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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
AMERICAN HAULING, INC.)
Notice of Failure to Comply)
With Hawaii Revised Statutes)
and Commission's Regulations)
Order to Show Cause Why)
Respondent's Operating)
Authority Should Not Be)
Suspended or Revoked.)
_____)

DOCKET NO. 02-0244

DECISION AND ORDER NO. 20240

Filed June 19, 2003
At 2:00 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE & INDUSTRY
CONSUMER AFFAIRS
STATE OF HAWAII

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ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----))
AMERICAN HAULING, INC.) Docket No. 02-0244
))
Notice of Failure to Comply) Decision and Order No. 20240
With Hawaii Revised Statutes)
and Commission's Regulations)
Order to Show Cause Why)
Respondent's Operating)
Authority Should Not Be)
Suspended or Revoked.)
_____)

DECISION AND ORDER

I.

On April 4, 2003, the duly appointed hearings officer issued Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer (recommended decision) regarding the above-entitled matter. The recommended decision was served upon AMERICAN HAULING, INC. (Respondent) on April 4, 2003, via first class mail. Respondent did not file written exceptions to the recommended decision.

Upon a review of the entire record in this matter and pursuant to Hawaii Revised Statutes § 269-6, we conclude that the recommended decision, attached hereto as Exhibit A, should be adopted as the commission's final decision and order in this

matter and Order No. 19555¹, filed on September 30, 2002, should be vacated.

II.

THE COMMISSION ORDERS:

1. The recommended decision, attached hereto as Exhibit A, is adopted as the commission's final decision and order in this matter.

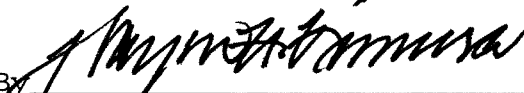
2. Order No. 19555, filed on September 30, 2002, is vacated.


3. This docket is closed.

DONE at Honolulu, Hawaii the 19th day of June, 2003.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

¹By Order No. 19555, filed on September 30, 2002, Respondent was ordered to appear before the commission on October 29, 2002, at 9:00 a.m. to show cause why Respondent's certificate of public convenience and necessity number 2068-C should not be suspended or revoked for failure to file its annual financial report, pursuant to Hawaii Revised Statutes § 271-25 and Hawaii Administrative Rules § 6-62-42(a).

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
AMERICAN HAULING, INC.)
Notice of Failure to Comply) DOCKET NO. 02-0244
With Hawaii Revised Statutes) FINDINGS OF FACT
and Commission's Regulations) CONCLUSIONS OF LAW, AND
Order to Show Cause Why) RECOMMENDED DECISION
Respondent's Operating) AND ORDER OF
Authority Should Not Be) HEARINGS OFFICER
Suspended or Revoked.)
_____)

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED DECISION AND ORDER OF HEARINGS OFFICER

I.

INTRODUCTION

By Order No. 19555, filed on September 30, 2002, AMERICAN HAULING, INC., (Respondent), was ordered to appear before the commission on October 29, 2002, at 9:00 a.m. to show cause why Respondent's certificate of public convenience and necessity (CPCN) number 2068-C should not be suspended or revoked for failing to file its annual financial report, pursuant to Hawaii Revised Statutes (HRS) § 271-25 and Hawaii Administrative Rules (HAR) § 6-62-42(a).¹

An order to show cause hearing was held at 9:00 a.m. on October 29, 2002, at the Public Utilities Commission Hearing Room, 465 South King Street, Room B-3. Counsel for Respondent,

¹Respondent timely paid its annual motor carrier gross revenue fee, pursuant to HRS § 271-36.

Lloyd Asato, represented Respondent at the hearing.² Hearings officer Benedyne S. Stone presided over the hearing.

Based upon a review of the record and the testimony presented at the hearing, the issue is whether Respondent's CPCN should be suspended or revoked for Respondent's failure to file its annual financial report with the commission, in violation of the State of Hawaii (State) motor carrier laws, rules, and regulations of the commission.

Having considered the testimony and other evidence presented at the hearing, and the entire record in this matter, this hearings officer hereby renders the following findings of fact, conclusions of law, and recommended decision and order.

II.

FINDINGS OF FACT

1. Pursuant to HAR § 6-62-42(a), Respondent's annual financial report of its motor carrier operations was due to the commission "by April 30 of [2002]".

2. As of the date of the order to show cause hearing, October 29, 2002, Respondent had not submitted its annual financial report of its motor carrier operations to the commission.

3. Respondent filed its annual financial report on

²Members of the commission's audit staff were sworn in and remained present during the hearing in the event they would be called upon to testify in the instant matter.

November 1, 2002.^{3,4}

4. By commission letter dated November 27, 2002, Respondent was informed that it owed the commission a penalty, in the amount of \$2,812.50, pursuant to HAR § 6-62-42(d), for its untimely filing of its annual financial report.⁵

5. On December 2, 2002, Respondent paid its penalty to the commission, in full.⁶

III.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the hearings officer makes the following conclusions of law. Any findings of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

1. HRS § 271-19 authorizes the commission, after notice and hearing, to suspend or revoke any CPCN, in part or in whole, if the holder is found to be in violation of any of the provisions of chapter 271, HRS.

2. Based on the above-stated findings of fact, this hearings officer concludes that because Respondent's annual financial report was received by the commission after the April

³Respondent filed amendments to its annual financial report on November 13 and 25, 2002.

⁴Pursuant to HAR § 6-61-48, this hearings officer takes official notice of certain facts contained in the commission's motor carrier files.

⁵Id.

⁶Id.

30 deadline, Respondent was in violation of HRS § 271-25 and HAR § 6-62-42(a) as of the date of the show cause hearing, October 29, 2002.

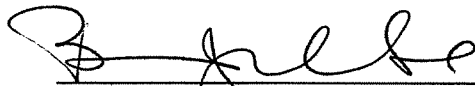
3. This hearings officer also concludes that Respondent's filing of its annual financial report on November 1, 2002, and its payment of penalties to the commission in full, on December 2, 2002, brought Respondent in full compliance with the State motor carrier laws, rules, and regulations.

IV.

RECOMMENDED DECISION AND ORDER

1. Based upon the foregoing, this hearings officer recommends that Order No. 19555, which ordered Respondent, among other things, to show cause why its CPCN should not be suspended or revoked, should be VACATED and that this docket should be closed.

DATED: Honolulu, Hawaii this 4th day of April, 2003.



Benedyne S. Stone
Hearings Officer
Public Utilities Commission

American Hauling/la

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS (VIA PICKUP)
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

AMERICAN HAULING, INC.
P.O. Box 691
Waialua, HI 96791

Leatrice G. Asahi

Leatrice G. Asahi
Clerk

DATED: April 4, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20240 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

AMERICAN HAULING, INC.
P. O. Box 691
Waialua, HI 96791

BENEDYNE S. STONE
HEARINGS OFFICER
PUBLIC UTILITIES COMMISSION
465 S. King Street, Room 103
Honolulu, HI 96813



Karen Higashi

DATED: June 19, 2003