

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
PROPOSED AMENDMENTS TO:)
REGULATION OF PETROLEUM) *R04-22*
LEAKING UNDERGROUND STORAGE) *(Rulemaking – Land)*
TANKS (35 ILL.ADM.CODE 732))

IN THE MATTER OF:

PROPOSED AMENDMENTS TO:)
REGULATION OF PETROLEUM) *R04-23*
LEAKING UNDERGROUND STORAGE) *(Rulemaking – Land)*
TANKS (35 ILL. ADM. CODE 734))

**UNITED SCIENCE INDUSTRIES, INC.'S RESPONSES TO THE ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY'S QUESTIONS REGARDING
TESTIMONY SUBMITTED AT THE JULY 27, 2005, HEARING.**

NOW COMES United Science Industries, Inc., (“USI”) and submits the following responses to the Illinois Environmental Protection Agency’s (“IEPA”) Questions regarding USI’s testimony submitted at the July 27, 2005 hearing.

USI would like to thank the Board for scheduling the July 27, 2005 hearing. Additionally, prior to offering its responses to the IEPA’s questions, USI believes it is appropriate to address a couple of suggestive subtleties embedded within the questions the Agency has posed.

First, many of the questions presented by the IEPA imply that USI takes exception with the Board for publishing the rule that was published at First Notice. USI desires to clarify that USI is not at all at odds with the Board. In fact, USI empathizes with the position that the Board was placed in at First Notice.

USI recognizes that the method of developing administrative rules is fortunately and intentionally designed as an open and public process to help assure that the rules that are adopted by regulatory authorities are based upon a complete and factual record with appropriate public input. First Notice is merely a milestone and not the conclusion in this information gathering process, and pursuant to 35 Illinois Administrative Code 102.606, the Board may make substantive changes in the proposed rule based upon public comment up to the beginning of the Second Notice period. USI empathizes with the Board in that, at the time the Board moved to First Notice, it was confronted with a highly controversial, confusing and incomplete record. [This is very much like the situation that confronts the environmental consultant at the onset of a UST remediation project where quantities of environmental contamination are unknown as are the documentation and technical approach requirements that may be imposed upon the project by any individual IEPA Project Manager.] USI believes that the Board's publication at First Notice, of a form of rule that closely mirrored the Agency's original proposal, was not an adoption by the Board of the Agency's proposal as their own. Rather, the Board's publication of a First Notice Draft Rule that is almost entirely based upon the Agency's flawed proposal that the Board has already recognized is based upon methods that are "...not statistically defensible..." (Opinion and Order at 79) was merely the Board's means of moving forward and forcing the participants to identify and focus upon those critical portions of the proposed rule that must be changed in the Agency's proposal. For this reason, USI narrowed the focus of its testimony at the July 27, 2005 hearing to primarily focus on what USI believes is the largest remaining issue in this rulemaking. That is the means of determining a fair and reasonable level of

reimbursement to underground storage tank owners/operators for the costs of professional consulting services that are incurred on their projects.

For the Agency to imply that the rule as proposed at First Notice is the “Board’s proposal” or that the rule published at First Notice is the Board’s final position with regard to Subpart H is misleading and inappropriate. USI believes that the post-First Notice rulemaking process codified in the Illinois Administrative Procedures Act and in 35 Illinois Administrative Code Part 102 is of substance and involves continued receipt of data by an impartial decision maker and is not just window-dressing as the Agency apparently would like the participants in this proceeding to believe.

Secondly, in its questions to USI, the Agency has asked a number of questions regarding USI’s business operations and its financial performance. These questions are not relevant to the testimony that USI presented at the July 27th hearing or to this rulemaking. Recognizing that, in the absence of comparative data, a standard of “reasonableness” is very imprecise and easily misconstrued as a subjective standard, and that USI is but one consultant performing UST work in Illinois, the subject matter of USI’s July 27, 2005 testimony was intentionally much broader in scope than USI’s business operations alone. On July 27th USI provided a statistically reliable survey of information from the Agency’s own files. That survey provided a range of professional consulting hours, rates and costs that the Agency has historically reimbursed on a routine basis across the state during each phase of a UST project (i.e. Early Action, Site Classification and Corrective Action) (Pages 328-377 of USI’s testimony). During its July 27, 2005 testimony USI also provided the results of a survey of the profitability of environmental engineering and consulting firms from across the nation. The survey was

conducted by the Environmental Financial Consulting Group of New York, New York and covered the period from 1999 through 2003. Considering that this rulemaking is an industry wide rulemaking and that statewide and national costs data are now on record in this proceeding, it is not rational to conclude that an exhaustive examination of USI's business operations and financial performance is important, practical, or worthwhile. USI's belief is that this tactic is an attempt to divert the Board's attention from the accurate and relevant statewide and national facts and statistics presented by USI as part of its July 27, 2005 testimony. Nonetheless, since USI desires to provide constructive input as part of this rulemaking and assist the Board in gathering the facts that are relevant to this rulemaking it will respond to IEPA's questions to the extent that it deems the questions are appropriate and relevant to the subject of this rulemaking and/or are necessary to maintain USI as a credible witness and substantiate its testimony.

Responses to IEPA's Questions.

Presented below in italics are the questions posed to USI by the IEPA. USI's responses to those questions are provided in bold text below each question.

1.) Question: Numerous USI employees filed requests for the Board to hold an additional hearing in these proceedings, and specifically requested that the hearing be held in southern Illinois. See PC 10-36. These employees later provided the Board with the dates they would be available for the hearing. See PC 40 (comments of 18 USI employees); Exh. 95, 96. However, most of these employees did not present any testimony at the hearing or even attend the hearing. Please provide the reasons for each employee's failure to participate in the July 27, 2005 hearing.

Response: USI objects to this question as argumentative and not relevant. Eight employees of USI and two consultants attended the hearing on behalf of USI.

Additionally, two of USI's clients were also in attendance during the hearing.

Dozens of additional USI employees participated in the preparation of USI's testimony in some form or another. Finally, prior to the hearing date, USI was informed that the Board would like to limit the hearings pertaining to this rulemaking to the single day of July 27th. USI and its employees attempted to respect the Board's stated desires by consolidating comments and minimizing duplicative or redundant testimony from multiple individuals. The Agency's interpretation, that if one did not provide testimony or attend the hearing they did not participate is erroneous. To imply that because one did not attend the hearing he or she is disinterested is not logical and in direct contradiction to the reason for the Service of Process list and the Public comment period which are required elements of the rulemaking process.

2.) Question: In its pre-filed testimony for the July 27, 2005 hearing and its amended testimony submitted at the hearing, USI questions the IEPA's motives in this rulemaking, Exh. 107 at 28; Exh 109 at 20-30. Does USI believe that any of the listed "other motives that been discussed within industry circles" are true? If so, please state the motive(s) that USI believes to be true and provide evidence to support its belief. If not, please state what USI believes to be the IEPA's "real motives [that] are never likely to be stated publicly" and provide evidence to support its belief.

Response: USI believes that the fundamentally flawed portions of the IEPA's proposal that were addressed in USI's July 27th testimony are highly irrational and without merit. Given the irrational basis for the Agency's proposal, USI finds the Agency's continued defense of its proposal highly peculiar. USI would like to believe that the "other motives that have been discussed within industry circles" are not true. However, if the Agency continues its rigid defense of its proposal in light of the facts that were disclosed by USI at the July 27th hearing, such unfounded obstinacy would certainly support the theories that are circulating within the

industry. This is particularly the case when the Agency stated on the very first day of testimony in this matter that, “The legislature has approved appropriate levels of funding to address the program needs, we process payment requests efficiently and in accordance with Board rules.” (Gary King’s testimony on March 15, 2004-hearing transcript page 14). These opening statements by Mr. King are in direct contradiction to the Agency’s stated motives for this rulemaking. USI also finds the Agency’s questions regarding USI’s July 27, 2005 testimony to be highly peculiar. In its questions why did the Agency not question the reliability of USI’s statistical analysis of the Agency’s historical reimbursement practices for professional consulting costs at Illinois UST sites? Why did the Agency not challenge USI’s projections of anticipated reimbursement for professional service costs pursuant to Subpart H? Why did the Agency not question USI about the information contained within the Environmental Financial Consulting Group’s survey of the historical profitability of the environmental consulting and engineering industry? Instead of making inquiry into the above well documented items to this rule making, many of which negated key portions of the Agency’s prior testimony in this rulemaking and all of which were a part of USI’s July 27, 2005 testimony and highly relevant to this rulemaking; why did the Agency elect to inquire into the profitability of USI, a private business? Instead, why did the Agency want to know USI’s revenues by market segment? Instead, why does the Agency want to know the salary levels of USI employees? Considering that the *Agency processes reimbursement requests in accordance with Board rules and “has never been accused of running a give away program”* (emphasis added to Gary King’s testimony of March 15, 2004) these are

truly peculiar questions for the Agency to ask of a firm that has been reimbursed by the Agency at a rate of 94.30%. Clearly, the Agency's behavior has been and continues to be peculiar. If this peculiar behavior continues it is reason for alarm.

3.) *Question: USI states in its amended testimony that PIPE and PIPE's members refrained from providing alternative rates to the Board because "USI and other PIPE members were cautioned prior to the 2004 hearings to not discuss rates amongst one another for legal reasons." Exh. 109 at 32. However, for the July 27, 2005, hearing CSD, CW3M, and USI, who are all PIPE members, each submitted testimony that included alternative rates. In addition, Carol Rowe of CW3M suggested at the hearing that CW3M, CSD, and USI get together and submit a coordinated alternative proposal to the Board. Is it USI's contention that it, as well as others, could not have submitted alternative rates to the Board prior to the July 27, 2005 hearing? If so, please state the reasons why such action was prohibited.*

Response: After the Agency submitted its January 2004 proposal to the Board, the IPMA asked its associate members that provide environmental services to UST owners/operators to develop an impact statement outlining the projected impact of the proposed Subpart H on IPMA's active members. This meeting was held in the basement of the IPMA office in Springfield and was attended by environmental service firms from across the state. This was the formative meeting of PIPE. PIPE emerged from this meeting primarily because, as one of the individuals in attendance at the meeting put it, (this is quoted to the best of USI's recollection) "It is in our best interest to unite in responding to this rule because this rule threatens the very survival of the species" The "species" that this individual was referring to is the "environmental consultant that serves the UST market segment in Illinois" and the individual was stating that if the IEPA's proposed rule was adopted these consultants would be put out of business. Obviously, the group felt that his statement had merit and PIPE was formed. Once PIPE was formed, PIPE

members were told by their legal counsel that they should not discuss pricing in order to comply with anti-trust regulations. Under 15 U.S.C. § 1, every contract, combination or conspiracy in restraint of trade or commerce is unlawful.

Agreements among competitors to fix prices are among those activities which are regarded as “*per se illegal*” under this statute. *Northern Pac. Ry. Co. v. United States*, 356 U.S. 1, 5 (1958); *Citizen Pub. Co. v. United States*, 394 U.S. 131, 135 (1969). Accordingly, combinations of competitors charged with price fixing may not defend that the prices upon which they sought to agree were reasonable. *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 220-22 (1940); *United States v. McKesson & Robbins, Inc.*, 351 U.S. 305, 310 (1956).

A person injured in his business or property by such a violation may sue for damages and other monetary relief. 15 U.S.C. § 15. In addition, an action may be brought by a state attorney general, on behalf of the allegedly injured persons, on the theory of *parens patriae* (government as parent). 15 U.S.C. § 15c. Governmental and private parties also may sue for injunctive relief. 15 U.S.C. §§ 25-26.

In addition to these *civil* remedies, which apply in civil cases not governed by proof standards of a criminal case, violation of 15 U.S.C. § 1 is a crime for which a corporation may be fined up to \$100,000,000, and for which an individual may be punished by a fine of up to \$1 million and/or imprisonment for up to 10 years. 15 U.S.C. § 1.

The State of Illinois has frequently invoked these laws, including both suits for alleged overcharges as purchaser and suits *in parens patriae*. See, e.g., *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977); *State of New York v. Reebok Int'l Ltd.*, 96

F.3d 44 (2nd Cir. 1996); *In re Midwest Milk Monopolization Litigation*, 730 F.2d 528 (8th Cir. 1984).

Courts often hold that the agreement on prices need not be express or proven by direct evidence, so cases often are brought based on charges of tacit agreement. *E.g., United States v. Paramount Pictures*, 334 U.S. 131, 142 (1948); *Interstate Circuit, Inc. v. Paramount Pictures Distr. Co.*, 306 U.S. 208, 221, 226 (1939). Invoking such theories, plaintiffs often bring cases which are not meritorious. In *In re Fine Paper Antitrust Litigation*, MDL 323, for example, the State of Illinois and attorneys general from other states brought damage actions under these provisions even though there was no direct evidence of an agreement, even though the Federal Trade Commission had conducted a thorough review of the industry without taking any enforcement action, even though two grand juries had conducted investigations without returning any charges, and even though a civil jury ultimately found there was no conspiracy *without the defendants even putting on a case*.¹

Given those facts, *any* discussions of price *among competitors* are extremely fool-hardy – especially so where, as here, the State of Illinois, historically a zealous antitrust plaintiff, is involved. For that reason, USI has not and will not engage in such conversations with its competitors, and for an agency of the State of Illinois to suggest that it should do so is not only erroneous, it borders on entrapment.

The same concerns do not apply to *individual* competitors addressing price issues with the IEPA or the PCB. Accordingly, USI has submitted and may lawfully continue to submit its views on pricing to these agencies. Other consultants may as

¹ See generally *In re Fine Paper Antitrust Litigation*, 1979 WL 1743 (E.D. Pa. 1979), 98 F.R.D. 48 (E.D. Pa. 1983), 840 F.2d 188 (3d Cir. 1988). Certain of the facts stated in the text are based upon the personal involvement of USI's counsel in the defense of that litigation.

well. When one recognizes that the focus of the antitrust concern is the potential for an agreement concerning prices *among competitors*, one sees that there is no inconsistency between individual members of PIPE submitting to IEPA proposals on prices and those same companies refusing to engage in the conversations which would have resulted in PIPE – an association of competitors – submitting an agreed price proposal.

As noted above, price-fixing is one of those few activities which are regarded as *per se* illegal under the antitrust laws. Most other alleged restraints on trade are evaluated under the “rule of reason”, under which one looks at whether the alleged restraint is unreasonable under the circumstances. Accordingly, competitors may lawfully communicate with each other on a variety of other subjects where the result of any agreement or joint action is reasonable. In addition, members of an industry may come together to present a common front to government on non-price matters. See, e.g., U.S. Const., Amend 1. This is what PIPE has done, and its doing so involves no antitrust violation. As to Ms. Rowe’s suggestion of cooperation among the consultants, we understand that the proposal was for consultation on non-price issues.

Recognizing that the ability to provide pricing information was critical to establishing a complete record in this process, USI elected to present its own testimony regarding price issues during the July 27, 2005 hearing because doing so in a stand-alone fashion is not a violation of anti-trust regulations.

4.) *Question: USI’s amended testimony contains petitions signed by owners and operators asking the Board and IEPA to ensure that the proposed rules meet certain enumerated standards. Exh. 109 at 90-177. Did each owner and operator who signed a petition review the entire record in this rulemaking proceeding and independently*

conclude that the Board's First Notice Proposal does not meet the standards enumerated in the petition? If not, please state the following:

- a. The name of each person that did not review the entire record in this rulemaking proceeding prior to signing a petition*
- b. Whether the named person has concluded that the Board's First Notice Proposal does not meet the standards enumerated in the petition.*
- c. If the named person has concluded that the Board's First Notice Proposal does not meet the standards enumerated in the petition, the standard or standards that the person believes the Board's First Notice Proposal does not meet.*
- d. The basis for the named person's conclusions regarding the Board's First Notice Proposal.*

Response: Each owner/operator independently reviewed the petition and signed the same on their own free will and accord. It is not USI's responsibility to make an inquiry into how each owner/operator came to the conclusion that they supported the petition. The Board has already concluded on its own that the Agency's proposal includes rates that were not based upon "statistically defensible" methods so that standard enumerated in the petition is clearly not met in the Agency's proposal. Secondly, the Agency has admitted in its testimony that many of the maximum payment amounts are based upon averages so it is undisputable that the Agency's proposal will not meet the standard enumerated in the petition where the owners/operators express their desire for the LUST program to continue to reimburse all costs necessary to comply with the Act which are incurred in excess of the deductible. It should be noted that numerous other owners/operators whose sites are being remediated by consultants other than USI have signed the same form of petition and submitted the same to the IPCB as public comment.

5.) *Question: USI's amended testimony contains "Request(s) for Representation" signed by owners and operators. Exh. 109 at 181.-263. Did each owner and operator who signed a request for representation review USI's amended testimony in its entirety and express full agreement with it prior to signing the request? If not, please state the*

names of the owners and operators that did not review USI's amended testimony in its entirety and express full agreement with it prior to signing the request.

Response: The requests for representation provided in USI's testimony state the following: "I hereby provide this statement to document that it is my wish that my consultant, United Science Industries, Inc. act as my representative during proceedings before the Illinois Pollution Control Board in regard to proposed revisions to the Leaking Underground Storage Tank regulations R04-022 and R04-023." The parties that signed this request had an opportunity to review the pre-filed testimony of USI before signing the request. Some portions of USI's amended testimony were not completed until the evening of July 26, 2005. These amendments would not have been reviewed by the parties requesting representation by USI prior to the July 27, 2005. However, USI's amended testimony is on file with the Illinois Pollution Control Board and available for review and public comment if any such party now wishes to dissent therefrom.

6.) *Question: USI states in its amended testimony that it was paid approximately \$30,765,541 from UST Fund reimbursements to owners and operators for the period of January 1, 2003 to December 21, 2004. Exh. 109 at 283. According to USI's testimony that figure represents 14.7% of all amounts requested for reimbursement from the UST Fund and 15.1 % of all amounts paid for the same period. (ID.) USI also indicates in its amended testimony that it represents 3.6% of the open incidents in the LUST Program, or 2.6% of all incidents in the LUST Program. Exh. 109 at 76. Please explain the large discrepancies between the percentage of sites represented by USI and the percentage of UST Fund reimbursements paid to USI.*

Response: By virtue of this question, the Agency is apparently attempting to convince the Board that USI's costs are excessive and that USI's charges are out of line. This implication is a nonsensical attempt to divert the Board's attention to a collateral, extraneous and non-existent issue and distort the Board's interpretation

of the facts. The Agency's question attempts to inappropriately marry two opposing statistics and compare apples to oranges. The number of open incidents is not indicative of the level of costs that are likely to be claimed against the LUST Fund during a given period of time. The level of corrective action work that is being performed during a given time period is the appropriate metric to evaluate when considering appropriateness of cost. USI provides information from the IEPA downloadable database as of June 30, 2005 in order to confirm this point.

As of June 30, 2005 the following is true with regard to the IEPA's downloadable database of incident numbers:

- USI is assigned 3.6% of the 9,457 open incidents within the Agencies database.
- 52.7% or 4,986 of the open incidents do not have a consultant assigned within the Agency's database. (This suggests that little or no remedial activity is taking place at over half of the open incidents.)
- 47.74% or 4,515 open incidents do not have an Agency Project Manager assigned within the Agency's database. (This suggests that the Agency has not assigned a person to assess the criticality or severity of risks that these sites pose to the environment and also supports the conclusion that little or no remedial activity is taking place at these sites.)

As previously stated, a more suitable metric in determining the appropriateness of costs is to evaluate the progress being made in clean-up against costs claimed.

Utilizing the IEPA's June 30, 2005 downloadable database to evaluate progress of

clean-up activities one finds that USI's costs are in-line with what would be expected. The following information illustrates this point.

- From January 1, 2002 to December 31, 2004 a total of 14,850 Title 16 submissions of technical plans, reports, budgets, etc. have been submitted to the Agency. USI's client's projects account for 13.85% or 2,056 of these submissions.
- From January 1, 2002 to December 31, 2004 a total of 14,905 Title 16 decisions have been made by the Agency regarding technical plans, reports, budgets etc. USI's clientele represent 13.64% of these decisions or 2033.
- From January 1, 2002 to December 31, 2004 a total of \$221,879,175.16 was requested for reimbursement from the LUST Fund. United Science Industries, Inc. clients requested \$32,625,182.31 of this amount or 14.7% and they received 15.1% of the reimbursements. This demonstrates that USI's client's costs were reimbursed at a rate higher than the statewide average during this timeframe and that the percentage of the work performed by USI across the state and the level of costs claimed by USI's clientele from the fund are nearly equal.
- When evaluated in the context of the proper metrics, the "discrepancy" presented in IEPA's question simply does not exist.

7.) *Question: USI states in its amended testimony that it was paid approximately \$30,765,541 from USI Fund reimbursements to owners and operators for the period of January 1, 2002, to December 31, 2004. Exh. 109 at 283. It also testified about the low profit margin and the low growth rate of UST remedial work compared to other business sectors. See, e.g., Exh. 110 and 111. For the period of January 1, 2003, to December 31, 2004, please state the following (in dollars):*

- a. *The amount of revenue USI received for environmental consulting services it provided to UST owners and operators that are not eligible for reimbursement from the UST Fund.*
- b. *The amount of revenue USI received for environmental consulting services it provided to UST owners and operators eligible for reimbursement from the UST Fund for costs that have not, and will not, be reimbursed from the UST Fund. Please also state the portion of this amount (in dollars) that it is attributable to the payment of UST Fund deductibles and the portion that is not attributable to the payment of UST Fund deductibles.*
- c. *The amount of revenue USI received for environmental consulting services it provided to remedial applicants for sites in the IEPA's Site Remediation Program.*
- d. *The amount of revenue USI received for environmental consulting services it provided to RCRA owners and operators for sites in the IEPA's RCRA program.*
- e. *The amount of revenue USI received for environmental consulting services it provided to municipalities for sites in the IEPA's municipal Brownfield grants program.*
- f. *The amount of revenue USI received for environmental consulting services it provided to Superfund generators, transporters, owners, and operators for sites in the federal Superfund program.*
- g. *The amount of revenue USI received for environmental consulting services it provided for sites in a program administered by the IEPA's Bureau of Water or Bureau of Air. For this amount, please do not include sites in (a) through (f) above where there is regulatory overlap with a Bureau of Water or Bureau of Air program (e.g., a LUST site that requires an NPDES permit).*

Response: USI generally objects to Questions 7(a) through (g) as irrelevant. The subject rulemaking is an industry-wide rule. It is not intended to apply to USI alone. Therefore, USI's revenues in each of the above stated programs are irrelevant. What is relevant is the range of statewide costs that are typically incurred on Illinois UST sites by all owners/operators during a corrective action project. USI provided these relevant facts and statistics in its July 27, 2005 testimony. USI further objects to each question from 7 (a) through (g) for the following reasons. Question 7 a. is not relevant as the costs of any service not eligible from the LUST Fund would not be claimed by USI's clients and would

therefore not have any impact on the Illinois LUST Fund or this rulemaking.

Question 7 b. is not relevant as the costs of any service that has not or will not be paid from the LUST Fund is not a burden on the Fund and would therefore not have any impact on the Illinois LUST Fund or this rulemaking. Question 7 c. is not relevant as the costs of any service provided pursuant to the IEPA's Site Remediation Program are not a burden on the Fund and would therefore not have any impact on the Illinois LUST Fund or this rulemaking. Question 7 d. is not relevant as the costs of any service provided pursuant to the IEPA's RCRA Program are not a burden on the Fund and would therefore not have any impact on the Illinois LUST Fund or this rulemaking. Question 7 e. is not relevant as the costs of any service provided pursuant to the IEPA's Municipal Brownfield Grants Program are not a burden on the Fund and would therefore not have any impact on the Illinois LUST Fund or this rulemaking. Question 7 f. is not relevant as the costs of any service provided pursuant to the Federal Superfund Program are not a burden on the Fund and would therefore not have any impact on the Illinois LUST Fund or this rulemaking. Question 7 g. is not relevant as the costs of any service provided pursuant to projects required by the IEPA's Bureau of Water or Air are not a burden on the Fund and would therefore not have any impact on the Illinois LUST Fund or this rulemaking.

8.) *Question: At the July 27, 2005, hearing and on page 402 of its amended testimony (Exh. 109), USI testified with regard to information on EFCG Historical Industry Profitability for the years 1999 through 2003. USI's testimony indicates that historical industry profitability ranges from 8.8% to 9.9% during these years.*

a. Please state USI's net profit rate for each of the years 1999 through 2003

b. Please provide a breakdown of the revenues and expenses from which USI's net profit rates for each of these years are calculated (e.g., salaries of USI employees, payments to subcontractors, overhead, profit, etc.).

Response: USI objects to this question on the grounds that the proposed rule applies to the UST industry in Illinois and the profits or losses or charges of a single company are not an appropriate way to measure statewide ranges of reasonable. For this reason, USI's July 27, 2005 testimony provided appropriate statistics that disclosed costs typically incurred on a statewide basis. In order to validate that USI's profitability as a firm is consistent with the testimony presented by USI at hearing, and without waiving USI's objection to this question, USI states that its average profitability from UST work in Illinois during the years 1999 through 2003 is less than the lower end of the profitability range stated in the Environmental Financial Consulting Group (EFCG) survey.

9.) *Question: USI states in its amended testimony that, having reviewed Sections 734.810 through 734.840 of the Board's First Notice Proposal, "USI is not objectionable in concept to the language of any of those provisions." Exh. 109 at 37. However, USI has completely re-written Sections 734.810 through 734.840 in its proposed rules (PC 55). Please explain this inconsistency.*

Response: This is not an inconsistency. USI does not object to the concept that the Agency's language attempts to convey. Rather, USI believes the "concept" behind the rule can be codified in a way that is simpler and does not require the body of the rule to be re-written each time a rate change is warranted. This is the reason for USI's inclusion of all rates in an Appendix rather than the body of the rule. USI believes it is much simpler to publish a new appendix at periodic intervals rather than re-write sections of the rule.

10.) *Question: The legal memos included in USI's pre-filed testimony and amended testimony criticize the use of any competitive bidding under the LUST Program. Exh. 107; Exh. 109 at 588-595. However, USI included a competitive bidding provision in its proposed rules. See PC 55, Section 734.855. Please explain these inconsistencies.*

Response: USI objects that Question No. 10 presumes and indeed states facts not in evidence and is argumentative. The memoranda did not criticize “the use of any competitive bidding under the LUST program” (emphasis added); to the contrary, the criticisms were to the specific terms of IEPA’s proposed regulation § 734.855 and to that proposal’s viability as an alternative or cure to the fixed maximum prices proposed elsewhere in IEPA’s proposals. As USI never contended that “any competitive bidding” would be objectionable, and as USI has sought to cure the objectionable aspects of the fixed maximum prices proposed elsewhere in IEPA’s proposals, there is no inconsistency in including a competitive bidding program in USI’s proposals.

11.) *In the legal memos included in USI's pre-filed testimony and amended testimony there are several statements concerning 35 Ill. Adm. Code 742 (“TACO”). Exh 107; Exh. 109 at 595-600.*

- a. *Is it USI’s contention that a remediation that achieves corrective action objectives developed in accordance with Tier 2 of TACO will not protect human health and the environment? If so, please state the scientific basis for such a conclusion and provide citations to documents supporting such a conclusion.*
- b. *The legal memos criticize using remediation in accordance with TACO as the only objective of the LUST Program. However, in its proposed rules USI uses compliance with TACO as the standard for remediation. See, e.g., PC 55, Section 734.710 (c) and (d). Please explain these inconsistencies.*
- c. *Please state and provide the citation for the express language in the Environmental Protection Act that prohibits the Board from adopting a rule limiting reimbursement from the UST Fund to costs incurred in meeting Tier 2 objectives as set forth in 734.410 and 734.630 (bbb) of the Board’s First Notice Proposal.*
- d. *The legal memos criticize the Board’s proposed limitation on reimbursement from the UST Fund to costs incurred in achieving Tier 2*

remediation objectives. However, USI's proposed rules include the same limitation. See PC 55, Sections 734.410 and 734.630 (bbb). Please explain these inconsistencies.

Response: USI objects to Question No. 11 (a) as vague and ambiguous, in that it does not identify any specifics of the “remediation” referenced and in that it does not define the term “protect human health and the environment”. USI does not contend – and its memoranda cannot reasonably be read to suggest – that all remediation under Tier 2 of TACO fails to provide any protection for human health or the environment. For example, an ordinance making it unlawful to drink contaminated water is better than a system where consumers commonly drink such water. There plainly also are other situations where property is better under a Tier 2 cleanup than if no cleanup at all is done. That does not mean that a remediation under Tier 2 provides as much protection as remediation under Tier 1. USI’s contention is that IEPA’s suggestion that Tier 2 “results in the same protection of human health and the environment” as Tier 1 (emphasis added) is sophistry. IEPA’s regulations, cited in the memoranda, support that contention.

USI objects that Question No. 11(b) presumes and indeed states facts not in evidence and is argumentative. Specifically, the legal memos do not criticize using remediation in accordance with TACO as the only objective of the LUST Program. To the contrary, as shown in the memoranda, the LUST program has objectives far beyond remediation in compliance with TACO, which was not even dreamed up when LUST was adopted and its objectives set. USI further objects to Question No. 11(b)’s characterization of USI’s proposed regulations 734.710(c)-(d) as “the standard for remediation”; contrary to IEPA’s characterization, 734.710 (c)-(d)

merely state certain content which would be included in a no further remediation letter. It should be emphasized that USI's proposed changes to the regulations were conceptual in nature and were not considered to be a final draft that could be adopted without further editing and review. USI provided testimony to this effect at hearing on July 27th. The conceptual changes that USI applied to the proposed regulations were generally limited to Subpart H and the definitions Section of Part 734. USI did not perform a detailed review or editing of any regulations other than Subpart H. Any inconsistency between USI's testimony and the draft regulations provided, should be revised in favor of USI's testimony and the concepts it presented within Subpart H of its draft regulation. If the Board is interested in a final draft that is completely consistent with USI's testimony and the concepts USI presented in Subpart H of its proposed regulation, USI will be happy to accommodate such a request either as part of this rulemaking or an ensuing rulemaking.

With respect to Question 11(c), the statutory language which supports the conclusion that IEPA is not authorized to limit reimbursement in the proposed way is quoted, with citations, in the memoranda. Contrary to the premise of IEPA's question, IEPA is not granted power to enact any regulation not expressly prohibited by specific statutory language. If the legislature intended to permit IEPA to do anything not expressly prohibited by statute, it would not have commanded the Agency to "adopt amendments to the rules governing the administration of [the LUST program] to make the rules consistent with the

provisions of herein” (415 ILCS 5/14A) and to “administer this Title in accordance with the provisions herein”.

In response to question 11(d), it should be emphasized that USI’s proposed changes to the regulations were conceptual in nature and were not considered to be a final draft that could be adopted without further editing and review. USI provided testimony to this effect at hearing on July 27th. The conceptual changes that USI applied to the proposed regulations were generally limited to Subpart H and the definitions Section of Part 734. USI did not perform a detailed review or editing of any regulations other than Subpart H. Any inconsistency between USI’s testimony and the draft regulations provided, should be revised in favor of USI’s testimony and the concepts it presented within Subpart H of its draft regulation. If the Board is interested in a final draft that is completely consistent with USI’s testimony and the concepts USI presented in Subpart H of its proposed regulation, USI will be happy to accommodate such a request either as part of this rulemaking or an ensuing rulemaking.

12.) *Question: The legal memo included in USI’s amended testimony criticizes the audit provision proposed by the Board. Exh. 109 at 600-603. However, USI included the same audit provision in its proposed rules. See PC55, Section 734.665. Please explain this inconsistency.*

Response: It should be emphasized that USI’s proposed changes to the regulations were conceptual in nature and were not considered to be a final draft that could be adopted without further editing and review. USI provided testimony to this effect at the hearing on July 27th. The conceptual changes that USI applied to the proposed regulations were generally limited to Subpart H and the definitions Section of Part

734. USI did not perform a detailed review or editing of any regulations other than Suibpart H. Any inconsistency between USI's testimony and the draft regulations provided, should be revised in favor of USI's testimony and the concepts it presented within Subpart H of its draft regulation. If the Board is interested in a final draft that is completely consistent with USI's testimony and the concepts USI presented in Subpart H of its proposed regulation, USI will be happy to accommodate such a request either as part of this rulemaking or an ensuing rulemaking.

13.) *Question: The legal memo included in USI's pre-filed testimony criticizes the IEPA's submission of amendments at the August 9, 2005, hearing. Exh. 107. The amendments to which the memo refers, Exhibit 87, were pre-filed with the Board on August 2, 2005, as required by the hearing officer's June 25, 2004, order and were entered into the record at the August 9, 2005, hearing. Exh. 107. The amendments to which the memo refers, Exhibit 87, were pre-filed with the Board on August 2, 2005, as required by the hearing officer's June 25, 2005, order and were entered into the record at the August 9, 2005, hearing. Is it USI's contention that, beginning at least one week prior to a hearing, the Board should not accept any changes to testimony or other information that has already been filed with the Board?*

Response: USI objects that Question No. 13 presumes and indeed states facts not in evidence and is argumentative. Specifically, the memo at issue did not criticize submission of amendments at any August 9, 2005 [sic] hearing, nor did it criticize submission of amendments within seven days of a hearing in general. What USI said was that submission of such substantial and substantive changes as are included in the TACO Tier 2 proposal, by use of an "errata sheet", so late in the previous proceedings, was suspect. Why that aspect could not have been covered by IEPA's original proposal and submitted to the full public hearing process is not apparent, nor can the TACO Tier 2 proposal reasonably be regarded as a proposed cure for a defect in the original proposal. As opposed to trying to shoe-horn the

TACO Tier 2 limitation into the previous rule-making, the better course would have been to commence a new rule-making.

14.) Question: USI states in its amended testimony that “[i]n the case of Subpart H inaccurate estimates that are too low could costs jobs and bankruptcies and in the case of Subpart H if these inaccuracies result in estimates that are too high it could costs the UST program millions in wasteful spending.” Exh. 109 at 60-61.

- a. Does USI plan to layoff any of its employees or file for bankruptcy if the Board adopts its First Notice Proposal as final rules? If so, please state what actions USI plans to take and the reasons USI will be taking those actions.*
- b. Does USI believe that any of the reimbursement amounts set forth in the Board’s First Notice Proposal are too high, such that they will cost the USI program millions of dollars in wasteful spending? If so, please state the amounts that USI believes are too high, the reasons for USI’s belief, and the lower amounts that USI believes will not result in millions of dollars in wasteful spending.*

Response: In response to question 14 (a) USI provides the following: USI is dedicated to its mission and it plans to continue to serve the environmental and property redevelopment needs of its UST clients as long as it possibly can. USI is one of the larger firms in the UST industry in the state. As USI testified in July, our organization is strong and well managed so we believe that we are positioned to withstand the onslaught of the Agency’s proposal much better than others. How long any firm can exist in business is a function of its ability to continually and predictably produce a positive income. Because USI is one of the largest firms serving the UST industry in the State of Illinois, we expect other smaller firms will experience difficulties with these rules soon after these rules are put into effect and well before the rules will have any measurable impact on USI. Our plans are to observe the fate of these smaller firms and then respond to market conditions in a manner consistent with our mission and our business objectives.

In response to question 14 (b) USI provides the following: This question again takes USI's testimony out of context. The purpose of this portion of USI's testimony was to demonstrate two things. First, USI sought to demonstrate that it would be more prudent and cost-effective to provide a range of reasonable costs that would be eligible for reimbursement instead of a single maximum payment amount. Secondly USI sought to emphasize that if the competitive bidding process can be avoided with regard to a particular project; it should be avoided. Competitive bidding will add new levels of administration, complexity and costs to the Illinois UST program that are not present today. USI is confident that the IEPA has drastically under-estimated the added costs that this additional level of work will impose upon the LUST program. USI has nearly sixteen years of experience in the environmental services business and has witnessed numerous instances outside the Illinois UST market where the competitive bidding process has yielded price points that are orders of magnitude higher than those that would have been incurred had the project been performed for the rates that the IEPA has historically considered to be reasonable in the Illinois UST program.

15.) *Question: USI states in its amended testimony that, if the Board adopts its First Notice Proposal as final rules, "consulting firms will either no longer provide services to UST owners/operators or be required to recover costs in excess of the "Maximum Payment Amounts" directly from the owner/operator." Exh 109 at 64. If the Board adopts its First Notice Proposal as final rules,*

- a. Does USI plan to stop providing services to UST owners/operators?*
- b. Does USI plan to recover costs in excess of the "Maximum Payment Amounts" directly from owners/operators?*

Response: In response to question 15 (a) USI provides the following: USI is dedicated to its mission and it plans to continue to serve the environmental and

property redevelopment needs of its UST clients. If the Agency's proposal is adopted by the Board, USI may have to play a variety of roles that it has not been required to play in the past. USI may have to assist some of its clients in returning properties to the County in which the site is located in or returning the property to the State. USI may have to improve its knowledge in the area of bankruptcy proceedings, as it is almost certain to be required to assist a greater number of bankruptcies in the disposition of UST sites after the owners/operators have declared bankruptcy as a result of the implementation of the rule proposed by the Agency. USI may also need to act as a legislative liaison for the UST owners/operators. Finally, USI may need to act as an advocate and coordinate the efforts of owners/operators that desire to right themselves and protect their welfare in the unfortunate event that the flawed rule is adopted. With regard to question 15 (b) USI provides the following: USI recognizes that in order to be of any assistance to our clients we must remain profitable. We will work to that end and, as any business would, we will continually re-evaluate market conditions, adjusting accordingly in order to preserve our ability to serve our clients and carry-out our mission.

16.) *Question: USI states in its amended testimony that "[a]s long as 'maximums', whatever they may be, are published some firms will be tempted to raise prices to the maximum thereby increasing the costs to the program." Exh. 109 at 65.*

- a. *If the Board adopts its First Notice Proposal as final rules, will USI be charging UST owners and operators the maximum payment amounts set forth in the rules, or will it be charging lower amounts? If USI will be charging lower amounts, please identify the amounts and state the lower amounts it will be charging.*
- b. *In contrast to the statement quoted in the first paragraph of this question, USI states in its amended testimony that the use of published "expedited" unit rates that are lower than maximum unpublished unit rates will*

“encourage [the expedited units rates’] use and effectively drive down the costs of doing LUST work, because consultants will desire a quick and painless pricing approvals the use of such rates will provide.” Exh. 109 at 68. Please explain this inconsistency.

Response: In response to Question 16 (a) USI provides the following: For nearly the past sixteen years USI has charged rates that it has found to be competitive in the market. USI believes the rates it charges today are competitive. This belief, on USI’s part, has been independently and repeatedly validated over the years by the Agency’s own review of USI work plans, budgets and reimbursement claims. USI has no reason to believe that its rates will not be competitive tomorrow but it will continue to rely upon market conditions as a guide to the formulation and adjustment of its pricing policies. USI provides the following with regard to question 16 (b): The statement that USI makes with regard to the publication of Maximum Unit Rates and Expedited Unit Rate are not inconsistent. Rather, these concepts work in concert with one another. The publication of an Expedited Unit Rate that is established at a level such as the average, that cannot be easily achieved in all instances creates an incentive for owners/operates and their consultants to drive prices down in response to their desire to expedite the performance of the work and improve cash flows. On the other hand, for those instances where legitimate costs are incurred at a level above the Expedited Unit Rates, the concept of an unpublished Maximum Unit Rate that is based upon a formula that is published in the regulations allows claimants to be reimbursed at a price over the Expedited Unit Rate without disclosing the specific maximums prices that the Fund may pay for each product or service at any given point in time. In order to assure that this approach is consistent with the Illinois Administrative Procedures Act, the

formula or methodology that the Agency should utilize in calculating/determining the “Maximum Payment Amount” will be published as part of the regulation but it is not necessary that the actual Maximum Unit Rate be published because the formula published in the regulations provides an appropriate audit trail. Because the Maximum Unit Rate for products and services will change as market conditions fluctuate and varying levels of costs are reported to the UST Program, the Maximum Unit Rate and Expedited Unit Rate along with the Competitive Bidding and Costs Justification processes will provide a sound means to assure that a range of reasonable costs are considered while preserving the market dynamics that are needed to maintain a system of free-enterprise and assuring that all sites that incur eligible costs are able to obtain appropriate levels of reimbursement.

17.) Question: USI continues to complain in its testimony that the rates the Board proposed in its First Notice Proposal, as well as the use of competitive bidding, are not statistically defensible. Please state and provide the citation for the express language in the Environmental Protection Act that requires the amounts reimbursed from the UST Fund to be statistically defensible in addition to being reasonable.

Response: It is indisputable that the Act calls for the reimbursement of reasonable costs. The legal standard of reasonableness may be inherently imprecise but it is still intended to be an objective standard. Although the Act may not specifically use the terms “statistically reliable” or “statistically defensible” it does require that the Agency’s reimbursements be reasonable. Black’s law dictionary defines reasonable as “Fair, proper, just, moderate, and suitable under the circumstances. Fit and appropriate to the end in view. Having the faculty of reason; rational; governed by reason; under the influence of reason; agreeable to reason. Thinking, speaking or acting according to the dictates of reason. Not immoderate or excessive, being

synonymous with rational, honest, equitable, fair, suitable, moderate, tolerable.” Black’s law dictionary also defines the word “immoderate” which is incorporated into its definition of reasonable. The definition of immoderate is: “Exceeding just, usual or suitable bounds, not within reasonable limits”. These two definitions make it quite clear that one making a reasonableness determination should consider the circumstances and act in a manner that is *fair, proper, just, moderate and suitable under the circumstances*. It is hardly fair, proper, just or suitable to impose a maximum payment amount based upon an average that is likely to not cover half of the population of LUST sites in Illinois! Nor is it equitable, fair or tolerable for a tank owner to not be reimbursed because the average has been used as the maximum and his or her site conditions are not unusual or extraordinary but simply above average! The legislature may not have used the term “statistically defensible” in the language of the statute, but the Agency is certainly obligated to be reasonable in making reimbursement determinations and by the application of the above definitions of reasonable and the use of statistics are the only logical approaches to making consistently sound reasonableness determinations.

The Agency knows this. That is why the Agency used statistics when it presented its original proposal to the Board. In its original testimony in this very rulemaking the Agency attempted to support their position with statistics. A review of the Agency’s testimony in this proceeding shows that the Agency justified their pricing by stating that in many instances their maximum payment amounts were based upon averages. The Agency also stated that in other instances their maximum payment amounts were based upon the average plus one standard deviation.

(Please see the testimony of Harry Chappel and the testimony of Brian Bauer both dated April 8, 2004) Averages and averages plus standard deviations are statistics. Clearly, the Agency understands the need to employ statistics as an appropriate approach to determining reasonableness. Otherwise, they would have never included statistics (as errant, unsound and in-accurate as the Agency's statistics may have been) as their primary argument for justification of their maximum payment amounts. The Act has not changed since the Agency made its March 2004 testimony before the Board. If the Agency really believes that the use of statistics is not necessary in making a reasonableness determination, they would have never attempted to use statistics to prop up their maximum payment amounts. More peculiarly, why now, after USI presented the results of its valid and statistically sound study of professional consulting costs that has proven to completely discredit the basis for the Agency's proposed maximum payment amounts for professional services, does the Agency apparently abandon its use of statistics as a method of determining reasonableness? To abandon the use of statistics is to abandon objectivity in making reasonableness determinations. To ignore statistics is to ignore reason. The Agency's apparent willingness to abandon the use of statistics in making reasonableness determinations is outlandish and implies that the Agency desires, by virtue of its proposed rule, to obtain the authority to make subjective and whimsical decisions as to what is and is not reasonable. This bizarre question does nothing more than serve to confirm the suspicions of the industry.

18.) *Question: USI stated in its amended testimony that one of "four key facets of our regulatory system" includes "the use of unpublished maximum payment amounts." Exh. 109 at 69. "These rates will remain unpublished and known only to IEPA." Id. At 68.*

Please explain how the use of unpublished maximum amounts is legally consistent with the Illinois Administrative Procedures Act (5 ILCS100) and the Board's decision regarding the IEPA's use of rate sheets in Illinois Ayers Oil Company v. IEPA, PCB 03-214 (April 1, 2004)

Response: Please see USI's response to question 16.

19.) Question: USI has testified that the "Maximum Unit Rates" are to "remain unpublished and known only to the IEPA." Exh. 109 at 68. However, the definition of "Maximum Unit Rate" in USI's proposed rules states that "Maximum Unit Rates" are to be made available to the LUST Advisory Committee, which largely is comprised of owners and operators, consultants, and contractors, or their representatives. PC 55, Section 734.115. Please explain this discrepancy

Response: This is an error in USI's proposal. It is not necessary that the Maximum Unit Rates be disclosed to the LUST Advisory Committee because the formula for determining the Maximum Unit Rate will be published in the rule.

20.) Question: USI's proposed rules state that "the owner/operator may obtain three bids for services pursuant to Section 734.855" to demonstrate that "a product or service not covered by one or more of the Standard Products or Services listed in Appendix E, is reasonable and meets the requirements of Section 734.625 and 734.630 of Subpart F." PC55, Section 734.805(a)(ii) (emphasis added). Given that obtaining three bids is discretionary, by what other means does USI contemplate an owner or operator being able to make the required demonstration?

Response: USI is unable to respond to this question because it is unclear as to what is being asked.

21.) Question: USI's proposed rules require owners and operators seeking reimbursement to demonstrate that tasks performed pursuant to Subpart B are "necessary to meet the minimum requirements of the Act, or [are] otherwise eligible for reimbursement from the Fund." PC 55, Section 734.805 (b) (i) (emphasis added). However, USI's proposed rules also provide that "[c]osts for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act" are ineligible for reimbursement." PC 55, Section 734.630 (o). Please explain this inconsistency.

Response: This is not an inconsistency. USI makes a distinction between tasks and costs. A task is a discrete activity that a consultant or contractor may engage in as

result of a corrective action project. Some tasks, such as follow-up sales calls that might typically be made by an account representative to monitor the client's satisfaction with the progress of the project, are not eligible for reimbursement because they are not necessary to meet the minimum requirements of the act. Costs on the other hand, are simply the charges (the product of the Unit Rate for the product or service multiplied by the quantity of units) that are incurred by an owner/operator. Costs associated with an ineligible tasks would never be reimbursable. Costs associated with an eligible task would be reimbursable only to the extent that those costs are reasonable, necessary and not excessive.

22.) *Question: USI's proposed rules state that owners and operators must "demonstrate that the Extended Costs of Standard Products and Services is reasonable." PC 55, Section 734.805(c). The Section then requires the IEPA to calculate the Extended Rate via a prescribed formula using the "Expedited Rate" and the "Reasonable Quantity," and states that the result of the calculation "shall be presumed" reasonable. What type of demonstration is expected of the owner or operator if the IEPA is required to calculate the "Extended Costs" using a prescribed formula?*

Response: The owner/operator must demonstrate 1.) That the Unit Rate is reasonable either via being equal to or less than the Expedited Unit Rate published in Appendix E or being the result of the competitive bidding process found in Section 734.855 or the Cost Justification provisions of Section 734.860 or the Unusual or Extraordinary Circumstances provisions of Section 734.862; and 2.) That the quantity of products or services provided is reasonable and are necessary to meet the minimum requirements of the Act.

23.) *Question: Please state the amounts or ranges of amounts that an owner or operator can be reimbursed under Section 734.,810 of USI's proposed rules (PC 55) for costs associated with the removal or abandonment of USTs with the following volumes.*

- a. 110 to 999 gallons.
- b. 1,000 to 14,999 gallons

c. 15,000 gallons or more

Response: In response to this question USI provides the following: USI envisions a range of prices being considered to be reasonable for these services. The Expedited Unit Rates for these services are found in Appendix E. The Expedited Unit Rate for these Service are also presented in the Table below which is based on an excerpt from Appendix E of USI's proposed regulations.

Section 1.1- UST Removal/Abandonment Products & Services (734.810)	Billing Method	Unit of Measure	Expedited Unit Rate
UST Removal 110-999 gallons	Unit Price	Each	2100.00
UST Removal 1,000-14,999 gallons	Unit Price	Each	3150.00
UST Removal 15,000+ gallons	Unit Price	Each	4100.00
UST Abandonment	Time & Materials	N/A	N/A

The Expedited Unit Rates provided in the Table above would be presumed reasonable by the Agency. If the price of the service exceeds the Expedited Unit Rate the cost for that service may be reimbursed so long as the unit rate is not in excess of the "Maximum Unit Rate" (defined as the average costs for the service plus two standard deviations) and the other requirements of Section 734.860 (a) are met. Additionally, an alternative method of establishing an acceptable unit price for a service is to develop a "Bid Unit Rate" for that service pursuant to the provisions of paragraph 734.855. Finally, if, and only if, unusual or extraordinary circumstances exist, the owner/operator may establish an "Extraordinary Unit Price" for that service pursuant to the provisions of paragraph 734.862. Please note that USI has proposed that Tank Abandonment Services be administered on a time and materials basis.

24.) *Question: Please state the amount or range of amounts, per gallon, that an owner or operator can be reimbursed under Section 734.815 of USI's proposed rules (PC 55) for costs associated with the removal, transportation, and disposal of groundwater or free product via bailing or vacuum truck.*

Response: In response to this question USI provides the following: USI envisions a range of costs being considered to be reasonable for these services. The Expedited Unit Rates for these services are found in Appendix E. The Expedited Unit Rate for these Service are also presented in the Table below which is based on an excerpt from Appendix E of USI's proposed regulations.

Section 1.2- Free Product & Groundwater Removal & Disposal Services (734.815)	Billing Method	Unit of Measure	Expedited Unit Rate
Free Product/Groundwater Removal & Disposal	Unit Price	Gallon	0.68

The Expedited Unit Rates provided in the Table above would be presumed reasonable by the Agency. If the price of the service exceeds the Expedited Unit Rate the cost for that service may be reimbursed so long as the unit rate is not in excess of the "Maximum Unit Rate" (defined as the average costs for the service plus two standard deviations) and the other requirements of Section 734.860 (a) are met. Additionally, an alternative method of establishing an acceptable unit price for a service is to develop a "Bid Unit Rate" for that service pursuant to the provisions of paragraph 734.855. Finally, if, and only if, unusual or extraordinary circumstances exist, the owner/operator may establish an "Extraordinary Unit Price" for that service pursuant to the provisions of paragraph 734.862.

25.) *Question: Please state the amounts or ranges of amounts, per foot, that an owner or operator can be reimbursed under Section 734.820 or USI's proposed rules (PC 55) for costs associated with the following:*

- a. *Drilling via hollow stem auger (any purpose)*
- b. *Drilling via direct push platform for sampling or other non-injection purposes.*
- c. *Drilling via direct push platform for injection purposes*

- d. *Monitoring well installation via hollow stem auger (excluding drilling costs).*
- e. *Monitoring well installation via direct push platform (excluding drilling costs).*
- f. *Recovery well installation for four-inch diameter recovery wells (excluding drilling costs).*
- g. *Recovery well installation for six-inch diameter recovery wells (excluding drilling costs).*
- h. *Recovery well installation for eight-inch or greater diameter recovery wells (excluding drilling costs).*
- i. *Abandonment of monitoring wells.*

Response: In response to this question USI provides the following: USI envisions a range of prices being considered to be reasonable for these services. The Expedited Unit Rates for these services are found in Appendix E. The Expedited Unit Rate for these Service are also presented in the Table below which is based on an excerpt from Appendix E of USI’s proposed regulations.

Section 1.3 Drilling, Well Installation and Well Abandonment Services (734.820)	Billing Method	Unit of Measure	Expedited Unit Rate
Hollow Stem Auguring	Unit Price	Foot	23.00
Direct Push Advancement for Sampling Purposes	Unit Price	Foot	18.00
Well Placement in Hollow Stem Sampled Borehole	Unit Price	Foot	16.50
Well Placement in Probe Advanced/Sampled Borehole	Unit Price	Foot	12.50
Direct Push for Injection purposes	Unit Price	Foot	15.00
Well Installation exclusive of Drilling, 4-6 inch diameter	Unit Price	Foot	25.00
Well Installation exclusive of Drilling, 8+ inch diameter	Unit Price	Foot	41.00
Well Abandonment	Unit Price	Foot	10.00
Equipment and Crew Mobilization	Unit Price	Each	250.00

The Expedited Unit Rates provided in the Table above would be presumed reasonable by the Agency. If the price of the service exceeds the Expedited Unit Rate the cost for that service may be reimbursed so long as the unit rate is not in excess of the “Maximum Unit Rate” (defined as the average costs for the service plus two standard deviations) and the other requirements of Section 734.860 (a) are met. Additionally, an alternative method of establishing an acceptable unit price for a service is to develop a “Bid Unit Rate” for that service pursuant to the

provisions of paragraph 734.855. Finally, if, and only if, unusual or extraordinary circumstances exist, the owner/operator may establish a Extraordinary Unit Price for that service pursuant to the provisions of paragraph 734.862.

26.) *Question: Please state the amount or range of amounts, per cubic yard, that an owner or operator can be reimbursed under Section 734.825 of USI's proposed rules (PC 55) for costs associated with the removal, transportation, and disposal of contaminated soil exceeding the applicable remediation objectives. Please also state how the volume of soil removed and disposed of must be calculated.*

Response: In response to this question USI provides the following: USI envisions a range of prices being considered to be reasonable for these services. The Expedited Unit Rates for these services are found in Appendix E. The Expedited Unit Rate for these Service are also presented in the Table below which is based on an excerpt from Appendix E of USI's proposed regulations.

Section 1.4 Soil Removal & Disposal Services (734.825)	Billing Method	Unit of Measure	Expedited Unit Rate
Removal, Transportation & Disposal of Contaminated Soil	Unit Price	Cubic Yard	57.00

The Expedited Unit Rates provided in the Table above would be presumed reasonable by the Agency. If the price of the service exceeds the Expedited Unit Rate the cost for that service may be reimbursed so long as the unit rate is not in excess of the "Maximum Unit Rate" (defined as the average costs for the service plus two standard deviations) and the other requirements of Section 734.860 (a) are met. Additionally, an alternative method of establishing an acceptable unit price for a service is to develop a "Bid Unit Rate" for that service pursuant to the provisions of paragraph 734.855. Finally, if, and only if, unusual or extraordinary circumstances exist, the owner/operator may establish an "Extraordinary Unit

Price” for that service pursuant to the provisions of paragraph 734.862. The methods for calculating the volume of soil that is reasonable for purposes of reimbursement are provided on page 527 of USI’s July 27, 2005 testimony. This table is also presented below.

Description of Service	Bill Method	Reasonable Quantity Guidance
Removal, transportation and disposal of contaminated soil	Cubic Yard	For budgeting purposes a Reasonable Quantity shall be the estimated length & width & depth of the excavation multiplied times 1.05. For purposes of reimbursement the Reasonable Quantity shall be the number of tons disposed divided by 1.5 or a site specific conversion factor calculated by scientifically acceptable means. Soil volumes removed from the area immediately adjacent to the exterior of a UST during early action shall not exceed the values provided in Appendix C.

27.) *Question: Please state the amount or range of amounts, per cubic yard, that an owner or operator can be reimbursed under Section 734.825 of USI’s proposed rules (PC 55) for costs associated with the removal, transportation, and disposal of concrete, asphalt, or paving overlaying contaminated soil or fill.*

Response: Please see the response to Question 26.

28.) *Question: Please state the amount or range of amounts, per cubic yard, that an owner or operator can be reimbursed under Section 734.825 of USI’s proposed rules (PC 55) for costs associated with the purchase, transportation, and placement of material used to backfill excavations resulting from contaminated soil removal and disposal. Please also state how the volume of backfill material must be calculated*

Response: In response to this question USI provides the following: USI envisions a range of prices being considered to be reasonable for these services. The Expedited Unit Rates for these services are found in Appendix E. The Expedited Unit Rate for these Service are also presented in the Table below which is based on an excerpt from Appendix E of USI’s proposed regulations.

Section 1.4 Soil Removal & Disposal Services (734.825)	Billing Method	Unit of Measure	Expedited Unit Rate
Purchase, Transportation & Placement of Backfill	Unit Price	Cubic Yard	20.00

The Expedited Unit Rates provided in the Table above would be presumed reasonable by the Agency. If the price of the service exceeds the Expedited Unit Rate the cost for that service may be reimbursed so long as the unit rate is not in excess of the "Maximum Unit Rate" (defined as the average costs for the service plus two standard deviations) and the other requirements of Section 734.860 (a) are met. Additionally, an alternative method of establishing an acceptable unit price for a service is to develop a "Bid Unit Rate" for that service pursuant to the provisions of paragraph 734.855. Finally, if, and only if, unusual or extraordinary circumstances exist, the owner/operator may establish an "Extraordinary Unit Price" for that service pursuant to the provisions of paragraph 734.862. The methods for calculating the volume of soil that is reasonable for purposes of reimbursement are provided on page 527 of USI's July 27, 2005 testimony. This table is also presented below.

Description of Service	Bill Method	Reasonable Quantity Guidance
Purchase, transportation and placement of clean backfill	Cubic Yard	For budgeting purposes a Reasonable Quantity shall be the estimated length & width & depth of the excavation multiplied times 1.05. For purposes of reimbursement the Reasonable Quantity shall be the number of tons disposed divided by 1.5 or a site specific conversion factor calculated by scientifically acceptable means. Soil volumes removed from the area immediately adjacent to the exterior of a UST during early action shall not exceed the values provided in Appendix C.

29.) *Question: Please state the amount or range of amounts, per cubic yard, that an owner or operator can be reimbursed under Section 734.825 of USI's proposed rules (PC 55) for costs associated with the removal and subsequent return of soil that does not exceed the applicable remediation objectives but whose removal is required in order to conduct corrective action.*

Response: In response to this question USI provides the following: USI envisions a range of prices being considered to be reasonable for these services. The

Expedited Unit Rates for these services are found in Appendix E. The Expedited Unit Rate for these Service are also presented in the Table below which is based on an excerpt from Appendix E of USI's proposed regulations.

Section 1.4 Soil Removal & Disposal Services (734.825)	Billing Method	Unit of Measure	Expedited Unit Rate
Removal and Return of Clean Soil to Access Contaminated Soil	Unit Price	Cubic Yard	6.50

The Expedited Unit Rates provided in the Table above would be presumed reasonable by the Agency. If the price of the service exceeds the Expedited Unit Rate the cost for that service may be reimbursed so long as the unit rate is not in excess of the "Maximum Unit Rate" (defined as the average costs for the service plus two standard deviations) and the other requirements of Section 734.860 (a) are met. Additionally, an alternative method of establishing an acceptable unit price for a service is to develop a "Bid Unit Rate" for that service pursuant to the provisions of paragraph 734.855. Finally, if, and only if, unusual or extraordinary circumstances exist, the owner/operator may establish an "Extraordinary Unit Price" for that service pursuant to the provisions of paragraph 734.862.

30.) *Question: Please state the amount or range of amounts, per drum, that an owner or operator can be reimbursed under Section 734.830 of USI's proposed rules (PC 55) for costs associated with the purchase, transportation, and disposal of 55 gallon drums used to contain the following:*

- a. *Solid waste generated as a result of corrective action*
- b. *Liquid waste generated as a result of corrective action.*

Response: In response to this question USI provides the following: USI envisions a range of prices being considered to be reasonable for these services. The Expedited Unit Rates for these services are found in Appendix E. The Expedited

Unit Rate for these Service are also presented in the Table below which is based on an excerpt from Appendix E of USI's proposed regulations.

Section 1.5 Drum Disposal Services (7634.830)	Billing Method	Unit of Measure	Expedited Unit Rate
Solid Waste Drum Disposal	Unit Price	Drum	250.00
Liquid Waste Drum Disposal	Unit Price	Drum	150.00

The Expedited Unit Rates provided in the Table above would be presumed reasonable by the Agency. If the price of the service exceeds the Expedited Unit Rate the cost for that service may be reimbursed so long as the unit rate is not in excess of the "Maximum Unit Rate" (defined as the average costs for the service plus two standard deviations) and the other requirements of Section 734.860 (a) are met. Additionally, an alternative method of establishing an acceptable unit price for a service is to develop a "Bid Unit Rate" for that service pursuant to the provisions of paragraph 734.855. Finally, if, and only if, unusual or extraordinary circumstances exist, the owner/operator may establish an "Extraordinary Unit Price" for that service pursuant to the provisions of paragraph 734.862.

31.) *Question: Please state the amounts or ranges of amounts, per square foot, that an owner or operator can be reimbursed under Section 734.835 of USI's proposed rules (PC 55) for costs associated with the following:*

- a. *The installation of asphalt or paving to a depth of two inches solely for the purposes of constructing an engineered barrier (i.e., not installed as replacement asphalt or paving).*
- b. *The installation or asphalt or paving to a depth of three inches solely for the purposes of constructing an engineered barrier (i.e., not installed as replacement asphalt or paving).*
- c. *The installation of asphalt or paving to a depth of four inches solely for the purposes of constructing an engineered barrier (i.e., not installed as replacement asphalt or paving).*
- d. *The installation or concrete (any depth) solely for the purposes of constructing an engineered barrier (i.e., not installed as replacement asphalt or paving).*
- e. *The replacement of two inches of asphalt or paving*
- f. *The replacement of three inches of asphalt or paving.*

- g. *The replacement of four inches of asphalt or paving.*
- h. *The replacement of six inches of asphalt or paving.*
- i. *The replacement of two inches of concrete*
- j. *The replacement of three inches of concrete*
- k. *The replacement of four inches of concrete*
- l. *The replacement of five inches of concrete*
- m. *The replacement of six inches of concrete*
- n. *The replacement of eight inches of concrete*

Response: In response to this question USI provides the following: USI envisions a range of prices being considered to be reasonable for these services. The Expedited Unit Rates for these services are found in Appendix E. The Expedited Unit Rate for these Service are also presented in the Table below which is based on an excerpt from Appendix E of USI's proposed regulations.

Section I.6 Concrete, Asphalt and Paving Services (734.835)	Billing Method	Unit of Measure	Expedited Unit Rate
Asphalt and Paving as Engineered Barrier, 2 inches	Unit Price	Square Foot	1.65
Asphalt and Paving as Engineered Barrier, 3 inches	Unit Price	Square Foot	1.86
Asphalt and Paving as Engineered Barrier, 4 inches	Unit Price	Square Foot	2.38
Concrete as Engineered Barrier, any depth	Unit Price	Square Foot	2.38
Replacement of Asphalt and Paving, 2 inches	Unit Price	Square Foot	1.65
Replacement of Asphalt and Paving, 3 inches	Unit Price	Square Foot	1.86
Replacement of Asphalt and Paving, 4 inches	Unit Price	Square Foot	2.38
Replacement of Asphalt and Paving, 6 inches	Unit Price	Square Foot	3.08
Replacement of Concrete, 2 inches	Unit Price	Square Foot	2.45
Replacement of Concrete, 3 inches	Unit Price	Square Foot	2.93
Replacement of Concrete, 4 inches	Unit Price	Square Foot	3.41
Replacement of Concrete, 5 inches	Unit Price	Square Foot	3.89
Replacement of Concrete, 6 inches	Unit Price	Square Foot	4.36
Replacement of Concrete, 8 inches	Unit Price	Square Foot	5.31

The Expedited Unit Rates provided in the Table above would be presumed reasonable by the Agency. If the price of the service exceeds the Expedited Unit Rate the cost for that service may be reimbursed so long as the unit rate is not in excess of the "Maximum Unit Rate" (defined as the average costs for the service plus two standard deviations) and the other requirements of Section 734.860 (a) are

met. Additionally, an alternative method of establishing an acceptable unit price for a service is to develop a "Bid Unit Rate" for that service pursuant to the provisions of paragraph 734.855. Finally, if, and only if, unusual or extraordinary circumstances exist, the owner/operator may establish an "Extraordinary Unit Price" for that service pursuant to the provisions of paragraph 734.862.

32.) *Question: For each of the items listed in Section 734. Appendix D of the Board's First Notice Proposal, please state the amount or range of amounts that an owner or operator can be reimbursed under Section 734.840 of USI's proposed rules (PC 55) for costs associated with sample handling and analysis.*

Response: In response to this question USI provides the following: USI envisions a range of prices being considered to be reasonable for these services. The Expedited Unit Rates for these services are found in Appendix E. The Expedited Unit Rate for these Services are listed in Section II of Appendix E of USI's proposed regulation. This Section of Appendix E is found on pages 517 through 519 of USI's July 27, 2005 testimony.

The Expedited Unit Rates provided in the Table above would be presumed reasonable by the Agency. If the price of the service exceeds the Expedited Unit Rate the cost for that service may be reimbursed so long as the unit rate is not in excess of the "Maximum Unit Rate" (defined as the average costs for the service plus two standard deviations) and the other requirements of Section 734.860 (a) are met. Additionally, an alternative method of establishing an acceptable unit price for a service is to develop a "Bid Unit Rate" for that service pursuant to the provisions of paragraph 734.855. Finally, if, and only if, unusual or extraordinary circumstances exist, the owner/operator may establish an "Extraordinary Unit Price" for that service pursuant to the provisions of paragraph 734.862.

- 33.) *Question: Please state the amounts or ranges of amounts that an owner or operator can be reimbursed under Section 734.845 of USI's proposed rules (PC 55) for costs associated with the following professional consulting services:*
- a. *Preparation for the abandonment or removal of USTs*
 - b. *Early action field work and field oversight, excluding travel costs, per half-day (as defined in USI's proposed rules). Please also state any limits on the total amount an owner or operator can be reimbursed for said costs and how the limits are calculated.*
 - c. *Preparation and submission of a 20 day report (including any amendments).*
 - d. *Preparation and submission of a 45 day report (including any amendments).*
 - e. *Preparation and submission of reports submitted pursuant to Section 734.210(h)(3) of the Board's First Notice Proposal*
 - f. *Preparation for a Stage 1 site investigation*
 - g. *Stage 1 field work and field oversight, excluding travel costs, per half-day. Please also state any limits on the total amount an owner or operator can be reimbursed for said costs and how the limits are calculated.*
 - h. *Preparation and submission of a Stage 2 site investigation plan (including any amendments).*
 - i. *Stage 2 field work and field oversight, excluding travel costs, per half-day. Please also state any limits on the total amount an owner or operator can be reimbursed for said costs and how the limits are calculated.*
 - j. *A well survey conducted pursuant to Section 734.445(b) of the Board's First Notice Proposal.*
 - k. *Preparation and submission of a site investigation completion report (including any amendments).*
 - l. *Preparation and submission of a conventional technology corrective action plan (i.e., only the removal, transportation and disposal of contaminated soil – no alternative technology, including no groundwater remediation) (including any amendments).*
 - m. *Corrective action field work and field oversight excluding travel costs, per half-day. Please also state any limits on the total amount an owner or operator can be reimbursed for said costs and how the limits are calculated.*
 - n. *Obtaining an Environmental Land Use Control used as an institutional control.*
 - o. *Obtaining a Highway Authority Agreement used as an institutional control.*
 - p. *Preparation and submission of a corrective action completion report (including any amendments).*
 - q. *Field work and field oversight for the development of remediation objectives, excluding travel costs, per half-day. Please also state any limits on the total amount an owner or operator can be reimbursed for said costs and how the limits are calculated.*

- r. *Development of TACO Tier 2 or Tier 3 remediation objectives, excluding field work and field oversight.*

Response: As stated in USI's July 27, 2005 testimony USI did not develop prices for the IEPA's arbitrarily created tasks listed above. Rather, USI believes it is appropriate that, at least during the initial implementation phase for this rule, the professional consulting services associated with a corrective action project be rendered and reimbursed on a time and materials basis so that a typical range of professional consulting hours and costs can be defined for each task performed. USI proposes that, as a requirement for reimbursement, all time spent by a professional when rendering professional consulting services be coded to standardized tasks and that all hours proposed/claimed be justified as reasonable and necessary to meet the minimum requirements of the Act. USI also proposes that the Expedited Unit Rates provided in Appendix E Sections 3.1 through 3.4 be utilized for professional consulting services.

34.) *Question: USI's proposed rules prohibit owners and operators from determining alternative "Expedited Unit Rates" for professional consulting services via competitive bidding. PC 55, Section 734.855 (e). Please state the reasons for this prohibition.*

Response: This is explained in USI's July 27, 2005 testimony.

35.) *Question: USI's proposed rules state that owners and operators seeking to exceed the "Expedited Unit Rates" and obtain "Justified Unit Rates" must demonstrate that the cost of products or services, inter alia, "do not exceed the Maximum Unit Rate for the Product or Service." PC 55, Section 734.860(a). Please explain how an owner or operator is to make the required demonstration if the "Maximum Unit Rates" are to "remain unpublished and known only to the IEPA." Exh. 109 at 68*

Response: The language of this provision was poorly worded by USI. USI's intention was for the owner/operator to only be required to demonstrate that the costs 1.) exceed the Expedited Unit Rate set forth in Appendix E; 2.) are


unavoidable; 3.) are reasonable; 4.) are necessary to satisfy the requirements of the Act or this Part; and 5.) are not the result of unusual or extraordinary circumstances. The determination as to whether the proposed price is equal to or less than the average price for that Product or Service multiplied by two standard deviations (does not exceed the Maximum Unit Rate) would be made by the Agency. Of course, USI assumed that the data supporting any maximum unit rate would be normalized if necessary and treated in a sound manner from a statistical point of view.

36.) *Question: USI's proposed rules state that owners and operators seeking to exceed the "Expedited Unit Rates" and obtain "Justified Unit Rates" for products or services listed in Appendix E must demonstrate, inter alia, that the products or services are unavoidable and are not the result of unusual or extraordinary circumstances. PC 55, Section 734.860(a). However, owners and operators are not required to demonstrate the these criteria when seeking "Justified Unit Rates" for products or services that are not listed in appendix E. PC55, Section 734.860(b). Please explain this inconsistency.*

Response: This is not an inconsistency. This difference is by design. It is reasonable to believe that it would be impossible to capture, in a rule of this nature, a list of all products or services that may be needed during a UST remediation project. Additionally, as new products and services are developed by the industry and introduced into the market place the rule needs to be flexible enough to accommodate the timely inclusion of these new products and services.

Respectfully Submitted,

UNITED SCIENCE INDUSTRIES, INC.

A handwritten signature in black ink, appearing to read 'Jay P. Koch', written over a horizontal line.

*Jay P. Koch
President & CEO*

STATE OF ILLINOIS)

COUNTY OF JEFFERSON)

PROOF OF SERVICE

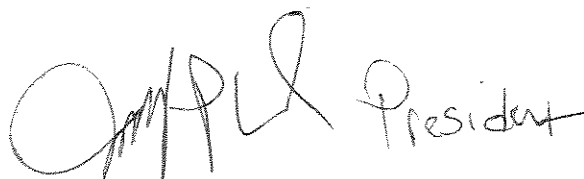
United Science Industries, Inc. states that it has served the attached UNITED SCIENCE INDUSTRIES ANSWERS TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S QUESTIONS REGARDING TESTIMONY SUBMITTED AT THE JULY 27, 2005, HEARING upon the person to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

SEE ATTACHED SERVICE LIST

and mailing it from Woodlawn, Illinois, on August 26, 2005, with sufficient postage affixed as indicated above.

A handwritten signature in black ink, appearing to read "United Science Industries, Inc. President". The signature is stylized and cursive.

United Science Industries, Inc.
August 26, 2005

Service List for
 IEPA Proposed Regulations
 R04-22 and R04-23

Company	Individual	Address 1	Address 2	City	State	Zip
<u>IEPA</u>	Gina Roccaforte, Assistant Counsel	1021 North Grand Avenue East	P.O. Box 19276	Springfield	IL	62794-9276
<u>IEPA</u>	Kyle Rominger, Assistant Counsel	1022 North Grand Avenue East	P.O. Box 19276	Springfield	IL	62794-9276
<u>IEPA</u>	Doug Clay	1023 North Grand Avenue East	P.O. Box 19276	Springfield	IL	62794-9276
<u>Hodge Dwyer Zeman</u>	Thomas G. Safley	3150 Roland Avenue	Post Office Box 5776	Springfield	IL	62705-5776
<u>Sidley Austin Brown & Wood</u>	William G. Dickett	Bank One Plaza	10 South Dearborn Street	Chicago	IL	60603
<u>Karaganis, White & Magel, Ltd.</u>	Barbara Magel	414 North Orleans Street	Suite 810	Chicago	IL	60610
<u>Illinois Petroleum Marketers Association</u>	Bill Fleischi	112 West Cook Street	6295 East Illinois Highway 15	Springfield	IL	62704
<u>United Science Industries, Inc.</u>	Joe Kelly, PE	P.O. Box 360		Woodlawn	IL	62898-0360
<u>Illinois Environmental Regulatory Group</u>	Robert A. Messina, General Counsel	3150 Roland Avenue		Springfield	IL	62703
<u>Carlson Environmental, Inc.</u>	Kenneth James	65 E. Wacker Place	Suite 1500	Chicago	IL	60601
<u>Chemical Industry Council of Illinois</u>	Lisa Frede	2250 E. Devon Avenue	Suite 239	DesPlaines	IL	60018-4509
<u>Barnes & Thornburg</u>	Carolyn S. Hesse, Attorney	1 North Wacker Drive	Suite 4400	Chicago	IL	60606
<u>Rapps Engineering & Applied Science</u>	Michael W. Rapps	821 South Durkin Drive	P.O. Box 7349	Springfield	IL	62791-7349
<u>Environmental Management & Technologies</u>	Craig S. Gocker, President	2012 West College Avenue	Suite 208	Normal	IL	61761
<u>Office of the Attorney General</u>	RoseMarie Cazeau, Bureau Chief	Environmental Bureau	188 West Randolph, 20th Floor	Chicago	IL	60601
<u>Herlacher Angleton Associates, LLC</u>	Tom Herlacher, P.E., Principal Engineer	8731 Bluff Road		Waterloo	IL	62298
<u>Illinois Pollution Control Board</u>	Dorothy M. Gunn, Clerk of the Board	100 W. Randolph St.	Suite 11-500	Chicago	IL	60601
<u>Illinois Pollution Control Board</u>	Marie Tipsord, Hearing Officer	101 W. Randolph St.	Suite 11-501	Chicago	IL	60602
<u>Huff & Huff, Inc.</u>	James E. Huff, P.E.	512 West Burlington Avenue		LaGrange	IL	60525
<u>Marlin Environmental, Inc.</u>	Melanie LoPiccolo, Office Manager	1000 West Spring Street		South Elgin	IL	60177
<u>Illinois Department of Natural Resources</u>	Stanley Yonkauski, Acting General Counsel	One Natural Resources Way		Springfield	IL	62702-1271
<u>Brown Hays & Stevens</u>	Claire A. Manning, Attorney	111 N. Sixth Street	Suite 200, PO Box 338	Springfield	IL	62705
<u>Great Lakes Analytical</u>	Debbie Lowe, Lab Director	1380 Busch Parkway		Buffalo Grove	IL	60089
<u>CSD Environmental Services, Inc</u>	Joseph W. Truesdale, P.E.	2220 Yale Boulevard		Springfield	IL	62703
<u>CORE Geological Services, Inc.</u>	Ron Dye, President	2621 8/26/2005 Suite C		Springfield	IL	62704
<u>Clayton Group Services Inc</u>	Monte Nienkerk	3140 Finley Road		Downers Grove	IL	60515
<u>Suburban Laboratories, Inc.</u>	Jarrett Thomas, V.P.	4140 Litt Drive		Hillside	IL	60162

Service List for
 IEPA Proposed Regulations
 R04-22 and R04-23

<u>Environmental Consulting & Engineering, Inc.</u>	Richard Andros, P.E.	551 Roosevelt Road	#309	Glenn Eilyn	IL 60137
<u>MACTEC Engineering & Consulting, Inc.</u>	Terrence W. Dixon, P.G.	8901 N. Industrial Road		Peoria	IL 61615
<u>Illinois Department of Transportation</u>	Steven Gobelman & Tom Benson	2300 Dirksen Parkway	Room 311	Springfield	IL 62764
<u>SEECO Environmental Services, Inc.</u>	Collin W. Gray	7350 Duvon Drive		Tinley Park	IL 60477
<u>Herlacher Angleton Associates, LLC</u>	Jennifer Goodman	522 Belle Street		Alton	IL 62002
<u>United Environmental Consultants, Inc.</u>	Tony Bush	2650 Galvin Dr		Elgin	60123
<u>McGuire Woods LLP</u>	David Rieser	77 W. Wacker	Suite 4100	Chicago	IL 60601
<u>Midwest Engineering Services, Inc.</u>	Erin Curley, Env. Department Manager	4243 W. 166th Street		Oak Forest	IL 60452
<u>Secor International, Inc.</u>	Larry Williams, Engineer	400 Bruns Lane		Springfield	IL 62702
<u>Illinois Society of Professional Engineers</u>	Kim Robinson	600 S 2nd Street	Suite 403	Springfield	IL 62704
<u>Illinois Society of Professional Engineers</u>	Brittan Bolin	600 S 2nd Street	Suite 403	Springfield	IL 62704
<u>Ogle County State's Attorney Office</u>	Michael Myzia, Assistant State's Attorney	Ogle County Courthouse	110 South Fourth Street, P.O. Box 395	Oregon	IL 61061-0395
<u>Sidley Austin Brown & Wood</u>	William G. Dickett	Bank One Plaza	10 South Dearborn Street	Chicago	IL 60603
<u>PDC Laboratories</u>	Kurt Stepping, Director of Client Services	2231 W. Altorfer Dr.		Peoria	il 61615
<u>Atwell-Hicks, Inc.</u>	Thomas M. Guist, PE, Team Leader	1245 E Diehl Rod	Sute 100	Naperville	IL 60563
<u>CW3M Company, Inc.</u>	Jeff Wienhoff	701 South Grand Ave. West		Springfield	IL 62704
<u>Suburban Laboratories, Inc.</u>	Jarrett Thomas, V.P.	4140 Litt Drive		Hillside	IL 60162
<u>Greensfelder, Hemker & Gale</u>	Tina Archer, Attorney	10 S. Broadway	Suite 2000	St. Louis	MO 63104
<u>American Environmental Corp.</u>	Ken Miller, Regional Manager	3700 W. Grand Ave., Suite A		Springfield	IL 62707
<u>Caterpillar, Inc.</u>	Eric Minder, Sr. Environmental Engineer	100 NE Adams Street		Peoria	IL 61629
<u>K-Plus Environmental</u>	Daniel Caplice	600 W. Van Buren Street	Suite 1000	Chicago	IL 60607