

**Southern District of Florida Rules That Sugarcane Preharvest Burning is an Acceptable Agriculture Practice under the Right to Farm Act, but Allows Claims of Negligence Resulting from the Burning**

Florida Crystals Corporation (“Defendant”) owns about 400,000 acres of land in Florida where it harvests sugarcane. As part of the harvesting process, the Defendant conducts preharvest burning which burns off the outer leaves of the plants, making the harvesting and processing of the sugar cane easier later on. The preharvest burning can only be done after obtaining a burn permit from the Florida Forest Service for each burn. The burning creates several dangerous chemicals, along with smoke and ash, and eventually turns into “black snow”—a mix of the smoke, ash, and chemical compounds created by the burn—which travels to the surrounding area. The black snow can cause “property damage, such as discoloration of cars and buildings, and causes medical conditions, such as respiratory problems.”

Local Florida residents (“Plaintiffs”) who live near the Defendant’s sugarcane farm sued the Defendant, claiming that the preharvest burning caused both their property value to diminish and their health to be negatively affected. The Plaintiffs brought forward seven counts against the defendant: (1) negligence; (2) strict liability for ultrahazardous activity; (3) strict liability pursuant to section 376.313, Florida Statutes; (4) trespass; (5) nuisance; (6) medical monitoring; and (7) injunctive relief. On the other side, the defendant moved to dismiss the case arguing that the Plaintiffs lacked Article III standing, the Right to Farm Act (“RTFA”) barred all of the Plaintiffs’ claims, and the Plaintiffs’ claim for injunctive relief was barred by the primary jurisdiction doctrine.

The Court addressed each of these claims in turn. Addressing the standing question first, the Court found that the Plaintiffs had failed to show that they had been harmed by the Defendant. In its reasoning, the Court first stated that none of the case law cited by the Plaintiffs was binding and that all the cases dealt with pollutants in waterways—rather than air pollutants. While the injury was not required to be proven beyond a shadow of a doubt, the Plaintiffs were required to plead sufficiently enough to show the injury was fairly traceable to the defendant. The Court noted that Plaintiffs failed to properly allege standing, but granted them leave to amend.

Next, the Court discussed what claims, if any, were barred by Florida’s RTFA. The RTFA protects farm operations conducting “generally accepted agricultural” practices from nuisance claims unless certain exceptions are met. The Court stated that preharvest burning of sugar is an acceptable agricultural practice under the RTFA. However, the Court also noted that the RTFA did not block all claims made by the Plaintiffs. The Court dismissed the claims for trespass and nuisance under the RTFA, but ruled that negligence claims, statutory claims, and others were not barred by RTFA because they were not solely nuisance claims.

Third, the Court discussed the primary jurisdiction doctrine in relation to the Plaintiff's claims. The primary jurisdiction doctrine in Florida seeks to promote the expertise of agencies when resolving controversies by requiring parties to go through agency administrative proceedings before a court can review the issue. Here, the Court ruled that the claim for injunctive relief was barred by the primary jurisdiction doctrine because the Florida Forest Service had the exclusive authority to authorize, or block, burnings. The Court also ruled that the remaining claims—such as strict liability and negligence claims—were “well within the ordinary experience of judges and juries.”

With regard to the Plaintiff's ultrahazardous activity claim, while the Plaintiffs argued that burning carried such a high risk of harming other's properties that the Defendant should be held liable, the Court disagreed stating that the Plaintiffs failed to show how burning was *abnormally* dangerous. The Court reasoned that the damages claimed by the Plaintiffs—discoloration of buildings and cars due to the black snow—was not sufficient enough harm to fall under the category of “ultrahazardous activity.”

Lastly, the Court quickly rejected the Plaintiff's medical monitoring claim, stating that they had failed to meet the required elements to succeed. However, the Court granted the Plaintiff's leave to amend on this issue.