

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Anderson Seed Co., Inc.
Ex Parte Cease & Desist**

Case No. GE-12-089

EX PARTE CEASE AND DESIST ORDER

February 24, 2012

On February 24, 2012, Licensing Division Staff (Staff) filed an Affidavit providing the Commission with information sufficient to support issuance of an Ex Parte Cease and Desist Order against Anderson Seed Co., Inc. as authorized by North Dakota Century Code §60-02-42, ordering that Anderson Seed Co., Inc. cease and desist from all public grain warehouse activities in Durbin, North Dakota and Selz, North Dakota and cease and desist from moving grain out of North Dakota.

On February 15, 2012, the Commission received a letter with attachments from Douglas Doll on behalf of the Doll & Pazdernik Partnership of Mandan, North Dakota, alleging the partnership has not been paid for sunflower seeds delivered to Anderson Seed Co., Inc. at their licensed grain warehouse in Durbin, North Dakota.

Between February 21, 2012 and February 24, 2012, the Commission received 18 additional written communications, each alleging nonpayment for sunflower seeds delivered or sold to Anderson Seed Co., Inc.

In addition to the written communications received, the Commission's Licensing Division has received and continues to receive numerous phone calls from additional producers alleging they had not been paid for sunflower seeds sold to Anderson Seed Co., Inc. and asking for instructions for filing a claim against the bond or the credit-sale contract indemnity fund.

Anderson Seed Co., Inc. of Mentor, Minnesota, operates licensed public grain warehouses in North Dakota at Durbin, North Dakota since October 2003 and at Selz, North Dakota since October 2004. As required by North Dakota Century Code §60-02-09 and North Dakota Administrative Code § 69-07-02-02 Anderson Seed Co., Inc. has a \$280,000 bond on file with the Public Service Commission.

In early February 2012, Anderson Seed Co., Inc. provided information to the Public Service Commission showing a significant amount of grain was received from producers in 2011 for which payment has not been made.

The Commission's Licensing Division is preparing and will be asking the Commission to file documents with Cass County District Court, asking that Anderson Seed Co., Inc. be declared insolvent under North Dakota Century Code Chapter 60-04, and the Commission be appointed trustee in the insolvency proceeding.

The Affiant stated that it appears the bond on file with the Public Service Commission will not be sufficient to cover the total amount owed to producers for the sunflower seeds delivered or sold to Anderson Seed Co., Inc.

The Affiant stated she has reason to believe that Anderson Seed Co., Inc. moved or is in the process of moving grain by truck out of the licensed public warehouses at Selz, North Dakota and Durbin, North Dakota to a storage facility in Fertile, Minnesota. Affiant also stated she is concerned that moving the grain could compromise the trust fund.

North Dakota Century Code §60-02-42 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 North Dakota Century Code Chapter 60-02 or related rules.

Affiant stated she has reason to believe Anderson Seed Co., Inc. has violated North Dakota Century Code §60-02-09 (4)(a) by failing to faithfully perform the licensee's duties as a public warehouseman and North Dakota Century Code §60-04-02 by refusing, neglecting, or being unable upon proper demand to make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored.

Affiant stated she believes that good cause exists requiring *ex parte* action by the Commission because additional sellers of grain may suffer immediate economic loss, damage or injury if Anderson Seed Co., Inc. continues receiving or purchasing grain as a licensed public warehouseman in North Dakota or if Anderson Seed Co., Inc. is permitted to move any more grain out of North Dakota that may be an asset of the insolvency trust.

Affiant has informed the Commission that it is her opinion that based on the written information filed with the Commission for the nonpayment for sunflower seeds delivered or sold to Anderson Seed Co., Inc. at Durbin, North Dakota and Selz, North Dakota, Anderson Seed Co., Inc. is insolvent under North Dakota Century Code Chapter 60-04.

Further, it is Affiant's opinion that in order to preserve the potential trust, Anderson Seed Co., Inc. should not be allowed to move any grain without Commission approval.

North Dakota Century Code §60-02-42 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 North Dakota law or rules. A cease and desist order must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

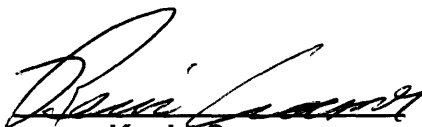
The Commission has considered the information provided by staff and finds that unless an Ex Parte Cease and Desist Order is issued, additional producers may suffer economic loss, damage or injury as a result of the actions of Anderson Seed Co., Inc. and the potential trust fund may be compromised.

Order

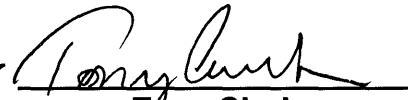
The Commission orders:

1. That Anderson Seed Co., Inc. cease and desist from receiving or purchasing grain in North Dakota.
2. That Anderson Seed Co., Inc. cease and desist from moving grain out of North Dakota.
3. Contemporaneously with this Order, the Commission is issuing to Anderson Seed Co., Inc. a notice of opportunity to be heard within fifteen days of the issuance of this Order.

PUBLIC SERVICE COMMISSION



Kevin Cramer
Commissioner



Tony Clark
Chairman



Brian P. Kalk
Commissioner