

52.3-1. Findings; purpose.

a. The General Assembly finds that:

1. During the last decade, considerable expertise in pollution prevention, sophisticated emissions monitoring and tracking techniques, compliance auditing methods, stakeholder involvement, and innovative approaches to control pollution have been developed.
2. Substantial opportunities exist to reduce the amount of or prevent adverse impacts from emissions or discharges of pollutants or wastes through the use of innovative and cost effective measures not currently recognized by or allowed under existing environmental laws, rules, and regulations.
3. There are persons regulated under this Act who have demonstrated excellence and leadership in environmental compliance or stewardship or pollution prevention and, through the implementation of innovative measures, who can achieve further reductions in emissions or discharges of pollutants or wastes or continued environmental stewardship.
4. Current environmental laws and regulations have, in some instances, resulted in burdensome transactional requirements that are unnecessarily costly and complex for regulated entities and have proven to be frustrating to the public that is concerned about environmental protection.
5. The goals of environmental protection will be best served by promoting and evaluating the efforts of those persons who are ready to achieve measurable and verifiable pollution reductions in excess of the otherwise applicable statutory and regulatory requirements or who can demonstrate real environmental risk reduction, promote pollution prevention, foster superior environmental compliance by other persons regulated under this Act, and who can improve stakeholder involvement in environmental decision making.
6. The United States Environmental Protection Agency is operating a pilot program entitled "Regulatory Reinvention (XL) Pilot Project," 60 Federal Register 27282 (May 23, 1995) (Federal XL Program), to allow members of the regulated community the flexibility to develop alternative strategies that will replace specific regulatory requirements on the condition that they produce greater environmental benefits, reduce administrative burdens, and enhance public participation. There should be a process that allows a proposal accepted under the Federal XL Program to be implemented at the State level if the proposal achieves one or more of the purposes of this Section and is acceptable to the Agency.
7. A process for implementing and evaluating innovative environmental measures on a pilot project basis should be developed and implemented in this State.

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

1. achieve emissions reductions or reductions in discharges of wastes beyond the otherwise applicable statutory and regulatory requirements through pollution prevention or other suitable means; or
2. achieve real environmental risk reduction or foster environmental compliance by other persons regulated under this Act in a manner that is clearly superior to the existing regulatory system.

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

- c. This program is a voluntary pilot program. Participation is at the discretion of the Agency, and any decision by the Agency to reject an initial proposal under this Section is not appealable. The Agency's authority to execute initial Agreements under this Section shall terminate on December 31, 2001. An initial Agreement may be renewed for 5 year periods after December 31, 2001 if the Agency finds the Agreement continues to meet applicable requirements and the purposes of this Section.
- d. The Agency shall develop and make publicly available a program guidance document regarding participation in the pilot program. A draft document shall be distributed for review and comment by interested parties and a final document shall

be completed by December 1, 1996. At a minimum, this document shall include the following:

1. The approximate number of projects that the Agency envisions being part of the pilot program.
 2. The types of projects and facilities that the Agency believes would be most useful to be a part of the pilot program.
 3. A description of potentially useful environmental management systems, such as ISO 14000.
 4. A description of suitable Environmental Performance Plans, including appropriate provisions or opportunities for promoting pollution prevention and sustainable development.
 5. A description of practices and procedures to ensure that performance is measurable and verifiable.
 6. A characterization of less-preferred practices that can generate adverse consequences such as multi-media pollutant transfers.
 7. A description of suitable practices for productive stakeholder involvement in project development and implementation that may include, but need not be limited to, consensus-based decision making and appropriate technical assistance.
- e. The Agency has the authority to develop and distribute written guidance, fact sheets, or other documents that explain, summarize, or describe programs operated under this Act or regulations. The written guidance, fact sheets, or other documents shall not be considered rules and shall not be subject to the Illinois Administrative Procedure Act.

52.3-2. Agency authority; scope of agreement.

- a. On or before December 31, 2001, the Agency may enter into initial Environmental Management System Agreements with any person regulated under this Act to implement innovative environmental measures that relate to or involve provisions of this Act, even if one or more of the terms of such an Agreement would be inconsistent with an otherwise applicable statute or regulation of this State. Participation in this program is limited to those persons who have submitted an Environmental Management System Agreement that is acceptable to the Agency and who are not currently subject to enforcement under this Act.
- b. The Agency may adopt rules to implement this Section if less than 6 Agreements are executed, but shall adopt rules to implement this Section if 6 or more Agreements are executed. Without limiting the generality of this authority, those regulations may, among other things:
 1. Specify the criteria an applicant must meet to participate in this program.
 2. Specify the minimum contents of a proposed Environmental Management System Agreement, including, without limitation, the following:
 - A. requiring identification of all State and federal statutes, rules, and regulations applicable to the facility;
 - B. requiring identification of all statutes, rules, and regulations that are inconsistent with one or more terms of the proposed Environmental Management System Agreement;
 - C. requiring a statement of how the proposed Environmental Management System Agreement will achieve one or more of the purposes of this Section;
 - D. requiring identification of those members of the general public, representatives of local communities, and environmental groups who may have an interest in the Environmental Management System Agreement; and
 - E. requiring identification of how a participant will demonstrate ongoing compliance with the terms of its Environmental Management System Agreement, which may include an evaluation of a participant's performance under the Environmental Management System Agreement by a third party acceptable to the Agency. Compliance with the Agreement shall be determined not less than annually.
 3. Specify the procedures for review by the Agency of Environmental Management System Agreements.

4. Specify the procedures for public participation in, including notice of and comment on, Environmental Management System Agreements and stakeholder involvement in design and implementation of specific projects that are undertaken.
 5. Specify the procedures for voluntary termination of an Environmental Management System Agreement.
 6. Specify the type of performance guarantee to be provided by an applicant for participation in this program. The nature of the performance guarantee shall be directly related to the complexity of and environmental risk associated with the proposed Environmental Management System Agreement.
- c. The Agency shall propose by December 31, 1996, and the Board shall promulgate, criteria and procedures for involuntary termination of Environmental Management System Agreements. The Board shall complete such rulemaking no later than 180 days after receipt of the Agency's proposal.
- d. On or before December 31, 2001, the Agency may enter into initial Environmental Management System Agreements prior to adopting rules under this Section, if the proposals for the Agreements have been accepted under the Federal XL Program, in accordance with the following:
1. An applicant shall submit, in writing, a proposed Environmental Management System Agreement to the Director of the Agency.
 2. The Agency shall have 120 days to review a proposed Environmental Management System Agreement.
 3. The Agency's failure to notify an applicant in writing that it has accepted a proposal shall be deemed a rejection.
 4. A rejection of a proposed Environmental Management System Agreement by the Agency shall not be appealable.
 5. The Agency shall provide notice to the public, including an opportunity for public comment and hearing in accordance with the procedures set forth in 35 Ill. Adm. Code Part 164, on each proposal accepted by the Agency under this subsection (d). The Agency shall provide such notice, including an opportunity for public comment and hearing, prior to executing an Environmental Management System Agreement.
 6. Prior to promulgation of rules under Section 52.3-2(c), each Agreement shall specify the terms and conditions under which the Agency may terminate the Agreement.
 7. Each Agreement shall provide for appropriate stakeholder involvement in a manner that is conducive to productive participation, equitable decision making and open exchange of information in developing and implementing the Agreement.

52.3-3. Effect of Environmental Management System Agreements.

- a. An Environmental Management System Agreement shall operate in lieu of all applicable requirements under Illinois and federal environmental statutes, regulations, and existing permits that are identified in the Agreement. Any environmental statute, regulation, or condition in an existing permit that differs from a term or condition an Agreement shall cease to apply from the effective date of an initial or renewed Agreement until it is terminated or expires.
- b. Notwithstanding the other provisions of this Section, no Agreement entered into by the Agency may allow a participant to cause air or water pollution or an unauthorized release in violation of this Act.
- c. Nothing in this Section shall reduce, eliminate, or in any way affect any fees that a participant in this program may be subject to under any federal environmental statute or regulation or under this Act or any rule promulgated hereunder.
- d. Applicants for participation in the Environmental Management System Agreement Program shall pay all costs associated with public notice and hearings.

52.3-4. Performance assurance.

- a. The Agency shall ensure that each Environmental Management System Agreement contains appropriate provisions for performance assurance. Those provisions may specify types of performance guarantees to be provided by the participant

to assure performance of the terms and conditions of the Agreement.

- b. In the case of deficient performance of any term or condition in an Environmental Management System Agreement that prevents achievement of the stated purposes in subsection (b) of Section 52.3-1, the Agency may terminate the Agreement and the participant may be subject to enforcement in accordance with the provisions of Section 31 or 42 of this Act.
- c. If the Agreement is terminated, the facility shall have sufficient time to apply for and receive any necessary permits to continue the operations in effect during the course of the Environmental Management System Agreement. Any such application shall also be deemed a timely and complete application for renewal of an existing permit under applicable law.
- d. The Agency may adopt rules that are necessary to carry out its duties under this Section including, but not limited to, rules that provide mechanisms for alternative dispute resolution and performance assurance.
- e. Nothing in this Section shall limit the authority or ability of a State's Attorney or the Attorney General to proceed pursuant to Section 43(a) of this Act, or to enforce Section 44 or 44.1 of this Act, except that for the purposes of enforcement under Section 43(a), 44, or 44.1, an Agreement shall be deemed to be a permit issued under this Act to engage in activities authorized under the Agreement.