



Research Brief

The Adverse Effects of Animal Husbandry

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Six years ago, Michael Pollan's *Omnivore's Dilemma* invited us to take a closer look at where our food comes from. Four years ago, the Pew Commission on Industrial Farm Animal Production released the results of its examination of the animal production industry, documenting the adverse effects on public health, the environment, rural communities, and animal health and well-being. Two years ago, Dan Imhoff's *CAFO: The Tragedy of Industrial Animal Factories* became perhaps the first-ever coffee table book on the industrial livestock production industry. And just this year, during the television broadcast of the 2012 Grammy Awards, the Chipotle restaurant chain stole the show with its compelling animated advertisement depicting traditional farming practices becoming first industrialized, then returning to their sustainable roots — all accompanied by stirring Willie Nelson vocals.

Heightened public scrutiny of food production parallels an increase in related legal and policy developments. One key battleground, for example, has been the non-therapeutic use of antibiotics in animals

— the use of antimicrobial drugs not to treat animals that are sick, but to promote growth and improve feed efficiency. It is estimated that roughly four fifths of all U.S. antibiotics are used for this purpose. Research shows that antibiotic use in livestock can lead to the development of antibiotic-resistant bacteria that can and do make the jump from animals to people.

Representative Louise Slaughter of New York, Congress's lone microbiologist, has introduced legislation to “preserve the effectiveness of medically important antibiotics by phasing out non-therapeutic use of these drugs in food-producing animals.”

And now the courts are involved. In March, a federal court granted summary judgment to the Natural Resources Defense Council and others in their suit to compel the U.S. Food and Drug Administration to withdraw its approval of the use of certain antibiotics in livestock for non-therapeutic purposes unless those uses are determined to be safe.

FDA had issued notices of intent to withdraw its approval as far back as 1977. But the agency never

held hearings or otherwise pursued the notices, and, in December 2011, rescinded them altogether. Without mandating any particular outcome, the court ordered the agency to initiate withdrawal proceedings for the disputed drug uses. The court observed that “for over 30 years, the FDA has taken the position that the widespread use of certain antibiotics in livestock for purposes other than disease treatment poses a threat to human health.”

Other CAFO-related legal disputes abound. EPA has yet to formulate a permitting rule for Concentrated Animal Feeding Operations under the Clean Water Act that could pass judicial muster, with the 11th Circuit last year striking down a requirement that CAFOs obtain a permit when they “propose to discharge,” based on a set of objective criteria. And EPA recently accepted public comment on a proposed CWA information-gathering rule applicable to CAFOs — one whose eventual issuance would seem all but certain to trigger litigation. Courts are also being asked to rule on the circumstances under which large companies exercising significant

control over local CAFO operations can be held in as codefendants in CWA citizen suit actions brought for discharges of animal waste.

CAFO-related pollution issues are also generating renewed attention under other federal environmental statutes, as well as under state law nuisance causes of action. Although most environmental laws contain robust exemptions for agriculture, lawyers are testing the bounds of these exemptions in the face of a food production system that bears many of the hallmarks of an industrial sector. In response, legislators are introducing bills that will further shield agricultural activities from federal regulation.

With federal courts, agencies, and legislators now increasingly in the mix, ELI has established its Industrial Agriculture Law and Policy Center to provide research-backed recommendations for reform and to serve as a new educational resource for the bar, policymakers, reporters, and the public. ELI will examine opportunities not only for incremental, short-term change, but also for big-picture, long-term change that can move us toward a more sustainable legal framework for agriculture.

In a year where debates over farm bill reauthorization are well underway, more and more of the action at the intersection of CAFOs, public health, and the environment is in the courts and on Capitol Hill, or headed that way. As Willie Nelson sings in the new Chipotle spot, “Nobody said it was easy.”