

**\SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

<b>DISTRICT OF COLUMBIA,</b>	:	<b>Case No. 2018 CA 004996 B</b>
<i>Plaintiff,</i>	:	
	:	
v.	:	
	:	
<b>MISS DALLAS TRUCKING, LLC,</b>	:	<b>Judge Heidi M. Pasichow</b>
<i>Defendant.</i>	:	

**ORDER GRANTING PLAINTIFF DISTRICT OF COLUMBIA’S SECOND SUPPLEMENTAL  
MOTION ENTRY OF DEFAULT JUDGMENT AND PENALTIES**

This matter is before the Court based upon the Plaintiff’s Second Supplemental Motion Entry of Default Judgment and Penalties (“Renewed Motion”), filed on March 3, 2021. Plaintiff is represented by counsel, but Defendant has not entered an appearance.

**I. *Procedural History***

On July 13, 2018, Plaintiff filed a Verified Complaint requesting \$81,399.69 in damages for Defendant’s violation of the Water Pollution Control Act of 1984 (“WPCA”), (“the Act”). In its Verified Complaint, Plaintiff alleged that on March 8, 2018, a dump truck operating on behalf of Defendant lost control while exiting I-295 in Washington, D.C., hit a concrete bank, and spilled the contents of its fuel tank (diesel fuel) into a drainage canal. Pl. Compl. at 5-6. Plaintiff further alleged that on March 8, 2018, the Department of Energy and Environment (“DOEE”) responded to the release of the pollutant and began cleanup of the site, and that without this response from DOEE, the pollutants would have discharged into the Potomac River and created a “substantial threat to the public health.” *Id.* Due to this spill, Plaintiff requested \$31,399.69 in reimbursement for the costs associated with removal of the pollutants and a \$50,000 civil penalty—the maximum penalty under the Act. *Id.* at 10.

On September 12, 2018, Proof of Service was filed with the Court. On October 12, 2018, Judge Brian F. Holeman entered Default against Defendant due to the Defendant’s failure to timely answer the Verified Complaint. On December 11, 2018, Plaintiff filed its Motion for Default Judgment. On January 2, 2019, the case was transferred to Judge Heidi M. Pasichow. On January 4, 2019, the Court held an Ex

Parte Proof hearing in order for Plaintiff to prove its damages. The Defendant was not present at the Hearing.

At the Ex Parte Proof Hearing on January 4, 2019, Judge Pasichow found that while the Plaintiff was able to prove its damages in the amount of \$31, 399.69, it had *not* shown that \$50,000 in civil penalties should be awarded to Plaintiff under the Act for the Defendant's actions given incomplete information regarding the size of the Defendant's business and its ability to absorb a civil penalty—two necessary factors the Court must consider under D.C. Code § 8–103.18(b)(2)(C). Judge Pasichow therefore requested Supplemental Briefing from Plaintiff by January 25, 2019 that was to include a comprehensive analysis of *all four factors* that the Court must consider under the Act when awarding a civil penalty.

On January 25, 2019, Plaintiff submitted its Supplemental Briefing to the Court. After a thorough review of the Briefing, the Court found that the Plaintiff was again unable to address all four factors under the Act, and therefore the Court was not able to determine an amount greater than \$0.00 that Plaintiff should be awarded in civil penalties under § 8–103.18(b)(2)(C). For these reasons, on February 4, 2019, the Court granted in part and denied in part Plaintiff's Motion for Default Judgment, awarding the sum certain amount of \$31,399.69 to Plaintiff but denying the Motion as to the \$50,000 civil penalty. On March 15, 2019, Plaintiff filed a Motion for Reconsideration, which the Court denied on May 16, 2019 stating:

Given that Plaintiff gave the Court incomplete information, and that the Court can only make a civil penalty determination by considering all four factors under §8–103.18(b)(2)(C), the Court did not award a penalty of more than \$0 in this case. In doing so, the Court operated well within its discretion under the Act and consistent with the Act's legislative history. For these reasons, Plaintiff's Motion must be denied. Order at 7, May 16, 2019.

On June 14, 2019, Plaintiff filed an appeal of the Court's February 15, 2019 and May 16, 2019 Orders. On December 4, 2020, the DC Court of Appeals issued a Mandate regarding their October 22, 2020 Opinion that vacated this Court's entry of judgment. The DC Court of Appeals ordered the case remanded for the Court to determine whether a civil penalty should be imposed

in this case, and if so, what the penalty would be. *District of Columbia v. Miss Dallas Trucking, LLC*, 19-CV-540 at 16 (Oct. 22, 2020). Specifically, the Court of Appeals noted that:

We do not foreclose the possibility that the trial court, on remand, will reach the same conclusion as before: that no civil penalty is warranted. The trial court does have *some* evidence before it as to [Miss] Dallas Trucking’s size and ability to pay a fine and it is possible the trial court will determine that evidence is enough to preclude imposition of a civil penalty here when weighing all the statutory factors. But it must undertake that inquiry disabused of any view that the WPCA required the District to establish all four factors militated in favor of imposing a penalty. We conclude [Miss] Dallas Trucking’s failure to participate in the litigation forfeits any argument that it was the District burden to establish the first two of those factors.

*Id.* On December 7, 2020, Judge Laura A. Cordero, then Presiding Judge of the Civil Division at the time, assigned the instant case to the undersigned judge based upon the remand from the DC Court of Appeals. The December 7, 2020 Order was mailed to Miss Dallas Trucking at their last known address of 8405 Hardwick Court, Upper Marlboro, MD 20772. However, the mailed copy of the December 7, 2020 Order was returned as “NOT DELIVERABLE AS ADDRESSED – UNABLE TO FORWARD[.]” *See* Docket Entry on Jan. 12, 2021. On March 3, 2021, Plaintiff filed the instant Renewed Motion. On September 3, 2021, Plaintiff filed a Praecipe on the Proper Service Address for Miss Dallas Trucking, LLC and a Declaration of Willie Haynes, Investigator in the Office of the Attorney General for the District of Columbia verifying that Mr. Antoine Robinson, the principal member of Miss Dallas Trucking, LLC, indeed lives at 8405 Hardwick Court, Upper Marlboro, MD 20772.

## **II. Legal Standard**

### **a. Civil Penalties under the Water Pollution Control Act- D.C. Code § 8–103.18(b)(2)(C)**

Under § 8–103.18(b)(2)(A) of the Water Pollution Control Act, “A person who violates the laws referred to in paragraph (1) of this subsection shall be subject to a civil penalty of no more than \$50,000 for each violation.”

Under § 8–103.18(b)(2)(C) of the Water Pollution Control Act,

The court shall determine the amount of the civil penalty under this paragraph based on the consideration of the following factors:

- i. The size of the person's business;
- ii. The ability of the person to continue the business despite the penalty;
- iii. The seriousness of the violation; and,
- iv. The nature and the extent of success in the person's efforts to mitigate the effects of the discharge.

**b. *Statutory Interpretation***

The first step when interpreting a statute is to look at the language of the statute. *See National Geographic Soc'y v. District of Columbia Dep't of Empl. Servs.*, 721 A.2d 618, 620 (D.C. 1998). The court is required to give effect to a statute's plain meaning if the words are clear and unambiguous. *See Office of People's Counsel v. Public Serv. Comm'n.*, 477 A.2d 1079, 1083 (D.C. 1984). "The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used." *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983). Furthermore, "in examining the statutory language, it is axiomatic that 'the words of the statute should be construed according to their ordinary sense and with the meaning commonly attributed to them.'" *Peoples Drug Stores*, 470 A.2d at 753 (quoting *Davis v. United States*, 397 A.2d 951, 956 (D.C. 1979)).

**III. *Analysis***

Plaintiff notes that this Court has already found that Defendant Miss Dallas Trucking is liable "for the District's costs to clean up the diesel fuel and engine oil discharge and for violating the District's Water Pollution Control Act[.]" Renew. Mot. at 1. Plaintiff's Renewed Motion supplements its previous Motion for Default Judgment and now requests that the Court impose the maximum civil penalty in the amount of \$50,000 arguing that any less penalty is "more likely to ignore the District's attempt to resolve cleanup cost liability, if the defendant is in the same position after the District expends government resources to litigate the matter." *Id.* at 9.

The Court notes that case law interpreting the civil penalty provision of the Federal Clean Water Act, the federal counterpart to the WPCA<sup>1</sup>, states that civil penalties are "intended to punish culpable

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<sup>1</sup> The Council of the District of Columbia patterned the WPCA on the Clean Water Act and caselaw interpreting the federal statute is persuasive in interpreting the District's statute. *See* D.C. Council, Report on Bill 5-326, at 1-2, 10

individuals and deter future violations, not just to extract compensation or restore the status quo.” *Kelly v. United States Env’tl. Protection Agency*, 203 F.3d 519, 523 (7th Cir. 2000) (citations omitted). A trial court can “require retribution for wrongful conduct based on the seriousness of the violations, the number of prior violations, and the lack of good-faith efforts to comply with the relevant requirements.” *Tull v. United States*, 481 U.S. 412, 422–23 (1987); *see also United States v. Sheyenne Tooling & Mfg. Co.*, 952 F. Supp. 1420, 1426 (D.N.D. 1996) (“[T]he defendant must receive sufficient punishment to alert other wrongdoers to the importance of obeying the laws and regulations.”). Under § 8–103.18(b)(2)(C) of the WPCA, the court shall determine the amount of the civil penalty based on the consideration of the following factors:

- i. The size of the person’s business;
- ii. The ability of the person to continue the business despite the penalty;
- iii. The seriousness of the violation; and,
- iv. The nature and the extent of success in the person’s efforts to mitigate the effects of the discharge.

Plaintiff argues that this Court should begin with the maximum civil penalty of \$50,000.00 and adjust downward based upon mitigation factors, of which Plaintiff claims there are none. Mot. at 6.

The Court agrees. As to the first two factors, the Court of Appeals noted that “[Miss] Dallas Trucking’s failure to participate in the litigation forfeits any argument that it was the District burden to establish the first two of those factors.” *District of Columbia v. Miss Dallas Trucking, LLC*, 19-CV-540 at 16 (Oct. 22, 2020).

As to the third and fourth factors, although Miss Dallas Trucking committed only one violation on one day, the significance of the violation and potential harm warrant the maximum penalty. The violation at issue involved a voluminous discharge of diesel fuel and motor oil that threatened to enter the Potomac. Diesel fuel is both toxic and flammable and can kill or harm wildlife. Pl. Ex. 2 at ¶ 3. This Court made clear in its Order, issued May 16, 2019, that it does not in any way dispute the seriousness of 900 gallons of fuel spilling into a wetland area. Moreover, Miss Dallas Trucking did nothing to mitigate the

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(explaining how (1) the Act’s civil penalties are “generally consistent with the Federal Clean Water Act” and (2) the WPCA is consistent with the Clean Water Act).

damages of its violation. Despite its obligation to have the insurance and resources in place to respond to environmental restoration needed because of company accidents (*see* 40 C.F.R. § 387.301T(a)(1)), the company hired only a tow truck to remove its asset (the dump truck) from the scene and refused to engage with the District when it sought to recover costs for performing a multi-day cleanup process. Mot. at 8.

The Court finds that a maximum civil penalty is appropriate as authorized under D.C. Code § 8-103.18. The provisions of this Judgment and Order shall apply to Miss Dallas Trucking and its officers, successors, and assignees.

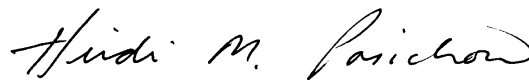
For the foregoing reasons, it is this 13<sup>th</sup> day of October 2021,

**ORDERED** that Plaintiff's Second Supplemental Motion Entry of Default Judgment and Penalties is **GRANTED**; it is,

**FURTHER ORDERED** that Defendant Miss Dallas Trucking shall pay the District the sum of \$81,399.69, of which \$50,000 is a civil penalty pursuant to D.C. Code § 8-103.18 and \$31,399.69 is damages pursuant to D.C. Code § 8-103.17(e) **on or before November 7, 2021**; it is,

**FURTHER ORDERED** that the parties' an *Ex Parte* Proof Hearing currently set for October 15, 2021, is **VACATED**; and it is,

**FURTHER ORDERED** the instant case is **CLOSED**.



**Heidi M. Pasichow**  
Associate Judge

**Copies e-served to:**

Wesley Rosenfeld  
*Counsel for Plaintiff*

**Copies mailed to:**

Miss Dallas Trucking  
8045 Hardwick Ct.  
Upper Marlboro, MD 20772  
*Defendant*