UNITED STATES DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

WASHINGTON, DC

In the Matter of:	FAA Order No. 98-18
GENERAL AVIATION, INC.	Served: October 9, 1998
	Docket No. CP96NM0112

DECISION AND ORDER[1]

This case involves the allegation that Respondent General Aviation, Inc., a company that runs a flight school and provides rental aircraft to the public, rented an aircraft on numerous flights with uncleared mechanical discrepancies. After a hearing, Administrative Law Judge Burton S. Kolko found that General Aviation violated the regulations listed in the complaint[2] and assessed General Aviation a $7,500 civil penalty.[3]

---

1 The Administrator's civil penalty decisions are available on LEXIS, WestLaw, and other computer databases. They are also available on CD-ROM through Aeroflight Publications. Finally, they can be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, *see* 63 Fed. Reg. 37,914, 37,929 (July 14, 1998).

2 14 C.F.R. §§ 91.205(a) & (b)(9) (operating an aircraft with an inoperable fuel gauge); 91.7(a) (operating an unairworthy aircraft); and 91.405(a) (failing to have discrepancies repaired between required maintenance).

The text of these regulations is as follows:

> 14 C.F.R. § 91.205(a): "[N]o person may operate a powered civil aircraft with a standard category U.S. airworthiness certificate in any operation described in paragraphs (b) through (f) of this section unless that aircraft contains the instruments and equipment specified in those paragraphs or (FAA-approved equivalents) for that type of operation and those instruments and items of equipment are in operable condition."
>
> 14 C.F.R. § 91.205(b)(9): "(b) Visual-flight rules (day). For VFR flights during the day, the following instruments and equipment are required: ... (9) Fuel gauge indicating the quantity of fuel in each tank."

General Aviation then filed the instant appeal, which challenges both the finding of violations and the penalty amount.

The facts are as follows. During a routine inspection,[4] FAA inspectors discovered that General Aviation had been renting out a Cessna 172 aircraft for the previous 19 days, even though a pilot had recorded on the aircraft's "Squawk Reporting Sheet" that the left fuel gauge was stuck and the fuel strainer was sticking occasionally.[5] (Tr. 20-21; Complainant's Exhibit 1.) The accompanying blocks on the sheet labeled "Remedy," "Date," and "Signature" were blank (Tr. 20) because General Aviation had not taken any action regarding the noted discrepancies.

The inspectors advised General Aviation's President, Donald Orton, that the discrepancies needed to be cleared. (Tr. 23.) According to the inspectors, Mr. Orton told them that the fuel gauges had been a problem for the preceding 5 years, ever since he bought the aircraft. He said that he had consulted numerous mechanics, spent a great deal of money, and the problem could not be fixed. (Tr. 23, 35, 55.) Mr. Orton also told the inspectors that he had instituted a policy of requiring pilots to use a dipstick to check the fuel quantity before flights, but he was unable to provide any written documentation of

---

14 C.F.R. § 91.7(a): "No person may operate a civil aircraft unless it is in an airworthy condition."
14 C.F.R. § 91.405(a): "Each owner or operator of an aircraft – (a) Shall have that aircraft inspected as prescribed in subpart E of this part and shall between required inspections, except as provided in paragraph (c) of this section, have discrepancies repaired as prescribed in part 43 of this chapter."

3 A copy of the law judge's written initial decision is attached.

4 The inspection took place on January 10, 1996.

5 The pilot's entry was dated December 22, 1995.

the policy. (Tr. 24, 35.) The inspectors' testimony that Mr. Orton admitted there was a problem with the fuel gauges was corroborated by a letter from Mr. Orton stating, "We were destined to use an intermittently unreliable indicator that we inherited with the airplane in 1990.... Our procedure was to visually check each tank with a provided dip stick prior to each flight." (Complainant's Exhibit 4.)

The inspectors advised Mr. Orton that a policy of using a dipstick, written or not, would not resolve the discrepancies. (Tr. 23-25.) They also told him that they were certain something could be done to correct the problem. (Tr. 23.)

When the inspectors returned to their car, one of them said that he was still not sure that Mr. Orton understood that he needed to correct the problem. (Tr. 25.) As a result, the other inspector returned to Mr. Orton's office to make sure he understood that General Aviation needed to take action before the aircraft was operated again. (*Id.*)

When the inspectors returned 2 days later,[6] they found the following entry on the aircraft's squawk reporting sheet: "Fuel gauge checks ok on left. Fuel strainer could not repeat squawk (will monitor) – ET."[7] (Complainant's Exhibit 1.) According to the inspectors, the entry was improper, not just because it failed to include a signature and certificate number,[8] but also because the individual who made the entry (a flight instructor and pilot named Eric Tupper who worked for General Aviation) (Tr. 54) was

---

6 The inspectors returned to General Aviation on January 12, 1996.

7 This entry was dated January 11, 1996.

8 Under 14 C.F.R. § 91.417(a)(1)(i)-(iii), maintenance records must include a description of the work performed, the date of completion, and the signature and certificate number of the person approving the aircraft for return to service.

not authorized to return aircraft to service after performing maintenance. (Tr. 72.) (*See* 14 C.F.R. §§ 43.3 and 43.7, which list the categories of authorized persons. The list includes holders of mechanic and air carrier certificates, but does not include flight instructors.)

The inspectors advised Mr. Orton that the open discrepancies still needed to be cleared by a person with authority to do so. (Tr. 54.) The inspectors reminded Mr. Orton that the regulations required his aircraft to have a working fuel gauge for each tank, and that it was impermissible to develop one's own technique for compensating for inoperable instruments. (Tr. 56.) The inspectors assured Mr. Orton that there was a remedy for the problem and they offered to help put him in touch with the manufacturer to bring more expertise to bear on the problem. (Tr. 61, 62.) Shortly thereafter, the inspectors passed along to Mr. Orton information regarding a service bulletin and kit available to fix problems in the Cessna's fuel quantity indicating system. (Tr. 64, 69; Complainant's Exhibit 2.) General Aviation, however, continued to ignore the FAA inspectors' advice and to rent out the aircraft without taking any action to resolve the open discrepancies.

Six days after their second visit, the FAA inspectors visited General Aviation a third time.[9] (Tr. 70.) Once again, they explained to Mr. Orton that Eric Tupper was not qualified to perform maintenance or to clear the discrepancies. (Tr. 72.) They repeated that the aircraft needed to go to a repair shop so that a certificated mechanic could

---

9 The FAA inspectors' third and final visit to the General Aviation facility took place on January 18, 1996.

determine whether the components noted on the squawk reporting sheet were working properly. (*Id.*)

After the inspectors' third visit, General Aviation removed the aircraft from service and took it to a repair station for inspection and repair. (Tr. 75.) According to the aircraft's maintenance records, a company called Airtech Instrument Company repaired both fuel tank gauges, and 15 days after the aircraft was taken out of service, General Aviation's regular repair station, Talon Aviation, re-installed them.[10] The aircraft had flown 26 flights during the 20 days that passed between the date the discrepancies were noted and the date they were properly cleared. (Complainant's Exhibit 3.)

When the FAA inspectors checked the aircraft's maintenance records they saw no indication that General Aviation had consulted any mechanics about the problem, as Mr. Orton had claimed. (Tr. 63.) Mr. Orton was unable to produce any records supporting his claim that he had consulted many mechanics about the problem at great expense. (Tr. 55.) Moreover, none of the pilots who rented the aircraft testified that they were aware of any General Aviation policy requiring them to use a dipstick to test the fuel level, as Mr. Orton had claimed. (Tr. 100, 115, 119.)

In a response to a letter of investigation from the agency, General Aviation stated that when the pilot who recorded the discrepancy told General Aviation about the problem (the same day he recorded it), Eric Tupper went to the aircraft, tapped the gauge, and the needle "immediately pointed to a position consistent to the observed fuel in the tank." (Complainant's Exhibit 4.) As for the fuel strainer, at the hearing General

---

[10] The gauges were reinstalled on February 2, 1996.

Aviation introduced an affidavit signed by Mr. Tupper which indicated that he also told the pilot that the fuel strainer drain valve may stick during cold weather, and "all one needs to do is jiggle it a bit to allow it to seat properly." (Respondent's Exhibit 1.) General Aviation argued in its response to the agency's letter of investigation that Mr. Tupper's actions constituted preventive maintenance.

After the hearing, the law judge issued a written initial decision in which he rejected General Aviation's argument that the squawk reporting sheet is not an official maintenance record. (Initial Decision at 4.) Noting that the regulations do not mandate any specific form, the law judge held that General Aviation's "Squawk Reporting Sheet" constituted a maintenance record under the regulations because the entries General Aviation was required to keep were contained there. (*Id.*)

The law judge rejected General Aviation's argument that the problem was not with the left fuel gauge, as the complaint indicated, but with the right fuel gauge. (Initial Decision at 4.) According to the law judge, this argument missed the point because the case was about whether General Aviation flew its aircraft with open discrepancies. (*Id.*) The law judge noted also that General Aviation's President, Donald Orton, had acknowledged to the inspectors that the left fuel gauge was unreliable and had been for some time. (*Id.*)

The law judge was unpersuaded by the testimony of five pilots who flew the aircraft before the discrepancies were resolved, to the effect that they detected nothing amiss.[11] (Initial Decision at 5.) The law judge noted that there was evidence showing

---

[11] These five pilots testified on behalf of General Aviation. All told, more than 20 pilots flew the aircraft with the unresolved discrepancies. (Tr. 151; Complainant's Exhibit 3.)

that the fuel gauge problem was intermittent, and the pilots' testimony did not indicate that either discrepancy had been properly cleared. (*Id.*)

As for the sanction, the law judge assessed the $7,500 civil penalty sought by Complainant, explaining that:

- General Aviation operated 26 flights over more than a 3-week period[12] with open discrepancies. .
- Critical components of the aircraft were not performing their intended function.
- General Aviation's actions flew in the face of safety considerations underlying the regulations and showed a lack of respect for the regulations.
- General Aviation could have fixed the problem but chose to operate with the unreliable equipment. The inspectors provided information to General Aviation about Cessna's service bulletin and kit for fuel quantity indicating problems, but General Aviation did nothing. Moreover, even before this, General Aviation was responsible for knowing and may have known about Cessna's solutions.
- Although Mr. Orton, president of General Aviation, claimed to have made attempts to correct the discrepancies, he was unable to substantiate this claim, and the aircraft's maintenance records revealed no evidence of efforts to solve the problems. The circumstances, said the law judge, did not promote confidence in Mr. Orton's credibility.

(Initial Decision at 5-6.) The law judge stated that the evidence fully warranted a penalty of $7,500, and that such a penalty would promote adherence to the regulations and act as a deterrent to General Aviation and other operators.[13] General Aviation subsequently filed the instant appeal of the law judge's decision.

---

12 The aircraft was operated for 20 days with the open discrepancies. (Complainant's Exhibit 3.) Thus, the law judge may have meant "almost a 3-week period" or "more than a 2-week period." The misstatement is immaterial.

13 One of the inspectors explained how Complainant derived its proposed civil penalty of $7,500. Complainant first determined that General Aviation had operated the aircraft for 20 days

Before addressing the merits of General Aviation's appeal, a motion to strike filed by Complainant must be decided. Specifically, Complainant has filed a motion to strike General Aviation's response to Complainant's reply brief, arguing that General Aviation did not have the right to file anything after its appeal brief without first obtaining the Administrator's permission.

The Rules of Practice provide that a party who wishes to file an additional brief may file a petition for leave with the Administrator, and may not file the additional brief with the petition. 14 C.F.R. § 13.233(f). The Rules of Practice also provide that the Administrator may grant leave to file an additional brief only if the party demonstrates good cause for allowing additional argument. *(Id.)*

General Aviation has filed an additional brief without leave. In its response to Complainant's motion to strike, General Aviation states that it needed to file the additional brief because Complainant improperly mentioned a previous enforcement case against General Aviation in its reply brief and attached a copy of the Order Assessing

---

with open discrepancies. Using the Enforcement Sanction Guidance Table (FAA Order No. 2150.3A, Appx. 4), Complainant determined that a moderate to maximum penalty would be appropriate. The sanction guidance table lists a moderate to maximum civil penalty for the violation of operating an unairworthy aircraft. (FAA Order No. 2150.3A, Appx. 4, p. 11.) Nevertheless, according to the inspector, Complainant sought a penalty in the minimum range for violations occurring before January 10, 1996, the date the inspectors first notified General Aviation of the problem, because there might have been simply a lack of knowledge. (Tr. 83.) But after notification, Complainant calculated violations at $750 per violation, which was in the maximum range for this size operator. (*Id.*) (The maximum range for general aviation owners is $750 - $1,000, the moderate range is $550 - $749, and the minimum range is $500-549. Order No. 2150.3A, Appx. 4, p. 3.) A penalty of $750 multiplied by 20 days of unresolved discrepancies led to a penalty of $15,000. (Tr. 84.) Then the agency cut the total penalty by half, to $7,500, in light of the operator's modest size and ability to withstand such a financial burden. (*Id.*) If the agency had used the number of flights instead of the number of days, a higher penalty would have been the result.

Civil Penalty. General Aviation claims that when the parties settled the previous case, they agreed that the FAA could not mention it in any future case.

In its motion to strike, Complainant does not specifically address General Aviation's contention that Complainant agreed not to mention the case in any later proceedings. Complainant states only that General Aviation has "failed to demonstrate good cause since the unauthorized brief substantially repeat[s] arguments made earlier in the proceedings," but Complainant fails to provide supporting citations to the record.

The Rules of Practice provide that an agency attorney may compromise any civil penalty action where a person charged with a violation agrees to pay a civil penalty and the FAA agrees to make no finding of violation. 14 C.F.R. § 13.16(l)(1). The Rules also provide that:

> Pursuant to such agreement, a compromise order shall be issued, stating:
> (i) The person agrees to pay a civil penalty.
> (ii) The FAA makes no finding of a violation.
> (iii) The compromise order shall not be used as evidence of a prior violation in any subsequent civil penalty proceeding....

(Id.) However, the Order Assessing Civil Penalty attached to Complainant's reply brief does not indicate that there was no finding of a violation. On the contrary, the order states that General Aviation violated 14 C.F.R. § 141.101(a). Order Assessing Civil Penalty, June 27, 1997, p. 4. Nor does the Order Assessing Civil Penalty state that it could not be used as evidence of a prior violation in any subsequent civil penalty proceeding. Thus, there is no evidence in the record to support General Aviation's claim that Complainant was wrong to refer in the reply brief to the previous enforcement case against General Aviation.

Complainant appears to have cited the previous enforcement case in its reply brief to counter General Aviation's claim that the penalty was too high because General Aviation is an "honorable, trustworthy, clean[-]operating flight school." (Appeal Brief at 7.) As Complainant points out, General Aviation agreed in the previous case to pay a $1,500 civil penalty for failing to keep current and accurate records of the accomplishments of its student pilots.

Based upon the foregoing, General Aviation has failed to show good cause for allowing its additional brief. Complainant's motion to strike is granted.

Turning now to the merits of General Aviation's appeal, General Aviation argues that a change in law judges caused delay and confusion. (Notice of Appeal at 1.)[14] General Aviation fails to explain or support its argument that the change in law judges caused delay and confusion. The order reassigning the case explained that the reassignment was "in the interest of judicial efficiency." If the original law judge's

---

14 On July 9, 1996, a little more than a month after the complaint was filed, Acting Chief Administrative Law Judge Ronnie A. Yoder assigned the case to Administrative Law Judge Ann Z. Cook. Judge Cook issued an "Order Setting Procedural Schedule" on August 26, 1996, in which she set a deadline of November 5, 1996, for all pre-hearing submissions, but did not set a hearing date. Instead, she indicated that the hearing date would be set by later order. In a proposed schedule filed on August 2, 1996, Complainant requested a hearing date of November 13, 1996, or later, and Respondent concurred in a document filed on August 30, 1996, entitled "Respondants (sic) Acceptance of Procedural Schedule and List of Exhibits, Witness List and Summary of Proposed Testimony."

During the summer and fall of 1996, General Aviation filed several prehearing motions -- specifically, a "Motion for Order to Cease and Desist Harassment and Intimidation," a "Motion to Dismiss for Insufficiency and Witness Tampering," and a "Motion to Strike" -- each of which was denied. Judge Cook decided the last of these motions on September 30, 1996. Apparently, no further action occurred in the case until February 12, 1997, when Judge Yoder reassigned the case to Administrative Law Judge Burton S. Kolko "in the interest of judicial efficiency, and with the consent of Judge Cook." Judge Kolko originally scheduled the hearing for April 30, 1997, but changed it to May 13, 1997, to accommodate General Aviation's concern about the availability of a witness.

caseload was so heavy that it delayed the scheduling of a hearing, then the change in law judges may have expedited the case, rather than causing delay. As for the alleged confusion resulting from the change in law judges, General Aviation fails to specify exactly what confusion occurred, how it unfairly prejudiced General Aviation, and why General Aviation failed to take appropriate action to cure the alleged confusion. For these reasons, General Aviation's argument concerning the change in law judges is rejected.

Along the same lines, General Aviation argues that the 4-month period between the hearing and the date the law judge issued his decision[15] was too long, and that it prejudiced General Aviation by causing confusion and a loss of important detail. Under the Rules of Practice, the law judge may issue either an oral initial decision at the end of the hearing or a written initial decision. If the law judge issues a written initial decision, the deadline is "not later than 30 days after the conclusion of the hearing or submission of the last posthearing brief." 14 C.F.R. § 13.232(c). The hearing was held on May 13, 1997, and no posthearing briefs were filed. Thus, the law judge's initial decision was due about the middle of June, but it was not issued until about 3 months later, on September 16, 1997.

General Aviation fails to specify what confusion occurred and what important details were lost due to the delay, and its argument is hard to accept, given that the case was decided on the basis of a written record. Indeed, arguably there would be *less* chance of confusion and loss of detail when the law judge, as in this case, takes the time to obtain

---

15 The hearing was held on May 13, 1997. The law judge's initial decision was served on September 16, 1997.

the hearing transcript, to review the record, to deliberate as long as necessary, and finally to issue a written initial decision. Here, the law judge indicated on the record that he wanted to reflect on the parties' polarized theories of the case and to review case law before issuing his decision. (Tr. 152-53.) The decision he ultimately issued, which comprises more than five single-spaced pages, is detailed, logical, and well-supported by references to the record. Thus, General Aviation's argument that the delay in issuing the initial decision caused confusion and loss of detail is rejected.

The Administrator has previously rejected the argument that a case should be dismissed when the law judge fails to issue a written initial decision within 30 days. As pointed out in In the Matter of Sanford Air, FAA Order No. 97-31 at 8 (October 8, 1997), dismissal generally is not appropriate unless the regulation containing the deadline specifies that loss of jurisdiction is the penalty for failing to issue a timely decision. If time is the real concern, the party's remedy is to initiate an action to compel the issuance of the decision. (*Id.*) Also, the party complaining of the delay must show prejudice. (*Id.*) Here, General Aviation has failed to show that it was prejudiced by the 3-month delay in issuing the initial decision.

Although General Aviation argues that the agency failed to prove that the aircraft was unairworthy, General Aviation's President, Donald Orton, admitted both orally (Tr. 23, 35, 55) and in writing (Complainant's Exhibit 4) that the fuel gauge was unreliable and had been for some time. The regulations specifically require the aircraft to have a working gauge for each fuel tank. 14 C.F.R. §§ 91.205(a) & (b)(9). Moreover, to be airworthy, an aircraft must both conform to its type design and be in a condition for safe flight. In the Matter of Delta Air Lines, FAA Order No. 97-21 at 2 (May 28, 1997).

When an aircraft has unresolved mechanical discrepancies, it does not meet these requirements. Thus, the law judge did not err in finding the aircraft unairworthy.

General Aviation argues that the agency did not prove, or even present any evidence, that the left fuel gauge was inoperative. (Appeal Brief at 2.) It is somewhat surprising that General Aviation makes this argument, given General Aviation's previous admissions that the left fuel gauge was inoperative. (*See* Complainant's Exhibit 4, a letter from Mr. Orton, President of General Aviation, admitting that the left fuel gauge was inoperative; *see also* Tr. 23, 35, 55, where the inspectors testified that Mr. Orton admitted to them orally that the left fuel gauge was unreliable.) In light of the persuasive evidence in the record to the contrary, this argument is rejected.

General Aviation argues that there was confusion between the right and left fuel gauges, that the law judge improperly permitted testimony regarding the right fuel gauge, and that General Aviation was not charged with anything regarding the right fuel gauge, so it could not properly defend itself at the hearing. The law judge, however, did not find any violations or assess any penalty for problems with the right fuel gauge. Moreover, as discussed above, there was ample evidence of a problem with the left fuel gauge. General Aviation's President admitted as much on several occasions. (Complainant's Exhibit 4; Tr. 23, 35, 55.)

General Aviation argues that the law judge erred in declaring the squawk sheet a maintenance record, and that the agency failed to present evidence that any event requiring maintenance took place. A holding that a record of an aircraft's mechanical discrepancies is not a maintenance record would defy logic and would be contrary to the public interest in safe skies. General Aviation's suggestion that there was no real

discrepancy, and that the entry was simply a mistake on the pilot's part, flies in the face of General Aviation's own admissions that the fuel indicating system had a longstanding history of unreliability.

General Aviation argues, citing 14 C.F.R. § 91.7(b), that the pilot in command has the ultimate responsibility for determining whether an aircraft is in safe condition for flight. While this is true, it does not relieve General Aviation of its responsibilities under the regulations as an owner and operator.

General Aviation argues that the law judge erred in failing to find that its flight instructor's tapping of the fuel gauge and reseating of the fuel gauge constituted preventive maintenance. To support its argument, the company notes that Section 1 of the Federal Aviation Regulations defines preventive maintenance as "simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations."

It is true that pilots may perform *preventive* maintenance under 14 C.F.R. § 43.3(g) when they themselves own or operate the aircraft and the aircraft is not used in air carrier service. (Tr. 85.) However, as the inspectors testified, the type of work needed in this case went beyond preventive maintenance. (Tr. 25, 72.) Repairing a sticking fuel gauge does not appear on the list in Appendix A of 14 C.F.R. Part 43 of items constituting preventive maintenance. (Tr. 25.) The only fuel system items included on the preventive maintenance list are: (1) replacing prefabricated fuel lines; and (2) cleaning or replacing fuel and oil strainers or filter elements. 14 C.F.R. Part 43, Appendix A, paragraph (c)(22) & (23). Thus, the law judge did not err in rejecting

General Aviation's claim that it cured the discrepancies by performing preventive maintenance.[16]

General Aviation argues that one inspector (Inspector Archibald) committed perjury when he testified (Tr. 92) that he asked General Aviation to identify the rest of the pilots on the list who flew the aircraft after the discrepancies were recorded. (Appeal Brief at 3.) General Aviation claims that the inspector never made the request. (*Id.*)

Whether the inspector requested the names of the other pilots is immaterial. Even if the inspector never asked General Aviation to identify the other pilots, General Aviation would still be responsible for the violations. There is no rule that violations such as operating an unairworthy aircraft are excused if an inspector fails to ask the operator certain questions or misstates an immaterial fact. Moreover, while the law judge questioned the credibility of Mr. Orton, he found the inspectors credible. (Initial Decision at 2 & 6, n.4.) The credibility findings of the law judge are entitled to deference on appeal. In the Matter of Northwest Aircraft Rental, FAA Order No. 94-4 at 4 (March 10, 1994). General Aviation has not presented any reason for overturning the law judge's credibility findings.

Finally, General Aviation argues that the penalty of $7,500 is "obscene," "cruel and unusual," and "severe." General Aviation suggests in its appeal brief that "this

---

16 Even if General Aviation had repaired the discrepancies properly, it would still have violated the regulations because it failed to make a proper entry on the "Squawk Reporting Sheet" for the work performed. *See* In the Matter of Watts Agricultural Aviation, FAA Order No. 91-8 at 12, 15-16 (July 5, 1991) (stating that "[t]he fact that Respondent may have actually complied with the [Airworthiness Directives] does not relieve Respondent of its responsibility under this regulation to maintain complete records" and "[a]ccurate recordkeeping is the linchpin behind the FAA's regulatory scheme, and FAA inspectors must be able to determine from a review of the records whether required maintenance has been performed on a timely basis."

honorable trustworthy clean[-]operating flight school serving this community" will be "forced into bankruptcy because of this severe and unjust fine." It says, "This school cannot pay this fine." (Appeal Brief at 7.) General Aviation, however, did not raise financial hardship in its answer or at the hearing. It failed to preserve the issue or introduce any evidence of inability to pay. It is simply too late to raise the issue now, on appeal. In the Matter of Northwest Aircraft Rental, FAA Order No. 94-4 at 8. Under all the circumstances of this case -- including the numerous flights with an unairworthy aircraft, the repeated failures to correct the recorded mechanical discrepancies, even after FAA inspectors called the problem to General Aviation's attention, and the prior violation[17] -- a civil penalty of $7,500 is appropriate.[18] Note that the $7,500 penalty is markedly less than that suggested by the Enforcement Sanction Guidance Table, and that it takes into account the relatively small size of General Aviation's operation.[19] Also, General Aviation has cited no case law showing that the $7,500 penalty imposed by the law judge is inconsistent with prior cases.

---

17 *See* p. 10, discussing the previous enforcement case in which General Aviation was found to have violated one of the safety regulations.

18 General Aviation's remaining arguments have been rejected summarily and do not merit discussion.

19 *See* note 13 above.

For the foregoing reasons, this decision denies General Aviation's appeal and affirms the law judge's decision assessing a civil penalty of $7,500.[20]

JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 8th day of October, 1998.

---

20 Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. § 46110), this decision shall be considered an order assessing civil penalty. *See* 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1998).