



Washington State Dairy Federation  
P.O. Box 1768  
Elma, WA. 98541

January 12, 2018

The Honorable Tim Walberg  
U.S. Representative  
Member, House Committee on Energy & Commerce  
Subcommittee on Environment

RE: Written Question as Follow Up to Testimony on the Farm Regulatory Certainty Act.

Representative Walberg,

You asked the following question:

“Your written testimony states that the language of the bill will foster a more secure and cooperative relationship between dairy families and their state and federal regulators. Can you explain why that is?”

I would use the agency interaction and lawsuit in the Yakima Valley as an example.

All four dairy families in the Yakima Valley (Washington State) case were the subject of a report and action by Region 10 EPA. They were discussing with EPA the potential of signing a Consent Order with EPA and were subsequently sued under the Resource Conservation and Recovery Act (RCRA).

All of the families had been negotiating with EPA over the details of the Consent Order, but one family did not sign because they closed their dairy operation after considering the legal and operational costs involved.

All four dairy families faced a form of double jeopardy, in that they were negotiating an agreement (the Consent Order) with the EPA and subsequently received notice of intent to sue from the activist organizations.

Three of the four families signed the consent order. The fourth family with the smallest of the farms decided to close their dairy and, as a result, did not sign the Consent Order.

In addition to losing their family business, they paid \$40,000 in settlement to the litigants, emptied their lagoon, and conducted testing of soils.

There is a chilling effect of this story.

The families believed they were resolving the matter at hand. The Consent Order was intended to allow all of the parties to move forward together to make remarkably expensive technological and operational changes and avoid even greater expenses from legal action.

Instead, one farm family went out of business and three farm families had the great expenses of the Consent Order and the much greater expenses of the court case and settlement.

In the aftermath, many farm families across the nation have noted that the farms are struggling under these massive expenses and that the farms “paid twice to get there.”

They ask if it is worth it to work cooperatively to settle a matter with the agencies if they will subsequently be sued over the very same matters by an activist lawsuit.

Getting hammered twice is a deterrent to cooperative approaches with the federal and state agencies.

This case remains a clear example of the problem dairies and other farms are facing. Even after the commencement of agency enforcement (negotiating the Consent Order) they faced a citizen lawsuit.

This form of double-jeopardy must end.

If farms are to face lawsuits in addition to working cooperatively with federal or state agencies, then there is no incentive to work with the agencies. We must make it possible to work cooperatively with regulatory agencies without facing additional actions over the same issues.

The draft language before the Subcommittee says that citizen lawsuits may not be filed when a state or federal agency has “commenced and is diligently prosecuting a civil or criminal action against such agricultural operation in a court of the United States or a State; or commenced and is diligently conducting a Federal or State administrative proceeding against, or entered into a consent agreement with, such agricultural operation to seek compliance with an applicable permit, standard, regulation, condition, requirement, prohibition, or order.”

In the Yakima case, the EPA had commenced a proceeding against the four dairy families. The decision to close the smallest dairy was made *after* EPA had commenced action in this matter. The remaining farms have endured both the cost of the Consent Order *and* the costs of the lawsuit and settlement, which addressed virtually the same allegations and actions.

The citizen lawsuit provision under RCRA was intended to address situations where agencies are NOT acting on a matter.

The proposed bill language retains the citizen suit option for situations where action is not taken.

Where action is in progress, as was the case in the Yakima Valley, a citizen lawsuit would not be filed.

Many of the examples presented to you at the hearing were of repeated situations where state and federal agencies had failed to act. In those cases, the legislation would still allow for a citizen lawsuit.

This combination approach in the legislation should have the effect of encouraging cooperative actions between the regulatory agencies and farmers who may have an issue that requires resolution.

Thank you for your attention to this important legislation and thank you for your follow up question.

I urge your passage of the Farm Regulatory Certainty Act.

Sincerely,



Dan Wood, Executive Director  
Washington State Dairy Federation

