

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

 UNITED STATES OF AMERICA,

Plaintiff

v.

MAZZA & SONS, INC.,

Defendant

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Civil Action No. 6:17-cv-01041-GTS-TWD

**CERCLA SECTION 107 CONSENT DECREE
FOR RECOVERY OF PAST RESPONSE COSTS**

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a Complaint against Defendant Mazza & Sons, Inc. (“Settling Defendant”), among others, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607 (“CERCLA” or “Act”). The Complaint seeks reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Frankfort Asbestos Superfund Site (“the Site”), located approximately one mile northwest of the Town of Frankfort, in Herkimer County, New York.

B. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, including:

1. In November 2007, EPA initiated interim stabilization removal activities to contain and prevent exposure to asbestos-containing materials (“ACM”) at the Site.
2. On November 15, 2011, EPA issued a Unilateral Administrative Order for Removal Action, Index No. CERCLA-02-2012-2001, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), directing Settling Defendant, among others, to implement time-critical removal activities at the Site to address deteriorating conditions. Settling Defendant, as well as others, declined to perform these removal activities.
3. In November 2013, EPA conducted the removal activities at the Site, involving excavation of the ACM and its off-site disposal at an approved facility.

C. In performing these response activities, EPA incurred response costs at the Site.

D. Settling Defendant is a potentially responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and jointly and is severally liable for response costs incurred and to be incurred at the Site.

E. In a separate criminal action pertaining to the release or threatened release of hazardous substances at or from this Site, Settling Defendant was indicted on charges of conspiracy to defraud the United States, failure to report a CERCLA release, obstruction of justice, and making false statements on June 2, 2011. See U.S. v. Julius DeSimone, Donald Torriero, Cross Nicastro, Dominick Mazza, Mazza & Sons, Inc., Case # 5:11-CR-264 NDNY (DNH).

F. Settling Defendant was found guilty of the charges set forth in Paragraph E on October 16, 2012. In accordance with sentencing, Settling Defendant has paid environmental restitution for response costs at the Site of approximately \$600,000.00 (six hundred thousand dollars). Id.; see also U.S. v. Dominick Mazza, Mazza & Sons, Inc., et al., Case # 5:11-CR-264 NDNY (DNH).

G. With regard to this civil action pertaining to the release or threatened release of hazardous substances at or from this Site, the United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without the admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and personal jurisdiction over Settling Defendant. Venue lies in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§1391(b) and (c) and 1395(a), because violations alleged in the Complaint are alleged to have occurred in this judicial district. Settling Defendant waives all objections and defenses it may have to jurisdiction of the Court or venue in this District. Settling Defendant agrees not to challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendant and its heirs, successors, and assigns. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available at: <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States of America and Settling Defendant.

“Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through the Effective Date plus accrued Interest on all such costs through such date.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendant” shall mean Mazza & Sons, Inc.

“Site” shall mean the Frankfort Asbestos Superfund Site, encompassing approximately 1.75 acres of a 192 acre former dairy farm, located at 3720 Southside Road (Old New York State Route 5S), approximately one mile northwest of the Town of Frankfort, Herkimer County, New York.

“State” shall mean the State of New York.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. PAYMENT OF RESPONSE COSTS

4. Payment by Settling Defendant for Past Response Costs. Settling Defendant shall pay to EPA the principal total amount of \$250,000.00 (two hundred and fifty thousand dollars). Payment of the principal amount shall be made in 3 (three) installments. The first installment payment of \$84,000.00 (eighty-four thousand dollars) is due and shall be paid within 30 (thirty) Days after the Effective Date of this Consent Decree and, if timely paid, shall include no Interest. The subsequent two installment payments, each of \$83,000.00 (eighty-three thousand dollars), are due on the first and second anniversary of the Effective Date. Each installment payment

shall also include an additional sum for Interest accrued on the unpaid portion of the principal amount calculated from the date of the prior payment until the date of the payment. The Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the Northern District of New York shall provide Settling Defendant with a calculation of the amount of Interest due for each payment upon request. Settling Defendant may pay any installment payment prior to the due date, but must contact the FLU in advance for a determination regarding the amount of Interest due to be included with the payment. In the event any installment payment includes an overpayment, the amount of the overpayment shall be applied to reduce the amount of the remaining principal.

5. Settling Defendant shall make payments by Fedwire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendant by the FLU of the U.S. Attorney’s Office for the Northern District of New York. Payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions on behalf of Settling Defendant after the Effective Date to:

Dominick J. Mazza, Jr., CPA
3230 Shafto Road
Tinton Falls, New Jersey 07753
Office: (732) 922-9292
Fax: (732) 918-9328
Email: djm@mazzademo.com

Settling Defendant may change the individual identified to receive payment instructions on its behalf by providing written notice to DOJ and EPA of such change in accordance with Section XIII (Notices and Submissions).

6. Deposit of Payment. The total amount of each payment to be paid pursuant to Paragraph 4 (Payment by Settling Defendant for Response Costs) shall be deposited by EPA into the EPA Hazardous Substance Superfund.

7. Notice of Payment. At the time of each payment, Settling Defendant shall send notice that each payment has been made to: (a) EPA and DOJ, in accordance with Section XIII (Notices and Submissions); (b) the EPA Cincinnati Finance Center, by email addressed to cinwd_acctsreceivable@epa.gov; and (c) the EPA Cincinnati Finance Center, by first class mail addressed to: 26 W. Martin Luther King Drive; Cincinnati, Ohio 45268. Such notice shall reference the CDCS Number, the Site/Spill ID Number ZG, and the DJ Number 90-11-3-10738.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. Interest on Late Payments. If Settling Defendant fails to make any payment under Paragraph 4 (Payment by Settling Defendant for Past Response Costs) by a required due date, Interest shall accrue or continue to accrue on the unpaid balance from the Effective Date through the date payment is made.

9. Stipulated Penalties.

a. If any amount due to EPA under Paragraph 4 (Payment by Settling Defendant for Past Response Costs) is not paid by the required due date, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA, as a Stipulated Penalty, in addition to the Interest required by Paragraph 8 (Interest on Late Payments), an amount of \$1,000.00 (one thousand dollars) per violation per Day that such payment is late.

b. Stipulated Penalties are due and payable within 30 (thirty) Days after the date of the demand for payment of the stipulated penalties by EPA. All payments to EPA under this Paragraph shall be identified as “stipulated penalties” and shall be made by Fedwire EFT to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

c. At the time of each payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ as provided in Paragraph 7 (Notice of Payment).

d. Stipulated Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment but need only be paid upon demand. All Stipulated Penalties shall begin to accrue on the Day after payment is due and shall continue to accrue through the date payment is made. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. Should the United States bring an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

12. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the Stipulated Penalties that have accrued pursuant to this Consent Decree. Payment of Stipulated Penalties shall not excuse Settling Defendant from payment as required by Section V (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VII. COVENANTS BY PLAINTIFF

13. Covenants for Settling Defendant by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants extend only to Settling Defendant and do not extend to any other person.

VIII. RESERVATION OF RIGHTS BY UNITED STATES

14. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Paragraph 13 (Covenants for Settling Defendant by United States). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

IX. COVENANTS BY SETTLING DEFENDANT

15. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or its contractors or employees with respect to Past Response Costs and this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of New York, the Tucker Act (28 U.S.C. § 1491), the Equal Access to Justice Act (28 U.S.C. § 2412), or at common law; or

c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for Past Response Costs.

16. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 CFR § 300.700(d).

17. Waiver of Claims by Settling Defendant.

a. Settling Defendant agrees not to assert any claims and agrees to waive all claims or causes of action, including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613, that it may have as follows:

(1) De Micromis Waiver. For all matters relating to the Site against any person where the person's liability to Settling Defendant with respect to the Site is based solely

on having arranged for disposal or treatment or for transport for disposal or treatment of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

(2) MSW Waiver. For all matters relating to the Site against any person where the person's liability to Settling Defendant with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of MSW at the Site, if the volume of MSW disposed, treated, or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site; and

(3) De Minimis/Ability to Pay Waiver. For response costs relating to the Site against any person that has entered or in the future enters into a final CERCLA 122(g) de minimis settlement or a final settlement based on limited ability to pay, with EPA with respect to the Site.

b. Exceptions to Waivers. The waivers under this Paragraph shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person otherwise covered by such waiver[s] if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

X. EFFECT OF SETTLEMENT/CONTRIBUTION

18. Except as provided in Paragraph 17 (Waiver of Claims by Settling Defendant), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section IX

(Covenants by Settling Defendant), each Party expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

19. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Past Response Costs.

20. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

21. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA and DOJ in writing no later than 60 Days prior to the initiation of such suit or claim. Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ within writing within 10 Days after service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within 10 Days after service or receipt of any Motion for Summary Judgment, and within 10 Days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

22. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiff set forth in Section VII.

XI. ACCESS TO INFORMATION

23. Settling Defendant shall provide to EPA, upon request, copies of all records, reports, documents, and other information in hard copy or electronic form ("Records") within its possession or control or that of its contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

24. Privileged and Protected Claims.

a. Settling Defendant may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 24b., and except as provided in Paragraph 24c.

b. If Settling Defendant asserts a claim of privilege or protection, it shall provide Plaintiff with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Defendant shall provide the Record to Plaintiff in redacted form to mask the privileged or protected information only. Settling Defendant shall retain all Records that it claims to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Defendant's favor.

c. Settling Defendant may make no claim of privilege or protection regarding:

(1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

(2) the portion of any Record that Settling Defendant is required to create or generate pursuant to this Consent Decree.

25. Business Confidential Claims. Settling Defendant may assert that all or part of a Record submitted to Plaintiff under this Section or Section XII (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Defendant shall segregate

and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendant asserts a business confidentiality claim. Records submitted to EPA determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendant that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Defendant.

26. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XII. RETENTION OF RECORDS

27. Until 10 years after the Effective Date, Settling Defendant shall preserve and retain all non-identical copies of Records now in its possession or control or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site. The above record retention requirement applies regardless of any corporate retention policy to the contrary.

28. At the conclusion of the record retention period, Settling Defendant shall notify EPA and DOJ at least 90 Days prior to the destruction of any such Records, and, upon request by EPA or DOJ, and except as provided in Paragraph 24 (Privileged and Protected Claims), Settling Defendant shall deliver any such Records to EPA.

29. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since

notification of potential liability by the United States and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XIII. NOTICES AND SUBMISSIONS

30. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section, satisfies any notice requirement of the Consent Decree regarding such Party.

As to DOJ by email: eescasemanagement.enrd@usdoj.gov

As to DOJ by regular mail: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ Number 90-11-3-10738

As to EPA: Jocelyn P. Scott
U.S. Environmental Protection Agency, Region 2
Office of Regional Counsel
New York/Caribbean Superfund Branch
290 Broadway, 17th Floor
New York, New York 10007-1866

As to Settling Defendant: Dominick J. Mazza, Jr., CPA
3230 Shafto Road
Tinton Falls, New Jersey 07753
Email: djm@mazzademo.com

XIV. RETENTION OF JURISDICTION

31. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION

32. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied within it. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

33. This Consent Decree shall be lodged with the Court for a period of at least 30 Days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

34. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party, and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVII. SIGNATORIES/SERVICE

35. The undersigned representative of Settling Defendant and the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, each certify that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

36. Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

37. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XVIII. FINAL JUDGMENT

38. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and Settling Defendant. The Court hereby enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

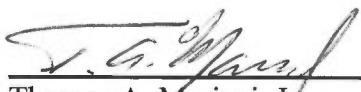
SO ORDERED THIS ___ DAY OF _____, 2017.

United States District Judge

FOR THE UNITED STATES OF AMERICA:


On Behalf of the U.S. Department of Justice:

09-17-2017
Date



Thomas A. Mariani, Jr.
Section Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

09-19-2017
Date

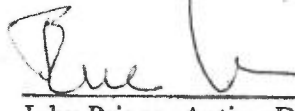


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Telephone: (518) 431-0247

8/14/17
Date

On Behalf of the Environmental Protection Agency:



John Prince, Acting Director *for*
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

FOR DEFENDANT MAZZA & SONS, INC:

6/2/2017
Date


James F. Mazza
President
Mazza & Sons, Inc.
3230 Shafto Road
Tinton Falls, NJ 07753
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