



# News & Views

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

## Clarification■

In the past month, some members have received a solicitation regarding property and casualty insurance that references the program as being part of a "WASA member campaign."

*Neither the WASA Board of Directors nor staff has endorsed a particular insurance program or company. The use of the WASA name in this solicitation was done entirely without our knowledge or consent. Staff has subsequently spoken to the company that did the solicitations and told them to immediately remove any mention of WASA from their communications. In addition, we have instructed the company to convey to all who received the solicitation that WASA has no involvement whatsoever with their sales or product.*

If you have further questions, please contact John Petty at the WASA office.

## Treated Seed and You 2■

In last month's issue of *News & Views*, we discussed the issue of treated seed finding its way into commercial loads at feed mills and grain elevators. A few members consequently called staff to express that similar incidents had occurred at their operation.

The members each related the story that upon confronting the responsible party involved regarding treated seed contaminating a bin of commercial grain or soybeans, the response was the same. The sellers each downplayed the contamination and suggested either "letting it go," "blending away" the contaminated grain or that the buyer was somehow making the situation into a means of "scamming" the seller. Zero-tolerance of treated seed in commercial loads means ZERO. In addition, the federal Food and Drug Act defines "adulterated" as a description that stays with a load, batch or bin. In other words, an adulterated load can't be cleaned to make it

commercial quality. Once it's classed as adulterated, it will always be adulterated.

While no one is suggesting that producers or others intentionally contaminate loads; the problem seems to stem from bulk transportation of treated seed in conveyances that are then not cleaned adequately and then refilled with commodity grain on farm which is then delivered to a feed mill or grain elevator. The real problem appears to be one in which those delivering to commercial facilities either don't take the issue of cleaning bulk delivery vehicles (and their later use to haul other commodities) seriously or are simply ignorant of the whole issue.

To that end, we asked for (and got) a meeting with Wisconsin Department of Agriculture, Trade and Consumer protection (DATCP) staff to discuss what might be done to better educate producers and others around the state regarding this important issue. First, we recognized that since humans are involved, we will not solve this issue to the extent that it will never happen again. In light of that assumption, we focused on how best to make producers and seed handlers aware of the seriousness of the problem. After discussing the issue with members, they agreed upon first step is to educate producers regarding the issue.

To that end, DATCP staff is developing and will distribute a poster to all licensed feed mills, grain dealers and seed treatment facilities in the state that can be posted in a location to both inform customers of the law and start a discussion of this problem. Our intent is not to create a new regulation or new bureaucracies; we hope this education effort will largely solve the problem. We anticipate the posters to be available and in your hands sometime during this year's planting season. In addition, we are working with both major and regional seed companies to make sure they are aware of both the

issue and our work to hopefully put a big dent in it. We are also working with both state- and national-level producer groups to discuss other approaches to the problem.

Last month's news of the Canadian pet food manufacturer's recalls should serve as a reminder to any of our commercial members who do not yet view this as an important issue that passing on contaminated loads can have a very serious impact on your business operations. As we stated last month, that is a very dangerous game to play.

We'll keep you updated, but if you wish to discuss this please contact WASA staff.

## **Contract Cancellations** ■

**We** had a phone call from a facility manager member regarding a producer who had earlier made a Hedge to Arrive (HTA) harvest delivery contract. Following the release of the Planting Intentions report and the resulting market price drop, the contract now had a positive balance; that is, the contract price was higher than the current cash price. The producer contacted the buyer and stated he wished to cancel the contract and have the elevator cut a check for the difference between the contracted price and the current spot price. The question posed to us was "Can I do it?"

Our response had several answers. Simple answer to the question asked, "Yes, you can do it, depending, of course, on what your contract said." Whether it is a wise thing to do is a whole other situation.

Whether a seller (in most cases, a producer) is released from the obligations of a delivery contract is usually handled on a case by case basis. For example, in exceptional circumstances such as a producer being "hailed out," it is generally accepted that the buyer would release the producer for the difference of the value of the contract (contract price compared to current buy-in values). The problem area occurs in the situation that gave rise to the original question. The producer appears to be simply "playing the market." If the market goes higher, he simply sold his grain and will deliver it (hopefully, but more on that later). If the market declines, he cancels the contract and requests the market balance

be sent to him. The facility paid the resulting margin calls and if the seller cancels out with a positive balance, the company made no money on the transaction barring any cancellation fees. This latter situation presents several issues.

First, you need to understand your actions today are setting a precedent by which your actions will be judged tomorrow. Explaining to the judge how this was "different," barring exceptional circumstances, is going to be real tough. Secondly, be aware the major difference between cash and futures contracts is the cash contract's requirement of delivery. It has been argued that allowing contract cancellation, barring exceptional circumstances, makes a cash contract into an illegal and unenforceable futures contract. This is because you, the grain buyer, aren't a registered futures broker and the customer didn't sign disclosure documents required for trading futures contracts. While announcements by some regulators in the past have given conflicting statements regarding the automatic disqualification of HTA contracts allowing unilateral cancellation, it's not something we'd depend on to keep us out of trouble. As one market advisor told us in discussing this matter, "Can you survive jumping out of an airplane without a parachute? Yeah, but I wouldn't advise it." So let's imagine a scenario in which you let the customer cancel the contract and send him a check. Are you setting yourself up for this to happen again; that is, you and your margin money being used free of charge so this customer can trade the market? That would be our thought. Also, consider what would happen given the precedent that has been set, if the market rallies and the producer decides that you have been writing illegal and unenforceable contracts. Does he need to deliver on that contract that is now below market prices and in which you have serious margin monies committed? We would hope so, but as we have said in the past, desperate people do desperate things.

In speaking with another advisor about this issue, we heard a different perspective, which we believe has credence. This person argued that given the facts as we outlined them, while agreeing with all our points listed above, perhaps it would simply be best (in pragmatic terms) to simply write the check and let

this individual go their own way. They argued that, yes, precedent is set, but imagine the difficulties if the market rallies later in the year to above the contracted price. Do you want to be dealing with this person come next fall with the argument before a court, “I notified him of a problem and asked to cancel the contract last spring, but he wouldn’t let me.”

The thought process in this situation is let the producer out now and never allow them to write another HTA or forward delivery contract again. There is the assumption in this position the producer will do this again sometime and you will be better off by “cutting your losses” and setting policy to not allow the individual into such a position ever again.

All this said, we are aware of some major companies that allow activity such as cancellation or infinite rolling-over with their contracts and even market it as such. But the difference between you and them is, as the saying goes, they can buy more lawyers than you; lots more.

So as we started out, there are several perspectives to this issue. It’s not a simple black or white issue, but one that needs to be approached primarily from the perspective of your operation’s risk management plan. Each policy has its benefits as well its downsides, some more so than others. We urge you to figure out what your operation’s policy on this matter is before too long, because we are pretty much assured we will see more of these situations develop before this year is out.

## **Mark Your Ag Chemical Tanks■**

The contents of all cargo tanks transported on the highway, as well as those mounted on implements of husbandry, should be clearly marked on the unit (truck, trailer, or the tank itself), so that in the event of a spill, or other incident appropriate action can be taken by the first responders. A copy of the Emergency Response Guide (ERG) and properly completed shipping papers should also be carried on the transport vehicle.

A recent traffic accident involving a cargo tank of UAN 32% solution resulted in an evacuation of up-to-a-mile radius surrounding the accident when the

contents were mistakenly identified only as ammonium nitrate. The first responders thought that the misidentified 32% solution, when mixed with the limited quantity of diesel fuel that spilled from the fuel tanks of the trucks involved, would combine to make a highly explosive mixture.

If you have any questions regarding what markings should be on your cargo tanks, or what supporting information should be carried, please contact the WASA office.

## **Eldon Roesler Scholarships■**

The criteria for consideration for the scholarships will remain the same and are as follows:

- be a Wisconsin resident,
- have completed one year of study at a Wisconsin university, college or vocational/technical college in an agricultural discipline or in another discipline with the stated intent of pursuing a career in an agriculture-related field,
- have a minimum of a 2.75 cumulative grade point average on a scale of 4.0, and
- can demonstrate in written form qualities of leadership, academic ability and financial need.

What do you need to do? Just copy both sides of the enclosed form and leave it on your counter and/or mention it to any employees or customers who may have an eligible child. If an applicant is awarded a scholarship that received their application from you, the resulting good will and potential positive publicity can’t do you any harm. And all you have to do is have the applications on your counter or mention it to your employees. Not a bad deal.

Deadline for applications to be received in the WASA office is April 30<sup>th</sup>, so get ‘em in.

## **Looking Down the Road■**

**July 31 & Aug. 1 Grain Quality Management School presented jointly by NGFA & GEAPS  
Marriott St. Louis Airport Hotel**