



News & Views

A Monthly Publication Dedicated to the Feed, Seed, Grain and Farm Supply Industries of Wisconsin

More on Grain Contracts ■

While crop prices have dropped somewhat dramatically in the past month, we would caution members that (paraphrasing Yogi Berra), "It ain't over until the grain's delivered and in the bin." To that comment, if you're involved in the buying and selling of grain, and the vast majority of WASA members do just that, you should be aware of a highly informative article published recently by the University of Illinois that addresses a variety of timely contracting issues.

The article, published in the July 30, 2008 edition of *Agricultural Law and Taxation Briefs* by the University of Illinois' Department of Agricultural and Consumer Economics, addresses a variety of issues arising when farmers lose crop production because of flooding, or when market prices rise significantly compared to previously negotiated contract prices.

Entitled, "*Grain Contracts, High Prices, Floods and Failure to Deliver*," the attached article discusses questions such as the legal effect of a written confirmation of an oral agreement; special rules that may apply in bankruptcy or when an elevator loses its grain dealer license; and the remedies that may be available for breach of contract (e.g., attorneys fees in some situations). While the article has some elements that *focus solely on Illinois state law*, the authors (a professor, assistant professor, and law student with the University's Agricultural Law Group) also discuss issues that have relevance across grain-growing regions given the current market environment.

In light of the importance of these issues and the dramatic negative impact they could have on your business operation, we encourage you to read and share the article with your grain buyer and/ or credit manager. While every year requires vigilance as a

manager, this year the stakes and risk to your operation have increased along with prices.

Source: NGFA

Scholarships Awarded ■

Wisconsin Agri-Service Association (WASA) is pleased to announce the 2008 recipients of the Eldon Roesler Scholarships. This year's recipients are:

Richard Franta – University of Wisconsin-River Falls

Frances Kinnard - University of Wisconsin-River Falls

Jodi Marshall University of Wisconsin-Platteville

Lindley Reilly - University of Wisconsin-Madison

Richard Franta is the son of Wally and Carol Franta of Spring Valley, Wisconsin. Richard is currently studying Agricultural Marketing and Dairy Science at the University of Wisconsin-River Falls. His intended career upon graduation is as an International Agriculture Extension Agent. Richard is currently an intern with Agri-View Newspaper.

Frances Kinnard is the daughter of Roger and Theresa Kinnard of Sturgeon Bay, Wisconsin. Frances is currently studying Marketing Communications with an Agriculture Emphasis and Dairy Science at the University of Wisconsin-River Falls. Her intention upon graduation is to enter the marketing field. She is presently interning with Ft. Dodge Animal Health in Dairy Sales.

Jodi Marshall is the daughter of Paul and Gail Marshall of Viola, Wisconsin. Jodi is currently studying Agriculture Education at the University of Wisconsin-Platteville. Her intended career upon graduation is to be an agricultural instructor. Jodi is currently employed at the University of Wisconsin-Platteville as a student employee.

Lindley Reilly is the daughter of Edward and Donna Reilly of Cascade, Wisconsin. Lindley is currently studying Dairy Science with a Pre-Veterinary emphasis at the University of Wisconsin-Madison. Her intention upon graduation is to be a production animal veterinarian. She is also a student employee at the University's Dairy Cattle Research Center.

On behalf of the WASA Scholarship Committee and members, we extend our congratulations to all of the 2008 Eldon Roesler Scholarship recipients.

Information Security ■

You should be aware the federal Fair and Accurate Credit Transactions Act (FACTA) has an "Identity Theft Red Flag Rule." This is an updated law and applies to every business or individual who possesses identity sensitive information of anyone including employees or clients. The law, which requires mandatory compliance by November 1, 2008, requires employers to establish a risk management plan to show they are taking proper precautions to safeguard this sensitive information.

The Federal Trade Commission requires employers to develop a written policy that shows how customer data will be safeguarded. This plan should include "Reasonable Measures of Destruction" which includes your plans to burn, shred or pulverize documents so they are impossible to reconstruct as well as erasing media files or electronic files that contain any consumer reports so they cannot be reconstructed or recovered. The plan should also include a periodic evaluation process to adjust the security plan in light of any circumstances that could have an impact on its effectiveness.

Other compliances include appointing an "Information Security Officer" who will oversee the program as well as employee training for those who could have access to non-public information.

If non-public information isn't destroyed and you were found to have done nothing to prevent sensitive information from being improperly used, potential penalties include:

- Civil Liability: An employee could be entitled to recover actual damages sustained if their identity is

stolen from an employer. Or, an employer could be liable for statutory damages for up to \$1,000 per occurrence.

- Class Action Lawsuits: If large numbers of employees are impacted, they may be able to bring class action suits and obtain punitive damages from employers.

- Federal fines: The federal government could fine a covered business up to \$2,500 for each violation.

- *Even if the only non-public information you have is from your employees you are still expected to comply.*

How to comply:

1. Develop a written policy that details the precautions and measures your company will take to safeguard sensitive information. This can include shredding documents, a timetable for periodic review and training personnel about the risk management policy.

2. Get Board or Committee Approval on the written program.

3. Appoint an Information Security Officer. This doesn't have to be a special appointment. Simply determine an employee or officer who will oversee the program.

4. Train Employees who may have access to sensitive information.

Source : Texas Business Today

Dust...How Much Is Too Much ■

As a result of a deadly dust explosion earlier this year at a sugar refinery in the state of Georgia, the Occupational Safety and Health Administration (OSHA) has initiated a National Emphasis Program (NEP) on combustible dust. Each Area Office is to do four NEP inspections during their fiscal year. There are four Area Offices in the state of Wisconsin.

There are a number of specific areas that OSHA will be looking at during an NEP inspection, including: housekeeping, preventative maintenance, and lockout/tagout procedures and recordkeeping. Each of these areas requires a written program and documentation of the actions taken. It is significant

to note that, while the NEP limits dust accumulations to 1/32 of an inch, the OSHA Grain Handling Standard [§1910.272] allows up to 1/8 of an inch of grain dust to accumulate in priority areas. Where more than these levels are found inside a facility, a citation will most likely be issued during this Emphasis program. It is also expected that fines and penalties would accompany any citations.

The Area Offices may satisfy their requirement for the four NEP inspections as part of site visit because of other reasons, such as an employee complaint, or may simply perform an inspection as a stand-alone visit. Obviously, feed, grain or agronomy facilities are not the only industries that might be inspected, but you don't want to win this lottery. Bottom line; they mean business. And, besides, it's just good management practices to keep an operation clean and swept-up.

If you have any questions on how the NEP could affect your operations, or how WASA can assist you in staying in compliance, feel free to contact RB Willder, in the WASA office at your convenience.

To obtain the complete text of the NEP, as well as the OSHA standards, go to the OSHA website home page at: www.osha.gov.

Thank you, Mr. Strachota■

You may already be aware that Dow AgroSciences LLC is acquiring WASA member Dairyland Seed Co. Inc. It's of special significance because Dairyland's President, Steve Strachota, is a WASA Board member. Dairyland Seed has been unique as the only privately held business with plant breeding programs in hybrid alfalfa, hybrid corn and soybeans. In addition, the business last year celebrated their centennial of operation.

Because of this change in ownership and, also for personal reasons, Steve has resigned from the WASA Board, effective immediately. Steve has served five and a half years as the Board's seed industry representative. An individual will be appointed by the Board to complete Steve's remaining six months of tenure. Thanks again, Steve.

Somebody Asked■

Q.: We received at our grain facility a lien notification regarding a customer. The customer subsequently brought in several loads of grain and we issued dual party checks for each of the loads in the names of the producer and the lien holder. The problem is the farmer customer has never cashed the checks (totaling into the tens of thousands of dollars) and they were issued about 9 months ago. Obviously, we want to get this matter cleaned up, but the real question is, "Do I, as the grain buyer who issued the checks, have any duty to notify the lien holder of the uncashed checks?"

A.: We have to admit this one was a first for us. To answer this question, we spoke to a couple different bank loan officers, as well as facility credit managers. The first comment that almost every one of these folks made was that this extreme of an example was a first for them as well, and there must be more to the story that we don't know. You would believe this given that interest charges were accruing the whole time the checks were outstanding and the lien remained in place.

As to the relevant question; the answer is, as the check issuer, you do not have a duty to notify anyone that the check has been issued and hasn't yet been presented for payment. However, you would be required to answer a question from the lien holder as to whether a check had been issued to the producer, if you were asked.

WASA Directory Update■

The annual association directory is at the printer. We anticipate mailing it before the first of September, so be on the lookout.

Looking Down the Road■

Sept. 9 **WASA Golf Fore Scholarships**
Wild Rock Golf Club at the
Wilderness, Wisconsin Dells