

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF</b>	)	
<b>ILLINOIS by KWAME RAOUL,</b>	)	
<b>Attorney General of the State of Illinois,</b>	)	
	)	
<b>Complainant,</b>	)	<b>PCB No. 2022- 079</b>
	)	<b>(Enforcement-Air)</b>
v.	)	
	)	
<b>CURLESS FLYING SERVICE, INC.,</b>	)	
<b>An Illinois corporation, and</b>	)	
<b>FARM AIR, INC., an Illinois</b>	)	
<b>corporation,</b>	)	
	)	
<b>Respondents.</b>	)	

**ANSWER TO COMPLAINT**

NOW COMES Respondents CURLESS FLYING SERVICE, INC, an Illinois Corporation and FARM AIR, INC, an Illinois corporation, by and through its attorneys, Tressler LLP, and for their answer to the complaint states 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).

**ANSWER: Respondents admit the allegations contained in Paragraph 1.**

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

**ANSWER: Respondent Curless admits the allegations contained in Paragraph 2.**

**Respondent Farm Air is without information or knowledge sufficient to enable it to admit or deny the allegations contained in paragraph 2 and on that basis denies those allegations.**

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.

**ANSWER: Respondents admit that Curless provides aerial pesticide application (or “crop dusting”) services to farms within the State of Illinois. Some pesticides are stored on site for specific applications. However, it is not the nature of the business of either Curless or Farm Air to store or handle bulk pesticides. Therefore, Respondents denies all remaining allegations not specifically admitted in Paragraph 3 of the Complaint.**

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.

**ANSWER: Respondent Farm Air admits the allegations contained in Paragraph 4**

**Respondent Curless is without information or knowledge sufficient to enable it to admit or deny the allegations contained in paragraph 4 and on that basis denies those allegations.**

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.

**ANSWER:** Respondents state that Exhibit A speaks for itself. Respondents admit to making an aerial pesticide application of the fungicide Avaris (azoxystrobin and propiconazole), the insecticide Sultrus (cyfluthrin and cyano), and the fertilizer Coron on or about August 5, 2019. Respondents deny the application of any other pesticide not expressly listed on the Application Report.

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.

**ANSWER:** The allegations contained in paragraph 6 of the Complaint call for an expert opinion and, as such, Respondents are without information or knowledge sufficient to enable them to admit or deny the allegations and on that basis denies.

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

**ANSWER:** Respondents admit to the allegations contained in Paragraph Number 7.

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.

**ANSWER:** Respondents are without information or knowledge sufficient to enable them to admit or deny the allegations contained in Paragraph 9, and as such, denies.

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.

**ANSWER:** Respondents are without information or knowledge sufficient to enable them to admit or deny the allegations contained in Paragraph 9, and as such, denies.

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

**ANSWER:** Respondents are without information or knowledge sufficient to enable it to admit or deny the allegations contained in Paragraph 10, and as such, denies.

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.”

**ANSWER:** Respondents neither admit nor deny the allegations contained in Paragraph 11 and further state that the Avaris label requirements speak for themselves.

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.”

**ANSWER:** Respondents neither admit nor deny the allegations contained in Paragraph 12 and further state that the manufacturer’s data sheet for Avaris speaks for itself.

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.

**ANSWER:** Respondents neither admit nor deny the allegations contained in Paragraph 13 and further state that the Sultrus label requirements speak for themselves.

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.”

**ANSWER:** Respondents neither admit nor deny the allegations contained in Paragraph 14 and further state that the manufacturer’s data sheet for Sultrus speaks for itself.

15. The Coron label requirements include:

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

**ANSWER:** Respondents neither admit nor deny the allegations contained in Paragraph 15 and further state that the Coron label requirements speak for themselves.

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.”

**ANSWER:** Respondents neither admit nor deny the allegations contained in Paragraph 16 and further state that the manufacturer’s data sheet for Coron speaks for itself.

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.

**ANSWER:** Respondent denies the allegations contained in Paragraph 17.

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.

**ANSWER:** Respondents deny the allegations contained in Paragraph 18.

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.

**ANSWER:** Respondents deny the allegations contained in Paragraph 19 specifically relating to spraying the area of fields in which the workers were working. At no point did Respondents spray any fields in which workers were located on August 5, 2019. Respondents are without information or knowledge to admit or deny the remaining allegations in Paragraph 19.

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.

**ANSWER:** Respondents neither admit nor deny the allegations contained in Paragraph 20 and further state that the Champaign-Urbana Public Health District Report dated August 6, 2019 speaks for itself.

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.

**ANSWER:** Respondents are without information or knowledge sufficient to enable them to admit or deny the allegations contained in Paragraph 21, and as such, denies.

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.

**ANSWER:** Respondents are without information or knowledge sufficient to enable them to admit or deny the allegations contained in Paragraph 22, and as such, denies.

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.

**ANSWER:** Respondents are without information or knowledge sufficient to enable them to admit or deny the allegations contained in Paragraph 23, and as such, denies.

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.

**ANSWER:** Respondents admit that Section 9(a) of the Act, 415 ILCS 5/9(a) states, in part, the text quoted in Paragraph 24. Respondents further admit that the statute speaks for itself. Respondent denies any remaining allegations in Paragraph 24 to the extent they are inconsistent with the statute as cited and to the extent a response is required.

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.

**ANSWER:** Respondents admit that Section 3.315 of the Act, 415 ILCS 5/9(a) defines “person” as the text quoted in Paragraph 25 of the Complaint. Respondents further state that the statute speaks for itself. Respondent denies any remaining allegations in Paragraph 25 to the extent they are inconsistent with the statute as cited and to the extent a response is required.

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

**ANSWER:** Respondents admit to the allegations in Paragraph 26 of the Complaint.

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

**ANSWER:** Respondents admit to the allegations in Paragraph 27 of the Complaint.

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.

**ANSWER:** Respondents admit that Section 3.365 of the Act, 415 ILCS 5/3.165 defines “contaminant” as the text quoted in Paragraph 28 of the Complaint. Respondents further state that the statute speaks for itself. Respondent denies any remaining allegations in Paragraph 28 to the extent they are inconsistent with the statute as cited and to the extent a response is required.

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).

**ANSWER:** The allegations in Paragraph 29 are legal conclusions and require no response. To the extent that a response is required, Respondents deny.

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.

**ANSWER:** Respondents admit that Section 3.115 of the Act, 415 ILCS 5/3.115 defines “air pollution” as the text quoted in Paragraph 28 of the Complaint. Respondents further state that the statute speaks for itself. Respondent denies any remaining allegations in Paragraph 30 to the extent they are inconsistent with the statute as cited and to the extent a response is required.

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).

**ANSWER:** The allegations in Paragraph 31 are legal conclusions and require no response. To the extent that a response is required, Respondents deny.

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).

**ANSWER:** Respondents deny the allegations in Paragraph 32.

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).

**ANSWER:** Respondents deny the allegations in Paragraph 33.

*/s/ Jennifer A. Dancy*  
\_\_\_\_\_  
Attorney for Respondents Curless Flying  
Service, Inc. and Farm Air Inc.

Mark T. Banovetz  
Jennifer A. Dancy  
Tressler LLP  
233 South Wacker Drive, 61st Floor  
Chicago, Illinois 60606-6399

**CERTIFICATE OF SERVICE**

I, Jennifer A. Dancy, counsel for Respondents, certify that on the 30th day of September 2022, I caused to be a copy of the foregoing ANSWER TO COMPLAINT to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service.

*/s/ Jennifer A. Dancy* \_\_\_\_\_

Mark T. Banovetz

Jennifer A. Dancy

Tressler, LLP

233 S. Wacker Dr. , 61st Floor

Chicago, IL 60606

jdancy@tresslerllp.com

**Service List**

**For the Complainant:**

Christina L. Nannini, #6327367  
Assistant Attorney General  
500 South Second Street  
Springfield, Illinois 62704  
christina.nannini@ilag.gov  
(217) 782-903

**Interested Party**

Illinois Pollution Control Board\*  
Don Brown - Clerk of the Board  
don.brown@illinois.gov