

Opening Statement of the Honorable John Shimkus
Subcommittee on Environment
Hearing on “H.R.____, the Farm Regulatory Certainty Act”
November 9, 2017

(As prepared for delivery)

The Subcommittee will now come to order.

I want to thank our witnesses for joining us today – especially my colleagues from Washington and California. The Discussion Draft that we are considering today is an outgrowth of Mr. Newhouse’s bill, H.R. 848.

I want to mention that even though they were not able to send someone today to present testimony in person, the Environmental Protection Agency provided a written statement to be included in our hearing record. [I seek unanimous consent to enter EPA’s statement into the record. So ordered]. The Agency has also agreed to taken written questions from Members for our hearing record.

I now recognize myself for 5 minutes for giving an opening statement.

Today, we consider the intersection of our environmental laws with modern agriculture. Agriculture plays a significant role in my District, as it does in many of our Districts. My District is the 17th largest Congressional district in the country in terms of farm operators and number of farms. Agriculture covers 7.5 million acres in my District. I know my colleagues began this effort because of some cases involving dairy farms, but this bill would also help hog farmers who are trying to do the right thing. My District can also lay claim to the largest pork producing county in Illinois – Clinton County – which has roughly 230,000 hogs.

The Resource Conservation and Recovery Act was enacted in 1976. Congress specifically addressed agricultural operations and clearly intended to include certain agricultural practices, but at the time Congress was focused on waste disposal practices that resulted in open dumping. In the legislative history of RCRA the Committee specifically noted that RCRA was not intended to apply to an agricultural operation that returns manure or crop residue to the soil as for fertilizer or soil conditioner because if it was reused, it was not discarded and therefore, not solid waste.

Likewise, in its regulations implementing RCRA, EPA also determined that manure and crop residue, if returned to the soil as fertilizer or soil conditioner, are not solid waste.

As a result, agricultural operations are not regulated under RCRA. Rather, they are typically regulated under the Clean Water Act, the Safe Drinking Water Act, or similar state regulatory programs.

Most farmers are good stewards of the soil – but not all. There are some who cut corners or do not store or apply manure in a way that complies with the appropriate agronomic practices or with applicable permits and regulations. In the case of agricultural operations that mishandle manure, the applicable regulatory process should be allowed to play out. The regulator governing the operation is responsible for the agricultural operation's compliance. The regulator should be able to work with the agricultural operation to bring them into compliance. The use of RCRA citizen suits as a hammer to force compliance should only be used as a last resort. If the operator is working with the regulator to come into compliance, then a RCRA citizen suit on top of whatever action is being taken by the state or federal government under the appropriate regulatory program, feels punitive.

The Discussion Draft is sponsored by Mr. Newhouse who has been diligently working on this issue for many years. The purpose of this bill is not to shield agricultural operations from RCRA citizen suits, but rather to ensure that if state or federal regulators are otherwise seeking compliance through civil, criminal, or administrative actions and the agricultural operation is trying to be a good actor by working with the regulator and has entered a consent agreement or order, then a RCRA citizen suit may not be initiated. If the state or EPA are not diligently taking action to obtain or ensure compliance, the bill does not preclude citizen suits.

I thank my colleagues for being here today to talk about their legislation and I thank our second panel which is comprised of someone who knows firsthand the impact of duplicative RCRA suits on dairy farms, an experienced environmental attorney who has handled a number of RCRA citizen suits as well as agricultural issues, an attorney who handles public justice and food safety issues, and a representative from an environmental stewardship organization.

With that, I yield back my time and now yield to my friend from New York, the Ranking Member of the Subcommittee, Mr. Tonko.