



GE Free New Zealand

In Food and Environment Inc.
PO Box 13402, Wellington,
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11 August 2015

Re: Proposed National Environmental Standards on Plantation Forestry (NES-PF)

Dear Minister Guy,

We **oppose** the Proposed Standard – **NES and other relevant legislation: 6.4- Genetically modified tree / root stock** (p. 43, Appendix 3, Afforestation, p. 64 & Replanting, p. 82)

Submission and Reasons –

The GM clauses on p. 43, 64 & 82, in the proposed NES – PF do not meet the objectives of environmental protection for communities, nor does the standard take into account the inherent dangers and liabilities associated with novel genetic technology contamination on soils, indigenous and exotic flora & fauna, pruning debris, waterways, trophic ecosystems and waterways. This orphan clause (NES-PF, 6.4) is open to confusion and is not within the scope of the NES-PF, which inappropriately treats the management dangers of GE trees as if they were the same as conventionally bred ones, which is not the case. We ask that you delete all conditions and references permitting genetically modified organisms to be the sole responsibility of the Environmental Protection Authority (EPA) under the Hazardous Substances and New Organisms Act (HSNO) and allow Councils to manage Regional and District land use through their mandated planning functions' under the Resource Management Act (RMA).

There are no protections for the environment or existing forestry owners in the proposed National Environmental Standards on Plantation forestry (NES-PF) once the EPA has given approval to release a genetically modified (GM) tree/stock. This endangers existing foresters and landowner's who follow certification standards under; Organic (BioGro, OFNZ, Asure Quality etc.), the Forest Stewardship Council (FSC), Standards New Zealand –Sustainable Forest Management (NZS AS 4708:2014), which has been adopted from the Australian Standard, and The Programme for the Endorsement of Forest Certification (PEFC), where GM trees are prohibited (FSC Criterion 6.8, NZAS4708: 2014 Criterion 3.8).

The most expert people who have the scope and mandate to maintain a regulated and responsible management of the activities for Plantation Forestry in their regions are Local Body Councils. They are required under the RMA to avoid, mitigate or manage activities that may

endanger their district or region's biosecurity, unique biodiversity, environment, existing primary producers, local economy, Maori ancestral lands, cultural wellbeing and the public health for the present and future generations. The NES-PF, clause 6.4, does not take into account Local Body expertise and removes the precautionary management functions around GMOs that Councils might need to maintain a vibrant economy. The NES-PF 6.4 clause potentially threatens the regions existing primary production activities and removes any ability to protect the areas of special cultural and ecosystem significance, especially as there is growing scientific uncertainty around GMO safety and their adverse effects are still unknown, in the long term. It is therefore imperative that Councils are allowed to designate precautionary objectives, rules and policies around the continuing management of any GM activity. The 6.4 clause and related sections on p.43, 64, 82, remove that right.

We ask that you specify as part of the decision making provisions the ability for Regional and District Councils to place objectives, policies and rules on the management of the environmental effects of land use activities in their regions, under the Resource Management Act (RMA).

We believe that the standardization of the proposed NES-PF weakens the ability of Councils to manage their special regional differences. With the proposed NES –PF standards, it is difficult to understand what the changes will add to the already existing Council standards. We were told that the NES-PF will be a guide for good practice for those involved with management of their plantations, not force unacceptable compliance cost on Councils and ratepayers for consents and monitoring.

As stated at the Wellington meeting – the standards regarding fish spawning would be difficult to establish as each region has different water temperatures that relate to spawning seasons. This would also apply to GM trees in regions across New Zealand; their growth is dependent on temperature, which also influences the biodiversity of bird and insect life that all support the trophic ecosystem. It appears that the NES-PF is socializing the cost and removing all liability for damage. There can be no set rule and it must be left to Local Bodies to decide how their regions / district land use activities are managed.

We believe that the insertion of the clauses 6.4, relating to the EPA and HSNO are out of place and do not belong in the NES-PF as they have nothing to do with "good practice" or give greater certainty about environmental outcomes for all stakeholders.

The EPA, under HSNO, does not have the mandate or expertise to place any land use conditions on GMO activity in Council district or regions once it has undergone trialing and is fully released (HSNO 2A (2)(b)). The ongoing long term monitoring and inspection of GM contamination through aerosols, soil ecosystems, water degradation, pollen and wilding spread or new disease

previously unexpected, would no longer be the responsibility of the EPA. This is the jurisdiction of Councils, so they need to be able to rule on the land use of GMOs.

HSNO and RMA have different purposes and different jurisdictions. HSNO's purpose and jurisdiction is to assess new organisms, including the trials by setting containment conditions on outdoor developments, field trials, conditional release of GMOs, before full release can be granted or declined for their introduction into NZ. Once released they are no longer considered new organisms and are no longer regulated under HSNO (HSNO 2A (2)(b)). HSNO is in effect a licensing regime for the introduction and testing of new organisms. That is where its jurisdiction ends.

The RMA, on the other hand, is a comprehensive statute that regulates the use of all natural and physical resources (unless expressly exempt) in an integrated manner so as to achieve the sustainable management of those resources. Such integrated management must include GMOs. The NES-PF sets up a situation where GMOs are excluded from any form of environmental management both by the EPA, under HSNO, and Councils, under the RMA.

Both the Environment Court and the Royal Commission on Genetic Modification (Chapter 13, Recommendation 13.1, H1, p.339) have stated the clear responsibilities and boundaries between the EPA and Council jurisdiction and this calls into question whether it is ultra vires to override the Councils' responsibilities under the RMA in such a way that will endanger the environment, especially as there is no "duplication" between the HSNO or RMA once a GMO is released.

We were given the understanding, at the Wellington meeting, that the NES-PF 6.4 clause on GMO's and EPA/HSNO provision was a late addition after consultation with Scion. However, this could be construed as mischievous as Scion and Federated Farmers took a challenge to the Environment Court on the Councils right to follow a GM precautionary approach by placing policies in their plans after the appropriate community consultation. The Environment Court, Judges Thomson and Newhook, decision upheld the Councils ability, under the RMA, to place policies, rules and objectives, on the management of GMO land use activities as part of their management and planning functions in their regional and district plans [1], [2].

References:

[1] <http://www.boprc.govt.nz/media/321876/environment-court-decision-18-dec-2013-env-2012-339-000041-part-one-section-17.pdf>

[2] <http://www.ge-free.co.nz/assets/pdf/20150512145527872.pdf>

Changes we would like you to make -

1. Remove all GM clauses in the proposed NES – PF and references permitting genetically modified organisms to be the sole responsibility of the Environmental Protection Authority (EPA) under the Hazardous Substances and New Organisms Act (HSNO) and
2. Retain and provide for Local Bodies to place more GM stringent land use rules, objectives and policies in their plans for the management of the natural and physical resources through their mandated planning functions' under the Resource Management Act (RMA).
3. Protect the Local Bodies mandate and duty of care, under the RMA, to the existing foresters, primary producers and businesses in their region and districts so they can maintain their responsibilities with national and global certification bodies.
4. Ensure that the Local Bodies have the ability, under the RMA, to create a much needed additional tier of local protection against the risks of outdoor release and use of GMOs.

The decision we would like the Minister to make

1. All wording in the NES-PF on pages **43, 64 & 82**, referring to genetically modified trees and rootstock must be deleted from the NES-PF.
2. To place an added condition in the proposed NES-PF stating that Local Bodies can set more stringent rules, objectives and policies on GMO's as part of their land use planning function, under the RMA, when addressing the economic, social and cultural wellbeing of their communities.

We wish to be heard. Please keep us informed.

Sincerely,
Jon Muller
Secretary GE Free NZ

Cc: Claire Bleakley
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