

Message

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Sent: 2/29/2016 3:18:25 PM
To: MILLS, KYLIE [AG/1920] [kylie.mills@monsanto.com]
Subject: Agenda for Today's GA Team Meeting

The agenda for today's GA Team meeting will be:

- Super Tuesday
- Labeling
- TSCA
- Meeting with EPA Administrator McCarthy
- Other

Also, please review the following NY Times article as we will be discussing it in today's meeting.

http://www.nytimes.com/2016/03/01/business/monsanto-could-benefit-from-a-chemical-safety-bill.html?_r=0

Monsanto Could Benefit From a Chemical Safety Bill

By [ERIC LIPTON](#) FEB. 29, 2016

WASHINGTON — Facing hundreds of millions of dollars in lawsuits, the giant biotechnology company Monsanto last year received a legislative gift from the House of Representatives, a one-paragraph addition to a sweeping chemical safety bill that could help shield it from legal liability for a toxic chemical only it made.

Monsanto insists it did not ask for the addition. House aides deny it is a gift at all. But the provision would benefit [the only manufacturer in the United States of now-banned polychlorinated biphenyls, chemicals known as PCBs](#), a mainstay of Monsanto sales for decades. The PCB provision is one of several sticking points that negotiators must finesse before Congress can pass a law to revamp the way thousands of chemicals are regulated in the United States.

“Call me a dreamer, but I wish for a Congress that would help cities with their homeless crises instead of protecting multinational corporations that poison our environment,” said Pete Holmes, the [city attorney for Seattle, one of six cities suing Monsanto](#) to help cover the costs of reducing PCB discharge from their sewers.

The House and the Senate last year both passed versions of legislation to replace the 40-year-old [Toxic Substances Control Act](#), a law that the Environmental Protection Agency acknowledged had become so unworkable that as many as [1,000 hazardous chemicals still on sale today needed to be evaluated to see if they should be banned or restricted](#).

Democrats and Republicans — along with the chemical industry and even some environmentalists — agree that the pending legislation would be a major improvement over existing law. But from legal liability shields to

state-based regulatory authority, the House and Senate versions have major differences to resolve. The remaining disputes revolve around the basics of pre-emption: Who gets to sue? And who gets to regulate the chemical industry?

Already, attorneys general and top environmental regulators from 15 states have written to leaders in Congress demanding changes.

“Our future work depends on striking the right balance to strengthen the U.S. Environmental Protection Agency’s abilities and funding, without limiting state powers in creating and enforcing needed protections,” [said a letter](#), obtained by The New York Times, sent by the top environmental regulators in California, Connecticut, Minnesota, New Hampshire, New York, Oregon, Washington and West Virginia.

Some of the most vociferous objections relate to the so-called Monsanto Clause. The provision does not mention the company by name, but between the early 1930s and 1977, [Monsanto manufactured almost all](#) of the 1.25 billion pounds of PCBs sold in the United States.

The chemicals were initially admired for their ability to prevent fires and explosions in electrical transformers and other equipment. But as the use of PCBs skyrocketed nationwide in products as varied [as paints, pesticides and even carbonless copy paper](#), evidence mounted that they were contaminating the environment and potentially causing [health problems](#) including cancer and immune-system complications. [The E.P.A. banned their production in 1979.](#)

PCB litigation has surged in the last year as cities and school systems struggle to comply with directives from federal and state regulators to reduce PCB levels in sewer discharge and in caulk once [used to construct schools](#). Separately, a group of individuals who received diagnoses of a form of cancer known as non-Hodgkin’s lymphoma [sued Monsanto last year](#), claiming the company [should pay damages](#).

The Senate Environment and Public Works Committee, [in a June report](#) accompanying its version of the legislation, asserted that neither existing toxic chemical law nor any revisions pending in Congress should be seen as a way to “pre-empt, displace or supplant” the right to sue for damages in lawsuits like the ones filed against Monsanto.

The House also voted to preserve the right to sue if individuals or local governments believe they have been harmed by a chemical, regardless of future federal regulations of the substance. But a critical paragraph added to the [House bill in late May](#) made sure past regulatory requirements by the E.P.A. would continue to disqualify legal claims, and it specifically referred to the section of the 1976 toxic chemical law governing PCBs, giving Monsanto clearer authority in the future to ask judges to dismiss lawsuits filed against it.

Congressional aides involved in the drafting said the language was inserted at the request of Republican staff members at the House Energy and Commerce Committee. One Republican committee aide disputed any suggestion that this was a gift to Monsanto, but he said he was not allowed to discuss the issue on the record.

And Charla Lord, a Monsanto spokeswoman, said the company did not ask for the change.

But by November, Monsanto was clearly aware of the provision. Arguing before a federal court in Texas, a lawyer representing Monsanto cited the House language to say that certain of the legal claims against the company’s past PCB business should be dismissed.

“The House bill specifically exempts PCBs,” ensuring that protection from lawsuits would continue “after the passage of the new law,” [the lawyer argued](#), even though the provision remained locked in negotiation.

The House provision is now drawing protests from local officials suing Monsanto to try to recover costs associated with PCB cleanups, and from lawyers who are trying to collect damages for individuals with health problems linked to PCB exposure, including non-Hodgkin's lymphoma.

"Taxpayers and public entities would be left holding the bag to pay hundreds of millions of dollars if not billions of dollars cleaning up Monsanto's PCBs," said [John Fiske](#), one of the lawyers representing the six cities suing to collect money from the company to help cover cleanup costs. Monsanto has not yet argued that the cities are barred from suing, but Mr. Fiske says he is certain that if the legislation passes, the company will make that argument.

Ms. Lord says Monsanto bears no responsibility for cleanup costs in cities like Seattle, San Jose and San Diego.

"PCBs served an important fire-protection and safety purpose," she said in a written statement. "If these products were improperly disposed of, Monsanto is not responsible."

And A. Elizabeth Blackwell, the lawyer representing Monsanto who cited the House language in the Texas lawsuit, says the provision is not a gift to the company, since it would merely preserve the protection the company believes it already has against claims brought under state law.

The Democratic state attorneys general from California, Hawaii, Iowa, Maine, Maryland, Massachusetts, New Hampshire, New York, Oregon, Rhode Island, Vermont and Washington are mainly concerned with the power that states will retain to regulate chemicals once the revised law passes.

They [argue that the Senate version](#) would block states from taking action on potentially hazardous chemicals for as long as four years while the E.P.A. reviewed them for possible regulation. That, the attorneys general say, could create roadblocks for state reviews already underway on products such as flame retardants in furniture cushions and methylene chloride, a chemical used in paint strippers.

"It could really slow down the pace of progress in the states," said Ken Zarker, a manager at the Washington State Department of Ecology, which has its own chemical testing and regulation program.

The House bill presents a different issue: It would prevent a state from regulating a chemical if the health risk the state agency was targeting was different from the risk the E.P.A. had already acted on, the attorneys general say. For example, an E.P.A. regulation targeting a cancer threat from a cleaning product could block state officials from regulating the same product to protect consumers from respiratory illnesses.

Despite such concerns, Democrats and Republicans — as well as environmentalists and state officials — want legislation passed this year to replace the current law, which was rendered all but unenforceable by a 1991 [court ruling](#).

That ruling left chemical regulation a patchwork of inconsistent state rules and national efforts by retailers like Target and Walmart to [curb the sale of some products](#) under pressure from environmental groups.

That hodgepodge has left few satisfied with the status quo.

Representative Diana DeGette, Democrat of Colorado and one of the lead House negotiators on the legislation, said: "We need to give security to consumers, so they know that dangerous chemicals will be regulated, and certainty to the industry, so it knows how chemicals it sells will be treated."

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