

Office of Hon Dr Nick Smith

MP for Nelson

Minister for the Environment

Minister for Climate Change Issues

Minister for ACC

-5 AUG 2010

ENV 4961

Dr Kerry Grundy
Inter-Council Working Party on GMO Risk Evaluation and Management Options
Whangarei District Council
Private Bag 9023
WHANGAREI 0148

Dear Dr Grundy



Thank you for your letter of 11 June 2010 regarding public opinion towards genetically modified organisms (GMOs) in the Northland and Auckland regions. I appreciate the copy of the Colmar Brunton survey results, which you attached.

The government's position is that GMOs are most appropriately controlled by the Hazardous Substances and New Organisms Act 1996 (HSNO Act). Decisions on whether to approve a GMO are best undertaken by the independent, quasi-judicial body, the Environmental Risk Management Authority (ERMA). However, this does not preclude a council from restricting or preventing the use of GMOs in their region, provided that this action meets the relevant requirements of the Resource Management Act 1991 (RMA).

With regard to your first question, the government does not intend to amend the HSNO Act in respect of recognising council policy. The HSNO Act was amended in 2003 to require ERMA to notify any council that it considers is likely to have an interest in a particular application. Further, councils are able to make submissions to ERMA on publicly notified applications.

To address your second and third questions, I note the Inter-Council Working Party's continuing concern regarding the liability regime under the HSNO Act. Common law liability rules will not always effectively encourage precaution or provide for compensation. However, the same applies to a range of other activities. This was noted by the Royal Commission on Genetic Modification in 2001.

The HSNO Act contains civil liability provisions and pecuniary penalty provisions for breaches of the Act. It is considered that imposing statutory liability for all harm (where that harm that does not constitute a breach of the Act) could deter socially beneficial activities and consequently stifle innovation and economic growth. The government does not intend to amend the HSNO Act in respect of the liability regime at this time.

With regard to your fourth and ninth questions, the government considers that it is not appropriate to enter into indemnity deeds as part of a council's operation. The government also considers it inappropriate to interfere with potential judicial reviews regarding whether a council appropriately exercised its duty of care under the RMA and any compensation issues arising out of that action.

Your fifth and sixth questions refer to the application of caution and the HSNO Methodology Order 1998. ERMA consulted on a revised Methodology Order in late 2008. Public submissions were received on many aspects including the precautionary approach and particular requirements around GMOs. Any changes to the Methodology are still under consideration. It should be noted though that, as the Methodology Order is secondary legislation, it cannot override the primary Act - including section seven (which requires the precautionary approach.) There is no intention at this time to amend section seven of the HSNO Act.

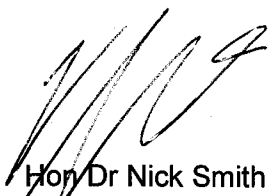
Your seventh question refers to regional exclusion zones for GMOs. The Royal Commission on Genetic Modification saw practical difficulties with implementing exclusion zones and recommended maintaining the management approaches under the HSNO Act. The government does not intend to amend the HSNO Act in this regard.

To address your eighth question, the government considers that the HSNO Act provides for comprehensive participation of Maori within the application and submission processes. Nga Kaihautu Tikanga Taiao, the Maori advisory committee to ERMA, specialises in engagement with Maori throughout the application process and on providing advice to ERMA regarding the Treaty of Waitangi.

I am confident that the HSNO Act regime provides appropriate control and management of genetic modification in New Zealand.

Once again thank you for sharing the survey results of your region's views on GMOs.

Yours sincerely



Hon Dr Nick Smith
Minister for the Environment