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Spreading the news

Nutrient Management Strategy Update and Materials

As reported in the last ICNAA newsletter, a statewide nutrient management strategy, which is a joint effort between the Iowa Department of Agriculture, Iowa Department of Natural Resources and Iowa State University, was released for public comment in November. The goal of the strategy is to reduce the nitrogen and phosphorus load in Iowa's waterways that drain into the Missouri River Basin.

Over 1,000 comments were received which included formal comments by Karl Brooks, Region 7 Administrator, US EPA.

"The EPA views the draft Iowa Nutrient Reduction Strategy as a great start to set in motion actions that will begin to yield measurable nutrient pollution reductions from point and nonpoint sources," said Brooks.

Brooks' comments stated that EPA supports states leading efforts to reduce nutrient loads from point and nonpoint sources but stresses that EPA is not mandating specific strategies or solutions and offered suggestions on how to strengthen the policy considerations and point and nonpoint source sections of the document. Currently, the strategy authors are reviewing all of the comments and will amend the strategy appropriately based on the feedback received by all parties.

Iowa State University Extension and Outreach has released multiple materials to aid in the understanding and implementation of practices that were set forth in the strategy. **Inside this newsletter, you will find a handout that details recommended nitrogen and phosphorous practices aimed at reducing nutrient loss for your review and use.** Video presentations by John Lawrence and Matt Helmers along with electronic version of the inserted handout are available for viewing at www.nutrientstrategy.iastate.edu/documents.

ICNAA Secretary and Treasurer, Alan Neese of Neese, Inc. has agreed to serve and represent ICNAA as part of the Nutrient Management Coalition which is a group of stakeholders focused on implementing and measuring the success of the strategy.

The Truth about Subcontractor's in the World of Commercial Ag

By: Brian Cassidy- Independent Commercial Agricultural Insurance Agent

Owners of any type of business are often successful for one main reason; they are knowledgeable in the area of business that they run. That is why they chose to take the risk to be responsible for their own livelihood. Most, however, are not always aware or adequately advised when reaching out for assistance from others to operate daily activities. The overuse of the term "subcontractor" has caused an evolution in the monitoring of regulations that could have substantial implications for any owner. This has been seen in numerous court cases most prominently in the areas of unemployment, liability and worker's compensation benefits. The easiest action for any employer to take is the stance that; "this will never happen to me" or that you can "outsmart the system." As a commercial agricultural insurance agent, I will look to outline a few key points of consideration for any operator to think about. No one goes into business not accepting a small amount of risk, so ultimately it is the decision of all business owners to make the decision that is best for them, but it is the goal of this article to also be aware of the implications for those you employ or "contract."

It is best to first define a subcontractor as understood by the IRS, Iowa Supreme Court, and the insurance industry. Each has its own method for making this determination. The IRS has its "20 questions" and the Iowa Supreme Court has the "8 factor test." Due to our goal of discussing insurance issues vs. taxes; we will present the "8 factor test." These two methods are very similar in tone, therefore please also consider what would happen if a "subcontractor" would decide to file for unemployment and is granted this request. If you failed to purchase unemployment insurance for this employee, financially this could be detrimental to your business.

Factor 1: Is a contract in place between the two parties outlining: expectations, fixed price, liability and most importantly defining the relationship? Normally a contractor and the contractor's insurance provider would like to see proof of general liability insurance, auto liability insurance, other necessary liability insurance (pollution, E&O...) and worker's compensation. In many cases, a contractor and client will want to be named on the subcontractor's policy as additional insured.

Factor 2: Is there an independent nature of the subcontractor's business? Does the subcontractor have a business name set up, advertise, have a name on the side of his auto, or place of business maintained?

Factor 3: Does the subcontractor employ any assistants, employees or subcontractor to assist with the completion of work or projects? Are these individuals under his control or direction and NOT hired by or employed by the general contractor?

Factor 4: Does the subcontractor furnish necessary tools, equipment, supplies and materials?

Factor 5: Will the progress of the work outside of completion of the project be controlled by the subcontractor? As a subcontractor do you have the right to fit the project into your schedule of projects for other contractors? Outside of accommodating a timeline issue of the contractor or client, does the subcontractor determine when he is available and not available for contracting? Basically, does he punch a clock and show up regularly as a requirement of the contractor?

Factor 6: The extended time period of a subcontractor's relationship with the contractor can be the most instrumental factor in determining and employee/employer relationship but does take into consideration larger projects that could place a long term contract or expectation.

Factor 7: How a contractor makes payment to the subcontractor provides evidence through a paper trail. Is an invoice provided for the work performed? Is payment and billing made on a regular schedule or defined within the contract? If a paycheck is received on the same schedule as employees and figured in the same hourly method, this could lead to an assumption of employment.

Factor 8: Is the work being performed a regular form of business or service provided by the contractor? For instance, a home builder does not normally employ anyone to install mechanicals. It is outside of the scope of the service in which they perform, therefore they hire a mechanical subcontractor who specializes in the type of work.

Although every circumstance needs to be evaluated individually, each of the factors listed can be used to prove or disprove an employer's stance on their relationship. I regularly caution all my clients from working to convince themselves or me; but instead evaluate how at the time of an unfortunate occurrence how this "subcontractor," other interested parties, or a jury of their peers will perceive the above factors. Unless defined by a contract and followed through by necessary action; an outsider looking in would see it looks walks and quacks like a duck.

In order for a contractor to protect himself, his insurance provider and his client, it is important for a subcontractor agreement to be put into place before work can start and readdressed before any and all projects. By creating an indemnity section within the contract, a contractor is clearly setting out the expectations for the subcontractor that can be helpful in the event of an occurrence. The contract can set limit requirements for each section of insurance it is felt as necessary. These requirements should equal, exceed or be reasonably in line with the level of risk that is present. A contractor should look to their own contract with the client for the project to make sure that subcontractors are allowed and if specific requirements are present. If a contractor has workers compensation insurance, but his subcontractor chooses not to purchase this protection, it is the right of the contractors work comp insurance provider to charge the contractor for the subcontractor at time of audit. This is an option that insurance companies are beginning to use more frequently. This is a direct reflection of court cases that have required a contractor's worker's compensation carriers to cover a "subcontractor" for an injury. If the court made this decision of an employee/employer relationship and the contractor did not purchase work comp, the medical expenses, loss of wages, and potentially long term disability benefits would be out of pocket for the employer.

Specifically within the commercial agricultural world, a misconception of employee/employer relationship has been made blurry. Most farm policies provide an extension of their farm liability to cover incidental farm labor employees for injuries. The limits provided are usually very low and restrictive. Ongoing employment constitutes a relationship and should not be broad brushed with short term assistance with activities that require outside assistance such as bailing hay. In the state of Iowa, work comp is not required for agricultural employers who have a cash payroll of less than \$2,500 in the calendar year. Also exempt from required coverage would be the president, vice president, secretary and treasurer of a family farm corporation and their spouses, and the parents, brothers, sisters, children, stepchildren and their spouses of either the officers or their spouses. Otherwise, Iowa law requires agricultural employers be treated similar to all other employees and fall under the "8 factors test" for determining an employment relationship. These laws clearly define what "farming" is and any activities that are done for others fall outside of this definition. Therefore when a farmer or his "farm hand" does any work for others, this is outside of this definition.

I am a big believer that all business owners got into business expecting a minor amount of risk. As a society we are placed in a position to continually play the "what if" game to scare us into making purchases, changing life styles or altering daily activity. To most, this can fall on deaf ears. That is why I ask each of my clients or those I advise to look past the initial costs and potential impact to your business financially. The cliché of good help being hard to find can be overcome by a paradigm switch toward making responsible decisions that first ask "what can I do to protect those who work for me?"

Soil & Conservation Week - April 28 - May 5

Iowa Soil and Water Conservation Week is an opportunity to recognize the important conservation work that has been placed on the Iowa landscape and bring attention to the ongoing work by farmers, landowners and urban residents to protect the state's soil and water resources.

Iowa Soil and Water Conservation Week this year is being coordinated with national Stewardship Week, which is sponsored by the National Association of Conservation Districts. This year's Stewardship Week theme is "Where Does Your Water Shed?" and is designed to focus the nation's attention on the stewardship of our natural resources.

There are many ways to participate in this awareness raising event. For more details and a list of events visit www.iowaagriculture.gov/conservationweek.asp.

Master Matrix Passes in 88 Counties

In January, 88 counties notified the DNR that they plan to evaluate construction permit applications and proposed locations for animal confinements by using the master matrix.

Animal producers in these counties must meet higher standards than other confinement producers who also need a construction permit. They must earn points on the master matrix by choosing a site and using practices that reduce impacts on air, water and the community.

With 11 exceptions, all counties will use the matrix during the next 12 months. The following counties will not use the matrix in 2012: Decatur, Des Moines, Iowa, Keokuk, Lee, Mahaska, Osceola, Plymouth, Wapello, Warren and Washington.

Counties that adopt the master matrix can provide more input to producers on site selection, the proposed structures and proposed facility management. Participating counties can also join in DNR visits to a proposed confinement site.

Producers and citizens can obtain more information and view a map of participating counties by looking for preconstruction requirements for permitted confinements at www.iowadnr.gov/afo.

Hay Expo - June 19 & 20

The Farm Progress Hay Expo will head to northeast Iowa for the 2013 event scheduled for June 19 and 20. The nation's largest two-day hay event will be held at Regancrest Holsteins in Waukon, Iowa.

The 27th annual Hay Expo returns to northeast Iowa after several shows were held in Minnesota and central Iowa. The Hay Expo has a history of choosing a new location each year. The show location rotates and has been in Iowa, Wisconsin and Minnesota. The annual event has grown and evolved over the years and continues as the best resource for forage producers to see and learn about the latest technology, products and services for their industry.

The two-day hay extravaganza will showcase mowing, conditioning, baling, hay handling and silage demonstrations on alfalfa. Visitors will be able to compare the various equipment brands operating side by side under actual field conditions.

The 2013 Farm Progress Hay Expo will be held June 19 and 20 from 9 a.m. to 4 p.m. The show site is located off of Highway 9, north of Waukon, Iowa. Admission is free; parking is \$10 per vehicle. The public is welcome. For more information, visit www.HayExpo.com or call 866-264-7469.

ICNAA Classified Listings

Do you have equipment for sale?

Send a picture and equipment information to Joan O'Brien at joano@agribiz.org.

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