

GMOs in South Africa Series

Who is in charge of the GMO Act?

The National Department of Agriculture, Forestry and Fisheries (DAFF) is in charge of administering the GMO Act. A Registrar is appointed in terms of the Act to receive and process GMO permit applications. These permit applications can be for:

- experiments in the laboratory or greenhouse (contained use),
- experimenting in open field trials,
- import and export of bulk shipments of GM grains (commodities) or
- Allowing seeds on the market for South African farmers to plant (called general or environmental release).

The Registrar, GMO Act, is the person to contact to find out what applications have been made, which applications have been rejected and which have been allowed. If you would like to comment or object to any GMO application, the Registrar is the person to send your written submission to. It is her job to ensure that your comments get to the Executive Council (EC), which is the body that reviews and decides if an application should be approved.

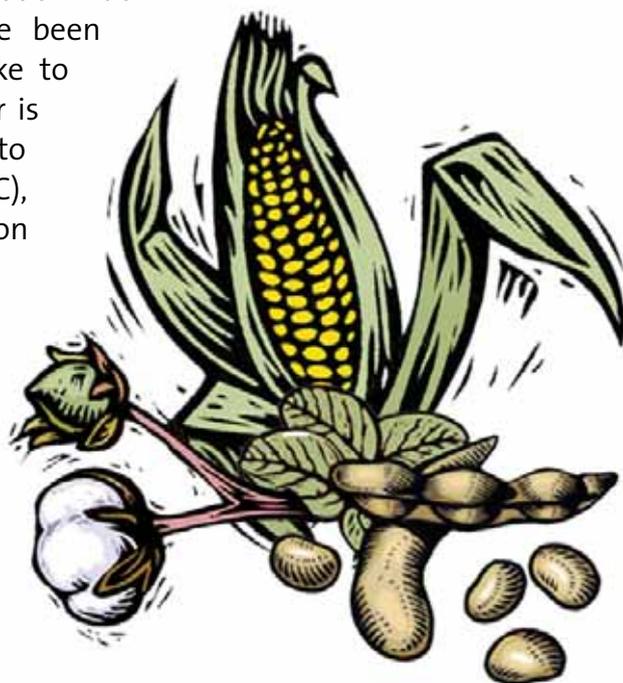
The Executive Council is the body that makes a final decision on whether or not to grant a permit for a new GMO. This is a council made up of members from each of the Departments:

- Environment and Water Affairs
- Health
- Trade and Industry
- Agriculture, Forestry and Fisheries
- Science and Technology
- Health
- Labour
- Arts and culture

The EC is assisted by the Advisory Council (AC) – a group of experts that are appointed by the Minister of Agriculture, Forestry and Fisheries. AC members should be adequately qualified to review the scientific data contained in the risk assessments submitted by any company or research institution that applies for a permit. The members of the AC give their scientific opinion to the EC.

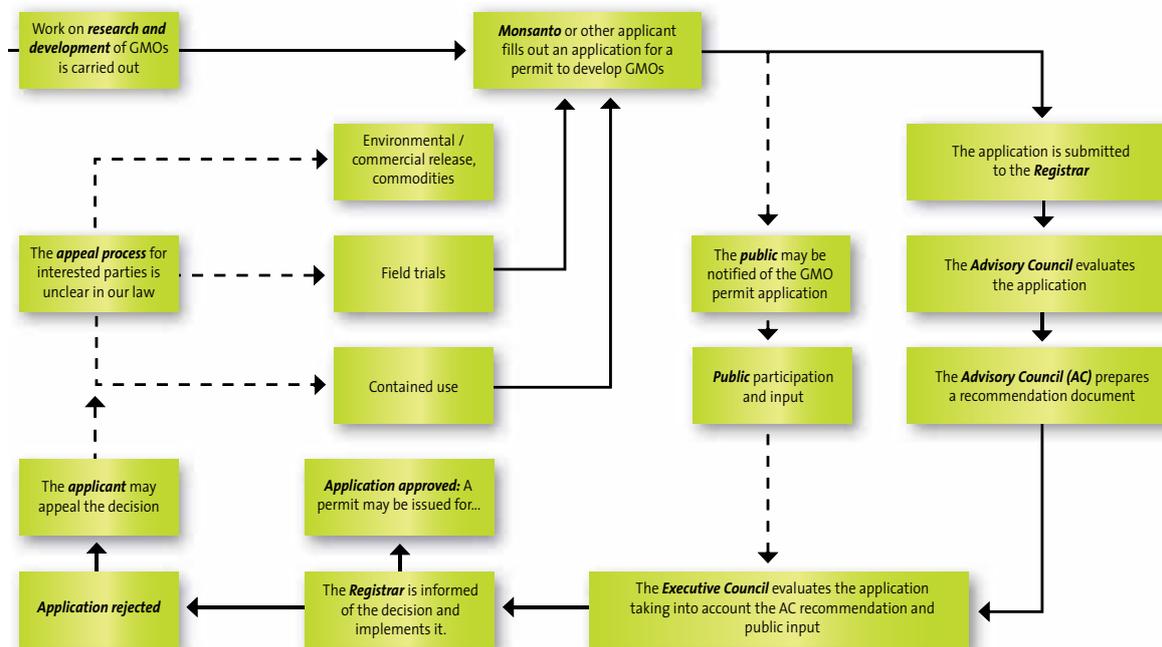
Civil society is concerned about the people serving on this influential Council as they usually have an industry background or are in favour of GMOs. The public is not given their names and there are no civil society representatives on the AC.

The EC considers the input of the public together with the AC's recommendation when they make a decision regarding a GMO application.



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The regulatory process for a GMO



Source: ACB: Understanding the Impacts of Genetically Modified Crops in Africa. An Activist's Handbook.

HOW CAN YOU GET INVOLVED: IT IS VERY DIFFICULT... HERE IS WHY

Problems with public participation in GMO decision-making

The ACB has played a watchdog role, constantly monitoring GMO approvals for the last decade. This has involved a lot of engagement with the various departments involved in regulating GMOs, as well as interrogating new permits for GMOs. Our major frustrations have been around public participation and access to information. The law makes it quite difficult for members of the public to be involved in an informed manner. It also puts a very strong emphasis on scientific expertise and gives little consideration to ethical, socio-economic and other concerns such as impacts on culture or agricultural practice.

Public participation is difficult because the law only requires companies to advertise in 3 newspapers when they are applying for a new permit. Where there are no newspapers in circulation they must use "other means of effective communication", such as radio. If the public misses that notice, which is very small and has minimal information, they miss the opportunity to become involved in the process. Even if you happen to see such a notice you may not know what it means. The law only gives 30 days for the public to respond to the application after the notice is published. This is very short because we have to access all the necessary information, consult experts and other civil society groups and write up the submission. The ACB has made over 35 submissions.

The South African Constitution ensures the right to administrative action that is lawful, reasonable and procedurally fair, as well as the right to access to information. We believe that the GMO Act contravenes these rights and needs to be amended to be in line with the Constitution.

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PUBLIC NOTICE

Application for commodity clearance of genetically modified organisms

Dow AgroSciences Southern Africa (Pty) Ltd, Private Bag X160, Bryanston 2012, hereby announces that an application was made requesting commodity clearance of soybean DAS-68416-4, before the Registrar (Genetically Modified Organisms Act)

Soybean DAS-68416-4, covered by this application, was produced through recombinant technology. Soybean DAS-68416-4 is sold as different varieties in producing countries and contains genes that confer herbicide tolerance to soybean plants.

The scope of application is for all uses of seed of soybean DAS-68416-4, i.e. in food, feed and for processing. Soybean DAS-68416-4 may be present in soybean consignments that may be imported into South Africa by international traders. Importation is subject to a permit issued in terms of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997). This is not a request for release into the environment of South Africa.

For more information on the application or to submit comments/objections, contact the Registrar at:

The Registrar Genetically Modified Organisms Act
Private Bag X973
Pretoria 0001
Fax 012 319 6329

All comments/objections must be received by the Registrar within 30 days from publication of this notice.

CITY PRESS, July 01, 2012

This is an example of a public notice informing of an application by Dow AgroSciences. They intend requesting a permit to allow a new GM soybean variety to be imported for use as food, feed and processing. The permit is not for cultivating this variety in South Africa, but import for commodity use. As you can see, there is very little information contained in the notice. For example, this soybean has been genetically engineered to withstand applications of two very controversial herbicides - 2,4D and glufosinate ammonium. (2,4D is one of the ingredients used to make the chemical called Agent Orange, used by the USA military in the Viet Nam War). This notice does not include that crucial information. Anyone who wants to see in-depth information on this application must apply for it through the Promotion of Access to Information Act (PAIA).

What we have been asking for

The ACB has asked the authorities to create a database of interested parties and to automatically notify them when a new application comes up. We have also asked that this information be posted on a public website. This would at least open up the process more, get information to people in good time and give the public an opportunity to participate more effectively. We have requested that all applications for GMO permits be published on a public website for easy access, rather than having to access this information via a difficult process. However, this has not yet happened.

As you will see in our factsheet, **International Law governing GMOs**, we have challenged the South African government because they are not publishing information to an international website called the Biosafety Clearing House (BCH). The Cartagena Protocol on Biosafety says that the Government must publish decisions, scientific information and various other types of information to this website, in the interests of transparency and the building of scientific knowledge on GMOs.

If you want to get involved, this is what you will have to do

In order to comment in an informed way, the public needs access to information about the proposed GMO. At the moment, we are forced to go through the Promotion of Public Access to Information Act (PAIA) procedure to get this information. This involves filling in and faxing a request form, as well as paying to have the information photocopied and posted.

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This form can be obtained from:

Email: MarionVR@daff.gov.za Tel.: (+27) (012)319-6907 Fax: (+27) (012)319-6740. When you fill in the form you must request both the application and the risk assessment.

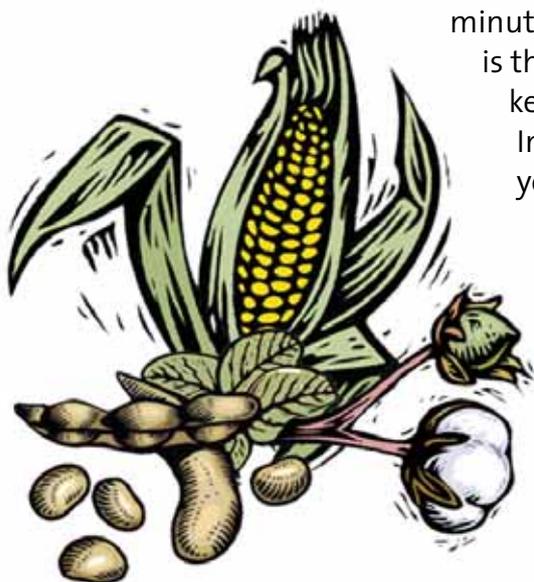
What you will receive is a Confidential Business Information (CBI) version. The company or institution that is applying for a permit decides what information should be kept confidential. This means that they can hide information that they don't want you to see. This is wrong as government should decide what information is in the public's interest and what is genuinely CBI. It is very difficult to do an accurate analysis of an application when much of the information has been deleted.

Once comments are submitted, these are shared with the Executive Council. According to the EC, they take such comments into account, but we have no way of knowing if this is indeed true. We have opposed all the GMO applications we have commented on. Almost all of the applications we have objected to, were approved. However, several were also rejected, including the commercial release of a genetically modified potato!

Since South Africa amended its laws to comply with the CPB, it has granted thousands of GMO permits. The GM maize and soya plantings have boomed since then. It certainly does not seem as if SA is complying with the precautionary principle of the CPB!

What happens once a decision is made?

Once a decision has been made on a GMO, the authorities do not have to tell us about their decision, even if we have put in an objection and shown that we are an interested and affected party. This decision is usually published 3 months after it is made and placed on the DAFF website. To find out what has happened you will need to keep a look out for and read the minutes of the EC meeting when these are posted on the website. Here is the website address, but it is not easy to find where the minutes are kept: www.nda.agric.za You will need to click on Divisions/Biosafety/Information/EC minutes. Without these instructions it is unlikely you will find it!



This means that we can't appeal the decision if we are unhappy because we will have missed the deadline for appeals. The deadline for appeals is 30 days from the day we received the decision in writing. Since the EC does not directly inform the public of decisions even when we have made submissions, the time within which to lodge appeals is taken from the time when a final decision is made by the Minister of Agriculture. The law also does not make it clear exactly how the appeal process works and how we can be involved in that process.

Where there is an appeal underway, for instance in the GM potato case the applicant is appealing the decision, the Minister has to appoint an appeal board. Even though the ACB have been involved in the GM potato case for more than 6 years, we were not allowed to know the names of the appeal board members. We also had to employ a lawyer to assist us in getting access to the appeal documents. We have been advised by government officials that

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the appeal board has already made a decision and that a final decision by the Minister has still to be made.

Who monitors GMOs once they are released?

There is very little monitoring of GMOs once they are released. There has never been any Environmental Impact Assessments (EIAs) carried out before a release has been granted. The South African National Biodiversity Institute (SANBI) is responsible for keeping an eye on the impacts on the wider environment of GMOs growing in farmers fields. To date SANBI has only carried out one monitoring study on one GM maize variety – Monsanto's Mon810. (For more information on the outcomes of this study, see the factsheet ***Genetically Modified Maize in South Africa***.) The SANBI study will provide a template for them to develop a framework for further work in this field. Clearly our government's capacity to monitor and research the effects of GMOs is not able to keep up with the pace at which permits for growing GMOs are being granted. The study found some disturbing results about insect resistance and gene transfer. This is discussed in the factsheet titled "***What you should know about GM crops.***"

What will happen if something goes wrong with GMOs?

In April 2009 three of Monsanto's GM maize varieties did not pollinate, leaving up to 200 000 hectares of mielie fields barren across several provinces¹. The African Centre for Biosafety was shocked that the Department of Agriculture made no independent inquiries into the reason for these failures. The ACB was also shocked when the authorities said that they did not have access to Monsanto's affected plant material². They simply accepted Monsanto's explanation and allowed Monsanto to compensate farmers for their losses. A condition of this compensation was that farmers do not speak to the media or anyone else about the problem. This shows us how free the GM industry is to regulate itself. We ask, what would have happened if these failures had occurred in the fields of small-scale farmers who received subsidised GM seed as part of development packages? Would they have been compensated?

South Africa's law on how 'damages' are dealt with and who will pay is very weak. The damages (harm) people may suffer could be socio-economic, health or environmental. There are no clear guidelines on who is finally responsible for damages and how they can be brought before the court in a civil case. Under the GMO Act the "end user", which could be a farmer or consumer, can be held responsible for damages. This is problematic because the developer and legal owner of the technology might not be found at fault and made to pay.

References

¹ ACB. 2009. **Monsanto's crop failures in South Africa still a mystery**. http://www.acbio.org.za/images/stories/dmddocuments/ACB_Open%20letter_Monsanto_crop_failure_November%202009.pdf (accessed 20 July 2012)

² Ibid