

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:

Buckley Air Force Base Municipal Separate
Storm Sewer System

United States Department of the Air Force,
460th Space Wing, *Permit Applicant*

NPDES Permit No. CO-R042003

NPDES Appeal No. 13-07

**PETITION FOR REVIEW OF NPDES PERMIT FOR BUCKLEY AIR FORCE BASE
MUNICIPAL SEPARATE STORM SEWER SYSTEM
AND REQUEST FOR ORAL ARGUMENT**

Attachment D

Comments by the U.S. Department of the Air Force, by Lt Col George Petty, Commander,
460th Civil Engineering Squadron, dated September 24, 2010

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 Unclassified	TRANSMISSION <input checked="" type="checkbox"/> IMMEDIATE <input type="checkbox"/> ROUTINE	PAGE 1 OF 7 PAGES
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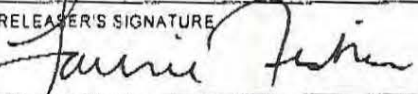
TO (Office Symbol, Point of Contact, and Address) Amy Clark EPA Region 8 Stormwater Coordinator 1595 Wynkoop St 8P-W-WW Denver, CO 80202	FAX NO.	
	DSN	COMMERCIAL 303-312-6116
ELECTRONIC MAIL ADDRESS (E-Mail)	VOICE NO.	
	DSN	COMMERCIAL

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

FROM (Office Symbol, Point of Contact, and Address) Laurie Fisher 460 CES/CEV 660 S. Aspen St. (Stop 86) Buckley AFB, CO 80011	FAX NO.	
	DSN 847-6159	COMMERCIAL 720-847-6159
ELECTRONIC MAIL ADDRESS (E-Mail) laurie.fisher@buckley.af.mil	VOICE NO.	
	DSN 847-9218	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 20100924	TIME 13:00
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SECTION II - TO BE COMPLETED BY ELECTRO MAIL OPERATOR

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DATE ADDRESSEE CONTACTED	TIME ADDRESSEE CONTACTED	CONTACTOR'S SIGNATURE

FROM :

FAX NO. :7208476159

Sep. 24 2010 01:08PM P2



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

FROM :

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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

FROM :

FAX NO. : 7208476159

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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

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

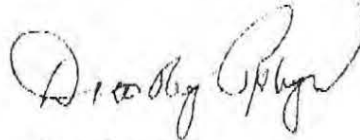
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requirements (i.e., temperature/heat criteria) that are applicable to all regulated entities under its Clean Water Act authority.

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

FROM :

FAX NO. :7208476159

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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/>).

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Flowchart for EISA §438 Implementation

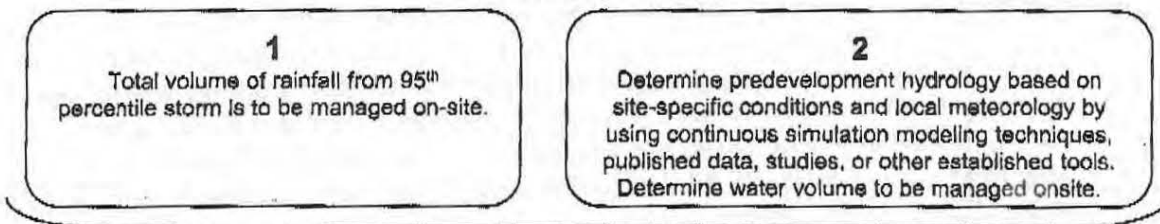
1. Determine applicability

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

2. Establish design objective

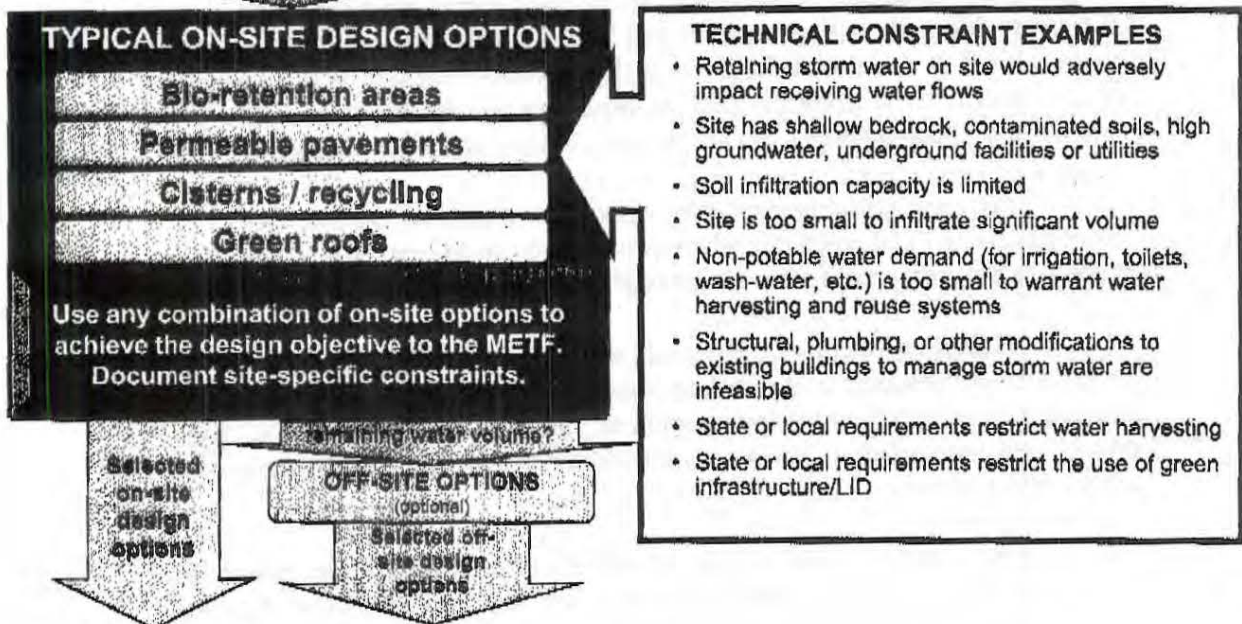
Requirement: maintain or restore predevelopment hydrology

OPTIONS



3. Evaluate design options

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



4. Finalize design and estimate cost