



U.S. Environmental Protection Agency

This document is one section from the Response to Public Comments Document regarding the “Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs,” published in August 2004. You can find the Response to Comments document in its entirety at <http://www.epa.gov/owow/oceans/habitat/artificialreefs/index.html>.

**Response to Public Comments Regarding the
“Draft National Guidance: Best Management
Practices for Preparing Vessels Intended to Create
Artificial Reefs”**

Responses to Comment # EPA-HQ-OW-2004-0003-0028

May 2006

**Response to Public Comments regarding the
Draft National Guidance: Best Management Practices for Preparing
Vessels Intended to Create Artificial Reefs
69 Fed. Reg. 46141 (August 2, 2004)**

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|---|---|
| Docket ID: EPA-HQ-OW-2004-0003. "Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs." 69 Fed. Reg. 46141 (August 2, 2004). | |
| Public Comment | |
| Docket Document ID: | EPA-HQ-OW-2004-0003-0028 |
| Author Date: | September 30, 2004 |
| Author: | Ellie Irons Office of Environmental Impact Review Commonwealth of Virginia Department of Environmental Quality |

Comment I-III-1:

OW-2004-0003



OCT 1 - 2004

10-04-04 P03:03 IN

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

(804) 698-4000
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September 30, 2004

Water Docket
Environmental Protection Agency
Mailcode: 4101T
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

ATTN: Docket ID No. OW-2004-0003
RE: Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs (DEQ #04-164F).

Dear Sir/Madam:

This letter is provided to clarify the Department of Environmental Quality's September 28, 2004 comments on the above-referenced project. Page 2, paragraph 4 in the "Comments" section of our letter to your office. Our initial correspondence indicated that the Draft National Guidance document addressed the topic of waste from a toxic and hazardous perspective. This is incorrect since the document does not specifically address hazardous or solid wastes, but instead, the Draft National Guidance document only addresses some toxic and hazardous substances.

The new Page 2, paragraph 4, "Comments" section should read as follows:

Since the document excludes discussion of hazardous and solid wastes, the DEQ-Waste Division recommends that the Final National Guidance document address hazardous waste laws and regulations, including the Resources Conservation and Recovery Act and state analogues, along with hazardous substances, as addressed by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and solid waste laws and regulations.

We are sending this letter and a corrected version of our September 28, 2004 letter by email in order to reach your office by the October 1, 2004 deadline.

Response to Comment I-III-1:

The corrected version of the September 28, 2004 letter was received and will follow as part of this Public Comment Document (Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0028).

We will follow up this email with a signed copy and 3 originals of both letters in the mail. We regret any inconvenience that may have resulted from this error. Thank you for the opportunity to comment on this matter.

Sincerely,


Ellie Irons, Program Manager
Office of Environmental Impact Review

Cc: Allen Brockman, DEQ-Waste



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September 28, 2004

Water Docket
Environmental Protection Agency
Mailcode: 4101T
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

ATTN: Docket ID No. OW-2004-0003

RE: Draft National Guidance: Best Management Practices for Preparing Vessels
Intended to Create Artificial Reefs (DEQ #04-164F).

Dear Sir/Madam:

The Commonwealth of Virginia has completed its review of the above-referenced guidance. The Department of Environmental Quality (DEQ) is responsible for coordinating Virginia's review of federal environmental documents and responding to appropriate federal officials on behalf of the Commonwealth. The following agencies and planning district commission participated in this review:

Department of Environmental Quality
Department of Game and Inland Fisheries
Department of Conservation and Recreation
Virginia Port Authority
Virginia Institute of Marine Science
Hampton Roads Planning District Commission

The Department of Health and the Marine Resources Commission were also invited to comment.

Project Description and Purpose

The Environmental Protection Agency (EPA), with support from the Department of Transportation's Maritime Administration (MARAD), intends to provide a national, environmentally-based best management practices guidance for the preparation of vessels to be sunk with the intention of creating artificial reefs in permitted artificial reef construction areas.

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Page 2

Comment I-III-2:

Artificial reefs should be developed in a manner that enhances marine resources and benefits the marine environment. Strategically sited artificial reefs not only enhance aquatic habitat, but also provide an additional option for conserving, managing and/or developing fishery resources.

Response to Comment I-III-2:

EPA agrees with this comment. As stated in the BMP guidance document, the purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources. Further, the BMP guidance document describes appropriate vessel preparation that could achieve such benefits as an artificial reef and avoid negatively impacting the environment with pollutants. The clean-up performance goals provided in the BMP guidance document, if implemented and complemented with strategic reef site selection, will maximize the opportunity for these vessels to benefit the environment as artificial reefs.

Comment I-III-3:

Although the best management practices presented in the Draft Guidance document are intended for use when preparing vessels to serve as artificial reef habitat, the best management practices may have applicability to other in-water uses of vessels, such as the creation of recreational diving opportunities, and placement of breakwaters or other types of barriers. When preparing a vessel for other permitted in-water uses, consideration should be given to vessel stability and integrity prior to and after final placement.

Response to Comment I-III-3:

This comment is merely restating what is provided in the draft BMP guidance document, and presumably, no response would be necessary. However, revisions made to the draft BMP guidance document include the deletion of any discussions pertaining to the placement of vessels to serve as breakwaters or other types of barriers.

Comment I-III-4:
Comments

In general, the Commonwealth supports the EPA in providing national, environmentally-based best management practices as set forth in the guidance document. Please note, however, the guidance document does not preclude the Commonwealth from commenting on future site-specific projects. Any proposed projects located in Virginia's coastal zone would be subject to review under the Virginia Coastal Resources Management Program (VCP) and would require the project proponent to submit a consistency determination to this office for review.

Response to Comment I-III-4:

The best management practices described in the BMP guidance document will serve as national guidance for the preparation of obsolete and decommissioned military and commercial vessels for use as artificial reefs. As vessel-to-reef projects are becoming a more common management option for obsolete MARAD and Navy vessels, the development of this guidance is timely. Currently, no guidance of this kind is available.

The BMP guidance document does not substitute for any statute or regulation, nor is it a regulation itself. The document recommends environmental best management practices for use in the preparation of vessels for use as artificial reefs. Associated with the recommended environmental best management practices are narrative environmental clean-up performance goals, as well as recommendations and suggestions in furtherance of those goals. By its terms, the guidance itself does not impose binding requirements on any federal agency, States, other regulatory or resource management authorities, or any other entity. The BMP guidance document notes that state and local laws also may apply to vessel preparation or placement for use as an artificial reef, and interested readers should consult with appropriate state and local authorities to identify such further requirements.

Further revisions to the BMP guidance document demonstrates how the use of this guidance document may help support permit applications under the Clean Water Act section 404 or Rivers and Harbors Act section 10, as well as consistency determinations under the Coastal Zone Management Act. More specifically, the following language will be included in the final BMP guidance document:

“When preparing a vessel that is intended to serve as an artificial reef, documenting the clean-up procedures used and the contaminants that will remain onboard the vessel is a key element of the BMPs. More specifically, a description of how the BMP narrative clean-up goals were achieved, and a visual inspection, are needed to determine whether and how the vessel has been cleaned to the level recommended in this guidance document so the vessel can be managed appropriately. A vessel inspection by qualified personnel should be conducted to confirm satisfactory clean-up/preparation. It also should be noted that applicable regulatory regimes may require such an inspection.

Achieving and verifying satisfaction of the BMP clean-up goals could help support permit applications under the Clean Water Act Section 404 or Rivers and Harbors

Act Section 10, if a permit application is submitted to the U.S. Army Corps of Engineers. Further, robust BMP documentation might prove useful for demonstrating consistency with Coastal Zone Management Act programs, as well as for any other State or local certifications necessary to carry out a vessel-to-reef project. Also, EPA officials may find BMP documentation useful as part of their review under EPA certification authority per the Liberty Ship Act. (Note: this Act only applies to DOT/MARAD-owned obsolete vessels intended for use as an artificial reef for the conservation of marine life.)”

Finally, for the convenience of the reader as a starting point, the final BMP guidance document includes Appendix B which identifies selected federal statutes relevant for consideration in the preparation of a vessel for use as an artificial reef. For these statutes, Appendix B explains their potential relevance and briefly summarizes the relevant provisions. The Appendix is not intended to be an exhaustive list of every conceivably relevant statute, nor do the brief summaries in this list alter or replace any requirements, regulations, or applicable guidance under those statutes that are summarized. In addition, State and local laws also may apply to vessel preparation, but the document does not attempt to identify such laws in Appendix B.

Comment I-III-5:

Comments submitted by reviewers during the Commonwealth's review of the draft guidance document are attached for your review. A summary of these comments follows.

The Department of Game and Inland Fisheries supports the siting guidance that stipulates that while artificial reefs can improve local fishery resources, care must be taken to avoid locating a reef where it may adversely impact wildlife resources (Draft Guidance Document, pages 11-12).

Response to Comment I-III-5:

EPA agrees, but no changes to the draft BMP guidance document are needed.

Comment I-III-6:

Since the document excludes discussion of hazardous and solid wastes, the DEQ-Waste Division recommends that the Final National Guidance document address hazardous waste laws and regulations, including the Resources Conservation and Recovery Act and state analogues, along with hazardous substances, as addressed by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and solid waste laws and regulations.

Response to Comment I-III-6:

EPA modified the draft BMP guidance document to acknowledge the importance of appropriate storage and disposal of waste generated during vessel clean-up/preparation. More specifically, the following addition will be made to the final BMP guidance document's Executive Summary:

“The narrative clean-up goals for the materials of concern highlighted in this guidance should be achieved while preparing a vessel intended for artificial reefing. There are statutory requirements and associated regulations, as well as permit processes applicable to the process of preparing a vessel for reefing that are not highlighted in this document. These include, but are not limited to, issues such as vessel inspections by appropriate authorities and storage and disposal of waste generated during clean-up/preparation.

EPA also expanded the list in Appendix B to include the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act. Appendix B identifies selected federal statutes relevant for consideration in the preparation of a vessel for use as an artificial reef. For these statutes, Appendix B explains their potential relevance and briefly summarizes the relevant provisions. The information in Appendix B is intended only for the convenience of the reader in order to provide a useful starting point for identifying the principal environmental statutes of interest. The Appendix is not intended to be an exhaustive list of every conceivably relevant statute, nor do the brief summaries in this list alter or replace any requirements, regulations, or applicable guidance under those statutes that are summarized.

The final preparation plan for any particular artificial reef project will necessarily be vessel-specific, and will depend on the characteristics of the vessel and final permitted artificial reef construction site, as well as regulatory considerations. In addition, State and local laws also may apply to vessel preparation, but the document does not attempt to identify such laws in Appendix B.

Other than the abovementioned, no further revisions pertaining to the handling and disposal of wastes generated during vessel preparation will be included. To incorporate revisions pertaining to additional State and local laws that may also apply to vessel-to-reef projects is not within the purview of this document.

Comment I-III-7:

The Department of Environmental Quality's Northern Regional Office (NRO) states that the guidance outlined in the document on the removal of toxic and/or hazardous substances

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Page 3

should minimize impacts to water quality. However, both the DEQ-NRO and the DEQ-Tidewater Regional Office state that the document does not address the handling and disposal of wastes generated during vessel preparation. The DEQ-NRO suggests that information should be added to the Executive Summary and each section of the document stating that all waste generated during

the preparation of the vessels must be stored and disposed of according to 40 CFR 260 through 265 and all applicable state regulations. Also, discussion should be added to Appendix B citing the hazardous waste regulations under 40 CFR 261 through 265.

Response to Comment I-III-7:

See Response to Comment #s J-I-8 and I-III-6.

Comment I-III-8:

In addition, the guidance document should address the use of appropriate spill containment during the sinking of the vessels to capture any oil or fuel that appears on the surface and that the party responsible for sinking the vessel should be prepared to capture and clean up any residual material.

Response to Comment I-III-8:

The BMP guidance document provides guidance for the preparation of a vessel intended to create an artificial reef. Discussions of “appropriate spill containment during the sinking of a vessel to capture any oil or fuel that appears on the surface” is beyond the scope of the document and this type of concern would be addressed in a sink plan. The final BMP guidance document states that “this document does not provide information on how to sink a vessel or the required actions or regulatory procedures/processes associated with the act of sinking a vessel.”

Additionally, the formation of such an oily sheen would be highly unlikely if the clean-up performance goal for oil and fuel is achieved. That narrative clean-up goal reads as follows:

“Remove liquid fuels and oils and semi-solids (greases) so that: no visible sheen is remaining on the tank surfaces (this includes all interior fittings, piping, structural members); no film or visible accumulation is remaining on any vessel structure or component (e.g., on machinery or from spills on decking or carpet). The end result of such clean-up should be that no sheen be visible upon sinking a vessel.”

Comment I-III-9:

General Information

The Draft Guidance document (page 6) states that the document does not cover the specific statutory requirements and associated regulations as well as permit processes applicable to the process of preparing a vessel for reefing. However, the DEQ-Waste Division would like to provide some general information that would be relevant to any proposal for preparation of and the sinking of a vessel in waters of the Commonwealth of Virginia.

The DEQ-Waste Division states that for any ship disposal/Artificial Reef project, soil or ship-related material that is suspected of contamination, or wastes that are generated in or prior to the

disposal process, must be tested and disposed of in accordance with applicable Federal, State and local laws and regulations. Some of the applicable state laws and regulations in Virginia are the Virginia Waste Management Act, Code of Virginia Sections 10.1-1400 *et seq.*, the Virginia Hazardous Waste Management Regulations (9V AC 2-60) and the Virginia Solid Waste Management Regulations (9V AC 20-110). Some of the applicable Federal laws and regulations include the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 *et seq.* and the applicable regulations contained in Title 40 of the Code of Federal Regulations, and the U.S. Department of Transportation Rules for Transportation of Hazardous Materials. 49 CFR Parts 107.

In addition, ship-related structures to be demolished should be checked for asbestos-containing materials (ACM) and lead-based paint (LBP) prior to demolition or disposal. If ACM or LBP are found, in addition to the federal waste-related regulations, State regulations 9V AC20-80-640 for ACM and 9V AC20-60-261 for LBP must be followed. DEQ also encourages all projects and facilities to implement pollution prevention principles, including the reduction, reuse and recycling of all solid wastes generated. All generation of hazardous wastes should be minimized and handled appropriately.

Response to Comment I-III-9:

The BMP guidance document provides national environmentally-based best management practices for the preparation of vessels to be sunk with the intention of creating artificial reefs in permitted artificial reef construction areas. There are statutory requirements and associated regulations, as well as permit processes applicable to the process of preparing a vessel for reefing, that are not highlighted in this document. Furthermore, the above comments pertaining to waste regulations related to asbestos-containing materials and lead-based paints were provided for informational purposes only, rather than to comment specifically on the draft BMP guidance document. For this reason, no further response is necessary.

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Thank you for the opportunity to review the Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs. Copies of future NEPA or Coastal Zone Management Act documents prepared for sites located in Virginia should be sent to DEQ's Office of Environmental Review for review. For further information, please contact me at (804) 698-4325 or Anne Newsom at (804) 698-4135.

Sincerely,



Ellie Irons
Program Manager
Office of Environmental Impact Review

Enclosures

cc: Michelle Henicheck, DEQ-OWWP&C
John Bowden, DEQ-NRO
Harold Winer, DEQ-TRO
Allen Brockman, DEQ-Waste
Andrew Zadnik, DGIF

MEMORANDUM
DEPARTMENT OF ENVIRONMENTAL QUALITY
Piedmont Regional Office

4949-A Cox Road

Glen Allen, VA 23060

804/527-5020

To: Anne B. Newsom
Environmental Program Planner

From: Susan A. Ridout
DEQ-PRO Environmental Planner

Date: September 27, 2004

Subject: Draft National Guidance: Best Management Practices for Preparing Vessels
Intended to Create Artificial Reefs (04-164F)

I have reviewed the Environmental Impact Review guidance document submitted by the U.S. Environmental Protection Agency concerning the above-mentioned project. The following summarizes my comments:

Comment I-III-10:

DEQ supports the efforts made by EP A to ensure that any adverse environmental impacts generated from the sinking of decommissioned vessels for the creation of artificial reefs are

avoided. The national guidance should consider each case individually based on site-specific placement of the vessels.

Response to Comment I-III-10:

The use of the BMP guidance document will help ensure that vessels prepared for use as artificial reefs will be environmentally sound in their use as artificial reefs. The BMP guidance document describes appropriate vessel preparation that could achieve such benefits as an artificial reef and avoid negative impacts to the environment. The narrative clean-up performance goals provided in the BMP guidance document, if implemented and complemented with strategic reef site selection, will maximize the opportunity for these vessels to benefit the environment as artificial reefs.

The BMP guidance document states that the final preparation plan for any particular artificial reef project is case specific, and will depend on the characteristics of the vessel and final permitted artificial reef construction site, as well as regulatory considerations.

Comment I-III-11:

It is recommended that the vessels used for reef creation to be monitored and managed ensure pollutants do not leak or pose a threat to the surrounding water body.

Response to Comment I-III-11:

Because the purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources, artificial reefs should not cause harm to existing living marine resources and habitats. Properly prepared and strategically sited artificial reefs can enhance fish habitat, provide more access to quality fishing grounds, and provide managers with another option for conserving, managing and/or developing fishery resources.

Though it is beyond the scope of this document to provide details on the monitoring aspects of a given vessel-to-reef project, the final BMP guidance document does mention the importance of planning (including siting), long-term monitoring, and evaluation as necessary components of each project to help ensure that the anticipated benefits of artificial reefs are attained. Such monitoring and evaluation of a given reef would provide opportunities to maintain the integrity of the reef, as well as the intention of the reef -- which is to not cause harm to existing living marine resources and habitats. The following text will also be included in the final version of the BMP guidance document:

“Project planners should evaluate vessel-to-reef projects and potential sites with regard to chemical and biological conditions as well as long-term durability and stability, as these will affect future habitat value.”

Comment I-III-12:

DEQ-PRO encourages the implementation of pollution prevention principles, including the reduction, reuse and recycling of all waste materials, when possible.

Response to Comment I-III-12:

The final BMP guidance document discusses the preparation of vessels when employing the vessel management option of artificial reefing. The placement of appropriately prepared/cleaned vessels with the intent to create an artificial reef is the “re-use” or “recycling” of the vessel itself. Even as such, reefing of vessels and resource recovery are not mutually exclusive. The BMP guidance document states that some portions of a candidate vessel may be economically salvageable. Salvage activities should allow for resource recovery while also allowing for improved access for subsequent clean-up efforts. In turn the salvage proceeds may help offset some costs for vessel preparation.

MEMORANDUM

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY
Ellen Gilinsky, Ph.D., Director

RECEIVED

SEP 23 2004

DEQ-Office of Environmental
Impact Review

TO: Anne B. Newsom
Office of Environmental Impact Review

FROM: Michelle Henicheck
Office of Wetlands, Water Protection and Compliance

DATE: September 20, 2004

SUBJECT: Guidance Document
Draft National Guidance, Best Management Practices for Preparing Vessels
intended to Create Artificial Reefs, Environmental Protection Agency
04-164F

We have reviewed the information provided concerning the above-referenced project. The purpose of the guidance is to provide national environmentally-based best management practices for preparation of vessels to be sunk with the intention of creating artificial reefs.

Comment I-III-13:

DEQ recommends submitting site-specific information to be reviewed on a case by case basis prior to initiating the proposed activities. Should the size or scope of the project change, additional review may be necessary.

Response to Comment I-III-13:

The final BMP guidance document states that the final preparation plan for any particular artificial reef project is case specific, and will depend on the characteristics of the vessel and final permitted artificial reef construction site, as well as regulatory considerations.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

Robert G. Burnley
Director

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MEMORANDUM

TO: Anne B. Newsom, Environmental Program Planner

FROM: *ARB* Allen Brockman, Waste Division Environmental Review Coordinator

DATE: September 20, 2004

COPIES: Sanjay Thirunagari, Waste Division Environmental Review Manager; file

SUBJECT: Review of EPA Draft National Guidance: Best Management Practices for Preparing Vessels to Create Artificial Reefs – to assist the Maritime Administration (MARAD) in identifying potential management options for their decommissioned vessel fleet, in Federal Register – August 2, 2004 --; DEQ Project Code 04-164F

The Waste Division has completed its review of the EPA Draft National Guidance: Best Management Practices for Preparing Vessels to Create Artificial Reefs in the Federal Register of August 2, 2004. We have the following comments concerning the waste issues associated with this proposed guidance:

Comment I-III-14:

The proposed guidance does not address solid and hazardous waste issues and sites *per se*. All of these issues are addressed from a toxic and hazardous substances perspective, instead.

Specifically, state solid waste regulations, the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) are not mentioned in the notice (either in the text or in Appendix B). Each of these issues should be addressed in the proposed guidance for the creation of artificial reefs from MARAD ships, given that many of the materials under consideration would likely be interpreted as "wastes" under the definitions in the omitted regulatory citations.

Response to Comment I-III-14:

See *Response to Comment #s J-I-8 and I-III-6*.

Comment I-III-15:

The remaining comments in this memo are presented for informational purposes only. Such state-specific information, as follows, does not need to be included in the proposed guidance for the EPA and MARAD, however this information indicates how the Waste Division would conduct reviews of Artificial Reef-related environmental assessment reports. Therefore, the proposed guidance should address such waste disposal requirements as they generally relate to waste disposal in all states.

Response to Comment I-III-15:

The comment is merely provided for informational purposes only rather than a comment specific to the draft BMP guidance document. For this reason, no response is necessary.

For any MARAD ship disposal/Artificial Reef project, soil or ship-related material that is suspected of contamination, or wastes that are generated in or prior to the disposal process, must be tested and disposed of in accordance with applicable Federal, State, and local laws and regulations. Some of the applicable state laws and regulations in Virginia are: Virginia Waste Management Act, Code of Virginia Section 10.1-1400 *et seq.*; Virginia Hazardous Waste Management Regulations (VHWMR) (9V AC 20-60); Virginia Solid Waste Management Regulations (VSWMR) (9V AC 20-80); Virginia Regulations for the Transportation of Hazardous Materials (9V AC 20-110). Some of the applicable Federal laws and regulations are: RCRA, 42 U.S.C. Section 6901 *et seq.*, and the applicable regulations contained in Title 40 of the Code of Federal Regulations; and the U.S. Department of Transportation Rules for Transportation of Hazardous materials, 49 CFR Parts 107.

Also, ship-related structures to be demolished should be checked for asbestos-containing materials (ACM) and lead-based paint (LBP) prior to demolition or disposal. If ACM or LBP are found, in addition to the federal waste-related regulations mentioned above, State regulations 9V AC 20-80-640 for ACM and 9V AC 20-60-261 for LBP must be followed.

Please note that DEQ encourages all such projects and facilities to implement pollution prevention principles, including the reduction, reuse, and recycling of all solid wastes generated. All generation of hazardous wastes should be minimized and handled appropriately.

If you have any questions of need further information, please contact Allen Brockman at (804) 698-4468.

Newsom, Anne

From: Winer, Harold
Sent: Wednesday, September 15, 2004 8:57 AM
To: Newsom, Anne
Cc: Johnston, Milton; Parolari, Bert
Subject: Subject: EIR #04-164F, Draft National Guidance; BMPs For Preparing Vessels To Create Artificial Reefs

As requested, TRO staff have reviewed the supplied information and have the following Comments:

Comment I-III-16:

Regarding Waste issues, the document's premise is that the sinking of ships to create artificial reefs is a beneficial use therefore the sinking of the ship is technically not a discarded material, i.e. waste. They then go on to identify those materials that are not part of the structural integrity of the ship such as oils, PCB's, asbestos, paint etc. and describe where to look for these materials. We did not see anything of concern in their guidance and they repeatedly point the reader to the appropriate regulations. Without being experts on ship construction we can not say whether they covered everything. That being said, if the material is not part of the structure or if it is contaminated, the document states that material can not be allowed to go down with the ship.

Response to Comment I-III-16:

The purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources. The BMP guidance document describes appropriate vessel preparation that could achieve such benefits as an artificial reef and avoid negatively impacting the environment with pollutants. The narrative clean-up performance goals provided in this document, if implemented and complemented with strategic reef site selection, will maximize the opportunity for these vessels to benefit the environment as artificial reefs.

The placement of appropriately prepared/cleaned vessels with the intent to create an artificial reef is the "re-use" or "recycling" of the vessel. Although the vessel itself is being "re-used" or "recycled," we note that for purposes of domestic law under TSCA, the sinking of PCBs remaining onboard vessels used as artificial reef is treated as PCB disposal.

This guidance identifies materials or categories of materials of concern that may be found aboard vessels and specifically identifies where they may be found. For each material or

category of material, this document provides a narrative clean-up performance goal and information on methods for achieving those goals in preparation of the vessel prior to sinking. Materials of concern include, but are not limited to: oil and fuel, asbestos, polychlorinated biphenyls (PCBs), paint, solids/debris/floatables, and other materials of environmental concern (e.g., mercury and refrigerants).

The narrative clean-up performance goals for the materials of concern highlighted in this guidance should be achieved while preparing a vessel intended for artificial reefing. There are statutory requirements and associated regulations, as well as permit processes applicable to the process of preparing a vessel for reefing that are not highlighted in this document. These include, but are not limited to, issues such as vessel inspections by appropriate authorities and storage and disposal of waste generated during clean-up/preparation.

Comment I-III-17:

Although the document clearly states where to look for the contamination, it does not go into detail on the operations at the ship breaking/cleaning facility and additional detail needs to be placed on BMP's at those facilities to minimize the release of material during the preparation/decontamination phase.

Response to Comment I-III-17:

The purpose of the BMP guidance document is provide national environmentally-based best management practices for the preparation of vessels to be sunk with the intention of creating artificial reefs in permitted artificial reef construction areas. The operations at the ship breaking/cleaning facility are outside the scope of this document.

While the BMP guidance was not designed to address worker safety issues, those with an interest in such safety issues and concerns should consult other relevant documents, such as those prepared by OSHA, State or local safety agencies, and other relevant EPA documents. For example, EPA's *A Guide for Ship Scrappers – Tips for Regulatory Compliance* presents important information related to environmental and worker safety and health issues for ship scrapping/ship breaking operations when handling specific hazardous materials. This document can be accessed via the World Wide Web at <http://www.epa.gov/oecaerth/resources/publications/civil/federal/shipscrapguide.pdf>.

Comment I-III-18:

Concerning VWP issues, this document properly recognizes the need to obtain federal and state permitting authorizations including CWA Section 404 permits and Section 401 State certification. Since this document is proposed to establish National guidance, more specific discussion of individual state issues is probably not warranted.

Response to Comment I-III-18:

Comment noted.

Thanks for the opportunity to comment.

Harold J. Winer
Deputy Regional Director
DEQ, Tidewater Regional Office
Phone – 757-518-2153 FAX -- 757-518-2003
email – hjwiner@deq.virginia.gov

Bowden,John

From: Bowden,John
Sent: Monday, September 20, 2004 3:32 PM
To: Newsom,Anne
Subject: #04-164F

RECEIVED

SEP 22 2004

DEQ-Office of Environmental
Impact Review

NVRO comments on the Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs project sponsored by the EPA are as follows:

Comment I-III-19:

1. Water Compliance- The document reviewed is a policy guidance document describing best management practices. As such it has no direct environmental impact. VPDES permit coverage is required for any stormwater discharges from land disturbance activities of 1 or more acres. Since no land disturbance activity is involved, stormwater discharges are not applicable. Removal of toxic and/or hazardous substances to the maximum extent practicable should minimize impacts to water quality.

Response to Comment I-III-19:

Comment noted.

Comment I-III-20:

2. Water Permitting-No comments submitted.

3. Waste Compliance- The document does not address the handling and disposal of the waste generated during the preparation of the vessels. A sentence is discussed in the sections on fuel oil and PCB cleanups, but handling and disposal is not mentioned elsewhere. A sentence should be added to the executive summary and to each material of concern that all waste generated during

the preparation of the vessels must be stored and disposed of according to the Federal Code of Regulations (40 CFR 260 through 265) and all applicable state regulations.

Response to Comment I-III-20:

See *Response to Comment #s J-I-8 and I-III-6.*

Comment I-III-21:

In addition in Appendix B, *Some Legal Authorities that may Apply to Vessel-to-Reef Projects*, a paragraph should be added to cite the hazardous waste regulations under 40 CFR 261 through 265.

Response to Comment I-III-21:

EPA has revised Appendix B to identify federal statutes that should be considered (including the Comprehensive Environmental Response, Compensation, and Liability Act, as well as the Resource Conservation and Recovery Act), but only for the convenience of the reader.

Under 10 U.S.C. 7306b(c), preparation of a vessel for use as an artificial reef needs to be conducted in accordance with “any applicable environmental laws.” Appendix B provides an overview of the principal federal environmental statutes potentially affecting preparation or placement of a vessel for use as an artificial reef. For these statutes, Appendix B explains their potential applicability and briefly summarizes the relevant provisions. The information in Appendix B is intended only for the convenience of the reader in order to provide a useful starting point for identifying the principal environmental statutes of interest. The Appendix is not intended to be an exhaustive list of every conceivably relevant statute, nor do the brief summaries in this list alter or replace any requirements, regulations, or applicable guidance under those statutes that are summarized. In addition, State and local laws, which EPA did not attempt to identify in the BMP guidance or Appendix B, also may apply to vessel preparation for use as an artificial reef.

Comment I-III-22:

In the Oil and Fuel Preparation Discussion, a sentence should be added that appropriate spill containment be available during the sinking of the vessels to capture any oil or fuel that appears on the surface. It is understood that it is nearly impossible to remove all of the material that may cause a sheen, but if there is a sheen, then the party responsible for sinking the vessel should be prepared to capture and clean up any residual material.

Response to Comment I-III-22

See *Response to Comment # I-III-8.*

*John D. Bowden
Deputy Regional Director
Department of Environmental Quality
Northern Virginia Regional Office
(703) 583-3880
jdbowden@deq.virginia.gov*

Newsom, Anne

From: Andy Zadnik [ZadnikA@dgif.state.va.us]
Sent: Tuesday, September 14, 2004 4:34 PM
To: Newsom, Anne
Subject: 04-164F_Draft guidance – BMPs for vessels

We have reviewed the draft guidance for preparing vessels intended to create artificial reefs, and offer the following comments.

Comment I-III-23:

We support the proposed guidance to ensure that prepared vessels are environmentally sound. We also support the current siting guidance, which stipulates that, while artificial reefs can improve local fishery resources, care must be taken to avoid locating a reef where it may adversely impact wildlife resources.

Response to Comment I-III-23:

EPA appreciates the support of the Department of Game and Inland Fisheries.

Thank you for the opportunity to comment on this draft guidance. Please contact me if I can be of further assistance.

Andres K. Zadnik
Environmental Services Section Biologist
Department of Game and Inland Fisheries
4010 West Broad Street
Richmond, VA 23230

(804) 367-2733
(804) 367-2427

Newsom, Anne

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From: Synthia Waymack [Synthia.Waymack@dcr.virginia.gov]
Sent: Monday, September 20, 2004 12:04 PM
To: Newsom, Anne
Subject: Re: DEQ # 04-164F

SEP 20 2004

DEQ-Office of Environmental
Impact Review

Anne,

Thank you for the opportunity to offer comments on BMP draft for preparing vessels for use as artificial reefs.

At this time, we have no comments to offer.

Take Care,
Synthia

Synthia Waymack
Grants Administrator/Environmental Review Coordinator
Department of Conservation and Recreation
Telephone: 804.786.4379
Fax number 804.371.7899
Synthia.Waymack@dcr.virginia.gov<mailto:Synthia.Waymack@dcr.virginia.gov>

>>> "Newsom, Anne" abnewsom@deq.virginia.gov 9/17/2004 3:00:54 PM >>>

Reviewers,

The Department of Environmental Quality's Office of Environmental Impact review is finishing its review period for the following project:

Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs
(DEQ # 04-164F)
(comments are due September 21, 2004)

If you would like to participate in the review, I need comments from you. Thank you. If you have any questions, please email me or give me a call.

Anne

Anne Newsom
Department of Environmental Quality
Office of Environmental Impact Review

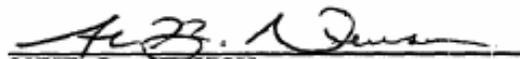
If you cannot meet the deadline, please notify ANNE B. NEWSOM at 804/698-4135 prior to the date given. Arrangements will be made to extend the date for your review if possible. An agency will not be considered to have reviewed a document if no comments are received (or contact is made) within the period specified.

REVIEW INSTRUCTIONS:

- A. Please review the document carefully. If the proposal has been reviewed earlier (i.e. if the document is a federal Final EIS or a state supplement), please consider whether your earlier comments have been adequately addressed.
- B. Prepare your agency's comments in a form which would be acceptable for responding directly to a project proponent agency.
- C. Use your agency stationery or the space below for your comments. **IF YOU USE THE SPACE BELOW, THE FORM MUST BE SIGNED AND DATED.**

Please return your comments to:

MS. ANNE B. NEWSOM
 DEPARTMENT OF ENVIRONMENTAL QUALITY
 OFFICE OF ENVIRONMENTAL IMPACT REVIEW
 629 EAST MAIN STREET, SIXTH FLOOR
 RICHMOND, VA 23219
 FAX #804/698-4319


 ANNE B. NEWSOM
 ENVIRONMENTAL PROGRAM PLANNER

COMMENTS

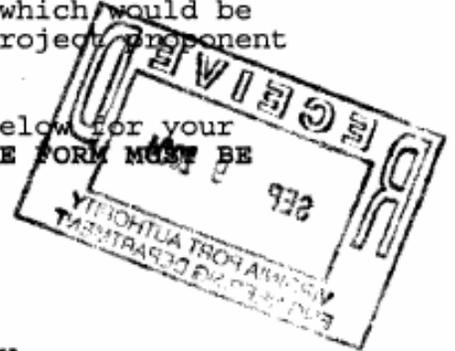
We have reviewed the Draft National Guidance: BMP's for Preparing Vessels Intended to Create Artificial Reefs and have no comments on the document.

(signed) TABanard (date) 9/20/04
 (title) Marine Scientist
 (agency) VIMS

If you cannot meet the deadline, please notify ANNE B. NEWSOM at 804/698-4135 prior to the date given. Arrangements will be made to extend the date for your review if possible. An agency will not be considered to have reviewed a document if no comments are received (or contact is made) within the period specified.

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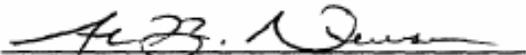
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DEQ Office of Environmental
Impact Review


ANNE B. NEWSOM
ENVIRONMENTAL PROGRAM PLANNER

COMMENTS

No comment. The proposed rule does not appear to impact VPA facilities or assets.

(signed) *Matthew T. Adair* (date) *9/17/04*
(title) *Environmental Manager*
(agency) *Virginia Port Authority*

PROJECT #04-164F

8/98



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DEQ-Office of Environmental
Impact Review

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September 14, 2004

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Ms. Anne B. Newsom
Department of Environmental Quality
Office of Environmental Impact Review
629 East Main Street, Sixth Floor
Richmond, Virginia 23219

Re: Draft National Guidance: Best
Management Practices for
Preparing Vessels Intended to
Create Artificial Reefs
DEQ #04-164F (ENV:GEN)

Dear Ms. Newsom:

Pursuant to your request of September 1, 2004, the staff of the Hampton Roads Planning District Commission has reviewed Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.

Based on this review, it appears that the proposed guidance provides advice and information without imposing any legally binding requirements on any regulated community. Thus, we have no significant comments to offer.

We appreciate the opportunity to review this document. If you have any questions, please do not hesitate to call.

Sincerely,


Arthur L. Collins
Executive Director/Secretary

MLJ:fn