

Federal Communications Commission

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

In the Matter of

KYS Inc.
Sandusky Bay Marine Towing
Sandusky, Ohio

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File No. EB-01-DT-415
FRN: 0006-0042-20
NAL/Act. No. 200232360003

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 31, 2001

By the District Director, Detroit Office, Enforcement Bureau:

I. Introduction

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that KYS Inc., Sandusky Bay Marine Towing ("KYS 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 vessel, the "Recovery", navigating the Great Lakes without having obtained the annual GLA inspection and certification of their marine VHF radiotelephone equipment. We conclude that KYS 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 June 29, 2001, an FCC agent from the Detroit Office conducted random inspections of vessels subject to the GLA in Sandusky, Ohio to determine whether GLA inspections were being conducted and certified. The agent inspected the "Recovery" and determined that the vessel did not have a current GLA safety inspection and certification. The agent also determined that that the vessel had navigated the waters of the Great Lakes as a towing vessel. As a follow up to this, copies of ship station logs were requested and received on July 2, 2001. A subsequent review of these logs indicated that the "Recovery" had navigated on at least June 10, 11, 19, and 24, 2001, without a valid GLA 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), and 80.953(b).

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4. On July 26, 2001, the Detroit District Director issued an Official Notice of Violation (“NOV”) to KYS Inc., Sandusky Bay Marine Towing, 603 42nd Street, Sandusky, Ohio 44870, for failure to have their vessel “Recovery” inspected under the provisions of the GLA. The Detroit Office received a response from KYS Inc. on August 20, 2001, in which they admitted to the violations. The correspondence also indicated that future correspondence be sent to 39 Cedar Point Road, Sandusky, Ohio 44870.

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 KYS Inc. has 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 “Recovery” having navigated the Great Lakes on June 10, 11, 19 and 24, 2001 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*”)³, sets the statutory maximum amount forfeiture at five hundred fifty dollars (\$550) per day for violating the Great Lakes Agreement. In assessing the monetary forfeiture amount, we must take into account the downward adjustment factors set forth in Section 1.80 of the Rules for non-Section 503 forfeitures, which include minor violations, good faith or voluntary disclosure, history of overall compliance, and inability to pay. While this is not a minor violation, the record reveals that KYS Inc. has an overall history of compliance and showed good faith surrounding the violations by the voluntary disclosure of information; however, the violations are egregious. Applying the Policy Statement and the adjustment criteria to the instant case, 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 Act⁴ and Sections 0.111, 0.311 and 1.80 of the Rules⁵, KYS Inc. Sandusky Bay Marine Towing is hereby NOTIFIED of this APPARENT 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, KYS Inc., Sandusky Bay Marine Towing SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

³47 C.F.R. § 1.80.

⁴ 47 U.S.C. § 507(a).

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

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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. 200232360003.

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. 200232360003.

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. 20554.⁶

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to KYS Inc., Sandusky Bay Marine Towing, 603 42nd Street, Sandusky, Ohio 44870 and Certified Mail, Return Receipt Requested, to Sandusky Bay Marine Towing, 39 Cedar Point Road, Sandusky, Ohio 44870.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office

⁶ See 47 C.F.R. § 1.1914.