

AN ACT concerning safety.

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

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

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

Sec. 1-5. Applicability.

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

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

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

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

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

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

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

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

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

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

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

an employee subject to that Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Upon approval of a final draft agreement, the Illinois Power Agency shall submit the final draft agreement to the Capital Development Board and the Commission no later than 90 days after July 13, 2011. The gas utility and the clean coal SNG brownfield facility shall pay a reasonable fee as required by the Illinois Power Agency for its services under this subsection (h-1) and shall pay the mediator's reasonable fees, if any. The Illinois Power Agency shall adopt and make public a policy detailing the process for retaining a mediator under this Section.

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

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

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

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

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

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

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

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

"Consumer protection reserve account principal maximum amount" shall mean the maximum amount of principal to be maintained in the consumer protection reserve account. During the first 2 years of operation of the facility, there shall be no consumer protection reserve account maximum amount. After the first 2 years of operation of the facility, the consumer protection reserve account maximum amount shall be \$150,000,000. After 5 years of operation, and every 5 years thereafter, the trustee shall calculate the 5-year average balance of the consumer protection reserve account. If the trustee determines that during the prior 5 years the consumer protection reserve account has had an average account balance of less than \$75,000,000, then the consumer protection reserve account principal maximum amount shall be increased by \$5,000,000. If the trustee determines that during the prior 5 years the consumer protection reserve account has had an average account balance of more than \$75,000,000, then the consumer protection reserve account principal maximum amount shall

be decreased by \$5,000,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and not subject to a Commission prudence review;

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

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

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

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

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

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

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

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

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

distributed to retail customers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) an advanced degree in economics,

mathematics, engineering, or a related area of study;

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

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

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

(vi) expertise in credit and contract protocols;

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

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

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

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

In the event that the estimate submitted by the clean coal SNG brownfield facility is within or below the range submitted by the Capital Development Board, the clean coal SNG brownfield facility's estimate shall be approved by the Commission as the amount of capital costs to be recovered under the sourcing agreement. In the event that the estimate submitted by the clean coal SNG brownfield facility is above the range submitted by the Capital Development Board, the amount of capital costs at the lowest end of the range submitted by the Capital Development Board shall be approved by the Commission as the amount of capital costs to be recovered under the sourcing agreement. Within 15 days after the Capital Development Board has

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

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

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

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

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

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

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

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

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

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

publicly announce the range of operations and maintenance costs submitted by the Capital Development Board. In the event that the estimate submitted by the clean coal SNG brownfield facility is within or below the range submitted by the Capital Development Board, the clean coal SNG brownfield facility's estimate shall be approved by the Commission as the amount of operations and maintenance costs to be recovered under the sourcing agreement. In the event that the estimate submitted by the clean coal SNG brownfield facility is above the range submitted by the Capital Development Board, the amount of operations and maintenance costs at the lowest end of the range submitted by the Capital Development Board shall be approved by the Commission as the amount of operations and maintenance costs to be recovered under the sourcing agreement. Within 15 days after the Capital Development Board has submitted its range and the clean coal SNG brownfield facility has submitted its estimate, the Commission shall approve the operations and maintenance costs for the clean coal SNG brownfield facility.

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

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

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

(A) capture carbon dioxide;

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

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

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

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

The Commission may, in its discretion, retain an expert

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

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

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

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

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

the sourcing agreement.

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

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

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

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

(h-5) Sequestration enforcement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

has no authority to consider, any attempted challenges.

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

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

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

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

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

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

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

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

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

companies or affiliates of the clean coal SNG facility.

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

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

(A) the revenue share target amount;

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

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

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

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

and

(F) any additional information the Commission may require.

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

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

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

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

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

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

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

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

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

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

synthetic natural gas, Article VII of this Act shall apply.

(Source: P.A. 96-1364, eff. 7-28-10; 97-96, eff. 7-13-11; 97-239, eff. 8-2-11; 97-630, eff. 12-8-11.)

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

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

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

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

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

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

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

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

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

(415 ILCS 5/9.14)

Sec. 9.14. Registration of smaller sources.

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

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

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

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

material air pollutant emissions;

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

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

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

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

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

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

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

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

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

Sec. 12. Actions prohibited. No person shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(415 ILCS 5/17.8)

Sec. 17.8. Environmental laboratory certification assessment.

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

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

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

and

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

(2) For certification to conduct water pollution

analyses:

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

and

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

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

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

and

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

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

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

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

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

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

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

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

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

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

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

Section;

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

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

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

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

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

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

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

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

Sec. 22.2. Hazardous waste; fees; liability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of local government.

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

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

(h) For purposes of this Section:

(1) The term "facility" means:

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

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

otherwise come to be located.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) an act of God;

(B) an act of war;

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

(D) any combination of the foregoing paragraphs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Environmental Audit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1-5) (Blank).

Public Act 097-1081

SB2867 Enrolled

LRB097 15146 JDS 60246 b

(m) (Blank).

(n) (Blank).

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

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

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Statutes amended in order of appearance

5 ILCS 100/1-70	from Ch. 127, par. 1001-70
220 ILCS 5/9-220	from Ch. 111 2/3, par. 9-220
225 ILCS 225/7	from Ch. 111 1/2, par. 116.307
415 ILCS 5/12	from Ch. 111 1/2, par. 1012
415 ILCS 5/17.8	
415 ILCS 5/22.2	from Ch. 111 1/2, par. 1022.2