

# Commercial Poultry News

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## Upcoming Events

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Photo by J. Moyle

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## Being Proactive In Your Operation Can Help Prevent Lawsuits

By Paul Goeringer, Extension Legal Specialist, UMD

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



Edwin Remsberg Photo

As I have written in the past, right-to-farm laws provide a defense to a nuisance suit.

Although I hope none of you will ever need to use this defense, it is worth taking a moment to consider proactive steps you could be taking to develop a record demonstrating you meet the defense requirements. Such actions may include developing written policies, keeping written records, considering new technology, and

working with your neighbors. Each of these is a way to help demonstrate you meet the requirements for using the right-to-farm law defense.

### Develop Written Policies

Developing written policies and procedures for handling regular work is always recommended for a farm operation. Along with the policies and procedures, create checklists to help employees and yourself understand what needs to be done to complete that regular work on the operation. If the operation has a permit, ensure these policies, procedures, and checklists align with the permit.

For example, let's consider yours is a poultry operation that includes a cropping operation. If poultry litter will be applied on the cropland, develop policies and procedures around how to land applications will take place in line with state permits. These policies and practices create checklists of what should be completed every time before a land application occurs. Doing all of this will help keep long-term employees, new employees, and even you informed of what should be done each time and potentially prevent you from cutting corners.

### Keep Good Written Records

Many of you are probably already required to keep records of when applications of nutrients occur based on state law. If you are not, this is something you should consider. If there is a lawsuit, written records will help a jury understand what you are doing on the operation. Written records can often help demonstrate that you are following the law, nutrient management plan, or permit and help you build a stronger case that your operation is not a nuisance. Lack of records, especially in those states which do not require them, could cause a jury or others to believe you have something to hide, such as over-applying nutrients or not following your established practices.

*Being Proactive in Your Operations....continued***Consider New Technology**

It would help if you considered keeping up with the latest technology. Technology does cost money, so think about what will work best for your operation. And when considering technology, think about existing issues on your operation. Are you concerned about neighbors complaining about odors from your farm? Consider researching the issue to see what technology could be utilized and why it may or may not work for your operation. Keep records of your final decision regarding the technology. The records will allow you to demonstrate down the road your decision-making process.

**Talk to Your Neighbors**

**Reach out to your neighbors and tell them to contact you if they have concerns.** If the concerns are odors, communicate with them about days you will apply nutrients to prevent the odors impacting a family gathering the neighbor might have planned. If the neighbors have concerns about what is going on with the operation, utilize information from Extension or the appropriate state agencies to show that the operation is operating within the law.

**Conclusion**

No one can prevent a lawsuit, but **taking proactive steps can ensure you have developed records that could help the operation demonstrate that the right-to-farm law applies.** For more information, see this fact sheet covering Maryland's right-to-farm law (<https://go.umd.edu/RTFMD>), this fact sheet covering agricultural mediation programs (<https://go.umd.edu/AgMediation>), and finally, this fact sheet covering other legal risk management strategies (<http://go.umd.edu/Liability>).

## Maryland Court of Appeals Finds Farm Manager is Not a Joint Employee of Poultry Farm

*By Paul Goeringer, Extension Legal Specialist, UMD*

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For those who remember back in 2019, I posted about a Court of Special Appeals decision which found that a poultry farm manager was a joint employee of both the poultry farm owner and the poultry company, Tyson Farms, Inc. Tyson appealed that decision to the Court of Appeals of Maryland. The Court of Appeals recently reversed that decision, finding that the circuit court correctly submitted to the jury. The evidence on the farm manager being a joint employee was susceptible to differing reasonable inferences.

**Background**

The poultry farm manager was hired to work on a poultry farm in Worcester County in 2009 which grew chickens for Tyson. Terry Ung owned the farm at the time, and hired the poultry farm manager to assist him. Ung passed away in late 2009, and Tyson representatives trained the poultry farm manager in maintaining the farm and raising chickens since Ung's widow was unfamiliar with such practices. In 2013, the farm was sold to another owner living



Poultry barns in Maryland. Image by Chesapeake Bay Program

*Maryland Court of Appeals Finds Farm Manager is not a Joint Employee of Poultry Farm...continued*

in northern Virginia. Tyson only agreed to continue the farm relationship 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 this farm.

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



Image of poultry barn. Image by Edwin Remsberg

After suffering from an occupational disease disablement, the poultry farm manager filed a claim against his employer (the poultry farm's new 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. The Court of Special Appeals reversed the circuit court, finding that the poultry farm manager was Tyson's co-employee.

### **Decision**

In looking at past decisions, the Court of Appeals found that the proper place to determine if the relationship between individual and company was a co-employment was a question for the jury to decide. Typically, when conflicting inferences can be drawn from the evidence on an employee-employer relationship, a jury should consider it.

The court next turned to the issue of control exercised by Tyson over the farm manager's conduct. Although in past decisions, the court had highlighted that control was the decisive factor, there were differing reasonable views drawn from the evidence in this case. Looking at the evidence, testimony showed that Tyson had no power to hire, fire, or pay the farm manager. The evidence showed that the farm owner asked the farm manager to stay on after purchasing the farm and negotiated pay with the farm manager. Further, the farm owner provided the paycheck, not Tyson. Tyson did nothing to establish the farm manager's work hours, and the contract with Tyson did not require a particular person to live on the farm. Under the terms of the farm owner's contract with Tyson, the farm owner provided the labor, and Tyson provided the chickens, feed, medication, and technical assistance.

The court agreed with Tyson's argument that the circuit court correctly decided to submit the question of the employer-employee relationship to a jury to determine, and the Court of Special Appeals had been wrong in reversing that jury verdict.

### **Why Care?**

The court's reversal of the lower court decision here takes away some of the uncertainty that I discussed in the prior ruling. The Court of Special Appeals' earlier decision had left many unanswered questions on who might all

*Maryland Court of Appeals Finds Farm Manager is not a Joint Employee of Poultry Farm...continued*

be considered joint employees of a poultry company in this situation. Could the farm owner be considered in the right circumstances? This decision seems to put many of those concerns to rest. In a similar case, this is a question of an employer-employee relationship for a jury to determine based on trial evidence.

The Court of Appeals does stress, as Tyson did at oral arguments before the court, that circumstances could vary from farm-to-farm and there could be a situation where a poultry farm worker could become a joint employee of both the poultry company and the poultry farm owner. That again would be a question for a jury to decide based on the evidence presented. The court did not announce a blanket rule with this ruling but left the door open to a situation presenting itself which could create a joint employment relationship.

**References** Tyson Farms, Inc. v. Uninsured Employers' Fund, No. 5, Sept. Term, 2020, 2020 WL 6815883 (Md. Nov. 20, 2020).

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**University of Maryland Extension - Maryland Poultry -**  
[extension.umd.edu/poultry](https://extension.umd.edu/poultry)

**USDA Farm Service Agency Programs - 443-482-2760 -**  
<https://www.fsa.usda.gov/state-offices/Maryland/index>

**Farm Stress Management-**  
[extension.umd.edu/farmstressmanagement/managing-farm-related-stress](https://extension.umd.edu/farmstressmanagement/managing-farm-related-stress)

**Farm Crisis Center -** <https://farmcrisis.nfu.org/>

**National Suicide Prevention Lifeline - 800-273-8255**

**Farm Management Assistance**  
Jon Moyle, AgFS Poultry Specialist,  
UME LESREC  
410-742-1178

**Farm Stress & Financial Assistance**  
Jenny Rhodes, AgFS Educator,  
UME Queen Anne's County  
410-490-6625

We know it's challenging out there on the farm right now. Here are some resources to help you out.

**POULTRY PRODUCERS**

Photo Credit: Jon Moyle

## Delmarva Chicken Association's New App 'Littr.' is First App to Connect Litter Customers, Suppliers

By James Fisher, Communications Manager, DCA



The **Delmarva Chicken Association** launched a new, free mobile app, **Littr.**, designed to help growers anywhere on Delmarva who have poultry litter find customers seeking to use it as a valuable fertilizer. DCA developed the app by partnering with the National Fish & Wildlife Foundation, Campbell Foundation for the Environment, the Delmarva Land & Litter Collaborative and Common Logic.

Creating this app is one way DCA is stepping in to help growers during the final implementation of Maryland's Phosphorous Management Tool (PMT), when many growers may need to find other users of litter. Over the past five months DCA has worked closely with key stakeholders, including chicken growers, grain farmers, litter brokers and other service providers to develop a simple tool that can be used on any smartphone or tablet to move litter in Delmarva's \$3.5 billion chicken community.

"**Littr.** is designed to link poultry growers who have litter, a locally-sourced, organic and slow-release fertilizer, with those who need it - from grain farmers to mushroom growers to alternative users and everyone in between," said Holly Porter, DCA's executive director. "We know there are farmers who want litter for their farms instead of purchasing commercial fertilizer, but they aren't sure how to source it. This app can bridge that supplier-customer gap, and in the process, help farmers profit while also protecting water quality in the Chesapeake Bay and coastal watersheds."

Chicken litter is the mix of wood-shavings chicken house bedding and chicken manure that covers the floors of Delmarva's chicken houses. Chicken growers commonly condition litter by in-house composting between flocks, but occasionally, they move some or all of a chicken house's litter to covered manure sheds between flocks to make room for fresh wood shavings. The nitrogen and phosphorus in chicken litter makes a highly effective fertilizer for crops like corn, soybeans and wheat, and more than 95 percent of all poultry litter is **recycled** to fertilize crops. Improved litter management has allowed farmers in the Chesapeake Bay watershed to reduce agricultural nitrogen entering the Bay by 39 percent and reduce agricultural phosphorus reaching the Bay by 25 percent.

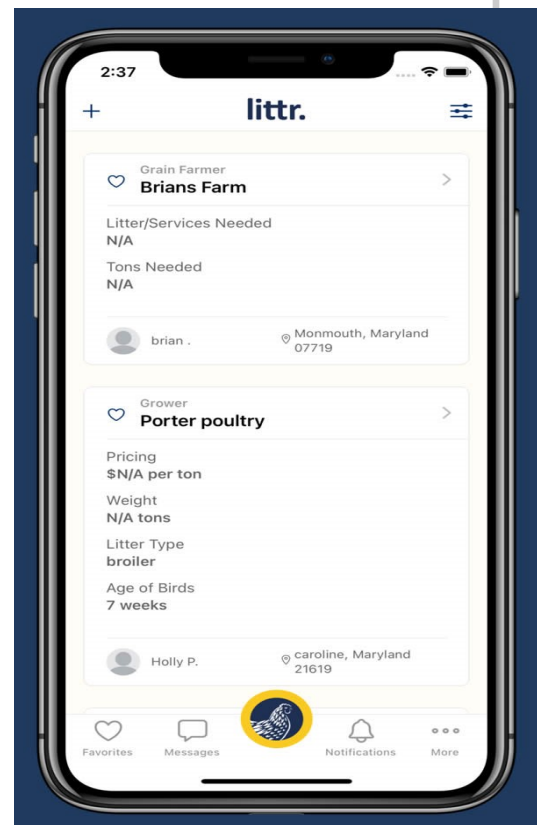
### Here are five easy steps to get started selling or buying chicken litter today:

1. Download the Littr. app from Google Play or App Store.
2. Register for the app (using lowercase characters) and complete as much information about yourself as you'd like. **Remember: the more details you provide, the more likely you'll find customers or suppliers.**
3. Start viewing the listings, and create your own filters based on distance from your location, listing type or state.
4. Create your own listing, whether you are a grower, a farmer in need of litter or someone that provides services, such as hauling, clean outs, or custom application. Again, the more information included, the better chance of being contacted.
5. Start connecting by sending a message, marking a listing as a favorite or making a phone call.

To learn more, check out [www.littr.io](http://www.littr.io) or contact [support@littr.io](mailto:support@littr.io).



littr.



# 7 Fundamentals for Antibiotic-free Poultry Growing

*By Austin Alonzo, WATT Poultry USA, with Dr. Jon Moyle, University of Maryland*

This article is reprinted with permission from [www.WATTPoultry.com](http://www.WATTPoultry.com)

Growers working in an antibiotic-free environment must focus on the fundamental principles of broiler husbandry to maximize success.

As part of the virtual Midwest Poultry Federation Convention, held on August 12 and 13, 2020, **Dr. Jon Moyle**, an extension poultry specialist at the University of Maryland, identified seven basic principles for success:

- Pre-placement
- Temperature management
- Feed management
- Light management
- Air quality and ventilation
- Water management
- Biosecurity



## 1. Pre-placement

Pre-placement includes all the necessary actions to be performed before the birds arrive.

Primarily, that means cleaning dust and debris - which carries pathogens - off the walls and other surfaces of the house that can be cleaned.

Along with cleaning the surfaces, he recommended windrowing litter between flocks. Before windrowing, however, he suggested blowing off the dust or rinsing down the dust inside a house before windrowing. This gets those materials into the litter when the windrowing process can reduce the viral and bacterial load in the house.

Litter should be managed between flocks. Moyle said litter should be kept at a depth of at least three inches and preferably four to six inches. Growers should strive for a consistent litter depth to avoid wet spots and other litter issues.

When adding new litter, consider that it settles when birds are placed upon it and that enough must be present in the house for the substrate to perform its job. If litter amendments are applied to the litter, growers must follow the product's exact directions for the best performance.

Next, the house's environment must be ready for birds to be successful before chicks arrive. Growers need to check the room temperature, the floor temperature and moisture. Next, they need to check their equipment when maintenance can be performed without disturbing the animals. Everything should be in working order. Controllers and alarms should be checked to make sure they are set.

Thermostats and probes should be positioned at bird height in the center of the brooding area and should be working properly. Minimum and maximum thermometers should be placed adjacent to the thermostat. Water lines should be cleaned and flushed before birds arrive. Drinkers should be set at the correct height and pressure for the birds. Feeders and supplemental feeders should be filled with feed.

Finally, the ventilation system should be checked. That includes checking fans and vents for functionality and sealing any areas where air could leak in or out of the house. Moyle recommended ventilating the house during preheating to remove waste gasses and excess moisture from the house.

## 2. Temperature Management

Establishing and maintaining the correct temperature throughout the house is critical when chicks arrive, but sometimes the settings on the controller don't match the temperature the birds feel. Cold birds don't perform well.

Moyle said the best way to check is to measure the temperature at the bird's height. By placing a few thermometers at the bird's height, or using an infrared thermometer, growers can check the temperature level before birds arrive. Once birds arrive, he said to manage the temperature based on the birds' behavior. Growers want to see birds spread out and moving around the house.

### *7 Fundamentals for Antibiotic-free Poultry Growing....continued*

Proper maintenance of the heaters helps ensure heat is evenly distributed throughout the house and matching the settings on the controller. Regularly cleaning heaters improves efficiency and performance.

### **3. Feed Management**

Broilers need access to plenty of feed, especially when the chicks are first placed in the house. When feed arrives, growers need to check it to ensure it's the correct consistency. Growers should walk their feed lines and check supplemental feeders to ensure there is feed everywhere. If birds do not eat, they do not grow. Feed is the key to higher weights. Chicks, especially, need it. When there is more available, they can find it faster.



Growers must maintain a consistent litter depth of 4 to 6 inches to avoid wet spots and other litter issues  
(Flatfeet Shutterfly.com)

He said to use supplemental feeders to increase the feed area for chicks. Feed must be presented where the birds are. Growers should look where the birds are going where there isn't a feeder and place a supplemental feeder there. Supplemental feeders must always be filled. Farmers should refresh them several times a day until chicks can reach the main feeding system.

### **4. Light Management**

Growers strive to provide uniform light inside the broiler house. Inconsistent light creates inconsistent performance.

Moyle said using brighter lights during the first week of the flock will help birds find feed and water more quickly. He recommended providing 40 to 50 lux. Growers should use a light meter to measure the intensity of the light at their feed lines and adjust their lighting until the measurement comes in at that range at that location. Lights, like other equipment, should be cleaned and dusted to work best.

### **5. Air quality and ventilation**

Moyle said ventilation is important to keeping the house dry and ammonia levels down. Rather than fans moving air, growers should think of their ventilation as a water pump. Farmers pump thousands of gallons of water into their house every day, but the birds only retain a small fraction of it. Ventilation functions to remove the excess moisture from the house.

Ventilation should be set up around the moisture level in the house. Wetter litter needs more ventilation. Special attention should be paid to new litter, which can be moister than it appears. If moisture is not removed, it accumulates and leads to worse performance in subsequent flocks.

He recommended using a wind meter to measure the speed of air flow through the house and a revolution per minute (RPM) meter to measure RPM performance of fans. These tools help detect areas of inconsistency in the house and machinery that is not functioning at an optimal level. Electricity to run fans is one of the greatest expenses on the farm, so keeping the machines in good order mechanically reduces expenses and helps bird performance.

Air flow cannot be seen, so Moyle recommended employing surveyor's flagging tape to visualize air flow inside the house. In the winter, air needs to flow into the middle of the house to warm up before it hits the birds and chills them.

In between flocks, growers should not leave their houses' doors and windows open. This does not help to ventilate the house and creates a number of biosecurity issues inside the house.

### **6. Water Management**

Like feed, birds need constant access to water. The drinkers must be set at the correct height for the birds to reach it. Litter can settle after birds arrive, so growers need to check the setting of their lines often during the first days of a flock. Water lines need to be cleaned regularly and sanitized daily for the best performance. Moreover, the equipment involved in the water system and drinking system should be cleaned and checked for functionality regularly.

### **7. Biosecurity**

Finally, growers should do everything they can to improve the biosecurity of their operation. This limits the potential for damaging diseases to arrive on the farm and does not necessarily have to be complicated. Creating a line of separation in between the outside and the growing area can create great improvements in biosecurity.

*7 Fundamentals for Antibiotic-free Poultry Growing....continued*

Insects, rodents and other vermin are one of the largest potential disease vectors on the farm. Growers need to limit the things that attract vermin and eliminate their entrances into the chicken house. He said maintaining a clean, mowed exterior and avoiding puddles of water forming near the house can discourage animals from trying to live in or near the house.

Another huge biosecurity issue lies with mortality disposal. Birds that are not disposed of properly attract flies, vultures, and other decomposers that bring disease onto the farm. Moreover, dead birds themselves can spread disease.

Mortality should be composted using a method that allows the birds to break down with resources available on the farm. Placing birds in the composter correctly and layering compost properly avoids many issues. Birds need to be covered in 8 to 10 inches of litter. Bins should be sealed so storm water does not get into the composter.

**Spend Time in the house**

In summation, Moyle said farmers need to trust their judgment and their eyes instead of relying on sensor readings along. Regularly walking the house helps farmers monitor feed levels, equipment performance, and bird behavior.

## CAFO Permit Update

*Provided by Michelle Chesnik*

When everyone sent in their NOI (notice of intent) and your CAFO Fee, you also submitted your CNMP (Comprehensive Nutrient management Plan) and your NMP (nutrient management plan). We (growers) were advised that if nothing changed in your operation, then your CNMP would stay the same. Your NMP, how much litter you will generate over the next 3 years should be updated, and additional information requested such as water shed etc. was filled out and submitted.

This information provided by MDE at that time was sadly incorrect. The CNMP's for all the operation must be updated by incorporating the information that was sent in with the NOI as well as additional information on the TSP (Technical Service Provider) checklist, (attached into your CNMP). This must be done by a TSP. Only the TSP who originally did your plan can do an addendum to your existing plan and unfortunately, many of those folks are no longer writing plans. <https://mde.maryland.gov/programs/LAND/RecyclingandOperationsprogram/Documents/AFOResourceConcernEvaluationWorksheet.pdf>

The Maryland Department of Agriculture under the guidance of David Mister and Soil Conservation will be writing plans for growers at no cost. They have all our information and will contact growers by order of the date that their NOI and permit fee were received by MDE. This will be done as quickly and efficiently as they can, but will take time to complete. (If you want to complete the CNMP quickly, then you can pay a TSP to write one for you.) MDA will not do addendums only complete CNMP' S. This will require a farm visit /inspection by MDA. Please be aware if you have not completed resource concerns from the 2014 permit, you may want to do them prior to this visit. Look at your practice and facility implementation schedule to see if anything was listed.

If you still need to update your NMP, that can be done by your local extension office.

The good news is that when you filled your NOCO (notice of continued operation) NOI (Notice of Intent to continue coverage) and paid the fee in 2019, then your coverage will be extended until your paperwork is completed. At this point and time all we can do is be patient and grateful that MDA is helping and best of all at no cost to us the growers!

If you receive a phone call or email from the MDA or MDE please respond promptly as they are trying to help complete your paperwork.



## Upcoming Events

*Winter Crop Production Meetings Calendar:* <https://extension.umd.edu/agriculture/winter-crop-production-meetings2020-2021>

**JANUARY: 2021 Delaware Ag Week is Going Virtual this Winter**

<https://sites.udel.edu/delawareagweek/2020/12/18/poultry-program/>

**Poultry Program - MONDAY, JANUARY 21, 2021**

>>> [Register Here](#) <<<

2.0 Delaware Nutrient Management Continuing Education Credits

2.0 Maryland Nutrient Management Continuing Education Credits

**9:30 a.m. Welcome and Announcements**

**9:35 a.m. Neighbor Relations**

*Dr. John Moyle, Poultry Extension Specialist, Agriculture and Natural Resources, University of Maryland*

*Ms. Jennifer Rhodes, Extension Educator, Agriculture and Natural Resources, University of Maryland*

**10:05 a.m. Bird Health**

*Dr. Dan Bautista, Senior Technical Services Veterinarian, Zoetis Inc.*

**10:50 a.m. Break**

**11:00 a.m. Water pH**

*Dr. Brian Fairchild, Professor/Extension Poultry Scientist, University of Georgia*

**11:45 a.m. Quiz and Evaluation**

**12:00 p.m. Adjourn**

**FEBRUARY: Grower Lunch Break with Extension**  
**February 3 - 12 Noon**

**Register:** <https://umd.zoom.us/meeting/register/tJ0kfuyhqjSpGNzp8wIhemiV6PeHRsJpxntO>

**Topic: "How Minerals in Your Water Can Impact Production"**

**Presenter: Mary Foy, Director of Technical Services,  
Proxy-Clean® Products**



*Your Extension Team* would like to remind you that they are always available to help. We haven't seen you in awhile, so, even if it's just to catch up, we'd love to hear from you.

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