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GOVERNMENT FORCED TO DISCLOSE LOCATIONS OF TEST SITES OF BIOPHARMACEUTICAL CROPS

Court Order is a First for Citizen Oversight of Biotech Crop Experiments.

HONOLULU—In a first step toward public disclosure of test sites of biopharmaceutical crops, the U.S. Department of Agriculture was forced by court order on February 4 to reveal the locations of these sites in Hawai'i. Following the ruling, representatives of the USDA handed over to Earthjustice attorneys information on the precise locations of open-air field tests of biopharmaceutical crops genetically engineered to produce industrial chemicals and drugs. This marks the first time the federal government has been forced to disclose the location of field tests of genetically engineered crops since it began systematically hiding these locations from the public.

Earthjustice, representing citizen groups Center for Food Safety (CFS), Friends of the Earth, Pesticide Action Network North America, and KAHEA: The Hawaiian-Environmental Alliance, filed a lawsuit in November 2003 in federal district court, seeking to compel USDA to review the environmental and public health impacts of such activities. In August 2004, District Court Judge David A. Ezra ordered the disclosure, rejecting the government's and the Biotechnology Industry Organization's claims of potential "espionage," "vandalism," and "civil unrest." The government and industry resisted disclosure since that ruling through a series of delay requests. At a hearing Friday, Judge Ezra denied their latest motion for a stay of disclosure, and the government handed the information to plaintiffs' counsel.

"This ruling is an important first step toward the day when citizens can find out if biopharmaceutical crops are growing near their food crops or their back yards," said Paul Achitoff, an Earthjustice attorney. "No one wants to accidentally get contraceptives in their corn flakes. Given the potentially disastrous effects these experiments could have on human health and the environment, we hope this ruling will result in lifting the veil of secrecy."

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The plaintiffs sought information on the locations of these field tests in response to the government's arguments that plaintiffs lacked standing to sue because they had not specified the precise locations of the field tests. Magistrate Judge Barry M. Kurren originally ordered discovery of the locations in April 2004, ruling that the mere locations of the field tests were not confidential business information. Judge Ezra affirmed the ruling in August, but preliminarily limited disclosure to plaintiffs only, and allowed the government and industry 90 days to come up with better support for denying public access to the information. The industry submitted supplemental arguments, to which plaintiffs responded, but the court has not yet ruled on the public disclosure issue. Until then, plaintiffs cannot reveal the information to the public at large.

"Allowing food crops to be engineered to produce chemicals or drugs is bad enough," said Peter Jenkins of CFS, "but hiding the location of the test fields from an at-risk public is indefensible. Yet we find our own government fighting on the side of the biotech industry to keep the public in the dark about drug-laced food crops."

Plaintiffs' attorneys are still reviewing the information to see whether it complies with the court's order. This latest development should allow plaintiffs' November 2003 lawsuit calling for long-overdue environmental reviews to move forward.

"With this order," added Jenkins, "we may at last be able to find out how close these experiments are to conventional food crops, ecologically sensitive areas, and our homes and schools. The next step will be to compel our government to investigate the impacts from these biotech crops."

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Earthjustice is a non-profit, public-interest, environmental law firm. The Hawai'i regional office opened in Honolulu in 1988 as the Sierra Club Legal Defense Fund, and has represented dozens of environmental, native Hawaiian, and community organizations. Earthjustice is the only non-profit environmental law firm in Hawai'i and the Mid-Pacific, and does not charge clients for its services.