

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Shepler’s, Inc.
Mackinaw City, Michigan

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File No. EB-00-DT-801

NAL/Acct. No. 200132360002

FORFEITURE ORDER

Adopted: July 25, 2001

Released: July 27, 2001

By the Chief, Enforcement Bureau:

I. Introduction

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of \$2,200 to Shepler’s, Inc. (“Shepler’s”) for violation of the Great Lakes Agreement¹ (“GLA”) and Sections 80.953(a) and 80.953(b) the Commission’s Rules² (“Rules”). The noted violations involve navigation of the vessels *Captain Shepler* and *Wyandot* without the required annual inspection and certification of their marine VHF radiotelephone equipment.

2. On March 27, 2001, the Commission’s Detroit, Michigan, District Office (“Detroit Office”) issued a Notice of Apparent Liability (“NAL”) in the amount of \$2,200 to Shepler’s for the noted violations.³ Shepler’s responded to the NAL by letter dated April 2, 2001.

II. Background

3. The radiotelephone apparatus aboard vessels subject to the GLA must be inspected at least once every 13 months and certified as compliant with requirements of the GLA and the Bridge-to-Bridge Act.⁴ See Article XII of the GLA and Sections 80.953(a) and 80.953(b) of the Rules.

4. Shepler’s is the owner of the vessels *Captain Shepler* and *Wyandot*, which carry passengers on the Great Lakes between Mackinac Island, Michigan, and Mackinaw City, Michigan. Both vessels exceed 65 feet in length and are, therefore, subject to the GLA. See Article V of the GLA and Section 80.951(a)

¹ *Agreement Between Canada and the United States for the Promotion of Safety on the Great Lakes by Means of Radio*, April 26, 1973, US.-Canada, 25 UST 935, T.I.A.S. 7837, amended 30 UST 2523, T.I.A.S. 9352.

² 47 C.F.R. §§ 80.953(a) and (b).

³ An erratum was issued April 6, 2001.

⁴ 33 U.S.C. §§ 24.1201-1208.

of the Rules.

5. On September 28, 2000, an FCC agent (“Agent”) from the Detroit Office observed the *Captain Shepler* returning from a voyage on the Great Lakes. The Agent inspected⁵ the radiotelephone installation aboard the *Captain Shepler* and determined that the vessel did not have a current GLA safety certification. On the same date, the Agent inspected the radiotelephone installation aboard the *Wyandot* and determined that the *Wyandot* also did not have a current GLA safety certification.

6. On October 31, 2000, the Detroit Office issued an Official Notice of Violation (“NOV”) to Shepler’s for violation of Section 80.953(b) of the Rules. Shepler’s provided, with its response to the NOV, copies of radiotelephone logs indicating that an authorized inspector inspected and certified the radio apparatus aboard the *Captain Shepler* and the *Wyandot* as compliant on October 4, 2000.

7. In March 2001, the Detroit Office requested that Shepler’s furnish copies of the *Captain Shepler*’s and the *Wyandot*’s radio station logs from the period before September 28, 2000. Shepler’s provided copies of these logs. The logs indicate that the *Captain Shepler* was navigated on September 18, 19, 20, 21, 22, 23, and 24, 2000, and the *Wyandot* was navigated on September 20, 22, and 24, 2000.

8. In its response to the NAL issued March 27, 2001, Shepler’s requests remission of the monetary forfeiture.

III. Discussion

9. The Enforcement Bureau assessed the proposed forfeiture amount in this case in accordance with Section 506(a) of the Act,⁶ Section 1.80 of the Rules,⁷ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). Section 1.80(b)(4) of the Commissions Rules,⁸ requires that the Commission, in examining Shepler’s’s response, take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.

10. Shepler’s does not deny navigating the *Captain Shepler* and the *Wyandot* on the Great Lakes without a current GLA safety inspection and certification. On the basis of all the information available to us, we conclude that Shepler’s navigated the *Captain Shepler* on September 18, 19, 20, 21, 22, 23, 24, and 28, 2000, and the *Wyandot* on September 20, 22, and 24, 2000, in the Great Lakes without the required annual inspection and certification of their marine VHF radiotelephone equipment, in violation of the Great Lakes Agreement and Sections 80.953(a) and 80.953(b) of the Rules.

⁵ Although the required annual inspections of radio installations aboard vessels subject to the provisions of the Great Lakes Agreement have been privatized, the FCC conducts spot-check inspections, such as the inspection in this case, to monitor compliance.

⁶ 47 U.S.C. § 506(a).

⁷ 47 C.F.R. § 1.80.

⁸ 47 C.F.R. § 1.80(b)(4).

11. In the NAL, the Detroit Office mitigated the statutory forfeiture amount of \$6,050 to \$2,200 on the basis of Shepler's good faith and history of overall compliance. In its response to the NAL, Shepler's seeks remission of the proposed \$2,200 forfeiture. Shepler's argues that its violations resulted from an "oversight" by its newly appointed senior captain, who believed that his predecessor had obtained GLA certifications for Shepler's entire fleet. This circumstance does not mitigate Shepler's violations. Navigation without a valid GLA certification increases the risk to the safety of life and, therefore, is a significant violation. Shepler's also argues that, in 45 years of service, it has never before violated the Commission's Rules. However, the forfeiture amount specified by the NAL already reflects Shepler's history of overall compliance. Thus, Shepler's arguments do not justify remission of the proposed forfeiture or any further mitigation. We have examined Shepler's response to the NAL in light of the factors specified in the *Policy Statement* and in Section 1.80(b)(4) of the Rules and we conclude that \$2,200 is the proper forfeiture amount.

IV. Ordering Clauses

12. **ACCORDINGLY, IT IS ORDERED THAT**, pursuant to Section 506(a) of the Act,⁹ and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,¹⁰ Shepler's **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$2,200 for violation of the Great Lakes Agreement and Sections 80.953(a) and 80.953(b) the Commission's Rules.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules¹¹ within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment may be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note "NAL/Acct. No. 200132360002," referenced above. Requests for full payment under an installment plan should be sent to: Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

⁹ 47 U.S.C. § 506(a).

¹⁰ 47 C.F.R. §§ 0.111, 0.311 and 1.80(f)(4).

¹¹ 47 C.F.R. § 1.80.

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.

14. **IT IS FURTHER ORDERED** that a copy of this order shall be sent by certified mail, return receipt requested, to Shepler's, Inc., P.O. Box 250, Mackinaw City, Michigan 49701.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau