

OVERVIEW OF THE NATIONAL ENVIRONMENTAL POLICY ACT AND PERFORMANCE OF AN ENVIRONMENTAL IMPACT STATEMENT FOR GM PLANTS. Frederick R. Anderson, Partner, McKenna Long & Aldridge LLP, 1900 K Street, NW, Washington, DC 20006.

The Animal and Plant Health Protection Service (APHIS) of the US Department of Agriculture has decided to prepare the first-ever full Environmental Impact Statement (EIS) on a genetically modified plant product, glyphosate-tolerant creeping bentgrass (GTCB). Creeping bentgrass is already in wide use on golf courses. GTCB would greatly improve golf course management by reducing overall herbicide use and maintenance costs. EISes are required by the National Environmental Policy Act (NEPA) of 1970 on "major federal actions significantly affecting the quality of the human environment." APHIS has decided that its decision whether to deregulate GTCB under the federal Plant Protection Act, a necessary step before GTCB can be marketed, is such a major federal action. NEPA has been described both as a "full disclosure" law and a "look before you leap" law. It requires the development and disclosure of potential environmental impacts so that federal agencies make important decisions in awareness of the possible consequences of their actions. In preparing its EIS, APHIS has set out plans to conduct a fully transparent, expeditious consultative process whereby other federal agencies, state and local governments, the scientific community, and the public will have an opportunity to comment first on the scope of the EIS and then on the contents of APHIS's draft EIS. Thus NEPA includes, on the one hand, a scientific component (including analysis of alternatives to the proposed deregulation and any potential indirect or cumulative impacts of deregulation), and, on the other hand, a consultative procedural component, both of which have been spelled out in detailed agency guidelines as well as guidelines issued by the President's Council on Environmental Quality. Furthermore, the courts have played a seminal role in shaping NEPA in many hundreds of NEPA decisions. The elaborate NEPA process has led some parties whose businesses require federal decisions in order to move forward to question whether the process can ever be successfully navigated. Yet, hundreds of parties have successfully moved through the NEPA maze. To succeed, they keep firmly in mind that NEPA is, after all, only a disclosure, documentation, and consultation statute: it imposes no regulatory or other substantive standards whatsoever, and its role is limited to informing agency decision makers. Officials and companies who complete the NEPA process by the quickest and easiest path also err on the side of over compliance rather than under compliance. As early as 1971, a landmark NEPA decision made clear that the NEPA required "a strict standard of compliance," an admonition agencies are still learning to take seriously. This helps prevent and if necessary defeat lawsuits brought by groups who seek only to delay federal action or to attempt to turn the NEPA process into a media "show trial" to publicize their policy views. Such in fact is already being attempted with GTCB. Non-profit groups have filed a NEPA lawsuit on APHIS's approval of GTCB test plantings, as a vehicle to carry their anti-GMO campaign into the courts and the media.