



Agricultural Law Update

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Court of Appeals Upholds the Indiana Right to Farm Act

In 1981, Indiana passed the “Right to Farm Act,” a law that protects farmers from “nuisance” suits, provided the operation is in a rural locale and has been in operation for more than one year when the alleged nuisance began. *See* I.C. § 32-30-6-9. In 1987, *Shatto v. McNulty*, 509 N.E.2d 897 (Ind. Ct. App. 1987) provided an illustration of the Act’s protections—a non-farming rural resident attempted to shut down his neighbor’s hog farm because it smelled like manure. The Court of Appeals applied the Right to Farm Act, stating: ***“We must observe that pork production generates odors which cannot be prevented, and so long as the human race consumes pork,***

someone must tolerate the smell.”

Since the 1981 passage of the Right to Farm Act and the subsequent *Shatto* case, the Iowa Supreme Court struck down a similar Right to Farm Act in Iowa as unconstitutional in *Bormann v. Bd. of Supervisors*, 584 N.W.2d 309 (Iowa 1998). The Iowa court held that the Iowa Right to Farm Act created a government “taking” of property with out compensation because the Right to Farm Act allows a farmer to fill the air above his neighbor’s property with the smell of manure and other farm odors.

On January 12, 2009, the Indiana Court of Appeals addressed *Bormann* in *Lindsey v.*

DeGroot, 898 N.E.2d 1251 (Ind. Ct. App. 2009). Don and Jacquelyn Lindsey moved to rural Indiana in 1998, purchasing ten acres in Huntington County. Neither Don nor Jacquelyn were farmers when they moved into the country and they paid little attention to the small old hog farm approximately one-half mile away. But a few years later, the old hog farm was sold to Johannes DeGroot, who converted it into a modern 1500 cow dairy farm. After the dairy farm had been in operation for more than one year, the Lindseys filed suit alleging “nuisance”—the farm created unpleasant smells, noise, and flies on the Lindseys’ property. DeGroot Dairy asserted the

continued on page 2

Agriculture Task Force Releases Report

In late 2007, Lt. Governor Becky Skillman commissioned the “Indiana Agriculture Regulatory Structure Task Force” to study those agencies that regulate agriculture in Indiana and report as to what structures worked efficiently and what structures contained

overlaps, gaps or needed to be fixed. After more than a year of interviews with agency officials, industry and environmental stakeholders, and concerned citizens, the Task Force released its report in early 2009.

You may view the report at: http://www.in.gov/lg/files/Ag_Reg_Task_Force_Final_Report010709.pdf.

The Court of Appeal's ruling means Indiana Courts will continue to uphold farmers' rights to raise livestock in rural Indiana without fear of nuisance suits.

continued from page 1
Right to Farm Act as a defense.

The Lindseys challenged the Indiana Right to Farm Act's constitutionality, asking the Indiana Court of Appeals to apply the reasoning of *Borrmann*. Citing precedent from Texas and Idaho, the court wrote: ***"We note that like the Idaho and Texas Courts, we have found nothing to suggest that Indiana has adopted the seemingly unique Iowa holding the right to maintain a nuisance is an easement."*** Indiana's Right to Farm Act is constitutional and applied to bar the Lindseys' nuisance claim.

The Lindseys also claimed that their nuisance case fell under the "negligence" exception to the Right to Farm Act. The Right to Farm Act does not apply where the nuisance

results from the negligence of the farming operation. The Lindseys pointed out that DeGroot Dairy had had regulatory violations under the Indiana Department of Environmental Management's (IDEM) confined feeding operation (CFO) rules. The Lindseys claimed that an alleged manure spill, occurring a mile downstream from their home, was a statutory violation that interfered with the use of their property.

The Court of Appeals looked back to *Town of Montezuma v. Downs*, 685 N.E.2d 108, 112 (Ind. Ct. App. 1997), where a pipeline company had failed to follow statutory regulations, resulting in gas explosion destroying a home. The court held the violation of a statutory duty may be actionable where it was "the proximate cause of the in-

jury." *Id.* at 112.

The court applied *Montezuma* to the Lindseys' claims. The court held that the statutes allegedly violated, IDEM's CFO regulations, were intended to protect Indiana's surface and groundwater, but the Lindseys had no evidence that their groundwater had been impacted by any alleged manure spill. There was no link between the alleged statutory violations for a manure spill and the Lindseys' nuisance claim.

The Court of Appeal's ruling means the end of the Lindseys' "nuisance" suit. It also means that Indiana Courts will continue to uphold farmers' rights to raise livestock in rural Indiana without fear of nuisance suits.

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