

Environmental Bill of Rights Application for Review **Decision Summary**

EBRO File No.: **013EBR006.R**

Issue: The Ministry of the Environment has received an Application for Review under the *Environmental Bill of Rights* (EBR) requesting a new regulation made under the *Environmental Assessment Act* (EAA) which would make activities related to the distribution and/or sale of genetically modified glyphosate-resistant alfalfa (GM alfalfa) subject to the EAA.

Review Decision:

The ministry has completed its assessment of the EBR Application for Review. After careful consideration of the information available and the requirements of the EBR, the Assistant Deputy Minister (ADM) of Operations Division has concluded that a new provincial regulation making activities on the sale and distribution of genetically modified (GM) seed subject to the EAA would overlap with the existing federal regulation. Therefore, the public interest does not warrant an EBR review by the ministry of the matters raised in the EBR application.

Ministry's Preliminary Assessment of the Application:

Applicants' Request

The applicants have requested an EBR review of the need for a new regulation made under section 39(a), (d) and (e) of the EAA. The proposed regulation would:

- define the distribution and/or sale of GM alfalfa as a major commercial or business enterprise or activity;
- designate the distribution and/or sale of GM alfalfa as a major commercial or business enterprise or activity, or as a class of major commercial or business enterprises or activities, as an undertaking or class of undertakings to which this EAA applies; and
- designate any proposal, plan or program or any class of proposals, plans or programs in respect to the distribution and/or sale of GM alfalfa as a major commercial or business enterprise or activity or any class of major commercial or business enterprises or activities as an undertaking or class of undertakings to which this EAA applies.

The applicants allege that the distribution and sale of GM alfalfa will adversely affect the environment, or might reasonably be expected to adversely affect the environment in the following ways:

- by contaminating non-GM alfalfa;
- by adversely affecting biodiversity;
- by threatening the certification of organic farmers and their access to markets that prohibit GM-contaminated agricultural products if the DNA of GM alfalfa mixes with organically raised crops or livestock;
- by imposing new production costs on farmers who do not wish to use GM alfalfa but may be negatively affected by it, e.g., cost of removal of GM plants; and,
- by increasing the use of glyphosate thereby accelerating the development of glyphosate-resistant weed sub-types.

Glyphosate is a non-selective herbicide registered for use on many food and non-food crops as well as non-crop areas where vegetation control is desired (according to the US Environmental Protection Agency).

Preliminary Consideration of the Application

The decision on the assessment of this EBR Application for Review has been delegated by the Minister of the Environment to the ADM of Operations Division.

The assessment was based on the evidence provided in the application and information found in ministry files. Ministry staff also consulted the Ontario Ministry of Agriculture and Food staff about matters raised in the application.

The ministry relied on section 67 of the EBR in its assessment of whether the public interest warrants an EBR review of the matters raised in the EBR application.

Consideration of the Application under subsection 67(2) of the EBR

The following factors from subsection 67(2) of the EBR were considered in determining whether the public interest would be served by an EBR review:

The resources required to conduct the review

The ministry has resources available to conduct the review.

The fact that matters sought to be reviewed are otherwise subject to periodic review

The matters raised in the EBR application are not subject to periodic review.

Any social, economic, scientific or other evidence that the minister considers relevant

Federal Food and Seed Safety Responsibilities and Approvals Process

In Canada, the regulation of GM traits in novel seeds and plants used for crop purposes is the responsibility of the Canadian Food Inspection Agency (CFIA) and Health Canada. Plants with GM traits cannot enter the marketplace unless the CFIA and Health Canada's assessment determines whether seeds and plants are safe for use as food, feed and release into the environment as other conventional plant varieties already being grown.

The CFIA is responsible for assessing the safety of plants with novel traits that are used as livestock feed and the impact of their cultivation on the environment. The CFIA's environmental safety assessment takes into account:

- the potential of the plant to become a weed;
- the potential of a plant to create a weed by cross-pollinating with another plant; and,
- the potential impact on biodiversity.

CFIA and Health Canada regulatory approvals for GM alfalfa for food, feed, and the environment have been in place in Canada since 2005. In 2012, the herbicide glyphosate was approved for use on Roundup Ready alfalfa.

A new plant variety also requires registration by the CFIA using performance data in order to be commercialized in Canada. In April 2013, one variety of GM alfalfa was registered by the CFIA, enabling it to be sold in Canada. Variety registration is based on the variety meeting the merit requirements (production index, bacterial wilt resistance etc.). Variety registration does not take into consideration how that variety was developed.

A new provincial regulation making activities on the sale and distribution of GM seed subject to the EAA would overlap with the existing federal regulation.

Other matters that the minister considers relevant

Federal Role in Agriculture and Seed Regulation

The CFIA is responsible for assessing the safety of plants with novel traits that are used as livestock feed and the impact of their cultivation on the environment. The CFIA's environmental safety assessment takes into account the potential of the plant to become a weed, the potential of a plant to create a weed by cross-pollinating with another plant; and the potential impact on biodiversity.

The potential for harm to the environment if the review is not undertaken

The sale and distribution of GM seed is federally regulated by CFIA and Health Canada. The CFIA is responsible for assessing the safety of plants with novel traits that are used as livestock feed and the impact of their cultivation on the environment. The CFIA's environmental safety assessment takes into account the effect of a new plant becoming a weed, cross-pollinating other plants and affecting biodiversity.

Conclusion:

The ministry has completed its assessment of the EBR Application for Review. After careful consideration of the information available and the requirements of the EBR, the ADM of Operations Division has concluded that a new provincial regulation making activities on the sale and distribution of GM seed subject to the EAA would overlap with the existing federal regulation. Therefore, the public interest does not warrant an EBR review by the ministry of the matters raised in the EBR application.