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Integrator and Grower Contracts: Should Farmers Get Involved?

## I. Introduction

Small family farms with a few chickens in the chicken coop are no longer the primary source of chicken for the marketplace. Today the United States poultry industry is vertically integrated.<sup>1</sup> The large poultry companies, commonly called integrators, contract with independent farmers, commonly called growers, to raise the chickens until they are ready for processing.<sup>2</sup> The integrator typically has several responsibilities including: supplying the chickens, feed, medicines; dictating to the grower as to how the chickens will be raised; and directing the type of facilities and machinery to be used.<sup>3</sup> The grower's typical responsibilities are to provide the facility and the labor, then care for the chickens until they are ready for processing and are picked up by the integrator.<sup>4</sup> The grower's facility must meet the standards of the integrator or be forced to make improvements

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<sup>1</sup> Charles W. Abdalla, *the Industrialization of Agriculture: Implications for Public Concern and Environmental Consequences of Intensive Livestock Operations*, 10 PENN ST. ENVTL. L. REV. 175, 175 (2002).

<sup>2</sup> Edward P. Lord, *Fairness for Modern Farmers: Reconsidering the Need for Legislation Governing Production Contracts*, 33 WAKE FOREST L. REV. 1125, 1127 (1998).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

prior to receiving a new contract.<sup>5</sup> The grower is at the mercy of the integrator and has little bargaining power.<sup>6</sup>

Part two of this paper will discuss poultry production contracts generally. This includes explaining common terms in poultry production contracts and grower's rights prior to signing poultry production contracts. Part three will explain the specifics of production contracts including: average debt, contract length, pay and performance, net income and upgrades to facilities and equipment. Part four of this paper will assess dispute resolution, explaining grower's options and rights under the law when conflict with the integrator occurs. Part five will explain the legislative and other legal governance of poultry production contracts. Part six will discuss environmental concerns associated with poultry production. Part seven will conclude that due to the risks involved it is important to thoroughly consider the opportunity before someone decides to become a grower.

## **II. Poultry Production Contracts Generally**

### ***1. Definitions contained in poultry production contracts***

Before explaining poultry production contracts, it is necessary to define common terms including: contract grower, integrator, and production contracts.

A Georgia statute defines "contract grower," also referred to as a "contract

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<sup>5</sup> *Id.* at 1132.

<sup>6</sup> Joseph A. Miller, *Contracting in Agriculture: Potential Problems*, 8 DRAKE J. AGRIC. L. 57, 69 (2003).

producer," as a producer of poultry who holds a legal interest in a contract operation and who produces poultry under a production contract at that contract operation.<sup>7</sup> The grower also provides physical facilities for housing and labor for raising poultry.<sup>8</sup> An Arkansas statute has a similar definition: "'grower' shall have its common meaning within the industry and shall include a person engaged in the business of raising and caring for livestock, poultry, or both, in accordance with a production contract, marketing agreement, or other arrangement under which a person raises and cares for livestock, poultry, or both whether the livestock and poultry are owned by the person or by another person or entity."<sup>9</sup> The key difference is that the Arkansas Act indicates that the poultry may be owned by the grower him or herself. For the purposes of this paper the term "grower" will be used to describe a farmer who raises poultry under a production contract for an integrator. An "integrator" also referred to as a "processor" means a person or company who owns poultry that is produced by a contract grower or contract producer or who is engaged in the business of manufacturing goods from poultry, including by slaughtering or processing poultry.<sup>10</sup> An "integrator" may also be referred to as a "contractor" defined to be a person or entity who owns livestock, poultry, or both that are raised or cared for by a

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<sup>7</sup> Poultry Contract Growers or Producers, GA. CODE ANN. § 2-22-1 Definitions (2004).

<sup>8</sup> Poultry and Egg Contracts, 3 PA. CONS. STAT. ANN. § 1402 Definitions (2004).

<sup>9</sup> The Arkansas Livestock and Poultry Contract Protection Act, 2005 Ark. Acts 1253.

<sup>10</sup> Poultry Contract Growers or Producers, GA. CODE ANN. § 2-22-1 Definitions (2004).

grower.<sup>11</sup> A “production contract” means an agreement executed between a grower and an integrator or processor that provides for the production of poultry or the provision of management services relating to the production of poultry by a contract grower or contract producer in this state.<sup>12</sup>

## **2. Understanding the contract prior to signing**

Production contracts define the rights and responsibilities of both the grower and the integrator in the poultry growing arrangement. In a production contract the integrator places chickens with the grower to raise the chickens, but the integrator maintains ownership of the chickens. The integrator generally provides the birds, food, medicine, and supervision, while the farmer provides chicken house, equipment, and labor.<sup>13</sup> The contract also includes the terms of payment.<sup>14</sup>

Typical production contracts heavily favor the integrator, so before a grower becomes financially involved in poultry production, it is important to consider both the risks and benefits carefully. Before signing a production contract, growers have the right under the 2002 Farm Bill<sup>15</sup> to “discuss any terms or details of a contract entered into, changed, renewed or extended after May

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<sup>11</sup> The Arkansas Livestock and Poultry Contract Protection Act, 2005 Ark. Acts 1253.

<sup>12</sup> Poultry Contract Growers or Producers, GA. CODE ANN. § 2-22-1 Definitions (2004).

<sup>13</sup> Lord, *supra* note 2 at 1127.

<sup>14</sup> *Id.*

<sup>15</sup> Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, § 10503 (2002) (codified at 7 U.S.C. § 229b).

13, 2002, with a legal advisor, a lender, an accountant, an executive or manager, a landlord, a family member or a Federal or State agency with responsibility for enforcing a statute designed to protect a party to the contract or administering the Packers and Stockyards Act."<sup>16</sup> It is beneficial to discuss the contract terms with an attorney; however, this may not be helpful if the grower has little or no bargaining power to alter the terms of the contract.

Most contracts contain an "integration" or "entirety" clause, which means that the contract itself is the complete agreement, and meaning that other verbal or prior written contracts are not legally relevant.<sup>17</sup> This includes promises made by the integrator representative that the equipment the grower purchases will "be good" until the facilities are paid off. Therefore, if the company later decides that the grower needs to update his or her equipment, even if the current equipment is still in good working order, the grower is obligated to update the equipment or risk losing a renewal contract.<sup>18</sup>

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<sup>16</sup> Klauke, *Questions to Ask Before You Sign a Poultry Contract* (Feb. 2005) (unpublished manuscript, on file with author). *See also*, Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, § 10503 (2002) (codified at 7 U.S.C. § 229b).

<sup>17</sup> Neil D. Hamilton, *Broiler Contracting in the United States – a Current Contract Analysis Addressing Legal Issues and Grower Concerns*, 7 DRAKE J. AGRIC. L. 43, 55 (2002).

<sup>18</sup> Klauke, *supra* note 16.

### **III. Specifics of Production Contracts**

#### **1. Amount of Debt**

Poultry growing facilities, houses, are not cheap! In South Carolina, the average cost is \$120,000 per house.<sup>19</sup> The average grower finances four houses which equals about \$580,000 debt to be paid over ten years.<sup>20</sup> Thus the grower must make more money to pay off the fixed expense of the mortgage before he or she gains any income from the contract.<sup>21</sup> Another expense growers face is the cost of upgrades to the facility or equipment.<sup>22</sup>

#### **2. Contract Length**

One expert estimates that the average initial grower-integrator contract length in South Carolina is five years with the option to renew annually after five years.<sup>23</sup> According to another source, however, many contracts nationally are only flock-to-flock; this is an average of 7 weeks.<sup>24</sup> Under a flock-to-flock contract, every seven weeks the integrator may change the terms of the contract and refuse to place more birds in the growers care if the grower does not sign

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<sup>19</sup> Telephone Interview with Don Boice, loan officer, Pee Dee Farm Credit (March 17, 2005).

<sup>20</sup> *Id.*

<sup>21</sup> Lord, *supra* note 2 at 1129.

<sup>22</sup> *Id.*

<sup>23</sup> Boice, *supra* note 19.

<sup>24</sup> Hamilton, *supra* note 17 at 50.

it.<sup>25</sup> The contract is also subject to the grower's performance.<sup>26</sup> After the initial contract is up, the farmer will still have to pay his or her debts, and will need a renewal contract to repay the debt, thus he or she has little bargaining power with the integrator. Without the ability to pay off the debts through the contract, the farmer risks losing the farm if the farmer used the farm as collateral for the mortgage.

### **3. Pay and Performance**

Growers are often paid based on one of two systems.<sup>27</sup> This first payment system is a lease by square foot of barn space, the second is a performance-based formula otherwise known as the ranking system.<sup>28</sup> In square footage payment systems the grower is paid based on a specific rate per square foot of working barn space.<sup>29</sup> The payment may be based throughout the year or only when birds are in the houses.<sup>30</sup>

With the performance based or ranking system, growers compete against each other for speedy grow out times.<sup>31</sup> The farmers who have the fastest grow

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<sup>25</sup> Klauke, *supra* note 16.

<sup>26</sup> Boice, *supra* note 19.

<sup>27</sup> Klauke, *supra* note 16.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Boice, *supra* note 19.

out times while using the least feed will get paid more than other farmers.<sup>32</sup>

While the grower's farming practices affect grow out, other factors beyond the grower's control, including feed and quality of the chickens also affect the grow out.<sup>33</sup>

Growers often have concerns about the amount and quality of feed that they are receiving from the integrator. However, efforts by the growers to put scales on the chicken house driveways in order to weigh the feed are never allowed by the integrator.<sup>34</sup> As a protection to the grower, the integrator is required by law to provide a printed scale ticket whenever feed is delivered, the grower should ensure that this policy is practiced in an effort to ensure that he or she is receiving the correct amount of feed. Additionally, the time delay between the removal of the birds from the grower's houses before the birds are weighed and processed affects their grow out numbers due to shrinkage of the birds.<sup>35</sup> The competition between growers affects who will get the birds and renewal contracts thus further influencing income, because the most competitive farmers will get the renewal contracts and the least competitive farmers may not get a renewal contract or possibly get fewer flocks per year.<sup>36</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Hamilton, *supra* note 17 at 51.

<sup>36</sup> Boice, *supra* note 19.

#### **4. *Net Income***

The grower should examine the contract to ensure that the contract guarantees a minimum income per flock or year.<sup>37</sup> Some contracts will have a minimum price per pound, so the grower's contract income will depend on the number of pounds raised and the time between the flocks.<sup>38</sup> Another pricing option, known as the "feed conversion efficiency" is based both on the weight of the birds and the amount of feed supplied by the integrator to the grower.<sup>39</sup>

Additionally, the number of flocks placed in the house each year may significantly affect the grower's income.<sup>40</sup> The more flocks the grower raises the more money the grower can make. If the number of flocks placed in the house is reduced, then the grower's income may also be reduced. It is common for the integrator to reduce or increase the number of flocks placed with a grower each year depending on market conditions.<sup>41</sup>

It is also important to look to the contract to see who is responsible for catastrophes including the death of the birds due to a heat wave, equipment failure, or storm. If the grower is responsible for the loss it could be devastating financially. When a grower encounters these types of contract clauses, he or she

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<sup>37</sup> Klauke, *supra* note 16.

<sup>38</sup> *Id.*

<sup>39</sup> Lord, *supra* note 2 at 1127.

<sup>40</sup> Hamilton, *supra* note 17 at 51.

<sup>41</sup> Klauke, *supra* note 16.

should attempt to negotiate new terms, or if he or she is able, walk away from the contract.

## ***5. Upgrades***

Upgrades are one of the problems that growers face when trying to renew poultry contracts. Growers are responsible for making the equipment upgrades and improvements required by the integrator or risk losing their contract. Without the production contract, there is nothing else to do with the poultry houses, and growers have no way to pay off their debt.<sup>42</sup> Although, the issue of equipment upgrades is often left out of formal production contracts,<sup>43</sup> the integrator may refuse to issue a new contract to the grower if the equipment and facilities are not up to the latest standard.<sup>44</sup> These upgrades are often substantial requiring the grower to get into more debt.<sup>45</sup>

## **IV. Dispute Resolution**

### ***1. Resolving problems under the contract***

Poultry contracts commonly include one of the following methods of dispute resolution: peer review, mediation, and arbitration.<sup>46</sup> In the case of

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<sup>42</sup> Lord, *supra* note 2 at 1129.

<sup>43</sup> Klauke, *supra* note 16.

<sup>44</sup> *Id.*

<sup>45</sup> Lord, *supra* note 2 at 1131.

<sup>46</sup> Klauke, *supra* note 16.

dispute resolution through peer review the grower puts his or her grievance in front of a panel of other growers, who generally work with the same integrator, and this panel decides the outcome.<sup>47</sup> Peer review is a quick and efficient way to solve problems however, it is questionable whether the panel of growers is able to truly provide a fair result without risking retaliation by the integrator.<sup>48</sup> With peer review either party can generally appeal the decision to the court if they are not happy with the result.<sup>49</sup>

The second commonly used method of dispute resolution with respect to production contracts is mediation.<sup>50</sup> Mediation is a dispute resolution technique that involves both parties working with a third party mediator who helps them work together to reach a decision.<sup>51</sup> Mediation in this context is often not binding so both parties are free to appeal to a court.

The third commonly used dispute resolution technique is arbitration. Arbitration involves bringing the matter before an arbitrator or a group of arbitrators, usually specified in the contract.<sup>52</sup> An arbitrator is a person, registered with neutral arbitration listing agency, such as the American

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<sup>47</sup> *Id.*

<sup>48</sup> Hamilton, *supra* note 17 at 64.

<sup>49</sup> Klauke, *supra* note 16.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

Arbitration Association, chosen by the parties, with knowledge of the applicable law, who decides the outcome of the dispute.<sup>53</sup> The arbitrators make a binding decision that typically cannot be appealed to a court.<sup>54</sup> The arbitration process can be expensive.<sup>55</sup>

## **V. Legislative and Other Legal Governance of Poultry Production Contracts**

Farmers also receive protection beyond the contract itself through legislative acts and common law remedies. These include the following legislation: the Packers and Stockyards Act<sup>56</sup> and the Agricultural Fair Practices Act.<sup>57</sup> Growers may also use the common law claims of breach of contract, fraud, and misrepresentation.

### **1. *Grower Protection Under the Packers and Stockyards Act***

The Packers and Stockyards Act (PSA)<sup>58</sup> offers some protection to growers. PSA prevents integrators from engaging in unfair practices and

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<sup>53</sup> Nicole Buonocore, *Resurrecting a Dead Horse - Arbitrator Certification as a Means to Achieve Diversity*, 76 U. DET. MERCY L. REV. 483, 484 (1999).

<sup>54</sup> Hamilton, *supra* note 17 at 63.

<sup>55</sup> Klauke, *supra* note 16.

<sup>56</sup> Packers and Stockyards Act, 7 U.S.C. §§ 181-231 (2000).

<sup>57</sup> Agricultural Fair Practices Act, 7 U.S.C. § 2301-2306 (2000).

<sup>58</sup> Packers and Stockyards Act, 7 U.S.C. §§ 181-231 (2000).

monopolistic activities.<sup>59</sup> The PSA offers growers certain protections with contract. One of these protections is that the integrator must give the grower a copy of the poultry production contract.<sup>60</sup> The production contract must give a clear indication of its length and terms indicating how either party can terminate it.<sup>61</sup> Payment details must also be plainly written in the contract.<sup>62</sup>

The PSA requires integrators to act quickly and carefully when “loading transporting, holding, yarding, feeding, watering, or weighing live poultry to prevent waste of feed, shrinkage, injury, death, or other avoidable loss.”<sup>63</sup> This is potentially enforceable if the grower brings a claim to the Grain Inspection, Packers, and Stockyards Administration (GIPSA).<sup>64</sup>

The PSA gives growers the right to prompt and full payment, on the 15<sup>th</sup> day after the week the birds are slaughtered.<sup>65</sup> The grower is entitled to a settlement sheet with all the information required to determine the full value of

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<sup>59</sup> Michael C. Stumo & Douglas J. O'Brien, *Antitrust Unfairness v. Equitable Unfairness in Farmer/Meat Packer Relationships*, 8 DRAKE J. AGRIC. L. 91, 91 (2003). *See also*, Packers and Stockyards Act, 7 U.S.C. §§ 181-231.

<sup>60</sup> Packers and Stockyards Act, 7 U.S.C. § 181-231 (2000). For a detailed explanation of how this affects poultry growers' benefits see, Farmers' Legal Action Group, CONTRACT POULTRY GROWERS' RIGHTS UNDER THE PACKERS AND STOCKYARDS ACT (2004).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Packers and Stockyards Act, 7 U.S.C. § 181-231 (2000).

payment owed to the grower.<sup>66</sup> If applicable, the grower is also entitled to the ranking sheet used by the integrator under performance-based standards that clearly shows where the grower ranked in comparison to other growers.<sup>67</sup>

PSA also provides growers protection for weighing the birds and the feed. Growers are permitted to watch the entire weighing process for both feed and birds.<sup>68</sup> The grower must be provided with an electronic scale ticket both when live poultry is weighed and when feed is weighed.<sup>69</sup>

Perceived violations of PSA should be brought to the Grain Inspection, Packers, and Stockyards Administration (GIPSA).<sup>70</sup> The PSA helps to make certain that the growers are paid in full by the integrators.<sup>71</sup> The remedy for payment violations is a “statutory trust,” which makes the integrator hold assets in trust until the grower has been paid.<sup>72</sup>

A district court in North Carolina held in *Philson v. Cold Creek Farms, Inc.* that the PSA prohibits “discriminatory or deceptive practices adversely affecting

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Lord, *supra* note 2 at 1137. *See also*, Packers and Stockyards Act, 7 U.S.C. §§ 181-231 (2000).

<sup>72</sup> Farmers’ Legal Action Group, CONTRACT POULTRY GROWERS’ RIGHTS UNDER THE PACKERS AND STOCKYARDS ACT (2004).

competition.”<sup>73</sup> Thus allowing the plaintiff to bring suit under the PSA if the integrator seems to have acted in an “unfair, discriminatory or deceptive manner.”<sup>74</sup> The court concluded that giving a grower poor quality birds in retaliation for complaining about the integrators practices violated the PSA.<sup>75</sup>

A District Court in Florida heard, *Baldree v. Cargill, Inc.*,<sup>76</sup> and held that integrators could not terminate the contracts of growers who created an alliance similar to a union, because the contract termination was an unfair practice under the PSA.<sup>77</sup> The PSA may protect growers against unfair and deceptive trade practices by the integrator.<sup>78</sup>

## **2. *Agricultural Fair Practices Act***<sup>79</sup>

The Agricultural Fair Practices Act (AFPA) is supposed to protect farmers, including growers, who attempt to organize to increase their bargaining power

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<sup>73</sup> *Philson v. Cold Creek Farms, Inc.*, 947 F. Supp. at 200 (E.D.N.C. 1996). For further explanation see also Edward P. Lord, *Fairness for Modern Farmers: Reconsidering the Need for Legislation Governing Production Contracts*, 33 WAKE FOREST L. REV. 1125, 1138 (1998).

<sup>74</sup> *Philson v. Cold Creek Farms, Inc.*, 947 F. Supp. at 202 (E.D.N.C. 1996). See also, Lord, *supra* note 2 at 1137.

<sup>75</sup> *Philson v. Cold Creek Farms, Inc.*, 947 F. Supp. at 202 (E.D.N.C. 1996). See also, Lord, *supra* note 2 at 1138. See also, Packers and Stockyards Act, 7 U.S.C. §§ 181-231 (2000).

<sup>76</sup> *Baldree v. Cargill, Inc.*, 758 F. Supp. 704 (M.D. Fla. 1990), *aff'd*, 925 F. 2d 1474 (11th Cir. 1991).

<sup>77</sup> *Baldree v. Cargill, Inc.*, 758 F. Supp. 704 (M.D. Fla. 1990), *aff'd*, 925 F. 2d 1474 (11th Cir. 1991). See also, Lord, *supra* note 2 at 1139.

<sup>78</sup> *Philson v. Goldsboro Milling Company*, 164 F. 3d 625 (4th Cir. N.C. 1998).

<sup>79</sup> Agricultural Fair Practices Act, 7 U.S.C. § 2301-2306 (2000).

with integrators.<sup>80</sup> The Act states, “because agricultural products are produced by numerous individual farmers, the marketing and bargaining positions of individual farmers will be adversely affected unless they are free to join together.”<sup>81</sup> However, the AFPA contains a qualification reducing its effectiveness that states “[n]othing in [the AFPA] shall prevent handlers and producers from selecting their customers and suppliers for any reason other than a producer’s membership in or contract with an association of producers, nor require a handler to deal with an association of producers.”<sup>82</sup> This act provides little protection for growers trying to increase their bargaining power through a grower alliance.

### **3. *Breach of Contract Claims***

Some growers have attempted to force integrators into renewing their contracts under breach of contract claims based on oral statements made by company representatives.<sup>83</sup> However, these suits generally fail due to the integration clauses predominant in production contracts that cause the court to

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<sup>80</sup> Lord, *supra* note 2 at 1139. *See also*, Agricultural Fair Practices Act, 7 U.S.C. § 2301-2306 (2000).

<sup>81</sup> Lord, *supra* note 2 at 1139. *See also*, Agricultural Fair Practices Act, 7 U.S.C. § 2301 (2000).

<sup>82</sup> Lord, *supra* note 2 at 1139. *See also*, Agricultural Fair Practices Act, 7 U.S.C. § 2304 (2000).

<sup>83</sup> Smith v. Central Soya, Inc., 604 F. Supp. 518, 530 (E.D.N.C. 1985).

find that any oral statement made by the integrator's representative is not part of the contract and therefore is not enforceable.<sup>84</sup>

#### **4. *Fraud and Misrepresentation***

Fraud and misrepresentation claims brought against the integrator may not be successful.<sup>85</sup> These claims are difficult to prove. Because, although the court may determine that the integrator made a representation with which it did not follow through, the grower must prove that the integrator did not intend to follow through with the claim at the time the claim was made.<sup>86</sup> So as long as the integrator intended to follow through with the claim at the time it was made, the integrator may rescind on the claim without penalty.

## **VI. Environmental Implications**

There are many environmental implications associated with poultry production. Concentrated animal feeding operations, including poultry production, produce a large amount of waste that can have a negative effect on the environment.<sup>87</sup> Animal waste contributes to air, soil, and water pollution. When an environmental or nuisance action is brought, it is important to determine who is the responsible party, the grower, or the integrator.

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<sup>84</sup> Lord, *supra* note 2 at 1142.

<sup>85</sup> *Id.* See also, Smith v. Central Soya, Inc., 604 F. Supp. 518, 530 (E.D.N.C. 1985).

<sup>86</sup> *Id.* at 1146.

<sup>87</sup> Michael Steeves, *The EPA's proposed CAFO regulations fall short of ensuring the integrity of our nation's waters*, 22 J. LAND RESOURCES & ENVTL. L. 367, 367 (2002).

A recent case brought in the district court of Kentucky, *Sierra Club v. Tyson*,<sup>88</sup> considers who is responsible for air pollution, the grower, or the integrator.<sup>89</sup> In *Sierra Club v. Tyson*, the court was asked to hold Tyson, the integrator, vicariously liable for the air pollution. In that case Tyson required the growers in the contract at issue to use tunnel ventilation (this is where the barn walls are solid, with cool cells at one end with water dripping down to cool the intake air and at the other end fans expel the air). In poultry operations, the droppings from the birds produce a large amount of toxic ammonia gas. The top layer of droppings is removed between flocks, but the entire amount is only removed about every two years. The concentration of ammonia is typically so high that it will actually kill the birds without proper ventilation. The Sierra Club sued on the basis that the amount of ammonia expelled is so significant it should be reported under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),<sup>90</sup> and the defendant's failure to report is in violation of CERCLA and the Emergency Planning and Community Right to Know Act (EPRCA).<sup>91</sup>

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<sup>88</sup> *Sierra Club, Inc. v. Tyson Foods, Inc.*, 299 F. Supp. 2d 693 (Ky. Dist. Ct. 2003).

<sup>89</sup> *Sierra Club, Inc. v. Tyson Foods, Inc.*, 299 F. Supp. 2d 693 (Ky. Dist. Ct. 2003).

<sup>90</sup> Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 (2005).

<sup>91</sup> Emergency Planning and Community Right to Know Act (EPRCA), 42 U.S.C. § 11001 et seq (2005).

The court found that the entire chicken farm was a “facility” under the CERCLA.<sup>92</sup> Therefore, the ammonia released from each chicken house will be aggregated and the entire amount will need to be reported. The court also found that “Tyson Chicken” is clearly a person in charge of the Tyson Facility and is directly responsible for the alleged ammonia discharges from that chicken production facility.”<sup>93</sup> The court also found that as integrator to the contract, which involved dictating the equipment and processes, in such a way as the grower was in no position to resist, Tyson should be held responsible.<sup>94</sup>

This case is encouraging for environmentalists. The environmental implication is that Tyson and other poultry integrators, instead of exclusively the growers, may be held liable for the environmental damage caused by poultry production if courts in other districts follow suit. The integrators have the capital to remedy the problems, unlike the growers who have fewer assets.

This decision could provide potential bargaining power for growers. For example, growers could agree to take on liability for environmental suits in exchange for quality standards instead of exact prescriptions for raising the birds. This would allow farmers to use existing equipment and avoid expensive upgrades. However, such an approach would also make farmers, who may have

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<sup>92</sup> Sierra Club, Inc. v. Tyson Foods, Inc., 299 F. Supp. 2d 693, 718 (Ky. Dist. Ct. 2003).

<sup>93</sup> *Id.* at 710.

<sup>94</sup> *Id.* at 719.

little legal knowledge and little capital, responsible for huge claims, forcing them to foreclose on their farms.

Water pollution is another environmental concern caused by poultry production.<sup>95</sup> Environmentalists believe that if integrators could be held liable for the degradation in water quality caused by the animal waste produced during the growing process, this could reduce the water clean-up costs to taxpayers.<sup>96</sup> For example, agricultural wastes including poultry farming account for the largest source of nutrient loading in the Chesapeake Bay.<sup>97</sup> Poultry waste in particular may increase the growth of *Pfiesteria piscicida*; a microbe that contaminates groundwater and may help spread pathogens.<sup>98</sup> *Pfiesteria* also kills fish and can be harmful to human health.<sup>99</sup> Agricultural runoff contributing to water pollution is often not well regulated under the Clean Water Act<sup>100</sup> because it is often considered a non-point source (a non-point source is generally any form of water pollution that does not come from the end of a pipe).

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<sup>95</sup> Paul L. Sorisio, *Poultry, Waste, and Pollution: the Lack of Enforcement of Maryland's Water Quality Improvement Act*, 62 MD. L. REV. 1054, 1074 (2003).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 1055.

<sup>98</sup> *Id.*

<sup>99</sup> Anita K. Chancey, *Clean Water Act Compliance Audit Program for Pork Producers: How was Such an Agreement Reached between the EPA and the National Pork Producers*, 7 MO. ENVTL. L. & POL'Y REV. 62, 65 (2000).

<sup>100</sup> Clean Water Act, 33 U.S.C. § 1251-1387 (2000).

States have the opportunity to help regulate non-point sources under the CWA.<sup>101</sup> However, non-point source pollution continues to be a problem.<sup>102</sup> Liability for the non-point source pollution caused by agricultural runoff is typically the responsibility of the grower, not the integrator.<sup>103</sup> Legislation making the integrators jointly and severally liable would provide access to more money and resources to assist with the water cleanup.<sup>104</sup> Kentucky has already enacted legislation that makes the integrator liable for environmental problems, by virtue of owning the animals.<sup>105</sup> Other states should enact laws to making integrators liable for environmental damage.<sup>106</sup>

## VII. Conclusion

Prior to entering into a poultry production contract a potential grower should carefully consider his or her options. Poultry production contracts dictate the rights and responsibilities between the integrator - who maintains legal ownership of the birds and typically provides food, medicine, and management - and the grower who typically provides the physical facilities and labor throughout

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<sup>101</sup> *Id.* at § 1329.

<sup>102</sup> Sorisio, *supra* note 95 at 1058.

<sup>103</sup> *Id.* at 1069.

<sup>104</sup> *Id.*

<sup>105</sup> Sorisio, *supra* note 95 at 1058. *See also*, 401 Ky. Admin. Regs. 5:074E (2001).

<sup>106</sup> *Id.*

the grow out process.<sup>107</sup> The grower has a right to have a third party, such as an attorney, review the terms of the contract.<sup>108</sup> The grower should also consider the specifics of production contracts including: debt, contract length, pay and performance, net income and upgrades to facilities and equipment. The average farmer typically must accumulate significant debt in order to enter into the poultry production business. This debt is often financed over ten years, while the average contract length is shorter.<sup>109</sup> There is no other economically productive use for a poultry house. Therefore the grower will need to renew the contract in order to continue to pay the mortgage and derive an income.<sup>110</sup>

The grower is usually paid under one of two payment systems. The first payment system is a lease by square foot of barn space, the second is a performance-based formula otherwise known as the ranking system. Income is derived from a minimum price per pound of poultry or “feed conversion efficiency” that considers the amount of feed required to grow out the birds.<sup>111</sup> Often the grower will have to pay for upgrades to his or her facilities or equipment to meet the new integrator standards prior to receiving a renewal

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<sup>107</sup> Lord, *supra* note 2 at 1127.

<sup>108</sup> Packers and Stockyards Act, 7 U.S.C. § 181-231 (2000).

<sup>109</sup> Boice, *supra* note 19.

<sup>110</sup> Lord, *supra* note 2 at 1127.

<sup>111</sup> *Id.*

contract. The contract terms dictate the growers debt and income and all parts of the contract should be evaluated prior to entering into the poultry production business.

Once the grower is under a poultry production contract he or she receives protection under the contract for contractual disputes. Under contract, the grower usually has access to one of three dispute resolution systems, peer review, mediation, or arbitration.<sup>112</sup> The grower has other options and rights under the law when conflict with the integrator occurs, including legislation and common law remedies.

The grower should consider the environmental impacts of poultry production including air, water, and soil pollution.<sup>113</sup> The grower should also consider that he or she may have to defend against environmental litigation or a tort action for nuisance.

Due to the risks involved, it is important to thoroughly consider the opportunity before someone decides to become a grower. The decision to enter into the poultry production business involves a great deal of money and a significant time commitment. The contracts tend to favor the integrator, who maintains ownership of the birds throughout the grow out process. Legislation provides some protection to the grower in a poultry production contract, but

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<sup>112</sup> Klauke, *supra* note 16.

<sup>113</sup> Steeves, *supra* note 87 at 367.

does not increase the grower's bargaining power. Therefore, it is important to consider all the aspects of the contract relationship before investing.