UNIVERSITY OF MARYLAND EXTENSION

Commercial Poultry News

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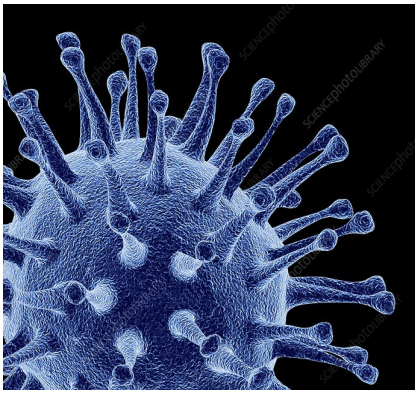

Highly Pathogenic Avian Influenza! A Commercial and Backyard Danger

On February 25, Dr. Nathaniel Tablante, DVM, UME, started 'Avian Influenza Warning Discussion' (click this title to watch the whole video).

More recently, on March 23, we held an *"HPAI Q & A"* Zoom, with over 200 people, including Maryland's Secretary and Deputy Secretary of Agriculture, Joe Bartenfelder and Steve Connelly, members of USDA, and Delaware officials, discussed the most recent information on where HPAI has hit, rules on **manure movement**, what is being done, and what the biosecurity measures we should all be doing to keep everyone's flocks safe. Georgie Cartanza of University of Delaware's Cooperative Extension, gave a brief talk at the end of the Zoom on the importance of footwear designated for each poultry house.

The video recording of the March 23 "HPAI Q & A" Zoom is here: https://umd.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=2514bb88-2292-4d98-a993-ae6101268c86

The Notes from this Q & A session can be found and downloaded on the UME Poultry Extension site: extension.umd.edu You can find other current information here too.

Also, for your information, the Amended (3/18/2022) Executive Order Restricting Movement of Poultry Litter Generated in Certain Areas of the State is here.

Helpful Contacts and Information:

Howard Callahan, MDA Nutrient Management, 410-427-9003, howard.callahan@maryland.gov
Bob Coleman, DDA Nutrient Management, 302-698-4556, nutrient.management@delaware.gov
APHIS:https://www.aphis.usda.gov/aphis/ourfocus/wildlifedamage/SA_Program_Overview/SA_Contact/ws-state-info?st=MD:Maryland

In Delaware, email Delaware Poultry Health Hotline at poultry.health@delaware.gov or call 302-698-4507 and provide your contact information, size of flock, location, and concerns.

In Maryland, report any unusual or sudden increases in sick birds to the MDA Animal Health Program at 410-841-5810. Email questions about the outbreak to MD.Birdflu@maryland.gov.

In Virginia, report sick or unusual bird deaths to the State Veterinarian's Office at 804.692.0601 or vastatevet@vdacs.virginia.gov or through the USDA's toll-free number, 866-536-7593.

Taking Biosecurity Measures to Limit Your Legal Liability for the Spread of Avian Influenza

Download PDF Here

(This should not be construed as legal advice.)

The possibility of an avian influenza (AI) outbreak on the Delmarva is scary. The recent HPAI outbreaks in Delaware and Maryland resulted in more than two million birds at commercial poultry flocks being affected. Infected birds are euthanized to help contain the disease, resulting in large economic loss to both the grower and integrator.

With this in mind, poultry growers and companies often have questions about potential liability if AI breaks out on one farm (Grower A) and then on a neighboring farm (Grower B). Could Grower A be liable to Grower B for damages caused by the disease? Under the traditional view, Grower A would not be liable for the spread of the disease unless it was shown that Grower A was negligent. Growers, poultry companies, and contractors practicing biosecurity measures can demonstrate he/she was not negligent and is working to prevent the spread of AI.

Negligence

Negligence is simply failure to exercise a ***duty of care*** under the circumstances. This means that you failed to act as a reasonable and prudent person would have in the same situation. Courts have found that negligence has four elements which need to be proven:

1. Party owed a duty of care to act reasonable under the circumstances to the injured party;
2. Party breached that duty of care;
3. Breach was the proximate cause of the injury; and
4. Actual damages occurred.

When looking at negligence in a livestock contagious disease situation, a grower would have a duty to conduct the operation in a reasonably safe way and in a reasonable fashion to prevent a contagious disease from spreading to neighboring operations. Breaching that duty would come from failure to practice good biosecurity protocols to prevent the spread of AI. The 2 proximate cause of the breach would be from the failure to practice biosecurity, causing a neighboring landowner to have an outbreak of AI. Actual damages would be shown through loss of income due to loss of birds from the decontamination process.

For example, Grower A is concerned he has AI in a house and calls neighbor, Grower B, to compare birds. Grower A enters Grower B's poultry house without cleaning his boots or putting on booties, gloves, or any other protective gear. A few days later, Grower B's birds show signs of AI. Grower B could potentially recover from Grower A in a lawsuit for negligence.

Taking Biosecurity Measures to Limit Your Legal Liability for the Spread of Avian Influenza continued...

In another example, a poultry integrator sends out feed trucks to visit multiple growers in a single day. Feed truck operator does not wash the truck off before entering a new farm nor does the driver wear protective footwear when out of the truck on each farm. Operator delivers feed to Grower A and then to Grower B, and both growers later develop avian influenza. Both growers could potential recover from the poultry integrator for negligence if the integrator did not follow appropriate biosecurity practices.

One last point on negligence: Maryland and Virginia still recognize the defense of *contributory negligence*. Contributory negligence is based on the idea that the injured party also owes a duty of care to himself or herself and breaching that duty is significant enough to bar the injured party from recovering damages. Looking at the first example, if negligent Grower A can show that Grower B also does not have established biosecurity practices, this would potentially be enough to bar Grower B from recovering damages. Delaware, however, no longer recognizes this defense.

Although we have few reported cases involving disease outbreaks in poultry, it is important to realize implementing biosecurity practices is one way to demonstrate that you were not acting negligently. Additionally, if both growers and companies implement good biosecurity practices it can also help lessen the impact of AI in our region if it appear in our region.

Biosecurity Practices

One way to demonstrate you are operating to prevent the spread of a contagious disease, such as A.I., is through adopting biosecurity practices. These practices can limit the spread of diseases and limit farm-to-farm outbreaks. These practices are good for growers, companies, and contractors who may be coming on poultry farms. The National Chicken Council has suggested the following practices:

- Limiting visitors on the farm and minimizing foot traffic;
- Avoiding contact with wild and domestic fowl;
- Avoiding the sharing of farm equipment;
- Having a clean and functioning footbath at each entrance to the broiler house or ensuring that all visitors and farm personnel have disinfected or new footwear before entering a house or facility;
- Making sure feed and water sources are covered and free of contaminants, limiting the attraction of wild fowl and pests;
- Having official signage clearly stating the farm is a biosecure zone and any unauthorized entry is strictly prohibited;
- Employing effective pest and wild bird management practices; and
- Adequately training farmers, farm and company personnel in biosecurity and disease prevention.

USDA's Animal Plant Health Inspection Service has a webpage dedicated to biosecurity practices for poultry (http://1.usa.gov/1OtaT7p). Craig Coufal, Texas A&M Agrilife Extension, has developed a factsheet covering Avian Influenza and Biosecurity Practices (http://bit.ly/1OtbRQW).

Avian Flu Could Threaten Eastern Shore Poultry Flocks

ShoreDailyNews.com

DOVER, Del - According to an article in the Delmarva Farmer, prior to Highly Pathogenic Avian Influenza being confirmed in a commercial poultry flock in Delaware on Feb. 23, multiple cases of of Eurasian H5 HPAI were detected in wild birds in Delaware on Feb. 16, as the bird flu continues to spread in the United States.

These findings were not unexpected, as wild birds can be infected with HPAI but show no signs of illness.

Eight other states in the Atlantic Flyway have found HPAI this year in wild birds, with it believed to be widespread in migratory waterfowl on Feb. 19.

The USDA's Animal and Plant Health Inspection Service confirmed HPAI in non-commercial backyard flocks in Maine and New York.

These findings have prompted state and federal officials and the area poultry industry to call for chicken growers and industry personnel to redouble their biosecurity efforts to keep the disease out of backyard and commercial poultry flocks.

Poultry owners or those working within the poultry industry should refer to guidance issued by the Delaware Department of Agriculture regarding increased biosecurity protocols.

- No person without a direct role in the poultry operation (e.g., feed trucks, fuel deliveries, service people) should visit poultry farms for the foreseeable future. Local, county, and state governments, as well as allied industries, should cease non-essential visits to poultry farms.

- Commercial and backyard flock owners should review their biosecurity plans to reduce the transmission of avian influenza to their birds. Virus transmission can occur through foot and vehicular traffic; secretions from birds' mouths, nostrils, eyes, excrement; contact with infected droppings; movement of infected birds; and contaminated clothing and equipment (cell phones). For tips on improving biosecurity, visit https://bit.ly/3Bh6T7p

- All keepers of domesticated birds should prevent contact between their animals and areas where wild birds have access.

- Report sick poultry or unusual deaths in poultry flocks to the Delaware Department of Agriculture's Poultry and Animal Health at (302) 698-4500, or after-hours disease emergency involving poultry, call 302-233-1480.

Understanding What an Easement by Necessity Is and When One Is Created

By Paul Goeringer, Senior Faculty Specialist, UME, Agricultural & Resource Economics,

The article is not a substitute for legal advice. See here for the site's reposting policy.

A court may grant an easement by necessity as a remedy when an owner splits a parcel into two properties, and one of those new properties becomes inaccessible. The idea is that the parties did not intend to create a property unfit for occupancy. A recent decision by the Court of Special Appeals affirming a Garrett County circuit court decision highlights how a court may handle this issue. The decision is in *Gunfeld Coal Co. v. Carey*.

What Is an Easement by Necessity?

An easement by necessity is defined as an "easement created by operation of law because the easement is indispensable to the reasonable use of nearby property, such as an easement connecting a parcel of land to a road" (Black's Law Dictionary). As the definition highlights, an easement by necessity is created when splitting a parcel of land, and one of the created parcels will no longer have a road to access the property. For example, if Will owns 100 acres of land and grants 20 acres of that land to his son, Steve, that acreage has no road access. Steve would be able to claim an easement by necessity across Will's property to access the road. The rationale for this is that the law presumes that Will's transfer intent was not to make Steve's property unfit for use.

The person arguing for the easement must show three elements to prove an easement by necessity. First, is the requirement of unity of title. In other words, there was a time that the original owner owned the two pieces of property. Second, there must be evidence the title was severed; in other words, evidence is needed showing the title was split, and separate tracts were created. Third, there must be evidence that it is necessary to cross the property to access the other property. This third element must show this access existed when the titles were severed and as conditions currently exist. In other words, the one party would need to show that access to the other property has not changed over time.

Background

This case involves land grants from the State of Maryland to veterans of the Revolutionary War in 1788 and involves Military Lots 2058, 2069, 2070, 2071, and 2079. In 1788, the state conveyed lots 2069 and 2070 to Henry Dobson

Understanding What an Easement by Necessity Is and When One Is Created continued…

and lots 2058, 2071, and 2079 to Thomas Mason. A property survey before 1788 did not include any roads or waterways going through to the lots. In 1843, Dobson died without heirs, and his property went to the state. Later the state sold lot 2069 to Wiland and lot 2070 to Winterburg. When Winterburg took title to lot 2070, a new survey showed the Casselman River passed through a portion of the lot. Years later, Winterburg granted a right-of-way for a railroad to run through lot 2070. In 1965, Gunfeld Coal Company (Gunfeld) purchased lot 2070. Carey purchased lot 2058 and parts of lots 2071 and 2079 in 1988. Pepper purchased lot 2069 in 1992.

Gunfeld's lot is not adjoined by a public road and has no deeded right to access. Since 1965, Gunfeld has not used lot 2070 for timber harvesting. When Carey purchased his lots, he bought an easement across lot 2069 and another to access the public road. Pepper bought lot 2069 and an adjoining lot with access to the public road. Gunfeld brought an action claiming an easement by necessity either cross Pepper's lots to access the public road or across both Carey's and Pepper's lots to access the public road. The circuit court held that Gunfeld failed to prove the three elements discussed above necessary to establish an easement by necessity. Gunfeld appealed that decision to the Court of Special Appeals of Maryland.

Court of Special Appeals Decision

On appeal, Gunfeld presented evidence that a common grantor created the lots in 1788, the State of Maryland. At the granting of title in 1788 to lot 2070 (Gunfeld's), the lot was inaccessible without the easement. The issue here is that Gunfeld failed to demonstrate that the easement by necessity existed in 1788 and that there the property was inaccessible without the easement by necessity at conveyance. The court agreed with the circuit court that Gunfeld produced no evidence that Dobson could not access lots 2070 and 2069 other than crossing Mason's lots. Additionally, Gunfeld never showed that when Pepper's property (lot 2069) was severed from lot 2070 in 1843, lot 2070 was inaccessible other than crossing lot 2069. At the same time, Gunfeld failed to show that access was not available to lot 2070 by the Casselman River, which that runs through the property.

The circuit court also found that Gunfeld was barred by laches from bringing a claim of easement by necessity. Laches is defined as an "[u]nreasonable delay in pursuing a right or claim." Laches is a defense in equity that defendants can raise against stale claims and is based on the public policy decision to discourage bringing older claims. In this case, Gunfeld bought the property in 1965 and brought the suit in 2018. Gunfeld did not explain the 53-year delay in bringing the suit for an easement by necessity. The Careys bought their property in 1988 and the Peppers in 1992. Both the Careys and Peppers took steps to gain access to their respective properties when purchasing them. In the 20-plus years of owning those properties, however, the Careys and Peppers had no notice that Gunfeld could press claims to create an easement by necessity. To the court, if they were aware of this, they might have purchased other properties or purchased the same properties at lower prices to accommodate Gunfeld's easement. The court affirmed the circuit court's decision.

Why Care?

This case highlights a critical aspect for landowners who may need to bring a claim for an easement by necessity. If a landowner has an inaccessible property, the landowner should not wait to bring suit. Gunfeld waited 53 years without explaining why. Another reason to highlight this case is the path taken by the Peppers and the Careys. Both purchased inaccessible lots but worked with neighboring landowners to negotiate easements across the adjacent properties to access the public road. This negotiated approach will potentially be a more long-term benefit to both landowners and ensure that future owners maintain access to the property.

References

Black's Law Dictionary (11th ed. 2019)

Gunfeld Coal Co. v. Carey, No. 50, Sept. Term, 2021, 2022 WL 767215 (Md. Ct. Spec. App. Mar. 14, 2022).

Chicken Growers Make Good Neighbors by Raising Chickens, Planting Buffers, and Saving Bees

By James Fisher, Communications Manager. Delmarva Chicken Association

On every chicken farm, there's open ground between the chicken houses and the property line. Stand there, and you can look toward the chicken house, or turn around, and look to a road, a neighboring farm, or other people's homes. Family farmers raising chickens have a decision to make: Should that space be covered by grass that needs to be mowed? Or is there a better option?

The Delmarva Chicken Association, a trade association for the chicken industry on Delmarva, has spent more than a decade exploring better options. What they've found is that planting vegetative environmental buffers - rows of warm-season grasses, shrubs and tall evergreen trees - on that ground pays real dividends for growers, their neighbors, and the environment. DCA has been working on a tweak to these buffers to add a benefit for pollinating insects, like bees.

Why should chicken growers plant buffers at all? To start, they provide benefits to the farmer. Acting as windbreaks, they make it less costly to keep chicken houses warm in the winter. During the summer, their shade can cool roofs and intake air. And DCA figured out which plants and trees are hardy enough to be planted close to tunnel fans, where they help capture dust and feathers. Plus, this land doesn't need to be mowed, saving farmers time and money, while cutting back on engine emissions.

As the saying goes, good fences make good neighbors. And these buffers help chicken growers do just that. Placed correctly, they can muffle farm noise and act as a screen between neighboring homes and the chicken houses. It's clear that a farmer who installs buffers takes pride in their property's appearance.

"When someone drives by my farm, I want them to think, 'Oh, there's a chicken farm - look at the pretty trees,'" said Kimber Ward, a family farmer raising chickens near Salisbury. "Yes, we can have a poultry farm and do positive things for the land at the same time. I have a passion for that. I want to leave the land better than I found it."

Finally, the root systems of plantings improve water quality overall, filtering and capturing nutrients in storm water. Ward said he's seen that work on his farm, where buffers planted around a storm water pond have led to measurable improvements in water clarity. The pond's so clear, he said, that tiny minnows in it are thriving and dining on mosquito larvae to boot. "Little things like that, I believe they all add up," Ward said.

Bees can also benefit from vegetative environmental buffers. For instance, the program Feed a Bee is all about promoting pollinator-friendly habitats - expanding the places where bees and other pollinating insects can thrive. That's where buffers can make a difference by including flowering plants. These will give a boost to bee populations, and it will benefit any crop farmer in the area whose crops profit from natural pollination.

On this note, we want to introduce the new 'buffers guy' for DCA, **Bobby Gorski**, the new agricultural conservation specialist. Bobby's role is to keep helping DCA members design, install and maintain vegetative environmental buffers (VEBs) while broadening the ways DCA can help chicken growers add smart, sustainable practices to their farms. Contact him at gorski@dcachicken.com or by calling 302-542-5131.

Coming Events!

Grower Lunch Break with Extension
May 4, 2022 - 12:00 Noon - IPM Strategies
"Life Cycle of a House Fly" by Dr. Simon Zebelo of UMES

Register at: https://umd.zoom.us/meeting/register/tJ0kfuyhqjspGNzp8wIhemiV6PeHRsJpxntO

Delmarva Chicken Association Booster BBQ
June 22, 2022
Delaware State Fairgrounds

Join DCA's members for our second Booster BBQ! We held this event for the first time last year, and you told us it was a hit for the live music, the venue, the food and the camaraderie. So we're bringing it back to you for 2022.

- 4:00 - 8 p.m. Visit with vendors and sponsors
- 4:30 - 7:00 p.m. BBQ chicken dinner available
- 4:30 - 6:30 p.m. Live performance
- 7:00 p.m. Recognition of Outstanding Growers, Distinguished Citizen and Medals of Achievement Award Recipients
- 7:30 p.m. Door prize drawings

RSVPs are firmly required for this event. Every $150 in DCA dues allows two people to register for the Booster BBQ. DCA will share more registration information in April.

Quillen Arena, Harrington, Delaware - View Map

Become a Sponsor or learn more at: *https://www.dcachicken.com/booster-bbq/*

Please visit the University of Maryland website: extension.umd.edu/poultry for more information and coming events.

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