

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Earth Harvest Mills, Inc.
***Ex Parte* Cease & Desist**

Case No. GE-13-99

***EX PARTE* CEASE AND DESIST ORDER**

February 27, 2013

On February 27, 2013, the Public Service Commission's Licensing Division Staff (Staff) filed an Affidavit providing the Public Service Commission (Commission) with information sufficient to support issuance of an *Ex Parte* Cease and Desist Order against Earth Harvest Mills, Inc. dba Dakota Prairie Organic Flour Company (Earth Harvest Mills) as authorized by North Dakota Century Code section 60-02-42, ordering that Earth Harvest Mills cease and desist from all public grain warehouse activities at Harvey, North Dakota.

Earth Harvest Mills operates a licensed public grain warehouse at Harvey, North Dakota since December 2004. As required by North Dakota Century Code section 60-02-09 and North Dakota Administrative Code section 69-07-02-02, Earth Harvest Mills has a \$50,000 bond on file with the Commission.

The Commission and Staff have been monitoring the grain warehouse activities and working with Earth Harvest Mills on compliance since 2010. During this time, the Commission and Staff met with Earth Harvest Mills on numerous occasions to discuss the licensee's conversion progress.

The Commission's Licensing Division and Earth Harvest Mills entered into a Memorandum of Agreement effective December 21, 2012 and filed with the Commission on December 27, 2012. By executing the Memorandum of Agreement, Earth Harvest Mills agreed to comply with North Dakota Century Code section 60-02-11 by converting into cash or credit-sale contracts all outstanding grain accounts, and to provide proof of significant compliance by December 31, 2012, and proof of full compliance by February 28, 2013.

Earth Harvest Mills has breached the Memorandum of Agreement by failing to provide proof of significant compliance by December 31, 2012, and by failing to file weekly progress reports.

On January 29, 2013, the Commission received a letter with attachments from Farmers Direct Co-op, of Regina, Saskatchewan, Canada, alleging the cooperative has not been paid for grain delivered to Earth Harvest Mills at its licensed grain warehouse in Harvey, North Dakota.

On February 7, 2013, the Commission received a letter with attachments from Ray H. Miller, alleging nonpayment for grain delivered or sold to Earth Harvest Mills.

In addition to the written communication received, the Commission's Licensing Division has received phone calls from additional producers alleging nonpayment for grain delivered or sold to Earth Harvest Mills. Subsequently, Earth Harvest Mills provided the Commission with proof of full or partial payment for some producers.

As of February 27, 2013, Earth Harvest Mills continues to violate North Dakota Century Code section 60-02-11 by failing to convert all outstanding grain accounts and to provide proof of compliance to the Commission.

Affiant stated she has reason to believe Earth Harvest Mills has violated North Dakota Century Code section 60-02-09(4)(a) by failing to faithfully perform the licensee's duties as a public warehouseman.

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 Earth Harvest Mills continues receiving or purchasing grain as a licensed public warehouseman in North Dakota.

North Dakota Century Code section 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 (15) 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 Earth Harvest Mills.


Therefore, the Commission issues the following:

Order

The Commission orders:

1. Earth Harvest Mills, Inc. dba Dakota Prairie Organic Flour Company to **Cease and Desist** from receiving or purchasing grain in North Dakota.
2. A Notice of Opportunity for Hearing within fifteen days be issued to Earth Harvest Mills.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Brian P. Kalk
Chairman



Julie Fedorchak
Commissioner