ILLINOIS POLLUTION CONTROL BOARD

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

REPLY IN SUPPORT OF RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

NOW COME, Respondents, CURLESS FLYING SERVICE, INC. ("Curless"), and FARM AIR, INC. ("Farm Air"), by and through their attorney DYLAN P. GRADY, from BROWN, HAY + STEPHENS, LLP, and for their reply in support of their Motion for Summary Judgment state as follows:

I. RESPONSE TO MATERIAL FACTS

Both parties largely agree on the material facts at issue. The only major dispute raised by the Complainant is regarding Respondent's fact number 27, which states:

> The IDOA also obtained several videos from the workers, which depicted either a helicopter or a blue-and-white aircraft. (Ex. P, Moss Email 9.18; Ex. Q-Videos).

In response, the State argued that Exhibit P does not reference the videos, so it is unclear how the videos were obtained.

Respondent inadvertently attached the incorrect exhibit. Rather than attaching Moss's September 18 email, Respondent attached Moss's October 21 email. As a result, Respondent now attaches the correct email from Moss, which was sent to Mr. Revuelta on September 18, 2019. This email states, in relevant part: "It was brought to our departments attention that there may be some videos available concerning the incident. Would you be able to share those videos with our

office, as well as any other information you have available on the case?" (Ex. W, Moss email from September 18). The next day, Mr. Revuelta responded, in relevant part: "Attached is everything the workers gave me." (Ex. X, Revuelta email from September 19). The videos were obtained as part of the investigation conducted by the Illinois Department of Agriculture; an investigation that Complainant primarily relies on.

The State also incorrectly claimed that the videos were not produced with Respondents' Motion. The undersigned sent the State an email with a link to the exhibits and specifically mentioned that the videos were included in that linked folder. (*See* Ex. Y, Grady email to Briggs). Upon review of the folder, the videos were clearly marked as "Exhibit Q" and produced to counsel. (*See* Ex. Z, Screenshot of Exhibits List). If the State had issues opening the linked exhibits, then the State should have alerted the undersigned, rather than baselessly claiming they were never produced.

Finally, in response to the State's claim that the videos are not material, Respondent argues that the videos are relevant to the question of whether Curless caused air pollution. The State is required to prove this element, and the fact that the discharge was attributed to other aircraft is material to that element, as argued in the Respondent's Motion for Summary Judgment.

Further, Respondents dispute the State's claims that the wind speeds referenced in Mr. Gardisser's report were based on a point located 25 to 30 miles away from the application site. (*See* St. Resp. ¶ 39). Mr. Gardisser's report does reference the initial measurement taken that morning, but it also explains that he reviewed the GPS data and the fact that Mr. Ewing used smoke several times to monitor direction and speed. (Ex. J).

Finally, Respondents hereby incorporate their previously filed responses to the facts in the State's Motion for Summary Judgment.

II. ARGUMENT

In its Response, the State advances three arguments. First, the State claims that the Respondents failed to apply the full language of 415 ILCS 5/9(a) to the undisputed facts, as Respondents did not argue whether there was a "threat" of air pollution. Second, the State argues that there is sufficient evidence to show that Farm Air should be liable for the alleged air pollution. Third, the State argues that the reports from the farmworkers demonstrate that the workers felt threatened by the aerial application.

Throughout its argument, the State abandons its claim that the Respondents caused air pollution, instead focusing its attention on whether there was a "threat" of air pollution. The State's arguments should be rejected for several reasons. First, the mere threat of harm, without any evidentiary support, is not sufficient to show a violation. Second, the State presents no evidence to suggest that Farm Air, Inc. should be held liable to for any alleged air pollution. Finally, the State fails to present any reliable evidence to support its theory that Curless caused the harm alleged.

A. This Board should reject the notion that the mere threat of harm, without any evidentiary support, is sufficient to show a violation.

The Act prohibits people from committing acts which "[c]ause 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). The term "threat" in this context "refers… to the existence of a hazard, and is intended to permit the Board to act before the pollution actually takes place." *City of Des Plains v. Metropolitan Sanitary Dist. of Greater Chicago*, 60 Ill.App.3d 995, 1000 (1st Dist. 1978).

The petitioner bears the burden of proving this element by a preponderance of the evidence.

415 ILCS 5/31(e); *Rodney B. Nelson, M.D. v. Kane County Forest Pres., et al.*, PCB 94-244, 1996 WL 419472 (July 18, 1996), slip op. at 5. To do this, the State must allege facts which "would show a 'very definite danger' of pollution." *Metropolitan Sanitary Dist.*, 60 Ill.App.3d at 1000 (finding that the plaintiff did not meet its burden, where it did not present evidence that the pollution was likely to occur). This can be shown, for example, by presenting evidence that there were prior instances of pollution or other facts that tend to support the "definite danger" of the pollution. *Id.*

Speculation alone is not sufficient to meet this burden. *See Rocke v. Illinois Pollution Control Board*, 78 Ill.App.3d 476, 479 (1st Dist. 1979). For example, in *Rocke*, the Court held that the petitioners did not meet their burden of proof because there was "no prior conduct [which] was alleged to have occurred upon which any threatened violations could be inferred." *Id.* The mere possibility that pollution might occur was not sufficient. *Id.*

As the State concedes, the data demonstrates that the applicator was not turned at any point during his flight over the workers. (Ex. C). The State suggests that the threat of harm to the workers, even without actual injury, would be sufficient to meet its burden.

However, there is no evidence that the GPS data was inaccurate or that the applicators were malfunctioning. 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. (Ex. A at 56:19-58:19; Ex. B at 151:12-182:22; Ex. C). The GPS data from Mr. Ewing's flight reflects that the product was delivered only to Kopp Farms 94-acre soybean field. (Ex. D). Despite the admission that the sprayers were off during that portion of the flight, the State maintains that the flight path of the plane was sufficient to meet their burden of showing that there was a threat of discharge. The State's argument must

be rejected because it is based on speculation and is unsupported by any reliable evidence.

Additionally, the State has presented no evidence that the wind direction would have allowed the spay to drift toward the workers. Based on the wind speed and direction, the spray would have been carried in the opposite direction of the workers. (Ex. J, Dennis Gardisser Expert Report). The State's argument is based entirely on speculation that the air patterns *could* have allowed the spray to travel over the workers. The State presents no evidence to suggest that the wind patterns actually *did* change. This is precisely the type of argument that was rejected by the *Metropolitan Sanitary Dist.* and *Rocke* courts. Without some reliable evidence to support its argument, the State cannot meet its burden of proving that there is a "definite danger" of pollution, as required by this element.

The State's argument is flawed because it seems to imply that any business that operates with pollutants would violate the act simply by existing. Certainly, this type of speculation is not the result that the legislature intended when it prohibited the "threat" of air pollution. *See, e.g., Illinois State Toll Highway Authority v. Karn*, 9 Ill.App.3d 784, 790 (2d Dist. 1973) (noting that a similar argument that actions "might cause" air pollution was invalid because it would result in "the construction of virtually all new roads [being] barred" due to the potential for harm). As a result, this Court should reject the State's argument.

B. The State cannot demonstrate that the harm was caused by Farm Air.

In response to Respondents' arguments that the State cannot demonstrate that the air pollution was caused by the Respondents, the State begins by unsuccessfully attempting to distinguish a case relied on by Respondents: *Lonza, Inc. v. Illinois Pollution Control Bd.*, 21 Ill.App.3d 468 (3d Dist. 1974).

The State notes that the *Lonza* court's application of the factors outlined in Section 33(c)

was disapproved by the Illinois Supreme Court. (St. Resp. 13-14). However, Respondents never relied on *Lonza* for its application of the Section 33 factors. Instead, Respondents used *Lonza* to demonstrate the State's flawed argument as it relates to causation. (Mot. for Summ. J. at 10). The State makes no attempt to distinguish *Lonza*'s reasoning as to that point.

Confusingly, the State argues that the respondent may not respond to the allegations in the complaint by presenting evidence in support of other theories of causation. (St. Resp. at 13-14). The State suggests that the Respondent may only offer evidence relevant to the theories pled by the State in its Complaint. (*Id.*). This defies logic. Certainly, if there is evidence of another source, the Respondents should be able to produce evidence supporting the fact that another entity caused the pollution. Otherwise, all the State would have to do in order to prove its case is bury its head in the sand and pretend that there can be no other source of pollution other than the source it deems to be correct.

This bizarre argument by the State is based on a citation to *Lonza*, which the State characterizes as "not include[ing] the description that the respondent may respond by presenting evidence in support of other theories." (St. Resp. at 13-14). But *Lonza* instead states the opposite: "there can be little doubt but that the respondent may deny the allegations of the complaint, *may present evidence in support of his position*, may argue with respect to disputed factual issues and disputed inferences and may otherwise oppose the theories proposed by the complainant." *Lonza*, 21 Ill.App.3d at 472 (emphasis added).

Next, the State argues that Farm Air should be held accountable for the pollution. Respondents argued in their Motion for Summary Judgment there is no evidence that Farm Air caused or threatened to cause the pollution because it did not have any involvement beyond preparing the aircraft. Respondents pointed out that the two companies are separate entities, and

Farm Air's role is solely to maintain the aircraft that Curless uses, and no evidence supported the allegation that any alleged emissions were caused by a fault in the aircraft's maintenance or that the aircraft's systems were not working properly.

The State relies on *Perkinson v. Pollution Control Bd.*, 187 Ill.App.3d 689 (3d Dist. 1989), to suggest that ownership is sufficient to establish responsibility for the pollution. However, even the *Perkinson* court noted 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 693. In that case, the court 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. *Id.* at 694-95. The *Perkinson* court noted that Perkinson had control of the lagoons and the land where the discharge occurred, and there was no evidence that another entity had control of the relevant waste facility. *Id.*

The *Perkinson* court relied on *Phillips Petroleum Co. v. Illinois Environmental Protection Agency*, 72 Ill.App.3d 217 (2d Dist. 1979), in support of reasoning. In that case, a tank car of anhydrous ammonia owned by Phillips was under the sole control of the transporting railroad when it was punctured in a derailment and released poisonous gas into the air. *Id.* at 218-19. Since no evidence showed that Phillips—the alleged polluter—had the capability of controlling the pollution or was even in control of the premises where the pollution occurred, the appellate court affirmed a finding that Phillips did not cause or allow the pollution. *Id.* at 220-221.

These cases demonstrate precisely why Farm Air cannot be held liable. Farm Air was the owner of the plane, but it was not in control of the plane at the time of the alleged events. Even now, the State has presented no evidence to suggest that Farm Air improperly maintained the aircraft or that there was a malfunction in the aircraft spray system. As noted by Mr. Gardisser, the

valves on the plane are designed to "assure that no material may leak from an aircraft during any portion of the ferry or turn around operations" and, even if there were a leak, the pilot would be able to see or sense potential leaks. (Ex. J at 5-6). Because there was no evidence that Farm Air had control of the plane at the time of the occurrence or that there was a malfunction in the spray system caused by Farm Air's improper maintenance, it has not established that Farm Air caused any pollution.

C. The State does not present any reliable evidence that Curless caused or threatened to cause the pollution.

As it relates to Curless, the State argues that the evidence of the videos were insufficient to disprove Curless's involvement. The State also argues that the testimony presented by the farmworkers is sufficient to demonstrate that there was a threat of air pollution that was caused by Curless.

As it relates to the videos submitted by the farmworkers, the State argues that it is "unclear what date and time those videos are from." (St. Resp. 17-18). However, the relevant context for the videos comes from the IDOA investigation. Ms. Moss, an IDOA worker, emailed Mr. Revuelta on September 18, 2019, which stated, in relevant part: "It was brought to our departments attention that there may be some videos available concerning the incident. Would you be able to share those videos with our office, as well as any other information you have available on the case?" (Ex. U, Moss email from September 18). The next day, Mr. Revuelta responded, in relevant part: "Attached is everything the workers gave me." (Ex. V, Revuelta email from September 19). This email exchange demonstrates that the videos were produced during the investigation of this incident.

Moreover, although the workers can testify regarding their symptoms, they cannot testify as to the cause of their symptoms. 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." *Steele v. Provena Hospitals,* 2013 IL App (3d) 110374, ¶ 48. See also Ill. R. Evid. 701. Yet that is precisely what the State aims to do here. It seeks to admit evidence that the farmworkers were suffering from pesticide exposure, without any medical records or expert testimony to support their conclusions.

One of the most egregious examples of why this approach is flawed comes from Jose Zuniga. Mr. Zuniga did not believe he was sprayed, but later assumed that he was because he was experiencing some sort of symptoms. Ex. 11, Jose Zuniga Dep., 47:10-20; 49:16-20. Additionally, in his deposition, Adrian Perez admitted that he did not smell anything from the plane and did not get sprayed by anything. Ex. 19, Adrian Perez Dep., at 54:11-20. Finally, some of the witnesses ascribe certain physical symptoms to the aerial sprays despite having never seen a doctor to confirm their suspicions. *See* Ex. 10, Yadira Elena Sierra Zuniga Dep., 65:1-3.

These examples demonstrate why the State's evidence is inadequate. Lay persons do not have the training and experience necessary to determine the cause of their symptoms. Without a medical diagnosis to confirm the causation, the testimony from the workers regarding causation is unreliable and improper.

Just as in *Lonza*, the workers' testimony should be weighed against the objective evidence. When doing so, the workers' testimony is undermined by the reports of other witnesses, and by their own video footage. Additionally, it is not supported by the GPS, wind pattens, lack of positive test results indicating the presence of the mixture used by Curless, and the plausible alternate source for the chemicals that did test positive. Based on this objective evidence, the State cannot demonstrate that Curless caused the air pollution at issue. As a result, this Board should grant summary judgment for Curless.

III. CONCLUSION

WHEREFORE, Respondents CURLESS FLYING SERVICE, INC., and FARM AIR, INC., move this honorable Court to enter summary judgment in its favor and against the State, and for any other and further relief as the Court may deem proper.

Respectfully submitted,

Curless Flying Service, Inc., and Farm Air, Inc.,
Respondents

/s/ Dylan P. Grady

BROWN, HAY & STEPHENS, LLP
DYLAN P. GRADY (#6309120)
205 S. Fifth Street, Suite 1000
P.O. Box 2459
Springfield, IL 62705-2459
(217) 544-8491
dgrady@bhslaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that on February 27, 2026, a copy of the foregoing instrument was e-filed and served via email to the following:

Christina L. Briggs
Assistant Attorney General
Office of the Illinois Attorney General
500 South Second Street
Springfield, IL 62704
Christina.Briggs@ilag.gov

Illinois Pollution Control Board
Carol Webb
Attorney, Hearing Officer
Carol.Webb@illinois.gov
Don Brown – Clerk of the Board
Don.Brown@illinois.gov

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Dylan P. Grady

BROWN, HAY & STEPHENS, LLP
DYLAN P. GRADY (#6309120)
205 S. Fifth Street, Suite 1000
P.O. Box 2459
Springfield, IL 62705-2459
(217) 544-8491
dgrady@bhslaw.com

DEFENDANT'S EXHIBIT

W

Moss, Suzanne

From: Moss, Suzanne
Sent: Wednesday, September 18, 2019 11:44 AM
To: Revuelta, Edgar
Cc: John Teefey (John.Teefey@Illinois.gov); Doug Owens (Doug.Owens@Illinois.gov); Noyes, Kari; Brad Beaver (Brad.Beaver@Illinois.gov)
Subject: Case no.12332- aerial spray incident

Importance: High

Hi Mr. Edgar,

I understand that you are the contact person for a case we are working on in our Bureau pertaining to an aerial spray incident in Champaign County. It was brought to our departments attention that there may be some videos available concerning the incident.

Would you be able to share those videos with our office, as well as any other information you have available on the case?

Currently our office is still working on this case and any additional information would be helpful to us.

Thank you so much and I look forward to hearing back from you soon.

Suzanne Moss-Support Services Manager
Illinois Department of Agriculture/Bureau of Environmental Programs
John R. Block Bldg. | 801 Sangamon Ave, P.O. Box 19281 | Springfield, IL 62794
(o) 217-785-4754 (f) 217-524-4882 (TTY) 866-287-2999

www.agr.state.il.us – check out our website for more detailed information about IDOA!

DEFENDANT'S EXHIBIT

X

Moss, Suzanne

From: Moss, Suzanne
Sent: Thursday, September 19, 2019 10:15 AM
To: Revuelta, Edgar
Cc: Teefey, John; Owens, Doug; Noyes, Kari; Beaver, Brad
Subject: RE: Case no.12332- aerial spray incident

Thanks so much for sending these... we will add them to the case file.

Suzanne Moss-Support Services Manager
Illinois Department of Agriculture/Bureau of Environmental Programs
John R. Block Bldg. | 801 Sangamon Ave, P.O. Box 19281 | Springfield, IL 62794
(o) 217-785-4754 (f) 217-524-4882 (TTY) 866-287-2999

www.agr.state.il.us – check out our website for more detailed information about IDOA!

From: Revuelta, Edgar
Sent: Thursday, September 19, 2019 9:17 AM
To: Moss, Suzanne <Suzanne.Moss@Illinois.gov>
Cc: Teefey, John <John.Teefey@Illinois.gov>; Owens, Doug <Doug.Owens@Illinois.gov>; Noyes, Kari <Kari.Noyes@illinois.gov>; Beaver, Brad <Brad.Beaver@Illinois.gov>
Subject: RE: Case no.12332- aerial spray incident

Good morning Suzanne,

Attached is the everything that the workers gave me. I'll have to send it in multiple emails. Hope this helps. Let me know if you have questions.

Thanks,

Edgar Revuelta
State Monitor Advocate
State of Illinois - Dept. of Employment Security
1307 N. Mattis Avenue
Champaign, IL 61821
(217) 278-5724

IDES
ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY

DEFENDANT'S EXHIBIT

Y

Natalia Galica

From: Dylan P. Grady
Sent: Friday, January 16, 2026 3:26 PM
To: Briggs, Christina; carol.webb@illinois.gov
Cc: Natalia Galica; Judy A. Connor
Subject: People v. Curless Flying Service, Inc., et al., PCB 22-79
Attachments: Motion (Curless and Farm Air) for Summary Judgment.pdf

Attached please find Respondents Curless and Farm Air's Motion for Summary Judgment. Linked below please find the exhibits, including videos. All were filed with the Pollution Control Board, except for the videos which will be mailed or otherwise delivered via flash drive.

Curless & Farm Air MSJ Exhibits

Thanks,

Dylan

BROWN HAY + STEPHENS
ESTABLISHED 1828

Dylan P. Grady | Partner
217.544.8491 (Main) | 630.541.7348 (O)
Attorney Profile | LinkedIn | Firm Website
Assistant | Bookkeeping

DEFENDANT'S EXHIBIT
Z

OneDrive

Search

Dylan P. Grady > Documents > Administrative Hearings > Curle

Name	Modifie...	Modified
Ex. V - Dep of Adrian Perez.pdf	January 16	Dylan P. G
Ex. O - Davis email 11.22.PDF	January 16	Dylan P. G
Ex. N - Dep of Consuelo Perez.pdf	January 16	Dylan P. G
Ex. M - Davis email 10.24.PDF	January 16	Dylan P. G
Ex. L - Special Assignme...	January 16	Dylan P. G
Ex. K - DOL Complaint.PDF	January 16	Dylan P. G
Ex. J - Dennis Gardisser Expert Report.P...	January 16	Dylan P. G
Ex. H - Purchase order.PDF	January 16	Dylan P. G
Ex. F - Ewing License.PDF	January 16	Dylan P. G
Ex. G - Dep. of Harley Curless.pdf	January 16	Dylan P. G
Ex. E - Application Report.PDF	January 16	Dylan P. G
Ex. D - Flight Map Diagram.PDF	January 16	Dylan P. G
Ex. B - Dep. of Ewing.PDF	January 16	Dylan P. G
Ex. A - Dep. of Joe Curless.pdf	January 16	Dylan P. G
Ex. Q - Videos from Field Workers.zip	January 16	Dylan P. G
Ex. C - FarmAir Overhead Flight.mp4	January 16	Dylan P. G