

SERVED: August 24, 2010

NTSB Order No. EA-5542

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

Issued under delegated authority (49 C.F.R. § 800.24)  
on the 24<sup>th</sup> day of August, 2010

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J. RANDOLPH BABBITT,		)	
Administrator,		)	
Federal Aviation Administration,		)	
		)	
	Complainant,	)	
		)	Docket SE-18547
	v.	)	
		)	
MARK SIMMONS,		)	
		)	
	Respondent.	)	
		)	
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**ORDER DENYING STAY**

Respondent has requested a stay of NTSB Order No. EA-5535, served July 28, 2010, pending disposition of a petition for review of that order to be filed in the United States Court of Appeals. In NTSB Order No. EA-5535, the Board affirmed a 180-day suspension of respondent's airline transport pilot certificate for carelessly operating an aircraft in a banner-towing flight over a congested area below an altitude of 1,000 feet above the highest obstacle in violation of 14 C.F.R. §§ 91.119(a), (b), and (c), 91.311, and 91.13(a). The Administrator did not oppose respondent's request for a stay of the order. The Board denies respondent's request.

The Board's policy with respect to stays of orders pending judicial appeals was summarized in Administrator v. Todd, NTSB Order No. EA-4399 (1995), in which we denied a request for stay of a 180-day suspension: "We generally grant a stay when a suspension of less than six months [180 days] is affirmed ... Cases involving suspensions of six months or more are evaluated on a case-by-case basis, considering the seriousness of the violations." See also Administrator v. Powell, NTSB Order No. EA-4328 (1995), and Administrator v. Auburn Flying Service, 5 NTSB 587 (1985), in which the Board denied respondents' requests for stays of 180-day suspensions. Respondent cites no precedent for a holding that a stay would be appropriate in his case.

The Board in this case, NTSB Order No. EA-5535, determined respondent operated an aircraft over a construction site, a residential area, and a beach below an altitude of 1,000 feet above the highest obstacle. Respondent admitted he made five circles of the area and has a prior, unrelated violation history. Thus, the seriousness of the established violations in this case counsels against a stay.

**ACCORDINGLY, IT IS ORDERED THAT:**

Respondent's request of a stay of the 180-day suspension affirmed in NTSB Order No. EA-5535 is denied.

Gary L. Halbert  
General Counsel