



# Public Service Commission

## State of North Dakota

### COMMISSIONERS

Brian P. Kalk  
Randy Christmann  
Julie Fedorchak

Executive Secretary  
Darrell Nitschke

600 East Boulevard, Dept. 408  
Bismarck, North Dakota 58505-0480  
Web: [www.psc.nd.gov](http://www.psc.nd.gov)  
E-mail: [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
Phone: 701-328-2400  
ND Toll Free: 1-877-245-6685  
Fax: 701-328-2410  
TDD: 800-366-6888 or 711

28 February 2013

Mr. Grayson Hoberg, CEO  
Earth Harvest Mills, Inc. dba  
Dakota Prairie Organic Flour Company  
500 North Street West  
Harvey, ND 58341

RE: Public Service Commission  
Earth Harvest Mills, Inc.  
*Ex Parte* Cease & Desist  
Case No. GE-13-99

Dear Mr. Hoberg:

Enclosed for the purpose of service upon Earth Harvest Mills, Inc. are a copy of the *Ex Parte* Cease and Desist Order, an Affidavit in Support of *Ex Parte* Cease and Desist Order, a Notice of Opportunity for Hearing, and an Affidavit of Service.


You have the opportunity to be heard on the order within fifteen days of the issuance of the order. If you intend to request a hearing, please let us know as soon as possible so the Commission can get a hearing scheduled.

As we discussed, please respond to my 18 February 2013 electronic mail requesting specific grain purchasing and processing information, and forward the following financial information to the Commission no later than noon on Friday, March 1, 2013:

1. Fiscal year-end balance sheet.
2. Income statement.

If you have any questions, please let us know.

Sincerely,

  
Illona A. Jeffcoat-Sacco  
General Counsel

Enclosures

6 GE-13-99 Filed: 2/28/2013 Pages: 8  
Letter to Earth Harvest Mills enclosing documents

Public Service Commission

Illona A. Jeffcoat-Sacco

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

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

Case No. GE-13-99

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

John Hamre deposes and says that:

he is over the age of 18 years and not a party to this action and, on the **27th** day of **February, 2013**, he deposited in the United States Mail, at Bismarck, North Dakota, one envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing photocopy of:

**Affidavit in Support of Ex Parte Cease and Desist Order  
Ex Parte Cease and Desist Order  
Notice of Opportunity for Hearing**

The envelope was addressed as follows:

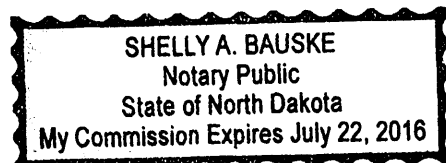
Mr. Grayson Hoberg, CEO  
Earth Harvest Mills, Inc. dba  
Dakota Prairie Organic Flour Company  
500 North Street West  
Harvey, ND 58341

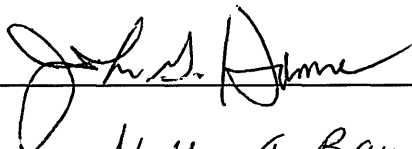
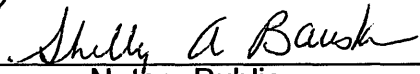
**Cert. No. 7012 1640 0002 4650 0534**

The address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me  
this **27th** day of **February, 2013**

SEAL



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



That on December 27, 2012, the executed Memorandum of Agreement was filed with the Commission.

That 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 organic hard red spring wheat delivered to Earth Harvest Mills at its licensed grain warehouse in Harvey, North Dakota.

That 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.

That in addition to the written communications received, the Licensing Division has received calls from additional producers alleging they had not been paid for grain delivered to Earth Harvest Mills. Earth Harvest Mills provided the Commission with proof of full or partial payment for some producers.

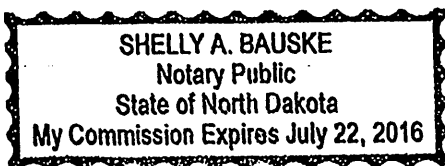
North Dakota Century Code section 60-02-42 provides the Commission with authority to issue a cease and desist order without prior notice against an entity that engages in an activity or practice that is contrary to the provisions of North Dakota law or rules.

Affiant believes that good cause exists which requires *ex parte* action by the Commission because grain sellers may suffer immediate economic loss, damage or injury as a result of the actions of Earth Harvest Mills.

Affiant supports the issuance of an *Ex parte* Cease and Desist Order against Earth Harvest Mills as authorized by North Dakota Century Code section 60-02-42 requiring the licensee to cease and desist all grain buying activities within the State of North Dakota.

Susan H. Richter

Subscribed and sworn to before me this 27<sup>th</sup> day of February, 2013.



Shelly A Bauske  
Notary Public

**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

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

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

Case No. GE-13-99

NOTICE OF OPPORTUNITY FOR HEARING

February 27, 2013

On February 27, 2013, the Commission issued an *Ex Parte* Cease and Desist Order against Earth Harvest Mills, Inc. dba Dakota Prairie Organic Flour Company ordering the entity to cease and desist from receiving or purchasing grain in North Dakota.

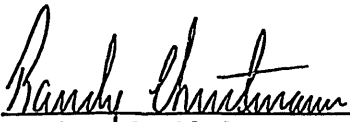
You are hereby notified that under North Dakota Century Code section 60-02-42, you have the opportunity to be heard on the order within fifteen days of the issuance of the order.

A request for hearing must be made in writing and filed with the Commission.

The issue to be considered in the hearing is whether a Cease and Desist Order is appropriate.

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Darrell Nitschke, Director of Administration.

PUBLIC SERVICE COMMISSION

  
Randy Christmann  
Commissioner

  
Brian P. Kalk  
Chairman

  
Julie Fedorchak  
Commissioner