

How to Handle Field Contamination

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Introduction

They're everywhere around you, from the fields to your house. You eat them everyday, whether you know it or not. They aren't necessarily bad for you but they are in the middle of a very heated debate. Genetically Modified Organisms are organisms that are not completely natural and, at some stage, have had their DNA altered genetically. These organisms can be used to help farmers fight against pests and to help keep their crop healthy. Unfortunately though, during their pollination they can contaminate the fields of neighboring farmers who have chosen not to use GMO's. In many cases the non-GMO farmer grows conventional crops in order to sell their crop to those companies and countries who do not wish to have any genetically modified food. In many European countries, Australia, and some Asian countries the backlash to GMO's is ever-present. These countries have stated that they will not purchase any crops that have any GMO's in them. This creates a special market for farmers who aren't going to take advantage of better technology but will farm in a conventional manner. Whether or not a farmer decides to use GMO crop or not, they understand what they are doing and are trying to get the best price for their hard work. The unfortunate problem arises though when a farmer who decides to grow conventional crops is somehow contaminated by a farmer who is using GMO crop.

Contamination can occur in many ways from animals to the wind. The fact remains that contamination is happening and is becoming a bigger problem than anyone had first imagined. The war between the big business that has the rights to GMO crops and the small farmer who chooses to grow conventional crops is raging. Quietly and away from most of our ears and eyes there are lawsuits and appeals all relating to the contamination of a conventional farmers field. This is a problem that is being argued out of the public eye but affects everyone. Thus the problem is who has the right when a field becomes contaminated with GMO's. Is it the large

business that holds the patent to these seeds or to the farmer who never intended to use GMO's but has in some manner become contaminated? First, we will look at the current example of Percy Schmeiser that shows the way these legal issues are being handled and where the liability is falling. Following that, we will draw out a model for change, one that respects the rights of both parties involved but also shares the liability so that neither party comes out completely unscathed. Then we will present two examples under those guidelines of how those changes will take place.

Current Situation

Percy Schmeiser has grown canola on his farm near Bruno, Saskatchewan, for 40 years and he usually sows each crop of the oil-rich plants with seeds saved from the previous harvest. He has never, says Schmeiser, purchased seed from St. Louis, Missouri, the base of agricultural and biotechnology giant Monsanto Co. He also said that more than 791 acres of his land is now "contaminated" by Monsanto's herbicide-resistant Roundup Ready canola, a man-made variety produced by a controversial process known as genetic engineering. Just like hundreds of other North American farmers, Schmeiser has felt the sting of Monsanto's legal power. Monsanto once took a 68-year-old farmer to court, claiming he illegally planted the company's canola without paying the \$15 per acre fee for the right to plant their seed. Unlike most accused North American farmers who have reached out-of-court settlements with Monsanto, Schmeiser decided to fight back. Schmeiser claims Monsanto investigators trespassed on his land and that the company seed could have easily blown on to his soil from passing trucks, which were loaded with canola seed. "I never put those plants on my land," says Schmeiser. "The question is, where do Monsanto's rights end and mine begin" (PS's "The Conflict")?

At trial, Monsanto Canada Inc. and Monsanto Company alleged that Percy Schmeiser had infringed Monsanto's Canadian patent number 1,313,830 in 1998 by planting Roundup Ready canola. The Trial Judge found that certain claims of the patent had been infringed and granted Monsanto an injunction, an order for delivery up, and an award for damages in the amount of \$19,832.

Mr. Schmeiser appealed the finding of infringement, the award of damages and the granting of the injunction. Monsanto cross-appealed on a number of grounds, but at the hearing relied only on the argument that the award of damages was too low.

On September 6, 2002 Percy Schmeiser sought leave to appeal a Federal Court of Appeal judgment that dismissed arguments that he did not violate the patent on its Roundup Ready canola.

Last year, Schmeiser was ordered to pay \$19,000 in damages for unlawfully using the seed and another \$153,000 to cover Monsanto's court costs.

“A farmer who wishes to grow Roundup Ready Canola must enter into a licensing agreement called a Technology Use Agreement (TUA), and must attend a Grower Enrollment Meeting conducted by Monsanto representatives, who describe the technology and its licensing terms. By signing the TUA, the farmer becomes entitled to purchase Roundup Ready Canola from an authorized seed agent but must promise to use the seed for planting only one crop, to sell the crop for consumption to a commercial purchaser authorized by Monsanto, and not to sell or give seed to any third party or save seed for replanting or inventory. The TUA gives Monsanto the right to inspect the fields of the contracting farmer and to take samples to verify compliance with the TUA. The farmer must also pay a licensing fee for each acre planted with Roundup

Ready Canola. In 1998 the licensing fee was \$15 per acre” (PS’s “Schmeiser takes case to top court”).

Guidelines for change

As it stands, the number of cross-contamination cases seen between non-GMO farms and GMO farms is steadily increasing. Something must be done to address this issue before things become too out of control. Several new guidelines need to be created, introduced, and policed to protect the safety of farmers whose crops are becoming contaminated inadvertently. We have put together a list of possible guidelines to address this issue that we believe to be as fair as possible to the farmers while still protecting the rights of Monsanto’s patent.

First of all, if a field is contaminated with more than 10% of GMO crop then standard rules should apply to payments to Monsanto and they should have to give up the seed. This is a case where the organic farmer is clearly using some GMO seed and is aware of what they are doing. Farmers in this case should be responsible for their actions. These farmers should have to pay the standard restitutions for these infractions.

Secondly, if a field is contaminated with less than 10% of the GMO gene then a new set of rules will govern the situation. If the farmer plants a non-GMO crop and his crop tests positive for less than 10% of the GMO gene, this guideline will apply. Monsanto will have the right to buy the entire crop from the farmer at fair market value within a one month time period. The fair market value will be determined by the average current price of the GMO crop within the last month. If Monsanto decides not to buy the crop from the farmer at the fair market price, the crop is still the farmers but they must sell all of it and keep none of it. They can do whatever they want with the crop, it is just required to get rid of all of it. We do not believe it is the

conventional farmer's fault that his crops were contaminated. Therefore, the farmer that has come to have the contaminated crop will pay no fines to Monsanto.

There is definite need for these guidelines, not only to stop inadvertent contamination of non-GMO crops, but also to protect the farmers affected by these contaminations and to protect Monsanto's patent on these crops. We believe that this situation is the most fair to all parties involved. With our solutions, we show no bias to one party, but no party is released from their responsibility for contamination of non-GMO farmers' crops.

Scenario One:

Let's look at an example of each of these guidelines. For the first guideline, we will take farmer Jim's situation. Farmer Jim buys Roundup Ready canola in 2002. He pays the standard fee per acre and signs the contract to not keep any seed the following year. He plants this canola and harvests it for the 2002 season. Instead of selling it all as the contract requires, he decides to keep some and replant it during the 2003 season. He replants the saved seed and mixes it with some non-GMO canola he buys. The 2003 season passes by without incidence. Farmer Jim again decides to keep some of the seed and replant it for the 2004 season. Farmer Jim replants the seed he kept from the 2003 season. Monsanto decides to come and test farmer Jim's crop. Farmer Jim's crop tests positive for more than 10% of the Roundup Ready gene. Under the guidelines set forth, farmer Jim is liable and must pay restitutions for the years that he knowingly planted the GMO crop without paying Monsanto for their patent. In this case, the farmer is held liable for his actions and Monsanto's patent is protected.

Scenario Two:

Now let's look at a different scenario. Farmer Steve is a conventional farmer. He has never planted any GMO products in any of his fields. Farmer Steve was contacted by some independent buyers who wanted non-GMO wheat. Steve entered a contract with these buyers to sell them non-GMO wheat at the end of the 2003 growing season. He plants conventional wheat in all his fields for this season and harvests them as usual. Steve then goes to the local elevator to test his crop. The crop tests positive for the GMO gene with 3.5% contamination. The contract with the independent buyers specified that the crop can have no more than 3% contamination and farmer Steve loses his contract and now has a crop of GMO wheat to sell. The elevator that tested the crop contacts Monsanto and Monsanto is left with the decision to buy the entire crop at fair market value or to let Steve keep it. Monsanto has a month from when they were notified of the situation to make a decision. If Monsanto decides to buy it, the value of the crop is determined by the average price for the crop over the last month. If Monsanto decides to let farmer Steve keep the crop, Steve can do what ever he wishes with the crop, but none of the crop can be kept and replanted any of the following years. Monsanto has the right to come and test farmer Steve's crop for three years to ensure that he is complying with this guideline. Again we feel that the farmer is being protected because he isn't losing money to Monsanto. We also feel this is fair to Monsanto because the farmers can't plant the seed again once they are aware of its genetic make-up.

Conclusion

In Conclusion, it is apparent that when it comes to contamination the current regulations and standards are not in the best interest of both parties involved. It is important to respect both

the rights of farmers and Monsanto but also be fair and just to both. A change needs to be made to prevent Monsanto from having an unfair advantage for contamination without acknowledging that some farmers are unintentionally having their fields contaminated with GMO seed. These new guidelines are sympathetic to the farmer who is unintentionally contaminated with GMOs, but do not release them from all liability. These guidelines handle the issue fairly for both parties. They enact a set of rules to follow that justly handles the very fragile issue of field contamination and allows for an optimal solution that should be considered by governmental agencies to protect the rights of everyone involved and yet prevent the conventional farmers from being taken advantage of by Monsanto.

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