

ZUGER KIRMIS & SMITH

COUNSELORS AND ATTORNEYS AT LAW

Lyle W. Kirmis
Lance D. Schreiner, P.C.
James S. Hill, P.C.
Patrick J. Ward
Rebecca S. Thiem, P.C.
Jerry W. Evenson, P.C.
Lawrence A. Dopson
Lawrence E. King, P.C.
Tracy Vigness Kolb, P.C.

316 North Fifth Street
Provident Building
P.O. Box 1695
Bismarck, ND 58502-1695
(701) 223-2711
fax (701) 223-9619
pward@zkslaw.com

Shawnda R. Ereth
Constance N. Hofland
Paul R. Sanderson, P.C.
Kara J. Johnson
Erica J. Shively
Rebecca L. Binstock
Kelsey A. Krapp

John A. Zuger
1940-2006
Thomas O. Smith
1944-2001

April 16, 2013

John Hamre
Public Service Commission
600 East Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480

RE: Earth Harvest Mills, Inc.
Case No. GE-13-99



Dear Mr. Hamre:

Enclosed for filing, please find the Exhibit List from the April 10, 2013, Commission Hearing in the Earth Harvest Mills matter, case no. GE-13-99. Also attached are Exhibits 1 and 2. Exhibit 3 is to be a late filed exhibit from Earth Harvest Mills.

Sincerely


Patrick J. Ward

Enclosures

P:\PWARD\OAH\Earth Harvest Mills\Hamre.4.16.13.doc

EXHIBIT LIST

Matter		North Dakota Public Service Commission Earth Harvest Mills, Inc. Case No. GE-13-99					
		Cease and Desist Order					
Hearing		April 10, 2013					
		Commission Hearing State Capitol Bismarck, ND 58505					
No.	Description	Mkd	Idd	Ofd	Obj	Adm	Witness
1	Earth Harvest Mills Farmer Debt, Payments and Balance Owed – March 25, 2013	X	X	X		X	
2	Rowland Seeds – Brewin – Deferred Payment Contract	X	X	X		X	
3	Late filed: Rowland Seeds claim of TOTAL amount owed. \$640,000?						
4							
5							
6							
7							
8							
9							
10							

E+h /

**Earth Harvest Mills
Farmer Debt, Payments and Balance Owed**

	<u>Sep-12</u>	<u>Oct-12</u>	<u>Nov-12</u>	<u>Dec-12</u>	<u>Jan-13</u>	<u>Feb-13</u>	<u>Mar-13</u>	Pymt Date	Pymt Date
Curtis Kosowan	17,261	17,261	17,261	17,261	17,261	17,261	17,261		3/31/2013
David Hager	4,029	4,029	4,029	4,029	4,029	4,029	4,029		12/31/2013
Delbert Cousins	25,949	25,949	25,949	25,949	25,949	25,949	25,949		3/31/2013
Donald Dufner Farms	62,389	62,389	62,389	62,389	62,389	62,389	62,389		12/31/2012
Farmers Director Cooperativ	82,375	82,605	76,468	76,468	76,468	76,468	76,468		5/1/2013
Farmers Director Cooperative	66,255	66,025	39,815	54,263	54,262	54,263	43,910		5/1/2013
Farmers Union Oil of Velva	8,227	8,227	5,883	5,883	5,883	5,883	4,540		
Jewell Mehlhoff	4,312	4,312	4,312	4,312	4,312	4,312	4,312		
Jon & Amy Kvaalen	34,408	34,408	34,408	34,408	34,408	34,408	34,408		12/31/2012
Lee Thomas	85,022	85,022	85,022	85,022	85,022	85,022	85,022		12/31/2012
Lewis Ag	31,818	21,593	21,593	21,593	21,593	21,593	21,593		
Lewis Seibold	6,017	6,017	6,017	6,017	4,032	4,032	4,032		12/31/2012
Lyle Busch	26,164	17,471	17,471	17,471	11,706	11,706	11,706		12/31/2012
Marvin Huber	10,067	10,067	10,067	10,067	3,020	0	0		
Mosher's Organic Grain	8,550	8,550	8,550	8,550	8,550	8,550	8,550		
Murray Foulston	4,031	4,031	4,031	4,031	4,031	4,031	4,031		12/31/2012
Phil Hooyer	20,713	20,713	20,713	20,713	20,713	20,713	20,713		
Ray Miller	23,320	23,320	23,320	23,320	23,320	23,320	18,320		12/31/2013
Reed Zimmerman	22,924	22,924	22,924	22,924	6,877	6,877	6,877		12/31/2012
Robert Porch	10,075	10,075	10,075	10,075	10,075	10,075	10,075		
Roger Hasse	24,739	24,739	24,739	24,739	24,739	24,739	24,739		12/31/2012
Ron Gleim	5,842	5,842	5,842	5,842	5,842	5,842	5,842		12/31/2012
Rowland Seeds, Inc.	856,813	735,225	872,798	980,046	887,176	638,280	578,292		12/31/2014
RW Organic Ltd.	41,904	41,904	41,904	41,904	41,904	41,904	41,904		12/31/2013
Steve Janko	19,110	19,110	19,110	19,110	5,733	0	0		
Ty O'Connor	37,055	37,055	37,055	37,055	37,055	37,055	37,055		12/31/2012
Wendell Lund		16,151	16,151	14,151	14,151	14,151	12,151		
	<u>1,539,369</u>	<u>1,415,014</u>	<u>1,517,896</u>	<u>1,637,591</u>	<u>1,500,500</u>	<u>1,242,851</u>	<u>1,164,167</u>		
Deferred Payment Plan	401,392	401,622	476,650	476,650	432,429	423,676	1,078,204		
Cash	<u>1,137,977</u>	<u>1,013,392</u>	<u>1,041,246</u>	<u>1,160,942</u>	<u>1,068,071</u>	<u>819,176</u>	<u>85,963</u>		
	<u>1,539,369</u>	<u>1,415,014</u>	<u>1,517,896</u>	<u>1,637,591</u>	<u>1,500,500</u>	<u>1,242,851</u>	<u>1,164,167</u>		
Cash Less Rowland Seeds	281,164	278,167	168,448	180,896	180,895	180,896	85,963		

Eth 2

Dakota Prairie Organic Flour Company Deferred Payment Contract

NO. _____

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
Roy Brewin Holdings, Inc (Seller) whose principal place of business is at
Taber, Alberta Canada T1G 2E1

The parties herto 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):

Receipt No.	Kind of Grain	Net Bushels	Price	Amount
On File	9300 HRSW		\$	380,000.00 173,387.05
			\$	
			\$	
			\$	
			\$	
			\$	173,387.05
Total Gross Amount				\$ 380,000.00
Less Deductions				\$
(ND Indemnity Fund Assessment; 2% (.002) x value of grain covered by this contract				\$ 0.00
Net Amount:				\$ 173,387.05

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 12/18/12 ~~10/15/12~~ and 12/31/13 ~~10/15/12~~ ~~and will paid @ additional \$1.50 bushel on~~
~~for wheat purchase and additional \$0.0075 on future open purchases~~

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: _____

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. ~~Seller expressly warrants that this grain was produced in the continental United States.~~

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.

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 24 day of March (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]
(Authorized Signature)

BUYER: [Signature]
(Authorized Signature)

SELLER: [Signature]
(Authorized Signature)

Dakota Prairie Organic Flour Company Deferred Payment Contract

NO. 138

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
Roy Brewin (Seller) whose principal place of business is at
Taber, Alberta Canada T1G 2E1

The parties herto 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):

Receipt No.	Kind of Grain	Net Bushels	Price	Amount
On File	<u>2B HRSW</u>		\$	\$ <u>350,000.00</u>
			\$	
			\$	
			\$	
			\$	
			\$	
Total Gross Amount				\$ <u>350,000.00</u>
Less Deductions				\$
(ND Indemnity Fund Assessment; 2% (.002) x value of grain covered by this contract				\$ <u>0.00</u>
Net Amount:				\$ <u>350,000.00</u>

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

3. Deferred Payment: Which Buyer agrees to pay Seller between the dates of 10/18/16 and 12/31/14
~~future wheat purchases and additional \$0.07/lb. on future spelt purchases~~

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:

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.
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 23 day of March (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 Roy Brewin
(Authorized Signature)

BUYER: [Signature]
(Authorized Signature)

SELLER: [Signature]
(Authorized Signature)

Dakota Prairie Organic Flour Company Deferred Payment Contract

NO. 137

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 Rowland Seeds Inc. (Seller) whose principal place of business is at Taber, Alberta Canada T1G 2E1

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):

Receipt No.	Kind of Grain	Net Bushels	Price	Amount
On File	<u>28 HRSW</u>		\$	\$ <u>350,000.00</u>
			\$	\$
			\$	\$
			\$	\$
			\$	\$
Total Gross Amount				\$ <u>350,000.00</u>
Less Deductions				\$
(ND Indemnity Fund Assessment; 2% (.002) x value of grain covered by this contract				\$ <u>0.00</u>
Net Amount:				\$ <u>350,000.00</u>

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 10/18/12 and 12/31/14
~~future wheat purchases and additional \$0.07/lb on future spelt purchases~~

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:

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.

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 23 day of March (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]
(Authorized Signature)

BUYER: [Signature]
(Authorized Signature)

SELLER: [Signature]
(Authorized Signature)