



# Farm-to-Consumer Legal Defense Fund®

Legal Representation ♦ Political Action ♦ Education

## BACKGROUND - Morningland Dairy, Mountain View, Missouri

Morningland Dairy cheese was seized by both FDA and 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 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, Montesano, Washington

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.

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

## BACKGROUND--MORNINGLAND & ESTRELLA, CONT.

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.

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 producer 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.

## CONCERNED CITIZENS MOUNT FUNDRAISING EFFORT

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, they face 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.

Friends of these dairies are fundraising to help them survive the harsh government actions. For those wanting to contribute money towards their charitable relief and legal expenses, 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/>

To interview Pete Kennedy or spokesman for the dairies, please contact:  
Kimberly Hartke, Publicist  
Hartke Communications  
703-860-2711 or 703-675-5557 cell  
[kimberly@hartkeonline.com](mailto:kimberly@hartkeonline.com)