RE: Invitation: EPA/Buckley MS4 Permit Meeting (Jan 23 07:30 AM MST in EPA Building, 1595 Wynkoop St, Denver 80202, 2nd Floor, Dakota Room)

Amy Clark to: OLDWEILER, CORWIN E GS-12 USAF 460 CES 460 CES/CEAN 01/15/2013 10:57 AM

Cc: Colleen Rathbone

Corwin - Attached are the comments we received. All are from either the Air Force or DoD. Regarding our meeting, please see Buckley's comments. Per Buckley's request, we would like to discuss the base's comments, but in particular we want to discuss the concerns with sections 2.6.1-2.6.3 (post-construction). Most of the other comments were minor and non-substantial. Below is a rough agenda to assist you in preparing for our meeting. Please let me know if you have any questions. Thank you.

Agenda - Buckley AFB/EPA MS4 Permit Meeting
January 23, 2012

1. Introductions

2. Discuss substantial permit comments relating to post-construction (sections 2.6.1-2.6.3)
   - What do EPA stormwater regulations require, what is currently being done for post-construction, etc.

3. EPA to ask questions on non-substantial permit comments
   - Non-allowable stormwater discharge "during emergency situations"
   - State inspection authority

4. Next Steps

DoD MS4 Permit Comments.pdf Buckley MS4 Permit Comments.pdf DoAF MS4 Permit Comments.pdf

Amy Clark
EPA Region 8
1595 Wynkoop St.
Mail Code: 8P-W-WW
Denver CO, 80202
303.312.7014 (office)
800.227.8917 Ext.7014 (toll-free)
303.312.6116 (fax)

"OLDWEILER, CORWIN E GS-12 USAF 460 CES 460 CES 01/15/2013 08:06:38 AM

From: "OLDWEILER, CORWIN E GS-12 USAF 460 CES 460 CES/CEAN" <corwin.oldweiler@us.af.mil>
To: Amy Clark/R8/USEPA/US@EPA
Date: 01/15/2013 08:06 AM
Subject: RE: Invitation: EPA/Buckley MS4 Permit Meeting (Jan 23 07:30 AM MST in EPA Building, 1595 Wynkoop St, Denver 80202, 2nd Floor, Dakota Room)

Amy,
To aid in preparation for our meeting, I would appreciate getting a copy of all comments received by EPA on the public notice MS4 permit document, or at

least all comments that you intend on discussing. And an agenda or listing of discussion topics you have in mind would also be appreciated. When we talked there were several topics/items that you mentioned.
Thanks, Cory

//signed//
Corwin Oldweiler, PE, DAF
WQP Mngr
460 CES/CEAN
Direct: 720-847-4655; DSN: 847-4655
Cell: 720-413-3739

-----Original Appointment-----
From: Amy Clark/R8/USEPA/US [mailto:Clark.Amy@epamail.epa.gov]
Sent: Tuesday, January 08, 2013 8:34 AM
To: Colleen Rathbone/R8/USEPA/US; OLDWEILER, CORWIN E GS-12 USAF 460 CES 460 CES/CEAN; FISHER, LAURIE B GS-13 USAF 460 CES 460 CES/CEA
Subject: Invitation: EPA/Buckley MS4 Permit Meeting (Jan 23 07:30 AM MST in EPA Building, 1595 Wynkoop St, Denver 80202, 2nd Floor, Dakota Room)
When: Wednesday, January 23, 2013 7:30 AM-10:00 AM Mountain.
Where: EPA Building, 1595 Wynkoop St, Denver 80202, 2nd Floor, Dakota Room

<< File: ATT00001.htm >> << File: c103401.ics >>

DEPARTMENT OF DEFENSE
OFFICE OF REGIONAL ENVIRONMENTAL AND GOVERNMENT AFFAIRS-WESTERN
US CUSTOM HOUSE
721 19TH STREET, ROOM 427
DENVER, CO 80202

13 October 2010

VIA-Hand Delivery

Donna Roberts (8P-W-WW)
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

RE: DRAFT PERMIT FOR BUCKLEY AFB'S MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)

Dear Ms. Roberts:

As the Department of Defense (DoD) Regional Environmental Coordinator (REC) for the U.S. Environmental Protection Agency (EPA) Region 8, and on behalf of all of the military services, I am responsible for coordinating responses to various environmental policies and regulatory matters of interest. I appreciate the opportunity to provide comments for your consideration on the U.S. EPA Draft MS4 Permit for Buckley AFB.

The DoD is committed to managing stormwater from its facilities' development and redevelopment projects through green technology and low impact development design principles and practices and has implemented policy to do so. The DoD is fully implementing the provisions of the Energy Independence and Security Act of 2007, Section 438 (EISA § 438), consistent with the EPA Technical Guidance, using Low Impact Development Techniques in accordance with DoD policy. (Enclosed.)

With regard to this draft permit, the DoD is concerned over the inclusion in section 2.6.1 of the draft MS4 Permit (Post-construction Stormwater Management for New Development and Redevelopment) of stormwater management controls which appear to be based on EISA § 438. The draft permit includes requirements from EISA § 438 in a Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) Permit. The DoD notes that EISA and the CWA are two separate statutes having related but distinct underlying purposes and enforcement mechanisms. The CWA is designed to eliminate the discharge of pollutants into navigable waters of the United States; EISA § 438 is designed to maintain or restore to the maximum extent technically feasible the pre-development hydrology of the property with regard to the temperature, rate, volume, and duration of flow. That is, EISA is designed to retain stormwater on-site to allow infiltration into groundwater rather than entry into navigable waters of the United States. We also note Congress did not amend the CWA when it passed EISA § 438. Rather, EISA § 438 was written to be self-executing by federal agencies, in the management of stormwater from federal development and redevelopment projects.

Furthermore, we do not believe the CWA authorizes the inclusion of EISA § 438 standards in the base's MS4 Permit. The CWA contains broad enforcement authorities to ensure compliance by the entire regulated community, including federal facilities, in applicable circumstances, but Congress did not extend that authority to the substantive EISA § 438 requirements. Prior to the inclusion of requirements based on EISA § 438 in an MS4 Permit, DoD believes the EPA is required to complete federal rulemaking under the Administrative Procedures Act to amend its stormwater regulations, providing all stakeholders notice and the opportunity to comment on the standards, their effectiveness, and the economic impact of the imposition of such standards.

The DoD is concerned the MS4 draft permit requirement that post-development hydrological conditions be identical to pre-development hydrological conditions may run afoul of Colorado water law. As the permit is now written, post-development stormwater runoff would have to be captured to artificially match the pre-development hydrological conditions; and arguably, that captured water may belong to a senior water right holder. Specifically, Title 37, Article 92 of the Colorado Revised Statutes may require adjudication in a water court to establish that a senior holder is not being deprived of his beneficial use. EPA's inclusion of these requirements in the permit, without a legal basis, may impermissibly subject federal facilities to potential legal actions.

In addition, the draft permit proposes to hold federal facilities to a more stringent performance standard than non-federal facilities. The federal government is only subject to requirements under the CWA to the extent it is treated in a non-discriminatory manner. Under CWA § 313(a), federal agencies are subject to "all Federal, State, interstate, and local requirements ... respecting the control and abatement of water pollution in the same manner, and to the same extent as any non-governmental entity." In this case, the EPA has proposed a standard that non-federal entities are otherwise not subject to; as such, EPA's inclusion of these standards in a permit for Buckley AFB may violate CWA provisions prohibiting discriminatory treatment of federal facilities.

The DoD is also concerned with what appears to be the incorporation of portions of the EPA's EISA § 438 Technical Guidance as legally binding requirements in a NPDES Permit. As required by EO 13514, the EPA issued Technical Guidance on Implementing the Stormwater Runoff Requirements for Projects under EISA § 438, in December 2009. In issuing the Technical Guidance, the EPA explained that the document was intended solely as guidance and did not impose any legally binding requirements on federal agencies, or impose legal obligations upon any member of the public. The DoD was surprised to see what appears to be elements of the Technical Guidance as mandatory elements in a NPDES Permit. It is not clear why these performance standards were included in the draft permit. The DoD has already instructed its installations to implement EISA § 438, consistent with the EPA's Technical Guidance, through its policy memorandum issued 19 January 2010. (Enclosed.)

In incorporating portions of EISA § 438 into the base's draft permit, the EPA has eliminated the statutory provision that federal facilities are to maintain predevelopment

hydrology "to the maximum extent technically feasible." Rather, the draft permit makes the management of stormwater based on predevelopment hydrology an absolute requirement. The DoD objects to the EPA's elimination of the statutory requirement concerning technical feasibility.

As stated above, DoD is committed to managing stormwater from its facilities' development and redevelopment projects through green technology and low impact development design principles and practices and has implemented policy to do so. The DoD is fully implementing the provisions of the Energy Independence and Security Act of 2007, Section 438 (EISA § 438), consistent with the EPA Technical Guidance, using Low Impact Development Techniques in accordance with DoD policy.

Representatives of this office and the Air Force are available to meet with you, at your convenience, to further discuss these concerns. My point of contact for this matter is Kevin Ward, Regional Counsel, who can be reached at (303)844-0955.

Sincerely,

Mark A. Mahoney
Department of Defense
Regional Environmental Coordinator, Region 8

Attachment

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

JAN 19 2010

MEMORANDUM FOR ACTING ASSISTANT SECRETARY OF THE ARMY
(INSTALLATIONS AND ENVIRONMENT)
ACTING ASSISTANT SECRETARY OF THE NAVY
(INSTALLATIONS AND ENVIRONMENT)
ACTING ASSISTANT SECRETARY OF THE AIR
FORCE (INSTALLATIONS, LOGISTICS, AND
ENVIRONMENT)

SUBJECT: DoD Implementation of Storm Water Requirements under Section 438 of the Energy Independence and Security Act (EISA)

Reducing the impacts of storm water runoff associated with new construction helps to sustain our water resources. In October 2004, DoD issued Unified Facilities Criteria on Low Impact Development (LID) (UFC 3-210-10), a storm water management strategy designed to maintain the hydrologic functions of a site and mitigate the adverse impacts of storm water runoff from DoD construction projects. Using LID techniques on DoD facility projects can also assist in fulfilling environmental regulatory requirements under the Clean Water Act. Since 2004, DoD has implemented LID techniques for controlling storm water runoff on a number of projects.

EISA Section 438 (Title 42, US Code, Section 17094) establishes into law new storm water design requirements for Federal development and redevelopment projects. Under these requirements, Federal facility projects over 5,000 square feet must "maintain or restore, to the maximum extent technically feasible, the predevelopment hydrology of the property with regard to the temperature, rate, volume, and duration of flow." Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance* (October 5, 2009), directed the U.S. Environmental Protection Agency (EPA) to issue EISA Section 438 guidance. DoD shall implement EISA Section 438 and the EPA *Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act*, using LID techniques in accordance with the policy outlined in the attachment.

EISA Section 438 requirements are independent of storm water requirements under the Clean Water Act and should not be included in permits for storm water unless a State (or EPA) has promulgated regulations for certain EISA Section 438

requirements (i.e., temperature/heat criteria) that are applicable to all regulated entities under its Clean Water Act authority.

The attached policy will be incorporated into applicable DoD Unified Facilities Criteria within six months. My points of contact are Thadd Buzan at (703) 571-9079 and Ed Miller at (703) 604-1765.

Dorothy Robyn
Deputy Under Secretary of Defense
(Installations and Environment)

Attachment:
As stated

DoD Policy on Implementing Section 438 of the Energy Independence and Security Act (EISA)

1. EISA Section 438 requirements apply to projects that construct facilities with a footprint greater than 5,000 gross square feet, or expand the footprint of existing facilities by more than 5,000 gross square feet. The project footprint consists of all horizontal hard surfaces and disturbed areas associated with the project development, including both building area and pavements (such as roads, parking, and sidewalks). These requirements do not apply to internal renovations, maintenance, or resurfacing of existing pavements.

2. The overall design objective for each project is to maintain predevelopment hydrology and prevent any net increase in storm water runoff. DoD defines "predevelopment hydrology" as the pre-project hydrologic conditions of temperature, rate, volume, and duration of storm water flow from the project site. The analysis of the predevelopment hydrology must include site-specific factors (such as soil type, ground cover, and ground slope) and use modeling or other recognized tools to establish the design objective for the water volume to be managed from the project site.

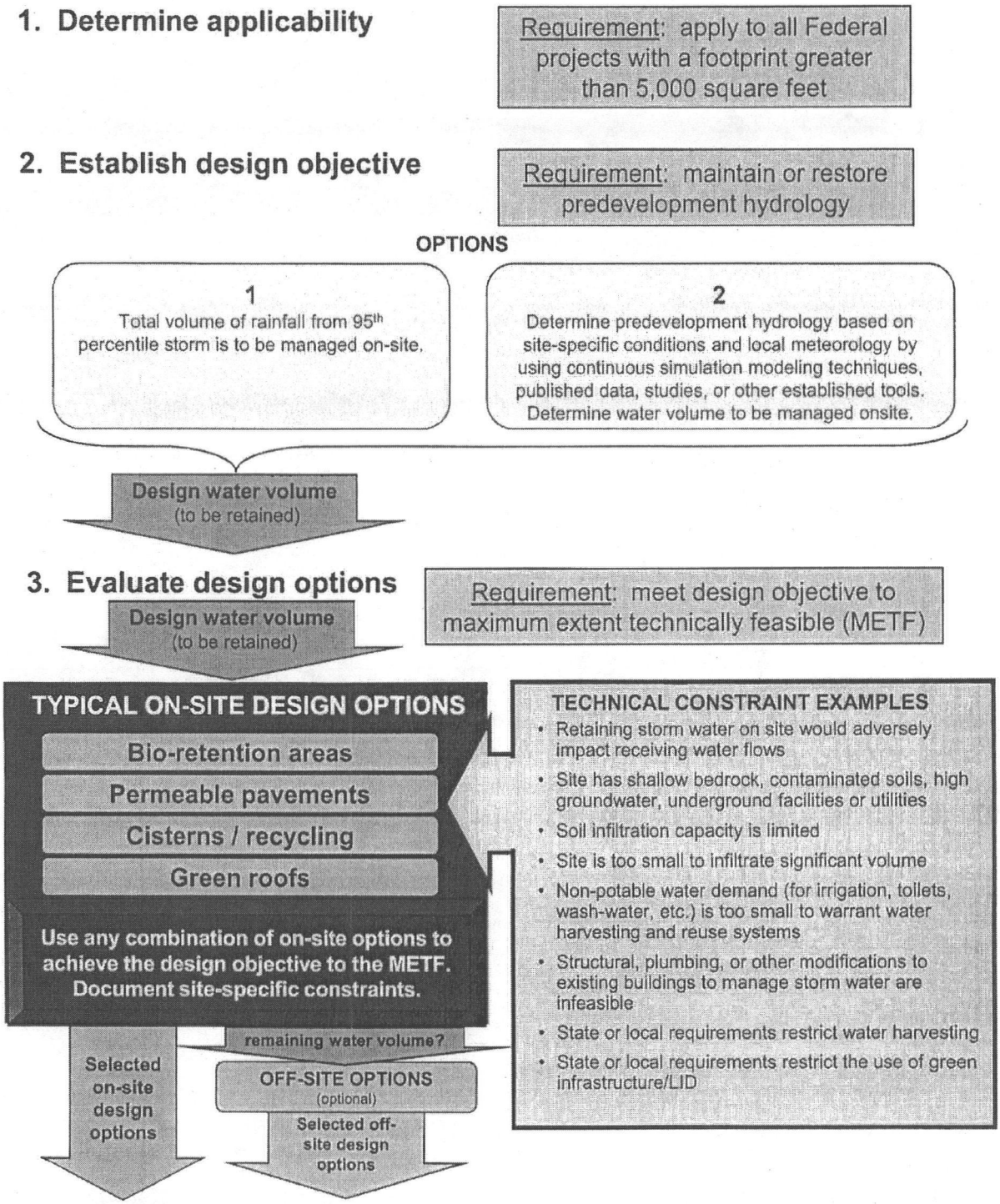
3. Project site design options shall be evaluated to achieve the design objective to the maximum extent technically feasible. The "maximum extent technically feasible" criterion requires full employment of accepted and reasonable storm water retention and reuse technologies (e.g., bio-retention areas, permeable pavements, cisterns/recycling, and green roofs), subject to site and applicable regulatory constraints (e.g., site size, soil types, vegetation, demand for recycled water, existing structural limitations, state or local prohibitions on water collection). All site-specific technical constraints that limit the full attainment of the design objective shall be documented. If the design objective cannot be met within the project footprint, LID measures may be applied at nearby locations on DoD property (e.g., downstream from the project) within available resources.

4. Prior to finalizing the design for a redevelopment project, DoD Components shall also consider whether natural hydrological conditions of the property can be restored, to the extent practical.

5. Estimated design and construction costs for implementing EISA Section 438 shall be documented in the project cost estimate as a separate line item. Final implementation costs will be documented as part of the project historical file. Post-construction analysis shall also be conducted to validate the effectiveness of as-built storm water features.

The following flowchart illustrates the DoD implementation process for EISA Section 438, consistent with the U.S. Environmental Protection Agency's *Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act* (December 2009) (http://www.epa.gov/owow/nps/lid/section438/.

Flowchart for EISA §438 Implementation



FROM :

FAX NO. :7208476159 Sep. 24 2010 01:07PM P1

FACSIMILE ELECTRO MAIL TRANSMITTAL

(This information collection is not subject to OMB review under PL-96, The Paperwork Reduction Act.)

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SECTION I - TO BE COMPLETED BY ORIGINATOR

CLASSIFICATION	TRANSMISSION	PAGE 1 OF 7 PAGES
Unclassified ☑ FOR OFFICIAL USE ONLY	☑ IMMEDIATE ☐ ROUTINE	

TO *(Office Symbol, Point of Contact, and Address)*	FAX NO. DSN	FAX NO. COMMERCIAL
Amy Clark EPA Region 8 Stormwater Coordinator 1595 Wynkoop St 8P-W-WW Denver, CO 80202		303-312-6116
ELECTRONIC MAIL ADDRESS *(E-Mail)*	VOICE NO. DSN	VOICE NO. COMMERCIAL

SUBJECT
Comments, 460 Space Wing/Buckley AFB MS4 Permit, Public Notice

FROM *(Office Symbol, Point of Contact, and Address)*	FAX NO. DSN	FAX NO. COMMERCIAL
Laurie Fisher 460 CES/CEV 660 S. Aspen St. (Stop 86) Buckley AFB, CO 80011	847-6159	720-847-6159
ELECTRONIC MAIL ADDRESS *(E-Mail)* laurie.fisher@buckley.af.mil	VOICE NO. DSN 847-9218	VOICE NO. COMMERCIAL 720-847-9218

REMARKS
Amy,
Attached are additional comments from the Air Force regarding the public notice version of our MS4 permit.

Thanks!

RELEASER'S SIGNATURE	DATE	TIME
Laurie Fisher	20100924	13:00

SECTION II - TO BE COMPLETED BY ELECTRO MAIL OPERATOR

DATE TRANSMITTED	TIME TRANSMITTED	TRANSMITTER'S SIGNATURE
DATE ADDRESSEE CONTACTED	**TIME ADDRESSEE CONTACTED**	**CONTACTOR'S SIGNATURE**

AF FORM 3535, 19950201 *(IMT-V1)* PREVIOUS EDITION IS OBSOLETE.

DEPARTMENT OF THE AIR FORCE
460TH SPACE WING (AFSPC)

24 September 2010

Lt Col George E. Petty
Commander
460th Civil Engineer Squadron
660 S. Aspen Street MS 86
Buckley AFB, CO 80011

Amy Clark
EPA Region 8 Stormwater Coordinator
U.S. EPA Region 8
Mailcode 8P-W-WW
1595 Wynkoop Street
Denver, CO 80220-1129

SUBJECT: Proposed Buckley Air Force Base Municipal Separate Storm Sewer System Permit No. COR042003 and Statement of Basis Public Notice

Dear Ms. Clark

We appreciate the opportunity to discuss again with you our comments on the draft MS4 permit for Buckley AFB. HQ Air Force Space Command (AFSPC) and the 460th Space Wing were provided a draft MS4 permit for Buckley AFB in December 2009, and submitted extensive comments to EPA on 8 January 2010 (provided to you by Mr Ed Carver via email 16 September 2010). In addition, we had a follow-on meeting with EPA in March 2010; based on that discussion, we believed the EPA and AFSPC resolved our concerns mutually. Upon reviewing the proposed public notice copy of the Draft Buckley AFB MS4 Permit, however, it is clear that the removal of some of proposed permit sections in question has not been accomplished in this latest draft.

The Air Force is concerned with, among other things, the proposed inclusion in the Draft MS4 Permit of storm water management controls apparently based on the Energy Independence and Security Act of 2007, Section 438 (EISA 438). The Department of Defense (DoD) is committed to managing storm water from its facilities' development and redevelopment projects through Low Impact Development (LID) design principles and practices. Attached is the DoD policy which implements EISA 438 storm water requirements using LID techniques and EPA's Technical Guidance Implementing EISA 438. This DoD policy, which was not in place at the time of our previous comments, indicates how the EISA 438 federal storm water requirements for development and redevelopment projects will be met by DoD agencies. To include such

requirements in an MS4 permit for a federal facility would be redundant, inconsistent with EPA's authority under the Clean Water Act, and would seem to inappropriately hold a federal agency to a standard that would not be applicable to non-governmental entities. Therefore, we request that sections 2.6.1, 2.6.2, and 2.6.3 be deleted from the draft MS4 permit.

In Section 1.3.2 (the last bullet in the list of allowable non-stormwater discharges), we request that the phrase "during emergency situations" be deleted. We also request that section 4.10 be changed to delete the language allowing the State of Colorado to inspect the installation.

At your convenience, we request a meeting with you to further discuss our concerns and our technical comments, prior to publishing an MS4 permit for Buckley AFB for public comment. Please contact Ms. Laurie Fisher, Environmental Flight Chief at 720-847-9218 or E-mail her at laurie.fisher@buckley.af.mil to set up a meeting.

GEORGE E. PETTY, Lt Col, USAF
Commander, 460 Civil Engineer Squadron

Attachment:
DUSD (I&E)Policy Memorandum, 19 Jan 10

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION, TECHNOLOGY AND LOGISTICS

JAN 19 2010

MEMORANDUM FOR ACTING ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS AND ENVIRONMENT)
ACTING ASSISTANT SECRETARY OF THE NAVY (INSTALLATIONS AND ENVIRONMENT)
ACTING ASSISTANT SECRETARY OF THE AIR FORCE (INSTALLATIONS, LOGISTICS, AND ENVIRONMENT)

SUBJECT: DoD Implementation of Storm Water Requirements under Section 438 of the Energy Independence and Security Act (EISA)

Reducing the impacts of storm water runoff associated with new construction helps to sustain our water resources. In October 2004, DoD issued Unified Facilities Criteria on Low Impact Development (LID) (UFC 3-210-10), a storm water management strategy designed to maintain the hydrologic functions of a site and mitigate the adverse impacts of storm water runoff from DoD construction projects. Using LID techniques on DoD facility projects can also assist in fulfilling environmental regulatory requirements under the Clean Water Act. Since 2004, DoD has implemented LID techniques for controlling storm water runoff on a number of projects.

EISA Section 438 (Title 42, US Code, Section 17094) establishes into law new storm water design requirements for Federal development and redevelopment projects. Under these requirements, Federal facility projects over 5,000 square feet must "maintain or restore, to the maximum extent technically feasible, the predevelopment hydrology of the property with regard to the temperature, rate, volume, and duration of flow." Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance* (October 5, 2009), directed the U.S. Environmental Protection Agency (EPA) to issue EISA Section 438 guidance. DoD shall implement EISA Section 438 and the EPA *Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act*, using LID techniques in accordance with the policy outlined in the attachment.

EISA Section 438 requirements are independent of storm water requirements under the Clean Water Act and should not be included in permits for storm water unless a State (or EPA) has promulgated regulations for certain EISA Section 438

requirements (i.e., temperature/heat criteria) that are applicable to all regulated entities under its Clean Water Act authority.

The attached policy will be incorporated into applicable DoD Unified Facilities Criteria within six months. My points of contact are Thadd Buzan at (703) 571-9079 and Ed Miller at (703) 604-1765.

Dorothy Robyn
Deputy Under Secretary of Defense
(Installations and Environment)

Attachment:
As stated

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3. Project site design options shall be evaluated to achieve the design objective to the maximum extent technically feasible. The "maximum extent technically feasible" criterion requires full employment of accepted and reasonable storm water retention and reuse technologies (e.g., bio-retention areas, permeable pavements, cisterns/recycling, and green roofs), subject to site and applicable regulatory constraints (e.g., site size, soil types, vegetation, demand for recycled water, existing structural limitations, state or local prohibitions on water collection). All site-specific technical constraints that limit the full attainment of the design objective shall be documented. If the design objective cannot be met within the project footprint, LID measures may be applied at nearby locations on DoD property (e.g., downstream from the project) within available resources.

4. Prior to finalizing the design for a redevelopment project, DoD Components shall also consider whether natural hydrological conditions of the property can be restored, to the extent practical.

5. Estimated design and construction costs for implementing EISA Section 438 shall be documented in the project cost estimate as a separate line item. Final implementation costs will be documented as part of the project historical file. Post-construction analysis shall also be conducted to validate the effectiveness of as-built storm water features.

The following flowchart illustrates the DoD implementation process for EISA Section 438, consistent with the U.S. Environmental Protection Agency's *Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act* (December 2009) (http://www.epa.gov/owow/nps/lid/section438/.

Flowchart for EISA §438 Implementation

1. Determine applicability

Requirement: apply to all Federal projects with a footprint greater than 5,000 square feet

2. Establish design objective

Requirement: maintain or restore predevelopment hydrology

OPTIONS

1
Total volume of rainfall from 95th percentile storm is to be managed on-site.

2
Determine predevelopment hydrology based on site-specific conditions and local meteorology by using continuous simulation modeling techniques, published data, studies, or other established tools. Determine water volume to be managed onsite.

Design water volume (to be retained)

3. Evaluate design options

Design water volume (to be retained)

Requirement: meet design objective to maximum extent technically feasible (METF)

TYPICAL ON-SITE DESIGN OPTIONS

- Bio-retention areas
- Permeable pavements
- Cisterns / recycling
- Green roofs

Use any combination of on-site options to achieve the design objective to the METF. Document site-specific constraints.

TECHNICAL CONSTRAINT EXAMPLES

- Retaining storm water on site would adversely impact receiving water flows
- Site has shallow bedrock, contaminated soils, high groundwater, underground facilities or utilities
- Soil infiltration capacity is limited
- Site is too small to infiltrate significant volume
- Non-potable water demand (for irrigation, toilets, wash-water, etc.) is too small to warrant water harvesting and reuse systems
- Structural, plumbing, or other modifications to existing buildings to manage storm water are infeasible
- State or local requirements restrict water harvesting
- State or local requirements restrict the use of green infrastructure/LID

Retaining water volume?

Selected on-site design options

OFF-SITE OPTIONS (optional)

Selected off-site design options

4. Finalize design and estimate cost

DEPARTMENT OF THE AIR FORCE
AIR FORCE LEGAL OPERATIONS AGENCY (AFLOA)
ENVIRONMENTAL LAW & LITIGATION DIVISION-CENTRAL REGION
525 SOUTH GRIFFIN STREET, SUITE 505
DALLAS, TEXAS 75202-5023

18 October 2010

Donna Roberts (8P-W-WW)
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

RE: PROPOSED BUCKLEY AFB MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT CO-R042003

Dear Ms. Roberts:

As the Air Force Regional Environmental Coordinator (REC) for the U.S. Environmental Protection Agency (EPA) Region 8, I appreciate the opportunity to provide comments on behalf of Buckley AFB and the United States Air Force for your consideration on the U.S. EPA Draft MS4 Permit for Buckley AFB.

First, the Air Force would like to address the inclusion of requirements in this permit which appear to be based on the Energy Independence and Security Act of 2007, Section 438 (EISA § 438). The Air Force is committed to managing stormwater from its facilities' development and redevelopment projects through green technology and low impact development (LID) design principles. The Air Force, however, agrees with DoD Comments submitted on the Buckley AFB Draft MS4 Permit that EISA §438 requirements should not be included in the permit. With regard to this draft permit, the Air Force notes that EISA and the CWA are two separate statutes having related but distinct underlying purposes and enforcement mechanisms. The CWA is designed to eliminate the discharge of pollutants into navigable waters of the United States; EISA § 438 is designed to maintain or restore to the maximum extent technically feasible the pre-development hydrology of the property with regard to the temperature, rate, volume, and duration of flow. That is, EISA is designed to retain stormwater on-site to allow infiltration into groundwater rather than entry into navigable waters of the United States. We also note Congress did not amend the CWA when it passed EISA § 438. Rather, EISA § 438 was written to be self-executing by Federal Agencies, in the management of stormwater from Federal development and redevelopment projects. Thus, we concur with the DoD comments on the Buckley AFB Draft MS4 Permit provided by Mr. Mahoney, the DoD REC for Region 8.

Next, the Air Force has attached a number of technical comments to the Draft MS4 Permit on behalf of Buckley Air Force. These comments address various issues related to the Draft MS4 Permit on a paragraph by paragraph basis. The Air Force believes that these changes to the Draft MS4 Permit will assure compliance with current legal and regulatory requirements and are in the best interest of all parties.

As stated above, the Air Force is committed to using green technology and LID principles in managing stormwater from its facilities' development and redevelopment projects and is implementing the provisions of EISA § 438, consistent with the EPA Technical Guidance and DoD Policy memorandum

to do so. I appreciate the opportunity to provide these comments. Representatives of my office or Buckley Air Force Base are available to meet with you at your convenience. If you have questions or comments, please contact me at (214) 767-4650.

Thomas M. Manning
Department of the Air Force
Air Force Regional Environmental Coordinator, Region 8

Attachment:

1. BuckleyMS4_460-CEV_Comments_14Oct10

DoD Comments – BUCKLEY AFB Draft MS4 Permit CO-R042003

1.3.2. Allowable Non-Stormwater Discharges. The following sources of non-stormwater discharges are allowed to be discharged into the MS4 unless the permittee determines they are significant contributors of pollutants. If the permittee identifies any of the following categories as a significant contributor of pollutants, the permittee must include the category as an illicit discharge (see Part 2.4):
• Discharges authorized by a separate NPDES permit;

• Discharges or flows from fire fighting activities occurring during emergency situations.

COMMENT: *Delete the phrase "occurring during emergency situations."*

2.6. Post-construction Stormwater Management for New Development and Redevelopment. The permittee must:

2.6.1. Develop Form 1391 Military Construction Project Data Sheets or other equivalent documents for all new construction projects disturbing 1+ acre to include a requirement to design for and provide funding for the installation of permanent post-construction stormwater control measures designed to retain, detain, infiltrate, or treat runoff from newly developed impervious surfaces in a manner which mimics pre-development hydrology. A line item needs to be included in every new proposal (e.g., Department of Defense Form 1391) to ensure that performance-based or design-based postconstruction stormwater requirements for new developments and re-developments are provided. This should include a line item for costs associated with the installation and design of permanent stormwater control measures which presumptively meet the performance-based or design-based runoff criteria;

COMMENT: *Delete in its entirety.*

2.6.2. Prior to the end of year 3 of the permit, incorporate LID designs provided for use in Simplified Acquisition Base Engineering Requirements (SABER) or other equivalent projects for the design and maintenance of new parking lots exceeding one acre in size such that they will significantly reduce, retain, and treat stormwater onsite;

COMMENT: *Delete in its entirety.*

2.6.3. As part of the design review process for new construction projects disturbing equal to or greater than one acre, review all projects to ensure that they include permanent post-construction stormwater control measures designed to retain, detain, infiltrate, or treat runoff from newly developed impervious surfaces in a manner which mimics pre-development hydrology;

COMMENT: *Delete in its entirety.*

4.10. Inspection and Entry. The permittee shall allow the State or Regional Administrator, or authorized representative (including an authorized contractor acting as a representative of the Administrator) upon presentation of credentials and other documents as may be required by law, to:....

COMMENT: Exclude the phrase "the State or."

2.5.6. Implement an inspection plan and keep a copy of that plan which provides inspection triggers, a priority for order of inspections, and a required timeframe upon which construction sites must be inspected by Buckley AFB. All construction sites within Buckley AFB must be inspected at a minimum

semi-annually, and all sites must be inspected prior to construction stormwater permit termination to verify that 70% vegetative cover has been met on all areas of the site;

COMMENT: Replace "70% vegetative cover "with "final stabilization"

Rationale: The construction general permit requires that the site achieves final stabilization as a condition of termination; it defines final stabilization in several ways, only one of which is achieving 70% vegetative cover. Given the semi-arid setting, we typically do not achieve that density prior to termination; it typically takes two to three growing seasons to achieve; we utilize other criteria in the definition.

2.6.9.3. A description of the process used to ensure that all Buckley AFB contracts initiated after the effective date of the permit contain language which requires the installation of permanent stormwater control measures and an excerpt of applicable contract language;

COMMENT: Replace "contracts "with "scopes of work"

Rationale: Contracts for work at Buckley AFB are written by many entities and often have multi-year performance periods; making changes to existing contract terms is impractical in many situations. However, a scope of work , which is developed for each project, can be customized to require certain components such as the installation of permanent stormwater control measures.