

Utility Solid Waste Activities Group

c/o Edison Electric Institute
701 Pennsylvania Avenue, NW
Washington, DC 20004-2696
202-508-5643

U S W A G

USWAG

2000 RESULTS & BENEFITS

**Highlights of
Accomplishments
and Activities**

USWAG has continued its regulatory advocacy, legislative technical support, and litigation efforts when necessary, on key solid and hazardous waste, PCB and hazardous materials transportation issues of importance to its members. While USWAG is continuing to pursue long-term core issues — e.g., preserving the non-hazardous status of fossil fuel combustion products, remediation waste reform, preserving the non-hazardous status of penta-treated wood and obtaining regulatory relief for mixed waste — this document highlights some of the immediate results and benefits that USWAG members have obtained in 2000.

- **EPA Issues NON-Hazardous Bevill Determination for Fossil Fuel Combustion Wastes** — Almost 20 years after Congress enacted the Bevill Amendment, which directed EPA to conduct the most comprehensive study ever undertaken of fossil fuel combustion wastes, EPA determined that these wastes are non-hazardous. This vindication of many years of intense USWAG efforts survived a serious and energetic last minute assault mounted by environmental interest groups and targeted at the highest levels of EPA and the Clinton administration. These groups, generally united in opposition to burning coal, sought to force a political reversal of the tentative non-hazardous determination recommended by EPA staff and supported by the 1999 Report to Congress. USWAG organized a broad coalition of industry groups, individual companies, and labor unions that brought to bear tremendous resources to counter the environmental groups' efforts on several fronts. In the end, USWAG and its allies were successful in preserving the science-based conclusions reached by EPA technical staff. In the face of strong support for a non-hazardous determination from most of the Executive Branch, key congressional leaders, and a majority of states, EPA management abandoned its intention to issue a determination that would have led to the management of oil and coal combustion wastes as federal hazardous wastes.

According to EPA's estimates, a hazardous waste determination would have cost the utility industry approximately \$860 million per year. USWAG engaged economic consultants who demonstrated that a more realistic yet conservative cost estimate is \$13.8 billion annually. Instead, due largely to USWAG's efforts, these wastes continue to be managed under state regulatory authorities. EPA intends to propose national Subtitle D standards to direct state programs by Fall 2001. USWAG continues to play the leading role on behalf of the electric utility industry as it urges EPA to defer to the states' expertise in regulating FFC waste management units based on site-specific considerations.

- **Court Invalidates Use of the TCLP for MGP Remediation Wastes** — USWAG achieved a major legal victory in April 2000 when the U.S. Court of Appeal for the D.C. Circuit rejected EPA's use of the toxicity characteristic leaching procedure (TCLP) for determining whether MGP remediation wastes are to be regulated as federal hazardous wastes. *Association of Battery Recyclers, Inc. v EPA*, 208 F.3d 1047 (D.C. Cir. 2000). The court ruled that EPA failed to present any evidence in the Phase IV land disposal restriction rule, that the management of MGP remediation wastes is plausible under conditions similar to the municipal solid waste landfill management scenario underlying the TCLP.

As a result of the decision, MGP wastes will be regulated under state solid waste and cleanup laws rather than under the federal hazardous waste program. (States are free to apply their own hazardous waste laws to these wastes.) USWAG has long contended that the optimal way to achieve MGP site clean-ups is to avoid federal hazardous waste regulation and its associated impediments to remediation. Under the court's ruling, the utility industry has the opportunity to remediate sites with fewer regulatory constraints. USWAG will continue its work with EPA to realize the full potential of this ruling to achieve environmentally protective remediations at more sites with less cost and will assist member companies in urging states to follow the Federal precedent.

- **EPA Excludes Boilers from Clean Air Act Controls for Solid Waste Incinerator Units** — In another important regulatory victory for USWAG, EPA excluded boilers that combust materials for energy recovery — including electric utility boilers that combust solid waste with fuel — from the final Clean Air Act (CAA) section 129 rule for commercial and industrial solid waste incineration (CISWI) units. During the early stages of the rulemaking, it became clear that EPA was planning to interpret the term "solid waste incineration unit" to encompass electric utility boilers that combust non-hazardous solid waste, potentially

capturing a range of utility combustion practices, including: (1) the burning of used oil, for energy recovery, (2) the blending and co-burning of MGP soils having low heat value with coal, and (3) the co-firing of non-hazardous boiler chemical cleaning wastes with coal and/or oil.

USWAG worked closely with EPA staff over the last two years, urging the Agency to exclude electric utility combustion practices from the scope of the section 129 rule. USWAG's efforts paid off – the final section 129 rule excludes from its scope commercial and industrial boilers that engage in energy recovery. The net effect is that electric utility boiler combustion practices, including circumstances where non-hazardous solid waste is co-burned with fuel (e.g., co-burning of non-hazardous boiler chemical cleaning waste with coal), are not regulated under the final section 129 regulations. This result preserves the use of electric utility boilers as a cost-effective and environmental sound management option for a number of electric utility secondary materials.

- **EPA Extends CAMU Availability to More Remediation Sites** — USWAG's Executive Director chaired the RCRA Multi-Industry Coalition that achieved a productive settlement with EPA and environmental interest groups of the appeal of the 1993 Corrective Action Management Unit ("CAMU") rule, which EPA reaffirmed in the 1998 HWIR-Media Rule (also the subject of appeal). The settlement preserves the HWIR-Media rule's extension of the CAMU concept beyond RCRA corrective action sites to provide a flexible option for remediating a wide range of contaminated sites, including utility MGP sites (providing an important backstop to USWAG's victory in the *Association of Battery Recyclers* case discussed above). Through the Coalition, USWAG submitted comments on the proposed amendments to the CAMU rule required by the settlement. The final rule is due by October 2001.
- **Court Upholds No Listing Decision for Spent Solvents** — In another litigation victory, USWAG successfully assisted EPA in defending the Agency's decision not to list 14 spent solvents – some of which are used by electric utilities – as hazardous wastes under RCRA. *Environmental Defense Fund, et al. v. EPA*, 210 F.3d 396 (D.C. Cir. 2000). The Court adopted EPA's and USWAG's position that, in rendering a listing determination for the particular solvents, the Agency was not required to examine every conceivable Appendix VIII constituent contained in the wastes, but rather could focus solely on the spent solvent itself. Keeping these solvents off the column of RCRA listed hazardous wastes saves USWAG members the potentially significant costs of having to manage these wastes under RCRA's onerous and costly hazardous listing regime.
- **Clarification Authorizing the Use of Reactors** — USWAG obtained an important regulatory clarification when EPA confirmed that shunt and/or series reactors can be viewed as transformers for purposes of the PCB use and disposal rules. This was a valuable achievement because PCB-containing reactors are not specifically authorized for use under the PCB rules. Absent EPA's confirmation letter, the use of such equipment was vulnerable to allegations of the unauthorized use of PCBs. The EPA letter also clarifies that reactors can be retrofilled and reclassified pursuant to applicable transformer regulations. This also is important because there is no express reclassification provision for reactors in the PCB regulations. This result will help electric utilities in their respective PCB phase-down programs.
- **Development of Data Regarding Non-Liquid PCBs** — USWAG played an important role in 2000 in providing data to EPA in support of proposed rule authorizing the use of PCBs in non-liquid items (e.g., grout, paint, lighting ballasts and caulking materials). This is an important rulemaking because USWAG members have identified a number of non-liquid uses of PCBs that are currently not authorized for use under the PCB program. USWAG has worked closely with EPA in developing the data in support of a use authorization for these items. When finalized, we expect that the rule will establish use authorizations for *all* forms of non-liquid PCBs used by electric utilities, as well as authorizing the distribution in commerce of such materials.
- **USWAG Provides PCB Mega Rule Compliance Guidance to Its Members** — USWAG has continued to provide important PCB Mega Rule guidance to its members, including, among other things, presenting PCB compliance questions to EPA on behalf of the USWAG membership, as well as submitting suggested corrections to EPA's PCB Question and Answer document.

- **International Treaty Allows for the Continued Use of PCB-containing Electric Equipment** — USWAG Staff and Counsel were successful in securing favorable language in a global United Nations treaty controlling Persistent Organic Pollutants. EPA has informed USWAG that the treaty will not be interpreted or implemented in a manner that would mandate the removal of PCB-containing electric equipment from service. *USWAG members will avoid hundreds of thousands of dollars in electric equipment replacement and disposal costs.*
- **DOT Decides Against Increasing Requirements for Transportation of PCBs** — USWAG successfully persuaded the Department of Transportation to avoid modification of the hazmat regulations that would have increased burdens on highway shipments of regulated PCBs and PCB-containing hazardous materials by reclassifying them as Packing Group II rather than Packing Group III materials. The final rule retains the less onerous Packing Group III designation thereby avoiding the need to evaluate and upgrade PCB packaging materials, modify transportation documentation and training materials, and re-train all hazmat employees involved with the transportation of PCBs.
- **USWAG Participates in Other Rulemaking Initiatives of Importance to Electric Utilities** — In addition to the accomplishments identified above, as part of its overarching mission to advance and protect the interests of its members, USWAG advocated utility industry positions on key issues arising under or affecting RCRA, TSCA, and HMTA, including, but not limited to, (1) EPA's proposal to establish a conditional exemption from RCRA regulation for the on-site storage and treatment of mixed waste by NRC licensees; (2) EPA's streamlining initiatives for RCRA's land disposal restrictions ("LDR" program); (3) EPA's draft reports in the Binational Toxics Reduction Strategy initiative regarding the role of penta-treated poles as source of dioxin to the environment; (4) development of guidelines under RCRA Subtitle D for the management of industrial non-hazardous wastes, including coal ash; (5) the development of Regional and National Programs designed to encourage the voluntary phase-out of PCB-containing electrical equipment; (6) development of SPCC regulations; (7) EPA's proposal to reduce the drinking water standard for arsenic, which could significantly affect Beville and other RCRA regulatory actions; and (8) the DOT rulemaking to establish the jurisdictional boundaries between EPA, OSHA, and DOT on hazmat transportation issues.
- **Individual Member Counseling** — USWAG counsel continued to provide members with individual counseling on an array of regulatory issues, ranging from day-to-day hazardous waste and PCB compliance questions to large-scale remediation strategies. Additional information, in the form of technical and legal analyses of proposed and final regulations, reduces members' burden of tracking Federal rules and provides members with time to meet requirements of new and revised regulations. *This service, which is included as part of USWAG membership, provides USWAG members with prompt, specialized and cost-effective legal advice, avoiding the need for additional counsel/consulting fees.* In addition, as need arises, USWAG provides regulatory workshops free of charge to its members, most recently on hazmat transportation issues tailored to the needs of the utility industry.
- **Leveraging Resources** — USWAG continues to leverage the value of members' dues in developing and implementing advocacy positions and generating technical data through participation in coalitions, strategic alliances, co-funding and use of EPRI tailored collaboration programs. For example, in 2000 USWAG contributed only a fraction of the costs for preparing analyses of EPA-proposed hazardous waste exit levels, a critique of EPA's groundwater risk model, and an *amicus* brief in a lawsuit addressing MGP remediation.

.....

For more information about USWAG membership, contact:

Celeste Heery
USWAG Program Specialist
202/508-5643
cheery@eei.org

Or visit the USWAG Web site at www.eei.org/uswag