

**U.S. Environmental Protection Agency
Statement for the Record
Committee on Energy and Commerce
Subcommittee on Environment
United States House of Representatives**

November 9, 2017

Farm Regulatory Certainty Act

Although the Administration does not have an official position on the Farm Regulatory Certainty Act, the EPA is providing the following summary of the bill, and background on the environmental law that it would amend, to assist the committee in considering this legislation. The stated intent of the bill is to amend the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act, known as RCRA) to clarify the citizen suit provisions with respect to the use of manure or crop residue as a fertilizer or soil conditioner at an agricultural operation.

RCRA contains two different citizen suit provisions. Section 7002(a)(1)(A) provides for citizen suits to address alleged violations of RCRA requirements, including regulations, permits and orders. Section 7002(a)(1)(B) provides for suits to address “imminent and substantial endangerment” to human health or the environment.

The current citizen suit authority also specifies certain EPA or state actions that bar citizen suits from proceeding. For the imminent and substantial endangerment suits under section 7002(a)(1)(B), a citizen suit is generally barred if, as to the alleged endangerment, **EPA**:

- is diligently prosecuting an action under RCRA § 7003 or CERCLA § 106;
- is engaging in a removal action under CERCLA § 104;
- has incurred costs for remedial investigation under CERCLA § 104 and is diligently proceeding with a remedial action; or
- has obtained a court order or issued an administrative order under CERCLA § 106 or RCRA § 7003 under which a responsible party is diligently conducting investigation, removal or remedial activities.¹

A citizen suit under section 7002(a)(1)(B) also is generally barred if, as to the alleged endangerment, **the state**:

- is diligently prosecuting a citizen suit under RCRA § 7002(a)(1)(B);
- is engaging in a removal action under CERCLA § 104; or
- has incurred costs for remedial investigation under CERCLA § 104 and is diligently proceeding with a remedial action.²

¹ RCRA § 7002(b)(2)(B).

² RCRA § 7002(b)(2)(C).

This bill would add to these statutory bars. The new section would bar any “imminent and substantial endangerment” citizen suits pertaining to (1) manure or crop residues returned to the soil as fertilizer by an agricultural operation, or (2) storage of manure or crop residue for such use, when they contributed to the activities which may present an endangerment, in two situations. Suits would be barred if either EPA or the state:

- is diligently prosecuting a civil or criminal court action against such agricultural operation; or
- is diligently conducting an administrative proceeding against, or has entered into a consent agreement with, such agricultural operation.

Unlike the current statutory bars, the EPA or state actions that would bar a citizen suit under this bill are not limited to RCRA or CERCLA actions. Thus EPA and state actions under other statutory authorities could bar the types of citizen suits affected by this bill. Because states can bring RCRA citizen suits, the bill could also bar states from bringing action under section 7002 where EPA is already acting.

The bill does not bar citizen suits for regulatory violations arising from the covered activities. But the hazardous waste regulations under RCRA subtitle C exclude animal and crop waste from the definition of “hazardous waste” when they are “returned to the soils as fertilizers.”³ Similarly, EPA’s solid waste regulations under RCRA subtitle D explicitly “do not apply to agricultural wastes, including manures and crop residues, returned to the soil as fertilizers or soil conditioners.”⁴ Thus there are unlikely to be many citizen suits filed under section 7002(a)(1)(A) alleging regulatory violations for the spreading of manure or crop residue for fertilizer at an agricultural operation.

The EPA appreciates the opportunity to provide this written statement on the Farm Regulatory Certainty Act. The agency stands ready to offer our technical assistance to the Committee.

³ 40 C.F.R. § 261.4(b)(2).

⁴ 40 C.F.R. § 257.1(c)(1).