



P.O. Box 360  
6295 East Illinois Highway 15  
Woodlawn, Illinois 62898-0360

Phone: (618) 735-2411  
Fax: (618) 735-2907  
E-Mail: [unitedscience@unitedscience.com](mailto:unitedscience@unitedscience.com)

July 5, 2005

Dorothy Gunn, Clerk  
Pollution Control Board  
James R. Thompson Center  
100 W Randolph, Ste. 11-500  
Chicago, IL 60601

Marie Tipsord, Hearing Officer  
Pollution Control Board  
James R. Thompson Center  
100 W Randolph, Ste 11-500  
Chicago, IL 60601

See Attached Service List

RE: R04-22 & R04-23 Proposed Amendments to Regulation of Petroleum Leaking  
Underground Storage Tank

Dear Ms. Tipsord and Ms. Gunn:

On May 23, 2005, I submitted a letter to you requesting an extension of the time for pre-filed testimony for the upcoming hearing scheduled for July 27, 2005 in Carbondale, Illinois. The Board agreed to extend the deadline for pre-filed testimony to July 8, 2005. I am appreciative of the Board authorizing this extension. The reason I requested the extension of time was to allow an appropriate amount of time in which to review the IEPA's answers to questions previously filed with the Board by parties interested in this rulemaking.

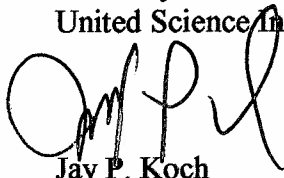
Unfortunately, after reviewing the IEPA's answers to the questions posed by Dan King of USI and myself, I feel that a number of the answers provided by IEPA either completely failed to address the question presented or only provided a partial answer to the question that was posed. Additionally, in many instances, the IEPA's answers to the questions were vague and did not provide enough specificity to provide accurate insight into the Agency's proposed intent or their planned administrative interpretation and approach with regard to the proposed rule. Due to a very high number of ambiguities associated with the proposed rule, it is imperative that anyone with a viewpoint that is potentially counter to that of the Agency be afforded the opportunity to present its position. It is difficult, if not impossible, for the party that may have opposing view points, to develop competent and compelling testimony without direct, appropriate and specific responses from the other party.

I respectfully request that the Board require that the Agency answer, with appropriate directness and specificity, those questions posed by Dan King of USI and myself which we believe were not sufficiently answered. A list of the question numbers for the questions at issue are listed in Attachment 1 to this letter.

I realize that the deadline for the filing of pre-filed testimony is July 8, 2005 and recognize that sufficient time is not available to require the Agency to re-answer questions by that date. However, I would request that the Board either 1.) require the Agency to answer the questions by July 22<sup>nd</sup> and allow the parties to modify their testimony up to the date of the hearing; or 2.) maintain the date of July 27<sup>th</sup> for the hearing in Carbondale, but require the Agency to answer these questions on or prior to July 22<sup>nd</sup> so that the hearing participants may address the Agency with follow-up questions in person at the hearing.

In closing, I believe that, in order to afford due process to the parties that will be impacted by the proposed rule, it is imperative that those that are likely to be impacted clearly understand the intent of the regulations and have a solid understanding of the enforcement approach that will be used by the Agency in administering the rule. I also believe that requiring meaningful answers to the previously-propounded questions and receiving meaningful comment on those answers are the best way for your agency to assure itself that the regulations it is considering are well-advised and proper. Should you have any questions or require any additional information, please do not hesitate to contact me. I look forward to your response.

Sincerely  
United Science Industries, Inc.

A handwritten signature in black ink, appearing to read 'Jay P. Koch', written over the typed name.

Jay P. Koch  
President & CEO

JPK:rm

**Attachment 1 to July 1, 2005  
Letter to Marie Tipsord from Jay Koch**

Questions posed by Jay Koch

Question Numbers from  
May 4, 2005 Filing with IPCB

7,10,13,14,17,19,21,25

Questions posed by Dan King of USI

Question Numbers from May 3, 2005  
Filing with IPCB.

1,2,9,10,11,18,21,23,24,27,38,39,46

<b>Company</b>	<b>Individual</b>	<b>Address 1</b>	<b>Address 2</b>	<b>City</b>	<b>State</b>	<b>Zip</b>
<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 &amp; Wood</u>	William G. Dickett	Bank One Plaza	10 South Dearborn Street	Chicago	IL	60603
<u>Karaganis, White &amp; 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		Springfield	IL	62704
<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 &amp; Thornburg</u>	Carolyn S. Hesse, Attorney	1 North Wacker Drive	Suite 4400	Chicago	IL	60606
<u>Rapps Engineering &amp; Applied Science</u>	Michael W. Rapps	821 South Durkin Drive	P.O. Box 7349	Springfield	IL	62791-7349
<u>Environmental Management &amp; Technologies</u>	Craig S. Gocker, President	2012 West College Avenue	Suite 208 188 West Randolph, 20th Floor	Normal	IL	61761
<u>Office of the Attorney General</u>	RoseMarie Cazeau, Bureau Chief	Environmental Bureau		Chicago	IL	60601
<u>Herliacher Angleton Associates, LLC</u>	Tom Herliacher, 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 &amp; Huff, Inc.</u>	James E. Huff, P.E.	512 West Burlington Avenue Suite 100		LaGrange	IL	60525
<u>Black &amp; Veatch</u>	Scott Anderson	101 North Wacker Drive	Suite 1100	Chicago	IL	60606
<u>Marilyn 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 &amp; Stevens</u>	Claire A. Manning, Attorney	111 N. Sixth Street	Suite 200, PO Box 338	Springfield	IL	62705
<u>Burroughs, Hepler, Broom, MacDonald, Hebrank &amp; True</u>	Musette H. Vogel	103 W. Vandalia Street	Suite 300	Edwardsville	IL	62025
<u>Great Lakes Analytical</u>	A.J Pavlick	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 Monetga, Suite C		Springfield	IL	62704



United Science Industries, Inc.  
P.O. Box 360  
6295 East IL Highway 15  
Woodlawn, IL 62898  
toll free 800.372.8740  
phone 618.735.2411  
fax 618.735.2907

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www.unitedscience.com

May 3, 2005

Ms. Marie E. Tipsord  
Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph, Suite 11-500  
Chicago, IL 60601

**Re: Prefiled Questions and Availability**

Dear Ms. Tipsord:

In regard to the April 20, 2005 Hearing Order, please find attached a copy of the prefiled questions submitted on behalf of United Science Industries, Inc (USI) for the Agency's review. USI appreciates the opportunity to have additional hearings in the Southern Illinois area. Currently, USI is *unavailable* for hearings on the following dates: 6/6, 6/7, 6/8, 6/9, 6/14, 6/15, 7/1, 7/4, 7/5, 7/6, 7/28 and 7/29.

If you have any questions, please feel free to contact me at (618)735.2411.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel A. King", is written over the word "Sincerely,".

Daniel A. King  
Manager of Business Development  
United Science Industries, Inc.

Encl (1)

Questions:

(NOTE: All questions and regulations references have been asked relative to the proposed 734 regulations, where applicable questions would also apply to corresponding sections of 732 and possibly 731 regulations as well)

1. Pursuant to 734.210(a) there are activities that are required to be performed within 24 hrs of the confirmation of the release. Pursuant to 734.625(a)(1) Early Action activities conducted pursuant to Subpart B are eligible for reimbursement. However, Subpart H does not include a pay item inclusive of these tasks.

Does the Agency intend to revise Subpart H to include a pay item for the completion of activities pursuant to 734.210(a)?

If the Agency does not intend to revise Subpart H to include a pay item for these costs, with what current Subpart H pay item are these costs associated?

2. Pursuant to 734.210(b) there are six (6) activities that are required to be performed within 20 days of the notification of the release to IEMA.

- 734.210(b)(1) Remove Petroleum to prevent further release
- 734.210(b)(2) Visually inspect Release and prevent further migration
- 734.210(b)(3) Monitor/mitigate fire, explosion, & vapor hazards
- 734.210(b)(4) Remedy hazards posed by excavated or exposed soils
- 734.210(b)(5) Measure for the presence of a release
- 734.210(b)(6) Determine the possible presence of free product

However, Subpart H does not include a pay item inclusive of these tasks.

Does the Agency intend to revise Subpart H to include a pay item for the completion of activities pursuant to 734.210(b)?

If the Agency does not intend to revise Subpart H to include a pay item for these costs, with what current Subpart H pay item are these costs associated?

3. Pursuant to 734.210(d) the owner/operator is required to prepare a 45-day report.

In the event of an Early Action extension (734.210(g)) is it necessary and required to submit a 45-day report within 45+14 days from notification to IEMA if all Early Action activities are not yet complete?

Doing so would require the submission of an amended 45-day report at the conclusion of early action activities and potentially result in an unnecessary duplicated effort.

Does the early action extension provided for in 734.210(g) also extend the submission deadline for the report that is required in 734.210(d) to the end of the early action period?

If not, and two reports are required to be submitted under this circumstance, would the preparation of the second 45-day report be considered an extenuating circumstance and therefore reimbursable on a time and materials basis pursuant to 734.850?

4. Pursuant to 734.210(g) an owner/operator may request in writing that activities continue beyond the 45+14 day period.

Are the costs associated with performing this activity eligible and reimbursable?

If yes, is this activity considered an extenuating circumstance and therefore reimbursable on a time and materials basis pursuant to 734.850?

If not, what applicable Subpart H pay items would apply to performing this task?

5. Section 734.810 of Subpart H allows for reimbursement of tank removal and abandonment costs, performed pursuant to 734.210(f), on a per UST basis based on the relative size of the tank.

Is it the Agency's intent that this cost would include the cost for abandonment slurry?

6. Taking into consideration that a waiver of the removal requirements set forth by the Office of the State Fire Marshall (OSFM) to allow abandonment-in-place may only be granted when unusual situations, determined by OSFM, are present that make it infeasible to remove the UST(s), and as such no typical situation exists, should all tank abandonment activities be considered as extraordinary circumstances?
7. Section 734.845(e) allows for reimbursement of costs associated with travel time, per diem, mileage, transportation, vehicle charges, lodging and meals for professional personnel. However, there is not a complimentary section within Subpart H to allow for travel costs associated with field personnel.

Would the Agency consider adding a Subpart H Pay Item for field equipment mobilization charges as an hourly rate, by the mile, or a mileage scale in addition to a field equipment mobilization permitting item on a time and materials basis?

If the Agency does not intend to revise Subpart H to include a pay item for these costs, with what current Subpart H pay items are these costs associated?

8. Section 734.845(a)(1) allows \$960.00 for professional services associated with the preparation for abandonment or removal of USTs, however, professional services are also required but not limited to the following;

Preparation for Early Action Soil Abatement  
Preparation for a Drilling Event  
Preparation for Implementation of Conventional Corrective Action  
Preparation for Implementation of Alternative Technologies

Would the Agency consider the addition of \$960.00 for preparation for an Early Action soil abatement, preparation for a drilling event, preparation for implementation of conventional corrective action, and preparation for implementation of alternative technologies?

If the Agency does not intend to revise Subpart H to include a pay item for these costs, with what current Subpart H pay item are these costs associated?

9. Pursuant to 734.845 costs associated with professional consulting services must include project planning and oversight, field work, field oversight, travel, per diem, mileage, transportation, vehicle charges, lodging, meals, and the preparation, review, certification, and submission of all plans, budgets, reports, and applications for payment, and other documentation. Sections 734.845(a-f) include provisions for each of the above mentioned, with the exception of costs associated with applications for payment pursuant to 734.625(a)(14)

Does the Agency intend to revise Subpart H to include a pay item for the owner/operator's reimbursement of the costs associated with the preparation, certification, and submission of a payment application for the following?

Early Action?  
Site Investigation Stage 1?  
Site Investigation Stage 2?  
Site Investigation Stage 3?  
Corrective Action?

If the Agency does not intend to revise Subpart H to include a pay item for these costs, with what current Subpart H pay item are these costs associated?

10. In accordance with section 734.845(a)(2)(A-C) owner/operators may be reimbursed for professional oversight of field activities when one or more of the following circumstances is taking place: removal/abandonment of UST's, ETD&B of contaminated backfill, soil sampling around abandoned UST's, and when a UST line release is repaired.



This allowance does not account for professional supervision for the confirmation of the release, the immediate actions taken to prevent any further release, and the identification and mitigation of fire, explosion and vapor hazards.

Would the Agency entertain the addition of language to section 734.845(a)(2)(B) which would allow for the reimbursement of professional oversight of these activities on a time and materials basis pursuant to 734.850?

11. Pursuant to section 734.605(b)(3), an Eligibility & Deductibility letter is required to complete an "application for payment". Pursuant to 734.625(a)(15) the costs associated with obtaining an Eligibility & Deductibility letter are considered to be eligible and reimbursable. However, Subpart H does not include a pay item inclusive of this task.

Does the Agency intend to revise Subpart H to include a pay item for the preparation and submission of an Eligibility & Deductibility letter?

If the Agency does not intend to revise Subpart H to include a pay item for these costs, with what current Subpart H pay item are these costs associated?

12. Pursuant to 734.345(b), an owner/operator as a minimum requirement must conduct "best efforts" to obtain off-site access in accordance with 734.350. However, Subpart H does not include a pay item inclusive of this task.

Does the Agency intend to revise Subpart H to include a pay item for conducting "best efforts" to obtain off-site access?

If the Agency does not intend to revise Subpart H to include a pay item for these costs, with what current Subpart H pay item are these costs associated?

13. Pursuant to 734.210(f) the owner/operator may, as a part of early action, perform ex-situ treatment of contaminated fill material. Will the owner/operator be reimbursed for these activities in accordance with 734.850, on a time and materials basis?

14. What technologies does the Agency consider "conventional" for the ex-situ treatment of contaminated fill material?

15. In our experience, UST removal rates vary depending upon the equipment required to remove said UST. For instance, tanks from 110-2000 gallons may be removed with a backhoe, however, tanks with capacities from 2,001 - 10,000 gallons require a larger piece of equipment, such as an excavator, to be removed. Any tanks larger than 10,000 gallons must be removed with a crane. Each of these graduations increase the cost for the required personnel and equipment to carry out the removal.

Would the Agency be willing to restructure the UST volume pay item schedule to account for these equipment limitations?

16. The titles listed within 734.APPENDIX E do not include a job description for the personnel.

When performing a task where payment will be in accordance with Appendix E, will reimbursement be based solely on the educational degree and experience of the person performing the task, regardless of the task performed, the efficiency of completing the task, and/or the success of regulatory compliance achieved by the owner/operator by performing the task?

If not, would the Agency consider adding a section which would briefly describe the tasks to be performed by each of the personnel listed in Appendix E?

17. Pursuant to Section 734.340(d) remote monitoring may be required during an alternative technology.

How will costs associated with Agency required remote monitoring be reimbursed?

18. In accordance with section 734.315(a)(2)(E) a hydraulic conductivity test must be completed during Stage 1 Site Investigation activities. However, Subpart H does not include a pay item for costs associated with performing and analyzing a hydraulic conductivity test.

Does the Agency intend to revise Subpart H to include a pay item for costs associated with performing and analyzing a hydraulic conductivity test?

If the Agency does not intend to revise Subpart H to include a pay item for these costs, with what current Subpart H pay item are these costs associated?

19. Pursuant to 734.315(a)(3) an initial water supply well survey must be conducted in accordance with 734.445(a). Currently 734.845(b)(7) of Subpart H provides for the reimbursement of costs associated with water supply well surveys conducted pursuant to 734.445(b & c). However, there is no Subpart H pay item associated with activities conducted in accordance with 734.445(a).

Does the Agency intend to revise Subpart H to include a pay item for costs associated with conducting an initial water supply well survey?

If the Agency does not intend to revise Subpart H to include a pay item for these costs, with what current Subpart H pay item are these costs associated?

20. In accordance with section 734.845(b)(7), a lump sum rate of \$160 will be allotted for potable water well surveys which must be conducted pursuant to

sections 734.445(b) or (c). The external costs associated with completing a typical well survey are approximately \$100 for ISGS and ISWS provided information. Given this typical situation, labor costs associated with this task would amount to \$60.

Does the Agency feel that \$60 is sufficient for the professional labor to comply with the requirements set forth in section 734.445?

Is it also expected that this amount would account for time allotted for the Professional Engineer's review and certification, as required by 734.445(d)(4)?

21. Pursuant to 734.825(a)(1), for the purposes of reimbursement, the volume of soil removed and disposed of must be determined by the dimensions of the excavation plus 5%.

Will a site map with a cross section showing varying depths be sufficient to verify this volume?

If yes, will it continue to be necessary to provide the following to the Agency:

- a. Copies of the weight tickets from the landfill accepting the waste?
- b. Copies of the special waste manifest?
- c. Copies of the landfill invoice (provided that the landfill acted as a subcontractor to the primary contractor)?

Would the additional cost of collecting GPS coordinates to determine the volume of the excavated material be considered reimbursable on a time and materials basis pursuant to section 734.850?

22. It is USI's experience that offsite investigations often require widely varying and unknown scopes of work.

Would the Agency consider revising the Subpart H pay item associated with preparation and submittal of a Site Investigation Completion Report pursuant to 734.845(b)(8) to T&M if completed during Stage III due the variability and inconsistencies within this stage of work?

23. Pursuant to 734.320(b)(3)(A) the owner/operator is required to include within their Stage 2 Site Investigation Plan one or more maps detailing hydraulic gradient and groundwater flow direction. In order to obtain this information, an additional site visit, apart from the installation of groundwater monitoring wells, is required to collect the necessary data.

Does the Agency intend to revise Subpart H to include a pay item for costs associated with completing a survey of groundwater flow direction and gradient?

If the Agency does not intend to revise Subpart H to include a pay item for these costs, with what current Subpart H pay item are these costs associated?

24. In addition to the half-day for each monitoring well drilled in accordance with section 734.845(b)(2)(B) and 734.845(b)(6)(B), would the Agency entertain the addition of one (1) additional half-day for each required trip to the site including: well development, well surveying, and well sampling?
25. It is mentioned within the Illinois Pollution Control Board's "Discussion" notes, page 80, that section 734.845(b)(5) and (6) will be deleted from the regulations and that the language "payment for costs associated with Stage 3 site investigations will be reimbursed pursuant to Section 734.850" will be added in its place, however, this language has not been included in the Board's proposed section 734.845 (b).

Is this omission an error?

26. In Brian Bauer's Prefiled Testimony submitted March 5, 2004, Mr. Bauer indicates that "neither incidental expenses nor decontamination charges" were necessary, thus the rate for direct push injections is substantially lower than direct push soil borings (\$15/ft vs. \$18/ft). Based on our experience, costs associated with expendable items will not change drastically between investigation and injection activities. Although investigation activities utilize expendable materials used only for sample collection, injection activities utilize expendable points to prevent soil from clogging the injection rod. As a result, the cost differential between these two activities is insignificant. Additionally, decontamination between injection points is still necessary to prevent cross contamination.

Would the Agency be willing to increase the per foot rate for Direct Push injections listed in 734.820(a) to \$18.00/foot.

27. Is the cost for the placement of an engineered barrier pursuant to 742.1105 eligible for reimbursement? For the purposes of reimbursement, is it required that the design of said barrier be approved by the Agency prior to implementation? If yes, why then would the same proposed rates not apply for engineered barriers as they do for replacement of surface materials?
28. It is our understanding that conventional groundwater remediation strategies include the use of institutional controls.

What other groundwater remediation mechanisms are characterized as "conventional" by the Agency? Subpart H does not include a pay item inclusive of these tasks.

Does the Agency intend to revise Subpart H to include a pay item for the completion of activities pursuant to 734.210(a)?

If the Agency does not intend to revise Subpart H to include a pay item for these costs, with what current Subpart H pay item are these costs associated?

29. Pursuant to 734.340 an owner/operator may choose to use an alternative technology for corrective action in response to a release.

In the event the cleanup strategy utilizes both conventional and alternative remedial methods, and the owner/operator elects to submit a single corrective action plan (CAP) inclusive of both technologies, will the costs associated with the preparation and submission of the CAP be reimbursed pursuant to 734.850 on a time and materials basis?

Or will the owner/operator be required to submit two (2) CAPs?

If two (2) CAPs must be submitted, will the Agency consider the cost for the conventional technology CAP reimbursable pursuant to 734.845(c)(1) and consider the cost for the alternative technology CAP reimbursable pursuant to 734.850?

30. It is USI's experience that an Agency project manager may request a groundwater remediation CAP be proposed after soil remediation has been completed. Would the submission of two (2) separate CAPs be reimbursed pursuant to 734.845(c)(1) for each submittal independently?
31. In accordance with 734.355(c) any action by the Agency to require a revised CAP pursuant to 734.355(b) must be subject to appeal to the board with 35 days after the Agency's final action.

Should 734.355(c) be revised to include budgets as well as plans?

32. The competitive bidding requirements provided in 734.855 provide an alternative means for establishing the maximum payment amounts. One of the requirements of 734.855 (a) is that any bid solicited under 734.855 be based upon the same scope of work as the applicable Subpart H maximum payment amounts. Since the scopes of work have not been defined as part of Subpart H, maximum payment amounts, how are the owners/operators to use 734.855 as a reasonable alternative to determine maximum payment amounts?
33. Section 734.860 provides that the Agency may reimburse an amount in excess of Subpart H, maximum payment amounts, if an owner or operator incurs or will incur eligible costs that exceed the maximum payment amounts set forth in Subpart H. Since no scope of work is defined in relation to Subpart H, maximum payment amounts, is an owner/operator to assume that all costs incurred in response to a release above the maximum payment amount are extraordinary or unusual in the definition of eligible under 734.675?

34. How will the Agency determine prevailing market rates pursuant to 734.875?
35. How does the Agency intend to collect the data needed to require with 734.875?
36. Would the Agency consider adjusting the maximum payment amounts on January 1 of each year instead of July 1 of each year so that it would be more consistent with the fiscal year most often utilized by private businesses (owners/operators and consultants)?
37. If the inflation factor in a given year is greater than 5.0% the adjustment in the maximum payment amount under 734.870 would be limited to 5.0%.

Why not adjust by the increase in the CPI since it is reflective of actual market conditions?

38. When engineering a remedial strategy for an active station, conventional technologies are often not applicable (ex. a dig and haul is not possible when a live system is in place), therefore one must look to alternative remedial designs. In reference to Section 734.340(b), an owner/operator must submit a budget that demonstrates that the cost for said alternative technology will not exceed the cost of conventional technologies.

Is it the Agency's intent to hold an owner/operator liable for costs in excess of the conventional technology amount when a conventional technology is not feasible? Would this circumstance be considered extraordinary?

39. Pursuant to section 734.340(c) what is the Agency's intent in rendering an owner/operator "ineligible to seek payment for the subsequent performance of a corrective action using conventional technology" when prior approval for implementing an alternative technology is not first attained?

Would the owner/operator be considered ineligible to seek payment for the subsequent performance of an alternative technology as well?

40. Pursuant to section 734.320(b)(3)(A-D) and 734.325(b)(2)(A-D) an owner/operator is required to produce one (1) or more maps, however, no limit is placed on the number of maps which may be required. Is it assumed that map preparation costs are to be included within the primary reporting lump sum task for each phase (ex. EA-\$4800, SI-\$1600/\$3200, CA-\$5120)?

If so, how can a lump sum amount be determined if the scope of work (one (1) or more maps) cannot be determined?

41. Pursuant to 734.835 Sample Handling and Analysis, costs associated with transportation, delivery, preparation, analysis and reporting of samples are

- reimbursable costs and should be billed in accordance with the rates listed in 734.APPENDIX D. Is it the Agency's intent that the per sample rates listed may be divided up between the entity doing the transportation, deliver, analysis, etc.?
42. When determining acceptable depths for well installation activities, what entity, Agency or consultant, decides what depth is sufficient?
  43. Are Subpart H unit rate reimbursable amounts billable within all applicable phases of work?
  44. Pursuant to 734.315 Stage 1 Site Investigation, 734.320 Stage 2 Site Investigation, and 734.325 Stage 3 Site Investigation, an owner/operator may be required to advance soil borings in an attempt to fully delineate soil contamination present on-site. As a result, what constitutes a "soil boring"? i.e. are minimum depths required or must specific tooling be utilized?
  45. Pursuant to 734.815 Free Product or Groundwater Removal and Disposal and 734.830 Drum Disposal, an owner/operator may be reimbursed for costs associated with disposal of petroleum contaminated soil and/or groundwater as a result of drilling activities. Who determines, however, whether media should drummed or disposed of in bulk?
  46. Pursuant to 734.845 Professional Consulting Services, how many submittals are included in each unit rate reporting pay item?
  47. Have all rates associated with Subpart H pay items been historically evaluated against actual reimbursement submittals?

**RECEIVED**  
CLERK'S OFFICE

**MAY 04 2005**

STATE OF ILLINOIS  
Pollution Control Board

May 4, 2005

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

Re: Questions and Additional Hearing(s) pertaining to R04-22 (UST Rulemaking) &  
R04-23 (UST Rulemaking Consolidated)

Dear Ms. Tipsord:

First, let me thank the Board for determining that at least one additional hearing shall be held in the above referenced matter. Also, thank you for considering and acknowledging the request of the many Southern Illinois-based employees of EcoDigital Development Group and United Science Industries, Inc.

Although by regional and national standards United Science Industries, Inc. is a very small firm, in the economy of the Southern Illinois region, our company is a significant employer. Our employees, many of which are native to Southern Illinois and desire to remain close to their roots, are appreciative of their employment and are concerned about the potential implications of this rule on their employment and our industry.

As members of the largest LUST services firm in the entire State of Illinois, USI's employees represent a client base from Chicago to Cairo, from the Indiana state line to the Mississippi River. USI's employees serve a client base which is the largest in the UST business in the State of Illinois by a factor of nearly two to our nearest competitor. USI's client's consists of owners/operators from numerous socioeconomic sectors ranging from highly profitable well-capitalized businesses to undercapitalized small businesses and even the financially destitute. Having been in the industry in Illinois since its inception, and having the practical experience of working on hundreds of LUST sites across all regions of the state for numerous owners/operators with varying social, economic and ethnic backgrounds, USI and its employees have an immense knowledge base regarding the needs and concerns of the UST owner/operator. As advocates of our clients (especially the mom & pop operator), our employees want to share their collective knowledge base with the IPCB to ensure that the record in this rulemaking reflects this vast base of knowledge and practical experience and most importantly the needs and desires of our clients.



Again, thank you for hearing each of USI's employee's individual requests. Their livelihood, and those of the hundreds of Illinois' owners/operators that USI represents are all dependent upon the long term viability of the Illinois LUST program. As a result, we are fully in support of the implementation of a fair cost containment rule that assures the viability of the LUST program for many years to come. Therefore, it is highly important to all of us that the rules that are eventually adopted pursuant to this rulemaking be based upon accurate, reliable and relevant facts and that the rule that is crafted be able to be administered fairly, objectively, uniformly and transparently. It is with these goals in mind that USI and its employees desire to participate in this process.

In one of the recent postings to your website, you requested that interested parties provide you with dates in June and July during which their time had already been scheduled so that you could consider the commitments of the various parties when contemplating dates for the upcoming hearing. I have previously scheduled commitments for the entire time period from June 1<sup>st</sup> through June 26<sup>th</sup>. I am available from June 27<sup>th</sup> through the end of July. In any case, I am committed to providing constructive input and suggestions during the remainder of this rulemaking and am willing to make sacrifices in my schedule to facilitate participation in the hearings if the proposed hearing date conflicts with my schedule. The employees of USI that desire to participate in the rulemaking will provide you with their schedules under separate cover.

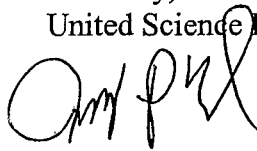
The Board also recently requested that written questions be presented by May 4, 2005. The Board also made notice that the questions posed would be answered by May 18, 2005. I assume that questions may be posed to either the Board or the Agency and will be answered accordingly. I also assume that, after all interested parties have received the answers to the questions posed pursuant to the May 4<sup>th</sup> dead-line, the Board will request pre-filed testimony for this summer hearing(s) thereby allowing the testimony of the participants to consider the Board's and Agency's responses to the questions. Therefore, although I hope to have an opportunity to testify at this summer's hearing and provide the board with a considerable amount of information that I believe needs to be on the record before a final rule is promulgated, under cover of this letter I am simply providing the questions requested of the participants by May 4<sup>th</sup>.

You will note that many of the questions that I am submitting have the goal of attempting to objectively define how the Agency intends to interpret and administer these rules with regard to professional service tasks. It is my belief, and I believe that of USI's employees and our colleagues in the industry, that the largest area of discrepancy remaining in this rulemaking is the fact that, as a practical matter, these rules if interpreted and administrated in an absolute sense by the Agency, will simply not allow enough time for the environmental professional to complete the professional service tasks required under the Act as historically enforced by the Agency.

This is very problematic as the result could be hundreds of appeals and unnecessary costs to all involved parties. Hopefully, the question and answer period proposed by the IPCB will resolve many of these issues and the remainder can be

resolved at the upcoming hearing(s). My questions are attached. Other questions are being submitted separately by other employees of United Science Industries, Inc.

Sincerely,  
United Science Industries, Inc.

A handwritten signature in black ink, appearing to read "Jay P. Koch". The signature is stylized and cursive.

Jay P. Koch  
President

**RECEIVED**  
CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**MAY 04 2005**

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

STATE OF ILLINOIS  
Pollution Control Board

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IN THE MATTER OF )  
 ) R04-23  
REGULATION OF PETROLEUM LEAKING ) (UST Rulemaking  
UNDERGROUND STORAGE TANKS ) Consolidated)  
PROPOSED NEW ILL. ADM. CODE 734 )

Proposed Rule. First Notice

PRE-FILED QUESTIONS FROM Jay P. Koch FOR THE ILLINOIS POLLUTION CONTROL BOARD'S 1<sup>st</sup> NOTICE OF AMENDMENT TO 35 ILL. ADM. CODE 734 AND 35 ILL. ADM. CODE 732.

Below are questions proposed by Jay P. Koch in response to the Illinois Pollution Control Board's request for pre-filed questions. These questions are presented in order to gain a better understanding of the Agency's intent and approach to the implementation and administration of the proposed rules and the UST program subsequent thereto in order to facilitate the preparation and development of accurate, factual and meaningful testimony for the hearing(s) to be held this summer in the above referenced matters.

Questions:

1. In Mr. Clay's testimony, he stated that groundwater remediation is, by definition, considered to be an alternative technology. Some, but not all, IEPA technical reviewers require that a Corrective Action Plan, in order to be acceptable, address both soil and groundwater remediation. In a situation where the owner/operator is proposing a corrective action to the agency for both soil and groundwater remediation and assuming that the proposed method of soil remediation would be excavation, transportation and disposal, how would the Agency administer the Subpart H maximum payment amounts? Would this be treated as a conventional cap (maximum lump sum payment amount) or an alternative technology CAP (Time & Materials) or would it be a hybrid?
2. Several consultants have recently mentioned that it is very difficult to have alternative technology CAPS (for soil remediation) approved by the Agency. If an alternative

technology CAP is submitted to the Agency and it is not approved, how does the Agency intend to deal with associated reimbursement issues under Subpart H? Specifically, if an alternative technology CAP is rejected one or more times, but is eventually approved by the Agency, will the Agency reimburse all professional service hours that are reasonable and justified so long as the rates for professional services are consistent with Appendix E? If the alternative technology Corrective Action Plan was rejected by the Agency reviewer on one or more occasions, and as a result the owner/operator elects to subsequently submit a CAP for a conventional technology, will the costs associated with the development of the alternative technology CAP be paid pursuant to Subpart H on a time and materials basis with the costs of the subsequently prepared conventional technology CAP being reimbursed on a maximum lump sum payment basis in accordance with 734.845 (c) (1)?

3. How does the Agency intend to administer the "extraordinary circumstances" provision? In order to avoid the landslide of questions and conflicts that are almost certain to arise after the implementation of any rule changes of the magnitude represented by Subpart H, is the Agency, prior to the final implementation of the rule, willing to publish on a regulation by regulation basis, examples of the types of situations that it believes will warrant a claim for "extraordinary circumstances"?

4. Market research and analysis performed by USI indicates that nearly ninety-five percent of the owners/operators that are currently engaged in LUST clean-ups in Illinois are individuals or very small businesses. Many of these individuals and small businesses do not belong to the organizations that are listed as being the parties that will appoint the Members of the LUST Advisory Committee. Will the IEPA consider allowing an additional seat or seats on the LUST Advisory Committee in order to assure the representation of this category of owner/operator?

5. The Agency is proposing revisions that would allow the Agency to remotely monitor alternative technologies? Is reimbursement for these activities to be handled on a time and material basis?

6. Subpart H, Appendix D provides rates for Sample Handling and Analysis. Section 734.835 indicates that these rates are for transportation, delivery, preparation, analysis and result reporting. Often times analytical samples are transported to a central shipping location by one party, delivered to the laboratory by another and then analyzed by the lab (a third party). Are the rates provided in Appendix D to cover the activities of all three parties described above?

7. In numerous instances in the Agency's testimony, the Agency testified that the proposed rules were being presented in order to "reform the budget and reimbursement process" and to "streamline the approval of budgets and the processing of reimbursement claims". An additional goal stated by the Agency was to "streamline the UST remediation process". Does this mean that the Agency's intentions are to improve upon (reduce to the greatest extent practicable) the amount of time that it takes for the various reviews, approvals and/or reimbursements?

8. The Agency testified that the rates are generally consistent with the rates the Agency currently approves. The Board accepted the Agency's position on this matter as part of the rule that was published at 1<sup>st</sup> notice. The consulting community, on the other hand, believes that the rates that are provided in the proposed regulations are not consistent with those that have historically been reimbursed. Instead the consulting community is confident that the amount of time that has been allowed for various professional service tasks and by extension the maximum lump sum payment amounts are substantially below those which have been historically reimbursed by the Agency. This has been a significant point of contention during this rulemaking and represents a conundrum. A simple answer to this conundrum would be to have a qualified and reputable independent third party audit the historical reimbursement records of the Agency with regard to the average costs for professional services per hour as well as the average number of professional service hours incurred per labor classification per task and to allow the audit report to be published, available to the public and placed on the record in this rulemaking. Is the Agency willing to allow an independent auditor to perform a statistically valid review of the Agency's historical files and to provide the results of that audit to be entered into the record in this proceeding?

9. The Board has acknowledged that the method that the Agency used to establish the rates provided in Subpart H was not based upon scientific or statistically valid means. The Board has further acknowledged that it is largely relying upon the experience of the Agency and that the Board finds the rates proposed by the Agency in Subpart H to be reasonable. I would generally agree with the Board's assessment and opinion with the exception that I believe that the number of hours that have been allotted for professional and consulting service tasks that are subject to the maximum lump sum payment amounts and therefore, by extension the maximum lump sum payment amounts themselves are substantially inaccurate. For those services the rates that have been established for professional services and consulting. It appears that the number of hours that the Agency has allotted to professional service tasks is woefully inadequate. Since the Board has acknowledged that the Agency did not use statistically valid means to establish the rates, what independent validation steps has the Board taken, or does it plan to take, in order to assure that the number of hours that the Agency has allotted for professional and consulting services is sufficient to allow a reasonably proficient professional to complete each of the necessary tasks?

10. Can the Agency please provide a list of the governmental fees and permits that it is considering not being eligible for reimbursement? Can the Agency provide a list of examples of the types of payments to other persons that it considers to be ineligible for reimbursement?

11. Because this rulemaking is likely to be the most momentous in the history of the Illinois LUST program and is likely to have a profound financial impact on numerous owners/operators and consultants across the State of Illinois, is the Board willing to make a second request for the Illinois Department of Commerce and Community Affairs to perform an economic impact study of these proposed regulations? It is my understanding

that, when requested to do so last year, the DCEO declined to provide this assessment for budgetary reasons.

12. In their 2004 testimony, the Agency indicated that 375 consultants performed work on LUST Sites in the last three years. Can the Agency provide a list of the names of the consulting firms that, in the aggregate, submitted fifty percent (50%) of the work plans, budgets and reports to the Agency from the period January 2003 to the present?

13. The Agency objected to the notion of providing a "Defined Scope of Work" for the Subpart H payment items. The Board, at first notice, agreed with the Agency's position on this matter. On page 78, the Board seems to suggest that the consulting community wanted a defined scope of work to be separately developed for each project and also suggest that such a requirement would result in a highly cumbersome rule. I agree with the Board in that regard. As a point of clarification it has not been USI's desire that a detailed scope of work be prepared for each project. Rather, USI would like some definition to be set forth, on a task by task or regulation by regulation basis, that will help everyone understand what is to be considered "typical" and what is to be considered "extraordinary". Would the Agency consider publishing, in advance of the effective date of this rule, some broad guidelines as to what is "typically required" on a task by task or regulation by regulation basis?

14. Is it the Agency's intention that upon satisfaction of the deductible, and provided that the limitations on total payments provided for in 734.620 have not been exceeded, that the LUST Fund reimburse all corrective action costs that are eligible under 734.625?

15. If funds are not available under the LUST Fund program, or as a result of the implementation of Subpart H, the Agency is unable to pay for all of the eligible (pursuant to 734.625) corrective action costs incurred by an owner/operator in excess of the deductible, does this in any way relieve the owner/operator of the responsibility to comply with IEPA regulations and remediate the site?

16. If the answer to the above question is "no" then, does the Agency intend to enforce the Act and the LUST regulations, including the levying of fines and penalties, against owners/operators that are unable to comply?

17. A practice, which has become common in the industry in Illinois, and which is necessitated by long reimbursement cycles, is for consultants and/or contractors to perform corrective action work for the owner/operator and to generally wait for payment for their services until such time that the owner/operator has been reimbursed by the LUST Fund. What is the Agency's opinion on consultants/contractors deferring payment for their services in excess of the deductible until such time that the owner/operator is reimbursed? What is the IPCB's opinion on this issue? Do the Agency and the Board believe that the proposed regulations, or any portion thereof have any bearing on this practice on the part of the consultant's/contractors?

18. In the late 1980's and the early 1990's the Agency administered a Joint Payment Program whereby the Agency would make joint reimbursement payments to the Owner/Operator and their primary consultant/contractor. Why did the Agency do away with this program?

19. In Mr. Chappel's testimony, he indicated that the activities conducted by a consultant in each step of the LUST process and the estimated personnel time required for each activity were provided to the Agency by ACECI. Who, at ACECI or from other organizations, participated in this process? What are their qualifications and credentials? How much experience, do they have in Illinois LUST work and in what capacity? What scope of work was given to them in order for them to determine what was required at each step in the process? After receiving the estimated personnel titles and the estimated number of hours from ACECI did the Agency make any modifications or additions to the information provided by ACECI before incorporating the information into the proposed rule? Why in this instance did the Agency rely on a third party to estimate the appropriate staffing and level of effort required instead of using information from its historical experience? When was the information provided to the Agency by ACECI?

20. Is the Agency familiar with a USEPA initiative referred to as TRIAD?

21. Is it the Board or the Agency's intention that personnel that do not meet the degree, licensing or experience requirements of Appendix E. but that have been previously employed in their respective positions prior to the effective date of the rules, be grandfathered into their current positions? In the alternative will these personnel be disqualified from their positions and subject to layoff? If a person does not meet the degree, licensing and experience requirements for the Project Manager labor category, but can demonstrate that it has been able to successfully develop work plans and budgets, gain Agency approval of those work plans and budgets and successfully manage the project with a high level of reimbursement by the Agency, can is it the intent of Subpart H and the Agency that this person will no longer be considered qualified to perform their job and therefore be subject to potential layoff by their employer?

22. If a person does not strictly meet the degree, licensing or experience requirements of Appendix E how would the Agency go about determining what T&M billing rate would be applicable to the individual?

23. 734.850 indicates that the reimbursement of personnel costs will be based upon the work being performed and not the classification or title of the person performing the work. Can the Agency provide a list of the classifications/titles that it considers to be appropriate to the various tasks/regulations?

24. Does the Agency consider consulting/professional services to be subject to the bidding requirements in Subpart H 734.855 as an alternative means of establishing the maximum payment amount? I assume the bidding requirement only pertains to contractors since the rule clearly delineates that consultants will be paid for bid

solicitation preparation and bid review on a time and materials basis. Please clarify the Agency's intentions with regard to this matter.

25. If the answer to the question above is "yes" what scope of work should be used in the bid solicitation since the scope of work associated with professional services is usually unknown at the time that the owner/operator hires the consultant?

26. By what means is the owner/operator and his or her consultant required to solicit bids? If a bid solicitation results in less than three bids, how many rounds of solicitation are required?

27. As an example, an owner/operator has an approved budget for a corrective action to excavate, transport and dispose of 2,000 yards of contaminated soil. One evening during the corrective action work it rains two inches and the excavation fills with water which becomes contaminated when it comes into contact with soils in the excavation. The costs of the water disposal was not in the budget. How would the Agency administer this type of situation, assuming that the owner/operator makes a claim for reimbursement of the water disposal costs from the LUST Fund?

28. As an example, an owner/operator hires a consultant to perform consulting and professional oversight services at its LUST site. The consultant performs the work required to obtain Agency approval of a Corrective Action Plan for conventional technology. The consultant bills the owner/operator for the service and the owner/operator is reimbursed. The owner/operator pays the consultant. After the completion of the excavation work stipulated in the approved CAP, the Agency reviewer requests a groundwater remediation to be performed. How will Subpart H be applied to this situation? Will the time necessary to develop the groundwater CAP be reimbursed on a time and materials basis.

29. In calculating the maximum lump sum payment amounts for the various plans and reports required as part of Early Action, Site Investigation and Corrective Action phases of a project, did the Agency assume that the various plans and reports would be approved by the Agency reviewer on the 1<sup>st</sup> submission? I assume this is the case since \$640 is provided for Amended Plans and Amended Reports?

30. 734.845 (f) provides \$640 for the amendment of a plan or report. It would appear that this amount could be excessive in some instances and insufficient in other instances. Because the degree of modification or amendment to a plan or report can vary widely, it seems more appropriate and cost effective for the LUST Fund for this task to be performed on a time and materials basis. Would the Agency consider the use of a T&M billing method for the development of amended plans and reports?

31. 734.800 (b) states that only some of the costs associated with each task are provided in Section 734.810 through 734.850 and that they are not intended as an exclusive list of all of the costs associated with each task for the purposes of payment from the Fund. 734.800 (c) goes on to state that Subpart H sets forth only the methods that can be used to



determine the maximum amounts that can be paid from the Fund for eligible corrective action costs. The rules go on to state that whether a particular cost is eligible for payment must be determined in accordance with Subpart F. If a cost item that is typically incurred on a LUST project has been accidentally omitted from Subpart H, how would the owner/operator go about seeking reimbursement for that costs?

32. If an owner/operator engages the services of a professional consultant and the consultant, in good faith, initiates the development of a corrective action plan, only to find out after the work was initiated and a substantial amount of time, energy and money had been expended that the project conditions warrant a level of effort that is likely to cause its charges for the professional/consulting services to greatly exceed the maximum payment amount provided in Subpart H. In this instance, does the Agency prefer to be notified immediately of the potential "extraordinary circumstance"? It seems as though all parties involved would want to know whether the Agency would consider the situation to be extraordinary or not before continuing to proceed with the work. In the example provided above, how should the owner/operator and his or her consultant handle this situation with the Agency?

33. Does the Agency intend to develop internal standard operating procedures to help improve and ensure uniformity, consistency and objectivity in its technical review of work plans, budgets and reports?

34. The time to prepare and submit an application for reimbursement is an eligible cost under 734.625 (a) (14). No maximum lump sum payment amount is provided for these activities. Will a maximum lump sum payment amount be provided for this activity?

35. Under 734.445 (c) the Agency may require additional investigation of potable water supply wells. From reading this provision within the regulations, this requirement is contingent and at the discretion of the individual Agency reviewer. Does the Agency consider wells surveys conducted pursuant to this paragraph to be typical or extraordinary?

36. Historically, the Agency has reimbursed on a time and materials basis the costs for field instrumentation, equipment, materials and supplies (field purchases), materials and supplies (stock items) and subcontractors related to professional and consulting services. Subpart H provides Appendix D which deals with acceptable rates for sample handling, transportation, delivery, analysis and reporting and Appendix E which provides personnel titles, qualifications and acceptable hourly rates. However, Subpart H does not provide a list of field instrumentation, equipment and materials and supplies that are acceptable in situations where the rules call for time and materials billing. Will the Agency be providing time and materials rates for field instrumentation, equipment and materials and supplies that will be considered to be the maximum payment amounts for those items when the work is associated with a time and materials task?