ILLINOIS POLLUTION CONTROL BOARD
September 17, 2026

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 22-79
	)	(Enforcement - Air)
CURLESS FLYING SERVICE, INC., an Illinois corporation, and FARM AIR, INC., an Illinois corporation,	)	
	)	
Respondents.	)	

INTERIM OPINION AND ORDER OF THE BOARD (by M. Gibson):

On May 23, 2022, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a one-count complaint against Curless Flying Service, Inc. (Curless) and Farm Air, Inc (Farm Air) (collectively, respondents). The complaint concerns the aerial application of pesticides conducted by Curless using an aircraft owned by Farm Air in Santa Anna Township, DeWitt County. On January 16, 2026, the People and the respondents filed motions for summary judgment.

For the reasons discussed below, the Board finds that there is a genuine issue of material fact and therefore summary judgment is not appropriate. The Board denies both motions for summary judgment and directs the hearing officer to proceed to hearing.

The Board's interim opinion begins with the procedural history and the undisputed facts of this matter. After providing the legal background, the Board summarizes the parties' arguments and discusses whether summary judgment is appropriate. The Board concludes by reaching its decision and issuing an interim order.

PROCEDURAL BACKGROUND

Complainants filed this complaint on May 23, 2022 (Comp.). On June 9, 2022, the Board accepted the complaint for hearing. On September 30, 2022, the respondents filed their answer to the modified complaint (Ans.).

On January 16, 2026, the People filed a motion for summary judgment (People Mot.) and the respondents filed a motion for summary judgement (Resp. Mot.). The People filed a response to respondents' motion (People Resp.) and the respondents filed a response to the People's motion (Resp. Resp.) on February 13, 2026. On February 27, 2026, the People filed a reply to the respondents' response (People Reply) and the respondents filed a reply to People's response (Resp. Reply).

UNCONTESTED FACTS

Curless is an Illinois corporation that provides aerial application, commonly called crop dusting, of agricultural products onto crops and services farms in Central Illinois and throughout the Midwest. People Resp. at 4, Resp. Resp. at 2. Curless employs pilots to apply pesticides to farms. Resp. Resp. at 2. Curless leases, but does not own, several types of aircraft. People Resp. at 4. Farm Air is a separate Illinois corporation that provides and maintains aircraft used on farms. People Resp. at 4, Resp. Resp. at 2.

The aircraft that Curless uses for pesticide applications have GPS units and monitors that assist the pilots with their application of chemicals to the fields. People Resp. at 4. The GPS unit "records and collects the aircraft's flight, including the location of the aircraft and whether the aircraft's sprayer was on or off at each GPS location." *Id.* at 5. After a pesticide application is completed, Curless creates a map, called the as-applied map, "showing where product was actually applied in a green area and red lines showing the track the plane flew without spraying." Resp. Resp. at 2.

Before applying pesticides, Curless' pilots "complete a 'reconnaissance circle' around the field to check the wind conditions, identify any obstacles, and to ascertain other relevant information about the field." People Resp. at 5. Curless provides the pilots with current weather reports from local stations to ascertain information about wind patterns. *Id.* The pilots confirm those wind patterns and weather reports by using a "smoker" to release smoke from the aircraft and observe what the wind is doing. *Id.*, Resp. Resp. at 2. However, "there are occasions when the wind may be doing something different lower to the ground than it is higher up where the pilot is flying when testing the smoker." Resp. Resp. at 3. During the aerial pesticide application, if people are "too close to a field, if the wind is blowing in the wrong direction toward houses, or obstacles [are] in the field of which the pilot was previously unaware," the pilot may stop, delay, or change the plans for the pesticide application. Resp. Resp. at 2.

On August 5, 2019, Curless was hired by Evergreen FS to conduct an aerial pesticide application on a field known as "Moo Maw," which is a 94-acre field in DeWitt County. People Resp. at 5, Resp. Resp. at 3. Curless contracted with the pilot Michael Ewing to complete the aerial pesticide application, who is licensed to apply restricted use pesticides in Illinois. People Resp. at 5. During that application, Mr. Ewing flew a yellow and blue Air Tractor aircraft. *Id.* at 6. Before the pesticide application, Mr. Ewing reviewed the weather data and used the smoker to determine the wind direction. *Id.* Mr. Ewing recorded in his application log that the "wind gusts were 8 miles per hour from 247 degrees." *Id.*

Mr. Ewing applied a combination of 1.18 gallons of the insecticide Sultrus (cyfluthrin and cyano), 7.71 gallons of the fungicide Avaris (azoxystrobin and propiconazole), and 94 gallons of the fertilizer Coron. People Resp. at 6, Resp. Resp. at 3. The labels for these products prohibit applying them in manner that will result in exposure to people. Resp. Resp. at 3-4. These product labels also state that: 1) Sultrus causes "moderate eye irritation and is harmful if swallowed or inhaled"; 2) Avaris causes substantial but temporary eye injury and is

harmful if swallowed; and 3) Coron causes "serious eye irritation and may be harmful in contact with skin and if inhaled." *Id.* at 3-4.

Farmworkers were working in a field (Corteva field) about one quarter of a mile west of Moo Maw field on August 5, 2019. Resp. Resp. at 4. Mr. Ewing saw the farmworkers in the field before he arrived at Moo Maw field. *Id.* Mr. Ewing applied the pesticides in lateral passes (west to east and east to west) over Moo Maw field and in longitudinal passes (north to south and south to north) over the Maxwell field that is immediately southeast of Moo Maw field. *Id.* Mr. Ewing "made approximately 18 passes in the lateral direction over the Moo Maw field" and made some turns over the farmworkers. *Id.*, People Resp. at 7. Approximately 90 farmworkers were in the field at that time. People Resp. at 7, Resp. Resp. at 9.

On August 7, 2019, farmworkers "Fidencio Salinas, Armina Salinas, and Fidencio Salinas, Jr. filed a complaint with the U.S. Department of Labor, alleging that they and several migrant workers began experiencing adverse medical reactions after feeling a mist fall over them." People Resp. at 7. The Illinois Department of Agriculture (IDOA) also investigated the alleged incident. *Id.* During the IDOA investigation, a Pioneer/Corteva employee, Brandon Gillen, stated that "14 out of the 90 field workers went to the hospital after they reported feeling the mist." *Id.*, Resp. Resp. at 9.

On August 8, 2019, IDOA collected Fidencio Salinas' hat for pesticide residue testing at their lab. People Resp. at 8, Resp. Resp. at 10. "No other clothing was preserved or tested; nor were samples or testing performed in the field where the migrant workers were located." *Id.* The farmworkers that worked at the Corteva field wore their hats every day and took them home. *Id.* Additionally, Fidencio Salinas worked at other fields that could have used the same pesticides as were used by Mr. Ewing on August 5, 2019. *Id.* IDOA's Residual Sample Result Report (Report) tested for Azoxystrobin and Propiconazole (Avaris ingredients) and Cyfluthrin (Sultrus ingredient), but not Coron. People Resp. at 9-11, Resp. Resp. at 11. The Report showed that Azoxystrobin and Propiconazole were detected but not quantified and Cyfluthrin was not detected. People Resp. at 9-10, Resp. Resp. at 11.

LEGAL BACKGROUND

The Board first describes the standards it applies when considering motions for summary judgment. After that, the Board sets forth the Board regulations allegedly violated, along with pertinent definitions.

Summary Judgement

Summary judgment is appropriate when the pleadings, depositions, admissions, affidavits, and other items in the record show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Adames v. Sheahan, 233 Ill. 2d 276, 295, 909 N.E.2d 742, 753 (2009); Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998); 35 Ill. Adm. Code 101.516(b). A genuine issue of material fact precluding summary judgment exists when "the material facts are disputed, or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed

facts." Adames, 233 Ill. 2d at 296, 909 N.E.2d at 753; Adams v. Northern Illinois Gas Co., 211 Ill. 2d 32, 43, 809 N.E.2d 1248, 1256 (2004).

When determining whether a genuine issue of material fact exists, the record "must be construed strictly against the movant and liberally in favor of the opponent." Adames, 233 Ill. 2d at 295-96, 909 N.E.2d at 754; Purtill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). Summary judgment "is a drastic means of disposing of litigation, and therefore, should be granted only when the right of the moving party is clear and free from doubt." Adames, 233 Ill. 2d at 296, 909 N.E.2d at 754; Purtill, 111 Ill. 2d at 240, 489 N.E.2d at 871. "Even so, while the nonmoving party in a summary judgment motion is not required to prove [its] case, [it] must nonetheless present a factual basis, which would arguably entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994).

Statutory and Regulatory Authorities

Section 9(a) of the Act states that no person shall:

> 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. 415 ILCS 5/9(a) (2024).

Section 33(c) of the Act states:

> In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:
>
> 1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
>
> 2. the social and economic value of the pollution source;
>
> 3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
>
> 4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
>
> 5. any subsequent compliance. 415 ILCS 5/33(c) (2024).

Section 3.315 of the Act defines "person" as "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." 415 ILCS 5/3.315 (2024).

Section 3.165 of the Act defines "contaminant" as "any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source." 415 ILCS 5/3.165 (2024).

Section 3.115 of the Act defines "air pollution" as "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." 415 ILCS 5/3.115 (2024).

PARTIES' ARGUMENTS

The Board first summarizes the People's motion for summary judgment and filings in response and then summarizes the respondents' motion for summary judgment and filings in response.

People's Motion for Summary Judgment

People's Motion.

Alleged violation. The People allege that the respondents violated Section 9(a) of the Act and argue that the respondents meet the elements of a Section 9(a) violation because they: 1) are a person; who 2) sprayed chemicals that are contaminants; that 3) caused, threatened, or allowed the discharge or release of contaminants; and 4) caused or tended to cause air pollution.

The People state that the respondents are each a "person" as defined by the Act. People Mot. at 13, *citing* 415 ILCS 5/3.315 (2024). Additionally, the People assert that Sultrus, Avaris, and Coron are all "contaminants" as defined by the Act. People Mot at 3, *citing* 415 ILCS 5/3.165 (2024).

In order to prove that a person caused, threatened, or allowed the discharge or release of contaminants, the People state they must show that "the alleged polluter has the capability or control over the pollution or that the alleged polluter was in control of the premises where the pollution occurred." People Mot. at 11, *citing* People v. A.J. Davinroy Contractors, 249 Ill. App. 3d 788, 793 (5th Dist. 1993). The People also allege that the "owner of the source of pollution is responsible for that pollution unless the facts establish the owner either lacked capability to control the source or had undertaken extensive precautions to prevent intervening causes." *Id.*, *citing* Perkinson v. PCB, 187 Ill. App. 3d 689 (3rd Dist. 1989). Additionally, the People assert that "threaten" in Section 9(a) of the Act "can be established by showing a very definite danger of pollution at any time." People Mot. at 12, *citing* City of Des Plaines v. PCB, 60 Ill. App. 3d 995, 1002 (1st Dist. 1978).

The People argue that the respondents are "responsible for causing, threatening, or allowing the discharge of a contaminant into the environment so as to cause or tend to cause air pollution." People Mot. at 10. The People contend that the respondents "controlled the

pollution by flying the plane and choosing to perform the application in lateral passes which involved flying in the airspace directly over the field in which farmworkers had been observed." *Id.* at 11. According to the People, air pollution occurred "the moment the pilot continued the flight pattern over the farmworkers at least twice." *Id.* The People also argue that the pilot knew that the "farmworkers were present and chose to fly directly over the same field where he had observed farmworkers, and further chose to fly several additional times over the field just below and adjacent to where . . . he had observed the farmworkers." *Id.*

The People argue that the "pathway of the plane alone, when considering the close proximity and the risk factor of drift, irrespective of the precise operation of the sprayers, threatened the discharge of contaminants so as to tend to cause air pollution." People Mot. at 11. The People also contend that, at a minimum, the pathway of the plane over the farmworkers threatened the discharge of contaminants so as to cause or tend to cause air pollution, no matter whether "the farmworkers were directly exposed, exposed through contact with co-workers, or not directly exposed at all." *Id.* at 12. According to the People, the fact that the plane's sprayer was off as it flew over the field with the farmworkers "does not negate the risk of a change in wind or incidental drift harming the workers." *Id.*

Additionally, the People contend that the respondents caused air pollution in a manner injurious to human, plant or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property. The People cite to the farmworkers' testimony, in which they describe their injuries. People Mot. at 15. The People allege that the farmworkers experienced "eye irritation, dizziness, nausea, and breathing difficulty" and that several farmworkers went to the hospital for treatment of these conditions. *Id.* at 15-16. The People argue that the "harm experience by the farmworkers goes well beyond 'tend to cause' and demonstrates that the aerial application . . . actually caused injuries to human health and interfered with the enjoyment of life." *Id.* at 16.

Reasonableness of the Violation. The People argue that Mr. Ewing "flying over the farmworkers and conducting the application in close proximity to the farmworkers" was unreasonable. People Mot. at 17. The People allege that the respondents' violation caused harm to human health by causing at least twelve farmworkers to feel unwell and experience "eye irritation, dizziness, nausea, and breathing difficulty." *Id.* The People contend that the aerial application of agricultural products has a social and economic benefit, but it was not suitable for the area where it was conducted because of the proximity of the farmworkers. *Id.* at 18. The People also argue that avoiding the farmworkers was technically practicable and economically reasonable because the pilot could have changed the flight pattern or delayed the application. *Id.* The People do concede that subsequent compliance is not at issue in this case because this was a single incident. *Id.*

Respondents' Response.

Motion to Strike. The respondents argue that the Board should strike the People's argument that "discharge of the products unreasonably interfered with the enjoyment of human life, as this theory was raised for the first time in the Motion for Summary Judgment." Resp. Resp. at 12. According to the respondents, "if a plaintiff desires to place issues in controversy

that were not named in the complaint, the proper course of action is to move to amend the complaint, rather than in a response to a motion for summary judgment." *Id.*, *citing* Abramson v. Marderosian, 2018 IL App (1st) 180081, ¶ 55; Filliung v. Adams, 387 Ill. App. 3d 40, 51 (1st Dist. 2008). The respondents contend that if "the plaintiff does not move to amend a complaint to include new issues in controversy, then it cannot move for summary judgment on those issues." Resp. Resp. at 12, *citing* Filliung, 387 Ill. App. 3d at 51.

The respondents allege that "the Illinois Supreme Court has recognized that there are two categories of 'air pollution.'" Resp. Resp. at 12-13, *citing* Incinerator, Inc. v. PCB, 59 Ill. 2d 290, 295 (1974). The first category 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." Resp. Resp. at 13, *citing* Incinerator, 59 Ill. 2d at 295. The second category is the "presence of such contaminants in such amounts, characteristics and duration as to unreasonably interfere with the enjoyment of life or property." *Id.* In the current case, the respondents argue that the People only alleged the first category of air pollution in their complaint by stating that 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.'" Resp. Resp., *citing* Comp. at 7. Therefore, the respondents contend that the People improperly moved for summary judgment on the second category of air pollution and the Board should strike this argument.

Alleged Violation. The respondents contend that the term "threat" in Section 9(a) of the Act refers to "the existence of a hazard, and is intended to permit the Board to act before the pollution actually takes place." Resp. Resp. at 14, *citing* City of Des Plaines v. Metropolitan Sanitary Dist. Of Greater Chicago, 60 Ill. App. 3d 995, 1000 (1st Dist. 1978). As the People also state, the People must prove this element by alleging facts showing that there was a "very definite danger" of pollution. *Id.* According to the respondents, a very definite danger of pollution can be shown by "presenting evidence that there were prior instances of pollution or other facts that tend to support the 'definite danger' of the pollution." Resp. Resp. at 14. However, the respondents allege that speculation alone or the possibility of pollution occurring is not sufficient to prove this element. *Id.*, *citing* Rocke v. PCB, 78 Ill. App. 3d 476, 479 (1st Dist. 1979).

The respondents argue that in this case, the evidence shows that the pilot completed reconnaissance circles around the field to ascertain wind patterns and other relevant information. Resp. Resp. at 14. Additionally, the respondents argue that the evidence shows that the planes are "equipped with GPS equipment, which records and collects every aspect of the aircraft's flight, including the altitude, precise location of the aircraft, and whether the aircraft's sprayer was on or off at each GPS location." *Id.* at 14-15. The respondents contend that the GPS data from Mr. Ewing's plane shows that the pesticide products were only delivered to the Moo Maw field. *Id.* at 15. The respondents also cite to their expert's report, who testified that, based on the wind speed and direction, "the spray would have been carried in the opposite direction of the workers." *Id.*

The respondents allege that the People's argument is based "entirely on speculation-either that the sprayers could have malfunctioned or that the air patterns could have allowed the

spray to travel over the workers." Resp. Resp. at 15. According to the respondents, the People concede that the data shows that the applicator was not turned on during Mr. Ewing's flight over the farmworkers and have not alleged that the GPS data was inaccurate or that the applicators malfunctioned. *Id.* Additionally, the respondents argue that the People have not provided any evidence that "the wind direction would have allowed the [spray] to drift towards the workers." *Id.* The respondents contend that the People have not shown any evidence to support its argument and therefore "cannot meet its burden of proving that there is a 'definite danger' of pollution." *Id.*

According to the respondents, "Illinois Appellate Courts have vacated rulings by the Board where evidence concerning the cause and source of emissions is unavailable." Resp. Resp. at 16, *citing* Lonza, Inc. v. PCB, 21 Ill. App. 3d 468, 475 (3rd Dist. 1974). The respondents argue that "there is no evidence that Farm Air had any involvement in the incident besides performing maintenance on the aircraft, and there is no evidence that Curless caused any emission into Corteva Field." Resp. Resp. at 17. As to Farm Air, the respondents contend that the People have not provided any evidence that "the alleged emissions were caused by a fault in the aircraft's maintenance or that the aircraft's systems were not working properly." *Id.* In terms of Curless, the respondents argue that "there is no reliable evidence that the workers were exposed to those chemicals as a result of Curless's actions." *Id.* According to the respondents, the only evidence that the People can provide is the testimony of the workers. *Id.*

However, the respondents argue that the farmworkers' testimony is contradicted by the results of IDOA's chemical analysis showing that the Avaris ingredients were detected but not quantified and that the Sultrus ingredient was not detected. *Id.* at 18. The respondents contend that the result of IDOA's analysis is significant because Sultrus "was one of the main ingredients in the application made by Curless." *Id.* Additionally, the respondents point to an email that IDOA received during its investigation stating that Corteva also used two of the active ingredients found in IDOA's analysis on its own field. *Id.* at 18-19. Another email that IDOA received noted that the farmworker whose hat was sampled for the IDOA analysis was "moonlighting at other seed corn locations and that pesticide residues could have come from those locations." *Id.* at 19. Therefore, the respondents contend that the evidence suggests that the ingredients found on the sampled hat "could have also originated from either the Corteva field itself, or another field." *Id.*

Lastly, the respondents argue that the farmworkers can only testify regarding their symptoms and not as to the cause of their symptoms. Resp. Resp. at 19. Respondents state that courts "have consistently held that 'a lay witness may not offer testimony pertaining to a specific medical diagnosis unless he or she is properly qualified as an expert to give such testimony." *Id.*, *citing* Steele v. Provena Hospitals, 2013 IL App (3d) 110374, ¶ 48; Ill. R. Evid. 701. According to the respondents, the People are seeking "to admit evidence that the farmworkers were suffering from pesticide exposure, without any medical records or expert testimony to support their conclusions." Resp. Resp. at 19. Therefore, the respondents argue that the testimony from the farmworkers as to the cause of their symptoms, without the confirmation of medical diagnoses, is unreliable and improper. *Id.* at 20.

Reasonableness of the Violation. The respondents contend that, even if the Board found that Curless violated the Act, its actions were not unreasonable under the factors in Section 33(c) of the Act. For the first factor, the respondents argue that the emissions did not cause permanent injury. Resp. Resp. at 21. For the second factor, the respondents argue that aerial application of pesticides is important to "control weeds and minimize crop damage by insects, disease, and animals." *Id.*, *citing* Ruckelshaus v. Monsanto Co., 47 U.S. 986, 990 (1984). For the fourth factor, the respondents allege Mr. Ewing mitigated the harm by doing a reconnaissance circle to "identify potential hazards, and by using equipment to track when the sprayers were on, the wind conditions, and other factors." Resp. Resp. at 21. For the fifth factors, the respondents state that "this was a single incident rather than an ongoing issue." *Id.*

People's Reply.

Motion to Strike. The People argue that the Board should deny respondents' motion to strike because the People's motion for summary judgment "did not assert a new claim or new facts not included in the Complaint." People Reply at 1. The People contend that the complaint references the definition of "air pollution" in Section 3.115 of the Act, which includes both air pollution categories of "injurious to human, plant or animal life, to heath, or property" and "unreasonably interfere with the enjoyment of life or property." *Id.*, 415 ILCS 5/3.115 (2026). Additionally, the People argue that the complaint alleges facts that apply to both air pollution categories. *Id.* at 1-2. According to the People, the "Board has recognized that physical symptoms are relevant in assessing whether emissions constitute an unreasonable interference with the enjoyment of life or property." *Id.* at 2, *citing* Local 3315 v. IFCO, PCB 02-205, slip op. at 7 (Aug. 8, 2002); Donetta Gott v. M'Orr Pork, PCB 96-68, slip op. at 5 (Feb. 20, 1997). Therefore, the People contend that the farmworkers' symptoms alleged in the Complaint are also relevant to the second category of air pollution. People Reply at 3.

The People also distinguish the cases cited by the respondents. According to the People, Filliung holds that adding new operative facts in a summary judgment motion that were not in the complaint is impermissible. People Reply at 2; 387 Ill. App. 3d at 51. Unlike in Filliung, the People contend that they do not "allege new emissions, new practices, new timeframes, or newly discovered conduct." People Reply at 2. Additionally, the People argue that Abramson held that "asserting factual allegations not contained in the pleadings" was the problem and that is not the case here. *Id.*

Alleged Violation. The People reiterate their argument that Mr. Ewing flying the plane in close proximity over the field with farmworkers during the application of agricultural products to the neighboring field violated Section 9(a) of the Act and was an unreasonable and avoidable threat of air pollution. People Reply at 4. According to the People, it is undisputed that planes conducting aerial applications of agrichemicals discharge contaminants and that the respondents conducted an aerial application of pesticide and fertilizer close by a field with farmworkers and flew over the farmworkers. *Id.* at 3. The People argue that the plane did threaten the discharge of contaminants by flying the plane low over the field, turning above the farmworkers, turning the sprayer off right before flying over the farmworkers, and applying agrichemicals approximately one quarter of a mile away from the farmworkers. *Id.* at 4. Additionally, the People contend that, by failing to use the information used by a

reconnaissance circle to avoid flying over a field with farmworkers, the respondents caused, threatened, or allowed the discharge of contaminants so as to cause or tend to cause air pollution. *Id.* at 4-5.

Reasonableness of Violation. The People argue that flying over the farmworkers was unreasonable and avoidable. The People contend that it is necessary to avoid people when conducting aerial applications of agrichemicals and it was possible to avoid flying over the farmworkers. People Reply at 5. According to the People, the logical choice would have been to change the flight pattern to avoid making turns over the farmworkers, even if the aerial application of the agricultural products would take longer. *Id.* The People argue that another alternative was delaying the application of product until the farmworkers were not in the neighboring field. *Id.* The People contend that the respondents should have required their pilots and planes to avoid people nearby an aerial application of agricultural products by changing the flight pattern or delaying the application. *Id.*

Additionally, the People argue that farmworkers' testimony regarding their symptoms is admissible. According to the People, "liability for air pollution has been found based on lay witness testimony describing bad odors." People Reply at 6, *citing* Darling & Co. v. PCB, 28 Ill. App. 3d 258, 264 (1st Dist. 1975). In this case, the People contend that the "farmworkers' testimony of their observations and symptoms are based on their personal experiences" and their "symptoms are consistent with the warnings for exposure from the agrichemical labels." *Id.* Therefore, the People argue that the farmworkers' testimony is "not a medical opinion but a reasonable inference that can be made from their experiences that day compared to the warnings on the labels of the products applied to the neighboring field." *Id.*

The People also argue that the respondents need to provide more evidence to support their allegation that "another application was responsible for the farmworkers' symptoms." People Reply at 7. The People contend that "the fact that one farmworker had worked in other field does not explain away the multitude of symptoms described by the other farmworkers in the field." *Id.*

Respondents' Motion for Summary Judgment

Respondent's Motion

The respondents argue that "Illinois Appellate Courts have vacated rulings by the Board where evidence concerning the cause and source of emissions is unavailable." Resp. Mot. at 10, *citing* Lonza, 21 Ill. App. 3d at 475; Harold Craig v. PCB, 59 Ill. App. 3d 65, 69 (4th Dist. 1978). In Lonza, the respondents contend that the court, when assessing the sufficiency of the evidence, stated that "the burden is on the complainant to show that the respondent caused or threatened to cause the pollution, and that the respondent may respond by presenting evidence in support of other theories." Resp. Mot. at 10; 21 Ill. App. 3d at 472.

The respondents argue that "there is no evidence that Farm Air had any involvement in the incident besides performing maintenance on the aircraft, and there is no evidence that Curless, through its contracted pilot, caused any emission into Corteva Field." Resp. Mot. at

11. As to Farm Air, the respondents contend that the People have not provided any evidence that "the alleged emissions were caused by a fault in the aircraft's maintenance or that the aircraft's systems were not working properly." *Id.* The respondents argue that, since Farm Air and Curless are separate entities and there is no evidence that Farm Air contributed to this incident at all, the Board should grant the respondents' summary judgment motion in Farm Air's favor. *Id.*

In terms of Curless, the respondents argue that "there is no reliable evidence that the workers were exposed to those chemicals as a result of Curless's actions." Resp. Mot. at 11. The respondents contend that the planes' GPS equipment recorded every aspect of the plane's flight, including the "altitude, precise location of the aircraft, and whether the aircraft's sprayer was on or off at each GPS location." *Id.* The respondents allege that the GPS data from Mr. Ewing's plane shows that the pesticide products were only delivered to the Moo Maw field. *Id.* The respondents also point to their expert's testimony, who concluded that, based on the wind speed and direction, "the spray would have blown away from the workers, rather than toward them." *Id.*

According to the respondents, the results of IDOA's chemical analysis showing that the Avaris ingredients were detected but not quantified and that the Sultrus ingredient was not detected is significant because Sultrus "was one of the main ingredients in the application made by Curless." Resp. Mot. at 12. The respondents argue that since IDOA testing only detected one of the three products and the products were all in the same mixture, IDOA's test results "should have revealed the presence of both of the substances that IDOA tested for, not just one of them." *Id.* Additionally, the respondents point to an email that IDOA received during its investigation stating that Corteva also used two of the active ingredients found in IDOA's analysis on its own field. *Id.* The respondents note that Corteva does not use products containing cyfluthrin (Sultrus ingredient) in its fields, which was not detected by the IDOA analysis. *Id.* Another email that IDOA received noted that the farmworker whose hat was sampled for the IDOA analysis was "moonlighting at other seed corn locations and that pesticide residues could have come from those locations." *Id.* at 12-13. Therefore, the respondents contend that the evidence suggests that the ingredients found in on the sampled hat "could have also originated from either the Corteva field itself, or another field." *Id.* at 13.

The respondents allege that the only evidence the People can provide is the testimony of the workers. Resp. Mot. at 13. However, the respondents argue that the testimony is contradicted by the evidence submitted to IDOA during its investigation, the results of IDOA's chemical analysis of the farmworker's hat, the respondents' expert witness' testimony, the wind patterns, and the information provided by the GPS. *Id.* Therefore, the respondents contend that the People have not met its burden of proving that the respondents caused the air pollution in this case. *Id.*

People's Response

The People argue that there is no material dispute over the facts and evidence because the facts and the timing of the plane flying over the farmworkers indicate that pesticide exposure happened. People Resp. at 11. According to the People, they do not need to prove

whether pesticides were released over the farmworkers; the only question at issue is whether the plane's turning over the farmworkers threatened the discharge of contaminants. *Id.* The People contend that "[n]o reasonable person could draw a different inference than air pollution is threatened by flying a crop dusting plane in close proximity to farmworkers while conducting an aerial application in a neighboring field." *Id.*

The People allege that the Board "has recognized that a combination of factors can substantiate a 'threat' of pollution." People Resp. at 12, *citing* Allaert Rendering v. PCB, 91 Ill. App. 3d 153, 156 (3rd Dist. 1980). The People also contend that Board has previously weighed the "character and degree of injury" Section 33(c) factor against a respondent when the complainants did not prove that an air quality standard was violated or that someone experienced health problems. People Resp. at 12, *citing* People v. Panhandle Eastern Pipe Line Co., 2001 Ill. Env. Lexis 618, 68. According to the People, the court weighed that factor against the respondent because the Illinois legislature recognized that an "effective environmental protection system must prohibit even threats of pollution." *Id.* In the case at hand, the People argue that the "aerial application using the field with the farmworkers to make the turns during the middle of the application to the neighboring field, in combination with the toxic nature of the agrichemicals carried by the plane, the variability of wind, and the proximity of the farmworkers" show that the respondents meet the threaten element of Section 9(a) of the Act. People Resp. at 12-13.

Additionally, the People distinguish the current case from Lonza and Craig by arguing that there is no question of where the pesticides came from. People Resp. at 13. Here, the People contend that the respondents do not provide credible evidence to demonstrate that another entity caused the farmworkers' harm. *Id.* at 13-14 The People also take issue with the respondents' interpretation of Lonza to claim that a respondent may present evidence in support of other theories. According to the People, Lonza "provides that respondent may otherwise oppose the theories presented by the complainant." People Resp. at 14, *citing* Lonza, 21 Ill. App. 3d 468 at 472. Even if the respondents' interpretation of Lonza is correct, the People still contend that the respondents did not provide sufficient evidence in support of its alternative theories that a pesticide application to the farmworkers' field or pesticide applications to another field where one farmworker worked caused the farmworkers symptoms. People Resp. at 14. The People argue that the evidence does not support the respondents' alternative theories because of the timing of the farmworkers' symptoms followed immediately after the plane applied the products to Moo Maw field. *Id.* The People also argue that, even if the respondents provided sufficient evidence of their alternative theories, Section 9(a) of the Act prohibits the "threat of discharge of contaminants either alone or in combination with contaminants from other sources." *Id.*

The People contend that it has shown that the respondents controlled the pollution source. People Resp. at 15. According to the People, the respondents admitted that they owned the plane at issue and set and implemented safety protocols. *Id.* The People argue that Farm Air is equally responsible for the control of the crop dusting plane as Curless because it owned the plane and allowed the plane to be used for the aerial application of agricultural products. *Id.* at 16. Additionally, the People allege that, while Farm Air and Curless are separate companies, they have the same "officers, the same principal address, and Harley Curless, as president of

both Curless Flying Service, Inc. and Farm Air, Inc., is the same individual responsible for the safety protocols and supervision of the pilots." *Id.* The People contend that both respondents "were capable of implementing a policy to ensure that if farmworkers are observed in a field, the . . . plane during an application must avoid flying over the field with farmworkers altogether." *Id.* The People argue that the plane chose to avoid a nearby truck during the application, but chose not to avoid people. *Id.* at 17. The People also contend that Curless controlled the flight pattern of the plane, which included the turns it took over the field with the farmworkers. *Id.* Therefore, the People argue that the respondent controlled the pollution source and threatened air pollution by the combination of turning over the field with farmworkers and the close proximity of the farmworkers to the aerial application of the chemicals. *Id.*

Lastly, the People contend that the respondents' arguments that the farmworkers' testimony is contradictory or confused does not refute the fact that the "undisputed pathway of the plane over the field with farmworkers was unreasonable, unsafe, and at a minimum threatened air pollution." People Resp. at 17. The People argue that the farmworkers' testimony of their symptoms after the plane flew over them supports the People's theory. *Id.* at 18. The People cite to testimony from the farmworkers of what they experienced when the plane turned over them. *Id.* Therefore, the People contend that the farmworkers did "experience a spray, smell an odor, and suffer symptoms" after the respondents' plane flew overhead. *Id.* at 19.

Respondents' Reply

The respondents argue that: 1) the threat of harm, without any evidentiary support, is not sufficient to demonstrate a violation of Section 9(a) of the Act; 2) the People do not present any evidence showing that Farm Air is liable for any alleged air pollution; and 3) the People do not present any reliable evidence in support of its theory that Curless caused the alleged violation. Resp. Reply at 3.

As the respondents argued in their response to the People's motions for summary judgment, the People must prove the "threaten" element of Section 9(a) of the Act by alleging facts showing that there was a "very definite danger" of pollution. Resp. Reply at 4. According to the respondents, a very definite danger of pollution can be shown by "presenting evidence that there were prior instances of pollution or other facts that tend to support the 'definite danger' of the pollution." *Id.* However, the respondents allege that speculation alone or the possibility of pollution occurring is not sufficient to prove this element. *Id.*, *citing* Rocke, 78 Ill. App. 3d at 479. The respondents argue that the evidence shows that their planes are "equipped with GPS equipment, which records and collects every aspect of the aircraft's flight, including the altitude, precise location of the aircraft, and whether the aircraft's sprayer was on or off at each GPS location." *Id.* The respondents contend that the GPS data from Mr. Ewing's plane shows that the pesticide products were only delivered to the Moo Maw field. *Id.* According to the respondents, the People even concede that the data shows that the applicator was turned off during Mr. Ewing's flight over the farmworkers. *Id.*

The respondents also contend that the People have not provided any evidence that the wind direction would have allowed the spray to drift towards the farmworkers. Resp. Reply at 5. The respondents argue that, based on their expert witness's report, "the spray would have been carried in the opposite direction of the workers." *Id.* According to the respondents, the People's argument is "based entirely on speculation that the air patterns *could* have allowed the spray to travel over the workers" and the no evidence "to suggest that the wind patterns actually *did* change." *Id.* (emphasis in original). Therefore, the respondents argue that the People do not have any reliable evidence to support its argument and cannot meet its burden of proving a "definite danger" of pollution.

Next, the respondents argue that the People cannot demonstrate that the alleged violation was caused by Farm Air. According to the respondents, the People contend that Farm Air caused the alleged violation because it owns the plane in question. However, the respondents point to Perkinson, which states that "the law does not impose strict liability on property owners for pollution which results from a cause beyond the owner's control." *Id.* at 7, *citing* 187 Ill. App. 3d at 693. The respondents allege that the court in that case "emphasized that Illinois precedent does not hold an owner liable for the discharge if they had either lacked the capability to control the source or undertaken precautions to prevent the cause of the harm." Resp. Reply at 7, *citing* Perkinson, 187 Ill. App. 3d at 694-95. Since the People cannot demonstrate that Farm Air was in control of the plane at the time of the incident at question, the respondents contend that Farm Air did not cause any air pollution. Resp. Reply at 8.

Additionally, the respondents contend that the People did not distinguish Lonza's point as to causation, only to the application of the Section 33(c) factors which the respondents did not rely on. Resp. Reply at 6. The respondents also argue that the People's contention that Lonza did not allow for respondents to prevent alternative theories is illogical. *Id.* The respondents state that, based on Lonza, they should "be able to produce evidence supporting the fact that another entity caused the pollution." *Id.*

Finally, the respondents argue that the People have not provided reliable evidence showing that Curless caused or threatened to cause air pollution. People Reply at 8. Reiterating its argument from its response to the People's motion for summary judgment, the respondents argue that the farmworkers can only testify regarding their symptoms and not as to the cause of their symptoms. *Id.* Respondents allege that courts "have consistently held that 'a lay witness may not offer testimony pertaining to a specific medical diagnosis unless he or she is properly qualified as an expert to give such testimony." *Id.* at 8-9, *citing* Provena Hospitals, 2013 IL App (3d) 110374, ¶ 48. According to the respondents, the People are seeking "to admit evidence that the farmworkers were suffering from pesticide exposure, without any medical records or expert testimony to support their conclusions." Resp. Reply at 9. Therefore, the respondents argue that the testimony from the farmworkers as to the cause of their symptoms, without the confirmation of medical diagnoses, is unreliable and improper. *Id*.

DISCUSSION

While the parties argue that the facts are not in dispute in this case, the Board finds that there is a genuine issue of material facts. First, the Board finds that it is unclear whether the

chemicals drifted from overhead Moo Maw field to the Corteva field. Second, it remains unclear whether the act of flying a crop dusting plane near a field with farmworkers "threatens" air pollution. The People argue that the pathway of the plane and the timing of the flight alone is enough to prove that the respondents caused or threatened air pollution. However, the respondents introduced evidence showing that the plane's sprayer was turned off after it left Moo Maw field and the wind direction was not conducive for chemical drift. Respondents provided evidence of a plausible alternative by pointing to the evidence from IDOA's investigation. The farmworker's hat that was sampled and analyzed by IDOA showed that one pesticide sprayed by Curless was detected, but that Corteva also used those chemicals on their field and that farmworker worked at other fields that could have used that pesticide.

Additionally, from the evidence presented to the Board, the farmworkers testified that they experienced different things: some farmworkers stated that they felt the spray and felt sick after the plane flew overhead, while some farmworkers stated that they did not feel any spray but did feel sick after the plane flew overhead. Other farmworkers stated that they did not feel any spray or feel sick. The Board finds that a hearing is necessary to understand what happened on August 5, 2019, and to further delve into the details to determine if the plane did cause or threaten to cause the chemicals to drift onto the farmworkers. The People only filed a select few pages of each farmworker's testimony, which does not give the Board a complete picture of what happened on August 5, 2019. Further, the Board needs more information on the alleged incident, such as testimony from an expert witness that it was possible for the chemicals to drift at that wind speed and direction, the hospital records of the farmworkers who went in for treatment, the best practices for crop dusting, and the manufacturers' directions for how best to apply the chemicals.

CONCLUSION

The Board denies both motions for summary judgment and finds that a hearing is needed to further explore and investigate the alleged incident on August 5, 2019. Since the Board is denying both motions for summary judgment, the Board denies the respondents' motion to strike as moot.

This opinion constitutes the Board's interim findings of fact and conclusions of law in this matter.

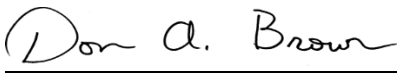
ORDER

1. The Board denies the motions for summary judgment.

2. The Board denies the respondents' motion to strike as moot.

3. The Board directs the hearing officer to proceed to hearing.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 17, 2026, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board