**Section 187.410 Performance Assurance**

a) The Agency is authorized to monitor compliance with the EMSA and may access and enter the facilities, buildings or property that are the subject of the pilot project for purposes of monitoring compliance, and to require such recordkeeping and reporting as it deems appropriate, including a final report assessing the environmental, regulatory and economic results of the pilot project.

b) The sponsor of an EMSA shall specify the manner in which performance of the terms and conditions of an EMSA shall be assured. The Agency shall consider the following in determining whether an EMSA contains adequate provisions to assure performance:

1) The technical complexity of the proposed pilot project;

2) The environmental risk associated with the proposed pilot project; and

3) The uncertainty that the proposed innovative environmental measures authorized by the EMSA will be successful.

c) A sponsor's performance of the terms and conditions of an EMSA shall be assessed not less than annually, and such assessment may include an evaluation of the sponsor's performance by a third party acceptable to the Agency and qualified to make such an evaluation.

d) Notification of Nonperformance

1) A sponsor shall notify the Agency and all members of the stakeholder group of any nonperformance of a term or condition of an EMSA. A notification under this subsection (d) shall include a description of any activity performed by the sponsor to cure or mitigate the effects of the nonperformance.

2) The Agency shall investigate and monitor a sponsor to determine whether the sponsor has responded adequately to any nonperformance, and shall notify all members of the stakeholder group of the results of its investigation.

e) Upon identification of nonperformance of the terms or conditions of an EMSA, the Agency may, consistent with this Part, enforce the terms of such EMSA.

f) An EMSA may contain provisions for alternative dispute resolution.