

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

IN THE MATTER OF THE PUC STAFF'S) COMPLAINT AGAINST ORGANIC) PRODUCERS OF IOWA, NEBRASKA,) AND SOUTH DAKOTA, NORTH BEND,) NEBRASKA)	COMPLAINT GW22-005
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COMES NOW, the Staff of the South Dakota Public Utilities Commission (PUC staff), pursuant to SDCL 49-45-1 and hereby requests the Commission issue an Order finding Organic Producers of Iowa, Nebraska, and South Dakota (OPINS) to be in violation of SDCL 49-45-1 and to issue a fine for the violation. In support of its Petition, PUC staff asserts as follows:

1. OPINS is a grain buyer located in North Bend, Nebraska.
2. OPINS does not appear to be registered with the South Dakota Secretary of State.
3. Organic Producers Iowa Nebraska South Dakota Cooperative is listed as a domestic corporation with the Nebraska Secretary of State with its principal office located in North Bend, Nebraska.
4. OPINS held a license to operate as a grain buyer in South Dakota between February 19, 2019, and June 30, 2019.
5. On or about May 15, 2019, PUC staff received an email from OPINS indicating OPINS would not renew its grain buyer license for the year beginning July 1, 2019, and OPINS would suspend operations in South Dakota. (Attachment 4).
6. On October 29, 2021, PUC staff inspector Justin Blais emailed OPINS to schedule an inspection, specifically to ensure all producers had been paid from prior purchases and to ensure OPINS had not engaged in grain purchases without a license. (Attachment 5).
7. On October 29, 2021, PUC staff received an email response to Mr. Blais' inquiry from OPINS stating OPINS needed to renew their license in South Dakota. (Attachment 5).
8. On November 1, 2021, PUC staff explained licensing requirements and provided information on how OPINS could obtain a grain buyer license.
9. On November 8, 2021, PUC staff conducted an inspection on OPINS which showed that OPINS continued purchasing grain in South Dakota, purchasing 33 loads of grain

between OPINS' license expiring on June 30, 2019, and November 8, 2021. (Affidavit of Justin Blais).

10. On March 8, 2022, PUC received a complete application from OPINS, and on March 10, 2022, PUC issued a grain buyer license to OPINS, effective March 8, 2022.
11. To Staff's knowledge, OPINS did not have a valid bond to cover any of the grain purchases in South Dakota. (Affidavit of Paul Kenefick-Aschoff).

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 49-45-9 provides:

Before any grain buyer license is issued by the commission, the applicant shall file with the commission a bond conditioned to secure the faithful performance of the applicant's obligations as a grain buyer and full and unreserved compliance with the laws of this state and the rules of the commission, relating to the purchase of grain by the grain buyer. The bond is for the specific purpose of protecting persons selling grain to the grain buyer. However, the bond may not benefit any person entering into a voluntary credit sale with a grain buyer. Any person who does business as a grain buyer without a bond is guilty of a Class 1 misdemeanor. Each day a person conducts the business of a grain buyer without a bond is a separate offense.

Analysis

It appears that OPINS continued to operate as a grain buyer in South Dakota after OPINS' license expired on June 30, 2019. When PUC staff conducted an inspection of OPINS, it was determined that OPINS purchased 33 loads of grain for resale in South Dakota during a period in which OPINS did not hold a valid grain buyer license. This is especially concerning because PUC staff specifically discussed licensing requirements to operate as a grain buyer with OPINS in 2019, before OPINS' license expired. At that time, OPINS asserted to PUC staff that OPINS would not be renewing its license due to cost and OPINS would suspend its work in South Dakota when its FY2019 license expired. OPINS only sought a license renewal in 2021 after PUC staff contacted OPINS to conduct an inspection to ensure OPINS had not been purchasing without a license. Additionally, inspection of records showed instances of slow payment. Due to the number of purchases made without a license, and that OPINS made purchases after allowing its license to expire, it is appropriate to impose the maximum penalty permitted by statute of \$20,000.

Conclusion

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

Additionally, because OPINS was operating as an unlicensed grain buyer, there is not applicable bond coverage for any purchases made in South Dakota. Given the number of purchases made and OPINS' failure to comply with state licensing requirements, PUC staff respectfully requests the Commission refer this matter to the applicable States Attorneys and/or the Attorney General for prosecution in accordance with SDCL 49-45-9.

Dated this 17th day of June 2022.



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