

From: Tomanelli, Luke (SBC) [mailto:Luke_Tomanelli@sbc.senate.gov]
Sent: Wednesday, April 20, 2016 9:41 AM
To: HOLLAND, MIKE [AG/1920]
Subject: FW: Monsanto Legal Filing

PCB Counsel's reliance on the Senate bill committee report is particularly puzzling because ***there is a competing TSCA reform bill—that has actually passed the House—whose***

statutory language (as opposed to a committee report) makes clear that the House does understand the currently existing version of TSCA to preempt PCB-related torts. The House bill generally reduces the preemptive scope of TSCA for chemicals ***other than PCBs*** by expressly altering the definition of "requirements" in 15 U.S.C. § 2617 to exclude common law duties—indicating that the House understands TSCA's ***current*** use of "requirements" to *include* those claims. H.R. 2576, *TSCA Modernization Act of 2015*, § 7(b)(3). Critically, the House bill specifically exempts PCBs from this change, ensuring that preemption of common law requirements from EPA's PCB rules would continue after passage of the new law. That bill expressly states that:

> Nothing in this Act, or the amendments made by this Act, shall be construed as changing the preemptive effect of *an action taken by the [EPA] Administrator* prior to the date of enactment of this Act or *under section 6(e)*.

Id. § 7(c) (emphasis added). As discussed *supra* at 4-5, "section 6(e)" of TSCA (codified at 15 U.S.C. § 2605(e)) is the provision of TSCA authorizing EPA to promulgate PCB rules. Thus, the House bill provision above would maintain the status quo with respect to preemption of torts related to PCBs. In short, to the extent that any of this "post-enactment legislative history" could conceivably be relevant to interpreting the existing version of TSCA, it cuts decidedly in Pharmacia's favor.

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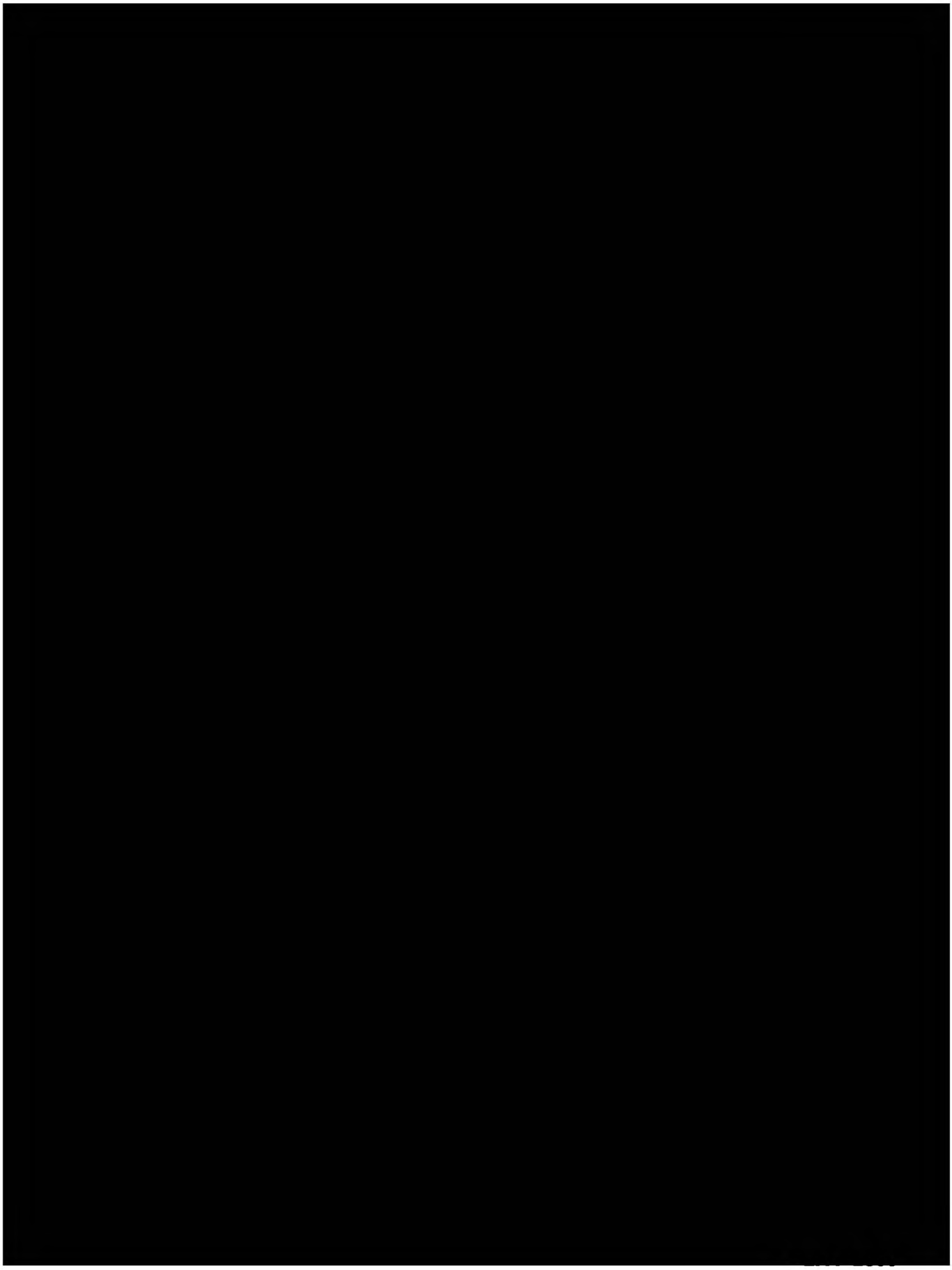


[redacted]

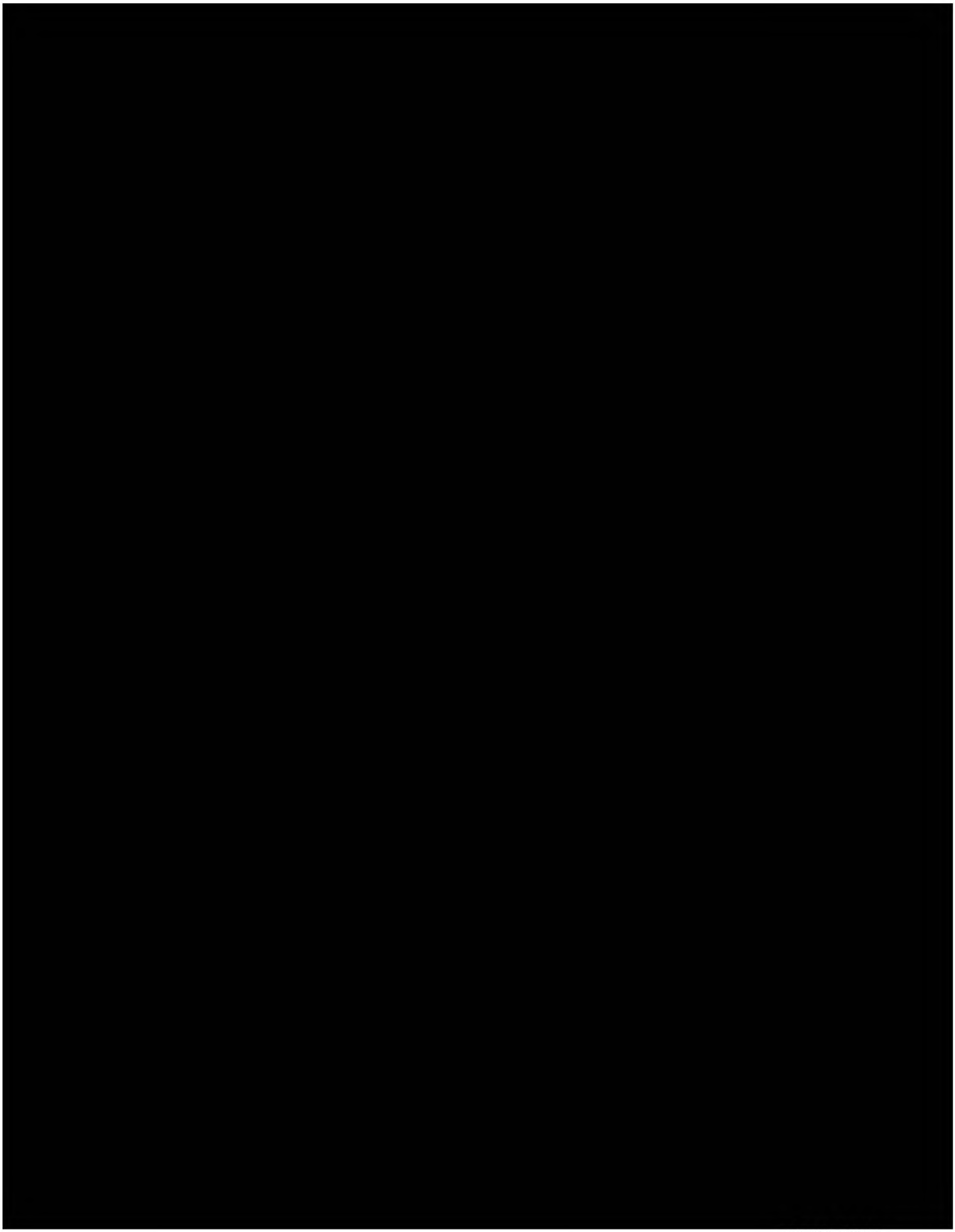
From: HOLLAND, MIKE [AG/1920]
Sent: Tuesday, December 01, 2015 12:21 PM
To: STUMP, JEREMY [AG/1920] <jeremy.stump@monsanto.com>
Subject: Fwd: TSCA

FYI - I left him a vm too.

Sent from my iPhone

Begin forwarded message:

> **From:** <mike.holland@monsanto.com>
> **Date:** December 1, 2015 at 12:20:49 PM EST
> **To:** Luke Tomanelli <Luke_Tomanelli@sbc.senate.gov>
> **Subject: TSCA**
>
> Hi, Luke. I hope all is well. We are heading there is an effort to attach TSCA to the omnibus. Are you hearing that?
>
> We appreciate the Senator and your commitment to ensure the preemption language issue is favorably addressed. This is especially important as the opposing parties in our TX case has cited the Senate report language as evidence there should be no preemption.
>
> Please let me know if you need anything from us. Thank you.
>
> Best,
>
> Mike
> 202-400-1350
>
> Sent from my iPhone



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> 202-400-1350
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[redacted]

From: "Chatterjee, Neil (McConnell)" <Neil_Chatterjee@mcconnell.senate.gov>
To: "Magallanes, Downey (Blunt)" <Downey_Magallanes@blunt.senate.gov>, "EMERSON, KATHARINE [AG/1920]" <katharine.emerson@monsanto.com>

Sent from my BlackBerry 10 smartphone.

<S.697 - Substitute - Confidential Draft - clean - Boxer Review - v.1.0.pdf>

Message

From: DYKES, MICHAEL D [AG/1920] [/O=MONSANTO/OU=NA-1000-01/CN=RECIPIENTS/CN=MDDYKE]
Sent: 9/29/2015 9:48:06 PM
To: STUMP, JEREMY [AG/1920] [jeremy.stump@monsanto.com]; HOLLAND, MIKE [AG/1920] [mike.holland@monsanto.com]
Subject: Fwd: Follow up on TSCA

FYI.

Sent from my iPhone

Begin forwarded message:

> **From:** "Chambers, Glen (Blunt)" <Glen_Chambers@blunt.senate.gov>
> **Date:** September 29, 2015 at 5:19:40 PM EDT
> **To:** "'DYKES, MICHAEL D [AG/1920]'" <michael.d.dykes@monsanto.com>
> **Subject: RE: Follow up on TSCA**
>
> Thanks michael. We are on it.
>
> ---
>
> **From:** DYKES, MICHAEL D [AG/1920] [mailto:michael.d.dykes@monsanto.com]
> **Sent:** Tuesday, September 29, 2015 4:31 PM
> **To:** Chambers, Glen (Blunt) <Glen_Chambers@blunt.senate.gov>
> **Subject:** Follow up on TSCA
>
> Glen
> I want to follow up on our conversation from this morning. You asked that I send you a short note as a reminder for Senator Blunt to raise a concern that Monsanto has with the TSCA legislation with Senator Vitter. My team has briefed Downey on this issue. We are concerned that the federal preemption in the House passed bill and the Senate language that is likely to pass the Senate very soon. The House and Senate accepted some changes to the preemption language that weaken Federal preemption and weakens our legal defense in our PCB litigation cases. We have been assured by Senator Vitter that he will fix the TSCA preemption language in pre-conference. We would like for Senator Blunt to verify this commitment with Senator Vitter.
>
> We have suggested a short comment such as the following.....I wanted to follow-up with you on a commitment you made to Monsanto in August to fix their TSCA preemption language issue in pre-conference. It is an extremely important issue to them and me but it also has national implications because if not properly addressed, the changes to preemption that were accepted will result in a flood of PCB litigation. I want to make sure that it gets resolved before a Conference Report is back on the Senate floor for a vote.
>
> Thank you for the conversation this morning. Please let me know if you have any questions.
>
> Michael

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Message

From: STUMP, JEREMY [AG/1920] [/O=MONSANTO/OU=NA-1000-01/CN=RECIPIENTS/CN=JJSTUM]
Sent: 12/1/2015 8:27:07 PM
To: DYKES, MICHAEL D [AG/1920] [michael.d.dykes@monsanto.com]
Subject: FW: Follow up on TSCA

Email we discussed...

From: DYKES, MICHAEL D [AG/1920]
Sent: Tuesday, September 29, 2015 5:48 PM
To: STUMP, JEREMY [AG/1920] <jeremy.stump@monsanto.com>; HOLLAND, MIKE [AG/1920] <mike.holland@monsanto.com>
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