

SERVED: July 23, 1993

NTSB Order No. EA-3942

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 July, 1993

JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Dockets SE-11130 and
)	SE-11131
)	
STEPHEN CLAIR ERICKSON and)	
THOMAS PHILLIP NEHEZ,)	
)	
Respondents.)	
)	
)	

ORDER DENYING RECONSIDERATION

Respondents have filed a petition for reconsideration and reversal of NTSB Order No. EA-3869, served on April 30, 1993. The Administrator has filed a reply to the petition. For the reasons that follow, we will deny respondents' petition.

Respondents claim that the Board erred in refusing to apply the standard of care for helicopter operations enunciated in Administrator v. Reynolds, 4 NTSB 240 (1982) to the fixed-wing operation which is the subject of this proceeding. They argue that the Board "cavalierly dismissed" their argument that the Ninth Circuit Court of Appeals' decision in Essery v. DOT, 857 F.2d 1286 (1988) mandates such a result. We disagree. As we indicated in footnote 5, page 4 of EA-3869, the Ninth Circuit did not address that specific issue either directly or in dicta.

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Respondents' insistence to the contrary is meritless.

Turning to the next issue, we do not agree that our determination that respondents created at least the potential for endangerment by taking off from a runway where visibility was below RVR minimums is unsupported by the record. Further, we do not agree that it is relevant to the issues in this proceeding to speculate as to what might have happened, or whether any violations would have been committed, if the aircraft had taken off on a different runway. In any event, a violation of an operational regulation is sufficient to support a finding of careless operation.

ACCORDINGLY, IT IS ORDERED THAT:

The petition for reconsideration is denied.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.