

***County of Lake  
GE Committee  
Environmental and Liability Subcommittee Report  
~Liability~  
June 28, 2009***

The Environmental & Liability Subcommittee (ELS) was charged with the task of reviewing the information on the liability issues surrounding the cultivation of GE crops.

According to the Santa Cruz Public Health report on GE technology, liability may be established through statutory or common law.<sup>1</sup> There are two issues the subcommittee inquired into, that of contamination of a farmer's crop by genetic drift and that of patent infringement by a farmer to the patent holder.

***Contamination through drift, horizontal gene transfer (HGT) or commingling – Market issues***

Currently, there are no statutory laws protecting farmers from GE contamination. Today, the only recourse for farmers whose crops are contaminated is through the civil law system. The organic agriculture industry as well as the California Rice Commission has no acceptable level of contamination, meaning that the grower may lose a price premium or the full sale of a crop if any level of GE material is in the crop. Currently, redress is at the burden is on the farmer whose crop has been contaminated through the civil court system. Civil recourse can be time intensive and costly to the farmer, and even more so for the small farmer when faced with large bio-tech industry. Lake County is comprised of smaller-sized farms where these issues may have significant impact.

Organic certification of a farm is not at risk for accidental contamination.

***Contamination through HGT – Patent infringement issues***

Up until recently, patent infringement issues have been left to the civil court system and many lawsuits have been initiated by patent holders against farmers, even in cases where unintentional contamination has occurred. These cases can be costly, lengthy, and the burden is on the farmer in question to prove there was not the intent for patent infringement.

California enacted AB541 in 2008. It is designed to protect the contaminated grower from lawsuits by the patent holder of the GE crop, though has not been tested in the court system as of this writing. AB541 also establishes a mandatory crop sampling protocol to be used by patent holders when investigating farmers they believe may have violated patents or seed contracts.

California Health & Safety Code Sec. 52305 now provides: “A farmer shall not be liable based on the presence or possession of a patented genetically engineered plant on real property owned or occupied by the farmer when the farmer did not knowingly buy or otherwise knowingly acquire the genetically engineered plant, the farmer acted in good faith and without knowledge of the genetically engineered nature of the plant, and when the genetically engineered plant is

detected at a de minimis level. The authority of a court to determine the presence of de minimis levels of a genetically engineered plant is intended solely for the purpose of assisting in adjudicating claims relating to the possession or use of a patented genetically engineered plant in which the seed labeler, patentholder, or licensee, has rights.”<sup>ii</sup>

This legislation does nothing to help the farmer whose crop has been contaminated and has incurred a loss in the marketplace or otherwise.

***Other issues for consideration***

According to Anita Grant, County Counsel for the County of Lake, if Lake County empowers a regulatory body for GE crops, the County could be held liable for any mandated restrictions on GE crops that attempt to supercede existing regulation.

“There could be a potential for liability if any regulation or protocol was implemented in contravention of existing statutes or if adherence to a regulation and/or protocol created a danger which would not otherwise exist. Depending upon the type of regulation and/or protocol, the County could protect itself from liability to some extent but could not immunize the farmer.”<sup>iii</sup>

***References***

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<sup>i</sup> Genetic Engineering (GE): A Report from the GE Subcommittee of The Public Health Commission (2006). (p. 56). Santa Cruz County: County of Santa Cruz Health Services Agency. Retrieved from <http://www.santacruzhealth.org/ge/>.

<sup>ii</sup> [http://www.leginfo.ca.gov/pub/07-08/bill\\_asm\\_ab\\_05010550/ab\\_541\\_bill\\_20080927\\_chaptered.html](http://www.leginfo.ca.gov/pub/07-08/bill_asm_ab_05010550/ab_541_bill_20080927_chaptered.html)

<sup>iii</sup> Grant, Anita. Email correspondence dated June 9, 2009.