

**SOD AND SWAMP BUSTED: CITIZEN ENFORCEMENT OF  
MANDATORY CONSERVATION COMPLIANCE IN THE  
FARM BILL**

“The soil is the great connector of lives, the source and destination of all. It is the healer and restorer and resurrector, by which disease passes into health, age into youth, death into life. Without proper care for it we can have no community, because without proper care for it we can have no life.”

-Wendell Berry<sup>1</sup>

INTRODUCTION .....	222
I. PUTTING THE PIECES OF THE FARM BILL TOGETHER.....	224
A. The Forming and Evolution of Farm Bill Coalitions .....	224
B. What the Farm Bill Looks Like Today.....	227
C. The Lack of Enforcement in Mandatory Conservation Compliance Programs .....	230
II. THE FARM BILL AS ENVIRONMENTAL LEGISLATION.....	232
A. How Mandatory Conservation Compares to the Clean Air and Clean Water Acts.....	233
B. How Citizen Suits Work to Enforce Environmental Legislation .....	236
III. THE NEED FOR CITIZEN ENFORCEMENT OF MANDATORY CONSERVATION COMPLIANCE.....	240
A. Applying the Citizen Suit Template from the Clean Air and Clean Water Acts to Mandatory Conservation Compliance .....	240
1. Providing Notice of the Alleged Violation to All Parties .....	241
2. “Standing” Up for Mandatory Conservation Compliance .....	243
B. Exploring a Distinction and Another Avenue Available for Action	244
CONCLUSION.....	246

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1. WENDELL BERRY, THE UNSETTLING OF AMERICA 90 (Counterpoint Press 2015) (1977).

## INTRODUCTION

Soil sustains life.<sup>2</sup> Like many farmers, legislators have long recognized the importance of this natural resource.<sup>3</sup> Congress continues to encourage—and in some cases requires—soil conservation through various Farm Bill programs.<sup>4</sup> Such a vital resource, however, needs more protection, and soon.<sup>5</sup> Although soil may appear robust and plentiful, it is “the fragile product of thousands of years of formation.”<sup>6</sup> Moreover, what took thousands of years to form can blow away in an instant during a drought or wash away in a flood.<sup>7</sup> In other words, the soil is vulnerable to erosion from climatic events that occur with increasing frequency, making all life increasingly vulnerable.<sup>8</sup> However, not all soil is equally vulnerable. The Natural Resources Conservation Service (the Agency) targets some areas as “highly erodible” when the soil in those areas erodes at excessive rates.<sup>9</sup> In what is known as the “Sodbuster” provision, the Farm Bill requires producers with highly erodible soil to conserve it.<sup>10</sup>

Additionally, in what is known as the “Swampbuster” provision, the Farm Bill requires producers with wetlands to protect them.<sup>11</sup> Distinct from highly erodible soils, the Agency designates an area as a “wetland” when it contains hydric or periodically saturated soil and plants capable of surviving

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2. See *What Is Soil?*, USDA: NAT. RES. CONSERVATION SERV., <https://www.nrcs.usda.gov/resources/education-and-teaching-materials/what-is-soil> (last visited Nov. 29, 2025); see also DONALD WORSTER, *DUST BOWL: THE SOUTHERN PLAINS IN THE 1930S* 12–13 (1979) (“‘Earth’ is the word we use when [soil] is there in place, growing the food we eat, giving us a place to stand and build on. ‘Dust’ is what we say when it is loose and blowing on the wind. Nature encompasses both—the good and the bad from our perspective, and from that of all living things. We need the earth to stay alive, but dust is a nuisance, or, worse, a killer.”).

3. See Soil Conservation and Domestic Allotment Act, Pub. L. No. 74-46, § 1, 49 Stat. 163, 163 (1935) (“[T]he wastage of soil . . . is a menace to the national welfare . . .”).

4. See 16 U.S.C. § 3831 (2018).

5. See Dede Sulaeman & Thomas Westhoff, *The Causes and Effects of Soil Erosion, and How to Prevent It*, WORLD RES. INST. (Feb. 7, 2020), <https://www.wri.org/insights/causes-and-effects-soil-erosion-and-how-prevent-it>.

6. *Id.*

7. See, e.g., PAUL DICKSON, *BILL OF RTS. INST., THE DUST BOWL* 1 (describing how, in 1934, a 1,500-mile-long by 600-mile-wide dust storm carried 300 million tons of soil out of the Great Plains); Benjamin P. Warner et al., *Farming the Floodplain: Ecological and Agricultural Tradeoffs and Opportunities in River and Stream Governance in New England’s Changing Climate*, CASE STUD. ENV’T, 2017, at 1, 1 (discussing the increasing risks of flooding on agricultural land).

8. See MARGARET K. WALSH ET AL., U.S. DEP’T OF AGRIC., *CLIMATE INDICATORS FOR AGRICULTURE* 1 (2020).

9. U.S. DEP’T OF AGRIC., *RISK MANAGEMENT AGENCY FACT SHEET: CONSERVATION COMPLIANCE – HIGHLY ERODIBLE LAND AND WETLANDS* (2015) [hereinafter *CONSERVATION COMPLIANCE FACT SHEET*].

10. 16 U.S.C. § 3811(a) (2018).

11. *Id.* § 3821(a).

in that soil.<sup>12</sup> Wetlands are essential in maintaining environmental and economic well-being by providing natural flood and erosion control and enhancing the water supply.<sup>13</sup> Despite the many benefits of wetlands, “since the founding of our Nation,” landowners, assisted by and including the Federal Government, have cut wetland acreage in half.<sup>14</sup> Further destruction of our Nation’s wetlands continues “by hundreds of thousands of acres each year.”<sup>15</sup> Yet the Agency’s enforcement of these mandatory conservation compliance provisions is incomplete.<sup>16</sup> When enforcement of other environmental legislation fell short, Congress created citizen suits.<sup>17</sup>

This Note discusses the Farm Bill as a piece of environmental legislation. Through a comparative analysis, it distinguishes the Farm Bill from other environmental legislation. Then, it examines the potential for a citizen suit as an enforcement mechanism in the Farm Bill’s conservation title. Part I explains how farm bill coalitions evolve to create modern farm bills and outlines the ongoing difficulty enforcing mandatory conservation compliance. Part II compares mandatory conservation compliance with environmental legislation and examines essential elements of existing citizen suit provisions. Lastly, Part III explains how citizens would enforce mandatory conservation compliance, addresses counterarguments, and differentiates other solutions. By implementing a citizen suit provision in the next Farm Bill, the public can help with this severely underenforced environmental protection.

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12. 7 C.F.R. § 12.2(a) (2023).

13. 16 U.S.C. § 3901(a)(5) (2018) (“[W]etlands enhance the water quality and water supply of the Nation . . . .”); *Id.* § 3901(a)(6) (“[W]etlands provide a natural means of flood and erosion control . . . thereby protecting against loss of life and property.”).

14. *Id.* § 3901(a)(7)–(8).

15. *Id.* § 3901(a)(7).

16. See NAT’L SUSTAINABLE AGRIC. COAL., ENFORCEMENT OF CONSERVATION COMPLIANCE FOR HIGHLY ERODIBLE LANDS 3–4 (2018); see also U.S. GOV’T ACCOUNTABILITY OFF., GAO-03-418, AGRICULTURAL CONSERVATION: USDA NEEDS TO BETTER ENSURE PROTECTION OF HIGHLY ERODIBLE CROPLAND AND WETLANDS 14 (2003) [hereinafter 2003 AGRICULTURAL CONSERVATION REPORT] (documenting the lack of enforcement of mandatory conservation compliance).

17. Jeffrey G. Miller, *Private Enforcement of Federal Pollution Control Laws Part I*, 13 ENV’T L. REP. 10309, 10311. Moreover, the idea of citizen participation is deeply embedded within environmentalism. See RACHEL CARSON, SILENT SPRING 13 (1962) (“We urgently need an end to these false assurances, to the sugar coating of unpalatable facts. It is the public that is being asked to assume the risks . . . . The public must decide whether it wishes to continue on the present road . . . .”).

## I. PUTTING THE PIECES OF THE FARM BILL TOGETHER

The Farm Bill is an omnibus, multiyear legislative package governing multiple aspects of our agriculture and food systems.<sup>18</sup> For such far-reaching legislation, the common name—the Farm Bill—is somewhat misleading and oversimplifies what is at stake.<sup>19</sup> A divide separates the consumer and the farmer, highlighting a “paradox in farm policy: we all eat, but very few of us produce [] food.”<sup>20</sup> Further, everyone pays taxes, but farmers receive federal assistance, which widens the divide and leaves room for misinformation and misunderstanding.<sup>21</sup> This Part attempts to narrow that divide by explaining and interpreting the Farm Bill’s evolution. Next, it will analyze current Farm Bill programs. Finally, it examines the mandatory conservation compliance provisions and their effects on conservation.

### A. The Forming and Evolution of Farm Bill Coalitions

Understanding the current Farm Bill requires a look back at its historical origins. Beginning with the Agricultural Adjustment Act of 1933 (AAA), Congress enacted 18 reiterations of the Farm Bill and several auxiliary acts woven into modern farm bills.<sup>22</sup> The Farm Bill began as price support for commodity growers in response to the Great Depression.<sup>23</sup> Two years later, Congress—facing another national emergency with the Dust Bowl<sup>24</sup>—passed the Soil Conservation and Domestic Allotment Act (1935 Act).<sup>25</sup> In passing the 1935 Act, Congress sought “to provide for the protection of land

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18. RENÉE JOHNSON & JIM MONKE, CONG. RSCH. SERV., RS22131, WHAT IS THE FARM BILL? 1 (2023) (explaining how the omnibus and multiyear nature of the Farm Bill gives Congress, policymakers, and stakeholders an opportunity to “comprehensively and periodically address agricultural and food issues”).

19. Michael Pollan, *You Are What You Grow*, N.Y. TIMES MAG. (Apr. 22, 2007), <https://www.nytimes.com/2007/04/22/magazine/22wwlnlede.t.html>.

20. JONATHAN COPPESS, THE FAULT LINES OF FARM POLICY: A LEGISLATIVE AND POLITICAL HISTORY OF THE FARM BILL 1 (2018) [hereinafter THE FAULT LINES OF FARM POLICY].

21. *Id.*

22. JOHNSON & MONKE, *supra* note 18, at 1 n.1, 3 fig.1, 4.

23. Agricultural Adjustment Act of 1933, Pub. L. No. 73-10, 48 Stat. 31, 31 (“To relieve the existing national economic emergency by increasing agricultural purchasing power . . .”).

24. WORSTER, *supra* note 2, at 4 (“The Dust Bowl came into being during the 1930s, as fulvous dirt began to blow all the way from the plains to the East Coast and beyond.”); see CRAIG COX & SOREN RUNDQUIST, ENV’T WORKING GRP., GOING, GOING, GONE!: MILLIONS OF ACRES OF WETLANDS AND FRAGILE LAND GO UNDER THE PLOW 6 (2013) (“[T]he Dust Bowl—a massive ecological disaster that devastated a large swath of the United States during the 1930s as a result of persistent drought combined with poor farming practices on fragile land that had once been covered with grass.”).

25. This is not considered a “Farm Bill” legislation, but is essential to understanding the development of the conservation coalition and their role in future farm bills. Soil Conservation and Domestic Allotment Act, Pub. L. No. 74-46, 49 Stat. 163 (1935).

resources against soil erosion” and established the Soil Conservation Service.<sup>26</sup>

In short order, the Great Depression and the Dust Bowl spawned two coalitions with interest and influence in farm legislation negotiations.<sup>27</sup> The first was the farm coalition focused on price and production controls.<sup>28</sup> Not far behind was the conservation coalition focused on changing practices to reduce soil erosion.<sup>29</sup> The coalitions were, and still are, comprised of members of Congress and lobbyists from various agriculture interest groups.<sup>30</sup>

Three years after Congress passed the AAA, in 1936, the Supreme Court held that Congress overstepped its bounds and struck it down.<sup>31</sup> Specifically, the Court held that the AAA was a “forbidden infringement of state power.”<sup>32</sup> Congress’s response to this decision amid two national emergencies was to weave together the AAA and the 1935 Act into the Soil Conservation and Domestic Allotment Act of 1936.<sup>33</sup> Around this same time, dust blew into Washington, D.C. from the Great Plains.<sup>34</sup> With this event, conservation support grew within Congress and the public.<sup>35</sup>

Utilizing the general support for conservation, the farm coalition could couch price and production controls as conservation by adjusting payments to farmers based on their farming practices.<sup>36</sup> Two years later, Congress passed the Agricultural Adjustment Act of 1938.<sup>37</sup> This Farm Bill “provide[d] for the conservation of national soil resources and . . . an adequate and balanced flow of agricultural commodities.”<sup>38</sup>

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26. *Id.* at 163–64.

27. JOHNSON & MONKE, *supra* note 18, at 4.

28. THE FAULT LINES OF FARM POLICY, *supra* note 20, at 48.

29. *Id.*

30. JOHNSON & MONKE, *supra* note 18, at 1 (“[S]takeholders . . . involved in the debate on farm bills, includ[e] national farm groups; commodity associations; state organizations; nutrition and public health officials; and advocacy groups representing conservation, recreation, rural development, faith-based interests, local food systems, and certified organic production.”).

31. *United States v. Butler*, 297 U.S. 1, 80 (1936) (Stone, J. dissenting).

32. *Id.*

33. Soil Conservation and Domestic Allotment Act of 1936, Pub. L. No. 74-461, 49 Stat. 1148, 1148 (“To promote the conservation *and* profitable use of agricultural land resources . . .”) (emphasis added).

34. THE FAULT LINES OF FARM POLICY, *supra* note 20, at 47.

35. *Id.* at 48.

36. *Id.* at 49.

37. Agricultural Adjustment Act of 1938, Pub. L. No. 75-430, 52 Stat. 31.

38. *Id.*

In 1941, rainfall returned to the Great Plains.<sup>39</sup> The drought ended due to natural climatic variations, not because of policies to control production.<sup>40</sup> However, as the rains fell, so too did conservation support. With conservation no longer in the national spotlight, the farm coalition primarily dominated subsequent farm bills.<sup>41</sup> These farm bills focused on price controls, and conservation took a back seat.<sup>42</sup> During this non-drought period, Congress enacted farm bills that encouraged farmers to produce commodities by promising stable prices, but the result was increased erosion and loss of income for farmers.<sup>43</sup>

Again, in the 1950s, the rainfall stopped, bringing another drought adding to farmers' disadvantage.<sup>44</sup> Congress responded by passing the Soil Bank Act.<sup>45</sup> Under the Soil Bank Act, Congress created the "Conservation Reserve Program," which paid farmers annually if they agreed to take land out of production and devote that land to conservation.<sup>46</sup> Although hopes were high for the Soil Bank Act, it created fractures within the farm coalition shortly after its enactment due to disparate treatment among commodity growers.<sup>47</sup>

The farm coalition continued to fracture for years, leaving farm bill negotiations at an impasse.<sup>48</sup> However, what seemed to be an impediment created an opportunity to form a new coalition unifying urban and rural communities and farm and non-farm interests—the nutrition coalition.<sup>49</sup> The

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39. W. A. Mattice, *The Weather of 1941 in the United States*, 1941 MONTHLY WEATHER REV. 360, 361 (explaining that 1941 was "outstanding for heavy [precipitation]," particularly around the Great Plains); WORSTER, *supra* note 2, at 227.

40. See generally NAT'L OCEANIC & ATMOSPHERIC ADMIN., CLIMATE VARIABILITY VS. CLIMATE CHANGE (2018) (explaining that climate variability includes droughts and multi-year changes in precipitation patterns).

41. THE FAULT LINES OF FARM POLICY, *supra* note 20, at 68.

42. Agricultural Act of 1948, Pub. L. No. 80-897, 62 Stat. 1247, 1247 ("[T]o stabilize prices of agricultural commodities . . ."); Agricultural Act of 1949, Pub. L. No. 81-439, 63 Stat. 1051, 1051 (using the same language).

43. Agricultural Act of 1956, Pub. L. No. 84-540, 70 Stat. 188, 188 ("Congress . . . [found] that . . . production of excessive supplies of agricultural commodities depresses the prices and income of farm families . . . and brings about soil erosion, depletion of soil fertility, and too rapid release of water . . .").

44. John D. Wiener et al., *Bite Without Bark: How the Socioeconomic Context of the 1950s U.S. Drought Minimized Responses to a Multiyear Extreme Climate Event*, 11 WEATHER & CLIMATE EXTREMES 80, 80 (2016).

45. § 102, 70 Stat. at 188.

46. *Id.* § 107.

47. THE FAULT LINES OF FARM POLICY, *supra* note 20, at 112; William S. Eubanks, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation's Tax Dollars*, 28 STAN. ENV'T L.J. 213, 221 (2009).

48. THE FAULT LINES OF FARM POLICY, *supra* note 20, at 124; Eubanks, *supra* note 47, at 221.

49. THE FAULT LINES OF FARM POLICY, *supra* note 20, at 124.

nutrition coalition lobbied for Congress to pass the Food Stamp Act,<sup>50</sup> and in 1964, Congress did so.<sup>51</sup> Its goal in passing the Food Stamp Act was “to strengthen the agricultural economy” and to improve “nutrition among low-income households.”<sup>52</sup> The Food Stamp Act increased demand for domestic agricultural commodities; however, with the fracturing of the farm coalition and enough support to stand on its own, Congress enacted it separate from other farm legislation.

Nine years later, Congress passed the Agriculture and Consumer Protection Act of 1973.<sup>53</sup> For the first time, the farm, conservation, and nutrition coalitions merged efforts and, in doing so, formed the components of modern farm bills.<sup>54</sup> Support from a wide variety of stakeholders strengthens the Farm Bill.<sup>55</sup> Further, the support enables Congress to renew, and sometimes add, programs on a multiyear basis that assist farmers, increase conservation, and ensure adequate nutrition.<sup>56</sup>

### *B. What the Farm Bill Looks Like Today*

To grasp the importance and magnitude of modern farm bills it is crucial to explore their fundamental components. Additionally, it is important to know the current state of the Farm Bill. Congress enacted the most recent Farm Bill (2018 Farm Bill) on December 20, 2018.<sup>57</sup> For many of the 2018 Farm Bill provisions, Congress set an expiration date of September 30, 2023.<sup>58</sup> Since 2023, however, instead of the traditional renegotiating process in which Congress creates a new farm bill, Congress continues to simply extend the 2018 Farm Bill.<sup>59</sup>

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50. *Id.*

51. Food Stamp Act of 1964, Pub. L. No. 88-525, 78 Stat. 703, 703.

52. *Id.*

53. Agriculture and Consumer Protection Act of 1973, Pub. L. No. 93-86, 87 Stat. 221, 221.

54. Title I of the Agriculture and Consumer Protection Act of 1973 covers “Payment Limitations” for farmers; Title X covers the “Rural Environmental Conservation Program” and amends the Food Stamp Act. Agriculture and Consumer Protection Act of 1973, Pub. L. No. 93-86, 87 Stat. 221, 221, 241.

55. JOHNSON & MONKE, *supra* note 18, at 1.

56. *Id.*

57. Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490.

58. JOHNSON & MONKE, *supra* note 18, at 1.

59. JIM MONKE ET AL., CONG. RSCH. SERV., R47659, EXPIRATION OF THE 2018 FARM BILL AND EXTENSION FOR 2025 3 (2024) [hereinafter EXPIRATION OF THE 2018 FARM BILL]. As of this writing, Congress has not passed a new farm bill. *Id.* However, in July of 2025 Congress passed the Budget Reconciliation Law (Pub. L. No. 119-21) which made changes to the nutrition, farm support, and conservation titles. MEGAN STUBBS, CONG. RSCH. SERV., IF13114, AGRICULTURAL CONSERVATION AFTER ENACTMENT OF THE FY2025 BUDGET RECONCILIATION LAW (P.L. 119-21) 1 (2025). It remains to be seen what future farm bills will look like, especially since the enactment of P.L. 119-21 fractured the farm bill coalition, which supports its passage. See *infra* notes 66-68 and accompanying text. Most



The Farm Bill authorizes both mandatory and discretionary spending programs.<sup>60</sup> However, the majority of Farm Bill programs consist of mandatory spending and, thus, must fall within the budget projected by the Congressional Budget Office.<sup>61</sup> For the 2018 Farm Bill, the projected total budget was \$428 billion throughout its five-year span.<sup>62</sup> The three major Farm Bill coalitions support programs that account for 99% of the mandatory budget outlays in the Farm Bill.<sup>63</sup> The nutrition title comprised 76%, the farm titles (crop insurance and commodity support) comprised 16%, and the conservation title comprised 7%.<sup>64</sup>

Congress combines these three main titles into one Farm Bill, backed by conflicting interests.<sup>65</sup> In doing so, Congress creates a structural tension that forces conflicting interests to negotiate.<sup>66</sup> However, this structure is like a house of cards. If any of the major coalitions were to leave negotiations or reject the outcome, the Farm Bill could come crashing down.<sup>67</sup> Essentially, without support from each coalition, the Farm Bill may fail—leaving the public, farmers, and conservationists empty-handed and hungry.<sup>68</sup>

Comprising the most significant percentage of mandatory spending is the nutrition title.<sup>69</sup> The Food Stamp Program, created by the Food Stamp Act of 1964, evolved into the Supplemental Nutrition Assistance Program (SNAP).<sup>70</sup> SNAP provides monthly grocery assistance for eligible low-income households.<sup>71</sup> The 2018 Farm Bill reauthorized SNAP, and it remains the most prominent domestic food assistance program.<sup>72</sup> Participation in the

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recently, Congress extended the 2018 Farm Bill through September 30, 2026. H.R. 5371, 119th Cong. (2025).

60. JOHNSON & MONKE, *supra* note 18, at 4; *see generally* *How Much Has the U.S. Government Spent This Year?*, FISCALDATA.TREASURY.GOV, <https://fiscaldata.treasury.gov/americas-finance-guide/federal-spending/> (last visited Nov. 29, 2025) (explaining that mandatory spending is mandated by laws, while discretionary spending is spending Congress and the President approve each year during the appropriations process).

61. JOHNSON & MONKE, *supra* note 18, at 4.

62. *Id.*

63. *Id.* at 5.

64. *Id.*

65. *See id.* at 1 (“In recent years, more stakeholders have become involved in the debate on farm bills, including national farm groups; commodity associations; state organizations; nutrition and public health officials; and advocacy groups representing conservation, recreation, rural development, faith-based interests, local food systems, and certified organic production.”).

66. *Id.*

67. *See id.* (detailing the various stakeholders that come together to form the farm bill coalition).

68. *See id.*; *see also* EXPIRATION OF THE 2018 FARM BILL, *supra* note 59, at 1.

69. JOHNSON & MONKE, *supra* note 18, at 5.

70. RANDY ALLISON AUSSENBERG & CARA CLIFFORD BILLINGS, CONG. RSCH. SERV., IF11087, 2018 FARM BILL PRIMER: SNAP AND NUTRITION TITLE PROGRAMS 1 (2019); Food Stamp Act of 1964, Pub. L. No. 88-525, 78 Stat. 703.

71. JOHNSON & MONKE, *supra* note 18, at 11.

72. AUSSENBERG & BILLINGS, *supra* note 70, at 1.



program controls SNAP's spending.<sup>73</sup> However, participation varies based on changes in requirements and economic conditions.<sup>74</sup> Moreover, the number of participants and the specific foods participants purchase with assistance impact conservation within agriculture.<sup>75</sup>

Similarly, the commodities Congress chooses to support and how much support it offers affect conservation.<sup>76</sup> The Farm Bill's crop insurance and commodity support programs comprise 16% of mandatory spending.<sup>77</sup> These programs include Federal Crop Insurance, Price Loss Coverage (PLC), and Agriculture Risk Coverage (ARC).<sup>78</sup> Congress reauthorized PLC and ARC programs for commodity crops through the 2024 crop year.<sup>79</sup> Congress also reauthorized the Federal Crop Insurance program in the 2018 Farm Bill and expanded it to include more specialty crops, cover crops, and crops and grasses used for grazing.<sup>80</sup>

The conservation title comprises 7% of mandatory spending.<sup>81</sup> In other words, Congress budgeted \$29.3 billion over five years for conservation programs.<sup>82</sup> While this may seem like a large sum, soil erosion's impact costs farmers an estimated \$100 million per year in lost income, and that figure accounts only for the cost to farmers.<sup>83</sup> The Farm Bill authorizes the United States Department of Agriculture (USDA) and the Natural Resources Conservation Service (NRCS) to administer several conservation programs.<sup>84</sup> Congress organized these programs into the following categories: working lands programs, land retirement programs, easement programs, partnership and grant programs, and mandatory conservation compliance.<sup>85</sup> Just as the Dust Bowl catalyzed Congress to incorporate

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73. *Id.*

74. *Id.*

75. See Eubanks, *supra* note 47, at 240–51.

76. *Id.*

77. JOHNSON & MONKE, *supra* note 18, at 5.

78. *Id.* at 9–10.

79. 7 U.S.C. §§ 9015–9016 (2018).

80. *Id.* § 1508.

81. JOHNSON & MONKE, *supra* note 18, at 5.

82. *Id.* at 5 tbl.1.

83. Sulaeman & Westhoff, *supra* note 5; see Laurie Ristino & Gabriela Steier, *Losing Ground: A Clarion Call for Farm Bill Reform to Ensure a Food Secure Future*, 42 COLUM. J. ENV'T L. 59, 90 (2016) (“From 1995 to 2014, nearly \$35 billion in taxpayer dollars were spent on [Conservation Reserve Program] payments.”).

84. 16 U.S.C. § 3801 (2018). The NRCS is an agency within USDA, formerly named the Soil Conservation Service. *Who We Are – History of NRCS*, USDA: NAT. RES. CONSERVATION SERV., <https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/north-dakota/who-we-are-history-of-nrcs> (last visited Nov. 29, 2025).

85. MEGAN STUBBS, CONG. RSCH. SERV., R47478, AGRICULTURAL CONSERVATION AND THE NEXT FARM BILL 1 (2023).

conservation in the 1938 Farm Bill,<sup>86</sup> increasing environmental awareness was a basis for Congress passing the 1985 Farm Bill.<sup>87</sup> With the 1985 Farm Bill, Congress mandated conservation compliance on farms with highly erodible lands or wetlands. These mandatory conservation programs are colloquially known as Sodbuster and Swampbuster and are viewed as “the gateway to USDA programs.”<sup>88</sup> Farmers must comply with the Sodbuster and Swampbuster provisions to receive certain USDA benefits.<sup>89</sup>

*C. The Lack of Enforcement in Mandatory Conservation Compliance Programs*

The Farm Bill includes many conservation programs; however, enforcing the mandatory programs remains a challenge. Most conservation programs pay farmers and ranchers who voluntarily implement conservation practices.<sup>90</sup> Yet, if a producer farms on land that NRCS determines is either highly erodible or a wetland, then that producer must self-certify that they are complying.<sup>91</sup> Because USDA requires compliance, the Sodbuster and Swampbuster programs lend themselves to enforcement through a private right of action—or a citizen suit provision. However, the mandatory conservation compliance programs do not have a citizen suit provision. Within the statute, Congress grants authority to the Secretary of Agriculture “to determine whether a person has complied.”<sup>92</sup> Further, the Secretary cannot “delegate [the authority] to any private person or entity.”<sup>93</sup>

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86. JOHNSON & MONKE, *supra* note 18, at 4.

87. Linda A. Malone, *A Historical Essay on the Conservation Provisions of the 1985 Farm Bill: Sodbuster, Swampbusting, and the Conservation Reserve*, 34 KAN. L. REV. 577, 578 (1986).

88. Food Securities Act of 1985, Pub. L. No. 99-198, 99 Stat. 1354, 1504–08; Jacqui Fatka, *USDA Rule on Wetland Determinations ‘Falls Short’*, FEEDSTUFFS (Aug. 28, 2020), <https://www.feedstuffs.com/agribusiness-news/usda-rule-on-wetland-determinations-falls-short> (quoting former NRCS Chief Kevin Norton).

89. Jonathan Coppess, *Reviewing USDA’s Revised Conservation Compliance Regulation*, FARMDAILY (May 1, 2015), <http://farmdaily.illinois.edu/2015/05/reviewing-usda-revised-conservation.html> [hereinafter *Revised Conservation Compliance Regulation*] (providing examples of benefits for which farmers would be ineligible, including farm commodity, conservation program payments, and crop insurance premium subsidy).

90. STUBBS, *supra* note 85, at 1.

91. *Revised Conservation Compliance Regulation*, *supra* note 89; CONSERVATION COMPLIANCE FACT SHEET, *supra* note 9. For a producer on highly erodible land or a wetland to remain eligible for other Farm Bill benefits, they fill out form AD-1026. U.S. DEP’T OF AGRIC., APPENDIX TO FORM FOR AD-1026 HIGHLY ERODIBLE LAND CONSERVATION (HELC) AND WETLAND CONSERVATION (WC) CERTIFICATION [hereinafter APPENDIX TO FORM FOR AD-1026]. Basically, the producer self-certifies that they follow the law and allow the NRCS to investigate their farm and they remain eligible for benefits. *Id.*

92. 16 U.S.C. § 3811(b) (2018).

93. *Id.*

In 1990, five years after Congress codified the Sodbuster and Swampbuster programs, the United States Government Accountability Office (GAO) issued a report on mandatory conservation compliance programs.<sup>94</sup> In their report, GAO found that USDA's criteria for implementing the conservation programs "do not protect all erodible lands or wetlands."<sup>95</sup> The report suggests that USDA lower its standards for what it considers highly erodible land.<sup>96</sup> Additionally, the report suggests that the Agriculture Stabilization and Conservation Service's monitoring system needs to "ensure that all USDA farm program participants . . . are included . . . for sampling participants' compliance."<sup>97</sup> Following this report, the USDA reorganized.<sup>98</sup> The Agriculture Stabilization and Conservation Service dissolved, and its responsibilities transferred to NRCS and Farm Service Agency jointly.<sup>99</sup>

Despite Congress amending the 1985 bill and USDA reorganizing, the omnibus nature of the Farm Bill and its limited budgetary outlays constrain the effectiveness of conservation compliance.<sup>100</sup> The continuing concern over soil erosion and wetland conversion led GAO to issue another report in 2003.<sup>101</sup> In its 2003 report, GAO shared a significant finding: "[A]lmost half of the [NRCS's] field offices do not implement the conservation provisions . . ."<sup>102</sup> Additionally, GAO reported that since the program's inception, "reductions in soil erosion and wetland conversions have leveled off . . . , and in some areas of the country, soil erosion has even increased."<sup>103</sup>

Since creating the conservation compliance programs, Congress has included them in every farm bill reiteration with slight modifications.<sup>104</sup> In most of the modifications to the Sodbuster and Swampbuster programs, Congress or USDA add exemptions and qualifications.<sup>105</sup> For example, in

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94. U.S. GOV'T ACCOUNTABILITY OFF., GAO-B-240470, FARM PROGRAMS: CONSERVATION COMPLIANCE PROVISIONS COULD BE MADE MORE EFFECTIVE (1990).

95. *Id.* at 3.

96. *Id.*

97. *Id.* at 39.

98. *Agency History*, USDA: FARM SERV. AGENCY, <https://www.fsa.usda.gov/about-fsa/history-and-mission/agency-history/index> (last visited Nov. 29, 2025).

99. *Id.*

100. See NAT'L SUSTAINABLE AGRIC. COAL., *supra* note 16, at 3–4.

101. 2003 AGRICULTURAL CONSERVATION REPORT, *supra* note 16, at 7.

102. *Id.* at 14.

103. *Id.* at 38.

104. See STUBBS, *supra* note 85, at 3.

105. 7 C.F.R. § 12.5 (2023); 16 U.S.C. § 3812(b) (2018) (exempting land that was cultivated prior to Dec. 23, 1985); 16 U.S.C. § 3822 (2018) (exempting wetlands converted prior to Dec. 23, 1985); Ristino & Steier, *supra* note 83, at 90–91.

2011, USDA issued a final rule that revised the “good faith” exemption.<sup>106</sup> The exemption applies to producers who, in USDA’s estimation, are acting in good faith and are either in the process of complying with a conservation plan or are in some way mitigating the environmental harm.<sup>107</sup> To meet the exemption now requires a “higher level of concurrence within USDA.”<sup>108</sup> Also, USDA reduced the benefit farmers can receive to match the seriousness of the violation.<sup>109</sup> None of the exemptions or qualifications, however, increase the efficacy of the programs.<sup>110</sup> In other words, more exemptions means more eroded land and more converted wetlands without penalty.

Still, mandatory conservation compliance programs within the Farm Bill remain plagued by a lack of enforcement.<sup>111</sup> A 2016 Office of the Inspector General Report found that NRCS had not supplied its state offices with sufficient guidance for erosion on highly erodible lands.<sup>112</sup> Moreover, the report found that NRCS guidance led to “inconsistent compliance determinations,” which spiraled to “incorrect interpretation of compliance rules” and confusion among producers.<sup>113</sup> Even after this report, USDA enforcement data showed deficiencies in implementation and enforcement.<sup>114</sup>

## II. THE FARM BILL AS ENVIRONMENTAL LEGISLATION

Though often not recognized as such, the Farm Bill plays a critical role in environmental protection, similar to legislation from the 1970s like the Clean Air and Clean Water Acts.<sup>115</sup> Moreover, throughout the history of the Farm Bill, environmental disasters—like the Dust Bowl—have molded farm bills to include conservation programs.<sup>116</sup> Despite these programs, soil erosion has increased in some areas, largely due to under-enforcement.<sup>117</sup>

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106. Highly Erodible Land and Wetland Conservation, 76 Fed. Reg. 82075 (proposed Dec. 30, 2011) (codified at 7 C.F.R. pt. 12).

107. 7 C.F.R. § 12.5 (2023).

108. Highly Erodible Land and Wetland Conservation, *supra* note 106, at 82075.

109. *Id.*

110. Ristino & Steier, *supra* note 83, at 90.

111. Ristino & Steier, *supra* note 83, at 110.

112. U.S. DEP’T OF AGRIC., OFF. OF INSPECTOR GEN., AUDIT REP. 50601-0005-31, USDA MONITORING OF HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION VIOLATIONS (2016).

113. *Id.*

114. See NAT’L SUSTAINABLE AGRIC. COAL., *supra* note 16, at 3.

115. Miller, *supra* note 17, at 10311 n.12.

116. JOHNSON & MONKE, *supra* note 18, at 4.

117. See 2003 AGRICULTURAL CONSERVATION REPORT, *supra* note 16, at 7; see also NAT’L SUSTAINABLE AGRIC. COAL., *supra* note 16, at 5–6 (providing tables of conservation compliance violation data state by state and explaining how inconsistent implementation led to the vast discrepancies in reporting violations).

Lack of enforcement was a concern for legislators while writing amendments to the Clean Air Act in 1970.<sup>118</sup> To quell this concern, legislators proposed “[a]uthorizing citizens to bring suits for violations” as a way to motivate enforcement.<sup>119</sup> After legislators preserved this private right of action in the Clean Air Act, citizen suits became “almost ubiquitous” in existing and new environmental legislation.<sup>120</sup> Just as citizen suits have aided the enforcement of other environmental legislation, so too can a citizen suit provision bolster the enforcement of mandatory conservation compliance. This Part will first compare mandatory conservation compliance with the Clean Air and Clean Water Acts. Then, it will examine how citizen suits operate to support enforcing environmental legislation.

*A. How Mandatory Conservation Compares to the Clean Air and Clean Water Acts*

The Clean Air and Clean Water Acts possess several similarities to the mandatory conservation compliance provisions. Broadly, all three operate to protect a particular environmental medium: the Clean Air Act protects air,<sup>121</sup> the Clean Water Act protects water,<sup>122</sup> and mandatory conservation compliance protects soil.<sup>123</sup> The Clean Air and Clean Water Acts authorize the Environmental Protection Agency (EPA) to establish ambient air and water quality standards.<sup>124</sup> Just as these statutes establish standards for their respective mediums, mandatory conservation compliance establishes quality standards for the soil. In other words, the Sodbuster and Swampbuster provisions authorize the Natural Resources Conservation Service (NRCS) to establish conservation standards on highly erodible lands and wetlands.<sup>125</sup>

Similarities continue when comparing some of the mechanisms the Clean Air and Clean Water Acts use to achieve their desired standards. The Clean Air Act uses state implementation plans.<sup>126</sup> Air quality standards are set at the federal level.<sup>127</sup> Then, states decide how to implement those

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118. Miller, *supra* note 17, at 10311 n.11 ((discussing legislators concern for enforcement agencies’ inevitable lack of sufficient resources to address violations) (citing to S. REP. NO. 91-1196, at 36–39 (1970), as reprinted in NRDC v. Train, 510 F.2d 692, 723 (D.C. Cir. 1974))).

119. S. REP. NO. 91-1196, at 36–39, as reprinted in NRDC, 510 F.2d at 723.

120. Miller, *supra* note 17, at 10311.

121. 42 U.S.C. § 7401(b) (2018).

122. 33 U.S.C. § 1251(a) (2018).

123. 16 U.S.C. §§ 3811, 3822 (2018).

124. DAVID B. FIRESTONE ET AL., ENVIRONMENTAL LAW FOR NON-LAWYERS 131 (5th ed. 2014).

125. 7 C.F.R. §§ 12.21, 12.32 (2023).

126. FIRESTONE ET AL., *supra* note 124, at 131.

127. See WALSH ET AL., *supra* note 8, at 13.

standards through various local regulations.<sup>128</sup> Finally, EPA approves state implementation plans.<sup>129</sup> If a state fails to submit a plan or EPA does not approve it, that state faces sanctions.<sup>130</sup> Alternatively, the Clean Water Act uses a permitting system.<sup>131</sup> Permits are issued for discharging pollutants into navigable waters.<sup>132</sup> The permits control pollution and, thus, the desired water quality standards by limiting the quantity of pollutants in a given waterway.<sup>133</sup> While there is an exception for existing agricultural operations,<sup>134</sup> anyone who discharges a pollutant from a point source into navigable waters without a permit is subject to penalties.<sup>135</sup>

Similar to the Clean Air Act's state implementation plans, the Sodbuster provision uses farm conservation plans to achieve soil conservation standards on highly erodible lands.<sup>136</sup> At the federal level, NRCS establishes whether the land is highly erodible.<sup>137</sup> Then, producers on highly erodible land must develop a conservation plan specific to their farm.<sup>138</sup> Then, local conservation districts approve the plan under NRCS's guidance and in consultation with the local county Farm Service Agency (FSA) committee.<sup>139</sup>

The Swampbuster provision operates differently to protect the soil.<sup>140</sup> More similar to the Clean Water Act, where an unpermitted discharge constitutes a violation, the Swampbuster provision makes a producer who converts a wetland to grow a commodity ineligible for benefits from other Farm Bill programs.<sup>141</sup> While both provisions contain several exemptions, under the Swampbuster provision, having a conservation plan does not allow a producer to convert a wetland to grow a commodity.<sup>142</sup> For both provisions, the exemptions can be seen as permits. In other words, if a producer meets one of the exemptions, the United States Department of Agriculture (USDA) permits the producer to spend the soil instead of conserving it.<sup>143</sup>

The final step for producers under both mandatory conservation compliance provisions is distinct from the Clean Air and Clean Water Acts.

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128. *See id.*

129. 42 U.S.C. § 7410 (2018).

130. *Id.* § 7410(m).

131. 33 U.S.C. § 1342 (2018).

132. *Id.*

133. *See id.*

134. 33 U.S.C. § 1344(f)(1)(A) (2018).

135. *Id.* § 1319.

136. 16 U.S.C. § 3812(a)(2) (2018).

137. 7 C.F.R. §§ 12.20(a), 12.21 (2023).

138. 7 C.F.R. § 12.20 (2023).

139. *Id.*

140. *See* 16 U.S.C. § 3822(a) (2018).

141. *Id.*

142. *Id.*

143. *See id.*

Under these provisions, a producer must self-certify that they follow a conservation plan or are not converting a wetland and sign off on potential NRCS inspections.<sup>144</sup> If a producer does not self-certify or NRCS finds them out of compliance after an inspection, they become ineligible for other Farm Bill benefits.<sup>145</sup> With the unrealistic threat of an inspection, this structure puts a lot of faith in producers.<sup>146</sup> Additionally, asking producers to deny themselves access to Farm Bill benefits they likely need seems unreasonable.

Further examining requirements within the Clean Air Act offers another point of comparison. The Clean Air Act uses a “best available emission reduction technology” requirement to set air quality standards for stationary sources.<sup>147</sup> The Sodbuster provision does as well. In creating a conservation plan to limit soil erosion, the Sodbuster provision uses the “technical guide in use at the time,” “available conservation technology,” and “practices . . . not currently approved but . . . [that] have a reasonable likelihood of success.”<sup>148</sup> Moreover, different industries have different source standards in the Clean Air Act.<sup>149</sup> The best practices for one industry may not apply to another. Similarly, in the Sodbuster Program, a conservation plan must be based on “local resource conditions.”<sup>150</sup> In other words, conservation plans for one area might not work in another. Additionally, the Clean Air Act and the Sodbuster Program require considering the costs associated with using the technology.<sup>151</sup>

While the Clean Air and Clean Water Acts provide an environmental benefit to the public, benefits can vary between the Sodbuster and Swampbuster provisions. Producers on highly erodible soil or on wetlands have a natural incentive to protect their land—it is where they grow their livelihoods. When the soil is protected and conserved, the crops are strong, which provides economic and environmental benefits to the producers and the public.<sup>152</sup> Alternatively, producers do not have the same economic

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144. See APPENDIX TO FORM FOR AD-1026, *supra* note 91.

145. 16 U.S.C. § 3812(a)(2) (2018); Malone, *supra* note 87, at 584 (“The general intent of sodbusting provisions is to discontinue government subsidization of conversion by denying commodity subsidies to producers of program crops grown on highly erodible land.”).

146. See NAT’L SUSTAINABLE AGRIC. COAL., *supra* note 16, at 5.

147. FIRESTONE ET AL., *supra* note 124, at 112.

148. 7 C.F.R. § 12.23 (2023).

149. FIRESTONE ET AL., *supra* note 124, at 113.

150. 7 C.F.R. § 12.23 (2023).

151. *Id.* (“Conservation systems shall be technically and economically feasible; based on local resource conditions and available conservation technology; cost-effective; and shall not cause undue economic hardship on the person applying the conservation system.”); FIRESTONE ET AL., *supra* note 124, at 112.

152. See BERRY, *supra* note 1, at 90.



benefits to protect wetlands.<sup>153</sup> Instead of an incentive to protect wetlands, in many instances, the producer decides that the more significant economic incentive lies in converting wetlands.<sup>154</sup> For producers in either situation, pressure to meet market demands and to repay loans puts them in the difficult position of weighing financial and environmental benefits.<sup>155</sup> Understandably, a producer might decide on a particular production method or convert a wetland for economic rather than environmental reasons. Moreover, a person experiencing direct adverse effects of erosion or a converted wetland may have a difficult time finding the culprit.<sup>156</sup> However, the decision to destroy a wetland or to expend highly erodible soil impacts everyone—just like the decision to pollute the air or water.<sup>157</sup>

### *B. How Citizen Suits Work to Enforce Environmental Legislation*

The similarities between the Clean Air and Clean Water Acts and the mandatory conservation compliance provisions end when it comes to enforcement. While amending the Clean Air Act in 1970, legislators knew agencies would have difficulty enforcing the Act's provisions.<sup>158</sup> Although discussing a potential violation under the National Environmental Policy Act, the Court also expressed awareness of this restraint.<sup>159</sup> Once legislators enacted the citizen suit provision in the Clean Air Act, it was nearly universal in environmental legislation.<sup>160</sup> However, under mandatory conservation compliance provisions, when production practices erode soil or destroy wetlands, the adversely affected person is at a loss. They are unable to sue the violator because there is no citizen suit provision.<sup>161</sup> When a producer's decisions adversely affect public health and safety, any person adversely

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153. See 16 U.S.C. § 3901(a) (2018).

154. See WALSH ET AL., *supra* note 8, at 1.

155. See *id.*

156. See *infra* Part III.A.2.

157. See COX & RUNDQUIST, *supra* note 24, at 3–6.

158. Miller, *supra* note 17, at 10311.

159. *Sierra Club v. Morton*, 405 U.S. 727, 745–46 (1972) (Douglas, J., dissenting). In his famous dissent, Justice Douglas explains:

Yet the pressures on agencies for favorable action one way or the other are enormous. The suggestion that Congress can stop action which is undesirable is true in theory; yet even Congress is too remote to give meaningful direction and its machinery is too ponderous to use very often. The federal agencies of which I speak are not venal or corrupt. But they are notoriously under the control of powerful interests who manipulate them through advisory committees, or friendly working relations, or who have that natural affinity with the agency which in time develops between the regulator and the regulated.

*Id.*

160. Miller, *supra* note 17, at 10311 n.12.

161. Alternatively, under the Administrative Procedure Act, anyone “adversely affected or aggrieved by agency action” can sue the offending agency. 5 U.S.C. § 702 (2018).

affected should be able to enforce environmental legislation. Further, with scarce enforcement of mandatory conservation compliance provisions,<sup>162</sup> Congress needs another place to turn.

Exceptions aside, the citizen suit provisions of environmental legislation are “virtually identical.”<sup>163</sup> In the Clean Air Act, the citizen suit provision authorizes “any person” to bring a civil action against anyone violating an emission standard.<sup>164</sup> While the Clean Water Act language states “any citizen,”<sup>165</sup> the provision operates similarly: It allows a person adversely affected to bring a civil action against any person violating an effluent standard.<sup>166</sup> Both citizen suits also allow adversely affected persons to sue violators or the administrator if the administrator has failed to perform their required duty.<sup>167</sup>

One common feature of citizen suit provisions is a notice requirement.<sup>168</sup> Within the Clean Air and Clean Water Acts, the notice requirement bars citizens from suing if they do not notify the administrator, the State, and the violator(s) within 60 days.<sup>169</sup> Alternatively, when dealing with a violation of hazardous air emissions or toxic water pollutants, an adversely affected person can commence action immediately.<sup>170</sup> This immediacy demonstrates congressional sentiment that the ability to sue should happen more quickly relative to the infraction’s severity.<sup>171</sup>

A close look at the notice requirement of citizen suit provisions in the Clean Air and Clean Water Acts reveals the diligent prosecution bar.<sup>172</sup> The diligent prosecution bar provides two main services. First, it reduces the number of cases brought to court.<sup>173</sup> The diligent prosecution bar achieves this by preventing citizens from suing a violator if the administrator or the

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162. See NAT’L SUSTAINABLE AGRIC. COAL., *supra* note 16, at 5.

163. Miller, *supra* note 17, at 10311.

164. 42 U.S.C. § 7604(a)(1) (2018).

165. 33 U.S.C. § 1365(a), (g) (2018) (defining citizen as “a person or persons having an interest which is or may be adversely affected”); Miller, *supra* note 17, at 10311 n.18 (explaining that the change from “person” to “citizen” was made in the conference committee to reflect the standard expressed in case law that a person must be adversely affected).

166. Compare 33 U.S.C. § 1365(a)(1), with 33 U.S.C. § 1365(g).

167. Compare 42 U.S.C. § 7604(a)(2), with 33 U.S.C. § 1365(a)(1)–(2).

168. Compare 42 U.S.C. § 7604(b), with 33 U.S.C. § 1365(b); Miller, *supra* note 17, at 10312; see Martin A. Miller, Note, *Coping with CAFOs: How Much Notice Must a Citizen Give*, 68 MO. L. REV. 959, 969 (2003).

169. Compare 42 U.S.C. § 7604(b)(1)(A), with 33 U.S.C. § 1365(b)(1)(A).

170. Compare 42 U.S.C. § 7604(b), with 33 U.S.C. § 1365(b); Miller, *supra* note 17, at 10312 n.25.

171. Miller, *supra* note 17, at 10312 n.25.

172. Compare 42 U.S.C. § 7604(b)(1)(B), with 33 U.S.C. § 1365(b)(1)(B).

173. See *Naturaland Tr. v. Dakota Fin. LLC*, 41 F.4th 342, 347 (4th Cir. 2022).

State is “diligently prosecuting a civil or criminal case” in court.<sup>174</sup> Second, the diligent prosecution bar indicates to courts that citizen suits are “meant to supplement rather than supplant governmental action.”<sup>175</sup> In *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc.*, the Supreme Court looked to legislative history and held that citizen suits are proper only when the responsible agencies fail to enforce the provisions.<sup>176</sup> Further, the Court held that the language of the citizen suit provision indicates they are “forward-looking.”<sup>177</sup> In other words, citizens cannot sue for “wholly past violations” of the Act.<sup>178</sup>

Debate continues over the standard for what satisfies diligent prosecution.<sup>179</sup> For example, the Fourth Circuit recently issued a decision in *Naturaland Trust v. Dakota Finance, LLC*, in which a citizen brought suit under the Clean Water Act.<sup>180</sup> In *Naturaland*, there was a question about the point at which South Carolina’s actions amounted to diligent prosecution.<sup>181</sup> The court concluded that the consent order issued by the State did amount to diligent prosecution; however, the issue boiled down to timing.<sup>182</sup> The court held that because the Naturaland Trust filed its complaint before the South Carolina Department of Health and Environmental Control issued a consent order, the diligent prosecution bar did not preclude Naturaland Trust’s claim.<sup>183</sup>

While both citizen suit provisions contain a notice requirement, there is an additional constitutional requirement for any plaintiff to have their day in court—they must also have standing.<sup>184</sup> Meeting this requirement allows a plaintiff to survive a motion to dismiss for lack of subject matter jurisdiction.<sup>185</sup> Put differently, the court must have the authority to hear a case.<sup>186</sup> Under Article III of the Constitution, courts have authority only over actual cases and controversies.<sup>187</sup> Therefore, for a court to have subject matter

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174. *Id.* at 346.

175. *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found.*, 484 U.S. 49, 60 (1987).

176. *Id.* (citing S. REP. NO. 92-414, at 64 (1971)).

177. *Id.* at 59.

178. *Id.* at 60.

179. Miller, *supra* note 17, at 10312.

180. 41 F.4th 342, 345–46 (4th Cir. 2022).

181. *Id.* at 344–49.

182. *Id.* at 349; see 33 U.S.C. § 1319(g)(6)(B)(i) (2018).

183. *Naturaland Tr.*, 41 F.4th at 350.

184. See *Friends of the Earth, Inc. v. Laidlaw Env’t Servs., Inc.*, 528 U.S. 167, 180 (2000).

185. See FED. R. CIV. P. 12(b)(1).

186. *Id.*

187. U.S. CONST. art. III, § 2, cl. 1.

jurisdiction over the case—and a plaintiff to withstand a 12(b)(1) motion to dismiss—the plaintiff must also have standing.<sup>188</sup>

Article III standing requires a plaintiff to show that they have (1) suffered an injury that is concrete and particularized and actual or imminent; (2) their injury is fairly traceable to the defendant's conduct; and (3) that it is likely their injury will be redressed by a favorable decision.<sup>189</sup> In the landmark case *Friends of the Earth v. Laidlaw Environmental Services, Inc.*, the Supreme Court held that the environmental plaintiffs had standing to enforce the Clean Water Act under its citizen suit provision.<sup>190</sup> Friends of the Earth plausibly asserted that it suffered an injury caused by the defendant and that stopping the defendant's impermissible discharge redressed its injury. Courts have upheld citizen suit provisions when a plaintiff meets all the requirements.<sup>191</sup>

Finally, courts may award attorney's fees to successful plaintiffs in the Clean Air and Clean Water Acts' citizen suit provisions.<sup>192</sup> Additionally, citizen suit provisions prevent citizens from collecting penalties associated with the violation.<sup>193</sup> Combining the access to attorney's fees with the restriction on penalties serves a function common to all of the barriers in citizen suit provisions—it prevents a large volume of cases from weighing on the courts.<sup>194</sup> Perhaps even frivolous ones.<sup>195</sup> More importantly, citizen suits grant harmed plaintiffs access to the courts. Further, allowing attorney's fees quells plaintiffs' financial concerns regarding litigation.<sup>196</sup>

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188. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2205–06, n.1 (2021) (“Congress rarely created “citizen suit”-style causes of action for suits against private parties by private plaintiffs who had not suffered a concrete harm. All told, until the 20th century, this Court had little reason to emphasize the injury-in-fact requirement because, until the 20th century, there were relatively few instances where litigants without concrete injuries had a cause of action to sue in federal court. The situation has changed markedly, especially over the last 50 years or so. During that time, Congress has created many novel and expansive causes of action that in turn have required greater judicial focus on the requirements of Article III.”).

189. *Friends of the Earth, Inc.*, 528 U.S. at 180–81.

190. *Id.* at 189.

191. *Id.* at 183, 187; *Friends of the Earth v. Carey*, 535 F.2d. 165, 172 (2d Cir. 1976) (“Congress made clear that citizen groups are not to be treated as nuisances or troublemakers but rather as welcomed participants in the vindication of environmental interests.”).

192. Compare 42 U.S.C. § 7604(d), with 33 U.S.C. § 1365(d); Miller, *supra* note 17, at 10312.

193. Compare 42 U.S.C. § 7604(g), with 33 U.S.C. § 1365.

194. Miller, *supra* note 17, at 10312.

195. *Id.*

196. See *id.* at 10319.

### III. THE NEED FOR CITIZEN ENFORCEMENT OF MANDATORY CONSERVATION COMPLIANCE

Agricultural exceptionalism is rampant in environmental legislation.<sup>197</sup> The Clean Air Act calls for states to implement ambient air quality standards; however, states then set thresholds that either “implicitly or explicitly exclude farmers.”<sup>198</sup> The Clean Water Act also exempts farmers.<sup>199</sup> Although the Clean Water Act demands discharges from a “point source” to have a permit, the definition of “point source” exempts “agricultural stormwater discharges and return flows from irrigated agriculture.”<sup>200</sup> In other words, farmers do not need a permit.<sup>201</sup> Environmental legislation protects the public’s right to a healthy and aesthetically pleasing environment.<sup>202</sup> However, when agricultural production practices degrade the environment, injured citizens are left without an opportunity to enforce the Sodbuster or Swampbuster provisions.

While a picturesque farm among rolling hills or across a field may be romanticized in the public sentiment, one cannot deny the negative impacts that farms have on our environment.<sup>203</sup> A citizen suit provision within the Farm Bill’s conservation title would help bolster enforcement of mandatory conservation compliance. This Part will first examine how a citizen suit within the Sodbuster and Swampbuster provisions would mirror those in the Clean Air and Clean Water Acts. Then, it will address counterarguments and other solutions while maintaining that a citizen suit would help bolster enforcement and, thus, increase necessary environmental protections.

#### *A. Applying the Citizen Suit Template from the Clean Air and Clean Water Acts to Mandatory Conservation Compliance*

Just as Congress empowered adversely affected citizens to become “private attorneys general” in the Clean Air and Clean Water Acts,<sup>204</sup> Congress could empower citizens here. The Farm Bill as a whole has severe environmental impacts.<sup>205</sup> The environmental impacts of mandatory conservation compliance are especially severe because they operate to

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197. See Eubanks, *supra* note 47, at 249; see also Margot J. Pollans, *Drinking Water Protection and Agricultural Exceptionalism*, 77 OHIO ST. L.J., 1195, 1197–98, 1201–02 (2016).

198. Eubanks, *supra* note 47, at 249.

199. 33 U.S.C. § 1362(14) (2018).

200. *Id.*

201. See *id.*

202. See *Sierra Club v. Morton*, 405 U.S. 727, 734 (1972).

203. See Eubanks, *supra* note 47, at 240–51.

204. Miller, *supra* note 17, at 10309.

205. Eubanks, *supra* note 47, at 240–51.

protect soil—a life-sustaining natural resource.<sup>206</sup> Allowing citizens to enforce the Sodbuster and Swampbuster provisions could require producers to follow a conservation plan or to not destroy wetlands.<sup>207</sup> Therefore, citizen suit provisions increase environmental protection.<sup>208</sup> A citizen suit would grant federal court jurisdiction to any person adversely affected by the National Resource Conservation Service's (NRCS's) failure to enforce the Sodbuster or Swampbuster Programs or by the violator of one of these programs. This Part examines two legal barriers to citizen suits as applied to mandatory conservation compliance: (1) the requirements and components of providing notice, and (2) standing.

### 1. Providing Notice of the Alleged Violation to All Parties

Any citizen attempting to sue under a citizen suit within the Sodbuster and Swampbuster provisions would have to give notice. Like the Clean Air and Clean Water Acts, the potential plaintiff could not commence their action until they notified NRCS, the local county Farm Service Agency committee, and the violator.<sup>209</sup> This procedural process of notifying the affected parties allows time for compliance without the need for litigation.<sup>210</sup> Essentially, notice serves as another filter, preventing an onslaught of cases and promoting judicial efficiency.<sup>211</sup>

Unlike the Clean Air and Clean Water Act citizen suit provisions, here, a citizen suit would clarify what meets the definition for commencing an action within the diligent prosecution bar.<sup>212</sup> The Sodbuster provision already calls for NRCS to communicate directly with producers to create a conservation plan.<sup>213</sup> Similarly, in the Swampbuster provision, NRCS determines if an area is a wetland by going directly to the area and communicating its findings to producers. If a diligent prosecution bar were included as it is in the Clean Air and Clean Water Acts, arguments would arise that NRCS is already diligently prosecuting.<sup>214</sup> In other words, the conservation plan and the communications from that process arguably meets the definition of commencing an action. However, neither NRCS nor the Farm Service Agency diligently prosecutes conservation plan violations;

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206. See BERRY, *supra* note 1, at 90.

207. See 16 U.S.C. § 3811 (2018); *see also* 16 U.S.C. § 3822 (2018).

208. See 2003 AGRICULTURAL CONSERVATION REPORT, *supra* note 16, at 42.

209. See 42 U.S.C. § 7604(b) (2018); *see also* 33 U.S.C. § 1365(b) (2018).

210. Miller, *supra* note 17, at 10312.

211. *See id.*

212. See *Naturaland Tr. v. Dakota Fin. LLC*, 41 F.4th 342, 348 (4th Cir. 2022).

213. 16 U.S.C. § 3812(g) (2018).

214. See *Naturaland Tr.*, 41 F.4th at 348.

they merely determine whether mandatory conservation compliance is required of a producer.<sup>215</sup> Producers then self-certify that they comply with NRCS approved conservation plans.<sup>216</sup> Under the Administrative Procedure Act, producers have access to judicial review.<sup>217</sup> Producers can sue NRCS if NRCS rejects the producers conservation plan or determines the producer's land is a wetland.<sup>218</sup> Alternatively, a citizen suit would open the doors to anyone adversely affected by agency inaction or by a violator of the provisions.

Nothing happens when producers do not follow an approved conservation plan.<sup>219</sup> NRCS reviews an average of 1% of highly erodible land and wetland determinations annually.<sup>220</sup> The site inspections that are carried out are applied inconsistently because of a lack of guidance for field offices.<sup>221</sup> Concern at the prospect of these realities—not enough agency resources or motivation—is precisely the concern that led Congress to create citizen suits in environmental legislation.<sup>222</sup> NRCS is already stretched thin.<sup>223</sup> It is time for citizens to heed the call once again to help enforce these essential provisions.<sup>224</sup>

However, lawsuits should not be a citizen's own financial burden.<sup>225</sup> That is why, here, a citizen suit provision would award successful plaintiffs attorney's fees.<sup>226</sup> Nor should a lawsuit be motivated by an opportunity for personal gain.<sup>227</sup> As such, a citizen suit provision would direct penalties payments to the government—not the individual.<sup>228</sup> This award and penalty structure is common in other citizen suit provisions. Here, as it does elsewhere, the award structure would provide courts with a lower caseload by preventing frivolous claims.<sup>229</sup>

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215. See 7 C.F.R. §§ 12.20(a), 12.21 (2023).

216. APPENDIX TO FORM FOR AD-1026, *supra* note 91.

217. See, e.g., *Boucher v. USDA*, 934 F.3d 530, 547 (7th Cir. 2019); see also *Maple Drive Farms v. Vilsack*, 781 F.3d 837, 848 (6th Cir. 2015); *Clark v. USDA*, 537 F.3d 934, 939 (8th Cir. 2008).

218. See, e.g., *Boucher*, 934 F.3d at 547; see also *Maple Drive Farms*, 781 F.3d at 848; *Clark*, 537 F.3d at 939.

219. See NAT'L SUSTAINABLE AGRIC. COAL., *supra* note 16, at 5.

220. See *id.*

221. See *id.*

222. Miller, *supra* note 17, at 10309 n.1.

223. See NAT'L SUSTAINABLE AGRIC. COAL., *supra* note 16, at 1.

224. See CARSON, *supra* note 17, at 13 ("We urgently need an end to these false assurances, to the sugar coating of unpalatable facts. It is the public that is being asked to assume the risks . . . . The public must decide whether it wishes to continue on the present road . . . .").

225. Miller, *supra* note 17, at 10312.

226. See *id.*

227. See *id.*

228. See *id.*

229. See *id.*



## 2. “Standing” Up for Mandatory Conservation Compliance

If a citizen wishes to sue someone violating the Sodbuster or the Swampbuster provisions, they must plausibly assert standing.<sup>230</sup> While the standing doctrine also applies to those suing under the Clean Air and Clean Water Acts, proving the elements of standing in those situations is clearer.<sup>231</sup> In other words, citizens can more readily show the particular violation of air or water quality standards resulted in an injury and that their injury was caused by the violation.<sup>232</sup>

The second element of standing, causation, may give a plaintiff difficulties. One reason for the difficulty is transparency. NRCS reviews a dismal 1% of producers that it covers under the mandatory conservation compliance provisions annually.<sup>233</sup> In some states, there is no enforcement data.<sup>234</sup> Fundamentally, for a citizen to show that a particular violation caused their injury, they would need to know where the violation occurred. A plaintiff would likely struggle to show causation without adequate transparency and increased reporting of violations.

Even in the absence of increased reporting and transparency, there are instances where a citizen suit would be beneficial. Say, hypothetically, there is a producer who is the neighbor of a second producer. That second producer knows that their neighbor converted an NRCS-designated wetland. Further, after periods of heavy rain, the second producer notices soil washing from the neighbor’s property to their own and an increase in flooding. This second producer knows—just as well as Congress, if not better than—that wetlands provide a natural form of flood and erosion protection.<sup>235</sup> However, without a citizen suit provision, the second producer is unable to find a readily accessible remedy under the mandatory conservation compliance provisions. They would have to wait and hope that the neighboring producer falls into the 1% of NRCS-reviewed sites.<sup>236</sup>

Additionally, a plaintiff may struggle to show causation because of the temporal delay between the violation and the injury.<sup>237</sup> Other factors, such as floods and droughts, further separate the violation and the injury.<sup>238</sup> In other

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230. *See* TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2207 (2021).

231. *See* Friends of the Earth, Inc. v. Laidlaw Env’t Servs., Inc., 528 U.S. 167, 174–75 (2000).

232. *See id.*

233. NAT’L SUSTAINABLE AGRIC. COAL., *supra* note 16, at 5.

234. *Id.*

235. 16 U.S.C. § 3901(a)(6) (2018) (“[W]etlands provide a natural means of flood and erosion control . . . thereby protecting against loss of life and property.”).

236. *See* NAT’L SUSTAINABLE AGRIC. COAL., *supra* note 16, at 5.

237. *See* COX & RUNDQUIST, *supra* note 24, at 3–6.

238. *See* WALSH ET AL., *supra* note 8, at 49.

words, when compared to Clean Air and Clean Water Act violations, here, the injuries appear more disconnected.<sup>239</sup> An example of this disconnect is found in the Dust Bowl.<sup>240</sup> The Dust Bowl spawned from poor growing practices as well as a period of drought.<sup>241</sup> Producers plowed and left highly erodible soils uncovered growing season after growing season.<sup>242</sup> However, public citizens were injured only after several years of this unsustainable practice.<sup>243</sup> Further, the injury occurred in combination with natural forces.<sup>244</sup>

Despite the disconnect, people can still plausibly allege that a mandatory conservation compliance provision violation caused their injury.<sup>245</sup> Moreover, standing analysis mainly focuses on the injury.<sup>246</sup> In this case, producers risk injury to life and property by violating mandatory conservation compliance.<sup>247</sup> Congress found that soil and wetlands are vital parts of the human environment.<sup>248</sup> Therefore, a plaintiff should be able to trace their injury to the expending of soil or the destruction of a wetland.

Standing and notice are two important legal barriers that apply to citizen suits. When Congress and the courts implement them in citizen suits, they legitimize citizen-plaintiffs claims. Additionally, both barriers promote judicial efficiency by preventing a non-injured plaintiff from bringing a frivolous claim.<sup>249</sup> Judicial efficiency further serves to legitimize the legal system and increase the public support of it.<sup>250</sup> Enacting a citizen suit provision for mandatory conservation compliance, with the same barriers, can bestow these same benefits.

### *B. Exploring a Distinction and Another Avenue Available for Action*

While mandatory conservation compliance provisions compare to the Clean Air and Clean Water Acts in many ways, there are distinctions. One significant distinction is that a producer violating mandatory conservation compliance becomes ineligible for federal benefits.<sup>251</sup> Alternatively, violators of the Clean Air and Clean Water Acts pay

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239. See *Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 175–76 (2000).

240. See COX & RUNDQUIST, *supra* note 24, at 3–6.

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. See *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2205–06, 2206 n.1 (2021).

247. See COX & RUNDQUIST, *supra* note 24, at 3–6.

248. 16 U.S.C. § 3901(a)(6) (2018).

249. Miller, *supra* note 17, at 10311.

250. See *id.*

251. See *Revised Conservation Compliance Regulation*, *supra* note 89.

penalties.<sup>252</sup> Given this distinction, a better comparison of mandatory conservation compliance could be to other federal benefit programs.<sup>253</sup> Moreover, other federal benefit programs do not contain citizen suit provisions.

However, simply because other federal benefit programs do not contain citizen suit provisions does not mean mandatory conservation compliance should go without one. Similar to mandatory conservation compliance, when an agency denies an individual or an entity a federal benefit, that individual or entity can sue the agency.<sup>254</sup> For most federal benefit programs this is the only action necessary because the person injured by not getting the benefit is that person.<sup>255</sup> When examining the environmental impacts of other federal benefit programs, mandatory conservation compliance stands out because injuries occur beyond the beneficiary.<sup>256</sup> Moreover, comparing the harms attributable to the various federal benefit programs reveals why mandatory conservation compliance will benefit from a citizen suit provision.<sup>257</sup> Aside from mandatory conservation compliance, it is difficult to imagine a situation where someone wrongly receives a federal benefit and receiving that benefit directly harms someone else.

In response to deficient enforcement data, the National Sustainable Agriculture Coalition, a conservation proponent, suggests that NRCS needs to be more transparent in informing the public of violations.<sup>258</sup> Further, Congress could “make enforcement more uniform and accountable” by amending the Farm Bill to “require NRCS to conduct spot checks on five percent of farms in each state.”<sup>259</sup> These policy proposals would require more funding for conservation compliance.<sup>260</sup> However, with so many competing interests in Farm Bill negotiations, more funding is hard to secure.<sup>261</sup> With this in mind, a citizen suit will be a better option because it will not require additional funding. In fact, successful citizen suits could

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252. Miller, *supra* note 17, at 10312.

253. See PATRICK A. LANDERS ET AL., CONG. RSCH. SERV., R46986, FEDERAL SPENDING ON BENEFITS AND SERVICES FOR PEOPLE WITH LOW INCOME: FY2008-FY2020 4–5 (2021).

254. See, e.g., *Boucher v. USDA*, 934 F.3d 530, 553 (7th Cir. 2019) (holding that the NRCS determination that Boucher was producing an agricultural commodity on land that was previously a wetland was arbitrary and capricious); see also *Maple Drive Farms v. Vilsack*, 781 F.3d 837, 858 (6th Cir. 2015) (holding USDA acted outside of the applicable regulations); *Clark v. USDA*, 537 F.3d 934, 943 (8th Cir. 2008) (relying on agency deference to uphold the denial of relief by the lower court).

255. See *George v. McDonough*, 142 S. Ct. 1953, 1957 (2022) (discussing the ways in which a veteran can seek review of a benefits denial).

256. See *id.*; see also *Eubanks*, *supra* note 47, at 241–50.

257. See WALSH ET AL., *supra* note 8, at 1; see also *Eubanks*, *supra* note 47, at 241–50.

258. NAT’L SUSTAINABLE AGRIC. COAL., *supra* note 16, at 8.

259. *Id.*

260. *Id.*

261. See JOHNSON & MONKE, *supra* note 18, at 1.

allow for increased transparency by identifying violators and increased funding by directing penalties to NRCS.<sup>262</sup>

#### CONCLUSION

In conclusion, mandatory conservation compliance provisions wound up in the Farm Bill to protect a vital natural resource—soil. Penalty structures aside, the Clean Air and Clean Water Acts compare to mandatory conservation compliance in that they all share a common goal: protecting the environment. In the Clean Air and Clean Water Acts, Congress empowers citizens to enforce this goal as long as they meet statutory and constitutional requirements. By enacting a citizen suit provision within mandatory conservation compliance, Congress can empower citizens to help enforce another environmental protection.

With the multiyear nature of the Farm Bill, the debate over what to include or exclude in the newest reiteration continues. Congress failed to enact a new farm bill in 2023, 2024, and 2025 after the 2018 Farm Bill expired. By simply extending the 2018 version year after year, Congress is putting off the inevitable. Legislators must get to work and soon decide what a new farm bill looks like. Although, Congress has declined to include a citizen suit provision for mandatory conservation compliance since Congress enacted it in the 1985 Farm Bill, the opportunity to enact a citizen suit provision is available with each Farm Bill negotiation, which happen when the existing Farm Bill (or its extension) expires. Given extreme under-enforcement of conservation compliance and increasing climatic variation, the need for citizen suit provision grows more and more with each passing year. Congress must act soon before it is too late.

-Andrew Hockenberry\*

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262. See NAT'L SUSTAINABLE AGRIC. COAL., *supra* note 16, at 8.

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