

Biotech In focus



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GMOs on Kauai, part 2: Can counties set rules that govern crops and pesticide use?

In June 2013, Kauai County Council member Gary Hooser introduced Bill 2491 to regulate pesticide use and the farming of genetically modified organisms (GMOs) on Kauai. This initial bill mandated yearly reporting to disclose which GMO crops were grown, where they were grown, and when they were planted.

The bill also proposed a moratorium on new farms that grow GMOs until the county completed an Environmental Impact Statement on the effects of pesticides and GMOs, and implemented a permitting process for these crops.

Bill 2491 initially proposed that the pesticide regulations be applied to farms that use experimental pesticides (that is, products not registered with the U.S. Environmental Protection Agency or registered products being used in new ways). In addition, it applied to farms that annually buy or use more than 5 pounds or 15 gallons of restricted use pesticides. Restricted use pesticides are those that the EPA rules require that the pesticide can only be applied by certified pesticide applicators or under their direct supervision. This wording in Bill 2491 meant that five growers—seed producers Syngenta, DuPont Pioneer, BASF, and Dow AgroSciences, plus Kauai Coffee Company—would be affected by the pesticide rules.



Farms regulated by the bill would be required to report all pesticide use through annual reports, neighbor notifications, and signs posted before, during, and after application. These farms would also be prohibited from applying any pesticide within 500 feet of schools, hospitals, residential areas, public roadways, streams, rivers, or shorelines. Field use of experimental pesticides would be banned, despite the fact that the EPA does not permit field use of experimental pesticides. Penalties could include civil fines (\$10,000–25,000 per day per violation), criminal fines (up to \$1,000 per violation), and even possible jail time (up to 1 year per violation).

As Bill 2491 was debated, opinion about the seed industry became increasingly polarized. Hundreds testified in person at public hearings. By the time the county council voted to pass the bill's second draft in October 2013, the regulatory thresholds for purchase or use of restricted use pesticides had been retained, but restrictions on experimental pesticides had been deleted. Likewise, the moratorium on new farms growing GMOs had been removed, but farms were still required to file annual reports describing where GM crops were grown and when they were planted.



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Buffer Zones

Whereas the initial bill prohibited regulated farms from using pesticides within 500 feet of certain inhabited or natural areas, the new bill defined more precisely which sites required buffer zones of 100, 250, or 500 feet, but banned regulated farms from growing any crops in those zones, even if pesticides weren't used. An exception was included to mitigate how the buffer zones would affect Kauai Coffee Company orchards. Criminal fines were increased to a maximum of \$2,000 per violation. Finally, the county was to fund an Environmental and Public Health Impact Study regarding "large-scale commercial agricultural entities utilizing pesticides and genetically modified organisms."

Kauai mayor Bernard Carvalho vetoed Bill 2491, noting concerns from the county attorney that Kauai did not have the authority to enact many of the bill's provisions. As an alternative he recommended cooperation with Hawaii Department of Agriculture to meet pesticide concerns.



Veto Overturned

The Department of Agriculture was working with the five affected companies to develop voluntary pesticide use notifications and buffer zones. The veto Bill was returned to the council for a vote to determine whether it would stand, a majority in the Council overrode the Mayor's veto. After delaying the vote to fill a vacancy on the council, the Kauai County Council overturned the veto in November 2013, and Bill 2491 became Ordinance 960.



Preventing 960



In January 2014, Kauai seed companies sued the County of Kauai in federal court to prevent the law's implementation. Four advocacy groups—the Center for Food Safety (CFS – HQ Washington, DC, local office), Ka Makani Hoopono (Local group), the Pesticide Action Network North America (HQ, Oakland, California), and the Surfrider Foundation (HQ. San Clemente, California, Local Chapter)—joined the suit in support of the law and were represented by attorneys from Earthjustice (HQ. San Francisco, California, local Office) and CFS.

Pre-empted Actions

The law was struck down in August 2014 when Judge Barry M. Kurren ruled that Kauai County's actions were pre-empted by state laws governing pesticide regulation. That ruling has been appealed to the 9th Circuit Court by the advocacy groups and the County.



While Ordinance 960 moves through the courts, the Pesticides Branch of the Hawaii Department of Agriculture has developed a Good Neighbor outreach program on Kauai. Seed producers voluntarily avoid pesticide application within 100 feet of schools, medical facilities, and residential areas. Seed farms notify schools, hospitals, and clinics within 1000 feet prior to applying restricted use pesticides. Participating farms also report their use of restricted pesticides to a public database

In our next bulletin we'll examine Hawaii County efforts to regulate GMOs.

