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EPA - REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	DOCKET NO. CWA-10-2017-0046
	)	
BIGGE CRANE AND	)	<b>CONSENT AGREEMENT AND</b>
RIGGING CO.,	)	<b>FINAL ORDER</b>
	)	
Auburn, Washington,	)	
	)	
Respondent.	)	

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**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegate this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Bigge Crane

and Rigging Co. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

### **Statutory and Regulatory Background**

3.1. The CWA prohibits the “discharge of any pollutant by any person” into navigable waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.2. Section 402(a) of the Act, 33 U.S.C. § 1342, provides that the Administrator of EPA may issue an NPDES permit for the discharge of any pollutant, or combination of

pollutants, into the waters of the United States, subject to certain requirements of the CWA and upon such terms and conditions as the Administrator may prescribe.

3.3. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States” under Section 502(7) of the Act, 33 U.S.C. § 1362(7). “Waters of the United States” include all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; the territorial seas; and all impoundments and tributaries of such waters. 40 C.F.R. § 122.2.

3.4. A “pollutant,” as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6), includes, in part, “rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”

3.5. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines the term “point source” to include, among others, “any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container ... from which pollutants are or may be discharged.”

3.6. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), specifies that an NPDES permit is required for any stormwater discharge “associated with industrial activity.”

3.7. “Storm water discharge associated with industrial activity” is defined to include “discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.” 40 C.F.R. § 122.26(b)(14).

3.8. The State of Washington has a federally approved NPDES permit program administered by the Washington Department of Ecology (“Ecology”).

3.9. In October 2009 Ecology reissued the Washington Industrial Stormwater General Permit (“2010 Stormwater GP”) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The 2010 Stormwater GP became effective on January 1, 2010, and expired on January 1, 2015. The 2010 Stormwater GP was modified with the new effective date of July 1, 2012. The 2010 Stormwater GP authorized certain discharges of stormwater associated with industrial activity at permitted facilities.

3.10. In December 2014 Ecology reissued the Washington Industrial Stormwater General Permit (“2015 Stormwater GP”) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The 2015 Stormwater GP became effective on January 2, 2015, and has an expiration date of December 31, 2019. The 2015 Stormwater GP authorizes certain discharges of stormwater associated with industrial activity at permitted facilities.

3.11. The 2010 and 2015 Stormwater GPs require facilities engaged in certain industrial activities to apply for coverage under the permit if stormwater from the facility discharges to a surface water body or to a storm sewer system that discharges to a surface water body. Permittees are required to comply with the conditions and requirements set forth in the applicable Stormwater GP.

#### **Factual Background**

3.12. Respondent is a company organized under the laws of the State of California, and therefore a “person” within the meaning of the Act. CWA § 502(5), 33 U.S.C. § 1362(5).

3.13. Respondent owns a heavy construction equipment rental business encompassing approximately 3.2 acres of land, located at 221 30th Street Northeast in Auburn, Washington (“Facility”).

3.14. Respondent’s specialization in heavy transport equipment rental business places the company within North American Industry Classification System (“NAICS”) code 532412 (Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing) and Standard Industrial Classification codes 5082 (Construction and Mining Machinery) and 7353 (Heavy Construction Equipment Rental).

3.15. At all times relevant to this CAFO, the Facility had coverage under the 2010 Stormwater GP or the 2015 Stormwater GP (permit no. WAR000929).

3.16. The Facility has two storm drains, known as catch basin 1 (“CB1”) and catch basin 2 (“CB2”). Each of these catch basins is a “point source” as defined in 40 C.F.R. § 122.2.

3.17. CB1 and CB2 discharge into the City of Auburn’s stormwater conveyance system, which, according to the Facility’s Stormwater Pollution Prevention Plan (“SWPPP”), discharges into Mill Creek. Mill Creek flows into the Green River, then to the Duwamish River, and ultimately into Puget Sound. Mill Creek is a “navigable water” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and a “water of the United States” as defined in 40 C.F.R. § 122.2.

**Alleged Violation 1  
(Failure to Conduct and/or Document Monthly Site Inspections)**

3.18. Condition S7.A.1. of the 2010 Stormwater GP states that the Permittee “shall conduct and document visual inspections of the site each month.”

3.19. Condition S7.C. of the 2010 Stormwater GP states that the Permittee “shall record the results of each inspection in an inspection report or checklist and keep the records on-site.”

3.20. Respondent was unable to produce site inspection reports or checklists for 28 months between August 2011 and August 2014.

3.21. For at least 28 months between August 2011 and August 2014, Respondent failed to conduct and/or document visual inspections of the Facility in violation of Conditions S7.A.1. and S7.C. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Alleged Violation 2  
(Failure to Properly Record Monthly Inspections)**

3.22. Condition S7.C.1. of the 2010 Stormwater GP states that the Permittee shall ensure that each inspection report includes the time and date of the inspection; the locations inspected; a statement by a designated person that the site is either in compliance or out of compliance with the terms and conditions of the SWPPP and the Permit; a summary report and a schedule of implementation of the remedial actions that the Permittee plans to take if the site is out of compliance; the name, title, and signature of the person conducting the site inspection with a certifying statement; and the certification and signature of a designated person.

3.23. For at least nine months between October 2012 and January 2014, Respondent failed to properly record its monthly inspection reports in violation of Condition S7.C.1. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Alleged Violation 3  
(Failure to Implement SWPPP Employee Training Best Management Practices (“BMPs”))**

3.24. Condition S3.A.1. of the 2010 Stormwater GP states that the Permittee shall “develop and implement a SWPPP for the permitted facility.”

3.25. Condition S3.B.4.b.i.5. of the 2010 Stormwater GP states that the SWPPP “shall include BMPs to provide SWPPP training for employees who have duties in areas of industrial activities subject to this permit.” Condition S3.B.4.b.i.5. specifies that the training plan must include the content of the training; how the permittee will conduct the training; the frequency/schedule of the training; and a log of the dates on which specific employees received training. Condition S3.B.4.b.i.5. further specifies that, at a minimum, employees must be trained annually.

3.26. Respondent was unable to produce employee training records for 2012 and 2013.

3.27. For at least two years in 2012 and 2013, Respondent failed to adequately implement SWPPP employee training BMPs in violation of Condition S3.B.4.b.i.5. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Alleged Violation 4  
(Failure to Modify SWPPP)**

3.28. Condition S3.A.4.a.i. of the 2010 Stormwater GP states that the Permittee “shall modify the SWPPP . . . [a]s necessary to include additional or modified BMPs to correct problems identified.”

3.29. Condition S8.D. of the 2010 Stormwater GP states that, as part of a Level 3 Corrective Action, a Permittee shall “[m]ake appropriate revisions to the SWPPP to include additional Treatment BMPs with the goal of achieving the applicable benchmark value(s) in future discharges.”

3.30. In December 2012, as part of a Level 3 Corrective Action, Respondent installed catch basin insert treatment systems at CB1 and CB2. Respondent failed, however, to modify the Facility’s January 2012 SWPPP to include these additional Treatment BMPs.

3.31. For at least 2 years in 2013 and 2014, Respondent failed to modify the Facility's SWPPP in violation of Conditions S3.A.4.a.i. and S8.D. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Alleged Violation 5  
(Failure to Sample Each Distinct Point of Discharge)**

3.32. Condition S4.A. of the 2010 Stormwater GP states that the Permittee "shall conduct sampling of stormwater in accordance with this permit and the SWPPP." Condition S4.A. of the 2010 Stormwater GP states that the Permittee "shall designate sampling location(s) at the point(s) where it discharges stormwater associated with industrial activity off-site."

3.33. Condition S4.B.2.c. of the 2010 Stormwater GP states that the Permittee "shall sample each distinct point of discharge off-site except as otherwise exempt from monitoring as a 'substantially identical outfall' per S3.B.5.b." Substantially identical outfall means "two or more outfalls [that] discharge substantially identical effluents (based on similar industrial activities and site conditions)."

3.34. At all times relevant to this action, Respondent discharged stormwater off-site from two distinct points of discharge, CB1 and CB2.

3.35. On two separate occasions in 2011 and 2012, Respondent conducted sampling at only one of the two distinct points of discharge. Discharges from CB1 and CB2 were not determined to be "substantially identical," nor were they identified or documented as "substantially identical" in the Facility's SWPPP.

3.36. On at least two occasions in 2011 and 2012, Respondent failed to sample each distinct point of stormwater discharge in violation of Condition S4.B.2.c. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).



**Alleged Violation 6**  
**(Failure to Prevent Process Wastewater from Comingling with Stormwater)**

3.37. Condition S3.B.4.b.i.7. of the 2010 Stormwater GP states, “Water from washing vehicles or equipment, steam cleaning and/or pressure washing is considered process wastewater. The Permittee must not allow this process wastewater to comingling with stormwater or enter storm drains.”

3.38. For at least seven months between December 2012 and January 2014, Respondent’s monthly inspection reports indicated that process wastewater from the Facility’s wash pad was comingling with stormwater.

3.39. For at least seven months between December 2012 and January 2014, Respondent failed to prevent process wastewater from comingling with stormwater or entering storm drains in violation of Condition S3.B.4.b.i.7. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Alleged Violation 7**  
**(Failure to Include All Sampling Data in DMR Calculations)**

3.40. Condition S9.A.1. of the 2010 Stormwater GP states, “The Permittee shall submit sampling data obtained during each reporting period on a Discharge Monitoring Report (DMR).”

3.41. Condition S9.D. of the 2010 Stormwater GP states, “If the Permittee samples any pollutant at a designated sampling point more frequently than required by this permit, then the Permittee shall include the results in the calculation and reporting of the data submitted in the Permittee’s DMR.”

3.42. Respondent collected three samples during the second quarter of 2013 but failed to include all three sampling results in the calculation and reporting submitted in the DMR.

3.43. On at least one occasion in 2013, Respondent failed to include all sampling results in the calculation and reporting of the data submitted in the DMR in violation of Condition S9.D. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Alleged Violation 8  
(Failure to Conform to Sampling Requirements)**

3.44. Condition S4.C. of the 2010 Stormwater GP states that the Permittee “shall ensure that analytical methods used to meet the sampling requirements in this permit conform to the latest revision of the Guidelines Establishing Test Procedures for the Analysis of Pollutants contained in 40 CFR Part 136” (“Guidelines”). The Guidelines specify, among other things, a maximum holding time for pH of fifteen minutes; a maximum holding time for fecal coliform of eight hours; and a preservation temperature of less than or equal to six degrees Celsius for parameters such as pH.

3.45. Respondent violated the maximum holding times for pH and fecal coliform and the maximum sample preservation temperature in the third quarter of 2011. Respondent also violated the maximum holding time for pH in the fourth quarter of 2011 and the maximum holding time for fecal coliform in the first quarter of 2014.

3.46. The Facility’s January 2012 SWPPP contained a holding time for fecal coliform that was not consistent with the Guidelines.

3.47. On at least four occasions between the third quarter of 2011 and the first quarter of 2014, Respondent failed to ensure that the analytical methods used to meet the Stormwater GP sampling requirements conformed to the Guidelines in violation of Condition S4.C. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.48. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that “any person has violated any permit condition or limitation ... in a permit issued” pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

#### IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent’s economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$48,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier’s check or certified check payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Raymond Andrews  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. *Interest.* Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. *Attorneys Fees, Collection Costs, Nonpayment Penalty.* Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists.

Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

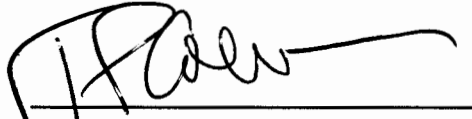
4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

3/9/2017

FOR RESPONDENT:

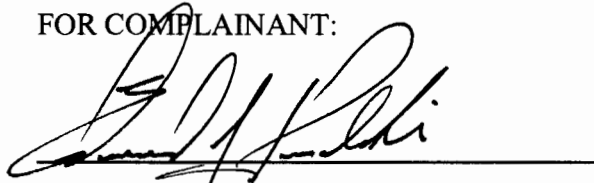


JAMES COENEN, Safety Manager  
Bigge Crane and Rigging Co.

DATED:

3/14/2017

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

#### V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

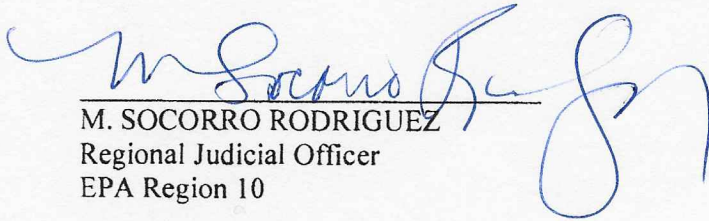
5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Washington Department of Ecology has been given the opportunity to

consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 30<sup>th</sup> day of March, 2017.

  
M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
EPA Region 10

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: BIGGE CRANE AND RIGGING CO., DOCKET NO.: CWA-10-2017-0046** was served on the addressees in the following manner on the date specified below:


The undersigned certifies that a true and correct copy of the document was delivered to:

Leah Brown  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

James Coenen, Safety Manager  
Bigge Crane and Rigging Co.  
10700 Bigge Ave.  
San Leandro, CA 94577

DATED this 31 day of March, 2017

  
\_\_\_\_\_  
Signature  
40477  
Teresa Luna  
Regional Hearing Clerk  
EPA Region 10