

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.