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September 18, 2012

**CERTIFIED MAIL # 91 7199 9991 7030 3432 7746**

Mr. Larry Wahl  
Director Environmental, Health, and Safety  
ThyssenKrupp Steel USA LLC  
1 ThyssenKrupp Drive  
Calvert, Alabama 36513

Dear Mr. Wahl:

Subject: **Consent Order No. 12-157-CHW**  
ThyssenKrupp Steel USA LLC (TK Steel)  
1 ThyssenKrupp Drive  
Calvert, Mobile County, Alabama 36560  
USEPA Identification Number ALR000042689

Enclosed is an original copy of the Consent Order No. 12-157-CHW between TK Steel and the Alabama Department of Environmental Management. This Order requires TK Steel to take certain actions at the facility in regard to alleged violations of the Alabama Hazardous Wastes Management and Minimization Act of 1978. This Order was signed by ADEM's Director and became effective as of September 18, 2012.

Should you have any questions regarding this matter, please feel free to contact James Burgess of my staff at 334-271-7993.

Sincerely,

Phillip D. Davis, Chief  
Land Division

cc (via email): César Zapata, US EPA Region 4  
John C. Goodwin, US EPA Region 4  
Jerome Hand, ADEM Office of Public Affairs  
Thomas L. Johnston, ADEM Office of General Counsel  
Jordan Collins, TK Steel

File: 33818 ALR000042689 097 20120918 EHCO CO# 12-157-CHW

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**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**ThyssenKrupp Steel USA LLC  
Calvert, Mobile County, AL**

USEPA ID NUMBER ALR000042689

**ORDER NO. 12-157-CHW**

**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 Steel USA LLC (hereinafter “TK Steel”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act (hereinafter “AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

**STIPULATIONS**

1. ThyssenKrupp Steel USA LLC (hereinafter “TK Steel”), a wholly owned subsidiary of ThyssenKrupp AG, based in Essen, Germany, owns and operates a steel mill with U.S. EPA Identification Number ALR000042689, located at 1 ThyssenKrupp Drive, Calvert, Mobile County, Alabama (the “site” or “facility”). TK Steel notified the Department of large quantity generator activities at the site on December 15, 2011.

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 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 AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).

#### **DEPARTMENT'S CONTENTIONS**

4. On December 1, 2011, a representative of the Department conducted a compliance evaluation inspection (hereinafter "CEI") of the facility. The CEI and a review of TK Steel's compliance showed the following:

(a) Pursuant to ADEM Admin. Code r. 335-14-17-.03(4)(a)1., a container holding used oil must always be closed during storage, except when it is necessary to add or remove used oil.

TK Steel did not keep closed a container of used oil located in the Cold Roll Mill Roll Shop; used oil was not being added to or removed from the container.

(b) Pursuant to ADEM Admin. Code r. 335-14-17-.03(4)(c)1., containers and used oil tanks, except underground tanks, used to store used oil at used oil generator locations must be labeled or marked clearly with the words "Used Oil".

TK Steel did not label or mark two containers of used oil, located in the Cold Roll Mill Roll Shop, with the words "Used Oil"; one of the containers was mislabeled with the words "Waste Oil".

(c) Pursuant to ADEM Admin. Code r. 335-14-3-.04(1)(e), a generator must maintain on site a written waste minimization plan.

TK Steel did not have a written waste minimization plan. TK Steel informed the Department's representative that a plan was in the process of being written.

(d) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)2., a generator may accumulate hazardous waste on site for 90 days or less without a permit, provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.

TK Steel accumulated three 55-gallon drums of F005/D035 hazardous waste methyl ethyl ketone (MEK) and D007 hazardous waste chromium-contaminated wipes on site, without a permit, and failed to mark clearly the containers with the accumulation start date(s). The drums were located in the SMS Millcraft hazardous waste storage area within the High Velocity Oxygen Fuel (HVOF) process area.

(e) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)3. , a generator may accumulate hazardous waste on site for 90 days or less without a permit, provided that while being accumulated on-site each container and tank is labeled or marked clearly with the words, "Hazardous Waste" and the EPA hazardous waste numbers.

TK Steel accumulated one of the aforementioned 55-gallon drums of F005/D035 hazardous waste MEK and D007 hazardous waste chromium- contaminated wipes on site, without a permit, and failed to mark clearly the container with words, "Hazardous Waste" and the EPA hazardous waste numbers. The drum was located in the SMS Millcraft Hazardous Waste Storage Area.

(f) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin. Code r. 335-14-6-.02(6)(d), the owner or operator 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.

TK Steel did not include the time of inspections in the Central Accumulation Area's weekly inspections records.

(g) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(i) referencing ADEM Admin. Code r. 335-14-6-.09(5), the owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers and must also note the number and capacity of hazardous waste containers present.

TK Steel failed to conduct weekly inspections of the SMS Millcraft hazardous waste storage area.

(h) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(i) referencing ADEM Admin. Code r. 335-14-6-.09(4)(a), a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

TK Steel did not keep closed an approximately four-gallon satellite accumulation area (SAA) container of F005/D035 hazardous waste MEK and D007 hazardous waste chromium-contaminated wipes located in the HVOF process area; waste was not being added to or removed from the container.

(i) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(ii), a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste as listed in 335-14-2-.04(2) or (4)(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with 335-14-3-.03(5)(a) or (d) provided he marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

TK Steel did not mark the abovementioned SAA container with words "Hazardous Waste" or with other words describing the content of the container.

(j) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4., referencing ADEM Admin. Code r. 335-14-6-.02(5)(c), a sign with the legend, "Danger-Unauthorized Personnel Keep Out", must be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion. The legend must be written in English and in any other language predominant in the workplace and the area surrounding the facility, and must be legible from a distance of at least 25 feet.

TK Steel did not post the required signage at or around the SMS Millcraft hazardous waste storage area.

(k) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4., referencing ADEM Admin. Code r. 335-14-6-.02(5)(b)2.(ii), a facility must have a means to control entry, at all times, through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

TK Steel did not have a means to control entry to the SMS Millcraft hazardous waste storage area.

(l) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4., referencing ADEM Admin. Code r. 335-14-6-.04(3)(d), the contingency plan must list names, office and home addresses, and phone numbers of all persons qualified to act as emergency coordinator.

TK Steel did not include the home addresses of the emergency coordinators in its contingency plan.

(m) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(b), a large quantity generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 335-14-5 and 335-14-6, and the permit requirements of 335-14-8 unless he has been granted an extension to the 90-day period. 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.

TK Steel accumulated one or more 55-gallon drums of F005/ D035 hazardous waste MEK and D007 hazardous waste chromium-contaminated waste, located in the SMS Millcraft hazardous waste storage area, for greater than 90 days without requesting an extension to the 90-day period or without having obtained a hazardous waste storage facility permit. Therefore, TK Steel operated a hazardous waste storage facility without having first obtained a permit from the Department.

5. On March 16, 2012, the Department issued to TK Steel a Notice of Violation that cited violations of applicable hazardous waste program regulations that were observed during the CEI.

6. On April 19, 2012, the Department received TK Steel's response to the abovementioned Notice of Violation.

7. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), 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.

8. In arriving at the civil penalty assessed in this Order, the Department has considered the following:

(a) SERIOUSNESS OF THE VIOLATIONS: TK Steel stored hazardous waste beyond the allowed accumulation period without first obtaining an extension or applying for and then obtaining an AHWMMMA storage facility permit. However, the Department is not aware of any threat to the health or safety of the public or of any irreparable harm to the environment resulting from the violations.

(b) THE STANDARD OF CARE: By committing the violations alleged herein, TK Steel did not exhibit a standard of care commensurate with the applicable hazardous waste program requirements.

(c) ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: TK Steel has stated that they have no desire to obtain an AHWMMMA permit for the storage of hazardous waste. The Department has now concluded that delayed compliance did not confer any economic benefit to TK Steel.

(d) **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** In response to the CEI and subsequent Notice of Violation, TK Steel took prompt actions to correct the violations.

(e) **HISTORY OF PREVIOUS VIOLATIONS:** Although a construction contractor committed certain violations that were previously addressed with a Notice of Violation, the response was determined to be adequate. Those violations occurred prior to the start of operations by TK Steel.

(f) **THE ABILITY TO PAY:** The Department does not have any evidence indicating that TK Steel is unable to pay the civil penalty.

(g) **OTHER FACTORS:** It should be noted that this Consent Order is a negotiated settlement between the Department and TK Steel. Therefore in the spirit of cooperation and the desire to resolve this matter amicably and without incurring the unwarranted expense of litigation, the Department has determined the amount of the penalty it believes is warranted in this matter (see Attachment A).

9. The Department neither admits nor denies TK Steel'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.

#### **TK STEEL'S CONTENTIONS**

10. TK Steel's Contentions

(a) Of the thirty-three individual violations listed by the Department on Attachment A hereto, and also described in subparts of paragraph 4 above, twenty-seven of those violations occurred in an area of the facility controlled by SMS Millcraft, a contractor who operates a processing unit on site.



(b) The violations cited herein involving areas under TK Steel's direct administration and daily control, are generally limited to relatively minor issues related primarily to records keeping.

(c) With respect to the civil penalty of \$15,000 assessed by this consent order, a total of \$14,100 is attributable to violations occurring in the SMS Millcraft area.

(d) The largest single part of the penalty, by far, involves accumulation of hazardous waste for more than 90 days without a permit. This accumulation beyond 90 days occurred in the SMS Millcraft storage area and involved a total of three drums of wastes which were not properly marked by SMS Millcraft, but which SMS Millcraft employees admitted had been in the storage area in excess of the 90-day limit.

(e) The Department also considered including an additional amount of penalty reflecting its estimate of the economic benefit of non-compliance for this storage that represents avoidance of the costs to obtain and maintain a permit for storage of hazardous waste beyond 90 days.

(f) TK Steel manages the transportation of hazardous waste generated at the facility in an effort to assure that all wastes are shipped for disposal within the authorized 90-day period. Historically TK Steel has included SMS Millcraft wastes with these shipments when it has been notified by SMS Millcraft that wastes are ready for shipment.

(g) During the period in which the three drums at the SMS Millcraft accumulation area were in storage, TK Steel shipped large volumes of hazardous wastes generated elsewhere at the facility for proper management off site.

(h) TK Steel has no interest in seeking or obtaining a hazardous waste permit, and had no economic incentive or other reason to allow hazardous wastes to be stored anywhere on its property for greater than the 90-day period.

(i) TK Steel acknowledges that, as the owner of the entire facility, it is ultimately responsible for compliance with environmental regulations including in those areas that are directly managed by SMS Millcraft.

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

### **ORDER**

THEREFORE, without admitting that it has violated any statutes or regulations, TK Steel, 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) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and TK Steel agree to enter into this Consent Order with the following terms and conditions:

A. TK Steel agrees to pay to the Department a civil penalty in the amount of \$15,000 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. Said penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or any other method of payment 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 order shall reference TK Steel's name and address, and the ADEM Administrative Order number of this action.

B. TK Steel agrees that, independent of this Consent Order, TK Steel shall comply with all terms, conditions, and limitations of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

C. The Department and TK Steel 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.

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

E. TK Steel agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

F. For purposes of this Consent Order only, TK Steel 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.

G. The parties 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 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; TK Steel agrees to 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.

H. The parties 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 TK Steel does hereby waive any hearing on the terms and conditions of this Consent Order.

I. The parties agree that this Consent Order shall not affect TK Steel's obligation to comply with any Federal, State, or local laws or regulations.

J. The parties 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.

K. The parties agree that, should any provision of this Consent 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.

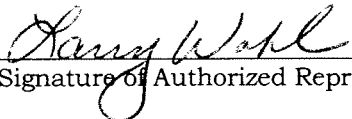
L. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.


M. The parties agree that, except as otherwise set forth herein, this Consent 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 TK Steel of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

TK STEEL COMPANY

ALABAMA DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT

  
(Signature of Authorized Representative)

  
Lance R. LeFleur  
Director

LARRY WAHL  
(Printed Name)

DIRECTOR EHS  
(Printed Title)

8.7.12  
(Date Signed)

9/18/2012  
(Date Executed)

**ATTACHMENT A  
Civil Penalty Synopsis**

**TK Steel  
Calvert (Mobile County), Alabama  
EPA ID No. ALR000042689**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation &amp; Base Penalty*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>
Failure to keep a container of used oil closed	1	\$100	\$50	\$0
Failure to label or mark two containers of used oil with the words "Used Oil"	2	\$200	\$100	\$0
Failure to maintain a written waste minimization plan	1	\$100	\$50	\$0
Failure to mark containers with the accumulation start date	3	\$300	\$150	\$0
Failure to mark a container with the words "Hazardous Waste" and the EPA hazardous waste numbers	1	\$100	\$50	\$0
Failure to include the time of the inspections in the weekly inspection records	1	\$100	\$50	\$0
Failure to perform weekly inspections for fifteen or more weeks	15	\$1500	\$750	\$0
Failure to keep a satellite accumulation container closed	1	\$100	\$50	\$0
Failure to label a satellite accumulation container	1	\$100	\$50	\$0
Failure to post "Danger-Unauthorized Personnel Keep Out" signs at the entry and around the SMS Millcraft Hazardous Waste Storage Area	4	\$400	\$200	\$0
Failure to control entry control entry to the SMS Millcraft Hazardous Waste Storage Area	1	\$100	\$50	\$0
Failure to include the home addresses of the emergency coordinators in the contingency plan	1	\$100	\$50	\$0
Accumulating hazardous waste for more than 90 days without a permit.	1	\$10,000	\$1,000	\$0
<b>Totals:</b>	33	\$13,200	\$2,600	\$0

<b>Economic Benefit:</b>	<u>\$20,290</u>
<b>Mitigating Factors:</b>	<u>\$0</u>
<b>Ability to Pay:</b>	<u>\$0</u>
<b>Other Factors:</b>	<u>(\$21,090)</u>
<b>Civil Penalty:</b>	<u><b>\$15,000</b></u>

Footnote

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