

USWAG 2007 RESULTS AND BENEFITS

Highlights of Accomplishments and Activities

USWAG HAS CONTINUED TO PURSUE IMPORTANT ISSUES RELATED TO PCBs, SOLID AND HAZARDOUS WASTES, HAZARDOUS MATERIALS TRANSPORTATION, AND CHEMICAL SECURITY THROUGH REGULATORY ADVOCACY, LEGISLATIVE TECHNICAL SUPPORT, AND, WHEN NECESSARY, LITIGATION EFFORTS.

Since USWAG's founding in 1978, the value of the organization's regulatory and legislative successes exceeds \$150 billion. These achievements increase in value each year as past successes are maintained and new accomplishments are realized.

While USWAG continues to pursue long-term core interests including protection of the non-hazardous regulatory status of fossil fuel combustion products and treated wood, revisions to the oil spill control program, and the cost-effective regulation of PCBs, this document highlights some of the immediate results and benefits that USWAG members achieved in 2007.

This report is divided into three sections. The first section describes activities USWAG has completed with a favorable outcome. The second section identifies currently pending activities in which a favorable interim milestone, such as congressional committee adoption of an amendment or bill USWAG supports, has occurred but with respect to which the full legislative process is not yet completed. Finally, the third section describes ongoing initiatives and member services.

I. REGULATORY, POLICY, AND COMPLIANCE SUCCESSES

USWAG Advocacy Before Key Decision Makers on Important Regulatory and Policy Initiatives—In 2007 USWAG continued to protect and advance the interests of its utility members through advocacy efforts before leading federal decision makers in a variety of important governmental venues. Specific events included: a meeting with the General Counsel of the Environmental Protection Agency ("EPA") to achieve regulatory clarity with respect to the management of PCB remediation wastes under the Toxics Substances Control Act ("TSCA"); direct dialogue and industry-specific meetings with key officials from the Department of Homeland Security ("DHS") regarding application of the new Chemical Facility Anti-Terrorism Standards ("CFATS") program to electric and gas utilities; and significant, sustained communication with the Directors of both the EPA's Office of Solid Waste ("OSW") and the EPA's Office of Pollution Prevention and Toxics ("OPPT"). These efforts concerned a number of issues critical to the utility industry, including policy and regulatory decisions involving the future regulation of coal combustion products ("CCPs") and the continued use, and possible phase-out, of PCB-containing equipment.

Transfer of PCB Cleanup and Spills Regulations to the Office of Solid Waste—An important development for USWAG in 2007 was the transfer of responsibility for implementation of the PCB cleanup and disposal regulations from the Office of Prevention, Pesticides and Toxic Substances ("OPPTS") to the Office of Solid Waste and Emergency Response ("OSWER"). USWAG strongly supported this transfer because it offers important opportunities for pursuing regulatory reform, including USWAG's efforts to have EPA clarify that all PCB remediation wastes containing < 50 ppm PCBs can be managed in non-TSCA disposal facilities. Upon transfer of the program, USWAG representatives immediately initiated discussions with OSWER to begin laying the groundwork for pursuing this and other related PCB cleanup and disposal initiatives.

Expansion of Federal Transportation Regulation—Working in coordination with aligned parties, USWAG helped lead a successful effort to convince PHMSA to that it should revisit its earlier decision (HM-223) on the scope of its jurisdiction over loading, unloading and storage-incident-to-transportation. The expansion of the Agency's jurisdiction would preempt inconsistent federal, state and local regulations over these activities and would help standardize transportation regulations applicable to utility operations.

USWAG Involvement in Application of DHS Regulations to Utility Industry—Working in coordination with the Edison Electric Institute, USWAG has developed important relationships with DHS staff to assist members in compliance with the new DHS Chemical Facility Anti-Terrorism Standards (“CFATS”) program. As a result of these recently developed relationships, USWAG has opened channels of communication with DHS through which we have worked to educate DHS staff regarding the practical compliance issues associated with application of CFATS to the utility industry. These efforts have led to two meetings between the utility industry and DHS aimed at identifying and resolving utility-specific compliance questions. Communication between the utility industry, led by USWAG, and DHS has also prompted DHS to produce a series of Frequently Asked Questions to assist all affected facilities in compliance with the new rules. USWAG will continue to foster this important working relationship and coordinate with DHS to better tailor future DHS regulations applicable to the utility industry.

II. FAVORABLE PROGRESS ON ISSUES AND ACTIVITIES

Management of Disposed Coal Combustion Products—EPA published its Notice of Data Availability (NODA) inviting public comment on data on CCP disposal practices that post-date the administrative record on which EPA based its 2000 Bevill regulatory determination. EPA is asking the public how the new information should affect future regulatory decisions on CCP disposal. The new data include, among other things, (1) a joint DOE/EPA report finding major improvement on management standards at new or expanded CCP landfills and surface impoundments and in state regulatory programs, (2) the USWAG CCP Action Plan, which more than 75% of USWAG members’ coal-fired capacity have either committed to implement or are operating in a manner consistent with the Plan; and (3) a damage case assessment that shows that most proven damage cases involve older unlined sites unrepresentative of newer CCP disposal units and that corrective action is underway or has occurred at nearly all sites involving releases to groundwater. USWAG, with support from state regulators, submitted comments advising EPA that national RCRA regulation of CCP disposal is no longer warranted in light of the significant changes in industry management and state regulatory policies on CCP disposal documented in the NODA documents. USWAG is urging EPA to make its decision later this year.

Revised Regulatory Definition of Hazardous Waste to Promote Recycling—Together with a multi-industry coalition, USWAG succeeded in persuading EPA to issue a supplemental proposal that would revise the regulatory definition of

hazardous waste by significantly expanding the types of recycling operations for hazardous materials that would be exempt from Subtitle C hazardous waste regulation. This achievement constitutes an important regulatory milestone for USWAG, as the proposal more clearly delineates the types of legitimate recycling activities that are excluded from hazardous waste regulation and would fundamentally alter the relationship between the federal RCRA program and secondary material recycling activities. Earlier comments submitted to EPA by USWAG urged the Agency to extend the recycling exclusion to encompass all legitimate reclamation of any hazardous secondary materials. In large part, EPA’s 2007 proposal reflected the positions of USWAG and other industry groups and significantly expanded the scope of the proposed exclusions to cover many types of reclamation activities. The final rule is due in 2008.

Spill Prevention Control and Countermeasures (SPCC) Rules—EPA has commenced the third rulemaking to amend the SPCC rules in this decade. In the months leading up to publication of the proposed rule, USWAG persuaded the Agency, among other things, to (1) exempt emergency diesel generator tanks at nuclear power plants from SPCC regulation because they already are regulated by the Nuclear Regulatory Commission; (2) provide regulatory relief for small SPCC-regulated facilities (i.e., 5000 gallons or less) to allow these facilities to use a simple SPCC template in place of preparing a full SPCC Plan with professional engineer certification; and (3) exempt tanker trucks used for oil transfer to/from oil-filled electrical and operational equipment from sized secondary containment. A final rule is expected towards the end of 2008.

PCB Remediation Waste Initiative—USWAG continues to press EPA for clarification of and/or amendment to its PCB regulations that would 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. USWAG submitted a white paper to EPA’s Office of General Counsel (“OGC”) setting forth the legal arguments supporting this position and subsequently met with the EPA General Counsel and his staff requesting that OGC issue a memorandum confirming this point. The General Counsel acknowledged that USWAG’s letter contained some “compelling arguments” and OGC is actively considering this issue. Confirmation of USWAG’s position could save USWAG members thousands of dollars for each PCB remediation waste cleanup.

Additionally, USWAG has been monitoring important initiatives with respect to PCB remediation wastes at the EPA Regional level and submitted a letter to EPA Region 5 and the State of Wisconsin regarding a Memorandum of Agreement (“MOA”) detailing the procedures that EPA

USWAG

Utility Solid Waste Activities Group

and the State would employ in coordinating federal and State responses to the remediation of PCB wastes. While USWAG's letter supported the MOA's important policy objective to "clarify the roles and responsibilities of U.S. EPA Region 5 and the WDNR" in addressing PCB sites, USWAG identified several important legal errors in the MOA pertaining to PCB remediation wastes. EPA has acknowledged that USWAG's letter raised important issues with national implications, and has told USWAG that EPA Headquarters is planning to coordinate among the various regions to address these issues.

Distinguishing Between Fuels and Solid Waste—Following the D.C. Circuit's June 2007 decision vacating EPA's Clean Air Act ("CAA") section 129 regulation excluding boilers, including utility boilers, from the term "solid waste incineration unit" for the purposes of section 129 incinerator standards, USWAG has been busy working with EPA and aligned parties to preserve the ability of utilities to burn secondary materials for energy recovery. The vacated rule was favorable to USWAG because it excluded boilers that combust solid waste (e.g., boiler chemical cleaning waste or tire-derived fuel) from being classified as "incinerators" provided that the boiler was designed and operated to recover energy.

EPA has gone back to the drawing board and is developing new regulations defining the scope of the section 129 incinerator program, including distinguishing the combustion of "non-hazardous solid waste," which is subject to the section 129 incinerator standards, from the combustion of fuels, which is not subject to the incinerator standards. USWAG has spearheaded a coalition of aligned parties developing a legal strategy to support the position that secondary materials burned for legitimate energy recovery are not "solid wastes." This would preserve the regulatory status of utility boilers that combust secondary materials for energy recovery. USWAG's position also urges EPA to include a "de minimis" exemption in the revised rule to ensure that utility boilers that are occasionally used to combust non-hazardous solid waste for destruction, as opposed to energy recovery (e.g., boiler cleaning wastes), are not inappropriately characterized as "solid waste incinerators" during such combustion practices.

Utility Consolidation Waste Petition—USWAG completed its rulemaking petition requesting that EPA amend the hazardous waste generator rules to authorize utilities to consolidate wastes generated along transmission and distribution rights-of-way at central consolidation facilities without requiring these facilities to obtain RCRA storage permits. The premise of the petition is that RCRA's "one size fits all" regulatory approach for generators is not well-suited to the unique characteristics of utility operations which may encompass thousands of square miles with hundreds or even thousands of locations (e.g., vaults, manholes, and substations) along utility

rights-of-way at which hazardous waste might be generated. The petition asks EPA to promulgate a rule specific to utilities allowing for the intra-company consolidation of hazardous wastes from remote locations (e.g., utility manholes) at company-owned utility central collection facilities ("UCCFs") without the need for UCCFs to obtain RCRA storage permits.

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 proactive effort by USWAG will help educate policymakers 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 update the Agency of these programs' results. The essential message for communication to EPA is that while voluntary reduction efforts are wide-spread throughout the utility industry, the ability and methods for voluntary removal of PCB-containing equipment varies among member companies depending on the unique operating circumstances of each utility company; there is not a "one size fits all" approach that can or should be adopted for the accelerated phase-down of PCB equipment.

III. ONGOING INITIATIVES AND 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. These issues include among others: (1) EPA's rulemaking schedule for rendering re-registration decisions under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") for critical wood preservatives including CCA, penta and creosote; (2) the legal challenge to EPA's ban in the Portland Cement NESHAP on the use of fly ash with enhanced mercury content in cement kilns; (3) EPA's proposal to develop an electronic manifest option for the transportation of hazardous waste; (4) EPA's renewed interest in working with the Nuclear Regulatory Commission to develop options for expanding the number of facilities authorized to dispose of low-level radioactive wastes; and (5) EPA's initiative to further streamline the hazardous waste generator regulations.

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Utility Solid Waste Activities Group

Individual Member Counseling—Throughout 2007, USWAG counsel (Venable LLP) continued to provide members with individual counseling on an array of regulatory compliance issues, ranging from day-to-day questions related to the handling of hazardous waste, transportation of hazardous materials, and PCB and SPCC compliance questions, to large-scale concerns regarding 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 efforts 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 or consulting fees*

Regulatory Compliance Workshops—USWAG held three SPCC compliance workshops in 2007 to assist utilities in understanding and implementing the SPCC amendments adopted by EPA in 2002 and 2006. Detailed analysis of the SPCC program was provided by USWAG counsel as well as EPA SPCC staff. USWAG is scheduled to conduct an advanced PCB compliance workshop in 2008 and plans to conduct additional SPCC workshops in 2009 after EPA takes final action on the pending SPCC rulemaking expected at the end of this year. These workshops provide valuable regulatory compliance assistance and practical training tailored specifically to USWAG members.

PCB Interpretive Letter Compendium—USWAG has continued to add to its archive of critical EPA PCB interpretive letters addressing a wide range of PCB compliance matters. These letters contain important Agency guidance on PCB regulatory issues and provide useful guidance for achieving compliance with applicable PCB regulations while reducing the costs associated with regulatory compliance.

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 of particular relevance to the utility industry, this database of over 100 interpretive letters addressing a range of transportation issues provides 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. ("ATA"). 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 for 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

For more information about USWAG membership, contact:

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

Gayle Novak, USWAG Program Specialist
202/508-5654; gayle.novak@uswag.org

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

USWAG Counsel, Venable LLP
202/344-4000;
www.venable.com

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 nearly 110 individual utility operating companies, 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.