

2011 VETO SESSION SUMMARY

This document provides a summary of environmental bills introduced during the veto session of the 97th General Assembly. There may have been other environmental bills introduced during this session that are not included in this document because they were not of importance to the drafter. Also, any bill referenced below as effectively dead could re-emerge as a new bill in an upcoming legislative session.

BILLS THAT BECAME LAW

P.A. 97-618/SB 2062. *Overridden in both houses on October 26, 2011; effective October 26, 2011.* Creates the Clean Coal FutureGen for Illinois Act of 2011. Provides that if the FutureGen Alliance selects as its location for CO₂ storage a designated site or sites in the State of Illinois suitable for injection of captured CO₂ into the Mount Simon Formation (rather than at the Tuscola or Mattoon site), then the operator shall retain the rights, title, and interest in and to, and any liabilities associated with the pre-injection CO₂. Provides that the operator shall retain all rights, title, and interest in the sequestered CO₂ during the operational phase of the FutureGen Project. Following the operational phase of the FutureGen Project, requires the operator to transfer and convey and requires the State of Illinois to accept and receive, with no payment due from the State, all rights, title, and interest in and to, and any liabilities associated with the sequestered CO₂.

Requires the operator, rather than the Department of Commerce and Economic Opportunity (DECO), to procure a certain insurance policy that insures the operator against any qualified loss stemming from a public liability action and with coverage limits of at least \$15 million. Requires the operator to establish and fund a newly-created CO₂ Storage Trust Fund to complement commercially-available insurance products, and to support the operator's ability to satisfy financial assurance obligations that may be required by law or the terms of the operator's permit issued by the USEPA. Requires the State to indemnify the operator and hold the operator harmless against any qualified loss stemming from a public liability action to the extent that the qualified loss is not covered under the insurance policy required under the Clean Coal FutureGen for Illinois Act, and to the extent that the CO₂ Storage Trust Fund lacks adequate funds to cover the loss. Extends the repeal date from March 1, 2011 to March 1, 2015. Makes other changes.

BILLS PASSED BOTH HOUSES AWAITING FINAL ACTION BY THE GOVERNOR

HB 691 (Colvin/Trotter). Amends the Public Utilities Act. No later than 90 days after the Illinois Power Agency submits the final draft sourcing agreement, requires the Illinois Commerce Commission (ICC) to approve a sourcing agreement containing all other terms and conditions, rights, provisions, exceptions, and limitations contained in the final draft sourcing agreement. Requires the ICC to 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 synthetic natural gas (SNG) brownfield facility's failure to timely meet milestones, uncured default,

extended force majeure, or abandonment. Contains revisory changes. Introduced for the proposed Leucadia clean energy plant in Chicago. Effective immediately.

HB 3840 (Tryon/Althoff). Amends the Drycleaner Environmental Response Trust Fund Act. Authorizes the Department of Revenue to accept payment of the license fee required under the Act by credit card only if the Department is not required to pay a discount fee charged by the credit card issuer. Effective immediately.

ACTIVE BILLS

SB 678 (Cullerton). *Passed the Senate; first reading in the House.* Amends the Illinois Power Agency Act. Requires the Illinois EPA to take certain actions with respect to CO2 sequestration sites and CO2 pipelines. Requires the Illinois EPA to annually inspect sequestration sites for “safety and feasibility.” Also requires the Illinois EPA to issue seal orders and request the institution of civil actions for injunctions if sequestration site conditions warrant such actions, and to post notice of such actions on its website. Requires the Illinois Commerce Commission (ICC) to notify the Illinois EPA if the ICC determines that a CO2 pipeline creates conditions that warrant the issuance of a seal order by the Illinois EPA. Requires the Illinois EPA to request the institution of a civil action for an injunction if the ICC determines that a CO2 pipeline creates conditions that warrant such action.

Also amends the Environmental Protection Act (EPA), specifically to address CO2 sequestration sites. Requires the Illinois EPA to inspect sequestration sites for compliance with the EPA, Pollution Control Board rules, and permits issued by the Illinois EPA. Requires the Illinois EPA to post on its website notices of seal orders and injunctions related to sequestration sites. Requires sequestration sites to pay the Illinois EPA’s costs of permitting and inspecting the sites. Introduced for the proposed Tenaska clean energy plant in Taylorville. Effective immediately.

SB 1617 (Steans/Acevedo). *Passed the Senate; third reading in the House.* Creates the Chicago Clean Power Act. The bill would apply to “A coal-fired power plant located within a municipality with a population of 1,000,000 or more inhabitants...” All such plants must meet stringent emissions limits on PM (particulate matter)/PM10, PM2.5, and carbon dioxide (CO2). The timing for meeting the limits set forth in this bill is within one year of the immediate effective date of the bill for the PM limits, within two years of the effective date for the PM limits for an owner of two or more units at the same coal-fired power plant, and within three years of the effective date for both plants for the CO2 requirements.

The bill also contains requirements for the submittal and maintenance of a compliance plan and the submittal of periodic emissions reports to the Illinois EPA. The bill also contains enforcement provisions that set forth pre-referral procedures and contain penalty amounts and allow for the recovery of litigation costs by the Attorney General’s Office or state’s attorney. Effective June 1, 2012.

BILLS THAT ARE EFFECTIVELY DEAD

SB 2288 (Hutchinson/Nekritz). *Vetoed on August 26, 2011; total veto stands.* Amends the Environmental Protection Act (EPAAct). Changes the definition of “municipal waste incineration” in Section 9.4(f) of the EPAAct and by adding similar conforming language to Section 22.16b(a) of the EPAAct. Excludes from the definition of “municipal waste incineration” non-hazardous materials that are excluded from “solid waste” pursuant to a demonstration that such materials are legitimate fuels under recently promulgated federal rules at 40 CFR Part 241. Once the demonstration is made, combustion units burning such materials would not be classified as municipal waste incinerators under state law or federal law (assuming no combustion of other waste materials is being done at the facility). The conforming changes at Section 22.16b would remove these same combustion units from the fees and other requirements for municipal waste incinerators under Section 22.16b once the Part 241 demonstration is made and accepted. Effective immediately.