

FindLaw[®] FOR LEGAL PROFESSIONALS

Superior Court of New Jersey, Appellate Division.

**STATE DEPARTMENT OF
ENVIRONMENTAL PROTECTION
BUREAU OF COUNTY
ENVIRONMENTAL AND WASTE
COMPLIANCE ENFORCEMENT v.
MAZZA AND SONS INC**

**STATE of New Jersey DEPARTMENT OF ENVIRONMENTAL PROTECTION,
BUREAU OF COUNTY ENVIRONMENTAL AND WASTE COMPLIANCE
ENFORCEMENT, Plaintiff-Respondent, v. MAZZA AND SONS, INC., Borough
Property, L.L.C., Dominick J. Mazza, Individually, and James Mazza, Individually,
Defendants-Appellants.**

Argued Jan. 13, 2009. -- March 19, 2009

Before Judges SKILLMAN, GRAVES and GRALL.

→ James G. Aaron, Newark, argued the cause for appellants (Ansell, Zaro, Grimm & Aaron,
→ attorneys; Barry M. Capp, on the brief). Gary W. Wolf, II, Deputy Attorney General,
argued the cause for respondent (Anne Milgram, Attorney General, attorney; Melissa
Raksa, Deputy Attorney General, of counsel; Mr. Wolf, on the brief).

The opinion of the court was delivered by

This appeal involves the interpretation and application of Rule 4:67-6, which governs an
action by a state agency for judicial enforcement of an administrative order.

I.

In April 2002, plaintiff Department of Environmental Protection (DEP) issued permits under the Solid Waste Management Act (SWMA), N.J.S.A. 13:1E-1 to -48, and the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 to -99.32, authorizing defendant Mazza & Sons to operate a solid waste transfer station and recycling center in Tinton Falls. Defendants Dominick and James Mazza are the principals in Mazza & Sons.

On April 27, 2006, the DEP issued an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA), which determined, based on compliance evaluations conducted on March 31, 2005, May 2, 2005, May 17, 2005, June 21, 2005 and July 7, 2005, that Mazza & Sons had violated various administrative regulations governing the operation of solid waste facilities under the SWMA and Solid Waste Utility Control Act (SWUCA), N.J.S.A. 48:13A-1 to -13. This order was also directed to Dominick and James Mazza, individually, and to defendant Borough Property, L.L.C., the owner of a fifty-acre property adjoining the transfer station and recycling center in which the Mazzas are also the principals (collectively "defendants"). Based on those violations, the AONOCAPA ordered defendants to take various remedial actions, many of which were required to be performed "immediately." The AONOCAPA also directed defendants to obtain various permits and other approvals from the DEP before undertaking this remedial work. In addition to ordering defendants to remedy the violations of the DEP regulations, the AONOCAPA imposed a civil administrative penalty of \$27,000 for the violations.

The AONOCAPA specifically informed defendants that they were entitled to request a hearing to challenge its provisions and enclosed a form they could use for this purpose. The AONOCAPA also stated that "[i]f no request for a hearing is received within twenty (20) calendar days from receipt of this AONOCAPA, it shall become a Final Order upon the twenty-first (21st) calendar day following its receipt, and the penalty shall be due and payable." In addition, the AONOCAPA stated: "Submittal or granting of a hearing request does not stay the terms or effect of this AONOCAPA."

Defendants received the AONOCAPA on May 11, 2006. Thus, as provided by N.J.S.A. 13:1E-9(c) and (e) and set forth in the AONOCAPA, defendants had until June 1, 2006 to request a hearing.

However, defendants failed to submit a timely request for a hearing. Moreover, insofar as the record before us indicates, defendants did not take any steps to comply with the remedial provisions of the April 27, 2006 AONOCAPA that required immediate action.

On July 17, 2006, which was forty-six days after the time for requesting a hearing had expired and the April 27, 2006 AONOCAPA had become final, defendants filed a request with the DEP for a hearing. However, defendants did not seek a stay of the remedial provisions of the AONOCAPA or, as far as the record before us indicates, comply with any of those provisions.



MULTI-POLICY DISCOUNTS: COVERING MORE COULD SAVE YOU MORE

GET A QUOTE

TRAVELERS
It's better under the umbrella

Sign in | Register for free

Sign in with Facebook

Site Search Search Local Business Listings

Search for keywords, people, locations, obituaries, Web ID and more.

Brought to you by:

Find your new home at

- Home
- News
- Weather
- Sports
- Entertainment
- Living
- Interact
- Jobs
- Autos
- Real Estate
- Rentals
- Classified Ads
- Deals
- News
- Business
- Columns
- Education
- National
- Obits
- Opinion/NJ Voices
- Politics
- Star-Ledger
- Town pages
- Forums
- More

Top Stories



Jonathan Goff emerges as Giants' man in middle

Boil water notices issued for several towns



Di Ionno: Red Cross workers take storm in stride

Home > New Jersey Real-Time News > Monmouth County

Tinton Falls disposal company owner is charged with dumping asbestos-laden debris in N.Y.

Published: Friday, June 03, 2011, 7:59 PM Updated: Saturday, June 04, 2011, 1:05 PM

By MaryAnn Spoto/The Star-Ledger
Follow

Sponsored By:

Massage Envy
SPA DEALS!
CLICK HERE NOW!

Recommend 10 recommendations. Sign up to see what your friends recommend.

Comment 10

Share

Email

Print

5



submit

TINTON FALLS — The owner of a Tinton Falls disposal company and three of his associates were arrested today on charges they dumped thousands of tons of asbestos-laden debris at a farm containing wetlands in upstate New York.

Dominick Mazza and his company, Mazza & Sons Inc., were named in the seven-count indictment that was handed up Thursday in federal court in the northern district of New York.

The indictment also names Julius DeSimone, 68, of Rome, N.Y., Donald Torriero, 54, of Wellington, Fla., and Cross Nicastro II, 59, of Frankfort, N.Y.

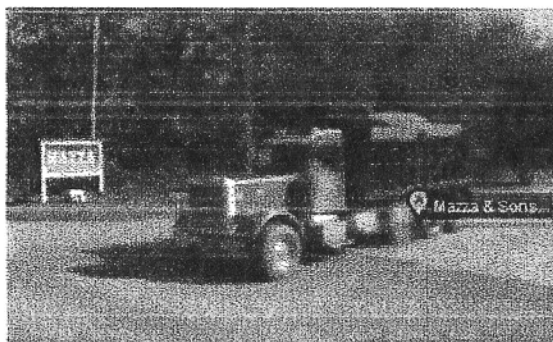
Richard Hartunian, U.S. Attorney for the northern district of New York, said DeSimone worked in the solid waste industry for more than 10 years, Torriero operated a transfer station in Florida and Nicastro owns the 28-acre farm in Frankfort abutting the Mohawk River in Herkimer County where the debris was dumped.

All four men fabricated a New York State Department of Environmental Conservation permit letter and other documents and forged the name of a DEC official, according to the indictment.

The indictment charges them with conspiracy to defraud the United States, conspiracy to commit wire fraud and conspiracy to violate the Clean Water Act and Superfund laws.

Mazza's attorney, Paul Brickfield, said he plans to plead not guilty to the charges.

"We are going to vigorously fight the case," Brickfield said.



Google Maps

Street view of Mazza & Sons Inc. in Tinton Falls. The owner was charged today with dumping asbestos-laden debris in New York.

Bankrate.com

SAVE ON YOUR MORTGAGE

Today's 30 Yr Fixed Rates
4.28%*

View Rates Now

Free and objective

*Overnight average rate click here to learn more

More New Jersey Real-Time News

Most Comments Most Recent

- New Jersey Real-Time News stories with the most comments in the last 7 days.
- 291 Earthquake rocks New Jersey and New York
 - 194 Nearly half of N.J. voters don't think President Obama deserves a second term, poll says
 - 138 Camden to pay students \$100 not to cut class

He said Mazza was released on his own recognizance after being arrested early today.

The men are accused of dumping 60 million pounds of contaminated construction and demolition material at the farm, said Ignacia Moreno, assistant attorney general for the U.S. Justice Department's Environment and Natural Resources Division.

Mazza, 60, of Tinton Falls, has been fighting with the New Jersey Department of Environmental Protection, which accused him of improperly disposing waste on an adjacent piece of property his company owns. His attorney in that case, Robert Honecker Jr., said Mazza is still negotiating with the DEP to try to resolve the issue.

Previous coverage:

- 4 charged with dumping asbestos-contaminated debris in New York; feds said it went to North Bergen firm first

Related topics: [tinton-falls](#)

*L MCP Alumni
Now Ansell, Grimm Aaron partner*

- 133 Top union official blasts Gov. Christie for requiring state employees to report to work
- 126 Elizabeth school lunch discounts come under scrutiny; N.J. officials call for investigation

Sponsored Links

Carbonite Business Backup
A better way to back up your SMB. Continual backup. Rapid recovery
www.Carbonite.com/Business

Serious Money!
If I Can Make Over \$6,000 Per Week So Can You! I'll Prove It!
www.thewealthprophet.com

Invest In Gold: Free Kit
Learn How to Invest In Gold. Get Started with Free Investors Kit Now!
Goldline.com/Gold

Most Active Users

What's this?

Users with the most NJ.com comments in the last 7 days

93 **rbcommittee**

87 **Mickster**

79 **FairfieldFox**

70 **Mtown Quaker**

63 **phatdaddy4**

Users We Love

NJ.com user Rene
Sharing photos from events across New Jersey

[More Users We Love](#)

Connect with NJ.com

What's this?

[All Facebook & Twitter accounts »](#)

Share this story

Story tools

Email

Print

More stories in New Jersey Real-Time News

Previous story
Pest control workers called to University Hospital in Newark for mouse infestation

Next story
Newark Mayor Cory Booker's calls for resident's support to reduce violence

10 Comments

Feed

View: [Oldest first](#) | [Newest first](#)

mercerguy323 June 03, 2011 at 4:41PM
[Follow](#)

So what? As long as the private sector can make a buck or two, all is good with our Gov. Who needs Environmental regulations anyway, just let them self regulate, right? THIS is what happens when private industry is allowed to self regulate and environmental rules put in place because of people like this, are weakened as part of the Republican agenda. Go big business! (sarcasm included)

[Reply](#)

[Post new](#)

[Inappropriate? Alert us.](#)

Wizard of Blogs June 03, 2011 at 5:03PM
[Follow](#)

You woke up this morning
Got yourself a gun,
Your mama always said you'd be
The Chosen One....

[Reply](#)

[Post new](#)

[Inappropriate? Alert us.](#)

replacenJSC June 03, 2011 at 11:48PM

11/9/10 Council Appearance

1. This is directed at mayor and cw Celli and to apprise new council members of what has been allowed to go on in the area of Community place which is adjacent a brook in a regulated flood zone, and continuing to Morris area, across the street from councilwoman Celli, ~~who sits by allowing her neighborhood to deteriorate.~~
2. A developer is being helped to evade the zoning and environmental laws with the full knowledge and participation of several Long Branch officials and its city attorney who has a conflict of interest in the matter.
3. In the previous council meeting. cw Celli asked for documentation, not mere allegations. So I've brought some documentation with me today showing the corruption is ongoing. I will pursue my civil remedies as far as necessary.
4. The developer ED Bruno/E&L Paving unilaterally established then expanded a non-permitted use and has been cited by Long Branch previously for this. No use variance or subdivision approvals were ever obtained, contrary to law. Nevertheless, last August, the zoning officer issued a permit grandfathering and allowing the use to continue with new occupants. This bypasses the planning board process and is highly illegal. I went to the mayor and administrator then presented documentation to the previous council on this on 1/26/10. Mr Aaron claimed a notice of violation would issue to remove those other companies not on the zoning permit. A notice of violation was issued 1/27/10 to remove only the demolition company from the premises and has never been enforced and they and others continue to illegally use these properties against mine and the public interest. I returned to the council on 2/23/10 with further documentation. I have recently discovered a CO being issued to the same demolition company dated 1/19/2010 though they are not on the illegal zoning permit as first required.
5. I also present documents showing a conflict of interest by the city attorney which may be contributing to the refusal to enforce the laws, to the benefit of some and detriment of others. The documents evidence a deal by Seashore Daycamp and E&L to swap properties across the brook. As part of the swap deal, Mr. Bruno and his tenants are apparently allowed to continue evading the zoning and DEP regulations. Seashore's site plan shows bulk variances being granted to E&L lots having nothing to do with Seashore's site plan and for which no public notice was given. The zoning board chairperson and attorney previously recused themselves in E&L's own site plans which it never completed. Mr. Aaron's law firm previously represented Seashore Daycamp on earlier site plans and still seems to be protecting them and their deal by laying off of Mr. Bruno and E&L. This is corruption ladies and gentlemen. Mr. Aaron on behalf of the City, seeks to procedurally evade having the civil court look into these facts – it does not mean they have not occurred or that corruption is absent or that there will not be future damages. *for hls*
6. I also submit a copy of the official misconduct statute to Mayor Schneider and cw Celli. Note that no bribes have to be paid – only that there is either benefit to the official or detriment to others for refusing to enforce the laws and violate the public trust. Bribery would bring it to the federal level.
7. So I would advise council that you take with a grain of salt what the city attorney tells you about this matter. Don't feel to comfortable and smug about immunities for discretionary acts – you have no discretion to engage in unauthorized and criminal acts. See Garrou v. Teaneck Tryon Corp. 11 NJ 294, 94 A.2d 332 (1953, NJ Supreme Court), regarding indictments for similar allowance of evasion of zoning laws by officials. I predict that in the end, all laws – civil and criminal will be enforced, damages paid, and for this reason am glad mayor and councilwoman Celli are still in office to accomplish this. Its always so much cheaper for the city and safer for its officials when the law is uniformly enforced.

