

# Canadian Environmental Law Association

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### CELA Calls for Removal of NAFTA “Expropriation” Provisions That Can Undermine Health and Environmental Policy

Nov 13 2008

**Toronto** - In a [letter sent jointly to Prime Minister Stephen Harper and President-Elect Barack Obama](#), the Canadian Environmental Law Association (CELA) asks the two leaders to take immediate action to repeal or at the very least, amend Chapter 11 of the *North American Free Trade Agreement*.

CELA’s concerns arise from the claim by Dow Agroscience filed in August this year pursuant to Chapter 11, the Investment chapter of NAFTA. The claim is against the government of Canada in which Dow seeks \$2 million in compensation (plus legal fees and any taxes) for revenues lost due to the ban of its pesticide 2,4-D under the *Quebec Pesticides Code*.

“Under our constitution, Canadian provinces and municipalities can take action on a range of environmental issues, including pesticides,” notes Theresa McClenaghan, Executive Director and Counsel with CELA. “Such action, and division of roles concerning the regulation of pesticides across the federal, provincial/territorial and municipal levels of government in Canada, has also been confirmed by the Supreme Court of Canada.” Moreover, the court of public opinion in Canada is consistently and solidly behind the further restriction, in provincial laws or municipal bylaws, of cosmetic pesticide use.

CELA’s letter to the two leaders cites provisions in several bilateral trade agreements between the US and other countries that very clearly and intentionally exclude the same archaic provisions contained in NAFTA. For example, recent bilateral agreements negotiated between the United States and each of Chile, Singapore, and Australia, among others, have included express language to assure that “Non-discriminatory regulatory action designed for legitimate public welfare objects, public health, safety and the environment do not constitute indirect expropriation.”

“They simply need to take their own advice,” noted McClenaghan. “Both Canada and the United States provide official guidance for the negotiation of bilateral Free Trade Agreements. They explicitly recommend that an updated provision be included to note that regulation for legitimate public welfare objectives, such as health, safety and the environment, does not constitute indirect expropriation. Such provisions would preclude the type of claim that Dow Agroscience has now filed against Canada. CELA believes that it is imperative that the NAFTA itself be brought up to date with such official guidance.”

[CELA’s letter to Prime Minister Harper and President-Elect Obama](#)

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#### For more information, please contact:

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#### Related Information

[International Trade Agreements - Commentary](#)

Collection of materials analyzing the environmental and health implications of trade and investment and the

activities of governments and corporations at the international level.



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