

**Opening Statement of Ranking Member Paul Tonko  
House Committee on Energy and Commerce  
Subcommittee on Environment  
Hearing on H.R. \_\_\_\_, the Farm Regulatory Certainty Act**

*November 9, 2017*

Thank you, Mr. Chairman, and thank you to our colleagues Mr. Newhouse and Mr. Costa for being here to share their views on the Farm Regulatory Certainty Act.

I am sure Mr. Newhouse and Mr. Costa will want to brag about their states' agriculture, so I hope you will allow me a minute to talk up my home state.

Dairy is an important part of New York's agricultural output, and I am proud to represent a number dairy farms in the Capital Region. New York is home to around 5,500 dairy farms and produces the third most milk of any state.

I am also proud to be the grandson of a dairy farmer. In my youth, I spent many days working on my grandfather's farm in the Town of Florida, New York.

So I have great respect for dairy farmers, and I know they care about being good stewards of the environment.

The Resource Conservation and Recovery Act, commonly known as RCRA, was enacted in 1976 and governs the disposal of solid and hazardous waste, which can include manure and crop residue.

In my view, the discussion draft before us today doesn't pass the smell test. And while we may hear a few more bad jokes this morning, let me tell you, this is an incredibly serious issue.

The legislation would amend provisions of RCRA to block the availability of citizen suits in some cases involving manure and crop residue.

RCRA provides a mechanism for citizen suits when pollution has endangered public health and the environment and when EPA or state agencies are not effectively enforcing the law.

As we will hear from Ms. Culpepper on the second panel, RCRA's citizen suit provisions have in fact been used regarding manure.

However, citizen suits are already prohibited by the law if EPA or the state is taking action under RCRA or CERCLA.

RCRA, including the citizen suit provisions, does not apply when manure and crop residues are returned to the soil as fertilizers. But RCRA does cover agricultural waste.

It is clear from at least one recent court case that there is a point where manure has been applied to the soil in amounts far exceeding the

agronomic rate, at which point, the exemption for manure as a fertilizer no longer applies. It is being improperly disposed of as waste.

I want to stress the importance of preserving the opportunity for citizen suits when necessary.

Many of our nation's most important environmental laws, including RCRA, allow private citizens to bring suit in order to enforce the law.

We will hear testimony this morning that will make it clear that these suits are not frivolous. Communities support their local dairies— they work on these farms.

And people take these actions only as a last recourse when public health is put at risk.

I do not want to set a bad precedent of limiting citizen suits under environmental laws, and I believe that the legislation before us today is far too broad.

According to EPA's statement for the record, EPA believes that EPA and state actions against an agricultural operation under other statutory authorities— not just RCRA or CERCLA— could bar the types of citizen suits affected by this bill.

That means RCRA citizen suits would be prohibited if there is any pending action against an agricultural operation, even if it has no relationship to the RCRA violation.

Unfortunately, there are some bad actors in every industry. Some farms are breaking the law in how they manage manure, resulting in pollution of groundwater and putting Americans' health at risk.

Protecting people's drinking water, including protecting groundwater sources for private wells, must be a top priority, not just for this Committee, EPA, or State agencies, but for all Americans.

When EPA or a state fails to enforce the law, citizens must have the right to do something about it.

I have no doubt that most farmers want to do the right thing, but in the rare case where this does not happen, I am very hesitant to remove this last avenue for legal recourse.

I look forward to hearing from our colleagues and the other witnesses, and I yield back.