



Six years ago, Michael Pol-
Slan's *Omnivore's Dilemma*
invited us to take a closer look
at where our food comes from.
Four years ago, the Pew Com-
mission on Industrial Farm
Animal Production released
the results of its examination of
the animal production indus-
try, documenting the adverse
effects on public health, the
environment, rural commu-
nities, and animal health and
well-being. Two years ago, Dan
Imhoff's *CAFO: The Tragedy of
Industrial Animal Factories* be-
came perhaps the first-ever cof-
fee 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 tradi-
tional farming practices be-
coming first industrialized,
then returning to their sustain-
able 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 anti-
biotic-resistant bacteria that
can and do make the jump from
animals to people.

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

And now the courts are in-
volved. In March, a federal
court granted summary judg-
ment 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 in-
tent 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and, in December 2011, rescinded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 man-
dating 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 live-
stock 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 Feed-
ing Operations under the Clean
Water Act that could pass judi-
cial muster, with the Eleventh
Circuit last year striking down
a requirement that CAFOs ob-
tain a permit when they “pro-
pose to discharge,” based on a
set of objective criteria. And
EPA recently accepted public
comment on a proposed CWA
information-gathering rule ap-
plicable to CAFOs—one whose
eventual issuance would seem
all but certain to trigger liti-
gation. Courts are also being
asked to rule on the circum-
stances under which large com-
panies exercising significant
control over local CAFO op-
erations can be held in as co-
defendants in CWA citizen suit
actions brought for discharges
of animal waste.

CAFO-related pollution is-
sues are also generating re-
newed attention under other
federal environmental stat-
utes, as well as under state law
nuisance causes of action. Al-

though most environmental
laws contain robust exemp-
tions 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 agri-
cultural activities from federal
regulation.

With federal courts, agencies,
and legislators now increasing-
ly in the mix, ELI has estab-
lished its Industrial Agriculture
Law and Policy Center to pro-
vide research-backed recom-
mendations for reform and to
serve as a new educational re-
source 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 sustain-
able legal framework for agri-
culture.

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.”