



November 5, 2009

Administrator Lisa P. Jackson  
Environmental Protection Agency  
USEPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code: 1101A  
Washington, DC 20460

Dear Administrator Jackson,

The Environmental Protection Agency's (EPA) Office of Pesticide Programs regulates genetically engineered plants that have a plant incorporated insecticidal protectant under the Federal Insecticide, Fungicide, and Rodenticide Act. Between 1995 and 2008, EPA registered approximately one dozen engineered corn plants that produce one or more pesticidal substances from genes of the *Bacillus thuringiensis* bacterium (*Bt*). Those plants have been grown on millions of acres by U.S. farmers who benefit from the plant's unique pest-fighting properties. In 2008, according to USDA, approximately 49 million acres of *Bt* corn was grown, which was 57% of all U.S. corn acreage.

When EPA registered the *Bt* corn varieties, it imposed use conditions designed to protect the longevity of the technology and prevent any adverse environmental impacts by delaying the development of resistance in the target pest populations. Those insect resistance management (IRM) obligations require that farmers plant a specific amount of non-*Bt* corn that would act as a "refuge" to increase the likelihood that any resistant pests that survive the *Bt* corn's engineered pesticide would mate with susceptible pests. EPA also obligated the registrants to survey farmer compliance with the IRM requirements and report those results annually in Compliance Assurance Program reports (CAP Reports).

The Center for Science in the Public Interest (CSPI) obtained from EPA the industry CAP Reports for years 2005 through 2008 and analyzed the refuge compliance data in the attached report entitled "Complacency on the Farm." That report documents a significant decrease in farmer compliance during the second term of the Bush Administration that needs to be reversed under your tenure as EPA Administrator. From 2003 to 2005, farmer compliance with the IRM obligations remained consistently above 90%. Starting in 2006, however, compliance rates declined demonstrably so that by 2008 (the last year for reported data), approximately 25% of all *Bt* corn farmers were not in compliance with the IRM obligations. Instead of more farmers meeting their obligations over time (and with years of education by the registrants), the data shows compliance decreasing to unacceptable levels. The decreasing compliance rates and the increasing farmer adoption of *Bt* corn means that almost 15% of all

corn acres (both engineered and conventional varieties) now violate EPA's requirements, a six-fold increase in four years.

The CAP Report data in CSPI's report should be a wake-up call to EPA that the regulatory system is not working and that EPA's mandate to prevent adverse environmental impacts may be in jeopardy. EPA should immediately implement the recommendations in CSPI's report, which are designed to increase farmer compliance and penalize the registrants if high levels of noncompliance continue. In particular, EPA should not re-register the existing *Bt* corn varieties in the fall of 2010 until the registrants demonstrate higher levels of compliance. If EPA does re-register those *Bt* corn products, it should impose monetary penalties on the registrant and/or restrict seed sales by the registrant and its wholly owned subsidiaries if national or regional noncompliance remains high. EPA should require the registrants to provide farmers incentives to meet their obligations and impose severe penalties for farmers found to be noncompliant. In addition, to assess compliance, EPA should require the registrants to obtain annual certifications of compliance from growers and pay for independent third-party assessments of farmer compliance. Finally, EPA should use its rulemaking authority to promulgate a rule that would require labels on the *Bt* seed bags specifying the IRM obligations.

If EPA implements the recommendations in the CSPI report and makes compliance with the IRM refuge obligations a priority, *Bt* corn would continue to benefit farmers now and in the future. I would be happy to meet with you or your staff to discuss our report and its recommendations.

Sincerely,

Gregory Jaffe  
Director, Biotechnology Project