

Pittsburgh redesignation (66 FR 50399, October 19, 2001).

Comment 11: The state SIPs fail to meet the part D requirements of the CAA. EPA asserts that certain requirements of part D are not applicable because monitoring data shows the area has attained. EPA relies on the case of *Sierra Club v. EPA* for this conclusion. However, this case has no application here because it was not a "redesignation case." Given the attainment demonstration modeling, it would be impossible to conclude that any of the "part D requirements are not necessary." All part D requirements are applicable unless, prior to redesignation, EPA formally exempts the St. Louis area from the part D requirements.

Response 11: Section II.A of this document, discussing the rationale for EPA's determination of attainment and suspension of certain requirements, addresses the applicability of the part D requirements. The part D requirements specifically include the requirements of sections 172(c) and 176 as well as the applicable requirements of subpart 2. The section 172(c) requirements include General Plan Requirements which to the extent applicable, must provide for the implementation of all RACM as expeditiously as practicable (at a minimum this requires RACT for stationary source), RFP, emissions inventory, identification and quantification of allowable emissions for major new or modified stationary sources, permits for new and modified major stationary sources, other emission control measures needed to assure attainment of the NAAQS, section 110(a)(2) requirements, and contingency measures. Section 110(a)(2) requirements include submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate apparatus, methods, systems, and procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)); provisions for the implementation of part D requirements (nonattainment area NSR permit programs); provisions for stationary source emission control measures, source monitoring, and source reporting; provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development. Subpart 2 requirements include attainment demonstration, 1990 base year inventory and periodic emissions

inventories updates, emission statements, rate-of-progress plans, VOC RACT, RACM, stage II vapor recovery, I/M, and NO_x emission controls.

As stated in the response to comment 8 above, the Missouri SIP meets all applicable requirements including section 110 and part D requirements. As stated in the January 30, 2003, proposed rule at 68 FR 4852 and 4853, EPA has approved each state's RFP, permitting programs, and VOC RACT rules as meeting the requirements of part D. Missouri's SIP has regulations requiring annual emission statements from major sources. Missouri has submitted complete emission inventories. Missouri has approved general conformity rules pursuant to section 176. In addition, Missouri has approved transportation conformity rules. EPA is approving in this action Missouri's maintenance plan which includes adequate contingency measures. Thus, Missouri has met the applicable part D requirements of the CAA. Note that also as stated in the response to comment 8, by finding that the St. Louis area has attained the standard, the attainment demonstration and RACM requirements are no longer applicable requirements. *See* also the final rule for Illinois describing how the Metro-East St. Louis area has met the applicable requirements.

As indicated in comment 3 above, neither section 107(d)(3)(E) nor EPA policy referenced by the commenter requires modeling as a prerequisite to redesignation of an ozone nonattainment area. In addition, no modeling was conducted as part of the redesignation requests submitted by Missouri or Illinois. Thus, there is no modeling basis for EPA to make any conclusions regarding the necessity for the part D requirements. (Modeling is not a required element of a redesignation request. *See*, 65 FR 37879—Cincinnati redesignation for additional discussion of this issue. *See*, *Wall v. EPA*, 265 F.3d 426 upholding this interpretation.) However, as explained in detail in comment 3, the monitoring data collected over the 2000 through 2002 period show that the area has in fact attained the ozone standard. EPA finds no need for further controls to bring about attainment.

With respect to the commenter's assertion that the Tenth Circuit *Sierra Club* case is not applicable because it is not a "redesignation" case, the commenter misses the point of the case as it relates to St. Louis. The Tenth Circuit's endorsement of the interpretation of the CAA in the Seitz memo (that certain "statutory" requirements relating to attainment are not applicable to an area which has

attained the standard) was not dependent on the fact that the area was not being redesignated. The case involved a determination by EPA that Salt Lake and Davies Counties, Utah, had attained the standard, and that, therefore, certain additional requirements relating to attainment (such as an attainment demonstration) would not apply so long as the area continued to attain. The Court expressly recognized that the area could be redesignated without having met those requirements, even though the action at issue there was an attainment determination and not a redesignation. The Court stated: "Recall that the Environmental Protection Agency's determination to exempt the Counties from limited ozone requirements is really no more than a suspension of those requirements for so long as the area continues to attain the standard or until the area is formally redesignated to attainment." (*Sierra Club v. EPA*, 99 F.3d 1551, 1558 (10th Cir. 1996)). (*See also*, 66 FR 53095 for EPA's redesignation of the Pittsburgh area.) The Court did not say, as the commenter would have it, that the area would have to adopt those measures which had been determined to be unnecessary in order to be redesignated. As it did for the Utah counties, in which EPA redesignated those counties without requiring that they meet the suspended requirements, EPA is here determining that the St. Louis area is attaining the standard and that certain requirements are suspended and do not apply because the area is being redesignated. The basis for this determination and the suspension of certain requirements for the area was explained in detail in the proposal found at 68 FR 4850–4858 and further explained in this response to various comments on the issue. The determination is based on monitored data, not modeling, for reasons explained in this document. Nothing in the Tenth Circuit case prohibits EPA from simultaneously suspending the requirements and redesignating an area, which is what this rulemaking accomplishes. EPA has taken this dual action in a number of areas including Louisville (66 FR 53665), Cincinnati (65 FR 37879), Grand Rapids (61 FR 31831), and Pittsburgh (66 FR 53094). Upon redesignation to attainment, the suspended nonattainment area requirements will no longer apply at all since the area is no longer a designated nonattainment area.

Comment 12: EPA asserts that the RACM requirements of section 172(c)(1) need not be adopted because the area has attained the NAAQS, thus, these