

Remedy in GMO Sugar Beet Case Announced

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In September of 2009, on cross motions for summary judgment, an anti-technology activist group¹ persuaded a federal judge that they had showed that USDA's unconditional deregulation of Roundup-Ready sugar beets² violated the National Environmental Policy Act (NEPA) by failing to examine the likelihood and effects of gene transmission on conventional farmers and consumers of sugar beet seed or of gene transmission to the related crops of red table beets and Swiss chard.³ The court determined that the potential elimination of farmers' choice to grow non-genetically engineered crops, or consumers' choice to eat non-genetically engineered food has a significant effect on the "human environment." The court stated that USDA's reasons for concluding that the potential for gene transmission of the genetically engineered gene was not significant were not convincing and did not satisfy required NEPA standards. The court also ruled that it need not determine whether the USDA further violated NEPA by failing to sufficiently address whether deregulation would cause the proliferation of glyphosate-resistant weeds or whether USDA-APHIS had an obligation to address the cumulative effects of increased use of glyphosate. Ultimately, the court ruled that USDA-APHIS had to prepare an EIS before approving the deregulation of Roundup Ready sugar beets.

Now, the court has ruled on the appropriate remedy that should be applied in the case.⁴ On August 13, 2010, the court issued an order effectively banning the continued planting of genetically modified sugar beets. The court's order is limited to the 2011 sugar beet crop, which allows beets that were planted as of August 13, 2010 to be harvested, processed and sold as sugar. The ban is to stay in place until USDA fully reviews the potential environmental harm of biotech beets. In its order, the court expressed its belief that the USDA's decision to deregulate biotech sugar beets without issuing an EIS was seriously defective. The court also displayed little regard for the impact that its decision could have on sugar beet farming operations in the U.S., noting that the USDA had ample time to conduct a full environmental review but that it failed to do so.

Note: Monsanto has previously taken a federal judge's similar decision banning the planting of genetically modified alfalfa seeds pending a full environmental review to the U.S. Supreme Court, which overturned the lower court.⁵ Monsanto may also ask the Supreme Court to consider the present matter.

¹ The plaintiffs are all various activist groups that focus, among other things on the environmental impact of the use of technology in large-scale agriculture.

² Monsanto's Roundup Ready Sugar Beets produce about one-half of the annual U.S. sugar supply and the Roundup Ready sugar beet seeds account for approximately 95 percent of the current U.S. sugar beet crop.

³ Center for Food Safety, *et al. v. Vilsack, et al.*, No. C 08-00484 JSW, 2009 U.S. Dist. LEXIS 86343 (N.D. Cal. Sept. 21, 2009).

⁴ Center for Food Safety, *et al. v. Vilsack*, No. C 08-00484 JSW (N.D. Cal. Aug. 13, 2010).

⁵ *Monsanto Co., et al. v. Geertson Seed Farms, et al.*, No. 09-475 (U.S. Jun. 21, 2010).