

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

IN THE MATTER OF HIGH COUNTRY)	
MERCANTILE, INC.)	AMENDED
)	COMPLAINT
)	
)	GW19-002
)	

Staff of the South Dakota Public Utilities Commission (Commission), pursuant to SDCL 49-45-1, hereby requests the Commission issue an Order finding High Country Mercantile, Inc. (HCM) to be in violation of SDCL 49-45-1 and 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 the hearing on the request for an injunction, HCM had provided some but not all of the information required to obtain a license.
7. Prior to filing this docket, 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.

8. On August 7, 2019, a hearing was held regarding Staff's request to seek an injunction. The Commission voted 2-1 to grant the request.
9. After the August 7, 2019 hearing, HCM submitted the information necessary to obtain a license.
10. On August 12, 2019, HCM was given a grain buyer license. Therefore, an injunction is no longer necessary and will not be pursued at this time.
11. Following the August 7, 2019 hearing, Staff became aware of additional purchases made by HCM without a license, including one the day following the hearing.

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 fine of twenty thousand dollars.

Throughout the hearing on August 7, 2019, HCM's owner stated that the company failed to obtain a license because they were so busy during the licensing time. While Staff sympathizes with the difficulties of running a business and staying on top of the workload, hundreds of licenses are issued by this office every year, almost all of them to companies that submit their applications on time, almost none of whom need repeated reminders to do so. If all recourse were to be removed from the requirement to obtain a license prior to buying grain, and all of the hundreds of locations we license were to become dilatory in submitting their license renewal applications prior to July 1, Staff's task of issuing licenses would become impossible, and the people of South Dakota would suffer. For this reason, Staff views it very seriously when a company refuses to comply with licensing laws.

Because HCM 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 HCM purchased grain, it has certainly accumulated enough violations to meet the maximum penalty. Of greatest concern to Staff is the fact that not only did HCM continue to buy grain on numerous occasions after being informed that a license was required to do so, but HCM bought grain in South Dakota without a license the very next day after coming before the Commission to respond to Staff's request for an injunction.

After the August 12, 2019 hearing, Staff looked into the purchases in South Dakota listed in the accounts payable information submitted by HCM. To the credit of HCM, none of the companies Staff contacted had encountered any late payment or nonpayment issues with HCM.

However, Staff discovered several additional purchases, including the purchases on August 8, 2019, discussed above. Staff is generally aware that more loads of grain were purchased in South Dakota, but specific information was not available at the time of this filing. The following chart depicts the purchases made by HCM after HCM was notified of the license issue.

[BEGIN CONFIDENTIAL]

Seller	Number of Loads	Most recent purchase
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[END CONFIDENTIAL]

As shown in the chart, HCM purchased at least 78 loads of grain since being notified that it was illegal to do so. At least one purchase was made after the Commission ruled in favor of pursuing an injunction.

Conclusion

SDCL 49-45-1 provides for both civil and criminal penalties for buying grain without a license. For the purposes of both the civil and criminal penalties, each purchase of grain is a separate offense. At the hearing on August 7, 2019, Ms. Connally stated that HCM has been operating in South Dakota for fourteen or fifteen years. HCM has never had a grain buyer license in this state. Staff is aware of over one hundred purchases without a license. While the civil penalty is capped at \$20,000, the number of misdemeanor offenses is not capped and could be quite large.

Given the number of grain warehouses and grain buyers in this state, Staff does not have the time or resources to be hand-holding and begging operators for several months to get them to follow the law.

Most alarming is the fact that HCM continued to purchase grain without a license not only after they were informed of the violation, but after the complaint was filed, and even after the hearing on the injunction. Given this disregard for South Dakota regulations, as well as the amount of time Staff was forced to spend attempting to get HCM to come into compliance, a civil fine is appropriate in this case.

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.

Staff requests this matter be heard at the Commission's regularly scheduled meeting on September 3, 2019.

Dated this 13th day of August 2019.



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