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## Genetically Modified Crops: Guidelines for Producers

by Neil E. Harl\*

With the consumer resistance to products containing genetically modified ingredients in Europe and Asia rising in recent weeks, and processors responding to that resistance, the focus is on how producers can protect themselves. It's especially critical for those producing non-GMO varieties.

Here are some points to consider:

- Several processors have signaled that products must be kept separate and there will likely be differential pricing for GMOs and non-GMOs.
- That means exporters have to keep the products separate if they are to sell into that market.
- In turn, elevators and other first purchasers are expected to request the same of producers.
- As a practical matter, actual testing for GMO germplasm for the 1999 crop is expected to be spotty with heavy reliance on producer representation as to which loads are GMO and which are non-GMO.

But it's not as simple as stating that a load of corn, soybeans or other crops is GMO or non-GMO. Some of the seed companies concede that their seed purporting to be non-GMO contained low levels of GMO germplasm. Besides, contamination from pollen drift may have added to the level of GMO germplasm in non-GMO crop. And there may have been mechanical contamination in augers, wagons, storage bins or even in the combine itself.

All of this adds up to a high stakes legal problem for everyone involved. Eventually, with reliable testing at every point at which the crop is commingled--at the elevator, the processor's bins or at export vessels--it will be possible to monitor more closely what is GMO and what contains only low levels of GMO germplasm. But the system is not there yet and won't be capable of that type and extent of testing this crop season.

### Producers should be careful

If producers are asked by the first purchaser to promise that the crop is non-GMO, they should be very careful what they sign or even what oral comments are made.

Here's what they *can* realistically do:

- State that no seed represented by the seed company as GMO seed was planted.
- State that seed represented by the seed company as non-GMO seed *was* planted.

- State that care was taken in avoiding contamination in bins, augers, and in the combine.

Here's what producers should be careful *not* to do:

- State that the crop in question has no GMO germplasm.
- State that no contamination has occurred from mechanical handling and storage of the crop.
- State that no contamination has occurred from pollen drift.

There's another worry--the Uniform Commercial Code imposes implied warranties or promises in some situations. An implied warranty of fitness is imposed on the producer as seller if the seller has reason to know any particular purpose for which the goods are required if the buyer is relying on the seller's skill and judgment in providing the goods. This could very well be invoked against a producer if the conditions are met. You can disclaim or nullify an implied warranty of fitness *but it takes a conspicuous, written provision in a contract*.

An implied warranty of merchantability is imposed on merchants. Nearly half of the states treat farmers as merchants. One feature of this warranty is that the goods must be fit for the ordinary purposes for which they are to be used. Implied warranties of merchantability can be disclaimed or nullified by the producer as seller *if done orally or in writing in language that mentions merchantability*.

So what does this all mean?

Check immediately with likely purchasers. What are they requiring? Some may not yet know. Once the answer to that question is known, check *carefully* the language in any statement you're asked to sign. Use caution in responding orally.

Remember, even non-GMO crop likely isn't completely free of GMO germplasm. But the GMO level may be at an acceptably low level. A key problem--no one has set tolerances. Without tolerances, no one knows for sure where the line will be drawn.

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