

# Commercial Poultry News

## In This Issue:

- 2 - North Carolina Court Rejects Challenges to Changes Made to State Right-to-Farm Law
  
- 5 - UME Family Communications and Estate Planning Workshops Planned for the Winter
  
- 6 - NEEF Grant Opportunity Pollinator Habitat and Community Engagement
  
- 7 - Coming Events!



## 2021 Annual Implementation Reports (AIRs) Due March 1, 2022



**Annual Implementation Reports (AIRs)**, documenting nutrient applications for Calendar Year 2021, are due to the Nutrient Management Program by **March 1, 2022**. Farmers have two reporting options:

1. Farmers who want to submit their 2021 AIRs electronically should go to the [Maryland OneStop Portal](#). This includes resources and links to help.
  
2. Farmers who want to submit paper reports may download either the standard AIR or the CAFO reporting form to their devices before completing.
  - [Instructions for Completing the 2021 AIR](#)
  - [2021 AIR Form](#) (Please download this fillable PDF to your device before completing)
  - [2021 CAFO Form](#) (Please download this fillable PDF to your device before completing)

*If you need help or have questions while filling out your AIRs, please contact your local extension agents or a [Nutrient Management Regional Office](#) in your county.*

*[Join our Grower Lunch Break on Feb. 2 at noon when MDE will speak on the above.](#)*

# North Carolina Court Rejects Challenges to Changes Made to State Right-to-Farm Law

*Paul Goering, Extension Legal Specialist, Department of Agricultural and Resource Economics, UMD  
<https://www.agrisk.umd.edu/>*

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



The end of 2021 saw development on the right-to-farm law front. The Court of Appeals of North Carolina recently rejected arguments that amendments to the state's right-to-farm law were facially unconstitutional. To the court, the law was not unconstitutional on its face. The decision is in [Rural Empowerment Assn. for Community Help v. State](#).

## Background

In 1979, the North Carolina General Assembly enacted the state's right-to-farm act which provided a defense to nuisance suits that might be brought against agricultural and forestry operations. In response to lawsuits brought against swine farmers, the General Assembly amended the law in 2013 and then again in 2017 and 2018 in response to additional lawsuits brought against the swine industry in federal court.

Plaintiffs brought a facially challenged suit regarding the constitutionality of the recent changes. This challenge was dismissed, and the plaintiffs appealed.

## Facial Challenge

Before we look at the court of appeals, we need to discuss what constitutes a facial challenge to a law. A facial challenge, one of the most difficult challenges to bring against a law, is asserting the law is unconstitutional on its face as written. In many cases, courts will refuse to strike down a law as facially

*NC Court Rejects Challenges to Changes Made to State Right-to-Farm Law....continued*

unconstitutional if the law can be upheld on any reasonable basis. Another possible avenue to challenge the constitutionality of a law is as-applied. With as-applied, you are now arguing that the law is unconstitutional in a specific situation. When arguing as-applied, you are not saying that the law itself is unconstitutional, but that the law is being applied in an unconstitutional manner. In this situation, the plaintiffs only alleged facial challenges, and no as-applied challenges were brought.

**Court of Appeals Decision**

On appeal at the end of 2021, the plaintiffs argued that the law was unconstitutional in regards to four situations:

1. Violation of private property rights under the law of the land clause of the state's constitution;
2. Violation of the fundamental right to property;
3. Violation of the local, private, special act restrictions in the state constitution; and
4. Violation of the right to a jury trial.



As we will discuss, the court rejected all four of these situations as possible facial challenges to the revisions to the state's right-to-farm law.

The Law of the Land Clause states that, "No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land." The North Carolina courts have found that this provision is similar to the 14th Amendment in the U.S. Constitution. To determine if a law is unconstitutional, the court typically uses a two-part test. First, the court will consider if the object of the legislation is within the scope of the police power. Second, looking at all the circumstances and particular facts of the case, the court considers whether the government has chosen a reasonable way to regulate.

Applying these tests to the amendments to the state's right-to-farm law, the court finds that preserving and promoting agriculture and forestry is within the police powers of the State.

*NC Court Rejects Challenges to Changes Made to State Right-to-Farm Law....continued*

In applying the second part of the test, the court has to ask two questions. The first question is, does applying the statute reasonably promote the public good? The court agrees that it is within the bounds of the General Assembly to determine the public and economic policy of the state. The second question is, are the interferences reasonable? The court determines that the amendment's interferences in property to the state's right-to-farm law are reasonable. The first facial challenge fails.

The court next turns to arguments that changes to the law would interfere with the fundamental right to use and enjoy property. The plaintiffs highlight a state supreme court decision finding restrictions placed on private property constituted a taking of private property. The court highlights that this decision does not apply in this situation because the plaintiffs have not alleged any governmental taking of private property through the changes to the right-to-farm law. The court rejects the challenge to the fundamental right to private property.

Next, the court considers the argument that the right-to-farm law amendments violate a provision in the state constitution which states "[t]he General Assembly shall not enact any local, private, or special act or resolution: . . . Relating to health, sanitation, and the abatement of nuisances[.]" This provision allows the General Assembly to only enact general laws which apply to the whole State and not special laws only applying to specific individuals, associations, or corporations.

The plaintiffs argue that the provisions only protected the swine industry and were not generally applicable statewide laws. The court disagrees with this, pointing out that the laws are statewide laws of general applicability to all agricultural and forestry operations and those operations can invoke the law's protections against a suit. The court also rejects this argument.

Lastly, the court turns to arguments made by the plaintiffs that the changes to the law limit a jury's ability to award compensatory damages, which violates the state's constitution. The court also rejects this argument because

the state courts have long held that the General Assembly can place limits on lawsuits and caps on compensation for damages. Changing the state's right-to-farm law did not abolish the right to a jury trial; it only placed limits on damages. The court upholds the lower court's decision.

Plaintiffs still have an opportunity to appeal this decision and it's unclear if they will at this time. Plaintiffs may also bring a future challenge claiming the law is unconstitutional as applied in a specific situation in which the defense has previously applied. That future challenge could be brought once a specific application of the defense takes place, but as of right now the plaintiffs will have to rely on a facial challenge.

**Reference:** *Rural Empowerment Assn. for Community Help v. State*, 2021 WL 6014722, 2021-NCCOA-693 (N.C. App. Dec. 21, 2021).

## UME Family Communications and Estate Planning Workshops Planned for the Winter

*Written By Laura Wormuth, Program Manager, AGNR Communication Office*

Estate planning for farms is a difficult subject to navigate - families must create a plan of succession for the business, understand the legalities of property inheritance, all while dealing with the emotional toll of having difficult conversations with their loved ones.

University of Maryland Extension specialists have joined forces to create a workshop that not only helps farm families maneuver through the legal portions of estate planning but also provides tools and techniques to break down the barriers of communication that make these conversations so difficult.



Image from past workshop by Edwin Remsberg

Developed jointly by Alexander Chan, family relations and mental health specialist, and Paul Goeringer, senior faculty specialist in agricultural law, the first Family Communications and Estate Planning workshop will be held from 10 a.m. to 1 p.m. on Dec. 7, 2021, at the [Eastern Shore Higher Education Center](#) located at the Chesapeake College Wye Mills campus, with other upcoming opportunities both regionally and virtually.

“When it comes to these conversations, we all know we have to have them and make a plan, but what should be easy seems so difficult,” said Chan. “Our workshop gives farm families the communication tools they need to start these conversations without it devolving into doomsday scenarios, it helps them break down those emotional walls of communication so that they can develop a plan.”

The first part of the workshop will offer concrete skills that help participants practice seeing things from other people’s perspectives, allowing people to work past the fear of starting that conversation, said Chan.

“We offer techniques to open the door to conversations, allowing everyone to feel heard,” Chan said. “These strategies help people respond without anger, and prepares them to listen and validate one another’s emotions, fears, and needs.”

The second part of the workshop, run by Goeringer, focuses on the legal aspects of estate planning, and the actual steps farm families need to take to assure their succession plan is in place accordingly.

“Our partnership in the workshops will help families start these difficult discussions, allowing them to get to the details and legalities of estate planning,” Goeringer said. “We all know we have to make these plans, but it can be challenging to know where to start, or how to start.”

**Future workshops are planned for [10 a.m. to 1 p.m. on Jan. 22, 2022](#), which will be held virtually, and from [10 a.m. to 1 p.m. on Feb. 12, 2022](#), at the [Carroll County Extension office](#). To register, go to <https://www.agrisk.umd.edu/events>. For more information, contact Alex Chan at [alexchan@umd.edu](mailto:alexchan@umd.edu) or 301-405-4153.**

# NEEF Grant Opportunity

## Pollinator Habitat and Community Engagement

*Rachel J. Rhodes, MS, UME Horticulture Associate Agent and Master Gardener Coordinator*



There's a new grant opportunity from NEEF for work with pollinator habitat and community engagement surrounding pollinators, **2022 Biodiversity Conservation Grant: Enhancing Pollinator Habitats**. It's a great opportunity! Feel free to apply or share.

### OVERVIEW

With major support from Toyota Motor North America, the National Environmental Education Foundation (NEEF) is excited to announce \$200,000 in grant funding to support shovel-ready pollinator habitat enhancement projects on America's public lands.

Habitat enhancement projects should directly support the creation, restoration, remediation, improvement, and/or protection of habitats for important pollinator species such as butterflies, bees, bats, and more. Additionally, projects should incorporate community outreach and engagement activities designed to educate and empower the public to help enhance pollinator habitats.

Letters of Interest are due **February 17, 2022**. Here is the link: <https://www.neefusa.org/resource/2022-biodiversity-conservation-grant-enhancing-pollinator-habitats>

[Download Grant Information PDF](#)

[START LETTER OF INTENT \(LOI\)](#)

# Coming Events!

January 10 - 27 : **Delaware Ag Week/Month** - Sessions will be offered throughout the month

January 22 : **Family Communications and Estate Planning** - (Virtual) 10 a.m. - 1 p.m. [Register Now](#)

February 2 : **Grower Lunch Break with Extension - Maryland Department of the Environment**  
 Topics Include: AFO Update, Recordkeeping, and CAFO Annual Fees  
 12:00 noon by Zoom - you don't have to turn your screen on if you don't want to  
 Register: <https://umd.zoom.us/meeting/register/tJ0kfuyhqispGNzp8wlhemiV6PeHRsJpxntO>

February 12: **Family Communications and Estate Planning** - 10 a.m. - 1 p.m. Carroll County Ag Center



**OUR NEXT GROWER LUNCH BREAK WITH EXTENSION**  
**Wednesday - February 2, 2022**

**Maryland Department of the Environment**  
**AFO Update, Recordkeeping, and CAFO Annual Fees**  
 12:00 Noon (EST)

REGISTER: <https://umd.zoom.us/meeting/register/tJ0kfuyhqispGNzp8wlhemiV6PeHRsJpxntO>  
 Go to this website, register, and you will receive an email with ways you can connect and participate.



**CHANGING Maryland FOR THE BETTER**

**Your Poultry Extension Team:**

<i>Jon Moyle</i>	<i>jmoyle@umd.edu</i>
<i>Jenny Rhodes</i>	<i>jrhodes@umd.edu</i>
<i>Jennifer Timmons</i>	<i>jtimmson1@umes.edu</i>
<i>Georgie Cartanza</i>	<i>cartanza@udel.edu</i>

The University of Maryland is and Equal Opportunity Employer with Equal Access Programs



**SAVE THE DATE(S):**  
**FAMILY COMMUNICATIONS & ESTATE PLANNING**

**THREE WORKSHOP OPPORTUNITIES**

**12.7.21, 10 AM - 1 PM**  
 (EASTERN SHORE HIGHER EDUCATION CENTER)  
**1.22.22, 10 AM - 1 PM**  
 (VIRTUAL)  
**2.12.22 10 AM - 1 PM**  
 (CARROLL COUNTY EXTENSION OFFICE)

Each standalone workshop will cover the essentials of estate planning, as well as practical activities to assist with family communication about business matters.

Registration: <https://www.agrisk.umd.edu/events>

February 4: The New Grower Program has been **postponed** and will be rescheduled as soon as we can!

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

The University of Maryland is and Equal Opportunity Employer with Equal Access Programs