

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WELLS

SOUTHEAST JUDICIAL DISTRICT

_____)	
Public Service Commission)	CIVIL NO. _____
)	
Petitioner,)	
)	
vs.)	
)	APPLICATION FOR
Earth Harvest Mills, Inc.)	APPOINTMENT AS
)	TRUSTEE AND FOR
Respondent.)	EX PARTE ORDER
_____)	
PSC Case No. GE-13-193)	
_____)	

The North Dakota Public Service Commission (Commission) alleges as follows:

1.

Earth Harvest Mills, Inc. (Earth Harvest Mills), a North Dakota business corporation, operates a licensed grain warehouse at Harvey, North Dakota, subject to North Dakota Century Code Chapters 60-02 and 60-04. Earth Harvest Mills, Inc. operates under the trade name of Dakota Prairie Organic Flour Company.

2.

Earth Harvest Mills operates a grain warehouse at Harvey, under license number 1155.

3.

A surety bond is on file with the Commission as required by North Dakota Century Code section 60-02-09. The surety bond is for \$50,000.00 and identified as

number 9145595 with Washington International Insurance Company, 475 North Martingale Road #850, Schaumburg, Illinois, as surety.

4.

On April 26, 2013, the Commission received a letter with attachments from Delbert Cousins, Weirdale, Saskatchewan, Canada, alleging nonpayment for grain delivered or sold to Earth Harvest Mills.

5.

The Commission was informed and has reason to believe that there are outstanding obligations for unpaid claims for grain sold to Earth Harvest Mills as a public warehouseman under North Dakota Century Code Chapter 60-02. Under the provisions of North Dakota Century Code section 60-02-09, bond protection is available for the benefit of all persons storing or selling grain to such warehouseman. Under the provisions of North Dakota Century Code section 60-10-04 a person is eligible to receive indemnity payments from the credit-sale contract indemnity fund if the licensed warehouse to which the person sold grain to becomes insolvent.

6.

Earth Harvest Mills is insolvent under North Dakota Century Code Chapter 60-04, in that it is unable upon proper demand to make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored.

7.

North Dakota Century Code section 60-04-03 provides that the court may issue *ex parte* a temporary order to preserve or protect any assets and potential assets of the trust fund until the court issues its order granting or denying the application.

8.

The Commission is legally entitled to be appointed trustee of the trust fund provided under North Dakota Century Code Chapter 60-04.

9.

Bond proceeds may be needed to redeem outstanding receipts issued by Earth Harvest Mills. North Dakota Century Code section 60-04-03.3 provides:

The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the commission when the commission believes that proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. When it appears in the best interests of the receipt holders, the court may order the surety to deposit the penal sum of the bond, or so much thereof as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

10.

Proceeds from the credit-sale contract indemnity fund may be needed to meet the licensee's obligations to any holders of credit-sale contracts. North Dakota Century Code section 60-10-05 provides:

Upon the insolvency of a licensed public warehouse or grain buyer and a declaration that the Public Service Commission serve as the trustee, the Public Service Commission shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

WHEREFORE the Public Service Commission respectfully requests:

1. That the Court issue *ex parte* a temporary **ORDER** to preserve and protect the assets and potential assets of the trust fund under North Dakota Century Code section 60-04-03.1.
2. That the Court declare Earth Harvest Mills, Inc. **INSOLVENT** within the meaning of North Dakota Century Code Chapter 60-04 and establish the date of insolvency as April 26, 2013, the date the first claim for nonpayment for grain delivered or sold was filed at the Commission.
3. That the Court **APPOINT** the Public Service Commission as trustee of the trust fund under North Dakota Century Code section 60-04-03.

Respectfully submitted at Bismarck, North Dakota, this **1st day of May, 2013**.



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