

## USWAG 2023 RESULTS AND BENEFITS

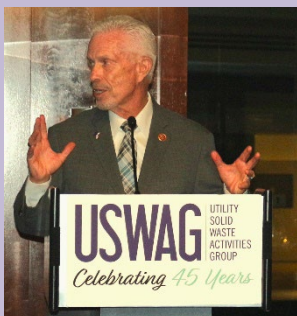
### Highlights of Accomplishments and Activities

THROUGHOUT 2023, USWAG CONTINUED ITS REGULATORY AND LEGISLATIVE ADVOCACY EFFORTS ON BEHALF OF THE ELECTRIC AND GAS UTILITY INDUSTRIES AND PROVIDED USWAG MEMBERS WITH STRATEGIC AND DAY-TO-DAY COMPLIANCE ASSISTANCE, TRAINING, AND TECHNICAL AND OPERATIONAL SUPPORT ON A RANGE OF ISSUES CRITICAL TO SOLID AND HAZARDOUS WASTE MANAGEMENT; SITE ASSESSMENT AND REMEDIATION; HAZARDOUS MATERIAL TRANSPORTATION; MANAGEMENT AND DISPOSAL OF PCBs; AND REPORTING, STORAGE, AND MANAGEMENT OF OTHER CHEMICALS AND MATERIALS USED AND GENERATED BY MEMBERS IN CONNECTION WITH THEIR OPERATIONS.

Since its founding in 1978, USWAG's regulatory and legislative successes have translated to billions of dollars in benefits to the electric and gas utility industries. Over time, the value of past achievements has magnified as they establish the foundation upon which new gains are built.

Throughout 2023, as USWAG celebrated its 45<sup>th</sup> year of continuous service to members, we continued to pursue long-term core interests, including support of appropriate non-hazardous regulation for coal combustion residuals (CCR), cost-effective and environmentally protective stewardship of former manufactured gas plant sites, and appropriate regulation of hazmat transportation and PCBs in electrical equipment and natural gas pipelines. At the same time, the organization has worked to respond to and support member interest in emerging areas, such as end-of-life management of renewables and management of materials and waste streams potentially containing per- and polyfluoroalkyl substances (PFAS). This document highlights the key initiatives pursued and the major successes achieved in 2023 on these and other fronts.

USWAG wants to express its sincere appreciation to Xcel Energy for hosting a Remediation & Response Committee meeting, Duquesne Light Company for hosting a DOT Committee meeting, AEP for hosting the Summer Policy Committee Meeting and the American Gas Association for hosting the Fall Policy Committee meeting. Having access to members' topflight meeting facilities at no cost allows USWAG to deliver more value-added services to members.



USWAG also wants to recognize the three speakers from our 45<sup>th</sup> Anniversary Celebration Dinner held in conjunction with the Fall Policy committee meeting. In addition to The Honorable Bill Johnson (OH-6), Chairman of Subcommittee on Environment, Manufacturing, and Critical Minerals, House Energy & Commerce Committee (pictured at left), we heard from Tom Kuhn, President & CEO, Edison Electric Institute and Scott Corwin, President & CEO, American Public Power Association. The messages they delivered provided a fitting capstone to USWAG's 45<sup>th</sup> anniversary celebration.

## I. Highlights of Key Member Benefits in 2023

In 2023, USWAG continued its federal legislative, regulatory, and policy advocacy efforts to protect and advance USWAG member interests. USWAG also provided members with valuable, timely, and in-depth analyses of proposed and final rules, policy and guidance documents, and legislation and facilitated member compliance efforts by offering a range of technical and operational resources, including training webinars, workshops, and individual member counseling.

Key initiatives undertaken and successes achieved in 2022 include:

- Continued support of members' compliance with the federal CCR rule, including preparation of comments on EPA's proposed denials of all pending alternative liner demonstration applications under the CCR Part B rule and on the Agency's new proposed rulemaking to expand the CCR rule to legacy CCR surface impoundments and CCR management units.
- Continued participation in litigation challenging EPA's new legal positions on compliance with key federal CCR rule provisions, including the Agency's unlawful expansion of the scope of CCR units regulated under the rule and revised closure standards when leaving CCR in place.
- Conducted a strongly attended CCR technical workshop, which had a new dual-track format focused on various topics involving closure, groundwater monitoring, and corrective action remedies.
- Supported members' use of the nationwide USWAG PCB risk-based disposal approval authorizing the management and disposal of certain as-found < 50 ppm PCB remediation wastes in non-Toxic Substances Control Act (TSCA) disposal units to facilitate and expedite site cleanups.
- Provided analysis and related member compliance resources in connection with EPA's final rule amending the PCB disposal regulations at 40 C.F.R. Part 761.
- Hosted a four-part PCB 101 training webinar to facilitate USWAG member company understanding of and compliance with the federal PCB regulations related to the use, storage, and disposal of PCB-containing equipment and materials. The PCB 101 webinars were recorded and are available on the USWAG web site for on-demand access.
- Continued ongoing work to track and respond to TSCA risk evaluation developments, including EPA revisions to the TSCA risk evaluation framework and the multi-pronged risk evaluation and risk management activity focused on asbestos and asbestos-containing articles.
- Submitted comments on EPA's Advanced Notice of Proposed Rulemaking (ANPRM) regarding potential options for dealing addressing issues concerning the management of used drums or containers at drum reconditioning facilities, including the possible elimination of the Resource Conservation and Recovery Act (RCRA) empty container rule.
- Continued monitoring of and support of member interests in ongoing regulatory initiatives impacting end-of-life management of renewable waste streams, including EPA's decision to initiate a rulemaking to add solar panels to the federal Universal Waste program.
- Continued monitoring and keeping members updated on various regulatory initiatives and changes that impact their transportation operations, including harmonization of domestic regulations with changes to international standards, governmental responses to the East Palestine train derailment, potential changes to DOT registration fees, suspension of the authorization of LNG transport by rail, updated postal regulations related to hazmat shipping, and the development of further changes to the transportation requirements applicable to lithium batteries.
- Submitted comments in support of USWAG's petition to reduce regulatory burden related to the shipment of Dexsil test kits and electrical equipment containing oil.
- Continued monitoring and keeping members apprised of federal legislation that could impact members' transportation operations, including proposed statutory changes to the cap on hazmat registration fees, burden reduction related to transportation security clearances, and Congressional mandates for specific rulemaking proceedings.
- Commented on the Department of Interior's ANPRM regarding potential revisions to the "Type A" regulations for streamlined assessments under the Natural Resource Damage and Assessment and Restoration (NRDAR) regulations.
- Hosted a two-day Spill Prevention, Control, and Countermeasure (SPCC) Workshop featuring presentations and trainings by key EPA personnel

overseeing implementation and enforcement of the SPCC and facility response plan (FRP) regulations.

- Provided analysis and member company compliance resources in connection with EPA’s final reporting TSCA reporting rule for PFAS.
- Submitted comments on EPA’s proposal to list PFOA and PFOS hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as well as comments on EPA’s ANRPM regarding the potential listing of additional PFAS as CERCLA hazardous substances.

## II. Regulatory and Legislative Advocacy Activities and Successes

USWAG’s advocacy efforts included the articulation and advancement of electric and gas power industry positions on a range of issues arising from nearly every major federal environmental and transportation statute, including the Resource Conservation and Recovery Act (RCRA), TSCA, CERCLA, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Clean Water Act (CWA), and the Hazardous Materials Transportation Act (HMTA). In 2022, key advocacy activities included:

**Advocacy Related to Implementation of CCR Rule** – 2023 saw a continued flurry of CCR-related activity at EPA. EPA issued additional proposed decisions under the Part A and Part B rules containing written positions on the meaning of certain key elements of the CCR rule. These positions—which involve the scope of regulated units, closure of units, and implementation of groundwater monitoring and corrective action—significantly impact USWAG member operations and potentially question the compliance of the entire industry. In response, USWAG has, in coordination with a group of individual electric utilities, continued its participation in two separate legal challenges in the D.C. Circuit, arguing that EPA unlawfully revised the CCR rule without going through the required notice and comment process.

EPA also issued a new proposed CCR rulemaking that would bring two new classes of units into the scope of the federal CCR rule: legacy CCR surface impoundments and CCR management units (CCRMUs). The proposal, if finalized, would result in a drastic expansion of the CCR

regulations to potentially encompass any amount of CCR historically placed on the ground at active or inactive power plants at any time, without limitation. USWAG, in close coordination with members, submitted comments on the proposal pointing out the significant legal and technical deficiencies in the proposal, including the failure of EPA to support the proposal with an updated risk assessment. In response, EPA subsequently issued a Notice of Data Availability (NODA) containing a new analysis of risk for historical landfills and surface impoundments and CCR fills. USWAG again, with the support of members, filed comments on the NODA identifying the many unreasonable assumptions and errors in EPA analysis. To support USWAG’s comments on the rulemaking and the NODA, USWAG also engaged a technical consultant to more fully evaluate and comment on the technical basis for the proposal.

Following release of the legacy impoundment and CCRMU proposal, USWAG hosted two informational webinars led by representatives of USEPA. The first webinar, dedicated to USWAG members, had 214 registrants. A subsequent webinar, for both members and affiliates, had 312 registrations. The high attendance at these two webinars attests to the major impact the proposal would have on industry if finalized.

USWAG is evaluating all legal strategies moving forward and continues to advise member companies on compliance with the CCR rule during pendency of the legal challenges and the proposed rulemaking.

**Advocacy for WIIN Act State CCR Programs** – USWAG continued to advocate for EPA’s implementation of the Water Infrastructure Improvements for the Nation (WIIN) Act, as moving from a self-implementing program to state/federal permit programs allows for greater regulatory certainty and for the consideration of site-specific characteristics in permitting decisions. In addition, approval of state CCR permit programs to operate in lieu of the federal rule eliminates the dual regulation of CCR under federal and state controls and enables USWAG members to interact directly with state regulators with respect to implementing CCR controls at their respective facilities. As part of these efforts, USWAG submitted comments on the Agency’s proposed denial of Alabama’s state CCR permit program, strongly urging EPA to reverse course and approve the state program, which largely mirrors the federal CCR regulations. USWAG has also continued to provide support for member-led advocacy efforts on Capitol Hill related to implementation of state and federal CCR permit

programs and the funding to support those programs.

**Ongoing Support for Member PCB Compliance Efforts** – In 2023, USWAG continued to support member company compliance with federal PCB regulations governing the use, storage, transportation, and disposal of PCBs and PCB-containing equipment and materials. This included hosting a four-part USWAG members-only PCB 101 webinar series covering topics including the PCB use authorizations and associated conditions; storage and marking requirements; PCB spill response options and strategies; decontamination and disposal options; enforcement considerations; and a segment focused on compliance issues arising in connection with the use and disposal of natural gas pipelines and appurtenances. This work also included ongoing member counseling on a range of PCB-related issues including use conditions, storage requirements, and PCB spill cleanup.

**PCB Cleanup Relief Following Major Storm Events** – USWAG successfully advocated for codification of regulatory provisions providing flexibility for entities responding to PCB spill events occurring in connection with natural disasters and other emergency events, with new regulatory language promulgated in 2023 that will take effect in February 2024. Pending the effective date of that new rule, USWAG continued to coordinate with member companies, EPA regional offices, and EPA Headquarters to obtain and implement storm-specific guidance documents addressing PCB spill response efforts in the context of hurricanes and other natural disasters. This included securing regional guidance documents that provided significant regulatory clarity while streamlining the PCB cleanup process for impacted USWAG members, resulting in significant operational and safety benefits for utilities undertaking cleanup and power restoration activities in the wake of these severe weather events.

**Ongoing Advocacy and Member Counseling Regarding Impact of TSCA Risk Evaluations** – In 2023, USWAG continued working with members to assess and respond to EPA’s ongoing risk evaluations of chemicals of importance to USWAG members, including multi-pronged risk evaluation activity focused on asbestos. In particular, USWAG worked with members to understand the scope of and prepare materials for responding to EPA’s risk evaluation that will focus on legacy uses of asbestos, including in coal tar wrap and other applications that may play a role in utility operations. USWAG also worked with members to identify potential impacts of the Part 1 (ongoing manufacture and processing) asbestos risk

evaluation as well as other potentially relevant chemical risk evaluations.

**Pursuit of Management Options for PV Panels** – USWAG continues to pursue various management options for PV panels that have been removed from service and monitor and respond to various efforts by states to provide alternative regulatory options. In 2023, EPA granted a rulemaking petition submitted by multi-industry group, including USWAG, to regulate PV panels that exhibit a hazardous waste characteristic—and would otherwise be fully regulated as a RCRA hazardous waste—under the federal Universal Waste Program. At the same time, EPA also announced a rulemaking effort to establish a distinct category of universal waste specifically tailored to lithium batteries in an effort to improve safety standards and reduce fires from mismanaged end-of-life lithium batteries. Several USWAG members also participated throughout 2023 in working groups for the SOLAR project, which is led by a group from Battelle Memorial Institute and aims to build a profitable, equitable, and integrated model for PV solar panel recycling.

**Ongoing Advocacy Related to RCRA Empty Container Rule** – In 2023, USWAG submitted comments to EPA on an ANPRM related to the management of used drums and containers. The ANPRM sought comment on a wide range of potential regulatory and/or non-regulatory options for dealing with the issues concerning the management of used drums or containers, including potential revisions to or elimination of the “empty container” provision that exempts empty drums and the residual hazardous waste remaining in the drums from hazardous waste regulation as long as certain conditions are met, an important regulatory option for USWAG members. In response to the ANPRM, USWAG engaged with an informal coalition of other aligned industry groups to share thoughts on the ANPRM and submitted comments urging EPA to leave the empty container provision intact.

**Ongoing Advocacy Related to Chemical Security Rules** – USWAG continues to track and respond to the implementation of various chemical security planning and reporting rules impacting member facilities, including expected revisions to EPA’s Risk Management Program (RMP) regulations and the reauthorization of the Chemical Facility Anti-Terrorism Standards (CFATS) program, which expired in July 2023. USWAG also prepared a detailed memorandum on the Chemical Safety Board (CSB)’s guidance on implementation of its Accidental Release



Reporting rule and evaluating the applicability of that rule to member facilities.

### **Regulatory Reforms to Transportation Regulations** –

USWAG monitored and participated in various regulatory initiatives that could impact the transportation operations of members. USWAG submitted comments in support of its petition to reduce the regulatory burden related to transportation of Dexsil test kits and electrical equipment containing oil. In addition, USWAG monitored and kept members apprised of the multiple proposed and finalized changes to the rules applicable to the transportation of lithium batteries. We also kept members informed on various proposals and requests for information issued by DOT that would directly impact members' transportation operations.

## **III. Other Key Activities and Member Benefits**

### **Ongoing Advocacy and Outreach Related to PFAS Regulatory Developments** –

USWAG continued its ongoing outreach to, education of, and engagement with members regarding federal and state legislative and regulatory developments involving the monitoring for, sampling and assessment of, and remediation and treatment of PFAS and PFAS-impacted environmental media, and continued coordination with the PFAS Regulatory Coalition in tracking and responding to federal and state PFAS-related regulatory developments. This work included analysis of and submission of comments on EPA's proposal to list PFOA and PFOS as CERCLA hazardous substances, as well as the Agency's ANPRM regarding the potential hazardous substance listing of additional PFAS chemicals—both actions which could significantly delay site assessment, remediation, and reuse and which will give rise to complex liability scenarios. In 2023, USWAG also provided members with analysis of and compliance assistance related to EPA's reporting rule for PFAS under TSCA section 8(a).

### **Site Remediation Challenges and CERCLA Liability Issues**

– In 2023, USWAG continued working with members to facilitate the transition to use of the recently updated ASTM E1527 Phase I Environmental Site Assessment standard (republished as ASTM E1527-21 in November 2021), which is critical to the establishment of eligibility for important landowner liability protections under CERCLA. USWAG also continued to work with members to

anticipate and address challenges to site remediation and due diligence, including site reopeners and other challenges posed by PFAS and other emerging contaminants.

### **Advocacy Regarding TSCA Chemical Risk Evaluation**

**Procedures** – In December 2023, USWAG submitted comments on EPA's proposed revisions to the rule establishing procedures for chemical risk evaluations conducted under TSCA section 6. This work included coordination with the American Chemistry Council (ACC) and the American Alliance for Innovation, a multi-industry group led by ACC and focused on protecting sound science and transparency in EPA's implementation of the 2016 Lautenberg Amendments to TSCA.

### **Individual Member Company Counseling and Related Legal Services**

– A key benefit of USWAG membership is the availability of member counseling from USWAG counsel, Venable LLP. Throughout 2023, members availed themselves of legal counseling on a host of compliance questions including, among others, those arising under RCRA, SPCC, TSCA (including the federal PCB regulations), CERCLA, and HMTA regulations, as well as the CSB's accidental release reporting program, EPA's RMP requirements, and requirements applicable to potentially PFAS-containing materials and waste. USWAG counsel provided member counseling on issues involving the day-to-day management and disposal of solid and hazardous wastes and other regulated materials, including issues involving hazardous materials transportation, use and disposal of PCB-containing materials and equipment, chemical data reporting (CDR), remediation strategies and related CERCLA liability considerations, chemical safety and security requirements, and issues related to Clean Air Act (CAA) emission standards for commercial and industrial solid waste incinerators (CISWIs). In addition, USWAG counsel identified and tracked federal regulatory developments and routinely conducted legal analysis of proposed and final regulations and guidance documents (supplemented, where appropriate, with technical analysis developed by environmental consultants under the direction of USWAG counsel). Members turned to USWAG counsel to clarify regulatory requirements imposed by newly promulgated regulations and evolving EPA policy, including questions related to compliance with the CCR rule, assessment and management of unauthorized PCB uses in building materials, development and implementation of SPCC plans, and requirements for establishing liability protection under CERCLA including in the wake of the recent revision of the ASTM E1527 Phase I Environmental Site Assessment standard. These legal

services, included as a benefit of USWAG membership, free members from the burden of constantly monitoring and evaluating federal regulatory developments and allow members to instead focus their time and resources on compliance efforts. Members have access to timely, cost-effective, specialized counseling without incurring the costs associated with outside counsel or technical consultants.

**Legal and Strategic Issue Papers** – USWAG maintains a series of issue papers providing an overview of the relevant legislative, regulatory, and litigation background associated with specific issues involving a range of topics of interest to members, including, for example, the management and disposal of certain chemicals and solid and hazardous waste and other topics arising under RCRA, TSCA, CERCLA, FIFRA, HMTA, SPCC, and CAA regulations. These issue papers are updated regularly to address recent developments. The issue paper compendium represents an important resource to facilitate member company compliance efforts and operational strategies, while preserving the history of significant past USWAG advocacy efforts that inform our ongoing work.

**Training and Compliance Assistance Resources** – Existing compliance training tools and resources, including USWAG workshop and webinar materials and presentations, have been compiled into a resource webpage to facilitate access to compliance training support for member company staff. USWAG is working to develop additional RCRA waste management and hazmat transportation training presentations that are focused on utility-specific materials and scenarios. USWAG is also developing a members-only compliance assistance webinar focused on EPA’s 2023 PFAS reporting rule under TSCA section 8(a). These presentations are being developed with the input of various USWAG members and incorporate insights and guidance specific to the utility industry.

**CCR Citizen Suit Resource Page** – Of particular value in the CCR context is the CCR Citizen Suit Resource Page. This resource enables members to stay abreast of citizen suits involving member companies by providing a centralized database of publicly available information related to citizen suits brought under the CWA, RCRA, and state laws. The database includes notices of intent to sue, complaints filed in federal or state court, briefs, consent decrees or settlement agreements where available, and final court decisions. This compilation is intended to provide members with access to the relevant legal documents and the range of legal theories and positions raised by the parties and the courts (where there are final decisions).

**Decommissioning Resources** – USWAG has developed a Decommissioning Issues Resource Page to facilitate member compliance efforts and enhance member strategy development in the decommissioning context. This online resource includes a compilation of existing USWAG products, such as relevant issue papers, memoranda, and other resources and materials from USWAG workshops and technical symposia related to decommissioning activities.

**CCR Workshop** – In April 2023, USWAG hosted a three-day CCR workshop attended by 245 individuals. The workshop featured a new dual-track format, with presentations from EPA, state regulatory agencies, academic researchers, consultants, and individual companies on a wide variety of topics, including regulatory and policy updates, specific groundwater monitoring and corrective action issues, closure techniques and case studies, and beneficial use of CCR. The workshop also featured a new USWAG members and affiliates dialogue session, where USWAG representatives joined with member companies and affiliates to discuss important CCR-related developments facing the industry.

**SPCC Workshop** – In August 2023, USWAG hosted a two-day SPCC Workshop attended by 71 individuals. This workshop provided a detailed review of SPCC regulations, with in-depth discussion on topics including applicability, training, self-certification, and enforcement considerations, as well as segments covering FRP requirements and EPA’s revised “waters of the United States” (WOTUS) rule. The workshop featured presentations from key EPA personnel overseeing implementation and enforcement of the SPCC and FRP programs and included multiple Q&A sessions between members and EPA.

**PCB 101 Webinar Series** – The four-part PCB 101 webinar series, first presented in September-October 2023 and available for USWAG members to stream via the USWAG website, provides an overview of the federal PCB regulations under TSCA. The series includes a deep dive on topics including use authorizations and associated conditions for PCB-containing equipment and materials, storage (for reuse and for disposal) and marking requirements, manifest and recordkeeping requirements, PCB spill cleanup options and strategies, and disposal and decontamination. The series also includes a segment focused on the use and disposal of PCBs in natural gas pipelines, as well as a discussion of recent changes to the federal PCB disposal regulations resulting from EPA’s 2023

PCB disposal rule.

**TSCA Compliance Training** – The “TSCA 101” webinar, first recorded in 2019 and available to USWAG members on USWAG’s website, is intended facilitate member compliance efforts in the context of TSCA obligations beyond those related to PCBs. The presentation included TSCA-related topics addressing (1) the CDR rule; (2) requirements applicable to the manufacture and import of chemicals; (3) recordkeeping and reporting obligations potentially applicable to chemical substances used by power companies; (4) chemical control regulations that can be imposed on chemicals manufactured, imported, and used by USWAG members; and (5) the relationship between federal TSCA chemical controls and state chemical regulations.

**PCB Interpretive Letter Database** – USWAG has compiled more than 100 letters and memoranda from EPA setting forth the Agency’s position on key PCB regulatory provisions. USWAG continues to update this database, which provides members with quick access to valuable EPA insight and precedent that can facilitate member compliance efforts in a cost-effective manner.

**DOT Hazmat Interpretive Letter Compendium** – This USWAG database containing select DOT Hazardous Materials Letters of Interpretation and Exemptions is a valuable resource for USWAG member companies. Tailored to include letters relevant to the electric power industry, this database of more than 100 interpretive letters helps reduce members’ compliance costs.

**Online Access to Hazmat Security Plan Resources** – To help USWAG members meet the hazmat security plan requirements promulgated by DOT in 2003 and revised in 2010, USWAG acquired rights to a series of hazmat motor carrier security resource documents provided by the American Trucking Association. These include a sample security plan, guidance documents discussing counterterrorism risk assessment and security planning, and human resources and training exercises.

**Leveraging Resources and Relationships** – USWAG continues to develop and strengthen relationships with aligned organizations and coalitions to leverage the value of members’ dues when developing and implementing advocacy positions, responding to EPA rulemaking and risk assessment actions, developing technical data on key regulatory initiatives, and engaging in litigation to challenge or defend agency actions. For example, in 2023, USWAG continued its partnership with a group of individual electric utilities to challenge EPA’s new legal positions on key CCR rule provisions; continued its participation in the PFAS Regulatory Coalition, a multi-industry group focused on federal and state regulatory developments involving PFAS; continued to participate in the ACC-led multi-industry group, American Alliance for Innovation, to respond, as appropriate, to TSCA chemical prioritization, risk evaluation, and risk management rules; coordinated with the multi-industry Interested Parties for Hazardous Materials Transportation group to promote reform of regulations that govern the transportation of hazardous materials; and worked with aligned parties on supporting EPA’s efforts to decline to regulate hazardous substances stored in above-ground storage tanks.

**USWAG 2.0** – In 2023, USWAG continued its member-led initiative to review its existing value proposition and organizational sustainability. The process, referred to as USWAG 2.0, examined various topics, including the organization’s foundational strengths, future program focus, and member retention, with the goal of ensuring that USWAG continues to provide value to members as the energy industry and regulatory landscape evolve. The task force met several times in 2023 and presented its findings at the Spring 2023 Policy Committee Meeting. The task force recommended that the group continue its dialogue, further engage the broader membership regarding the current and future or projected needs, and incorporate a new future-leaning value proposition into an updated Five-Year Plan that lays out concrete steps toward long-term sustainability.

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