Oppose Permitting Legislation: Protect Rural Communities from Big Ag

November 9, 2026

The Honorable John Thune
Senate Majority Leader
511 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Steve Scalise
House Majority Leader
266 Cannon House Office Building
Washington, D.C. 20515

The Honorable Charles Schumer
Senate Minority Leader
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Hakeem Jeffries
House Minority Leader
2267 Rayburn House Office Building
Washington, D.C. 20515

Dear Majority Leader Thune, Minority Leader Schumer, Majority Leader Scalise, Minority Leader Jeffries, and Members of the U.S. Senate and House of Representatives:

On behalf of our organizations, members and supporters, we urge you to oppose passage of the Bipartisan American Affordability and Jobs Act (BAAJA) of 2026. While BAAJA has some provisions intended to speed the development of renewable sources of energy, they are more than offset by provisions that would decimate the environmental statutes that Americans depend on to protect the health of their families, their communities, and the waterways they depend on for safe drinking water, recreation, aquatic habitat, and economic and agricultural uses, including livestock watering and crop irrigation.

<u>BAAJA Eliminates Core Clean Water Act Safeguards, Exacerbating Water Pollution from Industrial Agriculture and Harming Rural America</u>

BAAJA proposes several troubling amendments to the Clean Water Act that would significantly weaken our nation's bedrock water pollution control law and lock in polluting practices without regard for their harmful impacts on communities and agricultural lands.

Section 1203's extension of National Pollutant Discharge Elimination System (NPDES) permits from five years to ten years would seriously limit opportunities to strengthen permit terms and secure stronger water quality protections against major polluting industries like concentrated animal feeding operations (CAFOs), slaughterhouses, and agricultural chemical manufacturers. The process of renewing NPDES permits is instrumental to meeting the Clean Water Act's goal of using the best technology to consistently reduce—and ultimately eliminate—water pollution.[1]

[1] *NRDC v. EPA*, 808 F.3d 556, 563–64 (2d Cir. 2015) ("Congress designed [the Clean Water Act] to be technology-forcing, meaning it should force agencies and the permit applicants to adopt technologies that achieve the greatest reductions in pollution . . . not only to stimulate but to press development of new, more efficient and effective technologies . . . ."). *See also Sw Electric Power Co. v. EPA*, 920 F.3d 999,

Permit renewal is the point at which regulators can require the adoption of more effective technology-based requirements and impose additional water quality-based conditions to clean up impaired waterways. It is also one of the only times at which the public can meaningfully engage in the permitting process, voice community concerns, and win additional safeguards for waters they rely on for drinking water and recreation. Locking in permit terms for a decade (or more)[2] will prevent those permits from keeping pace with advancing technology and any newly promulgated effluent limitation guidelines and water quality standards, and will delay the implementation of critical waste load allocations necessary to remediate badly polluted waterways.

Section 1202 also dramatically weakens state and tribal governments' ability to protect their water resources through the Clean Water Act Section 401 water quality certification process, which comes into play with federally-issued CAFO permits.[3] Currently, EPA administers 33 CAFO permits in States without delegated permitting authority and in Indian Country, which cannot issue without the state or tribe's sign off.[4] The water quality certification process is the only opportunity for state and tribal regulators to meaningfully weigh in and demand more protective conditions in NPDES permits issued by EPA. This provision effectively strips them of their oversight by significantly narrowing the scope of protective conditions they can require. Not only would certifying authorities have to prove by an impossibly high "clear and convincing evidence" standard they are proposing the "least burdensome" terms possible, but they would be prohibited from imposing any water quality-related requirements grounded in state or tribal law, or addressing downstream consequences for waters that fall outside of Clean Water Act jurisdiction. Section 1202 further requires all conditions to be "consistent with the federal license or permit for which the certification application was made," the meaning of which is unclear and ripe for abuse. Currently, states and tribes are empowered to put whatever conditions in place that are necessary to protect water quality – BAAJA would enact such severe limitations that regulators would no longer be able to protect the public from contaminated drinking water, more expensive water for drinking and for farm use, and polluted waterways.

Moreover, Section 1204 provisions gut the Army Corps of Engineers' ability to assess the harmful environmental impacts of discharges of dredge and fill materials before issuing

---

1005 (5th Cir. 2019) ("The Act therefore mandates a system in which, as available pollution-control technology advances, pollution discharge-limits will tighten.").

[2] State and Federal permitting authorities already routinely delay permit renewals for lengthy periods of time by administratively continuing expired permits, a practice likely to continue and push permit renewals beyond the proposed ten year mark. *See* Laura Gatz, *Clean Water Act Permitting: Overview and Policy Issues*, CRS Report R49486, 12-13 (Oct. 14, 2026), https://www.congress.gov/crs_external_products/R/PDF/R49486/R49486.2.pdf (documenting thousands of backlogged permits across state and federal permitting authorities that have been administratively continued more than 180 days). *See also* NPDES General Permit for Discharges from CAFOs in New Mexico (NMG010000) (still in effect and administratively continued for the past 5 years following its Aug. 2021 expiration date); NPDES General Permit for Discharges from CAFOs in Oregon (#01-2016) (administratively continued for 5 years past Feb. 2021 expiration date).

[3] *See* BAAJA, S. 5653, § 1202.

[4] *See* EPA, NPDES CAFO Permitting Status Report, Endyear 2025, https://www.epa.gov/system/files/documents/2025-09/cafo-status-report-2024.pdf (EPA issues CAFO permits in New Mexico, New Hampshire, and Indian Country).

Nationwide General Permits (NWPs). Such activity will further harm rural Americans.[5] The bill would prohibit the Army Corps from taking into account any harmful environmental effects of a project beyond basic compliance with certain enumerated Clean Water Act requirements. It would also deem fills of up to two acres automatically to have minimal adverse environmental impact, forcing the Corps to disregard the broader adverse environmental effects of a project.[6] Forcing regulators to greenlight environmentally destructive activities will undoubtedly threaten waterways, surrounding communities and farmland. Studies have found that natural gas pipeline installations (authorized to cross Waters of the United States under NWP 12) can cause lasting damage to crop fields and severe drops in crop yields on neighboring lands.[7] And recklessly filling wetlands threatens nearby agricultural lands with increasingly worse flood conditions.[8]

Section 1201 would also require EPA to undertake notice and comment rulemaking before providing scientific analysis and recommendations to states, tribes, and the general public. Emerging contaminants like PFAS are of particular concern to the farming community given their impacts to the health of farmers and their families. Section 1201 would politicize scientific analysis of pollutants like PFAS and virtually halt the process of setting protective public health standards.

Tying Regulators' Hands in the Name of "Project Certainty" Will Eviscerate Effective Oversight of Industrial Ag Polluters

BAAJA's incredibly poorly written and overbroad "project certainty" section threatens to lock in current permits and requirements for all kinds of polluting facilities in perpetuity and open the floodgates to litigation likely to transfer billions of taxpayer dollars to corporate polluters. Section 1401 would substantially constrain federal permitting authorities from revoking or modifying permits, or imposing new regulatory requirements applicable to construction of new CAFOs, and would enact heightened burdens and harsh penalties on agencies seeking to engage in good faith oversight of permittees.[9] It imposes absurd requirements on federal agencies attempting to do their job by, for example, enforcing against violations of the Clean Water Act or Clean Air Act, requiring regulators to prove the violation by the extremely high standard of "clear and convincing evidence" or face both losing their ability to take action in the

---

[5] BAAJA, S. 5653, § 1204(b).
[6] *See* Laura Gatz, *Bipartisan American Affordability and Jobs Act (BAAJA) of 2026: Analysis of Clean Water Act Provisions*, CRS Report R49492, 26–7, 30 (Oct. 26, 2026), https://www.congress.gov/crs-product/R49492.
[7] *See*, Steve Culman et al., *Landowner Experiences with Natural Gas Pipeline Installations in Ohio*, Ohio State University School of Environment and Natural Resources, 3–4 (2022), https://soilfertility.osu.edu/sites/soilf/files/imce/Research/Landowner%20Pipeline%20Experiences.pdf. (documenting average declines in crop yields of 40–60% following pipeline installation and incidences of total crop failure); Mehari Z. Tekeste et al., *Effects of subsoil tillage during pipeline construction activities on near-term soil physical properties and crop yields in the right-of-way*, Soil Use and Management (Jul. 10, 2020).
[8] *See* GR Evenson et al., *Depressional wetlands affect watershed hydrological, biogeochemical, and ecological functions*, Ecol. Appl. (Feb. 13, 2018), https://doi.org/10.1002/eap.1701.
[9] *See* BAAJA, S. 5653, § 1401b(1), b(4)(B), b(4)(D).

future and paying permittees' costs and fees of litigation, project delay, and more at the public's expense. The provision's fee shifting language invites corporations to challenge all manner of agency actions due to its prohibition on agencies "tak[ing] any other action" that could affect a facility's operations post-permitting; this will create a chilling effect on agencies' willingness to take commonsense and necessary steps such as strengthening the Clean Water Act's lax regulations for CAFOs and slaughterhouses, imposing protections for agricultural workers, and much more.

Additionally, though the provision is purportedly aimed at permits issued by federal agencies only, it is uncertain whether it could similarly limit state regulators in the numerous states with delegated permitting authority that have enacted "no more stringent than" laws requiring CAFO permitting to exactly match the scope of federal law and regulation.[10] Regardless, the provision would almost certainly deter federal agencies from performing vital oversight of states with lax CAFO permitting programs that fail to comply with basic federal requirements, a pervasive problem across the country.[11]

Narrowing Environmental Review Under the National Environmental Policy Act Will Shield Industrial Ag from Federal Oversight and Fast-Track Industrial Ag Expansion

BAAJA weakens environmental oversight under the National Environmental Policy Act (NEPA) in such a way that will facilitate industrial agriculture expansion.

Section 1102 narrows the definition of "major federal action," which is required to trigger NEPA review obligations on action agencies. The proposed definition would exclude certain federally financed projects, including those for which the only federal involvement is a loan or loan guarantee.[12] Many CAFO owners receive federal loans and loan guarantees from the USDA Farm Service Agency and the Small Business Administration to construct and expand their industrial livestock operations.[13] BAAJA thus allows CAFO construction and expansion projects receiving federal funding to bypass NEPA review altogether, eliminating federal oversight and public transparency. CAFOs cause significant environmental and community impacts, including manure and nutrient runoff, surface and groundwater contamination, air pollution, climate emissions, noxious odors, pest infestations, noise, and traffic. NEPA review provides agencies an important opportunity to evaluate these impacts, including cumulative environmental

[10] *See* e.g., Colo. Rev. Stat. § 25-8-504; Iowa Code § 459.11; N.C. Gen. Stat. § 150B-19.3; Wis. Stat. § 283.11.

[11] *See, e.g.,* Petition to Revise the Clean Water Act Regulations for Concentrated Animal Feeding Operations (2017), https://www.foodandwaterwatch.org/press/2017/03/08/dozens-of-advocacy-groups-challenge-epa-on-factory-farm-pollution/.

[12] BAAJA, S. 5653, § 1102.

[13] FSA holds 8–10 percent of all U.S. farm debt. *See Despite Decreased Demand for Loans, FSA Credit Still Critical for Farmers*, National Sustainable Agriculture Coalition (April 4, 2018), https://sustainableagriculture.net/blog/fsa-credit-fy2017-series/. FSA guaranteed nearly ten billion dollars in loans to livestock operations from just 2009 through 2015 – approximately, 1.4 billion dollars total per year, with an average guarantee amount of nearly $320,000 according to FSA loan data obtained via Freedom of Information Act request.

consequences, and assess alternatives. It also gives potentially impacted communities notice of proposed projects and an opportunity to participate in the NEPA process *before* an agency approves it. In excluding agency financing actions from NEPA review, BAAJA makes it easier for CAFOs to build and expand while leaving neighboring residents and family-owned farms without any means of identifying and challenging related environmental harms.

Even in instances where NEPA still applies, Section 1106 further undermines independent environmental review by requiring agencies to eliminate from NEPA review alternatives that do not meet both the purpose of the agency action and the goals of the non-Federal sponsor.[14] This effectively provides private entities, including CAFOs, slaughterhouses, and agricultural chemical manufacturers, significant influence over which alternatives federal agencies will consider, potentially sidelining less environmentally harmful options.

Section 1110 compounds these issues by imposing a 150-day statute of limitations to challenge a deficient NEPA review, requiring a "substantive comment . . . with such comment being sufficiently detailed to put the applicable Federal agency on notice of the particular issue on which the party seeks judicial review" to preserve legal claims, heightening basic standing requirements to include an actual or imminent injury "amounting to direct harm," and generally preventing courts from vacating unlawful agency NEPA determinations or issuing preliminary injunctions for NEPA violations, allowing the court only to require another, more complete NEPA evaluation.[15] That makes it harder for landowners to stop a federally funded or permitted project, such as CAFOs and CAFO biogas pipelines, that harms their homes and families.

Together, these provisions not only make it harder for regulators to protect critical water resources from industrial agriculture and other polluters, but also enable those polluters to avoid environmental scrutiny while making it more difficult for affected communities to challenge inadequate environmental review. We urge you to oppose BAAJA.

Sincerely,

Original Signatories
Food & Water Watch
Campaign for Family Farms and the Environment
Center for Food Safety
Institute for Agriculture and Trade Policy
National Family Farm Coalition
Waterkeeper Alliance Inc.

[14] BAAJA, S. 5653, § 1106.
[15] BAAJA, S. 5653, § 1110.

National Groups
Animal Legal Defense Fund
Center for Biological Diversity
Compassion In World Farming
Endangered Species Coalition
Farm Aid
Food Animal Concerns Trust
Friends of the Earth
Our Honor
Save Our Food and Farms
SEED
The Humane League

State and Regional Groups
Animal Protection New Mexico
Bayou City Waterkeeper (Texas)
Buffalo River Watershed Alliance (Arkansas)
Dakota Rural Action (South Dakota)
Deep River Riverkeeper (North Carolina)
Ecological Consultants for the Public Interest (Colorado)
Emerald Clean Water for All (Wisconsin)
Endangered Habitats League (California)
Freshwater Future (Regional)
Friends Of the Forestville Dam, Inc. (Wisconsin)
Iowa Citizens for Community Improvement
Law Scholars for Change (Washington)
LEAD Agency, Inc. (Oklahoma)
Milwaukee Riverkeeper (Wisconsin)
NC Environmental Justice Network (North Carolina)
One Mississippi (Regional)
Orange County Coastkeeper (California)
Russian Riverkeeper (California)
Save the River, Upper St. Lawrence Riverkeeper (New York)
Snake River Waterkeeper (Regional)
Spring Creek Coalition Inc (Oklahoma)
Sussex Health & Environmental Network (Delaware)
The Williams County Alliance (Indiana)
UnchainedTV - 501c3 Non-Profit (California)