

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WELLS

SOUTHEAST JUDICIAL DISTRICT

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

The Public Service Commission (Commission) has jurisdiction over public grain warehouses under North Dakota Century Code Chapters 60-02 and 60-04, which provides for the appointment of the Commission as trustee of the assets of a public warehouse upon the filing of a notice with the Commission that the public warehouseman has defaulted in the payment for grain purchased by the public grain warehouseman.

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 at the licensed grain warehouse in Harvey, North Dakota.

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 in 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.

Under North Dakota Century Code section 60-04-03.1, grain assets are part of the trust fund, but only unencumbered grain product assets are part of the trust fund. The Commission is concerned that processing any grain in the facility may compromise the trust fund.

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

It is in the best interests of all claimants that the Court declare Earth Harvest Mills, Inc. insolvent and establish the date of insolvency as April 26, 2013, the date the first claim for collection of outstanding funds owed was filed with Commission, and that the Commission be appointed Trustee, and be given the powers under North Dakota Century Code Chapters 60-04 and 60-10 so that all claimants will be treated fairly. Further, it is in the best interest of the potential claimants that the Court issue *ex parte* a temporary order to preserve and protect any potential assets of the trust under North Dakota Century Code section 60-04-03.1.

Upon the insolvency, the Commission has the authority under North Dakota Century Code Chapter 60-04 to make payment of valid claims to any persons holding noncredit-sale receipts for grain sold or stored.

The Commission has the authority under North Dakota Century Code section 60-10-05 to make payment to any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated under the contract.

The Court has jurisdiction under North Dakota Century Code section 60-04-03, which provides for the filing of this action in the District Court, Southeast Judicial District.

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

Respectfully submitted,



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