

MERRIMAC INDUSTRIES INC

Form SC 14D9/A

January 13, 2010

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**Amendment No. 1
to
SCHEDULE 14D-9**

**SOLICITATION/RECOMMENDATION STATEMENT
PURSUANT TO SECTION 14(D)(4) OF THE
SECURITIES EXCHANGE ACT OF 1934**

Merrimac Industries, Inc.
(Name of Subject Company)

Merrimac Industries, Inc.
(Name of Person Filing Statement)
Common Stock, par value \$.01 per share
(Title of Class of Securities)
590262101
(CUSIP Number of Class of Securities)

Mason N. Carter
Chairman, President and Chief Executive Officer
41 Fairfield Place
West Caldwell, NJ 07006
(973) 575-1300
(Name, address and telephone number of person authorized to receive notices
and communications on behalf of the persons filing statement)

With a copy to:
David H. Landau, Esq.
Katten Muchin Rosenman LLP
575 Madison Avenue
New York, NY 10022
(212) 940-8800

- ☐ Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.
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Item 8. Additional Information.

SIGNATURE

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This Amendment No. 1 to the Schedule 14D-9 (the "Amendment") amends and supplements the Schedule 14D-9 filed with the Securities and Exchange Commission (the "SEC") on January 5, 2010 (as amended from time to time, the "Schedule 14D-9") by Merrimac Industries, Inc. (the "Company"), a Delaware corporation. The Schedule 14D-9 relates to the tender offer (the "Offer") by Crane Merger Co., a Delaware corporation ("Purchaser") and wholly-owned subsidiary of Crane Co., a Delaware corporation ("Parent"), to purchase all of the outstanding shares of common stock, par value \$.01 per share, of the Company (collectively, the "Shares") for \$16.00 per Share, net to the holder thereof in cash, without interest thereon (the "Offer Price"), subject to any required withholding of taxes, upon the terms and subject to the conditions set forth in the Purchaser's Offer to Purchase dated January 5, 2010 (as amended or supplemented from time to time, the "Offer to Purchase") and in the related Letter of Transmittal (as amended or supplemented from time to time, the "Letter of Transmittal"), copies of which are filed as Exhibits (a)(1) and (a)(2) to the Schedule 14D-9, respectively.

The information in the Schedule 14D-9 is incorporated in this Amendment by reference to all of the applicable items in the Schedule 14D-9, except that such information is hereby amended and supplemented to the extent specifically provided herein.

Item 8. Additional Information.

Item 8 ("Additional Information") of the Schedule 14D-9 is hereby amended and supplemented by inserting the following heading and paragraph after the fourth paragraph on page 25 under the heading "Appraisal Rights".

Legal Proceedings

On January 8, 2010, a lawsuit related to the Offer and the Merger was filed in the Superior Court of the State of New Jersey, County of Essex, *Hex Partners v. Carter et al.* The action, brought by a purported stockholder of Merrimac, names Merrimac, each member of the Merrimac Board and Parent as defendants, and alleges, among other things, breaches of fiduciary duties by the Merrimac Board, aided and abetted by Parent, that resulted in an unfair price of \$16.00 per share and unjust enrichment of the members of the Merrimac Board. The complaint seeks certification as a class of all Merrimac stockholders, except the defendants and their affiliates, and unspecified damages and declaratory relief. On January 8, 2010, the plaintiff filed a proposed order to show cause seeking to expedite discovery in anticipation of a forthcoming post-discovery motion for a preliminary injunction to enjoin the defendants from consummating the Offer and the Merger. The Company was not served with the complaint in this lawsuit until January 12, 2010. Neither Parent nor Merrimac were provided with the January 8, 2010 motion until the evening of January 12, 2010. The Company believes the plaintiff's claims are without merit and intends to vigorously defend this lawsuit.

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SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

By: /s/ Mason N. Carter

Name: Mason N. Carter

Title: *Chairman, President and Chief
Executive Officer*

Date: January 13, 2010