

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|---|---|----------------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| by KWAME RAOUL, |) | |
| Attorney General of the State of Illinois, |) | |
| |) | |
| Complainant, |) | PCB No. |
| |) | (Enforcement – Air) |
| v. |) | |
| |) | |
| CURLESS FLYING SERVICE, INC., |) | |
| an Illinois corporation, and |) | |
| FARM AIR, INC., an Illinois corporation, |) | |
| |) | |
| Respondents. |) | |

NOTICE OF FILING

TO: See attached service list (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, a copy of which is attached and hereby served upon you. **You may be required to answer the charges of the Complaint at a hearing before the Board, at a date set by the Board.**

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the clerk's office, or an attorney.

NOTIFICATION - YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1, et seq.] to correct the alleged violations.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
KWAME RAOUL, Attorney General of the
State of Illinois

By: /s/ Christina L. Nannini
Christina L. Nannini, #6327367
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62704
christina.nannini@ilag.gov
(217) 782-9031

Dated: May 23, 2022

Service List

For the Respondents:

Curless Flying Service, Inc.
Attn: Harley Joe Curless
11220 East Bricker Highway
Astoria, IL 61501
(via certified mail)

Farm Air, Inc.
Attn: Harley Joe Curless
11220 East Bricker Highway
Astoria, IL 61501
(via certified mail)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| by KWAME RAOUL, |) | |
| Attorney General of the State of Illinois, |) | |
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| Complainant, |) | PCB No. 22- |
| |) | (Enforcement—Air) |
| v. |) | |
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| CURLESS FLYING SERVICE, INC., |) | |
| an Illinois corporation, and |) | |
| FARM AIR, INC., an Illinois corporation, |) | |
| |) | |
| Respondents. |) | |

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, on his own motion, complains of Respondents, CURLESS FLYING SERVICE, INC., an Illinois corporation, and FARM AIR, INC., an Illinois corporation, as follows:

COUNT I
AIR POLLUTION

1. This Count is brought on behalf of the People of the State of Illinois, by Kwame Raoul, Attorney General of the State of Illinois, on his own motion pursuant to Section 31 of the Illinois Environmental Protection Act (“the Act”), 415 ILCS 5/31 (2020).

2. At all times relevant to this Complaint, Curless Flying Service, Inc. (“Respondent” or “Respondent Curless”) has been and is an Illinois corporation in good standing, and has operated an agrichemical facility at 11220 East Bricker Highway, Astoria, Fulton County, Illinois. Respondent Curless’s president is Harley Joe Curless of Astoria, Illinois.

3. In addition to the storage and handling of bulk pesticides, Respondent Curless provides aerial pesticide application (or “crop-dusting”) services to farms within the State of Illinois.

4. At all times relevant to this Complaint, Farm Air, Inc. (“Respondent” or “Respondent Farm Air”) has been and is an Illinois corporation in good standing, and has operated a business that provides and maintains aircraft used on farms, located at 11220 East Bricker Highway, Astoria, Fulton County, Illinois. Respondent Farm Air’s president is Harley Joe Curless of Astoria, Illinois.

5. On August 7, 2019, Respondent Curless completed and submitted to the Illinois Department of Agriculture an application report stating that on August 5, 2019, Respondent Curless had conducted an aerial pesticide application, of a combination of the fungicide Avaris (azoxystrobin and propiconazole), the insecticide Sultrus (cyfluthrin and cyano), the fertilizer Coron, and other pesticides better known to the Respondents, at a 94-acre soybean field in Section 7 and Section 8, T20N, R5E, Santa Anna Township, DeWitt County, farmed by Kyle Kopp d/b/a Kopp Farms (“Moo Maw Field”). The application report is attached as Exhibit A and incorporated herein by reference.

6. The Moo Maw Field is located a quarter-mile east of a test field operated by Corteva, Inc. (“Corteva Field”). The Corteva Field is located in Section 7, T20N, R5E, Santa Anna Township, DeWitt County. The Moo Maw Field and the Corteva Field are separated by a narrow gravel lane approximately 15 feet wide (Coyote Road, also known as 2450 East Road) in addition to a “soybean field” that is approximately a quarter-mile wide. The distance from the west edge of the “soybean field” in Section 7 of Santa Anna Township to the Corteva Field is 40

feet.

7. Respondent Curless conducted the aerial pesticide applications on the Moo Maw Field using an aircraft owned by Respondent Farm Air.

8. Corteva, Inc. is a publicly traded agricultural chemical and seed company that employs migrant agricultural workers as part of its farm operations in Illinois. Its corporate activities include operating test fields throughout Illinois, including the Corteva Field.

9. On August 5, 2019, approximately 95 workers were detasseling corn in the Corteva Field. The workers ranged in age from 15 to over 60, and one worker was pregnant. The workers were plainly visible, wearing bright neon hats and backpacks, and most workers were taller than the corn at that time.

10. Both the Moo Maw Field and the Corteva Field are located 3 to 4 miles southwest of Farmer City, DeWitt County, Illinois.

11. The Avaris label requirements include:

Directions for Use: "Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during the application."

12. According to the manufacturer's data sheet for the fungicide Avaris, exposure to the chemical will cause moderate skin irritation and severe eye irritation. The hazard statement indicates: "harmful if swallowed, causes serious eye irritation, causes skin irritation, may cause respiratory irritation, may cause drowsiness or dizziness."

13. The Sultrus label requirements include:

Directions for Use: "Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application."

14. According to the manufacturer's data sheet for the insecticide Sultrus, exposure to the chemical results in moderate skin irritation and severe eye irritation. The hazard statement indicates: "harmful if swallowed, may be harmful in contact with skin, toxic if inhaled, causes serious eye irritation, causes skin irritation, may cause an allergic skin reaction, may damage fertility or damage to an unborn child."

15. The Coron label requirements include:

Do not apply this product in such a manner as to directly expose workers or other persons.

16. According to the manufacturer's data sheet for the agrichemical Coron, exposure to its chemical mist may cause eye irritation. The hazard statement indicates: "may be harmful if swallowed, may be harmful in contact with skin, may be harmful if inhaled, causes skin irritation, causes serious eye irritation."

17. During Respondent Curless's aerial pesticide application of Avaris, Sultrus, Coron, and other pesticides better known to Respondents on August 5, 2019, the pilot, while still releasing agrichemicals from the plane, made multiple turns over the Corteva Field while workers were present.

18. As Respondent Curless passed Respondent Farm Air's plane over the Corteva Field, multiple workers in the field experienced a strong chemical odor. Multiple workers saw a liquid spray come out of the plane, felt a mist, and smelled a strong, bad odor. The workers observed the plane fly over the Corteva Field several times. The plane flew so low that some of the workers could read the painted numbers on the plane, and could see the pilot.

19. After Respondent Curless first flew Respondent Farm Air's plane over the

Corteva field, some workers left the field and did not return, and some workers returned into the field. Approximately twenty-five minutes later, Respondent Curless passed Respondent Farm Air's plane over the Corteva Field again, making a couple of passes and again spraying the area in which the workers were working. After leaving the field, multiple workers sought medical attention.

20. On August 6, 2019, the Champaign-Urbana Public Health District filed a report with the Illinois Department of Agriculture asserting that a total of seventeen (17) individuals had sought treatment at two local hospitals, in response to being sprayed with agrichemicals at the Corteva Field. Those individuals reported symptoms including loss of consciousness, nausea, vomiting, sore throat, tingling mouth, shortness of breath and burning eyes. One individual was taken to a hospital by ambulance.

21. At least one of the exposed workers vomited in response to the exposure, and was taken to the hospital by ambulance. The worker was unable to work the following day.

22. Due to the exposure to chemicals sprayed on them by Respondent Curless and Respondent Farm Air, at least seventeen (17) individuals experienced health symptoms including loss of consciousness, nausea, vomiting, sore throat, tingling mouth, shortness of breath, and burning eyes.

23. On August 6, 2019, a State Monitor Advocate for the Illinois Department of Employment Security personally interviewed exposed workers at their hotels. He observed that some of the workers had rashes on their skin. Some of the workers stated that the rashes were more severe on the day after exposure, than on the day of exposure. He also observed that some workers had puffy eyes. Several of the workers who had sought medical attention received

recommendations for follow-up care based on chemical exposure.

24. Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), provides as follows:

No person shall:

(a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act.

25. Section 3.315 of the Act, 415 ILCS 5/3.315 (2020), provides the following definition:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

26. Respondent Curless, a corporation, is a “person,” as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2020).

27. Respondent Farm Air, a corporation, is a “person” as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2020).

28. Section 3.165 of the Act, 415 ILCS 5/3.165 (2020), provides the following definition:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

29. The fungicide Avaris, the insecticide Sultrus, and the fertilizer Coron are each a “contaminant,” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2020).

30. Section 3.115 of the Act, 415 ILCS 5/3.115 (2020), provides the following definition:

“Air pollution” is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

31. The discharge of the fungicide Avaris, the insecticide Sultrus, and the fertilizer Coron into the atmosphere so as to be injurious to human life and health caused “air pollution,” as that term is defined in Section 3.115 of the Act, 415 ILCS 5/3.115 (2020).

32. By causing, threatening, or allowing the discharge or emission of contaminants into the environment so as to cause or tend to cause air pollution, Respondent Curless violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020).

33. By causing, threatening, or allowing the discharge or emission of contaminants into the environment so as to cause or tend to cause air pollution, Respondent Farm Air violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, CURLESS FLYING SERVICE, INC. and FARM AIR, INC.:

A. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

B. Finding that Respondents have violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020);

C. Ordering Respondents to cease and desist from any further violation of the Act, by immediately undertaking and maintaining the necessary corrective action that will result in a

final and permanent abatement of the violation of the Act;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2020), assessing against each Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act;

E. Ordering Respondents to pay all costs, including expert witness, consultant and attorney fees, expended by the State in pursuit of this action; and

F. Ordering such other and further relief as the Board deems appropriate and just.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL,
Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: /s/ Andrew B. Armstrong
ANDREW B. ARMSTRONG, Chief
Environmental Bureau
Assistant Attorney General

Andrew B. Armstrong, ARDC # 6282447
Christina L. Nannini, ARDC # 6327367
Assistant Attorneys General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62701
Phone: (217) 782-9031
Andrew.Armstrong@ilag.gov
Christina.Nannini@ilag.gov

CERTIFICATE OF SERVICE

I, Christina L. Nannini, an Assistant Attorney General, certify that on the 23rd day of May 2022, I caused to be served by Certified U.S. Mail the foregoing Notice of Filing and Complaint to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service in Springfield, Illinois 62701.

/s/Christina L. Nannini

Christina L. Nannini, #6327367

Assistant Attorney General

500 South Second Street

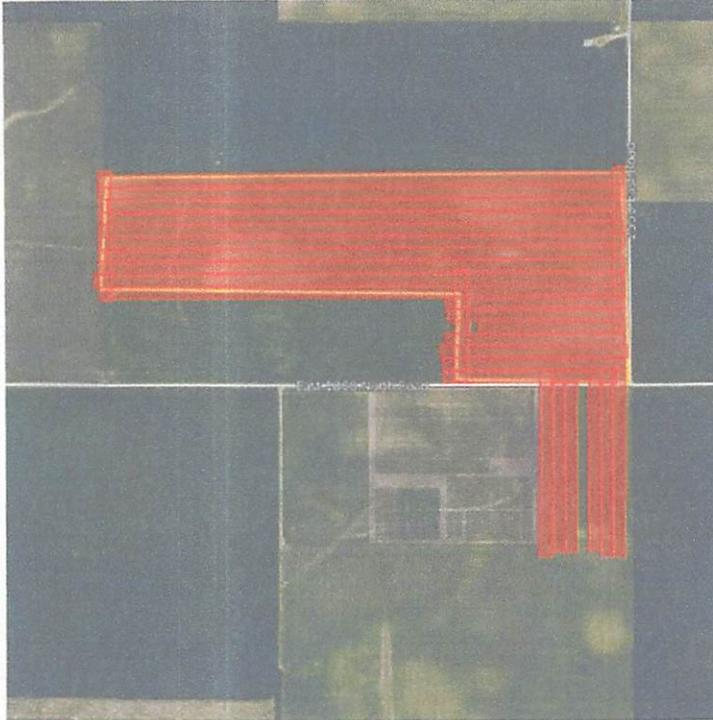
Springfield, Illinois 62704

christina.nannini@ilag.gov

(217) 782-9031

Application Report

Curless Flying Service, Inc. - 11220 East Bricker Road - Astoria, IL 61501 - 309 759-4826



Job #: 1356338

Batch #: 724

Airport: CFS East (McLean, Illinois, 61754)

Pilot/Operator: Michael Ewing

Pilot/Operator Address: , , ,

Ground support provided by: Applicator

Job Type: Aerial Application

Customer: Evergreen FS - Wapella

301 N. Chestnut, Wapella, IL 61777

217-935-9533

Ron Reynolds - 217-935-9533

Grower: Kyle Kopp - Kopp Farms

910 N. Main St, Farmer City, IL 61842

Acres: 94

Crop: Soybeans Pest: Disease and insects

State: IL County: De Witt

Township: Santa Anna

Tier & Range: 8-20N-5E

Center: 40° 12.129' -88° 39.9483'

Field name(s): MOO MAW SOUTH

Product(s) Provided by Customer:

| Product | Company | Restricted Use? | EPA Reg # | Rate per Acre | Acres | Total Volume Used |
|---|-------------------------|-----------------|---------------|---------------|-------|-------------------|
| <u>Avaris 2XS</u> (azoxystrobin + propiconazole) | Helena | No | 100-1324-5905 | 10.5 flozs | 94 | 7.710938 gallons |
| Coron 25-0-0 .5 B (25-0-0-0.5B) | Helena | No | Exempt | 1.0 gallon | 94 | 94.0 gallons |
| <u>Sultrus</u> (cyfluthrin + cyano) | Helena Chemical Company | Yes | 5905-599 | 1.6 flozs | 94 | 1.175 gallons |

| Carrier Product | Rate per Acre | Acres | Total Volume Used |
|-----------------|---------------|-------|-------------------|
| Water | 0.91 gallons | 94 | 85.1 gallons |

Actual GPA: 2.0

Comments:

| Released by Customer | App. Date Range | | Assigned App. Date | Actual App. Date | Actual App. Time | |
|----------------------|-----------------------------|---------------|--------------------|-------------------|--------------------|----------|
| | App. Start Date | App. End Date | | | Start Time | End Time |
| YES | Aug 04 | Aug 09 | Aug 05 | Aug 05, 2019 | | 02:45 PM |
| Temperature | Wind Direction | Wind Speed | Humidity | Acres Applied | | |
| 86.0 | 247 | 8.0 | 52.0 | 94 | | |
| Pilot/Operator Name | Pilot/Operator Pest. Lic. # | Business Name | | Bus. Pest. Lic. # | Plane N#/Equipment | |
| Michael Ewing | | | | | N3082V | |

724



OPY

Assigned to: /

| | | | |
|----------------|--|--|--|
| Acres Applied | | | |
| Pilot/Operator | ME | | |
| Pest. Lic. # | | | |
| N#/Equipment | 821 | | |
| Airport | J | | |
| App. Date | 8-5 | | |
| Start Time | | | |
| End Time | 2:35 | | |
| Temperature | | | |
| Wind Direction | | | |
| Wind Speed | | | |
| Rinsate | <input type="checkbox"/> None <input type="checkbox"/> N/A | <input type="checkbox"/> None <input type="checkbox"/> N/A | <input type="checkbox"/> None <input type="checkbox"/> N/A |
| | <input type="checkbox"/> Applied to Field | <input type="checkbox"/> Applied to Field | <input type="checkbox"/> Applied to Field |

Center: 40° 12.129', -88° 39.9483'

Polygon #: 15

State, County: IL, De Witt

Township: Santa Anna

Tier & Range: 8-20N-5E

Acres: 94

Crop: Soybeans

Pest: Disease and insects

Customer: Evergreen FS - Wapella

Grower: Kyle Kopp - Kopp Farms

Grower Phone:

Field name(s): MOO MAW SOUTH

Job Type: Aerial Application

Start Date Aug 04 | End Date Aug 09

Assigned App. Date: Aug 05

Job #: 1356338 Batch #: 724

Created By: Ron Reynolds - 217-935-9533

Airport: CFS East

Miles to job: 31.41 (107°)

GPA: 2.00

Products: Avaris 2XS^C (10.5 floz - 7.71 gallons)

Coron 25-0-0 .5 B^C (1.0 gallon - 94.0 gallons)

Sultrus^C (1.6 floz - 1.18 gallons)

Comments: Tach Hours _____ Starts _____ Flights/Landings _____