

GeneWatch UK response to DEFRA's Consultation on draft regulations and guidance implementing the Environmental Liability Directive 2004/35/EC with regard to the prevention and remedying of environmental damage

May 2008

GeneWatch UK is a not-for-profit organisation based in Derbyshire that monitors developments in genetic technologies from a public interest, environmental protection and animal welfare perspective.

GeneWatch believes that the implementation of the Environmental Liability Directive (ELD) provides an important opportunity to improve environmental protection in the UK. We have already contributed to the NGO coalition response which answers many of the questions posed by the consultation document. In this response our comments on the options for implementing the ELD are concerned with its relationship to activities using GMOs only.

In relation to GMOs, the ELD provides the regime that was promised in the Deliberate Release Directive (2001/18). As such it is one important component of the overall precautionary approach set out in that Directive and should be formulated with that context in mind as well as public attitudes to GMOs in the UK.

GeneWatch does not believe that these draft regulations will provide either the liability regime that was promised or provide assurance to the public that GMO producers have full confidence in the safety of their own products.

Answers to specific consultation questions:

Question 2: do you agree that the Regulations should apply to all species and habitats within a SSSI for which that SSSI has been notified as well as to EU listed species and habitats (regulation 4)?

GeneWatch welcomes the inclusion of national protected species and habitats by extending the scope of the Regulations to SSSIs. We agree that the Regulations should apply to all species and habitats within a SSSI. This provides both protection for our nationally important wildlife and clarity for any business that may be affected by the Regulations.

However, most GM crops will be grown on arable land not covered by SSSI status. The farm scale evaluations demonstrated the harm that could arise from the change in arable practices in relation to GMOs and GeneWatch believes this type of harm could be detrimental to BAP species and habitats. Furthermore, in our response to the first consultation we highlighted the guidance given by ACRE that specific BAP species that are important on arable land should be explicitly considered. Of the nine species identified by ACRE five will still not fall within the scope of the Regulations. These are;

- *Brown Hare*

- *Corn Bunting*
- *Linnet*
- *Tower Mustard (Arabis glabra)*
- *Cornflower (Centaurea cyanus)*

In line with the NGO coalition response we urge the Government to include BAP species and habitats as soon as possible.

Question 14 (Wales only): do you agree with extending liability to GMO permit holders (i.e. the GMO producers) as well as operators (such as farmers) who purchase GMOs from them (regulation 13 of the Welsh regulations)?

In line with the NGO coalition response GeneWatch welcomes the Welsh approach to extending the liability to GMO permit holders.

The data upon which the risk assessment for GMOs (in both contained use and for deliberate release) is based upon data supplied by the GMO producers. GeneWatch is concerned that the data has been produced to meet the minimum requirements of the risk assessment process and not to research the longer term impacts of GMOs on the environment and human health.

The extension of liability to permit holders will, in this instance, provide the necessary incentive to ensure the longer term risks of GMOs to the environment and human health are carried out.

Question 15: do you agree with the way in which the ‘defences’ in the Directive have been applied (regulation 14 in England, regulation 15 in Wales)?

GeneWatch does not agree with the application of the permit and state of the art defences for GMOs. Our reasons for this are that;

- The nature of the risks from GMOs is very different from other Annex III activities: GMOs are living and able to multiply in the environment.
- Our knowledge of their long term environmental impacts remains limited.
- The permit system for GMOs is different to other Annex III activities in that the permits are given on a European wide basis.
- Post Market Environmental Monitoring is the responsibility of the permit holder. The regulations do not require that any third party (for example, the Environment Agency) carry out independent monitoring.

Attached to this consultation response is a briefing written by GeneWatch UK outlining our concerns more fully¹. For these reasons, the inclusion of Regulation 19 in Wales is welcomed.

¹ The Environmental Liability Directive and the ‘Permit Defence’ (August 2007) GeneWatch UK