



Dustin Johnson, Chair  
Gary Hanson, Vice Chair  
Steve Kolbeck, Commissioner

# SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue  
Pierre, South Dakota 57501-5070  
[www.puc.sd.gov](http://www.puc.sd.gov)

Capitol Office  
(605) 773-3201  
(605) 773-3809 fax

Warehouse  
(605) 773-5280  
(605) 773-3225 fax

Consumer Hotline  
1-800-332-1782

March 1, 2007

LW Sales, Inc.  
Larry Wheeting  
PO Box 668  
Groton, SD 57445

**VIA US CERTIFIED MAIL**

Re: IN THE MATTER OF LW SALES/LW SEED'S FAILURE TO OBTAIN  
NECESSARY LICENSURE PRIOR TO OPERATION AS A GRAIN DEALER IN THE  
STATE OF SOUTH DAKOTA

Dear Mr. Wheeting:

Enclosed please find a copy of Staff's Motion for an Order to Show Cause in the above captioned matter. This is intended as service upon you by certified mail.

Very truly yours,

Kara Van Bockern  
Staff Attorney

Enc.

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF LW SALES/LW SEED'S )</b>	<b>MOTION FOR AN ORDER TO</b>
<b>FAILURE TO OBTAIN NECESSARY )</b>	<b>SHOW CAUSE</b>
<b>LICENSURE PRIOR TO OPERATION AS A )</b>	
<b>GRAIN DEALER IN THE STATE OF SOUTH )</b>	<b>GD07-001</b>
<b>DAKOTA )</b>	

Comes now the staff of the South Dakota Public Utilities Commission ("Commission"), pursuant to SDCL 49-45-1 through SDCL 49-45-9 and ARSD 20:10:12, and moves the Commission to issue an Order to Show Cause, pursuant to 20:10:01:45, in the above-entitled manner. By this Motion, staff requests that the Commission assess a civil monetary fine against LW Sales Inc. ("LW Sales") and further enjoin it from operation as a grain dealer in the state of South Dakota until such time as it acquires the necessary licensure. In support of this Motion, staff asserts as follows:

**BACKGROUND**

On February 15, 2007, the Grain Warehouse Division ("GW Division") of the Commission received a written complaint regarding a possible grain dealer license violation. Specifically, it appeared as if LW Sales was acting as a grain dealer without a license as is required by SDCL 49-45-1. The complainant had firsthand knowledge of the violation. (See Affidavit of Travis Sitter, Exhibit A).

Staff had reason to investigate LW Sales in October 2006, after a similar complaint. James Mehlhaff, the Director of the GW Division visited the premises of LW Sales and interviewed Larry Wheeting, the owner of LW Sales. During the course of that interview Mr. Wheeting admitted that he had acted as a grain dealer without being licensed, but explained that it was an isolated incident that would not be repeated. On November 1, 2006, Mr. Mehlhaff sent Mr. Wheeting a letter warning him that if he continued to act as a grain dealer without a license that formal action may be taken. (See GW Division Warning Letter, Exhibit B and Affidavit of James Mehlhaff, Exhibit C.) Specifically, LW Sales asserted the sale of grain in 2006 was a one-time occurrence based on unique circumstances. It further indicated it did not intend to act as a grain dealer and would not sell grain. (Exhibit B)

After a conversation with Mr. Wheeting regarding the most recent Complaint, he asserted he sold his product in the form of seed rather than grain. The GW Division proceeded to investigate to either substantiate or disprove the belief Mr. Wheeting was indeed selling grain. Part of the investigation performed by Mr. Mehlhaff included an inspection of LW Sales' operations. The inspection reflects noncompliance with seed sales requirements. It is staff's contention that LW Sales does indeed intend to operate as a grain dealer and is selling grain. LW Sales must, therefore, obtain the necessary licensure from the Commission.

LW Sales has clearly been warned and informed of the law and possible results of a violation thereof. Staff now seeks the Commission's assistance to both prevent future violations of the applicable grain dealer rules and regulations and further, to levy a civil fee for this particular violation.

#### **ARGUMENT IN SUPPORT OF MOTION**

1. The Commission has jurisdiction over this matter pursuant to SDCL 49-45-1 through SDCL 49-45-9 and ARSD 20:10:12.
2. Pursuant to 20:10:01:45, this Motion has been served by certified mail upon LW Sales at 300 Railroad Ave., Groton, SD 57445. The purpose of this service is to give notice of the facts and conduct which warrant staff's request that the Commission issue a fine pursuant to 49-45-1 and enjoin LW Sales from further grain sales without the proper license.

It is staff's position that LW Sales is guilty of the following:

- a) Failure to obtain necessary licensure as required in SDCL 49-45-1 prior to conducting business as a grain dealer as defined by SDCL 49-45-1.1.

Pursuant to 20:10:01:45, Affidavits from Travis Sitter of Hesco, Inc. and James Mehlhaff of the PUC Warehouse Division are attached and will also be served via certified mail on LW Sales. Consistent with the allegations in this Affidavit, staff requests the Commission serve notice that the following issues will be heard by the Commission:

1. Whether LW Sales violated the above grain dealer statutes,
2. Whether an injunction should be issued against LW Sales; and,

3. What penalties, if any shall be imposed if LW Sales is found guilty of such violations.

Signed and dated this 1 day of March, 2007.



Kara Van Bockern  
Staff Attorney  
South Dakota Public Utilities Commission  
500 E. Capitol Ave  
Pierre, SD 57501  
(605) 773-3201

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF LW SALES/LW SEED'S )      AFFIDAVIT OF TRAVIS  
FAILURE TO OBTAIN NECESSARY )      SITTER OF HESCO, INC.  
LICENSURE PRIOR TO OPERATION AS A )  
GRAIN DEALER IN THE STATE OF SOUTH )      GD07-001  
DAKOTA )**

Travis Sitter, after being duly sworn upon his oath, hereby states and deposes as follows:

1. My name is Travis Sitter. I work as a Commodity Merchandiser for Hesco, Inc. (herein "Hesco") of Watertown, South Dakota.
2. Hesco is a licensed and bonded grain dealer in the state of South Dakota.
3. I learned of possible grain sales by LW Sales/LW Seed (herein "LW") of Groton, South Dakota. As I understand the law, a grain dealer license is required to purchase grain for resale in the state of South Dakota. I believe that LW does not have a grain dealer license, but do not know that as a fact.
4. This issue was first brought to Hesco's attention in the fall of 2006. Wayne Kruger, the logistics manager at Hesco, first had suspicion of the license violation. His suspicion was aroused during a conversation with a representative from D&E Transport (herein "D&E").
5. Mr. Kruger inquired with D&E whether a truck was available to haul on behalf of Hesco.
6. The D&E representative indicated they did not have equipment available at the time. He stated, however, they had a truck scheduled out of Groton, South Dakota, delivering to the same ultimate location as we needed. It appeared as if LW contracted with D&E.
7. Later that fall, D&E mistakenly sent an invoice that was actually intended for LW to Hesco for payment.. The invoiced shipment was for the above mentioned situation. LW was clearly selling and shipping grain despite its failure to hold a grain dealer license.
8. As a result of the above situation, Barb Smith, a Hesco employee, contacted the PUC in October of 2006 to report the violation.
9. As I understand it, the PUC investigated the report and found that LW owner Larry Wheeting had purchased grain for resale without a grain dealer license and was warned for the violation.

10. During the week of February 5, 2007, Mr. Krueger received a call from a representative at D&E Transport stating that they continued to ship grain out of Groton, South Dakota, as arranged by Leanne Johnson, a former Hesco employee, believed to be acting as a sales agent for LW.
11. I have good reason to believe that LW is purchasing grain for resale without being licensed as a grain dealer in the state of South Dakota.

Dated this 26<sup>th</sup> day of February, 2007.

  
\_\_\_\_\_  
Travis Sitter  
Hesco, Inc.

STATE OF SOUTH DATKOA    )  
  ) SS  
COUNTY OF Codington    )

On this 26<sup>th</sup> day of February, 2007, before me personally appeared Travis Sitter, known to me to be the person who is described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 5-11-2008

\_\_\_\_\_  
(SEAL)

**LARRY WHEETING  
LW Sales Inc.**

300 Railroad Ave. • P.O. Box 668  
Groton, SD 57445  
Bus. 605-397-8111  
Bus. Fax 397-8361  
Home 605-397-4456

EXHIBIT B

**SOUTH DAKOTA  
UTILITIES COMMISSION**

500 East Capitol Avenue  
Pierre, South Dakota 57501-5070  
www.puc.sd.gov

Capitol Office  
(605) 773-3201  
(605) 773-3809 fax

Transportation/Warehouse  
(605) 773-5280  
(605) 773-3225 fax

Consumer Hotline  
1-800-332-1782

November 1, 2006

Larry Wheeting  
LW Sales Inc.  
PO Box 668  
Groton, SD 57445

Dear Larry:

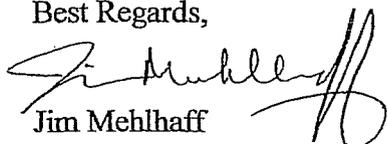
This letter is a follow up to our recent conversation regarding your operation of LW Sales Inc.

The Warehouse Division received reports that LW Sales was operating as a grain dealer without a license. The reports that we received were that you had purchased millet and sold it in to the mushroom trade. When we visited about this report, you admitted that the transaction had taken place but that it was an isolated incident resulting from your purchase of millet that was to be used for seed. The millet turned out to be unsuitable for that purpose so it was sold as described.

As we discussed you are not a licensed grain dealer and have no intentions of becoming one. Therefore when you engage in transactions such as this you are in violation of SDCL 49-45-1 which is a class 2 misdemeanor. In addition to the criminal penalties for violations of this statute the Commission may assess civil penalties of up to \$5000.00. This is a serious matter and if we receive additional reports of activities such as this we will investigate them and may take further.

This letter is meant to be a warning only. We have no plans of taking any further actions at this time; however, when we have an inspector in your area we may stop by to say hello. If you have any questions or if there is anything we can do to help you please do not hesitate to call our office.

Best Regards,



Jim Mehlhaff  
Director  
PUC Warehouse Division

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF LW SALES/LW SEED'S FAILURE TO OBTAIN NECESSARY LICENSURE PRIOR TO OPERATION AS A GRAIN DEALER IN THE STATE OF SOUTH DAKOTA</b>	<b>) ) ) ) )</b>	<b>AFFIDAVIT OF JAMES MEHLHAFF, PUC WAREHOUSE DIVISION  GD07-001</b>
--	----------------------------------	--

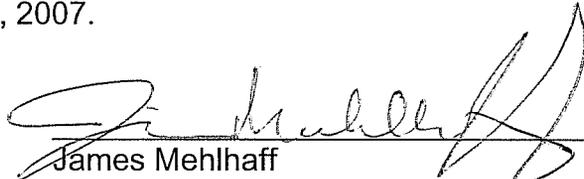
James Mehlhaff, after being duly sworn upon his oath, hereby states and deposes as follows:

1. My name is James Mehlhaff. I am the Director of the Warehouse Division with the South Dakota Public Utilities Commission (herein "PUC").
2. The Warehouse Division is charged with licensing and regulating grain dealers in the state of South Dakota under South Dakota Codified Law (herein "SDCL") Chapter 49-45.
3. In October of 2006, I received reports that LW Sales Inc. (herein "LW Sales") was purchasing grain for resale without a South Dakota Grain Dealer's License. After unsuccessfully trying to reach LW Sales by phone, I traveled to Groton, South Dakota, and visited the offices of LW Sales and met with Larry Wheeting, the President of LW Sales. At that time, Mr. Wheeting told me that he had purchased two loads of millet for the purpose of marketing it as seed. He went on to state that the millet did not germinate and he sold it to the mushroom industry. Mr. Wheeting acknowledged that this type of sale required him to be licensed by the PUC, but explained that it was an isolated incident that would not be repeated.
4. On November 1, 2006, I sent Mr. Wheeting a letter recounting our conversation and warned him that if we received future complaints we would investigate them and may take further action.
5. On February 15, 2007, I received another complaint that LW Sales was purchasing grain for resale.
6. On February 21, 2007, I contacted D&E Transport to confirm that they had hauled additional loads of millet after November 1, 2006, to the same destination.
7. On February 21, 2007, Mr. Wheeting left a message on my voicemail that he had heard from a trucker that he was being investigated and wanted to discuss the matter.
8. On February 22, 2007, I returned a call to Mr. Wheeting with Kara Van Bockern present to discuss the complaint against LW Sales. Mr. Wheeting explained that he was selling millet seed to Phillips Mushroom Farms (herein "Phillips") and that he did not know what they were doing with it. He also stated that he had a letter

from his attorney indicating that he was not required to have a Grain Dealer's License to sell seed to Phillips. Mr. Wheeting faxed me a copy of the letter from his attorney along with a copy of a sales confirmation with Phillips.

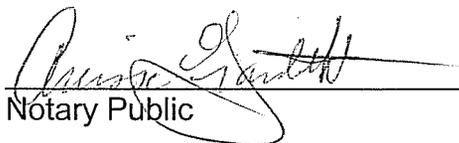
- 9. On February 22, 2007, I contacted other known seed dealers to compare their costs in producing millet seed to the sale price that LW Sales had indicated on the sales confirmation with Phillips. I also reviewed the South Dakota Seed Standards and Labeling Statutes to see what was required to label grain as seed. This information prompted me to contact Brad Berven with the South Dakota Department of Agriculture (herein DOA) Agronomy Services Division. Mr. Berven offered to arrange for me to accompany a DOA inspector on an inspection of LW Sales.
- 10. On February 27, 2007, I accompanied DOA Inspector Chuck Tollefson on an inspection of LW Sales. During the course of the inspection and interview, we found that LW Sales had not performed the tests required under SDCL Chapter 38-12A to label the millet sold to Phillips as seed. We found that several hundred bags of millet seed were labeled as if the required tests had been performed when the tests had clearly not been done. We also found that several hundred other bags were labeled with information regarding purity, but did not meet the requirements to be sold as seed.
- 11. In my opinion, LW Sales is in violation of SDCL 49-45-1, an infraction for which they have been warned previously.

Dated this 1st day of March, 2007.

  
 \_\_\_\_\_  
 James Mehlhaff  
 South Dakota Public Utilities Commission

STATE OF SOUTH DATKOA    )  
   ) SS  
 COUNTY OF HUGHES        )

On this 1 day of March, 2007, before me personally appeared James Mehlhaff, known to me to be the person who is described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same.

  
 \_\_\_\_\_  
 Notary Public

My Commission Expires:  
7-1-2007  
 (SEAL)