



# *COMMONWEALTH of VIRGINIA*

*DEPARTMENT OF ENVIRONMENTAL QUALITY*

TIDEWATER REGIONAL OFFICE

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Doug Domenech  
Secretary of Natural Resources

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Director

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Regional Director

## **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO PRECON MARINE INCORPORATED**

**Registration Nos. 61651 and 61657**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Precon Marine Incorporated for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Chesapeake Facility", air registration number 61651, means the Precon Marine Incorporated shipyard repair facility located at 1448 Precon Drive in Chesapeake, Virginia.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "FCE" means a full compliance evaluation by DEQ staff.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "PCE" means a partial compliance evaluation by DEQ staff.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 Chapters 10 through 80.
10. "Precon" means Precon Marine Incorporated, a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Precon is a "person" within the meaning of Va. Code § 10.1-1300.
11. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*), of Title 10.1 of the Va. Code.
15. "Virginia Beach Facility", air registration 61657, means the Precon Marine Incorporated shipyard repair facility located at 2465 Ferry Road in Virginia Beach, Virginia.

**SECTION C: Findings of Fact and Conclusions of Law**

1. Precon is a heavy marine construction, underwater construction, structural repair company that leases and operates the Chesapeake Facility and the Virginia Beach Facility.
2. On December 15, 2011, Department staff conducted a surveillance inspection of the Chesapeake Facility for compliance with the requirements of the Virginia Air Pollution Control Law and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:

Blasting equipment had been installed and operated without an air permit.

3. On February 29, 2012, Precon submitted an air permit application for its Chesapeake Facility.
4. On October 2, 2012, based upon information listed in an air permit application submitted by Precon for its Virginia Beach Facility on August 20, 2012, Department staff conducted a PCE of the Virginia Beach Facility for compliance with the requirements of the Virginia Air Pollution Control Law and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:

Painting equipment had been installed and operated without a permit.
5. Precon reports that a professional environmental consulting firm was hired to advise Precon with respect to its need for air emission permits for its facilities.
6. According to Precon, the advice Precon received from an environmental consulting firm, with respect to the need for air emission permits at the Chesapeake and Virginia Beach Facilities, prior to submittal of the air permit applications, disagreed with the DEQ's findings of fact and conclusions of law recited in this Order.
7. 9 VAC 5-80-1120(A) states, "No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source."
8. 9 VAC 5-80-1210 (E) states, "Any owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section."
9. 9 VAC 5-50-50(A) requires that any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the Board for the date of commencement of construction, initial startup, and actual date of startup.
10. On January 29, 2013, based on the December 15, 2011 surveillance inspection, the October 2, 2012 PCE evaluation and follow-up information, the DEQ issued two NOV's to Precon for the violations described in paragraphs C(2) through C(6), above.

11. On March 8, 2013, Department staff met with representatives of Precon to discuss the violations including the observations and legal requirements listed in the NOV's.
12. Based on the results of the December 15, 2011 surveillance inspection (Chesapeake Facility), the October 2, 2012 PCE (Virginia Beach Facility) and the March 8, 2013 discussion with Precon, the Board concludes that Precon has violated 9 VAC 5-80-1120(A) and 9 VAC 5-50-50(A) as described in paragraphs C(4) and C(6), above.
13. DEQ issued Precon a State Operating Permit for the Chesapeake Facility on October 18, 2012 and a State Operating Permit for the Virginia Beach Facility on March 5, 2013; therefore, the violations described in paragraphs C(2) through C(6), above, have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1309 and 1316, the Board orders Precon and Precon agrees to pay a civil charge of \$12,402.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Precon shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Precon shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Precon, for good cause shown by Precon, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking

any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For the purposes of this Order and subsequent actions with respect to this Order only, Precon admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Precon consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Precon declares it has received fair and due process under the Administrative Process Act, Va. Code and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Precon to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority. Precon does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Precon shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Precon shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Precon shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours and in writing within three business days, of learning of any condition above, which Precon intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

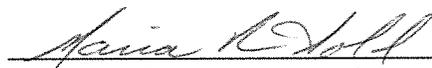
- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Precon. Nevertheless, Precon agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
  - (a) The Director or his designee terminates the Order after Precon has completed all of the requirements of the Order;
  - (b) Precon petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - (c) the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Precon.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Precon from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

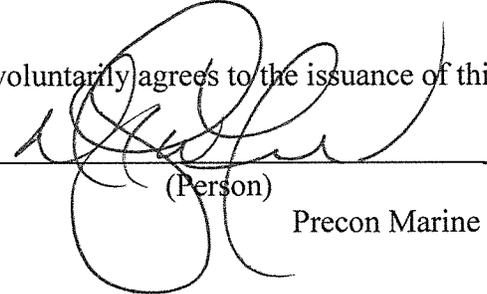
- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Precon and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Precon certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Precon to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Precon.

- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, Precon voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14 day of January, <sup>2014</sup>2013.

  
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Maria R. Nold, Regional Director  
Department of Environmental Quality

Precon Marine Incorporated voluntarily agrees to the issuance of this Order.

Date: 12.12.13 By:  EXU.P.  
(Person) (Title)  
Precon Marine Incorporated

**Commonwealth of Virginia**

City/County of VA Beach

The foregoing document was signed and acknowledged before me this 12<sup>th</sup> day of  
Dec., 2013, by Daylis Fuller, who is

Exec V.P. of Precon Marine Incorporated on behalf of the  
corporation.

R C R  
\_\_\_\_\_  
Notary Public

7208059  
\_\_\_\_\_  
Registration No.

My commission expires: 2/29/16  
Notary Seal:

