April 26, 2013

VIA E-MAIL:
Tony.Portra@ujs.state.sd.us

The Honorable Judge Tony Portra
Fifth Circuit Court Judge
PO Box 1087
Aberdeen, SD 57402-1087

Re: Anderson Seed Company, Inc. Grain Buyer Bond Matter
Spink County File 12-044

Dear Judge Porta:

We are writing to ask that you reconsider your April 4 decision in the Anderson Seed Company matter. Reconsideration is appropriate because this Court's ruling will change the way grain business is done in South Dakota and it will be at odds with grain business in all other states. Some of those changes are set forth below.

In order to understand why this Court's decision is so significant, the Court should have some background on Delayed Price (DP) contracts. These contracts pass title from the seller (farmer) to the buyer (receiving elevator) but no price is established at the time of entering into the DP. Typically the contracts are verbal agreements between the farmer and elevator that are followed up with a written contract issued by the elevator upon completion of delivery or by request. Unique contract terms can be, and often are, negotiated but not limited to: the total amount of bushels that can applied to a DP contract, duration of time that the grain can remain un-priced, pricing deadlines, methods of pricing and charges for the privilege of putting the grain into the DP contract. These terms are verbally agreed to in advance and verified in the written contract.

DP serves two primary purposes, both which facilitate business flow for farmers and elevators. First, it allows for grain to be delivered by the farmer during a preferred time without having to set a price. This has been a useful tool for farmers who want to deliver when it is most convenient, such as during harvest or before spring field work begins, but retain the ability to price at their discretion or sell for tax or budget planning. The second reason is it gives the elevator the ability to ship grain out in order to accommodate incoming grain of a larger quantity than the physical capacity of the elevator. This is accomplished by the title transfer feature of the DP contract.

The alternative is for incoming grain to be placed into open storage with the farmer as owner of record and no title passed. Under this scenario, the grain becomes a storage liability for the elevator and must be physically accounted for at all times. The risk is that the storage liability quantity becomes greater than the owned grain, the elevator fills up and cannot ship until enough grain is purchased to offset the storage liability. The elevator is not only unable to ship,

but is unable to take in more grain because it is full, limiting the ability of farmers to conduct business.

We agree with the position originally taken by the PUC in its February 11, 2013 "Decision of Receiver; Proposed Findings of Facts, Conclusions of Law, and Decision," that SDCL § 57A-2-201 *does* apply to voluntary credit sales. Thus, a writing confirming the contract sent to the seller satisfies the "writing" requirement of SDCL § 49-45-11.

As you may know, on Monday, April 15, 2013, the PUC issued a Notice to Grain Sellers and Grain Buyers outlining this Court's decision. (See enclosed Notice). This Notice directed that all grain purchases more than 30 days old must be considered cash sales and must be paid by the buyer unless the grain buyer has in its possession a VCS (Voluntary Credit Sale) signed by both parties.

One ramification of this Court's decision and the resulting PUC notice is that it can force farmers to accept prices for their property both at a time and a price that is not in their control. Some farmers defer selling their grain due to tax considerations. Others defer selling their grain under a voluntary credit sale in order to try and achieve the best potential market price for their grain. Forcing grain buyers to pay farmers for their grain within 30 days takes that control away from the farmers.

The 30 day limit also adds risk and confusion for the farmer and elevator. Grain markets change constantly so an issue would arise over what day to use for pricing regarding contracts that go unsigned past 30 days. For example, would it be the date of delivery, the date of last load or at the end of 30 days? All could be very different prices and would cause confusion and disagreements over the intended pricing date.

Elevators cover their risk by offsetting hedging or sales when grain is purchased. If grain were to be priced at any point in this scenario and then goes higher, under this ruling delaying the signing of the contract would mean there is no binding contract and the farmer could opt for the highest price. This would leave the elevator at risk of the price change.

The conscientious elevators will accommodate the added risk by issuing multiple contracts to adhere with the law. However, the added volume of paperwork would become confusing or simply ignored. These elevators may find it better to stop offering these flexible options which in turn leaves farmers with less options and could result in farmers taking business to those companies who knowingly operate outside of the rules.

SDCL § 57A-2-201 should be applied as originally proposed by the PUC. This statute addresses that the contracts are often not signed and returned within 30 days. Some of those reasons are listed below.

- The farmers are not always the ones hauling and may not tell the hired man, the custom harvester, or the trucker his intentions.

- Farmers often start and / or stop hauling without notifying the elevator of their intent.
- Weather conditions can cause the time (of hauling unpriced grain into the elevator) to stretch over 30 days.
- Fall harvest conditions can be such that the commodity harvested changes, for example, from corn to soybeans and then back. This could cause each commodity's harvest to stretch over 30 days.
- Many farmers are gone during the off season, but hire trucking done and may not return contracts within 30 days.

For all the reasons set forth above, we ask that the Court reconsider its letter decision of April 4, 2013. Such a ruling would be in line with business practices of farmers and grain buyers in the world today.

As we are sure this Court is aware, a request for reconsideration is an invitation to the Court to consider exercising its inherent power to vacate or modify its own judgment. As we understand it, there has been no final Order entered and thus, this Court has the option of changing its letter decision dated April 4, 2013. We believe this Court can follow the sound reasoning set forth by the PUC staff in their proposed findings and conclusions and uphold their proposed conclusions of law that SDCL § 57A-2-201 does apply to voluntary credit sales.

Sincerely,	Sincerely,	Sincerely,
Jerry Cope Dakota Mill & Grain	Mike Nickolas North Central Farmers Elevator	Milton Handcock CHS Inc. dba Midwest Cooperatives

pc: Mr. Ray Martinmaas
Martinmaas Dairy
35210 176th Street
Orient, SD 57467

Mr. John Smith, Commission Counsel
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501