UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

MAR 28 1986

MEMORANDUM

SUBJECT: Applicability of Nonattainment New Source Review (NSR) to Tennessee Valley Authority Shawnee Plant Demonstration Project

FROM: Darryl D. Tyler, Director Control Programs Development Division

TO: Bruce C. Miller Acting Chief Air Programs Branch, Region IV

This is in response to your March 20, 1986, memorandum requesting that EPA soon release policy for approving a State implementation plan (SIP) revision that would implement a "plantwide" rather than dual definition of source in a NSR program for nonattainment areas. I understand that this is of particular importance in your case, given the fact that many of the States in Region IV have been applying the State-adopted plant-wide rule nstead of the dual source definition (or its equivalent) presently contained in the SIP. Your memo details one particular permit, the TVA Shawnee AFBC demonstration project, where the State of Kentucky wishes to use a plantwide source definition to exempt the project from major NSR requirements even though the Kentucky SIP would not allow such an exemption.

As you know, EPA's October 14, 1981, revisions to the Federal NSR regulations regarding which source definition must be implemented in nonattainment areas have been involved in litigation since their inception. As a result of the June 25, 1984, Supreme Court decision (NRDC v. Gorsuch) and subsequent denial of a petition for rehearing, we believe that the regulations governing the definition of source for nonattainment areas revert back to EPA's October 14, 1981, promulgation. This rulemaking gives States an option as to the kind of source definition to employ under certain circumstances.

Policy development as to the required SIP demonstration has been extremely complex. Critical issues associated with resolving this policy are closely related to similar concerns which are apparent in other policies under development, such as the evolving emissions trading policy. These issues have necessarily required discussion among Regional Offices, Office of General Counsel, Regulatory Reform Staff, and OAQPS in order to achieve a reasonable final policy. We are currently developing a decision memorandum which is to be used by Craig Potter in selecting what policy will be used by EPA in approving plantwide source definition

in a NSR SIP. Roger Pfaff, of your staff, has been sent a copy for review. This "dual source policy" is part of the priority list developed by Ray Cunningham and as such has been put on an extremely tight schedule, with policy dissemination planned for late summer.

In your first question, you ask whether EPA should tell the State that the State should not permit the source until it has been subjected to nonattainment review. The EPA should tell the State during the public comment period that all permits need to comply with the federally approved SIP and that for the TVA permit this means that the source should be subjected to major new source review requirements before receiving a permit to construct.

In your letter, you also questioned, in the absence of final policy, whether EPA should take enforcement action against a permit under section 113(a)(1) of the Clean Air Act if the State chooses to implement the plantwide definition of source rather than the source definition contained in the Kentucky SIP. The decision to enforce in such circumstances can only be made on a case-by-case basis because of all the factors involved. Several counties in Kentucky have outstanding SIP conditions on their TSP SIP. Since the TVA facility is located in one of these counties, EPA's evolving policy may require more stringent demonstrations in these areas. For example, if the processing of this permit application under a plantwide source definition scenario would result in substantial environmental impacts as compared to the application of the existing approved SIP definition of source, then I believe that the potential for litigation, while still small, is greater. Therefore, you should be prepared to intervene during the interim period while policy evolves as it would relate to any application of a single source definition which would afford substantially less environmental protection. In determining environmental impacts, the following should be considered: (1) the difference in emissions between the application of lowest achievable emission rate and the emission rate required under the minor source permit, (2) the difference between the increase in emissions allowed under netting transactions and the decrease in emissions required under offset transactions, and (3) if the owner has any other sources within the State that are not in compliance (including other facilities at the plant) then one must calculate the emissions differences that would have occurred if the source in question would not have been built at all or whether the other sources that are currently out of compliance would have been put into compliance. If the Region chooses to take enforcement action against the permit it could use either section 113(a) (1) of the Clean Air Act as mentioned in the Region IV memorandum, or section 113(a) (5) of the Clean Air Act.

If a Region is contemplating enforcement against the State for failure to implement the SIP [under section 113(a) (2) of the Clean Air Act], rather than against the permit as described in the previous paragraph, our advice is to wait until the final plantwide source policy guidance

is signed. The reason for this advice is that if the final policy would llow a specific SIP to adopt a plantwide source definition without much difficulty, then an enforcement proceeding may not be appropriate. Regardless of the approvability of the plantwide source definition, Region IV should continue working with Kentucky to ensure that the rest of the NSR SIP is correct so that when the plantwide source definition issue is resolved, the Kentucky NSR SIP revision can be processed without delay.

I realize that even though this policy development is particularly complex, its absence does create significant problems in terms of SIP backlog and rule enforcement. We will make every reasonable effort to expedite development of final guidance in the near future.

cc: G. Emison
P. Wyckoff