

RECEIVED
CLERK'S OFFICE

SEP 23 2004

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO:)
REGULATION PETROLEUM LEAKING)
UNDERGROUND STORAGE TANKS)
35 ILL. ADM. CODE 732)

R04-22
(Rulemaking - UST)

IN THE MATTER OF :)
)
PROPOSED AMENDMENTS TO:)
REGULATION PETROLEUM LEAKING)
UNDERGROUND STORAGE TANKS)
35 ILL. ADM. CODE 734)

R04-23
(Rulemaking - UST)
Consolidated

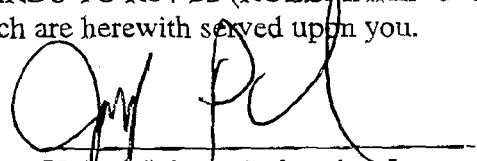
PC#8

To: Dorothy M. Gunn, Clerk
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100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

Ms. Marie E. Tipsord
Illinois Pollution Control Board
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Chicago, IL 60601

NOTICE OF FILING

Now comes JAY P. KOCH, on behalf of United Science Industries, Inc., and files with the Illinois Pollution Control Board, via fax and an original via U.S. Mail a REQUEST FOR ADDITIONAL HEARING WITH REGARDS TO R04-22 (RULEMAKING-UST) AND R04-23 (RULEMAKING-UST) copies of which are herewith served upon you.


United Science Industries, Inc.
Jay P. Koch, President

JAY P. KOCH
United Science Industries, Inc.
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(618) 735-2907 (FAX)
jay@unitedscience.com

SEP 23 2004

STATE OF ILLINOIS
Pollution Control Board

PROOF OF SERVICE

The undersigned, being duly sworn, states that a true and correct copy of the foregoing REQUEST FOR ADDITIONAL HEARING WITH REGARDS TO R04-22 (RULEMAKING-UST) AND R04-23 (RULEMAKING-UST) with the CLERK and the HEARING OFFICER of the ILLINOIS POLLUTION CONTROL BOARD, was served on the individuals as listed below, by mailing the same via the United States postal service, Springfield, Illinois on September 23 2004:

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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IN THE MATTER OF:)
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R04-22

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(Rulemaking - UST)

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R04-23

(Rulemaking - UST)

Consolidated

REQUEST FOR AN ADDITIONAL HEARING

Now comes United Science Industries, Inc., USI, by and through its President, Jay P. Koch, and hereby requests an additional hearing before the Illinois Pollution Control Board in the above stated matter.

BACKGROUND & RATIONALE FOR REQUEST

United Science Industries, Inc. has participated in the numerous hearings held before the IPCB since March of this year relating to the above referenced proposed rule. USI's participation in the hearing process has been at the firm level and also as a member of the Professionals of Illinois for the Protection of the Environment (PIPE).

As the IPCB is aware, there has been a significant amount of debate and controversy surrounding this rulemaking. Most of the controversy centers not on technical issues but on the subject of cost containment. One of the main points of

debate/discussion during the hearings is the validity of the data used by IEPA to establish the costs that have been proposed by IEPA as the maximum payment amounts under Subpart H. The second is the Agency's proposal to provide payment/reimbursement for a number of professional service tasks on a lump sum basis.

The underlying matter is whether or not the approach proposed by the Agency would result in the reimbursement/payment of "reasonable" costs incurred and necessary in order to meet the minimum requirements of the Act. This is the case because Section 57.7 (c)(3) of Public Act 92-0554 provides: " In approving any plan submitted pursuant to this subsection (a) or (b) of this Section, the Agency shall determine by a procedure promulgated by the Board under Section 57.14, that the costs associated with the plan are reasonable, will be incurred in performance of site investigation or corrective action, and will not be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of this Title."

Therefore, applicable statutes prescribed that any costs containment rule should provide for the reimbursement/payment of the reasonable costs of undertaking corrective action which were necessary and incurred at a LUST site in order to comply with the minimum requirements of applicable statutes and regulations. Fortunately, the statutory language provided above also supplies guidance as to how reasonableness determinations should be made. The statutory language is clear that the determination of reasonableness should be on a plan by plan basis.

Considering, the limited resources of the Agency's LUST Unit and the volume of work that the Agency's LUST Unit must administer annually, I appreciate the Agency's desire to establish cost thresholds to help guide Agency reviewers in their determinations of reasonableness when evaluating individual work plans and budgets. I can also appreciate that in the absence of some form of guidance as to generalized ranges of reasonableness, the task of performing detailed individual reviews of work plans and budgets is too daunting. In fact, to the extent that the standardization of rates still allows for justification of reasonableness on a plan-by-plan basis with the standard for reviewing justifications as being something less than an unusual or extraordinary circumstance and as long as the standardization helps facilitate the expeditious review of plans and budgets, the adoption of thresholds of reasonableness is favorable. However, the use of a specified costs figure as a near absolute "maximum payment amount" is unreasonable and thereby outside the authority granted to the Agency under the statute cited above.

If the Agency would use their proposed rates for the various LUST tasks provided in Subpart H as benchmarks for determining cost reasonableness and not absolutes (maximum payment amounts which can only be exceeded in unusual or extraordinary situations), it would seem that they would be within their statutory authority in doing so. I also believe the regulated community would be much more receptive to the Agency's proposal. Finally, I also believe the regulated community would be especially receptive to the Agency's proposal if the regulated community was convinced that the adoption of Subpart H would result in the more expeditious review of plans, budgets and reports and would be fairly and uniformly administered.

USI has long held, and continues to believe, that the creation of a database to track the costs of performing investigations and corrective actions at LUST sites is the most accurate and feasible way to implement cost containment. More importantly, a database helps to assure a fair, uniform and objective means for administering the program going forward. The benefits of a database that would allow the Agency to track costs pursuant to a standardized work breakdown structure (WBS), a standard billing methodology for each task within the work breakdown structure, standardized units of measure and a table of standard resources that could be utilized for time and materials tasks is invaluable. A database could 1.) provide the statistically reliable dataset that has been so sorely missing from these proceedings 2.) facilitate the long term projection of clean-up costs statewide 3.) expedite the review of budgets and plans and environmental clean-up and 4) allow the Agency and the Board to use Illinois specific market data that is consistent with the task and administrative peculiarities of the Illinois' LUST program as a means for establishing initial and revisionary baseline cost containment thresholds.

Further, a database could be used to automate portions of the budget and claims review process and would provide the IEPA with a means of achieving several of their stated goals for this rulemaking. These goals include: 1.) limiting the amount of technical reviewer (IEPA Project Manager) time spent on budget reviews/issues, 2.) minimizing the timeframe for reimbursement; and 3) maximizing the effectiveness of expenditures from the LUST Fund (containing costs). An automated claims review system could serve to define, over time, the specific activities that are normally included a given task

as well as the range of costs that the free market system indicates are reasonable for that tasks. This approach would help to establish, for an example, whether the Agency's proposal to pay a lump sum for professional service task is appropriate.

Unfortunately, the Agency has objected to the creation of a database. Their position has been that the development of a database would be too complicated, too time consuming and too costly to implement. As a result of this position by the Agency, USI is concerned that the IPCB could be hesitant to adopt a component that is critically needed as part of this rulemaking process. This critical component is the creation of a database to track costs, establish statistically reliable pricing points for LUST clean-up in Illinois and enable the fair, uniform and expeditious review of plans, budgets and reimbursement payments.

In order to dispel any hesitance that the IPCB might have regarding the timeliness, costs or complexity associated with the development and use of a customized database for purposes of achieving and administering a costs containment program, USI has taken the initiative to develop a functional prototype of an automated administrative database system.

USI developed this automated database system since the August 9th hearing, and envisions that this, or a similar, automated process could be utilized by the Agency to set initial costs containment thresholds based upon actual market data and also in the long term administration of their program.

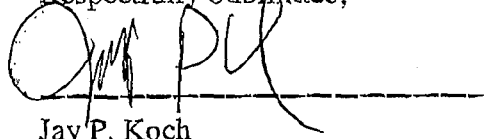
There are a number of benefits to utilizing an automated system such as the prototype which has been developed. In the instance of the current prototype these benefits include but are not limited to: 1.) the prototype is flexible and would provide the Agency with appropriate managerial latitude and discretions in setting the initial threshold pricing levels for expedited budgetary and payment application reviews and processing (this allows the Agency to adjust their workload so that only the reviews that they believe are necessary are required to be performed on a detailed basis; 2.) the novel business and administrative rules that have been built into the system provide a means for administering a long term costs containment program based upon competitive market data that will be specific to LUST clean-ups in Illinois (the system provides a unique cost containment incentive measure which has not been previously presented to the IPCB); and 3.) The prototypical system is also functional, thereby proving that a database system can be built and deployed quickly enough to be included as part of this rulemaking.

There are a number of obvious efficiencies of utilizing an automated budgetary and claims review system. However, USI has learned from engaging in the details of the development process that there are also a number of subtle, yet extremely profound, efficiencies afforded through the use of an automated system. These subtle efficiencies are not explicit in this document and have not been previously presented to the IPCB but are likely to be incredibly enabling to the process of developing and administering a fair cost containment rule. As such, I believe a presentation of the features and benefits of the

use of an automated budgetary review and claims processing system would be dramatically enlightening to the IPCB as it prepares to deliberate this matter.

Therefore, I respectfully request, on behalf of USI, that the Board consider another hearing to provide USI with an opportunity to present the features and benefits of a prototypical automated administrative system for reviewing budget submittals and payment applications.

Respectfully Submitted,



Jay P. Koch
United Science Industries, Inc.
President

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Date 9-23-04 STATE OF ILLINOIS
Pollution Control Board

Number of pages including cover sheet 11

FAX



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REMARKS: Urgent For your review Reply ASAP Please Comment

Dear Ms. Gunn:

Please file the attached Notice of Filing as it relates to R04-22 and R04-23 rulemaking, on behalf of United Science Industries. If you have any questions, please do not hesitate to contact me at the above numbers.

Sincerely,

United Science Industries, Inc.

Jay P. Koch, President