

The U.S. Supreme Court handed down its decision today in [\*Monsanto v. Geertson Seed Farms\*](#), a case involving Monsanto's efforts to introduce Roundup Ready Alfalfa, a genetically modified crop engineered to tolerate the herbicide Roundup. The Court, on a 7-1 vote (Stevens dissenting, Bryer recused), held in favor of Monsanto but did so in a way that leaves standing a lower court decision preventing Monsanto from introducing the alfalfa crop until the government complies with the National Environmental Policy Act (NEPA). The Supreme Court decision has much less to do with environmental law and much more to do with the remedies the plaintiffs sought and whether an injunction issued by the district court was too broad. Here's the background.

In introducing a new type of plant, Monsanto must comply with the Plant Protection Act. The PPA gives authority to the Department of Agriculture to issue regulations "to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the U.S." The Dept of Ag, through the Animal and Plant Health Inspection Service (APHIS), has used its authority to regulate genetically engineered plants by presuming that such plants are plant pests under the PPA. One provision of that regulation allows a person or company seeking to introduce a genetically engineered plant into the environment to petition to avoid regulation under the statute. That's what Monsanto did. The APHIS, under the Bush Administration, granted the petition after conducting a required environmental analysis under NEPA and finding that the introduction of the roundup ready alfalfa would have no significant environmental impact.

Two conventional alfalfa farmers and environmental groups sued the Secretary of Agriculture challenging the decision to deregulate the genetically engineered alfalfa. The farmers' fears were that the genetically engineered crops could contaminate the conventional crops. In addition, conventional farmers point to [evidence](#) that crops engineered to tolerate herbicides are leading to a huge increase in pesticide use as weeds are developing pesticide resistance. While the case was initially pending in District Court, the RRA was commercially available and not regulated and was planted by about 3000 farmers across the country.

The district court found in favor of the farmers and environmental groups on the grounds that the Department of Agriculture violated NEPA. The court held that government should not have found that the introduction of the roundup ready seeds had no environmental impact. Importantly, that finding — that the government violated NEPA — remains in tact and was not challenged on appeal.

At issue on appeal were two main questions. One had to do with whether the conventional alfalfa farmers were the proper parties to sue — in legal parlance had "standing" under

Article III of the U.S. Constitution. The U.S. Supreme Court said yes. Relatedly, the Court also said that Monsanto had standing to participate in the court case.

The second part of the decision involved a technical question about the scope of the district court decision to prevent the government from granting Monsanto's petition to deregulate its alfalfa seeds. The Supreme Court found that the district court had issued an injunction that was too broad: the injunction prevented the government from granting a petition without preparing a full environmental impact report (EIR) not only for complete deregulation (where Monsanto could sell and/or plant its crops nationwide) but also for partial deregulation for, say, a very limited pilot project nowhere near other conventional alfalfa crops. The Court said that it was possible that Monsanto could propose some limited "partial" deregulation that would not require a full blown EIR but that the District Court opinion would prohibit such a possibility.

Nevertheless, the Court decision does not alter the current status quo, which is that "virtually no RRA can be grown or sold until such time as a new deregulation decision is in place." That's because the initial APHIS decision not to prepare a full Environmental Impact Statement was vacated by the district court. Until the APHIS completes its review under NEPA the genetically engineered alfalfa cannot be sold or grown.

In short, the decision issued today is really a narrow procedural win for Monsanto and the government and a victory for the plaintiffs on standing grounds. The real action will now be at the administrative level as the APHIS engages in its environmental review and decides whether to issue a decision deregulating the alfalfa seeds. Today's decision could also have an impact on cases challenging the introduction of other genetically modified crop. For example, genetically modified sugar beets are the subject of [a case](#) currently pending in Northern California. In that case the judge has held that APHIS violated NEPA but [has denied](#) organic farmers and the Sierra Club a preliminary injunction banning the selling and growing of genetically engineered sugar beets. His decision about whether to issue a permanent injunction — which he has said he is inclined to grant — is still pending and could be affected by today's decision.