

WORC

Western Organization of Resource Councils

February 6, 2008

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BY FAX: 301-734-0767

Dear Ms. Huberty:

I am submitting these comments on the scope of the EIS planned to evaluate the deregulation of genetically modified alfalfa (Docket No. APHIS-2077-0044) on behalf of the Western Organization of Resource Councils. I am also reiterating our January 30th request for an extension of 30 days to file comments, which would allow us to submit more comprehensive comments. We have not received a reply to that request, but we understand that USDA has denied similar requests submitted by others.

This EIS, the first EIS APHIS will prepare in response to the order of a court, must avoid the sort of inadequacies which led the court to order it in the first place. Accordingly, the scope of the EIS must include information and analysis identified during the proceedings in that case as necessary to an adequate environmental review.

The notice requesting comments on the scope of the EIS lists questions in 18 areas that USDA has identified, which cover many of the issues identified in the court case. In some cases, it is difficult to tell from the groupings and phrasings whether particular issues or areas of information identified in the court case are covered by the scope of issues identified in USDA's list. These comments focus on issues, information and analysis identified during the court proceedings of most importance to WORC and its members, and which should be thoroughly covered in the Environmental Impact Statement, and on issues raised in WORC's comments on the Environmental Analysis (EA)¹, which the court found to be inadequate.

The central failure of the EA was its failure to analyze the impact of the deregulation of genetically modified alfalfa, and the contamination of non-GM alfalfa which would inevitably follow, on non-GM alfalfa hay and seed growers, farmers and ranchers and

¹ WORC's comments on the EA, dated January 12, 2005, are appended to these comments and incorporated by reference.

other livestock owners who choose to buy non-GM alfalfa; honey bee owners; and consumers who choose to buy non-GM meat and dairy products.²

Among its other deficiencies, the EA assumed that the responsibility for preventing contamination of organic alfalfa production falls on the organic producer, rather than on the manufacturer of genetically modified alfalfa or producers who grow it. The scope of the EIS must not be based on this same assumption. For example, the last question in topic area #10 in APHIS' list of questions to address in the EIS is:

To what extent can organic or conventional alfalfa farmers prevent their crops from being commingled with unwanted, unintended, or unexpected glyphosate-tolerant alfalfa?

This question must be expanded so that the EIS addresses *the extent to which the owners (Monsanto, Forage Genetics, and associated seed companies) and growers of genetically modified alfalfa can prevent their product from unwanted, unintended, and unexpected commingling and contamination of non-GM alfalfa*. Similarly, the EIS must analyze (1) the cost of any measures organic or conventional alfalfa farmers would have to take to prevent their crops from being commingled with unwanted, unintended, or unexpected glyphosate tolerant alfalfa; and (2), the cost of commingling and contamination, to the extent that is not or can not be prevented.

The EA did not analyze whether and to what extent segregation of GM from conventional alfalfa is possible. The questions outlined by APHIS for its proposed scope of the EIS appear to get at this under items #16 and #17, but the EIS must evaluate whether *any of the potential negative environmental and economic impacts resulting from the deregulation of glyphosate-tolerant alfalfa can be mitigated and the likelihood that mitigation measures will be successful* – that is, whether “coexistence” (see #17) is practical or possible.

The EA assumed that the only potential impact to organic producers concerned their status as certified organic producers. In fact the more important potential impact concerns the loss of markets or premiums for contaminated alfalfa, which organic producers can suffer whether they lose organic certification or not. The scoping questions proposed by APHIS appear to address this issue, in topic area #4:

Should the low level presence of glyphosate-tolerant alfalfa occur in situations where it is unwanted, unintended, or unexpected, what impact would this have on the ability of producers to market affected organic or conventional alfalfa or livestock fed this material?

² The District Court found that “the significant impact that requires the preparation of an EIS is the possibility that the deregulation of Roundup Ready alfalfa will degrade the human environment by eliminating a farmer’s choice to grow non-genetically engineered alfalfa and a consumer’s choice to consume such food.” The EIS must evaluate this possibility if it is to be an adequate basis for deciding whether to deregulate genetically modified alfalfa.

The EIS must analyze this impact, not just in terms of whether or not alfalfa with unwanted, low-level presence of glyphosate-tolerant alfalfa can be marketed as “conventional” or “organic”, but also the potential loss of premiums or imposition of discounts, and the cost of testing to satisfy customers who prefer non-GM alfalfa, at whatever no-tolerance or low-tolerance levels that consumers may desire.

The EA did not consider impacts on any agricultural producers other than organic alfalfa hay, seed or sprout producers. Some of APHIS’ proposed scoping questions mention potential impacts on producers of livestock that are fed alfalfa, but they do not specifically mention dairy, nor does it mention honey producers. The EIS must analyze the impact of widespread contamination of organic alfalfa hay by genetically modified alfalfa on the availability of organic feed for dairy cattle, on organic dairy farmers and the organic dairy industry, and on the price of organic milk to consumers. The EIS must also analyze the impact of introduction and widespread use of genetically modified alfalfa (and the associated increase in the use of Roundup on alfalfa fields) on bees and both conventional and organic honey producers.

APHIS’s proposed scoping questions (especially #8) address issues related to the likely increase in Roundup-Resistant weeds, and associated environmental impacts. However, it is not clear that the EIS will address the economic effect of such increases and environmental impacts on alfalfa growers. It is also not clear why #8 includes the question of whether there *are* Roundup-Resistant weeds. That question is settled. A more useful question to answer would be, *What weeds have already developed resistance to Roundup?* The EIS should include a short history of the development of Roundup-Resistant weeds, and list the weeds that have developed Roundup Resistance in North America.³

The Federal District Court decision ordering preparation of this EIS found that USDA acted arbitrarily and capriciously in not evaluating “the extent of likely gene transmission from genetically engineered seed crops to non-engineered seed crops.” The collection of scoping questions proposed by APHIS seems to require such an evaluation, but the agency should make clear that this is a central purpose of the EIS.

The Court found that “APHIS failed to consider... that because of weather--which is beyond a farmer’s control--a farmer cannot always harvest his field at the most optimal time. APHIS made no inquiry into how often farmers are actually able to harvest their forage crop before seeds mature and no inquiry into the likelihood of gene transmission when they cannot.” The EIS must correct this failure, but it is not clear from the questions posed under topic areas #1 and #2 if it will do so.

³ See WORC’s *Guide to Genetically Modified Alfalfa*, pp. 33-39. The *Guide* is available at http://www.worc.org/issues/art_issues/alfalfa_guide/alfalfa_guide.html and is incorporated to these comments by reference.

The scoping issues outlined by APHIS make no mention of analyzing the impact of the Roundup Ready alfalfa already planted. The central issue outlined by WORC and other commenters on the inadequate EA, and affirmed by the decision of the Federal District Court, and which must be analyzed in the EIS, is the likely extent to which Roundup Ready alfalfa will contaminate non-GM alfalfa. It would seem logical for APHIS to collect data and conduct tests on the location and extent of GM alfalfa planted before and after deregulation (and before the court-ordered injunction), and the extent to which nearby non-GM alfalfa seed and hay fields and the conventional seed supply contains GM traits.

In our January 2005 comments on the EA, WORC said USDA should prepare a full EIS, and made this suggestion about the scope of the EIS:

The EIS should examine whether, how, and at what cost Roundup Ready alfalfa can be kept separate from conventional, organic, and other alfalfas and hays containing alfalfa. The EIS should analyze the economic costs of contamination to producers of organic, natural, and conventional alfalfa seed, grass, hay, honey, livestock, meat, milk, and other foods.

USDA, of course, did not prepare an EIS, was sued for its failure, lost in court, and is now under a court order to prepare an EIS. That EIS must examine the questions WORC suggested three years ago, as well as the other issues set out by the court. WORC looks forward to the EIS, and we will be glad to provide any information that will help produce a thorough, credible analysis of the environmental and economic impacts of the introduction of genetically modified alfalfa.

Sincerely,

John Smillie
Campaign Director
Western Organization of Resource Councils

January 24, 2005

Regulatory Analysis and Development, PPD
APHIS, Station 3C71
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Re: Comments – Monsanto Roundup Ready Alfalfa
Docket #04-085-1

To Whom It May Concern:

WORC (Western Organization of Resource Councils) appreciates the opportunity to comment on Monsanto's petition for deregulation of herbicide tolerant alfalfa and USDA's accompanying environmental analysis in the docket referenced above.

APHIS should prepare an Environmental Impact Statement on its decision whether to deregulate Monsanto's Roundup Ready alfalfa. The EIS should analyze the potential economic impacts of commercial release of the crop on U.S. alfalfa producers and livestock producers. APHIS should not deregulate these alfalfa events until it has prepared a draft EIS, provided an opportunity for public comment, and responded to comments in a final EIS.

WORC and other organizations previously requested that APHIS prepare an environmental impact statement on the proposed deregulation of Roundup Ready wheat. In our petition⁴, we noted the inseparability of the potential economic impacts of deregulation on farmers and the impacts to the human environment. The potential economic and environmental impacts of releasing Roundup Ready alfalfa are similarly connected. Nearly 80 million tons of alfalfa is grown each year on 22 million acres in the U.S., according to USDA statistics. Nearly 90 million tons more is grown and harvested in mixed hay production on 40 million more acres. Feral and volunteer alfalfa is ubiquitous in the West. The potential cost of any unintended adverse agronomic, environmental or economic impacts of release of Roundup Ready alfalfa are large, and are largely unexamined in APHIS' EA.

The EA's only discussion of economic impacts is limited to analysis of Roundup Ready alfalfa and organic alfalfa production, and is deficient. First, it assumes that the responsibility for preventing contamination of organic production falls on the organic producer, rather than on the manufacturer of this alfalfa variety or farmers who grow it. Second, it fails to evaluate whether and to what extent segregation of genetically modified alfalfa from conventional alfalfa is possible. APHIS failed to evaluate, require or describe steps that Monsanto or those who buy and plant its Roundup Ready alfalfa seed could take to minimize or eliminate contamination of neighboring crops or to limit

⁴ See *Petition Seeking an Environmental Impact Statement Concerning the Deregulation of Genetically Engineered Wheat Varieties*.

the spread of volunteers. Third, the EA assumes that the only potential problem for organic producers is whether and how they could continue to be certified as organic. APHIS ignores the separate and distinct question, whether alfalfa contaminated with genes from Monsanto's alfalfa could be *marketed* as organic production.⁵

APHIS has not considered impacts on any agricultural producers other than organic alfalfa seed or sprout producers. Sectors of the agriculture and food industry that could be adversely affected by the introduction and spread of Roundup Ready alfalfa include organic meat and livestock producers; producers of 'natural' beef, lamb, and other meat and livestock marketed with source-verification claims related to feed; and conventional and organic honey producers.

The EA fails to analyze the potential acceleration in the development of Roundup resistant weeds. Widespread adoption of Roundup Ready technology in corn and soybeans has led to increasing problems with Roundup-resistance. Widespread planting of Roundup Ready alfalfa will worsen this problem, especially where alfalfa is used in rotation with other Roundup Ready crops. Increasing Roundup resistance will lead to use of herbicides with relatively greater environmental impacts, and to increased costs for both adapting and non-adapting farmers.

APHIS should prepare an environmental impact statement that considers the potential environmental and economic costs of an increase in Roundup-resistant weeds. The EIS should examine whether, how, and at what cost Roundup Ready alfalfa can be kept separate from conventional, organic, and other alfalfas and hays containing alfalfa. The EIS should analyze the economic costs of contamination to producers of organic, natural, and conventional alfalfa seed, grass, hay, honey, livestock, meat, milk, and other foods.

We note that APHIS is preparing an EIS on Roundup Ready bentgrass, in part because of its potential to spread to public lands and to rights of way, where it could be prohibitively expensive or impossible to eradicate. Roundup Ready alfalfa, similarly, may spread by crossing with feral alfalfa, through the spread of volunteer plants, through wind and water erosion, and by the transport, feeding and digestion of feed. Just as an EIS on bentgrass was warranted, we believe a APHIS should prepare a comprehensive EIS on Roundup Ready alfalfa.

Once again, thank-you for the opportunity to comment.

Sincerely,

John Smillie
Program Director, Western Organization of Resource Councils

⁵ Some or all buyers of organic alfalfa may choose to require testing, may discount any organic alfalfa with transgenic content, or may choose to buy from sources that can be certified as completely GM-free. Any of these economic choices would be costly to organic alfalfa producers, even if they were able to maintain their status as certified organic producers as APHIS presumes in the EA.