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March 17, 1989

Thomas M. Allen, P.E.  
Acting Director  
Division of Air Resources  
New York State Department of  
Environmental Conservation  
50 Wolf Road  
Albany, New York 12233

Dear Mr. Allen:

This is in reference to our prior correspondence regarding the offset exemption for resource recovery facilities in Part 231 of the New York SIP.

As you know, several parties have petitioned EPA to call upon New York, pursuant to section 110(a)(2)(H) of the Act, to revise its SIP to remove the emissions offset exemption. EPA has now responded by holding the petition in abeyance (See Letter, William J. Muszynski, Acting Regional Administrator, to Eric A. Goldstein and Charles S. Warren, March 17, 1989). As explained in that letter, one of the reasons for withholding final action at this time is to give New York a further opportunity to voluntarily revise its SIP. I ask again that you do so.

In the past, you have expressed reluctance to remove this exemption on the ground that it is allowed by section IV.B.i of Appendix S to 40 CFR Part 51. I must disagree. As discussed in the letter to Goldstein and Warren, EPA was guided by Appendix S when it approved New York's new source review (NSR) rules in 1980, because at that time the Agency had not promulgated any Part 51 regulations setting forth requirements for approval of NSR programs under Part D of the Act. Shortly after EPA approval of the New York rules, however, EPA promulgated 40 CFR 51.18(j), now designated as 51.165(a) establishing the current requirements for NSR programs. Unlike Appendix S, the Part 51 regulations do not provide for offset exemptions for resource recovery facilities. Appendix S thus has been largely superseded. It remains in place because it still applies in some narrow categories of permitting circumstances (primarily, in newly designated nonattainment areas subject to Part D). However, the Agency no longer adheres to the offset exemption in Appendix S, and will not approve a SIP revision which contains such an exemption.

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Your timely attention to this matter would be much appreciated.

Sincerely,

Conrad Simon, Director  
Air and Waste Management Division

Enclosure

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