



state law, whether there is good cause to deny a license, and whether the Commission shall issue a grain buyer license to Banghart.

Having thoroughly reviewed the filings in the docket and after making further inquiry of the parties, the Commission voted 3-0 to grant Banghart's Class B license.

The Commission, having considered this matter, all records and documents on file herein, the applicable law and the arguments of counsel now finds that determining a reasonable method for interpreting the grain contracts, title transfers, and bond coverages rests primarily on sound judgment after considering all of the various avenues of review available through contract law, property law, UCC law, and constitutional law. Additionally, interpreting the grain contracts requires reasonable judgment after understanding the implications that may arise in Banghart's arbitrage, as well as recognizing the supporting circumstances at the time the producer and Banghart contract. At the evidentiary hearing, Banghart's owner and independent contractors advocated the unique nature of their business clearly squares title transfer upon the final destination of the grain. These witnesses testified that the interpretation of the issue of title transfer relative to destination and is the correct interpretation for determining whether Banghart violated state law by purchasing grain without a license.

As for the various forms of contracts available for selling grain and conducting future business, the Commission finds that the use of Banghart's current contract forms and sloppy record keeping is a concern, and it is insufficient to continue using. The Commission further finds that it would be possible for a disclaimer or statement to the effect of "bond coverage and any other grain seller protections are determined by the laws of the state where title passes" to better inform the grain seller of the jurisdiction which regulates the sale.

The Commission also finds that issues with regulating could arise if the company or its independent contractors continue to contact grain staff on their personal devices or outlets such as cell phones or Facebook, and that the strength of the relationship depends on the strength of the professional courtesies extended.

Finally, the Commission finds that the evidence submitted and admitted to regarding two occasions of late payment was not sufficient for the Commission to impose a rejection of the continued business of Banghart.

The Commission, having found that Banghart did not violate state law by purchasing grain without a license and having found that Banghart did violate state law by failing to pay a producer within the 30 days as required by state law, now makes and finds the following Findings of Fact and Conclusions of Law and Order:

#### FINDINGS OF FACT

1. On January 30, 2023, Staff filed a Complaint against Banghart.
2. On April 4, 2023, Banghart submitted a Class A license application to the Commission's Grain Warehouse Division. Exhibit 23
3. On April 5, 2023, Mr. Cody Chambliss, manager of the grain warehouse program, issued a formal letter denying Banghart's Application for financial reasons and for good cause

and advising Banghart of its right to request a Commission hearing on the denial. Exhibit G

4. On April 27, 2023, the Commission held an evidentiary hearing on the Class A license application and Staff's initial Complaint against Banghart. Staff and Banghart presented witness testimony and documentary evidence to the Commission.
5. The evidentiary hearing lasted approximately 10 hours.
6. On May 8, 2023, Staff filed a Motion to Reopen the Record and Allow Additional Testimony, an Affidavit of Cody Chambliss, and accompanying exhibits. Staff requested the Commission hear the Motion to Reopen the Record and Allow Additional Testimony at the regularly scheduled May 9, 2023, Commission Meeting, as this matter was already included on the agenda.
7. On May 9, 2023, pursuant to Staff's Motion, Staff and Banghart presented additional witness testimony and documentary evidence to the Commission.
8. Specifically, Staff showed it obtained relevant and newly discovered information that was not available to Staff prior to the evidentiary hearing.
9. Staff demonstrated that Banghart was aware of this information and did not adequately explain or provide this information to Staff. Further, Banghart made misrepresentations and misclassified this information so Staff could not reasonably understand this information prior to the evidentiary hearing.
10. Staff presented the new information as a lack of honesty, integrity, and willingness to comply with state laws. Staff showed that Banghart's candor surrounding the transaction indicated a lack of trustworthiness when viewed in light of the prior memorandum of adjustment and a cease-and-desist request both provided to Banghart on January 12, 2023.
11. This newly discovered information shows Banghart made misrepresentations to the Commission during the evidentiary hearing. Banghart led the Commission to believe that it was complying and would continue to comply with Staff's request to cease and desist operation as a grain buyer in South Dakota pending resolution of the Complaint.
12. On May 9, 2023, after offering Banghart additional time to prepare for reopening the record, finding good cause to reopen the record, the Commission granted Staff's Motion to Reopen the Record and Allow Additional Testimony.
13. The Commission found that the evidence from the evidentiary hearing, the new evidence presented after the evidentiary hearing, and the totality of the record since the inspection of January 9, 2023, and Complaint filed on January 30, 2023, shows Banghart made multiple misrepresentations to Staff, struggled to timely turn over adequate and up-to-date financial information of the kind and standard regularly obtained in the course of grain buyer regulation, and required dramatically more Staff support than the average grain buyer.
14. Throughout the record, Jan, owner of Banghart, provided Staff with financial information about Banghart that was drastically different than what was provided in the CPA reviewed

financial report. These filings by Jan were numerous and in multiple formats and submissions.

15. Banghart admitted to violations of state law. In a response to a data request by Staff, Banghart admitted they did not have copies of each contract entered into by Banghart as required by state law. Exhibit G
16. At the evidentiary hearing Mr. Jeremy Frost, independent contractor for Banghart, testified to a willingness to continue violating state law if it is in the best interests of his grain seller clients. Mr. Frost expressed a belief that this mentality was acceptable due to Jan's ultimate oversight and control over his actions while working for Banghart.
17. Mr. Frost and Mr. Wade Hardes, independent contractor for Banghart, testified they work virtually unsupervised, with full discretion, and Jan exercises limited to no control over their arbitrage dealings.
18. Additionally, the evidence showed Banghart has exhibited a pattern of non-compliance with state rules and law, as well as non-compliance in other jurisdictions. Exhibit G
19. The Commission finds these actions by Banghart pose a risk to grain sellers in this state.
20. The Commission found these actions by Banghart are good cause to deny Banghart's Application for a Class A license.
21. During the Class A license hearing and post hearing briefing, Staff, Banghart, and the Commissioners identified multiple ambiguous business practices in need of change.
22. During the Class A license hearing and post hearing briefing, Staff, Banghart, and the Commissioners discussed and presented new ideas for Banghart's business model that would foster honesty, integrity, and willingness to comply with state laws.
23. These new business directions identified and founded within the entirety of the record will reduce the risk to grain sellers in this state.
24. Upon denial of the Class A license the parties set a schedule for presenting briefings on the alleged Class B license violations.
25. On May 26, 2023, Banghart submitted a written request for a hearing for approval of a Class B license.
26. On June 21, 2023, at the Class B license hearing, Banghart testified that the multiple ambiguous business practices in need of change were fixed or in the process of being fixed with input from Staff.
27. During the Class B license hearing and post complaint briefing, Staff, Banghart, and the Commissioners continued to discuss and present new ideas for Banghart's business model that would foster honesty, integrity, and willingness to comply with state laws while improving Banghart's valuable service within the industry and market.
28. The evidence showed Banghart has exhibited a plan of compliance with state rules and law, as well as compliance in other jurisdictions.

29. The testimony displayed Banghart's intention to implement the best practices and policies possible while working with and maintaining appropriate communications with Staff in a professional and cooperative manner.

From the foregoing Findings of Fact, the Commission now makes the following:

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-45 and ARSD Chapters 20:10:01 and 20:10:12.
2. SDCL 49-45-7 allows the Commission to deny a grain buyer license for good cause shown after notice and an opportunity for hearing.
3. Despite denial of a Class A license, good cause to deny Banghart's application for a Class B license has not been shown.
4. The Commission denies in part and grants in part Staff's allegations under the complaint.
5. The Commission finds Banghart did not violate state law by purchasing grain without a license.
6. The Commission finds Banghart did violate state law by failing to pay a producer within the 30 days required by state law.
7. The Commission finds there is not good cause to deny Banghart's Application for a Class B license under SDCL 49-45-7.
8. In the event any Finding of Fact above should properly be a Conclusion of Law or a Conclusion of Law should properly be a Finding of Fact, each shall be treated as such irrespective of its improper classification.

Based on the foregoing Findings of Fact and Conclusions of Law, it is therefore

ORDERED, that the current financial position as of May 31<sup>st</sup> be provided and approved by Staff showing financial compliance prior to issuance of a Class B license for fiscal year 2024. It is further

ORDERED, that there is no violation of law under Banghart's existing B license other than two instances of failure to pay a producer within 30 days, a Class B license condition that carries no enforceable penalty, civil or criminal. It is further

ORDERED, that records shall be maintained for in-state and out-of-state transactions in a neat and orderly manner that will allow for meaningful review by grain inspectors.

ORDERED, that Banghart shall follow all laws and rules.

ORDERED, that Banghart shall submit quarterly financials.

ORDERED, that the parties shall submit improved forms and contracts that are clear and precise for Commission review and acceptance.

ORDERED, that a disclaimer or statement to the effect of “bond coverage and any other grain seller protections are determined by the laws of the state where title passes”, or for some clause to appear in a form that does expressly trigger or otherwise clearly identifies a time and place under the instrument in which title transfers.

ORDERED, that Jeremy’s role as power of attorney for Jan does not alleviate any responsibilities or liabilities of Jan as sole owner of the company.

ORDERED, that a license to purchase grain as a Class B licensed grain buyer is granted to Banghart for the 2023 – 2024 licensing period. It is further

ORDERED, that Banghart shall comply with all the attached conditional terms and conditions naturally occurring under South Dakota law designed to better protect producers in those circumstances where the producer is not covered by South Dakota law or bond protections, which are incorporated by reference into this Order the same as if they had been set forth in their entirety herein. It is further

ORDERED, that evidentiary records from April 27, 2023, and May 9, 2023, are incorporated by reference into this Order the same as if it had been set forth in its entirety herein.

**NOTICE OF ENTRY**

PLEASE TAKE NOTICE that this Final Decision and Order Resolving Staff’s Complaint; Order Granting Class B License was duly issued and entered on the 7<sup>th</sup> day of July 2023.

Dated at Pierre, South Dakota, this 7<sup>th</sup> day of July 2023.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.	
By:	<u>Adam DeHueck</u>
Date:	<u>7/7/23</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Kristie Fiegen  
KRISTIE FIEGEN, Chairperson

Gary Hanson  
GARY HANSON, Commissioner

Chris Nelson  
CHRIS NELSON, Commissioner