



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
April 25, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7649 4779

Mr. James Anderson  
Corporate Legal Manger  
5101 Menard Drive  
Eau Claire, Wisconsin 54703

Consent Agreement and Final Order In the Matter of  
Menards, Inc. Docket No. FIFRA-05-2014-0011

Dear Mr. Anderson:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on April 25, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,860 is to be paid in the manner described in paragraphs 32 and 33. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by May 28, 2014 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terence Bonace".

Terence Bonace  
Pesticides and Toxics Compliance Section

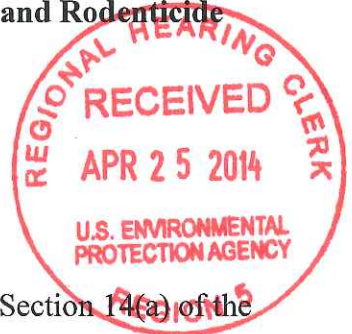
Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )  
)  
Menard, Inc. )  
Eau Claire, Wisconsin, )  
)  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-05-2014-0011

Proceeding to Assess a Civil Penalty  
Under Section 14(a) of the Federal  
Insecticide, Fungicide, and Rodenticide  
Act, 7 U.S.C. § 136l(a)



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Menard, Inc. (Menard), a corporation doing business in the State of Wisconsin.
4. 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). 40 C.F.R. § 22.13(b).
5. 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.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

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

8. 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.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

**Statutory and Regulatory Background**

10. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states it is unlawful for any person in any state to distribute or sell to any person any registered pesticide if any claims made for it as part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA.

11. Section 2(s) of FIFRA, 7 U.S.C. § 136(s) defines the term “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

12. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) defines the term “distribute or sell” as “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.” Also see 40 C.F.R. §152.3.

13. Section 2(u) of FIFRA, 7 U.S.C. § 136(u) defines the term “pesticide” as, among other things, “any substance or mixture of substances intended for preventing, destroying,

repelling, or mitigating any pest.” Also see 40 C.F.R. §152.3.

14. Section 2(t) of FIFRA, 7 U.S.C. § 136(t) defines the term “pest” as “any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator [of the EPA] declares to be a pest” under Section 25(c)(1) of FIFRA. Also see 40 C.F.R. §152.5.

15. The Administrator of the EPA may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

16. Respondent is a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

17. Menard’s headquarters is at located at or about 5101 Menard Drive, Eau Claire, Wisconsin, 54703-9625.

18. On or about April 16, 1981, **JOMAX House Cleaner and Mildew Killer**, EPA Registration Number (Reg. No.) 71240-1, was registered with EPA as a pesticide.

19. On or about November 5, 2009, the EPA assigned a new registration number, EPA Reg. No. 69587-1, to **JOMAX House Cleaner and Mildew Killer**.

20. Prior to a March 6, 2013 inspection, the last amended label for **JOMAX House Cleaner and Mildew Killer**, EPA Reg. No. 69587-1, was accepted by the EPA on or about October 20, 2010.

21. On or about March 6, 2013, an inspector employed by the Illinois Department of Agriculture and authorized to conduct inspections under FIFRA inspected a Menard retail store located at 120 Oak Creek Plaza, Mundelein, Illinois 60060.

22. During the March 6, 2013 inspection, the inspector observed a bottle of **JOMAX House Cleaner and Mildew Killer**, EPA Reg. No. 69587-1, on Menard's retail store shelves that was ready for distribution or sale.

23. Hanging immediately below the container of **JOMAX House Cleaner and Mildew Killer**, EPA Reg. No. 69587-1, on Menard's retail store shelves was a supply of brochures containing additional information on the product.

24. During the March 6, 2013 inspection, the inspector observed that the brochure for **JOMAX House Cleaner and Mildew Killer**, EPA Reg. No. 69587-1, made the following claims:

- a. "The unique JOMAX formula contains key ingredients not found in other cleaners: A powerful **EPA registered mildewcide** that kills mold and mildew"
- b. "ChloRelease™-a unique **bleach activator** that removes tough stains at lower bleach concentrations..."
- c. "A specially formulated **detergent system**..."
- d. "JOMAX is great for..."
- e. "JOMAX House Cleaner and Mildew Killer is the perfect solution for exterior dirt and mold..."
- f. "**The JOMAX family includes a full line of powerful cleaning solutions for interior & exterior surfaces**"

25. All of these claims are substantially different than the claims made for **JOMAX House Cleaner and Mildew Killer**, EPA Reg. No. 69587-1, as part of its registration under Section 3 of FIFRA as reflected in its last accepted label, dated on or about October 20, 2010.

**Count 1**

26. Complainant incorporates paragraphs 1 through 25 of this complaint, as set forth in this paragraph.

27. On or about March 6, 2013, Respondent distributed or sold the registered pesticide **JOMAX House Cleaner and Mildew Killer**, EPA Reg. No. 69587-1, with claims made for it as part of its distribution or sale that substantially differed from any claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA.

28. Respondent's distribution or sale of the registered pesticide, **JOMAX House Cleaner and Mildew Killer**, EPA Reg. No. 69587-1, on March 6, 2013, constitutes an unlawful act pursuant to Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

29. Respondent's violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a) of FIFRA.

**Civil Penalty And Other Relief**

30. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

31. Based on an evaluation of the facts alleged in this complaint, the factors in

Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$2,860.

32. Within 30 days after the effective date of this CAFO, Respondent must pay a \$2,860 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

The check must note "In the Matter of Menard, Inc.," and the docket number of this CAFO.

33. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Terence Bonace (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Nidhi K. O'Meara (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

34. This civil penalty is not deductible for federal tax purposes.

35. If Respondent does not pay the civil penalty in a timely manner, EPA may refer

the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 1367(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

36. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

37. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO.

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

39. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

40. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

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

42. 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.

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

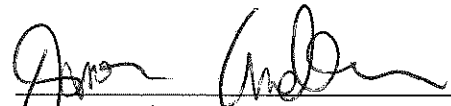


44. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:  
Menard, Inc.**

**Menard, Inc., Respondent**

3/31/14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James Anderson,  
Corporate Legal Manager  
Menard, Inc.

**In the Matter of:  
Menard, Inc.**

**United States Environmental Protection Agency, Complainant**

4/17/2014

Date




Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**  
**Menard, Inc.**  
**Docket No. FIFRA-05-2014-0011**

**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.

4-22-2014  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Menards, Inc., was filed on April 25, 2014 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7649 4779, a copy of the original to the Respondents:

Mr. James Anderson  
Corporate Legal Manger  
5101 Menard Drive  
Eau Claire, Wisconsin 54703

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Nidhi K. O'Meara, Regional Judicial Officer, ORC/C-14J  
Eric Volck, Cincinnati Finance/MWD



Frederick Brown  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. FIFRA-05-2014-0011

