

ENTERED

To: Bruce Swanton
EID
Hazardous Waste Bureau
1190 St. Francis Drive
Runnels Building N-2300
Santa Fe, NM 87503

From: Ron Bratton
6631 Astair NW
Albuquerque, New Mexico 87120

Date: March 20, 1991



Subject: Site Permits at Elephant Butte Lake

Mr. Swanton:

The following is an extensive list of concerns that I have in reference to the current operation of handling hazardous waste at Elephant Butte Lake. I do not know what is administered or enforced by your office so I am providing all of my concerns. Please take a few minutes to evaluate them.

1. The current Contractor is Pro Shop, PO Box AP, Elephant Butte NM 87935. USAF Contract NO. F29650-91-C0008. NM Business License No. 996, Issued Aug. 7, 1990. This contractor my not carry the proper insurance to have a site permit.

a. His Auto insurance is State Farm. Policy Number 150 6145-A05-31E. This is a private insurance policy and does not cover the employees of Pro Shop nor does it cover the commercial use of his truck. Should an accident occur while this contractor is in the performance of this contract, handling hazardous waste, there would be insufficient insurance to protect the people in New Mexico. See Attachment No. 1

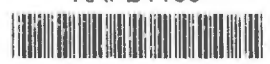
b. The insurance that is used to protect the boats which are the vehicles used in the direct transportation of hazardous waste are insured by Hartford Insurance. This Insurance has no protection for any environmental damage caused by this contractor. This insurance does not protect the people who use the Lake should they be injured or death to a third party.

c. To this day the Air Force has not provided proof of General Liability insurance for Pro Shop.

d. Finally this contractor does not carry Workmen's Compensation.

I think it can clearly be seen that should an employee or a visitor to Elephant Butte Lake become injured, due to the miss handling of hazardous waste, there is no insurance to protect them or the lake. I truly feel that the intent of requiring proper insurance for a

KAFB1103



site permit is to protect the employees, bystanders and the State of New Mexico should an environmental accident occur.

2. The Contract Manager is a Dean Tolstedt. Mr. Tolstedt was employed by Rock Canyon Dry Dock as a Boat operator. He was given training by the Air Force and by Rock Canyon Dry Dock in 1988. However his performance was well below any minimal standards established for the handling of hazardous waste. A Major Schrimsher who directly supervised Mr. Tolstedt performance asked that he be removed from the boats until he could be reprimanded and further trained. Despite the fact that Rock Canyon Dry Dock, and Maj. Schrimsher both stated this man could not handel hazardous waste properly, he was awarded a contract.

On November of 1990 this Mr. Tolstedt and four others were trained by the air force to handle hazardous waste. Once the Air Force turn control of the contract to Mr. Tolstedt, he started to perform in levels that were well below minimal standards for handling hazardous waste. Thus on February 20, 1991 I went to Santa Fe, and talked with Travis M. Shugart of the State Corporation Commission. He called Mr. Tolstedt on the phone and informed him that he could not tow the boats, loaded with hazardous waste, across a public road to the storage bin with out a permit. Mr. Tolstedt informed him that he did not do this. However, that afternoon Mr. Tolstedt was seen driving his Truck over public roads to the storage bin and placing something into the storage bin. Since only hazardous waste is stored in this bin I must assume that it was hazardous waste. Further, since the boats had not been in the water for a few days, I must assume that he obtained this hazardous waste from the building which he stored the boats. I do not believe he has a permit to store hazardous waste in the building that he stores his boats in. Please see attachment 3.

On February 25, 1991 I meet with Col. McDaniels and informed him of all my concerns. I provided him with attachment 3, and expressed my concern that after being trained two times, by the Air Force to handel hazardous waste, Mr. Tolstedt was performing well below any minimal standards in the handling of hazardous waste. I served Col. McDaniels a statement that I felt the current practice of sending Mr. Tolstedt out alone, on the water, was placing him and the people in New Mexico into imminent danger of death or serious bodily injury. However, on March 7, 1991 Mr Tolstedt was out operating the boat alone once more. He further transported hazardous waste across a public road. See Attachment No. 4 & 5.

3. Current State Park regulations require a contractor who performs a major part of their services on or within state park lands to file for a permit. I do not believe that Pro Shop has a valid permit from the state of New Mexico.

Citation: New Mexico State Park Regulations 122.2.2 Commercial Use 1989 Permits.

"No Commercial use shall be authorized until the applicant has provided proof of insurance or bond unless waived on the face of the permit. All Commercial use applications for permits must be submitted at least thirty days before commencing the service or activity."

4. A certificate of registration must be available at all times, and a vessel carrying passengers for hire must have onboard one, Type I, Coast Guard approved life preserver for each person on board.

Citation: Boating Act Regulations (1989) 2.1.1 and 3.1.3.

a. The boat trailers do not have a license plate on them.

b. The boats do not have registration numbers as required by the state.

5. OSHA requires that when a helicopter is being used to deploy a payload or using a crane, that persons on the ground wear appropriate clothing. They also require that a separate communication person be at the job site and wear distinctive clothing identifying them as such. They also require that a person be trained in First Aide to render service should an employee become hurt on the ground. That if an employee works with a substance that could splash on their face or hands that a clean wash unit be available for employee use. Finally OSHA requires that a public bathroom be available at the job site for use by the employees.

Employees of Pro Shop only wear a baseball cap and goggles as protection for their head from possible exposure to phosphorus. During the winter a coat with gloves is worn, however, in the summer short selves are worn. I feel that should an employee be hit with pyrotechnics dropped from the air craft or should a pyrotechnic sputter up onto their face or arms, they are not wearing appropriate protection. That should such an occurrence happen death may result especially with only one person in the boat or on the lake.

Example: If a pyrotechnic should burn Mr. Tolstedt eyes, he is expected to make it to the radio and call for help. However, what if he falls out of the boat or passes out, who would be there to help him ? Currently he operates alone. Should Mr. Tolstedt become hurt or incapacitated before help could arrive, the pyrotechnics could be lost, stolen, or injure another innocent bystander. With current acceptable practice of only one person in the boat, there is not a separate communication person on the ground as required by OSHA. Nor is there an additional employee to render first aide to the injured employee as required by OSHA. Dipping your face or hand into the lake will not stop this phosphorus from burning.

Finally there is no bathroom on the boats nor in close proximity, the current practice of urinating over the side of the boat is in violation of OSHA standards.

Although Pro Shop does not have sufficient employees to fall under OSHA laws, it is the USAF that operates the helicopters and is required by OSHA to see that their standards are being followed. The USAF should insure that OSHA standards are being followed to decrease the danger to the military, Pro Shop, and the people of New Mexico.

6. "It is unlawful for any person to deposit or discharge liquid or solid waste or other refuse into the waters of this state."

Boating Act Regulations (1989) 5.4 Pollution

I believe that dropping hazardous waste into the water at Elephant Butte Lake is illegal, and has the following dangers:

- a. The pyrotechnics sink at times. They will burn a hole in the side and take on water. Since the pyrotechnic is armed and burning the contractor can not safely retrieve it and must let it sink. The Air Force has known this since the start of training in 1976. They do not tell this to the contractors. Then when a pyrotechnic sinks they inform the contractor to keep their mouth shut or the contractor might have to pay to clean the lake. Also, the I will handle it, so you do not have to tell anyone else is used. Today there are pyrotechnics at the bottom of the lake, not because a contractor was irresponsible, but due to the fact that they sink and can not be retrieved. It should be the Air Force who cleans the lake.

- b. The Air Force has at times sent down as many as four helicopters to train at the lake at the same time. It is a common practice to send two helicopters at the same time to train. Because the air craft must have a large area to train, they can be as far as a mile apart. It is impossible for one boat with one man to keep the hundreds of people who use the lakes out of harms way. They can be burned, or hit by the pyrotechnics as they fly through the air. The helicopters can swamp a small boat leaving its occupants in the water scrambling for safety. Should a helicopter ever crashes the wake can capsize even large boats and many visitors to the lake could be hurt.

The Air Force is a large entities and they use unsuspecting contractors to stay on the lake. The contractors, because they are small, can not tell the air force that their practice of sending multi planes and dropping flares into the water is dangerous. That this practice, over many years, has made it infeasible and at times impossible, for the ground unit to recover all of their pyrotechnics. This is an unfair burden to place on the State of New Mexico and on unsuspecting contractors. When the Air Force obtained permission to use Elephant Butte Lake they established a contract with the Department of the Interior Bureau of Reclamation (Contract No. 2-07-54-X0394). In this contract the 1550th agreed to keep the area policed and clean. I know that the 1550th has not recovered

all the hazardous materials that it has generated at the lake. I believe that this is their responsibility and ask that they assume it.

7. Training is not being conducted at Elephant Butte Lake IAW this contract. The following occurrences are noted:

The plot of land furnished to the Air Force has not been used for over four years. The current plot of land being used is located in a main park recreation and camping area in Lost Canyon. This current conex site does not have a eight foot chain link fence as required by this contract and current Air Force Regulations. Thus, civilians unaware that this conex is a hazardous waste storage container, camp immediately adjacent to it, sometimes attaching their tent ropes to it. In the past duds have ignited and caused this building to emit heavy smoke. I do not know the results of exposure to burning paint fumes and phosphorous.

This training area can not be used except by the 1550th and they do not have the right to make other alterations without approval from the BLM. The 1550th moved the conex from its proper location to its current location almost five years ago. This was done by dragging the conex, full of hazardous waste, down a public road, with a military vehicle. This is in direct violation of State Corporation Commission laws. To my knowledge no permit was ever issued to move this conex.

8. I do not believe that the current permit for hazardous waste storage issued by your office is for the current location of the conex.

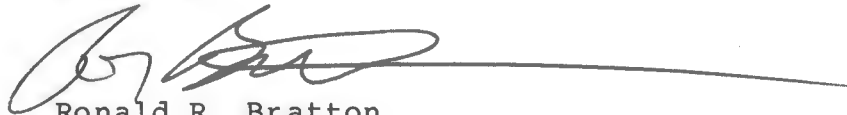
The Bureau of Reclamation requires the 1550th "... to comply with Environmental Improvement Division regulations at all times". Current EID regulations require the 1550th to hold a permit for the transportation and storage of hazardous waste within the state for each site. That this permit must be posted at each site. That each site is clearly marked, and that certain safety precautions are maintained. I know of no such compliance to your regulations.

9. Soon after the Air Force provided training, this contractor hired a person by the name of Rocky to help handle the hazardous waste. He was not trained by the Air Force and to this date has not been trained.

Today Elephant Butte Lake is the most frequently used lake in New Mexico. Other lakes like Blue Water are much less used and pose a much less risk of injury to the people who use the lake should an accident occur. I hope you will evaluate the current permit that the Air Force holds. I truly feel that the past practice of the Air Force and the contractor pose more questions then their are answers. I truly feel that some day soon a person will be hurt.

Please feel free to contact me if you have any questions regarding this matter. Thank you for your cooperation and for your time.

Sincerely

A handwritten signature in black ink, appearing to read 'Ronald R. Bratton', with a long horizontal line extending to the right.

Ronald R. Bratton



STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

1665 WEST ALAMEDA DRIVE TEMPE, AZ 85289

NAMED INSURED

POLICY NUMBER 150 6145-A05-31E

31-3055-42 C
TOLSTEDT, RICHARD D & SHARON A
408 MC AD00
T OR C NM 87901-2806

POLICY PERIOD OCT-24-90 TO JAN-05-

CURRENT 6 MONTH PREMIUM
DO NOT PAY PREMIUMS SHOWN ON THIS PAGE
SEPARATE STATEMENT ENCLOSED IF AMOUNT L

DESCRIBED VEHICLE	YEAR	MAKE	MODEL	BODY STYLE	VEHICLE IDENTIFICATION NUMBER	CLASS
	81	FORD	F150	PICKUP	1FTEF14E9BPA08043	6B3H2

COVERAGES (AS DEFINED IN POLICY)
SYMBOL-PREMIUM-COVERAGE NAME-LIMITS OF LIABILITY

A- \$27.95 BODILY INJURY/PROPERTY DAMAGE LIABILITY
 LIMITS OF LIABILITY-COVERAGE A-BODILY INJURY
 EACH PERSON, EACH ACCIDENT
 250,000 500,000
 LIMITS OF LIABILITY-COVERAGE A-PROPERTY DAMAGE
 EACH ACCIDENT
 25,000

\$27.95 TOTAL PREMIUM FOR POLICY PERIOD OCT-24-90 TO JAN-05-91

EXCEPTIONS AND ENDORSEMENTS

6236A.1 REJECTION OF UNINSURED AND UNKNOWN MOTORISTS COVERAGE.

THIS IS YOUR DECLARATIONS PAGE.
PLEASE ATTACH IT TO YOUR AUTO POLICY BOOKLET.

AGENT: TERRY G. TAYLOR
PHONE: (505) 894-2528

3055-42

OUR POLICY CONSISTS OF THIS PAGE, ANY ENDORSEMENTS, AND THE POLICY BOOKLET, FORM 9831.3 PLEASE KEEP TOGETHER
REPLACED POLICY 1506145-31D NEW POLICY FORM

155-4976

ACORD CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)

11-13-90

PRODUCER

Attn AZ

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

Mains & McConnell, Inc.
P.O. Box 26593
Albuquerque, NM 87125
(505) 243-6616

COMPANIES AFFORDING COVERAGE

CODE SUB-CODE

INSURED

Pro shop
c/o Dean Tolstedt
P.O. Box AP
Elephant Butte, NM 87935

COMPANY LETTER	A	Hartford Insurance
COMPANY LETTER	B	Northfield Insurance
COMPANY LETTER	C	
COMPANY LETTER	D	
COMPANY LETTER	E	

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO CTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	ALL LIMITS IN THOUSANDS
D	GENERAL LIABILITY	TBD	11-02-90	11-02-91	GENERAL AGGREGATE \$ 500,
	<input type="checkbox"/> COMMERCIAL <input checked="" type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR. OWNER'S & CONTRACTOR'S PROT. XX \$250 Deductible				PRODUCTS-COMP/OPS AGGREGATE \$ PERSONAL & ADVERTISING INJURY \$ EACH OCCURRENCE \$ 500, FIRE DAMAGE (Any one fire) \$ MEDICAL EXPENSE (Any one person) \$
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	ANY AUTO				
	ALL OWNED AUTOS				
	SCHEDULED AUTOS				
	EXCESS LIABILITY				EACH OCCURRENCE \$ AGGREGATE \$
	OTHER THAN UMBRELLA FORM				
	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY				\$ (EACH ACCIDENT) \$ (DISEASE—POLICY LIMIT) \$ (DISEASE—EACH EMPLOY)
A	OTHER	Protection & Indemnity Hull & Inland Marine	340M978038	11-02-90 11-02-91	*See Limits Below

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

* P & I - \$500,000 BI Limit Hull & IM - \$54,520 Total Value All Coverages subject to a \$500 Deductible

CERTIFICATE HOLDER

Operational Contracting Division/PKDV
Bldg 449, RM 112
Kirtland AFB, NM 87117-5320

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OF LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Alice C. Foster

Mains & McConnell, Inc.

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On 21 February, 1991, An A/C was dispatched from KAFB which conducted 2 sorties. Beginning at approximately 10:00 AM, departure for fuel at about 11:00 AM. A/C returned before 12:00 for sortie #2.

Kittland boat #79 came to the beach, ostensibly to store flares, however, upon realizing my presence with cameras & cameraman, Mr Tolsted opted not to carry flares to Covey.

Following sortie #2 KAFB Boat '79 returned to dispose of his cargo of flares. On approaching the boat, Tolsted requested I not ~~see~~ photograph the events. They are explained as follows;

- 1 Mr Tolsted brings boat to shore



Pic 1

Pic #1

- Cont 1 This picture clearly shows that Dean Valstedt is alone and the "Two-Man Rule," required by USAF and OSHA is not being used.
- 2 Both engines are, clearly, fully down. It would be impossible for this boat to reach shore without forcing (dragging) lower unit of both engines in gravel aggregate, which erodes/damages both engines skags on each occurrence.
3. It should be noted that the boat is not moored.
- 4 Dean Valstedt can clearly be seen bent over a Mark Six Pyrotechnic with no other protection than ski goggles, while busily tossing other pyrotech devices onto the beach.
- 5 Not also, that no other person/bo or a/c is visible, should the Mark 6 ignite or explode. No protection for Dean or Bystanders, should First Aid be needed.



2

Picture 2

1. Dean Talstedt can, unmistakably, be seen throwing a live, charged Mark 6 Pyro onto the beach. This is the same manner in which each Pyro was placed on the beach.
2. At it, further, he noted that this is the "fully trained" Primary Contractor (Boat Operator) He is ostensibly fully trained and qualified.
3. Mark 6 (Detonation systems) differ from some pyros in that they detonate (armed) on impact with the water surface. The force of this armed Pyro against ground could cause it to ignite. Although it didn't happen, Dean Talstedt, or an innocent citizen on the beach could have been sprayed with the horror of a white phosphorus burn, resulting serious injury

or death.
picture 3



3

- 1 This picture clearly shows Dean Tolstedt bent over picking up a discharged M16. He has an armed M16 at his left foot and numerous Mk 25's facing toward his person, with the potential to spread White Phosphorous. Although this picture doesn't show it some of the flares still had smoke coming from them.
- 2 Note that he neither has radio communications, nor does he control the boat. Boat is only held by the skags imbedded in the sand. A passing boat or unexpected wave would alter that situation.



4

- 1 He retrieved 3 mark 6's and 11 mark 25's, it is not known how many were deployed.
- 2 Dean is placing the flares into the lid of the storage containers. It should be noted that this lid was not designed for this purpose.



5

Picture # 5

1. Dean Tolstedt can be seen carrying multiple Pyros away from the boat, leaving the boat radios and other Pyros unattended. It should be noted that he is leaving an armed, live, Mark 6 on the ground.
2. Additionally, a Mark 25 can clearly be seen pointing directly toward Dean's left arm and chest. Should this Pyro sputter or burn, Dean could be seriously harmed.
3. It also should be noted that the lid for Pyro storage bin is being mis-used and might even reflect sputtered white Phosphorous toward Dean's chest & forearms.



7

Pic # 7

- 1 Dean Tolstedt can clearly be seen transporting hazardous material across a thoroughfare and Public Campsite.
- 2 The Conex can be seen in this picture to be located in the middle of that Public Thoroughfare and Campsite.
- 3 The Conex is not surrounded by a fence nor is there a 50' access restriction as required by USAF EOD Safe Handling/Storage policies
- 4 Mr. Tolstedt has left the boat unattended. This is in violation of AFR 127-100. Clearly, Dean does not have access to at least 2 portable fire extinguishes. This, too, is in violation of AFR 127-100
- 5 It should be noted that Dean is carrying class Division 1.3 Explosives, not a ~~Baby~~ Baby.
- 6 A fire symbol 3 can clearly be seen on the side of the Conex. IAW AFR, however there is no markings noted on the Conex that a civilian would understand in order to protect themselves from this munition/hazardous Waste storage site.
7. It should be obvious to the reader that Dean's return for the remaining Pyros will repeat all these known munition's handling violations



6

Picture 6

- 1 This picture clearly shows boat property left unattended.
- 2 This picture clearly shows an armed (live) mark 6 and eight mark 25 left unattended on a public swimming beach.
- 3 This picture clearly shows that Dean is out of range of his radio communications.
- 4 Should Dean injure himself between the shore and the Coxey he has no means of calling for help.
- 5 We believe this contractor should not put himself, the State Parks, the USAF, nor the Federal Govt, in such an unnecessary risk.

SAFETY is a function of COMMA.

Att. # 4

March 7, 1991

Upon arriving in my neighborhood, at around 12:15, this date, my wife and I observed Dean Tolstedt at the hazardous waste storage Conex. His red ford pickup was hitched to the USAF boat. The Conex door was open and Dean was removing/unloading something from the boat into the Conex.

I hurried to my home - located two doors away, parked my car and ran to get John Myers, a construction contractor working on my home, because I wished to have him witness the waste handling practice. By the time Mr Myers had come around the house, Dean had completed his waste dumping and jumped into his truck and was driving away.

So that Mr Myers could make a statement with meaning we went to the Conex where we followed (back-tracked) truck/trailer tracks to the launching area,

(An area commonly/obviously) used
by Dean.

From the evidence it is apparent
that Dean hauls the waste, loaded
in the boat, overland to the
Conex.

We believe:

- a. Dean Tolsted is not licensed
to haul hazardous waste
(Consists of White Phosphorous
flares.)
- b. Dean has only P.O.V. insurance,
invalidated when he tows a
commercial apparatus, a
USAF boat & trailers.
- c. Is an USAF/New Mexico/Osha
safety violation in that he
is operating alone. A fact
which has been reported
Colonel McDaniel of
Phillips Lab/Contracting Center.

Signed: Gafford McCurley
Gafford McCurley

AHW #5

Mar 7, 1991

In accordance with Mr. McCurley's report.

At 12:15 P.M. Mar 7, 1991, I, John C. Myers, Rural Route 2 Box 57 La Luz, New Mex. 88337, observed a red Ford truck towing a United States Air Force boat from the hazardous waste cover located at Lost Canyon, Elephant Butte, N. Mex.

Mr. McCurley and I went and ~~observed~~ observed truck and trailer tracks from the launching site of the boat, different from that of the cover. I am convinced that the red Ford truck hauled to the cover and unloaded some material.

Previously on Feb 21, 1991 I observed the same red Ford truck apparently driving up and down the roads around Lost Canyon to make sure Mr. McCurley was not at home. Mr. McCurley got home as the red Ford truck was leaving and asked if I had seen the truck unload anything at the cover. I did not see anything suspicious other than the truck apparently checking things out. Today's happenings convinced me the Mr. McCurley's report is well founded.

Sincerely

John C. Myers