

**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 CODY CHAMBLISS GW23-001
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I, Cody Chambliss, hereby swear and affirm as follows:

1. I am the manager of the grain warehouse program of the South Dakota Public Utilities Commission.
2. On January 14, 2021, the Commission first received an application for a grain buyer license from Banghart Properties LLC (Banghart). As part of that application, on February 18, 2021, the Commission received an electronic copy of a grain buyer application, letter to the bond company, and a financial statement (Attachment 10). Banghart also submitted to the Commission a letter addressed to the bond company along with a business model flow chart. This flow chart identifies Jan Banghart and Rick Banghart as management. Jeremy Frost is listed as grain merchandising. Further below the chart states "Jeremy Frost would provide supervision and oversight of the GMAs, essentially a manager of the GMA's. An email (Attachment 11) was also received from Jan on March 3, 2021, explaining Jeremy would lead the grain side of the business and Jan would lead the managerial side of the business. Based on the flowchart and email received March 3, 2021, it is my understanding that Jan, Rick and Jeremy would all be serving in the roles of either an owner, manager, or chief executive officer of Banghart under SDCL 49-45-27.
3. Banghart first obtained a Class B grain buyer license on June 1, 2021. This license was valid for the annual license period of July 1, 2021, to June 30, 2022 (licensing period 2022). This license allowed Banghart to purchase up to five million dollars during the licensing period and required payment of grain within thirty days of delivery.
4. Banghart is required to have a grain buyer license because Banghart purchases grain for resale and purchases more than \$300,000 annually from producers in South Dakota. SDCL 49-45-1.1(3).
5. On May 19, 2022, a Class A grain buyer license application was received for the annual license period of July 1, 2022, to June 30, 2023 (license period/PUC fiscal year 2023).
6. On June 2, 2022, I issued a letter denying Banghart's Class A application for financial reasons, specifically Banghart did not meet the minimum equity requirements for a Class A license. (Attachment 1). The importance of positive equity for a Class B or \$100,000 equity for a Class A grain buyer is to limit the risk and ensure a grain buyer has available

funds to pay producers.

7. On June 24, 2022, after Banghart made a capital infusion to bring Banghart into compliance with financial requirements, I issued a Class B grain buyers license to Banghart for license period 2023. This license allowed Banghart to purchase up to five million dollars during the license period and required payment of grain within thirty days of delivery.
8. As manager of the grain warehouse program, I assigned Sarah McIntosh, an inspector employed by the Public Utilities Commission, to conduct a routine inspection of Banghart on January 9, 2023.
9. On January 9, 2023, I received a communication from Ms. McIntosh indicating the inspection showed multiple violations. I also received a preliminary report and financial documents obtained during the Banghart inspection from Ms. McIntosh.
10. Upon receipt of the financial documents, including copies of Banghart purchases made in calendar year 2022, Paul Kenefick-Aschoff, an inspector employed by the Public Utilities Commission, and I created an excel spreadsheet (Attachment 2) to determine which transactions were under South Dakota jurisdiction (South Dakota purchases) and determine total purchases made in licensing period 2022 and in licensing period 2023. SDCL 49-45-7.1.
11. After reviewing the South Dakota purchases, I determined that Banghart exceeded the license's maximum allowed of five million dollars in purchases during license period 2022, on or about March 16, 2022. Total South Dakota purchases made by Banghart during license period 2022 were \$8,719,741.80.
12. After reviewing the South Dakota purchases, I determined that Banghart exceeded the license's maximum allowed of five million dollars in purchases during licensing period 2023, on or about October 25, 2022. Total South Dakota purchases made by Banghart during license period 2023 as of January 13, 2023, were \$7,213,628.58
13. I determined that Banghart purchased 184 loads after March 16, 2022, when the five million dollars maximum for Class B grain buyers license was reached prior to their license expiring on June 30, 2022.
14. I determined that Banghart purchased 130 loads after October 25, 2022, when the five million dollars maximum for Class B grain buyers license was reached prior to their license expiring on June 30, 2023.
15. After reviewing the South Dakota purchases, I determined that Banghart failed to make payment for at least eight transactions within thirty days of delivery as required by SDCL 49-45-10. Those eight transactions are identified in red on Attachment 2 and summarized below.

Customer

Final delivery

Banghart made payment


1070W	02/07/2022	03/29/2022
1062M	04/05/2022	05/10/2022
1013M	06/01/2022	07/05/2022
1004W	09/06/2022	10/25/2022
1130P	09/27/2022	11/23/2022
1120S	09/28/2022	11/08/2022
1013G	10/12/2022	11/23/2022
1120W	12/07/2022	Unpaid as of 01/09/2023

16. On January 11, 2023, I instructed Sarah McIntosh to issue a memorandum per SDCL 49-45-13.1 for operating without a grain buyer license in violation of SDCL 49-45-1 and for failure to pay for grain within the allowed thirty days SDCL 49-45-10. (Attachment 3). An inspection report was also provided to Banghart (Attachment 4).
17. As of January 11, 2023, Banghart had not notified PUC staff that Banghart had exceeded the five million dollar limit of its Class B License for either licensing year 2022 or 2023. As of January 11, 2023, Banghart hasn't notified the commission that they exceeded the five million dollars purchases per Banghart's Class B license.
18. On January 12, 2022, I sent Banghart a data request pursuant to SDCL 49-45-26 to obtain additional information regarding purchases and pending delivery contracts, a cease and desist letter from Staff Attorney Amanda Reiss (Attachment 5), a memorandum of adjustment, and the inspection report.
19. On January 12, 2023, Sarah McIntosh forwarded an email (Attachment 7) sent from Banghart providing a balance sheet as of January 8, 2023. That balance sheet showed current assets of \$ [REDACTED] and net worth of \$ [REDACTED] (Attachment 8).
20. On January 20, 2023, the PUC received a new application for a Class A grain buyer license. On this application, Banghart listed current assets of \$ [REDACTED] and net worth of \$ [REDACTED] the application was signed and witnessed by a magistrate on January 19, 2023. The application numbers contained in the application are \$ [REDACTED] less current assets and \$ [REDACTED] less equity than reported to the PUC just seven days earlier.
21. On January 24, 2023, after staff granted an extension, I received the responses to the data request sent on January 12, 2023. The responses included a balance sheet for Banghart's fiscal year 2022 ending December 31, 2022 (Attachment 9). That balance sheet showed \$ [REDACTED] current assets, only \$ [REDACTED] current liabilities, and total equity of \$ [REDACTED] significantly different numbers than Banghart had reported over the previous two weeks.

- 22. An unsettled ticket report was also received on January 24, 2023, showing \$ [REDACTED] still owed to producers as of January 20, 2023. The unsettled ticket report is not reflected on the yearend balance sheet as a current liability. Also, the unsettled tickets (Attachment 6) must be paid within thirty days per SDCL 49-45-10 as Banghart's license expired when they reached five million dollars of purchases on or about October 25, 2022.

- 23. Since first receiving an application for a grain buyer license from Banghart, the Commission Staff (Staff) has spent a significant amount of time on Banghart, time that is extremely out of proportion with time spent on the other 207 companies with 371 locations, licensed in the state. Licensing, inspecting, and reviewing Banghart for compliance with state law to permit Banghart to operate as a grain buyer over the past two years has not been an easy task for Staff. The numerous emails highlighted in the timeline are just a small portion of those exchanged with Banghart in that time and do not account for the time inspecting and reviewing documents obtained in inspections. Additionally, the inconsistencies submitted to Staff by Banghart have made inspections even more difficult and Staff has spent additional time investigating the accuracy of Banghart's records and financial information, significantly reducing the time available to review other entities.

Dated this 27th day of January 2023.


 Cody Chambliss

Subscribed and sworn to before me this 27th day of January, 20 23

Joy L. Lashley (Notary Public)

My Commission expires: 08.12.25

