

# Commercial Poultry News

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## Pollinator / Vegetative Buffers Demo Day Was a Success!



Put on by the Nanticoke Watershed Alliance, Delmarva Poultry Association, University of Delaware Cooperative Extension, and University of Maryland Extension, poultry growers and others came out to learn how these buffers can capture dust, shade houses, deter Canada geese and other wild fowl (preventing spread of disease), absorb excess nutrients before they reach local waterways, and reduce maintenance costs and time on their properties.



Held here at the Lower Eastern Shore Research & Education Center (LESREC) in Salisbury, participants enjoyed a *beautiful* day, where they heard from experts and shared a meal generously provided DCA and the Nanticoke Watershed Alliance.





# Potential Class Action Lawsuit Filed Arguing Broiler Growers Are Employees of Company

*By Paul Goeringer, Extension Legal Specialist, UMD*

*The article is not a substitute for legal advice.*

An interesting potential class action was recently filed in U.S. district court in South Carolina involving a broiler grower and Amick Farms. In this class action suit, the grower argues that they and other similarly situated growers for Amick Farms are Amick employees and not independent contractors as their contracts state. This action is currently in the early stages and will be worth watching for those in the industry going forward. It is important to note that, however, as of right now, the action only involves Amick Farms and no other integrated poultry operations. The action in question is *Diaz v. Amick Farms, LLC*, No. 5:22-CV-01246.

## What Is a Class Action Lawsuit?

Many of us have received that random check in the mail for a small amount as our payout on a class action lawsuit. But many people may not understand what a class action lawsuit is. Class action lawsuits allow the judicial system to manage lawsuits that potentially could be unmanageable. Cases would become unmanageable if each potential class member were to bring a lawsuit. In class actions, the class members must share common questions of law or



fact, with proposed claims or defenses being typical for each class member. At the same time, class actions require that the size of the potential class makes it impractical for all the members to join in and that the class representatives can adequately protect the interests of the entire class.

That definition can be confusing, but let's look at a few recent examples which many in agriculture might be familiar with: the recent Syngenta corn seed settlement or the settlement reached with Bayer over the off-target dicamba applications. For a grower who experienced loss in either of those cases, there were other growers also experiencing the same loss with very similar fact patterns. By consolidating all these cases with similar fact patterns, losses, and other commonalities, we can reduce the burden on the court system and allow cases to proceed more quickly.

## Background

Diazes and the Diaz Family Farms, LLC, operating a broiler farm in South Carolina, are bringing claims against Amick Farms, LLC, an integrated poultry company which contracts with growers to raise broilers. Amick Farms processes these birds and markets the final products.

*Potential Class Action Lawsuit Filed Arguing Broiler Growers Are Employees of Company continued...*

Livestock &amp; Poultry Environmental Learning Center picture

Diaz Farms was one of these contractors, an independent contractor to Amick Farms as standard in the industry. An independent contractor is a self-employed person or entity with the right to control or direct the result of work, what will not be done, and how work will be done. For example, if you pay a mechanic to fix your vehicle, the mechanic would be an independent contractor since the mechanic has control over the vehicle, how the work will be done, and what will not be

done. Independent contractors are responsible for paying their social security taxes and Medicare taxes.

**Claims Being Pursued**

Diaz Family Farms' claims are centered on arguments that broiler growers for Amick Farms are not independent contractors but employees, that Amick Farms controls every aspect of raising the broilers, and that the growers are employees of the company. As employees, Diaz Family Farms argues that the company has not been paying the federal minimum wage (\$7.25/hour) for growers' work.

Diaz also argues that Amick has violated South Carolina state law requiring employers to notify employees in writing when hired of regular hours agreed to, wages agreed to, the time and place of work, and any deductions from wages. The claims are that Amick often requires growers to make costly improvements to their poultry houses, or the grower might lose their contract. The Diazes argue that these expensive improvements and the tournament system pay system violate South Carolina state law.

At the same time, the Diazes claim that other employees of Amick Farms are offered benefits including health insurance, life insurance, disability insurance, and 401(k) plans. A federal law, Employee Retirement Income Security Act (ERISA), sets minimum standards for employers' voluntary retirement and health plans. The Diazes argue they were eligible for these benefits as employees, and Amick failed to extend these benefits to them.

Finally, the Diazes include in their suit state law claims of violating South Carolina's Unfair Trade Practices Act (UTPA), breach of the grower contract by a fraudulent act, and breach of the contract by violating the implied covenant of good faith and fair dealing. Violating the UTPA is the only claim brought just on behalf of the Diazes and not the entire class. This claim is based on Amick using contractual language leading the Diazes to believe they were independent contractors when their experience with Amick meant they are employees. Based on their arguments, the other two claims are also based on Amick using the contractual language to lead the plaintiffs to believe they are independent contractors when they are employees.

Amick Farms has yet to answer this complaint. Since the suit is currently only in the pleading stages, we will have to wait and see whether the case will be certified as a class action lawsuit and how much further it may proceed through the court system.

Poultry farm with deer in foreground image by Chesapeake Bay Program.jpg

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An interesting potential class action was recently filed in U.S. district court in South Carolina involving a broiler grower and Amick Farms. In this class action suit, the grower argues that they and other similarly situated growers for Amick Farms are Amick employees and not independent contractors, as their contracts state. This action is currently in the early stages and will be worth watching for those in the industry going forward. It is important to note that, however, as of right now, the action only involves Amick Farms and no other integrated poultry operations. The action in question is *Diaz v. Amick Farms, LLC*, No. 5:22-CV-01246.

# Biden Administration Announces Proposed Changes to the Poultry Tournament System

*By Paul Goeringer, Extension Legal Specialist, UMD*

*The article is not a substitute for legal advice.*

The Biden administration recently announced a proposed regulation to revise the Packers and Stockyards Act to require more disclosures to contract poultry growers. These regulations would fully replace the proposed regulations announced by the Trump administration. The regulations being proposed by USDA are to combat a concern by USDA that poultry growers are not fully aware of the financial risks associated with flock placements and the tournament system. At the same time, there is a concern that growers potentially are making financial decisions involving improvements to houses without fully understanding the financial risks. The proposed rules would assist in combating that. The current administration's proposed regulations are similar to efforts made at the end of the Obama administration to create transparency in the tournament system.

## Proposed Federal Regulation

Under the proposed federal rule, a poultry integrator would be required to provide additional information to a poultry grower, including a *Live Poultry Dealer Disclosure Document* consisting of:

1. Minimum number of flocks the grower can expect annually under the terms of the contract;
2. Minimum stocking density for each flock that the grower can expect under the terms of the contract;
3. Summary of all litigation over the previous six years involving the integrator and the integrator's growers. This would include the nature of the litigation, initiating party, location, brief description of the controversy, and any resolution;
4. Summary of all bankruptcy filings over the previous six years by the integrator, including any parent, subsidiary, or related entity by the integrator; and
5. A statement describing the policies and procedures for the integrator regarding the sale of the grower's facility or assignment of the poultry grower's facility, or assignment of the contract to another grower.

Integrators would be required to get a grower's signature to verify that the required disclosures were presented to the grower. The proposed rule would also allow growers to discuss the terms of the contract and disclosure document with others.

Additionally, the integrator would need to provide specific financial disclosures, in the *Poultry Dealer Disclosure Document*, including:

1. A table showing average annual gross payments to all poultry growers for the previous calendar year for all facilities the integrator operates. This would need to be organized by housing specifications, and the average payments would be expressed in U.S. dollars per farm facility square foot;

*Biden Administration Announces Proposed Changes to the Poultry Tournament System continued....*

2. A table showing average annual gross payments made to growers by the local facility for the past five years. This would also be expressed in U.S. dollars per farm facility square foot. The table would be organized by year, housing specification tier, and quintile. The proposed regulation also includes how this should be calculated.
3. If the grower's housing specifications are modified to include an additional capital investment or if the five-year average annual gross payments do not accurately reflect projected grower gross annual payments for any reason, then the integrator will need to provide additional information:
  - a. Tables with projections of average annual gross payments to growers under contract with the facility with the same housing specifications for the term of the contract at five quintile levels, expressed in dollars per farm facility square foot, and
  - b. An explanation of why the five-year annual gross payment averages do not accurately reflect a projection of future payments. This explanation would need to include the basic assumptions being made in the projections.
4. A summary of all information that the integrator will collect or maintain from the grower related to variable poultry production costs.

For the above requirements, you may contact a local state Extension office for information relevant to poultry production costs and financial management information.

Along with the required disclosures that would now be required by the proposed regulations, integrators utilizing the tournament system would need to provide additional documentation to increase transparency. This would include a placement disclosure within 24 hours of flock delivery to a grower. The integrator should provide the following information related to placement: stocking density, name and all ratios of breeds of poultry delivered, ratios of males to females (if available), breeder facility, breed flock age, information related to health impairments of the breeder flock/poultry delivered, and any adjustments the integrator might have to make to calculate the pay based on these factors.

At settlement, the integrator would need to provide the grower with all ranking system settlement documents. These documents would include a copy of the grouping or ranking sheet showing the grower's exact position in the grouping/ranking/comparison for that period. The sheet need not include the names of other growers but must show the growers' housing specifics and the actual figures the ranking is based on. The growers in the ranking will need to see how inputs are distributed, including stocking density for each placement, names and ratios of breeds for each grower, the ratio of male to female birds (if available), all the breeder facilities, breeder flock ages, and the number of feed disruptions each grower endured during the grow out period.

The current administration is proposing these changes to increase transparency in the tournament system. **At this point, USDA is accepting comments through August 8;** you can make comments here (<https://www.federalregister.gov/documents/2022/06/08/2022-11997/transparency-in-poultry-grower-contracting-and-tournaments>). It's important to note these are just proposed regulations at this time; the final regulations may include changes based on the public comments. The other issue is that once the final regulations go into effect, there may be litigation on enforcing the regulations.



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

*James Fisher, DCA Communications Manager*



UME's perspective as the evening got started



Delaware Governor, John Carney, with DCA President, Holly Porter, heading to the stage to say a few words of gratitude for the poultry growers throughout Delmarva, for their diligence in keeping HPAI at bay, and keeping chicken available during COVID.

Full Event News from James Fisher, here:

[https://www.dcachicken.com/media/nr\\_view.cfm?id=669](https://www.dcachicken.com/media/nr_view.cfm?id=669)



Delmarva Chicken Association announced the recipients of its Outstanding Grower awards, honoring 12 farm families in Delmarva's chicken community with recognition as exemplary farmers raising broiler chickens. Each grower operates an independent, family-owned farm raising chickens under contract for one of Delmarva's five chicken companies. There are more than 1,360 such chicken growers on Delmarva, each one an important part of the \$4.2 billion chicken community.

"To be a chicken grower in 2021 was to roll with the punches. In a climate roiled by COVID-19, avian influenza and the stirrings of inflation, chicken growers certainly dealt with adversity," said Holly Porter, DCA's executive director. "Growers came through for all the families, including mine, who depend on the chickens they raise. For this class of outstanding growers, earning recognition for their work in a year of challenge is a real feather in their caps. And when they share their everyday rewards and challenges with others, they help people who may never set foot on a farm understand how chickens are raised."

The following growers were honored ([high-resolution photos of each are available on Flickr](#), and a [video roll call of the Outstanding Growers is available on YouTube](#)):

*DCA's 2022 Outstanding Growers continued***Gary & Pat Bennett**

Gary Bennett Farm  
Berlin, MD | Perdue Farms

**Brenda Cowgill**

Brenda Cowgill Farm  
Denton, MD | Amick Farms

**Aaron Dennis**

Carrs Creek Farm  
Preston, MD | Perdue Farms

**Ben & Kayla Dilworth**

Beyla Farm  
Greensboro, MD |  
Mountaire Farms

**Robert & Susan Elliott**

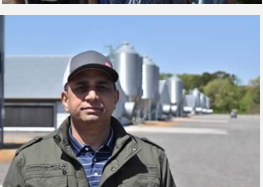
Elliott's Chicks  
Delmar, DE |  
Mountaire Farms

**Aaron & Kathy Mast**

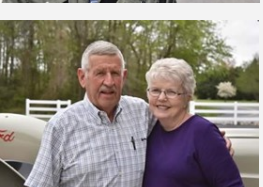
Royal Oak Farm  
Quantico, MD |  
Perdue Farms

**Muhammad Parvez**

Ish Farm LLC  
Oak Hall, VA | Tyson

**Alvin & Norma Warner**

Warner Enterprises Inc.  
Milford, DE |  
Coleman Natural Foods

**Keith & Sandy Whaley**

Three Jokers Farm  
Hardscrabble, DE |  
Allen Harim

**Marcus & Marcia Woodward**

Gryffen's Roost  
Houston, DE |  
Mountaire Farms

**Wan Ki Yu & Eun Young Yu**

Cco Cco Farm  
Laurel, DE |  
Mountaire Farms

**John & Carol Zoch**

Dixie Line Farm  
Seaford, DE | Amick Farms



The Outstanding Grower awards were presented during the Booster BBQ, an annual event for DCA members and invited guests at the Delaware State Fairgrounds. More than 800 DCA members and others in the chicken community attended the event, which featured barbecued chicken prepared and served by Greenwood Volunteer Fire Company and Harrington Fire Company Ladies Auxiliary, ice cream from Vanderwende's, door prizes, more than 40 vendors, and a musical performance by the Jones Boys.

The growers received silver Revere bowls and were recognized on stage at the Booster BBQ. They also received lane signs that can be displayed at the entrances to their farms acknowledging them as outstanding poultry producers.

**Other Award Recipients:**

The J. Frank Gordy, Sr. Delmarva Distinguished Citizen Award to **Steve Schwalb**

The Edward H. Ralph Medal of Achievement to **Ron Darnell**

The DCA Medal of Achievement to Maryland Governor, **Larry Hogan**

For more information, visit [dcachicken.com](http://dcachicken.com); like DCA on [Facebook](https://www.facebook.com/dcachicken); and follow us on [Twitter](https://twitter.com/dcachicken) and [YouTube](https://www.youtube.com/dcachicken). Contact: [James Fisher](mailto:james.fisher@dca.com), communications manager, 302-856-9037 (work) or 302-500-2223 (cell).

*(Some of these recipients are not on our email list yet, please feel free to share this with them if you know them)*



## Poultry Housing Tips

### Uneven Bird Distribution Can Prove Costly

*M. Czarick and B. Fairchild Dept. of Poultry Science, UGA*

[Download the pdf here](#)

Though broilers often appear to be evenly distributed throughout a house, more times than not our eyes are deceiving us. Figures 1 and 2 are of the tunnel fan end and tunnel inlet ends of a 50' X 600' broiler house with 20-day-old birds. At first glance bird density appears fairly uniform but when examined closely, it becomes apparent that there are more birds near the tunnel doors (far right of Figure 2) than in any other area of the house. The question are, of course, is this "slight" difference in bird density significant? Will it create problems in the future?



Figure 1. Tunnel fan end



Figure 2. Tunnel inlet end

This particular house was equipped with two ultrasonic water meters, one for the tunnel inlet end, and one for the tunnel fan end (Figures 3 and 4). In addition to displaying total water usage, these ultrasonic water meters also display water flow rate. Water meters can be a very useful tool in helping to determine if the birds are evenly spread between the two ends of a house because broiler water usage is a very good indicator of bird density. If the water meters indicate that the birds are drinking more water on one end than the other, it is highly likely birds there are more birds on one end than the other. In this particular case when the birds were 20 days old, the water meters were indicating that the birds on tunnel inlet end were drinking roughly 20% more water than those on the tunnel fan end (0.61 Vs. 0.46 gals/min). The twenty percent difference in water usage indicated that there were very likely twenty percent more birds on the tunnel inlet end than the tunnel fan end of the house. When the farm manager became aware of this fact he worked on moving birds from the tunnel inlet end to the tunnel fan end but only had limited success doing so.



Figure 3. Tunnel inlet end water meter



Figure 4. Tunnel fan end water meter



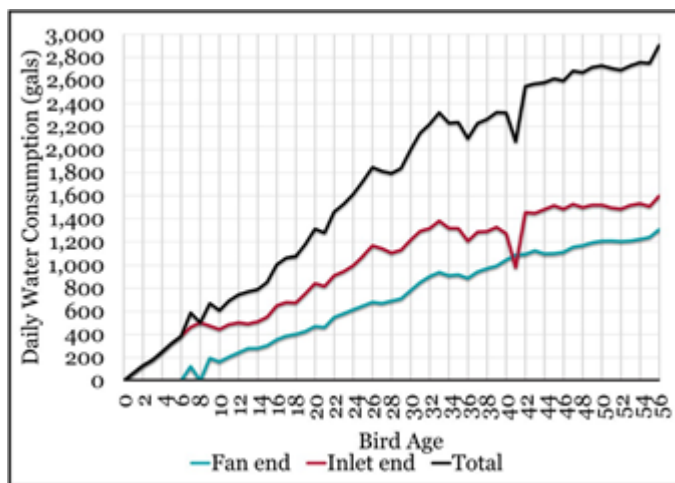
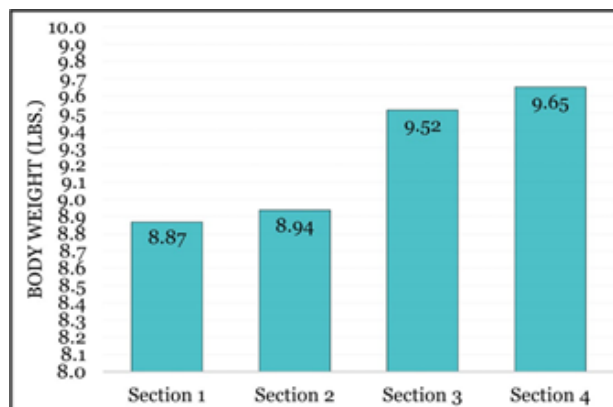
*Poultry Housing Tips - Uneven Bird Distribution Can Prove Costly continued...*

Figure 5. Daily Water Consumption

Figure 5 illustrates daily water usage over the entire flock. After the birds were turned out on Day 9 (three migration fences were installed on Day 14) there was roughly a 60% / 40% split in water usage between the tunnel inlet end and the tunnel fan end of the house. Though the difference in water usage between the two ends of the house tended to decrease slightly toward the end of the flock this was not likely due to the movement of birds between the two ends of the house. The fact is that since the density was significantly lower on the tunnel fan end the birds had easier access to feed and water than those on the higher density tunnel inlet end which resulted in higher weight gains, a fact which became evident when the birds were weighed at 58 days of age (Figure 6). Even though the air temperatures during the August/September flock were generally lower on the tunnel inlet end of the house, the birds on the tunnel inlet end weighed almost 3/4 of a pound less than those on the warmer tunnel fan end. What made the situation more costly to the grower was there roughly 20% more of the lighter birds on the tunnel inlet end of the house than there were heavier birds on the tunnel fan end of the house.

To help ensure that bird density is as uniform as possible from one end of a house to another, consider taking the following steps:

1. Install at least two water meters. In longer houses (600'+), consider breaking the drinker system into four sections and installing a water meter per section. Having four water meters will not only provide a more detailed view of bird density, but also make it easier to recognize possible bird performance problems that may be occurring on in different areas of the house.
2. During warm weather, when bird migration tends to be most costly, consider full-house brooding. Migration fences could be installed at chick placement and the number of chicks placed in each section can be precisely controlled.
3. Install migration fences within three to five days of turning birds out into the entire house. The older the birds become, the more difficult it is to move them from one end of the house to the other.
4. In houses 500'+, consider installing four or more fences. Placing an extra fence within 50' of the tunnel fan end wall will help to ensure there are adequate birds in this area of the house to properly trigger feed control pans. Placing an extra migration fence 50' to 100' from the tunnel fan end wall can help ensure that bird density can be minimized in this area where air speeds tend to be minimal.

Figure 6. Average Bird Weights  
(Second 1 = Pad end, Section 4 = Tunnel fan end)

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[poultryventilation.com](http://poultryventilation.com)

# Upcoming Event

## *Poultry Grower Field Day*

### *New MDA Animal Diagnostic Labs and Education Tour*

***August 16, 2022 10 a.m. - 1:00 p.m.***

*A light lunch will be included*

**MINI-CLINIC TOPICS:** → Biosecurity  
→ Early Clinical Signs of HPAI  
→ How to Collect Samples

**REGISTER:** <https://ume-mda-diagnostic-tour.eventbrite.com>

**VISIT** the University of Maryland Extension Poultry website: [extension.umd.edu/poultry](https://extension.umd.edu/poultry) for more poultry information on Commercial Poultry Production, including Farm Safety, Production Management, Biosecurity, Avian Influenza, Publications, and Videos on Preventing Outbreaks of A.I. for Commercial Poultry Farms, and Technical Service Personnel.



The flyer is for the 'POULTRY GROWER FIELD DAY' held on Tuesday, August 16, 2022, from 10 a.m. to 1:00 p.m. It is an educational event and tour of the new Maryland Department of Agriculture's Animal Diagnostic Labs. The event is free with a light lunch provided for those who register before August 11. Mini-clinics will cover biosecurity, early clinical signs of HPAI, and sample collection. Registration is via Eventbrite. The flyer lists the poultry extension team: Jan Moyle, Jenny Rhodes, Maegan Perdue, Jennifer Timmons, and Georgie Cortanza, with their respective email addresses. Logos for the University of Maryland Extension, University of Delaware Cooperative Extension, and the Maryland Department of Agriculture are included.

Also, if you are not already, sign up for our Commercial Poultry email list at our website too!  
[extension.umd.edu/poultry](https://extension.umd.edu/poultry)



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