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Environmentalists, chemical company claim victory in NAFTA fight over Quebec ban

By Nelson Wyatt, The Canadian Press

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MONTREAL - The settlement of a NAFTA dispute that challenged Quebec's pesticide ban has both a U.S.-based chemical giant and environmentalists claiming victory in the case.

Environmentalists say the settlement reinforces the right of municipalities and provinces to ban pesticides.

"Dow reversed course and decided not to pursue its claim," said Sidney Ribeaux, executive director of the Quebec-based environmentalist group Equiterre.

"This is a very strong message to all jurisdictions that the precautionary arguments for the defence of Quebec's lawn pesticide ban are strong and can be used for other substances."

Quebec began banning pesticides in 2003 and prohibits the use and sale of 20 ingredients in lawn pesticides. It also restricts pesticide use outside daycares and schools.

Dow AgroSciences got no compensation in the settlement which was reached May 25. It had been seeking \$2 million.

Federal International Trade Minister Ed Fast said the agreement "confirms the right of governments to regulate the use of pesticides.

"This right will not be compromised by Canada's participation in NAFTA or any other trade agreement."

But Brenda Harris, a spokeswoman for Dow, says the company is happy Quebec acknowledged that its weed killer doesn't pose unacceptable risks to people or the environment if it's used properly.

"What was most important to Dow AgroSciences is that they (Quebec) clarify their perspective on 2, 4-D," Harris said by telephone from the company's Canadian head office in Calgary.

"We always believed that there was no basis for their decision, their decision had nothing to do with science," said Harris, who is the company's regulatory and government affairs manager.

Harris noted that as part of the deal, the Quebec government stated its agreement with Health Canada that 2, 4-D is safe when used according to the product label directions.

The company had based its claim in part on a Health Canada ruling in 2008 that 2, 4-D can be used safely when label directions are followed.

It said the Quebec ban violated Chapter 11 of the North American Free Trade Agreement and launched a challenge against the federal government.

Section 11 allows investors of one NAFTA country to sue the government of another NAFTA country for actions they think are hurting them or their investments.

Harris acknowledged that despite the settlement the ban against the pesticide for lawn use remains in effect in Quebec.

"That's a decision that they have, that they certainly have the ability to make. But that ban is not based on science — it's on something else."

Told that environmentalists were also claiming victory, Harris said, "Well, I guess it all depends on perspective.

"We never said, ever, that governments didn't have the right to regulate. What we've always said is you have to communicate clearly how you are regulating."

The International Agency for Research on Cancer, a branch of the World Health Organization, has classified 2, 4-D as a possible human carcinogen and linked it to several other health risks including effects on hormones.

Five Canadian provinces — Quebec, Ontario, Nova Scotia, New Brunswick and Prince Edward Island — have banned 2, 4-D's use on such things as lawns and Alberta has banned it in pesticide-herbicide mixes.

British Columbia and Manitoba are also considering bans.

Lisa Gue, an environmental health policy analyst with the David Suzuki Foundation in Ottawa, pointed out that while Quebec has supported the Health Canada advisory, "Quebec is not saying that 2, 4-D is safe."

Gue said environmentalists suspected Dow brought the suit to dissuade other provinces from following Quebec's lead and banning the comestic use of pesticides like 2, 4-D.

"That wasn't successful."

She said she found it significant that Dow dropped the claim without compensation or changes to Quebec's ban.

Gue said environmentalists are pleased that Quebec will continue to ban the product and that the settlement acknowledges the rights of provinces to regulate pesticides as Quebec has done.

"We see that as an important signal also to other provinces."

The pesticide 2, 4-D is widely used across Canada in forestry and agriculture as well as in the United States, Europe and Asia.

Harris said there was no action being taken against other provinces by Dow now "but I would never speculate on what we might do in the future."

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