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June 16, 2022

Gretchen Mikeska, Anacostia Coordinator  
Department of Energy & Environment  
1200 First Street NE  
Washington, DC 20002

Dear Ms. Mikeska:

The DC Appleseed Center for Law and Justice (“DC Appleseed”) is a non-profit, non-partisan organization that aims to make the District a better place to live and work through litigation, teamwork, and advocacy. For more than 20 years, DC Appleseed has supported the restoration of the Anacostia River, as well as equitable growth and development in surrounding communities. We are writing to offer comments on the proposed Beneficial Use Guidance for Dredged Material (“the document”), published in March 2022 by the DC Department of Energy & Environment (“DOEE”).

In general, this highly technical document is geared toward professionals in the field, as indicated in the executive summary. It appears to be thorough, well-organized, and consistent with similar guidance published by other state and federal agencies. We have not given the document a thorough technical review. At this time, DC Appleseed does not endorse the use of the proposed guidance at any particular site of the river until we learn more about how the guidance will be applied, the views of the public, and how strictly DOEE will comply with the standards set out in the document, including the purpose of the reuse. We would like to offer several general comments focused on fostering public engagement on this important topic.

### **Public Engagement and Accessibility**

Our primary suggestion is to create a simple fact sheet for the public. District residents deserve to understand what actions are being proposed so they may effectively offer feedback about the approach. We recommend using language that is understandable to all regardless of their level of education. Best practices for ensuring the readability of public documents suggest aiming for a 7<sup>th</sup> or 8<sup>th</sup>-grade reading level.<sup>1</sup>

The current executive summary of the document, while reasonably brief,

<sup>1</sup> See, e.g., *Readability for Developing and Pretesting Concepts, Messages, Materials, and Activities*, EPA, <https://www.epa.gov/fish-tech/readability-developing-and-pretesting-concepts-messages-materials-and-activities> (last visited June 9, 2022); see also *What is readability and why should content editors care about it?*, CTR. FOR PLAIN LANGUAGE, <https://centerforplainlanguage.org/what-is-readability> (Mar. 2017).

omits key information relevant to the public. We have listed a few elements below that we believe should be included in a fact sheet for the public, but there may be other elements we have not listed that would be appropriate for inclusion. We note that some of this information is already included in the executive summary, but it could be more effectively communicated with additional context. The additional context should be at a summary level, with the complex technical details left to the body of the document. Specifically, we suggest that the fact sheet address:

- What are beneficial uses? Who makes the decision on the permissible beneficial uses?
- How does DC currently evaluate beneficial uses? Why is this document an improvement on that process?
- Where does the dredged material come from?
- What are the options and relative costs/impacts of disposing of the dredged material from the river?
- Do beneficial uses provide economic and/or ecological benefits? Who receives these benefits?
- What is the general procedure for evaluating material for beneficial uses? What will happen should toxic material erroneously pass evaluation?
- What factors are considered when evaluating the protectiveness of screening criteria?
- What role can the public play in making these decisions? What efforts will be made to engage the public?
- What role do environmental justice and racial equity play in these decisions?

### **Usability of Tables and Charts**

We also offer a couple of comments about the usability of the document. The flowcharts provided in Figures 2.1, 2.2, and 2.3 are useful for evaluating the process for a given beneficial use. There may be situations, however, when a project proponent would like to evaluate what beneficial uses might be appropriate for their material. In these situations, the project proponent would have to follow each flowchart independently. We urge you to consider creating another flowchart that does not require an *a priori* assumption about which beneficial use might be appropriate.

We noted that the human health screening criteria on Table 3.8 include chemicals without criteria and chemicals that are not typically included on standard target analyte lists for the analysis methods listed in Table 3.4. We suggest you consider reducing the size of this criteria table so that it only includes the analytes for which chemical data typically would be generated according to the framework in this document.

### **Site-Specific Risk Assessments**

Finally, we note that the document includes a provision for conducting a site-specific risk assessment, but it includes very little information about this process. The documents state that the process may allow higher contaminant levels than Category 1 screening criteria, yet still ostensibly provide protection for unrestricted use. In the event that less stringent criteria are being considered, we

recommend that significant community involvement be solicited as part of the development of the site-specific risk assessment and decisions about its use. While we understand that residential screening criteria could be overly conservatively when applied to a non-residential site, the public should be clearly informed of the assumptions being made in such situations. Every effort should be made to ensure that these assumptions are health-protective. This is especially critical for sites in environmental justice communities.

Concluding, we believe this proposed document is an appropriate overall approach. However, we encourage DOEE to create a more robust and readable summary of the document which permits the public to engage more fully with this guidance. We additionally seek more information about when or how site-specific risk assessments will be made and the extent to which local communities will be involved in those decisions.

Thanks for the opportunity to provide comments on this important document.

Sincerely,



Vanessa Batters-Thompson  
DC Appleseed



Lois Schiffer  
Volunteer



Russ Randle  
Miles & Stockbridge



Tad Deshler  
Coho Environmental LLC