UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

December 28, 1988

MEMORANDUM

SUBJECT: Emission Offset Exemptions for Resource Recovery Facilities (RRF's)

FROM: Gerald A. Emison, Director
Office of Air Quality Planning and Standards (MD-15)

TO: Conrad Simon, Director
Air and Waste Management Division, Region II

You have asked for guidance regarding the provision in Section IV(B)(i) of the Emission Offset Interpretative Ruling, 40 CFR 51, Appendix S, that exempts RRF's from the general requirement that major new sources and modifications locating in designated nonattainment areas obtain emission offsets. Your request stems from the offset exemptions for RRF's contained in the New York and New Jersey State implementation plans (SIP's). Both States cite the following reasons as the basis for their reluctance to delete these exemptions from their SIP's:

1. Their SIP offset requirements were originally crafted using Appendix S as a guide;

2. The Environmental Protection Agency (EPA) approved the relevant SIP measures, including the exemptions for RRF's; and

3. Section IV(B)(i) of Appendix S still provides for this exemption.

As discussed below, Appendix S has been largely superseded, and EPA will no longer approve SIP's containing offset exemptions for RRF's unless they contain an approved growth allowance. Thus, you may advise these States that Appendix S is no obstacle to deletion of the exemptions in question.

At the time these new source review (NSR) programs were submitted, EPA had not promulgated its Part 51 regulations setting forth the requirements for approval of State NSR programs under Part D of the Clean Air Act. Those regulations, originally designated as 40 CFR 51.18(j) and presently codified at 51.165, were promulgated on August 7, 1980 (45 FR 52676, 52687, 52743). Rather, EPA was guided by the Offset Ruling in Appendix S to 40 CFR Part 51 [see 44 FR 3282 (January 16, 1979)]. Section IV(B)(i) of the Offset Ruling does contain provisions

for exempting RRF's from the offset requirement under certain conditions. However, the Offset Ruling has been largely superseded by the Part 51 regulations.

The Offset Ruling governs permitting of major sources in newly designated nonattainment areas that are subject to Part D requirements, while the affected State makes necessary revisions to its NSR rules [see 44 FR 20372, 20379 n.36 (1979)]. In addition, EPA still utilizes the Offset Ruling for guidance purposes in certain respects. Nevertheless, as a matter of policy, EPA no longer adheres to the RRF's offset exemption in the Offset Ruling. Thus, EPA will not approve a proposed SIP revision

which contains such an exemption without an approved growth allowance.

Accordingly, you may inform these States that they should proceed at this time to initiate SIP revisions that would remove the offset exemptions.

25.13-3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

DATE: SEP 27 1988

SUBJECT: Application and Validity of the Emission Offset Interpretative Ruling (Appendix S)

FROM: Conrad Simon, Director
Air and Waste Management Division (2AWM)

TO: Gerald A. Emison, Director
Office of Air Quality Planning and Standards (MD-10)

The purpose of this memorandum is to make you aware of a recurring problem we are facing in Region II regarding the application and validity of the Emission Offset Interpretative Ruling, contained at 40 CFR 51, Appendix S. The presence of Appendix S in Part 51 has generated confusion about the Environmental Protection Agency's (EPA's) requirements and has become a major barrier to our efforts to make our states' new source review regulations consistent with Federal requirements.

In 1980 and 1981, EPA approved New York and New Jersey's new source review regulations which impose emission offset requirements on major stationary sources of air pollution. However, both New York's Part 231 and New Jersey's Subchapter 18 exempt resource recovery facilities from those requirements. We understand that this is true of as many as twenty-two other states' new source review regulations.

Earlier this year, we undertook an effort to eliminate the differences between New York and New Jersey's new source review nonattainment rules and the federal new source review requirements. We have found workable solutions to most of these problems. However, New York and New Jersey expressed strong reservations about removing the offset exemption for resource recovery facilities from their regulations. Both states have correctly indicated that their offset requirements were originally crafted using Appendix S as a guide and that EPA subsequently approved these regulations. We have responded on several occasions, based on the advice of Office of Air Quality and Planning Standards staff, that Appendix S has largely been superceded by the Part 51 regulations and is applicable in only very limited circumstances. Further, we have indicated that offset exemptions are only valid when accompanied by an approved growth allowance. Our states, however, remain unconvinced and cite Section IV.B.i of Appendix S in EPA new source review regulations as their justification for retaining the offset exemption for resource recovery facilities. Frankly, we have concluded based on our own review and a review by the Regional Counsel's office that the state's interpretation is plausible.

In light of this confusion with the interpretation of EPA's emission offset requirements and the obvious friction that this ambiguity creates in working with our states, we are requesting that the Emission Offset Interpretative Ruling, contained at 40 CFR 51, Appendix S, be removed from EPA regulations. At the very least, that portion that contains the exemption from the emission offset requirements needs to be removed, or a clear policy memorandum needs to be issued which clarifies and provides a legal basis for the Agency's present requirements. Lacking this, I am not optimistic that this issue can be resolved.

cc: G. Mc Cutchen, OAQPS