

**United States District Court  
for the District of Columbia**

GREENPEACE INTERNATIONAL

Greenpeace, Inc.

1436 U Street, N.W.

Washington, DC 20009

INTERNATIONAL FEDERATION

OF ORGANIC AGRICULTURE MOVEMENTS

c/o 2618 J Street

Suite 2

Sacramento, CA 95816

CENTER FOR FOOD SAFETY,

c/o International Center

for Technology Assessment,

310 D Street, N.E.

Washington, DC 20002,

CHARLES ANDREWS,

P.O. Box 130 Civil Docket No.

Island Grove, FL 32654,

**99-389 (LFO)**

ARIZONA TOXICS INFORMATION,

4100 Howell Avenue

Bisbee, AZ 85603,

JOHN & SUSAN BELDING,

RR2, Box 377

Lovell, ME 04501,

CHRIS & KIM BLANCHARD,

169 Beech Hill Road

Mount Desert, ME 04660,

CECILIA BOWMAN,

8364 South SR 39

Clayton, IN 46118,

LYNN BRAKKE,

RR2, Box 115A

Moorehead, MN 56560,

TERRY & MARY CAKE,

3424 Tulley Road

Hughson, CA 95326,

CALIFORNIA CERTIFIED

ORGANIC FARMERS,

1115 Mission Street

Santa Cruz, CA 95060,

VALENCIA WADSWORTH-CARR,

1168 N CR 575 W

Greencastle, IN 46135,

CENTER FOR ETHICS AND TOXICS,

39141 S. Highway One

P.O. Box 39141

Gualala, CA 95445,

MIKKI CLARK,

8050 E. Shingle Mill Road

Sandpoint, ID 93964,

PAUL CONWAY,

25476 183<sup>rd</sup> Street

Leavenworth, KS 66048,

JIM COOK,

61 Main Street

Grand Isle, ME 04746,

COULEE REGION ORGANIC

PRODUCE POOL,

507 W. Main Street

P.O. Box 159

LaFarge, WI 54639,

COUNCIL FOR RESPONSIBLE GENETICS,

5 Upland Road

Suite 3

Cambridge, MA 02140,

CROWN OF MAINE

ORGANIC COOPERATIVE,

61 Main Street

Grand Isle, ME 04746,

ED DAVIS,

1716 Oak Street #4

Bakersfield, CA 93301,

ATINA & MARTIN DIFFLEY,

25498 Highview Road,

Farmington, MN 55024,

FARM VERIFIED ORGANIC, INC.,

RR #1, Box 40A

Medina, ND 58467

FLORIDA CERTIFIED ORGANIC

GROWERS AND CONSUMERS,

2211 Northwest 49<sup>th</sup> Terr.

Gainesville, FL 32604,

SALLY FOX,

P.O. Box 69

Guinda, CA 95637,

JIM & MEGAN GERRITSEN,

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Bridgewater, ME 04735,

JOHN E. HAAPALA, JR.,

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Junction City, OR 97448

HOOSIER ORGANIC

MARKETING EDUCATION,

8364 S SR 39

Clayton, IN 46118,

ROBERT HOWE,

200 Pine Swamp Road

Danville, PA 17821,

INDIANA CERTIFIED ORGANIC, INC.,

1168 N CR 575 W

Greencastle, IN 46135,

INSTITUTE FOR AGRICULTURAL

AND TRADE POLICY,

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Minneapolis, MN 55404,

INTEGRATED FERTILITY MANAGEMENT,

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Wenatchee, WA 98801,

MARC A. KASTEL,

E 12738 Red-Tail,

LaFarge, WI 54639,

DONALD & REBECCA KRETSCHMANN,

257 Zeigler Road

Rochester, PA 15074,

MAINE ORGANIC FARMERS

AND GARDENERS ASSOCIATION,

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Augusta, ME 04338,

JOHN & JULIE MARQUARDT,

16809 Sneath Road

Richland Center, WI 53581,

JANET & JOHN McCONAUGHEY,

P.O. Box 56

Cameron, WV 26033,

LORNA McMAHON,

RR1, Box 2665

Tiptonville, TN 38079,

JO MELLER & JIM SLUYTER,

3480 Potter Road

Bear Lake, MI 49614,

MOTHERS & OTHERS,

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New York, NY 10011,

NATIONAL CAMPAIGN AGAINST

THE MISUSE OF PESTICIDES,

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NATIONAL FAMILY FARM COALITION,

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Washington, DC 20002,

NEW JERSEY ENVIRONMENTAL

FEDERATION,

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Marlton, NJ 08053,

NORTHEAST ORGANIC

FARMING ASSOCIATION,

130 Ruckytucks Road

Stillwater, NY 12170,

NORTHEAST ORGANIC FARMING

ASSOCIATION, NEW JERSEY,

33 Titus Mill Road

Pennington, NJ 08534,

NORTHEAST ORGANIC FARMING

ASSOCIATION OF NEW YORK, INC.,

3200 Rt. 89

Savannah, NY 13146,

NORTHEAST ORGANIC FARMING

ASSOCIATION, VERMONT,

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Bridge Street

Richmond, VT 05477,

RUSSELL & SUE NUFFER,

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Jerusalem, AR 72080,

OREGON TILTH ORGANIC CERTIFIED,

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Tigard, OR 97224,

ORGANIC AG ADVISORS,

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Grass Valley, CA 95949,

ORGANIC CROP IMPROVEMENT

ASSOCIATION INTERNATIONAL,

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Lincoln, NE 68508,

ORGANIC FARMERS

MARKETING ASSOCIATION,

8364 S SR 39

Clayton, IN 46118,

ORGANIC MATERIALS

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Eugene, OR 97401,

PESTICIDE ACTION NETWORK

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San Francisco, CA 94102,

LOUIS PULVER,

412 Richard Crossing

East Hardwick, VT 05836,

SHARON M. REINER,

2007 Hayes Road

Chelsea, MI 48118,

RINCON-VITTOVA INSECTARIES,

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Ventura, CA 93001,

RICHARD ROTH,

1318 Bruce Street

Chico, CA 95928,

RURAL ADVANCEMENT FOUNDATION

INTERNATIONAL - USA,

21 Hillsboro Street

Pittsboro, NC 27312,

RURAL VERMONT,

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Montpelier, VT 05602,

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R2 Box 114

Viroqua, WI 54665,

JOHN C. SIMMONS,

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North Branch, MI

TOMMY SIMMONS & LOIS MILTON,

Route 3, Box 180

Archer, FL 32618,

BARBARA & BILL SPENCER,

5750 El Pharo Road

Paso Robles, CA 93446,

KATE STOUT,

N 142287 290<sup>th</sup> Street

Prairie Farm, WI 54762,

SUSTAINABLE COTTON PROJECT,

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Oroville, CA 95966,

TERRA PRIMA, INC.,

106 Buckeye Street

Suite 103

Hudson, WI 54016,

TEXAS ORGANIC

GROWERS ASSOCIATION,

1512 ½ South Congress Ave.

Austin, TX 78704,

VIRGINIA ASSOCIATION OF

BIOLOGICAL FARMERS,

4380 Glendale Drive

Barboursville, VA 22923,

VRESEIS LIMITED,

320 West Cavaness Ave.

Wickenburg, AZ 85358,

WASHINGTON BIOTECHNOLOGY

ACTION COUNCIL,

3807 South McClellan Street

Seattle, WA 98144,

MARK WILKE,

1204 N. Ballard

Brownfield, TX 79316,

TOM WILLEY,

13886 Road 20

Madera, CA 93637,

Plaintiffs,

vs.

CAROL BROWNER, in her official

capacity as,

Administrator

United States Environmental

Protection Agency

401 M Street, SW

Room W1200

Washington, DC 20460,

Defendant.

**SECOND AMENDED COMPLAINT FOR DECLARATORY**

**AND INJUNCTIVE RELIEF**

This is an action to declare unlawful and enjoin certain actions of the defendant's, and others acting under her authority, regarding the approval and registration of genetically engineered plant pesticides expressing *Bacillus thuringiensis* (B.t.) endotoxins. These actions include a series of arbitrary and capricious pesticide registrations of genetically engineered B.t. plants and a failure to analyze the programmatic environmental impacts of a plant pesticide program as initiated by the registration of genetically engineered B.t. plants. Defendant's actions regarding the pesticide registration of genetically engineered B.t. plants violates the statutes and regulations of the defendant's including the Federal Insecticide, Rodenticide and Fungicide Act (FIFRA), 7 U.S.C. § 136, et seq., Endangered Species Act, 16 U.S.C. § 1536, Regulatory Flexibility Act, as amended by, Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. § 601, et seq., National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, et seq., the Administrative Procedure Act (APA), 5 U.S.C. § 551 et seq., and the Public Trust Doctrine.

### **JURISDICTION AND VENUE**

1. This court has jurisdiction over this action pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136n, Endangered Species Act, 16 U.S.C. § 1540(c), Regulatory Flexibility Act, 5 U.S.C. § 611(a), as well as 28 U.S.C. § 1331 (federal question), 28 U.S.C. §1346 (United States as defendant), and 28 U.S.C. § 1361 (mandamus).
2. The relief requested is specifically authorized by 28 U.S.C. §2201 (declaratory relief) and 28 U.S.C. § 2202 (injunctive relief) and the plaintiffs have a right to bring this action pursuant to 5 U.S.C. §§ 701 - 706 (Administrative Procedure Act).
3. Venue is proper in this court pursuant to 28 U.S.C. §1391(e) because the defendant in action resides in this district and a substantial part of the events and omissions which gave rise to this action occurred in this district.

### **PARTIES**

4. Plaintiff Greenpeace International c/o Greenpeace, Inc. is located at 1436 U Street, NW, Washington, DC 20009. Plaintiff is the U.S. headquarters of one of the world's major environmental organizations with offices in 33 countries, including the United States of America, and over 3 million donating supporters worldwide. Greenpeace is a non profit organization devoted to the protection of the environment with an emphasis on global environmental problems such as climate change, protection of the stratospheric ozone layer, prevention of nuclear, chemical and biological pollution, and defense of biodiversity. Defendant's failure to prevent B.t. resistance building and the outcrossing of genetically engineered B.t. plants harms plaintiff's ability to reduce and eliminate the use

of environmentally harmful pesticides as well as its ability to protect genetic diversity and integrity worldwide. Defendant's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants also harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of genetic engineering B.t. plant pesticides to its members, the public and policy makers. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

5. Plaintiff International Federation of Organic Agriculture Movements (IFOAM) is located in the United States c/o 2618 J Street, Suite 2, Sacramento, CA 95816. Plaintiff is the only global federation of the entire organic farming sector, with 650 member organizations in more than 100 countries, including the United States. IFOAM represents farmers, processors, organic certifiers, traders, scientists, educators and consumers of organic products. IFOAM has developed the "IFOAM Basic Standards," the consensus of organic producers and consumers throughout the world about the way the organic food should be produced. Plaintiff's organizational purposes are to pursue the public benefit and to further organic agriculture by informing and educating its own members and the public. Defendant's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of genetically engineered *B.t.* plant pesticides to its members, the public and policy makers. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

6. Plaintiff Center for Food Safety is a project of the International Center for Technology Assessment (CTA) a private, non-profit organization incorporated in the District of Columbia. Its office is located at 310 D Street, N.E., Washington, DC 20002. The Center for Food Safety was established by CTA in 1997 to address the increasing concern about the of our food production system on human health, animal welfare and the environment. The four major goals of CFS include: (1) ensuring the testing, labeling and regulation of genetically engineered foods; (2) preserving strict national organic food standards; (3) preventing the potential animal and human health crisis caused by "mad cow" disease; and (4) educating the public of the hazards of industrial agriculture. Defendant's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of genetic engineering B.t. plant pesticides to

its members, the public and policy makers. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

7. Plaintiff Charles Andrews is a farmer who resides at Hammock Hollow Farm, PO Box 130, Island Grove, FL 32654. He is an organic potato, tomato, and vegetable farmer. His potato crop is susceptible to infestation from Colorado potato beetles (CPB). As a management tool to ensure the quality of his crop when he has need he uses foliar sprays of B.t. *San Diego* (also known as B.t. *tenebrionis*) to prevent CPB infestation and to ensure the organic quality of his crop. His vegetable crop is also susceptible to infestation from cabbage worms and hornworm. As a management tool to ensure the quality of his crop he uses foliar sprays of B.t. *kurstaki* as needed to prevent worm infestation and to ensure the organic quality of his crop. In addition, he uses beneficial insects such as lacewings, predatory mites, and ladybugs to protect his crop. CPB resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures his economic viability as an organic farmer. Additionally, the injury to non-target organisms and beneficial insect populations caused by the defendant's registration of genetically engineered B.t. plants also directly injures plaintiff's ability to maintain the quality and yield of his crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

8. Plaintiff Arizona Toxics Information is located at 4100 Howell Avenue, Bisbee, AZ 85603. Plaintiff is a non-profit research and policy organization which advocates public participation, pollution prevention and right to know in regard to hazardous materials management, including management of pesticides. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

9. Plaintiffs John and Susan Belding are farmers who reside at Old Stage Farm, RR2, Box 377, Lovell, ME 04051. They are organic flower and vegetable farmers. Their crop is susceptible to infestation from Colorado potato beetles (CPB). As a management tool to ensure the quality of their crop when they have need they use foliar sprays of B.t.

*tenebrionisto* prevent CPB infestation and to ensure the organic quality of their crop. In addition, they use beneficial insects such as ladybugs to protect their crop. The Beldings also sell flower seeds to gardeners who rely on them for organic seeds. CPB resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures their economic viability as organic farmers. Additionally, the injury to non-target organisms and beneficial insect populations caused by the defendant's registration of genetically engineered B.t. plants also directly injures plaintiff's ability to maintain the quality and yield of their crops. The genetic contamination of their crop by cross pollination with genetically engineered B.t. crop resulting from the defendant's registration of genetically engineered B.t. plants directly injures their economic viability as organic farmers and seed suppliers. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

10. Plaintiffs Chris and Kim Blanchard are organic farm managers who reside at 169 Beech Hill Road, Mount Desert, ME, 04660. Since 1994 they have made their primary living managing organic vegetable farms. As a management tool to ensure the quality of the crops they manage when they have need they have used foliar sprays of B.t. *San Diego*, *kurstaki*, and *Israelensis* to prevent insect infestation and to ensure the organic quality of the crop. In addition, they have relied on natural populations of beneficial insects such as lacewings and ladybugs to protect the crops. They hope to have their own organic vegetable farm in the near future. Insect resistance to foliar B.t. caused by the defendant's registration of genetically engineered B.t. plants directly injures their economic viability as organic farm managers. Additionally, the injury to non-target organisms and beneficial insect populations caused by the defendant's registration of genetically engineered B.t. plants also directly injures plaintiff's ability to maintain the quality and yield of the crops they manage. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

11. Plaintiff Cecilia Bowman is a farmer who resides Center Valley Organic Farm, 8364 South SR 39, Clayton, IN, 46118. She is an organic vegetable farmer. Her crop is susceptible to infestation from cabbage worms, squash vine borers, and tomato hornworms. As a management tool to ensure the quality of her crop when she has need she uses foliar sprays of B.t. *kurstaki* to prevent infestation and to ensure the organic quality of her crop. In addition, she relies on natural populations of beneficial insects such as lacewings and ladybugs to protect her crop. Insect resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures Ms. Bowman's economic viability as an organic farmer. Additionally, the injury to non-target organisms and beneficial insect populations caused by the defendant's registration of genetically engineered B.t. plants also directly injures plaintiff's ability to maintain the quality and yield of her crops. Finally, defendant's failure to undertake its required final

regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

12. Plaintiff Lynn Brakke is a farmer who resides at RR2, Box 115A, Moorehead, MN 56560. He is an organic potato, grain, and bean farmer. His entire production is sold for export to customers who require organic products. The genetic contamination of his crop by cross pollination with genetically engineered B.t. crop resulting from the defendant's registration of genetically engineered B.t. plants directly injures his economic viability as an organic farmer. It further threatens his ability to sell and export his crop as organic. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

13. Plaintiffs Terry and Mary Cake are farmers who reside at A Country Garden, 3424 Tulley Road, Hughson, CA 95326. Plaintiffs are organic potato and vegetable farmers. Their potato crop is susceptible to infestation from Colorado potato beetles (CPB). As a management tool to ensure the quality of their crop when they have need they use foliar sprays of B.t. *tenebrionisto* prevent CPB infestation and to ensure the organic quality of their crop. Additionally, they use beneficial insects such as lacewings, lady beetles, trichogramma wasps and others, and they rely on natural populations of beneficials to protect their crop. CPB resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures their economic viability as organic farmers. Additionally, the injury to non-target organisms and beneficial insect populations caused by the registration of genetically engineered B.t. plants also directly injures plaintiffs' ability to ensure the quality and yield of their crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

14. Plaintiff California Certified Organic Farmers (CCOF) is located at 1115 Mission Street, Santa Cruz, CA 95060. CCOF was founded in 1973 as a membership organization of organic growers. Currently, CCOF has nearly 700 certified members and 350 supporting members. Its members rely on B.t. as a secondary pest control to defer infestations which has proven to be an effective and appropriate organic control. The rapid development of pest resistance to B.t., the possibility of transgenic B.t. gene flow, and the disturbance of soil ecology caused by EPA's registration of transgenic B.t. plant pesticides imminently harms plaintiff's members' ability to produce, market and sell organic foodstuffs. The loss of efficacious foliar B.t. sprays and compounds would eliminate an organically acceptable pest control option that often makes the difference between success and failure of plaintiff's members' crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide

Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

15. Plaintiff Valencia Wadsworth-Carr is a farmer who resides at 1168 N CR 575 W, Greencastle, IN 46135. Plaintiff is an organic corn and vegetable farmer. Her corn crop is susceptible to infestation from European corn borer. As a management tool to ensure the quality of her crop she uses foliar sprays of B.t. *kurstaki* when needed to prevent corn borer infestation and to ensure the organic quality of her crop. In addition, she relies on natural populations of beneficial insects such as lacewings and ladybugs to protect her crop. Corn borer resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures her economic viability as an organic farmer. Additionally, the injury to non-target organisms and beneficial insect populations caused by the registration of genetically engineered B.t. plants also directly injures plaintiff's ability to ensure the quality and yield of her crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

16. Plaintiff Center for Ethics and Toxics (CETOS) is located at 39141 S. Highway One, P.O. Box 39141, Gualala, CA 95445. CETOS is a non-profit organization located on the coast of Northern California. Plaintiff focuses on reducing the amount of chemicals used in the environment and protecting susceptible individuals from exposure to toxic chemicals. EPA's failure to perform its statutorily required environmental impact review of Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

17. Plaintiff Mikki Clark is a farmer who resides at Almost Eden Organic Farm, 8050 E. Shingle Mill Road, Sandpoint, ID 83864. She is an organic potato, vegetable and herb farmer. Her vegetable crop is susceptible to infestation from cabbage worms and webworms. As a management tool to ensure the quality of her crop she uses foliar sprays of B.t. *Berliner* when needed to prevent infestation and to ensure the organic quality of her crop. In addition, she relies on natural populations of beneficial insects such as lady bugs and wasps to protect her crop. Insect resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures her economic viability as an organic farmer. Additionally, the injury to non-target organisms and beneficial insect populations caused by the registration of genetically engineered B.t. plants also directly injures plaintiff's ability to ensure the quality and yield of her crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis

injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

18. Plaintiff Paul Conway is a farmer who resides at 25476 183<sup>rd</sup> Street, Leavenworth, KS 66048. He is an organic corn and vegetable farmer. He grows open-pollinated seed corn in an area nearby many conventional corn farms. The genetic contamination of his crop by cross pollination with genetically engineered B.t. crop resulting from the defendant's registration of genetically engineered B.t. plants directly injures his economic viability as an organic farmer. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

19. Plaintiff Jim Cook is a farmer who resides at Skylandia Farm, 61 Main Street, Grand Isle, ME 04746. He is an organic potato and corn farmer. His potato crop is susceptible to infestation from Colorado potato beetles (CPB). As a management tool to ensure the quality of his crop when he has need he uses foliar sprays of B.t. to prevent CPB infestation and to ensure the organic quality of his crop. His corn crop is susceptible to infestation from corn borers. As a management tool to ensure the quality of his crop when he has need he uses foliar sprays of B.t. *kurstaki* to prevent corn borer infestation and to ensure the organic quality of his crop. CPB and/or corn borer resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures Mr. Cook's economic viability as an organic farmer. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

20. Plaintiff Coulee Region Organic Produce Pool (CROPP) is located at 507 W. Main Street, PO Box 159, LaFarge, WI 54639. Plaintiff is the nation's largest farmer-owned organic cooperative in the country, which produces and markets products nation wide. Over 160 CROPP owners are organic farmers, in Wisconsin, Minnesota, Iowa, Maine, and Oregon. Many of them, including some board members, use B.t. spray preparations when they have need as a management tool to ensure the organic quality of their crops. Insect resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures plaintiff's economic viability as an organic farmer and marketing cooperative. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

21. Plaintiff Council for Responsible Genetics is located at 5 Upland Road, Suite 3, Cambridge, MA 02140. Plaintiff is a non-profit organization representing over 1,000

scientists, ethicist and concerned citizens which seeks to educate the public regarding the social and environmental impacts of genetic engineering. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

22. Plaintiff Crown of Maine Organic Cooperative is located at 61 Main Street, Grand Isle, ME 04746. Plaintiff is an association of six organic potato and vegetable farms. Their farmer-members rely on the use of B.t. foliar sprays, including B.t. *San Diego* and B.t. *tenebrionis* when they have need as a management tool to ensure the organic quality of their crops. Insect resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures plaintiff's economic viability as an organic farmer and marketing cooperative. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

23. Plaintiff Ed Davis is a farmer who resides at S & E Organic Farms, 1716 Oak Street, #4, Bakersfield, CA 93301-3040. He is an organic cotton farmer and commodity broker. His cotton crop is susceptible to infestation from boll worms, army worms, cabbage loppers, leaf tier, and salt marsh. As a management tool to ensure the quality of his crop when he has need he uses foliar sprays of B.t. *kurstaki* or B.t. *aizawai* to prevent infestation and to ensure the organic quality of his crop. He also uses beneficial insects such as lacewings and Tricogramma wasps to protect his crop. Insect resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures his economic viability as an organic farmer and broker. Additionally, the injury to non-target organisms and beneficial insect populations caused by the registration of genetically engineered B.t. plants also directly injures plaintiff's ability to ensure the quality and yield of his crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

24. Plaintiffs Atina and Martin Diffley are fourth generation family farmers who reside at Gardens of Eagan Farm, 25498 Highview Road, Farmington, MN 55024. They are organic corn and vegetable farmers. Their corn and vegetable crops are susceptible to infestation from European corn borer. As a management tool to ensure the quality of their

crop when they have need they use foliar sprays of B.t. *kurstaki* to prevent corn borer infestation and to ensure the organic quality of their crop. Their farm is located in an area in which B.t. corn and potatoes are currently being planted. Corn borer resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures their economic viability as organic farmers. Additionally, the genetic contamination of their corn by cross pollination with genetically engineered B.t. corn resulting from the defendant's registration of genetically engineered B.t. plants directly injures their economic viability as an organic farmers. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

25. Plaintiff Farm Verified Organic, Inc. (FVO) is located at RR#1, Box 40A, Medina, ND 58467. FVO is an international organic certification organization established in the early 1980's. Plaintiff certifies as "organic" over 115 family farms, cooperatives, processors, handlers and manufacturers around the world. Plaintiff represents a number of organic farmers who use foliar B.t. products for emergency pest management. The rapid development of pest resistance to B.t., the possibility of transgenic B.t. gene flow, and the disturbance of soil ecology caused by EPA's registration of transgenic B.t. plant pesticides imminently harms plaintiff's members' ability to produce, market and sell organic foodstuffs. The loss of efficacious foliar B.t. sprays and compounds would eliminate an organically acceptable pest control option that often makes the difference between success and failure of plaintiff's crop. The possibility of gene flow of B.t. transgenes resulting from the registration of transgenic B.t. plant pesticides harms the plaintiff's members' ability to certify organic foods. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

26. Plaintiff Florida Certified Organic Growers and Consumers (FOG) is located at 2211 Northwest 49<sup>th</sup> Terrace, Gainesville, FL 32604. FOG is a non-profit organization committed to educating farmers, gardeners, the press, homeowners, agricultural information providers and consumers about organic and sustainable farming practices. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a

requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

27. Plaintiff Sally Fox is a farmer who resides at P.O. Box 69, Guinda, CA 95637. She is an organic cotton, alfalfa, and walnut farmer. Her cotton crop is susceptible to infestation from cotton bollworm. As a management tool to ensure the quality of her crop she foliar sprays of B.t. *aizawai* as needed to prevent cotton bollworm infestation and to ensure the organic quality of her crop. In addition, she uses beneficial insects such as lacewings, native thrips, parasitic wasps, and others to protect her crop. Ms. Fox also provides cottonseed to organic contract cotton farmers in Arizona, whose crops are susceptible to pink bollworm infestation. Many of these farmers use B.t. *aizawai* to prevent pink bollworm infestation and to ensure the organic quality of their crops. Cotton bollworm resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures Ms. Fox's economic viability as an organic farmer and seed supplier. Additionally, the injury to non-target organisms and beneficial insect populations caused by the registration of genetically engineered B.t. plants also directly injures Ms. Fox by harming the quality and yield of her crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

28. Plaintiffs Jim and Megan Gerritsen reside at 49 Kinney Road, Bridgewater, ME 04735. The Gerritsen's are certified organic farmers who raise certified seed and table stock potatoes. These products are sold under the name Wood Prairie Farm. Petitioners have used B.t. *tenebrionis* and B.t. *San Diego* for the past eight years in an integrated pest management program designed to control the Colorado potato beetle. B.t. has been the single most effective component of their IPM program. Plaintiffs also use beneficial insects such as *Perillus bioculatus* for Colorado potato beetle (CPB) control and ladybugs for aphid control. The rapid development of pest resistance to B.t., the harm to non-target organisms, the possibility of transgenic B.t. gene flow, and the disturbance of soil ecology caused by EPA's registration of transgenic B.t. plant pesticides, including the registration of transgenic B.t. potato plant pesticides, imminently harms plaintiff's ability to produce, market and sell organic foodstuffs. The loss of efficacious foliar B.t. sprays and compounds would eliminate an organically acceptable pest control option that often makes the difference between success and failure of plaintiff's crop. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

29. Plaintiff John E. Haapala, Jr. is a farmer who resides at Heron's Nest Farm, 30848 Maple Drive, Junction City, OR 97448. He is an organic corn and vegetable farmer. His corn and vegetable crops are susceptible to infestation from European corn borer. As a management tool to ensure the quality of his crop when he has need he uses foliar sprays

of B.t. *kurstaki* to prevent corn borer infestation and to ensure the organic quality of their crop. In addition, he uses beneficial insects such as lacewings and ladybugs to protect his crop. Corn borer resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures his economic viability as an organic farmer. Additionally, the injury to non-target organisms and beneficial insect populations caused by the defendant's registration of genetically engineered B.t. plants also directly injures Mr. Haapala's ability to ensure the quality and yield of his organic crop. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

30. Plaintiff Hoosier Organic Marketing Education (HOME) is located at 8364 S SR 39, Clayton, IN 46118-9178. Plaintiff is a non-profit organization dedicating to providing educational information to the public about organic farming and food. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

31. Plaintiff Robert Howe is a farmer who resides at Pine Creek Organics, 200 Pine Swamp Road, Danville, PA 17821-7504. He is an organic vegetable farmer. His corn crop is susceptible to infestation from European corn borer. As a management tool to ensure the quality of his crop when he has need he uses foliar sprays of B.t. *kurstaki* to prevent corn borer infestation and to ensure the organic quality of his crop. In addition, he relies on natural populations of beneficial insects such as lacewings and lady beetles to protect his crop. Corn borer resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures his economic viability as an organic farmer. Additionally, the injury to non-target organisms and beneficial insect populations caused by the defendant's registration of genetically engineered B.t. plants also directly injures plaintiff's ability to ensure the quality and yield of his organic crop. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

32. Plaintiff Indiana Certified Organic, Inc. (ICO) is located at 1168 N CR 575 W, Greencastle, IN 46135. Plaintiff is a certifier of organic operations. ICO allows most current formulations of B.t. applications, however, it prohibits genetically engineered plants such as transgenic B.t. plant pesticides. The use of any such prohibited substance

immediately ends a farms organic certification for at least three years. The possibility of gene flow of B.t. transgenes resulting from the EPA's registration of transgenic B.t. plant pesticides harms plaintiff's ability to certify accurately organic crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

33. Plaintiff Institute for Agricultural and Trade Policy (IATP) is located at 2105 1st Avenue South, Minneapolis, MN 55404-2505. Plaintiff is a research and education organization that acts locally, nationally and internationally to develop and support policies and strategies that expand choices and opportunities to farmers, farm workers and local communities around the world, regenerate the natural resource base, take a precautionary approach to the use of chemicals and genetic manipulation and avoids dependence on purchased inputs and external energy sources, and tackle the causes rather than the consequences of unsustainability, looking for positive, progressive and proactive ways of solving problems. IATP works with farmers, consumers, unions, environmental organizations, citizens groups and others both in the U.S. and around the world. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

34. Plaintiff Integrated Fertility Management is located at 333 Ohme Gardens Road, Wenatchee, WA 98801. IFM was founded in 1983 as a wholesale/retail supplier of organic fertilizers and pest controls. In particular, plaintiff focuses expertise in soil analysis and organic production of fruit trees. Increasing its business consists of selling foliar B.t. products to conventional apple growers for leafroller and cutworm control. The increased resistance to B.t. resulting from EPA's registration of transgenic B.t. plant pesticides harm plaintiff's sales of over \$700,000 annually. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

35. Plaintiff Marc A. Kastel is a farmer who resides at Winter Camp Farm, E 12738 Red-Tail, LaFarge, WI 54639. Plaintiff is an organic corn, alfalfa, oat and vegetable farmer. His corn crop is susceptible to infestation from European corn borer, and his vegetable crop is susceptible to infestation from cabbage worm. As a management tool to ensure the quality of his crop when he has need he uses foliar sprays of B.t. *kurstaki* to prevent

infestation and to ensure the organic quality of his crop. In addition, he uses beneficial insects such as ladybugs and relies on natural populations of beneficials to protect his crop. Insect resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures his economic viability as an organic farmer. Additionally, the injury to non-target organisms and beneficial insect populations caused by the defendant's registration of genetically engineered B.t. plants also directly injures plaintiff's ability to ensure the quality and yield of his organic crop. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

36. Plaintiffs Donald and Rebecca Kretschmann are farmers who reside at Kretschmann Farm, 257 Zeigler Road, Rochester, PA 15074. They are organic vegetable farmers. Their corn crop is susceptible to infestation from corn borers. Their potato crop is susceptible to infestation from Colorado potato beetles (CPB). As a management tool to ensure the quality of their crop when they have need they use foliar sprays of B.t. *tenebrionisto* prevent CPB infestation and to ensure the organic quality of their crop. When they have need they also use foliar sprays of B.t. *kurstaki* on their vegetable crop to prevent cabbage looper and/or diamondback moth infestation and to ensure the organic quality of their crop. CPB and/or corn borer resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures their economic viability as organic farmers. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

37. Plaintiff Maine Organic Farmers and Gardeners Association is located at 283 Water Street, Augusta, ME 04338. Plaintiff is a statewide organization of organic farmers and gardeners. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

38. Plaintiffs John and Julie Marquardt are farmers who reside at 16809 Sneath Road, Richland Center, WI 53581. Plaintiffs are organic dairy farmers who grow alfalfa, clover and grass for hay and intensive grazing. Their farm is nearby to many conventional growers. In addition, they purchase organic feed for their dairy herd. The genetic contamination of their farm by cross pollination with genetically engineered B.t. crops resulting from the defendant's registration of genetically engineered B.t. plants directly

injures their economic viability as organic farmers. In addition, genetic contamination of their feed supply by genetically engineered B.t. crops resulting from the defendant's registration of genetically engineered B.t. plants directly injures plaintiff's ability to ensure the organic certification of their dairy products. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

39. Plaintiffs Janet and John McConaughy are farmers who reside at Wolf Spring Farm, P.O. Box 56, Cameron, WV 26033. They are organic corn, potato and vegetable farmers. Their potato crop is susceptible to infestation from Colorado potato beetles (CPB). Their corn crop is susceptible to infestation from European corn borer. As a management tool to ensure the quality of their crop when they have need they use foliar sprays of B.t. *kurstaki* to prevent corn borer infestation and to ensure the organic quality of their crop. They also rely on natural populations of beneficial insects to protect their crop. CPB and/or corn borer resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures their economic viability as organic farmers. Additionally, the injury to non-target organisms and beneficial insect populations caused by the registration of genetically engineered B.t. plants directly injures plaintiff's ability to ensure the quality and yield of their crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

40. Plaintiff Lorna McMahon is a farmer who resides at Donaldson-McMahon Family Farms, RR1, Box 2665, Tiptonville, TN., 38079. She is an organic cotton, soybean, corn, and vegetable farmer, who markets her crop, food, and fiber products through contract farming, wholesaling, mail-order and retail sales. Her cotton crop is susceptible to infestation from pink budworm. Her corn crop is susceptible to infestation from European corn borer. As a management tool to ensure the quality of her crop when she has need she uses foliar sprays of B.t. *kurstaki* to prevent infestation and to ensure the organic quality of her crop. She also keeps bees and relies on them and on natural populations of other beneficial insects such as lacewings to protect her crop. Pink budworm and European corn borer resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures Ms. McMahon's economic viability as an organic farmer. Additionally, the injury to non-target organisms and beneficial insect populations caused by the registration of genetically engineered B.t. plants directly injures plaintiff's ability to ensure the quality and yield of her crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

41. Plaintiffs Jo Meller and Jim Sluyter are organic potato and vegetable farmers who reside at Five Springs Farm, 3480 Potter Road, Bear Lake, MI, 49614. Their crop is susceptible to infestation from Colorado potato beetles (CPB). As a management tool to ensure the quality of her crop when they have need they use foliar sprays of B.t. *San Diego* to prevent CPB infestation and to ensure the organic quality of their crop. In addition, they rely on natural populations of beneficial insects such as lacewings and ladybugs to protect their crop. CPB resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures their economic viability as organic farmers. Additionally, the injury to non-target organisms and beneficial insect populations caused by the registration of genetically engineered B.t. plants also directly injures plaintiffs' ability to ensure the quality and yield of their crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

42. Plaintiff Mothers & Others is located at 40 West 20<sup>th</sup> Street, New York, NY, 10011. Plaintiff is a national non-profit environmental consumer education organization working to promote consumer choices which are safe and sustainable for current and future generations. EPA's failure to perform its statutorily required environmental impact review of Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

43. Plaintiff National Campaign Against the Misuse of Pesticides (NCAMP) is located at 701 E Street, SE, Washington, DC 20003-2841. NCAMP was established in 1981 as a national membership organization to identify hazards and promote the adoption of effective and safe pest management strategies. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

44. Plaintiff National Family Farm Coalition is located at 110 Maryland, NE, Suite 307, Washington, DC 20002. Plaintiff represents 34 family farm based grassroots organizations in thirty states. Plaintiff supports policies and practices that enable family farmers to sustain their farming operations. The rapid development of pest resistance to B.t., the possibility of transgenic B.t. gene flow, and the disturbance of soil ecology caused by EPA's registration of transgenic B.t. plant pesticides imminently harms plaintiff's members' ability to produce, market and sell organic foodstuffs. The loss of efficacious foliar B.t. sprays and compounds would eliminate an organically acceptable pest control option that often makes the difference between success and failure of plaintiff members' crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

45. Plaintiff New Jersey Environmental Federation (NJEF) is located at 223 Park Ave, Marlton, NJ 08053. Plaintiff is a non-profit organization fighting to protect natural resources and clean up pollution in New Jersey. NJEF is the New Jersey chapter of Clean Water Action, a 25 year old national organization based in Washington DC, and dedicated to organizing citizen efforts to protect the environment. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers.

46. Plaintiff Northeast Organic Farming Association (NOFA) is located at Ruckytucks Farm, 130 Ruckytucks Road, Stillwater, NY 12170. Plaintiff is the oldest organic farming association in the United States and currently has chapter organizations in NY, VT, NH, MA, RI, CT and NJ. NOFA is a diverse grass roots organization comprised of farmers, gardeners and consumers with predominantly and educational mission. The state NOFA organizations are also primary certifiers of organic farms in the Northeast. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Additionally, the possibility of gene flow of B.t. transgenes resulting from the EPA's registration of transgenic B.t. plant pesticides harms plaintiff's state organizational members' ability to certify accurately organic crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

47. Plaintiff Northeast Organic Farming Association - New Jersey Chapter (NOFA-NJ) is located at 33 Titus Mill Road, Pennington, NJ., 08534. Plaintiff is a non-profit

association, including farmers, gardeners, and consumers, committed to local, organic agriculture. NOFA-NJ membership and board members include farmers who rely on the use of B.t. foliar sprays for organic production. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Additionally, the possibility of gene flow of B.t. transgenes resulting from the EPA's registration of transgenic B.t. plant pesticides harms plaintiff's state organizational members' ability to certify accurately organic crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

48. Plaintiff Northeast Organic Farming Association of New York, Inc. (NOFA-NY) is located at 3200 Route 89, Savannah, NY 13146. Plaintiff is a non-profit association of 1100 members including farmers, gardeners, and consumers, committed to local, organic agriculture. NOFA-NY membership and board members include farmers who rely on the use of B.t. foliar sprays for organic production. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Additionally, the possibility of gene flow of B.t. transgenes resulting from the EPA's registration of transgenic B.t. plant pesticides harms plaintiff's state organizational members' ability to certify accurately organic crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

49. Plaintiff Northeast Organic Farming Association - Vermont Chapter (NOFA-VT) is located at Daily Bread Building, 2<sup>nd</sup> Floor, Bridge Street, Richmond, VT 05477. Plaintiff is a non-profit association of 650 members including farmers, gardeners, and consumers, committed to local, organic agriculture. NOFA-VT membership and board members

include farmers who rely on the use of B.t. foliar sprays for organic production. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Additionally, the possibility of gene flow of B.t. transgenes resulting from the EPA's registration of transgenic B.t. plant pesticides harms plaintiff's state organizational members' ability to certify accurately organic crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

50. Plaintiffs Russell and Sue Nuffer are farmers who reside at Armstead Mountain Farm, HC 73, Box 30, Jerusalem, AR 72080. They are organic potato and vegetable farmers. Potatoes comprise 50% of their sales. Their potato crop is susceptible to infestation from Colorado potato beetles (CPB). As a management tool to ensure the quality of their crop when they have need they use foliar sprays of B.t. *San Diego* (B.t. *tenebrionis*) to prevent CPB infestation and to ensure the organic quality of their crop. CPB resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures their economic viability as organic farmers. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

51. Plaintiff Oregon Tilth Organic Certified is located at 11535 S.W. Durham Road, Suite C-1, Tigard, OR 97224. Since 1989 petitioner has published an annually updated list of materials allowed for use on the organic farms it certifies. Conventional B.t. was one of the first materials allowed to safely and efficaciously control insect pests. The rapid development of pest resistance to B.t., the possibility of transgenic B.t. gene flow, and the disturbance of soil ecology caused by EPA's registration of transgenic B.t. plant pesticides imminently harms plaintiff's continued ability to certify organic farms and products. The loss of efficacious foliar B.t. sprays and compounds would eliminate an organically acceptable pest control option that often makes the difference between success and failure for the many careful and conscientious growers which plaintiff certifies. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

52. Plaintiff Organic Ag Advisors is located at 20226 Salt Creek Court, Grass Valley, CA 95949. Plaintiff is an independent research and consulting firm providing technical advice to over 1400 farmers growing nearly 400,000 acres of crops in California, Oregon, Washington, Arizona, Hawaii, and Latin America. Crops produced by plaintiff's clients which depend on the use of B.t. foliar sprays include cotton, corn, potatoes and many others. Plaintiff's clients' crops are susceptible to infestation from European corn borer, Colorado potato beetle, cotton leaf perforator and other insects. As a management tool to ensure the quality of their crops, when they have need they recommend the use of foliar sprays of B.t. *aizawai*, *kurstaki*, *Israelensis*, or *tenebrionisto* prevent insect infestation and to ensure the organic quality of their clients' crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

53. Plaintiff Organic Crop Improvement Association International (OCIA) is located at 1001 Y Street, Suite B, Lincoln, NE., 68508-1172. OCIA is the world's largest organic certification agency, a farmer-owned and managed grassroots organization focusing on crop and process improvement for farmers, processors, and manufacturers. As producers, handlers and consumers of organic food and fiber, OCIA seeks to build environmental stewardship through ethical partnerships with nature. Many of OCIA's 35,000 grower-members, including some board members, use B.t. spray preparations when they have need as a management tool to ensure the organic quality of their crops. The loss of effectiveness of B.t. foliar sprays caused by EPA's registration of B.t. plants directly injures plaintiff's economic viability as an organic certification agency. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

54. Plaintiff Organic Farmers Marketing Association (OFMA) is located at 8364 S SR 39, Clayton, IN 46118. OFMA includes members of a certified organic farming cooperative, and organizations, businesses and members of the public with direct interests in the farming, marketing and distribution of organically farmed foods. Many of OFMA's members use foliar B.t. sprays to control populations of tomato horn worms, diamond back moths, squash borer, corn borer, cucumber beetles, grape roller, codling moths and many other pests. The rapid development of pest resistance to B.t., the possibility of transgenic B.t. gene flow, and the disturbance of soil ecology caused by EPA's registration of transgenic B.t. plant pesticides imminently harms plaintiff's members' ability to produce, market and sell organic foodstuffs. The loss of efficacious foliar B.t. sprays and compounds would eliminate an organically acceptable pest control option that often makes the difference between success and failure of plaintiff's members' crop. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

55. Plaintiff Organic Materials Review Institute (OMRI) is located at 541 Willamette Street, Eugene, OR 97401. Plaintiff is a non-profit organization created to support the organic community and the general public. OMRI provides research and education on the use of materials by the organic industry, and creates, publishes and disseminates lists of materials allowed and prohibited in the production, handling, and processing of organic food and fiber. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers.

56. Plaintiff Pesticide Action Network North America (PANNA) is located at 49 Powell Street, Suite 500, San Francisco, CA 94102. Plaintiff is a non-profit organization providing information, technical support, and communications coordination to farmers and other partners throughout North America. PANNA works closely with the Organic Fiber Council and others to support organic agriculture as an alternative to genetically altered and chemical-intensive production. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

57. Plaintiff Louis Pulver is a farmer who resides at Surfing Veggie Farm, 412 Richard Crossing, East Hardwick, VT 05836. He is an organic potato and vegetable farmer. His potato crop is susceptible to infestation from Colorado potato beetles (CPB). As a management tool to ensure the quality of his crop when he has need he uses foliar sprays of B.t. *San Diego* and B.t. *tenebrionis* to prevent CPB infestation and to ensure the organic quality of his crop. Mr. Pulver also sells seed potatoes to local gardeners who rely on him for an organic supply. CPB resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures his economic viability as an organic farmer. The genetic contamination of his crop by cross pollination with genetically engineered B.t. crop resulting from the defendant's registration of genetically engineered B.t. plants directly injures his economic viability as an organic farmer and seed supplier. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

58. Plaintiff Sharon M. Reiner is a farmer who resides at 2007 Hayes Road, Chelsea, MI 48118. Plaintiff has been an organic farmer and plans to return to organic farming. In her farming, she grows organic, ancient corn varieties, including Inca Rainbow Sweet Corn and Black Aztec Sweet Corn. In addition, she has used beneficial insects such as ladybugs and preying mantis to protect her crop. The genetic contamination of her crop by cross pollination with genetically engineered B.t. crop resulting from the defendant's registration of genetically engineered B.t. plants directly injures her economic viability as an organic farmer. In addition, the injury to non-target organisms and beneficial insect populations caused by the registration of genetically engineered B.t. plants directly injures plaintiff's ability to ensure the quality and yield of her crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

59. Plaintiff Rincon-Vitova Insectaries is located at 3891 Ventura Avenue, Ventura, CA., 93001. Plaintiff is the nation's oldest and one of the largest suppliers of beneficial insects and natural organisms designed to control agricultural pests. Plaintiff has had \$300,000 of sales of beneficial insects for each of the past 3 years. In addition, plaintiff sells several B.t. products. The loss of effectiveness of beneficial insects caused by defendant's registration of genetically engineered B.t. plants directly injures plaintiff's economic viability as a supplier of such insects. Plaintiff estimates that half of their sales of beneficial insects (\$150,000/year) would be compromised by this loss of effectiveness. Additionally, the loss of effectiveness of B.t. caused by defendant's registration of genetically engineered B.t. plants directly injures plaintiff's economic viability as a supplier of B.t. products. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

60. Plaintiff Richard Roth is a farmer who resides at rfarm, 1318 Bruce Street, Chico, CA 95928. He is an organic potato and vegetable farmer. As a management tool to ensure the quality of his crop when he has need he relies on natural populations of beneficial insects such as bees, moths, and butterflies to protect his crop. In addition, Mr. Roth sells seed of open pollinated vegetables to gardeners who need heirloom varieties. The injury to non-target organisms and beneficial insect populations caused by the defendant's registration of genetically engineered B.t. plants directly injures Mr. Roth ability to maintain the quality and yield of his crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

61. Plaintiff Rural Advancement Foundation International-USA is located at 21 Hillsboro Street, Pittsboro, NC 27312. Plaintiff is a non-profit organization dedicated to

community, equity and diversity in agriculture. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

62. Plaintiff Rural Vermont is located at 15 Barre Street, Montpelier, VT 05602. Plaintiff is a statewide grassroots organization dedicated to building a prosperous rural life and committed to broad based sustainable agriculture in harmony with the needs of the family, community, and the environment for future generations. Rural Vermont membership and board members include farmers who rely on the use of B.t. foliar sprays for organic production. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

63. Plaintiff Elizabeth Sarno is a farmer who resides at 2351 Road 43, Box 116, Linwood, NE 68036. She is an organic corn, soybean, alfalfa, wheat, oat and vegetable farmer. She also keeps bees and relies on them as natural pollinators, as well as for honey production. A neighboring farmer whose fields are approximately fifty feet from hers grows B.t. corn. The genetic contamination of her crop by cross pollination with genetically engineered B.t. crop resulting from the defendant's registration of genetically engineered B.t. plants directly injures her economic viability as an organic farmer. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

64. Plaintiff George Siemon is a farmer who resides at Siemon Family Farm, R2 Box 114, Viroqua, WI 54665. He is an organic corn and vegetable farmer. His corn and vegetable crops are susceptible to infestation from European corn borer. As a management tool to ensure the quality of his crop when he has need he uses foliar sprays of B.t. *kurstaki* to prevent corn borer infestation and to ensure the organic quality of his crop. Corn borer resistance to foliar B.t. sprays caused by the defendant's registration of

genetically engineered B.t. plants directly injures his economic viability as an organic farmer. Additionally, the genetic contamination of his crop by cross pollination with genetically engineered B.t. crop resulting from the defendant's registration of genetically engineered B.t. plants directly injures his economic viability as an organic farmer. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

65. Plaintiff John C. Simmons is a farmer who resides at Simmons Family Farms, 5321 N. Branch Road, North Branch, MI. He is an organic corn, potato, and grain farmer. His potato crop is susceptible to infestation from Colorado potato beetles (CPB). As a management tool to ensure the quality of his crop when he has need he uses foliar sprays of B.t. *San Diego* (B.t. *tenebrionis*) to prevent CPB infestation and to ensure the organic quality of his crop. His corn crop is susceptible to infestation from European corn borers. As a management tool to ensure the quality of his crop when he has need he uses foliar sprays of B.t. *kurstaki* to prevent corn borer infestation and to ensure the organic quality of his crop. CPB and/or European corn borer resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures Mr. Simmons' economic viability as an organic farmer. Additionally, the genetic contamination of his corn by cross pollination with genetically engineered B.t. corn resulting from the defendant's registration of genetically engineered B.t. plants directly injures his economic viability as an organic farmer. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

66. Plaintiffs Tommy Simmons and Lois Milton are farmers who reside at Bellevue Gardens Organic Farm, Route 3, Box 180, Archer, FL 32618. They are organic vegetable farmers. Their potato crop is susceptible to infestation from Colorado potato beetles (CPB). Their corn crop is susceptible to infestation from corn borers. As a management tool to ensure the quality of their crop when they have need they use foliar sprays of B.t. *tenebrionis* to prevent CPB infestation and to ensure the organic quality of their crop. When they have need they also use foliar sprays of B.t. *kurstaki* on their corn and vegetable crops to prevent corn ear worm, cabbage looper and other insect infestation and to ensure the organic quality of their crop. CPB and/or corn borer resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures their economic viability as organic farmers. Additionally, the genetic contamination of their crop by cross pollination with genetically engineered B.t. crop resulting from the defendant's registration of genetically engineered B.t. plants directly injures their economic viability as organic farmers. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

67. Plaintiffs Barbara and Bill Spencer are farmers who reside at Windrose Farm, 5750 El Pharo Road, Paso Robles, CA 93446. They are an organic potato and vegetable farmers. As a management tool to ensure the quality of their crop they use foliar sprays of B.t. *San Diego* (B.t. *tenebrionis*) when needed to infestation and to ensure the organic quality of his crop. Insect resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures plaintiffs' economic viability as an organic farmer. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

68. Plaintiff Kate Stout is a farmer who resides at North Creek Community Farm, N14227 290<sup>th</sup> Street, Prairie Farm, WI 54762 9622. She is an organic potato and vegetable farmer. Her crop is susceptible to infestation from Colorado potato beetles (CPB). As a management tool to ensure the quality of her crop when she has need she uses foliar sprays of B.t. *San Diego* (B.t. *tenebrionis*) to prevent CPB infestation and to ensure the organic quality of her crop. CPB resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures Ms. Stout's economic viability as an organic farmer. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

69. Plaintiff Sustainable Cotton Project is located at 6176 Old Olive Highway, Oroville, CA 95966. Plaintiff is a non-profit organization founded in 1994. Plaintiff works to aid farmers in the transformation of cotton production systems so that sustainability is achieved throughout the entire life cycle of cotton products. Many of the farmers plaintiff works with use foliar B.t. for the control of cabbage looper and boll worms. The rapid development of pest resistance to B.t., the possibility of transgenic B.t. gene flow, and the disturbance of soil ecology caused by EPA's registration of transgenic B.t. plant pesticides imminently harms plaintiff's ability to aid in the development of organic and sustainable cotton farms. The loss of efficacious foliar B.t. sprays and compounds would eliminate an organically acceptable pest control option that often makes the difference between success and failure of plaintiff's crop.

70. Plaintiff Terra Prima Incorporated is located at 106 Buckeye Street, Suite 301, Hudson, WI 54016. Plaintiff is a supplier and exporter of certified organic ingredients for food products and animal feed. Recently, testing revealed that Novartis B.t. corn had contaminated a shipment of plaintiff's corn, resulting in product recalls from 7 European countries and damages of over \$100,000. The genetic contamination of plaintiff's crops by cross pollination with genetically engineered B.t. crop resulting from the defendant's registration of genetically engineered B.t. plants directly injures the company's economic viability as an organic food supplier. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful

consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

71. Plaintiff Texas Organic Growers Association (TOGA) is located at 1512 ½ South Congress Ave., Austin, TX 78704. Plaintiff is an association of over 400 members, including major corporate growers, retail distributors of organic products, small family organic farmers and consumers. Since 1991, plaintiff has actively educated farmers, consumers, public and private institutions and the business community on the benefits of organic production. The rapid development of pest resistance to B.t., the possibility of transgenic B.t. gene flow, and the disturbance of soil ecology caused by EPA's registration of transgenic B.t. plant pesticides imminently harms plaintiff's ability to produce, market and sell organic foodstuffs. The loss of efficacious foliar B.t. sprays and compounds would eliminate an organically acceptable pest control option that often makes the difference between success and failure of plaintiff's members' crops, including cotton, melons and green vegetables. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

72. Plaintiff Virginia Association of Biological Farmers is located at 4380 Glendale Drive, Barbourville, VA 22923. Plaintiff is a statewide network of growers, educators, gardeners, marketers, and consumers organized for the promotion of sustainable agriculture. The Association membership and board members include farmers who rely on the use of B.t. foliar sprays for organic and sustainable production. The rapid development of pest resistance to B.t., the possibility of transgenic B.t. gene flow, and the disturbance of soil ecology caused by EPA's registration of transgenic B.t. plant pesticides imminently harms plaintiff's ability to produce, market and sell organic foodstuffs. The loss of efficacious foliar B.t. sprays and compounds would eliminate an organically acceptable pest control option that often makes the difference between success and failure of plaintiff's members' crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

73. Plaintiff Vreseis Limited is located at 320 West Cavaness Ave., Wickenburg, AZ 85390. Plaintiff is the oldest organic cotton company in the United States. It markets and wholesales products, including yarn, fabric and other products, made from organic cotton to over 100 other businesses. Through the commercialization of organic cotton, plaintiff works to aid farmers in the transformation of cotton production systems so that sustainability is achieved throughout the entire life cycle of cotton products. Much of the plaintiff's end product depends on the use of foliar B.t. for the control of cabbage looper, boll worms and other cotton pests. The rapid development of pest resistance to B.t., the possibility of transgenic B.t. gene flow, and the disturbance of soil ecology caused by EPA's registration of transgenic B.t. plant pesticides imminently harms plaintiff's ability to aid in the development of organic and sustainable cotton farms. The loss of efficacious foliar B.t. sprays and compounds will directly injure plaintiff's viability as a supplier of organic cotton by eliminating an organically acceptable pest control option that often makes the difference between success and failure of plaintiff's ability to grow organic cotton. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

74. Plaintiff Washington Biotechnology Action Council (WashBAC) is located at 3807 South McClellan Street, Seattle, WA 98144. Plaintiff is a public interest organization which, for almost a decade, has been the focus in the Northwest of citizen concerns regarding the impacts of genetic engineering of plants, animals, and humans. Its members are also active in allied organizations regarding sustainable agriculture, citizen empowerment, consumers' rights, environmental quality, fair trade, and civil liberties. EPA's failure to perform its statutorily required environmental impact review of its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants harms and impedes plaintiff's organizational goal of providing accurate, complete, and dependable information concerning the use of transgenic B.t. plant pesticides to its members, the public and policy makers. Plaintiff's members and board members are consumers of corn, cottonseed oil and potatoes who seek to avoid unnecessary exposure to pesticides. Defendant's registration of genetically engineered B.t. plants without a requirement that all B.t. corn, cottonseed oil and potatoes be labeled as pesticides injures plaintiff's members and board members by, *inter alia*, denying them accurate, material information about the food products they consume.

75. Plaintiff Mark Wilke resides at 1204 N. Ballard, Brownfield, TX 79316. Plaintiff is President of Oportunidades Golpe, Inc. and Chairman of the Texas Organic Cotton Growers Association. Plaintiff's farm grows organic cotton in a region where neighboring farms are using transgenic B.t. cotton plants. The rapid development of pest resistance to B.t., the possibility of transgenic B.t. gene flow, and the disturbance of soil ecology caused by EPA's registration of transgenic B.t. plant pesticides, including the registration of transgenic B.t. cotton plant pesticides, imminently harms plaintiff's ability to produce, market and sell organic cotton. The loss of efficacious foliar B.t. sprays and compounds would eliminate an organically acceptable pest control option that often makes the difference between success and failure of plaintiff's crop. Finally, defendant's failure to

undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

76. Plaintiff Tom Willey is a farmer who resides at T&D Willey Farms, 13886 Road 20, Madera, CA 93637. He is an organic potato and vegetable farmer. His potato and vegetable crop is susceptible to infestation from lepidopterous worms, aphids, lugs, and cucumber beetles. As a management tool to ensure the quality of his crop when he has need he uses foliar sprays of B.t. *kurstaki* to prevent infestation and to ensure the organic quality of his crop. He also uses beneficial insects such as lacewings and relies on natural populations of beneficials to protect his crop. Insect resistance to foliar B.t. sprays caused by the defendant's registration of genetically engineered B.t. plants directly injures his economic viability as an organic farmer and broker. Additionally, the injury to non-target organisms and beneficial insect populations caused by the registration of genetically engineered B.t. plants also directly injures plaintiff's ability to ensure the quality and yield of his crops. Finally, defendant's failure to undertake its required final regulatory flexibility analysis injures plaintiff by failing to give any meaningful consideration to the economic impact of defendant's Plant Pesticide Program, as implemented through the registration of genetically engineered B.t. plants, on small, organic farmers and business entities.

#### **STATEMENT OF FACTS**

77. *Bacillus thuringiensis* (B.t.) is a group of spore-forming bacterial strains found commonly in the environment. They produce a number of insect toxins, the most distinctive of which are protein crystals formed during sporulation.

78. When certain insects ingest the B.t. spores or the delta-endotoxin protein crystals produced by the bacterium, the function of their digestive system is disrupted and the insects die. The insects susceptible to particular strains of B.t. include, *inter alia*, European corn borer, southwestern corn borer, tobacco budworm, cotton bollworm, pink bollworm, and Colorado potato beetle.

79. Non-genetically engineered, natural B.t. has been registered as a foliar spray pesticide with the Environmental Protection Agency (hereinafter "EPA" or "defendant") since 1961. It is used widely in sprays to kill agricultural pests when needed. The registered B.t. toxins have been hailed as a perfect pesticide because it can specifically target certain pests without having a detrimental effect on mammals, birds or most non-target insect species and microorganisms. B.t. sprays leave no poisonous residue on crops or trees and are readily degraded by sunlight and the environment within a week after application.

80. Foliar B.t. sprays have been in use for decades and when used properly have not created resistance among pest species. These B.t. pesticides used in foliar spray are critical for many organic and conventional farming programs and have been identified by the defendant as a safer pest control method than chemical pesticide alternatives.

81. Recent figures have found that 57% of all organic farmers use foliar B.t. sprays either frequently, occasionally or as a pest control method of last resort. Over 85% of these organic farmers are single family farming operations and average 140 acres of organic production. Just over 80% of organic farming operations receive a gross income of \$100,000 or less from organic product sales. As a result, a loss of foliar B.t. spray pesticides would significantly impact small organic farming businesses.

82. Because of the effectiveness and safety of foliar B.t. compared to the pesticides it displaces, B.t. is probably the single most important insecticide ever discovered and the loss of such a pesticide's effectiveness would cause growers to switch to more harmful synthetic pesticides.

83. For many years researchers and corporations have experimented with genetically engineering B.t. toxins into the permanent genetic code of plants. The resulting genetic engineered plants are designed to continuously produce forms of B.t. toxins so that various agricultural crops are less susceptible to insect infestation.

84. In 1994 the defendant proposed to regulate, *inter alia*, genetically engineered B.t. plants under a new Plant Pesticide Program. In 1996, the defendant reopened the public comment on its proposal. To date, it has not finalized its rulemaking establishing the Plant Pesticide Program.

85. Despite the defendant's failure to complete rulemaking implementing its Plant Pesticide Program, in early 1995, the defendant began the limited registration of these genetically engineered B.t. plants as plant pesticides under the Federal Insecticide Fungicide, and Rodenticide Act ("FIFRA"). The FIFRA registrations allow for genetically engineered B.t. plants, including resulting corn, cotton and potato products, to be sold, distributed and used in interstate commerce.

86. Since its 1995 action, the defendant has registered eight (8) genetically engineered B.t. plants. There is one registration each for B.t. potatoes, B.t. cotton, and B.t. popcorn; and there are five (5) registrations for B.t. field corn. One of the B.t. corn plant pesticides is also registered for processed sweet corn. These registrations do not require that corn, popcorn, cottonseed oil, and potatoes, *inter alia*, from these B.t. plants be labeled as pesticides. In addition, companies are developing other types of genetically engineered B.t. crops for commercial use.

87. Many conventional farmers have readily adopted these new genetically engineered B.t. plants. It is now estimated that up to twenty-five (25%) of the 1999 field corn crop will be genetically engineered B.t. corn. Current estimates have B.t. corn accounting for almost 15 million acres in the United States.

88. Genetically engineered B.t. plants present new and unprecedented adverse environmental impacts not associated with the use of natural, foliar B.t. sprays. These impacts include, *inter alia*, the widespread creation of multiple insects resistant to foliar B.t. sprays, direct harm to non-target organisms and beneficial insect populations by exposure to new, unique forms of B.t. toxins, and the dispersal of the genetically engineered B.t. traits into non-genetically engineered crops and weeds.

89. In general, plant pests are susceptible to the use of B.t. as a biopesticide because the pests contain genes that confer susceptibility to specific toxins produce by B.t.

90. During the registration process for all genetically engineered B.t. crops, the defendant was aware that the dissemination of genetically engineered B.t. plants will lead to selective evolutionary pressure which will cause organisms targeted by B.t. to lose "suseptibility" genes -- that is "resistance" genes rather than "suseptibility" genes will predominate in the population. This will lead to the development of B.t. resistance to multiple B.t. toxins in major pests within a relatively short period of time (between 2 to 10 years).

91. Recent studies have shown that B.t. resistant European corn borers (ECB) can be easily found and that resistance in ECB increases rapidly with exposure to genetically engineered B.t. plants (up to 35-fold increases in only three generations). Similarly, B.t. resistant Colorado potato beetle (CPB) have been detected in laboratory experiments and found to survive for two generations on genetically engineered B.t. plants.

92. Defendant is also aware that, contrary to conventional B.t. preparations, genetic engineered B.t. plants have properties which make the development of pest resistance much more likely, including the continuous production of B.t. toxins at high doses throughout most of its tissues, including the resulting corn, cotton and potatoes, over a long period. In addition, many of the B.t. toxins exuded by some genetically engineered crops are in forms that are not readily degraded in the environment and are potentially readily active to a wider range of organisms coming in contact with the toxins. Each of these characteristics potentially exerts selection pressure on target pests and non-target organisms that is not present in the use of conventional B.t. preparations.

93. As a result, defendant's registration of genetically engineered B.t. plant pesticides threatens the continued susceptibility of pests to B.t. toxins. The novel and widespread use of B.t. resulting from the defendant's FIFRA registration of genetically engineered B.t. plants will result in the natural selection of other genes, "resistance genes," which will allow pests to circumvent human attempts to kill them with B.t. toxins. As a result, B.t. foliar sprays will be rendered ineffective and lost as a pest control option for organic and conventional farmers. This will have significant economic impact upon numerous small organic farming operations. Additionally, the loss of B.t will force many farmers to return to using traditional, synthetic insecticides.

94. Numerous government sponsored reports have found that resistance management plans are needed to slow the development of B.t. resistance occurring because of the commercial use of genetically engineered B.t. plants.

95. A February 1998 Scientific Advisory Panel ("SAP") convened by the defendant concluded that use of genetically engineered B.t. crops risks the creation of B.t. resistance pest populations and such issues must be addressed by the EPA. The SAP found that it was essential that resistance management plans be required for every registered B.t. crop.

96. The SAP found that B.t. crops must be planted within resistance management plans that consist of two essential criteria: (1) the genetically engineered plants produce a high dose of b.t. toxin and (2) the genetically engineered plants are planted with refuges of non genetically engineered plants.

97. The SAP revealed numerous problems associated with adequately developing resistance management plans. The problems include a failure of genetically engineered B.t. plants to consistently produce a high dose of B.t. toxin necessary to achieve high mortality rates in targeted insects, the unknown geographic and structural requirements of non genetically engineered plant refuges and the ongoing monitoring and enforcement associated with implementing resistance plans. 98. In October 1998, a USDA supported regional research committee known as NC-205 supplemented a 1997 report entitled, "B.t. Corn and European Corn Borer: Long-Term Success Through Resistance Management." The report found that resistance management is possible only if the genetically engineered corn puts forth a consistent high dose of transgenic B.t. and resistance management plans are in place.

99. To potentially be successful, the NC-205 report found that at least 20-30% of each 320 acre planting area containing genetically engineered B.t. corn must be a refuge of non B.t. corn that goes unsprayed for insects. If the non-B.t. refuge is to be sprayed with insecticide, NC-205 found that the refuge would need to be expanded to 40% of each 320 acre area.

100. In November 1998, the International Life Sciences Institute (ILSI), a public, non-profit scientific foundation located in Washington, DC, released a report entitled "An Evaluation of Insect resistance Management in B.t. Field Corn: A Science-based Framework for Risk Assessment and Risk Management." ILSI's Subcommittee of Insect Resistance Management includes five companies currently manufacturing foliar B.t. products and/or genetically engineered B.t. crops - AgrEvo Plant Genetic Systems, Monsanto Company, Mycogen Company, Novartis Seeds, Inc., and Pioneer Hi-Bred International. The ILSI report concluded that refuges of 20% unsprayed and 40% sprayed be used for B.t. corn resistance management plans.

101. To date defendants have mandated resistance management plans through conditional FIFRA registrations of one B.t. cotton (including 20% sprayed and 4% unsprayed refuge) and two B.t. corn lines (Novartis B.t. popcorn with 40% sprayed refuges and 20-30% unsprayed refuges and AgrEvo field corn with 40% sprayed refuges and 25% unsprayed

refuges). The defendant's monitoring, enforcement of these resistance management plans and its response plan to the development of resistance are woefully inadequate and devoid of meaningful detail.

102. Genetically engineered B.t. plants are also responsible for the transfer, or gene flow, of their engineered genetic traits from the genetically engineered plants to non-genetically engineered plants and wild native plants. These plants may acquire the novel, engineered B.t. genes through cross pollination.

103. Pollen from genetically engineered B.t. plants can be transferred throughout local growing areas by wind or insects to crops and contamination of non-genetically engineered B.t. crops can occur through the inadvertent distribution of genetically engineered seed when harvested B.t. crops (or B.t. seed) are transported.

104. The cross pollination of crops caused by release of genetically engineered B.t. crop pollen can contaminate organic and conventional crops often causing them to be unmarketable. This genetic contamination of organic crops by genetically engineered B.t. plants will have a significant impact on small organic farming operations. Defendant has failed to complete analysis of this and other economic impacts of its actions resulting from beginning its Plant Pesticide Program as implemented by the registration of genetically engineered B.t. plants.

105. Additionally, the transfer of B.t. genes to wild related species could also have a direct impact on B.t. resistance development in pests that also feed on these wild species. B.t.-enhanced weeds could function as an additional selective pressure on the insect pests and increase the rate of resistance development.

106. Genetically engineered B.t. plants also have a negative impact on non-target organisms. Appropriate studies on the negative impact on natural non-target organisms by genetically engineered B.t. plants have not been required by the defendants during B.t. plant FIFRA registrations.

107. Significant differences between the B.t. produced by genetically engineered plants and the original B.t. bacteria have been found. Some B.t. toxins, as produced by genetically engineered plants, have the potential to be activated more readily, and affect organisms not susceptible to original B.t. toxin including beneficial pest predators and pollinators such as lacewings and bees. Recent studies have found that beneficial predatory species may be poisoned when they feed on pests (such as European corn borer and bollworms) who have consumed genetically engineered B.t. plants. Moreover, B.t. toxins in genetically engineered plants continue to be active for a surprisingly long time in some soils and keep their toxic effects. Widespread growing of genetically engineered B.t. plants will result in accumulating B.t. toxin over a longer period in the soil with potentially significant environmental consequences for non-target insects and soil organisms.

108. In addition defendant's past biological consultations with the United States Fish & Wildlife Service ("FWS") concerning B.t. pesticides indicate that B.t. use could jeopardize the continued existence of non-target organisms such as threatened and endangered species including, *inter alia*, the Kern primrose sphinx moth, Lange's metalmark butterfly, Smith's blue butterfly, El Segundo blue butterfly, Oregon silverspot butterfly, Mission blue butterfly, San Bruno elfin butterfly, Lotis blue butterfly, and Schaus swallowtail butterfly. Despite this past consultation, defendant has not engaged in any biological consultations with FWS concerning the registration of genetically engineered B.t. plants.

109. Because of the environmental impacts of genetically engineered B.t. plants including the development of B.t. resistant insects (and the resulting loss in effectiveness of foliar B.t. sprays), the flow of genetically engineered B.t. traits into the environment, and the injury to non-target organisms, on September 16, 1997, a number of the plaintiffs petitioned the defendant under the Administrative Procedure Act, 5 U.S.C. §553(e) and the defendant's FIFRA Special Review regulations, 40 C.F.R. Part 154 to take action.

110. Specifically, plaintiffs' petition for rulemaking and collateral relief requested the defendant to, *inter alia*, undertake withdrawal the FIFRA registrations of all registered genetically engineered B.t. crops, institute an immediate moratorium on issuing any new FIFRA registrations of such plants, and undertake a programmatic EIS on the defendant's plant pesticide registration program.

111. Despite several attempts by plaintiffs to obtain a response to the petition, the defendant has failed to substantively respond to plaintiffs' petition and constructively denied all requests contained in plaintiffs' rulemaking petition.

112. In addition, defendant has failed to undertake any programmatic environmental assessment or environmental impact assessment addressing the cumulative impacts associated with its implementation of its plant-pesticide program which began with the registering genetically engineered B.t. crops.

## **CAUSES OF ACTION**

### **COUNT I - FEDERAL INSECTICIDE, RODENTICIDE, AND FUNGICIDE ACT**

#### **(A). Defendant's Approvals of Genetically Engineered**

#### **B.t Crops Causing Unreasonable Adverse Effects on the**

#### **Environment Are Arbitrary, Capricious**

#### **and an Abuse of Discretion.**

113. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 112 *supra*.

114. Section 3 of FIFRA, 7 U.S.C. § 136a, allows the defendant to approve the registration of a pesticide only if the substance or formulation in question does not generally cause unreasonable adverse effects on the environment.

115. The registration and use of all eight (8) genetically engineered plants expressing B.t. toxins will cause unreasonable adverse effects on the environment including, *inter alia*, the development of B.t. (multiple) resistance in major pests within a relatively short period of time, the transfer of B.t. traits to non-genetically engineered crops, progenitor plants and wild relatives, and have a negative impact on non-target and beneficial organisms. As a result, defendant has registered these plant pesticides in violation of 7 U.S.C. § 136a(c)(5).

116. In light of the foregoing, including the approval and registration of genetically engineered plant expressing B.t. toxins, defendant's failure to comply with FIFRA is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law, and without observance of the procedures required by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706.

(B). Defendant's Failure to Cancel All FIFRA

Registrations for Genetically Engineered B.t. Crops Was Arbitrary, Capricious and an Abuse of Discretion.

117. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 116 *supra*.

118. Section 6 of FIFRA, 7 U.S.C. § 136d, allows the defendant to cancel the registration of a plant pesticide if the pesticide generally causes unreasonable adverse effects on the environment.

119. Defendant has constructively denied plaintiffs' petition for rulemaking seeking the cancellation of all genetically engineered B.t. plant pesticide registration because of their adverse impact on the environment including, *inter alia*, the development of B.t. (multiple) resistance in major pests within a relatively short period of time, the transfer of B.t. traits to non-genetically engineered crops, progenitor plants and wild relatives, and the negative impact on non-target, beneficial organisms. As a result, defendant has failed to cancel plant pesticides registrations in violation of 7 U.S.C. § 136d(b).

120. In light of the foregoing, defendant's failure to cancel the FIFRA registrations of genetically engineered plant expressing B.t. toxins, is arbitrary, capricious, an abuse of

discretion and otherwise not in accordance with law, and without observance of the procedures required by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706.

(C). Defendant's Registrations of Genetically Engineered

B.t Crops Without Requiring the Labeling of Individual

Corn, Popcorn, Cotton and Potatoes as Pesticides Are

Arbitrary, Capricious and an Abuse of Discretion.

121. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 120 *supra*.

122. Section 3 of FIFRA, 7 U.S.C. § 136a, allows the defendant to approve the registration of a pesticide only if its labeling complies with the requirements of the Act.

123. Section 2 of FIFRA, 7 U.S.C. § 136(p) and (q), establishes the labeling requirements that all registered pesticides must meet in order not to be misbranded.

124. Defendant's registration of eight (8) genetically engineered plants expressing B.t. toxins has allowed corn, cottonseed oil and potatoes to be put into interstate commerce without mandated pesticide labeling. As a result, defendant has registered these plant pesticides in violation of 7 U.S.C. §§ 136a(c)(5), 136(p), 136(q).

125. In light of the foregoing, including the registration of genetically engineered plant expressing B.t. toxins without labeling, defendant's failure to comply with FIFRA is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law, and without observance of the procedures required by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706.

(D). Defendant's Failure To Answer Plaintiff's

Petition for Rulemaking and Collateral Relief

Constitutes Unreasonable Delay.

126. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 125 *supra*.

127. Pursuant to §553(e) of the Administrative Procedure Act and defendant's Special Review regulations, 40 C.F.R. § 154.10, plaintiffs filed a petition on September 16, 1997 with defendants seeking, *inter alia*, cancellation of all FIFRA registrations related to genetically engineered B.t plants and an immediate undertaking of Special Review procedures. The defendant has failed to provide a substantive response to the petition or a statement of grounds for denial as required by 5 U.S.C. § 555(e).

128. In light of the foregoing, defendant's failure to respond constitutes unreasonable delay and is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law, and without observance of the procedures required by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706.

**COUNT II - ENDANGERED SPECIES ACT(A). Defendant's Approvals of Genetically Engineered**

B.t Crops Without Undertaking an Endangered Species

Consultation on the Impact on Non-target and Beneficial

Organisms Violates the Endangered Species Act and is

Arbitrary, Capricious and an Abuse of Discretion.

129. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 128 *supra*.

130. Section 7 of the Endangered Species Act ("ESA"), 16 U.S.C. §1536(a)(2), requires that each Federal agency must insure, through consultation with the Department of the Interior, that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species.

131. In fulfilling the requirements of Section 7 each agency shall use the best scientific and commercial data available. 16 U.S.C. §1536(a)(2).

132. Defendant has determined that consultation with the Department of the Interior concerning its registrations of any and all genetically engineered B.t. plants is not required.

133. In light of the foregoing, defendant's approval and registration of genetically engineered plant expressing B.t. toxins, has failed to comply with the Section 7 of the ESA and is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law, and without observance of the procedures required by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706.

### **COUNT III - REGULATORY FLEXIBILITY ACT**

#### (A). EPA's Failure to Prepare a Final Regulatory Flexibility

#### Analysis on its Plant Pesticide Program as Implemented by the

#### Registration of Genetically Engineered Plants Expressing B.t. Toxins Violates the Regulatory Flexibility Act.

133. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 132 *supra*.

134. The Regulatory Flexibility Act, 5 U.S.C. § 604, requires each federal agency to prepare a final regulatory flexibility analysis with respect to each proposal for final rulemaking.

135. Defendant has initiated its Plant Pesticide Program through the registration of eight (8) genetically engineered plant pesticides expressing B.t. toxins. As a result, defendant's registration of genetically engineered B.t. plants constitutes final rulemaking subject to the provisions of the Administrative Procedure Act, 5 U.S.C. § 553.

136. The defendant has failed to prepare, *inter alia*, an adequate regulatory flexibility analysis of the impacts to accompany its implementation of its plant pesticide program, including the effects approving genetically engineered plants expressing B.t. toxins for widespread use will have on small entities such as organic farmers. Thus, the defendant's actions as described heretofore violate the Regulatory Flexibility Act and is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law, and without observance of procedures required by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706.

### **COUNT IV - NATIONAL ENVIRONMENTAL POLICY ACT**

#### (A). EPA's Failure to Prepare a Programmatic

#### Environmental Impact Statement on its

Plant Pesticide Program as Implemented by the Registration of Genetically Engineered  
Plants Expressing B.t. Toxins

Violates the National Environmental Policy Act

137. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 136 *supra*.

138. Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. §4332(2)(C), requires each federal agency to prepare an environmental impact statement with respect to each major action of such agency that may significantly affect the quality of the human environment.

139. Defendant has initiated its Plant Pesticide Program through the registration of eight (8) genetically engineered plant pesticides expressing B.t. toxins. These registrations constitute defendant's implementation of its Plant Pesticide Program and constitute a major federal action that may significantly affect the environment.

140. The defendant has failed to prepare an adequate environmental assessment (EA) or programmatic environmental impact statement (EIS) addressing the environmental and social impacts of this Plant Pesticide Program, including the effects of approving genetically engineered plants expressing B.t. toxins for widespread use. Thus, the defendant's actions as described heretofore violate section 102(2)(C) of the NEPA and its implementing regulations.

141. Defendant's failure to prepare an adequate EA and programmatic EIS that provides information on the environmental, socio-economic and cumulative impacts and risks of its Plant Pesticide Program (including its allowance for use of genetically engineered B.t. plants) and alternatives to the approval of such action, violates, *inter alia*, Section 102(2)(C) and (E), (F), (G) and (H) of NEPA, 42 U.S.C. §4332(2)(C), (E), (F),(G)and (H).

142. In light of the foregoing, defendant's failure to comply with NEPA and the applicable implementing regulations by not preparing an adequate EA or EIS and Programmatic EIS under NEPA was arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law, and without observance of procedures required by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706.

**COUNT V. - PUBLIC TRUST DOCTRINE**

(A). EPA's Transfer of Commercial Rights  
to Use B.t. Toxin Susceptibility Genes Violates  
the Public Trust Doctrine.

143. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 142 *supra*.

144. Defendant holds the genetic resources allowing for the susceptibility of organisms to B.t. toxins in trust on behalf of U.S. citizens. As trustees, defendant is charged with the duty and clothed with the power to protect this public good and natural resources from trespass and unlawful appropriation. As such, defendant owes a fiduciary duty to the public as its sovereign.

145. Through the registration of genetically engineered B.t. plants defendant has conveyed a proprietary interest in publicly-owned genetic resources potentially destroying their effectiveness. This transfer of genetic resources from the public trust into the possession of commercial entities causing harm to the resources with little if any direct public gain or benefit violates the defendant's public trust fiduciary duty.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs request this Court to:

(1). Pursuant to Count One:

(A). Declare that defendant's action in registering genetically engineered plants producing B.t toxins cause an unreasonable adverse environmental impact and is arbitrary, capricious, an abuse of discretion and not in accordance with law and a violation of the Federal Insecticide Fungicide and Rodenticide Act;

(B). Declare that defendant's failure to rescind the registration of genetically engineered B.t. plants as requested through plaintiffs' rulemaking and Special Review petition is arbitrary, capricious, an abuse of discretion and not in accordance with law and a violation of the Federal Insecticide Fungicide and Rodenticide Act;

(C). Direct the defendant to immediately rescind the FIFRA registrations of all genetically engineered B.t. plants;

(D). Direct the defendant to immediately withdraw all existing FIFRA registrations of genetically engineered plants producing B.t toxins;

(E). Direct the defendant to cease the approval process of any and all new applications seeking the FIFRA registration of any genetically engineered plants producing B.t toxins;

(F). Declare that defendant's failure to mandate the pesticide labeling of corn, cottonseed oil and potatoes grown from B.t. plants is arbitrary, capricious, an abuse of discretion and not in accordance with law and a violation of the Federal Insecticide Fungicide and Rodenticide Act;

(G). Direct the defendant to immediately mandate the labeling of corn, cottonseed oil and potatoes grown from B.t. plants as pesticides;

(H). Declare that defendant's failure to respond to plaintiffs' petition for rulemaking constitutes unreasonable delay;

(I). Direct defendant to immediately issue a substantive response to plaintiffs' petition for rulemaking;

(2) Pursuant to Count Two:

(A). Declare that defendant's failure to undertake the require Endangered Species Act consultation process during the registration of genetically engineered B.t. plants is arbitrary, capricious, an abuse of discretion and not in accordance with law and a violation of the Endangered Species Act;

(B). Direct the defendant to immediately rescind the

FIFRA registrations of all genetically engineered B.t. plants;

(C). Direct the defendant to immediately undertake consultations with the Department of Interior concerning the impact of each registration of a genetically engineered B.t. plant has on threatened and endangered species;

(3) Pursuant to Count Three:

(A). Declare that defendant's failure to undertake a final regulatory flexibility analysis prior to its implementation of a Plant Pesticide Program, as implemented by the registration of genetically engineered B.t. crops, was arbitrary, capricious, an abuse of discretion and not in accordance with law and a violation of the Regulatory Flexibility Act;

(B). Direct the defendant to immediately rescind the

FIFRA registrations of all genetically engineered B.t. plants;

(C). Direct the defendant to immediately undertake a final regulatory flexibility analysis concerning the implementation of its Plant Pesticide Program as implemented through the FIFRA registration of any and all genetically engineered plants producing B.t toxins;

(4). Pursuant to Count Four:

(A). Declare that defendant's failure to perform an environmental assessment and/or programmatic environmental impact assessment under the National Environmental Policy Act analyzing the environmental and socio-economic impacts associated with the implementation of its Plant Pesticide Program as implemented through the FIFRA registration of any and all genetically engineered plants producing B.t toxins was arbitrary, capricious, an abuse of discretion and not in accordance with law and a violation of the National Environmental Policy Act;

(B). Direct the defendant to immediately rescind the FIFRA registrations of all genetically engineered B.t. plants;

(C). Direct the defendant to immediately perform an environmental assessment and/or programmatic environmental impact assessment under the National Environmental Policy Act analyzing the environmental and socio-economic impacts associated with the implementation of its Plant Pesticide Program as implemented through the FIFRA registration of any and all genetically engineered plants producing B.t toxins;

(5). Pursuant to Count Five:

(A). Declare that defendant's transfer of rights to use susceptibility genetic resources to commercial entities through the FIFRA registration genetically engineered B.t. plants is a violation of defendant's public trust obligations;

(B). Direct the defendant's to immediately rescind the

FIFRA registrations of all genetically engineered B.t. plants;

(C). Direct the defendant to immediately withdraw all existing FIFRA registrations of genetically engineered plants producing B.t toxins;

(D). Direct the defendant to cease the approval process of any and all new applications seeking the FIFRA registration of any genetically engineered plants producing B.t toxins;

(6) Retain jurisdiction of this action to ensure compliance with its decree;

(7) Award plaintiffs attorney's fees and all other reasonable expenses occurred in pursuit of this action; and

(8) Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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