



# THE CENTER FOR FOOD SAFETY

660 PENNSYLVANIA AVE., SE , SUITE 302, WASHINGTON, DC 20003  
PHONE (202) 547-9359 FAX (202) 547-9429  
WWW.CENTERFORFOODSAFETY.ORG

## CITIZEN PETITION BEFORE THE UNITED STATES UNITED STATES DEPARTMENT OF AGRICULTURE ANIMAL PLANT HEALTH INSPECTION SERVICE

**CENTER FOR FOOD SAFETY,**  
660 Pennsylvania Ave., S.E.  
Suite 302  
Washington, DC 20003,

*et al.,  
Petitioners,*

***Filed With:***

**Docket No.**

**ANN VENEMAN,**  
in her official capacity as,  
Secretary of the United States  
Department of Agriculture,  
Room 200-A  
Jamie L. Whiten Bldg.  
1400 Independence Ave., SW  
Washington, DC 20250

**BOBBY R. ACORD,**  
in his official capacity as,  
Administrator, USDA, Animal Plant  
Health Inspection Service  
Room 312E  
Jamie L. Whiten Bldg.  
1400 Independence Ave., SW  
Washington, DC 20250

**PETITION SEEKING A CRIMINAL INVESTIGATION INTO MONSANTO CO.'S &  
AVENTIS CROPSCIENCE USA'S SALE OF CONTAMINATED GENETICALLY  
ENGINEERED CANOLA SEED**

Pursuant to the Right to Petition Government Clause contained in the First Amendment of the United States Constitution,<sup>1</sup> the Administrative Procedure Act,<sup>2</sup> the Plant Protection Act,<sup>3</sup> and the United States Department of Agriculture's (USDA) implementing regulations,<sup>4</sup> the undersigned submit this citizen petition for rulemaking and collateral relief requesting the Secretary immediately act to investigate the presence in commercially available seed of non-deregulated genetically engineered canola (Monsanto's Roundup Ready canola event GT200 and Aventis CropScience USA's glufosinate-tolerant canola event Topas 19/2) and take other actions to halt the deregulation of all pending Monsanto Co. and Aventis CropScience petitions for the deregulated status of any other genetically engineered crop. Specifically, petitioner requests the Secretary undertake the following actions:

I. Immediately launch a criminal investigation concerning Monsanto Co.'s ("Monsanto") actions from 1997 thru the present of knowingly moving in interstate commerce canola seed containing Roundup Ready canola event GT200 without the general or specific permit required under the Plant Protection Act to do so. In undertaking such investigation the Secretary should use all inspection and subpoena powers provided under the Plant Protection Act, 7 U.S.C. §§ 7731-7733, to investigate, *inter alia*:

- (1). The date at which Monsanto discovered contamination of commercial canola destined for the U.S. market with event GT200;
- (2). The extent and level of GT200 contamination in all varieties of canola seed;
- (3). The commercial names of all canola seed sold containing GT200;
- (4). The extent to which Monsanto notified licensees who sell Roundup Ready canola about the contamination problem with GT200;
- (5). The extent to which Monsanto notified purchasers of Roundup Ready canola seed about possible contamination with GT200;
- (6). The number of acres planted with canola seed contaminated by GT200;
- (7). All actions taken by Monsanto officials to remediate GT200 contamination; *and*

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<sup>1</sup> The right to petition for redress of grievances is among the most precious of the liberties safeguarded by the Bill of Rights. United Mine Workers of America, Dist. 12 v. Illinois State Bar Association, 389 U.S. 217, 222, 88 S. Ct. 353, 356, 19 L. Ed. 2d 426 (1967). It shares the "preferred place" accorded in our system of government to the First Amendment freedoms, and has a sanctity and a sanction not permitting dubious intrusions. Thomas v. Collins, 323 U.S. 516, 530, 65 S. Ct. 315, 322, 89 L. Ed. 430 (1945). "Any attempt to restrict those First Amendment liberties must be justified by clear public interest, threatened not doubtful or remotely, but by clear and present danger." *Id.* The Supreme Court has recognized that the right to petition is logically implicit in, and fundamental to, the very idea of a republican form of government. United States v. Cruikshank, 92 U.S. (2 Otto) 542, 552, 23 L. Ed. 588 (1875).

<sup>2</sup> 5 U.S.C. § 553(e).

<sup>3</sup> 7 U.S.C. § 7701, *et seq.*

<sup>4</sup> 7 C.F.R. § 1.28

(8). All actions taken by Monsanto to identify the manner in which its commercially sold canola varieties were contaminated with GT200.

II. Immediately launch a criminal investigation concerning Aventis CropScience USA's ("Aventis") actions from 1995 thru the present of knowingly moving in interstate commerce canola seed containing glufosinate-tolerant canola event Topas 19/2 for uses other than direct shipment to processing plants without the general or specific permit required under the Plant Protection Act to do so. In undertaking such investigation the Secretary should use all inspection and subpoena powers provided under the Plant Protection Act, 7 U.S.C. §§ 7731-7733, to investigate, *inter alia*

(1). The date at which Aventis discovered contamination of commercial canola destined for the U.S. seed market with event Topas 19/2;

(2). The extent and level of Topas 19/2 contamination in all varieties of canola seed;

(3). The commercial names of all canola seed sold containing Topas 19/2;

(4). The extent to which Aventis notified licensees who sell glufosinate-tolerant canola about the contamination problem with Topas 19/2;

(5). The extent to which Aventis notified purchasers of glufosinate-tolerant canola seed about possible contamination with Topas 19/2;

(6). The number of acres planted with canola seed contaminated by Topas 19/2;

(7). All actions taken by Aventis officials to remediate Topas 19/2 contamination in the U.S; *and*

(8). All actions taken by Aventis to identify the manner in which other glufosinate-tolerant commercially sold canola varieties were contaminated with Topas 19/2.

III. Pending the result of the requested criminal investigation, coordinate with the Attorney General to file criminal charges and civil penalties, as established by the Plant Protection Act, for those persons found to have knowingly allowed Monsanto's canola event GT200 and/or Aventis canola event Topas 19/2 to be move into interstate commerce without proper permit;

IV. Withhold any approval of Monsanto's "Request for Extension of a Determination of Non-regulated Status to Glyphosate Tolerant Canola Event GT200," and all other pending Monsanto petitions for deregulated status, pending completion of the requested criminal investigation;

V. Withhold any approval of Aventis's "Application for an Extension of the Determination of Nonregulated Status for Glufosinate-Tolerant Canola Transformation (97-205-01p): Topas 19/2 (01-206-02p)," and all other pending Aventis petitions for deregulated status, pending completion of the requested criminal investigation;

VI. Pursuant to the Secretary's authority provided at 7 U.S.C. §7714(b), immediately order Monsanto to take all remedial measures necessary to recall, destroy or otherwise remove all contaminated seeds sold as Roundup Ready canola event RT73 (or other canola variety) but containing non-deregulated

Roundup Ready canola event GT200 pending the completion of the requested criminal investigation;

VII. Pursuant to the Secretary's authority provided at 7 U.S.C. §7714(b), immediately order Aventis to take all remedial measures necessary to recall, destroy or otherwise remove all contaminated seeds sold as glufosinate-tolerant canola lines but containing non-deregulated glufosinate-tolerant canola event Topas 19/2 pending the completion of the requested criminal investigation; *and*

VIII. Pursuant to 7 U.S.C. §7715(e), immediately establish a compensation program, paid for by Monsanto and Aventis, for farmers and seed dealers who suffer an economic loss as result of the Secretary taking actions as per the requests herein and their unknowing purchase of canola seeds contaminated with Roundup Ready canola event GT200 and/or glufosinate-tolerant canola event Topas 19/2.

## PETITIONER

Petitioner the *Center for Food Safety* (CFS) is a non-profit, membership organization located at 660 Pennsylvania Ave., SE, Suite 302, Washington, DC 20003. Petitioner was established in 1997 to address the increasing concerns about the impacts of our food production system on human health, animal welfare, and the environment. The Center for Food Safety is a founding member of the Genetically Engineered Food Alert coalition.

## STATEMENT OF GROUNDS & ARGUMENT

### A. Monsanto Co.'s Canola Event GT200.

In 1997, the Canadian Food Inspection Agency ("CFIA") suspended the sale of a Monsanto genetically engineered Roundup Ready canola sold, *inter alia*, under license by Limagrain Canada Seeds, Inc., as Quest canola. It was revealed to the CFIA that the canola seed was contaminated with an unapproved variety of Roundup Ready canola known as event GT200. The revelation led to the suspension and subsequent recall of 60,000 bags of contaminated canola seed (enough to plant 600,000 acres) and forced the Canadian government to broker deals with farmers to plow under fields already planted with the contaminated seed.<sup>5</sup> According to Monsanto, the problem may have occurred because the company allowed the seeds to get mixed up and bred together.<sup>6</sup>

Five years have passed since the Canadian recall caused by the presence of unapproved GT200 canola in commercially available canola seed to be known. In the United States, GT200 canola has been considered a regulated article under USDA/APHIS regulations found at 7 C.F.R. Part 340.<sup>7</sup> At no point has GT200 canola obtained the deregulated status necessary under the Plant Pest Act to allow its commercial dissemination in the United States. Monsanto now seeks deregulation of GT 200 in the United States to remove itself from liability for its past sale of canola seed contaminated with GT200 canola in violation of Plant Protection Act.

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<sup>5</sup> Heather Scoffield, "Contaminated Farm Seed Sold in Genetic Mixup," Globe & Mail Newspaper, Jan. 4, 2000.

<sup>6</sup> *Id.*

<sup>7</sup> 67 Fed. Reg. 9248 (Feb. 28, 2002).

On November 9, 2001, Monsanto submitted a “Request for the Extension of a Determination of Nonregulated Status to Glyphosate Tolerant Canola Event GT200 (APHIS No. 01-324-01p).” In a letter accompanying this submission, Monsanto states that, “Although glyphosate-tolerant canola event GT200 is not intended to be commercialized independently as a Roundup Ready canola variety, the extension of nonregulated status to this event is being requested because GT200 has the potential to be present in low, adventitious levels in commercial canola varieties.”<sup>8</sup> The Monsanto petition provides neither detail as to the extent of GT200’s contamination of existing commercially available canola seed nor the manner in which such contamination has occurred.

On February 28, 2002, the USDA /APHIS announced in the Federal Register the availability of an environmental assessment for Monsanto’s request to extend the determination of nonregulated status for canola genetically engineered for glyphosate herbicide tolerance (i.e. canola event GT200).<sup>9</sup> The notice does not mention any reasons for Monsanto’s request for this extension.

As directed by the Federal Register notice, petitioner requested a copy of the USDA’s environmental assessment (EA). The EA states:

This extension request is to address the adventitious presence of this event in commercially available seeds commercially sold in the U.S. until a Federal policy on this issue is developed. (Adventitious presence is the presence of events that have not been fully reviewed or approved by a regulatory agency and occurs in seeds and commodities as a result of either cross-pollination or commingling of experimental seeds with commercial seed).<sup>10</sup> (emphasis added)

In addition to providing a previously unknown definition of “adventitious presence” that has no statutory or regulatory context, the USDA environmental assessment (EA) also makes no mention of the extent of GT200’s presence in the current canola seed market nor does it provide any analysis on how this non-commercialized, non-deregulated genetically engineered canola variety has come onto the market.

Monsanto’s request and the USDA’s EA consist of the first public acknowledgment that U.S. canola seed may be contaminated with the non-deregulated genetically engineered canola event GT200. Furthermore, the public acknowledgement of the Canadian canola seed contamination issue strongly indicates that Monsanto (and possibly USDA) knew and should have known that Roundup Ready canola seed sold in the United States from 1997 until the present contains canola event GT200 that has not gone through the deregulatory process. Export, import or movement of this seed without such conformance to the existing APHIS regulation is specifically prohibited by the Plant Protection Act §7711(a).

Accordingly, the failure of Monsanto to notify the USDA prior to its November 9, 2001, request about the illegal contamination of U.S. canola seed indicates a clear violation of law over a period of five years. Moreover, the USDA’s willingness to entertain Monsanto’s request for retroactive deregulation suggest

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8 Raymond Dobert, Ph.D., Monsanto Co. Oilseeds Lead – Regulatory Affairs, Letter to Dr. Michael J. Firko, Assistant Director, Permitting and Risk Assessment, USDA, APHIS, PPQ, dated November 9, 2001.

9 67 Fed. Reg. 9247 (Feb. 28, 2002).

10 USDA/APHIS, “Decision on Monsanto Company Request (01-342-01p) Seeking an Extension of Determination of Nonregulated Status for Glyphosate Tolerant Canola Event GT200,” Environmental Assessment, February 2002.

a regulatory failure on behalf of the USDA to provide adequate oversight concerning the introduction of genetically engineered crops into commercial settings. To the extent the USDA had knowledge of this issue, the failure of the agency to act to prevent contamination of the canola seed market saps the public confidence in an agency's ability to discharge its regulatory responsibilities and creates uncertainty and harm to all U.S. canola farmers, who may have been defrauded and/or induced to buy canola seeds that Monsanto and the USDA knew illegally contained canola event GT200.

#### B. Aventis CropScience USA's Canola Event Topas 19/2.

In 1995, Aventis (then known as AgrEvo USA) sought deregulatory status for the importation of glufosinate-tolerant canola event Topas 19/2 seed for processing into canola. On June 9, 1995, USDA/APHIS granted Aventis's request for deregulated status of Topas 19/2 solely for this purpose. In granting such deregulated status USDA stated:

We emphasize that our opinion regarding these canola lines is expressly limited to conditions that you have described, namely, shipment of seed to processing plants in the United States . . . However, if this plant material is shipped for other uses or purposes, it may be subject to regulation under 7 CFR Part 340.<sup>11</sup> (emphasis added)

On October 4, 2001, Aventis submitted an "Application for an Extension of the Determination of Nonregulated Status for Glufosinate-Tolerant Canola Transformation (97-205-01p): Topas 19/2 (01-206-02p)." In response, the USDA/APHIS announced in the Federal Register the availability of an environmental assessment for Aventis CropScience's application to extend deregulated status for Topas 19/2.<sup>12</sup> As with Monsanto's GT200, the EA states:

This extension request is to address the adventitious presence of this event in commercially available seeds commercially sold in the U.S. until a Federal policy on this issue is developed. (Adventitious presence is the presence of events that have not been fully reviewed or approved by a regulatory agency and occurs in seeds and commodities as a result of either cross-pollination or commingling of experimental seeds with commercial seed).<sup>13</sup> (emphasis added)

Thus, the deregulation decision EA concerning Topas 19/2 consists of the first public acknowledgement that U.S. canola seed may be contaminated by the non-deregulated genetically engineered event Topas 19/2. The prior deregulatory approval of Topas 19/2 for processing only was granted in 1995. This approval indicates that Aventis and USDA knew or should have known that canola seed sold in the United States after 1995 could contain canola event Topas 19/2 even though it had not been deregulated for that purpose. Movement of such seed without conformance to existing APHIS regulations is prohibited by the Plant Protection Act § 7711(a).

Accordingly, the failure of Aventis to notify the USDA prior to its 2001 deregulation application about the illegal contamination of U.S. canola seed and its inability to control the importation of Topas 19/2

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11 Letter from John H. Payne, USDA, APHIS, BBEP, to Sally Van Wert, Manager, Regulatory Affairs, AgroEvo USA Company, dated June 9, 1995.

12 67 Fed. Reg. 9431 (March 1, 2002).

13 USDA/APHIS, "Decision on Aventis CropScience USA LP Request (01-206-02p) Seeking an Extension of Determination of Nonregulated Status for Glufosinate Tolerant Canola Event Topas 19/2," Environmental Assessment, November 2001.

strictly to processing facilities in the U.S. indicates a clear violation of law for a period of up to seven years. Such action is especially egregious given Aventis's inability to control the dissemination of other genetically engineered, such as StarLink corn, to the limited markets found in their federal approvals. Moreover, USDA's willingness to entertain Aventis's request for retroactive deregulation suggests a regulatory failure on behalf of USDA to provide adequate oversight of the limits placed on Aventis of by the 1995 deregulation. This raises serious concerns about the USDA's ability to effectively oversee the introduction of genetically engineered crops into commercial settings. As with Monsanto's GT200, to the extent USDA had knowledge of this issue prior to the recent Federal Register notice, the agency has acted in an arbitrary and capricious manner and been complicit in limiting public scrutiny of this issue.

### **CERTIFICATION**

The undersigned certify that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies, and that it includes representative data known to the petitioner that are unfavorable to the petition.

### **CONCLUSION**

Wherefore the reasons contained herein, the petitioners respectfully request that the Secretary, USDA Inspector General and Attorney General undertake the actions sought herein.

As established at 7 CF.R. ' 1.28, petitioner requests that the agency provide an answer to this citizen's petition within the reasonable time period of 180 days. Failure to respond within a reasonable time will be construed as constructive denial of the requests contained here and may subject the agency to litigation for, *inter alia*, unreasonable delay.

Respectfully submitted,

Joseph Mendelson, III  
Legal Director

Center for Food Safety  
660 Pennsylvania Ave., SE  
Suite 302  
Washington, DC 20003

**Dated:**

**CC:**

Attorney General John Ashcroft  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530-0001

Roger C. Viadero  
USDA, Office of Inspector General  
Room 9-E Jamie Whitten Bldg.  
1400 Independence Avenue, SW  
Washington, DC 20250

David R. Shipman  
Acting Administrator  
USDA, Grain Inspection, Packers and Stockyards Administration  
1400 Independence Avenue, SW  
Washington, DC 20250