UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF RESOURCE CONSERVATION AND RECOVERY
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

PUBLIC HEARING ON EPA'S PROPOSED RULE ON

Hazardous and Solid Waste Management System;
Identification and Listing of Special Wastes;
Disposal of Coal Combustion Residuals from
Electric Utilities

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1 P R O C E E D I N G S

2 (10:00 a.m.)

3 MR. DELLINGER: I'm going to do my

4 opening remarks, and then we'll call the first

5 group of people up to speak.

6 Good morning, and thank you for

7 attending today's public hearing on the

8 Environmental Protection Agency's proposed rule

9 regarding the regulation of coal combustion

10 residuals that are disposed of in landfills and

11 surface impoundments.

12 Before we begin I'd like to thank you

13 for taking the time out of your busy schedules to

14 address our proposed rule, and we look forward to

15 receiving your comments. This is the first of

16 seven public hearings that we'll be conducting.

17 The other hearings are scheduled in Denver,

18 Dallas, Charlotte, Chicago, Pittsburgh, and

19 Louisville.

20 My name's Bob Dellinger. I'm the

21 director of the Materials Recovery and Waste

22 Management Division of EPA's Office of Resource

1 Conservation and Recovery, and that's within the
2 Office of Solid Waste and Emergency Response of
3 the Environmental Protection Agency. With me on
4 the panel today are Laurel Celeste, Jesse Miller,
5 and Steve Souders.
6 Before we begin the public hearing, I'd
7 like to provide you with some background that
8 briefly describes the proposed rule on which we're
9 taking comments today as well as the logistics on
10 how we plan to run today's hearing. Coal
11 combustion residuals, or CCRs, are residues from
12 the combustion of coal at electric utilities and
13 include fly ash, bottom ash, boiler slag, and flue
14 gas desulfurization materials. Coal combustion
15 residuals contain contaminants such as mercury,
16 cadmium, selenium, and arsenic.
17 In 2008, 136 million tons of coal
18 combustion residuals were generated by electric
19 utilities and independent power producers. Of
20 that total, approximately 34 percent were
21 landfilled, 22 percent were disposed in surface
22 impoundments, 37 percent were beneficially used,

1 and 8 percent were placed in mines. The Agency
2 estimates that there are approximately 300
3 landfills and more than 600 surface impoundments
4 where coal combustion residuals are disposed.
5 EPA has proposed to regulate these coal
6 combustion residuals to ensure their safe
7 management when they are disposed in landfills and
8 surface impoundments. Without proper protections,
9 the contaminants in these residuals can leach into
10 groundwater and migrate to drinking water sources
11 posing public health concerns. In addition, the
12 structural failure of a surface impoundment in the
13 Tennessee Valley Authority's plant in Kingston,
14 Tennessee, in December 2008, released more than 5
15 million cubic yards of coal ash over approximately
16 300 acres of land and contaminated portions of the
17 Emory and Clinch rivers.
18 With this proposal, EPA has opened a
19 national dialogue by calling for public comment on
20 two different regulatory approaches available
21 under the Resource Conservation and Recovery Act
22 -- also called RCRA -- and both of these address

1 the risks from the disposal of coal combustion
2 residuals in slightly different ways. One option
3 presented in the proposed rule draws from the
4 authorities available under Subtitle C of RCRA.
5 This would create a comprehensive program of
6 federally enforceable requirements for waste
7 management and disposal. The other option is
8 based on the authorities of Subtitle D of RCRA,
9 which gives EPA the authority to set national
10 minimum criteria for waste management units that
11 would be enforced primarily by the states and
12 through citizen suits.
13 EPA decided to co-propose these two rule
14 options to encourage a robust dialogue on how to
15 address the human health concerns and structural
16 integrity issues associated with the disposal of
17 coal combustion residuals in landfills and surface
18 impoundments. EPA wants to ensure that our
19 ultimate decision is based on the best data
20 available and is made with the substantial input
21 of all stakeholders. Therefore, we ask that you
22 provide us your comments not only at today's

1 hearing, but any other comments and supporting
2 information that you want to provide in writing.
3 I'd also like to say a few words about
4 the beneficial use of coal combustion residuals.
5 The proposed rule maintains the Bevill exemption
6 for coal combustion residuals that are
7 beneficially used and, therefore, would not alter
8 the regulatory status of these residuals when used
9 in this manner. EPA continues to strongly support
10 the safe and protective beneficial use of coal
11 combustion residuals.
12 However, the proposal also indicates
13 that concerns have been raised about uses of coal
14 combustion residuals, particularly when used in an
15 unencapsulated form. Therefore, we request
16 comments, information, and data on specific
17 aspects of beneficial use, particularly those
18 activities that deal with unencapsulated
19 applications. We also make clear in the proposal
20 that coal combustion residuals that are placed in
21 sand and gravel pits, quarries, and other
22 large-scale fill operations are not examples of

1 beneficial use. EPA views these as disposal and
2 would regulate it as disposal under whichever
3 regulatory option EPA finalizes.
4 Now I'll cover some logistics for the
5 comment portion of today's public hearing.
6 Today's public hearing will work as
7 follows: Speakers, if you preregistered, you were
8 given a 15-minute time slot when you were
9 scheduled to give your 3 minutes of testimony. To
10 guarantee that slot we've asked that you sign in
11 10 minutes before your 15-minute slot at the
12 registration desk. All speakers, those that
13 preregistered and walk-ins, were given a number
14 when you signed in today, and this is in order --
15 this will determine the order in which you'll be
16 speaking. I will call speakers to the table by
17 number, four at a time -- and that table is over
18 on my right, your left of the room -- and each
19 speaker will have three minutes to speak.
20 We'll be using an electronic timekeeping
21 system and we'll also hold up cards to let you
22 know when your time is getting low. When we hold

1 up the first card, it means that you have 1 minute
2 left in your time; and when we hold up the second
3 card, you have 30 seconds remaining; and when we
4 hold up the third card, your time has ended. When
5 you've completed speaking, please return to your
6 seat at the table and remain there until all
7 speakers in your group have completed their
8 testimony. And after that time, you can carry
9 your -- any written materials over and put it in
10 with the court reporters.
11 We're here today to hear your comments
12 on this proposed rule. We want to hear what you
13 like and what you think needs improvement or
14 clarification. To the extent that you believe
15 that portions of the proposal need to be improved
16 or are not clear, please let us know both today
17 and in any written comments that you may provide.
18 We will not be answering questions on
19 the proposal. However, from time to time, any of
20 us on the hearing panel may ask questions of you
21 to clarify your testimony. If you've brought a
22 written copy of the comments you are giving today,

1 please leave a copy in the box by our court
2 reporter, as I mentioned before. If you're only
3 submitting written comments today, please put
4 those in the box by the registration desk. If you
5 have additional comments after today, please
6 follow the instructions on the yellow handout
7 sheet that you were provided and submit your
8 comments by November 19, 2010.
9 Our goal is to ensure that everyone who
10 has come today to present testimony is given an
11 opportunity to provide comments. To the extent
12 allowable by time constraints, we will do our best
13 to accommodate speakers who have to preregistered.
14 Today's hearing is scheduled to close at
15 9:00 p.m., but we will stay later if necessary.
16 Right now we're pretty much working through lunch.
17 We made that determination because of the number
18 of speakers. If, however, time does not allow you
19 to present your comments orally, we have prepared
20 a table in the lobby where you can provide a
21 written statement in lieu of oral testimony, and
22 these written statements will be collected and

1 entered into the docket for the proposed rule and
2 will be considered the same as if you presented
3 them orally. If you'd like to testify, but have
4 not yet registered to do so, please sign up at the
5 registration desk.
6 An agenda can be found in the packet you
7 received when you signed in today. Also included
8 is some material on the proposal as well as
9 instructions for submitting comments. We plan to
10 take occasional breaks according to the agenda.
11 We will shorten the breaks with high attendance.
12 We've already made that determination by working
13 through most of lunch and taken, I think, about a
14 10-or-so minute break to switch out the panelists
15 here. And we're going to try to get as many
16 people to be able to testify as possible today.
17 Finally, if you have a cell phone, we
18 would appreciate it if you can turn it off or turn
19 it to vibrate. And if you need to use your phone
20 at any time during the hearing, please move to the
21 lobby or somewhere outside the hearing room.
22 We ask for your patience as we proceed.

1 This is the first hearing. There may be a couple
2 glitches. We'll try our best, you know, to
3 maintain a nice steady flow for this hearing. We
4 may need to make some minor adjustments, as I
5 mentioned, and thanks again for participating.
6 We're really glad to see this kind of a turnout.
7 The one in Denver later on this week seems like
8 it's filling up to be a very full hearing as well.
9 So we should get started right now, and
10 now I need to find my piece of paper here. I'm
11 calling up the speakers number 2, 3, 4, and 5 to
12 move over to the speakers' table.
13 And Speaker Number 2 can move forward
14 and state your name, and then provide your
15 comments.
16 MR. GOLDSTEIN: I'm Nick Goldstein,
17 assistant general counsel for the American Road
18 and Transportation Builders Association.
19 ARTBA represents more than 5,000 members
20 nationwide in all sectors of the transportation
21 design and construction industry. First off,
22 thank you for holding today's public hearing.

1 ARTBA members routinely use coal ash to produce
2 concrete, which is an essential material in
3 transportation improvement projects. The
4 transportation sector's use of coal ash is truly
5 an environmental success story. According to
6 EPA's own data, coal ash accounts for between 15
7 and 30 percent of the cement and concrete.
8 Further, EPA has noted using coal ash at this
9 level results in GHG reductions of between 12.5
10 and 25 tons, and an annual reduction in oil
11 consumption of between 26.8 and 53.6 million
12 barrels.
13 Further, as EPA has noted, coal ash
14 generally makes concrete stronger and more
15 durable, which reduces the need for future cement
16 manufacturing and corresponding avoided energy
17 emissions and energy use. In 2008 alone, more
18 than 12.5 million tons of coal ash were used in
19 the production of concrete. Specific details on
20 the beneficial use of coal ash in transportation
21 improvements has been reported from a variety of
22 states, including Colorado, where the use of coal

1 ash resulted in GHG emissions reductions of 19,500
2 tons; Indiana, where transportation was able to
3 use an average of 42 percent of the recycled coal
4 ash in the state; North Carolina, where the use of
5 coal ash is saving 5- to 10 million annually on
6 transportation projects; Texas, where those
7 savings are estimated at 16 million annually; and
8 perhaps most recognizably in Minnesota, where coal
9 ash was used in the concrete for the new I-35
10 bridge replacement.
11 In order to preserve all of the benefits
12 that recycled coal ash has provided to the
13 transportation sector and the environment, ARTBA
14 urges EPA not to regulate coal ash as a hazardous
15 waste. On at least four separate occasions -- in
16 1988, 1993, 1999, and 2000 -- EPA has found coal
17 ash did not warrant regulation as a hazardous
18 waste. There's been no new scientific information
19 since the last time this issue was broached to
20 warrant reaching a different conclusion now.
21 Every element of the transportation
22 construction process, from the suppliers of

1 concrete to the contractors who handle
2 constructions materials, would be affected by the
3 stigma of a hazardous waste label for coal ash.
4 Specifically, because of the increased expense of
5 handling a hazardous waste, producers of coal ash
6 would be resistant to continue providing it to
7 concrete manufacturers.
8 Ultimately, without coal ash, concrete
9 will become more expensive and less durable. This
10 will not only increase the environmental footprint
11 of the transportation sector because more concrete
12 production will be necessary, but it will also
13 increase the overall cost of transportation
14 projects to the public.
15 In conclusion, ARTBA takes great pride
16 in the environmental successes the transportation
17 sector has been able to achieve through the
18 recycling of coal ash. ARTBA urges the EPA to
19 allow these achievements to continue and even grow
20 by rejecting the option of regulating coal ash as
21 a hazardous waste.
22 Again, thank you for holding this

1 hearing. We in the regulated community really
2 appreciate this forum to be able to state our
3 views.
4 MR. DELLINGER: Speaker Number 3?
5 MR. SHAFFER: My name's Eric Shaffer,
6 and I'm director of the nonprofit Environmental
7 Integrity Project. I appreciate the opportunity
8 to testify in favor of strong federal standards
9 for coal combustion waste.
10 I want to use my time to challenge EPA
11 to take a much more active role in investigating
12 this problem than I believe the Agency has. Last
13 week, EIP, Earthjustice, and the Sierra Club,
14 released a report documenting another 39 coal ash
15 sites that have contaminated groundwater or
16 surface water adding to the 31 we provided you in
17 February. And when I say "contamination," I mean
18 arsenic, lead, and other toxic metals that exceed
19 drinking water or water quality standards
20 sometimes by a factor of 10 or more.
21 Now, we know most of this data comes
22 from monitoring wells that are on-site, but that's

1 because states almost never require off-site
2 monitoring. Where that data exists, it invariably
3 shows contamination.
4 My question to you is, the law requires
5 you to evaluate this damage. What are you doing
6 to evaluate the information we presented to you?
7 And, more importantly, why aren't you taking the
8 initiative to get this kind of information
9 yourself?
10 We hear a lot of talk about coal ash not
11 being hazardous based on the so-called toxicity
12 characteristic leaching procedure used for
13 chemical waste. But I think EPA's known for more
14 than four years now -- the National Research
15 Council warned you -- that this was not the right
16 test for coal ash because it doesn't accurately
17 predict leaching rates from that material. And,
18 of course, we have now groundwater contamination
19 at more than 100 sites.
20 So are you going to act on the NRC's
21 recommendations or are you going to continue to
22 allow people to use a test that I think you know

1 to be inaccurate?

2 The law also requires you to consider

3 the impact the rule may have on recycling, but as

4 defined by industry more than half of recycling

5 includes structural fills and minefills and other

6 land applications that are often little more than

7 disposal in disguise. That end of the market is

8 growing. The share of ash and scrubber sludge

9 used for wallboard and gypsum -- I'm sorry, and

10 cement has stayed relatively flat. So while we

11 don't doubt that some of these fill projects are

12 designed responsibly, EPA has conceded that some

13 aren't.

14 Are you gathering data in any kind of

15 systematic way that will help you distinguish

16 responsible recycling from midnight dumping? I

17 don't think these, you know, sham recycling

18 operators are going to walk through the door and

19 introduce themselves.

20 Now, we understand recycling can benefit

21 the environment; we don't understand how you're

22 quantifying those benefits. You said in your June

1 proposal that recycling coal ash into cements
2 knocks out 26,000 tons of fine particle pollution.
3 Your office says the entire industry that you were
4 looking at emits no more than 15,000 tons, and
5 that's going to go to 3,000 tons in 2013. So how
6 are you pulling 26,000 tons out of an industry
7 that's not going to emit any more than 3,000? We
8 don't understand that.
9 A lot of talk about Subtitle D. Under
10 Subtitle D, if you contaminate groundwater at
11 these sites, you are supposed to be shut down or
12 upgraded. How many of these sites failed to meet
13 that standard and has anything been done about
14 enforcement?
15 We hope that you'll listen carefully to
16 the testimony here today, but I don't think this
17 will be the kind of decision you can make by just
18 letting all of us fight it out like gladiators
19 with the prize going to whoever's left standing at
20 the end. No, please live up to the
21 administrator's promise to make a decision based
22 on law, based on the facts, and the best available

1 science. There are a lot of people who can't
2 afford to be in the room today who are depending
3 on you to make the right choice.
4 MR. DELLINGER: Speaker Number 4?
5 MR. STINE: Good morning. My name is
6 James Stine. I'm a senior principal for
7 environmental policy at NRECA, the National Rural
8 Electric Cooperative Association. NRECA is a
9 national service organization for more than 900
10 not-for-profit, rural electric utilities that
11 provide energy to approximately 42 million
12 consumers in 47 states and 12 percent of the
13 nation's population. These are primarily private,
14 not-for-profit companies that are owned by the
15 consumers they serve.
16 These companies include about 66
17 generating and transmission cooperatives which
18 generate and transmit power to the distribution
19 cooperatives. Most of these generators were built
20 during or shortly after the national energy crisis
21 of the late '70s, early '80s. This was the time
22 when new supplies of electricity were desperately

1 needed and when coal, to a large extent, was the
2 only fuel choice for co-op generators due to the
3 Fuel Use Act and prevailing economic conditions.
4 As a result, NRECA's members will be directly and
5 possibly disproportionately affected by the final
6 CCR rule. And I do very much appreciate, as the
7 others have said, the opportunity to speak today.
8 Let me say up front that NRECA favors
9 the development of federal regulations for CCRs,
10 but under RCRA Subtitle D, nonhazardous waste
11 program. We evaluated the alternatives and
12 believe that the Subtitle D prime option is the
13 best path forward. These rules will establish a
14 federal floor that all CCR facilities must meet.
15 On the other hand, NRECA is strongly
16 opposed to using the Subtitle C approach. EPA can
17 obtain a higher level of protection for human
18 health and the environment without resorting to
19 the unnecessary and extreme measure of regulating
20 CCRs under records hazardous waste rules. In
21 fact, Congress has given EPA guidance on how to
22 proceed in cases like this when they have

1 different regulatory options before them and both
2 options receive essentially the same result. In
3 cases where small businesses like co-ops are
4 affected, EPA is obliged to pursue the least
5 costly approach in order to mitigate impacts in
6 the firms that can least afford them.
7 Moreover, Congress made clear in
8 enacting the Bevill amendment, under which this
9 decision is being made, that EPA should avoid the
10 Subtitle C option if at all possible. The
11 proposed controls for CCRs are virtually identical
12 -- under C and D the proposed controls -- and they
13 would be expected to provide the same increased
14 levels of protection. However, all the other
15 requirements and consequences that would come with
16 regulating coal ash under hazardous waste rules
17 would likely cripple coal ash beneficial use and
18 impose unnecessary regulatory costs on power
19 plants, threatening jobs and increasing
20 electricity rates.
21 Co-op systems are relatively small, and
22 by regulation they're not allowed to maintain

large capital reserves. When the cost for running their businesses suddenly increase, like they would under Subtitle C, cooperatives must go directly to their lenders. There is no cushion to mitigate the increases and the costs of new loans to be shared directly by each co-op member.

Thank you very much for this opportunity to speak.

MR. DELLINGER: Speaker Number 5.

MR. WARD: Good morning. My name is John Ward. I'm chairman of Citizens for Recycling First, and I wish to thank you for the opportunity to testify today. Citizens for Recycling First is an organization of more than 1,500 individual members who believe that the best way to solve coal ash disposal problems is to stop throwing the coal ash away. Coal ash recycling can be done safely and effectively, and it creates significant benefits: Environmental benefits, improved product performance benefits, and economic benefits.

Citizens for Recycling First supports

1 stronger regulation of coal ash disposal and does
2 not object to federal enforcement authority over
3 that program. But if getting federal enforcement
4 authority requires designating coal ash a
5 hazardous waste in any setting, the effects on
6 recycling in the United States will be decimating.
7 The hazardous waste stigma is real. A
8 hazardous waste stigma presents significant
9 barriers at every step of the chain, from the
10 people who generate coal ash to the people who
11 specify its use to the people who incorporate it
12 in products, right down to the end-use consumers.
13 How many people want to have something that's
14 called hazardous waste somewhere else in their
15 home or their school or their driveway or their
16 roads or many of the places that we can use this
17 material productively?
18 While we appreciate EPA's statements
19 that the Agency continues to support beneficial
20 use, actions like creating the new label of
21 "special waste" are not helpful in shielding the
22 users from the potential liabilities of this. And

1 actions like shutting down the coal combustion
2 products partnership are actually having a
3 detrimental effect to the recycling industry today
4 well in advance of the conclusion of this rule.
5 If the goal of this rulemaking is to
6 protect the environment, then EPA should pursue
7 policies that encourage more safe and effective
8 recycling of coal ash as a preferred alternative
9 to disposal. That means that we cannot use
10 Subtitle C as a vehicle to promulgate those rules.
11 Speaking for more than 1,500 citizens
12 who care about the environment, please do not use
13 Subtitle C as the way to enact these rules. We
14 can improve disposal regulations in this country
15 without destroying an industry that creates real
16 benefits for our environment.
17 Thank you very much for the opportunity
18 to testify.
19 MR. DELLINGER: Okay, we're calling up
20 the speakers 6, 7, 8, and 9. All right, Speaker
21 Number 6?
22 MS. SCHAFFER: Good morning. My name is

1 Amy Schaffer. I represent the American Forest and
2 Paper Association. AF&PA is the National Trade
3 Association of the forest products industry
4 representing pulp, paper, packaging, and wood
5 products manufacturers and forest landowners. Our
6 companies make products essential for everyday
7 life from renewable and recyclable resources that
8 sustain the environment, that is, trees. The
9 industry is among the top 10 manufacturing sector
10 employers in 48 states.
11 According to the Energy Information
12 Administration, the pulp and paper industry uses
13 about 1 percent of the coal burned in the United
14 States. We use coal to generate electricity and
15 steam. Virtually all of our facilities that
16 generate electricity do so using highly efficient
17 combined heat and power technology. As a result,
18 we are greatly interested in the rulemaking that
19 EPA is undertaking concerning the regulatory
20 scheme for coal combustion byproducts.
21 AF&PA supports EPA's decision not to
22 include coal combustion byproducts from the

1 manufacturing sector in this rulemaking. We
2 believe that our management of coal ash differs
3 somewhat from that of the electric utilities.
4 Pulp and paper mills use a wide variety of fuels
5 in addition to coal. As a result, our mills
6 frequently co-manage coal ash with ash generated
7 from other fuels, particularly biomass. We
8 believe that our ash management units are
9 significantly smaller than those in the electric
10 utility sector. Therefore, we think it makes
11 sense to review our operations separately before
12 regulating them.
13 AF&PA strongly supports the decision
14 reached by the Clinton Administration in 2000 that
15 coal ash should be regulated under Subtitle D, the
16 nonhazardous waste provisions of RCRA. We believe
17 that much of the additional information developed
18 by EPA subsequent to that determination does not
19 support the need for applying the onerous
20 hazardous waste regulations to coal combustion
21 byproducts. Appropriate management standards and
22 engineering design would have avoided the

1 catastrophic failure of the TVA surface
2 impoundment, which can be achieved through the
3 nonhazardous waste requirements.
4 Frankly, my members prefer the Subtitle
5 D prime option which allows the grandfathering in
6 of existing units that are not leaking. Many of
7 the impoundments in landfills used by my members
8 are monitored and do not show any signs of
9 encroachment into the environment. We believe
10 that those units should continue to be used
11 without additional changes. AF&PA members are
12 extremely concerned with EPA's belief that
13 beneficial use of coal combustion residues will
14 rise if disposal is regulated under the hazardous
15 waste regulations. Nothing is further from
16 reality.
17 Our members work hard to find beneficial
18 uses for all of our residuals. It is not a
19 question of whether the use is appropriate; it's a
20 recognition of the reality of our litigious
21 society. AF&PA members are very concerned that
22 EPA did not evaluate the economic impact of the

1 proposed rule for the manufacturing sector. And I
2 have provided additional information in these
3 written -- in my oral comments and will also
4 provide additional written comments. Thank you.

5 MR. DELLINGER: Thank you. Speaker
6 Number 7?
7 MR. JACKSON: Good morning. My name is
8 Michael Jackson. I'm the District Attorney of the
9 4th Circuit in Alabama that includes Perry County.
10 I prosecute all types of criminals -- murderers,
11 rapists, gang members, et cetera -- but I have to
12 say it's hard to monitor the criminals who are
13 destroying the environment.
14 I believe coal ash should be treated as
15 a hazardous waste. Perry County, specifically
16 Uniontown, one of the areas I represent, that was
17 the area that received over a million tons from
18 the TVA ash. I remember one evening I was at a
19 meeting involving something totally different, but
20 we came outside when the meeting was over and one
21 of the ladies brought it to my attention about the
22 smell in the air that night. It was a clear

1 night, but you could smell that smell very
2 strongly, and the area was maybe two miles away
3 from the landfill that received all that ash.
4 Recently, I received an e-mail from a
5 priest who talked about illegal discharge and the
6 leaching from a tanker truck. And, certainly, I
7 believe that priest would be telling the truth.
8 These dumping grounds are often in minority areas.
9 You never see that in a rich area. We have some
10 very wealthy counties in Alabama, but they picked
11 one of the poorest areas, the Black Belt. Some
12 areas in the Black Belt are like a Third World
13 country, and you really, you can't find 10 people
14 in that area of Uniontown that wanted that ash
15 dumped there. It has one of the poorest health
16 systems around. There's no hospital, there's no
17 nothing.
18 People talked about their water being
19 dirty now and that type of thing, and we need
20 help. I'm being bombarded now about going out to
21 the landfill people, people that are dumping
22 things. And as a prosecutor, again, I prosecute

1 the normal criminal that you think of. But it's
2 getting to the point where there needs to be
3 stronger laws to deal with this situation. Poor
4 people need a voice, and I've been trying to be
5 that voice, but I do need help. And I'd ask EPA
6 again to regulate this material as a hazardous
7 waste.
8 Thank you.
9 MR. DELLINGER: Speaker Number 8?
10 MR. McGRATH: Good morning. James
11 McGrath, concerned citizen, Giles County. In our
12 county we have a coal combustion byproduct project
13 that has fallen through the cracks and should be
14 the national poster child for an impaired system
15 of checks and balances. It's called the
16 Cumberland Park Fly Ash Project, and it's located
17 next to the New River at Narrows, a town in Giles
18 County.
19 The project should fall under FEMA
20 minimum permit requirements, Executive Orders, and
21 federal regulations, but none of these were
22 followed because if they had, our county would

1 have had public hearings for the citizens to speak
2 out. By calling this dump a beneficial use of
3 coal combustion waste, our local government
4 maintains it was exempted from having any public
5 hearings for citizen input. This was done
6 intentionally and without any regard for federal
7 requirements.
8 Initially, Cumberland Park violated FEMA
9 policy and federal regulations by not applying for
10 the federally prescribed development permit.
11 Three years later, American Electric Power is
12 rushing to finish the site before the EPA decides
13 how to regulate CCB. The locality's intentional
14 avoidance of FEMA permit requirements, Executive
15 Orders, and federal regulations can realistically
16 bring to question the legality of any dumping of
17 coal combustion byproduct at the site.
18 Who will be eventually responsible for
19 the removal of all this coal combustion byproduct
20 from the floodplain when the toxic heavy metals
21 percolate through the dump and into a river that
22 serves as a water supply and source of recreation

1 for communities downriver? Our children or our
2 grandchildren? Situations like Cumberland Park
3 can happen anywhere, and without the special waste
4 designation and regulation under Subtitle C, the
5 public is not protected environmentally,
6 medically, or democratically.
7 When left to policing themselves, like
8 the power and coal companies with their
9 million-dollar lobbyists want you to do, you end
10 up with Tennessee Valley disasters and unlined fly
11 ash fields like Cumberland Park. We, the people,
12 really need your help. Don't give in to the
13 corporate lobbyists for industries who value
14 profit over people. Please give us back our voice
15 and regulate this toxic waste under Subtitle C
16 where it belongs.
17 Please come to Giles County and help the
18 citizens finally understand if we are part of the
19 United States or a AEP corporate fiefdom with the
20 court jester being the county administration.
21 Thank you.
22 MR. ROBERTSON: My name is John

1 Robertson. I'm an attorney, and the gentleman who
2 just spoke is one of scores of individuals in
3 Giles County whom I represent. I am a classic
4 example of why Subtitle D will not work. When I
5 was a starry-eyed law student, I wanted to
6 prosecute environmental crimes for the
7 Environmental Protection Agency. There was a
8 hiring freeze at that time, and, logistically, I
9 could not afford to do that. Years later, I find
10 myself drawn to that same type of problem where
11 citizens are in need of some sort of help.
12 The industries that are speaking to you
13 to ask for regulation under Subtitle D are able to
14 afford hundreds of attorneys. They are able to
15 afford millions of dollars. The citizens in Giles
16 County are able to afford me. Citizen suits are
17 going to be very difficult under Subtitle D. They
18 will be outgunned, they will be outmanned, and
19 they will likely be done in by the war of
20 attrition.
21 We would ask for Subtitle C to cover
22 coal combustion waste because, as Mr. McGrath had

1 indicated, the way that the Cumberland Park
2 Project is currently structured is not a
3 beneficial use, and it's something that the EPA
4 has recognized under any regulation would not be
5 recognized as a beneficial use. Unfortunately,
6 the patchwork of regulation between the states
7 would have one state regulating the type of
8 project that Giles County has as a hazardous waste
9 dump and requiring monitoring, permitting, lining;
10 whereas in our neck of the woods, you have an
11 unlined site next to a source of drinking water
12 for communities that live downriver. That's
13 something that should not be permitted to occur.
14 I have had some interesting
15 conversations with individuals in this room before
16 coming here, some of whom are engineers and
17 scientists. They would have me urge you look at
18 the science and the data. I agree, but I think
19 that you should go further. I think that you need
20 to revisit the standards by which you evaluate the
21 impacts of this waste. The simple fact that it is
22 not leaching now will not guarantee that the

1 hazardous metals, which the EPA will agree are bad
2 for human health, will eventually leach into
3 groundwater if they are put over groundwater.
4 They will eventually permeate through these sites
5 which are unlined, which are currently classified
6 as beneficially use.
7 We believe that the only way that this
8 problem can be controlled is by regulation under
9 Subtitle C. It would be the only tool that
10 citizens, like the citizens of Giles County, would
11 be able to have as opposed to pooling their
12 resources to hire one attorney as opposed to the
13 industry that's able to afford an entire firm of
14 attorneys. Thank you.
15 MR. DELLINGER: Numbers 10, 11, 12, and
16 13.
17 MR. TODD: Hello. My name's Sean Todd.
18 I'm speaking here on behalf of the Coal Boilers
19 Slag Consortium, a group of seven companies that
20 process and distribute coal boiler slag from
21 coal-powered power plants.
22 The boiler slag industry is comprised of

1 8 companies, 27 plants, about $200 million in
2 revenue across 20 states, affecting thousands of
3 people. We want to emphasize that coal boiler
4 slag is a unique byproduct of CCBs. It is
5 different than the other three major categories.
6 It is -- as the smallest category, it has unique
7 physical and chemical characteristics. It's
8 squashed in water at the bottom of the furnace and
9 is, therefore, vitrified. It is an inert
10 material; it has a Mohs Scale hardness of 6+ and
11 extremely low leachability. Because it is
12 environmentally benign, the boiler slag is hot and
13 in high demand for a number of consumer products.
14 More than 90 percent of coal boiler slag
15 is beneficially used and recycled. For example,
16 80 percent of all roofing shingles in this country
17 contain boiler slag. I would like to leave with
18 you four main points this morning.
19 One, EPA's own technical reports and
20 scientific studies have declared slag to be
21 nonhazardous in four different reports since 1980.
22 These four rulings demonstrate that slag does not

1 meet the statutory definition of hazardous waste
2 or, by the criteria established to list a waste.
3 The vitrified characteristic of slag makes it
4 virtually inert and environmentally benign.
5 Two, there are already efforts in the
6 commercial marketplace to stigmatize boiler slag.
7 I have several published advertisements from trade
8 journals that attempt to scare consumers and
9 distributors by showing a skull questioning the
10 safety of slag. If slag is designated as a
11 Subtitle C waste, but listed as special waste, I
12 would expect only more of these commercial scare
13 tactics.
14 In response to EPA's specific question
15 on stigma and the draft rule, it is difficult to
16 quantify the effects of the possible stigma.
17 These four or five advertisements have caused an
18 uptick in requests for TLCP data. The industry
19 cannot say that we have lost business yet.
20 Opponents are simply attaching a false stigma of
21 hazardous waste that raises questions, and if an
22 audience is not informed, it will cause real

1 problems for continuing recycling of boiler slag.
2 Three, boiler slag should be held as a
3 model for EPA for beneficial use. Keeping the
4 Bevill exemption in place or even expanding it is
5 the best action the Agency can take to create
6 incentives for beneficial use. By doing anything
7 else, it will impede beneficial use. Significant
8 negative impact will occur should further
9 regulation occur.
10 Fourth and final point, as a public
11 policy goal, EPA should predictably maintain the
12 maximum beneficial reuse of boiler slag. This
13 will require further clarification from EPA with
14 regard to fill and encapsulation definitions. The
15 use of boiler slag as an industrial abrasive grit
16 is protective of the health of U.S. workers.
17 Naturally occurring abrasives contain crystalline
18 silica, which causes a severely debilitating lung
19 condition known as silicosis. Because it is
20 vitrified glassy material, boiler slag is a safer
21 and economical alterative to natural abrasives,
22 eliminating worker exposure to crystalline silica

1 and silicosis. For these reasons the use of slag
2 as an abrasive should be clarified by EPA as a
3 beneficial use.
4 In conclusion, the final rule and other
5 public policies should maximize the recycling and
6 beneficial use of boiler slag. It is not common
7 for economic and environmental benefits to overlap
8 in the use of a commercial product, but we see it
9 in the recycling of boiler slag. Thank you very
10 much.
11 MR. DELLINGER: Speaker Number 11?
12 MR. OBLA: Good morning. My name is
13 Karthik Obla. I am the vice president, technical
14 service, for the National Ready-Mix Concrete
15 Association. On behalf of NRMCA, I would like to
16 thank the Environmental Protection Agency for
17 conducting this listening session on this very
18 important issue.
19 As a matter of scale, Ready-Mix concrete
20 consumes percent of all Portland cement used in
21 this country. We represent over 1,500 concrete
22 manufacturers and 50 state-affiliated

1 organizations. Concrete is the most widely used
2 construction material in the world, and it's
3 produced and consumed in every congressional
4 district of our country. With regard to fly ash,
5 a major portion of coal combustion residuals, the
6 Ready-Mix concrete industry is the largest
7 beneficial user.
8 Surveys of Ready-Mix concrete producers
9 show that over 55 percent of all Ready-Mix
10 concrete contains fly ash. Fly ash is used in
11 commercial Portland cement to impart the following
12 important benefits to concrete: Increased
13 durability and service life; reduction of wastes
14 into landfills; reductions in raw materials
15 extracted; energy for production and air
16 emissions, including CO2; and lower concrete
17 materials costs.
18 While the concrete industry currently uses
19 about 15 million tons of fly ash annually, it is
20 estimated that the concrete industry could
21 increase its current use to more than 30 million
22 tons per year by 2020, resulting in less fly ash

1 going to landfills and reducing the concrete
2 industry's carbon footprint by 20 percent, which
3 is the President's goal as well.
4 Based on the concrete industry's
5 extensive use of and reliance on fly ash in
6 concrete and our examining EPA's proposed rule, we
7 have (inaudible) RCRA Subtitle C designation for
8 CCRs' burn for disposal. Well-written exemptions
9 for beneficial use will lead to the following
10 unintended consequences for the concrete industry.
11 One, an increase in production costs in
12 the course of production.
13 Two, an increase in potential liability
14 for concrete producers. Currently the regulatory
15 status of small amounts of fly ash in the waste
16 streams from concrete production and construction
17 is unclear. Any proposed rule should explicitly
18 state that such waste streams from the concrete
19 industry are exempt and not subject to such
20 regulations. There will also be litigation which
21 will target existing structures built with fly ash
22 concrete.

1 Three, potentially stricter state laws
2 impacting beneficial use. For example, a proposed
3 rule in the state of Maryland states that any
4 product containing fly ash is to be disposed of in
5 a special facility authorized to accept fly ash.
6 Most states will establish similar laws.
7 Four, the potential elimination of fly
8 ash concrete. A hazardous waste stigma and fear
9 of liability will drive specifying engineers,
10 architects, and end-users to disallow the use of
11 fly ash in concrete. For example, the Los Angeles
12 Unified School District has banned the use of fly
13 ash until the EPA has finalized its position.
14 Five, there will be a drastic impact on
15 the durability of our nation's infrastructure.
16 Thank you for hearing my concerns on
17 behalf of the Ready-Mix concrete industry. I
18 would be happy to answer any questions you may
19 have.
20 MR. DELLINGER: Speaker Number 12.
21 MR. STEERS: Good morning. My name is
22 Jeffery Steers, and I am the Waste Division

1 director for the Virginia Department of
2 Environmental Quality. Today I'm providing an
3 abbreviated version of our Agency's formal written
4 comments on EPA's proposed regulatory schemes for
5 coal combustion residues, commonly referred to as
6 CCRs. While the Commonwealth acknowledges that
7 improvements in the management of CCR are needed,
8 such regulatory changes are best left to
9 individual states.
10 Virginia has a strong solid waste
11 program that regulates the management of coal ash
12 as an industrial waste under this program.
13 Virginia's regulatory -- Virginia's regulations
14 provide requirements for CCR management, including
15 the appropriate criteria for disposal units while
16 also allowing for its beneficial reuse in a manner
17 that is protective of human health and the
18 environment. The Commonwealth recognizes the need
19 to continuously enhance its regulations and has
20 been actively doing so even prior to EPA's
21 proposed regulations.
22 Virginia has concerns with EPA's

1 proposals regarding the regulation of CCR, and
2 again we believe the regulation of this material
3 is best left to the states. We are especially
4 concerned with EPA's proposal to regulate this
5 material as a hazardous waste under the RCRA
6 Subtitle C. The EPA asserts that such treatment
7 is necessary for EPA in order to retain and
8 exercise appropriate enforcement authority.
9 States like Virginia have consistently
10 demonstrated the ability to conduct an effective
11 and comprehensive RCRA compliance and enforcement
12 program, as is illustrated in EPA's own feedback
13 to the State of Virginia during the state review
14 framework process.
15 We would remind you that EPA does have
16 broad RCRA enforcement authority to address
17 potential substantial threats or endangerments to
18 human health and the environment for releases of
19 solid waste. The proposed regulatory scheme is
20 counter to the intent and spirit of the federal
21 RCRA statute inasmuch as it is contrary to the
22 hierarchy of resource conservation, that is, to

1 reduce, reuse, and recycle. There are problems
2 with EPA's proposals to regulate CCR under
3 Subtitle C and to some extent Subtitle D. I am
4 focusing my comments on the Subtitle C proposal.
5 Although EPA's proposal to regulate CCRs
6 as a hazardous waste under Subtitle C, EPA is not
7 calling CCRs a hazardous waste and indeed there is
8 no data to suggest otherwise. Further, EPA itself
9 over the years has determined that CCRs do not
10 merit hazardous waste regulation, and by creating
11 a new S code of special hazardous waste is
12 effectively expanding its authority to designate
13 any waste as hazardous whenever it desires with no
14 regard to the appropriate characterization of the
15 waste or the ability of states to effectively deal
16 with waste within its state borders.
17 As recognized in EPA's proposal, more
18 research is needed to truly understand the impacts
19 that CCRs may have in a landfill setting such as
20 the effect of compacting material and the ability
21 of metals to leachate. Virginia recommends that
22 EPA, as it has successfully done in many of its

1 programs, develop guidance for the management of
2 CCR through the science, to continuously improve
3 research, and to work closely with the
4 organizations such as ECOS and ASTSWMO to develop
5 an effective CCR program that can be implemented
6 at the state level.
7 Our Agency will be submitting additional
8 detailed written comments prior to the close of
9 the public notice period. Thank you.
10 MR. DELLINGER: Speaker Number 13.
11 MS. MOSELEY: Good morning. My name is
12 Lyndsay Moseley, federal policy representative of
13 Sierra Club. And on behalf of the 1.2 million
14 members and supporters, I want to thank EPA for
15 your commitment to protecting public health and
16 the environment, and for scheduling this and the
17 six other hearings around the country on the coal
18 ash rule.
19 The decision EPA makes regarding this
20 toxic waste stream is critically important. It
21 has the potential to dramatically improve the
22 health and safety of thousands of communities

1 living in the shadows of these giant toxic waste
2 disposal sites or to set a powerful precedent that
3 will ensure such protections are likely or never
4 obtained.
5 I am here also today speaking as an
6 individual who was born and raised in a lakeside
7 community outside Knoxville, Tennessee, not too
8 far from the disaster site, TVA Kingston site. I
9 happened to be visiting my parents in December
10 2008 when we heard the news about the TVA-owned
11 dam failure. As soon as I could, I drove over to
12 Swan Pond Circle to evaluate the scope and scale
13 of this disaster for myself. I witnessed large
14 coal ashbergs filling the river, homes moved off
15 their foundations, ashy sludge covering yards and
16 gardens, and I witnessed clean-up workers in
17 Hazmat suits while TVA said there were no -- there
18 was nothing to worry about to the residents there.
19 I spoke with many confused, angry, and
20 frightened residents already mourning the loss of
21 their property and peaceful way of life and unsure
22 what they should be doing to protect themselves.

1 I saw this firsthand, but millions of Americans,
2 through the widespread news media coverage of that
3 disaster at the TVA site, also began to understand
4 and began a new conversation about the prevalence
5 of dangerous and irresponsible coal ash disposal
6 practices not just in Tennessee, but around the
7 country.
8 Poor structural integrity of an ash
9 disposal site is obviously not the only risk from
10 irresponsible coal ash disposal. Other serious
11 risks such as the flow of leaching toxins into
12 groundwater, rivers, lakes, and streams, less
13 obvious to the average person, but no less
14 threatening to the health of their communities.
15 Scientists, including EPA's own scientists, have
16 documented unsafe exposure to these heavy metals,
17 including arsenic, selenium, cadmium, chromium,
18 and others, can cause respiratory illness, organ
19 disease, cancer, learning disorders, et cetera.
20 We're having this conversation today
21 because states have failed time and again to adopt
22 and enforce commonsense safeguards. In my

1 opinion, it is abundantly clear that the only way
2 EPA can ensure a basic level of protection for all
3 communities near coal ash disposal sites is
4 through adopting commonsense regulations that are
5 federally enforceable, as outlined in the current
6 proposals.
7 The Sierra Club supports the Subtitle C
8 proposal because it would require the phase-out of
9 the wet storage ponds like the ones that failed in
10 Tennessee, and ensure those basic protections,
11 like liners, leachate collection systems,
12 groundwater monitoring, financial assurance. Many
13 states do not require these things.
14 In my opinion, we urge EPA -- Sierra
15 Club urges EPA to protect communities at risk from
16 coal ash contamination, and in a sense this is a
17 choice. The choice between Subtitle C and
18 Subtitle D is a choice between protecting and
19 neglecting citizens across the country.
20 Thank you for your time, and my
21 submitted comments, my written comments are a
22 little bit longer. Thank you.

1 MR. DELLINGER: 201, 202, 203, and 17.
2 Number 201.
3 MR. KABIK: Hello. My name is Gefen
4 Kabik. Coal ash is obviously a hazardous waste.
5 It is unhealthy, it's causing a ton of illness,
6 and it's just hurting the people who are affected
7 by it. It's causing cancer, it's causing
8 respiratory diseases, and a lot of other things.
9 And if this stuff were happening to you, you guys
10 would understand it's not about the stigma
11 attached to calling it a hazardous waste, it's
12 about the people it's affecting.
13 It doesn't matter about the economics of
14 it. Since when has money become more important
15 than people? People being affected by this can't
16 really stand up, many of them live in poverty and
17 don't have the resources to do things like sue the
18 companies. These companies have not been at all
19 taking responsibility for this, and they just keep
20 on doing this to make money, and not care about
21 people's lives.
22 People have always been affected by

1 things related to coal, but this is something that
2 affects people who have nothing to do with coal;
3 it can affect people who live miles away from
4 where it's being dumped, and they can't do
5 anything about it. And it's unfair for them, and
6 it's unfair for -- it's unfair for them.
7 The coal ash companies will come here
8 and say that it's not a hazardous waste and that
9 it will affect lots of other things, but those
10 other things, they're not as important as the
11 people that they're affecting, and so that's why
12 you should call it a hazardous waste. Thank you.
13 MR. DELLINGER: Number 202.
14 MR. BROGUN: Hello, everyone. My name
15 is Chris Brogun. I work for a coal ash-producing
16 company, but, more importantly, a company that has
17 striven to control the production of said ash.
18 Our process has been worked on for over a decade
19 now towards producing a much safer product to go
20 into concrete. Every ton of cement, as I'm sure
21 many of you know, produces one ton of carbon
22 dioxide. With the addition of fly ash to said

1 concrete, we are able to lower the carbon
2 footprint throughout the construction environment.
3 And being from the metro New York area, I can tell
4 you that the carbon footprint can be rather large.
5 I implore the EPA to reconsider and work
6 towards Subtitle 4 rather than working under the
7 Subtitle 3, which will have very negative impact
8 on the industry at large, including construction,
9 basic materials production, and the economy
10 throughout the area. Thank you very much.
11 MR. DELLINGER: Thank you. 203? 17?
12 SPEAKER: Here he is.
13 MR. DELLINGER: Oh, I'm sorry.
14 MR. WATHEN: I'm in a state of
15 confusion. I've had too much coal ash. My name
16 is John Wathen. I'm the Hurricane Creekkeeper
17 from Tuscaloosa, Alabama. I'm here today to
18 represent the Citizens Coal Council as the
19 chairman of the Board of Directors. I'm here to
20 represent that Waterkeeper Alliance and
21 international federation of groups like mine that
22 believe in clean water.

1 I first came in contact with the coal
2 ash from Kingston, Tennessee, in a canoe. I was
3 one of the three people that paddled up into the
4 Kingston ash hole and brought out the first
5 samples that proved TVA was lying through their
6 teeth. It was full of arsenic. I didn't know at
7 that time that coal ash was going to follow
8 me home to Kingston, Alabama, or I'd have been
9 much louder at the time.
10 I want to talk to you today about a
11 duality in standard and why we need a federal
12 regulation that controls this stuff in a uniform
13 way. In Kingston, Tennessee, the disaster ash is
14 being treated as a hazardous material. A truck
15 can't drive in and out of the lot without having
16 double-wash standard: It has to be washed twice.
17 People have to wear white booties on their feet
18 and respiratory masks in order to work in the
19 area. There are dust- sampling devices all around
20 the white affluent community of Swan Pond.
21 None of these conditions exist in Perry
22 County, Alabama. None. As a matter of fact, in

1 Perry County, Alabama, where the coal ash is being
2 brought now, there are trains that are bringing
3 this stuff in, 105 cars a day. They're coming in
4 in these sterile burrito wrappers that everybody's
5 so proud of to keep the dust out of the
6 communities as they transfer it.
7 When it gets to Perry County, Alabama,
8 they take track hose that are sitting up on top of
9 pads built out of coal ash with no best management
10 practices around them whatsoever. None. They
11 take these track hose, dig it out, dump it on the
12 ground, and then it runs into Tayloe Creek. A
13 recent EPA inspection, the EPA inspector said
14 that, and I quote, "Some of the material spilled
15 on the ground and ran into the creek." That is an
16 absolute fallacy. The material was intentionally
17 washed into the creek. I have photographs with
18 people with seven high-pressure hoses
19 intentionally washing this mess into the creek.
20 The waste stream is coal ash. In
21 Alabama, the beneficial use says that you can use
22 coal ash as a top cover in the landfill. If

1 beneficial use means that the waste stream has to
2 be segregated from the top cover, this is, in
3 essence, giving a waiver without due process to
4 use the waste stream for top cover. We have
5 clouds of dust blowing through our community now.
6 Why are the people in Kingston,
7 Tennessee, in the affluent white community of Swan
8 Pond treated any differently than the people of
9 Perry County, Alabama? I'll tell you why.
10 They're black, they're poor, they have no
11 political worth. And what I see happening in
12 Perry County today is nothing more than an
13 environmental crime. If EPA doesn't take some
14 action to stop this and create some kind of a
15 uniform procedure for handling this, then you are
16 nothing more than environmental criminals
17 yourselves.
18 MR. DELLINGER: Number 17.
19 SPEAKER: Clean coal is a dirty lie.
20 MS. MAIN: I'm Ivy Main from McLean,
21 Virginia. Thank you for the opportunity to speak
22 on the subject of coal ash. I was asked to come

1 here today to deliver the words of someone who
2 could not be here, but who has a story to share.
3 I was sent her message a few days ago, and reading
4 it I was struck by something implicit in its
5 message about the way we, as citizens, trust our
6 government to do the right thing. Often we say we
7 don't. We speak cynically about politicians and
8 government workers, but there's no greater
9 testament to our basic faith than the fact that
10 when our government fails in its duty to protect
11 us, we're surprised as well as outraged. The
12 failure of oversight by the MMS that led to the
13 Gulf Oil spill and the inability of the FDA and
14 the USDA to prevent the massive salmonella
15 contamination of our egg supplies are just the
16 most recent examples. We're surprised as well as
17 outraged because we really do think that the
18 professionals who make up our government workforce
19 will act to protect us.
20 Even the people most vocal in advocating
21 less regulation and less oversight assume that the
22 government agencies won't cave in so far as to

1 threaten public health and safety. And ordinary
2 people are totally reliant on this, on this idea
3 that the government will do the right thing to
4 protect us. If you say coal ash isn't hazardous,
5 they aren't going to say, well, I'd better protect
6 myself from whatever might be in there anyway.
7 They have way too much faith in you for that.
8 I'm now going to read you the words of
9 Dr. Christine Llewellyn of Williamsburg, Virginia,
10 and you'll see what I mean. She writes, "I worry
11 every time I see road workers in a cloud of dust
12 as they jackhammer up concrete, concrete made with
13 heavy metal-laced coal ash. They may be wearing
14 ear protection, but they're not wearing
15 respirators. And this is called beneficial reuse.
16 I doubt it is benefitting the workers unknowingly
17 exposed to it since it is not designated as
18 hazardous.
19 "Coal combustion waste is only one of
20 the many negative effects of combusting coal, but
21 must be designated for the toxic hazardous
22 substance that it is. If this designation causes

1 the cost of electricity to go up, then perhaps we
2 will just be starting to pay some of the true cost
3 of coal."
4 As Dr. Llewellyn points out, these road
5 workers haven't a clue what they're working with,
6 and it's not their employers they trust to protect
7 them. It's their government. It's you. Don't
8 let them down. Thank you.
9 MR. DELLINGER: I got a little bit out
10 of order. I misread the -- you know, one of the
11 notes that I got, and so the next speakers will be
12 14, 16, 18, and 19.
13 MS. SANTIAGO: Good morning. My name is
14 Ruth Santiago. I'm a lawyer from Salinas, Puerto
15 Rico. I work with community groups in
16 Southeastern Puerto Rico.
17 Hundreds of thousands of tons of coal
18 ash are being used as fill material at
19 construction sites above the South Coast aquifer
20 in Southeastern Puerto Rico. CCRs are being
21 deposited within a few meters of public water
22 wells, irrigation canals, streams, farms,

1 wetlands, beaches, and other sensitive areas. The
2 aquifer is the sole source of potable water for
3 approximately 53,000 residents of Salinas and
4 Santa Isabel, and many more thousands of people in
5 neighboring municipalities.
6 In some places, contractors have
7 excavated huge holes that are filled with CCRs
8 below the aquifer water table. Groundwater
9 sampling results at the Salinas municipal
10 landfill, where coal ash has been used as daily
11 cover, indicate the presence of selenium and other
12 heavy metals associated with CCRs above background
13 levels. Residents of coastal areas fear that
14 heavy metals, toxins, and radioactive isotopes in
15 the CCRs are leaching into the water supply and
16 will cause serious public health problems.
17 In addition to providing potable water
18 for tens of thousands of people, the aquifer feeds
19 the unique Jobos Bay estuary, a designated
20 National Estuarine Research Reserve. As in the
21 town of Pines, Indiana, the reserve and contiguous
22 areas where coal ash is being buried contain

1 low-lying, poorly drained wetlands. As in Pines,
2 the soil is very sandy, unconsolidated, acidic,
3 with high organic content. In some areas, the
4 aquifer is contained within a thin, less than 40
5 feet clay-rich confining layer facilitating
6 contact with the CCRs, particularly during
7 hurricane season such as right now.
8 CCRs from the AES Puerto Rico, Limited
9 Partnership, power plant are virtually given away
10 at 15 cents per ton to anyone who will take them.
11 AES also provides free transportation to
12 residential and commercial construction sites.
13 AES has no on- or off-site disposal facility and
14 disposes of all -- disposes virtually all CCRs
15 that it admits exceeds 300,000 tons per year
16 through secondary use at construction sites and
17 daily cover at the landfill.
18 Even after construction is completed,
19 the coal ash is exposed because the rain erodes
20 the thin layer of dirt sometimes placed over the
21 CCRs. At once site a virtual mountain of CCRs was
22 dumped similar to the illegal disposal of AES

1 residues in the Dominican Republic in 2003/2004,
2 which has been the subject of various lawsuits and
3 a multimillion-dollar settlement paid by AES.
4 In the settlement agreement, AES
5 prohibited the Dominican government from using any
6 evidence that AES coal ash is toxic or harmful.
7 That's in paragraph 8 of that agreement. The
8 Agremax use contract that AES requires all
9 recipients to sign, limits the type of testing
10 that can be done on the CCRs. Thank you.
11 MR. DELLINGER: Speaker 16.
12 MS. NOLAN: Good morning. My name's
13 Jamie Nolan, and I'm the communications director
14 for a regional nonprofit organization called the
15 Chesapeake Climate Action Network. On behalf of
16 our 65,000 members, activists, and volunteers in
17 Maryland and Virginia, I urge you to classify
18 toxic coal ash as a hazardous waste under Subtitle
19 C of the RCRA so that this harmful substance can
20 be regulated aggressively at the federal level.
21 In Maryland, we have three major coal
22 combustion waste facilities in three different

1 counties: Prince George's County, Charles County,
2 and Anne Arundel County. In Virginia, we have 20
3 recorded facilities that are either dry landfills
4 or wet ash ponds.
5 We are submitting comments on behalf of
6 our members who live within five miles of all of
7 these facilities and are negatively impacted by
8 these facilities on a daily basis. In Maryland
9 alone that includes around 300 members.
10 Additionally, there is a landfill proposed for the
11 City of Baltimore which hosts hundreds of members
12 within a five-mile radius of the proposed site.
13 You will hear extensive testimony from
14 impacted community members about the dangers of
15 coal ash, so I'll be very succinct in my testimony
16 and offer you an example of the impacts from a few
17 members in one community located in Prince
18 George's County, Maryland. The Brandywine coal
19 combustion waste landfill is located in a
20 predominantly African-American, rural portion of
21 Prince George's County. The facility is 300 acres
22 in size and located in close proximity to the

1 Patuxent River.

2 The state environmental agency, the

3 Maryland Department of the Environment, has

4 documented reports indicating that the facility is

5 discharging very high levels of toxic metals into

6 local surface waterways. Cadmium is over 100

7 times the recommended groundwater limit, and

8 surface water criteria for aquatic life are

9 significantly exceeded for cadmium and lead.

10 Our organization has brought a citizen

11 enforcement action on behalf of our members to

12 address these federal and state water violations.

13 CCAN staff and members have seen the beautiful

14 marshland and hiked around the threatened Mataponi

15 Creek where these violations are occurring. It is

16 a peaceful place just 15 miles from Washington,

17 D.C.

18 We have a member who has come out on

19 record refusing to buy property in Brandywine

20 because of the coal waste facility and what is

21 happening to the water in the area. He was

22 fearful for his family's health and well- being

1 because of the facility and decided to move.
2 As part of our enforcement action, we
3 are currently investigating whether the surface
4 water contamination has also impacted local
5 groundwater. Most people use well water in this
6 part of the county, so the impacts of groundwater
7 contamination to human health would be disastrous.
8 This is a predominantly blue-collar rural
9 community that cannot afford to dig new wells or
10 have their water treated if it's contaminated.
11 The state of Maryland only deals with
12 coal combustion waste permitting through their
13 Waste Management Department, which is woefully
14 underfunded and inadequate to address this very
15 large and toxic waste stream. In Virginia, there
16 are a number of recorded damage cases to
17 threatened creeks due to coal ash pollution. One
18 particular coal ash landfill in Dumphries County,
19 Virginia, is an unlined, unmonitored facility that
20 has discharged large amounts of heavy metals into
21 our local streams.
22 The Virginia Department of Environmental

1 Quality also handles these coal ash facilities
2 through their state Waste Management Department
3 which has done a very poor job of regulating. The
4 very composition and nature of coal ash is
5 hazardous, and you will hear plenty of expert
6 testimony today that will prove that fact. This
7 is clear: The EPA should regulate coal ash under
8 Subtitle C of the RCRA.
9 Thank you for the opportunity to submit
10 testimony.
11 MR. DELLINGER: Number 18.
12 MR. THORINGTON: Good morning. I am
13 John Thorington, senior director of Communications
14 and Board Coordination for the Tampa Port
15 Authority which represents the Port of Tampa, the
16 nation's 15th largest cargo port. And one of the
17 tremendous success stories in our port in the last
18 18 months has been the commencement of a series of
19 shipments of fly ash from Tampa to a green energy
20 hydroelectric dam project in Panama. The contract
21 is slated to total 170,000 tons of fly ash when
22 complete.

1 In addition, there are numerous other
2 beneficial use export opportunities throughout
3 this hemisphere for this project. At a time when
4 imported building materials moving through our
5 port have dropped substantially due to the
6 construction downturn in our region, the
7 opportunity to significantly enhance beneficial
8 exports through the shipment of fly ash has
9 produced much-needed positive impacts within our
10 port and our community. In fact, in the 29 years
11 that I've been with the Tampa Port Authority, this
12 project has been one of the most unique commercial
13 ventures that I have witnessed. Rarely does a
14 project generate so many benefits across so many
15 levels.
16 The benefits to the Port of Tampa have
17 been previously stated. In addition, vast other
18 benefits accrue from this project. The fly ash
19 being shipped from Tampa comes from a major
20 utility company in our area, and the product being
21 exported would otherwise be delivered to a
22 landfill. If forced to go to a landfill, the

1 utility cost to our area's ratepayers will rise.
2 Furthermore, this project and other similar
3 projects expected in the future strongly support
4 the President's initiative to double U.S. Exports
5 in the next five years.
6 In addition, using fly ash as an
7 additive and partial replacement for cement in
8 concrete reduces the requirement for mining in our
9 state for substitute products. The recycling of
10 fly ash via export shipments through the Port of
11 Tampa represents innumerable beneficial use
12 applications throughout the hemisphere.
13 These opportunities will vanish if the
14 EPA proceeds with the Subtitle C designation in
15 defining coal combustion residues. The hazardous
16 waste designation, even if narrowly applied, will
17 result in a stigma which will undermine the
18 progress made to date and the benefits previously
19 referenced will be lost. In fact, it is my
20 understanding that even just the discussion to
21 date on this issue has raised serious concerns
22 amongst Panamanian citizens and officials

1 associated with the hydroelectric dam project in
2 Panama that I referenced earlier.
3 I respectfully urge that the EPA pursues
4 the Subtitle D approach for defining coal
5 combustion residues, and I thank you very much for
6 this opportunity to speak today on this very
7 important issue. Thank you.
8 MR. DELLINGER: Number 18. That was 18?
9 Okay, Number 19.
10 Is Number 19 here? Well, let's do
11 Number 15.
12 MS. STEINZOR: My name is Rena Steinzor.
13 I am a law professor at the University of Maryland
14 School of Law, and president of the Center for
15 Progressive Reform.
16 We are all familiar with the
17 psychological studies that have become a cottage
18 industry at American universities. Consider this
19 one. A dead cockroach is medically sterilized --
20 and I honestly don't know what that means -- and
21 then dipped in a glass of juice in front of a
22 group of people. The purpose: To gauge the test

1 subject's willingness to drink the juice after the
2 cockroach is removed. To the researchers'
3 apparent surprise, the people, all victims of an
4 irrational phenomenon known as "the stigma
5 effect," would not drink the juice although they
6 were willing to take a sip if the cockroach was
7 merely laid to rest peacefully beside the glass as
8 opposed to dunked inside it. As amazing to the
9 researchers, they refused to drink the dunker
10 juice even if it was placed in a freezer for one
11 year or the cockroach was dipped in the juice
12 very, very quickly. So, conclude the researchers,
13 while shunning may have evolved from an adaptive
14 response to avoid contaminated food, it can be
15 triggered in inappropriate circumstances.
16 Now why on Earth am I bringing up this
17 bizarre experiment in the context of this
18 perfectly staid hearing on a hypertechnical EPA
19 rulemaking proposal which covers -- count them --
20 138 pages in the Federal Register leaving many
21 supposedly more relevant points to be addressed by
22 the witnesses today? I am telling you the

1 cockroach story because it is at the root of the
2 reasons why the OMB Office of Information and
3 Regulatory Affairs mangled this rulemaking,
4 constructing a fanciful but deadly cost-benefit
5 analysis that predicts negative net benefits of as
6 much as $239 billion if EPA regulates coal ash
7 appropriately as a special waste under Subtitle C.
8 Or, to put it more bluntly, electric
9 utility executives who generate 136 million tons
10 of coal ash annually will squander 239 billion of
11 the nation's resources over the next 50 years
12 because, suffering from the cockroach-proven
13 stigma effect, they will send millions of tons of
14 the stuff to line landfills rather than dumping it
15 in roadbeds and mine shafts.
16 You'll look in vain for the cockroach
17 study in any of the official documents that emerge
18 from OIRA around the coal ash rule, all of which
19 discussed the stigma effect without citing any
20 references supporting the effect's existence in
21 the coal ash context. But the cockroach study is
22 described at some length in an EPA study on

1 superfund that was cited at footnote 118 of the
2 original EPA cost- benefit analysis. And the
3 study is a personal favorite of Cass Sunstein,
4 director of OIRA, who has cited it in Law Review
5 articles and his book Laws of Fear, which argues
6 that irrational people who fear pollution must be
7 saved from themselves.
8 Thank you for considering this
9 commentary on why OIRA has interfered with this
10 rulemaking and why EPA should regulate coal ash
11 stringently.
12 MR. DELLINGER: Numbers 1, 21, 204, and
13 205. Speaker Number 1?
14 SPEAKER NO. 1: Good morning. I am here
15 this morning speaking on behalf of County
16 Executive John Leopold from Anne Arundel County,
17 Maryland. His testimony:
18 "I strongly support the proposed rule to
19 regulate the management and disposal of coal ash
20 and coal combustion residuals generated by
21 electric utilities and independent power
22 producers. I further support Options C and D

1 under the Resource Conservation and Recovery Act
2 to address human health concerns and structural
3 integrity issues associated with coal ash
4 impoundments and landfills.
5 "The disposal of coal ash and coal
6 combustion residuals poses a serious threat to the
7 public health and the environment. Coal
8 combustion residuals generated by electric
9 utilities and independent power producers contain
10 heavy metals that pose a serious health risk and
11 can adversely affect ground and drinking water
12 supplies.
13 "An investigation in Anne Arundel
14 County, Maryland, in 2007, identified the presence
15 of heavy metals in groundwater that resulted from
16 the disposal of coal ash and coal combustion
17 residuals at a sand and gravel surface mine.
18 Arsenic, cadmium, chromium, aluminum, thallium,
19 and beryllium were identified in groundwater and
20 directly affected off-site private wells and
21 drinking water supplies.
22 "The disposal of coal combustion

1 residuals caused significant public health and
2 environmental concerns in Anne Arundel County,
3 Maryland, ranging from contamination of
4 groundwater, nuisances from airborne dust, and
5 adverse effects on private drinking water
6 supplies. In 2007, 2008, and again in 2009, the
7 county executive secured County Council approval
8 of legislation he proposed to ban the disposal of
9 coal ash and other coal combustion residuals in
10 Anne Arundel County, Maryland. He continues to
11 support this legislation and has great concern for
12 the management and disposal of this material at
13 landfills and service impoundments on a national
14 level.
15 "He strongly supports the development of
16 a state and federal permit program as proposed
17 under Subtitle C which provides the minimum level
18 of protection necessarily to protect public health
19 and the environment. The classification of coal
20 ash and coal combustion residuals as a special
21 waste under the Resource Conservation and Recovery
22 Act will ensure the necessary regulatory oversight

1 will be in place to adequately address the
2 storage, manifest, transportation, and disposal of
3 coal ash and coal combustion residuals. This
4 option also requires the installation of liners
5 and groundwater monitoring at new landfills and
6 provides the greatest benefit to protect human
7 health, the environment, and our limited
8 resources.
9 "The requirements proposed in Option D
10 provide additional measures to protect public
11 health and the environment through retrofitting
12 existing surface impoundments with liners and
13 through improvements in the structural integrity
14 of existing surface impoundments. These measures
15 will further reduce the risk of surface
16 impoundment failure and provide the added
17 protection to human health, surface and drinking
18 water supplies, and our limited water resources."
19 The county executive wants me to note
20 that there is a flaw with the proposed rule in
21 that it does not address exposure to fly ash from
22 fugitive dust. Maryland is among the 42 states --

1 MR. DELLINGER: Your time limit is up.
2 SPEAKER NO. 1: Can I finish? I have
3 just a little bit.
4 MR. DELLINGER: Real quick.
5 SPEAKER NO. 1: Pardon me?
6 MR. DELLINGER: Real quick.
7 SPEAKER NO. 1: Okay. As this matter is
8 of great urgency to the citizens of Anne Arundel
9 County, the county executive strongly supports
10 options Subtitle C and D under the proposed rule.
11 Thank you.
12 MR. DELLINGER: Number 21.
13 MR. BORDERS: Hello. My name is John
14 Borders. I'm president of the Titan America
15 Separation Technologies' Business Unit, and I want
16 to thank you for the opportunity to participate in
17 what I think are incredibly important hearings.
18 I'm here to ask for thoughtful action
19 that avoids confusion and puts ash where it
20 belongs: In concrete and not in landfills. It's
21 become obvious that this has become a very
22 important and public issue to everyday people,

1 most of whom didn't now what fly ash was just a
2 few short months ago. And education must be a
3 very important part of what we do here in order to
4 understand the benefit, a benefit that is, if we
5 can somehow manage to utilize problem- solving
6 techniques and failure mode analysis and real
7 science in order to reach a conclusion, a
8 conclusion without that process most generally, in
9 our world of today -- and I think that's pretty
10 obvious -- becomes a stimulus program for legal
11 professionals and job security for those who seek
12 to impose political agendas on both sides of the
13 argument.

14 I need to tell you briefly why I'm
15 compelled to be here, and I hope you find my
16 personal comments relevant to the situation. And
17 while I am a concrete industry spokesperson here,
18 I have chosen to be a life member of the Sierra
19 Club and I'm actively involved.
20 In 40 years of professional association,
21 I've had the opportunity to lead national and
22 international concrete specification and business

1 development work with architects, engineers,
2 concrete producers, concrete suppliers, and people
3 who work in that science. For the past seven
4 years, I've been president of Separation
5 Technologies, which is a Titan America business
6 unit that processes fly ash into two separate
7 components, quality controlled components that
8 make concrete better and eliminate the need for
9 landfills. During that effort, we've invested
10 more than $100 million to make it the best we can
11 make it, and now doing business up and down the
12 East Coast as well as in four other countries,
13 including the latest start-up in Poland.
14 Our proprietary solutions process
15 literally hundreds of millions of tons of this
16 with no harm, with good, and that good is to keep
17 the fly ash making concrete better. And while the
18 numbers of technology patents that we have, have
19 increased markedly, what we really do is create
20 jobs, good jobs, green jobs, jobs that I don't
21 have to tell you will go away if there is
22 confusion in what the EPA does.

1 In my opinion, if regulation or
2 legislation, no matter how well-intended, is
3 imposed by the federal government, the content
4 which allows confusion to exist in what is
5 hazardous and what is not, the beneficial use of
6 fly ash in concrete products will, in fact,
7 greatly diminish over the next few months.
8 Fly ash aside, the CO2 is an issue and
9 jobs are an issue, and, yes, the cost of utilities
10 and the cost of electricity is important. It's
11 not just that ST is a green technology company and
12 it will lose jobs. We'll move our operation
13 overseas. It's obvious to me that neither ash nor
14 EPA is a four-letter word, certainly not in
15 intent. And if you want to really help the
16 environment, the economy, even security, use your
17 influence to replace more Portland cement with fly
18 ash, not less. Don't intentionally, negatively
19 impact one of the most successful examples of
20 recycling in history. Contrary to what I learned
21 in school, I would like a D, not a C.
22 MR. DELLINGER: Thank you. Number 204.

1 Number 205.

2 MR. BRINKLEY: Good morning. My name is

3 Dave Brinkley. I'm the director of distribution

4 for Roanoke Cement. I also manage their outbound

5 trucking operations as well as their customer

6 service functions. Typically, on a weekly basis

7 we take up to 500 orders, truckload orders of fly

8 ash every week to go into beneficial use. It's

9 the job of my department and the people within our

10 department to make sure that that fly ash gets

11 safety to its destination and that it subsequently

12 ends up in beneficial use.

13 My point here this morning is that

14 Subtitle C will have a stigma on the beneficial

15 uses of fly ash. I want to read a section from

16 the statement that you guys put out this morning.

17 It's actually on page 2 of the handouts.

18 It says, "Large quantities of coal ash

19 are used today in concrete cement, wallboard, and

20 other contained applications that should not

21 involve any exposure by the public to unsafe

22 contaminants." And then it goes on to say, "These

1 uses would not be impacted by today's proposal."
2 Subtitle C would impact the beneficial use of fly
3 ash in concrete.
4 Today we coordinate about 500 truckloads
5 of delivery each week. As a truck picks up at a
6 power plant it either goes to a landfill, and we
7 are big advocates that those landfills are
8 properly controlled, but those same truck drivers
9 also take that product to concrete plants for
10 beneficial use. How can an individual like a
11 driver pick up fly ash and go one direction with
12 it and it be classified as hazardous, and then go
13 another direction and it not be classified as
14 hazardous? It doesn't make sense and it will
15 create a stigma on the beneficial use of fly ash.
16 Thank you for your time.
17 MR. DELLINGER: Numbers 22, 23, 24, and
18 25.
19 MR. THERNSTROM: Good morning. My name
20 is -- thank you for the opportunity to speak
21 today. My name is Sam Thernstrom, and I'm senior
22 climate policy advisor at the Clean Air Task

1 Force, a Boston-based nonprofit organization
2 dedicated to reducing atmospheric pollution
3 through research advocacy and private sector
4 collaboration.
5 One of the initiatives I work on at CATF
6 is what we call our coal transition project, and I
7 should explain what we mean by a coal transition.
8 Unlike some, we do not assume that Americans will
9 stop using substantial amounts of coal in the next
10 few decades, and, unfortunately, we don't think
11 that's a realistic aspiration. But we believe we
12 can and must transition to a world in which coal's
13 environmental and social costs are addressed in a
14 comprehensive modern framework of federal
15 regulations. Doing so will ensure that coal could
16 continue to provide a substantial fraction of
17 America's electric power while reducing it's
18 profound environmental and human costs.
19 CATF's main mission is to reduce air
20 pollution from coal-fired power plants, and we are
21 very proud of the progress America has made in
22 that regard. This fall CATF will issue a report

1 documenting dramatic reductions in air pollution
2 over the last 5 years due to the installation of
3 new scrubbers on 130 power plants, but as is often
4 the case, progress in one area requires
5 reinforcement to prevent backsliding in others.
6 Every ton of pollution captured by smokestack
7 scrubbers is a ton less of air pollution and a ton
8 more of hazardous waste that threatens land and
9 water resources if not disposed of properly.
10 Coal contains a witch's brew of toxic
11 pollutants which combustion either releases to the
12 air or leaves behind in the ash. While we
13 celebrate progress in cleaning the air, we must
14 redouble our efforts to keep these pollutants from
15 contaminating our land and water. We expect
16 America's power generators to further reduce air
17 pollution in the future and, consequently, to
18 generate even larger quantities of hazardous
19 waste.
20 Two years ago, the Tennessee Valley
21 Authority's catastrophic coal ash spill
22 dramatically illustrated the consequences of our

1 failure to provide adequate safeguards for coal
2 ash disposal. Disasters easily capture our
3 attention, but the daily dangers of living near
4 coal ash impoundments go largely unnoticed. In my
5 20 years of experience working with and studying
6 America's environmental laws and policies, I am
7 hard-pressed to think of a more egregiously
8 inadequate and antiquated regulatory scheme or,
9 more precisely, the absence of one. The fact that
10 the federal government in the 21st century still
11 regulates coal ash as if it were less dangerous
12 than household garbage simply defies
13 comprehension.
14 CATF strongly urges you to regulate coal
15 ash as a special waste under Subtitle C of the
16 Resource Conservation Recovery Act. This would
17 give EPA the authority to enforce comprehensive
18 regulations for coal ash and the flexibility to
19 consider the waste's special characteristics. In
20 order to protect public health and the
21 environment, EPA must regulate disposal of these
22 hazardous wastes under Subtitle C of RCRA.

1 Thank you for your attention to this
2 matter.
3 MR. DELLINGER: Number 23.
4 MR. RAMSEY: My name is Boyd Ramsey, GSC
5 Lining Technology LLC, a privately held company in
6 Houston, Texas. Today I'm representing the
7 Geosynthetic Materials Association, a trade group
8 of 80 companies that manufacture, distribute, and
9 install geosynthetic materials, including lining
10 systems. The industry employs 12,000 people
11 throughout the United States.
12 Our comment to EPA is very simple: We
13 request the EPA mandate the geosynthetic lining of
14 coal ash storage facilities using composite lining
15 systems. In the shortest terms, use liners,
16 specifically composite liners. Why? Because
17 liners work. Concerns of safety regarding CCRs
18 are mitigated if landfill storage sites are lined
19 with a composite lining system of a geomembrane
20 and a geosynthetic clay liner. A composite lining
21 system prevents leachate from entering the
22 groundwater. Safety concerns regarding surface

1 impoundments are also mitigated if the
2 impoundments are lined with a composite lining
3 system.
4 The American Society of Civil Engineers
5 does a regular report card on America's
6 infrastructure. For the last three report cards,
7 representing over a decade, solid waste has
8 received the highest grade of any category. My
9 industry does a good job of taking America's waste
10 and properly storing it to protect the
11 environment. The materials, technology, and
12 people exist: the engineers, engineering
13 standards, the general contractors and installers
14 who can build the proper facilities, and the
15 regulators and inspectors who assure that work is
16 done correctly. We urge the EPA to use what works
17 and is working today.
18 Further, our industry has continuously
19 improved over time, and EPA has been a part of
20 that effort. Over the years EPA has commissioned
21 nearly 80 studies on the design and performance of
22 lining systems. We specifically call your

1 attention to a 2002 study titled Assessment and
2 Recommendations for the Optimal Performance of
3 Waste Containment Systems. That study contains a
4 great deal of pertinent information on how to
5 construct containment systems.
6 Most illustrative for today is a graph
7 charting the leakage rate of various designs over
8 the life cycle of nearly 200 facilities. The
9 composite lining system -- that's the line in red
10 -- of a geomembrane and a geosynthetic clay liner
11 was demonstrated to have the lowest leakage rate
12 over all life cycle stages, including a near zero
13 leakage rate after the facilities are closed and
14 final cover is placed. Our materials work. The
15 use of a composite lining system will achieve the
16 EPA mission to protect human health and the
17 environment for all Americans.
18 A brief word on the
19 hazardous/nonhazardous question. While coal ash
20 does contain heavy metals, it lacks the
21 traditional characteristics of hazardous
22 materials: Radioactivity, the presence of

1 infectious medical waste, et cetera. In the
2 opinion of our trade organization, coal ash can be
3 properly stored using Subtitle D regulations, a
4 nonhazardous solid waste designation, and
5 composite lining systems. Thank you.
6 MR. DELLINGER: Number 24.
7 MR. PICA: Good morning. My name is
8 Eric Pica, and I'm the president of Friends of the
9 Earth, United States. Friends of the Earth is a
10 national environmental advocacy organization and
11 seeks to champion a just and healthy world. We
12 are also member of Friends of the Earth,
13 International, the world's largest federation of
14 grassroots environmental groups in 77 countries
15 around the world. And today I'm representing our
16 100,000 members and activists across the country.
17 I want to begin by thanking the
18 Environmental Protection Agency for conducting
19 hearings on the issue of regulating and the
20 control of dangerous waste ash generated from
21 burning coal. We will submit detailed written
22 comments, but we wanted to testify in person to

1 support our activists and communities around the
2 country that want to see an end to unregulated
3 disposal of toxic coal ash.
4 Around the country today there are more
5 than 431 disposal sites for coal ash. Our members
6 and supporters live near these facilities. The
7 coal ash at these sites contain a toxic soup of
8 chemicals, including arsenic, cadmium, chromium,
9 lead, selenium, and others which have been linked
10 to cancer, organ disease, respiratory illnesses,
11 neurological damage, and reproductive and
12 developmental problems.
13 Forty-nine of these sites have been
14 listed by the Environmental Protection Agency as
15 high-hazard potential. Every year more than 130
16 million tons of coal ash is being added to these
17 sites. This is enough to fill train cars from the
18 North Pole to the South Pole. As we recently
19 witnessed with the Tennessee Valley Authority,
20 there is a lack of federal enforceable standards.
21 In 2008, a dam holding more than 1 billion gallons
22 of toxic coal ash sludge failed, destroying 300

1 acres, dozens of homes, killing fish and other
2 wildlife, and poisoning the Emory and Clinch
3 rivers. Fortunately, nobody was killed.
4 In addition to the risk of catastrophic
5 failure from the TVA dam, communities around coal
6 ash sites are suffering a slower, more insidious
7 fate. People living near unlined coal ash ponds
8 where water is contaminated by arsenic and ash is
9 mixed with coal refuse have extremely high rates
10 of cancer: Up to 1 in 50. This is 2,000 times
11 greater than EPA's accepted cancer risks.
12 It's time the EPA begin regulating coal
13 ash as a toxic pollutant. Coal ash must be
14 regulated under Subtitle C of the Resource
15 Conservation Recovery Act as a special waste with
16 all the safeguards that apply. Federally
17 enforceable standards must ensure coal ash dumps
18 and waste ponds have all the protections presently
19 required at household wasteland fills, including
20 sold waste permits, liners, monitoring systems,
21 collection systems, corrective actions, financial
22 assurances, fugitive dust suppression, and

1 transport controls. Only Subtitle C requires
2 this.
3 For the health of communities in the
4 environment located near these 431 coal ash
5 disposal sites, it's imperative that EPA use the
6 strictest regulatory framework at its disposal,
7 and requiring Subtitle C of the Resource
8 Conservation Recovery Act is this regulatory
9 framework. Thank you.
10 MR. DELLINGER: Number 25.
11 MR. GRAY: Good morning. My name is
12 Danny Gray. I'm executive vice-president of
13 Charah, Incorporated, and I have over 30 years'
14 experience in the coal combustion products
15 management industry. And I'm testifying today on
16 behalf of Charah.
17 Charah's a 23-year-old company. It
18 specializes in the management of coal combustion
19 residues. Charah employs over 225 people in 11
20 states, all dedicated to responsible management of
21 CCRs. Our company is very active in the recycling
22 of coal combustion products that are derived from

1 coal ash. We have invested substantial efforts
2 and capital in expanding the beneficial use of
3 CCPs, and we look forward to continued growth in
4 one of the most successful recycling industries
5 that operates in the United States.
6 A successful recycling program provides
7 tremendous benefits for the environment and
8 improvements to construction materials, which are
9 acknowledged by the scientific community, the
10 construction industry, and EPA. Charah supports
11 EPA's efforts to implement regulations to avoid
12 structural failures of impoundments and require
13 added safeguards for design and operation of CCR
14 receiving ponds and landfills.
15 We believe that the protective features
16 are appropriate under Subtitle D and will provide
17 -- and that will provide for disposal of CCRs in a
18 manner that is consistent with the nature of the
19 CCR materials requiring disposal.
20 We take particular note of the fact that
21 the environmental protective features proposed
22 under the CCR landfills under Subtitle C, a

1 regulation approach, and the Subtitle D alternates
2 are essentially the same. Therefore, we believe
3 that a Subtitle D regulatory program provides the
4 necessary protection and is the only choice that
5 will avoid damage to the recycling industry.
6 Maintaining the success of the CCP
7 recycling industry is in the best interest of all
8 members of our society. We do not believe that
9 regulation of CCRs under Subtitle C can occur
10 without damaging the recycling industry. We as a
11 company have already experienced customer loss
12 associated with the proliferation of news coverage
13 inappropriately referring to coal ash as a
14 hazardous or toxic material. Our experience with
15 the stigma impacts of the proposed labeling of CCR
16 as a special waste under Subtitle C indicates that
17 recycling will decrease the valuable resources --
18 will decrease recycling and valuable resources
19 will be disposed of instead of beneficially used
20 to save virgin materials. EPA's assumption that
21 Subtitle C will result in an increase in
22 beneficial use is contrary to our experience.

1 In summary, our company has been
2 involved in the management of CCRs and the
3 beneficial use of CCPs for many years. The
4 proposed regulations under C and D essentially
5 have the same protective features for disposal.
6 Therefore, we believe that taking the risk to
7 damage the CCP recycling beneficial use industry
8 from a Subtitle C approach is not warranted.
9 As for the impact of stigma, we -- I can
10 tell you firsthand that in the loss of customers
11 who've said they would love to use our material,
12 it makes their products better, but they have to
13 switch because of the hazardous labeling. Thank
14 you.
15 MR. DELLINGER: Numbers 26, 27, 28, and
16 29. Number 26.
17 MS. WILLIAMSON: Good morning. My name
18 is Barbara Williamson. I'm the general secretary
19 for Social Justice and Environmental -- Social and
20 Environmental Justice for the Earthcare Witness of
21 the Americas for the Religious Society of Friends.
22 I first became aware of the problem of

1 coal ash when I read an EPA report that told me
2 that 48 percent of coal ash dump sites had
3 contamination that had moved off- site and
4 poisoned streams and drinking water. In the
5 Appalachian Mountains where I grew up, sites have
6 been known -- have been shown to have water travel
7 at least a mile to contaminate streams and
8 drinking water wells.
9 The EPA admits that lack of monitoring
10 and -- has meant that there are some sites that
11 are not monitored. And I think none of us should
12 forget Pines, Indiana, where using coal ash for
13 road projects contaminated the drinking wells in
14 that town and turned that town into a Superfund
15 site.
16 The public needs to be involved in a
17 permitting process for the siting and operation of
18 coal ash disposal facilities. In addition,
19 regulation -- regulatory mandates to assure that
20 facilities comply with standards requirements that
21 would prevent pollution before it occurs rather
22 than undertaking expensive cleanups after major

1 damage has occurred.
2 In addition, we need for -- and I have a
3 list of things that we would like to see -- states
4 to adopt and implement rules at the same level as
5 the EPA; coal ash be treated as a hazardous waste;
6 there to be requirements for every stage of
7 handling coal ash from generation to post-
8 closure, including management and storage with
9 consistent minimum remediation standards.
10 But we'd like for the state and EPA
11 monitoring all enforced, cleanup of all releases
12 for active and closed landfills and ponds
13 facilities, the whole facility, each individual
14 facility.
15 We would like bonding that is large
16 enough to cover all the cost of closing
17 facilities, conducting cleanup, and compensate any
18 injured -- or injury to third- party --
19 third-person parties, basic standards for new
20 landfills including liners, water runoff controls,
21 groundwater monitoring, leachate collection
22 systems, fugitive dust controls, closure, and past

1 closure care -- post-closure care.
2 Thank you for your time. I appreciate
3 your giving me the opportunity to talk today.
4 Thank you.
5 MR. DELLINGER: Thank you. Number 27.
6 MS. FAGGERT: Good morning. My name is
7 Pam Faggert, and I'm vice president and chief
8 environmental officer for Dominion Resources, and
9 I'm testifying today on behalf of the Utility
10 Solid Waste Activities Group, or USWAG. USWAG is
11 an association of over 100 electric utilities and
12 trade associations and has been working
13 cooperatively with EPA for close to three decades
14 regarding the Agency's implementation of the
15 Bevill amendment for coal combustion residuals, or
16 CCRs. USWAG's members will be directly impacted
17 by the final CCR rule, and I very much appreciate
18 the opportunity to speak today on the proposal.
19 Let me say at the outset that USWAG
20 favors the development of federal regulations for
21 CCRs under RCRA Subtitle D, nonhazardous waste
22 program. The question for us is not whether to

1 regulate, but how to regulate. We have evaluated
2 the alternatives and believe that the Subtitle D
3 prime option is the best path forward. Unlike the
4 Subtitle C approach, D prime will establish a
5 robust and environmentally protective program for
6 coal ash disposal units without crippling coal ash
7 beneficial use and imposing unnecessary regulatory
8 costs on power plants, threatening jobs, and
9 increasing electricity costs. USWAG shares the
10 EPA's objective of having a regulatory program
11 that ensures the safe disposal of CCRs and the D
12 prime option will meet this objective.
13 One of the elements of the D prime
14 option that makes it the preferred option is that
15 it would not require the automatic closure of CCR
16 surface impoundments that are operating in a
17 manner that is fully protective of human health
18 and the environment. We agree that disposal units
19 that are not fully protective must either be
20 upgraded or closed. However, there are many CCR
21 surface impoundments which are perfectly safe.
22 There is no reason why these units should not be

1 allowed to continue operating.

2 A major shortcoming, however, of the

3 Subtitle D and D prime approach is the lack of any

4 mechanism for the states to step in and administer

5 the regulations. Where state regulatory programs

6 meet or exceed the EPA proposed Subtitle D

7 standards, it makes no sense to not allow these

8 qualified state programs to administer the federal

9 Subtitle D rules.

10 We also have some serious concerns with

11 the accelerated closure in the Subtitle D option

12 that we will discuss in our written comments.

13 Finally, I want to touch briefly on our

14 opposition to Subtitle C. We agree with the views

15 of a bipartisan group of 165 members of Congress,

16 45 U.S. Senators, and virtually all the states

17 that believe that regulating CCRs under RCRA's

18 hazardous waste program is simply regulatory

19 overkill and, in fact, would be counterproductive

20 because it would cripple the CCR beneficial use

21 industry. There is simply no reason to pursue

22 this approach when the Subtitle D prime option

1 offers the same degree of protection without the
2 attendant risks and burdens of Subtitle C.
3 Thank you very much.
4 MR. DELLINGER: Number 28.
5 MR. TOLMAN: Good morning. My name is
6 Chad Tolman. I'm the energy chair of the Delaware
7 Chapter of the Sierra Club. My particular
8 interest is climate change and sea level rise, and
9 I'd like to have you think about a problem you may
10 not have thought of.
11 For many years, many coal-burning power
12 plants have been allowed to dispose of coal
13 combustion residuals as they saw fit even though
14 it's been known for a long time that these wastes
15 contain toxic heavy elements. They can be leached
16 from waste piles to contaminate streams and
17 groundwater. The size of the problem is immense
18 since U.S. Power plants consume about a billion
19 tons of coal annually and produce over 130 million
20 tons of CCR each year. Because power plants that
21 burn coal require cooling water to condense steam
22 after it's gone through power-generating turbines,

1 plants are often located close to rivers, tidal
2 basins, or coasts where cooling water is readily
3 available.
4 Though some of the CCR has been sold for
5 commercial use, for example in concrete on
6 highways, much of it has been simply dumped near
7 power plants, often without liners or impermeable
8 covers to prevent leaching. In the case of
9 Delaware, the largest power plant in the state
10 burns powdered coal and it's located near the
11 tidal Indian River, part of the state system of
12 inland bays.
13 My concern is not only about the toxic
14 heavy elements that are already leaching into the
15 river, but what will happen in the future as sea
16 levels rise and storm surges cause waves to
17 overtop the waste piles, potentially washing much
18 of their contents into the river and bays? I
19 suspect that this problem is not unique to
20 Delaware.
21 We don't have good models for how far
22 and how fast sea level will rise as we keep adding

1 greenhouse gases to the atmosphere. The most
2 recent estimates I've seen of sea level rise
3 expect up to two meters, or six feet, by 2100.
4 The paleoclimate records shows that rates as high
5 as 5 meters per century have occurred with the
6 sensitivity of sea level rise to global average
7 temperature at equilibrium of 20 meters to degree
8 centigrade.
9 Policymakers have proposed keeping the
10 global average temperature increase to 2 degrees
11 since -- above what it was at the beginning of the
12 Industrial Revolution, but target appears
13 increasingly unlikely to be met. We're already at
14 390 parts per million increasing by more than 2
15 parts per million per year, and in order to keep
16 the temperature rise below 2 degrees, you'd
17 probably have to go back to 350.
18 Thus it seems to me that CCR from
19 electrical utilities should not only be listed as
20 special waste under Schedule C of RCRA, but those
21 anywhere near sea level should be moved inland to
22 higher elevations, at least 40 to 50 meters above

1 current sea level, and should be stored in a
2 manner that prevents leaching of their toxic
3 elements for long periods of time. These costs
4 should be borne by the utilities that have created
5 the problem and not by American taxpayers.
6 And I'll submit my written comments.
7 Thank you.
8 MR. DELLINGER: Thank you. Number 29.
9 MR. TUTTLE: Good morning. Thank you
10 for having this hearing. My name is Steve Tuttle,
11 and I'm a resident of Alexandria, Virginia.
12 Five hundred years ago, the land, air,
13 and water were so much cleaner. Why do we as
14 humans have to destroy what is around us? Coal
15 ash dumps similar to Mirant's Potomac River Power
16 Plant, leach arsenic and lead and mercury into our
17 water. In Maryland, three major coal ash leak
18 sites belong to the Mirant Corporation. Why don't
19 people who make a mess clean it up? Coal
20 companies have done so much damage to the
21 environment and no one holds them accountable. In
22 the past, they have polluted the water and

1 destroyed mountains.

2 I support Subtitle C and -- because that

3 would give you, the EPA, the ability to enforce

4 uniform federal standards and coal ash could then

5 be regulated as a hazardous waste that it is. It

6 is my job to take care of my health and it is

7 cheaper to stay healthy. But I have to breathe

8 the air here. I wish it was cleaner. We must do

9 a better job and not allow heavy metals to leach

10 into our water supplies. It is so expensive to

11 try to clean that up.

12 The business model for Mirant appears to

13 be create energy from coal by spending the least

14 amount of money. The industry standard should be

15 who can do the least amount of damage to the

16 environment and make energy while they clean up

17 the mess they make. Please help the coal industry

18 learn to be responsible so we all can live in a

19 less polluted area. Thank you very much.

20 MR. DELLINGER: Numbers 30, 31, 32, and

21 33.

22 MR. DIEDRICH: I guess it's still

1 morning, good morning. Roger Diedrich. I thank
2 you for the time to speak today on this issue.
3 I'm a resident of Fairfax, Virginia, and retired
4 from the Department of Energy. Although I have
5 not looked closely at coal ash during my career at
6 DOE, I'm familiar with the Resource Conservation
7 Recovery Act, Subtitle C and D, having worked on
8 solid waste issues as a volunteer on a county
9 advisory committee for several years.
10 I would urge you to regulate coal ash
11 under Subtitle C, that is as a toxic substance,
12 because that will provide the framework to cover
13 several important issues. These include adequate
14 requirements for liners, groundwater monitoring,
15 testing, and post-closure care. I was engaged
16 when we had the debate over how you would regulate
17 incinerator ash. And ultimately, it came down to
18 what a proven testing regime would show. In some
19 cases that meant that ash had to be handled as a
20 hazardous material.
21 The regulation should be science-based,
22 and I am confident the science will show that the

1 coal ash contains many highly toxic substances at
2 levels that are a danger to human health and the
3 environment. I'm also concerned about the
4 prospect of defining beneficial uses which the
5 regulations might allow. In particular, one use
6 that seems attractive for coal generators is to
7 dispose them in roadbeds. This is a sought-after
8 use because, number one, a lot of ash can be
9 disposed that way. And, number two, a part of the
10 process, that is the cover, would be covered under
11 another budget.
12 Unfortunately, we know that lately many
13 states are broke, and so they cannot maintain
14 roads and perhaps in rural areas are removing the
15 paving when it deteriorates. What if such a road
16 had been built with the coal ash and now the toxic
17 substances were to disperse into the general
18 environment?
19 We have seen too many examples recently
20 where a lax regulatory environment has had serious
21 consequences, and so I urge you to be
22 conservative, which means to impose restrictive

1 controls on coal ash disposal. Thank you.
2 MR. DELLINGER: Number 31.
3 MR. HOWLEY: Good morning. My name is
4 John Howley, and I am editor of Maryland Energy
5 Report, an independent voice for energy users.
6 Maryland is in the middle of transforming its
7 coal-fired power generation sector, and this will
8 mean big improvements in air quality. The 2006
9 Healthy Air Act will significantly reduce NOCs,
10 SOCs, and mercury emissions by 2013. Meanwhile,
11 Maryland has new regulations on the disposal of
12 toxic CCRs which took effect at the end of 2008.
13 The new regulations require annual reports from
14 CCR generators. These reports could provide EPA
15 with a useful case study to inform projections of
16 the ratios of CCRs to tons of coal burn.
17 According to MDE, in 2008, about 2
18 million tons of coal ash was generated from
19 Maryland plants. Maryland projects that in 2010,
20 when scrubbers are fully operational, an
21 additional 2.5 million tons of scrubber sludge
22 will be generated each year. This suggests that

1 the nationwide increase in CCRs resulting from
2 better air quality controls may be even faster
3 than EPA projects. The MDE report throws light on
4 another issue EPA should take note of: Interstate
5 transport of CCRs. Generator reports for 2009
6 show that more than half of the CCRs generated
7 were transported out of state for disposal going
8 to landfills, minefills, as well as manufacturing
9 plants.
10 Please note that these figures do not
11 yet include any scrub or sludge. Unless new
12 permitted landfills or processing capacity is put
13 in place quickly, it is likely that much of the
14 additional 2.5 million tons of scrubber sludge
15 predicted by MDE will also be exported from the
16 state. One county in Maryland has completely
17 banned the disposal of CCRs. In the absence of
18 strong nationwide regulatory structure, it is
19 reasonable to assume that as individual states
20 improve their own regulations, toxic coal
21 combustion waste may flow across state lines in
22 increasing amounts, as the TVA-Kingston disaster

1 shows, where wastes were exported from Tennessee
2 to Alabama.
3 While Maryland's rate of export may or
4 may not be representative, it should serve as a
5 reminder that toxic CCRs do move across state
6 lines and will likely do so in higher volume in
7 years to come.
8 The three factors -- the growing
9 discrepancy in the patchwork of state-level CCR
10 regulation; a more rapid than expected increase in
11 toxic CCRs; and the possibility of growing
12 interstate movement -- make it imperative that EPA
13 put in place an effective federal framework as
14 quickly as possible. Each day of further delay by
15 EPA simply increases the health and economic
16 burden on our children and grandchildren who will
17 live with the consequences of this generation's
18 inaction. Promulgation of Subtitle C's special
19 waste option is a long overdue first step towards
20 protecting the health of Americans from the
21 hazards of toxic CCRs. Thank you.
22 MR. DELLINGER: Number 32.

1 PROFESSOR LOCKWOOD: Good morning. My
2 name is Alan Lockwood, and I'm a tenured professor
3 of neurology at the University at Buffalo. I'm
4 here to represent Physicians for Social
5 Responsibility, 50,000 members and E-activists.
6 Each year coal-fired utilities create
7 and dispose of over 120 million tons of coal
8 combustion residues. Ironically, as air pollution
9 control technologies improve, this huge waste
10 stream becomes increasingly hazardous as toxicants
11 such as arsenic, selenium, and many others that
12 had been released into the air and become a part
13 of the CCR waste stream. If CCRs stayed put, the
14 problem we face would be much simpler. However,
15 many of these toxicants leach into drinking water
16 supplies, our waterways, into the air as dust, et
17 cetera, and harm the health of those who are
18 exposed. Several disposal sites are so toxic they
19 have been added to the national priorities list.
20 Time does not permit me to present the
21 details of this complex problem, so I will focus
22 my comments on arsenic and selenium, two critical

1 constituents of CCR. Arsenic is a known
2 carcinogen that causes cancers of the skin, lung,
3 and urinary bladder. Arsenic and CCR placed in
4 surface impoundments creates the greatest risk for
5 the development of cancer. The cancer risk for
6 individuals at the 50th percentile of exposure is
7 increased by a factor of about 30. Unlined and
8 clay-lined disposal sites have lower but still
9 appreciable risks.
10 Leaching of arsenic and other CCR toxins
11 has forced the shutdown of water supplies and
12 towns such as the town of Pines, Indiana.
13 Exposure to arsenic also increases the risk of
14 developing Type 2 diabetes mellitus. As many of
15 you know, Americans are experiencing an epidemic
16 of this largely preventable, devastating, and
17 expensive disease.
18 CCR also contains significant amounts of
19 selenium. The EPA's own analysis has demonstrated
20 clearly that selenium from CCR disposal sites has
21 devastated fish populations and resulted in fish
22 consumption advisories. For example, Devil's

1 Lick, North Carolina, selenium eliminated 16 out
2 of 20 species of fish and led the Fish Consumption
3 Advisory that was in effect for 7 years.
4 These are but a few of the numerous,
5 well- studied, and proven instances of CCR
6 damages. Other examples include the highly
7 publicized collapse of a dam that contained CCR in
8 Kingston, Tennessee, that led to the discharge of
9 about 1 billion gallons of toxic slurry into
10 adjacent waterways.
11 In 2009, EPA's sponsored survey showed
12 that there were at least 50 CCR storage ponds that
13 posed a significant high risk for failure.
14 Seventy-five of all of the impoundments were
15 behind dams that were more than 50 feet high, thus
16 too many CCR repositories have the potential to
17 cause additional, perhaps catastrophic, effects on
18 health and the environment.
19 On behalf of our members and all
20 Americans, PSR urges the EPA to adopt the measures
21 for regulating CCR described in Subtitle C so that
22 the Agency can best fulfill its mission to protect

1 health and the environment.
2 Thank you for this opportunity.
3 MR. DELLINGER: Number 33.
4 MS. CLEMENT: My name is Audrey Clement.
5 I'm co-chair of the Green Party of Virginia.
6 The issue before the EPA is whether to
7 adopt a regulation classifying coal ash as a RCRA
8 Subtitle C hazardous waste or a Subtitle D solid
9 waste, i.e., household garbage. According to OMB
10 Watch, EPA faces this dilemma only because the
11 White House Office of Information and Regulatory
12 Affairs rewrote the EPA rule proposing to regulate
13 coal ash as a hazardous waste after secret
14 meetings with the coal and utility industry
15 flacks.
16 The White House did industry's bidding
17 by presenting a solid waste designation as a
18 reasonable compromise between meaningful
19 regulation and no regulation at all. While
20 politically expedient, designating coal ash as a
21 household waste is imprudent. Those who make
22 money selling coal ash for so-called beneficial

1 reuse argue that coal ash is no more harmful than
2 dirt, yet it is known that coal ash concentrates
3 the pollutants in coal 10-fold. According to
4 Wikipedia, approximately 10 percent of the mass of
5 coal burned in the United States consists of
6 unburnable mineral material that becomes ash, so
7 the concentration of most trace elements in coal
8 ash is approximately 10 times the concentration in
9 the original coal.
10 Secondly, coal ash contains harmful
11 particulates silica and lime. Silica has been
12 linked to silicosis and lime with lung damage due
13 to its high alkali pH. Because of the hazardous
14 particulate nature of coal ash, workers installing
15 it as a soil stabilizer at a Chesapeake, Virginia,
16 golf course in 2004 were told to wear respirators
17 and gloves. It stands to reason that if handling
18 a substance requires protective measures, the
19 substance itself must be hazardous. Certainly,
20 this is the position EPA has taken regarding a
21 host of other pollutants including lead, mercury,
22 and asbestos. Why should coal ash be treated any

1 differently except that selling it is profitable
2 to utilities?
3 Finally, regulating coal ash as solid
4 waste is voluntary and, therefore, unenforceable.
5 According to a coal ash proposed-rule summary put
6 out by Earthjustice, EIP, NRDC, Sierra Club, and
7 the Southern Environmental Law Center, "EPA cannot
8 require that states issue solid waste permits
9 under the Subtitle D option. Permits are the
10 prime enforcement tool of state and federal
11 regulatory agencies and are the only mechanism for
12 meaningful public involvement in citing an
13 operation of disposal facilities.
14 "Furthermore, requiring facilities to
15 comply with standard permit requirements would
16 allow agencies with citizen involvement to prevent
17 pollution before it occurs rather than undertaking
18 expensive clean-up operations. Option C is the
19 only way to assure safe disposal of coal ash."
20 I, therefore, urge EPA to reject the
21 White House's solid waste disposal option and
22 designate coal ash as a Subtitle C hazardous

1 waste. Thank you very much.
2 MR. DELLINGER: Numbers 34, 35, 36, 37,
3 and 38.
4 MS. RUSSO: Hello. I'm number 34.
5 Gentlemen, let's see, Steve, Jesse, Bob, Laurel, I
6 have a packet -- I will -- rather than give the
7 written comments so you can follow along with me,
8 my presentation will be three minutes, sir. But I
9 just wanted to show you, there's some maps, and
10 this is an important (inaudible).
11 MR. DELLINGER: Save you some time.
12 MS. RUSSO: Okay, thank you. Good
13 afternoon. My name is Mary Russo. I am
14 spokesperson for the Anne Arundel County Council
15 for the Environment. We're a small group of
16 activists who have fought since -- if you'll look
17 at the history in the back, since 1979, actually,
18 on many issues, and this is an environmental
19 justice issue as well as it is a pollution issue.
20 We live near -- all of us are in the shadow of the
21 BG&E.
22 In this little packet I gave you, it's a

1 picture -- it's actually a map -- make sure I'm
2 going to read the other thing there -- there's a
3 map that shows how many industries -- it's called
4 A Major Particulate Matter Source Impacting ZIP
5 Code 21226. Actually, 21226 is Baltimore City and
6 it also is part of Anne Arundel County. It's
7 where all the industry is. As you can see, it's
8 concentrated between -- well, you can't see
9 Brooklyn maybe -- Brooklyn, Brooklyn Park, and
10 Glen Burnie, parts of Pasadena, and it's
11 encompassed. It has the highest concentration of
12 pollutants, actually, in the state.
13 I have also included in here the 2009 --
14 these are the most recent -- within this area that
15 you're looking at, which covers actually a
16 three-mile radius area, part of Dundalk, actually,
17 too, because they're right across the river from
18 this map that you see. I left my giant map home;
19 it was just too big to carry on the van.
20 At any rate, it starts from Valley
21 Proteins, which is an animal rendering plant, all
22 the way down to Nustar, and you'll find out that

1 Constellation Energy has the most. But the
2 tonnages -- whoops, my one minute. Did you take
3 out for me giving you those things?
4 MR. DELLINGER: Yes.
5 MS. RUSSO: Geez, okay. All right. So
6 the point is, this is an environmental justice
7 issue to the people that are most impacted, and
8 we're going to get another great big, giant
9 landfill and -- off of Ft. Smallwood Road, which
10 is in that area of 210 feet that BG&E wants to put
11 this fly ash there.
12 So I would say to you, if you look at
13 the environment, the other handout inside here,
14 it's the environmental justice. And it says:
15 "It's a fair treatment and meaningful involvement
16 of all people regardless of race, color, national
17 origin, culture, education, or income, with
18 respect to the development, implementation, and
19 enforcement of environmental laws, regulations and
20 policies. 'Fair treatment' means that no group of
21 people, including racial, ethnic, or socioeconomic
22 groups should bear a disproportionate" -- that's

1 the key word here, "disproportionate" -- "share of
2 negative, municipal, and commercial operations, or
3 the execution of federal, state, local, and tribal
4 environmental programs and policies." This is the
5 law we should go by. We should not be constantly
6 impacted with this.
7 And my brief testimony, which is -- I
8 can say in half a minute. I'm here today to
9 represent the Anne Arundel Council for the
10 Environment. Our group is a dedicated group of
11 community activists. We all live in the shadows
12 of major power plants plus many other industries,
13 the largest medical waste incinerator in the
14 nation -- we fought that, but we lost that one --
15 Millennium Chemical, W.R. Grace landfill, Browning
16 and Ferris hazardous waste landfill -- which is
17 still leaking into the groundwater -- Solly Road
18 Compost Facility, Baltimore City dump, Ordnance
19 Road, and 25 other polluting industries.
20 We have managed to stop BG&E from using
21 anhydrous ammonia in their plant, and they were
22 not successful. This was to -- this was a big

1 thing. I didn't bring the picture of all the
2 people that were lined up there. We had to tell
3 them that that was not worth us having a very
4 dangerous waste stream being brought there. And
5 the County Council -- so we were successful at
6 that. We stopped that.
7 We convinced the county -- we could not
8 convince the County Council to prohibit BG&E from
9 using fly ash as a structural fill. The Solly
10 Road residents suffered greatly from the air
11 pollution. In fact, my one resident who has
12 passed away, most of them that were working there
13 live there right across from this, found their
14 apples in his orchards, the ash had penetrated the
15 apples.
16 MR. DELLINGER: You're going to have to
17 close right away.
18 MR. RUSSO: Oops. Okay, okay, I got
19 this little bit, just teeny-teeny. A special
20 group was formed, CAFF, okay. I'm here today
21 really to plead and stand before you to say I
22 don't know that this C thing is going to be the

1 same as classifying it as a hazardous waste, but I
2 really think you need to classify it as a
3 hazardous waste because it is a hazardous waste.
4 And I'm really sorry for these guys that are
5 saying, oh, gee, I'm going to have problems. We
6 tried to work with BG&E on them having recycling
7 their plant stuff, and I think, Lola, you can talk
8 to that.
9 But any rate, the point is, is that they
10 lied to the people at every single meeting we went
11 to saying it was like dirt.
12 MR. DELLINGER: You're going to have to
13 --
14 MS. RUSSO: Well, it wasn't like dirt.
15 Okay. Thank you very much.
16 MR. DELLINGER: Number 35, please.
17 MS. RUSSO: Sorry about that.
18 MS. KOLBERG: Hello. My name is Rebecca
19 Kolberg, and I live at 7605 Bay Street, Pasadena,
20 Maryland, 21122. That's just downriver and
21 downwind from Constellation Energy's former
22 unlined dumping grounds for coal fly ash and its

1 proposed new fly ash landfill.
2 I support listing coal ash as a
3 hazardous waste subject to regulation under
4 Subtitle C of the Resource Conservation and
5 Recovery Act. The reasons I call on the EPA to
6 support such federal regulation are threefold:
7 The health of the American public, the welfare of
8 wildlife, and environmental justice.
9 I want to draw attention to several
10 issues that have come to light because of
11 Constellation Energy's past, present, and proposed
12 coal ash disposal practices in Maryland. First,
13 to protect our health the EPA not only needs to
14 safeguard drinking water supplies, it needs to
15 monitor and regulate airborne or fugitive coal
16 ash. Recently testing near Constellation's ash
17 disposal site in Gambrills, Maryland, has shown
18 that the ash has not remained confined to the site
19 and airborne ash has contaminated nearby
20 neighborhoods.
21 This is very disturbing given
22 Constellation's recent proposal to build another

1 coal fly ash landfill at the border of Baltimore
2 and Anne Arundel County. Unlike the Gambrill's
3 landfill, which involved filling a hole in the
4 ground, this landfill would be a so-called
5 vertical landfill, looming 170 feet above the flat
6 coastal plain, a veritable Mount Ashmore. That's
7 certainly not what most people picture when they
8 think of a landfill. Consequently, the EPA needs
9 to set height limits for coal ash landfills or
10 else face the threat of windborne fugitive ash
11 contaminating neighborhoods for miles around.
12 Secondly, to protect wildlife near coal
13 ash landfills the EPA needs to require strict
14 management and treatment systems to protect not
15 only groundwater, but surface water and wetland
16 areas. The landfill proposed for my area would be
17 built adjacent to non-tidal wetlands built for
18 mitigation purposes as well as adjacent to and
19 upstream from tidal wetlands.
20 Then there is the issue of environmental
21 justice. From what I have read in the news media
22 and witnessed with my own eyes, utility companies

1 dump fly ash mainly in low- income and minority
2 areas. This situation is doubly unfair when one
3 considers many of these people have had to breathe
4 the air from coal-fired power plants for decades.
5 Thanks to the Clean Air Act, emissions from stacks
6 may soon be cleaner, but these disadvantaged
7 communities now face a different, perhaps even
8 greater threat in the form of more highly
9 contaminated ash in their soil, waterways, and
10 air.
11 Finally, I want to express my outrage
12 that the EPA has chosen not to hold a public
13 hearing in Tennessee. Your decision is an insult
14 to the communities most devastated by ash disposal
15 failure and flies in the face of environmental
16 justice. On behalf of my sisters and brothers in
17 Tennessee, I call on you to reconsider that
18 decision. Thank you.
19 MR. DELLINGER: Number 35.
20 MS. FABULA: 36.
21 MR. DELLINGER: 36, sorry.
22 MS. FABULA: Thank you. My name is

1 Cecilia Fabula, and I'm representing the Anne
2 Arundel County Council for the Environment, and
3 also I am chairperson for the Brooklyn Park
4 Advisory Council.
5 When I took over this position, it was
6 because the advisory chairman at the time, Ann
7 McCoy, had cancer. She is trying to survive. She
8 had an operation. They had to close her up and
9 they can't do anything with it. She's going to
10 die this year.
11 Also, I can name dozens, but I'll give
12 you four or five: Ann Jones, who lives on Seward
13 Avenue; the gentleman across the street from me,
14 Jim Foley, who had to have his lung taken out and
15 now it's gone to the other lung and the brain, and
16 he will be dead in six months.
17 Solley Road landfill, which was the dump
18 for Johnson and Speake, my brother worked there.
19 This year my brother died because he worked there.
20 We fought this for 40 years. Surely, you who are
21 being paid and you who are volunteers should take
22 some action. We have a President that will help

1 you take the action. We are so sorry that our
2 families have to go through this.
3 Shirley Murphy, who was our county
4 counsel in the 3rd District, her 42-year-old
5 daughter, and they live in that area -- Pasadena,
6 Brooklyn Park -- she has cancer of the brain.
7 She's dying. They gave her a year three months
8 ago. How many people are going to have to die
9 before you decide that it's not exactly what's
10 written, but what you hope to be able to take some
11 action with?
12 We had a situation with MDE and, quite
13 frankly, I got so disgusted that I said let's get
14 them a rubber stamp, a rubber stamp, a rubber
15 stamp, a rubber stamp, because when you look at
16 those 37 places where we went to oppose it, we had
17 a rubber stamp. We did not have an organization
18 that was really going to observe what was going on
19 and to know that we need this action.
20 You're not doing that, so why don't you
21 resign? We'll get action committees from the
22 citizens and we'll divide all the money up, and

1 you better believe they'll go in there and enforce
2 it. And they'll go in there and give them hell.
3 And they would never have let BP Oil do what it
4 did in that particular area and destroy our whole
5 area.
6 Now, I'm not giving you any text for
7 that. I'm giving you live stories. If you want
8 about three dozen more, call me at Anne Arundel
9 County, Brooklyn Park Advisory Board, and I'll
10 give you hell with it. Thank you.
11 MR. DELLINGER: Number 37.
12 MR. KAVAROVICS: Good afternoon. My
13 name is Scott Kavarovics. I'm the conservation
14 director at the Izaak Walton League of America.
15 Izaak Walton League is a national conservation
16 organization with about 38,000 members across the
17 country who hunt, fish, recreate, and are active
18 conservationists in their local community.
19 With our members, conserving and
20 protecting water resources is of utmost
21 importance. The league supports a strong and
22 appropriate solution to the widespread pollution

1 caused by inadequate storage of coal ash waste.
2 Specifically, the league urges EPA to issue a
3 final rule that regulates coal ash as special
4 waste under Subtitle C of the Resource
5 Conservation and Recovery Act.
6 Water quality is especially at risk from
7 unregulated coal ash storage and disposal. As
8 others have alluded to, most plants are close to
9 fresh water resources because of the vast amount
10 of water they use, and then on- site storage of
11 coal ash in unlined ponds and on the surface poses
12 direct and serious threats to surface and
13 groundwater resources by their close proximity to
14 these waters.
15 Coal ash contains a host of toxic
16 substances and heavy metals. And I'll highlight
17 just one from a fish and wildlife perspective:
18 Selenium easily moves from coal waste into the
19 water. It becomes more concentrated in the
20 aquatic food chain. It can render fish unsafe to
21 eat and ultimately cause reproductive failure in
22 fish populations. And birds that eat fish

1 containing high levels of selenium may also
2 experience reproductive failure.
3 Strong and effective federal regulations
4 are necessary because a majority of states do not
5 require safeguards at most coal ash landfills and
6 ponds. Under the Subtitle C option, which the
7 league supports, all states would set equivalent
8 standards for the generation, storage,
9 transportation, and disposal of coal waste;
10 require permits for disposal facilities; and phase
11 out waste ponds. Proper disposal should require
12 composite liners, leachate collection systems,
13 adequate groundwater monitoring, and corrective
14 action, all of which are necessary to afford more
15 protection to the public health, fish, and
16 wildlife.
17 Absent this comprehensive approach under
18 Subtitle C, states would only be given suggested
19 guidelines for disposal safeguards. Moreover, the
20 EPA would lack enforcement authority. This weak
21 approach under Subtitle D is completely inadequate
22 to address proper handling and disposal of the

1 second largest industrial waste stream in America.
2 Finally, strong regulations will also
3 support the beneficial reuse and recycling of coal
4 ash as utilities will have economic incentives to
5 find innovative methods to reuse this waste.
6 Several environmentally appropriate reuse options
7 exist today, and we believe encouraging additional
8 innovation makes sense within the context of a
9 comprehensive approach to reduce coal ash
10 generation.
11 In conclusion, the Izaak Walton League
12 encourages EPA to issue a final rule adopting a
13 reasonable, necessary, and protective alternative
14 for disposal of coal waste under Subtitle C.
15 Thank you.
16 MR. DELLINGER: Number 38.
17 MR. SALMON: Hi. My name is Ryan
18 Salmon, coordinator for a climate and energy
19 policy at the National Wildlife Federation. On
20 behalf of the National Wildlife Federation, our
21 47-state affiliate organizations, and our more
22 than 4 million members and supporters, we thank

1 you for the opportunity to provide comments on
2 EPA's proposed rule on coal combustion residuals.
3 Because state regulations have proven to
4 be inadequate to protect citizens and wildlife
5 from the toxic substances found in coal waste, the
6 National Wildlife Federation strongly supports
7 EPA's determination that coal ash be classified as
8 a special waste under Subtitle C of the Resource
9 Conservation and Recovery Act. Despite the litany
10 of documented impacts of coal ash contamination on
11 human health, water, and wildlife, currently there
12 is no meaningful federal regulation of this waste.
13 Although the industry claims that state
14 regulations are adequate and coal ash disposal
15 landfills and ponds are a safe way to deal with
16 the waste, the reality is that every year hundreds
17 of thousands of gallons of toxic substances leak
18 into ground and surface water and leach into the
19 soil.
20 For example, in Montana, lawmakers have
21 actually exempted on-site disposal of coal ash
22 from the state solid waste regulations. This has

1 impacted the lives of thousands of people, an
2 entire aquifer, and large swaths of fish and
3 wildlife habitat. In Colstrip, Montana, the
4 consortium that owns a coal power plant had to pay
5 $25 million in 2008 to settle a class action
6 lawsuit filed by 57 residents whose drinking water
7 was contaminated by leaking coal ash disposal
8 ponds, one of which had been leaking for the last
9 three decades.
10 A toxicologist who examined the problem
11 stated that the wells contaminated by the plume
12 should not be used for irrigation or for drinking
13 by animals or people. The State of Montana's
14 response to this contamination has been to
15 negotiate privately with PPL, one of the
16 defendants in the case and the operator of the
17 plant. They agreed that the main requirement
18 would be to continue monitoring the spread of the
19 toxic plume and try to cycle the contamination
20 back into the ponds. But the plume is growing
21 larger every day, and the Montana Department of
22 Environmental Quality has refused to act in a

1 meaningful way that will protect the community and
2 wildlife. It has had the authority to fine PPL
3 $10,000 per day for this contamination, but it's
4 chosen not to do so.
5 Colstrip, Montana, is just one of many
6 examples of the failure of states to adequately
7 regular coal ash. There are over 180 sites
8 nationwide where coal ash is dumped in unlined or
9 partially lined ponds and pits. These toxic sites
10 pose major problems for fish and wildlife. The
11 following are just a few examples.
12 Researchers investigated the impacts of
13 coal ash ponds on green sunfish in North Carolina,
14 and found evidence that the selenium, copper, and
15 arsenic released from the ash ponds increase skin,
16 eye, and gill aberrations and increased
17 nutritional stress in the fish.
18 In Texas, coal ash discharges into the
19 Brady Branch Reservoir, increases selenium
20 concentration in the inhabitant fish, leading the
21 Texas Department of Health to issue a fish
22 consumption advisory for the reservoir.

1 The impacts of coal contamination on
2 communities, water, and wildlife and the failure
3 of states to implement effective regulations
4 underscores the need for EPA to regulate coal ash
5 under Subtitle C of the Resource Conservation and
6 Recovery Act. Under Subtitle D, there would be
7 little change in how the states handle these
8 problems. National Wildlife Federation strongly
9 urges EPA to implement the Subtitle C option for
10 the coal combustion residuals proposed rule.
11 Thank you.
12 MR. DELLINGER: Is Number 19 in the room
13 now? Okay. That person had been here, I was
14 told, at one time. We'll go on to Number 39, 40,
15 41, and 42.
16 SPEAKER: I'll talk to him.
17 MS. J.D. ANDREWS: I give honor to the
18 God of Israel, the Creator of Heaven and Earth,
19 his son Yeshua, which is and which was and which
20 is to come, and I honor the Holy Spirit that
21 dwells in me.
22 For five generations my family has

1 occupied the farmland on Land of Promise Road in
2 Chesapeake, Virginia. The groundwater sustained
3 us. My ancestors drew water from wells and pumped
4 water by hand. We celebrated the day our
5 homestead was blessed with indoor plumbing.
6 I support ministries in Third World
7 countries that plant hand pumps, bringing
8 life-giving water to poor communities. Now I find
9 my ancestral waters have been defiled by coal ash.
10 No longer does the groundwater sustain us. No
11 longer does the groundwater bring life, it brings
12 death: Death by drinking, death by bathing,
13 corroding pipes, pumps, my body, my family. My
14 husband is in a wheelchair.
15 How could this happen in America? How
16 can my community be in worse condition than a
17 Third World community? Yeshua said in a parable,
18 "The thief cometh not but to steal, to kill, and
19 to destroy." The thief has come into my
20 community, into my home, into my family. The
21 thief has come to steal, alienate, to transfer the
22 ownership of property to another, to kill,

1 inducing death by drinking water, to destroy, to
2 destroy the established agricultural community by
3 dividing fields into urban subdivisions.
4 Who is this thief? In ancient times
5 when a city was under siege, invaders would cut
6 off the water supply. My community has been
7 invaded by a thief using subversion. Our water
8 supply was poisoned. We became victims, in-
9 fighting, division, and alienation the results.
10 Micah records in the God of Israel's
11 judgment against thieves as follows: "Woe to them
12 that devise iniquity and work evil upon their
13 beds. When the morning is light they practice it
14 because it is in the power of their hand. They
15 covet fields and take them by violence, and
16 houses, and take them away, so they oppress a man
17 and his house, even a man and his heritage."
18 Who is this thief that has invaded and
19 devised iniquity? Dominion Virginia Power. They
20 pay the golf course to take that coal ash as
21 landfill. They dump the coal ash directly on the
22 land without the necessary safety precautions.

1 They defile our life-giving water and our heritage
2 for generations. Now our community must bear the
3 cost of waterline installation forcing us to buy
4 water from the thief that stole the groundwater in
5 the first place.
6 For this deliberate assault on our
7 community and the willful poisoning of our water,
8 restitution must be made. This injustice must be
9 corrected. There is no repentance without
10 restitution. I pray in the Name of Yeshua that
11 the thief will restore sevenfold and for the
12 establishment of the Kingdom of Adonai on Earth as
13 it is in Heaven. Thank you. Amen.
14 MR. DELLINGER: Thank you. Could you
15 state your name?
16 MS. J.D. ANDREWS: Jeanette Dey Andrews.
17 MR. DELLINGER: Thank you. Number 40.
18 MS. J. ANDREWS: My name is Jasmine
19 Andrews. My water was contaminated by the coal
20 ash. I am a student at Hampton University but
21 Chesapeake, Virginia, is the place I call home. I
22 lived in the same place for 17 years, and whenever

1 the family gathered together, it was in the
2 ancestor home in Chesapeake. No matter where I
3 went, I always knew that I could return to that
4 farm in Chesapeake until now.
5 When I would come home to visit, there
6 would always be a strain on how long I could stay.
7 A simple act like taking a shower was a barrier
8 between me and my family. Whenever I stayed in
9 Chesapeake for a long period of time, my skin
10 would break out, and I always feel this oily film
11 left on it from the water, feeling less clean than
12 before taking a shower. I would constantly have
13 to run to the store to buy gallons of water just
14 for everyone to have a simple glass of water to
15 drink, taking away from time spent together to run
16 errands. I would cart around empty gallon jugs to
17 refill in Hampton, just to bring back clean water
18 sometimes. Rather than staying home for one
19 continuous visit with my family I would have to
20 take an hour and 30 minute road trip, roundtrip,
21 back to Hampton every 2 days just to take a
22 shower.

1 I am planning a wedding. I intend to be
2 married in my backyard at my ancestor home in
3 Chesapeake. I chose this location because it is
4 my heritage. God makes a covenant with the land
5 and the people, and as I enter the covenant of
6 marriage, I want to include my ancestral lands.
7 However, the water is contaminated, putting the
8 purity of the land in question. The only way to
9 restore the land is with the immediate
10 installation of city water. This is where the
11 true iniquity is revealed because the very people
12 responsible for contaminating the water --
13 Dominion Virginia Power -- are the ones who are
14 charging money to install clean water.
15 My great-great-grandparents, against
16 many odds, managed to find a piece of the American
17 Dream and get a home after slavery and bondage.
18 They lived humbly, but God provided them with
19 clean water. Now, five generations later, I find
20 that I'm worse off than first generation freed
21 slaves with no clean water because a cruel enemy
22 has polluted it. In the pursuit of greedy gain,

1 Dominion Virginia Power has taken away the gift of
2 clean water so they can sell me something that I
3 used to have for free.
4 Dominion Virginia Power must make
5 restitution for their perverse disregard for human
6 life by contaminating the drinking water. This
7 restitution must not be only for me, but others in
8 the community and the generations to come who will
9 be affected by the sickness of their greed.
10 MR. DELLINGER: Number 41.
11 MR. TYE: Greetings. My name is Robert
12 E. Tye, and I reside in Chesapeake, Virginia, and
13 today I'd like to speak just as a citizen from my
14 personal concern considering a health risk to my
15 family and friends from dumping coal ash in our
16 community, sculpturing a 216-acre golf course with
17 1.5 million tons of fly ash. My concerns are as
18 follows.
19 The impact on home values when you go to
20 sell because of the proximity of the coal ash.
21 Number 2 is the wisdom of local and
22 state agencies approving dumping coal ash in a

1 community dependent on home wells and septic
2 tanks.
3 Water pollution, since the direction of
4 underground water aquifers flow in uncertain
5 directions.
6 Because Centerville Baptist Church,
7 which I attend, is in the proximity of the coal
8 ash dumping, the dust that the church members and
9 the preschoolers who play outside is very
10 hazardous. The health of golfers even concern me
11 that play on the golf course. The golf course
12 contains many waterholes which I understand were
13 not properly lined to prevent water seepage into
14 the water aquifers that flow beneath.
15 Disposal of fly ash, as we all know, is
16 a national concern, and it's a problem that should
17 be strictly regulated, and hopefully, that you
18 people will regulate it as a hazardous material.
19 Thank you for my time.
20 MR. DELLINGER: Number 42.
21 MS. FAGAN: Hello. My name is Greta
22 Fagan. I reside in Chesapeake, Virginia. I'm

here to speak about coal ash as a hazardous waste product of electric power. I'm going to let the technical stuff be spoken by people that know about technical things. I want to tell you about how it's affected my life.

I was told it was harmless as dirt, and they're going to build a golf course. I was kind of excited about that because I like golf. The first two years they dug holes so deep that you couldn't see the dump trucks as they went down into them. They took out sand, they put in coal ash. No big deal, I like golf.

They rolled five days a week, six days a week from 7:00 to 5:00 in the afternoon. This black ash would be carried in the wind. It covered our streets, it covered our yards, it covered our cars, our swimming pools, those that were lucky enough to have them. It came through our windows into our furniture, our carpets, our drapes. We didn't know that fly ash was -- that it was actually fly ash. We was told it was safe as dirt.

1 Well, we didn't know that they'd also
2 told the truck drivers that they needed to wear
3 protective clothing. Our children were outside
4 playing while they were dumping the fly ash, while
5 it was flying across our yards.
6 I, personally, in the last few years
7 have developed asthma, about a year and a half
8 after they started dumping. At my age, you don't
9 develop asthma. I have a young granddaughter that
10 has lived with us since she was eighteen months
11 old. I'm really worried about her, what she's
12 going to develop later on in life.
13 Now, our water is no longer safe to
14 drink even though they say it is. A lot of people
15 won't even have a cup of coffee at my house even
16 though I use bottled water. Have you ever sat
17 down to try to make pasta? Wash a potato after
18 you've peeled it? All of these things you have to
19 think about when you go to make a meal when your
20 water's contaminated. I'd like to share some of
21 these concerns about minor things like this that
22 you don't think about when you've got water, well

1 water that's being polluted by this beautiful golf
2 course they were going to build us.
3 EPA needs to stand up and protect us.
4 EPA stands for right, not easy. To protect
5 Virginia water resources and the people that live
6 in our neighborhood, we can't even sell our home
7 and downsize. Our values have dropped so
8 drastically on our home we couldn't replace a home
9 to live in. My husband and I are in our 60s. Our
10 property may be back where it should be in 20
11 years. We don't have 20 years. The water's going
12 to be contaminated forever, and it's not just my
13 water, it's not just my air: It's your families'
14 water, it's your families' air.
15 Do the right thing. Step up. Don't let
16 it be the bottom line of big business for them to
17 have what they need to get rid of this coal ash.
18 You've got to regulate it. Thank you.
19 MR. DELLINGER: Numbers 43 and 44. And
20 45.
21 MR. SEARS: Hello. I'm Dennis Sears. I
22 live across the street from Greta. Well, she

1 covered just about everything I wrote, so I'm
2 winding up having to shoot from the hip, so that's
3 -- look out.
4 The only thing different during the
5 dumping phase of the golf course -- or beneficial
6 use program -- I developed hay fever-like
7 symptoms. I kept them for five years while they
8 were dumping. My doctor would say try this, try
9 that, try the other thing. You know, and I spent
10 hundreds of dollars just on sinus medication. It
11 didn't do me any good. It's eased up in the past
12 year or so because everything's -- well,
13 everything for the most part is covered. You
14 still get a bald spot now and then, and they're
15 out there trying to cover it up so they can still
16 play golf.
17 One of our meetings with the city and
18 the DEQ and the Health Department, it was really
19 disgusting. The DEQ guy got up and just spouted
20 off a regulation. He didn't have a clue what was
21 really going on. This beneficial use thing is
22 like a basket with a hole in it. You can do

1 whatever you want, and at the end I'll sign off on
2 it. You're good to go.
3 Our water got tested before the project
4 started. It was good. After the news broke in
5 the paper, it was tested again. Levels were
6 higher, but the Health Department says they're
7 within acceptable levels. Well, when it goes up,
8 that's not acceptable. When I built my house 28
9 years ago, I had good drinking water. Not
10 anymore. I'm going to have to start paying for
11 city water. That's why I moved out of
12 inner-Chesapeake out to the area where I could
13 have more land, not neighbors up my butt, and I
14 wouldn't have to pay for city water or sewage.
15 Well, guess what? I'm going to have to start
16 paying for city water. I never expected to have
17 to do that in my lifetime.
18 I have a friend that was in the trucking
19 business during the time of the dumping. He
20 stopped sending his trucks to do the dumping
21 because the material was so chemically hot in his
22 trucks that it was eating up the aluminum wheels

1 on his trucks and costing him money.
2 The DEQ needs some guidance from you
3 guys to have some real teeth in the regulations so
4 that maybe they'll do something about problems
5 like this. Thank you.
6 MR. DELLINGER: Number 44. Number 45.
7 MR. FOX: My name is Stephen Fox,
8 formerly of 1317 Murray Drive, Chesapeake,
9 Virginia. My wife Karen and I purchased our home
10 in the fall of 2002, a little over a year after
11 the golf course was approved by the city. While
12 we were closing on our home we were required to
13 sign a disclosure on the noise effects from the
14 Navy jets. Nothing was said in regards to us
15 living next to a toxic waste dump disguised as a
16 golf course.
17 For five years we watched dump truck
18 after dump truck unload what we assumed to be
19 regular backfill dirt. During those years, we
20 would have storms move in, and, boy, what we now
21 know was fly ash into our homes and yards. Even
22 going to the store meant you would end up driving

1 behind one of these trucks breathing the ash that
2 was blowing off them.
3 During the years that the dump was
4 built, the mountains of ash would be left
5 uncovered for weeks and months at a time being
6 exposed to the wind and rain. Murray Drive is
7 well documented for being prone to flooding with
8 water reaching waist high. And between 2006 and
9 '07, my wife started becoming sick. Finally,
10 after a series of tests, she is diagnosed with
11 autoimmune disease, lupus.
12 At the end of March of 2009, I was
13 diagnosed with Stage 3 cancer. We were soon
14 overwhelmed with medical bills, but due to the
15 fact that we live next to the dump, we were unable
16 to sell our home. Most realtors we talked with
17 said our best choice was to burn it to the ground
18 or run like hell.
19 And finally, after advice from my
20 medical team and facing growing medical debt, we
21 were forced to file Chapter 7 this spring. During
22 the last year that we lived on Murray Drive, I had

1 to euthanize three of my dogs: Two due to cancer,
2 one due to kidney failure. All this could have
3 been avoided if fly ash had been left classified
4 what it truly is: A hazardous material. A
5 beneficial use should truly be a benefit to
6 society, not as a cheap means for corporations to
7 dispose of toxic materials.
8 If we had been endangered slug or mouse,
9 this dump would have been long cleaned up or,
10 better yet, never allowed. While even after
11 losing our health and our home, my wife and I feel
12 we are the lucky ones. We no longer have to live
13 next to that toxic dump.
14 In closing, all of us are here today
15 because EPA has failed us in the past. Today is
16 your chance to begin rectifying past mistakes.
17 Thank you.
18 MR. DELLINGER: We are pretty much on
19 our lunch break right now, but we have some people
20 who have flights that are coming up pretty soon,
21 so this panel is going to continue to work through
22 as many people as we can. We're going to have to

1 start the next session at 1:00, though. As we've
2 indicated to people that they would be speaking at
3 the, you know, 1:00 and 1:15 and 1:30 time period,
4 so I'm going to call on Number 167 now and 165 and
5 150.
6 MS. HAND: I thought I was going to
7 speak at 7:00 tonight and was not able to do so,
8 so I'm not really prepared other than the fact
9 that I don't need to be prepared because I've been
10 an environmentalist working against landfills and
11 toxic waste and things for 40-some years. I am a
12 member of the Anne Arundel County Council for the
13 Environment. I've been a member of so many
14 environmental groups I don't even remember them
15 all over 40 years.
16 I am a nurse. I've found that going out
17 and becoming an environmentalist was one way of
18 making sure people helping people so they don't
19 become sick, because while I was in the hospital
20 so many people were sick and I couldn't help them.
21 But I found that if maybe if I go out and become a
22 part of a group that would make the environment a

1 little more safer, that we wouldn't have so many
2 sick people.
3 I start a lot of my problems through
4 smoking, dumps, and things like that, but since
5 we're talking about the coal ash, my time with
6 them started when they started burning it. We met
7 in the community, and they said you will never see
8 this fly ash in a landfill. We will be able to
9 sell it. And Mrs. Russo and I actually tried to
10 go out and sell it to the state, and we actually
11 had a law that our builders put in, but the
12 asphalt people came in and they tore that up so we
13 couldn't get that done. But they still
14 landfilled, and the people in the area were
15 covered with dust.
16 I hear the other people speaking from
17 Virginia, and I am just heartsick to think that
18 this has gone on so long. My concern is that over
19 the many years we got so concerned that we went
20 out and found candidates to run for office, and we
21 were able to get a lot of them elected. And
22 because of that we were able to get recycling

1 through with many, many -- the community right to
2 know, the worker right to know, we got a lot of
3 bills passed. And it is because of this -- it's
4 not just the government that did it, we had to go
5 out and we had to find these people. And so I can
6 say to you that this is government of the people,
7 by the people, for the people. And I'm finding in
8 my 40 years it's more by the people than it is the
9 ones that are in office. And it's a
10 disappointment to us because we have so much time
11 we have given, our money and our energy and times
12 away from our family as volunteers.
13 So I just hope that you will not -- I
14 hope you will be one of these "by the people."
15 Thank you.
16 MR. DELLINGER: Could you state your
17 name?
18 MS. HAND: I am Lola Hand, H-A-N-D.
19 MR. DELLINGER: Thank you. Number 165.
20 Number 150?
21 MS. WASE: Good afternoon, and thank you
22 for allowing us to speak, very much. My name is

1 Alana Wase. I work for the Maryland Sierra Club,
2 and we represent 15,000 members in the state of
3 Maryland.
4 I just -- we've heard some really
5 heart-wrenching stories recently, and I want to
6 compare those with the stories we heard earlier of
7 an executive director from Sherrill Industries who
8 said maintaining and recycling of CCR is in the
9 best interest to all society and, therefore,
10 please side with Subtitle D. Taking the risk to
11 damage this industry by regulating under Subtitle
12 C is not worth it. Another representative from
13 Dominion Power said Subtitle D -- I'm sorry,
14 Subtitle C would be regulatory overkill.
15 After hearing such moving testimony of
16 people whose lives are endangered from this, I
17 think that it's really -- it's disgraceful to be
18 able to characterize Subtitle C that way. And I
19 just urge you all, as the Environmental Protection
20 Agency, perhaps as a young, naive
21 environmentalist, I urge you as the Environmental
22 Protection Agency to do the right thing and

protect our environment and our people. Thank you.

MR. DELLINGER: Number 93.

SPEAKER: He's got 155 over here.

MR. DELLINGER: Well, I'm working off a list that I was handed to --

SPEAKER: Oh, I'm sorry. Sorry. I (inaudible).

MR. DELLINGER: 93? 126? 168?

SPEAKER: Here he comes.

MR. DELLINGER: We'll probably be able to fit you in. I only have two more numbers to go. I'm sorry, I can't hear you.

SPEAKER: He's asking.

MR. DELLINGER: I think we'll be able to fit you in. Okay, thank you.

MR. SCHWERMAN: My name is Jack Schwerman. I'm owner of Schwerman Trucking Company. We are a transporter of bulk materials such as cement and fly ash, and we think the current use of fly ash in concrete is the best possible use as a waste.

1 This country burns coal to make
2 electricity. We need electricity and everyone is
3 up in the morning, the first thing you do is turn
4 on the switch and the electricity comes on. And
5 to do that it generates waste in the form of fly
6 ash. And, you know, I think the best possible
7 thing for the fly ash is to be as an add-mixture
8 in the use of concrete because that waste is then
9 encased in concrete not to be harmful to anyone in
10 the future.
11 I've heard a lot of emotional stories
12 here of people getting sick when fly ash is being
13 used in a -- put into these landfills, and I can
14 share their concern. I think the current use of
15 fly ash will be continued in the use of concrete
16 so that this waste is not put into the water table
17 and that sort of thing.
18 If you take all fly ash and make it as a
19 hazardous waste, it'll be very expensive, and I'm
20 not sure if the landfills in this country are set
21 up, because there's so much volume of fly ash is
22 generated each day that it could not be adequately

1 stored properly. And if it is the EPA's decision
2 to make it a hazardous waste, then the problem we
3 have with that is it's going to -- people will
4 stop using it in concrete. They're not going to
5 put concrete in sidewalks and schools and that
6 sort of thing, and the problem is going to get
7 worse rather than better.
8 So I would encourage the EPA to choose
9 wisely. I agree with everyone here today to
10 protect our environment, but, on the other hand, I
11 think the use of fly ash encased in concrete is
12 the best possible use. Thank you.
13 MR. DELLINGER: Number 155. Please
14 state your name.
15 MR. GREENBERG: Hello. I'm Michael
16 Greenberg. Thank you for having me today. So I'm
17 sitting here, it just seemed a little bewildering
18 how people, respectable, well-off people, can
19 somehow argue that things with lead, mercury,
20 selenium, arsenic, should for some bizarre reason
21 not be qualified as hazardous. So that was kind
22 of strange.

1 And then there was the argument that
2 there's stigma, which is really a very bad
3 argument. I mean, Ronald Reagan in his terms as
4 president almost never mentioned the word "AIDS"
5 due to the stigma, and that was obviously very
6 problematic. So stigmas are definitely something
7 that should be overcome rather than, you know,
8 letting them take us over.
9 So it does work okay for sidewalks and
10 roads -- maybe it does, I don't know -- then let's
11 use it, even if it's classified as hazardous. And
12 if it's not good, then let's not regardless of
13 what the term is. So, yeah, it is very important
14 that it be qualified as hazardous waste in order
15 to receive the amount of regulation that it
16 deserves on account of the fact that it is
17 actually hazardous unless those chemicals are not.
18 And another statistic which I have not
19 heard mentioned today is that 1 in 50 people who
20 are in communities where coal ash is improperly
21 dumped get cancer. And that's really a large
22 number. If the four of you know about Facebook,

1 many people have five- or six hundred friends,
2 most of whom they know, so that could turn into
3 about a dozen or so people who you personally know
4 getting cancer just because of coal ash. And
5 that's a lot.
6 So, yeah, I think that's about most of
7 what I have to say. And it's definitely important
8 that we do this at a national level because state
9 legislatures suck sometimes. For example, Alabama
10 has a higher percent income tax for people with
11 lower income, and a lower percentage income tax
12 for people with higher income, and that's just one
13 example. So we need things at a national level.
14 That's it. Thank you very much, and I
15 hope to see some strong regulations coming from
16 you soon.
17 MR. DELLINGER: 142. 129. All right,
18 we're going to take a brief break. We want to try
19 to start at 1:00. It's about 5 minutes to 1:00
20 according to Steve Souder's watch, and that's the
21 one we started with, so we'll end with this one,
22 too. Thank you.

1 (Whereupon, a luncheon recess was
2 taken.)
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1 A F T E R N O O N S E S S I O N

2 (1:10 p.m.)

3 MS. DEVLIN: I think we're going to go

4 ahead and get started. Again, good afternoon, and

5 thank you for attending today's hearing on EPA's

6 proposed coal combustion rule. As Bob said this

7 morning, this is the first of seven public

8 hearings that the agency will be conducting, and

9 the other hearings are scheduled for Denver,

10 Dallas, Charlotte, Chicago, Pittsburgh and

11 Louisville.

12 My name is Betsy Devlin and I am the

13 Associate Director of the Materials Recovery and

14 Waste Management Division in EPA's Office of

15 Resource Conservation and Recovery, and I am going

16 to be chairing this afternoon's session of the

17 public hearing.

18 On the panel with me this afternoon are

19 Rob Stachowiak, Craig Dufficy and Alex Livnat. I

20 am not going to give additional background on the

21 rule. I think a lot of you were here this

22 morning, so I'm going to delete the summary of the

1 rule just in the interest of time. What I do want
2 to go through though again is some of the
3 logistics for the hearing in case some of you
4 didn't hear it before. Speakers, if you were
5 pre-registered, you were given a 15 minute time
6 slot when you're scheduled to give your 3 minutes
7 of testimony, and to guarantee that time we ask
8 that you sign in 10 minutes before your slot at
9 the registration desk. All speakers, those that
10 pre-registered and those that walked in, were
11 given a number when we signed in and that is the
12 order in which you will speak.
13 I will call speakers to the table by
14 number, four at a time. The table is to your left
15 and to my right. When your number is called, if
16 you will please move to the microphone and state
17 your name and affiliation for the record for our
18 court reporters. We may ask you to spell your
19 name or repeat it just to make sure we have it in
20 the record.
21 Again because we do have so many people
22 signed up for testimony today, we are strictly

1 enforcing our three minute limit. We are using an
2 electronic time keeping system, so you'll have
3 that on the podium, as well as cards. The first
4 card will come when there is one minute left, a
5 second card when there's 30 seconds, and the third
6 will come up when your time has expired and when
7 your time has expired, I will ask you to conclude
8 immediately so we can get on to the next speaker.
9 When you've completed your testimony,
10 I'm going to ask that you go back and sit at the
11 table, remain there until all the speakers in your
12 group have finished and at the end of all of you
13 I'll ask if you have any written comments, to
14 please put them in the box over here at our court
15 reporter's table. Again we are here to hear your
16 comments on our proposed rule and we do want to
17 hear what you like, what you think needs
18 improvement or what you think needs clarification.
19 Again our goal today is to ensure that everyone
20 who has come to present testimony is given an
21 opportunity to provide comments. To the extent
22 allowable by time constraints, we are going to do

1 our best to accommodate speakers that have not
2 pre-registered.
3 As Bob said, we are scheduled to close
4 at 9:00 tonight, but we will go later. I think
5 we've already agreed to go later. If time for
6 some reason does not allow you to orally present
7 your comments, we have a table in the lobby where
8 you can provide a written statement in lieu of
9 oral testimony. Written statements are collected
10 and entered into the docket for the rule. They
11 are considered the same as if you had presented
12 them orally. So please don't worry if you don't
13 get to speak. We will consider your comments.
14 Again if any of you have not registered to speak
15 but would like to do so, I encourage you to go to
16 the registration table and sign up to speak. When
17 you signed in, there was an agenda and also some
18 material on the proposal as well as instructions
19 for submitting comments.
20 We are going to try to take occasional
21 very, very brief breaks. Probably in about
22 another 2 to 2-1/2 hours we'll try to take another

1 10-minute break. But because of the high
2 attendance we're trying to keep the breaks very
3 short to allow as many people as possible to
4 present their testimony.
5 Again I'm going to ask you if anyone has
6 a cell phone could you turn it to vibrate or turn
7 it off? And if you do need to use the phone at
8 any time during the hearing, I understand that you
9 may have to, if you would just leave the room and
10 move to the lobby or just somewhere outside the
11 hearing room.
12 Again I do ask for your patience as we
13 proceed. This is our first hearing. I think the
14 morning session was able to go fairly smoothly,
15 but we'll make minor adjustments as needed. I
16 thank you again and I am going to try to get
17 started with this afternoon's session. I am going
18 to call speakers 47, 48 and 49. If you would
19 please come to the table. Thank you.
20 MR. STANT: Do I do something here?
21 MS. DEVLIN: No, we'll do it all. All
22 you need to do is state your name.

1 MR. STANT: I'm Jeff Stant. I'm the
2 Director of the Coal Combustion Waste Initiative
3 for the Environmental Integrity Project, and I
4 appreciate this opportunity to present testimony
5 on the national regulatory proposal for coal
6 combustion waste.
7 I'd like to focus on the release of our
8 report last week of "In Harms Way: Lack of Federal
9 Coal Ash Regulation Endangers Americans and Their
10 Environment" that we co-released last week with
11 Earthjustice and the Sierra Club which documents
12 the problem of coal combustion waste contamination
13 at 39 more coal ash sites and demonstrates that in
14 many cases state agencies have remained silent
15 while private and public drinking water supplies
16 are threatened by the contamination.
17 Highlights of the report are as follows.
18 Number one, that contamination from CCW is
19 pervasive. When combined with the 31 other coal
20 ash sites examined by EIP and Earthjustice in a
21 February report, and the sites already
22 acknowledged by EPA to be damaged by coal ash, the

1 list of contaminated sites comprises some 137
2 sites now spread across 34 states, making this
3 truly a national water pollution problem. At
4 every one of the 35 sites in this report that had
5 groundwater monitoring data, contamination of the
6 groundwater was readily apparent.
7 Number two is that the levels of
8 contamination are toxic. At every one of the 35
9 contaminated sites, MCLs for metals were exceeded
10 in underlying groundwater with exceedances ranging
11 as high as 341 times the standard for arsenic at
12 the Hatfield's Ferry Landfill in Pennsylvania, 170
13 times the standard for cadmium, and 179 times the
14 standard for lead in groundwater leaving the
15 Little Blue impoundment in Pennsylvania, 37 times
16 the standard for selenium at the Northeastern
17 Landfill in Oklahoma, and antimony at 52 times,
18 beryllium 30 times, chromium 17 times, and nickel
19 22 times at groundwater leaving the Industrial
20 Access Landfill in Ohio.
21 The third point is that the
22 contamination is endangering people. At the five

1 sites in which off-site monitoring of drinking
2 water wells was undertaken, contamination of the
3 wells was confirmed in every case, with four of
4 the five having confirmed exceedances of MCLs in
5 residential wells. Additionally, state records
6 indicate that at least five private drinking water
7 wells are located within 2 miles of 19 of the
8 sites, and in 13 of those sites, the wells are in
9 the direction that the contaminate flow is moving.
10 In eight cases there's 25 or more
11 private drinking water supplies within 2 miles of
12 the site, and in two cases there's more than 90
13 wells within a mile of site. People are in harm's
14 way.
15 The fourth and last point is that states
16 are not preventing the contamination or requiring
17 it to be remediated. Despite some indication of
18 contamination being acknowledged at 21 of the
19 sites, operators have been required to determine
20 the extent of the contamination at only five of
21 them. At no site did we find the state requiring
22 operators to clean up the contamination even when

1 it was acknowledged that the contamination had
2 moved beyond the property lines of the dump sites.
3 I'd like to just close by saying that
4 the decision about coal combustion waste facing
5 EPA has been inevitable for decades. The agency
6 must do its job under federal law and stop the
7 pervasive, imminent and substantial threat to human
8 health in the environment occurring around the
9 nation's coal ash dump sites today. Thank you.
10 MS. DEVLIN: Thank you. Number 48?
11 MS. GRAVES-MARCUCCI: Thank you. What
12 about health? In 1995, the Pennsylvania DEP
13 granted permission to allow 1 million and a half
14 tons of fly ash to be dumped in my parents' back
15 yard. That's how my story begins. I sought help
16 from the Pennsylvania DEP, but was told, and this
17 is a direct quote, "We the Department will presume
18 these wastes are safe until citizens can prove
19 otherwise."
20 Why would it be the responsibility of
21 the citizens to prove fly ash was unsafe? Why
22 would the Pennsylvania DEP protect ash and not

1 health? Who gave this directive? We soon learned
2 that the Pennsylvania DEP was considering a
3 statewide general permit that would allow fly ash
4 to be dumped virtually anywhere in our state
5 without protections, but called beneficial.
6 We requested a public hearing before the
7 general permit was issued, and we were told one
8 would be held if sufficient interest was
9 expressed. Hundreds of requests were submitted,
10 however, we never did receive our public hearing,
11 and the general permit was granted on December 23,
12 1997, without any public input. I believe this
13 was by design, done systematically to exclude
14 public scrutiny, clearing the way for a statewide
15 cheap unregulating coal ash dumping.
16 To policymakers, rules mean facts and
17 figures on a printed page, but communities like
18 mine live with the deadly consequences these
19 misguided policies create. It is long overdue.
20 Protecting human health from toxic coal ash should
21 be priority number one, not saving money for
22 wealthy industries and their lobbyists.

1 Throughout the next few weeks you will
2 be introduced to real people living and dying with
3 the dangers created by mismanaged coal ash
4 dumping. Pro-industry policies at the
5 Pennsylvania DEP are running rampant as evidence
6 by file reviews and the recent reports "Out of
7 Control" and "In Harm's Way."
8 I have reviewed tens of thousands of
9 Pennsylvania documents throughout the past decade
10 and I can tell you unequivocally I have never
11 reviewed a coal ash disposal site in Pennsylvania
12 that did not have contamination. Every single
13 site I have reviewed has been highlighted in
14 yellow or circled in pencil but filed back in the
15 file. Time and time again the Pennsylvania DEP
16 does nothing to enforce. I ask you to remember
17 our faces. We are real people, we have real
18 concerns, we are here because of our health, and
19 we ask you to please focus the decision-making on
20 health protections. Thank you.
21 MS. DEVLIN: Excuse me. Could you
22 please state your name and affiliation for the

record?

MS. GRAVES-MARCUCCI: Yes, I'm sorry, Lisa Graves-Marcucci, and I work with the Environmental Integrity Project and I'm a resident of the Commonwealth of Pennsylvania.

MS. DEVLIN: Thank you.

MS. GRAVES-MARCUCCI: Thank you.

MS. DEVLIN: Number 49?

MR. ADAMS: My name is Thomas Adams and I'm executive director of the American Coal Ash Association, Aurora, Colorado. I want to thank you for the opportunity to speak today on this subject.

The ACAA's mission is to encourage the use of coal combustion products in ways that are environmentally safe, technically appropriate, commercially viable, and that contribute to a sustainable society. We've been engaging in this activity since 1968. In an effort to create disposal regulations, the EPA has created a serious potential threat to one of the most successful recycling stories of this generation.

1 Coal combustion products have been safely recycled
2 in numerous applications including cement,
3 concrete, wallboard, roofing products,
4 agriculture, geotechnical fills, and many others
5 for decades. Should the EPA elect to create a
6 regulation which manages disposal under Subtitle C
7 of RCRA, we believe coal combustion products will
8 be stigmatized, resulting in market rejection of
9 these products. Consumers who have a choice
10 between using a material that's considered a
11 hazardous waste for some reason and using a
12 material that does not have such a stain will make
13 the rational decision to use the nonhazardous
14 option.
15 The EPA has cited damaged cases as a
16 primary basis for creating its hazardous waste
17 disposal regulations. None of the cases, the
18 damaged cases, are connected to beneficial use of
19 coal combustion products, not one single case. In
20 fact, two of the specific cases cited by EPA have
21 shown no effects on human health and the
22 environment. The EPA's own Region 3 report on the

1 Battlefield Golf Course states there is no effect
2 on groundwater in the property surrounding the
3 golf course. Two reports on the Kingston,
4 Tennessee impoundment failure indicate no
5 short-term or long-term health effects related to
6 the spill. The U.S. Department of Health and
7 Human Services, along with Tennessee Department of
8 Health, issued a report last December stating that
9 there were no long-term health effects indicated
10 from the spill.
11 Within the last 3 weeks, an additional
12 report was issued on testing of 200 individuals
13 residing in close proximity to the Kingston plant
14 which showed no material health effects related to
15 the spill. Both of these are EPA prime examples
16 to justify the need for hazardous waste
17 regulations which show no damage to human health.
18 So we must ask the question, is there no damage
19 because there is no damage, or is it that we just
20 have not done enough research? And if it the
21 latter, how much research is enough?
22 The Board of Directors of the American

1 Coal Ash Association passed a resolution earlier
2 this year supporting national enforcement
3 authority for EPA under Subtitle D of RCRA. The
4 same resolution calls for opposition to any form
5 of Subtitle C regulation. We simply cannot afford
6 to risk the progress and recycling CCPs for the
7 sake of creating the most extreme regulation for
8 disposal. Disposal requirements are the same
9 under Subtitles C and D and we call on EPA to say
10 yes to the continued safe recycling of CCP with
11 Subtitle D regulation of coal ash disposal. We
12 hope you'll rule on science and not science
13 fiction or political science. Thank you.
14 MS. DEVLIN: Speakers number 50, 51, 52
15 and 53.
16 MS. WIDOWSKY: I'll just show these to
17 you up front. I was going to say this at the end
18 of my speech, but all things considered, I'm going
19 to say it now and I'll say it again at the end.
20 MS. DEVLIN: Can you state your name for
21 the record?
22 MS. WIDOWSKY: Yes, my name is Lisa

1 Widowsky and I'm an attorney with the
2 Environmental Integrity Project. As I'm sure you
3 know, both Subtitle C and Subtitle D will
4 completely exempt regulation of beneficial reuses.
5 Everyone in this room knows that, and you know
6 that, too. We're not trying to regulate
7 beneficial reuses, we're trying to get safeguards
8 put in place from unsafe disposal that's been
9 happening around the country, in Maryland,
10 Virginia and all of the places you're hearing
11 about today and in the next few weeks.
12 EIP, our organization, was founded by
13 former EPA enforcement attorneys to ensure strict
14 implementation and enforcement of environmental
15 laws. We have recently investigated polluting
16 coal ash dump sites throughout the 31 states
17 nationwide that are now already home to leeching
18 coal ash dumps due to insufficient regulations and
19 meager state enforcement attempts, including
20 Maryland, Pennsylvania, and Tennessee. I'm
21 licensed to practice in the Commonwealth of
22 Pennsylvania, and I've spent many hours throughout

1 the state visiting with families and communities
2 struggling to protect their livelihoods and their
3 lives from the toxic effects of mismanaged coal
4 combustion waste dumps in their communities.
5 Although Pennsylvania has among the most
6 extensive coal ash disposal regulations in the
7 country, requiring liners, groundwater monitoring
8 and other protections that many other states in
9 the country still lack, its coal ash regulatory
10 system is fraught with gaps that make the Subtitle
11 C regulations a necessity for the protection of
12 Pennsylvanians as well as citizens throughout the
13 country.
14 The Pennsylvania regulations have
15 grandfathered out of regulation disposal sites
16 that were active before the regulations were
17 promulgated in 1992 and have left dangerous
18 loopholes that permit and even promote dangerous
19 so called beneficial reuses like reclamation of
20 abandoned mines with coal ash of which there have
21 been several damaged cases. These deficiencies in
22 the state regulatory scheme have put communities

1 at risk despite the state's intention to regulate
2 this toxic waste stream with more stringent
3 regulations than most other states.
4 When you are deciding whether to
5 regulate coal ash under the federally enforceable
6 Subtitle C or the suggested guideline that is
7 Subtitle D, please think about the 30-year-old man
8 who bought his first house and had begun to make
9 costly improvements when his drinking well, about
10 1,000 yards from First Energy's unlined Little
11 Blue Run impoundment, this is his mother in the
12 photo and she'll be speaking later, was measured
13 to have arsenic above the maximum contaminate
14 level in his well. Are his hard-earned savings
15 and life worth more than the cost that it would
16 have taken for First Energy to put their ash in a
17 lined landfill?
18 In addition, I also want you to think
19 when you're regulating about the little boy whose
20 family just set up a pool in their back yard to
21 congratulate him on doing well in kindergarten.
22 The boy's family is African American and his

1 mother just returned from serving in Iraq. The
2 family has to replace the filter in the pool water
3 every single day because of the ash that comes in
4 from unlined trucks.
5 These are just two people among many of
6 thousands plagued by mismanaged coal ash. When
7 EPA is deciding how to regulate coal ash, I want
8 you to remember that the $20.3 billion total that
9 it will cost this industry is a de minimis cost to
10 the coal industry and that it is expressly lower
11 than Subtitle D costs because EPA expects
12 noncompliance with Subtitle D.
13 MS. DEVLIN: Your time is up.
14 MS. WIDOWSKY: Thank you.
15 MS. DEVLIN: Thank you. Number 51?
16 MR. KEIPER: Good afternoon. My name is
17 Hank Keiper and I'm a licensed engineer employed
18 by the SEFA Group, a coal combustion products
19 marketing company based near Columbia, South
20 Carolina. I'm based in Richmond and I'm currently
21 the area manager responsible for the mid- Atlantic
22 region. I'm also a camper, canoeist, and avid

1 Chesapeake Bay sailor, and I strongly oppose the
2 Subtitle C designation for coal combustion
3 products. In 2006, I personally recycled 168,000
4 tons of fly ash and bottom ash generated by my
5 utility partner, Myriad. That's more than all the
6 recycled material delivered by the residents of
7 Arlington County in 2006. But I need to discuss
8 stigma.
9 The EPA proposal clearly states the
10 Agency does not want to disrupt current recycling
11 efforts. Members of the Agency stated during
12 recent webinars they believe Subtitle C will
13 dramatically increase CCB recycling. If that's
14 true, then my company and I will benefit
15 financially. So why do I argue against my own
16 personal financial interest?
17 My 25 years of experience as an engineer
18 has taught me that engineers, architects and
19 building owners are more risk averse than ever in
20 our litigious society. I live near Chesterfield
21 County, Virginia, where a Home Depot store was
22 demolished in 1996. Coal combustion products were

1 used to structural fill and incorrectly blamed for
2 the building's settlement. Fourteen years later,
3 people still prohibit the use of fly ash as an
4 additive in concrete because of the Home Depot
5 case.
6 Fly ash was also listed as a possible
7 cause of the problems relating to the Chinese
8 drywall, but only if you dig much deeper will you
9 learn there was no fly ash in the Chinese drywall,
10 but the damage was done by mere association. My
11 customers, concrete producers, are also concerned
12 about stigma and liability. Under EPA's special
13 waste proposals, two trucks will leave the power
14 plant, one will turn right destined for disposal
15 as hazardous waste, at the same time, the second
16 truck with the exact same material on board will
17 turn left and travel to my customer's plant with
18 no restrictions other than the normal DOT. It's
19 very difficult for the public, business owners and
20 their attorneys to reconcile this concept. As an
21 engineer, I believe the Subtitle D proposal option
22 provides rigorous protection with common sense

1 management practices. Agency staff freely admit
2 the engineering safeguards in both proposals are
3 virtually identical, so one must conclude that a
4 Subtitle C designation is primarily an attempt to
5 influence the commercial commodity market.
6 The stigma against coal combustion
7 products is real. If I'm wrong, I'll make a lot
8 more money. But if I'm correct and EPA's
9 fundamental assumption is flawed, then my entire
10 industry including thousands of jobs will be in
11 peril and more millions of tons of coal combustion
12 products will end up in landfills or surface
13 impoundments instead of less. We must resist the
14 urge to asbestosize coal combustion products and
15 preserve one of America's great all-time recycling
16 success stories and only Subtitle D will do that.
17 Thank you for your time.
18 MS. DEVLIN: Thank you. Number 52,
19 please.
20 MS. GOTTLIEB: Good afternoon. My name
21 is Barbara Gottlieb. I'm deputy director of the
22 Environment and Health Program at Physicians for

1 Social Responsibility. We're a national
2 organization of 50,000 physicians and other health
3 professionals, members and activists working to
4 prevent those health problems that we cannot cure.
5 Coal ash falls squarely into that category.
6 Let's remind ourselves that it contains
7 some of the world's deadliest toxic metals.
8 Arsenic, lead, mercury, cadmium, chromium,
9 selenium, and other toxicants in coal ash can and
10 do cause cancer, neurological damage including
11 developmental disorders, respiratory disease,
12 reproductive impacts and other problems in human
13 beings while killing and damaging wildlife,
14 especially fish and other water-dwelling species.
15 The threat that coal ash poses to human health is
16 serious and it is widespread. Coal ash is the
17 second largest industrial waste stream in the U.S.
18 after mining wastes, it's disposed in
19 approximately 2,000 sites across the nation, and
20 coal ash toxicants have leached from disposal
21 sites in well over 100 locations, carrying toxic
22 substances into aboveground and underground

1 waterways and in many cases drinking water wells.
2 As the damage cases indicate with coal ash causing
3 real damage, if there's going to be stigma
4 associated with coal ash, let's put that stigma on
5 the lives that are lost and not the jobs.
6 The impacts to health are severe. The
7 EPA itself has issued a risk assessment report
8 indicating that people who lived near an unlined
9 wet ash pond and who get their drinking water from
10 a well have as much as a 1 in 50 chance of getting
11 cancer from drinking water contaminated by
12 arsenic. Even where people are not drinking
13 contaminated water, their health may be threatened
14 if they eat fish that's taken from waters
15 contaminated by coal ash toxicants. Coal ash is
16 also dangerous if inhaled. Making fugitive dust
17 from coal ash is a serious health concern.
18 I'd like to stress though one other
19 point that I haven't heard enough about today, and
20 that is that coal ash is persistent over time.
21 This raises long-term concerns and challenges in
22 regard to health. When coal ash contaminants

1 leach out of unlined surface impoundments, it can
2 take decades until they reach peak concentrations
3 in nearby well water. The EPA has estimated it
4 might be 74 years for selenium, 78 years for
5 arsenic, 94 years for cobalt.
6 What these numbers suggest is that coal
7 ash toxicants are going to be with us and with our
8 kids and with our grandchildren for a long time.
9 They do not disintegrate, they do not lose their
10 toxicity, they never really go away. Either we
11 securely contain coal ash toxicants or they will
12 disperse into and contaminate our environment and
13 damage our health.
14 For that reason, Physicians for Social
15 Responsibility calls on the EPA to discharge its
16 duty to protect the environment by applying the
17 strictest possible levels of control over coal ash
18 disposal. We strongly support Subtitle C as the
19 only option currently on the table that would
20 adequately protect human health. Based on the
21 needs for public health, we call for a federal
22 regulation of coal ash disposal, phase-out of wet

1 storage, and limiting the recycling of coal ash to
2 uses where coal ash is not exposed to water and
3 where the ash is chemically bound. Unencapsulated
4 uses and minefilling must end. On behalf of
5 Physicians for Social Responsibility, thank you.
6 MS. DEVLIN: Thank you. Number 53?
7 MS. FEENEY: My name is Katie Feeney.
8 I'm a project director with the Clean Air Council,
9 and on behalf of the Council I would like to thank
10 the U.S. EPA for the opportunity to comment today
11 on its proposed coal ash rule.
12 The Clean Air Council is a nonprofit
13 environmental and public health advocacy
14 organization. We seek to protect everyone's right
15 to breathe clean air. The Council was
16 incorporated in 1967 and we operate in
17 Pennsylvania, Delaware, and New Jersey.
18 The purpose of my testimony today is to
19 strongly urge EPA to ignore the intense lobbying
20 of corporate interests in trying to get EPA to
21 overlook public health in favor of corporate
22 profits. Coal-fired power plant pollution is

1 hazardous to our health. Burning coal creates air
2 pollution, coal ash and coal waste, and they are
3 all a threat to public health. The time has come
4 to insist that utilities and others that burn coal
5 pay the full health and environmental costs of
6 using coal from generation to disposal. Last
7 Thursday the Council testified in an EPA hearing
8 in Philadelphia in favor of EPA's proposal to
9 issue federal implementation plans, to reduce
10 interstate transport of fine particulate matter,
11 and ozone, better known as the transport rule.
12 Just as utilities must pay the cost of reducing
13 air pollution from burning coal, they must also be
14 made to pay the cost of properly disposing of the
15 coal ash. EPA should not be in the business of
16 helping to facilitate utilities finding a better
17 way to undercut public health protection by
18 supporting weak disposal rules and unsafe
19 beneficial uses that threaten our public health.
20 Let's accept that coal ash is hazardous and
21 require that it be handled, transported and
22 disposed of as such.

1 The Council urges EPA to regulate coal
2 ash under Subtitle C of the Resource Conversation
3 and Recovery Act. Pennsylvania, where I was born
4 and raised and still live, is a coal state and the
5 economics and politics of extractive industries
6 such as coal are politically very powerful.
7 Pennsylvania's health and environment are plagued
8 by the historic unwillingness of state and federal
9 officials to hold coal interests accountable for
10 the full cost to public health and the environment
11 of coal use. Some in industry will argue that
12 EPA's proposal to designate coal ash as hazardous
13 waste or more euphemistically a special waste,
14 will cost industry, and it will, but it will
15 substantially lower the cost of public health and
16 the environment which would result from continuing
17 to dump underregulated coal ash into ponds and
18 landfills and allowing too broad a definition of
19 beneficial use.
20 Because of its historic alliance in coal
21 energy, Pennsylvania's environment continues to be
22 under threat from coal use, coal incineration and

1 coal disposal. Take for instance two of the
2 biggest current concerns which include the Bruce
3 Mansfield Power Station in Shippingport and
4 Hatfield's Ferry Power Station which has already
5 been discussed today and hopefully will continue
6 to be so. According to a recent report, which
7 you've also heard about, we are seeing offsite
8 migration of toxics from coal ash and waste. I'm
9 attaching as part of my testimony the report's
10 assessment of those two sites.
11 To close, I want to be clear that I
12 think this rule is about public health, and on
13 behalf of the Clean Air Council I thank you for
14 the opportunity to testify today.
15 MS. DEVLIN: Thank you. Numbers 54, 55,
16 56 and 57? Also, has number 46 joined us? Number
17 54?
18 MR. SHAMORY: I am Craig Shamory,
19 Environmental Manager with PPL Corporation. PPL
20 owns or controls nearly 12,000 megawatts of
21 merchant power generation in five states,
22 including four coal-fired plants in Pennsylvania

1 and Montana. Annually we generate 3 million tons
2 of coal combustion residuals, CCRs, and of that
3 total we beneficially use 2 million tons. CCRs
4 from our Pennsylvania plants have been effectively
5 regulated since 1992 as a nonhazardous waste under
6 Pennsylvania's residual waste regulations.
7 Furthermore, Pennsylvania and Montana recognize
8 that properly implemented beneficial uses are an
9 environmentally responsible option for managing
10 these materials.
11 A federal Subtitle D nonhazardous waste
12 regulation along the lines of Pennsylvania's
13 successful program would support beneficial use of
14 this large mineral resource. Conversely, federal
15 Subtitle C hazardous waste regulation would
16 severely limit and most likely eliminate
17 beneficial uses including cement industry
18 applications and mine reclamation. Beneficial
19 uses create thousands of jobs and provide their
20 own significant environmental benefits. The
21 impact of beneficial use from the stigma of
22 labeling CCRs as a hazardous waste is real and is

1 already occurring. One of PPL's largest marketers
2 of coal ash for cement products has had one of its
3 main customers stop using coal ash. Why?
4 Potential product liabilities if EPA actually
5 regulates CCRs as a hazardous waste.
6 Furthermore, many companies have told
7 our marketers they will not use coal ash in their
8 products. Why? Because they don't want their
9 products to contain an ingredient that would
10 otherwise be subject to hazardous waste
11 regulation. Based on EPA's own economic analysis,
12 if Subtitle C eliminates beneficial use, the
13 financial impact on our struggling economy will be
14 in the billions of dollars. So if we can't
15 beneficially use it we'll be forced to dispose of
16 all these CCRs and that's very problematic, if
17 even possible, under the Subtitle C approach.
18 Both Pennsylvania and Montana do not have any
19 commercial Subtitle C landfills. Therefore, PPL
20 would either have to permit on-site Subtitle C
21 landfills, which is an uncertain proposition, or
22 be forced to find among the very few limited

1 numbers that exist across the nation a facility
2 that would have the capacity and permits to accept
3 such large volumes of waste, another uncertain
4 proposition. PPL strongly opposes federal
5 Subtitle C regulation and instead requests that
6 EPA regulate CCRs under the Subtitle D prime
7 option including a modification that integrates
8 with current state regulatory programs such as
9 Pennsylvania's residual waste and dam safety
10 regulations. This approach will create a
11 reasonable and effective regulatory program that
12 protects the environment, retains options for
13 beneficial use and preserves jobs while not
14 adversely impacting our economy. Thank you.
15 MS. DEVLIN: Thank you. Number 55?
16 MS. SHEPARD: Thank you for the
17 opportunity to speak before you today. My name is
18 Betsy Shepard and I come to you today from Surry
19 County, Virginia which is about 3 hours south of
20 here. Maybe you've heard of the Michael Vick dog
21 fighting case and that's us. We're a rural
22 community. We're a poor community. We're also a

1 minority community. We're an African-American
2 community. We have before us in our community a
3 proposal for the largest coal-fired power plant in
4 the State of Virginia. With that power plant
5 would come obviously coal ash landfills and
6 according to the utility who's proposing this, the
7 potential for a 1,600-acre coal ash landfill that
8 would take up about two-thirds of the entire
9 landmass of the town that this is proposed for.
10 This is 3 miles from our schools, it's 8 miles
11 from my home and it's 1,500 feet from the town's
12 well water supply.
13 One of the things that you hear a lot in
14 our community is that the EPA would never allow
15 anything to come through that would harm us. This
16 is a very common refrain and people really believe
17 that where I live. I'm very thankful to the EPA
18 for working on the air emissions from coal-fired
19 power plants. I understand that you all are in
20 the process of pulling a lot of those toxins out
21 of the air. But as we know, those will not just
22 disappear, those toxins will go into the ash and

1 if those toxins are too hazardous to go air borne
2 then they're probably also hazardous as landfill
3 material.
4 I understand the monetary concerns of
5 the utilities, but one of the things that I also
6 hear a lot this last year as this proposal has
7 come before us is that coal is the cheapest form
8 of electricity so that it would seem to me that
9 they have plenty of room for that increase in
10 their industry. In the same way that we would not
11 allow Firestone or Toyota to continue to market
12 dangerous tires or faulty breaks in the name of
13 cost saving, we shouldn't allow coal ash to be
14 marketed in the same manner.
15 I can't imagine going to the restaurant
16 here at the hotel this morning and ordering an
17 omelet and having no federal oversight that
18 perhaps you're getting salmonella tainted eggs.
19 How much would you take as a price reduction on
20 your omelet to know that there was no federal
21 oversight on your eggs? That's my neighborhood,
22 we're happy to pay extra for the federal

1 oversight. The EPA would never allow anything to
2 harm us. Thank you so much for your time.
3 MS. DEVLIN: Thank you. Number 56,
4 please? Number 57? Let's try 58, 59, 60 and 61,
5 please.
6 MS. FOX: Good afternoon. My name is
7 Mary Fox, Assistant Professor in the Department of
8 Health Policy and Management at the Johns Hopkins
9 Bloomberg School of Public Health. I'm a risk
10 assessor with 20 years' experience in
11 environmental health and I'm here today as a
12 private citizen.
13 I would like to make four points. Coal
14 ash contains multiple toxic constituents that can
15 appear as mixtures in the ambient environment.
16 Enforceable standards are needed for disposal in
17 sand and gravel pits, quarries and landfills. We
18 need to know the locations of disposal pits, past
19 and present. Risk assessments to date have likely
20 underestimated health risks. The latest reviews
21 show that arsenic cancer risks are higher than
22 previously thought and noncancer risks are under

1 estimated if mixture exposures are not evaluated.
2 Regarding multiple contaminants, the
3 proposed rule summarizes the Gambrills damages
4 case in Anne Arundel County, Maryland where coal
5 combustion waste was used to reclaim a former sand
6 pit. Coal combustion waste constituents reached
7 the drinking water wells of nearby residents. In
8 total, 34 wells were contaminated with
9 concentrations of aluminum, arsenic, beryllium,
10 cadmium, lead, manganese, and thallium above
11 drinking water standards. I would like to
12 emphasize that several of those wells were
13 contaminated with multiple coal ash constituents
14 demonstrating the importance of assessing
15 combinations of coal ash contaminants and
16 vulnerabilities of unlined disposal areas. Three
17 of the commonly used coal combustion waste
18 management practices, landfill, surface
19 impoundment or use and reclamation in mines result
20 in localized disposal. We will be unable to fully
21 assess or correct environmental or public health
22 risks unless disposal locations are known.

1 To date, cancerous assessments of
2 arsenic exposure have been based on studies of
3 skin cancer. Epidemiological evidence on arsenic
4 ingestion shows greater risks of several internal
5 organ cancers such as bladder, kidney, lung, liver
6 and prostate so that estimates using the skin
7 cancer data will underestimate total cancer risks
8 from arsenic ingestion, and arsenic exposure is
9 also associated with some noncancer outcomes
10 including diabetes and hypertension. In
11 conclusion, I believe my concerns would be best
12 addressed and public health better protected to
13 regulation under RCRA Subtitle C.
14 MS. DEVLIN: Thank you. Number 59,
15 please.
16 MR. SELLS: Thank you very much. My
17 name is Robert Sells and I'm with Titan America.
18 I represent our concrete products group and I'm
19 representing today the concrete industry and the
20 need for fly ash in the use of concrete.
21 We are very supportive of Subpart D in
22 the fact that concrete is dependent upon

1 cementitious products. The coal combustion
2 products that you're talking about today are
3 invaluable to the concrete producer today. As
4 much as 20 to 25 percent on average of
5 cementitious product that is used in concrete
6 comes from fly ash and other cementitious
7 materials. That material is chemically bound in
8 the concrete in the end product, it reduces the
9 heat of hydration in concrete production and
10 reduces the permeability. Fly ash is extremely
11 beneficial to concrete. In addition, the industry
12 which is not a very profitable industry has done
13 everything it can to maximize the use of fly ash
14 in concrete. There were over 460 million cubic yards of
15 concrete consumed in 2006. The average price was
16 sold at $90.30, and the gross profit for the
17 Ready-Mix concrete producer was about $7-1/2.
18 This is before taxes. However, with the economic
19 turndown and the industry continuing to maximize
20 its use of fly ash, the average selling price has
21 increased slightly but other costs have increased
22 more dramatically and the current gross profit is

about 20 cents per cubic yard. It is extremely important to understand that the use of fly ash saves the Ready-Mix producer about $4.75 per yard.

One of the things that is of great concern to the thousands of Ready-Mix concrete producers in the United States is the possible designation of hazardous waste. We have seen this before in other areas and are very much concerned. You've heard statements today already where specifiers have shied away from the use of fly ash in specifications simply because of the potential designation of 'hazardous'. This will not increase the use of fly ash in concrete and force power plants to supply more to Ready-Mix producers, it will actually decrease it. The Ready-Mix producer will shy away from the hazardous designation of fly ash and will not use the product because of the potential liability.

Follow the movement. Today there is no issue around fly ash use in concrete. Now it becomes a hazardous designation if it goes to a landfill. How long will it be before that

1 hazardous designation is applied and concrete is
2 ripped up at the cost to the producer? Thank you
3 very much.
4 MS. DEVLIN: Thank you. Number 60,
5 please.
6 MR. SMITH: Good afternoon. My name is
7 David Smith. I'm the Director of Environmental
8 Health and Safety Services for Old Dominion
9 Electric Cooperative or ODEC. ODEC is a
10 generating and transmission cooperative
11 headquartered in Glen Allen, Virginia that
12 provides electric power to 11 distribution co-ops
13 in Virginia, Maryland and Delaware. Among our
14 portfolio of generation assets, Old Dominion
15 currently has a 50 percent ownership in the 850
16 megawatt coal-fired Clover Power Station which is
17 located in Halifax County, Virginia. ODEC is also
18 a member of the National Rural Electric
19 Cooperative Association and we fully support the
20 testimony that they have submitted on behalf of
21 the approximately 66 electric co-ops that generate
22 and transmit electricity across the country. As a

1 50 percent owner in the Clover Power Station and
2 because of our current interest in potentially
3 developing a similar coal-fire-based load
4 facility, my company will be directly and possibly
5 disproportionately impacted by the final CCR rule.
6 I am here today to state that ODEC
7 favors the development of federal regulations for
8 CCRs under RCRA Subtitle D prime nonhazardous
9 waste program. However, we feel strongly that
10 regulating CCRs as a hazardous waste under RCRA's
11 Subtitle C program would impose unnecessary
12 regulations and costs on our current and proposed
13 coal-fire facilities, would threaten jobs,
14 increase electric rates and have a large effect on
15 the beneficial use industry. EPA is obligated to
16 pursue the least-cost approach in order to
17 mitigate impacts on the firms that can least
18 afford them. Since the proposed controls for CCRs
19 are virtually identical under C and D, in
20 approaches that would be expected to provide the
21 same increased levels of protection, Subtitle D
22 should be adopted.

1 However, the regulations of CCRs as a
2 hazardous waste under RCRA Subtitle C would
3 introduce many unnecessary measures such as
4 potentially requiring each generating facility to
5 acquire and operate storage facilities with TSD
6 permits. The Clover Power Station currently
7 utilizes a dry landfill system for storage and
8 disposal of CCRs that is lined and monitored with
9 groundwater monitoring wells and will be capped
10 appropriately when completed in a fashion very
11 similar to what's outlined in Option D. We feel
12 that this is an effective means for ensuring that
13 CCRs are disposed of in a manner safe to the
14 environment and do not feel there would be any
15 great useful gains through the implementation of
16 Option C.
17 In conclusion, we agree with NRECA and
18 many others who are already on record as opposing
19 Subtitle C approach, including a bipartisan of 165
20 members of Congress, 45 U.S. Senators, virtually
21 all states, other federal agencies and municipal
22 and local governments, CCR marketers beneficial

1 users' unions, state PUCs and many other third
2 parties. I appreciate your time.
3 MS. DEVLIN: Thank you. Number 61,
4 please.
5 MR. ADAMS: My name is Mike Adams. I'm
6 with Headwaters Resources and I've been in the
7 coal ash recycling business for over 31 years.
8 I've seen the acceptance of coal ash grow from an
9 unwanted waste product to a very valuable resource
10 in many products such as concrete, concrete
11 masonry products, roof shingles, carpet backings,
12 wallboard and a multitude of other products.
13 I come today to urge the EPA to rule in
14 favor of the Subtitle D solid waste option in lieu
15 of Subtitle C hazardous designation. My main
16 premise is that the Subtitle D and Subtitle C
17 options provide essentially the same protection of
18 the environment. However, based on my experience,
19 I believe that the Subtitle C hazardous
20 designation will essentially eliminate any future
21 beneficial reuse of CCPs.
22 Coal combustion products when

1 beneficially reused in the aforementioned products
2 provide numerous economical and environmental
3 benefits. The benefit of replacing Portland
4 cement with coal combustion products has been
5 documented and accepted by U.S. EPA and other
6 regulatory agencies. The replacement of Portland
7 cement with fly ash saves up to 15 million tons of
8 carbon dioxide from being released into the
9 atmosphere annually. Fly ash reduces the cost of
10 concrete and allows smaller concrete producers to
11 compete with larger cement owned producers.
12 Concrete containing fly ash is stronger and more
13 durable, allowing locally produced concrete to be
14 utilized in lieu of imported steel and wood
15 products. The use of synthetic gypsum in wall
16 board product, bottom ash is a light weight
17 aggregate, fly ash as a filler in asphalt roof
18 shingles and other beneficial uses of CCPs provide
19 similar carbon footprint reductions and cost
20 reductions.
21 It is my opinion as well as the opinion
22 of most of the coal ash industry that a Subtitle C

1 designation by the U.S. EPA will result in a
2 significant and real stigma against the use of
3 CCPs in any products and eliminate any of the
4 environmental and economic advantages of CCPs.
5 The stigma issue is real and is already occurring.
6 There are many documented cases where stigma
7 issues resulted in discrimination of CCPs or
8 specifying concrete or eliminating the use of fly
9 ash to eliminate possible liability issues.
10 Competitors of CCP producers are trying to gain
11 competitive advantage by highlighting possible
12 liabilities within their trade associations.
13 Nefarious court suits are being brought forth. An
14 example of this is a concrete customer of mine
15 that must remain nameless due to the ongoing suit
16 who's being sued by a former employee claiming his
17 health problems were caused by fly ash even though
18 there's no documented evidence of fly ash causing
19 this and his lifestyle choices have direct links
20 to this illness.
21 In summary, I ask the EPA to use common
22 sense and logic and not succumb to political

1 pressure in making the decision on this issue.
2 Please take into account that the CCP problem is
3 an engineering problem and is addressed in
4 essentially the same manner by both Subtitle D and
5 C. There's already evidence that a hazardous
6 designation will affect the use of CCPs,
7 eliminating the many environmental advantages of
8 CCPs, driving the cost of many building products
9 higher.
10 CCPs' beneficial reuse provides millions
11 of tons of CO2 reduction. The continued
12 beneficial reuse of CCPs in an environmentally
13 safe manner eliminates the disposal of a million
14 tons of CCPs annually. Common sense dictates that
15 the Subtitle D option is the correct and only
16 option for EPA. Thank you.
17 MS. DEVLIN: Thank you. At this time I
18 want to ask if there's anyone in the audience with
19 a number below 60 who wasn't here at their
20 original time and would like to come to the podium
21 now. Then I'm going to go to 62, 63, 64 and 65,
22 please. Number 62?

1 MR. SCOGGAN: Thank you for the
2 opportunity to speak here today. My name is John
3 Scoggan. I work for a company called Boral
4 Material Technologies. We operate, market and
5 manage fly ash, principally selling fly ash into
6 Ready-Mix concrete. Our company has been in
7 business for over 50 years and employs roughly 180
8 people.
9 In the beginning we handled less than
10 100,000 tons of fly ash and today we handle
11 approximately 5 million tons annually. We support
12 the EPA's effort to protect human health and the
13 environment. We don't want another disaster like
14 the Kingston spill. We don't want the EPA to
15 overreact due to the Kingston spill with the RCRA
16 Subtitle C rule. The problem at Kingston was a
17 disposal problem and not a problem with the
18 material itself. We feel that the disposal can be
19 handled properly with a Subtitle D nonhazardous
20 regulation. Fly ash has been used in the United
21 States since the 1920s. Over 25 years ago the
22 Federal Register encouraged the use of fly ash

1 with any federally funded project with over
2 $10,000 in it. Today fly ash is accepted as a
3 routine product in concrete. There is no pent-up
4 demand for fly ash as the EPA's financial model
5 indicates. Concrete can be made without fly ash
6 if the Subtitle C goes through and the stigma
7 comes out.
8 The EPA has already reviewed coal
9 several times in both 1993 and 2000 and came to
10 the conclusion that it did not warrant the
11 hazardous label. Nothing has changed. The
12 constituents of fly ash have not gotten any worse.
13 The EPA believes that recycling won't hurt
14 concrete or the use of fly ash with Subtitle C for
15 disposal. We believe the EPA is wrong in this
16 assumption. The stigma is real.
17 If you watch TV, 60 Minutes has aired
18 two segments on how toxic coal ash is and has
19 questioned its safety in products with the clear
20 intent to scare consumers away from using these
21 products. Owners, material specifiers, engineers
22 and concrete producers will limit its use due to

1 future legal liability exposure. Several
2 utilities that we deal with have already told us
3 they will limit or cease to allow recycling of
4 coal waste due to legal exposures.
5 Boral asks EPA to do the right thing,
6 regulate coal combustion residuals under RCRA
7 Subtitle D and avoid any reference to hazardous
8 waste. EPA's own scientific data says coal wastes
9 are nonhazardous. Under EPA's own admission, RCRA
10 Subtitle D with a nonhazardous label will provide
11 equal protection to public health and environment.
12 The U.S. is best served by continuing to
13 recycle coal. It's a success story. EPA has the
14 power to limit material going into landfills by
15 continuing the use of fly ash in concrete and
16 other products. Thank you for your time.
17 MS. DEVLIN: Thank you. Number 63,
18 please.
19 MS. EHRLICH: Good afternoon. My name
20 is Lori Ehrlich. I'm a State Representative from
21 Massachusetts for the 8th Essex District. I'm
22 here in three capacities. I'm here as a mother of

1 two children who through their sooty footprints on
2 my white-tiled floor brought my attention to the
3 issue of coal burning. What I want to do is share
4 a story with you that played out in Massachusetts
5 back in 2000 and 2001 and I'll do it very briefly.
6 It's a very colorful story with lots behind it
7 which I will share in writing with you afterwards.
8 Wenham Lake is the drinking water for
9 three communities. Eighty-thousand people drink
10 from this lake. The ice trade that used to exist
11 on Wenham Lake used to chop up the ice on the lake
12 in the winter and carry ice around the world.
13 This was before the refrigeration. And Queen
14 Victoria actually used to insist upon Wenham Lake
15 ice in her drinks. It was known for its purity
16 and crystal- clear appearance.
17 Come to find out that after the
18 construction in 1952 of a coal-burning power plant
19 in our area, the solid waste left behind from this
20 power plant was dumped about 500 feet from the
21 lake and over the half century that it sat there
22 it migrated into the lake, and we found out back

1 in 2001 that it was 4 to 6 feet deep in this once
2 pristine drinking water source.
3 Using some help from one of the lake's
4 consumers, Jan Schlichmann who is here as well,
5 he's the attorney who was featured in a civil
6 action and played by John Travolta. This was his
7 drinking water supply. He and I co-founded an
8 organization that drew the community together, we
9 got all of the stakeholders around a table and
10 negotiated the complete cleanup of the waste pit
11 that was now at the bottom of this drinking water
12 pit. It was not without some drama and some help
13 from the press, but we had a success story which
14 also came at a cost. It was rumored to be about a
15 $10 million cleanup and it took about 6 years to
16 get this drinking water cleaned up.
17 As a State Representative, which I've
18 been for two years, I've proposed legislation. I
19 wrote legislation back in 2001 as a layperson and
20 for the last five 2-year sessions my legislation
21 which is very similar to what we're considering in
22 the strongest version that EPA is considering has

1 failed for 10 years now. I am begging that EPA
2 step up and does this because it is so hard on
3 the state level to find the political will and the
4 ability to do this on the state level. I know how
5 hard it is to hear testimony and how it can be a
6 very long day, so I just want to thank you very
7 much. I left a lot out, but thank you.
8 MS. DEVLIN: Thank you. Number 64,
9 please.
10 MR. YODER: My name is Chris Yoder. I
11 live in Baltimore, and Baltimore has the community
12 of Curtis Bay in its southern suburbs that's an
13 old industrial town and has numerous contaminated
14 sites. There's a proposal to put a coal ash
15 disposal site in that community. North of
16 Baltimore and very close to the Susquehanna River
17 there's a proposal to put fly ash into an
18 abandoned quarry, again, just dumping it in and
19 filling it up.
20 The designation whether coal ash is a
21 hazardous substance and controlled as such should
22 depend in my opinion solely on the question of is

1 it hazardous, does it contain hazardous materials?
2 If the answer to that question is yes then it
3 should be controlled as a hazardous substance.
4 And the answer to that question is yes. We know
5 that.
6 The prescription is clear: federally
7 enforceable standards with permits and subject to
8 inspection, monitoring and accountability for
9 outcomes. I'm a retired federal employee and my
10 experience taught me that you can't control what
11 you don't measure and you can't measure what you
12 don't monitor. It's important that the standards
13 be federally enforceable. Requiring or allowing
14 citizen lawsuits is simply to abrogate our
15 society's responsibility to protect its citizens
16 from harmful substances and actions. Standards
17 without accountability don't work. Guidelines
18 don't work. As a personal example, I've been
19 applying dietary guidelines for losing weight for
20 the last 20 years, and I'm 20 pounds heavier. I
21 ate too many pieces of pizza for lunch today.
22 That's because while I have good intentions, those

1 standards are not enforceable unless I enforce
2 them. So mandatory standards, measurement and
3 consequences for unsatisfactory outcomes by an
4 independent body charged with protecting our
5 environment, that's you EPA and I think that
6 argues for regulation under Subtitle C. Thanks.
7 MS. DEVLIN: Thank you. Number 65,
8 please.
9 MR. ANGER: My name is Donald Anger.
10 I'm the Operations Manager for a precast concrete
11 company called Americast, Incorporated. We're a
12 small business. We have eight producing plants in
13 Virginia, West Virginia and South Carolina. I'm
14 also the President of the Precast Concrete
15 Association of Virginia.
16 We have nine producer members, all the
17 same as Americast, small businesses trying to
18 survive this construction economy that we're in.
19 We manufacture reinforced concrete pipes, sanitary
20 and storm manholes, structures for the
21 infrastructure, three-sided bridges and retaining
22 walls. All of these products are made of concrete

1 obviously and they all have cement in them. We
2 substitute anywhere from 15 to 30 percent of our
3 cement with fly ash. This fly ash is hauled to us
4 in confined containers, it's stored in silos and
5 encapsulated in the concrete after the
6 manufacturing process. The fly ash is very
7 beneficial to our industry both economically
8 because it reduces the cost of our products. If
9 we have to go back to straight cement-concrete,
10 again our costs will increase.
11 It also enhances the performance of the
12 concrete, creating better concrete and makes it
13 more durable and less permeable. The current
14 specifications in Virginia and surrounding areas
15 require the use of fly ash in our concrete. That
16 is part of the AASHTO specifications and VDOT
17 specifications in several sanitary districts.
18 Using fly ash replaces the cement in the product
19 and by doing that we keep fly ash out of the
20 landfills and the fill areas that the others are
21 talking about. If fly ash is labeled as a
22 hazardous waste, our green advantage goes away.

1 All of my green-labeled products are committed to
2 no hazardous materials in the concrete. The
3 stigma associated with a hazardous waste tag on
4 fly ash will cause severe economic impact to my
5 business and our industry. Thank you for the time
6 to speak.
7 MS. DEVLIN: Thank you. Numbers 66, 67,
8 68 and 69, please. Number 66?
9 MR. SLESINGER: My name is Scott
10 Slesinger. I am the legislative director of the
11 Natural Resources Defense Council. I will address
12 the so-called stigma issue. Having spent more
13 than 10 years working for the hazardous waste
14 disposal industry, I notice that hazardous waste
15 disposal companies that operated Subtitle C
16 facilities lost market share over time to
17 recyclers and beneficial users. Market economics
18 makes this obvious. The higher cost of disposal
19 led to finding cheaper alternatives. So despite
20 the concern of every regulated industry that a
21 stigma would attach if EPA regulated their waste
22 as a hazardous waste, the market soon proved

1 otherwise and beneficial uses went up. This will
2 be especially the case with fly ash where EPA has
3 used the special waste terminology and
4 specifically avoided the dreaded term hazardous
5 for disposal, and clearly for the first time
6 specifically avoided any change to the regulations
7 to the material that is going to be used
8 beneficially.
9 Some argue that the market has already
10 been affected by the pre-proposal statements of
11 EPA. If there has been an effect, the negative
12 impact was ginned up by the utilities and the fly
13 ash recyclers essentially trying to poison the
14 market for their own product. It is as if Coke
15 said we put rusty nails in Coke; that would
16 probably hurt Coke sales.
17 Of course the utilities' concern is not
18 really fly ash recycling. Their concern is having
19 to dispose of the toxins that they took out of
20 their stack emissions, collected in the ash and
21 now have a difficult time arguing that the toxic
22 ash should be handled as nontoxic waste like

1 kitchen garbage. Therefore, they have created the
2 red herring of stigma.
3 A survey by NRDC shows that of companies
4 that use fly ash, over 69 percent will continue to
5 use it even if it is hazardous. I'm sorry, that
6 was not an NRDC survey, but a survey of the NRMCA,
7 the National Ready-Mix Concrete Association
8 echoing the survey of the National Precast
9 Concrete Association whose survey in July 2010
10 showed that 84 percent of their members will
11 continue to use fly ash even if the waste was
12 regulated under Subtitle C. I'm sure though that
13 future surveys released by opponents of the EPA
14 option, at least those that are released to the
15 public, will be more in line with their lobbying
16 campaign that the regulation would kill fly ash
17 recycling. NRDC and its 1.3 million supporters
18 urge the EPA and the Administration to as quickly
19 as possible issue the final rule under Subtitle C.
20 Thank you.
21 MS. DEVLIN: Thank you. Number 67,
22 please.

1 MR. ISA: First of all, I want to thank
2 you for giving me the opportunity to speak here
3 today. My name is Ulber Isa. I'm the Operations
4 Manager for Essex Cement located in Newark, New
5 Jersey, and I'm here to oppose the EPA ruling
6 classifying fly ash as a hazardous material.
7 Given the time I have, I'll try to make three
8 points to the audience and to you so you can
9 hopefully make the right decision.
10 One is how does science classify fly
11 ash? How is fly ash disposed of currently? What is
12 the trend? And is there any benefit of disposing
13 of fly ash and recycling fly ash or not? From my
14 research, I found out the University of North
15 Dakota Coal Ash Research Department has done
16 extensive research on this issue and they posted
17 all their findings on the web site so that if
18 anybody interested, they can go and do more
19 research on their own. Their research today shows
20 that fly ash is benign and does not qualify as a
21 hazardous waste based on its toxic
22 characteristics, and this is scientific data we're

1 talking about. Per their research, the chemical
2 constitutes of coal ash are commonly found in many
3 everyday products and natural materials. They are
4 present in soil, rock and other parts of the
5 Earth's crust. Again this is scientific data and
6 I want to emphasize this because it's not opinion.
7 The EPA actually ruled the same way on August 9,
8 1993, and also May 22, 2000, so that basically the
9 EPA supported this decision.
10 It is very important to note that no
11 damage cases are related to beneficial use of coal
12 ash as of year to date. This whole thing started
13 with the Kingston, Tennessee, issue and it's
14 important to separate the issue because the
15 Kingston, Tennessee, damage case is related to
16 engineer failure and not the material that's
17 involved. The same thing might be like saying
18 we're building a 20-story building, we have no
19 foundation and we blame the concrete for not
20 supporting the building because the building falls
21 down. That has nothing to do with the material,
22 but it has to do with engineering failure and

1 that's very important.

2 As for disposal, in 2008 utilities

3 generated 136 million tons of coal ash combustion

4 products which is the second largest waste. In

5 2000 only 30 percent was used in recycling, in

6 2008 44 percent was used and that's 60 million

7 tons, basically a 33 percent increase.

8 In Europe, 100 percent of fly ash is

9 recycled. Why do I bring this up? Every time you

10 recycle fly ash, it reduces CO2 emissions, and

11 basically year to date you can reduce by 20 to 25

12 percent the greenhouses. In 2008, 12 million tons

13 of greenhouse gas was reduced. Isn't that our

14 mission? Since 2000, 117 million tons of

15 greenhouse gas is reduced.

16 As for data, the electric power

17 utilities did research and this is the data they

18 found, 159 trillion BTUs saved, 32 billion gallons

19 of water saved, 12 million pounds of CO2 saved and

20 51 million cubic yards of landfill space. If we

21 cannot recycle fly ash, we're going to end up in

22 the landfill. Quickly I just want to go through

1 the benefits.

2 MS. DEVLIN: I'm sorry, your time is up.

3 MR. ISA: I know, time is up, but I want

4 to emphasize there's a benefit of recycling fly

5 ash. Thank you.

6 MS. DEVLIN: Thank you. Number 68,

7 please.

8 MR. OLIVO: Good afternoon. My name is

9 Don Olivo. I'd like to thank you all for allowing

10 me to speak this afternoon to you. I have been in

11 the cement industry for 27 years. I am with the

12 Essex Cement Company in Newark, New Jersey whose

13 parent is Titan America. I am the dispatcher at

14 Essex Cement and also the labor union

15 representative for all the members of the

16 International Longshoremen's Association.

17 I support coal ash disposal regulations

18 that protect human health and the environment

19 while encouraging greater recycling the fly ash.

20 These goals cannot be reached if the EPA

21 designates coal ash a hazardous special waste.

22 People will not want material in their homes,

1 schools and neighborhoods if it is considered
2 hazardous in a landfill. Businesses will not want
3 to risk being sued for using a material that is
4 considered hazardous in a landfill. We risk
5 losing the environmental benefits that come along
6 with recycling millions of tons of this material.
7 If the EPA designates coal ash as a
8 hazardous waste, the entire industry will be
9 affected. I speak for myself and the people who I
10 work with and report to me when I state there will
11 be families greatly affected. Many jobs will be
12 lost. The cement and concrete industry will be
13 set back substantially. Please consider the
14 effect of this ruling on all the people involved,
15 the workers, their families, children and
16 grandchildren.
17 I deal directly with our customers and
18 truckers. We deliver fly ash in the most
19 difficult traffic zones and conditions in the
20 nation. We have had breakdowns, accidents and
21 delays throughout the five boroughs of New York
22 and New Jersey. Never in all the years of

1 handling ash have we ever had an incident relating
2 to a hazardous material situation.
3 Why do producers use fly ash? It has
4 fresh concrete advantages, sustainability, reduces
5 material cost of concrete, longer lasting
6 structures and it reduces waste. I have witnessed
7 over time some of our concrete customers being
8 introduced for the first time to fly ash in their
9 businesses. The positive outcome was remarkable.
10 The finished material they produced was superior.
11 The cost was significantly reduced. The
12 environmental advantages were greatly beneficial.
13 The effective elimination of fly ash incorporated
14 into concrete would be a major step backward in
15 the nation's efforts to provide a more sustainable
16 infrastructure. Please consider this, and I thank
17 you.
18 MS. DEVLIN: Thank you. Number 69,
19 please.
20 MR. LYONS: Good afternoon. My name is
21 Bill Lyons. I am currently the Executive Director
22 of the Concrete Industry Board of New York. The

1 New York City Concrete Industry Board is a
2 nonprofit concrete educational organization
3 founded in 1951 and a chapter of the American
4 Concrete Institute with a mission to educate,
5 inform and certify those involved in all aspects
6 of the concrete industry.
7 My experience includes 15 years with a
8 major concrete add mixture manufacturer, over 5
9 years with Separation Technologies, a Titan
10 America company, and over 4 years with a national
11 concrete Ready-Mix company prior to joining the
12 Concrete Industry Board. I was president of two
13 and vice president of one chapter of ACI and I'm a
14 fellow of the institute. Several ACI committees I
15 am on include ACI 232, Fly Ash and Concrete.
16 Throughout my career I have spent
17 considerable time consulting with the design
18 community including structural engineers, owners
19 and developers including public agencies, general
20 contractors and concrete producers in the
21 promotion of quality, high-performance concrete.
22 This includes the addition of fly ash concrete

1 into mixes. Fly ash uses in the Metropolitan New
2 York City area are numerous. It is used
3 continuously in the construction of high-rise tall
4 building development. Because fly ash reacts with
5 the unhydrated cement, it creates a better bonding
6 concrete that without its use concrete's high
7 strengths would not be attained. Fly ash is also
8 used in concrete mixes for our streets, bridges
9 and parking structures, not only in the
10 Metropolitan New York area, but every single one
11 of the towns and cities and states that are in the
12 union.
13 The purpose is for the durability
14 benefit it offers. Longer-lasting structures can
15 be obtained with the addition of fly ash in the
16 mixes. Fly ash has been used successfully in
17 concrete for over 30 years in the New York City
18 Metropolitan area well before the term green
19 became a symbol for sustainability. Back then it
20 was just another color in the rainbow. I feel it
21 would be an injustice to landfill the 50 million
22 tons of fly ash annually used in concrete

1 products. For a product that has been used in the
2 construction of the Hoover Dam back in the late
3 1920s to early 1930s, I encourage the EPA to
4 listen to the concrete construction industry and
5 deem fly ash a nonhazardous material. Let's go D.
6 Thank you.
7 MS. DEVLIN: Thank you. I'm going a
8 little bit out of order now, so everyone listen.
9 Number 156, number 165, number 93 and number 126.
10 Are any of you guys here?
11 MS. BICK: Yes. I'm really surprised
12 and delighted. Thank you very much. My name is
13 Bonnie Bick and I'm a citizen in Maryland and I'm
14 here because I'm very concerned about the
15 Brandywine fly ash landfill and the Faulkner
16 landfill. Both of them are unlined landfills that
17 are leaking and there are MDE, Maryland Department
18 of Environment, lawsuits and citizen lawsuits on
19 these issues.
20 I'm very upset about the beneficial-use
21 aspect because it's taken out of our scrubbers,
22 and I think once we've got it, we should contain

1 it. We don't want it in our air, we don't want it
2 distributed, we want it contained. So my urging
3 is that you will try to avoid the externalities
4 that are being created by distributing this fly
5 ash. It needs to be properly sequestered and
6 taken out of our environment and I'm asking you to
7 think of our grandchildren because not to use fly
8 ash beneficially sounds good, but the beneficial
9 way to do it is when you have it, contain it and
10 use it as a toxic waste which it is. So I support
11 the Subtitle C designation and I think that we can
12 all benefit from having the EPA step up to the
13 plate and take responsibility. Thank you very
14 much.
15 MS. DEVLIN: Thank you. Are numbers
16 165, 93 or 126 in the room? I'm going to go back
17 now to 70, 71, 72 and 73.
18 MS. TRAVIS: Good afternoon. I'm going
19 to speak in my most rapid New York voice to try
20 and say as much as I can in 3 minutes and I'm
21 going to skip a few things so hopefully it'll be
22 coherent. At the most recent meeting of the

1 National Environmental Justice Advisory Council in
2 July of which I am a member, U.S. EPA leadership
3 presented a significant document to the FACA for
4 consideration and comment. The document is called
5 "Plan Environmental Justice 2014" and incorporates
6 several components that are intended to move the
7 Agency forward to develop stronger relationships
8 with communities and increase the Agency's effort
9 to improve the environmental conditions and public
10 health in overburden communities. Plan EJs 2014's
11 five critical components are incorporating
12 environmental justice into rulemaking, considering
13 environmental justice concerns in EPA's permitting
14 process, accelerating compliance and enforcement
15 initiatives, supporting community-based action
16 programs and fostering administration-wide action
17 on environmental justice. The fact that
18 incorporating environmental justice into agency
19 rulemaking is listed as the first critical
20 priority of Plan EJ 2014, speaks volumes to this
21 proceeding today and to its overall importance to
22 achieving the Agency's and Administrator Lisa

1 Jackson's goal for achieving and advancing
2 environmental justice across the Agency.
3 As Vice Chair of the Maryland Commission
4 on Environmental Justice and Sustainable
5 Communities, issues of environmental justice,
6 ecological degradation and disproportionate human
7 health impact in our state are of great concern to
8 me. Maryland is home to multiple coal combustion
9 waste sites that have contaminated drinking water
10 wells and polluted surface waters and the
11 environment with arsenic, cadmium, selenium,
12 nickel, thallium and other toxic pollutants. In
13 2008 a major energy producer in our state entered
14 into a multimillion-dollar settlement agreement to
15 clean up arsenic, cadmium and other pollutants in
16 drinking water wells. The State of Maryland has
17 taken enforcement action against other power
18 companies and two of its subsidiaries for Clean
19 Water Act violations at the Faulkner Coal
20 Combustion Waste Facility in Charles County,
21 Maryland. We also have problems in Brandywine,
22 Maryland, and Prince Georges County, not far from

1 the town where I live.
2 I want to speak a little bit to
3 environmental justice. Low-income communities in
4 Maryland need EPA to regulate coal ash under
5 Subtitle C of RCRA as special waste with all the
6 attending safeguards that apply. Airborne
7 issues. Harmful clouds of airborne coal ash
8 pollute communities and put them at great risk.
9 The nation's 495 coal-fired power plants generate
10 over 140 million tons of coal ash annually. The
11 storage, disposal and transport of this ash can
12 pose significant health hazards. However, no
13 federal standards exist to require polluters to
14 control the harmful air emissions from dump sites
15 despite the fact that EPA itself has documented
16 that coal ash contains toxic materials and those
17 toxicants can and do escape disposal sites.
18 Lastly, water quality. Few coal
19 combustion waste disposal sites are subject to
20 Clean Water Act permits that monitor or limit the
21 full range of toxic metals that are discharged
22 from coal combustion waste disposal sites. At a

1 minimum, EPA must take basic steps to protect the
2 off-site environment at coal combustion waste
3 sites and set limits on the discharge of leachate
4 or waste water that are based on best available
5 treatment and containment standards and which are
6 designed to protect rivers and streams. This is
7 particularly important in a state like Maryland
8 where rivers and streams empty into the
9 ecologically fragile and highly threatened
10 Chesapeake Bay. For these reasons and so many
11 more, I support Subtitle C.
12 MS. DEVLIN: Also could you please state
13 your name for the record?
14 MS. TRAVIS: Vernice Miller Travis, Vice
15 Chair, Maryland Commission on Environmental
16 Justice and Sustainable Communities and a member
17 of the EPA National Environmental Justice Advisory
18 Council. Thank you.
19 MS. DEVLIN: Thank you. Number 71,
20 please.
21 MR. McNELLY: As Executive Director of
22 ARIPPA, my comments today represent the voice of

1 over 10,000 citizens who are directly or
2 indirectly employed by our industry and I live and
3 work where CFB coal ash is and has been generated
4 and beneficially used for over two decades.
5 ARIPPA is a nonprofit association representing
6 alternative energy generating plants. EPA's
7 motivation to propose these rules appears to be
8 based on what EPA has termed proven damage cases,
9 citing two ash impoundment accidents at Kingston,
10 Tennessee, and Martins Creek, Pennsylvania. This
11 is in spite of the fact that a thorough study of
12 the Martins Creek accident found no adverse
13 impacts to the river, wildlife or human health,
14 and that the Tennessee Department of Health found
15 no significant human health impacts due to the
16 Kingston accident. These findings combined with
17 safe management of the vast majority of ash sites
18 and the beneficial uses clearly indicates that EPA
19 is acting in a capricious manner. EPA's true
20 motivation to propose these rules appears to be
21 based on political media appeasement versus
22 scientific fact.

1 EPA appears to be only overly influenced
2 by certain special interest anti-fossil fuel
3 groups that have never directly managed ash. An
4 ash accident may be a legitimate reason for EPA to
5 propose regulatory improvements pertaining to wet
6 ash disposal impoundments. However, it is
7 unreasonable to propose rules that declare all ash
8 hazardous and drastically limit its many current
9 beneficial uses. While EPA cites the NRC-NAS
10 study concerning ash in its preamble, it ignores
11 its scientifically based factual findings which
12 include, one, enforceable federal standards should
13 be established to ensure that states have specific
14 authority and implement adequate safeguards; two,
15 primary regulatory mechanisms should be used to
16 develop enforceable standards are SMCRA, joint
17 OSM-EPA rules, or RCRA D rules. Beneficial use of
18 ash should be strongly encouraged. Government
19 agencies should examine ways in which they can
20 promote ash use or remove impediments to its use.
21 Number four, placement of ash in mines should be
22 based on an integrated process of ash

1 characterization, site characterization,
2 management and engineering, design of placement
3 activities and design and implementation of
4 monitoring.
5 Since 1985 Pennsylvania DEP has provided
6 oversight on the beneficial use of coal ash for
7 mine reclamation and other uses. PA DEP's 25-year
8 scientific technical findings include, one,
9 allegations that ash causes pollution are
10 seriously flawed. Two, ash placement has not
11 caused water-quality degradation. In fact, in
12 some instances significant improvements have
13 occurred. EPA should consider the negative
14 implications of classifying all coal ash as
15 hazardous. One, the CFB ash will not likely meet
16 encapsulation recycling use standards. Two,
17 industry ash management costs will increase by
18 more than 31 times, exceeding revenue by $40 to
19 $50 per megawatt hour. Our industry would operate
20 at a loss. Accordingly, it would cease to exist.
21 Thousands of workers will become unemployed. Ten
22 percent of our region's electric energy will be

1 gone. Land/stream reclamation benefits which to
2 date include thousands of acres and hundreds of
3 miles of streams will vanish.
4 In summary, we are aware that certain
5 special interest groups have lobbied their
6 opinion that classifying coal ash as hazardous
7 will increase beneficial uses.
8 MS. DEVLIN: Excuse me, your time is up.
9 MR. McNELLY: Thank you.
10 MS. DEVLIN: Could you please state your
11 name for the record? I think we got your
12 affiliation, but I don't think we got your name.
13 MR. McNELLY: My name is Jeff A.
14 McNelly. Did you want handouts or anything?
15 MS. DEVLIN: If you have them, we'll
16 take them and put them in the record, certainly.
17 Thank you. Number 72, please.
18 MR. ACKERMAN: My name is Frank
19 Ackerman. I'm an economist at Tufts University.
20 I'm going to submit longer written comments, but I
21 want to make one point about the economic analysis
22 today which is that it is crucial to reject the

1 treatment of stigma and the calculation of
2 stigma-related losses in EPA's Scenario 2 in the
3 RIA. That scenario assumes that the stigma of
4 Subtitle C regulation would eliminate half of the
5 market for reuse of coal ash even though reuse is
6 clearly exempt from that regulation.
7 There are three reasons to reject stigma
8 as seen in Scenario 2. First, it is not supported
9 by logic, economic theory or legal precedent. The
10 stigma in Scenario 2 rests entirely on the
11 incorrect belief that beneficial reuse of CCRs is
12 described as hazardous waste.
13 Since the buyers of CCRs are companies
14 and not individuals, they should realize that it
15 remains legal and profitable to use CCRs. If they
16 do not realize that, they would be expected to
17 lose market share to companies that do realize it
18 and profit from continued use of CCRs. That's one
19 of the virtues of a market economy. The stigma
20 notion may stem from the negative publicity
21 surrounding the Kingston spill in December 2008,
22 but the recent dip in the reuse of CCRs is due to

1 the economic slump which has dragged down the
2 construction industry. The tonnage of beneficial
3 reuse outside of mining started to go down in
4 2008, too early to be affected by Kingston but
5 matching the timing of the recession.
6 The second point is that the estimates
7 of stigma losses in the EPA analysis are purely
8 arbitrary without even a pretense of empirical
9 support. Why should 50 percent of one sales
10 category or 80 percent of another be lost? Why do
11 these losses persist unchanged for 50 years rather
12 than fading over time as real stigmas typically
13 do? This level of imprecision would be laughed
14 out of the room in a debate about health hazards,
15 cancer risks or anything else where real
16 information exists. Far from providing empirical
17 support for the stigma numbers, the EPA expresses
18 its disbelief in these estimates and provides
19 extensive evidence that there is no stigma
20 preventing beneficial reuse of many Subtitle C
21 wastes. The contrary argument in Scenario 1 is
22 more logical and carefully supported with real

1 empirical data. The desire to avoid increased
2 disposal costs under Subtitle C regulation would
3 actually increase reuse. Finally, consider the
4 precedent for other regulation that would be
5 created by stigma-based regulation of CCRs. The
6 stigma losses are said to be more than 10 times
7 the direct costs imposed by Subtitle C. So for
8 the next regulation why bother thinking about the
9 details of real costs and benefits? Just tell a
10 story about the value of unfounded fears.
11 Monetizing stigma-based losses that might be
12 caused by fear of regulation is an argument
13 against any regulation any time. Should all
14 carcinogens be declared safe in order to avoid
15 stigmatizing them and reducing their sales? If
16 allowed, this absurd approach would win every time
17 especially if it uses arbitrary estimates of
18 stigma losses with no empirical support as is done
19 in Scenario 2. Thank you.
20 MS. DEVLIN: Thank you. Number 73,
21 please.
22 MR. DULANEY: Good afternoon. Brian

1 Dulaney with Separation Technologies. I'm a sales
2 rep. I sell processed fly ash in the mid-Atlantic
3 region. Although I can't say I am against
4 regulation, I certainly applaud the EPA's efforts
5 to ensure a safe environment for my children to
6 grow up in, and I appreciate that. I do fear, not
7 to I guess beat a dead horse, the stigma of it. I
8 appreciate the studies the previous speakers spoke
9 of. I don't have access to those studies. All I
10 know is the conversations I've had with local
11 decision makers in their businesses and they are
12 very fearful that their transportation costs will
13 increase, the costs for making the product will
14 increase and that's what troubles me. That's
15 where my worries lie.
16 I am very proud of my job and what I do
17 in keeping fly ash from the landfills, last year
18 150,000 tons roughly out of the landfill directly.
19 I would like to take credit for it in selling to
20 the customers, and that's just why I am opposed to
21 the hazardous designation. Do whatever you need
22 to do to it, just let's make sure we're keeping it

1 out of the landfills and I just think saying it's
2 hazardous is going to really prevent me from doing
3 that. Thank you.
4 MS. DEVLIN: Thank you. I'm going to go
5 out of order again and try calling a couple of
6 numbers that I had called before, 165, 93, 126 and
7 142. None of you are here. I'm going to try 204,
8 206, 207 and 208. If none of you guys are here,
9 how about 74, 75 and 77?
10 MR. SHAW: My name is Tom Shaw and I am
11 Director of Sales for Harsco Minerals, a division
12 of the Harsco Corporation based in Camp Hill,
13 Pennsylvania. Harsco Minerals operates 15 boiler
14 slag processing plants throughout the Eastern
15 United States. For more than 70 years we have
16 been a green recycler of boiler slag, producing
17 mainly abrasives under the Black Beauty trade name
18 and roofing granules for roofing shingles. Harsco
19 Minerals employs approximately 500 employees and
20 generates much needed revenue in many rural areas.
21 Almost all of our business is built on the
22 beneficial reuse of coal slag.

1 The facts demonstrate that there is no
2 reasonable basis for subjecting boiler slag to
3 regulations under RCRA Subtitle C, not even as a
4 special waste. When extremely hot, molten coal
5 ash is quenched with cold water and the coal ash
6 immediately becomes vitrified into an amorphous,
7 solid and glassy matrix known as boiler slag.
8 Because boiler slag is vitrified, it is very
9 durable and an environmentally stable material
10 that permanently immobilizes the chemical
11 constituents into a glassy amorphous structure.
12 Boiler slag makes up only 2 percent of coal
13 combustion byproducts and the vast majority of it
14 is recycled into valuable reusable products.
15 Because it is beneficially reused, boiler slag is
16 not commonly stored in surface impoundments.
17 Historically, our boiler slag has always passed
18 the TCLP and has never exhibited any
19 hazardous-waste characteristics. Our testing of
20 pre- and post-blast boiler slag using the EPA
21 standard TCLP has confirmed that the resulting
22 leachate meets drinking water standards. The

1 scientific information about boiler slag and its
2 physical properties have not changed since we
3 began our operations 70 years ago. Regulating
4 boiler slag destined for disposal is a special
5 waste under Subtitle C would unfairly stigmatized
6 beneficially reused boiler slag.
7 Already, competitors have been using
8 EPA's proposal to attack our products and try and
9 take business away from us, not based on
10 performance or value for the customer, but merely
11 on stigma. Customers and consumers will continue
12 to be confused and concerned about purchasing and
13 using products that seem to be essentially the
14 same as a Subtitle C waste. We have seen no
15 evidence that boiler slag meets any threshold for
16 regulation under Subtitle C. We are not aware of
17 any environmental problems linked to our products.
18 Boiler slag has been used since the 1930s as an
19 abrasive in lieu of sand which is an abrasive that
20 presents serious work or health concerns. We
21 recognize the need for proper and environmentally
22 sound standards for regulating the small

1 percentage of boiler slag that is discarded rather
2 than beneficially reused. Accordingly, consistent
3 with the announced views of nearly 30 states and
4 EPA's own two previous determinations evaluating
5 proper management of CCRs, we support appropriate
6 and reasonable disposal standards for any waste
7 boiler slag under Subtitle D of RCRA. Thank you.
8 MS. DEVLIN: Thank you. Number 75,
9 please.
10 MR. BESA: Good evening, my name is Glen
11 Besa. Actually I guess it's afternoon. My name
12 is Glen Besa. I'm the Director of the Sierra
13 Club, Virginia Chapter, representing 15,000
14 members of the Sierra Club in the State of
15 Virginia.
16 The burning of coal is the largest source
17 of electricity in this country. Why is that?
18 It's because it's the cheapest fuel. Why is it
19 the cheapest fuel? Because utilities have been
20 able to shift the costs associated with cleaning
21 up coal to the public, and that's the cost of air
22 pollution, the cost of water pollution, the cost of

1 mountain top removal coal mining and all the costs
2 associated with coal ash. This subsidization of
3 coal makes it that much harder for renewable
4 energies to compete. The utilities should not
5 have the right to poison people's wells with coal
6 ash just to shave a small amount of the cost off
7 electricity. Utilities should have to pay the
8 full cost of disposing of coal ash responsibly.
9 If coal cannot compete because of this then
10 cleaner forms of energy will take its place and
11 will not only address the issue with regard to
12 coal ash, but will begin to address the issue with
13 regard to climate change and also all the air
14 pollution associated with burning coal that puts
15 so many people in the hospital each summer. So it
16 comes down to a small cost of handling this waste
17 responsibly versus public health and that should
18 not be a contest. Where is this stuff dumped?
19 Generally in poor neighborhoods, urban and rural,
20 and this is environmental injustice. The
21 executives of these utilities would not want this
22 waste in their back yards and they would not want

1 their children to drink the water contaminated by
2 the coal ash. But they can afford to live
3 elsewhere, the people in poor communities cannot.
4 There is no consistent regulation among
5 the states with regard to coal ash and there's no
6 consistent regulation within the State of Virginia
7 with regard to coal ash. I live in Chesterfield
8 County, home of the largest coal plant in
9 Virginia, Dutch Gap, and that plant has a large
10 unlined pond which they continue to maintain.
11 They're up for a new NPDES permit on that.
12 Currently they do not monitor for any of the toxic
13 heavy metals that are discharged into the James
14 River from that site.
15 Throughout Virginia there are wells
16 contaminated by coal ash. The monitoring wells
17 with landfills that include coal ash, when they
18 are determined to have some toxic chemical in them
19 as a result of testing, are simply reclassified as
20 assessment wells so that once they're a monitored
21 well and you determine there are toxins in them
22 and they reclassify them as an assessment well,

1 then they don't do anything about it. They just
2 watch it. This is really an irresponsible
3 situation, and the way we handle coal ash in this
4 country is irresponsible. I urge you to regulate
5 coal ash under Subtitle C of RCRA as a special
6 waste. Thank you so much.
7 MS. DEVLIN: Thank you. Number 77,
8 please.
9 MS. MOSS: Good afternoon. My name is
10 Susan Moss and I'm a resident of Surry County,
11 Virginia. In the past 2 years I have gone to
12 meetings in Surry County, Virginia, for the permit
13 process to build the largest coal processing plant
14 in Virginia. I have not spoken at these meetings.
15 I took notes. At these meetings my novice
16 observations at the lack of protection for the
17 proposed coal ash has compelled me to come today
18 and request strict limitations be placed on the
19 disposal of coal combustion residuals from
20 electric utilities to protect our country's water
21 and air.
22 Seeing and reading about past problems

with disposal of the byproducts from processing coal and understanding that the new plants will have more toxic chemicals in the coal combustion residuals, it is imperative to take strong action. Please be aggressive now to secure the future. I have never lived near a coal processing plant and never taken the time to understand the process. Now that I am informed on the subject, I see the need for caution and look to you for guidance. Thank you.

MS. DEVLIN: Thank you. Number 147 and number 105 are not here.

MR. DURNING: I'm 105.

MS. DEVLIN: Thank you, great.

MR. DURNING: Good afternoon. My name is Matt Durning. I'm an independent documentary filmmaker. I'm speaking today on behalf of myself and my co-producer, N'Jer Eaton who is here with us today as well. From August 2009 through May 2010 my classmate and I reported on the story unfolding in Perry County, Alabama, where the spilled coal ash waste from Kingston, Tennessee

1 had been dumped at the Arrowhead Landfill in
2 Uniontown, and this landfill is literally within a
3 few hundred feet of the homes of residents who
4 have lived in this area for generations.
5 The Arrowhead facility started accepting
6 this toxic waste despite the significant
7 opposition from the majority of local residents in
8 Perry County. The result of our reporting was a
9 27-minute documentary entitled Perry County which
10 we're hoping to submit to the public record today
11 along with our testimony. We hope that you and
12 the other members of the EPA and your colleagues
13 will take the time to watch this 27-minute film
14 about the situation in Perry County and the
15 environmental injustice there before ruling on
16 this important issue.
17 The situation in Perry County is a prime
18 example of why the U.S. is in such desperate need
19 of strong federal regulation on coal ash. As a
20 result of the absence of federally enforceable
21 protections, the Alabama Department of
22 Environmental Management or ADEM, local Perry

1 County politicians, and landfill owners and operators
2 in Uniontown were able to secure this contract to
3 bring the waste from Kingston and dispose of more
4 than 3 million tons of coal ash in Perry County at
5 a landfill that was designed only for household
6 garbage. The only way to protect the residents of
7 Perry County and other communities across this
8 country is to be regulating coal ash disposal
9 under Subtitle C of the Resource Conservation and
10 Recovery Act.
11 While the Arrowhead Landfill is deemed
12 "state-of-the-art" by local politicians and
13 landfill officials, in our reporting there we have
14 witnessed conditions on the ground, which give us
15 great cause for concern and we think should give
16 you cause for concern as well. For at least the
17 last 6 months a mountain of coal ash has been
18 rising behind the tree line that has sat uncovered
19 only a few hundred feet from residents' homes.
20 This is clearly increasingly the likelihood that
21 fugitive ash and dust will be blown off-site and
22 could end up in the lungs and water sources of

1 local residents.
2 Although the landfill is equipped with a
3 liner system which they also call state-of-the-
4 art, we know for a fact that contaminated water
5 has flowed from the landfill property into
6 roadside ditches and creeks which feeds into local
7 water sources. In this community many of these
8 folks are on personal wells and we know that the
9 homes near the landfill get their drinking water
10 from water that is directly tied to the creeks and
11 roadside ditches that are basically being fed from
12 this contaminated water from the landfill. Most
13 of the people living in this community in Perry
14 County, Alabama, are poor and African-American and
15 like the majority of Perry County,
16 disenfranchised. They fought hard to stop the
17 original landfill construction and the coal ash
18 contract but every step of the way the system just
19 failed them. A few local politicians have strong-
20 armed the coal ash contract and squelched
21 opposition. They have silenced the very people
22 they were elected to represent.

1 The people of Perry County are an
2 example of the most vulnerable victims of weak
3 federal coal ash legislation. Unfortunately,
4 there are so many other communities like them
5 across the U.S. suffering from the same thing,
6 improper disposal of this toxic waste. Time and
7 again states like Alabama have put communities at
8 risk. Without any support from their elected
9 officials and scant resources to effectively fight
10 this dumping, they desperately need real and
11 lasting support from the federal government and
12 the only way to ensure this and ensure that they
13 are protected is by regulating coal ash under
14 Subtitle C. Thank you very much.
15 MS. DEVLIN: Thank you. Number 204,
16 206, 207 and 208. I'm going to keep calling, 209,
17 210, 211, 212 and 213.
18 MS. CHIN: I'm 211.
19 MS. DEVLIN: 211? Great. Thank you.
20 MS. CHIN: You got to me sooner than I
21 expected, but that's great. My name is Allison
22 Chin. I want to thank you for the opportunity to

1 testify today and share my concerns for why strong
2 regulation is vital for safeguarding public health
3 and basic environmental integrity. It's a
4 privilege to be able to come before you as an
5 American, as a resident of Virginia and as a
6 current volunteer member of the Sierra Club's
7 Board of Directors and one of its past presidents.
8 The Sierra Club, as you know, is America's largest
9 and oldest grassroots environmental organizations
10 standing at 1.3 million members and supporters.
11 I've also spent 25 years as a cancer biologist.
12 I applaud the EPA for recognizing the
13 serious problems posed by toxic coal ash left from
14 the burning of coal. Communities across the
15 country are exposed to heavy metals such as
16 arsenic, lead, mercury and selenium seeping from
17 ash storage sites into our drinking water, rivers
18 and streams. The result? Increased risk of
19 cancer, learning disabilities, birth defects and
20 other devastating illnesses. Workers in the many
21 industries that we have heard from are exposed to
22 these toxins in their daily work environment.

1 Option C will regulate coal ash from
2 cradle to grave, from its generation, to storage,
3 to transportation, to management and disposal.
4 Option D will only require unenforceable
5 guidelines for disposal and is inadequate to
6 protect communities, let alone workers. Coal ash
7 is everywhere, a 150 million tons a year at more
8 than 2,000 sites. Virginia alone produces 2.4
9 million tons of coal ash a year and we're
10 sixteenth in the country. There are 11 impounds at
11 six plants. Communities are at risk from
12 disaster, from the lack of basic safety
13 procedures, from the toxins seeping into drinking
14 water and from the fact that time and time again the
15 best intent by corporations is not sufficient to
16 compete with their financial interest and
17 communities pay the price.
18 If the BP oil disaster and the Tennessee
19 coal ash catastrophe taught us anything, it's that
20 corporate self-regulation does not work. I urge
21 EPA to stand up to industry pressure and issue
22 strong federally enforceable standards to protect

1 communities and workers from toxic coal ash.
2 Continuing to ignore scientific and safety
3 concerns comes at a high cost to our families,
4 communities and economy. There's no tradeoff
5 here. It's not about choosing between public
6 health and enabling responsible recycling. Strong
7 regulation under Subtitle C will promote safeguard
8 and public health and protect the environment in
9 recycling of coal ash for beneficial use with
10 federally enforceable standards and
11 accountability. To encourage recycling, EPA can
12 regulate coal ash as a hazardous waste when
13 disposed of but not when recycled. Thank you very
14 much.
15 MS. DEVLIN: Thank you. Number 213?
16 MS. MILLER: Thank you. My name is
17 Jessica Miller and I'm here representing myself as
18 a concerned consumer of the industries that
19 produce this toxic coal fly ash. I am supporting
20 Subtitle C with the exception that the enforcement
21 date should be changed to be taking effect 6
22 months after the ruling, if not sooner, since time

1 is of the essence as the folks who have talked
2 about their experiences and negative health
3 impacts of this on their lives and their families.
4 As for enforcement, Subtitle D leaves
5 enforcement, the expense of the suits and the
6 burden of proof to the citizens. Those industrial
7 representatives that have spoken against Subtitle
8 C and for Subtitle D should start listening to the
9 citizens before the expenses start to rise. If we
10 do not have their cooperation and their ears, then
11 what can we expect from you if they are not
12 listening now? Corrective action and the presence
13 of arsenic and other toxins like selenium and
14 others that have been mentioned by experts are
15 known to be in fly ash, yet the Mirant Company
16 that owns the Brandywine fly ash facility in
17 Brandywine, Maryland, allowed their collection pond
18 water to be released without testing for selenium
19 and arsenic and that community, as folks before me
20 have said, is very susceptible to contamination of
21 the water since they rely a lot on wells as well
22 as streams that have been contaminated run

1 directly behind private citizens' property.
2 For permit issuance, this is actually
3 something that the companies and industries that
4 have spoken out for Subtitle C should take heart
5 in because in order to get a permit you have to
6 understand what the costs are associated with that
7 permit so that having Subtitle C enforced, and the
8 regulations will actually allow companies to make
9 a sound economic assessment of what these coal
10 plants and the projects of waste disposal,
11 basically the mess that their industry will cause,
12 will truly cost totally, and that will be able to
13 help them in deciding whether the project is
14 profitable within a moral economy.
15 For the surface impoundments that have
16 been built before and after this rule, I am glad
17 to see that both proposals include testing of the
18 water. I do want to stress that as to the surface
19 impoundments built after the rule, it's very
20 important that companies actually get jobs when it
21 comes to liners being required. It's comforting
22 to hear that people who are working with fly ash

1 were supposed to wear protective equipment, I know
2 that probably is from the work of the unions and I
3 hope that you will be our collective power for
4 giving us the best protection you can. Thank you.
5 MS. DEVLIN: Thank you. Numbers 214,
6 215, 216 and 217. Number 214?
7 MS. LYNDSEY: How are you doing today?
8 My name is Lilly Lyndsey and I am a member of the
9 Hampton Roads community. I came today because I
10 wanted to share with you a real life story, and
11 sometimes there's human cause to things that
12 happen in the environment.
13 From 1996 to 2004 I was a U.S. Army
14 Stevedore at Fort Eustis and I had a colleague,
15 Specialist Henby, who could do anything. She had
16 the title of Combat Cosmetologist. We would be in
17 the woods she'd go to the water buffalo she'd do
18 all kinds of chemical processes. There was
19 nothing she couldn't do. One day after a drill
20 she asked me if I could give her a ride home: I
21 said sure.
22 I took her to her home and she lived in

1 Newport News, Virginia. Outside of her home was a
2 huge mountain of coal like you would not believe.
3 It was unbelievable. Hampton Roads is as flat as
4 a pancake. To see it took my breath away. I
5 asked her have you noticed anything as a result of
6 all this coal being stored here? She said you
7 know it's funny, but my daughter would go outside
8 and she'd play and she'd come back and her clothes
9 would be as black as tarpaper and I kept
10 reprimanding her why are you rolling in mud?
11 Finally one day she said, mom, I'm not rolling in
12 mud. All I did was swing on the swing and then I
13 just went down the sliding board. That sliding
14 board was a little more than a coal chute for all
15 practical purposes, and it's unfortunate but
16 here's someone that's one of America's heroes.
17 When September 11th came and there was a need for
18 someone to volunteer to fight, she volunteered.
19 I'm a person that imagines possibilities
20 and I've looked on the Internet to see is it
21 possible for coal to become diamonds. It said
22 it's possible but you need millions of years and

1 you need great environmental pressure. I don't
2 have millions of years. I'm 45. I may be midway
3 right now, but so far a great environmental
4 pressure, maybe that's something that can come
5 from the EPA because in the Harbor Home Apartments
6 in Newport News, Virginia, you have diamonds in
7 the rough. You've got people like Specialist
8 Henby who go out every day and make America the
9 great place that it is. I would like for you if
10 you have an opportunity to go to www.youtube.com,
11 and if you would kindly type in the words Harbor
12 Homes Apartments, a diamond in the rough. You
13 will see the mountains of coal in Hampton Roads,
14 Virginia, will take your breath away. I thank you
15 for this opportunity and I wish you well.
16 MS. DEVLIN: Thank you. Number 215,
17 please.
18 MR. PAYNE: My name is Bryce Payne. I'm
19 from Pennsylvania. First, thanks for the
20 opportunity by the EPA and colleagues from
21 environmental groups for encouraging me to come
22 over here today. What I'm about to say I say as a

1 scientist trying to help. Hopefully you can
2 forgive the tactlessness time constraints require.
3 For 12 years I investigated coal ash as
4 a consulting scientist under contract for coal
5 power plants. For those 12 years, industry
6 supported just enough science to ease regulatory
7 compliance but never enough to confirm safety.
8 Then I investigated selenium impacts in
9 groundwater related to the 2005 ash spill in
10 Pennsylvania. That experience confirmed for me
11 that industry prefers ignorance over information
12 and some subservient science over scientific
13 integrity and rigor. Based on my conclusions
14 regarding selenium and coal ash in Pennsylvania, I
15 attempted to warn TVA, TDEC and EPA of risks in
16 the planned spill response to the TVA 2008 ash
17 spill. I was joined by colleagues and we were
18 ignored.
19 New data will soon be released that show
20 fish in the impacted river system have gone from
21 initial tissue selenium levels of 3 to 5 parts per
22 million to now lethal levels over 20 parts per

1 million of arsenic and selenium each. Humans and
2 wildlife are almost certainly eating those fish.
3 This is what coal ash can do and conventional coal
4 ash thinking cannot see it coming.
5 Let me now attempt to disabuse you and
6 anyone else who will listen, of some coal ash
7 science, engineering, regulatory myths and
8 misconceptions illustrated by these two cases.
9 One, both the failed ponds, PPL and TVA, were
10 designed by and operated with the assistance of
11 professional engineering staffs. Two, when the
12 TVA dike failed at an ash stack height of 65 feet
13 above grade, TVA and consulting professional
14 engineers were attempting to get approval for a
15 final height of over 300 feet and already had
16 state approval to go over 100 feet. Three,
17 halfhearted science has led to fundamental
18 misconceptions about and disregard for ash and its
19 properties. Those misconceptions relied upon by
20 engineers, managers, consultants and regulators
21 caused the dike failure and produce a
22 fundamentally flawed root cause analysis. The

1 TCLP failed to detect probably selenium releases
2 from ash in the PPL and TVA cases. The new
3 multi-pH tests will not fair much better because
4 they too ignore fundamentals of the chemistry,
5 physics, biology and behavior of coal ash. NPDES
6 permits at the PPL and TVA ash spill sites, like at
7 most power plants, did not require monitoring of
8 selenium, arsenic or other ash-derived toxics and
9 therefore provide no protection.
10 Extending from these points, I would ask
11 that EPA consider the following questions. How is
12 it that an open pit mine is functionally different
13 from a sand pit or quarry? Given the history of
14 liners covers only 30 to 40 years, why would one
15 presume for risk analysis that they remain intact
16 for centuries or millennia? May our descendents
17 forgive us when these time capsules in the future
18 open, and they will. I'd like to expand on these
19 and other points but I'm sure I'm out of time. I
20 hope you put ash under the Subtitle C designation.
21 MS. DEVLIN: Thank you. Number 216,
22 please.

1 MS. VERTREES: My name is Marissa
2 Vertrees and I want to thank you for the
3 opportunity to testify here today. I am the
4 Social Justice Director of St. Charles Borromeo
5 Catholic Church in Arlington, Virginia, and a
6 board member of the Virginia Chapter of Interfaith
7 Power and Light, an organization made up of people
8 from all faith traditions who have come together
9 out of our strong belief that we are called to be
10 responsible stewards of the environment.
11 Because of this belief, I am here today
12 to ask you to regulate coal ash under the Subtitle
13 C designation. Coal ash is a hazardous substance.
14 We've heard many people dismiss the Kingston
15 disaster as an engineering disaster rather than an
16 environmental one or something because of the
17 substance itself. And while this was certainly a
18 very dramatic disaster that drew our attention to
19 this, there are many quieter dangers from coal ash
20 that are affecting our communities every day. It
21 contains all of the impurities and contaminants
22 that are found in coal itself, particularly

1 dangerous heavy metals such as mercury, arsenic,
2 selenium, chromium, cadmium and lead. These
3 toxins bioaccumulate, building up in the system
4 over the years and making it dangerous to pinpoint
5 any sort of safe amount. These toxins will leach
6 into the water supply from landfill coal ash or
7 from storage and waste ponds. We've already seen
8 this happen. In communities that surround areas
9 where coal ash is being stored we've seen
10 respiratory ailments, neurological problems and
11 reproductive and developmental challenges as well
12 as other health problems. In some areas it is
13 estimated that the risk of cancer has grown to
14 nearly 1 in 50, almost 2,000 times the acceptable
15 background level. The dangers of this product are
16 well known and no one here has argued against any
17 sort of regulation but, rather, the type. We need
18 to have strong, enforceable and effective
19 regulation available from Subtitle C.
20 Subtitle D does not provide the
21 enforcement that is necessary, putting the burden
22 on the citizens and the states. It also does not

1 require that all states accept these federal
2 regulations. EPA has estimated that possibly half
3 of the waste generated in the United States will
4 not be covered by these new regulations as states
5 will not adopt them, leaving many people in the
6 same situation that they're currently in. Perhaps
7 most troubling though is the fact that Subtitle D
8 will not require utilities to monitor old and
9 inactive waste dumps, leaving several communities,
10 disproportionately poor and minority ones, at
11 significant risk of toxic if not deadly drinking
12 water.
13 Regulations of this substance have been
14 long in coming. I and other faith leaders here
15 today are here to urge you to provide the strong
16 and enforceable regulation provided by Subtitle C
17 to stop utilities from poisoning our communities.
18 Thank you.
19 MS. DEVLIN: Thank you. Number 217,
20 please. With that we are going to take a very
21 short, about a 5- minute break, and we'll come
22 back like I said in about 5 minutes.

1 (Recess)

2 MS. DEVLIN: We'd like to get started

3 again. Trying to keep this moving and give

4 everybody a chance to speak.

5 I'm going to call numbers 79, 82, 83,

6 and 84.

7 MR. CERULLO: Good afternoon. I'm Tom

8 Cerullo with Separation Technologies. I actually

9 work for a company that profits when power

10 companies experience high landfill costs. The

11 more difficult it is for a power company to

12 landfill their fly ash, the better it is for my

13 company. So, I have a unique perspective on this.

14 Separation Technologies -- we produce

15 and sell patented equipment that can be used for

16 processing fly ash. You process the fly ash, it

17 is now usable in concrete. So, we can take a

18 utility from being in the landfill business to

19 being into the beneficial-use business. And my

20 responsibilities within the company are to work

21 with those utilities and try to sign up more

22 utilities to utilize our equipment. So, one would

1 think that my company would be in favor of
2 regulations that make it just as difficult as
3 possible on utilities to landfill their fly ash.
4 Such difficulties would, in theory, pull more
5 sales out of their businesses for our company.
6 It's our position as a company, as
7 Separation Technologies, that Subtitle C would not
8 benefit -- the beneficial-use industry would not
9 benefit from the implementation of more processing
10 equipment to take what would be landfilled ash
11 into beneficial applications.
12 When I meet with utilities and I
13 describe to them our solutions for landfilling,
14 their responses and their reactions now to me are:
15 Thanks but no thanks; we need to wait and see how
16 this EPA thing sorts itself out; if this thing
17 goes Subtitle C, we're out of the beneficial-use
18 business; we're worried about liability; we're
19 worried about liabilities finding us from the use
20 of this product in beneficial applications.
21 Furthermore, they say we're unwilling to make the
22 investment because if the liability doesn't get

1 us, the destruction of the beneficial-use market
2 will get us and so we will now have made an
3 investment to beneficiate this ash and there'll no
4 longer be a market to sell the product.
5 So, I'm here to report to you as a
6 business development person for a company that
7 could benefit from regulations done the right way
8 that we feel that Subtitle C is not the right way
9 to go, and I'm here advocating for Subtitle D.
10 I thank you for your consideration, and
11 good afternoon.
12 MS. DEVLIN: Thank you. Number 82,
13 please.
14 MR. DAVIS: Good afternoon. My name is
15 Vernon Davis. And, no, I don't play for the San
16 Francisco 49ers.
17 Thank you for the opportunity to speak
18 before you today. I'm here as a private citizen
19 employed by a very reputable company that manages
20 all aspects of coal fly ash. We market to the
21 concrete market, filler market, concrete block
22 market, as well as site management of ash disposal

for most all the major utilities across the nation.

As you'd guess, I'm opposed to the classifying of fly ash as hazardous. I've been in fly ash management since 1975, and I can honestly say I don't know of any illness related or caused by the exposure of fly ash.

We in our industry are as concerned with the environment as anyone. We take great pains to abide by the regulations set forth by the regulatory departments. We also take great pride in the way we manage these sites we're in charge of by being good stewards of the environment. Nothing will change our commitment regarding the way we do our jobs regardless of the ruling now being debated, but the cost associated will increase substantially if the ruling declares fly ash as hazardous. The end user -- the consumer -- will bear the burden of the cost associated with the ruling if fly ash is wrongfully deemed hazardous. An industry that I'm proud to say I've been a part for over 30 years will be decimated

1 and jobs will be lost.
2 Again, let me thank you for allowing me
3 the time to voice my opinion.
4 MS. DEVLIN: Thank you. Number 83,
5 please. 83's not here.
6 Number 84? Okay.
7 MR. MASTIN: Hello, and thanks for the
8 opportunity to speak today.
9 My name is Frankie Mastin. I'm an
10 operational supervisor for Headwaters Resources.
11 The landfill I manage is in Chesapeake, Virginia,
12 and it is the same landfill where the million and
13 a half tons of fly ash was processed for the
14 Battlefield Golf Course project.
15 Altogether I've been a part of 3-1/2 to
16 4 million tons of ash leaving that same site for
17 beneficial-use projects. It has been used for
18 interstate building -- interstates, building pads,
19 and an outfield for a minor league baseball
20 stadium. That's 3-1/2 and 4 million tons of sand,
21 dirt, and clay that was not removed from the
22 earth. I see that as the best reason for the

1 material not to be a hazardous waste. More
2 disturbed earth and landfills filled with fly ash
3 just can't be the same as a renewable resource in
4 an industry where we take waste from coal-fired
5 power plants and reuse it. Fly ash with the
6 hazardous waste label will make it more expensive
7 to dispose of and it'll make electric bills go up
8 and will cause a loss of jobs in our industry.
9 We recycle almost 50 percent of the ash
10 produced in America, and of course we want that
11 number to be 100 percent. And that's the goal of
12 our company and I believe that should be the goal
13 of everybody. I believe that what is the best in
14 our environment, and making fly ash hazardous waste
15 will not allow that to happen.
16 And, once again, thank you for the
17 opportunity to speak.
18 MS. DEVLIN: Thank you. Okay, numbers
19 85, 86, 87, and 91. Number 85?
20 MS. NORCROSS: Hello. My name is Beth
21 Norcross. I'm a minister specializing in
22 ecotheology. I'm also adjunct professor at Wesley

1 Theological Seminary. It's a pleasure to be with
2 you today to talk about this very important
3 matter. My time is brief, so I thought I would
4 share a story with you from our sacred text, the
5 Book of Matthew. I should point out at the outset
6 that this is a story that is shared across all
7 major religious traditions, not just Christianity.
8 In this story, Jesus is being tested by
9 the religious authorities of his time who happen
10 to be in cahoots with the political authorities.
11 They're trying to discredit him because he's
12 wildly popular with the masses. Trying to trick
13 Jesus, one of the lawyers asks him, Teacher, what
14 is the greatest Commandment?
15 Jesus replies, as one of my children
16 might, duh, love your God with all your heart and
17 mind and soul. This is very familiar I'm sure.
18 Pretty straightforward.
19 But then Jesus uses this opportunity to
20 turn the conversation around so that he is now
21 teaching and testing the authorities. Well, since
22 you brought this subject up, Jesus says, let's

1 talk about the second great Commandment: Love
2 your neighbor as yourself. He said this is so
3 important, these two Commandments, that everything
4 else in the Bible hangs on these two.
5 Now, unlike the many other times that
6 this very familiar passage was taught by Jesus,
7 this time he's not talking to the people. He's
8 talking to the authorities directly, those with
9 the power who can use it to either benefit their
10 neighbors or harm their neighbors as these
11 particular authorities were prone to do.
12 So, I humbly suggest to you today that
13 you all are the authorities of our time with all
14 the power and the influence and the potential for
15 doing good or doing harm to our neighbors and your
16 neighbors. I'd also humbly suggest that the way
17 to love our neighbors is not to deny, as Subtitle
18 D does, that mercury and lead and arsenic are
19 indeed hazardous to our neighbors; not to pretend
20 that, as Subtitle D does, that a hodgepodge of
21 state regulations and guidance are really the way
22 to protect our neighbors, but rather to love our

1 neighbors, adopt Subtitle C that names this waste
2 for what it is -- hazardous, harmful, particularly
3 to the children and other innocents among our
4 neighbors; to adopt Subtitle C that seeks to
5 really do the job of protection that the name of
6 your Agency charges you with; and to adopt
7 Subtitle C that allows you to assume the
8 leadership and power and authority given you and
9 not take the easy way out, not make the political
10 compromise when your neighbors' health and safety
11 is at stake. Thank you so much.
12 MS. DEVLIN: Thank you. Number 86,
13 please.
14 MR. FORTUNA: Don't hit it yet. Hello.
15 My name is Richard Fortuna. I have been working
16 on RCRA regulatory, legislative, and litigation
17 issues since 1979. In light of the many
18 falsehoods being disseminated regarding RCRA
19 regulation and recycling, I've been asked by a
20 consortium of the environmental community to
21 prepare a report on the history of recycling under
22 RCRA, which will be submitted for the record of

1 this hearing.

2 There's three points I'd like to make

3 this afternoon. One, recycling is alive and

4 thriving under RCRA. There are many thriving

5 recycling markets under RCRA for materials which

6 have been designated as hazardous waste. In

7 addition, there are several consumer-based

8 hazardous wastes for which recycling markets are

9 doing extremely well. This will be expanded upon

10 in the report that'll be submitted later.

11 Number two, as the level of regulatory

12 control increases, so does the level of recycling.

13 One example of this is KO61, electric arc furnace

14 dust. I conducted a study for EPA back in 1994

15 which showed several interesting things. One is

16 prior to RCRA regulation, relatively little EAF

17 dust was recycled. Once the regs in place were in

18 1980 and the land disposal bans took effect in

19 1986 through 1990, the level of EAF dust recycling

20 accelerated as did the diversity of recycling

21 technologies available. Now, confirmation of this

22 trend came later that decade when I conducted a

1 private market study of opportunities for
2 recycling in Canada. A survey of those steel
3 industries in Ontario showed little interest --
4 little to no interest in recycling because, as
5 they said, we still have our back 40, why would we
6 want to recycle?
7 And number three and finally, claims of
8 stigma are little more than a shtick. For those
9 of you who may have forgotten your college
10 Yiddish, a shtick is a contrived and overused bit,
11 and a shtick aptly describes what is -- how stigma
12 is being used in the context of this rulemaking.
13 Every potentially regulated recycler since 1979
14 has claimed stigma if you regulate their recycling
15 of their waste. This includes the cement
16 industry, the chemical industry, the (inaudible)
17 recycling industry, the fuel blending industry,
18 the oil industry, the steel industry, to name but
19 a few. All this will be detailed in the report
20 that'll be submitted for this rulemaking. Not
21 once have these claims ever been realized.
22 I would also point out that Congress

1 explicitly addressed the competing goals of
2 resource recovery and protection of public health
3 and the environment in the 1984 HSWA amendments.
4 In 1984, Congress specifically stated with regard
5 to used oil recycling as follows: It was never
6 Congress' intent that protection of public health
7 and the environment be subordinated to the
8 continuation of used-oil recycling practices.
9 And one last detail, which I can finish
10 in the last 30 seconds, stigma is also illegal.
11 Pursuant to a ruling of the D.C. Circuit in the
12 used-oil recycling regulation, the Court deemed
13 that if it's not in the statute, you can't use it.
14 One last point I'll make since I have 15
15 seconds left is that I think we have to be mindful in
16 this regulation that many so-called recycling
17 practices are little more than disposal and drag.
18 That's particularly true for the nonencapsulated
19 uses such as land reclamation and agricultural
20 uses. Thank you very much.
21 MS. DEVLIN: Thank you. Number 87,
22 please.

1 MR. AUS: Okay. Hi. I'm Doug Aus and
2 I'm a resident of the state of Maryland. And I am
3 speaking out in favor of Subtitle C because as
4 someone who lives near a large body of water, the
5 Chesapeake Bay, which has a lot of rivers that
6 flow into the bay, that coal ash with all its
7 toxic elements, such as lead, mercury, and
8 arsenic, that these -- that if a coal ash pond
9 were to fail, too much of these toxins would
10 probably get into one of these rivers, especially
11 if it was near -- if there was coal ash pond near
12 the Chesapeake Bay and probably contaminate the
13 bay and destroy a lot of marine life. And
14 currently there's enough coal ash being stored in
15 waste ponds all across the United States to flow
16 continuously over Niagara Falls for more than
17 three days straight, and enough coal ash is
18 generated every year to fill train cars stretching
19 all the way from the North Pole to the South Pole.
20 And I will conclude with these several
21 points, that only Subtitle C regulations could
22 guarantee the full panoply of the protections

1 needed to phase out the dangerous waste ponds.
2 And I'll conclude by saying that regulation of
3 coal ash under Subtitle C will increase disposal
4 cost and thus provide an incentive for greater ash
5 recycling.
6 MS. DEVLIN: Thank you. Number 91,
7 please.
8 MR. DUNLAP: Thank you. My name is
9 Randy Dunlap and I am president of Separation
10 Technologies and Essex Cement.
11 I want to thank the EPA for conducting
12 these hearings for what will potentially be the
13 most important decision in regulation that those
14 of us that are both users and marketers of CCRs
15 have ever dealt with.
16 Separation Technologies is a company
17 with more than 100 employees that is involved in
18 the processing and marketing of fly ash. We have
19 a patented zero emissions technology that
20 processes and removes carbon from fly ash, thereby
21 taking the fly ash that would normally have to be
22 landfilled and turning it into a high-quality

1 product for use as a partial replacement for
2 Portland cement and concrete.
3 Our business model entails providing a
4 100 percent solution to the utility industry with
5 respect to CCRs, resulting from the combustion of
6 coal during their power generation. The carbon
7 that our technology removes is then available to
8 be returned to the utility for fuel. My point is,
9 in this background on our company, is that as a
10 processor and a marketer in one of EPA's positions
11 that not only will a Subtitle C regulation not be
12 a stigma to the use of coal combustion or residue
13 recycling, but actually could enhance the
14 utilization that our company, if, in fact, that
15 was true, would be one of the biggest
16 beneficiaries of that ruling, both from
17 implementing and expanding our technology as well
18 as providing the larger market for the CCRs. So,
19 we come at it from a perspective that certainly if
20 we believe that was a legitimate position, we
21 would certainly come out in favor of Subtitle C.
22 We are absolutely not in favor of Subtitle C. The

1 stigma is real and we are a proponent of Subtitle
2 D.
3 I'd like to make a few points, if I
4 could, for your consideration, particularly as it
5 relates to Subtitle C classification and the fact
6 that it will not create a stigma for the
7 beneficial use of CCRs. Those assumptions from
8 the EPA, as I understand it, is a Subtitle C
9 classification could actually increase the
10 beneficial use because it will make the cost of
11 landfilling more expensive, thereby creating an
12 incentive for the utilities to either subsidize or
13 further increase the use of CCRs. This assumption
14 is incorrect, and I can assure you that this will
15 not be the case for several primary reasons.
16 A concrete producer operates on very
17 slim margins, as you heard earlier today. The
18 average profit margin is less than $5 and current
19 market is less than a dollar. The use of fly ash
20 and concrete is already a strong financial
21 incentive for the utilization of fly ash in
22 concrete.

1 Second point is any potential cost
2 savings that a producer might see from the use of
3 fly ash would quickly disappear with just one
4 lawsuit resulting from the hazardous
5 classification of CCRs regardless of how frivolous
6 the lawsuit might be.
7 And last point, even if the argument
8 could be made that an additional financial
9 incentive could increase the use, this assumes
10 that there's some vast untapped potential for
11 increased usages of concrete. This is simply not
12 the case. Thank you.
13 MS. DEVLIN: Thank you. Numbers 89, 93,
14 94, and 96, if you guys could come to the table.
15 Okay, number 89 -- thank you.
16 MR. JOHNSON: Good afternoon. My name
17 is Brian Johnson. I come to you today on behalf
18 of Greenpeace, but also as a local resident from
19 right next door here in Alexandria.
20 I'm pleased to see that the EPA is
21 finally considering regulations on dirty coal ash
22 waste. Coal ash is a toxic substance that

1 contains nasty pollutants, such as mercury, lead,
2 and arsenic, and yet industry has already filled
3 waste ponds with enough coal ash to flow over
4 Niagara Falls for more than three days. Living
5 near an unlined coal ash pond increases a person's
6 cancer risk to 2,000 times beyond the EPA's
7 acceptable level, and the EPA's own risk
8 assessment has already determined that living near
9 an unlined coal ash waste pond and drinking
10 arsenic-contaminated water can be more adverse to
11 a person's health than smoking a pack of
12 cigarettes every day. That's why I urge EPA to
13 regulate coal ash under Subtitle C of the Resource
14 Conservation and Recovery Act, giving coal ash the
15 special waste designation it deserves and putting
16 in place requirements that will help keep people
17 like myself out of harm's way.
18 Subtitle C is backed by the EPA's own
19 science, which shows that some coal ashes leach
20 high levels of heavy metals. At the same time,
21 Subtitle C will incentivize ash recycling by
22 increasing disposal costs.

1 Subtitle D, on the other hand, is not an
2 acceptable plan. It is amazing to me that the EPA
3 would even consider Subtitle D. Subtitle D
4 actually treats coal ash waste as if it were
5 nonhazardous and allows industry to slip under
6 weak regulations. Moreover, the EPA itself
7 acknowledges that Subtitle D would allow many coal
8 ash dump and waste ponds to go on uncleaned.
9 With Subtitle D in place can we really
10 expect that the disaster that struck Tennessee in
11 2008 will not happen again? What happened in
12 Tennessee is not limited to that region, but
13 represents an issue of national scale. Coal ash
14 dumps exist in nearly every state, including
15 Virginia and Maryland, and coal ash is produced at
16 Mirant's Potomac River Generating Station just 10
17 minutes down the road from my town, Alexandria.
18 Please, I urge you, regulate coal ash
19 under Subtitle C and help prevent disasters like
20 what happened in Tennessee from happening again.
21 Thank you.
22 MS. DEVLIN: Thank you. Number 93?

1 Okay, number 94?
2 MR. FRISBY:: Hello. My name is
3 Bradford Frisby. I'm the associate general
4 counsel for the National Mining Association, or
5 NMA. NMA represents the producers of most of
6 America's coal, metals, industrial, agriculture,
7 and minerals. NMA members place CCRs in their
8 minds and otherwise beneficial-use CCRs at their
9 facilities and are, therefore, very interested in
10 EPA's proposed rule. NMA strongly supports EPA's
11 preamble statement that the agency is not
12 proposing to address the placement of CCRs in
13 mines or non-minefill uses of CCRs at coal mines
14 in this action.
15 In 2006, the National Academy of
16 Sciences recommended that the Office of Surface
17 Mining and its state partners under the Surface
18 Mining Control and Reclamation Act take the lead
19 in developing new national standards for CCR use
20 in mines, because the framework is in place to
21 deal with mine-related issues. NMA agrees with
22 the NAS and urges EPA to continue to defer to OSM

1 given its considerable expertise in mine
2 regulation.
3 NMA, however, is concerned that EPA's
4 intention to defer to OSM is not executed properly
5 in the proposed regulatory text. For example, the
6 definition of minefill in the preamble is vague
7 and does not adequately account for non-minefill
8 uses of CCRs, but EPA states it is not regulating
9 under this proposal. In addition, only the
10 proposed hazardous waste regulations under
11 Subtitle C specifically exclude minefilling
12 operations.
13 No definition appears in the proposed
14 regulations for the term "minefilling." Although
15 we believe that EPA's intention was for other
16 non-minefill uses at coal mines to be exempt from
17 EPA's rule, this point is left unclear by the text
18 of the proposed regulation. The proposed
19 nonhazardous waste regulations under Subtitle D
20 should, but do not, include a similar exclusion.
21 Furthermore, EPA's definition of CCR landfill
22 under both proposals only expressly excludes

1 underground mines and thus fails to address
2 surface mines.
3 To avoid significant confusion and
4 regulatory uncertainty, EPA must make it clear in
5 the preamble and in the final regulatory text that
6 placement of CCRs at mines and other non-minefill
7 uses of CCRs in underground and surface coal mines
8 are all excluded from the rule's requirements.
9 NMA strongly opposes EPA's proposal to
10 reverse the 1993 and 2000 Bevill regulatory
11 determinations, which correctly concluded that
12 CCRs should be regulated as nonhazardous waste.
13 NMA also strongly opposes listing CCRs as special
14 waste and subjecting these materials to hazardous
15 waste regulation under Subtitle C. A regulatory
16 program under Subtitle D will protect human health
17 and the environment without putting unnecessary
18 barriers on the beneficial uses of CCRs.
19 NMA strongly supports EPA's decision not
20 to reverse the regulatory determination for
21 beneficial uses of CCRs, but is concerned with
22 EPA's discussion of unencapsulated uses, a term

1 not well-defined in the proposal. This term could
2 be interpreted to encompass certain uses of CCRs
3 at mine sites contradicting EPA's stated intention
4 not to regulate their uses under RCRA. CCRs serve
5 a variety of important uses at mine sites, and
6 EPA's final role should not put these uses in
7 peril. Thank you very much.
8 MS. DEVLIN: Thank you.
9 MR. FRISBY:: I have a copy.
10 MS. DEVLIN: Great. Thank you very
11 much. Number 96, please.
12 MR. CROCE: Good afternoon. Thanks for
13 having us. My name is Joe Croce. I'm senior vice
14 president of the Virginia Manufacturers
15 Association and the environmental manager. On
16 behalf of the VMA, we oppose regulating coal
17 combustion byproducts as hazardous waste.
18 A little bit about the VMA. We're the
19 state's largest industrial trade association
20 representing small and large manufacturers in
21 every industrial sector. The VMA is the state's
22 leading voice for the manufacturing economy and a

1 sector that employs thousands of people. It's our
2 mission to enhance competitiveness of
3 manufacturing and to improve the living standards
4 of our people by shaping a legislative and
5 regulatory environment conducive to the U.S.
6 economic growth.
7 The VMA supports continued regulation of
8 CCBs under Subtitle D as a nonhazardous waste. By
9 allowing continued recycling and beneficial use of
10 CCBs in the manufacture of concrete, paints,
11 gypsum, and some wood and plastic products,
12 industry is able to assist a cost- competitive
13 feedstock for a variety of products. These
14 beneficial uses for CCBs extend to the manufacture
15 of products throughout the economy, including our
16 construction industry and housing sector.
17 Construction products such as fiber, cement, roof
18 shingles also contain CCBs. A reclassification
19 for handling as hazardous waste would raise the
20 costs of these products and undermine an economic
21 recovery that is attempting to take hold and
22 threatening jobs.

1 Stricter regulation of CCBs would also
2 raise energy costs, adding more competitive
3 burdens on the manufacturing sector.
4 Reclassifications of CCBs as hazardous waste under
5 RCRA Subtitle C would increase the price of
6 electricity by increasing compliance costs for
7 power generators. Stricter federal regulations
8 would also force coal-fired power and industrial
9 plants or manufacturers plants to handle and store
10 massive quantities of coal byproducts as hazardous
11 waste that would increase the costs of operating
12 the power generation.
13 The VMA recommends continued regulations
14 of CCBs under Subtitle D, and we look forward to
15 providing comment during a formal comment period
16 in November. Thank you.
17 MS. DEVLIN: Okay, thank you. The next
18 numbers I have are numbers 97, 98, 99, and 100.
19 98? Okay. Come up.
20 MR. MELLON: Good afternoon. My name is
21 Paul Mellon, president of Novetas Solutions.
22 We're a small company that manufactures recycled

1 glass products. Our signature brand is New Age
2 Blast Media, which is an abrasive.
3 This is actually the second time I've
4 come before the EPA to discuss the coal combustion
5 waste proposal. The first time was in January,
6 where we made a presentation to the EPA in
7 Washington, D.C., where we tried to show the EPA
8 that, in fact, it already had the information in
9 its own records that conclusively proved that coal
10 slag, when used as an abrasive, does not, in fact,
11 warrant the beneficial-use designation and, in
12 fact, has been misused by the coal slag abrasive
13 industry for a number of years.
14 Specifically, we showed that when you
15 blast with coal slag abrasives, the glassy matrix,
16 which was referred to earlier by Harsco
17 Corporation, is, in fact, shattered and what you
18 get is a toxic dust. That's not me saying that;
19 that's the EPA. Because in 1997, the EPA said
20 that Black Beauty -- slags -- had been documented
21 to release hazardous airborne pollutants. And so,
22 when those hazardous airborne pollutants fall to

1 the ground or on wood or on people, they are, in
2 fact, unencapsulated and they are a danger and a
3 threat to the environment and to human health.
4 And, in fact, most of this product, when it is
5 scooped up, is, in fact, sent to a landfill
6 anyway. All of these are violations of the past
7 beneficial-use program.
8 And so we wholeheartedly supported
9 Director Jackson when she said that they were
10 going to look at regulating potentially coal slag
11 or all coal combustion residuals going forward.
12 And the May 4th declaration from Director Jackson
13 was I think something that should be applauded
14 because she basically came out and said that we're
15 going to finally apply a commonsense approach to
16 the regulation of coal combustion waste.
17 Basically, she hit the reset button on this very
18 important problem.
19 In June of 2010, the EPA released the
20 proposed regulations. It's a 138-page rule, which
21 we have studied intently. And again, I'm happy to
22 see that the EPA, perhaps finally looking at all

1 of the information at hand regarding coal slag
2 abrasives, has not, in fact, listed coal slag
3 abrasives as a beneficial-use product in the new
4 regulations. And this makes sense. When you look
5 at the information that is out, it is clear that
6 this product is, in fact, a toxic product. I find
7 it an interesting fact that on page 35212 the EPA
8 announces that the ACAA's definition of "beneficial
9 use" does not align with that of the EPA.
10 The bottom line, to be brief here, is
11 that -- just to give you some local flavor --
12 about three hours south of here is the Norfolk
13 Shipyards at the mouth of the Chesapeake Bay. It
14 is estimated that 30,000 to 50,000 tons of coal
15 slag are used every year in the Norfolk area to
16 the Virginia Beach area. That's a million tons of
17 coal slag that is unencapsulated, dumped into
18 regular landfills, and spread throughout that area
19 since the 1970s. Hopefully, the EPA's new
20 regulations will give owner-operators and
21 contractors an opportunity to make different
22 choices. Thank you.

1 MS. DEVLIN: Thank you. Number 97.
2 MR. HOUSEKNECHT: Good afternoon. My
3 name's Edward Houseknecht, Jr. I'd like to thank
4 you for the opportunity. I'm advocating Subtitle
5 D.
6 I'm the operations manager at Separation
7 Technologies' Baltimore location, and I've been
8 there 11+ years. We employ 12 local employees.
9 We're located at Constellation Energy, Brandon
10 Shores location in Anne Arundel County, with a
11 startup date of 1999. Our operation's recent
12 milestones include 2 million-plus tons shipped
13 from our location over 11+ years for use in a
14 concrete construction industry. In that time,
15 we've had zero lost time accidents, zero medicals,
16 and zero environmental reportables. In this time,
17 an estimated 80,000 bulk tanker trucks have left
18 our facility to offload at over 100 customers at
19 260+ locations, including 50,000 tons loaded to
20 rail and barge. We have a current state approval,
21 DOT approvals in New York, New Jersey, Delaware,
22 Pennsylvania, Virginia, West Virginia,

1 Mississippi, Alabama, as well as Maryland. We
2 also have NSF approval.
3 Over our history here's just a short
4 list of some projects that we've provided ProAsh
5 to: Lockraven Reservoir Dam, 206; Dulles Airport
6 Runway, 207; Pax River Airport, early 2000s;
7 Woodrow Wilson Bridge project 2006/2007; Census
8 Bureau, D.C., 2006; Chinese Embassy, D.C., 2006;
9 Susquehanna Bridge project, 2005/2006; Freedom Tower
10 in New York, 2010; both stadiums in New York and
11 also Philadelphia Stadium.
12 If you have any -- my invite to
13 everybody here, if you have any questions or are
14 in our area in Baltimore, I would be happy to
15 respond to calls or, more importantly, have anyone
16 visit our location to see for yourself what our
17 processing and load-out have done. Thank you very
18 much.
19 MS. DEVLIN: Thank you. Number 99,
20 please. 99 is not here?
21 Number 100?
22 MR. BRYANT: Good afternoon. My name is

1 Mark Bryant. I manage emission control
2 commodities for Ameren Energy Fuels and Services
3 in St. Louis. I am testifying today on behalf of
4 the American Coal Ash Association.
5 I have previously submitted comments to
6 the docket describing the negative stigma that
7 EPA's proposal has created. I would like to
8 reinforce those comments today by supplying
9 additional evidence of how the public has become
10 suspicious of any use of fly ash. This suspicion
11 is due to the possibility that U.S. EPA will
12 regulate CCRs as a hazardous special waste under
13 RCRA Subtitle C. Attached to these comments is a
14 newspaper article describing a county board member
15 in Madison County, Illinois, questioning a
16 technically sound use of fly ash as proposed by
17 the Army Corps of Engineers. Specifically, this
18 project involves the repair of the Alton to Gale
19 Levee District.
20 The low-cost option of the four options
21 proposed include the use of fly ash as an
22 ingredient. It is the low-cost option by a

1 significant margin. This article provides clear
2 evidence that the public does not understand the
3 subtle distinction that EPA has attempted to
4 create with the new hazardous special waste label.
5 It also confirms that terms such as "hazardous"
6 and "toxic" are misapplied by those opposed to
7 beneficial use, by some in the media, and by a
8 partially informed public. Sadly, this public
9 discussion is unraveling years of sound science,
10 demonstration, and market development.
11 Based on the information available, this
12 public board is opposed to this option because of
13 the ash. Damage to the public perception of
14 beneficial use has clearly occurred. Without any
15 evidence, this negative stigma has been reported
16 in the local media. The Corps of Engineers will
17 have to incur significant additional expense or
18 reduce the amount of levee repaired by this
19 project if this low-cost option is not available
20 due to stigma. Taxpayer-funded budgets are
21 already being stretched. The beneficial use and
22 recycling markets, which are already feeling the

1 chill of possible C regulation, will be
2 irreparably damaged if any RCRA Subtitle C options
3 are chosen.
4 In St. Louis, regional and local damage
5 is already occurring. Small business private jobs
6 will be lost, the engine that will drive our
7 economy out of the recession. Good uses,
8 EPA-supported uses, of ash are being lost. RCRA's
9 time-tested methodology for determining whether a
10 material is hazardous is being ignored.
11 Significant government-funded research and
12 demonstration has supported beneficial use and
13 recycling for many years. This activity has added
14 to the good science of our industry and what it is
15 based on.
16 Please abandon the effort to regulate
17 CCRs under RCRA Subtitle C, as the science doesn't
18 support it. Instead, a Subtitle D approach will
19 accomplish everything that is technically
20 necessary to properly manage these materials when
21 stored, recycled, beneficially used, or disposed.
22 The evidence of gaining federal -- the expedience

1 of gaining federal enforcement authority under
2 RCRA Subtitle C is flawed public policy. RCRA
3 Subtitle D, amended if necessary, is technically
4 sufficient. Thank you.
5 MS. DEVLIN: Thank you. Before I go on,
6 I want to ask is there anyone in the audience with
7 a number of under 100 that has not spoken?
8 Okay, all right. Then I would like to
9 call numbers 102, 103, 104, and 105, please.
10 MR. RICHARDSON: Good afternoon. I am
11 Bill Richardson, co-founder and managing partner
12 of Precision Recycling Industries of Virginia
13 located in Chester, Virginia. My partners and I
14 formed PRIVA about 18 months ago in order to build
15 a production facility to produce recycled glass,
16 open-air abrasives, marketed under the brand name
17 of New Age Blast Media, as well as other post-
18 consumer glass fillers for various industries
19 seeking to meet post-consumer content requirements
20 for their products. There are many businesses
21 like ours across the country trying to compete in
22 the abrasive market industry by offering products

1 that are nontoxic and Earth friendly.
2 Our plant opened its doors and began
3 production in January 2010. In March, after
4 thorough inspection of our process and QC
5 protocols by the U.S. Navy, our facility was
6 placed on the Military Qualified Providers List
7 for open-air abrasives. We employ 10 people at
8 our plant running one shift and could easily
9 double that as demand increases. Since January,
10 we have shipped thousands of tons of New Age Blast
11 Media throughout Virginia, including Norfolk and
12 Hampton Roads, and in addition, to surrounding
13 states. We offer a safe, nontoxic alternative to
14 coal slag and other metal-laden slags that are
15 currently used -- widely used in this country. In
16 the process we have diverted thousands of tons --
17 I mean thousands of pounds of recycled glass from
18 local landfills, including those in the D.C. area.
19 My partners and I have invested over a
20 million dollars in private funds. In our company
21 we have not sought nor received any government
22 assistance. We have created new jobs in the green

1 industry and diverted thousands of tons of
2 recyclable glass from landfills. We have the
3 capacity in our Virginia facility to produce over
4 3,000 tons a month of safe, recycled glass
5 abrasives that would replace coal slag and other
6 CCB open-air abrasives that the EPA and others
7 recognize as serious health and environmental
8 issues.
9 We are asking the EPA to cease the
10 allowing of the coal slag industry to use the EPA
11 to promote their product as a beneficial use in
12 open-air abrasive blasting when it is clearly a
13 hazard when used in this manner. We are also
14 asking the EPA to maintain the current proposal to
15 remove the beneficial-use designation of CCBs as
16 an open- air abrasive. We applaud your efforts to
17 regulate this serious problem with CCBs and look
18 forward to seeing your final requirements.
19 Thanks.
20 MS. DEVLIN: Thank you. Number 103,
21 please.
22 MR. GEHRMANN: Thank you. I'm Bill

1 Gehrmann with Headwaters Resources. We're the
2 largest marketer and manager of coal combustion
3 products in the United States.
4 As the Administrator has said, it's time
5 for a commonsense approach. Coal ash does not
6 qualify as a hazardous waste based on its
7 toxicity. In fact, the EPA's proposed engineering
8 standards are essentially the same under both the
9 Subtitle C hazardous waste and Subtitle D
10 nonhazardous waste approaches.
11 The other piece to addressing disposal
12 of coal ash is recycling. Over 40 percent of coal
13 ash is beneficially used. As the EPA has pointed
14 out, using fly ash as a partial cement replacement
15 for Portland cement in concrete reduces greenhouse
16 gas emissions. This use of coal ash also provides
17 significant engineering benefits. These
18 engineering benefits result in substantial
19 increases in the life cycles of the products
20 they're used in. Roads last longer -- twice as
21 long -- stretching the dollars that we as
22 taxpayers spend on building and maintaining our

1 infrastructure.

2 The stigma of hazardous waste that is

3 already being attached to coal ash due to the

4 potential of a Subtitle C designation will result

5 in more coal ash being landfilled, more greenhouse

6 gas emissions, and more tax dollars being required

7 to improve our infrastructure. This stigma has

8 already led to the specifiers moving coal ash from

9 their specifications. Competitive product

10 suppliers are using the negativity of the Subtitle

11 C hazardous waste designation in their

12 advertising. End users of coal ash have already

13 begun to assess their liabilities under a Subtitle

14 C designation with their lawyers and insurance

15 carriers. Efforts to push these liabilities down

16 the supply chain have already begun impacting many

17 small businesses that have been built around

18 products and service based on the recycling of

19 coal ash. These businesses are facing tough

20 decisions, and many will likely be forced out of

21 business by a hazardous waste designation.

22 As for the incentives of Subtitle C,

1 I've been in the industry for 25 years. When
2 recycling first started, it was often subsidized
3 or the material was given away. It wasn't until
4 the waste stigmas of the use of the project had
5 been addressed that any efforts to substantially
6 increase recycling started to take place. This
7 also came through the EPA's support of recycling
8 through its coal combustion products partnership.
9 That support has helped promote the beneficial use
10 of coal ash and has helped increase recycling by
11 almost 50 percent.
12 Don't turn around and start sending all
13 of that coal ash that could be beneficially used
14 into landfills instead. The stigma associated
15 with Subtitle C has already begun to do this. If
16 the desire of the EPA is to have federal
17 jurisdiction, find another way. Don't do it under
18 Subtitle C. Don't send more coal ash to the
19 landfill. Thank you.
20 MS. DEVLIN: Thank you. Okay, number
21 104?
22 MS. REED: Hello. My name is Barbara

1 Reed. My family and I live on Georgetown Road in
2 Greene Township, Pennsylvania. We're a short
3 distance from the Little Blue Compound. My son's
4 home is on Crummett Lane. The Little Blue
5 Compound is approximately a thousand yards from
6 his well.
7 We carry 15 to 20 gallons of water a
8 week to drink and cook with because our water
9 tastes like salt, is cloudy, and has a sediment in
10 it. At times it has a foul odor of rotten eggs.
11 We can't wash our vehicles at home because our
12 water leaves a white filmy residue on them. The
13 water holding tank of our toilets forms a nasty,
14 globby gel if we don't put swimming pool
15 chlorinating tablets in it. As you can see by my
16 exhibits, our water corrodes the faucets and the
17 elements and pipes of our hot water tank. We have
18 to replace them every couple of years.
19 In 2009, our motorcycle was sitting on
20 the back porch, which is open on three sides and
21 has a roof over it. We had a bad wind and
22 rainstorm. When the storm ended, the bike and the

1 porch were covered in dust. Later, when we
2 cleaned the bike, the dust had pitted the chrome
3 and caused surface rust.
4 My son's water was tested and showed to
5 have an arsenic level of 14.60 UGLs, which is
6 higher than the maximum contaminant level
7 contained in the national primary drinking
8 regulations of 10 UGLs. There was also levels of
9 mercury, thallium, manganese, and aluminum found
10 in his well. First Energy has done nothing about
11 either well other than testing and sending us the
12 results with a letter stating, "If you have any
13 questions regarding the domestic use of this water
14 source, please contact the Pennsylvania Department
15 of Environmental Protection." The DEP's letter
16 stated, "Please note Pennsylvania does not have
17 requirements or regulations for private water
18 systems, and, therefore, these levels are only
19 listed as recommendations for comparison."
20 My question is what are we supposed to
21 do about our properties in a rural farming
22 community, thinking we had a safe place to live

1 for the rest of our lives? If we had known about
2 the impact of the Little Blue Compound would have
3 on us, we'd have chosen somewhere else to live.
4 Now we're stuck. Our property values have
5 decreased. Our water is not drinkable. Who would
6 want to buy our homes and live under these
7 conditions?
8 My son now lives with us because of the
9 contaminants in his well. But he still has to
10 make his monthly mortgage payments and is afraid
11 to live in his home that he bought to start his
12 future of independence.
13 We believe the First Energy fly ash dump
14 has caused a higher number of cancer and other
15 illnesses in our community and many financial
16 issues. So please, for the health and welfare of
17 our residents of many communities and mine,
18 support Subtitle C. Thank you.
19 MS. DEVLIN: Thank you. Going back,
20 we're going to do number 90, number 95, number
21 109, and number 129.
22 MR. MASON: Good afternoon. My name is

1 Roy Mason of the law firm of Mason & Kaywood, and
2 I'm here to speak on behalf of the designation of
3 coal ash as special waste and Subtitle C.
4 I represent approximately 600
5 individuals who live in Chesapeake, Virginia. In
6 2001, a power company -- Dominion Power -- came to
7 Chesapeake, Virginia, and presented at a church
8 meeting and at other community meetings that the
9 1.5 millions tons of ash that they were about to
10 try to utilize to build a golf course would be
11 "safe as dirt." They did this because earlier
12 attempts to dump this ash in a landfill in the
13 community were turned down by the community.
14 The community now knows that they were
15 misled, but at the time some of the community
16 members actually went down to the City of
17 Chesapeake and asked the City of Chesapeake to
18 please allow this use of coal ash. They had no
19 idea it was dangerous, and for five years
20 approximately a hundred trucks a day trucked coal
21 ash out to a site which was effectively in the
22 dismal swamp. The sand that was present at the

1 site was sold, the water table was approximately 2
2 feet, and the holes into which this coal ash was
3 dropped and dumped were sometimes 30 or 40 feet
4 deep. The ash has -- now it's just a mere two or
5 three years later -- the ash has contaminated the
6 aquifer underneath the site, exactly opposite of
7 what was told to the community.
8 Now the community is told a different
9 thing. The community is told, well, it's not to
10 your wells yet, so what are you complaining about?
11 The community is told we'll provide some public
12 water for you, so what are you complaining about?
13 What the community is complaining about is they
14 didn't ask to have their aquifer contaminated.
15 They asked simply to be told the truth, and if the
16 truth had been told that site would have never
17 been allowed to go forward. Thank you.
18 MS. DEVLIN: Thank you. Number 95?
19 MR. PETTY: My name's Bill Petty. I'm
20 here representing Environmental Defense Fund. EDF
21 is a leading national nonprofit environmental
22 organization representing more than 700,000

1 members. EDF members live all over the United
2 States, and we have offices in regions that rely
3 heavily on coal.
4 Today, EDF has three primary comments on
5 the proposed regulations. First, we recommend
6 regulating coal combustion residuals under RCRA
7 Subtitle C. Second, we discuss concerns with
8 respect to the proposed approach to beneficial
9 uses. And finally, we support EPA's preference
10 for promulgating regulations for surface
11 impoundments similar to those promulgated by the
12 Mine Safety and Health Administration.
13 EDF believes that CCRs should be
14 regulated as special waste under Subtitle C.
15 According to EPA's own scientific risk assessment,
16 CCRs meet the criteria necessary to list under
17 Subtitle C due to their toxicity, the potential
18 for the hazardous constituents to migrate or
19 bioaccumulate, and plausible mismanagement of the
20 waste, as well as cases in which damage to human
21 health or the environment has been proven, such as
22 the Kingston, Tennessee, disaster.

1 In addition to established risk, CCRs
2 pose other threats that have not been fully
3 explored by the EPA. For materials of this
4 character, Subtitle C is far more appropriate than
5 Subtitle D, because it is expected to achieve far
6 greater compliance and because it includes a
7 comprehensive cradle-to-grave approach that is
8 lacking under Subtitle D. Such a cradle-to-grave
9 approach is absent from EPA's proposal for
10 beneficial uses.
11 EDF supports safe beneficial uses of
12 CCRS. However, for any proposed encapsulated
13 beneficial use to be considered safe would require
14 consideration of the risks over the full life
15 cycle, including risks from production, use,
16 recycling, and reuse, and ultimate disposal of
17 both CCRs and any products or materials containing
18 them with proper attention given to the type of
19 CCR proposed to be used.
20 Evaluating safety at all phases of the
21 life cycle of a proposed use requires extensive
22 information about the CCR constituents, including

1 total metal content, chemical and physical form,
2 fate and transformation potential, leachability,
3 and other factors related to the capacity of
4 contaminants to become bioavailable under a broad
5 range of real-world conditions. Safety also
6 requires an ability either to track and monitor
7 any such use over its full life cycle or to ensure
8 that no appreciable risk would arise under
9 worst-case scenarios.
10 As for unencapsulated beneficial uses,
11 these pose direct risk to the environment and
12 human health and, when allowed, should be
13 regulated under Subtitle C.
14 Finally, EPA should adopt MSHA-style
15 regulations for the storage of wet CCR waste and
16 all surface dams and impoundments. Such
17 regulations would require facilities to conduct
18 and submit to the EPA or the state important plans
19 for the design, construction, and maintenance of
20 existing impoundments, plans for closure, and to
21 conduct periodic inspections by trained personnel.
22 Due to the toxicity of CCRs and the number of

1 high-hazard facilities, such regulations should
2 apply regardless of size. Thank you very much.
3 MS. DEVLIN: Thank you. Number 109,
4 please. All right, number 129?
5 MS. OMAN: Good afternoon. My name is
6 Alicia Oman, and I am the director for Energy and
7 Resources Policy at the National Association of
8 Manufacturers. The NAM is the largest industrial
9 trade association in the United States,
10 representing over 11,000 small, medium, and large
11 manufacturers in all 50 states. We are the
12 leading voice for the manufacturing economy in
13 Washington, D.C., which provides millions of
14 high-wage jobs in the United States and generates
15 more than $1.6 trillion in GDP. In addition, 80
16 percent of NAM members are small businesses, which
17 serve as the engine for job growth.
18 EPA's proposal to regulate the disposal
19 of CCRs will have a direct impact on many of our
20 member companies. Not only will it impact the
21 utilities and CCR generators that will have to
22 comply with the new disposal requirements, but it

1 will also directly impact the nearly 2,000
2 companies that may use CCRs to manufacture
3 products. The NAM and its members appreciate the
4 opportunity to provide the following comments.
5 Manufacturers are attempting to fully
6 recover from the steepest economic downturn since
7 the 1930s and bring back the 20 million high-wage
8 jobs lost during the previous recession. Federal
9 policymakers should create conditions that will
10 lead to economic expansion and not stifle the
11 vitality necessary to create jobs. The NAM and
12 its member companies are confronting an avalanche
13 of additional rules and regulations from EPA,
14 including the reconsideration of the 2008 Ozone
15 Standard, the Boiler MACT rule, and the imposition
16 of first-time federal regulations on greenhouse
17 gas emissions.
18 The NAM strongly opposes the regulation
19 of CCRs as a special listed waste under Subtitle C
20 of RCRA. Regulating CCRs under Subtitle C would
21 place unworkable facility and operational
22 requirements on utilities and other generators of

1 CCRs, and create an immediate and critical
2 shortfall in hazardous waste disposal capacity.
3 This increased regulatory burden is likely to
4 result in higher energy costs for all
5 manufacturers.
6 Manufacturers are especially vulnerable
7 to high energy costs, and a noticeable increase in
8 the price of energy will derail any hope of a
9 robust economic recovery, preventing Americans
10 from getting back to work. Reclassification of
11 CCRs as a hazardous waste is likely to increase
12 transportation costs both for power generators and
13 manufacturers who generate their own CCRs by
14 channeling materials to sites that are designated
15 to handle hazardous waste. One food processing
16 facility that generates CCRs estimates their cost
17 for transportation and disposal could increase
18 from $120,000 to approximately $20 million per
19 year.
20 In addition, manufacturers are concerned
21 that the Subtitle C option will result in the loss
22 of important high-paying jobs in the CCR

1 beneficial reuse market. Federal policy should
2 encourage the beneficial reuse of industrial
3 byproducts and other manufacturing initiatives
4 that make economic and environmental sense.
5 Thank you, and we look forward to
6 submitting our comments.
7 MS. DEVLIN: Thank you. Okay, numbers
8 114, 123, 124, and 125, if you're here.
9 MR. ELLIS: Good afternoon, 114. Thank
10 you for the opportunity to speak today. My name
11 is Phillip Ellis and I represent the Sierra Club
12 Sustainable Metro D.C. Campaign.
13 When we first heard about this hearing
14 and we began to educate our membership on the
15 differences between Option C -- Subtitle C and
16 Subtitle D, we were overwhelmed by the response
17 that we received. In addition to turning out at
18 the hearing today to express their opinion, we
19 received an enormous amount of letters for people
20 who could not make it here today, and I'm here to
21 read one such letter. This one is by Antoinette
22 Frank, who lives in Stafford, Virginia.

1 "The coal industry has dumped its toxic
2 coal ash in nearly 600 communities across the
3 United States of America. A coal industry
4 executive said this waste is safe enough to eat.
5 Actually, this toxic ash contains arsenic,
6 mercury, selenium, lead, and other highly toxic
7 pollutants." And in her words she politely says,
8 "Is this something that you want to eat for
9 breakfast?"
10 "Dirty coal-fired power plants produce
11 over 140 million tons of coal ash each year.
12 People living near the dump sites are drinking
13 contaminated groundwater. No wonder the mortality
14 rate is 600 people more per year in coal regions
15 than the rest of our nation. The toxins in coal
16 mining waste are known to cause cancer, birth
17 defects, and neurological disorders. Research
18 shows that coalfield residents suffer high
19 occurrences of cancer and other health problems.
20 "In 2008, the Tennessee Valley coal ash
21 disaster -- a massive spill at Kingston Fossil
22 Plant near Knoxville, Tennessee -- released 1

1 billion gallons of coal ash sludge, which
2 contaminated 400 acres of land in the Emory and
3 Clinch Rivers. Months after the spill, children
4 were having respiratory problems and one man died
5 of seizures. Fish swimming near the spill were
6 found to have high levels of toxins, including
7 arsenic and selenium. Fish were found with their
8 gills completely closed in coal ash sediment.
9 Studies found the level of arsenic 260 times and
10 lead 16 times the federal drinking water standards
11 at the TVA site. High levels of arsenic cause
12 cancer. Also there was a higher-than-normal level
13 of selenium, which causes neurological problems.
14 The fly ash present probably irritated people's
15 skin and caused asthma. TVA people cannot drink
16 their well water because of elevated levels of
17 arsenic. Would you want to live there?"
18 And then she finishes her reply -- her
19 letter by saying, "Coal ash is deadly."
20 And I, like Antoinette, who represents
21 our membership who couldn't speak here today, urge
22 you to treat coal ash under Subtitle C and treat

1 it for what it truly is: Hazardous waste. Thank
2 you.
3 MS. DEVLIN: Thank you. Number 123?
4 MS. NOVEY: My name is Joelle Novey.
5 I'm with Greater Washington Interfaith Power and
6 Light. Through Greater Washington Interfaith
7 Power and Light hundreds of congregations of all
8 religious traditions work together on energy and
9 climate issues. And today, I'm joining local
10 religious leaders in asking that the EPA adopt
11 Subtitle C option and protect communities from
12 toxic coal ash. At each of the subsequent
13 hearings, you'll be hearing from Interfaith Power
14 and Light groups around the country. And over the
15 coming months, many of the 10,000 congregations in
16 this movement will be sending our message to the
17 EPA in written testimony.
18 The teaching, from my own tradition,
19 that informs my thoughts on this come from Rabbi
20 Isaac Ben Sheshet, a 14th century scholar of
21 Jewish law. He wrote, "One is forbidden from
22 gaining a livelihood at the expense of another's

1 health." Simple, ethical wisdom. Not bad for
2 Medieval Spain.
3 For too long -- here, now -- coal
4 companies have been permitted to gain their
5 livelihoods at the expense of people's health.
6 Coal ash contains arsenic, lead, mercury, and
7 other toxins that have been linked to organ
8 disease, respiratory illness, neurological damage,
9 and developmental problems. When this ash is
10 dumped in unlined landfills or ponds, it raises
11 cancer rates in the nearby communities. The
12 Environmental Integrity Project has named 137
13 sites in 34 states, including Virginia, where coal
14 ash is leaching arsenic into the water. It should
15 be forbidden in this country for coal companies to
16 make their livelihood at the expense of people's
17 health.
18 In the religious communities with which
19 I work, people are heartsick about the role of
20 coal power in producing the heat-trapping gases
21 that are causing global climate change. They are
22 working to reduce their electricity use in their

1 sanctuaries and at home. They are using their
2 energy dollars to support wind energy generation,
3 and they are figuring out how to put solar panels
4 on their roofs.
5 So often we are told that the change we
6 are trying to make is unrealistic because clean,
7 renewable energy is so expensive, while coal power
8 is cheap. In fact, coal power is intolerably
9 expensive, but its true costs are borne by others.
10 Who bears the cost of the permanent destruction of
11 a mountain through mountain-top removal mining?
12 Who bears the cost of stronger storms, devastating
13 floods, and other extreme weather caused by global
14 climate change? And who bears the cost of dumping
15 toxic coal ash as if it were just dirt, causing
16 sickness in our communities? By insisting that
17 coal companies bear the cost of disposing coal ash
18 safely, we take a truer measure of the real cost
19 of coal power.
20 Please adopt the Subtitle C option.
21 Coal companies shouldn't be allowed to make people
22 sick. Thank you.

1 MS. DEVLIN: Thank you. Number 124,
2 please? Number -- you're number 124?
3 SPEAKER: He's on his way. He's just
4 (inaudible).
5 MS. DEVLIN: Okay. Is 125 here
6 (inaudible) we wait for 124? No. He'll speak
7 when he gets here.
8 Numbers 126, 142, 147, and 165, are any
9 of you in the room? Okay.
10 MS. GREENLEE: Yeah, 147.
11 MS. DEVLIN: 147, thank you.
12 MS. GREENLEE: Hi. My name is Emily
13 Greenlee, and I work in the New York office of
14 Earthjustice. Thank you for the opportunity to
15 testify in favor of the need for federally
16 enforceable safeguards to protect human health and
17 the environment from toxic coal ash.
18 Over the past year, I have spent a great
19 deal of time researching coal combustion waste and
20 have learned about the dangers of coal ash stored
21 in unlined ponds where it can contaminate
22 groundwater with toxins like arsenic and lead.

1 EPA's own data shows that coal ash can contaminate
2 -- can increase cancer risk for those living
3 nearby to over 2,000 times the EPA's acceptable
4 cancer risk. Coal ash from an American company
5 has also been blamed for a spate of skin lesions,
6 respiratory ailments, and horrific birth defects
7 in the Dominican Republic.
8 Given the serious health threats posed
9 by coal ash, it is particularly troublesome that
10 coal ash impoundments are disproportionately
11 located in low-income communities where residents
12 are more likely to rely on groundwater supplies
13 and less likely to have access to quality medical
14 insurance and care. According to the EPA's own
15 environmental justice analysis for the proposed
16 coal ash regulations, the myriad risks of coal
17 combustion waste "may have a disproportionately
18 higher effect on low-income populations."
19 Earthjustice's environmental justice analysis
20 found that almost 70 percent of ash impoundments
21 in the U.S. are in areas where household income is
22 lower than the national median. I would like to

1 enter into the record three maps showing poverty
2 rates and the location of ash impoundments in
3 Alabama, Louisiana, and South Carolina. Here's a
4 copy for each of you.
5 MS. DEVLIN: Oh, good, thank you.
6 MS. GREENLEE: In South Carolina, about
7 16 percent of residents living near ash
8 impoundments are below the poverty line. That
9 number climbs to around 25 percent in Louisiana.
10 These figures are well above the national average.
11 In Alabama, a map of which can be seen on this
12 poster, about one-fifth of residents living near
13 coal ash ponds are below the poverty line. All
14 areas that show up in blue on the map have poverty
15 rates that exceed the national average.
16 Most notoriously, the Arrowhead landfill
17 in Perry County, where there's a poverty rate of
18 about 33 percent, has been the dumping ground for
19 ash recovered after the TVA ash spill in Kingston,
20 Tennessee, in December of '08. The ash flowing
21 into this low-income and predominately African-
22 American community at a rate of about 8,500 tons

1 per day contains dangerous levels of arsenic,
2 lead, and other heavy metals.
3 Strict federal guidelines are needed to
4 protect the low-income populations living near
5 Arrowhead and other ash impoundments, particularly
6 because Alabama is one of 15 states that has
7 explicitly stated that it will not adopt stricter
8 state regulations if EPA chooses to regulate ash
9 under Subtitle D. As the TVA spill and dozens of
10 other damage cases have demonstrated, state
11 regulations of coal ash are often insufficiently
12 protective of human health and the environment.
13 Only federally enforceable Subtitle C regulations
14 can fully protect human health and the environment
15 from coal ash in low-income communities and
16 throughout the United States. Thank you.
17 MS. DEVLIN: Thank you. All right, is
18 number 124 or 125 here now? Okay.
19 MR. FAIR: My name is Henry Fair, and
20 I'm an artist from New York. I've had many
21 opportunities to look at coal ash and to study it
22 and document it, and it seems well known that coal

ash is rife with many contaminants -- arsenic, lead, mercury, many other things more or less harmful -- and it should be regulated as the toxic waste that it is under -- what is it? -- phase C? Thank you. I've seen many coal ash impoundments around the world. Most of them are unlined, leaching into groundwater. And again, knowing what we know is in these impoundments it seems a little foolish not to regulate it as toxic waste.

And the other things that happen with coal ash are -- I think should be questioned as well, but that's not what we're talking about here, so mostly that we need to regulate coal ash as the toxic waste that it is. Thank you.

MS. DEVLIN: Thank you. Number 99? And then I'd like to go back to 204, 206, and 207. Are you here? Okay, number 99 first.

MR. BALL: Hi, good afternoon.

MS. DEVLIN: Good afternoon. Thank you.

MR. BALL: My name's Drew Ball. I'm the political project representative for Sierra Club, formerly the state director of government

1 relations for the North Carolina Sierra Club.
2 We applaud EPA for recognizing the very
3 real health and environmental risk posed by toxic
4 coal ash. Given the seriousness of these risks,
5 enforceable federal safeguards, not suggested
6 state guidelines, are necessary to protect
7 communities. Having done extensive work on coal
8 ash within North Carolina, particularly with North
9 Carolina state government, I can say firsthand
10 that some states are not doing an adequate job of
11 protecting communities from the dangers of coal
12 ash. Strong federal safeguards needs to be issued
13 quickly before more communities are exposed.
14 Continuing to ignore scientific and safety
15 concerns could come at a very high cost.
16 North Carolina issued -- I'm sorry, the
17 North Carolina Sierra Club issued a report on
18 April 11th -- April 12th of this year documenting
19 how a lack of federal controls and weak state
20 regulations have created a gaping loophole,
21 allowing an unknown volume of coal ash to be
22 disposed of with very little oversight and

1 uncertain impacts to public health. This lack of
2 oversight is placing the health of North
3 Carolinians and our environment at risk. While
4 some processes may render coal ash inert and,
5 therefore, suitable for reuse, such as use in
6 additive concrete, North Carolina's practice of
7 allowing coal ash to be placed on the ground as
8 fill material for land development with minimal
9 oversight, has led to numerous problems. These
10 problems include groundwater contamination,
11 surface water contamination, sham landfills,
12 environmental violations, and a failure to track
13 locations of coal ash fills. The lack of federal
14 regulation is what has led to the current failed
15 patchwork of state protections against coal ash.
16 Classification of coal ash under
17 Subtitle C would provide basic environmental and
18 public health safeguards backed up with
19 enforcement and financial accountability. It is
20 far more protective than the status quo option
21 under Subtitle D and covers coal ash from cradle
22 to grave. Under the strong option, coal ash sites

1 would have to be permitted. It would be required
2 to take basic safety precautions, install liners,
3 water runoff controls, groundwater monitoring, and
4 dust controls -- much of which is lacking in North
5 Carolina.
6 Along with these comments, I'm
7 submitting the report issued by the North Carolina
8 Sierra Club that they released on April 12 of 2010
9 I mentioned earlier. So with that, I ask the EPA
10 to please protect our communities, our families,
11 and our environment by classifying coal ash under
12 Section C of the Resources Conservation Recovery
13 Act.
14 Thank you for allowing me to speak
15 today.
16 MS. DEVLIN: Thank you. Number 204?
17 206? 207?
18 MS. EVANS: I feel like I should order
19 half a pound of ham or something.
20 My name is Lisa Evans. I am senior
21 administrative counsel for Earthjustice, a
22 nonprofit environmental law firm. I want to thank

1 you for the opportunity to speak at EPA's first
2 public hearing. I also want to express my sincere
3 appreciation for EPA's willingness to hold seven
4 public hearings on this critical issue.
5 The decision facing EPA is of monumental
6 importance, but it is not unprecedented. There
7 are clear, legal mandates for this rulemaking that
8 the agency cannot ignore. The proposed regulation
9 of coal ash as a special waste under Subtitle C,
10 is dictated by the specific mandates of the Bevill
11 Amendment, the regulatory definition of hazardous
12 waste, and EPA's guidance concerning reduction of
13 cancer risk. A special waste designation is the
14 only option consistent with Administrator
15 Jackson's pledge to rely on "sound science and
16 risk-based criteria protective of human health and
17 the environment."
18 Many who oppose Subtitle C regulations
19 want you to look back to the days when the TVA dam
20 still stood, when we knew nothing of 70 additional
21 damage cases, and when the TCLP test was not
22 deemed irrelevant. They would have you ignore

1 your new leach test that reveal arsenic leaching
2 from ash at many times the threshold for hazardous
3 waste. They would have you disregard state data
4 documenting contaminated water at dozens of sites
5 across the nation. They would prefer you forget
6 the conclusions of the National Academy of
7 Sciences, the EPA Science Advisory Board, and your
8 own peer-reviewed risk assessment. Lastly, they
9 would have you disregard the gross deficiencies of
10 an existing state law, which allow some of the
11 largest coal states to avoid entirely the
12 regulation of coal ash.
13 In short, you are asked to base this
14 critical rule on facts frozen in the last century.
15 This course is as illegal as it is foolhardy. We
16 trust that you will not join them in their
17 way-back machine. This law requires your decision
18 be based on 21st century data and science.
19 Further, the current reality of coal ash
20 mismanagement by states across the nation requires
21 a rural design to resolve this problem.
22 Albert Einstein once said the definition

1 of insanity is doing the same thing over and over
2 again expecting different results. Issuing
3 guidelines under Subtitle D or, worse, under
4 Subtitle D prime, and expecting a change in the
5 status quo of state mismanagement is certainly
6 madness. Despite the passage of over three
7 decades since Congress has enacted RCRA, many
8 states still by law allow gross mismanagement of
9 coal ash, and most states routinely fail to
10 enforce existing Subtitle D guidelines that apply
11 to ash. Consequently, EPA must ask if states
12 after 36 years have neither established their own
13 reasonable requirements for ash and not enforced
14 existing federal guidelines, why would additional
15 unenforceable guidelines change the status quo?
16 We respectfully ask EPA to correct and
17 not repeat the mistakes of the past. Let sound
18 science and law, not outmoded data and conjecture,
19 guide your decision. We ask you to act wisely and
20 without delay to protect, at long last, our
21 health, our drinking water, and our environment
22 from further harm.

1 MS. DEVLIN: Thank you. Okay, numbers
2 208, 209, 210, 212.
3 MR. SWARTZ: 108? Is that -- did you
4 skip over me?
5 MS. DEVLIN: 108? I hadn't gotten to
6 108, but --
7 MR. SWARTZ: Okay.
8 MS. DEVLIN: -- 108.
9 MR. SWARTZ: Okay, good.
10 MS. DEVLIN: No, I'm just going to --
11 MR. SWARTZ: Is that all right?
12 MS. DEVLIN: Sure.
13 MR. SWARTZ: I wasn't sure --
14 MS. DEVLIN: No, come ahead. 108 is
15 fine.
16 MR. SWARTZ: Hello. My name is Stephen
17 Swartz, and I'm co-owner of New Age Faceting
18 Systems, who is a developer of a branded
19 expandable abrasive, New Age Blast Media.
20 Approximately six years ago, my company
21 started to explore the uses of recycled crushed
22 bottle glass for grit blasting, which in large

1 part was prompted by our desire to find a better
2 and safer product over slag abrasives like coal
3 slag. We have a small plant in Sewell, New
4 Jersey, that has partnered with local towns to
5 reduce piles of recycled glass that were destined
6 for landfills. We have over eight employees
7 working at the plant and could easily double that
8 amount in the future. Our decision to enter the
9 abrasive manufacturing business was ironically
10 fueled by studies done by the EPA, NIOSH, and OSHA
11 that proved how toxic slag abrasives like coal and
12 copper are compared to other abrasives like garnet
13 and crushed glass.
14 The reason is that after being blasted the
15 particles are shattered, and the unencapsulated
16 dust is a major human health and environmental
17 concern. When we discovered that 13 million tons
18 of glass is dumped into landfills, we felt there
19 was an opportunity to provide a competitive
20 product that was safer than slags. Today there
21 are many other small businesses like ours that are
22 also trying to sell crushed glass and other

1 abrasives that are nontoxic and inert.
2 I thought it was important that I gave
3 you this background information, but the real
4 reason I'm here is not to discuss crushed glass,
5 but as a voice of a small business owner who feels
6 that we have been placed in an unfair competitive
7 position by the past decision of the EPA in 2000
8 to classify boiler slag abrasives as part of the
9 beneficial-use program.
10 Since that time, there have been many
11 well-documented studies by EPA, OSHA, and NIOSH
12 that confirm that coal slag when used as an
13 abrasive is harmful to human health and the
14 environment. This is a clear violation of the new
15 beneficial-use criteria announced on May 4th by
16 Director Jackson, and the EPA should finalize its
17 decision in their new CCR proposed rule to drop
18 slag abrasives from the program. We
19 wholeheartedly agree that Director Jackson -- that
20 there needs to be a new commonsense approach to
21 allowing a CCR product into the beneficial use
22 program. The EPA's beneficial use approval for

1 slag abrasives has, therefore, amounted to a
2 federal subsidy of coal slag.
3 The past actions by the EPA for slag
4 abrasives have directly impaired small companies
5 trying to compete against coal slag by denying us
6 a level playing field. This has meant less jobs
7 and less ability to open new plants to crush
8 glass. Most of our glass actually comes from
9 people who drank beverages in it. Coal slag waste
10 comes directly from coal-fired power plants.
11 Thank you very much for allowing me this
12 time to not only represent New Age, but a growing
13 small business segment with similar interests on
14 the issue. We trust that the EPA will make the
15 proper ruling in this matter that takes into full
16 account all the human safety and environmental
17 concerns that have been well documented. Thank
18 you.
19 MS. DEVLIN: Thank you. At this time, I
20 want to ask does anyone have a number under 115
21 that I have not called that would like to speak at
22 this time?

1 Okay. Then I have numbers 217, 218,
2 219, and 220. Are any of you here? Okay.
3 SPEAKER: There's one back there.
4 MS. DEVLIN: 220, come -- whoever could
5 --
6 MR. COLLINS: I'm just using the tape.
7 MS. DEVLIN: That's fine. Just go
8 ahead.
9 MR. COLLINS: Hello. My name's Thomas
10 Collins. I'm with Separation Technologies. I'm a
11 Northeast sales rep for the company, and, you
12 know, I just wanted to talk about, you know, I'm
13 strongly opposed to Subtitle C.
14 I'm pretty proud of what I do. I mean,
15 we -- our company takes a product that is
16 otherwise bound for a landfill and makes it usable
17 for any concrete or concrete products, and one of
18 the things that I do each and every day is market
19 that product to ready-mix producers, concrete
20 producers. And this topic -- the regulation comes
21 up an awful lot here over the past year. And one
22 of the things that they keep telling me is if it's

1 designated Subtitle C -- or hazardous -- if there's
2 a hazardous designation in any way, shape, or form
3 with this -- with fly ash, what they'll do is they
4 will stop using it. So, it's going to create a
5 negative stigma associated with the product, and,
6 you know, I just -- that's basically what I wanted
7 to say.
8 And one of the other things that I think
9 that, you know, needs to be considered is these
10 companies use this product, you know, obviously to
11 create better margins. And with that, if you
12 eliminate the product from being used, beneficial
13 use, what's going to happen -- you know, what I'm
14 concerned with and they're concerned with is, is
15 the margin going to be reduced? So they're going
16 to have to cut costs at some point, and that --
17 you know, cutting the costs is probably going to
18 come with manpower.
19 So, other than that, I just oppose the
20 Subtitle C, and that's it. Thank you.
21 MS. DEVLIN: Thank you. At this time,
22 I'm going to ask is there anyone else in the room

1 who has a number to speak? Can you please come
2 forward and we'll allow you to speak now?
3 At this point I'm asking for any number
4 right now. I've lost -- and if you could say your
5 number and your name when you come up, we'll run
6 through these for about the next 15 minutes or so.
7 MR. HUEY: Yeah, it's number 146.
8 MS. DEVLIN: Thank you.
9 MR. HUEY: And Jason Huey, with
10 Separation Technologies, our operations manager at
11 our facility up in York Haven, Pennsylvania. I
12 appreciate you guys taking the time to talk with
13 all of us today. I also oppose the possible
14 regulation under Subtitle C of the fly ash.
15 Within Separation Technologies -- give
16 you a little background -- what we do is we take
17 an otherwise unusable material -- the fly ash that
18 comes out of the utility based on the LOI in ASTM
19 specifications is not adequate. It cannot be used
20 in concrete applications. We take that fly ash
21 and we process it so that we can remove the
22 carbon. By doing so, we turn an otherwise

unusable material into something that has value both economically as well as environmentally. We take material that would be going into a landfill and process it so that it can be sold to the concrete industry.

A couple of benefits that has to the environment, one of which is the material's not going into the ground. This year we'll sell about 200,000 tons, so that'll be 200,000 tons of material not going into the ground, but, rather, going into concrete.

The other advantage is whenever it's used in concrete, it's done so as a replacement for Portland cement. The manufacturing of Portland cement is a fairly energy-intensive process. They say that for one ton of Portland cement it generates one ton of CO2. So, not only are we preventing material from going into the ground, additionally, the use of that material was preventing CO2 generation by replacing Portland cement. So, in all, I feel that our processing of the fly ash is a good story environmentally for

1 those couple reasons.
2 Subtitle C, if it were to get that
3 designation -- basically what would happen was
4 there would be this public perception associated
5 with it. Even though being used in concrete would
6 be considered a beneficial use and would be
7 allowed, still some of our customers as well as
8 some of the people that purchased that concrete I
9 think would have a public perception to the extent
10 that how are they going to make that determination
11 of something being hazardous that goes in the
12 grounds, but yet they can put in their basement
13 floor and let their kid crawl on it and all of a
14 sudden it's nonhazardous because it's locked up in
15 concrete.
16 So, we do feel that that public
17 perception will be there and that any type of
18 hazardous designation associated with fly ash will
19 have a negative impact both on the material itself
20 that's sellable to concrete as well as the
21 environment. Because, again, by not putting that
22 material in the ground as well as preventing that

1 CO2 generation from Portland cement, it's a good
2 story for the environment.
3 All right, thank you.
4 MS. DEVLIN: Thank you.
5 MR. QUINN: 128.
6 MS. DEVLIN: 128, thank you.
7 MR. QUINN: Good afternoon. My name is
8 Tom Quinn, and I'm a resident of Washington, D.C.
9 I'm here today to read into the record a statement
10 from Mr. Scott Burger of Richmond, Virginia. Mr.
11 Burger's statement follows.
12 "I've lived around coal ash most of my
13 life either here in Richmond or growing up in
14 Norfolk. I'm tired of seeing the coal dust darken
15 everything. It's a reminder that it's likely that
16 years have been knocked off my lifespan and that
17 of others', and so much of the environment has been
18 polluted."
19 Speaking for myself as a resident of the
20 District of Columbia, I'm resident of one of the
21 only state-level jurisdictions that does not have
22 to grapple with the permanent toxicity of coal

1 ash. However, my local electricity supplier,
2 PEPCO, receives about 50 percent of its
3 electricity from coal-fired power plants. So I
4 may be blessed by geographic good fortune and far
5 removed from this problem, the responsibility for
6 this mess rests on all of us.
7 The lack of federally enforceable
8 regulations on coal ash means that those of us
9 many miles from coal-fired power plants enjoy
10 cheap but dirty electricity while shifting the
11 environmental costs of that power to citizens like
12 Mr. Burger, who may not have the option to move.
13 But no person, community, or ecosystem should have
14 to tolerate the lax enforcement of this toxic
15 substance any longer, which is why I'm urging you
16 to regulate coal ash under Subtitle C of the
17 Resource Conservation and Recovery Act.
18 Thank you for listening, and thank you
19 for your time.
20 MS. DEVLIN: Thank you. Great.
21 MR. THOMAS: I'd like to thank you for
22 allowing me to testify today. My name is Steve

1 Thomas, and I reside in the Commonwealth of
2 Pennsylvania and have a Bachelor of Science degree
3 in environmental resource management. I'm
4 presenting this public comment to you today on my
5 own behalf.
6 I'm a supporter of the establishment of
7 a national criteria for disposal of coal
8 combustion residuals. I'm also an advocate for
9 conservation of our natural resources, which we
10 are so gifted to have in our great country. One
11 way we conserve these viable resources is through
12 recycling. Whether we as individuals separate our
13 paper, glass, metal, and other household waste for
14 curbside recycling or, as a business, purchase
15 products made with recycled components or as a
16 company which beneficially uses coal combustion
17 residuals, the environmental benefits are
18 substantial and have been well documented.
19 The Environmental Protection Agency
20 should be promoting recycling. However, when it
21 comes to coal combustion residuals, this does not
22 appear to be happening.

1 By proposing Subtitle C legislation
2 under RCRA, you are making coal combustion
3 residuals a special waste when disposed of. You
4 are attaching a label to all coal combustion
5 residuals that are dangerous -- that are
6 dangerous, toxic, hazardous, just plain bad
7 material. This labeling will result in a
8 short-term and a long-term degradation and
9 destruction of environmentally sound and safe
10 beneficial uses of coal combustion residuals.
11 Even now while legislation is being
12 drafted, I see the stigma of this labeling
13 occurring. The news media seems hard-pressed to
14 say "fly ash" without saying "toxic" at the same
15 time. Governmental agencies are considering
16 regulations that would require labeling of
17 products that contain coal combustion residuals.
18 Where else do we see this kind of labeling other
19 than possibly consumer food products? I can offer
20 mountable examples of where this stigma is
21 occurring and how it is impacting beneficial-use
22 coal combustion residuals. But the most personal

1 observation I have is my mother. After watching a
2 network TV program a few months ago, she came up
3 to me and said do you work in this toxic material?
4 And I had to say, yes, I've been doing it for 30
5 years; this is my business.
6 In closing, I want to restate that I'm a
7 supporter of establishing national disposal
8 regulations to protect human health and the safety
9 of the environment. Subtitle C or D regulations
10 are essentially the same. Subtitle D approach
11 will provide faster implementation, allow for
12 continued regulatory programs at the state level,
13 and be less costly to implement and manage. I
14 support -- I do not support Subtitle C legislation
15 under RCRA. Thank you.
16 MS. DEVLIN: Thank you. At this point,
17 we are going to take a very short break, and so we
18 should reconvene in about 10 minutes. Thank you.
19 (Recess)
20 MS. DEVLIN: Okay, at this point, we're
21 going to reconvene, and I'm going to ask is there
22 anyone who at this point wants to provide

1 testimony to us whether you have preregistered or
2 have just walked in this afternoon?
3 Okay, hearing that, we are going to
4 officially adjourn for a dinner break then. And
5 our next scheduled speakers are at 6:00, so we
6 will adjourn until 6:00, and we're back here and
7 start hearing testimony at 6:00.
8 Thank you.
9 (Whereupon, at 5:07 p.m., an
10 afternoon recess was taken.)
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1 E V E N I N G S E S S I O N

2 (6:06 p.m.)

3 MR. DELLINGER: Good evening and thank

4 you for attending today's public hearing on the

5 Environmental Protection Agency's proposed rule

6 regarding the regulation of coal combustion

7 residuals that are disposed of in landfills or

8 surface impoundments. Before we begin I'd like to

9 thank you for taking time out of your busy

10 schedules to address our proposed rule and we look

11 forward to receiving your comments. This is the

12 first of seven public hearings that we'll be

13 conducting. The other hearings are in Denver,

14 Dallas, Charlotte, Chicago, Pittsburgh, and

15 Louisville.

16 My name is Bob Dellinger. I'm the

17 director of the Materials Recovery and Waste

18 Management Division in EPA's Office of Resource

19 Conservation and Recovery within the Office of

20 Solid Waste and Emergency Response. I'll be

21 chairing this portion of today's public hearing.

22 With me on the panel are Laurel Celeste, Steve

1 Hoffman, and Jesse Miller.
2 Now I'm going to cover the logistics for
3 the comment portion of today's public hearing.
4 Today's public hearing will work as follows.
5 Speakers, if you preregistered you were given a
6 15-minute time slot when you are scheduled to give
7 your 3 minutes of testimony. To guarantee that
8 slot we've asked that people who've preregistered
9 would sign up 10 minutes before their 15- minute
10 slot at the registration desk. It's probably not
11 going to be a big problem because we took extra
12 speakers earlier today so we'll how that works.
13 All speakers, those that preregistered and
14 walk-ins, were given a number when you signed in
15 today and this is the order in which you will
16 speak, although that may not be the case if we
17 have gaps in who is here right now. I'll call
18 speakers to the table by number four at a time and
19 when your number is called, please move to the
20 microphone and state your name and your
21 affiliation.
22 Because there are many people who have

1 signed up to provide testimony today and to be
2 fair to everyone, we've limited testimony in the
3 hearing to 3 minutes. We'll be using an electric
4 timekeeping system and we'll also hold up cards to
5 let you know when your time is getting low. We'll
6 flash a card at 1 minute and also one at 30
7 seconds and then one when your time is up.
8 When you've completed speaking, please
9 return to your seat at the table and remain there
10 until all speakers in your group have completed
11 their testimony. If you brought a written copy of
12 the comments that you're giving today, please
13 leave a copy in the box over here where the court
14 reporters are. And if you're only submitting
15 written comments today, please put those in the
16 box at the registration desk.
17 If you have additional comments after
18 today, please follow the instructions on the
19 yellow handout and submit the comments by November
20 19, 2010. Our goal is to ensure that everyone who
21 has come today to present testimony is given an
22 opportunity to provide comment and to the extent

allowable by time constraints, and unless we have a big mass of people moving in here in the next few minutes, I think that's not going to be an issue.

The hearing is scheduled to close at 9:00 p.m., although we extended to about 9:45 I believe, so we'll be here until 9:45 unless all the people that signed up up to that 9:45 timeframe have been allowed to offer their testimony. At least a few of us will wait to make sure that we get the testimony of anybody else who comes in, and that's pretty much it.

One thing, with cell phones just try to keep them on vibrator, and if you have to take a call, try to take it outside into the lobby if possible.

I'm going to start calling numbers four at a time and we'll see how that goes. Numbers 110, 116, 119, 120? All right, we've got four right now. Number 110?

MR. LAURIE: Good evening. My name is Lucian Laurie. I'm a homeowner and resident in

1 Oakland Park Subdivision in King George, Virginia.
2 The substance of my comments this evening will
3 just be personal comments on an issue that's been
4 ongoing for us in the community for about two
5 years, and actually longer than that but we've
6 been really concentrating on it for about two
7 years, and that is the overwhelming stench of a
8 landfill that's about a mile from our house.
9 This landfill is run by Waste Management
10 Corporation and we just recently found out that
11 they've been accepting coal ash as a trash stream
12 as they call it, and I'm not sure when that
13 started. I know they stopped in June because, lo
14 and behold, they were opening a methane
15 reclamation site and the testing for when they
16 started to open that up revealed that they had
17 toxic levels of a couple of different contaminates
18 none of which are really my bailiwick. I
19 understand that they're toxic at the levels that
20 they were found at and I know that our air quality
21 has been horrendous for the last -- I've been
22 there for four years and it's been the entire four

1 years that I've been there.
2 The conversation started out with
3 e-mails amongst the neighbors. We all complained
4 about the odor. Then it moved to talking to the
5 Waste Management folks and to our county
6 officials. I must say that Waste Management has
7 been very responsive as far as answering your
8 questions and responding to our e-mails, but the
9 situation has not changed in the least. The
10 stench is still terrible on almost a daily basis.
11 There are ups and downs, but it's been very bad.
12 We are constantly assured by our county
13 officials that the water is tested and is okay,
14 but the fact is that it smells and tastes just
15 like the air does. I will say that I'm not
16 terribly concerned at this point about property
17 values because the economy has taken care of that,
18 but at this point really what I'm concerned about
19 is my 12- year-old son who we're forced by
20 economic conditions to stay in this place. I
21 think the smart people have already gotten out. I
22 ask that this panel and the considerations that

1 ensue from these hearings take into account the
2 concern that we as parents are feeling about this
3 environmental quality.
4 Thank you.
5 MR. DELLINGER: 116?
6 MR. CUNNINGHAM: Thank you. My name is
7 Bill Cunningham. I'm with the Unions for Jobs in
8 the Environment, or U.J. for short. U.J. member
9 unions represent more than 3.2 million workers in
10 electric power, transportation, coal mining, and
11 construction, all who have a vital interest in the
12 way that EPA regulates coal combustion residuals.
13 Unions for Jobs in the Environment is
14 opposed to the regulation of CCRs under Subtitle C
15 of RCRA. The nature of CCRs does not warrant
16 regulation as a hazardous waste and we believe
17 that such regulation would hinder the recycling
18 programs that greatly reduce the need for and the
19 costs of disposal. Either of the two proposals by
20 EPA would regulate for the first time CCRs under
21 RCRA instead of leaving regulation to state
22 authorities. Under both proposals, EPA would

1 establish dam safety requirements to address the
2 kind of environmental damage that occurred at
3 Kingston. Both proposals would require multilayer
4 liners for impoundments as well as landfills and
5 require ground water monitoring to detect
6 contamination.
7 Under Subpart D of RCRA, facilities
8 would be subject to location standards and there
9 would be corrective action standards for releases
10 from the facility. Closure and post-closure care
11 requirements would be put forth to address the
12 stability of service impoundments.
13 We are pleased to see that EPA has
14 expressed its commitment to continued recycling of
15 CCRs. We believe however that regulation of CCRs
16 under the Hazardous Waste Subtitle C would
17 stigmatize the use of these materials in
18 construction products even if the materials are
19 termed special waste. There is little doubt that
20 the public would respond negatively if asked if
21 they would approve recycling materials under
22 hazardous waste. With uses of CCRs increasingly

1 conscious of product liabilities, recycling is
2 highly likely to be set back by regulation under
3 Subtitle C. Flexibility and discretion by the
4 states is needed due to the many differences in
5 storage sites in each state. Maintaining
6 flexibility for state regulators can best be
7 served under Subtitle D. As EPA has noted, under
8 Subtitle D, regulations would go into effect much
9 more quickly than under Subtitle C.
10 The statement I am giving today is for
11 all U.J. Members, but some members including the
12 mine workers and the IBW will be submitting their
13 views as well. I would like to call your
14 attention to the mine workers' letter which
15 requests that EPA work with Congressman Boucher
16 and the majority of members of the Energy and
17 Commerce Committee that transmitted their views in
18 a July 29 letter of their desire for revisions of
19 Subtitle D regulation.
20 In summary, U.J. members are confident
21 that regulation under Subtitle D of RCRA would
22 protect public health and safety and that

1 regulation under hazardous waste provisions would
2 damage the recycling program for CCRs while giving
3 no real measure of public benefit.
4 Thank you. I'd like to leave with you
5 the complete statement that we prepared for EPA.
6 MR. DELLINGER: That would be great.
7 119?
8 MR. BECK: Thank you. My name is
9 Michael Beck. I conduct sales and marketing
10 efforts for Synthetic Materials LLC, the largest
11 processor and marketer of flue gas desulfurization
12 gypsum in the United States. We're currently
13 processing and marketing for beneficial reuse over
14 4 million tons of FGD gypsum each year.
15 Synthetic Materials is a small business
16 that will directly and negatively be impacted by a
17 Subtitle C determination. Our primary customer
18 base is for our washed and dried FGD gypsum that
19 consists of wallboard and cement manufacturers.
20 In the wake of the current economic recession, our
21 customers are facing an extremely difficult
22 present and an even more challenging and unknown

1 future. With construction demand at historically
2 low levels and the housing market struggling to
3 show signs of life, our customers are forced to
4 operate their plants at levels as low as 30
5 percent of their capacity. The market situation
6 has forced plant closures, layoffs and investment
7 stagnation.
8 The above climate alone has created a
9 very difficult way forward for SYNMAT's marketing
10 department, and with the potential for FGD gypsum
11 to be unfairly regulated as a hazardous waste
12 despite being labeled a special waste, the
13 potential to completely lose our customer base and
14 suppliers is very real. We have both customers as
15 well as suppliers refusing to move forward with
16 contractual and other commitments made to SYNMAT
17 not because of current market conditions or any
18 perceived stigma of Subtitle C determination, but
19 because of the real liability concerns that come
20 with an absolutely unnecessary hazardous waste
21 classification for coal combustion byproducts.
22 For our wallboard customers especially,

1 the compounding of the terrible housing market,
2 the Chinese wallboard problems, the still
3 remembered asbestos issue and the addition of
4 classifying a major raw material as a hazardous
5 waste creates a perfect storm that will severely
6 hurt market recovery and potential for the overall
7 health of the U.S. economy.
8 The appropriate response is the proposed
9 Subtitle D option. The catalyst to this
10 discussion was a failed coal ash retention pond
11 and not a hazardous waste. A proportional
12 response is necessary to maintain a stable market
13 for beneficial reuse and to significantly reduce
14 the risk of such an accident again. That
15 proportional response is Subtitle D.
16 Thank you very much.
17 MR. DELLINGER: Thank you. Number 120?
18 MR. ROHRBACH: My name is Jim Rohrbach.
19 I'm a licensed professional engineer in Delaware.
20 I have a Bachelor of Science and Master of Science
21 in civil engineering focusing on civil and
22 environmental aspects.

1 I want to thank you guys for the opportunity to
2 provide comments for this hearing.
3 I have 10 years' experience recycling
4 coal ash in a variety of applications, the
5 geotechnical and chemical properties of both flash
6 and bottom ash, along with their nonhazardous
7 nature make them ideally suited for many different
8 reuse applications. Industry figures show about
9 60 million tons of coal ash was recycled in 2008.
10 Uses of coal ash as a structural fill in
11 construction application saves money and reduces
12 the need to mine virgin soil resources. The same
13 can be said for the use in concrete manufacturing
14 along with the millions of tons of avoided
15 greenhouse gas emissions annually resulting from
16 the replacement of cement with coal ash. In the
17 operation I manage in Delaware, the beneficial use
18 of coal ash with municipal sewage sludge saved
19 millions of cubic yards of landfill volume over
20 the last 15 years while mitigating the need for
21 millions of cubic yards of virgin resources for
22 fill and landfill cover applications.

1 These and many other uses save the
2 public money. They save virgin resources and
3 landfill volume and reduce greenhouse gas
4 emissions by many millions of tons annually.
5 Based on my experience in the industry, there is
6 no doubt that the stigma associated with
7 regulating coal ash under the Subtitle C approach
8 would effectively cripple the ability of this
9 entirely nonhazardous resource as defined by the
10 character of the material to be reused as it is
11 today.
12 A couple of examples. Concrete
13 manufacturers will be extremely reluctant to
14 handle a material that would be considered
15 hazardous if disposed but okay to use for, say,
16 residential areas or schools. We get questions
17 already, do my workers need to be especially
18 trained? Do the products that use coal ash become
19 hazardous if and when they are ultimately
20 disposed? I think a bigger issue is that the
21 power plants who produce the ash are going to be
22 very reluctant to allow the use of ash. Why take

1 a chance on that liability? The hundreds of
2 millions of dollars of extra costs based on
3 disposal versus reuse will be passed on to you,
4 me, and everyone else who uses electricity in this
5 country.
6 With no apparent technical basis that I
7 can see to the Subtitle C hazardous approach, will
8 result in tens of millions of tons of coal ash to
9 be uselessly disposed of annually along with the
10 other environmental problems associated with
11 disposal. I, therefore, urge that the states be
12 allowed to continue their regulation of coal ash
13 under Subtitle D, thereby allowing the
14 continuation of the important role of coal reuse
15 without the erroneous and needless designation as
16 a Subtitle C hazardous material.
17 Thank you.
18 MR. DELLINGER: Thank you. I'm going to
19 call four more numbers now, 121, 125, 126, 142,
20 143 and 147.
21 Let's go with 228, 229 and 230. I don't
22 have either 222 or 223. I was looking in the

1 wrong column on here, but you'll have a 15-minute
2 wait roughly if that's okay.
3 MS. ENDERLE: I want to make sure I'm
4 not jumping in front of 221.
5 MR. DELLINGER: No, you're okay.
6 MS. ENDERLE: My name is Emily Enderle.
7 I am a legislative representative at Earthjustice,
8 which is an environmental nonprofit law firm here
9 in D.C.
10 I want to thank the EPA first for
11 allowing the public to comment on this really
12 important rule. As you've noticed, this is of
13 high importance to a number of the large
14 environmental and public health groups in the
15 United States. I for example am here on behalf of
16 the 220,000 plus members and supporters of
17 Earthjustice to let you know that this is
18 certainly one of our high-priority rules.
19 You are right now in the midst of
20 looking at public comments, looking at technical
21 data and considering two particular options on how
22 to deal with the disposal of coal ash. For us we

1 would really appreciate and the public would
2 really appreciate the scientifically defensible
3 option which is Subtitle C under the Resource
4 Conservation and Recovery Act.
5 It's only under that particular subtitle
6 that we would be able to ensure that communities
7 are going to be protected from toxic coal ash.
8 We've seen time and time again that the states,
9 when left to operate under the status quo, that
10 there are damage cases throughout the country.
11 You have identified dozens of damages cases
12 yourselves. We have certainly worked on several
13 reports in the past identifying more damage
14 reports looking into using data that's available
15 at the state and local level. I think that's one
16 example and a lot of those are related to
17 leaching.
18 Then we have cases like the Kingston
19 spill. That's an example of catastrophic failure.
20 I am from a small town in rural Ohio. We are
21 certainly a coal state. We are actually sixth, I
22 think, in the country in terms of coal use and we

1 generate 6.9 million tons per year. In Ohio we
2 have six of the high-hazard dams, which means if
3 they were to fail one or more people would likely
4 die because of that failure. You know that there
5 are a lot of structural integrity issues and
6 you've collected the data. Personally I'm scared
7 for my family, for citizens of Ohio as well as
8 citizens across the country and there are hundreds
9 of other ponds that haven't even been quantified
10 in terms of structural integrity. So the
11 catastrophic failure, as well as leachability are
12 of high concern.
13 Your own data shows 2,000 times the
14 acceptable risk of arsenic is a possibility in
15 terms of the leach test. You have the science. I
16 mainly wanted to let you know that you have the
17 public's support and you have the scientific
18 support. We hope that the rule that you decide to
19 promulgate is ultimately that one that you put
20 forth to OMB and that the politically more
21 attractive yet the less-protective rule is the one
22 that's left behind. Thank you for the opportunity

1 to comment.

2 MR. DELLINGER: Number 228?

3 MR. BENNETT: Good evening. My name is

4 Colin Bennett and I'm here to only represent

5 myself, my daughter and all of the other concerned

6 citizens who can't be here to offer comment in

7 person.

8 The way I look at it, there are two

9 options here, more or less the right way and the

10 wrong way and I think that most folks in this room,

11 if they dig down deep, know what the right way is

12 to pursue Subtitle C.

13 Your own press release lists all the

14 contaminates found in coal ash, arsenic, cadmium,

15 mercury, which are neurotoxins in the case of

16 mercury that have catastrophic health effects when

17 they're introduced into the ecosystem and then,

18 furthermore introduced into the public health

19 system through whatever means, whether it be

20 through bioaccumulation through fish and pregnant

21 mothers, young children, or anybody eating fish

22 contaminated with mercury, to any other ways that

1 it can be introduced.

2 Essentially like I said, there is what I

3 would feel is the industry backed way and in my

4 experience, limited as it may be being somewhat

5 young, what industry backs is generally not what

6 the public backs because industry has profit as a

7 motive whereas the public has their life and

8 safety as a motive. I definitely urge and implore

9 you to take the more-stringent standard, adopt

10 Subtitle C and to do the right thing for our

11 country, our future, our children, my daughter,

12 and everybody else out there who isn't just

13 looking for a way to increase profits through

14 less-stringent standards.

15 Thank you.

16 MR. DELLINGER: Thank you. 229?

17 MS. MILES: My name is Emily Miles and I

18 am a student at George Mason University. I came

19 to this hearing today not as part of a corporation

20 or organization, but as a concerned public

21 citizen.

22 Every year thousands of people die from

1 illnesses that stem from dirty coal. Fine
2 particles get into the respiratory systems of
3 children and innocent civilians. Contaminants from
4 coal plants can also get into our environment,
5 something that we can not live apart from. It
6 would be ridiculous for the EPA to put coal
7 profits over the lives of thousands as well as the
8 health of the surrounding environment. After all,
9 the EPA stands for the Environmental Protection
10 Agency and that's just what it is here to do,
11 protect our environment and not to make
12 compromises with corrupt coal companies.
13 I cannot describe here how much it makes
14 me sad that continually corporations put profits
15 over people. Some of us here have had friends and
16 families who have died from cancer and other
17 illnesses because environmental companies are
18 willing to go to any end to get more profits. As a
19 citizen I am here today to tell the EPA to do its
20 job and protect people by protecting the
21 environment. Do what is the right thing to do.
22 Coal is hazardous and so are all its byproducts.

1 It needs to be treated as such. Our communities
2 need to be protected from this toxic ash by
3 implementing strict guidelines that can be
4 enforced under Subtitle C.
5 MR. DELLINGER: Thank you. Number 230?
6 MR. VAN KUDRO: My name is Jason Van
7 Kudro and I'm 21 years old and a senior at George
8 Mason University. I am an environmental science
9 major and I understand the importance of
10 protecting our air and water. I don't work for a
11 major corporation or an organization. I don't
12 have a hidden agenda. I'm just here for only one
13 reason and that's to protect my future and the
14 future of future generations.
15 Coal ash is a hazardous waste and I urge
16 the EPA to regulate it as a toxic substance under
17 Subtitle C. Ever since I've been a kid I've
18 suffered from chronic headaches. My brother has
19 really bad asthma and my parents would take him to
20 the hospital and not know if he'd make it through
21 the night. A dear friend of mine who is only 29
22 years old was diagnosed with breast cancer this

1 year. I can't prove that these were due to coal
2 ash, but the evidence that coal ash has negative
3 effects on humans is known. The EPA has that
4 evidence and they are the ones putting forth that
5 evidence.
6 I urge the EPA to do the right thing and
7 regulate coal ash under Subtitle C. Our country
8 needs to make a transition away from this dirty
9 source of energy. This transition is, as you know,
10 is what our country and our President is calling
11 for and we need to start stepping up regulations
12 on coal ash, start protecting our health and
13 protect our communities.
14 Thank you.
15 MR. DELLINGER: 224, 225, and 222, and
16 223. I don't have the complete set. Let's 221,
17 223, 224, and 225.
18 MS. BLAKE: Hello, my name is Jessie
19 Thomas Blake and I am a concerned citizen from
20 Fairfax, Virginia.
21 I'm glad that EPA is proposing rules for
22 the safe disposal and management of coal ash. I

1 support the creation of a comprehensive program of
2 federally enforceable requirements for waste
3 management and disposal as proposed under Subtitle
4 C. I also support the recycling and beneficial
5 use of coal ash as long as it does not compromise
6 human health or the environment. This is
7 important because states do not usually require
8 offsite monitoring of drinking water supplies yet
9 data consistently shows contamination offsite.
10 Federally enforceable regulations are
11 necessary to stop the threat to public health and
12 damage to the environment that poor management of
13 coal ash ponds and landfills has caused in the
14 past. No one should have to drink water
15 contaminated by coal ash. Clean water is a basic
16 right. I hope these regulations bring us closer
17 to that reality. Thank you for the opportunity to
18 provide comment.
19 MR. DELLINGER: Thank you. Number 222?
20 MR. BARKER: My name is Jonathan Barker.
21 I'm a licensed professional engineer and I've
22 worked in the utility industry for 30 years. In

1 addition to my power plant operational experience
2 I've been involved with the beneficial use of coal
3 ash for approximately 20 of those 30 years.
4 I very much appreciate the fact that you
5 guys are having these sessions and letting people
6 speak their minds, and that's very important.
7 That being said, I have a couple of comments and
8 I'd better say them fast.
9 I'm deeply concerned with the
10 implications associated with the eventual ruling
11 and also the delay associated with this process.
12 There appears, as far as I'm concerned as an
13 engineer, to be no technical justification to
14 separate coal ash as a special waste that is
15 beneficially utilized from coal ash that is
16 deposed of. Coal ash is coal ash. It's either
17 one or the other. Again, as an engineer this
18 makes no technical sense to me.
19 The EPA suggests that by segregating
20 these applications, byproduct utilization will not
21 be impacted. Approximately 43 percent of the coal
22 ash generated is utilized in applications such as

1 cement, road construction, cement replacement in
2 kilns, cement replacement in concrete road
3 construction, building schools, building houses,
4 building everything. To say that this is not
5 going to impact that construction industry, as far
6 as I'm concerned, is a very false assumption and
7 seems to contradict the government's stimulus
8 package approach of getting our country out of
9 this recession.
10 Again, I am representing a company but
11 we believe strongly in managing these materials
12 appropriately. We have no problem with strict
13 regulations as far as disposal is concerned. I
14 completely disagree with going to Subtitle C
15 versus Subtitle D because there is no technical
16 merit to doing that. Otherwise, it's either
17 hazardous or it's not.
18 It must be noted that one of the other
19 things that you haven't talked about are some of
20 the other industries. There was a gentleman here
21 earlier who talked about the use of gypsum and I
22 can personally testify that I have many clients

1 that were utilizing gypsum as an agricultural
2 amendment for crops and their utilities have
3 decided not to put those materials on the ground
4 anymore so that these farmers now have to buy
5 chemicals and put other things on the ground as
6 opposed to using gypsum products that come from
7 power plants.
8 Real quickly, in summary it's my opinion
9 that the prospect of segregating the
10 classification of coal ash based upon the end use
11 is entirely not supported by technical merit. In
12 addition, the economic implications are far beyond
13 those anticipated by the EPA when you consider the
14 cost to our country's infrastructure and the
15 agricultural end users.
16 Thank you very much.
17 MR. DELLINGER: Thank you. 223?
18 MR. CARRER: My name is Gary Carrer.
19 I'm from Oakland Park which is King George County.
20 I have my neighbor Lou Chin with me. I represent
21 myself, my family, my loved ones and my neighbors.
22 I've heard a lot of testimony here and

1 this has been cram course for me over the last 4
2 or 5 months of how these things work as related to
3 coal ash disposal. I want to offer testimony and
4 perhaps even offer the EPA a case study in how
5 much of a failure it's been in King George County.
6 They started accepting this product a year X ago,
7 I don't know that information. They stopped
8 taking it in June because they had very poor and
9 ineffectual recapture of gas and it was polluting
10 our neighborhood and making everything smell like
11 sulfur, rotten eggs, and so on, and it's reached
12 the point now where it almost seems unlivable
13 there.
14 Waste Management manages that facility
15 and by their own stopping of the waste stream they
16 admit that they can't manage it. I've heard
17 testimony here about the impacts of industry and
18 possibly the positive uses of all of these
19 products and I applaud that. I'm not looking for
20 heavy-handed regulations but the DEQ has been
21 involved, the Department of Environmental Quality
22 in Virginia has been involved in a loop on

1 pressuring Waste Management now for probably 9
2 months and the effect has been basically zero.
3 They've stopped taking the product and I don't
4 know what the reason or pressure was to cause
5 that.
6 But my belief is that the at the local
7 level, the environmental DEQ and the various state
8 levels seem to have such varying rules and levels
9 that perhaps it's time that we standardized this
10 and make it enforceable because our property
11 values are destroyed not only from the downturn in
12 general but nobody in our area would buy anymore.
13 You cannot sell a house in my area, period. We've
14 got negative press and at this point the cat is
15 out of the bag, so now I'm looking to see if the
16 EPA could standardize it, make it sensible, do the
17 right thing as we've heard here mentioned tonight
18 so we can breathe and live and I don't have to
19 worry about my seven- and nine-year-old
20 grandchildren from developing some hideous disease
21 that could have been possible as a result of these
22 pollutants.

1 Thank you, folks. I appreciate the
2 time.
3 MR. DELLINGER: Thanks. 224?
4 MR. RISCH: My name is John Risch and
5 I'm with the United Transportation Union
6 representing operating railroad workers across
7 America. We have about 100,000 members many of
8 which operate coal trails across the country.
9 We'd urge the EPA to be cautious in
10 their dealing with coal and labeling coal ash as a
11 hazardous waste. We are members of Unions for
12 Jobs in the Environment and we fully support their
13 testimony and the written comments that they
14 submitted in support of Part D with modifications.
15 Our country depends on coal. About 57
16 percent of the nation's energy is derived from the
17 burning of coal. Our nation's railroads in
18 particular depend on coal. A full 25 percent of
19 all the freight in this country on the freight
20 railroads is coal traffic and 20 percent of the
21 freight railroad jobs are coal related.
22 I myself grew up in Mandan, North Dakota

1 next to a railroad line that would be abandoned
2 today if it were not for coal. In the late 1970s
3 the Potter River Basin opened up. The coal began
4 to flow through North Dakota on this line that was
5 on its way to abandonment and was rebuilt and all
6 kinds of shippers other than coal shippers
7 benefited from it: Our farmers, our egg
8 producers. And manufacturing industries along
9 these lines were given the benefit of these great
10 railroad lines that coal money -- the coal freight
11 rates revenues were used to rebuild. My small
12 town of Mandan, North Dakota with a population of
13 17,000 people now has 400 good-paying railroad
14 jobs today because of coal.
15 In closing I'd like to say that we'd
16 urge the EPA to be cautious. We don't want to do
17 any more damage to the economy than absolutely
18 necessary. Coal ash should certainly be handled
19 in a responsible way, but we're very concerned
20 about being too heavy-handed and causing too much
21 expense incurred upon the industry to make coal
22 not a competitive fuel source.

1 Thank you so much for the opportunity.
2 MR. DELLINGER: Is there anyone else in
3 the room who has logged in?
4 225 and 226. Thanks.
5 MR. BURTON: My name is Bruce Burton. I
6 am an international representative with the
7 International Brotherhood of Electrical Workers
8 here in the Washington, D.C. area. I'm here
9 tonight on behalf of IBEW president Ed Hill and
10 the approximately 725,000 members of the IBEW.
11 The nature of coal ash does not warrant
12 its regulation in the same section of law as
13 hazardous waste. Such regulation would destroy
14 the very successful recycle programs that greatly
15 reduce the need for and cost of disposal. CCRs
16 have been used for decades to enhance concrete and
17 for wallboard construction. CCRs contributed to
18 the construction of the Hoover Dam and the San
19 Francisco/Oakland Bay Bridge. More recently they
20 were used in the construction of the new I-35
21 bridge in Minneapolis, Minnesota. Concrete made
22 with fly ash extends the life of construction

1 projects by decades, minimizing the environmental
2 impacts of rebuilding.
3 The approximately 45 percent of CCRs
4 that are currently recycled avoid about 117 tons
5 of greenhouse gas emissions annually, and every
6 ton of fly ash used in place of Portland Cement
7 prevents about a ton of CO2 from entering the
8 atmosphere. Additionally, the equivalent of 55
9 gallons of oil is saved because that is what it
10 takes to produce a ton of cement. Furthermore,
11 fly ash requires less water than Portland cement.
12 Regulation of CCRs under Subtitle C,
13 that is hazardous waste, will stigmatize the use
14 of fly ash in construction products even if the
15 material is termed special waste. There would be
16 significant reluctance to allow CCRs in
17 construction materials if it is regulated as a
18 hazardous waste. Any lawsuit against recycling
19 would be substantially assisted by regulating CCRs
20 under Subtitle C. With the users of CCRs
21 increasingly conscious of product liability,
22 placing coal ash under Subtitle C will greatly set

1 back, if not destroy, recycling efforts. Even if it
2 classifies fly ash as nonhazardous, EPA would
3 still establish national criteria to ensure the
4 safe disposal of CCRs and the IBEW is fully
5 supportive of that part of the proposal.
6 Facilities handling coal ash would be subject to
7 location standards and composite liner
8 requirements. Existing ash ponds without liners
9 would have to retrofit within five years or close
10 and ground water would be monitored for
11 contaminants. Finally, post-closure care
12 requirements would be issued to address the
13 long-term stability of ash ponds.
14 With that, thank you very much for
15 allowing me to speak this evening. We appreciate
16 it.
17 MR. DELLINGER: Thank you. Are you 226?
18 I didn't lose count then.
19 DR. PRADOS: Good afternoon. My name is
20 Dr. Ana Prados. I am a research assistant
21 professor at the University of Maryland Baltimore
22 County here in the D.C. Area. I am here

representing myself. I am a chemist by profession.

Thank you for the opportunity to comment on this important regulation. I applaud the EPA for the first time ever considering enforceable federal regulation of toxic coal combustion residuals. I support the EPA proposal for regulation under Subtitle C with some important additions. Regulation under Subtitle D is very weak. It's essentially voluntary. It does not seem like it would do much at all to protect families and our drinking water supplies.

Here in our local area we've already heard of one case in King County which I was going to talk about but we've already heard that. That's something I am very concerned about. We do know where that coal ash comes from. It comes from a coal plant owned by the Mirant Corporation just a few miles from here actually in the city of Alexandria. It has caused its own problems here with air quality and now we're seeing the impacts on the other end. This is very unfortunate.

1 I also am aware of another case here in
2 the D.C. Area which also happens to be due to the
3 same Mirant Corporation which has been sued by the
4 Maryland Department of the Environment. This is
5 happening in P.G. County which is where I
6 happen to work. In this case there have been
7 violations of the Clean Water Act, there have been
8 violations of the NPDES discharge permit at the
9 Brandywine landfill which is in P.G. County. It
10 has a total of three unlined pits, several unlined
11 receiving ponds, something that would not have
12 happened if this landfill had been regulated under
13 Subtitle C. It receives a total of 5-1/2 million
14 cubic yards. You probably have heard about this
15 earlier today. It has unfortunately been leaking
16 toxic chemicals into the groundwater of Mataponi
17 Creek which flows into a sanctuary. So this is a
18 hazard not just to drinking water and not just to
19 people but to wildlife.
20 These are not the only cases. These are
21 the ones I happen to know about in my area. Since
22 the publication of EPA's final regulatory

1 determination of waste from the combustion of
2 fossil fuels in 2000, many other cases have come
3 to light, many of these based on EPA's own
4 analysis. You might want to take note of a recent
5 study conducted by the Environmental Integrity
6 Project, Earthjustice, and the Sierra Club which
7 reports a threefold increase in the number of
8 contaminated sites since 2000. Clearly what we
9 have in place is just not working. I think the
10 responsible and the ethical thing to do is
11 regulation under Subtitle C.
12 Finally, I was a little disappointed to
13 see no consideration of what would happen to all
14 the so-called reclaimed underground mines. I
15 believe that these should be subject to the same
16 regulations, that citizens should be protected
17 equally across the U.S.
18 Thank you very much for the opportunity
19 to comment.
20 MR. DELLINGER: 134?
21 MS. DODSON: Good evening. My name is
22 Kara Dodson. I'm a student and campus organizer

1 at Virginia Tech in Blacksburg, Virginia. I fully
2 support the EPA's regulation of coal ash waste
3 under Subtitle C of the RCRA. I speak on behalf
4 of the Virginia Tech Beyond Coal Campaign. The
5 coal ash at the Virginia Tech co-generation plant
6 is causing health problems for students in Thomas
7 Hall and town residents living near the plant. A
8 survey conducted by a student Chrissy Barton in
9 April 2010 revealed that coal particulates and
10 coal ash had collected on 72 percent of student
11 respondent windowsills, fans and counters. Many
12 students have reported headaches, heavy coughing
13 and sinus issues as a result of the dust settling
14 in the dormitory. Eighty-five percent of students
15 who took the survey believe students living beside
16 the coal plant face greater health risks than
17 students living on other parts of campus.
18 In an extreme case, one female student
19 contacted tonsillitis and had her tonsils removed
20 after a failed regimen of antibiotics. Her campus
21 physician concluded that the cause of her health
22 issues was the coal ash collecting in her room.

1 Persistent headaches forced her to move to another
2 dormitory, and upon moving all of her previous
3 health issues stopped.
4 Virginia Tech has refused to properly
5 control the on-campus coal ash as well as provide
6 air filtration systems for affected students
7 living in Thomas Hall. The current method of
8 controlling air pollution is wetting down the ash.
9 This is ineffective and in no way protecting
10 students from heavy metal and particulate
11 contamination. Subtitle C is the only viable
12 option for properly disposing of coal ash waste.
13 These stringent regulations under federal
14 enforcement are needed to protect Virginia Tech
15 students' health.
16 To quote a student adversely affected by
17 the coal ash pollution, If the technicians and
18 workers at the coal plant have to wear respiratory
19 masks, then shouldn't the students also be wearing
20 protection if they're breathing in the same dust?
21 Concerning water contamination, my
22 research with Appalachian Voices for the In Harm's

1 Way Coal Ash Report released on August 26 has
2 proven that dangerous levels of heavy metals and
3 coal combustion wastes are entering groundwater
4 systems and nearby public waterways. Frankly, our
5 drinking water is at stake, and if our public
6 waterways are compromised under Subtitle D then
7 the EPA has failed citizens and communities that
8 it has been charged to protect. Only the special
9 waste designation under Subtitle C can resolve
10 these human health and environmental issues on a
11 national scale. If we begin disposing of coal ash
12 as truly hazardous substance, we will ensure
13 cleaner water, air, and land for future
14 generations.
15 Thank you.
16 MR. DELLINGER: Number 130?
17 MR. WILLCOX: Good evening. My name is
18 Nathan Willcox and I am the Federal Global Warming
19 Program Director for Environment America.
20 Environment America is a federation of state-based
21 citizen-funded environmental advocacy
22 organizations working to protect our air, water,

1 and open spaces. I would also mention that prior
2 to assuming my current position in Environment
3 America's Washington, D.C., office, I worked for
4 eight years for our Pennsylvania affiliate, Penn
5 Environment. And Pennsylvania is certainly a
6 state that has had to deal with the dangers posed
7 by coal ash for decades. I would also mention
8 that I will be dropping off testimony from our
9 Maryland affiliate, Environment Maryland. They
10 have done extensive work on the issue of coal ash
11 over the years and I'll be leaving that testimony
12 as well.
13 Coal combustion waste or coal ash is a
14 dangerous toxic material and I'm here today on
15 behalf of Environment America and our state
16 affiliates around the country to urge the
17 Environmental Protection Agency to draft
18 regulations for coal ash that are federally
19 enforceable, that identify coal ash as a special
20 waste under Subtitle C of the Resource
21 Conservation and Recovery Act, that strictly
22 regulates and monitors coal ash reuse and that

1 phases out the most dangerous methods of coal ash
2 storage while requiring dry disposal and monitored
3 and lined ponds.
4 We base this request on a long track
5 record of scientific studies linking health
6 problems such as cancer and birth defects with the
7 toxic substances that can leach from coal ash as
8 well as a history of coal ash disasters that prove
9 the inadequacy of the status quo. For example, in
10 2000, the town of Pines, Indiana, was declared a
11 Superfund site as a result of contamination coming
12 from a northern Indiana public service company,
13 Coal Ash Landfill. The company and the landfill
14 operator were required to provide alternative
15 drinking water sources and will likely be required
16 to pay for more cleanup in the future.
17 In 2006, studies found that coal ash
18 stored in sand and gravel mines in Anne Arundel
19 County, Maryland, had contaminated nearby
20 groundwater with sulfate, manganese, nickel,
21 cadmium, and other metals. To date, the company
22 responsible, Constellation Energy, has paid $45

1 million in legal settlements and will likely pay
2 millions more to clean up drinking water and in
3 compensation to property owners.
4 And probably most infamously, in 2008, a
5 dam broke at a coal ash pond at the Tennessee
6 Valley Authority in Kingston, Tennessee, and
7 covered more than 300 acres in eastern Tennessee
8 with toxic coal ash sludge. The total cleanup
9 from that disaster will likely cost over $1.2
10 billion.
11 Despite what we know about coal ash, its
12 storage, and the contamination that has occurred,
13 there is still much that we don't know. Some
14 states provide no oversight of coal ash storage
15 and don't require regular monitoring. Around the
16 country there are more than 1,300 coal ash dumps
17 full of highly toxic materials that are
18 essentially ticking time bombs. That the EPA
19 would not provide baseline regulations for
20 permitting, storing, and monitoring these dumps is
21 unconscionable. On behalf of Environment America,
22 our state affiliates across the country, and our

1 citizen members, I urge you to draft enforceable
2 regulations under Subtitle C today.
3 Thank you.
4 MR. DELLINGER: Number 227?
5 MS. HOFFMAN: Good afternoon. I'm Cindy
6 Hoffman. I am a health care executive and have
7 been in health care for 30 years. I am a Fellow
8 of the American College of Medical Practice
9 Executives and a former research writer for the
10 University of Texas Health Science Center at San
11 Antonio.
12 I recently moved here from south Texas
13 and when I was in south Texas I became very, very
14 interested in the efforts to prevent another coal
15 fired plant from being built, and as I was
16 involved in this I visited with some of the local
17 people who live around the coal fired plant, and
18 if you want to see a group of walking wounded, go
19 look at those people. I have never in my life
20 seen anything so bizarre. There are families with
21 two instances of very rare cancer, a 40-year-old
22 man with his jawbone removed because of bone

1 cancer and he walked in dragging his leg because
2 he had had a stroke. It is unbelievable what
3 those people go through. So I just want everyone
4 to really know and I want to call on our
5 government to really put out what the real facts
6 are. Without the facts we can't have a true
7 democratic process. Without the facts people
8 can't speak intelligently. So we have to know
9 what the true facts are about all of this.
10 I heard some addressing some of the
11 economic issues of coal jobs. We also, in a
12 cost-benefit analysis of how valuable coal may be,
13 I think we have to balance that against the
14 cost of all the health care issues that it may
15 cause. To get a true economic analysis, a true
16 understanding of what really we're looking at, I
17 think those two things have to happen.
18 Thank you very much.
19 MR. DELLINGER: Does anybody have number
20 228, 229, or 230? Mine jumps from 227 to 231.
21 231, 232, and 233? You all can move up
22 to the front now and then step up to the

1 microphone.

2 MR. BROWN: Good evening. My name is

3 Bob Brown. I'm representing myself, my family and

4 my friends.

5 I support the Subtitle C proposal for a

6 tougher standard such as posting the content of

7 coal ash. I also support the prevention of new

8 coal plants being built, therefore reducing future

9 coal ash issues. Thank you.

10 MS. SORFF: My name is Jennifer Sorff.

11 I'm a private citizen but I'm also here for

12 someone named Richard H. from Locus Grove,

13 Virginia, and I have a quote from him. He says, I

14 can't go into details because of confidentiality,

15 but as a retired EPA senior scientist, I've

16 written opinions in legal cases demonstrating the

17 hazards of coal ash. Metals included arsenic,

18 lead, and aluminum. These opinions factored into

19 the out-of-court settlements in favor of the

20 plaintiff.

21 Now I'd like to speak for myself. I

22 know these are hard economic times which cause

1 government agencies to hesitate to regulate
2 industry for fear of hurting our recovery and as a
3 private business owner we all want to see a
4 recovery sooner than later. However, lack of
5 regulation can be much more harmful given the
6 potential for disasters that can affect our
7 country's health and prosperity.
8 The most recent example, of course, is
9 the BP oil spill in the Gulf where the government
10 has been found somewhat responsible due to
11 under-regulation. I urge the EPA to take the long
12 view, the responsible act, and enact the Subtitle
13 C option. Let's make sure the next big crisis
14 doesn't involve large areas of groundwater found
15 contaminated with arsenic and lead and with the
16 public blaming EPA for lack of supervision.
17 MR. DELLINGER: Let's do 234. Is 232
18 here?
19 MR. MCDONALD: My name is Norris
20 McDonald and I represent the Center for
21 Environment Commerce and Energy, and I just gave
22 you a chart of our recommendation.

1 The Center recommends a hybrid of the
2 two proposed rules as the final rule. Coal
3 combustion residuals should be ruled as hazardous
4 if it is not directed to beneficial reuse. The
5 Center is taking the best from both proposals and
6 combining them into a rule that will both
7 stimulate beneficial reuse while policing
8 indiscriminate warehousing of such waste that can
9 then pose a risk to surrounding communities. The
10 Center recommends that beneficial reuse should
11 include utilizing coal ash as a substitute for
12 Portland Cement in the production of concrete.
13 Beneficial reuse should exclude the use of CCR in
14 residences. Our proposal should also eliminate
15 the shipment of residuals to landfills in
16 vulnerable communities. I'll go through the
17 comparison now, the fusion of the two other
18 proposals.
19 The Center combines the two proposals by
20 making the effective date one year after the final
21 rule is promulgated for most provisions requiring
22 state and local enforcement; the corrective action

being self-implementation combined with monitoring by states and the EPA; no requirement for financial assurance or permit issuance; requirements for storage including containers, tanks and containment buildings pending reuse; reinforced impoundments receiving CCRs for surface impoundments built before the rule is finalized; phase out new surface impoundments and install composite liners for newly hazardous CCR for surface impoundments built after the rule is finalized; no liner requirements but require groundwater monitoring for landfills built before the rule is finalized; liner requirements and groundwater monitoring for landfills built after the rule is finalized; and requirements for closure and post-closure care monitored by states and EPA.

Thank you for listening to our comments today.

MR. DELLINGER: Thank you. Is there anyone else here who has not spoken who wants to speak?

1 MS. HOERATH: My name is Margaret
2 Hoerath. I'm with the Sierra Student Coalition
3 which is part of the Sierra Club, and I'd like to
4 read my statement. The status of coal ash
5 regulation is a patchwork and unreliable system
6 which varies from state to state. This system does not
7 adequately handle coal ash waste and often results
8 in coal ash ponds that leak toxins. Subtitle C
9 will change this, protecting public health from
10 these dangerous toxins such as mercury, lead, and
11 arsenic.
12 Federally enforceable standards upheld
13 by the EPA are what we need. Citizen lawsuits
14 which are long, drawn out and hard for affected
15 communities to afford is the only mode of
16 enforcement under the weaker Subtitle D.
17 Please support Subtitle C which will
18 phase out coal ash ponds and will effectively
19 protect individuals' and communities' health and
20 well-being.
21 MR. DELLINGER: Thank you. Is there
22 anyone else who wants to speak at this time?

1 We'll take a 10-minute break and then
2 see what happens with new people coming in.
3 (Recess)
4 MR. DELLINGER: I hope I got this right.
5 Is number 154 here? Thanks. Next would be 236,
6 so you can go to the microphone right now.
7 MR. STEVENS: Good evening. My name is
8 Tim Stevens and I'm here to express my views
9 regarding EPA's proposed regulation regarding
10 disposal of coal ash.
11 I am a member of the City Council
12 appointed Environmental Services Council of the
13 City of Falls Church where I live, and I'm also
14 Assistant Treasurer of the Virginia State Chapter
15 of the Sierra Club, although I speak here as an
16 interested citizen.
17 I'm concerned about how the 2-1/2
18 million tons of coal ash in Virginia is treated
19 today, namely, similar to municipal solid waste,
20 and would like to see the EPA become more
21 proactive in its oversight role with respect to
22 all phases of coal ash including its generation,

1 disposal including storage, and transport.
2 Requiring producers of coal ash to obtain permits
3 according to federally mandated and enforceable
4 procedures is necessary to minimize the risk to
5 the public that coal ash will harm our drinking
6 water, our rivers, our wildlife and our
7 communities. This risk arises from the fact that
8 coal ash contains numerous toxic substances such
9 as arsenic, lead, selenium, mercury, and a number
10 of others.
11 Of the two options proposed by the EPA,
12 I prefer Subtitle C of the Resource and
13 Conservation Recovery Act. This option gives the
14 EPA enforcement and oversight capabilities over
15 utilities commensurate with the risk that coal ash
16 represents while not preventing continued
17 exploration of ways for the industry to examine
18 beneficial uses of coal ash. I concur with the
19 proposal to phase out waste ponds and the
20 requirement of operators to demonstrate financial
21 assurances to ensure effective cleanup in the case
22 of contamination.

To those who would say that adoption of Subtitle C will drive up the cost of electricity produced from coal, I would observe that the costs of safely handling coal ash should be included in the price of production. Otherwise, the health risks of improperly handled coal ash will continue to be an externality paid for by all the rest of us.

I thank the panel for the opportunity to present my views.

MR. DELLINGER: Thank you. 236?

MR. BUCHANAN: Good evening. My name is John Buchanan. I am here representing myself and my family. My wife and I are pretty average folks here in Arlington. We had a life-changing event about two years ago with the birth of our child and people said that would really change your life, your views, your outlook on things. My being here is evidence of that because I never in a million years imagined me talking here about coal ash. But I must say that when learning more about and understanding more about this event, I find it

1 totally unfathomable that we would not pursue the
2 strictest regulations possible against a known
3 environmental hazard and toxin. Any arguments
4 against tougher regulation on behalf of costs, I
5 think, are crazy because common sense tells us if
6 we don't deal with this issue now, we're just
7 kicking the can down the generations to our
8 children who will pay for this in increased public
9 health costs and increasing environmental
10 remediation and cleanup, and more devastatingly in
11 terms of increased diseases and cancer.
12 So I would want to applaud the EPA for
13 having this process, but to urge you to take
14 the strongest possible stance, pursue Subtitle C
15 and go beyond that if necessary. I think in a
16 country like the U.S., where we have enormous
17 opportunities in front of us to pursue the highest
18 quality of life for our current and future
19 generations, I think that's common sense that we
20 should all pursue.
21 Thank you.
22 MR. DELLINGER: Number 127?

1 MR. LEVY: Good evening. I'm Dave Levy
2 and I live in Alexandria, Virginia. Several of
3 you know I used to work with you guys over at EPA.
4 I'm here tonight not to give some
5 technical comments on the rule but to point out
6 that we're back here again, and by again I mean
7 the agency proposed in the year 2000 in January to
8 declare that coal ash was recognized as hazardous
9 waste and should be managed that way. It went to
10 OMB. The coal and electric industries went and
11 talked to OMB. In March 2000 EPA came back and
12 proposed that it be called nonhazardous waste and
13 managed under a less stringent program.
14 So we're back here again today. I'd
15 encourage Administrator Jackson and Carol Browner
16 who is now in the White House working on climate
17 change and other issues to go with the Subtitle C
18 determination again. Ms. Browner had the
19 opportunity before but I suspect the White House
20 wasn't too happy with the industry's comments so
21 they proposed something else to the EPA.
22 The difference is not between the C

1 program, and sometimes we call it the C minus
2 program when it's a little bit less stringent in
3 total hazardous waste management such as
4 beneficial uses, and it's not the difference
5 between a D plus program which is the municipal
6 management program with a little bit more
7 stringent requirements. It's the difference
8 between the Grade A program and the Grade F
9 program, and I think we're destined for failure
10 again, maybe not quite as often, but we're destined
11 for failure again if we adopt the D program. It
12 has to be the C program so that it's incorporated
13 as pointed out before. It's not an external cost
14 to electric production and electricity production,
15 but that's what economists like to call it. I
16 call it an indirect cost, but really it's a very
17 direct cost.
18 Talk to the people in Tennessee. Talk
19 to the people who had to pay the rates for the
20 cleanup of what happened in Tennessee. So I think
21 it needs to be incorporated into the cost of
22 electrical production because it needs to be a

1 direct cost to the consumer meaning me and you and
2 everybody else who uses electricity that comes
3 from coal-fired generation. We need to be
4 responsible for that and it also puts it on an
5 economic footing where other competing electrical
6 generation technologies, especially newer ones that
7 are more green can complete.
8 Thank you.
9 MR. DELLINGER: Is there anyone else who
10 has not spoken who wants to speak?
11 You start because yours is 160, and
12 yours is 152. You can go first.
13 MR. WHITLEY: Thank you for the
14 opportunity to speak. My title is "The Great Harm
15 of Coal Ash" and my testimony is on behalf of the
16 National Capital Presbytery, and I'm delighted to
17 have this opportunity.
18 The most important and unique expression
19 which the faith community can present to you is
20 that this Earth is home to all humans and all of
21 God's other creatures and they all deserve to have
22 places to live and thrive that will not do them

1 harm but, rather, nourish and advance their lives
2 and health. We believe that God gave this Earth
3 as the only one for living creatures as a gift of
4 our salvation and that all humans have a godly
5 obligation to protect and preserve all our places
6 of life.
7 That coal ash is being created as waste
8 from burning coal as a process to produce
9 electricity, we must reduce our energy use, but we
10 must also stop carelessly accumulating the ash
11 which thereby pollutes that land and all the
12 bodies of water affected. That surely means our
13 ocean which we are rapidly acidifying and
14 destroying the food chain of fish and threatening
15 the lives of fish-dependent millions of people.
16 Thus, the local humans are severely threatened by
17 pollutants near the source, and the rest of us
18 downstream, whether an intended consequence or not.
19 The recent report of the Ohio River
20 pollution should be enough to require all ash
21 runoff to be restricted by Subtitle C of the
22 Resource Conservation and Recovery Act. Only that

1 section can give the protection living species
2 deserve. We must not forget the disaster in
3 Tennessee of December 2008.
4 Humans who ingest toxins such as arsenic
5 in the ash are subject to much greater risks of
6 short-term and long-term illnesses and chronic
7 diseases placing very high care costs on our
8 society while the coal crowd saves money and makes
9 bigger profits. We are going to be confronted
10 with more harmful waste mismanagement. Let us not
11 let the ash-making crowd off the hook as a
12 precedent or barometer for future abuse. Think
13 nuclear waste.
14 All humans have a godly obligation to
15 protect and preserve all our places of life. All
16 of us in the United States have big problems of
17 using many more resources than we need for a
18 decent life and wasting much more than we have any
19 right to waste. We must focus on the imposition
20 of unanticipated risks on persons who had no idea
21 or expectation that such harms would be or could
22 be forthcoming. The corporation creating the risk

1 knows to insure its risks and does so. We are
2 fast creating a world of unreasonable risks which
3 were not known or anticipated and for which there
4 is no protection for the bystander.
5 Our stewardship of the Earth and all
6 that live there must be accomplished as we think
7 God intends.
8 Thank you.
9 MR. DELLINGER: Could you state your
10 name?
11 MR. WHITLEY: W-H-I-T-L-E-Y, Thomas.
12 Whitley, that's my last name. All right?
13 MR. DELLINGER: Thank you. Number 152?
14 Would you please state your name?
15 MR. ABLARD: My name is Ed Ablard,
16 A-B-L-A-R-D. I want to thank you for holding this
17 educational event today. I live in Alexandria
18 within sight and sound of the Mirant plant which
19 is to my immediate right rear within a mile. My
20 city made a deal to extend the life of the plant
21 and approved a scheme to blow the pollution out of
22 town and onto our neighbors across the river and

1 into P.G. County. I think that deal was flawed.
2 The science is in as of this month. It comes to
3 us from ATSDR which is part of the Centers of
4 Disease Control. If you haven't seen the report,
5 I've got a copy of some of the notes from it and
6 I'd be happy to submit that with my comments for
7 the record.
8 The plant creates health problems of
9 fine particulate matter, SO2 and I come to find in
10 conversation with the plant owner, Mirant, that it
11 produces coal ash and that the operating
12 regulations for the plant have not been reviewed
13 in some years.
14 I'm a member of the Episcopal Church in
15 Alexandria, St. Paul's Episcopal, on Pitt Street.
16 I'm also an active member with the Virginia
17 Interfaith Center for Public Policy where I come
18 by the moniker of Interfaith Power and Light, and
19 I'm also a Sierra Club member. I can tell you
20 that God is not going to fix this, that we've got
21 to do it and my thought is that it can't be done
22 by individuals. Government is going to have to do

1 this. Government is the only effective and
2 standing organization that can possibly fix this
3 problem.
4 I've studied this problem from a
5 religious point of view for about 20 years and I
6 can tell you that all the religious themes
7 absolutely support protection of the health of the
8 people, the wildlife and the plant life over
9 protection of pocketbooks of the owners of the
10 coal. I favor Subchapter C regulation and I'm
11 submitting my comments.
12 Thank you.
13 MR. DELLINGER: Thank you. Number 112?
14 MS. FIELDS: Good evening. My name is
15 Leslie Fields and I'm the Environmental Justice
16 and Community Partnerships Director for the Sierra
17 Club here in Washington, D.C. I want to thank you
18 for this opportunity to testify for the need that
19 coal ash be regulated, we prefer, under Subtitle C
20 of RCRA.
21 The Subtitle C option would effectively
22 regulate coal ash as a hazardous waste with the

1 associated safeguards for storage, handling,
2 transport and disposal. The Sierra Policy has had
3 a board-approved policy on hazardous management
4 since 1984 and it was revived in 1987 and 1989
5 that states in part that regulatory programs
6 should be specific and enforceable when possible,
7 and incentives should be encouraged to the best
8 management practices. Government responsibilities
9 include oversight of hazardous waste management
10 systems. Agencies involved must be well managed
11 and capable of coordinating the highly complex
12 system involving different levels of government,
13 the private sector, and the public.
14 I will also submit my comments in the
15 record and go on to say that these procedures for
16 handling such wastes by generators, recyclers,
17 transporters, treaters, and disposal should
18 include also protection of workers, should include
19 rules governing facility siting, operation, and
20 closure, effective enforcement of the laws and
21 permit conditions and conscientious inspections in
22 order to ensure proper operation and accurate

1 reporting.

2 The Sierra Club's Environmental Justice

3 and Community Partnerships program has provided

4 support to dozens of low-income and communities of

5 color in their environmental justice struggles.

6 Our goal is to work with low-income and

7 communities of color to overcome these

8 environmental assaults in their lives and

9 communities. Since Administrator Jackson has

10 designated environmental justice as one of the

11 seven EPA priorities, the EPA must keep this

12 priority as a central part of this rule making,

13 not as an after thought, not as something to do at

14 the end, not as something that we have to go back

15 and redo again.

16 In addition to regulating coal ash under

17 Subtitle C of RCRA, EPA must also evaluate how

18 this rule will impact low-income communities of

19 color who already have disproportionate exposure to

20 industrial toxins. In addition, due to its vital

21 charge under Executive Order 12898, federal

22 actions to address environmental justice in

1 minority populations and low-income populations,
2 EPA must take immediate steps to recognize and
3 address environmental justice considerations of coal
4 ash regulation. Thus under Subtitle C, under the
5 reuse loophole there is the potential for coal ash
6 to be used as structural fill for development and
7 should be addressed.
8 An example of this was in Georgia, a
9 reuse technology company, a Georgia-based company
10 which handles coal ash in cooperation with
11 Edgecombe County's County Development began using
12 coal ash as a landfill in the Fountain Industrial
13 Park near the city of Rocky Mount, in Edgecombe
14 County, North Carolina. The ash from these plants
15 as well as coal-fired facility at the University
16 of North Carolina Chapel Hill was included in
17 that. Hurricane Floyd in 1999 -- the industrial
18 park was turned into a trailer park for 370
19 eastern North Carolina families displaced by
20 disaster, many from Princeville, an historical
21 African American community. By the time the soil
22 covering the fill had eroded, the coal ash had

1 been exposed.

2 I see my time is up. Thank you, and

3 I'll submit my remarks into the record.

4 MR. DELLINGER: Thank you. Number 237?

5 MR. GOLDBERG: My name is Victor

6 Goldberg and I represent myself as a citizen.

7 On this talk about the effects of the

8 ash that is so terrible, my thought is that there

9 is also talk about solar energy, wind energy, and

10 according to the current numbers, this is more

11 expensive than coal-based energy. But the truth

12 is that we are not paying the full price for that

13 coal energy. Those companies that use coal, maybe

14 they should pay for the health insurance of all

15 the population that is being affected by their

16 coal burning. Maybe they should pay for the

17 agricultural damage that they produce with acid

18 rain. Then we would be talking about the real

19 price of coal and electricity and then it would be

20 interesting to compare that price with solar

21 energy and wind energy.

22 Thank you.

1 MR. DELLINGER: Is there anyone else who
2 wants to speak now?
3 MR. CURLE: My name is John Curle and
4 I'm a citizen of Fairfax County. This is the
5 first hearing that I've been to and I'm actually
6 quite surprised that there wasn't something done
7 sooner. I regard that every Superfund site is
8 pretty much a failure of the EPA. As I understand
9 it, there have been 1,279 Superfund sites that
10 have been set up. I think 341 of those have been
11 resolved and I think that any additional Superfund
12 sites would be a further failure of the EPA and
13 anything that we can and should do to prevent that
14 should be done. I don't feel that the proposed
15 Subtitle C goes far enough to regulate coal ash.
16 I think that the EPA can do a lot better and I
17 think they have that authority and responsibility
18 to the government and to the people of the
19 government.
20 I can't say enough that there have been
21 plenty of great arguments here, economic arguments
22 as well as very heart-felt arguments, but I think

1 it's unconscionable what we're doing in ignoring
2 these problems.
3 That's all I have to say. Thank you.
4 MR. DELLINGER: Thank you. Is there
5 anyone else? We'll take another 10-minute recess.
6 (Recess)
7 MR. DELLINGER: Number 153.
8 REV. PARKER: My name is Reverend Janet
9 Parker and I'm the pastor for Parish Life at Rock
10 Spring Congregational United Church of Christ
11 right here in Arlington. I want to begin by
12 thanking the EPA for holding this public hearing.
13 I think it is so important for the EPA to be
14 recognizing the need to act on what I believe and
15 many believe is a very serious public health and
16 environmental issue.
17 I know that you're hearing expert
18 testimony on the damaging effects of coal ash on
19 human health and ecosystems. As a minister, I
20 can't claim to have all the scientific knowledge
21 and understanding of the toxic nature of coal ash
22 waste with its poisonous load of mercury, arsenic,

1 lead, and other toxins, but what I can speak to is
2 the moral urgency of the issue facing us.
3 My tradition teaches me that the first
4 human beings were given responsibilities to care
5 for this marvelous creation that God has given us.
6 When Adam was placed in the Garden of Eden, which
7 was perfectly fitted to sustain human and all
8 other forms of live, Adam was charged to tend and
9 keep the garden. Two chapters later in the Book
10 of Genesis we read about Cain and Able and we hear
11 from Cain the anguished question, "Am I my
12 brothers' keeper?" The answer clearly is yes.
13 These two stories teach us that human beings have
14 moral responsibilities to care for our planet and
15 to care for our fellow brothers and sisters for we
16 are both our Earth's keeper and our neighbor's
17 keeper.
18 Sadly, human beings have not lived up to
19 our responsibilities. We have fouled our planet
20 and allowed untamed industry to harm vulnerable
21 human populations, but we can do better. We can
22 be better. There is some excuse for failing to

1 act out of ignorance, but we are no longer
2 ignorant. We know, and I know that the EPA now
3 knows, that coal ash is harmful to human beings
4 causing respiratory problems, organ damage,
5 neurological and reproductive problems, and
6 dramatically increased cancer risks. Now that we
7 know, we cannot fail to act.
8 I have a friend who lives in Wise
9 County, Virginia. Her drinking water comes from
10 the Glen River and Clinch River watershed. These
11 are the two Virginia rivers that were just
12 identified in a report by the Environmental
13 Integrity Project as being poisoned by coal ash.
14 I shuddered at the thought of my friend and her
15 family and neighbors being poisoned by drinking
16 water out of their own tap. This should not
17 happen in America.
18 I urge the EPA to adopt the Subtitle C
19 option of the Coal Combustion Residuals Rule in
20 order to protect my friend and everyone else
21 threatened by unregulated dumping of coal ash.
22 This is the only option that will really work to

1 bring protections for the entire country from the
2 dangers of coal ash.
3 Thank you for your time and attention.
4 MR. DELLINGER: Thank you. Number 238?
5 MR. HAGER: I'm Lawrence Christie Hager
6 and I live in Falls Church. I've been involved in
7 safe energy work since the late 1970s. In 1991,
8 for my college twenty-fifth, I led a class
9 initiative that convinced the university that it
10 should do more in environmental education and
11 ended up having dual majors with the environment
12 on one side and almost anything else a student
13 chose on the other side, so I've given a lot and I
14 hope for a lot and I've seen so little in 35 years
15 since 1976 when I started doing work in this area.
16 I'm concerned about coal ash pollution
17 to be sure. I'm also concerned about the airborne
18 pollution that goes up the stack and settles back
19 into our water and onto our land including our
20 crop lands. And I'm also concerned about what
21 happens when we take coal from the ground by
22 mountaintop removal. I think we've done much too

1 much.

2 I recall in the 1970s someone at Harvard

3 Business School wrote a book called Bridge to the

4 Future: Coal, and he envisioned a move rapidly

5 toward more safe energy but coal would fill the

6 gap until around this time. Something has been

7 missing. We have not done the renewable work

8 where the government could have made major

9 support. We have not even done the basic

10 upgrading of the insulation in our homes by and

11 large. We're stuck back where we were in about

12 1978 or 1979 and I'm appalled. I have a couple of

13 kids who are going to soon be having kids of their

14 own and I'm distressed at what we're leaving.

15 I've got to say although I'm concerned

16 about coal, when I hear them talking about

17 injecting steam into the ground to get out either

18 sand tar or shale oil deposits, I'm equally

19 appalled at the gross high technology where what

20 we need is to insulate our homes and to drive

21 smaller cars. I think coal is one of the places

22 that we've made the biggest mistake and we need to

1 move very rapidly to quit depending on coal.
2 Thank you.
3 MR. DELLINGER: Is there anyone else who
4 wants to speak now? We'll take another 10-minute
5 break and see if anyone else shows up.
6 (Recess)
7 MR. DELLINGER: You have to state your
8 name into the microphone even though we have it
9 here on the sheet.
10 MS. CHIEFFO: Should I give my
11 hardcopies over there now or after?
12 MR. DELLINGER: After is fine.
13 MS. CHIEFFO: Good evening. My name is
14 Sara Chieffo and I'm Deputy Legislative Director
15 of the League of Conservation Voters. We were
16 founded over 40 years ago and LCV works to turn
17 environmental values into national priorities. We
18 produce the Annual National Environmental
19 Scorecard, an important public education tool that
20 provides factual information about the most
21 important environmental legislation that's
22 considered each year, and it shows the

1 corresponding voting records of all members of
2 Congress. LCV also works in close partnership
3 with state-based leagues in over 30 states.
4 I'm here to encourage the EPA to adopt
5 strong federally enforceable coal ash regulations.
6 U.S. coal- fired power plants generate more than
7 130 million tons of toxic coal ash annually. Coal
8 ash and other combustion wastes are not currently
9 subject to federal regulation and most state laws
10 are either far too weak or nonexistent. The
11 dangers coal ash poses to public health and the
12 environment have been known for a long time. This
13 coal combustion byproduct is known to contain
14 harmful metals and chemicals like arsenic, lead,
15 and mercury that lead to increased rates of
16 cancer, birth defects, learning disabilities, and
17 other illnesses.
18 Currently much of the coal ash waste is
19 stored in ponds, landfills, and abandoned mines
20 that do not have adequate safeguards. Whether
21 through large-scale and highly visible disasters
22 like the massive coal ash spill in Tennessee in

1 2008, or the less-visible contamination of
2 groundwater, communities, public health, and the
3 environment are unnecessarily being threatened.
4 In fact, a report released just last week by the
5 Environmental Integrity Project, Earthjustice, and
6 the Sierra Club, brings the total number of known
7 contamination sites from toxic coal ash pollution
8 to 137 sites spread across 34 states.
9 LCV strongly encourages the
10 administration to adopt the Subtitle C option that
11 has been proposed. Families across the country
12 and drinking water sources will only be protected
13 by federally enforceable standards and not by
14 guidance to states which will only perpetuate the
15 patchwork of inadequate state regulations that we
16 currently have. No community should be exposed to
17 these health risks especially when safer disposal
18 methods exist and could be readily implemented.
19 Thank you.
20 MR. DELLINGER: Thank you.
21 (Recess)
22 MR. DELLINGER: Do we have two or three

speakers? Do you want to go in any particular order? 157 and 239 are the numbers. We usually start with the lowest number.

MS. ANDELA: My name is Cynthia Andela. I'm the President of Andela Products. It's a woman-owned business that manufactures recycling equipment and clean glass plants. We also own and operate a recycling facility that recycles glass, waste glass, into sand-blasting abrasives. I'm here today to speak about the beneficial use of coal slag as a blasting abrasive and what we should consider.

I'd like to thank everyone for this opportunity to voice my opinion with regard to the long-term beneficial use of boiler slag. I have some major concerns regarding boiler slag or coal slag currently being approved by the Environmental Protection Agency as a blasting abrasive. There are two fundamental issues that contradict the EPA's determination regarding coal slag abrasives, the greatly reduced particle size compared to other beneficial uses and those particles' close

1 proximity to human tissue and the environment.
2 I really do understand and support EPA's
3 decision to allow some of the beneficial uses for
4 boiler slag when, and only when the encapsulated
5 grains are kept whole throughout their useful life
6 cycle. Using boiler slag as a roofing granule, for
7 example, provides a long-term useful and safe
8 alternative to land filling. In this case, all
9 the hazardous material that's encapsulated in the
10 boiler slag is contained in the original
11 sand-sized particle and they cannot harm the
12 surrounding people or the environment.
13 In contrast, let's examine the life
14 cycle of a single granular piece of boiler slag
15 that's used as a blasting abrasive. The molten
16 granule containing the heavy metals, the carbon,
17 and other contaminates falls from the bottom of a
18 coal-burning power plant into a pool of water. It
19 is collected, processed and size sorted. The
20 granule is shipped to an industrial blasting
21 location, perhaps a shipyard or bridge that needs
22 refurbishment. The granule is loaded into a

1 blasting pot and forced through a hose at 100-plus
2 pounds per square inch until it smashes into the
3 ship or bridge and shatters into hundreds of
4 pieces, some as small as one-thousandth of a
5 millimeter. The formerly singular granular now
6 exists as hundreds of miniscule granules that are
7 now light enough to float free in the air. The
8 total exposed surface area of a single granule
9 has now increased exponentially. The granules
10 and their newly exposed surfaces are now free and
11 willing to contaminate the ocean near the
12 shipyard, the river under the bridge, or the lung
13 of the sand blaster.
14 The EPA's decision to allow boiler slag
15 to be used as a blasting abrasive may be revised
16 for the health and safety of all citizens. I
17 would advocate that in closing I'm asking that you
18 remove boiler slag as an approved blasting agent
19 as many safer alternatives are available. I
20 recommend that you limit the beneficial use of
21 boiler slag to other non-blasting uses.
22 Thank you.

1 MR. DELLINGER: Thank you.
2 MS. JACKSON: My name is Lisa M.
3 Jackson, not Lisa P. Jackson from EPA. I came
4 this morning to listen to the debate and felt
5 compelled to come back to speak. I'm the owner of
6 a woman-owned small business bringing innovative
7 green solutions to the marketplace. We market
8 infrastructure out of recycled materials and can
9 take coal ash and encapsulate it with composites
10 and build extremely strong, lightweight
11 infrastructure products that are virtually
12 indestructible, making a product that is inert and
13 will not leach toxins into the environment.
14 We also take recycled glass and create
15 clean nontoxic abrasives that are truly safe for
16 the environment, unlike coal slag which also will
17 not cause silicosis, but is still blasting toxic
18 byproducts into the air and water. I am told, for
19 example, that the Port of Los Angeles is
20 struggling with how to deal with the sludge they
21 will be dredging partly due to the toxins that
22 sand blasting with coal slag has contributed to

1 over the years. As a business owner creating
2 green jobs, I want to see responsible recycling
3 and encourage true green business growth. If we
4 can take coal boiler slag and create unique inert
5 byproducts for roofing shingles, terrific, but
6 using coal boiler slag to blast into the air for
7 sand blasting and calling it the safe alternative
8 is at best misleading, and after listening to the
9 testimony today, is down right criminal.
10 We have the ability to take dirty glass
11 and recycle it into clean glass that is not only
12 truly safe as it is amorphous silica like coal
13 slag, but it is free of arsenic, lead, selenium
14 and the other carcinogenic toxins discussed today.
15 The use of clean recycled glass is also more
16 effective than coal slag as it does not leave a
17 black oily residue that needs to be cleaned with
18 additional surfactants. Making the right choice
19 does not mean loss of jobs. We can create green
20 jobs by choosing to use the right alternative
21 choice. Coal boiler slag is not that choice.
22 Today roughly 67 percent of the glass we

1 recycle still ends up in a landfill. We now have
2 technology to take this dirty glass and provide a
3 clean glass facility to produce clean glass for
4 abrasive sand blasting. Coal slag is glass with
5 toxins. Our market research shows that coal slag
6 has been and still is the medium of choice because
7 it is the cheapest. I ascertain that going with
8 the cheap alternative is costing us dearly in
9 damage to our health and our environment.
10 Some from CHAR this morning spoke about
11 their successful recycling program and that if EPA
12 supports Subtitle C it would damage the recycling
13 industry. I am here to tell you if we support
14 appropriate use of the appropriate materials for
15 sand blasting we can actually strengthen the use
16 of the recycling program as well as create green
17 jobs. Coal slag is appropriate for tile and
18 concrete and not for sand blasting. I'm going to
19 skip it because I'm almost done.
20 In short, there are appropriate uses of
21 coal byproducts, and coal slag for sand blasting is
22 not one that should be considered safe, and my

1 hope is that EPA can and will truly differentiate
2 this.
3 Thank you, Lisa P. Jackson, for the
4 opportunity to speak today.
5 MR. DELLINGER: Thank you. We'll take
6 another 10-minute break.
7 (Recess)
8 MR. HOFFMAN: This is Steven Hoffman,
9 U.S. Environmental Protection Agency, officially
10 closing the hearing August 30 at 9:35 p.m.
11 (Whereupon, at 9:35 p.m., the
12 PROCEEDINGS were adjourned.)
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1 CERTIFICATE OF NOTARY PUBLIC

2 I, Carleton J. Anderson, III do hereby
3 certify that the witness whose testimony appears
4 in the foregoing hearing was duly sworn by me;
5 that the testimony of said witness was taken by me
6 and thereafter reduced to print under my
7 direction; that said deposition is a true record
8 of the testimony given by said witness; that I am
9 neither counsel for, related to, nor employed by
10 any of the parties to the action in which these
11 proceedings were taken; and, furthermore, that I
12 am neither a relative or employee of any attorney
13 or counsel employed by the parties hereto, nor
14 financially or otherwise interested in the outcome
15 of this action.

16 /s/Carleton J. Anderson, III

17

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19 Notary Public in and for the
20 Commonwealth of Virginia
21 Commission No. 351998
22 Expires: November 30, 2012