BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of	:	
	:	
Pre Con, Inc.	:	**Docket No. RCRA-03-2014-0065**
6700 Court Yard Road	:	
Chester, VA 23831	:	
	:	
Respondent	:	**Proceeding under Section 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6928(a) and (g)**
	:	
Pre Con, Inc.	:	
	:	
220 South Perry Street and	:	
321 Brown Street	:	
Petersburg, Virginia 23803	:	
EPA ID No. VAD 988 207 148	:	
	:	
Facility	:	
	:	

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EPA REGION III, PHILA. PA

CONSENT AGREEMENT

I. <u>PRELIMINARY STATEMENT</u>

1. This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant") and Pre Con, Inc. ("Respondent") pursuant to Section 3008(a) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act ("RCRA") of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments ("HSWA") of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. The Consolidated Rules of Practice, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement ("CA") and the accompanying Final Order

("FO"), (collectively referred to herein as the "CAFO"), simultaneously commence and conclude this administrative proceeding against Respondent.

3. The Commonwealth of Virginia ("Virginia") has received federal authorization to administer a Hazardous Waste Management Program (the "Virginia Hazardous Waste Management Program") *in lieu* of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g. The Virginia Hazardous Waste Management Regulations ("VaHWMR") were federally authorized, effective December 18, 1984 (49 *Fed. Reg.* 47391 (December 4, 1984)), by EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, and subsequently were re-authorized effective: August 13, 1993 (58 *Fed. Reg.* 32885 (June 14, 1993)); September 29, 2000 (65 *Fed. Reg.* 46607 (July 31, 2000)); June 20, 2003 (68 *Fed. Reg.* 36925 (June 20, 2003)), July 10, 2006 (71 *Fed. Reg.* 27216 (May 10, 2006)); July 30, 2008 (73 *Fed. Reg.* 44168 (July 30, 2008)), and again on November 4, 2013 (78 *Fed. Reg.* 54178 (September 3, 2013)), with minor changes not relevant in this matter. The authorized VaHWMR are currently codified at 9 VAC 20-60, *et seq*. The VaHWMR that were effective at the time of the violations in this matter were those authorized in 2008.

4. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to initiate an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C, EPA's regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA.

5. This CA and the accompanying FO address alleged violations by Respondent of Subtitle C of RCRA, 42 U.S.C. §§ 6921- 6939g, and the authorized Virginia Hazardous Waste Management Regulations, set forth at 9 VAC 20-60, *et seq*., which incorporate by reference the federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270-273, in connection with Respondent's facility. Respondent's facility consists of two buildings located at 220 South Perry Street and 321 Brown Street, in Petersburg, Virginia 23803 (the "Facility"). Factual allegations or legal conclusions in this CA that are based on provisions of federally-authorized VaHWMR requirements cite those respective provisions as the authority for such allegations or conclusions.

6. On January 13, 2014, EPA sent a letter to the Commonwealth of Virginia, through the Virginia Department of Environmental Quality ("VADEQ"), providing prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. GENERAL PROVISIONS

7. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

8. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA, except as provided in Paragraph 7, above.

9. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, issuance of the attached FO, or the enforcement of the CAFO.

10. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.

11. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

12. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

13. The settlement agreed to by the parties in this Consent Agreement reflects their desire to resolve this matter without the expense and burden of litigation.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. In accordance with the Consolidated Rules of Practice, at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the findings of fact and conclusions of law as set forth below.

15. The United States Environmental Protection Agency's Office of Administrative Law Judges has jurisdiction over this matter pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), and 40 C.F.R. § 22.1(a)(4) and .4(c).

16. Respondent, Pre Con, Inc., is a Virginia corporation and is a "person" as defined by 9-VAC 20-60-12, incorporating by reference RCRA Section 1004(15), 42 U.S.C. § 6903(15).

17. Respondent is and has been, at all times relevant to the allegations set forth in this CAFO, the operator of a facility located at 220 South Perry Street and 321 Brown Street, Petersburg, Virginia 23803 (the "Facility").

18. On September 10 and 11, 2012, EPA representatives conducted a Compliance Evaluation Inspection ("Inspection") of the Facility to examine Respondent's compliance with the federally-authorized VaHWMR requirements at the Facility.

19. Respondent's Facility is predominantly a research facility with pilot scale manufacturing capabilities, primarily for developmental production of ballistic resistant materials.

20. Respondent is and, at all times relevant to the allegations set forth in this CAFO, has been engaged in "generation," and "storage" of materials that are "solid wastes" and "hazardous waste" at the Facility, as these terms are defined by 9-VAC 20-60-260, incorporating by reference RCRA Section 1004(5), (6), (27) and (33), 42 U.S.C. § 6903(5), (6), (27) and (33), and 40 C.F.R. § 260.10.

21. From July 2005, when Pre Con began research and development at the Facility, until at least the time of the September 2012 Inspection, Pre Con was a large quantity generator at the Facility.

22. Beginning in at least July 2005, and continuing through the time of the Inspection, Respondent stored a variety of hazardous wastes at the Facility in several different types of containers, including large totes, 55-gallon drums and smaller containers. Some of the containers, and their associated piping and equipment, contained or were in contact with a hazardous waste with 10% or more organic concentration. (For purposes of this CAFO, this solvent is designated as "Solvent 1".) Some of the wastes were ignitable hazardous wastes with EPA Hazardous Waste Code No. D001.

23. The federal hazardous waste management regulations exclude "hazardous secondary material that is generated and then transferred to another person for the purpose of reclamation" from the definition of "solid waste," at 40 C.F.R. § 261.4(a)(24), provided that the material meets specified conditions. While Solvent 1 might have qualified as a "hazardous secondary material" of the type excluded from the definition of "solid waste" under the current federal regulations at 40 C.F.R. § 261.4(a)(24), Virginia has not adopted this exclusion, and Respondent did not meet the conditions required to qualify for the exclusion at the time of the violations alleged herein.

24. On September 26, 2012, Respondent sent to EPA additional information about the Facility and its operations.

25. On January 2, 2013, Respondent received guidance from a consultant that it had hired that the requirements in 40 C.F.R. Part 265, Subpart BB applied to equipment at the Facility.

26. On December 16, 2013, EPA sent to Respondent a letter providing Respondent with an opportunity to show cause and provide further information ("Show Cause Letter") regarding the alleged violations of Subtitle C of RCRA and the VaHWMR at the Facility that were set forth in the letter.

27. On the basis of the Inspection and a review of supplemental information provided to EPA by Respondent, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, and federally-authorized VaHWMR requirements promulgated thereunder.

28. Respondent has submitted information to EPA identifying measures taken by Respondent to comply with the requirements of RCRA Subtitle C and the VaHWMR identified in Counts I through VIII of this CAFO.

COUNT I

(Operating a Hazardous Waste Storage Facility without a Permit or Interim Status)

29. The allegations of Paragraphs 1 through 28 of this CA, above, are incorporated herein by reference as though fully set forth at length.

30. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), provide, with certain exceptions not relevant to the violations alleged herein, that a person may not operate a hazardous waste treatment, storage or disposal facility ("TSDF") unless such person has first obtained a permit or interim status for the facility.

31. Respondent has never had "interim status" pursuant to RCRA Section 3005(e) or 9-VAC 20-60-265, or a permit issued pursuant to RCRA Section 3005(a) or 9-VAC 20-60-270, for the treatment, storage, or disposal of hazardous waste.

32. Pursuant to 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.34(a) and (b), large quantity generators of hazardous waste who accumulate hazardous waste in containers, tanks, drip pads, or containment buildings on-site for less than ninety (90) days are exempt from the requirement to obtain a permit for such accumulation, as long as the hazardous waste is stored in accordance with a number of conditions set forth in that section, including the following:

    a. The waste is placed in containers and the generator complies with the applicable requirement of Subparts I, AA, BB, and CC of 40 C.F.R. Part 265,

    b. The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container,

    c. While being accumulated on-site, each container is labeled or marked clearly with the words, "Hazardous Waste," and

    d. The generator complies with the requirements for owners in Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. §268.7(a)(4).

33. 40 C.F.R. Part 265, Subpart I includes 40 C.F.R. § 265.174, which is incorporated by reference in 9 VAC 20-60-265.A. 40 C.F.R. § 265.174 provides that, at least weekly, the owner or operator must inspect areas where containers are stored.

34. 40 C.F.R. Part 265, Subpart BB includes 40 C.F.R. § 265.1063(d), which is incorporated by reference in 9 VAC 20-60-265.A. 40 C.F.R. § 265.1063(d) provides that owners and

operators of a facility that is regulated by 40 C.F.R. Part 265, Subpart BB must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with an organic concentration that equals or exceeds 10% by weight. This determination must made using a methodology set forth in 40 C.F.R. § 265.1063(d)(1) or (2), or through application of knowledge of the nature of the hazardous waste stream or the process by which it was produced, as described in 40 C.F.R. § 265.1063(d)(3).

35. 40 C.F.R. Part 265, Subpart BB includes 40 C.F.R. § 265.1057, which is incorporated by reference in 9 VAC 20-60-265.A. 40 C.F.R. § 265. 1057(a) provides that each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in 40 C.F.R § 265.1063(b) and in compliance with paragraphs (b) through (e) of 40 C.F.R. § 265.1057, with exceptions not relevant to this matter.

36. 40 C.F.R. Part 265, Subpart BB includes 40 C.F.R. § 265.1050(c), which is incorporated by reference in 9 VAC 20-60-265.A. 40 C.F.R. § 265.1050(c) provides that that every piece of equipment at a facility regulated under 40 C.F.R. Part 265, Subpart BB, shall be marked in such a manner that it can be readily distinguished from other pieces of equipment.

37. 40 C.F.R. Part 265, Subpart BB includes 40 C.F.R. § 265.1064(b)(1)(i), which is incorporated by reference in 9 VAC 20-60-265.A. 40 C.F.R. § 265.1064(b)(1)(i) provides that the owner or operator of a hazardous waste storage facility shall maintain records for equipment subject to Subpart BB regulation, including the equipment identification number and hazardous waste unit identification.

38. 40 C.F.R. Part 265, Subpart D includes 40 C.F.R. § 265.52(c), (e) and (f), which is incorporated by reference in 9 VAC 20-60-265.A. 40 C.F.R. § 265.52(c), (e) and (f) provide that the owner and operator of a hazardous waste facility shall maintain an adequate contingency plan, describing the facility's planned response to fires, explosions, and any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water at the facility. The plan must describe arrangements agreed to by local emergency responders, list all emergency equipment at the facility and their locations, and include an evacuation plan.

39. Pursuant to 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.34(c), a generator may accumulate as much as 55 gallons of hazardous waste, or one quart of acutely hazardous waste, in containers if the containers are kept at or near the point of generation, under the control of the operator, and are marked with the words "Hazardous Waste," or with any other words that identify the contents of the containers.

40. At the time of the Inspection, several areas that Respondent considered to be "satellite accumulation areas" failed to meet the applicable conditions for the satellite accumulation exemption of 40 C.F.R. § 262.34(c)(1) because the containers of hazardous waste stored in such areas were not clearly labeled with the words "Hazardous Waste," or with other words that identify the contents of the containers, as required by 9 VAC 20-

60-262.A. These areas include: a solvent containment shed, the Eden Building loading dock, and a manufacturing area.

41. From July 2005 through the Inspection in September 2012, Respondent failed to qualify for the 90-day storage permit exemption for certain activities and units because Respondent failed to meet the following conditions for such exemption set forth in 40 C.F.R. § 262.34(a), which is incorporated by reference in 9 VAC 20-60-262.A:

    a. Respondent stored a waste solvent at the Facility, designated as "Solvent 1," which is a hazardous waste with organic concentrations of at least 10% percent by weight. Respondent failed to perform an analysis of which equipment at the Facility contained or was in contact with Waste Solvent 1, and was therefore subject to the requirements of 40 C.F.R. Part 265, Subpart BB, as required by 9 VAC 20-60-265.A, which incorporates by reference 40 C.F.R. § 265.1063(d).

    b. Respondent failed to test monthly for leaks the equipment containing or in contact with hazardous waste Solvent 1 (which is subject to the requirements of 40 C.F.R. Part 265, Subpart BB), as required by 9 VAC 20-60-265.A, which incorporates by reference 40 C.F.R. §§ 265.1057 and 1063.

    c. Respondent failed to mark each piece of equipment containing or in contact with the hazardous waste Solvent 1 (which is subject to the requirements of 40 C.F.R. Part 265, Subpart BB), as required by 9 VAC 20-60-265.A, which incorporates by reference 40 C.F.R. § 265.1050(c).

    d. Respondent failed to record in the Facility operating record the identification numbers for each piece of equipment containing or in contact with the hazardous waste Solvent 1, which is subject to the requirements of 40 C.F.R. Part 265, Subpart BB, as required by 9 VAC 20-60-265.A, which incorporates by reference 40 C.F.R. §§ 265.1064(b).

    e. For the weeks of September 2, 2009 and December 30, 2009, Respondent failed to inspect the Solvent 1 hazardous waste storage area, as required by 9 VAC 20-60-265.A, which incorporates by reference 40 C.F.R. § 265.174.

    f. Respondent failed to maintain an adequate contingency plan, as required by 9 VAC 20-60-265.A, which incorporates by reference the federal regulation at 40 C.F.R. §§ 265.52 (c), (e) and (f).

    g. Respondent failed to label the containers referred to in paragraph 40, above, with the words "Hazardous Waste," as required by 40 C.F.R. § 262.34(a)(3), which is incorporated by reference by 9 VAC 20-60-262.A.

42. From July 2005 until November 2013, Respondent owned and/or operated a hazardous waste storage facility without a permit, interim status, or valid exemption. Therefore, Respondent operated the Facility in violation of the requirements set forth in Section

3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b).

COUNT II

(Failure to Determine Whether Equipment Contains or Contacts a Hazardous Waste With 10% or More Organic Concentration, as Required by 9-VAC 20-60-264.A, incorporating 40 C.F.R. § 264.1063(d))

43. The allegations of Paragraphs 1 through 42 of this CA, above, are incorporated herein by reference as though fully set forth at length.

44. The waste solvent generated and stored at the Facility, designated as "Solvent 1," was a hazardous waste and had an organic concentration that equaled or exceeded 10% by weight; therefore all the equipment at the Facility, including the equipment discussed in Counts III, IV and V, below, that contained or contacted this hazardous waste was subject to 40 C.F.R. Part 264, Subpart BB.

45. Respondent began generating hazardous waste Solvent 1 at the Facility in July 2005.

46. 9-VAC 20-60-264.A, incorporating by reference 40 C.F.R. § 264.1063(d), requires that owners and operators of a facility that is regulated by 40 C.F.R. Part 264, Subpart BB determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with an organic concentration that equals or exceeds 10% by weight. This determination is made using a methodology set forth in 40 C.F.R. § 264.1063(d)(1) – (3).

47. All of the equipment used to pump hazardous waste Solvent 1 to storage containers at the Facility was "equipment" within the meaning of 40 C.F.R. § 264.1050(b), and was not otherwise exempt under that section. This equipment included at least 9 valves and at least 106 connectors. This equipment at Respondent's Facility was subject to 40 C.F.R. Part 264, Subpart BB.

48. Respondent failed to determine, for each piece of equipment at the Facility, whether the equipment "contained" or "contacted" hazardous waste which had an organic concentration that equaled or exceeded 10% by weight, within the meaning of the regulations.

49. From July 2005 until November 2013, Respondent violated 9-VAC 20-60-264.A, incorporating by reference 40 C.F.R. § 264.1063(d), by failing to determine, for each piece of equipment at the Facility, whether the equipment contained or contacted a hazardous waste with an organic concentration that equaled or exceeded 10% by weight.

COUNT III

(Failure to Monitor Monthly Valves in Gas/Vapor Service or in Light Liquid Service, Subject to Part 264, Subpart BB, as Required by 9-VAC 20-60-264.A, incorporating 40 C.F.R. § 264.1057(a) and 40 C.F.R. § 264.1063)

50. The allegations of Paragraphs 1 through 49 of this CA, above, are incorporated herein by reference as though fully set forth at length.

51. 9-VAC 20-60-264.A, incorporating by reference 40 C.F.R. § 264.1057(a), provides, with exceptions not relevant to this matter, that each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in 40 C.F.R § 264.1063(b) and in compliance with paragraphs (b) through (e) of 40 C.F.R. § 264.1057.

52. There were at least 19 valves in gas/vapor or light liquid service at the Facility.

53. From July 2005 until November 2013, Respondent failed to monitor monthly at least 19 valves in contact with or containing hazardous waste Solvent 1, to detect leaks by the methods specified in 40 C.F.R § 264.1063(b), and in compliance with paragraphs (b) through (e) of 40 C.F.R. § 264.1057.

54. From July 2005 until November 2013, Respondent violated 9-VAC 20-60-264.A, incorporating by reference 40 C.F.R. § 264.1057(a), by failing to monitor monthly at least 19 valves in contact with or containing hazardous waste Solvent 1, to detect leaks by the methods specified in 40 C.F.R § 264.1063(b), and in compliance with paragraphs (b) through (e) of 40 C.F.R. § 264.1057.

COUNT IV

(Failure to Mark Each Piece of Equipment Subject to Part 264, Subpart BB, as Required by 9-VAC 20-60-264.A, incorporating 40 C.F.R. 264.1050(d))

55. The allegations of Paragraphs 1 through 54 of this CA, above, are incorporated herein by reference as though fully set forth at length.

56. 9-VAC 20-60-264.A, incorporating by reference 40 C.F.R. § 264.1050(d), requires that every piece of equipment at the Facility regulated under 40 C.F.R. Part 264, Subpart BB, shall be marked in such a manner that it can be readily distinguished from other pieces of equipment.

57. From July 2005 until November 2013, Respondent failed to mark at least 19 valves and 106 connectors at the Facility, subject to 40 C.F.R. Part 264, Subpart BB, in such a manner that that they could be distinguished readily from other pieces of equipment.

58. From July 2005 until November 2013, Respondent violated 9-VAC 20-60-264.A, incorporating by reference 40 C.F.R. § 264.1050(d), by failing to mark at least 125 pieces

of equipment subject to 40 C.F.R. Part 264, Subpart BB, in a manner such that they could be distinguished readily from other pieces of equipment.

COUNT V

(Failure to Record Each Piece of Equipment Subject to Subpart Part 264, Subpart BB in the Facility Operating Record, as required by 9 VAC 20-60-264.A, incorporating 40 C.F.R. § 264.1064(b))

59. The allegations of Paragraphs 1 through 58 of this CA, above, are incorporated herein by reference as though fully set forth at length.

60. 9-VAC 20-60-264.A, incorporating by reference 40 C.F.R. § 264.1064(b), requires the owner or operator of a hazardous waste storage facility to maintain records for equipment subject to Subpart BB regulation, including (i) the equipment identification number and hazardous waste unit identification, (ii) approximate locations within the facility, (iii) type of equipment, (iv) percent-by-weight total organics in the hazardous waste stream at the equipment, (v) hazardous waste state at the equipment, and (vi) any compliance measures that are in effect.

61. From July 2005 until November 2013, Respondent failed to record for each piece of equipment subject to the Part 264, Subpart BB regulation, the information required by 40 C.F.R. § 264.1064(b) in the Facility operating record.

62. From July 2005 until November 2013, Respondent violated 9 VAC 20-60-264.A, incorporating by reference 40 C.F.R. § 264.1064(b), by failing to record in the Facility operating record, the information required about the equipment subject to Part 264, Subpart BB.

COUNT VI

(Failure to Make a Waste Determination, as Required by 9 VAC 20-60-262.A, incorporating 40 C.F.R. § 262.11)

63. The allegations of Paragraphs 1 through 62 of this CA, above, are incorporated herein by reference as though fully set forth at length.

64. VAC 20-60-262.A, incorporating by reference 40 C.F.R. § 262.11, requires a person generating a solid waste to determine whether that waste is a hazardous waste using one of the methods set forth in 40 C.F.R. Part 261, or an equivalent method approved by EPA.

65. At the time of the Inspection, Respondent was storing at the Facility a solid waste, i.e. discarded aerosol containers which it had generated at the Facility, for which it had not made a hazardous waste determination.

66. Respondent violated VAC 20-60-262.A, incorporating by reference 40 C.F.R. § 262.11, by failing to determine whether a solid waste which it had generated at the Facility, was a hazardous waste using one of the methods set forth in 40 C.F.R. Part 261.

COUNT VII

(Failure to Perform Weekly Inspections of Hazardous Waste Storage Areas, as Required By 9 VAC 20-60-264.A, incorporating 40 C.F.R. § 264.174)

67. The allegations of Paragraphs 1 through 66 of this CA, above, are incorporated herein by reference as though fully set forth at length.

68. 9 VAC 20-60-264.A, incorporating by reference 40 C.F.R. § 264.174, requires that, at least weekly, the owner or operator of a hazardous waste storage facility must inspect areas where containers of hazardous waste are stored.

69. During the weeks of September 2, 2009 and December 30, 2009, Respondent failed to inspect an area where hazardous waste Solvent 1 was stored in containers.

70. During the weeks of September 2, 2009 and December 30, 2009, Respondent violated 9 VAC 20-60-264.A, incorporating by reference 40 C.F.R. § 264.174, by failing to perform weekly inspections of the hazardous waste Solvent 1 container storage area.

COUNT VIII

(Failure to Have Required Content in the Facility Contingency Plan, as Required by 9 VAC 20-60-264.A, incorporating 40 C.F.R. § 264.52(c), (e) and (f))

71. The allegations of Paragraphs 1 through 70 of this CA, above, are incorporated herein by reference as though fully set forth at length.

72. 9 VAC 20-60-264.A, incorporating 40 C.F.R. § 264.52(c), (e) and (f)), requires that the owner and operator of a hazardous waste facility maintain an adequate contingency plan, describing the facility's planned response to fires, explosions, any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water at the facility. The plan must describe arrangement agreed to by local emergency responders, list all emergency equipment at the facility and their locations, and include an evacuation plan.

73. Respondent's Contingency Plan for the Facility, dated February 28, 2012, lacked the following required information:

    a. Descriptions of arrangements agreed to by local emergency responders, as required by 40 C.F.R. § 264.52(c);

b. List and locations of all emergency equipment, as required by 40 C.F.R. § 264.52(e); and

c. Evacuation plan, as required 40 C.F.R. § 264.52(f).

74. From July 2005 to September 2012, Respondent violated 9 VAC 20-60-264.A, incorporating 40 C.F.R. § 264.52(c), (e) and (f), by failing to maintain an adequate contingency plan for the Facility.

IV. CIVIL PENALTY

75. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty of **ONE HUNDRED ONE THOUSAND THREE HUNDRED SEVENTY FIVE DOLLARS ($101,375.00)**, which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct signed copy of this CAFO, fully executed by the parties, signed by the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.

76. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in RCRA § 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), which include the seriousness of the violation and any good faith efforts to comply with applicable requirements, EPA's RCRA Civil Penalty Policy (June 2003) ("Penalty Policy"), and with the penalty inflation provisions of 40 C.F.R. Part 19.

77. Respondent shall remit payment for the civil penalty set forth in Paragraph 75, above, and/or any administrative fees and late payment penalties, in accordance with Paragraphs 79, 80 and 81, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by Respondent shall reference its name and address, and the Docket Number of this action, i.e., RCRA-03-2014-0065;

b. All checks shall be made payable to "**United States Treasury**";

c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: 513-487-2105

d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

g. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706

Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: 301-887-6548 or REX, 1-866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

j. Payment by Respondent shall reference Respondent's name and address, and EPA Docket Number of this CAFO (Docket No. RCRA-03-2014-0065). A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Natalie L. Katz
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

78. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

79. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a Consent Agreement and Final Order begins to accrue on the date that a copy of the

Consent Agreement and Final Order is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

80. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

81. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

82. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.

V. FULL AND FINAL SATISFACTION

83. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. §6928(a) and (g), for the violations alleged in this CAFO for the specific violations alleged against Respondent in this Consent Agreement. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VI. CERTIFICATION OF COMPLIANCE

84. Based on the personal knowledge of the signer or an inquiry of the person or persons responsible for the Facility's compliance with Subtitle C of RCRA, by his or her signature herein, the person signing this CA on behalf of the Respondent certifies to EPA, to the best of the person's information and belief, that Respondent, as of the date of its execution of this CA, is in compliance with the provisions of Subtitle C of RCRA, 42 U.S.C. §§ 6921- 6939g, federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270-273, and the VaHWMR, 9 VAC 20-60, *et seq.*, applicable to the Facility referenced herein.

VII. RESERVATION OF RIGHTS

85. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

VIII. OTHER APPLICABLE LAWS

86. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed on it by applicable federal, state or local law and/or regulations.

IX. AUTHORITY TO BIND THE PARTIES

87. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and bind Respondent hereto. By his/her signature hereto, Respondent certifies that he/she is fully authorized to enter into the terms and conditions set forth in this CA and to bind the Respondent hereto.

X. ENTIRE AGREEMENT

88. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the attached Final Order.

XI. EFFECTIVE DATE

89. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

For Respondent:

March 13, 2014
Date

Pre Con, Inc.

By: Mark L. Wauford
Title: President

For Complainant:

3/13/14
Date

U.S. Environmental Protection Agency, Region III

Natalie L. Katz
Sr. Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

3.14.14
Date

John A. Armstead, Director,
Land and Chemicals Division
EPA Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

In the Matter of:	:	
	:	
Pre Con, Inc. **6700 Court Yard Road** **Chester, VA 23831**	:	**Docket No. RCRA-03-2014-0065**
Respondent	:	**Proceeding under Section 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6928(a) and (g)**
Pre Con, Inc.	:	
220 South Perry Street and **321 Brown Street** **Petersburg, Virginia 23803** **EPA ID No. VAD 988 207 148**	:	
Facility	:	

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Pre Con, Inc., have executed a document entitled "Consent Agreement" which I ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are incorporated herein by reference.

NOW, THEREFORE, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), and based upon the representations of the parties set forth in the Consent Agreement that the civil penalty amount agreed to by the parties in settlement of the above-captioned matter is based upon a consideration of the factors set forth in RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), IT IS HEREBY ORDERED THAT

Respondent shall pay a civil penalty in the amount of **ONE HUNDRED ONE THOUSAND THREE HUNDRED SEVENTY FIVE DOLLARS ($101,375.00)**, as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

Docket No: RCRA-03-2014-0065

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order is filed with the Regional Hearing Clerk of U.S. EPA, Region III.

Date: 3/19/14 BY: Renée Sarajian

Renée Sarajian, Regional Judicial Officer
United States Environmental Protection Agency
Region III

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the Matter of	:	
	:	
Pre Con, Inc.	:	**Docket No. RCRA-03-2014-0065**
6700 Court Yard Road	:	
Chester, VA 23831	:	
	:	
Respondent	:	**Proceeding under Section 3008(a) and**
	:	**(g) of the Resource Conservation and**
Pre Con, Inc.	:	**Recovery Act, as amended, 42 U.S.C.**
	:	**§ 6928(a) and (g)**
220 South Perry Street and	:	
321 Brown Street	:	
Petersburg, Virginia 23803	:	
EPA ID No. VAD 988 207 148	:	
	:	
Facility	:	
	:	

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2014 MAR 20 PM 12:17
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

CERTIFICATE OF SERVICE

I hereby certify that I filed and served copies of the attached Consent Agreement and Final Order, as follows:

On March 20, 2014 Original and One Copy filed: (via hand delivery)	 Lydia Guy (3RC00) Regional Hearing Clerk U.S. Environmental Protection Agency Region III 1650 Arch Street Philadelphia, PA 19103
Copy to: (via Overnight Mail)	John M. Carter, Esq. Director of Compliance and General Counsel The Wauford Group 6700 Court Yard Road Chester, VA 23831

Date: 3/20/14

Natalie L. Katz
Senior Assistant Regional Counsel
EPA, Region III