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Environmental groups claim victory for municipal, provincial pesticide bans

May 30, 2011

Environmental groups are claiming an important victory for the right of municipalities and provinces to ban dangerous pesticides as Dow AgroSciences has backed away from its longstanding dispute of Quebec's cosmetic pesticides ban under NAFTA. In a settlement reached between the Canadian government and Dow, Dow waived its legal actions and claims and accepted no compensation, implicitly confirming the legality under NAFTA of Quebec's ban on the cosmetic use of 2, 4-D herbicides.

"Dow reversed course and decided not to pursue its claim," observed Sidney Ribaux, Executive Director of Équiterre. "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."

The settlement was announced by Dow on May 25, ending an arbitration process it had launched back in 2009 to challenge Quebec's ban on the pesticide 2, 4-D. Dow alleged that this ban resulted in a breach of its Chapter 11 NAFTA investor rights, and illegally disallowed the sale and distribution of such cosmetic pesticides as Killex. The company was also seeking \$2-million in damages allegedly occurring from the ban.

The pesticide 2, 4-D is a chlorophenoxy herbicide, a group of chemicals that the International Agency for Research on Cancer — a branch of the World Health Organization — classifies as possible human carcinogens. Exposure to this herbicide is also associated with a number of other serious health risks, including effects on the hormone system.

"This is a major victory for provinces and municipalities that have banned cosmetic pesticides," said William Amos, Director of the uOttawa-Ecojustice Environmental Law Clinic. "Quebec's ban under the Pesticides Management Code remains intact and 2, 4-D is still prohibited on store shelves in that province. Dow explicitly acknowledges that provinces, territories and municipalities may regulate pesticides in a more restrictive manner than provided for under federal law."

Five Canadian provinces have banned the cosmetic use of 2, 4-D, and Alberta also prohibits the chemical in pesticide-herbicide mixtures.

The only apparent concession obtained by Dow was an agreement from Quebec that, under federal law, 2, 4-D does "not pose an unacceptable risk to human health or the environment, provided that the instructions on their label are followed." However, Quebec's provincial pesticide ban remains intact.

"But Quebec is not saying that 2, 4-D is safe," said Lisa Gue of the David Suzuki Foundation. "This is still a toxic chemical and we disagree with regulators that a potentially cancer-causing pesticide does not pose an unacceptable risk to human health or the environment. At the same time, we are pleased that Quebec remains committed to enforcing its ban on lawn pesticides. We encourage other provinces to follow this precautionary example."

Quebec's Pesticides Management Code came into effect between 2003 and 2006. It prohibits the use and sale of 20 active ingredients in lawn pesticides and prescribes additional restrictions on pesticide

use outside public daycares and schools.

For more information, please contact:

Will Amos, Director | University of Ottawa-Ecojustice Environmental Law Clinic
(613) 562 5800, ext. 3378

Lisa Gue Environmental Health Policy Analyst | David Suzuki Foundation
(613) 594-5428

Éveline Trudel-Fugère, Media Officer | Équiterre
(514) 605-2000

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