

Hello all,

I appreciate the opportunity to submit my testimony to your committee. My name is Bella O'Connor, and I am an attorney practicing animal law. I have worked on a variety of cases that help defend communities against factory farm pollution, and I am concerned that the updated 'Right to Farm' bill (S.45) may give corporate agribusiness a free license to pollute some of our most vulnerable communities here in Vermont. Many individuals outside of my field are unaware that overly broad 'Right to Farm' laws (like the one before you) are the *primary* way that factory farms are able to poison local communities while evading legal consequences.

It is clear to me that something very bad is happening to the agricultural sector in Vermont. Currently, small farms in Vermont are being economically bullied out of existence, and large, industrial farms are taking over. None of our state's factory farms are complying with federal water regulations. Two senators (both of which receive a disproportionate amount of money from people *who do not even live in Vermont*) have aligned themselves with corporate agribusiness, and have introduced bills that would weaken our pollution laws. Republican officials are frightening farmers into believing they will be sued over something that is not even legally possible. Plus, all of this is happening at a time where Vermonters are desperate to expand our agricultural industry. I do not believe this is a coincidence.

In fact, these steps are all part of the industry playbook. These are the exact methods that JBS, Tyson, and Purdue used to exploit the Carolinas and the Midwest— all areas that are now dominated by factory farms and rife with cancer. I believe that the Vermont legislature is being conned into creating the perfect conditions to expand industrial farming in our state under the guise of "protecting small farmers," and S.45 is just part of that plan.

Below, I will outline why I believe this is happening, and how we can make one modest change to the bill that will stop the issue.

What I like about S.45

First, I would like to say that this bill does several important things to help Vermont farmers. For example, it ensures that farmers seeking to diversify are not subject to litigation solely because they have altered their practices, and also removes the legal burden on farms subject to suit by abolishing the outdated "rebuttable presumption." However, it also creates new, potentially dire problems.

What I dislike about S.45

This new version of the bill will prohibit all parties from filing a private nuisance action against a farm so long as all farm activities are “conducted in accordance with generally accepted agricultural practices.” Additionally, the prohibition would be lifted if a farm negligently creates a nuisance in violation of existing law.

At first glance, this appears to be reasonable. The bill asserts that no farm activity can be deemed a nuisance or trespass so long as it complies with industry standards. However, this makes the false assumption that farms engaging in common agricultural practices cannot cause harm. Simply because a practice is “common” does not mean that it is safe. Moreover, farms may be running in complete compliance with state and federal pollution requirements and *still* create life-altering levels of pollution. To best illustrate this issue, I would like to share a story.

While I was working at my first legal clinic, I had a client named Maria. Maria told me that earlier in her life she was living in a rural area of the United States when a factory farm that raised poultry moved right next door to her. Ultimately, the amount of feces the farm produced was astronomical and ended up polluting the water in her area to an unimaginable degree. She told me that the water was so dirty that when she would give her son a bath he would get blisterous rashes all over his body— just from spending too much time sitting in the filthy water. It wasn’t until her child’s pediatrician expressed serious concerns about her son’s health that she decided she absolutely had to move. Consequently, Maria and her family left everything behind. Years later, her old house still sits there...completely abandoned. This was a tremendous financial burden on the family because not only did they have to find a new place to live, but because they are still liable for that property (which now has a commercial value of zero because no one in their right mind is ever going to move into a polluted neighborhood) she is forced to continue to pay taxes on the home that she is unable to live in. If she doesn’t, she will be forced to file for bankruptcy.

Unfortunately, Maria was unable to seek legal help. Although the farm had a problem with agricultural runoff that seriously harmed her family, this factory farm was operating in full compliance with state and federal laws— nearly identical to that of Vermont’s. Furthermore, her state’s Right to Farm Law prohibited her from filing a private nuisance suit, because the farm was not engaging in any “uncommon” practices that deviated from “industry standards.” In sum, nothing about this operation was unusual. It operated just as every other Concentrated Animal Feeding Operation in the country does. Yet, the damage this farm caused was unfathomable.

The Main Takeaway

Although this story may sound shocking, it is all too common. According to the EPA, agricultural operations are the #1 source of water pollution in the United States– even when they are completely legal. We should not allow what is “common” to determine what is *right*. We shouldn’t be asking if a practice is “generally accepted” but rather, if it has a “substantial adverse effect on health, safety, or welfare” to the community or neighboring property owners. Unfortunately, the Senate has chosen to remove that language from the bill.

If we allow the industry to regulate itself in Vermont, we are creating a perfect storm for corporate agribusiness to exploit our communities– just as they have done in countless other parts of the country. Factory farms are most likely to move into environments that are rural, economically vulnerable, lack industry, are seeking to expand agricultural sectors, and that have “lax” pollution laws. Passing this updated ‘Right to Farm’ law would invite these multinational conglomerates into our state. If we want to keep factory farms out of our neighborhoods, we have to give citizens the right to pursue action for operations that cause real and lasting harm.

For these same reasons, the Conservation Law Foundation, the Vermont Natural Resources Council, a variety of small farmers who are committed to responsible stewardship, and environmental law & policy experts strongly oppose this bill.

Moreover, in recent years we have seen increased consolidation of the agricultural industry in Vermont– particularly that of dairy. It is an open secret that many of these farms are turning into industrial operations that are far from the bucolic landscape that we associate with traditional farming methods here in our state. This is intentional. Huge corporations are driving independent farmers out of the market, and they seek to make industrial operations the only viable option.

Notable History

Since Vermont’s ‘Right to Farm’ law was enacted almost 40 years ago, there have only been *three* successful lawsuits that sought legal action against a farm for a private nuisance violation– and only one of them has been brought in the past 20 years. In the first case, one defendant openly admitted to poisoning his neighbors property intentionally. In the second case, the Right to Farm law was not even applicable because the pollution was caused by ‘non-farm’ activities, and the defendant was liable for private nuisance for unrelated actions. Consequently, the outcomes of these first two suits pose no danger to Vermont farmers.

The final lawsuit has been discussed in-depth during both Senate and House hearings, so I won't rehash what has already been discussed for hours. However, it is *abundantly* clear that the final lawsuit was an outlier case in which one of Vermont's largest and wealthiest farms caused extreme damage to a neighboring property, and this suit is *not* representative of why Vermont farms are struggling.

Vermont farms are facing major challenges. Rising production costs, insurance and subsidy losses, unfair federal pricing, inconsistent regulation across the state, limited access to markets, rising land prices, industry consolidation... just to name a few. No agricultural interest group in Vermont, or any other body in all of New England, cites the 'Right to Farm' law as an *actual* reason why Vermont farmers are struggling. There is no data to support that claim.

Sen. Samuel Douglass, the bill's lead sponsor, told the Senate Judiciary Committee last month "right now in Vermont, we have a lot of issues with people moving in, and that's great, but they move in and then will complain about the smell of the farm that's next door, that they moved in next to. A lot of those farmers are worried about getting sued." Despite the Senator's concerns, this could not be farther from the truth. Not a single case brought before a Vermont court has ever shown that a person has sued a farm because they didn't like the way it smelled. In fact, a hypothetical "smell" suit would be prohibited under the current or proposed version of Vermont's Right to Farm Law. This rhetoric is rooted in pure myth.

What's interesting is that the threat of a "smell suit" is a commonly used piece of propaganda from the pork industry. The same industry that gave thousands of families respiratory diseases from chronic air pollution issues and had to pay millions of dollars in damages for permanently damaging children's lungs. So, why promote industry scare tactics? Why scare farmers into thinking they will be sued for something that isn't even legally possible? I believe that corporate agribusiness is attempting to bring more factory farms to Vermont, and passing S.45 would only make it easier for them.

Our Current Climate

Federal environmental law requires farms that are considered Confined Animal Feeding Operations to obtain permits if they are discharging effluent into state waterways. But, in September, the EPA wrote in a letter to Vermont that "no individual CAFO permit has been issued to a facility even though there are 37 large CAFOs within the state, 104 medium, and 1,000 small size farms that are potential CAFOs." We have approximately 40 large-scale factory farms in our state, housing thousands of animals in one location,

that are operating with absolutely no permit. They are not reporting their pollution levels, and that is a *massive* issue. Coincidentally, another Senate bill (S.118) was recently introduced, and would remove permitting requirements from stormwater runoff from farms— meaning even *less* pollution would be documented, and fewer farms (even industrial, factory farms) would not have to report this form of water pollution. This bill's primary sponsor is Kesha Hinsdale, who is known to take corporate PAC money.

At the same time, Sam Douglass (whose campaign finance reports show that he has received thousands of dollars from out of state donors) has introduced S.45 which would remove a citizens' ability to sue when agricultural pollution causes "substantial adverse effect on health, safety, or welfare." He is also using rhetoric and fear-mongering propaganda commonly employed by one of our nation's most corrupt agricultural institutions: The National Pork Producers Council. Lastly, a recent Vermont Digger article has confirmed that due to increasingly dire economic conditions, many of the surviving farms have had to decide whether to "get big or get out."

Isn't it interesting that all these events are happening at the same time?

To summarize: Small farms in Vermont are being economically bullied out of existence, and large, industrial farms are taking over. None of our state's factory farms are complying with federal water regulations. Two senators (who receive a disproportionate amount of money from people *who do not even live in Vermont*) are aligning themselves with corporate agribusiness, and have introduced bills that serve as the *primary* way that factory farms are able to poison local communities while evading civil litigation in other states. Plus, this is all happening at a time when Vermonters are desperate to expand our agricultural sector. And we are to believe that all of this is a coincidence?

I truly believe that the Vermont legislature is being conned into writing laws that are designed to promote and expand factory farming in our state under the guise of "helping small farmers." This is exactly what has happened in the Carolinas and the Midwest. Please, do not be deceived by these tactics.

How to fix this problem

As written, the bill should not be passed. The proposed version states that no agricultural activity can be considered a nuisance so long as it is in "accordance with generally accepted agricultural practices." However, as discussed, just because a practice is *common* does not mean that it cannot be *harmful*.

Instead, the appropriate standard should be: Nuisance suits may be barred so long as a farm does not have a “substantial adverse effect on the health, safety, or welfare” of the neighboring community or property owners.

This is a perfectly reasonable and appropriate standard.

If we allow the industry to regulate itself in Vermont, we are creating a perfect storm for corporate agribusiness to exploit our communities.

Factory farms are most likely to move into environments that are:

- Rural
- economically vulnerable
- lack industry
- are seeking more agricultural opportunities
- and that have “lax” pollution laws

Passing this updated ‘Right to Farm’ law would practically invite multinational conglomerates into our state. If we want to keep factory farms out of our neighborhoods, we have to give citizens the right to pursue action for operations that cause real and lasting harm. We **have** to honor a citizen’s right to sue someone who has poisoned them. Passing this law will not protect farmers. It will only embolden the *wrong* kinds of practices from infiltrating Vermont. Please, amend this bill.

Lastly, I have attached an article from Harvard Law School that highlights how poorly crafted Right to Farm laws lead to rampant pollution and environmental justice issues. It may be informative when making your decision and meeting with your co-legislators.

With much appreciation,
Bella O’Connor