

Sanitation of Milk Plant Operations Pays Dividends*

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THE production and sale of market milk is a business vested with a public interest. This private enterprise is legally and sociologically a matter of cogent public concern because:

1. Pure milk is an essential article of diet.
2. Milk is a perishable food easily susceptible to dangerous contamination.
3. The production and distribution of clean and safe milk requires technical skill.

Mainly for these reasons the milk business has been, now is, and always will be subject to extensive regulation by the State in the interests of the general welfare. When such regulation is reasonable in scope and application, it is as beneficial to the industry as it is to the people. The production of pure milk which merits and has the confidence of the consumer always is good business.

The dairy industry is not a public utility in the accepted sense of that phrase, according to no less an authority than the Supreme Court of the United States. In a leading decision upholding the New York milk control law, this court declared in 1933 that the production and distribution of milk is a paramount industry of the State, which largely affects the health and prosperity of the people (1). Save the conduct of railroads, said this tribunal, no other business has been so thoroughly regimented and regulated for the benefit of the common good.

* Address at the Service Training Course for Milk Pasteurization Plant Operators, Managers, and Owners, University of Michigan, Ann Arbor, May 12, 1942.

Self regulation of milk production by the industry itself is, however, as advantageous and as profitable as is regulation imposed by the State under the very broad authority of its police powers. Mere compliance with official rules may result in an acceptable milk supply, but more rigid voluntary measures will result in an even better supply of this indispensable food. Achievement of the utmost in sanitation in milk plant operations is a relatively inexpensive procedure which pays richly in dividends on the investment. Too many members of the industry fail to realize this axiomatic fact.

PURE MILK IN WAR AND PEACE

Pure milk is the most nearly perfect food at any time, but in time of war this wholesome, nourishing food is even more significant. Milk is prominently featured in the national nutrition program sponsored by the federal government in cooperation with science and industry. More milk and dairy products are being produced today than ever before, for our own benefit and the benefit of our allies.

Although pure milk has been regarded as the best all-around food for young and old, many other valuable protective foods are being properly stressed in the modern nutritional movement. The new enriched white breads, containing vitamins and minerals natural to whole wheat, are receiving well-merited acclaim, and much attention is being given to meats, fruits, eggs, green and yellow vegetables, and fortified margarines, as necessary parts of well-constructed daily dietaries.

Instead of being in the vanguard of the protective foods, pure milk today is merely one of them. Some of this loss of position is due to short-sightedness among leaders of the dairy industry.

The war has, of course, imposed certain difficulties upon the dairy industry. Although dairying is properly rated as a vital civilian industry, and some degree of priority is given to necessary dairy equipment, there are shortages in many critical materials needed for the proper maintenance of milk plant operations (2). Milk control officials must recognize this fact and must be reasonable and liberal in the enforcement of certain regulations.

Despite the difficulties with equipment and with occasional lack of personnel, any progressive dairyman can easily produce clean and safe milk, or milk that has been obtained in a hygienic manner and then properly pasteurized. The principal factors in the production of such a desirable milk supply may be summarized as follows (3):

1. Clean, healthy, well-fed cattle.
2. Healthy employees using sanitary methods.
3. Proper equipment that is properly cleaned or sterilized after each use.
4. Pasteurization of the milk by standard methods.
5. Adequate cooling of the milk.
6. Proper care in bottling, handling, and delivery of the milk.

THE COSTS OF SANITATION

Sanitation generally represents an extremely small fraction of the cost of production and distribution of market milk. On the farm, the principal cost items in milk production are for feed and labor, which together account for nearly two-thirds of the total cost to the dairyman. The distributor's largest items of expense are his payments to the farmer and his labor charges. These two main items representing about 70 percent of the dealer's total costs.

In a comprehensive study of dairy management in Michigan, made on 499 farms during the years 1932-1936, it was reported that feed represented 41 percent of the annual cost of milk production, labor 21 percent, management 10 percent, buildings and equipment 7 per cent, cow depreciation 5 percent, interest on cow 3 percent, bull expenses 3 percent, and miscellaneous 10 percent (4). Costs of sanitation apparently are included in this 10 percent for miscellaneous items. Elsewhere in this report it is shown that the charges per cow per year for producing market milk were \$138.76 in contrast to \$137.54 for condensery milk, or a difference of \$1.22 per cow per year for the milk having more rigid sanitary standards.

A more recent comparison between the costs of producing fluid market milk and milk for a manufactured market, in this instance evaporated milk, has been published by a large dairy corporation (5). This report shows that the average extra costs for producing fluid milk on 376 farms in eleven markets, which complied with the U. S. Public Health Service Standard Ordinance or with local milk ordinances, amounted to \$0.3337 per cwt., of which \$0.2426 was for ordinance compliance, and \$0.0911 was for extra transportation. The extra costs for producing the fluid milk consisted of increased labor charges, building improvements, depreciation of equipment, extra supplies, and transportation. Labor was the largest single item, amounting to \$0.1385 per cwt.

If comparisons were available between the costs of production of fluid market milks of different grades and qualities, instead of between fluid milk and manufactured milk, the added cost of more effective sanitary procedures would be slight. Certified milk may cost considerably more to produce than most other grades, but these costs are due in part to the relatively small volume of production and in part to the

large, and often excessive, fees paid to medical milk commissions and to local and national associations of this waning industry.

THE PENALTIES OF POOR SANITATION

The everlasting value of eternal vigilance in the hygienic production of milk is easily demonstrated by the unfortunate experiences of dairymen and dealers who have been negligent in safeguarding their milk supplies. Aside from the possibility of justifiable criminal action for such negligence in the production of an essential food, the offending dairyman or distributor is also liable in civil actions for damages or injuries caused by the consumption of contaminated or unwholesome milk and dairy products (6).

That such litigation is a constant menace to the milk dealer is shown not only by the record of actual court cases, but by the record of annual disease outbreaks caused by insanitary milk. Since 1923 there have been reported an average of 42 epidemics of milk-borne disease in this country. In 1939 there were 41 such outbreaks, with 2,509 cases of disease and 7 deaths, mostly due to contaminated raw milk (7). In that year six epidemics of septic sore throat due to milk caused almost half, or 1,282, of these preventable cases of disease.

Since civil actions in the lower courts are seldom published in the law reports, citations can be given here only to some of the more important decisions which reached state and federal courts of appeals. These decisions by courts of last resort are, however, impressive examples of the penalties of poor milk sanitation.

LIABILITY FOR UNDULANT FEVER

When an article of food, such as milk, is sold for human consumption, the seller is generally presumed at law to warrant that it is sound and wholesome, and fit for consumption. Such an implied warranty of the wholesome-

ness of food sets up a contractual relationship between the vendor and the vendee, for the breach of which the buyer may sue. But the purchaser of unwholesome food also has another remedy at law. He may bring suit against the seller or producer of the food for negligence, an action which is not predicated upon a contractual relationship, but is due to a legal wrong, or tort (8). If the seller, producer, or manufacturer of the food has violated a law or sanitary regulation, negligence will be presumed.

Early in 1937 an individual living in Everett, Washington, was advised by a member of the healing cult known as sanipractic to give raw milk to his eleven-year-old daughter. He instructed his milk dealer to leave one bottle of raw milk and one bottle of pasteurized milk each morning. With characteristic efficiency, the dealer frequently left only the raw milk, which the customer consumed, and as result of which he became afflicted with undulant fever. For this injury he sued the milk dealer, the dairy company from which the dealer had obtained the raw milk, and the farmer who was thought to have produced it.

In the lower court where the original case was tried, a judgment for damages was awarded to the customer against the milk dealer who delivered the raw milk and the dairy company which furnished the milk to the dealer, but since there was some doubt as to the precise source of this impure milk, the case against the producer was dismissed. On appeal, the judgment of the trial court was upheld in 1940 by the Supreme Court of Washington, which pointed out, among other things, that it is the duty of the seller of the milk to ascertain at his peril the wholesomeness of the food which he sells (9).

Previously, in 1937, a Superior Court in Washington had awarded \$1,946.50 in damages against a milk company and a milk producer for a

case of undulant fever caused by raw milk. Apparently this case was not appealed (10).

In 1936 a similar case was adjudicated in Virginia (11). In this instance the son of the customer contracted undulant fever as the result of drinking infected milk. In sustaining a judgment for the defendant dairy company in this case, the Supreme Court of Appeals of Virginia pointed out that while the law recognizes an implied warranty for the wholesomeness of milk, there was actually no contractual relationship between the son and the seller of the milk, and the warranty did not apply to subvendees. The milk dealer certainly would have been liable for negligence for the sale of this infected milk, but the customer made the fatal mistake of not instituting suit within one year, as required by the Virginia law for such tort actions. This decision sets forth the same legal principles as does the Washington case, but the plaintiff failed to get relief because of his tardiness, or that of his attorney.

LIABILITY FOR IMPURE MILK AND DAIRY PRODUCTS

On numerous occasions the courts have upheld judgments for damages in cases of illness or injury due to impure milk and other dairy products (12). In 1918, for example, the New York Court of Appeals ruled in a leading decision that a druggist who sold ice cream for immediate consumption was liable for sickness caused by this food (13). In a recent case the Federal Circuit Court of Appeals for the Seventh Circuit affirmed a judgment for \$6,000 for illness due to use of evaporated milk, which was proven to the satisfaction of a lower federal court in Illinois to have contained the body of a mouse (14).

Not all of the decisions have been adverse to the dairyman or milk dealer. In a recent case in Louisiana, where it was alleged that a man and his wife

became sick after drinking unwholesome milk, the verdict was for the milk company on the grounds that the customer had failed to prove that his ailment, if any, was due to the milk (15). It was shown by the evidence that the dairy from which the milk was dispensed was a modern plant approved by the state and city boards of health, and conducted in a sanitary manner.

In a recent Missouri case in which it was claimed that an infant was injured by glass splinters in a bottle of fluid milk, the St. Louis Court of Appeals reversed a decision in favor of the customer on the grounds that the trial judge improperly instructed the jury regarding the size of the nipple used on the bottle (16). The court pointed out, however, that if the jury found as a fact that the milk contained glass, which caused the infant's violent illness, that fact would be sufficient to determine liability.

Many of these alleged instances of glass in milk, and many of the other lawsuits brought against milk dealers are, of course, in the racket class, but this fact does not justify or excuse any lack of vigilance by milk producers and dealers in the sanitation of their milk and other dairy products. Proper sanitation and hygiene are potent factors in the defense of such litigation, and may also help to avoid it.

RECENT CASES ON THE VALIDITY OF MILK CONTROL

During the past year or two courts of last resort have handed down a number of interesting decisions concerned with various legal aspects of milk control. Thus, city ordinances requiring the pasteurization of all milk were sustained in Arizona (17) and California (18); a local board of health regulation to the same effect was upheld as valid in Massachusetts (17); and a requirement that pasteurized milk be dispensed only in sealed, sterilized containers was approved by a court in Illinois (20). A state law for the con-

trol of Bang's disease has been upheld in Virginia (21), while a regulation of the New York City Board of Health requiring permits for resale of milk by persons not in business prior to June 1, 1939, was upheld, with one justice of the Court of Appeals dissenting with respect to this rather drastic provision (22).

Some of the recent decisions have ruled in favor of the milk industry and against the type of milk control attempted by regulatory authorities. In Chicago a dairy was successful in contesting a prohibition by the board of health against the use of paper milk bottles or single service containers (23). In this case the Federal Circuit Court of Appeals ruled that since such containers were permitted by state law, the local ordinance was void as in direct conflict with it.

An action by a city health commissioner in Washington against a milk dealer who standardized his fluid milk with pasteurized homogenized cream was sanctioned by the trial court, but on appeal was reversed by the Supreme Court of that state (24), which said that such increase in the cream line was not "artificial" and was no violation of existing law.

In Kansas it was held that milk control is vested by the laws of that state in the State Board of Agriculture and not in the State Board of Health (25), so that a criminal action brought against a milk dealer for violation of a regulation of the State Board of Health would have to be dismissed. There was a similar decision in New York, which held that the Department of Health of New York City could not deny a permit for manufacture of ice cream in a sanitary basement, or regulate such manufacture, because that matter was legally the function of the State Department of Agriculture and Markets (26). In New Jersey a local board of health was denied the right to withhold a permit to sell milk merely on the grounds that it lacked funds to

inspect the source of supply, which had been inspected and approved by other health departments, including the State Department of Health (27).

In a recent Michigan case it was held that a farmer who sold a few quarts of milk to his neighbors and friends was not selling "to the public," within the meaning of the laws of that state (28).

SUMMARY

The production and sale of market milk is a business vested with a public interest, although the dairy industry is not a public utility.

Under the police powers of the state, the production and distribution of milk may be, and is, extensively regulated.

The reasonable regulation of milk is of value to the industry, as also self-regulation by the dairy industry itself.

Sanitation generally represents an extremely small, though definite, fraction of the cost of milk production and sale, but it is always a most profitable investment.

The penalties of poor sanitation may be expensive and costly litigation for damages due to illness or injuries caused to consumers by unwholesome or contaminated milk.

On numerous but not all occasions the courts have upheld awards for such damages. A number of such decisions are outlined as examples of the value of sanitary control of milk plant operations.

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Thirty-first Annual Meeting

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