

# Farmer to Farmer Campaign

ONE IN A SERIES OF FACT SHEETS ON GENETIC ENGINEERING IN AGRICULTURE

## Questions Farmers Ask About Legal Issues and GMOs

1. Could farmers be held liable for damages caused by GMOs?

The liability issues are serious.<sup>1</sup> The question of who should pay for GMO contamination has come up when neighboring farmers' conventional crops have been contaminated with GMOs, when organic food products had to be destroyed because they were contaminated, and when contaminated conventional seed supplies caused thousands of European farmers to inadvertently plant GMO crops and several governments ordered the crops destroyed.

Since contamination can occur at any point of the food system, farmers may share the risk if damages occur. Many farm advocates, including The National Family Farm Coalition, argue that GMO manufacturers should be held responsible for all damages caused by GMO crops and that they should exempt farmers from liability. Without national legislation that assigns liability to the manufacturers, it will be up to the courts to decide who is responsible and how much is paid when contamination occurs. These risks put farmers at a legal and economic disadvantage.

In 1998, when a German farmer's conventional corn crop was contaminated by Novartis transgenic corn planted nearby, Novartis Corporation denied any responsibility, pointing to its contract with the GMO grower, which called for the planting of a 200-meter buffer zone. Such actions suggest that seed companies can use technology use agreements to deflect liability on to the GMO grower.

2. Is insurance available?

There are no known companies offering insurance that specifically covers risks from GMOs. Regular crop and liability insurance may apply to claims from certain acts of negligence or crop damage, but there are standard exclusions for pollution and GMO contamination may fall under those exclusions. Large insurance companies, such as Cigna International, have expressed hesitation about providing coverage because of their experience with other environmental risks and American Agrisure, the third largest crop insurer in the US, does not offer a policy to cover damages relating to genetically engineered seeds.<sup>2</sup> The 130 year old Swiss reinsurance company Rueck, concluded in their 1998 report "Genetechnology and Liability Insurance," that insurance companies could not offer coverage because there is no way for them to evaluate the risks.

3. What should farmers know about the "Technology Use Agreements"?

Farmers who grow GMO crops sign "technology use agreements" which give farmers the right to lease GMO seed from the company that owns the patents on that seed. In exchange, farmers are obligated to follow strict requirements. One key restriction is that farmers can only use the GMO seed once and the seed cannot be saved, replanted or sold. In addition, a typical agreement obligates farmers to allow the seed company access to farm records, including financial records, and to opening

their land to inspection if the company believes the agreement has been violated. The agreement's primary purpose is to give seed companies the authority to protect their financial interest which means setting strict limits on how farmers use their seed and limiting the liability of the company.

The Vermont state legislature has considered legislative action to ensure that these agreements do not infringe on farmers' rights. Friedrich Vogel, the head of BASF's crop protection business was quoted in *Farmers Weekly* as saying: "[these] strict contracts will dictate production methods and severely limit the farmer's share of any added value the new crops offer to food processors and retailers."

Farmers in the U.S., and around the world, have raised concerns about how restrictive these agreements are, particularly because they force farmers to give up the right to save seed. Seed saving is still practiced by a large percentage of farmers in the U.S. offering them an effective means of controlling costs. Restrictions on the use of GMOs also make on-farm and independent experimentation, which often provide a farm's most reliable research, impossible. Because of these restrictions, GMO seed contracts increase the control of corporations over farm production and erode the farmer's independence.

#### 4. What can farmers do to protect themselves?

In the case of insect resistant crops, farmers should comply with the measures set forth by the Environmental Protection Agency (EPA), called Insect Resistant Man-

agement Strategies, that slow the development of insect resistance to the insecticide excreted by the plant. Technology Use Agreements (TUAs) obligate farmers to adopt these plans although seed companies and the EPA acknowledge that even if farmers adopt these measures, insect resistance will eventually occur.

TUAs also require that farmers plant buffer zones around some GMO crops to reduce the risk of contamination to conventional crops from pollen flow. Corn pollen can be carried long distances by wind or insects. But again, protection for farmers is not guaranteed. Seed corporations will rely on the TUA to protect themselves. Farmers who do not strictly adhere to its instructions on farm practices are risking exposure to liability. Farmers whose crops are contaminated by GMOs could sue under trespass or nuisance laws. Farmers growing non-GMO, conventional and organic crops should ensure that their seed is certified as non-GMO and consider adopting an Identity Preserved system. Until contamination cases are decided by the courts, the potential liability farmers may face cannot be estimated. However, with concrete evidence that insect resistance and pollen flow can occur, it is safe to say that farmers who plant GMOs will, at a minimum, risk exposure for liability for any resulting damages.

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*This fact sheet was written by Claire Cummings in collaboration with the Farmer to Farmer Campaign. For additional information on genetic engineering in agriculture, please call (800) 639-FARM. Fact sheet prepared September 2000.*

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<sup>1</sup> The Iowa attorney general has put together a checklist for farmers growing GMO grain because of these concerns. (<http://www.state.ia.us/government/ag/99grain.htm>)

<sup>2</sup> Chase, Brett. "Gene-Altered Crops are Trouble in the Wind for Organic Foods" *Bloomberg Newswire* 8/11/99.