

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

In the Matter of	)	
	)	
OleumTech Corporation	)	File No. EB-05-SE-333
	)	NAL/Acct. No. 200632100007
	)	FRN # 0014483978
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: March 15, 2006**

**Released: March 17, 2006**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find OleumTech Corporation (“OleumTech”) apparently liable for a forfeiture in the amount of five thousand six hundred dollars (\$5,600) for marketing in the United States unauthorized intentional radiating devices,<sup>1</sup> specifically, wireless monitoring devices used primarily by oil and gas companies for the collection of data and monitoring of remote well sites, process facilities and pipelines, in willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),<sup>2</sup> and Section 2.803(a) of the Commission’s Rules (“Rules”).<sup>3</sup>

**II. BACKGROUND**

2. On October 26, 2005, the Spectrum Enforcement Division of the Enforcement Bureau received an informal complaint alleging that OleumTech was manufacturing and marketing unauthorized radiofrequency devices. The complaint listed the model numbers of several transmitters which were allegedly unauthorized. In support of the allegation, the complainant explained that it ordered one of OleumTech’s devices which subsequently arrived without the required FCC label attached.

3. On December 7, 2005, the Spectrum Enforcement Division issued a Letter of Inquiry (“LOI”) to OleumTech seeking further information about its devices.<sup>4</sup> OleumTech submitted a response to the LOI on February 2, 2006.<sup>5</sup> In the response, OleumTech states that it has designed and manufactured only one class of low power transmitter which it uses in all of its products. It states that the various model numbers cited in the Enforcement Bureau’s LOI all use the same transmitter inside. The transmitter is

<sup>1</sup> Section 15.3(o) of the Rules, 47 C.F.R. § 15.3(o), defines an intentional radiator as a “device that intentionally generates and emits radio frequency energy by radiation or induction.”

<sup>2</sup> 47 U.S.C. § 302a(b).

<sup>3</sup> 47 C.F.R. § 2.803(a).

<sup>4</sup> Letter to Ms. Kristin Cano, Legal Counsel, OleumTech Corporation, from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (December 7, 2005).

<sup>5</sup> Letter from Michael Armani, President & CEO, OleumTech Corporation, to Neal McNeil, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (February 2, 2006) (“LOI Response”).

identified as the “2027 PCB assembly” radio. Different model numbers and casings are used with this same transmitter to identify the specific task each product performs.

4. OleumTech asserts that, between August and September 2003, prior to shipping any of its products, it conducted testing which showed that its radio was in compliance with the FCC’s technical standards. However, OleumTech states that it did not request an FCC certification because its chief design consultant and the manager of its testing laboratory concluded that certification and labeling were not required for radio devices that operated at such low power levels.

5. OleumTech states that on or about October 2005 it was informed by an outside consultant that its prior determination that certification was not needed was erroneous. OleumTech avers that it then submitted its device for certification. The Commission granted an equipment authorization to OleumTech on January 18, 2006.<sup>6</sup>

### III. DISCUSSION

6. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” Section 2.803(a) of the Rules provides that:

Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device ... unless such device has been authorized by the Commission.

It is undisputed that OleumTech’s devices are intentional radiators, and as discussed below, are subject to the Commission’s certification procedures and related marketing restrictions.

7. Pursuant to Section 15.201(b) of the Rules,<sup>7</sup> intentional radiators operating under the provisions of Part 15 of the Rules must be certificated by the Commission prior to marketing. OleumTech concedes that it has sold less than 1,500 units of its wireless monitoring device in the U.S. prior to receiving certification.<sup>8</sup> OleumTech also concedes that it was not until late 2005 that it determined that its product needed FCC certification. As previously noted, on January 18, 2006, OleumTech obtained an equipment authorization from the Commission.

8. In the instant case, we find that OleumTech apparently willfully<sup>9</sup> and repeatedly<sup>10</sup> violated Section 302(b) of the Act and Section 2.803(a) of the Rules by marketing an intentional radiator device prior to obtaining Commission equipment authorization.

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<sup>6</sup> FCC Identifier TWE-SM1X00-XXX.

<sup>7</sup> 47 C.F.R. § 15.201(b).

<sup>8</sup> LOI Response at 7.

<sup>9</sup> The term “willful,” as used in Section 503(b) of the Act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate the Commission’s Rules. 47 U.S.C. § 312(f)(1).

<sup>10</sup> A violation is “repeated” within the meaning of Section 503(b) of the Act if it occurs more than once or continues for more than one day. 47 U.S.C. § 312(f)(2).

9. Section 503(b) of the Act and Section 1.80(a) of the Rules<sup>11</sup> authorize the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.<sup>12</sup> In exercising such authority, we are to 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.”<sup>13</sup>

10. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*<sup>14</sup> and Section 1.80 of the Rules,<sup>15</sup> the base forfeiture amount for importation or marketing of unauthorized or non-compliant equipment is \$7,000. In this case, we note that OleumTech marketed one unauthorized intentional radiator.<sup>16</sup> We further note that OleumTech made a good faith effort to bring the transmitter into compliance with the Rules by submitting its device for certification testing prior to receiving the Spectrum Enforcement Division’s LOI. Accordingly, we reduce the proposed forfeiture amount from \$7,000 to \$5,600.<sup>17</sup>

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>18</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>19</sup> OleumTech Corporation, Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of five thousand six hundred dollars (\$5,600) for willfully and repeatedly violating Section 302(b) of the Act and Section 2.803(a) of the Rules.

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, OleumTech Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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

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<sup>11</sup> 47 C.F.R. § 1.80(a).

<sup>12</sup> 47 U.S.C. § 503(b).

<sup>13</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>14</sup> 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

<sup>15</sup> 47 C.F.R. § 1.80.

<sup>16</sup> Although several model numbers were cited in the Enforcement Bureau’s letter of inquiry, each of those models used the same radio internally. Pursuant to 47 C.F.R. § 2.907(b), certification attaches to all units of a device which are identical to the sample tested or have undergone changes identified in 47 C.F.R. § 2.1043.

<sup>17</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-101; 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures (discussion of downward adjustment factors); see, e.g., *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 ¶ 4 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003) (reducing a forfeiture from \$9,200 to \$8,000 for EAS violations because the licensee had identified the problems and had ordered replacement equipment *prior* to the Field Office’s on-site inspection).

<sup>18</sup> 47 U.S.C. § 503(b).

<sup>19</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

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.

14. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>20</sup>

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested to Michael Armani, President and CEO, OleumTech Corporation, 29 Parker, Irvine, California 92618.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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<sup>20</sup> 47 C.F.R. § 1.1914.