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Case # 52-2013-CV-00033 - North Dakota Public Service Commission vs. Earth Harvest Mills Inc (Merrick, Thomas E.)



Envelope # 1000068 filed May 01, 2013 at 3:08 PM by Ilona Jelfcoet-Sacco

Table with 5 columns: Status, Filing Code, Filing Type, Filing Description, Reference Number. Row 1: Accepted, Service Documents, EFile, Affidavit of Service By Certified and Regular Mail

Case # 52-2013-CV-00033 - North Dakota Public Service Commission vs. Earth Harvest Mills Inc (Merrick, Thomas E.)



Envelope # 998779 filed May 01, 2013 at 2:06 PM by Shelly Bauske on behalf of Ilona Jelfcoet-Sacco

Table with 5 columns: Status, Filing Code, Filing Type, Filing Description, Reference Number. Rows include: Motion, Notice, Affidavit, Exhibit A to Affidavit, Brief, Proposed Order, Proposed Order

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WELLS

SOUTHEAST JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Earth Harvest Mills, Inc.

Respondent.

PSC Case No. GE-13-193

CIVIL NO. _____

APPLICATION FOR
APPOINTMENT AS
TRUSTEE AND FOR
EX PARTE ORDER

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**.



Illona A. Jeffcoat-Sacco
Special Assistant Attorney General
State Bar ID No. 03315
Public Service Commission
600 E. Boulevard Avenue, Dept 408
Bismarck, ND 58505
(701) 328-2407
(701) 328-2410 fax

Attorney for the Public Service Commission

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WELLS

SOUTHEAST JUDICIAL DISTRICT

_____)
Public Service Commission)
) **Petitioner,**)
) **vs.**)
) **Earth Harvest Mills, Inc.**)
) **Respondent.**)
_____)
PSC Case No. GE-13-193)
_____)

CIVIL NO. _____

**NOTICE OF APPLICATION
FOR APPOINTMENT AS
TRUSTEE AND FOR
EX PARTE ORDER AND
NOTICE OF MOTION UNDER
RULE 3.2**

TO: **Eric G. Hoberg, Registered Agent, Earth Harvest Mills, Inc.** 500 North Street West, Harvey, North Dakota 58341-1012.

Grayson Hoberg, Chief Executive Officer, Earth Harvest Mills, Inc. 500 North Street West, Harvey, North Dakota 58341-1012

PLEASE TAKE NOTICE that the Public Service Commission respectfully moves the Court for Appointment as Trustee and for *Ex Parte* Order. The Public Service Commission further moves the Court for an order declaring Earth Harvest Mills, Inc. doing business as Dakota Prairie Organic Flour Company (Earth Harvest Mills) insolvent within the meaning of North Dakota Century Code Chapter 60-04 and establishing the date of insolvency as April 26, 2013, the date the first claim for nonpayment for grain delivered or sold.

The application, affidavit and brief in support of the application are attached to this notice and by reference made a part hereof.

YOU ARE HEREWITH NOTIFIED that the attached Application includes a request for appointment as trustee and declaration of insolvency as of April 26, 2013, and a request for an *ex parte* order under North Dakota Century Code section 60-04-03. The application for appointment as trustee and declaration of insolvency is submitted to the Court pursuant to Rule 3.2 of the North Dakota Rules of Court and will be decided on briefs unless oral argument is timely requested. You have fourteen (14) days after the service of the notice to file your response and other supporting papers.

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



Illona A. Jeffcoat-Sacco
Special Assistant Attorney General
State Bar ID No. 03315
Public Service Commission
600 E. Boulevard Avenue, Dept 408
Bismarck, ND 58505
(701) 328-2407
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Attorney for the Public Service Commission

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WELLS

SOUTHEAST JUDICIAL DISTRICT

_____)
Public Service Commission)
))
Petitioner,)
))
vs.)
))
Earth Harvest Mills, Inc.)
))
Respondent.)
_____)
PSC Case No. GE-13-193)
_____)

CIVIL NO. _____

**AFFIDAVIT OF
SUSAN K. RICHTER
IN SUPPORT OF
APPLICATION**

STATE OF NORTH DAKOTA)
)ss
COUNTY OF BURLEIGH)

Susan K. Richter being duly sworn states as follows:

1. That she is a citizen of the United States of America, of legal age, residing at Bismarck, North Dakota.
2. That she is the Director of the Licensing Division for the Public Service Commission (Commission) and as such is charged with the duty of enforcing the provisions of North Dakota Century Code Chapters 60-02 and 60-04.
3. Earth Harvest Mills, Inc. (Earth Harvest Mills), a North Dakota business corporation, operates a grain warehouse at Harvey, North Dakota since December 2004 under 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.

4. Earth Harvest Mills operates its grain warehouse facility at Harvey, North Dakota under license number 1155. Earth Harvest Mills processes grains into flour and other products for subsequent sale.
5. As part of the licensing process, Earth Harvest Mills filed a surety bond with the Commission as required by North Dakota Century Code section 60-02-09 and North Dakota Administrative Code section 69-07-02-02, in the amount of \$50,000 and identified as number 9145595 with Washington International Insurance Company, 475 North Martingale Road #850, Schaumburg, Illinois, as surety.
6. 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. Copy attached as Exhibit A.
7. In addition to the written communication received, the Licensing Division has received and continues to receive phone calls from additional producers alleging they have not been paid for grain delivered or sold to Earth Harvest Mills and asking for instructions for filing a claim against the bond under the provisions of North Dakota Century Code section 60-02-09 or against the credit-sale contract indemnity fund under the provisions of North Dakota Century Code section 60-10-04.
8. Affiant believes that under North Dakota Century Code section 60-04-03 the court may issue a temporary *ex parte* order to preserve or protect the assets and any potential assets of the trust fund until the court issues its order granting or denying the application.

9. Affiant believes that Earth Harvest Mills refused, neglected, or is unable upon proper demand to make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain
10. Affiant believes, based on the claim for nonpayment filed with the Commission, Earth Harvest Mills is insolvent under North Dakota Century Code Chapter 60-04 in that it refused, neglected, or 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.
11. Affiant believes it is in the best interest of the potential claimants that the Commission be appointed trustee in an insolvency proceeding under the provisions of North Dakota Century Code Chapter 60-04.
12. Affiant believes that the bond proceeds may be needed to redeem outstanding receipts issued by Earth Harvest Mills.
13. Affiant believes that proceeds from the credit-sale contract indemnity fund may be needed to meet the licensee's obligations to any holders of credit-sale contracts.
14. Affiant understands that 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. Affiant is concerned that processing any grain in the facility may compromise the trust fund.

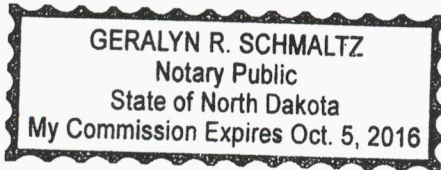
15. Affiant believes it is in the best interest of potential claimants that the Court issue *ex parte* a temporary order preserving and protecting any assets and potential assets of the trust under North Dakota Century Code Chapter 60-04.
16. That this affidavit is made for the purpose of securing the appointment of the Commission as trustee of Earth Harvest Mills and preserving any assets of the trust under North Dakota Century Code Chapter 60-04.

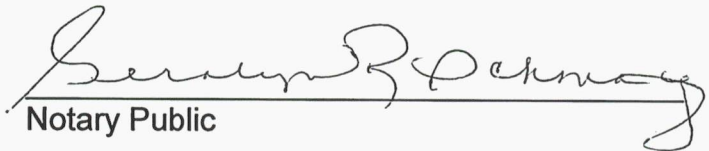
Dated this 1st day of May, 2013.



Susan K. Richter

Subscribed and sworn to before me
this 1st day of May, 2013.





Notary Public

Delbert Cousins
 Box 38
 Weirdale, SK
 S0J 2Z0

13 April, 2013

Public Service Commission
 Bismarck, ND 58505-0480

Susan Richter



Re: Unpaid grain claim – Delbert Cousins & Earth Harvest Mills

Earth Harvest Mills owes me **\$25,949.00** plus interest from organic wheat I sold them in March 2012.

On the 10th January, 2012, Chris Krenzel of Earth Harvest Mills sent me a quote on what they would pay me for my organic wheat, which was above 14 % protein. The price was \$14.00 per bushel. (Copy of their quote is attached and marked **Appendix A**)

I agreed to sell my wheat at that price and on 15 March, 2012, Grayson Hoberg, CEO of Earth Harvest Mills sent me a contract via email, which I signed and returned to him by email that same day. (Copy of the Contract is attached and marker **Appendix B**) On the contract Grayson estimated the value of two truck loads of grain, final amount would be know when grain reached the mill.

I arranged for two trucks and on that same day the 15 March, 2012 the two trucks arrived and loaded up my organic wheat. The trucks were weighed at our local scale and a copy of the trucks weigh receipts are attached. (They are marked **Appendix C**)

I arranged for an Export Licence. (Copy of the Export Licence marked **Appendix D**) The licence shows the organic wheat crossed the Border on the 16 March, 2012.

My organic wheat arrived at Earth Harvest Mill on the 16 March, 2012 and the loads were unloaded into Bin 2 & Bin 4. Weights are recorded on the receipts. Copy of the receipts are attached and marked **Appendix F**) Two loads held 1891.33 bushels. At \$14.00 per bushel I expected around \$26000.00. Although the grain was fairly clean I knew there would be some screening waist when clean to a higher standard.

I did not receive payment for my organic wheat within 30 days as required by the contact so I called Chris Krenzel by email & phone on several occasions but to no avail. He finally told me I should talk with Grayson Hoberg. I contacted Mr Hoberg on numerous occasions and he would often say a check would be in the mail but non ever came.

On about the 19 June 2012 I received a Deferred Payment Contact date 19 June, 2012 by mail from Grayson Hoberg. (Copy of this contract attached and marked **Appendix G**) He advised signing this contract would guarantee me 80% payment from the Government if they went Bankrupt. The contract shows he owed me **\$25,949.00**. I did not sign the contract as there was no mention of the 80% guarantee.

I started searching data on the internet about Earth Harvest Mills and that is how I found that the Public Service Commission was looking into the mill so I called them. Susan Richter explained the Deferred Payment Contract to me.

Time passed and I never did receive any payment from Earth Harvest Mills. After learning more about a Deferred Payment Contract, I signed a Deferred Payment Contract with Grayson Hoberg dated 12 February, 2013. (Copy of this contract Marked **Appendix H**) The contract states I would receive payment by the 31 March 2013 but no payment was received.

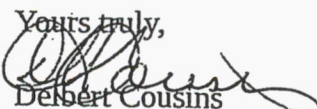
I paid all expenses to ship the wheat to Earth Harvest Mills. I paid for the trucking, Boarder crossing fees, Canada Wheat Board fees, and partial cleaning expense. Total expense was about \$5,000.00. I am out my wheat plus these out of pocket expenses Earth Harvest Mills had no expense on this sale so made full profit on the sale of the milled flour. They sold my wheat and used the money to pay others; doing this in Canada can constitute a Criminal Offence.

One year has now passed and I have not received a payment of any sort from Earth Harvest Mills. I have made many emails & phone calls back and forth to Grayson & Eric Hoberg and have had many promises that payment would be in the mail but no money has been received.

I am convinced that when Earth Harvest Mills purchased our wheat in March of 2012, they at that time had no intention of paying us. This was one of their tactics to raise some money to keep operating. Many times they would tell us "You will have a check by Friday". No check ever came.

Attachments: Appendix A – Offer to pay \$14.00 per bushel
Appendix B – Sale Contract
Appendix C – Trucks weigh tickets
Appendix D – Export Licence
Appendix F - Earth Harvest Mills' weigh ticket
Appendix G – First Deferred Payment Contract, shows what the Mill owes me
Appendix H – Deferred Payment Contract, signed by Grayson Hoberg & myself

Yours truly,


Delbert Cousins

Appendix
A

Chris Krenzel chris@dakota-prairie.com Jan 10

Delbert,

Here is the price structure I am currently using. The pricing is FOB Harvey, ND
I am interest in all of the grain and will pay (following the attached chart) according to proteins. Please read the standards we have at the bottom of the chart for TW, bugs, and smell.

Chris Krenzel

HRSW pricing for November 1, 2011			
	Protein of the grain		Proposed price \$/bush (FOB Harvey)
Delivered Price for 16%+ Protein HRSW:	16% or higher		\$15.00
Delivered price for 14.0%-15.99% Protein HRSW:	17% or less		\$13.00
Delivered price for 13.0%-13.9% Protein HRSW:			
Proteins from 13.0%-13.3%	13.00%-13.25%		\$12.50
Proteins from 13.4%-13.7%	13.50%-13.69%		\$12.60
Proteins from 13.7%-13.9%	13.70%-13.99%		\$12.70
Delivered price for 12.0%-12.9% Protein HRSW:			
Proteins from 12.0%-12.19%	12.0%-12.19%		\$12.00
Proteins from 12.20%-12.39%	12.20%-12.39%		\$12.10
Proteins from 12.40%-12.59%	12.40%-12.59%		\$12.20
Proteins from 12.60%-12.79%	12.60%-12.79%		\$12.30
Proteins from 12.8%-12.9%	12.80%-12.99%		\$12.40
Proteins below 12% Protein	less than 12%	Pay on protein=11.9% is \$11.90/bushel	Pay on protein=11.9% is \$11.50/bushel

All incoming grain must be at least 58 TW, below 14% moisture and 300 Falling number. Loads not meeting psi, protein, moisture, and falling number specs can be rejected. We can also reject loads for extreme, high moisture (above 20%), odor, or rocks.

Appendix B

Sales Agreement

Agreement# DPO031512HRSW

Seller

Delbert Cousins
Box 38
Weirdale, Saskatchewan
Phone 306-929-4813
Fax 306-929-4813

Buyer

Earth Harvest Mills
DBA Dakota Prairie Organic Flour Co.
500 North St West
Harvey, ND 58341
Phone 701-324-4330
Fax 701-324-4334


Delbert Cousins agrees to sell Earth Harvest Mills approximately 1700 bushels of 14.0% protein (average), 60+ TW, hard red spring wheat. The 2011 crop year HRSW will be shipped from Weirdale, Saskatchewan to Harvey, ND via truck. Trucking will be arranged/paid by the seller.

Bushel price is \$ 14.00/bushel less dockage , FOB Harvey, ND
Invoice total: \$23,800 less dockage

- *Weight and total price to be adjusted according to weight on printed scale ticket after loading, less dockage.
- Grain can be rejected for any of the following reasons: Moldy/rancid smell, vomitoxin above 1 ppm, falling number below 300, TW below 58, rocks, and/or bugs.
- Payment terms are Net 30 Days from arrival date.
- An Organic Certification, BOL, and clean truck affidavit paperwork must accompany each load of grain.
- Copies of paperwork will be transmitted via fax, email, or mail to Earth Harvest Mills as they are available.
- Product can be shipped starting 03/15/12 and shipped at farmers discretion.


 Grayson Hoberg, CEO-Earth Harvest Mills
 Signature of Purchaser

3/15/12
 Date


 Signature of Seller

3/15/12
 Date

DAHL TRUCKING LLC

9240 Hwy. 1 S., Langdon, ND 58249
Phone 701-256-3959 • 800-624-8680

No. 6559

Appendix C

From: Shipper name and address Delbert Cousins Meath Park, SK		Date: 3/15/12	
To: Receiver name and address Dakota Prairie Organics Harvey, ND		Load #:	
Commodity		Weight lbs.	Rate
wht		60 804	
Driver Name (print): Kevin Nygaard		Driver Signature: <i>Kevin Nygaard</i>	
Truck #: 91		Trailer #: 130	

SHIPPER COPY

ELROY TRUCKING LLC

P.O. Box 85, Gilby, ND 58235
Cell 218-791-1344 • Fax 701-869-2104

No. 1060

From: Shipper name and address Delbert Cousins Farm Meath, Park SK		Date: 3-15-2012	
To: Receiver name and address Dakota Prairie Organics Harvey, ND		Load #:	
Commodity		Weight lbs.	Rate
Organic wheat		52,757 LBS	
Driver Name (print): Kevin Larson		Driver Signature: <i>Kevin Larson</i>	
Truck #: 56808 - E18		Trailer #: T771272 - ET8	

WHITE - DRIVER COPY CANARY - SHIPPER COPY PINK - RECEIVER COPY

Appendix

D

2012-03-05 16:45

CWB Winnipeg

>>

Form # 124/Exports/8



EXPORT LICENCE FOR WHEAT OR BARLEY / Permis d'exportation de blé ou d'orge

Read all terms and condition on this application carefully / Veuillez lire attentivement les modalités de cette demande.

IT IS AN OFFENCE:

1. Under the Canadian Wheat Board Act to export wheat, barley or their products without an export licence and to otherwise contravene the Canadian Wheat Board Regulations or Instructions to the Trade issued pursuant to the Act. 2. Under the Canada Customs Act to fail to stop and report to Canada Border Services Agency at the point and time of exit and produce a valid export licence before exporting wheat, barley or their products.

Il est interdit:

1. Aux termes de la Loi sur la Commission canadienne du blé, d'exporter du blé, de l'orge ou des produits dérivés de blé ou d'orge sans permis d'exportation de la CCB; de telles actions constituant une infraction au Règlement sur la CCB et aux Instructions au négociant s'y rapportant. 2. Aux termes de la Loi sur les douanes, il est interdit de ne pas s'arrêter et de ne pas se présenter à l'Agence des services frontaliers du Canada au point de sortie et au moment de la sortie du Canada et de ne pas produire de permis d'exportation valide avant d'exporter du blé, de l'orge ou des produits dérivés de blé ou d'orge.

1 Applicant / Exporter / Demandeur / Exportateur :

Name / Nom: Delbert Cousins; Address / Adresse: GD, Weirdale; Province / State / Etat: SK; Country / Pays: Canada; Postal Code / Code Postal: S0J 2Z0; Phone / Tel: 306-929-4813; Fax / Telecopieur: 306-929-4813; Exporter is a Canadian Citizen? / L'Exportateur est citoyen du Canada. Yes / Oui [] No / Non []

2 Agent / Agent :

Name / Nom: ; Address / Adresse: ; Province / State / Etat: ; Country / Pays: ; Postal Code / Code Postal: ; Phone / Tel: ; Fax / Telecopieur: ; Agent is a Canadian Citizen? / L'Agent est citoyen du Canada. Yes / Oui [] No / Non []

3(a) Commodity purchased from / Marchandise obtenue de :

Name / Nom: Delbert Cousins; Address / Adresse: GD, Weirdale; Province / State / Etat: SK; Country / Pays: Canada; Postal Code / Code Postal: S0J 2Z0; Phone / Tel: 306-929-4813; Fax / Telecopieur: 306-929-4813; 3(b) CWB Contract No / No de contrat CCB: 317210

4(a) Commodity being exported / Marchandise exportée: 2CWRS - Wheat; 4(b) Quantity being exported / Quantité exportée: 51.70 MT; 4(c) Country of final Destination of commodity being exported / Pays où la marchandise exportée est expédiée: United States

5(a) Canada Border Services Agency (CBSA)-Point of Exit / Bureau de sortie de l'Agence des services frontaliers du Canada (ASFC): North Portal, SK; 5(b) Mode of transport from point of exit / Mode de transport à partir du point de sortie: [] Air / Avion, [] Mail / Courrier, [] Rail / Rail, [] Highway / Route, [x] Marine / Maritime

6 Applicant has read and agrees to all the terms and conditions found on pages one and two of the export licence application / Le demandeur a pris connaissance des Termes et Conditions aux pages Un et Deux de ce formulaire.

Applicant's Signature / Signature du demandeur: [Signature]; Date: 5 Mar 2012; Company / Société: Owner; Position / Fonction: Owner

For CWB use only / Réserve à l'usage de la CCB

Applicant is issued an export licence, for the total quantity of the product outlined above, subject to the terms and conditions of this application. / Un permis d'exportation a été octroyé au requérant, pour le volume total du produit indiqué ci-dessus, sous réserve des modalités de cette demande.


The Canadian Wheat Board / La Commission canadienne du blé, 423 Main Street / 423, rue Main, P.O. 816 Station Main / C.P. 816 Winnipeg, Manitoba, Canada R3C 2P5; Export Licencing / Permis d'exportation (204) 983-3569; Export Licencing Fax / Permis d'exportation Telecopieur (204) 987-4178

CWB Representative / Agent CCB; Export Licence # / N° de permis: 31721021; Issue Date / Date de délivrance: March 05, 2012; Expiry Date / Date d'expiration: May 04, 2012

[Signature] Signature

Appendix
F

TK1

 DAKOTA PRAIRIE ORGANIC FLOUR CO.
500 NORTH STREET WEST
HARVEY, ND 58341

DATE 3-16-12

COMMODITY HRSW

TO Bin 2 TRUCK
FROM _____ RAILCAR

UNIT NUMBER _____

GROSS	ID 031612.1 09:32AM 03/16/2012	<i>wrong found</i>
TARE	93100 lb INBOUND	
NET	ID 031612.1 11:38AM 03/16/2012	

GROSS 93100 lb RECALLED

TARE ~~32900~~ lb

NET 60780 lb

10/300 Bu

Dahl Trucking LLC
 9240 HWY 1 South
 Langdon, ND 58249
 P: 701-256-3959 F: 701-256-3960

INVOICE
 162078
 03/19/2012

Bill To

Delbert/Linda Cousins
 Box 38
 Weirdale, SK S0J 2Z0

Terms: Net 21
 Reference: 031612.1/6559

Office: 27

Company	Address	City, St	Zip	Ref
Shipper		Meath Park, SK		
Consignee		Harvey, ND		

Commodity	Description	Reference	Pcs	Act Wgt	Tar Wgt	Bill Wgt
Wheat	6559	031612.1	1,013	60,780	0	60,780

Accessorial	Reference	Rate	Units	Amount
Fuel Surcharge	per bu	0.32	1,013	324.16

Pickup Date: 3/15/12	Total Pieces: 1,013	Actual Wgt: 60,780	As Wgt: 60,780	Truck: 91
Delivery Date 3/16/12	Total Space: 0	Tariff Wgt: 0	Miles: 575	Trailer: T1201

Payable only in U.S. Funds	Rate By: Piece	Freight:	1,296.64
Payment due net 30 days or finance charges apply	Rate: 1.28	+ Accessorials:	324.16

(For your Records)

Invoice Total: 1,620.80 *pd*



DAKOTA PRAIRIE ORGANIC FLOUR CO.
500 NORTH STREET WEST
HARVEY, ND 58341

DATE 3-16-12

TK2

COMMODITY HRSW

TO Bin #

TRUCK
 RAILCAR

FROM _____

UNIT NUMBER _____

GROSS

TARE

NET

52700

ID 031612.2 10:05AM 03/16/2012
81380 lb INBOUND
ID 031612.2 12:37PM 03/16/2012

GROSS 81380 lb RECALLED

TARE ^{WEIGHER} 28680 lb

NET 52700 lb

TK KK

52700 = 878.33 Bu

Appendix F

Frontier Freight
 9240 Hwy 1 South
 Langdon, ND 58249
 P: (701)256-3959 F: (701)256-3960

INVOICE
 12892
 03/21/2012

Bill To

Delbert or Linda Cousins
 Box 38
 Weirdale, SK S0J 2Z0

Terms: Net 21
 Reference: 031612.2
 Office: 1

Company	Address	City, St	Zip	Ref
Shipper Delbert Cousins		Meath Park , SK		
Consignee Dakota Prairie Organic Flo	500 N St. W	Harvey, ND		

Commodity	Description	Reference	Pcs	Act Wgt	Tar Wgt	Bill Wgt
Wheat	1060	031612.2	878.33	52,700	0	52,700

Accessorial	Reference	Rate	Units	Amount
-------------	-----------	------	-------	--------

Pickup Date: 3/15/12	Total Pieces: 878.33	Actual Wgt: 52,700	As Wgt: 52,700	Truck:
Delivery Date 3/16/12	Total Space: 0	Tariff Wgt: 0	Miles: 575	Trailer:

Rate By: Piece
 Rate: 1.60

Freight: 1,405.33
 + Accessorials: 0.00

Invoice Total: 1,405.33

(for your records)

pd

G

Jun 19
Delbert,

We are in a major growth in the wheat and gluten-free area. From last month to this month we are growing 60% and it has hurt our cash flow.

We are planning on paying this bill within the next four months thru the profits of the company or faster thru an equity raise that we are in the process of.

In the meantime, I attached a deferred payment contract. This is filled with the State of North Dakota and it provides a guarantee from the State of 80% of the total. So it is a benefit to you.

Thank you for your help.

Grayson Hoberg
CEO

Appendix H

Dakota Prairie Organic Flour Company
Deferred Payment Contract

NO. 139

THIS AGREEMENT, made and entered into by and between Dakota Prairie Organic Flour Company, (Buyer) with its principal place of business at 500 North Street West, Harvey, ND 58341 and Delbert Cousins (Seller) whose principal place of business is at Box 38, Weirsdale, SK Canada S0J2Z0

The parties hereto hereby promise and agree as follows:

1. Seller has sold (or sells) and Buyer has purchased (or hereby purchases) and acknowledges receipt of the following described grain(s):

Table with 5 columns: Receipt No., Kind of Grain, Net Bushels, Price, Amount. Includes rows for 'On File' (Hard Red Wheat) and a summary for 'Total Gross Amount' (25,949.00) and 'Net Amount' (25,949.00).

2. Purchase Price: As and for the purchase price, Buyer promises to pay the "net amount" stated above.

3. Deferred Payment: Which Buyer agrees to pay Seller between the dates of 2/12/13 and 3/31/13

4. Liens: Seller hereby warrants to Buyer that all grain delivered hereunder is now and will remain up to and including the time of delivery, free of all liens, encumbrances or security interest of any kind except as follows: Dakota Prairie Organic Flour Company is to pay 5% interest per year on outstanding balance owing from 16th March 2012, the date they received the wheat.

5. Title: Title to the grain shall pass to the buyer at time of delivery.

6. Merchantable Quality: All grain delivered under this contract shall be of merchantable quality, unadulterated, and unrestricted from movement in interstate commerce within the meaning of the federal Food, Drug and Cosmetics Act, Environmental Protection Agency tolerances, the U.S. Grain Standards Act and Applicable state law.

7. Tax Consequences: Buyer has made no representations regarding the tax consequences of this contract.

8. Arbitration: Buyer and Seller agree that all disputes and controversies between them with respect to this contract shall be arbitrated by District Court, Wells County, North Dakota and that judgement may be entered on the arbitration award in any court of competent jurisdiction. Seller agrees to pay all Buyer's costs resulting from Seller's breach, including, but not limited to, reasonable attorney's fees and court costs. Buyer agrees to pay all Seller's costs resulting from Buyer's breach, including, but not limited to, reasonable attorney's fees and court costs.

9. Binding Effect: This contract, and any amendments thereto agreed to mutually by the Seller and buyer, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives and successors of the respective parties. This contract may not be assigned.

10. Final and Complete Agreement: This contract shall represent the final, complete and exclusive statement of agreement between the parties and may not be modified, supplemented or waived, except in writing signed by both parties.

In witness whereof, the parties have signed this contract this 12 day of February (month) 2013 (year)

CREDIT-SALE CONTRACT INDEMNITY
This contract is not protected by bond coverage in the event of buyer's insolvency.
Upon the insolvency of a licensed warehouse or a grain buyer the PUBLIC SERVICE COMMISSION shall use the credit-sale contract indemnity fund for 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.
The amount payable to any eligible person from the credit-sale contract indemnity fund for each insolvency may not exceed the lesser of eighty percent of the amount owed to that eligible person in accordance with all of that person's unsatisfied credit-sale contracts or two hundred eighty thousand dollars.
Seller [Signature]

BUYER: [Signature]
SELLER: [Signature]

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,



Illona A. Jeffcoat-Sacco
Special Assistant Attorney General
State Bar ID No. 03315
Public Service Commission
600 E. Boulevard Avenue, Dept 408
Bismarck, ND 58505
(701) 328-2407
(701) 328-2410 fax

Attorney for the Public Service Commission

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WELLS

SOUTHEAST JUDICIAL DISTRICT

_____)	
Public Service Commission)	CIVIL NO. _____
)	
Petitioner,)	
)	
vs.)	
)	
Earth Harvest Mills, Inc.)	EX PARTE ORDER
)	TO PRESERVE TRUST
Respondent.)	ASSETS
_____)	
PSC Case No. GE-13-193)	
_____)	

The Public Service Commission has moved the Court for appointment as trustee of Earth Harvest Mills, Inc. under North Dakota Century Code Chapter 60-04 and for an *Ex Parte* Order to Preserve Trust Assets. Earth Harvest Mills, Inc., doing business as Dakota Prairie Organic Flour Company, 500 North Street West, Harvey, North Dakota 58341, operates as a grain warehouseman in the State of North Dakota.

It appears from the record that Earth Harvest Mills, Inc. is insolvent under North Dakota Century Code Chapter 60-04, and that it is in the best interest of the claimants and the parties to this proceeding that an *ex parte* order be issued by this Court to preserve and protect the potential assets of the trust fund until the court issues its order granting or denying the application.

North Dakota Century Code section 60-04-03.1 provides that the trust fund must consist of the following:

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of such grain.
2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the commission is appointed trustee must be remitted to the commission and included in the trust fund.
3. The proceeds of insurance policies on destroyed grain.
4. The claims for relief, and proceeds therefrom, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.
5. The claim for relief, and proceeds therefrom, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.
8. Unencumbered grain product assets.

ORDER

THEREFORE, the Court orders that Earth Harvest Mills, Inc., doing business as Dakota Prairie Organic Flour Company is prohibited from selling, transferring, removing, processing, or otherwise compromising potential assets of the trust fund as provided in North Dakota Century Code Chapter 60-04, until the court issues its order granting or denying the application for appointment of the Public Service Commission as Trustee of the trust fund in this proceeding.

_____, North Dakota, this ____ day of _____, 2013.

BY THE COURT

Honorable
Judge of the District Court

purpose of marshalling all trust assets of the insolvent Earth Harvest Mills, Inc. doing business as Dakota Prairie Organic Flour Company in the manner provided by law.

ORDERED FURTHER that the date of insolvency be established as April 26, 2013.

_____, North Dakota, this ____ day of _____, 2013.

BY THE COURT

Honorable
Judge of the District Court

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WELLS

SOUTHEAST JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Earth Harvest Mills, Inc.

Respondent.

CIVIL NO. _____

AFFIDAVIT OF SERVICE
BY CERTIFIED AND
REGULAR MAIL

PSC Case No. GE-13-193

STATE OF NORTH DAKOTA

COUNTY OF BURLEIGH

)
)ss
)

Geralyn R. Schmaltz deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **1st day of May, 2013**, she deposited in the United States Mail, Bismarck, North Dakota, **2** envelopes with certified postage, return receipt requested, securely sealed and containing a photocopy of:

1. Notice of Application for Appointment as Trustee and Notice of Motion Under Rule 3.2 and for Ex Parte Order
2. Application for Appointment as Trustee and for Ex Parte Order
3. Affidavit of Susan K. Richter
4. Brief in Support of Application for Appointment as Trustee and for Ex Parte Order
5. Proposed Ex Parte Order to Preserve Trust Assets
6. Proposed Order Appointing Trustee
7. Affidavit of Service by Certified and Regular Mail

The envelopes were addressed as follows:

Grayson Hoberg, CEO
Earth Harvest Mills, Inc.
500 North Street West
Harvey, ND 58341-1012
Certified Mail No. **7012 1640 0002 4652 2499**

Eric G. Hoberg, Registered Agent
Earth Harvest Mills, Inc.
500 North Street West
Harvey, ND 58341-1012
Certified Mail No. **7012 1640 0002 4652 2505**

Geralyn R. Schmaltz further deposes and says that on the **1st day of May, 2013**, she deposited in the United States Mail, Bismarck, North Dakota, **25** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

The envelopes were addressed as follows:

Ray L. Miller
R & S Organic Farm
1504 W 11th Road
Aurora, NE 68818-3920

Jason Freeman, General Manager
Farmers Direct Co-Operative LTD
1536 Victoria Avenue
Regina, SK CN S4P 0P5

Lyle Busch
14641 514th Ave.
Bristol, SD 57219

Lewis Siebold
1397 51st Ave. NE
Cathay, ND 58422

Ty O'Connor
1 O'Connor Road
Broadus, MT 59317

Ron Gleim
PO Box 298
Chaplin, SK CN SOH OVO

Robert Porch
27403 Husle Road
Wanblee, SD 57577

Phil Hooyer
3867 Cherry Ave.
Hudson, SD 57034

Murray Foulston
PO Box 190
Tugaske, SK CN SOH 4BO

Jewell Mehlhoff
1821 Josephine Lane
Tuttle, ND 58488

Farmers Union Oil of Velva
PO Box 35
Martin, ND 58758

Delbert Cousins
Box 38
Weirdale, SK CN SOJ 2ZO

David Hager
2775 Hwy 3 Northeast
Harvey, ND 58341

Curtis Kosowan
PO Box 141
Mealth Park, SK CN SOJ 1TO

Roy Brewin
Rowland Seeds, Inc.
Box 4776
Taber, Alberta CN T1G 2E1

RW Organic Ltd.
Box 232
Mossbank, SK CN SOH 3GO

Brad Hennrich, President
Hesco, Inc.
500 19th Street SE
Watertown, SD 57201

Wendell Lund
1539 104th Street NE
Bottineau, ND 58318

Jon & Amy Kvaalen
PO Box 21
Lambert, MT 59243

Lee Thomas
12506 20th Street North
Moorhead, MN 56560

Lewis Ag
6820 30th Road
Thayer, KS 66776

Reed Zimmerman
6112 45th Avenue SE
Napoleon, ND 58561

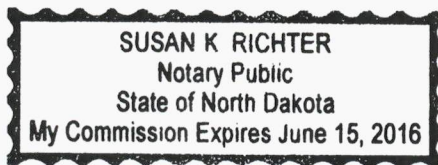
Washington Insurance Company
475 North Martingale Road \$850
Schaumburg, IL 60173

Mosher's Organic Grain
PO Box 51
Bushnell, NE 69128

Roger Hasse
4433 41st Avenue SE
Tappen, ND 58487

Subscribed and sworn to before me
this 1st day of May, 2013.

SEAL



Suzanne R. Schmag

Susan K Richter
Notary Public