

license. A letter, attached as Exhibit A, was sent confirming the inspection and subsequent conversation.

On February 15, 2007, the Grain Warehouse Division of the Commission received a second complaint against LW Sales for selling millet to mushroom farms. Specifically, it appeared as if LW Sales was again acting as a grain dealer without first obtaining the necessary license and bond as is required by SDCL 49-45-1.

Mr. Wheeting was contacted shortly after receipt of the complaint. He stated that the sales referred to in the complaint were seed sales rather than grain sales and that his attorney had advised him that he did not need a grain dealer license for these transactions. A letter to Mr. Wheeting from his attorney dated December 5, 2006, is attached hereto as Exhibit B. The Grain Warehouse Division of the PUC proceeded to investigate to either substantiate or disprove the belief Mr. Wheeting was indeed selling grain. Part of the investigation performed by Mr. Mehlhaff included an inspection of LW Sales' operations in conjunction with the Department of Agriculture. The Department of Agriculture inspected for compliance with the seed dealer requirements while Mr. Mehlhaff inspected for compliance with grain dealer requirements. The inspection found evidence that LW Sales had sold four lots of millet to mushroom companies and that though Mr. Wheeting was characterizing the millet sales as seed sales, he failed to follow the testing and labeling standards required by SDCL 38-12A-2 and 38-12A-9. A seed test report and invoice attached hereto as Exhibit C, clearly show that four lots of millet were purchased for the purpose of resale to a mushroom farm in Pennsylvania.

Department of Agriculture inspection notes and results are attached hereto as Exhibit D.

b. Mushroom Spawning Industry

The four known lots of grain sold by Mr. Wheeting were intended for use by a mushroom company for use in the spawning process. Spawning is just one step in the mushroom growth and cultivation process. After preparation of the compost (the mushroom growing medium), the

compost is inoculated with mushroom spawn, the mushroom "seeds." These microscopic spores form within a mushroom cap. Mycelium propagated vegetatively is known as spawn, and is used by commercial mushroom farmers.

Spawn makers start the spawn-making process by sterilizing a mixture of rye grain plus water and chalk; wheat, millet, and other small grain may be substituted for rye. Once sterilized, mycelium is added to the grain. Mycelium colonized grain is called spawn. See *MUSHROOM COUNCIL website: info@mushroomcouncil.com*. The grain, or millet sold by Mr. Wheeting was sterilized and used in the spawning process. Sterilization prevents any germination of the millet or other grain itself. Rather, it is to be used as a nutrient substrate in which to deliver the mushroom "seeds."

II. ANALYSIS

a. Commission Staff's request for Summary Judgment Should be Granted

Commission Staff relies on SDCL 1-26-18 in this request. SDCL 1-26-18 provides for judgment as a matter of law, "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact."

i. LW Sales/LW Seeds Acted as a Grain Dealer

"Before transacting the business of a grain dealer in this state, a person shall obtain a grain dealer license from the commission...the commission may assess a civil fine against an unlicensed grain dealer in the amount of one hundred dollars for each purchase of grain up to a maximum fine of five thousand dollars." SDCL 49-45-1. A "grain dealer" is defined as "any person who buys grain for the purpose of resale." SDCL 49-45-1.1(3). Grain for purposes of

Chapter SDCL 49-45 is, "grain, grain sorghums, beans and oil seeds. However, the term does not include grain that has been cleaned, processed, and specifically identified for an intended use of planting for reproduction..."

The millet purchased and then resold by Mr. Wheeting was not processed prior to its sale. In addition, it clearly was not intended for use in planting. The millet is, in fact, sterilized to prevent germination, thereby eliminating the "reproduction" option. The millet product sold by Mr. Wheeting was grain. Commission Staff anticipates Mr. Wheeting will argue he has no control over the product's eventual use. In following Mr. Wheeting's argument to allow 'self-designated' seed dealers, Public Utility regulation of the grain dealer industry could effectively be eliminated. Rather, Commission Staff argues the eventual use of the product should be considered. Eventual use is considered in the statutory definition of "grain" itself. The definition considers whether the product will be used for planting. A sterilized grain certainly is not an appropriate planting seed and thus is grain.

Nothing about the 2006 sale is different from the 2007 sale. Mr. Wheeting, however, seems to draw some distinction and now classifies what he does as seed sales. Commission Staff argues he simply tried to avoid the grain dealer licensure expense and exercise by labeling his product as seed. Such a label, however, does not make it so.

III. Conclusion

In conclusion, there are no issues of material fact for this Commission to consider. Mr. Wheeting was clearly selling a grain product, as defined by the South Dakota Code, without a license. This Commission regulates the sale of such product and thus requires all dealers apply and obtain a license prior to engaging in grain sales. Commission Staff respectfully requests this Commission grant its request for Summary Judgment, enjoin Mr. Wheeting from any future

grain sales to mushroom companies and assess the maximum penalty of \$400 against LW Sales, Inc.

Dated at Pierre, South Dakota, this 27th day of July, 2007.



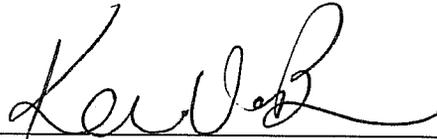
Kara Van Bockern
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave
Pierre, SD 57501
(605) 773-3201

CERTIFICATE OF SERVICE

I hereby certify that copies of Brief in Support of Motion for Summary Judgment were served on the following electronically or by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the addresses shown below on this the 27th day of July, 2007.

Ms. Kari A. Bartling
Attorney at Law
Kolker Law Office
P. O. Box 467
Groton, SD 57445-0467

Mr. Larry Wheeting
LW Sales
P.O. Box 668
Groton, SD 57445-0668



Kara Van Bockern
Staff Attorney

**LARRY WHEETING
LW Sales Inc.**

300 Railroad Ave. • P.O. Box 668
Groton, SD 57445
Bus. 605-397-8111
Bus. Fax 397-8361
Home 605-397-4456

**SOUTH DAKOTA
UTILITIES COMMISSION**

500 East Capitol Avenue
Sioux Falls, South Dakota 57501-5070
www.puc.sd.gov

Capitol Office
(605) 773-3201
(605) 773-3809 fax

Transportation/Warehouse
(605) 773-5280
(605) 773-3225 fax

Consumer Hotline
1-800-332-1782

November 1, 2006

Larry Wheeting
LW Sales Inc.
PO Box 668
Groton, SD 57445

Dear Larry:

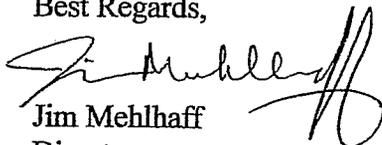
This letter is a follow up to our recent conversation regarding your operation of LW Sales Inc.

The Warehouse Division received reports that LW Sales was operating as a grain dealer without a license. The reports that we received were that you had purchased millet and sold it in to the mushroom trade. When we visited about this report, you admitted that the transaction had taken place but that it was an isolated incident resulting from your purchase of millet that was to be used for seed. The millet turned out to be unsuitable for that purpose so it was sold as described.

As we discussed you are not a licensed grain dealer and have no intentions of becoming one. Therefore when you engage in transactions such as this you are in violation of SDCL 49-45-1 which is a class 2 misdemeanor. In addition to the criminal penalties for violations of this statute the Commission may assess civil penalties of up to \$5000.00. This is a serious matter and if we receive additional reports of activities such as this we will investigate them and may take further.

This letter is meant to be a warning only. We have no plans of taking any further actions at this time; however, when we have an inspector in your area we may stop by to say hello. If you have any questions or if there is anything we can do to help you please do not hesitate to call our office.

Best Regards,



Jim Mehlhaff
Director
PUC Warehouse Division

KOLKER LAW OFFICE

P.O. Box 467 - 102 N. Main
Groton, South Dakota 57445

Richard L. Kolker
Kari A. Bartling

605-397-8464
Fax - 605-397-8497
email: tdlaw@nvc.net

December 5, 2006

Larry Wheeting
PO Box 668
Groton SD 57445

Re: Seed Issues

Dear Larry:

I have done some research concerning the issue you presented to me regarding selling seed millet to mushroom growers on the east coast. As I understand from the information you have provided me the mushroom grower purchases certain kinds of seed millet from you in order to make a pasty like substance that mushrooms are grown in. The millet is a type of manure for the mushrooms and helps them grow better.

You had inquired as to whether South Dakota Law would classify this as a grain or as a seed. I have done some research on this subject and SDCL 49-45-1.1 defines "grain" as "grain, grain sorghums, beans and oil seeds. ~~However, the term does not include grain that has been cleaned, processed and specifically identified for an intended use of planting for reproduction and for which a grain warehouse receipt has not been issued.~~"

As I understand your situation, you are obtaining millet from certain farmers in South Dakota who grow a certain type of millet. You pack the millet in seed bags for shipping to mushroom growers on the east coast who use the millet to create a product that is ~~used for the production and growing of mushrooms. No grain warehouse receipt is issued for this product.~~

Based on the information that you have provided me, it appears that you do not fall under the definition of grain in this situation. Because of the exception under the term grain, it appears that the type of product you are dealing with falls more under the seed definitions and as such, you would be subject to the Department of Agriculture rules with respect to the seed.

If there is anything else that I am not aware of or that I have misunderstood please contact me immediately. However, based on the information provided, the foregoing is the assessment of the situation.

If you have any questions, please do not hesitate to contact me. Best regards.

Sincerely,



Kari A. Bartling
KAB/gz

EXHIBIT B

ABERDEEN GRAIN INSPECTION, INC.

P. O. Box 842 15 Dakota St. South

Aberdeen, South Dakota 57401

Phone: 605-225-8432

Report of Seed Test No. 963

Date reported January 26, 2007 Date received January 26, 2007

Name and address IW Sales - Groton, SD

Sender's mark Sunrise 6431-32-33

Submitted as Millet

The analysis report shown below is accurate only for the sample received at the laboratory.

Pure seed 99.19 % Germination _____ %

Inert matter 0.74 % Hard seed _____ %

Crop seed 0.00 % Total of germ. and hard seed _____ %

Weed seed 0.07 % Date tested _____

Name and number of secondary Origin _____

Noxious weed seeds _____

Variety of seed is not indicated.
 Pure seed includes all seed of the kind analyzed.
 Crop seed includes all seed of other crop plants.
 Inert matter includes broken seeds of one-half size or less, dirt, chaff, etc.
 Germination includes only those seeds which sprout and produce normal seedlings.
 Hard seeds are those seeds which, while not dead, have a hard seed coat that is impervious to water and did not sprout.

Any test results appearing on this report were performed by examiners that were NOT CERTIFIED SEED TECHNOLOGISTS.

The results mentioned on this report CANNOT BE USED FOR TAG, LABEL OR CERTIFICATION.

REMARKS

| Noxious Weed Seeds | Number per oz. or lb. | Weed Seeds | Number per lb. |
|--------------------|-----------------------|---------------|----------------|
| None | | Green Foxtail | 60 |
| Other Crop Seeds | Number per lb. | | |
| None | | | |

Pure live seed (P.L.S.) $\left(\frac{\text{pure seed \%} \times \text{germination \%}}{100} \right)$

FORM PGC

Vernon Rempher lh

EXHIBIT C
(over)

TESTED BY

LW SALES, INC.
 PO BOX 668
 GROTON, SD 57445

Invoice
 Invoice Number
 5

Invoice Date
 Feb 26, 20
 Page

Voice: 605/397-8111
 Fax: 605/397-8361

Duplicate

Sold To:
 PHILLIPS MUSHROOM FARMS
 PO BOX 190
 KENNETT SQUARE, PA 19348

Ship to:

| Customer ID | | Customer PO | | Payment Terms | |
|--------------|------|--|------------|--------------------|----------|
| PHILMUSH | | | | 1% 10, Net 30 Days | |
| Sales Rep ID | | Shipping Method | | Ship Date | Due Date |
| | | D & E TRANSPORT | | 2/26/07 | 3/28/07 |
| Quantity | Item | Description | Unit Price | Extension | |
| 100.00 | 463 | DAWN MILLET SEED LOT 6433 IN BROWN BAG | 13.80 | 1,380.00 | |
| 375.00 | 463 | SUNRISE MILLET SEED LOT 6434 IN COLORED BAG | 12.50 | 4,687.50 | |

Subtotal 6,067.50
 Sales Tax
 Total Invoice Amount 6,067.50
 Payment Received
TOTAL 6,067.50

Check No:



**SOUTH DAKOTA DEPARTMENT OF AGRICULTURE
DIVISION OF AGRICULTURAL SERVICES**

523 East Capitol Ave., Foss Building
Pierre, South Dakota 57501-3182
Phone (605) 773-3724 / Fax (605) 773-3481
Web Address – www.state.sd.us/doa/das

May 2, 2007

LARRY WHEETING
LW SALES
PO BOX 668
GROTON, SD 57445

RECEIVED

MAY 03 2007

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Dear Mr. Wheeting:

On February 27, 2007, the department began a joint investigation with PUC regarding the sales of seed and grain at LW Sales.

The department's subsequent investigation concluded that you claimed that you were selling bagged millet as seed. You had several bags of millet on hand in your warehouse. Many bags were labeled without having a seed test for the information on the label and many had incomplete or incorrect seed label information.

Based on the facts of the case, as we know them, the Department has determined that violations of SDCL 38-12A-2, label required for containers of agricultural seeds – contents-, SDCL 38-12A-9, seed test to determine label information, and SDCL 38-12A-16(3), unlawful sale, offer for sale, or transportation for sale of seed in state which has false, misleading or incomplete label, have occurred. According to South Dakota law, violations of this type are subject to civil penalties of up \$1,000 per offense.

Before taking this step, however, we are issuing you a **warning**, for the aforementioned violations. Any further violation of South Dakota Codified Law could result in further regulatory action(s).

If you have any further information in regard to the findings of our investigation, we would like to provide you with an opportunity to present that information. If it is your wish to meet with us, please contact me in order to arrange a time when we can meet here in Pierre or you may submit your written comments.

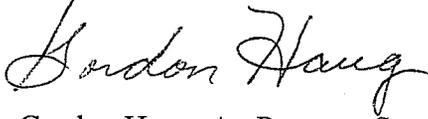
This offer to provide additional information will remain open to you until June 1, 2007. If we do not hear from you by the above date, this warning will be entered into our records.

EXHIBIT D

Page -2-
Larry Wheeting
May 2, 2007

Should you have questions or need an extension of the date, please contact me at (605) 773-4432, or direct correspondence to the address located at the top of this letter.

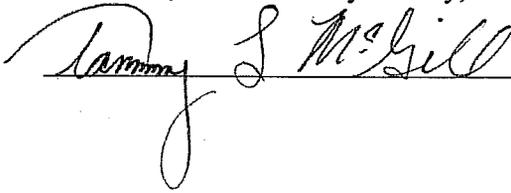
Respectfully,



Gordon Haug, Ag Program Specialist
Office of Agronomy Services

cc: Brad Berven
Jim Mehlhaff, PUC

The undersigned hereby certifies that this letter was sent to the addressee, United States first class mail, on this 2nd day of May, 2007.



RECEIVED

MAR 7 8 2007

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

SD DEPT. OF AGRICULTURE
VS
LW SALES – GROTON, SD



Gordon Haug, SDDA requested that I assist Jim Mehlhoff with the SD PUC in an investigation at LW Sales, Groton, SD. Information I received is that LW Sales is marketing millet and does not hold a grain dealers license. LW Sales states that it is selling seed.

I met with Jim Mehlhoff on February 27, 2007 in Aberdeen and we proceeded to LW Sales at Groton. We entered into the office and asked to see the owner Larry Wheeting and were told that he had not returned from lunch. Mr. Wheeting arrived a short time later. I presented my credentials as did Mr. Mehlhoff and explained why we were there. Mr. Wheeting asked us into the office and Mr. Mehlhoff asked Mr. Wheeting a series of questions.

I presented Mr. Wheeting with a Notice and Report of Inspection (attachment #1) which Mr. Wheeting completed. I inquired if LW Sales has a seed license and Mr. Wheeting replied he did and presented it to me from his files. I informed Mr. Wheeting that the license is to be posted in public view. Mr. Wheeting replied that he would post it on the bulletin board next to his sales tax permit. Mr. Wheeting said he has a seed license for the State of Pennsylvania (attachment #2).

From Mr. Wheelings conversation with Mr. Mehlhoff I learned that millet is being sold to Phillips Mushroom Farms, Kennet Square, Pennsylvania. Mr. Wheeting explained that he cleans the millet and bags it in 50 pound bags and that he has it tested for purity at Aberdeen Grain Inspection, Inc. Mr. Wheeting provided me with a copy of the analysis (attachment #3) for the last sample submitted. The analysis has pure seed, inert matter, crop seed and weed seed percent listed. On the inspection report is a statement "The results mentioned on this report CANNOT BE USED FOR TAG, LABEL OR CERTIFICATION." Mr. Wheeting stated that Phillips Mushroom does not care about germination because the seed is sterilized so it does not germinate. The millet is mixed with other material to make a medium for the mushrooms to grow in.

I asked Mr. Wheeting as to what kind of label is used to identify the product in the bags? Mr. Wheeting replied that he uses a stick on label that identifies the product, lot number and the purity and inert matter. I told Mr. Wheeting that if he is selling the millet as seed that it needs a germination test performed at an accredited lab. I provided Mr. Wheeting with the Seed Advertising and Label Guidelines. Mr. Wheeting stated that he has sent samples to Mid-West Labs or the seed lab at Brookings. I asked Mr. Wheeting what if any millet seed he had on hand? Mr. Wheeting replied he had some of lot 33 still in the warehouse and was in the process of bagging lot 34. Mr. Wheeting asked if I would like to see it. Mr. Mehlhoff and I said we did.

Mr. Wheeting escorted us to the location in the warehouse where the bagged millet was stored. The bags had stick on labels applied as Mr. Wheeting stated. As we viewed the labels on the bags for lot 6433 they contained a germination percent of 85 %. I asked Mr. Wheeting where the germination information came from. Mr. Wheeting stated that those labels were a mistake. The analysis provided to me from Aberdeen Grain Inspection, Inc. did not have a germination percent. I informed Mr. Wheeting that the labels would have to be corrected or destroyed and he said they would be covered over and relabeled. I counted 380 bags of lot 6433. The millet for lot 6434 (250 bags) only contained the pure seed and inert matter information and I informed Mr. Wheeting that those labels were not correct and they needed to be replaced with all of the required information. Mr. Wheeting stated that he would send a sample to a lab for the required analysis.

I plan on returning to LW Sales to review the labeling requirements and to collect samples of the labeled product in the near future. This concludes my investigation into the sale of millet seed without correct labels.

Chuck Tollefson
Ag. Inspector
SD Dept. of Agriculture
March 5, 2007



ATTACHMENT LIST
SD DEPT. OF AGRICULTURE
VS
LW SALES

1. Notice and Report of Inspection – Larry Wheeting
2. Millet Seed analysis – Aberdeen Grain Inspection, Inc.
3. Pennsylvania Seed License – LW Sales Inc.
4. Inspection Findings – Chuck Tollefson
5. Inspection Findings – Chuck Tollefson



Department of Agriculture

Division of Agricultural Services

Foss Building, 523 E. Capitol
Pierre, SD 57501-3182

Notice and Report of Inspection

| | | |
|--|---------------------------|---------------------------------|
| NAME (Owner, Operator or Agent) <i>LARRY Wheating</i> | TITLE <i>President</i> | SIGNATURE <i>[Signature]</i> |
| FIRM NAME (Number, Street, City, State and Zip Code) <i>LW Sales 300 Railroad Ave. Croton, SD</i> | | |
| SIGNATURE OF INSPECTOR <i>[Signature]</i> | DATE <i>2-27-2007</i> | TIME <i>1:30pm.</i> |

Distribution Center Inspection Report

Product Category



| | <u>Seed</u> | | Animal Remedies | | Fertilizer | | Soil Amend. | | Pesticide | |
|---|-------------|--------|-----------------|--------|------------|--------|-------------|--------|-----------|--------|
| | sat. | unsat. | sat. | unsat. | sat. | unsat. | sat. | unsat. | sat. | unsat. |
| 1. Current Licensing/Permits | X | | X | X | | | X | X | | |
| 2. Product Registrations | X | X | | | | | | | | |
| 3. Labeling of Products | | X | | | | | | | | |
| 4. Storage and Handling of Products | X | | | | | | | | | |
| 5. Invoice/Records | X | | | | | | | | | |
| 6. Were Laws and regulations discussed? | X | | | | | | | | | |
| 7. Was corrective action discussed? | X | | | | | | | | | |

Note: If unsatisfactory or yes is checked above specify the reason under the remarks section below.

Consent for inspection granted by *Larry Wheating*

Remarks:
Investigation into the sales of grain - with laboratory analysis
Labeling of product does not contain % germination - needs to have samples analyzed at accredited facility.

ABERDEEN GRAIN INSPECTION, INC.

P. O. Box 842 15: Dakota St. South

Aberdeen, South Dakota 57401

Phone: 605-225-8432

Report of Seed Test No. 963

Date reported January 26, 2007 Date received January 26, 2007

Name and address LW Sales - Groton, SD

Sender's mark Sunrise 6431-32-33

Submitted as Millet



The analysis report shown below is accurate only for the sample received at the laboratory.

Pure seed 99.19 % Germination _____ %
 Inert matter 0.74 % Hard seed _____ %
 Crop seed 0.00 % Total of germ. and hard seed _____ %
 Weed seed 0.07 % Date tested _____
 Name and number of secondary _____ Origin _____
 Noxious weed seeds _____

Variety of seed is not indicated.
 Pure seed includes all seed of the kind analyzed.
 Crop seed includes all seed of other crop plants.
 Inert matter includes broken seeds of one-half size or less, dirt, chaff, etc.
 Germination includes only those seeds which sprout and produce normal seedlings.
 Hard seeds are those seeds which, while not dead, have a hard seed coat that is impervious to water and did not sprout.

Any test results appearing on this report were performed by examiners that were NOT CERTIFIED SEED TECHNOLOGISTS.

The results mentioned on this report CANNOT BE USED FOR TAG, LABEL OR CERTIFICATION.

REMARKS

| Noxious Weed Seeds | Number per oz. or lb. | Weed Seeds | Number per lb. |
|--------------------|-----------------------|---------------|----------------|
| None | | Green Foxtail | 60 |
| Other Crop Seeds | Number per lb. | | |
| None | | | |

Pure live seed (P.L.S.) $\left(\frac{\text{pure seed \%} \times \text{germination \%}}{100} \right)$

FORM PGC

Vernon Rempher lh

(over)

TESTED BY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE

Bureau of Plant Industry 8403
2301 N. Cameron Street

SEED LICENSE

License No: 000883
Company ID: 000319
Company Name: L W SALES INC
Address: BOX 668 300 RAILROAD AVE
GROTON, SD - 57445

Issued: 1/22/2007
Expires: 12/31/2007

[Handwritten Signature]
SIGNATURE

NOT
TRANSFERABLE



**PENNSYLVANIA DEPARTMENT OF AGRICULTURE
BUREAU OF PLANT INDUSTRY**
Division of Agronomic and Regional Services
2301 North Cameron Street
Harrisburg, Pennsylvania 17110-9408



**APPLICATION FOR SEED LICENSE
API-SD001 (Rev. 4/06)**

- New Seed Distributor - \$25.00/Distributor
 Addendum to Primary Distributor - \$25.00/Distributor

PRIMARY DISTRIBUTOR (See instructions on page 2)

APPLICATION IS HEREBY MADE FOR A LICENSE TO DISTRIBUTE SEED IN PENNSYLVANIA.

L. W. Sales Inc 605 391 8111
 (Business Name) (Telephone Number)

LARRY Wheeting 605 391 8361
 (Contact Person) (Facsimile Number)

Box 668 300 Railroad Ave - Garton SD 57445
 (Street Address) (City) (State) (Zip Code) (County - PA Only)

(Web Address) (Federal ID if available)

ADDITIONAL LICENSEE(S) BY THE ABOVE PRIMARY DISTRIBUTOR (Complete this section *only* if there are different names and addresses that seeds will be distributed by. Otherwise, indicate *SAME AS ABOVE*.)

| Company Name | Street Address | City | State | Zip Code | County (PA Only) |
|--------------|----------------|------|-------|----------|------------------|
| | | | | | |

MAILING ADDRESS IF DIFFERENT THAN PRIMARY DISTRIBUTOR ADDRESS. Otherwise, leave this section *BLANK*.

(Business Name) (Telephone Number)

(Contact Person) (Facsimile Number)

(E-mail Address)

(Street Address) (City) (State) (Zip Code)

(Web Address)

I verify that the above statements are true and correct to the best of my knowledge, information and belief. I understand that false statements are made subject to the penalties of 18 Pa.C.S Section 4904 relating to unsworn falsifications to authorities and may result in criminal prosecution and suspension or revocation of my license.

I hereby agree to comply with the provisions of the Pennsylvania Seed Act, as amended, as well as any rules promulgated thereunder.

Larry Wheeting 1-16-07
 (Signature) (Date)

President
 (Title)

**L. W. SALES, INC.
LARRY & SHARON WHEETING
300 RAILROAD AVE
BOX 668
GARTON, SD 57445**

78-525/914
114817
3447
DATE 1-17-07

ling December 31, 20

THE OF PA Dept of Agriculture
 twenty five dollars \$25.00
 DOLLARS

Seed Program Supervisor)

SOUTH DAKOTA DEPARTMENT OF AGRICULTURE

Agricultural Services Division
Foss Bldg., 523 East Capitol
Pierre, South Dakota 57501
Telephone: (605) 773-3724



INSPECTION FINDINGS

OBSERVATIONS AND FINDINGS REVIEWED WITH PERSON IN CHARGE.
(NOTE RESPONSE OR COMMENTS GIVEN BY THE PERSON IN CHARGE)

LW Sales - selling millet seed to Phillips Mushroom Farms - Kennett Square, PA. Larry Wheatling
Owner of LW Sales samples of lots sold
Analysis for purity tested at Aberdeen Grain
Inspection, does not have a germination performed
MR. Wheatling has applied to State of Pennsylvania
for seed license on 1-16-07.

Lot - 6433 sent to Phillips Mushroom Farms - PA,
without germination % established on 2-26-07
Lot - 6434 sent on 2-26-07 without an analysis
performed.

Millet seed is sold only ⁱⁿ the state of Pennsylvania
Seed Advertising & Label Guidelines given to Larry Wheatling

A COPY OF THIS FORM WAS GIVEN TO:

Larry Wheatling

DATE:

2-27-2007

INSPECTOR:

Chris Tollefson

INSPECTION FINDINGS

OBSERVATIONS AND FINDINGS REVIEWED WITH PERSON IN CHARGE.
(NOTE RESPONSE OR COMMENTS GIVEN BY THE PERSON IN CHARGE)

380 bags of lot 6433 contained label (sticker)
Sunrise Millet
with purity 98.100%
inert 1.90%
crop 0.18%
weed 0.102%
Germ 85%
Nonnoxious
test 1-07
50lbs net.

Asked Mr. Wheating where the information for label came from. Mr. Wheating replied that label was a mistake. Does not have an analysis from an approved seed testing lab.
Instructed Mr. Wheating that labels need to be destroyed and product relabeled.



A COPY OF THIS FORM WAS GIVEN TO:

Larry Wheating

DATE: 2-27-2007

INSPECTOR:

Chuck Tellefsen