

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE A: GENERAL PROVISIONS

CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 181
TOXIC POLLUTION PREVENTION INNOVATION PLANS

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AUTHORITY: Implementing and authorized by Section 6(d) of the Toxic Pollution Prevention Act (P.A. 86-914, effective January 1, 1990).

SOURCE: Adopted at 14 Ill. Reg. 14392, effective August 22, 1990.

SUBPART A: INTRODUCTION

Section 181.101 Purpose

- a) The Toxic Pollution Prevention Act (P.A. 86-914, effective January 1, 1990) provides that after January 1, 1990, any person may submit to the Agency a plan to use an innovative production process to achieve toxic pollution prevention. An innovative production process may consist of a new application of technology or a combination of existing technologies that have not previously been implemented together. *If the Agency concurs with a proposed innovation plan, it shall make every reasonable effort to accommodate the proposed innovative production process, including:*
- 1) *Expedited coordination and processing of any applicable*

- permit applications;
- 2) Cooperation, as appropriate with any request for an applicable variance, adjusted standard, or site specific standard pursuant to the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1001 et seq.);
 - 3) Appropriate technical assistance to avoid or eliminate any potential compliance problems resulting from the proposed innovative production process.
- b) In providing this accommodation with innovation plans with which it has concurred, the Agency shall consider whether such accommodation would be feasible under applicable law and also whether such accommodation would be consistent with prudent environmental practices. (Section 6(c) of the Act)

Section 181.102 Definitions

"Act" means the Toxic Pollution Prevention Act.

"Agency" means the Illinois Environmental Protection Agency.

"EP Act" means the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1001 et seq.).

"Innovation Plan" means any toxic pollution prevention innovation plan provided for under Section 6 of the Act.

"Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, political subdivision, state agency, or any other legal entity, or its legal representative, agent or assigns.

"Release" means emission to the air, discharge to surface waters or off-site wastewater treatment facilities, or on-site release to the land, including but not limited to landfills, surface impoundments and injection wells.

"Toxic Pollution Prevention" means in-plant practices that reduce, avoid or eliminate:

the use of Toxic substances,
the generation of toxic constituents in wastes,
the disposal or release of toxic substances into the environment, or
the development or manufacture of products with toxic constituents, through the application of any of the following techniques:

input substitution, which refers to replacing a toxic substance or raw material used in a production process with a nontoxic or less toxic substance;
product reformulation, which refers to substituting for an existing end product which is nontoxic or less toxic upon use, release or disposal;
production process redesign or modification, which refers to developing and using production processes of a different design than those currently used;
production process modernization, which refers to upgrading or replacing existing production process equipment or methods with other equipment or methods

based on the same production process; improved operation and maintenance of existing production process equipment and methods, which refers to modifying or adding to existing equipment or methods, including but not limited to such techniques as improved housekeeping practices, system adjustments, product and process inspections, and production process control equipment or methods; recycling, reuse or extended use of toxic substances by using equipment or methods which become an integral part of the production process, including but not limited to filtration and other closed loop methods.

However, "toxic pollution prevention" shall not include or in any way be inferred to promote or require incineration, transfer from one medium of release to another, off-site or out of process waste recycling, or end of pipe treatment of toxic substances. (Section 3 of the Act)

"Toxic Substance" means any substance listed by the Agency pursuant to Section 4 of the Act.

"Trade Secret" means any information concerning production processes employed or substances manufactured, processed or otherwise used within a facility which the Agency determines to satisfy the criteria established under Section 3.48 of the Environmental Protection Act, and to which specific trade secret status has been granted by the Agency in accordance with 2 Ill. Adm. Code 1827.

SUBPART B: CONTENT OF INNOVATION PLANS

Section 181.201 Content of Innovation Plans

An Innovation Plan shall describe:

- a) *the innovative production process (the detail and nature of the plan submission should be related to the complexity of the proposal and should reflect the information available to the person);*
- b) *the expected benefits;*
- c) *the proposed implementation schedule; and*
- d) *Any potential problems that may occur under the plan with respect to compliance with state or federal environmental laws or regulations pertaining to the release or disposal of toxic substances. (Section 6(a) of the Act)*

Section 181.202 Level of Innovation Plan Detail

The level of detail provided in the innovation plan shall be sufficient to enable the Agency to determine that the criteria for concurrence are satisfied.

Section 181.203 Proprietary Information

To the extent that the innovation plan contains proprietary information regarding the innovative production process involved or to the extent it

contains proprietary information regarding a related production process, the person filing the innovation plan should identify whether the proprietary information has been determined to constitute a trade secret in accordance with 2 Ill. Adm. Code 1827. If there is a request for such a determination pending before the Agency, the person filing the innovation plan shall include a statement in the innovation plan that such a request has been made.

SUBPART C: CRITERIA FOR AGENCY CONCURRENCE WITH INNOVATION PLANS

Section 181.301 Criteria for Agency Concurrence with Innovation Plans

The Agency shall concur with a proposed toxic pollution prevention innovation plan if the owner or operator of the affected facility demonstrates to the agency that the proposed process:

- a) *will be effective in toxic pollution prevention;*
- b) *will achieve at least the level of toxic pollution prevention as other available processes;*
- c) *is not reasonably expected to have any significant adverse effect on public health or the environment in the course of its operation, function, or malfunctions; (Section 6(b) of the Act) and*
- d) *will constitute toxic pollution prevention for a toxic substance.*

Section 181.302 Agency Nonconcurrence

If the Agency does not concur with the proposed plan, the Agency shall provide the owner or operator with a written statement of the reasons for its refusal to concur, and the owner or operator may modify the plan, submit a new plan for review, or appeal the decision to the Director pursuant to Section 181.401. (Section 6(b) of the Act)

Section 181.303 Agency Follow-up

In accordance with Section 6(e) of the Act, the Agency shall monitor the implementation and effectiveness of any innovation plan with which it has concurred.

Section 181.304 Time for Agency Review

- a) The Agency shall review a proposed innovation plan for completeness within 45 days of receipt and shall decide concurrence for a complete plan within 120 days of receipt of such plan.
- b) Upon request of the owner or operator, the Agency shall review a permit application for an innovative production process for which it has concurred in the innovation plan within 60 days of receipt of the complete permit application. In circumstances involving an opportunity for public comment on the Agency draft permit pursuant to Title X of the EP Act, it will not be possible for the permit to be issued within this 60 day period. The complete permit application must be filed within 2 years of the Agency concurrence in the innovation plan.
- c) Upon request of the owner or operator, the Agency shall make every reasonable effort to accommodate an innovative production process for which it has concurred in the innovation plan, through cooperation, as appropriate, with any request for an applicable

variance, adjusted standard, or site specific standard, provided the specific request is duly filed within 2 years of the date of concurrence by the Agency with the innovation plan. Such accommodation shall be achieved to the extent feasible under applicable law and consistent with prudent environmental practices.

- d) The Agency's time limit for deciding its concurrence in innovation plans is 120 days from receipt, but the allotted time for most permit and all variance decisions is less than that (see Titles IX and X of the EP Act). Accordingly, the Agency will not be able to respond to concurrent submittals of innovation plans and permit applications or variance petitions.

SUBPART D: APPEAL

Section 181.401 Appeal

The owner or operator submitting an innovation plan may appeal any Agency decision regarding the innovation plan by filing an appeal in writing with the Director of the Agency within 30 days of the Agency decision. The Agency Director shall respond in writing within 30 days of receipt of the appeal with his/her decision regarding the matter, including reasons therefor. The decision of the Director shall be based upon the criteria set out in the Act and this Part.