

MEMORANDUM

TO: Commissioners Clark, Kalk, and Cramer
Darrell Nitschke
Legal Division

FROM: Sue Richter, Licensing Division Director

DATE: April 6, 2011

RE: Mitchell Feeds, Inc. (Mitchell Feeds)
Cease and Desist Order



Mitchell Feeds, Inc. is licensed as a North Dakota roving grain buyer under license no. 3159 and has a \$70,000 bond on file. The license was originally issued in October 2009.

On February 1, 2011, the Commission received a letter with attachments from James Burckhard of Towner, North Dakota, alleging he had not been paid for sunflower seeds sold to Mitchell Feeds, Inc.

On February 9, 2011, Mike McNamee visited the offices of Mitchell Feeds, Inc. and asked for unpaid grain purchase information. Mr. McNamee was given information by Mitchell Feeds, Inc. showing approximately 3,385,000 pounds of sunflowers, with a value exceeding \$900,000, was received from 26 growers during 2009 and 2010 and remain unpaid.

I called Mitchell Feeds office, Mitchell Feeds elevator located in Hendrum, Minnesota (I was told sunflowers were delivered here), and Mr. Mitchell's cell phone, each numerous times over the past few months and was never able to talk to Mr. Mitchell. I was repeatedly told that Mr. Mitchell was not available, but a message would be left for Mr. Mitchell to return my call. Mr. Mitchell did not return any of my phone calls.

On March 29, Staff called the offices of Mitchell Feeds and talked to Mr. Mitchell about his grain buying activities. Mr. Mitchell said he had a meeting at his bank with SBA later in the week. Mr. Mitchell said he would call Staff with specifics about the meeting, so Staff could attend via phone but Mr. Mitchell did not call. Staff called Mitchell Feeds late last week and again on April 4. Mr. Mitchell was not available. Although messages were left for Mr. Mitchell to call Staff, he did not return either call.

During the week of March 28, Staff received phone calls from more than a half dozen producers allegedly they "sold" sunflowers to Mitchell Feeds, Inc. and were not paid. Additional claims alleging non payment have also been received from a number of producers.

North Dakota Century Code § 60-02.1-39 provides the Commission with authority to issue a cease and desist order without prior notice against an entity that engages in an activity or practice that is contrary to the provisions of Chapter 60-02.1 or related

rules. Staff is concerned about Mitchell Feeds, Inc.'s failure to pay producers for grain received.

It appears that the outstanding payables for grain purchased significantly exceeds the surety bond on file. In an effort to prevent further harm to anyone that may sell additional grain to Mitchell Feeds, Inc. it is in the best interest that the Commission issue a cease and desist order against Mitchell Feeds, Inc. as authorized by North Dakota Century Code § 60-02.1-39 ordering that Mitchell Feeds, Inc. cease and desist from purchasing grain in North Dakota.

I produced an Affidavit as Licensing Division Director and it has been docketed in the case. I am providing a copy of the Affidavit to the Sarah Vogel Law Firm who is representing a group of farmers.

If you have questions, please let me know.