



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

DEC 12 2008

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Law Offices of Richard Klein
3000 Marcus Avenue, Suite 2E4
Lake Success, New York 11042

Re: In the Matter of Mazel Group, LLC
Docket No. RCRA-02-2009-7501

Dear Mr. Klein:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter, signed by the Regional Administrator of the United States Environmental Protection Agency ("EPA"), Region 2.

Please assure that your client, the Mazel Group, LLC, makes arrangement for payment of the civil penalty and performance of compliance provisions in accordance with the timeframe(s) specified in the CA/FO.

Thank you for your cooperation in working with us to resolve this matter. If you have any questions, please contact me at (212) 637-3224.

Sincerely yours,

Bruce H. Aber
Assistant Regional Counsel

Enclosure

cc: Karen Maples, Region 2 Regional Hearing Clerk
Russ Brauksieck, NYSDEC

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION 2
2008 DEC 16 PM 7:52
REGIONAL HEARING
CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

The Mazel Group, LLC,
Respondent

Proceeding Under Section 9006
of the Solid Waste Disposal Act,
as amended.

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-02-2009-7501

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2009 DEC 16 PM 7:53
REGIONAL HEARING
CLERK

This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, and the Energy Policy Act of 2005, 42 U.S.C. §6901 et seq. (referred to collectively as the "Act" or "RCRA").

The Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, who has been duly delegated the authority to institute and carry forward this proceeding. The Respondent is the Mazel Group, LLC, the "owner" of "underground storage tank" or "UST Systems" as those terms are defined in Section 9001 of the Act, 42 U.S.C. §§ 6991, and 40 C.F.R. § 280.12, at the former Saint Mary's Hospital facility (hereinafter "Facility"), previously owned and operated by the Saint Vincent Catholic Medical Center ("SVMC"). The Facility is located at 170 Buffalo Avenue, Brooklyn, New York 11213. Complainant alleges that there have been violations of certain applicable federal underground storage tank ("UST") requirements involving two 1,000 gallon UST systems at the Facility.

Pursuant to 40 Code of Federal Regulations ("C.F.R.") § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may

simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

The Complainant and Respondent agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) is an appropriate means of resolving this matter without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is subject to the requirements of the Act and its implementing regulations applicable to underground storage tanks.
2. SVCMC submitted a disclosure to EPA on August 5, 2005, which revealed longstanding federal underground storage tank ("UST") violations at the Facility.
3. The USTs at the Facility, which stored diesel fuel for emergency generators, are "petroleum UST systems", as that term is defined in 40 C.F.R. §280.12, and they are subject to the regulatory requirements set forth at 40 C.F.R. Part 280.
4. SVCMC's July 20, 2007 response to EPA's May 2007 Information Request Letter ("the SVCMC Response") concerning the Facility confirmed that SVCMC had failed to upgrade two (2) 1,000 gallon USTs at the Facility while it still owned and operated these USTs.
5. EPA entered into a settlement with SVCMC on or about March 31, 2008, in order to resolve EPA's claims against SVMC.
6. On or about December 29, 2006, the Respondent (e.g., the Mazel Group) purchased the Facility and became an owner and operator of five USTs located at the Facility.

7. On or about June 22, 2007, the Respondent sold about half of the SVCMC hospital property (containing one 5,500 gallon UST) to Prospect Rochester Equities, LLC, but retained ownership of the SVCM building and the other four USTs at the Facility, two of which were used to store heating oil for consumptive use on premises and are not subject to federal regulation.
8. Pursuant to Section 9005 of RCRA, on November 14, 2007, EPA sent an Information Request Letter (“IRL”) to the Respondent (i.e, the Mazel Group), in order to determine whether the Respondent had brought the USTs at the Facility into compliance.
9. On or about November 28, 2007, Respondent submitted a response to EPA’s IRL.
10. In the Respondent’s Response to EPA’s IRL, Respondent confirmed that in December 2006 it had purchased the St. Mary’s Hospital–Brooklyn Facility, including the two 1,000 gallon UST systems located at the Facility.
11. In Respondent’s Response to EPA’s IRL, Respondent confirmed that it continues to be an owner of the two 1,000 gallon UST systems at the Facility.
12. Based on Respondent’s response to the IRL and communications between EPA and Respondent’s technical consultant, EPA determined that two 1,000 gallon USTs, which have been used for storing diesel fuel for emergency generators, had not been upgraded pursuant to 40 C.F.R. Part 280.21.
13. Respondent’s two 1,000 gallon USTs at the Facility have not been upgraded for the period January 1, 2007 through the present time.
14. In accordance with 40 C.F.R. §280.21(b), owners and operators of regulated UST systems have had to be in compliance with the performance standards specified in the

regulation (also known as "upgrade requirements") or, in the alternative, they have had to comply with the closure requirements set forth at 40 C.F.R. §280.70 through §280.74, Subpart G, since December 22, 1998.

15. The two (2) 1,000 gallon UST systems at the Facility are made of steel and have not been upgraded pursuant to 40 C.F.R. Section 280.21.
16. The UST systems at the Facility do not have corrosion protection (interior lining and/or cathodic protection), and do not have spill and overflow prevention equipment, as required by 40 C.F.R. Section 280.21.
17. On September 17, 2008, Respondent submitted a draft UST Closure Work Plan to EPA for review and comment.
18. By letter of October 15, 2008, EPA provided to Respondent written approval of the UST Closure Work Plan.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and 40 C.F.R. § 22.18 (2008) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, the parties hereby agree, as follows:

1. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies EPA's Findings of Fact and Conclusions of Law set forth above.
2. Respondent consents to the payment of a civil penalty as set forth in this Consent Agreement, and agrees to comply with the compliance provisions of this Consent Agreement, and to its conditions.

3. This Consent Agreement and Final Order shall not relieve Respondent from its continuing obligation to comply with all applicable provisions of federal, state or local environmental laws.
4. Respondent shall pay, by cashier's or certified check, a civil penalty for settlement of the violations described above, in the amount of **Twenty Thousand dollars** (\$20,000.00).

The payment instrument shall be payable to the "Treasurer of the United States of America" and shall be mailed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Or by **OVERNIGHT MAIL:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
Attn: USEPA Box No. 979077
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

The check shall be identified with a notation of the name and docket number of this case as:

In the Matter of the Mazel Group, LLC, RCRA-02-2009-7501. Respondent shall also send a copy of the check to both Bruce Aber, Assistant Regional Counsel, United States Environmental Protection Agency, 290 Broadway, 16th Floor, New York, New York 10007-1866, and Karen Maples, Regional Hearing Clerk, at the same address.

- a. The payment must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order at the end of this document (the “due date”).
- b. Failure to pay the full amount, according to the above provisions may result in the referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- c. Further, if timely payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period, or any portion thereof, following the due date in which the balance remains unpaid.
- d. A 6% per annum penalty will also be applied on any principal amount not paid within 90 days of the due date.
- e. The effective date of this Consent Agreement and Final Order shall be the date of its filing with the Regional Hearing Clerk, Region 2, New York, New York.

Compliance Provisions

5. a. To the extent it has not already done so, Respondent shall, no later than thirty (30) days after the EPA Regional Administrator’s signature of the Final Order: i) permanently close (including performance of a site assessment) the two 1000

gallon UST systems at the former St. Mary's Hospital Facility (the Facility) at 170 Buffalo Avenue, Brooklyn, NY 11213, in accordance with the provisions of 40 C.F.R. 280.70 to 280.74, and ii) submit a certified statement to EPA, in the form below, stating that it has complied with the permanent closure requirements for the two 1,000 gallon UST systems at the Facility, as required by 40 C.F.R. Section 280.70 to 280.74. The certification shall be signed by a responsible official of Respondent and state:

To the best of my knowledge, after thorough investigation, I certify that the information submitted to EPA is true, accurate and complete. I am aware that there are significant potential penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

- b. Respondent shall comply with any applicable New York State Department of Environmental Conservation and New York City requirements, including notifications, for permanent closure of petroleum bulk storage tanks.
- c. Respondent shall submit a Permanent Closure Report (including the results of the site assessment and the remediation of any petroleum impacted soil that might be discovered during the removal of the two 1,000 gallon USTs at the St. Mary's Hospital Facility) to EPA no later than sixty (60) days after the EPA Regional Administrator's signature of the Final Order. Additionally, Respondent shall also submit the permanent Closure Report to the appropriate NYSDEC regional offices and/or NYC offices in accordance with any applicable deadline specified under New York State or New York City law.
- d. For any new UST system(s) that Respondent installs at the former St. Mary's Hospital Facility, the new UST system(s) shall comply with 40 C.F.R. Part 280, subpart B (UST Systems: Design, Construction, Installation and Notification), including the new UST system(s) performance standards in 40 C.F.R. Section 280.20. Additionally, Respondent

shall comply with applicable local and state requirements for UST system installation, including registration and notification to the appropriate NYSDEC regional office of Respondent's intent to add an UST system, at least three (3) days prior to installation or as otherwise required by New York State law.

- e. Respondent shall hereinafter maintain compliance with all applicable provisions of federal UST regulations set forth at 40 C.F.R. Part 280, as well as applicable provisions of state and local regulations.
- f. Respondent shall submit copies of any communications or reports with respect to the Compliance Provisions of this Consent Agreement to: Rebecca Jamison, Enforcement Officer, Division of Enforcement and Compliance Assistance, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th floor, New York, NY 10007-1866.
- g. If Respondent fails to comply with the permanent closure requirements and reporting requirements to EPA that are specified in subparagraphs a, c, and f, above, then it shall pay a stipulated penalty for each day that it fails to meet this final compliance deadline as follows:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day Per Violation</u>
1 st to 10 th day	\$500
11 st to 30 th day	\$1000
31 to 60 days	\$2000
Each day in excess of 60 days	\$3000

- 6. Costs or expenses associated with the implementation of actions called for by this Consent Agreement, changed financial circumstances, and Respondent's inability to obtain any loan or funding shall not serve as a basis for changes to this Consent Agreement or any extensions of time under this Consent Agreement.

7. Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by the Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA. Any penalty owed pursuant to this paragraph shall be paid in accordance with the instructions set forth in paragraph 4, above. Failure to pay the stipulated penalty in full will result in referral of this matter to the United States Department of Justice or the United States Department of Treasury for collection and/or other appropriate action.
8. This Consent Agreement is being voluntarily and knowingly entered into by Respondent and EPA to resolve (upon full payment of the civil penalty and any stipulated penalty that comes due) Respondent's liability pursuant to Section 9006 for civil penalties for the violations at the Facility during 2007 and 2008 of federal UST requirements specifically described in paragraphs 12 through 16 in the Findings of Fact and Conclusions of Law section in this CA/FO. Respondent has read the foregoing Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance of the accompanying Final Order. The parties agree that all terms of settlement are set forth herein. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

9. Respondent hereby waives its right to request or to seek any Hearing on any of the terms of this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
10. Respondent waives any rights it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
11. Respondent certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
12. Each party hereto agrees to bear its own costs and fees in this matter.
13. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.
14. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative or legal proceeding, except one to enforce the terms of this CA/FO.
15. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns and upon Complainant.

In the Matter of the Mazel Group, LLC, Docket No. RCRA-02-2009-7501

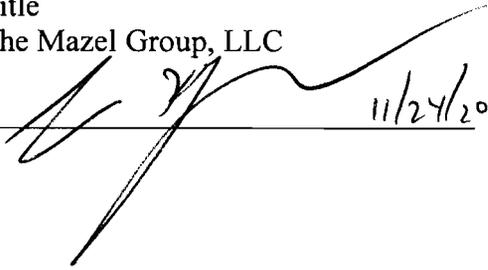
RESPONDENT:

BY: SHLOMO KARPEN

Name (Print)

Title

The Mazel Group, LLC

DATE:  11/24/2008

In the Matter of the Mazel Group, LLC, Docket No. RCRA-02-2009-7501

COMPLAINANT:

BY:


Duke LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency -
Region 2

*PROVIDE DORR
FOR*

DATE: DECEMBER 4, 2003

In the Matter of the Mazel Group, LLC, Docket No. RCRA-02-2009-7501

FINAL ORDER

The Regional Administrator (or anyone duly delegated to act on his behalf) of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of the Mazel Group, LLC, bearing Docket No. RCRA-02-2009-7501. The Consent Agreement, having been duly accepted and entered into by the parties to this matter, is hereby ratified, and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. Section 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. Section 22.18(b)(3) and shall constitute an order issued under authority of Section 9006 of RCRA, 42 U.S.C. Section 6991e.



Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

DATE: 12-9-08

In the Matter of the Mazel Group, LLC, Docket No. RCRA-02-2009-7501

CERTIFICATE OF SERVICE

I certify that I have caused to be sent the foregoing CONSENT AGREEMENT and its accompanying FINAL ORDER bearing the above referenced docket number, in the following manner to the respective addressees listed below:

Copy by
Certified Mail/
Return Receipt Requested:

Law Offices of Richard Klein, Esq.
Counsel for the Mazel Group, LLC
3000 Marcus Avenue
Suite 2E4
Lake Success, New York 11042

Original and One Copy
by Hand:

Karen Maples
Office of Regional Hearing Clerk
U. S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Dated: DEC 12, 2008
New York, New York

