

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

**IN THE MATTER OF THE PUC STAFF'S
COMPLAINT AGAINST BANGHART
PROPERTIES, LLC, GETTYSBURG,
SOUTH DAKOTA**

) **AFFIDAVIT OF JAN BANGHART**
) **IN SUPPORT OF APPLICATION FOR**
) **CLASS B GRAIN BUYER LICENSE**
)
)
) **GW23-001**

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF **POTTER**)

Comes now Jan Banghart, sole, managing member of Banghart Properties, LLC, a South Dakota Limited Liability Company, being first duly sworn under oath, does depose and state as follows:

1. I am the sole, managing-member member of Banghart Properties, LLC (hereinafter referred to as “Banghart”), party to be above-captioned action.

2. Banghart has held a Class B Grain Buyer license since approximately July of 2021, and that license has not been revoked, surrendered, or suspended. The Class B license is set to expire on July 1, 2023. Banghart has filed an application to renew its Class B grain buyer license for the July 1, 2023 - June 30, 2024 licensing period.

3. Banghart Properties, LLC (hereinafter referred to as “Banghart”) was recently denied a Class A Grain Buyer license. Since the time of the Class A license denial, I have taken several affirmative steps in my business to improve compliance, communication, record keeping, and inspector convenience.

4. The topic of the independent contractor status of Jeremy Frost and Wade Hardes was significantly discussed at the Class A evidentiary hearing. Since the time of that hearing, I have met with my accountant Lisa Boomsma, spoken with the South Dakota Bureau of Human Resources, and reviewed IRS publications on subcontractors. Based upon my conversations with those persons, and my research, I believe that Jeremy and Wade are accurately designated as independent contractors.

5. Likewise, I discussed the various IRS payments made by Banghart in 2022, and I believe those payments were made in compliance with the law and upon the advice of my accountant Lisa Boomsma.

5. On or about May 17, 2023, Jeremy Frost, Amanda Reiss, Cody Chambliss, Rob Konrad, and I all met at the PUC office to discuss possible solutions and suggestions for our pending renewal of Class B license.

6. At that meeting, significant time was spent trying to create some contract language that would advise producers of some other jurisdictional issues and bond coverage matters that pertain to the unique way the Banghart conducts its business. After much discussion, I suggested, through my attorney, addendum/contract language that Cody Chambliss stated would "clear up several matters."

7. Banghart's future contracts with South Dakota producers will contain the following advisement:

"Buyer and Seller hereby agree that title to the grain sold hereunder shall pass to the Buyer from Seller outside / within (circle one) the state of South Dakota, *and* upon acceptance of the grain pursuant to generally accepted industry grain standards. Buyer shall provide to Seller a written notice of delivery and destination specifics when the information is available to Buyer. This notice shall include the destination facility, location, and set forth the state where title will transfer. Seller hereby acknowledges that if title to the grain passes outside the state of South Dakota, **this contract is not protected by South Dakota statutory bond coverages.** The terms pertaining to transfer of grain title and delivery destination may be expressly modified pursuant to the Purchase Terms and Conditions, Item #1, as set forth herein."

8. Based upon my review of the law, the unique way in which Banghart takes title to grain (often times out of state), and my May 17, 2023 conversation with Cody Chambliss, I believe this contract language helps all interest parties understand South Dakota bonding pursuant to the PUC staff arguments made in the *Anderson Seed* matter referenced at the hearing.

9. Banghart also now utilizes standardized, pre-numbered, and sequential bill of lading forms for all on-farm pickups. This bill of lading form will specifically set forth the pickup and delivery locations to promote clarity and ease of understanding for PUC inspections. This new bill of lading form was produced after the May 17, 2023 PUC meeting with Cody Chambliss.

10. I am the only person authorized to sign on the Banghart checking account. I, not Jeremy nor Wade, will control the payment of all delivered grain. I am aware of the law and regulation that requires payment to be made within 30 days of final delivery. I intend to comply with the law. If any other person wants to pay later than 30 days, or if any producer wants to be paid outside that 30 day time period, the request will be denied and payment will issue within 30 days.

11. I have discussed this matter with Jerney Frost, and it is my understanding that he will comply with all 30 day payment requirements.

12. This affidavit is offered in support of Banghart's pending application for Class B grain buyer license.

Further your affiant sayeth naught.

Dated this 6 day of June, 2023.


Jan Banghart

Sworn and subscribed to before me this 6th day of June, 2023.


Julie Kilian, Magistrate
South Dakota Notary Public

My commission expires: 6



Certificate of Service

The undersigned counsel hereby certifies that a true and correct copy of the forgoing Affidavit in Support of Application for Class B Grain Buyer License was served on the following parties in the following manner, on this the 5th day of June, 2023:

Ms. Patricia Van Green
Executive Director
South Dakota Public Utility Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us

VIA EMAIL,
AND ELECTRONIC FILING

Mr. Cody Chambliss
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VIA EMAIL

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VIA EMAIL

Dated this 5th day of June, 2023.



BY: Robert Thomas Konrad
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Attorney for Banghart Properties, LLC.