

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

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UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	10-CV-00509-JL
)	
TORROMEO INDUSTRIES, INC.)	
)	
Defendant.)	
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CONSENT DECREE

TABLE OF CONTENTS

I.	STATEMENT OF CLAIM.....	4
II.	JURISDICTION AND VENUE	4
III.	APPLICABILITY.....	4
IV.	OBJECTIVES	5
V.	DEFINITIONS.....	6
VI.	CIVIL PENALTY.....	8
VII.	COMPLIANCE MEASURES	9
VIII.	STORM WATER COMPLIANCE ASSESSMENTS.....	11
IX.	STORM WATER COMPLIANCE PROGRAM.....	16
X.	SUPPLEMENTAL ENVIRONMENTAL PROJECT	20
XI.	MONITORING.....	23
XII.	ADDITIONAL REPORTING OBLIGATIONS	25
XIII.	REVIEW AND APPROVAL	27
XIV.	STIPULATED PENALTIES	28
XV.	FORCE MAJEURE	33
XVI.	DISPUTE RESOLUTION.....	36
XVII.	RIGHT OF ENTRY	39
XVIII.	FORM OF NOTICE	41
XIX.	CERTIFICATION	42
XX.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS.....	43
XXI.	COSTS	45
XXII.	EFFECTIVE DATE.....	45
XXIII.	RETENTION OF JURISDICTION.....	45
XXIV.	MODIFICATION	45
XXV.	TERMINATION.....	46
XXVI.	APPENDICES	46
XXVII.	WAIVER OF SERVICE OF SUMMONS AND COMPLAINT	47
XXVIII.	PUBLIC COMMENT	47
XXIX.	FINAL JUDGMENT	48

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a complaint (the “Complaint”) in this action on November 1, 2010, alleging that Defendant Torromeo Industries, Inc. (“Torromeo” or “Defendant”) violated Sections 301 and 308 of the Clean Water Act (the “CWA” or the “Act”), 33 U.S.C. §§ 1311 and 1318;

WHEREAS, Torromeo owns or operates, or has owned or operated, construction materials facilities, including ready-mix concrete operations, and/or sand and gravel operations in Massachusetts, and New Hampshire. The Complaint relates to Defendant’s facility located at 18 Dorre Road, Kingston, New Hampshire (the “Facility”);

WHEREAS, the Complaint alleges that Torromeo discharges or has discharged wastewater, including process water and storm water, from the Facility identified above into waters of the United States;

WHEREAS, the Complaint alleges that Torromeo discharged process water from the Facility without a National Pollutant Discharge Elimination System (“NPDES”) permit, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for various periods of time from the mid-1970s through the filing of the Complaint on November 1, 2010;

WHEREAS, the Complaint alleges that, in violation of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311 and 1318, Torromeo discharged from the Facility “storm water associated with industrial activity” from various point sources into waters of the United States without an NPDES permit; and that Torromeo failed to apply for an NPDES permit for each such

discharge for various periods of time when the Facility was operational between December 1995 and December 2009;

WHEREAS, Torromeo disputes the allegations of the Complaint; and

WHEREAS, the Parties agree, and the Court finds, that settlement of this matter before the taking of any testimony, upon the pleadings, and without adjudication is in the public interest and that entry of this Consent Decree without further litigation is an appropriate resolution of the claims alleged in the Complaint, and the Parties consent to the entry of this Consent Decree;

NOW, THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

I. STATEMENT OF CLAIM

1. The Complaint filed in this action states claims upon which relief can be granted against Torromeo pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the subject matter of this action and over the Parties to this Consent Decree pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355. Venue properly lies in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391 and 1395.

III. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of any Covered Facility, as defined in Section V (Definitions), whether in compliance with the procedures of this paragraph or otherwise, shall

relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 days prior to such transfer, Defendant shall provide a copy of this Consent Decree to any proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 1, and the United States Department of Justice, in accordance with Section XVIII of this Decree (Form of Notice). Any attempt to transfer ownership or operation of any Covered Facility without complying with this paragraph constitutes a violation of this Decree.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree.

Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. OBJECTIVES

7. It is the express purpose of the Parties in entering into this Consent Decree to further the goals of the Clean Water Act, as enunciated in Section 101, 33 U.S.C. § 1251. Any and all provisions herein relating to operation and maintenance, monitoring, reporting, and inspections shall have the objective of ensuring full compliance with the CWA, the regulations promulgated pursuant to the Act, and the terms of any permit issued under the Act.

V. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Complaint” shall mean the complaint filed by the United States in this action;

“Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXVI);

“Construction Materials” shall include, without limitation, ready-mix concrete, and/or sand and gravel operations, and any operations associated therewith;

“Construction Materials Facility” shall mean any facility owned or operated by Torromeo that is engaged in Construction Materials operations, and any operations associated therewith;

“Covered Facility” means those facilities located at 18 Dorre Road, Kingston, New Hampshire; 33 Old Ferry Road, Methuen, Massachusetts; and any Torromeo facility producing Construction Materials in New England which is determined at any time prior to the termination of this Consent Decree to be subject to the requirements of, as applicable, MSGP-2008, and any New Facility subject to the MSGP-2008;

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

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

“Interest” shall mean interest at the rate determined pursuant to 28 U.S.C. § 1961;

“MSGP-2000” shall mean EPA’s “Storm Water Multi-Sector General Permit for Industrial Activities,” 65 Fed. Reg. 64801 (October 30, 2000), and any state-issued storm water permit issued pursuant to Section 402 of the Clean Water Act by an authorized state;

“MSGP-2008” or “MSGP” shall mean EPA’s “Storm Water Multi-Sector General Permit for Industrial Activities,” 73 Fed. Reg. 56572 (September 29, 2008), any subsequently issued permit which takes the place of MSGP-2008 during the term of this Consent Decree, and any state-issued storm water permit issued pursuant to Section 402 of the Clean Water Act by an authorized state;

“New England” shall mean the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut and Rhode Island;

“New Facility” shall mean any facility producing Construction Materials in New England in which Torromeo acquires a leasehold interest, or acquires operational control or ownership, during the term of this Consent Decree;

“Torromeo” shall mean Torromeo Industries, Inc.;

“Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;

“Parties” shall mean the United States and Torromeo;

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

“United States” shall mean the United States of America, acting on behalf of EPA.

VI. CIVIL PENALTY

9. Defendant shall pay a total penalty of \$135,000, plus interest (calculated at 3%) on any penalty payment amount not paid within 30 days of the effective date of this Decree, pursuant to 28 U.S.C. § 1961, according to the following schedule:

a. \$67,500 shall be due within 30 days of the effective date of this Decree;

b. \$68,512 (i.e. \$67,500 principal, plus \$1,012 in interest) shall be due within six months of the effective date of this Decree;

c. Acceleration Clause: If Defendant fails to make any payment as described in Paragraph 9 above, all remaining installments shall become immediately due and payable as of the missed payment date. Interest on such unpaid penalty amounts shall accrue from the missed payment date; and

d. Torromeo shall make payment by electronic funds transfer, in accordance with written instructions to be provided by the United States Attorney's Office, Financial Litigation Unit, Concord, New Hampshire. Defendant shall make payment by FedWire Electronic Funds Transfer ("EFT") in accordance with current EFT procedures, referencing USAO File Number 2010V00084, EPA Region I, and DOJ Case Number 90-5-1-1-10014. The costs of such electronic funds transfer shall be the responsibility of Torromeo. A copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and any transmittal letter shall be sent to the United States in the manner specified in Section XVIII (Form of Notice) by email to acctsreceivable.CINWD@epa.gov, and by mail to:

U.S. EPA Region I
U.S. Environmental Protection Agency Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

10. Torromeo shall not deduct any penalties paid under this Decree pursuant to this Section or Section XIV (Stipulated Penalties) in calculating its federal income tax.

VII. COMPLIANCE MEASURES

11. Torromeo shall completely eliminate all process water discharges from the Facility, as such discharges are not permitted unless specifically authorized by an individual NPDES permit.

Towards this requirement, Torromeo shall complete the following activities:

- a. Submit a final design of Holding Pond #1 to EPA and New Hampshire Department of Environmental Services (“NH DES”) by March 1, 2013, and implement such final design upon approval by EPA and NH DES; and
- b. Defendant shall diligently pursue obtaining all permits necessary to implement the final design of Holding Pond #1. Construction of Holding Pond #1 will be completed no later than April 30th of the year following issuance of all required permits. If weather conditions preclude installation by either of the times detailed above, Defendant may submit a request for modification to the completion date of Holding Pond #1 pursuant to Section XXIV (Modification).

12. Within 30 days of the effective date of this Decree, with respect to each of the Covered Facilities, Torromeo shall achieve and thereafter maintain compliance with the CWA and the MSGP-2008, as applicable. For each such facility, compliance with the MSGP-2008 shall include without limitation:

- a. preparing, achieving and maintaining compliance with a Storm Water Pollution Prevention Plan or Plans (“SWPPP”) which fully comply with the MSGP-2008;
- b. maintaining up-to-date site diagrams;
- c. selecting, installing, and maintaining adequate best management practices (“BMPs”), including “minimizing” the exposure of manufacturing, processing, and material storage areas to rain, snow, snowmelt, and runoff as required by the MSGP-2008;
- d. conducting annual comprehensive site inspections;
- e. conducting visual monitoring, analytical benchmark and/or numeric monitoring as applicable and taking specific measures to adequately address any benchmark exceedances;
- f. conducting inspections; and
- g. to the extent there are specific storm water controls associated with construction of Holding Pond #1, such controls need not be implemented until such time as actually constructed in association with Holding Pond #1.

13. If, at any such facility, storm water discharges associated with industrial activity are eliminated, or if Torromeo has obtained coverage for such facility under an alternative permit, Torromeo shall promptly file a Notice of Termination (“NOT”) in accordance with the MSGP-2008, shall submit a copy of the NOT to EPA Region I, and shall comply with all terms and conditions of such alternate permit, if applicable.

14. Torromeo shall amend all BMPs and control measures for the Covered Facilities and update all SWPPPs whenever required by the MSGP, and also within 14 days when:

a. there is a change in conditions, design, construction, operation or maintenance at the Facility that has or could have an effect on the discharge of pollutants to waters of the United States and that has not been previously addressed in the SWPPP; or

b. a BMP, or a combination of BMPs, is ineffective in eliminating or significantly minimizing pollutants in storm water and runoff from the Facility; or

c. there is a change in or update of the information required to be in the SWPPP.

15. Torromeo shall not discharge pollutants to waters of the United States at any of its Facilities, except in compliance with all applicable federal and state statutes, regulations and permits.

VIII. STORM WATER COMPLIANCE ASSESSMENTS

16. Within 60 days of the effective date of this Decree, Torromeo shall complete and submit to EPA an Initial Comprehensive Facility Compliance Evaluation (“ICFCE”) for each Construction Materials Facility located in New England that it owns or operates as of the effective date. This is not limited to the Covered Facilities as defined in Section V (Definitions) of the Decree. Defendant may elect to combine such ICFCE with the annual Comprehensive Site Inspection required by the MSGP for any facility, as long as the requirements of this Section are met in addition to the requirements of the MSGP.

17. The ICFCE for each facility shall include, without limitation:

a. A review of the applicability of the MSGP to the Facility, an assessment of whether a Notice of Intent (“NOI”) for coverage under the MSGP has been or should be filed, and an identification of all industrial sectors at the Facility to which the MSGP applies. If a NOT has been filed for the Facility, the review shall provide a narrative description of how and

when storm water discharges were terminated, including diagrams of relevant BMPs. If the Facility has a process water discharge, the review shall provide a description of waste waters, discharges and NPDES permit compliance status.

b. Identification of all discharges of pollutants from the Facility to waters of the United States, including but not limited to point sources such as outfalls, basins, pumps, swales, gullies, etc., and discharges to municipal separate storm sewer systems (“MS4s”) and/or publicly-owned treatment works (“POTWs”).

c. Identification of all BMPs in place at the Facility to address discharges of storm water.

d. An evaluation of whether a SWPPP is in place and meets permit requirements. A copy of the SWPPP for each Facility and operation shall be included in the ICFCE.

e. An explanation of how the BMPs and controls called for in the MSGP and SWPPP are installed, implemented and maintained.

f. An evaluation of whether the SWPPP includes a complete site map reflecting on-the-ground conditions. A copy of the site map for each Facility and operation shall be included in the ICFCE.

g. An evaluation of the efficacy of the controls in addressing discharges of pollutants from truck and equipment washing operations, vehicle maintenance activities, and fueling stations.

h. For stone and gravel operations, an evaluation of the efficacy of the controls in addressing discharges of pollutants from material stockpile operations; stone washing and rock crushing operations; and quarry dewatering operations.

i. For ready-mix concrete operations, an evaluation of the efficacy of the controls in addressing discharges of pollutants from concrete up-loading areas and operations; drum washout operations; concrete washout pits and operations; and waste concrete processes. In addition, Torromeo shall evaluate the capacity of all concrete washout pits in relation to current and future planned production.

j. An identification of surface waters and wetlands at or near the facility, and a description and map depicting hydrologic connections from point sources to surface waters or wetlands.

k. An evaluation of whether all site compliance inspections, visual monitoring and pollutant monitoring has been conducted during the previous twelve (12) months as required under the MSGP.

l. A statement indicating whether the facility has met, over the previous twelve (12) months, benchmark concentrations identified for the appropriate sector under the MSGP, and if not, a plan for immediately modifying the SWPPP and implementing BMPs to achieve benchmark concentrations.

m. A statement indicating whether the facility has met, over the previous twelve (12) months, numeric limits required under the MSGP or an applicable NPDES permit, including a discussion of all violations of numeric limits, their causes, and a plan for immediately remedying the violations.

n. A description of any ongoing noncompliance with the CWA, the MSGP or applicable NPDES permit, and presentation of a plan for promptly bringing the facility into compliance.

18. Within 45 days of acquiring a leasehold interest in any new Construction Materials Facility in New England or acquiring any interest in any new Construction Materials Facility in New England, or otherwise beginning to operate any new Construction Materials Facility in New England, in addition to complying with permit requirements of the MSGP, Torromeo shall complete and submit to EPA a New Facility Comprehensive Compliance Evaluation

(“NFCCE”). The NFCCE shall include without limitation:

a. An inspection of the facility, and a detailed description of its operations, size, and activities.

b. A statement indicating whether the facility has or should seek coverage under the MSGP, and identification of appropriate industrial sectors. If the facility has or should have a permit for the discharge of process waters, a description of waste water discharges and NPDES permit compliance status.

c. An identification of surface waters and wetlands at the facility, and a description and map depicting hydrologic connections from point sources to surface waters or wetlands.

d. Verification that an NOI has been filed according to permit regulations, that a SWPPP and detailed site plan have been prepared, and submission to EPA of the SWPPP, including a detailed site plan.

e. A description of all discharges of pollutants from the facility (including, e.g., discharges from outfalls, basins, pumps, swales, gullies, and discharges to MS4s or POTWs).

f. Identification of all BMPs in place at the facility to address discharges of storm water, and an evaluation of how and whether BMPs and controls have been installed, implemented and maintained.

g. A description of any recommended or needed improvements to BMPs and controls, and a plan and schedule for their prompt implementation.

h. A written certification that Torromeo has reviewed the results of all inspections and monitoring conducted during the twelve (12) months prior to submission of the NFCCE. Such review shall include an evaluation of the causes of exceedances (if any) of benchmark concentrations and numeric limits.

i. A written certification that Torromeo has reviewed all records of inspections conducted pursuant to the SWPPP and all spill records prepared during the twelve (12) months prior to submission of the NFCCE, including a review of any maintenance and spill prevention programs records.

j. If Torromeo determines that the Facility has been in violation of any requirement of the CWA, regulations or permits issued thereunder during the twelve (12) months prior to submission of the NFCCE, but that it is in compliance as of the required date of the submission of the NFCCE, Torromeo shall provide a written certification that corrective measures have been implemented at the Facility and that the Facility is now in compliance.

k. If Torromeo determines that, as of the required date of submission of the NFCCE, the Facility is violating or is not in compliance with any requirement of the CWA, its regulations, or permits issued thereunder, Torromeo shall describe such noncompliance, identify the requirement(s) with which the Facility is not in compliance, and present to EPA for review and approval a plan and schedule for promptly bringing the facility into compliance with such requirements, and thereafter implement the plan according to the plan and schedule approved by EPA. Consistent with EPA's policy on "*Incentives for Self-Policing: Discovery, Disclosure,*

Correction and Prevention of Violations,” disclosure of such noncompliance or violations pursuant to this Paragraph 18 will not in itself preclude EPA’s consideration of a request by Torromeo for mitigation of civil penalties pursuant to EPA’s *“Interim Approach to Applying the Audit Policy to New Owners,”* 73 Fed. Reg. 44991 (August 1, 2008).

IX. STORM WATER COMPLIANCE PROGRAM

Storm Water Compliance Manager

19. Within 90 days of the effective date of this Decree, Torromeo shall establish and fill the position of regional Storm Water Compliance Manager (hereinafter, the “SWCM”), who shall be responsible for ensuring compliance with the MSGP, other applicable storm water permits, and the SWPPP for all Covered Facilities. Within 90 days of the effective date of this Decree, Torromeo shall notify EPA of the selection and qualifications of the SWCM and provide a copy of the SWCM’s CPESC, Inc. (or otherwise approved) training certification. Torromeo may employ a third-party consultant in lieu of a payroll staff person to fill this position.

20. The primary job responsibilities of the SWCM shall include: (a) properly preparing, amending and signing SWPPPs for all Facilities to which the MSGP applies; (b) conducting monthly and quarterly inspections required by this Decree, including preparing reports and determining appropriate actions to achieve compliance; (c) supervising the installation, maintenance and improvement of BMPs; (d) conducting Annual Comprehensive Site Evaluations in accordance with the MSGP; (e) conducting the ICFCE for each Covered Facility; (f) determining if appropriate actions have been timely made to address compliance violations or to make improvements to BMPs; and (g) submitting reports to EPA pursuant to the MSGP and Section XI (Monitoring) below.

21. The SWCM shall have the following minimal qualifications: (a) three years' experience in the field of storm water management, including erosion and sedimentation control; and (b) successful completion of a training and certification program conducted by CPESC, Inc., or other organization to be approved by EPA in writing, in the field of storm water quality, sediment and erosion control. Successful completion of the SWCM training program shall require attainment of a grade of 75% or higher on a written test administered at the conclusion of the program, and shall be evidenced by a Certificate of Completion issued by the training organization. The SWCM shall successfully complete refresher training, either through an in-person session or a computer-based course, on an annual basis.

22. The SWCM shall report directly to Torromeo's President. Torromeo may also choose to designate an alternate SWCM, with equivalent qualifications, in order to act in the SWCM's absence. If the SWCM must be replaced and Torromeo replaces him or her within 30 days of the vacancy, the gap in designation shall not be considered a violation of Paragraph 19. However, the gap in designation shall not excuse noncompliance with any other requirement of this Decree. Torromeo shall notify EPA of any change in the SWCM, including the credentials of any new SWCM, within 15 days of such personnel change.

23. The SWCM shall also be responsible for ensuring compliance with the MSGP, other applicable storm water permits, and the SWPPP for all Covered Facilities and for any New Facilities. The SWCM shall: (a) be on-site at the Kingston, NH Facility for at least 16 hours during each week that the Facility is in operation until construction of Holding Pond #1 is complete, after which the SWCM must be on-site at the Kingston, NH Facility, and at any New Facilities for at least 8 hours during each week that the facility is in operation; (b) for the

Methuen, MA Facility, the SWCM will be on-site for at least 4 hours each week that the Facility is in operation; (c) be responsible for the proper operation and maintenance of structural and non-structural BMPs; (d) have the authority to direct employees and others at the Facility in order to achieve compliance with the Act, including the ability to stop work if necessary; (e) conduct and document routine Facility inspections as required by the MSGP, the Facility's SWPPP, and this Decree; (f) conduct visual monitoring of storm water discharges as required by the MSGP, the Facility's SWPPP, and this Decree; (g) conduct benchmark monitoring and compliance monitoring of storm water discharges as required by the MSGP, the Facility's SWPPP, and this Decree; (h) identify and implement corrective actions needed to achieve compliance as soon as problems are identified; (i) on at least a monthly basis, report such actions to Torromeo's President; and (j) maintain all documentation on-site as required by the MSGP, the Facility's SWPPP, and this Decree.

24. Torromeo may have benchmark and analytical monitoring conducted by a qualified third-party consultant instead of by the SWCM. All other activities identified in Paragraph 23 above must be conducted by the SWCM or the alternate SWCM described in Paragraph 22.

Storm Water Training Program

25. Within one hundred twenty 120 days of the effective date of this Consent Decree, Torromeo shall develop and implement a storm water training program for all employees with operational responsibilities (excluding purely administrative staff) at Covered Facilities.

26. Each employee with operational responsibilities shall be trained in storm water management or erosion and sediment control through successful completion of a training program conducted by Torromeo by May 31st of each year covering the topics listed in the

syllabus attached as Appendix A. Any employee with operational responsibilities who is hired after the training program has been given for that year shall be provided with written materials covering the topics listed in Appendix A as part of new employee orientation. If Torromeo develops its own internal training program and materials, those materials shall be submitted to EPA in accordance with the requirements of Section XIII (Review and Approval) prior to their use to determine if they adequately address the topics listed in Appendix A. Each such employee shall, on an annual basis thereafter, complete a refresher training course, either through an in-person session or a computer-based course.

27. Within 180 days of the effective date of this Consent Decree, Defendant shall provide written documentation to EPA that all employees with operational responsibilities employed by Defendant as of the effective date of this Consent Decree successfully completed a training program conducted by Torromeo covering the topics listed in the syllabus attached as Appendix A. Defendant shall also provide the United States with copies of training materials used in 2013 to train the employees with operational responsibilities regarding storm water management or erosion and sediment control.

28. Torromeo shall provide written documentation to EPA of the satisfactory completion of the training requirements for non-administrative employees at the Covered Facilities within 30 days of completing such annual training program. In addition, Torromeo shall evaluate the training courses required in Paragraph 26 above on an annual basis. The evaluation shall include a written evaluation of the training programs, and a description of any significant proposed revisions to the training programs or syllabi. The evaluation shall be submitted to EPA within 30 days of its completion in accordance with the requirements of Section XIII (Review and

Approval). Torrromeo may revise the training programs without receiving EPA's approval as long as the programs conform to the approved syllabi. Any changes to the syllabi may be made only with the consent of EPA. In the event of EPA approval of changes to the syllabi, Torrromeo shall conform the training programs required by Paragraphs 26 and 27 above within 60 days, or such other time as may be agreed to by the Parties.

X. SUPPLEMENTAL ENVIRONMENTAL PROJECT

29. Torrromeo shall implement a Supplemental Environmental Project ("SEP"), the Castleton Function Hall Pervious Concrete Project, in accordance with all provisions of Appendix B of this Consent Decree. The SEP shall be completed in accordance with the schedule set forth in Appendix B. The SEP shall consist of the installation of approximately 35,000 sq. feet of pervious concrete at the Castleton Function Hall located in Windham, New Hampshire.

30. Torrromeo is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. Defendant may use contractors or consultants in planning and implementing the SEP.

31. With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that Torrromeo in good faith estimates that the cost to implement the SEP is approximately \$500,000;

b. that, as of the date of executing this Decree, Torrromeo is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform

or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEP is not a project that Torromeo was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that Torromeo has not received and will not receive credit for the SEP in any other enforcement action; and

e. that Torromeo will not receive any reimbursement for any portion of the SEP from any other person.

32. SEP Completion Report

a. Within 30 days after completion of construction of the SEP, Torromeo shall submit a SEP Completion Report to the United States, in accordance with Section XVIII of this Consent Decree (Form of Notice). The SEP Completion Report shall contain the following information:

- i. a detailed description of the SEP as implemented;
- ii. a description of any problems encountered in completing the SEP and the solutions thereto;
- iii. an itemized list of all eligible SEP costs expended;
- iv. certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- v. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

33. EPA may, in its sole discretion, require information in addition to that described in the preceding paragraph, in order to evaluate Torromeo's completion report.

34. After receiving the SEP Completion Report, the United States shall notify Torromeo whether or not Torromeo has satisfactorily completed the SEP. If Torromeo has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section XIV of this Consent Decree (Stipulated Penalties).

35. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section XVI of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

36. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 84.

37. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States v. Torromeo, taken on behalf of the U.S. Environmental Protection Agency under the Clean Water Act."

38. For federal income tax purposes, Torromeo agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

39. Torromeo certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Torromeo further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity

as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

XI. MONITORING

40. a. For three years following the effective date of this Consent Decree, in addition to the requirements of the MSGP, Torromeo shall at all Covered Facilities conduct: (i) monthly facility BMP inspections, (ii) monthly visual monitoring of storm water discharges, and (iii) quarterly analytical sampling for storm water discharges. Such inspections, visual monitoring, and analytical sampling must be performed by the SWCM for each facility. The visual monitoring and analytical sampling required by this Paragraph 40 shall be conducted during discharges that constitute “Measurable Storm Events” as defined in MSGP-2008. Such monitoring and sampling shall be conducted according to the protocols specified in the MSGP. Monitoring, inspections and sampling required in this paragraph may be combined, if feasible, with the monitoring, inspections and sampling required under the MSGP.

b. The SWCM shall review the results of the monthly BMP inspections, monthly visual monitoring, and quarterly analytical sampling, as well as other relevant information, to determine if the BMPs and storm water controls are adequate and effective, and (to the extent required) shall identify any action not already taken which may be needed to bring the facility

into compliance with the MSGP. The SWCM shall provide a monthly report containing a description of the action items to Torromeo's President.

41. a. For three (3) years following the effective date of this Consent Decree, in addition to the requirements of the MSGP, the SWCM or the alternate SWCM described in Paragraph 22 shall conduct monthly inspections and quarterly analytical sampling during each calendar month at the Covered Facilities for the parameters required for the relevant industrial sector under the MSGP, and in addition, at redi-mix concrete plants, for pH. With respect to the analytical sampling identified in the preceding sentence, the SWCM may designate any other Torromeo employee who has been properly trained to conduct such sampling. The reduced schedule for benchmark monitoring provided in Part 6.2.1.2 of MSGP-2008 shall not apply to the analytical sampling during the first two (2) years of this sampling obligation. If, after four (4) samples are taken at a particular outfall during four (4) consecutive quarterly events, as required by this Paragraph 41, they are below the benchmark standard for a particular pollutant, Defendant shall no longer be subject to quarterly analytical sampling at that particular outfall for that pollutant; provided however, that all requirements of MSGP-2008 shall continue to apply to that Facility.

b. The monthly inspections and quarterly sampling required in Paragraphs 40.a and 41.a may be combined, if feasible, with monitoring, inspections and analytical sampling required by the MSGP.

c. Quarterly inspection reports and recommended action items, if required, shall be prepared and signed by the SWCM and provided to Torromeo's President.

XII. ADDITIONAL REPORTING OBLIGATIONS

42. Torromeo shall submit to the Water Technical Unit, EPA Region I, in the manner specified in Section XVIII (Form of Notice), copies of the following documents, according to the following schedules:

a. In addition to any other reporting requirements under the CWA or this Consent Decree, Torromeo shall, for three (3) years following the effective date of this Consent Decree, within 30 days after the end of each calendar quarter (commencing with the quarter starting on January 1, 2013), provide to EPA Region I a region-wide quarterly inspection summary, for all Covered Facilities, including, without limitation, reports of visual monitoring, analytical monitoring, benchmark monitoring and numerical monitoring required by the applicable portions of the MSGP and this Consent Decree, and (to the extent required) recommended action items, a schedule for their implementation, and a report describing the storm water management improvements implemented for the Facilities to which the MSGP has applied during the reporting period;

b. For three (3) years following the effective date of this Consent Decree, within 30 days after completion, Torromeo shall provide copies to EPA Region I of all reports of Comprehensive Site Inspections of the Covered Facilities, including without limitation recommended action items, a schedule for their implementation, and a report describing the improvements implemented. Torromeo shall also provide copies of such Comprehensive Site Inspections to EPA Headquarters as required under the MSGP.

c. During the term of this Consent Decree, Torromeo shall forward to EPA Region I copies of all inspection reports and sampling results regarding process water or storm water

conducted by a state environmental agency at any Torromeo facility, within 15 days of their receipt by Torromeo.

43. Upon receiving written notice from EPA identifying any deficiencies in the documents submitted in accordance with Paragraph 42, Torromeo shall make revisions to correct deficiencies within 30 days of receipt of notice of the deficiencies or such other time as the Parties agree to in writing. If the deficiencies identified by EPA are not timely cured as provided in the previous sentence, the Defendant will be subject to Stipulated Penalties pursuant to Section XIII (Stipulated Penalties). This 30-day period to cure applies only to deficiencies identified by EPA in accordance with this paragraph. Failure to act by EPA is not a defense to failing to comply with Defendant's obligations under this Decree. Notwithstanding this paragraph, Torromeo shall also comply with all deadlines in the MSGP.

44. The obligations under Paragraphs 42 and 43 shall commence upon lodging of the Decree and shall terminate three (3) years after the effective date of the Decree, except if Defendant has not yet cured any deficiencies that EPA has identified to Defendant pursuant to Paragraph 43 to the satisfaction of EPA. If EPA has identified any such deficiencies, the obligations of Paragraphs 42 and 43 shall terminate upon the Defendant's resolution of such deficiencies to EPA's satisfaction. Termination of the Defendant's obligations under Paragraphs 42 and 43 shall have no effect on the Defendant's obligation to comply with all other requirements of this Decree and all applicable statutory and regulatory requirements.

45. The reporting requirements in this Section do not relieve Torromeo of its obligation to submit any other reports or information required by the Act, or by the regulations promulgated or any permit issued thereunder including, but not limited to, the reporting requirements set forth in

the MSGP, or by any applicable state or local requirements. Any information provided under the reporting requirements of this Consent Decree may be used by the United States as an admission of fact by the Defendant in any proceeding to enforce the provisions of this Consent Decree or the Act. Defendant reserves the right to contest whether the terms of this Consent Decree, applicable statutes or regulations, or MSGP have been violated.

XIII. REVIEW AND APPROVAL

46. After review of any plan, report or other item that is required to be submitted for approval by EPA pursuant to this Consent Decree, EPA shall in writing: (a) approve, in whole or in part, the submission; (b) approve, in whole or in part, the submission upon specified conditions; (c) modify, in whole or in part, the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Defendant modify the submission; or (e) any combination of the above.

47. In the event of approval, approval upon conditions, and/or modification by EPA pursuant to Paragraph 46, the plan, report, or other item, or portion thereof, as approved, approved with conditions, and/or modified by EPA shall be enforceable under this Consent Decree, and Torromeo shall implement such plan, report, or other item, or portion thereof, in accordance with the approval, approval with conditions, and/or modification issued by EPA.

48. Upon receipt of a written notice of disapproval pursuant to Paragraph 46, Torromeo shall, within 30 days or such other time as the Parties agree in writing, correct the deficiencies and resubmit the plan, report, or other item, or portion thereof, for approval.

49. Any resubmitted plan, report, or other item, or portion thereof, shall be subject to EPA's review and approval as provided under this Section. If Torromeo fails to resubmit a plan, report,

or other item, or portion thereof after disapproval, or if, upon resubmission, the plan, report, or other item, or portion thereof, is disapproved or modified by EPA, Torromeo shall be deemed to have failed to submit such plan, report, or other item, or portion thereof, timely and adequately, unless Torromeo invokes the Dispute Resolution procedures set forth in Section XVI (Dispute Resolution) and EPA's action is overturned. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 46, Torromeo shall proceed, at the direction of EPA, as appropriate, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Torromeo of any liability for Stipulated Penalties under Section XIV (Stipulated Penalties) for the deficient portions.

XIV. STIPULATED PENALTIES

50. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree, unless excused by EPA under Section XV (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree and within the specified time schedules established by or approved under this Decree.

51. Late Payment of Civil Penalty.

If Torromeo fails to pay the civil penalty required to be paid under Section VI (Civil Penalty) of this Decree when due, Torromeo shall pay a Stipulated Penalty of \$2,000 per day for each day that payment is late.

52. Major Compliance Milestones

a. The following Stipulated Penalties shall accrue per violation per day for each violation of the requirements identified in Subparagraph b:

<u>Period of Failure to Comply</u>	<u>Penalty per violation per day per Facility</u>
1st through 30th day	\$ 500.
31st through 60th day	\$1,000.
61st day and beyond	\$1,500.

b. (i) Failure to prepare an ICFCE for each Construction Materials Facility in New England meeting the requirements of, and within the time period set out in, Section VIII (Storm Water Compliance Assessments);

(ii) Failure to prepare an NFCCE for any Construction Materials Facility leased or acquired in New England after the Effective Date of this Consent Decree, meeting the requirements of, and within the time period set out in, Section VIII (Storm Water Compliance Assessments);

(iii) Failure to establish, staff, or maintain the position of a qualified SWCM as set out in Section IX (Storm Water Compliance Program);

(iv) Failure to conduct annual storm water training programs for all employees with operational responsibilities at Covered Facilities, as set forth in Paragraphs 26-28;

(v) Failure to conduct monthly inspections and analytical sampling required pursuant to Paragraphs 40 and 41, or to submit reports regarding such inspections to management of Torromeo;

(vi) Failure to submit to EPA the region-wide quarterly inspection summaries required under Paragraph 42a;

(vii) Failure to submit to EPA the annual Comprehensive Site Inspection reports of the Covered Facilities required under Paragraph 42b;

(viii) Failure to provide the certification required by Paragraph 84;

(ix) Failure to provide any Notice required by Paragraph 5; and,

(x) Failure to comply with any of the Compliance Measures related to eliminating process water discharges as described in Paragraphs 11a and 11b.

53. SEP Compliance

a. If Torromeo fails to satisfactorily complete the SEP by the deadline set forth in Appendix B or within the cure period as set forth in Section X (Supplemental Environmental Project), whichever is later, Torromeo shall pay stipulated penalties for each day for which it fails to satisfactorily complete the SEP, or cure any deficiencies at noted by EPA under Paragraph 43, as follows:

<u>Period of Failure to Comply</u>	<u>Penalty per violation per day per Facility</u>
1st through 30th day	\$ 500.
31st through 59th day	\$1,000.
60th day and beyond	\$1,500.

b. If Torromeo fails to timely submit the SEP Completion Report, or fails to provide EPA with a copy of the engineering design/specifications for the SEP for review at least 60 days prior to commencement of construction work at the SEP site, Torromeo shall pay a stipulated penalty of \$100 per day that the SEP Completion Report is submitted late, or that the engineering design/specifications is provided late.

c. If Torromeo fails to implement the SEP or abandons work on the SEP prior to its completion, Torromeo shall pay a stipulated penalty of \$500,000 together with interest accruing from the effective date of this Consent Decree.

d. Notwithstanding anything herein to the contrary, if the SEP is not completed but EPA, in its sole discretion, determines that Torromeo made good faith and timely efforts to complete the SEP, and Torromeo certifies, with supporting documentation, that at least 100 percent of the amount of money which was required to be spent was expended on the SEP, Torromeo shall not be liable for any stipulated penalty.

54. Other Violations. For any other requirement of this Consent Decree, including but not limited to failure to achieve and maintain compliance with the MSGP or any SWPPPs required by Paragraph 8, stipulated penalties of five hundred dollars (\$500.) per violation per day shall accrue during the first 15 days of the failure to comply per Facility, and then seven hundred and fifty dollars (\$750.) per violation per day, per Facility, thereafter, until such violation is cured.

55. All stipulated penalties begin to accrue on the day after complete performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations per Covered Facility.

56. Defendant shall pay any stipulated penalty within 30 days of receiving the United States' written demand.

57. Stipulated penalties shall continue to accrue as provided in Paragraphs 51 through 54 during any dispute resolution, but payment thereof is subject to the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay any accrued penalties determined to be owing, together with interest, to the United States within 30 days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 days of receiving the final appellate court decision.

58. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

59. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

60. Subject to the provisions of Section XX of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree

shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law.

61. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive in writing any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XV. FORCE MAJEURE

62. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Defendant, including its consultants, contractors, and subcontractors, and any other entities controlled by the Defendant, that delays or prevents the timely performance of any obligation under this Consent Decree, notwithstanding the Defendant's best efforts to avoid the delay. Stipulated penalties shall not be due for the number of days of noncompliance caused by a Force Majeure event as defined in this paragraph, provided that the Defendant complies with the terms of this Section. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the extent possible. "Force Majeure" does not include the financial inability of Defendant to perform any obligation under this Consent Decree.

63. If any event occurs that may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, the Defendant shall notify EPA orally or via fax within 72 hours after the Defendant first knew or should have known that the event might cause a delay. Within five (5) working days thereafter, the Defendant shall

provide to the United States, in the manner specified in Section XVIII (Form of Notice), a written explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measure(s) taken and to be taken by the Defendant to prevent or minimize the delay, a proposed schedule for the implementation of such measures, the Defendant' rationale for attributing such delay to a Force Majeure event if Defendant intend to assert such a claim, and a statement as to whether, in the opinion of the Defendant, such event may cause or contribute to an endangerment to public health, welfare, or the environment. The Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure event. Notwithstanding the foregoing, the Defendant shall notify EPA orally or via fax within two (2) hours of becoming aware of any event which presents an imminent threat to the public health or welfare or the environment and provide written notice to EPA within 24 hours. Failure to give timely and complete notice in accordance with this Paragraph shall constitute a waiver of any claim of Force Majeure with respect to the event in question.

64. If EPA agrees that a delay or anticipated delay is attributable to a Force Majeure event, the Parties shall stipulate in writing to an extension of time for the performance of the affected requirements of this Consent Decree, not to exceed the amount of time lost due to the actual unavoidable delay resulting from such circumstances. Stipulated penalties shall not be due for the number of days of noncompliance caused by such circumstances. An extension for the time of performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for the performance of any other obligation.

65. If the Parties are unable to agree whether the Defendant's failure to comply with a provision of this Consent Decree is attributable to a Force Majeure event, or on the number of days of noncompliance that were caused by a Force Majeure event, the matter shall be subject to Section XVI (Dispute Resolution). The Defendant shall notify EPA of its request to invoke Dispute Resolution within 10 days of receipt of written notice from EPA that it disagrees with the Defendant's position either (i) that a delay is attributable to a Force Majeure event, or (ii) as to the number of days of noncompliance caused by the Force Majeure event. Such notice shall constitute the notice required under Paragraph 69. Thereafter, the provisions of Section XVI (Dispute Resolution) shall apply. If the Court then determines that the failure to comply was caused by circumstances beyond the control of the Defendant and any entity controlled by the Defendant, including the Defendant's consultants, contractors and subcontractors, and it is determined that the Defendant or any entity controlled by the Defendant could not have foreseen and prevented such noncompliance, the Defendant shall be excused as to the failure to comply for the period of time the noncompliance continued due to such circumstances, and no Stipulated Penalties shall apply.

66. In any such determination to be made by the Court pursuant to Paragraph 64, the Defendant shall bear the burden of proving: (i) that the noncompliance was caused by circumstances beyond the control of the Defendant and any entity controlled by the Defendant, including its consultants, contractors and subcontractors; (ii) that the Defendant or any entity controlled by the Defendant could not have foreseen and prevented such violation; and (iii) the number of Days of noncompliance that were caused by such circumstances. If the Defendant fails to sustain its burden of proof under this paragraph, stipulated penalties shall be paid for each

day of noncompliance beginning with the first day of such noncompliance, including interest at the rate provided for in 28 U.S.C. § 1961 from the date that the stipulated penalties were originally due. The time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event shall be extended by mutual agreement of the Parties for a period of time as may be necessary to allow performance of such obligations to the extent the delay was caused by a Force Majeure event.

67. Compliance with any requirement of this Consent Decree by itself shall not constitute compliance with any other requirement. Defendant must make an individual showing of proof regarding each requirement for which an extension is sought.

XVI. DISPUTE RESOLUTION

68. Unless otherwise expressly provided for in this Consent Decree, the Dispute Resolution procedures set forth in this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. The Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree. The pendency of any negotiations or petitions under this Section shall not operate as a stay of any obligation of this Decree, except by consent.

69. Invoking Dispute Resolution. In the event that Defendant elects to invoke dispute resolution according to this Section, Defendant shall do so by giving the United States written Notice of Dispute, as described in Section XVIII (Form of Notice), of the existence of the dispute within 10 days after receipt of a notice of disapproval, approval with conditions or modification, a Force Majeure determination by EPA , or a written demand for payment of

stipulated penalties. If Defendant fails to give such notice, it shall be deemed to have waived any right to invoke the dispute resolution procedures regarding such dispute, and EPA's position shall be considered binding.

70. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 days from the date the dispute arises, unless that period is extended by agreement of the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

71. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

72. The United States shall serve its Statement of Position within 45 days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States'

Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following paragraph.

73. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XVIII of this Consent Decree (Form of Notice), a motion requesting judicial resolution of the dispute. The motion must be filed within 15 days of receipt of the United States' Statement of Position pursuant to the preceding paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

74. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

75. In any dispute brought under Paragraph 71, Defendant shall bear the burden of demonstrating that its position clearly complies with, and furthers the objectives of, this Consent Decree and the Clean Water Act. In all disputes under this Section, the Defendant shall have the burden of proving, based upon the administrative record, that the United States' position is arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law. EPA shall maintain the administrative record of the dispute, which shall contain all statements of the Parties, including supporting documentation, submitted pursuant to this Section.

76. The invocation of Dispute Resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree,

unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 57 above. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties).

XVII. RIGHT OF ENTRY

77. Until termination of this Decree, EPA and its contractors, subcontractors, consultants, and attorneys shall have authority to enter any Torromeo facilities that are the subject of the Consent Decree, at all reasonable times, upon proper identification, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

78. Upon request, Defendant shall provide EPA or its authorized representative splits of any samples taken at the Covered Facilities by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

79. Until one (1) year after the termination of this Consent Decree ("Retention Period"), Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other

information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during the Retention Period, upon written request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this paragraph. This paragraph does not limit, and shall not excuse any noncompliance with, any document retention requirements of the MSGP.

80. At the conclusion of the Retention Period, Defendant shall notify the United States at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding paragraph and, upon written request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

81. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any

information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

82. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or any State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XVIII. FORM OF NOTICE

83. Submissions required by this Consent Decree to be made to the United States or an agency thereof shall be made in writing to the following respective addressees, unless written notice is given that another individual has been designated to receive the submissions:

As to the Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
DOJ #90-5-1-1-09769
Attention: Peter Flynn

As to the EPA:

Joy Hilton
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100 (OES04-3)
Boston, Massachusetts 02109-3912
Telephone: 617-918-1877

and

Jeffrey Kopf, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100 (OES04-4)
Boston, Massachusetts 02109-3912
Telephone: 617-918-1796

As to the NH DES:

Sharon Rivard, P.E.
Design Review Engineer
New Hampshire Department of Environmental Services
Wastewater Engineering Bureau
P.O. Box 95 - 29 Hazen Drive
Concord, NH 03302-0095
Telephone: 603-271-2508

Notice to the Defendant under this Consent Decree shall be made in writing to the following addressees, unless written notice is given that another individual has been designated to receive the submissions:

Henry Torromeo
Torromeo Industries, Inc.
33 Old Ferry Rd.
Methuen, MA 01844

and

Thea Valvanis, Esq.
Sumner F. Kalman, Attorney at Law, P.C.
147 Main Street
P.O. Box 988
Plaistow, NH 03865
Telephone: 603-382-4003

XIX. CERTIFICATION

84. All written notices, reports or any other submissions required by this Consent Decree shall contain the following certification by a representative in senior management of Torromeo:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

XX. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

85. This Consent Decree resolves only the civil claims of the United States for the violations alleged at the Facility as identified in the Complaint, through the date of filing the Complaint.

86. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 85. This Consent Decree shall not be construed to limit the rights of the United States or any state to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 85. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant’s Facilities, whether related to the violations addressed in this Consent Decree or otherwise.

87. This Consent Decree expressly does not limit any rights or remedies available to the United States for any criminal violation.

88. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief, 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 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, except with respect to claims that have been specifically resolved pursuant to Paragraph 85 of this Section.

89. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, or with any other provisions of federal, state, or local laws, regulations, or permits.

90. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties not party to this Consent Decree, nor does it limit the rights of third parties not party to this Consent Decree, against Defendant, except as otherwise provided by law. This Consent Decree does not limit the standing of any person under Section 505 of the Clean Water Act to sue for any future violation of the Act not addressed by this Decree.

91. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XXI. COSTS

92. Each Party shall bear its own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including the cost of time of attorneys and Regional program employees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XXII. EFFECTIVE DATE

93. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XXIII. RETENTION OF JURISDICTION

94. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XXIV. MODIFICATION

95. Any material modification of this Consent Decree shall be by agreement of the Parties and in writing and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be by agreement of the Parties and in writing and shall not take effect until filed with the Court.

XXV. TERMINATION

96. No sooner than three (3) years after the effective date of this decree, Defendant may request, in writing, Plaintiff's consent to terminate this decree. In seeking such consent, Torrromeo shall demonstrate that:

- a. All monies, civil penalties, interest, and stipulated penalties due under this decree have been paid;
- b. There are no unresolved Notices of Dispute invoking the Dispute Resolution provisions of this decree, and there are no unresolved matters subject to Dispute Resolution pursuant to Section XVI (Dispute Resolution);
- c. No enforcement action under this decree is pending; and
- d. The requirements set forth in the decree have been fully satisfied.

97. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree. If the United States does not agree that the Consent Decree may be terminated, Defendant may invoke Dispute Resolution under Section XVI of this Consent Decree.

XXVI. APPENDICES

98. The following appendices are attached hereto and incorporated into this Consent Decree:
- a. "Appendix A" is the syllabus for training employees with operational responsibilities; and

b. “Appendix B” is the Scope of Work for the Castleton Brook Function Hall Pervious Concrete Project.

XXVII. WAIVER OF SERVICE OF SUMMONS AND COMPLAINT

99. 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 its behalf with respect to all matters arising under or relating to this Consent Decree. Defendant agrees to accept service by mail and to waive the formal service requirements set forth in 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.

XXVIII. PUBLIC COMMENT

100. This Consent Decree shall be lodged with the Court for a period of not less than thirty days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to the Consent Decree if the comments regarding the decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to the entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree or to challenge any provision of the decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

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

XXIX. FINAL JUDGMENT

102. Entry of this Consent Decree constitutes Final Judgment under Rule 54 of the Federal Rules of Civil Procedure.

103. Headings in this Decree are provided for convenience only and shall not affect the substance of any provision.

104. This Decree is the final, complete, and exclusive agreement between the Parties. The Parties acknowledge that in entering this decree they have not relied upon any promises, representations, agreements or understandings other than those expressly contained in this decree.

So Ordered this _____ day of _____, 2013.

United States District Judge

The undersigned Party enters into this Consent Decree in the matter of United States v. Torromeo Industries, Inc., Docket No. 10-cv-00509-JL, U.S.D.C., D.N.H.

For Plaintiff United States of America

Date

/s/ Ellen M. Mahan
Ellen M. Mahan
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

3/20/13
Date

/s/ Peter M. Flynn
Peter Flynn
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

JOHN P. KACAVAS
United States Attorney
District of New Hampshire

April 4, 2013

/s/ T. David Plourde _____
T. David Plourde
Assistant U.S. Attorney
NH Bar No. 2044
U.S. Attorney's Office
53 Pleasant Street, 4th Floor
Concord, NH 03301-3904
Tel: 603-225-1552
Email: david.plourde@usdoj.gov

The undersigned Party enters into this Consent Decree in the matter of United States v.

Torromeo Industries, Inc., Docket No. 10-cv-00509-JL, U.S.D.C., D.N.H.

2/27/13

Date

/s/ Susan Shrinkman

Susan Shinkman, Director
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

2/26/13

Date

/s/ Mark Pollins

Mark Pollins, Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

2/12/13

Date

/s/ Amanda J. Helwig

Amanda J. Helwig, Attorney
Water Enforcement Division,
Office of Civil Enforcement,
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

The undersigned Party enters into this Consent Decree in the matter of United States v. Torromeo Industries, Inc., Docket No. 10-cv-00509-JL, U.S.D.C., D.N.H.

01/23/12
Date

/s/ Susan Studien
Susan Studien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

The undersigned Party enters into this Consent Decree in the matter of United States v. Torromeo Industries, Inc., Docket No. 10-cv-00509-JL, U.S.D.C., D.N.H.

For Torromeo Industries, Inc.

01/23/2013
Date

/s/ Henry Torromeo
Henry Torromeo, President
Torromeo Industries, Inc.

Agent for Service of Process:

Name: Sumner F. Kalman
147 Main Street
P.O. Box 988
Plaistow, NH 03865

Appendix A

Training Syllabus For Employees with Operational Responsibilities

Overview

The Permit

- What is Required
- The SWPPP

SWPPP and paper work inspection

- Permit
- Text
- Best Management Practices
- Site Maps
- Forms

Inspections

- The BMPs
 - Installation
 - Repairs from previous inspections
 - Modifications or additions

SWPPP

- Updates
- Details

Filling out the inspection form

BMPs I -- Basics of Erosion and Sediment Control

Ten Basic Principles of Erosion and Sediment Control

The Controls

- Erosion Controls
- Sediment Controls
- Stormwater Management Controls

References

BMPs II -- Erosion Control

Erosion Control Methods

Soil Stabilization with Vegetation

Mulch and Compost

Erosion Control Devices

Dust Control

Water Trucks

Polymers

BMPs III - Sediment Control

Straw or Hay Bales

Diversions

Silt Fence

Installation Methods

Proper Placement

Where Not to Place

Wattles

Check Dams

Design

Types

Inlet Protection

Traps and Ponds

Outlet Structures

Flocculants

Dewatering

Turbidity Barriers

Oil/Water Separators

BMPs IV -- Pollution Prevention

Good Housekeeping

 Solid Waste

 Sanitary Waste

 Petroleum and Hazardous Waste

Concrete Washout

Construction Exits

 How It Works

 Types

 Tire Wash

TEST

Appendix B

Supplemental Environmental Project: Pervious Concrete Installation Castleton Function Hall, Windham, NH

SCOPE OF WORK

Defendant hereby agrees to undertake the following Supplemental Environmental Project (“SEP”) in connection with the settlement of the enforcement action described in this Consent Decree. Defendant will install a pervious concrete parking area, approximately 35,000 sq. feet, at the Castleton Function Hall located in Windham, New Hampshire, as indicated in Attachment 1 (DWG No. L-1).

A. Background Information.

Cobbett’s Pond is a 345-acre water body located in the town of Windham, New Hampshire. It is approximately two miles long, and the shoreline forms the shape of an “8.” The average depth is 33 feet, with a maximum depth of 50 feet. Cobbett’s Pond is home to many different types of lakeside homes, ranging from seasonal cottages to year-round multi-million-dollar houses. Located on the west edge of the lake is the Windham Town Beach. The beach is open to the public and has an enclosed swimming area.

During the summer months, watersport shows, boat parades, and fireworks take place on the pond. The winter months are less busy on the lake, since most homes are only seasonal and fit to be used in warm weather. Ice fishing and skating are common activities during the winter. Cobbett’s Pond is primarily a spring-fed lake. Water from the pond flows via Golden Brook and Beaver Brook to the Merrimack River in Lowell, Massachusetts.

Since the 1980’s the NH Department of Environmental Services (“NH DES”) and the Cobbett’s Pond Improvement Association (“CPIA”) have tested water samples from the pond. Over this time period, test results have shown a significant deterioration of the pond’s water quality. A major contributor to the decline in water quality is development in the watershed.

Cobbett’s Pond is on the Draft 2010 list of NH Threatened or Impaired Waters for “aquatic life” impairments related to low levels of dissolved oxygen and elevated levels of chlorophyll-a and total phosphorus. The pond was listed as impaired for “primary contact recreation” due to recent blooms of cyanobacteria that have the potential to produce toxins. In 2010, the Cobbett’s pond Watershed Restoration Plan (“WRP”) identified target areas for storm water management upgrades to reduce phosphorus loading to the Pond, including the Castleton site.

As an SEP, Defendant will remove approximately 35,000 square feet of impervious material and install approximately 35,000 sq. feet of pervious concrete, as describe below.

B. Environmental Issues.

Stormwater drainage from the current parking area enters into a catch basin and flows directly into Castleton Brook which flows into Cobbett's Pond.

C. Project.

The SEP consists of the following which the Defendant shall complete:

- Test pitting, soil sampling for field and laboratory testing, and infiltration rate testing of site soils to provide required design criteria;
- Engineering design and specifications for new parking lot;
- Removal, transport and disposal/recycling of existing bituminous concrete and approximately 2.0 ft of unsuitable sub-base material from approximately 35,000 square feet of current parking area (site owner retains right to stockpile or sell removed material);
- Grading and replacement of 2.0 ft of suitable sub-base material (i.e., ¾ inch stone or multi-layer design);
- Placement of approximately 6.0 in. of pervious concrete over approximately 35,000 square feet;
- Installation of approximately 1,500 linear feet of curbing;
- Field inspections, quality control testing and periodic storm water inspections and visual monitoring for duration of consent decree;
- Preparation of SEP documentation, as-built plan and long-term operation and maintenance plan for pervious concrete parking area;

D. Costs.

Mobilization/Demobilization	\$5,000
Excavation/Disposal of Unsuitable/Placement of Import Subgrade	\$214,455.56
Pervious Concrete Placement	\$229,350.00
Construction Supervision/Management	\$28,050.35
Construction Cost Total	\$476,855.91
Engineering Design Permitting	\$33,379.91
Field Inspection, QC and as built	\$19,074.24
Total:	\$529,310.06

E. **Environmental Benefits.**

The pervious concrete will increase the stormwater absorption capacity of this area, increase groundwater recharge, and reduce the flow of pollutants in stormwater, such as total suspended solids, phosphorus and metals, into Cobbett's Pond.

The Castleton Function Hall offers high visibility to the public and business communities to demonstrate the use of pervious concrete as a feasible low impact alternative to traditional asphalt paving.

F. **Permitting.**


Defendant is required to obtain all local, state and federal permits necessary for completing the SEP.

G. **Schedule.**

1. Defendant shall provide EPA with a copy of the engineering design/specifications for the SEP for review at least 60 days prior to commencement of construction at the SEP site.

2. SEP Construction complete by September 30, 2014.



 Mabbett & Associates Environmental Consultants & Engineers	PROPOSED SEP CONCEPT WINDHAM, NH	
	SCALE: 1"=100'	DR BY: mtl
DATE:	AP BY:	PROJ NO. 51000

DWG NO. L-1
PROJ NO. 51000