

1/19/95

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
 )  
HARDWARE WHOLESALERS, INC., and ) Docket No. IF&R-V-002-93  
HOWARD JOHNSON'S ENTERPRISES, INC.)  
 )  
Respondents. )

ORDER DENYING COMPLAINANT'S MOTION FOR ACCELERATED DECISION

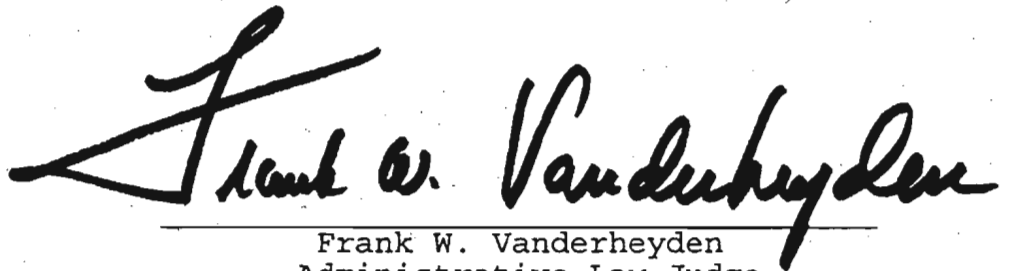
On April 25, 1995, the United States Environmental Protection Agency, Region 5 (complainant), filed an accelerated decision motion concerning both the liability and penalty issues. The respondents responded jointly in opposition to the motion on May 11, 1995. The arguments of the parties have been weighed.

The Administrative Law Judge is of the mind that genuine issues of material fact exist regarding the alleged violations. Under 40 C.F.R. § 22.20(a), an accelerated decision should only be granted where no genuine issue of material fact exists, and a party is entitled to judgment as a matter of law. In this matter, the parties are at odds over the main factual issues necessary to establish the alleged violations. Specifically, the respondents contest the testing methods used by complainant to determine whether or not respondents sold or distributed an alleged adulterated pesticide and pesticide product whose composition differs from its registration in violation of Sections 12(a)(1)(E) and (a)(1)(C) of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136j(a)(1)(E) and (a)(1)(C).

Respondents assert that complainant's testing methods and results are flawed because the composition of its pesticide is not

distributed homogeneously. Thus, the sample taken by complainant and used to establish the alleged violations is not representative of the total pesticide formulation. These issues of proper sampling and laboratory analysis of respondents' pesticide go to the heart of this cause, and can only be resolved adequately at a hearing. Further, the penalty issue is not ripe for a determination until these crucial material facts on liability have been decided.

IT IS ORDERED that complainant's motion for an accelerated decision be DENIED.



Frank W. Vanderheyden  
Administrative Law Judge

Dated: June 7, 1995

IN THE MATTER OF HARDWARE WHOLESALERS, INC. and HOWARD JOHNSON'S ENTERPRISES, INC., Respondents  
Docket No. IF&R-V-002-93

Certificate of Service

I certify that the foregoing Order, dated 6/7/95, was sent this day in the following manner to the below addressees:

Original by Regular Mail to:

Ms. Jodi L. Swanson-Wilson  
Regional Hearing Clerk  
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Marion Walzel

Marion Walzel  
Legal Staff Assistant

Date: June 8, 1995