



# Farm-to-Consumer Legal Defense Fund®

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## **FDA Issues Destroy Orders for Cheesemakers in Two States with No Proof of Harm Agency Neglects to Test for Pathogenic Qualities in Bacteria Subtype**

**Thursday, November 18, 2010--Falls Church, VA--**Two farmstead cheese makers--Morningland Dairy of Mountain View, Missouri and Estrella Family Creamery of Montesano, Washington-- could be forced to destroy hundreds of thousands of dollars in product that are no threat to the public health. The dairies face upcoming legal battles which could result in court orders for each dairy to destroy its entire cheese inventory for allegedly being adulterated. Both small farms have suffered significant financial losses already; neither has produced any cheese in the last two months. Destroy orders from the courts will further cripple the farms, if not entirely shutting them down.

The FDA is 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 long term goal is to eliminate access to raw dairy products. Read "FDA's Ace in the Hole" at [www.farmtoconsumer.org/ace](http://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 Washington state, 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.

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.

According to Farm-to-Consumer Legal Defense Fund President, Pete Kennedy, Esq., "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*; 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."

FDA Orders Cheese Destroyed with No Proof of Harm, cont.

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, Kennedy believes "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.

***The Farm-to-Consumer Legal Defense Fund*** *defends the rights and broadens the freedoms of family farms and protects consumer access to raw milk and nutrient-dense foods. Concerned citizens can support the Fund, a U.S. based 501(c)(4) nonprofit, by joining or donating online at [www.farmtoconsumer.org](http://www.farmtoconsumer.org) or by calling 703-208-FARM (3276).*

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