

USWAG 2005 RESULTS AND 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 and legislative successes exceed \$150 billion. 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—e.g., protecting the non-hazardous regulatory status of fossil fuel combustion products and penta-treated wood, remediation waste reform, and ensuring the cost-effective regulation of PCBs—this document highlights some of the immediate results and benefits that USWAG members achieved in 2005.

This report is divided into three sections. The first section describes completed activities in which USWAG achieved a favorable outcome. The second section identifies currently pending activities in which a favorable interim milestone has occurred, such as persuading EPA to propose a rule that USWAG favors or having a congressional committee adopt an amendment or bill USWAG supports, but the full legislative process has not yet been completed. Finally, in the third section we describe ongoing member services.

I. REGULATORY, POLICY, AND LITIGATION SUCCESSES

USWAG Testimony at Important Regulatory and Legislative Forums—USWAG testified or submitted written information in a number of important governmental venues to protect and advance the interests of its utility members. Specific events included: an EPA Public Meeting on USWAG's proposal for the management of qualified PCB remediation wastes in municipal solid waste landfills; a series of National Academy of Science (NAS) Panel Public Meetings across the country on the placement of coal ash in mines; the U.S. House of Representatives Subcommittee on Regulatory Reform hearing on the Impact of Regulation on Manufacturing, which addressed USWAG's PCB remediation waste proposal; and an EPA Peer Review Panel addressing EPA's Dioxin Inventory as it related to treated wood and PCB-containing electrical equipment.

Mercury-Containing Wastes Included in Universal Waste Program—U.S. EPA granted USWAG's

rulemaking petition to add discarded mercury-containing equipment to RCRA's Universal Waste Program. Under this rule, USWAG members may generate, store and transport discarded mercury-containing equipment (e.g., manometers, flow meters, mercury regulators and mercury light switches) under the streamlined and less costly universal waste standards in lieu of RCRA's more burdensome hazardous waste management requirements. In addition to obtaining this regulatory relief, mercury-containing universal wastes *are not* counted in determining a facility's generator status, which may allow some USWAG members to "downgrade" their RCRA generator status.

Clean Air Act Section 129 Rule—EPA agreed with USWAG comments that electric utility boilers are not subject to emission control requirements for commercial and industrial solid waste incineration units under section 129 of the Clean Air Act, even when such boilers co-burn non-hazardous waste for purposes of destruction (e.g., boiler chemical cleaning wastes, refuse-derived fuels, waste wood, tires). This result excludes electric utility combustion operations involving non-hazardous waste from the quantitative emissions limits applicable to these incineration units.

All Appropriate Inquiry Rule—In November, EPA promulgated the “All Appropriate Inquiry Rule” (“AAI”) setting forth the process for investigating the prior ownership and use of a property necessary to obtain liability protection under CERCLA as an innocent landowner, contiguous property owner, or prospective purchaser. The final rule reflects comments submitted by USWAG and, in conjunction with ASTM Standard E1527-05 for Phase I Site Assessment (which was supported by USWAG), will provide members with cost-effective tools to qualify for CERCLA liability protection in the context of property transactions.

Relief from PCB Regulations for Hurricane Response—In response to efforts of the PCB Committee Chair, EPA issued guidance providing regulatory relief for addressing spills of PCBs from electrical equipment damaged by hurricanes Katrina and Rita. This regulatory streamlining will allow for more cost-effective and expeditious responses by USWAG members to PCB cleanup operations resulting from the damage wrought by these storms.

Confirmation that Waste Catalysts from Spent Catalytic Reduction Process Wastes Are Exempt from Hazardous Waste Regulation—Working with one of its members, USWAG determined that spent selective catalytic reduction (SCR) catalyst waste is exempt from RCRA hazardous waste regulation under the Bevill Amendment to RCRA. This interpretation allowed the USWAG member to dispose of spent SCR catalysts in a Subtitle D non-hazardous waste landfill in lieu of a RCRA Subtitle C hazardous waste facility, thereby saving the member over \$200,000

in disposal costs. This clarification will benefit other USWAG members that are likely to generate similar wastes in the future.

RCRA Standardized Permit—In response to the comments of USWAG and others, EPA promulgated a streamlined, standardized permit process for facilities that generate and store or treat hazardous wastes on-site in tanks or containers, and extended that relief to facilities that receive hazardous waste generated at off-site locations within the same company. The extension of the rule to off-site generated waste can be of particular value to USWAG members that frequently consolidate wastes generated within their respective utility systems.

TSCA Inventory Update Reporting Exemption—In response to a request for assistance by a member company, USWAG convinced EPA that the generation of 2% ammonia gas for air pollution control using a urea-to-ammonia (or “ammonia-on-demand”) system is exempt from reporting under the TSCA Inventory Update Reporting (IUR) rule. This clarification means that utilities generating ammonia in this manner may avoid TSCA IUR reporting on this activity in 2006 and in subsequent IUR reporting periods.

RCRA Standardized Hazardous Waste Manifest—In response to long-standing support from USWAG and others, EPA issued a standardized hazardous waste manifest rule that *must* be used in all 50 states when the rule takes effect in September 2006. The rule standardizes the hazardous waste manifest form by eliminating most of the “state optional” data fields and will simplify and streamline the paperwork associated with the transport of hazardous waste. The new rule also specifically allows for the return of rejected hazardous waste shipments to the generator, an option not authorized in the current rules.

II. FAVORABLE PROGRESS ON ISSUES & ACTIVITIES

Management of Disposed Coal Combustion Products—USWAG continues negotiations with EPA on implementing EPA’s May 2000 Bevill regulatory determination that disposal of coal combustion products (“CCPs”) does not warrant hazardous waste regulation. USWAG advocated that the CCP Action Plan developed by USWAG provides the framework for addressing the management concerns identified by EPA in its Regulatory Determination.

PCB Remediation Waste Initiative—In response to USWAG comments submitted to the Office of Management and Budget on suggested regulatory reforms, U.S. EPA held a public hearing in July to solicit comments on USWAG’s proposal that EPA clarify and/or amend its PCB regulations to allow for *all* PCB remediation wastes containing < 50 ppm PCBs to be disposed of in a municipal solid waste landfill, as opposed to a more costly TSCA landfill. Confirmation of this position could save USWAG members thousands of dollars in PCB remediation waste cleanup costs.

Spill Prevention Control and Countermeasures (SPCC) Rules—USWAG advocacy was instrumental in shaping a proposal to tailor EPA’s SPCC rules to oil-filled electrical equipment. As a result, the proposal will require USWAG members to install general secondary containment at only a small fraction of electrical

substations, saving millions of dollars in construction costs nationwide. In the meantime, in response to requests by USWAG and others, EPA has agreed to several extensions of the SPCC compliance deadlines to ensure that members have sufficient time to develop and implement SPCC plans once the uncertainties of the regulatory requirements are resolved.

Proposed Relief for the Disposal of Low-Activity Mixed Waste—USWAG continued its support in 2005 of EPA’s initiative to expand the disposal options for low-activity mixed wastes. This 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. EPA is scheduled to issue a proposed rule in July 2006 addressing this issue.

Development of Joint USWAG/EPA Treated Wood Memorandum of Understanding—In light of the ongoing public and regulatory scrutiny of the management of treated wood products, USWAG remains fully engaged in developing proactive strategies enabling its members to continue using these critically important products in an environmentally sound manner. For example, USWAG continued its efforts in 2005 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. The proposed MOU is currently under review by EPA, and the Agency has publicly praised USWAG for its exceptional efforts in taking the lead in developing it. 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.

Rulemaking Petition to Exclude All PCB-Regulated Wastes From RCRA—USWAG submitted a rulemaking petition to EPA requesting the expansion of the current exclusion from RCRA regulations for certain PCB wastes to include *all* PCB wastes subject to TSCA’s PCB disposal regulations. Expansion of this exclusion would eliminate the potential for subjecting PCB wastes to dual regulation under TSCA and EPA’s hazardous waste system.

Development of USWAG PCB Phase-Down Document—In response to the increasing emphasis on the removal of PCBs from service and the possibility of mandatory PCB phase-out regulations, USWAG published a PCB phase-down document promoting and demonstrating the voluntary phase-down of PCB-containing equipment by USWAG members. This type of proactive effort by USWAG will help educate

policy-makers and hopefully serve to temper interest in the need for further legislative and regulatory phase-out initiatives. Another principal message in the phase-down document is to make clear that the ability and methods for voluntarily removing PCB-containing equipment varies among member companies, depending on the unique operating circumstances of each utility, and that there is *not* a “one size fits all” approach that can or should be adopted for the accelerated phase-down of PCB equipment.

RCRA Generator Reform Initiative—USWAG continues as one of the leading proponents for streamlining RCRA generator regulations, as virtually all USWAG members are subject to them. USWAG continued to press its reform initiatives with EPA in 2005, including USWAG’s long-standing interest in a utility-specific waste consolidation rule that would allow utilities to consolidate intra-company wastes from off-site sources without triggering the need to obtain a RCRA storage permit. New York State recently adopted this rule under EPA’s XL program, and USWAG is pointing to the success of the New York rule as precedent for a similar rule at the federal level.

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 over arching 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 proposal to revise the definition of “solid waste” to promote the recycling of secondary materials; (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 national standards for management of coal combustion products under RCRA Subtitle D; (4) the development of federal legislation to implement the United States’ participation in international treaties regulating chemicals of interest to the utility industry, including PCBs and pentachlorophenol; and (5) the DOT rulemaking establishing jurisdictional

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boundaries between EPA, OSHA, DOT, and state and local governments on hazmat transportation issues.

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 and SPCC 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 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 utility industry personnel.*

TSCA IUR Rule Workshops—USWAG held a workshop on the TSCA IUR Rule, providing valuable compliance training and assistance tailored specifically to utility operations to USWAG members.

Online Issue-Specific Resources—USWAG has continued to provide through its web site a wealth of

information regarding guidance on compliance and strategic information on legislative and regulatory matters. In addition to hundreds of PCB and DOT hazmat interpretive letters specifically tailored to the utility industry, issue-specific pages and documents are updated on a regular basis. For example, some web resources added this year pertain to SPCC, TSCA Inventory Update Rule Compliance, Federal & State Vapor Intrusion Guidance, the DC Hazmat Ban, and hazmat security. Additional resources will be provided to give members timely and helpful information in an easily accessible manner.

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, and co-funding of projects.



Utility Solid Waste Activities Group
c/o Edison Electric Institute
701 Pennsylvania Avenue, NW
Washington, DC 20004-2696
202-508-5643
www.uswag.org

USWAG

USWAG was formed in 1978 and is an association primarily dedicated to assisting members in the management of wastes and the beneficial use of materials associated with the generation, transmission, and sale of electricity and natural gas. USWAG is comprised of approximately 80 individual utilities, energy companies, and energy trade associations. Together, USWAG members represent more than 85% of the total electric generating capacity of the U.S., and service more than 95% of the nation's consumers of electricity and over 93% of the nation's consumers of natural gas.

CONTACT INFORMATION:

Jim Roewer, Executive Director,
jim.roewer@uswag.org
202/508-5645

Celeste Heery, Manager, Program Services,
celeste.heery@uswag.org
202/508-5643

Visit the USWAG web site at: www.uswag.org

USWAG Counsel, DLA Piper Rudnick Gray Cary US LLP
www.dlapiper.com. 202/861-3900