



Kathy Phillips : So, my name is Kathy Phillips and I currently live in Ocean City, Maryland on the Eastern shore. I grew up in the Washington D.C. Area, I went to high school there and University of Maryland College Park. I grew up sailing on the Chesapeake Bay with my dad and I was also a Girl Scout. My mother was a Girl Scout leader, so I spent a good deal of my youth camping and out and about in the environment. And my family also camped. This was in the 1950s and we visited most of the national parks in the country and also visited Canada.

So, I got an early view of our nation as a whole, met people from all over the country. I think this background is what helped me to develop relationships later in life and gave me reason to move to the Eastern shore of Maryland, away from the urban centers. And raise our child in a more rural area even though Ocean City itself is a big resort town, but only for a few months of the year. I wanted to live somewhere where I could see and feel water.

Currently, I work for Assateague Coastal Trust and I'm a member of the Waterkeeper Alliance. I am the waterkeeper for the Coastal Bays watershed and the whole coastal watershed of Delmarva. As such, I provide a voice for our local waterways, whether that be in local politics, in legislative matters at the state level or just within my communities.

Too often at political hearings, legislative hearings, whether it's local or state level or even federal level, the people who own the land have a big voice. The politicians have a big voice, but the water that is so impacted by what happens on the land doesn't have a voice. And that was what drew me to be a waterkeeper. And it's what drew me to work for Assateague Coastal Trust. So for the past 12 years, almost 13 years, I have been that voice for the water and the coastal watershed of Delmarva and have proudly held this position as Assateague Coastkeeper with my organization ACT and with Waterkeeper Alliance.

Did that cover everything?

Eve Austin : Oh, that's great. I like the way you put it too, basically like you speak for the water. It reminds me of the Lorax. The Lorax I speak for the trees. Yeah. Because I really didn't know exactly what a waterkeeper was, so you're speaking for the water. I don't know if you want to say any more about that.

Kathy Phillips : Sure. You know, to be a waterkeeper, you have a passion for your local waterway. You know it intimately, you know the communities that live along your waterway, whether it be a river or a bay or a creek. And I found that so intriguing too, by being a member of the Waterkeeper Alliance and by becoming a waterkeeper to be able to network with hundreds of passionate advocates all over the world and learn from their experiences. And in some cases I've been able to mentor new people coming on as the keeper for their local waterway.



It's an amazing brotherhood, sisterhood of people from all over the world. But it has also given me greater incentive to speak out at a local level. I've always been an advocate at heart. I grew up in the fifties and sixties so it was the civil rights movement, it was the Vietnam war. My parents and most people in my family were very much engaged in speaking truth to power and holding government accountable. So I kind of have that in my DNA to begin with, but to then find a way through Assateague Coastal Trust and through the Waterkeeper Alliance movement to be able to advocate for the water itself. Just floored me and excited me and that's how I got involved and that's why I'm where I am today.

Eve Austin : It's a big job.

Kathy Phillips : It is, very often you can feel like you're beating your head against a brick wall. The best part is that you have this network of passionate water advocates all over the world. So you can always drop an email into somebody's inbox or pick up the phone and see how they handled certain situations or just learn that, yeah, they're hitting the same brick walls too. And we just have to find a way to stop hitting the wall and get up over the wall and solve the problem.

Eve Austin : I think that the Town Creek Foundation, since they're sunsetting their grant making, want to try and collect lessons learned and stories of challenges that you've come up against. I guess and also accomplishments that can be shared with a new crop of people coming up and working, doing environmental work.

So I don't know if you could think of a story of a particular challenge or accomplishment over the years that that Town Creek funding has been involved in?

Kathy Phillips : Well, I would be the one who would have to tell the story of the Clean Water Act lawsuit that was brought against big chicken, Perdue Farms incorporated in particular. With the help of funding from Town Creek Foundation, with the help of Waterkeeper Alliance and with the help of the board and the members of my organization, Assateague Coastal Trust and some members of my local community.

So this was a Clean Water Act lawsuit that was brought originally by the Assateague Coastkeeper at the time, me and Waterkeeper Alliance, against Perdue Farms and one of their contracted growers. The grower had a small farm near the Assateague Coastal Trust office, as a matter of fact. That water discharges from that farm eventually connected to the Pocomoke river, which drains to the Chesapeake Bay. And at the time Waterkeeper Alliance and others had been looking for a Clean Water Act case that would cover what's known as integrator liability.

Perdue Farms is known as an integrator in the poultry industry. In other words, it is the corporate entity that owns the chickens, controls how the chickens are grown,



but actually contracts down to local farmers and puts a responsibility on that time, local farmers. We'll probably talk about this later, but the new model of growing chickens now is not the family farm that everybody was so used to, but we'll probably talk about that later.

But with this case, this particular grower in a routine patrol, aerial patrol that I was on with some other members of Waterkeeper Alliance. When we flew over the farm, we discovered this huge pile, a huge, huge pile that was sitting in a field next to a ditch and that ditch drain to a larger ditch called the Franklin branch that eventually emptied into the Pocomoke river. And we also noticed, we took some photos as we flew over and went on our way because we actually were heading to a different area of the watershed, to do this aerial patrol that day.

But when we came back later and we were looking through the photos, we realized that this huge dark pile was actually trenched to the ditch. There was a lot of leeching, in other words, a big pond of water around it. And in order to dry up the area, there was a trench that had been dug out to a ditch to drain that water.

Now at that time, we often found that farmers who had an excess of manure or wanted to use their chicken manure to fertilize their own crop fields, would pile that manure outside of the chicken houses. 40 years ago, 30 years ago, even 25 years ago, that was a kind of a common practice. A lot of times these piles and manure would be stored next to the edge of the woods or just right behind the chicken houses.

And when it was time to fertilize the fields, they would bulldoze it up and truck it in manure spreaders and take it out to their fields. Eventually the state of Maryland realized that this was a huge pollution source to the Chesapeake Bay and other waterways. My coastal bays included and regulations were put into effect or at that time were being put into effect that would require that excess manure on a farm that was pulled of a chicken house. And I'm sorry, when I say manure, what I'm talking about is chicken poop. The flooring of the inside of these chicken houses is a combination of sawdust. That's laid down when the little chicks first come in, but by the time the chickens are full grown and ready to go to the slaughterhouse, this is now a several inches deep layer of chicken manure because the chickens never come out of the houses. They stay in there 24 hours a day, seven days a week for as many weeks as it has, the industry, deems is a full sized chicken and ready to go to the slaughterhouse. So-

Eve Austin : Let me just interrupt you just say, I mean, so can you just paint a picture of what does that manure look like? Feel like? Smell like? Just so anyone who isn't familiar will understand.

Kathy Phillips : So sure. Chicken manure is damp. It's not wet like in a dairy farm where the cows
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defecate inside the milking sheds and there are hoses and water that turns that liquid and sluices it out to ... Same thing with the hog industry and sluices it out to a large storage lagoons. In a poultry house, it builds up inside the house. It is damp with urine and feces. Actually with a chicken, it's not urine, it's just a excrement that the chicken releases. So it's a little liquid ... So it's a combination, I guess for the listeners, you know it's a little urine, it's a little poop, but it's all one in the same.

When it's exposed to air, it creates extremely high levels of ammonia. So anyone who has ever driven across the Eastern shore in the summertime on a hot, humid day, I'm sure they have often passed a farm that had poultry houses and they would notice a sudden shortness in their breath and their eyes might tear a little bit and definitely they would smell this very acrid ammonia type smell.

The houses are constructed in such a way that because of this ammonia buildup inside the house and the fact that the houses are closed up and the chickens don't go in and out, they just stay inside the houses their entire life. They would die from the levels of ammonia inside the house. So the houses are constructed in such a way that there are these exhaust fans that pull the air out of the chicken house, as the poultry industry likes to say for the comfort of the chickens. But these are completely unfiltered fans and there's no effort to control the amount of ammonia that's coming out of the houses. So while it might be for the chickens comfort, if you happen to live near one of these farms, then it's your discomfort.

Now, politicians on the Eastern shore for years have always said that, "Oh, there's nothing wrong with that. That's the smell of money. You know, this is the main industry on the Eastern shore of Maryland and this is a critical industry and it's just a little smell. It's just annoying. Don't worry about it." And in fact, our Right to Farm laws in the state of Maryland state that if you're buying property next to a farm and you are especially in an agricultural area, you have to sign a release that says, I understand that farms produce noises and they have animals and they produce smells. And it's just something that you put up with living in a rural area.

Kathy Phillips: On the Eastern shore, there is always... 40 years ago, 50 years ago, or even 30 years ago, poultry being grown on the Eastern shore of Delmarva was grown on family farms. These farms would be many, many acres, hundreds of acres. They might have two, three, even four poultry houses, and maybe even growing as many as 100,000 chickens a year. And limited to rural areas. And so it was not as... The number of chickens that they were growing a year produced the amount of manure that the farmer needed to fertilize his crops, that he was growing on his own farm, and so it was this nice cycle.

They would take the manure, they would fertilize their fields, they would grow their crops, which would use up most of the nutrients in that manure because at



that time, farms were very diversified. They were growing vegetables, they were growing tree crops like... They would have orchards. It was very diverse agriculture. And so it was this interesting cycle. And it was not as polluting as our agricultural system on Delmarva today. We still do have some of these family farms.

For instance, as I was talking about earlier, the poultry grower who has a small farm near Berlin, Maryland, who was growing about 40,000 chickens a year for Perdue. But even since we brought that lawsuit, there has been this expansion to where today it is not a mom-and-pop operation growing chickens. In fact, those growers are slowly being squeezed out by more corporate entities that are coming in, buying up small parcels of land that are still zoned agricultural, but the counties on the lower shore, Wicomico County in particular, had begun to change their zoning code and turn more and more farmland into land that could be developed for housing developments.

And so for instance, in Wicomico County and down in Somerset County, zoning codes changed so that more and more farm land was being sold profitably to be turned into residential housing developments. And so now, you had a situation where there were these pockets of ag zone land completely surrounded by the city of Salisbury that had just been growing and growing and growing into suburbs and then more rural suburbs. But because these small parcels, these pockets of ag land were zoned still as agricultural, they weren't really conducive to a full farm because they might only be 40 acres, 60 acres or less than 100 acres.

But that was just enough acreage to squeeze in four to six, 600-foot-long by 67-foot-long chicken houses. And so what we have now is we have basically corporate poultry production. I don't even like to call them farms, they're just factory industrial scale facilities that are growing up to a million chickens a year. They're actually labeled by the State of Maryland now as no land Concentrated Animal Feeding Operations, CAFO. The state actually identifies them as no land because they don't have any crop land to use the manure on that is produced by the 500,000 to 1 million chickens that they are growing in a year on these small parcels, and so that manure has to be offloaded someplace else.

But to bring this back to Town Creek and their support of this Clean Water Act lawsuit that we brought in late 2007. This particular farm, and this is a farm and it is a family that has this farm and they've been in the area a long time and they grow the chickens and they grow some cattle. And his surrounding fields around the farm, he grows corn and soybeans for the poultry industry. So as I had said, we were looking for a way to hold the poultry corporations accountable for the waste stream that they were producing because the situation that we still have in the State of Maryland is that someone will contract with a Perdue or a Tyson or a Mountaire to grow chickens for them.



That person in their contract, they're responsible for building the houses and for maintaining the ammonia levels inside the houses, making sure that those fans are always working to get that ammonia out of the houses, so that at the end of five to seven weeks, these chickens can be collected and taken to the slaughterhouses. During this entire process, those chickens do not belong to the farmer who's growing them. Those chickens belong to the Perdues, the Tysons, the Mountaire, the other integrators on the Eastern shore. But they integrate into their system this sort of ladder down that while they own the chickens and they profit from the sale of those chickens, the people actually growing the chickens for them are under separate contract and the industry is not responsible...

This is what has always been so interesting and why we wanted to bring this lawsuit, because while the industry owns the chickens and they own the feed that's being fed to the chickens and they send the veterinarians who care for the chickens, somewhere along the line when that chicken takes a poop, what comes out of that chicken no longer belongs to the integrator. They say that it now belongs to the farmer. It's a resource to the farmer that he can use to fertilize his fields.

And it's a very clever set up because now suddenly, the responsibility for proper non-polluting management of all of this excrement from the chickens is now the responsibility of some farmer who has a multimillion dollar mortgage on their property, which they had to go into that debt in order to build this specific type of chicken house that the companies wanted them to build, and to install the type of computer equipment that's needed and the type of watering systems and cooling systems that are required. And so now the proper management of that waste stream now belongs to the farmer.

So again, the State of Maryland steps in and we as taxpayers, our tax money goes to help support that farmer so that he can build large sheds that will hold the excess manure and keep it under a roof so it's not just on a pile it behind the poultry house any longer. Now, today, anyone growing chickens in the State of Maryland is required to also build these big manure sheds and store the excess manure in there so it's under roof. Also, no longer can a farmer do what they used to do 20, 30 years ago, which when they... Because of the way these chickens are grown inside these houses, there's mortality, there's daily mortality.

And again, not the responsibility of the Perdues or the Tysons, but the farmer himself. It's his responsibility to go in and remove the mortality, so the dead chickens so that they don't contaminate the other chickens. And again, when these were family farms with many acres and wooded areas again, the mortality would just be piled somewhere and allowed to decompose and more than likely that was then eventually used in the fertilization of their fields too. That used to be a nice loop, again. But, what we have more recently, especially in the 1990s and the



2000s is the recognition by the State of Maryland that these old time practices were polluting to the Chesapeake Bay, so the States set up regulations.

And in order to enforce those regulations on not the company actually who owns the chickens, but on the farmer growing the chickens is to subsidize the farmer to be able to afford to build the manure sheds which not only held the manure but now also hold the mortality. So there's a subsection of large, large manure sheds that are a covered shed of their own and this is where the dead chickens are composted. And then eventually what's that compost is mixed in with the rest of the manure and then goes out onto the fields to fertilize the fields at the end of the year.

But the difference here is that because the number of chickens being grown is so much bigger, that a lot of this manure, the farmer may not have enough fields for all the manure that he's generated, and so that has to go somewhere. And then we have this more corporate model of... And by corporate, I don't mean that the poultry companies like Perdue, I'm talking about corporate in that individuals, developers have come together and just like developers getting together to put up a Walmart shopping center with the Home Depot and a bunch of other stores, and they develop that and then they sell it and they moved down the road and they develop another big shopping center.

This is what's happening in the poultry industry, is that we now have individuals who have financial backing. Some of that financial backing is from overseas, some of it is just from financial backers here in the United States, and they buy up these small parcels of land that unfortunately are still zoned ag, even though the suburbs and the more rural suburbs have developed around them. And they have found that it's apparently profitable to them to build these chicken houses. It's not a farm, it's just an industrial use. It's an industrial facility.

Doesn't have a smokestack, but it does have these huge exhaust fans. It doesn't produce smoke, but it does produce an invisible plume of ammonia as well as at times a visible plume of dust that comes from inside the poultry houses. And that dust can have pathogens attached to it. Sometimes the actual feathers are blown out through those fans. Again, they are totally unfiltered, so whatever they're sucking out from inside the poultry house is coming out into the air that we breathe and that neighbors of these facilities breathe.

I forget where I was or where I was going on that. Sorry.

Eve Austin: That's, oh my gosh.

Kathy Phillips: Take a break here for a second. I got to get back to Town Creek and the Hudson. By going in this direction, I'm trying to give some history as to why it was so unusual



for us in 2007, to be flying over a family farm that had two rather moderate sized poultry houses, nothing industrial scale, but to see this large pile that certainly had, from the photographs, the texture and the substance to be something other than just dirt. And to see it, see the very dark black leachate that was around the bottom of it, being trenched out to a ditch that was going to waters of the state and eventually out to the Pocomoke River.

So we began with the help of Town Creek Foundation, with funding from them. It enabled me as the Assateague Coastkeeper to start sampling downstream of this farm. We determined by looking at maps that there really was no actual upstream. The ditch originated on the farm and left the farm. So we found a spot that was publicly accessible and we began taking water samples just to see what was in the water coming off of that farm, and particularly that ditch because that was the ditch that the trench was taking all that leachate from the bottom of that enormous pile on the farm. And we discovered just very, very elevated levels of E. Coli, elevated levels of fecal coliform, high levels of ammonia in the water.

We were finding some levels of arsenic in the water. Arsenic at that time was a component of chicken feed. It was used to make the chickens grow plumper faster and made the chicken meat look very pink and appetizing when it was processed and in pieces, parts on the market shelf. So looking for arsenic was actually a way to identify it as possibly being chicken manure. So based on the scientific data that we pulled together and bringing in experts to analyze the water flow from that farm towards the ditch, we felt that this would be an opportunity to bring a case that would hold Perdue Farms accountable for the pollution.

But under the Clean Water Act, to do that, we also had to name the owner of the property that this pollution was coming off of. So that is how the lawsuit originally was filed, was that it was against Perdue Farms Inc. and Alan Hudson, who was the farmer who owned the property. Very long story short, with help from Town Creek to help us hire attorneys that were needed, although we took advantage of and gave a great opportunity to student attorneys through the University of Maryland law clinic to be involved in this and to help with the research that was needed for the lawsuit. We brought the lawsuit in 2008, and we...

I'm trying to think of how to put this, because it was something that had been thought out very carefully. There were other cases in the country of integrator liability that we felt gave good precedent for this lawsuit. The moment that we filed the 60-day notice to Perdue Farms and to Alan Hudson, the State of Maryland and the Maryland department of the environment kicked in. They wanted to go see what this pile was. We wanted them to go see because we didn't have access to the farm. And as it turned out, the owner would not let the county come on and was giving the state a little pushback on coming onto his property.



But eventually, the state did gain access. And it was determined, although they never actually tested anything that was in that pile. They didn't test it for what it actually was, but according to the farmer who gave them some records, showed that the town of Ocean City, their wastewater treatment plant produces a sediment, all waste water treatment plants produce a sediment. Most people know it as sludge, wastewater sludge, sewage sludge. And the city, they also... This sediment goes through a composting process of sorts and then is labeled. So the class A, and I love it, they call it bio solids. I mean, it's just sewage sludge.

But class A sewage sludge or as the town of Ocean City and any other wastewater treatment plant is going to label it as class A bio solids, has been composted and heated to a level that all pathogens are dead. It's actually a way for the town to not have to fill the landfills with it. They give it out to the farming community and then the farmers distribute it, sometimes sell it to other farmers to again be used as a soil enhancement. So people who live in more urban areas are probably more familiar with sewage sludge smells and issues, but it's very similar to what us on the Eastern shore have to deal with, chicken manure.

The farmer was able to show documentation that this big pile was actually sewage sludge, class A bio solids that had been given to him and he had piled them on this little corner of the area where the poultry houses were located also. He did not have it covered, at was just open and exposed to the elements. And it had been sitting there for quite some time, so it was getting wet, it was producing this leachate around the bottom of it. And as a result, it was making that little corner of his property very wet. So he was trenching it out to the ditch to get rid of it.

Maryland department of the environment actually fined him for storing bio solids and made him move the pile to another area of the farm and cover it and berm it so that it would be stored undercover. And he was to get it either put out on his fields or sold to other farmers as quickly as he could. And the area where the pile used to sit, MDE had him cover that with grass seed. He had to fill in the small trench that he had dug out to the farm ditch and that was supposed to have taken care of it. But we continued our monitoring of the water coming off the farm, and we were still getting the elevated levels of E. Coli, fecal coliform, especially ammonia and still getting levels of arsenic.

So even though that pile was determined, although no one ever tested the pile, so we will never know exactly what it was, whether it was a combination of manure and sewage sludge, but it was moved, it was covered, it was bermed. The old area was mitigated, and yet we were still getting the same type of readings in the water coming off the farm. So this case moved forward and it was on the premise that number one, he did not have a manure shed. He actually had them a newer shed, a very old one on the property, but it was storing farm equipment. And because he had two medium-sized poultry houses and was not growing that many chickens, he



was handling his manure or storing it before he needed it for his farm fields by just letting it compost inside the chicken houses in between flocks.

It's something that they call wind rowing, and it is supposedly a way that you pile the manure inside the poultry houses and let it compost on its own inside the houses undercover and then it can be moved out and put on fields before the next flock of chickens comes in. The problem with that is that it has been discovered through research up in Delaware that when your wind rowing, the ammonia levels are even higher than when you just have the chickens inside the houses. So as those fans are pulling all of that ammonia out, what happens with ammonia, it deposits as nitrogen. And the nitrogen then either gets into the water or the soil itself and down into groundwater, and again, can pollute local waterways.

Our water samples were also being test for levels of phosphorous and nitrogen, which are, especially phosphorus, a main components of poultry manure in particular. So we went ahead with the lawsuit, but while we were spending our time establishing the data that we needed and the scientific data, and while the lead attorney on the case felt that it was best to not get into any type of media campaign or even talking about the case, but just let the lawyers and the students lawyers work on putting the case together, and continue to gather our data, and let the case move forward on its own merits.

A major lesson learned from that was that in the absence of Waterkeeper Alliance and the Assateague Coastkeeper informing the community of what we were doing and why we were doing it, that void was happily filled by the Delmarva poultry industry and by Perdue Farms themselves in that they created a website, Save Farm Families. They began a huge multi-million dollar media campaign that took all the focus off of Perdue, which was the original reason for this lawsuit was to hold Perdue accountable for this waste stream and the subsequent pollution and turned all the focus onto the Hudson family and how, and I'm making quotation signs here with my fingers, big environment was doing horrible things to a small farm and the family that owns that farm.

And so once that had been established, even though the case was moving forward, Perdue's attorneys were trying to stop the case one way or another, but the judge continued to let the case move forward. So even though the case was moving forward, the merits of the case were being challenged constantly by Perdue, but our merits were being upheld by the court. But while all that was going on, the media was paying much more attention to this massive PR campaign of how Assateague Coastkeeper and Kathy Phillips was trying to put every farmer on the Eastern shore out of business. And it became a huge media crisis.

And at that point, even though again, with the help of Town Creek and their funding, media PR firm was brought in to start helping university of Maryland law



clinic and Waterkeeper Alliance and the Coastkeeper start to get some messaging out there. It was really too late. And so that's the pro and con of this amazing opportunity that Town Creek gave us to start this very public dialogue. Because while it definitely was very hard on my organization, Assateague Coastal Trust and on my board members, and it was extremely difficult on me because I had a big target on my back at this point.

The fact that we were able to bring this lawsuit and that it did progress all the way to the very end, put the State of Maryland on notice, put the poultry industry on notice and put every poultry grower not only on Delmarva but nationally on notice that somebody has to be responsible for the pollution coming off of these farms and that the state has to step up and do a better job of monitoring permits that they have given. For instance, if you go back through court documents, you will see that the State of Maryland, MDE required and find the Alan Hudson didn't find Perdue but find Alan Hudson for having this, what was supposed to be sewage sludge that had never been tested, moved, and eventually that fine was, the state legislature came in and actually reduced that fine.

To tell you the truth, to this day, I'm not certain that Alan Hudson ever had to pay any fine to the State of Maryland. But here's where I see the victory in this case, and I guess I haven't mentioned that we lost the case.

Eve Austin: Everyone knows.

Kathy Phillips: Yeah. And even though it really just kept progressing along, some of the findings, preliminary findings that were coming out from the judge saw that he was really thinking about this carefully and he was really weighing the whole integrator liability issue and the clean water act issue of having to bring in this farmer as part of the lawsuit. He was really trying to, I think, figure out how to balance this all out and possibly establish some court precedents and legal precedent for integrator liability. But this massive PR campaign a life of its own now, and the state legislature was now getting involved. The governor began speaking out. The governor who was a lawyer himself went on public record decrying the University of Maryland Law Clinic, and in some ways interfering with this case, but there was such a huge PR battle going on that the the legislature felt they had to step in and help this poor farmer who was going to be bankrupted if he lost this case.

Again, not even talking about, "Well Perdue, these were your chickens. This is technically your mess coming off of this farm." Because our case at that point was that what's being blown out of these fans, out of his two poultry houses where the manure is being stored inside those houses, and there was scientific data to show that wind road manure being allowed to compost inside the houses puts out even more ammonia than when just the chickens are in the houses. Now, those fans, which on the two houses pointed at each other to a grassy swale between the two



houses, and that's swale, when it rains, all the rain water came off the rooftops of those two chicken houses into that swale and all that water was going out to the ditch.

And I realize I didn't say that a little earlier, so I wanted to get that in here.

Eve Austin: That's okay. When you're ready, I want to ask you a wrapping up type of question.

Kathy Phillips: But this was why we continued monitoring the water and keeping that data because it was clear that while it may not have been that original pile, there still was poultry pollution coming off of that farm, and we wanted to hold Perdue Farms accountable for that. But now at this point, the legislature, the governor had stepped in, it was all about this poor farmer being put out of business if he should lose the case and we could begin to see that this was putting a lot of pressure and more publicity on the judge in this case than he probably was comfortable with. But we still had optimism right up to the very last day of the trial.

But unfortunately, it was found that the cows that were on this farm where they were leaving manure piles on the field in that farm that was near the chicken houses, the judge in his final words was that, yes, the farm was polluting the Pocomoke River, but he was not going to hold Perdue or Alan Hudson accountable for that pollution. And there was this whole cloud of mystery at the last moment when produce attorneys and Alan Hudson's attorneys brought in this whole element about the cows that were maybe at the most 100 head as opposed to 40,000 chickens. But this element of mystery was brought in at the end.

And so in the end, the judge's final ruling does actually state that the Hudson farm is indeed polluting the Pocomoke River. All of my monitoring water sampling, all of the data that we collected on that was upheld by the judge, but he was not going to hold anyone accountable. And so we lost the suit, but where we did actually have a victory is that, prior to that lawsuit, no environmental organization in the State of Maryland or anywhere in the Chesapeake region would touch big chicken with a 10 foot pole. The fact that we brought that lawsuit, did open the door to now a broader public discussion throughout the environmental community that maybe we need to do more to account for the agricultural pollution that is going into the Chesapeake Bay throughout the entire Chesapeake Bay region and whether it be chickens or dairy cattle or horses or whatever.

Also what happened in more of my aerial patrolling of my watershed and going as far as the Wicomico River was that every small poultry farm, because back then it was still more family farms with just a few poultry houses, where I had photographs before the lawsuit where there was trash, there were dead chickens, there were dark piles of whatever, piled behind these poultry houses on these farms, the rooftops were rusting and just they were old. After that lawsuit, I had



photographs of the exact same farms where nothing was outside of those buildings. Fresh grass had been planted, rusting rooftops had been replaced with new metal rooftops, and some sort of storm water management was being attempted.

And I know for certain that as a result of that lawsuit, as painful as it was, that we did actually change how waste and storm water from poultry operations in Maryland were being changed for the better, were being improved. Nobody else wanted to get sued. And by the way, we have never sued another fam... And by we, I mean the entire environmental community, has never sued another family farmer since then. But now because of this change in the model of growing chickens and that it's more industrial and that it's compacted into these small parcels of land. And because of that lawsuit and the data and the research that was done on ammonia emissions, there have been more studies done now about ammonia emissions. There had been more studies done about the health impacts from concentrated animal feeding operations.

And we know that we have a problem and we know that we have a source of not only bacterial pollution, but we have a source of nitrogen pollution that needs to be accounted for and fixed. And so while a lot of people see that lawsuit as a horrible loss for the environmental community and they still, some environmental groups even today, hold that up as an excuse for them not being able to work with local farmers and agricultural land owners. They don't see it the way that I see it, the way Town Creek Foundation saw it, the way Waterkeeper Alliance saw it, which is that we, we opened the door for a broader discussion.

We did clean things up in that all these other little farms cleaned up their act, and that now because it's a more industrial type of poultry production here on the shore, the State of Maryland has made little minor improvements to the pollution permits, that nutrient management permits that both farmers and non-farmer poultry growers have to have so that we're trying to improve the pollution source off of these factory farms into our waterways. We haven't gotten there yet, but we're working at it. And again, through the support of Town Creek Foundation, for the next four to five years, we now have the funding to strengthen regulations, to bring more communities together, to try and change zoning laws at the local level, and to put more pressure on both our state agencies and the industry to be more accountable for the waste stream that they produce.

Eve Austin: That's so much. Thank you. Well, I guess I want to thank you for all of your work. I can imagine that there's some of the small kind of in the weeds details that you gave about just chickens and the chicken industry and I'm sure you have so much more information about so many more things but thank you for sharing just a small piece of how complex it all is. And I guess in your optimism, even after the loss of the lawsuit, I guess I want to wrap up today with asking if you could give some



advice or some thoughts to new generation of environmental activists who are coming up today with whatever obstacles you think they may be facing now. Any advice for how to keep going just like you did?

Kathy Phillips: Well, obviously to do this kind of work does require funding. It takes staff, it takes lab fees, it takes on the ground, travel expenses to be able to monitor these operations and hold state agencies accountable for making sure that the permits that they've issued are actually in compliance. That is one of the things that made this source of funding from Town Creek Foundations so critical because no other funding or no other foundations in the Chesapeake region will fund advocacy work. They very much like to fund what I call the Band-Aids, which is giving money to environmental organizations so they can go out and pass that money on to farmers who will now fence along stream beds to keep cattle out of the streams, that will plant trees to absorb a lot of this nitrogen, this excess of nitrogen and especially phosphorus.

We need more orchards to suck up this excess of phosphorus from all these years of fertilizing all the fields on Delmarva with nothing but poultry manure and then growing the corn and the soy beans that go back to feeding the chickens that produce the manure, and it's back out onto the fields again.

Eve Austin: Well, can I just ask you this. If Town Creek Foundation is coming to an end of its giving, what do you think a young environmentalist should do?

Kathy Phillips: I think there needs to be a very honest discussion with the various foundations and funding organizations in the Chesapeake region because it is admirable to give money to help put Band-Aids down along the shoreline, whether it be systems that you bury into the ground along the ditches to keep nitrogen and phosphorus from getting into the ditches, if it's biochar systems, that sort of thing, or whether it's planting trees or whether it's putting up fences, but if you're not stopping the source of the pollution upstream, which is what water keepers do, we look upstream, where is the source of the pollution coming from? And let's stop it at the source.

The loss of Town Creek Foundation, it worries me that the upcoming young advocates trying to save not only the Chesapeake Bay, but my Coastal Bay, all our little creeks and streams and all the rivers in-between, if they are only going to be able to get funding that requires them to put these Band-Aids down and then give a nice report back that, "Yes, X number of trees were planted, X number of volunteers were recruited to do this," what good is it going to do if the source of the pollution is still coming downstream? So we need the new environmentalist movement to really shift gears. \

And by them shifting gears, maybe it will force the funders to shift gears also. But



currently, with the loss of Town Creek, I just don't see any other funder in the Chesapeake region that is going to step up and take their place. So we all need to get more creative, maybe instead of depending on the funders, all of our organizations need to figure out how we can lean and mean up our own organization. But at the same time, build up our donor basis, partner with businesses that depend on clean water throughout the entire state and shift the funding source to within our own communities. That's what Assateague Coastal Trust has been working very hard on for the past three years.

When we knew that we were going to lose Town Creek because that was our only funding sources, we're down in the coastal base watershed, so most of the Chesapeake Bay funders network does not even fund our work in the co... They won't fund me even though, and I don't mean personally, I mean the Assateague Coastkeeper. Even though a lot of the work bleeds into the Chesapeake watershed just because of the geography of where we are, but because our business is located in the coastal bays watershed, other than Chesapeake Bay Trust, none of the other Chesapeake based funders network will fund work for where I am located.

But we have to change the dynamics and perhaps the dependency on these funders, which then may eventually force them to look inward and take another look at funding advocacy, funding litigation. Because right now, our only avenue is to go look nationally. And we are finding national foundations and national funding organizations that are a little more comfortable with advocacy and litigation. It's not real feel good, it's not, "Oh, look at the pretty trees." It's taking the State of Maryland to court because they're not forcing their permit holders to be in compliance. It's working hard in the legislature to make more stringent regulations.

These are not feel good activities, but if they're not done, then you're not stopping the pollution at the source and you're only putting Band-Aids on the ground. And so I hope that this upcoming generation of environmentalists will take heart from the fact that Assateague Coastal Trusts, the Assateague Coastkeeper, Waterkeeper Alliance, our waterways survived the Perdue Hudson lawsuit and actually opened the door for better regulation, more compliance, more monitoring and gave other environmental organizations the opportunity to really start talking about, seriously talking about agricultural pollution. It is still the number one source of pollution to the Chesapeake Bay watershed.

It is a big source of pollution to my coastal bays because the amount of rural farmland that we have in the coastal bays. And we just have to start having a much broader discussion about how to, number one, hold the industry more accountable for their waste stream and stop being afraid of them. We have to get our communities more engaged and more educated so that they have the data and the confidence to stand up to political leaders, not only in their own communities but at the state level. And to also stand up to bullying by the poultry industry. We have



to break through this culture of fear that we have on the lower shore, that smell of money, if you dare complain about it, that the entire industry is going to pack up and go someplace else.

I really don't think that's going to happen, but if we can diversify our agricultural system on Delmarva and try to get back to where, yes, there was livestock, there was meat production, but there was also vegetable production, there was fruit production. If we can get back to diversifying our system of agriculture on the eastern shore and have our communities more engaged, even if it means running for office themselves to get some of these entrenched politicians out, we can see a really bright future. And I as old as I am and as long as I've been at this, I am optimistic that there will be change. And I'm looking forward to the next four to five years and this platform, this project that Town Creek Foundation has funded for us as we begin to launch this. Let's see if we really do make change over the next five to six, 10 years.

Eve Austin: Thank you so much, so much passion, so much energy. You have so much energy for this.

Kathy Phillips: Well, I cover the gray hair very carefully. I can thank my beautician for that, my colorist for that.

Eve Austin: That's great. Okay. Well, I'm Eve Austin, interviewing Kathy Phillips. It is September 9th, 2019, and we are interviewing here in Annapolis, Maryland. Thank you.

Kathy Phillips: Thank you.