

HELP STOP DESTRUCTION OF RAW CHEESE INVENTORIES

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Farmstead cheese operations--Morningland Dairy of Mountain View, Missouri and Estrella Family Creamery of Montesano, Washington--face upcoming legal battles which could result in court orders for each dairy to destroy its entire cheese inventory for allegedly being adulterated. The FDA is now taking aim at raw cheese producers and has created a climate of fear among those who make farmstead cheese for a living. The agency's longterm goal is to eliminate access to raw dairy products. Read "[FDA's Ace in the Hole](http://www.farmtoconsumer.org/ace)" at www.farmtoconsumer.org/ace.

On October 22 the Missouri State Milk Board, through the Missouri Attorney General's office, petitioned the Circuit Court of Howell County to obtain a court order requiring Morningland to destroy 50,000 pounds of cheese (market value of about \$250,000) located at Morningland's cheesemaking facility because samples of Morningland Dairy cheese have tested positive for *Listeria monocytogenes* [*L. mono* is widespread in the environment and many subtypes of this bacteria have not been implicated in human illness] and *Staphylococcus aureus* [*Staph. aureus* is present normally on everybody's skin and is considered protective. Most subtypes of this organism do not produce the toxin which can occasionally cause vomiting. Gastrointestinal illness from *Staph. aureus* is self limiting-meaning medical treatment is not necessary].

In neither the Morningland case nor the Estrella case has there been any reported illness from the consumption of cheese.

On October 21 the United States Marshall Service executed a seizure order issued by a federal district court against the entire inventory of raw cheese located at the Estrella Family Creamery (EFC); FDA is attempting to get the dairy's cheese inventory destroyed because cheese samples and environmental swabs taken at the EFC facility tested positive for *L. mono*. Under federal law EFC has thirty days to make a claim on the seized cheese which owners, Anthony and Kelli Estrella, are in the process of doing. If the court with jurisdiction over their case rejects the claim, then their cheese will be destroyed.

What is unjust about the actions taken against Morningland and Estrella is that there has not been an adequate level of proof shown to establish that the bacteria found in the cheese and the environment are actually harmful to human health.

In neither the Morningland case nor the Estrella case has there been any reported illness from the consumption of cheese. In fact, there has not been any case of illness attributed to Morningland products in the thirty years it has been in business nor has there been any illness attributed to Estrella products in its seven years of operation. Joe and Denise Dixon, owners of Morningland, have developed a loyal following and sell to hundreds of retail stores across the country as well as direct to consumers through their mail order business. Anthony and Kelli Estrella have won numerous awards domestically and internationally for the quality of the cheese they produce.

What is unjust about the actions taken against Morningland and Estrella is that there has not been an adequate level of proof shown to establish that the bacteria found in the cheese and the environment are actually harmful to human health. There are many subtypes of *L. mono* (and *Staph.*

aureus); as mentioned above, many of these subtypes have not been found to cause illness in humans. The agencies have the capability to determine the subtype of a pathogen found and whether that particular subtype is on record as having caused human illness; if the subtype has not, then there is no adulteration and no need to destroy the product.

Neither the FDA nor Milk Board, which is working at the direction of FDA, has conducted any testing to determine the subtype. Once the agencies had the initial positive tests, they should have done subsequent testing for the subtype. Even if the subtype is known to cause illness in humans, it still needs to be determined whether the amount of bacteria in the food is enough to actually do so. FDA has a zero tolerance policy for *L. mono*, a standard widely rejected by the scientific community throughout the world. The zero tolerance policy, in fact, reduces the incentive to test for *L. mono*.

What stands to happen now is that the dairies could be forced to destroy hundreds of thousands of dollars in product that are no threat to the public health. Morningland and Estrella have suffered significant financial losses as it already is; neither has produced any cheese in the last two months. The destruction orders from the courts would further cripple their businesses, if not entirely shutting them down.

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TAKE ACTION TO HELP

Both the Dixons and the Estrellas are fighting government attempts to destroy their cheese while currently earning little or no income from their farming operations. In addition to the money needed to pay for living and farming expenses, there will be significant court costs incurred to overturn the destruction and seizure orders.

The outcome of the Morningland and Estrella cases will have an impact on freedom of food choice in this country.

Your help is needed. For those wanting to contribute money towards this fight, donation pages have been set up for each dairy:

For **Morningland Dairy**, donate at <http://pledgie.com/campaigns/13790>. To learn more, go to <http://uncheeseparty.wordpress.com/>

For **Estrella Family Creamery**, donate at <http://pledgie.com/campaigns/13917>. To learn more, go to <http://estrellacheese.wordpress.com/>

BACKGROUND - Morningland Dairy

Morningland Dairy cheese was seized by both FDA and the California Department of Food and Agriculture (CDFA) in the June 30 raid on the Rawesome food store in Venice. In August CDFA informed the Missouri State Milk Board that samples of Morningland cheese had tested positive for *L. mono* and *Staph. aureus*. The evidence is that the procedures the agency used in taking the cheese from Rawesome and recording the test results were sloppy at best. On August 26 the Milk Board issued Morningland orders not to ship any cheese at the facility and to cease all production.

On August 31 Morningland issued a voluntary recall asking their customers to either destroy or return over 60,000 pounds of cheese produced from January 1, 2010 onward.

On August 27 Morningland sent cheese samples off for testing. Unfortunately, like in California, proper protocols were not followed in taking the samples. A number of the samples came back positive for *L. mono* and *Staph. aureus*.

On August 31 Morningland issued a voluntary recall asking their customers to either destroy or return over 60,000 pounds of cheese produced from January 1, 2010 onward. On August 27 FDA sent out a press

release as a voluntary recall by Morningland when the Dixons had not yet decided whether to issue a recall. From August 30 through September 1, FDA conducted an inspection of the Morningland facility taking one hundred environmental swabs, all of which tested negative for pathogens.

On September 24 the Milk Board verbally requested that Morningland destroy the entire cheese inventory; the Dixons asked that the request be put in writing, which was done on October 1. Morningland responded by objecting to the destruction order and proposing that each batch at the facility be tested, allowing the sale of only those batches of cheese testing negative for contamination.

The next day, the Milk Board rejected the Dixons' proposal, petitioning the Howell County Court to order that the product be destroyed. The hearing was scheduled for October 8, giving the Dixons almost no time to prepare a defense and was only cancelled when a scheduled state witness was not able to attend. On October 22 the Milk Board again filed a petition for a condemnation order that is currently before the Howell County Court.

BACKGROUND - Estrella Family Creamery

In February, the Estrella's received a call from the Washington State Department of Agriculture (WSDA) informing them that a wheel of Estrella cheese purchased at a retail outlet tested positive for *L. mono*. After a follow-up visit to the Estrella facility by WSDA inspectors turned up more positive results for *L. mono* in sampled cheeses and in the environment, Estrella issued a voluntary recall for several different cheeses as well as throwing out thousands of dollars in cheese inventory. They then took about a month off from making cheese to work on a physical upgrade to the facility. After the dairy resumed production, WSDA returned to the facility and took thirty environmental swabs with one of them testing positive for *L. mono*. The inspectors were not concerned about the positive test, telling the Estrellas, "Listeria is everywhere, you will never totally eradicate it but you have to control it."

From the time Estrella reopened until August, no cheese, produced post-recall, tested positive for any pathogen. Then FDA stepped into the picture; on August 2, FDA officials showed up to conduct a three-day inspection. They took 151 environmental swabs, four of which tested positive for *L. mono* (including one on a ceiling switch far from any cheese and another outside the cheese room on a slider door track). After the inspection, the FDA inspectors discussed the results with the Estrellas; they did not indicate that the swabbing or inspection results were unacceptable nor did they use language describing the facility as filthy or unsanitary. They only suggested some minor changes to be made in the facility's operation.

On September 3 the agency requested that Estrella recall all cheese products. The Estrellas declined the request; however, the company destroyed all cheese located in Cave 3.

During a subsequent visit on August 16, an FDA investigator collected a sample of cheese that was also found to be positive for *L. mono*. The sample came from Cave 3 (Estrella has four cheese caves) which was the area where the dairy had the most problems in February. FDA claimed their testing showed that the strain of *L. mono* found in February at the facility and the strain found in the testing conducted there in August were "indistinguishable". On August 30 Estrella took cheese samples for testing, four of which came back positive for *L. mono*; all four were from Cave 3. On September 3 the agency requested that Estrella recall all cheese products. The Estrellas declined the request; however, the company destroyed all cheese located in Cave 3.

On September 4, FDA issued a press release advising consumers that "consumption of all Estrella Creamery cheeses put them at risk for *L. mono* related illnesses." On October 21 the U.S. Marshall executed the seizure order covering all the cheese inventory at the Estrella facility; the order was issued on the grounds that the cheese was adulterated since it had "been prepared, packed, and held under unsanitary conditions whereby they may have become contaminated with filth or whereby they may have been rendered injurious to health" in violation of the Federal Food, Drug and Cosmetic Act. As much as 80% of the "seized" inventory consisted of long-aged cheeses, such as gruyere and cheddar, that do not support the growth of *L. mono*. None of these long-aged cheeses at the facility had ever tested positive for *L. mono*.

If their cheese can be destroyed just on the basis of an initial positive test for *L. mono*, then the Dixons and Estrellas are being denied due process.

Again, in neither the Morningland nor the Estrella case had any of the positive samples for *L. mono* been tested to determine whether they were of a subtype that had actually caused illness in humans; the same goes for the Morningland positive samples for *Staph. aureus*. Under the Federal Food, Drug and Cosmetic Act, if a food contains a subtype of *L. mono* (or of any other pathogen) that is not found to have been harmful to human health, then the food is not "adulterated"; if

the subtype of *L. mono* found in an environmental swab is one that has not been shown to cause illness in humans, then there should be no finding of adulteration. If their cheese can be destroyed just on the basis of an initial positive test for *L. mono*, then the Dixons and Estrellas are being denied due process.

For small food producers, one recall or destruction order can put them out of business. Due process of law needs to be upheld to protect producers from the reign of terror FDA is waging against farmstead cheese operations; otherwise, FDA will continue to go unchecked after raw dairy producers who have harmed no one with their products--working toward the agency's eventual goal of eliminating access to raw dairy.

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HYPERLINKS for PDF version:

Morningland Dairy = <http://pledgie.com/campaigns/13790>

Estrella Family Creamery = <http://pledgie.com/campaigns/13917>

FDA's Ace in the Hole = <http://www.farmtoconsumer.org/ace>

October 22 = <http://www.ftclfd.org/aa/aa-22october2010.htm>

June 30 raid = <http://www.farmtoconsumer.org/news/news-4July2010.htm>