

**97TH GENERAL ASSEMBLY****State of Illinois****2011 and 2012****SB2867**

Introduced 2/1/2012, by Sen. William R. Haine

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Administrative Procedure Act. Exempts certain guidance documents issued by the Environmental Protection Agency from the definition of "rules". Amends the Public Utilities Act. Removes provisions requiring the Agency: (i) to inspect carbon dioxide sequestration sites each year, (ii) to seal such a site if it determines that the site creates conditions that warrant the issuance of a seal order, (iii) to request the State's Attorney or the Attorney General to institute a civil action if the Agency determines a site creates conditions warranting such an action. Removes provisions (i) requiring a Substitute Natural Gas (SNG) facility to incur all reasonable costs associated with any Agency inspection or monitoring of the sequestration sites, (ii) prohibiting those costs from being passed along to customers, and (iii) requiring the facility to cooperate with Agency investigations. Removes a provision authorizing the Agency to monitor and conduct investigations of SNG facilities. Amends the Environmental Protection Act. Increases laboratory fees and assessments. Removes a provision requiring the Agency to submit its assessment schedules to the Environmental Laboratory Certification Committee. Makes changes concerning the terms of members of the Environmental Laboratory Certification Committee and the frequency of the Committee's meetings. Provides that, beginning January 1, 2013, the Environmental Protection Agency shall issue 3-year Special Waste Hauling Permits (instead of annual Special Waste Hauling Permits). Increases the fee for each waste hauling vehicle identified in the permit application and for each vehicle that is added to the permit during the 3-year period. Makes other changes. Effective immediately.

LRB097 15146 JDS 60246 b

FISCAL NOTE ACT
MAY APPLY**A BILL FOR**

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Administrative Procedure Act is
5 amended by changing Section 1-70 as follows:

6 (5 ILCS 100/1-70) (from Ch. 127, par. 1001-70)

7 Sec. 1-70. "Rule" means each agency statement of general
8 applicability that implements, applies, interprets, or
9 prescribes law or policy, but does not include (i) statements
10 concerning only the internal management of an agency and not
11 affecting private rights or procedures available to persons or
12 entities outside the agency, (ii) informal advisory rulings
13 issued under Section 5-150, (iii) intra-agency memoranda, (iv)
14 the prescription of standardized forms, (v) documents prepared
15 or filed or actions taken by the Legislative Reference Bureau
16 under Section 5.04 of the Legislative Reference Bureau Act, or
17 (vi) guidance documents prepared by the Illinois Environmental
18 Protection Agency under Section 39.5 or subsection (s) of
19 Section 39 of the Environmental Protection Act.

20 (Source: P.A. 97-95, eff. 7-12-11.)

21 Section 10. The Public Utilities Act is amended by changing
22 Section 9-220 as follows:

1 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

2 Sec. 9-220. Rate changes based on changes in fuel costs.

3 (a) Notwithstanding the provisions of Section 9-201, the
4 Commission may authorize the increase or decrease of rates and
5 charges based upon changes in the cost of fuel used in the
6 generation or production of electric power, changes in the cost
7 of purchased power, or changes in the cost of purchased gas
8 through the application of fuel adjustment clauses or purchased
9 gas adjustment clauses. The Commission may also authorize the
10 increase or decrease of rates and charges based upon
11 expenditures or revenues resulting from the purchase or sale of
12 emission allowances created under the federal Clean Air Act
13 Amendments of 1990, through such fuel adjustment clauses, as a
14 cost of fuel. For the purposes of this paragraph, cost of fuel
15 used in the generation or production of electric power shall
16 include the amount of any fees paid by the utility for the
17 implementation and operation of a process for the
18 desulfurization of the flue gas when burning high sulfur coal
19 at any location within the State of Illinois irrespective of
20 the attainment status designation of such location; but shall
21 not include transportation costs of coal (i) except to the
22 extent that for contracts entered into on and after the
23 effective date of this amendatory Act of 1997, the cost of the
24 coal, including transportation costs, constitutes the lowest
25 cost for adequate and reliable fuel supply reasonably available

1 to the public utility in comparison to the cost, including
2 transportation costs, of other adequate and reliable sources of
3 fuel supply reasonably available to the public utility, or (ii)
4 except as otherwise provided in the next 3 sentences of this
5 paragraph. Such costs of fuel shall, when requested by a
6 utility or at the conclusion of the utility's next general
7 electric rate proceeding, whichever shall first occur, include
8 transportation costs of coal purchased under existing coal
9 purchase contracts. For purposes of this paragraph "existing
10 coal purchase contracts" means contracts for the purchase of
11 coal in effect on the effective date of this amendatory Act of
12 1991, as such contracts may thereafter be amended, but only to
13 the extent that any such amendment does not increase the
14 aggregate quantity of coal to be purchased under such contract.
15 Nothing herein shall authorize an electric utility to recover
16 through its fuel adjustment clause any amounts of
17 transportation costs of coal that were included in the revenue
18 requirement used to set base rates in its most recent general
19 rate proceeding. Cost shall be based upon uniformly applied
20 accounting principles. Annually, the Commission shall initiate
21 public hearings to determine whether the clauses reflect actual
22 costs of fuel, gas, power, or coal transportation purchased to
23 determine whether such purchases were prudent, and to reconcile
24 any amounts collected with the actual costs of fuel, power,
25 gas, or coal transportation prudently purchased. In each such
26 proceeding, the burden of proof shall be upon the utility to

1 establish the prudence of its cost of fuel, power, gas, or coal
2 transportation purchases and costs. The Commission shall issue
3 its final order in each such annual proceeding for an electric
4 utility by December 31 of the year immediately following the
5 year to which the proceeding pertains, provided, that the
6 Commission shall issue its final order with respect to such
7 annual proceeding for the years 1996 and earlier by December
8 31, 1998.

9 (b) A public utility providing electric service, other than
10 a public utility described in subsections (e) or (f) of this
11 Section, may at any time during the mandatory transition period
12 file with the Commission proposed tariff sheets that eliminate
13 the public utility's fuel adjustment clause and adjust the
14 public utility's base rate tariffs by the amount necessary for
15 the base fuel component of the base rates to recover the public
16 utility's average fuel and power supply costs per kilowatt-hour
17 for the 2 most recent years for which the Commission has issued
18 final orders in annual proceedings pursuant to subsection (a),
19 where the average fuel and power supply costs per kilowatt-hour
20 shall be calculated as the sum of the public utility's prudent
21 and allowable fuel and power supply costs as found by the
22 Commission in the 2 proceedings divided by the public utility's
23 actual jurisdictional kilowatt-hour sales for those 2 years.
24 Notwithstanding any contrary or inconsistent provisions in
25 Section 9-201 of this Act, in subsection (a) of this Section or
26 in any rules or regulations promulgated by the Commission

1 pursuant to subsection (g) of this Section, the Commission
2 shall review and shall by order approve, or approve as
3 modified, the proposed tariff sheets within 60 days after the
4 date of the public utility's filing. The Commission may modify
5 the public utility's proposed tariff sheets only to the extent
6 the Commission finds necessary to achieve conformance to the
7 requirements of this subsection (b). During the 5 years
8 following the date of the Commission's order, but in any event
9 no earlier than January 1, 2007, a public utility whose fuel
10 adjustment clause has been eliminated pursuant to this
11 subsection shall not file proposed tariff sheets seeking, or
12 otherwise petition the Commission for, reinstatement of a fuel
13 adjustment clause.

14 (c) Notwithstanding any contrary or inconsistent
15 provisions in Section 9-201 of this Act, in subsection (a) of
16 this Section or in any rules or regulations promulgated by the
17 Commission pursuant to subsection (g) of this Section, a public
18 utility providing electric service, other than a public utility
19 described in subsection (e) or (f) of this Section, may at any
20 time during the mandatory transition period file with the
21 Commission proposed tariff sheets that establish the rate per
22 kilowatt-hour to be applied pursuant to the public utility's
23 fuel adjustment clause at the average value for such rate
24 during the preceding 24 months, provided that such average rate
25 results in a credit to customers' bills, without making any
26 revisions to the public utility's base rate tariffs. The

1 proposed tariff sheets shall establish the fuel adjustment rate
2 for a specific time period of at least 3 years but not more
3 than 5 years, provided that the terms and conditions for any
4 reinstatement earlier than 5 years shall be set forth in the
5 proposed tariff sheets and subject to modification or approval
6 by the Commission. The Commission shall review and shall by
7 order approve the proposed tariff sheets if it finds that the
8 requirements of this subsection are met. The Commission shall
9 not conduct the annual hearings specified in the last 3
10 sentences of subsection (a) of this Section for the utility for
11 the period that the factor established pursuant to this
12 subsection is in effect.

13 (d) A public utility providing electric service, or a
14 public utility providing gas service may file with the
15 Commission proposed tariff sheets that eliminate the public
16 utility's fuel or purchased gas adjustment clause and adjust
17 the public utility's base rate tariffs to provide for recovery
18 of power supply costs or gas supply costs that would have been
19 recovered through such clause; provided, that the provisions of
20 this subsection (d) shall not be available to a public utility
21 described in subsections (e) or (f) of this Section to
22 eliminate its fuel adjustment clause. Notwithstanding any
23 contrary or inconsistent provisions in Section 9-201 of this
24 Act, in subsection (a) of this Section, or in any rules or
25 regulations promulgated by the Commission pursuant to
26 subsection (g) of this Section, the Commission shall review and

1 shall by order approve, or approve as modified in the
2 Commission's order, the proposed tariff sheets within 240 days
3 after the date of the public utility's filing. The Commission's
4 order shall approve rates and charges that the Commission,
5 based on information in the public utility's filing or on the
6 record if a hearing is held by the Commission, finds will
7 recover the reasonable, prudent and necessary jurisdictional
8 power supply costs or gas supply costs incurred or to be
9 incurred by the public utility during a 12 month period found
10 by the Commission to be appropriate for these purposes,
11 provided, that such period shall be either (i) a 12 month
12 historical period occurring during the 15 months ending on the
13 date of the public utility's filing, or (ii) a 12 month future
14 period ending no later than 15 months following the date of the
15 public utility's filing. The public utility shall include with
16 its tariff filing information showing both (1) its actual
17 jurisdictional power supply costs or gas supply costs for a 12
18 month historical period conforming to (i) above and (2) its
19 projected jurisdictional power supply costs or gas supply costs
20 for a future 12 month period conforming to (ii) above. If the
21 Commission's order requires modifications in the tariff sheets
22 filed by the public utility, the public utility shall have 7
23 days following the date of the order to notify the Commission
24 whether the public utility will implement the modified tariffs
25 or elect to continue its fuel or purchased gas adjustment
26 clause in force as though no order had been entered. The

1 Commission's order shall provide for any reconciliation of
2 power supply costs or gas supply costs, as the case may be, and
3 associated revenues through the date that the public utility's
4 fuel or purchased gas adjustment clause is eliminated. During
5 the 5 years following the date of the Commission's order, a
6 public utility whose fuel or purchased gas adjustment clause
7 has been eliminated pursuant to this subsection shall not file
8 proposed tariff sheets seeking, or otherwise petition the
9 Commission for, reinstatement or adoption of a fuel or
10 purchased gas adjustment clause. Nothing in this subsection (d)
11 shall be construed as limiting the Commission's authority to
12 eliminate a public utility's fuel adjustment clause or
13 purchased gas adjustment clause in accordance with any other
14 applicable provisions of this Act.

15 (e) Notwithstanding any contrary or inconsistent
16 provisions in Section 9-201 of this Act, in subsection (a) of
17 this Section, or in any rules promulgated by the Commission
18 pursuant to subsection (g) of this Section, a public utility
19 providing electric service to more than 1,000,000 customers in
20 this State may, within the first 6 months after the effective
21 date of this amendatory Act of 1997, file with the Commission
22 proposed tariff sheets that eliminate, effective January 1,
23 1997, the public utility's fuel adjustment clause without
24 adjusting its base rates, and such tariff sheets shall be
25 effective upon filing. To the extent the application of the
26 fuel adjustment clause had resulted in net charges to customers

1 after January 1, 1997, the utility shall also file a tariff
2 sheet that provides for a refund stated on a per kilowatt-hour
3 basis of such charges over a period not to exceed 6 months;
4 provided however, that such refund shall not include the
5 proportional amounts of taxes paid under the Use Tax Act,
6 Service Use Tax Act, Service Occupation Tax Act, and Retailers'
7 Occupation Tax Act on fuel used in generation. The Commission
8 shall issue an order within 45 days after the date of the
9 public utility's filing approving or approving as modified such
10 tariff sheet. If the fuel adjustment clause is eliminated
11 pursuant to this subsection, the Commission shall not conduct
12 the annual hearings specified in the last 3 sentences of
13 subsection (a) of this Section for the utility for any period
14 after December 31, 1996 and prior to any reinstatement of such
15 clause. A public utility whose fuel adjustment clause has been
16 eliminated pursuant to this subsection shall not file a
17 proposed tariff sheet seeking, or otherwise petition the
18 Commission for, reinstatement of the fuel adjustment clause
19 prior to January 1, 2007.

20 (f) Notwithstanding any contrary or inconsistent
21 provisions in Section 9-201 of this Act, in subsection (a) of
22 this Section, or in any rules or regulations promulgated by the
23 Commission pursuant to subsection (g) of this Section, a public
24 utility providing electric service to more than 500,000
25 customers but fewer than 1,000,000 customers in this State may,
26 within the first 6 months after the effective date of this

1 amendatory Act of 1997, file with the Commission proposed
2 tariff sheets that eliminate, effective January 1, 1997, the
3 public utility's fuel adjustment clause and adjust its base
4 rates by the amount necessary for the base fuel component of
5 the base rates to recover 91% of the public utility's average
6 fuel and power supply costs for the 2 most recent years for
7 which the Commission, as of January 1, 1997, has issued final
8 orders in annual proceedings pursuant to subsection (a), where
9 the average fuel and power supply costs per kilowatt-hour shall
10 be calculated as the sum of the public utility's prudent and
11 allowable fuel and power supply costs as found by the
12 Commission in the 2 proceedings divided by the public utility's
13 actual jurisdictional kilowatt-hour sales for those 2 years,
14 provided, that such tariff sheets shall be effective upon
15 filing. To the extent the application of the fuel adjustment
16 clause had resulted in net charges to customers after January
17 1, 1997, the utility shall also file a tariff sheet that
18 provides for a refund stated on a per kilowatt-hour basis of
19 such charges over a period not to exceed 6 months. Provided
20 however, that such refund shall not include the proportional
21 amounts of taxes paid under the Use Tax Act, Service Use Tax
22 Act, Service Occupation Tax Act, and Retailers' Occupation Tax
23 Act on fuel used in generation. The Commission shall issue an
24 order within 45 days after the date of the public utility's
25 filing approving or approving as modified such tariff sheet. If
26 the fuel adjustment clause is eliminated pursuant to this

1 subsection, the Commission shall not conduct the annual
2 hearings specified in the last 3 sentences of subsection (a) of
3 this Section for the utility for any period after December 31,
4 1996 and prior to any reinstatement of such clause. A public
5 utility whose fuel adjustment clause has been eliminated
6 pursuant to this subsection shall not file a proposed tariff
7 sheet seeking, or otherwise petition the Commission for,
8 reinstatement of the fuel adjustment clause prior to January 1,
9 2007.

10 (g) The Commission shall have authority to promulgate rules
11 and regulations to carry out the provisions of this Section.

12 (h) Any Illinois gas utility may enter into a contract on
13 or before September 30, 2011 for up to 10 years of supply with
14 any company for the purchase of substitute natural gas (SNG)
15 produced from coal through the gasification process if the
16 company has commenced construction of a clean coal SNG facility
17 by July 1, 2012 and commencement of construction shall mean
18 that material physical site work has occurred, such as site
19 clearing and excavation, water runoff prevention, water
20 retention reservoir preparation, or foundation development.
21 The contract shall contain the following provisions: (i) at
22 least 90% of feedstock to be used in the gasification process
23 shall be coal with a high volatile bituminous rank and greater
24 than 1.7 pounds of sulfur per million Btu content; (ii) at the
25 time the contract term commences, the price per million Btu may
26 not exceed \$7.95 in 2008 dollars, adjusted annually based on

1 the change in the Annual Consumer Price Index for All Urban
2 Consumers for the Midwest Region as published in April by the
3 United States Department of Labor, Bureau of Labor Statistics
4 (or a suitable Consumer Price Index calculation if this
5 Consumer Price Index is not available) for the previous
6 calendar year; provided that the price per million Btu shall
7 not exceed \$9.95 at any time during the contract; (iii) the
8 utility's supply contract for the purchase of SNG does not
9 exceed 15% of the annual system supply requirements of the
10 utility as of 2008; and (iv) the contract costs pursuant to
11 subsection (h-10) of this Section shall not include any
12 lobbying expenses, charitable contributions, advertising,
13 organizational memberships, carbon dioxide pipeline or
14 sequestration expenses, or marketing expenses.

15 Any gas utility that is providing service to more than
16 150,000 customers on August 2, 2011 (the effective date of
17 Public Act 97-239) ~~this amendatory Act of the 97th General~~
18 ~~Assembly~~ shall either elect to enter into a contract on or
19 before September 30, 2011 for 10 years of SNG supply with the
20 owner of a clean coal SNG facility or to file biennial rate
21 proceedings before the Commission in the years 2012, 2014, and
22 2016, with such filings made after August 2, 2011 ~~the effective~~
23 ~~date of this amendatory Act of the 97th General Assembly~~ and no
24 later than September 30 of the years 2012, 2014, and 2016
25 consistent with all requirements of 83 Ill. Adm. Code 255 and
26 285 as though the gas utility were filing for an increase in

1 its rates, without regard to whether such filing would produce
2 an increase, a decrease, or no change in the gas utility's
3 rates, and the Commission shall review the gas utility's filing
4 and shall issue its order in accordance with the provisions of
5 Section 9-201 of this Act.

6 Within 7 days after August 2, 2011 ~~the effective date of~~
7 ~~this amendatory Act of the 97th General Assembly~~, the owner of
8 the clean coal SNG facility shall submit to the Illinois Power
9 Agency and each gas utility that is providing service to more
10 than 150,000 customers on August 2, 2011 ~~the effective date of~~
11 ~~this amendatory Act of the 97th General Assembly~~ a copy of a
12 draft contract. Within 30 days after the receipt of the draft
13 contract, each such gas utility shall provide the Illinois
14 Power Agency and the owner of the clean coal SNG facility with
15 its comments and recommended revisions to the draft contract.
16 Within 7 days after the receipt of the gas utility's comments
17 and recommended revisions, the owner of the facility shall
18 submit its responsive comments and a further revised draft of
19 the contract to the Illinois Power Agency. The Illinois Power
20 Agency shall review the draft contract and comments.

21 During its review of the draft contract, the Illinois Power
22 Agency shall:

23 (1) review and confirm in writing that the terms stated
24 in this subsection (h) are incorporated in the SNG
25 contract;

26 (2) review the SNG pricing formula included in the

1 contract and approve that formula if the Illinois Power
2 Agency determines that the formula, at the time the
3 contract term commences: (A) starts with a price of \$6.50
4 per MMBtu adjusted by the adjusted final capitalized plant
5 cost; (B) takes into account budgeted miscellaneous net
6 revenue after cost allowance, including sale of SNG
7 produced by the clean coal SNG facility above the nameplate
8 capacity of the facility and other by-products produced by
9 the facility, as approved by the Illinois Power Agency; (C)
10 does not include carbon dioxide transportation or
11 sequestration expenses; and (D) includes all provisions
12 required under this subsection (h); if the Illinois Power
13 Agency does not approve of the SNG pricing formula, then
14 the Illinois Power Agency shall modify the formula to
15 ensure that it meets the requirements of this subsection
16 (h);

17 (3) review and approve the amount of budgeted
18 miscellaneous net revenue after cost allowance, including
19 sale of SNG produced by the clean coal SNG facility above
20 the nameplate capacity of the facility and other
21 by-products produced by the facility, to be included in the
22 pricing formula; the Illinois Power Agency shall approve
23 the amount of budgeted miscellaneous net revenue to be
24 included in the pricing formula if it determines the
25 budgeted amount to be reasonable and accurate;

26 (4) review and confirm in writing that using the EIA

1 Annual Energy Outlook-2011 Henry Hub Spot Price, the
2 contract terms set out in subsection (h), the
3 reconciliation account terms as set out in subsection
4 (h-15), and an estimated inflation rate of 2.5% for each
5 corresponding year, that there will be no cumulative
6 estimated increase for residential customers; and

7 (5) allocate the nameplate capacity of the clean coal
8 SNG by total therms sold to ultimate customers by each gas
9 utility in 2008; provided, however, no utility shall be
10 required to purchase more than 42% of the projected annual
11 output of the facility; additionally, the Illinois Power
12 Agency shall further adjust the allocation only as required
13 to take into account (A) adverse consolidation,
14 derivative, or lease impacts to the balance sheet or income
15 statement of any gas utility or (B) the physical capacity
16 of the gas utility to accept SNG.

17 If the parties to the contract do not agree on the terms
18 therein, then the Illinois Power Agency shall retain an
19 independent mediator to mediate the dispute between the
20 parties. If the parties are in agreement on the terms of the
21 contract, then the Illinois Power Agency shall approve the
22 contract. If after mediation the parties have failed to come to
23 agreement, then the Illinois Power Agency shall revise the
24 draft contract as necessary to confirm that the contract
25 contains only terms that are reasonable and equitable. The
26 Illinois Power Agency may, in its discretion, retain an

1 independent, qualified, and experienced expert to assist in its
2 obligations under this subsection (h). The Illinois Power
3 Agency shall adopt and make public policies detailing the
4 processes for retaining a mediator and an expert under this
5 subsection (h). Any mediator or expert retained under this
6 subsection (h) shall be retained no later than 60 days after
7 August 2, 2011 ~~the effective date of this amendatory Act of the~~
8 ~~97th General Assembly.~~

9 The Illinois Power Agency shall complete all of its
10 responsibilities under this subsection (h) within 60 days after
11 August 2, 2011 ~~the effective date of this amendatory Act of the~~
12 ~~97th General Assembly.~~ The clean coal SNG facility shall pay a
13 reasonable fee as required by the Illinois Power Agency for its
14 services under this subsection (h) and shall pay the mediator's
15 and expert's reasonable fees, if any. A gas utility and its
16 customers shall have no obligation to reimburse the clean coal
17 SNG facility or the Illinois Power Agency of any such costs.

18 Within 30 days after commercial production of SNG has
19 begun, the Commission shall initiate a review to determine
20 whether the final capitalized plant cost of the clean coal SNG
21 facility reflects actual incurred costs and whether the
22 incurred costs were reasonable. In determining the actual
23 incurred costs included in the final capitalized plant cost and
24 the reasonableness of those costs, the Commission may in its
25 discretion retain independent, qualified, and experienced
26 experts to assist in its determination. The expert shall not

1 own or control any direct or indirect interest in the clean
2 coal SNG facility and shall have no contractual relationship
3 with the clean coal SNG facility. If an expert is retained by
4 the Commission, then the clean coal SNG facility shall pay the
5 expert's reasonable fees. The fees shall not be passed on to a
6 utility or its customers. The Commission shall adopt and make
7 public a policy detailing the process for retaining experts
8 under this subsection (h).

9 Within 30 days after completion of its review, the
10 Commission shall initiate a formal proceeding on the final
11 capitalized plant cost of the clean coal SNG facility at which
12 comments and testimony may be submitted by any interested
13 parties and the public. If the Commission finds that the final
14 capitalized plant cost includes costs that were not actually
15 incurred or costs that were unreasonably incurred, then the
16 Commission shall disallow the amount of non-incurred or
17 unreasonable costs from the SNG price under contracts entered
18 into under this subsection (h). If the Commission disallows any
19 costs, then the Commission shall adjust the SNG price using the
20 price formula in the contract approved by the Illinois Power
21 Agency under this subsection (h) to reflect the disallowed
22 costs and shall enter an order specifying the revised price. In
23 addition, the Commission's order shall direct the clean coal
24 SNG facility to issue refunds of such sums as shall represent
25 the difference between actual gross revenues and the gross
26 revenue that would have been obtained based upon the same

1 volume, from the price revised by the Commission. Any refund
2 shall include interest calculated at a rate determined by the
3 Commission and shall be returned according to procedures
4 prescribed by the Commission.

5 Nothing in this subsection (h) shall preclude any party
6 affected by a decision of the Commission under this subsection
7 (h) from seeking judicial review of the Commission's decision.

8 (h-1) Any Illinois gas utility may enter into a sourcing
9 agreement for up to 30 years of supply with the clean coal SNG
10 brownfield facility if the clean coal SNG brownfield facility
11 has commenced construction. Any gas utility that is providing
12 service to more than 150,000 customers on July 13, 2011 (the
13 effective date of Public Act 97-96) ~~this amendatory Act of the~~
14 ~~97th General Assembly~~ shall either elect to file biennial rate
15 proceedings before the Commission in the years 2012, 2014, and
16 2016 or enter into a sourcing agreement or sourcing agreements
17 with a clean coal SNG brownfield facility with an initial term
18 of 30 years for either (i) a percentage of 43,500,000,000 cubic
19 feet per year, such that the utilities entering into sourcing
20 agreements with the clean coal SNG brownfield facility purchase
21 100%, allocated by total therms sold to ultimate customers by
22 each gas utility in 2008 or (ii) such lesser amount as may be
23 available from the clean coal SNG brownfield facility; provided
24 that no utility shall be required to purchase more than 42% of
25 the projected annual output of the clean coal SNG brownfield
26 facility, with the remainder of such utility's obligation to be

1 divided proportionately between the other utilities, and
2 provided that the Illinois Power Agency shall further adjust
3 the allocation only as required to take into account adverse
4 consolidation, derivative, or lease impacts to the balance
5 sheet or income statement of any gas utility.

6 A gas utility electing to file biennial rate proceedings
7 before the Commission must file a notice of its election with
8 the Commission within 60 days after July 13, 2011 ~~the effective~~
9 ~~date of this amendatory Act of the 97th General Assembly~~ or its
10 right to make the election is irrevocably waived. A gas utility
11 electing to file biennial rate proceedings shall make such
12 filings no later than August 1 of the years 2012, 2014, and
13 2016, consistent with all requirements of 83 Ill. Adm. Code 255
14 and 285 as though the gas utility were filing for an increase
15 in its rates, without regard to whether such filing would
16 produce an increase, a decrease, or no change in the gas
17 utility's rates, and notwithstanding any other provisions of
18 this Act, the Commission shall fully review the gas utility's
19 filing and shall issue its order in accordance with the
20 provisions of Section 9-201 of this Act, regardless of whether
21 the Commission has approved a formula rate for the gas utility.

22 Within 15 days after July 13, 2011 ~~the effective date of~~
23 ~~this amendatory Act of the 97th General Assembly~~, the owner of
24 the clean coal SNG brownfield facility shall submit to the
25 Illinois Power Agency and each gas utility that is providing
26 service to more than 150,000 customers on July 13, 2011 ~~the~~

1 ~~effective date of this amendatory Act of the 97th General~~
2 ~~Assembly~~ a copy of a draft sourcing agreement. Within 45 days
3 after receipt of the draft sourcing agreement, each such gas
4 utility shall provide the Illinois Power Agency and the owner
5 of a clean coal SNG brownfield facility with its comments and
6 recommended revisions to the draft sourcing agreement. Within
7 15 days after the receipt of the gas utility's comments and
8 recommended revisions, the owner of the clean coal SNG
9 brownfield facility shall submit its responsive comments and a
10 further revised draft of the sourcing agreement to the Illinois
11 Power Agency. The Illinois Power Agency shall review the draft
12 sourcing agreement and comments.

13 If the parties to the sourcing agreement do not agree on
14 the terms therein, then the Illinois Power Agency shall retain
15 an independent mediator to mediate the dispute between the
16 parties. If the parties are in agreement on the terms of the
17 sourcing agreement, the Illinois Power Agency shall approve the
18 final draft sourcing agreement. If after mediation the parties
19 have failed to come to agreement, then the Illinois Power
20 Agency shall revise the draft sourcing agreement as necessary
21 to confirm that the final draft sourcing agreement contains
22 only terms that are reasonable and equitable. The Illinois
23 Power Agency shall adopt and make public a policy detailing the
24 process for retaining a mediator under this subsection (h-1).
25 Any mediator retained to assist with mediating disputes between
26 the parties regarding the sourcing agreement shall be retained

1 no later than 60 days after July 13, 2011 ~~the effective date of~~
2 ~~this amendatory Act of the 97th General Assembly.~~

3 Upon approval of a final draft agreement, the Illinois
4 Power Agency shall submit the final draft agreement to the
5 Capital Development Board and the Commission no later than 90
6 days after July 13, 2011 ~~the effective date of this amendatory~~
7 ~~Act of the 97th General Assembly.~~ The gas utility and the clean
8 coal SNG brownfield facility shall pay a reasonable fee as
9 required by the Illinois Power Agency for its services under
10 this subsection (h-1) and shall pay the mediator's reasonable
11 fees, if any. The Illinois Power Agency shall adopt and make
12 public a policy detailing the process for retaining a mediator
13 under this Section.

14 The sourcing agreement between a gas utility and the clean
15 coal SNG brownfield facility shall contain the following
16 provisions:

17 (1) Any and all coal used in the gasification process
18 must be coal that has high volatile bituminous rank and
19 greater than 1.7 pounds of sulfur per million Btu content.

20 (2) Coal and petroleum coke are feedstocks for the
21 gasification process, with coal comprising at least 50% of
22 the total feedstock over the term of the sourcing agreement
23 unless the facility reasonably determines that it is
24 necessary to use additional petroleum coke to deliver net
25 consumer savings, in which case the facility shall use coal
26 for at least 35% of the total feedstock over the term of

1 any sourcing agreement and with the feedstocks to be
2 procured in accordance with requirements of Section 1-78 of
3 the Illinois Power Agency Act.

4 (3) The sourcing agreement has an initial term that
5 once entered into terminates no more than 30 years after
6 the commencement of the commercial production of SNG at the
7 clean coal SNG brownfield facility.

8 (4) The clean coal SNG brownfield facility guarantees a
9 minimum of \$100,000,000 in consumer savings to customers of
10 the utilities that have entered into sourcing agreements
11 with the clean coal SNG brownfield facility, calculated in
12 real 2010 dollars at the conclusion of the term of the
13 sourcing agreement by comparing the delivered SNG price to
14 the Chicago City-gate price on a weighted daily basis for
15 each day over the entire term of the sourcing agreement, to
16 be provided in accordance with subsection (h-2) of this
17 Section.

18 (5) Prior to the clean coal SNG brownfield facility
19 issuing a notice to proceed to construction, the clean coal
20 SNG brownfield facility shall establish a consumer
21 protection reserve account for the benefit of the customers
22 of the utilities that have entered into sourcing agreements
23 with the clean coal SNG brownfield facility pursuant to
24 this subsection (h-1), with cash principal in the amount of
25 \$150,000,000. This cash principal shall only be
26 recoverable through the consumer protection reserve

1 account and not as a cost to be recovered in the delivered
2 SNG price pursuant to subsection (h-3) of this Section. The
3 consumer protection reserve account shall be maintained
4 and administered by an independent trustee that is mutually
5 agreed upon by the clean coal SNG brownfield facility, the
6 utilities, and the Commission in an interest-bearing
7 account in accordance with subsection (h-2) of this
8 Section.

9 "Consumer protection reserve account principal maximum
10 amount" shall mean the maximum amount of principal to be
11 maintained in the consumer protection reserve account.
12 During the first 2 years of operation of the facility,
13 there shall be no consumer protection reserve account
14 maximum amount. After the first 2 years of operation of the
15 facility, the consumer protection reserve account maximum
16 amount shall be \$150,000,000. After 5 years of operation,
17 and every 5 years thereafter, the trustee shall calculate
18 the 5-year average balance of the consumer protection
19 reserve account. If the trustee determines that during the
20 prior 5 years the consumer protection reserve account has
21 had an average account balance of less than \$75,000,000,
22 then the consumer protection reserve account principal
23 maximum amount shall be increased by \$5,000,000. If the
24 trustee determines that during the prior 5 years the
25 consumer protection reserve account has had an average
26 account balance of more than \$75,000,000, then the consumer

1 protection reserve account principal maximum amount shall
2 be decreased by \$5,000,000.

3 (6) The clean coal SNG brownfield facility shall
4 identify and sell economically viable by-products produced
5 by the facility.

6 (7) Fifty percent of all additional net revenue,
7 defined as miscellaneous net revenue from products
8 produced by the facility and delivered during the month
9 after cost allowance for costs associated with additional
10 net revenue that are not otherwise recoverable pursuant to
11 subsection (h-3) of this Section, including net revenue
12 from sales of substitute natural gas derived from the
13 facility above the nameplate capacity of the facility and
14 other by-products produced by the facility, shall be
15 credited to the consumer protection reserve account
16 pursuant to subsection (h-2) of this Section.

17 (8) The delivered SNG price per million btu to be paid
18 monthly by the utility to the clean coal SNG brownfield
19 facility, which shall be based only upon the following: (A)
20 a capital recovery charge, operations and maintenance
21 costs, and sequestration costs, only to the extent approved
22 by the Commission pursuant to paragraphs (1), (2), and (3)
23 of subsection (h-3) of this Section; (B) the actual
24 delivered and processed fuel costs pursuant to paragraph
25 (4) of subsection (h-3) of this Section; (C) actual costs
26 of SNG transportation pursuant to paragraph (6) of

1 subsection (h-3) of this Section; (D) certain taxes and
2 fees imposed by the federal government, the State, or any
3 unit of local government as provided in paragraph (6) of
4 subsection (h-3) of this Section; and (E) the credit, if
5 any, from the consumer protection reserve account pursuant
6 to subsection (h-2) of this Section. The delivered SNG
7 price per million Btu shall proportionately reflect these
8 elements over the term of the sourcing agreement.

9 (9) A formula to translate the recoverable costs and
10 charges under subsection (h-3) of this Section into the
11 delivered SNG price per million btu.

12 (10) Title to the SNG shall pass at a mutually
13 agreeable point in Illinois, and may provide that, rather
14 than the utility taking title to the SNG, a mutually agreed
15 upon third-party gas marketer pursuant to a contract
16 approved by the Illinois Power Agency or its designee may
17 take title to the SNG pursuant to an agreement between the
18 utility, the owner of the clean coal SNG brownfield
19 facility, and the third-party gas marketer.

20 (11) A utility may exit the sourcing agreement without
21 penalty if the clean coal SNG brownfield facility does not
22 commence construction by July 1, 2015.

23 (12) A utility is responsible to pay only the
24 Commission determined unit price cost of SNG that is
25 purchased by the utility. Nothing in the sourcing agreement
26 will obligate a utility to invest capital in a clean coal

1 SNG brownfield facility.

2 (13) The quality of SNG must, at a minimum, be
3 equivalent to the quality required for interstate pipeline
4 gas before a utility is required to accept and pay for SNG
5 gas.

6 (14) Nothing in the sourcing agreement will require a
7 utility to construct any facilities to accept delivery of
8 SNG. Provided, however, if a utility is required by law or
9 otherwise elects to connect the clean coal SNG brownfield
10 facility to an interstate pipeline, then the utility shall
11 be entitled to recover pursuant to its tariffs all just and
12 reasonable costs that are prudently incurred. Any costs
13 incurred by the utility to receive, deliver, manage, or
14 otherwise accommodate purchases under the SNG sourcing
15 agreement will be fully recoverable through a utility's
16 purchased gas adjustment clause rider mechanism in
17 conjunction with a SNG brownfield facility rider
18 mechanism. The SNG brownfield facility rider mechanism (A)
19 shall be applicable to all customers who receive
20 transportation service from the utility, (B) shall be
21 designed to have an equal percent impact on the
22 transportation services rates of each class of the
23 utility's customers, and (C) shall accurately reflect the
24 net consumer savings, if any, and above-market costs, if
25 any, associated with the utility receiving, delivering,
26 managing, or otherwise accommodating purchases under the

1 SNG sourcing agreement.

2 (15) Remedies for the clean coal SNG brownfield
3 facility's failure to deliver a designated amount for a
4 designated period.

5 (16) The clean coal SNG brownfield facility shall make
6 a good faith effort to ensure that an amount equal to not
7 less than 15% of the value of its prime construction
8 contract for the facility shall be established as a goal to
9 be awarded to minority owned businesses, female owned
10 businesses, and businesses owned by a person with a
11 disability; provided that at least 75% of the amount of
12 such total goal shall be for minority owned businesses.
13 "Minority owned business", "female owned business", and
14 "business owned by a person with a disability" shall have
15 the meanings ascribed to them in Section 2 of the Business
16 Enterprise for Minorities, Females and Persons with
17 Disabilities Act.

18 (17) Prior to the clean coal SNG brownfield facility
19 issuing a notice to proceed to construction, the clean coal
20 SNG brownfield facility shall file with the Commission a
21 certificate from an independent engineer that the clean
22 coal SNG brownfield facility has (A) obtained all
23 applicable State and federal environmental permits
24 required for construction; (B) obtained approval from the
25 Commission of a carbon capture and sequestration plan; and
26 (C) obtained all necessary permits required for

1 construction for the transportation and sequestration of
2 carbon dioxide as set forth in the Commission-approved
3 carbon capture and sequestration plan.

4 (h-2) Consumer protection reserve account. The clean coal
5 SNG brownfield facility shall guarantee a minimum of
6 \$100,000,000 in consumer savings to customers of the utilities
7 that have entered into sourcing agreements with the clean coal
8 SNG brownfield facility, calculated in real 2010 dollars at the
9 conclusion of the term of the sourcing agreement by comparing
10 the delivered SNG price to the Chicago City-gate price on a
11 weighted daily basis for each day over the entire term of the
12 sourcing agreement. Prior to the clean coal SNG brownfield
13 facility issuing a notice to proceed to construction, the clean
14 coal SNG brownfield facility shall establish a consumer
15 protection reserve account for the benefit of the retail
16 customers of the utilities that have entered into sourcing
17 agreements with the clean coal SNG brownfield facility pursuant
18 to subsection (h-1), with cash principal in the amount of
19 \$150,000,000. Such cash principal shall only be recovered
20 through the consumer protection reserve account and not as a
21 cost to be recovered in the delivered SNG price pursuant to
22 subsection (h-3) of this Section. The consumer protection
23 reserve account shall be maintained and administered by an
24 independent trustee that is mutually agreed upon by the clean
25 coal SNG brownfield facility, the utilities, and the Commission
26 in an interest-bearing account in accordance with the

1 following:

2 (1) The clean coal SNG brownfield facility monthly
3 shall calculate (A) the difference between the monthly
4 delivered SNG price and the Chicago City-gate price, by
5 comparing the delivered SNG price, which shall include the
6 cost of transportation to the delivery point, if any, to
7 the Chicago City-gate price on a weighted daily basis for
8 each day of the prior month based upon a mutually agreed
9 upon published index and (B) the overage amount, if any, by
10 calculating the annualized incremental additional cost, if
11 any, of the delivered SNG in excess of 2.015% of the
12 average annual inflation-adjusted amounts paid by all gas
13 distribution customers in connection with natural gas
14 service during the 5 years ending May 31, 2010.

15 (2) During the first 2 years of operation of the
16 facility:

17 (A) to the extent there is an overage amount, the
18 consumer protection reserve account shall be used to
19 provide a credit to reduce the SNG price by an amount
20 equal to the overage amount; and

21 (B) to the extent the monthly delivered SNG price
22 is less than or equal to the Chicago City-gate price,
23 the utility shall credit the difference between the
24 monthly delivered SNG price and the monthly Chicago
25 City-gate price, if any, to the consumer protection
26 reserve account. Such credit issued pursuant to this

1 paragraph (B) shall be deemed prudent and reasonable
2 and not subject to a Commission prudence review;

3 (3) After 2 years of operation of the facility, and
4 monthly, on an on-going basis, thereafter:

5 (A) to the extent that the monthly delivered SNG
6 price is less than or equal to the Chicago City-gate
7 price, calculated using the weighted average of the
8 daily Chicago City-gate price on a daily basis over the
9 entire month, the utility shall credit the difference,
10 if any, to the consumer protection reserve account.
11 Such credit issued pursuant to this subparagraph (A)
12 shall be deemed prudent and reasonable and not subject
13 to a Commission prudence review;

14 (B) any amounts in the consumer protection reserve
15 account in excess of the consumer protection reserve
16 account principal maximum amount shall be distributed
17 as follows: (i) if retail customers have not realized
18 net consumer savings, calculated by comparing the
19 delivered SNG price to the weighted average of the
20 daily Chicago City-gate price on a daily basis over the
21 entire term of the sourcing agreement to date, then 50%
22 of any amounts in the consumer protection reserve
23 account in excess of the consumer protection reserve
24 account principal maximum shall be distributed to the
25 clean coal SNG brownfield facility, with the remaining
26 50% of any such additional amounts being credited to

1 retail customers, and (ii) if retail customers have
2 realized net consumer savings, then 100% of any amounts
3 in the consumer protection reserve account in excess of
4 the consumer protection reserve account principal
5 maximum shall be distributed to the clean coal SNG
6 brownfield facility; provided, however, that under no
7 circumstances shall the total cumulative amount
8 distributed to the clean coal SNG brownfield facility
9 under this subparagraph (B) exceed \$150,000,000;

10 (C) to the extent there is an overage amount, after
11 distributing the amounts pursuant to subparagraph (B)
12 of this paragraph (3), if any, the consumer protection
13 reserve account shall be used to provide a credit to
14 reduce the SNG price by an amount equal to the overage
15 amount;

16 (D) if retail customers have realized net consumer
17 savings, calculated by comparing the delivered SNG
18 price to the weighted average of the daily Chicago
19 City-gate price on a daily basis over the entire term
20 of the sourcing agreement to date, then after
21 distributing the amounts pursuant to subparagraphs (B)
22 and (C) of this paragraph (3), 50% of any additional
23 amounts in the consumer protection reserve account in
24 excess of the consumer protection reserve account
25 principal maximum shall be distributed to the clean
26 coal SNG brownfield facility, with the remaining 50% of

1 any such additional amounts being credited to retail
2 customers; provided, however, that if retail customers
3 have not realized such net consumer savings, no such
4 distribution shall be made to the clean coal SNG
5 brownfield facility, and 100% of such additional
6 amounts shall be credited to the retail customers to
7 the extent the consumer protection reserve account
8 exceeds the consumer protection reserve account
9 principal maximum amount.

10 (4) Fifty percent of all additional net revenue,
11 defined as miscellaneous net revenue after cost allowance
12 for costs associated with additional net revenue that are
13 not otherwise recoverable pursuant to subsection (h-3) of
14 this Section, including net revenue from sales of
15 substitute natural gas derived from the facility above the
16 nameplate capacity of the facility and other by-products
17 produced by the facility, shall be credited to the consumer
18 protection reserve account.

19 (5) At the conclusion of the term of the sourcing
20 agreement, to the extent retail customers have not saved
21 the minimum of \$100,000,000 in consumer savings as
22 guaranteed in this subsection (h-2), amounts in the
23 consumer protection reserve account shall be credited to
24 retail customers to the extent the retail customers have
25 saved the minimum of \$100,000,000; 50% of any additional
26 amounts in the consumer protection reserve account shall be

1 distributed to the company, and the remaining 50% shall be
2 distributed to retail customers.

3 (6) If, at the conclusion of the term of the sourcing
4 agreement, the customers have not saved the minimum
5 \$100,000,000 in savings as guaranteed in this subsection
6 (h-2) and the consumer protection reserve account has been
7 depleted, then the clean coal SNG brownfield facility shall
8 be liable for any remaining amount owed to the retail
9 customers to the extent that the customers are provided
10 with the \$100,000,000 in savings as guaranteed in this
11 subsection (h-2). The retail customers shall have first
12 priority in recovering that debt above any creditors,
13 except the original senior secured lender to the extent
14 that the original senior secured lender has any senior
15 secured debt outstanding, including any clean coal SNG
16 brownfield facility parent companies or affiliates.

17 (7) The clean coal SNG brownfield facility, the
18 utilities, and the trustee shall work together to take
19 commercially reasonable steps to minimize the tax impact of
20 these transactions, while preserving the consumer
21 benefits.

22 (8) The clean coal SNG brownfield facility shall each
23 month, starting in the facility's first year of commercial
24 operation, file with the Commission, in such form as the
25 Commission shall require, a report as to the consumer
26 protection reserve account. The monthly report must

1 contain the following information:

2 (A) the extent the monthly delivered SNG price is
3 greater than, less than, or equal to the Chicago
4 City-gate price;

5 (B) the amount credited or debited to the consumer
6 protection reserve account during the month;

7 (C) the amounts credited to consumers and
8 distributed to the clean coal SNG brownfield facility
9 during the month;

10 (D) the total amount of the consumer protection
11 reserve account at the beginning and end of the month;

12 (E) the total amount of consumer savings to date;

13 (F) a confidential summary of the inputs used to
14 calculate the additional net revenue; and

15 (G) any other additional information the
16 Commission shall require.

17 When any report is erroneous or defective or appears to
18 the Commission to be erroneous or defective, the Commission
19 may notify the clean coal SNG brownfield facility to amend
20 the report within 30 days, and, before or after the
21 termination of the 30-day period, the Commission may
22 examine the trustee of the consumer protection reserve
23 account or the officers, agents, employees, books,
24 records, or accounts of the clean coal SNG brownfield
25 facility and correct such items in the report as upon such
26 examination the Commission may find defective or

1 erroneous. All reports shall be under oath.

2 All reports made to the Commission by the clean coal
3 SNG brownfield facility and the contents of the reports
4 shall be open to public inspection and shall be deemed a
5 public record under the Freedom of Information Act. Such
6 reports shall be preserved in the office of the Commission.
7 The Commission shall publish an annual summary of the
8 reports prior to February 1 of the following year. The
9 annual summary shall be made available to the public on the
10 Commission's website and shall be submitted to the General
11 Assembly.

12 Any facility that fails to file a report required under
13 this paragraph (8) to the Commission within the time
14 specified or to make specific answer to any question
15 propounded by the Commission within 30 days from the time
16 it is lawfully required to do so, or within such further
17 time not to exceed 90 days as may in its discretion be
18 allowed by the Commission, shall pay a penalty of \$500 to
19 the Commission for each day it is in default.

20 Any person who willfully makes any false report to the
21 Commission or to any member, officer, or employee thereof,
22 any person who willfully in a report withholds or fails to
23 provide material information to which the Commission is
24 entitled under this paragraph (8) and which information is
25 either required to be filed by statute, rule, regulation,
26 order, or decision of the Commission or has been requested

1 by the Commission, and any person who willfully aids or
2 abets such person shall be guilty of a Class A misdemeanor.

3 (h-3) Recoverable costs and revenue by the clean coal SNG
4 brownfield facility.

5 (1) A capital recovery charge approved by the
6 Commission shall be recoverable by the clean coal SNG
7 brownfield facility under a sourcing agreement. The
8 capital recovery charge shall be comprised of capital costs
9 and a reasonable rate of return. "Capital costs" means
10 costs to be incurred in connection with the construction
11 and development of a facility, as defined in Section 1-10
12 of the Illinois Power Agency Act, and such other costs as
13 the Capital Development Board deems appropriate to be
14 recovered in the capital recovery charge.

15 (A) Capital costs. The Capital Development Board
16 shall calculate a range of capital costs that it
17 believes would be reasonable for the clean coal SNG
18 brownfield facility to recover under the sourcing
19 agreement. In making this determination, the Capital
20 Development Board shall review the facility cost
21 report, if any, of the clean coal SNG brownfield
22 facility, adjusting the results based on the change in
23 the Annual Consumer Price Index for All Urban Consumers
24 for the Midwest Region as published in April by the
25 United States Department of Labor, Bureau of Labor
26 Statistics, the final draft of the sourcing agreement,

1 and the rate of return approved by the Commission. In
2 addition, the Capital Development Board may consult as
3 much as it deems necessary with the clean coal SNG
4 brownfield facility and conduct whatever research and
5 investigation it deems necessary.

6 The Capital Development Board shall retain an
7 engineering expert to assist in determining both the
8 range of capital costs and the range of operations and
9 maintenance costs that it believes would be reasonable
10 for the clean coal SNG brownfield facility to recover
11 under the sourcing agreement. Provided, however, that
12 such expert shall: (i) not have been involved in the
13 clean coal SNG brownfield facility's facility cost
14 report, if any, (ii) not own or control any direct or
15 indirect interest in the initial clean coal facility,
16 and (iii) have no contractual relationship with the
17 clean coal SNG brownfield facility. In order to qualify
18 as an independent expert, a person or company must
19 have:

20 (i) direct previous experience conducting
21 front-end engineering and design studies for
22 large-scale energy facilities and administering
23 large-scale energy operations and maintenance
24 contracts, which may be particularized to the
25 specific type of financing associated with the
26 clean coal SNG brownfield facility;

1 (ii) an advanced degree in economics,
2 mathematics, engineering, or a related area of
3 study;

4 (iii) ten years of experience in the energy
5 sector, including construction and risk management
6 experience;

7 (iv) expertise in assisting companies with
8 obtaining financing for large-scale energy
9 projects, which may be particularized to the
10 specific type of financing associated with the
11 clean coal SNG brownfield facility;

12 (v) expertise in operations and maintenance
13 which may be particularized to the specific type of
14 operations and maintenance associated with the
15 clean coal SNG brownfield facility;

16 (vi) expertise in credit and contract
17 protocols;

18 (vii) adequate resources to perform and
19 fulfill the required functions and
20 responsibilities; and

21 (viii) the absence of a conflict of interest
22 and inappropriate bias for or against an affected
23 gas utility or the clean coal SNG brownfield
24 facility.

25 The clean coal SNG brownfield facility and the
26 Illinois Power Agency shall cooperate with the Capital

1 Development Board in any investigation it deems
2 necessary. The Capital Development Board shall make
3 its final determination of the range of capital costs
4 confidentially and shall submit that range to the
5 Commission in a confidential filing within 120 days
6 after July 13, 2011 (the effective date of Public Act
7 97-96) ~~this amendatory Act of the 97th General~~
8 ~~Assembly~~. The clean coal SNG brownfield facility shall
9 submit to the Commission its estimate of the capital
10 costs to be recovered under the sourcing agreement.
11 Only after the clean coal SNG brownfield facility has
12 submitted this estimate shall the Commission publicly
13 announce the range of capital costs submitted by the
14 Capital Development Board.

15 In the event that the estimate submitted by the
16 clean coal SNG brownfield facility is within or below
17 the range submitted by the Capital Development Board,
18 the clean coal SNG brownfield facility's estimate
19 shall be approved by the Commission as the amount of
20 capital costs to be recovered under the sourcing
21 agreement. In the event that the estimate submitted by
22 the clean coal SNG brownfield facility is above the
23 range submitted by the Capital Development Board, the
24 amount of capital costs at the lowest end of the range
25 submitted by the Capital Development Board shall be
26 approved by the Commission as the amount of capital

1 costs to be recovered under the sourcing agreement.
2 Within 15 days after the Capital Development Board has
3 submitted its range and the clean coal SNG brownfield
4 facility has submitted its estimate, the Commission
5 shall approve the capital costs for the clean coal SNG
6 brownfield facility.

7 The Capital Development Board shall monitor the
8 construction of the clean coal SNG brownfield facility
9 for the full duration of construction to assess
10 potential cost overruns. The Capital Development
11 Board, in its discretion, may retain an expert to
12 facilitate such monitoring. The clean coal SNG
13 brownfield facility shall pay a reasonable fee as
14 required by the Capital Development Board for the
15 Capital Development Board's services under this
16 subsection (h-3) to be deposited into the Capital
17 Development Board Revolving Fund, and such fee shall
18 not be passed through to a utility or its customers. If
19 an expert is retained by the Capital Development Board
20 for monitoring of construction, then the clean coal SNG
21 brownfield facility must pay for the expert's
22 reasonable fees and such costs shall not be passed
23 through to a utility or its customers.

24 (B) Rate of Return. No later than 30 days after the
25 date on which the Illinois Power Agency submits a final
26 draft sourcing agreement, the Commission shall hold a

1 public hearing to determine the rate of return to be
2 recovered under the sourcing agreement. Rate of return
3 shall be comprised of the clean coal SNG brownfield
4 facility's actual cost of debt, including
5 mortgage-style amortization, and a reasonable return
6 on equity. The Commission shall post notice of the
7 hearing on its website no later than 10 days prior to
8 the date of the hearing. The Commission shall provide
9 the public and all interested parties, including the
10 gas utilities, the Attorney General, and the Illinois
11 Power Agency, an opportunity to be heard.

12 In determining the return on equity, the
13 Commission shall select a commercially reasonable
14 return on equity taking into account the return on
15 equity being received by developers of similar
16 facilities in or outside of Illinois, the need to
17 balance an incentive for clean-coal technology with
18 the need to protect ratepayers from high gas prices,
19 the risks being borne by the clean coal SNG brownfield
20 facility in the final draft sourcing agreement, and any
21 other information that the Commission may deem
22 relevant. The Commission may establish a return on
23 equity that varies with the amount of savings, if any,
24 to customers during the term of the sourcing agreement,
25 comparing the delivered SNG price to a daily weighted
26 average price of natural gas, based upon an index. The

1 Illinois Power Agency shall recommend a return on
2 equity to the Commission using the same criteria.
3 Within 60 days after receiving the final draft sourcing
4 agreement from the Illinois Power Agency, the
5 Commission shall approve the rate of return for the
6 clean coal brownfield facility. Within 30 days after
7 obtaining debt financing for the clean coal SNG
8 brownfield facility, the clean coal SNG brownfield
9 facility shall file a notice with the Commission
10 identifying the actual cost of debt.

11 (2) Operations and maintenance costs approved by the
12 Commission shall be recoverable by the clean coal SNG
13 brownfield facility under the sourcing agreement. The
14 operations and maintenance costs mean costs that have been
15 incurred for the administration, supervision, operation,
16 maintenance, preservation, and protection of the clean
17 coal SNG brownfield facility's physical plant.

18 The Capital Development Board shall calculate a range
19 of operations and maintenance costs that it believes would
20 be reasonable for the clean coal SNG brownfield facility to
21 recover under the sourcing agreement, incorporating an
22 inflation index or combination of inflation indices to most
23 accurately reflect the actual costs of operating the clean
24 coal SNG brownfield facility. In making this
25 determination, the Capital Development Board shall review
26 the facility cost report, if any, of the clean coal SNG

1 brownfield facility, adjusting the results for inflation
2 based on the change in the Annual Consumer Price Index for
3 All Urban Consumers for the Midwest Region as published in
4 April by the United States Department of Labor, Bureau of
5 Labor Statistics, the final draft of the sourcing
6 agreement, and the rate of return approved by the
7 Commission. In addition, the Capital Development Board may
8 consult as much as it deems necessary with the clean coal
9 SNG brownfield facility and conduct whatever research and
10 investigation it deems necessary. As set forth in
11 subparagraph (A) of paragraph (1) of this subsection (h-3),
12 the Capital Development Board shall retain an independent
13 engineering expert to assist in determining both the range
14 of operations and maintenance costs that it believes would
15 be reasonable for the clean coal SNG brownfield facility to
16 recover under the sourcing agreement. The clean coal SNG
17 brownfield facility and the Illinois Power Agency shall
18 cooperate with the Capital Development Board in any
19 investigation it deems necessary. The Capital Development
20 Board shall make its final determination of the range of
21 operations and maintenance costs confidentially and shall
22 submit that range to the Commission in a confidential
23 filing within 120 days after July 13, 2011 ~~the effective~~
24 ~~date of this amendatory Act of the 97th General Assembly.~~

25 The clean coal SNG brownfield facility shall submit to
26 the Commission its estimate of the operations and

1 maintenance costs to be recovered under the sourcing
2 agreement. Only after the clean coal SNG brownfield
3 facility has submitted this estimate shall the Commission
4 publicly announce the range of operations and maintenance
5 costs submitted by the Capital Development Board. In the
6 event that the estimate submitted by the clean coal SNG
7 brownfield facility is within or below the range submitted
8 by the Capital Development Board, the clean coal SNG
9 brownfield facility's estimate shall be approved by the
10 Commission as the amount of operations and maintenance
11 costs to be recovered under the sourcing agreement. In the
12 event that the estimate submitted by the clean coal SNG
13 brownfield facility is above the range submitted by the
14 Capital Development Board, the amount of operations and
15 maintenance costs at the lowest end of the range submitted
16 by the Capital Development Board shall be approved by the
17 Commission as the amount of operations and maintenance
18 costs to be recovered under the sourcing agreement. Within
19 15 days after the Capital Development Board has submitted
20 its range and the clean coal SNG brownfield facility has
21 submitted its estimate, the Commission shall approve the
22 operations and maintenance costs for the clean coal SNG
23 brownfield facility.

24 The clean coal SNG brownfield facility shall pay for
25 the independent engineering expert's reasonable fees and
26 such costs shall not be passed through to a utility or its

1 customers. The clean coal SNG brownfield facility shall pay
2 a reasonable fee as required by the Capital Development
3 Board for the Capital Development Board's services under
4 this subsection (h-3) to be deposited into the Capital
5 Development Board Revolving Fund, and such fee shall not be
6 passed through to a utility or its customers.

7 (3) Sequestration costs approved by the Commission
8 shall be recoverable by the clean coal SNG brownfield
9 facility. "Sequestration costs" means costs to be incurred
10 by the clean coal SNG brownfield facility in accordance
11 with its Commission-approved carbon capture and
12 sequestration plan to:

13 (A) capture carbon dioxide;

14 (B) build, operate, and maintain a sequestration
15 site in which carbon dioxide may be injected;

16 (C) build, operate, and maintain a carbon dioxide
17 pipeline; and

18 (D) transport the carbon dioxide to the
19 sequestration site or a pipeline.

20 The Commission shall assess the prudence of the
21 sequestration costs for the clean coal SNG brownfield
22 facility before construction commences at the
23 sequestration site or pipeline. Any revenues the clean coal
24 SNG brownfield facility receives as a result of the
25 capture, transportation, or sequestration of carbon
26 dioxide shall be first credited against all sequestration

1 costs, with the positive balance, if any, treated as
2 additional net revenue.

3 The Commission may, in its discretion, retain an expert
4 to assist in its review of sequestration costs. The clean
5 coal SNG brownfield facility shall pay for the expert's
6 reasonable fees if an expert is retained by the Commission,
7 and such costs shall not be passed through to a utility or
8 its customers. Once made, the Commission's determination
9 of the amount of recoverable sequestration costs shall not
10 be increased unless the clean coal SNG brownfield facility
11 can show by clear and convincing evidence that (i) the
12 costs were not reasonably foreseeable; (ii) the costs were
13 due to circumstances beyond the clean coal SNG brownfield
14 facility's control; and (iii) the clean coal SNG brownfield
15 facility took all reasonable steps to mitigate the costs.
16 If the Commission determines that sequestration costs may
17 be increased, the Commission shall provide for notice and a
18 public hearing for approval of the increased sequestration
19 costs.

20 (4) Actual delivered and processed fuel costs shall be
21 set by the Illinois Power Agency through a SNG feedstock
22 procurement, pursuant to Sections 1-20, 1-77, and 1-78 of
23 the Illinois Power Agency Act, to be performed at least
24 every 5 years and purchased by the clean coal SNG
25 brownfield facility pursuant to feedstock procurement
26 contracts developed by the Illinois Power Agency, with coal

1 comprising at least 50% of the total feedstock over the
2 term of the sourcing agreement and petroleum coke
3 comprising the remainder of the SNG feedstock. If the
4 Commission fails to approve a feedstock procurement plan or
5 fails to approve the results of a feedstock procurement
6 event, then the fuel shall be purchased by the company
7 month-by-month on the spot market and those actual
8 delivered and processed fuel costs shall be recoverable
9 under the sourcing agreement. If a supplier defaults under
10 the terms of a procurement contract, then the Illinois
11 Power Agency shall immediately initiate a feedstock
12 procurement process to obtain a replacement supply, and,
13 prior to the conclusion of that process, fuel shall be
14 purchased by the company month-by-month on the spot market
15 and those actual delivered and processed fuel costs shall
16 be recoverable under the sourcing agreement.

17 (5) Taxes and fees imposed by the federal government,
18 the State, or any unit of local government applicable to
19 the clean coal SNG brownfield facility, excluding income
20 tax, shall be recoverable by the clean coal SNG brownfield
21 facility under the sourcing agreement to the extent such
22 taxes and fees were not applicable to the facility on July
23 13, 2011 ~~the date of this amendatory Act of the 97th~~
24 ~~General Assembly.~~

25 (6) The actual transportation costs, in accordance
26 with the applicable utility's tariffs, and third-party

1 marketer costs incurred by the company, if any, associated
2 with transporting the SNG from the clean coal SNG
3 brownfield facility to the Chicago City-gate to sell such
4 SNG into the natural gas markets shall be recoverable under
5 the sourcing agreement.

6 (7) Unless otherwise provided, within 30 days after a
7 decision of the Commission on recoverable costs under this
8 Section, any interested party to the Commission's decision
9 may apply for a rehearing with respect to the decision. The
10 Commission shall receive and consider the application for
11 rehearing and shall grant or deny the application in whole
12 or in part within 20 days after the date of the receipt of
13 the application by the Commission. If no rehearing is
14 applied for within the required 30 days or an application
15 for rehearing is denied, then the Commission decision shall
16 be final. If an application for rehearing is granted, then
17 the Commission shall hold a rehearing within 30 days after
18 granting the application. The decision of the Commission
19 upon rehearing shall be final.

20 Any person affected by a decision of the Commission
21 under this subsection (h-3) may have the decision reviewed
22 only under and in accordance with the Administrative Review
23 Law. Unless otherwise provided, the provisions of the
24 Administrative Review Law, all amendments and
25 modifications to that Law, and the rules adopted pursuant
26 to that Law shall apply to and govern all proceedings for

1 the judicial review of final administrative decisions of
2 the Commission under this subsection (h-3). The term
3 "administrative decision" is defined as in Section 3-101 of
4 the Code of Civil Procedure.

5 (8) The Capital Development Board shall adopt and make
6 public a policy detailing the process for retaining experts
7 under this Section. Any experts retained to assist with
8 calculating the range of capital costs or operations and
9 maintenance costs shall be retained no later than 45 days
10 after July 13, 2011 ~~the effective date of this amendatory~~
11 ~~Act of the 97th General Assembly.~~

12 (h-4) No later than 90 days after the Illinois Power Agency
13 submits the final draft sourcing agreement pursuant to
14 subsection (h-1), the Commission shall approve a sourcing
15 agreement containing the capital costs, rate of return, and
16 operations and maintenance costs. Once the sourcing agreement
17 is approved, then the gas utility subject to that sourcing
18 agreement shall have 45 days after the date of the Commission's
19 approval to enter into the sourcing agreement.

20 (h-5) Sequestration enforcement.

21 (A) All contracts entered into under subsection (h) of
22 this Section ~~Act~~ and all sourcing agreements under
23 subsection (h-1) of this Section ~~Act~~, regardless of
24 duration, shall require the owner of any facility supplying
25 SNG under the contract or sourcing agreement to provide
26 certified documentation to the Commission each year,

1 starting in the facility's first year of commercial
2 operation, accurately reporting the quantity of carbon
3 dioxide emissions from the facility that have been captured
4 and sequestered and reporting any quantities of carbon
5 dioxide released from the site or sites at which carbon
6 dioxide emissions were sequestered in prior years, based on
7 continuous monitoring of those sites.

8 (B) If, in any year, the owner of the clean coal SNG
9 facility fails to demonstrate that the SNG facility
10 captured and sequestered at least 90% of the total carbon
11 dioxide emissions that the facility would otherwise emit or
12 that sequestration of emissions from prior years has
13 failed, resulting in the release of carbon dioxide into the
14 atmosphere, then the owner of the clean coal SNG facility
15 must pay a penalty of \$20 per ton of excess carbon dioxide
16 emissions not to exceed \$40,000,000, in any given year
17 which shall be deposited into the Energy Efficiency Trust
18 Fund and distributed pursuant to subsection (b) of Section
19 6-6 of the Renewable Energy, Energy Efficiency, and Coal
20 Resources Development Law of 1997. On or before the 5-year
21 anniversary of the execution of the contract and every 5
22 years thereafter, an expert hired by the owner of the
23 facility with the approval of the Attorney General shall
24 conduct an analysis to determine the cost of sequestration
25 of at least 90% of the total carbon dioxide emissions the
26 plant would otherwise emit. If the analysis shows that the

1 actual annual cost is greater than the penalty, then the
2 penalty shall be increased to equal the actual cost.
3 Provided, however, to the extent that the owner of the
4 facility described in subsection (h) of this Section Act
5 can demonstrate that the failure was as a result of acts of
6 God (including fire, flood, earthquake, tornado,
7 lightning, hurricane, or other natural disaster); any
8 amendment, modification, or abrogation of any applicable
9 law or regulation that would prevent performance; war;
10 invasion; act of foreign enemies; hostilities (regardless
11 of whether war is declared); civil war; rebellion;
12 revolution; insurrection; military or usurped power or
13 confiscation; terrorist activities; civil disturbance;
14 riots; nationalization; sabotage; blockage; or embargo,
15 the owner of the facility described in subsection (h) of
16 this Section Act shall not be subject to a penalty if and
17 only if (i) it promptly provides notice of its failure to
18 the Commission; (ii) as soon as practicable and consistent
19 with any order or direction from the Commission, it submits
20 to the Commission proposed modifications to its carbon
21 capture and sequestration plan; and (iii) it carries out
22 its proposed modifications in the manner and time directed
23 by the Commission.

24 If the Commission finds that the facility has not
25 satisfied each of these requirements, then the facility
26 shall be subject to the penalty. If the owner of the clean

1 coal SNG facility captured and sequestered more than 90% of
2 the total carbon dioxide emissions that the facility would
3 otherwise emit, then the owner of the facility may credit
4 such additional amounts to reduce the amount of any future
5 penalty to be paid. The penalty resulting from the failure
6 to capture and sequester at least the minimum amount of
7 carbon dioxide shall not be passed on to a utility or its
8 customers.

9 If the clean coal SNG facility fails to meet the
10 requirements specified in this subsection (h-5), then the
11 Attorney General, on behalf of the People of the State of
12 Illinois, shall bring an action to enforce the obligations
13 related to the facility set forth in this subsection (h-5),
14 including any penalty payments owed, but not including the
15 physical obligation to capture and sequester at least 90%
16 of the total carbon dioxide emissions that the facility
17 would otherwise emit. Such action may be filed in any
18 circuit court in Illinois. By entering into a contract
19 pursuant to subsection (h) of this Section, the clean coal
20 SNG facility agrees to waive any objections to venue or to
21 the jurisdiction of the court with regard to the Attorney
22 General's action under this subsection (h-5).

23 Compliance with the sequestration requirements and any
24 penalty requirements specified in this subsection (h-5)
25 for the clean coal SNG facility shall be assessed annually
26 by the Commission, which may in its discretion retain an

1 expert to facilitate its assessment. If any expert is
2 retained by the Commission, then the clean coal SNG
3 facility shall pay for the expert's reasonable fees, and
4 such costs shall not be passed through to the utility or
5 its customers.

6 In addition, carbon dioxide emission credits received
7 by the clean coal SNG facility in connection with
8 sequestration of carbon dioxide from the facility must be
9 sold in a timely fashion with any revenue, less applicable
10 fees and expenses and any expenses required to be paid by
11 facility for carbon dioxide transportation or
12 sequestration, deposited into the reconciliation account
13 within 30 days after receipt of such funds by the owner of
14 the clean coal SNG facility.

15 The clean coal SNG facility is prohibited from
16 transporting or sequestering carbon dioxide unless the
17 owner of the carbon dioxide pipeline that transfers the
18 carbon dioxide from the facility and the owner of the
19 sequestration site where the carbon dioxide captured by the
20 facility is stored has acquired all applicable permits
21 under applicable State and federal laws, statutes, rules,
22 or regulations prior to the transfer or sequestration of
23 carbon dioxide. The responsibility for compliance with the
24 sequestration requirements specified in this subsection
25 (h-5) for the clean coal SNG facility shall reside solely
26 with the clean coal SNG facility, regardless of whether the

1 facility has contracted with another party to capture,
2 transport, or sequester carbon dioxide. ~~described in~~
3 ~~subsection (h) of this Act described in subsection (h) of~~
4 ~~this Act~~

5 (C) If, in any year, the owner of a clean coal SNG
6 brownfield facility fails to demonstrate that the clean
7 coal SNG brownfield facility captured and sequestered at
8 least 85% of the total carbon dioxide emissions that the
9 facility would otherwise emit, then the owner of the clean
10 coal SNG brownfield facility must pay a penalty of \$20 per
11 ton of excess carbon emissions up to \$20,000,000, which
12 shall be deposited into the Energy Efficiency Trust Fund
13 and distributed pursuant to subsection (b) of Section 6-6
14 of the Renewable Energy, Energy Efficiency, and Coal
15 Resources Development Law of 1997. Provided, however, to
16 the extent that the owner of the clean coal SNG brownfield
17 facility can demonstrate that the failure was as a result
18 of acts of God (including fire, flood, earthquake, tornado,
19 lightning, hurricane, or other natural disaster); any
20 amendment, modification, or abrogation of any applicable
21 law or regulation that would prevent performance; war;
22 invasion; act of foreign enemies; hostilities (regardless
23 of whether war is declared); civil war; rebellion;
24 revolution; insurrection; military or usurped power or
25 confiscation; terrorist activities; civil disturbances;
26 riots; nationalization; sabotage; blockage; or embargo,

1 the owner of the clean coal SNG brownfield facility shall
2 not be subject to a penalty if and only if (i) it promptly
3 provides notice of its failure to the Commission; (ii) as
4 soon as practicable and consistent with any order or
5 direction from the Commission, it submits to the Commission
6 proposed modifications to its carbon capture and
7 sequestration plan; and (iii) it carries out its proposed
8 modifications in the manner and time directed by the
9 Commission. If the Commission finds that the facility has
10 not satisfied each of these requirements, then the facility
11 shall be subject to the penalty. If the owner of a clean
12 coal SNG brownfield facility demonstrates that the clean
13 coal SNG brownfield facility captured and sequestered more
14 than 85% of the total carbon emissions that the facility
15 would otherwise emit, the owner of the clean coal SNG
16 brownfield facility may credit such additional amounts to
17 reduce the amount of any future penalty to be paid. The
18 penalty resulting from the failure to capture and sequester
19 at least the minimum amount of carbon dioxide shall not be
20 passed on to a utility or its customers.

21 In addition to any penalty for the clean coal SNG
22 brownfield facility's failure to capture and sequester at
23 least its minimum sequestration requirement, the Attorney
24 General, on behalf of the People of the State of Illinois,
25 shall bring an action for specific performance of this
26 subsection (h-5). Such action may be filed in any circuit

1 court in Illinois. By entering into a sourcing agreement
2 pursuant to subsection (h-1) of this Section, the clean
3 coal SNG brownfield facility agrees to waive any objections
4 to venue or to the jurisdiction of the court with regard to
5 the Attorney General's action for specific performance
6 under this subsection (h-5). ~~for the facility described in~~
7 ~~subsection (h) of this Act described in subsection (h) of~~
8 ~~this Act~~

9 Compliance with the sequestration requirements and
10 penalty requirements specified in this subsection (h-5)
11 for the clean coal SNG brownfield facility shall be
12 assessed annually by the Commission, which may in its
13 discretion retain an expert to facilitate its assessment.
14 If an expert is retained by the Commission, then the clean
15 coal SNG brownfield facility shall pay for the expert's
16 reasonable fees, and such costs shall not be passed through
17 to a utility or its customers. ~~or a clean coal SNG~~
18 ~~brownfield facility or requisite penalties are paid~~

19 Responsibility for compliance with the sequestration
20 requirements specified in this subsection (h-5) for the
21 clean coal SNG brownfield facility shall reside solely with
22 the clean coal SNG brownfield facility regardless of
23 whether the facility has contracted with another party to
24 capture, transport, or sequester carbon dioxide.

25 (h-7) Sequestration permitting, oversight, and
26 investigations.

1 (1) No clean coal facility or clean coal SNG brownfield
2 facility may transport or sequester carbon dioxide unless
3 the Commission approves the method of carbon dioxide
4 transportation or sequestration. Such approval shall be
5 required regardless of whether the facility has contracted
6 with another to transport or sequester the carbon dioxide.
7 Nothing in this subsection (h-7) shall release the owner or
8 operator of a carbon dioxide sequestration site or carbon
9 dioxide pipeline from any other permitting requirements
10 under applicable State and federal laws, statutes, rules,
11 or regulations.

12 (2) The Commission shall review carbon dioxide
13 transportation and sequestration methods proposed by a
14 clean coal facility or a clean coal SNG brownfield facility
15 and shall approve those methods it deems reasonable and
16 cost-effective. For purposes of this review,
17 "cost-effective" means a commercially reasonable price for
18 similar carbon dioxide transportation or sequestration
19 techniques. In determining whether sequestration is
20 reasonable and cost-effective, the Commission may consult
21 with the Illinois State Geological Survey and retain third
22 parties to assist in its determination, provided that such
23 third parties shall not own or control any direct or
24 indirect interest in the facility that is proposing the
25 carbon dioxide transportation or the carbon dioxide
26 sequestration method and shall have no contractual

1 relationship with that facility. If a third party is
2 retained by the Commission, then the facility proposing the
3 carbon dioxide transportation or sequestration method
4 shall pay for the expert's reasonable fees, and these costs
5 shall not be passed through to a utility or its customers.

6 No later than 6 months prior to the date upon which the
7 owner intends to commence construction of a clean coal
8 facility or the clean coal SNG brownfield facility, the
9 owner of the facility shall file with the Commission a
10 carbon dioxide transportation or sequestration plan. The
11 Commission shall hold a public hearing within 30 days after
12 receipt of the facility's carbon dioxide transportation or
13 sequestration plan. The Commission shall post notice of the
14 review on its website upon submission of a carbon dioxide
15 transportation or sequestration method and shall accept
16 written public comments. The Commission shall take the
17 comments into account when making its decision.

18 The Commission may not approve a carbon dioxide
19 sequestration method if the owner or operator of the
20 sequestration site has not received (i) an Underground
21 Injection Control permit from the United States
22 Environmental Protection Agency, or from the Illinois
23 Environmental Protection Agency pursuant to the
24 Environmental Protection Act; (ii) an Underground
25 Injection Control permit from the Illinois Department of
26 Natural Resources pursuant to the Illinois Oil and Gas Act;

1 or (iii) an Underground Injection Control permit from the
2 United States Environmental Protection Agency or a permit
3 ~~similar to items (i) or (ii) from~~ the state in which the
4 sequestration site is located if the sequestration will
5 take place outside of Illinois. The Commission shall
6 approve or deny the carbon dioxide transportation or
7 sequestration method within 90 days after the receipt of
8 all required information.

9 (3) (Blank). ~~At least annually, the Illinois~~
10 ~~Environmental Protection Agency shall inspect all carbon~~
11 ~~dioxide sequestration sites in Illinois. The Illinois~~
12 ~~Environmental Protection Agency may, as often as deemed~~
13 ~~necessary, monitor and conduct investigations of these~~
14 ~~sites. The owner or operator of the sequestration site must~~
15 ~~cooperate with the Illinois Environmental Protection~~
16 ~~Agency investigations of carbon dioxide sequestration~~
17 ~~sites.~~

18 ~~If the Illinois Environmental Protection Agency~~
19 ~~determines at any time a site creates conditions that~~
20 ~~warrant the issuance of a seal order under Section 34 of~~
21 ~~the Environmental Protection Act, then the Illinois~~
22 ~~Environmental Protection Agency shall seal the site~~
23 ~~pursuant to the Environmental Protection Act. If the~~
24 ~~Illinois Environmental Protection Agency determines at any~~
25 ~~time a carbon dioxide sequestration site creates~~
26 ~~conditions that warrant the institution of a civil action~~

1 ~~for an injunction under Section 43 of the Environmental~~
2 ~~Protection Act, then the Illinois Environmental Protection~~
3 ~~Agency shall request the State's Attorney or the Attorney~~
4 ~~General institute such action. The Illinois Environmental~~
5 ~~Protection Agency shall provide notice of any such actions~~
6 ~~as soon as possible on its website. The SNG facility shall~~
7 ~~incur all reasonable costs associated with any such~~
8 ~~inspection or monitoring of the sequestration sites, and~~
9 ~~these costs shall not be recoverable from utilities or~~
10 ~~their customers.~~

11 (4) At least annually, the Commission shall inspect all
12 carbon dioxide pipelines in Illinois that transport carbon
13 dioxide to ensure the safety and feasibility of those
14 pipelines. The Commission may, as often as deemed
15 necessary, monitor and conduct investigations of those
16 pipelines. The owner or operator of the pipeline must
17 cooperate with the Commission investigations of the carbon
18 dioxide pipelines.

19 In circumstances whereby a carbon dioxide pipeline
20 creates a substantial danger to the environment or to the
21 public health of persons or to the welfare of persons where
22 such danger is to the livelihood of such persons, the
23 State's Attorney or Attorney General, upon the request of
24 the Commission or on his or her own motion, may institute a
25 civil action for an immediate injunction to halt any
26 discharge or other activity causing or contributing to the

1 danger or to require such other action as may be necessary.

2 The court may issue an ex parte order and shall schedule a

3 hearing on the matter not later than 3 working days after

4 the date of injunction. The Commission shall provide notice

5 of any such actions as soon as possible on its website. The

6 SNG facility shall incur all reasonable costs associated

7 with any such inspection or monitoring of the sequestration

8 sites, and these costs shall not be recoverable from a

9 utility or its customers.

10 (h-9) The clean coal SNG brownfield facility shall have the

11 right to recover prudently incurred increased costs or reduced

12 revenue resulting from any new or amendatory legislation or

13 other action. The State of Illinois pledges that the State will

14 not enact any law or take any action to:

15 (1) break, or repeal the authority for, sourcing

16 agreements approved by the Commission and entered into

17 between public utilities and the clean coal SNG brownfield

18 facility;

19 (2) deny public utilities full cost recovery for their

20 costs incurred under those sourcing agreements; or

21 (3) deny the clean coal SNG brownfield facility full

22 cost and revenue recovery as provided under those sourcing

23 agreements that are recoverable pursuant to subsection

24 (h-3) of this Section.

25 These pledges are for the benefit of the parties to those

26 sourcing agreements and the issuers and holders of bonds or

1 other obligations issued or incurred to finance or refinance
2 the clean coal SNG brownfield facility. The clean coal SNG
3 brownfield facility is authorized to include and refer to these
4 pledges in any financing agreement into which it may enter in
5 regard to those sourcing agreements.

6 The State of Illinois retains and reserves all other rights
7 to enact new or amendatory legislation or take any other
8 action, without impairment of the right of the clean coal SNG
9 brownfield facility to recover prudently incurred increased
10 costs or reduced revenue resulting from the new or amendatory
11 legislation or other action, including, but not limited to,
12 such legislation or other action that would (i) directly or
13 indirectly raise the costs the clean coal SNG brownfield
14 facility must incur; (ii) directly or indirectly place
15 additional restrictions, regulations, or requirements on the
16 clean coal SNG brownfield facility; (iii) prohibit
17 sequestration in general or prohibit a specific sequestration
18 method or project; or (iv) increase minimum sequestration
19 requirements for the clean coal SNG brownfield facility to the
20 extent technically feasible. The clean coal SNG brownfield
21 facility shall have the right to recover prudently incurred
22 increased costs or reduced revenue resulting from the new or
23 amendatory legislation or other action as described in this
24 subsection (h-9).

25 (h-10) Contract costs for SNG incurred by an Illinois gas
26 utility are reasonable and prudent and recoverable through the

1 purchased gas adjustment clause and are not subject to review
2 or disallowance by the Commission. Contract costs are costs
3 incurred by the utility under the terms of a contract that
4 incorporates the terms stated in subsection (h) of this Section
5 as confirmed in writing by the Illinois Power Agency as set
6 forth in subsection (h) of this Section, which confirmation
7 shall be deemed conclusive, or as a consequence of or condition
8 to its performance under the contract, including (i) amounts
9 paid for SNG under the SNG contract and (ii) costs of
10 transportation and storage services of SNG purchased from
11 interstate pipelines under federally approved tariffs. The
12 Illinois gas utility shall initiate a clean coal SNG facility
13 rider mechanism that (A) shall be applicable to all customers
14 who receive transportation service from the utility, (B) shall
15 be designed to have an equal percentage impact on the
16 transportation services rates of each class of the utility's
17 total customers, and (C) shall accurately reflect the net
18 customer savings, if any, and above market costs, if any, under
19 the SNG contract. Any contract, the terms of which have been
20 confirmed in writing by the Illinois Power Agency as set forth
21 in subsection (h) of this Section and the performance of the
22 parties under such contract cannot be grounds for challenging
23 prudence or cost recovery by the utility through the purchased
24 gas adjustment clause, and in such cases, the Commission is
25 directed not to consider, and has no authority to consider, any
26 attempted challenges.

1 The contracts entered into by Illinois gas utilities
2 pursuant to subsection (h) of this Section shall provide that
3 the utility retains the right to terminate the contract without
4 further obligation or liability to any party if the contract
5 has been impaired as a result of any legislative,
6 administrative, judicial, or other governmental action that is
7 taken that eliminates all or part of the prudence protection of
8 this subsection (h-10) or denies the recoverability of all or
9 part of the contract costs through the purchased gas adjustment
10 clause. Should any Illinois gas utility exercise its right
11 under this subsection (h-10) to terminate the contract, all
12 contract costs incurred prior to termination are and will be
13 deemed reasonable, prudent, and recoverable as and when
14 incurred and not subject to review or disallowance by the
15 Commission. Any order, issued by the State requiring or
16 authorizing the discontinuation of the merchant function,
17 defined as the purchase and sale of natural gas by an Illinois
18 gas utility for the ultimate consumer in its service territory
19 shall include provisions necessary to prevent the impairment of
20 the value of any contract hereunder over its full term.

21 (h-11) All costs incurred by an Illinois gas utility in
22 procuring SNG from a clean coal SNG brownfield facility
23 pursuant to subsection (h-1) or a third-party marketer pursuant
24 to subsection (h-1) are reasonable and prudent and recoverable
25 through the purchased gas adjustment clause in conjunction with
26 a SNG brownfield facility rider mechanism and are not subject

1 to review or disallowance by the Commission; provided that if a
2 utility is required by law or otherwise elects to connect the
3 clean coal SNG brownfield facility to an interstate pipeline,
4 then the utility shall be entitled to recover pursuant to its
5 tariffs all just and reasonable costs that are prudently
6 incurred. Sourcing agreement costs are costs incurred by the
7 utility under the terms of a sourcing agreement that
8 incorporates the terms stated in subsection (h-1) of this
9 Section as approved by the Commission as set forth in
10 subsection (h-4) of this Section, which approval shall be
11 deemed conclusive, or as a consequence of or condition to its
12 performance under the contract, including (i) amounts paid for
13 SNG under the SNG contract and (ii) costs of transportation and
14 storage services of SNG purchased from interstate pipelines
15 under federally approved tariffs. Any sourcing agreement, the
16 terms of which have been approved by the Commission as set
17 forth in subsection (h-4) of this Section, and the performance
18 of the parties under the sourcing agreement cannot be grounds
19 for challenging prudence or cost recovery by the utility, and
20 in these cases, the Commission is directed not to consider, and
21 has no authority to consider, any attempted challenges.

22 (h-15) Reconciliation account. The clean coal SNG facility
23 shall establish a reconciliation account for the benefit of the
24 retail customers of the utilities that have entered into
25 contracts with the clean coal SNG facility pursuant to
26 subsection (h). The reconciliation account shall be maintained

1 and administered by an independent trustee that is mutually
2 agreed upon by the owners of the clean coal SNG facility, the
3 utilities, and the Commission in an interest-bearing account in
4 accordance with the following:

5 (1) The clean coal SNG facility shall conduct an
6 analysis annually within 60 days after receiving the
7 necessary cost information, which shall be provided by the
8 gas utility within 6 months after the end of the preceding
9 calendar year, to determine (i) the average annual contract
10 SNG cost, which shall be calculated as the total amount
11 paid for SNG purchased from the clean coal SNG facility
12 over the preceding 12 months, plus the cost to the utility
13 of the required transportation and storage services of SNG,
14 divided by the total number of MMBtus of SNG actually
15 purchased from the clean coal SNG facility in the preceding
16 12 months under the utility contract; (ii) the average
17 annual natural gas purchase cost, which shall be calculated
18 as the total annual supply costs paid for baseload natural
19 gas (excluding any SNG) purchased by such utility over the
20 preceding 12 months plus the costs of transportation and
21 storage services of such natural gas (excluding such costs
22 for SNG), divided by the total number of MMBtus of baseload
23 natural gas (excluding SNG) actually purchased by the
24 utility during the year; (iii) the cost differential, which
25 shall be the difference between the average annual contract
26 SNG cost and the average annual natural gas purchase cost;

1 and (iv) the revenue share target which shall be the cost
2 differential multiplied by the total amount of SNG
3 purchased over the preceding 12 months under such utility
4 contract.

5 (A) To the extent the annual average contract SNG
6 cost is less than the annual average natural gas
7 purchase cost, the utility shall credit an amount equal
8 to the revenue share target to the reconciliation
9 account. Such credit payment shall be made monthly
10 starting within 30 days after the completed analysis in
11 this subsection (h-15) and based on collections from
12 all customers via a line item charge in all customer
13 bills designed to have an equal percentage impact on
14 the transportation services of each class of
15 customers. Credit payments made pursuant to this
16 subparagraph (A) shall be deemed prudent and
17 reasonable and not subject to Commission prudence
18 review.

19 (B) To the extent the annual average contract SNG
20 cost is greater than the annual average natural gas
21 purchase cost, the reconciliation account shall be
22 used to provide a credit equal to the revenue share
23 target to the utilities to be used to reduce the
24 utility's natural gas costs through the purchased gas
25 adjustment clause. Such payment shall be made within 30
26 days after the completed analysis pursuant to this

1 subsection (h-15), but only to the extent that the
2 reconciliation account has a positive balance.

3 (2) At the conclusion of the term of the SNG contracts
4 pursuant to subsection (h) and the completion of the final
5 annual analysis pursuant to this subsection (h-15), to the
6 extent the facility owes any amount to retail customers,
7 amounts in the account shall be credited to retail
8 customers to the extent the owed amount is repaid; 50% of
9 any additional amount in the reconciliation account shall
10 be distributed to the utilities to be used to reduce the
11 utilities' natural gas costs through the purchase gas
12 adjustment clause with the remaining amount distributed to
13 the clean coal SNG facility. Such payment shall be made
14 within 30 days after the last completed analysis pursuant
15 to this subsection (h-15). If the facility has repaid all
16 owed amounts, if any, to retail customers and has
17 distributed 50% of any additional amount in the account to
18 the utilities, then the owners of the clean coal SNG
19 facility shall have no further obligation to the utility or
20 the retail customers.

21 If, at the conclusion of the term of the contracts
22 pursuant to subsection (h) and the completion of the final
23 annual analysis pursuant to this subsection (h-15), the
24 facility owes any amount to retail customers and the
25 account has been depleted, then the clean coal SNG facility
26 shall be liable for any remaining amount owed to the retail

1 customers. The clean coal SNG facility shall market the
2 daily production of SNG and distribute on a monthly basis
3 5% of the amounts collected with respect to such future
4 sales to the utilities in proportion to each utility's SNG
5 contract to be used to reduce the utility's natural gas
6 costs through the purchase gas adjustment clause; such
7 payments to the utility shall continue until either 15
8 years after the conclusion of the contract or such time as
9 the sum of such payments equals the remaining amount owed
10 to the retail customers at the end of the contract,
11 whichever is earlier. If the debt to the retail customers
12 is not repaid within 15 years after the conclusion of the
13 contract, then the owner of the clean coal SNG facility
14 must sell the facility, and all proceeds from that sale
15 must be used to repay any amount owed to the retail
16 customers under this subsection (h-15).

17 The retail customers shall have first priority in
18 recovering that debt above any creditors, except the
19 secured lenders to the extent that the secured lenders have
20 any secured debt outstanding, including any parent
21 companies or affiliates of the clean coal SNG facility.

22 (3) 50% of all additional net revenue, defined as
23 miscellaneous net revenue after cost allowance and above
24 the budgeted estimate established for revenue pursuant to
25 subsection (h), including sale of substitute natural gas
26 derived from the clean coal SNG facility above the

1 nameplate capacity of the facility and other by-products
2 produced by the facility, shall be credited to the
3 reconciliation account on an annual basis with such payment
4 made within 30 days after the end of each calendar year
5 during the term of the contract.

6 (4) The clean coal SNG facility shall each year,
7 starting in the facility's first year of commercial
8 operation, file with the Commission, in such form as the
9 Commission shall require, a report as to the reconciliation
10 account. The annual report must contain the following
11 information:

12 (A) the revenue share target amount;

13 (B) the amount credited or debited to the
14 reconciliation account during the year;

15 (C) the amount credited to the utilities to be used
16 to reduce the utilities natural gas costs though the
17 purchase gas adjustment clause;

18 (D) the total amount of reconciliation account at
19 the beginning and end of the year;

20 (E) the total amount of consumer savings to date;
21 and

22 (F) any additional information the Commission may
23 require.

24 When any report is erroneous or defective or appears to the
25 Commission to be erroneous or defective, the Commission may
26 notify the clean coal SNG facility to amend the report within

1 30 days; before or after the termination of the 30-day period,
2 the Commission may examine the trustee of the reconciliation
3 account or the officers, agents, employees, books, records, or
4 accounts of the clean coal SNG facility and correct such items
5 in the report as upon such examination the Commission may find
6 defective or erroneous. All reports shall be under oath.

7 All reports made to the Commission by the clean coal SNG
8 facility and the contents of the reports shall be open to
9 public inspection and shall be deemed a public record under the
10 Freedom of Information Act. Such reports shall be preserved in
11 the office of the Commission. The Commission shall publish an
12 annual summary of the reports prior to February 1 of the
13 following year. The annual summary shall be made available to
14 the public on the Commission's website and shall be submitted
15 to the General Assembly.

16 Any facility that fails to file the report required under
17 this paragraph (4) to the Commission within the time specified
18 or to make specific answer to any question propounded by the
19 Commission within 30 days after the time it is lawfully
20 required to do so, or within such further time not to exceed 90
21 days as may be allowed by the Commission in its discretion,
22 shall pay a penalty of \$500 to the Commission for each day it
23 is in default.

24 Any person who willfully makes any false report to the
25 Commission or to any member, officer, or employee thereof, any
26 person who willfully in a report withholds or fails to provide

1 material information to which the Commission is entitled under
2 this paragraph (4) and which information is either required to
3 be filed by statute, rule, regulation, order, or decision of
4 the Commission or has been requested by the Commission, and any
5 person who willfully aids or abets such person shall be guilty
6 of a Class A misdemeanor.

7 (h-20) The General Assembly authorizes the Illinois
8 Finance Authority to issue bonds to the maximum extent
9 permitted to finance coal gasification facilities described in
10 this Section, which constitute both "industrial projects"
11 under Article 801 of the Illinois Finance Authority Act and
12 "clean coal and energy projects" under Sections 825-65 through
13 825-75 of the Illinois Finance Authority Act.

14 Administrative costs incurred by the Illinois Finance
15 Authority in performance of this subsection (h-20) shall be
16 subject to reimbursement by the clean coal SNG facility on
17 terms as the Illinois Finance Authority and the clean coal SNG
18 facility may agree. The utility and its customers shall have no
19 obligation to reimburse the clean coal SNG facility or the
20 Illinois Finance Authority for any such costs.

21 (h-25) The State of Illinois pledges that the State may not
22 enact any law or take any action to (1) break or repeal the
23 authority for SNG purchase contracts entered into between
24 public gas utilities and the clean coal SNG facility pursuant
25 to subsection (h) of this Section or (2) deny public gas
26 utilities their full cost recovery for contract costs, as

1 defined in subsection (h-10), that are incurred under such SNG
2 purchase contracts. These pledges are for the benefit of the
3 parties to such SNG purchase contracts and the issuers and
4 holders of bonds or other obligations issued or incurred to
5 finance or refinance the clean coal SNG facility. The
6 beneficiaries are authorized to include and refer to these
7 pledges in any finance agreement into which they may enter in
8 regard to such contracts.

9 (h-30) The State of Illinois retains and reserves all other
10 rights to enact new or amendatory legislation or take any other
11 action, including, but not limited to, such legislation or
12 other action that would (1) directly or indirectly raise the
13 costs that the clean coal SNG facility must incur; (2) directly
14 or indirectly place additional restrictions, regulations, or
15 requirements on the clean coal SNG facility; (3) prohibit
16 sequestration in general or prohibit a specific sequestration
17 method or project; or (4) increase minimum sequestration
18 requirements.

19 (i) If a gas utility or an affiliate of a gas utility has
20 an ownership interest in any entity that produces or sells
21 synthetic natural gas, Article VII of this Act shall apply.

22 (Source: P.A. 96-1364, eff. 7-28-10; 97-96, eff. 7-13-11;
23 97-239, eff. 8-2-11; revised 9-12-11.)

24 Section 15. The Private Sewage Disposal Licensing Act is
25 amended by changing Section 7 as follows:

1 (225 ILCS 225/7) (from Ch. 111 1/2, par. 116.307)

2 Sec. 7. (a) The Department shall promulgate and publish and
3 may from time to time amend a private sewage disposal code
4 which shall include minimum standards for the design,
5 construction, materials, operation and maintenance of private
6 sewage disposal systems, for the transportation and disposal of
7 wastes removed therefrom and for private sewage disposal system
8 servicing equipment. In the preparation of the private sewage
9 disposal code, the Department may consult with and request
10 technical assistance from other state agencies, and shall
11 consult with other technically qualified persons and with
12 owners and operators of such services. Such technically
13 qualified persons shall include representatives of the real
14 estate, development, and building industries.

15 (b) The Department is expressly prohibited from amending
16 the private sewage disposal code by rule if there are increases
17 in the land density requirements. Amendments that increase the
18 land density requirements must be approved by the Illinois
19 General Assembly.

20 (c) On and after January 1, 2013, a surface discharging
21 private sewage disposal system with a discharge that enters the
22 waters of the United States, as that term is used in the
23 Federal Water Pollution Control Act, shall not be constructed
24 or installed by any person unless he or she has a coverage
25 letter under a NPDES permit issued by the Illinois

1 Environmental Protection Agency or by the United States
2 Environmental Protection Agency or he or she constructs or
3 installs the surface discharging private sewage disposal
4 system in a jurisdiction in which the local public health
5 department has a general NPDES permit issued by the Illinois
6 Environmental Protection Agency or by the United States
7 Environmental Protection Agency and the surface discharging
8 private sewage disposal system is covered under the general
9 NPDES permit. The private sewage disposal code must be amended
10 before January 1, 2013 to comply with this subsection.

11 (d) Except as provided in subsection (c) of this Section,
12 before the adoption or amendment of the private sewage disposal
13 code, the Department shall hold a public hearing with respect
14 thereto. At least 20 days' notice for such public hearing shall
15 be given by the Department in such manner as the Department
16 considers adequate to bring such hearing to the attention of
17 persons interested in such code. Notice of such public hearing
18 shall be given by the Department to those who file a request
19 for a notice of any such hearings.

20 (Source: P.A. 96-801, eff. 1-1-10.)

21 Section 20. The Environmental Protection Act is amended by
22 changing Sections 12, 17.8, and 22.2 as follows:

23 (415 ILCS 5/12) (from Ch. 111 1/2, par. 1012)

24 Sec. 12. Actions prohibited. No person shall:

1 (a) Cause or threaten or allow the discharge of any
2 contaminants into the environment in any State so as to cause
3 or tend to cause water pollution in Illinois, either alone or
4 in combination with matter from other sources, or so as to
5 violate regulations or standards adopted by the Pollution
6 Control Board under this Act.

7 (b) Construct, install, or operate any equipment,
8 facility, vessel, or aircraft capable of causing or
9 contributing to water pollution, or designed to prevent water
10 pollution, of any type designated by Board regulations, without
11 a permit granted by the Agency, or in violation of any
12 conditions imposed by such permit.

13 (c) Increase the quantity or strength of any discharge of
14 contaminants into the waters, or construct or install any sewer
15 or sewage treatment facility or any new outlet for contaminants
16 into the waters of this State, without a permit granted by the
17 Agency.

18 (d) Deposit any contaminants upon the land in such place
19 and manner so as to create a water pollution hazard.

20 (e) Sell, offer, or use any article in any area in which
21 the Board has by regulation forbidden its sale, offer, or use
22 for reasons of water pollution control.

23 (f) Cause, threaten or allow the discharge of any
24 contaminant into the waters of the State, as defined herein,
25 including but not limited to, waters to any sewage works, or
26 into any well or from any point source within the State,

1 without an NPDES permit for point source discharges issued by
2 the Agency under Section 39(b) of this Act, or in violation of
3 any term or condition imposed by such permit, or in violation
4 of any NPDES permit filing requirement established under
5 Section 39(b), or in violation of any regulations adopted by
6 the Board or of any order adopted by the Board with respect to
7 the NPDES program.

8 No permit shall be required under this subsection and under
9 Section 39(b) of this Act for any discharge for which a permit
10 is not required under the Federal Water Pollution Control Act,
11 as now or hereafter amended, and regulations pursuant thereto.

12 For all purposes of this Act, a permit issued by the
13 Administrator of the United States Environmental Protection
14 Agency under Section 402 of the Federal Water Pollution Control
15 Act, as now or hereafter amended, shall be deemed to be a
16 permit issued by the Agency pursuant to Section 39(b) of this
17 Act. However, this shall not apply to the exclusion from the
18 requirement of an operating permit provided under Section
19 13(b) (i).

20 Compliance with the terms and conditions of any permit
21 issued under Section 39(b) of this Act shall be deemed
22 compliance with this subsection except that it shall not be
23 deemed compliance with any standard or effluent limitation
24 imposed for a toxic pollutant injurious to human health.

25 In any case where a permit has been timely applied for
26 pursuant to Section 39(b) of this Act but final administrative

1 disposition of such application has not been made, it shall not
2 be a violation of this subsection to discharge without such
3 permit unless the complainant proves that final administrative
4 disposition has not been made because of the failure of the
5 applicant to furnish information reasonably required or
6 requested in order to process the application.

7 (g) Cause, threaten or allow the underground injection of
8 contaminants without a UIC permit issued by the Agency under
9 Section 39(d) of this Act, or in violation of any term or
10 condition imposed by such permit, or in violation of any
11 regulations or standards adopted by the Board or of any order
12 adopted by the Board with respect to the UIC program.

13 No permit shall be required under this subsection and under
14 Section 39(d) of this Act for any underground injection of
15 contaminants for which a permit is not required under Part C of
16 the Safe Drinking Water Act (P.L. 93-523), as amended, unless a
17 permit is authorized or required under regulations adopted by
18 the Board pursuant to Section 13 of this Act.

19 (h) Introduce contaminants into a sewage works from any
20 nondomestic source except in compliance with the regulations
21 and standards adopted by the Board under this Act.

22 (i) On and after January 1, 2013, construct or install a
23 surface discharging private sewage disposal system that
24 discharges into the waters of the United States, as that term
25 is used in the Federal Water Pollution Control Act, unless he
26 or she has a coverage letter under a NPDES permit issued by the

1 Illinois Environmental Protection Agency or by the United
2 States Environmental Protection Agency or he or she is
3 constructing or installing the surface discharging private
4 sewage disposal system in a jurisdiction in which the local
5 public health department has a general NPDES permit issued by
6 the Illinois Environmental Protection Agency or by the United
7 States Environmental Protection Agency and the surface
8 discharging private sewage disposal system is covered under the
9 general NPDES permit.

10 (Source: P.A. 96-801, eff. 1-1-10.)

11 (415 ILCS 5/17.8)

12 Sec. 17.8. Environmental laboratory certification
13 assessment.

14 (a) The Agency shall collect an annual administrative
15 assessment from each laboratory requesting certification for
16 meeting the minimum standards established under the authority
17 of subsection (n) of Section 4. The Agency also shall collect
18 an annual certification assessment for each certification
19 requested, as listed below. Until the Agency and the
20 Environmental Laboratory Certification Committee establish
21 administrative and certification assessment schedules in
22 accordance with the procedures of subsections (c) and (d-5) of
23 this Section, the following assessment schedules shall remain
24 in effect:

25 (1) For certification to conduct public water supply

1 analyses:

2 (A) \$1,000 ~~\$350~~ per year for inorganic parameters;

3 and

4 (B) \$1,000 ~~\$350~~ per year for organic parameters.

5 (2) For certification to conduct water pollution
6 analyses:

7 (A) \$1,000 ~~\$700~~ per year for inorganic parameters;

8 and

9 (B) \$1,000 ~~\$700~~ per year for organic parameters.

10 (3) For certification to conduct analyses of solid or
11 liquid samples for hazardous or other waste parameters:

12 (A) \$1,000 ~~\$900~~ per year for inorganic parameters;

13 and

14 (B) \$1,000 ~~\$900~~ per year for organic parameters.

15 (4) An administrative assessment of \$2,400 ~~\$350~~ per
16 year from each laboratory requesting certification,
17 provided that the administrative assessment shall be
18 \$3,900 if the laboratory was not certified at any time
19 during the 6 months immediately preceding its application
20 for certification.

21 (b) Until the Agency and the Environmental Laboratory
22 Certification Committee establish administrative and
23 certification assessment schedules in accordance with the
24 procedures of subsections (c) and (d-5) of this Section, the
25 following payment schedules shall remain in effect. The
26 administrative and certification assessments ~~assessment~~ shall

1 be paid at the time the laboratory submits an application for
2 certification or renewal of certification ~~and on the~~
3 ~~anniversary date of the initial certification. The~~
4 ~~certification assessment shall be paid at the time the~~
5 ~~laboratory submits an application and on the anniversary date~~
6 ~~of the initial certification.~~ Assessments paid under this
7 Section may not be refunded.

8 (c) The Agency ~~may~~ ~~must~~ establish procedures relating to
9 the certification of laboratories, analyses of samples,
10 development of alternative assessment schedules, assessment
11 schedule dispute resolution, and collection of assessments. No
12 assessment for the certification of environmental laboratories
13 shall be due under this Section from any department, agency, or
14 unit of State government. No assessments shall be due from any
15 municipal government for certification to conduct public water
16 supply analyses. The Agency's cost for certification of
17 laboratories that are exempt from the assessment shall be
18 excluded from the calculation of the alternative assessment
19 schedules.

20 (d) All moneys collected by the Agency under this Section
21 shall be deposited into the Environmental Laboratory
22 Certification Fund, a special fund hereby created in the State
23 treasury. Subject to appropriation, the Agency shall use the
24 moneys in the Fund to pay expenses incurred in the
25 administration of laboratory certification duties. All
26 interest or other income earned from the investment of the

1 moneys in the Fund shall be deposited into the Fund.

2 (d-5) The Agency, with the concurrence with the
3 Environmental Laboratory Certification Committee, shall
4 determine the assessment schedules for participation in the
5 environmental laboratory certification program. The Agency,
6 with the concurrence of the Committee, shall base the
7 assessment schedules upon actual and anticipated costs for
8 certification under State and federal programs and the
9 associated costs of the Agency and Committee. ~~On or before~~
10 ~~August 1 of each year, the Agency shall submit its assessment~~
11 ~~schedules determination and supporting documentation for the~~
12 ~~forthcoming year to the Committee. Before the following~~
13 ~~September 30, the Committee shall hold at least one regular~~
14 ~~meeting to consider the Agency's assessment schedule~~
15 ~~determination.~~ If the Committee concurs with the Agency's
16 assessment schedule determination, it shall thereupon take
17 effect.

18 (e) The Director shall establish an Environmental
19 Laboratory Certification Committee consisting of (i) one
20 person representing accredited county or municipal public
21 water supply laboratories, (ii) one person representing the
22 Metropolitan Water Reclamation District of Greater Chicago,
23 (iii) one person representing accredited sanitary district or
24 waste water treatment plant laboratories, (iv) 3 persons
25 representing accredited environmental commercial laboratories
26 duly incorporated in the State of Illinois and employing 20 or

1 more people, (v) 2 persons representing accredited
2 environmental commercial laboratories duly incorporated in the
3 State of Illinois employing less than 20 people, and (vi) one
4 person representing the Illinois Association of Environmental
5 Laboratories, all appointed by the Director. If no accredited
6 laboratories are available to fill one of the categories under
7 item (iv) or (v) then any laboratory that has applied for
8 accreditation may be eligible to fill that position. Beginning
9 in 2002, the Director shall appoint 3 members of the Committee
10 for a one-year term, 3 members of the Committee for 2-year
11 terms, and 3 members of the Committee for 3-year terms.
12 Thereafter, all terms shall be for 3 years, provided that all
13 appointments made on or before December 31, 2012 shall end on
14 December 31, 2012. Beginning on January 1, 2013, the Director
15 shall appoint all members of the Committee for 6-year terms. In
16 the case of a vacancy, the Director may appoint a successor to
17 fill the remaining term of the vacancy. Members of the
18 Committee shall serve until a successor is appointed by the
19 Director. No member of the Committee shall serve more than 6
20 consecutive years ~~2 consecutive 3-year terms~~. The Committee
21 shall select from its members a Chairperson and any other
22 officers that it deems necessary. The Committee shall meet at
23 the call of the Chairperson or the Director ~~hold at least 2~~
24 ~~regular meetings each year~~. The Agency shall provide the
25 Committee with any supporting services that the Director and
26 the Chairperson may designate. Members of the Committee shall

1 be reimbursed for ordinary and necessary expenses incurred in
2 the performance of their duties. The Committee shall have the
3 following duties:

4 (1) To consider any alternative assessment schedules
5 submitted by the Agency pursuant to subsection (c) of this
6 Section;

7 (2) To review and evaluate the financial implications
8 of current and future State and federal requirements for
9 certification of environmental laboratories;

10 (3) To review and evaluate management and financial
11 audit reports relating to the certification program and to
12 make recommendations regarding the Agency's efforts to
13 implement alternative assessment schedules;

14 (4) To consider appropriate means for long-term
15 financial support of the laboratory certification program
16 and to make recommendations to the Agency regarding a
17 preferred approach;

18 (5) To provide technical review and evaluation of the
19 laboratory certification program;

20 (6) To hold ~~regular and special~~ meetings at times and
21 places ~~a time and place~~ designated by the Director or the
22 Chairperson of the Committee; and

23 (7) To conduct any other activities as may be deemed
24 appropriate by the Director.

25 (Source: P.A. 92-147, eff. 7-24-01.)

1 (415 ILCS 5/22.2) (from Ch. 111 1/2, par. 1022.2)

2 Sec. 22.2. Hazardous waste; fees; liability.

3 (a) There are hereby created within the State Treasury 2
4 special funds to be known respectively as the "Hazardous Waste
5 Fund" and the "Hazardous Waste Research Fund", constituted from
6 the fees collected pursuant to this Section. In addition to the
7 fees collected under this Section, the Hazardous Waste Fund
8 shall include other moneys made available from any source for
9 deposit into the Fund.

10 (b) (1) On and after January 1, 1989, the Agency shall
11 collect from the owner or operator of each of the following
12 sites a fee in the amount of:

13 (A) 9 cents per gallon or \$18.18 per cubic yard, if
14 the hazardous waste disposal site is located off the
15 site where such waste was produced. The maximum amount
16 payable under this subdivision (A) with respect to the
17 hazardous waste generated by a single generator and
18 deposited in monofills is \$30,000 per year. If, as a
19 result of the use of multiple monofills, waste fees in
20 excess of the maximum are assessed with respect to a
21 single waste generator, the generator may apply to the
22 Agency for a credit.

23 (B) 9 cents or \$18.18 per cubic yard, if the
24 hazardous waste disposal site is located on the site
25 where such waste was produced, provided however the
26 maximum amount of fees payable under this paragraph (B)

1 is \$30,000 per year for each such hazardous waste
2 disposal site.

3 (C) If the hazardous waste disposal site is an
4 underground injection well, \$6,000 per year if not more
5 than 10,000,000 gallons per year are injected, \$15,000
6 per year if more than 10,000,000 gallons but not more
7 than 50,000,000 gallons per year are injected, and
8 \$27,000 per year if more than 50,000,000 gallons per
9 year are injected.

10 (D) 3 cents per gallon or \$6.06 per cubic yard of
11 hazardous waste received for treatment at a hazardous
12 waste treatment site, if the hazardous waste treatment
13 site is located off the site where such waste was
14 produced and if such hazardous waste treatment site is
15 owned, controlled and operated by a person other than
16 the generator of such waste. After treatment at such
17 hazardous waste treatment site, the waste shall not be
18 subject to any other fee imposed by this subsection
19 (b). For purposes of this subsection (b), the term
20 "treatment" is defined as in Section 3.505 but shall
21 not include recycling, reclamation or reuse.

22 (2) The General Assembly shall annually appropriate to
23 the Fund such amounts as it deems necessary to fulfill the
24 purposes of this Act.

25 (3) The Agency shall have the authority to accept,
26 receive, and administer on behalf of the State any moneys

1 made available to the State from any source for the
2 purposes of the Hazardous Waste Fund set forth in
3 subsection (d) of this Section.

4 (4) Of the amount collected as fees provided for in
5 this Section, the Agency shall manage the use of such funds
6 to assure that sufficient funds are available for match
7 towards federal expenditures for response action at sites
8 which are listed on the National Priorities List; provided,
9 however, that this shall not apply to additional monies
10 appropriated to the Fund by the General Assembly, nor shall
11 it apply in the event that the Director finds that revenues
12 in the Hazardous Waste Fund must be used to address
13 conditions which create or may create an immediate danger
14 to the environment or public health or to the welfare of
15 the people of the State of Illinois.

16 (5) Notwithstanding the other provisions of this
17 subsection (b), sludge from a publicly-owned sewage works
18 generated in Illinois, coal mining wastes and refuse
19 generated in Illinois, bottom boiler ash, flyash and flue
20 gas desulphurization sludge from public utility electric
21 generating facilities located in Illinois, and bottom
22 boiler ash and flyash from all incinerators which process
23 solely municipal waste shall not be subject to the fee.

24 (6) For the purposes of this subsection (b), "monofill"
25 means a facility, or a unit at a facility, that accepts
26 only wastes bearing the same USEPA hazardous waste

1 identification number, or compatible wastes as determined
2 by the Agency.

3 (c) The Agency shall establish procedures, not later than
4 January 1, 1984, relating to the collection of the fees
5 authorized by this Section. Such procedures shall include, but
6 not be limited to: (1) necessary records identifying the
7 quantities of hazardous waste received or disposed; (2) the
8 form and submission of reports to accompany the payment of fees
9 to the Agency; and (3) the time and manner of payment of fees
10 to the Agency, which payments shall be not more often than
11 quarterly.

12 (d) Beginning July 1, 1996, the Agency shall deposit all
13 such receipts in the State Treasury to the credit of the
14 Hazardous Waste Fund, except as provided in subsection (e) of
15 this Section. All monies in the Hazardous Waste Fund shall be
16 used by the Agency for the following purposes:

17 (1) Taking whatever preventive or corrective action is
18 necessary or appropriate, in circumstances certified by
19 the Director, including but not limited to removal or
20 remedial action whenever there is a release or substantial
21 threat of a release of a hazardous substance or pesticide;
22 provided, the Agency shall expend no more than \$1,000,000
23 on any single incident without appropriation by the General
24 Assembly.

25 (2) To meet any requirements which must be met by the
26 State in order to obtain federal funds pursuant to the

1 Comprehensive Environmental Response, Compensation and
2 Liability Act of 1980, (P.L. 96-510).

3 (3) In an amount up to 30% of the amount collected as
4 fees provided for in this Section, for use by the Agency to
5 conduct groundwater protection activities, including
6 providing grants to appropriate units of local government
7 which are addressing protection of underground waters
8 pursuant to the provisions of this Act.

9 (4) To fund the development and implementation of the
10 model pesticide collection program under Section 19.1 of
11 the Illinois Pesticide Act.

12 (5) To the extent the Agency has received and deposited
13 monies in the Fund other than fees collected under
14 subsection (b) of this Section, to pay for the cost of
15 Agency employees for services provided in reviewing the
16 performance of response actions pursuant to Title XVII of
17 this Act.

18 (6) In an amount up to 15% of the fees collected
19 annually under subsection (b) of this Section, for use by
20 the Agency for administration of the provisions of this
21 Section.

22 (e) The Agency shall deposit 10% of all receipts collected
23 under subsection (b) of this Section, but not to exceed
24 \$200,000 per year, in the State Treasury to the credit of the
25 Hazardous Waste Research Fund established by this Act. Pursuant
26 to appropriation, all monies in such Fund shall be used by the

1 University of Illinois for the purposes set forth in this
2 subsection.

3 The University of Illinois may enter into contracts with
4 business, industrial, university, governmental or other
5 qualified individuals or organizations to assist in the
6 research and development intended to recycle, reduce the volume
7 of, separate, detoxify or reduce the hazardous properties of
8 hazardous wastes in Illinois. Monies in the Fund may also be
9 used by the University of Illinois for technical studies,
10 monitoring activities, and educational and research activities
11 which are related to the protection of underground waters.
12 Monies in the Hazardous Waste Research Fund may be used to
13 administer the Illinois Health and Hazardous Substances
14 Registry Act. Monies in the Hazardous Waste Research Fund shall
15 not be used for any sanitary landfill or the acquisition or
16 construction of any facility. This does not preclude the
17 purchase of equipment for the purpose of public demonstration
18 projects. The University of Illinois shall adopt guidelines for
19 cost sharing, selecting, and administering projects under this
20 subsection.

21 (f) Notwithstanding any other provision or rule of law, and
22 subject only to the defenses set forth in subsection (j) of
23 this Section, the following persons shall be liable for all
24 costs of removal or remedial action incurred by the State of
25 Illinois or any unit of local government as a result of a
26 release or substantial threat of a release of a hazardous

1 substance or pesticide:

2 (1) the owner and operator of a facility or vessel from
3 which there is a release or substantial threat of release
4 of a hazardous substance or pesticide;

5 (2) any person who at the time of disposal, transport,
6 storage or treatment of a hazardous substance or pesticide
7 owned or operated the facility or vessel used for such
8 disposal, transport, treatment or storage from which there
9 was a release or substantial threat of a release of any
10 such hazardous substance or pesticide;

11 (3) any person who by contract, agreement, or otherwise
12 has arranged with another party or entity for transport,
13 storage, disposal or treatment of hazardous substances or
14 pesticides owned, controlled or possessed by such person at
15 a facility owned or operated by another party or entity
16 from which facility there is a release or substantial
17 threat of a release of such hazardous substances or
18 pesticides; and

19 (4) any person who accepts or accepted any hazardous
20 substances or pesticides for transport to disposal,
21 storage or treatment facilities or sites from which there
22 is a release or a substantial threat of a release of a
23 hazardous substance or pesticide.

24 Any monies received by the State of Illinois pursuant to
25 this subsection (f) shall be deposited in the State Treasury to
26 the credit of the Hazardous Waste Fund.

1 In accordance with the other provisions of this Section,
2 costs of removal or remedial action incurred by a unit of local
3 government may be recovered in an action before the Board
4 brought by the unit of local government under subsection (i) of
5 this Section. Any monies so recovered shall be paid to the unit
6 of local government.

7 (g) (1) No indemnification, hold harmless, or similar
8 agreement or conveyance shall be effective to transfer from
9 the owner or operator of any vessel or facility or from any
10 person who may be liable for a release or substantial
11 threat of a release under this Section, to any other person
12 the liability imposed under this Section. Nothing in this
13 Section shall bar any agreement to insure, hold harmless or
14 indemnify a party to such agreements for any liability
15 under this Section.

16 (2) Nothing in this Section, including the provisions
17 of paragraph (g) (1) of this Section, shall bar a cause of
18 action that an owner or operator or any other person
19 subject to liability under this Section, or a guarantor,
20 has or would have, by reason of subrogation or otherwise
21 against any person.

22 (h) For purposes of this Section:

23 (1) The term "facility" means:

24 (A) any building, structure, installation,
25 equipment, pipe or pipeline including but not limited
26 to any pipe into a sewer or publicly owned treatment

1 works, well, pit, pond, lagoon, impoundment, ditch,
2 landfill, storage container, motor vehicle, rolling
3 stock, or aircraft; or

4 (B) any site or area where a hazardous substance
5 has been deposited, stored, disposed of, placed, or
6 otherwise come to be located.

7 (2) The term "owner or operator" means:

8 (A) any person owning or operating a vessel or
9 facility;

10 (B) in the case of an abandoned facility, any
11 person owning or operating the abandoned facility or
12 any person who owned, operated, or otherwise
13 controlled activities at the abandoned facility
14 immediately prior to such abandonment;

15 (C) in the case of a land trust as defined in
16 Section 2 of the Land Trustee as Creditor Act, the
17 person owning the beneficial interest in the land
18 trust;

19 (D) in the case of a fiduciary (other than a land
20 trustee), the estate, trust estate, or other interest
21 in property held in a fiduciary capacity, and not the
22 fiduciary. For the purposes of this Section,
23 "fiduciary" means a trustee, executor, administrator,
24 guardian, receiver, conservator or other person
25 holding a facility or vessel in a fiduciary capacity;

26 (E) in the case of a "financial institution",

1 meaning the Illinois Housing Development Authority and
2 that term as defined in Section 2 of the Illinois
3 Banking Act, that has acquired ownership, operation,
4 management, or control of a vessel or facility through
5 foreclosure or under the terms of a security interest
6 held by the financial institution or under the terms of
7 an extension of credit made by the financial
8 institution, the financial institution only if the
9 financial institution takes possession of the vessel
10 or facility and the financial institution exercises
11 actual, direct, and continual or recurrent managerial
12 control in the operation of the vessel or facility that
13 causes a release or substantial threat of a release of
14 a hazardous substance or pesticide resulting in
15 removal or remedial action;

16 (F) In the case of an owner of residential
17 property, the owner if the owner is a person other than
18 an individual, or if the owner is an individual who
19 owns more than 10 dwelling units in Illinois, or if the
20 owner, or an agent, representative, contractor, or
21 employee of the owner, has caused, contributed to, or
22 allowed the release or threatened release of a
23 hazardous substance or pesticide. The term
24 "residential property" means single family residences
25 of one to 4 dwelling units, including accessory land,
26 buildings, or improvements incidental to those

1 dwellings that are exclusively used for the
2 residential use. For purposes of this subparagraph
3 (F), the term "individual" means a natural person, and
4 shall not include corporations, partnerships, trusts,
5 or other non-natural persons.

6 (G) In the case of any facility, title or control
7 of which was conveyed due to bankruptcy, foreclosure,
8 tax delinquency, abandonment, or similar means to a
9 unit of State or local government, any person who
10 owned, operated, or otherwise controlled activities at
11 the facility immediately beforehand.

12 (H) The term "owner or operator" does not include a
13 unit of State or local government which acquired
14 ownership or control through bankruptcy, tax
15 delinquency, abandonment, or other circumstances in
16 which the government acquires title by virtue of its
17 function as sovereign. The exclusion provided under
18 this paragraph shall not apply to any State or local
19 government which has caused or contributed to the
20 release or threatened release of a hazardous substance
21 from the facility, and such a State or local government
22 shall be subject to the provisions of this Act in the
23 same manner and to the same extent, both procedurally
24 and substantively, as any nongovernmental entity,
25 including liability under Section 22.2(f).

26 (i) The costs and damages provided for in this Section may

1 be imposed by the Board in an action brought before the Board
2 in accordance with Title VIII of this Act, except that Section
3 33(c) of this Act shall not apply to any such action.

4 (j) (1) There shall be no liability under this Section for a
5 person otherwise liable who can establish by a preponderance of
6 the evidence that the release or substantial threat of release
7 of a hazardous substance and the damages resulting therefrom
8 were caused solely by:

9 (A) an act of God;

10 (B) an act of war;

11 (C) an act or omission of a third party other than an
12 employee or agent of the defendant, or other than one whose
13 act or omission occurs in connection with a contractual
14 relationship, existing directly or indirectly, with the
15 defendant (except where the sole contractual arrangement
16 arises from a published tariff and acceptance for carriage
17 by a common carrier by rail), if the defendant establishes
18 by a preponderance of the evidence that (i) he exercised
19 due care with respect to the hazardous substance concerned,
20 taking into consideration the characteristics of such
21 hazardous substance, in light of all relevant facts and
22 circumstances, and (ii) he took precautions against
23 foreseeable acts or omissions of any such third party and
24 the consequences that could foreseeably result from such
25 acts or omissions; or

26 (D) any combination of the foregoing paragraphs.

1 (2) There shall be no liability under this Section for any
2 release permitted by State or federal law.

3 (3) There shall be no liability under this Section for
4 damages as a result of actions taken or omitted in the course
5 of rendering care, assistance, or advice in accordance with
6 this Section or the National Contingency Plan pursuant to the
7 Comprehensive Environmental Response, Compensation and
8 Liability Act of 1980 (P.L. 96-510) or at the direction of an
9 on-scene coordinator appointed under such plan, with respect to
10 an incident creating a danger to public health or welfare or
11 the environment as a result of any release of a hazardous
12 substance or a substantial threat thereof. This subsection
13 shall not preclude liability for damages as the result of gross
14 negligence or intentional misconduct on the part of such
15 person. For the purposes of the preceding sentence, reckless,
16 willful, or wanton misconduct shall constitute gross
17 negligence.

18 (4) There shall be no liability under this Section for any
19 person (including, but not limited to, an owner of residential
20 property who applies a pesticide to the residential property or
21 who has another person apply a pesticide to the residential
22 property) for response costs or damages as the result of the
23 storage, handling and use, or recommendation for storage,
24 handling and use, of a pesticide consistent with:

25 (A) its directions for storage, handling and use as
26 stated in its label or labeling;

1 (B) its warnings and cautions as stated in its label or
2 labeling; and

3 (C) the uses for which it is registered under the
4 Federal Insecticide, Fungicide and Rodenticide Act and the
5 Illinois Pesticide Act.

6 (4.5) There shall be no liability under subdivision (f) (1)
7 of this Section for response costs or damages as the result of
8 a release of a pesticide from an agrichemical facility site if
9 the Agency has received notice from the Department of
10 Agriculture pursuant to Section 19.3 of the Illinois Pesticide
11 Act, the owner or operator of the agrichemical facility is
12 proceeding with a corrective action plan under the Agrichemical
13 Facility Response Action Program implemented under that
14 Section, and the Agency has provided a written endorsement of a
15 corrective action plan.

16 (4.6) There shall be no liability under subdivision (f) (1)
17 of this Section for response costs or damages as the result of
18 a substantial threat of a release of a pesticide from an
19 agrichemical facility site if the Agency has received notice
20 from the Department of Agriculture pursuant to Section 19.3 of
21 the Illinois Pesticide Act and the owner or operator of the
22 agrichemical facility is proceeding with a corrective action
23 plan under the Agrichemical Facility Response Action Program
24 implemented under that Section.

25 (5) Nothing in this subsection (j) shall affect or modify
26 in any way the obligations or liability of any person under any

1 other provision of this Act or State or federal law, including
2 common law, for damages, injury, or loss resulting from a
3 release or substantial threat of a release of any hazardous
4 substance or for removal or remedial action or the costs of
5 removal or remedial action of such hazardous substance.

6 (6) (A) The term "contractual relationship", for the
7 purpose of this subsection includes, but is not limited to,
8 land contracts, deeds or other instruments transferring title
9 or possession, unless the real property on which the facility
10 concerned is located was acquired by the defendant after the
11 disposal or placement of the hazardous substance on, in, or at
12 the facility, and one or more of the circumstances described in
13 clause (i), (ii), or (iii) of this paragraph is also
14 established by the defendant by a preponderance of the
15 evidence:

16 (i) At the time the defendant acquired the facility the
17 defendant did not know and had no reason to know that any
18 hazardous substance which is the subject of the release or
19 threatened release was disposed of on, in or at the
20 facility.

21 (ii) The defendant is a government entity which
22 acquired the facility by escheat, or through any other
23 involuntary transfer or acquisition, or through the
24 exercise of eminent domain authority by purchase or
25 condemnation.

26 (iii) The defendant acquired the facility by

1 inheritance or bequest.

2 In addition to establishing the foregoing, the defendant
3 must establish that he has satisfied the requirements of
4 subparagraph (C) of paragraph (1) of this subsection (j).

5 (B) To establish the defendant had no reason to know, as
6 provided in clause (i) of subparagraph (A) of this paragraph,
7 the defendant must have undertaken, at the time of acquisition,
8 all appropriate inquiry into the previous ownership and uses of
9 the property consistent with good commercial or customary
10 practice in an effort to minimize liability. For purposes of
11 the preceding sentence, the court shall take into account any
12 specialized knowledge or experience on the part of the
13 defendant, the relationship of the purchase price to the value
14 of the property if uncontaminated, commonly known or reasonably
15 ascertainable information about the property, the obviousness
16 of the presence or likely presence of contamination at the
17 property, and the ability to detect such contamination by
18 appropriate inspection.

19 (C) Nothing in this paragraph (6) or in subparagraph (C) of
20 paragraph (1) of this subsection shall diminish the liability
21 of any previous owner or operator of such facility who would
22 otherwise be liable under this Act. Notwithstanding this
23 paragraph (6), if the defendant obtained actual knowledge of
24 the release or threatened release of a hazardous substance at
25 such facility when the defendant owned the real property and
26 then subsequently transferred ownership of the property to

1 another person without disclosing such knowledge, such
2 defendant shall be treated as liable under subsection (f) of
3 this Section and no defense under subparagraph (C) of paragraph
4 (1) of this subsection shall be available to such defendant.

5 (D) Nothing in this paragraph (6) shall affect the
6 liability under this Act of a defendant who, by any act or
7 omission, caused or contributed to the release or threatened
8 release of a hazardous substance which is the subject of the
9 action relating to the facility.

10 (E)(i) Except as provided in clause (ii) of this
11 subparagraph (E), a defendant who has acquired real property
12 shall have established a rebuttable presumption against all
13 State claims and a conclusive presumption against all private
14 party claims that the defendant has made all appropriate
15 inquiry within the meaning of subdivision (6)(B) of this
16 subsection (j) if the defendant proves that immediately prior
17 to or at the time of the acquisition:

18 (I) the defendant obtained a Phase I Environmental
19 Audit of the real property that meets or exceeds the
20 requirements of this subparagraph (E), and the Phase I
21 Environmental Audit did not disclose the presence or likely
22 presence of a release or a substantial threat of a release
23 of a hazardous substance or pesticide at, on, to, or from
24 the real property; or

25 (II) the defendant obtained a Phase II Environmental
26 Audit of the real property that meets or exceeds the

1 requirements of this subparagraph (E), and the Phase II
2 Environmental Audit did not disclose the presence or likely
3 presence of a release or a substantial threat of a release
4 of a hazardous substance or pesticide at, on, to, or from
5 the real property.

6 (ii) No presumption shall be created under clause (i) of
7 this subparagraph (E), and a defendant shall be precluded from
8 demonstrating that the defendant has made all appropriate
9 inquiry within the meaning of subdivision (6)(B) of this
10 subsection (j), if:

11 (I) the defendant fails to obtain all Environmental
12 Audits required under this subparagraph (E) or any such
13 Environmental Audit fails to meet or exceed the
14 requirements of this subparagraph (E);

15 (II) a Phase I Environmental Audit discloses the
16 presence or likely presence of a release or a substantial
17 threat of a release of a hazardous substance or pesticide
18 at, on, to, or from real property, and the defendant fails
19 to obtain a Phase II Environmental Audit;

20 (III) a Phase II Environmental Audit discloses the
21 presence or likely presence of a release or a substantial
22 threat of a release of a hazardous substance or pesticide
23 at, on, to, or from the real property;

24 (IV) the defendant fails to maintain a written
25 compilation and explanatory summary report of the
26 information reviewed in the course of each Environmental

1 Audit under this subparagraph (E); or

2 (V) there is any evidence of fraud, material
3 concealment, or material misrepresentation by the
4 defendant of environmental conditions or of related
5 information discovered during the course of an
6 Environmental Audit.

7 (iii) For purposes of this subparagraph (E), the term
8 "environmental professional" means an individual (other than a
9 practicing attorney) who, through academic training,
10 occupational experience, and reputation (such as engineers,
11 industrial hygienists, or geologists) can objectively conduct
12 one or more aspects of an Environmental Audit and who either:

13 (I) maintains at the time of the Environmental Audit
14 and for at least one year thereafter at least \$500,000 of
15 environmental consultants' professional liability
16 insurance coverage issued by an insurance company licensed
17 to do business in Illinois; or

18 (II) is an Illinois licensed professional engineer or
19 an Illinois licensed industrial hygienist.

20 An environmental professional may employ persons who are
21 not environmental professionals to assist in the preparation of
22 an Environmental Audit if such persons are under the direct
23 supervision and control of the environmental professional.

24 (iv) For purposes of this subparagraph (E), the term "real
25 property" means any interest in any parcel of land, and
26 includes, but is not limited to, buildings, fixtures, and

1 improvements.

2 (v) For purposes of this subparagraph (E), the term "Phase
3 I Environmental Audit" means an investigation of real property,
4 conducted by environmental professionals, to discover the
5 presence or likely presence of a release or a substantial
6 threat of a release of a hazardous substance or pesticide at,
7 on, to, or from real property, and whether a release or a
8 substantial threat of a release of a hazardous substance or
9 pesticide has occurred or may occur at, on, to, or from the
10 real property. Until such time as the United States
11 Environmental Protection Agency establishes standards for
12 making appropriate inquiry into the previous ownership and uses
13 of the facility pursuant to 42 U.S.C. Sec. 9601(35)(B)(ii), the
14 investigation shall comply with the procedures of the American
15 Society for Testing and Materials, including the document known
16 as Standard E1527-97, entitled "Standard Procedures for
17 Environmental Site Assessment: Phase 1 Environmental Site
18 Assessment Process". Upon their adoption, the standards
19 promulgated by USEPA pursuant to 42 U.S.C. Sec. 9601(35)(B)(ii)
20 shall govern the performance of Phase I Environmental Audits.
21 In addition to the above requirements, the Phase I
22 Environmental Audit shall include a review of recorded land
23 title records for the purpose of determining whether the real
24 property is subject to an environmental land use restriction
25 such as a No Further Remediation Letter, Environmental Land Use
26 Control, or Highway Authority Agreement.

1 (vi) For purposes of subparagraph (E), the term "Phase II
2 Environmental Audit" means an investigation of real property,
3 conducted by environmental professionals, subsequent to a
4 Phase I Environmental Audit. If the Phase I Environmental Audit
5 discloses the presence or likely presence of a hazardous
6 substance or a pesticide or a release or a substantial threat
7 of a release of a hazardous substance or pesticide:

8 (I) In or to soil, the defendant, as part of the Phase
9 II Environmental Audit, shall perform a series of soil
10 borings sufficient to determine whether there is a presence
11 or likely presence of a hazardous substance or pesticide
12 and whether there is or has been a release or a substantial
13 threat of a release of a hazardous substance or pesticide
14 at, on, to, or from the real property.

15 (II) In or to groundwater, the defendant, as part of
16 the Phase II Environmental Audit, shall: review
17 information regarding local geology, water well locations,
18 and locations of waters of the State as may be obtained
19 from State, federal, and local government records,
20 including but not limited to the United States Geological
21 Survey, the State Geological Survey of the University of
22 Illinois, and the State Water Survey of the University of
23 Illinois; and perform groundwater monitoring sufficient to
24 determine whether there is a presence or likely presence of
25 a hazardous substance or pesticide, and whether there is or
26 has been a release or a substantial threat of a release of

1 a hazardous substance or pesticide at, on, to, or from the
2 real property.

3 (III) On or to media other than soil or groundwater,
4 the defendant, as part of the Phase II Environmental Audit,
5 shall perform an investigation sufficient to determine
6 whether there is a presence or likely presence of a
7 hazardous substance or pesticide, and whether there is or
8 has been a release or a substantial threat of a release of
9 a hazardous substance or pesticide at, on, to, or from the
10 real property.

11 (vii) The findings of each Environmental Audit prepared
12 under this subparagraph (E) shall be set forth in a written
13 audit report. Each audit report shall contain an affirmation by
14 the defendant and by each environmental professional who
15 prepared the Environmental Audit that the facts stated in the
16 report are true and are made under a penalty of perjury as
17 defined in Section 32-2 of the Criminal Code of 1961. It is
18 perjury for any person to sign an audit report that contains a
19 false material statement that the person does not believe to be
20 true.

21 (viii) The Agency is not required to review, approve, or
22 certify the results of any Environmental Audit. The performance
23 of an Environmental Audit shall in no way entitle a defendant
24 to a presumption of Agency approval or certification of the
25 results of the Environmental Audit.

26 The presence or absence of a disclosure document prepared

1 under the Responsible Property Transfer Act of 1988 shall not
2 be a defense under this Act and shall not satisfy the
3 requirements of subdivision (6)(A) of this subsection (j).

4 (7) No person shall be liable under this Section for
5 response costs or damages as the result of a pesticide release
6 if the Agency has found that a pesticide release occurred based
7 on a Health Advisory issued by the U.S. Environmental
8 Protection Agency or an action level developed by the Agency,
9 unless the Agency notified the manufacturer of the pesticide
10 and provided an opportunity of not less than 30 days for the
11 manufacturer to comment on the technical and scientific
12 justification supporting the Health Advisory or action level.

13 (8) No person shall be liable under this Section for
14 response costs or damages as the result of a pesticide release
15 that occurs in the course of a farm pesticide collection
16 program operated under Section 19.1 of the Illinois Pesticide
17 Act, unless the release results from gross negligence or
18 intentional misconduct.

19 (k) If any person who is liable for a release or
20 substantial threat of release of a hazardous substance or
21 pesticide fails without sufficient cause to provide removal or
22 remedial action upon or in accordance with a notice and request
23 by the Agency or upon or in accordance with any order of the
24 Board or any court, such person may be liable to the State for
25 punitive damages in an amount at least equal to, and not more
26 than 3 times, the amount of any costs incurred by the State of

1 Illinois as a result of such failure to take such removal or
2 remedial action. The punitive damages imposed by the Board
3 shall be in addition to any costs recovered from such person
4 pursuant to this Section and in addition to any other penalty
5 or relief provided by this Act or any other law.

6 Any monies received by the State pursuant to this
7 subsection (k) shall be deposited in the Hazardous Waste Fund.

8 (l) Beginning January 1, 1988, and prior to January 1,
9 2013, the Agency shall annually collect a \$250 fee for each
10 Special Waste Hauling Permit Application and, in addition,
11 shall collect a fee of \$20 for each waste hauling vehicle
12 identified in the annual permit application and for each
13 vehicle which is added to the permit during the annual period.
14 Beginning January 1, 2013, the Agency shall issue 3-year
15 Special Waste Hauling Permits instead of annual Special Waste
16 Hauling Permits and shall collect a \$750 fee for each Special
17 Waste Hauling Permit Application. In addition, beginning
18 January 1, 2013, the Agency shall collect a fee of \$60 for each
19 waste hauling vehicle identified in the permit application and
20 for each vehicle that is added to the permit during the 3-year
21 period. The Agency shall deposit 85% of such fees collected
22 under this subsection in the State Treasury to the credit of
23 the Hazardous Waste Research Fund; and shall deposit the
24 remaining 15% of such fees collected in the State Treasury to
25 the credit of the Environmental Protection Permit and
26 Inspection Fund. The majority of such receipts which are

1 deposited in the Hazardous Waste Research Fund pursuant to this
2 subsection shall be used by the University of Illinois for
3 activities which relate to the protection of underground
4 waters.

5 (l-5) (Blank).

6 (m) (Blank).

7 (n) (Blank).

8 (Source: P.A. 97-220, eff. 7-28-11.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.

1

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2

Statutes amended in order of appearance

3

5 ILCS 100/1-70

from Ch. 127, par. 1001-70

4

220 ILCS 5/9-220

from Ch. 111 2/3, par. 9-220

5

225 ILCS 225/7

from Ch. 111 1/2, par. 116.307

6

415 ILCS 5/12

from Ch. 111 1/2, par. 1012

7

415 ILCS 5/17.8

8

415 ILCS 5/22.2

from Ch. 111 1/2, par. 1022.2