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Maui County: GMOs at the Ballot Box, Part 1 of 2

In 2014, legal battles over the production of genetically modified (GM) crops in three of Hawaii's four counties played out in federal court. U.S. District Court Judge Barry M. Kurren ruled in August 2014 that Kauai's Ordinance 960 was unlawful because it was preempted by state law regulating pesticide use. Three months later, as described in our previous bulletin, Judge Kurren invalidated Ordinance 13-121, Hawaii County's GM crop ban, as being preempted by both state and federal law. Both decisions have since been appealed.



In the next two bulletins, we'll consider a third case brought before Judge Kurren in 2014: a Maui County ban on GM crops. Unlike Kauai County and Hawaii County, which regulated GM crops by legislating through their respective county councils, the Maui County GM crop ban was placed on the ballot as a voter initiative. The measure passed by a 1077-vote margin, with 51 percent of the electorate supporting the ban and 49 percent opposing it. Here, we'll review efforts to limit GM crops in Maui County that preceded the November 2014 referendum.

Maui County encompasses three of the state's major islands—Maui, Molokai, and Lanai—plus an uninhabited island, Kahoolawe. Two companies currently grow seed crops in the county, primarily corn. Mycogen Seeds, which is affiliated with Dow AgroSciences, farms land on Molokai, while Monsanto has fields on Molokai and Maui. Molokai has a decades-long history of seed corn production that dates back to the origins of Hawaii's seed industry in the 1960s.



Like the Hawaii County Council, the Maui County Council enacted specific prohibitions on selected GM crops prior to considering broader restrictions. In 2009, the Maui County Council unanimously passed Ordinance 3649 (formerly Bill 82), a ban on GM taro. The penalty for growing, transporting, or releasing GM taro in Maui County is a \$1,000 fine, 30 days in jail, or both. Unlike Hawaii County's Ordinance 154, which became law in 2008, Maui County's ban on GM taro did not prohibit the development or production of GM coffee.



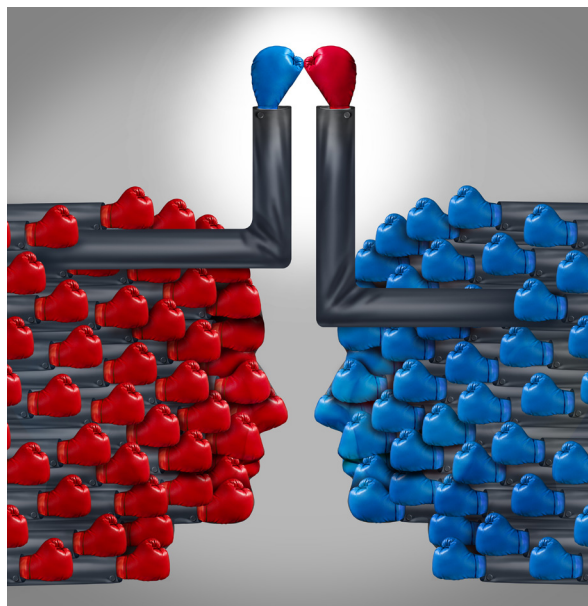
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Memorandum of Understanding

In November 2013, Kauai County Council passed Ordinance 960 (Bill 2491, Relating to Pesticides and Genetically Modified Organisms), while the Hawaii County Council passed Ordinance 13-121 (Bill 113, Relating to Genetically Engineered Crops and Plants). Also that same month, Maui Mayor Alan Arakawa signed a Memorandum of Understanding with Monsanto, in which the company agreed to disclose data relating to their use of restricted-use pesticides—pest-killing products for which the U.S. Environmental Protection Agency requires specialized worker training or supervision. These data were always required to be provided to the Hawaii Department of Agriculture as required by law regarding the use of restricted use products. Monsanto would also provide information about the company's environmental practices on Maui, how the company complies with all state and federal regulations, and they agreed to meet regularly with county representatives for feedback sessions.



More Regulations



This voluntary agreement did not deter legislative action. In December 2013, Maui County Council member Elle Cochran introduced Bill PIA-58, which was closely modeled on Kauai's Ordinance 960. The Maui bill, like the Kauai law, regulated only those farms that bought or used a threshold level of restricted-use pesticides, established buffer zones in which pesticide application would be prohibited, mandated pre- and post-application notifications and annual reports of pesticide use, required that farmers growing GM crops disclose the locations of those crops each year, and instructed the county to complete an environmental and public health impact study.

Stiff Penalties

The Maui bill proposed stiff penalties, with civil fines ranging from \$10,000 to \$25,000 per violation per day, criminal fines of up to \$2,000 per conviction, and jail time of up to one year.



Public Hearings



The Public and Intergovernmental Affairs Committee of the Maui County Council held public hearings on Bill PIA-58 during January 2014. More than 200 individuals testified. Supporters of the bill questioned the safety of the pesticides and GM crops that were currently in use or that may be used in the future, while opponents argued that state and federal regulation of pesticides and GM crops already ensures the protection of farm workers, local communities, and the environment. Action on the bill was deferred.

With Bill PIA-58 stalled, proponents of GM crop regulations turned to a voter initiative mechanism defined in Article 11 of the Maui County Charter. In our next bulletin, we'll trace that initiative process and examine the new law's status as it moves through ongoing court challenges.

