

## CONTRACTUAL ARRANGEMENTS FOR FEED & MANURE

Contractual arrangements for feed and manure have existed in Ohio for many years. As livestock operations have grown in size, contracts for feed and manure have become more common. Contracting has allowed livestock producers to focus their attention on efficiently managing their operations by not taking time away from the animals during spring planting and fall harvest. It has also allowed livestock producers to expand their operations without acquiring more land to produce the additional feed needed for the additional animals. Contracting has allowed crop producers to add value to their crops by receiving more money than if they had sold them through normal marketing channels. As both livestock producers and crop producers seek to maximize profit potential, feed and manure contracts of the future will become even more detailed than they currently are.

### Contractual Arrangements for Feed & Forages

Contract feed production arrangements offer several advantages to both livestock operators and crop producers, such as:

- ❑ They allow both the livestock producer and the crop producer to specialize and do what each does best, and have more time available for management activities.
- ❑ Hauling charges and potential road damage can be minimized if the crop producer has sufficient acreage close to the livestock operation to provide the feed and take the manure to nearby fields to be applied.
- ❑ Price risk is minimized for both parties since a guaranteed price is ensured for a set amount of feed delivered.
- ❑ The livestock producer obtains a secure source of feed inputs and the crop producer obtains a stable market and price for their production.
- ❑ The livestock producer, having been relieved from some or all crop production duties, might have more time available for family activities.
- ❑ Specialized crop producers can provide land for manure from expanding livestock operations. The crop producers save on fertilizer costs and reap the fertility benefits of organic matter supplied by the manure.
- ❑ Livestock producers can place all or most of their investment capital into the business of producing meat, milk or eggs, rather than seldom-used field machinery and equipment.
- ❑ Crop producers may add a new business such as manure hauling, silage chopping or hay production and can justify machinery investments needed to produce and harvest high quality forages and feed grains.

However, the following points also need to be kept in mind by both livestock producers and crop producers:

- ❑ Prices set forth in the contract must be profitable for both parties for long-term arrangements to last over time.
- ❑ In event of lower than expected yields, the crop producer will still be expected to deliver the contracted amount of feed, unless the livestock operation allows a smaller feed delivery due to circumstances beyond the crop farmer's control (such as a wet spring, drought, flooding, frost, etc.). To avoid this problem, the crop producer should never contract his/her entire crop.
- ❑ The livestock producer will still be obligated to purchase the amount of feed specified in the contract at the prices specified, even though opportunities to buy feed at lower cost may arise later. If field conditions are less than ideal during harvest, who pays if the field requires one or more tillage passes?
- ❑ Special care must be taken to monitor corn silage and high-moisture corn dry-down rates. Care must be taken not to let haylage wilt too long in the field. When feeds are ensiled too dry, digestibility declines. Timing of harvest and moisture content at time of ensiling controls 95% of forage quality. The right to refuse feeds delivered below minimum acceptable moisture levels can also be written into contracts.

Just as cash rent agreements vary tremendously across Ohio, so do feed contracts. No standard contract or "form" currently exists for all contract feed production arrangements. In fact, it would be extremely difficult to develop a feed production contract that would cover all possible mishaps, such as crop loss due to drought stress, flooding,

wind, hail, fire, herbicide injury, insect damage, plant disease, vandalism, etc. Quality loss can be attributed to some extent using forage analysis with a price premium/discount schedule for various quality levels. But any attempts to write a contract to cover any and all possible mishaps will likely result in a very lengthy, cumbersome document.

Therefore, the first rule of developing a good contract is to do business with another party that you know and trust. Any contract is only as good as the integrity of the parties who sign it. Furthermore, get your agreement in writing. Sit down and draft your contract together with an attorney, and get all your questions answered before signing. You can likely get sample contracts from your county office of the Ohio State University Extension (OSUE), other producers or from commodity organizations.

If your attorney was not the one who drafted the contract, then have your attorney review it before you sign the contract. Attorneys are trained to ask “what if” types of questions, and may point out some potential problems or “gaps” in your agreement. Remember, it will be far cheaper to pay an attorney to review your contract before you sign than it will be to hire one to defend you in a disagreement that results in a lawsuit.

Another important reason to get all agreements in writing is so both parties have legal protection under state law. Keep in mind that a contract is a promise that the law can enforce. While both parties usually have good intentions when entering an agreement, circumstances could change over the life of the contract. The livestock producer could experience a cash shortfall due to an unexpected drop in meat, milk or egg prices and not be able to pay for the contracted crop. Putting the shoe on the other foot, the crop producer may be asked to raise a crop that he/she has very little experience growing and the quality of the crop could be unacceptable to the livestock producer at harvest time.

Arriving at feed prices that are profitable for both parties may be a challenge. Some farmers have used recent average market prices for hay and feed grains to determine contract prices, but this method will not prove suitable for years in which commodity prices fall below one’s cost of production.

One recommendation would be to have each party determine their cost of production, and use this to determine profitable purchase and selling prices. The livestock operator needs to know how much he/she can pay for feed and still earn enough profit to continue operating. The crop producer needs to know what his/her breakeven price is, and must change enough over breakeven to replace machinery and continue operations over time. Arriving at prices that are profitable for both parties will protect both the livestock operator and crop producer from the wide price fluctuations that quite typically affect agriculture on an annual basis, thereby minimizing price risk for both.

The following list identifies some, but not all, contract provisions that you should consider in a feed contract. Again, please consult an attorney for more information.

- Names of all parties involved.
- What feed is to be delivered?
- Who is responsible for planting, fertilizing, spraying, harvesting, etc. of the crop?
- Base price per unit of feed at a specified moisture level. For example, “...Chocolate Milk Dairy Farm will pay \$17.50 per ton of corn silage at 65% moisture.”
- Specify how prices will be adjusted from the base price for varying moisture levels.
- Acceptable quality, moisture range, test weight, etc. If you must have your alfalfa harvested at about 65% moisture for proper packing in a bunker silo, then specify it in your contract. If you want high moisture shelled corn delivered at 25 to 30% moisture, then specify it in your contract. Be sure to specify maximum and minimum acceptable moisture levels of feeds.
- Specify how prices will be adjusted for varying forage quality levels (how will prices increase or decrease with varying RFV levels in alfalfa?)
- “Right of refusal” clauses. If test weight, moisture levels or alfalfa quality is above or below a certain level, does the buyer have the right to refuse the feed?
- How will the feed be tested for moisture and quality? Will a grain probe be required for high moisture corn samples? Who will pull samples? Where will samples be analyzed — at the local grain elevator or using a combine moisture tester? Who will pay for the moisture test?

- ❑ Who will be responsible for harvesting and transporting the crop? Be sure to factor hauling distance into the final price.
- ❑ Specify use of preservatives, kinds and who will apply and pay for them.
- ❑ Determine how and where feed will be weighed. Must every load be weighed, or will every other load or every third load be enough? Who will pay any charges for weighing?
- ❑ Payment method and interest rates. Will it be cash on delivery or installments? Will there be a late payment penalty or default interest rates?
- ❑ Cancellation clause --- what happens if the crop producer can't deliver?
- ❑ An arbitration clause --- in case of dispute, you may wish to identify impartial third parties that can help resolve the dispute. Will the arbitrator's decision be binding?
- ❑ Date and signatures.

### **Contractual Arrangements for Manure**

Like feed contracts, manure contracts can vary greatly. When considering a manure contract it is important to remember that neighbors may very well consider manure a potential nuisance. Public attention in Ohio is becoming more focused on livestock, dairy and poultry manure and its potential for surface water contamination, yet fail to realize that home septic systems probably contribute more to stream pollution than any other single source.

The manure contract should be a part of a livestock producer's nutrient management plan developed with assistance from the local soil and water conservation district (SWCD) office or by a private consultant. This assures that the manure is being managed properly and applied using Best Management Practices (BMPs).

Here are some items commonly covered in manure contracts:

- Amount of land available for manure application and its location.
- Length of the contract. Most are from five to ten years.
- A termination clause allowing either party to terminate the contract with a 30-day notice.
- A termination clause if the land is sold.
- Method(s) of manure application to be utilized.
- Recommended application amount on a gallons or tons per acre basis.
- Manure nutrient analysis, which is typically paid for by the livestock producer.
- Who will record the amount of manure applied and how will the crop producer receive this information?
- Who is responsible if the manure contaminates nearby surface water?
- Who pays for the manure application if it is custom applied?
- Landowner's (or landowners') permission for application to begin so field conditions are acceptable.
- Time of the year application can be made.
- Any payment agreed upon.
- Signatures of both parties.

Historically the livestock owner applied the manure or paid for its application. As livestock operations have grown in size, livestock producers have started looking at the manure produced as a fertilizer source that should be valued for its ability to improve soil tilth and fertility levels instead of a waste product that needs to be disposed of. Livestock producers are starting to ask crop producers to pay for a portion of the manure application expense. As crop producers see the benefit of the manure through better crops, the livestock producer may likely ask the crop producer to pay for a portion of the nutrients in the manure as well.

While manure is a good soil amendment, the crop producer should also be thinking of the costs associated with receiving manure. Is soil compaction likely to occur from the manure application equipment? If so, who pays for deep ripping the field? If the crop producer normally utilizes no-till, is tillage needed to incorporate the manure after application? If the manure is incorporated when applied is the field smooth enough to be planted or is a tillage pass needed? Is there a social cost, such as upset neighbors, to enter into a manure contract?

The crop producer can greatly benefit from a manure contract. It's important that crop fertility programs be adjusted for the nutrients gained from manure by reducing purchased fertilizer inputs. Extension bulletins like the Ohio Agronomy Guide and the Ohio Livestock Manure and Wastewater Management Guide have information on the nutrient content of manure and the nutrient removal rates of various crops.

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