



Chris Nelson, Chairman
Kristie Fiegen, Vice Chairperson
Gary Hanson, Commissioner

South Dakota

PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
www.puc.sd.gov

(605) 773-3201

Consumer Hotline
1-800-332-1782

Email
puc@state.sd.us

June 21, 2022

Jeffery T. Sveen
415 S Main Street, 400 Capitol Bldg
Aberdeen, SD 57401

RE: SD Hutterian Cooperative

Mr. Sveen,

It has come to my attention that South Dakota Hutterian Co-Operative has been purchasing and reselling grain in South Dakota for a number of years and does not hold a grain buyer license. 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 purchases three hundred thousand dollars’ worth or more of grain directly from producers in a calendar year.”

Under these laws, it is my assessment that South Dakota Hutterian Co-Operative has been operating in violation of state law and requires a license to continue purchasing grain for resale.

Enclosed, please find the following documents on our website <https://puc.sd.gov/warehouse/default.aspx> for review and to make application for a gran buyer license:

- Grain Buyer/Warehouse License Application
- Grain Buyer/Warehouse Bond Form
- Grain Buyer Financial Statement Requirements
- Grain Buyer Financial Criteria for Licensing

Please feel free to contact me should you have questions or concerns about state licensing requirements, or questions regarding the application process.

Sincerely,

Cody Chambliss
Manager Grain Warehouse Program

Attachment 4

From: Edwards, Kristen <Kristen.Edwards@state.sd.us>
Sent: Tuesday, July 5, 2022 8:47 AM
To: Chambliss, Cody <Cody.Chambliss@state.sd.us>
Subject: FW: [EXT] Grain Buyer Licensing

From: Jeff Sveen <JSveen@sbslaw.net>
Sent: Tuesday, July 5, 2022 8:46 AM
To: Edwards, Kristen <Kristen.Edwards@state.sd.us>
Subject: Re: [EXT] Grain Buyer Licensing

I will be available for a call later this morning if you want to discuss : however I believe you are incorrect in your analysis

From: Edwards, Kristen <Kristen.Edwards@state.sd.us>
Sent: Wednesday, June 29, 2022 8:35 AM
To: Jeff Sveen <JSveen@sbslaw.net>
Cc: Chambliss, Cody <Cody.Chambliss@state.sd.us>
Subject: Grain Buyer Licensing

Jeff,

Sorry we were playing phone tag all afternoon yesterday. Cody is in a hearing this morning, so maybe we should just plan to touch base either this afternoon or tomorrow. Just let us know what works.

And just so you are aware where I am coming from prior to the call, the highlighted language is what we are looking at. In order to sell to AGP, the coop needs to be the a purchaser, since AGP won't purchase directly from the producer. Due to the way AGP is set up, this situation where folks form a cooperative to sell to them is not really all that unique. I know we license a handful.

49-45-1.1. Definitions.

Terms used in this chapter mean:

- (1) "Commission," the Public Utilities Commission;
- (2) "Grain," grain, grain sorghums, beans, pulse crops, and oil seeds. The term does not include grain that has been cleaned, processed, and specifically identified for an intended use of planting for reproduction, grain received for consignment that will

Attachment 4

be processed by the consignee for an intended use of planting for reproduction, or grain purchased to feed livestock;

- (3) "Grain buyer," 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. Nothing in this chapter applies to the isolated resale of grain by a producer who does not hold himself or herself out as engaging in the business of reselling grain;
- (4) "Person," any natural person, firm, corporation, company, limited liability company, partnership, association, joint stock company or the lessee, trustee, or receiver appointed by any court for any one of the foregoing;
- (5) "Voluntary credit sale," a sale of grain or seeds pursuant to which the sale price is to be paid more than thirty days after the delivery or release of the grain for sale, including those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts and price-later contracts; and
- (6) "Producer," a person engaged in the business of grain production.

Kristen N. Edwards

Staff Attorney

South Dakota Public Utilities Commission

500 East Capitol Avenue, Pierre, SD 57501

(605) 773-3201 | kristen.edwards@state.sd.us



PUBLIC UTILITIES COMMISSION

Public business must always be done by somebody... If wise men decline it, others will not; if honest men refuse it, others will not. -John Adams

Attachment 4

From: Edwards, Kristen
Sent: Wednesday, July 6, 2022 9:23 AM
To: Jeff Sveen <JSveen@sbslaw.net>
Cc: Chambliss, Cody <Cody.Chambliss@state.sd.us>
Subject: SD Hutterian Cooperative

Mr. Sveen,

I got your voicemail yesterday, but was in meetings until after 5:00. You asked what our goal is. To be clear, our goal is not to simply get a licensing fee. The licensing fee is minimal and does not even cover our overhead. Our goal is to reach out to companies that we know or believe to be operating without a license and bring them into compliance. We felt that with the penalties greatly increasing as of July 1, it was most fair to reach out to everyone and ensure they were in compliance so that no one got too far down the road. To that end, our job is just to ensure compliance evenhandedly by all grain buyers in South Dakota. This means obtaining necessary licensure and bonds, as well as maintaining adequate financials.

I suppose at the end of the day, what we at the PUC need to figure out is who the grain buyer is – the cooperative or AGP – and make sure that entity is properly licensed. Currently, AGP's business model was to only deal with first purchasers, ie licensed entities, and not buy directly, which made it so that they don't fall under our licensing statutes per 49-45-1.1(2), because they are a processor and not purchasing direct from producers.

I hope this helps,

Kristen N. Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol Avenue, Pierre, SD 57501
(605) 773-3201 | kristen.edwards@state.sd.us



PUBLIC UTILITIES COMMISSION

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SOUTH DAKOTA HUTTERIAN COOPERATIVE
PO Box 490
Aberdeen, South Dakota 57401-0490

July 11, 2022
VIA E-MAIL

Ms. Kristen N. Edwards, Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
kristen.edwards@state.sd.us

Dear Ms. Edwards:

I received your most recent e-mail and I still have the ultimate question. What is the intent of the PUC towards the South Dakota Hutterian Cooperative? The Coop has been working with AG Processors, Inc. (AGP) on a business model that has worked for both companies for over 30 years with no problems. I do not know how AGP operates and what your comment to consider them a grain buyer, as a result of AGP and the Coop working together means. I also do not believe that the Coop, by allowing the Colonies to sell their soybeans to AGP through the Coop, makes the Coop a grain buyer under South Dakota law.

If the PUC's intent is for the Coop to merely purchase a Grain Buyer's License, even though I disagree that would apply to the Coop, it is something the Coop can consider. However, if the intent of PUC is to alter the Coop's relationship with AGP that has worked well for over 30 years and impose bonds and other regulations upon a closed entity only open to religious members, then that is a different circumstance.

Would you please advise me as to what the PUC's ultimate goal is, does the PUC want the Coop to purchase a Grain Buyer's License, want the Coop to purchase a bond, or does the PUC want to assert some other regulation and control of our Coop. I look forward to hearing from you. Thank you.

Sincerely,


Jeffrey T. Sveen
of SIEGEL, BARNETT & SCHUTZ, LLP
jsveen@sbslaw.net



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July 15, 2022

Jeffery T. Sveen
415 S Main Street, 400 Capitol Bldg
Aberdeen, SD 57401
VIA E-MAIL

RE: SD Hutterian Cooperative

Mr. Sveen,

In response to your letter of July 11, 2022, our objective is to ensure that all grain buyers, including South Dakota Hutterian Co-Operative comply with state law. To that end, we must apply the laws fairly and exactly as they are written. The legislature does not allow us to pick and choose what laws to follow and to whom to apply those laws. As mentioned in our last correspondence, those laws would include not only the license, but the requirements the law specifies in order to obtain a license, such as a bond.

As with any unlicensed grain buyer, our first step is to reach out and see what help we can offer to get on the same page and in compliance. It does not appear that we will be able to accomplish that here, given the communication we have had with you to-date.

Sincerely,

Kristen N. Edwards
Staff Attorney