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 Reply in support of Complainant's 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/
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BY: s/Christina L. Briggs

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Dated: February 27, 2026

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COMPLAINANT'S REPLY IN SUPPORT OF COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, hereby replies in support of Complainant's Motion for Summary Judgment.

OPPOSITION TO MOTION TO STRIKE

Respondents' motion to strike a portion of Complainant's argument should be denied. Complainant's motion for summary judgment did not assert a new claim or new facts not included in the Complaint. Rather, the undisputed facts prove both prongs of air pollution. The Complaint quotes Section 3.115 of the Act and defines "air pollution" to include the presence of contaminants "injurious to human, plant or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property." Comp. ¶30. The Complaint further alleges that Respondents discharged fungicide, insecticide, and fertilizer into the atmosphere and that workers experienced shortness of breath, burning and puffy eyes, nausea, vomiting, rashes, and loss of consciousness. Comp. ¶19-23. Those factual allegations are incorporated into the Count I Section which alleges Air Pollution under Section 9(a) of the Act. Comp. ¶24. Complainant's motion for

summary judgment relies on the same discharges, the same exposures, and the same pleaded symptoms; it simply argues that those facts satisfy the interference prong of the defined statute.

Respondents cite to *Abramson v. Marderosian*, 2018 IL App (1st) 180081, ¶ 51 and *Filliung v. Adams*, 387 Ill. App. 3d 40, 51 (1st Dist. 2008) in seeking to strike Complainant's argument that both prongs of air pollution have been proven by the undisputed facts in this matter. In *Filliung*, the plaintiffs admitted they had not named in the complaint all of the "restrictive practices and procedures" they later sought to challenge and attempted to contest practices that arose after the complaint was filed. 387 Ill. App. 3d at 51. The court emphasized that "[t]he existence or nonexistence of a practice is a fact," and if plaintiffs wished to place those new facts in controversy, they were required to amend their complaint. *Id*. Similarly, *Abramson* reiterates that a response to summary judgment is not the proper vehicle to assert new factual allegations that should have been included in the complaint, and that the trial court looks to the pleadings to determine the issues in controversy.

Here, unlike in *Filliung*, Complainant does not allege new emissions, new practices, new timeframes, or newly discovered conduct. The discharge of the pesticides and the resulting physical symptoms were pleaded from the outset. The motion does not introduce a new factual basis; it applies statutory language already included in the Complaint to those pleaded facts. Under *Filliung*, the impermissible act is adding new operative facts. 387 Ill. App. 3d at 51. Under *Abramson*, the defect lies in asserting factual allegations not contained in the pleadings. That is not what has occurred here.

The Illinois Pollution Control Board has recognized that physical symptoms are relevant in assessing whether emissions constitute an unreasonable interference with the enjoyment of life or property under Section 9(a). See *Local 3315 v. IFCO*, PCB No. 02-208, slip op. at 7 (Aug. 8,

2002); *Donetta Gott v. M'Orr Pork*, PCB No. 96-68, slip op. at 5 (Feb. 20, 1997). The symptoms alleged in paragraphs 19–23 of the Complaint, respiratory distress, eye irritation, nausea, rashes, and loss of consciousness, are directly relevant to that statutory inquiry. Complainant's motion for summary judgment does not expand the theory beyond the pleadings; it argues that the pleaded facts meet the statutory definition that was itself pleaded verbatim. Respondents' motion to strike a portion of Complainant's argument should be denied.

ARGUMENT IN SUPPORT OF COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT

Respondents admit to flying the plane over the field in which farmworkers were observed in the course of the aerial application of pesticide and fertilizer to the neighboring field. This action threatened the discharge of contaminants so as to cause or tend to cause air pollution in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2024). Complainant respectfully requests that the Board deny Respondents' Motion for Summary Judgment and grant Complainant's cross-motion.

I. Flying the plane in close proximity over the field with farmworkers during the application to the neighboring field posed a very definite danger of pollution.

There is no doubt or dispute that aerial applications of agrichemicals discharge contaminants and that Respondents conducted an aerial application of pesticide, including a restricted use pesticide, and fertilizer in close proximity to a field with farmworkers, using the airspace directly over the field with farmworkers to make its turns. The incident on August 5, 2019 cannot be credibly compared to routine activity of an airplane flying overhead or into O'Hare. Resp. Ex. A at 78:4-5. Nor is this a situation where a crop dusting plane was flying at a high altitude away from a site where an application occurred over an area where people may be located *once* to get back to an airport. The August 5, 2019 aerial application became air pollution in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) when the plane repeatedly flew directly over the field where farmworkers were observed, using the airspace directly above the farmworkers and

upwind of the farmworkers to make its turns. That is not normal. Resp. Ex. A at 95:4-10 (for close proximity, including within one quarter of a mile, Respondents would check if there are people around). Flying in close proximity to the farmworkers during the application to the neighboring field was an unreasonable and avoidable threat of air pollution in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) that ultimately did cause harm to the farmworkers warranting a significant civil penalty pursuant to Section 42(h) of the Act, 415 ILS 5/42(h).

Respondents argue that since the sprayer was off when the plane flew over the farmworkers, there was not a definite danger of pollution. Resp. Response at 15. Further, that something that "may" cause pollution does not arise to air pollution. *See Illinois State Toll Highway Authority v. Karn*, 9 Ill. App. 3d 784, 790 (2d Dist. 1973) (in the case of a new highway and associated traffic that would use the highway). Respondents' comparison to *Illinois State Toll Highway Authority* is inappropriate. The construction of a highway alone, and all the possible ways in which other entities may use that highway not leading to a definite danger of pollution does not compare to a situation in which a crop dusting plane containing agrichemicals is used to apply those chemicals and in the midst of the application knowingly flies over a field with farmworkers. The latter describes a definite danger of pollution.

On August 5, 2019, the plane repeatedly flew over the field with farmworkers. See Comp. Ex. 5. Respondents' argument regarding threaten fails in a scenario in which the plane is low to the field, and using the airspace with people below to make turns, literally turning the boom off and on as it passes over the field with people and back to the field where the plane applied agrichemicals approximately only one quarter of a mile away.

The pilot conducted a reconnaissance circle but failed to use that information to avoid flying over the field with the farmworkers thereby causing, threatening or allowing the discharge

of contaminants so as to cause or tend to cause air pollution. As the entities responsible for the plane, safety protocols, operation of the plane during the course of aerial applications, and supervision of the pilots, Respondents Farm Air, Inc. and Curless Flying Service, Inc. violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2024).

II. The flight pattern over the farmworkers was entirely unreasonable and the harm experienced by the farmworkers warrants a significant civil penalty.

Avoiding people is a necessary part of conducting aerial applications. It is possible to conduct aerial applications without flying directly over people while making turns back to the site of application. The requirement to ensure humans are not exposed to chemicals during the application is provided in the labels themselves.

Respondents admit that in 10 years they have not had to respond to a situation where workers complained about exposure to chemicals during an aerial application. Resp. Ex. G at 92:4-7. And, based on the safety precautions described by Respondents, including the ability to adjust plans for an aerial application based on the surroundings (Comp. Ex. 2 at 135:11-22; 170:8-171:19; Comp. Ex. 3) this was not a normal aerial application event.

Changing a flight pattern, even if that means the application will take longer, would have been a logical choice and could have been a requirement to use Farm Air's plane and part of Curless Flying Service's safety protocol. Delaying the application until the farmworkers were not in the neighboring field would have been a logical choice and could have been a requirement to use Farm Air's plane and part of Curless Flying Service's safety protocol. There is absolutely no reason that a person working in a field should be seeing a plane rise up, turn its booms off as it is heading directly over the field where that farmworker is, to turn around and turn the booms back on. See Resp. Ex. L. That is quite literally asking for human exposure to agrichemicals to occur and poses a definite danger of pollution.

Finally, Respondents ask the Board to both find that the farmworkers described symptoms were due to a different pesticide application and that the farmworkers description of their symptoms is an improper medical opinion and cannot be linked to pesticides at all. Rule 701 provides that the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. Ill. R. Evid. 701. Rule 701 "simply restates the general requirement that a witness must have personal knowledge of the matter to testify to it." *People v. Loggins,* 2019 IL App (1st) 160482, ¶ 79.

In fact, liability for air pollution has been found based on lay witness testimony describing bad odors. See *Darling & Co. v. Pollution Control Board,* 28 Ill. App. 3d 258, 264 (1st Dist. 1975). Here, the Complainant cites to the farmworkers' observations of the plane including seeing the plane fly directly over the field they were in (Comp. Mot. at 7), observations of the feeling of spray (Comp. Mot. at 7), observations of a smell (Comp. Mot. at 7) and physical symptoms felt after the observation of the plane, including eye irritation, dizziness, nausea, and breathing difficulty (Comp. Mot. at 8). The farmworkers' testimony of their observations and symptoms are based on their personal experiences on August 5, 2019. That those symptoms are consistent with the warnings for exposure from the agrichemical labels (Comp. Ex. 1) 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. And, as discussed in Complainant's Response to Respondents' Motion for Summary Judgment on page 14, Respondents fail to provide evidence to support that the farmworkers sudden symptoms after observing the plane were due to

any applications to the field they had been working in. At a minimum, there would need to be an application report produced to support Respondents' contention that another application was responsible for the farmworkers' symptoms, symptoms that are consistent with the warning labels for Sultrus, Avaris, and Coron. Comp. Ex. 1. Furthermore, the fact that one farmworker had worked in other fields does not explain away the multitude of symptoms described by the other farmworkers in the field on August 5, 2019.

While the actions of the Respondents involve a single occurrence on a single day, significant injuries were reported by the farmworkers based on Respondents' actions which warrant a significant civil penalty. The agreed upon material facts demonstrate that Respondents caused, threatened or allowed the discharge of contaminants so as to cause or tend to cause air pollution. The egregious facts in this matter, admitted to by Respondents when testifying about that day and the harm described by the farmworkers support a civil penalty of $100,000 jointly and severally. Complainant respectfully requests that the Board deny Respondents' Motion for Summary Judgment and grant Complainant's cross-motion.

Respectfully submitted,

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

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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 Reply in support of Complainant's Motion for Summary Judgment, containing 10 pages total by electronic mail before 5:00 PM on February 27, 2026 to:

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