



# Congress just gave Big Agriculture the pollution green light

BY LAURIE RISTINO, OPINION CONTRIBUTOR — 03/23/18 02:20 PM EDT  
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The legislative free-for-all leading up to the 2018 Farm Bill includes a fistful of bills that shield agri-business from responsibility for its environmental harms. These bills effectively amount to a free pass to pollute. If passed, local communities would be hobbled in their efforts to protect themselves from the pollution generated by ever-expanding Concentrated Animal Feeding Operations (CAFOs). These facilities – there are about 18,000 by EPA estimates – can house thousands or millions of animals, generating tons of feces and related toxic air emissions and water pollution.

For example, H.R. 848, the "Farm Regulatory Certainty Act," would amend the Resource Conservation and Recovery Act (RCRA) – a comprehensive statute passed in 1976 to address solid waste – to remove manure from the definition of waste. Two companion bills, H.R. 5275, the "Agricultural Certainty for Reporting Emissions Act" (ACRE), and S. 2421, the "Fair Agricultural Reporting Method Act" (FARM), would exempt agricultural toxic emissions from the requirements of the Comprehensive Environmental Response, Compensation and Liability

Act (CERCLA), known widely as "Superfund," the law passed in 1980 to address the human health harms caused by hazardous substance releases.

FARM was recently rolled into the House's massive omnibus spending bill, which President Trump signed into law today. And a catch-all Senate bill, the Agriculture Creates Real Employment Act, incorporates the FARM Act and a host of other bills exempting agricultural producers from a range of sensible standards, including pesticide discharge requirements and migratory bird protections.

The RCRA amendment is legislative blowback from a 2015 federal court case in the eastern district of Washington, *Community Association for the Restoration of the Environment v. Cow Palace*. In that case, a local community successfully sued Cow Palace, a dairy CAFO operation, under RCRA for nitrate pollution of groundwater, arguing that the CAFO's field application of manure far exceeded usable nutrient levels and, consequently, constituted solid waste.

Nitrate pollution from agriculture is a serious problem nationally, especially in heavy agricultural states. Excess nitrates have been linked to blue baby syndrome, and there is evidence that nitrates may be a carcinogen. Municipal water systems (like one in Des Moines, Iowa) are often stuck with the expensive tab of nitrate removal in order to meet Safe Drinking Water Act standards.

The preamble to the Farm Regulatory Certainty Act declares that Congress never intended RCRA to apply to agricultural animal waste. But the plain and broad language of RCRA does not support this contention, made decades after the law was originally passed.

Similarly, the impetus and rationale for amending CERCLA is a recent decision by the D.C. Circuit Court of Appeals that overturned the EPA's 2008 regulatory exemption of CAFOs from the law's toxic emissions requirements. EPA's bungling of the implementation of CERCLA CAFO reporting requirements, including the lack of data to estimate emissions in the first place, certainly contributed to industry backlash. But such implementation issues can be remedied; gutting the act is no solution.

Measuring and mitigating toxic air emissions from CAFOs is vital to protect the health of people who live and work near these industrial facilities. The communities impacted are often rural or socially disadvantaged – such as the beleaguered community of Tonopah, Ariz., which is exposed to emissions from a poultry CAFO housing 4 million chickens, and the citizens of Duplin County, N.C., where about 2.3 million hogs are raised in CAFOs.

These initiatives are reactionary. Passage will only delay an inevitable reckoning with pollution caused by our enormously consolidated agricultural system. Agriculture already enjoys important exemptions from key environmental statutes, and consequently, is the main source of water pollution in the United States and a substantial greenhouse gas emitter. Relying on agriculture to clean up its pollution primarily through voluntary conservation supplemented by taxpayer dollars is not working.

There was a time when most Americans didn't care where their food came from or how it was produced. No longer. We must now turn to a new page in U.S. food and farm policy and make it more accountable to taxpayers and the environment in order to ensure a food-secure future for

Americans. Instead of exempting agri-business from environmental laws, Congress should get to work on policy that constructively addresses the agricultural industry's pollution problem.

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