

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

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

**Part 8.**



# Quebec Prohibition of Pest Control Products.

## Part 8.

02/06/2009

## Environmentalists in battle to be heard in pesticide case

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April 27<sup>th</sup>, 2009

Luke Eric Peterson



Look out, Ontario.

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**Dow** Chemicals has filed a claim under the **North American Free Trade Agreement** seeking compensation for a Quebec ban on lawn pesticides. Dow says that the ban amounts to an unfair "*expropriation*" of the company's **Quebec** pesticide business.

Although the **NAFTA** claim is focused on the **Quebec** ban, don't be surprised if Ontario comes into the sightlines now that a similar province-wide ban came into effect last week.



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The ramifications of this **NAFTA** dispute have spurred environmental groups to mobilize for battle. A hint of the coming fireworks could be glimpsed on Parliament Hill late last month.

In hearings of the Standing Committee on International Trade, environmental groups signalled their plans to intervene in any forthcoming **NAFTA** arbitration proceeding.

These groups insist that governments should be permitted to act on a precautionary basis to shield vulnerable groups such as children — even when the scientific evidence is uncertain as to the long-term health impacts of certain substances.

They plan to present their own views to the arbitration panel that will hear **Dow's** case.

However, the groups complain that the **NAFTA Chapter 11** arbitration process is less than welcoming when it comes to hearing from concerned citizens and other interests.

In testimony to Parliament last month, environmental advocates lamented that **NAFTA** — unlike more recent trade pacts — permits foreign companies to sue a **NAFTA** government behind closed doors.

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**Will Amos**, an Ottawa-based lawyer representing the **David Suzuki Foundation** and the Quebec group **Équiterre**, says that his clients can submit written arguments to a **NAFTA** arbitration panel, but they may be blocked from showing up and watching, or participating in these high-stakes arbitration proceedings.



**Culprit that has conspired to prohibit pest control products.**

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*"There is no guarantee that the investor won't request confidential proceedings, which would further limit our ability to understand what case they're bringing, and there will be no opportunity for us to make oral representations before the tribunal," Amos says.*

*"This is totally unlike the Supreme Court of Canada," he adds.*

Indeed, it's unfortunate that **NAFTA** disputes can be arbitrated in private — unlike domestic court hearings

Otherwise, members of Canada's Supreme Court might benefit from sitting in on these arbitration hearings, and gaining a better appreciation of this **NAFTA** process.

If permitted into the hearing room, the justices might be taken aback by the extent to which **NAFTA** tribunals can now review the actions of governments.

In fact, one of the things that has incensed many members of the environmental community [ ... ] Environmentalists in battle to be heard in pesticide case, and which might bemuse members of the Supreme Court — is that pesticide bans in other parts of Canada have already been upheld by the Supreme Court of Canada.

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In **2005**, the court dismissed an effort by a pesticide industry association to challenge a ban introduced by the municipality of Toronto.

Environmentalists assumed that this ruling affirmed the right of governments to act proactively so as to minimize potential health risks.

**Culprit that has conspired to prohibit pest control products.**

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However, it now appears that the Supreme Court was merely engaged in a dress rehearsal.

Sure, pesticide bans in different parts of Canada have been declared constitutional by the highest court in the land, but in the 21st century, constitutions are not the only law of the land.

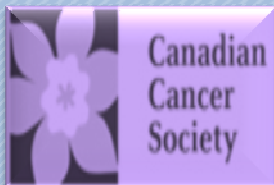
Rather, it will fall to three arbitrators – one appointed by **Dow**, one by Canada, and the third by mutual assent — to determine whether our North American constitution, the **NAFTA**, sanctions the actions of the **Quebec** government.

The **Dow** arbitration promises to be of seminal importance.

**Dow** protests that Quebec lawmakers failed to take heed of several risk assessments, including one by Canada's federal government, which showed that the pesticide ingredient **2,4-D** *"does not entail an unacceptable risk of harm to human health or the environment."*

Of course, others — including some governments — have questioned whether risk assessments should be the final word on such matters.

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Environmental and medical groups like the **Canadian Cancer Society** have long argued that no amount of risk is worth taking when it comes to *"unnecessary"* chemicals, such as lawn pesticides, which are used for purely cosmetic purposes.

However, where governments wish to drive certain risks closer to zero, it will fall to a panel of **NAFTA** arbitrators to decide who shall pay the price for doing so: the chemicals industry or the Canadian taxpayer.

Luke Eric Peterson is editor of Investment Arbitration Reporter, an online news service reporting on NAFTA-style investor-state arbitrations ([www.iareporter.com](http://www.iareporter.com)).

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**Culprits that  
have conspired  
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### Notable quotations.

*<< While the federal government would defend Quebec, it is in an awkward position because the federal Health Canada pest management regulatory agency declared 2,4-D safe, if used as directed. >>*

*<< Dow says Quebec's ban is not driven by science but by " political, social or cultural considerations " and the province has broken a promise to review the " precautionary " ban after the federal pest agency review was complete. >>*

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*<< So the issue is not about compensation. The issue is not about commercial interests. The issue is about due process. >>*



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### NAFTA threat won't stop Quebec ban on lawn pesticides

March 29<sup>th</sup>, 2009

Juliet O'Neill, Canwest News Service

**NATIONAL POST**

OTTAWA — Trade Minister **Stockwell Day** vows a " *vigorous defence* " of **Quebec's** ban on lawn pesticides containing **2,4-D** from a challenge by a U.S. chemical company through the **North American Free Trade Agreement**.



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**Dow AgroSciences** is to decide within a few weeks whether to go ahead with a threatened claim through **NAFTA** for **\$2 million**, just as Ontario is introducing similar pesticide controls that put **2,4-D** on a ban list.

In written comments to Canwest News Service, Mr. **Day** said the government, in consultation with **Quebec**, is assessing **Dow's** claim after a **Jan. 13** meeting of lawyers for all three parties.

*"Should this claim proceed, the government of Canada will continue to work with the government of Quebec to vigorously defend our interests,"* Mr. **Day** said.



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*"The NAFTA preserves the state's ability to regulate in the public interest including issues concerning public health and environmental issues related to pesticides."*

**While the federal government would defend Quebec, it is in an awkward position because the federal Health Canada pest management regulatory agency declared 2,4-D safe, if used as directed.**

That finding is at the heart of **Dow's** case. **Dow says Quebec's ban is not driven by science but by " political, social or cultural considerations " and the province has broken a promise to review the " precautionary " ban after the federal pest agency review was complete.**

*"Basically we filed this notice to protect our rights under those provisions of NAFTA but we continue to hope that the Quebec government will review the decision,"* Claude Andre Lachance, director of public policy for parent company **Dow Chemical Canada**, said in an interview.



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*" That's basically what we want. So the issue is not about compensation. The issue is not about commercial interests. The issue is about due process. "*

A spokesman for **Quebec's** Environment Ministry said there is no comment on **Dow's** call for a review of the ban or on the **NAFTA** case.

The case has attracted attention of MPs of all parties at the House of Commons trade committee, sparking a hearing last week into **Chapter 11** investment provisions of the free trade agreement between Canada, the United States and Mexico.

New Democratic Party MP **Peter Julian**, who instigated the hearing, said he suspects the government will settle out of court and/or ask **Quebec** to reverse its ban, despite Mr. **Day's** comments. Mr. **Julian** said the case would likely expose the outdated nature and general weakness of **Chapter 11**.

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### Culprit that has conspired to prohibit pest control products.

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*"The question is whether a company can use Chapter 11 to override a decision made by a democratic government in the best interests of the citizens," Mr. **Julian** said in an interview. "This is really the principle that's at stake."*

*"If a company can say our profits have been infringed so we're going to force you off this ban of our product, regardless of the consequences, then this opens up a whole avenue (to challenge) pesticide bans and a whole range of toxic products."*

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Mr. Lachance said meetings among lawyers for all three parties were "**absolutely not**" for out-of-court settlement negotiations but for discussions on procedures and issues so the **NAFTA** arbitrators will be well informed.



**Will Amos**, staff lawyer for the **University of Ottawa's Ecojustice Environmental Law Clinic**, said he is pleased by Mr. **Day's** pledge.



*"I'm hopeful they'll advance the strongest arguments possible,"* he said, adding he will apply to make a submission to the three-member **NAFTA** arbitration panel.

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The **Environmental Law Association** has cited the **Dow** case in calling for amendment, if not repeal, of **Chapter 11**. It cites more modern trade agreements between the United States and other countries that provide explicit protection of environmental, health or safety regulations from being subject of investor compensation claims.

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have conspired  
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On April 22<sup>nd</sup>, 2009, Ontario becomes the second province in the country (after Quebec) to prohibit the sale and use of most off-the-shelf cosmetic pesticides.

## Will NAFTA exterminate Canadian pesticide bans ?

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March 29<sup>th</sup>, 2009

Parminder Parmar,



CTV.ca News

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.

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*"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.

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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.



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### Culprit that has conspired to prohibit pest control products.

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*"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 ?

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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.

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**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**. [DayS@parl.gc.ca](mailto:DayS@parl.gc.ca) On **March 24**, **Equiterre** and other groups also appeared before a federal committee looking into the pesticide bans and their implications for **NAFTA**.

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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."*

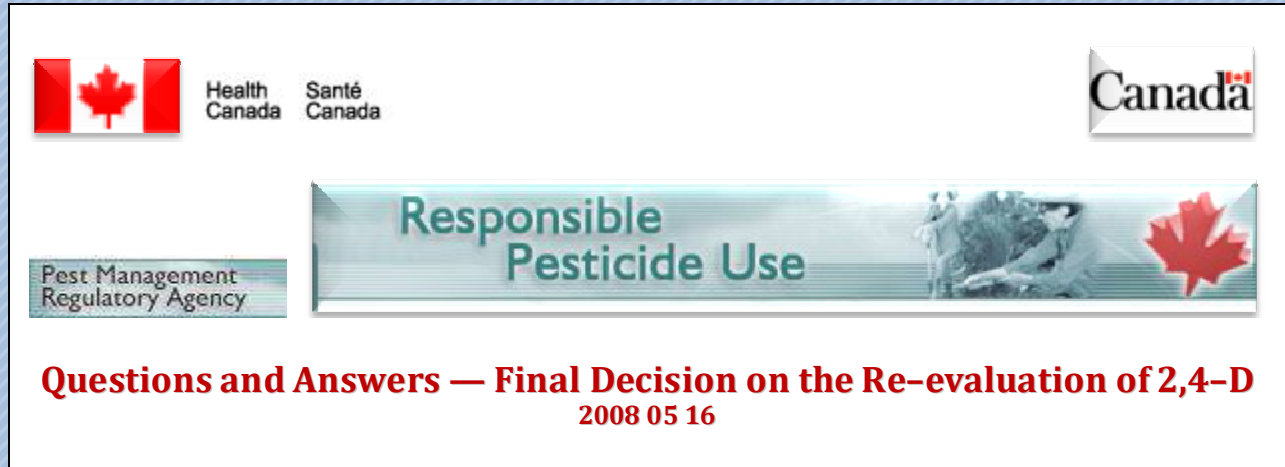
In Canada, pest control products, or pesticides, are regulated by « *Health Canada* » under the « *Pest Control Products Act* », and are among the most stringently regulated substances in Canada. The « *Pest Management Regulatory Agency* » (P.M.R.A.) is the branch of « *Health Canada* » that administers 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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## Excerpts from Health Canada report on 2,4-D.



**Questions and Answers — Final Decision on the Re-evaluation of 2,4-D**  
2008 05 16

### Health Considerations

#### Can Approved Uses of 2,4-D Affect Human Health ?

**2,4-D is unlikely to affect your health when used according to the revised label directions. Additional risk-reduction measures are required on 2,4-D labels.**

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People can be exposed to 2,4-D when consuming food or water, when working as a mixer/loader/applicator or when entering treated sites. When assessing health risks, two key factors are considered: the levels at which no health effects occur and the levels to which people may be exposed. The dose levels used to assess risks are established to protect the most sensitive human population (e.g. children and nursing mothers). Only those uses for which the exposure is well below levels that cause no effects in animal testing are considered acceptable for registration.

#### Residues in Water and Food

**Dietary risks from food and water are not of concern.**

Human exposure to 2,4-D was estimated from residues in treated crops and drinking water, including the most highly exposed subpopulation (e.g. children 1 to 6 years old). This aggregate exposure (i.e. to 2,4-D from food and drinking water) represents less than 16.3% of the acute reference dose for the most exposed population group (females of childbearing age) and less than 9.9% of the



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acute reference dose for all other population groups. For chronic risk, the aggregated exposure represents less than 24% of the chronic reference dose for all population subgroups.

### **Risks in Residential and Other Non-Occupational Environments**

#### **Non-occupational risks are not of concern**

Risks to homeowners and their children from contact with treated lawns and turf are not of concern.

#### **Biomonitoring studies**

Biomonitoring studies have measured exposure levels in the children and wives of farmers that used 2,4-D. Some of the participants sampled in these studies had helped to apply the pesticide. In over 80% of the urine samples, 2,4-D was not detected. More than 80% of the sampled children and women had samples that were negative for 2,4-D in their urine. Those participants that did have detectable levels of 2,4-D had very low levels in their urine (mean of approximately 3 µg/L), indicating that exposures were generally lower than what was estimated in the PMRA risk assessment that concluded acceptable risk at higher exposure levels.

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As presented in PACR2005-01, the turf risk assessment evaluated exposure in children playing on treated turf immediately after application. This was considered to be a high-end exposure scenario because it was assumed children would be exposed dermally through contact with treated turf as well as orally through ingestion of soil, turf mounding and hand-to-mouth contact. The unique physiology, behaviours and play habits, such as their lower body weights and hand-to-mouth contact while playing, were also taken into consideration in the exposure assessment.

In addition, extra safety factors were applied to the no effect level identified in animal toxicity studies to protect population groups, such as children and pregnant women, that may be more susceptible to the potential effects of pesticides. This resulted in reference doses that were 300- to 1000-fold lower for these sensitive groups, which are more protective than the minimum 100-fold safety factor. Thus, products will not be considered acceptable for continued registration unless the estimated human exposure is at least 300 times to 1000 times less than the level at which there were no observed effects in the studies examined. These levels ensure the most sensitive population groups — children and pregnant women — are protected.

*The ever-resourceful  
environmental movement ...*



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*... has hired its own serious  
and professional lawyer  
for the NAFTA challenge.*

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**Force of Nature** was launched for continuous transmission on the Internet on January 1<sup>st</sup>, 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. ● Kazimiera Jean Cottam. ● Kelowna B.C. Prohibition. ● New Brunswick Prohibition. ● Nova Scotia Prohibition ● Ontario Prohibition. ● Organic Fertilizers. ● Pets and Lawn Care Chemicals. ● Prince Edward Island Prohibition. ● Quebec Prohibition. ● Randy Hillier, The Next Premier of Ontario ● Saint Catharines Ontario. ● Salmon Arm B.C. Prohibition. ● The 9/11 Era of the Green Space Industry. ● The Failure of Integrated Pest Management. ● The Wisdom of the Solomons. ● Wisconsin Fertilizer Prohibition. ●

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