STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2009-0012

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
DISCHARGING WITHOUT A PERMIT
COAST CRANE COMPANY
14951 CATALINA STREET
SAN LEANDRO, ALAMEDA COUNTY

This Complaint is issued to Coast Crane Company (hereinafter "Discharger" or "Coast Crane") to assess administrative civil liability pursuant to California Water Code ("CWC") Sections 13385(a)(1) and 13323. The Complaint addresses the Discharger's failure to obtain required permit coverage from March 2, 2007, to July 24, 2008 (510 days), for its storm water discharges associated with its industrial activities at its facility located at 14951 Catalina Street, San Leandro, Alameda County.

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the "Regional Water Board"), hereby gives notice that:

1. Coast Crane violated provisions of law for which the Regional Water Board may impose civil liability pursuant to Section 13385(a)(1) and 13323 of the CWC. Based on the allegations and considerations described below, this Complaint proposes to assess $88,700 in liabilities for the violations cited.

2. The Regional Water Board will hold a hearing on this matter on **October 14, 2009**, in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612 unless the Discharger waives its right to a hearing. The Discharger and/or its representatives(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Water Board. An agenda for the public hearing will be mailed to you approximately ten days before the hearing date. The deadline to submit all comments and written evidence concerning this complaint to the Regional Water Board is **August 17, 2009**, at 5 p.m.

3. At the hearing the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, to refer the matter to the Attorney General for recovery of judicial civil liability, or take other enforcement actions.

4. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint in accordance with the procedures and limitations set forth in the attached waiver, including waiving its right to a hearing and (a) paying the civil liability in full or (b) engaging prosecution staff of the Regional Water Board in discussions to resolve outstanding violations and/or propose a supplemental environmental project, not to exceed $38,050, in accordance with the criteria attached to this Complaint.

ALLEGATIONS

5. Coast Crane is a full service lift specialist with 16 locations from the Arctic Circle to the Mexican border and 250 employees. The company manufactures, maintains, and sells cranes, forklifts and aerial work platforms at its facility in San Leandro. The subject facility discharges storm water associated with industrial activities.

6. Federal regulations require operators of specific categories of facilities where discharges of storm water associated with industrial activity occur to obtain a national pollutant discharge elimination system ("NPDES") permit and to implement Best Available Technology Economically Achievable ("BAT") and Best Conventional Pollutant Control Technology ("BCT") to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm discharges. The regulations require such operators either apply for an individual NPDES permit or seek coverage under a promulgated storm water general permit.

7. Pursuant to federal regulations, the State Board adopted Water Quality Order No. 97-03-DWQ NPDES General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities (hereafter, the "General Permit"), to regulate storm water discharges and authorized non-storm water discharges associated with industrial activities set forth in the federal regulations. To obtain coverage, covered facility operators must submit a notice of intent ("NOI") and comply with the terms and conditions of the General Permit.

8. CWC section 13376 requires any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States to submit a report of waste discharge and prohibit the discharge of pollutants except as authorized by waste discharge requirements. Submission of an NOI for coverage under and compliance with the General Permit satisfies the requirements of section 13376.

9. The Discharger discharges storm water associated with industrial activities at its facility that requires an NPDES permit. The activities are included in the Standard Industrial Classification ("SIC") Code descriptions: 1) 3536 Cranes and Hoists, Overhead Traveling; 2) 3531 Construction Machinery and Equipment; and 3) 7353 Heavy Construction Equipment Rental and Leasing. Discharger failed to seek an individual NPDES permit or coverage under the General Permit for the time period set forth in this Complaint.

10. The City of San Leandro had notified the Discharger of its obligation to comply with the above requirements annually since December 2005, and referred the case against the Discharger to the Regional Water Board for enforcement.

11. Based on the referral from the City of San Leandro, Regional Water Board staff notified the Discharger of its obligation to file an NOI to obtain coverage under the General Permit via certified mail dated January 31, 2007. The Discharger was required to respond by March 2, 2007. The Discharger did not submit an NOI and did not otherwise respond to the letter.

12. By certified mail dated October 9, 2007, Regional Water Board staff issued a Notice of Violation ("NOV") letter to the Discharger. This letter informed the Discharger that it was in violation of the CWC by allowing pollutants to enter waters of the United States without a permit. Staff also informed the Discharger that if it did not submit an NOI to obtain coverage under the General Permit by November 1, 2007, Regional Water Board staff would recommend enforcement actions, including imposition of administrative civil liability up to $10,000 per day. The Discharger did not submit an NOI and did not otherwise respond to the letter.

13. On June 26, 2008, Regional Water Board staff inspected the facility and notified Coast Crane staff verbally that the Regional Water Board was anticipating imposing administrative civil liability due to the discharger's continuing violation. Regional Water Board staff noted during the June 26, 2008, inspection that both the facility's finished concrete and asphalt and unfinished dirt surfaces contained significant hydrocarbon staining resulting from the crane manufacturing and maintenance work evident throughout the facility. Staff also noted that the large tires and tracks of heavy equipment (when operating) had mobilized significant volumes of sediment in the unfinished dirt areas.

14. The area in which the facility is located receives an average of about 18 inches of rain per year. The facility footprint is about 87,700 square feet and consists of impermeable asphalt, concrete, roofing materials and compacted soils. The facility does not have containment structures sufficient to contain and appropriately dispose of stormwater runoff at the facility, but rather uses the surrounding storm drain system, which discharges to San Francisco Bay, a water of the United States. The majority of rainfall in a given year would have run off the facility and discharged into San Francisco Bay.

15. Coast Crane finally submitted its NOI on July 24, 2008.

16. The number of days of violation for which this Complaint proposes an administrative civil liability is 510 days, which is the number of days between the deadline in the first notification letter from the Regional Water Board, March 2, 2007, and the date the Discharger finally submitted a complete NOI, July 24, 2008.

PROPOSED CIVIL LIABILITY

17. Water Code Section 13385 states, in part:

(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars ($10,000) for each day in which the violation occurs.

(2)Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

18. The Discharger violated Water Code section 13376 by failing to file a report of waste discharge through submission of an NOI for coverage under the General Permit and discharging pollutants without authorization. At a minimum, the Discharger failed to submit a report of waste discharge or NOI for General Permit coverage from March 2, 2007, to July 24, 2008, a total of 510 days. At $10,000 per day, the maximum potential civil liability is $5,160,000.

19. As required by Section 13385(e) of the CWC, in determining the amount of civil liability the following factors have to be taken into consideration:

"...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup and abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and other matters of justice may require."

These factors to be used in determining the amount of civil liability to be imposed are discussed below:

(a) <u>The nature, circumstances, extent, and gravity of the violation</u>: Failure to apply for and comply with applicable permits is a significant violation, especially considering the problems associated with storm water runoff in San Francisco Bay. The General Permit

is a key means of protecting water quality from potential impacts from industrial storm water runoff. To obtain coverage under the General Permit, the Discharger must submit an NOI and prepare and implement a storm water pollution prevention plan ("SWPPP"). The SWPPP specifies appropriate control measures to protect the quality of storm water runoff from the Discharger's site. Additionally, the General Permit has reporting requirements that are the Discharger's primary tools to self-evaluate site compliance with the permit and to identify any needed improvements.

Based on Regional Water Board staff's inspections, the activities are conducted outside and exposed to rain and would likely have contributed significant petroleum and sediment concentrations to the facility's stormwater discharges. Water Board staff noted during the June 26, 2008, inspection that both the finished concrete and asphalt and unfinished dirt surfaces contain significant hydrocarbon staining resulting from the crane manufacturing and maintenance work that is evident throughout the facility. When operating, the large tires and tracks on heavy equipment used at the facility mobilize large volumes of sediment in the unfinished dirt areas.

(b) Susceptibility to cleanup: The stormwater discharges associated with this industrial facility are not susceptible to cleanup because: 1) the discharges happened in the past; and 2) the increase in volume once the discharges mix with Bay waters render collection and treatment both infeasible and impracticable.

(c) Violator's voluntary cleanup efforts: The Discharger did not participate in any voluntary cleanup efforts.

(d) Toxicity of the discharge: The Discharger has prepared and implemented a SWPPP to protect the quality of storm water runoff from the facility. However, this first step towards compliance did not occur until after receiving annual notification from City of San Leandro inspectors since 2005, two letters delivered via certified mail from this agency, and finally a joint inspection by San Leandro and Regional Water Board inspectors. As a result, uncontrolled industrial storm water was discharged from the facility since at least 2005. These discharges contributed to receiving water quality impacts because they transported pollutants from facility industrial activities to the storm drain and then to waters of the United States.

The toxicity of the discharges cannot be specifically estimated at this time. However, the studies presented in the publications referenced below have documented that industrial stormwater is deleterious to the environment, typically exhibits chronic toxicity, and is at times acutely toxic. Based on Regional Board staff's inspections of the site, runoff from the site likely contained turbidity, sediment, hydrocarbons, and other pollutants related to the facility's industrial operations, and posed a threat to water quality and the beneficial uses of San Francisco Bay.

Whalen, P.J., and M.G. Cullum. 1989. *An Assessment of Urban Land Use/Stormwater Runoff Quality Relationships and Treatment Efficiencies of Selected Stormwater Management Systems.* South Florida Water Management District Resource Planning Department, Water Quality Division, Technical Publication No. 88-9.

Pitt, R.E. 1991. *Nonpoint Source Water Pollution Management*. Department of Civil Engineering, University of Alabama, Birmingham, AL

Horner, R.R., and B.W. Mar. 1982. *Guide for Water Quality Impact Assessment of Highway Operations and Maintenance*. FHWA WA-RD-39.14. Federal Highway Administration, United States Department of Transportation, McLean, VA

Bay Area Stormwater Management Agencies Association, Woodward Clyde, 1996. *San Francisco Bay Area Stormwater Runoff Monitoring Data Analysis 1988-1995.* San Francisco Bay Area, California.

(e) Discharger's ability to pay and effect on ability to continue in business: The Discharger is a privately held corporation that operates 16 full service lift specialist locations from the Arctic Circle to the Mexican border with 250 employees. There is no reason to indicate that the Discharger will not be able to pay the proposed civil liability, or that payment will affect its ability to continue in business. As described in the Public Notice and Hearing Procedure, as part of its response to this Complaint, the Discharger may submit additional information on this issue.

(f) Prior history of violations: Coast Crane began operations at the San Leandro facility on July 16, 2004, and has operated without permit coverage for its storm water discharges associated with industrial activity. Civil liability proposed in this Complaint, however, only encompasses the time between March 2, 2007 (the deadline presented in the Regional Water Board's first communication via certified mail) and when the Discharger filed a complete NOI.

(g) Degree of culpability: The storm water regulations are applicable to all specified industrial sites on a nationwide basis. All dischargers are required to comply with the Clean Water Act and CWC.

The Discharger was notified of its requirement to obtain coverage under the General Permit in a letter dated January 31, 2007. The March 2, 2007, response date was an opportunity to comply with the General Permit. After receiving no response from the Discharger, an NOV letter was issued to the Discharger on October 9, 2007. The November 1, 2007 response date was another opportunity to comply, and yet the Discharger did not comply until July 24, 2008, after the Regional Water Board's inspection of June 6, 2008.

The City of San Leandro notified the current owners of Coast Crane regarding their requirement to obtain coverage under and comply with the industrial stormwater permit obligations as early as December 12, 2005, and approximately every year thereafter.

Thus, the Discharger was notified of its obligation to comply with the General Permit, but failed to do so until July 24, 2008.

The Discharger is fully culpable.

(g) Economic savings resulting from the violation: The Discharger has realized cost savings by failing to pay General Permit annual fees, failing to develop and implement SWPPP, failing to perform required sampling and analyses, and failing to report annually on its compliance. Estimated costs are as follows:

(1) Annual fee: $830/year;

(2) Sampling and analyses at three discharge locations: $1,500;

(3) Development of a SWPPP: an EPA survey indicates average one-time costs to prepare SWPPP of about $2,095 - 105,091, dependent on the size/complexity of facility. SWPPP preparation for this facility would cost about $10,000; and

(4) SWPPP implementation including preparation and submittal of annual reports: an EPA survey indicates average annual costs of about $750 - $25,000, dependent on the size/complexity of facility. Annual costs for this facility would be about $5,000.

(h) Other matters that justice may require:

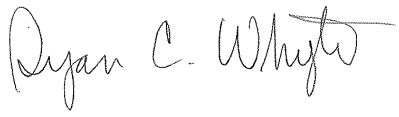
Staff time to investigate and prepare a Notice of Noncompliance, NOV, Complaint and supporting information is estimated to be 80 hours. Based on an average cost to the State of $150 per hour, the total cost is $12,000. Issuance of the complaint also requires publication of a Public Notice in a newspaper of general circulation at a cost of approximately $600. These costs totaling $12,600 have been included in the amount of the proposed administrative civil liability.

20. Based on the above factors to be considered, the Assistant Executive Officer of the Regional Water Board proposes an administrative civil liability of $88,700 against the Discharger for the violations described in this Complaint. The Discharger may complete a supplemental environmental project (SEP) in lieu of the suspended liability up to $38,050. In summary, the Discharger operates a large industrial facility where significant pollution-causing activities are frequently completed outdoors and frequently exposed to rain. The Discharger operated this facility without General Permit coverage for a minimum of 510 days, but did finally submit an NOI.

21. This action is an Order to enforce the laws and regulations administered by the Regional Water Board. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.

22. The Assistant Executive Officer will not consider any request to reduce the amount of proposed liability based on the Discharger's alleged inability to pay unless the Discharger submits adequate proof of financial hardship. Such information should substantially demonstrate that the Discharger cannot, and could not, pay the proposed liability. It could consist of, for example, two years of income tax returns, or an audited financial statement with appropriate supporting information.

    Further failure to comply with CWC Section 13376 and the General Permit may subject the Discharger to further administrative civil liability, and/or other appropriate enforcement actions(s), including referral to the Attorney General.



July 17, 2009

Dyan C. Whyte
Assistant Executive Officer

WAIVER OF HEARING
DUE NO LATER THAN **August 17, 2009, at 5 p.m**.

By signing this waiver, I affirm, acknowledge, and agree to the following:

I am duly authorized to represent Coast Crane Company (hereinafter, "Discharger") in connection with Administrative Civil Liability Complaint No. R2-2009-0012 ("Complaint"). I am informed that California Water Code section 13323(b) states that "…a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

❑ Waiver of the right to a hearing and agreement to make payment in full.

By checking the box, I agree to waive my right to a hearing before the Regional Water Board with regard to the violations alleged in the Complaint and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the scheduled Hearing date.

I understand the payment of the amount in the Complaint constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments during the comment period, the Regional Water Board's Assistant Executive Officer may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of the civil liability.

❑ Waiver of right to a hearing and agreement to make payment and undertake an SEP

By checking the box, I agree to waive my right to a hearing before the Regional Water Board with regard to the violations alleged in the Complaint and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to $38,050 and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the scheduled hearing date. **The SEP proposal shall be submitted no later than August 26, 2009**, **at 5 p.m.** I understand that the SEP proposal shall conform to the requirements specified in the Policy on Supplemental Environmental Projects, which was adopted by the State Water Resources Control Board on February 3, 2009, and be subject to approval by the Assistant Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Assistant Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from

the Assistant Executive Officer rejecting the proposed/revised SEP. If payment is not timely received, the Regional Water Board may adopt an administrative civil liability order requiring payment.

I further understand that the acceptance or rejection of the SEP and payment of the remainder of the proposed civil liability constitutes a settlement of the Complaint and that any settlement will not become final until after a 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments during this period, the Regional Water Board's Assistant Executive Officer may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

❑ Waiver of right to a hearing within 90 days in order to engage in settlement discussions.

By checking this box, I hereby waive my right to have a hearing within 90 days after service of the Complaint, but I reserve the right to have a hearing in the future. I agree to promptly engage the Regional Water Board prosecution staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing and hearing deadlines so the Discharger and Regional Water Board staff can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing.

❑ Waiver of a right to a hearing within 90 days in order to extend the hearing date and/or hearing deadlines. Attach separate sheet with the amount of additional time requested and the rationale.

By checking this box, I hereby waive my right to have a hearing within 90 days after service of the Complaint and request that the Regional Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board to agree to delay the hearing.

_____	_____
Name (print)	Signature
_____	_____
Date	Title/Organization