

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE, MAY 3, 2005

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R04-22,23

May 3, 2005

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

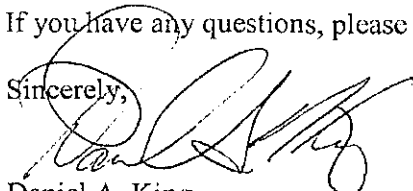
Re: Prefiled Questions and Availability

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,


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

Encl (1)

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE, MAY 3, 2005

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.

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE, MAY 3, 2005

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 UST's, 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.

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE, MAY 3, 2005

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.

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE, MAY 3, 2005

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 I 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

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE, MAY 3, 2005

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?

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE, MAY 3, 2005

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

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE, MAY 3, 2005

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?