

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

<b>IN THE MATTER OF HIGH COUNTRY MERCANTILE, INC.</b>	)	<b>COMPLAINT AND REQUEST FOR INJUNCTION</b>
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	)	
	)	<b>GW19-002</b>
	)	

COMES NOW, the Staff of the South Dakota Public Utilities Commission (Commission), pursuant to SDCL 49-45-1 and hereby requests the Commission issue and Order finding High Country Mercantile, Inc. (HCM) to be in violation of SDCL 49-45-1 and enjoin HCM from continuing to buy grain in the state of South Dakota without a grain buyer license, and to issue a fine for the violations. In support of its Complaint, Staff states as follows:

1. HCM is a grain buyer located in Wyoming and not licensed to do business in South Dakota.
2. On or about January 30, 2019, Staff first became aware that HCM was purchasing grain in this state. See Affidavit of PUC Grain Inspector/Administrator Paul Kenefick-Aschoff.
3. Staff immediately contacted HCM officials to inform HCM that it needed to obtain a grain buyer license to purchase grain. Staff followed up this contact several times and provided HCM officials with the legal authority requiring it to obtain a grain buyer license. See Affidavit of Paul Kenefick-Aschoff.
4. On or about March 25, 2019, Staff received from HCM a copy of its license application for a Class B grain buyer's license. However, Staff did not receive the requisite financial statements or bond in order to process the application. In addition, necessary information was missing from the application.
5. On or about April 18, 2019, Staff received payment of the licensing fee from HCM. At this time, Staff reminded HCM of the need to provide financials and a bond, but neither have been received to date. See Affidavit of Paul Kenefick-Aschoff.
6. As of the date of this filing, HCM has not provided the following necessary items:
  - a. An original completed license application,
  - b. A financial statement, and

c. A bond.

7. Staff learned that HCM has made more than 100 purchases of grain without a license, more than 30 of which were made after HCM was notified it needed a license.

Over the last several months, Staff has worked to assist HCM officials in understanding South Dakota laws and regulations and complying with the same. Unfortunately, HCM has not only failed to comply but has continued to purchase grain in this state without a license. SDCL 49-45-1 provides:

Grain buyer's license required--Violation as misdemeanor--  
Injunction--Civil fine. Before transacting the business of a grain buyer in this state, a person shall obtain a grain buyer license from the commission. A violation of this section is a Class 1 misdemeanor. Each purchase of grain without a license is a separate offense.

Operation as a grain buyer without a license may be enjoined upon complaint of the commission. In addition, the commission may assess a civil fine against an unlicensed grain buyer in the amount of one thousand dollars for each purchase of grain up to a maximum fine of twenty thousand dollars.

A grain buyer is defined by SDCL 49-45-1.1(3) as “any person who purchases grain for the purpose of reselling the unprocessed grain or who purchases three hundred thousand dollars worth or more of grain directly from producers in a calendar year.” HCM is a grain broker that purchases grain for the purpose of reselling the unprocessed grain. HCM meets the definition of a grain buyer in South Dakota and is required to have a license. Therefore, each time HCM purchased grain without a license, HCM committed a separate violation, the penalty for which is one thousand dollars up to a maximum find of twenty thousand dollars.

Because HCM has continued to purchase grain even after Staff spent months attempting to assist them in obtaining a grain buyer license and gave them abundant warning of the violations, Staff believes that it is now necessary to take formal action. Given the number of

times HMC purchased grain, it has certainly accumulated enough violations to meet the maximum penalty. Therefore, it is of concern to Staff that without an injunction, HCM is without incentive to comply with the South Dakota grain laws, making it necessary to seek an injunction to prohibit HCM from continuing to purchase grain without a grain buyer license. SDCL 49-45-1 provides that “a grain buyer without a license may be enjoined upon complaint of the commission.”

### **Conclusion**

WHEREFORE, Staff respectfully requests the Commission find HCM to have committed a violation each time it purchased grain in South Dakota without a license and issue a fine of up to \$20,000 for the violations. In addition, Staff requests the Commission apply to the circuit court for an injunction pursuant to SDCL 49-45-1.

Dated this 1st day of August 2019.

  
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