

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF KINGSBURY

THIRD JUDICIAL CIRCUIT

IN THE MATTER OF RECEIVERSHIP
OF H&I GRAIN OF HETLAND, INC.

CIV18-

**PETITION TO APPOINT AN
INDEPENDENT RECEIVER**

1. Petitioner South Dakota Public Utilities Commission (Commission) is an agency of the state of South Dakota created by SDCL 49-1-8. The South Dakota Attorney General, through its Special Assistant Attorney General assigned to the Commission, joins in instituting this action at the request of the Commission pursuant to SDCL 1-11-1 and 49-1-14.
2. The Commission hereby requests the above Court to appoint an independent receiver pursuant to SDCL 49-45-16.1 and SDCL Chapter 21-21.
3. In support of its Petition, the Commission states:
 - a. In 2017, H&I Grain was a licensed grain dealer in the State of South Dakota and possessed a grain buyer's license to do business at 205 Main Avenue, Hetland, South Dakota 57212.
 - b. H&I Grain had locations in Hetland, Arlington, and De Smet, South Dakota. Each location had a separate grain buyer license issued by the Commission. Copies of H & I Grain's most recent licenses are attached and incorporated by reference as Exhibit A.
 - c. On or about June 16, 2017, the Commission's Grain Warehouse Division (Staff) received a draft copy of H&I's FY16 balance sheet and profit and loss statement. The draft balance sheet showed significant deficiencies in working capital and equity. Staff then sent two inspectors to conduct a detailed inspection of the facility and books to determine if the risk to producers warranted an immediate suspension.
 - d. On June 23, 2017, pursuant to SDCL 49-45-16, the Commission issued an Order suspending H&I's grain buyer license. A copy of the Order is attached and incorporated by reference as Exhibit B.
 - e. On July 24, 2017, pursuant to SDCL 49-45-16, the Commission revoked H&I Grain's grain buyer license due to insolvency. A copy of

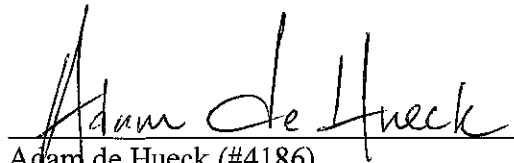
the Order is attached and incorporated by reference as Exhibit C.

- f. On April 12, 2018, the Commission issued an Order for Distribution of Bond Proceeds. A copy of the Order is attached and incorporated by reference as Exhibit D.
- g. On August 6, 2018, attorney Gary Schumacher, representing a group of grain sellers (plaintiffs in 38CIV.17-000045), filed a Petition to Appoint South Dakota Public Utilities Commission as Receiver.
- h. On August 8, 2018, pursuant to SDCL 49-45-16.1 the Commission issued an Order to request permission from the circuit court to take receivership of H&I Grain for the sole purpose of selling the corporation to a consortium of individuals and entities who have not been fully paid for grain sold to H&I Grain. A copy of the Order is attached and incorporated by reference as Exhibit E.
- i. On September 19, 2018, Circuit Court Judge Patrick T. Pardy denied Commission's Petition.
- j. On October 10, 2018, attorney Gary Schumacher, representing a group of grain sellers (plaintiffs in 38CIV.17-000045), filed a Second Petition to Appoint South Dakota Public Utilities Commission as Receiver.
- k. On November 21, 2018, pursuant to SDCL 49-45-16.1 the Commission issued an Order to request permission from the circuit court to appoint an independent receiver. A copy of the Order is attached and incorporated by reference as Exhibit F.
- l. The complete administrative record and procedural history is found at <http://puc.sd.gov/Dockets/Grainwarehouse/2017/gw17-001.aspx> and <http://puc.sd.gov/Dockets/Grainwarehouse/2017/gw17-002.aspx>.
- m. Pursuant to SDCL 49-45-16.1, the Commission now petitions this Court to appoint an independent receiver to take receivership of H&I Grain.

WHEREFORE, the Commission requests that this Court:

1. Issue an order pursuant to SDCL 49-45-16.1 and SDCL Chapter 21-2 appointing an independent receiver.
2. Waive surety requirements imposed by SDCL 21-21-6 and 21-21-8 because the Commission is an agency of the state of South Dakota and the Commissioners are covered under the state employees' blanket bond pursuant to SDCL 49-1-6.

Dated this 12th day of December 2018.


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