

# Commercial Poultry News

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## Upcoming Events

### On-Farm Field Day

Wed., March 4

9:30-2:30

38067 Robin Hood Rd.

Delmar, DE 19940

### Lunch & Learns

April 1, 2

Cooling Pad Maintenance

## Maryland Court Rules Poultry Farm Manager Is Co-Employee Of Integrator In Workers' Compensation Case

*Paul Goeringer*

The article is not a substitute for legal advice. See [here](#) for the site's reposting policy.



Picture by Edwin Remsberg

The Court of Special Appeals of Maryland, in *Uninsured Employers' Fund v. Tyson Farms, Inc.*, recently agreed with the Workers' Compensation Commission that a poultry farm manager's occupational disease disablement arose out of his co-employment to both the poultry farm owner and the poultry company, Tyson Farms, Inc. Tyson may appeal to the Court of Appeals of Maryland, but growers and companies should consider the possible implications of this decision.

### Background

The poultry farm manager was hired to work on a poultry farm in Worcester County in 2009 that grew chickens for Tyson. At the time, Terry Ung owned the farm, and the poultry farm manager was hired to assist Mr. Ung. Ung passed away in late 2009 and Tyson representatives trained the poultry farm manager in how to maintain the farm and raise chickens since Ung's widow was unfamiliar with such practices. In 2013, the farm sold to another owner who lived in northern Virginia, and Tyson would only agree to continue the relationship with the farm if the new owner kept the poultry farm manager on the farm.

Under the terms of the poultry production contract, Tyson retained ownership of the birds, provided feed and medication, determined how long the flocks were on the farm, and provide veterinary services and technical advice. The contract included various addendums setting out detailed instructions on how to raise poultry on the farm.



*Maryland Court Rules Poultry Farm Manager Is Co-Employee Of Integrator ...continued*

Tyson continually provided oversight to ensure the operation of the poultry farm in compliance with the contract. The poultry manager lived on the poultry farm and frequently met with Tyson's representatives directly about adjustments during the flock's cycle.

After suffering from an occupational disease disablement, the poultry farm manager filed a claim against his employer (the poultry farm's owner), and the Uninsured Employers' Fund (UEF) became a party to the suit because the employer did not have workers' compensation insurance. The poultry farm manager and UEF then brought Tyson Farms, Inc. (Tyson) into the claim.

After a hearing, the Workers' Compensation Commission ruled that the poultry farm manager's injuries arose from his employment on the poultry farm and that both the poultry farm owner and Tyson were his co-employers. Tyson appealed the decision to the circuit court.

On appeal, a two-day jury trial was held with the sole issue of whether the poultry farm manager was co-employed by Tyson. The jury returned with a verdict that Tyson was not a co-employer of the poultry farm manager. The UEF appealed the decision to the Court of Special Appeals.

**Decision**

On appeal, the court was presented with the question of whether the evidence established that Tyson exerted sufficient control over the poultry manager's job performance to make Tyson his employer as a matter of law.

To answer this question, the court looked to five criteria to establish whether an employer-employee relationship existed. The five factors were:

1. the power to select and hire the employee,
2. the payment of wages,
3. the power to discharge,
4. the power to control the employee's conduct, and
5. whether the work was part of the regular business of the employer.

In prior decisions, the factor of control was considered the most critical factor.



Poultry barns and a small farm are surrounded by forested land in Wicomico County, Md., on June 18, 2010. (Photo by Matt Rath/Chesapeake Bay Program)

Looking at Tyson's control over the poultry farm manager's work, the court thought this was more than enough to establish an employment relationship. The court points to the poultry production contract with the current farm owner which required the poultry manager to be on the farm 24 hours a day, seven days a week, to manage the operation. The contract with the owner could be terminated if the poultry farm manager did not comply with the terms of the contract. The court also pointed to the addendums laying out how the flock should be grown to highlight the control that Tyson had over the farm.

Prior decisions supported this outcome as well, according to the court. To the court, it looked like Tyson exerted enough control over the poultry farm manager's job to be considered a co-employer. Tyson could direct him to complete tasks on the farm and could alter his performance to comply with the terms of the contract. The court pointed out that Tyson did not have the expressed ability to fire the poultry farm manager, but did have the power to terminate the contract with the owner if the poultry farm manager did not comply with contract terms. Based on this, the court reversed the decision of the circuit court.

One justice dissented in this decision. This dissenting justice argued that the majority misapplied the prior decisions cited by the other justices, Based on those decisions and the following evidence from the trial:

*Maryland Court Rules Poultry Farm Manager Is Co-Employee Of Integrator ...continued*

1. Tyson never selected or hired the poultry farm manager,
2. The current owner of the farm set and paid the poultry manager's wages,
3. Tyson could not fire the poultry farm manager,
4. Tyson could not set the poultry farm manager's hours, and
5. Tyson communicated directly with the owner on changes in practices to raise the chickens.

At the same time, the current owner had authorized the poultry farm manager to act on his behalf in operating the farm. It would be easy based on this information to think that when Tyson interacted with the poultry farm manager, they were interacting with the owner's agent, not a Tyson employee. Based on these factors, the dissenting justice would have affirmed the lower court decision.

[Maryland Court Rules Poultry Farm Manager Is Co-Employee of Integrator in Workers' Compensation Case](#)



### Why Care?

I need to note before moving on, this decision may still be appealed to the Court of Appeals, and may not be the last decision on this issue. Based on the current decision, we only have one time where a court in Maryland has determined that an employee of a poultry grower was a co-employee of the poultry company. This current decision might be unique based on the fact that we had an absentee owner and an on-site farm manager who took care of the farm in place of the owner. It is unclear if this had been an employee of a poultry farmer not acting as the farmer's agent, if the outcome would have been the same.

The dissent, in this case, highlights several issues the majority did not expressly deal with in their opinion. The majority never explicitly handled the point that the poultry farm manager appears from the facts to be acting as the owner's agent with Tyson. We will have to watch to see if Tyson appeals this decision.

## **USPOULTRY Recognizes 2020 Family Farm Environmental Excellence Award Finalists and Award Recipients**

*Gwen Venable, [gvenable@uspoultry.org](mailto:gvenable@uspoultry.org)*

**Jan. 28, 2020** – U.S. Poultry & Egg Association (USPOULTRY) recognized twelve poultry farms that were nominated for the annual Family Farm Environmental Excellence Award at the International Poultry Expo, part of the 2020 International Production & Processing Expo. The award is given annually to recognize exemplary environmental stewardship by family farmers engaged in poultry and egg production.

"It is a privilege to recognize these twelve family farms for the excellent job they do in being good stewards of their land. Our industry could not continue to function and thrive without taking proper care of our natural resources. These six winners and six finalists are to be commended for their efforts," said Greg Hinton, Rose Acre Farms, Seymour, Indiana, and newly elected USPOULTRY chairman.

*USPOULTRY Recognizes ...continued*

Applicants were rated in several categories, including dry litter management, nutrient management planning, community involvement, wildlife enhancement techniques, innovative nutrient management techniques and participation in education or outreach programs. In selecting the national winners and finalists, applications were reviewed and farm visits conducted by a team of environmental professionals from universities, regulatory agencies and poultry associations.



USPOULTRY recognized six Family Farm Environmental Excellence Award winners and six finalists during the International Poultry Expo, part of the 2020 International Production & Processing Expo. Joining in the presentation were Mike Levensood (left), vice president, Chief Animal Care Officer and Farmer Relationship Advocate for Perdue Foods; Greg Hinton (middle, back), Rose Acre Farms, and newly elected USPOULTRY chairman; and John Prestage (5<sup>th</sup> from right), Prestage Farms, and outgoing USPOULTRY chairman.

The winners were chosen from five geographical regions throughout the United States. In addition, a new State Poultry Association nomination was added this year. The winners are as follows:

**State Poultry Association Nomination winner** – M&C Anderson Pullets, Sioux Rapids, Iowa  
Marvin and Colleen “Coke” Anderson, nominated by the Iowa Poultry Association

**North Region winner** – Michael & Heather Lewis, Mount Joy, Pennsylvania  
Michael and Heather Lewis, nominated by Tyson Foods

**Northeast Region winner** – Lambertson Family Farms, Pocomoke, Maryland  
Wayne, Jason and Logan Lambertson, nominated by Tyson Foods

**South Central Region winner** – Mishler Turkey Farm, Seymour, Missouri  
John and Carla Mishler, nominated by Cargill

**Southeast Region winner** – Blake Farms of North Carolina, LLC, North Wilkesboro, N.C.  
Chad Blake, nominated by Tyson Foods

**Southwest Region winner** – C3 Farms & Poultry, LLC, Caldwell, Texas  
Jamie & Sherri Chmelar; Boelden & Leann Chmelar, and Natalie Chmelar Zgabay, nominated by Sanderson Farms

There were also six finalists recognized at the award presentation. They are as follows:

**State Poultry Association Nomination finalist** – Gray Poultry Company, Union City, Tennessee  
Matthew and Colby Gray, nominated by the Tennessee Poultry Association

**North Region finalist** – Stephen Purlee Farm, Salem, Indiana  
Stephen Purlee, nominated by Tyson Foods

**Northeast Region finalist** – Twin Maples Farm, LLC, Ridgely, Maryland  
David and Spring Tribbett, nominated by Amick Farms

**South Central Region finalist** – Dalen Bell Farm, Tuscumbia, Missouri  
Dalen Bell, nominated by Cargill

**Southeast Region finalist** – Hillcrest Farm, Hanceville, Alabama  
Mike and Karen Hill, nominated by Tyson Foods

**Southwest Region finalist** – R&T Farm, Mulberry, Arkansas  
Terry and Robin Fisher, nominated by Cargill

*USPOULTRY Recognizes ...continued*

U.S. Poultry & Egg Association (USPOULTRY) is the all-feather organization representing the complete spectrum of today's poultry industry, whose mission is to progressively serve member companies through research, education, communication and technical assistance. Founded in 1947, USPOULTRY is based in Tucker, Georgia.

## Maryland Ag Hall of Fame Honors The Rhodes and Richardson Families

Our own UMD Extension, Principal Agent, Jenny Rhodes and her family were honored and inducted into Governor Hogan's [Maryland Agriculture Hall of Fame](#) this month. Here is a short YouTube video marking their family history:



[https://m.youtube.com/watch?v=-TeFbljmQTA&feature=share&fbclid=IwAR3273zosRJ31eaJCcmei8vOr3IKiCAPT3m7DnpRlZvH65kpz\\_jqDKH1E7s](https://m.youtube.com/watch?v=-TeFbljmQTA&feature=share&fbclid=IwAR3273zosRJ31eaJCcmei8vOr3IKiCAPT3m7DnpRlZvH65kpz_jqDKH1E7s)

And here is the [Sean Clagherty's](#) article of both deserving families in the *Delmarva Farmer*:

## Rhodes, Richardsons Join MD Ag Hall of Fame

GLEN BURNIE, Md. — As the Maryland Agriculture Council celebrated 50 years of bringing together leaders in the state's farming and legislative communities, Gov. Larry Hogan and Agriculture Secretary Joe Bartenfelder inducted two Eastern Shore families into the Governor's Agriculture Hall of Fame.

The new inductees — [the Rhodes family of Queen Anne's County](#) and the [Richardson family of Worcester County](#) — accepted the awards in front of more than 900 agricultural leaders and legislators from across the state at Michael's Eighth Avenue on Feb. 6.

In 1970, several Maryland agriculture groups joined forces to start the annual event, now known as Taste of Maryland Agriculture, offering farmers and legislators an opportunity to engage in conversation on farming issues and celebrate the strength of the industry. The 50th annual event recognized founding sponsors, donors and farms that contributed

Maryland-produced food for the event and all attendees received a commemorative 50th anniversary coin. "Congratulations to all of tonight's recipients and honorees and congratulations to the Maryland Agriculture

*MD Ag Hall of Fame Honors The Rhodes and Richardson Families...continued*

Council on 50 successful years of hosting this event,” Hogan said. “Agriculture continues to be our state’s leading industry, and I want everyone to know that your commitment to our communities, our state, and our thriving agriculture industry does not go unnoticed.”



The Rhodes and Richardson families are the 51st and 52nd inductees in the Governor’s Agriculture Hall of Fame. Pat and Temple Rhodes began their family farm operation in 1959 on rented ground in Easton. In 1961, the Rhodes purchased their first farm, Chestnut Vale, in Centreville. Over the next several years, Chestnut Vale Farm became home to Pat and Temple’s children: Jenny, Betsy, Susan, Carole, and Temple, Jr. The family began with a dairy herd and transitioned to a cow-calf operation in 1968, raising nearly 200 head of Angus cattle per year. Throughout his decades of farming, Temple Rhode, remains committed to conservation and has embraced the use of technology and other best

management practices to maintain a profitable, environmentally-sound operation, MDA said.

Pat Rhodes has been involved with the local 4-H club since her children were young, and continues to be an ardent supporter of University of Maryland Extension programs.

The Rhodes family is a fixture in the Queen Anne’s County agriculture community, from offering up their land and equipment to support the county fair and other events at the county’s nearby 4-H Park, to their involvement at Our Mother of Sorrows Church in Centreville.

Roger Richardson and his wife Fay have farms in Worcester, Wicomico, and Somerset counties. Richardson Farm dates back to 1767. Roger currently operates the farm with his daughter, grandson, and great-grandson, while Fay has been instrumental in the continued growth and diversification of the family farm business. The family grows corn, soy beans and wheat. In 1980, the Richardsons diversified their operation by starting a private trucking company dedicated to the transportation of agricultural products. In addition to precision farming techniques, the Richardsons have adopted both conservation and no-till practices to manage nutrients and meet soil and water conservation goals.



In the late 1970s, Roger was one of 14 men appointed by then Gov. Marvin Mandel to create the Maryland Department of Agriculture. Thirty-five years later, then-Gov. Martin O’Malley appointed Roger to serve as Maryland Secretary of Agriculture, overseeing the agency he helped create. In addition to his involvement with the department, Roger has held several leadership positions with local, state, and national organizations, including: the Agricultural Stewardship Commission, the Maryland Center for Agro-Ecology, and stints as president and vice-president of the National Association of Farmer Elected Committees. With decades of knowledge and experience, Roger and Fay Richardson continue to support and advocate for farmers on the Lower Eastern Shore, Maryland, and beyond.

Sponsored by the MDA, the Governor’s Agriculture Hall of Fame was created in 1991 by then Governor William Donald Schaefer to honor agricultural leaders who exemplify high standards of achievement and commitment to the industry and their communities. Nominations are accepted at local University of Maryland Extension offices.

“These two families are outstanding examples of Maryland agriculture’s leadership and commitment to implementing conservation practices while maintaining successful farm operations,” said MD Agriculture Secretary Joe Bartenfelder.

## Quality Farm Water, Pipes Play Role In Pathogen Control

by Roy Graber, *WATTglobalnews.net*



Biofilm buildup in water pipes on the poultry farm needs to be avoided.

There are many practices that can be done on poultry farms to control the incidence of pathogens like *Salmonella* and *Campylobacter*, including having clean pipes and quality water running through them.

Manpreet Singh, professor and extension food safety specialist, University of Georgia, discussed that importance on January 30 at the International Production & Processing Expo (IPPE) in Atlanta, Georgia.

### Problems with hard water and biofilms

Singh said hard water can create problems with pathogens on the farm.

With water hardness comes the issue of particles in the water and corrosion on the water lines.

“This harbors sites for all types of bacteria in them. Slowly but surely, they are getting released in the water line, and they’re slowly inoculating the birds, over and over and over again. ... It’s kind of working against your feed additives. It’s working against anything you are trying to do,” said Singh.

It is important to understanding water quality from a hardness perspective, Singh said, because hard water can increase biofilm buildup.

“What are biofilms? Biofilms basically are a whole bunch of different layers of bacteria, slowly released over time,” he said.

### Water line maintenance and design

A common response Singh said he usually hears to the question of how to eliminate biofilms is grinding the lines. He **advises against grinding**, because that really doesn’t get rid of the problem in the long term.

“By the time you grind a stainless steel surface, you might as well buy a new piece of replacement and put it in there. That’s how difficult biofilms are to remove from the system,” he said.

Singh knows that replacing pipes is expensive, but he added that when grinding pipes to the level that biofilms are gone, the pipes can become so thin “that basically there’s perforations in them.”

**Sanitizing lines frequently is a better option**, and he said if there is any area that isn’t clean, there will continue to be some kind of buildup.

Singh also advises against welding pipes. Even if you think you “are the best welder in the world,” Singh says welds will leave behind increased surface area to which biofilms can attach.

He also recommends a water line design that includes rounded curves, rather than angles, as buildup can occur more easily in corners.

<https://extension.umd.edu/poultry>