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**ANC 3/4G Testimony Before the  
Committee on Transportation and the Environment  
Performance Oversight Hearing on the  
Department of Energy and the Environment  
February 14, 2019**

Chairperson Cheh and members of the Committee on Transportation and the Environment. I am Randy Speck, Chair of ANC 3/4G (Chevy Chase), and I am testifying on behalf of our Commission, which authorized this testimony at its February 11, 2019 meeting by a vote of 7 to 0 (a quorum being 4).

ANC 3/4G has worked with the Department of Energy and the Environment (DOEE) on two programs that warrant the Committee's attention: (1) DOEE's implementation of relief for non-profit organizations from the hardship imposed by DC Water's Clean River Impervious Area Charges (CRIAC); and (2) DOEE's efforts to address chronic flooding on Broad Branch Road, NW.

## **CRIAC Relief**

As part of the Fiscal Year 2019 Budget Support Act of 2018, the Council passed and the Mayor signed the “District of Columbia Water and Sewer Authority Rate Increase Mitigation Amendment Act of 2018” (Mitigation Act), which establishes “a financial assistance program to assist nonprofit organizations located in the District with a payment of their impervious area charges.” DC Code § 34-2202.16b(a)(1). On January 11, 2019, DOEE published a Notice of Emergency and Proposed Rulemaking (<http://bit.ly/2DGeFvr>) to begin implementing this program. Unlike the statute, which does not differentiate among nonprofit organizations, the proposed regulations specify that only three categories of non-profits will be eligible for CRIAC relief — those that have “applied for and obtained from the District’s Office of Tax and Revenue (OTR) a real property tax exemption pursuant to: (1) D.C. Official Code § 47-1002(12) (certain cemeteries); (2) D.C. Official Code §§ 47-1002(13), (14), (15), or (16) (certain property of religious institutions); or (3) D.C. Official Code § 47-1002(8) (certain charitable institutions).” Proposed DCMR Title 21, § 565.1(c). There is no basis in the statute for these distinctions.

Moreover, DOEE has not made clear what is meant by “certain charitable institutions.” DC Code § 47-1002(8) includes a broad swath of non-profits: “Buildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia.” DOEE apparently intends to pick and choose only “certain charitable

institutions” based on unspecified criteria while denying CIRAC relief eligibility to other non-profits that serve the same public charitable purpose.

DOEE’s handling of two non-profit institutions in our ANC demonstrates the arbitrariness of its approach. DOEE held public meetings in 2018 to explain its eligibility process (<http://bit.ly/2DGTxoA> at 8) and indicated that eligibility would be limited to those non-profits designated by the Office of Tax and Revenue (OTR) as E-1 (religious), E-3 (charitable), or E-7 (cemetery). Using these classifications (specified on OTR’s website at <http://bit.ly/2DgcgpD>), the Ingleside Continuing Care Retirement Community would be deemed eligible for relief because OTR classifies it as E-3 (charitable). In contrast, the Knollwood Military Retirement Community — serving the same function as Ingleside and also organized as a non-profit — would not be deemed eligible because OTR classified it as an E-8 non-profit (miscellaneous). There is no logical or statutory basis for DOEE to make one non-profit retirement community eligible for CRIAC relief and a comparable community ineligible. The statute makes no such distinction, and DOEE has no authority to discriminate between the two.

DOEE also appears to be applying additional, unstated criteria to exclude some non-profits from eligibility. Our ANC contacted OTR to determine whether Knollwood’s classification as an E-8 non-profit could be changed to E-3, and OTR’s Assistant General Counsel responded on January 17, 2019, that

that OTR’s classification of the property as E8 or E3 *makes no difference* for purposes of qualifying for the CRIAC relief, as we understand that the guidelines for that program state that a property must be exempt under certain specified provisions of the general exemption law, sec. 47-1002, in order to qualify. (Emphasis added.)

Initially, DOEE wrote the ANC that it agreed with OTR's analysis, but it quickly changed its position. On January 25, 2019, DOEE "corrected [its] mistake," and stated that

Since Knollwood's property tax exemption was granted pursuant to an act of Congress, rather than under the District's general real property tax exemption statute, DC Official Code sec. 47-1002, it does **not** meet the eligibility requirements of the relief program, regardless of its administrative classification as an E3 or E8. (Emphasis in original.)

DOEE now appears to impose an additional eligibility criterion that the non-profit status must be granted under a District statute, not a federal statute. This further restriction has no basis in the authorizing statute, Mitigation Act, § 34-2202.16b(a)(1).

Moreover, DOEE's addendum to the statute unreasonably discriminates between two entities that serve virtually identical groups of District residents. DOEE's implementation of its proposed rule would mean that Ingleside residents will be eligible for reduced CRIAC fees while their indistinguishable cohorts at Knollwood would not be eligible. DOEE has not suggested any legitimate rationale for treating these peers differently.

ANC 3/4G has urged DOEE to modify § 565.1 of its proposed rule to make clear that any organization that OTR classifies as an E-3 or E-8 non-profit for property tax purposes is eligible for CRIAC relief if it meets the "hardship" and mitigation requirements. This change is consistent with the Mitigation Act and the Council's intent. The Council should ensure that DOEE implements the statute in accordance with the Council's intent.

## **Chronic Flooding on Broad Branch Road**

Our ANC has been working with DOEE since August 2017, to address the long-standing problem with the culvert under Broad Branch Road across from the Ivory Coast Embassy, 5111 Broad Branch Road. That small culvert becomes clogged with debris, and water overflows across Broad Branch Road. Cecilia Lane, a Watershed Protection Specialist at DOEE, reported at ANC 3/4G's September 24, 2018 meeting that the Broad Branch Stream tributary currently runs through a 36-inch pipe under the Road into a large box culvert that then runs into Broad Branch Stream. This culvert is not sufficient to carry the flow during a 10-year rain event, particularly when it becomes clogged.

She advised our Commission that there was once an eight-foot arched culvert under the Road that remains but is now bricked up. This arched culvert apparently no longer extends all the way to the box culvert but does go to the other side of Broad Branch Road. It needs to be extended to the box culvert and will then be able to handle the expected flow from the tributary. DOEE has contracted with an engineering firm to do the analysis and to make recommendations for the design of the new culvert.

Ms. Lane has worked diligently to move this project forward, and she recently informed us that the design work is 65% complete, but they need cooperation from the Department of Transportation (DDOT) (because the culvert runs under a District street) and DC Water (because the culvert must connect to the large box culvert on the other side of Broad Branch Road) to fix this problem. Meanwhile the flooding over Broad Branch Road continues during any big storm.

This project is important for the safety of our community and can be completed within three months if all the agencies work cooperatively on a solution. Each flooding event will further damage the road and create safety risks. We urge the Committee — which also oversees DDOT and DC Water — to identify the impediments to completion of this project and to ensure that DOEE is permitted to resolve this ongoing safety concern expeditiously.

Thank you.