

**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. Acting in that capacity, it is my assessment that based on actions and omissions of Banghart Properties, LLC (Banghart) over the past two licensing periods, there is good cause to deny Banghart’s application for a Class A grain buyer license for the current licensing period.
3. Attachment 10 outlines Banghart’s business model flow chart. Banghart provided this document to Staff with its first application for a grain buyer license in 2021. It is my understanding Banghart provided this document to the bonding company when applying for a bond. One thing promised in the document is that is Banghart would organize an advisory committee and hold meetings monthly. During the same time frame, Jan Banghart (Jan), the owner of Banghart also made representations to Staff that she intended to follow state laws and would implement business and management practices to ensure compliance. However, it is very clear that Banghart never followed through with this business model and Staff has seen no evidence that the advisory board was created.
4. Significantly, in January 2023, Staff became aware that Banghart appeared to have engaged in purchasing grain without a valid grain buyer license in both licensing period 2022 and 2023 and that Banghart had failed to make timely payment in accordance with state law. These actions resulted in Staff filing a Complaint against Banghart. I view these repeated violations as a blatant disregard of state law and coupled with the sheer number of purchases, and associated value, Banghart made above and beyond the \$5 million permitted by Banghart’s Class B license, I believe this to be good cause to deny Banghart a grain buyer license.
5. Banghart has consistently struggled with keeping records organized and available for inspection and data requests.
 - a. Through inspections, Staff discovered gaps in check numbers and contract numbers along with missing scale tickets, contracts, bills of lading, and “old data” on their grain software.
 - b. This not only causes concern and makes it difficult to inspect Banghart’s financial

position, but state law requires grain buyers maintain records of contracts and receipts for six years (SDCL 49-45-10.1 and 49-45-23).

- c. I have significant concerns with the ownership and management of Banghart. Over the past two years, Banghart management has been inconsistent and disorganized to the point that regulation has become extremely difficult. While Staff is used to some changes to management and changes to contact information, this repeated back and forth with Banghart about who can discuss matters with Staff makes it extremely difficult for Staff to work with the company.
6. Banghart's stability as a company and their management raises concerns.
 - a. While Banghart is owned by Jan Banghart, it is important to highlight that Jeremy Frost has been listed as a manager and employee on multiple Banghart documents filed with the Commission. Additionally, when Banghart was first licensed, it was Staff's understanding Jeremy was a point of contact within Banghart. Jan Banghart later asked Staff not to consult with Jeremy regarding Banghart, but later allowed Jeremy as a point of contact for Banghart. Since Banghart was first licensed, Jeremy has contacted Staff regularly.
 - b. Through my experience with the PUC, I understand Jeremy Frost and Jan Banghart were also owner and employee of another business engaged in purchasing grain in South Dakota, Fearless Grain Marketing, LLC (Fearless). It is my understanding that Jeremy was the owner of Fearless and Jan was an employee. (See Docket No. GW21-001)
 - c. Through my experience regulating these entities, both Banghart and Fearless have operated under different company names and utilized different contact information.
 - i. At least five different email addresses have been provided to the PUC by both Jan and Jeremy for contact information.
 - ii. Multiple dbas and company names have been utilized by Jeremy and Jan including Banghart Properties LLC; Banghart Properties dba Fearless Grain Marketing Storage & Arbitrage; Fearless Grain Marketing Storage & Arbitrage; Fearless Grain Marketing, LLC; and Fearless Grain Marketing Arbitrage and Storage, LLC. See Applications filed in this docket and GW21-001.
 - iii. Staff is aware of at least one instance where Banghart made payment to a producer with a check from Fearless. Memorandum and letter provided. See (Timeline 8).
 - d. Interactions with Jan also have called into question the competency of Jan to operate and manage a grain buying business, showing an overall lack of knowledge of Banghart's daily transactions, lack of understanding of state laws, and lack of knowledge or lack of control over activities her employees are engaged in on behalf of Banghart. This was further evidenced by Jan's discussion with the Commission at the February 28, 2023, Commission meeting where Jan struggled to answer Commission questions about Banghart's financial position.
 - e. Jan has also provided the PUC Staff with conflicting information regarding her

intent to continue operating, at one point even indicating she would be retiring at the end of a licensing period, and then submitting an application for license. This inconsistency raises concerns about Banghart's stability as a company.

7. I have significant concerns about Banghart's regulatory compliance and the ability to adhere to laws in this state and in other jurisdictions. Multiple regulatory actions have been taken against Banghart and Banghart's managerial Staff over the past few years, showing a pattern of disregard for South Dakota's and other states' laws and regulations. Banghart currently has pending matters in two states with potential penalties amounting to \$360,000.
 - a. In 2021, Nebraska Public Service Commission assessed a penalty of \$290,000 against Banghart for regulatory violations. Banghart has appealed this penalty and is waiting for a final court decision.
 - b. Additionally, Banghart is subject to potential SD PUC penalties up to \$70,000 in those matters involved in the initial Complaint.
 - c. In 2019, the South Dakota Division of Insurance banned Jeremy for life from trading securities in South Dakota.
 - d. In 2021, PUC Staff filed a complaint against Fearless Grain Marketing, LLC (Fearless), a company owned and operated by Jeremy Frost for purchasing grain without a license. Jan Banghart was an employee of Fearless at this time. Staff and Jeremy ultimately entered into a settlement agreement to resolve this complaint which was approved by this Commission.
 - e. Jeremy has multiple personal lawsuits filed against him, including one exceeding five million dollars. It is important to note that his counter claim in the large lawsuit was dismissed completely with prejudice.
8. One commonality that I have observed throughout the regulatory actions discussed in paragraph 7 is a lack of accountability or general acceptance of responsibility for having broken the law.
9. Banghart has provided Staff with many different financial values and their position in a very short timeframe. Specifically, I observed discrepancies in multiple financial submissions provided to Staff in the period between January 1, 2023, and January 17, 2023, including discrepancies in Banghart's accounts receivable, payable, current assets, and current liabilities. I am cognizant that a grain buyer's financials do change quickly, however I am generally able to account for those changes. In the case of Banghart, I have not been able to reconcile the changes in reporting numbers based on transactions occurring in that timeframe. This lack of consistency in reporting makes it extremely difficult to determine Banghart's actual financial position at any point of time.
 - a. Attachment 8 was a compilation balance sheet as of January 8, 2023.
 - b. Attachment 9 was a balance sheet as of December 31, 2022.
 - c. The January 20, 2023, application also showed conflicting current assets and liabilities compared to Attachments 8 and 9.
 - d. Banghart's Exhibit A reviewed financial filed on March 22, 2023, is for calendar year 2022. This reviewed financial report is far different than any other financial report or application Banghart provided to Staff. This application was signed

under penalty of perjury, and I believe these varying financials violate SDCL 49-1-9.1.

10. I do not believe Banghart meets the financial requirements to qualify for a Class A grain buyer license. Banghart's April 4, 2023, application and reviewed financials seem to meet the minimum standards at first glance; but many things cause concern regarding the reliability of the reviewed financials. The following concerns can be found on Exhibit H Banghart Reconciliation
- a. A reviewed financial is only data that is provided to the accountant by the company. This is not an audited financial. I have dug deeper into the numbers provided on this reviewed financial comparing to bank reconciliation reports.
 - b. Based on information previously provided to Staff in reconciliation reports, some of the information included in the reviewed financial appeared inconsistent, so I sent a third set of data requests to Banghart to obtain additional information.
 - c. ARSD 20:10:12:15 provides for disallowance of accounts and notes receivable from or advances to stockholders, owners, partner, employees, or affiliates; accounts receivable over 180 days old; investments or equities in cooperatives; or goodwill. Based on this rule, I disallowed the following items:
 - i. Loan receivable in amount of [REDACTED]. This is listed as a note receivable from a limited liability company which is owned by a relative of the company's ownership.
 - ii. Banghart's reviewed financial lists accounts receivable in the amount of [REDACTED]. This is a significant number, and Staff has not seen confirmation in scale tickets or receipts that this amount is actually currently owed to Banghart. Without further information and based on my knowledge of Banghart's business model and the vastly different financial information provided by Banghart, this raises questions. Jan specifically stated in the Jan. 20, 2023, application that current assets were [REDACTED]. I am inclined to exclude this listed asset unless additional documentation is provided. See also Attachment 8.
 - d. The financials include [REDACTED] in unrealized gains. It is the practice of the PUC not to include unrealized gains in financials because this amount is speculative. One reason for this is the fact that an unrealized gain is not something that could be easily liquidated in the event of an insolvency.
 - e. The reviewed financials include salaries and wages in the amount of [REDACTED] but the reconciliation reports show payments to Banghart employees Jeremy Frost, Wade Harges, Sebastian Frost, and Jan Banghart in the amount of [REDACTED].
 - i. Staff did reduce amounts paid directly to Jan by [REDACTED]. This number was determined from the bank reconciliation reports by subtracting the dollar amounts that are irregular and do not appear to be monthly payroll payments.
 - ii. Even assessing a portion of this to Member Distributions, it appears that there are payments to employees that have not been accounted for in the reviewed financials and should increase expenses by approximately [REDACTED].

- iii. Additionally, I am concerned an increased amount of payroll expense would affect the amount of Payroll Tax owed, further increasing Banghart's expenses.
- f. The reviewed financials include Payroll Tax in the amount of [REDACTED]. However, the reconciliation reports show payments made to the IRS in the amount of [REDACTED]
 - i. The payments to the IRS in excess of the amount listed as Payroll Tax do not appear to be accounted for in other areas of Banghart expenses such as Member Distributions. If this amount were considered a loan to cover personal taxes, I would disallow under ARSD 20:10:12:15.
- g. The bank reconciliation also provides many transactions for trucking expenses totaling more than [REDACTED] as calculated by Staff (See Exhibit Banghart Rec.). Banghart informed Staff that the trucking costs were included in cost of goods sold on the balance sheet and not listed separately under expenses in the income statement. However, given the history with Banghart, I am concerned that simple things like [REDACTED] in postage is listed as an expense, but a line item for [REDACTED] in trucking expenses is not included in the reviewed financial. Under reporting expenses on the income statement is an easy way to inflate income which ultimately positively impacts a company's equity. Without an accurate showing of the breakdown of the sales and costs of goods sold, I am skeptical trucking has been included in the costs of goods sold, and I have no way of otherwise confirming.
- h. Banghart listed [REDACTED] for professional fees in their reviewed financial. This number may not be alarming; but, since first applying for a license, Banghart has used two different companies to provide a reviewed financial and has used at least two different individuals preparing their monthly reconciliation reports. Switching accountants and bookkeepers regularly is an oddity and raises cause for concern.
- i. The Reconciliation reports show a large number of irregular transactions for a grain buyer business and these transactions do not appear to be reflected in the reviewed financials. Specifically:
 - i. Nevada Check Fraud and ACH to County of Clark District Attorney payments in the amount of [REDACTED]
 - ii. Rocket Mortgage payments in the amount of [REDACTED]. I am unaware that Banghart has a mortgage and there is no property listed as an asset of Banghart, nor does the Reviewed financial include an expense for a mortgage.
 - iii. Beadle Ford in the amount of [REDACTED]. While this could be a company expenditure, there is no related asset included in the reviewed financial. (See Attachment 8, attesting Banghart has no vehicles.)
 - iv. Market Minute in the amount of [REDACTED]. This could be an advertising expense, but it is not explained.
 - v. A check for [REDACTED] listed as an expense on the Reconciliation report, but no details are associated with this payment.
 - vi. A charge to Citi in the amount of [REDACTED]
 - vii. A charge to Prairie Green in the amount of [REDACTED]

11. Banghart's reviewed financials and balance sheet include a large amount of what Staff would classify as ill-gotten gains. Banghart profited from exceeding the \$5 million purchase limit of its Class B grain buyer license in two licensing periods. I do not believe Banghart should be permitted to enhance its balance sheet based on profits made while in violation of state law. I have calculated the point at which Banghart exceeded \$5 million for licensing year 2022. That date was March 16, 2022. From March 6, 2022, though June 30, 2022, Banghart purchased an additional [REDACTED] worth of grain. For licensing year 2023, Banghart exceeded the \$5 million in purchases on October 27, 2022. From October 27, 2022, until January 12, 2023, when Staff issued a cease-and-desist, Banghart purchased [REDACTED] (Exhibit F 21 and 22 Purchases).
- I did a rough calculation based on Banghart's overall profit margin by taking total sales divided by total operating income. This yielded a 6.2% profit margin and when you multiply 6.2% times the amount purchased after their licenses exceeded \$5 million during both licensing periods. Banghart profited [REDACTED] in ill-gotten gains.
 - Since Banghart's maximum potential penalty in South Dakota is \$70,000, Banghart's illegal activity from exceeding a Class B license maximum in South Dakota alone, exceeds all the penalties the PUC can assess in that time period.
12. Through this investigation, I became aware that in June 2022, less than one month after I requested Banghart make a capital infusion into the company to qualify for a Class B license, that amount was withdrawn by Banghart.
- Banghart's bank reconciliation showed a [REDACTED] deposit on June 18, 2023. This capital infusion was required by Staff for Banghart to qualify for a Class B license for licensing year 2023. Staff received confirmation from Rob Konrad on June 24, 2023, that the capital infusion had taken place.
 - Reconciliation reports show a check written for [REDACTED] on June 27, 2023, to a bakery that I am aware is owned by Jan. Staff did not discover this withdrawal until reviewing the bank reconciliation reports in late March 2023. There was another large withdrawal from Banghart on August 1, 2023, for [REDACTED]
 - These capital withdrawals potentially placed Banghart below the minimum equity requirement of positive equity for a Class B Licensed Grain Buyer.
13. While reviewing documents for this investigation, it appears each application submitted by Banghart contains different amounts for annual purchases made in calendar year 2021 and 2022. These amounts are used to determine the bond required. While I do not believe these discrepancies caused under bonding, I am concerned that there is not a uniform calculation or financial reporting used in the Applications. See previous filings titled May 19, 2022, Application and January 20, 2023, Application.
14. A Banghart manager/employee has engaged in inappropriate conduct aimed at PUC employees which I believe is an attempt to intimidate or harass.
- On or about January 31, 2023, I became aware of several posts to Facebook made by a Jeremy Frost. These posts published my personal cell phone number, personal information and negative comments about me personally on numerous public Facebook pages. See Exhibit J. I believe these comments were triggered by

Staff's Complaint filed on Jan. 30, 2023, as well as previous interactions in which Jeremey expressed displeasure with how Staff addressed a grain dispute in which Jeremey was involved as an agent. Specifically, because the dispute involved contractual issues not regulated by the PUC, Staff did not get involved in the matter, and were aware that the contract was overseen by National Grain and Feed Association.

b. On or about April 12, 2023, I became aware that Jeremey had initiated a phone call to my fiancée's father. As I understand it, the point of Jeremey's call was to discredit me and convince my fiancé's father to prevent our marriage. This call came after the PUC office received a call from Jeremey and Jan, expressing displeasure that Banghart's licensing matter was not included on the agenda for the April 13, 2023, Commission meeting.

15. Banghart has made claims that all producers have been paid whether or not the contract was filled. The payments to producers only happened after Staff requested producers be paid since a cease and desist was in place.

c. Also as evidenced in Exhibit G, purchases made after Jan. 12, 2023, Banghart continued to buy grain in South Dakota. The contracts state FOB Ludlow, SD with a producer's home address in North Dakota.


16. On April 20, 2023, Staff received notice that Banghart's bond company would not be issuing a new bond for the next licensing period. The bond application was denied for financial reasons along with numbers 8 and 9 on their reviewed financial accountant notes. It is my understanding this does not affect the current bond held by Banghart. See exhibit E

17. The time Staff has spent working on this docket during the past four months has been significant. While Staff has continued inspecting the other more than 200 companies licensed to buy or warehouse grain in this state, if Staff is required to continue devoting this amount of time and resources to one company, it could impact Staff's ability to properly regulate the other licensed companies.

Dated this 24th day of April 2023


Cody Chambliss

Subscribed and sworn to before me this 24th day of April, 20 23

 (Notary Public)

My Commission expires: 08.12.25

