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ADVISORY NEIGHBORHOOD COMMISSION 3/4G**

CHEVY CHASE, BARNABY WOODS, HAWTHORNE

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**ANC 3/4G Testimony on the  
Department of Energy and Environment's  
Emergency CRIAC Relief Regulations  
February 12, 2019**

I am Randy Speck, Chair of ANC 3/4G (Chevy Chase). 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 first raised concerns about the impact of DC Water's Clean Rivers Impervious Area Charge (CRIAC) when Director Wells attended our November 27, 2017 meeting (<http://bit.ly/2Unc676>). Among other issues with CRIAC, we raised with Director Wells the disproportionate impact of CRIAC fees on some non-profit organizations in our community,<sup>1</sup> and we suggested that "the Council might define a class of customers — e.g., cemeteries and other non-profit

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<sup>1</sup> ANC 3/4G has within its boundaries at least the following non-profits that pay high CRIAC fees and need relief: Knollwood Military Retirement Community, Ingleside at Rock Creek Continuing Care Retirement Community, Temple Sinai, St. John's College High School, Chevy Chase Presbyterian Church, Shrine of the Most Blessed Sacrament, and Blessed Sacrament School.

organizations — who contribute to the District in ways that serve the public good, and [the Council] would appropriate subsidies to cover a portion of [those customers'] CRIAC fees.” On March 2, 2018, we testified before the Council (<http://bit.ly/2UhOdO2>) urging it to provide CRIAC relief to non-profits. We continued to work with Councilmembers Brandon Todd and Mary Cheh throughout the Spring of 2018 on legislation that became law in the “DC Water and Sewer Authority Rate Increase Mitigation Amendment Act of 2018” (Mitigation Act”), DC Code § 34-2202.16b. DOEE is responsible for implementing that statute through regulations.

On January 11, 2019, DOEE published a Notice of Emergency and Proposed Rulemaking to provide CRIAC relief for both residents and non-profit organizations (<http://bit.ly/2DGeFvr>). We are primarily concerned that DOEE’s proposed regulations for non-profits’ CRIAC relief eligibility do not reflect the legislative language or intent and, if adopted, will create illogical and unwarranted distinctions among non-profit organizations. The statute provides that “The Mayor shall establish a financial assistance program to assist nonprofit organizations located in the District with a payment of their impervious area charges.” Mitigation Act, § 34-2202.16b(a)(1). While a non-profit must also establish “hardship” and propose a stormwater mitigation project to receive relief, the statute contains no

other criteria for determining which categories of non-profits would be eligible and which would not be eligible.

Unlike the statute, DOEE's proposed regulations specify that only three categories of non-profits that will be eligible for CIRAC 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. In public meetings to explain its eligibility process

(<http://bit.ly/2DGTxoA> at 8), DOEE 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 will be deemed eligible for relief because OTR classifies it as E-3. In contrast, the Knollwood Military Retirement Community — serving the same function as Ingleside and also organized as a non-profit — will not be deemed eligible because OTR classified it as an E-8 non-profit. 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. After DOEE's public presentations in 2018, 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 urges 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. In particular, Knollwood should be deemed eligible, regardless of

the origin of its non-profits status. This change is consistent with the Mitigation Act and the Council's intent.