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U S W A G

USWAG

2004 RESULTS & BENEFITS

**Highlights of
Accomplishments
and Activities**

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

Since its founding in 1978, USWAG's regulatory successes have saved the utility industry billions of dollars. Each year, the value of these achievements increases, as past successes are maintained and new accomplishments are realized.

While USWAG continues to pursue long-term core interests — including, among others, protecting the non-hazardous status of fossil fuel combustion products and penta-treated wood, maintaining a cost-effective PCB regulatory program, and pursuing site remediation regulatory reform — this document highlights some of the immediate benefits that USWAG members received in 2004 as a result of these efforts.

We have divided the report into three sections. The first section describes completed activities in 2004 in which USWAG achieved a favorable outcome for its members. The second section identifies pending activities in which a favorable interim milestone has occurred, such as success in having EPA propose a rule that USWAG favors or having favorable legislative language included in pending legislation. In the third section, we describe ongoing member services.

I. REGULATORY, POLICY, AND LITIGATION SUCCESSES

USWAG Testimony at Key Regulatory and Legislative Forums – USWAG testified in a number of important venues throughout 2004 to protect and advance the interests of its members. USWAG's participation in these events underscores the fact that the organization is recognized as a major stakeholder by regulatory and legislative decision-makers on matters involving the development of national and international environmental policies affecting the utility industry. Specific events included participation in:

- four EPA "Listening Sessions" across the country on CCP management;
- a consultation meeting of the United Nations Environment Programme ("UNEP") regarding measures for implementing PCB controls under the Stockholm Convention on Persistent Organic Pollutants ("POPs");
- Congressional hearings on legislation to implement United States participation in various international treaties controlling POPs, including the Stockholm Convention;
- two National Academy of Sciences ("NAS") panels, one on an evaluation of "Mine Placement of Coal Ash," the other addressing the EPA's draft Dioxin Reassessment, especially as it pertains to dioxin-like PCBs; and
- two EPA public meetings in support of a proposed EPA initiative to exclude contaminated rags and wipes from hazardous waste regulation and reforming the EPA hazardous waste generator regulations to more accurately reflect utility waste handling practices.

Extension of SPCC Compliance Deadline – At USWAG's urging, EPA formally extended the compliance deadlines for the revised Spill Prevention Control and Countermeasures ("SPCC") Program by 18 months. Absent this extension, members were faced with the daunting task of revising and certifying SPCC plans on an impractical schedule at the same time that EPA was revisiting and possibly easing the burden of those rules. As a result of the extension, members will be afforded additional time to update their plans while USWAG continues to press the Agency to revise the SPCC regulations as they affect oil-filled electrical and operating equipment and to address other utility-specific compliance issues.

Approval of ASTM Standard Guide for the Use of Coal Ash in Mine Reclamation – With USWAG representatives and members leading the effort, the ASTM E50 Committee gave final approval in 2004 of the new Standard Guide for the Use of CCPs for Surface Mine Reclamation: "Revegetation and Mitigation of Acid Mine Drainage" (designated as Standard Guide E2278-04). This new consensus standard complements existing standards addressing the use of CCPs in other mine reclamation activities.

Inclusion of USWAG Member PCB Success Stories in EPA Annual Report – Through its close working relationship with EPA Region 5 staff involved in the Great Lakes Binational Toxics Strategy ("GLBTS"), USWAG was invited to submit descriptions of individual member company success stories in voluntarily reducing their inventories of PCB-containing equipment. USWAG accepted this offer and EPA included member company information virtually verbatim in the Agency's 2003 GLBTS update report. The EPA update report is an important forum for member companies to showcase their successful PCB reduction efforts and is an example of where USWAG's proactive efforts in reaching out to EPA – e.g., working cooperatively with Regional EPA staff – provides important opportunities for USWAG members.

Addition of Coal Ash-Containing Products to Comprehensive Procurement Guidelines – In response to USWAG comments, EPA amended its Comprehensive Procurement Guidelines ("CPG") to add several new beneficial uses of coal combustion products ("CCPs") to the list of items eligible for federal procurement preferences, including blasting grit containing bottom ash; non-pressurized pipe and roofing materials containing recovered cement (including cement containing fly ash); and cement and concrete containing fly ash cenospheres. As a result, any federal, state or local procuring agency that uses federal funds to procure items listed must purchase the item containing the highest percentage of recovered material practicable, which should increase the beneficial utilization of CCPs.

Treated Wood Litigation Victory – USWAG played an important role in assisting EPA in successfully fending off a lawsuit brought by the National Coalition Against the Misuse of Pesticides ("NCAMP") seeking to cancel the FIFRA registrations for penta, creosote and CCA and to invalidate the exclusion from hazardous waste regulation for CCA-treated wood. USWAG assisted in the litigation by providing a supporting affidavit prepared by the USWAG Executive Director detailing the critical role that treated wood plays in providing reliable and cost-effective electricity to millions of customers throughout the country. This information was important in helping the court decide not to grant a preliminary injunction to NCAMP canceling the above registrations.

Defeat of Burdensome Hazardous Materials Legislation – In 2004, USWAG responded on short notice to a series of federal legislative proposals that, if enacted, could have required utilities to, among other things: install and maintain global position satellite ("GPS") tracking devices on any vehicle used to transport hazardous materials ("hazmat"); file written route plans with the Department of Homeland Security and give notice to local authorities prior to transporting certain hazmat shipments; adopt new physical security and surveillance measures for hazmat shipments, purchase new upgraded communication equipment; incorporate new security training requirements; and impose geographic hazmat transportation restrictions. If enacted, the proposed GPS tracking requirement alone would have cost the utility industry an estimated \$30 million dollars to purchase and install the GPS systems - excluding costs for training, operation, maintenance and repair - as well as future upgrades of the equipment.

II. FAVORABLE PROGRESS ON ISSUES & ACTIVITIES

Implementation of the Coal Combustion Products Partnership – USWAG continues to create an even playing field for the reuse of coal combustion products (“CCPs”), working through the Coal Combustion Products Partnership (“C²P²”). C²P² is a joint industry-regulatory agency initiative led by USWAG, the American Coal Ash Association, and EPA that will establish a series of coordinated efforts aimed at promoting increased beneficial use of CCPs thereby reducing the quantities of CCPs requiring waste management in land disposal units and also reducing greenhouse gas (“GHG”) emissions. In 2004, USWAG and C²P² Funders: supported a series of CCP utilization workshops around the country; helped prepare and deliver a paper defining CO₂ emission reduction factors for CCP utilization to EPA to inform the Agency’s evaluation of the impact of CCP utilization; submitted comments to improve the message in a draft pamphlet prepared by EPA addressing the economic and environmental benefits of CCP utilization for highway construction; and supported EPA’s recent creation of a C²P² Awards Program recognizing innovation, increased utilization and partnerships relating to CCP utilization. In a recent speech by Senior EPA management, the Agency publicly praised C²P² as a model for new strategic EPA policies to encourage resource conservation. USWAG’s sponsorship of the C²P² program has already strengthened the CCP utilization market and helped achieve USWAG’s goal of encouraging EPA and others to recognize CCPs as a valuable commodity as opposed to a waste.

Success Persuading EPA to Reconsider Stringent Cancer Risk Assessment For Naphthalene – USWAG, working through a coalition of other interested parties, was successful in challenging the validity of EPA’s proposed stringent cancer risk factors for naphthalene. USWAG’s efforts, including a jointly-funded scientific review of EPA’s proposal, encouragement of federal agencies to question EPA’s naphthalene proposal, and meetings with EPA staff and management resulted in a delay of the effective date of the naphthalene cancer risk assessment. The proposed risk factors were scheduled to be effective in September 2004 and would have triggered more stringent environmental media cleanup levels and increased compliance costs at MGP and other utility cleanup sites.

POPs Ratification Legislation – Preservation of Existing PCB Use Authorizations – USWAG played a critical role in 2004 in helping to preserve the existing use authorizations for PCB-containing electrical equipment in the face of legislation that threatened to eliminate these authorizations. In 2004, Congress continued its work on developing legislation to ratify and implement the Stockholm Convention on Persistent Organic Pollutants (the “POPs Convention”). PCBs are one of the twelve POPs addressed in the POPs Convention. Draft legislation prepared in both the House and Senate would have established a statutory ban on the use of all POPs, including PCBs, effectively overriding the existing use authorizations for PCB-containing equipment under TSCA. USWAG representatives, working with EEI Government Affairs staff, persuaded key Congressional staff to amend the draft legislation to preserve the existing PCB regulatory program, including the use authorizations for PCB-containing utility equipment. USWAG will continue to monitor development of the POPs ratification and implementing legislation to ensure that the final legislation does not inappropriately infringe on the existing PCB regulatory program.

Classification of Mercury-Containing Equipment as Universal Waste – In response to a rulemaking petition submitted by USWAG, EPA is close to issuing a final rule characterizing discarded mercury-containing equipment as a “universal waste,” thereby excluding such material from the most onerous aspects of RCRA’s hazardous waste program. A final rule is scheduled for promulgation in 2005 and will result in significant cost-savings for USWAG members, both in terms of handling mercury-containing equipment and enabling some utilities to qualify as “conditionally exempt small quantity generators” and avoiding the costs associated with the full array of RCRA generator requirements.

Proposed Regulatory Relief for Utility Generator Activities and Management of Solvent-Contaminated Rags – USWAG’s long-standing dialogue with EPA in support of RCRA burden reduction initiatives continues to bear fruit for USWAG members. In early 2004, EPA issued a comprehensive proposal to re-evaluate the RCRA generator rules to streamline and/or eliminate problematic and inefficient regulatory provisions. Included on EPA’s list of potential reform issues is (1) amending the rules to allow for the more efficient consolidation of utility wastes from off-site intra-company sources, and (2) reducing the regulatory complications associated with episodic generator events (e.g., the occasional generation of regulated volumes of boiler chemical cleaning wastes). This is an important initiative that could significantly streamline USWAG member hazardous waste handling activities.

As part of its RCRA burden reduction initiative, EPA also issued in 2004 a comprehensive proposal to exclude solvent-contaminated industrial rags, shop towels, paper towels, and wipes (collectively “wipes”) from RCRA’s hazardous waste program when disposed of or returned to vendors for laundering. USWAG testified and prepared comments in support of this initiative which, when finalized, will remove solvent-contaminated rags from RCRA’s Subtitle C controls and will significantly reduce the costs currently incurred by USWAG members in managing these materials as hazardous waste.

Development of Joint USWAG/EPA Treated Wood Memorandum of Understanding – In light of the ongoing public and regulatory scrutiny of 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. USWAG continued in 2004 to develop its proposal to enter into a treated wood memorandum of understanding (“MOU”) with EPA 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 this proactive effort and has publicly praised USWAG on its exceptional efforts in taking the lead in developing the treated wood MOU. 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.

Proposed Relief for the Disposal of Low-Activity Mixed Waste – Following on the heels of USWAG’s successful efforts in having EPA develop a RCRA conditional exclusion for the on-site management of mixed waste, USWAG is now supporting EPA’s follow-up proposal – issued in late 2003 – to expand the disposal options for low-activity mixed wastes. This new initiative offers the possibility of providing significant regulatory relief for a number of USWAG member companies by allowing for the disposal of low-activity mixed waste, and perhaps all low activity waste, in RCRA Subtitle C facilities, as opposed to a dually licensed NRC/RCRA disposal facility.

III. MEMBER SERVICES

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, among others, (1) EPA's proposals to streamline RCRA's hazardous waste manifest and permit programs; (2) EPA's development of general national guidelines for management of industrial non-hazardous wastes under RCRA Subtitle D; (3) EPA's rulemaking to develop tailored nonhazardous RCRA standards for management of coal combustion products; and (4) the DOT rulemaking establishing jurisdictional boundaries between EPA, OSHA, DOT, and state and local governments on hazmat transportation issues.

Assessment of Treated Wood and Alternative Materials for Utility Poles – USWAG joined with EPRI to produce a comprehensive report addressing alternative wood preservatives and alternative pole materials. The report evaluates the potential advantages and disadvantages of certain alternative wood preservatives and alternative pole materials and has a dual purpose: 1) to support members' decision making regarding comparisons of alternative support structures, and 2) to support USWAG's advocacy by demonstrating the need for re-registration of the three major wood preservatives (e.g., copper chromated arsenate, creosote, and pentachlorophenol).

Review of the Current State of the Science Related to Re-release of Mercury from Coal Combustion Products – USWAG produced a detailed summary report regarding the potential for release of mercury from CCPs. The report summarizes existing data and concludes that the mercury associated with CCPs is stable and highly unlikely to be released under most management conditions, including utilization and disposal. The report was prepared to provide a resource to members to respond to concerns with the presence of mercury in CCPs - especially in the context of the promulgation of mercury emissions control regulations - raised by the public, environmental groups and State regulatory agencies. The report supports USWAG's position that CCPs can be effectively managed as non-hazardous solid waste, and that the Bevill regulatory determination does not need to be re-visited to address the mercury and CCP issue.

Individual Member Counseling – USWAG counsel (DLA Piper Rudnick Gray Cary US LLP) continued to provide members with individual counseling on an array of regulatory issues, ranging from day-to-day hazardous waste, hazmat transportation 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 achieving compliance with new and revised regulations. *This counseling service, which comes with USWAG membership, provides USWAG member companies 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 utility industry personnel. For example, in December 2004, the USWAG PCB Committee held a heavily attended workshop reviewing the fundamentals of EPA's PCB regulatory program.

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 added to its archive 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 web sites and therefore are not readily available to the public. USWAG members, however, have direct access to the letters through the USWAG web site which provide important guidance for reducing regulatory costs and facilitating compliance with applicable PCB regulations.

DOT Hazmat Interpretive Letter Compendium - Another resource for USWAG members is the database accessible through the USWAG web site that contains select DOT Research and Special Program Administration Letters of Interpretation and Exemptions. This database is tailored to include letters particularly applicable to the utility industry and thus offers a unique resource that is only available to USWAG members. USWAG has added to its archive over 100 interpretative letters on a range of transportation issues. These letters provide and offer solutions to help reduce compliance costs.

Online Access to Hazmat Security Plan Resources – To help members meet the new hazmat security plan requirements promulgated by DOT in 2003, USWAG acquired rights to a series of hazardous material/motor carrier security resource documents, and made available a number of other links and resources designed to help members comply with the new security regulations. For example, documents provided to USWAG members that were produced by the American Trucking Association, Inc. ("ATA") included a sample security plan, a variety of guidance documents discussing anti-terrorism risk assessment and security planning, and human resource and training exercises. The sample plan and related documents are available electronically to all members on the USWAG web site. USWAG's purchase of the ATA resources under a license agreement allows all employees of USWAG member companies to obtain copies of the security resource documents, resulting in substantial savings.

Compilation of Federal Register Notices – A new addition to the USWAG web site in 2004 is a compilation of Federal Register notices of interest to USWAG members. These notices cover a time period beginning in 1993 and continue to the present. Included are items which USWAG provided analyses for (with links to such correspondence) as well as notices addressing issues not under USWAG's purview or not of significant concern to member companies but which may be of interest.

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.

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