

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.)