

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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SCHEDULE 14D-1

TENDER OFFER STATEMENT

(Pursuant to Section 14(d)(1) of the Securities Exchange Act of 1934)  
(Amendment No. 1)

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ROTO-ROOTER, INC.  
(Name of Subject Company)

CHEMED CORPORATION  
(Bidder)

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Common Stock, Par Value \$1.00 Per Share  
(Title of Class of Securities)

77878103

(CUSIP Number of Classes of Securities)

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Mr. Kevin J. McNamara  
Chemed Corporation  
2600 Chemed Center  
255 East Fifth Street  
Cincinnati, OH 45202

(Name, Address and Telephone Number of Person(s) Authorized  
to Receive Notices and Communications  
on Behalf of Bidder)

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Copy to:  
Richard Hall, Esq.  
Cravath, Swaine & Moore  
Worldwide Plaza  
825 Eighth Avenue  
New York, New York 10019  
(212) 474-1000

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Exhibit Index on Page 4

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Chemed Corporation hereby amends and supplements its Tender Offer Statement on Schedule 14D-1 (the "Statement") originally filed on August 14, 1996, with respect to its offer to purchase any and all outstanding shares of Common Stock, par value \$1.00 per share, of Roto-Rooter, Inc., a Delaware corporation, at a price of \$41.00 net in cash per share, as set forth in this Amendment No. 1. Capitalized terms not defined herein have the meanings assigned thereto in the Statement.

Item 10. Additional Information.

Item 10(e) of the Statement is hereby amended to read as follows:

(e) A putative class action complaint entitled *Rand v. Roto Rooter Inc., et al*, C.A. No. 15145 (Del. Ch. filed Aug. 9, 1996) has been filed against the Company, its directors and the Purchaser by a purported stockholder of the Company. This complaint alleges breaches of fiduciary duty by the defendants and seeks declaratory relief, injunctive relief and damages. The Purchaser intends to defend vigorously against these allegations. The above description of the complaint is qualified in its entirety by reference to the Complaint, a copy of which is attached hereto as Exhibit (g) and is incorporated herein by reference.

Item 11. Material to be filed as Exhibits.

Item 11 of the Statement is hereby amended to add the following exhibit:

- (g) Complaint in Rand v. Roto Rooter Inc., et al, C.A. No. 15145 (Del. Ch. filed Aug. 9, 1996).

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in Amendment No. 1 to the Statement is true, complete and correct.

Dated: August 19, 1996

CHEMED CORPORATION,

by /s/ Kevin J. McNamara

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Name: Kevin J. McNamara  
Title: President

EXHIBIT INDEX

Exhibit Number	Exhibit Name	Page Number
(g)	Complaint in Rand v. Roto Rooter Inc., et al, C.A. No. 15145 (Del. Ch. filed Aug. 9, 1996).	5

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
COUNTY OF NEW CASTLE

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:
HARRIETT RAND, :
on behalf of herself and all :
others similarly situated, :
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Plaintiff, :
:
-against- :
:
ROTO ROOTER INC., EDWARD L. HUTTON, :
WILLIAM R. GRIFFIN, BRIAN A. BRUMM, :
JAMES A. CUNNINGHAM, NAOMI C. DALLOB, :
CHARLES H. ERHART, JR., NEAL GILLIATT, :
LAWRENCE J. GILLIS, DOUGLAS B. HARPER, :
WILL J. HOEKMAN, THOMAS C. HUTTON, :
PATRICK L. JOHNSON, SANDRA E. LANEY, :
KEVIN J. MCNAMARA, JOHN M. MOUNT, :
TIMOTHY S. O'TOOLE, DONALD E. SAUNDERS, :
D. WALTER ROBBINS, JR., :
GEORGE J. WALSH III, and CHEMED CORP. :
Defendants. :
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C.A. 15145NC  
CLASS ACTION  
COMPLAINT

Plaintiff, by her attorneys, alleges upon information and belief, based, in part, upon an investigation conducted by and through the undersigned counsel, except with respect to her ownership of Roto Rooter Inc. common stock and her suitability to serve as a class representative, which are alleged upon personal knowledge, as follows:

1. Plaintiff is, and has been at all relevant times, the owner of shares of the common stock of the Company.

2. Defendant Roto Rooter Inc. ("Roto Rooter" or the "Company") is a corporation duly organized and existing under the laws of the State of Delaware. The Company is one of the nation's premier providers of plumbing and drain cleaning services in the

United States and is the largest direct provider of residential appliance and air conditioning repair services through the sale of service contracts. The Company's common stock is traded on the NASDAQ National Market System under the symbol ROTO. Roto Rooter had, as of March 25, 1996, approximately 5,151,660 shares of common stock issued and outstanding, which shares are held by at least hundreds of shareholders of record and are traded on the NASDAQ National Market System. The Company maintains its principal corporate offices at 2500 Chemed Center, 255 East Fifth Street, Cincinnati, OH 45202-6690.

3. Defendant Chemed Corp. ("Chemed") is a diversified public corporation incorporated under the laws of the State of Delaware with strategic positions in medical and dental disposable-product supply and support services for the primary, acute and long-term care markets; home healthcare services; sanitary maintenance-product distribution services; and plumbing, drain cleaning, and residential appliance and air conditioning repair. Chemed maintains its principal executive offices at 2600 Chemed Center, 255 East Fifth Street, Cincinnati, OH 45202. Chemed had, as of April 30, 1996, approximately 9,839,229 shares of common stock issued and outstanding, which shares are held by at least hundreds of shareholders of record and are traded on the New York Stock Exchange. Chemed beneficially owns approximately 58% of Roto Rooter.

4. Defendant Edward L. Hutton ("E. Hutton") is, and at all relevant times, has been Chairman of the Company and, from 1970 to 1993, was President, Chief Executive Officer and a director of Chemed.

5. Defendant William R. Griffin ("Griffin") is and at all relevant times, has been President and Chief Executive Officer of the Company and an executive Vice President and director of Chemed.

6. Defendant Brian A. Brumm ("Brumm") is and at all relevant times, has been Vice President, Treasurer, Chief Financial officer and director of the Company.

7. Defendant Naomi C. Dallob ("Dallob") is and at all relevant times, has been Secretary, General Counsel and director of the Company and Vice President and Secretary of Chemed.

8. Defendants James A. Cunningham ("Cunningham"), Charles E. Erhart, Jr. ("Erhart"), Thomas C. Hutton ("T. Hutton"), Sandra E. Laney ("Laney"), Kevin J. McNamara ("McNamara"), John M. Mount ("Mount"), Timothy S. O'Toole ("O'Toole"), D. Walter Robbins ("Robbins"), and George S. Walsh, III, ("Walsh") were at all relevant times, directors of both the Company and Chemed.

9. Defendants Neal Gilliatt ("Gilliatt"), Lawrence J. Gillis ("Gillis"), Douglas B. Harper ("Harper"), Will J. Hoekman ("Hoekman"), Patrick L. Johnson ("Johnson") and Donald E. Saunders ("Saunders") were at all relevant times, directors of the Company.

10. The defendants described in paragraphs 4-9 above are hereinafter sometimes collectively referred to as the "individual defendants" or the "director defendants."

11. By virtue of the individual defendants' positions as officers and/or directors of Roto Rooter, said defendants are in a fiduciary relationship with the plaintiff and other public shareholders of Roto Rooter and owe plaintiff and other members of the Class the highest obligation of good faith, fair dealing, loyalty and due care.

12. The individual defendants are members of the board of Roto Rooter and the defendants enumerated in paragraphs 4 and 6-8 are affiliated with Chemed. As set forth above, certain of the individual defendants are members of the board of directors of Chemed. Chemed, by virtue of its 58% interest in Roto Rooter is a controlling shareholder of Roto Rooter and orchestrated the merger at issue for its own benefit, at the expense of Roto Rooter's minority shareholders.

13. The individual defendants, by reason of their corporate directorships, stand in a fiduciary position relative to Roto Rooter's minority shareholders, whose fiduciary duties, at all times relevant herein, require them to exercise their best judgment, and to act in a prudent manner, and in the best interests of the Company's minority shareholders. Said defendants owe the public minority of Roto Rooter the highest duty of good faith, fair

dealing, due care, loyalty, and full, candid and adequate disclosure.

14. Each defendant herein is sued individually as a conspirator and aider and abettor, as well as in his capacity as a director of the Company (in the case of the individual defendants), or as a control person and the liability of each arises from the fact that he has engaged in all or part of the unlawful acts, plans, schemes, or transactions herein.

#### CLASS ACTION ALLEGATIONS

15. Plaintiff brings this action on her own behalf and as a stockholders' action, pursuant to Delaware law, on behalf of all shareholders of the common stock of the Company (except the defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the defendants) and their successors in interest, who are or will be threatened with injury arising from defendants' actions as more fully described herein.

16. This action is properly maintainable as a class action.

17. The class is so numerous that joinder of all members is impracticable. As of March 25, 1996, there were 5,151,660 shares of Roto Rooter common stock outstanding held by at least hundreds of shareholders throughout the country.



18. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted, and no unusual difficulties are likely to be encountered in the management of this class action. The likelihood of individual class members prosecuting separate claims is remote.

19. There are questions of law and fact which are common to the class and which predominate over questions affecting any individual class member. The common questions include, inter alia, the following:

(a) whether defendants have breached their fiduciary and other common law duties owed by them to plaintiff and the members of the class;

(b) whether defendants are pursuing a scheme and course of conduct designed to eliminate the public shareholders of Roto Rooter in violation of the laws of the State of Delaware in order to benefit from a proposed acquisition of Roto Rooter by Chemed at the expense and to the detriment of the plaintiff and the other public minority shareholders who are members of the class;

(c) whether defendants are acting on both sides of the possible going-private transaction, thus presenting a conflict of interest, self-dealing and overreaching;

(d) whether the said proposed acquisition, hereinafter described, constitutes a breach of the duty of fair dealing with respect to the members of the class; and

(e) whether the class is entitled to injunctive relief or damages as a result of the wrongful conduct of the defendants.

20. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. The claims of the plaintiff are typical of the claims of other members of the class and plaintiff has the same interests as the other members of the class. A class action is superior to any other type of adjudication of this controversy.

21. Defendants have acted in a manner which affects plaintiff and all members of the class, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the class as a whole.

#### SUBSTANTIVE ALLEGATIONS

22. In 1995, Chemed attempted to buy out the minority shareholders of Roto Rooter. The independent committee of the Roto Rooter Board rejected Chemed's offer as inadequate and the takeover offer was rescinded.

23. Roto Rooter's profits and outlook have ben on an upswing. In an article in the June 20, 1996 Cincinnati Enquirer, an analyst at D.A. Davidson & Co., referrin to Roto Rooter, stated "I guess I see it as a sort of solid rock cash generator with probably 15 percent or so growth potential in terms of cash flow....Plumbing

is a cash cow." Indeed, in the same article, defendant O'Toole stated of Roto Rooter, "[t]he future's very similar to its excellent past with us."

24. On or about July 17, 1996, Roto Rooter reported its financial results from the quarter ended June 30, 1996. Earnings per share rose to 54 cents, a 23% increase over the comparable quarter a year earlier. Defendant Griffin stated: "Looking at our performance for the first six months of the year, we are on target to achieve another record year of revenue and profit growth." (Emphasis added)

25. On July 18, 1996, Chemed reported its financial results for the quarter ended June 30, 1996. Earnings per share rose to 38 cents, only a 9% increase over the comparable quarter a year earlier.

26. On August 8, 1996, in an attempt to boost its lagging growth, Chemed roiled the market with its proposal to squeeze out Roto Rooter's minority shareholders. Chemed announced that it plans to increase its existing stake in Roto Rooter from 58% to 100%, thereby eliminating the public shareholders' investment. Fleet Financial plans to pay \$41 in cash for each share of Roto Rooter outstanding via a tender offer scheduled to commence on August 14, 1996. The total dollar value of the transaction is approximately \$86 million.

27. The proposed purchase price of \$41 does not represent the true value of the assets and future prospects underlying each share of Roto Rooter.

28. By virtue of its dominance and control over Roto Rooter, Chemed, together with the individual defendants, has engaged in a plan involving acts which are grossly unfair to plaintiff and the other members of the class. The purpose of the plan is to enable Chemed to acquire 100% equity ownership of Roto Rooter and its assets for its own benefit, and at the expense of the other Roto Rooter minority stockholders who would be deprived of their equity investment and the benefits to accrue thereafter, for a grossly inadequate price.

29. Defendants' announcement of the proposed bid fails to disclose the improving prospects for Roto Rooter due to the growth prospects for the Company, specifically, its plumbing business and the improving economy in its markets. The tender offer announcement does not mention that Roto Rooter is on the verge of reporting sustained and significant profits for the foreseeable future.

30. Because of Chemed's 58% equity power and overwhelming control over Roto Rooter, all of Roto Rooter's directors who will be considering the offer, and the entire board of directors, no third party, as a practical matter, can attempt any competing bid for Roto Rooter, as the success of any such bid would require the

consent and cooperation of Chemed. In fact, because of the predominant control of Roto Rooter by Chemed, it is a foregone conclusion that whatever Chemed may offer, such offer will be accepted.

31. The proposed transaction serves no legitimate business purpose of Roto Rooter but rather is an attempt by defendants to unfairly benefit Chemed from the transaction at the expense of Roto Rooter's minority public stockholders. The proposed plan will deny plaintiff and the other members of the class their right to share proportionately in the future success and growth in profitability of Roto Rooter and its valuable assets, while permitting defendants to reap huge benefits from the contemplated transaction.

32. The price of \$41 per share to be paid to the class members is unconscionable, unfair and grossly inadequate. The terms of the proposed merger constitute a fraud upon the minority stockholders because, among other things:

(a) the intrinsic value of the stock of Roto Rooter is materially in excess of \$41 per share, giving due consideration to the possibilities of growth and profitability of Roto Rooter in light of its business, earnings and earnings power, present and future.

(b) The \$41 per share price is not the result of arm's length negotiations and was not based upon any independent

evaluation of the current value of Roto Rooter shares, assets or business, but was fixed arbitrarily by defendants, as part of a plan by Chemed to obtain complete ownership of Roto Rooter's assets and business at the lowest possible price, to obtain for itself benefits disproportionate with those to be received by the public stockholders, which facts were not and perhaps will not be disclosed since it is not in defendants' interests to disclose such facts.

33. Because the defendants are in possession of corporate information concerning Roto Rooter's assets, businesses and future financial prospects, the degree of knowledge and economic power between defendants and the public stockholders is unequal, making it grossly and inherently unfair and comprises "unfair dealing" for Chemed to obtain ownership of Roto Rooter's assets from the minority public common shareholders.

34. By reason of the foregoing acts, practices and course of conduct, Chemed has breached and continues to breach its duty as a controlling stockholder of Roto Rooter and the individual defendants have breached and continue to breach their duties as directors of Roto Rooter, to the remaining stockholders including plaintiff and the other members of the class herein.

35. Plaintiff and the class will suffer irreparable damage unless defendants are enjoined from continuing to breach their

fiduciary duties and from carrying out the aforesaid plan and scheme.

36. Plaintiff and the other members of the class have no adequate remedy at law.

WHEREFORE, plaintiff demands judgment against the defendants jointly and severally, as follows:

(1) declaring this action to be a class action and certifying plaintiff as the class representative and her counsel as class counsel;

(2) enjoining, preliminarily and permanently, Chemed's offer for acquisition of the Roto Rooter stock owned by plaintiff and the other members of the class;

(3) to the extent, if any, that the contemplated transaction or transactions complained of are consummated prior to the entry of this Court's final judgment, rescinding such transaction or transactions, and granting, inter alia, rescissionary damages;

(4) directing that defendants pay to plaintiff and the other members of the class all damages caused to them and account for all profits and any special benefits obtained as a result of their unlawful conduct;

(5) awarding to plaintiff the costs and disbursements of this action, including a reasonable allowance for the fees and expenses of plaintiff's attorneys and experts; and

(6) Granting plaintiff and the other members of the class such other and further relief as may be just and proper.

Dated: August 8, 1996

MORRIS and MORRIS

By: /s/ Karen L. Morris

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