

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

<b>IN THE MATTER OF THE PUC STAFF'S )</b>	<b>COMPLAINT AND REQUEST</b>
<b>COMPLAINT AGAINST FEARLESS GRAIN )</b>	<b>FOR INJUNCTION</b>
<b>MARKETING, LLC AND JEREMEY FROST )</b>	
<b>)</b>	<b>GW21-001</b>

COMES NOW, the Staff of the South Dakota Public Utilities Commission (Staff), pursuant to SDCL 49-45-1, and hereby requests the Commission issue and Order finding Fearless Grain Marketing, LLC (Fearless) and Jeremey Frost (Frost) to be in violation of SDCL 49-45-1 and 49-45-10 and to pursue an injunction to enjoin Fearless and Frost from continuing to purchase grain in the State of South Dakota without a grain buyers license, and to issue a fine for the violation. Staff further pursues a declaration from the Commission that this violation constitutes good cause to deny a grain buyer license to Jeremey Frost and to any entity with Frost serving as an owner, manager or chief executive officer, or any other managerial or advisory position of a grain buyer. In support of its Petition, Staff asserts as follows:

1. Fearless Grain Marketing LLC is a grain buyer located in Onida, South Dakota.
2. Documents filed with the South Dakota Secretary of State list Jeremey Frost as the sole owner and registered agent of Fearless Grain Marketing, LLC.
3. Neither Fearless nor Frost are licensed to operate as a grain buyer in South Dakota. See Affidavit of Paul Kenefick-Aschoff.
4. Neither Fearless nor Frost has ever been licensed as a grain buyer in South Dakota.
5. In 2018, Staff provided information to Frost about licensing requirements to operate as a grain buyer. See Affidavit of Paul Kenefick-Aschoff.
6. On or about December 28, 2020, Staff received an application for a Class B grain buyer's license from Frost for a Fearless Grain Marketing, Storage & Arbitrage, LLC. (Fearless MSA) The Application did not include a bond or license fee. See Affidavit of Paul Kenefick-Aschoff.
7. Staff reviewed Fearless MSA application and financial documents. On or about January 29, 2021, Fearless MSA notified Staff the company was unable to obtain a bond. See Affidavit of Paul Kenefick-Aschoff.
8. On February 18, 2021, Staff informed Frost that Fearless MSA would not qualify for a license based on inability to secure a bond. See Affidavit of Paul Kenefick-Aschoff.

9. On February 18, 2021, Staff reached out to Frost to again explain the state licensing requirements and cautioned not to purchase grain without a valid license. See Affidavit of Paul Kenefick-Aschoff.
10. Staff continued to monitor Fearless and Frost and on or about March 10 2021, Staff became aware that Fearless may again be purchasing grain without a license. Staff opened an investigation and began a full inspection of Fearless' books. See Affidavit of Sarah McIntosh.
11. On March 17, 2021, Staff conducted an inspection of Fearless. See Affidavit of Sarah McIntosh.
12. Through its investigation of Fearless, Staff learned that Fearless has made more than 23 purchases of grain without a license going back to at least July 8, 2020. See Affidavit of Sarah McIntosh.
13. Through its investigation, Staff learned that Fearless/Frost had not provided payment for a number of these purchases within 30 days of delivery, as required by SDCL 49-45-10.
14. On March 17, 2021, after learning of these purchases, Staff reached out to Fearless and Frost indicating Staff found evidence of a violation and indicated Staff's willingness to work to resolve the matter, with the expectation Fearless and Frost cease grain buying activities.
15. On or about March 30, 2021 Staff became aware that Fearless/Frost had purchase contracts that were not disclosed to Staff on the March 17, 2021 inspection. See Paul Kenefick-Aschoff Timeline.

### **Legal Authority**

SDCL 49-45-1 provides:

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.

SDCL 49-45-1.1(3) defines a grain buyer as “any person who purchases grain for the purpose of reselling the unprocessed grain or who purchased three hundred thousand dollars worth or more of grain directly from producers in a calendar year.

SDCL 49-45-10 provides:

A grain buyer shall pay the purchase price to the owner or the owner's agent for grain upon delivery or demand of the owner or agent unless payment is to be made in accordance with the terms of a voluntary credit sale which complies with the requirements of this chapter and rules promulgated thereto. Full payment of any cash purchase shall be made by the grain buyer within thirty days of final delivery.

Fearless is a grain broker that purchased grain for resale on multiple occasions and with knowledge that staff considered the purchases fell under SDCL 49-45-1. Based on the conduct outlined in this complaint, Fearless acted as a grain buyer in South Dakota and is required to have a license. Therefore, each time Fearless purchased grain without a license, Fearless committed a separate violation, the penalty for which is one thousand dollars up to a maximum fine of twenty thousand dollars. Considering Frost and Fearless' seemingly blatant disregard for state law and Staff's warnings and the financial condition observed in the inspection, Staff believes Fearless and Frost's conduct put producers in undue risk of financial harm and therefore the maximum penalty should be imposed.

### **Conclusion**

WHEREFORE, the Staff respectfully requests the Commission find Fearless Grain Marketing, LLC to have committed a violation of SDCL 49-45-1 for each instance Fearless purchased grain in South Dakota without a license and issue the maximum permitted fine of \$20,000.

In addition, Staff requests the Commission issue a ruling that these violations constitute good cause to deny a grain buyer license to Jeremy Frost and to any entity with Frost serving as an owner, manager or chief executive officer, or any other managerial or advisory position of a grain buyer.

Further, given that Fearless/Frost have not complied with staff's request to cease grain buying activities and considering Fearless and Frost's financial situation poses an undue risk to

producers, Staff also requests the Commission immediately apply to the circuit court for an injunction against both Fearless Grain Marketing, LLC and Jeremy Frost pursuant to SDCL 49-45-1.

Due to the risk the violations pose to the public, Staff submits there is good cause to hold a hearing on less than ten days' notice and requests an expedited hearing.

Dated this 31st day of March 2021.



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