

CALIFORNIA COUNTY INITIATIVES BANNING GENETICALLY ENGINEERED ORGANISMS

Two counties (Mendocino and Trinity) have passed bans on the propagation and cultivation of genetically engineered (GE) organisms, including food crops, seeds, trees, grass, fish and bacteria. Four others (Butte, San Luis Obispo, Marin and Humboldt) have similar bans on the November 2004 ballot. Sonoma County is collecting signatures for a 10-year moratorium, heading for a special election in March 2005. And, citizens groups in at least eight other counties are organizing towards similar initiatives. As summarized below, there is no strong regulatory framework for GE foods and crops on the state and federal level. In the absence of strong state and federal regulation, California counties are enacting laws to protect their citizens.

FEDERAL REGULATION

The three federal agencies that regulate GE are:

FDA — Under a 1992 policy, the FDA considers GE foods “generally regarded as safe” (GRAS), and not significantly different than conventional foods. They are not subject to mandatory review, safety testing or food labeling laws. The FDA policy calls for voluntary consultation and the agency simply asks the industry to submit new GE foods to a cursory review process.

USDA — The USDA reviews GE crops to determine if they are plant pests, and does not look at human health or economic impacts. Its environmental assessments have been criticized by the National Academy of Sciences for lack of rigor (NRC, 2002). Once GE crops are reviewed and deregulated, the agency cannot require further monitoring for long-term environmental harm or set restrictions on use.

EPA — EPA reviews the human health and environmental safety of pesticide-producing GE crops, and has so far exempted them all. The agency also sets tolerance levels for herbicides used on herbicide-tolerant GE crops. EPA has no formal GE crop safety testing guidelines, relying instead on ad hoc review and guidelines for chemical pesticides.

STATE REGULATION

The state of California has no laws or regulations governing GE organisms. The agencies that might be responsible for regulating them — the CDFA and Cal EPA — have not yet done so. In 2000, the state established a Food Biotechnology Task Force that met only once before disbanding. According to an issue brief by the Senate Office of Research (2003), the Task Force “produced two published products, neither of which explicitly addressed the issue of whether more state oversight and monitoring of biotechnology is advisable.” The SOR also concluded that “with few exceptions, states rely solely upon the federal government for regulation of biotechnology products.” Senate Resolution 34 (January 2002) found that “state agencies have virtually no resources allocated to evaluating any potential adverse effects of biotechnology on the environment, public health or consumers.”

LEGAL LEGITIMACY OF LOCAL CONCERN

Counties have the right to regulate the use of GE organisms according to the following legal bodies:

- California Constitution (Article I, Section I; Article II, Section I; Article XI, Section 7)
- California Supreme Court — Interpreted the California Constitution to mean that the County’s power is as extensive as that of the State Legislature itself unless preempted by state law.
- US Supreme Court — Found that a state has “a legitimate interest in guarding against imperfectly understood environmental risks, despite the possibility that they may ultimately prove to be negligible.”

Rather than wait until potentially irreversible genetic contamination occurs, for the scientific community to thoroughly assess the dangers of GE, or for the state or federal government to revise their inadequate regulatory procedures, citizens of several counties are legitimately acting to protect themselves from the consequences of the production and propagation of GE organisms.

GENETIC ENGINEERING & INTERNATIONAL TRADE AGREEMENTS

INTERNATIONAL TRADE MODELS

There are currently two competing regulatory models for GE crops and products at the international level, one driven by the United States through the WTO, and the other advanced by the 87 signatory countries to the Cartagena Protocol.

United States & WTO Model

The US is challenging the European Union's temporary ban on GE products as part of a long-term strategy to impose the US "deregulatory" model for GE on the rest of the world (see the reverse for a summary of the US regulatory approach). The US is alleging in the WTO complaint that that its "precautionary" requirements related to labeling and liability amount to unacceptable trade barriers that do not meet the "least trade distorting" criteria mandated by the WTO. WTO rules deem the Precautionary Principle (defined below) as unnecessary and not based on sound science, and thereby trumps the rights of countries to apply that Principle.

Cartagena Protocol & Precautionary Principle Model

In September 2003 the Cartagena Protocol came into effect, and has been signed by 87 countries around the world, *not* including the US. The core principles of the Cartagena Protocol include the following:

- All countries have the right to follow the Precautionary Principle with regard to regulating GE crops and food. In short, the Precautionary Principle requires that when a new technology poses threats of serious or irreversible damage to human or environmental health, the burden of proof is on the promoter of the technology to prove scientifically that the technology is safe, not on the public or governments to prove that it is unsafe.
- All countries have the right to require labeling and traceability of GE crops and food so that their consumers are afforded the right to know whether they are eating GE foods.
- All countries have the right to clarify that biotech companies who introduce GE crops must shoulder the primary liability for any adverse impacts that the introduction of such crops will have on human health, the environment and the economic well being of farmers and rural communities.

SUB-FEDERAL REGULATIONS

As yet, it is unclear if and how the US federal government and the WTO will respond to genetic engineering regulations and restrictions at state, county or city jurisdictions within the US. The county-level bans in California represent the first domestic case of what could be viewed under the WTO model as a trade barrier, and a challenge to these bans would test the democratic authority of counties to protect their environment, health and economies.

On the other hand, even though the US has not ratified the Cartagena Protocol, its legitimacy internationally will grow as increasing numbers of governmental bodies cite it in defense of local ordinances and state laws. Proponents of the Cartagena Protocol maintain that the rights enshrined in the Protocol provide a legitimate alternative international regulatory model for governments to follow besides the WTO model. In California, the Sonoma County initiative (in the signature collection stage, targeted for a March 2006 ballot) makes specific reference to the Cartagena Protocol in its findings. Several other counties and cities are using the Sonoma County initiative as a model for future initiatives.

RESOURCES

Californians for GE-Free Agriculture • www.calgefree.org

Institute for Agriculture and Trade Policy • www.iatp.org or www.tradeobservatory.org

Convention on Biological Diversity • www.biodiv.org/biosafety/default.aspx

GE-Free Sonoma County (for a copy of their initiative) • www.gefreesonoma.org