

**U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219**

**BEFORE THE ADMINISTRATOR**

**In the Matter of:** )  
 )  
Melrose Holdings, LLC ) **Docket No. FIFRA-07-2020-0150**  
d/b/a Proven Repellent Co. )  
**Respondent** )  
\_\_\_\_\_ )

**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Melrose Holdings, LLC, doing business as Proven Repellent Co. (Respondent), have agreed to a settlement of this action before the filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

**Parties**

3. Complainant is the Chief of the Chemical Branch, Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.
4. Respondent is Melrose Holdings, LLC, a limited liability company doing business in the state of Kansas as Proven Repellent Co.

### Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 *et. seq.*

6. Section 3(c)(1)(C) of FIFRA, 7 U.S.C. § 136a(c)(1)(C), provides that each applicant for registration of a pesticide shall file with EPA a statement which includes a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use.

7. Section 3(c)(5)(A) of FIFRA, 7 U.S.C. § 136a(c)(5)(A), provides that EPA shall register a pesticide if EPA determines that, when considered with any restrictions imposed under subsection (d), its composition is such as to warrant the proposed claims for it.

8. Section 3(c)(5)(B) of FIFRA, 7 U.S.C. § 136a(c)(5)(B), provides that EPA shall register a pesticide if EPA determines that, when considered with any restrictions imposed under subsection (d), its labeling and other material required to be submitted comply with the requirements of FIFRA.

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

10. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.

11. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

12. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” to mean all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time or to which reference is made on the label or in literature accompanying the pesticide or device with exceptions not relevant here.

13. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

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

15. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines “registrant” to mean “a person who has registered any pesticide pursuant to the provisions of FIFRA.”

16. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to distribute or sell” to mean 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.

17. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, a pesticide is misbranded if its labeling bears any statement which is false or misleading in any particular.

18. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), authorizes a civil penalty against any registrant, commercial applicator, wholesaler, dealer, or other distributor who violates any provision of FIFRA of up to \$5,000 for each offense. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$20,288 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 13, 2020.

### **General Factual Allegations**

19. Respondent is, and at all times referred to herein was, a “person” within the meaning of FIFRA.

20. At all times relevant to this Consent Agreement and Final Order, Respondent owned or operated a place of business located at 8283 Melrose Drive, Lenexa, Kansas.

21. On or about March 26, 2018, Respondent registered with EPA its pesticide product Proven Insect Repellent Spray, EPA Registration Number (Reg. No.) 9333-2.

22. On or about November 8, 2018, Respondent registered with EPA its pesticide product Proven Insect Repellent Lotion, EPA Reg. No. 9332-1.

23. On July 15, 2019, EPA conducted an inspection to determine Respondent’s compliance pursuant to Section 9 of FIFRA.

24. Proven Insect Repellent Spray and Lotion, EPA Reg. Nos. 9333-1 and 9333-2, are substances or mixtures of substances intended for preventing, destroying, repelling, or mitigating pests, and are therefore each a “pesticide” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. Respondent registered pesticides pursuant to the provisions of FIFRA, and is therefore a “registrant” as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

26. At all times relevant to this Consent Agreement and Final Order, Proven Insect Repellent Spray and Lotion, EPA Reg. Nos. 9333-1 and 9333-2, were registered pesticides with EPA accepted labels, including EPA accepted labels dated March 26, 2018, and November 8, 2018, respectively.

27. The accepted labels for Proven Insect Repellent Spray and Lotion, EPA Reg. Nos. 9333-1 and 9333-2, include approved claims that may be made for these pesticides as part of their distribution or sale.

28. During the inspection, the EPA inspector collected copies of labels and invoices documenting distribution and sales of Proven Insect Repellent Spray and Lotion, EPA Reg. Nos. 9333-1 and 9333-2.

29. At all times relevant to this Consent Agreement and Final Order, Respondent offered Proven Insect Repellent Spray and Lotion, EPA Reg. Nos. 9333-1 and 9333-2, for sale on its website at <https://provenrepellent.com>.

30. At all times relevant to this Consent Agreement and Final Order, Respondent's labels for Proven Insect Repellent Spray and Lotion, EPA Reg. Nos. 9333-1 and 9333-2, included the following reference to Respondent's website: "For questions: [info@ProvenRepellent.com](mailto:info@ProvenRepellent.com)."

31. At all times relevant to this Consent Agreement and Final Order, Respondent's website included the following claims for Proven Insect Repellent Spray and Lotion, EPA Reg. Nos. 9333-1 and 9333-2:

- Safe protection: safe for women who are pregnant or breastfeeding as well as children and babies over 2 months of age;
- Non-toxic: low acute toxicity and low skin absorption;
- Planet-friendly: non-toxic to fish and wildlife, biodegradable, safe for pets;
- Made in the USA by EPA-approved factories;
- Saltidin (Picaridin) is recommended by the EPA, CDC, and the World Health Organization for effective protection against insect-borne illnesses; and
- Proven effectively repels black flies, biting flies, stable flies, gnats, chiggers, sand flies and No-see-ums for up to 12 hours (EPA Reg. No. 9333-2) or up to 14 hours (EPA Reg. No. 9333-1).

32. The EPA inspection and subsequent investigation revealed that on or about July 3, 2019, Respondent sold or distributed a quantity of Proven Insect Repellent Spray, Gentle Scent, EPA Reg. No. 9333-2, through its website at <https://provenrepellent.com/shop/scented-12-hour-spray/>.

33. The EPA inspection and subsequent investigation revealed that on or about July 3, 2019, Respondent sold or distributed a quantity of Proven Insect Repellent Spray, Odorless, EPA Reg. No. 9333-2, through its website at <https://provenrepellent.com/shop/scented-12-hour-spray/>.

34. The EPA inspection and subsequent investigation revealed that on or about July 3, 2019, Respondent sold or distributed a quantity of Proven Insect Repellent Lotion, Gentle Scent, EPA Reg. No. 9333-1, through its website at <https://provenrepellent.com/shop/scented-12-hour-spray/>.

35. The EPA inspection and subsequent investigation revealed that on or about July 3, 2019, Respondent sold or distributed a quantity of Proven Insect Repellent Lotion, Odorless, EPA Reg. No. 9333-1, through its website at <https://provenrepellent.com/shop/scented-12-hour-spray/>.

36. The EPA inspection revealed that on or about June 24, 2019, Respondent sold or distributed a quantity of Proven Insect Repellent Spray and Lotion, EPA Reg. Nos. 9333-1 and 9333-2, to “The Cisco Companies” in Indianapolis, Indiana.

37. The EPA inspection revealed that on or about July 5, 2019, Respondent sold or distributed a quantity of Proven Insect Repellent Spray and Lotion, EPA Reg. Nos. 9333-1 and 9333-2, to “Pete Lane’s Mountain Sports” in Sun Valley, Idaho.

38. The EPA inspection revealed that on or about May 13, 2019, Respondent sold or distributed a quantity of Proven Insect Repellent Spray and Lotion, EPA Reg. Nos. 9333-1 and 9333-2, to “Target Corp.” in Minneapolis, Minnesota.

39. The EPA inspection revealed that on or about June 24, 2019, Respondent sold or distributed a quantity of Proven Insect Repellent Spray and Lotion, EPA Reg. Nos. 9333-1 and 9333-2, to “Westlake Hardware” in Lenexa, Kansas.

40. The EPA inspection revealed that on or about July 3, 2019, Respondent sold or distributed a quantity of Proven Insect Repellent Spray and Lotion, EPA Reg. Nos. 9333-1 and 9333-2, to “Zanders” in Sparta, Illinois.

### **Allegations of Violations**

41. Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

#### Counts 1 through 9

42. The facts stated in Paragraphs 19 through 40 above are herein incorporated.

43. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), prohibits the distribution or sale of any registered pesticide if any claims for it as part of its distribution or sale substantially differ from any claims made for it as part of the statement required in connection with its registration under FIFRA § 136a.

44. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), prohibits the distribution or sale of any pesticide that is misbranded as defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q).

45. The claims identified in Paragraph 31, above, include claims that substantially differ from claims on the accepted labels for Proven Insect Repellent Spray and Lotion, EPA Reg. Nos. 9333-1 and 9333-2.

46. The claims identified in Paragraph 31, above, include statements that are false and/or misleading within the meaning Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

47. Respondent violated Section 12(a)(1)(B) and (E), 7 U.S.C. § 136j(a)(1)(B) and (E), for each of the nine sales or distributions of Proven Insect Repellent Spray and Lotion, EPA Reg. Nos. 9333-1 and 9333-2, described in Paragraphs 32 through 40, above, by selling or distributing pesticides with claims that substantially differ from claims made for them as part of the statement required in connection with their registration under Section 136a of FIFRA, and/or by selling or distributing pesticides that were misbranded within the meaning of Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

#### **CONSENT AGREEMENT**

48. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

49. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

50. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

51. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail address: bob@melroseholdings.com.

### **Penalty Payment**

52. EPA has considered the appropriateness of the penalty pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136(a)(4), and has determined that the appropriate penalty for the violations is zero dollars. Pursuant to the statutory requirement that EPA consider a Respondent's ability to pay, Respondent has demonstrated that it is unable to pay any penalty in this matter. Because of Respondent's inability to pay the penalty, therefore, Complainant conditionally agrees to resolve the claims alleged herein.

### **Effect of Settlement and Reservation of Rights**

53. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

54. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in the paragraph directly below.

55. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of FIFRA and its implementing regulations.

56. This Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

57. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

### **General Provisions**

58. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

59. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

60. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

61. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.



**RESPONDENT**  
**MELROSE HOLDINGS, LLC**

Date: 6/30/20

By: Robert S. Dix

ROBERT S. DIX  
Print Name

PRESIDENT / MANAGING MEMBER  
Title

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: \_\_\_\_\_

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Candace Bednar  
Chemical Branch Chief  
Enforcement and Compliance Assurance Division

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Kasey Barton  
Office of Regional Counsel

**FINAL ORDER**

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer

\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

*barton.kasey@epa.gov*  
*lesher.mark@epa.gov*

Copy via Email to Respondent:

*bob@melroseholdings.com*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signed