



**DEPARTMENT OF THE AIR FORCE**  
**HEADQUARTERS AIR FORCE SPACE COMMAND**

08 January 2010

HQ AFSPC/A7AQ  
150 Vandenberg St; Ste 1105  
Peterson AFB CO 80914

Greg Davis  
EPA Region 8 Storm Water Coordinator  
U.S. EPA Region 8  
Mailcode: 8P-W-WW  
1595 Wynkoop Street  
Denver CO 80220-1129

**RECEIVED**

**JAN 11 2010**

**Wastewater Unit**

**SUBJECT: Proposed Buckley Air Force Base Municipal Separate Storm Sewer System Permit**  
**- Permit No. COR042003**

Dear Mr. Davis

HQ Air Force Space Command (AFSPC) appreciates the opportunity to provide preliminary comments for your consideration in advance of your final draft of the proposed Statement of Basis (SOB) and draft Municipal Separate Storm Sewer System (MS4) permit for Buckley AFB. The following comments are submitted for your review, to include the Attachment, Buckley AFB's facility-specific technical comments on the SOB and draft permit.

We have coordinated our response with the Air Force Regional Environmental Office responsible for Air Force installations in EPA Region 8 as well as the Air Force Legal Operations Agency, Environmental Law and Litigation Division. Both offices concur with our position.

Generally, the proposed SOB and draft permit language appears overly prescriptive on how Buckley AFB should operate its MS4 stormwater program. We ask that the final draft MS4 permit be more goal-oriented and focus on broad measures to control stormwater runoff and protect water quality consistent with the objectives of the Stormwater Phase II Final Rule. AFSPC believes that the base-specific Stormwater Management Plan (SWMP), developed to support the proposed permit, is the appropriate vehicle for the installation to provide the specifics on how it will run the stormwater program and what best management practices will be used to comply with the maximum extent practicable (MEP) standard to satisfy the more general requirements of the MS4 permit. Consistent with the objectives of the MS4 permitting process, such an approach would provide the installation with maximum flexibility to adapt practices to changing stormwater conditions and better meet permit conditions and Colorado water quality standards.

Of specific concern to the Air Force, though, is the inclusion in section 2.6 of the draft permit of what appear to be requirements based on the Energy Independence and Security Act of 2007 (EISA) as enforceable requirements in a Clean Water Act (CWA) permit. As you are aware, EISA Section 438 sets out storm water requirements for federal development projects. While those provisions may be generally applicable to federal facilities, there does not appear to be any authority for inclusion of such requirements in a CWA National Pollutant Discharge Elimination System (NPDES) permit. We can find no authority in either CWA Section 402, or

the implementing regulations in 40 CFR Part 122, which would provide for the inclusion of such requirements in a Small MS4 permit.

In addition, it would seem that the inclusion of such provisions in a permit for a federal agency would potentially subject the agency to CWA requirements that other entities are not subject to; a result that is neither equitable to federal agencies nor consistent with the federal facilities pollution control aspects included in the CWA. Also, if such requirements were to be incorporated into the permit of a federal agency, it could potentially subject the agency to CWA applications that otherwise would not be applicable based solely on the federal enforceability of the NPDES permit.

As a result, AFSPC believes that it is inappropriate to place any provisions in the MS4 permit referring to concepts or requirements related to implementation of EISA. We acknowledge that EISA Section 438 creates requirements for federal agencies to consider hydrology in stormwater design and management strategies, and we note that DoD is developing policy concerning EPA's Technical Guidance on implementing stormwater requirements under EISA Section 438. While those efforts also focus on stormwater, those considerations are independent of an installation's CWA obligations to use the minimum control measures to reduce pollutants from stormwater under the MEP standard in an MS4 permit. While we are committed to the advancement of stormwater designs and decreasing stormwater runoff at our facilities, absent the promulgation of appropriate regulations which would require inclusion of such factors in MS4 permitting, we feel inclusion of these considerations in the SOB and the Buckley AFB MS4 permit is not justified, and we request that such provisions be removed.

At your convenience, we would like to schedule a meeting with you to further discuss our concerns and our technical comments, prior to EPA's official release of the draft permit. Our POCs are Mr. Ed Carver, HQ AFSPC/A7AQ, (719) 554-7717, at HQ AFSPC and Ms. Laurie Fisher, 460 CES/CEV, (720) 847-9218, at Buckley AFB. Thank you again for the opportunity to provide preliminary comments.



RONALD J. LESTER,  
Chief, Environmental Quality Branch

Attachment:  
Buckley AFB Technical Comments

**Attachment      Buckley AFB Technical Comments on MS4 Permit No. COR042003**

This attachment provides excerpts of permit conditions and related comments.

***1.1 This permit covers all areas served by the municipal separate storm sewer system (MS4) within the exterior boundary of Buckley Air Force Base. This permit contains requirements which apply within privatized housing area(s) which may not be operated by the Air Force. However, maintenance of the storm sewer system in these privatized housing areas is not specifically required by this permit provided that (1) The Air Force does not maintain operational control of the storm sewer system; and (2) There is an Intergovernmental Agreement (IGA) or contractual obligation in place which specifies an entity outside the Air Force who is responsible for operating and maintaining the storm sewer system and allows that entity the necessary access to operate and maintain the system.***

**COMMENT:** Buckley AFB does not have operational control of the storm sewer system in the privatized housing area, which is leased to Hunt Housing, LLC. The Buckley AFB housing privatization agreement with Hunt Housing, LLC, Lease No. SPCBUC-1-04-0055, dated 4 Aug 2004, para 11.1.1 states the following: "The Lessee shall be responsible for the operation and maintenance of the utility systems owned by it within the Leased Premises, including but not limited to water, gas, TV, electric, sanitary sewer, and storm systems. The Government assumes no responsibility under this Lease for maintenance and operation of utility systems not owned by the Government or for utility easements across Government property procured by the Lessee from either local sources or the Government."

We propose replacing the MS4 permit, para 1.1, with the following: "This permit covers all areas served by the municipal separate storm sewer system (MS4) within the exterior boundary of Buckley Air Force Base, except for the privatized housing area currently leased to Hunt Housing, LLC. Hunt Housing, LLC and its successors shall be solely responsible for the sanitary sewer and storm systems under its operation and control."

***2.2 Public Education and Outreach on Stormwater Impacts***

**COMMENT:** This section singles out specific training requirements for housing personnel and residents, but again this would be better left to the SWMP. Including more generic requirements such as "all of installation personnel must be appropriately trained" would be sufficient. This would allow the installation to curtail training programs to the needs of each group. Additionally, it would provide flexibility in the SWMP when dealing with privatized housing area lease issues but still meet the intent of the public outreach requirements.

***2.2.7 Provide and document training to all Environmental Project Officers (EPOs), planning staff, and contracting officers to learn about LID practices, green infrastructure practices, and to communicate the specific requirements for post-construction control as specified in this permit. This includes contracting officers employed by the base and contracting officers at the US Government Contracting Office located on-base;***

**COMMENT:** Please clarify who are "Environmental Project Officers," as Buckley AFB does not have such designations.

We ask that this provision be removed and replaced with the following: "Provide and document training to appropriate 460 SW personnel, for example, environmental, engineering and planning staff, and contracting officers to communicate the specific requirements for post-construction control as specified in this permit. Such training will be made available to tenant unit personnel, within the context of current contracts or inter-service support agreements."

***2.3.1 Comply with applicable State and local public notice requirements when implementing a public involvement and participation program;***

**COMMENT:** This language implies that Buckley AFB is subject to those public notice requirements, a conclusion that may not be entirely accurate. A better approach may be: "Document efforts to provide notice of public involvement and participation program."

***2.3.4 Create and document a mechanism by which Aurora and Buckley AFB communicate to discuss decisions related to new development, stream maintenance, and new discharges which may affect the flow and stormwater quality in East Tollgate Creek;***

**COMMENT:** This language conveys a significant commitment to a process that must then be maintained, i.e. a "mechanism." A simpler approach may be: "Document efforts to meet at least annually with the City of Aurora to discuss development, maintenance and new discharges to East Toll Gate Creek."

***2.3.5 Provide volunteer activities as practicable to actively engage residents and personnel at Buckley Air Force Base in understanding water resources and how their activities can affect water quality.***

**COMMENT:** Opportunities for volunteer activities are somewhat limited on the installation, since many open areas where cleanups may occur are off-limits for a variety of reasons. Please provide additional input as to the context and rationale for this permit condition. In addition, this condition is a subset of public outreach/involvement.

***2.4.6 Develop and maintain an Illicit Discharge Detection and Elimination (IDDE) database which tracks dry weather screening efforts and the location and any remediation efforts to address identified illicit discharges;***

**COMMENT:** Since IDDE has not been identified as a major issue at Buckley AFB, this condition appears to be unnecessary. The installation completed an aggressive cross-connection inventory and found no issues. Also, there are other plans and procedures in place to respond to any suspect discharge. The development of a new database is unnecessary, given Buckley AFB already maintains a database for SPCC purposes and will be modifying that database for use related to MSGP. Para 2.4.4, which requires Buckley AFB to "analyze any reports provided by the Buckley AFB Fire Department for trends in illicit discharge reports annually, and take action as practicable to eliminate these illicit discharges," is sufficient.

***2.4.8 Maintain a list of potential pollutants which may be mobilized in stormwater discharges for all facilities not covered under a separate stormwater permit and note the source and location of these potential pollutants. Evaluate each category of allowable non-stormwater discharges referenced in the permit at least once every five years. If the permittee identifies any of these non-stormwater discharges as a significant contributor of pollutants, it must include the category as an illicit discharge, include the non-stormwater discharge in the list of potential pollutants, and implement a plan of action to minimize or eliminate the illicit discharge as soon as practicable;***

**COMMENT:** This is a confusing and potentially onerous condition. All facilities on the installation are already covered by either the MS4 permit or the MSGP. Also, Buckley AFB has approximately 3000 hazardous material authorizations on record and already tracks hazardous materials through EPCRA TRI and Tier II. This would be an additional effort with little to no water quality benefit.

***2.5.3 Develop and maintain a list of preferred construction site BMPs with criteria for maintenance and installation. This may reference or incorporate documents which define how to install and maintain BMPs such as the Urban Drainage and Flood Control District Criteria Manual;***

**COMMENT:** Selection, installation and maintenance of stormwater BMPs at construction sites is the responsibility of the construction contractor (CGP operator). By developing a list, the 460<sup>th</sup> can be construed as limiting the options for contractors and as accepting some level of liability at the construction site. Recommend deleting this condition.

***2.5.10 Maintain and utilize a Notice of Termination (NOT) form for Buckley AFB independent of the CGP NOT form and have Buckley AFB stormwater staff inspect all construction sites prior to termination to ensure that 70% vegetative cover has been met at all areas of the site.***

**COMMENT:** As written, this requirement may violate federal contract law. Stormwater staff can certainly inspect construction sites to ensure 70% vegetative cover. However, the contracting office is the only entity that can sign off on either type of NOT. Additionally, while vegetative cover is the most desirable, it is not the only method to accomplish final stabilization.

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

**COMMENT:** As described in the cover letter to these comments, the provisions in this section of the draft permit use concepts and requirements that appear to be derived from EISA Section 438 and EPA's Technical Guidance on implementing EISA Section 438. Again, as a general comment, those provisions are not CWA MS4 requirements and are not appropriate for inclusion in this draft permit.

***2.6.1 Starting the first day of the reissued permit, coordinate National Environmental Policy Act (NEPA) review procedures and review contracts to ensure that no projects shall be made***

***available for bidding without procedures, BMPs, and costs provided so that runoff from newly developed and re-developed impervious surfaces equal to or greater than one acre mimics pre-development hydrology where technically feasible;***

**COMMENT:** It is a misapplication of NEPA to require analysis on whether runoff mimics “pre-development hydrology where technically feasible” and to “ensure” all projects have such procedures in place. NEPA was intended to require federal agencies determine whether major federal actions significantly affect the quality of the human environment prior to taking a proposed action. NEPA does not require federal agencies to ensure that certain conditions such as pre-development hydrology provisions are in place. We believe an MS4 permit is an inappropriate mechanism to amend NEPA in such a fashion and respectfully request that you delete this requirement.

Finally, the requirement in subsection 2.6.1 states, “Starting the first day of the reissued permit.” This condition needs to have provisions for those projects that have already been designed, but for which construction has not yet started. These projects have most likely been funded with prior year appropriations, so requirements in this section could amount to obligating additional federal monies. As written, this condition would require all projects, even those at the 100% design stage, to be redesigned before being available for bidding, as of the first day, at great cost and imposing significant delays on limited Congressional appropriations.

***2.6.2 Review Form 1391 Military Construction Project Data Sheets prior to submittal to ensure that all new construction projects disturbing 1+ acre include a requirement to design for and provide funding for the installation of permanent 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 post-construction 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:** This requirement is prescriptive and imposes a condition affecting internal work processes that may be routinely changed. For example, the installation may be deemed to violate this permit if it fails to use Form 1391, or if Form 1391 changes. We respectfully ask that you delete this provision as a permit condition.

***2.6.3 Working with EPA, consider options for training the Omaha Army COE office and the US Fiscal Property Office related to pre-development hydrology, since they act as the construction agents at Buckley AFB. Training for the COE should take place at both the Louisville (design) office and the Omaha (engineering) office;***

**COMMENT:** The draft language requires Buckley AFB to work with EPA to come up with ways and methods to train COE and U.S. Fiscal Property Office personnel. The apparent intent is to require COE and Fiscal Property personnel undergo pre-development hydrology training. However, the 460 SW has no authority to require the COE and the Fiscal Property Office

personnel to undergo any type of training, much less pre-development hydrology training, and the MS4 permit is not the appropriate mechanism to implement such a requirement. Additionally, if either the COE or Fiscal Property Office declines training, Buckley AFB would not be able to meet this condition and would be in violation of the permit. We request EPA delete this condition from Buckley's permit.

***2.6.5 Prior to the end of year 3 of the permit, incorporate LID designs provided for use in Simplified Acquisition Base Engineering Requirements (SABER) 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. To request a work order, it is necessary to submit an Air Force Form 332. Only a portion of these go to environmental review via the work order review board. For smaller types of projects which do not normally go to environmental review via the work order review board, define if there are specific types of projects where low impact development practices can be included;***

**COMMENT:** How the Air Force requests a work order (i.e., use an AF Form 332) is an internal process that does not need to be included as a permit condition. As an example, Air Force internal processes may change, and the installation may be deemed to violate this permit if it failed to use AF Form 332s.

***2.6.6 As part of the environmental review (e.g., NEPA) process for new construction projects disturbing equal to or greater than one acre, review all projects to ensure that they are designed to mimic pre-development hydrology where technically feasible;***

**COMMENT:** Environmental reviews are intended only to determine whether a proposed action would significantly affect the quality of the human environment and whether mitigation measures exist to lessen those effects. Even so, NEPA does not require the Air Force to select the option with the least environmental consequences; NEPA only requires the Air Force consider a reasonable range of alternatives before determining a course of action. Thus, it would be inappropriate to require that during environmental reviews, Buckley AFB "ensures" that new one-plus acre construction projects "are designed to mimic pre-development hydrology where technically feasible." Such assurance is neither the purpose, nor a requirement, of environmental reviews under NEPA. Thus, it is inappropriate to add a new level of scrutiny for NEPA reviews under an MS4 permit condition. As such, we ask that you delete this requirement.

Furthermore, requiring the environmental staff to "ensure" predevelopment hydrology can be achieved in a project places a significant "burden of proof" on the staff, with no responsibility on the ultimate permit holder.

***2.6.8 Maintain and utilize a Notice of Termination (NOT) form or other regulatory mechanism by which construction site operators provide maintenance and design specifications for all newly installed permanent stormwater control measures to Buckley AFB prior to receiving authorization from stormwater managers to submit a Notice of Termination (NOT) to EPA to discontinue coverage under the CGP;***

**COMMENT:** Stormwater managers can verify that construction site operators provide maintenance specifications for post-construction BMPs. However, the contracting office is the only entity that can authorize the operators to submit a NOT form to discontinue coverage under the CGP. As such, this requirement may violate federal contract law.

***2.6.9 Include design specifications and maintenance requirements for all newly installed permanent stormwater control measures in a georeferenced data management system;***

**COMMENT:** Recommend this condition be divided into two separate conditions, as maintenance requirements and design specifications are managed separately from the georeference database. Both are doable, but they cannot be linked, at least not at this point in time.





**MS4 Permit**  
Amy Clark to: laurie.fisher

08/16/2010 08:02 AM

Laurie - EPA is getting ready to public notice Buckley's permit and I wanted to ensure that we have the correct permittee name. Greg had listed "Buckley AFB" as the permittee, but I think it should be "Air Force Space Command." Is that correct?

Thanks.

Amy Clark  
EPA Region 8  
Stormwater Coordinator  
1595 Wynkoop St.  
Mail Code: 8P-W-WW  
Denver CO, 80202  
303.312.7014 (office)  
303.312.6116 (fax)

<http://www.epa.gov/region8/water/stormwater>

Send me an e-mail if you would like to receive updates related to stormwater permits, BMPs, and NPDES regulations.

**EPA-BAFB-0000380**



**MS4 Permit**  
Amy Clark to: Laurie.Fisher

09/16/2010 09:56 AM

Hi Laurie - I'm going to be public noticing Buckley's permit in the next week and I was needing the "responsible official's" name and phone for the Statement of Basis. I have you listed as the contact person but who should be listed as the "responsible official"? Thanks.

Amy Clark  
EPA Region 8  
Stormwater Coordinator  
1595 Wynkoop St.  
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303.312.7014 (office)  
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<http://www.epa.gov/region8/water/stormwater>

Send me an e-mail if you would like to receive updates related to stormwater permits, BMPs, and NPDES regulations.

**EPA-BAFB-0000381**



**Re: Buckley AFB MS4 Permit**

Amy Clark to: Carver, Ed P Civ USAF AFSPC AFSPC/A7A

09/16/2010 04:04 PM

Cc: "Fisher, Laurie Ms Civ USAF AFSPC 460 CES/CEV", "Lester, Ronald J Civ USAF AFSPC AFSPC/A7A"

Hi Ed - Thanks for introducing yourself. I understood that there was some back-and-forth with the permit while Greg was still in this position. Last I heard, Greg had incorporated/addressed all of Buckley's comments into the permit and SOB. Just so you know, I called Laurie's replacement (name is escaping me at the moment) on 8/17 and inquired about the permittee name. I also informed her that the permit would be public noticed shortly. After speaking with her, I changed the permittee name to "US Dept. of Air Force, 460th Space Wing" from "Buckley Air Force Base" since she said the permittee should be the 460th Space Wing. Both CDPHE and myself questioned how the Base could be the permittee. Other than the name change, I hope there is very little that you'll have concern with. Greg did tell me that he addressed all of your comments, but please let me know if you see something else. I will email you the advance versions tomorrow morning. If you are able to get me your comments quickly, I may be able to incorporate them into the version that will go out for public notice. I have to public notice the permit before 9/30. Thanks and please let me know if you have any questions.

Amy Clark  
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Send me an e-mail if you would like to receive updates related to stormwater permits, BMPs, and NPDES regulations.

"Carver, Ed P Civ USAF AFSPC AFSPC	Good Afternoon Amy-	09/16/2010 02:19:48 PM
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From: "Carver, Ed P Civ USAF AFSPC AFSPC/A7A" <Ed.Carver@PETERSON.af.mil>  
To: <Clark.Amy@epamail.epa.gov>  
Cc: "Fisher, Laurie Ms Civ USAF AFSPC 460 CES/CEV" <Laurie.Fisher@Buckley.af.mil>, "Lester, Ronald J Civ USAF AFSPC AFSPC/A7A" <Ronald.Lester@peterson.af.mil>  
Date: 09/16/2010 02:19 PM  
Subject: Buckley AFB MS4 Permit

Good Afternoon Amy-

We haven't been formally introduced, but I am the Headquarters Air Force Space Command Water Program manager with oversight of Peterson AFB, Buckley AFB, Cheyenne Mtn AFS, & Schriever AFB. Representatives from these bases and I have been working with Greg Davis via a federal facilities front range water working group on MS4 permit issues over the past several years.

EPA-BAFB-0000382

We were provided a draft MS4 permit for Buckley AFB and submitted extensive comments to EPA on 8 Jan 2010 (see attached memo). We met with Greg Davis to address these comments and expected to receive another draft permit prior to public notice of the revised permit. It is our understanding that EPA intends to public notice the MS4 permit for Buckley AFB in the next week.

Since some of our comments were significant, we request an advanced copy of the revised permit prior to the public notice in order to ensure our comments were addressed prior to the formal comment period. We would welcome the opportunity to discuss this issue with you at your convenience. You can contact me at (719) 554-7717, E-mail [Ed.Carver@Peterson.af.mil](mailto:Ed.Carver@Peterson.af.mil) or contact the Environmental Quality Chief (Mr Ron Lester) at (719) 554-9812.

We appreciate EPA's continued support on this issue.

V/R,

Ed

Ed Carver  
Water Quality Manager  
HQ AFSPC/A7AQ  
Comm 719-554-7717 [attachment "MS4 Buckley AFB Comments to EPA  
08 Jan 2010.pdf" deleted by Amy Clark/R8/USEPA/US]