

1/4/94

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
HARMON ELECTRONICS, INC., ) Docket No. VII-91-H-0037  
Respondent )

ORDER GRANTING PARTIAL ACCELERATED DECISION

On December 10, 1993,<sup>1</sup> complainant served a motion for leave to file a motion for partial accelerated decision concerning respondent's alleged failure to obtain coverage for sudden and non-sudden accidental occurrences. Complainant's motion and arguments were submitted with its request. Respondent served its response to the motion for the partial accelerated decision on December 30. It states that complainant does not object to the timeliness of the pleading.

In its response, respondent makes reference to a fully executed consent agreement between it and the State of Missouri finalized on March 3. Respondent points out that in paragraph 6 of that document the Missouri Department of Natural Resources (MDNR) states that it would not bring an enforcement action if the former submits annual documentation to the MDNR reflecting periodic efforts to obtain liability insurance coverage. For the reasons stated in the order of August 17, at 3-6, and notwithstanding the consent agreement with the State, the U.S. Environmental Protection

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<sup>1</sup> Unless otherwise stated, all dates are for the year 1993.

Agency is not precluded from charging respondent with failure to maintain financial responsibility. To acquiesce in respondent's thinking could well vitiate effective federal enforcement of the Resource Conservation and Recovery Act, in those states authorized to carry out hazardous waste programs, and render section 3008(a)(2) of the statute impotent.

Another argument advanced by respondent is that for practical purposes it is a closed facility and that it "has not generated hazardous waste from its operations since 1988." (Resp. at 13.) This issue was met in the aforementioned order of August 17 (at 13-15). There it was noted that respondent did not obtain financial assurance for closure and post-closure until November 22, 1991, a date subsequent to the issuance of the complaint in this matter; that respondent did not have such financial assurance for approximately 10 years prior to that time; and that as of August 19, 1992, there was no record of respondent having obtained coverage for sudden and non-sudden accidental occurrences at the facility.

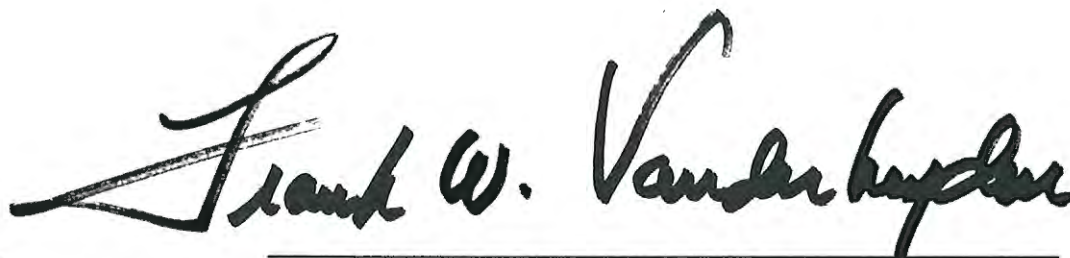
Assuming arguendo that insurance coverage for sudden and non-sudden accidental occurrences was not available to respondent, such impossibility of obtaining same does not excuse failure to demonstrate financial assurance for liability; it is not an available defense concerning whether a respondent has complied with liability coverage requirements. A good faith effort in attempting to obtain insurance is likewise not available as a defense to noncompliance with the regulatory requirements. However, good

faith efforts, as well as impossibility or impracticability of obtaining insurance, are relevant in determining the amount of civil penalty. In the Matter of Urschel Laboratories, Inc., Docket No. V-W-89-R-35, at 15-16, (April 25, 1991).

**IT IS ORDERED** that:

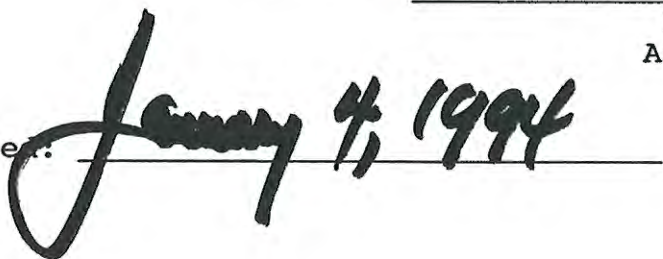
1. Complainant's motion for leave to file a motion for a partial accelerated decision concerning respondent's failure to obtain coverage for sudden and non-sudden accidental occurrences be **GRANTED**.

2. Complainant's motion for a partial accelerated decision, concerning the charge set forth in "1" above, be **GRANTED**.



Frank W. Vanderheyden  
Administrative Law Judge

Date: \_\_\_\_\_



IN THE MATTER OF HARMON ELECTRONICS, INC., Respondent,  
Docket No. VII-91-H-0037

Certificate of Service

I certify that the foregoing Order, dated Jan. 4, 1994,  
was sent this day in the following manner to the below addressees:

Original by Regular Mail to: Ms. Venessa R. Cobbs  
Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region VII  
726 Minnesota Avenue  
Kansas City, KS 66101

Copy by Telefax and Regular Mail to:

Attorney for Complainant: Belinda Holmes, Esquire  
Assistant Regional Counsel  
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Marion Walzel  
Marion Walzel  
Legal Staff Assistant

Date: Jan. 4, 1994