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U S W A G

USWAG

1999 RESULTS & BENEFITS

**Highlights of
Accomplishments
and Activities**

USWAG

has continued its regulatory advocacy, legislative technical support, and litigation efforts when necessary, on key solid and hazardous waste, PCB and hazardous materials transportation issues of importance to its members. While USWAG is continuing to pursue long-term core issues — e.g., the Bevill Phase II regulatory determination, remediation waste reform, preserving the nonhazardous status of penta-treated wood and obtaining regulatory relief for mixed waste — this document highlights some of the immediate results and benefits that USWAG members have obtained in 1999.

- **Bevill Combustion Waste Study** — Nearly 19 years after Congress enacted the Bevill Amendment, EPA completed the second phase of its study of utility combustion wastes and products and submitted its supplemental Report to Congress. For the “remaining wastes” studied in Phase II – e.g., co-managed coal combustion wastes, oil combustion wastes, residues from co-burning, and nearly all beneficial uses of ash – EPA recommended that hazardous waste regulation was not warranted. While the regulatory determination is still a work in progress, USWAG continues to play the leading role on behalf of the electric utility industry in securing a nonhazardous status for *all* “remaining wastes.” *EPA estimates that hazardous waste regulation of fossil fuel combustion wastes and products could cost the utility industry approximately \$860 million per year. USWAG believes that EPA has significantly underestimated the true cost of hazardous waste regulation. A final determination is due in March 2000.*
- **EPA Provides Regulatory Relief for Lighting Wastes** — Following years of efforts by USWAG, EPA issued a final rule providing regulatory relief for lighting wastes under RCRA’s universal waste program. The rule removes all lighting wastes that exhibit a hazardous characteristic from RCRA’s hazardous waste generator, storage and transportation requirements, and allows electric utilities to manage spent lamps, including those of their customers, under the less costly and streamlined universal waste consolidation standards.
- **EPA Proposes Broad Relief for Electric Utility Mixed Waste** — In direct response to USWAG’s longstanding rulemaking and litigation initiatives, EPA at long last proposed a comprehensive proposal that would end the dual regulation of commercial radioactive/hazardous mixed waste. The proposal would exclude mixed waste generated by NRC licensees from RCRA’s hazardous waste requirements, as long as the waste is managed in accordance with applicable NRC controls. By ending the dual regulatory regime for mixed waste, the proposal also would remove commercial nuclear power plants from the lingering specter of RCRA enforcement actions attributable to the regulatory inconsistencies of the dual regulatory regime. The proposal is expected to save the electric utility industry millions of dollars through avoided RCRA permitting and compliance costs.
- **EPA Initiates Rulemaking to Provide Regulatory Relief for Consolidation of Hazardous Waste from Remote Electric Utility Sites** — EPA has embarked on a rulemaking initiative, at the urging and support of USWAG, to provide regulatory relief for the consolidation of hazardous wastes generated at remote locations throughout electric utility transmission and distribution systems (e.g., manholes, field locations and substations). The anticipated proposal — aimed specifically at electric utility systems — would allow companies to consolidate at a central collection facility (CCF) hazardous wastes generated at remote locations. The intra-company collection of wastes would not be subject to RCRA’s manifest regulations and, most importantly, the CCF would not require a RCRA storage permit. This approach will allow electric utilities to consolidate wastes from remote locations in a cost-effective and practical manner.

- **EPA Issues PCB Mega Rule Technical Amendments Correcting Errors Identified by USWAG** — USWAG obtained an important regulatory correction from EPA in the PCB Mega Rule technical amendments where EPA clarified the requirements applicable to the management of drained PCB-Contaminated Articles (*i.e.*, equipment containing 50-500 ppm PCBs). The original Mega Rule incorrectly subjected drained PCB-Contaminated Articles (*e.g.*, drained transformers) to the PCB manifest and annual document log requirements. This placed another unnecessary burden on electric utilities and created an immediate compliance concern for some in the regulated community. In response to a lawsuit filed by USWAG, the Agency issued a technical amendment correcting this regulatory error by making clear that drained PCB-Contaminated Articles are not subject to the PCB manifest requirements or the PCB annual document log requirements.
- **USWAG Provides PCB Mega Rule Compliance Guidance to Its Members** — USWAG has provided important PCB Mega Rule guidance to its members, including, among other things, a Question and Answer document responding to specific compliance questions raised by electric utilities. In addition, USWAG has prepared a PCB Cleanup Decision Tree that provides a common sense guide identifying regulatory options under the Mega Rule for responding to spills of PCBs.
- **Court Bars EPA from Bringing Overfiling Actions Under RCRA** — USWAG and other industry groups won an important legal victory when the U.S. Court of Appeals for the Eighth Circuit declared that EPA *cannot* override the specific enforcement actions of a RCRA authorized state. *Harmon Industries v. Carol Browner*, (No. 98-3775, Sept. 16, 1999). The Court found that RCRA allows EPA to pursue an enforcement action against a regulated entity in a RCRA authorized state *only* after a state's RCRA authorization has been revoked or when the authorized state fails to initiate an enforcement action in the first instance. As a practical matter, the decision means that the enforcement action of a RCRA authorized state has the same effect as if the action were taken by EPA, and therefore EPA cannot bring a separate enforcement action on top of that brought by the authorized state (referred to as "overfiling"). USWAG and other industry groups participated in the litigation by filing an amicus brief in support of Harmon Industries.
- **Court Upholds EPA's Innovative Regulation Authorizing Land Ban Treatment Variances to Promote Aggressive Remediation of Contaminated Sites** —USWAG and other industry groups were successful in persuading the U.S. Court of Appeals for the District of Columbia Circuit to uphold EPA's new land ban treatment variance regulation. Under this rule, EPA or an authorized state may adopt alternative treatment standards for land disposal of remediation waste (in lieu of the stringent Best Demonstrated Available Technology standards) where the overseeing agency finds that alternative treatment standards will "minimize" the overall threats to human health and the environment, taking into account both the risks disposing of the remediation waste at a new disposal site and the risks of leaving the contamination in place. EPA adopted this flexible approach for achieving compliance with the RCRA land ban program for remediation waste to provide an inducement for "aggressive remediation" of contaminated sites. *This rule provides a fallback for facilitating a flexible approach to MGP and other site remediations in the event that some of the broader administrative and legislative reforms currently under consideration are not adopted.*
- **SF₆-Containing Equipment: DOT Packaging Exemption** — Earlier this year, USWAG was successful in obtaining an exemption from the DOT hazardous materials packaging regulations to authorize transportation in commerce of high pressure SF₆-containing circuit switchers made by S&C Electric Company (2000 Series and Mark Series). USWAG worked with the manufacturer and DOT staff and management to expedite issuance of the exemption. Furthermore, at USWAG's urging, RSPA promptly issued a revision to the exemption to significantly reduce the paperwork burden for utilities.

- **USWAG Assists in Defeating Federalism Legislation** — USWAG enjoyed an important victory as Congress abandoned legislation that would have adversely affected electric and gas utilities' regulated activities involving PCBs and transportation of hazardous materials. As introduced, the legislation would have precluded the preemption of state and local requirements unless certain conditions were met by Congress and the Executive Branch. If this legislation had passed, there would have been an increased regulatory burden placed on utilities related to compliance with varying state and local regulations. USWAG was active in a multi-industry effort to defeat the legislation.
- **USWAG Participates in Other Rulemaking Initiatives of Importance to Electric Utilities** — In addition to the accomplishments identified above, as part of its overarching mission to advance and protect the interests of its members, USWAG also filed comments on key issues arising under RCRA, TSCA, and HMTA, including, but not limited to, (1) opposition to EPA's imposition of new controls under TSCA on electric utility lead-based paint removal operations; (2) EPA's development of guidelines under RCRA Subtitle D for the management of industrial nonhazardous wastes, including coal ash; (3) streamlining of RCRA hazardous waste regulations as applied to land ban requirements; (4) the development of Regional and National Programs designed to encourage the voluntary phase-out of PCB-containing electrical equipment; (5) SPCC (Edible Foods Act); (6) DOT (HMTA).
- **Individual Member Counseling** — USWAG counsel 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 remediation strategies. Additional information, in the form of technical and legal analyses of proposed and final regulations, reduces members' burden of tracking Federal rules and provides members with time to meet requirements of new and revised regulations. *This service, which is included as part of USWAG membership, provides USWAG members with prompt, specialized and cost-effective legal advice, avoiding the need for additional counsel/consulting fees.*
- **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 1999 USWAG contributed only a fraction of the costs for preparing information on the generation and management of mixed radioactive-hazardous waste by the electric utility industry in support of a conditional exclusion from RCRA. Similarly, USWAG has contributed only a fraction of the costs for promoting RCRA remediation waste reform and the development of Industrial D Guidance and regulatory exit levels under the Hazardous Waste Identification Rulemaking.

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