monitoring provisions (Virginia regulation 120–04–04), the Notification, Records and Reporting provisions (120–04–05), and Appendix J (Emission Monitoring Provisions For existing Sources) would be taken on Virginia's Section 111(d) plan for sulfuric acid mist in part 62 until EPA incorporated these Commonwealth provisions in part 52. In this action, EPA is revising subpart VV of part 62 to reflect the action taken at § 52.2420(c)(89) to incorporate by reference the current provisions of Virginia regulations 120–04–04 and 120–04–05.

During the 30-day public comment period following the October 19, 1987 proposed rulemaking notice, no comments were received.

Final Action

EPA is approving the revised provisions of Rule 4–21, Section 120–04–2104 as a revision to Virginia's Section 111(d) plan for sulfuric acid mist. Therefore, the revised State regulations will be codified at 40 CFR 62.11601(g). At the same time, EPA is removing 40 CFR 62.11601(c) and 62.11602(a) to reflect the current status of the federally-enforceable Virginia SIP.

The Agency has reviewed this request for revision of the Federally-approved Section 111(d) plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in these actions should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of these actions pertaining to approval of revisions of Virginia's air pollution control regulations for mobile sources and sulfuric acid mist, as well as the deletion of the pre-1985 hydrocarbon emissions regulations, must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 1995. Filing a petition for reconsideration by the Administrator of these final rules does not affect the finality of these rules for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. These actions may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 62

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements, Sulfuric acid plants.

Dated: July 7, 1995.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(104) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(104) Revisions to the Virginia Regulations for the Control and Abatement of Air Pollution submitted on February 14, 1985 by the Virginia Department of Air Pollution Control:

(i) Incorporation by reference.

(A) Letter of February 14, 1985 from the Virginia Department of Air Pollution Control transmitting a revision to the Virginia State Implementation Plan.

(B) The following provisions of the Virginia regulations, effective February 1, 1985:

(*1*) Revisions to Part IV, Rule 4–41 (Mobile Sources), Sections 120–04–4103A. and 120–04–4103B.

(*2*) Deletion of SIP Regulation 4.52.

(ii) Additional material.

(A) Remainder of February 14, 1985 State submittal pertaining to the revised provisions of Section 120–04–4103 and the deletion of SIP regulation 4.52.

* * * * *

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7413 and 7601.

Subpart VV—Virginia

1. Section 62.11601 is amended by removing and reserving paragraph (c) and by adding paragraph (g) to read as follows:

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Plants

§ 62.11601 Identification of plan.

* * * * *

(g) Section 4.51(c)(2) is replaced with Rule 4–21 (Emission Standards from Sulfuric Acid Production Units), section 120–04–2104 (Standard for Sulfuric Acid Mist), effective February 1, 1985. This revision was submitted on February 14, 1985 by the Commonwealth of Virginia.

§ 62.11602 [Removed]

2. Section 62.11602 is removed.

[FR Doc. 95–24034 Filed 9–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5305–5]

Clean Air Act Final Full Approval of Operating Permits Programs in Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating full approval of the operating permits program submitted by the Oregon Department of Environmental Quality (ODEQ) and Lane Regional Air Pollution Authority (LRAPA) for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

DATES: This action will be effective on November 27, 1995, unless adverse or critical comments are received by October 30, 1995. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of Oregon's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: David C. Bray, U.S. Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the Clean Air Act Amendments of 1990 (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (part 70), require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On September 14, 1994, EPA proposed interim approval of the operating permits programs for ODEQ and LRAPA, provided certain proposed revisions to Oregon rules were adopted and submitted to EPA as a program revision prior to EPA's statutory deadline for acting on the State's submittal. In the alternative, EPA proposed disapproval of the Oregon programs if the proposed revisions were not adopted and submitted prior to the statutory deadline. See 59 FR 47105 (Sept. 14, 1994). The State adopted and submitted the revisions necessary to address the proposed disapproval items and, on December 2, 1994, EPA published final interim approval of the operating permits programs for ODEQ and LRAPA which identified two remaining deficiencies in Oregon's enforcement authorities. See 59 FR 68120 (December 2, 1994).

EPA received a letter from ODEQ on June 30, 1995 addressing the two interim approval issues identified in the December 1994 Federal Register notice. EPA has reviewed the submittal and has determined that the Oregon programs now qualify for full approval. Accordingly, EPA is taking final action to promulgate full approval of the operating permits programs for ODEQ and LRAPA.

II. Final Action and Implications

A. Resolution of Interim Approval Issues

1. Upset/Bypass as a Defense to Criminal Liability

ORS 468.959 provides an affirmative defense to criminal liability for violations that result from an ''upset'' or a ''bypass,'' as those terms are defined in the Oregon statute. In the December 2, 1994, Federal Register notice, EPA stated that in order to receive full approval, Oregon must demonstrate to EPA's satisfaction that ORS 468.959 is consistent with 40 CFR 70.6(g). That section establishes an affirmative defense to violations of technology-based standards due to an ''emergency'' provided certain specified procedures are met. EPA went on to state that the affirmative defense under ORS 468.959 appeared to be broader than the affirmative defense under 40 CFR 70.6(g) and therefore precluded full approval. See 59 FR 61827.

In response to this issue, ODEQ submitted an opinion letter from the Oregon Attorney General describing the legislative history of ORS 468.959 and opining that ORS 468.959 did not interfere with the enforcement requirements of part 70 (see Letter from Oregon Assistant Attorney General, Shelley McIntyre, to Phil Millam, May 22, 1995). The opinion letter notes that Oregon has enacted a regulation corresponding to the emergency provision of 40 CFR 70.6(g). See OAR 340–28–1430(1). The opinion letter states that ORS 468.959 is a completely different provision, which was patterned after the upset/bypass provisions under the Federal Clean Water Act and was enacted to provide two very narrow affirmative defenses to criminal liability under all of Oregon's environmental statutes for violations that the legislature considered either unavoidable or necessary to prevent more serious injury or damage.

After further consideration of the relationship between the emergency provision of 40 CFR 70.6(g) and the enforcement requirements of 40 CFR 70.11, EPA agrees with the Oregon Attorney General that the appropriate question is whether ORS 468.959 impermissibly interferes with the enforcement requirements of 40 CFR 70.11. Based on EPA's review of ORS 468.959 and the Attorney General's opinion letter, EPA believes that the affirmative defense to criminal liability available in Oregon for violations due to an upset or bypass does not unduly interfere with the State's enforcement authorities required under 40 CFR 70.11.

ORS 468.959 allows a source to assert an affirmative defense to violations resulting from an ''upset''. An upset is defined under this statute as an exceptional and unexpected occurrence in which there is an unintentional and temporary violation because of factors beyond the reasonable control of the violator and is not caused by operational error, improperly designed facilities, lack of preventive maintenance or careless or improper operation. See ORS 468.959(2)(b). By defining an upset as an ''unintentional'' violation, Oregon has greatly limited the scope of that affirmative defense. The class of violations that would be ''unintentional'' and yet ''knowing,'' so as to subject the violator to criminal liability, should be extremely narrow. Compare ORS 161.090(7) (definition of ''intentionally'') with ORS 161.090(8) (definition of ''knowingly'').

In addition, the procedural requirements a source must meet in Oregon in order to be excused from criminal liability for violations due to upsets are substantially equivalent to the procedural requirements a source must meet to establish the affirmative defense of emergency under 40 CFR 70.6(g). EPA believes that these procedural safeguards further minimize the likelihood that ORS 468.959 will

interfere with the criminal enforcement authorities required by part 70.

With respect to the bypass provisions of ORS 468.959, a ''bypass'' is defined as a temporary discharge under circumstances in which the defendant reasonably believed that the discharge was necessary to prevent the loss of life, personal injury or severe property damage. See 468.959(2)(a). The Attorney General's opinion states that the affirmative defense to criminal liability for violations due to a ''bypass'' is directly analogous to the criminal defense of necessity, which is available as a matter of Federal criminal common law. See *U.S.* v. *Schoon,* 971 F.2d 193, 195. The necessity defense ''justifies criminal acts to be taken to avert a greater harm, maximizing social welfare by allowing a crime to be committed where the social benefits of the crime outweigh the social costs of failing to commit the crime.'' *Id.* at 196. By limiting the affirmative defense of ''bypass'' to ''circumstances in which the defendant reasonably believed that the discharge was necessary to prevent the loss of life, personal injury, or severe property damage or to minimize environmental harm'', a defendant may avoid criminal liability under the Oregon statute for what would otherwise clearly be a knowing violation only in those limited situations where the violation will avert a more serious harm to society as a whole. As such, EPA believes that the Oregon affirmative defense to criminal liability for a ''bypass'' is substantially equivalent to the affirmative defense of necessity which would be available as a matter of Federal common law for criminal violations under the Clean Air Act. EPA does not believe that part 70 was intended to preclude a State from providing sources with affirmative defenses that would be available as a matter of Federal law to Clean Air Act violations. See 40 CFR 70.11(b) (requiring that the degree of knowledge and burden of proof required under State law can be no greater than that required under the Clean Air Act).

The Attorney General's opinion also points to the procedural requirements a source must meet to establish the affirmative defense of bypass as additional checks on the scope of that affirmative defense. In the determing that ORS 468.959 precluded full approval, EPA expressed concern that the statute appeared to allow a source to routinely bypass improperly designed control equipment with impunity simply by indicating that the control equipment would be severely damaged if operated during the periods of bypass. The Attorney General explains that because the affirmative defense of bypass is available only if the source took appropriate corrective action as soon as reasonably possibly, it should not be necessary to have a bypass day after day.

In summary, EPA believes that the Oregon statute providing an affirmative defense to criminal liability for violations due to an upset or bypass is sufficiently narrow so as not to interfere with the criminal enforcement requirements of 40 CFR 70.11. EPA notes that 40 CFR 70.4(b)(7) requires a permitting authority with an approved title V program to submit at least annually information regarding the State's enforcement activities and 40 CFR 70.10(c)(iii) allows EPA to withdraw program approval where a permitting authority fails to enforce its title V program consistent with the requirements of part 70. To ensure that ORS 468.959 does not impermissibly impinge on the State's enforcement authority, EPA intends to monitor the Oregon enforcement programs closely during implementation.

2. Small Business Assistance Program Provisions

The statute establishing the Oregon Small Business Program, ORS 468A.330, states that onsite technical assistance for the development and implementation of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program shall not result in inspections or enforcement actions except where there is reasonable cause to believe that a clear and immediate danger to the public health and safety or to the environment exists. See ORS 468A.330(4)(a). In the Federal Register notice granting Oregon interim approval of its operating permits programs, EPA stated that, as a condition of full approval, Oregon must demonstrate to EPA's satisfaction that ORS 468A.330(4)(a) is consistent with the enforcement responsibilities of 40 CFR 70.11(a). EPA explained that ORS 468A.330(4)(a) does not simply give a source an opportunity to correct a violation observed during onsite technical assistance before being subject to enforcement action, but rather protects the source from follow-up inspections or enforcement activities that ''result from'' observations made during onsite technical assistance.'' 59 FR 61827. EPA therefore concluded that the Oregon statute interfered with the State's enforcement requirements under 40 CFR 70.11.

In discussing ORS 468.330(4)(a), EPA noted that EPA had issued a guidance memorandum dated August 12, 1994, entitled ''Enforcement Response Policy for Treatment of Information Obtained Through Clean Air Act Section 507 Small Business Assistance Programs'' signed by Steven A. Herman (herein referred to as the ''SBA Enforcement Guidance''). This guidance document sets forth EPA's enforcement response policy on the treatment of violations detected during compliance assistance visits under State Small Business Assistance Programs. The SBA Enforcement Guidance endorses State Small Business Assistance Programs that either (1) allow sources that voluntarily seek compliance assistance a limited period to correct violations observed or revealed as a result of compliance assistance or (2) if the State Small Business Assistance program is independent of the delegated State air enforcement program, keep confidential information that identifies the names and locations of specific small businesses with violations revealed through compliance assistance. It therefore interprets section 507 of the Clean Air Act as creating a limited exception to the enforcement requirements of title V and part 70 for those sources that qualify for assistance under section 507 of the Act.

In granting the Oregon operating permits programs interim approval, EPA determined that ORS 468.330(4)(a) did not meet the requirements of the SBA Enforcement Guidance because the Oregon statute permanently shields a source from inspections or enforcement actions resulting from observations during onsite technical assistance, rather than granting a limited correction period. See 59 FR 61826. Since that time, Oregon has submitted a guidance document entitled ''Air Quality Guidance: Restriction of Information Obtained by the AQ Small Business Assistance Program'' (hereinafter, ''Oregon's SBAP Confidentiality Guidance''). This document requires Oregon's Small Business Assistance Program to be operated independently from Oregon's air program enforcement efforts, and requires the Small Business Assistance Program to restrict access by Oregon air enforcement staff to information regarding violations detected through onsite technical assistance visits to small businesses. EPA has reviewed Oregon's SBAP Confidentiality Guidance and believes that it meets the conditions that apply to States choosing the confidentiality option under the SBA Enforcement Guidance. See 60 FR 46071 (September 5, 1995). EPA also believes that this document sufficiently minimizes the risk that ORS 468A.330(4)(a) will interfere with the State's enforcement

responsibilities under part 70 and allows full approval of the Oregon program. Because Oregon's air enforcement staff will not have access to information regarding violations detected during onsite technical assistance, Oregon sources should not be successful in arguing that inspections and enforcement actions initiated by air enforcement staff ''resulted from'' onsite technical assistance. Again, EPA intends to monitor the Oregon enforcement programs closely during implementation to ensure that ORS 468A.330(4)(a) does not interfere with the State's enforcement efforts against title V sources and will consider withdrawal of program approval if sources are successful in raising ORS 468A.330(4)(a) as a defense to title V enforcement actions.

B. Scope of Approval

The scope of the part 70 program approved in this notice for ODEQ and LRAPA applies to all title V sources (as defined in the approved program) within the State of Oregon and Lane County, respectively, except for sources within the exterior boundaries of Indian Reservations in Oregon. See 59 FR 61827.

III. Administrative Requirements

A. Docket

Copies of the State's supplemental submittal and other information relied upon for this direct final action are contained in the Oregon Title V docket maintained at the EPA Regional Office, docket number ORV100. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final action. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Direct Final Rulemaking

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to fully approve the ODEQ and LRAPA operating permits programs should adverse or critical comments be filed. This action will be effective November 27, 1995, unless, within 30 days of its publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 27, 1995.

C. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

D. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: September 19, 1995.

Jane S. Moore,

Acting Regional Administrator.

Part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by revising the entry for Oregon to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Oregon

(a) Oregon Department of Environmental Quality: submitted on November 15, 1993, as amended on November 15, 1994, and June 30, 1995; full approval effective on November 27, 1995.

(b) Lane Regional Air Pollution Authority: submitted on November 15, 1993, as amended on November 15, 1994, and June 30, 1995; full approval effective on November 27, 1995.

* * * * *

[FR Doc. 95–24036 Filed 9–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 228

[FRL–5304–8]

Ocean Dumping; Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA designates an ocean dredged material disposal site, the Humboldt Open Ocean Dredged Site (HOODS), located offshore of Humboldt Bay, California, for the disposal of suitable dredged material removed from the Humboldt Bay region and other nearby harbors or dredging sites. EPA has determined that the site identified in the Final EIS as the environmentally preferred site, and selected in the Final EIS as the preferred site, will be the site designated as the HOODS in this Final Rule. The HOODS is located between approximately 3 and 4 nautical miles (5 and 7 kilometers) west of the Humboldt Bay entrance and occupies an area of 1 square nautical mile (3 square kilometers). Water depths within the area range from 160 to 180 feet (49 to 55 meters). The coordinates of the