

Federal Communications Commission

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

In the Matter of)	
)	
)	File No. EB-00-DT-801
Shepler's Inc.)	
Mackinaw City, Michigan)	NAL/Acct. No. 200132360002

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 27, 2001

By the District Director, Detroit Office, Enforcement Bureau:

I. Introduction

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Shepler's Inc. has apparently violated the Great Lakes Agreement ("GLA")¹ and Sections 80.953(a) and 80.953(b) of the Commission's Rules² (the "Rules") as a result of their vessels the "Capt. Shepler" and "Wyandot" navigating the Great Lakes without having obtained the annual GLA inspection and certification of their marine VHF radiotelephone equipment. We conclude that Shepler's Inc. is apparently liable for a forfeiture in the amount of two thousand two hundred dollars (\$2,200).

II. Background

2. The GLA requires, among other things, that all vessels 65 feet or over in length (20 meters), most towing vessels, and vessels carrying more than six passengers for hire be equipped with a marine VHF radiotelephone installation when navigated on the Great Lakes. The GLA is intended to promote safety of life and property on the Great Lakes by means of radio and requires the radiotelephone installation be inspected and certified at least once every thirteen months. The inspection of GLA subject vessels may be performed by the holder of an FCC General Radiotelephone Operator License, GMDSS Radio Maintainer's License, Second Class Radiotelegraph Operator's Certificate or First Class Radiotelegraph Operator's Certificate.

3. On September 28, 2000, an FCC agent from the Detroit Office conducted random inspections of vessels subject to the GLA in Mackinaw City, Michigan to determine whether GLA inspections were being conducted and certified. The agent observed the "Capt. Shepler" returning from a voyage on the Great Lakes while carrying passengers between Mackinac Island, Michigan and Mackinaw City, Michigan. The agent inspected the "Capt. Shepler" and determined that the vessel did not have a current GLA safety inspection and certification. The agent also determined that a second vessel, the "Wyandot," did not have a current GLA safety inspection and certification.

¹ Agreement Between Canada and the United States for the Promotion of Safety on the Great Lakes by Means of Radio T.I.A.S. 7837, amended T.I.A.S. 9352 (Great Lakes Agreement).

² 47 C.F.R. §§ 80.953(a), 80.953(b).

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4. On October 31, 2000, the Detroit District Director issued an Official Notice of Violation (“NOV”) to Shepler’s Inc., P.O. Box 250, Mackinaw City, Michigan 49701, for failure to have their vessels “Capt. Shepler” and “Wyandot” inspected under the GLA. As a follow up to this, copies of ship radiotelephone logs were requested and a subsequent review of these logs indicated that the “Captain Shepler” had also navigated on at least September 18, 19, 20, 21, 22, 23, and 24, 2000, without a valid GLA certificate. The logs also indicated that the “Wyandot” had navigated on at least September 20, 22, and 24, 2000 without a valid GLA certificate.

III. Discussion

5. In order to promote the safety of life and property on the Great Lakes, the Great Lakes Agreement and Sections 80.953(a) and 80.953(b) of the Rules require that vessels subject to the GLA have the radiotelephone installation inspected and certified annually.

6. Based on the evidence before us, we find that Shepler’s Inc. has willfully³ and repeatedly⁴ violated the Great Lakes Agreement and Sections 80.953(a) and 80.953(b) of the Commission’s Rules as a result of their vessel the “Capt. Shepler” having navigated the Great Lakes on September 18, 19, 20, 21, 22, 23, 24 and 28, 2000, and their vessel the “Wyandot” having navigated the Great Lakes on September 20, 22, and 24, 2000 without having had their radiotelephone installation inspected and certified as required by the Great Lakes Agreement. *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) (“*Forfeiture Policy Statement*”)⁵, sets the base forfeiture amount at five hundred dollars (\$500) per day for violating the Great Lakes Agreement. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁶ which include 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. Although the record reveals that Shepler’s Inc. has an overall history of compliance and showed good faith surrounding the violations by the voluntary disclosure of information, the violation is egregious. Applying the Policy Statement and the statutory factors to the instant case and applying the inflation adjustments, we believe that a two thousand two hundred dollar (\$2,200) monetary forfeiture is warranted.

IV. Ordering Clauses

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 506(a) of the Act⁷ and Sections 0.111, 0.311 and 1.80 of the Rules⁸, Shepler’s Inc. is hereby NOTIFIED of this APPARENT

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term “repeated”, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(d).

⁷ 47 U.S.C. § 507(a).

⁸ 47 C.F.R. §§ 0.111, 0.311, and 1.80.

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LIABILITY FOR A FORFEITURE in the amount of two thousand two hundred dollars (\$2,200) for willfully violating the Great Lakes Agreement and Sections 80.953(a) and 80.953(b) of the Commission's Rules.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Shepler's Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200132360002.

10. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200132360002.

11. 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 ("GAAP"); 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.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Shepler's Inc., P.O. Box 250, Mackinaw City, Michigan 49701.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office

⁹ See 47 C.F.R. § 1.1914.