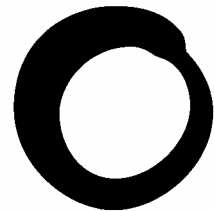




GM Contamination Briefings



Friends of the Earth

5. Liability and insurance

This briefing is part of a series explaining the difficulties involved in growing GM and non-GM crops together ('co-existence'), and why a strong legal framework is needed to deal with this issue. Under European law, Member States can create a legal basis for coexistence and liability, and the UK Government has now started this process. It is vital that strict laws are put into place to prevent contamination of non-GM crops and ensure that biotechnology companies are held liable for any damage caused by their products. Local and regional authorities should have the democratic right to decide whether or not GM crops are grown in their areas.

Key points

- There is no adequate legislation to require biotech companies to pay compensation or clear up damage caused by GM crops
- Economic losses to non-GM farmers are inevitable if GM crops are widely grown, but there is no system to provide compensation to them.
- Environmental damage from GM crops is not covered by the EU Environmental Liability Directive, and is not being considered by the UK Government

Liability for damage caused by GM crops to the environment and human health, or economic loss due to contamination, is not adequately addressed by any EU or UK legal framework.

Economic liability

There is currently no specific liability regime to deal with GM contamination of non-GM crops and the subsequent financial losses caused. In North America, farmers who are found to have GM crops growing on their land, even as a result of contamination, have been asked to pay large sums of money to biotech companies or face legal action due to infringement of patent rightsⁱ.

A recent survey of the principal farming insurance underwriters in the UK found that none of them were willing to provide insurance cover for farmers considering growing GM crops, or non-GM farmers seeking to protect their businesses from contamination by GM cropsⁱⁱ. Insurance company spokespeople compared GM crops to 'thalidomide', 'asbestos' and 'Acts of Terrorism'.

But 'coexistence' will undoubtedly carry an economic cost - a Danish Expert Report recently studied the costs of measures to ensure that GM contamination of conventional and organic

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crops stays below 1%. These extra costs can rise to 21% of production costs, excluding measures needed further up the food chain, such as labelling and segregationⁱⁱⁱ. The report of the EU's Joint Research Centre concluded that the cost increase in the case of organic oilseed rape would be up to 41%^{iv}. Under the current situation, these costs will fall to farmers who wish to ensure their crops remain GM-free, and not the biotech companies producing the GM crops.

Land values may also suffer - public registers will be required for all sites where GM crops are grown, which is likely to have a negative impact on land values, as well as affecting future land use, as GM seeds could remain viable for many years. The Royal Institute of Chartered Surveyors has stated that land values may drop for fields where GM crops are grown^v.

The UK Government has suggested the implementation of a compensation scheme funded by the biotech industry for "*non-GM farmers who suffer financial loss through no fault of their own*"^{vi}. The first coexistence laws to include a compensation fund have now been approved in Denmark.

Environmental liability

GM contamination is self-replicating; if harm is caused it may be very difficult to 'clean up'. The effects on the environment are not yet known, but may include development of 'super weeds' resistant to more than one herbicide, which would require an increase in herbicide use to control, or the use of older, more damaging herbicides. Weeds may also become stronger and fitter as a result of cross pollination with GM crops (*see Briefing 3 – Gene escape*). English Nature has warned that GM crops could threaten wildlife such as farmland birds^{vii}.

The EU Environmental Liability Directive, which came into force in April 2004, fails to address these problems. Environmental damage caused by an EU-authorized GM crop is exempt, as are unauthorized GM crops not "*considered harmful according to the state of scientific and technical knowledge at the time*". The Directive only applies to areas and species with special protection status, so does not cover the vast majority of agricultural areas where damage is most likely to occur^{viii}. Member states have until April 2007 to bring these provisions into force, but the implementing legislation can be more stringent than the Directive. The UK Government will be consulting on the issue during 2006; it is vital that they take advantage of this opportunity.

The Government's GM policy advisors from 2000-05, the Agriculture and Environment Biotechnology Commission (AEBEC), recommended that environmental liability should be part of any new coexistence regime based on the 'polluter pays' principle^{ix}. But the Government has not yet given any indication that environmental impacts will be covered under any new regime.

Conclusion

Numerous contamination incidents have already occurred, and can only be expected to increase if GM crops are more widely grown. Yet the biotechnology companies are not willing to take responsibility for damage that might arise from GM. If GM crops are as safe as the industry claims, why are they not accepting liability for any damage caused?

It is vital that a strong legal framework is put into place to prevent GM contamination occurring, and ensure that liability is clear if contamination does occur.

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