



July 29, 2010

The Honorable Jim Oberstar  
U.S. House of Representatives  
2365 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable John Mica  
U.S. House of Representatives  
2313 Rayburn House Office Building  
Washington, D.C. 20515

**RE: Trade Secret Protection in H.R. 3534**

Dear Congressmen Oberstar and Mica:

Intellectual Property Owners Association (IPO) recognizes the seriousness of the Gulf oil spill and supports the Committee's efforts, through H.R. 3534, also known as the "Consolidated Land, Energy and Aquatic Resources Act of 2010," to ensure safe and effective responses to current and future oil spills. However, IPO advocates a response that is narrowly tailored to ensure the preservation of commercially valuable trade secrets employed in remediation efforts. In so doing, Congress would be acting consistently with prior legislation and encouraging private investment in these important materials, processes, and technology that are needed to clean up environmental accidents without risking a chilling effect that the risk of loss of trade secret protection might have on new investment. Specifically, we write to express our concerns about the provision contained in H.R. 3534 regarding the public disclosure of the chemical identity and formulas of oil dispersants and to urge the inclusion of a safe harbor from disclosure.

Our Concern

IPO is concerned about the potential adverse consequences of the trade secret implications of Section 715 of the Amendment to H.R. 3534. Section 715 amends Section 311 of the Clean Water Act to compel the Administrator of the Environmental Protection Agency (EPA) to "require the public disclosure of the specific chemical identity, including the chemical and common name of any ingredients contained in, and specific chemical formulas or mixtures" of dispersants and other spill mitigating substances included or proposed to be included in the National Contingency Plan schedule. The chemical identity, ingredients and formulas of some of these dispersants are commercially valuable and protected by law as trade secrets.

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Executive Director  
**Herbert C. Wamsley**

## INTELLECTUAL PROPERTY OWNERS ASSOCIATION

Owners of trade secrets have expended significant resources to create and protect certain intangible intellectual property rights that provide competitive advantage. These fundamental property rights further encourage investment in research and development and thus lead to higher quality products and technology which benefits the public. However, once trade secrets are publicly disclosed, the trade secrets and associated competitive advantages are lost forever. With regard to the oil dispersant business, as Congressman Coble explained before the Committee on Transportation and Infrastructure on July 1, 2010, the public disclosure requirement contained in what is now Section 715 of the Amendment to this bill will strip trade secret holders of their proprietary interest and discourage future investment in new and improved oil dispersant formulas. In addition to negating trade secret protection and stifling investment in oil dispersant development, Section 715 will also destroy the commercial advantages earned by trade secret owners including depriving trade secret owners of any potential return on their substantial investment in the trade secrets. Of course, such a result directly undercuts one of the key purposes of H.R. 3534—to improve the safety and effectiveness of our nation’s response to oil spills.

### Our Recommendation

To advance the overall goals of H.R. 3534, IPO urges amending the bill by adopting Congressman Sensenbrenner’s amendment or other similar modifications that respect the preservation of trade secrets.

An amendment to H.R. 3534 would be entirely consistent with public policy and prior legislation. For instance, Congress statutorily acknowledged the importance of trade secret protection in the context of EPA regulation in Section 308 of the Clean Water Act. Section 308, which governs compliance monitoring of the National Pollutant Discharge Elimination System, contains a safeguard that allows parties to make “a showing satisfactory to the Administrator . . . that . . . information . . . to which the Administrator has access . . . if made public would divulge methods or processes entitled to protection as trade secrets.” Upon such showing, Section 308 requires the Administrator to consider the information confidential. H.R. 3534 should contain a similar safeguard and should not require the public disclosure of confidential and proprietary information unless it is determined to be necessary to protect the public welfare. A determination by a court or government agency that the public welfare necessitates the disclosure of trade secrets or confidential information should be subject to an adequate review process.

We appreciate the Committee’s willingness to consider our concerns. We believe that the protection of trade secrets not only protects the valuable, commercial rights of trade secret owners but also contributes to the goal of greater public safety in oil spill response through the increased development of safe and effective oil dispersants. We thus respectfully urge the Committee on Transportation and Infrastructure to revise Section 715 of the Amendment to H.R. 3534 per Congressman Sensenbrenner’s

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amendment or other similar modifications to provide an adequate safeguard for trade secret protection.

Sincerely,

A handwritten signature in black ink that reads "Herbert C. Wamsley". The signature is written in a cursive, flowing style.

Herbert C. Wamsley  
Executive Director

cc: Chairman Markey, Chairman Waxman, Chairman Conyers, Ranking Member Smith,  
Congressman Coble, Congressman Sensenbrenner

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