VESSEL DECONSTRUCTION GENERAL PERMIT

Addendum to the Fact Sheet
Appendix C: Response to Comments

February 13, 2024

DEPARTMENT OF
ECOLOGY
State of Washington

SUMMARY OF MAJOR PERMIT CHANGES

In finalizing this permit, the Washington State Department of Ecology (Ecology) considered all of the public comments received during the public comment period. Ecology received only written comments, as no comments were received during oral testimony at the public hearings held on November 28 and 29, 2023.

This is a summary of the significant changes made to the Vessel Deconstruction General Permit (permit) in response to the public comments received between October 18, 2023 and December 6, 2023.

- Removal of the Special Condition S2.B.2. on the public notice requirements. To be consistent with the previous issuance of the permit. Vague trigger criteria for when the condition was enforceable for the public notice requirement.
- Addition of Special Condition S6.D., allowing Ecology to require, on a case-by-case basis, additional monitoring and reporting requirements for non-routine discharges and/or post-deconstruction receiving waters.
- A change was made to the 303(d) Listed Waters definition in the permit, shown in Appendix A. These revisions were done to improve consistency with the definition used in other general permits and state law.

Additional minor changes to permit wording and punctuation have been made to correct formatting, grammar and improve clarity.

COMMENTS AND RESPONSES

Ecology published a draft Vessel Deconstruction General Permit on October 18, 2023 at 12AM for public comment. The public comment period ended December 7, 2023 at 12AM. During the comment period, Ecology conducted two public hearings and workshop webinars. Ecology also accepted public comments via comment form on the permit website and email.

Ecology considered all comments in preparing the final permit. The response to comments document describes Ecology's response to each commenter and any changes to the permit that resulted from the comment. Ecology received 15 comments during the public comment period. Each comment is numbered. The comment number that corresponds to each commenter is given in Table 1. These numbers allow the commenter to find Ecology's response to their comments. Comments may include parts or be summarized; full text of all comments received by Ecology can be found at the Vessel Deconstruction General Permit Public Comment Period[1] web page.

The response to comments is organized in two sections:

Section 1: Table of Commenters

Section 2: Comments on the Permit and Related Documents

Section 1: Table of Commenters and Comment Numbers

Table 1: Commenters

Commenter Name	Affiliation	Comment Number(s)
Emily Gonzalez, Director of Law and Policy, staff attorney	Puget Soundkeeper Alliance	1-14
Abby Barnes, Sediment Quality Unit Supervisor	Washington State Department of Natural Resources	15

[1] https://wq.ecology.commentinput.com/comment/extra?id=Gm5htPgCx2

Section 2: Response to Comments on the Permit

Introduction section

This section describes how the section presents the comments and their responses. The commenters and their respective comment numbers are shown in Table 1. Emily Gonzalez of Puget Soundkeeper provided Ecology with fourteen comments on the Vessel Deconstruction General Permit (comments 1 – 14). Abby Barnes of the Washington State Department of Natural Resources provided Ecology with one comment on the Vessel Deconstruction General Permit (comment 15).

The comments on the Vessel Deconstruction General Permit received will be separated by a header indicating the commenter followed by a number as listed in Table 1. For each comment, there is a number followed by a title of the comment then a summary of the comment and response taken by Ecology. The complete comments are available on the Vessel Deconstruction General Permit Public Comment Period[2] web page.

Puget Soundkeeper® Alliance Comments and Responses

1. Public Notice Requirements

Summary:

Public notice requirement added by Ecology to quicken the permitting process for permittees that have 'previously circulated public notice under this permit for the same type of discharge to the same receiving water(s) in the same geographical area' (Special Condition S2.B.2) is vague and unenforceable.

This public notice requirement was added to allow permittees that have already circulated public notice, under the Vessel Deconstruction General Permit, to not have to recirculate a public notice if the same type of discharge to the same receiving water(s) in the same geographical area is performed. The commenter noted that the provision lacks a clear criterion to trigger this exemption. Additionally, defining the elements in this condition (i.e. type of discharge, type of pollutants, same receiving waters) is necessary to comply with both procedural and substantive legal standards.

Response:

Ecology concurs with the commenter that without a clear criterion to trigger this exemption and without defining certain elements of this condition, the condition may not comply with procedural and/or substantive legal standards. This condition was removed from the final draft of the Vessel Deconstruction General Permit.

[2] https://wq.ecology.commentinput.com/comment/extra?id=Gm5htPgCx2

2. Definition of 303(d) Listed Waters in Appendix A

Summary:

The definition of 303(d) waters in Appendix A of the draft Vessel Deconstruction General Permit was modified to state "303(d) Listed Waters means waterbodies listed as Category 5 on Washington State's Water Quality Assessment, approved by EPA, *in effect at the time of permit coverage*" (emphasis added).

The effect of the added language "in effect at the time of permit coverage," may be inconsistent with water quality standards, as it implies that permittees are only subject to 303(d) related conditions for waters listed at the time of obtaining permit coverage. The commenter recommends that a change in the emphasized portion of the definition to "at any time throughout the period of permit coverage" will more appropriately protect impaired waterbodies.

Response:

Ecology has changed the definition of 303(d) listed waters in the permit to reflect 303(d) listed waters definition from the Boatyard General Permit. Although this definition does not account for impaired waterbodies that have been listed during the period of permit coverage, it is considered a more robust definition of 303(d) listed waterbodies and remains consistent with other Ecology general permits.

3. Post-Wastewater Discharge Monitoring

Summary:

Following completion of the vessel's deconstruction, Ecology should include explicit requirements for the permittees to monitor to protect water quality.

Following wastewater discharge from a vessel deconstruction, Ecology should include explicit requirements in the Vessel Deconstruction General Permit for permittees to monitor and analyze for contaminants for a specified period. The commenter contends that such due diligence is appropriate to protect water quality standards and would be consistent with all known, available and reasonable methods of prevention, control and treatment. Additionally, an explicit requirement that a permittee facility clean-up and remediate if a non-routine discharge fails to control the discharge of pollutants.

Response:

Ecology recognizes the potential for disturbing the sediment while deconstructing a vessel in a non-routine fashion in our navigable waterways. The added condition S6.D provides Ecology with the ability to require additional monitoring and reporting requirements for non-routine discharge and/or of the receiving waters post-deconstruction. This will allow Ecology to require monitoring and reporting after non-routine discharge from vessel deconstruction, if necessary.

4. Material and Substantial Changes from Authorized Permit Coverage

Summary:

Operations with coverage under the Vessel Deconstruction General Permit that need to make a material change to the vessel deconstruction operation which results in a substantial change to the anticipated volume or type of discharges, then the permittee must notify Ecology within 60 days prior to that planned change.

The commenter notes that the if the permittee needs to make a material change to their vessel deconstruction operation that will result in a substantial change in an anticipated volume or type of discharges that the operator must notify Ecology at least 60 days prior to the planned alteration. The commentor expresses their concern over this condition for two reasons. First that the trigger is vague and unenforceable, as there is no definition of what "material" or "substantial" changes mean throughout the general permit. Secondly, the determination for what constitutes a "material" or "substantial" change is at the discretion of the permittee, thus creating a self-enforcing regulatory scheme.

Response:

The statement cited in this comment refers to the Vessel Deconstruction General Permit Fact Sheet and does not specifically cite a general permit condition. The Fact Sheet portion referenced by the commenter is the section referring to the State Environmental Policy Act (SEPA), where Ecology requires the permittee to report changes to their anticipated volume or type of discharge within 60 days. After reviewing the provided information, Ecology determines the material or substantial alterations warrant modification of their permit coverage or is outside the scope of the initial SEPA evaluation.

Ecology will not modify permit conditions because of this comment. Instead, Ecology will replace the phrase "…substantial change to the volume…" with "…the quantity, characteristic, or type of discharge…" to reflect the intent of a substantial change in the volume.

Ecology references 40 CFR 122.62(a)(1), where reference to "material" and "substantial" alterations or additions to the permitted facility or activity post permit coverage that justify the addition of permit conditions that are absent in the existing permit. Additionally, WAC 173-220-150(1)(b) addresses "facility expansions, production increases or process modifications which would result in new or increased discharges of pollutants causing effluent limitations in the permit to be exceeded must be reported to the department by submission of a new application or supplement thereto; or, if such discharge does not violate effluent limitations specified in the permit, by submission to the department of notice of such new or increased discharges of pollutants."

The "material" and "substantial" alterations in this chapter would constitute a review by Ecology to ensure that SEPA is complied with.

5. Drydock Vessel Deconstruction

Summary:

Drydock vessel deconstruction allows for more control of wastewater discharge. Thus, Ecology should only allow vessels to be deconstructed while afloat for truly necessary cases.

The Vessel Deconstruction General Permit should limit vessel deconstruction's while afloat to essential cases, as drydock vessel deconstructions allow for more control of wastewater discharge. Permit applicants should justify why drydock deconstruction is not a viable option and why deconstructing the vessel afloat is necessary.

Response:

Ecology recognizes that drydocks control wastewater discharges to a greater degree. However, there is no requirement requiring a feasibility assessment for other types of deconstructions (i.e. barge, pier, land). Vessel Deconstruction General Permit is for situations where the activities are not covered by either the Boatyard General Permit or Shipyard Individual Permit.

6. Best Management Practice and All Known, Available, and Reasonable Treatment Standards and Technologies Implementation

Summary:

Ecology must ensure that best management practices and all known, available, and reasonable treatment standards and technologies are implemented to address stormwater runoff from vessels being deconstructed over water.

The primary type of discharge anticipated for vessels deconstructed over water is the stormwater runoff from exposed portions of the vessel that may contain "oil and grease, sediment, pH, [and] metals." How does Ecology ensure best management practices and all known, available, and reasonable treatment standards and technologies listed in the Vessel Deconstruction General Permit are properly implemented to protect water quality.

Response:

Ecology acknowledges that best management practices and all known, available, and reasonable treatment standards and technologies are important for controlling the discharge of both stormwater and wastewater during vessel deconstructions. We will continue to work with the permittees to ensure best management practices and all known, available, and reasonable treatment standards and technologies are employed during vessel deconstruction projects.

7. Not Authorizing Certain Waters for Discharge

Summary:

This comment acknowledges that the Vessel Deconstruction General Permit does not authorize the discharge of certain waters containing additional pollutants.

The Vessel Deconstruction General Permit does not authorize the discharge of water used for fire suppression during metal cutting, as well as water used for health and safety purposes during asbestos abatement and working with lead paint.

Response:

Ecology recognizes the potential environmental and human health concerns associated with water used to suppress fires during metal cuttings, asbestos, and working with lead paint during vessel deconstruction.

8. Prohibited Discharges Considerations

Summary:

The Fact Sheet discusses the pollutants Ecology considered for S5.D. Prohibited Discharges. The commentor asks which other types of prohibited discharges were considered. The Fact Sheet and the Vessel Deconstruction General Permit lists prohibited discharges to waters of the state. What other discharges (pollutants) did Ecology consider adding to the prohibited discharge list for this permit revision?

Response:

Ecology could have considered the following types of discharges in S5.D. Prohibited Discharges:

- Discharge of sediment-laden water,
- Discharge of cleaning activities that produce wastewater containing soaps, dispersants, and/or emulsifiers (S9.C.12.d does not allow solvents, detergents, emulsifying agents, or dispersants added to bilge water to discharge to waters of the state; and S9.C.7 states “the permittee must not use emulsifiers or dispersants in or upon the waters of the state…”),
- Discharge of water capable of causing a change in turbidity or color in the receiving waters.

Ecology believes the current list of prohibited discharges in S5.D. will be protective of state waters for vessel deconstruction activities.

9. Chronic Criteria for Metals

Summary:

The Vessel Deconstruction General Permit Fact Sheet describes chronic criteria for metals (total Cu, Zn, and Pb) as four-day averages (pg. 26 of the Fact Sheet).

The commenter inquires why chronic criteria for metals are assessed using four-day averages and how this method helps to prevent or reduce the likelihood of violating water quality standards.

Response:

Chronic criteria in the water quality standards protect aquatic organisms from injury or death as a result of repeated or constant exposure over an extended period of time. The effluent limits in the permit are expressed as daily maximum levels, not four-day averages. The permit limits prevent the violation of both acute and chronic criteria in the receiving waters. See pages 30-32 of the Fact Sheet.

10. Access to Permit Documents

Summary:

Access to relevant information is crucial to public participation in the regulatory processes, like the Clean Water Act, and other regulatory schemas.

The Vessel Deconstruction General Permit is mandated to provide the public with access to essential documents, including the permit, permit coverage letter, approvals, and the deconstruction site management plan.

Response:

Ecology provides public access to the Permitting and Reporting Information System (PARIS) database containing information about water quality permits, inspections, enforcement actions, and discharge monitoring reports. Both Federal National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge permits are included in the database. Documents, submitted by the permittee, are available in the database including the deconstruction site management plans.

11. Regular Site Inspections Leading to Fewer Water Quality Violations

Summary:

There is a correlation between regular site inspections and fewer water quality violations, emphasizing the important of establishing a minimum baseline for the inspection frequency within the Vessel Deconstruction General Permit.

The commenter notes “Ecology notes that sites that are inspected regularly typically tend to cause fewer water quality violations” there should be a minimum baseline of site inspections for sites dealing with non-routine discharges.

Response:

Ecology agrees that effective best management practices and all known, available, and reasonable treatment standards and technologies and their subsequent inspection reduce water quality standard violations. Special Condition S8 of the permit requires site inspections and discharge observations daily.

12. Requirement to Report Identified Problems from Site Inspections

Summary:

The Vessel Deconstruction General Permit requires the permittee to report problems identified during the permittees daily site inspection. The general permit does not require the permittee to report the underlying event.

During a daily site inspection, per S8.A. Site Inspections, if the permittee notices a problem, the Vessel Deconstruction General Permit requires them to report the remedial actions taken to Ecology. However, the underlying problem is not necessarily required to be reported to Ecology.

Response:

Ecology acknowledges that the Vessel Deconstruction General Permit does state in Special Condition S8.A.5.d to report to Ecology the underlying reason the BMPs failed to operate as designed or intended. Ecology believes the underlying problem will be reported to Ecology through the S8.A.5. permit condition.

13. Where are the Records of Problems Stored by the Permittee

Summary:

Clarification on where the records of problems noted during the site inspections are stored by the permittee. During a permittees daily site inspection, the Vessel Deconstruction General Permit requires them to summarize the results of the inspection in an inspection report or checklist and enter the report/checklist into, or attach it to, the site logbook. Where are these site inspections stored by the permittee?

Response:

These records are stored by the permittee according to Special Condition S11.B. Records Retention. The permittee is required to store all documents for a minimum of three (3) years.

14. Implementation of Source Control and/or Treatment BMPs Following an Inspection

Summary:

The deconstruction site management plan must be completed within one day following an inspection, however there is no timeline for the implementation of the source control and/or treatment BMPs. Revisions to the deconstruction site management plan must be completed within 24 hours following an inspection, ensuring quick updates based on the permittee's findings. There is no specified timeline for the implementation of the best management practices.

Response:

Following the identification of a problem during a daily site inspection, Special Condition S9.B.2.a states that the permittee must update the deconstruction site management plan within 24 hours of the inspection. Special Condition S9.B.2.b states that a permittee must fully implement and maintain appropriate source control and/or treatment BMPs as soon as possible, addressing the problems no later than 24 hours from the inspection. They must also document their best management practices installation and maintenance in the site logbook.

Washington State Department of Natural Resources Comments and Responses

15. Washington State Department of Natural Resources Programmatic Permit

Summary:

The Washington State Department of Natural Resources (DNR) emphasizes that derelict vessels are a public nuisance, and the timely removal of abandoned vessels is needed to prevent pollution of our state waters. DNR suggests a programmatic permit be held by DNR to expedite derelict vessel removal, thus reducing costs and administrative burdens. DNR also suggests the creation of an emergency clause in the permit to reduce the required timeframe to address immediate health, safety, and environmental concerns.

Response:

DNR's concerns regarding the need for a prompt removal of derelict vessels to prevent environmental pollution and to safeguard human health. Ecology agrees that the timely removal of abandoned vessels will protect the environment. Ecology has removed S2.A.1.a. requiring a 90-day timeline for current permittees to submit a complete and accurate updated NOI to Ecology. Ecology added language to S2.A.2.a.iv. that allows Ecology to shorten timelines when feasible.

Regarding DNR's proposal for a programmatic permit (held by DNR), we are open to discussing potential methods to streamline the permitting process to facilitate quicker vessel removal while adhering to permit conditions and SEPA regulations during the next permit cycle (next 5-years).

The fee associated with In-Water vessel deconstruction is larger than the other types of vessel deconstruction activities. The permit fees are intended to reflect the costs associated with regulations of complex deconstruction projects, and the relatively small number of projects authorized under the general permit to recoup costs associated with permit reissuance. Ecology invites DNR to participate in Ecology's rulemaking on permit fee regulations starting summer of 2024.