

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 and 52.3-2 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 "Regulatory
14 Reinvention (XL) Pilot Project," 60 Federal Register
15 27282 (May 23, 1995) (Federal XL Program), to allow
16 members of the regulated community the flexibility to
17 develop alternative strategies that will replace specific
18 regulatory requirements on the condition that they
19 produce greater environmental benefits, reduce
20 administrative burdens, and enhance public participation.
21 There should be a process that allows a proposal accepted
22 under the Federal XL Program to be implemented at the
23 State level if the proposal achieves one or more of the
24 purposes of this Section and is acceptable to the Agency.

25 (7) A process for implementing and evaluating
26 innovative environmental measures on a pilot project
27 basis should be developed and implemented in this State.

28 (b) It is the purpose of this Section to create a
29 voluntary pilot program by which the Agency may enter into
30 Environmental Management System Agreements with persons
31 regulated under this Act to implement innovative
32 environmental measures not otherwise recognized or allowed
33 under existing laws and regulations of this State if those
34 measures:

1 (1) achieve emissions reductions or reductions in
2 discharges or wastes beyond the otherwise applicable
3 statutory and regulatory requirements through pollution
4 prevention or other suitable means; or

5 (2) achieve real environmental risk reduction or
6 foster environmental compliance by other persons
7 regulated under this Act in a manner that is clearly
8 superior to the existing regulatory system.

9 These Agreements may include proposals accepted under the
10 Federal XL Program, provided the proposals achieve one or
11 more purposes of subsection (b)(1) or (2) of this Section and
12 are acceptable to the Agency.

13 (c) This program is a voluntary pilot program.
14 Participation is at the discretion of the Agency, and any
15 decision by the Agency to reject an initial proposal under
16 this Section is not appealable. ~~The--Agency's--authority--to~~
17 ~~execute-initial-Agreements-under-this-Section-shall-terminate~~
18 ~~on-December-31, 2001.~~ An initial Agreement may be renewed for
19 appropriate time ~~5--year~~ periods after ~~December-31, 2001~~ if
20 the Agency finds the Agreement continues to meet applicable
21 requirements and the purposes of this Section.

22 (d) The Agency shall develop and make publicly available
23 a program guidance document regarding participation in the
24 pilot program. A draft document shall be distributed for
25 review and comment by interested parties and a final document
26 shall be completed by December 1, 1996. At a minimum, this
27 document shall include the following:

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

30 (2) The types of projects and facilities that the
31 Agency believes would be most useful to be a part of the
32 pilot program.

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

1 (4) A description of suitable Environmental
2 Performance Plans, including appropriate provisions or
3 opportunities for promoting pollution prevention and
4 sustainable development.

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

7 (6) A characterization of less-preferred practices
8 that can generate adverse consequences such as
9 multi-media pollutant transfers.

10 (7) A description of suitable practices for
11 productive stakeholder involvement in project development
12 and implementation that may include, but need not be
13 limited to, consensus-based decision making and
14 appropriate technical assistance.

15 (e) The Agency has the authority to develop and
16 distribute written guidance, fact sheets, or other documents
17 that explain, summarize, or describe programs operated under
18 this Act or regulations. The written guidance, fact sheets,
19 or other documents shall not be considered rules and shall
20 not be subject to the Illinois Administrative Procedure Act.
21 (Source: P.A. 89-465, eff. 6-13-96.)

22 (415 ILCS 5/52.3-2)

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

24 (a) ~~On or before December 31, 2001,~~ The Agency may enter
25 into an initial Environmental Management System Agreement
26 Agreements with any person regulated under this Act to
27 implement innovative environmental measures that relate to or
28 involve provisions of this Act, even if one or more of the
29 terms of such an Agreement would be inconsistent with an
30 otherwise applicable statute or regulation of this State.
31 Participation in this program is limited to those persons who
32 have submitted an Environmental Management System Agreement
33 that is acceptable to the Agency and who are not currently

1 subject to enforcement action under this Act.

2 (b) The Agency may adopt rules to implement this Section
3 if less than 6 Agreements are executed, but shall adopt rules
4 to implement this Section if 6 or more Agreements are
5 executed. Without limiting the generality of this authority,
6 those regulations may, among other things:

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

9 (2) Specify the minimum contents of a proposed
10 Environmental Management System Agreement, including,
11 without limitation, the following:

12 (A) requiring identification of all State and
13 federal statutes, rules, and regulations applicable
14 to the facility;

15 (B) requiring identification of all statutes,
16 rules, and regulations that are inconsistent with
17 one or more terms of the proposed Environmental
18 Management System Agreement;

19 (C) requiring a statement of how the proposed
20 Environmental Management System Agreement will
21 achieve one or more of the purposes of this Section;

22 (D) requiring identification of those members
23 of the general public, representatives of local
24 communities, and environmental groups who may have
25 an interest in the Environmental Management System
26 Agreement; and

27 (E) requiring identification of how a
28 participant will demonstrate ongoing compliance with
29 the terms of its Environmental Management System
30 Agreement, which may include an evaluation of a
31 participant's performance under the Environmental
32 Management System Agreement by a third party
33 acceptable to the Agency. Compliance with the
34 Agreement shall be determined not less than

1 annually.

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

4 (4) Specify the procedures for public participation
5 in, including notice of and comment on, Environmental
6 Management System Agreements and stakeholder involvement
7 in design and implementation of specific projects that
8 are undertaken.

9 (5) Specify the procedures for voluntary
10 termination of an Environmental Management System
11 Agreement.

12 (6) Specify the type of performance guarantee to be
13 provided by an applicant for participation in this
14 program. The nature of the performance guarantee shall
15 be directly related to the complexity of and
16 environmental risk associated with the proposed
17 Environmental Management System Agreement.

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

23 (d) On or before December 31, 2001, the Agency may enter
24 into initial Environmental Management System Agreements prior
25 to adopting rules under this Section, if the proposals for
26 the Agreements have been accepted under the Federal XL
27 Program, in accordance with the following:

28 (1) An applicant shall submit, in writing, a
29 proposed Environmental Management System Agreement to the
30 Director of the Agency.

31 (2) The Agency shall have 120 days to review a
32 proposed Environmental Management System Agreement.

33 (3) The Agency's failure to notify an applicant in
34 writing that it has accepted a proposal shall be deemed a

1 rejection.

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

5 (5) The Agency shall provide notice to the public,
6 including an opportunity for public comment and hearing
7 in accordance with the procedures set forth in 35 Ill.
8 Adm. Code Part 164, on each proposal accepted by the
9 Agency under this subsection (d). The Agency shall
10 provide such notice, including an opportunity for public
11 comment and hearing, prior to executing an Environmental
12 Management System Agreement.

13 (6) Prior to promulgation of rules under Section
14 52.3-2(c), each Agreement shall specify the terms and
15 conditions under which the Agency may terminate the
16 Agreement.

17 (7) Each Agreement shall provide for appropriate
18 stakeholder involvement in a manner that is conducive to
19 productive participation, equitable decision making and
20 open exchange of information in developing and
21 implementing the Agreement.

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