

SECURITIES AND EXCHANGE COMMISSION

FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

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FILER

**CALGENE INC /DE/**

CIK: **1011134** | IRS No.: **680369863** | State of Incorporation: **DE** | Fiscal Year End: **1231**  
Type: **10-Q** | Act: **34** | File No.: **000-20641** | Film No.: **96666079**  
SIC: **0100** Agricultural production-crops

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FORM 10-Q

SECURITIES AND EXCHANGE COMMISSION  
Washington, DC

Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the quarterly period ended September 30, 1996 or

Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Commission File Number: 0-14802

Calgene, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of  
incorporation or organization)

68-0369863

(I.R.S. Employer Identification No.)

1920 Fifth Street,

Davis, California

(Address of principal executive offices)

95616

(Zip Code)

(916) 753-6313

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

X                      Yes                                      No

-----                                      -----

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Common Stock Outstanding at October 31, 1996: 60,464,636 shares

CALGENE, INC.

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PART I. FINANCIAL INFORMATION

Calgene Inc.  
 Condensed Consolidated Balance Sheets  
 (\$ in thousands except per share amounts)  
 (Unaudited)

	September 30 1996	June 30 1996
Assets	-----	-----
Current assets:		
Cash and equivalents	\$ 598	\$ 17,674
Available-for-sale securities	3,163	10,919
Accounts receivable, net of allowances	19,490	26,133
Inventories	27,977	23,865
Prepaid expenses and other current assets	1,601	2,174
	-----	-----
Total current assets	52,829	80,765
Property, plant and equipment:		
Land	22,755	22,755
Buildings	23,083	23,083
Leasehold improvements	8,591	8,556
Furniture, fixtures and equipment	40,654	40,398
Construction in progress	3,499	1,676
	-----	-----
	98,582	96,468
Less accumulated depreciation and amortization	18,634	16,481
	-----	-----
Property, plant and equipment, net	79,948	79,987
Product rights, patents and other intangible assets, less accumulated amortization	30,333	30,642
Costs in excess of fair values assigned to net assets acquired, less accumulated amortization	35,582	36,219
Other non-current assets	5,147	5,689
	-----	-----
	\$203,839	\$233,302
	=====	=====

Liabilities and shareholders' equity	Current liabilities:		
Notes payable		\$ 18,939	\$ 16,789
Note payable to affiliate		5,000	--
Accounts payable		14,963	20,111
Accrued payroll and related expenses		3,748	3,252
License contract payable		--	750
Amounts due customers		3,389	5,028
Other current liabilities		13,430	13,453
Current portion of long-term debt		13,157	22,850
		-----	-----
Total current liabilities		72,626	82,233
Note payable to affiliate		24,760	24,760
Research and development advance from affiliate		10,000	10,000
Long-term debt		20,613	22,643
Commitments and contingencies			
Minority interest		198	266
Shareholders' equity:			
Common stock, \$.001 par value; 80,000,000			
shares authorized; 60,464,636 and 60,443,115			
shares issued and outstanding at			
September 30, 1996 and June 30, 1996, respectively		60	60
Additional paid-in capital		367,590	367,494
Accumulated deficit		(292,008)	(274,154)
		-----	-----
Total shareholders' equity		75,642	93,400
		-----	-----
		\$203,839	\$233,302
		=====	=====

See accompanying notes

Calgene, Inc.  
Condensed Consolidated Statements of Operations  
(\$ in thousands except per share amounts)  
(Unaudited)

Three Months  
Ended September 30

1996	1995
------	------

Revenues:

Product sales, net	\$	36,611	\$	8,812
Product development revenues		359		300
		-----		-----
		36,970		9,112
Costs and expenses:				
Cost of goods sold		38,765		12,141
Research and development		4,018		3,223
Selling, general and administrative		10,392		3,892
		-----		-----
		53,175		19,256
Interest expense		(1,744)		(513)
Other income, net		111		298
		-----		-----
Loss from operations before income taxes		(17,838)		(10,359)
Provision for income taxes		16		15
		-----		-----
Net loss	\$	(17,854)	\$	(10,374)
		=====		=====
Net loss per share	\$	(0.30)	\$	(0.34)
		=====		=====
Shares used in per share calculations		60,443,354		30,249,592

See accompanying notes.

Calgene, Inc.  
Condensed Consolidated Statements of Cash Flows  
Decrease in Cash and Equivalents  
(\$ in Thousands)  
(Unaudited)

Three Months Ended

	September 30	
	1996	1995
Cash flows from operating activities:		
Net loss	\$ (17,854)	\$ (10,374)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	3,416	1,220
Other	(73)	(59)
Net changes in:		
Operating assets	3,104	1,274
Operating liabilities	(7,064)	(3,585)
Net cash used in operating activities	(18,471)	(11,524)
Cash flows from investing activities:		
Proceeds from sales of securities	8,715	5,893
Purchase of securities	(955)	(3,542)
Capital expenditures for property, plant and equipment	(2,032)	(1,094)
Purchases of product rights, patents and other intangible assets	(291)	(1,208)
Other	214	54
Net cash provided by investing activities	5,651	103
Cash flows from financing activities:		
Proceeds from notes payable	13,800	1,353
Payments on notes payable	(11,650)	(2,205)
Proceeds on note payable to affiliate	5,000	--
Decrease in securities-pledged	334	175
Increase in borrowings of long-term debt	--	3,000
Principal payments on long-term debt	(11,832)	(459)
Sale of common stock	92	117
Net cash provided by (used in) financing activities	(4,256)	1,981
Net increase (decrease) in cash and equivalents	(17,076)	(9,440)
Cash and equivalents at beginning of period	17,674	11,753
Cash and equivalents at end of period	\$ 598	\$ 2,313
Supplemental disclosures of cash flow information:		
Cash paid during the period for:		
Interest	\$ 1,712	\$ 456
Income taxes	\$ 9	\$ 26

See accompanying notes.

## Notes to Condensed Consolidated Financial Statements

### 1. Summary of Significant Accounting Policies

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The accompanying condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis during the interim periods. These financial statements should be read in conjunction with the Company's audited financial statements contained in the Company's Annual Report on Form 10-K for the fiscal year ended June 30, 1996.

In the opinion of management, the interim financial statements reflect all adjustments necessary, consisting only of normal recurring adjustments, to present fairly the Company's consolidated financial position at September 30, 1996 and the consolidated results of operations and cash flows for the fiscal quarters ended September 30, 1996 and 1995. Results for the period ended September 30, 1996 are not necessarily indicative of results to be expected for the entire fiscal year.

Net loss per share has been computed by dividing the net loss by the weighted average number of common shares outstanding during each period. Common shares issuable upon the exercise of stock options have been excluded from the computation of net loss per share since their inclusion would be antidilutive.

Certain amounts reported as of June 30, 1996 and for the fiscal quarter ended September 30, 1995 have been reclassified to conform with the presentation of the fiscal quarter ended September 30, 1996.

Product rights are stated at cost and are amortized on a straight-line basis over the lesser of their contractual lives or their estimated useful lives (generally 10 to 20 years). External costs incurred in obtaining patents are capitalized. The costs of successful patent applications are amortized on a straight-line basis over the lesser of their statutory lives or their estimated useful lives (generally 17 years). External costs incurred in defense of patents are capitalized and amortized on a straight-line basis over the remaining life of the patent. The costs of unsuccessful patent applications or patent defense are charged to expense in the period in which the patent applications are denied or the patent defense is unsuccessful.

During the quarter ended September 30, 1996, the Company adopted the provisions of FASB Statement No. 121, Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of ("SFAS 121"). SFAS 121 requires impairment losses to be recognized for long-lived assets and identifiable intangibles used in operations when indicators of impairment are present and the estimated undiscounted cash flows are not sufficient to recover the assets' carrying amount. The impairment loss is measured by comparing the



fair value of the asset to its carrying amount. Costs in excess of fair values assigned to net assets acquired in purchase business combinations are included in impairment evaluations when events or circumstances exist that indicate the carrying amount of the acquired assets may not be recoverable.

Management of the Company is exploring alternative business strategies for its Gargiulo subsidiary, certain of which may require the disposal and write-down of long-lived assets and associated costs in excess of fair values assigned to net assets acquired. No formal plans have yet been formulated or adopted by the Company in this regard.

2. Inventories  
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Inventories are stated at the lower of cost, determined on a first-in, first-out basis, or market value. Inventories consist of the following (in thousands):

	September 30, 1996 -----	June 30, 1996 -----
Growing crops	\$ 14,272	\$ 11,208
Supplies and seed inventories	7,590	10,136
Finished goods	3,158	1,415
Work in progress	1,394	596
Raw materials	1,563	510
	-----	-----
	\$ 27,977 =====	\$ 23,865 =====

3. Patent and Legal Proceedings  
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See Part II - Other Information  
Item 1. Legal Proceedings

4. Notes Payable  
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During fiscal year 1996 the Company entered into a credit facility agreement with Monsanto Company ("Monsanto"). Monsanto is obligated, subject to certain terms and conditions, to lend up to \$15 million annually until September 30, 1998, to Calgene, although not more than \$15 million may be outstanding at any one time. The credit facility agreement contains various covenants precluding Calgene and its subsidiaries from taking certain actions without the approval of Monsanto. Also, in the event of a default by Calgene, Monsanto has certain rights to convert the outstanding principal and interest under such

agreement into additional shares of Calgene Common Stock, not to exceed 3,000,000 shares. The outstanding balance of this credit facility shall bear interest at two percent above the prime rate (aggregating 10.25% at September 30, 1996). This credit facility expires on September 30, 1998. In September 1996 the Company received a \$5 million advance under this credit facility. In October 1996 the Company received an additional \$10 million advance.

## 5. Subsequent Events

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In October 1996 the Company sold a portion of its Florida produce farm land for a gross sales price of \$3 million. Commensurate with the sale, the Company paid off a \$3 million mortgage loan secured by the land sold as well as five adjoining parcels. As part of the sales agreement, the buyer has the option to purchase five additional parcels, one additional parcel in each of the next five years, for a cumulative purchase price of \$9 million.

On November 12, 1996, Calgene and Monsanto Company consummated a transaction whereby Monsanto purchased 6,250,000 shares of Calgene Common Stock. The gross proceeds from the transaction were \$50 million or \$8 per share. This transaction brings Monsanto's equity ownership in Calgene to approximately 54.6% and caused a shift in the composition of the Calgene Board of Directors to four independent directors, the CEO of Calgene, and four Monsanto nominees. Of the four independent directors, three are nominated by Calgene and one is nominated by Monsanto.

In November 1996, the Company sold a leased asset with a net book value of \$2.9 million for a gross sales price of \$4.1 million. Commensurate with the sale, the Company paid off a capitalized lease obligation of \$3.1 million.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Results of Operations

#### Overview of Gargiulo

On March 31, 1996, Calgene and Monsanto Company ("Monsanto") entered into a transaction under which Monsanto contributed Gargiulo Inc. ("Gargiulo"), \$30 million cash and certain oils and produce related technology in exchange for a 49.9% equity interest in Calgene. Gargiulo is a grower, packer, marketer and distributor of tomatoes, strawberries and other produce. Gargiulo tomato producing operations are conducted principally in Florida, California, Puerto Rico and Mexico. Gargiulo berry production operations are conducted principally in northern California. On February 29, 1996, Gargiulo and Collier Enterprises consummated an asset purchase agreement whereby Gargiulo acquired substantially

all the assets subject to the assumption of certain specified liabilities of the produce business conducted by certain affiliates of Collier Enterprises under the trade name Collier Farms ("Collier"). Collier is an agricultural producer of tomatoes and other vegetables in Florida, and engages in the packaging, marketing and distribution of those products in the commodity markets. The Company's tomato operations consist of the combined business of Calgene Fresh, which was organized in 1992 to develop and produce genetically engineered premium tomatoes, and Gargiulo.

#### Revenues

Calgene's product sales in the quarter ended September 30, 1996 increased 315% to \$36.6 million from \$8.8 million in the corresponding period of the prior year. The increase is due to the inclusion of Gargiulo's operations which resulted in higher fresh market produce sales of \$27.9 million. Gargiulo's product sales in the quarter were \$32.0 million and were largely comprised of tomato sales of \$16.4 million and berry sales of \$13.6 million.

Product development revenues in the current quarter increased by \$59,000 as compared to the corresponding period of the prior year due to addition of several new research contracts. This increase was partly offset by the conclusion of several other research contracts and a \$125,000 benchmark milestone payment which was recognized in the first quarter of fiscal 1996.

#### Gross Profit

Calgene's gross profit on net product sales was negative \$2.2 million in the quarter ended September 30, 1996, as compared to a negative gross profit of \$3.3 million in the comparable period of the prior year. Gross profit was negative in the current quarter due to the Company's produce operations. Tomato yields from Gargiulo's Central California production were reduced due to record high heat in the region. In addition, tomato yield's from the Company's Virginia operations were negatively impacted by a hurricane that hit the region in July. Low strawberry prices the industry experienced in the quarter also impacted Gargiulo.

#### Research and Development Expenses

Research and development expenses increased by \$795,000 or 24.7% to \$4.0 million in the quarter ended September 30, 1996, as compared to the corresponding period of the prior year. The increase was primarily due to the inclusion of \$619,000 of Gargiulo variety development expenses, and higher expenses for technology licensing activities.

#### Selling, General and Administrative Expenses

Calgene's selling, general and administration expenses increased by \$6.5 million or 167% to \$10.4 million in the quarter ended September 30, 1996, as compared to the corresponding period of the prior year. The increase reflects

\$5.3 million in higher expenses for the Company's fresh market produce operations attributable to the inclusion of Gargiulo. The increase also reflects a corporate severance expense of \$905,000. Selling, general and administration expenses are expected to be higher over the next two fiscal quarters as compared to the corresponding periods of the prior year due to the inclusion of Gargiulo.

#### Interest Expense

Interest expense, which reflects the Company's borrowings on its bank line of credits and long-term debt obligations, increased \$1.2 million to \$1.7 million in the quarter ended September 30, 1996, as compared to the corresponding period of the prior year. The increase was due to interest expense of \$1.6 million attributable to Gargiulo's debt obligations.

#### Pre-Tax Losses from Operations

In the quarter ended September 30, 1996, Calgene incurred a pre-tax loss of \$17.8 million as compared to a pre-tax loss of \$10.4 million in the corresponding period of the prior year. The increased pre-tax loss of \$7.5 million reflects higher selling, general and administrative expenses, higher interest expense, and higher research expenses, primarily due to the inclusion of Gargiulo. These factors were partly offset by a gross profit improvement from net product sales.

#### Provision for Income Taxes

For federal income tax return purposes, as of June 30, 1996 the Company has a net operating loss carryover of approximately \$193 million which expires between 1996 and 2011, and a general business tax credit carryover of approximately \$4 million which expires between 1996 and 2011. In addition, as of June 30, 1996 the Company has a net operating loss carryover of approximately \$129 million for state income tax purposes which expires between 1996 and 2011. Approximately \$20 million and \$3 million of the federal and state net operating loss carryovers, respectively, and \$700,000 of the general business tax credit carryover, are available only to offset the separate federal and state taxable income, if any, of Calgene Fresh. For financial reporting purposes, a valuation allowance of approximately \$91.5 million has been recognized at June 30, 1996 to offset the deferred tax assets related to all of the aforementioned carryforwards.

Because of the change in ownership provisions of the Tax Reform Act of 1986, a portion of the Company's federal net operating loss and tax credit carryovers will be subject to an annual limitation regarding their utilization against taxable income in future periods. The Company expects that the annual limitation will not have a material adverse effect on the Company's ability to utilize the net operating loss and credit carryovers prior to the expiration of the carryover periods.

#### Seasonality

Tomato prices are generally higher and unit volume lower during winter

months due to adverse weather conditions. The opposite effects occur in the summer months. Sales of planting seed are seasonal, causing significant fluctuations in product sales and working capital requirements. Cotton seed sales are concentrated in the quarters ending March 31 and June 30. Strawberry sales occur predominantly in the quarters ended June 30 and September 30. Specialty oleochemical sales are generally not seasonal.

#### Litigation

See "Legal Proceedings."

#### Government Farm Legislation

Cotton seed sales are affected by changes in U.S. government agricultural policy, which may impose limitations on planting acreage as a criterion for farmers' eligibility to receive government subsidy payments and other benefits. An increase in the acreage set-aside for a subsidized crop will generally reduce farmer demand for seed for that crop, and a decrease in the set-aside will generally increase demand for the seed. In situations where growing conditions give farmers the alternative of planting either of two crops, an increase in the set-aside for one crop will tend to increase farmer demand for the seed of the competing crop.

#### Inflation and Price Fluctuations

The market price for fresh produce can experience substantial fluctuations in short periods. When the supply of tomatoes and berries on the market exceeds the demand for such products, the market price may be driven down significantly, in some instances below the cost of harvesting and packing. In such situations it may be uneconomical to harvest a crop, resulting in a total loss of the costs incurred in growing such crop. Even when market prices are sufficient to permit recovery of direct harvesting and packing costs, prices may not be high enough to permit recovery of growing costs and/or overhead and other indirect costs. Calgene's plant oil and cotton operations can also be affected by changes in prices of commodity plant oil and cottonseed oil and meal. The effects of general inflation have not had a material impact on Calgene's consolidated results of operations.

#### Liquidity and Capital Resources

At September 30, 1996 Calgene had cash and equivalents and short term available-for-sale securities of approximately \$3.8 million, excluding \$708,000 in securities pledged as collateral for certain obligations. This was a decrease of \$24.8 million from June 30, 1996. Uses of cash include financing the Company's net loss; payments of \$11.8 million on long-term debt; a \$7.1 million decrease in operating liabilities; and the acquisition of \$2.0 million in property, plant and equipment. Sources of cash included a \$5.0 million increase in notes payable to affiliate; a \$3.1 million decrease in operating assets; and a \$2.2 million net increase in notes payable. The Company's investment policy is

to invest excess cash in high quality, liquid, short-term fixed income securities.

Operating assets decreased by \$3.1 million at September 30, 1996 as compared to June 30, 1996 due to a \$6.6 decrease in accounts receivable, offset in part by a \$4.1 million increase in inventories. Inventories increased by \$4.1 million due to higher tomato growing costs and seasonal buildup of bulk cottonseed.

Operating liabilities decreased by \$7.1 million at September 30, 1996 as compared to June 30, 1996 largely due to a \$5.1 million decrease in trade accounts payable, a \$1.6 million decrease in amounts due customers for cotton seed returns consistent with industry practice, and a \$750,000 technology license payment.

Net working capital decreased \$18.3 million from a negative net working capital of \$1.5 million at June 30, 1996 to negative \$19.8 million at September 30, 1996 primarily due to a \$24.8 million reduction in cash and equivalents and available for sale securities and a \$3.1 million reduction in operating assets. This increase was partly offset by a \$9.6 million decrease in current liabilities.

In the normal course of business, the Company enters into various grower contracts with third party growers. Pursuant to these contracts, the Company contracts with growers to purchase their crop, subject to certain quality standards, at the end of the growing cycle which is generally less than one year. The amount of outstanding grower contract commitments was approximately \$6.8 million at September 30, 1996.

The Company has capitalized the legal fees incurred in its lawsuit with Enzo Biochem, Inc. related to Calgene's defense of its antisense patent. On February 2, 1996, the court ruled on behalf of the Company and held that Calgene's patent was valid. If the defense of Calgene's patent is unsuccessful as a result of potential appeals, the Company would have to expense all of these unamortized legal costs. At September 30, 1996, the amount of these unamortized costs was \$5.8 million.

On November 12, 1996, Calgene and Monsanto Company consummated a transaction whereby Monsanto purchased 6,250,000 shares of Calgene Common Stock at a price of \$50 million or \$8 per share. The transaction increased Monsanto's equity interest in Calgene to approximately 54.6% and gave Monsanto the right to designate five of the nine members of the Board of Directors.

Monsanto is obligated, subject to certain terms and conditions, to lend up to \$40 million to Gargiulo ("Gargiulo Credit Facility"), and up to \$15 million annually to Calgene for the period ended September 30, 1998 ("Calgene Credit Facility"), although not more than \$15 million may be outstanding thereunder at any one time. As of September 30, 1996, \$24.8 million of the Gargiulo Credit Facility and \$5.0 million of the Calgene Credit Facility were outstanding. The credit facility agreements each contain various covenants precluding Calgene and

its subsidiaries from taking certain actions without the approval of Monsanto. Also, in the event of a default by Calgene under the Garguilo Credit Facility or the Calgene Credit Facility, Monsanto has certain rights to convert the outstanding principal and interest under such agreements into additional shares of Calgene Common Stock at the then market value of the Calgene Common Stock, and any such conversion could substantially dilute the ownership interests of other Calgene stockholders.

Calgene currently has a \$13 million line of credit with Harris Trust and Savings Bank (the "Harris Credit Facility"). The Harris Credit Facility which was scheduled to expire on January 31, 1996, has been extended until December 31, 1996. The bank may require changes in the terms of the Calgene credit facility agreement with Monsanto and, if the required changes cannot be accommodated, there can be no assurance that such bank will continue to make these lines of credit available or, if such lines are not available, that Calgene will be able to obtain alternative bank financing on favorable terms, if at all. As of September 30, 1996, Calgene was not in compliance with certain financial covenants under its credit agreement with Harris Bank. Calgene has obtained waivers of such defaults through December 31, 1996 and believes it is currently in compliance as a consequence of the November 1996 equity investment by Monsanto. There was no balance outstanding on the Harris Credit Facility at September 30, 1996.

Gargiulo has a \$17.5 million line of credit and four mortgage loans with NationsBank. NationsBank has indicated that it does not intend to renew its line of credit and mortgage loans which at September 30, 1996, totaled \$22.1 million. The NationsBank lone of credit and loans were repaid on November 14, 1996.

A \$3.5 million line of credit with a bank is used to finance working capital requirements at Gargiulo's Puerto Rico operations. Borrowings under the line bear interest at prime. The credit line expires on November 30, 1996. On September 30, 1996, the bank's prime rate was 8.25%. As of September 30, 1996, there was \$3,500,000 outstanding on the line of credit. The Puerto Rico line of credit was repaid on November 14, 1996.

While Monsanto has agreed to make a \$40 million loan available to Gargiulo under the Gargiulo Credit Facility, further advances under such loan are subject to the achievement of certain milestones, and are to be used solely to fund the branded tomato strategy and are repayable out of specified portions of the cumulative free cash flow of Gargiulo. While Monsanto has agreed to advance up to \$15 million annually to Calgene under the Calgene Credit Facility until September 30, 1998, not more than \$15 million may be outstanding thereunder at any one time. Except as described above, Monsanto has no obligation to loan or otherwise contribute additional cash to Calgene.

Calgene expects its current cash balances and the proceeds of the credit facility agreements and other bank lines of credit expected to be available to Calgene, will be sufficient to fund its operations for the foreseeable future. However, such expectation is based in part on the achievement of the operating plans of Calgene and there can be no assurance such operating plans will be

achieved. Also, there can be no assurance that all of Calgene's expected sources of funds, including credit facilities, will be available. Accordingly, there can be no assurance that Calgene will not be required to obtain additional sources of financing or that any future required financing will be available on favorable terms, if at all.

## PART II. OTHER INFORMATION



## ITEM 1. Legal Proceedings

From 1992 through early 1996, Calgene was engaged in a litigation with Enzo Biochem, Inc. ("Enzo") a company licensed under three related U.S. patents and counterpart foreign patents (the "Enzo Patents") which purported to cover the use of antisense technology in all cells, including plant cells. Some of Calgene's products, including the FLAVR SAVR tomato, use antisense technology. Enzo had claimed that Calgene infringed the Enzo Patents. Calgene denied infringement and challenged the validity of the Enzo Patents. On February 2, 1996, the District Court ruled that the Enzo Patents are invalid. In addition, the validity of a patent owned by Calgene directed to the use of antisense in plant cells was upheld by the District Court. Calgene subsequently requested that the court clarify certain aspects of the infringement portion of its decision, and the court has agreed to reconsider on this basis. There is no indication that the court would reverse any aspect of its original ruling. Meanwhile, Enzo has indicated that it intends to appeal the decision.

Although the trial court has the option of altering any aspect of its decision upon reconsideration, and Enzo may appeal the decision after its publication, Calgene believes that further proceedings will not have a material adverse effect on its consolidated financial position or results of operations, based on the trial court's determination that the SUNY/Enzo Patents are invalid and not infringed by Calgene and that the Calgene Antisense Patent is valid.

Nevertheless, if on reconsideration or as a result of an appeal a court were to determine that one or more of the Enzo Patents validly covers plant cells and that such patents are infringed by Calgene's sales of products incorporating such antisense technology, Calgene could be held liable for significant damages and could be precluded from producing and selling the FLAVR SAVR tomato, as well as other products currently under development. There is no assurance that a license, if necessary, could be obtained by Calgene on commercially acceptable terms, if at all. If the court were to determine that the Calgene Antisense Patent is invalid or unenforceable, Calgene would be deprived of the competitive and licensing advantages afforded by its patent. Moreover, the Company would have to expense the capitalized legal fees related to the defense of the Calgene's Antisense Patent, which amounted to

approximately \$5.8 million at September 30, 1996.

Gargiulo is a defendant in two pending cases which involve personal injury claims relating to a vehicle accident in which numerous migrant labor workers being transported to the farm of Gargiulo & Dresick Associates (which was being farmed under contract by Dresick Farms, Inc.) were killed or injured. The two cases, Alvertano Alberto Jiminez; et al. v. Gargiulo & Associates; Pat Kreger, Inc., Manuel Vega; Robles Rios; Jesus Loza and Samuel Santiago Vasquez, and Jose Vasquez; et al. v. Gargiulo & Associates; Pat Kreger, Inc., Manuel Vega; Robles Rios; Jesus Loza and Samuel Santiago Vasquez, were both filed on October 18, 1995, in the United States District Court for the Eastern District of California. The company alleged to be transporting such farm workers was Pat Kreger, Inc., an independent contractor engaged by Dresick Farms, Inc. to arrange for migrant farm labor for the farm. The plaintiffs allege that the vehicle in question was in violation of one or more federal and state safety regulations governing farm labor vehicles. The plaintiffs are seeking general damages, including compensation for pain and suffering; special damages, including past, present and future medical expenses; compensation for the loss of past and future income; and punitive damages in an unspecified amount. Gargiulo's insurance carriers have been contacted regarding these lawsuits. It has not yet been determined whether Gargiulo's insurance will be sufficient to cover these claims, if any. Gargiulo intends to vigorously defend itself against these claims and believes that the ultimate outcome will not have a material adverse effect on the Company's financial position or results of operations.

The Company is party to other pending litigation incidental to its business and has from time to time been notified of various claims that are not the subject of pending litigation. While the results of litigation and claims cannot be predicted with certainty, the Company believes that the final outcome of all such other litigation matters and claims will not have a materially adverse effect on its consolidated financial position or results of operations.

ITEM 6. Exhibits and Reports on Form 8-K

A. Exhibits

10.42 Tenth Amendment to Secured Revolving Credit Agreement and Secured Revolving Credit Note Among Calgene Technology Corporation and Harris Trust and Savings Bank Dated September 30, 1996.....	19
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B. Reports on Form 8-K

None.

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

CALGENE, INC.

Date: November 14, 1996

By: /s/ Christian Leleu  
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Christian Leleu  
Chief Financial Officer

CALGENE TECHNOLOGY CORPORATION  
TENTH AMENDMENT TO  
SECURED REVOLVING CREDIT AGREEMENT AND  
SECURED REVOLVING CREDIT NOTE

Harris Trust and Savings Bank  
Chicago, Illinois

Ladies and Gentlemen:

Reference is hereby made to that certain Secured Revolving Credit Agreement dated as of April 26, 1990, as amended (the "Credit Agreement"), originally among the undersigned, CALGENE TECHNOLOGY CORPORATION (formerly known as Calgene, Inc.), a Delaware corporation (the "Company"), Harris Trust and Savings Bank (the "Bank") and Caisse Nationale de Credit Agricole, acting through its Grand Cayman Branch ("Credit Agricole") and Harris Trust and Savings Bank as agent thereunder (the "Agent"). All defined terms used herein shall have the same meaning as in the Credit Agreement unless otherwise defined herein.

The Bank has extended a revolving credit facility to the Company on the terms and conditions set forth in the Credit Agreement. Credit Agricole has assigned to Harris, and Harris has assumed all of Credit Agricole's rights and obligations under the Credit Agreement. The Company and Harris now wish to extend the termination date of the Credit Agreement to December 31, 1996, and amend certain terms of the Credit Agreement, all in the manner and on the terms and conditions set forth in this Amendment.

SECTION 1. AMENDMENTS.

Upon satisfaction of all conditions precedent set forth in Section 3 hereof, the Credit Agreement shall be amended as follows:

Section 1.1. The Termination Date of the Credit Agreement shall be extended to December 31, 1996.

Section 1.2. Section 1.1(a) of the Credit Agreement shall be amended by replacing the date "September 30, 1996" appearing therein with the date "December 31, 1996".

Section 1.3. Section 7.10 of the Credit Agreement shall be amended by replacing the figure "1.2" appearing therein with the figure "1.0".

Section 1.4. Section 7.11 of the Credit Agreement shall be amended by replacing the figure "\$10,000,000" with the figure "\$3,000,000".

Section 1.5. Section 8.1(1) of the Credit Agreement shall be amended to read as follows:

"(1) no later than December 15, 1996, the Company shall have failed to deliver to the Agent copies, certified by the secretary or assistant secretary of the Company, of resolutions of the Company's board of directors ratifying the execution and delivery by the Company of the Tenth Amendment Secured Revolving Credit Agreement and Secured Revolving Credit Note dated as of September \_\_\_\_, 1996 (the "Tenth Amendment"), a Certificate of the Secretary or Assistant Secretary of the Company as to the incumbency and signatures of the authorized officers of the Company, and an opinion of counsel to the Company and its Subsidiaries in form and substance satisfactory to the Bank."

Section 1.6 Exhibit A to the Credit Agreement and the Revolving Note of the Company payable to the order of Harris Trust and Savings Bank (the "Note") shall each be amended by deleting the date "September 30, 1996" appearing twice in the first paragraph therein and inserting in lieu thereof the date "December 31, 1996".

Section 1.7. Harris Trust and Savings Bank shall type the following legend on its Note:

"This Note has been amended pursuant to the terms of a Tenth Amendment to Secured Revolving Credit Agreement and Secured Revolving Credit Note dated as of September 30, 1996, including an extension of the maturity date hereof, to which reference is hereby made for a statement of terms thereof."

## SECTION 2. CONDITIONS PRECEDENT.

The effectiveness of this Amendment is subject to the satisfaction of all of the following conditions precedent:

Section 2.1. The Company the Bank shall have executed this Amendment (such execution may be in several counterparts and the several parties hereto may execute on separate counterparts).

Section 2.2 Each of the representations and warranties set forth in Section 5 of the Credit Agreement shall be true and correct.

Section 2.3. The Company shall be in full compliance with all of the terms and conditions of the Credit Agreement and no Event of Default or Potential Default shall have occurred and be continuing thereunder or shall result after giving effect to this Amendment.

Section 2.4. All legal matters incident to the execution and delivery hereof and the instruments and documents contemplated hereby shall be satisfactory to the Bank.

## 3. REPRESENTATIONS.

In order to induce the Bank to execute and deliver this Amendment, the Company hereby represents to the Bank that as of the date hereof, each of the

representations and warranties set forth in Section 5 of the Credit Agreement are and shall be and remain true and correct (except that the representations contained in Section 5.2 shall be deemed to refer to the most recent financial statements of the Company delivered to the Bank) and the Company is in full compliance with all of the terms and conditions of the Credit Agreement and no Default or Event of Default has occurred and is continuing thereunder or shall result after giving effect to this Amendment.

4. MISCELLANEOUS.

Section 4.1. The Company has heretofore executed and delivered to the Agent that certain Security Agreement Re: Inventory and Receivables and various separate Pledge and Security Agreements, each dated as of April 26, 1990 (the "Security Documents") and the Company hereby agrees that notwithstanding the execution and delivery of this Amendment, the Security Documents shall be and remain in full force and effect and that any rights and remedies of the Agent thereunder, obligations or the Company thereunder and any liens and security interests created or provided for thereunder shall be and remain in full force and effect and shall not be affected, impaired or discharged thereby. Nothing herein contained shall in any manner affect or impair the priority of the liens and security interests created and provided for by the Security Documents as to the indebtedness which would be secured thereby prior to giving effect to this Amendment.

Section 4.2. The Company agrees to pay on demand all costs and expenses of or incurred by the Bank in connection with the negotiation, preparation, execution and delivery of this Amendment, including the fees and expenses of counsel for the Bank.

Section 4.3. Except as specifically amended herein the Credit Agreement and the Note shall continue in full force and effect in accordance with their original terms. Reference to this specific Amendment need not be made in any note, document, letter, certificate, the Credit Agreement itself, the Note, or any communication issued or made pursuant to or with respect to the Credit Agreement or the Note, any reference to the Credit Agreement or Note being sufficient to refer to the Credit Agreement as amended hereby.

Section 4.4. This Amendment may be executed in any number of counterparts, and by the different parties on different counterparts, all of which taken together shall constitute one and the same agreement. Any of the parties hereto may execute this Amendment by signing any such counterpart and each of such counterparts shall for all purposes be deemed to be an original. This Amendment shall be governed by the internal laws of the State of Illinois.

Dated as of September 30, 1996.

CALGENE TECHNOLOGY CORPORATION

By /s/ Mike Motroni

Its Vice President

Accepted as of the date last written above.

HARRIS TRUST AND SAVINGS BANK

By /s/ Erica Kuhlmann  
Its Vice President

GUARANTOR'S CONSENT

The undersigned, Calgene, Inc., a Delaware corporation, has heretofore executed and delivered to the Bank a Guaranty Agreement dated march 28, 1996 (the "Guaranty") and hereby consents to the Amendment to the Credit Agreement as set forth above and confirms that its Guaranty and all of the undersigned's obligations thereunder remain in full force and effect and, without limiting the foregoing, acknowledges and agrees that all indebtedness, obligations and liabilities of the Company under the Credit Agreement as amended as set forth above constitutes indebtedness which is guaranteed by the undersigned under its Guaranty. The undersigned further agrees that the consent of the undersigned to any further amendments to the Credit Agreement shall not be required as a result of this consent having been obtained, except to the extent, if any, required by the Guaranty referred to above.

CALGENE, INC.

By /s/ Mike Motroni  
Its Vice President

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THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM CONDENSED BALANCE SHEET AND CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.

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<F1> TOTAL COSTS INCLUDE EXPENSES FOR BOTH FUNDED AND UNFUNDED R&D PROJECTS.



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