should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: September 12, 2001.

Mike Shulz,

Acting Regional Administrator, Region IX.

[FR Doc. 01–25253 Filed 10–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[VA–T5–2001–01b; FRL–7073–5]

Clean Air Act Full Approval of Operating Permit Program; Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to fully approve the operating permit program of the Commonwealth of Virginia. Virginia's operating permit program was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required States to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. The EPA granted final interim approval of Virginia's operating permit program on June 10, 1997, as corrected on March 19, 1998. Virginia amended its operating permit program to address deficiencies identified in the interim approval action and this action proposes to approve those amendments. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's operating permit program as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by November 9, 2001.

ADDRESSES: Written comments should be mailed to Ms. Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: David Campbell, (215) 814–2196, or by e-mail at *campbell.dave@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 25, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 01–25013 Filed 10–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NV 044–OPP; FRL–7077–2]

Clean Air Act Proposed Full Approval of Title V Operating Permit Programs; Clark County Department of Air Quality Management, Washoe County District Health Department, and Nevada Division of Environmental Protection, Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to fully approve the operating permit programs submitted by the Clark County Department of Air Quality Management [1] (Clark County), Washoe County District Health Department (Washoe County), and the Nevada Division of Environmental Protection (NDEP). The three operating permit programs were submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted final interim approval to Clark County's program on July 13, 1995 (60 FR 36070), to Washoe County's program on January 5, 1995 (60 FR 1741), and to NDEP's program on December 12, 1995 (60 FR 63631). All three permitting agencies revised their programs to satisfy the conditions of interim approval and this action proposes approval of those revisions. NDEP and Clark County made other revisions to their programs since interim approval was granted. EPA is proposing to approve some of the additional revisions made by NDEP and is taking no action on Clark County's additional changes.

DATES: Comments on the program revisions discussed in this proposed action must be received in writing by November 9, 2001.

ADDRESSES: Written comments on this proposed action should be addressed to Gerardo Rios, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. You can inspect copies of the program submittals, and other supporting documentation relevant to this action, during normal business hours at Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. You may also see copies of the submitted title V programs at the appropriate permitting agency location below:

Clark County Department of Air Quality Management, 651 Shadow Lane, Las Vegas, Nevada 89106;

Washoe County District Health Department, 401 Ryland Street, Suite 331, Reno, Nevada 89520; and

Nevada Division of Environmental Protection, 333 W. Nye Lane, Room 138, Carson City, Nevada 89706.

[1] On August 7, 2001, the governor of Nevada officially shifted responsibility for air quality management in Clark County from the County's Health District to a newly created Department of Air Quality Management, overseen by the Clark County Air Quality Management Board. Since the change is effectively a shift in the organizational location of the County's air quality management program and all rules, regulations, and policies of the Health District are being carried over to the new Department, EPA is today proposing to grant full approval to Clark County's operating permits program, which will be administered by the County's Department of Air Quality Management.

FOR FURTHER INFORMATION CONTACT: David Albright, EPA Region IX, at (415) 744–1627 or albright.david@epa.gov.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
What is being addressed in this document?
Are there other issues with the program?
What are the program changes that EPA proposes to approve?
What is involved in this proposed action?

I. What Is the Operating Permit Program?

The CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as ''serious,'' major sources include those with the potential of emitting 50 tons per year or more of volatile organic compounds or nitrogen oxides.

II. What Is Being Addressed in This Document?

Where an operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the state revising its program to correct the deficiencies. Because the Clark County, Washoe County, and Nevada Division of Environmental Protection programs substantially, but not fully, met the requirements of part 70, EPA granted interim approval to each program in three separate rulemakings, published on July 13, 1995 (60 FR 36070), January 5, 1995 (60 FR 1741), and December 12, 1995 (60 FR 63631), respectively. Each interim approval notice described the conditions that had to be met in order for the programs to receive full approval. Since that time, each of the permitting agencies has submitted to EPA one revision to its interimly approved operating permit program. Clark County submitted its revision on June 1, 2001; Washoe County submitted its revision on May 8, 2001; and NDEP submitted its program revision on May 30, 2001. This document describes changes that have been made to the Clark County, Washoe County, and NDEP operating permit programs since EPA granted interim approval. The changes that EPA is proposing to approve include those that were made by each permitting authority to address interim approval deficiencies identified by EPA. In addition, EPA is proposing to approve several additional program changes made by NDEP. Although NDEP's program combines the requirements for operating permits and construction permits (''integrated program''), EPA's proposed approval of changes to the Nevada Administrative Code (NAC) addresses only those elements that pertain to NDEP's operating permit program. The proposed approval is not being made under EPA's title I authority, and hence, is not amending Nevada's new source review program.

III. Are There Other Issues With the Program?

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. (65 FR 32035) The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a document in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** document.

Two members of the public commented on what they believe to be deficiencies with respect to the Clark County title V program. EPA takes no action on those comments in today's action; however, as stated in the **Federal Register** document published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval. We will publish a notice of deficiency (NOD) if we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

IV. What Are the Program Changes That EPA Proposes To Approve?

EPA made full approval of the Clark County, Washoe County, and NDEP title V operating permit programs contingent upon satisfaction of certain conditions. Described below are the conditions of approval for each program and a summary of how each of the three permitting agencies revised their part 70 programs and rules to meet the conditions required for full program approval. In addition, Clark County and NDEP made additional changes to their programs that were not required as a condition for full program approval. EPA is not taking any action on the additional changes made by Clark County, but will evaluate these additional changes and take appropriate action at a later date. As described below, EPA is proposing to approve most of the additional changes made by NDEP in today's proposed action.

A. Changes Required for Clark County Health District To Receive Full Program Approval

As explained in EPA's July 13, 1995 rulemaking, Clark County was required to make the following changes:

(1) *Enforcement Commitments:* In the 1995 interim approval, EPA required the District to submit documentation and commitments for implementing its enforcement and compliance tracking program. Part 70 requires that the District submit enforcement policies, including agreements with the EPA, and

a description of the District's enforcement program, compliance tracking activities, and inspection strategies. (40 CFR 70.4(b)(4) and (5)) In addition, failure to act on violations of permits or other program requirements, failure to seek adequate penalties and fines and collect all assessed penalties and fines, and failure to inspect and monitor activities subject to regulation are grounds for withdrawing program approval. (40 CFR 70.10(c)(iii)) Therefore, the District was required to submit the descriptions and/or commitments required under §§ 70.4(b)(4) and (5) to qualify for full approval and ensure that the commitments meet the criteria in § 70.10(c)(iii).

Clark County fulfilled this requirement in its title V program revision by submitting a title V Compliance Monitoring Strategic Plan. This strategic plan outlines and explains the District's standard procedures and commitments for targeting and conducting inspections, evaluating source compliance, addressing various types of violations, and reporting compliance and enforcement data to EPA. EPA has determined that the District's Plan contains the enforcement policies, descriptions of the District's enforcement program, compliance tracking activities, and inspection strategies that are required by 40 CFR 70.4(b)(4) and (5). Furthermore, the District's commitments, as outlined in their Compliance Monitoring Strategic Plan, demonstrate that they are enforcing the part 70 program consistent with the requirements of part 70, and that the criteria in § 70.10(c)(iii) (criteria for a finding that a permitting authority is failing to adequately enforce their part 70 program) are not present given the District's implementation of their submitted Plan.

(2) *Operational Flexibility Gatekeeper:* EPA determined in the 1995 interim approval that the District's operational flexibility gatekeeper (APCR section 19.4.1.8) was not explicitly as broad as the § 70.4(b)(12) gatekeeper for section 502(b)(10) changes. Part 70 prohibits operational flexibility for ''modifications under any provision of title I of the Act.'' In contrast, the District prohibited these changes for any ''New Source Review modifications under any provision of title I of the Act,'' which does not expressly include modifications under sections 111 and 112. EPA expected that most section 111 or 112 modifications will be subject to the District's New Source Review program; however, in certain cases the section 111 or 112 modification definition will be more inclusive than the District's New Source Review rule. Therefore, revising the rule to explicitly prohibit section 502(b)(10) changes for all title I modifications was a requirement for full approval.

Clark County met this condition by revising section 19.4.1.8 to clarify that a source may make 502(b)(10) changes in operations without a permit revision only if the changes are not modifications under any provision of Title I of the Act.

(3) *Confidential Business Information:* The District Counsel's opinion did not document that the District's definition of confidential business information (''CBI''), which is not available to the public, is as narrow as EPA's. Section 19.3.1.3 states that ''emissions'' may not be considered confidential. EPA's regulation states that ''emissions data'' may not be considered confidential. (40 CFR 2.301) The District was required to adopt EPA's narrower definition of confidential information. Alternatively, the District Counsel was asked to issue a statement that the District's program does not contain more restrictions on public access to information than the federal regulations.

Clark County met this condition by revising section 19.3.1.3(a) to clarify that the Health District may not consider ''emissions data'' (rather than just ''emissions'') as confidential information which is not available to the public.

(4) *Insignificant Activities:* In its initial title V program submittal, the District submitted criteria defining the units that are not subject to the part 70 permitting program. For criteria pollutants, the rule exemption threshold was based on potential emissions of either one or two tons per year. EPA believed these criteria pollutant thresholds are acceptable. The rule also exempted units with potential emissions of 200 pounds per year of hazardous air pollutants (HAPs). EPA believed that this threshold is acceptable, except for very hazardous substances for which EPA has promulgated or proposed a lower title I modification threshold. To receive full approval, the District's exemption needed to be no less stringent than these thresholds.

Clark County fulfilled this requirement by amending section 19 to clarify which emissions units can qualify as insignificant activities and to eliminate the statement that these activities are exempt from the permit. In lieu of using an emissions threshold as the means of identifying insignificant activities, the District adopted an EPA-approved list of insignificant activities as attachment A to section 19. Attachment A notes that the listed activities may be presumptively omitted from part 70 permit applications but does not suggest that these activities are exempt from the requirements of the permit. The adoption of Attachment A (List of Insignificant Activities or Emission Units) resolves EPA's concern about the stringency of emission thresholds contained in the District's previous version of section 19.

(5) *Applicable Requirements and National Ambient Air Quality Standards (NAAQS):* The District was required to add NAAQS, visibility, and increment requirements for temporary sources to the definition of applicable requirements (40 CFR 70.3). Sources that temporarily operate at multiple locations, such as non-metallic minerals processors or asphalt batch plants, may qualify for temporary source permits. The temporary source permits issued to these sources was required to comply with applicable requirements, as defined in part 70, at each location.

To address this condition, Clark County made an appropriate revision to section 0, their ''definitions'' regulation. Clark County revised the definition of ''applicable requirement'' in section 0 to include, ''any national ambient air quality standard or increment or visibility requirement under part C of title 1 of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) (Temporary Sources) of the Act.''

(6) *Early reductions permit deadline:* The District was required to add a deadline of nine months or less for early reductions permits issued under section 112(i)(5) of the Act (40 CFR 70.4(b)(11)).

Clark County fulfilled this condition by revising section 19.5.1.4(a) as follows: ''(a) Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Act shall be acted on within nine months of receipt of the complete application.''

B. Changes Required for Washoe County District Health Department To Receive Full Program Approval

As explained in EPA's January 5, 1995 rulemaking, Washoe County was required to make the following changes:

(1) *Insignificant activities:* EPA required Washoe County to revise its insignificant activity provisions so that they comply with 40 CFR 70.5(c). Specifically, rule 030.905(B)(3) was required to state that any activity at a title V facility that is subject to an applicable requirement may not qualify as an insignificant activity. Because Washoe defines insignificant activities by size, both rule 030.020(C)(4) and the

application form must require the applicant to list all insignificant activities in enough detail to determine applicability and fees, and to impose any applicable requirements.

Washoe County met this condition with two rule revisions and a modification to its permit application form. First, they revised Rule 030.905(B)(3) to state that ''No source which is itself subject to an applicable requirement may qualify as an insignificant activity.'' In addition, Washoe modified Rule 030.020(C)(4) to require that each permit application contain ''* * * description of all insignificant activities for Part 70 permits, and all emission points in sufficient detail to determine applicability and fees.'' Finally, Washoe amended their title V permit application form to require the applicant to list all emissions associated with insignificant activities.

(2) *Applications:* EPA required Washoe County to revise 030.020 to state that each application must contain the following information: (a) Description of any processes and products associated with alternate scenarios (40 CFR 70.5(c)(2)); (b) description of compliance monitoring devices or activities (§ 70.5(c)(3)(v)); (c) when emissions trading provisions are requested by a source, proposed replicable procedures and permit terms (§ 70.4(b)(12)(iii)); and (d) a statement that the source will, in a timely manner, meet all applicable requirements that will become effective during the permit term (§ 70.5(c)(8)). In addition, rule 030.020 must clearly require that any application form, report, or compliance certification submitted in the permit application include a certification based on information and belief formed after reasonable inquiry (40 CFR 70.5(d)).

Washoe County met this requirement by revising Rule 030.020(C)(12) to include the required provisions from §§ 70.5(c), 70.4(b), and 70.5(d) identified in the interim approval notice by EPA. In addition, Washoe County's permit application form (which was submitted as an addendum to their revised title V program submittal) contains clear certification requirements that are consistent with part 70 regulations.

(3) *Supplementary information:* As a condition of the 1995 interim approval, EPA required Washoe County to add a provision to its rules that imposes a general duty on the permit applicant to submit supplementary facts or corrected information upon becoming aware of any failure to submit relevant facts or submittal of incorrect information. (40 CFR 70.5(b))

Washoe County fulfilled this condition by revising their Rule 030.910 to include the following requirement: ''Any part 70 permittee or permit applicant must submit any previously unknown, supplementary or corrected information upon becoming aware of any failure to submit relevant facts or the submittal of incorrect information. The permittee shall also notify the Control Officer of any change in operations or change in applicable requirements.''

(4) *Public notice:* Washoe County was required to revise 030.930 to provide public notice ''by other means if necessary to assure adequate notice to the affected public.'' (40 CFR 70.7(h)(1))

Washoe County met this condition by amending Rule 030.930. The amended Rule states that the District shall give public notice and ''such notice shall be made in a newspaper of general circulation within Washoe County and by mailing notice to persons on a list which shall be developed for such part 70 notifications, or by other means if necessary to assure adequate notice to the affected public.'' Although Washoe's rule language differs slightly from that contained in part 70 (which says ''*and* by other means * * *''), EPA interprets Rule 030.930 to require the District to provide notice in every case in a newspaper of general circulation and to persons on the mailing list, as well as by other means if necessary, which is consistent with the requirements of part 70.

(5) *Certifications:* EPA required Washoe County to revise 030.960(C)(8) to state that certifications by a responsible official must be based on information and belief formed after reasonable inquiry. (40 CFR parts 70.6(c)(1) and 70.5(d)).

Washoe County fulfilled this condition by revising Rule 030.960(C)(8) to add the following language: ''* * * and that all certifications are based on information and belief formed after a reasonable inquiry.''

(6) *Compliance schedules:* Washoe County was required to revise 030.970(B) to state that schedules for compliance shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order (40 CFR 70.5(c)(8)(iii)(C) and 70.6(c)(3)).

Washoe County met this condition by modifying Rule 030.970(B) to add item (6) as follows: ''(6) Any schedule for compliance must be at least as stringent as that contained in any judicial consent decree or administrative order.''

(7) *Significant permit modifications:* Part 70 prohibits sources from implementing significant permit modifications prior to final permit action unless the changes have undergone preconstruction review pursuant to section 112(g) or a program approved into the SIP pursuant to part C or D of title I, and the changes are not otherwise prohibited by the source's existing part 70 permit. At the time of Washoe's interim approval, its regulations required sources to submit applications for significant permit modifications 6 months prior to implementing the change, yet final permit action did not need to occur until 9 months after receipt of a complete application. Hence, rule 030.950(E) needed to be revised to eliminate the 3 month time frame that sources were able to implement significant permit modifications without revised permits (40 CFR 70.5(a)(1)(ii)).

Washoe County met this condition by revising Rule 030.950(E) to add the following language: ''No changes covered under a significant permit modification may be implemented by the source without an Authority to Construct (ATC) permit if such authorization is required under regulation 030.002. The source must submit a complete application at least nine (9) months prior to the time it intends to implement the change.''

C. Changes Required for Nevada Division of Environmental Protection To Receive Full Program Approval

As explained in EPA's December 12, 1995 rulemaking, NDEP was required to make the following changes:

(1) *Compliance certifications:* NDEP was required to revise Nevada Administrative Code (NAC) section 445.7054.2(h)(2) to clearly require that compliance certifications submitted as part of the permit applications include the compliance status of all applicable requirements and the methods used for determining compliance with all applicable requirements. As NDEP's rule was written in 1995, a compliance certification was part of the source's compliance plan, and the elements of the compliance plan were required to address all applicable requirements (NAC 445.7054.2(h)). However, the compliance certification provision, within the compliance plan framework, could have been read, inappropriately, to narrow the scope of certifications to those applicable requirements that become effective during the term of the permit (40 CFR 70.5(c)(9)).

NDEP met this condition by amending NAC 445B.295.2 (formerly 445.7054.2) [2]

[2] The State of Nevada re-numbered their Administrative Code in section 445 during the 1995

Continued

to add the specific compliance certification requirements of 40 CFR 70.5(c)(9).

(2) *Agricultural and food processing activities:* In order to have a fully approvable program, NDEP was required to remove all ambiguity regarding the permitting of agricultural and food processing activities and clearly require all major sources to obtain Class I permits. If a regulatory impediment exists outside of the submitted program, then NDEP was required to eliminate that impediment prior to full program approval.

NDEP fulfilled this condition of full approval by revising NAC 445B.288 (formerly 445.705) to clarify that agricultural and food processing activities are not exempt from permitting unless they are not subject to title V permitting themselves and they are located at a source that is not required to get a title V permit.

(3) *Application deadline:* NDEP's rule did not contain a title V permit application trigger for existing sources that become subject to the program after the program's effective date. NAC 445.7052.1 needed to be revised to include an application requirement for such sources (40 CFR 70.5(a)(1)(i)).

NDEP met this condition by amending NAC 445B.289 (formerly NAC 445.7042) to add 445B.289.2, which states, ''If an existing stationary source becomes subject to the requirements of a Class I stationary source, the owner or operator of the existing stationary source must submit a Class I–A application to the director within 12 months after the date on which the stationary source becomes subject to the requirements for Class I sources.''

(4) *Permit shield:* NDEP's permit shield provisions in NAC 445.7114.1(j) were not fully consistent with part 70 and needed to be revised as follows: (a) clearly indicate that NAC 445.7114.1(j) provides for permit shields; (b) require the permit to expressly state that a permit shield exists or the permit is presumed not to provide such a shield (40 CFR 70.6(f)(2)); and (c) add a statement that the permit shield may not be extended to minor permit modifications (40 CFR 70.7(e)(2)(vi)).

NDEP fulfilled this condition by revising NAC 445B.316 (formerly 445.7114) to add new language at 445B.316.2 clearly indicating that a Class I operating permit may provide a permit shield, that a shield exists only if the permit expressly states that a permit shield exists, and noting that permit shields do not apply to minor permit modifications.

(5) *Emissions trading:* NDEP was required to add emissions trading provisions consistent with 40 CFR 70.6(a)(10), which requires that trading must be allowed where an applicable requirement provides for trading increases and decreases without a case-by-case approval.

NDEP fulfilled this requirement by amending NAC 445B.316.1(g) (formerly 445.7114.1(g)) to allow for the trading of emissions increases and decreases to the extent that the applicable requirements provide for such trading without a case-by-case approval.

(6) *Compliance schedule:* A schedule of compliance contained in a title V permit must be consistent with that required in the permit application (40 CFR 70.6(c)(3)). While NDEP application provisions required all the necessary elements of a schedule of compliance, the permit requirements in NAC 445.7114.1(h) needed to be revised either by referencing the application requirements in NAC 445.7054.2(h)(3) or by adding that the schedule of compliance will contain a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance and that the schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order. In addition, the schedule of compliance was required to address requirements that become applicable during the term of the permit pursuant to 40 CFR 70.5(c)(8)(iii)(B).

NDEP met this condition by revising their regulations at NAC 445B.316.1 (formerly 445.7114.1) to reference the application requirements in 445B.295.2(h) (formerly 445.7054.2(h)) NDEP also amended NAC 445B.295.2(h) (formerly 445.7054.2(h)) by adding the following language at 445B.295.2(h)(3)(II): ''(II) For the applicable requirements that may become effective during the term of the permit, a statement that the stationary source will comply with those requirements on a timely basis* * *''

(7) *Progress reports:* At the time of interim approval in 1995, the progress report requirement in NAC 445.7114.1(h)(1) was vague and needed to be revised to more clearly meet the requirements of 40 CFR 70.6(c)(4). EPA suggested adding the following language to NAC 445.7114.1(h)(1): ''Requirements for [s]emiannual progress reports with dates for achieving milestones and dates when such milestones were achieved.''

NDEP met this condition by modifying NAC 445B.295 (formerly 445.7054) to include a schedule for the submission of certified progress reports and added additional language to 445B.295.2(h)(4) to require all the provisions of 40 CFR 70.6(c)(4).

(8) *Portable sources:* NDEP indicated in its program description that Class I permits may be issued to portable sources (program submittal, section II, p. 8). In order to satisfy the part 70 requirements for temporary sources, NDEP needed to add a requirement that the owner or operator of a Class I ''portable source'' (as defined in NAC 445.5695) notify NDEP at least 10 days in advance of each change in location. (40 CFR 70.6(e)(2))

NDEP fulfilled this requirement by revising NAC 445B.194 (formerly 445.5695) to replace the term ''portable source'' with the term ''temporary source.'' Also, NDEP revised NAC 445B.331.2 (formerly 445.7145.2) to require that Class I sources make a request in writing to the director for a change in location of an emission unit, and to further require that the request be made ''at least 10 days in advance of each change in location.''

(9) *Emissions trading under a federally enforceable cap:* For full approval, NDEP was required to revise NAC 445.7114.1(g) to ensure that any trade under a federally enforceable emissions cap is preceded by a written notification to NDEP at least 7 days in advance of the trade. Part 70 requires that the notification specify when the change will occur and include a description of the change in emissions that will result and how the increases and decreases will comply with the terms and conditions of the permit (40 CFR 70.4(b)(12) and 70.4(b)(12)(iii)(A)).

NDEP met this condition by revising NAC 445B.316 (formerly 445.7114) to require that requests for emissions trading under a federally enforceable emissions cap be made pursuant to NAC 445B.320. NAC 445B.320 requires requests to be made by written notification to the NDEP Director and the EPA Administrator at least 7 days before making the change and requires that the notifications meet other specific criteria, pursuant to the requirements at 40 CFR 70.4(b)(12)(iii)(A).

(10) *Clarification of permit exemption:* NDEP was asked to remove the phrase ''Except as otherwise provided in subsection 2'' from NAC 445.705.1, as it inaccurately suggested that major sources subject to either the New Source Performance Standard for new residential wood heaters or the

legislative session. Since EPA's final interim approval identified changes that needed to be made in the previously numbered NAC provisions, in this notice we identify both the current and former NAC regulatory citations. Also, see Tables 1 and 2 below for a complete cross reference of old and new NAC provisions that are part of NDEP's operating permit program.

National Emissions Standard for Hazardous Air Pollutants for asbestos demolition are not required to obtain title V operating permits.

NDEP fulfilled this condition by revising NAC 445B.288.1 (formerly 445.705.1) to remove the phrase ''except as otherwise provided in subsection 2.'' NAC 445B.288.1 now clearly states that the title V exemption for sources subject to part 61, subparts AAA and M, only applies where sources would otherwise be subject to permitting solely because they are regulated by subpart AAA or M.

(11) *Insignificant activities:* NDEP was required to provide additional defining criteria to ensure that NDEP's insignificant activities are truly insignificant and are not likely to be subject to an applicable requirement. Alternatively, NDEP could have restricted their list of insignificant activities to those that are not likely to be subject to an applicable requirement or that emit less than State-established emission levels. NDEP needed to demonstrate that these emission levels would be insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements.

NDEP fulfilled this requirement through several revisions to NAC 445B.288 (formerly 445.705). First, NDEP added additional defining criteria to their list of insignificant activities to ensure that activities on the list are truly insignificant. In addition, 445B.288 now notes that any activities on the list do not qualify for treatment as an insignificant activity if they are otherwise subject to a specific applicable requirement. Finally, NDEP has clarified in their regulations at 445B.288 that insignificant activities at part 70 sources are not exempt from the part 70 permit by removing the prior language from NAC 445B.288 (formerly 445.705) which stated that insignificant activities do not require operating permits.

D. Other Program Changes Made by the Nevada Division of Environmental Protection

NDEP made other changes to its operating permits program since EPA granted interim approval. These changes were not required to correct deficiencies identified by EPA in our interim approval of December 12, 1995. EPA has reviewed the additional changes and proposes to approve most of the changes. Table 1 identifies the additional rule sections EPA is proposing to approve. One of the changes listed in Table 1 is a revision of NAC section 445B.138, the definition of potential to emit (''PTE''). The revised definition states that limitations on the capacity of a source to emit air pollutants ''may be treated as part of its design for the purposes of determining its potential to emit if the limitation is enforceable by the director.'' The definition had previously required such limitations to also be enforceable by the EPA Administrator, pursuant to the definition of PTE in 40 CFR 70.2.

Although NDEP's definition is different from the current definition in 40 CFR 70.2, litigation has affected EPA's consideration of this issue. In *Clean Air Implementation Project* vs. *EPA*, No. 96–1224 (D.C. Cir. June 28, 1996), the court remanded and vacated the requirement for federal enforceability of potential to emit limits under part 70. Even though Part 70 has not been revised it should be read to mean, ''federally enforceable or legally and practicably enforceable by a state or local air pollution control agency.'' [3]

EPA proposes to approve this revision because the State's rule is consistent with the current meaning of potential to emit as described above in the court's interpretation. EPA has issued several guidance memoranda that discuss how the court rulings affect the definition of potential to emit under CAA section 112, New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs, and title V.[4] In particular, the memoranda reiterate the Agency's earlier requirements for practical enforceability for purposes of effectively limiting a source's potential to emit.[5] For example, practical enforceability for a source-specific permit means that the permit's provisions must, at a minimum: (1) Be technically accurate and identify which portions of the source are subject to the limitation; (2) specify the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); (3) be independently enforceable and describe the method to determine compliance including appropriate monitoring, recordkeeping and reporting; (4) be permanent; and (5) include a legal obligation to comply with the limit.

EPA will rely on NDEP implementing this revised PTE definition in a manner that is consistent with the court's decisions and EPA policies. In addition, EPA wants to be certain that absent federal and citizen's enforceability, NDEP's enforcement program still provides sufficient incentive for sources to comply with permit limits. Prior to our final action on this rulemaking, we will discuss with the State our expectations for ensuring that the permit limits they impose are enforceable as a practical matter and that its enforcement program will still provide sufficient compliance incentive. In the future, if NDEP does not implement the PTE definition consistent with our guidance, and/or has not established a sufficient compliance incentive absent federal and citizen's enforceability, EPA could find that the State has failed to administer or enforce its program and may take action as authorized by 40 CFR 70.10(b).

Some changes made by the State are not approvable and EPA is not acting on those sections. Table 2 below lists the NAC sections of NDEP's program on which EPA is not taking action. Please refer to the TSD for additional information on the basis for our decision to either approve or not act on other changes made by the State.

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[3] See also, *National Mining Association (NMA)* v. *EPA*, 59 F.3d 1351 (D.C. Cir. July 21, 1995) (Title III) and *Chemical Manufacturing Ass'n (CMA)* v. *EPA*, No. 89–1514 (D.C. Cir. Sept. 15, 1995)(Title I).

[4] *See*, e.g., January 22, 1996, Memorandum entitled, ''Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit'' from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, Director, Office of Regulatory Enforcement to EPA Regional Offices; January 31, 1996 paper to the Members of the Subcomittee on Permit, New Source Review and Toxics Integration from Steve Herman, OECA, and Mary Nichols, Assistant Administrator of Air and Radiation; and the August 27, 1996 Memorandum entitled, ''Extension of January 25, 1995 Potential to Emit Transition Policy'' from John Seitz, Director, OAQPS and Robert Van Heuvelen, Director, Office of Regulatory Enforcement.

[5] *See*, e.g., June 13, 1989 memorandum entitled, ''Guidance on Limiting Potential to Emit in new Source Permitting, from Terrell F. Hunt, Associate Enforcement Counsel, OECA, and John Seitz, Director, OAQPS, to EPA Regional Offices. This guidance is still the most comprehensive statement from EPA on this subject. Further guidance was provided on January 25, 1995 in a memorandum entitled ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act),'' from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, Director, ORE to Regional Air Directors. Also please refer to the EPA Region 7 database at http://www.epa.gov/region7/programs/artd/air/policy/policy.htm for more information.

TABLE 1.—OTHER RULE SECTIONS THAT WERE CHANGED SINCE INTERIM APPROVAL THAT EPA IS PROPOSING TO APPROVE

Interim approved NAC provision	New NAC provision	Section title	Date of adoption
445.430	445B.001	Definitions	5/10/01
445.432	445B.002	''Act'' defined	N/A
445.433	445B.004	''Administrator'' defined	N/A
445.434	445B.005	''Affected facility'' defined	10/30/95
445.4346	445B.007	''Affected state'' defined	N/A
445.438	445B.013	''Allowable emissions'' defined	10/30/95
445.4395	445B.016	''Alternative operating scenarios'' defined	10/30/95
445.4415	445B.019	''Applicable requirement'' defined	3/5/98
445.4425	445B.021	''Area source'' defined	N/A
445.4615	445B.034	''Class I–A application'' defined	N/A
445.4625	445B.035	''Class I–B application'' defined	N/A
445.4635	445B.036	''Class I source'' defined	N/A
445.4645	445B.037	''Class II source'' defined	10/30/95
445.477	445B.043	''Confidential information'' defined	N/A
445.4915	445B.055	''Effective date of the program'' defined	N/A
445.4955	445B.056	''Emergency'' defined	N/A
445.500	445B.059	''Emission unit'' defined	10/30/95
445.5008	445B.061	''EPA'' defined	N/A
445.504	445B.063	''Excess emissions'' defined	N/A
445.506	445B.066	''Existing stationary source'' defined	10/30/95
445.5095	445B.069	''Federally enforceable'' defined	N/A
445.5105	445B.070	''Federally enforceable emissions cap'' defined	N/A
445.521	445B.077	''Fugitive emissions'' defined	10/30/95
445.5275	445B.082	''General permit'' defined	10/30/95
445.5305	445B.084	''Hazardous air pollutant'' defined	N/A
445.5431	445B.096	''Maximum achievable control technology'' defined	10/30/95
445.548	445B.103	''Monitoring device'' defined	10/30/95
445.550	445B.108	''New stationary source'' defined	10/30/95
445.559	445B.123	''Operating permit'' defined	N/A
445.571	445B.138	''Potential to emit'' defined	5/3/96
445.5855	445B.147	''Program'' defined	N/A
445.5905	445B.153	''Regulated air pollutant'' defined	10/30/95
445.5915	445B.154	''Renewal of an operating permit'' defined	N/A
445.5925	445B.156	''Responsible official'' defined	N/A
445.5935	445B.157	''Revision of an operating permit'' defined	N/A
445.613	445B.170	''Single source'' defined [REPEALED]	10/30/95
445.630	445B.190	''Stop order'' defined	N/A
445.5695	445B.194	''Temporary source'' defined	5/10/01
445.649	445B.200	''Violation'' defined	N/A
445.6605	445B.221	Adoption by reference of provisions of federal law and regulations	9/27/99
445.662	445B.224	Public and confidential information	3/5/98
445.664	445B.227	Prohibited conduct: Operation of source without required equipment; removal or modification of required equipment; modification of required procedure.	10/30/95
445.696	445B.275	Violations: Acts constituting; notice	10/30/95
445.697	445B.277	Stop orders	10/30/95
445.699	445B.281	Violations: Classification; administrative fines	N/A
445.704	445B.287	Operating permits and permits to construct: General requirements; restrictions on transfer	5/10/01
445.705	445B.288	Operating permits: Exemptions from requirements	5/10/01
445.7042	445B.289	Class I–A application for Class I operating permit: Filing requirement	5/10/01
445.7054	445B.295	Contents of application for operating permit: General requirements	5/10/01
445.7056	445B.296	Contents of application for operating permit: Requests for inclusion of additional provisions	10/30/95
445.7058	445B.297	Application for operating permit: Submission of application and corrected or additional information.	10/30/95
445.706	445B.298	Application for operating permit: Official date of submittal	3/5/98
445.707	445B.300	Operating permits: Action on applications; expiration	9/27/99
445.7073	445B.303	Operating permits: Initial periods for action on applications	3/5/98
445.7075	445B.305	Operating permits: Imposition of more stringent standards for emissions	10/30/95
445.7077	445B.306	Class I operating permits: Prerequisites to issuance, revision, or renewal	3/5/98
445.7112	445B.315	Contents of operating permits: Conditions	3/5/98
445.7114	445B.316	Contents of Class I operating permits	5/10/01
445.7122	445B.319	Operating permits: Administrative amendment	9/27/99
445.7124	445B.320	Operating permits: Making certain changes without revision of permit	3/5/98
445.7126	445B.321	Class I operating permits: Minor revision	4/17/98
445.7128	445B.322	Class I operating permits: Significant revision	3/5/98
445.713	445B.323	Operating permits: Renewal	10/30/95
445.7131	445B.325	Operating permits: Termination, reopening and revision, revision, or revocation and reissuance.	3/5/98
445.7133	445B.326	Operating permits: Assertion of emergency as affirmative defense to action for noncompliance.	N/A

TABLE 1.—OTHER RULE SECTIONS THAT WERE CHANGED SINCE INTERIM APPROVAL THAT EPA IS PROPOSING TO APPROVE—Continued

Interim approved NAC provision	New NAC provision	Section title	Date of adoption
445.7135	445B.327	Fees: Operating permits; revision of operating permit; annual fee for emissions and maintenance of stationary source.	9/27/99
445.7145	445B.331	Fees: Replacement of lost or damaged operating permit; request for change of location of emission unit.	5/10/01
445.7155	445B.335	General permits	10/30/95
445.717	445B.339	Identification of substances	5/3/96
445.7191	445B.343	Development of maximum achievable control technology; establishment of lower emission rates or different criteria.	3/26/96
445.7193	445B.345	Maximum achievable control technology: Approval, degree of reduction in emission, methods.	3/26/96
445.7195	445B.347	Prerequisites to issuance or renewal of operating permit	3/26/96

Note: Rule sections marked as N/A in the ''Date of Adoption'' column were not changed since EPA granted NDEP interim approval, except for changes related to the Legislative renumbering of the NAC in 1995.

TABLE 2.—OTHER RULE SECTIONS THAT WERE CHANGED SINCE INTERIM APPROVAL THAT EPA IS NOT PROPOSING TO APPROVE

Interim approved NAC provision	New NAC provision	Section title	Date of adoption
445.5405	445B.094	''Major source'' defined	3/5/98
445.628	445B.187	''Stationary source'' defined	5/10/01
445.7044	445B.290	Class I–B application for Class I operating permit: Filing requirement	5/10/01
445.7052	445B.294	Class I–A application for Class I operating permit: Period for filing; effect of application and previous permits.	10/30/95

V. What Is Involved in This Proposed Action?

Clark County, Washoe County, and NDEP have fulfilled the conditions of their respective interim approvals, and EPA proposes full approval of their title V operating permit programs.

Clark County and NDEP also made additional changes to their operating permits programs. These changes were not required by EPA to address conditions of the interim approvals granted to them on July 13, 1995, and December 12, 1995, respectively. EPA is proposing to approve most, but not all, of the changes made by NDEP and is taking no action today on additional changes made by Clark County. EPA will evaluate the additional program changes made by Clark County and will take appropriate action at a later date.

Request for Public Comment

EPA requests comments on the program revisions discussed in this proposed action. Copies of the Washoe County, Clark County, and NDEP submittals and other supporting documentation used in developing our proposed full approval are contained in docket files maintained at the EPA Region 9 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by November 9, 2001.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program , to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 70

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

Dated: September 28, 2001.

Sally Seymour,

Acting Regional Administrator, Region IX.

[FR Doc. 01–25410 Filed 10–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7077–1]

Ocean Dumping; Proposed Site Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to modify the designation of an Ocean Dredged Material Disposal Site (ODMDS) in the Atlantic Ocean offshore Charleston, South Carolina. The proposed modification is to modify the restriction on use and shorten the site's name. This proposed action is necessary to allow for disposal activities to continue as previously planned by the site's Task Force for management and monitoring.

DATES: Comments must be received on or before November 26, 2001.

ADDRESSES: Send comments to: Wesley B. Crum, Chief, Coastal Section, Water Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, 404/562–9395.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On December 23, 1986, the Administrator delegated the authority to the Regional Administrator of the Region in which sites are located. The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR chapter I, subchapter H, § 228.11) state that use of disposal sites may be modified.

Two ODMDS's were ultimately designated for Charleston in 1987. One was a 12-square mile site for deepening material. The second site was 3-square miles and was placed within the 12-square mile site. During the 1980's, additional benthic and sedimentological studies were conducted by South Carolina Department of Natural Resources (SCDNR). In 1987, live bottoms were identified in the western portion of the 12-square mile site. Concerns regarding impacts to the living resources at the ODMDS encouraged EPA to place a restriction on the use of the 12-square mile site. The Final Rule regarding this restriction was published in the **Federal Register** March 5, 1991 stating, ''Disposal shall be limited to dredged material from the Charleston Harbor area. All dredged material, except entrance channel material, shall be limited to that part of the site east of the line between coordinates 32°39′04″ N, 79°44′25″ W and 32°37′24″ N, 79°45′30″ W unless the materials can be shown by sufficient testing to contain 10% or less of fine material (grain size of less than 0.074mm) by weight and shown to be suitable for ocean disposal.'' This bisecting line was an immediate effort by EPA to protect live bottom resources initially reported by fishermen. The line was set with limited knowledge of the exact location and extent of those resources, and was set in a location that was believed to be as protective as possible at that time.

During this same time frame, an interagency group (EPA, DNR, COE and State Ports Authority) began working together to develop a monitoring and management plan (MMP) for the ODMDS. As part of this MMP process, construction of an L-shaped berm was developed approximately midway within the ODMDS. The COE began construction of the L-shaped berm using consolidated material from the last (42-foot) deepening project. The berm was evident on 1993 bathymetry. Also, as part of the MMP, the interagency group began looking for an area within the ODMDS for disposal of dredged material which would have the least impacts on the live bottom resources located in the western region of the site. A 4-square mile area (disposal box) was identified within the eastern half of the 12-square mile designated ODMDS and placed in position with the L-shaped berm as part of the western boundary. This location was approved by all the agencies involved, and placed where it would impact minimal reef habitat. At that time, the bisecting line should have been moved, but due to an oversight, it was not.

In 1995, EPA de-designated the smaller 3-square mile site and modified the larger site to allow for continued disposal of all material, not just deepening material. However, the COE agreed not to place any material outside of the 4-square mile disposal box. During the 1999–2000 (deepening project) dredging, a number of unauthorized dumps occurred to the west of the 4-square mile site. To date, studies indicate that some fine-grained material is present to the west of the 4-square mile site. It is unknown at this time whether the disposal material is moving from the ODMDS over the berms, from the berms, is part of the unauthorized dumps that occurred in 1999 and 2000, whether it is from the dispersion of the material during disposal activities at the site, or whether it is some combination of these four possibilities. Subsequent investigation and studies conducted by SCDNR to date have not identified adverse impacts at index reef sites being monitored. Other samples of the sand bottom benthic communities in areas that now have muddy sediments are still being processed.