

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

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IN THE MATTER OF: )  
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Pinnacle Renewable Energy Inc. )  
Aliceville, Pickens County, Alabama )

Air Facility ID No. 409-0010 )  
\_\_\_\_\_ )

CONSENT ORDER NO. \_\_\_\_\_

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management ("Department" or "ADEM") and Pinnacle Renewable Energy Inc. ("Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-17, *as amended*, the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23, *as amended*, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee owns and operates a wood pellet manufacturing facility located at 6777 Highway 17, Aliceville, Pickens County, Alabama ("Facility"), under the authority of ADEM Air Permit Nos. 409-0010-X001, X003, X005, X006, X008, X009, and X011, issued on July 1, 2021 (collectively, the "Permits"), subject to certain limitations and conditions.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-17, *as amended*.

3. Pursuant to Ala. Code §§ 22-22A-4(n), *as amended*, the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q,

*as amended.* In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23, as amended.

4. Provisos 18 and 19 of Air Permit No. X001 state:

18. While the process is operating, someone familiar with the process shall observe the debarker (F-DB), chipper (F-CH), scalping screen (F-SS1), conveyance equipment (F-MH), and storage piles (F-STP1) a minimum of once daily during daylight hours for greater than normal emissions as determined by previous observations. Whenever observed emissions are greater than normal, the permittee shall initiate corrective action as soon as practicable but no longer than 24 hours from the time of observation, followed by an additional observation to confirm that emissions have been reduced to normal.

19. The following "emission monitoring" recordkeeping and reporting requirements apply to this process:

a) The permittee shall maintain records, including the dates and times, of all daily observation results, corrective actions taken, and emissions-related maintenance performed. The records shall be made available for inspection for at least five (5) years from the date of generation of each record.

b) The permittee shall submit a written report to the Air Division on a semiannual basis, postmarked or delivered no later than August 29<sup>th</sup> and March 1<sup>st</sup> of each year, for the reporting periods of January 1<sup>st</sup> through June 30<sup>th</sup> and July 1<sup>st</sup> through December 31<sup>st</sup>, respectively, certifying that the daily observations were accomplished as required and noting the nature and date of any episodes of greater-than-normal emissions observed and corrective or emissions-related maintenance actions taken.

5. Proviso 27 of Air Permit No. X003 states:

27. Emission Monitoring

g) While the process is operating, someone familiar with the process shall observe the RTO stack (RTO1) and the dry flake storage silo (FSS) a minimum of once daily during daylight hours for greater than normal visible emissions as determined by previous observations.

h) Whenever observed emissions are greater than normal from the RTO stack (RTO1) or the dry flake storage silo (FSS), corrective action to minimize emissions shall be initiated as soon as practicable but no longer than 24 hours from the time of the observation, followed by an additional

observation to confirm that emissions are reduced to normal from RTO1 and/or FSS.

6. Provisos 27 and 28 of Air Permit No. X005 state:

27. While the process is operating, someone familiar with the process shall observe the emissions from the belt conveyor (F-MH), the four pellet storage silos (PSS1-PSS4), the barge loading equipment (BL), and the emergency truck loadout (TL) a minimum of once daily during daylight hours for greater than normal emissions as determined by previous observations. Whenever observed emissions are greater than normal, the permittee shall initiate corrective action as soon as practicable but no longer than 24 hours from the time of observation, followed by an additional observation to confirm that emissions have been reduced to normal.

28. The following "emission monitoring" recordkeeping and reporting requirements apply to this process:

a) The permittee shall maintain records, including the dates and times, of all daily observation results, corrective actions taken, and emissions-related maintenance performed. The records shall be made available for inspection for at least five (5) years from the date of generation of each record.

b) The permittee shall submit a written report to the Air Division on a semiannual basis, postmarked or delivered no later than August 29<sup>th</sup> and March 1<sup>st</sup> of each year, for the reporting periods of January 1<sup>st</sup> through June 30<sup>th</sup> and July 1<sup>st</sup> through December 31<sup>st</sup>, respectively, certifying that the daily observations were accomplished as required and noting the nature and date of any episodes of greater-than-normal emissions observed and corrective or emissions-related maintenance actions taken.

7. Provisos 18 and 19 of Air Permit No. X006 state:

18. While the process is operating, someone familiar with the process shall observe the truck unloading area (F-TU), storage piles (F-STP2), screening area (F-SCR), and hammermilling area (HOG) a minimum of once daily during daylight hours for greater than normal emissions as determined by previous observations. Whenever observed emissions are greater than normal, the permittee shall initiate corrective action as soon as practicable but no longer than 24 hours from the time of observation, followed by an additional observation to confirm that emissions have been reduced to normal.

19. The following "emission monitoring" recordkeeping and reporting requirements apply to this process:

a) The permittee shall maintain records, including the dates and times, of all daily observation results, corrective actions taken, and emissions-related maintenance performed. The records shall be made available for inspection for at least five (5) years from the date of generation of each record.

b) The permittee shall submit a written report to the Air Division on a semiannual basis, postmarked or delivered no later than August 29<sup>th</sup> and March 1<sup>st</sup> of each year, for the reporting periods of January 1<sup>st</sup> through June 30<sup>th</sup> and July 1<sup>st</sup> through December 31<sup>st</sup>, respectively, certifying that the daily observations were accomplished as required and noting the nature and date of any episodes of greater-than-normal emissions observed and corrective or emissions-related maintenance actions taken.

8. Provisos 30 and 31 of Air Permit No. X011 state:

30. Emission Monitoring

a) While the process is operating, someone familiar with the process shall observe the wet flake storage silo (WFS), the fire lock silo (FS), and the RTO or RCO stack (RTO2) a minimum of once daily during daylight hours for greater than normal visible emissions as determined by previous observations.

b) While the process is operating, someone familiar with the process shall observe the baghouse (BH1) a minimum of once daily during daylight hours for the presence of visible emissions.

c) Whenever observed emissions are greater than normal from the wet flake storage silo (WFS), the fire lock silo (FS), or the RTO or RCO stack (RTO2), or if the presence of visible emissions is detected from the baghouse (BH1), the Permittee shall initiate corrective action to minimize emissions as soon as practicable but no longer than 24 hours from the time of the observation, followed by an additional observation to confirm that emissions are reduced to normal from the silo(s) and/or cyclone(s), or visible emissions are eliminated from BH1.

d) The Permittee shall inspect the baghouse (BH1) for proper operation and clean, if needed, at least annually and whenever the presence of visible emissions is detected from the baghouse.

31. Recordkeeping and Reporting Requirements



a) The Permittee shall maintain records, including the dates and times, of all daily observation results, corrective actions taken, and emissions-related maintenance performed. The records shall be made available for inspection for at least five (5) years from the date of generation of each record.

32. The Permittee shall submit a written report to the Air Division on a semiannual basis, postmarked or delivered no later than August 29<sup>th</sup> and March 1<sup>st</sup> of each year, for the reporting periods of January 1<sup>st</sup> through June 30<sup>th</sup> and July 1<sup>st</sup> through December 31<sup>st</sup>, respectively. The report shall provide the following:

a) Certify whether the emission monitoring requirements were accomplished as required, and if not, describe the date and reason any required monitoring was not accomplished.

b) Certify whether the daily visual observations were accomplished as required and note the nature and date of any episodes of greater-than-normal emissions, or visible emissions (BH1) observed, and corrective or emissions-related maintenance actions taken.

#### DEPARTMENT'S CONTENTIONS

9. On August 24, 2021, ADEM inspected the Facility and noted the absence of records for twenty-two separate days of daily visual observations of plant-wide emission points during the first semester of 2021.

10. On August 27, 2021, Permittee submitted its Semiannual Monitoring Report for the first semester of 2021, which lacked the exact dates on which the required visual observations were required to be performed, documented, and itemized.

11. On September 14, 2021, the Department issued a Notice of Violation ("NOV") to the Permittee for failing to: conduct the required daily visual observations of all emission points identified in the permits; record the results of those daily visual observations; and, maintain records of the results in a form readily available for inspection. The Department also requested that the Permittee respond to the NOV on or before by October 15, 2021.

12. The Permittee responded to the NOV on October 14, 2021. The response indicated that during the time period of the absent 22 separate days of daily visual observations, the facility was going through a staff transitional period and records documenting the daily visual observations that occurred were not properly maintained.

13. Pursuant to Ala. Code §22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, 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 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 violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Department considers the Permittee's failure to meet the emission monitoring requirements of the Permit to be serious violations.

B. THE STANDARD OF CARE: The Permittee did not exhibit a standard of care commensurate with applicable regulatory requirements and the Permit.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: There are no known significant economic benefits gained by the Permittee as a result of the violations or delayed compliance referenced herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects to mitigate as a result of the alleged violations.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee entered into a previous Consent Order with the Department in 2014 for excessive VOC air emissions.

F. THE ABILITY TO PAY: The Permittee 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 warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

14. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate (*See* "Attachment A", which is hereby made a part of Department's Contentions).

15. The Department neither admits nor denies Permittee's Contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

#### PERMITTEE'S CONTENTIONS

16. The Permittee neither admits nor denies the Department's Contentions. Permittee

consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues 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 has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$11,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five 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. That, from the effective date of this Consent Order and continuing thereafter, the Permittee shall operate in compliance with all the Emission Monitoring, Recordkeeping, and Reporting Requirements of the Permits.

C. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

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

D. The parties agree that this Consent Order 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 Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

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

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

G. For purposes of this Consent Order only, the Permittee 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. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working

days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order 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 concerning the facility which would constitute possible violations not addressed in this Consent Order, 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, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

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

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order 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 Department and the Permittee agree that, should any provision of this Order 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 Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order 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 the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

PINNACLE RENEWABLE ENERGY INC.

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT



\_\_\_\_\_  
(Signature of Authorized Representative)

Andrea Johnston

\_\_\_\_\_  
(Printed Name)

SVP North America Capital Development

\_\_\_\_\_  
(Printed Title)

\_\_\_\_\_  
Lance R. LeFleur  
Director

Date Signed: 12/06/21 \_\_\_\_\_

Date Executed: \_\_\_\_\_

**Attachment A**

**Alabama Pellets, LLC  
Aliceville, Pickens County**

**Facility ID No. 409-0010**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failed to conduct and record the results of required daily visual observations of all emission points for 22 separate days.	22	\$6,000	\$5,000		
					<b>Total of Three</b>
<b>TOTAL PER FACTOR</b>		<b>\$6,000</b>	<b>\$5,000</b>	<b>\$0</b>	<b>\$11,000</b>

Adjustments to Amount of Initial Penalty		<b>Economic Benefit (+)</b>	
Mitigating Factors (-)		<b>Amount of Initial Penalty</b>	\$11,000
Ability to Pay (-)		<b>Total Adjustments (+/-)</b>	\$0
Other Factors (+/-)		<b>FINAL PENALTY</b>	\$11,000
<b>Total Adjustments (+/-)</b> <i>Enter at Right</i>	\$0		

Footnotes

\* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.