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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

August 26, 1981

Mr. Charles Tompkins, P.E.
Manager, Air Quality
Corporate Environmental Protection
Kimberly-Clark Corporation
Noenah, Wisconsin 54956

Dear Mr. Tompkins:

This is in response to your August 6, 1981, letter in which you asked our opinion on an issue involving EPA's requirements for nonattainment areas. Kimberly-Clark Corporation is proposing to install a cogeneration project at its tissue paper products mill in an area which is currently designated nonattainment for NOx. The project will result in NOx increases of over 100 tons per year, subjecting it to new source review offset requirements.

An issue arises because one of the provisions of the South Coast Air Quality Management District (AQMD) plan exempts cogeneration projects from the necessity of providing 100 percent of all nonattainment area offsets if all available onsite offsets are utilized and lowest achievable emission rate technology is installed. EPA declared this provision deficient, but did not disapprove it. Instead, EPA conditionally approved the plan, giving the South Coast AQMD until November 7, 1981, to correct this and other deficiencies. In the interim period before the cogeneration exemption is required to be eliminated, you want to take advantage of the exemption, and wish to know which of the following conditions must be met by November 7, 1981:

- (1) File a complete application for the cogeneration project
- (2) Receive a construction permit
- (3) Commence construction

You believe you can meet the first condition, but not the others. This issue is not addressed in the South Coast plan.

I have discussed this issue with EPA's Office of General Counsel and Office of Air Quality Planning and Standards, and both are in agreement that the NOx Offset exemption can be applied to the cogeneration project if a complete application is filed before November 7, 1981. This decision is consistent with the approach Congress applied towards growth restrictions at Section 110(a)(2)(I) of the Clean Air Act. Section 110 (a)(2)(I) provides that no major stationary source shall be constructed or modified in a nonattainment area after June 30, 1979, unless, as of the time of application for a permit for such construction or modification, the applicable state plan meets Part D requirements. Although the situation in this case is different, the key point in both this case and the Section 110(a)(2)(I) provision is that an approved plan is being carried out at the time of permit application.

I wish to point out that this decision in no way represents approval of the project. Other nonattainment requirements must be met before such approval can be granted. If you have any questions concerning this

response, please contact Robert Myers of my staff at (202) 755-2564.

Sincerely yours,

Edward E. Reich, Director
Division of Stationary Source Enforcement

cc: Mike Trutna
Eric Smith
Rick Sugarek