

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 F

Comments by the U.S. Department of the Air Force, by Thomas Manning, Air Force
Regional Environmental Coordinator, Region 8, dated October 18, 2010



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

RECEIVED

18 October 2010

OCT 18 2010

Wastewater Unit

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:

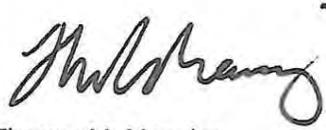
As the Air Force Regional Environmental Coordinator (REC) for the U.S. Environmental Protection Agency (EPA) Region 8, I appreciate the opportunity to provide comments on behalf of Buckley AFB and the United States Air Force for your consideration on the U.S. EPA Draft MS4 Permit for Buckley AFB.

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.

A handwritten signature in black ink, appearing to read "Tom Manning", with a stylized flourish at the end.

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.