

Commercial Poultry News

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State Court Declines to Use Public Trust Doctrine in Lawsuit Over Water Quality

By Paul Goeringer, Extension Legal Specialist, Agricultural & Resource Economics, UMD

This is not a substitute for legal advice.

The Supreme Court of Iowa recently found that a dispute brought by two groups against the state of Iowa lacked standing and was not an issue the courts could decide. The two groups claim that excessive nitrate levels from agricultural runoff into the Raccoon River had impaired recreational uses of the river and increased costs to purify the water for drinking. The decision is in *Iowa Citizens for Community Improvement v. State of Iowa*.

Iowa Citizens for Community Improvement (ICCI) and Food and Water Watch (FWW) brought a lawsuit against the state of Iowa to clean up nitrate levels in Iowa's Raccoon River. According to the ICCI and FWW, the use of manure from animal feeding operations on corn and soybeans has caused increased nitrate levels in the river and increased costs to make the water safe for drinking. In 2018, the state legislature approved a state strategy to reduce nitrogen and phosphorus water pollution through best management practices. But only limited progress has been made implementing these strategies.

ICCI and FWW brought their claims based on the Iowa public trust doctrine (more on that doctrine later). Both parties claimed that the state of Iowa had a duty to protect the public use of navigable waters by protecting against their impairment. Both parties moved for an injunction requiring the state of Iowa to adopt a mandatory plan to limit discharges from animal feeding operations in the Raccoon watershed. The state moved to dismiss based on lacking standing, the issue not being appropriate for the courts, and failure to exhaust other remedies. The trial court denied that motion and the state appealed to the state supreme court.

The public trust doctrine is a property law doctrine which holds specific natural resources preserved for general use by the state. This doctrine is commonly applied to water resources. The state government typically holds certain lakes, rivers, and streams open to the public for use and enjoyment, and the state cannot give away this public interest. For example, for a river with recreational value, the state would hold the waters in public trust for recreational users to use. However, riparian property owners, those who own property that the river passes through, still have title to the stream beds to the center of the stream. In my example, a riparian owner could not prevent a recreational user from using the river but could prevent the recreational user from going beyond the property held in public trust.

The main issues on appeal were: do the parties have standing to bring the case, could a court hear the dispute, and is the disagreement justiciable (subject to trial in a



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court of law). Courts often require that parties have a legally protectable interest in a dispute, also known as standing. For example, you and your neighbor are having a property line dispute. You and your neighbor would have standing in any dispute involving the property line, but a property owner a mile away would not have standing in a property line dispute between you and your neighbor.

In Iowa, the courts typically require a party to meet a two-prong test to show standing to bring a claim. First, a party must have a specific personal or legal interest in the lawsuit. Second, the party must be injuriously affected. The two groups were claiming that the injury arose from Colorado's failure to regulate animal feeding operations. It was speculative to the court that a favorable decision could lead to a cleaner Raccoon River. The court highlighted that currently, the agencies included in the lawsuit do not have the authority to require nutrient limits on nitrogen and phosphorus from agricultural sources. The courts held that ICCI and FWW did not have the standing to bring this case.

The court next turned to whether ICCI and FWW claims amounted to a non-justiciable political question. The political question doctrine is a legal principle where courts will routinely defer specific issues to another branch of government, such as the legislative or executive branches. The idea behind the political question doctrine is whether the court system is the appropriate venue to hear this issue or better suited for an elected branch to handle.

The court turns to determining if the claims are political questions. ICCI and FWW were looking to expand the public trust doctrine, which is based on property law. Previous decisions had held that the public trust doctrine is based around the idea that the state is the steward of natural resources, but it is a narrow doctrine. Past decisions had limited the public use doctrine to the public's use of the resource. To the court, this meant accessing the resource free of obstruction and interference from a private person. At the same time, past decisions involving the public trust doctrine prevented the court from second-guessing regulatory decisions made by elected bodies and strictly limited to prohibiting the state from conveying certain natural resources to private parties.

Although the public trust doctrine is based on property law, the court could not find discoverable and manageable standards for a court in this situation. The current dispute required the court to balance both the interest of agriculture versus recreational uses and additional costs on agriculture versus recreation. The court also disagreed with an argument that the court could order the legislature to pass legislation limiting nitrate levels in the river. This would raise separation of powers concerns, allowing the courts to exercise veto power over the legislature. The court reversed the lower court ruling and dismissed the case for lack of standing and a non-justiciable political question.

This is not the first dispute in the Raccoon River watershed. The Des Moines Water Works had already sought to recover money to remove access nitrates from drainage districts in Iowa. That lawsuit was also unsuccessful. For more, see <https://www.calt.iastate.edu/blogpost/why-federal-court-dismissed-dmww-lawsuit>.

This case highlights that not everything is a dispute the courts can handle. To the Supreme Court of Iowa, this dispute required the courts to step into the role of the elected legislature and potentially violate the separation of powers principles laid out by the state constitution. Here the court saw the dispute as a political question needing to be addressed by the legislature. The ongoing controversy in the Raccoon River watershed will be interesting to continue following.

References: *Iowa Citizens for Community Improvement v. State of Iowa*, No. 19-1644, 2021 WL 2483412 (Iowa, June 18, 2021)

Prepare for Natural Disaster on Commercial Farms

By Dr. Jonathan Moyle for The Mid-Atlantic Poultry Farmer



It is that time of year when we see the chance of tornados and heavy rains increasing and along with them the possibility of damaging winds and flooding. Additionally, hurricane season starts on June 1 and runs through Nov. 30.

Hurricanes also bring the potential for high winds, tornados, torrential rains, flooding, and tidal surges in coastal areas.

Regardless of the type of disaster, similar problems can occur to transportation and public utility services.

Therefore, it is important to prepare for emergencies before they happen to limit damage and lost production. In order to help prepare for natural disasters, consider the following items.

Gathering information is an easy place to start preparing for possible disaster situations. *Begin by preparing a list of all important emergency contact numbers* such as: local police and fire department, local emergency management office, hospital, physicians, schools, integrator and flock supervisor, fuel supplier, propane supplier, equipment maintenance company, insurance company, Extension office, electric company, family and neighbors, etc.

Also, gather important materials such as: standard operating procedures, material safety data sheets for chemicals in use, maintenance manuals for equipment, financial information, insurance policy, etc.

Checklists can be helpful for remembering information during a stressful situation. It is always a good idea to keep a copy of this information along with your personal documents (such as prescriptions, passports, etc.) in a fire-resistant safe.

Caring for your family and then maintaining the health and welfare of your birds should be your top priority.

The basic needs of the birds depend on the generator functioning, allowing for feed and water to be available.

Normal feed deliveries may be disrupted, as deliveries will be dependent on feed availability and if roads are passable for delivery trucks. Companies will prioritize which farms get feed first, depending on needs and ability to deliver.

In extreme situations, it may be necessary to ration feed, feeding only enough for maintenance and reducing hours of light. If possible, *be proactive and fill feed tanks prior to the arrival of a storm if one is forecast* for your area.

Almost all natural disasters result in some loss of electrical service. Bird welfare is dependent on electricity to power the ventilation system as well as provide feed and water. Generators need to be maintained so they are ready to run at all times and capable of supplying all the energy needs of your farm.

If you have recently added fans or other equipment to your farm, make sure the generator is sized big enough to supply the required increase in electrical load.

Some power outages can last for days, so *consider how much fuel your generator uses when operating under a full load* to determine the minimum size of the fuel tank needed. Always keep on hand sufficient fuel to run at least 24

Prepare for Natural Disaster on Commercial Farms...continued

hours, if not longer. Make sure your fuel supplier is capable of delivering fuel during natural disasters, and have a backup plan in case that supplier has a problem.

Other considerations are: do you have oil and oil filters to change the oil on the generator? Do you have backup air filters and other items needed to maintain the generator?

It is also recommended that you use fuel stabilizers to keep the fuel fresh, prevent oxidation, help clean out impurities, and protect your generator from corrosive condensation build-up.

Phone and internet service, both land lines and cellular, may be out for some time. This will cause problems with your controller system contacting you when an alarm goes off, so extra care must be taken to prevent any production issues.

Communication should improve rapidly as conditions permit and you should stay tuned to weather forecasts and emergency broadcasts. Consider purchasing a weather radio tuned to National Oceanic and Atmospheric Administration broadcasts (www.noaa.gov).

Keep some cash on hand for emergency purchases.

If power and phone lines are down, stores may not be able to make credit card transactions and automatic teller machines may be out of service.

Again, safety should be a top priority, so do not enter collapsed or damaged buildings until their structural integrity can be verified.

Watch out for exposed electrical wires and make sure to shut off all electric and gas lines before going to inspect the damaged building.

Consult your integrator and/or Department of Agriculture and Department of Environment representative if you have chickens trapped inside a collapsed poultry house and/or may have birds that need to be euthanized.

Additionally, they will need to be notified if heavy rains have resulted in a manure discharge.

Biosecurity is still important, but not at the expense of safety. In severe weather, appropriate clothing and footwear take precedent. In all emergencies, personal safety and the safety of your family are top priority. To help keep your family safe, make sure you have an emergency supply of food and water (72 hours minimum, one month preferable). Having extra batteries on hand to operate flashlights, radios and other devices is an important part of preparing.

Make sure that your prescription medications are filled and if possible keep extra on hand. Consider ways you can purify water if your well becomes contaminated due to flooding.

Natural disasters and severe weather are going to happen, and being prepared can give you a little peace of mind during a stressful situation. Proper planning can help you get through the hard times and able to assist others as well.

Jon Moyle, jmoyle@umd.edu



Celebrating Outstanding Growers on Delmarva At the DCA BBQ - Delaware State Fairgrounds

Delmarva Chicken Association announced the recipients of its Outstanding Grower awards, honoring 10 farm families in Delmarva's chicken community with recognition as exemplary farmers raising broiler chickens. Each grower is an independent farmer raising chickens under contract for one of Delmarva's five chicken companies.

"Time and again, Delmarva chicken growers serve as examples for the chicken community and the nation," said Holly Porter, DCA's executive director. "When growers stand and speak at meetings and public hearings, their voices command attention and respect. When they share their everyday rewards and challenges on social media, they help people who never set foot on a farm understand how chickens are raised. And they are valued in their communities by all who understand their roles as stewards of the land." *James Fisher, fisher@dcachicken.com*

The following growers were honored: (<https://www.youtube.com/watch?v=wLifXnesMKk>)



Highlights of interviews with the 10 Outstanding Growers

- ◆ **Jay Bonk**, is a Laurel, DE, grower who operates two chicken houses and raises chickens for Amick Farms.
- ◆ **Shane Cohee**, is a Hurlock, MD, grower with three chicken houses who raises chickens for Allen Harim.
- ◆ **Jason and Courtney Dryden**, located in Westover, MD, are growers with eight chicken houses who grow for Mountaire Farms.
- ◆ **Andy and Bonnie Lewis**, Newark, MD, are growers operating two chicken houses who produce chickens for Tyson.
- ◆ **Lemston McCrea**, is a Laurel, DE, grower whose two chicken houses produce chicken for Perdue Farms.
- ◆ **Brenda and Keith Powell** of Milford, DE, operate six chicken houses and grow for Mountaire Farms.
- ◆ **Rick and Diane Smith** of Pittsville, MD, who operate two chicken houses and grow for Mountaire Farms.
- ◆ **John Swartzentruber** of Bridgeville, DE, whose two chicken houses produce birds for Mountaire Farms.
- ◆ **Tonya Timmons**, is a Snow Hill, MD, grower with two chicken houses and grows for Perdue Farms.
- ◆ **Amy Tran**, is a Westover, MD, grower with five chicken houses and grows for Amick Farms

CONGRATULATIONS TO ALL!

Vegetative Environmental Buffers

DCAchicken.com/VEB, Jim Passwaters



Jim Passwaters' Buffer Bites: [Don't Weed-whack Your Buffers!](#)

The Delmarva Chicken Association (DCA) Vegetative Environmental Buffers Program was created to help with air quality improvements on chicken farms in Delaware, the Eastern Shore of Maryland, and the Eastern Shore of Virginia. DCA assumed responsibility for the program in 2006 after its creation by the University of Delaware.

The planting of trees around chicken houses has both air quality and water quality benefits. Properly designed vegetative environmental buffers with farm-specific plants - trees, shrubs and warm season grasses - help capture air emissions from chicken houses. Additionally, these vegetative environmental buffers can absorb nutrients in the soil and water around chicken houses and help prevent the movement of nutrients to adjacent waters.

Vegetative environmental buffers also let growers reduce the time and expense of mowing grass. And DCA is also pioneering the adaption of pollinator-friendly vegetative environmental buffers, which promote crop pollination on top of their other advantages. In 2017, DCA was awarded a grant from Bayer's Feed A Bee program to help growers on Delmarva plant pollinator-friendly vegetative environmental buffers. Beginning in 2019, we've collaborated with the Nanticoke Watershed Alliance to research which pollinator-friendly plant species work best for growers, and converted high-maintenance mowed areas to low-maintenance pollinator-plot meadows all across Delmarva. [This guide](https://www.dcachicken.com/VEB/docs/NWA-Poultry-Guide.pdf) (<https://www.dcachicken.com/VEB/docs/NWA-Poultry-Guide.pdf>) helps growers add pollinator-friendly buffers to their farms and transition lawns to meadows, including in swales between chicken houses.

Since 2006, the DCA Vegetative Environmental Buffers Coordinator has worked with hundreds of growers and overseen the designs of vegetative environmental buffers, helped growers navigate the systems of cost-share programs, and identified contractors to help with the plantings.


Delmarva chicken growers can contact program coordinator [Jim Passwaters](#) to learn more about this internationally known environmental program.

[VEB TOOL-KIT: A Guide to Vegetative Environmental Buffers \(Revised 2020 Edition\)](#)


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[VEB 툴킷](#)



JOIN OUR NEXT
GROWER LUNCH BREAK WITH EXTENTION
Wednesday, July 7, 2021 at Noon

“COOL CELL PAD MAINTENANCE”
With
Isaac Singletary
of

Munters Corporation

Register at: <https://umd.zoom.us/j/81252418249?pwd=MTZkd0pDZWpBdUJkdjR0Y1ZlZDZkdz09>

Go to this website, register, and you will receive an email with ways you can connect and participate. We also will open to discuss current questions/issues.

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Coming Events!

Grower Lunch Break with Extension Cool Cell Pad Maintenance

- [July 7 - “Cool Cell Pad Maintenance”](#)
Isaac Singletary of Munters Corporation



- [Register:](https://umd.zoom.us/meeting/register/tJ0kfuyhqjsgGNzp8wlhemiV6PeHRsJpxntO) <https://umd.zoom.us/meeting/register/tJ0kfuyhqjsgGNzp8wlhemiV6PeHRsJpxntO>

Poultry Mortality Composting Short Course and Demonstration

- [July 13 - “Poultry Mortality Composting](#)
Virtual School - Instructors:
Drs. Gary Felton and Jon Moyle
- [Cost is Free](#)
- [Register by July 7 Tina Scites at:](#)
tscites@umd.edu or call (301) 405-1198



Poultry Mortality Composting Short Course and Demonstration

Wednesday July 13, 2021 9:00 AM- 3:00 PM
Virtual School

Sponsored by
Environmental Science and Technology Department
University of Maryland Extension

AGENDA

8:30	Check in and Troubleshooting
9:00	What is composting Description of the compost process, the variables that control the process, recipes to successfully compost, and the items that must be controlled: time, oxygen, moisture, pH, C:N ratio
9:45	Whole animal composting Whole animal compost systems, set-up of a poultry mortality compost, bio-security, legal and environmental issues.
10:30	Break
10:45	Channel composters and Composting Problems Mass mortality composting Both in-house composting and outside composting of large numbers of dead birds. Mass mortality experiences
12:00	Lunch
1:00	Freezers
1:30	Compost use
2:00	Practical Aspects, NRCS design shortcoming, Our take
2:45	Q&A, Wrap up
3:00	Adjourn