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Supreme Court Affirms Right to Sue For Pesticide Harm

The Supreme Court today ruled that citizens damaged by pesticides have the right to sue producers of these toxic products, saying that federal pesticide law does not offer adequate protection from "manufacturers of poisonous substances." Dow Chemical Company argued that, because its products are registered by EPA, chemical manufacturers should be shielded from litigation. The Bush Administration joined the case in support of Dow.

Washington, DC, April 27, 2005 - In a landmark decision, the Supreme Court today upheld the rights of citizens to sue for damages caused by pesticides, after Dow Chemical Company and the Bush Administration argued that the chemical industry should be shielded from such litigation. "This decision affirms a moral value that life is more precious than chemical company profits," said Jay Feldman, executive director of Beyond Pesticides, a Washington, DC-based environmental group. The Bush Administration filed a brief in support of Dow Chemical, arguing against the rights of citizens who are poisoned or damaged from pesticide use.

The case, *Bates et al v. Dow AgroSciences LLC*, involves Texas peanut farmers, who argued that the Dow herbicide Strongarm (diclosulam) ruined their crops, but were prevented from suing after Dow successfully argued in a lower District court that registration of pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) insulates it from citizen suits, or preempts litigation. The Bush administration weighed in the case on the side of Dow, officially reversing the position of the Clinton administration (see [Etcheverry v. Tri-Ag Service, Bayer Corp, et al.](#)). The [Justice Department brief](#) filed before the high court

in late November, 2004 was designed to protect pesticide manufacturers when their products cause harm. Advocates cite that this position is contradictory to the administration's public support of states' rights.

The court decision reads, "The long history of tort litigation against manufacturers of poisonous substances adds force to the presumption against pre-emption, for Congress surely would have expressed its intention more clearly if it had meant to deprive injured parties of a long available form of compensation." The decision continues, "Moreover, this history emphasizes the importance of providing an incentive to manufacturers to use the utmost care in distributing inherently dangerous items. Private remedies that enforce federal misbranding requirements would seem to aid, rather than hinder, the function of FIFRA [the Federal Insecticide, Fungicide and Rodenticide Act]."

The Court criticized Dow and the Bush Administration's attempts to undermine public protection, stating, "Dow and the United States exaggerate the disruptive effects of using common-law suits to enforce the prohibition on misbranding. FIFRA has prohibited inaccurate representations and inadequate warnings since its enactment in 1947, while tort suits alleging failure-to-warn claims were common well before that date and continued beyond the 1972 amendments. We have been pointed to no evidence that such tort suits led to a 'crazy-quilt' of FIFRA standards or otherwise created any real hardship for manufacturers or for EPA."

According to Beyond Pesticides, the court decision is extremely important because: (i) "Pesticides are registered by the Environmental Protection Agency under a risk assessment review process that implicitly does not consider all aspects of potential harm," (ii) "The potential for court review of cases in which people are harmed creates a strong incentive for the development of safer products," and (iii) "The same companies or their trade associations, including Dow Chemical Company, that have successfully lobbied for weak national laws and standards do not want people who are harmed as a result to seek redress."

Beyond Pesticides joined an *amicus* brief in the case with Earthjustice, Defenders of Wildlife, Farmworker Justice Fund, Natural Resources Defense Council, Physicians for Social Responsibility, Public Citizen, Sierra Club, and Trial Lawyers for Public Justice.

See decision at:

<http://a257.g.akamaitech.net/7/257/2422/27apr20050800/www.supremecourtus.gov/opinions/04pdf/03-388.pdf>

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