In the 1970's and 80's, most states passed “Right to Farm” laws in response to “urban sprawl.” The intent was to protect farmers from unjustified lawsuits brought by newcomers to the country who sued because they could not tolerate the smell. Indiana did the same in 1981 by enacting the “Right to Farm Act” (RTFA) to provide existing farms with legal immunity from lawsuits brought by neighbors who “moved to the nuisance.” Notably, the original RTFA did not protect farms that became nuisances after neighbors moved in due to “significant changes” in farm’s type, size, hours, or manner of operation. In those situations, the law afforded no protection to the offending farm because the neighbors had not moved to the nuisance, it came to them.

Since then, states’ right to farm laws have been subverted by the powerful meat and dairy industries to shield their newly built factory farms from lawsuits by impacted neighbors who were there first. Such is the case in Indiana where the RTFA was amended in 2005 to redefine what it means for an agricultural operation to undergo a “significant change” that would otherwise remove the RTFA’s protection. Now, a significant change no longer includes a change in the size, type, or ownership of an agricultural operation, no matter how extreme, offensive, or damaging that change might be.

In Indiana, courts have recently held that the RTFA shields even negligently sited factory farms from all liability for harm caused to existing neighbors so long as the factory farm follows regulations. Now, the decision to build a factory farm on vacant cropland next to long-established homes—no matter how unreasonable, extreme, and knowingly harmful—cannot be considered negligent conduct under the RTFA.

Unfortunately, even if a factory farm complies with all regulations, that does nothing to reduce harm to neighbors because the noxious air pollution released by factory farms is not regulated under federal and state clean air laws. Put another way, so long as a factory farm complies with the very regulations that allow it to confine thousands of animals, generate millions of gallons of animal waste each year, and blow the resulting stench and waste particles onto neighboring homes, the factory farm cannot be held liable for negligence under the RTFA.

This gap in regulation is precisely why factory farm owners must be held to the same negligence standard as everyone else—that is, the duty to use reasonable care not to harm others. This is especially so because Indiana has around 1,800 confined feeding operations that under current regulations: (1) have no limits on their air emissions; (2) have no restrictions on their size, number of animals or amount of waste they can generate; and (3) can be located within 400 feet of an existing residence, and just 100 feet from property lines including churches, schools, businesses, parks and other public places regardless of the amount of dangerous waste and emissions produced.

No other industry in Indiana has such an unlimited ‘right to harm’ like the livestock industry does. There is no other industry in Indiana that has been given a pass on having to use basic, reasonable care to avoid injuring people and their property. And no citizen in Indiana should have to forfeit their fundamental right to live in peace and dignity in their own homes so that a powerful industry can expand and pollute with impunity.

Accordingly, we are calling on the Indiana General Assembly to pass common-sense RTFA Reform that will restore the basic legal rights of our fellow rural citizens by:

- making clear that a switch from cropland to factory farm is a “significant change” if the change will unreasonably interfere with existing neighbors’ use and enjoyment of property, or will substantially diminish property values;
- requiring factory farm developers to use reasonable care in all aspects of siting, design, building, managing, and operating a factory farm to avoid injuring other people and property such that a failure to do so will remove the RTFA's protection.