

SHIPPED: Prior to 2-24-60, from Minneapolis, Minn.

LIBELED: 3-23-60, W. Dist. Va.

CHARGE: 402(a)(3)—contained insects; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 6-9-60. Default—delivered to a public institution for use as animal feed.

MISCELLANEOUS CEREALS AND CEREAL PRODUCTS

26603. Wheat. (Inj. No. 374.)

COMPLAINT FOR INJUNCTION FILED: 2-10-60, W. Dist. Mo., against the Empire Cold Storage & Ice Co., a corporation, t/a Empire Elevator, Kansas City, Mo., and against W. Ralph Wilkerson, president of the corporation, James E. Wilkerson, vice president and treasurer, and Lewis A. Davis, superintendent and manager of the corporation's grain elevator at Kansas City, Mo.

CHARGE: The complaint alleged that the defendants were engaged in operating a grain elevator for the storage and distribution of wheat for human consumption, and that the defendants were causing to be introduced into interstate commerce, wheat which was adulterated within the meaning of 402(a)(3) by reason of contamination with rodent, insect, and bird filth, and within the meaning of 402(a)(4) by reason of being held at the defendants' Kansas City elevator under insanitary conditions.

It was alleged further that the insanitary conditions resulted from and consisted of the presence of active rodent burrows in the stone piers in the basement; a dead mouse at the bottom of the basement stairway; dead mice in the center of the basement; a dead mouse under the track scale bed; stagnant water on the basement floor; sour and moldy grain residues in the elevating boots in the basement; one dead mouse, rodent excreta pellets, bird excreta, and bird feathers in the wheat in the car dump; rodent excreta pellets on a ledge above the car dump; openings in the work floor that permit the entry of rodents, insects, and birds; a loose-fitting north door that permits the entry of rodents onto the work floor; uncovered horizontal conveyors that permits the entry of rodents; dead mice on the work floor; rodent and bird excreta on the work floor; insect trails in dust residues on the bin floor and the scale floor of the elevator; bird excreta along the south wall of the head house floor beneath windows that are loosely and inadequately screened; the presence on the surface of the wheat in the bins of rodent excreta, insect larvae, bird excreta, bird feathers, insects; the presence of weevils in the wheat in the bins; loose-fitting and missing sheathing around the track scale outside the elevator that permits rodent entry to the basement; a spout from the car grain dump to the basement that permits rodent entry; and the presence of weeds, piles of boards, old equipment and junk outside the elevator that affords a harborage for rodents.

The complaint alleged further that the defendants were well aware that their activities were in violation of the Act in that inspections of the defendants' grain elevator at Kansas City, Mo., had been made by inspectors of the Food and Drug Administration on September 16, 17, and 18, 1959, and October 8 and 9, 1959, at which times the insanitary conditions in the elevator were called to the defendants' attention; and that despite such warnings, the defendants failed to correct the insanitary conditions and continued to introduce into interstate commerce wheat which was adulterated as specified above.

DISPOSITION: On 2-11-60, the court issued a temporary restraining order enjoining the defendants from introducing into interstate commerce, wheat which was adulterated as described in the complaint. The temporary restraining order was continued in effect in accordance with orders of extension entered with the consent of the parties. A preliminary injunction was entered on 4-21-60, and on 5-23-60 a temporary injunction was entered with the consent of the parties. Under the temporary injunction the defendants were restrained for the period beginning 5-23-60 and ending on 4-21-61, from introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, wheat for human consumption and any similar article of food which was adulterated as alleged in the complaint. The defendants were also restrained under the temporary injunction from introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, wheat for human consumption held at the defendants' Kansas City elevator unless and until:

(a) the same standards of cleanliness and physical facilities as now existing at said elevator, which have recently been brought into compliance with the Act and inspected and approved by Pure Food and Drug representatives are maintained, with respect to protection from rodent, insect, and bird filth, means of ingress and egress, and any similar insanitary conditions which may result in the contamination of wheat for human consumption or any similar article of food;

(b) all of the wheat which is on hand at said elevator be inspected by representatives of the Food and Drug Administration and under their supervision all or part may be loaded out, and that wheat which does not meet announced industry cleanliness tolerances and standards, as defined herein, shall be destroyed, denatured for use as animal feed, or cleaned and otherwise reconditioned under the supervision of a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare, and thus brought into compliance with the provisions of the Act, all costs of such supervision to be borne by the defendants; that wheat which meets announced industry cleanliness tolerances and standards (i.e. no more than 1 rodent pellet per pint of grain and no more than 1% insect-damaged kernels), shall be released from this injunction and may be shipped, returned to storage, or otherwise disposed of and handled in any manner desired by defendants;

(c) immediately prior to the end of the period of the injunction an inspection is made of defendants' elevator by a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare, and a report made to the court which shows that the above-described or any similar insanitary conditions no longer exist and that the wheat which does not meet industry standards has been destroyed, denatured, or brought into compliance with the law as provided in subparagraph (b) above.

26604. Wheat. (F.D.C. No. 44078. S. No. 28-204 R.)

QUANTITY: 120,000 lbs. at Minneapolis, Minn.

SHIPPED: 2-19-60, from Crosby, N. Dak., by Farmers Union Elevator Co.

LIBELED: 3-7-60, Dist. Minn. ✓

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.