

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 Sections 1-5 and 1-70 as follows:

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

7 Sec. 1-5. Applicability.

8 (a) This Act applies to every agency as defined in this
9 Act. Beginning January 1, 1978, in case of conflict between the
10 provisions of this Act and the Act creating or conferring power
11 on an agency, this Act shall control. If, however, an agency
12 (or its predecessor in the case of an agency that has been
13 consolidated or reorganized) has existing procedures on July 1,
14 1977, specifically for contested cases or licensing, those
15 existing provisions control, except that this exception
16 respecting contested cases and licensing does not apply if the
17 Act creating or conferring power on the agency adopts by
18 express reference the provisions of this Act. Where the Act
19 creating or conferring power on an agency establishes
20 administrative procedures not covered by this Act, those
21 procedures shall remain in effect.

22 (b) The provisions of this Act do not apply to (i)
23 preliminary hearings, investigations, or practices where no

1 final determinations affecting State funding are made by the
2 State Board of Education, (ii) legal opinions issued under
3 Section 2-3.7 of the School Code, (iii) as to State colleges
4 and universities, their disciplinary and grievance
5 proceedings, academic irregularity and capricious grading
6 proceedings, and admission standards and procedures, and (iv)
7 the class specifications for positions and individual position
8 descriptions prepared and maintained under the Personnel Code.
9 Those class specifications shall, however, be made reasonably
10 available to the public for inspection and copying. The
11 provisions of this Act do not apply to hearings under Section
12 20 of the Uniform Disposition of Unclaimed Property Act.

13 (c) Section 5-35 of this Act relating to procedures for
14 rulemaking does not apply to the following:

15 (1) Rules adopted by the Pollution Control Board that,
16 in accordance with Section 7.2 of the Environmental
17 Protection Act, are identical in substance to federal
18 regulations or amendments to those regulations
19 implementing the following: Sections 3001, 3002, 3003,
20 3004, 3005, and 9003 of the Solid Waste Disposal Act;
21 Section 105 of the Comprehensive Environmental Response,
22 Compensation, and Liability Act of 1980; Sections 307(b),
23 307(c), 307(d), 402(b)(8), and 402(b)(9) of the Federal
24 Water Pollution Control Act; and Sections 1412(b),
25 1414(c), 1417(a), 1421, and 1445(a) of the Safe Drinking
26 Water Act.

1 (2) Rules adopted by the Pollution Control Board that
2 establish or amend standards for the emission of
3 hydrocarbons and carbon monoxide from gasoline powered
4 motor vehicles subject to inspection under the Vehicle
5 Emissions Inspection Law of 2005 or its predecessor laws.

6 (3) Procedural rules adopted by the Pollution Control
7 Board governing requests for exceptions under Section 14.2
8 of the Environmental Protection Act.

9 (4) The Pollution Control Board's grant, pursuant to an
10 adjudicatory determination, of an adjusted standard for
11 persons who can justify an adjustment consistent with
12 subsection (a) of Section 27 of the Environmental
13 Protection Act.

14 (5) Rules adopted by the Pollution Control Board that
15 are identical in substance to the regulations adopted by
16 the Office of the State Fire Marshal under clause (ii) of
17 paragraph (b) of subsection (3) of Section 2 of the
18 Gasoline Storage Act.

19 ~~(6) Rules adopted by the Illinois Pollution Control~~
20 ~~Board under Section 9.14 of the Environmental Protection~~
21 ~~Act.~~

22 (d) Pay rates established under Section 8a of the Personnel
23 Code shall be amended or repealed pursuant to the process set
24 forth in Section 5-50 within 30 days after it becomes necessary
25 to do so due to a conflict between the rates and the terms of a
26 collective bargaining agreement covering the compensation of

1 an employee subject to that Code.

2 (e) Section 10-45 of this Act shall not apply to any
3 hearing, proceeding, or investigation conducted under Section
4 13-515 of the Public Utilities Act.

5 (f) Article 10 of this Act does not apply to any hearing,
6 proceeding, or investigation conducted by the State Council for
7 the State of Illinois created under Section 3-3-11.05 of the
8 Unified Code of Corrections or by the Interstate Commission for
9 Adult Offender Supervision created under the Interstate
10 Compact for Adult Offender Supervision or by the Interstate
11 Commission for Juveniles created under the Interstate Compact
12 for Juveniles.

13 (g) This Act is subject to the provisions of Article XXI of
14 the Public Utilities Act. To the extent that any provision of
15 this Act conflicts with the provisions of that Article XXI, the
16 provisions of that Article XXI control.

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

18 (5 ILCS 100/1-70) (from Ch. 127, par. 1001-70)

19 Sec. 1-70. "Rule" means each agency statement of general
20 applicability that implements, applies, interprets, or
21 prescribes law or policy, but does not include (i) statements
22 concerning only the internal management of an agency and not
23 affecting private rights or procedures available to persons or
24 entities outside the agency, (ii) informal advisory rulings
25 issued under Section 5-150, (iii) intra-agency memoranda, (iv)

1 the prescription of standardized forms, (v) documents prepared
2 or filed or actions taken by the Legislative Reference Bureau
3 under Section 5.04 of the Legislative Reference Bureau Act, or
4 (vi) guidance documents prepared by the Illinois Environmental
5 Protection Agency under Section 39.5 or subsection (s) of
6 Section 39 of the Environmental Protection Act.

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

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

10 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

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

12 (a) Notwithstanding the provisions of Section 9-201, the
13 Commission may authorize the increase or decrease of rates and
14 charges based upon changes in the cost of fuel used in the
15 generation or production of electric power, changes in the cost
16 of purchased power, or changes in the cost of purchased gas
17 through the application of fuel adjustment clauses or purchased
18 gas adjustment clauses. The Commission may also authorize the
19 increase or decrease of rates and charges based upon
20 expenditures or revenues resulting from the purchase or sale of
21 emission allowances created under the federal Clean Air Act
22 Amendments of 1990, through such fuel adjustment clauses, as a
23 cost of fuel. For the purposes of this paragraph, cost of fuel
24 used in the generation or production of electric power shall

1 include the amount of any fees paid by the utility for the
2 implementation and operation of a process for the
3 desulfurization of the flue gas when burning high sulfur coal
4 at any location within the State of Illinois irrespective of
5 the attainment status designation of such location; but shall
6 not include transportation costs of coal (i) except to the
7 extent that for contracts entered into on and after the
8 effective date of this amendatory Act of 1997, the cost of the
9 coal, including transportation costs, constitutes the lowest
10 cost for adequate and reliable fuel supply reasonably available
11 to the public utility in comparison to the cost, including
12 transportation costs, of other adequate and reliable sources of
13 fuel supply reasonably available to the public utility, or (ii)
14 except as otherwise provided in the next 3 sentences of this
15 paragraph. Such costs of fuel shall, when requested by a
16 utility or at the conclusion of the utility's next general
17 electric rate proceeding, whichever shall first occur, include
18 transportation costs of coal purchased under existing coal
19 purchase contracts. For purposes of this paragraph "existing
20 coal purchase contracts" means contracts for the purchase of
21 coal in effect on the effective date of this amendatory Act of
22 1991, as such contracts may thereafter be amended, but only to
23 the extent that any such amendment does not increase the
24 aggregate quantity of coal to be purchased under such contract.
25 Nothing herein shall authorize an electric utility to recover
26 through its fuel adjustment clause any amounts of

1 transportation costs of coal that were included in the revenue
2 requirement used to set base rates in its most recent general
3 rate proceeding. Cost shall be based upon uniformly applied
4 accounting principles. Annually, the Commission shall initiate
5 public hearings to determine whether the clauses reflect actual
6 costs of fuel, gas, power, or coal transportation purchased to
7 determine whether such purchases were prudent, and to reconcile
8 any amounts collected with the actual costs of fuel, power,
9 gas, or coal transportation prudently purchased. In each such
10 proceeding, the burden of proof shall be upon the utility to
11 establish the prudence of its cost of fuel, power, gas, or coal
12 transportation purchases and costs. The Commission shall issue
13 its final order in each such annual proceeding for an electric
14 utility by December 31 of the year immediately following the
15 year to which the proceeding pertains, provided, that the
16 Commission shall issue its final order with respect to such
17 annual proceeding for the years 1996 and earlier by December
18 31, 1998.

19 (b) A public utility providing electric service, other than
20 a public utility described in subsections (e) or (f) of this
21 Section, may at any time during the mandatory transition period
22 file with the Commission proposed tariff sheets that eliminate
23 the public utility's fuel adjustment clause and adjust the
24 public utility's base rate tariffs by the amount necessary for
25 the base fuel component of the base rates to recover the public
26 utility's average fuel and power supply costs per kilowatt-hour

1 for the 2 most recent years for which the Commission has issued
2 final orders in annual proceedings pursuant to subsection (a),
3 where the average fuel and power supply costs per kilowatt-hour
4 shall be calculated as the sum of the public utility's prudent
5 and allowable fuel and power supply costs as found by the
6 Commission in the 2 proceedings divided by the public utility's
7 actual jurisdictional kilowatt-hour sales for those 2 years.
8 Notwithstanding any contrary or inconsistent provisions in
9 Section 9-201 of this Act, in subsection (a) of this Section or
10 in any rules or regulations promulgated by the Commission
11 pursuant to subsection (g) of this Section, the Commission
12 shall review and shall by order approve, or approve as
13 modified, the proposed tariff sheets within 60 days after the
14 date of the public utility's filing. The Commission may modify
15 the public utility's proposed tariff sheets only to the extent
16 the Commission finds necessary to achieve conformance to the
17 requirements of this subsection (b). During the 5 years
18 following the date of the Commission's order, but in any event
19 no earlier than January 1, 2007, a public utility whose fuel
20 adjustment clause has been eliminated pursuant to this
21 subsection shall not file proposed tariff sheets seeking, or
22 otherwise petition the Commission for, reinstatement of a fuel
23 adjustment clause.

24 (c) Notwithstanding any contrary or inconsistent
25 provisions in Section 9-201 of this Act, in subsection (a) of
26 this Section or in any rules or regulations promulgated by the

1 Commission pursuant to subsection (g) of this Section, a public
2 utility providing electric service, other than a public utility
3 described in subsection (e) or (f) of this Section, may at any
4 time during the mandatory transition period file with the
5 Commission proposed tariff sheets that establish the rate per
6 kilowatt-hour to be applied pursuant to the public utility's
7 fuel adjustment clause at the average value for such rate
8 during the preceding 24 months, provided that such average rate
9 results in a credit to customers' bills, without making any
10 revisions to the public utility's base rate tariffs. The
11 proposed tariff sheets shall establish the fuel adjustment rate
12 for a specific time period of at least 3 years but not more
13 than 5 years, provided that the terms and conditions for any
14 reinstatement earlier than 5 years shall be set forth in the
15 proposed tariff sheets and subject to modification or approval
16 by the Commission. The Commission shall review and shall by
17 order approve the proposed tariff sheets if it finds that the
18 requirements of this subsection are met. The Commission shall
19 not conduct the annual hearings specified in the last 3
20 sentences of subsection (a) of this Section for the utility for
21 the period that the factor established pursuant to this
22 subsection is in effect.

23 (d) A public utility providing electric service, or a
24 public utility providing gas service may file with the
25 Commission proposed tariff sheets that eliminate the public
26 utility's fuel or purchased gas adjustment clause and adjust

1 the public utility's base rate tariffs to provide for recovery
2 of power supply costs or gas supply costs that would have been
3 recovered through such clause; provided, that the provisions of
4 this subsection (d) shall not be available to a public utility
5 described in subsections (e) or (f) of this Section to
6 eliminate its fuel adjustment clause. Notwithstanding any
7 contrary or inconsistent provisions in Section 9-201 of this
8 Act, in subsection (a) of this Section, or in any rules or
9 regulations promulgated by the Commission pursuant to
10 subsection (g) of this Section, the Commission shall review and
11 shall by order approve, or approve as modified in the
12 Commission's order, the proposed tariff sheets within 240 days
13 after the date of the public utility's filing. The Commission's
14 order shall approve rates and charges that the Commission,
15 based on information in the public utility's filing or on the
16 record if a hearing is held by the Commission, finds will
17 recover the reasonable, prudent and necessary jurisdictional
18 power supply costs or gas supply costs incurred or to be
19 incurred by the public utility during a 12 month period found
20 by the Commission to be appropriate for these purposes,
21 provided, that such period shall be either (i) a 12 month
22 historical period occurring during the 15 months ending on the
23 date of the public utility's filing, or (ii) a 12 month future
24 period ending no later than 15 months following the date of the
25 public utility's filing. The public utility shall include with
26 its tariff filing information showing both (1) its actual

1 jurisdictional power supply costs or gas supply costs for a 12
2 month historical period conforming to (i) above and (2) its
3 projected jurisdictional power supply costs or gas supply costs
4 for a future 12 month period conforming to (ii) above. If the
5 Commission's order requires modifications in the tariff sheets
6 filed by the public utility, the public utility shall have 7
7 days following the date of the order to notify the Commission
8 whether the public utility will implement the modified tariffs
9 or elect to continue its fuel or purchased gas adjustment
10 clause in force as though no order had been entered. The
11 Commission's order shall provide for any reconciliation of
12 power supply costs or gas supply costs, as the case may be, and
13 associated revenues through the date that the public utility's
14 fuel or purchased gas adjustment clause is eliminated. During
15 the 5 years following the date of the Commission's order, a
16 public utility whose fuel or purchased gas adjustment clause
17 has been eliminated pursuant to this subsection shall not file
18 proposed tariff sheets seeking, or otherwise petition the
19 Commission for, reinstatement or adoption of a fuel or
20 purchased gas adjustment clause. Nothing in this subsection (d)
21 shall be construed as limiting the Commission's authority to
22 eliminate a public utility's fuel adjustment clause or
23 purchased gas adjustment clause in accordance with any other
24 applicable provisions of this Act.

25 (e) Notwithstanding any contrary or inconsistent
26 provisions in Section 9-201 of this Act, in subsection (a) of

1 this Section, or in any rules promulgated by the Commission
2 pursuant to subsection (g) of this Section, a public utility
3 providing electric service to more than 1,000,000 customers in
4 this State may, within the first 6 months after the effective
5 date of this amendatory Act of 1997, file with the Commission
6 proposed tariff sheets that eliminate, effective January 1,
7 1997, the public utility's fuel adjustment clause without
8 adjusting its base rates, and such tariff sheets shall be
9 effective upon filing. To the extent the application of the
10 fuel adjustment clause had resulted in net charges to customers
11 after January 1, 1997, the utility shall also file a tariff
12 sheet that provides for a refund stated on a per kilowatt-hour
13 basis of such charges over a period not to exceed 6 months;
14 provided however, that such refund shall not include the
15 proportional amounts of taxes paid under the Use Tax Act,
16 Service Use Tax Act, Service Occupation Tax Act, and Retailers'
17 Occupation Tax Act on fuel used in generation. The Commission
18 shall issue an order within 45 days after the date of the
19 public utility's filing approving or approving as modified such
20 tariff sheet. If the fuel adjustment clause is eliminated
21 pursuant to this subsection, the Commission shall not conduct
22 the annual hearings specified in the last 3 sentences of
23 subsection (a) of this Section for the utility for any period
24 after December 31, 1996 and prior to any reinstatement of such
25 clause. A public utility whose fuel adjustment clause has been
26 eliminated pursuant to this subsection shall not file a

1 proposed tariff sheet seeking, or otherwise petition the
2 Commission for, reinstatement of the fuel adjustment clause
3 prior to January 1, 2007.

4 (f) Notwithstanding any contrary or inconsistent
5 provisions in Section 9-201 of this Act, in subsection (a) of
6 this Section, or in any rules or regulations promulgated by the
7 Commission pursuant to subsection (g) of this Section, a public
8 utility providing electric service to more than 500,000
9 customers but fewer than 1,000,000 customers in this State may,
10 within the first 6 months after the effective date of this
11 amendatory Act of 1997, file with the Commission proposed
12 tariff sheets that eliminate, effective January 1, 1997, the
13 public utility's fuel adjustment clause and adjust its base
14 rates by the amount necessary for the base fuel component of
15 the base rates to recover 91% of the public utility's average
16 fuel and power supply costs for the 2 most recent years for
17 which the Commission, as of January 1, 1997, has issued final
18 orders in annual proceedings pursuant to subsection (a), where
19 the average fuel and power supply costs per kilowatt-hour shall
20 be calculated as the sum of the public utility's prudent and
21 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 provided, that such tariff sheets shall be effective upon
25 filing. To the extent the application of the fuel adjustment
26 clause had resulted in net charges to customers after January

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

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

22 (h) Any Illinois gas utility may enter into a contract on
23 or before September 30, 2011 for up to 10 years of supply with
24 any company for the purchase of substitute natural gas (SNG)
25 produced from coal through the gasification process if the
26 company has commenced construction of a clean coal SNG facility

1 by July 1, 2012 and commencement of construction shall mean
2 that material physical site work has occurred, such as site
3 clearing and excavation, water runoff prevention, water
4 retention reservoir preparation, or foundation development.
5 The contract shall contain the following provisions: (i) at
6 least 90% of feedstock to be used in the gasification process
7 shall be coal with a high volatile bituminous rank and greater
8 than 1.7 pounds of sulfur per million Btu content; (ii) at the
9 time the contract term commences, the price per million Btu may
10 not exceed \$7.95 in 2008 dollars, adjusted annually based on
11 the change in the Annual Consumer Price Index for All Urban
12 Consumers for the Midwest Region as published in April by the
13 United States Department of Labor, Bureau of Labor Statistics
14 (or a suitable Consumer Price Index calculation if this
15 Consumer Price Index is not available) for the previous
16 calendar year; provided that the price per million Btu shall
17 not exceed \$9.95 at any time during the contract; (iii) the
18 utility's supply contract for the purchase of SNG does not
19 exceed 15% of the annual system supply requirements of the
20 utility as of 2008; and (iv) the contract costs pursuant to
21 subsection (h-10) of this Section shall not include any
22 lobbying expenses, charitable contributions, advertising,
23 organizational memberships, carbon dioxide pipeline or
24 sequestration expenses, or marketing expenses.

25 Any gas utility that is providing service to more than
26 150,000 customers on August 2, 2011 (the effective date of

1 Public Act 97-239) shall either elect to enter into a contract
2 on or before September 30, 2011 for 10 years of SNG supply with
3 the owner of a clean coal SNG facility or to file biennial rate
4 proceedings before the Commission in the years 2012, 2014, and
5 2016, with such filings made after August 2, 2011 and no later
6 than September 30 of the years 2012, 2014, and 2016 consistent
7 with all requirements of 83 Ill. Adm. Code 255 and 285 as
8 though the gas utility were filing for an increase in its
9 rates, without regard to whether such filing would produce an
10 increase, a decrease, or no change in the gas utility's rates,
11 and the Commission shall review the gas utility's filing and
12 shall issue its order in accordance with the provisions of
13 Section 9-201 of this Act.

14 Within 7 days after August 2, 2011, the owner of the clean
15 coal SNG facility shall submit to the Illinois Power Agency and
16 each gas utility that is providing service to more than 150,000
17 customers on August 2, 2011 a copy of a draft contract. Within
18 30 days after the receipt of the draft contract, each such gas
19 utility shall provide the Illinois Power Agency and the owner
20 of the clean coal SNG facility with its comments and
21 recommended revisions to the draft contract. Within 7 days
22 after the receipt of the gas utility's comments and recommended
23 revisions, the owner of the facility shall submit its
24 responsive comments and a further revised draft of the contract
25 to the Illinois Power Agency. The Illinois Power Agency shall
26 review the draft contract and comments.

1 During its review of the draft contract, the Illinois Power
2 Agency shall:

3 (1) review and confirm in writing that the terms stated
4 in this subsection (h) are incorporated in the SNG
5 contract;

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

23 (3) review and approve the amount of budgeted
24 miscellaneous net revenue after cost allowance, including
25 sale of SNG produced by the clean coal SNG facility above
26 the nameplate capacity of the facility and other

1 by-products produced by the facility, to be included in the
2 pricing formula; the Illinois Power Agency shall approve
3 the amount of budgeted miscellaneous net revenue to be
4 included in the pricing formula if it determines the
5 budgeted amount to be reasonable and accurate;

6 (4) review and confirm in writing that using the EIA
7 Annual Energy Outlook-2011 Henry Hub Spot Price, the
8 contract terms set out in subsection (h), the
9 reconciliation account terms as set out in subsection
10 (h-15), and an estimated inflation rate of 2.5% for each
11 corresponding year, that there will be no cumulative
12 estimated increase for residential customers; and

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

23 If the parties to the contract do not agree on the terms
24 therein, then the Illinois Power Agency shall retain an
25 independent mediator to mediate the dispute between the
26 parties. If the parties are in agreement on the terms of the

1 contract, then the Illinois Power Agency shall approve the
2 contract. If after mediation the parties have failed to come to
3 agreement, then the Illinois Power Agency shall revise the
4 draft contract as necessary to confirm that the contract
5 contains only terms that are reasonable and equitable. The
6 Illinois Power Agency may, in its discretion, retain an
7 independent, qualified, and experienced expert to assist in its
8 obligations under this subsection (h). The Illinois Power
9 Agency shall adopt and make public policies detailing the
10 processes for retaining a mediator and an expert under this
11 subsection (h). Any mediator or expert retained under this
12 subsection (h) shall be retained no later than 60 days after
13 August 2, 2011.

14 The Illinois Power Agency shall complete all of its
15 responsibilities under this subsection (h) within 60 days after
16 August 2, 2011. The clean coal SNG facility shall pay a
17 reasonable fee as required by the Illinois Power Agency for its
18 services under this subsection (h) and shall pay the mediator's
19 and expert's reasonable fees, if any. A gas utility and its
20 customers shall have no obligation to reimburse the clean coal
21 SNG facility or the Illinois Power Agency of any such costs.

22 Within 30 days after commercial production of SNG has
23 begun, the Commission shall initiate a review to determine
24 whether the final capitalized plant cost of the clean coal SNG
25 facility reflects actual incurred costs and whether the
26 incurred costs were reasonable. In determining the actual

1 incurred costs included in the final capitalized plant cost and
2 the reasonableness of those costs, the Commission may in its
3 discretion retain independent, qualified, and experienced
4 experts to assist in its determination. The expert shall not
5 own or control any direct or indirect interest in the clean
6 coal SNG facility and shall have no contractual relationship
7 with the clean coal SNG facility. If an expert is retained by
8 the Commission, then the clean coal SNG facility shall pay the
9 expert's reasonable fees. The fees shall not be passed on to a
10 utility or its customers. The Commission shall adopt and make
11 public a policy detailing the process for retaining experts
12 under this subsection (h).

13 Within 30 days after completion of its review, the
14 Commission shall initiate a formal proceeding on the final
15 capitalized plant cost of the clean coal SNG facility at which
16 comments and testimony may be submitted by any interested
17 parties and the public. If the Commission finds that the final
18 capitalized plant cost includes costs that were not actually
19 incurred or costs that were unreasonably incurred, then the
20 Commission shall disallow the amount of non-incurred or
21 unreasonable costs from the SNG price under contracts entered
22 into under this subsection (h). If the Commission disallows any
23 costs, then the Commission shall adjust the SNG price using the
24 price formula in the contract approved by the Illinois Power
25 Agency under this subsection (h) to reflect the disallowed
26 costs and shall enter an order specifying the revised price. In

1 addition, the Commission's order shall direct the clean coal
2 SNG facility to issue refunds of such sums as shall represent
3 the difference between actual gross revenues and the gross
4 revenue that would have been obtained based upon the same
5 volume, from the price revised by the Commission. Any refund
6 shall include interest calculated at a rate determined by the
7 Commission and shall be returned according to procedures
8 prescribed by the Commission.

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

12 (h-1) Any Illinois gas utility may enter into a sourcing
13 agreement for up to 30 years of supply with the clean coal SNG
14 brownfield facility if the clean coal SNG brownfield facility
15 has commenced construction. Any gas utility that is providing
16 service to more than 150,000 customers on July 13, 2011 (the
17 effective date of Public Act 97-096) shall either elect to file
18 biennial rate proceedings before the Commission in the years
19 2012, 2014, and 2016 or enter into a sourcing agreement or
20 sourcing agreements with a clean coal SNG brownfield facility
21 with an initial term of 30 years for either (i) a percentage of
22 43,500,000,000 cubic feet per year, such that the utilities
23 entering into sourcing agreements with the clean coal SNG
24 brownfield facility purchase 100%, allocated by total therms
25 sold to ultimate customers by each gas utility in 2008 or (ii)
26 such lesser amount as may be available from the clean coal SNG

1 brownfield facility; provided that no utility shall be required
2 to purchase more than 42% of the projected annual output of the
3 clean coal SNG brownfield facility, with the remainder of such
4 utility's obligation to be divided proportionately between the
5 other utilities, and provided that the Illinois Power Agency
6 shall further adjust the allocation only as required to take
7 into account adverse consolidation, derivative, or lease
8 impacts to the balance sheet or income statement of any gas
9 utility.

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

25 Within 15 days after July 13, 2011, the owner of the clean
26 coal SNG brownfield facility shall submit to the Illinois Power

1 Agency and each gas utility that is providing service to more
2 than 150,000 customers on July 13, 2011 a copy of a draft
3 sourcing agreement. Within 45 days after receipt of the draft
4 sourcing agreement, each such gas utility shall provide the
5 Illinois Power Agency and the owner of a clean coal SNG
6 brownfield facility with its comments and recommended
7 revisions to the draft sourcing agreement. Within 15 days after
8 the receipt of the gas utility's comments and recommended
9 revisions, the owner of the clean coal SNG brownfield facility
10 shall submit its responsive comments and a further revised
11 draft of the sourcing agreement to the Illinois Power Agency.
12 The Illinois Power Agency shall review the draft sourcing
13 agreement and comments.

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

1 the parties regarding the sourcing agreement shall be retained
2 no later than 60 days after July 13, 2011.

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 gas utility and the clean coal
7 SNG brownfield facility shall pay a reasonable fee as required
8 by the Illinois Power Agency for its services under this
9 subsection (h-1) and shall pay the mediator's reasonable fees,
10 if any. The Illinois Power Agency shall adopt and make public a
11 policy detailing the process for retaining a mediator under
12 this Section.

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

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

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

1 procured in accordance with requirements of Section 1-78 of
2 the Illinois Power Agency Act.

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

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

17 (5) Prior to the clean coal SNG brownfield facility
18 issuing a notice to proceed to construction, the clean coal
19 SNG brownfield facility shall establish a consumer
20 protection reserve account for the benefit of the customers
21 of the utilities that have entered into sourcing agreements
22 with the clean coal SNG brownfield facility pursuant to
23 this subsection (h-1), with cash principal in the amount of
24 \$150,000,000. This cash principal shall only be
25 recoverable through the consumer protection reserve
26 account and not as a cost to be recovered in the delivered

1 SNG price pursuant to subsection (h-3) of this Section. The
2 consumer protection reserve account shall be maintained
3 and administered by an independent trustee that is mutually
4 agreed upon by the clean coal SNG brownfield facility, the
5 utilities, and the Commission in an interest-bearing
6 account in accordance with subsection (h-2) of this
7 Section.

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

1 be decreased by \$5,000,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 carbon dioxide as set forth in the Commission-approved
2 carbon capture and sequestration plan.

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

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

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

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

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

1 and not subject to a Commission prudence review;

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

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

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

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

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

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

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

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

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

1 distributed to retail customers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 abets such person shall be guilty of a Class A misdemeanor.

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

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

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

1 addition, the Capital Development Board may consult as
2 much as it deems necessary with the clean coal SNG
3 brownfield facility and conduct whatever research and
4 investigation it deems necessary.

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

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

26 (ii) an advanced degree in economics,

1 mathematics, engineering, or a related area of
2 study;

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

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

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

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

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

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

24 The clean coal SNG brownfield facility and the
25 Illinois Power Agency shall cooperate with the Capital
26 Development Board in any investigation it deems

1 necessary. The Capital Development Board shall make
2 its final determination of the range of capital costs
3 confidentially and shall submit that range to the
4 Commission in a confidential filing within 120 days
5 after July 13, 2011 (the effective date of Public Act
6 97-096). The clean coal SNG brownfield facility shall
7 submit to the Commission its estimate of the capital
8 costs to be recovered under the sourcing agreement.
9 Only after the clean coal SNG brownfield facility has
10 submitted this estimate shall the Commission publicly
11 announce the range of capital costs submitted by the
12 Capital Development Board.

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

1 submitted its range and the clean coal SNG brownfield
2 facility has submitted its estimate, the Commission
3 shall approve the capital costs for the clean coal SNG
4 brownfield facility.

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

22 (B) Rate of Return. No later than 30 days after the
23 date on which the Illinois Power Agency submits a final
24 draft sourcing agreement, the Commission shall hold a
25 public hearing to determine the rate of return to be
26 recovered under the sourcing agreement. Rate of return

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

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

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

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

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

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

22 The clean coal SNG brownfield facility shall submit to
23 the Commission its estimate of the operations and
24 maintenance costs to be recovered under the sourcing
25 agreement. Only after the clean coal SNG brownfield
26 facility has submitted this estimate shall the Commission

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

21 The clean coal SNG brownfield facility shall pay for
22 the independent engineering expert's reasonable fees and
23 such costs shall not be passed through to a utility or its
24 customers. The clean coal SNG brownfield facility shall pay
25 a reasonable fee as required by the Capital Development
26 Board for the Capital Development Board's services under

1 this subsection (h-3) to be deposited into the Capital
2 Development Board Revolving Fund, and such fee shall not be
3 passed through to a utility or its customers.

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

10 (A) capture carbon dioxide;

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

13 (C) build, operate, and maintain a carbon dioxide
14 pipeline; and

15 (D) transport the carbon dioxide to the
16 sequestration site or a pipeline.

17 The Commission shall assess the prudence of the
18 sequestration costs for the clean coal SNG brownfield
19 facility before construction commences at the
20 sequestration site or pipeline. Any revenues the clean coal
21 SNG brownfield facility receives as a result of the
22 capture, transportation, or sequestration of carbon
23 dioxide shall be first credited against all sequestration
24 costs, with the positive balance, if any, treated as
25 additional net revenue.

26 The Commission may, in its discretion, retain an expert

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

17 (4) Actual delivered and processed fuel costs shall be
18 set by the Illinois Power Agency through a SNG feedstock
19 procurement, pursuant to Sections 1-20, 1-77, and 1-78 of
20 the Illinois Power Agency Act, to be performed at least
21 every 5 years and purchased by the clean coal SNG
22 brownfield facility pursuant to feedstock procurement
23 contracts developed by the Illinois Power Agency, with coal
24 comprising at least 50% of the total feedstock over the
25 term of the sourcing agreement and petroleum coke
26 comprising the remainder of the SNG feedstock. If the

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

14 (5) Taxes and fees imposed by the federal government,
15 the State, or any unit of local government applicable to
16 the clean coal SNG brownfield facility, excluding income
17 tax, shall be recoverable by the clean coal SNG brownfield
18 facility under the sourcing agreement to the extent such
19 taxes and fees were not applicable to the facility on July
20 13, 2011.

21 (6) The actual transportation costs, in accordance
22 with the applicable utility's tariffs, and third-party
23 marketer costs incurred by the company, if any, associated
24 with transporting the SNG from the clean coal SNG
25 brownfield facility to the Chicago City-gate to sell such
26 SNG into the natural gas markets shall be recoverable under

1 the sourcing agreement.

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

16 Any person affected by a decision of the Commission
17 under this subsection (h-3) may have the decision reviewed
18 only under and in accordance with the Administrative Review
19 Law. Unless otherwise provided, the provisions of the
20 Administrative Review Law, all amendments and
21 modifications to that Law, and the rules adopted pursuant
22 to that Law shall apply to and govern all proceedings for
23 the judicial review of final administrative decisions of
24 the Commission under this subsection (h-3). The term
25 "administrative decision" is defined as in Section 3-101 of
26 the Code of Civil Procedure.

1 (8) The Capital Development Board shall adopt and make
2 public a policy detailing the process for retaining experts
3 under this Section. Any experts retained to assist with
4 calculating the range of capital costs or operations and
5 maintenance costs shall be retained no later than 45 days
6 after July 13, 2011.

7 (h-4) No later than 90 days after the Illinois Power Agency
8 submits the final draft sourcing agreement pursuant to
9 subsection (h-1), the Commission shall approve a sourcing
10 agreement containing (i) the capital costs, rate of return, and
11 operations and maintenance costs established pursuant to
12 subsection (h-3) and (ii) all other terms and conditions,
13 rights, provisions, exceptions, and limitations contained in
14 the final draft sourcing agreement; provided, however, the
15 Commission shall correct typographical and scrivener's errors
16 and modify the contract only as necessary to provide that the
17 gas utility does not have the right to terminate the sourcing
18 agreement due to any future events that may occur other than
19 the clean coal SNG brownfield facility's failure to timely meet
20 milestones, uncured default, extended force majeure, or
21 abandonment. Once the sourcing agreement is approved, then the
22 gas utility subject to that sourcing agreement shall have 45
23 days after the date of the Commission's approval to enter into
24 the sourcing agreement.

25 (h-5) Sequestration enforcement.

26 (A) All contracts entered into under subsection (h) of

1 this Section and all sourcing agreements under subsection
2 (h-1) of this Section, regardless of duration, shall
3 require the owner of any facility supplying SNG under the
4 contract or sourcing agreement to provide certified
5 documentation to the Commission each year, starting in the
6 facility's first year of commercial operation, accurately
7 reporting the quantity of carbon dioxide emissions from the
8 facility that have been captured and sequestered and
9 reporting any quantities of carbon dioxide released from
10 the site or sites at which carbon dioxide emissions were
11 sequestered in prior years, based on continuous monitoring
12 of those sites.

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

1 years thereafter, an expert hired by the owner of the
2 facility with the approval of the Attorney General shall
3 conduct an analysis to determine the cost of sequestration
4 of at least 90% of the total carbon dioxide emissions the
5 plant would otherwise emit. If the analysis shows that the
6 actual annual cost is greater than the penalty, then the
7 penalty shall be increased to equal the actual cost.
8 Provided, however, to the extent that the owner of the
9 facility described in subsection (h) of this Section can
10 demonstrate that the failure was as a result of acts of God
11 (including fire, flood, earthquake, tornado, lightning,
12 hurricane, or other natural disaster); any amendment,
13 modification, or abrogation of any applicable law or
14 regulation that would prevent performance; war; invasion;
15 act of foreign enemies; hostilities (regardless of whether
16 war is declared); civil war; rebellion; revolution;
17 insurrection; military or usurped power or confiscation;
18 terrorist activities; civil disturbance; riots;
19 nationalization; sabotage; blockage; or embargo, the owner
20 of the facility described in subsection (h) of this Section
21 shall not be subject to a penalty if and only if (i) it
22 promptly provides notice of its failure to the Commission;
23 (ii) as soon as practicable and consistent with any order
24 or direction from the Commission, it submits to the
25 Commission proposed modifications to its carbon capture
26 and sequestration plan; and (iii) it carries out its

1 proposed modifications in the manner and time directed by
2 the Commission.

3 If the Commission finds that the facility has not
4 satisfied each of these requirements, then the facility
5 shall be subject to the penalty. If the owner of the clean
6 coal SNG facility captured and sequestered more than 90% of
7 the total carbon dioxide emissions that the facility would
8 otherwise emit, then the owner of the facility may credit
9 such additional amounts to reduce the amount of any future
10 penalty to be paid. The penalty resulting from the failure
11 to capture and sequester at least the minimum amount of
12 carbon dioxide shall not be passed on to a utility or its
13 customers.

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

1 General's action under this subsection (h-5).

2 Compliance with the sequestration requirements and any
3 penalty requirements specified in this subsection (h-5)
4 for the clean coal SNG facility shall be assessed annually
5 by the Commission, which may in its discretion retain an
6 expert to facilitate its assessment. If any expert is
7 retained by the Commission, then the clean coal SNG
8 facility shall pay for the expert's reasonable fees, and
9 such costs shall not be passed through to the utility or
10 its customers.

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

20 The clean coal SNG facility is prohibited from
21 transporting or sequestering carbon dioxide unless the
22 owner of the carbon dioxide pipeline that transfers the
23 carbon dioxide from the facility and the owner of the
24 sequestration site where the carbon dioxide captured by the
25 facility is stored has acquired all applicable permits
26 under applicable State and federal laws, statutes, rules,

1 or regulations prior to the transfer or sequestration of
2 carbon dioxide. The responsibility for compliance with the
3 sequestration requirements specified in this subsection
4 (h-5) for the clean coal SNG facility shall reside solely
5 with the clean coal SNG facility, regardless of whether the
6 facility has contracted with another party to capture,
7 transport, or sequester carbon dioxide.

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

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

24 In addition to any penalty for the clean coal SNG
25 brownfield facility's failure to capture and sequester at
26 least its minimum sequestration requirement, the Attorney

1 General, on behalf of the People of the State of Illinois,
2 shall bring an action for specific performance of this
3 subsection (h-5). Such action may be filed in any circuit
4 court in Illinois. By entering into a sourcing agreement
5 pursuant to subsection (h-1) of this Section, the clean
6 coal SNG brownfield facility agrees to waive any objections
7 to venue or to the jurisdiction of the court with regard to
8 the Attorney General's action for specific performance
9 under this subsection (h-5).

10 Compliance with the sequestration requirements and
11 penalty requirements specified in this subsection (h-5)
12 for the clean coal SNG brownfield facility shall be
13 assessed annually by the Commission, which may in its
14 discretion retain an expert to facilitate its assessment.
15 If an expert is retained by the Commission, then the clean
16 coal SNG brownfield facility shall pay for the expert's
17 reasonable fees, and such costs shall not be passed through
18 to a utility or its customers. A SNG facility operating
19 pursuant to this subsection (h-5) shall not forfeit its
20 designation as a clean coal SNG facility or a clean coal
21 SNG brownfield facility if the facility fails to fully
22 comply with the applicable carbon sequestration requirements
23 in any given year, provided the requisite offsets are
24 purchased or requisite penalties are paid.

25 Responsibility for compliance with the sequestration
26 requirements specified in this subsection (h-5) for the

1 clean coal SNG brownfield facility shall reside solely with
2 the clean coal SNG brownfield facility regardless of
3 whether the facility has contracted with another party to
4 capture, transport, or sequester carbon dioxide.

5 (h-7) Sequestration permitting, oversight, and
6 investigations.

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

18 (2) The Commission shall review carbon dioxide
19 transportation and sequestration methods proposed by a
20 clean coal facility or a clean coal SNG brownfield facility
21 and shall approve those methods it deems reasonable and
22 cost-effective. For purposes of this review,
23 "cost-effective" means a commercially reasonable price for
24 similar carbon dioxide transportation or sequestration
25 techniques. In determining whether sequestration is
26 reasonable and cost-effective, the Commission may consult

1 with the Illinois State Geological Survey and retain third
2 parties to assist in its determination, provided that such
3 third parties shall not own or control any direct or
4 indirect interest in the facility that is proposing the
5 carbon dioxide transportation or the carbon dioxide
6 sequestration method and shall have no contractual
7 relationship with that facility. If a third party is
8 retained by the Commission, then the facility proposing the
9 carbon dioxide transportation or sequestration method
10 shall pay for the expert's reasonable fees, and these costs
11 shall not be passed through to a utility or its customers.

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

24 The Commission may not approve a carbon dioxide
25 sequestration method if the owner or operator of the
26 sequestration site has not received (i) an Underground

1 Injection Control permit from the United States
2 Environmental Protection Agency, or from the Illinois
3 Environmental Protection Agency pursuant to the
4 Environmental Protection Act; (ii) an Underground
5 Injection Control permit from the Illinois Department of
6 Natural Resources pursuant to the Illinois Oil and Gas Act;
7 or (iii) an Underground Injection Control permit from the
8 United States Environmental Protection Agency or a permit
9 similar to items (i) or (ii) from the state in which the
10 sequestration site is located if the sequestration will
11 take place outside of Illinois. The Commission shall
12 approve or deny the carbon dioxide transportation or
13 sequestration method within 90 days after the receipt of
14 all required information.

15 (3) At least annually, the Illinois Environmental
16 Protection Agency shall inspect all carbon dioxide
17 sequestration sites in Illinois. The Illinois
18 Environmental Protection Agency may, as often as deemed
19 necessary, monitor and conduct investigations of those
20 sites. The owner or operator of the sequestration site must
21 cooperate with the Illinois Environmental Protection
22 Agency investigations of carbon dioxide sequestration
23 sites.

24 If the Illinois Environmental Protection Agency
25 determines at any time a site creates conditions that
26 warrant the issuance of a seal order under Section 34 of

1 the Environmental Protection Act, then the Illinois
2 Environmental Protection Agency shall seal the site
3 pursuant to the Environmental Protection Act. If the
4 Illinois Environmental Protection Agency determines at any
5 time a carbon dioxide sequestration site creates
6 conditions that warrant the institution of a civil action
7 for an injunction under Section 43 of the Environmental
8 Protection Act, then the Illinois Environmental Protection
9 Agency shall request the State's Attorney or the Attorney
10 General institute such action. The Illinois Environmental
11 Protection Agency shall provide notice of any such actions
12 as soon as possible on its website. The SNG facility shall
13 incur all reasonable costs associated with any such
14 inspection or monitoring of the sequestration sites, and
15 these costs shall not be recoverable from utilities or
16 their customers.

17 (4) At least annually, the Commission shall inspect all
18 carbon dioxide pipelines in Illinois that transport carbon
19 dioxide to ensure the safety and feasibility of those
20 pipelines. The Commission may, as often as deemed
21 necessary, monitor and conduct investigations of those
22 pipelines. The owner or operator of the pipeline must
23 cooperate with the Commission investigations of the carbon
24 dioxide pipelines.

25 In circumstances whereby a carbon dioxide pipeline
26 creates a substantial danger to the environment or to the

1 public health of persons or to the welfare of persons where
2 such danger is to the livelihood of such persons, the
3 State's Attorney or Attorney General, upon the request of
4 the Commission or on his or her own motion, may institute a
5 civil action for an immediate injunction to halt any
6 discharge or other activity causing or contributing to the
7 danger or to require such other action as may be necessary.
8 The court may issue an ex parte order and shall schedule a
9 hearing on the matter not later than 3 working days after
10 the date of injunction. The Commission shall provide notice
11 of any such actions as soon as possible on its website. The
12 SNG facility shall incur all reasonable costs associated
13 with any such inspection or monitoring of the sequestration
14 sites, and these costs shall not be recoverable from a
15 utility or its customers.

16 (h-9) The clean coal SNG brownfield facility shall have the
17 right to recover prudently incurred increased costs or reduced
18 revenue resulting from any new or amendatory legislation or
19 other action. The State of Illinois pledges that the State will
20 not enact any law or take any action to:

21 (1) break, or repeal the authority for, sourcing
22 agreements approved by the Commission and entered into
23 between public utilities and the clean coal SNG brownfield
24 facility;

25 (2) deny public utilities full cost recovery for their
26 costs incurred under those sourcing agreements; or

1 (3) deny the clean coal SNG brownfield facility full
2 cost and revenue recovery as provided under those sourcing
3 agreements that are recoverable pursuant to subsection
4 (h-3) of this Section.

5 These pledges are for the benefit of the parties to those
6 sourcing agreements and the issuers and holders of bonds or
7 other obligations issued or incurred to finance or refinance
8 the clean coal SNG brownfield facility. The clean coal SNG
9 brownfield facility is authorized to include and refer to these
10 pledges in any financing agreement into which it may enter in
11 regard to those sourcing agreements.

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

1 facility shall have the right to recover prudently incurred
2 increased costs or reduced revenue resulting from the new or
3 amendatory legislation or other action as described in this
4 subsection (h-9).

5 (h-10) Contract costs for SNG incurred by an Illinois gas
6 utility are reasonable and prudent and recoverable through the
7 purchased gas adjustment clause and are not subject to review
8 or disallowance by the Commission. Contract costs are costs
9 incurred by the utility under the terms of a contract that
10 incorporates the terms stated in subsection (h) of this Section
11 as confirmed in writing by the Illinois Power Agency as set
12 forth in subsection (h) of this Section, which confirmation
13 shall be deemed conclusive, or as a consequence of or condition
14 to its performance under the contract, including (i) amounts
15 paid for SNG under the SNG contract and (ii) costs of
16 transportation and storage services of SNG purchased from
17 interstate pipelines under federally approved tariffs. The
18 Illinois gas utility shall initiate a clean coal SNG facility
19 rider mechanism that (A) shall be applicable to all customers
20 who receive transportation service from the utility, (B) shall
21 be designed to have an equal percentage impact on the
22 transportation services rates of each class of the utility's
23 total customers, and (C) shall accurately reflect the net
24 customer savings, if any, and above market costs, if any, under
25 the SNG contract. Any contract, the terms of which have been
26 confirmed in writing by the Illinois Power Agency as set forth

1 in subsection (h) of this Section and the performance of the
2 parties under such contract cannot be grounds for challenging
3 prudence or cost recovery by the utility through the purchased
4 gas adjustment clause, and in such cases, the Commission is
5 directed not to consider, and has no authority to consider, any
6 attempted challenges.

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

1 (h-11) All costs incurred by an Illinois gas utility in
2 procuring SNG from a clean coal SNG brownfield facility
3 pursuant to subsection (h-1) or a third-party marketer pursuant
4 to subsection (h-1) are reasonable and prudent and recoverable
5 through the purchased gas adjustment clause in conjunction with
6 a SNG brownfield facility rider mechanism and are not subject
7 to review or disallowance by the Commission; provided that if a
8 utility is required by law or otherwise elects to connect the
9 clean coal SNG brownfield facility to an interstate pipeline,
10 then the utility shall be entitled to recover pursuant to its
11 tariffs all just and reasonable costs that are prudently
12 incurred. Sourcing agreement costs are costs incurred by the
13 utility under the terms of a sourcing agreement that
14 incorporates the terms stated in subsection (h-1) of this
15 Section as approved by the Commission as set forth in
16 subsection (h-4) of this Section, which approval shall be
17 deemed conclusive, or as a consequence of or condition to its
18 performance under the contract, including (i) amounts paid for
19 SNG under the SNG contract and (ii) costs of transportation and
20 storage services of SNG purchased from interstate pipelines
21 under federally approved tariffs. Any sourcing agreement, the
22 terms of which have been approved by the Commission as set
23 forth in subsection (h-4) of this Section, and the performance
24 of the parties under the sourcing agreement cannot be grounds
25 for challenging prudence or cost recovery by the utility, and
26 in these cases, the Commission is directed not to consider, and

1 has no authority to consider, any attempted challenges.

2 (h-15) Reconciliation account. The clean coal SNG facility
3 shall establish a reconciliation account for the benefit of the
4 retail customers of the utilities that have entered into
5 contracts with the clean coal SNG facility pursuant to
6 subsection (h). The reconciliation account shall be maintained
7 and administered by an independent trustee that is mutually
8 agreed upon by the owners of the clean coal SNG facility, the
9 utilities, and the Commission in an interest-bearing account in
10 accordance with the following:

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

1 storage services of such natural gas (excluding such costs
2 for SNG), divided by the total number of MMBtus of baseload
3 natural gas (excluding SNG) actually purchased by the
4 utility during the year; (iii) the cost differential, which
5 shall be the difference between the average annual contract
6 SNG cost and the average annual natural gas purchase cost;
7 and (iv) the revenue share target which shall be the cost
8 differential multiplied by the total amount of SNG
9 purchased over the preceding 12 months under such utility
10 contract.

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

25 (B) To the extent the annual average contract SNG
26 cost is greater than the annual average natural gas

1 purchase cost, the reconciliation account shall be
2 used to provide a credit equal to the revenue share
3 target to the utilities to be used to reduce the
4 utility's natural gas costs through the purchased gas
5 adjustment clause. Such payment shall be made within 30
6 days after the completed analysis pursuant to this
7 subsection (h-15), but only to the extent that the
8 reconciliation account has a positive balance.

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

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

23 The retail customers shall have first priority in
24 recovering that debt above any creditors, except the
25 secured lenders to the extent that the secured lenders have
26 any secured debt outstanding, including any parent

1 companies or affiliates of the clean coal SNG facility.

2 (3) 50% of all additional net revenue, defined as
3 miscellaneous net revenue after cost allowance and above
4 the budgeted estimate established for revenue pursuant to
5 subsection (h), including sale of substitute natural gas
6 derived from the clean coal SNG facility above the
7 nameplate capacity of the facility and other by-products
8 produced by the facility, shall be credited to the
9 reconciliation account on an annual basis with such payment
10 made within 30 days after the end of each calendar year
11 during the term of the contract.

12 (4) The clean coal SNG facility shall each year,
13 starting in the facility's first year of commercial
14 operation, file with the Commission, in such form as the
15 Commission shall require, a report as to the reconciliation
16 account. The annual report must contain the following
17 information:

18 (A) the revenue share target amount;

19 (B) the amount credited or debited to the
20 reconciliation account during the year;

21 (C) the amount credited to the utilities to be used
22 to reduce the utilities natural gas costs through the
23 purchase gas adjustment clause;

24 (D) the total amount of reconciliation account at
25 the beginning and end of the year;

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

1 and

2 (F) any additional information the Commission may
3 require.

4 When any report is erroneous or defective or appears to the
5 Commission to be erroneous or defective, the Commission may
6 notify the clean coal SNG facility to amend the report within
7 30 days; before or after the termination of the 30-day period,
8 the Commission may examine the trustee of the reconciliation
9 account or the officers, agents, employees, books, records, or
10 accounts of the clean coal SNG facility and correct such items
11 in the report as upon such examination the Commission may find
12 defective or erroneous. All reports shall be under oath.

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

22 Any facility that fails to file the report required under
23 this paragraph (4) to the Commission within the time specified
24 or to make specific answer to any question propounded by the
25 Commission within 30 days after the time it is lawfully
26 required to do so, or within such further time not to exceed 90

1 days as may be allowed by the Commission in its discretion,
2 shall pay a penalty of \$500 to the Commission for each day it
3 is in default.

4 Any person who willfully makes any false report to the
5 Commission or to any member, officer, or employee thereof, any
6 person who willfully in a report withholds or fails to provide
7 material information to which the Commission is entitled under
8 this paragraph (4) and which information is either required to
9 be filed by statute, rule, regulation, order, or decision of
10 the Commission or has been requested by the Commission, and any
11 person who willfully aids or abets such person shall be guilty
12 of a Class A misdemeanor.

13 (h-20) The General Assembly authorizes the Illinois
14 Finance Authority to issue bonds to the maximum extent
15 permitted to finance coal gasification facilities described in
16 this Section, which constitute both "industrial projects"
17 under Article 801 of the Illinois Finance Authority Act and
18 "clean coal and energy projects" under Sections 825-65 through
19 825-75 of the Illinois Finance Authority Act.

20 Administrative costs incurred by the Illinois Finance
21 Authority in performance of this subsection (h-20) shall be
22 subject to reimbursement by the clean coal SNG facility on
23 terms as the Illinois Finance Authority and the clean coal SNG
24 facility may agree. The utility and its customers shall have no
25 obligation to reimburse the clean coal SNG facility or the
26 Illinois Finance Authority for any such costs.

1 (h-25) The State of Illinois pledges that the State may not
2 enact any law or take any action to (1) break or repeal the
3 authority for SNG purchase contracts entered into between
4 public gas utilities and the clean coal SNG facility pursuant
5 to subsection (h) of this Section or (2) deny public gas
6 utilities their full cost recovery for contract costs, as
7 defined in subsection (h-10), that are incurred under such SNG
8 purchase contracts. These pledges are for the benefit of the
9 parties to such SNG purchase contracts and the issuers and
10 holders of bonds or other obligations issued or incurred to
11 finance or refinance the clean coal SNG facility. The
12 beneficiaries are authorized to include and refer to these
13 pledges in any finance agreement into which they may enter in
14 regard to such contracts.

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

25 (i) If a gas utility or an affiliate of a gas utility has
26 an ownership interest in any entity that produces or sells

1 synthetic natural gas, Article VII of this Act shall apply.
2 (Source: P.A. 96-1364, eff. 7-28-10; 97-96, eff. 7-13-11;
3 97-239, eff. 8-2-11; 97-630, eff. 12-8-11.)

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

6 (225 ILCS 225/7) (from Ch. 111 1/2, par. 116.307)

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

20 (b) The Department is expressly prohibited from amending
21 the private sewage disposal code by rule if there are increases
22 in the land density requirements. Amendments that increase the
23 land density requirements must be approved by the Illinois
24 General Assembly.

1 (c) Beginning ~~On and after~~ January 1, 2013 or 6 months
2 after the date of issuance of a general NPDES permit for
3 surface discharging private sewage disposal systems by the
4 Illinois Environmental Protection Agency or by the United
5 States Environmental Protection Agency, whichever is later, a
6 surface discharging private sewage disposal system with a
7 discharge that enters the waters of the United States, as that
8 term is used in the Federal Water Pollution Control Act, shall
9 not be constructed or installed by any person unless he or she
10 has a coverage letter under a NPDES permit issued by the
11 Illinois Environmental Protection Agency or by the United
12 States Environmental Protection Agency or he or she constructs
13 or installs the surface discharging private sewage disposal
14 system in a jurisdiction in which the local public health
15 department has a general NPDES permit issued by the Illinois
16 Environmental Protection Agency or by the United States
17 Environmental Protection Agency and the surface discharging
18 private sewage disposal system is covered under the general
19 NPDES permit. The private sewage disposal code must be amended
20 before January 1, 2013 to comply with this subsection.

21 (d) Except as provided in subsection (c) of this Section,
22 before the adoption or amendment of the private sewage disposal
23 code, the Department shall hold a public hearing with respect
24 thereto. At least 20 days' notice for such public hearing shall
25 be given by the Department in such manner as the Department
26 considers adequate to bring such hearing to the attention of

1 persons interested in such code. Notice of such public hearing
2 shall be given by the Department to those who file a request
3 for a notice of any such hearings.

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

5 Section 20. The Environmental Protection Act is amended by
6 changing Sections 9.14, 12, 17.8, and 22.2 as follows:

7 (415 ILCS 5/9.14)

8 Sec. 9.14. Registration of smaller sources.

9 (a) After the effective date of rules implementing this
10 Section, the owner or operator of an eligible source shall
11 annually register with the Agency instead of complying with the
12 requirement to obtain an air pollution construction or
13 operating permit under this Act. The criteria for determining
14 an eligible source shall include the following:

15 (1) the source must not be required to obtain a permit
16 pursuant to the Illinois Clean Air Act Permit Program or
17 Federally Enforceable State Operating Permit program, or
18 under regulations promulgated pursuant to Section 111 or
19 112 of the Clean Air Act;

20 (2) the USEPA has not otherwise determined that a
21 permit is required;

22 (3) the source emits less than an actual 5 tons per
23 year of combined particulate matter, carbon monoxide,
24 nitrogen oxides, sulfur dioxide, and volatile organic

1 material air pollutant emissions;

2 (4) the source emits less than an actual 0.5 tons per
3 year of combined hazardous air pollutant emissions;

4 (5) the source emits less than an actual 0.05 tons per
5 year of lead air emissions;

6 (6) the source emits less than an actual 0.05 tons per
7 year of mercury air emissions; and

8 (7) the source does not have an emission unit subject
9 to a standard pursuant to 40 CFR Part 61 Maximum Achievable
10 Control Technology, or 40 CFR Part 63 National Emissions
11 Standards for Hazardous Air Pollutants other than those
12 regulations that the USEPA has categorized as "area
13 source".

14 (b) Complete registration of an eligible source, including
15 payment of the required fee as specified in subsection (c) of
16 this Section, shall provide the owner or operator of the
17 eligible source with an exemption from the requirement to
18 obtain an air pollution construction or operating permit under
19 this Act. The registration of smaller sources program does not
20 relieve an owner or operator from the obligation to comply with
21 any other applicable rules or regulations.

22 (c) The owner or operator of an eligible source shall pay
23 an annual registration fee of \$235 to the Agency at the time of
24 registration submittal and each year thereafter. Fees
25 collected under this Section shall be deposited into the
26 Environmental Protection Permit and Inspection Fund.

1 (d) The Agency shall propose rules to implement the
2 registration of smaller sources program. Within 120 days after
3 the Agency proposes those rules, the Board shall adopt rules to
4 implement the registration of smaller sources program. These
5 rules may be subsequently amended from time to time pursuant to
6 a proposal filed with the Board by any person, and any
7 necessary amendments shall be adopted by the Board within 120
8 days after proposal. Such amendments may provide for the
9 alteration or revision of the initial criteria included in
10 subsection (a) of this Section. ~~Subsection (b) of Section 27 of~~
11 ~~this Act and the rulemaking provisions of the Illinois~~
12 ~~Administrative Procedure Act do not apply to rules adopted by~~
13 ~~the Board under this Section.~~

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

15 (415 ILCS 5/12) (from Ch. 111 1/2, par. 1012)

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

17 (a) Cause or threaten or allow the discharge of any
18 contaminants into the environment in any State so as to cause
19 or tend to cause water pollution in Illinois, either alone or
20 in combination with matter from other sources, or so as to
21 violate regulations or standards adopted by the Pollution
22 Control Board under this Act.

23 (b) Construct, install, or operate any equipment,
24 facility, vessel, or aircraft capable of causing or
25 contributing to water pollution, or designed to prevent water

1 pollution, of any type designated by Board regulations, without
2 a permit granted by the Agency, or in violation of any
3 conditions imposed by such permit.

4 (c) Increase the quantity or strength of any discharge of
5 contaminants into the waters, or construct or install any sewer
6 or sewage treatment facility or any new outlet for contaminants
7 into the waters of this State, without a permit granted by the
8 Agency.

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

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

14 (f) Cause, threaten or allow the discharge of any
15 contaminant into the waters of the State, as defined herein,
16 including but not limited to, waters to any sewage works, or
17 into any well or from any point source within the State,
18 without an NPDES permit for point source discharges issued by
19 the Agency under Section 39(b) of this Act, or in violation of
20 any term or condition imposed by such permit, or in violation
21 of any NPDES permit filing requirement established under
22 Section 39(b), or in violation of any regulations adopted by
23 the Board or of any order adopted by the Board with respect to
24 the NPDES program.

25 No permit shall be required under this subsection and under
26 Section 39(b) of this Act for any discharge for which a permit

1 is not required under the Federal Water Pollution Control Act,
2 as now or hereafter amended, and regulations pursuant thereto.

3 For all purposes of this Act, a permit issued by the
4 Administrator of the United States Environmental Protection
5 Agency under Section 402 of the Federal Water Pollution Control
6 Act, as now or hereafter amended, shall be deemed to be a
7 permit issued by the Agency pursuant to Section 39(b) of this
8 Act. However, this shall not apply to the exclusion from the
9 requirement of an operating permit provided under Section
10 13(b) (i).

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

16 In any case where a permit has been timely applied for
17 pursuant to Section 39(b) of this Act but final administrative
18 disposition of such application has not been made, it shall not
19 be a violation of this subsection to discharge without such
20 permit unless the complainant proves that final administrative
21 disposition has not been made because of the failure of the
22 applicant to furnish information reasonably required or
23 requested in order to process the application.

24 (g) Cause, threaten or allow the underground injection of
25 contaminants without a UIC permit issued by the Agency under
26 Section 39(d) of this Act, or in violation of any term or

1 condition imposed by such permit, or in violation of any
2 regulations or standards adopted by the Board or of any order
3 adopted by the Board with respect to the UIC program.

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

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

13 (i) Beginning ~~On and after~~ January 1, 2013 or 6 months
14 after the date of issuance of a general NPDES permit for
15 surface discharging private sewage disposal systems by the
16 Illinois Environmental Protection Agency or by the United
17 States Environmental Protection Agency, whichever is later,
18 construct or install a surface discharging private sewage
19 disposal system that discharges into the waters of the United
20 States, as that term is used in the Federal Water Pollution
21 Control Act, unless he or she has a coverage letter under a
22 NPDES permit issued by the Illinois Environmental Protection
23 Agency or by the United States Environmental Protection Agency
24 or he or she is constructing or installing the surface
25 discharging private sewage disposal system in a jurisdiction in
26 which the local public health department has a general NPDES

1 permit issued by the Illinois Environmental Protection Agency
2 or by the United States Environmental Protection Agency and the
3 surface discharging private sewage disposal system is covered
4 under the general NPDES permit.

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

6 (415 ILCS 5/17.8)

7 Sec. 17.8. Environmental laboratory certification
8 assessment.

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

20 (1) For certification to conduct public water supply
21 analyses:

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

23 and

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

25 (2) For certification to conduct water pollution

1 analyses:

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

3 and

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

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

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

8 and

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

10 (4) An administrative assessment of \$2,400 ~~\$350~~ per
11 year from each laboratory requesting certification,
12 provided that the administrative assessment shall be
13 \$3,900 if the laboratory was not certified at any time
14 during the 6 months immediately preceding its application
15 for certification.

16 (b) Until the Agency and the Environmental Laboratory
17 Certification Committee establish administrative and
18 certification assessment schedules in accordance with the
19 procedures of subsections (c) and (d-5) of this Section, the
20 following payment schedules shall remain in effect. The
21 administrative and certification assessments ~~assessment~~ shall
22 be paid at the time the laboratory submits an application for
23 certification or renewal of certification ~~and on the~~
24 ~~anniversary date of the initial certification. The~~
25 ~~certification assessment shall be paid at the time the~~
26 ~~laboratory submits an application and on the anniversary date~~

1 ~~of the initial certification.~~ Assessments paid under this
2 Section may not be refunded.

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

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

23 (d-5) The Agency, with the concurrence with the
24 Environmental Laboratory Certification Committee, shall
25 determine the assessment schedules for participation in the
26 environmental laboratory certification program. The Agency,

1 with the concurrence of the Committee, shall base the
2 assessment schedules upon actual and anticipated costs for
3 certification under State and federal programs and the
4 associated costs of the Agency and Committee. ~~On or before~~
5 ~~August 1 of each year, the Agency shall submit its assessment~~
6 ~~schedules determination and supporting documentation for the~~
7 ~~forthcoming year to the Committee. Before the following~~
8 ~~September 30, the Committee shall hold at least one regular~~
9 ~~meeting to consider the Agency's assessment schedule~~
10 ~~determination.~~ If the Committee concurs with the Agency's
11 assessment schedule determination, it shall thereupon take
12 effect.

13 (e) The Director shall establish an Environmental
14 Laboratory Certification Committee consisting of (i) one
15 person representing accredited county or municipal public
16 water supply laboratories, (ii) one person representing the
17 Metropolitan Water Reclamation District of Greater Chicago,
18 (iii) one person representing accredited sanitary district or
19 waste water treatment plant laboratories, (iv) 3 persons
20 representing accredited environmental commercial laboratories
21 duly incorporated in the State of Illinois and employing 20 or
22 more people, (v) 2 persons representing accredited
23 environmental commercial laboratories duly incorporated in the
24 State of Illinois employing less than 20 people, and (vi) one
25 person representing the Illinois Association of Environmental
26 Laboratories, all appointed by the Director. If no accredited

1 laboratories are available to fill one of the categories under
2 item (iv) or (v) then any laboratory that has applied for
3 accreditation may be eligible to fill that position. Beginning
4 in 2002, the Director shall appoint 3 members of the Committee
5 for a one-year term, 3 members of the Committee for 2-year
6 terms, and 3 members of the Committee for 3-year terms.
7 Thereafter, all terms shall be for 3 years, provided that all
8 appointments made on or before December 31, 2012 shall end on
9 December 31, 2012. Beginning on January 1, 2013, the Director
10 shall appoint all members of the Committee for 6-year terms. In
11 the case of a vacancy, the Director may appoint a successor to
12 fill the remaining term of the vacancy. Members of the
13 Committee shall serve until a successor is appointed by the
14 Director. No member of the Committee shall serve more than 6
15 consecutive years ~~2 consecutive 3-year terms~~. The Committee
16 shall select from its members a Chairperson and any other
17 officers that it deems necessary. The Committee shall meet at
18 the call of the Chairperson or the Director ~~hold at least 2~~
19 ~~regular meetings each year~~. The Agency shall provide the
20 Committee with any supporting services that the Director and
21 the Chairperson may designate. Members of the Committee shall
22 be reimbursed for ordinary and necessary expenses incurred in
23 the performance of their duties. The Committee shall have the
24 following duties:

- 25 (1) To consider any alternative assessment schedules
26 submitted by the Agency pursuant to subsection (c) of this

1 Section;

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

5 (3) To review and evaluate management and financial
6 audit reports relating to the certification program and to
7 make recommendations regarding the Agency's efforts to
8 implement alternative assessment schedules;

9 (4) To consider appropriate means for long-term
10 financial support of the laboratory certification program
11 and to make recommendations to the Agency regarding a
12 preferred approach;

13 (5) To provide technical review and evaluation of the
14 laboratory certification program;

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

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

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

21 (415 ILCS 5/22.2) (from Ch. 111 1/2, par. 1022.2)

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

23 (a) There are hereby created within the State Treasury 2
24 special funds to be known respectively as the "Hazardous Waste
25 Fund" and the "Hazardous Waste Research Fund", constituted from

1 the fees collected pursuant to this Section. In addition to the
2 fees collected under this Section, the Hazardous Waste Fund
3 shall include other moneys made available from any source for
4 deposit into the Fund.

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

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

18 (B) 9 cents or \$18.18 per cubic yard, if the
19 hazardous waste disposal site is located on the site
20 where such waste was produced, provided however the
21 maximum amount of fees payable under this paragraph (B)
22 is \$30,000 per year for each such hazardous waste
23 disposal site.

24 (C) If the hazardous waste disposal site is an
25 underground injection well, \$6,000 per year if not more
26 than 10,000,000 gallons per year are injected, \$15,000

1 per year if more than 10,000,000 gallons but not more
2 than 50,000,000 gallons per year are injected, and
3 \$27,000 per year if more than 50,000,000 gallons per
4 year are injected.

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

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

20 (3) The Agency shall have the authority to accept,
21 receive, and administer on behalf of the State any moneys
22 made available to the State from any source for the
23 purposes of the Hazardous Waste Fund set forth in
24 subsection (d) of this Section.

25 (4) Of the amount collected as fees provided for in
26 this Section, the Agency shall manage the use of such funds

1 to assure that sufficient funds are available for match
2 towards federal expenditures for response action at sites
3 which are listed on the National Priorities List; provided,
4 however, that this shall not apply to additional monies
5 appropriated to the Fund by the General Assembly, nor shall
6 it apply in the event that the Director finds that revenues
7 in the Hazardous Waste Fund must be used to address
8 conditions which create or may create an immediate danger
9 to the environment or public health or to the welfare of
10 the people of the State of Illinois.

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

19 (6) For the purposes of this subsection (b), "monofill"
20 means a facility, or a unit at a facility, that accepts
21 only wastes bearing the same USEPA hazardous waste
22 identification number, or compatible wastes as determined
23 by the Agency.

24 (c) The Agency shall establish procedures, not later than
25 January 1, 1984, relating to the collection of the fees
26 authorized by this Section. Such procedures shall include, but

1 not be limited to: (1) necessary records identifying the
2 quantities of hazardous waste received or disposed; (2) the
3 form and submission of reports to accompany the payment of fees
4 to the Agency; and (3) the time and manner of payment of fees
5 to the Agency, which payments shall be not more often than
6 quarterly.

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

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

20 (2) To meet any requirements which must be met by the
21 State in order to obtain federal funds pursuant to the
22 Comprehensive Environmental Response, Compensation and
23 Liability Act of 1980, (P.L. 96-510).

24 (3) In an amount up to 30% of the amount collected as
25 fees provided for in this Section, for use by the Agency to
26 conduct groundwater protection activities, including

1 providing grants to appropriate units of local government
2 which are addressing protection of underground waters
3 pursuant to the provisions of this Act.

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

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

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

17 (e) The Agency shall deposit 10% of all receipts collected
18 under subsection (b) of this Section, but not to exceed
19 \$200,000 per year, in the State Treasury to the credit of the
20 Hazardous Waste Research Fund established by this Act. Pursuant
21 to appropriation, all monies in such Fund shall be used by the
22 University of Illinois for the purposes set forth in this
23 subsection.

24 The University of Illinois may enter into contracts with
25 business, industrial, university, governmental or other
26 qualified individuals or organizations to assist in the

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

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

23 (1) the owner and operator of a facility or vessel from
24 which there is a release or substantial threat of release
25 of a hazardous substance or pesticide;

26 (2) any person who at the time of disposal, transport,

1 storage or treatment of a hazardous substance or pesticide
2 owned or operated the facility or vessel used for such
3 disposal, transport, treatment or storage from which there
4 was a release or substantial threat of a release of any
5 such hazardous substance or pesticide;

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

14 (4) any person who accepts or accepted any hazardous
15 substances or pesticides for transport to disposal,
16 storage or treatment facilities or sites from which there
17 is a release or a substantial threat of a release of a
18 hazardous substance or pesticide.

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

22 In accordance with the other provisions of this Section,
23 costs of removal or remedial action incurred by a unit of local
24 government may be recovered in an action before the Board
25 brought by the unit of local government under subsection (i) of
26 this Section. Any monies so recovered shall be paid to the unit

1 of local government.

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

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

17 (h) For purposes of this Section:

18 (1) The term "facility" means:

19 (A) any building, structure, installation,
20 equipment, pipe or pipeline including but not limited
21 to any pipe into a sewer or publicly owned treatment
22 works, well, pit, pond, lagoon, impoundment, ditch,
23 landfill, storage container, motor vehicle, rolling
24 stock, or aircraft; or

25 (B) any site or area where a hazardous substance
26 has been deposited, stored, disposed of, placed, or

1 otherwise come to be located.

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

3 (A) any person owning or operating a vessel or
4 facility;

5 (B) in the case of an abandoned facility, any
6 person owning or operating the abandoned facility or
7 any person who owned, operated, or otherwise
8 controlled activities at the abandoned facility
9 immediately prior to such abandonment;

10 (C) in the case of a land trust as defined in
11 Section 2 of the Land Trustee as Creditor Act, the
12 person owning the beneficial interest in the land
13 trust;

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

21 (E) in the case of a "financial institution",
22 meaning the Illinois Housing Development Authority and
23 that term as defined in Section 2 of the Illinois
24 Banking Act, that has acquired ownership, operation,
25 management, or control of a vessel or facility through
26 foreclosure or under the terms of a security interest

1 held by the financial institution or under the terms of
2 an extension of credit made by the financial
3 institution, the financial institution only if the
4 financial institution takes possession of the vessel
5 or facility and the financial institution exercises
6 actual, direct, and continual or recurrent managerial
7 control in the operation of the vessel or facility that
8 causes a release or substantial threat of a release of
9 a hazardous substance or pesticide resulting in
10 removal or remedial action;

11 (F) In the case of an owner of residential
12 property, the owner if the owner is a person other than
13 an individual, or if the owner is an individual who
14 owns more than 10 dwelling units in Illinois, or if the
15 owner, or an agent, representative, contractor, or
16 employee of the owner, has caused, contributed to, or
17 allowed the release or threatened release of a
18 hazardous substance or pesticide. The term
19 "residential property" means single family residences
20 of one to 4 dwelling units, including accessory land,
21 buildings, or improvements incidental to those
22 dwellings that are exclusively used for the
23 residential use. For purposes of this subparagraph
24 (F), the term "individual" means a natural person, and
25 shall not include corporations, partnerships, trusts,
26 or other non-natural persons.

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

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

21 (i) The costs and damages provided for in this Section may
22 be imposed by the Board in an action brought before the Board
23 in accordance with Title VIII of this Act, except that Section
24 33(c) of this Act shall not apply to any such action.

25 (j) (1) There shall be no liability under this Section for a
26 person otherwise liable who can establish by a preponderance of

1 the evidence that the release or substantial threat of release
2 of a hazardous substance and the damages resulting therefrom
3 were caused solely by:

4 (A) an act of God;

5 (B) an act of war;

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

21 (D) any combination of the foregoing paragraphs.

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

24 (3) There shall be no liability under this Section for
25 damages as a result of actions taken or omitted in the course
26 of rendering care, assistance, or advice in accordance with

1 this Section or the National Contingency Plan pursuant to the
2 Comprehensive Environmental Response, Compensation and
3 Liability Act of 1980 (P.L. 96-510) or at the direction of an
4 on-scene coordinator appointed under such plan, with respect to
5 an incident creating a danger to public health or welfare or
6 the environment as a result of any release of a hazardous
7 substance or a substantial threat thereof. This subsection
8 shall not preclude liability for damages as the result of gross
9 negligence or intentional misconduct on the part of such
10 person. For the purposes of the preceding sentence, reckless,
11 willful, or wanton misconduct shall constitute gross
12 negligence.

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

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

22 (B) its warnings and cautions as stated in its label or
23 labeling; and

24 (C) the uses for which it is registered under the
25 Federal Insecticide, Fungicide and Rodenticide Act and the
26 Illinois Pesticide Act.

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

11 (4.6) There shall be no liability under subdivision (f) (1)
12 of this Section for response costs or damages as the result of
13 a substantial threat of a release of a pesticide from an
14 agrichemical facility site if the Agency has received notice
15 from the Department of Agriculture pursuant to Section 19.3 of
16 the Illinois Pesticide Act and the owner or operator of the
17 agrichemical facility is proceeding with a corrective action
18 plan under the Agrichemical Facility Response Action Program
19 implemented under that Section.

20 (5) Nothing in this subsection (j) shall affect or modify
21 in any way the obligations or liability of any person under any
22 other provision of this Act or State or federal law, including
23 common law, for damages, injury, or loss resulting from a
24 release or substantial threat of a release of any hazardous
25 substance or for removal or remedial action or the costs of
26 removal or remedial action of such hazardous substance.

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

11 (i) At the time the defendant acquired the facility the
12 defendant did not know and had no reason to know that any
13 hazardous substance which is the subject of the release or
14 threatened release was disposed of on, in or at the
15 facility.

16 (ii) The defendant is a government entity which
17 acquired the facility by escheat, or through any other
18 involuntary transfer or acquisition, or through the
19 exercise of eminent domain authority by purchase or
20 condemnation.

21 (iii) The defendant acquired the facility by
22 inheritance or bequest.

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

26 (B) To establish the defendant had no reason to know, as

1 provided in clause (i) of subparagraph (A) of this paragraph,
2 the defendant must have undertaken, at the time of acquisition,
3 all appropriate inquiry into the previous ownership and uses of
4 the property consistent with good commercial or customary
5 practice in an effort to minimize liability. For purposes of
6 the preceding sentence, the court shall take into account any
7 specialized knowledge or experience on the part of the
8 defendant, the relationship of the purchase price to the value
9 of the property if uncontaminated, commonly known or reasonably
10 ascertainable information about the property, the obviousness
11 of the presence or likely presence of contamination at the
12 property, and the ability to detect such contamination by
13 appropriate inspection.

14 (C) Nothing in this paragraph (6) or in subparagraph (C) of
15 paragraph (1) of this subsection shall diminish the liability
16 of any previous owner or operator of such facility who would
17 otherwise be liable under this Act. Notwithstanding this
18 paragraph (6), if the defendant obtained actual knowledge of
19 the release or threatened release of a hazardous substance at
20 such facility when the defendant owned the real property and
21 then subsequently transferred ownership of the property to
22 another person without disclosing such knowledge, such
23 defendant shall be treated as liable under subsection (f) of
24 this Section and no defense under subparagraph (C) of paragraph
25 (1) of this subsection shall be available to such defendant.

26 (D) Nothing in this paragraph (6) shall affect the

1 liability under this Act of a defendant who, by any act or
2 omission, caused or contributed to the release or threatened
3 release of a hazardous substance which is the subject of the
4 action relating to the facility.

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

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

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

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

6 (I) the defendant fails to obtain all Environmental
7 Audits required under this subparagraph (E) or any such
8 Environmental Audit fails to meet or exceed the
9 requirements of this subparagraph (E);

10 (II) a Phase I Environmental Audit discloses the
11 presence or likely presence of a release or a substantial
12 threat of a release of a hazardous substance or pesticide
13 at, on, to, or from real property, and the defendant fails
14 to obtain a Phase II Environmental Audit;

15 (III) a Phase II 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 the real property;

19 (IV) the defendant fails to maintain a written
20 compilation and explanatory summary report of the
21 information reviewed in the course of each Environmental
22 Audit under this subparagraph (E); or

23 (V) there is any evidence of fraud, material
24 concealment, or material misrepresentation by the
25 defendant of environmental conditions or of related
26 information discovered during the course of an

1 Environmental Audit.

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

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

13 (II) is an Illinois licensed professional engineer or
14 an Illinois licensed industrial hygienist.

15 An environmental professional may employ persons who are
16 not environmental professionals to assist in the preparation of
17 an Environmental Audit if such persons are under the direct
18 supervision and control of the environmental professional.

19 (iv) For purposes of this subparagraph (E), the term "real
20 property" means any interest in any parcel of land, and
21 includes, but is not limited to, buildings, fixtures, and
22 improvements.

23 (v) For purposes of this subparagraph (E), the term "Phase
24 I Environmental Audit" means an investigation of real property,
25 conducted by environmental professionals, to discover the
26 presence or likely presence of a release or a substantial

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

22 (vi) For purposes of subparagraph (E), the term "Phase II
23 Environmental Audit" means an investigation of real property,
24 conducted by environmental professionals, subsequent to a
25 Phase I Environmental Audit. If the Phase I Environmental Audit
26 discloses the presence or likely presence of a hazardous

1 substance or a pesticide or a release or a substantial threat
2 of a release of a hazardous substance or pesticide:

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

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

24 (III) On or to media other than soil or groundwater,
25 the defendant, as part of the Phase II Environmental Audit,
26 shall perform an investigation sufficient to determine

1 whether there is a presence or likely presence of a
2 hazardous substance or pesticide, and whether there is or
3 has been a release or a substantial threat of a release of
4 a hazardous substance or pesticide at, on, to, or from the
5 real property.

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

16 (viii) The Agency is not required to review, approve, or
17 certify the results of any Environmental Audit. The performance
18 of an Environmental Audit shall in no way entitle a defendant
19 to a presumption of Agency approval or certification of the
20 results of the Environmental Audit.

21 The presence or absence of a disclosure document prepared
22 under the Responsible Property Transfer Act of 1988 shall not
23 be a defense under this Act and shall not satisfy the
24 requirements of subdivision (6) (A) of this subsection (j).

25 (7) No person shall be liable under this Section for
26 response costs or damages as the result of a pesticide release

1 if the Agency has found that a pesticide release occurred based
2 on a Health Advisory issued by the U.S. Environmental
3 Protection Agency or an action level developed by the Agency,
4 unless the Agency notified the manufacturer of the pesticide
5 and provided an opportunity of not less than 30 days for the
6 manufacturer to comment on the technical and scientific
7 justification supporting the Health Advisory or action level.

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

14 (k) If any person who is liable for a release or
15 substantial threat of release of a hazardous substance or
16 pesticide fails without sufficient cause to provide removal or
17 remedial action upon or in accordance with a notice and request
18 by the Agency or upon or in accordance with any order of the
19 Board or any court, such person may be liable to the State for
20 punitive damages in an amount at least equal to, and not more
21 than 3 times, the amount of any costs incurred by the State of
22 Illinois as a result of such failure to take such removal or
23 remedial action. The punitive damages imposed by the Board
24 shall be in addition to any costs recovered from such person
25 pursuant to this Section and in addition to any other penalty
26 or relief provided by this Act or any other law.

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

3 (1) Beginning January 1, 1988, and prior to January 1,
4 2013, the Agency shall annually collect a \$250 fee for each
5 Special Waste Hauling Permit Application and, in addition,
6 shall collect a fee of \$20 for each waste hauling vehicle
7 identified in the annual permit application and for each
8 vehicle which is added to the permit during the annual period.
9 Beginning January 1, 2013, the Agency shall issue 3-year
10 Special Waste Hauling Permits instead of annual Special Waste
11 Hauling Permits and shall collect a \$750 fee for each Special
12 Waste Hauling Permit Application. In addition, beginning
13 January 1, 2013, the Agency shall collect a fee of \$60 for each
14 waste hauling vehicle identified in the permit application and
15 for each vehicle that is added to the permit during the 3-year
16 period. The Agency shall deposit 85% of such fees collected
17 under this subsection in the State Treasury to the credit of
18 the Hazardous Waste Research Fund; and shall deposit the
19 remaining 15% of such fees collected in the State Treasury to
20 the credit of the Environmental Protection Permit and
21 Inspection Fund. The majority of such receipts which are
22 deposited in the Hazardous Waste Research Fund pursuant to this
23 subsection shall be used by the University of Illinois for
24 activities which relate to the protection of underground
25 waters.

26 (1-5) (Blank).

1 (m) (Blank).

2 (n) (Blank).

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

4 Section 99. Effective date. This Act takes effect upon
5 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