

12:17PM

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11021 RENNER BOULEVARD
LENEXA, KANSAS 66219

Received by
EPA Region 7
Hearing Clerk

In the Matter of

Stanley Black & Decker, Inc.
200 S. Ridge Road
Hesston, Kansas 67062

)
)
)
)
)
)
)

Docket No. EPCRA-07-2022-0100

Respondent.

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 hereby issues this Notice of Determination (NOD) regarding violations voluntarily disclosed to EPA by Stanley Black & Decker, Inc. (“SBD”) for the facility located at 200 S. Ridge Road., Hesston, Kansas 67062.

Preliminary Statement

- On November 12, 2021, SBD acquired Excel Industries, Inc. (“Excel”) via a stock purchase transaction. SBD identified violations through an internal audit conducted by a third-party consultant to evaluate the facility’s compliance with the Emergency Planning and Community Right-to-Know Act’s (EPCRA) Toxics Release Inventory (TRI) requirements. As an incentive for regulated entities disclosing any violations resulting from an environmental audit or a compliance management system, 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, including the New Owner Audit Policy. As such, SBD performed a voluntary environmental audit of its newly acquired facility in Hesston, Kansas and identified and disclosed to EPA several potential violations uncovered by the audit.

Findings of Fact

- Pursuant to 40 C.F.R. § 372.30, for each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in § 372.25 at its covered facility for a calendar year, the owner or operator must

submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350-1).

4. SBD's internal environmental audit revealed that the former owner of the Hesston, KS facility, Excel, failed to submit EPA Form Rs for Diisocyanates for the reporting years 2018 and 2019.
5. SBD initially disclosed violations subject to this NOD to EPA on March 7, 2022. The EPA sent a request for further information on March 21, 2021. SBD sent a response containing further information on May 19, 2022.
6. Based on information provided by SBD for the violations identified above, EPA has determined that SBD has met each of the following conditions set forth in the New Owner Audit Policy:
 - a. SBD has certified that the violations were discovered as part of an audit of the listed Hesston, Kansas facility.
 - b. SBD 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. SBD promptly disclosed and submitted the violations to EPA in writing.
 - d. SBD 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. SBD has certified that it has taken the appropriate steps to correct and remedy the EPCRA TRI reporting requirements for diisocyanates.
 - f. SBD has certified to EPA that it has taken steps to prevent a recurrence of the violations.
 - g. SBD has certified that the violations at issue or closely related violations have not occurred previously within the past three years at the same facility or other SBD facilities and are not part of a pattern of violations on the part of SBD within the past five years.
 - h. SBD 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, SBD has stated the violations at issue do not violate the specific terms of any judicial order, administrative order, consent decree or consent agreement.
 - i. SBD 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.
7. SBD 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, SBD was not responsible for environmental compliance at the 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 SBD 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

8. Based on the review of information and documentation received and in reliance on the SBD certifications, EPA has determined that:
 - a. SBD 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;
 - b. SBD accrued no significant economic benefit of noncompliance as a result of the violations described herein; and
 - c. this NOD resolves SBD's civil penalty liability for the violations described herein with no assessment of a civil penalty.

Reservation of Rights

9. If, and to the extent that, any information or statement provided by SBD 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 SBD.
10. 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 SBD 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 SBD.
11. Nothing herein shall be construed to limit the authority of EPA and/or the United States to undertake action against any person, including SBD, 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 SBD for any other violation of any federal or state statute, regulation or permit.

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

David Cozad
Director
Enforcement and Compliance Assurance Division

**CERTIFICATE OF SERVICE
To be completed by EPA**

I certify that that a true and correct copy of the foregoing Notice of Determination, EPA Docket No. EPCRA-07-2022-0100, was sent this day in the following manner to the following addressees:

Copy via e-mail to Complainant:

Katherine Kacsur, Office of Regional Counsel
Kacsur.Katherine@epa.gov

Sean Bergin, Enforcement and Compliance Assurance Division
Bergin.Sean@epa.gov

Copy via e-mail to counsel for Respondent:

Steven Axtell, attorney
Thompson Hine
Steve.Axtell@thompsonhine.com

Dated this _____ day of _____, _____.

Signed