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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

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

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

Design water volume
(to be retained)

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

Selected on-site design options

remaining water volume?

OFF-SITE OPTIONS
(optional)

Selected off-site design options

4. Finalize design and estimate cost