

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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December 21, 2017

Ms. Jessica Culpepper,
Food Project Attorney
1620 L Street, N.W.; Suite 630
Washington, DC 20036

Dear Ms. Culpepper:

Thank you for appearing before the Subcommittee on Environment on November 9, 2017, to testify at the hearing entitled "H.R. ____, Farm Regulatory Certainty Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Friday, January 12, 2017. Your responses should be mailed to Allie Bury, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Allie.Bury@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Shimkus
Chairman

Subcommittee on Environment

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment

Attachment

Attachment—Additional Questions for the Record

The Honorable John Shimkus

1. Does the Resource Conservation and Recovery Act (RCRA) contain a fee-shifting provision?
2. For the case *Community Association for the Restoration of the Environment, Inc. v. Cow Palace, LLC* how much was awarded to Plaintiffs in (a) attorneys' fees, (b) expert witness fees, and (c) costs?
3. How much did your organization, Public Justice, receive in attorneys' fees?
4. Did any of the Plaintiffs' attorneys initiate any other RCRA citizen suits (against other defendants) after the conclusion of *Community Association for the Restoration of the Environment, Inc. v. Cow Palace, LLC*?
 - a. Please identify all cases initiated by any of Plaintiffs' attorneys subsequent to the decision in *Community Association for the Restoration of the Environment, Inc. v. Cow Palace, LLC*.
5. The Administrative Order on Consent between the Environmental Protection Agency (EPA) and the dairies that were defendants in *Cow Palace* was signed in March 2013. The complaint in the RCRA citizen suit was filed February 4, 2013. EPA was working with the defendant dairies to help them come into compliance with the applicable statutes and regulations. Why did Plaintiffs not allow the process between EPA and the dairies to play out before initiating a citizen suit?
6. Your testimony is that a citizen suit under RCRA is "last resort" – what other proceedings (under any other state or federal law) did your organization or any of the other Plaintiffs, initiate or conduct regarding the dairies at issue in *Community Association for the Restoration of the Environment, Inc. v. Cow Palace, LLC*?

The Honorable Frank Pallone

1. What are some of the health and environmental impacts you have seen in the communities you have worked with?
2. Are these impacts isolated to Washington State, or do we see them nationwide?
3. Environmental justice is a real and serious concern. We should be doing everything we can on this Committee to increase environmental justice by helping low income

communities and communities of color that bear the brunt of pollution. Who lives in these impacted communities?

4. Under current law, citizen suits are blocked when EPA or the State is pursuing an enforcement action to address the dangerous condition the citizen suit seeks to address. How is the language in the discussion draft different from the approach in current law?
5. We received testimony from EPA in advance of this hearing, and they noted that “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.” Do you agree with this assessment? Do you think this is appropriate?
6. If this bill had been in effect, would the lawsuit brought by Community Association for Restoration of the Environment against Cow Palace have been blocked?
7. What actions, required under the settlement in the CARES v. Cow Palace case, would not have been required under the Safe Drinking Water Act consent order?
8. It has been suggested that the requirements of RCRA are duplicative with the requirements of the Safe Drinking Water Act or the Clean Water Act. Do you agree with that suggestion?
9. It has also been suggested that communities have extensive alternatives to citizen suits. What alternatives would have been available to the Community Association for Restoration of the Environment if their citizen suit had been blocked?