

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

In the Matter of)	
)	
Trap Rock Industries, Inc.)	File Number EB-05-NY-072
)	
Owner of Antenna Structure)	NAL/Acct. No. 200632380001
ASR # 1209546)	
Kingston, New Jersey)	FRN 0003 3092 83

FORFEITURE ORDER

Adopted: September 28, 2006

Released: September 29, 2006

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Trap Rock Industries, Inc. (“Trap Rock”), owner of antenna structure 1209546, located in Franklin Township, New Jersey, for willfully and repeatedly violating Section 17.50 of the Commission's Rules (“Rules”)¹ by failing to clean and repaint its antenna structure as often as necessary to maintain good visibility.

II. BACKGROUND

2. On March 16, 2005, an agent in the Commission’s New York Office conducted an inspection of antenna structure 1209546 with a Trap Rock employee. The agent observed that the white paint on the tower was badly faded, revealing significant amounts of an underlying layer of orange paint. The faded white paint on the uppermost white band revealed so much orange paint that the white band was indistinguishable from the adjacent orange bands. The Antenna Structure Registration (ASR) for this tower requires that the tower be painted and lighted in accordance with FAA Chapters 3, 4, 5 and 13 in FAA Circular Number 70/7460-1J. Chapter 3 provides that antenna structures shall display alternate bands of aviation orange and white paint, that the bands be equal in width, and approximately one-seventh the height of the structure for towers 700 feet or less.

3. During the March 16, 2005 inspection, the Trap Rock employee stated to the agent that the tower is visually inspected by Trap Rock’s chief maintenance technician. The agent informed the

¹ 47 C.F.R. § 17.50.

Trap Rock employee of the painting and posting violations and advised him that the tower must be repainted as soon as possible to conform to the required specifications and that the ASR number must be posted.

4. On May 3, 2005, the agent conducted a follow-up inspection of Trap Rock's antenna structure 1209546 with Trap Rock's chief maintenance technician and observed that the condition of the tower paint was the same as it was during the March 16, 2005 inspection. In addition, the ASR number still was not posted. The chief maintenance technician stated that he visually observes the tower twice a week, and was aware of the appearance of the paint on the tower. The agent informed the technician of the painting and posting violations, and advised him that they must be corrected as soon as possible.

5. On May 4, 2005, the agent contacted Trap Rock's administrative offices by telephone, and spoke to Trap Rock's corporate secretary. The agent informed the corporate secretary of the painting and posting violations on the tower, and directed him to correct the problems as soon as possible. The corporate secretary stated that Trap Rock had arranged for the tower to be painted and for the signs to be made and posted.

6. On November 21, 2005, the New York Office issued a Notice of Apparent Liability for Forfeiture to Trap Rock for apparent willful and repeated violation of Section 17.50 of the Rules² for failure to clean and repaint its antenna structure as often as necessary to maintain good visibility.³ Trap Rock submitted a response to the *NAL* on December 21, 2005. Trap Rock does not dispute the finding in the *NAL* that its antenna structure needed to be repainted, but claims that a cancellation or reduction is warranted in light of (1) the nature, circumstances, extent, and gravity of the violation; (2) Trap Rock's immediate remedial measures after the agent's inspection on March 16, 2005; and (3) Trap Rock's history of compliance. Trap Rock also reports in its response to the *NAL* that the painting of the antenna structure was completed on September 16, 2005.

III. DISCUSSION

7. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁴ Section 1.80 of the Rules,⁵ and the *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we 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 such other matters as justice may require.⁷

² 47 C.F.R. § 17.50.

³ *Trap Rock Industries, Inc.*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200632380001 (Enf. Bur., New York Office, November 21, 2005) ("*NAL*"). In the *NAL*, the New York Office also admonished Trap Rock for failing to post the antenna structure registration number at the base of the tower.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁷ 47 U.S.C. § 503(b)(2)(D).

8. Trap Rock claims that a reduction or cancellation of the forfeiture is warranted based on the nature, circumstance, extent, and gravity of the violation. More specifically, Trap Rock claims that the requirement in Section 17.50 of the Rules that antenna structures must be painted “as often as necessary to maintain good visibility” is “inherently subjective” and thus a finding that Trap Rock violated Section 17.50 of the Rules is not appropriate. We disagree. The Commission has a statutory responsibility under Section 303(q) of the Act to ensure that antenna structures do not present a hazard to air safety. The painting requirements set forth in Section 17.50 of the Rules are an integral part of how the Commission discharges its statutory obligation. By any reasonable standard, Trap Rock’s antenna structure was not repainted “as often as necessary to maintain good visibility.” The agent observed that the white paint on the tower was so badly faded that the white band was indistinguishable from the adjacent orange band, thus diminishing the overall visibility of the tower. We believe that the proposed forfeiture amount was warranted based on the nature, circumstance, extent, and gravity of the violation and we decline to reduce or cancel the forfeiture on this basis.

9. We also decline to reduce or cancel the forfeiture amount based on Trap Rock’s claim that its “degree of culpability here was slight” based on its remedial efforts after the agent’s March 15, 2005 inspection. The Commission consistently has held that corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.⁸ In light of Trap Rock’s history of compliance, however, we reduce the forfeiture amount from \$10,000 to \$8,000.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁹ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁰ Trap Rock Industries, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for willful and repeated violation of Section 17.50 of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) days of the release of this *Order*. If the forfeiture is not paid within the period specified, that case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹²

⁸ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

⁹ 47 U.S.C. § 503(b).

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

¹¹ 47 U. S. C. § 504(a).

¹² See 47 C.F.R. § 1.1914.

12. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Trap Rock Industries, Inc. at its address of record and to counsel for Trap Rock Industries, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Russell Monie, Jr.
Regional Director, Northeast Region
Enforcement Bureau