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July 9, 2013

The Honorable John M. Shimkus
Chairman
Subcommittee on Environment & the Economy
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Paul Tonko
Ranking Member
Subcommittee on Environment & the Economy
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Re: *Committee on Energy and Commerce, Subcommittee on Environment and the Economy, July 11, 2013 Hearing on "Regulation of New Chemicals, Protection of Confidential Business Information, and Innovation": Statement of 3M Company*

Dear Chairman Shimkus and Ranking Member Tonko:

Thank you for providing 3M Company with the opportunity to submit this letter for the record in connection with the Subcommittee hearing on "Regulation of New Chemicals, Protection of Confidential Business Information, and Innovation." 3M's comments will focus on the role and impact of Sections 5 and 14 of the Toxic Substances Control Act on innovation. Given 3M's long history and recognized commitment to innovation, no provisions of TSCA are of greater importance to 3M.

We urge Congress to uphold the current protections for confidential data under TSCA Section 14 and to maintain the basic framework for new chemical review under TSCA Section 5. These two provisions are working well and achieve the goal of protecting public health and the environment while promoting American innovation at companies such as 3M.

Who We Are and Why We Care about TSCA

Based in St. Paul, Minnesota, 3M is a global, diversified technology company with sales totaling nearly \$30 billion in 2012. We market over 50,000 products across 45 technology platforms, including advanced materials, adhesives, films, non-woven fibers, ceramics, and abrasives, almost all of which are regulated by TSCA. 3M's research and development expenditures totaled \$1.6 billion in 2012, and 3M has rightfully earned its reputation as an innovative company in the way that we combine our technology platforms to find unique solutions for our customers. 3M has also rightfully earned its reputation for being committed to sustainability, and we have leveraged our technology platforms to create a wide range of products that provide superior environmental, health, and safety performance. In recent years, 3M has introduced, among other new products: films that allow electronic displays to use less energy; Novec™ fire protection and electronics processing fluids that do not contribute to climate change or ozone depletion; materials and components for generation of solar and wind energy; and solvent-free adhesive technologies that eliminate air emissions of volatile compounds. As a company based on bringing innovative new products to its customers, 3M has an intense interest in ensuring that a modernized TSCA promotes our ability to continue to innovate.

TSCA Section 14 – Disclosure of Data

The single most important aspect of TSCA modernization to 3M is ensuring the continued protection of our trade secrets when they are disclosed to EPA in connection with the regulatory review process. As is the case under the current statutory framework, companies should continue to have the right to designate which business data submitted to EPA are entitled to confidential protection, and there should be no predetermined or arbitrary limits placed on the duration of this protection. Rather, the confidentiality of data submitted to EPA should mirror the legal protections afforded by well-settled trade secret law. In other words, data submitted under TSCA should be maintained in confidence by EPA for as long as it continues to be protected as a trade secret – *i.e.*, not generally available to the public, of economic value to the submitter and subject to reasonable measures to keep it secret. 3M relies on the legal rights afforded by trade secrets to protect many of its most important innovations, including some trade secrets that we have carefully maintained for decades. By protecting these investments, 3M can continue to invest in the costly and uncertain R&D efforts that bring new technology, products, and innovation to companies, homes, and lives in the U.S. and around the world.

Congress appropriately recognized the connection between innovation and protection of trade secrets when it passed TSCA in 1976. Congress should continue to maintain these protections under a modernized TSCA because strong protection of trade secrets remains essential to the health of the American economy. In the modern economy, products often come to market only after many years and enormous financial resources are spent on research and development. Research-based companies are rational decision makers when it comes to deciding whether and how much to invest in R&D. When deciding whether or not to make an investment in any given project, many factors are taken into account, including the cost of the project, the technical risk and likelihood of success, and the expected return on investment. In determining the expected return on investment, a critical element is the likelihood that meaningful intellectual property protection – including trade secrets – can be obtained and maintained over time for inventions resulting from the project. Forced public disclosure of trade secrets generated from these investments risks undermining the incentives for continued innovation by allowing competitors to free-ride on those investments. Over time, the risk to domestic R&D may cause American companies to reduce research and development expenditures, resulting in a gradual weakening of American global competitiveness, elimination of high-end jobs, and relocation of operations.

Protection of Trade Secrets Drives Advances in Greener Chemical Technologies

We believe that protection of trade secrets is also a key to driving advances in safer and greener chemical technologies. John C. Warner of the Warner Babcock Institute for Green Chemistry estimates that for approximately 65% of existing products, a greener solution cannot be found without new chemistry -- solutions will not come from selecting among existing alternatives. Protection of intellectual property is certainly necessary for companies to invest in the development of these new chemistries and technologies. As but one example, 3M relies on the protection of confidential data under TSCA for our extensive development and use of innovative solvent-free adhesive technology. This technology enables significant reductions in air emissions, energy use, and waste generation across a wide range of greener industrial and consumer products.

Protection of Chemical Identities Should Be Maintained

The debate regarding protection of confidential data does not center solely on manufacturing and technology information that must be disclosed under TSCA. Rather, often at issue is the ability of a company to protect as confidential the exact chemical identity of a substance. The identity of chemical compounds that must be disclosed to EPA under TSCA are protected from public disclosure under the current statutory framework. 3M urges that this protection be maintained under a modernized TSCA. Chemical identity is a critical type of trade secret information. Disclosing certain chemical identities to the public would reveal to competitors valuable business information, including the direction of a company's product development efforts, the chemical manufacturing capabilities of a company and, in the case of isolated intermediates that must be identified under TSCA, the reaction pathways for manufacturing an end substance.

TSCA Contains Appropriate Checks and Balances for Confidential Data

For those cases in which chemical identity is held as confidential, TSCA contains appropriate checks and balances to ensure the safety of each chemical substance and to safeguard the public's need for information. The chemical identity is disclosed to EPA under specific confidentiality provisions that maintain the trade secret status of the chemical identity, and EPA serves to protect the public's interest by conducting scientific risk assessments and implementing regulatory measures, such as consent orders, to ensure that each confidential chemical substance is safe in commerce. Companies, too, take independent measures to ensure that their chemical substances are safe for their intended uses. Long before submitting a new substance to EPA for evaluation, companies frequently conduct human health and environmental studies on a slate of candidate molecules to find a chemical substance that meets environmental, health, and safety performance requirements, as well as technical performance requirements.

TSCA also appropriately relies on EPA to implement administrative procedures, such as substantiation questionnaires, to protect the public's need for information and to ensure that companies do not make frivolous claims regarding the confidential status of a chemical's exact identity. 3M supports the strengthening of some of these measures, provided that the additional administrative processes provide true public benefits and are not unduly burdensome. Specifically, 3M supports a statutory requirement for companies to provide an up-front substantiation of claims of confidentiality. We believe that up-front substantiation of claims will help address the perception by some parties that companies are making overly broad designations of confidentiality under TSCA's provisions for protecting confidential information.

Data Sharing with Foreign Governments Should Be Limited to Publicly-Disclosed Data

Some of the testimony provided to the Subcommittee during the oversight hearing on June 13, 2013 suggested that EPA should have the right to share confidential data with foreign governments. We believe that such data sharing with foreign governments should be limited to publicly-disclosed data. Even if EPA sought to confirm the ability of a foreign government to protect confidential information, U.S. companies, not EPA, would be the ultimate victims of unauthorized disclosures. U.S. companies harmed by the disclosures of their trade secrets by foreign governments would lack both the means to detect the unauthorized disclosure and sufficient legal remedies for the loss of their trade secrets.

Chairman Shimkus and Ranking Member Tonko
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TSCA Section 5 - Manufacturing and Processing Notices
The Basic Framework for New Chemical Review Under TSCA Works Well

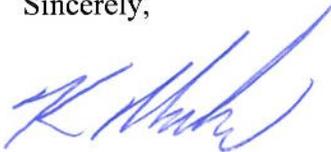
Also central to 3M's ability to innovate and create new technologies under TSCA is the review of new chemicals as authorized under Section 5. Under Section 5, companies file with EPA a Premanufacture Notice (PMN) that contains production, processing, use, and disposal information for new chemicals so that EPA can conduct a risk assessment of the new chemical substance prior to its introduction into commerce. Under Section 5, EPA does not require an up-front minimum data set for new chemical substances. Rather, companies submit existing studies that they possess and EPA uses these studies in combination with data from analog chemical substances or structure-activity relationships to conduct a health-protective risk assessment. The basic framework for new chemical review under Section 5 works well as a tiered, targeted, risk-benefit approach to safety assessment. This basic framework achieves a far better balance between risk and benefit than alternative approaches, such as the European REACH regulation, in which companies are required to generate an expensive – and at times irrelevant – minimum data set for all chemical substances.

EPA Should Be Transparent About the Risk Assessment Process

Although we do not advocate for significant changes to Section 5 of TSCA, we recommend that Section 5 be amended to require EPA to provide submitters with explicit information regarding the Agency's risk assessment methodologies and results. Increased transparency regarding the risk assessment process will enable submitters to provide, in their initial submissions, data directly responsive to the key issues involved in a particular risk assessment. Although 3M has gained some insights into the EPA risk assessment process through participation in voluntary EPA programs such as the Sustainable Futures Program (a program that gives companies access to the risk-screening models that EPA uses so that companies can identify potentially risky chemicals early in the development process), we believe that more transparency will improve the efficiency, predictability, and speed of EPA's review process for new chemicals.

Thank you again for providing 3M with the opportunity to present these views on the role and impact of TSCA Sections 5 and 14 on innovation. As always, 3M remains committed to working with all stakeholders on these important issues. We will be pleased to submit written answers to any questions this statement may raise and to supply any additional information that may be requested for the record.

Sincerely,



Kevin H. Rhodes

KHR/smc