



Washington State Dairy Federation  
TESTIMONY of Dan Wood, Executive Director  
Washington State Dairy Federation  
To the U.S. House Subcommittee on

Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee:

I'm Dan Wood, Executive Director of Washington State Dairy Federation, our state's trade association for dairy farm families. I appreciate the opportunity to testify before you today on the discussion draft of the Farm Regulatory Certainty Act (H.R. 848) authored by Representative Dan Newhouse (R-WA) and cosponsored by Representative Jim Costa (D-CA).

The Washington State Dairy Federation represents roughly 400 family farms across the state. Our organization is a member of the National Milk Producers Federation as well as the Western States Dairy Producers Association, both of which support the pending draft legislation.

Today I'll cover the current degree of regulation of dairy farms, illustrate how they have been put in double jeopardy, and tell you why the language in the bill before you will foster a more secure and cooperative relationship between dairy families and the state and federal agencies that provide oversight.

Dairy farmers strive to be good stewards of all resources, including environmental resources like the land and water that make it possible for them to farm.

The Washington State Department of Agriculture reported last year that we had a more than 92% compliance rate with our rigorous Dairy Nutrient Management Program.

Across the nation, dairy farmers are regulated by a multi-layered system of state agencies & laws, and federal agencies & laws, including the Safe Drinking Water Act administered by the EPA.

If there is an error or allegation being addressed with a state or federal regulator, then the farms should not face a citizen lawsuit if they are working in good faith with the regulatory agencies with authority over the respective laws.

Citizen lawsuits were intended to allow citizens to step into the role of the regulator when the government agency failed to fulfill its responsibilities. These lawsuits were not intended to double down on penalties and costs, or place farms in double jeopardy when they are already trying to solve a problem collaboratively and cooperatively.

But that is exactly what happened in the Yakima Valley in Washington State two years ago. Groundwater nitrates have been high in Yakima Valley for more than 100 years – predating the dairy farms and much of the agriculture there.

Region 10 EPA issued a widely disputed report that assigned blame to four dairy families. Rather than spend millions of dollars in court, the dairies voluntarily entered into a Consent Order.

The farms were told by EPA, and they reasonably expected, that the matter was resolved as long as they followed the consent order, which required the farms to adhere to rigorous environmental operating conditions, such as increasing soil testing and submitting more frequent, detailed reports on soil and water conditions to the EPA.

Despite the collaborative work being done by the farmers and the EPA under the Consent Order, activists sued these dairy families in court using the Resource Conservation and Recovery Act (RCRA). This lawsuit made it necessary for the farmers to spend millions of dollars defending themselves over the very same issues that were intended to be resolved in the Consent Order with EPA.

Importantly, RCRA was not intended to apply to manure or crop residue returned to the soil as fertilizers or soil conditioners. The EPA made this clear when it put forth regulations to implement RCRA after it was enacted (40 CFR 257.1).

The family with the smaller farm knew they had no hope of funding a defense, regardless of the outcome. Facing the possibility of crushing legal bills, they closed their dairy after receiving notice of the intent to sue.

The other farms continue to struggle under the weight of the lawsuit settlement from, which they entered into after they were no longer able to afford to defend themselves.

Remember, these farms had already entered into a consent decree with the EPA. They spent a great deal of time and money working with EPA. Then they were sued.

To help address this issue, Congressman Newhouse has introduced the Farm Regulatory Certainty Act, which now has 65 bipartisan cosponsors in the House.

Language in the bill would not prevent the Consent Order under the Safe Drinking Water Act. It would simply prevent farmers from facing RCRA citizen suits when they are already engaged in consent orders or other similar environmental actions by federal or state regulators.

Importantly, the prohibition on RCRA citizen suits *only* applies to the uses of nutrients as laid out in the EPA's regulations. This is NOT an across-the-board exemption, it is merely intended to reinforce what is already codified both in law and in regulation pertaining to the scope of RCRA.

Given the Yakima lawsuit, many dairy farmers around the country are understandably nervous that their positive efforts with regulators may be for naught if citizen suits will abound under other environmental statutes that were not intended to govern the activities in question regardless of the work being done.

If enacted, this legislation would preserve the ability of regulators to work with farmers just as EPA was doing in this case before the lawsuit, and it would give farmers renewed confidence that their efforts to be proactive environmental stewards will not harm them unintentionally.

Once again, this is a narrow, bipartisan bill that is intended to correct a targeted problem, not a bill intended to undermine environmental protections in any manner.

I appreciate the opportunity to testify before you today and I am happy to answer any questions you may have.

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*Language from CFR 257.1*

### **§ 257.1 Scope and purpose.**

... (c) These criteria apply to all [solid waste disposal](#) facilities and [practices](#) with the following exceptions:

(1) The criteria do not apply to agricultural wastes, including manures and crop residues, returned to the soil as fertilizers or soil conditioners.