

FILED

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**U.S. EPA REGION 5
HEARING CLERK**

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF:

Gebhart Holdings, Inc.
1605 Riverfork Drive
Huntington, IN 46750

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Docket No. CWA-05-2024-0011

NOTICE OF DETERMINATION

Pursuant to the “Interim Approach to Applying the Audit Policy to New Owners”, 73 Fed. Reg. 44991 (Aug. 1, 2008), (New Owner Audit Policy), the U.S. Environmental Protection Agency (EPA or Agency) offers tailored incentives and additional penalty mitigation to new owners that want to make a “clean start” at newly acquired facilities by addressing noncompliance that began before the acquisition. The New Owner Audit Policy modifies certain conditions of EPA’s April 11, 2000 “Incentives for Self- Policing: Discovery, Disclosure, Correction and Prevention of Violations,” 65 Fed. Reg. 19618 (commonly known as the Audit Policy). The EPA issues this Notice of Determination (NOD) regarding violations voluntarily disclosed to EPA by Gebhart Holdings, Inc. (Gebhart) for the Huntington Aluminum, Inc. facility, located at 1605 Riverfork Drive, Huntington, IN 46750 (HA Facility).

Preliminary Statement

On April 20, 2022, Gebhart acquired the HA Facility. Following a voluntary environmental audit of the HA Facility, Gebhart identified potential violations of the National Pollutant Discharge Elimination System (NPDES) Storm Water Permitting requirements of Section 301(a) of the Clean Water Act (CWA), 33 U.S.C. § 1311(a) and Spill Prevention, Control and Countermeasures (SPCC) Program requirements of the CWA, 33 U.S.C. § 1321(j).

As an incentive for regulated entities disclosing any violations resulting from an environmental audit or a CMS, EPA may eliminate or substantially reduce the gravity-based component of civil penalties to be assessed for violations that are voluntarily disclosed in compliance with the conditions specified in the Audit Policy. For new owners who meet the conditions of the New Owner Audit Policy, EPA may eliminate or substantially reduce the economic benefit component of civil penalties to be assessed for self-disclosed violations. As such, Gebhart performed a voluntary environmental audit of its newly acquired facility and identified and disclosed to EPA potential violations.

Findings of Fact

1. Gebhart initially disclosed the violations subject to this NOD to EPA on April 29, 2022.
2. Gebhart identified potential violations of the NPDES Storm Water Permitting requirements of Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and SPCC Program requirements of the CWA, 33 U.S.C. § 1321(j).
3. Based on information provided by Gebhart for the disclosures identified above, EPA has determined that Gebhart has met each of the following conditions set forth in the New Owner Audit Policy:
 - a. Gebhart has certified that the violations were discovered as part of an audit of the listed HA Facility.
 - b. Gebhart has certified that the violations were identified voluntarily, not through a monitoring, sampling or auditing procedure required by statute, regulation, permit, judicial order, administrative order, consent decree or consent agreement.
 - c. Gebhart promptly disclosed and submitted the violations to EPA in writing.
 - d. Gebhart has certified that the violations were identified and disclosed prior to the commencement of a federal, state, or local agency inspection, investigation, or information request, notice of a citizen suit, legal complaint by a third party, or imminent discovery by a regulatory agency.
 - e. Gebhart has certified that it has taken the appropriate steps to correct and remedy potential violations of the NPDES Storm Water Permitting requirements of Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and SPCC Program requirements of the CWA, 33 U.S.C. § 1321(j).
 - f. Gebhart has certified to EPA that it has taken steps to prevent a recurrence of the violations.
 - g. Gebhart has certified that the violations at issue or closely related violations have not occurred previously within the past three years at the same facilities and are not part of a pattern of violations on the part of Gebhart within the past five years.
 - h. Gebhart has certified that the violations at issue have not resulted in serious actual harm to human health or the environment, and that the violations have not presented an imminent and substantial endangerment to public health or the environment. Furthermore, Gebhart stated the violations at issue do not violate the specific terms of any judicial order, administrative order, consent decree or consent agreement.
 - i. Gebhart has cooperated with EPA and provided the information necessary for the Agency to determine the applicability of the New Owner Audit Policy to its disclosure.

4. Gebhart stated it meets the definition of a “New Owner,” for purposes of receiving the penalty mitigation incentives provided by the New Owner Audit Policy. Specifically:
 - a. prior to the transaction, Gebhart was not responsible for environmental compliance at the HA Facility that is the subject of the disclosure, did not cause the violations being disclosed, and could not have prevented their occurrence;
 - b. the violations that are the subject of the disclosure originated with the prior owner; and
 - c. prior to the transaction, neither Gebhart nor the prior owner of the facility had the largest ownership share of the other entity, and they did not have a common corporate parent.

Determination

5. Based on the review of information and documentation received and in reliance on the Gebhart certifications, EPA has determined:
 - a. Gebhart has met all of the conditions of the New Owner Audit Policy and is eligible for a waiver of the total gravity-based civil penalty for the disclosed violations described above;
 - b. Gebhart accrued no significant economic benefit of noncompliance as a result of the violations described herein; and
 - c. That this NOD resolves Gebhart’s civil penalty liability for the violations described herein with no assessment of a civil penalty.

Reservation of Rights

6. If, and to the extent that, any information or statement provided by Gebhart upon which this NOD is based was materially false or inaccurate at the time such information or statement was provided to EPA, EPA reserves the right to revoke this NOD and, thereby, render such NOD null and void. Such revocation shall be in writing and shall become effective upon receipt by Gebhart.
7. This NOD applies only to EPA’s mitigation of the civil monetary penalties for the violations disclosed. If, and to the extent that, any information or statement provided by Gebhart upon which any civil penalty mitigation granted herein for such violations was based was materially false or inaccurate at the time such information or statement was provided to EPA, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. Such assessment and collection or the exercise of this reservation shall be in writing and shall become effective upon receipt by Gebhart.
8. Nothing herein shall be construed to limit the authority of EPA and/or the United States to undertake action against any person, including Gebhart, in response to any condition which EPA or the United States determines may be necessary to protect public health, welfare or the environment. Furthermore, issuance of this NOD does not constitute a waiver by EPA and/or the United States of its right to bring an enforcement action, either civil or criminal, against Gebhart for any other violation of any federal or state statute, regulation or permit.

9. In issuing this NOD, EPA seeks to promote self-auditing and full compliance by Gebhart with all environmental requirements and to continue the internal procedures necessary to prevent recurrences of violations of environmental requirements.

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