

## Dow VS Quebec: Nafta

### Remarks Below:

6. Further, Quebec changed its methodology for determining which products would be subject to the Ban from its originally issued methodology in August 2002, to a revised methodology in March 2003, without any consultation, and with no further opportunity to comment, thereby denying stakeholders an opportunity to be heard.

7. At the time the Ban was announced, Quebec stated that 2,4-D would be subject to the Ban not based on scientific criteria, but, in effect, based on the precautionary approach until recognized organizations had concluded their re-assessments of 2,4-D. Industry stakeholders were led to believe that if such re-assessment were favourable to 2,4-D, the Ban would be lifted. Those re-assessments have been completed and were favourable, yet Quebec has refused to lift the Ban. The considerations which form the basis for the Ban, whatever they may be, are not based on science, and are arbitrary, irrelevant and unfair.

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16. After requests from industry, the Quebec Government released a background report titled "Methodology for Establishing the List of Prohibited Active Ingredients (Annex I)", dated August 2002 ("2002 Methodology Report").

17. In this Report, 2,4-D, among others, was included on a list of the prohibited active ingredients in Annex I.

18. In determining the sources relied upon for inclusion in Annex I, the 2002

Methodology Report states as follows:

The reference sources consulted for the cancer risk assessment are the International Agency for Research on Cancer (IARC), the United States Environment Protection Agency (EPA), the United States National Toxicology Program (NTP) and the California Environmental Protection Agency. Each of these agencies regularly update and publish lists of products considered to be carcinogenic, which are grouped into several categories depending on the degree of carcinogenic certainty. The products are continually re-evaluated and can be transferred from one category to another based on scientific discovery and proof. With respect to endocrine disruption, we reviewed the summary by Lawrence KEITH, a former EPA chemical researcher, published in 1997: Environmental Endocrine Disruptors

29. The new March 2003 Methodology Report continued to recognize IARC as its basis for inclusion of the 2,4-D in the Prohibited List. However, based on Quebec's apparent recognition of the weakness of this position, the description of its reliance on the IARC reviews was re-stated as follows:

In all, the IARC identified 11 of the active ingredients on our list of 38 active ingredients registered for lawn use as possible carcinogens (Group 2B). These are chlorothalonil and chlorophenoxy herbicides which include the various chemical forms of 2,4-D, Mecoprop and MCPA. However, since the IARC list does not classify each active ingredient individually, but rather the entire chemical family of chlorophenoxy herbicides, and *since epidemiological and clinical studies on each active ingredient taken individually are not sufficient to assess the carcinogenicity potential to man, It is preferable to wait for the reassessment of these active ingredients in order to classify them individually. In fact, it is currently difficult to justify scientifically the introduction of these active ingredients taken individually, on the basis of this criterion. Given the doubt that persists, they are maintained on the list pending the outcome of the reassessments in progress.* (Emphasis added)

30. In other words, the 2003 Methodology Report itself recognizes the absence of a scientific basis for the Ban. Instead, Quebec states that because of the "doubt that persists", 2,4-D will be prohibited pending the outcome of the reassessments in progress. In the March 5, 2003 news release announcing the Code, Quebec states that:

Due to the continuing uncertainty about their harmfulness herbicides made up of active ingredients, 2,4-D, MCPA and Mecoprop will continue to be prohibited for precautionary reasons until the availability of the products' re-evaluation results by recognized Organizations. (Emphasis added).

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