

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF RICHLAND

SOUTHEAST JUDICIAL DISTRICT

\_\_\_\_\_ )  
**Public Service Commission** )  
) **Petitioner,** )  
) **vs.** )  
**VeraSun Hankinson, LLC** )  
) **Respondent.** )  
\_\_\_\_\_ )  
**PSC Case No. GE-09-104** )  
\_\_\_\_\_ )

CIVIL NO. 39-9-C-462-1

**SUPPLEMENTAL AFFIDAVIT  
OF JAMES WIRTZ IN  
SUPPORT OF NONPAYMENT  
OF GRAIN CLAIM OF JAMES  
WIRTZ**

STATE OF NORTH DAKOTA )  
) **ss**  
COUNTY OF \_\_\_\_\_ )

James Wirtz states under oath as follows:

1. I swear and affirm, upon penalty of perjury, that the statements made in this affidavit are true and correct.
2. On September 11, 2008, I signed Cash Contract Number VHN1000532, agreeing to sell 4,000 bushels of corn, priced at \$5.19 per bushel for delivery to the ethanol facility in Hankinson, North Dakota, during the month of September 2008. The payment terms as agreed in the contract were "Net 10" as provided in Exhibit TJW-1 attached to the Affidavit of Timothy Erdmann in Support of Nonpayment of Grain Claim of James Wirtz executed on March 10, 2010 and attached to this Affidavit.

3. Following delivery of the corn on this contract, I received US Bio Hankinson, LLC check number 6841 dated September 22, 2008, for the amount of \$26,934.70. The check was issued to me and Bank of the West. I usually cash checks right away, but I was busy working long hours and misplaced the check. Approximately three or four weeks after I first received the check I called Jon Anderson, Grain Procurement Manger at the Hankinson ethanol facility, to tell him that I couldn't find the check and asked for a new check to be issued. He didn't really have anything to say and I did not receive a new check.
4. I finally found the check in December of 2008 and I deposited it with Bank of the West. I received a statement from Bank of the West dated December 9, 2008, along with a copy of the check marked RETURN REASON – C, STOP PAYMENT, Do Not Re-deposit. When I first deposited the check, I thought the check would be good because the banker told me that earlier checks had been returned, but then when they were re-deposited a second time, they were good.
5. I called Jon Anderson again after the check was returned. He told me that VeraSun had filed for bankruptcy and the check could not be cashed. Jon gave me a Sioux Falls number and when I called Sioux Falls, I was told they were in bankruptcy.
6. I am not familiar with credit-sale contracts because I always sell my grain for cash. I never intended to extend credit to VeraSun Hankinson, LLC for the sale of my corn and I did not execute any oral or written agreement to sell my corn under a credit-sale arrangement.

7. I did not file a claim in the bankruptcy court.

Dated this \_\_\_\_\_ day of April, 2010.

By: \_\_\_\_\_  
James Wirtz

Subscribed and sworn to before  
me this \_\_\_\_\_ day of April, 2010.

\_\_\_\_\_  
Notary Public



9230 Co. Road 1  
Hankinson, ND 58041  
T 701-242-9400  
F 701-242-9490  
www.verasun.com

Contract for Future Delivery of Grain

KEMSKA PAPER CO. NEW ULM, MN 5600782-3332 N121

VENDOR ID NUMBER: 1102

CONTRACT NUMBER: VHN1000532  
Cash

NAME: Wrtz, James  
17275 95th St SE  
Fairmount ND 58030

CONTRACT DATE: September 10, 2008

GRADE AND GRAIN: # 2 YELLOW CORN

PREM / DISC: STANDARD

QUANTITY TRADED: 4,000.00

PAYMENT TERMS: Net 10

PRICE: \$5.1900

BASIS LOCATION: HANKINSON

BASIS: (\$0.3100)

SHIPMENT PERIOD: 9/1/2008 to 9/30/2008

CZ8

COMMENTS: VERASUN HANKINSON SCALE OF DISCOUNTS TO APPLY; SOLD BY JERRY WIRTZ; SPLIT TICKETS BETWEEN JERRY AND JIM;

Seller hereby agrees to sell to VeraSun Hankinson, LLC (hereinafter called "Buyer") the above grain. Title of the grain shall pass to Buyer at the time of delivery.

If Buyer is unable to receive the grain at the time specified for reasons beyond his control such as, but not limited to, lack of transportation, equipment failure, etc. Seller shall still be obligated to deliver the grain at such time as Buyer's condition eventually permits.

Settlement for under-delivery or non-delivery of grain shall be made on the difference between market price on the date and the contract price.

*Thank you*

SELLER	BUYER
BY <i>J. P. Wrtz</i>	BY <i>[Signature]</i>
DATE <i>9/11/2008</i>	DATE <i>9/10/08</i>
	VERASUN HANKINSON