



News & Views

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

Know Your Customer ■

We want to make sure that you are aware of a developing situation in Iowa, Illinois, Minnesota, Nebraska and possibly other states. In each state, a farming business contracted 2008 harvest delivery soybeans with, it appears, multiple buyers. Within the past couple weeks; the seller/s has notified all of the buyers of their inability to deliver on the contracts.

The notifications of the inability to deliver on the contracts from supposedly different farming operations in different states have basically identical language. As such, the letters reference National Grain & Feed Association (NGFA) Trade Rule 28 regarding seller's non-performance. The letters request the buyers to either: a) buy in the defaulted contracts for the producer's account or, b) cancel the contract at fair market value. An important point is the contracted values are several dollars higher than current market values.

Some disconcerting details have arisen in these particular cases. First, these businesses have sold to not just a couple grain buyers, but perhaps dozens with cumulative amounts per state into the hundreds of thousands of bushels. Secondly, the return address used by each seller in the various states has been a mailbox rental at a local UPS Store (formerly Mailboxes Etc.).

We're not saying these operations aren't legitimate, but a farming operation selling hundreds of thousands of bushels of soybeans across an entire state to multiple buyers with a return address of a rental mail box should generate some questions. Let's assume the same set of facts, but that harvest delivery prices went higher than the contracted levels, instead of lower as they are now. How easy would it be for a seller to "walk" on the contracts with the buyer's only contact information being a rental mail box? The actual situation is that current

prices are below the contracted levels. The letters are careful to not directly request that monies be sent to the mail box address, but it is implied.

There are two issues involved here. First, how would you know at the outset regarding a potential problem account, and secondly, how do you handle contract defaults. A little background first of what we have learned as to the "m.o." as to how the earlier mentioned contracts were first initiated. Almost in every case, a caller phoned the grain buyer and explained that either they were farming rented land in the area or an unsophisticated family member was farming in the area and the caller wished to market grain locally for them. The buyer was given a return address with a suite number in a major city in the state, which was explained as being the office of the farm's management company. It appears buyers were bunched in some cases and spread out in other ones. For example, in Minnesota we are aware of a spread of 12 buyers reaching from the Iowa border to the far northwest corner of the state. Among just these twelve, over 410,000 bushels of soybeans were contracted. In some cases, the delivery period is still open and minimal deliveries have been made, so a crime has not been committed.

So what could have been done differently to protect your business, in case the markets had gone the other direction? When approached by a new potential client, ask for references. Ask for the landlord's name and contact information in the case of a rental, and any other grain dealers the potential customer have dealt with in their local area. This solves an immediate issue given today's high prices; that of receiving stolen grain. Somebody asking questions isn't where a thief will attempt to "fence" stolen goods. Yes, we're aware the business is competitive, but there is some business you're better off without. We know of one buyer that asked the questions listed above and either got no or false answers and never heard from the caller again. They are very

happy they did. It could have cost them far more than the margin they might have made on the volume. The bottom line is: *Know Your Customer*.

The second issue is how you handle contract cancellation by a seller. In the case listed above, the letter from the seller requests the buyer to cancel the contract using either of the NGFA's Trade Rule methods. "Buying in" the account is obviously an acceptable method of cancellation, however there are other methods that are acceptable and have been done. One is a slight variation on having the buyer "buy in" the account, and that is to compel delivery by the seller. In other words, it's the seller's responsibility to source the underfill and deliver to the buyer. The other method is to roll the underfilled portion of the contract to the next year's equivalent delivery period. For example, if a producer had a short crop this year, the harvest '08 delivery underfill amount would "rolled" into harvest '09 contracts given the equivalent levels using Board futures spreads. Any one of the three methods is acceptable for handling seller contract cancellation; you just need to defend the method's use. The overall point you should remember, and of which your customers should realize, **the expectation of full and timely delivery is implicit in all contracts in which you enter with your customers.** There are finer points which could be discussed but they are outside the scope of this newsletter. We anticipate having a follow-up special edition on this subject to cover the subject more in depth.

As of this writing, we are not aware of a similar activity which we first described occurring in Wisconsin, but we want, as we first stated, to make you very aware of this ongoing situation. If you have had dealings with any operation using the same story, please contact the WASA office immediately. All information given us will remain confidential.

Harvest Overweight Allowance■

As you should be aware, legislation included in the 2005 legislative session put forth by WASA, implemented an annual overweight authorization, without the need for the WisDOT secretary to issue a declaration of an "agricultural emergency."

While this overweight authorization is now automatic, there still seems to be some confusion as to when it is effective, what it applies to, and where overweight loads can be transported. Accordingly, we wish to provide a refresher course on some of the details of the law:

From September 1 to November 30 of each year, no permit is required for the transportation of corn, soybeans, potatoes, vegetables, or cranberries from the field to storage on the grower's owned or leased land, from the field to initial storage at a location not owned or leased by the grower, or from the field to initial processing in a vehicle or combination of vehicles having a registered gross weight of 50,000 lbs. or more. This overweight permit exemption applies to any motor truck, farm truck, truck tractor, or farm truck tractor or vehicle combined with a semitrailer, trailer or farm trailer, when the vehicle or combination is a commercial motor vehicle operated on a highway that exceeds weight limits by not more than 15%. The maximum allowed total vehicle weight is 92,000 lbs.

The overweight authorization does *not* apply to interstate highways except for that portion of I-39 between USH 51 and I-90/94. The overweight authorization is *not* valid on class B highways, or roads and structures that are posted with a special weight limitation by any county, town, village or city. To avoid a citation, you should check with each county or municipality when planning your routes, in case you are not sure whether the local roads you wish to use are allowable under the overweight authorization.

The overweight authorization does NOT apply to implements of husbandry, or exempt the operator from any other applicable motor carrier regulation dealing with over-width, over-height, over-length or "leaky loads." If your load spills or blows from the truck or trailer, you may get a citation. One way to eliminate this possibility would be to tarp the load, while another would be to raise the sides so that the load stays within the bed. We are aware of at least one citation being issued for silage blowing from the bed of a farmer's vehicle.

As a service to your customers, you may want to remind them that each unit included in this overweight authorization is considered a commercial motor vehicle (CMV) when it is transporting harvested crops to an agribusiness storage facility and accordingly, must be marked with the appropriate USDOT ID number. Again, we are aware of farmers, exhibitors and livestock haulers that have been stopped and cited for "innocent" violations of this relatively new regulation.

For those of you that may operate both in Wisconsin and the bordering states of Illinois, Iowa, Michigan or Minnesota, you need to contact the department of transportation in those states to determine if they have a similar authorization in effect. Unless the border state that you are operating in has a similar "harvest overweight exemption" in place with identical allowable weight limits, you will get a citation and a fine if you are stopped and do not have a valid Overweight Permit issued by that state. There is no such thing as a "five mile rule" or any leeway on these rules. In fact, we know of past years in which the Wisconsin exemption preceded the implementation of a similar exemption in Iowa which resulted in enforcement actions. In one case, Iowa State Patrol set up a portable scale on the land side of the Highway 151 bridge at Dubuque and simply waited for Wisconsin-plated grain trucks to make an appearance. Once they crossed the state line, they were subject to Iowa state regulations and were uniformly issued overweight vehicle citations. Easy pickin's, as they say.

Even though all law enforcement officers in Wisconsin (state, county & municipal) should be aware of the overweight authorization, we recommend that a summary copy of legislation be carried in each vehicle that may be overweight, and that one be posted at any truck-scale that you may use. This will limit any downtime explaining to an officer why your trucks are overweight.

If you have any questions regarding how this authorization affects your operations, or information on how to obtain a USDOT ID Number, feel free to contact the WASA office at your convenience.

Somebody Asked■

Q.: I have had farm customers that have bought grain or feed from my facility and have taken delivery in their own trucks. The common instruction I get from them is "Fill it up." That is, they want it loaded to the top of the sides of the trailer without regard to weight. Obviously, they're running illegally overweight, but can I get in trouble having been the one who loaded them out overweight?

A.: Maybe. Yes, in the event there was an accident involving an overloaded truck that you filled, your operation could be held liable for knowingly allowing the truck onto the road. Maybe, in the case where the truck isn't involved in an accident but is stopped, weighed and found to be overweight. In this case, it's up to the officer's discretion, if they wish to come back and pay you a visit.

In an effort to limit your liability when a customer or trucker insists on leaving your facility overloaded, consider posting wording similar to the following at your facility:

NOTICE TO ALL DRIVERS IT IS THE RESPONSIBILITY OF THE DRIVER TO ENSURE THAT THE WEIGHT OF THEIR VEHICLE IS LEGAL FOR TRANSPORTATION ON THE HIGHWAY. WE WILL NOT ASSUME ANY LIABILITY FOR ANY ACTIONS

Looking Down the Road■

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

Route:

- General Manager
- Feed Department
- Grain Department
- Agronomy
- Safety Director
- Personnel
- _____

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Remember to vote on November 4th

