

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
BEFORE THE ADMINISTRATOR

In the Matter of:

Timothy Wilson, d/b/a
Wilson's Pest Control,

Respondent.

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Docket No. FIFRA-07-2023-0135

**ANSWER OF RESPONDENT TO COMPLAINT
AND REQUEST FOR HEARING**

Now comes Respondent Timothy Wilson, d/b/a Wilson's Pest Control, by and through his undersigned counsel, and for his Answer to the Complaint and Request For Hearing herein, states as follows.

Section I - Jurisdiction

1. Respondent denies the allegations contained in paragraph 1. Further answering, Respondent states that the United States Environmental Protection Agency's (EPA) pleading filed herein speaks for itself as to what the EPA believes or has reason to believe and is the best evidence thereof.

2. Respondent admits that the proceeding herein purports to be an administrative action. Except as specifically admitted herein, Respondent denies each and every remaining allegation contained in paragraph 2. Respondent was not served with a copy of 40 C.F.R. Part 22. This document was not enclosed with the Complaint.

Section II- Parties

3. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 3 and, therefore, denies same.

4. Respondent admits the allegations contained in paragraph 4.

Section III- Statutory & Regulatory Background

5. Answering paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30, Respondent states that each statute and regulation cited in said paragraphs speaks for itself and is the best evidence of the contents thereof. Except as specifically admitted herein, Respondent denies each and every allegation contained in each of the said paragraphs.

Section IV- General Factual Allegations

6. Respondent admits the allegation contain in paragraph 31.

7. Answering paragraph 32, Respondent admits that on or about June 15, 2022, the EPA conducted an inspection of Respondent's facility located at 2400 N. Grand Blvd., St. Louis, MO. Except as specifically admitted herein, Respondent denies each and every remaining allegation contained in paragraph 32.

8. Answering paragraph 33, Respondent admits during the inspection the inspectors inspectors made observations of products in Respondent's facility. Except as specifically admitted herein, Respondent denies each and every remaining allegation contained in paragraph 33 and in subparagraphs 33a, 33b, 33c, 33d, 33e, 33f, 33g, 33h, 33i and 33j.

Further answering subparagraphs 33a, 33b, 33c, 33d, 33e, 33f, 33g and 33h, Respondent states that at the time of each and every sale, Respondent delivers to each customer a safety data sheet from the manufacturer of the product or item in question stating the following information: active ingredients and specific directions as to how to use the product. Further, Respondent also notifies each customer if the customer should lose or misplace the safety data sheet, the safety data sheet can be accessed on a mobile telephone by entering the name of the product on said device. Respondent has followed this protocol with each and every customer at the time of each and every

sale. During the inspection Respondent informed the inspectors of this protocol followed with each and every customer at the time of each and every sale.

Further answering subparagraphs 33h, 33i and 33j, Respondent's label on the subject products listed all active ingredients of the product and complete warnings (precautionary statements as to hazards to humans and animals) which fully complies with applicable EPA statutes and regulations.

Further answering paragraphs 33 and its subparagraphs, Respondent states affirmatively that Respondent has, since he has been doing business for the past 31 years, submitted each year to the EPA headquarters in Washington, D.C. -- not to any field office of the EPA -- EPA Form 3540-16. EPA Form 3540-16 lists all products distributed, sold or offered for sale and/or held for distribution and/or repackaged and/or relabeled by Respondent. The EPA has approved each and every Form 3540-16 submitted by Respondent.

The individuals who conducted the inspection of Respondent's facility on behalf of the EPA had no knowledge nor understanding of EPA Form 3540-16.

9. Respondent admits the allegations contained in paragraph 34.

10. Respondent admits allegations contained in paragraph 35.

11. Paragraph 36 consists of a legal conclusion that Respondent "produced" the pesticides in question within the meaning of the cited regulation and does not contain an averment of fact to which an affirmative or denial is necessary. To the extent that paragraph 36 may be deemed to contain allegations of fact, Respondent denies same.

12. Paragraph 37 consists of a legal conclusion that Respondent was a "producer" of the pesticides in question within the meaning of the cited regulation and does not contain an averment of fact to which an affirmative or denial is necessary. To the extent that paragraph 37 may be

deemed to contain allegations of fact, Respondent denies same.

13. Answering paragraph 38, Respondent states affirmatively that the EPA has never at any time notified or requested that Respondent obtain a registration, nor that Respondent was required to obtain a registration for any of the pesticides identified in paragraph 33 of the Complaint. Accordingly, Respondent denies the allegations contained in paragraph 38.

14. Answering paragraph 39, Respondent states affirmatively that the EPA has never at any time notified Respondent that Respondent was required to obtain a contract with any registrants to repackage, distribute, or sell any of the pesticides identified in paragraph 33 of the Complaint. Nor did Respondent have any knowledge whatsoever from any other source, including but not limited to registrants, that he was required to obtain a contract with any registrants to repackage, distribute, or sell any of the pesticides identified in paragraph 33 of the Complaint. Except as specifically admitted herein, Respondent denies each and every allegation contained in paragraph 39.

Answering further, Respondent states affirmatively that Respondent, as a licensed pest control vendor and distributor, was authorized to distribute and/or sell pesticides and does not need a written contract from any registrant to distribute and sell the pesticides identified in paragraph 33 of the Complaint.

15. Answering paragraph 40, Respondent states each label on the pesticides identified in paragraph 33 of the Complaint listed all active ingredients of the product and complete warnings (precautionary statements as to hazards to humans and animals), which fully complied with applicable EPA statutes and regulations. Except as specifically admitted herein, Respondent denies each and every allegation contained in paragraph 40.

16. Answering paragraph 41, Respondent states on July 27, 2023 purported representatives

of the EPA, without any advance notice to Respondent or its undersigned counsel of record, who entered his appearance on behalf of Respondent on July 15, 2022, appeared at Respondent's facility located at 2616 Woodson Road, Overland, MO -- not at Respondent's Grand Blvd. facility.

Respondent had the right to have counsel present and exercised this right by referring the purported EPA representatives to Respondent's counsel of record. EPA did not pursue the matter further by contacting Respondent's counsel regarding an inspection. No one from the EPA appeared at Respondent's facility located at 2400 N. Grand Blvd. on July 27, 2023. Except as specifically admitted herein, Respondent denies each and every allegation contained in paragraph 41.

Answering further, Respondent states that Respondent cooperated with EPA inspectors when they appeared at the Grand Blvd. facility on June 15, 2022 and conducted an inspection. At this time Respondent was not represented by counsel.

17. Answering paragraph 42, for the reasons set forth in the answer to paragraph 41 hereinabove, Respondent denies that Respondent refused to allow the inspection on July 27, 2023 in violation of FIFRA or any of its implementing regulations.

Section V - Violations

18. Paragraph 43 does not contain an averment of fact or which an affirmation of denial is necessary. To the extent that paragraph 43 may be deemed to contain allegations of fact, Respondent denies the same.

19. Paragraph 44 does not contain an averment of fact to which an affirmation or denial is necessary. To the extent paragraph 44 is interpreted to require an answer by Respondent, denies same.

20. Answering paragraphs 45, 46 and 47, Respondent states that each statute and regulation cited in said paragraphs speaks for itself and is the best evidence of the contents thereof. Except as

specifically admitted herein, Respondent denies each and every allegation contained in each of the said paragraphs.

21. Answering paragraph 48, Respondent admits during the inspection on June 15, 2022, EPA inspectors made observations. Except as specifically admitted herein, Respondent denies each and every remaining allegation contained in paragraph 48.

22. Answering paragraph 49, Respondent states affirmatively that the EPA has never at any time notified or requested that Respondent obtain a registration, nor that Respondent was required to obtain a registration for any of the pesticides identified in paragraph 33 of the Complaint. Accordingly, Respondent denies the allegations contained in paragraph 49.

23. Answering paragraph 50, Respondent states affirmatively that the EPA has never at any time notified Respondent that Respondent was required to obtain a written contract with any registrant to repackage any product and to use the registrant's label. Nor did Respondent have any knowledge whatsoever from any other source, including but not limited to registrants, that he was required to obtain any such contract with any registrant. Except as specifically admitted herein, Respondent denies each and every allegation contained in paragraph 50.

24. Answering paragraph 51, Respondent states each label on the pesticides identified in paragraph 33 of the Complaint listed all active ingredients of the product and complete warnings (precautionary statements as to hazards to humans and animals), which fully complied with applicable EPA statutes and regulations. Except as specifically admitted herein, Respondent denies each and every allegation contained in paragraph 51.

25. Paragraph 52 contains a statement of a legal conclusion and does not contain an averment of fact or which an affirmation of denial is necessary. To the extent that paragraph 52 may

be deemed to contain allegations of fact, Respondent denies the same.

Counts 11-20 - Misbranding

26. Paragraph 53 does not contain an averment of fact to which an affirmance or denial is necessary. To the extent paragraph 53 is interpreted to require an answer by Respondent, denies same.

27. Answering paragraphs 54, 55, 56, 57, 58, and 59, Respondent states that each statute cited in said paragraphs speaks for itself and is the best evidence of the contents thereof. Except as specifically admitted herein, Respondent denies each and every allegation contained in each of the said paragraphs.

28. Answering paragraph 60, Respondent admits during the inspection on June 15, 2022, EPA inspectors made observations. Except as specifically admitted herein, Respondent denies each and every remaining allegation contained in paragraph 60.

29. Paragraph 61 contains a legal conclusion and does not contain an averment of fact or which an affirmance of denial is necessary. To the extent that paragraph 61 may be deemed to contain allegations of fact, Respondent denies the same.

30. Respondent, for the reasons stated in the answers to paragraphs 33, 38, 39 and 51 hereinabove, denies the allegations in subparagraphs 61a, 61b, 61c, 61d, 61e, 61f, 61g, 61h, and 61j.

31. Paragraphs 62 and 63 contain statements of legal conclusions and do not contain any averments of fact to which an affirmance of denial is necessary. To the extent that paragraphs 62 and 63 may be deemed to contain allegations of fact, Respondent denies the same.

Count 21 - Refusal to Allow Inspection

32. Paragraph 64 does not contain an averment of fact to which an affirmation or denial is necessary. To the extent paragraph 64 is interpreted to require an answer by Respondent, denies same.

33. Answering paragraphs 65 and 66, Respondent states that each statute cited in said paragraphs speak for itself and is the best evidence of the contents thereof. Except as specifically admitted herein, Respondent denies each and every allegation contained in each of the said paragraphs.

34. Answering paragraph 67, Respondent states on July 27, 2023 purported representatives of the EPA, without any advance notice to Respondent or its undersigned counsel of record, who entered his appearance on behalf of Respondent on July 15, 2022, appeared at Respondent's facility located at 2616 Woodson Road, Overland, MO. Except as specifically admitted herein, Respondent denies each and every remaining allegation contained in paragraph 67.

35. Answering paragraphs 68 and 69, for the reasons set forth in the answer to paragraph 41 hereinabove, Respondent denies that Respondent refused to allow the inspection of July 27, 2023 in violation of FIFRA or any of its implementing regulations.

Section VI – Relief Sought

36. Answering paragraph 70, Respondent states that each statute and regulation cited in said paragraphs speaks for itself and is the best evidence of the contents thereof. The Complaint regarding the EPA's proposed penalty speaks for itself and is the best evidence thereof. Except as specifically admitted herein, Respondent denies each and every allegation contained in paragraph 70.

37. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 71 and 72 and, therefore, denies same.

38. Paragraphs 73, 74 and 75 contain statements relating to procedural matters of the EPA in this action and do not contain any averments of fact to which an affirmation or denial is necessary. Further, the Complaint speaks for itself regarding said matters and is the best evidence thereof.

39. Answering paragraph 76, Respondent admits that the EPA has notified Respondent of his right to submit or decline to submit financial information relating to ability to pay the proposed civil penalty. Except as specifically admitted herein, Respondent denies each and every remaining allegation contained in paragraph 76.

40. Paragraphs 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, and 87 contain statements relating to procedural matters in this action and do not contain any averments of fact to which an affirmation or denial is necessary. Further, the Complaint speaks for itself regarding said matters and is the best evidence thereof.

Answering paragraph 87 further as to electronic filing, Respondent hereby consents to electronic filing in the present case.

WHEREFORE, having fully answered the EPA's Complaint, Respondent prays for entry of an order dismissing the Complaint in its entirety with prejudice and finding that no civil penalty against Respondent is warranted.

REQUEST FOR HEARING

Respondent hereby gives notice that Respondent requests a hearing on the Complaint and an opportunity to contest material facts contained in the Complaint as well as whether or not it is

appropriate to assess any civil penalty against Respondent.

Respondent raises the following defenses and issues:

(1) Whether Respondent's protocols, at the instance of each sale, by which Respondent notifies, informs and educates each customer regarding safety in the use of all pesticide products sold, offered for sale and distributed by Respondent, and Respondent's labeling of such pesticide products constitute substantial compliance with FIFRA and its implementing regulations. Respondent's protocols and labeling are detailed in the answers to paragraphs 33, 38, 39 and 51 hereinabove. This evidence regarding Respondent's protocols and labeling supports a finding that Respondent has not committed the violations alleged in the Complaint and that no civil penalty should be assessed against Respondent; and,

(2) Whether Respondent's actions in response to the EPA's alleged attempted inspection of Respondent's facility on Woodson Road on or about July 27, 2023, as detailed in the answer to paragraphs 41, 42, 67 and 68, constitutes an unlawful refusal to allow an inspection in violation of FIFRA, as alleged in the Complaint. Respondent simply exercised its lawful right to have its counsel of record present for the inspection. The exercise of that right did not constitute an unlawful refusal to allow an inspection

Respectfully submitted,


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Attorney for Respondent

March 9, 2024

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Answer to Complaint and Request for Hearing was served on the Regional Hearing Clerk, Region 7 U.S. Environmental Protection

Agency Region 7, 11201 Renner Blvd., Lenexa, KS 66219 by certified mail and via electronic mail
on this 9th day of March 2024 on the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov

Christopher Muehlberger
Chief, Chemical Branch
Office of Regional Counsel
muehlberger.christopher@epa.gov

A handwritten signature in black ink, appearing to read "Christopher Muehlberger", with a long horizontal flourish extending to the right.