

1 AN ACT in relation to environmental matters.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Environmental Protection Act is amended  
5 by changing Sections 52.3-1, 52.3-2, and 52.3-4 as follows:

6 (415 ILCS 5/52.3-1)

7 Sec. 52.3-1. Findings; purpose.

8 (a) The General Assembly finds that:

9 (1) During the last decade, considerable expertise  
10 in pollution prevention, sophisticated emissions  
11 monitoring and tracking techniques, compliance auditing  
12 methods, stakeholder involvement, and innovative  
13 approaches to control pollution have been developed.

14 (2) Substantial opportunities exist to reduce the  
15 amount of or prevent adverse impacts from emissions or  
16 discharges of pollutants or wastes through the use of  
17 innovative and cost effective measures not currently  
18 recognized by or allowed under existing environmental  
19 laws, rules, and regulations.

20 (3) There are persons regulated under this Act who  
21 have demonstrated excellence and leadership in  
22 environmental compliance or stewardship or pollution  
23 prevention and, through the implementation of innovative  
24 measures, who can achieve further reductions in emissions  
25 or discharges of pollutants or wastes or continued  
26 environmental stewardship.

27 (4) Current environmental laws and regulations  
28 have, in some instances, resulted in burdensome  
29 transactional requirements that are unnecessarily costly  
30 and complex for regulated entities and have proven to be  
31 frustrating to the public that is concerned about

1 environmental protection.

2 (5) The goals of environmental protection will be  
 3 best served by promoting and evaluating the efforts of  
 4 those persons who are ready to achieve measurable and  
 5 verifiable pollution reductions in excess of the  
 6 otherwise applicable statutory and regulatory  
 7 requirements or who can demonstrate real environmental  
 8 risk reduction, promote pollution prevention, foster  
 9 superior environmental compliance by other persons  
 10 regulated under this Act, and who can improve stakeholder  
 11 involvement in environmental decision making.

12 (6) The United States Environmental Protection  
 13 Agency is operating a pilot program entitled "National  
 14 Environmental Performance Track" 65 Federal Register  
 15 41655 (July 6, 2000) (Federal Performance Track Program)  
 16 to recognize and reward businesses and public facilities  
 17 that demonstrate strong environmental performance beyond  
 18 current regulatory requirements. "Regulatory-Reinvention  
 19 (XL)-Pilot-Project," 60 Federal Register 27282 (May 23,  
 20 1995) (Federal XL Program), to allow members of the  
 21 regulated community the flexibility to develop  
 22 alternative strategies that will replace specific  
 23 regulatory requirements on the condition that they  
 24 produce greater environmental benefits, reduce  
 25 administrative burdens, and enhance public participation.  
 26 There should be a process that allows regulatory  
 27 flexibility available to a participant in the Federal  
 28 Performance Track Program a proposal accepted under the  
 29 Federal XL Program to be also granted in implemented at  
 30 the State level if the participant's proposal the  
 31 proposal achieves one or more of the purposes of this  
 32 Section and is acceptable to the Agency.

33 (7) A process for implementing and evaluating  
 34 innovative environmental measures on a pilot project

1 basis should be developed and implemented in this State.

2 (b) It is the purpose of this Section to create a  
3 voluntary pilot program by which the Agency may enter into  
4 Environmental Management System Agreements with persons  
5 regulated under this Act to implement innovative  
6 environmental measures not otherwise recognized or allowed  
7 under existing laws and regulations of this State if those  
8 measures:

9 (1) achieve emissions reductions or reductions in  
10 discharges or wastes beyond the otherwise applicable  
11 statutory and regulatory requirements through pollution  
12 prevention or other suitable means; or

13 (2) achieve real environmental risk reduction or  
14 foster environmental compliance by other persons  
15 regulated under this Act in a manner that is clearly  
16 superior to the existing regulatory system.

17 These Agreements may be executed with participants in the  
18 Federal Performance Track Program if the provisions include  
19 ~~proposals-accepted-under-the-Federal-XL-Program,-provided-the~~  
20 ~~proposals--achieve--one-or-more-purposes-of-subsection-(b)(1)~~  
21 ~~or-(2)-of-this-Section-and~~ are acceptable to the Agency.

22 (c) This program is a voluntary pilot program.  
23 Participation is at the discretion of the Agency, and any  
24 decision by the Agency to reject an initial proposal under  
25 this Section is not appealable. An initial Agreement may be  
26 renewed for appropriate time periods if the Agency finds the  
27 Agreement continues to meet applicable requirements and the  
28 purposes of this Section.

29 (d) The Agency shall develop and make publicly available  
30 a program guidance document regarding participation in the  
31 pilot program. A draft document shall be distributed for  
32 review and comment by interested parties and a final document  
33 shall be completed by December 1, 1996. At a minimum, this  
34 document shall include the following:

1           (1) The approximate number of projects that the  
2 Agency envisions being part of the pilot program.

3           (2) The types of projects and facilities that the  
4 Agency believes would be most useful to be a part of the  
5 pilot program.

6           (3) A description of potentially useful  
7 environmental management systems, such as ISO 14000.

8           (4) A description of suitable Environmental  
9 Performance Plans, including appropriate provisions or  
10 opportunities for promoting pollution prevention and  
11 sustainable development.

12           (5) A description of practices and procedures to  
13 ensure that performance is measurable and verifiable.

14           (6) A characterization of less-preferred practices  
15 that can generate adverse consequences such as  
16 multi-media pollutant transfers.

17           (7) A description of suitable practices for  
18 productive stakeholder involvement in project development  
19 and implementation that may include, but need not be  
20 limited to, consensus-based decision making and  
21 appropriate technical assistance.

22           (e) The Agency has the authority to develop and  
23 distribute written guidance, fact sheets, or other documents  
24 that explain, summarize, or describe programs operated under  
25 this Act or regulations. The written guidance, fact sheets,  
26 or other documents shall not be considered rules and shall  
27 not be subject to the Illinois Administrative Procedure Act.

28 (Source: P.A. 92-397, eff. 1-1-02.)

29 (415 ILCS 5/52.3-2)

30 Sec. 52.3-2. Agency authority; scope of agreement.

31           (a) The Agency may enter into an initial Environmental  
32 Management System Agreement with any person regulated under  
33 this Act to implement innovative environmental measures that

1 relate to or involve provisions of this Act, even if one or  
 2 more of the terms of such an Agreement would be inconsistent  
 3 with an otherwise applicable statute or regulation of this  
 4 State. Participation in this program is limited to those  
 5 persons who have submitted an Environmental Management System  
 6 Agreement that is acceptable to the Agency and who are not  
 7 currently subject to enforcement action under this Act.

8 (b) The Agency may adopt rules to implement this Section  
 9 ~~if less than 6 Agreements are executed, but shall adopt rules~~  
 10 ~~to implement this Section if 6 or more Agreements are~~  
 11 ~~executed.~~ Without limiting the generality of this  
 12 authority, those regulations may, among other things:

13 (1) Specify the criteria an applicant must meet to  
 14 participate in this program.

15 (2) Specify the minimum contents of a proposed  
 16 Environmental Management System Agreement, including,  
 17 without limitation, the following:

18 (A) requiring identification of all State and  
 19 federal statutes, rules, and regulations applicable  
 20 to the facility;

21 (B) requiring identification of all statutes,  
 22 rules, and regulations that are inconsistent with  
 23 one or more terms of the proposed Environmental  
 24 Management System Agreement;

25 (C) requiring a statement of how the proposed  
 26 Environmental Management System Agreement will  
 27 achieve one or more of the purposes of this Section;

28 (D) requiring identification of those members  
 29 of the general public, representatives of local  
 30 communities, and environmental groups who may have  
 31 an interest in the Environmental Management System  
 32 Agreement; and

33 (E) requiring identification of how a  
 34 participant will demonstrate ongoing compliance with

1 the terms of its Environmental Management System  
 2 Agreement, which may include an evaluation of a  
 3 participant's performance under the Environmental  
 4 Management System Agreement by a third party  
 5 acceptable to the Agency. Compliance with the  
 6 Agreement shall be determined not less than  
 7 annually.

8 (3) Specify the procedures for review by the Agency  
 9 of Environmental Management System Agreements.

10 (4) Specify the procedures for public participation  
 11 in, including notice of and comment on, Environmental  
 12 Management System Agreements and stakeholder involvement  
 13 in design and implementation of specific projects that  
 14 are undertaken.

15 (5) Specify the procedures for voluntary  
 16 termination of an Environmental Management System  
 17 Agreement.

18 (6) Specify the type of performance guarantee to be  
 19 provided by an applicant for participation in this  
 20 program. The nature of the performance guarantee shall  
 21 be directly related to the complexity of and  
 22 environmental risk associated with the proposed  
 23 Environmental Management System Agreement.

24 (c) The Agency shall propose by December 31, 1996, and  
 25 the Board shall promulgate, criteria and procedures for  
 26 involuntary termination of Environmental Management System  
 27 Agreements. The Board shall complete such rulemaking no later  
 28 than 180 days after receipt of the Agency's proposal.

29 (d) After July 1, 2003, ~~On-or-before-December-31,--2001,~~  
 30 the Agency may enter into an initial Environmental Management  
 31 System Agreement with any participant in the Federal  
 32 Performance Track Program ~~Agreements-prior-to-adopting--rules~~  
 33 ~~under--this-Section,--if-the-proposals-for-the-Agreements-have~~  
 34 ~~been-accepted-under-the-Federal--XL--Program,~~ in accordance

1 with the following:

2 (1) The participant submits An--applicant--shall  
3 submit, in writing, a proposed Environmental Management  
4 System Agreement to the Director-of-the Agency.

5 (1.5) The Agency shall provide notice to the  
6 public, including an opportunity for public comment and  
7 hearing in accordance with the procedures set forth in 35  
8 Ill. Adm. Code Part 164, on each proposal filed with the  
9 Agency under this subsection (d).

10 (2) The Agency shall have 120 days after the public  
11 comment period, unless the participant grants an  
12 extension, to execute to-review a proposed Environmental  
13 Management System Agreement.

14 (3) ~~The--Agency's Failure to execute an agreement~~  
15 ~~notify-an-applicant-in-writing-that--it--has--accepted--a~~  
16 ~~proposal shall be deemed a rejection.~~

17 (4) A rejection of a proposed Environmental  
18 Management System Agreement by the Agency shall not be  
19 appealable.

20 ~~(5)--The--Agency--shall--provide--notice--to--the--public,~~  
21 ~~including-an-opportunity-for-public-comment--and--hearing~~  
22 ~~in--accordance--with--the-procedures-set-forth-in-35-Ill.~~  
23 ~~Adm.-Code-Part-164,-on--each--proposal--accepted--by--the~~  
24 ~~Agency--under--this--subsection--(d).--The--Agency--shall~~  
25 ~~provide-such-notice,-including-an-opportunity-for--public~~  
26 ~~comment--and-hearing,-prior-to-executing-an-Environmental~~  
27 ~~Management-System-Agreement.~~

28 ~~(6)--Prior-to-promulgation-of--rules--under--Section~~  
29 ~~52.3-2(e),--each--Agreement--shall--specify-the-terms-and~~  
30 ~~conditions-under--which--the--Agency--may--terminate--the~~  
31 ~~Agreement.~~

32 ~~(7)--Each--Agreement--shall--provide-for-appropriate~~  
33 ~~stakeholder-involvement-in-a-manner-that-is-conducive--to~~  
34 ~~productive--participation,-equitable-decision-making-and~~

1 open--exchange---of---information---in---developing---and  
2 implementing-the-Agreement-

3 (Source: P.A. 92-397, eff. 1-1-02.)

4 (415 ILCS 5/52.3-4)

5 Sec. 52.3-4. Performance assurance.

6 (a) The Agency shall ensure that each Environmental  
7 Management System Agreement contains appropriate provisions  
8 for performance assurance. Those provisions may specify  
9 types of performance guarantees to be provided by the  
10 participant to assure performance of the terms and conditions  
11 of the Agreement.

12 (b) In the case of deficient performance of any term or  
13 condition in an Environmental Management System Agreement  
14 that prevents achievement of the stated purposes in  
15 subsection (b) of Section 52.3-1, the Agency may terminate  
16 the Agreement and the participant may be subject to  
17 enforcement in accordance with the provisions of Section 31  
18 or 42 of this Act.

19 (b-5) The Agency may terminate an Agreement executed  
20 pursuant to subsection (d) of Section 52.3-1 if participation  
21 in the Federal Performance Track Program ceases.

22 (c) If the Agreement is terminated, the facility shall  
23 have sufficient time to apply for and receive any necessary  
24 permits to continue the operations in effect during the  
25 course of the Environmental Management Systems Agreement.  
26 Any such application shall also be deemed a timely and  
27 complete application for renewal of an existing permit under  
28 applicable law.

29 (d) The Agency may adopt rules that are necessary to  
30 carry out its duties under this Section including, but not  
31 limited to, rules that provide mechanisms for alternative  
32 dispute resolution and performance assurance.

33 (e) Nothing in this Section shall limit the authority or



1 ability of a State's Attorney or the Attorney General to  
2 proceed pursuant to Section 43(a) of this Act, or to enforce  
3 Section 44 or 44.1 of this Act, except that for the purposes  
4 of enforcement under Section 43(a), 44, or 44.1, an Agreement  
5 shall be deemed to be a permit issued under this Act to  
6 engage in activities authorized under the Agreement.

7 (Source: P.A. 89-465, eff. 6-13-96.)

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law.