

USWAG 2006 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 treated wood, remediation waste reform, revisions to the oil spill control program, and ensuring the cost-effective regulation of PCBs—this document highlights some of the immediate results and benefits that USWAG members achieved in 2006.

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 full legislative process has not yet been completed. Finally, in the third section we describe ongoing member services.

I. REGULATORY, POLICY, AND COMPLIANCE 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, including the U.S. House of Representatives Subcommittee on Environment and Hazardous Materials hearing on amendments to the Toxics Substances Control Act to implement the United States' obligations under the Stockholm Convention for Persistent Organic Pollutants; and the U.S. House of Representatives Small Business Subcommittee on Regulatory Reform hearing on Administration Action to Reduce Unnecessary Regulatory Burdens on America's Small Manufacturers.

Federal Legislation Implementing the Stockholm Convention on Persistent Organic Pollutants—USWAG achieved a significant legislative achievement in 2006 by working across party lines in having both the Democratic and

Republican versions of POPs implementing legislation remove PCBs from the otherwise applicable prohibition on the manufacturing, use, distribution and disposal of POPs chemicals. Both pieces of legislation recognize that the existing federal PCB regulatory program enables the United States to meet its Convention obligations with respect to PCBs. While POPs implementing legislation will continue to be developed in 2007, this bi-partisan recognition of the unique regulation of PCBs under federal law should help ensure a reasonable and appropriate approach to PCBs in the final legislation.

Spill Prevention Control and Countermeasures (SPCC) Rules—Another significant achievement for USWAG in 2006 involved EPA's final promulgation of the SPCC rule. USWAG's advocacy efforts were instrumental in tailoring the final rule so as to provide flexibility to utilities with respect to the requirement to install secondary containment as applied to oil-filled electrical equipment. The rule also provides regulatory relief from certain of the SPCC certification requirements for small facilities. In addition, EPA proposed an extension of the effective date for the SPCC's 2002 amendments to July 2009, giving the industry additional time to plan for the new rules.

Conditional Exclusion for Cathode Ray Tubes—At the urging of USWAG and other aligned parties, EPA issued a final rule excluding used cathode ray tubes (“CRTs”) and CRT processed glass from the definition of solid waste when destined for recycling. The rule establishes another important exclusion from RCRA jurisdiction for materials that are recycled and provides regulatory relief for many USWAG members that generate CRTs from their systems. In addition to obtaining this regulatory relief, CRTs that qualify for the exclusion are *not* counted in determining a facility’s generator status, which may allow some USWAG members to “downgrade” their RCRA generator status.

Exclusion from “Hours of Service” Restriction—USWAG supported EEI in a successful effort to clarify that electric utility service vehicles are exempt from the DOT “hours of service” regulation. As a practical matter, this allows operators of utility service vehicles more flexibility in responding to public service outages.

Prevention of Unwarranted DHS Regulation—USWAG worked successfully with an aligned industry group to help prevent new legislation that would have expanded the jurisdiction of the Department of Homeland Security over the transportation of hazardous materials. These efforts helped to prevent redundant and unwarranted legislative controls on the transportation of hazardous materials by USWAG members.

Removal of Penta Treated Wood as a Targeted Reservoir Source of Dioxin—Through its advocacy efforts in the Great Lakes Binational Toxics Strategy (“GLBTS”) – an EPA and Environment Canada collaborative effort to eliminate POPs from the Great Lakes Basin – USWAG, through the presentation of sound science, successfully demonstrated that penta-treated wood poles are not a significant reservoir source of potential dioxin loadings to the environment. USWAG’s Treated Wood Guidelines document – which sets forth life cycle management recommendations for all categories of treated wood – played an important role in demonstrating to regulators that the utility industry is a proper steward of its treated wood products. This is an important achievement as it helps to prevent unnecessary initiatives seeking to impose further federal controls on treated wood use, management and disposal.

NAS Issues Report Critical of Draft Dioxin Reassessment—In an effort strongly supported by USWAG and other aligned parties, the National Academies of Science (NAS) issued a report critical of many of EPA’s assertions in its draft dioxin reassessment. USWAG’s major concern with the draft dioxin reassessment has been its assertion

that certain PCBs (*i.e.*, coplanar PCBs) are considered to be “dioxin-like” and, therefore, any reduction in the toxicity levels for dioxin – as recommended in the current draft – would lead to similar significant reductions in the toxicity levels for PCBs, resulting in more stringent PCB cleanup standards and perhaps eliminating certain PCB use authorizations. The NAS recommendations to correct the fundamental flaws in the draft dioxin reassessment are important to ensure that the reassessment is not inappropriately used as the technical basis to amend the PCB regulations.

DOE Study on CCP Management Practices & ASTM CCP Standard—With support from USWAG, DOE issued a report (jointly sponsored by DOE and EPA) on coal combustion product (“CCP”) management practices. The purpose of the report was to provide an update on industry CCP management practices and state regulatory oversight since the 2000 Beville Regulatory Determination and 1999 Report to Congress. The DOE report provides significant support to USWAG’s position regarding the rigorous nature of state controls over CCP management and the lack of a need for a comprehensive federal regulatory program for CCP management under RCRA.

EPA Provides Utility Specific IUR Reporting Guidance—Following USWAG’s close working relationship with EPA during development of the USWAG 2006 Inventory Update Reporting (IUR) rule workshop, EPA developed, in response to USWAG’s request, a utility specific IUR Question and Answer (Q&A) document focusing specifically on utility IUR reporting issues. The Q&A document provides important practical guidance for USWAG members, many of whom are for the first time subject to the IUR rule for activities involving the beneficial use of CCPs.

RCRA Burden Reduction Rule—In another initiative strongly supported by USWAG, EPA issued a final rule reducing the recordkeeping and reporting obligations for RCRA regulated facilities. While many of the burden reduction benefits are aimed at RCRA permitted facilities, the rule also provides important relief for RCRA generators, including entities accumulating hazardous wastes in 90-day accumulations units, which includes many USWAG members. In addition to reduced recordkeeping and reporting obligations, the rule allows for more streamlined emergency responses and contingency plan procedures and the use of in-house professional engineers to certify hazardous waste management units rather than requiring the use of outside consultants. USWAG members identified these burden reduction measures as providing meaningful economic relief from RCRA’s generator requirements.

II. FAVORABLE PROGRESS ON ISSUES & ACTIVITIES

Management of Disposed Coal Combustion Products—

After extended negotiations with EPA, the Agency is poised to notice USWAG's CCP Action Plan that provides a non-regulatory framework for addressing the management concerns expressed by EPA in its May 2000 Bevill Regulatory Determination. Also, as noted above, USWAG supported the joint DOE/EPA update report on CCP management, which identified the rigorous nature of state controls over CCP management. The USWAG Action Plan, coupled with DOE report, provide additional support for USWAG's position that EPA does not need to develop a comprehensive federal regulatory program to address CCP management.

PCB Remediation Waste Initiative—USWAG continues to press EPA and the Office of Management and Budget (OMB) to respond to USWAG's position – as adopted by OMB's Thompson Report on suggested regulatory reforms – 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 more costly TSCA landfills. Confirmation of this position could save USWAG members thousands of dollars for each PCB remediation waste cleanup. A recent EPA Administrative Law Judge Decision regarding the management of certain "multi-phasic" PCB remediation wastes supports USWAG's position on this issue and USWAG will continue to lead a multi-industry coalition to obtain a favorable outcome for all PCB remediation wastes.

Proposed Relief for the Disposal of Low-Activity Waste—

USWAG continued its support in 2006 of EPA's initiative to expand the disposal options for low-activity wastes, including 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. The NRC solicited input for modifications to the low level waste program, and USWAG took this opportunity to urge the NRC to work with EPA in developing expanded disposal options for all low-activity wastes, including disposal at RCRA Subtitle C facilities.

Development of USWAG Voluntary PCB Phase-Down Program—

In response to the increasing emphasis on the removal of PCBs from service and the possibility of mandatory PCB phase-out regulations, USWAG continues to document and support the voluntary efforts of USWAG members in removing PCB-containing equipment from service. This type of pro-active effort by USWAG will help educate policy-makers and hopefully serve to temper EPA's interest in promulgating mandatory phase-out regulations. USWAG plans on continuing to work with EPA to ensure the Agency is fully apprised of USWAG member voluntary programs and to ensure that the Agency is kept apprised of the success of these programs. A key message for EPA is that while voluntary reduction efforts are wide-spread throughout the utility industry, 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 2006, including USWAG's plans to file a rulemaking petition requesting EPA to adopt 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 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 rulemaking schedule for rendering FIFRA re-registration decisions for key wood preservatives, including CCA, penta and creosote, (2) EPA's proposed ban in the Portland Cement NESHAP on the use of fly ash with enhanced mercury content in cement kilns; (3) EPA's proposal to provide

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relief from RCRA's generator requirements for academic and commercial laboratories; (4) NRC's request for comment on options for amending its low-level waste regulations to better facilitate the management of disposal of materials; (5) EPA's issuance of the PCB Site Revitalization Guidance; and (6) DOT's proposed revisions to the applicability of the security plan requirements in the hazardous materials regulations.

Individual Member Counseling—USWAG counsel (DLA Piper 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 from 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 & PCB Compliance Workshops—USWAG held two compliance workshops in 2006: a course on PCB Compliance, and compliance training on the 2006 TSCA IUR Rule. These workshops provide valuable regulatory compliance assistance and practical training tailored specifically to USWAG members. USWAG is scheduled to hold SPCC compliance workshops in 2007.

PCB Interpretive Letter Compendium—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—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 containing select DOT Research and Special Program Administration Letters of Interpretation and Exemptions. Tailored to include letters particularly applicable to the utility industry, this database of over 100 interpretive letters on a range of transportation issues provide solutions to help reduce members' compliance costs.

Online Access to Hazmat Security Plan Resources—To help members meet the hazmat security plan requirements promulgated by DOT in 2003, USWAG acquired rights to a series of hazardous material/motor carrier security resource documents produced by the American Trucking Association, Inc.. These documents include a sample security plan, a variety of guidance documents discussing anti-terrorism risk assessment and security planning, and human resource and training exercises.

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.



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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.