

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. 22-79
)	(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

PLEASE TAKE NOTICE that I have filed today with the Office of the Clerk of the Pollution Control Board by electronic filing the following Complainant’s Response to Respondents’ Motion for Summary Judgment, a copy of which is attached and hereby served upon you.

Respectfully submitted,

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

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

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**PCB No. 22-79
(Enforcement—Air)**

**COMPLAINANT’S RESPONSE TO
RESPONDENTS’ MOTION FOR SUMMARY JUDGMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, hereby responds to the Motion for Summary Judgment filed by Respondents, CURLESS FLYING SERVICE, INC., an Illinois corporation and FARM AIR, INC., an Illinois corporation.

I. INTRODUCTION

The question before the Board is whether a crop dusting plane using a field with farmworkers to make its turns during the course of the application of agrichemicals to a neighboring field causes, threatens, or allows the discharge of contaminants so as to cause or tend cause injuries to human health or unreasonably interfere with the enjoyment of life, either alone or in combination with contaminants from other sources. The facts presented by Respondents in their

Motion for Summary Judgment are mostly undisputed. However, several facts are also immaterial to the question of whether Respondents violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2024).

Respondents inappositely rely on the testing of the hat containing one of the agrichemicals present in the aircraft to argue there is a question of what caused the farmworkers' pesticide exposure, apparently arguing that all three agrichemicals must have been present on that hat for Respondents to have caused, threatened or allowed air pollution. In fact, Illinois Department of Agriculture did not even test for Coron, one of the three ingredients, making Respondents argument fatal. Resp. Ex R. (analysis requested for azoxystrobin and propiconazole which are two constituents in Avaris and cyfluthrin which is one constituent in Sultrus). In any event, Complainant is not relying on the testing to prove that air pollution was "caused, threatened or allowed."

There is no dispute that Respondent Farm Air, Inc.'s plane used the field where farmworkers were working to make the turns during the course of Respondent Curless Flying Service's aerial application to the neighboring field. Resp. Facts ¶¶ 14, 17; Resp. Ex B/Comp. Ex. 2 at 105:23-106:6 and 168:15-169:4; Resp. Ex. D/Comp. Ex. 5.

There is no dispute that farmworkers were evacuated from the field with several observing the plane. Resp. Ex. L; Comp. Ex. 6 at 19:3-22; 30:12; 63:9-10; Comp. Ex. 7 at 57:8-9; 73:17-20; Comp. Ex. 8 at 20:23-21:7; 27:1-5; Comp. Ex. 9 at 22:13; Comp. Ex. 12 at 54:1-3; Comp. Ex. 13 at 10:8-12; 14:16-20; 18:4-10; Comp. Ex. 15 at 65:11-14, 16-17; Comp. Ex. 17 at 26: 4-6, 16-20; Comp. Ex. 18 at 52:21-53:19; Comp. Ex. 20 at 53:19-24; 54:25-55:16; 64:15-65:1; Resp. Ex. N; Comp. Ex. 21 at 42:17-20.

There is no dispute that several farmworkers described feeling spray at the time they saw the airplane. Comp. Ex. 7 at 57:21-23; Comp. Ex. 8 at 21:7-19; 29:13-15; Comp. Ex. 12 at 55:12-

13, 20; 56:6-7; Comp. Ex. 13 at 14:16-20; Comp. Ex. 14 at 56:6-7; 62:4-5; 67:16-69:6; Comp. Ex. 15 at 31:14, 16-18; Comp. Ex. 17 at 26:23; Comp. Ex. 18 at 50:5-6; Comp. Ex. 20 at 65:4-9.

There is no dispute that several farmworkers experienced a smell at the time they saw the airplane. Resp. Ex. L at 2; Comp. Ex. 7 at 12:20-21; Comp. Ex. 8 at 30:8; Comp. Ex. 10 at 74:23-75:4; Comp. Ex. 12 at 57:13-19; Comp. Ex. 13 at 25:23-26:6; Comp. Ex. 15 at 70:9; Comp. Ex. 17 at 33:20-22; Comp. Ex. 18 at 50:9; Comp. Ex. 20 at 65:21-24; 66:14-15.

There is no dispute that several farmworkers experienced symptoms of pesticide exposure immediately after the plane flew overhead. Comp. Ex. 6 at 33:1-4, 18; Comp. Ex. 7 at 15:21-24; Comp. Ex. 8 at 21:17-19; Comp. Ex. 9 at 28:3-7; Comp. Ex. 10 at 53:5-6, 10-11; Comp. Ex. 11 at 47:23; 50:2-7; Comp. Ex. 12 at 86:21-23; 87:4-8; Comp. Ex. 13 at 27:17-21; Comp. Ex. 15 at 82:19; Comp. Ex. 17 at 36:15; 41:6; Comp. Ex. 18 at 66:6-8; Comp. Ex. 21 at 44:6-8; 46:17-18.

Respondents argue that Complainant is required to prove that spray from the plane made contact to the farmworkers. The testimony of several farmworkers and admissions by the Respondents support that spray during the course of the application to the neighboring field actually did make contact with the farmworkers, despite the noted wind speed and direction in Champaign and Bloomington. Resp. Ex. A at 89:22-90:6. But more importantly, Respondents plainly caused, threatened, or allowed the discharge of contaminants so as to cause or tend to cause injuries to human health or unreasonably interfere with enjoyment of life where the flight pattern of the plane demonstrated a very definite danger of exposing farmworkers to fungicide, fertilizer, and insecticide. There is no doubt that agrichemicals are a contaminant that would tend to be injurious to human health. There is no doubt that flying a plane containing agrichemicals over the field with farmworkers while flying to and from the field in which agrichemicals were sprayed

during an aerial application poses a threat of discharge of contaminants that would cause or tend to cause injuries to human health.

The pathway of the plane is undisputed and Respondents fail to fully apply the law to the undisputed facts. Respondents' motion for summary judgment should be denied and Complainant's motion for summary judgment should be granted.

II. THERE IS NO GENUINE ISSUE OF MATERIAL FACT

1. It is undisputed that Curless is an Illinois corporation which specializes in the aerial application of agricultural products onto crops, and services various agricultural producers in Central Illinois and throughout the Midwest. Resp. Ex. A at 12:18-21, 99:17.

2. It is undisputed that Farm Air is a separate Illinois corporation that performs maintenance on aircrafts and is an Air Tractor dealership for new and used airplanes. Resp. Ex. A at 12:18-24, 13:8-14:6.

3. It is undisputed that in order to complete the aerial applications, Curless leases several types of aircraft of various sizes. It is undisputed that it does not own any aircrafts. Resp. Ex. A at 36:17-21, 38:21-40:4; <https://registry.faa.gov/aircraftinquiry/Search/NameResult>.

4. It is undisputed that at the time, neither Curless nor Farm Air owned any helicopters. Resp. Ex. A at 39:18-40:2; <https://registry.faa.gov/aircraftinquiry/Search/NameResult>. This is also immaterial.

5. It is undisputed that the aircrafts Curless uses for aerial applications are equipped with GPS units and monitors to assist the pilots with their aerial applications of chemicals to fields. Resp. Ex. A at 22:2-11.

6. It is undisputed that 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 location¹. It is undisputed that the data from the GPS units is regularly downloaded and preserved by Curless. Resp. Ex. A at 56:19-58:191; Resp. Ex. B. at 151:12-182:22; Resp. Ex. D; Resp. Ex. C.

7. It is undisputed that before an aerial application, Curless's 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. Resp. Ex. A at 93:2-13.

8. It is undisputed that in order to ascertain information about wind patterns, Curless provides the pilot with current weather reports from local stations, and the pilot would confirm the reports by releasing and observing smoke from the aircraft. Resp. Ex. A at 88:21-91:16. It is also undisputed that for the August 5 flight, Curless would have looked at the weather stations in Bloomington and Champaign, approximately 25 or 30 miles away. Resp. Ex. A at 88:21-91:16.

9. It is undisputed that on August 5, 2019, Curless was hired by Evergreen FS for an aerial application of agricultural products (Kopp Farms)². Resp. Ex. E, Application Report.

10. It is undisputed that Curless contracted with the pilot Michael Ewing to complete the application of the agricultural products to Kopp Farms. Resp. Ex. A at 38:4-15.

11. It is undisputed that at the time of the application, Mr. Ewing was licensed to apply restricted use pesticides in Illinois. Resp. Ex. B at 48:12-14; Ex. F, Ewing License.

¹ Respondents' statement of facts includes that the GPS 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. The cited testimony supports that the GPS records the aircraft's flight including the location of the aircraft and whether the aircraft's sprayer was on or off at each location. That cited testimony is undisputed. It is unclear who made the "Overhead Flight Video" and it is not discussed in the deposition testimony provided in support of Respondents' Motion. But the GPS coordinates and whether the sprayer was on or off, as depicted in Respondent's Exhibit D and described within the deposition testimony of Joseph Curless regarding the "as-applied map," is not disputed.

² The address on the application report likely indicates the mailing address of Kopp Farms, and is not the address to the field.

12. It is undisputed that during the application, Mr. Ewing was flying a yellow and blue Air Tractor aircraft. Resp. Ex. G, Dep. of Harley Curless at 96:17-97:12; Resp. Ex. H, Purchase Order; Resp. Ex. I, Photo of Air Tractor; Resp. Ex. B at 63:9-23.

13. It is undisputed that before the agriculture product application on August 5, 2019, Mr. Ewing was aware of the wind direction because he had been reviewing the weather data throughout the day, had completed other applications, and deployed smoke to determine wind direction before applying product to Kopp Farms field. Resp. Ex. B at 110:1-12.

14. It is undisputed that the GPS data from Mr. Ewing's flight reflects that the product was delivered to Kopp Farms 94-acre soybean field. Resp. Ex. C, Resp. Ex. D.

15. It is undisputed that Mr. Ewing's application log indicates the wind gusts were 8 miles per hour from 247 degrees. Resp. Ex. E. It is also undisputed that wind can vary based on altitude. Resp. Ex. B/Comp. Ex. 2 Ewing Dep. 74:13-18.

16. It is undisputed that the Application Report provides that the mixture being sprayed contained three products: approximately 7.71 gallons of the fungicide Avaris 2XS (azoxystrobin + propiconazole); approximately 94 gallons of Coron; and approximately 1.18 gallons of the insecticide Sultrus (cyfluthrin + cyano). Resp. Ex. E; Resp. Ex. A at 113:3-116:3.

17. It is undisputed that the expert thinks that although there were some workers in a nearby field, Mr. Ewing's application spray would only have been carried in the opposite direction of the workers' location(s), based on the wind speed and direction. Ex. J, Dennis Gardisser Expert Report; Ex. B at 105-106:7. It is also undisputed that the wind speed was determined from a point located 25 to 30 miles away (Resp. Ex. A at 89:22-90:6) and wind can change based on altitude. Resp. Ex. B/Comp. Ex. 2 Ewing Dep. 74:13-18.

18. It is undisputed that on August 7, 2019, field workers 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. Resp. Ex. K.

19. It is undisputed that the Illinois Department of Agriculture (IDOA) also began investigating the incident. Resp. Ex. L at 1.

20. It is undisputed that the Corteva field, where the workers were located, was approximately .25-.5 miles to the [w]est of the Kopp field. Ex. L at 1³. It is also undisputed that the plane was making turns over the top of the crew. *Id.*

21. It is undisputed that Corteva also uses pesticides on their fields. Resp. Ex. M, Davis's Email from Oct. 24⁴. It is also undisputed that the farmworkers would not enter into a field to work until sufficient time has passed after an application event, known as "reentry requirement" under product labels. Resp. Ex. A at 183:12-184:16.

22. It is undisputed that during the IDOA investigation, Brandon Gillen, a Pioneer/Corteva employee confirmed that 14 of the 90 field workers went to the hospital after they reported feeling the mist. Resp. Ex. L at 1. It is undisputed that Brandon Gillen further stated that the plane was making turns over the top of the crew. *Id.*

23. It is undisputed that Jacob Wantland, a Corteva supervisor who was in the field with the workers, stated that he did not believe a plane sprayed the workers, but that he had the workers leave the field after seeing the plane, under Corteva's policy. Ex. L at 1.

³ Respondents say "east" but that appears to be an error and therefore not in dispute. Respondent's Exhibit L contains a statement from an employee of Corteva who describes an application taking place to a field (Kopp also known as Moo Maw/Maxwell) located ¼ to ½ mile to the east of where the crew was working (Corteva) and that the plane was making turns over the top of the crew.

⁴ Respondents fail to include the attachment to the email and it is unclear what date and time any application to the Corteva Field occurred and whether it was done on the ground or by air.

24. It is undisputed that Pete Dunn, another Corteva supervisor, stated that he witnessed the entire application and was able to see when the spray was turned on and off Ex. L at 1-2. It is undisputed that Dunn reported that he did not see the plane's boom turn on while it was over the work crew. *Id.* It is undisputed that he reported watching the boom being turned off as it left the field being treated, then make its turn over the crew, go east towards the field it was treating, and saw the boom being turned on. *Id.*

25. It is undisputed that Fidencio Salinas, crew supervisor reported to the IDOA that he smelled something strange when the plane flew over the workers, but he did not go to the hospital⁵. Resp. Ex. L at 2.

26. It is undisputed that on August 8, 2019, three days after the application by Mr. Ewing, IDOA collected Salinas's hat and submitted it to their lab for pesticide residue analysis. Resp. Ex. L at 2.

27. It is undisputed that no other clothing was preserved or tested; nor were samples or testing performed in the field where the migrant workers were located. See, e.g., Resp. Ex. L; Resp. Ex. U.

28. It is undisputed that hats worn by the workers at the Corteva field were typically worn every day, and the workers would take them home. Resp. Ex. N, Dep. of Consuelo Perez, at 30-31.

29. It is undisputed that during the relevant time, Salinas was also working at other seed corn locations, which could have used the same pesticides. Resp. Ex. O.

⁵ Respondents additionally include within fact paragraph 25 that Fidencio Salinas stated that he did not see any spray on the workers. That statement is not included in Respondent's Exhibit L. Nevertheless, some of the farmworkers did testify that they did not see spray, so that some farmworkers did not see spray is not disputed.

30. It is undisputed that Adrian Perez, who went to the hospital after vomiting and being unable to breathe, testified that he was not sprayed. Resp. Ex. V at 54:20-55:20. It is undisputed that Adrian Perez also testified that “it’s obvious that whoever flew that plane at that time on that day in that area caused people to be exposed to pesticides, including myself.... pesticides to my belief that were sprayed by an airplane were near or on the field that I was working at, and I was exposed to those pesticides.” Resp. Ex. V at 56:4-6; 56:14-17.

31. It is undisputed that videos were obtained, but Respondent’s Exhibit P does not reference the videos, so it is unclear how the videos were obtained. The videos referenced in Exhibit Q were not produced with Respondents’ Motion and no foundation to support those videos has been provided. Accordingly, it is disputed that the videos are relevant to or accurately depict the incident on August 5, 2019 that led to farmworkers evacuating the field. However, that fact is not material as Respondents have already admitted to the pathway of the plane that crossed several times over the field where farmworkers were observed while making its turn back to the field where the application occurred. Resp. Facts ¶¶ 14, 17; Resp. Ex B/Comp. Ex. 2 at 105:23-106:6 and 168:15-169:4; Resp. Ex. D/Comp. Ex. 5.

32. It is undisputed that Illinois Department of Agriculture stated that preponderance of the evidence so far is that the workers were not sprayed on and the case will hinge on the lab test. Resp. Ex. L at 2.

33. It is undisputed that on August 9, 2019, the IDOA prepared a Residue Sample Result Report in its Pesticide Laboratory. It is undisputed that the “Analysis Requested” requested testing for Azoxystrobin and Propiconazole (ingredients contained in Avaris 2SX) and Cyfluthrin (an ingredient contained in Sultrus). It is undisputed that the results of the analysis show that the

Azoxystrobin and Propoiconazole were detected but not quantified (DNQ). It is undisputed that the results showed a finding of “ND” (not detected) for Cyfluthrin. Resp. Ex. R.

34. It is undisputed that on October 27, 2020, IDOA issued a Notice of Fine to Curless alleging pesticide misuse. Resp. Ex. S.

35. It is undisputed that Curless and Mr. Ewing requested a hearing before the CMS Bureau of Administrative Hearings. Resp. Ex. T.

36. It is undisputed that IDOA concluded that it did not have a preponderance of evidence to determine a point value assessing a monetary penalty against the Respondent pursuant to the Use and Violation Criteria set forth in the Illinois Pesticide Act, and since the incident legislative changes have been made in the State of Illinois to more stringently address human exposure to pesticides. Resp. Ex. T.

37. It is undisputed that IDOA dismissed the claims against Curless and Mr. Ewing.

38. It is undisputed that Respondents retained an expert, Dennis R. Gardisser, Ph.D to review the facts related to this matter. It is undisputed that Mr. Gardisser is an expert in agricultural chemical application, pesticide applications, aerial applications, ground applications, pesticide labels, instructions for use, label interpretations, label instructions impact upon licensed end-user applicators, scope of labeling, label warnings, precautions, and label meanings for applicators who meet industry and regulatory standards. Resp. Ex. J.

39. It is undisputed that Mr. Gardisser holds the opinion that, based on the application log which identifies winds from 247 degrees at 8 mph, spray released from Mr. Ewing’s application would have carried in the opposite direction of the migrant workers. Resp. Ex. J at 6-7. It is also undisputed that the wind speed was determined from a point located 25 to 30 miles away (Resp.

Ex. A at 89:22-90:6) and wind can change based on altitude. Resp. Ex. B/Comp. Ex. 2 Ewing Dep. 74:13-18.

40. The facts surrounding the testing of the hat are undisputed. The constituents of Avaris (Azoxystrobin and Propoiconazole) were detected but not quantified (DNQ) and the constituent of Sultrus (Cyfluthrin) was not detected (ND) greater than 0.160 mg/kg. IDOA did not test for Coron. Resp. Ex. R.

III. ARGUMENT

Respondents' assertion that the facts and evidence do not support an allegation that any pesticide was released over the farmworkers is disputed, but this is not a material dispute. The facts certainly indicate that pesticide exposure occurred. Based on the timing of the plane flying overhead, there is no doubt that the plane flying at that time on that day in that area threatened the exposure. The Act does not require that Complainant prove pesticide was released over the farmworkers, thus that dispute is ultimately immaterial to the question of whether the undisputed flight path of Farm Air Inc.'s plane during Curless's application using the field where farmworkers were working to make its turns caused, threatened, or allowed the discharge of contaminants so as to cause or tend to cause injuries to human health or unreasonably interfere with enjoyment of life, either alone or on combination with contaminants from other sources. No 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. As this is

a question of whether air pollution occurred based on the undisputed facts, summary judgment is appropriate.

A. Respondents' motion fails to apply the full language of 415 ILCS 5/9(a) to the undisputed facts.

Section 9(a) of the Act, 415 ILCS 5/9(a) (2024) provides that no person shall cause or threaten or allow the discharge 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. 415 ILCS 5/9(a) (2024). Respondents argue that they are entitled to summary judgment because the State cannot prove that the Respondents “caused the alleged air pollution or were the source of any spray on the field workers.” Resps. Mot. at 1. Respondents fail to fully apply the language of Section 9(a) of the Act, 415 ILCS 5/9(a) (2024) to the undisputed facts.

The Board has recognized that a combination of factors can substantiate a “threat” of pollution. *Allaert Rendering v. Pollution Control Bd.*, 91 Ill. App. 3d 153, 156 (3rd Dist. 1980). Additionally, the Board has previously weighed the 33(c)-factor, 415 ILCS 5/33(c), relating to “character and degree of [the] injury” against a respondent even when complainants “do not...prove that an air quality standard has been violated or that someone has experienced health problems,” explaining that the General Assembly recognized that an “effective environmental protection system must prohibit even threats of air pollution.” *People v Panhandle Eastern Pipe Line Company*, 2001 Ill. ENV LEXIS 618, 68. The Board in the *Panhandle* opinion cited to Section 9(a) emphasizing the “threaten” and “tend to cause” clauses, as follows: (“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. . . .”) (emphasis added).” *Id.*

The aerial application using the field with farmworkers to make the turns during the middle of the application to the neighboring field, in combination with the toxic nature of the

agricultural chemicals carried by the plane, the variability of wind, and the proximity of the farmworkers, at a minimum, demonstrate that Respondents threatened the discharge of contaminants so as to tend to cause air pollution. Respondents' emissions of toxic agricultural chemicals during an application event on August 5, 2019, in combination with the foregoing factors, interfered with the "protection of the health...of people." 415 ILCS 5/33(c)(i) (2024).

Defendant's description of caselaw does not defeat this analysis. This is not a case where there is a question of where a particular odor came from or where credible evidence has been produced supporting an argument that the farmworker's harm was caused by another entity leading to a question of causation, as in the matters *Lonza* and *Craig*. Resp. Mot. at 10. In *Craig*, there was a question of whether bacteria in water that contributed to a fish kill was attributed to manure from Craig Farm or a combination of Craig Farm and municipal human waste. *Craig v. Pollution Control Bd.*, 56 Ill. App. 3d 65, 67-69 (4th Dist. 1978). Notably, in *Craig*, only the portion of the Board's finding of the responsibility for the fish kill was reversed, not the water pollution violation and thus a cease and desist provision and penalty was upheld despite there being two sources of contaminants in the water. *Id.* at 69.

In *Lonza*, citizen witnesses could not distinguish the source of the odors between two chemical plants located adjacent to one another. *Lonza, Inc. v. Illinois Pollution Control Bd.*, 21 Ill. App. 3d 468, 473-474 (3d Dist. 1974). The Court in *Lonza* does not explain why the facts in that particular matter did not support a finding under the clause, "either alone or in combination with other sources," as the Court does not discuss that provision anywhere in the opinion. See *Lonza* 21 Ill. App. 3d 468. The *Lonza* opinion does interpret Sections 33(c) and 31(c), the specific interpretation of 33(c) being disapproved of by the Illinois Supreme Court in *Processing & Books, Inc. v. Pollution Control Bd.*, 64 Ill. 2d 68 (1976), but *Lonza* does not include the description that

the respondent may respond by presenting evidence in support of other theories. Instead, the Court in *Lonza* provides that respondent may otherwise oppose the theories presented by the complainant. *Lonza*, 21 Ill App. 3d 468 at 472. Regardless, the flight of Respondents' plane over the field in which the farmworkers were observed is undisputed based on the GPS data and that activity, at a minimum, threatened the discharge of contaminants so as to tend to cause air pollution.

Respondents fail to even provide sufficient evidence that an application to the field in which the farmworkers were working, or the fact that the farmworker whose hat tested positive for constituents of Avaris worked in several fields, were alternative causes of the symptoms experienced by the farmworkers on August 5, 2019. See Resp. Ex. M. The email from Illinois Department of Agriculture stating that Avaris is also used in Corteva's field, without information regarding the date or time or method of application, does not support Respondents' theory that the harm the farmworkers experienced right after the plane flew overhead was caused by agrichemicals already present in the field. See Comp. Ex. 9 at 28:3-7 ("It was rare because whenever I worked in the fields, you know, I would touch my face and could touch mouth and nothing happened. But that day when I touched my mouth, and I touched my face, my lips got numb."). The fact that the same constituent found in Avaris, one of the products in the plane's tank, was detected on a farmworker's hat further supports that spray actually contacted the farmworkers from above. Insufficient evidence has been presented to support the argument that any residue agrichemicals from within the field in which the farmworkers were working caused the symptoms experienced by the farmworkers after the plane flew overhead on August 5, 2019.

Moreover, whether there was residue from a prior application already within the field is ultimately immaterial to whether Respondents caused, threatened, or allowed air pollution alone

or in combination with contaminants from any other source. Here, even if there was sufficient evidence supporting the argument that farmworkers were also impacted from residue in the field they were in or from a field they had previously been in, which there is not, the language of Section 9(a) of the Act, 415 ILCS 5/9(a) plainly prohibits a threat of discharge of contaminants either alone or in combination with contaminants from other sources. 415 ILCS 5/9(a) (2024).

B. The undisputed facts prove that Farm Air, Inc, and Curless Flying Service, Inc. controlled the source of the pollution and the safety protocols governing the aerial application conducted on August 5, 2019.

Complainant is required to show that Respondents had control of the source of the pollution. The owner of the source of the pollution causes or allows the pollution within the meaning of the statute and is responsible for that pollution unless the facts establish the owner either lacked the capability to control the source, or had taken extensive precautions to prevent vandalism or other intervening causes. *Perkinson v. Pollution Control Bd.* 187 Ill. App. 3d 689, 694-695 (3d District 1989).

Respondents admit to ownership of the plane. Resp. Ex. G at 52:20. Respondents admit to setting and implementing safety protocols. Resp. Ex. A at 30:4-19, 60:4-11; Resp. Ex. G at 49:13-50:1. Respondents admit to the flight pattern of the plane. Resp. Ex. Comp. Ex. 2 at 156:14-19; 165:10-14; Resp. Ex. D/Comp. Ex. 5. Respondents also admit that the crew supervisor “smelled something strange when the plane flew over the workers.” Resp. Mot. ¶ 25. After Respondent Farm Air, Inc.’s plane flew over the farmworkers while conducting Respondent Curless Flying Service’s aerial application, those farmworkers were evacuated from the field and 14 farmworkers went to the hospital. Resp. Ex. L. By using the field with farmworkers to turn the crop dusting plane during the course of the application to the neighboring field, Respondents caused, threatened, or allowed the discharge of contaminants into the environment so as to cause or tend to cause air

pollution, either alone or in combination with contaminants from other sources. 415 ILCS 5/9(a) (2024).

Respondent argues there is no evidence Farm Air had any involvement in the incident besides performing maintenance on the aircraft and the “two companies are separate entities and Farm Air’s only role is to maintain Curless’s aircraft.” Resp. Mot. at 11. Further, that there is “no evidence that any alleged emissions were caused by a fault in the aircraft’s maintenance or that the aircraft’s systems were not working properly.” *Id.*

However, Respondent Farm Air Inc., owned the source of the pollution, the plane. Ans. at 7; Resp. Ex G at 52:20. Respondent Farm Air, Inc. allowed the plane to be used in an aerial application conducted by Curless. Ans. at 7. Moreover, while they are two distinct companies, both Farm Air, Inc. and Curless Flying Service, Inc. 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 pilots. Resp. Ex. G at 49:13-50:1, 46:10, 51:20. Thus, Farm Air, Inc., as owner of the plane and with the owner and president Harley Curless also responsible for safety protocols and supervision of pilots at Curless Flying Service, Inc. is equally responsible for the control of the crop dusting plane used on August 5, 2019 and safety protocols adhered to during the aerial application. *Id.*

Both Respondents were capable of implementing a policy to ensure that if farmworkers are observed in a field, the use and pathway of a plane during an application must avoid flying over the field with farmworkers altogether. Resp. Ex. G at 49:13-50:1; Resp. Ex. B/Comp. Ex. 2 at 68:5-69:11; 70:15-19; 84:9; 95:1-21; 96:24-97:3; 97:7-98:17; Resp. Ex. A/Comp. Ex. 4 95:4-10 (describing the safety measures including inspecting areas surrounding an application field to confirm no one is around and stopping, delaying, or changing plans or the pathway for an

application if people are too close to a field, if the wind is blowing in the wrong direction, or if there are obstacles in the field). The pilot voluntarily did that in this case to avoid a truck, but did not do that to avoid people. Resp. Ex. B/Comp. Ex. 2 at 135:11-22; 170:8-171:19; See also Comp. Ex. 3. Because that caution was not exercised here, Respondents threatened air pollution and farmworkers were harmed.

Respondent argues there is “no evidence that Curless Flying Service, through its contracted pilot, caused any emission into Corteva Field.” Resp. Mot. at 11. Respondent Curless Flying Service, Inc. controlled the flight pattern of the plane, which included several swaths over the field in which farmworkers were working during the course of emitting the agrichemicals into the neighboring field. Resp. Ex. B/Comp. Ex. 2 at 154:15-22; 156:19; 165:14; Resp. Ex. D/Comp. Ex. 5. As described on pages 4-5, above, all of the farmworkers were evacuated and upon seeing the plane several farmworkers experienced an odor, felt spray, and subsequently went to the hospital. The aerial application using the field with 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, at a minimum, demonstrate that Respondents threatened the discharge of contaminants so as to tend to cause air pollution.

C. Respondents’ attempt to present the farmworkers testimony as contradictory or confused fails and does not refute that the undisputed pathway of the plane over the field with farmworkers was unreasonable, unsafe, and at a minimum threatened air pollution.

Respondents raise a video of a helicopter and a plane that appears blue and white to them in order to support the argument that the farmworkers were confused about which aircraft was attributable to their pesticide exposure. Resp. Mot. at 13. It is unclear what date and time those videos are from, but regardless those videos are immaterial to the question of whether Respondents

caused, threatened or allowed air pollution by using the field the farmworkers were working in to make turns of the plane during the aerial application to the neighboring field on August 5, 2019. The farmworkers' testimony of the harm they experienced when the plane flew over them supports Complainant's theory without video evidence. It is hard to imagine how video evidence could be captured while the plane was overhead and farmworkers were experiencing the agrichemical exposure and running out of the field. Videos taken after the incident or of a different incident are immaterial to the flight pattern of the plane, a fact that is not in dispute, and the harm the farmworkers experienced.

The timing of the observations and experiences of just a few of the farmworkers when the plane flew overhead more than once does not support the argument by Respondents that there is a question of where the pesticide contamination came from. Multiple reports, instead, demonstrate that the farmworkers were threatened by the aerial application, as follows:

- “then the plane ended up passing again...I told my dad to get out because they don't know what they are doing. And some of the workers are getting sprayed. There is people taking off their shirts.” Comp. Ex. 6 at 63:9, 18-20;
- “It happened all of a sudden. We were working when the plane appear spraying the pesticide.” Comp. Ex. 7 at 57:17-20;
- “They were spraying in another location, but I don't know if there was some kind of escape because we felt from the breeze we felt the pesticide.” Comp. Ex. 12 at 55:10-13;
- “It flew over us...they sprayed some chemicals. I don't know what they were, but they were hard on – on our eyes, on our throat, and our nose.” Comp. Ex. 13 at 13:16-20;
- “I heard the plane, I looked up and it was leaking. I felt it on my shirt.” Comp. Ex. 15 at 31:16-18; and,
- “[W]e were in the field when the plane passed over and sprayed. We left the field and waited a half hour to see what was going to happen. And about half an hour, the plane came again and sprayed again.” Comp. Ex. 17 at 26:16-20

Respondent's argument merely attempts to distract from the egregious event on August 5, 2019.

Finally, Respondents state that "one of the workers who sought medical treatment for vomiting admits that the airplane did not spray him." Mot. at 13. Adrian Perez testified credibly, explaining he did not believe he was sprayed but exposed to pesticides through the plane's activity, specifically describing "it's obvious that whoever flew that plane at that time on that day in that area caused people to be exposed to pesticides, including myself.... pesticides to my belief that were sprayed by an airplane were near or on the field that I was working at, and I was exposed to those pesticides." Resp. Ex. V at 56:4-6; 56:14-17. That is not inconsistent with farmworkers spread out in a field, in which all evacuated, several saw the plane, some smelled an odor, some experienced the spray, and others experienced symptoms despite not feeling the spray, some due to contact with family or others who had experienced spray. As described in Complainant's Motion for Summary Judgment and on pages 4-5 above, too many farmworkers did, in fact, experience a spray, smell an odor, and suffer symptoms after Respondents' plane flew overhead.

IV. CONCLUSION

The undisputed GPS data shows the plane flying over the field in which farmworkers were working several times. Significantly, the plane was not just flying overhead to get to and from a destination rather, the pilot flew over the field with farmworkers during the course of the aerial application to the neighboring field. While it is undisputed that the expert opined that the wind patterns support that an application *should* be safe to the east, that opinion does not take into account that the plane here used the field to the west while making turns. The east-west pattern of application that the plane used was in fact contrary to Respondents' stated safety recommendations that include stopping, delaying, or changing plans if people are too close to the field.

No reasonable person could conclude that flying a crop dusting plane several times over a field in which farmworkers were working in the course of conducting an application to a neighboring field separated by approximately one quarter of a mile did not cause, threaten, or allow the discharge of contaminants so as to cause or tend to cause injuries to human health or to unreasonably interfere with the enjoyment of life. Therefore, Complainant is entitled to judgment as a matter of law for the violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2024). Respondents' Motion for Summary Judgment should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Payton Calcara, under penalties as provided by law pursuant to §1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), certifies that the statements set forth in this certificate of service are true and correct, and that she has served a copy of the foregoing Notice of Filing, Complainant's Response to Respondents' Motion for Summary Judgment, containing 23 pages total by electronic mail before 5:00 PM on February 13, 2026 to:

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