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USWAG

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# 2002 RESULTS & BENEFITS

Highlights of  
Accomplishments  
and Activities

**USWAG** has continued its regulatory advocacy, legislative technical support, and litigation efforts, when necessary, on important solid and hazardous waste, PCB, and hazardous materials transportation issues.

Since its founding in 1978, the value of USWAG's regulatory successes amounts to \$147.3 billion. Each year, the value of these achievements increase, as past successes are maintained and new accomplishments are realized.

While USWAG continues to pursue long-term core interests — e.g., protecting the non-hazardous regulatory status of fossil fuel combustion products and penta-treated wood and remediation waste reform — this document highlights some of the immediate results and benefits that USWAG members received in 2002.

■ **Coal Combustion Products Partnership** – USWAG continues to create an even playing field for the reuse of coal combustion products (“CCPs”), as evidenced in part by its success in having EPA establish the Coal Combustion Products Partnership (“C<sup>2</sup>P<sup>2</sup>”). C<sup>2</sup>P<sup>2</sup> is a joint industry-regulatory agency effort led by USWAG, the American Coal Ash Association, and EPA that will establish a series of coordinated efforts aimed at diverting CCPs from land disposal and reducing greenhouse gas (“GHG”) emissions by increasing beneficial uses of CCPs. C<sup>2</sup>P<sup>2</sup> consists of: (1) a Challenge Program directed at potential users of CCPs, informing them of the attributes and beneficial uses of CCPs, and encouraging them to consider increased application of CCPs in their firms’ or organizations’ endeavors; and (2) Barrier Breaking Activities, designed to better understand obstacles to beneficial uses of CCPs and to identify waste pollution prevention and recycling programs that can be expanded to include utility industrial wastes, including utility CCPs. C<sup>2</sup>P<sup>2</sup> will further strengthen the CCP reuse market and promote USWAG’s goal of having EPA and others recognize CCPs as a valuable commodity as opposed to a waste.

■ **Extension of SPCC Compliance Deadline** – USWAG was successful in convincing EPA to suspend the compliance deadlines for the revised Spill Prevention Control and Countermeasures (“SPCC”) Program. Members were faced with the task of revising and certifying SPCC plans on an impractical schedule. As a result of the suspension, members will be afforded additional time to update their plans and, most significantly, USWAG will have the opportunity to advocate further revisions to the SPCC regulations affecting electrical equipment and to address other utility-specific compliance issues.

■ **Mercury-Containing Equipment** – USWAG continues to successfully influence development of EPA’s hazardous waste program, as evidenced by the proposal to act favorably on USWAG’s rulemaking petition to include mercury-containing equipment in the federal universal waste program. The proposal would include all mercury-containing equipment (e.g., thermometers, manometers, barometers, mercury regulators, gauges, mercury wetted switches, relays, pressure relief gauges, hagenmeters, water treatment pressure gauges, sprinkler system contacts, power plant water treatment gauges, and variable force counterweight wheels used in coal conveyor systems) in the federal program. In taking this action, EPA acknowledged that USWAG’s petition contained “useful information” describing how mercury-containing equipment would meet the regulatory criteria for the universal waste program.

Most significantly, the proposal offers substantial regulatory relief for USWAG members in the handling and management of discarded/recycled mercury-containing equipment and instruments generated throughout electric and gas utility systems. Universal wastes are exempt from hazardous waste manifest and transportation rules. The intra-company consolidation and storage of universal wastes also are exempt from RCRA’s hazardous waste permit requirements. Universal wastes are not included in determining a facility’s hazardous waste generator status. Thus, in addition to the reduced regulatory costs associated with the universal waste program, this initiative will enable some USWAG members to qualify as conditionally exempt small quantity generators, thus helping to further minimize company compliance costs under RCRA’s hazardous waste program.

■ **EPA Endorsement of USWAG Treated Wood Guidelines** – In light of the ongoing public and regulatory scrutiny on treated wood, USWAG remains fully engaged in developing proactive strategies enabling its members to continue using these critically important products in an environmentally sound manner. In this regard, USWAG has developed voluntary Treated Wood Guidelines for the purpose of demonstrating the utility industry’s continued commitment to responsible use and management of treated wood products. EPA has responded favorably to these proactive efforts and has specifically publicly praised USWAG on its exceptional efforts in collecting information on treated wood management practices and in developing the Treated Wood Guidelines, stating that the Treated Wood Guidelines “speak strongly to [USWAG’s] commitment towards environmental leadership.”

An immediate benefit of the Guidelines was a reduction in the ranking of penta-treated wood poles from a “medium” to a “low” priority for information gathering purposes of EPA’s Great Lakes Binational Toxics Reduction Strategy. In the longer term, this type of proactive effort underscores USWAG’s commitment to the environmentally sound management of treated wood and may be important in staving off undue treated wood regulations.

- **Mixed Waste Batteries** – USWAG strongly endorsed EPA's direct final rule – which became effective November 21, 2002 – establishing a national treatment variance from RCRA's land disposal restriction ("LDR") requirements for hazardous/radioactively contaminated cadmium-, mercury-, and silver-containing batteries ("mixed waste batteries"). The direct final rule establishes a new LDR treatment standard for mixed waste batteries based on macroencapsulation. In adopting the rule, EPA reiterated USWAG's long-standing concerns with subjecting radioactive mixed waste to RCRA's LDR program – explaining in this case that the existing LDR treatment standards are technically inappropriate for mixed waste batteries and result only in the batteries being stored indefinitely because of the lack of available LDR treatment options. The new rule thus provides a new and cost-effective option for USWAG members to effectively manage mixed waste batteries.

- **Reduced DOT Registration Fees & Hazmat Safety Within the Department of Homeland Security** – Over the course of the last year, USWAG remained actively involved behind the scenes in successful hazmat registration fee litigation with DOT through an industry coalition. The litigation and related settlement discussions resulted in a three-year decrease in the hazmat registration fees, starting with the 2003-2004 registration year. This represents the amount of time DOT estimates it will take to expend the \$26 million surplus in the Hazardous Materials Emergency Preparedness grant program, which is funded through hazmat registration fees. For registration year 2002-2003, fees were \$300 for small businesses and \$2,000 for large businesses, including a \$25 processing fee. Beginning with registration year 2003-2004, and for two years thereafter, registration fees will be reduced to \$300 for large businesses, and to \$150 fee for small businesses, including a \$25 processing fee, saving USWAG members thousands of dollars.

Also in 2002, USWAG, along with the Interested Parties coalition ("IPs"), was successful in having language included in the Department of Homeland Security ("DHS") legislation coordinating and distinguishing between hazmat security (DHS jurisdiction) and hazmat safety (DOT jurisdiction). The Homeland Security Act of 2002 includes language developed by the IPs stating that the DHS Secretary must consult with the DOT Secretary "when prescribing a security regulation or issuing a security order that affects the safety of transportation of hazardous material." This differentiation preserves DOT's federal preemption on hazardous materials transportation safety, an issue USWAG has long advocated in our effort to achieve national uniformity of hazmat regulations.

- **Litigation Victories** – USWAG successfully resolved two important lawsuits over the last year, including the "point of generation" litigation in which EPA issued a written clarification that the "point of generation" principle applicable to boiler cleaning wastes—i.e., the ability to determine whether rinses test hazardous after they have been collected in a single tank system—applies with equal force to electric utility ion exchange regeneration wastes. In its letter, EPA agreed with USWAG that the interrelated rinses from the ion exchange regeneration process (e.g., the acid and caustic rinses from the regeneration process) can be viewed as a single waste stream for purposes of waste characterization under RCRA when combined in a single unit, such as a transfer sump or neutralization basin. This clarification will help to minimize the chances of inter-related ion exchange streams testing hazardous under RCRA's Subtitle C program.

USWAG also was successful in assisting EPA in defending its contingent management no-listing decision for sludges from the production of chlorinated aliphatics. This was the first time EPA had applied the contingent management concept – i.e., not listing a waste as hazardous conditioned on compliance with specified management conditions – in circumstances where the required condition included disposal of the waste in a non-hazardous waste landfill. USWAG has long advocated EPA's use of the contingent management concept because it allows EPA to look at actual management practices in determining whether a particular waste warrants hazardous waste regulation, as opposed to assuming worst case mismanagement scenarios in rendering listing determinations. This victory lets stand an important extension of the contingent management concept. It is in USWAG's interest that EPA continue to incorporate the contingent management concept in the RCRA program, as it will be an important concept to have available if electric utility wastes come under increased scrutiny for further RCRA regulation.

- **Joint EPA/USWAG Training Courses** – One of the significant benefits of USWAG membership over the last year has been the opportunity to participate in joint USWAG/EPA workshops in areas of key importance to USWAG members. For example, we held two well attended USWAG/EPA PCB workshops where most of the Regional EPA PCB-Coordinators from across the country attended and met with and discussed key PCB compliance issues with USWAG members. The workshops provided USWAG members with the unique opportunity to meet with and further strengthen their working relationships with key regulators in an informal setting.

We had similar success with EPA's SPCC program staff. Following issuance of the SPCC Phase 1 Rule, USWAG conducted three joint USWAG/EPA SPCC compliance workshops with key EPA staff responsible for implementing the rule and Regional EPA SPCC personnel. Here too, the workshop allowed USWAG members to discuss first hand with EPA staff some of the important compliance aspects of the new rule. This allowed members to more efficiently and effectively develop their company-specific SPCC compliance strategies.

USWAG will continue to sponsor these joint EPA efforts in the future, as warranted.

- **PCB Interpretive Letter Compendium** — In addition to the above, USWAG membership also provides access to important EPA guidance that is not available elsewhere. For example, USWAG has developed an archive on its website of key EPA PCB interpretive letters discussing a broad array of PCB compliance matters. These letters — which contain important Agency guidance on PCB regulatory issues — are not available on any of EPA's various websites and therefore are not readily available to the public. USWAG members, however, have direct access to the letters which provide important guidance for reducing regulatory costs and facilitating compliance with applicable PCB regulations.
- **Toxic Tort Workshop** — USWAG offered members a workshop on toxic tort issues tailored specifically to the needs of the utility industry. Participants indicated that the workshop fills a need that is not addressed in any other forum, and USWAG plans to continue to offer focused, utility-specific workshops in the future.
- **USWAG Participates in Other Rulemaking Initiatives of Importance to Electric Utilities** — In addition to the accomplishments described 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: (1) EPA's proposals to streamline RCRA's hazardous waste manifest and permit programs; (2) EPA's proposal to amend the definition of "solid waste" to reduce barriers to recycling secondary materials; (3) EPA's development of general national guidelines for management of industrial non-hazardous wastes under RCRA Subtitle D; (4) EPA's rulemaking to develop tailored national standards for management of coal combustion products under RCRA Subtitle D; (5) the development of Regional and National Programs designed to encourage voluntary phase-out of PCB-containing electrical equipment; (6) EPA's proposal to reduce the drinking water standard for arsenic, which could significantly affect Bevill and other RCRA regulatory actions; and (7) the DOT rulemaking to establish jurisdictional boundaries between EPA, OSHA, and DOT on hazmat transportation issues.
- **Individual Member Counseling** — USWAG counsel (Piper Rudnick LLP) 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 rulemaking and remediation strategies. Additional information, in the form of technical and legal analyses of proposed and final regulations, frees members of the burden of tracking new federal rules and allows members to concentrate their time and effort on maintaining compliance with new and revised regulations. *This counseling service, which is included as part of USWAG membership, provides USWAG members with prompt, specialized, and cost-effective regulatory counseling, avoiding the need for additional counsel/consulting fees.* In addition, as the need arises, USWAG provides regulatory workshops tailored to the needs of the utility industry, at no additional charge to its members.
- **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 2002, USWAG contributed to: the preparation of analyses of EPA-proposed hazardous waste exit levels; PCB risk assessments; rulemaking comments on the definition of solid waste; and intervention in a lawsuit addressing DOT hazmat registration fees.

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