

**Opening Statement
Congressman Dennis J. Kucinich, Chairman
Domestic Policy Subcommittee
Oversight and Government Reform Committee**

**“Is USDA Accounting for Costs to Farmers from Contamination
Caused by Genetically Engineered Plants?”**

Thursday, March 13, 2008

Contamination of conventional crops by genetically engineered (GE) plants can occur in several ways. They can pollinate non-genetically engineered plant species by wind or insects. They can grow as “volunteers” from seed that was unintentionally left in soil from a previous growing season. Or they can be mixed together with non-genetically engineered products in the harvesting, handling, distribution and/or food processing systems. When genetically engineered plants contaminate the crops of conventional and organic farmers, the farmers pay a heavy price.

Today’s hearing will not be about whether GE crops are a “good” or a “bad” thing. Today’s hearing is about whether the chief regulator and advocate for farmers, USDA and its subagency, the Animal and Plant Health Inspection Service (APHIS), is taking into account the cost to farmers and realities of contamination risk by the GE plants it regulates.

In 2000, America’s corn farmers faced a sudden collapse of international and domestic demand for all varieties of U.S. corn. Prices fell considerably

when genetically engineered StarLink corn was detected in taco shells by a private laboratory. StarLink had been approved for commercial use by APHIS, though limited to animal feed by the Environmental Protection Agency. Japan temporarily halted imports of U.S. corn. One of our witnesses estimated that the short-term cost to farmers was \$500 million. A class action suit was settled for \$110 million against the manufacturer of StarLink.

In 2006, America's rice farmers faced a sudden collapse of international demand for U.S. rice. Prices fell considerably when experimental genetically engineered LibertyLink was detected in the commodity rice supply by a foreign customer. APHIS investigated—over 7 months AFTER the contamination was first detected—and concluded that the contamination originated at a field test plot in Louisiana. However, APHIS never determined how the contamination occurred. APHIS took no enforcement action and, on its own initiative, deregulated LibertyLink rice after the contamination event. One of our witnesses today is an affected grower of conventional rice.

Two-and-a-half weeks ago, APHIS announced another contamination event, this time involving a genetically engineered corn variety called “Event 32.” USDA's press release indicates that the cause of the contamination was the sale to farmers of contaminated seed, and that 53,000 acres of contaminated seed were planted in 2007.

According to APHIS, contamination events are rare. But it is unclear if this is accurate. Not a single government agency detected the contamination in

any of these events. This is not surprising because the federal government doesn't test for crop contamination. We only know about crop contamination when private actors discover it by testing and decide to report it to the public. Sometimes contamination that is discovered by them is not reported.

APHIS is supposed to play a role in preventing contamination. But when the Inspector General, in 2005, published its audit of APHIS' controls over the issuance of permits for field testing of genetically engineered plants, it found, "APHIS had little assurance that field tests are being conducted safely, in a way that minimizes the potential for GE plants to persist in the environment."¹ In all, the Inspector General made 28 recommendations to APHIS.² APHIS eventually agreed to corrective action on each of the recommendations.

The National Environmental Policy Act of 1969 (NEPA) requires APHIS to analyze and report in Environmental Impact Statements (EIS) significant environmental impacts and any related economic impacts of decisions to deregulate or field test genetically engineered crops. APHIS has approved 13,500 field tests for GE crop varieties, occurring at more than 79,000 sites

¹ "Audit Report: Animal and Plant Health Inspection Service Controls Over Issuance of Genetically Engineered Organism Release Permits," USDA Office of Inspector General, Southwest Region, USDA/OIG-A/50601-8-Te, p. 29 (December 2005).

² The IG found many areas of deficiency, including: APHIS failed to conduct inspections at nearly half of all notification field test locations; failed to conduct the number of inspections at pharmaceutical and industrial field sites where it had publicly announced it would; had no knowledge precisely where field tests were occurring and had to call ahead to the sites to be inspected for directions; failed to require plans or proof of destruction of experimental GE crops; failed to record the names of violators it "understated to the public the percentage of inspected sites with compliance infractions" because it included non-inspected sites as well; and took little action against violators when violations were identified.

around the country, and has also deregulated more than 70 GE plant varieties. Yet, APHIS has initiated only 4 EIS's—all of them in the past year or so. One of them was ordered by a federal court.

According to APHIS, the reason for the small number of EIS's—in contrast to the thousands of notifications, permits, and deregulations it has issued—is that in nearly all cases, APHIS determined that its proposed action did not have a “significant impact” as defined by the NEPA. However two recent federal district judges, reviewing APHIS' determination of “no significant impact” for proposed agency actions related to two genetically engineered plants, Roundup Ready alfalfa and creeping bentgrass, found that APHIS had acted in an arbitrary and capricious manner,³ APHIS' interpretation was inconsistent with NEPA, and APHIS had violated the Act.

In a federal district court decision, *Geertson Seed Farms v. Johanns*, the judge found that APHIS violated NEPA by failing to account for the potential economic impact that would result from contamination of non-GE alfalfa by Roundup Ready alfalfa. The court ruled that APHIS had an obligation to evaluate economic costs stemming from a genetic contamination because they are so closely related. The court concluded that “the economic effects on the organic and conventional farmers of the

³ In *International Center for Technology Assessment v. Johanns*, a federal district court found that APHIS failed to consider that its proposed notification of a specific confined field test for genetically engineered Roundup Ready creeping bentgrass could have a significant environmental impact. The Court concluded that the absence of appropriate environmental review “manifests arbitrary and capricious agency action which is inconsistent with the terms used in APHIS's own regulations and which violates NEPA.” *Int'l Ctr. for Tech. Assessment v. Johanns*, No. Civ. 03-00020, slip op. at 32 (D.D.C. Feb. 5, 2007).

government's deregulation decision are ... a direct result of ... the transmission of the genetically engineered gene to organic and conventional alfalfa. *APHIS was required to consider those effects in assessing whether the impact of its proposed action is 'significant.'*"⁴

Today's hearing will focus on where APHIS goes from here. How will APHIS incorporate the guidance provided by these judicial decisions in reforming the way it regulates the GE crop industry? Will APHIS account for the economic impacts on farmers caused by GE-plant contamination? Will APHIS take seriously NEPA's requirements to produce environmental impact statements that analyze environmental impacts and related economic impacts related?

Now is the time to pose these questions and conduct oversight: In the wake of these two significant judicial rebukes, USDA is in the process of overhauling its both its GE crop and NEPA regulations.

⁴ *Geertson Seed Farms v. Johanns*, No. C 06-01075, U.S. Dist. LEXIS 14533, *6 (N.D.Ca. Feb. 13, 2007) (emphasis added).