

20-D-01419

s 9(2)(a)

Sustainability Council

s 9(2)(a) @sustainabilitynz.org

Dear s 9(2)(a)

Thank you for your email of 30 July 2020 requesting the following under the Official Information Act 1982 (the Act):

All documents held by MFE concerning the detection of GMOs and other genetically altered material (via laboratory testing of samples), including emails and any attachments, that are dated 1 September 2017 or later.

In January 2019, the Ministry for the Environment was informed, via the Environmental Protection Authority, that the Ministry for Primary Industries had been notified of the discovery of GM soybeans in the Hawke's Bay in December 2018. As the Ministry for Primary Industries is the agency primarily responsible for the enforcement of the Hazardous Substances and New Organisms Act 1996, the Ministry for the Environment was informed as a matter of courtesy.

The documents held by the Ministry for the Environment concerning this detection of GM soybeans have been identified as in scope of your request, as listed in the attached document schedule. Some information within these documents has been withheld under the following sections of the Act:

- 9(2)(a) to protect the privacy of natural persons
- 9(2)(b)(ii) to protect information where the making available of the information would be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information.

While it is the general policy of the Ministry for the Environment that all staff names be released for Official Information Act requests, the Ministry for Primary Industries has requested that the details of several persons be redacted. This is due to staff no longer being employed at the Ministry for Primary Industries, making consultation unachievable within the requested timeframe, and several staff being incidentally copied into the correspondence despite being uninvolved with the matter.

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the withholding of this information is not outweighed by other considerations that render it desirable to make the information available in the public interest.

You have the right to seek an investigation and review by the Office of the Ombudsman of my decision to withhold information relating to this request, in accordance with section 28(3) of the Act. The relevant details can be found on their website at: www.ombudsman.parliament.nz.

Please note that due to the public interest in our work the Ministry for the Environment publishes responses to requests for official information on our [OIA responses page](#) shortly after the response has been sent. If you have any queries about this, please feel free to contact our Executive Relations team: ministerials@mfe.govt.nz.

To ensure a prompt response, we would also recommend that future enquiries regarding the briefing in question be directed to the Ministry for Primary Industries.

Yours sincerely



Glenn Wigley
Director, Waste and Resource Efficiency

Released under the provision of
the Official Information Act 1982

Document schedule

Document no.	Document date	Content	Decisions	OIA sections applied
1	17 January 2019	New Draft 20190109 Memo to CTO GM soy in Hastings	Released in part	S 9(2)(b)(ii) – To protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.
2	21 February 2019	Fwd Sensitive issue – GM soy bean discovered	Released in part	<p>S 9(2)(a) – To protect the privacy of natural persons, including that of deceased natural persons.</p> <p>S 9(2)(b)(ii) – To protect information where the making available of the information would be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information.</p>

Released under the provisions of the Official Information Act 1982

From: Glenn Wigley
Sent: Wednesday, 23 January 2019 8:58 am
To: Amanda Moran; Vicky Robertson
Cc: Brian Hallinan
Subject: Fwd: Sensitive issue - GM soy bean discovered
Attachments: New Draft 20190109 Memo to CTO GM soy in Hastings s 9(2)(b)(ii)

Morena Amanda and Vicky

Last night we were informed via EPA, that MPI have discovered some GM soy bean in Hawkes Bay. Detail is attached.

MPI is responsible for enforcement of new organisms part of HSNO. They have briefed Minister OConnor. The memo indicates that there is no risk of further contamination. There will be questions though why the lab testing prior to import indicated negative to GM, but subsequent testing indicated positive.

I have suggested to Brian that the simplest way of informing Minister Parker and Sage is to ask MPI to connect with their office, and for the memo to be forwarded to Minister Parker and Sage for their info.

Brian will also contact Laute in case any media results - though MPI would be spokesperson.

Any questions let me know..

Glenn

Sent from my Samsung Galaxy smartphone

----- Original message -----

From: Brian Hallinan <Brian.Hallinan@mfe.govt.nz>
Date: 22/01/19 17:05 (GMT+12:00)
To: Glenn Wigley <glenn.wigley@mfe.govt.nz>
Subject: Sensitive issue

See attached – are you free to chat about it tonight or tomorrow morning?

From: Stephen Cobb <Stephen.Cobb@epa.govt.nz>
Sent: Tuesday, 22 January 2019 5:00 PM
To: Brian Hallinan <Brian.Hallinan@mfe.govt.nz>; Cherie Engelbrecht (EPA) <cherie.engelbrecht@epa.govt.nz>
Subject: FW: Notification

Brian, Cherie,

Min O'Connor has been told about the attached by MPI so it would be prudent for us to make sure Min Parker and Sage are informed. Doubt this is suitable for part of our respective weekly updates, can I leave it to you two to agree the best way forward?

Thanks

Stephen

From: s 9(2)(a) [redacted] @mpi.govt.nz]
Sent: Tuesday, 22 January 2019 3:03 PM
To: Tim Strabala <Tim.Strabala@epa.govt.nz>; Stephen Cobb <Stephen.Cobb@epa.govt.nz>
Cc: s 9(2)(a) [redacted] @mpi.govt.nz>; s 9(2)(a) [redacted] @mpi.govt.nz>; s 9(2)(a) [redacted] @mpi.govt.nz>; s 9(2)(a) [redacted] @mpi.govt.nz>; s 9(2)(a) [redacted] @mpi.govt.nz>
Subject: Notification

Hi Tim and Stephen,

As discussed over the phone please find attached a memo containing key messages and background information related to a recent investigation by MPI of soybean in Hastings. Please, note that there are sensitive information including name of the importer and the offshore laboratory. This information should not be release without prior discussion with MPI.

Please, let me know if you require further information.

Regards,

s 9(2)(a) [redacted] | **Acting Manager Plant Germplasm Imports team**
Plant Imports Group | Plant & Pathways Directorate | Regulation & Assurance Branch
Ministry for Primary Industries - Manatū Ahu Matua | TSB Bank Tower - Level 8 | 147 Lambton Quay | Wellington | New Zealand
s 9(2)(a) [redacted] | **Web:**
<http://www.mpi.govt.nz>

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The Ministry for Primary Industries accepts no responsibility for changes made to this email or to any attachments after transmission from the office.

Memo

Issue: GM soy in Hastings ^{s 9(2)(b)(ii)}

Key messages

1. A portion of soybean plants growing in Hastings suspected to be contaminated with a genetically modified (GM) event was reported to MPI on 28 December 2018.
2. This does not constitute a food issue because no product entered the food chain.
3. Unused seeds and plant material from live and dead plants were re-tested at the same MPI-approved laboratory ^{s 9(2)(b)(ii)} and the presence of a GM event (glyphosate herbicide tolerance event) was confirmed on 16 January 2019.
4. The risk of GM spread has been managed by plant material being deep buried on 3 January 2019, and the unused seeds being held in containment.
5. Current import requirements can detect the presence of GM seed contamination at an infestation level of 0.1% (1 seed in 1,000). These pre-export tests are undertaken by MPI's approved laboratories overseas.
6. The laboratory ^{s 9(2)(b)(ii)}, where the seeds were tested pre-export, is due to be audited this year by MPI.
7. Tracing suggest that no other consignment was exported from the same supplier in 2018.

Background

Case in Hastings

- (1) A ^{s 9(2)(b)(ii)} Field Manager informed MPI through the 0800 number on 28 December 2018 that his soybean (Glycine max) crop was potentially contaminated with GM soybeans. He had planted a 10 hectare block of soybean (approx. over three million seeds ~ 1,200kg) at his Hastings property and after spraying off with Round-Up (glyphosate-based herbicide) a small percentage survived (approx. 1000 – 2000 plants).
- (2) There was no discernible pattern to the distribution of the plants that survived. In some cases perfectly healthy plants were found surrounded by dead ones. The application of glyphosate was undertaken because the crop had not been successful and the farmer would have liked to replant the field with another crop.

Incursion and Investigation actions

Sampling

- (3) Samples of unused seeds, dead and surviving plants were sent to MPI's Plant Health & Environment Laboratory (PHEL) to enable seeds and extracted DNA to be forwarded to one of MPI's approved laboratories for testing for glyphosate herbicide tolerance.

Tracing

- (4) The importer, ^{s 9(2)(b)(ii)}, imported 1 lot (2,041 kg) of *Glycine max* (soybean) as seeds for sowing in 2018 from ^{s 9(2)(b)(ii)}, although the seeds were grown in ^{s 9(2)(b)(ii)}. A GM certificate compliant with current requirements was presented by the importer together with all the other required documents.

- (5) As per current requirements determined by the *MPI Protocol for Testing for the Presence of Genetically Modified Plant Material*, which is incorporated by reference into the *IHS 155.02.05: Seeds for sowing*, all lots of soybean seeds for sowing are required to be tested for four different GM elements, including glyphosate herbicide tolerance. The required assays (or tests) are outlined in the table below:

Assay	Purpose of Assay	Pre-Export Result	Post-Border Re-test
CaMV 35S promoter	A common element extensively used on genetic modified constructs. It is used for detection of important GMOs such as glyphosate herbicide tolerant soybean and other relevant herbicide tolerant events (i.e. glufosinate herbicide tolerant);	Negative	Positive
FMV 34S promoter or EPSPS or equivalent assay (MON89788 event specific)	Used for the detection of glyphosate herbicide tolerance	Negative	Positive
DP-305423-1 event specific or equivalent assay	A specific event used to detect sulfonylurea herbicide tolerance	Negative	Negative
MON 87701	A specific event used to detect Lepidopteran insect resistance	Negative	Negative

A further Optional Assay was provided as per the table below:

Assay	Purpose of Assay	Pre-Export Result	Post-Border Re-test
SAMS/ALS Modification	Used for the detection of glyphosate herbicide tolerance and sulfonylurea herbicide tolerance.	Negative	Negative

These seeds were tested pre export by one of MPI's approved lab and the results were negative for all required tests. These seeds also arrived with a non- GM Organism (GMO) declaration from the exporter.

Testing

- (6) On 8 January 2019, plant DNA and seeds were sent to the same approved laboratory ^{s 9(2)(b)(ii)} to undergo tests for glyphosate tolerant soybean. This also includes the tests required by the *IHS 155.02.05: Seeds for sowing*. Test results have confirmed the presence of glyphosate tolerant soybean for two GM elements (as outlined in the table above).

Containment

- (7) To contain the biosecurity issue, the remaining plants that survived the herbicide spraying were dug up and deep-buried on the farm site by the Hastings grower, as instructed by the Incursion Investigator on 3 January 2019. Evidence of the destruction was supplied by the grower.
- (8) The 2 tonne of soybean seed imported by ^{s 9(2)(b)(ii)} has been fully accounted for.
- a) The ~800kg of remaining soybean seed has been voluntarily contained by ^{s 9(2)(b)(ii)} and is held in secure storage in ^{s 9(2)(b)(ii)}. The unused seeds pose no risk to other crops on the farm or the

surrounding area. A decision is still to be made on what to do with the unplanted seeds. The importer will be given the options of re-shipment or destruction.

- b) ~1200 kg of seed was planted out and all surviving plants after the glyphosate treatment were deep buried.

Imports Requirements

- (9) MPI is the enforcement agency for the new organisms' provisions of the Hazardous Substances and New Organisms (HSNO) Act 1996. New organisms, including GMOs, need to be approved by the Environmental Protection Authority before they can be legally imported or grown in New Zealand. The EPA has not approved the importation or growing any GM soybean crops in New Zealand.
- (10) Seeds and plants imported for planting into New Zealand must meet the phytosanitary requirements detailed in the *MPI Import Health Standard (IHS): 155.02.05: Seeds for Sowing* - <http://www.mpi.govt.nz/documentvault/1151> and *155.02.06: Importation of Nursery Stock* - <https://www.mpi.govt.nz/document-vault/1152>
- (11) MPI enforces the HSNO Act at the border, requiring seed lots imported for sowing to be tested before they are exported from the country of export, for the presence of unapproved GM seeds
- (12) The MPI Protocol for Testing for the Presence of Genetically Modified Plant Material applies to New Zealand importers of seed for sowing of the following crops: maize, sweetcorn, soybean, oilseed rape, lucerne/alfalfa, squash, cotton, petunia and flaxseed/linseed. It also applies to importers of specific species listed in the nursery stock standard.
- (13) Seed and nursery stock importers must take appropriate precautions to ensure consignments of seed for sowing and nursery stock do not contain unapproved GM plant material. Such precautions might include purchasing seed or plants which have been produced under a quality assurance system, such as field isolation and other production management practices, and testing to exclude GM presence through the production chain.
- (14) For seed, the MPI Protocol ensures a 95% level of confidence that the inadvertent presence of 1 GM seed in 1,000 seeds (0.1%) will be detected in the final sample tested. An accurate test method minimises the likelihood of unapproved GM plants being released into the environment. Seed testing helps manage the risk of unapproved GM seeds but can only guarantee absence of GM seeds up to a certain confidence level. Very low levels of GM seeds can be present in a seed lot as a result of accidental cross-pollination or admixture during field production, transport and cleaning processes.

Volume of imports

- (15) Initial tracing shows that since 2016, only seven consignments of soybeans are recorded to have been imported into New Zealand for the purpose of sowing.
- (16) Only two imports, including the contaminated consignment were imported in 2018. In the case of the second one, the volume is only of 20kg and from a different supplier. There is no reason to suspect that this consignment is contaminated but MPI will follow up to ensure the consignment's fate is known.

s 9(2)(b)(ii)

- (17) MPI currently have four approved laboratories for the DNA extraction and testing for unapproved genetically modified events. The seeds were tested pre-export and post-border by the same laboratory, s 9(2)(b)(ii).
- (18) Audits are seen as a proactive tool to identify and manage risk, assist in continual improvement, and encourage communication between the accredited laboratories and MPI.

- (19) The last audit carried out at s 9(2)(b)(ii) was on 5 and 6 November 2014. The purpose of the audit was to ensure that the procedures in the quality manual (related to quality systems), and the laboratory's method manual (related to testing activities) were being followed; and to determine the effectiveness of the laboratory's procedures in controlling the quality of the data reported.
- (20) The audit was conducted at the s 9(2)(b)(ii) laboratory new premises located at s 9(2)(b)(ii). The audit was focused on the processes related to the GMO analysis undertaken for MPI regulatory purposes. The audit showed that:
- s 9(2)(b)(ii) did continue to meet the testing requirements of the MPI Standard.
 - Although a number of small non-conformances were observed, s 9(2)(b)(ii) did work to a consistently good standard of service and quality, and it has performed well in inter-laboratory comparisons and proficiency tests.

Analysis

- (21) Pre-border testing of the affected imported seed yielded negative results for five assays (in the tables above). Re-testing of suspected GMO contaminated seeds and plants showed positive results for two of five GMO assays.
- (22) Overseas, GM grain is authorised for commercial use and cultivated, harvested, transported and stored. Therefore, trace amounts of that grain may become mixed with other grain varieties, despite the use of best management practices by industry. As a result, a GM grain that has not yet been approved by the importing country may unintentionally be present, at low levels, in grain shipments exported to that country.
- (23) Based on the ball-park numbers provided by the importer, the contamination level of GM found is below the infestation level applied by MPI import requirements (0.1%). Currently, we believe that contamination level is below 0.1%.
- (24) MPI will, however, continue to refine the estimation of the contamination rate.

Communication

- (25) MPI is taking a reactive communications approach to this issue. A draft reactive statement has been prepared. MPI will consider releasing this if there is public interest in the issue or the media show interest.
- (26) A spokesperson has been assigned in case we need to put somebody forward for media interviews.

Next Steps

- (27) MPI will:
- a) Contact s 9(2)(b)(ii) foods of our findings and advise on their management options.
 - b) Contact s 9(2)(b)(ii) regarding this matter to clarify their results as part of their ISO 17025 accreditation.
Note: MPI will audit the s 9(2)(b)(ii) facility this year as per auditing schedule.
 - c) Continue refining the estimation of the contamination rate.
 - d) Follow up to ensure the fate of the other 2018 consignment is known.