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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Afternoon Session:

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Evening Session:

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Night Session:

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P R O C E E D I N G S

(10:00 a.m.)

MR. DELLINGER: Good morning, and thank you for attending today's public hearing on the Environmental Protection Agency's proposed rule regarding the regulation of coal combustion residuals that are disposed of in landfills and surface impoundments.

Before we began I'd like to thank you for taking your time out of your busy schedules to address our proposed rule, and we look forward to receiving your comments. This is the fourth of eight public hearings that we'll be conducting. We have had three very successful hearings in Washington DC, Denver, and Dallas. Remaining hearings are scheduled for Chicago later this week, Pittsburgh next week, Louisville the week after and then a final hearing in Tennessee.

My name is Bob Dellinger. I'm the director of the Materials Recovery and Waste Management Division in EPA's Office Of Resource Conservation and Recovery. I'll be chairing this

session of today's public hearing. With me on the panel are Rob Stachowiak of EPA's Office of General Counsel, Frank Ney of EPA's Region Four office, and Alexander Livnat, who works with me.

Before we begin the public hearing I would like to provide you a brief description of the proposed rule as well as the logistics on how we plan to run today's hearing. Coal combustion residuals, or CCRs, are residues from combustion of coal and electric utilities and include fly ash, bottom ash, boiler slag and flue gas desulfurization materials. Coal combustion residuals contain problematic contaminants such as mercury, cadmium, selenium and arsenic.

In 2008, 136 million tons of coal combustion residuals were generated by electric utilities and independent power producers. Of that total, approximately 46 million tons were landfilled, 30 million tons were disposed in surface impoundments, 50 million tons were beneficially used, and 11 million tons were used in mine fill operations.

EPA estimates that there are approximately 300 landfills and more than 600 surface impoundments where coal combustion residuals are disposed. We propose to regulate the coal combustion residuals to ensure their safe management when they are disposed in landfills and service impoundments. Without proper protections the contaminants in these residuals can leach into groundwater and migrate into drinking water sources, posing public health concerns.

In addition, the structural failure of surface impoundment in the Tennessee Valley Authority's plant in Kingston, Tennessee in December of 2008 released more than 5 million cubic yards of coal ash into approximately 300 acres of land and contaminated portions of the Emory and Clinch rivers.

With this proposal the EPA has opened a national dialogue by calling for public comment on two different regulatory approaches that are available under the Resource Conservation and Recovery Act for addressing the risks from

disposal of coal combustion residuals. One option presented in the proposed rule draws from the authorities available under Subtitle C Of RCRA. This would create a comprehensive program of federally enforceable requirements for waste management and disposal.

The other option is based on the authorities of Subtitle D of RCRA, which gives EPA the authority to set national minimum federal criteria for waste management facilities that must be met under a schedule established in the regulation when it's finalized. The regulation would be enforced for citizen suits. Under this scenario, states qualify as citizens. EPA decided to co-propose these two rule options to encourage a robust dialogue on how to address the human health concerns and structural integrity issues associated with the disposal of coal combustion residuals in landfills and surface impoundments.

EPA wants to ensure that our ultimate decision is based on the best available data and is made with a substantial input of all

stakeholders. Therefore we ask that you provide us your comments not only in today's hearing but any other comments and supporting information that you want to provide in writing.

I'd also like to say a few words about the beneficial use of coal combustion residuals. The proposed rule maintains the Bevill exemption for coal combustion residuals that are beneficially used and therefore, would not alter the regulatory status of these residuals when used in this manner. EPA continues to strongly support the safe and protected beneficial use of CCRs. However, the proposal also indicates that concerns have been raised with some uses of coal combustion residuals, particularly when used in an encapsulated form. Therefore, we request comments, information and data on specific aspects of beneficial use, particularly those activities that deal with unencapsulated applications.

We also make it clear in the proposal that coal combustion residuals that are placed in sand or gravel pits, quarries and other

large-scale fill operations are not examples of beneficial use. EPA views this placement as akin to disposal and would regulate these sites as disposal sites under either of these regulatory options.

Now, I'm going to cover the logistics for the comment portion of today's public hearing. The way that this will work is speakers, if you preregistered you've been given a 15 minute time slot when you're scheduled to give you three minutes of testimony. To guarantee that slot we'd ask that you sign in 10 minutes before your 15-minute slot at the registration desk. All speakers, those who have preregistered and walk-ins, were given a number when you signed in today and this is the order in which you will speak, with some slight modifications to accommodate some people's needs.

I will call speakers to the front of the room by number four or five at a time. When your number is called, please move to the microphone and state your name and your affiliation. We may

ask you to spell your name for the court reporter, who is transcribing your comments for the official record.

Because there are many people signed up to provide testimony today and to be fair to everyone, testimony is limited to three minutes.

We will be using an electric timekeeping system and will also hold up cards to let you know when the time is getting low. When we hold up the first card this means that you have two minutes left. When we hold up the second card you have one minute left. When the third card is held in up, you have 30 seconds left and when the red card is held up you are out of time and should not continue with your remarks. Remember you can provide written material to our court reporter and the material will be entered into the rulemaking record just as if the testimony was given today.

We will not be answering questions on the proposal. However, from time to time any of us on the panel may ask questions of you to clarify your testimony.

As I just mentioned, if you've brought a written copy of your testimony, please leave the copy in the box by our court reporter. That's on my left, your right. If you are only submitting written comments today, please put those in the box by the registration desk. If you have additional comments after today please follow the instructions in the yellow handout and submit comments by November 19, 2010.

Our goal is to ensure that everyone who has come today to present testimony is given the opportunity to provide comment. To the extent allowable provided by time constraints we will do our best to accommodate speakers who had not preregistered. Today's hearing is scheduled to close at 9:00 p.m, and I think it's highly likely that we're going to be here long after 9:00 o'clock. We've got an overflow crowd that we're expecting to continue long into the evening.

If, however, time does not allow you to present your comments orally, we have prepared a table in the lobby where you can provide a written

statement in lieu of oral testimony. These written statements will be collected and entered into the docket for the proposed rule, and will be considered the same as if you had presented them orally.

If you would like to testify but had not yet registered to do so, please sign up at the registration table. We are likely to take occasional breaks but we are prepared to eliminate or shorten the brakes in order to allow as many people as possible to provide their oral testimony. Finally, if you have a cell phone we would appreciate it if you would turn it off or turn it to vibrate. If you need to use your phone any time during the hearing, please move the lobby.

We ask for your patience as we proceed. We may need to make some minor adjustments as the day progresses. Thanks again for participating today and let's get started.

With that, would speakers number one, two, three, and four move to the front? Number

one?

MR. SCARBOROUGH: I am Steve Scarborough and my home is Roane County, Tennessee.

This committee will hear from an army of hired corporate spokesmen who will all make essentially the same argument. That argument is that doing the right thing and adequately protecting the people from coal ash will cost you extra. They will argue against having Federal oversight, saying that they can be trusted to do the right thing without regulatory oversight, that state agencies will make sure they handle their coal ash just fine, that a system where citizens having to sue them to make sure they handle their coal ash is just fine, and that citizens have to sit through a hodge-podge of state courts is better than comprehensive and consistent federal regulations in which the EPA has the power to inspect and enforce.

And oh yes, doing the right thing will cost too much.

I drove five hours today -- just got out

of the car -- to tell you that not doing the right thing will cost far more. I come here to speak as strongly as I can for Option C. When I read the EPA cost- benefit analysis I thought, "Why is anyone opposed to this?" The reason is that it makes the people who make the money creating coal ash waste pay the cost of adequately handling and storing coal ash. That is also the reason they oppose Option C. They will have to pay more of the true cost of coal power instead of shifting it to the American people.

Roane County, Tennessee is my home. It is a beautiful part of America that I hope you all get to visit. It is also the site of the Kingston TVA coal ash disaster, the largest in American history, where millions of cubic yards of improperly handled and stored coal ash waste destroyed a way of life during the night on December 22, 2008. Had it not happened just after midnight on the longest and coldest night of the year, we would have had a body count to go with this disaster of geological proportions.

I count myself lucky compared to those whose homes were there. I have two lake lots on the Emory River that were on the market then that I now cannot sell except for pennies on the dollar. Having real estate that you cannot sell is far better than having a life that cannot be made whole.

This disaster was caused by incompetency and willful negligence at multiple levels but mainly in the financial decisions of a corporate bureaucracy focusing on shortsighted cost savings and a complicit state agency that allowed it to operate a massive coal storage facility without adequate oversight. For a savings of less than 20 million dollars TVA now faces a billion dollar bill for cleaning it up, and an additional burden that can never be paid for and people who were harmed and cannot be made whole.

There are no cost savings in inadequately protecting innocent people's lives. There is no justice in shifting the cost burdens from businesses which profit from coal power to

innocent members of surrounding communities. Option C is the only moral choice. It is also the only financially sound choice. To do less would simply cost too much.

MR. DELLINGER: Thank you. Number two?

MS. DIGGINS: Thank you. My name is Molly Diggins and I'm the state director of the North Carolina chapter of the Sierra Club, which has about 15,000 members in North Carolina. On behalf of the Sierra Club, I would like to express our appreciation to EPA for holding this hearing today in Charlotte.

Coal ash is of particular importance to North Carolina, for we have the dubious distinction of having been identified by the EPA as having more high-hazard coal ash ponds than any other state in the country. We know that we generated last year nearly 4 million tons of dry ash. We have no idea how much wet ash was generated because it's not required to report that information.

Following the catastrophic spill in

Tennessee, we looked around. We took a close look at what's happening in North Carolina, plus looking at other states to see what we needed to do here. And we're frankly astonished to learn that despite what is known about the health impacts of coal ash and the toxins, that there's no agency, no individual, no institution in North Carolina that can answer the question: how much coal ash are we generating, where is it going, and is it safe?

There is a hodgepodge of programs and regulation but ultimately, North Carolina is awash in coal ash, and there is no cop on the beat. Here is what we do know: investigations, when they have taken place, have shown that we are having problems with groundwater and surface water contamination in North Carolina. And the list of damage reports is continuing to grow here in this state, and nationally.

We believe this is only the tip of the iceberg. The public is just now really becoming engaged in understanding what may be in their

backyard, what may be in the lot next door; in fact, what might be under their own property.

I know that this rule as proposed does not address beneficial fill, but I do want to point out in North Carolina we have a loophole. Maybe they don't in other states, but we have a loophole here that allows largely unregulated dumping of coal ash in unlined landfills. That is a serious problem.

Subtitle D might have been worth a try a decade ago when EPA first started giving serious consideration to addressing the health impacts. That time is long past. The magnitude of the problem is such that Option C is the only viable option. Citizens and states need consistent, federally-enforceable requirements if we are going to succeed in managing this threat to public health.

Finally, let me conclude by saying that this is a moment of leadership. We appreciate that the EPA inherited this problem from a previous administration, but the public is really

looking to you to act. There are many here today who are going to talk to you about beneficial fill. I would just state that a failure to act to protect public health to avoid a hypothetical public relations problem for certain uses of coal not regulated by this rule, would be a complete abdication of the public trust. We urge you to adopt Option C.

Thank you.

MR. DELLINGER: Thank you.

MS. DIGGINS: And we would like to submit for the record this map, which shows the location of sites here in this region. Thank you.

MR. DELLINGER: Thank you. Number three?

MR. LEMLEY: Hello. I'm Dr. Dennis Lemley. I am a research fish biologist and I am attending this public hearing as a private citizen expressing personal views. My comments pertain to the aquatic hazard of selenium, which is a trace element that leaches out from coal combustion residues, or CCR, bioaccumulates in the aquatic

food chains and causes deformed young, reproductive failure, and other toxic effects.

I have studied the environmental toxicology of selenium pollutant from CCR for over 30 years, beginning with Belews Lake, North Carolina and continuing today with the TVA ash spill in Tennessee, which has polluted an entire river ecosystem. Only 159 of the 2000-plus CCR disposal sites across the country have undergone technical evaluation to determine risks and impacts. Yet 137 of these, or 86 percent, are proven or suspected environmental damage cases, as determined by EPA and other investigators. What the damage cases show is that currently-used disposal techniques pose a substantial ecological hazard. From surface wet basins to quote, "dry landfills," unquote, all can produce selenium-laden leachate that can poison fish and wildlife.

Little progress has been made in updating disposal practices to better protect fish and wildlife from toxins in CCR. For example, the

1970's Belews Lake case resulted from open surface disposal of coal ash. So did the TVA catastrophe in 2008, more than 30 years later. Lessons about CCR disposal from Belews lake were not heeded and the issue has expanded from a regional problem into a national one. In addition, we have learned that landfills and other so-called dry disposal methods offer little more protection for aquatic life than open surface storage. Even disposal sites with composite liners produce leachate that must be treated.

There is no disposal method for CCR that is selenium-free. The two regulatory options under consideration by EPA are very different with respect to selenium hazards. Subtitle D would essentially be business as usual since it does not eliminate surface impoundment disposal practices like those which led to the disasters at Belews lake and TVA-Kingston, and the D Prime alternative does not require liners, leachate collection and treatment. Option D is clearly not protective of fish and wildlife health.

Subtitle C, or a special waste designation, will afford a much greater level of protection as a consequence of better and federally enforceable, nationally consistent controls on selenium-laden leachate. One argument against a C designation is the cost associated with the extra pollution control measures it requires. However, the cost of anything less than a C designation can be even more expensive. For example, the cleanup cost at just one polluted site can be over a billion dollars, and the ongoing environmental cost of poisoned fish and wildlife at one site can easily be in the millions per year.

Thank you for the opportunity to testify.

MR. DELLINGER: Thank you. While number four is coming up to speak, could numbers five, six, seven, and eight move to the front chairs?

MS. HITT: My name is Marianne Hitt. I am here today both as the national director of the Sierra Club's "Beyond Coal" campaign, and as a new

mom.

I have two quick points I want to make today, and a brief story about my own personal close encounter with coal ash. The first point: coal ash should be classified under Subtitle C of RCRA, not D, because one, it is indeed toxic. Why else would TVA be spending $1 billion in buying up all the land around the Kingston spill if it was not? We know it causes developmental problems in children, and cancer and other ailments caused by all those heavy metals.

And secondly, the key here is that Subtitle C is federally enforceable and Subtitle D is not. Subtitle D is only enforceable by states and citizen suits. And we know that state enforcement has been spotty at best. That's what got us into this situation in the first place. And I think we can all agree that it's unfair and I would say unreasonable to expect citizens to bear the burden of enforcing rules when the polluters they are encountering are well-resourced, well-financed, and these are

complex, lengthy, technical, legal proceedings.

So putting the burden of enforcement on states and on citizens is not getting the job done when you've got hundreds of these sites all across the country.

And briefly, on the industry stigma argument, which I know you'll be hearing a lot about; it's a convenient argument for continuing business as usual, but the fact is that many other industries have actually seen recycling increase and become more economically profitable once it was clear that hazardous waste would go in one direction and beneficial use would be not classified and kept out of the hazardous waste stream, and we've got lots of examples that the Sierra Club will be submitting as part of our testimony.

But to close, I think a lot of us are here because of our personal experience with coal ash and I think mine illustrates the harm in not making it clear that coal ash needs to be regulated by the EPA. I used to spend a lot of

time canoeing on the New River, and the Glenn Lynn power plant, they proposed a coal ash dump that was eventually built right on the banks of the New River, 100 yards of flood plain full of coal ash with no lining, no cap, and that was built in part with local citizen approval because local citizens were told, "Look, if this was harmful, EPA would be doing something about it. If this was dangerous, EPA would regulate it. It's not. Therefore, this is just as benign as dirt and we're just putting it in the flood plain. It won't cause a problem."

And so that flood plain is now filled with many tons of coal ash. I would be personally hesitant to once again go back to that section of the river and float downstream from that site, knowing that there is unprotected coal ash pit right there on the river bank. I can only imagine what it's like for the parents of the 1.5 million children who live near these sites and depend on drinking water and bathing water for their children, not knowing if it's safe or not.

So on behalf of those families and on behalf of the Sierra Club, I would encourage you to choose Subtitle C. Thanks.

MR. DELLINGER: Thank you. Number five.

MR. GUPTON: Good morning. My name is Bill Gupton. I'm the chair of the Central Piedmont Sierra Club, representing over 2300 members in a 10-county area around the Charlotte-Mecklenburg region, and we urge you to adopt Subtitle C.

I grew up here in Mecklenburg County only a few miles from the Riverbend Steam Station, and very little has changed in terms of regulation, monitoring, or containment of coal ash in the two high-hazard coal ash ponds on Mountain Island Lake. These aging coal ash ponds, one built in 1957, are both still unlined. Both are still leaching hazardous substances into the ground and contaminating our groundwater, a fact documented by Duke Energy's own data.

As is seen in this photograph, every day millions of gallons of water, along with a toxic

soup of arsenic, mercury, lead, chromium, barium, selenium, cadmium, and more are still being discharged into our drinking source and this valuable recreational resource.

The two coal ash ponds at Riverbend cover a 69-acre area and are 80 feet and 70 feet deep; the equivalent of a 15-story skyscraper of toxic, poorly- regulated, hazardous and life-threatening coal ash sitting on the banks of Mountain Island Lake where I swam and played in my youth. I don't want my children's children to be exposed to this. This is why we strongly urge you to adopt Subtitle C.

As this illustration shows, what has changed over the years is that this portion of the Catawba River is the primary source of drinking water for over eight cities and three quarters of a million people. Mountain Island Lake supplies 80 percent of the Charlotte drinking water, and our intake source is just downstream from the coal ash pond and the discharge.

What has also changed is industry

reports that now show about two thirds of coal ash is used for structural fill, the melting of snow and ice on the roads, and other uses that allow these toxins to seep into our groundwater and run off into our streams and lakes. And because our current regulation, no one is required to disclose this, and it's all perfectly legal.

Obviously, our current requirements and traditions are not adequate. A decade ago, coal industry promised the EPA it would self-monitor groundwater, your coal ash ponds. It took Duke Energy over eight years to take the first sample last year. Obviously, current requirements and regulations are not working.

The state of North Carolina, the North Carolina Utility Commission have shown that they do not have the ability or the desire to enact or adequately enforce regulations on coal ash and coal ash pond. This is why we urge you to adopt Subtitle C.

Thank you.

MR. DELLINGER: Thank you. And number

six.

MR. WARD: My name is John Ward and I am Chairman of Citizens for Recycling First, an organization of over 1,500 individuals who believe that the best solution for solving coal ash disposal problems is to quit throwing coal ash away.

At its first three public hearings, the EPA has heard from dozens of people who are actively involved in the recycling of coal ash to produce significant environmental benefits, including millions of tons in annual reductions of greenhouse gas emissions. These people include producers, marketers and users of coal ash and they have unanimously testified that designating coal ash as hazardous waste when destined for disposal will create a stigma that will ruin the recycling industry.

A handful of witnesses, none of them actually involved in recycling coal ash, have stated that stigma is not real. They have said that other hazardous materials get recycled and

that the higher costs of disposal that come with a hazardous designation will incentivize people to recycle more. Today I would like to point out why those positions are just plain wrong.

First of all, examples of other hazardous materials that get recycled are not comparable to coal ash. Most examples cited by stigma deniers are of materials that get reprocessed before they are reused. Coal ash is not reprocessed before it is recycled and is mechanically and chemically identical to coal ash that is disposed. This opens the door to litigation that will ask, if it's hazardous over there, why is it not hazardous over here?

Furthermore, most examples cited by stigma deniers are of materials that are reused by the very industries that produced them. Coal ash is widely dispersed to literally thousands of locations in every community and is placed in products that come in direct contact with everyday users.

Finally, many examples cited by stigma

deniers are materials that do not compete with alternative products. Your gasoline-fueled car cannot operate without gasoline. Concrete and other products can be made without coal ash. EPA has already heard testimony that some manufacturers of competitive products are already using the prospect of a hazardous waste designation to sow fear among coal ash users.

As for the position that higher disposal costs will automatically lead to greater recycling rates, please consider history. In 2000, the recycling rate for coal ash was 30 percent. In 2008, it had increased to 44 percent; a 50 percent increase in less than a decade. Did the cost of disposal increase during that time? No. So what was responsible for the dramatic increase in recycling rates?

The answer is, in 2000 the Environmental Protection Agency issued its final regulatory determination that concluded coal ash does not warrant regulation as a hazardous waste. That sent a clear signal to producers, marketers and

users of ash who began to invest more in the infrastructure necessary to support recycling. In 2002, the Environmental Protection Agency accelerated this effort by creating the Coal Combustion Products Partnership, or C2P2 program, to actively promote recycling as a preferred alternative to disposal.

Sadly, EPA has now reversed this trend by creating a new era of regulatory uncertainty and by stepping back from its visible support for recycling.

The EPA should enact tougher coal ash disposal regulations. But it should do so without unnecessarily stigmatizing coal ash as a hazardous waste.

MR. DELLINGER: Thank you. Number seven.

MR. LINER: Good morning. My name is Jerry Liner, speaking on behalf of concerned businesses and manufacturers, concrete block producers, aggregate suppliers, architects, and engineers in the region regarding the byproduct

coal ash materials.

We all realize that the United States Environmental Protection Agency has a national challenge to write new regulations on a waste material that could and will benefit the health and safety of the public for many years. We all realize the major concerns, but there is also more than just containment and fly ash. As this country moves more and more toward recycling, or the green movement, we all must look very closely at the materials being recycled and the types of products being used for health and safety concerns.

The coal ash different byproducts must call for different regulations based on the material itself and the end use. The real issue at hand for this group of professionals and manufacturers is the bottom ash material, having the potential of being a health and safety concern when used in the manufactured cement- type products.

The bottom ash material does not have

construction standards such as ASTM like fly ash. While fly ash is contained in the cement paste when used, bottom ash is not contained when used as an aggregate to manufacture concrete block and other manufactured cement products, leaving the waste material exposed on the surface for leaching. Please review the pictures submitted.

Unlike fly ash that is used at a very small amount by percentage of the cement weight, the bottom ash is used at 65 percent-plus of total weight of mix of manufacturing concrete block, making a product that we believe will release the hazardous materials.

As EPA reviews all of the collected information, we would like to encourage the additional regulations that sets controlled standards on the reuse and non-use of the reused materials based on the type of waste material and how it may be used. We all remember the Asbestos issues and how long it took to show its ugly head. Let's not allow the bottom ash waste material to gain ground in construction products and spread

and repeat this type of history.

A commonsense approach to the big picture of the coal ash byproducts regulations could be considered as submitted with this statement: One, regulate the pits. Regulate the use of fly ash. Regulate bottom ash as a hazardous material that cannot be used in concrete block, and regulate the transportation of all the materials.

Thank you.

MR. DELLINGER: Thank you. While number eight is moving forward, can numbers nine, 10, 11, and 12 move to the front.

MR. STEVENS: Good morning. My name is Byard Stevens. I'm currently unemployed from construction and concrete industry, and a concerned citizen.

Many comments to date have been directed on the controls and regulation of coal ash waste material, pits, containment ponds, contaminated ground water and the concerns of suitable re-use of fly ash materials. Our Country is moving

forward with a new initiative of recycling in the name of green, re-use, or other green-washing terms that seem to be the buzz of the marketing world.

A closer look need be taken in what exactly is being re-used or recycled in the concrete and concrete products industry. A good, hard look need be taken on what materials are being recycled or reused in the name of greening that product. With that stated, we need to emphasize that the coal ash byproducts need different rules and regulations for the material itself and the end product the material is directed to. And realize that all of these areas have long-term affects and are far more reaching than containment and product re-use.

The real issues for manufacturers and the end-users in the public is the heavier bottom ash material having the potential of being a health and safety concern when reused in the manufactured cement type products as a lightweight aggregate in concrete block. As stated before,

unlike fly ash, bottom ash does not have the same rigid American Society for Testing and Materials Construction Material standards. Bottom ash is not contained in mix designs for concrete materials in the same way as fly ash. While fly ash is committed to the paste of the cement mixture at a rate of five to seven percent typically, bottom ash as a lightweight aggregate, and can be up to 65 percent of the total mix design in concrete block.

As EPA reviews all of the collected information, we would like to encourage regulation that sets controlled standards not only on the storage pits but the reuse and non-reuse of the waste materials based on the type of material used and how and what products it may be used in.

Thank you very much.

MR. DELLINGER: Thank you. Number nine.

MS. HOFFNER: Good morning. My name is Diane Hoffner, of CROP PLUS of New York State, and my son Kevin is here with me. This morning we had set up a projector. We could not have it

provided, but we felt we could present a PowerPoint to you, but that right was declined to us this morning. Therefore I ask you to time up the two of us as an accommodation to not being able to show the PowerPoint, and my son will help me go forward.

What we have -- or did have, excuse me, was a presentation that would have lasted six minutes. I'm playing it for myself. There's several people we wanted to recognize for that -- but this will time me to end my presentation.

Concerned Residents of Portland, New York, and People like us, or CROP PLUS, is a volunteer grassroots group established to protect our environment and waterways. We're working to end the use of coal combustion bottom ash as a deicer and traction agent on our roads. This ash is not encapsulated, sir, and it is a very serious concern.

Our ditches are not lined. We believe this use is merely unmonitored dumping rather than reuse. What we have are a series of roads,

pictures, during the winter months. The snow is pure white in these pictures, but the road is black. And then when the plows come back and push it to the side, it's a very slushy, black, soot-y type mess. It is bottom ash.

My town mixes 10 part of bottom ash to three parts of sand, to one part of salt. And massive amounts can build up in the ditches. Our ditches, again, are not lined.

New York State allowed this with a BUD of beneficial use, but that BUD issued in 1992 said it required that it be tested twice a year to guarantee the safety to our waterways and environment. However, in 1993 New York introduced a new regulation which, again, is part of our problem. In this regulation, 360-1.15 has four parts. Part A said any BUDs issued before should stay in effect with all of their conditions if they were issued previous to this. Part B lists 16 predetermined BUDs, where people don't even have to apply to use it. If you agree to use it this way, just go ahead and use it and you don't

even have to apply. Absolutely no testing.

Part D, though, again where we were told that our BUD 122 was incorporated into this, I felt, well, if they ignored it in part A and that said we should keep the rules under the BUD, it must have gone into part D. Part D has several regulations, on paper only, that call for testing and a plan, that the user and the producers provide a plan. None of these plans exist. It suggested that the ash not be stockpiled for more than 90 days before use. I have pictures here of huge piles from two towns: Portland and Pomfret. And what it shows is that these piles are right next to a creek.

When I sent for FOIA information, absolutely no tests were available. I was granted a grant by Freshwater Future out of Michigan, and we tested two samples of coal ash, five streams and surface waters, and three domestic wells. We have those test results. And again, we repeatedly ask that this come up. At Correll Creek, which is behind my stockpile, when we were upstream,

aluminum, arsenic, barium, chromium, iron, manganese, lead, and selenium were all very close to zero. However, slightly downstream, these numbers raised. And again, if anybody is interested in seeing this we will show the slide today in room 141 at noon, two, and 6:00 p.m.

After we had tested the ash and the five waters -- my son will again show you some graphs. One of the streams goes right through two landfills. One of the landfills is designated (inaudible) case damage case. Don Cramer trucking, it is in the 2007 records, and that second one is presently being used.

One of the streams that, with the ash sludge that we got from the ditch, came from the entrance to this landfill. It is unmarked. There is absolutely nobody around the area who knows exactly that this is a landfill. The closed one has 700,000 cubic yards of ash. It was closed by court order in 1988. It is still under 30 years of supposed testing and the records, in checking, is very poor. Absolutely no one is notified.

The ditch sludge, the aluminum was over 16,000, arsenic at 11.8, barium at 846, chromium at 17, iron that 20,100 parts per million. Manganese, 464. Lead, 14.5, and selenium did not show.

But what we have to do is guarantee. This ditch goes through two residential areas on the bay of Lake Erie, and then directly into Lake Erie. The three wells that were tested had quite a bit of waste on them, and one well has been in the DEC records since 1984 but that homeowner has not had any satisfaction from sludge at the bottom of the well.

A second one was also very high, with the -- this particular thing shows all of our tests. And what we're asking is that the EPA grant us a meeting to review these three domestic wells, the five surface waters, and the sludge in the ash. Because this is proven to be very dangerous.

Mr. Chuck Norse from Colorado reviewed our data and said that Correll Creek was a sure

sign of contamination from water that is safe to drink to one that is beyond.

I thank you and again, room 141. 12:00, 2:00 or 6:00. Thank you.

MR. DELLINGER: Thank you. One thing, there is an overflow room that is equipped with audio if people want to sit down, if you get tired of standing.

Number 11?

MS. WASHINGTON: Good morning. We are representing lower Richland, South Carolina, which consists of Eastover, Gaskin, and Hodkins. The group --

MR. DELLINGER: Can you please state your name?

MS. WASHINGTON: My name is Anne Pringle Washington of 3513 Old Eastover Road, Eastover, South Carolina.

Several people have joined me here this morning, taking time off from their work schedule -- those people who are fortunate enough to have jobs have continued to go there. I'd like to

recognize ones that are here. I've been asked to serve as the spokesperson.

In this hand, I have some water. And I wonder what you would say if I put just a little bit in that pitcher down there and you drank it during the course of the day. Now, that's a rhetorical question and you need not answer because the bottle is filled with water. It's nothing that most people would call harmful. But your skepticism would be correct. Because the water is from Lower Richland, South Carolina. Yet it is the water we drink. It is water we mix our infant formula. It is the water we spray on our gardens, water our plants, and our children and grandchildren play in these substances.

On June 10, the Boston Globe published an article by Robert Kupner. I may have mispronounced his name, but he stated that oil companies -- and here, he was speaking of oil companies, but he was talking in terms of companies in general, pursuing short-term gain do not invest enough in safety precautions, and their

shareholders didn't care. Only government could compel action, but failed to act.

More than a half-century ago, the late economist John Kenneth Galbraith coined an important concept. It's called countervailing powers. This is what is happening here today. Galbraith observed that businesses have immense economic influence, but countervailing forces such as the trade union movement or activist citizen groups could neutralize that economic power by harnessing government to keep businesses' less savory tendencies from overpowering its benign ones.

The U.S. Environmental Protection Agency estimates that residents who live near unlined coal ash plants and rely on well water have as much as one in 50 chances of getting cancer from arsenic exposure.

I'm going to skip, because my time is running short, but the point that I want to make is that we want to encourage you to please rule coal ash byproducts as hazardous waste. The

bottle remains here. You needn't worry; I'm not going to put any in your glasses. But do take into consideration that we are drinking this water on a daily basis and arsenic is constantly being seeped into our well water. Thank you.

MR. DELLINGER: Thank you. Number 12? And while number 12 is moving forward, can 13, 14, 15 and 16 move to the front?

MR. MELTON: Good Morning. My name is Randy Melton, Environmental Administrator for Tampa Electric Company. Thank you for this opportunity to comment.

Tampa Electric serves over 700,000 customers throughout the Tampa Bay region of central Florida. TECO operates two coal-fired power plants that generate approximately one million tons of CCRs annually, of which over 97 percent is beneficially reused in a variety of environmentally-sustainable applications.

At both coal plants, we have worked with the Florida Department of Environmental Protection to modernize the facility's existing CCR

management units. These improvements have been required by the FDEP to ensure the protection of groundwater and surface water resources in the vicinity of these plants. Projects have included the capping and closure of inactive former disposal units, the lining of CCR impoundments and the redesign of handling systems to eliminate onsite storage of CCR products prior to beneficial reuse.

The impoundments and landfills at our plants have been retrofitted with liner systems that meet the permeability and leachate control standards required by the federal Subtitle D regulations. Any future facilities will also be required to meet these standards. Our experience is provided as an example to illustrate the effectiveness of Florida's solid waste regulatory program in addressing the safety of CCR management units that are constructed within our state. Other Florida utilities have similar experience with this program, which is already authorized under federal Subtitle D.

Therefore, we believe that the imposition of Subtitle C standards on CCRs produced in our state would serve no useful purpose. Subtitle C is not needed and would only serve to create confusion and derail the successful regulatory program that is already in place in Florida.

Tampa Electric is convinced that the negative impacts of Subtitle C regulation will be bad for the economy and for the environment. Listing CCRs as a special class of hazardous waste will create an immediate stigma on these valuable products, resulting in drastic declines in sales.

Onsite stockpiles of CCRs will grow at an alarming rate. Offsite disposal will skyrocket and landfills nationwide will be stressed beyond their capacities. Shipping of CCRs for disposal will result in increases in fuel usage and tailpipe emissions. Power generation costs will increase in response to burdensome equipment retrofits and operating requirements. Utility customers throughout the country will suffer

significant rate increases. Many environmental benefits from the beneficial reuse of CCRs, including reduced demand for mined minerals, reduced consumption of valuable landfill space, and reduced greenhouse gas emissions, will diminish.

On the other hand, Subtitle D, or equivalent regulations administered by the states, will adequately protect human health and the environment without causing these adverse consequences, as has been demonstrated by the program already in place in the state of Florida.

We appreciate this opportunity to comment on this important rulemaking and will be providing EPA with more detailed comments. Thank you for your consideration.

MR. DELLINGER: Thank you. Number 13?

MR. BRAY: Good morning. My name is Stephan Bray and I am a solid waste engineer in private practice with the firm Garret and Moore in Raleigh, North Carolina. My background includes providing engineering services for the power and

waste industries, to include county and local governments and private industry. My experience includes designing, permitting, constructing, and monitoring Subtitle D and industrial waste landfills.

Given the proposed options, it is my opinion that the nonhazardous Subtitle D option is most appropriate. Based on my experience, I offer the following comments regarding select engineering components of the proposed rules:

First, hazardous waste is defined as waste that exceeds EPA-established toxicity contaminant concentrations. The contaminants typically of concern in CCRs include metals such as arsenic, mercury, barium, cadmium, selenium, chromium, lead, and others. While the contaminants present in CCRs are certainly a health concern, the data suggests that the contaminant concentrations found in CCRs are typically well under EPA's hazardous thresholds.

Second, the hazardous Subtitle C option is not practicable, as it will result in a

shortfall of landfill disposal capacity. And currently, there is very limited regional and national commercial hazardous waste landfill disposal capacity. Permitting a nonhazardous landfill can take upwards of 5 to 10 years to complete, while permitting a hazardous waste landfill can nearly be an impossible task due to opposition and legal challenges, as witnessed by the fact that there are only 18 commercial hazardous waste landfills nationwide, and none in North and South Carolina.

Given the proposed timeline and my experience permitting landfills, it is foreseeable in the near future that there will be a period where there simply isn't any available hazardous waste disposal capacity under the Subtitle C option. This situation will limit new electricity production, as well as limit the option for landfilling legacy waste currently stored in existing ash impoundments.

And in comparison, while Subtitle D landfill capacity is not infinite, it's much more

readily available and could likely be used as a contingency to ensure uninterrupted power generation and waste disposal capacity while utilities permit the additional Subtitle D landfill capacity.

Thirdly, the proposed timeline for closure of existing ash impoundments under both options is too short. Both the hazardous and nonhazardous proposal generally require impoundments to be closed within 5 to 7 years. Some sites may choose to close the impoundments by de-watering and capping over the in- placed waste. Whereas, other sites may find it more appropriate to remove the waste and place it in lined landfills.

Based on my experience, the proposed allowable time may not be long enough to adequately investigate, plan, permit and execute closure. These concerns are primarily warranted for those impoundments for which appropriate closure includes removal and landfilling of millions of cubic yards of waste.

Given that both options include the same landfill liner and groundwater requirements, as well as the current landfill permitting environment, it is my opinion that the nonhazardous option is the most appropriate and the only practicable option.

Thank you.

MR. DELLINGER: Thank you. Number 14?

MS. TAYLOR: Good morning. My name is Chandra Taylor. I am senior attorney at Southern Environmental Law Center in Chapel Hill, North Carolina. Thank you for scheduling a hearing in North Carolina for public comment on the proposed CCR rule.

For the past 20 years, SELC is using the full power of the law to conserve clean water, healthy air, wildlands and livable communities throughout the Southeast. My comments today are directed at the need to reduce CCRs under Subtitle C to ensure federally- enforceable regulations which establish national safeguards to protect public health and the environment.

Southern Environmental Law Center's support for the Subtitle C option is based on my review of state statutes and regulations across the Southeast, which reveal significant statutory and regulatory gaps in CCR regulation that result in inadequate protection of the environment and public health from the dangers proposed by CCRs.

Gaps in regulation previously identified by the EPA have not been substantially addressed by the states in the intervening period and therefore only federal oversight under Subtitle C will result in protective regulation.

In particular, as to inadequate state regulation, in North Carolina in 2007 a comprehensive solid waste management act was passed. Most facilities became subject to significantly stronger requirements for where solid waste facilities could be placed. CCR landfills were specifically exempted from those provisions. In fact, in addition to the particular exemption for new CCR landfills, groundwater monitoring at CCR landfills is

voluntary rather than mandatory. In particular, in the new law the statute specifically states that compliance with performance of the landfill to prevent releases of waste to the environment may be determined based on the leakage rate rather than monitoring well data. Adequate oversight to determine if CCR constituents have migrated off-site require the use of monitoring wells. Thus, this statute is not sufficiently protective.

Further, when a leak is detected, there is no set time period within which corrective action must be taken.

In South Carolina, the stringency of regulation of CCR landfills depends on the result of a short-term leach test, the toxicity characteristic leaching procedure. This test has been soundly discredited for its failure to accurately predict the migration of contaminants from coal ash.

In Alabama, despite being a very large CCR producing state, CCR landfills and surface impoundments are not specifically regulated.

Overall, in the states of Alabama, North Carolina, South Carolina, Virginia, Tennessee, and Georgia, all six states fail to require liners for all CCR surface impoundments and landfills. And Georgia, Alabama, and South Carolina, they all fail to require that CCR disposal units be separated from groundwater. In Alabama, Georgia, North Carolina and Tennessee, they all fail to require that all CCR disposal units obtain solid waste permits. And all six states failed to require all waste unit to have groundwater monitoring systems during active life and post-closure.

We support the Subtitle C option. Thank you.

MR. DELLINGER: Thank you. Number 15. Is number 15 here? Number 16?

MS. ARNASON: I'm Debbie Arnason and I live in Waynesboro, North Carolina and I am here because I really care about clean air, clean water, and clean government, and I think this is a very important issue. I have brought my eldest of

10 grandchildren. That's my main reason for being here. But other affiliations are Sierra Club, Friends of the Earth, Carolina Clean Air Coalition, Riverkeepers, Appalachian Voices, many other groups because I really do care. And I hope the Environment Protection Agency also cares and will live up to its name to protect the environment.

In this case, we need you to defend citizens from coal-fired power plants dumping their coal ash contaminants into ponds that leak into public drinking water supplies. The states have not been doing the job of monitoring toxic metals like arsenic, lead, chromium, selenium, iron, manganese into drinking water supplies. Power companies obviously cannot be counted on to monitor their own waste or even to switch to healthy alternatives like solar, wind, and geothermal. Only by calling these coal ash dumps as they are, hazardous waste, and forcing them to pay the real cost to the rest of us for coal will they ever change.

We've all heard about the tragic coal ash flood in Tennessee in 2008. I think EPA monitoring could have prevented that. Here in the Carolinas, Duke's Dan River coal ash pond is under investigation for leaching into local drinking water. The coal ash is full of arsenic stored on the shorelines of Mountain Island Lake drinking water supply, and that seems like an accident waiting to happen.

Private power companies should be made to pay for their -- our protection from poisonous and radioactive wastes. Or better yet, invest in truly clean energy fuel. If it becomes too expensive to dump their harmful refuse on the public, they will find the courage and dollars and cents to change. We need the EPA to regulate coal ash ponds across the U.S. as the hazardous waste tanks they truly are.

I've got a note. I was feeling sorry for the guys from the electric companies and the cement companies and all that, you know, because they say it's going to be too expensive and they

just can't do it fast enough and so on and so forth. You know what? By allowing them to continue to do this we are enabling them to continue using cheap, dirty coal. And the rest of us end up paying the cost of the coal in our drinking water, in our air, in our water, and our global warming and boy, that's really expensive. So I would ask you please to take Subtitle C and keep us safe.

One thing else I'm going to stick in here and has nothing to do with this exactly, but I want you to look into it: chloramine being used in many drinking water supplies. Everyone knows that chlorine and ammonia don't mix. You can see the website at www.Chloramine.org. Thank you.

MR. DELLINGER: Thank you. Can we have numbers 163, 17, 18, 19, and 300 move forward. One reminder would be that if you have written materials, if you could please put them in the box over here to the left. Thank you.

Number 163?

MR. BIEBER: Good Afternoon, My name is

Paul Bieber and I am not affiliated with any organization and I would like to thank you for the opportunity this morning to participate in today's hearing. I am here to tell you that a stigma is already in place on CCRs and it is real.

I am a veteran in the CCR industry as well as a victim of the negative label being placed on recycled CCRs by the EPA. There is a diminishing interest in these products due to the possibility of a Subtitle C designation as a hazardous waste.

I was recently displaced from a senior management position with one of the largest coal ash marketers due to the fact that many of our customers were already seeking alternatives to fly ash and utilization rates of CCRs and concrete, block and encapsulated products were dropping rapidly as many of the customers did ultimately change raw materials.

This stigma is costing real live jobs and is unnecessarily driving up the cost of construction in an already challenged economy and

is doing exactly what the EPA said it would not do, which is stopping the use of coal ash in concrete.

Subtitle C is designated for truly hazardous wastes and I am here to tel1 you that consumers of fly ash today will stop using CCRs in recycled encapsulated products if the EPA designates any CCR as a hazardous waste or if a hybrid solution is used to define usable or non-usable based on its final application or intended use. No fancy regulations will fool the market. Previously being part of an international corporation who embraced sustainable principles, I urge EPA to do the right thing concerning coal ash designation.

Because otherwise you have killed my job, and you will kill the entire CCR recycling industry with your Subtitle C approach. Stigma is real and I am living proof. CCRs are utilized in beneficial applications reducing landfilling of the product and minimizing the potential for a hazardous situation when managed onsite. It is

best to use it, recycle it into sound business practices and encapsulated applications, and reuse for its beneficial value. Not just sitting around not being reused.

I strongly urge you to consider the beneficial use of CCRS under a clear Subtitle D designation and listen to sound, fact-based data to guide you in your decision and final ruling.

Thank you.

MR. DELLINGER: Thank you. Number 17?

MR. STEELE: Thank you so much. My name is Charles Steele Jr. I'm from Atlanta, former president of the international organization Southern Christian Leadership Conference, an organization Dr. King co-founded with Dr. Lorry and others. I was president for four and a half years and I resigned to actually take on this issue, the start of a business called Working People For Fair Energy.

It has been so enriching for me to hear previous speakers. They all have made excellent points but what I'm concerned about is the fact

that we're not talking about poor people. We're not talking about affordability. There are over 100 million poor people in this country. (inaudible) can barely survive on a day-to-day basis. But most of them are not; they're just getting by. And I would love to see one of these meetings over in a black church. Many of our people are afraid to come out to the Holiday Inn -- that some people call a Hole-iday Inn.

Because of the fact that there's a cultural difference in terms of where we are in the history of this country. So the twist that I'm bringing is that we must be more intrusive, and slow it down. We all believe in clean air, clean water and a healthy environment, for all of us. But somebody must pay for this. And the brunt of these expenses will be upon minorities and poor people due to the fact that they can't afford what they have today. 75 to 80 percent, if they are fortunate enough to work, of their wages and their salary would be going toward electricity.

Over half of the nation depends upon coal. All I'm saying is that let's slow it down and let's do it right. Is it affordable? Because when you're dead, you're dead. I don't care if it's about the environment or the lack of not having a job or someone killing you at the local convenience store because they saw you with a few dollars. So is it affordable? Are we representing the interests of poor people? I don't see any African-Americans in here, no more than two or three. And two of them just left. So there's two of us, brother.

So the point being, they don't even know about this issue. They don't even know about the concerns that are affecting us because they don't even have time to pay attention to it. Because they are too busy trying to make a living. Thank you so much, and God bless you.

MR. DELLINGER: Thank you. Number 18?

MS. HALE: Hello. My name is Kendall Hale. I live in Fairview, North Carolina, and I am a member of the Canary Coalition. While I

agree many poor people don't know -- but to tell you the truth, I only learned about hazards of coal ash, and I'm an educated person. I've been an activist all my life and a concerned citizen. I only learned about it in about the last six months and, boy, did I start getting frightened. Not only does coal ash contain arsenic, lead and other heavy metals that can poison local water supplies endangering the environment and public health -- I learned this just last week -- and it's also radioactive.

Richard Rhodes, author of The Twilight of the Bomb, stated earlier this month in a letter to the New York Times editor in response about the hazards of coal ash, that coal ash contains significant quantities of uranium and thorium, two mildly radioactive elements. He reminds us that the U.S. Atomic Energy Commission in the early 1950s seriously considered extracting uranium from coal ash for atomic bombs.

Why is this relevant today? Burning coal concentrates these two metals and their

radioactivity in coal ash. And one must ask: Why is it that we forbid nuclear power plants from releasing radioactive material except under careful sequestration, but we permit coal-fired plants to do so? Clearly, we need tough Federal laws to designate coal ash as a hazardous waste and to require industry to phase out these porous sludge ponds. I live near one by Julian. I'm very concerned about my community and all of the area around Asheville.

And the other proposal to lead coal ash as a nonhazardous substance regulated by the State will continue to endanger public health, and that means you and me.

Thank you.

MR. DELLINGER: Thank you. Number 19.

MR. NOBLE: Good morning. And welcome, again, to Charlotte, North Carolina; ground zero for the Catawba River Basin. We appreciate your visit to the Carolinas to hear our concerns.

My name is Rick Noble. I'm the chairman of the Catawba Riverkeeper Foundation, which

represents the two-million-plus people who depend on the Catawba River Basin for not only their drinking water, but also their recreation and other forms of their livelihood.

My official comment is as follows: Coal- fired power plants are poisoning our waters with coal ash; a waste product that contains arsenic, barium, chromium, mercury, selenium, lead, and many other heavy metals. Constant discharges of this toxic substance are slowly filling and killing our local waterways. EPA must protect our most precious assets; the water. For decades, power plants have carelessly dumped coal ash into ponds and landfills that leak into our drinking water, whether ground or surface waterways. Our drinking water supply cannot incorporate constant discharges of arsenic and other heavy metals and remain a viable community asset for generations to come.

It's time for the EPA to set strong, Federally enforceable safeguards such as those in Subtitle C that protect our health, our

communities and our future. I ask you to please protect our drinking water, our security, our well-being, and that, personally, of my grandchildren.

Thank you.

MR. DELLINGER: Thank you. Number 300.

MR. SIMON: My name is James Simon. I'm with Separation Technologies. I'm here to speak on opposition 2 designation under Subtitle C. Separation Technologies operates a fly ash separation facility at the Roxboro plant. We separate carbon from fly ash so that the ash can be used in ready mix concrete. We've operated the plant for almost 14 years. We have processed over 2 million tons of fly ash that would otherwise have gone into a landfill, and sent that for beneficial use in the concrete. Our operation is clean, safe. We have gone ten years without a loss- time accident, and I invite people to come and visit us.

Fly ash for beneficial use is going to get tarred with the same brush as fly ash

designated as hazardous waste. People aren't going to split that hair. And the reduction in the amount of fly ash used in concrete is just going to go in landfills; no other place for it to go.

Our operation helps the community, it helps the utilities, it helps the concrete producers. And I ask that the EPA not do anything that's going to interfere with that going forward.

Thank you.

MR. DELLINGER: Thank you. Is number 20 here?

(No audible response.)

MR. DELLINGER: All right. We'll go to number 21, 23, 24, 77, and 301.

MR. KNOWLES: My name is Jimmy Knowles. I am the vice president of Research and Market Development for The SEFA Group. We are a small family-owned and operated business with 154 employees. We are located in the Carolinas and operate throughout the Southeast and mid-Atlantic states. Managing and marketing coal combustion

residues is our only business. We market over one million tons of fly ash, which are recycled concrete products and structures each year.

I began working with coal ash in 1977 and I began working for The SEFA Group in 1982. We composite and test representative samples of all the fly ash that we market. We analyze and characterize fly ash in a number of different ways, including the quantification of trace elements and determination of toxicity. Over the last 33 years, I have developed an intimate understanding of coal ash, and the facts are clear: Fly ash is not hazardous and, therefore, disposal of fly ash ought not be under Subtitle C. Fly ash is very similar to other competitive materials whose disposal is not regulated under Subtitle C. Listing and regulating fly ash under Subtitle C will reduce the volume of fly ash that is beneficially used.

Of course, the EPA knows that the characteristics of coal fly ash, in and of itself, do not have the hazardous properties necessary to

be regulated as hazardous waste. Therefore, the EPA is proposing to call coal fly ash a special waste and to exercise its right to list and regulate fly ash under Subtitle C -- the hazardous waste section of the law -- because it is capable of posing a potential hazard to human health or the environment when improperly managed.

So, EPA doesn't claim that coal fly ash is hazardous, but rather that it could pose a potential hazard if it is mismanaged. Obviously, we agree with EPA in principle. However, the disposal of CCRs should be properly regulated in such a way as to prevent mismanagement. However, we strongly disagree that coal fly ash needs to be listed and regulated under the hazardous waste section of the law. Coal fly ash that is destined for disposal could just as easily be called a nonhazardous special waste and regulated under a nonhazardous section of the law. Regardless, because coal fly ash is not hazardous, it should not be listed and regulated under the hazardous waste section of the law.

Coal fly ash is very similar to other competitive materials. There is a substantial amount of research data that shows what I have personally confirmed through numerous characterizations of competitive products: Coal fly ash is not significantly different -- either in concentration of trace elements or toxicity -- than competitive materials that would otherwise be used. These materials also pose a potential hazard if their disposal is mismanaged, but EPA does not consider them to be disposed under Subtitle C.

Listing and regulating coal fly ash under Subtitle C will reduce the volume and value of fly ash that is beneficially used. Coal fly ash has always had some level of stigma attached to it.

However, if the EPA were to list coal fly ash as a special waste under Subtitle C, then the public will consider it to be a hazardous waste. EPA may think that calling it a special waste -- rather than a hazardous waste -- is a

clever way to avoid stigma and, therefore, maintain robust market in the concrete industry. However, from the perspective of the general public, the term "special waste" is a distinction without a difference. The public will consider it to be hazardous.

Thank you.

MR. DELLINGER: Thank you. Number 22. I'm sorry. Number 23.

MR. PRICE: My name is Charles Price. I am president and CEO of Charah, and I'm testifying today on behalf of Charah and its 225 employees in 11 states who are committed to recycling coal combustion by- products and the benefits this recycling has for our environment and the construction industry. Beneficial use of CCRs save landfill space and avoid use of manufactured products which require virgin materials and energy to manufacture. A successful CCR recycling program is good for the environment and should be supported by EPA through its regulations. Regulations of CCR disposal can be done without

causing harm to the recycling program that are prevalent throughout our U.S. economy. The stigma associated with regulating CCBs under hazardous waste Subtitle C is real.

I have an ad from the manufacturer of lightweight material that competes with bottom ash. The ad reads: "WARNING SIGNS OF UNHEALTHY RAW MATERIAL ARE HERE AND IT'S CALLED COAL BOTTOM ASH." The ad goes on to say the liability issues are too great to allow this waste material to be used in building materials. EPA's assumption that Subtitle C regulations will result in an increase of beneficial use are not correct.

Customers that use CCBs are concerned over the labeling of CCBs as a hazardous material. Our experience and this example prove this recycling will decrease, if not end all together, if EPA regulates CCRs under Subtitle C. Simply stating that CCRs are exempt if beneficially used is not sufficient to put the legal liability fears to rest.

The protective features proposed by the

EPA for CCRs landfills under Subtitle C and Subtitle D are essentially the same; therefore, a Subtitle D regulation program by EPA's own description will provide the necessary protection and would avoid further damage to the CCP recycling industry.

Subtitle D approach is clearly the appropriate record for a mechanism that will protect the environment and avoid damage to the recycling industry. Regulations under the Subtitle C approach will not provide added environmental benefits as described by EPA in its economical analysis. EPA assumes the growth in the beneficial use of CCRs will not occur. The stigma impact will harm our industry and result in the loss of jobs.

MR. DELLINGER: Thank you. Number 24.

MR. WALLACE: Good morning. I'm David Wallace, and I'm with JP Donmoyer. We're a transportation company. We transport ash and have been for about 25 years. We are also an active participant in the EPA's monthly program. We have

over 250 employees that work daily with over 15 coal generation plants with the delivery of lime and the self-realization of admissions as well as the disposal results in carbon ash. We've transported millions of tons of lime and coal ash over the past 25 years. We have identified no ill effects in any aspect for any employees in any association of any materials associated with any coal generation plants. That's a fact.

Coal is a natural decomposition of vegetation of over eons of time. As a fossil fuel, this abundance in this nation provides us a heat source that produces electrical power highly efficient in a safe manner upon demand. It has, and continues, to play a vital role in the welfare of our industries, the wealth of our nation and the future of our children. We should be celebrating our good fortune rather than debating questionable ruling as to deem this natural product is a hazardous material.

Beneficial uses for coal ash that our company directly participates in includes all

forms of commercial buildings, construction of highways, buildings, industrial sites, homes. Coal also serves to purify acidity in the aquifer to improve the quality of water. In the state of Pennsylvania we moved thousands of tons of coal generation ash from mine sites where it's used to neutralize the city and the water. The state of Pennsylvania actually pays incentives for us to do this.

I support coal ash disposal regulations that protect human health and the environment while encouraging greater recycling of coal ash. These goals cannot be accomplished if the Environmental Protection Agency designates coal as hazardous special waste. People will not want a material in their homes and schools and neighborhoods that is considered hazardous at landfill. Businesses will not want to risk being sued for material that's considered hazardous at landfill. We risk losing the environmental benefits that come from recycling millions of tons of this material, including conserving landfill

space and natural resources as well as avoiding the emissions of tons of millions of tons of greenhouse gases for the manufacturing materials recycled coal replaces.

The EPA should -- can and should enact new regulations while encouraging the safe recycling of coal ash as a preferred alternative disposal. To do so, EPA must not designate coal ash as a hazardous special waste.

Thank you.

MR. DELLINGER: Thank you. Number 77, number 301.

MR. SLATE: Hello. My name is Jim Slate, and I'm with Separation Technologies. As I look around the room, I see all of us have our little pins and our little badges. Our mind is already set on what we think about this, and there's nothing that I'm going to say that's going to change your mind about the way that you feel about it.

So what I would like to say is, about four months ago I was employed by Separation

Technologies. They gave me a job when I was out of work. I now have a paycheck at the end of the week. I have insurance and I have benefits; something many of us don't have. I actually work in the silos where fly ash is produced, which goes into concrete products. I have only been there four months, but I work with people who have been there for 13 years plus. I work with no one that is sick, no one that coughs, nobody that misses work because of illness, at least in the four months that I have been there.

Once again, I am not going to change your mind about what you think, but I know that if it was deemed hazardous it would affect our sales and our business and I may be out of work again.

Thank you for your time.

MR. DELLINGER: Thank you. Will number 25, number 28, number 78, and number 302 move forward. Number 25.

MR. BATTEN: I'll speak fast. I hope everybody listens quickly. Good morning. My name is Henry Batten. I'm the president of Concrete

Supply Company.

In my humble opinion, this agency is pursuing the wrong approach with respect to its efforts to label fly ash with Subtitle C classification. Your theories that we're providing language for beneficial use only, no one will consider it a hazardous material if you stipulate it not hazardous when used as a beneficial use. It is inconceivable to believe that a load of fly ash that leaves the plant and turns left is hazardous, and turns right is not. The construction community will simply view the product as hazardous, period, thus the only possible outcome is that fly ash will be used less and will have to be disposed of in a landfill, thus, I believe you make the problem worse.

Surveys of ready mix concrete producers show that over 55 percent of all ready mix concrete contains fly ash. There's actually no reason why all the concrete manufacturer does not include fly ash. The real opportunity is to rapidly influence the specifier community and

incorporate fly ash in the remaining 45 percent of concrete produced, thereby increasing the demand for fly ash and severely and substantially reducing that amount, which gets placed in landfills.

Buildings contribute to nearly 40 percent of all CO2 emissions. With the full support of the EPA and the government, you could help reduce these emissions by nearly 5 percent by supporting construction of homes and commercial structures with concrete manufactured with fly ash. This nearly equals 123 million metric tons of CO2 for more than 30 coal-powered plants, or the entire cement industry's emissions. Furthermore, if you carry the same logic to the construction of concrete roads, emissions over the life of the road could be reduced by 50 to 70 percent.

MIT is currently performing nanotechnology- level research, which could greatly increase the amount of fly ash that can be used in a yard of concrete while maintaining the

performance requirements of the application, which could mean even greater beneficial use of fly ash in the future.

With the support of EPA and other governments, in general, and lastly, a structural change to your approach to this regulation, we could change the current construction practices to incorporate more fly ash beyond the 30 million tons the industry would have achieved on its own, thereby truly reducing and moving toward a sustainable path of overall CO2 reductions. Thus, 40 percent of the CO2 being emitted could be reduced by 30 percent by your very action.

By incorporating my approach, you change the methodology from simply being concerned about the quality aspects of a landfill for storing fly ash, which should remain a direct responsibility of the states to supporting the increased use of fly ash reducing the need to store the material all together and reducing overall CO2 making our environment actually better, not worse.

Thank you.

MR. DELLINGER: Thank you. Number 28.

DR. FIREMAN: Hello. My name is Richard Fireman. I live in Mars Hill, North Carolina. I'm a retired medical doctor and currently work for the North Carolina Council of Churches; a program called Interfaith Power and Light. I retired to work on issues of great concern to me; the sustainability of our beautiful home, the earth.

You have heard before and will continue to hear from many that the regulation of coal ash is primarily about values -- what we as a people value -- love, our ethical and our moral systems, and trust, that if we hold to those values, the opportunity for fulfilling a healthy life for ourselves and our descendants and all of God's creation will endure and flourish.

All of our faith traditions rest on a fundamental proposition. Stated negatively, it's "Do no harm." Stated positively, it's a variation of "Love God and your neighbor as yourself." A secular version beautifully written is the

Preamble of our Constitution; "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution." The language is clearly one of values; justice, general welfare, the health and integrity of our ecosystems, and for the good of the whole and for our posterity.

Given these values, we are outraged that the leaders of our State government have asked the EPA not to regulate coal ash as a hazardous waste. With our government's approval; Eugene Conti, the Secretary of the Department of Transportation; Robert Gruber, the executive director of the public staff of the Utilities Commission; and J. Keith Crisco, the Secretary of the Department of Commerce, wrote to Senator Burr and Lisa Jackson. All wanted business as usual. It's particularly egregious that the director of the public staff

asked for regulations that would not protect the public health based on sound science and Federal law. And the science and law are clear; the chemicals in coal ash meet the requirements of the Resource Conservation and Recovery Act's definition of "hazardous waste."

Furthermore, the more we know about the chemicals, we know that we should be worried. There is new science that says there is a field basis of adult disease based on very small amounts in utero. History is our guide that the regulators of North Carolina will do more to protect the bottom line of business of corporations and industry in our state than the public health.

Harm has already occurred. It's clearly time to protect the public health; the highest value of all, God's creation. We ask you to choose Option C (sic) and classify coal ash as a hazardous waste. Thank you.

MR. DELLINGER: Thank you. Number 78.

MR. HULING: Good morning. I'm Chuck

Huling, the vice president of environmental affairs for Georgia Power, the largest subsidiary of Southern Company. Georgia Power serves over 2 million customers. The company and its customers will be impacted by the final coal combustion by-products of CCB rules, so I appreciate the opportunity to speak today.

First, Georgia Power supports protection of the environment in safe management of CCBs. Georgia Power remains committed to the appropriate criteria to ensure dam safety and the integrity that the public can rely on. Georgia Power also supports the regulations of CCBs in a manner that establishes reasonable minimum standards while recognizing the variability of each site. EPA's proposed Subtitle D Prime approach recognizes that existing CCB impoundments should be allowed to continue operating with State oversight.

Second, Georgia Power believes that State agencies should regulate CCBs. EPA's own conclusions in 1993 and in 2000 recognize that states should continue to be the primary

regulators of CCBs. Georgia and other states have operational experience and have provided effective oversight of CCBs through wastewater programs, landfill disposal, closure of surface impoundments, and beneficial reuse.

Third, Georgia Power opposes the regulation of CCBs as a hazardous waste. After 20 years of study, EPA concluded in 1993 and in 2000 that CCBs did not warrant hazardous waste regulation. This regulation, even with an exemption, unravels decades of progress of beneficial reuse. CCBs are one of America's recycling success stories with approximately 43 percent diverted annually from landfills.

Regulation under hazardous waste requirements will be cost prohibitive without a corresponding benefit to the environment. In addition, proper disposal of hazardous waste may be impossible for the foreseeable future because of the cost and lack of permitted disposal capacity. Any mandatory phase out of CCB wet management practices would exacerbate these

concerns.

To conclude, Georgia Power supports dam integrity and a performance-based approach for management of CCB units with State regulatory oversight and enforcement. Georgia Power opposes the regulation of CCBs under RCRA Subtitle C recognizing that this approach does not provide additional health or environmental protections. Hazardous waste regulations will impact CCBs beneficial reuse and potentially eliminate decades of progress made in the recycling of this valuable product.

Thank you.

MR. DELLINGER: Thank you. Number 302.

MS. CRIFIELD: My name is Bonnie Crifield from Ringgold, Virginia. I have been a machine operator for Separations Technology for 13 years. And I'm here in opposition of Subtitle C. I see this as calling my plant to go away. If you place a hazardous waste name on fly ash, people that we supply are no longer going to be interested in product.

The larger companies, well-educated, may still buy it, but the homeowners and the smaller companies are only going to see the big words; the hazardous waste problems. And for me, this is the only job I've known other than homemaker. So I wanted to come today and place my bid for opposition of Subtitle C.

Thank you.

MR. DELLINGER: Thank you. Numbers 26, 27, 29 and 30. Number 26.

MS. BATTLE: My name is Alice Battle. Currently, I am the Mountain Island Lake Lakekeeper. I'm also a former Mountain Island Marine Commissioner.

I'm here to testify in support of Subtitle C. The 80-year-old Riverbend steam plant has two coal ash ponds on site, which have been returning water to Mountain Island Lake for that number of years. Currently, the lake provides potable water to almost one million people in the Metrolina area. As such, it has a value to the region that far exceeds its size. In addition,

many people use the lake for recreation, such as boating, fishing and swimming. The effluence from the plant has only been tested for arsenic in the last couple of years. Both the Catawba Riverkeeper Foundation and Mecklenburg County's Water Quality Program found excessive amounts of arsenic in the samples near the discharge from the ash ponds. The discharge area is shallow and full of the sediment. The sediment in the lake is mostly clay, which has fine particles that re-suspend easily. Heavy metals like arsenic adhere to the sediment.

Mountain Island Lake is one of the smallest lakes in the Catawba chain and is below the largest lake, Lake Norman. Water is moved through Mountain Island Lake rapidly when there is excessive precipitation. The currents can be quite strong at times, so the sediment is moved downstream of the discharge. Testing for all heavy metals is not done. The metals in the sediment climb their way into the food chain of the fish that live in the lake. Fish acquire

contaminants and concentrate them in their tissues by uptake from water and through ingestion. Fish can often bioaccumulate chemicals at levels more than a million times the concentration detected in the water column. This limits the fish as a source of food for humans, but it also finds its way into the tissue of animals and birds that depend on fish as a source of food.

What is the effect on humans who ingest the water for years? Even though the amounts of heavy metals in water columns may be undetectable by current measurement standards, the effect is not known. We know that the heavy metals are introduced into the lake.

We also don't know if heavy metals and sediment cause contact problems in humans such as skin rashes and other irritants. The safe levels of heavy metals in the water currently used are more the results of politics than of scientific study.

Years of abuse of the nation's rivers and streams have produced measurable amounts of

contaminants in most of the lakes in the United States. Monitoring cannot be left to the goodwill of companies whose motivation is money, not the welfare of the future generations. Their self-monitoring is what has contaminated waterways in the first place.

MR. DELLINGER: Thank you. Number 27.

MS. DANZI: Good afternoon. Thank you for coming and letting us speak at the hearing.

My name is Ann Danzi, and I am a commissioner on Mountain Island Lake, and I'm also a very concerned citizen.

I live across the street from the Riverbend plant in Mt. Holly. Something that hasn't been touched on in the articles that I've read is, what happens when the energy firms have the ponds and they are full? They remove the ash and store it in enormous piles without liners in various areas in the facility.

About three years ago, Duke found it necessary to empty the ponds at the Riverbend plant. For weeks, as they drained the pond and

moved the resultant dry ash, tiny black particles flew all over our cars and our homes. They tried to cover the trucks, et cetera, but when it's dry, this ash is very, very tiny particles. Many residents of my Stonewater development complained. They could see the ash accumulating on our cars and our houses. What we couldn't see was how much was accumulating, how we breathed it. Duke piled this residue in a very large mound -- about half the size of a football field -- right beside Horseshoe Bend Beach Road, which is the only access to the peninsular we live on. They told the residents the ash would not be a problem and proceeded to plant grass on it to hold it in place. A large mound with grass on it and heavy rain; what do you think happened? It's running down and the water is seeping through this mound and it could be going into our groundwater. My concern is air as well as water quality.

My development is on City water and sewer, but the rest of that peninsular is on well water, and we will have no idea of what is

leaching into that well water until it is too late. That mound is not monitored in any way; it's not near the water where monitors have been installed. It's on the other side of the facility. This is a very big concern to me.

The other one is, what happens when this plant closes? Erin Cuthbert of Duke has already said in 2015 they will close Riverbend plant. It makes no economical business sense for us to dredge and line these ponds when we are about to close it. That's true. They are a profit-making company.

So I think, unless you pass Option C (sic), they will never be mandated to do this. And to say that the citizens have a right to sue is just ridiculous. Where would we get the staff and the money to do so and fight something like Duke Power? Please go with Option C (sic).

Thank you very much.

MR. DELLINGER: Number 29.

MR. HUDSON: My name is Jay Hudson, and I'm the environmental manager at Santee Cooper.

Santee Cooper is South Carolina's state-owned electric and water utility. We indirectly and directly serve over two million South Carolinians. And one of our most successful environmental stewardship programs is the recycling of coal combustion by-products.

I'd like to say that Subtitle C option that EPA proposed represents the most extreme, costly and burdensome option without proportional environmental benefit. Regulating CCRs under RCRA's hazardous waste controls would have an adverse impact on beneficial use in South Carolina and around the country. Santee Cooper has a very successful recycling program, which emphasizes the beneficial use of both ash and gypsum.

Santee Cooper's sale of gypsum over the last five years is over 75 percent of the total production. Gypsum, which is predominately calcium sulfate, can be safely used in the production of drywall and as an agricultural soil amendment. Using gypsum saves the environmental impacts associated with mining the natural

mineral.

More importantly, gypsum does not meet any of the criteria set forth under RCRA for hazardous waste. Various lab tests have been conducted on the gypsum at Santee Cooper gypsum, and results showed gypsum does not have any hazardous waste properties.

We also successfully recycle fly ash and bottom ash in order to minimize the use of ash ponds and landfills. When fly ash is encapsulated in concrete or cement, this is an environmentally responsible reuse program.

In spite of the Rule's claim to the contrary, labeling gypsum and other CCRs as hazardous waste will impact recycling. Examples which EPA cites to support the claim that hazardous waste regulation would actually increase beneficial use do not support that viewpoint. In a case of used oil, a program EPA uses as a model for CCR hazardous waste regulation, EPA determined not to regulate used oil as a listed waste precisely because of the adverse impact on used

oil recycling.

We are already seeing negative impacts from the proposed regulation on recycling efforts. Companies selling alternative raw materials to recycle bottom ash are touting their product as nonhazardous in an attempt to gain market share in the lightweight aggregate market.

The Subtitle C option would overwhelm existing Subtitle C disposal capacity increasing by 50 fold the volume of hazardous waste disposed on annually in landfill units. The shortfall is especially severe in South Carolina, since no hazardous waste disposal facilities in the state could receive any of these CCRs. A significant amount of the CCRs produced by Santee Cooper under the Subtitle C option would have to be hauled long distances for disposal, thus increasing road traffic, greenhouse gas emissions, and drastically increasing disposal costs when environmental responsible disposal and recycling options are available at a much lower cost.

For those reasons, the Subtitle C option

will cause an undue burden without environmental benefit. Santee Cooper appreciates the opportunity to present these comments and will be submitting additional written comments.

Thank you.

MR. DELLINGER: Thank you. Number 20.

MR. BROWNHILL: Good morning. My name is Ryan Brownhill, operations manager for Sphere One, Incorporated. We are the largest marketer of domestically sourced cenospheres in the United States and employ roughly 45 people. Cenospheres are inert, lightweight microspheres that are used in encapsulated building, refractories and recreational products.

I need to address the inherent stigma issues that have and will occur. The EPA has repeatedly stated they don't believe a Subtitle C regulation will create a stigma against CCPs and they, in fact, increase the amount of CCPs recycled.

I can tell you emphatically, that is simply not true. We talk to our customers every

day and can say with certainty that a Subtitle C designation is and will absolutely stigmatize CCPs. In fact, the negative stigma has already affected our business in several ways. One major supplier suspended operations of their sites until the EPA issues a final ruling and the supplier sees that CCPs are not classified as nonhazardous waste. The loss of this supply has caused a shortage of a raw material, and we will lose a significant, valuable product line and jobs will be at risk.

During a recent contract negotiation, a supplier has insisted on wording that will immediately void the contract if cenospheres are listed as a Subtitle C waste. The special waste designation won't make a difference. Last year we began working with a company on developing a new application for cenospheres. Once the proposed Rule came out, the work was suspended. They were not willing to R&D time and money on potentially hazardous material.

What's important about all these

examples is that they show the stigma is real and is negatively impacting our business right now, even though there is only the possibility of a Subtitle C designation. It stands to reason that this statement can only get worse if there is a hazardous designation.

By far, the most compelling proof of the negative impact comes from our existing customers. Our largest customers told us that they will stop use of cenospheres should CCPs be classified as a Subtitle C waste.

What this adds up to for us is the effective end of our business. Between the immediate loss of our customer base and the loss of our raw material supply, we will not be able to continue a viable operation.

The EPA has a great responsibility here. The marketers of CCPs are united in their stance that Subtitle C will carry a stigma and damage the reuse of CCPs. It isn't insignificant; it's real, hurting real businesses, hurting real people. The environment can be protected with strong

regulations under Subtitle D.

We in the recycling CCP industry support strong relation (sic) of CCRs under Subtitle D with Federal enforcement authority. The EPA can't be afraid to lead. With our economy sputtering, you would think the EPA could work with Congress, get direct enforcement authority, and proceed to regulate CCRs under Subtitle D without creating this damaging stigma for CCPs.

If there is even some question about how Subtitle C classification will be detrimental to business, why do it, especially when there is a technically sufficient solution that carries virtually no risk to the beneficial use of CCPs? A Subtitle D classification allows the EPA to live up to its responsibilities to protect the environment as well as its responsibility to all the hard working Americans whose livelihood depends on the reuse of CCPs.

Thank you.

MR. DELLINGER: Thank you. Numbers 31, 32, 153 and 191. How about 303 and 304?

(No audible response.)

MR. DELLINGER: All right. Number 31.

MR. DUNLAP: Thank you. My name is Randy Dunlap, and I am president of Separation Technologies and Essex Cement, both of which are Titan American companies.

I am here in strong support of the regulation of CCR landfills, but in strong opposition of the Subtitle C. Separation Technologies is a company with more than 100 employees involved in the processing of fly ash. We have a patented zero emissions technology that removes carbon from fly ash, thereby taking a fly ash that would normally have to be landfilled and turning it into a high-quality product use as a partial replacement for Portland cement and concrete. Our business model entails providing a 100 percent solution to the utility industry with respect to their CCRs.

My purpose in bringing this up is that if the EPA's assumptions under Subtitle C are correct -- and those assumptions are that not only

will a C designation not be detrimental to beneficial use, but, in fact, will likely increase beneficial use -- then my company would stand to benefit probably more than any other in the industry. We would, in fact, sell more CCRs and the demand for our technology would increase dramatically. Yet, here I am in strong opposition to Subtitle C and in support of the regulation of landfills under D.

I must admit that it is somewhat frustrating to continue to hear the EPA state that you are not convinced by the stigma argument, when those of us in the industry so clearly see the serious risk to beneficial use. And the arguments expressing concern over the potential stigma are coming from those in the industry that are not impacted, certainly not negatively impacted, by tough regulations of CCR landfills. In fact, those making the stigma argument would actually stand to benefit from Subtitle C if the EPA's assumptions are correct.

So why do we oppose Subtitle C? We

oppose it because EPA's arguments simply are not credible. If I could just give you a couple of small examples: One Sierra Club ad: "Coal ash -- it's toxic -- it's everywhere -- we must act now!"

I must apologize, but I missed where it clearly stated -- or stated anywhere, for that matter -- that beneficial use is okay. The legislative director for Natural Resources Defense Council makes the argument for us in his blog where he and many other proponents of "C" disputes the stigma claim by the CCR industry. He quotes a recent survey by the NRMCA, the National Ready Mix Concrete Association, to support his position that stigma argument is a misdirection. Quote, "A survey by the NRMCA shows that companies that use fly ash, over 69 percent will continue to use it even if it is 'hazardous.'" So I guess as an industry, we are to accept a decline over a third of our sales, over 5 million tons per year, and this is just encapsulated uses alone. It doesn't consider that the other implications by homeowners and other specifiers that will refuse to use fly

ash because of hazardous designation.

In conclusion, I hope that the EPA would give appropriate weighting to the testimony and written comments from those in the industry that are opposing Subtitle C and who have no other motivation to do so, other than the fact that based on their years of experience, they understand the significant negative impact that such a classification will have on future beneficial uses of the CCRs. The only option is Subtitle D.

Thank you.

MR. DELLINGER: Thank you. Number 32.

MS. ARNOLD: I'm Jane Arnold. I'm an owner and manager of Southern Concrete Materials, Eastern Division. I want to go over with you a few points why I am against Subtitle C, why I feel like fly ash is helpful rather than hazardous to our industry.

Southern Concrete has produced and delivered concrete primarily in Western North Carolina and the Charlotte regions since it was

formed in 1958. The National Ready Mix Concrete Association has stated that fly ash is present in over 55 percent of concrete produced. I would be willing to say that the percentage of fly ash concrete we have produced is closer to 70 percent.

In explanation, the fly ash is delivered to our plants in tanker trucks. We place it in silos and eventually weigh it up and batch it into the mix, which then becomes a plastic concrete. At this point, our driver delivers the concrete to our customer in a specially designed truck that continues to mix the plastic concrete until it is discharged to the customer. Generally, our customers are not the end user, but will be the company that places or forms the plastic concrete. We might sell to a one- or two-man operation working out of a pickup truck or to a more complex company with highly sophisticated equipment used to place and form concrete in ultra level slabs, high-rises, bridges, parking decks, et cetera.

What I believe has been relevant to this discussion is the fact that in 52 years, Southern

Concrete has worked closely with fly ash. There has not been even one incident that I can recall when an employee, an outside hauler, a customer, or an end user has named us in a health claim relative to fly ash.

If fly ash is labeled as a hazardous material, then Southern Concrete material would discontinue its use. The increased costs in handling the material and the potential perceived liability that we could be facing would render the use of fly ash economically unfeasible.

The NRMCA has outlined benefits from using fly ash. All of these would be reversed if fly ash is removed from ready mix concrete. There will be decreased durability and life of the structures, which could lead to injuries, but most certainly, would lead to increased costs. Also, the cost of the initial project will be greater. This will affect everyone in this room. Should you, as an individual, want to build or buy a home, the increased cost in the foundation, slab and driveway construction would be factored in.

The same would hold true if you wanted to buy or rent a commercial space from which to run your business. We, as tax payers, would also pay more for an airport parking deck, a classroom building at UNCC, a new sports arena, a bridge over 485, new schools, or even sidewalks.

Finally, and most importantly for our children and our grandchildren, there would be increase in waste in our landfills.

Fly ash is working in the ready mix industry. Changing it would only create insurmountable problems.

MR. DELLINGER: Thank you. I've only kept track of the numbers over there, so whoever has the lowest number, can you come forward and help me put that number in? Thank you. Number 153.

MR. SILVERTOOTH: My name is Mike Silvertooth, and I'm with Mineral Resource Technologies, a CEMEX Company. MRT is a full-service coal combustion product marketing and management company in North America.

I want to thank the EPA panel for giving me time to address the recent proposal for the disposal of coal combustion residuals from electric utilities.

Besides being a full-service marketing and management company of coal combustion products, one of MRT's key roles is to supply our parent company, CEMEX, with fly ash, bottom ash and synthetic gypsum for the production of ready mix concrete, concrete pipe and cement in the United States. Our company was recognized by the EPA's coal combustion partnership program with the enhanced utilization of coal combustion products award in 2008. Specifically, EPA recognized us for internally consuming 2.1 million tons of coal combustion products annually in our various products. We continue to be the single largest beneficial user of coal combustion products in the United States.

EPA named CEMEX USA the energy star partner of the year for outstanding energy management reductions in greenhouse gas emissions

for the second year in a row. Award winners are selected from more than 12,000 organizations.

As you can see, our company is dedicated to operating in a sustainable manner that minimizes the impact to the environment. EPA has listed seven priorities for EPA's future, and taking action on climate change is listed first. The reduction of greenhouse gases is a top priority of EPA and is also a top priority for our company as well. The utilization of coal combustion products is a major portion of our internal efforts to minimize greenhouse gases and could very well be the single largest source of reducing CO2 annually. With the utilization of fly ash in our concrete operations alone, we have been able to reduce CO2 by up to 1.6 million tons annually, while at the same time improving the quality and useful service life of our concrete.

Also, we continue to use the fly ash, bottom ash and synthetic gypsum as a raw feed replacement for mined virgin materials for the production of Portland cement. By utilizing coal

combustion products in our cement operations, CEMEX substitutes a proportion of the mined raw materials such as clay, shale and natural gypsum. This enables us to conserve natural resources, avoid land disturbances and reduce CO2 from mining operations. At the same time, this reduces the amount of CCPs disposed at power plants and avoids the CO2 generated from disposal activities.

In summary, CEMEX urges EPA to elect management of coal combustion products under RCRA Subtitle D. This option allows coal combustion products to be managed under the same, similar guidelines proposed under the RCRA Subtitle C option, but allows CCPs to remain classified as nonhazardous material. Should coal combustion products remain classified as a nonhazardous material fall underneath RCRA Subtitle C management, there are too many negative variables that will hamper the beneficial uses of coal combustion products and would cripple a large part of the reduction of greenhouse gases in our country.

Thank you to the EPA panel for allowing my company to address our concerns.

MR. BLACK: Hello, my name is Bill Black. I'm a technical sales representative for the SEA group here in North and South Carolina. We're a company that markets, sells, and transport coal fly ash in North and South Carolina, Virginia, and Tennessee, primarily. The material that we sell is used beneficially in ready-mix concrete and other environmentally-friendly building products.

My company and others like it in this region keep millions of tons of fly ash out of landfills and slurry ponds every year by recycling it in concrete and other environmental-friendly building products. The vast majority of my company's customers that I have personally spoken to regarding this EPA decision have told me that if the EPA designates fly ash as a hazardous material they would discontinue their use of it in their concrete products. This will result in millions of tons of fly ash going into landfills

in this region which are now being safely and beneficially recycled in an environmentally friendly way, and it is for this reason that I came to oppose any EPA decision that would categorize fly ash as a hazardous material whether that would be under Subtitle C or otherwise.

Thank you very much.

MR. DELLINGER: Numbers 33, 34, 35 and 36. Number 33?

MR. MCCABE: Good afternoon. My name is Pat McCabe. I'm an environmental manager with Duke Energy and I'm testifying today on behalf of the Utility Solid Waste Activities Group, or USWAG. USWAG has been working cooperatively with EPA for close to three decades regarding the Agency's implementation of the Bevill Amendment for coal combustion residuals. USWAG's members will be directly impacted by the final CCR rule and I very much appreciate the opportunity to speak today on the proposal.

USWAG supports the Subtitle D Prime option, with appropriate adjustments, because of

the options presented by EPA this is the one that best balances clean energy with affordability and reliability. USWAG shares EPA's objective of having a federal regulatory program that ensures the safe disposal of CCRs. The D Prime option will meet this objective.

Opponents of a Subtitle D option persist on incorrectly stating that this would merely preserve the status quo under which EPA could only issue guidance. This is not the case. Under a Subtitle D option, EPA would issue federal regulations specifically designed for CCR disposal units. These regulations would be directly enforceable by the states and the public under RCRA's citizen suit provision. EPA would also retain its imminent and substantial endangerment authority to take action against any CCR unit that posed a risk to human health or the environment.

We agree that disposal units that are not fully protective must either be upgraded or closed. However, there are many CCR surface impoundments which are perfectly safe. The D

Prime option will allow for development of a regulatory program that meets all objectives.

A major shortcoming, however, of either the proposed Subtitle D approach is the lack of a mechanism for the states to step in and administer the regulations. Clearly, there are state regulatory programs that already meet or exceed the proposed Subtitle D standards. States with qualified programs should be given the option of administering the federal Subtitle D rules if they so desire.

Finally, I want to touch on our opposition to the Subtitle C option. USWAG agrees with the views of virtually all the states, many federal agencies, municipal and local governments, state public utility commissions, and many other third parties that regulating CCRs under RCRA's hazardous waste program does not provide significant additional protection to human health or the environment relative to a Subtitle D non-hazardous program. In fact, it would be counterproductive to do so because Subtitle C

regulations would cripple the CCR beneficial use industry. There is no reason for EPA to pursue this approach when an appropriately designed Subtitle D Prime option offers the same degree of environmental protection without the attendant risks, burdens and costs of Subtitle C.

Thank you.

MR. DELLINGER: Number 34?

MR. MARSHALL: Good afternoon. I'm David Marshall with Headwaters Resources. I'm here to speak to this issue from my background as a former ready-mix producer. In 1972, my family started a ready-mix concrete business in Leesburg, Florida. I was a senior in high school and worked full and part time there until I completed college and began working full time in the operation.

In 1974 we began using fly ash based on previous positive experience with the product use in pipe and block. By the end of 1977 we were using fly ash in all our concrete production.

As I learned about the technical aspects of concrete and of the use of fly ash, I became

aware of the benefits to the end user in the area of durability and enhanced strength performance provided when a pozzolan is used in concrete. I also became aware of the federal buying recommendations and provisions to allow the use of fly ash in concrete when comparable mix design performance could be provided. By then, the Florida Department of Transportation was allowing fly ash in all concrete and was beginning to consider requiring fly ash in concrete in certain exposure conditions such as sea water.

For over twelve years I served as the chair of the technical committee for Florida Concrete and Products Association, a state trade association and for ten years I was a board member of the Construction Materials Engineering Council, a group dedicated to quality concrete production and product testing. I became well recognized for my knowledge of concrete technology, testing, materials evaluation and performance guidance. And the more I learned, the more valuable fly ash came to be seen as a benefit for all parties.

All along the way in the evaluation of fly ash use and its incorporation into our daily concrete production, we were very aware of the EPA and Federal government recommendations to allow the use of fly ash in concrete to the point where the Federal purchasing guidelines provided buying preferences for products using recovered materials to the greatest extent possible. The EPA was also very supportive of increased utilization and encouraged, supported and participated in ongoing research at many levels that encouraged and supported fly ash use. The 1980 Beville Amendment, 1983 procurement guidelines, 1988 revisions increasing the emphasis to use recovered materials to the greatest extent possible; all items indicating that fly ash was to the benefit of the producer, the consumer and the buying public.

Power plants throughout the state and country were being asked to step up their ability to supply this increasingly valuable commodity and the establishment of sourcing terminals and

distribution networks with appropriate backhauls was encouraged by the concrete industry. The FDOT has changed their predicted structural life from 30 years to 70 years when fly ash is incorporated in their mix designs, so they required its use in extremely aggressive environments. Not only were we encouraged to use fly ash to improve concrete performance, but we were encouraged to use fly ash to extend the supply of Portland cement, the most expensive item included in the production of ready-mix concrete and a material that is occasionally in short supply. And we were encouraged to use this recovered material to minimize landfill use in power plants. We were recycling long before it became popular at curbside.

Thank you.

MR. DELLINGER: Thank you. Number 35, and while number 35 is moving forward, can number 36 move forward to the front? Thank you.

MR. SMITH: Thank you very much. I want to first thank the EPA for holding these hearings.

My name is James Smith. I'm here in two capacities. One is representing Mr. Heath Hill, who is a neighboring landowner of SCE&G's Wateree Station in South Carolina. I also serve in the South Carolina state legislature. And I'm here to support Subtitle C regulation, that coal combustion waste for basically, four reasons.

Basically, in South Carolina we have essentially no protection. I want to tell Mr. Heath Hill's story. At this plant, the Wateree station, was began operating in the early 1970s. Since then, it has two coal ponds that are online, and they are right along the Wateree River.

This action, we brought an action to challenge the permit for the waste discharge into the Wateree river and I'm going to provide the panel here with some photographs. It's a lot of information but the photographs themselves, if you could share those, they show what are seeps in the walls of these ponds. These ponds discharge water from those ponds containing one seep, over 1900 parts per billion of arsenic; the other seep over

700 parts per billion. Their daily maximum limit under the previous permit was 40 parts per billion.

When this facility was reviewed by the industry's own organization, EPRI, they recommended that these walls be improved to prevent seepage. Both our state regulatory agency, as well as the companies themselves have not taken any action to improve and close out the seeps. Consequently, we are seeing elevated readings within fish in terms of arsenic presence in the fish there, and we have nowhere to turn at this point.

As a matter of fact the previous standard set amount of that 40 parts per billion limit on arsenic, our own regulatory agency had the wisdom to remove that entirely, so now there's no monitoring limit for arsenic at that site despite what we have in terms of projected knowledge of elevated levels of arsenic poisoning the river, poisoning the groundwater and poisoning associated wells in the area.

I would point, you know, the evidence and information provided by EPA first, that it is your estimate that residents who live near unlined coal ash ponds and rely on well water have as much as one in 50 chance of getting cancer, a cancer rate that is almost 2000 times your agency regulatory goals.

We need your help in South Carolina to protect public health. We need to make sure that there is a limit, that they're not taking -- the reason they removed the limit as they said "EPA said we could." And that needs to change to protect the health of the neighbors of Mr. Heathfield as well as the rest of the citizens in the state of South Carolina.

Thank you very much.

MR. DELLINGER: Thank you. Number 36?

MR. AHLBERG: Good afternoon. My name is Gary Ahlberg. I'm a senior designer with BlackRock Engineers, and I'm also a former Subtitle D regulator in the state of North Carolina. I'm here to offer my professional

comments on the regulation of coal ash and coal combustion residuals. It's a field that I've been actively involved in for 15 years, and landfill regulation for nearly 25 years.

I have two primary comments to supplement my written comments, and the first is the status of regulation that applies to coal ash landfills in particular. Here in North Carolina, the state of North Carolina actively and fully regulates coal ash landfills, and requires liner systems and leachate collection systems for their construction. We've been involved in projects here in North Carolina that have adequately utilized existing capacity on what I would consider brown fields, improved their groundwater quality, added engineering controls to those facilities that have benefitted the environment, provided for safe disposal, and have provided a minimum impact on green field sites.

I think if you take away the existing brown fields and preclude them from future use, eliminate their capacity, you're requiring a

needless use of soil resources and green field resources for these facilities. I think that, you know, coal ash, if designed properly, can also provide more or less an improvement to those site conditions while it utilizes the existing capacity of those facilities.

I'm not really here to speak on the pond issues. I think that's a complicated issue for the regulations where NPDES regulations manage the wet waste and solid waste regulations here in North Carolina govern the solid requirements or the dry requirements for those facilities. So it certainly is a challenge. I think the regulators within the solid waste group within Subtitle D program have the experience, the staff experience, and technical resources to evaluate engineers' designs for solutions for these facilities. So I don't think we should establish design standards that do not include alternatives and equivalent demonstrations.

Thank you.

MR. DELLINGER: Thank you. Can we have

numbers 37, 38, 305 and 306 move forward? Number 37?

MR. ELDRED: Good afternoon. My name is Carl Eldred and I represent the Florida Electric Power Coordinating Group. The FCG is a nonprofit association consisting of 28 investor-owned, municipally-owned, and cooperatively-owned electric utilities engaged in providing the majority of electric power to the public in the state of Florida.

The FCG understands that recent events have caused the EPA to revisit its previous regulatory determinations for CCRs. However, the proposed Subtitle C regulations are not an appropriate response. In Florida, hazardous waste landfills are prohibited. Additionally, industrial byproducts such as CCRs may not be beneficially used if they are regulated as a hazardous waste. Consequently, if regulated under Subtitle C, CCRs generated in Florida will have to be disposed of or beneficially used out of state.

It's conservatively estimated that over

1.1 million tons of CCRs are disposed of each year in Florida. Absent legislative amendment, Subtitle C regulation would require FCG members to dispose of these CCRs at a hazardous waste landfill in Emelle, Alabama which is located over 600 miles away from many of the FCG member facilities.

The cost of disposal alone would exceed $280 million. Not to mention the cost of sending over 160 trucks a day on a 1200 mile round trip to Alabama.

The amount of CCRs disposed of in Alabama annually may actually exceed 3.6 million tons if FCG members are unable to find out-of-state opportunities for the continued beneficial use of the estimated 2.5 million tons of CCRs that are currently beneficially used in Florida.

A combination of Subtitle C regulations and the state prohibitions on disposal and beneficial use of hazardous waste will cripple the generation of electric power in Florida, and will

greatly increase the cost of power production for FCG customers.

Simply calling the CCRs a special waste will not place them beyond the reach of Florida's statutory prohibitions. Even EPA recognizing the preamble that Florida's statutory prohibitions would have to be amended if CCRs are regulated under Subtitle C. However, it is uncertain whether there will be any legislative support for such amendments.

What is a certain is that any proposed legislative amendment would meet strong opposition from any number of environmental public interest groups that are very active in Florida.

Of the options presented in the proposed rule the FCG prefers the Subtitle D Prime option. In light of the unique factual and regulatory circumstances present in each state however, EPA should first obtain legislative authority to implement state approval processes, or at least at a minimum include in the Subtitle D options the ability for states to seek equivalency

determinations. For many years Florida successfully implemented an approved Subtitle D program that differs from some of the requirements of part 258. The same legitimate reasons for Florida's approved alternatives, the parts 258 requirements will also apply to the proposed Subtitle D regulations for CCRs. However, as written, there is no process by which Florida can seek those alternatives.

Thank you.

MR. DELLINGER: Number 38.

MS. BLOTNICK: Good afternoon. I want to thank the EPA for coming to Charlotte for this hearing. My name is June Blotnick. I'm the director of Clean Air Carolina, a local nonprofit here in Charlotte.

Many people have spoken about the risks of toxic coal ash waste and what it presents to our water resources and particularly to Charlotte's source of drinking water, Mountain Island Lake. Today, on the 40th anniversary of the Clean Air Act, I'll emphasize the importance

of protecting air quality as we move from storing hazardous coal ash waste in slurry ponds to landfills, and the need for strong Federal regulations.

A report published 10 years ago in 2000 asking for stronger Federal regulation on coal ash waste by several environmental groups, points clearly to the closed system of nature and how removing pollution from the air doesn't mean it leaves the environment. Referring to coal ash waste, it says, "If the EPA does not regulate this waste stream it will lose ground it has gained in cleaning up our air. And future improvements in electric plant air emissions could be eroded. Make no mistake about it, cleaning up the air does not mean that pollutants disappear. It means they are captured in lime, in fabric filters, in particulate matter collectors. Once captured, they stop being air emissions and start being part of the unregulated, solid waste stream. Cleaning up the environment by regulating air emissions but not other waste streams is a lot like trying to

fill up a balloon that has a hole in it. The job just cannot get done."

With newer coal plants like Duke Energy's Cliffside, which is an 800 megawatt high efficiency unit located 50 miles west of Charlotte, massive amounts of coal will be burned. With EPA's new air regulations and new pollution controls capturing more of the toxic air emissions from the smokestacks, the total amount of coal ash waste will surge. Duke has secured a permit to store the coal ash waste in a huge landfill which will initially hold 1.8 million cubic yards of waste for a five-year period. Duke will cover the waste with six inches of dirt-but only once a week -- and this is six inches of our North Carolina red dirt.

In this scenario toxic fugitive dust can enter our airshed during transport, during dumping of the waste and through wind and water erosion on the 1,560 days the waste is not covered by dirt during that 5-year period. We know that climate change will bring more drought as well as more

extreme weather, both of which can accelerate the erosion of the six inches of dirt, leaving the toxic coal ash waste exposed to the elements.

Our region already has our hands full with air pollution problems as we are the 10th smoggiest city in the country. Our state doesn't even have an EPA-approved state implementation plan for ozone non-attainment issues, and the 56,000 children with asthma in our region don't need another reason to stay indoors.

We have a major environmental time bomb on our hands. We don't need a patchwork of state regulations. We need strong, consistent Federal oversight to protect public health and the environment. We need Subtitle C.

Thank you.

MR. DELLINGER: Number 305?

MR. STRATTON: Good morning. My name is Bob Stratton. I live in Matthews, North Carolina and I'm representing nobody. I wouldn't have your job because you're not going to make anybody happy here today.

I'm here to support Subtitle C. And I'm tired of listening to industry throw up the fear factor. It's all I've heard from industry. I haven't heard one person from industry say let's sit down and work this out together. It's all "I'm going to close my plant." Well, I'll tell you what, people. If we don't clean up the environment today we're going to close down all our plants along with the environment. The state of North Carolina is not going to fix it. If you look back at the history of this state and look at the regulations that they totally ignore, you will know that it's not going to happen. Thanks.

MR. DELLINGER: Number 306? Numbers 40, 41, 42 and 44. Number 41?

MR. RHODES: I'm number 40.

MR. DELLINGER: 40, okay. Oh, I'm sorry. I just -- I looked at my paper wrong. Thank you.

MR. RHODES: Good afternoon. Thank you for the time you've allotted us to offer our position on the proposed Subtitle Change. For the

record, my name is Doug Rhodes, I have worked for the research and development portion of Headwaters Resources for the last 16 years.

I wanted to use the time allotted to me to discuss the inevitable stigma which is going to be placed on beneficial use of fly ash if Subtitle C is adopted. Several times prior fly ash has been reviewed for Subtitle C designation and found nonhazardous. With the recent move by EPA to change to Subtitle C, numerous technical bodies such as American Association of State Highway Transportation Officials, National Ready-Mix Association, American Society for Testing and Materials, American Concrete Institute, and the Portland Cement Association have confirmed the hazardous designation is neither warranted nor needed.

EPA and the states have consistently recognized that regulating CCRs as hazardous waste under Subtitle C would adversely impact their beneficial use. Such a result would not be consistent with RCRA's directive that EPA consider

such beneficial uses in evaluating CCR regulatory options. On the other hand, regulation of CCRs under RCRA Subtitle D would not adversely impact CCR beneficial use, while at the same time allowing for the development of Federal regulations that would ensure that CCRs are managed in a manner protective of human health and the environment.

The belief that fly ash can have a dual designation of hazardous and beneficial use is absolutely untrue. Years of work have gone into establishing the technical data, relationships, distribution and product development that validates beneficial use. The stigma of a hazardous designation could simply destroy the marketability of beneficial use. I would take this opportunity to remind you of the negative impacts on marketing, technical, financial and legal implications for the beneficial use of fly ash.

So in closing I urge you to maintain the past technical findings that CCR regulation under

Subtitle C is unnecessary and unwarranted. Thank you again for your time and attention.

MR. DELLINGER: Number 42. 41? Okay, I did it wrong again.

MR. FANSLER: No worries. Good morning. Henry Fansler. I live in Louisville, North Carolina. I'm a member of the steering committee of North Carolina Interfaith Power and Light and a conservation co-chair of the foothills group of the Sierra Club serving Forsyth, Surry, Stokes, Yadkin, Davie and Davidson counties.

Sorry to say that the well that supplied water to my childhood home was partially filled with coal ash from the power plant of a local textile mill when we could connect to city water. If my father had known that it was much more than coal ashes it would never have happened. Then, he did not know that the ash contained toxic metals including mercury, selenium, cadmium and arsenic. Now we know better, and now we need to do better. To do this, participation will be required from Federal, state, and local government, and citizen

involvement.

I'm here today to represent the faith communities of the foothills of North Carolina, my Sierra Club members, my family, and especially my 10 grandchildren who call this area home. I support Option C of the proposed rule, and I hope that you will make stringent, clear rules concerning beneficial uses of coal ash. I believe that we will need to establish concise requirements so that the storage, disposal, and use of coal ash can be verified by inspection from appropriate authorities. I believe that we should work to prevent contamination before there is a need to clean up contamination.

I love to fish, and live near the Belews Creek Power Station in Stokes County. I know of folks that live right near the station and more that fish for recreation and most want to eat what they catch. Belews Creek Steam Station's active ash pond surface impoundment is on the EPA's official June 2009 list of coal combustion residue surface impoundments with high hazard potential

ratings.

In the 70s, after the station began operation, there was a selenium surprise in the waters of Belews Lake. The fish stopped reproducing and the fishery collapsed. Since then these issues, nitrogen oxides, fly ash, and sulfur dioxide emissions have been successfully addressed by the folks at Belews. I see no reason that the security of the ash pond could not be addressed as well. Forsyth County has a Department of Environmental Affairs, but is subject to budget restrictions. The website of the North Carolina Department of Environment and Natural Resources tell us that they are committed to regulating the impoundment and disposal of coal ash, but I know they are committed to doing the right thing but I believe that a definitive regulation such as Option C presents, with a definitive consideration of beneficial use of coal ash, is the appropriate response to the issue for me, as a heartfelt response to our gift of creation.

Thank you and welcome to North Carolina

in September. I hope you get a chance to enjoy it.

MR. DELLINGER: Thank you. Number 42?

MR. GRUBER: I'm Doug Gruber. I work for a coal ash marketing company, but I'm here to talk more about stigma than the impoundments and those things that you talk about, and how it affects me personally.

Stigma is an interesting thing and they say it will have no effect on the beneficial reuse of fly ash and coal combustion products but it will have. I've seen this recently in my personal life. I live along the Gulf Coast of Florida and after the Deep Horizon incident, the news media and politicians in their well-meaning manner talked so much about the devastation along the coast, and it was an incredible environmental disaster and the long-term effects are still yet to be seen.

The damage done to our local economy was mostly because people perceived how badly things were on the coast. And I live in the area of Fort

Walton Beach and Destin. Well, let me tell you, our beaches are beautiful. They're still beautiful. Please come and visit because my neighbors are unemployed. Businesses are going out of business, and it's just really bad.

The same thing is about to happen to my job. I market coal ash products to people who use them responsibly. We use them in good ways that benefit society, because we don't landfill the material. I implore you not to use C, and label us hazardous as you destroy our ability to market this material in a useful manner. Please do not call this a hazardous material. It doesn't meet the guidelines for hazardous, and all you're destroying is the good work people have done to recycle. Recycling is important in my life, is important in my job, and this information and stigma is going to destroy that opportunity. Please do not label this product hazardous. It is not hazardous. It is a good, useful opportunity for us to recycle.

Thank you.

MR. DELLINGER: Thank you.

MR. WILLIAMSON: My name is Rob Williamson. I am vice president of marketing and business development for Trimac Dry Bulk Group. We're headquartered in Holly Hills, South Carolina. Trimac is a major bulk hauler of fly ash, hauling fly ash throughout the United States through eight different states: Alabama, Florida, Georgia, Michigan, North Carolina, Ohio, Louisiana, and South Carolina.

Rec1assifying fly ash as a Hazardous waste would be very negative to our business. And listening to all the speakers before me, they're talking about landfill, they're talking about ponds and what have you, and reclassifying as hazardous, but eliminate the fly ash that we currently haul to concrete products and what have you, so it would be a loss of over at least 35 jobs at our company.

We are a strong proponent of recycling fly ash. Fly ash is used in many different things as we haul it to concrete products, and to --

we're hauling a very large project at the Savanna River bomb plant, which is -- the government is spending $1.6 billion to clean it up. Fly ash is being used to clean it up. So if fly ash is so bad, why would it be used in that, in this project?

We also haul to interstate highway paving jobs. It's used in the concrete of the recycling there. So we are a proponent of recycling. Changing it to hazardous would change our insurance. It would change our classification as a carrier. It would require truck drivers to change their commercial drivers license to hazardous amendment. It would also make many smaller carriers unable to get insurance at all, if you were to reclassify it. So it's much smarter to recycle ash into concrete highways and other projects than to put it in landfills and ponds.

So I ask you very sincerely, do not reclassify it as a hazardous waste. Thank you.

MR. DELLINGER: Thank you. Number 44.

REV. HUNT: Good morning. I'm Rev. Douglas Hunt, executive director of Tennessee Interfaith Power and Light. I'm pleased to be here, to call for implementing Option C as a first and critical step in meeting our moral and ethical responsibilities to protect people and our planet.

Tennessee did not wait for EPA to give us a hearing. We went ahead and held a people's hearing on September 22, the transcript of which has been forwarded, and you will see evidence of the effect of the Kingston ash spill on those people's lives. It brought misery and injustice to the people of Will County and surrounding communities and now the people of Perry County, Alabama, where 30 percent of residents live below the poverty line, and a majority of that African-American, are receiving the remnants of the toxic coal ash spreading misery and injustice and the morality that surround the disaster even further.

Tennessee Interfaith Power and Light and the rest of our Interfaith Power and Lights are

very concerned about issues of environmental, energy, and climate justice. Can it possibly be moral to continue to allow the transportation, disposal and storage of material that contains mercury, arsenic and a whole laundry list of toxic substances without the kind of monitoring and control provided in Option C? Can it possibly be moral or just to make the decision not to declare and regulate coal ash as the kind of substance it truly is? To fail to adopt Option C will almost certainly make such future tragedies inevitable.

A word about stigma. Those of us here from Muslim, Jewish and Christian backgrounds know about stigma from our scriptural teachings. Stigma was not attached to Cain because he deprived people of an economic opportunity, or lost jobs. And jobs are critically important in these times. But like Cain, if coal ash is to bear a stigma, it will be a stigma from lives lost, lives ruined, and the planet poisoned.

The solution to all of these problems ultimately is to stop burning coal. But that's

not going to happen -- that's not going to happen immediately. But Option C is a first and critical step in meeting our moral and ethical obligations to protect people and our planet from any more coal calamities like we experienced in Kingston.

Thank you.

MR. DELLINGER: Thank you. Is there anybody in the room with a number lower than 44 that has not spoken?

(No audible response.)

MR. DELLINGER: Okay, so I'm going to call number 303, 307, 308 and 191. Can you shout out your numbers, so I can -- 303?

MR. SCOGGAN: I want to thank you for the opportunity to be here and speak before you today. My name is John Scoggan. Today I'm speaking as a concerned father of three children attempting to enter the job market.

I want you to know that I support the EPA's efforts to protect human health and environment. We don't want another disaster like the Kingston spill. However, following Kingston I

think the EPA visited most of the coal waste impoundments around the country and I'm not aware of any recorded potential problems that could lead to another Kingston.

I am opposed to coal ash being regulated under RCRA's Subtitle C labeling the materials hazardous. There are currently not enough hazardous landfills in the U.S. to handle all this material. New landfills will have to be permitted, and many at greater distances from the power plants in the current disposal sites. These new landfills will cost money. Hauling the extra distance to these landfills will increase cost. The amount of waste will increase. Utilities may reduce the amount of coal combustion material available for reuse, and the amount recycled may be reduced by the end users due to the avoidance of legal liabilities. Again, costs will rise.

The additional landfill waste material will not help the environment. Handling and hauling hazardous waste will increase cost. Utility plant on-site operations to deal with

hazardous material will increase cost.

All of this additional cost will eventually be passed on to consumers, both commercial and residential. We all know that we are in the worst recession since the depression. Unemployment is close to 10 percent. Many manufacturing companies are just barely getting by. An increase in energy costs will drive some companies out of business or cause American business to ship production offshore where it costs less to operate. This will result in more Americans losing their jobs and further damaging the US economy.

EPA's own scientific data says that coal waste is not hazardous. By EPA's own admission both RCRA Subtitle C and D will provide equal protection for the public health and environment. I ask that the EPA rule with RCRA Subtitle D and continue to label coal ash as a non-hazardous material. Don't slow down the American recovery by needlessly increasing energy costs and putting U.S. citizens out of work.

Thank you for your time.

MR. DELLINGER: Thank you.

MR. BRINKLEY: Hello, my name is Dave Brinkley and I'm the director of distribution and customer resources for Roanoke Cement. I'd like to read a couple things for you this morning. Environmentally sound uses of ash conserve resources, reduce greenhouse gas emissions, lessen the need for waste disposal units, and provide significant domestic benefit. There's a lot of beneficial use that can be had from fly ash. Subtitle C would mitigate all of those beneficial uses that we have available to us. I'm not sure if there's too many people in this room that would think that calling fly ash a hazardous material and sending it to the landfill and then calling fly ash beneficial use and using it in concrete in our schools or in other public places makes sense.

Reclassifying fly ash as a hazardous waste would definitely have a detrimental effect on the amount of fly ash that's used in concrete. As a cement producer, you would think that I would

advocate less fly ash in concrete mix because then I would have the opportunity to produce more cement and sell more cement. Nonetheless, the environmentally responsible thing to do is Subtitle D and not to give fly ash a negative impact.

Thank you.

MR. DELLINGER: Thank you. 191?

MR. BRYANT: My name is Mark Bryant. I'm here today on my own behalf. For the past 18 years I've held various responsible positions for coal-fired utility for all aspects of hazardous and solid waste management including the disposal of coal combustion residuals. And more recently the beneficial use and recycling effort of all categories of CCRS, including FGB gypsum(sic).

Eighteen years ago I joined a utility and my first task was the closure of a company-owned landfill along with the permitting and construction of a modern state-of-the-art landfill. This work was part of the municipal solid waste landfill regulations that were

promulgated in the 80s and enacted in the 90s.

To me this RCRA Subtitle D program seems to be the perfect model to achieve the change that is sought today. The similarities are too close to ignore. Subtitle C is a political solution, not a technical solution. Back then there were landfills that did not meet a technical standard for structural stability or for engineering control. A national standard was required. Today, we have witnessed the structural failure of an impoundment that has galvanized a call for action and national standard for managing CCRs. The model is in place: A solid waste program that phases in reasonably, that evaluates the performance of existing facilities, closing those that fail the test, and allowing adequate time to permit and construct new, modern facilities where needed.

This policy and regulatory scheme provided for a manageable, cost-effective transition that brought the management of household trash and solid waste to a modern

science-based standard. The technical standards for Subtitle C and a Subtitle D landfill are essentially the same. So why are we threatening all the fine work to promote beneficial use and recycling, most of which was supported by EPA?

Today, our municipal solid waste program, under a national consistent level of requirements implemented by the states, is a success. I believe that the President promised that all policies enacted during his administration would be based on science. To politicize a well-tested RCRA is poor public policy, will waste decades of good hard work and cause a $10 billion beneficial use and recycling industry to suffer, if not die.

These uses are well-conceived, well-designed and well-constructed and are based on good science, sound economics and a market need. A Subtitle C approach is unnecessary. Subtitle D is sufficient. Thank you for listening.

MR. DELLINGER: Thank you. Numbers 208,

209, 308 and 310? 208 and 209 are not in the room? Okay, so let's go 308 and 310, 313, 314.

MR. TODD: Good afternoon. My name is Sean Todd and I'm here on behalf of the Coal Boiler Slag Consortium. And we are here to advocate a principle that previous speaker just referred to as well as I think many Sierra Club members could also agree to and Interfaith Power and Light members can also agree to, and that's to let science drive the policy. If a byproduct of material meets the technical criteria of hazardous waste then classify it and regulate it as such. If that byproduct or material does not meet that technical definition, then don't classify or regulate it as a hazardous waste.

I represent the boiler slag consortium. If you have shingles on your roof, on your home, there's an 80 percent chance that you have boiler slag on your house. 80 percent of all shingles in this country contain boiler slag. Boiler slag is different chemically and physically than other types of coal combustion byproducts; different

than fly ash, bottom ash, and flue gases -- it's a sulpherization by-product. It is collected at the bottom of a furnace. It's quashed with water and thereby vitrified -- meaning glassified.

Boiler slag is inert. It's environmentally benign and has at most a technical hardness of 6-plus. It has extremely low leachability rates. It is environmentally benign.

EPA asks specifically for some state-run programs. We will submit for the public record the state of New Hampshire in August 2005; their Department of Environment Services conducted a technical review of boiler slag and approved its use as a base material for the construction of driveways, roads, parking lots, asphalt emulsions and structural film. We'll give that to you and to the public docket. Their laboratory report finds the smallest particle size of boiler slag found. They did a chemical analysis for arsenic, cadmium, lead, and mercury, and four other constituents. They found concentrations to be between less than 0.01 and 0.5 milligrams per

liter concentration. Not meeting the definitions of hazardous waste.

My last point is another specific resuscitation from the rulemaking, and that has to do with unencapsulating uses. Over 90 percent of boiler slag is reused in roadways and roofing shingles and in abrasive applications. We have another study which we will submit to the docket, that from those fines used in abrasive applications; blasting industrial facilities, ships, roadways, bridges, the technical product was found to be the same as the soil in your backyard. And so when that material is blasted into its use, it simply breaks down in size. It does not chemically alter boiler slag.

So in conclusion, we would like to let science drive the policy, continue the unrestricted use of boiler slag, and please don't lump boiler slag in with other coal combustion byproducts.

MR. DELLINGER: Thank you. 310.

MR. BUCKLEY: My name is Tony Buckley.

I moved here from Arizona about five years ago. And I bought a lot on Lake Wylie because I liked the water so much, and you know there's not too much in Arizona. So that was a big novelty to me and I spent most of my time in the lake. I'm retired. I don't actually work. And after about two years I started to get a neurological problem and after going to see many specialists, I had contracted arsenic poisoning to a level where I couldn't -- my wife had to help me get out of bed and I couldn't get out of a seat after sitting in the theater for a while. It just put me in a total sort of stiff position, and they discovered I have shading in the brain.

And we had Lake Wylie tested at the time and my well tested. Lake Wylie showed up to be an insignificant amount in the lake, but I had to have no little concern about it.

You know, my piece is that we are subject to organic poisoning in many areas. One area that we can control is the lake, and we need to do that because I can tell you, I thought I had

MS and I was going to be crippled for the rest of my life, and now I'm taking a treatment put out by Dr. Brooks who did a study in Bangladesh, and the treatment they give you is basically a type of B12 which attracts the arsenic to it and it's supposed to exit my body. And it's only an experimental phase but it seems to be working and I walked here today, so I am proof of that fact. But I can tell you, I still have arsenic poisoning. I'm still feeling the effects of it today, and I will for the rest of my life I'm told. So that's right from somebody who has been personally affected by it. Okay?

MR. DELLINGER: Thank you. Numbers 103, 92, 164, and 313. Since only two people came up, and I think I called four numbers, can you -- 103 and -- who else, over there? What's your number, sir?

MR. PRERSALL: Ninety-two.

MR. DELLINGER: Thank you.

MR. BUFFKIN: Good afternoon. My name is Patrick Buffkin. I am a government affairs

specialist with North Carolina's Electric Cooperatives. North Carolina Electric Membership Corporation, or NCEMC, is a generation and transmission cooperative that provides wholesale power and other related services to 25 of the 26 electric cooperatives incorporated in North Carolina. All of North Carolina's electric cooperatives, known as electric membership corporations, or EMCs, were created in the 1930s and 40s to bring electric power to areas that were deemed by other utilities as too remote and uneconomical to serve.

Collectively, the EMCs of North Carolina provide energy in 93 of North Carolina's 100 counties. North Carolina's 26 distribution EMCs are independent, not-for-profit corporations. Each cooperative is owned by its retail consumers who elect its board of directors from among its membership. NCEMC obtains its energy needs through a combination of owned generating facilities and a number of purchase power agreements. While NCEMC does not have any

ownership interest in coal-fired generating plants, it does obtain approximately 37 percent of its energy needs from such facilities.

NCEMC supports the Federal regulation of CCRs and urges the EPA to adopt a rule that protects human health and the environment but that does not unduly burden the economy or threaten jobs and economic reliability. NCEMC favors the development of regulations of CCRs under RCRA Subtitle D non-hazardous waste program. We believe that the Subtitle D Prime option is the best one available.

It should be noted that NCEMC is strongly opposed to the regulation of CCRs under the RCRA hazardous waste program, the so-called Subtitle C approach. Unlike the Subtitle C approach, D Prime will enable the EPA to establish an environmentally protective program without crippling the beneficial use of CCRs and imposing unnecessary costs on power plants that in turn increase electricity costs.

In summary, NCEMC shares EPA's objective

of having a Federal regulatory program that ensures the safe disposal of CCRs, and the D Prime option would best meet this objective.

Thank you.

MR. DELLINGER: Thank you. Number 92?

MR. PRERSALL: I'm Sam Prersall. I'm the southeast regional manager for the Environmental Defense Fund, a national conservation environmental organization with over 700,000 members. Today EDF has two primary comments on the proposed regulations. First we strongly recommend regulating coal combustion residuals under RCRA Subtitle C. Second we discuss serious concerns about prospective beneficial uses. EDF believes the CCRs should be regulated under Subtitle C. CCRs meet the criteria necessary to list under Subtitle C due to their toxicity, the potential for the hazardous constituents to migrate or bioaccumulate, the potential for mismanagement of the waste in cases in which damage to human health or the environment has been proven.

In addition to established risks, CCRs pose other risks that have not been fully explored. For materials of this character Subtitle C is far more appropriate than Subtitle D. A cradle-to-grave regulatory approach is absent from EPA's proposal for beneficial uses. For any proposed encapsulated beneficial use to be considered safe as far as consideration of all the risks or the full life cycle of a material, including risks from production, use, recycling and reuse, and the ultimate disposal of CCRs and any products or materials containing them.

High temperature processes, opportunities to off-gas, and exposures to water all represent avenues whereby toxic components of CCRs can leave the beneficial use chain and directly enter the environment. Evaluating the safety of all phases of the life-cycle of the proposed use requires extensive information about the CCR constituents, including total metal content, chemical and physical form, fate and transformational potential, solubility and other

factors related to the capacity of contaminants to become bio-available under a broad range of real-world conditions.

Safety also requires the ability to track and monitor any such use over its full life-cycle to ensure that no appreciable risk could physically arise under worst-case scenarios such as use or reuse in homes or hospitals or schools.

Plainly put, only some encapsulated beneficial uses can be considered truly encapsulated over their entire life cycles. Those that they can be, of course, are okay. Non-encapsulated beneficial uses such as a soil amendments, road beds or ice control pose such direct risks to the environment and human health that they should not be allowed.

Thank you very much.

MR. DELLINGER: Thank you. Numbers 313, 314, 315, and 316. Numbers 317 and 318. Number 317?

MS. HOLK: My name is Jane Holk. I live

in Winston-Salem, North Carolina. I'm just finding out about this problem and I do think this needs to be made more public so that more people can come and speak. I've been concerned because my family and I like to enjoy the benefits of Belews Lake. We go and spend weekends there, and I recently found out that coal ash is a problem, that some of it has been sent into the water there and that 16 species of 20 have been eliminated on the lake. And in view of that, I'm very concerned about my family, my children and my grandchildren, the potential effects to them.

And I don't really understand how it can be harmful -- One group says it's harmful, one group says it's not. It either is or it isn't, so it doesn't really make sense. I think it is important to recycle what's been produced from coal power plants. But at the same time it's the government's job to create new green jobs that would eliminate the coal producing plants whatsoever. Solar, wind, geothermal or whatever.

And a lot of the industry people have

spoken have been concerned about their jobs. I'm unemployed myself and I know what it feels like. But I think of the long-term they're not really looking out for the big picture that we're poisoning ourselves incrementally, and also in many different areas. And if we can stop this I think proposal C would be the best option at this time.

I also think that it's important for the EPA to think about a compromise with the environmental and citizen groups with the industry, that they can both feel that they have made some inroads, until these new jobs are created. And I say protect our children, protect ourselves, the environment, protect our water and our air, and please protect the public health and the future of the generations to come.

Thank you.

MR. DELLINGER: Thank you. Number 318.

MS. GRIFFITH: Good afternoon. I'm Dot Griffith, and I live up in Linville, North Carolina. And I'm a member Appalachian Voices and

also on their board.

A few years ago on Christmas day, I was making dinner for my family and I was making a pumpkin pie with my daughter, and I got a call from a friend who said that I needed to get my camera right away and go with the founder of Appalachian Voices up in an airplane and go over the Kingston coal spill and photograph it. So with the blessing of my family I did, and I left for about seven hours and photographed this horrible disaster. And I brought you all some pictures that I am sure you have seen, but you haven't seen mine, probably. And so I'll leave them with you.

This is the picture of the ash pond, the berm that broke, and a picture of the houses that were surrounded by this tidal wave of ash. And another picture, also, of the ash sitting on top of the Emory River and the houses that were bowled over by the ash. Anyway, it was devastating that day and has been ever since for that community. And I would just like you all to take your "name,"

literally, and support and take care of our planet and our communities.

And I support Section C (sic) and hope that you all will also do that. Sorry.

Anyway, thank you.

MR. DELLINGER: Thank you. It's just about 1:00. We're going to take a 15-minute break and then start in with a new panel at 1:15.

(Whereupon, at 1:00 p.m., a luncheon recess was taken.)

A F T E R N O O N S E S S I O N

(1:17 p.m.)

MR. BEHAN: Good afternoon, and thank you for attending today's public hearing on EPA's proposed Rule regarding the regulation of coal combustion residuals that are disposed of in landfill and surface impoundments.

My name is Frank Behan, and I'm Acting Chief of the Energy Recovery and Waste Disposal Branch in the OSWER, which is the Office of Solid Waste and Emergency Response. I'll be chairing this session of today's public hearing, and with me on the panel this afternoon will be three other folks from the Office of Solid Waste and Emergency Response. Beginning closest to me is Suzanne Rudzinski, Elaine Eby, and Jeremy Ames.

Before we begin this afternoon's session, I would like to go over the logistics on how we are going to conduct the hearing this afternoon. The hearing will work as follows: Speakers, if you are preregistered, you're given a 15-minute time slot when you are scheduled to give

your three minutes of testimony. To guarantee that slot, we have asked that you sign in ten minutes before your 15-minute slot at the registration desk, which is just outside these doors. All speakers, those that have preregistered, and walk-ins, were given a number when you signed in today and this is the order in which you will speak. I will call speakers to the table, or to those chairs over to my right, your left, at four or five at a time. When your number is called, please move to the microphone at the podium and state your name and affiliation. The panel may ask you to spell your name for the court reporter, who is transcribing your comments for the official record.

Because there are many people that have signed up to provide testimony today and to be fair to everyone, testimony is limited to three minutes. We'll be using an electronic timekeeping system and we'll also hold up cards to let you know when your time is getting low. When we hold up the first card, which is green, this means you

have two minutes left. When we hold up the second card, you have one minute left, and at the third card you will have 30 seconds. When the fourth card, which is red, is held up, your time is up and you should wrap up your remarks. When you have completed speaking, please return to your seat and remain there until all speakers in your group have completed their testimony.

If you have a written copy of your testimony, please place it in the box at the court reporter's table to my left. Please remember, if you do not get to finish your remarks, your written comments will be entered into the record just as if you had provided them orally. If you did not get to finish and wish to submit written comments today, please see our staff at the registration table and they will provide you forms for submitting written comments. And, also, please remember that you may submit written comments to us up until November 19th, 2010.

We will not be answering questions on the proposal today. However, from time to time,

any of us on the panel may ask questions of you to clarify your testimony. Our goal is to ensure that everyone who has come today to present testimony is given an opportunity to provide comment. To the extent allowable by time constraints, we will do our best to accommodate speakers that have not preregistered. Today's hearing is scheduled to close at 9 p.m., but we will stay later, if necessary.

If, however, time does not allow you to present your comments orally, we have prepared a table in the lobby where you can provide a written statement in lieu of oral testimony. These written statements will be collected and entered into the docket for this proposed Rule and will be considered the same as if you presented them orally.

If you would like to testify, but have not yet registered to do so, please sign up at the registration table. An agenda can be found in the packet you received when you signed in today. Also included is some material on the proposed

Rule as well as instructions for submitting comments.

We are likely to take occasional breaks, but we are prepared to eliminate or shorten the breaks in order to allow as many people as possible to provide their oral testimony.

Finally, if you have a cell phone, we would appreciate it if you would turn it off or turn it to vibrate. If you need to use your phone at any time during the hearing, please move to the lobby or somewhere outside the hearing room. We ask for your patience as we proceed. We may need to make some minor adjustments as the day progresses.

Thanks, again, for participating and let's get started with the afternoon session.

Could numbers 45, 46, 47, and 49 come to the front of the room to the chairs, please. Could 45 come to the phone podium.

MR. SILVA: Good afternoon. My name is Edward Silva of Ronald Mark Associates, a company based in New Jersey.

Today I am representing the Geosynthetic Materials Association; a trade group of 80 companies that manufacture, distribute and install geosynthetic materials, including liner systems. The industry employs 12,000 people throughout the United States.

Our comment to EPA is very simple: We request that EPA mandate the geosynthetic lining of coal ash storage facilities using composite lining systems. In the shortest terms, use liners; specifically, composite liners. Why? Because liners work.

Concerns of safety regarding CCRs are mitigated at the landfill starter sites; are lined with a composite liner system of a geomembrane and a geosynthetic liner. A composite liner system prevents the leachate from entering the environment. Safety concerns regarding surface impoundments are also mitigated if the impoundments are lined with a composite liner system.

The American Society of Civil Engineers

does a regular report card on America's infrastructure. Of the three report cards representing over a decade, solid waste has received the highest grade of any category. My industry does a good job of taking America's waste and properly storing it to protect the environment. The materials, technology, and people exist; the engineers, engineering techniques and standards. The general contractors and installers who can build the proper facilities and the regulators and inspectors will assure the work is done correctly. We urge EPA to use what exists and is working today.

Further, our industry has continuously improved over time and EPA has been a part of that effort. Over the years, EPA has commissioned nearly 80 studies of the design and performance of liner systems.

We specifically call your attention to 2002 study titled, "Assessment and Recommendations for Optimal Performance of Waste-Containing Systems." That study contains a great deal of

pertinent information on how to construct containment systems.

What is illustrated for today is a graph charting the leakage rate of different designs over the life cycle of nearly 200 facilities. The composite liner system of a geomembrane and a geosynthetic clay liner was demonstrated at the lowest leakage rate over all life cycle stages, including a near-zero leakage rate after the facilities are closed and final cover placed. Our materials work. Use of composite liner systems will achieve the EPA's mission to protect human health and the environment for all Americans.

A brief word on the hazardous or nonhazardous question. While coal ash does contain heavy metals, it lacks traditional characteristics of hazardous materials; radioactivity or the presence of infectious medical waste. In the opinion of our trade organization, coal ash can be properly stored using Subtitle D regulations, a nonhazardous solid waste designation with composite liner systems.

Thank you.

MR. BEHAN: Thank you. If everyone, after you're done speaking, could put your comments into the box here, that would be great.

Number 46.

MR. CARSON: My name is Hartwell Carson, and I'm the French Broad Riverkeeper in Asheville, North Carolina.

And I continue to hear the utility industry claim that they're meeting all local, State, and Federal regulations. This is a direct quote from Progress Energy, and it's a gross sleight-of-hand that suggests they are doing what it takes to protect our environment and our communities.

Nothing could be further from the truth on the French Broad River where I am the Riverkeeper. I recently spent an afternoon canvassing the neighborhood that is located within a couple hundred feet of these coal ash ponds behind two of the nation's 49 high-hazard coal ash dams. I heard stories of coal ash blowing into

people's homes on a daily basis. We found drinking water wells that they had no idea that they were next to coal ash ponds that have 116 exceedances of State groundwater standards. And no one knows how many other wells are in the neighborhood, and no one's looking to see what water quality violations exist in their drinking water. We scooped coal ash out of one person's windowsill and heard stories of it getting into people's cars' ventilation systems and continuing to circulate for months.

The implementing regulations that don't establish meaningful oversight will do nothing to protect the French Broad River and the communities around this plant. The utility industry claims that coal ash is just like dirt. The recent tests on the French Broad River showed fish with alarmingly high levels of selenium, water samples that showed arsenic at over 18 times the human health standard for the state of North Carolina and arsenic and sediment samples at over 80 times the background what naturally occurs in soil.

This is not just like dirt. And because of this, this community is at risk and their health has been shown to be declining.

Since Progress Energy in Asheville is running out of room to store more coal ash, they are aggressively looking at opportunities to recycle this ash, and this is including putting 650,000 tons of coal ash to fill in a stream in a valley just above a trailer park community that is all on drinking water wells. And I've personally scooped coal ash out of this stream right next to the doors of these homes and next to these drinking water wells.

So the utility industry cannot continue to act as if all beneficial use will benefit anyone other than the utility industry. The utility industry also continues to support additional regulations of coal ash. And I'm glad that we can agree that additional regulations are needed, but we can't stand up here today and continue to let the fox guard the henhouse.

Coal ash must be classified as a

hazardous waste with real, meaningful oversight. And Subtitle C is the only regulation that will accomplish this goal.

Thank you for your time.

MR. BEHAN: Thank you. Number 47.

SPEAKER: Hi, I'm (inaudible), and I could say what he just said. Note that. Ditto.

But I'm a mom, and I'm actually paying a babysitter so that I could come here today and hang out a lot on the playgrounds of Charlotte. And it gets a little tiring just talking about what Little Johnny has for lunch every day, so we started talking about Subtitle D and Subtitle C instead.

And I just want you to know that five years ago a lot of the people I spoke to really believed that, oh, the government is protecting us; our water is safe to drink. And now it's a completely different situation and people are paying attention and parents are very concerned about what's in their children's water, particularly in Charlotte in our air where we have

some of the worst air in the entire country.

Maybe I'm a little naïve. I don't know why we're choosing this, but I just wanted to really make sure that you're hearing from many, many parents in Charlotte. Lots and lots of my friends and folks that I talked to said, yes, you should go to that hearing. You should say something. Just say we all care about this. We really want you to support Subtitle C.

Thank you.

MR. BEHAN: Thank you. Number 49.

DR. PATRIE: I'm Dr. Lewis Patrie, chair of Western North Carolina Physicians for Social Responsibility from Asheville, speaking on behalf of Physicians for Social Responsibility, a nationwide network of medical and public health professionals.

We believe mandatory Federal regulation of coal ash disposal by the EPA is essential. Coal ash typically contains heavy metals, including arsenic, lead, mercury, cadmium, chromium, selenium, plus other toxins. They can

cause cancer and nervous system illnesses such as cognitive deficits, developmental delays and behavioral problems, also heart damage, lung, kidney and gastrointestinal diseases, reproductive problems and birth defects.

Coal ash's toxic contaminants leak into the surface and groundwater. EPA estimates that 140 million tons of coal ash are generated annually. Coal ash is disposed at nearly 1,000 sites across the nation, including many in North Carolina.

EPA is considering adopting mandatory federal rules that would phase out leak- and spill- prone wet storage of coal ash, require storage areas to be lined and take other steps to minimize toxic contamination of surfaces, groundwater, and in a number of places, such as drinking wells.

Increasingly, opponents of federal regulation of toxic substances argue that regulations that stigmatize coal ash would hurt the economy at a time when many people struggle

with unemployment, rising prices and financial insecurity. PSR avows that coal ash should be stigmatized, considering the price of pollution and misery and health care costs. We pay in healthcare and health insurance costs, lost days from work and school when we suffer physically, economically, and emotionally from illnesses and premature deaths, and when our children are permanently deprived of their capacity for normal intellectual development.

We suggest you compare costs versus benefits comparing employment and economic losses that might be experienced by polluting industries with those health costs resulting from toxic pollution, such as has been applied to tobacco and health in the past and as being currently applied to the problem of childhood obesity.

Furthermore, costs of burning coal and the use of nuclear power to create electricity should be compared to those of retrofitting millions of homes and other buildings with energy-saving measures, plus a dramatic switch to

truly renewable energy resources, thus reducing our dependence on fossil fuels, a major cause of global warming.

Support Option C (sic). Thank you.

MR. BEHAN: Thank you. Could numbers 50, 51, 53, 54 come forward.

MR. EVERETT: Good afternoon. My name is George Everett. I'm director of Environmental and Legislative Affairs for Duke Energy.

Duke Energy strongly supports RCRA's Subtitle D nonhazardous program to regulate coal ash residuals, and specifically the D Prime Option. Subtitle D would raise the bar nationally for surface impoundment safety and achieve the environmental protection we all seek without the exponential costs and damaging consequences to the beneficial reuse industry. What would Subtitle D do? It would require electric utilities to either remove solids from existing surface impoundments and retrofit them with a composite liner or cease receiving residuals within five years of the effective date and close the unit. New

impoundments could only be constructed with composite liners. Groundwater monitoring would be required for all new and old landfills, provide continual assessment of any possible groundwater impacts.

Utilities have safely managed residuals and hundreds of surface impoundments for decades. In the Carolinas, Duke Energy has had a robust monitoring maintenance inspection program for all of its ash basins since 1976. This involves daily observations, monthly inspections by plant staff, plus additional inspections anytime there are two inches of rain in 24 hours. Additional inspections by a licensed professional engineer and inspection every five years by an independent engineer have now been replaced due to new legislation in North Carolina with inspections by the North Carolina Dam Safety Program. This program was in place well before EPA's inspections currently underway.

It's also important to note, for those who have talked about Subtitle C, there are

currently no permitted hazardous waste landfills in North or South Carolina. Consequently, a Subtitle C regulatory program would place an enormous burden for both the State's regulatory programs and utilities and, finally, permit disposal sites to handle the CCRs and meeting these proposed regulations.

Dam stability is a critical piece of this regulatory puzzle. Quite simply, a Subtitle C hazardous designation coal ash is not warranted to ensure the structural stability of surface impoundments.

Thank you.

MR. BEHAN: Thank you. Number 51.

MS. CAPOLA: Good afternoon. My name is Barbara Capola. I am the manager of coal by-products and reagents for Progress Energy, Incorporated, an investor-owned electric utility holding company.

Our utility owns and operates nine facilities located in North Carolina, South Carolina, and Florida with a combined electric

power generating capacity of over 7,400 megawatts that would be impacted by the proposed regulations. At our service territories we provide retail electric service to over three million customers who could see their monthly electric bills affected by the cost incurred due to this regulation.

Progress Energy supports the development of Federal regulations for CCRs under RCRA Subtitle D Prime. The development of Rules under this approach will establish a Federal standard for all CCR facilities to meet. Many states already have effective solid waste statutes and regulatory programs that will provide an additional layer of regulatory oversight for management reuse and disposal of CCRs.

Progress Energy strongly opposes the regulation of CCRs under Subtitle C. The comparatively stringent and costly Subtitle C program is not necessary to manage the relatively low toxicity of CCRs. An important aspect of the CCR regulation issue in terms of both cost and

effective disposal is the availability of adequate infrastructures, specifically landfills, that can and will accept hazardous waste.

There are 21 commercial hazardous waste landfills currently operating nationwide, and the last hole was permitted many, many years ago. The remaining capacity would quickly be consumed if such a landfill was required. In addition, transportation and infrastructure would see unparallel changes due to increased volumes of material movement. Nonetheless, reliable and nearby hazardous waste landfills must be available if Subtitle C is applied to CCRs.

EPA's proposal to not regulate CCRs for beneficial use is appropriate for a regulatory program under Subtitle D Prime. Most utilities endeavor to market as much of their CCRs as possible. This is better for the environment, the land or pond disposal, and provides unique and valued materials for many manufactured products, including high-quality cement and wallboard.

EPA should be aware that the beneficial

use marker for CCRs is susceptible to market variations, which limits reliance on beneficial uses. Today, the supply of fly ash for cement and concrete and the supply of synthetic gypsum for wallboard far exceeds market demand. We need to find ways to increase the consumptions of CCRs in these markets.

There have been many key drivers to reuse volumes. In 2008, over 30 percent of the nearly 61 million tons of CCRs used were in other market applications. With the proper engineering design controls and quality assurance programs in place, Progress Energy supports other market applications. While we are working diligently to beneficially use CCRs, there will remain a significant quantity of CCRs that must be disposed of in landfills.

It should be considered that even with strong efforts to beneficially use CCRs, a permanent disposal option at reasonable cost will still be needed.

Thank you.

MR. BEHAN: Thank you. Number 53.

MR. MULLINGS: Hello. My name is Gary Mullings. I'm the senior vice president of operations and compliance for the National Ready Mix Concrete Association.

As a matter of scale, ready mix concrete consumes 75 percent of all Portland cement used in this country. Concrete is the most widely used construction material in the world and is produced and consumed in every congressional district of our country. With regard to fly ash, a major portion of coal combustion residuals, the ready mix concrete industry is the largest beneficial user.

Surveys of ready mix concrete producers show that over 55 percent of all ready mix concrete contains fly ash. Fly ash is used in combination with Portland cement to impart the following benefits to concrete: Number one, it increases the durability and service life of structures. Number two, there's a reduction in waste sent to landfills. Three, there's a

reduction in raw materials extracted and reduction in energy for production and air emissions, including CO2. And it lowers concrete costs for the consumers.

While the concrete industry currently uses about 15 million tons of fly ash annually, it is estimated that the concrete industry could increase its current use to more than 30 million tons per year by 2020 resulting in less fly ash going into landfills and reducing the concrete industry's carbon footprint by some 20 percent.

Based on the concrete industry's extensive use of and reliance of fly ash in concrete, and after examining the EPA's proposed Rule, NRMCA has determined that Subtitle C designation for CCRs down for disposal while retaining any exemptions for beneficial use will lead to the following unintended consequences for the concrete industry. Number one, an increase in production costs and costs of construction resulting in less concrete production, thus, less opportunity to use fly ash in a beneficial way.

Number two, an increase in potential liability for concrete producers.

Currently, the regulatory status of small amounts of fly ash in waste streams for concrete production is unclear. Any proposed Rule, including Subtitle D, must explicitly state that small waste streams from the concrete industry are exempt from such regulations. There will also be litigation, which will target existing structures built with fly ash concrete. Three, potentially stricter laws impacting beneficial use; for example, there's a proposed Rule in Maryland which states that any concrete containing fly ash to be disposed of in a special facility authorized to accept fly ash. Number four, the potential elimination of fly ash concrete. A hazardous waste stigma and fear of liability will drive specifiers, engineers, architects, and end users to disallow fly ash in concrete. For example, the Los Angeles Unified School District has banned the use of fly ash until this panel and EPA finalize this Rule. And,

number five, there will be a drastic reduction in fly ash use in our nation.

Thank you very much for hearing our concerns. Appreciate it.

MR. BEHAN: Thank you. Number 54.

REV. RHOADES: Good afternoon. I'm Reverend Lynn Rhoades, pastor of a congregation in Stokes County. We are a rural people who had many tobacco farms at one time and are transforming those into vegetable farms trying to support our local folks and the folks next door in Forsyth County. We are people who enjoy the land and water, paddling and fishing in the Dan River and visiting Belews Lake. And, yet, we notice the rise of cancer in our community and we wonder. Concerns grow.

At the Duke Energy coal station at Belews Creek in Stokes County, we have watched a beautiful lake die. In the '70s and '80s, Duke Energy used the lake as a cooling pond and stored coal ash in a settling basin, which leaked selenium into the lake killing 16 of the 20

species of fish living there, including all the primary sport fish.

In 1985, the state ordered Duke to change coal ash disposal methods, but the ash is still being stored at several ash storage landfills which are currently leaking toxic chemicals into groundwater. You have heard these listed. There is no controversy that the chemicals in coal ash are dangerous to our health. Humans have not evolved to adapt to any of these chemicals, no matter what the level.

Just a generation or two in the past, the groundwater in North Carolina was pure and there were no measurable quantities of coal ash chemicals in our body tissue and organs. Today, we are gambling with the help of our water and therefore our life.

We question the effectiveness of regulating coal waste in our county. Data from Belews Creek power plant and others in North Carolina show that the groundwater on these sites is already well above safe levels and may be

leaking to our groundwater. Local residents there have not received answers regarding the effect of the wash water as a result of cleaning the stacks at the power plant a few years ago.

But hope is ever present in the human heart and we are gladdened by EPA's willingness to review their regulations. Option C (sic) will give EPA the authority to establish cradle to grave monitoring of coal ash, close toxic ponds, and regulate it as a hazardous waste, special waste. North Carolina Interfaith Power and Light, an organization in affiliation with North Carolina Council of Churches, supports Option C (sic).

As citizens, we have the ultimate responsibility of care for our communities. From a faith perspective, we are co-creators of God to care for and delight in God's creation.

Thank you.

MR. BEHAN: Could numbers 55, 56 and 57 and 58 come forward, please.

MR. HARGETT: My name is Travis Hargett. I'm the volunteer coordinator for the North

Carolina Sierra Club.

About a month and a half ago, I had the opportunity to go visit a community outside of Asheville in Arden, North Carolina right behind Progress Energy's coal-fired generation facility and outside of their coal ash pond. And I got the chance to talk to a man, and I was explaining what coal ash is and the toxic substances that are in it. And then I pointed behind him and I said, "A couple hundred yards up that hillside is a coal ash pond." And he said, very surprisingly, "Oh, is that what that is?" He had no idea. I then ran my finger across the side of his house and my finger was pitch black. He had no idea. I can't imagine growing up in such an environment where coal ash is just so present every day. But, you know, that day I was able to educate maybe four or five citizens. It's the EPA's job to not only educate, but also protect the majority of our citizens. And to adequately do that, you must set up federally enforceable regulations under Subtitle C.

Moving beyond coal is a challenge of my generation. You will hear from a number of students today. We are studying a wide variety of subjects from engineering to dance to environmental science. And we are here together because we understand the risks associated with under-regulated CCRs.

As we work to transition away from coal, we must ensure that we continue to protect the health and welfare of our citizens. A professor once told me that the status quo is a sinking ship. Well, regulation under Subtitle D is that sinking ship. We cannot let industrial use of fly ash be used as an excuse for inaction. I urge you to Subtitle C.

Thank you.

MR. BEHAN: Number 56.

MS. CHOI: Good afternoon. My name is Caroline Choi. I'm executive director for environmental services and strategy at Progress Energy. I am testifying today on behalf of the Utility Solid Waste Activities Group, or USWAG, an

association of over 110 electric utilities and trade associations.

Let me say, at the outset, that the question for us is not whether to regulate, but how to regulate. USWAG favors the development of federal regulations for coal ash under RCRA's Subtitle D nonhazardous waste program. Of the three options presented by EPA, the Subtitle D Prime option, with appropriate adjustments, is the best path forward. Unlike the Subtitle C approach, D Prime will enable EPA to establish an environmentally protective program without crippling coal ash beneficial use and imposing unnecessary costs on power plants, threatening jobs and increasing electricity costs. Even EPA has agreed that hazardous waste regulation will result in excessive and unnecessary regulation. In its final regulatory determination for the four large volume coal ash waste streams where EPA concluded that hazardous waste regulation was not warranted for coal ash, the agency found that the inflexible nature of the federal hazardous waste

program would result in excess costs and unduly burdensome regulations for coal ash.

Let me quote from the portion of EPA's final regulatory determination on this point: A Subtitle C system would require coal combustion waste units to obtain a RCRA Subtitle C permit, which would unnecessarily duplicate existing State requirements and would establish a series of waste unit design and operating requirements for these wastes, which would generally be in excess of requirements to protect human health and the environment. Since coal ash sites vary widely in terms of topographical, geological, climatological, and hydrological characteristics, for example, depth to groundwater, annual rainfall, distance to drinking water sources, soil type, and the wastes potential to leach into the groundwater and travel to exposure points is linked to such factors, it is more appropriate for individual states to have the flexibility necessary to tailor specific controls to the site or region-specific risks proposed by these wastes.

We couldn't have said it better, and nothing has changed since issuance of that determination that alters this conclusion.

Moreover, while we agree that steps must be taken to prevent accidents like that which occurred at TVA's Kingston facility from happening again, even EPA has found that coal ash being recovered from that site can be safely disposed of in a RCRA Subtitle D nonhazardous waste facility. The coal ash from the accident that was the impetus for this rulemaking proceeding is, with EPA's explicit approval, being safely disposed of in a Subtitle D nonhazardous waste facility. And just last week, the Tennessee Department of Health, in conjunction with the Federal Agency for Disease Registry and Toxic Substances, issued a final public health assessment concluding that the coal ash from the accident did not result in groundwater contamination nor result in ambient releases of ash above levels of concern.

USWAG supports federal Subtitle D controls for coal ash, including dam integrity

standards to help prevent future coal ash releases like that which occurred at TVA from happening again.

Thank you.

MR. BEHAN: Thank you. Number 57.

MR. STANISLAWCZYK: My name is Steven Stanislawczyk, and I'm the environment manager for Harsco Minerals, a division of the Harsco Corporation. I have been an environment engineer for about 15 years working in the manufacturing and/or processing industry for 15 years. Harsco Corporation, headquartered in Pennsylvania, is an international industrial service company employing 22,000 employees worldwide.

Harsco has partnered with the EPA in the past; the most recent partnership was celebrated in June of this year to remediate the Gulf States Steel Superfund Site located in Gadsden, Alabama. Harsco Minerals operates 15 boiler slag operating facilities. Eight are within 500 miles of Charlotte. They're located throughout the East Coast where boiler slag is used beneficially to

make abrasives and roofing granules. It has been since the 1930s. Over a million tons of boiler slag is processed each year by Harsco alone.

I am in support of regulating boiler slag under Subpart D.

Boiler slag is one of the four coal combustion by-products listed in this proposed Rule. Boiler slag only makes up 2 percent of the total CCB volume. The vast majority of boiler slag is recycled into valuable product. I'm only the second person to talk about boiler slag. Boiler slag is only produced from special types of combustion boilers where the molten material is quenched with water creating a vitrified amorphous nonporous solid mass where any metals are made into inert silicates. You can see it's different than coal ash. It's a solid mass.

Historically, boiler slag has always passed the TCLP testing and has never exhibited any hazardous waste characteristics. Harsco also ran the material through the ultimate leachate testing method that was referenced in the proposed

Rule that was conducted at Vanderbilt University; boiler slag passed all leaching scenarios even at very high and low digestion pHs.

Harsco is not aware of any referenced damage cases in the proposed Rule that was the result of mismanagement of boiler slag. Boiler slag is not commonly stored in surface impoundments. Harsco does not store any of our products, raw or processed, in any surface impoundments. Regulating boiler slag destined for disposal as a special waste under Subtitle C would unfairly stigmatize beneficially used products such as boiler slag.

In summary, placing an unneeded stigma on an inert product beneficially used since the 1930s will add millions of tons of extra nonhazardous waste into already crowded hazardous waste landfills and significantly increase the demand for mined virgin minerals, which has far greater carbon footprint, to replace recycled boiler slag.

Thank you.

MR. BEHAN: Thank you. Number 58.

MS. RENNICK: Good afternoon. My name is Jennifer Rennick, and I am the federal policy director for a regional nonprofit organization called the Southern Alliance for Clean Energy. I am also the mother of two young children, and I am a concerned citizen. And I'm very pleased to have the opportunity to speak today in support of the Subtitle C designation for coal ash under the Resource Conservation and Recovery Act.

In my professional capacity, I track how our federal legislative and regulatory systems make and enforce laws in this country. And I've had the opportunity first hand to see time and time again why voluntary measures, such as those that would result from the Subtitle D option, simply do not work; particularly not when we're speaking about for-profit ventures. Unless this industry is required by law to follow particular guidelines, there is no guarantee that public health and safety will be assured. In fact, regulating coal ash, which, as we've heard several

times today, contains, among other substances, lead, mercury, cadmium, chromium -- to regulate this in the same category as banana peels, soda cans and other household waste is truly unthinkable to me, particularly as a mother.

And I don't believe that citizens should have to sue after the fact for compensation or remediation in the event of another coal ash disaster, such as what happened in Harriman, Tennessee in December of 2008. And I do believe the correct word there is "when" we have another coal ash disaster, and not "if."

We should have the strongest public health protections from the start, and I believe that establishing the long overdue and robust standards that would result from a Subtitle C designation will help ensure that we have the best protections for our water, our air, and our children's future. I do not believe that environmental protection is a luxury as some utility spokespersons have suggested. I believe that these are fundamental rights and rights that

we all have a shared responsibility to protect.

And I trust and hope that the EPA is going to do the right thing at the conclusion of this hearing process and recommend a Subtitle D (sic) designation.

I want to thank you for your consideration, and I especially want to thank you for choosing my home state to hold one of these very critical and essential hearings.

MR. BEHAN: Thank you. Number 59, number 60. Is there anyone in the room that has a number below 60 that has not spoken that's here?

(No audible response.)

MR. BEHAN: We've had a couple of no-shows, and I am going to go back and call up two people that were called in the morning session to see if they're in the room; that is 208 and 209. Are they here? How about 164? 313 or 314? 316? Go ahead, sir.

MR. GASKINS: My name is Richard Gaskins, and I'm the Executive Director of the Catawba Riverkeeper Foundation, and that's a

relatively new position for me. I've been working on coal ash issues for over 30 years as both an engineer and as an attorney. For most of that time I was in private practice, and during that time, among other things, I chaired multiple ASTM committees that were drafting standards relating to coal ash. So this is not something that's really new for me. And if it was new, I think I would be inclined maybe to have a more lenient approach and say that states can handle it and industry can self- police, but in my experience, that hasn't worked. And I've seen a lot of people during my years of private practice come to me with contamination problems and really not have a good remedy.

So I want to urge you to regulate coal ash under Subtitle C as a hazardous waste. And I specifically want to point out one example, which I think is a little bit absurd, which is, on the Catawba River we have four high-hazard coal ash ponds. Two of those ponds are on Mountain Island Lake, which is the source of drinking water for

approximately 750,000 people. Charlotte uses about 113 billion gallons a day from that lake. If one of those ponds ruptured, that would be a serious problem. Charlotte doesn't have another source of drinking water for that much water currently in place. The current regulatory structure has not been adequate to really prevent that. And we think that better regulation is needed to ensure that our drinking water is protected.

So I urge regulation under Subtitle D (sic). And the rest of my remarks will be in the written remarks.

Thank you.

MS. REEVES: Good afternoon. My name is Ulla Reeves and I am the regional program director for the Southern Alliance for Clean Energy. We are a regional organization, representing citizens across the heavily coal dependent states of the Southeast, and we support listing coal combustion residuals as a special waste under Subtitle C of the Resource Conservation and Recovery Act. We've

arrived at this position through our understanding of the serious impacts that even trace amounts of hazardous chemicals can have on our bodies and the environment.

Of particular concern are the dozen high-hazard coal ash ponds here in North Carolina. It is unacceptable that we have so many unregulated, dangerous toxic waste dumps looming over us threatening our lives and our ways of life. We know from firsthand experience the devastation that coal ash spills have on local communities and firmly believe we need stronger standards for managing and ensuring this waste does not devastate more communities, homes, lives, and waterways, like those so affected by TVA's Kingston disaster in 2008.

Subtitle C is by far the best option for handling coal ash waste because the alternative, Subtitle D, merely establishes unenforceable and optional suggestions for regulation. Given the high levels of arsenic, mercury, aluminum and other hazardous constituents that leach from coal

ash into the environment, comprehensive, enforceable regulation from cradle to grave is the most responsible means of handling this waste.

Industry's loudest argument to date in this discussion has not been a legal argument about enforceability or a scientific argument about toxicity, but rather, a vague social argument, contending that classification of coal ash under Subtitle C would stigmatize it for beneficial uses. We believe that stigma ought not outweigh the real threats to human health and the environment. If we are considering stigma, we should equally consider the stigma coal ash carries on public health, our water, and our land.

EPA already anticipated industry concerns over public perception and decided that if listed under Subtitle C, coal ash will be designated as a special waste, not a hazardous waste. Moreover, coal ash destined for beneficial use would not be subject to hazardous waste rules under Subtitle C. EPA's own analysis suggests that special waste designation will actually

increase beneficial uses because the cost of ash disposal under Subtitle C will increase, thereby incentivizing recycling as opposed to dumping.

I'd like to thank EPA for announcing a public hearing in east Tennessee to hear the voices of those who have firsthand experience. And I'm here today, in addition to these comments, to deliver the official testimony from those citizens who traveled there.

MR. BEHAN: Thank you. Is number 61 in the room?

(No audible response.)

MR. BEHAN: Numbers 62, 63 and 313.

MR. CONRAD: My name is Dan Conrad. I'm an attorney and a policy analyst for the North Carolina Conservation Network, a nonprofit organization comprised of over 100 affiliate environment organizations, and 13,000 concerned citizens here in North Carolina.

In my testimony today I would like to enter two items into your official record, and make a few brief comments in favor of coal ash

regulation under Subtitle C of RARA.

The first item I would like to enter into the record is a memo endorsed by 17 environmental North Carolina groups, detailing the need for coal ash regulation in North Carolina.

The second item is a petition signed by over 1500 concerned North Carolina citizens urging that the EPA enact the more stringent of their two proposals, under Subtitle C of RARA.

RCRA defines "hazardous waste" as a solid waste or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may, A, cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or B, pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

I'd like to draw your attention to two specific words in the statute: "may" and "or."

"May" indicates not that an outcome must occur, but rather only that it possibly could occur. The word "or" establishes that only one of the two listed criteria must be met. I would submit to you that coal ash actually meet both criteria A and criteria B of the definition.

Regarding criteria A, the EPA itself has concluded that 49 high hazard potential coal ash surface impoundments exist in the United States, 12 in North Carolina alone. According to the EPA, high hazard potential indicates that a failure will probably cause loss of life. It is difficult for me to imagine a case where loss of human life would not qualify as an increase in mortality.

Regarding criteria B, all 13 of the coal ash ponds in North Carolina that have conducted testing have been found to exceed North Carolina groundwater standards. In one case, arsenic concentrations were measured at 44 times the primary maximum contaminant level. Again, it is difficult to imagine a scenario where arsenic concentrations found in contaminated groundwater

at 44 times the federal MCL would not possibly pose a substantial present or potential hazard to human health or the environment.

Under either criteria, it is evident that coal ash is encapsulated by RCRA's definition of hazardous waste. With that in mind, the North Carolina Conservation Network urges that at a minimum the EPA adopt the more stringent of its two current proposals, regulating coal ash under Subtitle C of RCRA.

Thank you for your time and the opportunity to speak today.

MR. BEHAN: Thank you. Number 63?

MR. WHELLER: My name is Cam Wheeler and I'm an environmental specialist for Progress Energy Incorporated, a utility headquartered in North Carolina. Our subsidiaries own and operate coal- fueled facilities located in North Carolina, South Carolina, and Florida.

Progress Energy supports the development of Federal regulation of coal combustion products under RCRA Subtitle D non-hazardous waste. The

development of rules under this approach will establish a federal standard enforceable for all CCR facilities. Green states, including at the states' Department of Energy already operates already have effective solid waste statutes and regulatory programs, and will provide an additional layer of regulatory oversight for management, reuse, and disposal of CCRs. Any new federal rules should incorporate measures to allow existing state regulations comparable to federal requirements to play an active part in the CCR regulatory program at the state level.

Progress Energy strongly opposes the regulation of CCRs under RCRA Subtitle C. Should the EPA list CCRs as a special waste, they would be subject to the full hazardous waste control, just as any other waste listed as hazardous. A comparatively stringent and costly Subtitle C program is not necessary to effectively manage and safely dispose of CCRs.

Progress Energy is confident that regulation of CCRs under Subtitle D Of RCRA is the

right choice for efficient and protective beneficial use and disposal.

MR. BEHAN: Thank you. Number 64?

MS. ELLIS: Hello. My name is Christine Ellis. I'm a Waccamaw Riverkeeper from Conway, South Carolina. As the Waccamaw Riverkeeper, I advocate for the protection of the Waccamaw watershed, a coastal plain river located in southeastern North Carolina and northeastern South Carolina, and that drains to Winyah Bay, the third-largest estuary on the eastern seaboard.

The Waccamaw River is a significant feature in our area. It's our source of drinking water. It affords myriad recreational opportunities: Fishing, swimming, boating, aesthetic beauty, and supports a unique and diverse flora and fauna. It flows through the city of Conway and in fact the city of Conway has embraced the river for all of its benefits, both environmental and economic. The city of Conway and the Waccamaw River lie within the shadow of the Dolphus M. Grainger steam generation station.

The Grainger plant, owned by Central Electric Power Cooperative, and operated and maintained by Santee Cooper, began operation in 1966. It has two ash ponds. The first was constructed in '66, then expended in '67. The second was constructed in '77 and expanded in 1990. In 2009, a Santee Cooper task force was struck to evaluate the need and extent for future structural integrity testing of those two ponds. These units, as you know, are not regulated by state or federal agencies.

In 2000, nine years before the task force was struck, Santee Cooper reported that groundwater monitoring results showed arsenic concentrations above the drinking water standard. The two wells in fact had extremely high concentrations, up to 91 times the drinking water standard.

Surface water sampling was taken up in 2001, 2006 and 2010 and not yet had there been shown to be concentrations of arsenic in surface water above drinking water standards. However, I say not yet because even though there's no data

for the Waccamaw River, there's plenty of evidence of off-site impacts of other coal plant sites.

In summary, current standards for regulation of coal ash ponds is inadequate, and therefore I ask that EPA commence regulating coal ash under Subtitle C of RCRA and commit to protecting our groundwater and surface water resources, and the health of our communities.

Thank you.

MR. BEHAN: Number 313.

MS. SCORANO: Hello. My name is Rachel Scorano. I'm a student at Warren Wilson College and a member of Asheville Rising Tide. And I'm here today to say that I support coal ash regulation under Subtitle C. Most of the statistics have been said. I just wanted to come in and let my voice be heard. After what happened in Tennessee, I'm really afraid. There's a coal ash pond right outside of Asheville that if it breaks, could flow into the French Broad. And I'm just here to say that I support Subtitle C. and that -- Subtitle C, that's it.

MR. BEHAN: Thank you. Is the person with number 66 in the room?

(No audible response.)

MR. BEHAN: 65, 67, 68?

(No audible response.)

MR. BEHAN: How about the person with number 314 or 316? Please come forward.

SPEAKER: How about 315?

MR. BEHAN: 315 already spoke. Number 65, please.

MS. TOWNLEY: Hi, my name is Victoria Townley and I come before you today as a private citizen and a resident of Asheville, North Carolina to speak about the danger of coal ash ponds and their devastating effects on the environment. Asheville, North Carolina is home to two coal ash ponds at Progress Energy's Skyland location. One of the ponds was used from 1962 to 1982 and is now inactive. However, the other is currently in use and has a capacity of 450 million gallons. Progress Energy's facility is one of 31 coal ash waste sites in 14 states leaking

pollutants into groundwater, according to the Environmental Integrity Project and Earth Justice.

The EPA has rated the ash pond as poor, meaning that there is a large potential for loss of life if the dam were to fall -- mostly being all of South Asheville. Research done by the University of North Carolina at Asheville's Environmental Quality Institute recently tested the water and sediment from an unnamed tributary on the French Broad River near Progress Energy's facility. The water samples contained arsenic at levels that far exceeded the legally permissible limits for surface waters and were seven times higher than the EPA's limit for drinking water. The sediment sample showed even more alarming levels of arsenic, 258 parts per million. That's more than 15 times the probable effect level, or the point at which a toxic element is known to have a negative effect on living things, according to the EPA.

Most U.S. soils only contain arsenic at about 5 parts per million. As a resident of

Asheville's beautiful mountain community, have spent many an afternoon kayaking, splish-splashing in, floating on, walking by, or simply admiring the 210 mile long river that flows directly through the city. I am personally frightened to know that I may have been exposed to the same dangerous chemicals that are known to cause severe deformities in fish, including growing two eyes on one side of their heads, s-shaped spines, and mutated organs.

Consequently, consumers of the fish, as many Asheville recreational fisherman are, are exposed to the same pollution. Toxins in coal ash have been linked to organ disease, cancer, respiratory illness, neurological damage, low birth rates, tissue damage, and developmental problems, including autism.

As a concerned citizen, I have read both the proposed regulations and I believe that Subtitle C is the strongest, most cost-effective and safest option for residents living in an area with a coal ash pond. Coal ash isn't only toxic

when a leach is found in the environment, and should be regulated from cradle to grave. A strong federal rule can ensure total compliance, offsetting the initial cost with avoided health and water clean up costs, prevent massive disasters like the spill in Tennessee, and increase safe coal ash recycling.

I urge you, for the safety of myself, citizens of Asheville and citizens of coal ash communities everywhere, to pass this important measure. Thank you for your time and consideration on this important issue.

MR. BEHAN: Thank you. Number 67.

MR. VENGOSH: Hello. My name is Avner Vengosh, and I'm professor of chemistry and water quality at Duke University and my testimony today is based on the scientific research that my group had been conducted since January 2009, a week after the spill of the TVA ash in Kingston, Tennessee. Research that we've been conducted since the spill was funded only by Duke University and NSF.

An 18-month survey of the water quality in the Emory and Clinch River in the vicinity of the 2008 TVA (inaudible) in Kingston has revealed elevated levels of contaminants associated with CCRs including arsenic, selenium, boron, strontium, and barium in surface water, with restrictive (inaudible) and also in coal water that extracted from bottom sediments in the river.

Our study has shown that high concentration of arsenic, up to 2000 ppb, exceeded that we found in the coal water, and this high concentration significantly exceed the MCL of 10 ppb and (inaudible) which is the ecological threshold of 150 ppb. So we're talking about 2000 ppb level of arsenic.

So we also performed a leeching experiment on the TVA ash and we found, as the literature showed very extensively, similar results showing the high mobility of contaminants if the (inaudible) interaction with CCR with water.

The impact of CCR on water resources,

however, is not restricted to a single accidental, as over 500 power plants nationwide generate approximately 130 million tons of CCR each year. Only in North Carolina, about 1 billion gallons of effluent coming from holding ponds is discharged into the environment. This is equivalent to the amount of drinking water in New York city of eight million people every day.

We already started to investigate the water quality in (inaudible) and we found alarming evidence for the discharge of affecting the water quality. The notion that CCR generate a direct threat to the aquatic system through holding ponds, landfill, and even beneficial use (inaudible) what CCR could be (inaudible) interact with ambient environment should become the principal decision-making criteria for EPA, and this committee in particular.

Water resources that are associate could be impacted by CCR should be mandatory regulated by the state and/or EPA with adequate (inaudible) such as are relevant to the CCR, including metals

and metal (inaudible), like arsenic, selenium, boron, and many others.

Thank you.

MR. BEHAN: Thank you. Number 68?

MR. MOON: Thank you, Mr. Chairman. Out of all the comments we've had here today I thought there were just two questions I would like to focus on, and ask you to consider as the EPA looking at this issue.

First is what's going to happen with the old ash? If we could stop time like they did in the Adam Sandler movie, we could just stop time, there's still a lot of ash out there. If we're not generating more it's still there. What's going to happen with that old ash? How are we going to accommodate that? What are we going to do with that old ash? What are the opportunities for utilization? What are the challenges for utilization, other than just to take it and store it somewhere? What can it be used for, with this product?

The other question would be, what is the

rest of the world looking at? What's the rest of the world doing about ash? What does the rest of the world do with ash from the coal plants that they have?

I was speaking at an international conference in New Orleans in March of this year. The subject was coal ash and it's use in cement and cement products. I began to talk about the anticipated regulations from the EPA that would be proposed and since have come forward, and there was much interest and much concern in the international community about the potential for anyone who consider coal ash hazardous to categorize it as hazardous or just to claim it as hazardous. I'm going to submit my comments that I made at that conference, and would ask that you all take a look at that. My name, I forgot to tell you, is Steve Moon. I'm from Columbia, South Carolina, and I'm here just to represent myself. Thank you for your time.

MR. BEHAN: Thank you. 314 or 315?

MR. HARRIS: Hello, my name is Owen

Harris. I am a student at Warren Wilson in Swannanoa, North Carolina. I'd just like to add my voice to those in support of Subtitle C. Other people have said it more expertly and more technically than I can, but by the EPA's own findings, coal ash is a toxic substance and right now it's being stored as if it were benign. It needs to be regulated adequately, to prevent contamination. And between Subtitle C and D, it's clear that the only one which guarantees safer storage of this deadly material is Subtitle C.

Thank you.

MR. BEHAN: Thank you. We are running about 15 to 20 minutes ahead of the scheduled time and what I'm finding is some of the people in our scheduled groups are not fully here, so what I'm going to do right now is take a group of walk-ins and some other numbers that were skipped this morning.

Is 319, 320, 321, 322 and 323 here? 319, when you're ready?

MR. STEPHENS: Hi, my name is Parker

Stephens and I came from Boone, North Carolina today. I work with Appalachian Voices, and I have a degree in public health so to me there's really nothing that should come before human health. And right now, coal combustion waste disposal practices are jeopardizing the health of North Carolinians. In many cases these affected individuals come from low income communities that have very little say in the matter.

Coal ash contains heavy metals and known carcinogens which have been identified in groundwater surrounding coal ash mines. Clean water is a basic human need and in no circumstance should we allow it to be poisoned. By classifying coal ash under Subtitle C and regulating it as a hazardous waste the risks to human health can be dramatically reduced.

I have a great amount of respect for the EPA and the work the agency does to protect my own health and safety, and I genuinely appreciate the chance to offer up my opinions on this matter. And I understand the financial implications the

new regulations may have and on the other impacts of new regulations, but I urge you to consider the health and environmental costs associated with coal ash disposal. State and self-regulation may be cheaper and it may be easier but we cannot justify putting public health at risk. Please opt for Subtitle C, stronger regulations on toxic coal ash, and safer, healthier communities.

Thank you.

MR. BEHAN: Thank you. 320?

MS. OSTROFF: Hello, my name is Sheila Ostroff, and I am here from (inaudible), North Carolina. I have had the most amazing opportunity to work with Appalachian voices and Watauga Riverkeeper. And I've been introduced to a subject called mountaintop removal, where over 50 percent of North Carolina, all of our energy is coming directly from this. So this is not only something that's going to continue to happen, but with coal ash that's something that's always going to be an issue, as long as we are doing this mountaintop removal.

With that, I've also had another amazing opportunity with Oxfam International Youth Project where I've been able to develop my own program. I have decided to educate our youth where their food, water, and energy come from. These seem like very, very, very basic concepts but I go into schools every single day and ask children just that question: Where does your food, water, energy come from? I'm always horrified and kind of shocked when I hear "grocery store," "faucets," "bottles" and "a light switch," or "an energy plant."

We are very disconnected as a human race to where our central resources are coming from, and I think that's a huge problem in and of itself. The fact that it's a basic right as well as a necessity for water to be available to us as individuals, I think that that's a main issue and we need to focus on making this possible; not only to ensure for the safety of ourselves, but also future generations.

So thank you very much for listening to

me. I think that Subtitle C is the only way to make this happen. Thank you very much.

MR. BEHAN: Thank you. 321?

MR. WHITSON: Good day, and thanks for having this hearing here. My name is David Whitson and I speak only for myself. I'm a member of the Carpenters Union. I've just moved here from Sacramento, local 46, in California. I now reside in Charlotte with my fiancee. I've looked into the employment opportunities here. They seem to be 90 percent or more in nuclear power or coal power production, for union carpenters anyway. So I was concerned. I saw this hearing was taking place and wanted to come over here. I'll be speaking off the cuff; I signed up when I got here. I briefly looked at Wikipedia, with all the pitfalls of that source of information, but it stated that potentially toxic trace elements in coal include arsenic, beryllium, cadmium, barium, chromium, copper, lead, mercury, molybdenum, nickel, radium, selenium, thorium, uranium, vanadium, and zinc at 10 times the concentration

in the original coal when it's in these byproducts.

I found Jeff Goodall's article from Rolling Stone, "Coal's Toxic Sludge." During the Clinton era EPA took a hard look at coal ash. He states in March 2000 they concluded that the waste can and do pose significant risks to human health and the environment when not properly managed. I don't think many people from East Tennessee would come in here and say these products, as they were called, this toxic waste has been appropriately managed or handled.

The other speakers, I made some notes. You've already heard these if you were here, so pardon the repetition, but it's been stated that no hazardous waste sites exist in North Carolina. It would place a burden upon the industry. There would be changes. There would be increasing production cost and construction. I've heard the ironic name of Progress Energy. There would be excess cost. There would be burdensome regulations. They would be unfairly stigmatized.

It would be stringent and costly. There should be beneficial use and disposal of this product. I'm kind of shocked to hear toxic waste termed a product, but I suppose in the world when depleted uranium can be used in bullets and bombs and destroy the soul and future generations in countries that we are introducing to democracy, I suppose the same logic applies.

As I have 30 seconds left I would just say that in the interest of fair and balanced discussion of this topic, I was kind of surprised that Duke Power did not announce their profits. They've only complained about their potential costs. As a working carpenter -- not to brag, I worked eight weeks in the last two and a half years. I last worked on a hospital in southern Sacramento, south side of Sac. Other than that I've worked in power plants almost exclusively. I just want to say in conclusion, I don't care if I don't work again, you know, if we destroy this planet so I can have a job. I won't put a dollar price on the health of this planet, or our future

generations.

Thank you.

MR. BEHAN: Thank you. Number 322.

MR. MCDOWELL: My name is Pete McDowell. I'm from NC1 and I'm here to speak in support of Subtitle C.

Climate change is real. Climate change brings stronger hurricanes, more and more intense floods. Coal plants and coal ash ponds are largely on rivers. Drinking supplies, our drinking supplies often come from rivers. Those coal ash ponds will flood out with those floods and those hurricanes. It will happen with the increase due to climate change. The Toxics in the coal ash ponds will wash down the rivers. We will drink those tonics.

I support Subtitle C. It's the only logical way to go. Thank you.

MR. BEHAN: Thank you. Is number 323 here?

(No audible response.)

MR. BEHAN: Could numbers 69, 70, 71 --

is 72 here?

(No audible response.)

MR. BEHAN: 72 is not here. How about 113?

(No audible response.)

MR. BEHAN: Number 129? Number 69, if you would come to the podium, please.

MS. HICKS: Good afternoon. My name is Katie Hicks and I work with Clean Water for North Carolina. We are a statewide organization focusing on protecting the drinking water and environmental health of rural and low-income communities and communities of color. We have offices in Asheville and Durham, and hundreds of members statewide.

The failure to regulate coal ash waste is yet another way in which the health and environmental costs of coal are being passed on to the public, while profits from sales of electric power are privatized to investors. Although regulating coal ash under Subtitle C will raise certain costs, these are marginal compared to the

value of our resources which are currently at risk. At Clean Water for North Carolina, we have a special concern with coal ash waste's threat to groundwater, as it is a source of drinking water for over 50 percent of North Carolina residents, including those served by public water systems that use groundwater as a source.

More than 2.5 million North Carolinians depend on their own private wells, which are not being tested for the contaminants most likely to come from unlined, under-monitored coal ash dumps. We're acutely aware that as more data accumulates, there are more and more instances of documented contamination of groundwater, which pose an unacceptable threat to the health and well-being of North Carolinians.

Our organization knows of communities living very close to coal ash ponds in this state, such as the neighborhood just behind the pond at Duke Energy's Buck Steam Station. The whole approach of regulating within a compliance boundary is based on the assumption that land

ownership and uses will change little over time and that groundwater won't move significantly; both completely unrealistic. We know that groundwater moves, and in unexpected ways. On behalf of the groundwater users and marginalized communities we work to protect, Clean Water for North Carolina supports regulation of coal ash waste under Subtitle C. EPA's first proposal is a step in the right direction.

I'd like to close on a personal note. I'm a resident of Asheville, North Carolina, home of Progress Energy's plant with one of the twelve high-risk impoundments in the state, and have met some folks that live in the shadow of that pond, so I personally understand the dangers associated with failure of coal ash dams. I look at what happened in Tennessee in 2008 and see an eerie picture of what the future could look for my community if EPA fails to enact stronger regulations.

Thank you.

MR. BEHAN: Thank you.

MS. HARRISON: Okay. I'm Tracy Harrison. I'm a member of the North Carolina House, serving in my third term representing Greensboro. And I'm not going to repeat all that you all have heard about the environmental issues associated and public health issues associated with coal ash but I would like to talk about my extraordinary frustration with getting regulation done at the state level here in North Carolina, and why we need Federal leadership on this.

It was pretty troubling for me to find out how ubiquitous coal ash is used in North Carolina, in structural fill on construction sites, on the roads to melt snow and ice and it goes virtually unregulated, unmonitored, unenforced, unreported. So I have been working for three years to introduce legislation at the state level to bring in some new practices and provide better oversight, and I feel stymied in efforts by the coal ash producers who would prefer Federal regulation -- at the federal level, but I believe -- Subtitle D, is treating it as regular

household waste, and I contend to you all that it's much too toxic to be used, to be regulated as regular household waste.

And it's pretty clear that the states, when I was looking for legislation, model legislation, around the country to model a North Carolina bill, I couldn't find one. So it's my feeling that there's not adequate regulation of coal ash anywhere in any state. So we really need federal regulation and we need federal regulation under Subtitle C.

And I appreciate your considering in those forums. Thanks.

MR. BEHAN: Thank you. Number 71?

MR. WILSON: My name is Darrell Wilson. I've been a marketer of fly ash for the past 28 years. I strongly oppose the EPA regulating fly ash under Subtitle C because there is no science to justify such a designation. A Subtitle C designation for fly ash would definitely hinder the recycling efforts that many of us have worked so hard on for many years. The idea that a

hazardous label would increase the recycling efforts is absolutely untrue and I have been told by many customers and engineering firms that a hazardous designation for fly ash would result in them ceasing to use and specify fly ash for fear of litigation.

I recently became aware of the August 9, 2010 Congressional Research Service report, "Regulating Coal Combustion Waste Disposal: Issues for Congress." In this report they recommend Congress amend the Resource Conservation and Recovery Act to create a new Subtitle K that would specifically address issues unique to the management of coal combustion waste. This appears to me to be the most sensible approach. I think everyone here would agree that insuring safe disposal of coal ash should be and is what everyone wants. How we achieve that is what is important. To label fly ash as a hazardous product gives the EPA the right to regulate disposal but at a cost that is much too high to everyone involved. Regulation under Subtitle C

will result in significant increases in the cost of electric power created using coal as a fuel source.

Since we won't be getting rid of coal-powered power plants anytime soon, we should concentrate on making it as safe as possible and also making sure we continue to utilize the resulting coal ash residue in as many recycling efforts as possible. A Subtitle C designation will not help achieve these goals. Work with Congress to correct RCRA, to do what is right for everyone. Thank you.

MR. BEHAN: Thank you. Is number 72 here? 113?

MS. ILLYN: My name is Alexis I1lyn with Restoring Eden. We are a national ministry that encourages Christians to love, serve, and protect God's creation and everyone who depends on it. As a follower of Christ I am here today out of concern for the communities across the nation who are being contaminated by toxic coal ash. I am deeply encouraged that the EPA is taking this

issue seriously and has invited all of us to comment.

God called the balance of nature good. In Micah 6:8 when we encounter what God has called good, we are called to respond by loving kindness, doing justice, and walking humbly with God. This fundamental call to do justice applies not only to our love for our neighbor, but also applies to our biblical call to care for God's creation. As faithful people, we strive to live in a way so that our daily lives and our actions and choices reflect our values and ethics. Values and ethics form the cornerstone of good leadership and good leadership should in turn lead to the betterment of all members of society.

Unfortunately, as a society we have failed with regards to how we store coal ash. The current system of dumping ash is not acceptable. Coal ash is damaging God's good creation and the health and livelihood of our neighbors. Communities, especially children, living near the 585 known disposal sites across the nation, are

facing an increased risk of cancer, learning disabilities, birth defects and other illnesses due to heavy metals such as arsenic, lead and mercury that are seeping into the water.

Yet for decades there has been no national regulations and little to no state regulations around this. This needs to change. The coal industry and individual coal-fired power plants have the means to properly dispose of this toxic by-product. Expecting the coal industry to be a good neighbor, one that does no harm to fellow neighbors, is not outrageous but simply is a reasonable cost of doing business. Making a profit is fine, but causing others to suffer and bear the harmful cost as a result is wrong. It is injustice and it is profiteering.

Unregulated coal ash sites are a national problem and a national solution is needed. Federally enforceable safeguards are the only way to guarantee that the public will be safe from the dangers of toxic coal ash. We know coal ash is toxic. We know it is poisoning families,

communities and our environment, and it's time that it be treated as the hazardous waste that it is. So I strongly urge you to adopt the Subtitle C proposal for coal ash regulation.

MR. BEHAN: Thank you. Number 72.

MS. GOFF: Good afternoon, ladies and gentlemen of the EPA panel. My name is Ellen Goff of Lake Wylie, South Carolina. I wish to express my profound gratitude for the agency's selection of Charlotte as one of the public hearing locations, to give you a first-hand look at our magnificent Catawba River basin, and the coal combustion residuals floating perilously next to this vital waterway. I also appreciate the Herculean effort required on your part to give the public an opportunity to make their voices heard.

By this evening you will have heard from many experts and scientists, businesspeople and special interests on the toxicity or relative harmlessness of CCRs. My viewpoint is personal. I live on Lake Wylie. I drink the water that originates from the Catawba River and I head up a

group of volunteers who work to protect the quality and quantity of our water.

As the Lake Wylie lake keeper for the Catawba Riverkeeper Foundation I give voice to the conditions on our lake that impact water quality, that impact the local environment, and compromise human health. Now the EPA must fulfill its role and protect the environment, our environment, from the toxic discharges that are filling and killing our local waterways; waterways not owned by a major energy producer, by an industry, state or Federal government or political party, but owned by the people and held in trust and managed for the people.

The EPA has the benefit of prior knowledge regarding the dangers of CCR pond failure, leaking landfills and contaminated ground and surface waters. We have witnessed the tragedies in Tennessee. We now know too much not to act. We see the disastrous effects of CCR pond failure and as sincere as coal plant operators may be in managing their sites, we cannot chance

another failure. Not here, not now, and not in the future.

There is no fix for a catastrophic failure, no remedy, no do-over that will restore our public waterway after such an event. The coal plant operators may say that huge cost issues are to blame if they challenge the handling of CCRs. Don't let their protests and objections cloud the issue. This is not a shared responsibility. It is theirs to manage safely while protecting the environment and protecting the public. I hope you will find at the conclusion of all these hearings that you know and have evidence of the harmful toxic discharges from CCRs is clear and evident. It is now time to set strong federally enforceable safeguards to protect the public and the public waterways. The time for the EPA to act is now.

MR. BEHAN: The persons with numbers 73, 74, 75, 76, and 174, please come forward. Number 73, when you're ready, ma'am.

MS. GELLICI: Thank you. The beneficial use of coal ash contributes $6-$11 billion to the

U.S. economy on an annual basis. Designating coal ash as a hazardous waste will jeopardize up to $11 billion of economic value for our nation each year.

My name is Janet Gellici. I'm Chief Executive Officer of the American Coal Council. The ACC is a trade association representing over 160 companies involved in the coal industry. Many of our member companies are actively engaged in beneficially recycling coal ash.

In 2005 our organization conducted the first ever assessment of the economic value of beneficial coal ash use. That study identified total economic benefits of $4.5 billion annually. Since the 2005 report was published, beneficial use of coal ash has increased significantly. The ACC updated its economic assessment in January of this year. We found that the use of coal ash now contributes $6-$11 billion in annual economic benefit for the U.S. economy. These benefits include revenues from the sale of coal ash for beneficial use, avoided cost of disposal, and

savings from use as sustainable building materials.

The ACC study also identified significant environmental advantages associated with beneficial use of coal ash. We found annual reductions in energy consumption equivalent to the energy consumed by 1.7 million homes. We found water savings equal to 31 percent of California's annual domestic water use.

We found annual greenhouse gas emissions reductions comparable to removing 2 million cars from the road. The American Coal Council supports the increased beneficial use of coal ash is a non-hazardous product. The ACC opposes EPA's proposal to reverse previous determinations that correctly concluded coal ash should not be regulated as a hazardous waste. A hazardous designation under Subtitle C will stigmatize the beneficial use of coal ash and seriously damage our ability to recycle this product. A hazardous designation will increase the volume of landfill products. A hazardous designation will require

the use of products that increase greenhouse gas emissions. And a hazardous designation will negatively impact the US economy by up to $11 billion each year. That's $11 billion each year.

Coal ash disposal regulations should be enacted under Subtitle D and EPA should work to promote beneficial coal use recycling as a benefit for our environment and the economy. Thank you.

MR. BEHAN: Number 74?

MR. STORM: Good afternoon. My name is Richard Storm. I'm from Albemarle, North Carolina and I'm here as an experienced, registered professional engineer with 40 years of experience in power generation. Except I'm not speaking here on behalf of the power generation business. I'm here as a grandfather. I'm worried about America's future.

Increased environment regulations are strangling America's industry and are a large contributing factor to the recession, unemployment, and the driving of American manufacturing overseas. My concern for America is

that the radical environmental movement has made the war on coal to be politically correct. We hear much in the media and the special interest groups that coal should be made so expensive that only natural gas, wind, and solar power will be used.

The consequences of the war on coal by the EPA and the politically-correct news media is working toward the weakening of America, America's industrial strength, our economy, and our position of dominance as a manufacturer in the world. As regulations are increased, the consequences are increased: Unemployment, reduced economic prosperity, and further loss of jobs.

America's industry and infrastructure was built in the last 100 years using coal as the largest source of electric power generation, and still is. America gained our world position on industrial production and technological leadership powered from this national treasure of coal. America still needs coal. Over 23 percent of America's energy is provided by coal and about 50

percent of our electricity. As America moves toward plug-in electric vehicles, we have an opportunity to reduce our dependence on foreign oil supplies by using clean coal-based electricity from America's own home-grown energy, coal.

Few people have been harmed by coal ash and many of us older adults remember the furnaces in our basement, and taking the ashes out to grow rosebushes and vegetables. Thank you for this opportunity to comment, and I hope you will be reasonable.

MR. BEHAN: Thank you. Number 75.

MR. BOGGS: Thank you for hearing us today. Balance, it's all about balance. If we were to take ash off the market, if we were to eliminate it by some means, and all the beneficial uses it has, something has to take his place.

My name is Bruce Boggs. I'm a conservation chemist. I learned it by marriage, by education, and by experience. My mother-in-law, when she used a napkin for a meal, proceeded immediately thereafter to use it to

clean the table if necessary, and then threw it in the fireplace for fuel. She spiraled down the use of the material.

A little over 20 years ago in Cincinnati, I spoke at a public hearing at the initiation of the Resource Conservation and Recovery Act. I believe in resource conservation, recovery and utilization. You cannot however create a vacuum. Nature abhors a vacuum. You know that. We can't live without having a carbon footprint of some sort. So if in fact we stigmatize, remove the beneficial uses of fly ash from their appropriate applications, there is going to be a vacuum created. That vacuum has to be filled by something and it may be from a quarry. Quarries have a finite life. They dissipate and then you have the issue of trade-offs with quarries versus potential resource conservation and recovery act; the very thing intended by that initial legislation.

I would be foolish to advocate that any of these applications or utilization areas would

harm the environment. I wouldn't believe in that. I've never practiced it. Over 25 years I've been developing applications for coal byproducts and other mineral byproducts that create a beneficial use without environmental damage.

And that can be done. You don't have to have either/or. You can have your cake and eat it too in this case. But only with appropriate regulations done in a manner that does not damage the application. So I would encourage EPA to take a position with D Prime, strictly controlled. Manage the states. Implement regulation of the resource and implement the spirit and intent of the Resource Conservation and Recovery Act.

Thank you.

MR. BEHAN: Thank you. Number 76.

MR. ARENT: Good afternoon. My name is William Arent and I'm the executive vice president of Carolina's Ready Mixed Concrete Association. I'm also a registered professional engineer.

It has literally taken decades for fly ash to gain the wide acceptance it now enjoys with

specifiers and concrete producers. Incorporating fly ash in a concrete mixture provides many benefits. The durability of concrete can be improved and service life extended by using fly ash. Fly ash can lower concrete permeability and thus reduce the rate of ingress of water and aggressive chemicals. Fly ash is used to resist deleterious alkali aggregate reactions and sulfate reactions in concrete. Fly ash increases the compressive strength of concrete. Fly ash reduces the heat of hydration in mass concrete. Fly ash is recognized in the U.S. Green Building Council's LEED system as a postindustrial recycled material. Fly ash reduces the cement content of concrete and thus the CO2 generated in the manufacture of cement.

The Carolinas Ready Mixed Concrete Association urges the EPA to consider the technical and sustainability implications of classifying fly ash as a hazardous waste under Subtitle C of RCRA. Designating fly ash as a hazardous waste will result in little or no fly

ash being used in concrete in the United States. The concrete industry will no longer specify its use due to the stigma of this designation.

The EPA's alternate proposal, Subtitle D option, is just as protective of the environment as Subtitle C option but without the pejorative stigma denoted by the hazardous label. Subtitle D option is not less stringent. The Subtitle D Option can be implemented much more quickly. If the EPA wants the federal enforcement of fly ash disposal regulations, EPA should petition Congress to give them that authority as a special waste under Subtitle D, not as a special waste under Subtitle C.

Thank you.

MR. BEHAN: Thank you. Number 74?

MR. ROBERTSON: Good afternoon. My name is Tom Robertson. I work for Environmental Quality Management. We are a consulting and engineering firm with offices throughout the United States.

I spend most of my time on cement plants

and hazardous waste incineration facilities. I'm an air pollution control guy. I've spent my entire career scrubbing pollutants and particulate out of the discharges, and then safely managing them once they're on the ground.

I would like to suggest that if the anger I seem to hear in the room is for dam and dike failure, then we are using the wrong statute to go after dam and dike failures. The Clean Water Act is what regulates discharges of water, and what regulates dredging and diking, not RCRA. I would suggest that appropriate regulatory management, where we have appropriate design standards with appropriate design engineers working on it -- you know, the Tennessee failure was an engineering failure. It was not a regulatory failure.

And with that, I would like to suggest the Subtitle D regulation, with appropriate design standards, enforcement and implementation would be the most appropriate response for this agency to take.

Thank you.

MR. BEHAN: Thank you. Numbers 77, 79, 80. How about 149, 324, 335? Let the record reflect that Suzanne Rudzinski has left the panel, to be replaced by Rob Stachowiak of the US EPA office of General Counsel.

Ma'am, when you're ready?

MS. KLESZY: My name is Nancy Kleszy. I come from Boone, North Carolina. I'm very close to where the mountaintop removal is going on. It makes me very angry as a private citizen, as a mother, grandmother and great-grandmother to imagine that we are knowingly poisoning ourselves. We know we are doing it. The evidence is overwhelming, and yet we keep on doing it. What are we trying to do? We are producing birth defects in children with -- I had a grandson with severe autism. We are producing all these terrible things because we don't stop the poisoning. It can be done. It's not impossible.

I really think -- I really think that we should be stopping being so selfish and worrying

about our bottom line all the time and start thinking about the people. Everything is supposed to be for the benefit of the people, isn't it? Well, it's not, and it should be.

And so I'm asking that the Environmental Protection Agency -- which is to protect the environment -- will start doing that in this particular case and will get the authority to do that, and we will stop poisoning our kids.

MR. BEHAN: Thank you. Will 324 come up?

MR. RICHARDSON: I'm Bill Richardson, co- founder and managing member of Precision Recycling Industries located nearby Cornelius, North Carolina.

PRI produces and markets a safe, nontoxic open-air abrasive media that is an alternative to the use of coal slag and copper slag, which are currently the most widely used open-air abrasives in the country. PRI is part of an emerging green industry creating green jobs and diverting thousands of tons of recyclable glass

from landfills converting this into a safe, economically, viable, expendable, open-air abrasive media that is not harmful to the environment. Unlike foundry slag, a recycled glass media does not contain any of the many toxins commonly known to be present in coal and copper slags. When foundry slags are blasted under high pressure against metal to remove rust and paint, this resulting micronized dust containing lead, arsenic and other toxic chemicals are substances that are released into the environment, contaminating nearby land and waterways.

Additionally, under current regulations, any of the contaminated dusts that's recovered is sent to unlined landfills where there is a great risk to major groundwater contamination.

The slag industry would have you believe that the dust created by the use of foundry slag abrasives is not harmful. This is simply not the case. Many numerous studies by the EPA and industry itself show that fact.

The slag industry also states there are no viable alternatives to the use of foundry slag abrasives. I stand here in testimony that that is not the case. The truth is that unregulated use of foundry slags as an open-air abrasive is harmful to the environment. It's a hazard to the workers and a source of contamination to our land and workplace. The truth is that the emerging recycled glass media industry is already supplying thousands of tons of recycled glass media to the market from Norfolk to Seattle.

Birth and growth of our industry has been in a direct response to the need for a safe, economically friendly replacement for foundry slags in the open-air abrasive market.

Our industry applauds the EPA proposal to regulate the use of disposal CCRs including foundry slags and the removal of their beneficial use designation as an open-air abrasive.

MR. BEHAN: Thank you. 325. Sir, what number do you have?

MR. SERTA: 80.

MR. BEHAN: 80? Number 80.

MR. SERTA: My family has been involved with boiler slag -- we call it also coal slag -- for over 40 years. I started bagging it when I was 20, so I've got about 20 years of breathing and eating this stuff. And I can tell you it's inert. EPA has already ruled four times that it was not a hazardous product.

I understand responding to the Kingston, Tennessee spill because it was such a mess; it was everywhere. And I'm the biggest fishermen of anybody, and I can't stand to see a mess like this in the rivers where we all like to fish. But you spill a billion gallons of any of our other alternatives out there, like garnet, steel shot, copper slag, nickel slag; I can see everybody else wanting to jump on the bandwagon and call that hazardous as well.

I've got a chemical analysis here that says, you know, this product here is not reactive, it's not corrosive, it's not ignitable and it's not toxic. It's environmentally benign, and

because it is so, almost 100 percent of it is recycled. 80 percent of residential shingles in the United States contain boiler slag.

So if you classify it as a Subtitle C hazardous waste, I see two things happening. One is, some of the power plants are just going to say, well, we're going to landfill all of it; we're not going to take the chance of getting sued. So they are going to pay the higher rate to put it in a hazardous landfill and then they are going to jack our rates up so they pass on the costs. Then, two, you know, the cost -- what does get recycled, the cost of roofing your house with asphalt shingles will go up, plus the cost to insure it by 20 to 30 percent, so we're told by our insurance agents.

I know we need to get off coal and we need to get off oil addiction and we need to move to solar. We have natural gas. But let's not move -- let's not destroy the industries that are still warming our houses and powering our cars until we have a plan in place.

We should jump at the opportunity to recycle, and that's what we are doing here. We are recycling this product. And I think that we've been doing it for over 40 years. Let's continue recycling and not landfill this stuff.

Thank you.

MR. BEHAN: Sir? Sir? I may have missed it at the beginning, but could you state your name and affiliation for the record?

MR. SERTA: Matt Serta with Mobile Abrasives.

MR. BEHAN: Thank you. Numbers 82, 83, 84, 129 and 163. Could number 82 come to the podium, please? Is number 82 here?

(No audible response)

MR. BEHAN: 83, please.

MS. DILLEN: Good afternoon. My name is Abigail Dillen. I'm an attorney with Earthjustice and I coordinate our coal work around the country. I want to thank you for being here today. It matters tremendously to me, and I thank everybody in the room to be heard by you.

Over the past year, my colleagues and I have researched the State regulations, such as they are, that are currently on the books to guard against water pollution from coal ash. We have documented extensive damage from coal ash around the country. And the picture that we see is a wholesale regulatory failure, and that failure is leaving us with a national legacy of contamination.

Given the history here, the claim that EPA can leave regulations to the state simply is incredible, and we will be making that case in detail to you in written comments.

But since we are in Charlotte, let's talk about North Carolina, which is a perfect example. There are more high-hazard dams here than in any other state in the country, but there are no regulations that apply to coal ash ponds and surface impoundments. That means no engineering and safety requirements, no required groundwater monitoring, no financial assurances, and no post-closure requirements for the many

aging facilities that will soon have to retire. And you've heard of that from somebody living near the Riverbend plant here today what happened to that ash pond. There is simply no regulations in place to ensure that it will be closely -- or safely closed and monitored.

North Carolina should know better. Going back to the 1970s, regulators knew that selenium from coal ash was poisoning Belews Lake, eventually killing off 16 of its 20 resident fish species. This is just one of several known damage cases in this state, yet there has never been a real attempt to get a handle on the coal ash problem. And let's be clear, North Carolina is not an outlier.

I'm going to end with a brief story about Pennsylvania, which supposedly has the most progressive coal ash regulation in the country. A couple of months ago, I was in the town of La Belle, and the highest point in La Belle is the coal ash ridge that surrounds a big ash -- it's a little bit bigger than a pond; it looks more like

an ash lake. And when it rains, storm water flows down through the ash flooding the back yards and the basements of the people who live below it. When the wind blows, they look up and they say they see a gray Sahara of ash blowing around. It blows under their windowsills, it blows into their barbeques, into their garages, into their cars.

Of 40 people I met at a town hall meeting, ten were suffering from cancer, and they all lived in the same cul-de-sac under the ash dump. These are people who do not have the means to pick up and move. They are trapped. And they are asking me, why aren't their rules against this?

On their behalf, I implore you to make those rules under Subsection C.

MR. BEHAN: Thank you. Number 84.

MS. ALLISON: I'm Nancy Ellett Allison, the pastor of Holy Covenant United Church of Christ, and this is Debbie Davis, an Elder from Holy Covenant.

We have come to thank the EPA for

holding these hearings, and challenge this agency to find the courage to live up to their high calling of protecting the environment.

Each year in the Christian calendar we observe a day of repentance known as Ash Wednesday. It is our day of contrition when we smear the ashes of remembrance on our foreheads or our hands for all to see. It is a public admission of guilt, a public statement of sorrow, complicity, and repentance. We mark the forehead saying, "Remember that you are dust, and to dust you shall return, yet out of death comes new life."

We mark the forehead saying, "Remember that you are dust, and to dust you shall return, yet out of death, comes new life." We would invite any others who wish to receive ashes to come forward at this time.

We have squandered God's legacy of grace and abundance. We have abused God's creation for the sake of personal profit. Each Wednesday, with the Psalmist, we cry out: "Have mercy on me, oh,

God, blot out my offenses. Wash me through and through from my wickedness and cleanse me from my sin against you, oh living God, and you alone, have I sinned and done what is evil in your sight. Your judgment is what I deserve, for you desire truth in my inward being."

The truth of our coal consumption, that it is a costly fuel. It costs us mountaintops to remove it cheaply. It costs us clean air when we burn it freely. It costs us wetlands, clean water and contaminated soil to discard it randomly. It costs us our integrity to yield to the coal and energy industry in considering these alternate regulations.

They will argue that it saves each consumer money for their industries to avoid mandatory regulation. It is time to deal truthfully with the full costs of our coal consumption. Only as the government quits subsidizing and yielding to the lobbying of the coal industry will the true costs of coal be known and will we find the collective courage and will

to turn to alternative sources of energy.

God desires, God demands truth from all God's children. Your work as an Environmental Protection Agency is to be faithful to the land you serve and protect, not to the industries and their deceptions. May new life rise from the ashes of our repentance today.

SPEAKER: Amen.

MR. BEHAN: Next.

MS. MacDOUGAL: Hello. My name is Fern MacDougal.

I support the implementation of Subtitle C option. There has been a lot of talk of money at this hearing on the industry's part. They are not willing to be held accountable for violations by Federally enforceable regulations. They also say it costs too much to monitor the groundwater, install liners where CCRs are being dumped or create water runoff or dust controls. And I just want to remind you that the cost isn't going to go away. What the industry does not pay in regulations, we will all pay in damage to our

health and to our environment.

Seems to me that if the coal industry isn't willing to pay for even the small fraction of the cost of burning coal, then maybe it's time to move on to a new form of energy; one that doesn't tear down our mountains, leach into our water and poison our air.

Thank you.

MR. BEHAN: Thank you. Is there anyone in the room that has a number less than 80 that has not spoken?

(No audible response.)

MR. BEHAN: Number 85, number 88, number 86 and 87 -- if you've shown up recently -- number 131, number 160 and number 185. Number 85, if you can come to the podium.

MR. DUDDING: My name is Carl Dudding, and I am a civil/solid waste engineer and a small-business owner from Glen Allen, Virginia. Thank you for the opportunity to speak here today.

And regulation under Subtitle C, in my opinion, will severely impact my firm's ability to

beneficially use significant amount of CCRs, as I will describe in a moment.

I'm opposed to the management of CCRs as a Subtitle C material and strongly support management under Subtitle D. To the best of my knowledge, CCRs are the largest, single recycling/reuse success story in the United States. They are a useful construction material with uniform physical characteristics, and a Subtitle C designation will significantly jeopardize this ongoing success story.

In my opinion, the stigma that will be created will prevent continued high usage rates of CCRs and is currently preventing development of innovative usage of these materials. At a minimum, the management of these materials under Subtitle D, instead of Subtitle C, will allow continued current and future beneficial reuse development.

From a technical perspective, the EPA's own proposed regulations have the same liner systems for both C and D and effectively change

the way wet storage is conducted, which I am fine with. The Subtitle C designation will add on a significant amount of time for permitting, however, as facilities try to change from existing systems to new requirements. This will occur at the time these facilities need additional capacity required by these regulations as they struggle to keep up with demand.

I am strongly in favor of utilization of geomembrane liner systems in large structural fills applications, but with properly designed engineering controls that offer maximum protection of the environment. I also believe that CCRs used in this manner can be considered beneficial reuse.

My company, Advanced Wall Technology, has developed new, innovative and unique methods for additional recycling/beneficial reuse of CCRs. The potential regulation of CCRs as a Subtitle C material, however, threatens that development.

The potential exists for AWT methods to reuse 5 to 10 million cubic yards of material for CCRs for the expansion of new facilities,

including utility CCR landfills, constructing large road embankments, et cetera, above current reuse rates.

Not only do these methods utilize a significant volume of CCRs in construction, by doing so, significantly reduce the number of new landfills -- new landfills that would need to be constructed in the years ahead as we develop as a society by increasing, recycling, or reuse.

The Subtitle C designation of CCRs will significantly impact the growth of the AWT process implementation. The uncertainty and stigma to date have already created adverse impacts. And all CCRs used in the manner by AWT are fully enclosed in geomembrane and geosynthetic systems preventing adverse environmental impact. I've attached a diagram in the written portion of my testimony.

Most importantly, under the proposed EPA regulations, no large structural fill applications are considered as beneficial use, even if the material is fully encapsulated by geomembrane or

other containment methods.

At the very least, we would suggest as an alternative a Subtitle D designation for management of CCRs with fully encapsulated structural fills considered as beneficial reuse and with properly engineered controls.

Thank you very much.

MR. BEHAN: Number 88.

MR. SNOW: Good afternoon. My name is Tom Snow. I'm the director of environment health and safety for Full Circle Solutions. We are a small business that safely recycles coal combustion residuals and CCRs in tumultuous potting soils, masonry block, soil amendments and geotechnical fills.

My comments today concern geotechnical fills, a subject -- a beneficial reason that has not been discussed to this point today.

The EPA has stated that large volume geotechnical fills do not constitute beneficial reuse. That decision was reached without giving adequate consideration to the issue. In the

preamble to the current regulatory proposal, the EPA stated that they reviewed only one large volume geotechnical fill, the Battlefield Golf Course in Eastern Virginia.

EPA's limited study of this project did not seek to find the answers to many important questions. It relied upon groundwater samples with turbidity levels that indicated improper sampling. Was this considered by EPA? It does not mention it in their report.

The golf course was sold to new owners who modified the layout, including pond locations. Did the new configuration place surface water and contact with the CCRs? This was not mentioned in EPA's report, and the list goes on and on.

Full Circle Solutions has proved that large volume geotechnical fills constructed in accordance with Virginia's regulations are safe for both groundwater and surface waters. Our Peter's Pointe Business Park constructed in Petersburg, Virginia actually was constructed using 970,000 tons of CCRs. Construction was in

compliance with all regulatory requirements, such as the separation from groundwater and surface waters. Operational requirements, such as run-on and run-off controls were among many other controls that provided adequate protections.

For years, we have currently -- for years, we have regularly monitored the quality of both the groundwater and surface water of that project. It is clean. It is safe for the environment. Anyone here today who would like to review those results, you can do so at our website at www.SCSI.biz.

We have proven that properly engineered, properly constructed, large volume geotechnical fills are safe for the environment. Hundreds, if not thousands of similar geotechnical fill projects have been constructed in the United States with no threat to the environment. EPA's decision to prohibit such fills based upon one potential damage case is simply premature.

The use of CCRs and geotechnical fills has benefited not only our small business, but

also other small businesses that build their facilities on properties we develop.

Therefore, we urge EPA to make an informed decision on the very beneficial use of CCRs as geotechnical fills. When placed in carefully engineered, constructed and dry regulated fills, CCRs are safe for the environment and provide badly needed jobs.

Thank you.

MR. BEHAN: Thank you. Number 131.

MR. RUNKLE: Thank you for the opportunity to speak. My name is John Runkle. I'm legal counsel for the North Carolina Waste Awareness and Reduction Network.

Now, we will be submitting written comments later on as a part of the hearing record. But just by initial reactions of the two options, NC WARN really doesn't like either one. And the reason is is the Subtitle C special waste -- I don't know if this is a stigma, or what. I mean, looking at any definition of hazardous waste, this is a hazardous waste. Any similar waste removed

by any other industry, this would be a hazardous waste because of the toxicity of the vast different metals, the public health impacts that it has. So this is a hazardous waste.

Whether this stigmatizes ash somehow or another is not a regulatory issue. The stigma is really one that people want to be able to do what they have always done. And the utilities have not spent the money that any other industry has put in to taking care of their waste stream.

Now, the other thing we don't like about this, that if this was any other waste stream, these would be Superfund sites because they are waste, they are open to the environment. Even the lined sites -- very few in North Carolina are lined sites. They are designed to include the groundwater, they are designed to run over into the rivers and streams.

Any other -- 10 years, 20 years ago, EPA would be saying these are Superfund sites; we need to spend the millions, if not billions of dollars to clean them up like we did a lot of our chemical

industry and the other industries. So given the choice, this is a hazardous waste. These are Superfund sites. Let's clean them up.

Now, Subtitle D regulation by the states is just not going to work. Local -- the State governments have these billion-dollar deficits; there's a complete lack of political will. These things are not going to happen.

North Carolina has a law that says annually that the utilities that produce coal ash needs reports; what their -- how much ash they generate, what they do with it, whether it's recyclable, whether it's reused, how it's being reused. And those reports go on to the State government. It sits on the shelf of a bureaucrat in the Division of Waste Management. They collect dust. No one, besides me five years ago, ever looked at them. And state governments are not going to regulate it. They can't do it. They are just not going to be able to regulate this hazardous waste. They are not going to be able to spend the money to clean up these Superfund sites.

Thank you.

MR. BEHAN: Thank you. Number 160.

MR. BOSS: Hi. My name is Stewart Boss, and I'm the co-chair for the UNC Chapter of the Sierra Student Coalition.

I'm here today because I'm deeply concerned about the current management of toxic coal ash in the U.S. I'm equally troubled by the idea that my generation and those who come after me will inherit a groundwater system irreversibly contaminated by toxic coal ash if we fail to act now to create enforceable Federal requirements for cleanup and disposal of this highly hazardous coal combustion waste.

Disturbing information about the large number of high-hazard coal ash ponds in North Carolina has further fueled my concern about my drinking water and health effects of dangerous heavy metals like arsenic, selenium, mercury and lead.

Obviously, the number of high-hazard sites in North Carolina indicates that our state

has failed to protect us from the environmental and health effects of these types of coal ash sites. The rationale for why we need to regulate coal ash should not come as a surprise to the EPA. Coal is dirty and is dangerous from cradle-to-grave. And its harmful effects through mining, burning and disposing of coal are now well documented and scientifically proven, and yet, the vast majority of states do not even require to see if coal ash is polluting drinking water.

Our federal government is long overdue to step in and hold polluting utility companies accountable for their (inaudible) similar to the massive Tennessee coal ash disaster of 2008. These massive coal slug impoundments are a danger in and of themselves. The Subtitle D option would not establish any uniform federally enforceable standards leaving us basically with the same patchwork of inadequate state regulations that have failed us up until now.

Under Subtitle D, ordinary citizens will be left to fend for themselves against an enormous

industry that has no incentive to bear the expense of safe and environmentally responsible coal ash disposal. Industry concerns about costs are completely overblown. Even if the entire cost of the Subtitle C option was passed on to consumers, electricity prices nationwide would only increase by an average of less than one percent.

It is the EPA's responsibility to prevent imminent and substantial endangerment to health for the environment. Subtitle D would completely undermine that responsibility. Now, more than ever, it is key that our government defends human health and environmental safety against the special interests of the fossil fuel industry.

The effects of toxic coal ash under the status quo can be measured in lives lost and years of illness. People must start coming before profits.

Thank you.

MR. BEHAN: Thank you. 185.

MR. BAKER: My name is Kevin Baker. I'm

from UNC Chapel Hill. I want to start by thanking the EPA for holding this hearing.

There are a lot of students, a lot of people my age who understand this issue. And it's pretty obvious; I think a lot of people in this room might say that maybe I'm too young to understand. The industry people might say that. But it's pretty obvious; it seems clear to pretty much everyone that you wouldn't want contaminants in your drinking water. You wouldn't want waste in your drinking water. That's basically the choice we have here. You can either do nothing with Subtitle D, or with Subtitle C you can make sure there is no chance that it gets into our drinking water.

I also want to say that this isn't a third- world country, you know, this is the United States of America and we have the resources to make sure that there is no threat of having contaminants in our drinking water. And there are a lot of countries that aren't fortunate enough to be able to make that choice, but we do. We have

the ability to stop this. And I'm afraid that if we don't do anything today that this is going to fade into the background. And maybe it won't come up again for a couple decades and then our generation is going to have to deal with this.

I think I've been fortunate in that I hope my community has not been contaminated. I hope that we are drinking safe drinking water. But maybe in the next decade, if this issue doesn't get resolved, my kids will be growing up with mercury, arsenic, lead in their water, and then it will be too late.

So thank you.

MR. BEHAN: Thank you. Number 87.

MS. BROWN: Good afternoon. My name is Peggy Brown. I'm a resident of Florence County, South Carolina. I'm representing the South Carolina Chapter of Sierra Club as a conservation chair with a state membership of over 5,000. I also represent the League of Women Voters of South Carolina as the natural resource director with a membership of over 600.

The South Carolina chapter of Sierra and the League of Women Voters strongly recommend the EPA's consideration to regulate coal ash ponds under Subtitle C, Resource Conservation and Recovery Act, as it is the most protective choice on the table.

South Carolina has 12 polluting outdated coal burning power plants that require at least one or more coal ash ponds. Leaching unregulated coal ash ponds will percolate into the ground, and without proper barriers eventually reach groundwater and contaminate the water with toxic waste.

Right now we have three known ash ponds that are leaching coal waste in the groundwater. At this time, South Carolina DHEC has no groundwater monitoring system in place. Due to budget restrictions, they have re-evaluated the number of surface water monitoring sites and the frequency of testing. With recent evidence of groundwater contamination at the Wateree Eastover site, DHEC has a pending groundwater monitoring

requirement to begin at some point. But in reality, if they're having trouble, or if they're having to cut back monitoring surface waters, where will the funding come from to begin a new groundwater monitoring program?

South Carolina has many rural areas that rely on well water for drinking. State records indicate the potential for more protect -- for more private wells to be contaminated may occur. Groundwater discharges from coal combustion waste dumps may load drinking water sources with contaminants that could increase nearby residents' cancer to as high as a staggering 1 in 50, so you report. Potential well water contamination of rural South Carolinians put the already economically challenged even at higher health risks.

If the EPA will regulate coal ash under Subtitle C, RCRA, the Rule for coal ash as hazardous waste under Federal law, this will require the industry to phase out porous sludge ponds, replace them with sturdy, leak-proof

facilities. The Subtitle C will take the burden off the State agency that is already physically struggling and place the responsibility of cleanup and up fitting on the utilities.

For years, the utility companies across the nation have touted coal energy as cheap. The time has come for the industry to realize coal is not cheap in terms of cost to the public health and degradation to the environment.

Thank you.

MR. BEHAN: Thank you. Will the persons with number 89, 90, 91 come forward?

(No audible response.)

MR. BEHAN: 126? 174? 155?

(No audible response.)

MR. BEHAN: Number 89, could you come to the podium.

MR. HARDIN: My name is Chris Hardin. I'm a private citizen from Huntersville, North Carolina. I'm a registered professional engineer with 22 years experience. I'm registered in the states of North Carolina, Tennessee and five other

neighboring states.

I work for SCS Engineers, but I am not making my comments on behalf of SCS; I'm making my comments as an engineer and a common sense forum with a wonderful wife and four kids. My personal experience is our family owns and operates, as a part- time venture, Rivendell Farms. It's a sustainable ag farm. It's located at the headwaters of Gar Creek that drains to Mountain Island Lake and Mecklenburg County's main drinking water supply.

As a civil engineer, I was fortunate enough to design the first permit application for one of the first coal ash landfills after the TVA Kingston failure. That's on the professional side. I also gave a presentation in 2009; World of Coal Ash on Best Management Practices for Coal Ash Containments.

We are currently installing a 9.2 kW solar system on our farm that will make us essentially carbon neutral by the end of the year. Over the past three years, I have also done a

pretty good amount of private research on the way -- the positive way to regulate coal combustion ash as they did in Europe. Coal combustion ash can be safely handled in Subtitle D landfills with virtually no risk to human health and the environment. Private utilities, like Progress and Duke, can only charge what the federal government allows them to charge. Any substantial rate increases will be passed on to us as the consumers.

Europe, also as an example, recycles 50 percent of its coal combustion ash, and it never declared coal combustion ash hazardous waste. That's the key point.

I would go ahead and suggest the following: First of all, 50 percent of our power is produced by coal nationally. That didn't get that way overnight. It's not going to change overnight. Change is good, but rapid change can be bad. As a professional engineer, and also more as a -- as a common sense farmer, I would counsel balance and gradual change. Rapid change in the

power industry will end up passing additional costs on to the middle class and the poor, who are most dependent upon cost-effective power.

Please do not declare coal combustion ash hazardous waste. The entire process of hazardous waste management is very, very expensive. Implement instead, the Subtitle D landfill guidelines that are already working well in the containment of ash in North Carolina and many of the neighboring states.

Remember, also, renewable energy takes time and costs money to do that. The U.S. government needs to learn, like everyone else, that we have limited resources, and good things like renewable energy takes time.

I would suggest following the example of the Hardin family. Start raising your own food, live a little slower pace of life, install a solar system, aim for the carbon neutral on a personal basis and allow the changes to happen over time as a country. I would just suggest you look at counseling slow change, gradual change.

MR. BEHAN: Thank you. Number 90.

MR. WALLACE: My name is Craig Wallace. I'm a coal ash marketer. Based on my tacit and explicit expertise of concrete coal ash marketing, I can unequivocally testify that linking coal ash with other hazardous by-products is a monumental mistake if you're trying to promote coal ash for beneficial use. It is a bad idea that is going to have unintended consequences, not only in this country but other countries around the world that follow our government's lead. Without EPA's unabashed support for beneficial uses, demand and marketability of coal ash will decrease. EPA support is already waning: The termination of EPA's C2P2 website is a verifiable example.

A hazardous waste labeled coal ash is totally unwarranted. Both Subtitle C and Subtitle D proposals accomplish the end goals for citizens impacted by coal ash disposal. Let me point out, Kingston is a federal owned and operated facility that had years of unstable sludge deposits that triggered the spill that is serving as the

catalyst for federal oversight proponents today.

Recycling coal ash benefits our environment and contributes to the conservation of our resources and reduction of CO2 gases. Putting coal ash disposal in the same group with other Subtitle C wastes thinking it will have no effect, or a positive effect on beneficial use, is pure nonsense. We are going to have to dispose of more coal ash if we go Subtitle C.

Today we are asked to provide verifiable evidence that the hazardous stigma has detrimentally affected beneficial use. I'd like to know how we are supposed to do that and prove that impact to something that has not yet happened. This is a very convenient position for Subtitle C proponents and very disheartening for those of us who know the coal ash markets.

I do not believe there is a person in this room who thinks what happened in Roane County is acceptable. Beneficial use marketers understand there are gaps in current disposal rules. These gaps will be fixed with Subtitle D.

So let's fix the problem without stigmatizing coal ash as hazardous waste.

But the EPA continued to support coal ash beneficial use without creating an oxymoron scenario that is going to reduce demand for coal ash.

Thank you.

MR. BEHAN: Thank you. Number 91.

MR. COMPTON: My name is Randy Compton, and I am a resident of Knoxville, Tennessee. And I've been in the coal management marketing business for over 30 years. I'm currently employed at Charah as vice president of sales.

It is my honest opinion, as both a concerned citizen and as a coal material marketer, the regulation to CCR as a hazardous material would cause great harm to the years of progress made in one of the most successful recycling programs in the world.

I live with stigma already every day; the stigma of the unknown. I see it. It's not the economy; it's that people are starting to pull

back because of the risk factors that sometime down the road is declared hazardous. That's the reality of it. They can believe stigma or not, but I live with it every day.

My customers that I deal with already know what's the composition of the materials and minerals that are in the products that I sell. It is well documented that the chemical constituents in CCRs are the same as commonly found in many everyday products in naturally occurring soils. There's no good reason to risk destroying CCR recycling. EPA's own proposed Rules as far as a landfill engineering standpoint would be essentially the same between the C or the D.

The Association of American Concrete industry has recognized that the use of CCRs in concrete make their products better by making the concrete less permeable, more dense, dehydration is slower and less water demand. State DOTs readily accept the use of CCRs in the concrete; private, bridge decks and (inaudible).

The Federal Highway Works Administration

has continued to push with recycling of CCRs in all interstate products. If CCRs are declared hazardous special waste, we risk losing the environmental benefits that come from recycling major tons of this material, driving up the cost of construction, the cost of the utility industry, and ultimately, the ratepayer, not to mention the millions of tons of greenhouse gases that will be generated making virgin progress to replace the loss of CCPs in the market.

The EPA can enact new regulations while encouraging the safe recycling CCRs as preferred disposal. To do so, EPA should not regulate CCRs as hazardous or special waste under Subtitle C, but instead should find a way to regulate under Subtitle D and avoid damaging the CCR recycling industry.

I dare say that the concrete slab you are standing on today has coal ash in it. The roads you rode in on did, the bridge decks you crossed did, the landing strips that you land your airplanes on, they all got CCRs in them. Lower

heat of hydration makes a better product.

Thank you.

MR. BEHAN: 155.

MR. WASHINGTON: Thank you. My name is Calvin Washington. I'm on Richland County Council, and I represent a district that has a coal-fire ash plant.

I want to put a face to the folks that live around here. My community has a national park; the only national park in South Carolina, the Congaree National Park. The land is owned by -- the land mass is 80-percent owned by African-Americans. We have low-income folks. We have two major rivers that flow in my district that are contaminated. Nobody can fish in it. We have mercury levels, we have arsenic levels that are very high.

I have three Fortune 500 companies in my district; major international companies. But the economy of my district is low. Those jobs are going somewhere else; other counties. They do not want to stay here. People do not want to live in

that area, but us.

Our concern about this plant putting an ash dump -- because right now, I have a Superfund site from a nuclear waste facility. I have a facility that creates the barrage for nuclear plants. I have a paper plant, and now I've got an ash plant -- dump. They are dumping in our river right now. DHEC, which I thought was an agency that supported the community, they pretty much ordered these companies to do what they want in these communities.

I'm asking EPA to make sure they put regulations in place for these ash dumps to stop dumping into our rivers. Right now, we cannot even build economy or recreate within our rivers. We have over 300,000 people that come to visit our park; our national park. We cannot open restaurants because of our groundwater contamination issues. We just got a grant -- water into one area, but to expand it out it costs even more. And that's the burden on the county that I cannot put on the county right now.

I'm asking DHEC -- I mean EPA to really look at the regulations that DHEC have allowed to get to this point with this coal ash plant. I implore you to come down into my area. I invite you. Matter of fact, I'll make a full invitation for you all to come to look at the faces of those folks -- they would have loved to have been here, but a lot of folks have to work. They can't be here, and I'm here to represent those folks. And I implore you to come down here and visit with us.

Thanks a lot.

MR. BEHAN: Thank you. Is 126 or 174 here?

(No audible response.)

MR. BEHAN: Are numbers 93, 94, 95 and 96 here? Have they showed up?

SPEAKER: 96.

MR. BEHAN: 96 is here. 97, 98, 99 and 100? I believe 100 is here. 315. Is there anyone else in the room that has a number greater than 300 that has not spoken today?

(No audible response.)

MR. BEHAN: Number 82. Number 82?

MR. BELOW: Good afternoon. My name is Brian Below, and I'm the general manager of Boral Composites, Inc. Boral Composites is a new start-up business and a wholly-owned subsidiary of Boral U.S. Focused on the manufacture of green building products. As a startup, we are just commercializing our first product line which has been engineered to be roughly 80 percent recycled and bio-based, rapidly renewable material.

A critical component in our product is a particular type of coal combustion residual, which not only offers unique and improved performance properties, but allows us to provide this exceptionally high level of green content. Our business is based on selling these green building products to both the construction industry and the end customer.

As such, we are extremely concerned about the EPA's proposal for relabeling CCRs as hazardous through a RCRA Subtitle C designation and the negative stigma that that would create

within our customer base; homebuilders, contractors, installers and homeowners.

Our customers are not typically scientists or environmental policy makers. They will likely not be aware that the EPA has formally encouraged the use of CCRs since 1983 or that the EPA has twice ruled that CCRs are nonhazardous, going so far as to form the Coal Combustion Products Partnership in 2003, or that U.S. Green Building Council, American Society for Testing and Materials, and American Concrete Institute all endorse and encourage the use of the CCRs. Unfortunately, our customers are more likely to hear inaccurate information about CCRs and their beneficial uses from uninformed and/or biased media sources, creating a negative stigma that will only be exacerbated with an unwarranted change in designation to RCRA Subtitle C.

We certainly support the EPA's efforts to protect human health and our environment. We further believe that CCR disposal should be done in a responsible manner to avoid ash spills, like

the tragic storage failure at Kingston, Tennessee in December 2008.

However, poor storage practices and mishandling of the material itself should not be grounds for changing the classification of that material, and thereby jeopardizing one of the most successful recycling programs in U.S. history.

Boral Composites is only a small start-up business, but it's a great example of the green-tech, advanced manufacturing opportunities that our economy desperately needs. Last Thursday, September 9th, we celebrated the groundbreaking for our first commercial scale manufacturing facility being built just up by I-85 in East Spencer, Rowan County, North Carolina; a $13 million 3.7 acre site, Leadership in Energy and Environmental Design certified project that will create 25 jobs when fully operational.

The decisions that the EPA makes around CCR classification will directly impact this new green- tech business, these new job opportunities and the future job opportunities that this

business would create. The negative stigma associated with the hazardous classification through Subtitle C is real and will virtually eliminate the demand for our products and our business overnight.

Let's find a more responsible way to deal with the CCR storage issues that Kingston, Tennessee has brought to light. Subtitle C is not the answer.

Thank you.

MR. BEHAN: Thank you. Number 96.

MR. PETERSON: Good afternoon. My name is Terry Peterson. I just happen to also work for a subsidiary of Boral, by chance, the way the numbers worked out.

But I work for the ash marketing group of Boral Industries. We employ 161 people. We operate in 18 states across the southern half of the United States. I've been in this industry for 27 years and most of my experience has been related to beneficial reuse and landfill management as well.

I'd like to open my statement today by applauding the EPA for supporting and maintaining a Subtitle D classification for CCRs since enactment of the Bevill Amendment in 1980. That support has underpinned the establishment and development of arguably one of the most successful recycling programs in U.S. history.

Sustaining a Subtitle D classification has created confidence amongst end users and producers that has allowed this program to flourish and ultimately eliminate the need to dispose of millions of tons of CCPs as well as the avoidance of millions of tons of greenhouse gas emissions.

I've recognized during these hearings that some would argue that Subtitle C classification is the appropriate response to isolated occurrences of poor landfill management. Throughout the years, Subtitle C will undo and potentially reverse 30 years of recycling efforts, and more importantly, eliminate investment in new technologies and products which are required to

further promote today's recycling efforts.

Investors, whether private or taxpayers, do not put money into hazardous waste. Just as importantly, consumers have no desire to purchase products that contain hazardous waste. Maintaining a Subtitle D classification is necessary to build upon the recycling momentum created over the past 30 years. Eliminating land filling through recycling is the appropriate course of action that will provide the most benefit to all U.S. citizens.

I encourage EPA to maintain a Subtitle D classification for CCRs while also working with State regulators to improve landfill management procedures. This logical approach will provide the solution for both sides of this debate.

Thank you for your time.

MR. BEHAN: Thank you. Number 93.

MR. CRAIG: Thank you. My name is Keith Craig, and I'm a union representative for the International Brotherhood of Electrical Workers. I represent the operations, I&C maintenance for

fossil, hydro, and nuclear employees on the property of the TVA. Prior to that, I worked as a control room operator at the TVA's new Johnsonville Fossil Plant for 24 years.

Today I'm here to speak out for jobs; the jobs my members currently enjoy in the fossil power generation field. These jobs provide a good wage, good benefits and economic stability for their families. In today's time, good jobs are hard to come by. So in that regard, I stand before you today to speak out in opposition to the proposal to regulate coal combustion residuals in Section C (sic) as hazardous waste. As someone who has worked boiler bottoms, precipitators and hoppers, I feel qualified to say this material is not hazardous. But with most things, when they're improperly handled, problems can arise.

Therefore, I'm in support of the EPA's proposal to regulate CCRs under Subtitle D as nonhazardous waste.

The IEBW supports a clean and safe environment, and that's the easy thing to say.

Everybody does. The real challenge is to provide that protection with reasonable rules that protect the environment without creating unnecessary job losses in the process. The IEBW believes that by supporting Subtitle D for nonhazardous waste, this will be accomplished more easily. It will also allow for the recycling of coal ash to continue without the stigmatization of classifying CCRs under the same section as hazardous waste, which I am certain would be harmful to that business.

I'll take a minute to -- what prompted this discussion was, I guess, Kingston Fossil Plant. One of the dikes released -- 4.4 million cubic yards of fly ash were released over approximately 300 acres. That's a fact. It happened and, unfortunately, in TVA there's very few regulations that they are held to. Unlike the BP Gulf Coast disaster, nobody in TVA was held accountable. Knowing that fact and now seeing proposed regulation on CCRs sends a mixed signal to the people I represent. They are concerned this regulation will put their jobs at risk and

they will be the ultimate losers.

So in dealing with public concern, I ask you to address the root cause of the accident. Fix the problem. Fix what's broken.

Thank you.

MR. BEHAN: Thank you. Number 97.

MS. MAYS: Hello, and thank you for this opportunity to speak. My name is Willa Mays, and I'm the executive director of Appalachian Voices, a nonprofit environmental organization that is charged with protecting the land, the air, the water, and the communities of central and southern Appalachia.

In December of 2008, our staff was among the first to take water samples from the Emory River in the wake of the Kingston coal ash pond failure in Harriman, Tennessee. We assembled a team of researchers from Appalachian State University and the Tennessee Aquarium Conservation Institute and over the past two years have expanded our initial testing to include water sediment and fish in the Emory, Clinch, and

Tennessee Rivers. We issued reports in January and May 2009 that detailed our findings. Arsenic, barium, cadmium, lead, and the selenium in the Emory River exceeded protective drinking water and/or aquatic life criteria levels. Ash and ash-laden river sediments had arsenic levels that exceeded EPA removal limits. Selenium levels increased dramatically downstream of the spill with levels in fish beyond the thresholds of toxicity for reproduction and growth. And in North Carolina, our staff reviewed groundwater data from 13 coal ash ponds operated by Duke and Progress Energy. We issued a report in October '09 that showed 681 exceedances of groundwater standards for arsenic, boron, cadmium, chloride, iron, lead, magnesium, pH, and total dissolved solids. The level of exceedances ranged from 1.1 to 380 times higher than the North Carolina groundwater standard.

We have direct hands-on experience with coal combustion waste and its impact to waterways in North Carolina and Tennessee. Our research has

consistently shown that coal ash contaminates groundwater, surface water and aquatic life with toxic heavy metals in 100 percent of the cases we have investigated. The science is clear. Coal combustion waste is hazardous and it poisons water.

The current state by state regulatory framework is not working. The regulation of coal combustion waste under Subtitle C by the federal government is the only option that will protect communities and waterways. All wet storage of coal ash in open pits should be eliminated, and coal combustion waste should be federally regulated.

Thank you very much.

MR. BEHAN: Thank you. Number 100.

MR. WINEBRENNER: Good afternoon. My name is Guy Winebrenner. I am the director of the Energy Business Practice for MACTEC Engineering and Consulting, a top 40 engineering design firm with over 20 years of experience in coal combustion products management with 7 of the top

10 coal generated utilities. Our work is centered on both safety analysis of coal combustion residual storage facilities as well as the impact of these facilities upon the environment.

We would like to address in this testimony three specific aspects of the proposed regulations: First, the appropriateness of state versus federal control of storage facilities for coal combustion residuals. Secondly, the benefit of providing for innovation in the means of proper storage of CCR. And thirdly, the importance of continuing the provision of opportunity for the beneficial reuse of coal combustion residuals.

Based on our experience in seven states where coal is used to fuel a significant portion of the electric generation output, we have found that the state regulatory programs controlling dam safety, landfill design, groundwater protection, at both point and nonpoint source discharge provide an adequate framework to provide for public safety, property protection and environmental preservation when properly applied.

Moreover, the State regulatory programs are designed to take into consideration the specific geographic, geologic and water resources features that can affect the proper operation of CCR storage facilities. Consequently, we see no reason -- no compelling reason to move the control of CCR under the hazardous waste management requirements of the Subtitle C.

Regardless of whether the CCR storage regulations are developed under Subtitle C or Subtitle D, the ensuing regulations should provide performance rather than prescriptive requirements to be met. By establishing performance standards to be met, a framework allowing for innovation, incorporation of the developing best practices and site-specific solution is promoted. This approach can result in solutions that are not only more cost-effective, but can also provide better protection of property and the environment in view of the specific site considerations encountered.

The beneficial reuse of CCR, such as fly ash and gypsum in construction materials, such as

concrete and wallboard not only reduces the overall quantity of CCR to be stored, but also provides a means to offset the cost of CCR storage. In addition, the CCR incorporated into beneficial products takes the place of other raw materials that would need to be obtained from other sources. This provides a secondary benefit of reduced impact on the environment from the mineral extraction activities required to provide these new materials.

Thank you very much.

MR. BEHAN: Thank you.

MS. LOWE: Hi, my name is Rebecca Lowe and I'm a senior at Warren Wilson College in Asheville, North Carolina. I'm not going to go through all the reasons because I think they've been pretty eloquently stated before -- better at public speaking than I am, but I'm just here to say that I am in full support of Subtitle C. I do think that in an ideal world Subtitle C would also list coal ash as a hazardous and not a special waste, and prohibit its use in quote, "beneficial

use" in products, because toxic waste should not be in our products at all in my opinion.

But yeah, I just wanted to get my voice heard and I'm glad to be here today. Thanks for holding this hearing.

MR. BEHAN: Thank you. Numbers 101, 102, 103, 104, and 326. If 101 could come to the podium that would be great, thanks.

MS. CAVE: Good afternoon. I'm Nancy Cave, north coast office director of the South Carolina Coastal Conservation League, an environmental advocacy organization with over 4,000 members in South Carolina and across the nation. I am here this afternoon on behalf of the League and our members to ask EPA to rule coal combustion waste a hazardous waste regulated under Subtitle C of the Resource Conservation and Recovery Act.

It is critical to the quality and safety of our water in South Carolina that coal ash be recognized as significantly more dangerous than household garbage. Regulating it as a toxic

substance will protect human and environmental health. South Carolina has 14 coal generating plants producing over 2.1 million tons of ash annually. This ranks South Carolina 20th in the country for coal ash generation. The coal ash is placed in 22 ash ponds at nine plants and at least five landfills. And according to your 2007 assessment, six of these ponds and landfills are unlined and one is clay-lined. Of these sites six do not have leachate systems. All of the plants are sited on rivers and lakes; rivers that are sources of drinking water for communities up and down their length.

In Georgetown County where I live the state- owned utility, Santee Cooper, operates the Winyah power station with 6 ash ponds on the Sampit River. In Horry County, Santee Cooper operates the Dolphus M. Grainger power station with two ash ponds on the Waccamaw River which supply drinking water to the communities of Myrtle Beach and Georgetown, just to name two.

The Environmental Integrity Project

found that the Grainger ponds contaminated groundwater near the Waccamaw River with arsenic 91 times the state drinking water standard. Ruling coal ash to be a hazardous waste is a precautionary action that will protect the waters of South Carolina and the nation, but more importantly a Subtitle C ruling will protect the children and adults from toxins that according to EPA's own studies cause serious health threats. Again, we ask that the EPA rule coal combustion waste be regulated under Subtitle C.

Thank you.

MR. BEHAN: Thank you. 102? Is 102 here? 103? 104?

MR. GOODMAN: Good afternoon, everyone. Thank you for having me today and thank you for being here. I am John Goodman. I am the director of governmental affairs at the North Carolina Chamber of Commerce and I want to say a few words today that's going to hopefully express our support for regulating coal ash in a way that protects our communities while also protecting

North Carolina jobs and maintaining an affordable electric rate. For us that means Subtitle D, not hazardous regulation.

It's been well demonstrated that a hazardous designation for coal ash would effectively end the beneficial use of CCRs. Currently more than 50 million tons of CCRs are recycled annually. This has an annual impact of about $9 billion on the U.S. economy. Designating coal ash as hazardous would cripple the many businesses that rely on these products for their livelihood due to the liability, stigma and marketing concerns that a hazardous label carries.

Additionally, we also see the same impacts on the electricity industry. A hazardous ruling will require the early retirement of coal plants and the coinciding jobs, leaving industrial, commercial and residential electric customers footing the bill.

Here are some of the staggering costs developed by the EOP group in 2000, a decade ago, for electric utilities to comply with Subtitle C

regulations. And these costs are being updated now. If CCRs are regulated as a hazardous waste, the cost is estimated at $13.8 billion annually. The cost of mandatory closure of CCR surface impoundments would be $39 billion annually. Whether coal ash is regulated as hazardous or not hazardous waste. The cost increases have to be passed to consumers who will likely see hefty rate increases. Those facilities where the cost investment is too high will be shut down, while replacement capacity will be needed to maintain capacity margins required by public utility commissions who serve electric customers.

In effect, you're paying twice; once for retiring units, and again for replacing electricity. You need to fill the gap.

If replacement capacity can't be arranged quickly enough we're looking at serious liability concerns that come within the potential national shortfall of electricity to meet growing customer demand. And while wind and solar can be part of that solution, they can't produce enough

or store enough to fill that void. Only one third of at-risk capacity needs to be replaced. The gross replacement cost will be $12-$37 billion and this is in addition to $39 billion needed to close the surface impoundments.

So in conclusion, a Subtitle C hazardous designation will have far-reaching effects on American jobs, the economy and electrical reliability across the nation. That's a high price to pay for the increased requirements in Subtitle D would accomplish added environmental protection without the cost.

Thank you for your time.

MR. BEHAN: Thank you. 326?

MS. THIRION: I think frogs are the future. Frogs are the canary in the mine shaft, by the way.

I envision a planet that is healthy and on which many more generations can enjoy its beauty and health. I have come to the realization that such envisioning does not make it so. Without drastic action and a conscious commitment

to righting the wrong, what is wrong, we will not have much of the planet left.

That is why I have been looking into the disappearance of amphibians. Amphibians and frogs are our canary in the mine shaft. I brought a few statistics with me. A three-year effort involving more than 520 scientists from 60 nations concluded that more than 1,800 of 5,743 known amphibian species, or nearly a third, are threatened with extinction. Since 1980, as many as 122 kinds of amphibians may have become extinct, and 34 extinctions are confirmed. There are several causes for this decline. Pesticides are one, and coal ash is another since the poison seeps into our groundwater. It is no accident that residents closest to the plants have such an elevated rate of cancer and thyroid incidence. But it is only a matter of time before we all are affected. That is why I want to see coal ash regulated under Subtitle C.

And one other thing: what's good for the goose is good for the gander. So my other request

is that the CEOs and the top decision-makers who will benefit from the status quo are required to reside within 10 miles of a coal ash site.

MR. BEHAN: Ma'am, could you state your name for the record?

MS. THIRION: Terry Thirion.

MR. BEHAN: Great, thank you.

MS. THIRION: Thank you.

MR. BEHAN: I called 102 and 103. Are they here?

(No audible response.)

MR. BEHAN: 106, 107, and 108?

(No audible response.)

MR. BEHAN: 327? Is 176 here?

(No audible response.)

MR. BEHAN: 106?

MR. PRESTON: Thank you very much. My name is Jack Preston. I am a director of corporate environmental services for the SCANA Corporations. SCANA's largest subsidiary, South Carolina Electric and Gas Company, also known as SCE&G, has a generating capacity of 5,800

megawatts of electricity, mostly from coal-fired generation.

Essentially, we are convened here today to answer three basic questions: one, is classifying coal combustion residuals or CCRs as hazardous waste really necessary? Second question is, what are the implications if CCRs are classified as a hazardous waste? And the third one is what is the appropriate course of action for EPA to take in this matter?

So let's start with the first question. Is classifying CCRs as a hazardous waste necessary? The answer is no. Concentrations of contaminants found in fly ash, bottom ash and other CCRs produced by utilities are typically well under the hazardous toxicity levels set forth by EPA. In two separate reports to Congress, the EPA itself has previously concluded that CCRs do not warrant regulation as a hazardous waste.

Bottom line, CCRs do not pose a potential health concern when properly managed. This leads us to question number two: What are

the implications if CCRs are classified as hazardous waste? Well, for starters it pretty much effectively kills the commercial market for products manufactured with the recycled CCRs. Nationwide over 43 percent of CCRs are recycled annually for use in cement and concrete. At SCE&G, we have successfully recycled over 45 percent of the CCRs we've produced over the past three years, mainly for use in cement and concrete industry.

End users of CCRs have warned us directly that subjecting CCRs to hazardous waste regulation will significantly curtail the beneficial use of CCRs, if not ending it entirely. The irony of this is that such a move would result in significant negative impacts to the environment.

For an example if CCRs such as fly ash are no longer viably available for things like highway and building construction, then other things have to be mined and found to replace it. It's estimated that the beneficial use of CCRs

saves over 73 trillion BTUs of energy, which reduces greenhouse emissions by 12.4 million metric tons of CO2. It also has an estimated value of over $2 billion in the US economy. Having to landfill this extra ash is approximately a 50-fold increase in the volume of hazardous waste disposed of annually in landfills. That doesn't even take into consideration the hundreds of millions of tons of existing CCRs.

This will create a true crisis, an immediate and critical shortfall in hazardous waste disposal capacity that cannot be mitigated by new landfills.

MR. BEHAN: Sir, why don't you wrap up your comments?

MR. PRESTON: Yes, and I'll turn it over the next person, 107, if it's okay with you, and he will continue.

MR. BEHAN: 107.

MR. EFFINGER: Tom Effinger. I'm a manager at SCANA Corporate Environmental Services department. I want to add on to what Jack was

saying because in South Carolina, it currently takes on the order of 8 to 10 years to permit, construct an industrial waste landfill and that's a nonhazardous landfill. Given the complexities and contentious natures of a hazardous waste landfill, that time frame could be doubled if even allowed at all. There are no hazardous waste landfills in South Carolina.

With public opposition and legal challenges to new landfills the ability to successfully permit and construct new hazardous Subtitle C landfills may be virtually impossible, resulting in situations where coal-fired plants would need to cease operations, depriving residential and business customers of affordable power. The state environmental protection agencies from around the nation have repeatedly cautioned EPA that the Subtitle C approach will overwhelm existing hazardous waste disposal capacity and further burden strained state budgets and staff resources.

Regulating CCRs as hazardous would also

raise unwarranted liability concerns related to materials that have been incorporated into commercial and residential products such as wallboard. Who's going to want to fill their new house with wallboard if it contains a material that the EPA is regulating as hazardous waste?

Obviously the collective costs involved with managing CCRs as hazardous waste are almost incalculable and will certainly represent an enormous financial burden for the customers of our nation's utilities at a time when they can ill afford it.

So what is the appropriate course of action for EPA to take in this matter? EPA has repeatedly determined that CCRs do not warrant regulation under Subtitle C. It makes no sense to declare it now to be hazardous in reaction to a civil structural failure.

As recently as last week the Tennessee Department of Health, under a cooperative agreement with the agency for Toxic Substances and Disease Registry, released a final report finding

only minimal risk from the coal ash spill at TVA's Kingston facility. The CCRs produced by SCE&G and other utilities do not meet EPA's hazardous waste levels and therefore, SCE&G believes they should be more appropriately regulated as non-hazardous waste under the proposed Subtitle D option, including modification that integrates with current state regulatory programs, such as South Carolina Department of Health and Environmental Control's solid waste regulations. This approach will create a reasonable and effective regulatory program that protects the environment, retains options for beneficial use and preserves jobs while not adversely impacting our economy.

Thank you for your time.

MR. BEHAN: Thank you. 108?

MR. KIRKLAND: My name is Taylor Kirkland from Buncombe County, North Carolina and I'm here today as a concerned citizen, as a young person who hopes to live out the rest of my life in a community where a coal ash pond is located. I live in this state and pay taxes to this state,

and I vote for the people who run this state and now I'm here as my citizenship asks of me, to tell you that federal safeguards need to be issued quickly to ensure the protection of people and waterways of the state.

There are a good number of smart people in this room; scientists and physicians, local business people, industry experts, and I don't have the kind of training that these people have so I can't talk about toxicological consequences or any kind of beneficial uses of coal ash. But I can connect dots fairly well. When Progress Energy's voluntary monitoring data states that boron, chromium and manganese have contaminated the groundwater at the Asheville plant in the community where I live, I know that's not okay. When living near a coal ash storage pond, according to the EPA, is more dangerous than smoking a pack of cigarettes a day, I know that's not okay. When I come to events like this and I listen to testimonies of people who have been affected by coal ash and when I reflect on the

damage that has taken place because of this lack of regulation, I know that that's not okay.

And I think any right-minded person can tell you that these things are not okay. That which is good for business is not always good the rest of us. The TVA disaster clearly shows what happens when we leave the industry to itself. It's not okay to maintain a business as normal attitude when people's health is at stake. It's not okay when money becomes more important than people. I'm here today to ask the EPA to do the right thing. I'm asking you to call coal ash what it is, a hazardous material.

There are a lot of people who can't afford to be in the room today who are depending upon you to make the right choice. I urge you to adopt the Subtitle C option of the CCR rule in order to protect those threatened by the unregulated dumping of coal ash. This is the only option that will work to bring the real protections for the entire country from the dangers of coal ash. Thank you.

MR. BEHAN: 176?

MS. TIMMERMANN: Hi, my name is Taylor Timmermann. I'm co-chair for the Sierra Student Coalition at UNC Chapel Hill. First, thank you for hearing my statement today, and I applaud the EPA for examining the environmental and health effects that toxic coal ash has on dozens of communities in North Carolina.

What I found most disturbing concerning the lack of regulation on coal ash is the fact that individuals are subjugated to the dangerous health effects without their knowledge. In my hometown of Asheville the neighbors surrounding a coal ash pond were completely unaware of their proximity to the dumping site or the hazardous effects that coal ash can have on their health and the environment. In Asheville a coal ash pond can easily seep into the groundwater or further threaten the French Broad River, which already contains an alarming amount of arsenic, most likely caused from the coal ash pond being dumped into the river.

We experience the detrimental effects coal ash can have on the river as demonstrated by the recent incident in which five million cubic yards of coal ash breached the dike in Tennessee in 2008, dumping sludge into the Emory River. How many more rivers must be compromised before the EPA takes action in regulating this pollution? It is proven that coal ash has harmful health and environmental effects. It's also been established that in the long run the regulation of coal ash will generate billions of dollars in benefits and prevent future environmental disasters like the Tennessee spill. I'm speaking today as part of a coalition of concerned students asking the EPA to regulate coal ash wherever it is. The EPA should not wait for another environmental disaster to occur but rather should begin to classify coal ash as hazardous and require companies to be held accountable for waste they produce from cradle to grave, as outlined in Subtitle C.

Again, thank you for having us today.

MR. BEHAN: 327.

MS. BUTLER: Hello, I'm Suzanne Butler and in the interest of full disclosure, I work for Norfolk Southern Corporation, and we've been transporting via rail the fly ash from Kingston down to the landfill in Alabama. I've been to the Kingston site many, many times and to the landfill in Alabama multiple times as well. However, I am speaking as a private citizen today.

First off, I want to say that I am fully in favor of protecting our environment for our current and future generations. Also on a personal note I had cancer myself last year and I went through chemo and radiation. I wouldn't wish that on anyone. I'm glad it's there but I'm all in favor of keeping any carcinogenic elements out of our drinking water and out of our air.

I also appreciate that I can go over to a switch and flip it and have a steady, constant source of electricity. Look around this room. We've got ample light. The temperature in here is very pleasant and knowing the outside temperature is in the 90s today I'd say that's because of the

air-conditioning and the electricity that powers it.

There are other interests in this room being presented today such as flat-top mining or maybe even the very existence of coal power plants. Those views may be very valid. However, that's not the question before us today. There is going to be regulation. We just need to decide how it's going to be. I don't see a lot of difference once we get down to the disposal. If you've got a lined landfill, if you've got leachate collection system, if you've got monitoring, there's not a lot of difference between a class C and a class D, the actual physical disposal of any material put in it. However, there is a big difference in the permitting, the monitoring and the enforcement.

Now under current regulations the only way the EPA can have oversight over this is to classify it as a class C. I don't want to use the word "overkill" but I believe we will be safe with a Subtitle D, if we can have EPA oversight. So

basically I'm saying I don't like either of the options being presented here today. I would like to see a middle ground where there can be EPA oversight because I believe when we hear private citizens and regulators saying that they can't get anything done on the state level I believe them. But I don't believe we need to overreact to that either so I want to see EPA oversight with class D Subtitle. Thank you.

MR. BEHAN: Thank you. It's about 4:30 right now and we are running about 45 minutes or so ahead of schedule. The next group I'm going to be calling up fall into the 5:15 to 5:30 group, just to let folks know. There are going to be some people, some numbers I call out that aren't here, and we'll come back and get them.

So is there anyone in the room that has the number 108 or lower, that has not talked today?

(No audible response.)

MR. BEHAN: Okay. 109, 110, and 111. If 112 is here, please come forward. Is 183 here?

(No audible response.)

MR. BEHAN: 210 and 325. Could 109 come to the podium, please?

MS. WATTS: Thank you. My name is April Watts. I'm here on behalf of CROP PLUS, or Concerned Residents Of Portland, New York and People Like Us.

EPA must classify coal combustion residuals under Subtitle C. I would like to speak about New York State DEC -- Department of Environmental Conservation policy and practices. In 2007, CROP PLUS filed a Freedom of Information Request to New York DEC and received the following information: One, NRG Dunkirk Power did not file any reports from 2002 thru 2007 for Coal ash use under BUD 122-0-34. The information submitted 10-31-2008 was incomplete and contradictory to previous records. Two, the DEC forms request yearly quantity of solid waste beneficially used. The form has a note, quote, "please attach to this form all reporting information required by the BUD." Nothing was attached to any files received

and no periodic testing was reported. Three, the DEC form for the beneficial use of coal ash under Regulation 360-1.15 has all cement, concrete and concrete products listed under bottom ash and not under fly ash. Both fly ash and bottom ash are recorded as bottom ash on several reports.

In April 2009, Daniel David, Regional Engineer for the Environmental Quality Region responded in a letter to Chautauqua County Executive Gregory Edwards, quote, "Sampling and analysis is no longer required in order to beneficially use coal ash as a traction agent." Mr. Daniels referred to Regulation 360 and predetermined BUDs that required no testing. However, Bottom ash reuse as a traction agent is being reported under BUD 122-0-34 which does require testing.

Also, in April 2009 New York DEC Commissioner Alexander Grannis responded to U.S. Congressman Brian Higgins saying "The use of coal combustion bottom ash by NRG Energy's Dunkirk Power Facility is addressed by a 1993 DEC

regulation that supersedes the previously granted BUD 122-0-34. This regulation does not require NRG to undertake any chemical analysis."

Which is it? Is this BUD superseded by or incorporated into the regulation? How can it be superseded by Regulation 360 when Part A of the regulation states: "Beneficial use determinations granted by the department before the effective date of this section shall remain in effect, subject to all conditions contained therein, unless specifically addressed by subsequent department action." No subsequent department action has been reported.

Forms and records need to be updated. Coal combustion ash should not be reused in residential areas without periodic testing to guarantee human and environmental health and safety.

In closing I emphasize that many state regulations are not requiring proof of protection. The EPA must regulate all coal waste under RCRA Subtitle C including coal waste for questionable

beneficial use.

MR. BEHAN: Thank you. Number 110?

MR. BERGMAN: Good afternoon, and thank you for the opportunity to speak to the EPA regarding the proposed regulation for the disposal of coal combustion residuals. I am Robert Bergman and I am a chemist that has tested coal combustion materials for 17 years. Today I would like to provide the EPA the data it is asking for to make their recommendation on sound science and not emotional pleas from citizens who have never handled coal combustion materials.

I would like to discuss the assertion made during the August 12th EPA webinar that since the European Union and Japan are able to beneficially use 89 to 95 percent of coal combustion materials, that the United States would be able to increase beneficial use of coal combustion materials even with the label of special waste that is regulated under Subtitle C of RCRA, and that no stigma would be attached causing a decrease in the amount of CCRs that can

become reused instead of being disposed in Subtitle C landfills.

Does the EPA realize that in Europe, the 89 percent beneficial use of CCRS is based solely on bituminous coal combustion materials reused? The other materials from brown coal, or lignite, are not included in their calculations, even though Brown coal is burned 4 times as much as bituminous coal. The American Coal Ash Association represents beneficial use of all combustion materials produced regardless of source, of material combusted, or the form the material results in.

Further analysis of the coal ash utilization charts provided by European Coal Association and Japan Coal Energy Association shows that by removing the utilization categories, which would not be covered under the Bevill exemption, the amount of beneficial use in Europe would only be 19 percent for encapsulated concrete and asphalt products. In Japan it would only be four percent. This reduction in use is due to the

majority of their materials being used in applications which is not clear if they would be allowed under the proposed regulation, including cement production, reclaiming coal mines, and un-encapsulated uses.

Neither Europe nor Japan is beneficially using coal ash as successfully as the United States in concrete and asphalt products. If the U.S. EPA is to take away un-encapsulated uses and list CCRs under Subtitle C regulations, the amount of coal ash that will be landfilled will far eclipse any amount that will be beneficially used.

Thank you.

MR. BEHAN: Thank you. Number 111?

MS. YOUNG: My name is Elisa Young and I'm a seventh generation (inaudible) County resident. I live in southeastern Ohio, and I'm here today because I on the border between region three and region five. And one of the issues that we have living on the border of those two regions is that there is no overarching federal regulation that protects my community equally. And what

you're seeing right there -- I went to the toxic release inventory list to see how much beneficial use is being dumped on us and there is no listing. We have no toxic release inventory list with the EPA but this is my solid evidence that it's been received in my county because they bring it on and trucks and they dump it on us every year. And this is going in our fields, this is going into our gardens. I have grit on my carpet that comes back up from the roads, and so this is going directly into our food chain.

These little jars here are two jars of ginger cinnamon syrup that you are welcome to put on your crepes and I want you to think about my chickens when you do that. I can no longer free-range my chickens. I like to do that because it makes the omega-3 content higher in the eggs. But now they're grazing in coal ash and I know that and I can no longer let my chickens free-range. Our cows are eating out of pastures where this stuff is dumped and it seeps off, and for the last 50 years nobody has tested the

sediment in our ponds or in our pastures to see what the cumulative impacts are to our food chain. So that whip cream you dollop on top of those crepes made from those eggs from the chickens that graze on coal ash, with those blueberries that grew out of that ash that you have sitting there in front of you, I want you to think about our food chain.

I want Option C to be passed, but not only put regulation around landfills because it's only going to encourage the industry to find more ways to dump this on us and put it into our homes unregulated. I know people who work at those cinderblock factories. They're telling me that they're under more pressure to add more and more of the coal combustion waste to the cinderblocks, and they deteriorate more quickly because it changes the matrix of those cinderblocks.

I want you to think about our food chain, okay? The Environmental Integrity Project did a report here and they showed that at one of the four landfills -- I live at the center of the

second-largest concentration of coal-fired power plants in the nation. The first is just up the river from us at Morgantown, West Virginia. We have four of them within a 10-mile radius of the farm where I've lived for seven generations, our family has lived there. And they found radiation levels and alpha particles that were 1000 times higher than what the EPA said was acceptable. Those deer go on and off those sites, okay, so it's not just was being dumped on us; it's what's going in those landfills. There are deer going back and forth. There are wild turkey. There are fish. People still hunt and fish where I live and we are not being protected.

I'm going to submit written comments in writing because there's no way you can do anything meaningful with three minutes. But I beg you, please pass Option C with additional regulation wrapped around beneficial use because it may be beneficial for the industry but it is not beneficial for us. I have lost multiple neighbors to cancer. I've lost my dog to cancer. We have

livestock dying of cancer. We have deer getting cancer. I've had melanoma and I have two more precancerous conditions for breast cancer and thyroid cancer. We have no family history of any of those and there is no doubt in my mind that it is a direct result from what we are being inundated with.

Thank you.

MR. BEHAN: 325.

MR. DEAL: Hello, my name is Jeff Deal, a concerned citizen and proud American. I'd like to start off by saying that it's unconscionable not to responsibly regulates the pollutant coal ash, whose cancer-causing effects and lifetime-shortening effects are well documented if sadly not well known.

An industry that seeks to have government obfuscate and shield their habitual life-threatening pollution practices, so that the industry may wholly profit, while at the same time saddling the citizen taxpayer with as much of their cost as possible, act as if they are

conducting the enterprise behind the Iron Curtain of the 1960s and '70s and '80s instead of a democracy that espouses profound respect for the free market and free enterprise system.

While it's true that a profitable industry once flourished lining our homes, schools and marketplaces with the flame retardant and cancer- causing agent, asbestos, we all celebrate the fact that alternatives for this products were identified, new jobs were created and their illness-causing industrial practices we all once supported no longer exist.

It is not the role of the EPA to assist, support, and enable elite monopolistic slackers who are seeking to escape the physical laws of free-market economics and the consequences of their dangerous actions. It is the role of the EPA to safeguard the environment, the common life-support system upon which all American lives and marketplaces depend.

I look forward to supporting and working with the EPA in safely and responsibly regulating

toxic coal ash as a hazardous-waste material, and to thank you for your time and consideration in this matter.

MR. BEHAN: Thank you. Numbers 113, 115, 116, 194, and 119. If 113 could come straight to the podium that would be great.

MR. HALLMAN: Good afternoon. My name is Chris Hallman. I am a Principal Environmental Specialist with Duke Energy, testifying today on behalf of Duke Energy. Duke Energy strongly supports the development of Federal regulations for coal combustion residuals under RCRA's Subtitle D non-hazardous waste program. We believe that regulation under Subtitle C is unwarranted and we're not the only ones who think so.

EPA's own significant study and past rulemaking process also supports this approach. The development of Subtitle D regulations would be the appropriate outgrowth of EPA's two reports to Congress and two final regulatory determinations under the Bevill Amendment declaring that CCRs do

not warrant hazardous waste regulation under RCRA Subtitle C.

Throughout EPA's 20 years of study, it has consistently found that the Subtitle D approach, with active state involvement, was the appropriate regulatory course for CCRs. In addition, various state and federal agencies, members of academia, and many others have studied CCRs for nearly three decades. These entities evaluated CCRs for toxicity levels and found them to be well below the criteria that would require a hazardous waste designation.

First in its 1993 CCR Regulatory Determination and again in its second report to Congress in 1999, EPA concluded that RCRA Subtitle D is more appropriate for addressing the limited human health and environmental risks that may be associated with disposal of these wastes.

EPA reaffirmed the appropriateness of the Subtitle D option in its 2000 CCR regulatory determination, concluding that the Subtitle D regulations are the most appropriate mechanism for

ensuring that CCRs disposed in landfills and surface impoundments are managed safely. EPA's decisive factors in reaching its final determination that CCRs do not warrant regulation as a hazardous waste include one, CCRs rarely exhibit a hazardous waste characteristic; two, trends demonstrate CCR disposal and utilization practices are improving; and three, the current and potential beneficial use of CCRs are important advantages.

Since the initiation of this rulemaking effort, an overwhelming number of entities have gone on record supporting a non-hazardous waste designation. These include more than two dozen state environmental protection agencies, various Federal agencies including the Department of Energy, a bipartisan group of 165 members of Congress, and 45 US senators.

The characteristics of CCRs have not changed, and there is no real science to support a hazardous designation. Ruling as such will raise electric costs to consumers and jeopardize CCR

re-use without delivering additional environmental benefit. The Subtitle D option provides the only reasonable and lawful regulatory approach for these materials under RCRA.

Thank You.

MR. BEHAN: Thank you. Number 116.

MR. BLUNDEN: Thank you for holding these hearings and allowing me to speak today. I appreciate your stamina.

I am here today representing my wife Ginger who has cancers and my four beautiful grand-daughters who have every right to expect a clean and healthy future.

Burning coal to make electricity is a primitive and dirty business. It is an industry in decline. There are proven, cleaner, modern technologies available to produce electricity in the form of solar, wind, and tomorrow it will be the norm. The way to move these clean technologies forward is to get all of the costs on the table, the cost of the coal burning industries on the table. This means the cost of c1eaning up

the coal ash waste. The evidence is indisputable that the concentrated storage of coal ash represents a public health hazard. Selenium, arsenic, and mercury are all present in coal ash. They have the very potential of leaching into public water systems, the groundwater, and rivers. As witnessed by the disastrous TVA spill of fly ash in December of 2008, there is also the very real potential for catastrophic spills.

Yes, there will be dollar costs associated the cleanup and yes, these costs will be passed on to the consumer. The clean-up has been estimated to add one percent to the cost of electricity. One dollar on a hundred dollars to your power bill. The costs of cleanup are not going to magically disappear. They will be paid now by ratepayers or later as superfund sites by taxpayers. The cost should be paid by consumers now because it is a real cost of producing electricity and will make the clean technologies more competitive once all of the costs are on the table. As Americans we demand a clean environment

in which to raise our families and 1 am confident all of us are willing to pay for that.

As a (inaudible) architect, I don't believe that the stigma associated with this hazardous waste is going to stop it from being recycled. I say that because if you look at vinyl, vinyl has really hazardous materials that go into it. But still, vinyl is on the market and people are buying it all the time.

Declaring coal ash as a hazardous waste is the only viable answer. Coal ash is hazardous waste. It is EPA's environmental protection responsibility to call it what it is. We the public expect no less.

Historically this has been called progress.

MR. BEHAN: 119.

MS. STROUP: Hi, my name is Mary Stroup. I'm from Winston-Salem, North Carolina. First, I'd like to express my appreciation for the Environmental Protection Agency having these hearings today. I decided to come and speak when

I saw on the Sierra Club website that these hearings were going to be in Charlotte also, as opposed to around other places in the country. And as I was registering to speak there was a blank to fill in for affiliation. I typed in "concerned citizen" because that's what I am.

Another thing that the website said about speaking at this hearing was to smile and have fun. I don't want to smile. I'm mad. I'm angry that we're even having the need to have these discussions and this hearing. I don't live near a coal ash disposal site and as of this moment, it isn't affecting me directly. But in the end it affects everyone.

I've watched a lot of documentaries about the environmental effects of dumping this poison on our land and into our rivers and I've done a lot of reading and a lot of research. It's dramatic what happens in the rivers. There's fish kills and wildlife that dies from drinking the water, not to mention the causing of cancer to people who live in the area. It's loaded with

known carcinogens.

I have to wonder how people from the coal industry can look at themselves in their mirrors everyday knowing that they're exposing our water, our wildlife, and in the end human beings to this poison. And I don't believe for one second that they don't know that what they're doing is poisoning everything in the planet.

Fresh drinking water is a limited resource. There are already places in the world that are running out and have to search every day for enough water to stay alive and yet we live in a country where an industry can leach cancer-causing chemicals into our water. How is this even possible? What kind of minds think that this is acceptable? We live in an ecosystem, a system. What affects one thing affects all things.

My father was a career military man. I'm very lucky. I grew up living all over the world. We camped everywhere we went. We loved to be in nature, a part of it. When you grow up like

that, you develop a real love for nature and have a burden to protect it. Humans were given an unbelievable gift in this planet and we are not very good stewards of it. It literally makes me sick to see what humans are doing to this planet. EPA, please do your job. Protect the environment and put in place enforceable safeguards to stop the coal industry from poisoning us and our planet.

Thank you.

MR. BEHAN: Thank you. 194.

MS. LOGUE: Good afternoon. My name is Lynnsy Logue. I'm a 71-year-old voice of cancer. Thank you for being here, because I didn't think I would be here last year. So I have spent the last year in chemo, and then radiation, and then chemo, and then surgery, and thank God I am here today.

My focus is on finding the cause, because I ate organic food, drank filtered water, I'm 71 years old, swim 30 laps, swim four miles; you couldn't be more healthy. But when I was handed the diagnosis of "you have cancer," I

thought how could this happen, and of course why not? We live in a toxic environment.

I'm very passionate about the road ahead of me, and this is what I have to say today: Happy birthday Molly Sue. With any luck, you'll live to maybe 43 or two. Depends on where cancer finds you. An easy task these days; divide and conquer. The cells sneak out in quick disguises, no surprises. They are often missed, non-detectable, but I'm not sure what gives me pause is the cause of a rampant disease in epidemic proportions, horrifying tens of thousands who fear a death with insufferable pain again and again and willingly accept the barbaric statement, their treatments are poison and death rays. Some say it might stop the man in the suit, cancer CEO. The man in the suit, you know, the man with his hand out for $100 a pill, or tens of thousands for radiation, or thousands of thousands for a CRT and MRI, CT, PAP, and all the letters that stand for ways to charge intensive fees, while shiving that 5 billion is spent for R&D. Since 1970, 5

billion. And yet 110 billion pieces of silver every year is spent for cancer treatments. Where is the search for cause? Because it's a cause we name, the business remains, change, not the same old game, not the only game in town. The man in the suit greases the palm of the man in the white coat. The truth of degrees that carry the disease over the heads with language that is over our heads, while you and I lay dying, smiling and saying, we will fight because we are only just learning that cancer is immortal. It is simple to see what envelops me is a wave of incredibility. Clean air and clean water, clean food and clean land, no small percentages of acceptable mercury, no heed for a trace of lead. My friends and family are dying, my dog is dead. What gives me pause is we conquer not cause but continue to pay and to pay and pave the way for generations of men in suits depleting our savings, sucking our life force to build and maintain a battlefield for cash registers and accountants. The invasion is invisible as long as we are silent. Happy

birthday, Molly Sue. Are you listening?

MR. BEHAN: The persons with numbers 117, 118, 120, 122 and 123 come forward, please. Number 117, please.

MR. MCCABE: Good afternoon. My name is Bill McCabe, and I am testifying on behalf of Duke Energy as manager of Duke Energy's Waste Remediation Group. Duke Energy strongly supports developing federal regulations for coal combustion residuals under RCRA's Subtitle D non-hazardous waste program. Opponents of Subtitle D say this option is a free ride for electric utilities. However, the reality is Subtitle D raises the bar considerably in terms of retrofitting and closing CCR impoundments, although the accelerated closure schedules are impractical and likely not possible the way currently proposed.

The Subtitle D proposal requires that unlined impoundments no longer be used five years after the rule is finalized. It also requires that impoundments be officially closed within 180 days after closure of the impoundment begins.

Both of these time frames are unrealistic, given that closing these ponds safely from an engineering perspective will be very challenging.

The cost to comply with the requirements (inaudible) unlined impoundments will drive most plants with these impoundments to either retire or convert to dry CCR handling systems at landfill disposal facilities. New landfills will have to be sited, designed, and constructed prior to beginning the pond closure. Given the number of new landfills that will be required, it is unlikely that those could be ready in time.

If these were hazardous waste landfills, as required under Subtitle C hazardous waste program, even more time would be needed. Assuming that a hazardous waste landfill could be successfully sited and permitted.

Also, the immediate and significant increase in demand for dry handling systems across the country will result in lengthy procurement and installation time frames, making the five-year deadline impractical, while impacting power plant

availability.

The requirement to close surface impoundments within 180 days is also not realistic given the time needed to de-water the unit, construct the cap, and to install the necessary stormwater controls while complying with the NPDES permits.

EPA should consider closure to start within 30 days of final receipt of waste, but the implementation of a closure plan and completion of construction should be determined by best engineering practices.

The Subtitle D Prime option, with appropriate adjustments, best balances clean energy with affordability and reliability. Adopting the Subtitle D Prime option will achieve the same long-term environmental goals on a more realistic time frame. With a reasonable, science-based approach, we can design federal regulations that ensure the safe management of CCRs without significantly raising costs for customers and jeopardizing national electric

reliability.

Thank you.

MR. BEHAN: Thank you. Number 118?

MR. IRVINE: Hello, my name is Jim Irvine. I'm the president of a small recycling business named Fly Ash Direct. Fly Ash Direct is based in Cincinnati, Ohio and we've been in business for over 20 years. We have multiple offices throughout the Midwest. We employ approximately 35 people. Our primary business purpose is to develop beneficial markets for coal combustion residuals including fly ash, bottom ash, and synthetic gypsum. My company and our industry has worked very hard over the last several decades to develop a comprehensive list of products that use coal residuals as beneficial construction materials. These products are widely utilized to manufacture many products that we live, work, and play within.

At no time in history has there been a hazardous, dangerous, harmful or unsafe connection between coal residuals in any of the products that

we use to manufacture. These products come into daily contact with humans, existing today in our basement foundations, roof shingles, drywall, roads and bridges, dams, water treatment plants, so forth and so on, in many other applications. We most certainly would have discovered by now if these materials are harmful in any way whatsoever. Declaring coal residuals hazardous at this point in my opinion is to declare the entire world landscape a wasteland.

Until now the U.S. government and the U.S. EPA have encouraged recycling coal residuals as an environmentally preferable alternative to disposal. It is well-documented that this recycling activity saves precious natural resources, reduces greenhouse gas emissions through cement reduction. Our government has analyzed the science multiple times in the past under multiple administrations and every time they've determined these materials do not warrant hazardous classification.

I vehemently oppose any designation by

EPA which would designate coal residuals as hazardous waste under RCRA Subtitle C. Any such association will have a profound negative effect on our future ability to manufacture quality construction products, unnecessarily increase our utility bills, and it will eliminate a significant US recycling success story. My industry has surveyed our customers who utilize coal residuals and they are firm in their position that if the US EPA pursues a Subtitle C approach they will discontinue their use of these materials in the future. It is my understanding that ASTM has a similar position.

In conclusion I do not oppose federal oversight with regard to solid waste disposal setting forth minimum engineering standards which safeguard our water and air. I do specifically oppose a Subtitle C approach which unnecessarily associates these valuable materials as hazardous, for the reasons stated.

Thanks for having me.

MR. BEHAN: Number 120.

MR. DANIELS: Hello, and thanks to everyone who's here. A lot of passionate discussion. I appreciate being part of this process. Thank you very much to the EPA and allowing this to happen. It's very late in the day so I'll get right to it. I see I've got a nice clock here to remind me how much time I've got to go.

My name is John Daniels and I'm in my tenth year on the faculty at UNC Charlotte. I spent three years recently at the U.S. National Science Foundation. I'm a registered professional engineer in both North Carolina and the state of Massachusetts.

And I guess a couple of my thoughts that I want to put forth is, first, coal fly ash is really very much similar to regular soil; dirt that is right outside this building here. If you were to look at the mineralogical composition, look at x-ray of the fraction, look at x-ray of fluorescence, look at whatever technique you want and look at the technical composition, by and

large they're essentially the same in terms of silica, alumina, iron oxides, lime and so on. Sure enough, there are trace metals with fly ash and, in fact, you can have trace metals with dirt as well. Ash can also absorb contaminants and so can soil. So these things can work in different ways. But let's just accept the fact that ash can leach contaminants. Let's manage this and manage it in a Subtitle D program. This works very well in municipal solid waste. And I would invite folks to look at typical leachate characteristics for municipal solid waste. And, you know, a lot of the emotion and a lot of the arguments for how many times higher than a groundwater standard you'll find in coal ash leachate, you can find a similar thing if you look at municipal solid waste leachate. And, yet, we are able to successfully manage municipal solid waste through Subtitle D. So if it works for MSW, it will certainly work for coal ash.

I'd also point out that it's far more compatible in terms of reuse of this material,

particularly at this point in history for poise, for major investments in infrastructure. Now is not the time to take off 50 million tons of material and take it and simply hide it and not use it at a time where we need so much more virgin materials for new bridges, new roads and so on. We simply need this material. It's far more sustainable to use that.

I guess my follow-up point would be, I'm very disingenuous to use this as an opportunity to bash the notion of coal burning. Again, having spent three years at NSF, I appreciate the fact that it's wonderful that we can take tax dollars and invest it in research; research that is needed so that we can have new technologies, alternative energy, energy efficiency and so on. We need these things. And to get to that point, we need research to invest there, but someone's got to pay for that research. It requires an economy which can support this. And so, right now we have a coal-based economy, so the idea would be that the road to a fossil fuel-free future is really paved

with coal.

And once we are able to make these investments, we can then transition to a more energy efficient economy.

So with that, I appreciate your time, and enjoy.

MR. BEHAN: Thank you. 122.

MS. DIAZ: Thank you. I'm Sandra Diaz with Appalachian Voices. And I wanted to thank the EPA and everyone else who's come out today to talk on this very important topic.

I personally came to realize the massive destruction that coal and its waste by-products can cause. I was actually one of the first people to commute into the massive coal ash spill in Harriman, Tennessee to assist with water testing in December of 2008. What I saw before me was what once was a free- flowing river that had become a toxic coal ash pit filled with dead fish. And the test results we collected from that sampling were not a surprise. We are still -- very frightening to see. The presence of toxic

heavy metals like arsenic, barium, cadmium, lead and selenium were at alarming levels. And the people's lives that lived there were forever impacted -- the many adults and children experiencing health issues; many whose homes are now part of a toxic site.

And while the terrible incident in Tennessee is just an extreme case of a damage that coal ash can bring to a community, it thankfully woke us up to the more insidious danger that coal ash can bring by slowly leaching toxic heavy metals into groundwater supplies over time.

We know that coal ash is a toxic substance. The EPA science says so. In North Carolina alone, 13 massive coal ash ponds are currently leaking heavy metals. Of course industry is opposed to treating coal ash as the hazardous waste it is. If this were a hearing about mercury, the industry would be arguing against regulating mercury. The industry's motivation is their bottom line. Why would they want us to pay for their waste when they can get

the public to do so? Who is looking out for the public interest? It is up to the EPA to do so; the Environmental Protection Agency.

I ask that the EPA protect human health by regarding their own science and regulating coal ash under Subtitle C in order to provide strong Federal oversight to this known toxic substance.

Thank you.

MR. BEHAN: Thank you. Number 23.

MS. RHODES: Yes. I'm Suzanne Rhodes. And I'm representing the League of Women Voters of Columbia, South Carolina, and I thank you for your attentiveness. I can't believe what a job you've got today.

I live a couple miles from the McMeekin plant, Lake Murray Dam. There's a coal ash pile there. It's about 58 years old, and it feeds into the Congaree National Park through -- I don't mean the -- coal ash is at the headwaters of the river that runs into Congaree National Park. The park and the Saluta River, as well as the citizens of the area, all deserve long-range protection.

It's been very interesting today hearing the variety of remarks, and I've learned a lot. But I didn't think about it much when the upgrade of the coal plant -- and I no longer had to clean up the porch furniture. I never thought about the ash. If we never get to clean coal, the ash is going to be worse and we've got to start now preparing for that.

And I've heard a lot of information today about leaking leachate, and I'm surprised I haven't heard anyone criticize, in harm's way, the data from the Environmental Integrity Project that cited -- I can't remember -- a couple hundred cases of toxic leaks from coal ash plants. Fly ash may be different. I've been disappointed with a fact-free kind of a campaign that -- we've talked a lot about jobs and recycling. And I've been introduced to stigma. I don't know of John Reaky. I've never heard of N.C. Warran, but I think he nailed it. Stigma is not a regulatory issue; it's an educational issue and we can certainly solve it.

I was also interested to hear about the Subpart K. I think federal Subpart C is what -- the direction we probably need to go. We need to get together and avoid future problems and someone's got to figure out a way to test the ash and the coal ash -- fly ash, coal ash products, that are, in fact, usable as product, but they need to be tested. And I'm surprised that nobody's paid attention to EPA's statement that's in the back of your handout. I guess I don't have it -- yeah, page 2 -- for the metal exemptions, which they pretty much tell you they are not talking about focusing on fly ash, they are talking about testing.

Obviously, this is going to cost money, and their permits are running the fees, and I think the ash program should be also.

Thank you very much.

MR. BEHAN: Thank you. Just to let folks know in the room, we're running about an hour ahead of schedule from what was published for the speaker list online. The next group, I show

that we don't have anyone here; that's 125, 126, 127, and 128. Are any of those numbers here? Is there anyone in the room that has a number 128 and lower that has not spoken today?

MS. ZIRKLE: I have 114.

MR. BEHAN: You have 114? 114 can come forward. 129, 130, 131, are those folks here?

(No audible response.)

MR. BEHAN: I will call again. We are running ahead of schedule so some people might come at the assigned time, so we will loop back. 114, go ahead, ma'am.

MS. ZIRKLE: Hi. My name is Lisa Zirkle, and I thank you for your patience and for listening to us all. I appreciate your attention during this very long day.

I'd like you to consider the undue influence Duke Energy has in our city and state. We lost serious drivers of the local economy when Wachovia and Bank of America tanked. The only game left in town is Duke. They make many large contributions to our community's pet projects.

Many Charlotte residents are employed by them and/or own their stock. The companies we do have left want Duke as a customer or a partner, which leaves few Charlotteans willing to challenge them or speak out against them.

At the State level, Duke's lawyers and consultants write their own regulations, as in the case of North Carolina General Statute 130A-295.4 regarding combustion products landfills. This statute doesn't even require coal ash ponds to be monitored for leakage. A frightening thought when you consider there are a dozen high-hazard ponds filled with carcinogenic toxins in North Carolina. Four are in Charlotte and two are located next to Mountain Island Lake, the source of drinking water for over three- quarter million people; our drinking water.

Duke Energy's known data shows the groundwater beneath every unlined coal ash pond is contaminated. North Carolina's Department of Environment and Natural Resources Solid Waste Bill states groundwater is the source of drinking water

for approximately half the population of the state. On the Federal level, Duke spent $3.29 million in lobbying money the first six months of this year. That doesn't include spending on the state level. A Fortune 500 company throwing around that much money easily buys influence and complacement (sic).

The last point I'd like to make is three; these three (indicating). These are my children, now middle and high school students. I bring this picture because they have been drinking the water from Mountain Island Lake all the years in between then and now; the same water Duke dumps one to three pounds of arsenic in every day. Water from the lake sediment contains arsenic, plus barium, lead, selenium, and mercury.

Our local officials have failed in protecting our drinking water. In fact, they just began testing for arsenic in June of last year.

In order to effectively regulate a company as influential as Duke, their pain in doing what is wrong must be greater than their

gain in doing what is easy.

I urge you to apply the force of consistent mandatory Federal regulation -- the pain, if you will. I urge you to adopt Subtitle C.

Thank you for your time.

MR. BEHAN: Thank you. Are numbers 133, 134 here?

(No audible response.)

MR. BEHAN: 190, 192, 198, come forward if you have any of those numbers. If 133 could come to the podium, that would be great.

MS. BOWMAN: My name is Rhiannon Bowman. I'm an independent journalist. And as a profile, I live about a mile from the two unlined high-hazard coal ash ponds at the edge of Mountain Island Lake, also known as Charlotte Metro -- the Charlotte Metro area's drinking water.

I've spent a lot of time researching and writing about this pond. But I'm actually here to talk to you about how your proposed regulatory options affect the people in my home state of

Alabama.

Historically, the state dumps hazardous and nonhazardous waste much closer to poor people than to middle-class or rich people. Under Subtitle D, your proposed regulation is enforced only through citizen lawsuits. Now, that doesn't make any sense to me. We're going to dump waste next to people with little money and dare them to challenge us; people who likely can't afford to do much more than beg and pray.

As a society, we must do a better job of protecting every element of our population. The pressing enforcement through citizen lawsuits is cost prohibitive for the very people who we're expecting to shoulder the burden of our electricity addiction.

I must support the institution of Subtitle C. The poor folks in Alabama deserve better. Every citizen in the U.S. deserves to enjoy true regulatory protection from your agency. It's not your job to worry about the coal industry's profits; it's your job to protect us

and our land. They are in the business of making money to overcome any hurdle put in their way of making their shareholders happy.

Further, your own numbers indicate the health benefits outweigh the cost of cleanup many times over.

Thank you.

MR. BEHAN: Thank you. 134, please. 190.

MS. CORBETT: Good afternoon. My name is Susan Corbett. I am the chair of the South Carolina Chapter of the Sierra Club. I'm here today to express our support for the classification of coal ash and Subtitle C.

In South Carolina, as you've heard from previous folks, we have a serious problem. I think there was a contingency here this morning from the area around Columbia where I live. She had a little bottle of water. I was at a DHEC hearing a few months ago where we challenged their attempt to deregulate or to lower these standards on arsenic being released from the SCANA coal ash

pond there in lower Richland County. I basically heard the DHEC officials say, "The dilution is the solution to pollution." Over 200 folks turned up at that hearing in Lower Richland County to speak out against the amount of arsenic and other toxins being dumped into the watery river from that coal ash. There are no markings in that river; people can paddle and fish right up at the area. I think Representative James Smith was familiar. He was here this morning, talked about the amount of seepage seeping under that pond into the watery river.

The sad fact is, the Department of Health and Environmental Control in South Carolina does not have the regulatory backbone to stand up to SCANA and other utilities that are managing these ponds, or not managing these ponds. There have been numerous citations over the years. They have had years of this going on, and virtually nothing has been done to change the pattern of leakage.

We also were at the -- Congressman

Clyburn hosted an EPA hearing in Columbia that Lisa Jackson was at. The same folks that were at the coal ash pond showed up at that hearing and spoke out again. Seems to be an environmental justice issue.

A lot of these leaking sites are in African- American communities and communities that are disenfranchised with public input, and they are sharing more share of the burden on these low-income areas.

We urge you to help us. Our state is being cut back. DHEC is being cut to the bare bones. We don't have the staff. We don't have the regulatory will -- the legislative or political will to stand up to utilities and clean up these leaking ponds. We need your help. We appreciate what you can do.

Thank you.

MR. BEHAN: Thank you. 192.

MS. CUNNINGHAM: Good evening. My name is Darlene Cunningham, and I am with a group called Concerned Citizens of Giles County,

Virginia.

I live in Giles County, a Southwestern county in Virginia where a division of American Electric Power and a 501(c)(3) public school foundation have teamed to construct an unlined fly ash dump right on the edge of the New River. Citizens of my county have been denied a right to a public hearing to oppose this. Actually, my state DEQ allows such action calling it "beneficial use." That's right. Pouring tons of toxic ash in an unlined site right by the river and calling it "fill" is okay in my state. Such is the regulation in Virginia.

The notion that states and utilities are effectively regulating coal waste is grossly erroneous and is being circulated by those who stand to profit if the status quo is maintained as described in Subtitle D. These hearings would not be necessary if states and industry were generally concerned about protection of our water and if they were disposing of their waste responsibly. The fact is there must be effective, enforceable

Federal regulation for coal waste if public health is to be valued over corporate profits. Subtitle C is the only rational choice.

It's time to listen to the citizens whose lives have been impacted by illnesses, contaminated wells, loss of property, loss of property value due to this toxic waste. It's time to listen to the biologists. It's time to listen to the riverkeepers. It's time to take seriously the numerous studies, including EPA's own risk assessment which has made very clear the dangers of coal waste. After decades of debate, decades of intense lobbying for industry and the decades of inaction, it is now time to regulate coal waste for what it is. It is a clear and present danger to public health.

Thank you.

MR. BEHAN: Thank you. 198.

MR. LANDRETH: My name is Jim Landreth, vice president of South Carolina Electric and Gas Fossil Hydrogeneration. Thank you for the opportunity to be here today.

Since the dawn of the industrial revolution, our nation has prospered because of our ability to harness energy; more specifically, converting energy from flowing rivers, burning fossil fuels, or even splitting the atoms has allowed the United States to move forward from a mostly agrarian society into an industrial and business world leader.

Electricity is the energy source necessary to support the critical infrastructure in our communities. This is essential to the economic health and viability of our country and is used by each and every one of us. As we near the close of the first decade of the 21st century, coal-fired generation continues to account for more than 50 percent of the electricity produced throughout the United States. It has been invaluable for the past century and a half and likely to be with us many, many years more.

Coal-fired generation is not the same as it was 50 years ago, 20 years ago, or even five years ago. Throughout history, engineering and

industry experts have focused on improving the processes to produce electricity for fossil fuels. South Carolina Electric and Gas, in specific, has installed environmental upgrades which have reduced SO2 by more than 70 percent -- excuse me -- 60 percent, oxides of nitrogen by 70 percent and more than 40 percent of the mercury emissions in our plants.

These ongoing series of upgrades has allowed SCE&G to meet the growing demands more efficiently while reducing the by-products as measured on a per unit basis. Business and industry does solve problems. South Carolina Electric and Gas was a pioneer within the industry, and we developed and installed the first commercialized carbon burnout unit to improve the beneficial use of coal combustion by- products, specifically fly ash. This achievement re-burns the coal ash recovering the residual fuel content and producing high quality by-products for the cement industry. We have two of these units remaining on our system.

During these hearings, you have recorded many positions regarding the future of coal combustion by-products. The key points of my message today are: When industry recognizes issues collectively, they have demonstrated the ability to solve problems. Rather than change the classification of coal combustion by-products to hazardous waste and arrest the future of technical developments of beneficial use, the EPA should maintain the current classification.

Three, industry -- we need to implement solutions that will encourage industry to further enhance the development -- technical developments to increase the beneficial use of these by-products. Remember, industry solves problems.

In summary, our goal is not to regulate coal-fired generation out of existence, but rather to collectively find solutions that will allow us to continue to use this abundant and expensive and domestically-created energy source.

Thank you.

MR. BEHAN: Thank you. Number 134,

number 136, numbers 141, 146, 147, 148, 149. Does anyone have a number here 161 and below? 161. The gentleman in the back, what number do you have, sir?

SPEAKER: 156.

MR. BEHAN: 156. 136.

MS. HARTZELL: Thank you. My name is Margaret Hartzell, and I'm the policy advocate with Environment North Carolina. We're a statewide citizen-based environmental advocacy organization with thousands of members across the state; many of them signing a petition to EPA asking you to regulate coal ash as a hazardous pollutant. So I am speaking for them tonight as well.

I know that it's been said many times before today that coal ash is toxic. It is proven to contain arsenic, lead, mercury and cadmium. It's worth noting that coal plants are the second largest source of industrial waste in the country, and the pollution that they generate is staggering. Every year coal- fired power plants

generate roughly 140 million tons of coal ash containing toxic chemicals, and all of this waste has to go somewhere.

Here in North Carolina we have more high- hazard ponds than any other state in the country. Water contamination from coal ash has already been reported in Buncombe, Robeson, Nash and Northampton Counties.

There's little to no regulation of coal ash at the State level, and unfortunately, that is unlikely to change anytime soon. But I can assure you that that's not for a lack of trying by advocates and elected officials.

Due to the lack of state regulation, it is absolutely critical that the EPA regulate toxic coal ash as a hazardous waste under Subtitle C, prevent new ponds and phase out existing ones. It is clear that this hearing has proven that North Carolinians favor clean water, not dirty coal.

MR. BEHAN: Thank you. 161.

MS. LEMAS: Hello. My name is Brenda Lemas, and I belong to the Sierra Club. I'm

representing myself today.

After listening to all of you, I realize that this is a problem that has become very personal to all of us. Coal ash is a problem, and I think that we need to -- we need to Federally -- how do you say that -- I'm getting notes. I think that we need to regulate coal ash procedures. These are toxic and it is -- I don't think that it is appropriate to say -- to negate this when there are so many people who have come over here testifying personally what has happened to them. This needs to be regulated. I think it has to be done under Subtitle C. The EPA has to enforce this.

I also think that if there can be a possibility of recycling coal ash, it should be done as long as it is done safely for all of us, and presently and for the future. I also think that coal ash -- we have to actually get new resources, find more resources to do this as opposed to be dwelling on the same thing on coal combustion. I think that we should end this

situation where we're all continuously depending on coal. Coal is not a good source of energy that is nontoxic and that is not going to put us in danger.

Also, when you say -- when we think of coal being taken as a resource after wiping out a whole mountain with total disregard of wildlife that is there -- the plants, the trees -- I don't think that this is ethical. I don't think that this is moral. A lady over there, Terry, explained to us what happens with the frogs.

They are telling us that there is something really wrong with our environment. Ignoring this is a crime. And this is what the coal industry is doing. I say that it is time to end this coal industry. They are only worried about their benefit, their personal financial benefits and their personal profits. Well, we need to protect the planet. If we don't protect the planet, we will not have any kind of financial benefits for coal anyway.

So I think that we have to do something

about this and that the answer is to end the coal industry. We should not be wasting our time right now dealing with all this -- excuse the word -- BS.

Thank you.

MR. BEHAN: Thank you. 156.

MR. WINFREY: Good afternoon. My name is Matt Winfrey. I'm here testifying this afternoon as a private citizen and as an interested individual.

I've worked in the construction industry for the past 20 years, and over those 20 years I've seen many changes; primarily through use of recycled materials being used to build our streets and our homes. I know that the use of coal combustion by- products has a long and successful record in the construction materials business. Recycling coal ash into construction materials appears to be the obvious choice for managing materials that otherwise will end up taking up more landfill space.

I truly feel that if coal ash is

regulated as hazardous waste, any efforts to use the materials for residential and commercial buildings will be harmed, and this most certainly will cause an increase in the cost of construction materials that will require manufactured raw materials. If this happens, I feel it will have an even greater negative effect on construction material costs for all residential housing and on the construction industry. An increased cost will likely cause even more loss of construction jobs.

Based on all my experience in the construction business and my knowledge of the value that coal ash adds to the finished products used in construction, I ask that the EPA consider all the positive and environmental impacts that recycling coal ash has of the current economy. Find a way to regulate coal ash disposal under the nonhazardous rules approach and avoid causing harm to the successful recycling business.

Making this decision not to classify coal ash as hazardous waste or special waste under Subtitle C is the responsible thing to do for our

future.

Thank you.

MR. BEHAN: Thank you for your comments. Is there anyone in the room that has a number 300 or greater that has not spoken today? Is there anyone in the room that would like to speak that has a number that has not spoken yet today?

(No audible response.)

MR. BEHAN: What number do you have? Could you spell it out?

SPEAKER: 183.

MR. BEHAN: Anyone else?

MS. CHENTFANT: 165.

SPEAKER: 166.

MR. BEHAN: Anyone else? Okay. Could 165, 166, and 183 come forward, please. Could 165 come to the podium, please.

MS. CHENTFANT: Sorry. The EPA regulated coal combustion waste as special waste under RCRA Subtitle C, including coal waste produced, proposed for questionable beneficial reuse.

Concerned residents of Portland, New York and People Like Us, Crop Plus, is a volunteer, grassroots group established to protect our environment and waterways. We are working to end the use of coal combustion and bottom ash as a deicer and traction agent on our roads. The ash is not encapsulated. Our ditches are not lined. We believe this use is merely unmonitored dumping rather than reuse.

No required periodic ash analyses were found in our FOIL requested State records. Therefore, Crop Plus commissioned the professional sampling and testing of bottom ash, five surface waters, ditch sludge and three domestic wells. These samples were collected in the towns of Portland and Pomfret, New York.

A creek which runs adjacent to Portland's stockpiled ash was the most severely contaminated. Chuck Norris of Geo-Hydro in Colorado reviewed the results and said, "This is a substantial piece of evidence that the Portland stockpile of coal bottom ash is contributing to

water degradation scientifically and from the position of taking water that is safe to drink, to water that is unsafe."

A residential well on a road that has received ash for decades was found to have very high levels of iron and manganese. The combined total for iron and manganese was 13.2 parts per million. The recommended New York state secondary drinking water standard is 0.5 parts per million.

Agencies must re-evaluate manganese. When manganese was declared a secondary standard, little was known about its health effects. Today, manganese is known to affect the nervous system and is associated with muscle and mental problems.

Furthermore, there is a pond at this residence. When the homeowner tries to stock the pond, fish do not live for more than 24 hours. Wildlife has been hunted on the property. Often the landowner finds diseased animals with tumors. The residents deserve to have their questions heard and answered.

A sludge sample was collected from a

roadside ditch. The water and the sludge from this ditch travels through two lakeside residential areas and into Lake Erie. This roadside ditch is at the entrance to two coal ash landfills. The cement entrance is washed with water that drains directly into the ditch. All test data will be submitted with written and electronic testimony.

New York State DEC has recently closed hearings on a draft solid waste plan titled, "Beyond Waste." The proposed plan called for less testing requirements.

Thank you.

MR. BEHAN: Ma'am, would you state your name for the record, please?

MS. CHENTFANT: I'm sorry. It's Libby Chentfant.

MR. BEHAN: Thank you. 166.

MR. HOFTER: My name is James Hofter. I'm a cofounder of Crop Plus. I'd like to speak about New York State DEC policy and practices. BUD 122-0-34 granted in 1992, allows coal bottom

ash from two power plants to be used as a traction agent with the following conditions: A sample of the ash may be obtained and analyzed twice annually for TCLP metal. If the results indicate a metal will have an adverse impact on water quality, the DEC will immediately notify and new samples must be analyzed. Accumulated ash cannot be used and must be managed properly. A semi-annual report must be submitted to the DEC to keep track of the amount of ash reused throughout the state. This report must list the users of the ash and quantities each user receives.

Moreover, the BUD was updated in 1996 to allow the use of bottom ash as the surface material for running tracks. Regulation 360-1.15 was adopted in '93. Part A states: BUD's granted by the Department before the effective date shall remain in effect subject to conditions contained therein. Part A is not being enforced. DEC reports this BUD has been incorporated in regulation 360. If not into part A, then surely it must be incorporated into part D, which states:

The generator or proposed user of solid waste may petition the DEC, in writing, to beneficially use the waste. They must provide a demonstration that management of solid waste will not adversely affect human health, safety, the environment, and natural resources by providing a solid waste control plan. This was described as follows: Procedures for periodic testing of the solid waste, a description of storage and maximum anticipated waste inventory not to exceed 90 days before using. Procedures for run-on and run-off control of the storage areas. None of these being required of BUD 122-0-34. Crop Plus presented proof of pollution.

EPA must classify CCRs under Subtitle C. Thank you.

MR. BEHAN: Thank you. 123.

MR. CHANCE: Hello, and thank you for the opportunity to speak today. My name is Eric Chance, and I'm the water quality associate for Appalachian Voices and the Watauga Riverkeeper, a North Carolina- based environmental nonprofit.

Our work includes studying the effects of coal combustion waste on the environment.

Based on a review of the voluntary groundwater monitoring data, every coal ash pond in North Carolina for which data was available is leaching heavy metals and other pollutants into groundwater. This leaching is causing heavy metals to be taken outside of the waste boundary. Equally as alarming is the prevalence of groundwater contamination at these sites is the level of contamination. Monitoring showed 681 exceedances of State groundwater standards including arsenic levels up to 8.8 times the State standard, boron levels up to 16.6 times the State standard, chromium levels up to twice the State standard, iron levels up to 380 times the State standard, lead levels up to three times the State standard, and manganese up to 200 times the State standard. This contamination not only has the potential to damage nearby waterways, but it can also contaminate the drinking water of nearby residents. And only one of the 13 ash ponds

reviewed by this study has NC Department of Environmental and National Resources required any sort of cleanup or monitoring or further monitoring action.

Appalachian Voices has also partnered and researched in the wake of the Kingston, Tennessee coal ash spill. Research has been ongoing since the spill and has shown levels of arsenic, barium, cadmium, lead and selenium in the Emory River exceeding protective drinking water standards and/or aquatic life criteria. Although water quality has returned to a more normal state since the spill, ash and ash-laden sediments with high levels of arsenic have washed far downstream from the spill site. Also, selenium levels in fish downstream from the site continue to rise and at exceeded threshold levels for reproduction and growth.

Our research clearly shows that coal combustion waste has significant impacts on groundwater, surface water and aquatic organisms. Current regulatory framework does not adequately

address the toxicity of coal ash and has allowed the contamination of our nation's water to go on for too long.

Our research shows that coal ash is hazardous to the environment and we believe it should be regulated as a hazardous waste under Subtitle C.

Thank you.

MR. BEHAN: Thank you for your comments. Are there any individuals in the room that have a number that have not spoken today that would like to speak?

(No audible response.)

MR. BEHAN: Seeing no speakers, let's take a ten-minute break. We were scheduled to take a break from 6:00 to 6:15 tonight. Let's go ahead and take a ten-minute break before we take that 15-minute break. Thank you.

(Whereupon, at 6:00 p.m., an afternoon recess was taken.)

E V E N I N G S E S S I O N

(6:15 p.m.)

MR. DELLINGER: We're going to reconvene right now. What I'm going to do to sort of go through the sort of the rules of engagement in terms of how we're going to run the hearing, and it will be the same as it was earlier today.

So good evening and thank you for attending today's public hearing on the Environmental Protection Agency's proposed rule regarding the regulation of coal combustion residuals that are disposed of in landfills and surface impoundments.

And before we begin I'd like to thank you for taking the time out of your busy schedules to address our proposed rule and we look forward to receiving your comments. My name is Bob Dellinger. I'm the director of the Materials Recovery and Waste Management division in EPA's Office Of Resource Conservation And Recovery. I'll be chairing this session of today's hearing. With me on the panel are Elaine Eby, who works

with me at EPA headquarters, Frank Ney of the EPA's Region 4 and Alexander Livnat, who also works with me at EPA headquarters.

Okay, what I'm going to do now is cover the logistics for the comments portion of today's public hearing and the way it's going to work is speakers, if you've registered you were given a 15-minute time slot when you were scheduled to give your three minutes of testimony. To guarantee that slot we've asked that you sign in 10 minutes before your 15-minute slot at the registration desk. Speakers that have preregistered and walk-ins were given a number when you signed in today and this is the order in which you'll speak. I'll call speakers to the front of the room by number, four or five at a time. When your number is called please move to the microphone and state your name and your affiliation. We may ask you to spell your name for the court reporters who are transcribing your comments into the official record.

Because there are many people who have

signed up to provide testimony today and to be fair to everyone, testimony is limited to three minutes. We'll be using an electronic timekeeping system and will also hold up cards to let you know when your time is getting low. When we hold up the first card this means you have two minutes left. When they hold up the second card that means you have one minute left. When we hold up the third card, when the third card is held up you have 30 seconds left, and when the red card is up you are out of time and should not continue with your remarks other than to do a closing remark.

Remember you can provide any written material to our court reporter and the material will be entered into the rulemaking record. We will not be answering questions on a proposal. However, from time to time any of us on the hearing panel may ask questions to you to clarify your testimony.

Our goal is to ensure that everyone who's come today to present testimony is given an opportunity to provide comment to the extent

allowable by time constraints. We'll do our best to accommodate speakers who have not preregistered. Today's hearing was scheduled to close at 9:00 although we will continue to hold the hearing as long as there are speakers, up through probably midnight if -- because that's when -- that's how long we any paid for the room.

And if time doesn't allow for you to present your comment orally, we've prepared a table in the lobby where you can provide a written statement in lieu of oral testimony and these written statements will be collected and entered into the docket for the proposed ruling, and they'll be considered the same as if you presented them orally here.

If you would like to testify but have not yet registered to do so, please sign up at the registration table. We are likely to take occasional breaks, especially if we don't have any speakers. We might take a 10-minute break and hope that speakers come in and then we'll continue on. That's typically what's been done at previous

hearings.

And finally, if you have a cell phone we'd appreciate it if you would turn it off or put it on vibrate. And if you need to use your phone at any time during the hearing, please move to the lobby.

We ask for your patience as we proceed this evening, and we may need to make minor adjustments as the day progresses and thanks again for participating today. And let's get started with evening session.

I'm going to call numbers 124, 125, and 127 to come forward. Speaker 124?

MS. MOORE: First, a strong thank you to you officials who are here today. You give me hope that the facts can be heard surrounding the issue of coal burning and the disposal of toxic waste. Thank you for coming here. I understand this is the largest ever opportunity, eight sites, for the EPA to listen to the citizens of this country. Thank you for giving us the opportunity to speak about our concerns. We're placing our

confidence in you that you will do the right thing, for this is a moral decision that we face today, one of the most important that you or we will face to determine our future.

My father moved to Charlotte 100 years ago. That's not really that long, really. There were no paved streets, no cars. Electricity was a novelty. Primitive conditions some would say but the water was safe. If my father came today he would be shocked that people are drinking water from plastic bottles and that babies are born with toxic metals in their system.

I've lived in Charlotte all my 72 years. What kind of community will I bequeath to my children and grandchildren who live here, as my father did to me? I was arrested last May for the first time for protesting the plant at Cliffside. For me personally this was a small thing. I want to do more. I want my government to do more. I want my community to do more. And I want to tell my grandchildren that the civilization that was bequeathed to them is one in which they can live

healthy lives. In this recent economic crisis, many people have criticized the role of government, feeling that government is the problem. The Environmental Protection Agency has this opportunity to step up and protect the citizens of this community from a corporation that is clearly more concerned with the bottom line than the health of its citizens.

I'm here today to ask the EPA to regulate coal ash waste as a hazardous waste that it is and would like to close quickly with a poem by Kay Ryan, former US poet laureate. She had read an article about Easter Island where people cut down logs to build their statues, and here's the really quick little poem:

It worked without a hitch. The last big head rolled down the last logs to its niche as planned. A long chorus of monoliths had replaced the forest; staring seaward, nicely spaced, each with a generous collar of greensward and prepared to last for so long that it would be a good trade; life for the thing made.

Thank you.

MR. DELLINGER: Thank you. You're number 127, is that right? Okay, you can come forward. You can go now.

MS. HENRY: My name is Beth Henry. Three years ago while opposing construction of Duke Energy's new coal plant, I spoke with many regulators about coal ash waste from Cliffside and Duke's plans for disposing of huge amounts of even more toxic waste from the new plant. It was clear then that our state regulators were not paying much attention to this issue. Duke was essentially regulating itself; doing its own testing and even writing the laws.

Our legislature had just passed a Solid Waste Management Act that included a last-minute amendment with no opportunity for public debate, called Combustion Products Landfills. That amendment, written by utility lawyers and consultants, allows the utilities to pile tons of dry coal ash waste on top of old, unlined slurry ponds; like putting a bowling ball on top of a

sponge.

I asked regulators in the Division of Waste Management and the Aquifer Protection Division about the new law, GS 130A-295.4, and was disturbed by their comments. When I objected that the utilities had written the law, I was told, quote, "We were happy. We would not have been so bold as to have asked for this." One regulator said monitoring wells weren't required because they would be useless since, quote, "All these sites already have contamination and other issues, and it would be impossible to tell where the contamination would be coming from."

When I asked if piling huge new dry coal ash landfills on leaking unlined slurry ponds would squish more poisons out sideways. I was told, quote, "You're wasting your energy. This doesn't even register on the radar screen compared to the damage they've done. You like turning on your lights, don't you?"

Another regulator said they know there is groundwater contamination around the old ponds,

but quote, "what does it matter if people aren't drinking it and there's no resource value to the aquifer?"

When I asked if piling new waste on leaking slurry ponds might be an attempt to avoid ever having to clean up existing damage, they said, quote, "You have to have electricity. There are a lot of problems from stuff that happened 40 years ago folks thought was okay then. It's probably impossible to clean up. At least it would cost too much."

The regulators had very low expectations and seemed grateful for whatever the utilities volunteered to do. Legislators have told me that no bill ever passes our General Assembly that Duke Energy doesn't want to pass. Because our legislators and regulators are overwhelmingly influenced by the utilities and other businesses whose want to profit from our natural resources, not to protect them, only strong Federal regulation will be adequate.

MR. DELLINGER: Thank you.

MR. BLUMENTHAL: Good evening. My name is Phil Blumenthal and I am the director of the Blumenthal Foundation and a co-owner of Radiator Specialty Company, both headquartered in Charlotte, and I thank you for the opportunity of speaking before you today.

Our company is a leader in the manufacturing of cleaning and degreasing, lubricating and penetrating, and maintenance and repair solutions primarily for the automobile aftermarket. In the business we are in, some of our products do use toxic materials and we are required to follow government regulations to assure that these items are neither a threat to the health of their users or the health of the environment in general. That's why I feel that if a company either manufacturers a hazardous product or as a result of the production process, hazardous waste is created, these products or by-products must be regulated.

Coal ash contains, among other substances, arsenic, cadmium, selenium, and

mercury, which certainly are hazardous materials. Released into the air and water, the potential for harm is too great to ignore. State regulations are simply too inconsistent to provide adequate protection if the ingredients in coal ash cross states lines. Only federal regulations will assure the protection of both human health and our environment.

As a business owner I'm sensitive to the business community and the effect on companies that use coal plant by-products. Those companies that are using waste materials that are not hazardous should be excluded from any new regulations. But the use of toxic coal ash itself should surely be controlled. The added cost due to regulation would very likely pale in comparison to the costs, both health and environmental, our society will face if we have to clean up the components of coal ash once they are released into the environment.

Without the establishment of a federal regulation, we will continue to see a worsening

effect on our air and water quality. I urge you to adopt Subtitle C of the Resource Conservation and Recovery Act in the interest of public health and environmental quality. Thank you.

MR. DELLINGER: Thank you. Numbers 328, 329, and 330? Not here. Number 331? Number 332, 333?

MR. WALKER: My name is Hollis Walker. I'm a kayaker, mountain biker and a hiker. I love clean air and clean water. I have three small children and I want them to have a healthy future.

I also recognize the law of diminishing returns. Subtitle C will provide immeasurably smaller environmental protection over Subtitle D; lower result and massive cost increases to the cost of coal generation. That fact is what may really be driving the Subtitle C advocates. I've heard a speaker today say EPA has designated coal ash as toxic. That is not true. There is an established scientific procedure that establishes whether solid waste exhibits solid waste characteristics. Ash does not. The speaker was

misinformed, obviously.

I've heard speakers say there's no regulation of coal ash in several states. I know for a fact that is not the case in at least one of the states mentioned, Georgia. I suspect the statement is incorrect in regard to several other states.

I've seen herds of young people, obviously coached; proclaiming Subtitle C is the only responsible choice when their own testimony reveals they have little to no understanding of the facts; particularly in regard to health effects. I've heard it said that the industry is more concerned about profits than environmental responsibility, that the true cost of coal needs to be on the industry. This shows a lack of understanding how the world functions. Most utilities are regulated and their profits are virtual1y fixed. They can't price gouge, but they are guaranteed a return on investments to ensure they stay in business and can keep the ratepayers' lights on.

The cost increases, which are phenomenally underestimated by EPA, will go directly to every American's power bill. In fact, utilities could make more profit as they would make a return on the cost increases imposed by a Subtitle C designation. Utilities oppose Subtitle C because it is the right thing to do. In fact, they are ratepayers also.

EPA must weigh the comments given today based on the credibility and factual substance of the commenter, and not the quantity of ill-informed commenters. EPA should not be fooled into thinking that the number of Subtitle C supporters is anywhere close to a representation of mainstream America. Those folks are busy working as productive members of the American economy right now. Thanks.

MR. DELLINGER: Thank you.

DR. HENDERSON: Hello, I am Dr. David Henderson and I teach environmental ethics at Western Carolina University. Thank you for holding this public hearing. I think it's clear

that the public are in favor of the regulation of toxic and hazardous substances, and the toxicity of coal ash is not a matter of public opinion, but a matter of empirical investigation.

But I'm here to speak here primarily about not my financial interests as a buyer of electricity but my moral interests in not contributing to the poisoning of my brothers and sisters and fellow Americans. I take this interest very seriously. I don't want my dollars going to the destruction of God's creation or my neighbors. And as I see it, it is doing that significantly. In other areas I have options. If a clothing manufacturer is using child labor I can buy from someone else. If an agricultural company is using toxic or cruel methods I can eat something else. But because of the nature of utilities I can't buy electricity from someone else. So an interest that I have that needs to be protected because of the structure of utilities is my moral interest of not contributing to the poisoning of my neighbors or the earth.

As such, I request that you see to this and it appears to me that Option C most clearly accomplishes this goal.

Thank you.

MR. DELLINGER: Thank you. Numbers 130, 140, and 159?

MR. KEENER: Good evening, ladies and gentlemen. I appreciate the opportunity to comment on the proposed regulations regarding coal ash.

My name is Stephen Keener, I'm a physician trained in family medicine and public health, and have practiced in the public sector for over 25 years. My career has been dedicated to protecting the health of the people from pathogenic organisms and toxins in the environment, and promoting healthy behaviors that prevent the development of acute and chronic diseases.

I speak in favor tonight of Subtitle C. There can be no argument that coal ash is a substance which is hazardous to human health. It

is not necessary for me to repeat what others have said here today about the scientific evidence linking the coal ash with human disease and death. There is also no question that the toxic chemicals in coal ash leach into the water table, and contaminate our drinking water. If stored in an uncovered landfill, the same harmful substances can be blown into the air we all breathe.

Regardless of whether coal ash contaminates drinking water or the air, it exposes human beings to toxins and their health will be harmed. This does not have to happen. If coal ash is declared a hazardous substance, then people can be protected from an environmental hazard that can be mitigated. Regulation of coal ash is an absolute no-brainer.

Now you are sitting in Mecklenburg County, North Carolina, but you are only seven miles from York County, South Carolina. I say this to illustrate the point that regulating coal ash in one state doesn't protect people in adjoining states from leachate, run-off, or

airborne particulate matter. The point is that letting each individual state create its own rules regarding coal ash will ultimately not result in the protection of health for all.

EPA needs to declare coal ash a hazardous substance, and regulate its treatment and disposal from coast to coast, so all citizens of our country can enjoy the benefits of air and water not contaminated with coal ash toxins.

In conclusion, whether it is pumped into slurry ponds where it leaches into the groundwater and watersheds contaminating the water we drink, or dumped in landfills where it can be blown into the air we breathe, coal ash contains toxins that harm people. Of course it is important to generate the electricity we need, and to maintain jobs built on this industry. But this need must be balanced by protection of our most precious resource, the people who live in our communities. The most sensible way to ensure the most healthy people with respect to coal ash is for the EPA to declare it a toxic substance, and regulate it

throughout the United States of America.

Thank you.

MR. DELLINGER: Thank you. Numbers 40, 140 and 159 come in. I was told that they were here right now ready to testify.

MR. GARDNER: Good Evening. My name is Robert Gardner and I am Greenpeace USA's Coalition and Partnership representative. I am here today to support your efforts to create a federal minimum coal ash disposal standard.

It's clear that coal ash must be treated as hazardous under Subtitle C of RCRA. I am here representing our millions of members worldwide saying that coal ash is indeed hazardous and that state-by-state enforcement is just not enough. We need Federal guarantees to ensure that dangerous coal ash isn't just shipped to the state with the most lax regulatory scheme.

Sound science supports the special waste designation. Coal ash waste contains arsenic, lead and mercury, among other toxic metals. These dangerous, toxic elements cause cancer, organ

disease, respiratory illness, neurological damage, and reproductive and developmental problems. There are over 130 damage cases that have been clearly documented. This is an ongoing national health catastrophe and requires redress immediately.

Business as usual will not protect the health and welfare of the American people. Responding to pressure from the utility industry, prior administrations have allowed the industry to police itself or self-regulate under a patchwork of state directives, leading to the extensive contamination of water and land by toxic heavy metals. This approach has not and will not protect streams, ponds, rivers, lakes and other waters.

Here in North Carolina, voluntary groundwater monitoring at Duke's Dan River Steam Station's coal ash ponds have detected levels of chromium, iron, lead, manganese, silver, and sulfate that exceed state groundwater standards and Federal maximum contaminant levels and

secondary maximum contaminant levels. Dan River Steam Station has two unlined coal ash ponds as well as an unlined dry ash landfill. Fifteen years of sporadic voluntary monitoring beginning in November '93 indicated that there is on-site groundwater contamination that is likely migrating outside of state-designated compliance boundary for Dan River's CCW impoundments.

EPA ranked both wet CCW ponds at Dan River Steam Station as "high hazard" surface impoundments, meaning that their failure will probably cause loss of life. Energy should not cost lives, period.

Lax guidelines such as those that would be applied under Subtitle D regulations will fail to fix the problem as the EPA expects that approximately 50 percent of coal ash dumps and waste will not clean up under this plan. This is unacceptable. A hazardous waste designation under Subtitle C of RARA would ensure that coal ash dumps and waste ponds have all the protections currently required at waste landfills. Solid

waste permits, liners, monitoring systems, and leachate collection systems make sense, are readily available technologies, and can help prevent disproportionately poor communities from being at risk from high-hazard dams and leaking dumps.

Thank you very much and I am available for questions.

MR. DELLINGER: Thank you. 167, 199 and 202.

MS. MATTOX: I'm Judy Mattox. I'm vice-chair of the local Sierra Club in Asheville, North Carolina and I'm here to strongly recommend the EPA adopt schedule C, and declare coal ash hazardous, and provide Federal regulations, nation-wide.

In the past few weeks I have had the privilege of doing canvassing in the neighborhood and I have gone from door to door in the neighbors' area who live as close sometimes as 100 yards to the coal ash ponds and as far away as a quarter of a mile from the coal ash ponds in

Arden, which is right south of Asheville, North Carolina.

Neighbor after neighbor told us that coal ash was blowing and covering their houses, their garages, their cars. We had one neighbor, Tom Nye invite us into his garage. He said he had just swept it out and he raised his window sash and there was this pile of coal ash. And of course we said "Oh goodie," and scooped some of it up and sent it off to be analyzed.

The next day, I mean all of the neighbors said they had this continuous problem with the fly ash. Sadly, one of the neighbors told us that her mom had just had a very large lung cancer tumor removed and that she could point to that house and that house, and that house, where these neighbors either currently were living with cancer or had died from cancer, and it was very, very sobering to walk down the street.

So indeed, we're talking fly ash and air quality are very grave concerns. But also water quality in the concentration, as you've heard

speaker after speaker say arsenic, mercury, cadmium, selenium, those certainly are grave concerns.

The coal ash ponds of Progress Energy are permitted by the state of North Carolina to discharge into Asheville's French Broad River. Only mercury has any kind of limitation and that's given a monthly average limitation. Our French Broad Riverkeeper, Hartwell Carson, stated that the river near the admission point, where these ponds admit out into our river, have the elevated levels of arsenic and that fish tissue samples tested with elevated selenium.

The groundwater ponds have also tested with elevated readings of heavy metals. And of course we're concerned with the possibility of the dams breaking and flooding our interstate, which is right there, and the river which is right there.

So I strongly recommend that EPA have coal ash be stored in dry ponds which are lined with covers and I recommend that "hazardous" and

"regulation" be the themes of the day.

Thank you very much.

MR. DELLINGER: Okay, number 199.

MR. JEFFRIES: Thank you for holding these hearings. My name is Donald Jeffries. I live in Arden, North Carolina, less than a mile as the wind blows from the two coal ash ponds maintained by Progress Energy. Fortunately, we're on the upslope side and not in immediate danger should there be a break in the levy, unless of course I happen to be scooting along on I-26 at the time. I'd be washed right into the French Broad River which runs very nearby. We have friends and neighbors who are more immediately affected by the coal ash. They are subjected daily with windblown ash. It accumulates on their houses and their windowsills and invades, if the windows are open. They worry about inviting their grandchildren over to play the yard, as do we. The wind carries that material everywhere. And that material is toxic. Toxic, and is not terribly good for us. But you say it is just

dirt. Just like dirt. Don't be a worry-wart, it's just like dirt. Right.

Several heavy metals like cadmium, (inaudible) and mercury are highly toxic in relatively low concentrations. These tonics used to be regulated, need to be regulated. Right now there's very little regulation, and halfheartedly it seems, by the states. States simply don't have the money or perhaps the will to do this sort of regulation.

This needs to be well-coordinated over the entire nation of the federal government or the Environmental Protection Agency. It's your job to protect our environment.

The industry seems to be worried too much about their profits. They talk a good game about how they care and how they are keeping things shipshape. But they fail far too often. Like the breached coal ash pond in Tennessee, like many oil spills around the planet, topped off by the BP extravaganza and loss of life in the Gulf.

I am a firm believer that climate change

is real. We will stand at our peril if we fail to change our ways. What we need is a new energy policy, working now to get us off our addiction to oil and coal. In the meantime we need to get control of tons of coal ash. It needs to be in lined landfills and covered up so it doesn't leach into our groundwater or blow into our neighborhoods. In other words, I prefer regulating coal ash as hazardous waste on the Federal level now, before we have another dangerous spill of this toxic ash.

Thank you.

MR. DELLINGER: Thank you. Number 202.

MS. GREENBERG: Hello. I'm Lori Greenberg and I'm here this evening as a new resident of Buncombe County and Arden, who lives within two miles of Progress Energy. I'm also a concerned citizen and an avid kayaker.

A week after moving to the beautiful state of North Carolina, I learned about the complications from coal ash that effect this region. The pollutants often mentioned in coal

ash are the ones that other people have mentioned this evening: Mercury, cadmium, selenium and arsenic. These toxins are dispersed both through the groundwater of the ponds, which are not lined, and through the actual ash itself. This ash leaves a film in the homes and in the yards of families who reside close to the plant.

Mercury is known to cause neurological impairment to fetuses, infants and children. Cadmium, when inhaled over long periods, can cause serious lung damage and if ingested over long durations can lead to kidney disease. Selenium in high doses causes vomiting and diarrhea, and there's also a disease linked to selenium called selenosis, which has symptoms that include hair loss, brittle nails, neurological damage and other nerve loss changes. Arsenic can have carcinogenic effects on the skin, organ and lungs. Heart disease, neurological damage and hormonal changes have also been connected to high levels of arsenic.

These are only the symptoms of each one

of these chemicals when inhaled or ingested singly, not in combination, as when exposed to coal ash. And all of these toxins have other short and long-term effects. Pregnant women, infants and children who live in our community are continually being exposed to these chemicals through the dust particles that embed themselves into their homes. We know that long exposure to such chemicals places all at extremely high risks, but especially our more vulnerable individuals.

Furthermore there has been community concern around the high numbers of persons with leukemia and other cancers who live in the neighborhood around the plant.

It is time we put safeguards in place to help decrease further high-level exposure. We need to contain the toxins admitted from this plant to ensure that our children can play safely outdoors, that our wildlife can live in the waterways and breathe clean air. I want to kayak in the beautiful rivers of western North Carolina free from the worry of hazardous waste. We need

to prevent a disaster like the one at the Tennessee Valley Authority plant.

As a citizen, I mistrust large energy companies, fearing they care more about profit than about health, safety, and I'm asking the EPA to enforce and regulate Subtitle C option, determining coal ash hazardous.

MR. DELLINGER: Thank you. Is there anyone in the room with a number of 140 or lower who hasn't spoken? Can you come forward, please?

MS. CUMMINGS: My name is Catherine Cummings, and I appreciate this opportunity to address this panel. I want to urge you to regulate coal ash waste as a hazardous material.

I grew up in Charlotte and I've come back home today for this comment period. My husband and I live in rural Washington County in Georgia, about an hour west of Augusta. We live about eight miles from a proposed coal-fired power plant site and we are concerned about the impact that will have on the well water that we rely on everyday as the only source of water that we have

for our house. We're worried about the impact on our friends and our neighbors.

The Georgia Environmental Protection Division recently responded to questions about plant Washington that were raised in October at a public comment session. The plant will generate 500 to 570 acre-feet of coal combustion waste every year, enough to cover a football field with ash that will be as tall as a 40- story building.

The EPD said that this plant -- the coal ash waste would be stored on a liner that will accumulate in 30 years' time eight tons of mercury and 100 tons of arsenic, in addition to other heavy metals and contaminants. They said that they would check that waste storage site to see if it's leaking into our groundwater at our local streams and rivers.

The nearby river, the Ogeechee River, is already so full of mercury that pregnant women are advised to eat no fish from that river. My grandchildren, who are both younger than five, they can't eat any of the fish that they catch in

that river.

Combustible coal waste and its storage are serious health issues for my family, for our friends and the larger community. The health and environmental impacts of coal ash waste will affect Washington County and surrounding areas negatively in both the immediate and the long-term projections. It's completely unreasonable to treat coal ash waste the same way as household garbage. Coal ash is hazardous and should be regulated that way.

Please select Subtitles C option and regulate coal ash as a special hazardous waste. Thank you.

MR. DELLINGER: Thank you. I'm going to call on numbers 328, 339, and 330.

MR. PENNY: I want to start by saying thank you for having these hearings. My name is Marcus Penny and I am a recent graduate of Morehouse College in Atlanta, Georgia. My experience at Morehouse College has resulted in a degree -- a large amount of debt, but most

importantly in an inconvenient passion for the fight against ignorance and injustice. After traveling for about four hours to this hearing here in North Carolina to make a three-minute statement, and I'm facing another four-hour drive home, I understand the meaning of the statement "ignorance is bliss." Not only is it bliss for people like me who live in apartments miles away from coal ash ponds but it's also bliss for those who have to deal with making sure that their organizations properly dispose of the ash that they produce.

Ignorance however is a silent killer of individuals who live in communities that are plagued with high cancer rates, illness and environments in degradation. Thankfully, nobody in this room has to face the burden of being ignorant, for we all are aware of the negative effects of coal ash. We all however are plagued with the heavier and more complex burden and that is the burden of justice. Unfortunately some put down the burden and pick up another burden of

making a profit and assuring that all their assets are protected at all costs.

This misguided vision can be corrected however by the EPA's implementation of Subtitle C. This will take the burden off of the communities and put it back on the shoulders of those who pollute these communities and the result will be protection of our most notable assets, which are the earth, our children and the future.

I understand that injustice does not happen in a vacuum and the EPA needs our help in enforcing justice and that's what I'm here to lend my voice. I'm here to stop ignorance and perpetuate justice. And EPA, I ask you to join me in enforcing Subtitle C.

Thank you.

MR. DELLINGER: Thank you.

MS. WILLIAMS: Hello, everyone, and thank you for your time. My name is Eriqah Foreman Williams and I'm a recent graduate of Spelman College in Atlanta, Georgia, and am currently a resident of Georgia.

In the organization I served as internal director of in the Atlanta University Center. We make environmental issues visible and to relate-able to our peers and through our own thirst for knowledge, educate ourselves and each other on these issues when they endanger our families back home. No one has to coach us to care.

However, I am here today on behalf of not only my school community but also my home, Newark, New Jersey. Both of these areas are considered urban inner cities and occupied by citizens who don't normally get an opportunity to get their voices heard, especially on issues such as the environment. Coal-fired power plants were staples in my community growing up. And when I came to college the area was no different. Power plants are permanent residents in our communities and so many citizens, including my elderly grandmother who has just recently added respiratory difficulties to her list of ailments, are affected by their admissions and waste.

Action must be taken immediately to stop this cycle.

Additionally, it will not be an effective idea to leave it up to the respective state governments to regulate the communities' whole usage. In many states, this is far down on the to-do list of our governments. In my teenage years as a New Jersey resident, I never heard this regulation brought up in our government or on the news. In my four years as a college student and resident of Atlanta, Georgia, the same thing: not high on the state's radar.

If two states thousands of miles away from each other aren't making strides, federal regulation is the next step. All I ask from the EPA is that coal policies be as strict as possible to ensure the health of the people and communities nationally.

Thank you.

MR. DELLINGER: Thank you. Is number 316, 323 or 331 in the room?

(No audible response.)

MS. HALL: Good evening. My name is Jonitka Hall. I am a current senior biological science major at Clark Atlanta University in Atlanta, Georgia. But I'm originally from rural North Carolina; Kenansville in Duplin County, to be exact. And when I was growing up a lot of things were kind of weird. Every time we had a hurricane my grandmother would always boil the water and I thought that was kind of really weird. And then as I got older they started to explain to me how the industrial farm and agricultural wastes would leak into our water and we had well water and that's why we boiled it.

But you can't do that with coal ash. And I think that if you want to continue to protect our public waterways, that we need to have the strongest and strictest restrictions possible. Right now communities and counties over the world have issues with this and as many of us mentioned before, it leads to learning disabilities, birth defects, and other illnesses, especially within communities of color.

A strong federal rule can ensure 100 percent compliance, offsetting the initial cost and avoiding health and water cleanup costs, prevent massive disasters like the Tennessee spill, and increase safe coal ash recycling. This is not only an economic issue, but it is also a health, safety and wellness issue and a Subtitle C is the right choice in my opinion.

Thank you for your time.

MR. DELLINGER: Number 144?

MR. STOWE: Good evening. My name is Allan Stowe. I'm an Environmental Specialist testifying today on behalf of Duke Energy.

The question for Duke Energy is not whether to regulate, but how to regulate. Duke Energy has evaluated the alternatives and determined that the Subtitle D Prime option, with appropriate adjustments, is the best path forward. Unlike the Subtitle C approach, Subtitle D Prime will enable EPA to establish an environmentally protective program without crippling CCR beneficial reuse, threatening jobs, and increasing

electricity costs.

Environmental groups allege dozens of new damage cases, listing some Duke Energy facilities. The actual number of proven damage cases is quite small. The current total is 27 proven damage cases and 40 potential damage cases. A close examination of the facts will reveal many flaws in the recent allegations made regarding damage cases. Many of the assertions in the reports are based on extremely flimsy evidence, with unfounded conclusions meant to scare the public. EPA cannot rely on these assertions in any final rulemaking without conducting its own factual, independent review of the sites and allowing for public notice and comment on its findings.

For example, an Electric Power Research Institute analysis of the EPA damage case report in 2008 shows only a handful of these cases actually involve MCL exceedances. For example, of the 54 proven or potential damage cases cited by EPA in the report involving groundwater

contamination, only three involved off-site contamination exceeding MCLs.

The same is likely true with the alleged new damage cases cited by environmental groups. In fact, during their press conference, they acknowledged that some of these cases do not involve off-site contamination, but were merely speculating that the damage may migrate off-site at some point in the future.

Another significant flaw is that the environmental groups have not consulted with the very states whose programs they allege are deficient. These states contest these allegations and charge that the environmental groups have improperly characterized the effectiveness of their state controls.

Assuming the allegations have any factual basis, USWAG and Duke Energy support a Subtitle D program that will involve groundwater monitoring controls specifically designed to detect any contamination before it moves off-site. Duke Energy supports federal regulations that will

actually address the potential threats that the environmental groups allege may occur from these sites.

If Duke Energy determines an impact to groundwater has occurred at any of its facilities, the appropriate regulatory agency is notified and proper next steps taken to ensure public safety.

In North Carolina, Duke Energy voluntarily initiated ash basin groundwater monitoring more than six years ago and has taken substantial measures to reduce or eliminate potential environmental impacts.

Thank You.

MR. DELLINGER: Thank you. Is there anybody in the room with the number below 144 that hasn't spoken? 138? 141? 138 and 141, please come forward.

MR. MERRYMAN: Good evening. My name is David Merryman and I'm the Catawba Riverkeeper with the Catawba Riverkeeper foundation, a place right here in Charlotte and working throughout North Carolina and South Carolina.

As an advocate for the Catawba River, I cannot sit idly by while Duke Energy and SCANA discharge their heavy metal-laden coal ash pond wastewater into the public's drinking water and contaminating local groundwater supplies.

EPA must protect our nation's water resources from broken and nonexistent state regulations. Here, I've got four NPDES permits from four different coal ash pond sites. These permits have absolutely no limits for the heavy metals known to be constituents of coal ash.

Before high-hazard coal ash ponds continue to discharge unlimited amounts of metals in the municipal tricky water supplies, old retired ponds at sites throughout our nation lie as subsurface threats and sources of groundwater contamination. These sites must be cleaned up to remove a constant, dormant threat to public health.

Now today we've heard a lot about the word "stigma." Let's talk about this. A stigma for a substance that causes cancer is warranted.

A stigma for a substance that's toxic and leads directly to death, I'd say that's warranted. We're talking about chromium and arsenic; both heavy metals known to be constituents of coal ash. I'm thinking this stigma is very likely warranted. Prove to me that your product is safe. Teach me that it's safe. I'm smart; I'll learn it.

The lack of clarity between state coal ash regulations and continued discharges from coal ash ponds, and the leaching of metals into groundwater from existing or retired ponds must be stopped. Without cradle-to-grave management and enforceable guidelines for storage and cleanup, we run the risk of continuing to place corporate profits ahead of public health and environmental safety.

Subtitle C is the only option that will protect our waters and the citizens of the United States of America. Thank you.

MR. DELLINGER: Thank you. 141?

MS. GLYNN: Hi. My name is Erin Glynn. I live in East Point, Georgia, a southwestern

suburb of Atlanta. I'm here today to join the overwhelming number and majority of citizens who have attended these hearings in calling for the most stringent, hazardous, Subtitle C regulation of coal ash waste.

My biggest problem with coal ash as it currently stands is the lack of monitoring data. The fact that we have no effective "snapshot" of ash ponds in the United States, the Southeast, and the state of Georgia is more than concerning. Add to that the opaque nature of these ponds; down a country road, behind hundreds of feet of trees, on private property where reporters and the public can't go, and my concern is even greater.

If giant utilities, like the Southern Company claim all is well, why take such precaution to keep coal ash and its related data from the public eye? Subtitle C would improve monitoring and create Federally enforceable standards. We need this desperately. Our state, the state of Georgia, is doing little to nothing and doesn't appear to have the smallest bit of

capacity to take on this monumental task. In fact, I can't even get a clear and comprehensive list of all the ash ponds in my state. Some say 15, some say 17, some even 28.

In addition to submitting my comments today, I'd like to request verification on the number, size, age, contents and location of all of the coal ash waste ponds in the state of Georgia.

I met with a woman in Macon a few weeks ago; Gloria. She was too sick to be here today. But she lives on the back border of Plant Scherer's ash pond. She's the closest resident to Scherer's ash pond. Gloria has battled cancer, lost her husband to cancer, and is now watching the two kids across the street, ages seven and five years old, suffer from cancer. She had a new driveway put in a few years ago and sometimes the ash is so heavy that she can see tire tracks in the driveway. They put new windows on the house not too long ago, and before the caulk could even dry it was black with ash. Gloria's house is well water and she has lived there for over 30 years.

But this is not just to tell you Gloria's story, because I'm sure you'll hear about that in other ways. This is to tell you about what our state is doing.

So what does EPD do? What does EPD do? They permit another waste storage facility at Plant Scherer. The gypsum storage pile is already piling up and Gloria has seen the dust. We need Federal action on this now. EPA has made the right decision in proposing Subtitle C, and I, and we, applaud you. I wasn't even aware that D Prime was on the block for discussion today, so the fact that utilities can create their own regulation and then lobby for it is especially interesting.

And I would like to add for the record that my friend Katherine Cummings, from Sandersville, spoke about the Plant Washington landfill. It's important to note that these people have not even applied for that permit because they are waiting on EPA to make the right decision. So please pass the Subtitle C regulation.

Thank you.

MR. DELLINGER: Number 334 and 335.

MR. HUFF: How y'all doing? Thanks for having me. My name is Damarcus Huff.

If EPA wants to ensure the safe management of hazardous coal ash and EPA believes that additional coal ash and specific Federal regulations are necessary to protect human health and environmental health, then it's obvious we need a comprehensive program that federally enforces requirements for coal ash waste management and disposal.

Therefore, Subtitle C is the way to go to avoid the worst from happening to me, to you, to our family and our friends throughout America.

Thank you.

MR. DELLINGER: Is number 335 here? Is there anybody with a number lower than 150 in the room that hasn't spoken? Anything below 150? Anything below 160? Does anybody have a number in the room that hasn't spoken?

(No audible response.)

MR. DELLINGER: Well, I'm going to call a ten-minute recess until other speakers are able to get here.

(Recess)

MR. DELLINGER: Let's start up again. So I'm calling the hearing to order. One thing that I forgot to tell speakers, that if you have your notes or written materials, if you could put them over here where the reporters are. It's on my left over here and everybody else's right, except for these other three people.

So we're going to get started. I'm going to call on numbers 142 and 169.

MR. AUTHERY: Good evening. Thanks very much for your time. My name is John Authery, and I serve the Mecklenburg Soil and Water Conservation District Board of Supervisors and I have some comments about coal ash. It seems that all coal ash is America's second largest industrial waste stream. And enough coal ash is generated each year that you could fill 340,00 747 jumbo jets with it.

Improperly stored coal ash has contaminated drinking water in at least eight states including Maryland, Pennsylvania, and Indiana and it has been linked to harm ecological and human health. People living near unlined coal ash ponds can have an extremely high 1-in-50 risk of cancer. That's more than 2,000 times higher than what the U.S. EPA considers acceptable.

Coal ash is hazardous but less strictly controlled than household garbage. The EPA must adopt enforceable Federal safeguards, not successive guidelines for states to protect our drinking water. An analysis of state pollution data by the Environmental Integrity Project, the Sierra Club, and Earthjustice, states that of 39 sites analyzed, 35 had groundwater monitoring wells of the grounds of ash waste disposal areas. All of the wells showed concentration of heavy metals such as arsenic and lead that exceeded Federal health standards.

Coal ash creates real world hazards for our drinking water and streams. Recent monitoring

data found contaminants such as arsenic, lead, selenium, cadmium, mercury and other toxins exceeding drinking water standards in groundwater at 26 of 31 coal ash sites. At three sites arsenic was over 90 times the drinking water standard. 25 of the 31 sites are active disposal facilities. Monitoring in the large majority of sites shows contamination is an ongoing problem, not the results of past practices.

What is found in coal ash and what it causes: Aluminum: Bone or brain disorders, especially in people with kidney disease and in children.

Arsenic: Cancer of the bladder, kidneys, liver, lungs, prostate and skin.

Boron: Harm to male reproductive organs causing birth defects.

Cadmium: Causing kidney damage. Chromium: Hexavalent chromium can cause stomach ulcers, convulsions, kidney and liver damage and can increase the risk of cancer.

Lead: Damage to the nervous system,

brain and kidney damage, miscarriages, learning and behavioral problems in children.

Manganese: Changes in the brain and nervous system, learning problems and poor coordination in children.

Molybdenum: Pain and inflammation of the joints. Selenium: Nausea, vomiting, diarrhea. Long-term exposure can cause hair loss, nail brittleness, and neurological problems.

Sulfate -- Thank you very much. I urge you to adopt something to do about this. Thank you.

MR. DELLINGER: Thank you. Numbers 335, 336, 337 and 338.

MS. OTIS-THOMPKINS: My name is Susan Otis- Tompkins and I've lived in Charlotte 44 years. Thank you for hearing us here in Charlotte. I've lived here 44 years and have come tonight to state reasons why the EPA must now declare coal ash a hazardous waste under Subtitle C.

I've been a volunteer on the Water

Commission here in Mecklenburg County for six years and served as the chair, but I've come to you as a grandmother and a parent and a citizen. I grew up on the Chesapeake Bay fishing and crabbing in its tidal inlets and now live on Briar Creek in urban Charlotte, which defies the 100-year floodplain definition. I can stand on my patio with my grandchildren and my children and watch the power of water as this creek crests its bank, which is made of landfill material. We can see the power of moving water and I have shown my grandchildren and children what water can do and, also, what we cannot see that is in our water here in Charlotte, which has coal ash ponds polluting us.

One reason that I found, as chair of the Soil and Water Commission in Mecklenburg County, is that I would try to find information from our State agencies which is, indeed, a patchwork quilt of agencies that I find inactive and postponing to give me information that I wanted to use for our water quality meetings. With some exceptions,

this is true, but it is important for this small example of someone serving on our Water Board to tell you that our State agencies are not doing the job. It is difficult to find information; the information has been conflicting, and we need EPA to work on the water problems.

Our infrastructure in our cities, as you know, is falling apart and deteriorating in an economy like we have, will probably not be repaired. I have seen the water intakes and know where the water ponds are and know what is going on with the water system that is not being repaired. Two of the discharge wastewater systems upstream from our Mecklenburg Utilities withdraw 80 percent of my water and my grandchildren's water. And I ask in this post BP Gulf Oil spill period: What have we learned at the Federal level, if not that the enforcement of violations must come from a broad, powerful agency such as the EPA? The lenient approach towards regulations at the mining and minerals agency used for the polluting industry should compel us. Our EPA must

stop dancing with the devil, which is semantics, and call coal ash what it is; a dangerous, hazardous pollutant on the move.

Thank you.

MR. DELLINGER: Thank you. Number 336.

MS. LISENBY:: Hi. Good evening. My name is Donna Lisenby, and I'm the Catawba Riverkeeper for Appalachian Voices and a ward member of Waterkeeper Alliance.

So, I've been here at the hearing all day and I don't want to repeat a lot of the awesome comments from so many of our North and South Carolina Riverkeepers who have been battling the toxic effects of these football stadium sized coal ash waste pits on their waterways and in their communities. So instead, I'm going to address two other issues. And I think the toxic effects of coal ash in polluting waterways has been adequately covered.

First is the failure of these proposed regs to fully regulate so-called beneficial uses. So I would characterize mine filling, structural

fill, the use of coal ash waste to melt snow on roads and on agricultural crops as a hazardous polluting use, not a beneficial use. The mine fill loophole is particularly egregious since it results in direct contact of coal ash with groundwater and the inevitable subsequent contamination over drinking water wells across Appalachia. So we formally request the EPA to strengthen these weak regs, to begin with, and properly regulate coal ash under Subtitle C from the cradle to the grave.

Second, I want to address this ridiculous industry smoke screen about the so-called "stigma" of a hazardous waste designation. This argument fails on its face, facially, and in terms of substance. The parade of industry spin doctors and biostitutes(sic) who have stood up here today and projected these dire consequences simply have their facts wrong. The EPA proposal is to regulate CCR as a special waste, not a hazardous waste. So even if their concerns were valid on their face, the EPA has

already addressed the stigma argument.

But let's wait a minute. Let's step back a minute and let's examine this ridiculous argument in terms of subsidence. Coal ash is poisoning waterways and communities. The stigma argument is the exact same argument that the tobacco industry made when the Surgeon General wanted to place warning labels on cigarettes. They made the same argument that this warning label would stigmatize cigarettes. Well, guess what everybody, and guess what, EPA? There ought to be a warning label on toxic substances that harm human health and the environment. It's honorable, scientifically accurate, and morally responsible to protect innocent people from hazardous poisons that cause cancer and brain damage.

So thank you for including that in your proposed regs. And hell yeah, we need to stigmatize coal ash so that future generations are protected.

We respectfully ask that the EPA fully

regulate coal ash, including mine filling from the cradle to the grave under Subtitle C of RCRA.

Thank you for coming to North Carolina, and we hope you guys enjoy your stay here despite all these toxic leaking coal ash ponds that we have.

MR. DELLINGER: Number 337.

MR. HAMMOCK: My name is Jamie Hammock, and this is my family. We are here to talk about the coal ash ponds because we are the closest house in our neighborhood in relation to the coal ash ponds. And you might think that the coal ash ponds results in all girls, but I don't think that's a very good argument.

But we do want to come out and just say that we do feel like this situation is dangerous, and we know that from the situation we had about a year and a half ago in Tennessee. Our family, we play on the lake about every other week, every week or so. We have a boat on the lake. And the elevated toxins are definitely a concern for us. We also -- it's a nuisance. I have been in a

situation where I've been coming home from work and driving along the road and a wind storm has come and, you know, my house and my car has been covered by ash. I can't imagine that that's very healthy to our children in our backyard.

And then, finally, I just want to say a couple things, that the enforcement of this proposed law are relying on citizens to sue to correct the situation is unfair to us as citizens because we don't have the power or the money to bring the suits. And waiting until 2015 is way too long; it needs to be cleaned up right now. And so we're just going to ask the EPA and Duke Power to be responsible, enforce the law and clean it up.

Thank you.

MR. DELLINGER: Thank you.

MRS. HAMMOCK: I just want to ask the EPA to please get rid of the toxic ponds behind our home. I don't want my children to become statistics.

Thank you.

MR. DELLINGER: Number 338.

MS. SHANE: Good evening. Thank ya'll for being here. My name is Lorraine Shane. I have nothing prepared. I actually didn't plan on coming here.

I work at Carolina's healthcare system in the anesthesia department. I've been up since 4:30 working a 15-hour shift, so you're just going to have to excuse me.

I moved here -- me and my husband moved here -- we are both anesthesia providers from Louisiana. I grew up in New Orleans, the first house on Lake Pontchartrain. Now, if any of y'all have watched the news for the last five years, accidents happen. You know, they happen and they happen big and they affect people's lives and they take away your families, okay, and they take away your ability to fish and your ability to reap the benefits of the water that exists. I grew up on the water. I grew up on that earthen dam. Earthen dams break. That's not rocket scientist, you know; that's what happens over time. And

water, the best way to break an earthen dam is to put water on it, okay? And to put unregulated water on it and expect Duke Power -- now, I don't live here -- but to regulate that in a proper function. Now, it behooves me that Duke doesn't take this opportunity right now to step up and do the right thing for the community because that really is your future, okay? That really is. I live in a very small community right down on South Point in Belmont right down from the Allen Steam Station about a half a mile. It's a very small cloistered, gated community. We can afford to live there; most people can't. Now, there are three houses that are off the grid already in my community. Three houses off the grid, and they're not doing with without amenities, either. So I think Duke needs to really pay attention and step up and be proactive and be a true steward of this community. You are the second largest provider of jobs in this state and that is worthy. So we can't knock you for what you do, okay, but more and more the paradigm shift in the community over

the next 20 years is more and more people are going to be getting off the grid, okay? So it's time for you to step up to the plate and do the right thing.

And state regulations -- we grew up in Louisiana. The State regulations in this state are beyond our comprehension. We've never seen anything like it, okay? So don't rely on the State regulations around here.

MR. DELLINGER: Number 339.

SPEAKER: I just wanted to say a few words about environmental justice. There's a limit to what you can do with three minutes, but this is a really important issue to me.

I understand from the webinar that the EPA had that we were able to listen to, that all of the environmental justice communities were put into a lump, and it was decided by averaging them out that there would be no environmental justice implications from the way things are or the way things could be with the regulations as they are proposed. And I would like to ask you to go back

to the drawing board on that, please, because -- there is a little graph I picked up here that the Sierra Club did. Have you guys seen this? Okay. Where's the coal? Over here in Appalachia. Is there environmental justice issues over here in California with urban Latino communities? You better believe it. Are they going to be the same as the coal ash issues we've got in Appalachia? Huh-uh. They are not dealing with the coal ash there. And so to lump us -- the whole purpose of environmental justice is to identify communities that are vulnerable and that are unfairly being impacted by an issue. And coal ash is going to hit people in Appalachia very differently than it is in other places, and so you can't average them out; it defeats the whole purpose of looking at environmental justice.

I live in a community that's being underground mined. We have no toxic release inventory. What do you think is going to happen if we get Option C (sic), which I want, and they make it more stringent to put it into the

landfills and they line them and make it more difficult for industry to do that, but then it's a free-for-all in the beneficial use in the mining backfill. It's going to make us a magnet. Then you have to report it. Then their toxic release is inventoriless where I live in my community. And so, we stand to be impacted differently than other communities.

They've also retrofitted two of the power plants with scrubbers. What we see is that it triples the amount of solid waste that we're expected to accommodate in our community. And so we have more waste being generated in more ways. And maybe those toxins aren't traveling out to Canada and New England where they're affluent enough to sue if there are assaults to their health and their environment, but we don't have that. They did away with funding for environmental justice attorneys over a decade ago where I live. This is 15, going on 20 years ago. I've had to file appeals now twice on my own with no legal representation because it does not exist.

I live in a community that has double-digit unemployment. The median income is $14,000 a year. Our families and our children are the least likely to be insured in the state. Does that sound like it might be an environmental justice issue if you have to medicate your child to breathe and you don't have the money for the medication and there's no hospital in our entire county? It's 45 minutes driving the speed limit to get to the nearest emergency room. And when this stuff blows off these dry landfills, you better believe it makes it hard to breathe.

So I would like to ask you, please, to do justice and to go back and look at this issue and reevaluate it for what it is.

Thank you.

MR. DELLINGER: Thank you. Number 162.

MR. BRUCE: Good evening. My name is Jimmy Bruce. I'm from Richburg, South Carolina. Thank you all for allowing me to address you today regarding my concerns with proposed coal ash regulations.

My life has been one of mostly enjoying and appreciating our environment, while not doing much to preserve or protect it, except perhaps by not littering. This has changed as I become aware of how industry is able to influence our policymakers at the various levels and departments within our government in order to influence favorable or reduced regulations regarding their industry, also known as preserving corporate profitability.

The situation we face today regarding how we regulate by-products of coal-produced electricity is not much different. We have been shown that coal ash contains many hazardous substances such as arsenic, mercury, lead, chromium, barium, selenium and cadmium. If these hazardous chemicals are contained within any product, it would seem logical to conclude that the product itself would likely be hazardous as well, and many tests have confirmed these findings regarding coal ash.

We have heard personal testimony by

individuals who have been affected by the leaching of these toxic chemicals into their well water and soils, who, unfortunately, live in close proximity to where coal ash is being processed.

We know these chemicals and metals cause various types of cancers. Reading about the short- and long-term environmental and health impacts of the coal ash disasters in Tennessee in 2008 and Kentucky in 2009 is concerning. Knowing we have four coal ash ponds in Charlotte with two discharging into the Catawba River petrifies me.

A massive flooding rate above the coal ash ponds has the potential to devastate the quality of life in our region for many years impacting hundreds of thousands of people. With such compelling evidence to support increased regulation, it is inconceivable to me how anyone can consider continuing regulating coal ash as it has been to date.

In order to protect and promote the proven industrial uses for some of the coal ash, considerations and accommodations should be made

accordingly. Additionally, promoting and developing alternative environmentally friendly-type uses for the unusable ash by-products could offer additional disposal solutions.

I will conclude my statements by asking the following questions: Could clean coal technology be the precursor for an increase in coal ash due to an increased number of clean coal power plants? Since this technology is removing pollutants, how does this impact the composition of the ash by-product? I understand the EPA is charged with protecting human health in the environment.

Please protect us; our way of life and our environment from future coal ash disasters due to inadequate State or Federal regulations. Please choose to regulate coal ash under Subtitle C.

Thank you.

MR. DELLINGER: Thank you. We are going to switch out on a panel member here. Suzanne

Rudzinski, my boss, will be substituting for Alex Livnat.

(Recess)

MR. DELLINGER: We are reconvening the hearing now. My intelligence tells me that we have two speakers in the room that want to speak; number 169 and number 340. Excellent. So 169 first, and then 340. At the podium, yes. And you can come up and sit at one of the chairs close by.

MR. BURDETTE: Good evening. My name is Kemp Burdette, I am the Executive Director of Cape Fear River Watch, an environmental nonprofit committed to protecting and improving the water quality of the Lower Cape Fear River. Our offices are located in Wilmington, North Carolina.

The Cape Fear River Basin is the largest river basin in the state of North Carolina and nearly one third of the state's population lives within our basin. The Cape Fear is the only major river in North Carolina to empty directly into the Atlantic Ocean and has the distinction of being the largest biodiversity hotspot on the eastern

seaboard of the United States of America. I am here today to speak on behalf of our river and on behalf of our membership, who understand the importance of clean, safe, and beautiful rivers.

Progress Energy's Sutton Steam Plant maintains two unlined coal ash ponds on the main branch of the Cape Fear River. These ponds are contained by earthen berms and hold over 555 million gallons of coal ash slurry. These ponds are less than 1 mile from the town of Navassa, less than 2 miles from the town of Leland, and less than 3 miles from the city of Wilmington. The population of the lower Cape Fear region is roughly 350,000.

These ponds are leaking toxic contaminants, including arsenic, boron, manganese, and iron into our groundwater supply. This contamination has spread 500 feet from the impoundment and will continue to spread as long as those coal ash ponds exist.

As the Kingston disaster demonstrated, groundwater contamination is not the only threat

that coal ash ponds pose. The Cape Fear region has proven throughout history to be especially prone to hurricanes: Hazel, Dianna, Fran, Floyd, Isabel, Earl just a few weeks ago and the current category four, Igor, off our coast. Hurricane Floyd dropped 19 inches of rain in a single event. 19 inches of rain at one time is incredibly destructive, especially to earthen berms and levees like those that failed in New Orleans during hurricane Katrina, and like those that contain the Sutton Steam Plant coal ash ponds. It is not a question of if a category four or five hurricane will make landfall in the Cape Fear Region; it is a question of when. When that time comes the Sutton coal ash ponds will pose a significant risk to our region.

The failure of those berms would release over half a billion gallons of coal ash into the river just upstream from Navassa, Leland, Wilmington, Carolina Beach, Southport, and Bald Head Island. That coal ash slurry would move up and down the river countless times with the tides

distributing toxins throughout our wetlands and along the banks of historic downtown Wilmington. It would make its way to the ocean and currents would distribute it along our beaches during the height of tourist season.

So I urge the EPA to regulate coal ash under Subtitle C. Wet storage of coal ash poses enormous risk to human health, and the health of the Cape Fear River.

Thank you.

MR. DELLINGER: Thank you. Number 340, state your name and your affiliation.

MS. JOYNER: My name is Julie Joyner. I am a housewife and mother of five children. I'm learning from my children about this issue and I just wanted to urge your to pass the C rather than the D. In fact I've been thinking about this all day. I came out here to listen, but I have a chance to speak so I thought I would take it.

It's just commonsense to me, just makes sense. You know, I would never mix up a cocktail of lead and selenium or arsenic -- that's the one

that really got me, and you know, feed that to -- nor would anybody. You know, they would be put in prison, that would be murder. And so, just to think that through irresponsibility or just lack of response, these kinds of toxins are getting into the water of our children and our neighbors is just mind-blowing to me and I just would like to see -- I would like to see you take the leadership and just call a spade a spade, I mean let's just call it what it is, you know, it's toxins.

Our own bodies are not healthy if our waste is not properly disposed of. I mean, that's just commonsense. It makes sense in our own bodies and it makes sense in the whole natural world, that if we don't properly dispose of toxins we're going to get sick, and we're going to make other people sick, and could even die.

So it just makes sense -- oh, mercury is the other one. I'm not a teacher or a professor, just a concerned citizen. And my dad worked for JC Penney's for 38 years and their motto was the

golden rule, "do unto others as you would have them do unto you." So it just makes sense to me that if this is something that is within our power to adjust, to fix, to make better for our children, it just makes sense that we would do that.

With regard to the C and the D, I think the federal government -- although I'm not a big fan of big government, but in this case I think it would be way more effective if we had a consistent policy across the board and you don't have states vying for each other's -- you don't have people running to this state to do something because it's easier there. It's just consistent and makes sense that it would be way more effective if you went with the federal regulation because everybody knows that, you know, if your boss is around you're going to do a better job, and if you're just left to your own implementation it's not going to be a good result.

So I think that's about it for this mom. Thank you.

MR. DELLINGER: Thank you. Is number 154 in the room?

MR. HANNON: How are you all doing today? Okay, so I should go ahead and start off. I'm just a concerned citizen. I know about the events that happened in Kingston, Tennessee and basically I wrote something down so I'll go ahead and read it.

The threat of large amounts of CCRs is present and this material now requires imminent and stringent regulation. The main issues seem to be solved fully through the proposed Subtitle C and in part by Subtitle D. The building materials industry also uses CCRs in their production processes. Their end product users currently use these products. Building material demands should not be reduced considering the EPA continues to stand behind the fact that this special waste can be beneficially used and these materials producers will be sure to relay such information if confronted with these issues.

Likely, more beneficial users will be

able to access and feasibly use this material in their own beneficial applications as a result of the increased storage costs and likely increase material manufacturing buying power. However, states have commented that the beneficial use of CCRs will be prohibited if the EPA designated CCRS as hazardous waste. I encourage the EPA to look further into this state beneficial usage issue.

While closing all existing surface impoundments that don't meet the rule's technical requirements will increase cost, it is a necessary investment to ensure safety. The permitting process provides a level of needed federal control. Subtitle C is the only approach that allows direct federal enforcement of the rule's requirements. Multiple studies suggest that the states have not yet adequately implemented the regulatory programs that were CCR management units, and that significant gaps continue to remain under state regulation.

CCRs from 56 percent of the 34 facilities, in another mentioned study; this one

done in 2009 by the EPA, exceeded at least one of the toxicity characteristics regulatory values for at least one type of CCR, illustrating the prevalent problem.

In 2008 the Environmental Council of the States issued a resolution stating that federal regulation wasn't necessary. The data supports that they are wrong. And while state regulations may be in place they are obviously either inefficient or unenforced.

I encourage your cooperation with state dam safety programs, considering that the structural stability of the surface impoundments is largely regulated under these programs. To date the EPA claims to have made certain conclusions from three recently prepared EPA reports. These findings all seem to clearly support mandating groundwater monitoring systems. I applaud your including this criteria in both Subtitle C And D. The amount and solubility of a constituent that may reach an aquifer or drinking water well are issues that the EPA needs to

further investigate however.

Please regulate this dangerous material to ensure that our drinking water, well-being, and a general environment are protected against these known effects of this substance. Thank you and please implement Subtitle C.

MR. DELLINGER: Can you state your name?

MR. HANNON: Reuben Hannon.

MR. DELLINGER: Thank you.

MR. HANNON: Thank you.

MR. DELLINGER: Do we have another speaker? Do you have a number? Okay. State your name and your affiliation.

MS. POWELL: My name is Elaine Powell. I am not representing anybody except my family. And I'm a water drinker. I think that's important.

First I just want to say I live on Mountain Island Lake. We can walk to the water and play in it and everything else, so the fact that coal ash is dumped into the lake is somewhat frightening. I'm hoping that you'll pass the most

strict guidelines -- I think they're calling it Subtitle C. I don't want to say the wrong letter. I just want "subtitle strict." So if you could pass that.

I was here earlier and had a prepared statement but I realized they can be kind of boring so I just wanted to tell you, some of my background -- my background here in Charlotte is in healthcare. And I don't know if you have had many healthcare people here today but I have the honor and privilege to work on pediatrics. At the same time, it was really hard because we have a lot of patients who have strange cancers. And when a child is diagnosed with a strange cancer, a lot of times they'll come in and try to figure out if it's genetic or what caused it.

Quite often the questionnaire is filled with environmental questions and I have to wonder in the back of my mind, all the time, what we are exposing ourselves to, and our children, by not regulating coal ash. So again, I just ask you for the strictest regulations.

I'm sorry that there will be consequences for the people who work in the coal ash industry and recycling and all that, who are fearful of the stigma of the hazardous designation. I'm sorry for that but we can't go forward doing the wrong thing for public health because of unintended consequences for them. Things change when we learn that public health is threatened. We have to do good things. And we have to get the strictest regulation.

And the other thing is, at our house, many of the people around us, we all rely on well water. We don't have water so we're drinking the water that's coming in -- the groundwater from all of this water that's been exposed to coal ash for many years. It's scary. And just as a homeowner, if you call and want to get your water tested for all these heavy metals, it's three or $400, so a lot of people aren't even going to do it. And they think that well water is wonderful but you know, after you read all the research, it's kind of terrifying.

Anyway I just ask you for the strictest -- Subtitle C if that's the strictest. Thank you for listening and have a good night.

MR. DELLINGER: Thank you. Does anybody else in the room have a number, whether it's in the 300s or 100s or 200s, or double digits or single digits? It's a little bit after 8:30. We'll reconvene at 9:00 o'clock.

(Whereupon, at 8:30 p.m., an evening recess was taken.)

N I G H T S E S S I O N

(9:00 p.m.)

MS. RUDZINSKI: Okay, we're going to reconvene the hearing. I understand we have three speakers in the room. Number 170, 193 and 341. Are all of you in the room? 170, do you want to come up and start first? I just want to remind you to state your name for the record and whatever affiliation you have, that would be great. Thank you.

MS. LUKAS-COX: Good evening. I'm Karen Lukas-Cox and I'm just a citizen of Charlotte. Point one, coal ash ponds need to be regulated by EPA. If your lover were HIV-positive you would not have sexual intercourse without using a condom. Water bodies have intercourse all the time; like young couples wildly on the surface from each storm event, and like maturing couples deep underground, slowly over decades.

Fluids mix during intercourse. In the case of coal ash ponds we have a giant condom. Fluids from the coal ash ponds casually mix with

the neighboring surface water as well as the neighboring groundwater, usually both linked to our drinking water supplies. So I repeat: coal ash ponds need to be regulated by the EPA.

Point two: It is common knowledge that the content of coal ash ponds is toxic and that when these contents cross over into neighboring drinking water supplies. Like lovers practicing unprotected intercourse, they will contaminate these water bodies. Thus, because the coal ash ponds' contents are toxic there's no doubt they are a hazard to human and wildlife consumption. Therefore EPA needs to classify these coal ash ponds as hazardous.

Point three: the building material industry does not need to worry about their business in case these coal ash ponds are classified as hazardous. As far as I can tell from my last school supply shopping mission, pencils were sold en masse even if lead is toxic to human consumption. To ease the mind of the building material industry, in addition to

classifying and defining coal ash ponds as hazardous to human and wildlife consumption, in liquid form for example, a separate clause can indicate that coal ash pond contents are safe for use in building material applications.

Point four, I quote Duke Energy's website: Quote, "At Duke Energy, supporting the health and welfare of our communities is directly tied to our commitment to our future sustainability. We believe that the decisions we make today will determine our long-term prospects as a company," end quote. Cleaning up coal ash ponds is Duke Energy's and other power companies' chance to act upon their commitment to community. It is their chance to stop sitting on the risk of contaminating drinking water reservoirs and rewarding their bottom lines with a smart investment.

Thank you very much for listening and good luck with the rest.

MS. RUDZINSKI: Thank you. Number 193?

MS. BENDEZU: Good evening. My name is

Roxana Bendezu and I am with the Conservation Chair of the Central Piedmont Sierra Club group and a member of the Social Justice Committee of St. Peter's Catholic Church. And yes, I kneel at Mass but my parents never taught me to kneel for money or to corporations. Instead they taught me to stand up and fight for the right causes and the regulation of coal ash as a hazardous waste under Subtitle C is one of them.

On the other side of the world, my father fights for similar causes of great importance as President of the Andes Parliament in South America. But today I stand here before you only as a citizen of the world to remind you of your role to protect creation, which includes the human race. We live in a society that focuses on making profit. But who are the ones making the most profit?

We say enough. If we lived in a perfect world these regulations would not be necessary but unfortunately we do not. We are so used to the social stratification, it is now ingrained in our

veins. We are okay with helping the wealthy get wealthier and seeing the poor not only get poorer but sick. We say enough. Reject the idea of alienation. Do not allow the feeling of isolation and misery to overtake our community. Listen to our voices that call for change. Do not make us feel powerless against the corporate giants. We say enough.

Realize the power vested upon you and your position not only as members of the EPA but also as citizens of this great nation and this planet. Let's once again lead the way and show our deep respect for earth and all its inhabitants. Remember this is not the only country with environmental issues. Once we accomplish this task in the United States, other countries will follow suit. It will no longer be the exception but the norm nonetheless.

I beg you to make the decision based on the interests of the global common good and not of the few. We have done that enough. Today I am asking you to not be afraid to show no respect for

the status quo. Do not be afraid to be called the crazy ones, because the people who are crazy enough to think they can change the world are the ones who do. I urge you to adopt Subtitle C and finally regulate coal ash as a hazardous waste.

Finally, if there is something I would like you to remember from my brief intervention, is the word that will hopefully resound in your head when making the decision: Enough.

MS. RUDZINSKI: 341, please.

MS. BECK: Good evening. My name is Pam Beck and I'm affiliated with the Catawba Riverkeeper Foundation and also the chairman of the Mountain Island Lake Marine Commission.

First of all, thank you for being here today. I know it's been a long day and I won't belabor my position but I do want you to know that we do appreciate your being here and having this opportunity to comment.

I want to encourage you to adopt the strictest hazardous monitoring possible. I am a neighboring community member to the Riverbend

Steam Plant on Mountain Island Lake. We're at the edge of a rural area that isn't likely to have municipal water supplies anytime soon, and I'm terribly concerned about the quality of our groundwater. Many of us in our rural area on the edge of Charlotte depend on well water for our water source and it's not likely that at anytime in the near future we'll be receiving municipal water. So I want to encourage you to help us to protect the drinking water source that we do have there. We've lived with the fallout from the ash. We've lived with the noises from the industrial site. And all of those were assumed to be the lifestyle -- we did trade that for the convenience and beauty of living by the lake. But at the same time that compromising, we don't want to compromise our health. And I know that eventually after Riverbend is one day closed down those pools are going to be of concern to all of us for generations, so please adopt the strictest; C.

Thank you very much.

MS. RUDZINSKI: Thank you. Do we have

anyone else with a number in the room?

(No audible response.)

MS. RUDZINSKI: Okay, I guess we'll take a 15 minute adjournment. Well, how about we make it 13 minutes, to 9:20.

(Recess)

MS. RUDZINSKI: I don't think we have a new speaker in the room yet. So what we're going to do is we are just merely going to adjourn until the next speaker arrives. Not a set time so whoever walks in the door that's got the number, we will reconvene at that time. So thank you for your patience.

(Recess)

MS. RUDZINSKI: Okay, we are reconvening. And speaker 196, if you would, state your name for the record. And if you have affiliation, also note that. Thank you.

MS. MCCARTHY: My name is Ann McCarthy and I'm a member of the Catawba River keepers foundation and the (inaudible) which is, like, a subsidiary of them, a Riverkeeper. I'm here to

voice my support for the Subtitle C proposal regarding the regulation of coal ash and classifying it as a hazardous toxic waste.

I am also encouraging an extension of the regulation be applied to the reuse or recycling of coal ash. The regulation should be proactive as well as reactive, after over 40 years of neglect.

National regulation, as you know, is critically needed, and it must be now. Your schedule of multistate hearings supports the need for federal oversight of this problem. States are unable to deal with the vastness of the problem, which crosses the state boundaries. I am from South Carolina. The toxic chemicals seeping from coal ash ponds in North Carolina are going into the waterways which go into Lake Wylie, which is the source of water for myself, my family, and my neighbors in South Carolina. Thousands of people are exposed in both North and South Carolina due to their toxic water.

Your own study in 2002 confirms that

people living near the coal ash residue storage sites have a one in 50 chance of developing cancer. Lining of the coal ash storage ponds is a minimal step in this process, and should be implemented immediately, as well as the cleanup of these coal ash ponds, to stem the seepage of toxic chemicals into the ground and water supplies, which are estimated to last for years to come.

Recent studies verify that contamination of the water supply is spreading, and at toxic levels, while the industry's cry that it will cost the public more money for their products. It will never come close to the cost people are paying and will continue to pay with their lives and health, plus the costs associated with chronic and fatal illnesses caused by exposure to these dangerous chemicals.

The toxic events in Georgia in 2002 and in Tennessee in 2008 press the issue as a national regulation oversight enforcement need. The victims who will suffer the consequences of unregulated coal ash waste need your support.

Thank you for your time and attention.

MS. RUDZINSKI: Thank you. I guess we are back on break until our next speaker arrives, then.

(Recess)

MS. RUDZINSKI: Okay, I'm going to reconvene the hearing. I'm going to have number 187 come up to the mike. If you would, state your name for the record and whatever affiliation you may have, and the floor is yours for three minutes.

MS. MOORE: Okay, my name is Sarah Moore. I am a junior at Catawba College, located in Rowan County, North Carolina.

I am here tonight to ask you to classify coal combustion residuals as Subtitle C, hazardous waste. As a concerned citizen I believe it is the government's job to protect all citizens from the hazardous wastes given off from our nonrenewable energy sources. Coal ash ponds around America, including the Buck Steam Station operated by Duke Energy located in Rowan County, which was rated as

a high hazardous site, need to be strictly regulated not only for the health of every American citizen, but also for every ecosystem affected by our unsustainable energy use needs. Strict regulation of this hazardous waste would show that the U.S. government is moving towards providing its citizens with affordable, efficient, clean energy. And that's all I have to say about that.

MS. RUDZINSKI: Thank you very much. We'll go on break until the next speaker arrives.

(Recess)

MS. RUDZINSKI: Okay, we're going to reconvene, and we're going to have a speaker here. If you could please state your name.

MR. WESTON: My name is Gene Weston and I'm affiliated with several different companies: Burgess-Brogden Concrete in Sumter, South Carolina; Burgess-Brogden Building Supply in Sumter, South Carolina; and CastLite Sales of South Carolina, from Lake City, South Carolina. I'm president of Burgess-Brogden, both companies,

and we have about 20 employees on the concrete side and another 30 employees on the building supply side, and approximately 5 jobs through CastLite Sales.

Burgess-Brogden concrete is in the business of manufacturing ready-mix concrete. For over 40 years we've used fly ash as an additive in ready-mix concrete for the DOT, for institutional use, on municipal water supplies, and any number of different functions you could think of. As everyone is probably aware, it's probably about the most widely used construction material in the world. We've used concrete with fly ash in it during this time and have never had an issue with anyone ever getting ill from use of our concrete.

Though the proposed reclassification won't disallow use of fly ash in concrete it's unlikely that folks in my industry, ready-mix concrete, will continue to consume fly ash at the rate -- by way of 15 million tons a year, for use in concrete. So that 15 million tons a year that we're using in concrete in your bridges and in

your roads and slabs on grading foundations will go away and that's now going to be landfilled. That's the thing we don't want to happen.

Burgess-Brogden Building Supply uses bottom ash in the manufacture of lightweight concrete block. This takes the place of other lightweight aggregates, which are pretty much in this area manufactured by expansion in a rotary kiln process, which requires heat, which requires energy, which gives off a CO2 emissions. And these have already been subject to CO2 emissions in the production of power.

We've never had, again, a problem with anyone getting ill with the millions of block that we have made using bottom ash. Likewise, bottom ash has been used as a road material and in a number of different tests done by our power companies in South Carolina, neither the stormwater runoff nor the wells (inaudible) these roads have shown any sign, and I mean any sign, of detrimental effects from the bottom ash that has been used in this construction.

My partner in CastLite Sales has partnered with power companies in South Carolina to use bottom ash beneficially. Unfortunately, if classified as a hazardous material, we will not continue to use bottom ash. That company will go away. So folks like us quit using it, what we're going to see is 100 pounds of coal is going to produce about 10 pounds of residue that right now is heading toward an ash pond, a dump on the power plant side. Of that 10 pounds about seven and a half pounds are being used as fly ash and bottom ash beneficially in a given good economic time. That's going to go away.

The bad news is the landfill at the power plant is going to grow that fast. That stuff is then going to be put in dumps and on trains and trucked to hazardous waste landfills off-site. So it's still going to still be on the road, still be on our right of ways and still take landfill space. The coal plants aren't going to go away because you and I as Americans like to have this light come on with a flip switch.

Finally, reclassification will have an unintended consequence in increasing CO2 emissions, drive up the cost of power and construction for all of us, put pressure on our other natural resources, and impede American competitiveness and achieve very little return for the costs incurred.

Thank you all for having me here tonight. Didn't realize the time frame was going to be so short or I'd been a lot quicker to talk. But thanks again for your time and I appreciate you giving us this opportunity to speak. Thank you.

MS. RUDZINSKI: Thank you. And we'll go into recess until we get the next speaker, as well.

(Recess)

MR. DELLINGER: The hearing is officially closed.

(Whereupon, at 11:05 p.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

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

/s/Carleton J. Anderson, III

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