

derive emissions for this study. Methane is not an ozone precursor, and the inclusion of this pollutant could significantly alter the preliminary findings. The study targets the control efficiencies of the flares and states that "efficiency drops approximately by the cube of the speed (wind)". This would suggest that on high wind event days that the control efficiencies would be at their lowest. However, in the St. Louis area, high ozone days have been characterized by low wind conditions, which would produce minimal impact on flare control efficiencies during the periods of concern.

Lastly, NO_x and VOC emissions from all flares constitute less than one-tenth of one percent of the total emissions inventory for the St. Louis ozone nonattainment area. Therefore, any potential changes in calculation methodology from this source category, even if changes were warranted based on this draft study, would still likely produce an insignificant change to the St. Louis area total VOC and NO_x emissions.

Comment 35: The Illinois request for approval of its maintenance plan and revised motor vehicle emissions budgets was submitted under the signature of David Kolaz, Chief, Bureau of Air, Illinois Environmental Protection Agency (IEPA). This submission included the commitment to adopt contingency measures in the event of ozone standard exceedances and/or violations. The IEPA is without authority to make this commitment on behalf of the State of Illinois. During the Illinois public hearing (November 7, 2002), the IEPA stated that it did not have the authority to impose emission control requirements. The IEPA explained that such authority rests with the Illinois Pollution Control Board, a separate and independent State agency. The EPA cannot lawfully approve the maintenance plan submitted by the IEPA if the State is not legally bound to implement the commitments in the plan, including contingency measures.

Response 35: Under the Illinois Environmental Protection Act, the IEPA has authority to develop and submit for EPA approval air quality control plans. Section 4(j) of the Illinois Environmental Protection Act states: "The Agency shall have the duty to represent the State of Illinois in any and all matters pertaining to plans, procedures, or negotiations for interstate compacts or other governmental arrangements relating to environmental protection." In addition, section 4(l) of the Illinois Environmental Protection Act states that "The Agency is hereby designated as * * * air pollution

agency for the state for all purposes of the Clean Air Act * * *". These provisions give the IEPA the authority to develop and submit air quality plans to the EPA. Therefore, EPA disagrees with the commenter that the IEPA lacks the authority to submit an ozone maintenance plan that commits the State to certain actions if triggered under the contingency plan.

With regard to adoption of specific emission control measures or rules, the IEPA has the authority and responsibility of developing source emission control regulations, which are subsequently adopted by the Illinois Pollution Control Board. Establishment of a separate rulemaking body is consistent with the process established by many states.

The Calcagni Memo suggests that a procedure for adoption of contingency measures should be in place. However, there is no suggestion that a state must alter or suspend its rulemaking process in order to commit to implementation of contingency measures. If the State is unable to adopt a particular contingency measure as a result of its rulemaking process, it will be required to adopt and implement another equally effective measure (or group of measures) within the same 18-month time frame. The IEPA will continue to be responsible for ensuring that its commitment is met, and the commitment remains enforceable.

Comment 36: EPA cannot conclude that keeping emissions no higher than the projected inventory amounts will ensure maintenance of the ozone NAAQS.

Response 36: As stated in response to comment 23 above, keeping emissions no higher than those that occurred in the attainment period (2000 through 2002) will ensure maintenance of the NAAQS. The Court of Appeals for the Sixth Circuit in *Wall v. EPA* (265 F.3d 426, 435) determined that "EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place."

Comment 37: Neither maintenance plan provides a technical analysis demonstrating that maintenance of the 2000 emission levels will assure maintenance of the NAAQS. Such a demonstration requires photochemical grid modeling.

Response 37: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the

Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

EPA disagrees that modeling is required to demonstrate maintenance of the NAAQS. EPA reiterates its response to comment 23 in that the Court of Appeals for the Sixth Circuit in *Wall v. EPA* (265 F.3d 426, 435) determined that "EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place." Also see the response to comment 36 above.

Illinois' maintenance plan includes a technical analysis, as described in the response to comment 28 above, that demonstrates maintenance of the NAAQS based on a comparison of base year (attainment year) and projected VOC and NO_x emissions. This analysis meets the maintenance requirements of the Act and of EPA guidelines.

Comment 38: EPA announced substantial changes in its PSD program on December 21, 2002. Illinois is required to administer these changes in attainment areas effective March 3, 2003, and three years later for nonattainment areas. 67 FR 80185. Therefore, the new NSR rules will not go into effect in the Metro-East St. Louis area for three years unless EPA redesignates the area to attainment. On February 27, 2003, Illinois announced that it is filing a lawsuit challenging the NSR changes due, in part, to the fact that the State lacks the resources to administer the new NSR rules. On the basis of this admission, EPA cannot lawfully make the finding that Illinois has adequate resources to administer the new NSR program that will only be necessary if EPA redesignates the area to attainment.

Response 38: The Federal revisions to the PSD regulations promulgated on December 31, 2002 became effective on March 3, 2003. States like Illinois, to which EPA had delegated the authority to administer the PSD program, are required to implement the revisions as of their effective date. The commenter does not provide any specific information that the IEPA lacks the resources to administer the revised program in the Metro-East St. Louis area upon redesignation. In addition, the IEPA has not formally notified EPA that it does not have sufficient resources to