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January 31, 1989

Mr. Paul J. Bontrager, Director
Bureau of Pollution Control
Metropolitan Health Department
Nashville-Davidson County
311 23rd Avenue, North
Nashville, Tennessee 37203

Dear Mr. Bontrager:

During a conversation with Tom Hansen of my staff on December 7, 1988, you raised a question regarding the use of the growth allowable contained in Part D SIPs under the Clean Air Act for areas included in the Post 1987 SIP call. This letter is in response to your question.

EPA approved control strategy demonstrations in Part D SIPs which provided for the use of a growth allowance in lieu of source-specific offsets to meet the requirements of section 173(1) of the Act. An implicit condition of EPA's approval of the growth allowance was that it could be used in lieu of source-specific offsets to satisfy the requirements of section 173(1) only so long as the SIP continued to be adequate to demonstrate attainment of the NAAQS. However, many areas for which such allowances were approved failed to attain the ozone standard by the end of 1987.

The fact of continued nonattainment of the ozone NAAQS extending beyond the statutory deadline created a conclusive presumption that the previously approved growth allowance has been depleted. Under these circumstances, the issuance of a permit allowing construction of a major new or modified source without source-specific offsets clearly would not result in reasonable further progress toward attainment, but would instead exacerbate the nonattainment problem.

As you are aware, on May 26, 1988, EPA issued a SIP call to the governor of Tennessee indicating that areas in Tennessee, including Nashville, were continuing to show violations of the standard for ozone, and, therefore, that the SIP is substantially inadequate to meet the requirements of Part D. Accordingly, since Nashville did not achieve attainment of the ozone standard by December 31, 1987, and the SIP has been declared deficient, the growth allowance built into the SIP is no longer available for use in lieu of offsets for new sources locating in nonattainment areas.

An additional question that you raised is whether banked credits from shutdown of sources can be used for offsets in nonattainment areas needing but lacking an attainment demonstration. Except for on-site replacement facilities, credits from shutdowns can be used as offsets for new sources only if they occur on the day the application is "complete" or any subsequent day up until actual operations begin. The shutdown must also be federally enforceable.

Should you have any additional questions, please do hesitate to call Tom Hansen or Kay Prince of my staff at (404) 347-2864.

Sincerely,

Bruce P. Miller, Chief
Air Programs Branch
Air Pesticides & Toxics
Management Division

bcc: John Silvasi, OAQPS
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PRINCE HANSEN MILLER
