

TESTIMONY OF JEFFREY BYE
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BEFORE THE U.S. HOUSE
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENVIRONMENT AND HAZARDOUS MATERIALS
Hearing on HR 2567, Antifreeze Bittering Act of 2005

MAY 23, 2006

Introduction

Good afternoon. I am Jeff Bye, Vice President for Prestone, a Honeywell business. Prestone has been the leader in the manufacture, marketing and sale of antifreeze products for over 75 years. I am here representing Honeywell as well as the domestic antifreeze industry, which has been organized by the Consumer Specialty Products Association. We appear before the Committee in support of HR 2567.

Honeywell is a diversified technology and manufacturing leader, serving customers with aerospace products and services; control, sensing and security technologies; automotive products; specialty chemicals; fibers; and electronic materials. Based in Morris Township, New Jersey, Honeywell's shares are traded on the New York Stock Exchange as well as on the London, Chicago and Pacific Stock Exchanges. We are one of the 30 stocks that make up the Dow Jones Industrial Average and we are also a component of the Standard & Poor's 500 Index. The company employs over 120,000 employees, with approximately 60,000 in the United States, and is comprised of four business units: Aerospace, Automation and Control Systems; Specialty Materials, and Transportation Systems. Prestone is part of the Consumer Products Group within the Transportation Systems business unit, with business headquarters in Torrance, California.

Prestone Background

Honeywell is the largest manufacturer and supplier of automotive antifreeze in the United States, Canada and Mexico. Its Prestone brand is the most widely recognized and distributed brand of antifreeze in North America. In the United States, our Prestone

antifreeze is sold in all 50 states and through virtually all major mass retailers, such as Wal-Mart, and auto retailers, such as Autozone and Advance. In addition, we supply private label antifreeze to most major retailers throughout the nation. We also supply automakers, such as General Motors, Ford and Toyota, for the factory fill of their automobiles in North America.

It may be helpful to understand the origin of antifreeze use in the automotive industry. Originally, motorists drove cars, such as the Ford Model T, without heaters or side and rear windows and, not surprisingly, winter driving was very unpleasant. Later, with the development of car heaters, installation of side and rear windows, and improvements in engines and engine lubricants, motorists drove more comfortably and frequently in winter and demand for engine antifreeze arose. At that time, many compounds were used with water as a form of antifreeze, including honey, sugar, molasses and, the most popular, methyl alcohol. Even methyl alcohol, however, had significant drawbacks including odor and flammability. Motorists were often uncertain about the freezing protection afforded by these fluids.

The antifreeze/coolant business as we know it today began with Prestone brand ethylene glycol antifreeze in 1927. It was pure ethylene glycol in cans and was packaged with charts showing the protection afforded by specific dilutions. The fluid would not evaporate or burn, was relatively odorless and offered many advantages over the substances used earlier by motorists. A few years later, Prestone developed and marketed the first inhibitor in its antifreeze to offer additional protection for the cooling system and

to retard rust. In the early 1960s, Ford, General Motors and Chrysler began filling their new cars with a 50% ethylene glycol and 50% water antifreeze/coolant solution, which led to the emergence of antifreeze/coolant as a year-round functional fluid in the automotive industry. Since then, Prestone and other producers of antifreeze/coolant have developed their formulations to provide even better corrosion protection and extend the life of a car's cooling system.

Ethylene glycol, which is a major ingredient of antifreeze, is toxic. For several decades, manufacturers of antifreeze have used foil safety seals and childproof caps to guard against the accidental human ingestion of antifreeze. Prestone provides prominent label warnings about proper use, storage and disposal of antifreeze. We fully comply with all child protection requirements established by the Consumer Products Safety Commission and we are dedicated to continual improvement. In addition, manufacturers have participated in public education and outreach promoting the safe use and storage of antifreeze. During the past ten years, antifreeze manufacturers have supported the American Association of Poison Control Centers in a series of public service announcements entitled "Take Care: Car Fluids, Children and Pets." These public service announcements also help to educate consumers about proper use and storage of antifreeze and other automobile fluids.

Although it is rare that children are accidentally exposed to antifreeze, there are occasions where household pets and other animals are exposed to ethylene glycol products and are injured by ingesting the product. Some animal deaths are likely caused by intentional

poisoning, such as a disgruntled person targeting a neighborhood dog that has been barking at night or causing other problems. Other animal fatalities are accidentally caused by antifreeze that has spilled or been carelessly left in improperly secured containers. We and other antifreeze manufacturers sponsor a national poison control center as a resource and service for veterinarians and pet owners. The center is staffed with specially trained veterinary toxicologists available to handle any animal poison-related emergency, 24 hours a day, 365 days a year.

Need for a Single Uniform Antifreeze Standard

For several years, the animal welfare community has encouraged local, state and federal lawmakers to pass legislation requiring antifreeze manufacturers to add denatonium benzoate (“DB”), a widely known bittering agent, to their product. The animal welfare community has argued that adding DB to antifreeze would make the product taste bitter, discouraging animals from ingesting the liquid. Their legislative efforts have met with some success, with laws passed in Oregon, California and New Mexico in 1991, 2002 and 2005, respectively.

In December 2004, the antifreeze industry reached out to the Doris Day Animal League to develop consensus federal legislation that would address the safety concerns of the animal rights community. The consensus federal legislation – HR 2567 – would require the addition of DB in antifreeze with the goal of rendering the product unpalatable and deterring children, pets and other animals from accidental poisoning. This federal legislation would create a national standard. Although California, Oregon and New

Mexico have passed similar or identical laws, HR 2567's preemption provision would avoid the potential inconsistency and practical difficulty of manufacturers complying with a patchwork of various state and local mandates. At least eleven states have been actively considering similar requirements, including Alabama, Maine, Missouri, Nebraska, Nevada, New Jersey, New York, Ohio, Tennessee, Virginia and Washington, and the trend indicates that additional states will pursue antifreeze bills.

Now is the appropriate time for Congress to establish a national standard. The difficulty of managing compliance with a patchwork of inconsistent state mandates would be significant and would hinder an adequate supply of antifreeze across the country. Further, the additional costs at the manufacturing and distribution levels would ultimately be borne by the American consumer – for a product that is considered a necessity for the proper maintenance of an automobile's engine. A national standard would ensure that the mandate is both uniform and cost effective, while responding to the call for improved antifreeze safety measures. Some states that have passed or considered antifreeze legislation, including New Mexico and Maine, have expressed their desire for Congress to pass a federal bill because they recognize the appropriateness of a national standard and federal enforcement.

Liability Provisions

HR 2567 would provide fair responsibility for the antifreeze and DB products by assigning liability between the respective manufacturers. Prestone scientists have developed antifreeze products that we stand behind and are willing to defend. Antifreeze

manufacturers, however, do not manufacture or distribute DB. While antifreeze manufacturers are willing to add DB in compliance with a national standard, antifreeze manufacturers should not be exposed to liability for complying with that mandate. The proposed federal legislation would not change the liability of antifreeze manufacturers for their products. Under the legislation, antifreeze manufacturers continue to be liable for the ethylene glycol antifreeze itself, and DB manufacturers and distributors are liable for their bittering agent.

HR 2567 shares the essential components of the liability provisions within the New Mexico, California and Oregon state laws as well as legislation introduced in the House of Representatives in 2004. Notably, the three state laws and HR 1563, sponsored in the 108th Congress by Reps. Gary Ackerman (D-NY) and Dana Rohrabacher (R-CA), all provide some form of liability protection to antifreeze manufacturers for the consequences of DB. Indeed, HR 1563 in the 108th Congress was cosponsored by 110 House Democrats and 23 House Republicans.

The 2005 New Mexico law (NM §57-19-38) includes the following liability provisions:

“A manufacturer, packager, distributor, or recycler or seller of engine coolant or antifreeze that is required to contain an aversive or bittering agent pursuant to this section is not liable to any person for personal injury, death, property damage, damage to the environment or natural resources or economic loss that results from the inclusion of denatonium benzoate in engine coolant or antifreeze.

The limitation on liability ... of this section is only applicable if denatonium benzoate is included in engine coolant or antifreeze in the concentrations mandated by this section. The limitation on liability provided ... does not apply to a particular liability to the extent that the cause of that liability is unrelated to the inclusion of denatonium benzoate in engine coolant or antifreeze.”

The 2002 California law (Section 17582) includes the following liability provisions:

“A manufacturer, distributor, recycler, or seller of an automotive product that is required to contain an aversive agent under this section is not liable to any person for any personal injury, death, or property damage that results from the inclusion of denatonium in ethylene glycol antifreeze.”

The 1992 Oregon law (§§431.870 – 915) includes the following liability provisions:

“(1) A manufacturer, distributor or seller of a toxic household product that is required to contain an aversive agent ... is not liable to any person for any personal injury, death or property damage that results from the inclusion of the aversive agent in the toxic household product.

(2) The limitation on liability provided by this section is only applicable if the aversive agent is included in the toxic household product in concentrations approved by the Poison Prevention Task Force.

(3) The limitation on liability provided by this section does not apply if the personal injury, death or property results from willful and wanton misconduct by the manufacturer, distributor or seller of the toxic household product.”

HR 1563 in the 108th Congress included the following liability provisions:

“LIABILITY-

(1) LIMITATION- A manufacturer, distributor, recycler, or seller of an automotive product that is required to contain an aversive agent under this section is not liable to any person for any personal injury, death, or property damage that results from the inclusion of denatonium benzoate in ethylene glycol antifreeze, provided that the inclusion of denatonium benzoate is in concentrations mandated by subsection (a).

(2) EXCEPTION FOR WILLFUL MISCONDUCT- The limitation on liability provided by this subsection shall not apply if the personal injury, death, or property damage results from willful or wanton misconduct by the manufacturer, distributor, recycler, or seller of the ethylene glycol antifreeze.”

The current House legislation in the 109th Congress, HR 2567, includes the following liability provisions:

“Limitation on Liability- (1) Subject to paragraph (2), a manufacturer, processor, distributor, recycler, or seller of an engine coolant or antifreeze that is required to contain an aversive agent... shall not be liable to any person for any personal injury, death, property damage, damage to the environment (including natural resources), or economic loss that results from the inclusion of denatonium benzoate in any engine coolant or

antifreeze, provided that the inclusion of denatonium benzoate is present in concentrations mandated...

(2) The limitation on liability provided in this subsection does not apply to a particular liability to the extent that the cause of such liability is unrelated to the inclusion of denatonium benzoate in any engine coolant or antifreeze.

(3) Nothing in this subsection shall be construed to exempt any manufacturer or distributor of denatonium benzoate from any liability related to denatonium benzoate.”

In fact, the current version of the federal bill improves upon the bill in the 108th Congress by unambiguously establishing the liability responsibilities of antifreeze and denatonium benzoate manufacturers. HR 2567 includes the final provision of the liability section (paragraph (3)) to clarify that the liability protections regarding DB extend only to antifreeze manufacturers, while paragraph (2) explicitly restricts any protections only to the consequences of DB.

Alternative Bittering Agents

The three state laws differ in regard to allowing alternative bittering agents beyond DB, and the bill passed by the Senate Commerce Committee in November 2005 differs as well. New Mexico law requires antifreeze manufacturers to specifically add DB as the sole bittering agent to their products. California law specifies DB as an appropriate bittering agent, but allows alternatives to DB if another agent meets the same degree of aversion at the same concentration. Because DB is the only chemical that currently satisfies the legislation’s bitterness standard at the specified concentration, California law effectively establishes a mandate requiring manufacturers to use DB to fulfill the state law requirements. Oregon law as passed in 1992 generically called for the addition of an aversive agent, but a 1993 litigation settlement regarding the statute specifies DB as the sole agent at a required concentration.

In November 2005, the Senate Commerce Committee considered the possibility of allowing alternatives to DB, and the Committee passed a bipartisan amendment to allow the Consumer Product Safety Commission (CPSC) to propose an alternative bittering agent if the alternative is as effective as DB as a bitterant, is compatible with motor vehicle engines, and shows no evidence of unreasonable adverse effects on the environment. The CPSC is the federal agency responsible for regulation and enforcement of federal laws associated with antifreeze and other consumer products.

Prestone and the other domestic antifreeze manufacturers supported the Senate Commerce Committee amendment allowing alternative bittering agents. The CPSC's requirements, however, are important to recognize. Because of DB's unique bittering characteristics, we are able to add a minimal quantity of the additive. Antifreeze manufacturers would have to add more volume of other bittering agents to achieve the same level of discouragement based on odor and/or taste. Another important consideration is the affect of the alternative bittering agent on an automobile. DB has proven to be a safe substance within motor vehicle engines, and alternatives may corrode the engine or impact its functionality.

Prestone and the U.S. antifreeze industry appreciate the deliberative approach that Chairman Gillmor has taken in regard to the development of HR 2567, the Antifreeze Bittering Agent Act of 2005. We are ready to assist the Committee as it considers the legislation, and we will be happy to answer any of the Committee's questions.