

STATEMENT OF HARVEY HOWINGTON
Before the
DOMESTIC POLICY SUBCOMMITTEE
OVERSIGHT AND GOVERNMENT REFORM COMMITTEE

***“ IS THE U.S. DEPARTMENT OF AGRICULTURE (USDA) ACCOUNTING FOR
THE COSTS TO FARMERS FROM CONTAMINATION CAUSED BY
GENETICALLY ENGINEERED (GE) PLANTS”***

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I would like to thank the Chairman Kucinich, Ranking Member Issa, and the Members of the Subcommittee for the opportunity to speak on this matter of great importance to American farmers.

My name is Harvey Howington. Our farm is a family operation owned jointly with my parents. I farmed 1200 acres on 3 tracts of land near Lepanto, Arkansas, in Poinsett County about 45 northeast of Memphis until 2006. The farming operation consisted of 500 acres of rice and 700 acres of Roundup Ready soybeans. After the LL601 contamination event in 2006, I decided to quit farming and now rent the farmland to neighboring farmers.

I am currently the Vice President of the Arkansas Rice Growers Association (ARGA) and a member of the Board of Directors of the U.S Rice Producers Association (USRPA) serving as an Arkansas Delegate. I am the former President of the Arkansas Seed Growers Association (2003-2004) and am currently a member of its Board of Directors. As President of the Arkansas Seed Growers Association (ASGA), I served on the Arkansas Seed Council which advises the University of Arkansas on public seed policy and foundation seed allocation.

August 19, 2006, is a day that will be indelibly etched in my mind for the rest of my life, and I dare say for the rest of the U.S. rice producers. Most of us were getting our combines ready to head to the fields for harvest. This looked to a profitable year for a change. The rice crop looked good, global supplies of rice were tight and prices on the futures market were on the rise. Then the bomb dropped. That day the USDA announced a “regulated event.” Bayer’s Liberty Link (LL) 601 - a herbicide tolerant, genetically engineered (GE) seed variety – not approved for commercial use had tested positive in non-GE seed stock. The USDA launched an immediate investigation and U.S. rice producers went into panic mode.

At the time, details of the GE contamination event were sketchy. What we knew was that in January of 2006, GE contamination was discovered by a rice export customer and the seller, Riceland Foods, was contacted. A Riceland investigation confirmed that the contamination was linked to LL601 and Bayer officials were contacted in June of 2006.

In July, Bayer confirmed a positive test for LL601 at .06%, or approximately 6 kernels in 10,000. As required by law, Bayer reported their findings to the USDA.

Why the panic? LL601 is a long grain rice variety that was field tested in Louisiana between 1999 and 2001. Bayer in cooperation with Louisiana State University (LSU) researchers experimented with LL601 to determine its potential for controlling red rice weed problems. Field trials proved ineffective, were terminated and LL601 was abandoned as a “commercial non-starter.” The problem is that LL601 found its way into 2003 Cheniere foundation seed stock.

Cheniere is a long grain, conventional seed variety widely used throughout Arkansas and among southern rice producers. The U.S. is a major rice supplier to the global marketplace, providing 12% of the world rice trade. In the 2006 crop year, U.S. rice production was valued at \$1.88B according to the USDA with approximately 50% of the crop exported to foreign markets. In 2005, 80% of rice exports were long grain varieties.

The problem is that foreign consumers have a wide variety of concerns about the safety of GE crops to the environment and to the public health and have been unequivocal in their demand that food products remain free of GE content. While this belief is not universally held among consumers, it is so widespread that foreign governments and, more importantly, foreign buyers have imposed restrictive tolerances, strict labeling requirements or outright bans on GE crops used in food products.

The rice industry had watched the ferocious debate on commercialization of Roundup Ready (RR) wheat closely and saw the handwriting on the wall. Rice growers and wheat producers in many respects share the same markets. When the Canadian Wheat Board surveyed its buyers and found that 83% were opposed to the commercialization of RR wheat, we knew that we could expect a similar reaction from rice buyers. Consequently, even though two commercial varieties of GE rice had been deregulated – LL06 and LL62 – commercial use was withheld for fear of losing significant global markets. That is exactly what happened when the LL601 contamination event was announced.

The reaction to the LL601 was swift and devastating. Japan immediately banned the importation of all long grain U.S. rice and the European Union imposed strict testing requirements on all rice shipments. GE contaminated rice shipments would be destroyed or sent back. Rice prices plunged. 2006 rice crop values plummeted by more than \$168 million in the week after the LL601 contamination event was announced as rice futures, based on the market price for September delivery, dropped from \$9.83/cwt to \$8.99/cwt. During the next 3 days the futures market would drop to \$8.93/cwt resulting in a \$135 million loss in farmgate prices to rice producers during that 10 day period.

While prices have subsequently rebounded to pre-contamination event levels, the cost to rice producers is probably far greater than these figures suggest. At the time of the contamination event global rice supplies were becoming increasingly tight and the futures market was tracking upward. It is not inconceivable that rice prices approaching \$12.00/cwt would have been realized had it not been for the contamination event.

Even without including this loss in price potential, the U.S. rice industry lost **\$1.2 billion** as a result of the LL601 contamination event based on a conservative assessment calculated by the USRPA. These figures are consistent with the findings of Dr. Neal Blue, an agricultural economist at Ohio State University.

The negative reaction in the marketplace snowballed during the next few weeks. Thousands of metric tons of long grain rice destined for the U.K. and Germany sat loaded in ships in the port of New Orleans until they could be tested for GE content. Large sectors of the rice industry, including Ebro Peleva – the world’s largest rice processor – committed to being GE-Free. Rice traders in Thailand and Vietnam, two of the largest rice trading countries, signed Agreements to be GE-Free in order to capitalize on market opportunities created by the LL601 contamination event. The All India Rice Exporters Association requested a prohibition of GE field trials in basmati rice growing states. Texas millers stopped bidding on rice to adjust handling and processing regimens to cope with the new market realities.

The bad news was not confined to the marketplace nor was the contamination confined to a test plot at an LSU research facility. Independent laboratory tests conducted as part of the on-going USDA investigation indicated that the long grain rice involved in the contamination event came from the 2005 rice crop that had been held in storage facilities in Arkansas and Missouri. Reports from the milling and export industry confirmed widespread positive results for LL601 contamination throughout the Gulf and Delta regions in the 2005 and 2006 crops.

This cataclysmic series of events left rice producers scrambling to find solutions to what seemed to be insurmountable problems. An ongoing debate raged within the rice industry. Do we adopt highly sensitive 35S bar PCR testing measures to satisfy foreign buyers? Do we push foreign countries to adopt higher tolerance levels? Do we ban the sale of Cheniere seed stock in 2007? Do we require random testing at all first points of delivery? Do we advocate for prohibitions and moratoriums on all field testing of GE rice varieties, as did the Rice Producers of California after an independent market study indicated that 40% of the total demand for their rice would have been lost had the contamination event occurred in their state? We were scrambling to fix a mess that we had no part in creating but which threatened the demise of our entire industry.

Throughout all the pain and turmoil that the LL601 contamination event caused, three questions remained at the forefront on the minds of rice producers. How did the contamination occur? Who is responsible? How did it get so widespread before detection occurred?

What we do know is that it is likely that the contamination occurred at the LSU AgCenter Rice Research Station near Crowley, Louisiana. From 1999 to 2001 Bayer and LSU rice breeders conducted field trials on LL601 at the site during which time Cheniere foundation seed stock was grown at the same facility.

Beyond that it is anybody's guess. Speculation abounds, the contamination was caused by LL601 volunteers in any variety of ways, the experimental crop was not devitalized according to stringent USDA regulations – a problem cited in a 2005 Inspector General's Audit critical of USDA administration of GMO field trials, volunteer cross-pollination with GE varieties, birds, human error or flooding – a common practice in rice production. Regardless, the source of the contamination remains unknown. This fact alone is a constant source of irritation among rice producers. At every opportunity that presented itself through public Comment of Environmental Assessments (EAs) going back 3 years to Ventria's Petition to conduct field trials on its pharmaceutical rice variety in California, we have repeatedly argued that contamination could occur by a wide variety of means. Each and every time, USDA dismissed the potential for contamination through a Finding of No Significant Impact.

Maybe we will get answers as the attorneys for the respective parties square off in the 15 class action lawsuits filed on behalf of 300 rice producers to find the guilty party and put a dollar figure on monetary and emotional losses suffered by U.S. rice producers.

One thing is perfectly clear. Those answers will not be forthcoming from the USDA whose legal mandate it is to administer, manage and monitor field trials to ensure that contamination events occur. In that regard, the agency failed miserably. After spending 8,500 staff hours conducting their investigation of the LL601 contamination event, USDA concluded that they could not determine the exact mechanism that GE rice was introduced into the commercial rice supply. Nor could APHIS pursue enforcement actions and/or sanctions against Bayer given the lack of records, available information or other specific evidence to make a definitive determination due to the fact that they had not implemented protocols, policies, record-keeping and other administrative requirements to meet even minimal legal requirements for managing field trials. Due to the lack of records and the failure to save seed samples, the exact mechanism for incursion of the LL601 gene into the Cheniere variety, such as gene flow or human error, could not be determined. Again, these are systemic problems were noted repeatedly in the 2005 Inspector General's Audit.

The USDA did such a poor job of administering these field trials that investigators discovered 7 instances in which field trials were either planted or terminated after the APHIS mandated period for experimentation but no action could be taken since the Statute of Limitations had run. What does this tell you about the quality of care in managing field trials to ensure that contamination does not occur?

The USDA in Lessons Learned concluded that simple bookkeeping changes can cure these problems but the problems are far greater than merely changing accounting practices and protocols. Dr. Steve Linscombe, rice breeder and director of the LSU AgCenter Rice Research Station stated in LSU AgCenter News (8/31.06) that the “standards set by the USDA were followed strictly in the research with LL601, and the field plots of LL rice were isolated from other rice plants. In fact we made sure that the distance between the LL plots and the other conventional rice plots were further than what the research protocols called for. When there was a minimum requirement, we

exceeded it.” If that is an accurate statement, an overhaul of the entire field trial plot design is necessary. Had environmental assessments (EAs) or Environmental Impact Statements (EISs) must be conducted prior to the approval of field testing especially when the potential for significant economic loss as a result of contamination exists.

Earlier in my testimony, I alluded to assessments of the economic costs related to the LL601 event. From my perspective many considerations were omitted and for many of those, a price tag does not exist. The LL601 contamination event resulted in a decision to leave farming for many rice producers. Nearly 600 rice farms were lost between 2006 and 2007. While not all were lost due to LL601, the economic loss and the emotional turmoil created by that event was a major factor in many rice producer’s decision to call it quits. The assessments alluded to earlier also did not take into account factors such as rural economic impact, impact on southern rice mills and marketers, seed testing and product testing costs, the impact on rice seed dealers, the extensive loss of rice production acreage in 2007 nor the impact on long grain rice futures and cash prices. When added to the equation, the price tag becomes incomprehensible.

The USDA needs to conduct more comprehensive environmental and economic analysis before embarking on field trials that pose major economic treats to an agricultural industry or commodity. The decision-making process needs to be more transparent with an opportunity for farmers to speak and to be heard. And most importantly, the burden must be placed on the biotech company to demonstrate how contamination will be prevented to the satisfaction of the industry and the farmers impacted.

Thank you for the opportunity to express my views through this testimony. Your efforts are sincerely appreciated by all rice producers. I would now be happy to answer any questions you may have.