

*** NOT FOR PUBLICATION ***

NO. 23981

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

IN THE MATTER OF

RCI ENVIRONMENTAL, INC., Petitioner-Appellant

vs.

PETER T. YOUNG, IN HIS CAPACITY AS DIRECTOR OF THE DEPARTMENT OF
LAND AND NATURAL RESOURCES, STATE OF HAWAII AND AMERICAN MARINE
CORPORATION, Respondents-Appellees

APPLICATION FOR JUDICIAL REVIEW
(DOCKET NO. PCH-2000-10)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Petitioner-appellant RCI Environmental, Inc. (RCI) appeals from the January 2, 2001¹ final order of the Department of Commerce and Consumer Affairs, State of Hawai'i (DCCA), granting respondent Peter T. Young's,² in his capacity as Director of the Department of Land and Natural Resources, State of Hawai'i [hereinafter, collectively, the "DLNR"], motion to dismiss the administrative appeal. On appeal, RCI argues that: (1) the term "days of issuance" is vague and ambiguous; (2) the computation of the time period within which RCI was required to respond began after RCI received DLNR's November 15, 2000 letter

¹ It appears that the January 2, 2001 final order was mistakenly time stamped as January 2, 2000.

² Current DLNR Director, Peter T. Young, replaces the former DLNR Director, Timothy E. Johns, as a party in this appeal pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 43(c)(1).

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and excluded Saturdays, Sundays and Holidays pursuant to Hawai'i Administrative Rules (HAR) § 3-126-49; (3) the hearings officer deprived RCI of due process by invalidating HAR § 3-126-8 and retrospectively applying the ruling to RCI; (4) the deputy attorney general is estopped from arguing or taking the benefit of the argument that the date of issuance does not mean date of receipt; and (5) the arguments raised by AMC should have been stricken.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that: (1) the date of issuance is the postmarked date, see Nihī Lewa, Inc. v. Dept. of Budget and Fiscal Services, 103 Hawai'i 163, 168, 80 P.3d 984, 987 (2003); (2) HAR 3-126-49 is inapplicable for the purpose of excluding intermediate Saturdays, Sundays, and holidays, inasmuch as Hawai'i Revised Statutes (HRS) § 103D-712 requires that requests for administrative review under HRS § 103D-709 be made within seven calendar days, see HRS § 103D-712(a); (3) although the final order invalidated HAR § 3-126-8, RCI was afforded due process, inasmuch as the final order considered the day of issuance from the decision regarding RCI's request for reconsideration as opposed to the decision regarding RCI's protest; (4) RCI's argument that the attorney general is estopped from arguing that the date of issuance does not mean

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date of receipt is moot, inasmuch as this court held that the date of issuance is the postmarked date; and (5) even if this court were to strike the arguments raised by AMC, this court would have reached the same results. We further hold that RCI's November 29, 2000 request for administrative review was untimely, inasmuch as the date of issuance was November 16, 2000 and RCI was required to request administrative review by November 23, 2000. Therefore,

IT IS HEREBY ORDERED that the order from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, July 20, 2004.

On the briefs:

Robert G. Klein
for the petitioner-appellant
RCI Environmental, Inc.

Margery Bronster,
for the respondent-appellee
American Marine Corporation

Wayne A. Mastuura,
Deputy Attorney General,
for the respondent-appellee
DLNR