

Climate Accountability Litigation Against CAFOs: *A Page from the Environmental Movement's Playbook?*



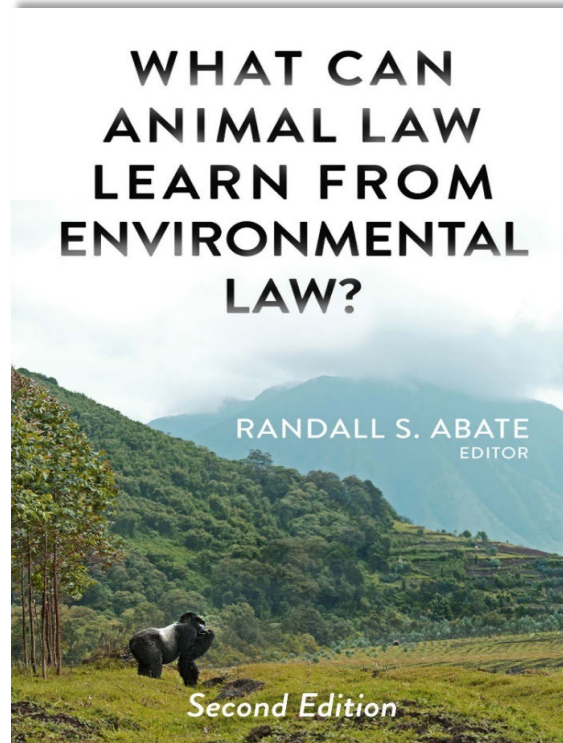
**Prof. Randall S. Abate
VLS Bridging Animal Law and Environmental Law Symposium
March 25, 2022**

Roadmap

- Why I'm excited to be here
- The Concept of "Common Enemies"
- Suits Against the Fossil Fuel Industry
- Suits Against CAFOs
- Proposals for Reform
 - ✓ Leverage Public Health and Welfare Angle
 - ✓ Mandatory Phaseouts to Sustainable Alternatives
 - ✓ Strategies for a Shared Path Toward Just Transition



Animal and Environmental Law Parallels and Synergies



What Is Anthropocene Accountability Litigation?

- Starting Premise: Existing regulation of climate change and its impacts is insufficient or nonexistent
- Types of Climate Accountability Lawsuits
 - ✓ Suits against government that seek to raise regulatory ambition
 - ✓ Suits against private sector entities for damages to ensure that entities responsible for widespread harms pay their fair share
- These lawsuits are not limited to climate change context (see, e.g., plastics)
- **Focus of presentation: lawsuits against fossil fuel industry and CAFOs as “common enemies” impeding efforts toward a “just transition”**
- Discussed in detail in a law review article last year:

<https://journals.library.columbia.edu/index.php/cjel/article/view/7990>

The Concept of “Common Enemies”

- Both industries cause massive climate change impacts
- Federal gov’t enables climate change impacts from these industries
 - ✓ Regulatory gaps and exclusions
 - ✓ Subsidies
- Both industries disregarded knowledge of these impacts
 - ✓ Proceeded with business as usual
 - ✓ Actively campaigned against efforts to regulate their activities
 - Climate denial science
 - Right-to-farm laws

Suits Against the Fossil Fuel Industry

- These cases have exploded in the U.S. in the past four years
- About 20 states, counties, and cities have sued a common set of “carbon major” fossil fuel defendants (Baltimore is the most well-known case)
- Creative common law legal theories including public nuisance, products liability, fraud, conspiracy, etc.
- Procedural History of the Cases
 - ✓ Industry defendants sought to remove cases to federal court
 - ✓ Circuit courts concluded that these cases should proceed in state court
 - ✓ U.S. Supreme Court issued narrow procedural decision in Baltimore case in May '21 that favored fossil fuel defendants
 - ✓ “Jury still out” on disposition of merits on federal vs. state court issue

Suits Against CAFOs

- Typically focus on public nuisance and impacts to health, property, “traditional” pollution, and marginalized communities
- Emerging lines of cases on impacts to animals and CAFO workers
- Recent petition to Inter-American Commission on Human Rights
- Major Obstacle: Right-to-Farm laws (constitutionality of these laws upheld in October ‘20 in U.S. Supreme Court’s denial of review)
- Lost Opportunity: These cases can (but haven’t yet) focused on public nuisance based on climate impacts, primarily from methane

Proposals for Reform



Proposal #1:

Leverage Public Health and Welfare Angle

- U.S. federal environmental legislation as a model
- Tobacco and opioids litigation as a model
- To see results, the need to phase out has to be framed as an **imminent threat to human health, welfare, and economic interests**



Proposal #2:

Mandatory Phaseouts to Sustainable Alternatives

- Montreal Protocol phaseout regime as model
- Phaseout of lead in gasoline under CAA
- **Transition to renewables and plant-based and lab-grown foods needs to be compelled** to comply with ticking clock of IPCC projections
- The market is facilitating these transitions, but it's not happening fast enough
- COP 26 “phasedown” language insufficient



Proposal #3:

Strategies for a Shared Path to a Just Transition

- Disable destructive **subsidies** and provide subsidies that promote transitions to clean and renewable energy and plant-based foods
- Implement **carrots and sticks** to promote positive activities and punish destructive activities on path toward just transition
- Follow the **model of coal to promote just transition** for oil and gas and animal agriculture
- Scale up California's **regulation of methane** on dairy farms to federal level and, ultimately, implement legislation to phase out factory farms
- Cory Booker's proposed **Farm System Reform Act** as one example

Closing Thoughts:

In the Midst of a Massive Legal and Social Revolution

1. First they ignore you
 2. Then they laugh at you
 3. Then they fight you (we are here)
 4. Then you win (a just transition away from fossil fuels and CAFOs)
- The fossil fuel and factory farm industries are facing the fights of their lives now and their demise is written on the wall
 - We can secure this just transition sooner with effective collaboration between the animal law and environmental law movements

Thank You! Questions?

Prof. Randall S. Abate

Rechnitz Family and Urban Coast Institute
Endowed Chair in Marine and Environmental Law and Policy
Director, Institute for Global Understanding
Monmouth University
West Long Branch, New Jersey
rabate@monmouth.edu