

UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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In re:

PROMISELAND LIVESTOCK, LLC;
and ANTHONY J. ZEMAN,

Respondents.

OFPA No. 08-0134

COMPLAINT

There is reason to believe that the respondents named herein have willfully violated the Organic Foods Production Act of 1990, as amended (7 U.S.C. §§ 6501-6522) (the Act or OFPA), and the National Organic Program (the "NOP") regulations issued pursuant to the Act (7 C.F.R. §§ 205.1-205.690) (the Regulations or NOP regulations). Therefore, the Administrator of the Agricultural Marketing Service (AMS) issues this Complaint alleging as follows:

JURISDICTIONAL ALLEGATIONS

1. Respondent Promiseland Livestock, LLC (Promiseland) is a Missouri limited liability company.
2. Respondent Promiseland's principal place of business is Promiseland Livestock, LLC, 44550 871st Road, Bassett, Nebraska 68714.
3. Respondent Anthony J. Zeman, a/k/a Tony Zeman, (Zeman or Tony Zeman) is an individual.

4. Respondent Zeman's mailing address is Post Office Box 7, Bassett, Nebraska 68714.
5. Respondent Promiseland's agent for service of process is Anthony J. Zeman, 12229 Highway Z, Falcon, Missouri 65470.
6. Respondent Promiseland's organizer is Zeman.
7. Respondent Promiseland's Articles of Organization were signed by Zeman.
8. Respondent Promiseland's actual and apparent managers include Zeman.
9. Respondent Promiseland's actual and apparent managers include Leslie R. Ehnis (Ehnis).
10. Respondent Promiseland's responsibly connected persons, as defined in the Regulations, include Anthony J. Zeman and Leslie R. Ehnis.
11. On information and belief, Respondent Promiseland's actual and apparent managers also include at least Adam A. Zeman (Adam Zeman).
12. On information and belief, Respondent Promiseland's responsibly connected persons, as defined in the Regulations, also include at least Adam Zeman.
13. At all material times mentioned herein, Respondent Zeman and Respondent Promiseland, including its organizer, principals, actual and apparent managers, and responsibly connected persons, have operated as a producer, as defined in the Act and Regulations.
14. Currently, Respondents Zeman and Promiseland (hereinafter Respondents) operate as a certified organic farm, as defined in the Act and as a certified

operation, as defined in the Regulations, pursuant to no fewer than two organic certificates issued by Indiana Certified Organic, LLC.

15. Indiana Certified Organic, LLC (ICO) is an Accredited Certifying Agent (ACA), as defined in the Act and Regulations, accredited by the Secretary of Agriculture to certify crop, livestock, wild crop and handling operations to the NOP regulations.

16. From on or about August 10, 2006 until on or about November 11, 2007, Respondents operated as a certified organic farm pursuant to an organic livestock certificate issued by ICO to “Anthony Zeman Promiseland Livestock LLC” for “12,000 dairy heifers and 10,000 slaughter cattle.”

17. From on or about August 10, 2006 until on or about November 11, 2007, Respondents also operated as a certified organic farm pursuant to an organic crop certificate issued by ICO to “Anthony Zeman Promiseland Livestock LLC” for “2500 acres corn, 2500 acres soybeans, 1500 acres sunflowers and 7500 acres grass/alfalfa.”

18. Effective on or about November 12, 2007, Respondents operate as a certified organic farm pursuant to an organic livestock certificate issued by ICO to “Anthony Zeman Promiseland Livestock LLC” for “Dairy Replacement Heifers, Beef Slaughter Stock, Beef Calves.”

19. Effective on or about November 12, 2007, Respondents also operate as a certified organic farm pursuant to an organic crop certificate issued by ICO to “Anthony Zeman Promiseland Livestock LLC” for “1081 acres corn, 548 acres corn silage, 1254 acres pasture, 4471 acres permanent pasture, 868 acres soybeans, 345 acres yellow corn.”

20. At various points in time since or about April 29, 2002, Respondents have maintained at least the following certified organic facilities: Promiseland Heifer Ranch, Falcon,

Missouri; Promiseland Empire, 15 miles south of Lebanon, Missouri; Promiseland Elkland, Elkland, Missouri; Promiseland Bassett, Bassett, Nebraska; and Promiseland Feedlot, Grant City, Missouri.

21. On or about June 8, 2007, the NOP Program Manager proposed to revoke all organic certifications of crops and livestock of Promiseland, and all responsibly connected parties, for failure to comply with the NOP Regulations.

22. On or about July 9, 2007, Respondents, pursuant to section 205.680(a) of the Regulations (7 C.F.R. § 205.680(a)), filed their appeal to the Administrator of AMS of the NOP Program Manager's proposed action to revoke all organic certifications of crops and livestock of Promiseland and its responsibly connected parties.

23. On or about October 1, 2007, the Administrator of AMS denied the appeal referred to above in paragraph 22 (§ 22), but reduced the severity of the sanction "to a 2-year suspension of [organic] certification."

ALLEGATIONS

24. On or about April 29, 2002, Quality Assurance International ("QAI") issued an organic livestock certificate to "Promiseland Livestock – Tony Zeman."

25. On or about April 29, 2002, QAI issued an organic crop certificate to "Promiseland Livestock – Tony Zeman."

26. QAI is an ACA, as defined in the Act and Regulations, accredited by the Secretary of Agriculture to certify crop, livestock, wild crop and handling operations to the NOP regulations.

27. On or about May 31, 2005, Respondents submitted to QAI an "Application for Organic Certification Annual Monitoring."

28. This application listed “Promiseland Livestock LLC – Tony Zeman” as the name of the location seeking certification.

29. The application listed “Tony Zeman – Leslie Ehnis” as the contact person for organic certification.

30. Between on or about June 3, 2005 and on or about October 10, 2006, QAI repeatedly notified Respondents that their record-keeping system was inadequate for purposes of conducting an audit or verifying compliance with the NOP regulations.

31. On or about June 7, 2006, Respondents took steps to remove QAI as Respondents’ ACA and obtain a new ACA.

32. On or about January 22, 2007, an AMS official contacted Respondents by telephone and requested that Respondents provide to AMS copies of various records pertaining to Respondents’ organic operation.

33. Specifically, on or about January 22, 2007, an AMS official contacted Zeman by telephone and requested that Respondents provide to AMS records concerning animals sold by Respondents to Aurora Organic Dairy.

34. Aurora Dairy Corporation d/b/a Aurora Organic Dairy (“Aurora”) is an organic dairy operation based in Boulder, Colorado.

35. Aurora maintains certified organic facilities in at least Colorado and Texas.

36. Respondents have sold a significant number of cattle to Aurora.

37. For instance, in 2004, Respondents sold no fewer than 3,077 cattle to Aurora.

38. In 2005, Respondents sold no fewer than 3,699 cattle to Aurora.

39. In 2006, Respondents sold no fewer than 6,280 cattle to Aurora.

40. On or about January 22, 2007, the same AMS official referred to above in paragraph 33 (§ 33) who contacted Zeman by telephone sent an e-mail to Zeman in which he confirmed their telephone conversation and AMS's request for correspondence, invoices and other information pertaining to Respondents' sales to Aurora.

41. On or about January 31, 2007, or approximately 9 days after the initial request for records, the same AMS official referred to above in paragraph 33 (§ 33) contacted Respondents by telephone to inquire about the status of AMS's request for records.

42. During this telephone call, Zeman confirmed receipt of the January 22, 2007 e-mail from AMS referred to above in paragraph 40 (§ 40).

43. During this telephone call, Respondents failed to produce any of the requested records or provide a date upon which such records would be made available to AMS.

44. On or about February 27, 2007, or approximately 36 days after the initial request for records, the same AMS official referred to above in paragraph 33 (§ 33) attempted to contact Respondents by telephone to inquire about the status of AMS's request for access to Respondents' records.

45. On or about February 27, 2007, this AMS official left a voicemail message on Zeman's telephone.

46. Specifically, on or about February 27, 2007, or approximately 36 days after the initial request for records, an AMS official left a voicemail message on Zeman's telephone concerning the lack of receipt of any of the records requested by AMS from Respondents.

47. After this voicemail message, Respondents failed to produce any of the requested records or provide a date upon which such records would be made available to AMS.

48. On or about March 6, 2007, or approximately 43 days after the initial request for records, the same AMS official referred to above in paragraph 33 (§ 33) attempted to contact Respondents by telephone to inquire about the status of AMS's request for access to Respondents' records.

49. On or about March 6, 2007, this AMS official left a voicemail message on Zeman's telephone.

50. Specifically, on or about March 6, 2007, or approximately 43 days after the initial request for records, an AMS official left a voicemail message on Zeman's telephone concerning the lack of receipt of any of the records requested by AMS from Respondents.

51. After this voicemail message, Respondents failed to produce any of the requested records or provide a date upon which such records would be made available to AMS.

52. On or about June 5, 2007, or approximately 134 days after the initial request for access to Respondents' records, AMS officials traveled to Respondents' facility.

53. On or about June 5, 2007, and during normal business hours, AMS officials appeared at Respondents' facility and personally requested that Respondents provide AMS access to their records for review and copying.

54. Specifically, on or about June 5, 2007, and during normal business hours, AMS officials appeared at Respondents' facility and were eventually met by Ehnis.

55. On or about June 5, 2007, these AMS officials requested that Respondents provide access to the specific records originally requested 134 days earlier, as referred to above in paragraph 33 (§ 33).

56. Additionally, these AMS officials provided Respondents with a letter from the AMS Director of Compliance, Safety and Security.

57. This letter stated that, to date, Respondents have failed to respond or provide access to the specific records originally requested 134 days earlier, as referred to above in paragraph 33 (¶ 33).

58. This letter further stated that, according to section 205.103(c) of the NOP regulations, a “certified operation must make [its] records available for inspection and copying during normal business hours by authorized representatives of the Secretary [of Agriculture]” and that if Respondents, “or any representative of [Respondents], fail to make your records available for inspection and copying, I will request that the National Organic Program Manager within 48 hours propose your suspension from the National Organic Program in accordance with 7 CFR § 205.660(b)(1).”

59. Ehnis indicated that none of the records were available at that time for review and copying.

60. The AMS officials informed Ehnis that they would return later that day.

61. On or about June 5, 2007, and during normal business hours, Respondents provided AMS access to a photocopy and an original set of documents originally requested 134 days earlier, as referred to above in paragraph 33 (¶ 33).

62. These records that were provided to AMS by Respondents were approximately 77 pages.

63. During this time, Respondents refused to provide AMS access to any other records, other than those records originally requested 134 days earlier, as referred to above in paragraph 33 (¶ 33).

64. The AMS officials indicated that while the records provided appeared partially responsive to the original request for access to records initially made on January 22,

2007, a purpose of their visit was to conduct an unannounced review of Respondents' certification records, pursuant to the NOP regulations.

65. The AMS officials requested that Respondents provide AMS access to Respondents' certification records, during normal business hours, for review and copying to determine Respondents' compliance with the Act and Regulations.

66. Ehnis indicated that none of Respondents' records were available at that time for review and copying.

67. The AMS officials informed Ehnis that they would return the following day.

68. Specifically, on or about June 5, 2007, AMS officials informed Respondents that on or about June 6, 2007, AMS would seek access to Respondents' records, during normal business hours, for review and copying to determine compliance with the Act and Regulations.

69. Later that evening, Respondents contacted one of these AMS officials by telephone.

70. Specifically, on or about June 5, 2007, Zeman contacted, by telephone, an AMS official and stated that Respondents would refuse to provide AMS with access to any of Respondents' records the following day.

71. Additionally, Zeman sought to specify a time after which Respondents would be willing to provide AMS access to Respondents' records.

72. Approximately ten minutes after the conclusion of this phone call, an attorney who stated that he was acting on behalf of Respondents contacted, by telephone, the same AMS official referred to above in paragraph 70 (¶ 70).

73. Specifically, or about June 5, 2007, an attorney who stated that he was acting on behalf of Respondents contacted, by telephone, an AMS official and stated that Respondents would refuse to provide AMS with access to any of Respondents' records the following day.

74. Instead, this attorney, acting on behalf of Respondents, decreed that AMS identify in advance of any unannounced visit which of Respondents' records AMS sought to access for review and copying.

75. Additionally, this attorney sought to specify a time after which Respondents would be willing to provide AMS access to Respondents' records.

76. The following day, the AMS officials returned to Respondents' facility in Falcon, Missouri.

77. Specifically, on or about June 6, 2007, and during normal business hours, AMS officials appeared at Respondents' facility and requested that Respondents provide AMS access to their records for review and copying.

78. On or about June 6, 2007, and during normal business hours, these AMS officials were met at Respondents' facility by Ehnis.

79. The AMS officials announced to Ehnis their intention to conduct a review of Respondents' records

80. Respondents refused to provide AMS access to Respondents' records.

81. Specifically, on or about June 6, 2007, and during normal business hours, Respondents refused to provide AMS access to Respondents' records for review and copying.

82. On or about May 9, 2008, Complainant requested access to Respondents' records and that such access be provided on or before May 16, 2008.

83. On or about May 16, 2008, Respondents provided AMS access to one box of Respondents' records.

84. These records that were provided to AMS by Respondents consisted primarily of cattle invoices.

85. During this time, Respondents failed to provide AMS access to any other records, other than the one box of records that consisted primarily of cattle invoices.

86. Specifically, on or about May 16, 2008, and during normal business hours, Respondents refused to provide AMS access to Respondents' records for review and copying.

87. Section 6506(b)(1)(B) of the Act (7 U.S.C. § 6506(b)(1)(B)) provides that Secretary of Agriculture may establish an organic certification program that provides for the certification of an entire farm or specific fields of a farm "if— . . . the operators of such farm or handling operation maintain records of all organic operations separate from records relating to other operations and make such records available at all times for inspection by the Secretary, the certifying agent, and the governing State official."

88. Section 205.400(d) of the Regulations (7 C.F.R. § 205.400(d)) provides that "[a] person seeking to receive or maintain organic certification under the regulations in this part must . . . [m]aintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow authorized representatives of the Secretary [of Agriculture] . . . access to such records during normal business hours for review and copying."

89. Additionally, section 205.103 of the Regulations (7 C.F.R. § 205.103) provides that "[a] certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as [organic]," that "[s]uch records must . . . [f]ully disclose all activities and

transactions of the certified operation in sufficient detail as to be readily understood and audited . . . [and] be sufficient to demonstrate compliance with the Act and the [Regulations],” and “[t]he certified operation must make such records available for inspection and copying during normal business hours by authorized representatives of the Secretary [of Agriculture].”

ALLEGED VIOLATIONS OF THE ACT AND REGULATIONS

90. Between on or about January 22, 2007, and on or about June 5, 2007, Respondents refused to provide AMS access to Respondents’ records, in willful violation of section 6506(b)(1)(B) of the Act and sections 205.103(c) and 205.400(d) of the Regulations. 7 U.S.C. § 6506(b)(1)(B); 7 C.F.R. §§ 205.103(c), 205.400(d).

91. On or about June 5, 2007, Respondents refused to provide AMS access to Respondents’ records, in willful violation of section 6506(b)(1)(B) of the Act and sections 205.103(c) and 205.400(d) of the Regulations. 7 U.S.C. § 6506(b)(1)(B); 7 C.F.R. §§ 205.103(c), 205.400(d).

92. On or about June 6, 2007, Respondents refused to provide AMS access to Respondents’ records, in willful violation of section 6506(b)(1)(B) of the Act and sections 205.103(c) and 205.400(d) of the Regulations. 7 U.S.C. § 6506(b)(1)(B); 7 C.F.R. §§ 205.103(c), 205.400(d).

93. On or about May 16, 2008, Respondents refused to provide AMS access to Respondents’ records, in willful violation of section 6506(b)(1)(B) of the Act and sections 205.103(c) and 205.400(d) of the Regulations. 7 U.S.C. § 6506(b)(1)(B); 7 C.F.R. §§ 205.103(c), 205.400(d).

WHEREFORE, it is hereby requested that for the purpose of determining whether Respondents have in fact willfully violated the Act and the NOP regulations, this Complaint

shall be served upon Respondents. Respondents shall file an Answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an Answer shall constitute an admission of all the material allegations of this Complaint.

The Agricultural Marketing Service requests:

1. That unless Respondents fail to file an Answer within the time allowed therefor, or file an Answer admitting all the material allegations of this Complaint, this proceeding be set for an oral hearing in conformity with the Rules of Practice governing proceedings under the Act; and

2. That such order or orders be issued as are authorized by the Act and warranted under the circumstances, including an order:

(a) suspending Respondents' organic certifications, in accordance with section 205.662(f)(1) of the Regulations (7 C.F.R. § 205.662(f)(1)); and

(b) disqualifying Respondents, and any person responsibly connected with Respondents' certified operations, from receiving certification under the Act, in accordance with section 6519 of the Act (7 U.S.C. § 6519).

Done at Washington, D.C.

this 4th day of June, 2008



Administrator
Agricultural Marketing Service

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