





United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

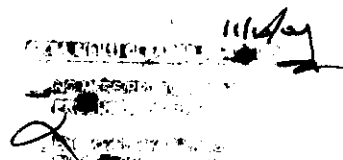
MEMORANDUM

DATE : July 12, 2004
TO : HS
Through: Todd A. Stevenson, Secretary 
FROM : Martha Kosh
SUBJECT: Petition HP 04-2, Requesting Ban on Sulfuric Acid Drain Openers for Consumer Use

ATTACHED ARE COMMENTS ON THE CH 04-5

<u>COMMENT</u>	<u>DATE</u>	<u>SIGNED BY</u>	<u>AFFILIATION</u>
CH04-5-1	6/06/04	Stuart Bush President & CEO Keith Onsdorff Atty Special Counsel For Federal Regulatory Issues	Roebic Laboratories, Inc. 25 Connair Road Orange, CT 06477
CH04-5-2	7/2/04	Joon S. Moon Chairman	The Roto Corporation 3505 West Grand River Howell, MI 48843
CH04-5-3	7/6/04		Amazing Products, Inc. P.O. Box 14226 Louisville, KY 40214
CH04-5-4	8/28/04 (LATE)	Industry Members	Sulfuric Acid Industry Manufacturers

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11/15/04) 


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**Comments to the Consumer Product Safety Commission
on**

Petition No. HP 04-2: Requesting Ban on Sulfuric Acid Drain Openers for Consumer Use

Commentor: Roebic Laboratories, Inc., 25 Cornair Road, Orange, Connecticut 06477

Date Submitted: July 6, 2004

Identity of Commentor

Roebic Labs is the most widely recognized industry leader in the development and marketing of environmentally safe, household plumbing related products. As the most "Earth Friendly" drain cleaning product manufacturer, Roebic Labs commenced marketing its proven safe and reliable sulfuric acid (less than 84% concentrate) drain opener ("SADOs") in 1998.

Prior to its entry into this market, Roebic undertook a most rigorous and thorough product evaluation process which culminated in its purchase of the U.S. marketing rights to a SADO which is truly unlike all others currently being sold in the U.S. consumer market today. These evaluations confirmed the lower product temperature uniformly achieved in the Roebic SADO as a concentrate mixture which is less than 84% sulfuric acid. This specially formulated SADO significantly decreases the potential for skin burns associated with inadvertent spillage.

Synopsis of Comments

Roebic's consumer sulfuric acid drain opener is marketed under the trade name Roebic Drain Flow. It is sold in several different containers, including a 32 fluid ounce (One quart) bottle. Roebic's Drain Flow product is distinguished from the SADO mass market by its multiple safety features engineered into the bottle - child resistant cap, anti-glug spout, sealed

plastic product wrapping. These container safety features, we believe, far exceed those typical of the SADO consumer drain opener market.

Most significantly, however, Roebic's Drain Flow is a formulated sulfuric acid mixture of more than six discrete ingredients that reduces the sulfuric acid product percentage in the final product to less than 84% concentrate by weight. This Roebic Drain Flow mixture provides a lower temperature product, significantly less likely to inflict burns on human skin, should an inadvertent spill occur. Drain Flow's "cooler" properties are so significant that if spilled on a dry arm, it will "bead up" in droplets for easy removal with a dry cloth to avoid noticeable skin burns. Additionally, the Roebic Drain Flow SADO is manufactured with a coloring agent that gives the product a deep black color such that any spilled droplets on a user's clothes or skin are clearly visible, and thus, more easily and quickly removed.

Accordingly, the initiation of a proposed rule-making to outlaw Roebic's Drain Flow would be an inappropriate regulatory initiative, in our judgment. Such an action is unwarranted because this product's unique formula, CPSC compliant safety container design and safety wrap packaging provide an adequate level of protection to the everyday household users of Roebic's Drain Flow product.

Comments and Specific Policy and Factual Objections to Petition HP 04-2

"To Ban Sulfuric Acid Drain Openers"

The Congressional enactment of national consumer product safety policy is codified in 15 U.S.C. §2051 *et seq.* Pursuant to this legislative grant of regulatory authority to the Consumer Product Safety Commission, the CPSC has been empowered to investigate reports of product risks, evaluate their causes, severity and preventability and thereafter, promulgate

feasible safety standards to provide adequate protection to the public from unreasonable risk of injuries from the use of said items. 15 U.S.C. §2057. Only upon a compelling finding of the absence of a viable alternative to the outright banning of a consumer product through appropriate safety standards is the CPSC authorized to adopt a rule prohibiting the marketing to U.S. consumers of an item deemed irredeemably hazardous. 15 U.S.C. §2057

Stripped of its significant bombast, demonstration of inappropriate personal disfigurement and appeals to emotionalism, petitioner's core policy argument is that SADO's are more dangerous to consumers than ALKDOs. This proposition, however true, is fundamentally irrelevant to petitioner's proof obligation to demonstrate the unreasonable and uncorrectable hazards purportedly posed by SADOs themselves. That SADO products exist in the vast U.S. marketplace of almost a countless number of more and less "safe" consumer products is indisputable. Accordingly, it is not difficult to compile a comparative analysis of any two similarly functioning items, showing that product "A" is less safe than product "B". Nonetheless, such comparative analyses do not satisfy the CPSC's statutory mandate for determining, on an individualized basis, a product's injury hazard record and potential.

Alternative Product Alterations Sought in Addition to Petitioner's Request

For an Outright Prohibition on SADO Sales to Consumers

- **Maximum Allowable Sulfuric Acid Concentrate Limited to 84%**

The Petitioner's proposal for a CPSC safety standard, mandating a diluted SADO, not exceeding 84% a concentrate volume by weight of sulfuric acid, is already surpassed by Roebic's Drain Flow product. Accordingly, in light of Roebic's adoption of multiple product formula safety features, its enhanced safety packaging and child resistant cap and anti-glug spout, the Petitioners proposal for a "one shot" container size is entirely unwarranted. That

container volume reduction feature adds no additional margin of safety to Roebic's matrix of protections that have been proven already in the consumer market place.

Commentor's Contact Persons:

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203-795-1283

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3505 West Grand River, Howell, Michigan 48843

July 2, 2004

Office of the Secretary
U. S. Consumer Product Safety Commission
Washington, DC 20207

Re: Michael Fox's Petition to Ban SADOS

Dear Sir:

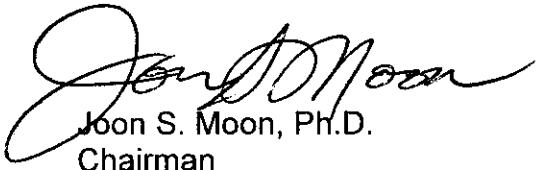
We have been a producer of SADOS for over 30 years. During that period, we have supplied over 100 million applications of these products for public usage. We have had less than 50 complaints concerning the product, mostly resulting from misuse or abuse (as stated by Mr. Fox himself) of the products.

This issue has been investigated by your agency before and the Battle Memorial Institute, which was hired by your Agency, has concluded that SADOS are cost/effective for consumer use. Banning this product will greatly increase the cost of cleaning blocked drains and probably will result in more accidents and also more cost to consumer only to the benefit of plumbers, who will use the same product to clean the drain for much higher cost.

I do not see any scientific merit in Mr. Fox's petition and his claim that 86% is better than 92% for consumer use.

I strongly urge that your agency reject his petition for the good of the consumer and for the industry.

Thank you,



Joon S. Moon, Ph.D.
Chairman

July 6, 2004

TO: Office of the Secretary
Consumer Product Safety Commission
Washington, D.C. 20207-0001

FROM: Sulfuric Acid Drain Line Opener Industry

RE: Michael Fox's Petition to Ban Sulfuric Acid
Drain Line Openers

We are aware of the above mentioned petition. We feel the petition has no merit based on many issues, but mainly on the petition's contents and the Consumer Product Safety Commission's criteria to grant a petition.

We will be in contact with your office in the immediate future regarding the petition and would ask that you contact us with any additional information that we may need.

*help over
later comment*

August 28, 2004

TO: The CPSC Staff
FROM: Sulfuric Acid Industry Manufacturers
RE: Michael Fox's Petition

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**PLEASE NOTE: THE FOLLOWING CONSIDERED TO BE
~~INDUSTRY CONFIDENTIAL~~ 11/15/04 TJS**

This letter is in response to Michael Fox's petition to ban sulfuric acid drain line openers. The 1977 petition by Hercules Chemical Corporation was purely based on economics - Hercules wanted to control the market by only selling to the plumbing trade, which they were well entrenched. Plumbers didn't want to come into customers homes with products that were available to consumers for \$2.00 a bottle and try to charge their \$50-\$60 hourly rate. They also were introducing a new product called Double Agent. They asked for the ban as a marketing ploy to introduce this new product. Now over twenty years since introducing this ban, Hercules still produces sulfuric acid drain line openers. Hercules "expressed and documented disappointment" was truly over money, nothing more!

Mr. Fox asserts that the CPSC's Tab was enthusiastic about the petition. We find it hard to believe that Mr. Fox would know the boards emotional state. Mr. Fox's history does not include that it was the CPSC's suggestion to create the A.C.P. and a year later commended it on their progress towards making the sale of sulfuric acid drain line openers safer.

The photo that Mr. Fox includes does not verify what caused the accident. Was it from criminal use, neglect and/or misuse? Why is "how the injury occurred" not included in Mr. Fox's report? If a plumber was using a

sulfuric, per Mr. Fox's contention that the 1977 or 1994 consumer ban would have prevented the injury, is he also saying that a plumber is above causing an accident?

We know that the Commission's opinion in 1981 and 1996 that sulfuric acids are no more dangerous than Alkdos was not decided by Mr. Fox's contrived and theatrical demonstrations, but with a thorough and comprehensive evaluation of information on these two similar, but different products. The CPSC took into account many factors, including that either product, in the unfortunate circumstance, where it would contact skin, would burn and not consider esoteric factors as to how fast it would burn material.

We are not sure who Mr. Fox is referring to when he alleges there was "one single individual with no chemistry of sulfuric acid, no formal chemistry education, no label or human factor education or training, no packaging training, and wasn't going to hire anyone as a temporary consultant", with respect to the 1978 petition and the voluntary efforts of our industry. He does however, seem to disregard any facts. As the CPSC well knows there were many member companies involved within the A.C.P. and with it's voluntary efforts. These companies had manufactured sulfuric acid drain line openers for many, many years. These companies had extensive staff with widely varying backgrounds and expertise. Each company dealt with the handling, manufacturing, labelling, marketing, sales, display, storage, and interaction with customers and users, both professional and others, on a daily basis for decades. This pool of experience was gathered for this purpose, and was unequalled anywhere. Hopefully, hired consultants don't think that when picking a particular agenda, with fees collected, they have this kind of experience and knowledge.

Again, regarding the flaws with the CPSC's logic, we find it ironic, that he has the sulfuric acid industry's companies sales information. Did he research the sales thoroughly??? If he did, he would know that our industry sales, are 93-95% consumer and have been that way for decades. This paragraph includes suppositions such as all professionals are trained in the use of all chemicals (because there is an OSHA standard) and therefore no accidents could be attributed to them. This allows Mr. Fox license to totally eliminate this population from the equation and is a very partisan invention.

Did Mr. Fox look closely at injury information from the 1996 petition, about our industry? It is very important for the CPSC and Mr. Fox to look at these injury numbers, as they compare with the NEISS Reports. With the litigation in our society today, why were these injuries not reported to the sulfuric acid industry? Why are our injuries so infinitesimal, compared to our sales volume and utility value?? It would make sense that misuse, neglect, or criminal usage was involved in these NEISS reported injuries and the consumers and attorneys knew that. Otherwise, the industry would have these injuries reported through lawsuits or some other measure.

With regards to Mr. Fox's contentions about our label improvements, we are not sure where he has drawn from for his data and/or the content from where it was derived. Our industry has requirements for labelling that come under the Poison Prevention Act and Hazardous Substance Act. Our packaging comes under similar requirements, including the Department of Transportation (DOT) Hazardous Regulations. Surely Mr. Fox realizes that there are other federal, state, and local regulatory entities and other governing bodies, in addition to, sound business ethics, that dictate our product labelling, for entry into the stream of commerce. Why wouldn't we do anything to help the consumer use our products in a safe manner? Our group intent was to voluntarily review our product for ideas above and beyond these entities, if that was even possible. Injury data severity, changes in reporting, and many other factors were left out of this paragraph synopsis. Mr. Fox concluded, that the additional warnings to users had no effect on safer use. Would he also conclude, using his own theory, that zero warnings would have the same outcome? i.e. - people do not completely read warning labels or instructions as manufacturers intend them to do. Please examine how many products now are in commerce with "quick instructions" to the main instructions. There is no doubt that the ACP's "improvements" all came from sincere intent of its members, with the belief that these were the things that could be done, in their estimation, to improve the safety of the product. If in fact those safety issues ever truly existed. Again look at the injury data and compare it to misuse, neglect, and/or criminal factors. Also the actual effect of these ACP standards were limited by the fact that most of the manufacturers were already doing many of the ACP "improvements" or the like. It did result in conformance of everyone's products to the same level. A level which was agreed upon by these highly experienced parties. In any event, the CPSC's beliefs that were used to decide on previous refusals to ban sulfuric acid drain openers were not

based or contingent on the success of this program. It was just the CPSC's belief that setting standards and self-policing, may be one way of preventing accidents. The ACP cooperated fully. If the effect was limited, do we still condemn the attempt? How can the manufacturer control misuse, neglect, or criminal action?

Mr. Fox's risk versus benefit argument again seems to be based on something close to "magic math". Simply put, although some alternative products (which may present similar or other risks) can treat blockages, there is no doubt that sulfuric acid drain line openers excel at removing certain types of blockages that otherwise could only be removed by mechanical methods. Therefore, eliminating them would definitely create an economic hardship on consumers who would then have no choice but to suffer the expense of a licensed plumber. Does one person get to dictate what choices are available to the general population? Where are all the millions of consumers and their complaints, rebuttals, requests, etc. over the years? Every 10-15 years, should one person's agenda, dictate to an industry and the consumers they serve?

Any criminal usage, has no relevance to this petition. The intentional misuse of products will always be a problem and is certainly not isolated to this product. One can intentionally misuse virtually any product, including all the alternatives to the sulfuric acid products, in some form or fashion. In a discussion of the risk of accident during the safe and directed use of a product, we do not see any relevance and don't think it should be included.

The CPSC recall lists, normally, are based on possible manufacture defects and are agreed to by the manufacturer. Obviously, that doesn't mean that the manufacturer ceased manufacturing and distributing these products. Quite the contrary! These lists would have to be examined in detail to see why the manufacturers agreed to the recalls. Many times there is no issues with the products, but the manufacturer may take the "better safe than sorry" attitude. Since none of this information was included, then we must assume that the relevance of the list is extremely questionable. The 11th item on the list was emphasized because of its chemical nature being relative to "alkaline drain openers". The product was defective and that makes this example irrelevant. It does bring up the point that caustic compounds (similar to the subject of this discussion) are acceptable for household use

even under pressure in aerosol form, unlike the sulfuric acid drain openers, which are in much safer and superior packaging.

The product ban list is even more unimpressive, since two of the three products were for entertainment purposes. One to protect children, which if they were eliminated, would have no consumer hardship. The third case presents a completely different danger of flammability. In addition, without further research, we think there was an exact drop-in replacement non-flammable product, therefore causing no economic effect. Also, we don't have complete information on product defects relative to these products.

The Kleenex Syndrome is an interesting story, but has no factual evidence and is one man's opinion. We would gladly review the information Mr. Fox has gained from his thorough study on this subject. We assume that he is taking his comments from factual information that he has documented. It is not disputed that the data is not perfect, but it must be accepted under the belief that it is predominantly correct. Conversely, if this effect was true then there would be Alkdo accidents that were reported as sulfuric acid accidents. Even if we believe that this happened, then it is as many times more likely that Alkdo accidents were reported as sulfuric acid drain opener accidents than the alternative. That being said and if we accept this theory, then we contend, that sulfuric acid drain opener accidents are overstated!

The miscellaneous notes section of the petition causes concern because going to the emergency room and being hospitalized are very different situations. When Mr. Fox uses this verbiage has he done in-depth investigation to determine what percentage is emergency and what is hospitalization? Many people, as our national health care crisis can substantiate, use the 911/emergency room for bumps and bruises instead of true emergencies. Mr. Fox certainly isn't using the words emergency room visit and hospitalization in the same context is he? Was verification on misuse, neglect, and/or criminal usage done by Mr. Fox? Why are our industry numbers on injury related reports so infinitesimal compared to sales and utilitarian purposes? Again, this section of the petition states the sales are 2/3 to professional and 1/3 to consumers. As we stated earlier that information is incorrect and that 93-95% are consumer sales and have been for decades.

Mr. Fox lists the things the ACP did not do. Since it was a consortium, the ACP was not capable of performing these things, but instead passed the recommendations to its members. Many of whom investigated and instituted many more of these suggestions as practical.

The last part of this section was Mr. Fox's opinion and nothing more. He also gives a legal conclusion based on his opinion. If that is what he is going to do then this type of conclusion must be made in comparison to the other hazards consumers are usually in contact with (flammable aerosol product, i.e. room fresheners, power tools, etc) and the economic benefits from having these products available.

We would be glad to take any and all facts, interviews, reports and information that Mr. Fox has in his possession for our thorough review. If we can incorporate even one increment of safety, then it will hopefully prove beneficial. We still contend that our products volume and usage and utilitarian nature far outweigh it's infinitesimal injury data!



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11/15/04*

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(This company is doing an independent response. Contact them for sales, injury and additional data.)