

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 662319**

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of:)	
)	
Emrich Aerial Spraying LLC,)	Docket No. FIFRA-07-2022-0133
)	
Respondent.)	RESPONDENT’S ANSWER TO
)	COMPLAINT AND REQUEST
_____)	FOR HEARING

ANSWER

COMES NOW Respondent, Emrich Aerial Spraying LLC, by and through counsel, Tiernan Siems of Erickson Sederstrom PC, LLO, attorney for Respondent, and for Respondent’s Answer, states and alleges as follows:

Jurisdiction

1. Respondent, for lack of information, denies the allegations contained in Paragraph 1 of the Complaint.
2. Respondent, for lack of information, denies the allegations contained in Paragraph 2 of the Complaint.

Parties

3. Respondent, for lack of information, denies the allegations contained in Paragraph 3 of the Complaint.
4. Respondent admits the allegations contained in Paragraph 4 of the Complaint.

Statutory & Regulatory Background

5. Respondent states that Paragraph 5 of the Complaint sets forth legal conclusions to which no response is required.
6. Respondent states that Paragraph 6 of the Complaint sets forth legal conclusions to which no response is required.
7. Respondent states that Paragraph 7 of the Complaint sets forth legal conclusions to which no response is required.

8. Respondent states that Paragraph 8 of the Complaint sets forth legal conclusions to which no response is required.
9. Respondent states that Paragraph 9 of the Complaint sets forth legal conclusions to which no response is required.
10. Respondent states that Paragraph 10 of the Complaint sets forth legal conclusions to which no response is required.

General Factual Allegations

11. Respondent states that Paragraph 11 of the Complaint sets forth legal conclusions to which no response is required.
12. Respondent admits the allegation contained in Paragraph 12 of the Complaint.
13. Respondent admits the allegation contained in Paragraph 13 of the Complaint.
14. Respondent admits the allegation contained in Paragraph 14 of the Complaint.
15. Respondent states that the summary contained in Paragraph 15 does not fully account for the relevant information and denies the same on that basis.
16. Respondent states that the summary contained in Paragraph 16 does not fully account for the relevant information and denies the same on that basis.
17. Respondent admits the allegations contained in Paragraph 17 of the Complaint.
18. Respondent, for lack of information, denies the allegations contained in Paragraph 18 of the Complaint.
19. Respondent, for lack of information, denies the allegations contained in Paragraph 19 of the Complaint.
20. Respondent, for lack of information, denies the allegations contained in Paragraph 20 of the Complaint.
21. Respondent, for lack of information, denies the allegations contained in Paragraph 21 of the Complaint.
22. Respondent, for lack of information, denies the allegations contained in Paragraph 22 of the Complaint.

Violations

23. Respondent states that no response is required to Paragraph 23 of the Complaint.

Count 1

24. Respondent incorporates by reference its responses to Paragraphs 11 through 22 of the Complaint.
25. Respondent states that Paragraph 25 of the Complaint sets forth legal conclusions to which no response is required.
26. Respondent admits the allegations contained in Paragraph 26 of the Complaint.

27. Respondent denies the allegations contained in Paragraph 27 of the Complaint.
28. Respondent denies the allegations contained in Paragraph 28 of the Complaint.
29. Respondent denies the allegations contained in Paragraph 29 of the Complaint.
30. Respondent denies the allegations contained in Paragraph 30 of the Complaint.

Count 2

31. Respondent incorporates by reference its responses to Paragraphs 11 through 22 of the Complaint.
32. Respondent states that Paragraph 32 of the Complaint sets forth legal conclusions to which no response is required.
33. Respondent admits the allegations contained in Paragraph 33 of the Complaint.
34. Respondent denies the allegations contained in Paragraph 34 of the Complaint.
35. Respondent denies the allegations contained in Paragraph 35 of the Complaint.
36. Respondent denies the allegations contained in Paragraph 36 of the Complaint.
37. Respondent denies the allegations contained in Paragraph 37 of the Complaint.

Relief Sought

38. Respondent denies that Complainant is entitled to any of the relief requested in the Complaint.
39. Respondent denies each and every remaining allegation in the Complaint not specifically admitted above, except those allegations which constitute admissions against Complainant's interests.

Affirmative Defenses

By way of further Answer, Respondent asserts the following affirmative defenses:

1. Complainant's Complaint fails to state a claim upon which relief can be granted.
2. If Complainant suffered any damages, it was the result of the Complainant's own negligence or the negligence of a third party.
3. Respondent reserves the right to supplement his defenses that may be learned through the discovery and litigation process.

REQUEST FOR HEARING

Pursuant to Section 4(a) of FIFRA, 7 U.C.S. § 136l(a), Respondent requests a hearing to contest the material facts listed below:

1. Whether the spraying on the intended property drifted elsewhere.

2. Whether Respondent applied Delaro and Bifen in accordance with their registered labels.
3. Whether the chemicals were sprayed in a way that violated applicable rules, regulations, statutes, or code sections.

WHEREFORE, having fully answered the Complainant's Complaint, Respondent prays that this Court dismiss Complainant's Complaint and that Respondent recovers its costs incurred herein.

Dated this 27th day of July, 2023.

Emrich Aerial Spraying LLC.,
Respondent,

By: /s/ Tiernan T. Siems
Tiernan T. Siems, #21328
Sarah K. Dage, #27468
ERICKSON | SEDERSTROM, P.C.
10330 Regency Parkway Drive
Omaha, NE 68114
(402) 397-2200
tsiem@eslaw.com
sdage@eslaw.com
Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing Answer was filed with the EPA Region 7 Regional Hearing Clerk and served via electronic mail on this 27th day of July, 2023, upon:

EPA Region 7 Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov

Katherine Kacsur
Office of Regional Counsel
EPA Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Kacsur.katherine@epa.gov
Telephone: (913) 551-7734
Attorney for Complainant

- by: [] U.S. Mail, postage prepaid
 [X] E-mail
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 [] Hand Delivery
 [] Certified Mail, Return Receipt Requested

/s/ Tiernan T. Siems