

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WELLS

SOUTHEAST JUDICIAL DISTRICT

_____)	
Public Service Commission)	CIVIL NO. 52-2013-CV-00033
)	
Petitioner,)	
vs.)	
)	REPORT AND
Earth Harvest Mills, Inc.)	RECOMMENDATION
)	OF TRUSTEE
Respondent.)	
_____)	
PSC Case No. GE-13-193)	
_____)	

1. The Public Service Commission, as Trustee, makes the following Report and Recommendation to the Court:
2. Earth Harvest Mills, Inc. dba Dakota Prairie Organic Flour Company (Earth Harvest Mills), a North Dakota business corporation, operated a grain warehouse at Harvey, North Dakota, licensed under North Dakota Century Code Chapter 60-02. Earth Harvest Mills, Inc. operated under license number 1155.
3. As part of the licensing process, Earth Harvest Mills filed a bond, as required by North Dakota Century Code section 60-02-09, in the amount of \$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, Delbert Cousins, Weirdale, Saskatchewan, Canada, filed with the Public Service Commission, a letter for collection of outstanding funds owed

Mr. Cousins by Earth Harvest Mills for grain delivered. Subsequently, twenty five others filed letters for collection of outstanding funds owed them for grain delivered to Earth Harvest Mills.

5. The week of April 29, 2013 Timothy Erdmann, Public Service Commission Grain Warehouse Inspector, confirmed there was no grain inventory at the Harvey, North Dakota facility.
6. On May 1, 2013, the Public Service Commission filed an Application under North Dakota Century Code Chapter 60-04 for Appointment as Trustee and for Ex Parte Order in District Court, County of Wells, Southeast Judicial District.
7. On May 2, 2013, the District Court issued an Order prohibiting Earth Harvest Mills from selling, transferring, removing, processing, or otherwise compromising potential assets of the Trust Fund until the Court issues its order granting or denying the application for appointment of the Public Service Commission as Trustee of the Trust Fund.
8. On May 10, 2013, a copy of the Notice of Entry of Order with attached copy of the executed Ex Parte Order to Preserve Trusts Assets was served by certified mail on Earth Harvest Mills and also sent by regular mail to the surety and twenty five potential claimants identified from the records of the Public Service Commission and Earth Harvest Mills.
9. On June 14, 2013, the District Court issued an Order appointing the Public Service Commission Trustee of the Trust Fund under North Dakota Century Code Chapter 60-04 for the purpose of marshaling all trust assets of the

insolvent Earth Harvest Mills, Inc. doing business as Dakota Prairie Organic Flour Company and establishing the date of insolvency as April 26, 2013.

10. On June 25, 2013, a copy of the Notice of Order Appointing Trustee with attached copy of the executed Order Appointing Trustee, and a copy of the Notice of Appointment as Trustee and Notice to File Claims, was served on Earth Harvest Mills by certified mail and also sent by regular mail to the surety and twenty-six potential claimants in the insolvency proceeding. The notice required the filing of claims within forty-five days of the second publication of the notice.
11. On June 29, 2013 and July 6, 2013, the Notice of Appointment as Trustee and Notice to File Claims was published as a legal publication in The Herald-Press, Harvey, North Dakota, as required by North Dakota Century Code section 60-04-03.3. The Herald-Press is located in Wells County and is the official county newspaper of the county in which the Harvey warehouse is located.
12. On March 7, 2014, the Trustee filed a Motion to Join Surety asking the Court to order Washington International Insurance Company joined as a Respondent under North Dakota Century Code section 60-04-03.3. The Notice of Motion, Motion and Brief in Support of Motion, under Rule 3.2 of the North Dakota Rules of Court, were served on Earth Harvest Mills and Washington International Insurance Company by certified mail, and on others via the Odyssey Electronic Service and File System and regular mail.
13. Twenty-six claims totaling \$4,351,571.30 were filed, and are identified below. Additional detail on each claim is provided in Exhibit A, attached to this report.

<u>Claimant Name</u>	<u>Claim Filed</u>
a. Lyle Busch	\$ 11,705.88
b. Delbert Cousins	\$ 25,949.00
c. Donald Dufner	\$ 48,310.84
d. Farmers Direct Co-op LTD	\$ 121,179.88
e. Farmers Union Oil of Velva	\$ 4,511.09
f. Murray Foulston	\$ 4,031.43
g. Ron Gleim	\$ 5,842.08
h. David Hager	\$ 4,029.26
i. Roger Hasse	\$ 24,738.75
j. Hesco, Inc.	\$ 1,743,192.40
k. Phil Hooyer	\$ 20,713.10
l. Curtis Kosowan	\$ 17,260.51
m. Jon & Amy Kvaalen	\$ 36,396.50
n. Lewis Ag	\$ 21,835.71
o. Wendell Lund	\$ 12,000.00
p. Jewell Mehlhoff	\$ 4,311.50
q. Ray L. Miller	\$ 23,319.85
r. Moshers Organic Grain	\$ 9,368.26
s. Ty O'Connor	\$ 37,055.20
t. Robert Porch	\$ 10,261.92
u. Rowland Seeds, Inc.	\$ 1,973,124.43
v. RW Organic Ltd.	\$ 42,556.05
w. Lewis Siebold	\$ 4,031.65
x. Lee Thomas	\$ 84,899.48
y. Reed Zimmerman	\$ 6,905.00
z. Buesing Bulk Transport, Inc.	\$ 54,041.53
Total	\$ 4,351,571.30

14. At the time of insolvency, there were no grain assets in the warehouse at Harvey, North Dakota.
15. The \$50,000 bond proceeds are needed to redeem outstanding claims for grain purchased by means other than by credit-sale contract by Earth Harvest Mills through its Harvey, North Dakota facility.
16. When the bond proceeds are paid over to the Trustee, there will be funds available from the Trust Fund to pay each valid noncredit-sale contract (cash) claimant approximately 62% of the respective valid claim.
17. The Trustee recommends that each noncredit-sale contract (cash) claimant be paid approximately 62% of the respective valid claim. The Trustee recommends that payment for each noncredit-sale contract (cash) claim be made jointly payable to the claimant and relevant valid lien holders at the time checks are issued. The final amounts to be paid will be determined once Court approval is received.
18. The Trustee recommends finding seven noncredit-sale contract (cash) claims valid totaling \$80,973.26. Valid noncredit-sale contract claims are identified below and with additional detail in Exhibit A, attached.

<u>Claimant Name</u>	<u>Claim Filed</u>	<u>Valid Claim</u>
a. Farmers Union Oil of Velva	\$ 4,511.09	\$ 4,539.76
b. Phil Hooyer	\$ 20,713.10	\$ 20,713.10
c. Lewis Ag	\$ 21,835.71	\$ 20,633.83
d. Wendell Lund	\$ 12,000.00	\$ 12,150.85
e. Jewell Mehlhoff	\$ 4,311.50	\$ 4,311.50

f. Moshers Organic Grain	\$ 9,368.26	\$ 8,549.63
g. Robert Porch	\$ 10,261.92	\$ 10,074.59
Total	\$ 83,001.58	\$ 80,973.26

19. The Trustee recommends that one noncredit-sale contract (cash) claim in the amount of \$54,041.53 be determined invalid because the claim is not for grain delivered to Earth Harvest Mills and is therefore nonjurisdictional, as shown with detail in Exhibit A, attached.
20. Proceeds from the Credit-Sale Contract Indemnity Fund will be needed to meet the insolvent licensee's obligations to valid credit-sale contract claimants.
21. The Trustee recommends that payments to each valid credit-sale contract claimant be made as specified in North Dakota Century Code section 60-10-06 in the amount of 80% of the claimant's valid credit-sale contract claim, up to a maximum of \$280,000. The Trustee recommends that payment for each credit-sale contract claim be made jointly payable to the claimant and relevant valid lien holders at the time checks are issued.
22. The Trustee recommends payments on valid credit-sale contract claims totaling \$2,402,901.24. Valid credit-sale contract claims and amounts payable are identified below and with additional detail in Exhibit A, attached:

<u>Claimant Name</u>	<u>Claim Filed</u>	<u>Valid Claim</u>	<u>80% Amount</u>
a. Lyle Busch	\$ 11,705.88	\$ 11,691.89	\$9,353.51
b. Delbert Cousins	\$ 25,949.00	\$ 25,921.20	\$20,736.96
c. Donald Dufner	\$ 48,310.84	\$ 48,310.81	\$38,648.65
d. Farmers Direct Co-op Ltd	\$ 121,179.88	\$ 120,027.58	\$96,022.06
e. Murray Foulston	\$ 4,031.43	\$ 4,026.78	\$3,221.42

f. Ron Gleim	\$ 5,842.08	\$ 5,834.78	\$4,667.82
g. David Hager	\$ 4,029.26	\$ 4,029.26	\$3,223.41
h. Roger Hasse	\$ 24,738.75	\$ 24,738.75	\$19,791.00
i. Hesco, Inc.	\$1,743,192.40	\$1,330,287.38	\$280,000.00
j. Curtis Kosowan	\$ 17,260.51	\$ 17,233.89	\$13,787.11
k. Jon & Amy Kvaalen	\$ 36,396.50	\$ 34,407.69	\$27,526.15
l. Ray L. Miller	\$ 23,319.85	\$ 18,319.85	\$14,655.88
m. Ty O'Connor	\$ 37,055.20	\$ 37,055.20	\$29,644.16
n. Rowland Seeds, Inc.	\$1,973,124.43	\$ 586,422.98	\$280,000.00
o. RW Organic Ltd.	\$ 42,556.05	\$ 39,412.31	\$31,529.85
p. Lewis Siebold	\$ 4,031.65	\$ 4,031.65	\$3,225.32
q. Lee Thomas	\$ 84,899.48	\$ 85,022.10	\$68,017.68
r. <u>Reed Zimmerman</u>	<u>\$ 6,905.00</u>	<u>\$ 6,127.14</u>	<u>\$4,901.71</u>
Total	\$ 4,214,528.19	\$2,402,901.24	\$948,952.69

23. North Dakota Century Code section 60-10-09 provides that expenses incurred in administering the Credit-Sale Contract Indemnity Fund are reimbursable from the fund. The Trustee requests reimbursement for one-half of the expenses of administration of the insolvency from the Credit-Sale Contract Indemnity Fund. The total amount of expenses incurred to date is \$272.51 and one-half is \$136.26, as identified in Exhibit B, attached. The final amount to be reimbursed will be determined once the Court approves the Report and Recommendation of Trustee and payments are complete.

24. Contemporaneously with the filing of this Report and Recommendation a motion to approve the Report and Recommendation of Trustee, require deposit of bond proceeds, approve payments, and discharge Trustee is being filed with the North Dakota District Court located in Wells County North Dakota. The Court has

scheduled a hearing on this matter for May 14, 2014 at 3:30 p.m. CDT. Any interested party may appear at the hearing to show cause why the Report and Recommendation should not be approved.

WHEREFORE the Trustee asks the Court to:

25. Approve the Report and Recommendation of Trustee.
26. Join the surety, Washington International Insurance Company, 475 North Martingale Road #850, Schaumburg, Illinois, as a Respondent, if not already joined when this matter is heard.
27. Order the surety, Washington International Insurance Company, 475 North Martingale Road #850, Schaumburg, Illinois, to deposit with the Trustee \$50,000, the total amount of the bond proceeds, within 10 days after service of Notice of Entry of Judgment.
28. Authorize the Public Service Commission, as Trustee, to make payments of Trust Fund proceeds consistent with this Report and Recommendation to persons with valid noncredit-sale contract (cash) claims for grain purchased for cash by Earth Harvest Mills, Inc., dba Dakota Prairie Organic Flour Company at Harvey, North Dakota.
29. Authorize the Public Service Commission, as Trustee, to make payments from the Credit-Sale Contract Indemnity Fund consistent with this Report and Recommendation to persons with valid credit-sale contract claims for grain purchased via credit-sale contract by Earth Harvest Mills, Inc., dba Dakota Prairie Organic Flour Company at Harvey, North Dakota.

30. Authorize the Public Service Commission, as Trustee, to make payments from the Credit-Sale Contract Indemnity Fund consistent with this Report and Recommendation to reimburse the Public Service Commission for one-half the expenses of administration of the insolvency.
31. Discharge the Public Service Commission, as Trustee, once all Trust Fund assets have been distributed and all Credit-Sale Contract Indemnity Fund payments have been made.
32. Respectfully submitted at Bismarck, North Dakota, this **28th day of March, 2014.**



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PSC vs Earth Harvest Mills, Inc. dba Dakota Prairie Organic Flour Company

CIVIL NO. 52-2013-CV-00033

PSC Case No. GE-13-193

DETAILED CLAIMS LIST

March 26, 2014

Exhibit A

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Claimant Name & Address	Claim Category	Credit-sale Contract #	Grain	Bushels or CWT	Claim Amount	Increase or Decrease	Cash Payable	Credit-Sale Payable	80% Amount
Lyle Busch 14641 514th Avenue Bristol, SD 57219 Claim difference is deduction of wheat promotion.	Credit-sale	124	HRWW	1170.94	\$ 11,705.88	\$ (13.99)		\$ 11,691.89	\$ 9,353.51
Delbert Cousins Box 38 Weirdale, SK CN SOJ 2Z0 Claim difference is deduction of wheat promotion.	Credit-sale	139	HRSW	1853.5	\$ 25,949.00	\$ (27.80)		\$ 25,921.20	\$ 20,736.96
Donald Dufner 1148 169th Avenue NE Buxton, ND 58218 Claim difference is probably mathematical rounding up of numbers.	Credit-sale	117	HRWW HRSW	5853.67 928.06	\$ 48,310.84	\$ (0.03)		\$ 48,310.81	\$ 38,648.65
Farmers Direct Co-operative LTD Jason Freeman, General Manager 1536 Victoria Avenue Regina, SK CN S4P OP5 Claim difference is deduction of wheat promotion.	Credit-sale	142	HRSW Rye	8519.83 1112.37	\$ 121,179.88	\$ (1,855.05)		\$ 120,027.58	\$ 96,022.06

Claimant Name & Address	Claim Category	Credit-sale Contract #	Grain	Bushels or CWT	Claim Amount	Increase or Decrease	Cash Payable	Credit-Sale Payable	80% Amount
Farmers Union Oil of Velva PO Box 35 Martin, ND 58758 Claim difference is the claimant unpaid bushel amount of 503.47 bushels versus the scale ticket amount of 506.67 bushels.	Cash		HRSW	506.67	\$ 4,511.09	\$ 28.67	\$ 4,539.76		
Murray Foulston PO Box 190 Tugaske, SK CN SOH 4BO Claim difference is deduction of wheat promotion.	Credit-sale	132	HWW	310.11	\$ 4,031.43	\$ (4.65)		\$ 4,026.78	\$ 3,221.42
Ron Gleim PO Box 298 Chaplin, SK CN SOH OVO Claim difference is deduction of wheat promotion.	Credit-sale	135	HRSW	486.84	\$ 5,842.08	\$ (7.30)		\$ 5,834.78	\$ 4,667.82
David Hager 2775 Hwy 3 Northeast Harvey, ND 58341 No difference, Claim amount is same as final net payable.	Credit-sale	112	HRSW	466.62	\$ 4,029.26			\$ 4,029.26	\$ 3,223.41
Roger Hasse 4433 41st Avenue SE Tappen, ND 58487 No difference, Claim amount is same as final net payable.	Credit-sale	108	HRSW	1707.89	\$ 24,738.75			\$ 24,738.75	\$ 19,791.00

Claimant Name & Address	Claim Category	Credit-sale Contract #	Grain	Bushels or CWT	Claim Amount	Increase or Decrease	Cash Payable	Credit-Sale Payable	80% Payment
HESCO, INC. Brad Hennrich, President 500 19th Street SE Watertown, SD 57201	Credit-sale	101	HRSW HRWW SWW Durum	110,000.00 2,611.00 5,355.00 15,399.00	\$ 1,743,192.40	\$ (412,905.02)		\$ 1,330,287.38	\$ 280,000.00
The claim indicated receipt of a significant amount of interest payments. These interest payments were deducted from the claim unpaid principal creating an unpaid of \$1,330,287.38. The maximum amount payable from the indemnity fund per claimant is 80% of \$350,000 or \$280,000.									
Phil Hooyer 3867 Cherry Avenue Hudson, SD 57034	Cash		HRWW	1885.58	\$ 20,713.10		\$ 20,713.10		
No difference, Claim amount is same as final net payable.									
Curtis Kosowan PO Box 141 Mealth Park, SK CN SOJ 1TO	Credit-sale	140	HRSW	1398.22	\$ 17,260.51	\$ (26.62)		\$ 17,233.89	\$ 13,787.11
Claim difference is deduction of wheat promotion.									
Jon & Amy Kvaalen PO Box 21 Lambert, MT 59234	Credit-sale	120	HRSW	2599.75	\$ 36,396.50	\$ (1,988.81)		\$ 34,407.69	\$ 27,526.15
Claim difference is deduction of the wheat promotion totaling \$39 and deduction of a \$.75 per bushel freight charge totaling \$1949.81 as indicated in the claim documents.									
Lewis AG 6820 30th Road Thayer, KS 66776	Cash		HRWW	1589.05	\$ 21,835.71	\$ (1,201.88)	\$ 20,633.83		
Claim difference is deduction of the wheat promotion totaling \$60.59 and \$1141.29 because claimant erroneously used origination gross weight.									

Claimant Name & Address	Claim Category	Credit-sale Contract #	Grain	Bushels or CWT	Claim Amount	Increase or Decrease	Cash Payable	Credit-Sale Payable	80% Payment
Wendell Lund 1539 104th Street NE Bottineau, ND 58318 Claim difference, claimant estimated the unpaid amount.	Cash		HRWW	1293.62	\$ 12,000.00	\$ 150.85	\$ 12,150.85		
Jewell Mehlhoff 1821 Josephine Lane Tuttle, ND 58488 No difference, Claim amount is same as final net payable.	Cash		HRSW	327	\$ 4,311.50		\$ 4,311.50		
Ray L. Miller R & S Organic Farm 1504 W 11th Road Aurora, NE 68818-3920 Claim difference is the claimant error of not deducting a \$5000 payment received March 6, 2013.	Credit-sale	111	HRWW	1983.74	\$ 23,319.85	\$ (5,000.00)		\$ 18,319.85	\$ 14,655.88
Moshers Organic Grain PO Box 51 Bushnell, NE 69128 Claim difference is deduction of the wheat promotion totaling \$11.67 and \$806.97 because claimant erroneously used the origination gross wieght.	Cash		HWW	778.3	\$ 9,368.26	\$ (818.63)	\$ 8,549.63		
Ty O,Connor 1 O'Connor Road Broadus, MT 59317 No difference, Claim amount is same as final net payable.	Credit-sale	116	HRWW	3435.81	\$ 37,055.20			\$ 37,055.20	\$ 29,644.16

Claimant Name & Address	Claim Category	Credit-sale Contract #	Grain	Bushels or CWT	Claim Amount		Cash Payable	Credit-Sale Payable	80% Amount
Robert Porch 27403 Husie Road Wanblee, SD 57577 Claim difference is deduction of the wheat promotion totaling \$40.06 and \$147.27 because the claimant erroneously used the origination gross weight.	Cash			840.6	\$ 10,261.92	\$ (187.33)	\$ 10,074.59		
Rowland Seeds, Inc. Roy Brewin Box 4776 Taber, Alberta CN T1G 2E1 The claim included late fees, interest charges, and other complicated fees and charges not protected or covered by this proceeding. The calculated amount owed to Rowlands is \$586,422.98. The maximum amount payable per claimant from the indemnity fund is 80% of \$350,000 or \$280,000.	Credit-sale	137	HRSW Spelt		\$ 1,973,124.43	\$ (1,487,553.00)		\$ 586,422.98	\$ 280,000.00
RW Organic Ltd. Box 232 Mossbank, SK CN S0H 3G0 Claim difference is deduction of the wheat promotion totaling \$49.33, excluded interest totaling \$2863.25, and \$231.16 because claimant erroneously used origination gross weight.	Credit-sale	119	HRSW	3288.47	\$ 42,556.05	\$ (3,143.74)		\$ 39,412.31	\$ 31,529.85
Lewis Siebold 1397 51st Avenue NE Cathay, ND 58422 No difference, Claim amount is same as final net payable.	Credit-sale	111	HRSW	269.04	\$ 4,031.65			\$ 4,031.65	\$ 3,225.32
Lee Thomas 12506 20th Street North Moorhead, MN 56560 Claim difference is the claimant pricing errors on scale ticket# 2264 increase of \$50 and scale ticket# 2279 increase of \$72.62.	Credit-sale	115	HRSW	7341.45	\$ 84,899.48	\$ 122.62		\$ 85,022.10	\$ 68,017.68

Claimant Name & Address	Claim Category	Credit-sale Contract #	Grain	Bushels or CWT	Claim Amount	Increase or Decrease	Cash Payable	Credit-Sale Payable	80% Amount
Reed Zimmerman 6112 45th Avenue SE Napoleon, ND 58561	Credit-sale	106	HRSW	430.43	\$ 6,905.00	\$ (777.86)		\$ 6,127.14	\$ 4,901.71
<p>Claim difference is an Earth Harvest Mills error on deferred payment contract #106 totaling \$22,951.71, the correct original amount payable is \$22,173.85. Claim contract amount \$22,951.71 less payment of \$16,046.71 minus wheat promotion & error totaling \$777.86 equal unpaid of \$6127.14</p>									
Buesing Bulk Transport Inc. Ottmar & Ottmar, P.C. 226 Second Avenue Southwest Jamestown, ND 58402-1397	Invalid cash				\$ 54,041.53	\$ (54,041.53)			
<p>Invalid claim, this claim is for goods or services provided by the claimant and not unpaid grain sold or delivered to Earth Harvest Mills. Claim also was filed beyond the last day to file a claim.</p>									
TOTALS					\$ 4,351,571.30	\$ (1,969,251.10)	\$ 80,973.26	\$ 2,402,901.24	\$ 948,952.69

EXPENSES

Exhibit B

PSC vs Earth Harvest Mills, Inc. dba Dakota Prairie Organic Flour Company
CIVIL NO. 52-2013-CV-00033
PSC Case No. GE-13-193
March 26, 2014

<u>Account</u>	<u>Fund</u>	<u>Current Month</u>	<u>Biennium to Date</u>	<u>Inception to Date</u>
541015 Postage or P.O. Box Rental	001 ACT	0.00	6.95	165.41
621020 Advertising Services	001 ACT	0.00	107.10	107.10
Total Operating Expenditure		0.00	114.05	272.51
Total General Fund		0.00	114.05	272.51
Total Federal Fund		0.00	0.00	0.00
Total Special Fund		0.00	0.00	0.00
Total Direct Expenditure		0.00	114.05	272.51
Total Expenditures		0.00	114.05	272.51
Total General Fund		0.00	114.05	272.51
Total Federal Fund		0.00	0.00	0.00
Total Special Fund		0.00	0.00	0.00