

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

**IN THE MATTER OF THE PUC STAFF'S)
COMPLAINT AGAINST ORGANIC) JOINT MOTION TO APPROVE
PRODUCERS OF IOWA, NEBRASKA,) SETTLEMENT STIPULATION
AND SOUTH DAKOTA (OPINS), NORTH) AND AGREEMENT
BEND, NEBRASKA)**


COMES NOW, Staff of the South Dakota Public Utilities Commission (Staff) and Organic Producers of Iowa, Nebraska, and South Dakota (OPINS), jointly referred to as "Parties" and hereby file this Joint Motion to request the South Dakota Public Utilities Commission (Commission) approve and adopt the attached Settlement Stipulation and Agreement (Stipulation) entered into between the Parties as the settlement and resolution of all the issues between the Parties in this matter.

In support of this Motion, the Parties submit as follows:

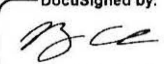
- 1. This Joint Motion is made pursuant to ARSD § 20:10:01:19.
- 2. The Stipulation represents a negotiated settlement of all the issues in docket GW22-005.

The undersigned Parties jointly request the Commission approve and adopt the attached Stipulation and Settlement Agreement without modification for the purpose of resolving the issues described therein.

Dated this 5th day of December 2022.



Amanda M. Reiss
Staff Attorney
SD Public Utilities Commission
500 E, Capitol Ave.
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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

**IN THE MATTER OF PUC STAFF'S COMPLAINT) SETTLEMENT STIPULATION
AGAINST ORGANIC PRODUCERS OF IOWA,) AND AGREEMENT
NEBRASKA, AND SOUTH DAKOTA (OPINS),)
NORTH BEND, NEBRASKA GW22-005**

This Settlement Stipulation and Agreement (Stipulation) reflects the resolution reached between the Staff of the Public Utilities Commission (Staff) and Organic Producers of Iowa, Nebraska, and South Dakota. (OPINS).

I. BACKGROUND

On June 17, 2022, Staff filed with the Public Utilities Commission (Commission) a Complaint against OPINS. OPINS has done business in the state of South Dakota for at least five years. During that time, OPINS operated as a grain buyer as defined in SDCL § 49-15-1.1(3). On or about November 8, 2021, Staff conducted an inspection and became aware that OPINS had engaged in purchasing grain for resale without a grain buyer license. Specifically, Staff alleged OPINS had purchased 33 loads of grain between June 30, 2019, and November 8, 2021, a period in which OPINS did not possess a valid South Dakota grain buyer license.

The penalty for operating as a grain buyer without a license is described in SDCL § 49-45-1. This statute provides for a fine of \$1,000 for each purchase of grain. The statute also states the total maximum fine that can be imposed is \$20,000. In this case, since at least 20 purchases are alleged, the maximum fine the Commission could assess is \$20,000 if the allegations were proven true.

II. STIPULATION AND AGREEMENT

Now, to avoid a hearing, Staff and OPINS stipulate to the facts below and agree to resolve this matter as follows:

1. OPINS is located in North Bend, Nebraska and operates as a "grain buyer" in South Dakota as the term is defined in SDCL § 49-45-1.1(3).

2. Prior to July 1, 2019, OPINS had a South Dakota grain buyer's license. This expired on June 30, 2019.
3. Both Staff and OPINS agree that between July 1, 2019, and November 8, 2021, OPINS engaged in the business of purchasing grain and OPINS contracted with 12 South Dakota producers involving at least 20 loads of grain for resale in South Dakota without a license.
4. OPINS is subject to licensure as required by SDCL § 49-45-1.
5. OPINS provided timely information to Staff throughout Staff's investigation, including granting access to all requested books, accounts, and electronic records.
6. OPINS attests that during the time OPINS was not licensed, OPINS paid all grain sellers and OPINS maintained a positive net worth in accordance with SDCL § 49-25-25 and SD Admin. Rule § 20:10:12:15.
7. Both Staff and OPINS agree all documents filed in the docket should be admitted to the record.
8. Both Staff and OPINS acknowledge OPINS is subject to penalties in SDCL § 49-45-1 (2021) for operating as a grain buyer without a license.
9. Both Staff and OPINS agree that the appropriate penalty to be assessed against OPINS should be a fine of \$5,000. Staff and OPINS also agree that upon Commission approval of this Stipulation, OPINS will surrender its FY23 Class B grain buyer license immediately upon Commission.
10. OPINS attests that OPINS has no open or unfulfilled contracts under the jurisdiction of the South Dakota Public Utilities Commission.
11. Both Staff and OPINS agree that, as of the date this Stipulation is executed, OPINS will not make any new purchases in FY23.

12. Both Staff and OPINS agree, OPINS is eligible to apply for a FY24 license with financials complying with SD Admin. Rule § 20:10:23:14 for the year ending May 31, 2023.
13. OPINS agrees any penalty assessed against OPINS by this Commission will be paid in full within thirty days.
14. Staff agrees this Stipulation, if approved by the Commission, and any associated penalty assessed by the Commission, represents the final disposition of the issues specified herein and Staff will not pursue additional fines or penalties for the infractions outlined in this Stipulation.
15. Upon execution of this Stipulation, the Parties shall immediately file this Stipulation with the Commission together with a joint motion requesting that the Commission issue an order approving the Stipulation.
16. This Stipulation is expressly conditioned on its acceptance by the Commission in its entirety. If the Commission imposes any material changes in or conditions to this Stipulation which are not acceptable to any party, such party may object at the Commission meeting and this Stipulation shall be null and void and shall not constitute any part of the record of the Commission's consideration of the Complaint.

Both Parties acknowledge that they may have different reasoning for the agreed upon Stipulation and absent the Stipulation, both parties could have presented argument supporting their positions. This Stipulation does not reflect the concession of any single issue, but a negotiated global agreement.

Dated this 5th day of December 2022.

South Dakota Public Utilities Commission Staff

By: Amanda M. Reiss

Name: Amanda M. Reiss

Its: Staff Attorney

Organic Producers of Iowa, Nebraska and South Dakota (OPINS)

DocuSigned by:
By: Mike Williams
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Name: Mike Williams

Its: ^{MKW}