

## Will NAFTA exterminate Canadian pesticide bans?



Ontario Premier Dalton McGuinty smiles as he departs a news conference in Toronto to announce province-wide legislation to ban the use of cosmetic pesticides on Tuesday, April 22, 2008. (Frank Gunn / THE CANADIAN PRESS)

Parminder Parmar, CTV.ca News

Updated: Sun. Mar. 29 2009 7:10 AM ET

A battle brewing over cosmetic pesticides between one of North America's biggest chemical companies and Canadian lawmakers may end up re-shaping the future of Canada's environmental policies in the years ahead.

Next month, Ontario is set to become the second province in the country (after Quebec) to ban the sale and use of most off-the-shelf cosmetic pesticides.

"The ban would eliminate the use of conventional pesticides for cosmetic purposes on lawns, gardens, school yards and parks," says an Ontario government press release. That means 250 products containing one or more chemicals on a list of prohibited materials will be pulled out of stores by Earth Day on April 22.

Environmental and health advocates hail the provincial bans as big steps in protecting public safety and children. But the pesticide prohibitions are not sitting well with the Dow Chemical Company. When Quebec enacted similar regulations, the Dow AgroSciences unit of the company filed a notice of action against Ottawa claiming the Quebec legislation violates NAFTA.

Dow's fight is centred on one chemical in particular: 2,4-D, which is used as one of the world's most common herbicides. Dow says it's safe if used according to instructions.

But proponents of the pesticide ban say studies have shown that 2, 4-D is linked with cancer, neurological impairment and other health problems. They say putting the chemical into herbicides, which are then thrown onto fields and lawns, doesn't make sense.

"This is a no-brainer," Lisa Gue of the David Suzuki Foundation told CTV.ca.

"This is a completely unnecessary source of chemical exposure. It just makes sense that in a world where we are surrounded by so many chemicals to ban unnecessary ones."

Gue and her colleagues have been working with Equiterre, a Quebec-based environmental group that's pushing Ottawa to fight back hard if Dow continues its plans against the Quebec ban. They say their fight is larger than a single chemical or company, arguing that Canadians should be allowed to decide for themselves what is in the best interest of public safety -- especially when it comes to kids.

"Children are more affected because of their physiology and behaviour," said Hugo Seguin, a coordinator at Equiterre.

"Children are children -- they play in the grass and mud and they put their hands on their mouths... Canadians are concerned about public health and health of their children. This is what it's all about."

### Conflicting science?

Claude-André Lachance, the director of public policy for Dow Canada, told CTV.ca that Canada's pesticides management agency and other researchers have concluded that 2, 4-D is safe if used appropriately.

"What is relevant is that those agencies, after conducting thorough reviews, have concluded this product is safe if used according to label. Our contention is that the Quebec government did not use a thorough and robust process to determine the safety of 2, 4-D ... It is basically an arbitrary decision," he said.

That's why the company filed a notice of intent to take action under chapter 11 of NAFTA, Lachance adds, noting the Quebec ban sends a bad message to the business community.

"(It) does not meet due process that is conducive to investment and innovation and accountable government," he said.

Gue said the fact that all the scientific reports are not conclusive or completed does not mean that the chemical is safe.

"It's true there is uncertainty around the science. But this is in effect an unnecessary risk. When it comes to lawn pesticides it is an unacceptable risk. It's just not worth the risk to children's health

when all we want to do is kill dandelions," she said.

Lachance noted that the company is now in discussions with Ottawa to resolve the issue. However, he added that if an acceptable resolution isn't worked out, the company will move ahead "in the next few weeks" in an effort to settle the matter through the NAFTA process.

"It is certainly Dow AgroSciences' intention to follow with a notice for arbitration if the matter cannot be resolved through those discussions. That's where it stands basically," he said.

That has mobilized Canadian groups who have banded together to fight the corporation. In Quebec, they've started a letter-writing campaign to Minister of International Trade Stockwell Day. On March 24, Equiterre and other groups also appeared before a federal committee looking into the pesticide bans and their implications for NAFTA.

Environmentalists fear that if the pesticide bans in Quebec and Ontario are overturned there will be implications for governments across Canada. Prince Edward Island is considering putting its own pesticide ban on the books, as is New Brunswick. There are also municipalities across the country that have banned the use of cosmetic pesticides.

"We think the governments have a right to regulate to protect public health and the environment. This restriction is not specific to Dow Chemicals," Gue said.

"If it is the case that NAFTA prevents governments from protecting public health from unnecessary chemical exposures, then I have to conclude there is a problem with the way that agreement is written or being interpreted."



The Dow Chemical Co. industrial site is seen in Midland, Mich. (AP / Steven Simpkins, File)



Lisa Gue of the David Suzuki Foundation appears in this undated photo.