



BILL RICHARDSON
GOVERNOR

Mel 05
State of New Mexico
ENVIRONMENT DEPARTMENT

Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
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www.nmenv.state.nm.us



RON CURRY
SECRETARY

DERRITH WATCHMAN-MOORE
DEPUTY SECRETARY

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 26, 2005

Mr. A.S. Elliot
Gottomitee, Ltd.
El Bigote Cattle Co., L.L.C.
P.O. Box 58
Fort Sumner, New Mexico 88119-0058

SUBJECT: DISCARDING OF WASTES BY CANNON AIR FORCE BASE TRAINING OPERATIONS AT MELROSE BOMBING RANGE

Dear Mr. Elliot:

The New Mexico Environment Department (NMED) has received your October 13, 2005, letter in which you express concern about chaff and flare canisters dropped on your property during Air Force training exercises. Dave Cobrain of my staff spoke with you by telephone in January, 2005, to discuss those concerns. He also left voicemail messages with you in May and August 2005 to provide updates on NMED's request of Cannon Air Force Base (CAFB) to provide copies of their most recent environmental assessment (EA) and related documentation. Additionally, NMED discussed these issues with CAFB during meetings held in April and July 2005. On each occasion, CAFB committed to send NMED copies of the EA.

During the January 2005 telephone conversation, Mr. Cobrain explained to you that removal of chaff and flares dropped from aircraft during Air Force training operations is not considered hazardous waste, and therefore does not fall under the jurisdiction of the Hazardous Waste Bureau. He also explained that oversight of an emergency response action by the Air Force to an aircraft crash incident also was not within Bureau jurisdiction, provided that residual hazardous waste or constituents, as defined in 20.4.1.100 NMAC, released as a result of the crash were removed during the cleanup of the crash site. You referenced an Air Force cleanup response, indicating that a removal action was conducted but that debris was left behind, in your letter to NMED dated December 24, 2004. Your conversation with Mr. Cobrain was followed by

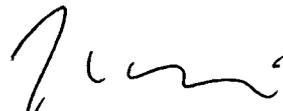
Mr. A.S. Elliot
October 26, 2005
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correspondence sent to you, dated January 18, 2005, that included a copy of a letter sent to CAFB requesting information on the off-range release of chaff, flares and any other solid waste associated with operations at Melrose Bombing Range. The letter also requested any documentation of cleanup activities conducted to mitigate hazards posed to human or animal health or the environment. Copies of the January 2005 correspondence are attached.

NMED has not yet received copies of the EA, or any other requested information relating to this issue, from CAFB. Because these activities are not regulated by the Hazardous Waste Bureau, we cannot compel CAFB to provide them under the New Mexico Hazardous Waste Act. You have the ability to request copies of the EA, and the other information requested in NMED's letter, from the Air Force under the Freedom of Information Act. NMED does not have the authority to regulate U.S. Air Force training operations because specific exemptions exist under the federal military munitions rule. If you have direct evidence, through laboratory analysis of samples or other means, that a release of hazardous waste or hazardous constituents occurred off-range that was not cleaned up by the Air Force, please forward them to this office. In such a case, NMED may have cause to require CAFB to investigate and clean up such a release.

If you have any questions regarding this letter, please contact Dave Cobrain of my staff at (505) 428-2553.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

JPB:dc

cc: J. Kieling, NMED HWB
D. Cobrain, NMED HWB

File: Reading and CAFB 2005

Enclosures.



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RON CURRY
SECRETARY

DERRITH WATCHMAN-MOORE
DEPUTY SECRETARY

January 18, 2005

A.S. Elliott
Managing General Partner
El Bigote Cattle Co., L.L.C.
Post Office Box 58
Fort Sumner, New Mexico 88119-0058

**RE: ALLEGED DISPOSAL OF SOLID WASTES BY CANNON AIR FORCE BASE
DEFENSIVE TRAINING INITIATIVE OPERATIONS**

Dear Mr. Elliott:

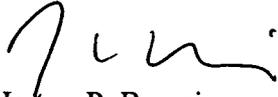
Cabinet Secretary Ron Curry has received your letter of December 24, 2004, in which you allege that Cannon Air Force Base (CAFB) occasionally releases flare and chaff canisters on your ranch property in DeBaca County. Secretary Curry has forwarded your letter to me for response.

Under separate cover, the New Mexico Environment Department (NMED) has contacted CAFB to serve them notice of our concerns about these alleged operational practices. NMED also requested that CAFB fully document any operational activities that may have resulted in releases of chaff, flares, or other solid waste. CAFB should also have documented any cleanups conducted to mitigate the hazards posed by the debris to human or animal health and the environment. Finally, NMED asked CAFB to submit copies of any documentation they may have for review. A copy of NMED's request to CAFB is enclosed. Once NMED receives this documentation, a determination will be made about any further action.

On behalf of Secretary Curry, thank you for bringing these issues to our attention. Please do not hesitate to contact David Cobrain of my staff at 505.428.2553 should you have any questions.

A.S. Elliott
January 18, 2005
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Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: Ron Curry, NMED Cabinet Secretary
Charles Lundstrom, WWMD Director
David Cobrain, HWB
Sandra Martin, HWB



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RON CURRY
SECRETARY

DERRITH WATCHMAN-MOORE
DEPUTY SECRETARY

January 18, 2005

Colonel John D. Posner
Commander
100 D.L. Ingram Blvd., Suite 100
Cannon Air Force Base, New Mexico 88103-5003

RE: ALLEGED DISPOSAL OF WASTE MATERIALS AT EL BIGOTE CATTLE RANCH, DEBACA COUNTY, NEW MEXICO

Dear Col. Posner:

The New Mexico Environment Department (NMED) has become aware of alleged improper disposal of refuse by Air Force personnel on private property in DeBaca County, New Mexico. Specifically, Mr. A.S. Elliot, Managing General Partner of El Bigote Cattle Company, alleges that certain Air Force exercises have resulted in dropping of flare and chaff materials on his and other properties, and that the Air Force has not properly cleaned up the material.

Cannon Air Force Base (CAFB) conducted an environmental assessment (EA) on its Defensive Training Initiative intended to address any adverse environmental concerns that may result from the activities. NMED's comments on the EA included, but was not limited to, the following:

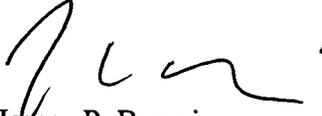
1. Flares and chaff could be "military munitions", as defined in 20.4.1.100 NMAC, incorporating 40 CFR 260.10 (*Definitions*). According to 20.4.1.700 NMAC, incorporating 40 CFR 266.202(d), military munitions are, at a minimum, solid waste and "...therefore, [are] potentially subject to RCRA corrective action authorities under sections 3004(u) and (v), and 3008(h), or imminent and substantial endangerment authorities under section 7003, if the munition lands off-range and is not promptly rendered safe and/or retrieved. Any imminent and substantial threats associated with any remaining material must be addressed. If remedial action is infeasible, the operator of the range must maintain a record of the event for as long as any threat remains. The record must include the type of munition and its location (to the extent the location is known)."

Col. Posner
January 18, 2005
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2. Although CAFB's EA indicates that chaff and flares do not contain listed hazardous constituents, one of the constituents (potassium perchlorate) could potentially pose a risk to human health or the environment in sufficient concentrations. Perchlorate contamination of groundwater in New Mexico is an emerging and serious problem. CAFB's operational practices described above could be contributing to this problem.
3. Other risks that could be of concern to the general public include the risk of fire and the ingestion of chaff and/or flare components by cattle. Although NMED recommended that CAFB more completely address the results of the ingestion effects of chaff on animals, NMED is not aware that CAFB or the federal government ever conducted such studies. NMED repeats its request that CAFB either provide a toxicological study or more completely address the results of such a study.

NMED respectfully requests that CAFB fully document any operational activities that may have resulted in releases of chaff, flares, or other solid waste. CAFB should also have documented any cleanups conducted to mitigate the hazards posed by the debris to human or animal health and the environment. Copies of any extant documentation should be forwarded to David Cobrain of my staff at the address on the letterhead. Mr. Cobrain can be reached at 505.428.2553.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: David Cobrain, HWB
Sandra Martin, HWB