

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

IN THE MATTER OF THE PUC STAFF'S)	COMPLAINT
COMPLAINT AGAINST BANGHART)	
PROPERTIES, LLC, GETTYSBURG,)	GW23-001
SOUTH DAKOTA)	

COMES NOW, the Staff of the South Dakota Public Utilities Commission (PUC staff), pursuant to SDCL 49-45-1 and hereby requests the Commission issue an Order finding Banghart Properties, LLC (Banghart) to be in violation of SDCL 49-45-1, SDCL 49-45-7.1, SDCL 49-45-10, and SDCL 49-1-9.1, and to issue a civil fine for the violation and seek all available remedies under the law. In support of its Petition, PUC staff asserts as follows:

1. Banghart is a Grain Buyer located in Gettysburg, South Dakota.
2. Banghart is registered in good standing with the South Dakota Secretary of State.
3. Banghart is listed as a domestic limited liability company with the South Dakota Secretary of State with its principal office located in Gettysburg, South Dakota.
4. Banghart has held a Class B license to operate as a Grain Buyer in South Dakota since June 1, 2021. This license was effective for the period between June 1, 2021, and June 30, 2022.
5. Under SDCL 49-45-7.1, no Grain Buyer with a Class B Grain Buyers license may purchase grain in excess of five million dollars for the annual license period.
6. On or about January 9, 2023, PUC staff conducted a routine Grain Buyer inspection of Banghart.
7. This January 9, 2023, inspection found evidence that since first obtaining a Class B Grain Buyer license in July of 2021, Banghart has made grain purchases of approximately sixteen million dollars and that grain purchases exceeded five million dollars in both licensing periods 2022 and 2023.
8. Following the January 9, 2023, inspection, PUC staff engaged in a subsequent analysis of the evidence found during the inspection.
9. During this January 9, 2023, inspection and subsequent analysis, PUC staff found evidence that Banghart had made at least 539 grain purchases for resale in licensing period 2022, for at least \$8,719,741.80. 184 of these purchases for \$3,610,478.55

occurred after Banghart had already made five million dollars in purchases during the licensing period.

10. During this January 9, 2023, inspection and subsequent analysis, PUC staff found evidence that Banghart had made at least 420 grain purchases for resale in the current licensing period 2023, for at least \$7,213,628.58, with approximately six more months left in the license period. PUC Staff found that 130 of these purchases for \$2,115,348.64 occurred after Banghart had already made five million dollars in purchases during the licensing period.
11. The subsequent analysis identified eight instances where Banghart failed to make payment within 30 days of final grain delivery, as required by SDCL 49-45-10.
12. The subsequent analysis also found inaccuracies contained in multiple applications for a Grain Buyer license submitted by Banghart. Specifically:
 - a. Banghart submitted an application for a Class A grain buyer license in May of 2022, for a license in licensing period beginning 2023.
 - i. Banghart's May 19, 2022, application indicated Banghart operates under a fiscal year, running from January 1 through December 31 each year and that purchases made the previous fiscal year were \$2,971,986.
 - ii. Staff's analysis using data from the January 9, 2023, inspection showed total purchases made by Banghart during that period were \$3,310,562.54.
 - iii. The data request sent on January 12, 2023, that was received January 24, 2023, shows \$2,244,808.60 total purchases for Banghart's fiscal year 2021.
13. Banghart's Class B license expired when they exceeded the five million dollar limit. As a result, payment is due on all grain received per SDCL 49-45-10, and payment must be made within thirty days of delivery.
14. Banghart submitted an application for a Class A Grain Buyer license in January of 2023, to upgrade Banghart from a Class B license to a Class A license for the remainder of the 2023 license period.
 - i. Banghart's January 20, 2023, application indicated that purchases made the previous fiscal year (2022) were \$11,576,591.
 - ii. Staff's analysis using data from the January 9, 2023, inspection showed total purchases made by Banghart during that period were \$12,343,126.56.

The data request sent on January 12, 2023, that was received January 24, 2023, shows \$14,241,794.62 total purchases for Banghart's fiscal year 2022.

iii. Banghart has submitted numerous figures related to Banghart's current financial situation.

15. On January 12, 2023, Sarah McIntosh received an email (Attachment 7) sent from Banghart providing a balance sheet as of January 8, 2023. That balance sheet showed current Banghart assets of [REDACTED] and net worth of [REDACTED]. (Attachment 8).

16. On January 20, 2023, on the Grain Buyers application our office received 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 numbers reported in the January 20, 2023, application are [REDACTED] less current assets and [REDACTED] less equity than reported to PUC staff just seven days earlier.

Legal Authority

For licensing period 2022, beginning July 1, 2021, and ending June 30, 2022, 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.

For licensing period 2023, beginning July 1, 2022, and ending June 30, 2023, SDCL 49-45-1 was amended and 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 5 felony if the person holds himself or herself out to be a grain broker and a Class 1 misdemeanor in all other cases. Each purchase of grain without a license is a separate offense.

A grain buyer transacting business without a license may be enjoined upon complaint of the commission.

The commission may assess a civil fine against an unlicensed grain buyer in the amount of five thousand dollars for each purchase of grain, up to a maximum fine of fifty thousand dollars per licensing period, as set forth in § 49-45-3.

For purposes of this section, the term, purchase of grain, means a transaction evidenced by the issuance of a uniform scale ticket or receipt, as described in § 49-45-10.1.

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 purchased three hundred thousand dollars’ worth or more of grain directly from producers in a calendar year.”

SDCL 49-45-7.1 provides “An applicant may apply for a Class A grain buyer's license or a Class B grain buyer's license. No grain buyer with a Class B grain buyer's license may purchase grain in excess of five million dollars for the annual licensed period or enter into voluntary credit sale contracts. The commission shall require an applicant for a Class A grain buyer's license to submit a more detailed review of its financial condition than an applicant for a Class B grain buyer's license.”

SDCL 49-45-10 provides “A grain buyer shall pay the purchase price to the owner or the owner's agent for grain upon delivery or demand of the owner or agent unless payment is to be made in accordance with the terms of a voluntary credit sale which complies with the requirements of this chapter and rules promulgated thereto. Full payment of any cash purchase shall be made by the grain buyer within thirty days of final delivery.”

SDCL 49-45-27 provides “The owner, manager, or chief executive officer of a grain buyer, or any other person in a managerial position, who is responsible for any violation of this chapter by a grain buyer is subject to any criminal penalty that applies to a grain buyer under the provisions of this chapter.”

SDCL 49-1-9.1 provides “No person may knowingly provide false or misleading information to the commission in response to, or in compliance with, any statute, order, tariff, rule, direction, demand, or requirement of the commission. A violation of this section is a Class 1 misdemeanor. Each separate act of providing false or misleading information pursuant to this section constitutes a separate offense. This penalty is in addition to any other authorized penalties.”

Analysis

In this case, Banghart was licensed to purchase grain for resale in licensing years 2022 and 2023, not to exceed five million dollars per licensing year. However, Banghart made purchases far in excess of this amount in both licensing years. When PUC staff conducted an inspection and investigation of Banghart, it was determined that in licensing year 2022, Banghart purchased at least 184 loads of grain for \$3,610,478.55 in South Dakota after already reaching the maximum five million dollars permitted by the Class B license. It was also determined by PUC staff that in licensing year 2023, Banghart purchased at least 130 loads of grain for \$2,115,348.64, in South Dakota after already reaching the maximum five million dollars permitted by the Class B license. Since the Class B grain buyer license has a maximum purchase limit, the license became invalid once Banghart made five million dollars of purchases in the licensing period. As a result, each purchase made in excess of that maximum is a purchase made without a valid Grain Buyer license, a violation of SDCL 49-41B-1.

Staff considers these violations especially egregious for a number of reasons. First, the number of purchases and the total dollar amount of the purchases made above the maximum permitted by the license, coupled with the fact that the same violation occurred over two separate licensing years indicates that this was a willful violation of law. These violations do not appear to be a mistake, an accounting error, or the result of an increase in grain value, but a blatant disregard for the limitations of the Class B license held by Banghart. Banghart continued operating in violation of the law until Staff uncovered the violation during an inspection and issued a cease and desist to Banghart.

Secondly, as outlined Cody Chambliss’ affidavit, Banghart’s past interactions with PUC staff regarding licensure show that Banghart was both aware of the limitations of the Class B

license and aware that the reason Banghart did not have a Class A license is because Banghart did not meet the financial requirements to obtain a Class A license. Specifically, in licensing year 2023, Banghart applied for a Class A Grain Buyer license. That application was denied and the June 2, 2022, denial letter specified the reason was because Banghart failed to meet the minimum financial requirements to obtain a Class A license. Banghart was ultimately granted a Class B license, but the exchanges with PUC staff show Banghart was aware they did not hold a Class A license, and the reason for that was the financial condition of the company. However, Banghart went on to make purchases in excess of the statute, putting South Dakota producers and sellers in risk of financial harm.

Additionally, in the two licensing periods, PUC staff identified at least eight separate instances where Banghart failed to make payment of grain within 30 days, as required by state law. This is a specific requirement under SDCL 49-45-10 for all purchase made by a Class B license holder.

Beyond this, PUC staff's analysis showed at least two instances in which Banghart provided false or inaccurate information to the Commission. Banghart's reporting of past years' transactions on at least two applications for a Grain Buyer license is extremely misleading. These inaccuracies are extremely concerning because PUC staff relies heavily on the honesty and willingness of each Grain Buyer to self-report to the Commission. Marked incidents of providing inaccurate information to the Commission makes it impossible for PUC staff to trust information provided by Banghart.

Banghart's actions since July 1, 2021, show a blatant disregard for South Dakota law and the well-being of South Dakota producers and other grain sellers operating in the state. For these reasons, PUC staff seeks the maximum penalties allowed under state law, including imposition of the maximum civil penalty permitted by SDCL 49-45-1 for both licensing years 2022 and 2023, referral of the case for criminal prosecution for violations of state law, and to petition the circuit court to enjoin Banghart's continued operation as a "Grain Buyer" by purchasing grain for resale. Additionally, PUC staff seeks a determination by the Commission that these violations constitute good cause under 49-45-7 to deny a license to Banghart and to any entity where any owner, manager, or chief executive officer of Banghart would be serving as an owner, manager, or chief executive officer of such applicant.

Conclusion

WHEREFORE, the PUC staff respectfully requests the Commission find Banghart Properties, LLC to have committed a violation of SDCL 49-45-1 for each of the 184 instances Banghart purchased grain in South Dakota without a license in license period 2022 and issue the maximum permitted fine of \$20,000.

Additionally, the PUC staff respectfully requests the Commission find Banghart Properties, LLC to have committed a violation of SDCL 49-45-1 for each of the 130 instances Banghart purchased grain in South Dakota without a license in license period 2023 and issue the maximum permitted fine of \$50,000.

Additionally, PUC staff respectfully requests the Commission refer this matter for criminal prosecution in accordance with SDCL 49-45-27 for at least 314 purchases of grain without a license in violation of SDCL 49-45-1, for at least two instances of making false or misleading statements to the Commission in violation of SDCL 49-1-9.1.

Additionally, PUC staff respectfully requests the Commission file a complaint with the circuit court seeking to enjoin Banghart from engaging as a Grain Buyer by making purchases of grain for resale.

Finally, PUC staff respectfully requests the Commission issue an order determining that these violations constitute good cause under 49-45-7 to deny a license to Banghart and to any entity where any owner, manager, or chief executive officer of Banghart would be serving as an owner, manager, or chief executive officer of such applicant.

Dated this 30th day of January 2023.



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