

SERVED: May 20, 2011

NTSB Order No. EA-5585

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 19th day of May, 2011

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J. RANDOLPH BABBITT,)	
Administrator,)	
Federal Aviation Administration,)	
)	
	Complainant,)	
)	Docket SE-18828
	v.)	
)	
MERLE W. AKERS,)	
)	
	Respondent.)	
)	
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OPINION AND ORDER

Respondent and the Administrator appeal the order entering judgment on the pleadings in favor of the Administrator, but reducing the sanction, issued by Chief Administrative Law Judge William E. Fowler, Jr., on December 23, 2010.¹ We deny both appeals and affirm the 180-day sanction.

¹ A copy of the order is attached.

On March 1, 2010, the Administrator issued an order suspending respondent's airman mechanic certificate with airframe and powerplant ratings, and inspection authorization, for a period of 240 days. The Administrator's order alleged respondent violated 14 C.F.R. §§ 43.13(a) and (b),² and 43.15(a)(1).³ The order alleged these violations occurred on June 19, 2009, when respondent performed an annual inspection on a Beech Model A23-24 civil aircraft, and indicated the aircraft was in an airworthy condition, but that sometime on or before June 19, 2009, a NewMar in-line alternator filter, which was an accessory not approved for the engine, had been installed. The order stated respondent failed to ascertain whether anyone had completed a repair or alteration form describing the installation of the filter. The order further alleged that, approximately one and one-half hours of time in service after

² 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; similarly, § 43.13(b) requires each person performing such maintenance to complete the work in such a manner and use materials of such a quality that the condition of the aircraft or part "will be at least equal to its original or properly altered condition" with regard to qualities affecting airworthiness.

³ Section 43.15(a)(1) requires each person performing an inspection to "[p]erform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements."

the aforementioned inspection, respondent again inspected the aircraft and failed again to observe and document that the in-line alternator filter had been installed, that the stabilators were loose beyond acceptable limits, and that a crack in the engine case—which was the source of an oil leak—existed. The order also stated respondent failed to reference and ensure compliance with three separate airworthiness directives applicable to the aircraft, its fuel injection servos, and its Lycoming engine.

On March 15, 2010, the NTSB's Office of Administrative Law Judges received by regular mail an appeal dated March 8, 2010, from respondent, who was then proceeding pro se, of the aforementioned order. On March 19, 2010, the case manager for the Office of Administrative Law Judges sent respondent a letter acknowledging receipt of his appeal and advising him that he was required to submit an answer to the Administrator's complaint within 20 days. The letter described an answer as a document containing an admission or denial of each paragraph of the Administrator's order, and stated, "[f]ailure to file an answer with the Board, responding to each allegation in the Order/Complaint may be deemed an admission of the charge or charges not answered. **THEREFORE, THE FILING OF A TIMELY ANSWER IS A VERY IMPORTANT STEP IN THE PROTECTION OF YOUR RIGHTS.**"

Letter dated Mar. 19, 2010, at 1 (emphasis in original).

Attached to the letter was an optional answer form, as well as a copy of the Board's Rules of Practice, codified at 49 C.F.R. part 821.

The Administrator also reissued the order as the complaint in the case on March 19, 2010, in accordance with 49 C.F.R. § 821.31(a). Under 49 C.F.R. § 821.31(b), respondent's deadline for filing an answer to the complaint was April 8, 2010. Specifically, § 821.31(b) provides, "[t]he respondent shall ... file with the Board an answer to the complaint within 20 days after the date on which the complaint was served by the Administrator," and that, "[f]ailure by the respondent to deny the truth of any allegation or allegations in the complaint may be deemed an admission of the truth of the allegation or allegations not answered."

On April 26, 2010, the Administrator filed a motion for judgment on the pleadings, on the basis that respondent had not submitted an answer to the complaint. Respondent did not respond to the Administrator's motion. On December 23, 2010, the law judge served the order at issue here, deeming all the factual allegations in the complaint admitted, based on respondent's failure to answer the complaint and failure to show good cause for not answering. On December 31, 2010, respondent, through a designated representative, appealed the law judge's order in a standard form, and attached a document responding to

individual paragraphs of the Administrator's complaint. This "appeal" does not mention respondent's failure to answer the Administrator's complaint, nor does it assert good cause for the delay; instead, it argues the merits of the complaint.

Based on § 821.31(b), the Board has stated that a respondent's failure to submit a timely answer will result in judgment on the pleadings against the respondent.⁴ In the case at hand, respondent did not provide any type of responsive document concerning the Administrator's complaint until December 31, 2010. In this document, respondent also did not assert good cause to excuse this 8-month delay. Therefore, we affirm the law judge's entry of judgment on the pleadings, in favor of the Administrator.

With regard to sanction, the Administrator has appealed the law judge's reduction in sanction in his order entering judgment on the pleadings. The Administrator argues 49 U.S.C. § 44709(d)(3) requires the Board to defer to the Administrator's

⁴ Administrator v. Diaz, NTSB Order No. EA-4990 (2002), aff'd, Diaz v. Dep't of Transp., 65 Fed. Appx. 594 (9th Cir. 2003); see also, e.g., Administrator v. Reid, NTSB Order No. EA-5508 (2010); Administrator v. McLarty, NTSB Order No. EA-3760 (1993); Administrator v. Sutton, 7 NTSB 1282 (1991); Administrator v. Blaesing, 7 NTSB 1075 (1991); Administrator v. Sanderson, 6 NTSB 748 (1988); cf. Administrator v. Ocampo, NTSB Order No. EA-5113 (2004) (stating a notice of appeal that specifically admits or denies the allegations in the complaint may function as a de facto answer, but indicating this consideration does not apply to a respondent's failure to file an answer or any responsive document at all).

choice of sanction.⁵ We have held that it is the Administrator's burden under 49 U.S.C. § 44709 to articulate clearly the sanction sought, and to ask the Board in a timely manner to defer to that determination.⁶ We also have held that the Administrator must support the request for deference with evidence showing that the sanction has not been selected arbitrarily, capriciously, or contrary to law.⁷ In determining whether the Administrator's choice of sanction is appropriate, we have indicated that we will consider any mitigating and aggravating factors unique to each case.⁸

The Administrator argues that the law judge did not have the authority to reduce the sanction, because he did not make a finding that the Administrator's choice of sanction was

⁵ Title 49 U.S.C. § 44709(d)(3) provides as follows:

The Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

⁶ Administrator v. Peacon, NTSB Order No. EA-4607 at 10 (1997).

⁷ Id.; see also Administrator v. Oliver, NTSB Order No. EA-4505 (1996) (no deference where the Administrator introduced no evidence regarding applicable or relevant sanction guidance).

⁸ Administrator v. Simmons, NTSB Order No. EA-5535 at 9 (2010); see also Administrator v. Hackshaw, NTSB Order No. EA-5501 at 23 (2010).

arbitrary, capricious, or not in accordance with law, pursuant to 49 U.S.C. § 44709(d)(3). The Administrator also contends the numerous cases the law judge cited in his order are inapposite, as they are factually distinguishable and comport with the Administrator's calculation of sanction in this case.⁹

The Administrator does not deny the basis of the complaint against respondent involves respondent's failure to resolve five discrepancies on one aircraft. While the Administrator asserts respondent's failure to document and resolve these discrepancies was "egregious," the Administrator provides no evidence indicating exactly why respondent's conduct was so serious, or explaining how the Administrator concluded a sanction of 240 days was appropriate. Instead, the Administrator generally asserts each discrepancy "posed a separate and distinct risk to safety and to the public interest." Appeal Br. at 16. The one aggravating factor the Administrator alleges exists in this case is the fact that respondent holds an inspection authorization, which we have previously indicated requires the utmost level of care and judgment.¹⁰

⁹ The cases the law judge cited indicate we have previously imposed lesser penalties for violations of 43.13(a) and (b), and 43.15(a)(1), unless the violations involve numerous aircraft and multiple discrepancies. Order at 6-7.

¹⁰ Administrator v. Wilson, NTSB Order No. EA-4013 at 9 (1993) (citing Administrator v. Garrelts, NTSB Order No. EA-3136 (1990), and Administrator v Saylor, 2 NTSB 366 (1973)).

We do not find persuasive the Administrator's arguments concerning the reduction in sanction. The Administrator's assertion that the law judge erred in not finding the choice of sanction arbitrary or capricious is contrary to the law judge's lengthy discussion of the case law and rationale that the Administrator's choice of sanction in this case differs from our precedent concerning violations of §§ 43.13(a) and (b), and 43.15(a)(1). Furthermore, the law judge referred to the Administrator's Sanction Guidance Table¹¹ in support of the reduction in sanction. The Administrator argues compounding the suspension periods as a result of the violations is appropriate. With regard to §§ 43.13(a) and (b), and 43.15(a)(1), the Table provides the following ranges of suspension:

- 60 days to revocation of IA for failure to accomplish inspection properly; and
- 30 to 120 days for failure to perform or improper performance of maintenance.

Sanction Guidance Table at B-22—B-23. The Administrator's complaint alleged a total of five violations of the aforementioned regulations.

We have carefully reviewed the law judge's decision, and believe his assessment of our previous cases concerning sanctions for maintenance violations similar to those at issue in this case is correct. The cases in which we held a sanction

¹¹ FAA Order 2150.3B, Appendix B.

of 240 days or more was proper involved the certificate holder making numerous discrepancies, often on many different aircraft. Conversely, our case law indicates our imposition of a sanction of less than 240 days in cases involving fewer aircraft and fewer discrepancies. Overall, we do not believe the law judge erred in reducing the sanction in this case to 180 days.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's appeal is denied;
3. The law judge's order, including the reduction of sanction from 240 to 180 days, is affirmed; and
4. The 180-day suspension of respondent's airman mechanic certificate with airframe and powerplant ratings, and inspection authorization, shall begin 30 days after the service date indicated on this opinion and order.¹²

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

¹² For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(g).

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

J. RANDOLPH BABBITT,
ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION,

Complainant,

v.

Docket SE-18828

MERLE W. AKERS,

Respondent.

**ORDER ENTERING JUDGMENT ON THE PLEADINGS IN
ADMINISTRATOR’S FAVOR, WITH MODIFICATION IN SANCTION**

Served: Eldon Holtz, Representative
4030 Adams Street
Strasburg, Colorado 80136
(BY CERTIFIED MAIL)

Scott R. Morris, Esq.
Federal Aviation Administration
Northwest Mountain Region
1601 Lind Avenue, S.W.
Renton, Washington 98055

(BY FAX)

On March 1, 2010, the Administrator of the Federal Aviation Administration (“FAA”) issued an order suspending respondent’s airman mechanic certificate with airframe and powerplant ratings, and inspection authorization for 240 days, for alleged violations of §§ 43.13(a) and (b), and 43.15(a)(1) of the Federal Aviation Regulations (“FAR,” codified at 14 C.F.R.).¹

¹ The aforesaid FARs provide as follows:

“§ 43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer’s maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16 [(which provides additional performance rules for inspections)]. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recom-

The Administrator's order contains the following factual allegations:

1. You are now, and at all times mentioned herein were, the holder of Mechanic Certificate No. [omitted] with Airframe and Powerplant [R]atings and Inspection Authorization.
2. On June 19, 2009, you performed maintenance (annual inspection) on a Beech Model A23-24 civil aircraft, N5678S, and made an entry in the maintenance records of N5678S, in which you stated that N5678S had been inspected in accordance with (the requirements for) an annual inspection and that the aircraft was in an airworthy condition.
3. Sometime on or before June 19, 2009, a NewMar in-line alternator filter had been installed on N5678S. This was an installation of an accessory which was not approved for the engine and was, therefore, a powerplant major alteration.
4. At the time you approved N5678S for return to service, you failed to ascertain that a repair or alteration form authorized or furnished by the FAA as prescribed in Appendix B of 14 CFR Part 43 had been executed in [a] manner prescribed by the FAA, or otherwise ascertain that the installation of the in-line filter was consistent with instructions found within the manufacturer's manual or other procedures approved by the FAA.
5. A subsequent inspection of N5678S, which occurred after N5678S had accumulated approximately one and one-half hours time in service after the annual inspection revealed that you failed to perform the inspection described in Paragraph 2, and related maintenance, as required by the manufacturer's manual or other methods, techniques and practices acceptable to the Administrator, specifically:
 - a. As required by FAR Part 43, Appendix D, (g), you failed to observe that the stabilators were loose beyond the acceptable limits and you failed to correct this discrepancy.
 - b. You failed to observe the in-line filter installation described above, and you failed to correct this dis-

mended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

“§ 43.15 Additional performance rules for inspections.

(a) *General.* Each person performing an inspection required by part 91, 125, or 135 of this chapter shall —

(1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements.”

- crepancy, as required by FAR Part 43, Appendix D, (d)(10).
- c. As required by FAR Part 43, Appendix D, (d)(1), you failed to observe a crack in the engine case which was the source of an oil leak, and you failed to correct this discrepancy.
 6. Airworthiness Directive (AD) 87-02-08 was issued with an effective date of March 4, 1987, and was made applicable to all Beach 23-24 models which includes N5678S.
 7. Airworthiness Directive (AD) 2009-02-03 was issued with an effective date of February 9, 2009, and was made applicable to all aircraft in which Bendix RSA-5 Fuel Injection Servos are installed, including aircraft N5678S.
 8. Airworthiness Directive (AD) 2008-14-07 was issued with an effective date of August 14, 2008, and was made applicable to all aircraft in which Lycoming Model 10-360 (A2B) engines are installed, including aircraft N5678S.
 9. At the time you made the maintenance entry referenced in [P]aragraph 2, you failed to ensure that the ADs referenced in [P]aragraphs 8, 9 and 10 had been complied with.
 10. As specified above, in maintaining N5678S, you failed to use the methods, techniques and practices prescribed in the current manufacturer's maintenance manual, or other acceptable methods, techniques and practices.
 11. As specified above, you failed to do maintenance work in such a manner so as to ensure that N5678S was at least equal to its original or properly altered condition.
 12. As specified above, you failed to perform an inspection required by Part 91 (14 CFR) of the Federal Aviation Regulations so as to determine whether N5678S or portions thereof under inspection, met all the applicable airworthiness requirements.

Thereafter, on March 15, 2010, this office received by regular mail from respondent, who was then acting *pro se*, an appeal from that order, which was dated March 8, 2010. This office's Case Manager then transmitted to respondent on March 19, 2010 a letter acknowledging the receipt of his appeal, which informed him that he was required to submit an answer to the Administrator's complaint within 20 days of the complaint's service upon him. Specifically, that acknowledgement letter stated, in relevant part (emphasis original):

Section 821.31(b) of [the Board's] Rules requires that you file with this office your answer to the Administrator's Complaint in this proceeding. **The Complaint is a copy of the order that is re-filed by the FAA.** It is important to note that the "date of mailing" is the "date of service" in all documents pertaining to this proceeding. An answer, according to our Rules, must contain an admission or denial of each and every paragraph of the charges/allegations in the FAA's Order/Complaint. Failure to file an answer with the Board, responding to each allegation

in the Order/Complaint may be deemed an admission of the charge or charges not answered. **THEREFORE, THE FILING OF A TIMELY ANSWER IS A VERY IMPORTANT STEP IN THE PROTECTION OF YOUR RIGHTS.** Your answer, to be timely, must be postmarked 20 days from the date the Administrator's complaint was placed in the U.S. Mail. . . . Enclosed is an optional answer form for your use. This form is also available in Adobe Acrobat format on the NTSB Website at www.NTSB.gov under the heading "Legal Matters."

In addition to the paper copy of the answer form referenced therein (Answer Form NTSB.2005.1), the appeal acknowledgment letter was accompanied by a series of informational items, including a copy of the Board's Rules of Practice in Air Safety Proceedings (49 C.F.R. Part 821).

The Administrator reissued the suspension order as the complaint in this proceeding, pursuant to Rule 31(a) of the Board's Rules (codified at 49 C.F.R. § 821.31(a)), on March 19, 2010.² Thus, under Rule 31(b) (codified at 49 C.F.R. § 821.31(b)), respondent's deadline for filing an answer to the complaint was April 8, 2010.³

On April 9, 2010, this office received from respondent's representative an undated entry of appearance to act in that capacity herein. Thereafter, on April 26, 2010, counsel for the Administrator filed a motion for the entry of a judgment on the pleadings in the Administrator's favor in this matter, on the basis that respondent had not, as of that time, submitted an answer to the complaint. That motion was served on both respondent and his representative on said date;⁴ however, neither respondent nor his representative have, since that time, filed an answer to the complaint, submitted a reply to the Administrator's motion for judgment on the pleadings, or provided any explanation for respondent's failure to submit an answer. Accordingly, the undersigned will now undertake consideration of the Administrator's motion based on the record in this proceeding, as currently constituted.

In *Administrator v. Diaz*, NTSB Order EA-4990 (2002), affirmed *sub nom.*, *Diaz v. Department of Transportation*, 65 Fed. Appx. 594 (9th Cir. 2003), the Board, noting that the submission of an answer is critical to the air safety enforcement appeal litigation process, affirmed an NTSB administrative law judge's ruling not accepting a respondent's late-filed answer, and, on the basis of the resulting deemed admissions, entering a judgment on the pleadings against him. There, the Board held that the standard to be applied in deciding

² Under Rule 31(a), "[t]he order of the Administrator from which an appeal has been taken shall serve as the complaint. The Administrator shall . . . file the complaint with the Board within 10 days after the date on which he or she was served with the appeal by the respondent, and shall simultaneously serve a copy of the complaint on the respondent."

³ Rule 31(b) specifically provides that "[t]he respondent shall . . . file with the Board an answer to the complaint within 20 days after the date on which the complaint was served by the Administrator," and that "[f]ailure by the respondent to deny the truth of any allegation or allegations in the complaint may be deemed an admission of the truth of the allegation or allegations not answered."

⁴ See Administrator's Motion at 3.

whether a late-filed answer should be accepted is whether the respondent has shown good cause for the delay in its submission.⁵

Because respondent here has neither filed an answer to the Administrator's complaint nor shown good cause for his failure to do so, the undersigned will, pursuant to *Diaz*, deem all of the factual allegations of the complaint to have been admitted by him. Since such deemed admissions are sufficient to establish violations of FAR §§ 43.13(a), 43.13(b) and 43.15(a)(1), the undersigned will also find that respondent violated those FAR provisions, as is charged in the complaint.

Turning to the propriety of the 240-day suspension ordered by the Administrator in this case, the undersigned notes that respondent's deemed admissions establish his responsibility for three maintenance discrepancies relating to the annual inspection of N5678S that he conducted on June 19, 2009,⁶ specifically: (1) a failure to observe that the aircraft's stabilators were loose beyond acceptable limits and to correct that deficiency; (2) a failure to observe that an in-line alternator which was not approved for that aircraft's Lycoming engine had been installed (which, because said part was not approved for that engine, constituted a major alteration of the aircraft's powerplant) and to correct that situation; and (3) a failure to observe a crack in the engine case (which was the source of an oil leak) and to correct that condition. *Each* such discrepancy forms a basis for the establishment of violations of FAR § 43.13(a) (failure to use acceptable methods, techniques and practices in performing maintenance), § 43.14(b) (failure to perform maintenance in such a manner and use materials of such a quality to insure that the condition of the aircraft or aircraft part in question is at least equal to its original or properly-altered condition) and § 43.15(a)(1) (failure to insure compliance with applicable ADs).

In support of the imposition of a 240-day suspension, the Administrator's motion references provisions of the FAA's Enforcement Sanction Guidance Table (FAA Order 2150.3B, Appendix B) which provide for a 30 to 60-day suspension for failure to perform or improper performance of maintenance (Fig. B-3-e.(2) at p. B-22) and a 60-day suspension to revocation of an inspection authorization for the failure of the holder of such an authorization to accomplish an inspection properly (Figs. B-3-e.(5) at p. B-23). There is nothing in the record which explains precisely how the 240-day suspension assessed was arrived at, and the undersigned must, therefore, speculate that an 80-day suspension was somehow allotted *per discrepancy* by adding the sanctions deemed appropriate for either: (a) respondent's failure to perform maintenance and his failure to conduct a proper inspection with respect to each deficiency, or (b) each of the three regulatory violations to which each of the discrepancies gave rise.

⁵ NTSB Order EA-4990 at 4-5. See also Rule 11(a) of the Board's Rules of Practice (codified at 49 C.F.R. § 821.11(a)), and *Administrator v. Hooper*, 6 NTSB 559, 560 (1988), on remand from *Hooper v. Nat'l Transp. Safety Bd.*, 841 F.2d 1150 (D.C. Cir. 1988).

⁶ Inspection is considered to be a form of maintenance. See FAR § 1.1 ("*[m]aintenance* means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance"). See also *Administrator v. Scott*, NTSB Order EA-4030 at 8 (1993) ("inspections are a form of maintenance which are subject to the performance rules in [§] 43.13); *Administrator v. Raab*, NTSB Order EA-5300 at 10-11 (2007) ("inspections are subject to the requirements of §§ 43.13 and 43.15").

As the Administrator's motion points out (at 2), 49 U.S.C. § 44709(d)(3) provides that "the Board is bound by . . . written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds [it] arbitrary, capricious, or otherwise not in accordance with law." It should also be noted that, in addition to the specific Sanction Guidance Table provisions cited in the Administrator's motion, the Sanction Guidance Policies chapter of FAA Order 2150.3B (Chapter 7) provides that, "[w]hen a single instance of noncompliance results in multiple violations of general and specific regulations involving the same or similar conduct, *the FAA ordinarily does not compound the sanction to reflect the amount of sanction recommended in the table for each regulatory violation.* In calculating the amount of sanction for multiple violations, FAA enforcement personnel consider the totality of circumstances relating to the multiple violations."⁷

The undersigned has undertaken a review of all cases involving violations of FAR §§ 43.13(a), 43.13(b) and 43.15(a)(1) in which decisions were rendered by the full Board over the past 20 years, and notes that, in comparison to those cases, the Administrator's imposition of a 240-day suspension in this matter appears to be unjustifiably excessive. While many of those Board decisions do not include a specific discussion of sanction, it is noteworthy that, in cases not involving an additional element of intentional falsification of maintenance records or logbooks, a significantly lower sanction was generally pursued by the Administrator and/or arrived at by the Board. The non-falsification cases resulting in a 240-day suspension or greater sanction involved: "numerous discrepancies" (*Administrator v. Marrone*, NTSB Order EA-3661 (1992) (revocation)); 32 discrepancies on multiple aircraft (*Administrator v. Dilavore*, NTSB Order EA-3879 (1993) (revocation)); the switching of aircraft data plates (*Administrator v. Potanko*, NTSB Order EA-3937 (1993) (eight-month suspension)); approximately 100 discrepancies on multiple aircraft (*Administrator v. Missouri Aerotech Industries, Inc.*, NTSB Order EA-3999 (1993) (revocation)); eight discrepancies on an annual inspection (*Administrator v. Adams*, NTSB Order EA-4247 (1994) (one-year suspension)); "extremely deficient" maintenance, inspection, and record-keeping practices over several years, resulting in a finding of "disturbing" conduct (*Administrator v. Baer*, NTSB Order EA-4619 (1998) (revocation)); nine discrepancies (*Administrator v. Marley*, NTSB Order EA-4877 (2001) (10-month suspension)); a knowing commission of violations and failure to make maintenance records available to FAA officials (*Administrator v. Ford*, NTSB Order EA-5120 (2004) (revocation)); failure to make logbook notations of aircraft condition warnings verbally given to a pilot (*Administrator v. Barber*, NTSB Order EA-5232 (2006) (250-day suspension)); notation of over 25 discrepancies, with no action being taken and a fatal crash resulting (*Administrator v. Raab, supra*, (revocation)); and performance of unauthorized maintenance by an aircraft's owner, who also deliberately conducted flights of that aircraft in a known unairworthy condition (*Administrator v. Armstrong*, NTSB Order EA-5320 (2007) (revocation)).

The vast majority of cases resulted in a lesser sanction than a 240-day suspension, and the undersigned discerns the customary length of suspension sought by the Administrator and/or arrived at by the Board in the absence of one or more aggravating

⁷ FAA Order 2150.3B Chap. 7, § 6.c., at pp. 7-10–7-11 (emphasis added).

factors to be between 30 and 60 days per discrepancy. Given the establishment of three discrepancies here, and the absence of any aggravating factors, it would appear that the maximum appropriate sanction in this matter would be a suspension of 180 days. Since respondent has offered no reasons for the imposition of a lesser sanction, a suspension of that length will be ordered.

THEREFORE, IT IS ORDERED that the factual allegations set forth in the Administrator's complaint in this proceeding (Paragraphs 1 through 12) are deemed admitted due to respondent's failure to file a timely answer to the Administrator's complaint or provide good cause for such failure;

IT IS FURTHER ORDERED that, based on such deemed admissions, respondent is found to have violated §§ 43.13(a) and (b), and 43.15(a)(1) of the Federal Aviation Regulations, as charged by the Administrator in the complaint;

IT IS FURTHER ORDERED that the 240-day suspension of respondent's airman mechanic certificate with airframe and powerplant ratings, and inspection authorization, that was ordered by the Administrator for those violations is reduced to a suspension of 180 days; and

IT IS FURTHER ORDERED that the Administrator's motion for judgment on the pleadings is hereby GRANTED, WITH MODIFICATION IN SANCTION, as ordered above.

Entered this 23rd day of December, 2010, at Washington, D.C.

William E. Fowler, Jr.
Chief Administrative Law Judge