

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**

One Judiciary Square  
441 Fourth Street, NW  
Washington, DC 20001-2714  
TEL: (202) 442-9094  
FAX: (202) 442-4789

DISTRICT OF COLUMBIA  
DEPARTMENT OF TRANSPORTATION  
Petitioner,

v.

DISTRICT PROPERTIES  
Respondent

Case Nos.: 2012-DDOT-M107643  
2012-DDOT-M107644

NOV Nos.: M107643  
M107644

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**FINAL ORDER**

**I. Introduction**

These cases arise under the Litter Control Administration Act of 1985, D.C. Official Code §§ 8-801 to 8-810 and Title 24, Chapter 34 of the District of Columbia Municipal Regulations (“DCMR”). On March 29, 2012, the Government served two Notices of Violation on Respondent District Properties alleging two violations of 24 DCMR 3403.1<sup>1</sup> for not complying with permit conditions. Both violations were alleged to have occurred at 4124 19<sup>th</sup> Street, NE on March 22, 2012. The Government seeks a fine of \$500 for each violation.

Respondent filed answers denying the violations, and I held a hearing on May 9, 2012. At the hearing held on that date, Inspector Dwayne Norris appeared for the Government.

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<sup>1</sup> 3403.1 The Excavation Permit shall specify the location, extent, and method of the Excavation, the start date and duration of the Excavation, the Permittee to whom the Permit is issued, and any conditions placed on the Permit. The Permit term shall be sixty (60) calendar days from the date the work is scheduled to commence as indicated on the Permit, unless the applicant requests a waiver of the 60-calendar day term in writing when the application is submitted. In order to receive a waiver, the applicant shall demonstrate why the work to be authorized cannot be completed within sixty (60) calendar days. In addition, a Permittee may seek a renewal of its Permit for major construction projects.

Nazireen Rasiff, Respondent's Assistant Manager, represented Respondent pursuant to OAH Rule 2835.6; 1 DCMR 2835.6.

After being advised of the three available pleas, Respondent sought to change its pleas from Deny to Admit with Explanation. The Government did not object to this change of pleas. I construed Respondent's request as a motion to amend the pleas, which I granted.

Based on the testimony at the hearing, the documents admitted into evidence, and the entire record, I now make the following findings of fact and conclusions of law.

## **II. Findings of Fact**

Respondent was issued an excavation permit (the "Permit") on March 12, 2012, which contained 19 conditions. By Respondent's pleas of Admit with Explanation, Respondent admits that on March 22, 2012, it failed to comply with two of those conditions by failing to erect a 4' high orange snow fence around the tree space in front of the Property as required by paragraph 8 of the Permit, and by failing to obtain an occupancy permit to use steel plates as required by paragraph 14 of the Permit. Respondent accepts responsibility for the violations, and promptly complied with the conditions of the Permit after the Notices of Violation were issued.

## **III. Conclusions of Law**

Respondent's pleas of Admit with Explanation establish that on March 22, 2012, it failed to comply with permit conditions as charged in the Notices of Violation. The Government has requested a fine of \$500 for each violation. D.C. Official Code Section 8-807 (2001 ed.); 24 DCMR 1380. 4. The judges of this administrative court have the authority to "suspend or modify fines, penalties and abatement costs; . . . ." D.C. Official Code § 8-808(b)(5). This administrative court has determined that it furthers the goals of the Litter Control Administration

Act to reward acceptance of responsibility for violations, and to reduce fines based on mitigating factors such as corrective action taken, efforts undertaken to prevent future violations, and good faith efforts to comply. There are mitigating factors in this case that justify a reduction in the fines. Respondent accepts responsibility for the violations, and promptly complied with the conditions of the Permit after it received the Notices of Violation. I will reduce each fine from \$500 to \$250, for a total of \$500.

#### **IV. Order**

Based on the findings of fact and conclusions of law, it is, this **22<sup>nd</sup>** day of **May**, 2012:

**ORDERED**, that Respondent shall pay a total of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within 35 days of the mailing date of this Order (30 days plus 5 days service time pursuant to 1 DCMR 2811.5; and it is further

**ORDERED**, that if Respondent fails to pay the above amount in full within 35 calendar days of the mailing date of this Order, interest shall accrue on the unpaid amount at the rate of **1½%** per month or portion thereof, starting 35 days from the mailing date of this Order, pursuant to D.C. Code §§ 8-807(h)(1); and it is further

**ORDERED**, that failure to pay within the time specified will, under D.C. Code §§ 8-807, authorize the imposition of additional sanctions, including the suspension of Respondent's license or permits, the placement of a lien on real and personal property owned by Respondent, and the sale of Respondent's real property at a tax sale conducted by the District of Columbia Office of Tax and Revenue. D.C. Code §§ 8-807; and it is further

**ORDERED**, that the appeal rights of any party aggrieved by this Order are stated below.

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Samuel McClendon  
Principal Administrative Law Judge