

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

April 13, 2012

CERTIFIED MAIL NO. : 91 7108 2133 3935 0334 1279
RETURN RECEIPT REQUESTED

David Scheid
ThyssenKrupp Stainless USA, LLC
1 ThyssenKrupp Drive
P.O. Box 13000
Calvert, AL 36513


RE: ThyssenKrupp Stainless USA, LLC
Consent Order No. 12-099-CAP

Dear Mr. Scheid:

Please find enclosed ADEM Consent Order No. 12-099-CAP which requires ThyssenKrupp Stainless USA, LLC to take certain actions in regard to alleged violations of the Alabama Air Pollution Control Act. This Order has been issued with the consent of ThyssenKrupp Stainless USA, LLC and the Department. Please refer to Order Item A. which requires the monetary penalties be paid within 45 days of the date of this Order.

If you have any questions concerning this matter, please contact Charles Killebrew at (334) 270-5675 in Montgomery.

Sincerely,


Ronald W. Gore, Chief
Air Division



Enclosure

cc: Thomas Johnston, Office of General Counsel

91 7108 2133 3935 0334 1279

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S. W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (FAX)

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)	
)	
ThyssenKrupp Stainless USA, LLC)	CONSENT ORDER NO. 12-099-CAP
Calvert, Mobile County, Alabama)	
)	
Air Facility ID No. 503-0106)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” or “ADEM”) and ThyssenKrupp Stainless, LLC (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.) and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a stainless steel mill, ADEM Air Facility ID No. 503-0106 (hereinafter, the “Facility”), in Calvert, Mobile County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code §22-22A-4(n) (2006 Rplc. Vol.), 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 (2006 Rplc. Vol.).
4. The Permittee operates a Cold Annealing and Pickling Line under the authority of Air Permit No. 503-0106-X013 (hereinafter, the “Permit”) issued by the Department on October 17, 2008, and reissued on September 27, 2011.

5. Proviso No. 22 of the Permit states:

The Permittee shall continuously monitor and record the caustic scrubber liquor flowrate and caustic scrubber underflow pH. The scrubber liquor flowrate and pH shall be maintained at a level equal to or greater than that recorded during the latest emissions test that indicated compliance with the applicable emissions limits. Records of the monitoring shall be kept in a form suitable for inspection for a period of at least five years following said recording.

6. Proviso No. 23 of the Permit states:

The Permittee shall continuously monitor the ammonia injection rate to the SCR. The ammonia injection rate shall be maintained at a rate equal to or greater than the ammonia injection rate utilized during the latest emission test that indicated compliance with the NOx emission rate. Records of the monitoring shall be kept in a form suitable for inspection for a period of at least five years following said recording.

7. Proviso No. 26 of the Permit states:

Deviations from permit requirements shall be reported within 48 hours or 2 working days of such deviations, including those attributable to upset conditions as defined in the permit. The report will include the probable cause of said deviations, and any corrective actions or preventive measures that were taken.

DEPARTMENT'S CONTENTIONS

8. On September 28, 2011, the Department conducted an inspection of the Facility and noted the following: a) The Cold Annealing and Pickling Line scrubber liquor flowrate, pH, and ammonia injection rate were not being continuously recorded; and, b) Permittee was not determining if the scrubber liquor flowrate, pH, and ammonia injection rate were at levels equal to or greater than the levels established during the latest emissions compliance test.

9. On October 18, 2011, pursuant to the request of the Department, Permittee reported multiple instances when the scrubber liquor flowrate, pH, and ammonia injection rate were below the levels established during the emissions compliance test.

10. On October 31, 2011, the Department issued a Notice of Violation (NOV) to Permittee for: a) Not continuously recording the scrubber liquor flowrate, pH, and ammonia injection rate, in violation of Permit Proviso No. 22; b) Failing to maintain the scrubber liquor flowrate, pH, and ammonia injection rate at the required levels, in violation of Permit Proviso No. 23; and, c) Failing to report deviations from Permit requirements to the Department within forty-eight hours or two working days, in violation of Permit Proviso No. 26.

11. On November 23, 2011, the Department received a response to the NOV from Permittee stating that the data was continuously recorded manually every hour and verified biweekly, and that it was in error for not reporting the deviations to the Department within the required time frame.

12. 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(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 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 views the failure to properly monitor control device operating parameters and report deviations, as serious violations. The Department is not aware of any irreparable harm to the environment or human health or safety resulting from the above referenced violations.

B. THE STANDARD OF CARE: Permittee failed to exhibit a sufficient standard of care by not properly monitoring the control device operating parameters and reporting the deviations.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any significant economic benefit which the Permittee may have obtained from these violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts by the Permittee to minimize or mitigate the effects of the violations on the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Permittee has no prior history of enforcement actions with the Department.

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 it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

13. 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 and consistent with the historical penalty range imposed by the Department for similar violations (see Attachment A, which is made a part of Department's contentions).

14. The Department neither admits nor denies the Permittee 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

15. 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.

16. During the time from the commencement of operations through the Department's inspection of September 28, 2011, referenced above, the Permittee was continuously recording scrubber liquor flow rate pH, and ammonia injection during hours of operation. This information was being recorded manually on an hourly basis.

17. Manual recording of the information was necessary because portions of the plant's equipment had not been completely installed before the plant commenced initial startup and testing operations.

18. Following the Department's inspection, electrical connections were completed and automatic data recording was commenced. The electronic data is now being recorded.

19. The Permittee acted with a misunderstanding of the Department's interpretation of the requirement for continuous monitoring, and prior to the inspection, believed that its temporary process of manually recording data on an hourly basis would comply with the requirements of the permit.

20. As noted in paragraph 12A above, there was no apparent harm to the environment as a result of the failure to record rates in strict accordance with the Department's interpretation of the permit requirement for continuous monitoring.

21. Testing of monitoring and operational equipment and experience gained during the commencement of operations have indicated that certain modifications to this specific permit and to other permits are appropriate to resolve technology challenges with continuous monitoring while demonstrating continuous compliance with emissions limitations imposed by the permit.

22. After consultation with the Department during which options were discussed to modify the permit and to other permits with respect to the procedures for monitoring various aspects of the operation in a manner that would not increase emissions or the possibility of failing to identify permit violations through monitoring, the Permittee has submitted proposed modifications to its permit with concurrence of the Department.

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 the Department believes 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 \$20,000.00 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. 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

C. The Permittee agrees to comply with all requirements of ADEM Administrative Code div. 335-3 and the Permit immediately upon the effective date of this Order and continuing every day thereafter.

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, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order 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.

THYSSENKRUPP STAINLESS USA, LLC

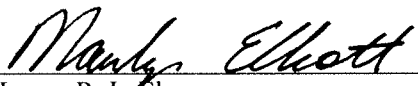

(Signature of Authorized Representative)

DAVID SCHEID
(Printed Name)

VP HRS
(Printed Title)

2/27/12
(Date)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


Lance R. Lefleur
Director

4/13/12
(Date)

ATTACHMENT A

ThyssenKrupp Stainless, LLC
Calvert, Mobile County
Facility Nos. 503-0106

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure to continuously record scrubber monitoring parameters	1	\$ 5,000.00	\$ 2,000.00	\$ -
Failure to maintain scrubber monitoring parameters at required levels	1	\$ 7,000.00	\$ 4,000.00	\$ -
Failure to report deviations within 48 hours or 2 working days	1	\$ 5,000.00	\$ 2,000.00	\$ -
TOTAL	3	\$ 17,000.00	\$ 8,000.00	\$ -
Economic Benefit				
Mitigating Factors				\$ -
Ability to Pay				
Other Factors				\$ (5,000.00)
CIVIL PENALTY				\$ 20,000.00

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