

Response by GM Freeze to the Defra Consultation on Environmental Liability Directive: Consultation on options for implementing In England December 2006 (submitting February 2007)

GM Freeze

GM Freeze is an alliance of 55 organisations *calling for a moratorium on GM foods, the growing of GM crops for any purpose and on patents on genetic resources in agriculture, food production and forestry until the need for and safety of GM technology has been established and alternative approaches have been fully evaluated.*

Our members include consumer groups, farming organisations, environmental groups, development agencies, religious groups, animal welfare groups and food companies.

This response is submitted on behalf of GM Freeze. It covers our response to Defra's Consultation on proposals for implementing the Environmental Liability Directive (ELD) in England issued in December 2006.

Summary

GM Freeze supports a broadening of the scope of the Environmental Liability Directive (ELD) in England to ensure that the polluters pay and the widest possible range of habitats and species receive protection. We believe that GMOs pose a unique threat to the environment because of their capacity to multiply themselves and there is every justification for Defra to make them a special case in the environment liability regulations for England by adopting the following measures:

- dropping the state of knowledge and permit defenses.
- making consent holders not farmers (operators) strictly liable.
- extending the time limit on liability to 75 years.
- expanding protection to cover the widest possible area of land and water, including the whole of the farmed landscape and soil.
- requiring companies to have compulsory insurance.
- extending liability to GMO escapes from contained use sites.

The Welsh Assembly Government has gone some way to recognizing the unique nature of GMOs by announcing their intent in the consultation document that they propose to drop the "permit defence" in the case of GMOs.

Introduction

GM Freeze welcomes the concept of environmental liability as an additional measure aimed at preventing and remedying environmental damage. This response focuses largely on the environmental liability from the perspective of genetically modified organisms (GMOs). We would also like to make some general comments about the need to extend the scope of the Directive to ensure that it is as effective as possible in achieving

its objectives.

We strongly disagree with the Defra presumption against "gold plating" the English regulations on Environmental Liability. Failure to use our national discretion to strengthen the Regulation would leave many important species and habitats unprotected

and mean that the underlying objectives of the Directive to prevent and remedy environmental damage will be lost over huge areas of the country.

GM Freeze believes that the English Regulation on Environmental Liability should be extended to:

- cover all SSSIs and BAP habitats and species.
- cover all water courses and bodies regardless of size.
- apply strict liability to all activities causing biodiversity damage including soil, water and land damage
- remove the permit and state of the art defenses
- set time periods for liability which are appropriate for each activity and the likely damage caused.

GMOs - A Special Case

Under the proposal put forward by Defra for England, GM Freeze believes that no one would be held strictly liable for any environmental damage caused by the release of a GMO except in exceptional circumstances when gross negligence could be demonstrated. We have come to this conclusion because it is clear to us that the consultation document fails to recognise that:

- GMOs have a unique capacity to replicate themselves once released into the environment.
- the scope of the Environmental Liability Directive covers a far narrower definition of the environment and biodiversity than national and EU legislation requires for GMO risk assessments. The latter include the soil and all biodiversity not just internationally protected species and habitats.
- the ELD is not consistent with national biodiversity and sustainability targets which include many farmland species not currently included in Defra's proposals for the English Regulations.
- GMOs have greater longevity than other harmful activities covered by the ELD and are able to transfer genetic materials into other species and consequently into other habitats.
- there is still scientific uncertainty about how GMOs will behave in the environment including in the soil. For instance, during GMO field trials in the UK, several unexpected events were recorded: cross pollination of oilseed rape over 26 km¹; out crossing of oilseed rape to the arable weed charlock, previously thought to be impossible in the field²; and longer persistence of oilseed rape seeds in the soil and GM volunteers, for at least 15 years when previous 10 years³ was thought to be the maximum.
- the UK have very limited experience of cultivating GM crops on a large scale.
- GMOs are released across the whole of the farmed landscape and not from point sources and that damage is more likely to arise from successive releases over

¹ http://www.defra.gov.uk/environment/gm/research/pdf/epg_rg0216.pdf see page 4

² http://www.defra.gov.uk/environment/gm/research/pdf/epg_1-5-151.pdf

³ Lutman PJW et al, 2005. Persistence of seeds from crops of conventional and herbicide tolerant oilseed rape (*Brassica napus*). *Proc.R.Soc B* (2005) 272, 1909-1915 22nd September 2005.

many years from many different sites than from a single release (although the latter cannot be ruled out).

- damage may not be apparent for many years. GMOs have the potential to survive for many years as seeds in the soil and in growing plants. Experience of exotic plant introductions into the UK indicates the difficulties of predicting impacts where living species are involved. The Advisory Committee on Releases to the Environment used Japanese Knotweed as an example in a recent report⁴. *“Japanese knotweed (Fallopia japonica), a native of Japan, Taiwan and Korea, was introduced into the UK as an ornamental garden plant. It has been grown in British gardens since 1825, was first recorded in the wild in 1886 and became well-established between 1920 and 1940. It is now widespread in the UK and an invasive weed.”* In other words, the impact was not apparent for nearly 100 years after Japanese Knotweed was introduced.
- GMO commercial marketing consents are EU wide and may not fully reflect conditions in England or the fact that the UK may have opposed the approval on environmental or health grounds.
- at present no insurance cover is available for GMOs because of the uncertainty about their long-term impacts on health and the environment preventing premiums being set.
- there is widespread public concern about the potential impact of GMOs and a strict liability regime would provide some reassurance that the government recognises this.
- GMOs, for instance fish, mammals or trees, kept in contained conditions (under the GMO Contained Use Regulations) could escape and cause harm in the environment but are not covered by the ELD.

For these reasons GM Freeze urges Defra to adopt the following for in the English environmental liability regulations:

- dropping the state of knowledge and permit defenses.
- making consent holders not farmers (operators) strictly liable.
- extending the time limit on liability to 75 years.
- expanding protection to cover the widest possible area of land and water.
- including the whole of the farmed landscape and soil.
- requiring companies to have compulsory insurance.
- extending liability to GMO escapes from contained use sites.

GM Freeze believes that by adopting such measures for the English regulation Defra would ensure that the polluter pays in the case of GMOs and would command wide support in the public who remain very concerned about the potential impacts of GMOs.

GM Freeze February 2007

⁴ <http://www.defra.gov.uk/environment/acre/fsewiderissues/acre-fse-060317draft.pdf> see example 1