

**From:** [Kenefick-Aschoff, Paul](#)  
**To:** [Jeremy Frost](#)  
**Bcc:** [Cody Chambliss \(Cody.Chambliss@state.sd.us\)](#); [Sarah McIntosh \(Sarah.McIntosh@state.sd.us\)](#)  
**Subject:** RE: [EXT] SD PUC Class A grain buyer for Banghart Properties LLC  
**Date:** Monday, January 10, 2022 9:23:00 AM

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I will give you a call this morning but here is what we will need to process a class A license.

- Fiscal Yearend financial statement prepared at the reviewed or audited level from your accounting firm. As a class A, your company will need to not only have positive working capital but will need to have at minimum net worth/equity of \$100,000.
- A current/new application making sure the class A is marked, page 2 # 7 make sure to indicate the new projected purchases amount & new bond amount and page 3 #14 shows current figures.
- A bond rider from the surety increasing the bond to the new projected amount for grain purchases as indicated on the application.

See the laws and administrative rules below.

Just so you are aware, if you have already gone over the projected \$5million mark without obtaining a class A license, that is considered operating without proper licensing.

Thank you, have a great day!

Paul Kenefick-Aschoff  
South Dakota Public Utilities Commission  
Grain Warehouse Program  
(605) 773-5280

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**From:** Jeremy Frost <[fearlessgrainmarketing@gmail.com](mailto:fearlessgrainmarketing@gmail.com)>  
**Sent:** Friday, January 7, 2022 10:57 AM  
**To:** Kenefick-Aschoff, Paul <[Paul.Kenefick-Aschoff@state.sd.us](mailto:Paul.Kenefick-Aschoff@state.sd.us)>  
**Subject:** Re: [EXT] SD PUC Class A grain buyer for Banghart Properties LLC

Hi Paul

If you have a few minutes could you give me a call and we can visit further about process.

Thanks much!

Jan  
605-354-4975

On Fri, Jan 7, 2022 at 10:26 AM Kenefick-Aschoff, Paul <[Paul.Kenefick-Aschoff@state.sd.us](mailto:Paul.Kenefick-Aschoff@state.sd.us)> wrote:

Just wanted to follow up on our discussion of becoming a Class A license. Is it looking like you will be going over the projected \$5 million in purchases?  
Thank you, have a great day!

Paul Kenefick-Aschoff  
South Dakota Public Utilities Commission  
Grain Warehouse Program

(605) 773-5280

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**From:** Kenefick-Aschoff, Paul

**Sent:** Tuesday, November 16, 2021 2:24 PM

**To:** [fearlessgrainmarketing@gmail.com](mailto:fearlessgrainmarketing@gmail.com); [jank2560@venturecomm.net](mailto:jank2560@venturecomm.net)

**Cc:** Sarah McIntosh ([Sarah.McIntosh@state.sd.us](mailto:Sarah.McIntosh@state.sd.us)) <[Sarah.McIntosh@state.sd.us](mailto:Sarah.McIntosh@state.sd.us)>; Cody Chambliss ([Cody.Chambliss@state.sd.us](mailto:Cody.Chambliss@state.sd.us)) <[Cody.Chambliss@state.sd.us](mailto:Cody.Chambliss@state.sd.us)>

**Subject:** SD PUC Class A grain buyer for Banghart Properties LLC

As discussed on the phone here are some laws and administrative rules surrounding a Class A license. I have highlighted some key points.

**49-45-7.1. Classes of grain buyer's license.**

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.

**Source:** SL 2008, ch 251, § 6; SL 2018, ch 268, § 1.

**49-45-22. Class A license requirements--Violation as misdemeanor.**

A grain buyer with a Class A license shall keep all company owned grain in the grain buyer's possession insured at current market value of the grain against loss by fire, windstorm, and extended coverage risks. The grain buyer shall furnish the commission with proof of the insurance when the grain buyer applies for a license. A grain buyer with a Class A license shall **submit a quarter-ending balance sheet** to the commission for inspection **within thirty days of the end of each quarter**. The balance sheet reports shall be **based on each grain buyer's fiscal year**. A violation of this section is a Class 1 misdemeanor.

**Source:** SL 2008, ch 251, § 20; SL 2018, ch 268, § 3.

**20:10:12:14. Financial statement requirements.** Each applicant for a public grain buyer's license shall submit financial statements for the most recently completed year of operation. The financial statements may not be prepared by the applicant or an employee of the applicant, and if the applicant is a partnership or corporation, by an officer, shareholder, partner, or an employee of the partnership or corporation.

An applicant for a class A grain buyer license shall submit financial statements prepared by a certified or independent public accountant **at the review, or audit level**, or detailed financial statements prepared by an approved grain commission or management firm in accordance with generally accepted accounting principles or international financial reporting standards.

An applicant for a class B grain buyer license shall submit financial statements prepared by a certified or independent public accountant, a grain commission or management firm, or other individual skilled in the preparation of financial statements.

If the commission determines that the first financial statements submitted are incomplete or otherwise unsatisfactory, the commission may require the applicant to submit a second set of financial statements prepared by a certified or independent public accountant in accordance with general accepted accounting principles or international financial reporting standards at the compilation, review, or audit level.

The financial statements must include a balance sheet and statement of profit and loss. If a statement of retained earnings, a statement of cash flows, a statement of changes in financial position, or notes and disclosures to the financial statements have been prepared, those items must also be submitted.

If the valuation of any assets are listed at fair market value, those valuations shall be established or confirmed by a person experienced in making assessments of the fair market value of fixed assets. The valuations must be accompanied by a statement signed by the person who establishes or confirms the values stating that such person:

- (1) Has no interest in the property;
- (2) Is not an employee of the applicant; and
- (3) Has no personal bias with respect to the parties involved.

**Source:** 24 SDR 190, effective July 15, 1998; 35 SDR 48, effective September 9, 2008; 40 SDR 39, effective September 9, 2013.

**General Authority:** SDCL [49-45-6\(5\)](#).

**Law Implemented:** SDCL [49-45-7](#), [49-45-7.1](#).

**20:10:12:15. Financial criteria for licensing.** At a minimum, for a class A license the applicant's balance sheet must show a positive net worth of \$100,000. At a minimum, for a class B license the applicant's balance sheet must show a positive net worth. In determining net worth for a class A or class B applicant, the commission may disallow the following assets if the assets are withdrawals of equity or are uncollectible:

- (1) Accounts and notes receivable from or advances to stockholders, owners, partners, employees, or affiliates;
- (2) Accounts receivable over 180 days old;
- (3) Investments or equities in cooperatives; or
- (4) Goodwill.

At a minimum, the balance sheet for a class A or class B applicant must show current assets greater than current liabilities. In determining working capital, the commission may disallow the following assets if the assets are withdrawals of equity or are uncollectible:

- (1) Accounts and notes receivable from or advances to stockholders, owners, partners, employees, or affiliates;
- (2) Accounts receivable over 180 days old;
- (3) Investments or equities in cooperatives; or
- (4) Goodwill.

**Source:** 24 SDR 190, effective July 15, 1998; 40 SDR 39, effective September 9, 2013.

**General Authority:** SDCL [49-45-6\(5\)](#).

**Law Implemented:** SDCL [49-45-7](#).

As far as voluntary credit sale contracts go, below are laws and administrative rule pertaining to those. The first is the rule pertains to the language on a VCS contract.

**20:10:12:13. Notice required to credit seller of grain.** The terms of a voluntary credit sale of grain shall contain the following statement: "This contract is not protected by South Dakota statutory bond coverages." This statement shall be printed in red or bold type immediately above the seller's signature line.

In addition to this statement, each voluntary credit sale contract shall include the following:

- (1) Name of the grain buyer;
- (2) Name of the seller;
- (3) Amount and type of grain;
- (4) Grade of the grain;
- (5) Method of pricing;
- (6) Service charges or other fees;
- (7) Advances against the contract;
- (8) A statement that title to the grain passes to buyer upon delivery; and
- (9) Signature and date of signature for both the seller and buyer immediately preceded by statement required in this section. However, if the voluntary credit sale contract is signed by only one of the parties to the contract, the requirements of this subsection are considered met if, within a reasonable time, a writing in confirmation of the contract and sufficient against the sender is received and the party receiving the writing in confirmation has reason to know its contents, unless written notice of objection to its contents is given within two days after the writing in confirmation is received.

**Source:** 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 24 SDR 190, effective July 15, 1998; 35 SDR 48, effective September 9, 2008; 40 SDR 39, effective September 9, 2013.

**General Authority:** SDCL [49-45-6\(4\)](#), [49-45-11](#).

**Law Implemented:** SDCL [49-45-11](#).

#### **49-45-1.1. Definitions.**

Terms used in this chapter mean:

- (1) "Commission," the Public Utilities Commission;
- (2) "Grain," grain, grain sorghums, beans, pulse crops, and oil seeds. The term does not include grain that has been cleaned, processed, and specifically identified for an intended use of planting for reproduction, grain received for consignment that will be processed by the consignee for an intended use of planting for reproduction, or grain purchased to feed livestock;

(3) "Grain buyer," any person who purchases grain for the purpose of reselling the unprocessed grain or who purchases three hundred thousand dollars worth or more of grain directly from producers in a calendar year. Nothing in this chapter applies to the isolated resale of grain by a producer who does not hold himself or herself out as engaging in the business of reselling grain;

(4) "Person," any natural person, firm, corporation, company, limited liability company, partnership, association, joint stock company or the lessee, trustee, or receiver appointed by any court for any one of the foregoing;

(5) "Voluntary credit sale," a sale of grain or seeds pursuant to which the sale price is to be paid more than thirty days after the delivery or release of the grain for sale, including those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts and price-later contracts; and

(6) "Producer," a person engaged in the business of grain production.

**Source:** SL 1985, ch 376, § 69; SL 1986, ch 397, § 9; SL 1994, ch 351, § 141; SL 2002, ch 216, § 1; SL 2008, ch 251, § 2; SL 2009, ch 248, § 1; SL 2013, ch 238, § 9, eff. Apr. 1, 2013; SL 2017, ch 200, § 4.

#### **49-45-11. Voluntary credit sales.**

Each voluntary credit sale of grain entered into by a grain buyer shall be in writing and shall have a settlement date. If a grain buyer meets the requirements set forth in § 57A-2-201(3)(d)(iii) when entering into a voluntary credit sale contract with a seller, the in writing requirement is considered met. The commission may, by rules promulgated pursuant to chapter [1-26](#), prescribe the form and content of the writings. If a grain buyer's license is terminated or not renewed, the grain buyer shall pay for grain subject to a voluntary credit sale within ten days after the license expiration date.

**Source:** SL 1985, ch 376, § 76; SL 2008, ch 251, § 11; SL 2015, ch 236, § 1.

In reference to change of ownership our office will discuss this and get back to you.

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South Dakota Public Utilities Commission  
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[Pierre, South Dakota 57501](#)  
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Jan Banghart  
Banghart Properties LLC  
Professional Grain Marketing Services

## Timeline 9 Pg 6

PO Box 93  
Gettysburg, SD 57442

Helping Producers support their operations through professional grain marketing services