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Gaining Ground in the Courts: The Center for Food Safety's Recent Victories in the Battle Over Genetically Engineered Crops

In a string of recent cases, the Center for Food Safety (CFS), representing and partnering with other non-profit consumer advocacy groups, environmental protection organizations, and numerous small farmers, has won hard-fought victories in federal court. Judges found that the environmental assessments done by the United States Department of Agriculture (USDA) prior to the testing or commercialization of several genetically engineered (GE) crops was either non-existent or severely lacking, and in violation of our nation's environmental protection laws. Each of these victories, summarized briefly below, is a landmark decision, with far-reaching implications for the future testing and agency assessment of genetically engineered crops. Taken together, these cases represent cornerstones of a new body of case law being created by CFS and others that protect the public, the environment, and farmers from the dangers of GE crops and preserve our public right to choose non-GE crops and food.

Genetically Engineered Alfalfa

Geertson Seed Farms, et al. v. Johanns, Docket No. 06-1075 (N.D. Cal. Feb. 14, 2007)

The Case: USDA illegally approved for commercial sale Monsanto's GE "Round Up Ready" alfalfa after conducting only cursory environmental review pursuant to the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA).

The Risks: Alfalfa, an open-pollinated, perennial crop poses unique risks when genetically engineered for resistance to Round Up including but not limited to: (1) unintentional biological contamination of conventional and organic alfalfa with GE alfalfa genes; (2) increased use of the toxic herbicide Round Up, endangering protected species and biodiversity; (3) creation of Round Up resistant "superweeds" resulting from increased Round Up use; and (4) threats to the economic livelihood of organic and conventional alfalfa growers. Alfalfa is the fourth largest crop grown in the U.S. and would be the first perennial crop approved for GE commercialization.

The Decision: For the first time, a Federal court held that USDA failed to abide by environmental protection laws when it approved a genetically engineered crop for commercialization without conducting a full Environment Impact Statement (EIS). Judge Breyer of the Federal District Court of the Northern District of California concluded that USDA failed to address numerous significant environmental risks raised by CFS before approving the commercialization of Roundup Ready alfalfa, and therefore must prepare an EIS before release of GE alfalfa.

"For those farmers who choose to grow non-genetically engineered alfalfa, the possibility that their crops will be infected with the engineered gene is tantamount to the elimination of all alfalfa; they cannot grow their chosen crop." ... "A federal action that eliminates a farmer's choice to grow non-genetically engineered crops, or a consumers' choice to eat non-genetically engineered food, is an undesirable consequence." – *Judge Breyer*

The Impact: USDA's approval of GE alfalfa is vacated – the USDA must now fully review the environmental risks in a rigorous EIS before it can allow GE alfalfa onto the market.

Genetically Engineered Bentgrass

Int'l Ctr. for Tech. Assessment, et al v. Johanns, et al., Docket No. 03-0020 (D.D.C. Feb. 5, 2007)

The Case: USDA illegally approved open-air field trials of GE “Round Up Ready” Creeping Bentgrass and Kentucky Bluegrass (created by Scotts’ and Monsanto) by claiming that these tests were “categorically excluded” from needing any environmental risk assessment.

The Risks: Creeping Bentgrass and Kentucky Bluegrass, two robust, weedy perennial grasses, pose significant environmental risks to the environment when genetically engineered for Round Up resistance, including but not limited to: (1) the threat of biological contamination of naturally occurring grass species through pollen transfer; (2) enhanced weediness as Round Up resistance develops and an inability to remove weedy grasses from naturally protected areas; and (3) increased use of Round Up and more toxic pesticides as Round Up resistance develops.

The Decision: Judge Kennedy of the Federal District Court of the District of Columbia held that USDA improperly exempted GE Bentgrass from NEPA’s environmental review requirements and ordered that USDA must halt approval of *all* new field trials across the country until more rigorous environmental reviews are conducted for each field trial.

“The record contains substantial evidence that the field tests may have had the potential to affect significantly the quality of the human environment, and that the tests may have involved, at the least, novel modifications (if not “new organisms”) that raised new environmental issues. APHIS failed, however, to consider any of these possibilities. ... [D]efendants are permanently ENJOINED from processing any acknowledgment or permit ... without [complying with NEPA and this opinion].” –*Judge Kennedy*

The Impact: USDA has approved over a thousand field trials for new GE crops each year without doing any environmental assessment under the “categorical exclusion” loophole. This court decision forces USDA to significantly slow down its dangerous, fast-tracked allowance of experimental GE crop field trials, and to comply with environmental protection laws by adequately assessing the significant environmental consequences of such field trials before they are allowed to occur.

Genetically Engineered Biopharmaceutical Crops

*Center for Food Safety, et al v. Johanns et al.,
(D. Hawaii Aug. 31, 2006)*

The Case: USDA illegally approved field trials of drug-producing, GE crops (including corn and sugarcane) throughout Hawaii without considering the effects to endangered species and without conducting any environmental review under NEPA.

The Risks: Biopharmaceutical (biopharm) crops, genetically engineered to produce pharmaceutical compounds such as hormones, vaccines, and cancer fighting agents, pose unique human health and environmental risks including but not limited to: (1) threats to endangered species that feed on such crops; (2) releasing unwanted chemicals into the air, water, and soil; (3) contamination of non-GE crops with the genes to produce these compounds; and (4) threats to the economic livelihood of organic and conventional farmers that could lose their markets if contamination occurred.

The Decision: Judge Seabright of the Federal District Court for the District of Hawaii held that USDA violated the ESA by failing to do even minimal investigation into whether biopharm crops could harm any of Hawaii’s over

three hundred endangered species. USDA also violated NEPA by granting four field trial applications without conducting any environmental review.

“APHIS’s utter disregard for this simple investigation requirement [under the ESA], especially given the extraordinary number of endangered species and threatened plants and animals in Hawaii, constitutes an unequivocal violation of a clear congressional mandate.”—*Judge Seabright*

The Impact: This case was the first-ever court ruling on biopharm crops, holding that the field testing of these risky GE crops must comply with our environmental protection laws. The decision makes crystal clear that USDA must consider impacts on endangered species and other environmental impacts before allowing the field testing of these novel crops.

These landmark victories mark the end of USDA’s dangerous streamlining of GE crop testing and approvals and hopefully portends an era of federal agency oversight that complies with our nation’s environmental protection laws rather than merely kowtowing to GE crop industry’s bottomline. However much more work is needed to protect the public, small farmers and the environment; if USDA and others charged with these duties continue to fail to lead, CFS will continue to show them the way.

For more information and to read all the opinions, please visit:
www.centerforfoodsafety.org