

Settlement ends neighbors' battle with poultry farm as they look to future with clean water

[Maddy Lauria](#), The News Journal Published 5:00 a.m. ET Feb. 20, 2020 | Updated 3:15 p.m. ET Feb. 22, 2020

Mountaire reached a settlement in one chapter of a multi-faceted legal saga that has spanned numerous lawsuits. The News Journal

Martha Wise made a promise to her late mother: She and her 14 brothers and sisters would keep the Burton family land nestled between Indian River and Route 24 near Millsboro in the family for generations to come.

Now, Martha and her husband, Junior Lee Wise, are in their 80s. And her grown son and his family have taken that promise to heart.

“We’re not gonna leave here,” Preston Wise said. “We’re gonna pass the property down to the [next] generation. ... We’re gonna keep it in the family.”



Herbert Lane, nestled between some of Mountaire Farms' spray fields off Route 24 near Millsboro, has been home to multiple generations of one Sussex County family that found themselves at odds with their corporate neighbor. (Photo: Jason Minto, The News Journal)

Decades ago, before that promise was made, his grandparents sold a chunk of that land to one of the area's largest employers, a poultry company known as Townsend Inc.

[It was a move that, decades later, the family would come to question.](#)

In late 2017, news broke that the plant's operator, Mountaire Farms, had been violating its waste-disposal permits by spraying too many contaminants onto hundreds of acres of farm fields.

[Lawyers argued](#) that those actions likely made an already polluted groundwater system worse. It is the same water source that feeds drinking water wells like those used by the Burton family, and the same water source that the [U.S. Environmental Protection Agency had ordered the company to stop polluting](#) over a decade earlier.

Residents along Herbert Lane and beyond started asking if there was a link to the health problems in their communities, like gastrointestinal issues, thyroid problems and birth defects.

By 2018, [lawyers began offering to represent Wise and his neighbors](#). The attorneys spent the next two years asking those same questions and turning to the courts to find answers.

The answer for Wise and 105 neighbors came in the form of a private settlement with the company that was finalized last week.

“This was only made possible because the community rallied together and offered us the privilege of fighting for them in court,” said attorney Jonathan Nace, co-counsel in the case against Mountaire and partner in the Washington, D.C.-based firm Nidel & Nace PLLC. “We’re happy our clients are able to move forward and ensure that they and their families are both protected and compensated for the problems with their drinking water.”

Life along Herbert Lane, named after Burton family patriarch Herbert Burton Sr., has been changing for the better, Wise said. The air smells fresher. The road has been paved, and pretty vegetation is growing along its eastern edge.



Neighbors of Mountaire Farm's chicken plant in Millsboro, Tiffany Reid and her daughter Maria, Gina Burton and James Reid live along Herbert Lane. (Photo: Jason Minto, The News Journal)

“Everything that they said they’re going to do, they’re working on,” Preston Wise said. “I don’t have any complaints, but I can’t speak for everybody else.”

Addressing the groundwater pollution around Mountaire’s Millsboro-area plant is still in progress, but even as his family and neighbors must rely on bottled water, Wise said he refuses to dwell on the mistakes of the past.

“We are Christians back here, and [being] Christian means that you have to forgive,” he said. “You have to move on.”

Recent Mountaire cases

Last week's settlement resolves just one chapter of a multifaceted legal saga that has spanned numerous lawsuits in both state and federal court, involving hundreds of people.

Those lawsuits stem from [water- and waste-related violations discovered in 2017](#), which the company and regulators have primarily blamed on a failure of the chicken plant’s wastewater

treatment process. This settlement means one case in Sussex County Superior Court has been dismissed, court documents filed last week confirm.

But that's not the only legal hurdle the company needs to clear. While those courtroom battles move forward, a gag order issued by the court prohibits Mountaire representatives and the teams of lawyers challenging them from publicly commenting on active litigation.

THE LAWSUITS: [Mountaire Farms' troubles mount as company is hit with lawsuits over water pollution claims](#)

ONE FINE, TWO PLANTS: [Delaware chicken plant Mountaire Farms to pay over \\$500K for pollution violations](#)



Irrigation runs on the fields owned by Mountaire Farms' poultry processing plant along Route 24 near Millsboro. (Photo: Jennifer Corbett, Delaware News Journal)

Mountaire Farms, a subsidiary of Arkansas-based Mountaire Corp., operates the poultry processing plant, feed mill and hatchery along Route 24 that employs over 2,000 people.

The plant slaughters, processes and packages nearly 2 million chickens a week, in addition to the grain and hatchery operations. It is also the subsidiary's corporate headquarters.



A view of a field adjacent to Mountaire Farms near Millsboro where it sprays wastewater. (Photo: Jason Minto/Delaware News Journal)

In 2017, the plant was accused of bypassing crucial steps in its wastewater treatment process, spraying highly contaminated wastewater onto hundreds of acres of farm fields and failing to report crucial data about its activities to the state, [according to the notice of violation issued at the time](#).

That included the release of hundreds of gallons of effluent containing up to 41 times the permitted levels for nitrates, and up to 5,500 times the permitted level for fecal coliform.

RELATED FINE: [Delaware chicken plant Mountaire Farms to pay over \\$500K for pollution violations](#)

DELAWARE'S DRINKING WATER: [Where does it come from and is it safe?](#)

Nitrate is a naturally occurring compound [regulated by the Safe Drinking Water Act](#), primarily because excess levels in drinking water have long been known to cause blue baby syndrome, a potentially fatal condition for infants.

Nitrates have increasingly been linked to other diseases such as cancer- and thyroid-related issues. In the environment, it can promote algae blooms and reduce water quality.



Mountaire Farms' closest neighbors still rely on bottled water for drinking and cooking. State regulators have hashed out an agreement that could bring central water, deeper wells or whole-home filtration systems to some residents with polluted wells. (Photo: Jennifer Corbett, Delaware News Journal)

Of the 34 nearby private residences that the state initially tested for nitrates in light of Mountaire's violations, 18 were found to have concentrations above the Environmental Protection Agency's safe drinking water standard of 10 milligrams per liter, [Delaware Online/The News Journal previously reported](#).

The details of the recently reached settlement will remain confidential, the parties agreed.

“This settlement allows our clients to hopefully turn the page and continue on with their lives,” said the residents’ attorney Raeann Warner of Wilmington- and Millsboro-based Jacobs & Crumplar law firm. “We thank Mountaire for doing the right thing and recognizing that these families, many of whom lived in the shadow of the Mountaire plant, deserved compensation.”



Buy Photo

Gina Burton used to live next to the Mountaire Farms chicken plant near Millsboro on Herbert Lane, and was part of the recent settlement. (Photo: Jason Minto/Delaware News Journal)

A separate [class-action suit against Mountaire](#) claiming that over 800 residents were impacted by “decades-long groundwater contamination and air pollution” from the Millsboro-area operation remains active.

Another case against Mountaire Farms, this one lodged by Delaware’s Department of Natural Resources and Environmental Control in U.S. District Court for Delaware, alleging [violations of the federal Clean Water Act and the Resource Conservation and Recovery Act](#) was stayed by the court until April.

DNREC's state-level case against Mountaire, in which it [originally lodged a previous version of a consent order](#) to fix the water and waste problems, has been stayed until the federal case can be resolved.

[The proposed agreement between Delaware environmental regulators and Mountaire](#) would have the company upgrade its wastewater treatment plant, clean the groundwater and provide safe drinking water to impacted residents through either a central water system, deeper wells or individual, whole-home filtration systems.

Company officials have recently cited a cost of about \$50 million for upgrades at the plant to address the issues. The agreement specifically notes that [Mountaire is not acknowledging it caused the groundwater pollution](#).



Buy Photo

A truck carrying chickens approaches Mountaire Farms' poultry plant on Route 24. (Photo: Jennifer Corbett, Delaware News Journal)

Until the wastewater plant is upgraded, state regulators have said, the plant will not be able to stay within permit limits. That means the effluent that has been sprayed onto farm fields may still contain more contaminants, like nitrate, than are legally permitted.

Lawyers with the class-action case have opposed the proposed agreement between DNREC and Mountaire, and claim they were left out of discussions that led to it despite the federal court's order saying they should be involved.

The public can submit comments on that proposed agreement through March 2 by emailing DNRECHearingComments@delaware.gov.

Meanwhile, Sussex County officials gave Mountaire its blessing Tuesday morning to [apply wastewater and sludge to another 350 acres of farmland](#) northeast of the Millsboro-area plant.

A connected community

The journey to last week's settlement both brought neighbors together and forced them apart.

"I love it here," said Joseph Balback. "I love this section of the neighborhood. I really, really do. This is home. I don't want to go anywhere."



Joan and Joe Balback live on Jersey Road not far from Mountaire Farms' Millsboro-area poultry processing plant on Route 24. The couple are among 106 residents who recently settled their lawsuit against the company, which lawyers argued had broken environmental laws and contaminated drinking water in the area. (Photo: Jennifer Corbett, Delaware News Journal)

Like Martha Wise and Preston Wise, Balback and his wife, Joan, on nearby Jersey Road, as well as their good friends and neighbors, [Bob and Jean Phillips across the street on Justice Lane](#), say they're satisfied with the settlement.

“My memories start 40 years ago when Joe and I first married, and the children and the grandchildren, I remember them playing baseball out back,” said Joan Balback, noting that her husband should be able to bring back his vegetable garden now that the air is fresher and there’s a fix for the water problems on the horizon.

“We thank Mountaire for finally listening to us,” she said. “It has changed our lives.”

Jean Phillips said the fight was never about winning a settlement.

“It was about water and being a good neighbor,” she said. “It was about so much more than just the money.”



(Left to right) Joan and Joe Balback, who live on Jersey Road, and Bob and Jean Phillips, who live across the street on Justice Lane, live near Mountaire Farms' poultry processing plant on Route 24. The two couples were among 106 people who sued Mountaire in 2018 and recently settled their case. (Photo: Jennifer Corbett, Delaware News Journal)

As large, colorful koi flitted around the small pond in Phillips' backyard on an unusually warm February day, Bob Phillips gleamed at the idea of spending time relaxing with his wife this summer on their fenced-in back porch.

Earlier that morning, he, his wife and the Balbacks sat together inside his home and talked about what's next now that the dust has settled on their fight to enjoy a happy, healthy home and life in retirement.

"We've got everything we need: We've got our fish; we're close to the water; we're close to town," Bob Phillips said. "We love it here."

Nearly three years ago, the two couples had sat around that same table with another neighbor and her baby boy, [who had been born with a birth defect](#), to figure out the real story behind the bottled water that had mysteriously appeared on their front stoop one December morning.

NEIGHBORS ASKED IN 2017: [How long have we been drinking tainted water?](#)

REPORT: [Mountaire has contaminated water near its Millsboro-area plant for years](#)

Now that they've learned the answers to some of their questions, they feel relieved.

“There were a lot of unknowns going through the process,” Jean Phillips said. “Hopefully, in the end, it’s a big wakeup call ... for other companies as well as other neighborhoods that are facing some type of environmental impact.”

Back on Herbert Lane, Preston Wise talked about [water contamination issues on the western side of the county near Seaford](#).

PFAS POLLUTION: [What's hidden in this Delaware town's groundwater?](#)

PFAS IN DELAWARE: [Where PFAS have been found, what officials are doing](#)

“It could have happened to anybody; it just happened to happen to us,” he said. “I’ve got family members who work there [at Mountaire], and I don’t want them to lose their jobs. We want people to come to Millsboro knowing that it’s safe and they’re working on the situation.”

But issues of the past, no matter how widespread, will never break his family’s deep connection to the hidden gem in southern Delaware, a place full of memories spanning multiple generations.

“We promised our grandmom we were gonna keep it in the family,” he said. “We’re here to stay.”

Contact environmental reporter Maddy Lauria at (302) 345-0608, mlauria@delawareonline.com or on Twitter [@MaddyinMilford](#).