

Policy Pennings by Dr. Daryll E. Ray

GMO crops – Who is responsible for the consequences of pollen drift?

The USDA's March 31 "Prospective Plantings" report shows the area to be planted in biotech crops increasing for corn, soybeans, and cotton. Biotech soybeans are projected to be planted on 86% of soybean acres in the U.S. this spring, up from 81% a year ago. Cotton biotech varieties are slated for an increase of 3% percentage points from 73% last year to 76% this season. For corn, the numbers are 46% for this spring up from 40% a year ago. In these three crops farmers are adopting the latest technology at a very fast rate.

On the other hand, wheat growers in North Dakota have expressed concern about the possible introduction of a GMO variety of wheat. Japanese millers recently told North Dakota agricultural leaders that they would stop buying U.S. wheat if Monsanto's plans to introduce a biotech variety of wheat go through. Japan is the largest market for North Dakota wheat. The Japanese have threatened to seek other markets if necessary.

On March 2, 2004, the voters in Mendocino County, California voted to become the first county in the U.S. to ban the growing of genetically altered plants and animals. Officials on Prince Edward Island, Canada have also considered becoming a GMO-free area. Organic producers are concerned that pollen from GMO crops will cross-pollinate with their traditional lines, thus from their perspective contaminating their genetic lines.

This raises the questions of responsibility and accountability. Who is responsible for the consequences of pollen drift? Should the growers of GMO corn be held responsible if pollen from their fields drifts onto a field of Reid's Yellow Dent corn that is being grown as seed corn for organic producers? Corn that contains GMO material, even if it is inadvertently contaminated, cannot be sold as organic.

Another question that arises is whether or not the organic producer who finds GMO material in his corn is liable for paying a tech fee for that corn? After all, the GMO gene belongs to a chemical company with the right to prevent others from using or possessing it.

On the other hand, is it the responsibility of organic farmers to protect themselves from this contamination? It could be argued that pollen drift has been a fact of agricultural life since the domestication of crops and thus the growers of GMO crops have no greater responsibility than the growers of any other crops. If the growers of organic or other non-GMO crops are concerned about pollen drift is it their responsibility to come up with a solution that does not infringe on the rights of the producers of GMO crops to plant what ever they want?

Some would suggest that this problem is without precedent and the actions of Mendocino County and the North Dakota wheat farmers are an over-reaction. A read-

ing of Earl W. Hayter's book, *The Troubled Farmer*, would suggest that there is nothing new in this controversy. We've been there and done that, only the last time the issue was not GMO seeds, it was the conflict between livestock and crop farming.

In England it was the responsibility of those farmers who produced livestock to enclose their animals in a legal fence. And if they did not, they were held liable to damage done by their animals. When the settlers came to North America there were large areas of open range and forests available for grazing and it made more sense to enclose the cropland and allow the animals to roam freely than to try to fence in the range and forest land. As Hayter tells it, "This traditional system of fencing crops in and livestock out gave rise to incessant quarrels and feuds (p. 106)."

The responsibility to protect themselves from roaming animals imposed a considerable burden on crop farmers. They had to take on the cost of building and maintaining animal-proof fences. This would prove to be a serious challenge when it came to fencing out semi-wild hogs that could make their way under all but the strongest fences. As farming moved out into Illinois, the extension of crop farming was delayed due to the lack of suitable, accessible fencing materials.

Even for the crop farmer who did erect a fence, the recovery of damages from trespassing livestock were not certain. For one thing the aggrieved crop farmer had the burden of proving whose animal it was that destroyed his crop. And even if he could do that, he had to face the counter argument that his fence did not meet the requirements of the law. It would be argued that the fence was old and in disrepair and thus the livestock owner had no responsibility for any damage that might have been done.

Over time, as crops followed livestock onto the frontier, the number of crop farmers would begin to outnumber the livestock producers, and township by township ordinances began to be passed requiring livestock owners to fence their animals in.

At this point the story of Mendocino County begins to sound like a new verse being sung to an old tune. Two groups with seemingly equal claims to "rights" have begun what may be a long struggle to determine who is responsible for providing the fence.

Daryll E. Ray holds the Blasingame Chair of Excellence in Agricultural Policy, Institute of Agriculture, University of Tennessee, and is the Director of the UT's Agricultural Policy Analysis Center. (865) 974-7407; Fax: (865) 974-7298; dray@utk.edu; <http://agpolicy.org>. Daryll Ray's column is written with the research and assistance of Harwood D. Schaffer, Research Associate with APAC.

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