

*Force of Nature Media Report :  
The Environmental Movement  
in the Media from an  
Independent Perspective.*

# **Quebec Prohibition of Pest Control Products.**

**Part 10.**



## Ban on pesticides may face **NAFTA** test

**October 22<sup>nd</sup>, 2008**

**Martin Mittelstaedt and Luke Eric Peterson**

**globeandmail.com** 

**Dow AgroSciences** is considering using the controversial investor-protection provisions of the **North American free-trade agreement [ NAFTA ]** to seek compensation from the federal government over **Quebec**'s ban on the cosmetic use of pesticides.

The company, a maker of the weed-killer **2,4-D**, filed a notice of intent to submit a claim to arbitration under **NAFTA** in late August. The 27-page legal action was posted yesterday on the Foreign Affairs website, where it is listed as a dispute to which Canada is a party.

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In its notice, **Dow** says the **Quebec** ban outlawing the use of bug and weed sprays for merely appearances' sake around homes breaches legal protections owed by Canada to U.S. investors under the trade agreement.

**NAFTA** has provisions, known as **Chapter 11**, that restrict the ability of a country to take measures “ *tantamount to nationalization or expropriation* ” of an investment from a firm from another **NAFTA** member. Besides Canada, the United States and Mexico are in the trade pact.



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The Indianapolis-based company, whose **2,4-D** is a standard ingredient in many commercial weed sprays, is seeking compensation of not less than **\$2-million**, plus legal costs and yet-to-be specified damages.

**Dow's** legal brief accuses the **Quebec** government of implementing a pesticide ban that “ *is not based on science* ” and was applied to **2,4-D** “ *without providing any meaningful opportunity* ” for the company to make its case that the herbicide is safe.

**Quebec** instituted its pesticide ban in **2006**, and **Dow's** action could have wide-ranging impacts. Ontario has recently adopted a similar measure, as have many municipalities, based on a precautionary public-health approach of minimizing exposures to these chemicals.



Although pesticide bans are spreading in Canada, the degree of health risk posed by the sprays is highly contentious. While such respected groups as the **Canadian Cancer Society** have argued in favour of bans, **Health Canada** says the pesticides it allows on the market are safe, if used as directed.

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Ironically, **Health Canada** issued its assessment backing the safety of **2,4-D** in **May**, shortly after Ontario said it would follow **Quebec's** lead by banning the lawn and garden chemicals.

The **Dow** claim is the latest in a long string of disputes to arise under **Chapter 11** — a legal back-channel that permits foreign investors to detour local courts and sue the federal government before an international tribunal.

Foreign Affairs lists nine active arbitrations to which Canada has been named as a party.

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The government is defending against a similar **Chapter 11** claim filed by another U.S.-based chemical producer over **lindane**, a suspected carcinogen banned or no longer used in many countries. When Canada moved to end the use of the fungicide on seed treatments, U.S.-based Chemtura Corp. sued for **\$100-million** in damages. That arbitration is going on behind closed doors.

Many of the **NAFTA Chapter 11** actions have been based on complaints that pollution regulations harm business, raising concerns that companies are trying to use the trade treaty to stop governments from taking actions to protect public health or the environment.

**Kathleen Cooper**, a senior researcher with the **Canadian Environmental Law Association**, says that the **Quebec** ban is backed by medical and environmental organizations, and enjoys wide support in public-opinion surveys. She says she is troubled that chemical producers can invoke **NAFTA** in an effort to “*undermine the decisions of democratically elected governments.*”



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**Rick Smith**, executive director of **Environmental Defence**, says **Dow** is “*quite transparently*” trying to stop pesticide bans from spreading around the country and he predicts the company will face a public backlash for its position.



But **Dow**, in its submission, says **Quebec** has consistently ignored decisions supporting as safe the continued use of **2,4-D** from **Health Canada** and other regulators.

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### Culprits that have conspired to prohibit legal, safe, and irreplaceable pest control products.

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### Commentary from an Independent Perspective. Adapted Excerpt from TURF & Recreation Magazine.

The **N.A.F.T.A. Chapter 11** scenario has the « ENVIRONMENTAL MOVEMENT » extremely worried. This scenario has dogged the movement for years for other hated products, such as « CHLORDANE », « DDT », and « LINDANE ».

In the next segments, we have examples from **1997** and **2002**.

If this scenario plays out in its entirety, the Canadian federal government may ultimately be forced to dispense **hundreds of millions of dollars** for every pest control product prohibited in every province and municipality across Canada. This scenario is mind boggling to people such as **David Suzuki**, who has retained the services of lawyers concerning the matter in an effort to pressure the federal government to avert this jurisdictional catastrophe.

## Mexico to stop using 2 pesticides

### NAFTA panel wins ban on DDT, chlordane

June 15<sup>th</sup>, **1997**

Claudia Coates



PITTSBURGH — Mexico has agreed to phase out the use of two pesticides **believed to cause cancer** — **chlordane** and **DDT** — over the next 10 years, government representatives said Friday.

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Mexico allows the use of **DDT** to kill mosquitoes, which carry malaria. **Chlordane** kills termites and is used mainly in Mexico's southern states.

**DDT** was banned in the United States in **1973**, and **chlordane** has been unavailable for residential use in this country since **1987**. Critics of pesticide use say that the two chemicals still find their way into the United States from Mexico on fruits and vegetables or are blown ...

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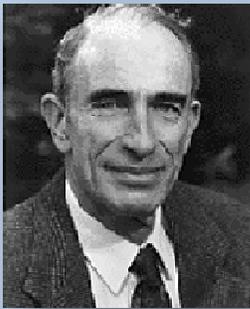
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### Background Information from an Independent Perspective.

#### DDT was NOT a cancer hazard.

The « *GREEN SPACE INDUSTRY* » needs to remind the public that the « *ENVIRONMENTAL MOVEMENT* » has been persistently wrong about the issue of cancer. Well ... a lot could be said about this subject. However, we shall keep things brief and tidy.

Many so-called « *FEAR-MONGERING EXPERTS* » have had their say about DDT. In the last century, most were wrong — just like most in the « *ENVIRONMENTAL MOVEMENT* » are wrong today about « *2,4-D* », and other chemicals. The « *ENVIRONMENTAL MOVEMENT* » has been mostly wrong and needlessly alarmist for almost one-half century. Here is an example. —



<< [...] *the oceans will die of DDT poisoning by 1979* [...] *the U.S. life expectancy will drop to 42 years by 1980 due to cancer epidemics.* >> — **A light-hearted and needlessly alarming warning from Paul R. Ehrlich. 1969.**

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#### DDT and cancer.

Although DDT had the reputation of being a carcinogen, this allegation is known to be imprecise. In **1987**, the U.S. « *ENVIRONMENTAL PROTECTION AGENCY* » (E.P.A.) classified DDT as « *CLASS B2* », « *A PROBABLE HUMAN CARCINOGEN* ». « *CLASS B2* » also includes substances like coffee and gasoline. In **1971**, an E.P.A. administrative law judge proclaimed — << *DDT IS NOT A CARCINOGENIC HAZARD TO MAN.* >>.

## Environmentalists Urge Pesticide Fight

January 30<sup>th</sup>, 2002

Danielle Knight



WASHINGTON — Environmentalists are urging the Canadian government to fight a lawsuit filed against it by a major U.S. chemical company under the **North American Free Trade Agreement (NAFTA)**.

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Activists say they worry Canada will cave in to Crompton Corporation, which has filed suit against the Canadian government for banning the pesticide **lindane**. Officials in Ottawa have capitulated in similar challenges filed under **NAFTA's** investment protection provisions, known as **Chapter 11**, they note.

*"Canada must not allow foreign investors to dictate through Chapter 11 the approach it takes to regulating substances as dangerous as lindane,"* environmental advocacy groups in Canada, Europe, Mexico, and the United States say in a letter to Canadian authorities.

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Crompton notified Canadian authorities in **November** that it would pursue a **100 million dollar NAFTA** claim against Canada for de-registering **lindane** for use on Canadian canola crops.

Crompton charges that by banning the pesticide and "*failing to live up to its undertaking to conduct a review of lindane, the government has taken measures tantamount to expropriation.*"

"*There is no scientific basis for banning the use of lindane product for canola seeds as there is no conclusive scientific evidence that such action is necessary to protect human health or the environment,*" its complaint states.

Marc Richard, spokesperson for the **Canadian Pesticide Management Regulatory Agency [ PMRA ]**, says the sides are discussing the issue. Under **NAFTA**, Crompton and Ottawa have 90 days to work out a compromise before the company can move the dispute process further.

Canada, explains Richard, did not ban the use of **lindane** for canola directly because of health or environmental concerns. Rather, it de-registered the use of **lindane** for canola seed after it became a trade dispute with the United States, which forbids the use of the pesticide on canola.

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In **1998**, Washington warned Ottawa it would block imports of crops treated with pesticides not allowed for use in the United States. US canola growers, prevented by US law from using the chemical to treat their seed, had complained that the higher cost of **lindane** substitutes gave Canadian growers an unfair competitive advantage.

In response, Canadian authorities, canola growers, and manufacturers of lindane — including Crompton unit Uniroyal Chemical — had agreed to phase out **lindane**, says Richard.

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In Canada, pest control products, or pesticides, are regulated by « *Health Canada* » under the « *Pest Control Products Act* », and are among the most stringently regulated substances in Canada. The « *Pest Management Regulatory Agency* » (P.M.R.A.) is the branch of « *Health Canada* » that administers the Act on behalf of the « *Minister Of Health* ». The primary objective of the P.M.R.A. is to prevent unacceptable risks to people and the environment from the use of pest control products.

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While Crompton argues that **lindane** is safe, the activist **Pesticide Action Network** says lindane is highly toxic and lists the pesticide as one of the "*dirty dozen*" pesticides.

**Lindane** is considered a persistent organic pollutant, or POP, because it travels long distances and breaks down extremely slowly. The documented health effects of **lindane** include dizziness, seizures, nervous system damage, immune system damage, and birth defects.

In Europe, all agricultural uses of **lindane** have been banned. The US **Environmental Protection Agency** has called the pesticide a possible human carcinogen and is currently completing a scientific review of the chemical.

*"No government should be forced to import such a toxin,"* says Kristin Schafer of **Pesticide Action Network North America**.

The Stockholm Convention on POPs, adopted and signed by 90 countries in **May**, does not yet cover **lindane** but discussions are under way to ban the pesticide.

The letter to Canadian authorities from several dozen groups including **Greenpeace** and the **Washington-based Center for International Environmental Law**, calls on the government to neither pay the money demanded by Crompton nor settle the lawsuit.

*"Canada must demonstrate that it will not let narrow corporate interests dictate the health of its citizens,"* says **Angela Rickman**, with **Sierra Club Canada**.

In **July 1998**, Ottawa withdrew its ban on the gasoline additive MMT and paid **13 million dollars** in damages to the U.S.-based Ethyl Corporation, which had brought a **NAFTA** challenge against the prohibition.

This time around, the environmental groups also are calling for action to limit the scope of **Chapter 11**, saying its provisions have been used as a "*key offensive strategic tool*" for corporations to fight laws that interfere with their ability to make a profit through exports.

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**Culprit that has conspired to prohibit legal, safe, and irreplaceable pest control products.**

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*" Ambiguities in the provisions of Chapter 11 have been used to tip the balance of the investor-state mechanism against the ability of governments to regulate in the public interest,"* says their letter.

Corporations in each of the three **NAFTA** countries — Canada, Mexico, and the United States — have filed at least seven other cases challenging domestic environmental and health policies.

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In **2000**, a **NAFTA** tribunal ruled that Mexico violated the trade agreement and ordered the government to pay **16.7 million dollars** to the U.S.-based Metalclad corporation. The company had wanted to open a hazardous waste treatment and disposal site in central Mexico but local government said the project violated environmental protection laws.

Another pending claim involves the Canadian-based company Methanex, which filed against the United States claiming that the state of California's decision to phase out the use of its gasoline additive, MTBE, cost the company **970 million dollars**.

California's governor, Gray Davis, ordered the use of MTBE halted by the end of this year after studies revealed unusually high — and potentially harmful — levels of MTBE in California's drinking water.

*" NAFTA Parties should reopen and renegotiate the provisions of Chapter 11,"* says the letter, *" to ensure the ability of national and sub-national governments to protect their citizens and the environment from toxic substances."*

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## Dow lawsuit threatens children's health protection, say groups

February 6<sup>th</sup>, 2009

*Toxic Free Canada*

*Web Site*

*Retrieved in April 2009*



**Dow Chemical's** action in suing the Canadian government over **Quebec's** Pesticide Code is a direct threat to Canadian legislation that is intended to protect children's health, a municipal councillor and leading health-environmental organization said today.

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*"Baby boomers will remember in the 1960s when thousands of Canadians and Americans protested against **Dow Chemical** as the manufacturer of incendiary napalm and the defoliant Agent Orange used in Vietnam," said **Mae Burrows**, executive director of **Toxic Free Canada**. "Now the chemical giant is suing the Canadian government under **NAFTA**, demonstrating that it is more interested in pushing its pesticide products than in helping ensure the protection of our children's health."*



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**Culprit that has conspired to prohibit legal, safe, and irreplaceable pest control products.**

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**Dow AgroSciences**, a wholly-owned subsidiary of **Dow Chemical**, has launched a lawsuit under **Section 11** of the **North American Free Trade Agreement (NAFTA)**, seeking at least **\$2 million** in compensation for sales revenue lost when products containing its weed killing chemical **2,4-D** were banned under **Quebec's** Pesticide Code. **Quebec's** legislation, which is seen as a model across Canada, was the first in Canada to ban sales of certain chemicals used in cosmetic pesticides.



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*"It's clear that **Dow** is trying to shut the door on other provinces that want to introduce similar legislation"* said

Councillor **Dan Johnston**, Chair of the Environment Committee of **Burnaby City Council**, which has adopted a bylaw to regulate the use of pesticides for cosmetic purposes.

**Johnston** added : *" British Columbia municipalities are so concerned with the potential risk that the use of pesticides poses to the environment and human health that the Union of B.C. Municipalities passed a resolution at its annual convention in September requesting the province to enact legislation that will ban the sale and use of cosmetic pesticides province-wide."*



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**Culprit that has conspired to prohibit legal, safe, and irreplaceable pest control products.**

**Dan Johnston.** Councillor. City of Burnaby.

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**Dow** insists that **2,4-D** is not toxic, pointing to a recent re-registration of the chemical by Canada's **Pest Management Regulatory Agency [ PMRA ]**. But critics note that the **PMRA**'s evaluation did not take into account recent research that links **2,4-D** to an increased incidence of non-Hodgkin's lymphoma. **2,4-D** is listed as a possible human carcinogen (Group 2B) by the UN's International Agency for Research on Cancer. It is also **banned** for use in Sweden, Norway and Denmark.

*"There is an overwhelming weight of evidence to tell us that we need to take a precautionary approach on 2,4-D,"* said Dr. **Jim Brophy**, a leading Ontario cancer researcher whose work has revealed a possible link between breast cancer and exposure to farm use of pesticides. *"The protection of our children's health is far more important than dandelion-free lawns and Dow's sales of its weed killer chemical."*

Brophy said if **Dow**'s lawsuit is successful, it will undermine the precautionary steps many local governments are taking to improve cancer prevention by reducing exposure to pesticides.

**Burrows** said that as the case becomes known, **Dow** could face the kind of public outrage that it did back in the **1960s** when **Dow** products were boycotted and many institutions pulled their shares out of the company.

*"As Canadians we can't tolerate a giant corporation interfering in the rights of the federal government to protect its citizens' health - especially its children's health,"* she said.



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### Background Information from an Independent Perspective.

#### 2,4-D and health.

It can be stated that « 2,4-D » does not cause cancer, which was the conclusion of the Canadian federal « PEST MANAGEMENT REGULATORY AGENCY OF HEALTH CANADA » (P.M.R.A.) in 2005, indicating that ...



*<< the toxicological database does not suggest a carcinogenic risk >>.*  
(PMRA, 2005.)

In 2008, the P.M.R.A. has also stated that (the underlined empasis is our own) ...

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*<< Products containing 2,4-D do not pose unacceptable risks to human health or the environment. >>*

*<< Risks to homeowners and their children from contact with treated lawns and turf are not of concern. >>*  
(PMRA RV2008-11, MAY 2008.)

According to the « ONTARIO PESTICIDES ADVISORY COMMITTEE » (O.P.A.C.), under the chairmanship of the renowned Clayton Switzer ...

*<< OPAC has concluded after in-depth consideration of the scientific evidence, there is no reason for us to recommend additional restrictions on the use of 2,4-D. 2,4-D will continue to be classified according to the current classification guidelines. >>*

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*First, we deceived  
everybody about DDT.  
Now we can do  
the same with 2,4-D.*

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**FORCE OF NATURE** was launched for continuous transmission on the Internet on January 1st, 2009. It is a series of e-newsletters destined for the Green Space Industry, the environmental movement, politicians, municipalities, and the media, nation-wide across Canada, and parts of the United States. Force of Nature is produced in two parts. First. The Media Report itself that reports on the current events affecting the future of the Green Space Industry. Second. Independent Perspective, which is a running commentary, sometimes also of a more technical in nature.

Force of Nature is the brainchild of William H. Gathercole and his entourage. The opinions expressed in these e-newsletters, even though from an independent perspective, may not reflect those of everyone in the Green Space Industry, or Mr. Gathercole's many associates. Be warned! Mr. Gathercole and his team may sometimes be very irreverent and fearless with these e-newsletters.

William H. Gathercole holds a degree in Horticulture from the University of Guelph, and another pure and applied science degree from McGill University. He has worked in virtually all aspects of the Green Space Industry, including public affairs, personal safety, and environmental issues. Mr. Gathercole has been a consultant and instructor for decades. Mr. Gathercole has been following the evolution of environmental terrorism for over a quarter-century. His involvement in environmental issues reached a fevered pitch in the 1990s, when he orchestrated, with others, legal action against unethical and excessive municipal regulations restricting the use of pest control products. ( i.e. the Town of Hudson. ) Although he can be accused of being anti-environment-movement, he is, in fact, simply a strong advocate for the Green Space Industry. However, this position has not precluded him from criticizing the industry itself. Nonetheless, his vast knowledge of our long journey with environmental issues is undeniable. ( Hopefully ! ) For many years, Mr. Gathercole has been a contributing columnist for TURF & Recreation Magazine, Canada's Turf and Grounds Maintenance Authority.

All pictures contained in Force of Nature were found somewhere on the Internet. We believe that they are in the public domain, as either educational tools, industry archives, promotional stills, publicity photos, or press media stock.

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The following titles are currently available. (Or, will be available in the near future.) ● Alberta Prohibition ● British Columbia Prohibition ● Canadian Association of Physicians for the Environment ● Consequences ● David Suzuki Foundation ● Death and the Environmental Movement ● Golf and Landscape Trade Industries ● June Irwin, The Princess of Junk Science ● Kazimiera Jean Cottam ● Kelowna BC Prohibition ● New Brunswick Prohibition ● Nova Scotia Prohibition ● Ontario Prohibition ● Organic Fertilizers ● Pets and Lawn Care Chemicals ● Prince Edward Island Prohibition ● Quebec Prohibition ● Rachel Carson, The Queen of Junk Science ● Randy Hillier, The Next Premier of Ontario ● Salmon Arm BC Prohibition ● The 9/11 Era of the Green Space Industry ● The Failure of Integrated Pest Management ● The Industry Strikes Back ● The Misconceptions About Cancer ● The Wisdom of the Solomons ● Wisconsin Fertilizer Prohibition ● ASK FOR A COPY OF ANY BACK ISSUE OF FORCE OF NATURE TODAY.

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