject of the proposed agreement. Nevertheless, the RH-034 and OH-007 outfalls service two different areas. The Salt Lot was proposed for the construction of the OH-007 CSO retention tank because of its proximity to the outfall. To place this CSO retention tank in the Head-of-Canal location would require the installation of considerable piping in the streets to this area.

Ongoing Construction at Salt Lot

Comment #19: A commenter noted that there are currently structures being constructed on the Salt Lot, the proposed location of the OH-007 CSO retention tank.

Response #19: The Department of Sanitation is building a salt storage shed and compost facility upgrade at the Salt Lot. The plans indicate that some permanent structures will be built on the lot. EPA has notified NYC that we anticipate preparatory work for the CSO retention tank at this location will begin within a year, and will likely require disruption and disturbance of these planned activities and structures.

Pump Station Impacts

Comment #20: A commenter asked how the pump stations will be affected by the two tanks being constructed so close to the Canal.

Response #20: Sewer piping and stormwater drainage systems, whether combined or separate, are typically designed to maximize the utilization of gravity through sloped piping. In order for sewage to be conveyed to the Red Hook wastewater treatment plant, a pump station is needed at the Head-of-Canal location because this location is a low point in the piping system. This pump station will not be affected by the placement of that CSO retention tank. The RH-034 and OH-007 CSO retention tanks will be used to store the first eight million gallons and four million gallons of sewage and rain water, respectively, that exceed the capacity of the sewer system. The contents of each CSO retention tank would be pumped to the associated wastewater treatment plant for treatment once it can accommodate the flow, using pumps constructed as part of the CSO retention tank.

Development at Head-of-Canal

Comment #21: Alloy Development LLC (Alloy)² and the property owner of 234 Butler Street noted that they have, with the owner of 242 Nevins Street, committed to donate approximately one acre of Canal-fronting land to NYC to serve as interim and permanent replacement parkland in exchange for avoiding pursuit of eminent domain for these properties. This additional parkland would serve as interim open space while the Park is remediated and permanent parkland once construction is complete. Not only would the proposal save NYC approximately \$100 million, save four years related to property acquisition, and bring hundreds of jobs to the area, given EPA's preference for locating the CSO retention tank in the Park and the proposed donation of parkland which solves the open space issues associated with that siting, the commenters do not understand why EPA is not proceeding with its original plan. A commenter asked if parkland alienation was such a critical factor in allowing NYC to build the RH-034 CSO retention tank on private land, why is there no mention of Alloy's proposed land donation to offset the loss of park space in the proposed agreement? Another commenter claims that NYC has rejected the land donation offer. A third commenter suggested that NYC continue to explore a cooperative approach with Alloy.

Response #21: EPA is aware of discussions between NYC and Alloy regarding Alloy and the property owners' proposal to donate approximately 57,000 square feet of the property for parkland to avoid NYC use of eminent domain to acquire the Head-of-Canal parcels for the construction of the CSO retention tank. However, because there is no existing agreement between them, it would be inappropriate to acknowledge the proposal in the proposed agreement between EPA and NYC.

Status of Discussions between NYC and Alloy

Comment #22: A commenter asked about the status of the discussions between NYC and Alloy regarding using the properties to construct the CSO retention tank, provide open space/parkland and for development.

Response #22: According to DEP, both the Parks Department and DEP have had regular conversations with Alloy about ways to use the properties to construct the CSO retention tank, provide open space/parkland, and develop the property. According to DEP, while eminent domain is an option, DEP intends to use it only as a last resort.

Open Space

Comment #23: While EPA has regularly expressed the belief that building the tank at the Head-of-Canal location would result in the creation of additional open space for the community, no such binding provision is included in the order. Riverkeeper recommended that EPA amend the order to require that the Head-of-Canal tanks remain open space in

² Alloy has acquired the long-term development rights for the Head-of-Canal parcels.

perpetuity. Another commenter suggested that the proposed agreement contain more robust language requiring open space on top of the tank.

Response #23: While there are no provisions in the proposed agreement that the land above the tank remain an open space, NYC has indicated publicly that it intends to transform the area on top of the CSO retention tank into a park open to the public.

The configuration of the CSO retention tank and what if anything will overlie it will be addressed in the design.

Comment #24: Riverkeeper opined that NYC has omitted critical community interests and concerns in its decision to effectively delay addressing the CSO discharges. Once the Canal is remediated and the CSO discharges successfully addressed, the Canal, itself, will become a 12-acre open space asset for the community in that a protected and restored Gowanus will enable long denied recreational activities, like fishing, boating, and kayaking.

Response #24: While the remediation of the contaminated sediments will address a significant portion of the human health and ecological risks, EPA agrees that the delays in constructing the RH-034 CSO retention tank will also delay the full recreational use of the Canal. Nonetheless, NYC has expressed its policy objective of more quickly resuming recreational use of the Park.

Comment #25: A commenter noted that rather than acquiring the Head-of-Canal properties to prevent utilizing the Park for the construction of the CSO retention tank, there are other options for NYC to add green space on property that is currently available for sale and would be less costly, timelier, and more favorable to the neighborhood.

Response #25: EPA acknowledges that there are other properties in the vicinity of the Park that could be utilized to either expand the Park at less expense immediately, rather than after tank construction is completed, or permanently replace any portion of the Park that would be encumbered by the construction of a CSO retention tank.

CSO retention tank Construction Timeline

Comment #26: A commenter asked for a timeline for the construction of the CSO retention tanks.

Response #26: For the RH-034 CSO retention tank, by April 2020, NYC will have to have acquired the two Head-of-Canal parcels. By that date, National Grid will have had to have designed and planned its cleanup of the property outside the CSO retention tank excavation footprint; National Grid's cleanup work will have to start following the acquisition of the property. After National Grid completes its cleanup work, which might

take a year, then NYC has to excavate the contaminated soil and construct the CSO retention tank. It is estimated that NYC's work will take at least three years.

It should be noted that the April 2020 property acquisition date is a deadline in the proposed agreement. There is the possibility of obtaining the property earlier through consensual acquisition or exercising eminent domain more quickly than four years.

For the OH-007 CSO retention tank, it is estimated that it will take one year to design and three years to construct it. Some property acquisition may be necessary at this location also, which could affect the date when construction will start.

Comment #27: A commenter expressed disappointment with the significant increase in the remedy implementation timeline afforded by the proposed agreement.

Response #27: As was noted above, the April 2020 property acquisition date is a hard deadline. There is the possibility that the property will be acquired earlier through consensual acquisition or exercising eminent domain more quickly. Nevertheless, EPA acknowledges that use of the Head-of-Canal location is likely to cause a delay.

Estimated Construction Time and Cost

Comment #28: A commenter asked for the estimated construction time and cost associated with constructing the RH-034 CSO retention tank in the Park.

Response #28: The ROD estimated the cost to construct the eight-million gallon RH-034 CSO retention tank to be \$46 million. It is estimated that it would take three to four years to excavate the contaminated soil (an additional expense) and construct the CSO retention tank. As EPA has stated, use of the Head-of-Canal location adds additional costs compared to the Park location.

Order First Milestone Status

Comment #29: A commenter noted that the first milestone in the order is April 2016, the beginning of the Environmental Impact Statement (EIS). The commenter asked whether or not the first milestone has been met.

Response #29: The order has not yet gone into effect; therefore, NYC's obligation to provide EPA with monthly status reports has not yet commenced. It is EPA's understanding, though, that the EIS process has started.

Administrative Order Negotiations with National Grid

Comment #30: A commenter inquired as to the status of EPA's negotiations with National Grid related to an administrative order associated with actions to remove contamination at the Head-of-Canal and at the Park. Another commenter asked for the timeframe for negotiating a consent order with National Grid to design and remove the coal-tar contaminated soils at the Head-of-Canal.

Response #30: EPA anticipates commencing negotiations with National Grid shortly after the proposed agreement with NYC becomes effective. EPA anticipates that negotiations will be completed and a document requiring the work will be issued sometime this year.

Community Involvement

Comment #31: A commenter asked how community involvement with the design of the temporary and permanent parks will be addressed.

Response #31: Community involvement in the design of the temporary and permanent parks would be addressed in the National Grid administrative order. It should be noted that NYC's Parks Department will insure that the temporary and permanent park designs are satisfactory and it will likely manage the park facilities. Under the agreement, NYC is required to coordinate and cooperate with National Grid regarding temporary and permanent park replacement.

Open Space

Comment #32: Two commenters asked about the relationship between the construction of the CSO retention tank on private land and the creation of more open space. Another commenter noted that DEP has indicated that the Head-of-Canal parcels could be used for open space once the RH-034 CSO retention tank is constructed; the proposed agreement, however, does not make any commitment toward that end. The commenter expressed concern because NYC acquired another former MGP site, the six-acre Public Place, through eminent domain to build a park, but is now offering it to Hudson Development/Fifth Ave Committee for one dollar to develop a large housing complex.

Riverkeeper noted that NYC has expressed concerns about the permanent loss of space in the park from the head house. EPA has, however, noted that the head house could be integrated into the Park while maintaining current uses or the structure could be built across the street from the Park on land currently vacant or available for sale, or, if built within the Park, the footprint it could be significantly smaller and could be designed to provide an amenity rather than an intrusion.

Response #32: The primary objective of the proposed agreement is to facilitate the design of the CSO retention tank for outfall RH-034. NYC does not want any commercial or residential development on top of CSO retention tanks and developers typically do not want to build residential or commercial property on top of a tank. Therefore, wherever

the CSO retention tank is built, any portion above the tank that does not have the head house on it will likely become open space.

If the tank were to be placed under the Park, NYC has stated it would construct the head house above the tank, within the Park footprint. If the tank is constructed at the Head-of-Canal location, then the majority of the footprint of the CSO retention tank would have open space above it, with a smaller portion of that footprint being occupied by the head house. Use of the Head-of-Canal location for the tank would, therefore, create a net increase in open space.

Staging Area

Comment #33: A commenter asked whether any of the properties or businesses located outside the footprint of the RH-034 CSO retention tank will be affected by the tank construction.

Response #33: For any construction project of this magnitude, a staging area where equipment and materials can be stored is necessary. Regardless of which location is selected for the RH-034 CSO retention tank, NYC has identified, and EPA has agreed, that the parcel at 270 Nevins Street is a logical location for the staging area. NYC intends to acquire this area. The acquisition could be through a voluntary purchase agreement or eminent domain. Because it is believed that some coal tar is located underneath this property (this property is also part of the former Fulton MGP State Superfund site), after the buildings are removed, National Grid would be obligated to address the coal tar underneath it. If the CSO retention tank is built at the Head-of-Canal location, NYC informed EPA that it would probably temporarily close off the last block of Degraw Street between Nevins Street and the Canal to give it free and clear access between the staging area and the construction site.

Opposition to Taking Properties by Eminent Domain

Comment #34: A representative of Eastern Effects, Inc., a movie production company that is the tenant of 270 Nevins Street, noted that it had made a significant financial investment (\$5 million) in the property to convert the formerly vacant building into a state-of-the-art soundstage, and its workers provide a significant stimulus to the local economy. The commenter noted that the company has 12 years remaining on its 20-year lease and would encounter a significant financial loss if the property was acquired through eminent domain. The commenter asked about compensation.

Another commenter expressed concern that 350 to 400 jobs would be lost if the company was displaced. The commenter also noted that the company contributes, by their estimate, approximately, four million dollars per year to the local economy. Another commenter expressed the belief that retaining businesses, such as Eastern Effects, is

critical for the long-term sustainability of the area, urging EPA to give serious consideration to securing another site for staging purposes. Another commenter stated that he would like to see the governmental entities find a way to protect Eastern Effects and its workers. Numerous commenters, including employees from the film and television industry, local small business owners, representatives of film production companies, elected officials and individuals expressed opposition to using the Eastern Effects site as a staging area.

The Founder and President of Eastern Effects noted that on page 7 of EPA Assistant Regional Counsel Brian Carr's December 21, 2015 letter to Christopher King, Senior Counsel, Environmental Law, NYC Law Department suggested that Eastern Effect's site not be utilized because "...there are commercially available workable, and considerably less expensive lease or sale options than the movie studio." The commenter noted that there are at least three alternative sites that achieve a greater public benefit and minimize the negative impact resulting from the closure of a productive movie studio that brings employment to the area and helps NYC to continue to be a factor in the business of making movies. The commenter stated that it is unclear why any of these sites would not satisfy NYC's requirements for a temporary construction staging area in that none of the properties include buildings that are heavily used for commercial purposes, two of the properties are currently for sale, and all three sites would be less costly and easier for NYC to acquire than 270 Nevins Street.

Several commenters stated that retaining businesses in the area is critical for the long-term sustainability of a diverse, rich, and vibrant community, urging that the proposed agreement be amended to guarantee that no business be forced to temporarily or permanently abandon or relocate its operations as part of the CSO retention tank installation and that less economically disruptive options be sought to meet the needs for construction staging in the vicinity of the CSO retention tank. A commenter questioned the logic of taking the property against the wishes of the tenant when other properties that are for sale exist across the street.

Response #34: The proximity of 270 Nevins Street to a Head-of-Canal CSO retention tank would eliminate the need to transport materials across active streets to go from the staging area to the CSO retention tank installation area.

EPA is aware of the number of employees at the studio and the economic benefit from the existence of the studio there. EPA is also aware of the fact that the lease held by Eastern Effects, Inc. does not provide for compensation if the property is acquired through eminent domain,

EPA's ROD stated that the location and capacity of the CSO retention tanks will be determined during the remedial design. The UAO that EPA issued to NYC following the issuance of the ROD required that NYC submit to EPA a list of no more than two locations for each of the two CSO retention tanks. The UAO also specified that NYC submit to

EPA a final list of the locations for each of the two tanks concurrent with the PRDRs. Therefore, although EPA gave NYC the opportunity to identify the CSO retention tank locations and staging areas. EPA did not require that NYC exercise eminent domain (with involuntary abandonment or relocation of businesses) to obtain the land. Should NYC decide to pursue alternative approaches that do not require the exercise of eminent domain for obtaining land for the CSO retention tank and the staging area, EPA would be supportive of such approaches and would work closely with NYC to realize them.

More Expeditious Remediation of Eastern Effects Property

Comment #35: Considering the fact that the former Fulton MGP site is to be remediated as properties become available, a commenter noted that using the "Eastern Effects" site for staging will result in the contamination being removed more expeditiously than if this property was not to be used for staging.

Response #35: NYSDEC's ROD for the former Fulton MGP site calls for the contaminated parcels to be remediated (excavation and/or in-situ stabilization) as they become available. While 234 Butler Street and 242 Nevins Street would likely be developed if the CSO retention tank is not constructed on these parcels, there are no current plans to develop 270 Nevins Street. Therefore, unless, NYSDEC decides to use in-situ stabilization for this property, removing the building to use this property for staging will result in the contamination being removed more expeditiously than if this property was not to be used.

Treat the Soil at 270 Nevins Street

Comment #36: Several commenters proposed utilizing in-situ stabilization of the coal tar beneath 270 Nevins Street, allowing for continuous uninterrupted occupancy of the premises by the current lessee.

Response #36: While in-situ stabilization would address the coal tar contamination at this location, the building would still have to be demolished in order to be used as a staging area.

Responsibility for Temporary and Permanent Park Facilities

Comment #37: A commenter opined that a temporary community park/pool must be fully operational before the removal of the public pool in the Park and it should remain operational until a new permanent replacement pool is operational. Another commenter asked what entity would be responsible for the construction and maintenance of the temporary and permanent facilities at the Park during the cleanup.

Response #37: It is EPA's intention that a temporary park and pool will be in place before the removal of the pool in the Park and it will remain operational until a new permanent

replacement pool is operational. As PRPs, National Grid and NYC, are responsible for addressing the contamination and building the temporary and permanent parks. NYC would likely be responsible for operating the temporary and permanent parks. National Grid and NYC will have to decide how the costs associated with the construction of the temporary and permanent Parks will be shared.

Duration of Disruption to Remediate and Reconstruct Park

Comment #38: A commenter noted that NYC's policy has been to deny, delay, and stall, and that NYC is shedding crocodile tears over the Park. The commenter further noted that there is general acknowledgement that the coal tar beneath the pool needs to be remediated, and questions why the remediation is being delayed. Another commenter asked about the duration of the disruption to remediate and reconstruct the Park.

Response #38: Because coal tar-contaminated soil is present under the Park, the Park needs to be dismantled so that the contamination can be accessed. The first task related to this effort is to find a location for a temporary park and then design and construct the temporary park. Following the construction of the temporary park, the current pool will need to be removed, followed by the excavation of the underlying coal tar-contaminated soil. Once the contaminated soil is removed and the excavation is backfilled, the Park would need to be restored. How long the Park disruption will take will be subject to EPA's determination following administrative order negotiations with National Grid related to this effort.

Support for Head-of Canal Location

Comment #39: In consideration of the net gain of open space in an area with few amenities, a commenter expressed support for the Head-of-Canal location for the CSO retention tank. Another commenter noted that the cleanup of the Canal cannot come at the expense of public amenities, especially in the immediate area of so much low-income housing. The commenter expressed support for the Head-of-Canal location for the tank in that it will avoid a nine-year closure of the pool, which is equivalent to a whole childhood. Another commenter stated that it is imperative that there be an interim pool and park under all the possible remediation scenarios and that the process must end with a permanent pool and park.

Response #39: While EPA believes that it will take considerably less than nine years to excavate the contaminated soil underlying the pool and construct a CSO retention tank, regardless how long this work will take, the community will have access to a pool while work is underway at the Park. Before the pool is dismantled so that the underlying contamination can be accessed, a temporary pool would need to be designed and constructed.

Economic Value Associated with Park

Comment #40: Four commenters expressed support for the Head-of-Canal location for the RH-034 tank, rather than the Park. One of the commenters noted that while installing the CSO retention tank at the Park location would be easier to implement and would be less costly than the Head-of-Canal location, EPA's analysis did not consider the economic value associated the health and social benefits to the community provided by the pool. The other three commenters opined that placing the CSO retention tank next to the Gowanus Houses and removing the only public pool in the area would be an insult to the community and would be unconscionable and shortsighted. One of the commenters suggested that other unused properties in the area could be used for the construction of the CSO retention tank.

Response #40: While the parcels of land that are for sale are potential locations for the CSO retention tanks, for the purpose of developing construction cost estimates for the contaminated CSO solids controls, it was assumed that the CSO retention tanks could be located most inexpensively on NYC-owned land in the vicinity of the outfalls. One such property is the Park. The Park location was identified as a possible location for the CSO retention tank because the property is owned by NYC and, as a former MGP facility, the land beneath the Park is heavily contaminated with coal tar that needs to be addressed through excavation and/or in-situ stabilization. For excavation of this coal tar to occur, the pool would have to be removed and rebuilt, regardless of whether a CSO retention tank is sited there. There would be significant efficiencies in terms of time and money that could be realized for both NYC and National Grid by using a part of the Park for the CSO retention tank. NYC would save money needed to excavate the hole for the tank because National Grid would be performing the excavation as part of the site remedy and National Grid would save money that would otherwise be spent to backfill the entire excavation because NYC would be placing a CSO retention tank in a portion of the excavation. NYC would also save the cost of acquiring a separate property. The pool, which is over 40 years old, also requires upgrading. Overall, combining such cost savings could be considerable.

EPA acknowledges that the pool and community services provided at the Park are vital local community resources. The community would not, however, lose access to a pool and the current community services provided at the Park. The first task related to the remediation of the Park will be to find a location for a temporary park and then design and construct the temporary park. Following the construction of the temporary park, the current pool would be removed, followed by the excavation of the underlying coal tar-contaminated soil. Once the contaminated soil is removed and the excavation is backfilled, the Park would need to be restored.

Concern about Loss of Park

Comment #41: A commenter expressed dismay that the cleanup includes the construction of a CSO retention tank at the expense of the Park so that people can fish and crab in the Canal. The commenter also inquired as to whether the community had

been surveyed by EPA about constructing the CSO retention tank in the Park before proposing it.

Response #41: The Park would be cleaned up and restored regardless of which location is used for the CSO retention tank. The objectives of the remedy selected for the Gowanus Canal site are to reduce the cancer risk to human health from the incidental ingestion of and dermal contact with polycyclic aromatic hydrocarbons (PAHs) in sediment during recreational use of the Canal or from exposure to Canal overflow; reduce the contribution of PCBs from the Gowanus Canal to fish and shellfish; reduce the risks to benthic organisms in the Canal from direct contact with PAHs, PCBs and metals in the sediments; reduce the risk to herbivorous birds from dietary exposure to PAHs; and eliminate the migration of non-aqueous phase liquid (NAPL) into the Canal so as to minimize NAPL serving as a source of contaminants, primarily PAHs, to the Canal.

The area's combined sewers receive sewage and stormwater flows and discharge to the Canal when the sewer system's capacity is exceeded. Rather than discharging the sewage and stormwater to the surface water when the system's capacity is exceeded, the remedy calls for the excess flow to be diverted to CSO retention tanks that will store it until the wet weather subsides, when it will be pumped to the wastewater treatment plant. Reducing the sewage and stormwater discharges to the Canal will protect the Canal remedy, which includes dredging of contaminated sediments and capping the Canal bottom.

In 2013, EPA released a Proposed Plan to the public describing the proposed remedy for the Canal and subsequently conducted two public meetings. The remedy that was presented in the Proposed Plan and was discussed at the public meetings included the construction of two CSO retention tanks. The Proposed Plan noted that EPA would allow NYCDEP to evaluate locating the CSO control facilities in areas where upland site-related source removal work might take place (such as the Park which is situated on the former Fulton MGP State Superfund site), creating a synergy between programs that potentially could save time in site acquisition and permitting and save significant construction costs. EPA identified the western two-thirds of the Park and the NYC Department of Transportation storage lot located at 2nd Avenue and 5th Street as potentially suitable locations due to such synergies. Both properties are owned by NYC, eliminating property acquisition costs. Both parcels are located near the major CSO outfalls which require control.

Input from the public about the placement of the CSO retention tank at the Park was received at the two 2013 public meetings noted above and in letters and emails received during the comment period. . These comments were considered by EPA and were addressed in the responsiveness summary for the ROD, which is available at: <https://semspub.epa.gov/work/02/692107.pdf>.

Eminent Domain and Design Time Frame

Comment #42: A commenter asked if the four years to design the CSO retention tank is driven by the eminent domain effort.

Response #42: Under the proposed agreement, four years (April 2020) is the maximum time to acquire title to the properties. The designs of the building demolition; soil excavation and deep foundation and associated elements of the tank; and above-ground structures and appurtenances, mechanical fit-out and conveyances for the tank are to be completed on June 30, 2017, April 30, 2019, and September 30, 2019, respectively.

Public Review of Interim Design Deliverables

Comment #43: A commenter asked if the community would have the opportunity to see the interim design deliverable schedules.

Response #43: The schedules for interim design deliverables will be developed in the workplan for the design. The final workplan will be available for public review.

Historical and Archaeological Resources

Comment #44: A commenter noted that due to the potential presence of historic resources at the Head-of-Canal (e.g., Block 424, which encompasses the property on which Eastern Effects is located), if eminent domain is utilized, Appendix 106 of the Historic Resources Act would apply, thereby necessitating an archaeological investigation. This would result in additional delay and increase the overall cost of the project.

Response #44: EPA is aware of a number of historical and archaeological resources along the Canal, including the area being considered for the construction of the RH-034 CSO retention tank and the staging area. In compliance with the Historic Resources Act, any necessary archaeological investigations would be performed in conjunction with the building demolition and soil excavation work. It is not anticipated that these efforts would have a significant impact on the overall project schedule and they would not extend the time by which NYC must complete the acquisition.

Covenant Not to Sue

Comment #45: A commenter noted that while the proposed agreement includes a commitment from NYC not to sue the EPA over the inclusion of CSO mitigation measures under the ROD, the current proposal fails to balance the additional costs of the Canal-side projected, with the risks of costs of such legal actions incurred if such a suit would take place. The commenter opined that it may be less costly to all tax and water-rate payers to incur costs of legal action, than to incur the additional \$460 million in costs under the proposed agreement. Furthermore, the proposed agreement does not limit citizens from taking legal action against EPA and DEP from moving forward with the

proposal. Another commenter expressed dismay that EPA acceded to the demands of NYC. The commenter stated that the residents trusted EPA to do what is best for the community, not what is politically expedient.

Carroll Gardens-Gowanus Coalition for Respectful Development opined that a grandiose land-use plan disguised as a crusade to save a swimming pool that is situated above highly-contaminated earth, is going to delay the cleanup, will take private land, businesses will lose their livelihood, many employees will lose their jobs and taxpayers will incur significant cost. This commenter opined that while EPA gets an assurance that NYC will not pursue litigation regarding the necessity of the CSO retention tanks, it comes at an extremely high price to the community and seems pitifully inequitable. Another commenter opined that she does not believe that obtaining a covenant not to sue by NYC is worth the increased project cost and delay. Riverkeeper noted that Superfund was created for protecting public health and the environment through the rapid, thorough, and permanent removal and remediation of contamination. The commenter opined that it is a mistake to retreat from a plan that would achieve these goals solely in order to avoid potential litigation over public space that the community will have replacement facilities for throughout the remediation process.

Riverkeeper noted that the “Covenant Not to Sue” section of the proposed agreement only covers the selection of the tank location; it does not cover anything related to the tank design.

Response #45: After the ROD was signed, because EPA and NYC did not reach a consensual agreement for the performance of the design of the CSO retention tanks, EPA issued NYC a UAO for this work. Under the Superfund law, if EPA goes to court to seek penalties or to seek injunctive relief, requiring a respondent to come into compliance, at that point, the respondent has the opportunity to challenge EPA's remedy decision. NYC vigorously opposed the inclusion of CSO controls in the ROD. While EPA is confident that it would prevail if NYC challenged the remedy, there are always risks when one goes to litigation. EPA believes that one of the most important elements of the proposed agreement is that when it becomes effective, NYC agrees to waive its right in perpetuity to any legal challenge of EPA's selection of CSO controls in the ROD.

Contrary to the assertion that the “Covenant Not to Sue by Respondent” section of the proposed agreement does not cover anything related to the tank design, that section includes a provision that clearly specifies that NYC waives challenges to the entire CSO portion of the remedy in EPA's ROD, not just for the siting of the CSO retention tank.

Comment #46: A commenter noted that NYC has not publicly stated that it has any intention of suing EPA over the terms of how it participates in the remediation of the Canal. Thus, opined the commenter, the covenant not to sue fails to further the ROD in that it does not timely advance the cleanup for the community and only serve to entice EPA away from holding a Responsible Party to aggressive cleanup timelines and targets. Another commenter opined that if NYC has the power to challenge in court the remedy

decision, which is something that EPA wants to avoid, the subtext is that NYC threatened to go to court if EPA did not negotiate with it.

Response #46: NYC has historically disagreed with the selection of CSO controls as part of the ROD. The proposed agreement limits the potential for future litigation, which is always a possibility when EPA attempts to enforce under any instrument.

Comment #47: A commenter asked whether NYC's agreement to waive its right to challenge the CSO elements of the ROD remedy affects other parties, such as National Grid or the State.

Response #47: While the waiver provision does not affect other parties, it is primarily NYC that has the interest in the CSO portion of the ROD. New York State concurred on the remedy selected in the ROD, including the CSO controls. As to National Grid or any of the other PRPs, in EPA's judgement, they would have no direct interest in opposing the CSO element of the remedy.

Technically Deficient Deliverables

Comment #48: A commenter noted that while EPA has identified constructability issues related to the Head-of-Canal location, the proposed agreement does not allow EPA to "pivot" to the Park location in the event that it finds DEP's designs for the Head-of-Canal tank to be infeasible, unworkable, or technically deficient. Riverkeeper urged EPA to retain the independence, autonomy, and ability to "pivot" away from the Head-of-Canal location for engineering reasons in addition to timeline considerations should the circumstances necessitate it.

Response #48: While the agreement does not allow EPA to "pivot" to the Park location in the event that it finds DEP's designs for the Head-of-Canal tank to be infeasible, unworkable, or technically deficient, the agreement incentivizes preparing technically competent design documents by assessing monetary penalties. Specifically, the failure to properly revise any documents consistent with EPA comments will subject NYC to stipulated penalties. In addition, the agreement provides EPA with final decision-making on critical engineering and planning matters. The "Dispute Resolution" section of the agreement provides for EPA's Deputy Director of the Emergency and Remedial Response Division to be the final arbiter of any disputes arising between EPA and NYC, such as issues of technical impracticability or design and construction schedules because of specific circumstances encountered during the development of the project.

Penalties for Noncompliance

Comment #49: A commenter opined that given that NYC actively lobbied for the Head-of-Canal location, which will cost hundreds of millions dollars more, penalties for

noncompliance seem like weak deterrents. The commenter also noted that the penalties and any cost overruns would be charged to water ratepayers.

Response #49: While DEP may spend more to acquire the Head-of-Canal properties, EPA believes that the agreement incentivizes preparing technically competent design documents by providing for daily stipulated penalties. If any work is seriously or repeatedly deficient or late and stipulated penalties are not effective in rectifying performance issues, EPA can pursue other enforcement options, including but not limited to, taking over the work.

CSO retention tank Siting Location Does Not Comport to Superfund Evaluation Criteria

Comment #50: Riverkeeper opined that not only does the proposed CSO retention tank siting at the Head-of-Canal location threaten the Canal's overall remediation, delay prompt attainment of the ROD goals, undermine the ROD's short-term benefits, ineffectively capture an ongoing source of contamination, and make the entire remedy cost-ineffective, but it also does not comport with EPA's nine evaluation criteria by which Superfund decisions are made. Specifically:

- With regard to the protection of human health and the environment criterion, in choosing a lesser CSO retention tank site in order to accommodate NYC's concerns over loss of park space to obtain a covenant not to sue, the commenter opined that EPA is prioritizing litigation risk above all other considerations.
- EPA is less certain about the feasibility of constructing the tank at the Head-of-Canal than at the Park in contradiction of the long-term effectiveness and permanence criterion.
- By choosing a location that delays source control thereby allowing continued exposure of the public to significant risks contravenes the short-term effectiveness criterion.
- A cost-effective remedy is one whose costs are proportional to its overall effectiveness. The Head-of-Canal tank is projected to cost significantly more than the Park location yet provide no increased long- or short-term benefits or improvements in human health and environmental protection. The commenter opined that EPA is specifically making this remedy cost-*ineffective*.

Response #50: To address the contaminated CSO solids discharges, in the 2012 Gowanus Canal site feasibility study report addendum, CSO control measures were screened based on effectiveness, implementability, and cost. Based upon this analysis, it was concluded that the only practicable, cost-effective measure for the control of the contaminated CSO solids would be the use of CSO retention tanks. The comparative analysis of remedial alternatives in the ROD assessed each alternative against the nine evaluation criteria. CSO retention tanks were evaluated in this assessment. In the ROD, EPA assumed that the Park and Salt Lot would be the cost-effective locations for the RH-034 and OH-007 CSO retention tanks, respectively, in large part due to the fact that there

would be no land acquisition costs for NYC. The ROD indicated that the location of the CSO retention tanks would be determined during the remedial design. Subsequently, NYC, based on its own analysis, concluded that the Head-of-Canal location for the RH-034 CSO retention tank would be most advantageous to NYC. Therefore, while EPA's ROD recommended an RH-034 CSO retention tank location that conformed to EPA's evaluation criteria, it was NYC's decision to pursue the Head-of-Canal location. EPA accepted this NYC decision for the reasons set forth above.

Explanation of Significant Differences

Comment #51: A commenter noted that because of the significant increase in the estimated cost of the CSO retention tank portion of the remedy attributable to the acquisition of the Head-of-Canal properties and the staging area, EPA is obligated to publish an explanation of significant differences (ESD).

Response #51: Because NYC has decided to acquire land for the construction of the CSO retention tank rather than using land that it already owns, EPA believes that the land acquisition costs are not considered part of the remediation costs. EPA believes that the cost estimates provided by NYC in its Preliminary Remedial Design Reports (PRDRs) for both CSO retention tanks (at the top and middle of the Canal) are excessively high. EPA provided comments to NYC on the PRDRs to that effect. Cost was not a factor in the selection of the Head-of-Canal location for the CSO retention tank. Therefore, EPA is not relying upon NYC's cost estimates. EPA believes that as the remedial designs of the tanks proceed and EPA's comments are addressed, the cost estimates will likely decrease significantly. Nevertheless, EPA agrees with the commenter that if the CSO retention tank construction costs are significantly greater than the cost estimate in the ROD, the issuance of an ESD may be warranted. This determination cannot be made, however, until the location of the CSO retention tank is final and the construction costs have been approved by EPA.

Financial Considerations

Comment #52: A commenter noted that the proposed agreement only considers the impacts on the use of the Park, not other impacts, such as the loss of the commercial development proposed by Alloy that would bring thousands of additional jobs into the area or the loss of the existing jobs and local economic stimulation received from the film studio. The commenter opined that a financial assessment that balances the additional costs of half billion dollars with the additional impacts on the commercial and industrial community with those of the benefits that the plan offers to avoid prolonged construction impacts within the Park should be performed. The commenter opined that a far less

expensive and less disruptive plan which better manages community impacts could be developed.

Response #52: EPA does not believe that a financial assessment is necessary, for reasons including that an assessment would require EPA to speculate as to land use, and also that EPA does not agree with NYC's cost estimates. EPA acknowledges that constructing the CSO retention tank at the Head-of-Canal location may have an adverse impact on the development of the two parcels if Alloy and DEP cannot work out an arrangement that accommodates the construction of the CSO retention tank and development and that utilizing the Eastern Effects location for a staging area will result in the loss of the existing jobs and local economic stimulation received from the film studio.

Comment #53: A commenter opined that because the additional costs related to constructing a CSO retention tank at the Head-of-Canal will come from a budget for CSO mitigation intended for all NYC's public waters, it is imperative that the proposed additional costs be presented for review by all waterfront communities and all water-rate payers in NYC.

Response #53: EPA assumes that there are public procedures utilized with respect to committing to such major expenditures by NYC and anticipates that DEP will share cost information with the public as the cost estimates are refined. EPA notes that DEP has recently published its current cost estimates.

Comment #54: A commenter opined that funds set aside for CSO mitigation should be used toward that purpose. The commenter noted that a significant portion of the costs appear to be directed to secondary actions, such as ULURP processes and land acquisition costs, and that EPA has noted excessive and redundant features related to the proposed RH-034 CSO retention tank. The commenter stated that in compliance with federal regulations, EPA must disclose the additional costs to the affected public communities prior to finalizing the proposed agreement.

Response #54: Because it is possible that the property owners will litigate the compensation offered by NYC through the condemnation process, the actual costs to acquire the properties may not be known for many years. EPA agrees that the process and the associated costs should be transparent and anticipates that DEP will share this information with the public when the cost estimates are refined.

Consistency with ROD Goals

Comment #55: A commenter opined that the proposed agreement is not consistent with the ROD-defined goals to address health and the environment.

Response #55: The ROD called for the construction of a CSO retention tank for outfall RH-034 to achieve CSO solids reduction. A properly constructed CSO retention tank, regardless of its location, will achieve the CSO solids reduction objective of the ROD.

Contaminated Sediment Deposition between Canal Remediation and CSO retention tank Coming On-Line

Comment #56: Riverkeeper and two other commenters expressed concern about the CSO-related contaminated sediments that will be deposited between the time the Canal is remediated and when the CSO retention tank comes on line. Riverkeeper requested that EPA make such dredging a requirement in the proposed agreement.

Response #56: While the agreement could not require NYC to dredge contaminated CSO sediments that might accumulate and recontaminate the Canal between the time that the Canal remedy has been completed and the RH-034 CSO retention tank is operational, NYC has committed to perform this work. This work will be addressed under a future enforcement instrument.

Schedule Slippage

Comment #57: A commenter expressed concern that the extended time that the proposed agreement allows NYC will push a clean and healthy Canal further into the future. As the staff on the project retire and are replaced with new staff with less knowledge about the history of the project, the schedule will slip further.

Response #57: While institutional knowledge will be lost as members of the project team retire, EPA will not allow the schedule to slip because new staff are not familiar with the project. Maintaining schedules for the various aspects of the project is an important component of project management.

Concerns Related to Work to be Performed by National Grid

Comment #58: National Grid noted that many provisions of the proposed agreement reference significant potential requirements that EPA intends to impose on National Grid in the future. Because National Grid was not party to the negotiations between the EPA and NYC, National Grid suggested that the proposed agreement not include references to potential future EPA requirements planned for National Grid before negotiations between National Grid and EPA for any such requirements have been conducted.

Response #58: National Grid is not bound by the terms or the work elements of the agreement. In the near future, EPA intends to negotiate with National Grid to perform the

necessary work. During discussions related to these negotiations, EPA will consider National Grid's input to ensure that the work is carried out in the most efficient and technically practical manner.

Comment #59: National Grid stated that the NYSDEC ROD selected a cut-off wall at the bank of the canal as the source control measure for the former Fulton MGP site and that since under current conditions there are no exposure risks at the site near term, remediation at the site is not necessary. National Grid also noted that NYSDEC and the New York State Department of Health (NYSDOH) have determined that coal tar at the Park does not pose a current threat to human health or the environment and should be remediated at such time as the land use is modified. EPA has, nevertheless, stated that it is planning to override the determination by NYSDEC and NYSDOH in the NYSDEC's ROD and require more immediate action via a cleanup that is more extensive than the standard applied throughout the State and most of the nation.

Response #59: In addition to the cut-off wall, the NYSDEC ROD calls for source control measures, such as removal or in-situ solidification of contaminated subsurface soil at the point of the sources, *i.e.*, the parcels where such contamination has been found. Also, EPA's ROD specifies the need for timely action to remove the contaminant sources from the former MGP sites as a means of ensuring that these contaminants do not recontaminate the Canal once the Canal remedy has been implemented, and as a result, create human and ecological exposure.

Comment #60: National Grid noted that whether the tank is located at the Park location or the Head-of-Canal location, the sequencing of work specified by the proposed agreement will result in a longer project schedule, duplication of work and, consequently, higher construction impacts to the community. Another commenter suggested an integrated design effort between DEP, National Grid, and a private developer to minimize inefficiencies and delays in the construction of the cutoff wall, installation of the CSO retention tank and head house, and restoration.

Response #60: EPA acknowledges that the sequencing of the work in the agreement will result in a longer schedule and duplication of work for the construction of the CSO retention tank at the Park should the efforts of NYC for constructing the tank at Head-of-Canal location fail. EPA will seek the cooperation of all parties in further planning of these actions in order to optimize project schedules and minimize adverse impacts to the community.

Comment #61: National Grid stated that the responsibility for the Park relocation and restoration should be shared equitably by National Grid and NYC.

Response #61: NYC, as the owner of the Park, bears some responsibility for the relocation and restoration of the Park. The relative responsibility of each party for this and other elements of the remedy will have to be determined.

Comment #62: National Grid noted that the sequencing of the work for the construction of the tank at the Head-of-Canal location, which requires National Grid to first perform excavation work outside the tank footprint is inefficient and would prolong the schedule.

Response #62: EPA acknowledges that the excavation work outside the tank footprint may be performed more efficiently than the sequencing described in the agreement. EPA, DEP, and National Grid will need to work cooperatively together to ensure that the excavation of the contaminated soil at the Head-of-Canal location will be performed in the most efficient manner possible.

Creation of Urban Field Station

Comment #63: A commenter proposed to create an Urban Field Station that will support local organizations, groups, and individuals that observe and report on the impacts in the watershed caused by the cleanup effort, development, changes in infrastructure, global warming, planning strategies, etc. The commenter proposed that the facility include exhibits, meeting rooms, academic spaces for interns and after school programs studying toxicity in urban environments, work spaces for an artist and scientist-in-residence, indoor and exterior recreation areas, and offices for community groups. The commenter proposed that the facility be located within the infrastructure footprint, preferably as part of the head house.

Response #63: EPA anticipates that a visitors' center will be set up on-site for the duration of the remedial action to provide the public with an opportunity to review the work progress. Because the head house, if any, will likely be constructed a number of years following the completion of the dredging, it is likely that a trailer or local building will be utilized for the visitors' center.