

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Pinnacle Manufacturing, LLC
Boaz, Marshall County, Alabama
EPA Identification Number AL R000041061**

Consent Order No. 20-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department” or “ADEM”) and Pinnacle Manufacturing, LLC (“Pinnacle”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended, and the Alabama Hazardous Wastes Management and Minimization Act (“AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Pinnacle operates a specialty tank and container manufacturing facility with EPA Identification Number ALR000041061, located at 512 West Henderson Road in Boaz, Marshall County, Alabama. Pinnacle, as a result of its operations at the facility, was a large quantity generator, as that term is defined in ADEM Admin. Code Div. 14, at all times relevant to this action.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On November 19, 2019, a representative of the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection (hereinafter "CEI") of Pinnacle. The CEI and a review of Pinnacle's compliance showed the following:

- (a) Pursuant to ADEM Admin. Code rs. 335-14-3-.01(7)(a)1.(viii) and 335-14-6-.09(6), a large quantity generator's container storage areas must have a containment system designed and operated in accordance with 335-14-6-.09(6).

Pinnacle stored liquid hazardous waste outside of a containment system in the following areas:

- Eleven 55-gallon drums of spent solvent located at the reclamation unit in Plant #I.
- Fifteen 55-gallon drums located in the 90- Day Central Accumulation Storage Ares.
- Three 55-gallon drums located at the outside storage area for Plant #2.
- One 55-gallon drum located on the back side of Plant #2.

- (b) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)10., the large quantity generator must prevent unknowing entry into the central accumulation area.

Pinnacle stored hazardous waste, not in satellite accumulation, in the following areas at the facility without means to adequately restrict access:

- Eleven 55-gallon drums of spent solvent located at the reclamation unit in Plant #1.
- Fifteen 55-gallon drums located in the 90- Day Central Accumulation Storage Area.
- Three 55-gallon drums located at the outside storage area for Plant #2.
- One 55-gallon drum located on the back side of plant #2.

(c) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)5.(i)a, a large quantity generator must mark or label its containers with the words "Hazardous Waste".

Pinnacle Failed to label the following containers with the words "Hazardous Waste":

- Eleven 55-gallon drums of spent solvent located at the reclamation unit in Plant# I.
- Fifteen 55-gallon drums located in the 90- Day Central Accumulation Storage Area.
- Three 55-gallon drums located at the outside storage area for Plant #2.
- One 55-gallon drum located on the back side of Plant #2.

(d) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)5.(i)c, a large quantity generator must mark or label its containers with the date upon which each period of accumulation begins clearly visible for inspection on each container.

Pinnacle failed to mark the following containers of hazardous waste with accumulation start dates:

- Eleven 55-gallon drums of spent solvent located at the reclamation unit in Plant #1
- Fifteen 55-gallon drums located in the 90-Day Central Accumulation Storage Area.
- Three 55-gallon drums located at the outside storage area for Plant 42.
- One 55-gallon drum located on the back side of Plant #2.

(e) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)1.(iv), a container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste.

Pinnacle failed to keep closed hazardous waste containers in the following areas, though it was neither adding nor removing waste:

- Three 55-gallon drums located at the outside storage area for Plant #2.

- One 55-gallon drum located on the back side of Plant #2.

(f) Pursuant to ADEM Admin. Code r. 335-14-3-.01(5)(a)4., satellite accumulation containers must be closed unless adding or removing waste.

Pinnacle failed to keep closed 55-gallon satellite accumulation drums located at the paint booth at Plant #1 and the paint booth at Plant #2.

(g) Pursuant to ADEM Admin. Code r. 335-14-3-.01(5)(a)5., satellite accumulation containers must be labeled with the words "Hazardous Waste" and an indication of the hazards of the contents.

Pinnacle failed to properly label satellite accumulation drums located at the paint booth at Plant #1 and the paint booth at Plant #2.

(h) Pursuant to ADEM Admin. Code r. 335-14-3-.14(2), a large quantity generator must maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

Pinnacle failed to operate its facility to minimize the release of hazardous waste to the environment. Three 55-gallon drums located at the back side of Plant #2 had released hazardous waste to the environment.

(i) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)1.(v), At least weekly, the large quantity generator must inspect central accumulation areas. The large quantity generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. The large quantity generator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

Pinnacle failed to provide records of weekly inspections of the hazardous waste storage area during the inspection.

- (j) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)7.(iv)., the large quantity generator must maintain the following documents and records at the facility: a. The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job; b. A written job description for each position listed under 335-14-3-.01(7)(a)7(iv)a. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position; c. A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under 335- 14-3-.01(7)(a)7.(iv)a.; and d. Records that document that the training or job experience, required under 335-14-3-.01(7)(a)7.(i) - (iii), has been given to, and completed by, facility personnel.

Pinnacle failed provide for review records related to hazardous waste management training during the inspection.

- (k) Pursuant to ADEM Admin. Code r. 335-14-3-.04(1)(a), a generator must keep a copy of each manifest signed in accordance with 335-14-3-.02(4)(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

Pinnacle failed provide for review copies of any hazardous waste manifests during the inspection.

- (l) Pursuant to ADEM Admin. Code r. 335-14-3-.14(8)(a), as required by ADEM Admin. Code r. 335-14-3-.01(7)(a)6., a large quantity generator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or

any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

Pinnacle failed to provide for review a contingency plan for its facility during the inspection.

5. On January 7, 2020, the Department issued a Notice of Violation to Pinnacle, which cited violations of the hazardous waste regulations that were discovered during the CEI.

6. On February 5, 2020, the Department received Pinnacle's response to the aforementioned Notice of Violation.

7. Based on a review of information provided in the February 5, 2020, NOV response, the Department determined that Pinnacle had an additional violation further described below:

- (a) ADEM Admin. Code r. 335-14-8-.01(1)(c) requires a permit for the "treatment", "storage", and "disposal" of any "hazardous waste" as identified or listed in Chapter 335-14-2. ADEM Admin. Code r. 335-14-3-.01(7)(a)1. provides in pertinent part that a large quantity generator may accumulate hazardous waste for no more than 90 days without a permit.

Pinnacle stored multiple 55-gallon drums of hazardous waste (waste paint and solvent) on site for longer than 90 days without first obtaining an accumulation time limit extension or a hazardous waste storage permit.

8. Pursuant to Ala. Code § 22-22A-5(18), as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation(s) upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department

shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

(a) **SERIOUSNESS OF THE VIOLATIONS:** In arriving at the civil penalty, the Department considered the general nature and magnitude of the violation(s) along with the available evidence of irreparable harm to the environment and threat to the health or safety of the public.

(b) **THE STANDARD OF CARE:** In considering the standard of care manifested by Pinnacle, the Department noted that the violations described above were non-technical and easily avoidable. Consequently, Pinnacle has failed to exhibit a standard of care commensurate with the applicable regulatory standards.

(c) **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has determined that there was no significant economic benefit gained by Pinnacle as a result of the violations referenced herein.

(d) **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** Pinnacle provided information to the Department documenting the cleanup of the area behind Plant #2 where a release of hazardous waste had been observed during the CEI.

(e) **HISTORY OF PREVIOUS VIOLATIONS:** Pinnacle has a history of similar violations and the penalty reflects that history.

(f) **THE ABILITY TO PAY:** Pinnacle has not alleged an inability to pay the civil penalty.

(g) **OTHER FACTORS:** It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty that is warranted in the spirit of cooperation and the desire to resolve this matter amicably without incurring the unwarranted expense of litigation (see Attachment A, which is made a part of the Department's Contentions).

9. The Department neither admits nor denies Pinnacle's contentions, which are set forth below. The Department has agreed to the terms of this Special Order by Consent in an

effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Special Order by Consent are in the best interest of the citizens of Alabama.

FACILITY'S CONTENTIONS

10. Pinnacle neither admits nor denies the Department's contentions. Pinnacle consents to abide by the terms of this Special Order by Consent and to pay the civil penalty assessed herein.

ORDER

Therefore, without admitting that it has violated any statutes or regulations, Pinnacle, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c. , as amended, as well as the need for timely and effective enforcement and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Pinnacle agree to enter into this Special Order by Consent with the following terms and conditions:

A. Pinnacle agrees to pay to the Department a civil penalty in the amount of \$13,125 in settlement of the violations alleged herein within one hundred eighty days of the effective date of this Special Order by Consent. Failure to pay the civil penalty within one hundred eighty days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Pinnacle agrees that all penalties due pursuant to this Special Order by Consent shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or other payment methods acceptable to the Department and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Any payment submitted to the Department pursuant to this Special Order by Consent shall reference Pinnacle's name and address, and the ADEM Administrative Order number of this action.

C. Pinnacle agrees that, independent of this Special Order by Consent, Pinnacle shall comply with all terms, conditions, and limitations of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

D. The Department and Pinnacle (the "parties") agree that this Special Order by Consent shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Special Order by Consent certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Special Order by Consent, to execute the Special Order by Consent on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Special Order by Consent is intended to operate as a full resolution of the alleged violations cited herein.

F. Pinnacle agrees that it is not relieved from any liability if it fails to comply with any provision of this Special Order by Consent.

G. For purposes of this Special Order by Consent only, Pinnacle agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County.

H. The parties agree that the sole purpose of this Special Order by Consent is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Special Order by Consent, then such future violations may be addressed in orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; Pinnacle agrees not to object to such future orders, litigation, or enforcement action based on the issuance of this Special Order by Consent if future orders, litigation, or other enforcement action address new matters not raised in this Special Order by Consent.

I. The parties agree that this Special Order by Consent shall be considered final and effective immediately upon signature of all parties. This Special Order by Consent shall not be appealable, and Pinnacle does hereby waive any hearing on the terms and conditions of this Special Order by Consent.

J. The parties agree that this Special Order by Consent shall not affect Pinnacle's obligation to comply with any federal, State, or local laws or regulations.

K. The parties agree that final approval and entry into this Special Order by Consent are subject to the requirements that the Department give notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the order.

L. The parties agree that, should any provision of this Special Order by Consent be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

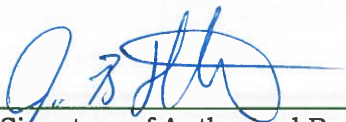
M. The parties agree that any modifications of this Special Order by Consent must be agreed to in writing signed by both parties.

N. The parties agree that, except as otherwise set forth herein, this Special Order by Consent is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State, or local law, and shall not be construed to waive or relieve Pinnacle of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Pinnacle Manufacturing, LLC

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

JASON SATTERFIELD

(Printed Name)

PRESIDENT

(Printed Title)

6/8/2020

(Date Signed)

Lance R. LeFleur
Director

(Date Executed)

Attachment A
Pinnacle Manufacturing, LLC
Boaz, Marshall County
Facility ID No. ALR000041061

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*	
Failure to provide an adequate containment system for all areas where hazardous waste is stored.	1	\$1,000	\$500	\$0	
Failure to prevent unknowing entry into the central accumulation area.	1	\$1,000	\$500	\$0	
Failure to label the all containers holding hazardous waste with the words "Hazardous Waste".	1	\$100	\$50	\$50	
Failure to mark the all containers holding hazardous waste with an accumulation start date.	1	\$100	\$50	\$50	
Failure to keep closed all containers holding hazardous waste.	1	\$100	\$50	\$50	
Failure to keep closed all satellite accumulation containers.	1	\$100	\$50	\$50	
Failure to properly label all satellite accumulation containers.	1	\$100	\$50	\$50	
Failure to operate a facility to minimize the release of hazardous waste to the environment.	1	\$1,000	\$500	\$0	
Failure to furnish upon request required records	1	\$500	\$250	\$250	
Storage of hazardous waste on site for longer than 90 days without first obtaining an accumulation time limit extension or a hazardous waste storage permit.	1	\$10,000	\$1,000	\$0	Total of Three Factors
TOTAL PER FACTOR		\$14,000	\$3,000	\$500	\$17,500

Adjustments to Amount of Initial Penalty

Mitigating Factors (-)	\$0	Economic Benefit (+)	\$0
Ability to Pay (-)	\$0	Amount of Initial Penalty	\$17,500
Other Factors (+/-)	(\$-4,375)	Total Adjustments (+/-)	(\$-4,375)
Total Adjustments (+/-) Enter at Right	(\$-4,375)	FINAL PENALTY	\$13,125

Footnotes

* See the "DEPARTMENT'S CONTENTIONS" portion of the Order for a detailed description of each violation and the penalty factors.