

Below please read the recent development that affects grain sellers and grain buyers. This development will require grain buyers and grain sellers to be extra vigilant in the way they do business with each other. The Grain Warehouse Division Staff want producers to be aware of their responsibilities with respect to getting their VCS (Voluntary Credit Sales) contracts signed, and the implications if they fail to sign them. These contracts include Delayed Pricing Contracts and Deferred Payments.

Notice to grain sellers and grain buyers

On April 4, 2013, Circuit Judge Tony L. Porra issued a ruling overturning one of the South Dakota Public Utilities Commission's findings in the matter of the Anderson Seed Co., Inc. grain buyer bond.

The commission ruled in support of staff's findings that pursuant to SDCL 49-45-9 Martinmaas Dairy should not be eligible to participate in the bond proceeds because its entire claim amount was subject to the terms of a voluntary credit sale (VCS) contract. Martinmaas Dairy challenged the PUC ruling based on the fact that it had not signed the VCS contract that was prepared to memorialize the agreement to defer payment. In finding Martinmaas Dairy had entered into a VSC contract, the Commission relied on SDCL 57A-2-201, which provides exceptions to the signature requirement for contracts for the sale of grain, as well as the sworn testimony of Raymond Martinmaas that he did intend to defer payment.

When the PUC presented recommendations for the disbursement of the bond to the 5th Judicial Circuit Court on March 19, 2013, Raymond Martinmaas appeared on behalf of Martinmaas Dairy and asked the court to overturn the PUC's findings with respect to the Martinmaas Dairy claim. The court found, pursuant to SDCL 49-45-11 and ARSD 20:10:12:13, that a VCS contract is not enforceable unless signed by both parties.

Therefore, going forward all grain purchases more than 30 days old will be considered cash sales that must be paid pursuant to SDCL 49-45-10 unless the grain buyer has in its possession a VCS contract signed by both parties.

Due to a recent South Dakota court ruling, All Voluntary Credit Sales contracts (Delayed Pricing, Deferred Payments and Basis), the South Dakota Public Utilities Commission Warehouse Division has notified Western Consolidated Cooperative that all Voluntary Credit Sales Contracts must be signed within 30 days of final delivery.

Important:

If Western Consolidated Cooperative does not receive the signed contract at our elevator within 30 days, the bushels on these contracts must be cashed out at the closing price on that date and the check will be mailed to the producer.