

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
May 8,2006

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO:)	R04-022
REGULATION OF PETROLEUM)	(UST Rulemaking-Docket B)
LEAKING UNDERGROUND STORAGE)	
TANKS (35 ILL.ADM.CODE 732))	
)	
IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO:)	R04-023
REGULATION OF PETROLEUM)	(UST Rulemaking)
LEAKING UNDERGROUND STORAGE)	Consolidated-Docket B)
TANKS (35 ILL.ADM.CODE 734))	

COMMENTS OF UNITED SCIENCE INDUSTRIES, WC.:

In its December 1,2005 Opinion and Order, the Board set forth fair standards that it requires in a professional consulting services rule. Specifically, the Board ruled that the professional consulting services portion of this rule "*...must include a scope of work for the tasks for which the rules specify lump sum payment amounts and lump sum rates which more accurately reflect current and historical reimbursement rates.*" (December 1, 2005 Opinion and Order at 60).

The Board's standards are further clarified in another portion of that same Opinion and Order. That portion provides that "*...the rates (those originally proposed by the Agency in their Initial Filing and published at First Notice in Docket A) need to be adjusted to reflect the actual scope of work and current market rates (emphasis added).*" (December 1, 2005 Opinion & Order at 60).

The Agency's testimony and proposal presented at the March 23,2006 hearing falls woefully short of meeting the standards set by the Board in their December 1,2005 Opinion

and Order. The Agency's March 23,2006 testimony is primarily a reverberation of their original proposal. The costs for professional consulting services originally proposed by the Agency in their Initial Filing with the Board on January 13,2004 which have already been rejected by the Board are slightly greater than those proposed by the Agency in Sub Docket B on March 23,2006 and both proposals by the Agency are a fraction of the professional consulting costs historically reimbursed by the Agency.

Given that the Agency is unwilling to significantly deviate from their original position, the Board should move to First Notice in this Docket B proceeding. In doing so, the Board should consider the following:

1. The Agency testified at the March 23,2006 hearing that their database did not contain information to support their proposed maximum lump sum payment amounts on a per task basis. Therefore the Agency convened an internal workgroup to develop proposed maximum lump sum payment amounts for professional consulting services. This workgroup only estimated amounts for each task and did not use market-data as a means for developing the rates. It should again be emphasized that the amounts proposed by the Agency workgroup do not materially differ from those rejected by the Board in December 2005.
2. The standard that has been set by the Board for this rule is that the maximum lump sum payment rates should be based upon current market rates and should more accurately reflect current and historical reimbursements. The Agency's proposed maximum lump sum payment amounts do not meet the "market-based" standard or the current or historical reimbursement standards set by the Board.

3. The Board has ruled that a scope of work must be developed for each task for which a maximum lump sum payment amount is proposed. Because standardized tasks for professional consulting services have not been utilized under the Illinois UST program, prices for professional consulting services can only be based on market data and can only reflect current and historical reimbursements after: 1.) standardized tasks have been established; 2.) scopes of work have been clearly defined and set forth for each standardized task; 3.) the standardized tasks and scopes of work are promulgated; 4.) The Agency provides clear definition and training on the detailed specifications for each task; 5.) consultants are required to report professional service charges pursuant to the standardized task list; and 6.) the Agency has been allowed time to collect true market based data in a fashion that can be reliably analyzed.
4. The record in this proceeding shows that the rate sheet that was historically used by the Agency in determining the reasonableness of professional consulting costs did not include prices for professional consulting tasks but instead focused on hourly rates for professional consulting personnel. (please refer to pages 61, 89 and 90 of the transcripts for the March 23, 2006 hearing). Several times in these proceedings the Agency has implied that when their prior use of this rate sheet was declared illegal, it became more difficult for them to make reasonableness determinations.
5. The Board has already promulgated, through Sub docket A, a list of Professional Consulting Personnel Titles and the hourly rates that may be charged for each title. This restores, as of March 1, 2006, all aspects of

the rate sheet that the Agency claims they used in the past to adequately regulate professional consulting charges.

6. Doug Clay, at the most recent hearing, during his cross examination of Jay Koch of United Science Industries, Inc., made it quite clear that the Agency already has the ability to determine the reasonableness of professional consulting costs. In his cross examination, Mr. Clay implied that the Agency has historically evaluated and determined the reasonableness of professional consulting costs by reviewing not only reimbursement payment applications but also budget proposals. He also implied that the cuts of professional consulting charges made during the budget review process are substantially greater than the reductions made during the review of payment applications. In making these implications, Mr. Clay admits that the Agency has appropriately carried out its statutory mandate and made reasonableness determinations and controlled/reduced the costs for professional consulting charges. In fact, this has been done consistently for years by Agency reviewers as part of the budget review process.

7. At this point in the rulemaking process, and in light of the facts provided in Items 4 through 6 above, the Board should rest assured that the Agency has the ability and is regulating professional consulting costs today.

8. PIPE has set forth: 1.) standards that it believes are appropriate for this rule; 2.) an approach to implementing this rule; and 3.) specific implementation steps that it believes are appropriate for this rulemaking.

9. PIPE's standards, approach and implementation steps are consistent with the standards that the Board has set for this rulemaking and there has been

no private sector objection to the standards, approach or implementation steps set forth by PIPE.

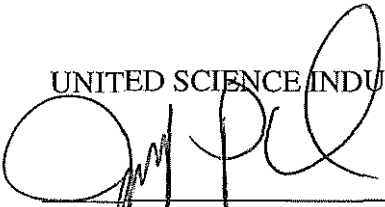
10. At the March 23, 2006 hearing USI offered a specific proposal for components of a proposed rule. USI designed its proposal to meet the requirements of PIPE and the standards set forth by the Board which are listed above.
11. The Budget and Reimbursement Forms that were prepared by the Agency in order to implement the Sub docket A rule, included Standard Remediation Categories. These Standard Remediation Categories are very similar to the task list proposed by USI in its March 23, 2006 testimony and proposal.
12. Since March 1, 2006 the Agency has required all consultants in the state to report all professional consulting charges under the Standard Remediation Categories.

Conclusion & Recommendation:

USI is of the opinion that additional hearings prior to First Notice in this matter are not necessary. USI believes that the record clearly demonstrates that, under the circumstances, the only logical way to approach the development of lump sum payment amounts for professional consulting services is to follow the standards, approach, and implementation steps set forth by PIPE in their March 2006 testimony. This would entail continuing to reimburse professional consulting services on a time and materials basis through the completion of Phase II of the implementation approach specified by PIPE. It would also entail the collection of market-based data that is necessary to provide for a proper evaluation of which professional consulting tasks may be eventually converted to maximum lump sum payment amounts. This approach is consistent with the standards that the Board set for this

rulemaking in its December 1, 2005 Opinion and Order. USI recommends that the Board rule in favor of the standards, approach and implementation steps outlined by PIPE in March of 2006.

Respectfully Submitted,

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