

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

<p>DISTRICT OF COLUMBIA, a municipal corporation, 400 6th Street NW, Washington, D.C. 20001</p> <p>Plaintiff,</p> <p>v.</p> <p>FORT MYER CONSTRUCTION CORPORATION, a corporation, 2237 33rd Street NE, Washington, D.C. 20018</p> <p>Defendant.</p>	<p>COMPLAINT</p> <p>JURY TRIAL DEMANDED</p>
---	---

**COMPLAINT FOR VIOLATIONS OF THE DISTRICT OF COLUMBIA’S WATER
POLLUTION CONTROL ACT**

Plaintiff, the District of Columbia (“District”), by the Office of the Attorney General, files this civil enforcement action against Fort Myer Construction Corporation (“FMCC”) for significant and repeated violations of the District’s Water Pollution Control Act (“WPCA”).

In support of its claims, the District states, claims, and alleges as follows:

INTRODUCTION

1. FMCC is one of the largest road paving and infrastructure construction companies in the DMV area, proudly boasting its numerous achievement awards, its extensive client list (including the District government), and its own “pillars of success” that include “safety, respect, quality, integrity, pride and community.”

2. But FMCC’s environmental track record at its headquarters in Ward 5 (“Facility”) paints a very different portrait—a company who repeatedly flouted the District’s environmental laws and regulations despite directive orders and warnings from the District.

3. For years, FMCC has allowed pollutants from its Facility to enter the District’s stormwater system without a permit or authorization. Beginning as early as 2015, FMCC allowed contaminated runoff from its storage and maintenance yard to discharge into the District’s stormwater sewer illegally, fouling District Waters—including Springhouse Run, which flows through the National Arboretum.

4. As a result, the District’s Department of Energy and Environment (“DOEE”) has received numerous complaints against FMCC and conducted a host of Facility investigations, spending considerable time and resources attempting to bring the Facility into compliance with the WPCA.

5. For example, from 2015 through 2023, DOEE observed poor maintenance conditions at the Facility and at least twenty unpermitted, illegal pollutant discharges of “greywater” (salty wastewater containing sediment and other pollutants) and petroleum into the District’s stormwater system, which DOEE repeatedly directed FMCC to remedy. But FMCC repeatedly failed to abide by these DOEE directive orders.

6. Each of FMCC’s unpermitted pollutant discharges, and each failure to abide by a directive order issued by DOEE, threatens District Waters and constitutes a violation of the WPCA. For these repeated violations, the District seeks to hold FMCC to account with civil penalties and other relief under the WPCA.

JURISDICTION

7. This Court has subject matter jurisdiction pursuant to D.C. Code § 8-301.18(b)(1).
8. This Court has personal jurisdiction pursuant to D.C. Code § 13-423.

PARTIES

9. Plaintiff, the District of Columbia, is a municipal corporation empowered to sue and be sued. The District is represented in this enforcement action by and through its chief legal officer, the Attorney General for the District of Columbia. D.C. Code § 1-102. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General is specifically authorized to enforce the WPCA. *See* D.C. Code § 8-103.08(b).

10. Defendant, FMCC, is a privately owned company incorporated in the District of Columbia. FMCC owns and maintains its headquarters and primary operations at the Facility located at 2237 33rd Street, NE, Washington, D.C. 20018 in Ward 5.

FMCC'S VIOLATIONS OF THE WPCA

11. FMCC's Facility is approximately 12.5 acres and is used to service, maintain, and store equipment, vehicles, and raw material (sand, gravel, asphalt) for resurfacing roadways. The Facility includes its headquarters, office trailers, a vehicle maintenance building, a diesel and fuel dispenser island, a wash rack for vehicles and equipment, and several large parking areas for vehicles and road-surfacing equipment.

12. Runoff from precipitation and on-site activities—including vehicle washing and dust control—flows into a series of stormwater drains located on or near the perimeter of the Facility. These storm drains are connected to the District's municipal stormwater sewer system

(“MS4”) that carry runoff to nearby creeks and streams that flow into the Anacostia or Potomac Rivers.

13. Environmental noncompliance at the Facility dates to at least March 2015, when DOEE was notified of a pollutant discharge into Springhouse Run, a tributary creek that flows through the National Arboretum and into the Anacostia River. The Arboretum is a public garden and botanical research and conservation institution operated by the U.S. Department of Agriculture. Because the Facility is the only industrial facility within the area drained by that portion of the District’s MS4, DOEE determined that the March 2015 pollutant discharge originated from the Facility as a result of a fire at the Facility.

14. Following the March 2015 incident, DOEE inspected the Facility several times between June and October 2015 to determine whether the Facility was compliant with Federal and District discharge regulations. Due to the size and scope of the Facility’s industrial activity and because runoff from the Facility drains into the MS4, DOEE concluded that the Facility required a permit to discharge under the Federal Environmental Protection Agency’s (“EPA”) Multi-Sector General (“MSG”) Permit program.¹

15. In response to an illegal dumping complaint from EPA, DOEE re-inspected the Facility on October 28, 2015. DOEE observed a petroleum discharge from the Facility into the MS4. Subsequent inspections at the Facility on November 3 and December 16 revealed poor maintenance, contaminated storm- water runoff, and a vehicle wash rack that discharged directly to the MS4. Following the December 16 inspection, DOEE issued a directive order that FMCC apply for a Federal MSG permit and install water pollution control devices (also referred to as Best Management Practices) at each of the stormwater drains that drain the Facility. Properly installed

¹ The MSG program is part of the EPA’s National Permit Discharge Elimination (NPDES) permit program under the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*

and maintained, these pollution control devices filter and remove pollutants from runoff before the runoff discharges into the MS4.

16. To determine compliance with DOEE's directive order, DOEE re-inspected the Facility on December 22, 2015. During the inspection, DOEE documented another petroleum discharge into the MS4. DOEE issued a notice of infraction to FMCC for the illegal discharge as well as the prior illegal discharge on October 28.

17. DOEE performed re-inspections at the Facility in January and February 2016 to determine FMCC's compliance with DOEE's directive order. DOEE determined that FMCC had installed pollution control devices, but Facility maintenance was lacking. In addition, FMCC still had not applied to EPA for the MSG permit. DOEE issued another directive order to FMCC to properly maintain the pollution control devices, perform appropriate housekeeping in storage and maintenance areas, and apply for the MSG permit.

18. In June 2016, FMCC applied to EPA for the MSG permit. EPA did not approve the permit application because FMCC failed to provide an updated Stormwater Prevention Plan ("SWPP") to EPA and stormwater monitoring reports to DOEE, as required by EPA.

19. In July 2018, DOEE conducted a follow-up inspection to determine compliance with prior directive orders and the status of the discharge permit. DOEE again found the Facility in poor condition and lacking good housekeeping practices. DOEE also determined that FMCC did not submit an updated SWPP to EPA and lacked any stormwater monitoring data as a prerequisite to MSG permit approval. As a result, DOEE issued another directive order to FMCC to provide the required documentation to EPA and DOEE for permit approval and to improve housekeeping conditions at the Facility.

20. Circumstances at the Facility failed to improve. DOEE issued another notice of infraction and directive order to FMCC for an illegal discharge to the MS4 on February 17, 2021. During a compliance inspection in March 2021, DOEE observed another petroleum discharge, poor maintenance conditions, exposed metals, paints, automotive fluids and construction materials, and contaminated stormwater bypassing the Facility's pollution control devices. DOEE also determined that FMCC still did not have an MSG permit nor an updated SWPP. Again, DOEE issued a directive order FMCC to cease illegal discharges and complete the MSG permit process.

21. DOEE conducted one more inspection at the Facility in February 2022 and two more inspections in July 2022. During the February inspection, DOEE observed salt- and silt-laden discharges. DOEE also found petroleum discharges in Springhouse Run during each of the July inspections. All three discharges were traced to poor maintenance conditions at the Facility.

22. After the July inspections, DOEE determined that the Facility's BMP stormwater filter system was entirely full of sediment and inoperable due to lack of maintenance. Stormwater containing sediment and other pollutants flowed directly over the top of the filters and directly out to the MS4. The DOEE inspector also observed petroleum product in the stormwater, which was flowing off the property and into the MS4.

23. DOEE instructed FMCC to clean the pollution control devices and requested a review of the Facility's pollution control maintenance documents. The documents revealed a failure by FMCC to maintain the pollution control devices and an illegal bypass pipe located within the manhole where the DOEE inspector had observed the petroleum product. The bypass allowed stormwater to circumvent the pollution control device.

24. Still without an MSG permit and despite these repeated violations, warnings and directive orders, conditions at the Facility still did not improve. In 2023, DOEE observed illegal

petroleum and sediment discharges from FMCC's Facility on seven different occasions during January, February, April and May. DOEE reissued its prior directive order and reiterated to FMCC the need to improve conditions at the Facility to prevent illegal discharges.

25. Due to the repeated illicit discharges, DOEE installed monitoring cameras at the MS4 outfall, which empties into Springhouse Run, to monitor for future illegal discharges. The monitoring camera recorded greywater discharges at the outfall originating from the Facility between May 1 and May 6, 2023.

26. On May 12, 2023, DOEE issued another directive order to FMCC to clean the pollution control device system; reassess the Facility's pollution control devices, operations, and maintenance plans to prevent future discharges; and identify the source of the greywater discharge. FMCC's Facility Supervisor provided documentation that indicated that the discharge originated from the wash rack bypass pipe and stated that the greywater was an "eco-friendly soap." However, the relevant Safety Data Sheet² for the "eco-friendly soap" indicates that it is also *not* to be released to drains or waters and directs users to contact the U.S. EPA in the event of a spill or discharge.

27. In total, DOEE found at least twenty unpermitted, illegal pollutant Facility discharges of greywater and petroleum into the District's stormwater system from 2015 to present. DOEE issued notices of infraction for two of these illegal discharges.

28. Throughout this entire period—from 2015, when FMCC was on notice of the permit requirement, until 2024—FMCC operated without a required MSG discharge permit. Even though directed to do so by DOEE, FMCC failed to apply for the permit, and then subsequently failed to provide required information to EPA to obtain the permit. Because of these FMCC-caused

² A "Safety Data Sheet" is a document that provides information about the potential health and safety hazards of a particular material and/or product.

delays, EPA did not issue the MSG discharge permit to FMCC until 2024, nearly 10 years after FMCC was on notice of the permit requirement.

29. FMCC has been a persistent violator of the WPCA and must be held accountable for its repeated discharge violations and failure to comply with directive orders.

CLAIMS FOR RELIEF

Violations of the WPCA

30. The District realleges and incorporates by reference the allegations set forth in the preceding paragraphs.

31. The purpose of the WPCA is to restore and maintain the water quality of the Waters of the District, which are defined as all “flowing and still bodies of water” within the District. D.C. Code § 8–103.01(26).

32. The WPCA prohibits any person from discharging pollutants into the Waters of the District, except by permit issued by the Mayor. D.C. Code §§ 8-103.02, 8-103.06. The WPCA also prohibits any person from violating orders by the District to prevent illegal discharges of pollutants. D.C. Code §§ 8-103.17. Violations of the WPCA are subject to civil enforcement, including the imposition of civil penalties in an amount up to \$50,000 for each violation. §§ 8-103.06(g) and 8-103.18(b). Each willful violation of the WPCA is subject to a maximum civil penalty of \$250,000. D.C. Code § 8-103.18(b)(2)(B).

33. “Discharge” is broadly defined to include the “spilling, leaking, releasing, pumping, pouring, emitting, emptying, or dumping of any pollutant or hazardous substance...into or so that it may enter District of Columbia waters.” D.C. Code § 8-103.01(5).

34. At all relevant times, FMCC has been and is a “person” within the meaning of the WPCA. D.C. Code § 8-103.01(17).

35. Each instance or day of a violation of the WCPA is considered a separate violation.
21 D.C.M.R. § 505.1.

36. Between 2015 and 2023, on at least twenty (20) occasions, FMCC illegally discharged pollutants into District Waters without a permit. Two of these violations were administratively resolved through the issuance of notices of infraction and payment of administrative fines.

37. Between 2015 and 2023, on at least six (6) occasions, FMCC violated valid directive orders issued by DOEE. FMCC is liable under the WPCA for violating DOEE's orders.

REQUEST FOR RELIEF

38. WHEREFORE, the District respectfully requests that judgment be entered in its favor and against FMCC and that this Court impose civil penalties, fines, and other relief as follows:

1. A declaratory judgment that FMCC violated the WPCA.
2. Statutory civil penalties against FMCC as authorized under the WPCA in an amount to be proven at trial.
3. Such other relief as the Court deems just and proper.

Dated: October 10, 2024

Respectfully submitted,

BRIAN L. SCHWALB
Attorney General for the District of Columbia

JENNIFER C. JONES
Deputy Attorney General

/s/ David S. Hoffmann
DAVID S. HOFFMANN [#983129]
Senior Assistant Attorney General

Office of the Attorney General for the District of Columbia
400 Sixth St., NW
Washington, D.C. 20001
(202) 368-2569
David.Hoffmann@dc.gov

/s/ Lauren Cullum
LAUREN CULLUM [#90009436]
Special Assistant Attorney General
Office of the Attorney General for the District of Columbia
400 Sixth St., NW
Washington, D.C. 20001
Lauren.Cullum@dc.gov

Attorneys for the District of Columbia