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September 22, 2005

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

Re: Proposed Rulemaking R04-22 (UST Rulemaking) & R04-23 (UST Rulemaking Consolidated)

Dear Ms. Tipsord:

As part of its July 27, 2005 testimony United Science Industries, Inc. (USI) provided the Illinois Pollution Control Board (IPCB) with the results of a statistically valid random sampling and analysis that USI performed on the UST reimbursement files of the Illinois Environmental Protection Agency (IEPA or Agency).

The random sampling and analysis performed by USI focused on the professional consulting costs that the IEPA has historically reimbursed as reasonable for professional consulting services typically rendered during each phase of an Illinois UST remediation project. Specifically, the results of the random sampling and analysis performed by USI revealed the number of professional consulting hours, hourly rates and total professional consulting costs that the IEPA has historically approved as reasonable and necessary on a phase by phase basis.

A summary of the professional consulting hours, rates and the total extended professional consulting costs per phase revealed by USI's sampling and analysis are summarized in Attachment One to this letter.

On July 27th USI showed that the Maximum Payment Amounts that the IEPA is proposing for professional consulting services in Subpart H will cut UST Fund benefits to tank owners/operators for the costs of professional consulting services by approximately fifty percent (50%).

Since July 27th, USI has revisited the testimony of Harry Chappel which was filed with the IPCB on March 8, 2004. Mr. Chappel is the IEPA employee that provided the

primary testimony in support of the Subpart H professional consulting Maximum Payment Amounts (734.845) and apparently the IEPA employee primarily responsible for their development. In his testimony, Mr. Chappel refers to nineteen UST incidents that he claims to have evaluated when developing the hourly rate he used to calculate the Maximum Payment Amounts found in 734.845. In his testimony, Mr. Chappel states the IEPA randomly selected nineteen incidents to review to determine if an average hourly rate of \$80 per hour for professional services is reasonable. USI understands that when requested to produce a list of those incidents that were reviewed for this purpose, Mr. Chappel produced a list of only seventeen incidents. These incidents are those that are listed in Attachment Two to this letter. Mr. Chappel's testimony was obviously designed to lead one to believe that the Maximum Payment Amounts being proposed by the Agency for professional consulting services were not significantly different from the Agency's historical reimbursement practices. However, this is simply not the case.

USI immediately recognized from its experience that Mr. Chappel's testimony was inaccurate and highly misleading. Upon reading the draft rule published at First Notice, and realizing that the IPCB probably unknowingly relied upon the erroneous and misleading testimony of Mr. Chappel when it published its First Notice Draft of the proposed rule, USI felt obligated to provide the IPCB with appropriate facts so that it would have a complete, accurate and factual record.

This was one of the main reasons why so many of the employees of USI requested an additional hearing in this matter and was also one of the main reasons why USI took the initiative to perform its own statistically valid random sampling and analysis of IEPA reimbursement practices.

The results of USI's random sampling and analysis of the Agency's historical reimbursement practices provides more than enough evidence to disprove Mr. Chappel's testimony and invalidate the Maximum Payment Amounts for professional consulting services proposed by the IEPA. Nonetheless, USI believes that in order to fully and appropriately discredit Mr. Chappel's testimony it is fitting to report to the Board, via the public comment period, the results of a study that USI performed on the reimbursement records of the seventeen incidents which Mr. Chappel apparently used to support his testimony.

In order to disclose all relevant facts, USI secured copies of the reimbursement records for the seventeen incidents that Mr. Chappel allegedly reviewed when evaluating the reasonableness of the hourly rate of \$80 per hour for professional consulting services. The findings of this review show that the average hourly rate for professional consulting services is \$79.89 per hour and not the \$68 per hour testified to by Mr. Chappel. Nonetheless, Mr. Chappel's error in his calculation of the average hourly rate had negligible impact on the Agency's proposal since the Agency utilized an average hourly rate of \$80 per hour for calculating the Maximum Payment Amounts in Subpart H. What Mr. Chappel failed to disclose to the IPCB is that the average total professional consulting service costs reimbursed by the Agency on those same seventeen incidents are vastly more than the levels proposed in Subpart H.

In fact, the average total professional consulting charges by phase on those seventeen projects were slightly more than the averages reported to the IPCB by USI on July 27, 2005. This titanic discrepancy between the proposed Subpart H Maximum Payment Amounts for professional consulting services and those historically reimbursed on Mr. Chappel's list of seventeen incidents is due to the fact that Mr. Chappel did not use the actual claims for reimbursement to determine the number of professional consulting hours required to complete each phase of a UST project. Instead he developed highly erroneous *estimates* of the number of hours that he guessed might be necessary to complete the *arbitrary tasks* that he created in support of his Maximum Payment Amount proposal. The actual number of professional consulting hours that have been required to date on the seventeen projects are provided in the Attachments to this letter. They are substantially higher than those estimated by Mr. Chappel when developing his Subpart H proposal. Finally, it should be noted that on the seventeen incidents allegedly evaluated by Mr. Chappel, the Agency reimbursed the claimed costs at a higher average rate than those incidents that USI analyzed and reported to the IPCB on July 27th.

A summary of the results of USI's review of the professional consulting costs associated with the seventeen incidents Mr. Chappel apparently reviewed is found in Attachment Two and detailed information is provided in Attachment Three.

It should be noted that all projects included in the population from which USI performed its random sampling for its July 27th testimony had received closure letters thereby helping to assure that USI's findings would be as inclusive as possible of all professional consulting costs necessary to complete the subject projects.

To the contrary, only six of the seventeen incidents (approximately 35%) utilized by Mr. Chappel had received closure letters. That means that additional costs beyond those contained in Attachments Two and Three are almost certain to be incurred against the Chappel projects and that the average costs of remediation for those projects will increase commensurately.

For example, if one reviews the eight (8) incidents in Mr. Chappel's incident set that have incurred costs during the Corrective Action Phase, one will find that only three (3) of those incidents, or thirty-seven and one half percent (37.5%) have received closure letters. Of the three (3) that have received closure letters, the average number of professional consulting hours claimed is 266.25. This is higher than the average of 259.3 professional consulting hours found by USI during its statistical evaluation. The remaining five (5) incidents are still works-in-process so it is not appropriate to include those projects as part of an evaluation since it is relatively certain each of these incidents represents an incomplete record.

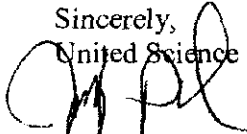
In summary, the testimony provided by Harry Chappel addressed only part of the facts related to the seventeen incidents that he allegedly reviewed.

If Mr. Chappel performed a thorough and detailed review of the seventeen incidents then he would have seen that the total reimbursements for professional services on those seventeen incidents were substantially more than his Subpart H proposal. The reason for this is that the number of professional service hours required for each phase of a UST project is substantially more than those that he estimated when developing Subpart H.

Fortunately, the confusing inaccuracies of Mr. Chappel's fractional testimony are now clarified and all relevant facts are complete. It is obvious that the Maximum Payment Amounts proposed in Section 743.845 are completely out-of-line and should not be utilized in any fashion.

USI, and numerous others, believe that the Board should abandon the Subpart H proposal made by the IEPA and either adopt, at Second Notice, the alternative proposal recently made by USI, or as an alternative, terminate this rulemaking altogether and initiate a new rulemaking process.

Sincerely,
United Science Industries, Inc.



Jay P. Koch
President

Professional Labor Analysis Summary

69 Incidents Randomly Selected and Analyzed

TITLE	# of Incidents Title Used	Hour Weighted Average Unit Rate (\$/hr)	Standard Deviation	Systematic Data Transformation 80% Coverage / 95% Confidence (Lower Limit)	Systematic Data Transformation 80% Coverage / 95% Confidence (Upper Limit)
Professional Engineer	43	\$100.18	\$17.47	\$74.10	\$126.76
Professional Geologist	11	\$63.54	\$21.43	\$24.21	\$121.94
Project Manager	52	\$86.47	\$13.93	\$61.90	\$103.65
Engineer	32	\$73.89	\$15.79	\$51.01	\$103.13
Geologist	40	\$73.80	\$11.94	\$55.20	\$93.37
Scientist	30	\$67.27	\$11.08	\$46.07	\$83.00
Account Technician	21	\$54.21	\$12.39	\$41.25	\$79.73
Draftsperson	43	\$50.86	\$9.98	\$33.93	\$65.52
Technician	35	\$48.75	\$7.70	\$39.21	\$64.17
Administrative	52	\$37.57	\$8.35	\$23.90	\$49.79

	# of Incidents	Average Unit Rate (\$/hr)	Standard Deviation	Systematic Data Transformation 80% Coverage / 95% Confidence (Lower Limit)	Systematic Data Transformation 80% Coverage / 95% Confidence (Upper Limit)
All Professional Personnel	69	\$70.68	\$11.70	\$54.23	\$89.40

PHASE	# of Incidents	Average hours per phase	Standard Deviation	Outliers Excluded	
				Systematic Data Transformation 80% Coverage / 95% Confidence (Lower Limit)	Systematic Data Transformation 80% Coverage / 95% Confidence (Upper Limit)
EA	43	85.58	64.94	7.6	218.90
SC	56	139.53	70.58	68.7	461.90
CA	42	259.30	163.50	61.5	558.10

FOIA Analysis - Professional Personnel

The Agencies 17 incidents "analyzed" for the development of Subpart H

The Agencies 17 incidents "analyzed" for the development of Subpart H				7-27-05 Hearing Info Analysis of 69 Incidents	
	# of Incidents	Average Professional Hours	Standard Deviation	Average (hrs.)	Std.Deviation
CA	8	161.22 hr	146.06	259.3	163.5
Closed	3	266.25 hr	189.95		
Open	5	98.20 hr	77.80		
EA	14	93.07 hr	61.63	85.58	64.94
Closed	6	108.13 hr	67.12		
Open	8	81.78 hr	59.13		
SC	10	176.40 hr	87.28	139.53	163.5
Closed	4	159.25 hr	77.55		
Open	6	187.83 hr	98.55		

FOIA Analysis - Professional Personnel

The Agencies 17 incidents "analyzed" for the development of Subpart H

	<u>Quantity</u>	<u>Unit Rate</u>	<u>7/27/2005 Hearing Info Unit Rate</u>
Personnel	4,356.70 hr	\$79.89	\$70.68
Account Technician	89.25 hr	\$53.70	\$54.21
Administrative	416.00 hr	\$39.96	\$37.57
Draftperson	125.75 hr	\$58.44	\$50.86
Engineer	949.25 hr	\$83.55	\$73.89
Geologist	345.00 hr	\$77.52	\$73.80
Professional Engineer	200.75 hr	\$98.21	\$100.18
Professional Geologist	15.00 hr	\$102.67	\$63.54
Project Manager	1,609.50 hr	\$95.18	\$86.47
Scientist	413.75 hr	\$68.80	\$67.27
Technician	192.45 hr	\$53.57	\$48.75

FOIA Analysis - Professional Personnel

The Agencies 17 incidents "analyzed" for the development of Subpart H

	<u># of Incidents</u>	<u>Average Professional Hours</u>	<u>Standard Deviation</u>
20020214	W.E.D. Corporation (Tex Gas)	15.00 hr	
20020013	Werhane Service Center	54.00 hr	
20020013	Werhane Service Center	60.00 hr	
20012081	Lombard Citgo	77.25 hr	
20012025	Franke Barke Service (Vanghen & Sons, Inc.)	128.25 hr	
20021048	Forest Park Foreign Car Repair	216.50 hr	

7-27-05 Hearing Info Analysis of 69 Incidents	
Average (hrs.)	Std.Deviation
259.3	163.5
266.15 Avg of Closed	

37.50% Closed
62.50% Open

20020021	Casey's General Store	12.25 hr	
20012081	Lombard Citgo	25.00 hr	
20012025	Franke Barke Service (Vanghen & Sons, Inc.)	38.50 hr	
20020247	A & Z Corporation	63.00 hr	
20020083	West Suburban Auto	79.00 hr	
20020013	Werhane Service Center	109.00 hr	
20021048	Forest Park Foreign Car Repair	163.00 hr	
20020080	Martin & Bailey, Inc.	164.50 hr	

7-27-05 Hearing Info Analysis of 69 Incidents	
Average (hrs.)	Std.Deviation
85.58	64.94
106.75 Avg of Closed	

42.86% Closed
57.14% Open

20012081	Lombard Citgo	33.25 hr	
20020013	Werhane Service Center	179.75 hr	
20012025	Franke Barke Service (Vanghen & Sons, Inc.)	180.00 hr	
20020083	West Suburban Auto	187.20 hr	
20021048	Forest Park Foreign Car Repair	203.00 hr	
20020080	Martin & Bailey, Inc.	343.75 hr	

7-27-05 Hearing Info Analysis of 69 Incidents	
Average (hrs.)	Std.Deviation
139.53	163.5
159.25 Avg of Closed	

40.00% Closed
60.00% Open

Shading -- Indicated a closed incident

FOIA Analysis - Professional Personnel

ATTACHMENT 3

The Agencies 17 incidents "analyzed" for the development of Subpart H

Personnel	7-27-05 Hearing Info	
	<u>Quantity</u>	<u>Unit Rate</u>
	4,356.70 hr	\$79.89
		\$70.68
Account Technician	89.25 hr	\$53.70
		\$54.21
20020013 Werhane Service Center	5.00 hr	\$60.00
20020080 Martin & Bailey, Inc.	34.75 hr	\$51.58
20020083 West Suburban Auto	31.50 hr	\$55.00
20021048 Forest Park Foreign Car Repair	18.00 hr	\$53.75
Administrative	416.00 hr	\$39.96
		\$37.57
20012025 Franke Barke Service (Vangenhenn & Sons, Inc.)	29.00 hr	\$35.00
20012081 Lombard Citgo	11.50 hr	\$29.00
20020013 Werhane Service Center	34.50 hr	\$49.57
20020021 Casey's General Store	5.25 hr	\$36.81
20020041 Huck's-Carmi	19.00 hr	\$27.37
20020042 Chebanse Crop Service	85.00 hr	\$40.00
20020065 Trickey's Service	22.50 hr	\$40.00
20020070 Martin & Bayley, Inc.	22.00 hr	\$26.59
20020080 Martin & Bailey, Inc.	2.25 hr	\$37.78
20020083 West Suburban Auto	35.00 hr	\$35.00
20021048 Forest Park Foreign Car Repair	41.00 hr	\$42.68
20021525 Thomas Management & Associates, Inc.	109.00 hr	\$45.00
Draftperson	125.75 hr	\$58.44
		\$50.86
20020013 Werhane Service Center	19.25 hr	\$55.00
20020080 Martin & Bailey, Inc.	36.00 hr	\$55.00
20021048 Forest Park Foreign Car Repair	37.00 hr	\$62.16
20021525 Thomas Management & Associates, Inc.	33.50 hr	\$60.00
Engineer	949.25 hr	\$83.55
		\$73.89
20012081 Lombard Citgo	124.00 hr	\$98.00
20020041 Huck's-Carmi	91.00 hr	\$74.45
20020042 Chebanse Crop Service	286.00 hr	\$86.26
20020065 Trickey's Service	29.75 hr	\$95.40
20020070 Martin & Bayley, Inc.	154.00 hr	\$74.68
20020078 Interstate 66	201.00 hr	\$84.13
20020080 Martin & Bailey, Inc.	0.50 hr	\$115.00
20020247 A & Z Corporation	63.00 hr	\$70.00
Geologist	345.00 hr	\$77.52
		\$73.80
20020042 Chebanse Crop Service	175.75 hr	\$80.46
20020083 West Suburban Auto	25.25 hr	\$74.61
20020214 W.E.D. Corporation (Tex Gas)	15.00 hr	\$50.00
20021048 Forest Park Foreign Car Repair	90.00 hr	\$76.11
20021525 Thomas Management & Associates, Inc.	39.00 hr	\$80.00
Professional Engineer	200.75 hr	\$98.21
		\$100.18
20020013 Werhane Service Center	19.25 hr	\$117.08
20020041 Huck's-Carmi	18.00 hr	\$107.78
20020042 Chebanse Crop Service	1.00 hr	\$130.00
20020065 Trickey's Service	5.50 hr	\$119.00
20020070 Martin & Bayley, Inc.	22.00 hr	\$108.18
20020080 Martin & Bailey, Inc.	6.50 hr	\$115.00
20020083 West Suburban Auto	124.00 hr	\$90.00
20021048 Forest Park Foreign Car Repair	4.50 hr	\$100.00

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FOIA Analysis - Professional Personnel

ATTACHMENT 3

The Agencies 17 incidents "analyzed" for the development of Subpart H

7-27-05 Hearing Info

		<u>Quantity</u>	<u>Unit Rate</u>	<u>Unit Rate</u>
Professional Geologist				
		15.00 hr	\$102.67	\$63.54
20020042	Chebanse Crop Service	4.00 hr	\$110.00	
20021048	Forest Park Foreign Car Repair	11.00 hr	\$100.00	
Project Manager				
		1,609.50 hr	\$95.18	\$86.47
20012025	Franke Barke Service (Vangenh & Sons, Inc.)	218.00 hr	\$99.39	
20020013	Werhane Service Center	178.50 hr	\$95.00	
20020021	Casey's General Store	1.00 hr	\$107.00	
20020080	Martin & Bailey, Inc.	210.00 hr	\$95.00	
20020083	West Suburban Auto	25.00 hr	\$71.20	
20021048	Forest Park Foreign Car Repair	282.00 hr	\$94.72	
20021525	Thomas Management & Associates, Inc.	695.00 hr	\$95.00	
Scientist				
		413.75 hr	\$68.80	\$67.27
20012025	Franke Barke Service (Vangenh & Sons, Inc.)	89.75 hr	\$72.51	
20020013	Werhane Service Center	63.25 hr	\$70.06	
20020041	Huck's-Carmi	6.00 hr	\$50.00	
20020065	Trickey's Service	13.50 hr	\$75.93	
20020070	Martin & Bayley, Inc.	16.00 hr	\$50.00	
20020080	Martin & Bailey, Inc.	116.25 hr	\$65.00	
20021048	Forest Park Foreign Car Repair	99.00 hr	\$72.17	
20021525	Thomas Management & Associates, Inc.	10.00 hr	\$70.00	
Technician				
		192.45 hr	\$53.57	\$48.75
20012025	Franke Barke Service (Vangenh & Sons, Inc.)	10.00 hr	\$54.75	
20020013	Werhane Service Center	23.00 hr	\$53.00	
20020021	Casey's General Store	6.00 hr	\$65.00	
20020041	Huck's-Carmi	12.00 hr	\$45.00	
20020070	Martin & Bayley, Inc.	14.00 hr	\$45.00	
20020080	Martin & Bailey, Inc.	102.00 hr	\$53.00	
20020083	West Suburban Auto	25.45 hr	\$61.96	