

SERVED: October 20, 2010

NTSB Order No. EA-5556

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 18<sup>th</sup> day of October, 2010

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J. RANDOLPH BABBITT,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-18645
v.	)	
	)	
JAMES L. ROBERTS,	)	
	)	
Respondent.	)	
	)	
_____	)	

**OPINION AND ORDER**

Respondent and the Administrator both appeal the April 9, 2010 oral initial decision of Administrative Law Judge William A. Pope, II, issued following evidentiary hearings held on March 8-9 and April 8-9, 2010.<sup>1</sup> In his decision, the law judge

<sup>1</sup> A copy of the initial decision, an excerpt from the hearing transcript, is attached.

affirmed in part the Administrator's complaint and reduced the sanction from a 120-day suspension to a 60-day suspension of respondent's mechanic certificate with airframe and powerplant ratings and inspection authorization, based on violations of 14 C.F.R. §§ 43.13(a)<sup>2</sup> and 43.9(a)(1).<sup>3</sup> We grant respondent's appeal and deny the Administrator's appeal.

The Administrator's July 1, 2009 order, as amended on November 25, 2009,<sup>4</sup> serves as the complaint in this case. The Administrator alleged that on or about May 9, 2008, respondent performed maintenance on a Gulfstream II (hereinafter, "N840RG"); he returned N840RG to service as airworthy following the maintenance; the aircraft was not in an airworthy condition as it had fuel leaks that were not repaired in an acceptable manner; and respondent failed to describe adequately the maintenance in his logbook entry. The Administrator ordered a 120-day suspension of respondent's mechanic certificate.

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<sup>2</sup> Section 43.13(a) requires each person performing maintenance, alteration, or preventive maintenance on an aircraft to use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual, or other methods, techniques, and practices acceptable to the Administrator.

<sup>3</sup> Section 43.9(a)(1) requires persons maintaining, performing preventative maintenance, rebuilding, or altering an aircraft to make entries in the maintenance record that contain a description of the work performed.

<sup>4</sup> In the amended complaint, the Administrator removed an allegation that respondent incorrectly performed maintenance on a Learjet at Darby Aviation, a Part 135 certified on-demand operation.

On April 24, 2008, FAA Principal Maintenance Inspectors Joseph Arvay and Ken Hutcherson conducted an inspection of Darby Aviation. Inspector Arvay asked Inspector Hutcherson to examine N840RG while Inspector Arvay inspected several other aircraft. Inspector Hutcherson smelled fuel, observed several hanging drops of fuel near the centerline strake, and observed fuel stains below N840RG. He pointed out these issues to Inspector Arvay and respondent. Respondent indicated N840RG had leaked fuel for 14 years and, as a Gulfstream II aircraft, had very liberal leak limits. Tr. at 51.

The inspectors obtained a copy of the Gulfstream Maintenance Manual (GMM), which provides step-by-step procedures for cleaning and repairing various classes of leaks based upon the rate of leak. The inspectors in this case acknowledged they never performed any tests on N840RG to determine the rate of the fuel leak. For heavy fuel seeps of less than 2 drops per minute, the GMM required "clean surface, record leak location, and inspect frequently." Tr. at 153, Exh. A-4. Inspector Arvay admitted the term "inspect frequently" was ambiguous. He testified that, "to the best of [his] knowledge because it's written so open, all that the FAA is concerned with is prior to flight to make sure that the aircraft is in a safe condition for flight." Tr. at 288.

On April 28, 2008, the inspectors returned to Darby Aviation to review the maintenance documents on N840RG to see if respondent had been identifying the leaks and subsequently monitoring them.<sup>5</sup> The inspectors reviewed the logbook entries for N840RG, beginning in December 2006, and found no documentation showing the aircraft had a chronic leak.

As part of the logbooks Inspector Arvay later received from Darby Aviation, respondent had made a computerized logbook entry on May 9, 2008, certifying N840RG as airworthy and returning it to service. Respondent signed his name and wrote his certificate number next to the entry. As part of his airworthiness inspection, respondent was required to check for the presence of any leaks. Tr. at 203, see also Exh. A-8 (computerized logbook entry from May 9, 2008); Exh. A-9 at 1, 4 (inspection record signed by respondent on May 1, 2008, indicating that "no squawks" were found, and that checking for the "presence of leaks and/or fluid accumulations" was required). Respondent's logbook entry on May 9, 2008, indicated he "leaked [sic] checked" the aircraft before returning it to service. Exh. A-8.

Inspector Arvay also obtained maintenance records from West Star Aviation, which performed heavy maintenance for Darby

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<sup>5</sup> The inspectors did not inspect N840RG on April 28, 2008, as it was on a flight at the time.

Aviation. The records indicated that, on May 16, 2008, West Star Aviation repaired several leaks on N840RG, which were within limits for a heavy seep.

Mr. Richard Screen was the director of the Gulfstream II maintenance program at West Star Aviation in May 2008 when Darby Aviation brought N840RG in for heavy maintenance. During his testimony on behalf of respondent, Mr. Screen noted Gulfstream II and III aircraft typically leak because they are wet wing aircraft,<sup>6</sup> but further explained leaks were not problematic under the GMM if the rate of the leak was less than 2 drops per minute. In 17 years of working on Gulfstream aircraft, Mr. Screen could not recall seeing an entry in any logbook noting leaks were within limits. He stated a Gulfstream aircraft could leak one day and not leak the next, depending on the amount of fuel in the tank.

At the conclusion of the hearing, the law judge issued an oral initial decision, providing a detailed summary of the evidence. The law judge found both FAA inspectors, as well as Mr. Screen, credible witnesses. The law judge held that respondent's contention that he signed a maintenance release on May 9, 2008, was not a defense to his failure to perform

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<sup>6</sup> A "wet wing" is an aircraft structure and fuel system design technique where an aircraft's wing structure is sealed and used as the fuel tank, thus eliminating the need for fuel tanks or fuel bladders.

maintenance and record that maintenance in the logbook. The law judge found sufficient circumstantial evidence to conclude N840RG was leaking on May 9, 2008, when respondent returned the aircraft to service, including: respondent's admission to inspectors that the aircraft had leaked for 14 years; the inspectors both saw leaks on April 24, 2008; and West Star Aviation repaired several leaks on May 16, 2008. The law judge stated that, "in all likelihood the leaks were there for the [r]espondent to see if he had taken the trouble to look for them." Initial Decision at 424. Thus, the law judge concluded respondent's failure to make a logbook entry documenting the leaks on May 9, 2008, violated the FAR. However, the law judge refused to find the aircraft unairworthy, since the Administrator did not prove the leaks West Star Aviation repaired or the leaks the FAA inspectors observed exceeded the limits contained in the GMM. The law judge also concluded the Administrator presented sufficient evidence to prove respondent violated 14 C.F.R. §§ 43.13(a) and 43.9(a)(1), but reduced the sanction from a 120-day to a 60-day suspension of respondent's mechanic certificate, because the Administrator failed to prove N840RG was unairworthy.

On appeal, respondent raises several issues. Among these issues, respondent argues that the Administrator failed to prove N840RG was leaking and that maintenance and a logbook entry were

required.<sup>7</sup> In the FAA's cross-appeal, the Administrator raises two issues: that the law judge erred in finding N840RG airworthy and in reducing the sanction to a 60-day suspension.

When evaluating a law judge's determination that a respondent violated a regulation as the Administrator has alleged, we conduct a *de novo* review.<sup>8</sup> A law judge's findings of fact are "susceptible of *de novo* review."<sup>9</sup> In reviewing the law judge's decision, the Administrator has the burden of proof by a preponderance of the evidence.<sup>10</sup>

The law judge found respondent violated § 43.9(a)(1), which requires each person who performs maintenance to make an entry in the maintenance record. The law judge relied on circumstantial evidence to conclude N840RG was leaking on May 9, 2008, and thus, found respondent's logbook entry incorrect since it failed to note the leaks in accordance with the GMM. We

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<sup>7</sup> As we find for respondent based upon the Administrator's failure to carry the burden of proof, we need not address respondent's additional issues in this opinion and order.

<sup>8</sup> See Administrator v. Andrzejewski, NTSB Order No. EA-5263 at 3, 4 (2006); Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 1 n.5 (1993).

<sup>9</sup> Frohmuth and Dworak, *supra* at 1 n.5; Administrator v. Wolf, NTSB Order No. EA-3450 (1991) (the Board may reverse a law judge's decision if the Board cannot reconcile the law judge's findings with the evidence).

<sup>10</sup> Administrator v. Opat, NTSB Order No. EA-5290 at 2 (2007), citing Administrator v. Van Der Horst, NTSB Order No. EA-5179 at 3 (2005).

reverse the law judge's findings in this regard, as not supported by a preponderance of reliable, probative, and substantial evidence.

We have long held that § 43.9(a)(1) requires maintenance records to be unequivocally accurate, and to describe adequately the work performed on an aircraft.<sup>11</sup> As explained below, we do not believe the Administrator presented sufficient evidence to show that respondent failed to meet this standard.

The Administrator bore the burden of proving that N840RG was leaking on May 9, 2008. The Administrator's evidence showed respondent performed an airworthiness inspection of N840RG on that date. As part of the 12-month inspection, respondent was required to check the aircraft for leaks. Respondent wrote "leaked [sic] checked I/A/W Alphjet International GMM," signed his name, and wrote his certificate number. Exh. A-8. The Administrator also introduced the corresponding maintenance card into evidence. Exh. A-9. On this card, respondent checked the box "no squawks," indicating he observed no deficiencies while completing the card. Id. Neither of the FAA inspectors visited Darby Aviation on May 9, 2008. The inspectors did not observe N840RG leaking on that date and never measured the rate of leak under the requirements of the GMM.

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<sup>11</sup> See, e.g., Administrator v. Hampton, NTSB Order No. EA-5189 at 5-6 (2005) (citing Administrator v. Reeves Aviation, Inc., 6 NTSB 96 (1988)).

In determining that respondent failed to make a specific logbook entry concerning the alleged leak, the law judge relied on leaks the FAA inspectors observed on April 24, 2008, and Mr. Screen observed on May 16, 2008. We believe these dates are too distant in time from May 9, 2008, to establish N840RG was indeed leaking on that date, and that respondent was therefore obligated to document the alleged leak. Furthermore, respondent's comment to the inspectors that the aircraft had leaked for 14 years does not establish that the aircraft was leaking on May 9, 2008. On this topic, we consider relevant Mr. Screen's testimony that Gulfstream aircraft could leak one day and not the next. We accordingly find the Administrator failed to present sufficient evidence to prove the aircraft was leaking on May 9, 2008. Therefore, under these circumstances, respondent's logbook entry sufficed to fulfill his obligation under § 43.9(a)(1).

The law judge declined to find the aircraft unairworthy or that it required repair, but, nonetheless, found respondent violated § 43.13(a) by failing to "timely use methods, techniques, and practices prescribed in the [GMM] when he had knowledge that there were fuel leaks on April 24<sup>th</sup>, 2008." Initial Decision at 427. Respondent challenges the law judge's finding as to § 43.13(a), arguing, among other things, that the Administrator failed to produce sufficient evidence showing that

maintenance was required or was performed. The Administrator, in the FAA's appeal brief, contends the law judge erred in finding N840RG airworthy.

Consistent with our finding regarding the logbook entry, we also find the Administrator did not meet his burden to prove respondent violated § 43.13(a), especially to the extent that the Administrator attempts to prove the § 43.13(a) violation by alleging N840RG was unairworthy under § 21.181(a).<sup>12</sup> In this case, the Administrator specifically pleaded that on or about May 9, 2008, when respondent "returned N840RG to service ... the aircraft was not in an airworthy condition in that it had fuel leaks that were not repaired in an acceptable manner." See Administrator's Complaint at 1 (emphasis added). In these proceedings, "notice pleading" principles require the Administrator to "give only a short and plain statement of the claim showing that the pleader is entitled to relief, and not a complete detailing of all the facts."<sup>13</sup> However, as we noted in Administrator v. Scott, "[b]ecause the complaint is the vehicle by which respondent is given fair notice of the charges he will

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<sup>12</sup> Section 21.181 states that airworthiness certificates are effective as long as the maintenance, preventative maintenance, and alterations are performed in accordance with Parts 43 and 91.

<sup>13</sup> Black's Law Dictionary 1271 (9<sup>th</sup> ed. 2009); see also Administrator v. Darby, NTSB Order No. EA-5521 at 8 (2010).

be expected to defend against and which facts and circumstances underlie those alleged violations, we cannot give any weight to apparent violations which were not alleged in the Administrator's complaint."<sup>14</sup> Consequently, we review this aspect of the pleadings within the context of the Administrator's specific allegations.

The GMM only requires repair of leaks when a drip<sup>15</sup> or a running leak<sup>16</sup> is found. The FAA inspectors never determined the rate of the fuel leak for N840RG under the GMM. Mr. Screen testified that the leaks West Star Aviation found did not exceed the rate of more than 2 drops per minute, and that the GMM does not require repair of such leaks. Tr. at 356, 359. Mr. Screen also opined that N840RG was in an airworthy condition when he inspected it. Tr. at 351. Respondent's logbook entry for May 9, 2008, indicates he leak-checked the aircraft before returning it to service. As the Administrator failed to prove by a preponderance of the evidence that any repairs were

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<sup>14</sup> NTSB Order No. EA-4030 at 6 (1993); see also Administrator v. MacGlashan, 5 NTSB 1539, 1541 (1986) (the complaint establishes the parameters of the Administrator's case); Administrator v. Robinson, 5 NTSB 1690, 1692 (1987) (Board cannot redraft the complaint but must evaluate the evidence in light of the allegations).

<sup>15</sup> A fuel leak at a rate of up to 4 drops per minute. Exh. A-4, A(6)(c)2.

<sup>16</sup> A fuel leak at a rate of 4 drops per minute or greater. Exh. A-4, A(6)(c)3.

necessary, we reverse the law judge's finding as to the § 43.13(a) violation.

As we find no § 43.13(a) violation, it logically follows that the Administrator failed to prove N840RG was unairworthy on May 9, 2008. On appeal, the Administrator argues it was not necessary to charge a violation of 14 C.F.R. § 21.181(a), because any time a mechanic fails to perform maintenance required by the maintenance manual, that failure alone renders the aircraft unairworthy. While such an interpretation may be valid, the Administrator did not provide evidence showing N840RG was leaking when respondent completed his airworthiness inspection on May 9, 2008, nor did the Administrator present testimony to establish the inspectors ever measured the rate of leak when they visited Darby Aviation. This lack of evidence regarding the measurement of the rate of leak, if any existed, defeats the Administrator's argument that the GMM required any maintenance. Therefore, the Administrator's argument concerning airworthiness also fails, as it is premised on respondent failing to perform certain maintenance required by the GMM.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is granted;
2. The Administrator's appeal is denied; and
3. The law judge's decision is affirmed as to airworthiness under 14 C.F.R. § 21.181, is reversed with regard

to the 14 C.F.R. § 43.13(a) and 43.9(a)(1) charges, and the sanction is set aside.

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, ROSEKIND, and WEENER, Members of the Board, concurred in the above opinion and order.

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
OFFICE OF ADMINISTRATIVE LAW JUDGES

\* \* \* \* \*

In the matter of: \*

J. RANDOLPH BABBITT, \*

ADMINISTRATOR, \*

Federal Aviation Administration, \*

Complainant, \*

v. \* Docket No.: SE-18645

JAMES L. ROBERTS, \* JUDGE POPE

Respondent. \*

\* \* \* \* \*

U.S. Tax Court  
Estes Kefauver Courthouse  
Courtroom C-650  
801 Broadway  
Nashville, Tennessee

Friday,  
April 9, 2010

The above-entitled matter came on for hearing, pursuant  
to Notice at 10:05 a.m.

BEFORE: WILLIAM A. POPE, II  
Administrative Law Judge

## APPEARANCES:

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE POPE: The following is my oral initial decision in the matter of the Administrator of Federal Aviation Administration, Complainant, versus James L. Roberts, Respondent, Docket No. SE-18645.

This is a proceeding under the provisions of 49 U.S.C. Section 44709, formerly Section 609 of the Federal Aviation Act, and the provisions of the Rules of the Practices in Air Safety Proceedings of the National Transportation Safety Board.

James L. Roberts, the Respondent, has appealed the Administrator's Order of Suspension, dated July 1, 2009, as amended on November 25, 2009, which pursuant to Section 821.31(a) of the Board's Rules, serves as the complaint in which the Administrator ordered the suspension of any and all mechanic certificates, including his mechanic certificate (number omitted) with airframe and power plant ratings and inspection authorization because he allegedly violated Sections 43.9(a)(1) and 43.13(a) of the Federal Aviation Regulations by returning N840RG, a Gulfstream G-II, to service when it was not in an airworthy condition because of fuel leaks that had not been repaired in an acceptable manner, and failing to adequately describe maintenance he had performed in logbook entries.

In his answer to the complaint, the Respondent admitted paragraph 1 of the complaint and denied all other allegations of

1 the complaint.

2 I have carefully considered the evidence admitted during  
3 the hearing and considered the able closing statements of counsel  
4 for the Administrator and the Respondent.

5 As I said, the following is my oral initial decision.  
6 In summary, the Respondent's appeal is granted in part and denied  
7 in part.

8 At the hearing, the Respondent amended his answer to  
9 admit paragraphs 4 and 5 of the complaint. The Administrator  
10 deleted paragraphs 2, 3, and 4 in his amendment of the original  
11 complaint. And they are not at issue in this proceeding.

12 Paragraph 5 of the amended complaint alleges that on or  
13 about May 9, 2008, the Respondent performed maintenance on civil  
14 aircraft N840RG, a Gulfstream G-II.

15 Paragraph 6 of the amended complaint alleges that the  
16 Respondent returned N840RG to service as airworthy following the  
17 maintenance described in paragraph 5.

18 At issue in this case are, therefore, paragraphs 7 and  
19 8. Paragraph 7 alleges that at the time the Respondent returned  
20 N840RG to service, it was not in an airworthy condition because it  
21 had fuel leaks that were not repaired in an acceptable manner.

22 Paragraph 8 alleges that the logbook entries for the  
23 maintenance failed to adequately describe the maintenance he  
24 performed.



1 required maintenance and preventive maintenance.

2           Exhibit R-2 was identified as a letter from Rick Screen,  
3 a Gulfstream program director for West Star Aviation, to the  
4 Respondent, dated September 5, 2008, stating that on several  
5 occasions in 2008, West Star Aviation worked on N840RG for fuel  
6 leaks and found leaks in a number of locations, but all were  
7 within Gulfstream Maintenance Manual limits for heavy seeps,  
8 equating to two drops per minute or less. The letter states that  
9 the leaks were not uncommon in that type of aircraft.

10           Exhibit R-4 was identified as a maintenance record for  
11 N840RG on paper bearing the letterhead Alpha Jet. The exhibit  
12 begins with an entry on 4/28/08 stating, "Tight lower inboard fuel  
13 panel, left-hand wing 840RG." The entry refers to the Gulfstream  
14 Maintenance Manual.

15           The next entry is dated 4/29/08 and states, "No leaks  
16 noted at this time." It is followed by an illegible name, no  
17 identifying A&P number.

18           Following that are entries through 1/3/09, for the most  
19 part giving a date and stating, "No leaks noted," followed by a  
20 set of initials. In those instances where fuel stains or slight  
21 seeps were noted, they were identified as to locations and noted  
22 to be within limits.

23           R-5 was identified as a West Star Aviation,  
24 Incorporated, ALN Work Order, dated May 16, 2008, for N840RG.

1 There is an entry identified as "squawk 1.2 fuel leaks." The  
2 resolution given here summarized is, "Cleaned fasteners and back-  
3 sealed areas identified as leaks. Removed and replaced fasteners  
4 where required. Cleaned and closed wing leak. Checked wing with  
5 air and found two more leaking fasteners in rear beam. Opened  
6 wing and found two fasteners loose. Removed and replaced  
7 fasteners and back-sealed area. Leak checked with air. Noted.  
8 And fueled and checked the area. No leaks were found."

9           Exhibit R-16 is a letter from the FAA to the Respondent,  
10 dated October 27, 2008, stating that a reexamination of the  
11 Respondent's ability to exercise the privileges of his A&P  
12 certificate on October 27, 2008 was satisfactory.

13           Inspector Arvay was called as a witness and identified  
14 Exhibit A-8 as an airworthiness release for N840RG dated May 9th,  
15 2008, signed by the Respondent with the Respondent's certificate  
16 number. It states, "All components removed, replaced, and/or  
17 reinstalled were rigged appropriately. Checked and leak checked  
18 in accordance with" -- illegible -- "international GMM. With  
19 respect to work performed, I certify the aircraft to be in  
20 airworthy condition and -- illegible -- "returned to service. For  
21 further details see work order listed at top of this page."

22           No. 14 says, "Main landing wheel well compartment-  
23 inspected."

24           Exhibit A-9 is a Gulfstream Computerized Maintenance

1 Program consisting of six pages that is signed on the first page  
2 by the Respondent with his certificate number and is dated May 1,  
3 2008. It is entitled "Main Landing Gear Well Compartment-  
4 Inspection." Section B, inspection item (10) says, "Inspect for  
5 condition and security of fuel system components, line runs and  
6 connections."

7 Section C, Follow-on, item (1) says, "Check for presence  
8 of leaks and/or fluid accumulations."

9 Exhibit A-10 is an airframe log record for N840RG, dated  
10 May 16, 2008, completed by West Star Aviation, which was provided  
11 to Inspector Arvay by Darby Aviation. It says, "Complied with all  
12 following R-2 items: repaired fuel leaks located behind L/H side  
13 brace actuator, and L/H wing. Closed panels per CMP 57210.  
14 Pressure checked L/H wing. No leaks noted. Refueled A/C. No  
15 leaks noted." It contains a return to service signed by Rick  
16 Screen for West Star Aviation.

17 Exhibit A-17 is an extract from the Administrator's  
18 Sanctions Guidance Table showing the sanction for improper  
19 approval for return to service to be suspension for 30 to 120  
20 days, and failure to make maintenance record entry to be  
21 suspension for 30 to 60 days.

22 On cross-examination, Inspector Arvay acknowledged that  
23 he has never himself worked on a Gulfstream G-II and that he last  
24 saw N840RG on April 24, 2008 and did not know if it had fuel leaks

1 on May 9th, 2008. He acknowledged that he saw Exhibit R-2, which  
2 is an e-mail from Rick Screen to the Respondent, dated September  
3 5, 2008, which Mr. Screen later testified he sent at the  
4 Respondent's request which states, in substance, that on most  
5 occasions when West Star Aviation had your aircraft in for work  
6 this year, we also squawked fuel leaks.

7 He went on to say, "The leaks had been in a number of  
8 different locations. All of the leaks we had noted have all been  
9 within the Gulfstream Maintenance Manual limit, not exceeding  
10 limits set forth as a heavy seep, which equates to no more than  
11 two drops per minute. As with any G-II or G-III aircraft I have  
12 worked, the leaks you have had are not uncommon." Mr. Screen  
13 later, in his own testimony on behalf of the Respondent, and in  
14 substance, said the same thing.

15 Inspector Arvay said he had received Exhibit A-10 from  
16 Rick Screen in response to his question as to what leaks they  
17 found, what they repaired, and what they documented. He said he  
18 did not know of other references to fuel leaks in the Gulfstream  
19 Maintenance Manual. He said he knows only that the maintenance  
20 manual calls for frequent inspections. He said he could not  
21 define frequent inspections. He said he had access to the  
22 maintenance log for the Gulfstream on April 29th, but he did not  
23 look at the Gulfstream Maintenance Manual at that time.

24 On redirect, he said he had -- the minimum required for

1 a maintenance entry was description of the work performed with the  
2 mechanic's signature and certificate number.

3           The only witness called by the Respondent was Richard  
4 Screen, who in May 2008 was in charge of the West Star Aviation  
5 maintenance program. He said that N840RG was brought for work by  
6 Darby Aviation to West Star on May 14th or 15th, 2008. He  
7 acknowledged sending the e-mail admitted as Exhibit R-2. He said  
8 that typically that G-II and G-III aircraft have fuel leaks. He  
9 said they are not a problem if the leak is less than two drops per  
10 minute. He said a leak less than that would not ground the  
11 aircraft. He said none of the leaks found by West Star were more  
12 than two drops per minute.

13           He identified Exhibit A-10 as a logbook entry prepared  
14 by West Star and signed by him. He said that Exhibit A-4 is an  
15 excerpt from the repair section of the Gulfstream Maintenance  
16 Manual. Its purpose is to give instructions on how to make  
17 repairs. He said there is a comparable section on leaks in the  
18 inspection portion of the manual. That portion of the manual was  
19 not admitted into evidence or offered into evidence in this  
20 proceeding.

21           He said he has never seen any recording of leaks of less  
22 than two drops per minute in any Gulfstream II or III aircraft he  
23 has worked on. He said that West Start would note such leaks on  
24 an inspection work order, but would not make an entry in the

1 aircraft logbook.

2 AUTHORITY

3 Applicable regulations and case law: FAR Section 43.13,  
4 Performance Rules General: (a) Each person performing  
5 maintenance, alteration, or preventive maintenance on an aircraft  
6 engine, propeller, or appliance shall use the methods, techniques,  
7 and practices prescribed in the current manufacturer's maintenance  
8 manual or instructions for continued airworthiness prepared by the  
9 manufacturer or other methods, techniques, and practices  
10 acceptable to the Administrator except as noted in 43.16.

11 I'll omit reading the rest of that regulation. But I do  
12 incorporate the entire regulation into this proceeding by  
13 reference.

14 FAR Section 43.9, Content Form and Disposition of  
15 Maintenance Records: (a) Maintenance record entries. Except as  
16 provided in paragraphs (b) and (c) of this section, each person  
17 who maintains, performs preventative maintenance, rebuilds or  
18 alters an aircraft, airframe, aircraft engine, propeller,  
19 appliance, or component part shall make an entry in the  
20 maintenance record of that equipment containing the following  
21 information.

22 (1) A description or reference to data acceptable to the  
23 Administrator of work performed.

24 (2) The date of completion of the work performed.

1           (3) The name of the person performing the work if other  
2 than the person specified in paragraph (a)(4) of this section.

3           (4) If the work performed on aircraft, airframe,  
4 aircraft engine, propeller, appliance, or component part has been  
5 performed satisfactorily, the signature, certificate number, and  
6 kind of certificate held by that person approving the work. The  
7 signature constitutes the approval for return to service only for  
8 the work performed.

9           I will omit reading paragraphs (b) and (c) of this  
10 regulation. However, they are incorporated by reference into this  
11 decision.

12           FAR Section 21.181, Duration: (a) Unless sooner  
13 surrendered, suspended, revoked, or a termination date is  
14 otherwise established by the Administrator, airworthiness  
15 certificates are effective as follows: (1) Standard airworthiness  
16 certificates, special airworthiness certificates. Primary  
17 category and airworthiness certificates issued for restricted or  
18 limited category aircraft are effective as long as the  
19 maintenance, preventive maintenance, and alterations are performed  
20 in accordance with Parts 43 and 91 of this chapter and the  
21 aircraft is registered in the United States.

22           In the case of Administrator v. Nyerges, NSTB Order No.  
23 EA-5483 (2009), the Board affirmed a sanction and suspension for  
24 120 days for violation of FAR Sections 43.13(a) and (b) and

1 43.9(d). The Board said that the Administrator had provided  
2 photographs that indicate that the aircraft in question was not  
3 repaired in accordance with methods, techniques, and practices  
4 prescribed in the aircraft maintenance manual and that respondent  
5 did not repair the parts in the manner equal to their original or  
6 properly altered condition. The respondent did not deny that he  
7 had failed to submit a Form 337 concerning the repairs.

8 In the case of Administrator v. Armstrong, NTSB Order  
9 No. EA-5320 (2007), the Board affirmed revocation for violations  
10 that included, among others, violation of FAR Sections 43.13(a)  
11 and (b) and 43.9. The Board said (citations omitted) that it has  
12 previously held that inspectors, mechanics, and operators must  
13 adhere to a high standard when performing maintenance on aircraft.  
14 And it has also recognized that keeping accurate maintenance  
15 records is a critical aspect of complying with the FARs.

16 The Board went on to say that it has previously expected  
17 firm compliance with FAR requirements regarding the performance of  
18 maintenance and keeping adequate maintenance records. The Board  
19 found that the maintenance entries made by the respondent, in that  
20 case, in the aircraft maintenance log, did not include such  
21 required information as the required signature, certificate  
22 number, and kind of certificate held by the person approving the  
23 work and the name of the person performing the work. The Board  
24 concluded that the Administrator had established that respondent

1 violated FAR Section 43.9.

2           The Board further found that a preponderance of the  
3 reliable probative and substantial evidence supports the finding  
4 regarding the improper installation of the nose landing gear  
5 doors. The evidence, therefore, the Board said supports the  
6 allegations that the Respondent failed to use proper maintenance  
7 methods, techniques, and practices in the installation of the  
8 landing gear doors as such. The Board then affirmed the Law  
9 Judge's finding of a violation of FAR Section 43.13(a).

10           In that case the Board further noted that it is bound by  
11 written Agency guidance available to the public, relating to the  
12 sanction to be imposed unless the Board finds that any such  
13 interpretation or case sanction guidance is arbitrary, capricious,  
14 or otherwise not in accordance with law. The Board said it is the  
15 Administrator's burden under the Act to clearly articulate the  
16 sanction sought and to ask the Board to defer to that  
17 determination supporting the request with evidence showing that  
18 the sanction has not been selected arbitrarily, capriciously, or  
19 contrary to law.

20           In Administrator v. Adili, NTSB Order No. EA-5037  
21 (2003), the Board referencing its decision in Administrator v.  
22 Sanders, 5 NTSB 1376 (1985), found a violation of FAR 91.13(a),  
23 where the Respondent did not perform the work, but signed off as  
24 the mechanic and is, therefore, held accountable for the work and

1 the manner of its performance.

2 In Administrator v. Scuderi, NTSB Order No. EA-5321  
3 (2007), in pages 9 to 11, the Board affirmed its long-held  
4 standard that "Airworthiness consists of two prongs: one, whether  
5 the aircraft conforms to its type certificate and applicable  
6 airworthiness directives; and, two, whether the aircraft is in a  
7 condition for safe operation.

8 The Board said that it has recognized that the term  
9 airworthiness is not synonymous with fly-ability. The Board said  
10 that in determining if an aircraft is airworthy, it considers  
11 whether the operator knew or should have known of a deviation in  
12 the aircraft's conformance to its type certificate.

13 In the Scuderi case, the Board concluded that while the  
14 Administrator had not proven that the Respondent's aircraft did  
15 not conform to its type certificate, the Administrator had  
16 nevertheless shown that the aircraft was not in condition for safe  
17 operation when the Respondent operated it, and that the Respondent  
18 in that case knew of the aircraft's condition of questionable  
19 airworthiness.

20 In Administrator v. Nielson, NTSB Order EA-3755 (1992),  
21 the Board noted that an aircraft that is flyable may nonetheless  
22 be considered unairworthy. The Board said that it is not  
23 necessary that the Respondent knew with absolute certainty that a  
24 defect, a broken cable that controlled the carburetor de-icing

1 function in that case, rendered the aircraft unairworthy. It was  
2 enough that he should have known the necessity for availability of  
3 carburetor heat to the proper and safe operation of the aircraft  
4 he was piloting. The Board said that it is the pilot-in-command's  
5 ultimate responsibility to ascertain whether an aircraft is  
6 airworthy.

7 The Board cited the Administrator v. Brodnax, 3 NTSB  
8 2795 (1980), as a case in which it made clear that an aircraft  
9 that is flyable may nonetheless be considered unairworthy.

10 I do not agree that strict liability is not the standard  
11 in this case. Reasonableness certainly plays a strong role here.  
12 But where reasonableness comes in is whether it was reasonable for  
13 the Respondent to know or should have known that a condition  
14 existed that could make the aircraft unsafe to fly. I find  
15 reasonableness is not an issue in this case because the Respondent  
16 admitted that he knew the aircraft had fuel leaks for 14 years.

#### 17 FINDINGS AND CONCLUSIONS

18 The issues in the case on close analysis are fairly  
19 simple. First, did the Respondent violate FAR Section 43.9(a)(1)  
20 by failing to use the methods, techniques, and practices  
21 prescribed in current manufacturer's maintenance manual in the  
22 performance of maintenance or preventive maintenance on N840RG on  
23 May 9, 2008?

24 And, second, did he violate FAR Section 43.13(a) by

1 maintaining or performing preventive maintenance and failing to  
2 make an entry in the maintenance record of N840RG containing the  
3 following information, a description or reference to data  
4 acceptable to the Administrator of work performed?

5           There is no maintenance record of any kind showing that  
6 the Respondent, or anyone else for that matter, performed any  
7 maintenance or preventive maintenance on N840RG for fuel leaks  
8 prior to April 28th, 2008, when the leaks were first observed by  
9 aviation safety inspectors and brought to the attention of the  
10 Respondent, even assuming arguendo, that Exhibit R-4, which is  
11 unsigned and undated, qualifies as a maintenance record. On the  
12 other hand, the Respondent admitted that he knew the aircraft had  
13 been leaking fuel when parked for 14 years.

14           I found that R-4 does not qualify as a maintenance  
15 record because there is no evidence as to who prepared it, when it  
16 was actually prepared, and no description in detail of the work  
17 performed or how it was performed. It is unsigned, undated, and  
18 bears no certificate number of the person who prepared it. I give  
19 no weight to R-4, but instead find that in all probability it was  
20 prepared after the fact of discovery by the FAA that the aircraft  
21 was leaking fuel on April 24, 2008 for purposes of defending  
22 against prosecution.

23           The Respondent had actual knowledge that N840RG was  
24 leaking fuel on April 24, 2008 because the two aviation safety

1 inspectors pointed it out to him and reminded him to follow the  
2 Gulfstream Maintenance Manual. I find both inspectors to be  
3 credible witnesses and nothing has been presented to in any way  
4 impeach their testimony.

5           The aircraft was not delivered to West Star Aviation for  
6 repairs of leaks until May 14 to 16, 2008. At that time West Star  
7 Aviation located and repaired a number of fuel leaks. They did  
8 not find the leaks to exceed the allowable limits though. In  
9 Exhibit R-2, West Star Aviation stated that it had found fuel  
10 leaks in a number of locations, but all were within the Gulfstream  
11 II Maintenance Manual limits for heavy seeps, equating to two  
12 drops per minute.

13           Whether or not they were within the maintenance manual  
14 limits, however, is beside the point and is irrelevant. The  
15 aircraft's maintenance manual states that all leaks are subject to  
16 limitations, which at a minimum include clean surface, record  
17 location, and inspect frequently.

18           The Respondent's contention that he complied with the  
19 Gulfstream Maintenance Manual by finding no leaks on or about May  
20 9, 2008, the date upon which he signed the maintenance release for  
21 the aircraft as airworthy after performing the maintenance noted,  
22 which included checking the wheel wells for leaks and finding  
23 none, is not a defense to the charge against him here that he  
24 violated FAR Section 43.9(a)(1) and 43.13(a).

1           Even assuming arguendo that there were no leaks of fuel  
2 on or about May 9, 2008, which is an assertion supported by  
3 nothing more than a bare maintenance entry with no corroborating  
4 testimony, the date when he signed the maintenance release and  
5 returned the aircraft as airworthy does not mean that there were  
6 no leaks on April 24th, 2008.

7           Leaks of fuel had been pointed out to him by the  
8 inspectors on April 24th, 2008. That necessitated an immediate  
9 compliance with Gulfstream Maintenance Manual to determine the  
10 extent of the leaks and whether they required immediate repair or  
11 grounding until the leaks were repaired.

12           There could be, according to the record, a number of  
13 reasons why the aircraft was leaking fuel on April 24, 2008 and  
14 not on May 9, 2008, including varying amounts of fuel in the tanks  
15 as discussed in the testimony of Mr. Screen, who I also find to be  
16 a credible witness. But in any event, there is no evidence  
17 explaining why there was such a variance on that date if such a  
18 variance existed. It is all just speculation. I find it highly  
19 improbable that the aircraft was not leaking fuel on May 9th,  
20 2008, when the Respondent signed the maintenance release and  
21 certified the aircraft was airworthy and said on the release that  
22 he had checked for leaks and had found none.

23           There is no direct evidence to support the inquiry since  
24 the Respondent chose not to testify and there was no testimony

1 from anyone else who saw the aircraft on or about May 9th, 2008.  
2 There is only the logbook entry itself, which is incomplete and  
3 does not meet the requirements of the Gulfstream Manual or FAR  
4 43.9(a)(1) or 43.31(a). There is, however, convincing  
5 circumstantial evidence that is sufficient to make it very  
6 probable that it was still leaking fuel on or about May 9th, 2008,  
7 notwithstanding the Respondent's unsupported certification that it  
8 was not.

9           The Respondent admitted that the aircraft had leaked  
10 fuel for 14 years. It was seen by aviation safety inspectors to  
11 be leaking fuel on April 24th, 2008. West Star Aviation, the  
12 certificated repair station, found it to be leaking fuel on or  
13 about May 16th, 2008, when it repaired a number of fuel leaks. To  
14 believe that it stopped leaking fuel on or about the last of April  
15 and on May 9th, then started again after that date defies reason  
16 and logic.

17           I am compelled to find that it was leaking fuel on or  
18 about May 9th, 2008, when the Respondent signed the return to  
19 service as airworthy and made that entry in the logbook. I find  
20 that in all likelihood the leaks were there for the Respondent to  
21 see if he had taken the trouble to look for them.

22           There is no testimony and nothing in the logbook entry  
23 or any other reliable maintenance record to indicate what kind of  
24 fuel leaks he did look for or what procedures he followed in

1 looking for them nor that he did anything to measure the quantity  
2 of the leaks and identify the source on April 24th, 2008, all as  
3 required by the Gulfstream Maintenance Manual.

4           Accordingly, I find that maintenance entry the  
5 Respondent made on May 9th, 2008 violated FAR Section 43.9(a)(1)  
6 and 43.13(a). Simply put, I find that on or about April 24th,  
7 2008, when the aircraft was leaking fuel to his knowledge, he  
8 should have complied with the requirements of the Gulfstream  
9 Maintenance Manual, that he determine the class of leak and take  
10 the maintenance action required by the manual, which at a minimum  
11 for a slow seep, seep, or heavy seep required cleaning of the  
12 surface, recording the leak location, and inspect frequently. A  
13 drip would have required returning the aircraft to a suitable  
14 maintenance base to investigate the cause and repair before  
15 further flight. A running leak would have required grounding the  
16 aircraft and immediate repair.

17           Waiting until May 9th, 2008, to perform any kind of  
18 maintenance or inspection, which by FAR Section 1.1 and Board  
19 precedent constitutes maintenance, and thus by inaction at least  
20 allowing for the situation to arise when the aircraft was operated  
21 without his having determined whether the leaks required immediate  
22 repair or grounding.

23           No reason has been advanced as to why the Respondent  
24 chose to wait until on or about May 9, 2008 to inspect for a fuel

1 leak. Because there was a known leak of fuel on April 24th, 2008,  
2 the maintenance entry that should have been made on May 9th, 2008  
3 was after the fact, not timely, and hence was incomplete.

4           The complaint charges a violation of the FAR in Sections  
5 43.9(a)(1). FAR Section 43.9(a)(2) and (3), although not  
6 specifically identified in the complaint, are also relevant  
7 because they are an integral part of the violation of 43.9(a) and  
8 further define what must be included in the maintenance record  
9 required under 43.9. That includes a description of the work  
10 performed or reference to data acceptable to the Administrator,  
11 the date the work was completed, and the name, signature, and  
12 certificate number of the person performing the work.

13           Further, Exhibit A-4, the aircraft's maintenance manual  
14 states that all leaks are subject to limitations, which at a  
15 minimum include for minor leaks, what might be called minor leaks,  
16 includes clean surface, record location, and inspect frequently.  
17 The maintenance manual specifically states that any leaks may be  
18 an indication of a starting structure failure. Consequently, the  
19 source of the leak must be located and the source determined prior  
20 to resealing. At a minimum that includes clean surface, record  
21 location, and inspect frequently.

22           Maintenance actions must be recorded in accordance with  
23 FARs. As established by the evidence, the Respondent failed to  
24 make any timely maintenance entry as required by the Gulfstream

1 Maintenance Manual. And the maintenance entry he made on May 9th,  
2 2008, was incomplete, untimely, and violated FAR Section 43.9(a).

3 The Respondent is also charged with violation of FAR  
4 Section 43.13(a) by performing maintenance or preventive  
5 maintenance without using methods, techniques, and practices  
6 acceptable to the Administrator. The Administrator has shown that  
7 there is no maintenance record that the Respondent did anything at  
8 all about the fuel leaks in the aircraft until after they were  
9 discovered by two aviation safety inspectors and pointed out to  
10 him on April 24, 2008.

11 Then, even when he did take maintenance action on or  
12 about May 9th, 2008, it was not timely and amounted only to an  
13 entry stating no leaks were discovered with no other action noted.  
14 By then the violation of FAR Section 43.9 was complete, and it was  
15 too late for the Respondent to rectify his failure to comply with  
16 that FAR. That is the date when the Respondent was told of the  
17 fuel leaks by the inspectors. And that is the date upon which he  
18 should have made the determinations and maintenance entries  
19 required by the Gulfstream Maintenance Manual.

20 Therefore, I find that the Respondent did not comply  
21 with FAR Section 43.13(a) on or about May 9, 2008, because he did  
22 not timely use methods, techniques, and practices prescribed in  
23 the Gulfstream Maintenance Manual when he had knowledge that there  
24 were fuel leaks on April 24th, 2008.

1           He unaccountably delayed signing off on May 9th, 2008  
2 for work that should have been done on or before April 24, 2008,  
3 and, therefore, his maintenance entry on that date was inaccurate  
4 and does not show that he complied with the Gulfstream Maintenance  
5 Manual. He signed off for work, but he did not perform it. But  
6 nevertheless, he is held accountable for the work and the manner  
7 of its performance or in this case nonperformance. Thus, I find  
8 that the Administrator has proved by a preponderance of the  
9 evidence violation of FAR Section 43.13(a).

10           In paragraph 7 of the complaint, the Administrator  
11 charges that at the time that he returned N840RG to service as  
12 described above on May 9, 2008 -- the paragraph was the aircraft  
13 was not in airworthy condition in that it had fuel leaks that were  
14 not repaired in an acceptable manner.

15           I find, however, that the Administrator has not proven  
16 that the aircraft was unairworthy or that any repairs were  
17 actually required. The violations here involve the Respondent's  
18 failure here to take actions required by the Gulfstream  
19 Maintenance Manual to determine whether the leaks required repair,  
20 as I have describe already in considerable detail.

21           When the leaks found by West Star were repaired on May  
22 16th, 2008, they were found not to require that the aircraft be  
23 taken for repair or grounded until repairs were made. The  
24 Administrator has not shown retroactively to April 24, 2008, when

1 the inspectors discovered the leaks and pointed them out to the  
2 Respondent, that they were any more severe than those found about  
3 three weeks later by West Star Aviation.

4 While FAR Section 21.181(a)(1) states that airworthiness  
5 certificates are valid as long as the maintenance, preventive  
6 maintenance, and alterations are performed in accordance with  
7 Parts 43 and 91, paragraph 7 of the complaint does not charge that  
8 the aircraft had an invalid airworthiness certificate. It charges  
9 that the aircraft was not in airworthy condition on May 9th, 2008,  
10 when the Respondent signed the airworthiness release.

11 Board precedent establishes a two prong test for  
12 determining airworthiness as I have stated above. Namely, one,  
13 whether the aircraft conforms to its type certificate and  
14 applicable airworthiness directives; and, two, whether the  
15 aircraft is in a condition for safe operation. That is the test  
16 that I must apply with regard to paragraph 7 of the complaint.

17 And I find that the Administrator has failed to prove so  
18 much of paragraph 7 as alleges the aircraft was not in airworthy  
19 condition because there is simply no evidence that the aircraft  
20 was unsafe to fly on May 9th, 2008. Such evidence as there is  
21 suggests that it was safe to fly even on May 9th, 2008.

22 The remaining issue here is the matter of sanction.  
23 The Administrator seeks a suspension of the Respondent's A&P  
24 certificate with IA privileges for 120 days. I note that the

1 complaint refers in that part not only to the Respondent's  
2 mechanic certificate with airframe and power plant ratings, but  
3 also says all mechanic certificates held by the Respondent. And,  
4 therefore, that includes the IA. And the sanction sought is  
5 suspension of his certificates and IA privileges for 120 days.

6           However, charges in the original complaint concerning  
7 the fuel leak in another aircraft were withdrawn by amendment of  
8 the complaint before the hearing. And the allegation in paragraph  
9 7 of the amended complaint that the aircraft was not in an  
10 airworthy condition has not been proved.

11           Because of all this, I find that the sanction sought by  
12 the Administrator of suspension of the Respondent's A&P  
13 certificate with IA privileges is too severe and is not warranted  
14 by violations proven, nor is it supported by Board precedent.  
15 Particularly in light of the amendment to the complaint,  
16 dismissing one of the two alleged similar violations with no  
17 accompanying reduction in sanction, I find that the sanction  
18 sought is unwarranted and is not supported by sufficient  
19 aggravating facts.

20           I find that the sanction should be reduced and the  
21 sanction I find to be most reasonable and appropriate and not  
22 contrary to Board precedent is suspension of the Respondent's A&P  
23 certificate with IA privileges for 60 days.

24           On consideration of all the substantial, reliable, and

1 probative evidence of record, I find that the Administrator has  
2 proven by a preponderance of the evidence that the Respondent  
3 violated FAR Sections 43.9(a)(1) and 43.13(a) as alleged in the  
4 complaint. But that reduction of the sanction from suspension of  
5 his mechanic certificate with airframe and power plant ratings and  
6 his IA authorization for 120 days to 60 days is warranted.

7 ORDER

8 ACCORDINGLY, IT IS ORDERED:

9 1. The Respondent's Appeal is granted in part and  
10 denied in part.

11 2. The Administrator's Order with respect to FAR  
12 violations alleged in the complaint is affirmed.

13 3. The Administrator's Order in respect to sanctions  
14 shall be modified that any and all mechanic certificates held by  
15 the Respondent, including his mechanic certificate with airframe  
16 and power plant rating, and his IA authorization shall be  
17 suspended for a period of 60 days.

18

19

20 EDITED ON  
21 MAY 4, 2010

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WILLIAM A. POPE II  
Administrative Law Judge