



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 8
 1595 WYNKOOP STREET
 DENVER, CO 80202-1129
 Phone 800-227-8917
<http://www.epa.gov/region08>

2008 APR -3 PM 12: 08


APR 3 2008
 ENVIRONMENTAL PROTECTION AGENCY
 REGIONAL OFFICE

DOCKET NO.: CWA-08-2007-0023

IN THE MATTER OF:)	
)	
MENARD, INC.)	FINAL ORDER
4777 Menard Drive)	
Eau Claire, WI 54703-9604)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 3rd DAY OF April, 2008



 Elyana R. Sutin
 Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. CWA-08-2007-0023

SEP 27 3 12:08 PM
EPA REGION 8
COMMUNICATIONS SECTION

_____)
IN THE MATTER OF:)
)
Menard, Inc.)
4777 Menard Drive)
Eau Claire, WI 54703-9604)
)
Respondent.)
_____)

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Menard, Inc. (Respondent), by their undersigned representatives, hereby consent and agree as follows:

1. On September 24, 2007, Complainant issued a Complaint to Respondent alleging certain violations of section 301(a) of the Clean Water Act (CWA), 33 U.S.C. §1311(a). The Complaint proposed a civil penalty for the violations alleged therein.
2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint including, but not limited to, those specific facts alleged and used by EPA to establish that the tributary described in the Complaint was regulated by the CWA.
3. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in the Complaint or this Consent Agreement.
4. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors or assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.
5. Respondent consents and agrees to pay a civil penalty of Sixty Eight Thousand One Hundred Twenty-five Dollars (\$68,125) in the manner described below in this paragraph:
 - a. Payment is due within 30 calendar days from the date written on the final order issued by the Regional Judicial Officer that adopts

this Consent Agreement. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. The date the payment is made is considered to be the date of the deposit ticket (standard form 215) issued by the Mellon Bank described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

- b. The payment shall reference the name and docket number of this case and be made by remitting a Menard's Inc. corporate check, cashier's check, or certified check for the penalty amount payable to "Treasurer, United States of America," or be paid by one of the other methods listed below, and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfers:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727

ACH Transactions:

PNC Bank/Remittance Express
ABA: 051036706
Account Number: 310006
CTX Format, Transaction Code 22, checking

There is now an On Line Payment Option, available through the U.S. Department of Treasury. This payment option can be accessed from the information below:

www.PAY.GOV

A copy of the check, or notification that the payment has been made by one of the other methods listed above, shall be sent simultaneously to:

Monica Heimdal, 8ENF-W
Environmental Engineer
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

and

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. §3717, and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the final order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
- f. Respondent further agrees and consents that if Respondent fails to pay the entire penalty amount within 60 days of the date on the final order, the full penalty amount proposed in the Complaint shall become immediately due and owing by Respondent.

6. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the CWA and its implementing regulations. Respondent's performance of the mitigation activities required by and set forth in the mitigation plan approved by EPA in this matter shall be deemed by EPA to comply with the CWA.

7. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the U.S. Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

8. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

9. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.


10. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

11. Each party shall bear its own costs and attorney fees in connection with this matter.


12. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement and shall resolve Respondent's liability for Federal civil penalties for the specific violations and facts alleged in the Complaint.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 04.02.08

By: 
Diane Sipe, Director
Technical Enforcement Program

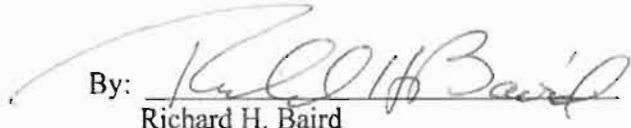
Date: 4/1/08

By: 
Matt Cohn, Supervisory Attorney
Legal Enforcement Program

Date:

4/1/08

By:



Richard H. Baird
Senior Enforcement Attorney,
U.S. Environmental Protection Agency,
Region 8, MC 8ENF-L
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone No.: (303) 312-6642
FAX No.: (303) 312-7202

Menard, Inc.

Date:


3/18/08

By:



Marv Prochaska

Its:


Vice President/Real Estate

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **MENARD, INC., DOCKET NO.: CWA-08-2007-0023** was filed with the Regional Hearing Clerk on April 3, 2008.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Richard H. Baird, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested and e-mailed on April 3, 2008, to:

Thomas A. Larson (#6092)
Matthew J. Franken (#31092X)
Briggs and Morgan, P. A.
2200 IS S. Center – 80 South 8th Street
Minneapolis, MN 55402-2157
mfranken@briggs.com

Pouch and E-mailed to:

Honorable Barbara Gunning
U. S. Environmental Protection Agency
Office of Administrative Law Judges (1900L)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

E-mailed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

April 3, 2008



Tina Artemis
Paralegal/Regional Hearing Clerk

