

**FILED**

Sep 11, 2024

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. TSCA-05-2024-0014</b>
	)	
<b>BMB Properties and Management, LLC</b>	)	<b>Consent Agreement and Final Order</b>
<b>Charleston, IL</b>	)	<b>Under Section 16 (a) of the Toxic</b>
	)	<b>Substances Control Act,</b>
<b>U.S. EPA ID No.:</b>	)	<b>15 U.S.C. § 2615 (a)</b>
	)	
<b>Respondent.</b>	)	
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**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and Sections 22.1(a)(5), 22.13(b), 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.1(a)(5), 22.13(b), and 22.18(b)(2) and (3).

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is BMB Properties and Management, LLC (BMB or Respondent), a corporation doing business in the State of Illinois.

4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

**Jurisdiction and Waiver of Right to Hearing**

5. Jurisdiction for this action is conferred upon U.S. EPA by Section 16 of TSCA, 42 U.S.C. § 2615(a).

6. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

7. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

**Statutory and Regulatory Background**

8. At all times relevant to this Complaint, Respondent BMB Properties and Management, LLC was a limited liability corporation operating under the laws of the State of Illinois, with a place of business at 1000 North 14<sup>th</sup> Street, Charleston, Illinois.

9. EPA lawfully promulgated the Polychlorinated Biphenyls (PCB) Disposal and Marking regulations pursuant to Section 6(e)(1) of TSCA, 15 U.S.C. § 2605(e)(1), on February 17, 1978 (43 FR 7150). The PCB Manufacturing, Processing, Distribution in Commerce and Use regulations (PCB Rules) were lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31514) and incorporated the disposal and marking regulations. The PCB rule was subsequently amended and partially recodified at 40 C.F.R. Part 761.

**Factual and Legal Allegations**

10. Respondent is a "person" as defined at 40 C.F.R. § 761.3 and is subject to the prohibitions set forth at 40 C.F.R. Part 761.

11. Respondent is the owner and operator of the facility at 1000 North 14<sup>th</sup> Street, Charleston, Illinois (Facility).

12. On June 14, 2021, BMB Properties and Management, LLC acquired the Facility.

13. On June 16, 2022, EPA inspected Respondent's Facility. During the inspection, representatives of GDB International, Inc. (GDB) stated that GDB owned the Facility.

14. On June 28, 2023, EPA issued a Subpoena Duces Tecum to GDB, pursuant to Section 11(c) of the Toxic Substances Control Act, 15 U.S.C. § 2610(c) (Subpoena).

15. On July 27, 2023, GDB, provided answers to the subpoena, including that BMB Properties and Management, LLC—which GDB described as “shar[ing] one and the same ownership group” as GDB—were the actual owners of the Facility.

16. At the time of the inspection, Respondent had four transformers at the Facility.

17. Respondent's four transformers are nameplated as containing PCBs and each contains 257 gallons of PCBs in concentrations greater than 500 ppm.

18. The four transformers at the Facility were “PCB Transformers” under 40 C.F.R. § 761.3.

19. In the July 27, 2023 response to the Subpoena, GDB confirmed that there was no change in the condition of the PCB transformers since the 2022 inspection and provided no additional records related to the PCB transformers.

20. Respondent disposed of the four PCB transformers in March 2024, at a cost of \$34,434.

21. Respondent's four PCB transformers are PCB Articles as defined at 40 C.F.R. § 761.3.

22. Respondent's PCB Articles are PCB Items as defined at 40 C.F.R. § 761.3.

## Alleged Violations

### Count I: Improper Recordkeeping

23. Complainant incorporates paragraphs 1 through 22 of this CAFO as if set forth in this paragraph.

24. The PCB rule at 40 C.F.R. § 761.180(a) requires, inter alia, that, effective July 2, 1978, each owner or operator of a facility using or storing at one time one or more PCB transformers to develop and maintain records on the disposition of PCBs and PCB items. These records form the basis of annual PCB documents, to be prepared for each facility by July 1, covering the previous calendar year. 43 Fed. Reg. 7150 (February 17, 1978) (subsequently amended at 54 Fed. Reg. 52716 [December 21, 1989] to include recordkeeping and reporting requirements applicable beginning February 5, 1990).

25. As of June 16, 2022, Respondent was storing four PCB transformers at its facility.

26. As of July 27, 2023, Respondent had not developed and maintained complete records and did not have annual documents on the disposition of its PCB items for calendar years 2021 and 2022.

27. Respondent's failure to develop and maintain records and annual documents for calendar years 2021 and 2022 constitutes a violation of 40 C.F.R. § 761.180(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

### Count II: Improper Use

28. Complainant incorporates paragraphs 1 through 22 of this CAFO as if set forth in this paragraph.

29. The PCB rule at 40 C.F.R. §§ 761.30(a)(1)(ix) and (xiii), requires that beginning May 11, 1981, a visual inspection of each PCB transformer that is in use or stored for reuse within



an area that has impervious secondary containment greater than or equivalent to the volume of dielectric fluid contained in the transformers, must be performed at least once every 12 months.

30. During calendar years 2021 and 2022, Respondent owned four PCB transformers that were stored for reuse within an area that has impervious secondary containment greater than or equivalent to the volume of dielectric fluid contained in the transformers.

31. During calendar years 2021 and 2022, Respondent did not perform a visual inspection of its four PCB transformers.

32. As of July 27, 2023, Respondent did not have records of transformer inspections or maintenance history for its PCB transformers for years 2021 and 2022.

33. Respondent's failure to conduct inspections of its PCB transformers during calendar years 2021 and 2022 and maintain records of such inspections constitutes a violation of 40 C.F.R. § 761.30(a)(1)(ix) and (xiii), and Section 15 of TSCA, 15 U.S.C. § 2614.

**Count III: Storage Area**

34. Complainant incorporates paragraphs 1 through 22 of this CAFO as if set forth in this paragraph.

35. The PCB rule at 40 C.F.R. § 761.35(a) requires that the owner or operator of any PCB article may store it for reuse in an area which is not designed, constructed, and operated in compliance with § 761.65(b), for no more than 5 years after the date the Article was originally removed from use (e.g., disconnected electrical equipment) or 5 years after August 28, 1998.

36. On July 27, 2023, GDB confirmed that BMB had not proceeded with any work towards disposal of the four PCB transformers or any additional PCB articles identified within the facility.

37. On July 23, 2023, GDB confirmed that BMB had no records of when the four PCB transformers were first stored for reuse.

38. 40 C.F.R. § 761.35(a)(2) states that, where the exact date of removal from use is unknown, that the removal date is presumed to be August 28, 1998.

39. As of June 16, 2022, Respondent had four PCB transformers stored for reuse past five years. Respondent's failure to either reuse or dispose of four PCB transformers within five years from the date when they were first placed in storage for reuse constitutes a violation of 40 C.F.R. § 761.35(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

**Count IV: Markings**

40. Complainant incorporates paragraphs 1 through 22 of this CAFO as if set forth in this paragraph.

41. The PCB rule at 40 C.F.R. § 761.40(a) requires that all PCB transformers, PCB large high voltage capacitors, PCB containers, PCB article containers and each storage area used to store PCBs and PCB items for disposal be marked with an ML label.

42. As of June 16, 2022, the exterior door of the location of the PCB transformer No. 003 was stored, was not marked with a legible ML label.

43. Respondent's failure to mark its storage area with the ML label constitutes a violation of 40 C.F.R. § 761.40 and Section 15 of TSCA, 15 U.S.C. § 2614.

**Civil Penalty Order**

44. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615 Complainant determined that an appropriate civil penalty to settle this action is **\$43,899**. In determining the penalty amount, Complainant took into account the above factual allegations, the seriousness of the violations, any

good faith efforts to comply with the applicable requirements, and other factors as justice may require. Complainant also considered U.S. EPA's PCB Civil Penalty Policy, dated April 9, 1990 [55 FR 13955].

45. Respondent agrees to pay a civil penalty in the amount of \$43,899 ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

46. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website:

<https://www.epa.gov/financial/makepayment>. For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

47. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, Docket No. TSCA-05-2024-0014,
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

**Regional Hearing Clerk (E-19J)**

U.S. EPA, Region 5

[R5hearingclerk@epa.gov](mailto:R5hearingclerk@epa.gov)

**Land Enforcement and Compliance Assurance Branch**

Enforcement and Compliance Assurance Division

U.S. EPA, Region 5

[R5lecab@epa.gov](mailto:R5lecab@epa.gov)

**Andrea Dierich (ECR-17J)**

Land Enforcement and Compliance Assurance Branch

Enforcement and Compliance Assurance Division

U.S. EPA, Region 5

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**James Bonar-Bridges**  
Office of Regional Counsel  
U.S. EPA, Region 5  
[bonarbridges.james@epa.gov](mailto:bonarbridges.james@epa.gov)

and

**U.S. Environmental Protection Agency**  
Cincinnati Finance Center  
[CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov)

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

48. Interest, Charges, and Penalties on Late Payments. Pursuant to 15 U.S.C. § 2615, 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA’s costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed each subsequent thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty, as well as any accrued interest, penalties, and other charges are paid in full.



- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, and other charges, that remain delinquent more than ninety (90) days.

49. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions may include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
- d. Per 15 U.S.C. § 2615(a), the Attorney General will bring a civil action in the appropriate district court to recover the full remaining balance of the debt plus interest. In such an action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

50. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

51. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

### General Provisions

52. Respondent certifies that it is complying fully with the statutory and regulatory provisions alleged violated in this CAFO.

53. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [bonarbridges.james@epa.gov](mailto:bonarbridges.james@epa.gov) (for Complainant), and [sunil@gdbinternational.com](mailto:sunil@gdbinternational.com) (for Respondent).

54. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

55. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

56. Payment of the civil penalty does not affect Respondent's continuing obligation to comply with TSCA and other applicable federal, state, local laws or permits.

57. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and U.S. EPA's TSCA Civil Penalty Policy.

58. The terms of this CAFO bind Respondent, its successors, and assigns.

59. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

60. Each party agrees to bear its own costs and attorney's fees in this action.

61. This CAFO constitutes the entire agreement between the parties.

**BMB Properties and Management LLC, Respondent**

9-4-24  
Date

Sunil Bagaria  
Sunil Bagaria, President  
BMB Properties and Management, LLC

**United States Environmental Protection Agency, Complainant**

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Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance  
Division

**In the Matter of:  
BMB Properties and Management, LLC  
Docket No. TSCA-05-2024-0014**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

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Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5