

**OPPOSE the FRC ACT: The so-called “Farm Regulatory Certainty Act”  
(a.k.a. the “Freedom to Ruin Clean Drinking Water” Act)**

*Huge factory farms are located in rural areas where citizens often depend exclusively on private wells to supply them, and their families, with clean drinking water. These facilities, which house tens and even hundreds of thousands of animals adjacent to homes, schools and businesses, produce extraordinary amounts of waste. While most of these operations are good neighbors and manage waste appropriately, those that do not pose serious threats to public health, including contaminating water with nitrates and bacteria that lead to increased rates of infant deaths, birth defects, and cancer. Forty years ago, Congress passed the Resource Conservation and Recovery Act (RCRA) to ensure that all wastes, including animal wastes, do not endanger communities. When other environmental statutes provide no recourse, RCRA allows citizens threatened by an imminent and substantial danger to sue a polluter. If they win a lawsuit under RCRA, citizens do not receive money. Rather, the polluter is required to fix the problem.*

**This Discussion Draft:**

- **Creates a loophole for even the worst actors:** As long as a facility is engaged in any sort of vague, undefined “administrative proceeding” for anything related to agricultural waste, no citizen can bring a RCRA enforcement action against it. For example, an industrial polluter facing a minor reporting violation could inflict wildly disproportionate (and unrelated) harm on a community without any accountability. That’s like saying someone gets a free pass for a hit-and-run if she is currently contesting a speeding ticket.
- **Pulls a bait-and-switch:** The legislation’s sponsors purport to be “clarifying,” yet the language makes profound statutory changes designed to eliminate the legal rights of rural communities that are harmed by industrial pollution and have no other recourse to fix the problem.
- **Slams the courthouse doors in the faces of communities with no other options:** The actions targeted by this bill are last resort options used in only the most extreme cases when no other remedies are available. Without this option, communities are completely reliant on the government to fix the problem.

**Setting the record straight: this bill would lower citizens’ protections against industrial pollution.**

- **Farmers do NOT face “double jeopardy” under RCRA and other laws.** RCRA *already* includes a “nonduplication provision,” which ensures it fits together with other environmental statutes like puzzle pieces, without overlap.
- **RCRA already contains protections against frivolous, duplicative, or unnecessary litigation, which have worked effectively for decades.** Citizen suits under RCRA are prohibited when EPA or the State are engaged in diligent prosecution of the polluter.
- **RCRA does not apply where the Clean Water Act (CWA) applies.** The same pollution is generally not covered by both the CWA and RCRA. These statutes have always addressed different harms.
- **RCRA *already* exempts manure or crop residue that is going to be reused** (i.e. returned to the soil as fertilizer or soil conditioner). Only manure that is disposed of, rather than used, opens the door for RCRA violations.

**Congress Must Protect the Resource Conservation and Recovery Act  
So Citizens Can Protect Themselves**

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**Factory Farms**

Factory farms—known technically as Concentrated Animal Feeding Operations (CAFOs)—are the largest animal agriculture operations. Each facility typically holds thousands, tens of thousands, or even hundreds of thousands of animals. The U.S. Environmental Protection Agency (EPA) estimates that there are approximately 20,000 CAFOs in the country, making up only a small percentage of the nation’s farms.

Because CAFOs confine so many animals at once, they produce much more manure than can properly serve as a fertilizer in one place. **One herd of 11,000 dairy cows produces as much waste as a city of more than 1.8 million people—more than the population of Philadelphia.** While urban human waste undergoes treatment before it is discharged or applied to land, typically animal waste from CAFOs is never treated. Instead it is spread or sprayed on land, stored in large lagoons, or indiscriminately left in piles, allowing it to leach into water resources. This waste includes animal feces and bodily fluids and is laden with chemicals like nitrogen, pathogens, and veterinary pharmaceuticals including antibiotics.

**The Cow Palace Dairy Case**

The citizens of Yakima Valley, Washington battled five CAFOs that were contaminating drinking water with nitrates. For nearly 15 years, the citizens asked the EPA and state agencies to protect their drinking water. The largest of these dairy facilities, Cow Palace, confines 11,000 cows and produces more than 7 times the quantity of waste as the County’s human population. In 2012, the EPA concluded that these dairies caused more than 60 percent of the nitrate pollution in the county’s drinking water, but took no action. EPA entered into a consent decree with these facilities, but it was insufficient to protect drinking water; it did not solve the problem. Left with no other recourse, local group Community Association for Restoration of the Environment and the Center for Food Safety brought a lawsuit.

The court found that the dairies were not following the rules; they disregarded the very nutrient management plans designed to ensure they applied their manure properly as a fertilizer. In other words, rather than using manure as a benefit to the land and crops, the dairies were simply discarding millions of additional gallons of it that leached into groundwater. This resulted in groundwater that dangerously exceeded the EPA’s nitrate limits. The court concluded the dairies were dumping waste into the environment and causing an imminent and substantial endangerment to public health, and the dairies agreed to settle the lawsuit. As a result, for the first time in 15 years, the community is guaranteed safe drinking water.