Good morning Chair Cheh and other members of the Committee. I am Walter Smith, Executive Director at the DC Appleseed Center for Law and Justice. DC Appleseed is a nonprofit public interest organization that addresses important issues facing residents of the National Capital Area. Thank you for the opportunity to testify on the Fiscal Year 2018 budget for the Department of Energy and Environment (DOEE). We are concerned specifically about the proposal to provide no capital funding next year for cleaning up the toxic sediment in the Anacostia River—for the first time since DOEE’s clean-up project began.

DC Appleseed has long been involved in efforts to restore the Anacostia. We have been a strong supporter of the strategy the District initiated several years ago to ensure that those responsible for the toxic sediment—primarily the federal government—come to the table and ultimately pay to clean up one of the city’s most valuable natural assets. I am testifying today to explain why it is so important for the District to continue its support for this commitment, and to urge the Council to restore the $5 million—at least—in capital funds that that had previously been planned for fiscal year 2018.

1. The District Has Invested in a Long-Term Strategy to Lead the Clean-Up the Anacostia River.

The Anacostia River has the potential to be a recreational, cultural, and economic centerpiece of the District. But legacy toxins trapped in the river’s sediment must be addressed in order for the river to reach its full potential. Toxic compounds from industrial activities, stormwater pollution, and sewers have accumulated in sediment at the bottom of the river. These toxins pose a threat to the health of D.C. residents and prevent the city from enjoying the full benefits of the river.

In order to accelerate the clean-up of the river, several years ago, DC Appleseed, along with other organizations and residents, encouraged the District to undertake a new strategy. This strategy focused on cleaning up contaminated sediment from the entire Anacostia River bottom, rather than individual shoreside sites. It also involved the District taking leadership using the federal Superfund law (Comprehensive Environmental Response, Compensation and Liability Act). DOEE, working with a contractor, has been conducting a remedial investigation to evaluate the type and degree of
contamination in the Anacostia’s sediment, and then will complete a feasibility study to identify options and costs for cleaning it up. Once this study is complete, DOEE will choose a remedy for cleaning up the sediment, called a Record of Decision (ROD). The actual clean-up of the river can begin only after DOEE has issued the ROD.

The actual clean-up of the Anacostia may cost nearly $1 billion. The whole purpose of the investigation now being conducted by DOEE is to ensure that the District will not bear the costs on its own. The contamination is the responsibility of various stakeholders, the federal government in particular. By taking leadership and making an investment now in working toward a ROD, the District will have leverage under the federal statute to bring those other parties to the table to pay their fair share of the clean-up.

2. Until Now, the District Has Been on Track with this Strategy by Setting Deadlines and Providing Adequate Capital Funds for the Project.

To implement this strategy, we have long suggested that the District do two things. First, it should include funding for the project in the capital budget, which would demonstrate the city’s long-term commitment to the project to the responsible parties. Second, we urged the Council to adopt statutory deadlines to pace DOEE toward completion of the ROD, which would accelerate clean-up, ensure that the project remains in the capital budget and the funds are spent efficiently, and insulate the project from political changes.

We think the District has been on track with this strategy, which is why we were surprised to see that there were no capital funds proposed for the project in the upcoming fiscal year. In 2015, the Council enacted a June 30, 2018, deadline for DOEE to issue the ROD. And each year since the river clean-up was first included in the FY 2014–FY 2019 Capital Improvement Plan, the Plan has proposed between $1.5 million and $10 million for each upcoming the fiscal year. The District has been planning on committing $5 million in capital funds for the project for FY 2018 since the FY 2016–FY 2021 Plan was released in early 2015. As it has in previous years, the latest Plan explains that:

The Anacostia River, once a pristine river, is now degraded mainly because of its highly urbanized location. The river and adjacent former Kenilworth landfill are the focus of large-scale restoration efforts by the District of Columbia. The District’s goal is to restore the Anacostia to a fishable and swimmable river by the year 2032.

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1 D.C. Code § 8-104.31.
The... capital budget for hazardous material remediation on the Anacostia River and its shoreline will fund continued efforts to achieve this goal.²

The District’s expressed continued commitment to leading the clean-up of the river has not changed. The District has a history of consistently ensuring adequate capital funds for the project every year, and DOEE has been making steady progress. It is therefore important that the city not eliminate funding for this project in FY 2018, especially as DOEE prepares to issue a ROD and enters a critical phase in bringing the responsible parties to the table to pay for the cost of the clean-up.

3. The District Risks Undermining its Investment if it Does Not Fund the Clean-Up in the Fiscal Year 2018 Capital Budget.

DOEE has been engaged in a long and so far successful effort to prepare a well-supported ROD for the clean-up. That ROD will choose the specific measures to clean up those toxic sediments under federal and District law. Finishing the ROD is essential to successful DOEE negotiations with responsible parties, federal and private, to carry out and fund that clean-up work.

We understand that the ROD is on track for completion at or near the statutory deadline of June 30, 2018, a little more than a year from now. This deadline has given DOEE negotiating leverage with the federal agencies and private parties responsible for the contamination. The agency has performed well in carrying out the key studies in a timely and scientifically rigorous fashion.

However, failing to fund this work will tell the other responsible parties that DOEE is not serious about completing this project. Such failure will dissipate the credibility and negotiating leverage DOEE has earned by its diligent performance to date. Moreover, DOEE is moving toward critical phase of negotiations—allocating financial obligations for the clean-up work. Failure to continue funding for the ROD and the process of negotiating with responsible parties may result in a far worse deal for the District and cost it much more than any short-term savings in Fiscal Year 2018 and the near term.

The District, through DOEE and its efforts to control stormwater and through DC Water and its efforts to eliminate Combined Sewer Overflows (CSOs), has spent or will spend over $2 billion dollars to clean up the Anacostia River. The final piece of this clean-up is the successful remediation of the toxics. That toxic clean-up will be expensive, but far less than what the District and its residents are already spending on stormwater controls and eliminating CSOs. It would be penny wise and pound foolish to stop funding the critical efforts to complete the ROD and to

complete successful negotiations with federal and private parties who should bear the lion’s share of the clean-up costs.

In our view, the Capital Improvement Plan should include at least $5 million for Fiscal Year 2018 and $5 million or more per year thereafter to conduct the detailed design of specific remedial components. Those detailed clean-up designs will equip DOEE to seek effective injunctive relief against recalcitrant parties, and in so doing, equip DOEE to negotiate successfully to obtain the funding and cooperation needed to finish the job.

4. Conclusion

DOEE has done a commendable job in bringing the ROD nearly to fruition. Pulling back now could undermine a major achievement in restoring the Anacostia and in holding responsible parties accountable, particularly the federal agencies who did very little to address the problem in the thirty-six years since the federal Superfund law was enacted. Thank you for the opportunity to testify, and I would be happy to answer any questions you may have.