



# News & Views

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

## Remember to Vote■

WASA Board of Director ballots were mailed early this month and must be returned by mail in the ballot envelope to the WASA office not later than January 27. Please be reminded faxed ballots will not be counted. If you have not yet voted and mailed your ballot, please do so immediately.

## Correction and Clarification■

In last month's newsletter, we erroneously stated the Wisconsin Agricultural Producer Security (APS) program provides indemnification for dealer-to-dealer transactions involving warehouse defaults. In fact, licensed warehouses, i.e., non-producers, are not able to file eligible claims in the case of a default of a warehouse.

Wisconsin Statutes, Section 126.70 (Recovery proceedings) clearly state, "(The following) may file a default claim with the department against a contractor who is licensed, or required to be licensed, under this chapter: A depositor who is either a grain producer or a producer agent, as defined in s. 126.10 (13), and who claims that a grain warehouse keeper has failed to return stored grain or its equivalent upon demand."

The bottom line is there is no dealer-to-dealer coverage under the APS program under either the grain dealer or the warehouse programs in case of a default. This is a subject with which the following story has direct bearing.

## Somebody Asked■

*We continue to get questions from all quarters, including legislators, regarding how grain dealer or warehouse defaults and bankruptcies might be handled in our state. In addition, the VeraSun specific bankruptcy topic will be covered extensively as a break-out session at the WASA Convention.*

**Q .:** Let's assume a producer who clearly grows his own crops also holds a Wisconsin grain dealer license. This producer sells his grain to a licensed buyer in Wisconsin which later defaults owing grain sellers money, including this individual. Let's also assume this producer has set his farm up as a limited liability corporation (LLC). Can this individual file an eligible claim against the Agricultural Producer Security (APS) fund?

**A.:** There are a couple circumstances here which we will address in reverse order. A producer's business structure (sole proprietorship, partnership or corporation) has no bearing on his or her eligibility to file a claim against the "fund" in case of a default. A producer is simply a "person who grows grain" as defined in the Statutes. That's it; there are no further qualifiers regarding how their businesses are organized. So the LLC issue is irrelevant to the question of eligibility.

The first situation requires a more detailed answer. In the majority of these situations, the producer has set up two separate businesses. In this example, let's use Old MacDonald Farms, Inc. and Old MacDonald Grain, Inc. (the dealer license holder), respectively referred to as Farms and Grain. In addition, let's assume both are controlled and operated by the same individual or group of individuals.

In a default, the question of the eligibility of claim by a producer who also holds a dealer license hinges on how that producer represented themselves to the defaulting grain buyer. Was the grain represented as coming from the Grain or the Farms business? It's pretty easy to tell by asking who the checks were made out to. If the payment checks for the grain were addressed to the Grain side, there would be no eligibility under the Fund. It's going to be pretty tough to sell a sad tale of woe in hindsight that "we really meant that grain to be from the Farms." The

producer, of course, could show records of crop production and attempt to indentify individual bushels; but again, it's going to be a tough sell to convince state regulators the only bushels involved in the default were "producer" bushels.

This situation points up an interesting and mostly ignored aspect regarding producers holding grain dealer licenses. In cases of which we are aware, individuals in this situation generally sell their own bushels (Farms) to their own dealer entity (Grain). In theory, that counts as the first entry of that grain into commercial channels and check-off should be, and is, taken on those bushels purchased by the Grain entity. The point that many producers miss is they are now holding themselves out as a commercial entity, which immediately removes many of the farm exemptions which they have enjoyed. Their farm truck being used to haul the Grain's inventory is now considered a commercial motor vehicle and subject to the same rules as any other commercial venture's regulatory requirements. This includes Commercial Driver Licenses (CDL), inspections, drug and alcohol testing of drivers, and licensing issues. If employees are paid by the Grain entity, they are subject to OSHA requirements the same as any other commercial operation and are not covered by the farm exemption. Any bushels sold by Grain will not be covered by a state indemnity fund in case of a buyer's default; barring, unlikely though it might be, successful usage of the "oops, we made a mistake" excuse highlighted above. Some producers may believe they can "fly under the radar" and not have to comply regarding these issues. We certainly won't waste effort attempting to convince someone they should comply with the law. That's their own decision. They should however be aware the penalties for non-compliance could be far more costly than any perceived costs they might have incurred by complying with the rules in the first place.

A further detail is that some believe the license itself is strong evidence to indicate the Grain entity has assumed "merchant status." This topic is beyond the scope of this newsletter, but the quick take-away from this is verbal or unsigned written contracts to

which both parties have merchant status are binding. That's not necessarily the case with someone who has represented themselves in trade as a producer.

## **Focus on Energy■**

**W**ant to save thousands of dollars that go right to your bottom line? You can save thousands of dollars on your energy bills through energy efficiency improvements with the help of Focus on Energy!

Sound too good to be true? You be the judge. Focus on Energy works with agribusinesses to make them more energy efficient, and save them money. A great example of how Focus on Energy has helped is the Oregon Farm Center in Oregon, Wisconsin.

In 2005, the Oregon Farm Center decided to move their operations from inside the town of Oregon to their former storage location and turned to Focus on Energy, Wisconsin's energy efficiency and renewable initiative, for assistance. The Oregon Farm Center had to decide whether to keep their old drying system or to move to new technology. With Focus on Energy's help, they decided on a new more energy efficient system.

The new system needed to handle increased capacity as well as be more energy efficient. The newest generation of grain dryers offers two big advantages over older models: heat recovery and automated control systems. Together these can add to big energy savings. Given the age of the system, it made sense to purchase a new unit; but in some cases a retrofit can also deliver excellent savings.

Although the facility's true energy savings will be most accurately measured over a five-to-ten year period—to account for moisture differences from one season to another—the Oregon Farm Center has seen an impressive and immediate drop in its natural gas usage costs.

Adjusting for seasonal moisture variation, the Center saved 31,274 therms of natural gas in 2006, processing 650,000 bushels of grain. This translates to more than \$31,000 in savings!

Are you sold yet? For more information or to talk about how your facility can save energy and money,

contact the Focus on Energy Agriculture & Rural Business Program at 800.762.7077. To see the Oregon Farm Center Case Study, visit [focusonenergy.com/agcasestudies](http://focusonenergy.com/agcasestudies).

Focus on Energy works with eligible Wisconsin residents and businesses to install cost effective energy efficiency and renewable energy projects. Focus information, resources and financial incentives help to implement projects that otherwise would not be completed, or to complete projects sooner than scheduled. Its efforts help Wisconsin residents and businesses manage rising energy costs, promote in-state economic development, protect our environment and control the state's growing demand for electricity and natural gas.

### **Safety Audits on the Increase**

In addition to the requirement that all motor carriers obtain a USDOT ID number, Federal Motor Carrier Safety Administration is required to perform a safety review on all carriers to establish their Safety Rating. While these reviews have typically been done on those carriers with a history of out-of-service inspections and crashes, they are also being done on carriers with good records, especially those that have not updated their carrier information within the past two years, as required.

As a motor carrier, you are required to maintain files on your commercial motor vehicles (CMVs) and your drivers. It is important to point-out that: a CMV includes trucks and trailers over 10,000 lbs.; and an employee does not need to hold a CDL to be considered a "driver".

While the required files can be maintained in either an electronic format on your computer or in folders in a cabinet, they must contain specific information. Failure to maintain the files as required could result in significant penalties and fines for both you and your drivers.

For more information on what is required in the driver and CMV files, along with how to review and update your company information on-line, contact the WASA office at your convenience.

### **IRS Issues 2009 Mileage Rates**

The Internal Revenue Service (IRS) has issued the standard mileage rates for business purposes in 2009.

As of January 1, 2009, the standard mileage rate for the use of a personal vehicle (car, van, pick-up, or panel truck), is 55¢ / mile driven. This rate is slightly lower than the 58.5¢ / mile rate set for the second half of 2008, which resulted from a spike in gasoline prices.

It is significant to note that, a taxpayer may not use the standard business mileage rate for any vehicle used for hire, or for more than four vehicles used simultaneously. In addition, the standard business mileage rate can not be claimed after using any depreciation method under the modified accelerated cost recovery system, or after claiming a section 179 deduction, for that vehicle.

### **WASA Directory Update**

The following updates should be made to your WASA Directory.

**New:**

**Digman Construction**  
**1291 College Farm Rd.**  
**Platteville, WI 53818**  
**Phone: (608) 348-2231**

As additions or changes are made throughout the year, we will notify you here in WASA *N & V*.

### **Looking Down the Road**

**Jan. 28**      **WASA Safety Day**  
**Kalahari Resort, Wisconsin Dells**

**Jan. 29 - 30**    **WASA Annual Convention & Trade Show**, held in conjunction with the Wisconsin Corn/Soy Expo and the Wisconsin Pork Producers  
**Kalahari Resort, Wisconsin Dells**

**Sep. 10**        **WASA Golf Outing**  
**Northern Bay Golf Resort, Arkdale**

**Route:**

- General Manager
- Feed Department
- Grain Department
- Agronomy
- Safety Director
- Personnel
- \_\_\_\_\_

**WASA Board of Directors**

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John Petty, Executive Director

RB "Bob" Willder, Loss Control Dir.

Denise Poindexter, Office Manager

**15<sup>th</sup> Annual WASA  
Convention and Trade Show  
January 29 & 30, 2009**

**11<sup>th</sup> Annual WASA Safety Day  
January 28, 2009**

**Kalahari Resort  
Wisconsin Dells**