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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2 EPA Hearing Panel:

3 Morning Session:

4 BETSY DEVLIN, Chair
Associate Director of Materials Recovery and Waste
5 Management
Office of Resource Conservation and Recovery
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LAUREL CELESTE
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SUSAN MOONEY
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JIM KOHLER
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Afternoon Session:
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FRANK BEHAN, Chair
11 Acting Chief of the Energy Recovery and Waste
Disposal Branch
12 Office of Resource Conservation and Recovery

13 ALEXANDER LIVNAT

14 JERRI GARL

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16 Evening Session:

17 BETSY DEVLIN, Chair
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1 PARTICIPANTS (CONT'D):

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3 Night Session:

4 BETSY DEVLIN, Chair
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1 P R O C E E D I N G S

2 (10:00 a.m.)

3 MS. DEVLIN: Okay, good morning, I think

4 we're going to start. Good morning and thank you

5 for attending today's public hearing on the

6 Environmental Protection Agency's proposed rule

7 regarding the regulation of coal combustion

8 residuals that are disposed of in landfills and

9 surface impoundments.

10 Before we begin, again I'd like to thank

11 everyone for taking the time out of your schedules

12 to come and give us your comments on the proposed

13 rule, and we really look forward to receiving your

14 comments. I also realize that a number of you

15 have traveled a great distance to be here and we

16 really do appreciate your participation in this

17 hearing.

18 This is the fifth of eight public

19 hearings that we are conducting on this rule. We

20 have conducted four very successful hearings

21 already. These have been in Washington, D.C.;

22 Denver, Colorado; Dallas, Texas; and Charlotte,

1 North Carolina. The remaining hearings are
2 scheduled for Pittsburgh; Louisville, Kentucky;
3 and there will be a final hearing in Tennessee.
4 My name is Betsy Devlin. I am the
5 Associate Director of the Materials Recovery and
6 Waste Management Division in EPA's Office of
7 Resource Conservation and Recovery and I will be
8 chairing this morning's session of this hearing.
9 With me on the panel are Laurel Celeste, Susan
10 Mooney and Jim Kohler, all of whom are from EPA.
11 Before I begin today I'd like to give
12 you a brief description of the proposed rule as
13 well as a rundown of the logistics on how we're
14 going to conduct today's hearing. Coal combustion
15 residuals or CCRs are residues from the combustion
16 of coal at electric utilities and include fly ash,
17 bottom ash, boiler slag, and flue gas
18 desulfurization materials. Coal combustion
19 residuals contain problematic contaminants such as
20 mercury, cadmium and arsenic. In 2008,
21 approximately 136,000,000 tons of CCRs were
22 generated by electric utilities and independent

1 power producers. Of that total, approximately
2 46,000,000 tons were landfilled, 30,000,000 tons
3 were disposed of in surface impoundments,
4 50,000,000 tons were beneficially used, and
5 11,000,000 tons were used in landfilling
6 operations. EPA estimates that there are
7 approximately 300 landfills and within 600 surface
8 impoundments where CCRs are disposed.
9 We have proposed to regulate these CCRs
10 to ensure their safe management when they are
11 disposed in landfills and surface impoundments.
12 Without proper protections, the contaminants in
13 these residuals can leach into groundwater and
14 migrate to drinking water sources posing public
15 health concerns. In addition, the structural
16 failure of the surface impoundment of the
17 Tennessee Valley Authority's plant in Kingston,
18 Tennessee in December 2008 released more than
19 5,000,000 cubic yards of coal ash over
20 approximately 300 acres of land and contaminated
21 portions of the Emory and Clinch Rivers.
22 With this proposal, EPA has opened a

1 national dialogue by calling for public comment on
2 two different regulatory approaches available
3 under the Resource Conservation and Recovery Act
4 (RCRA) for addressing risks from the disposal of
5 CCRs. One option presented in the proposed rule
6 draws from the authorities available under
7 Subtitle C of RCRA. This would create a
8 comprehensive program of federally enforceable
9 requirements for waste management and disposal.
10 The other option is based on the authorities under
11 Subtitle D of RCRA which gives EPA the authority
12 to set minimum national federal criteria for waste
13 management facilities that must be met on schedule
14 established in that regulation. The regulation
15 would be enforceable through citizen suits, but
16 under this scenario states do qualify as citizens.
17 EPA decided to propose the two options
18 in order to encourage a robust dialogue on how to
19 address the human health concerns and the
20 structural integrity issues associated with the
21 disposal of CCRs. And EPA wants to ensure that
22 our ultimate decision is based on the best

1 available data and is made with the substantial
2 input of all stakeholders. Therefore, we ask that
3 you provide us your comments, not only at today's
4 hearing but any other comments and supporting
5 information that you want to provide later in
6 writing.

7 I'd also like to say a few words about
8 beneficial use of coal combustion residuals. This
9 proposed rule maintains the bevel exemption for
10 CCRs that are beneficially used and, therefore,
11 will not alter the regulatory status of materials
12 used in that manner. EPA continues to strongly
13 support the safe and protective beneficial use of
14 CCRs. However, the proposal also indicates that
15 concerns have been raised with certain uses of
16 coal combustion residuals particularly when used
17 in an unencapsulated form. Therefore, we have
18 requested comments, information and data on
19 specific aspects of beneficial use, particularly
20 those dealing with unencapsulated applications.
21 We also make it clear in our proposal that coal
22 combustion residuals placed in sand and gravel

1 pits, quarries, and other large-scale fuel
2 operations are not examples of beneficial use.
3 EPA views this placement as akin to disposal and
4 would regulate those sites as disposal sites under
5 either of today's options.
6 Now, let me cover some logistics for how
7 this hearing is going to work today. Speakers, if
8 you pre- registered, you were given a 15-minute
9 time slot when you were scheduled to give your
10 three minutes of testimony. And to guarantee that
11 slot, we have asked that you sign in 10 minutes
12 before your 15-minute slot at the registration
13 desk.
14 All speakers, those that pre-registered
15 and walk- ins, were given a number when you signed
16 in today and that is the order in which you will
17 speak. I will call speakers to the front of the
18 room, four or five at a time, and ask that you
19 come up and sit on the chairs to my right. And
20 when your number is called, please move to the
21 microphone, state your name and affiliation, and
22 please state it clearly for our court reporter.

1 We may ask you to spell your name for our court
2 reporter who is transcribing the comments for the
3 official record.
4 Because there are many, many people who
5 signed up to provide testimony today, and to be
6 fair to everyone, testimony is limited to three
7 minutes, we will be using an electronic time
8 keeping system but we will also hold up cards to
9 let you know when your time is getting low. We'll
10 hold up the first card, that means you have two
11 minutes left. When we hold up the second card,
12 you'll have one minute left. When the third card
13 is held up, you'll have 30 seconds left. And when
14 the red card is held up, you are out of time and
15 we ask that you complete your remarks.
16 And remember, any written material, you
17 can provide any written material to our court
18 reporter. The material will be entered into the
19 rule-making record and it will be considered just
20 the same as if you had presented your testimony
21 orally.
22 We will not be answering questions today

1 on the proposal; however, from time to time some
2 of us on the panel may ask the speaker a question
3 to clarify something in your testimony. As I just
4 mentioned, if you have brought a copy of your
5 written testimony, you can leave it in the box by
6 our court reporter which is sitting, the box is
7 right in front of his desk. If you are only
8 submitting written comments today, we ask that you
9 put them in the box by the registration desk. And
10 if you have any comments after today, please
11 follow the instructions on the yellow handout
12 sheet for submitting official comments to the
13 docket, and those must be in by November 19th.
14 Although it's to ensure that everyone
15 who came today to present testimony is given the
16 opportunity to speak, and to the extent allowable
17 by time constraints, we will do our best to
18 accommodate those who have not pre- registered and
19 those who have asked us to speak orally. We will
20 try to do that. Today's hearing was technically
21 scheduled to end at 9:00 p.m. However, we are
22 planning to stay later to allow as many people as

1 possible to provide their testimony. If, however,
2 for some reason you are not able to present your
3 comments orally, we have prepared a table in the
4 lobby where you can provide your statement in lieu
5 of oral testimony. Again, your statements will be
6 collected and entered into the docket for the
7 proposed rule and will be considered just the same
8 as if you had presented your testimony orally.
9 If you would like to testify or to speak
10 and have not done so, please sign up at our
11 registration desk. Also, during the hearing, if
12 you have any concerns or questions, please see our
13 folks at the registration desk; they can answer
14 any questions that you have or can notify us if
15 you have a concern. We are likely to take
16 occasional brief breaks, but we will shorten or
17 eliminate them, again to allow as many people as
18 possible to testify.
19 Finally, if you have a cell phone, we
20 would ask that you turn it off or turn it to
21 vibrate. And if you do need to use your phone at
22 any time, we'd ask that you move into the lobby.

1 And again, ask for your patience, as we proceed we
2 may need to make some minor adjustments as we go
3 forward, but hopefully everything will go very
4 smoothly. And thanks again for participating and
5 I'd like to get started.
6 And so, will Speakers 1, 2, 3 and 4
7 please come to the front of the room? And number
8 1, please go to the microphone. Thank you.
9 MR. WELCH: Good morning. My name is
10 Lyman Welch. I'm the water quality program
11 manager for the Alliance for the Great Lakes. I
12 want to thank you for holding this public hearing
13 today and allowing the hundreds of people here in
14 Chicago and thousands across the country the
15 opportunity to speak on this important issue.
16 Thank you also for holding the hearing here in
17 Chicago where we are close to the Great Lakes.
18 The Alliance for the Great Lakes is a
19 non-profit organization as advocate on behalf of
20 the Great Lakes and the people who enjoy it on for
21 decades. The Alliance's mission is to conserve
22 and restore the world's largest fresh water

resource using policy, education, and local efforts to ensure a healthy Great Lakes and clean water for generations of people and wildlife. I'm here today to urge you to regulate coal ash waste under Subtitle C of the Federal Resource Conservation and Recovery Act.

The Great Lakes provide drinking water and recreation to over 40,000,000 people in the region. With more than 136,000,000 tons of coal combustion waste being produced each year which can send hazardous materials into waterways from leaking or flooded ash ponds and leaching into groundwater from unlined landfills, it is important that we address this problem. Some of this waste is generated by coal burning plants and disposal sites around the Great Lakes, including the Karn and Weadock landfills in Saginaw, Michigan and the Bailly Plant disposal site near the Indiana Dunes National Lakeshore.

With the overwhelming science showing that coal ash waste can contain more than a dozen potentially cancer- causing metals such as

1 arsenic, lead and mercury, we need strong federal
2 regulations to safeguard the health of the Great
3 Lakes and all of us who depend on them.
4 Regulation Subtitle C is important to ensure
5 consistent federal regulation across the country.
6 We do not want to have a patchwork of differing
7 state regulations that have greater or lesser
8 protection against these dangerous materials.
9 As an example, we know that in Erie,
10 Michigan there is a JR Whiting plant that a US
11 Fish and Wildlife study in 1983 and 1984 showed
12 some impacts on fish and wildlife. There is a
13 Wisconsin Energy Oak Creek Plant in Oak Creek,
14 Wisconsin near Lake Michigan that has had leaching
15 into the groundwater. I want to thank
16 Environmental Integrity Project and Earthjustice
17 for their important work on this issue.
18 Other industries argue against
19 regulations citing increased costs. It's
20 important that the Great Lakes do not become a
21 dumping ground. While that would be the cheapest
22 way to address this problem, industry should bear

1 the cost for disposing of the materials that they
2 create. Thank you.
3 MS. DEVLIN: Thank you. Number 2
4 please.
5 MR. JENSEN: My name is Larry Jensen. I
6 represent a group called People in Need of
7 Environmental Safety (PINES) in Pines, Indiana
8 which is about an hour and a half southeast of
9 this place. The two has been contaminated by
10 leachate from a coal ash disposal site that led to
11 groundwater and drinking water contamination.
12 It's now a CERCLA site.
13 My testimony here, however, involves the
14 radioactive aspects of the coal ash. By way of
15 substantiation, well, coal contains radioactive
16 materials, natural radioactive materials. These
17 are not degraded or destroyed by the burning
18 process, and so they are in the fly ash itself.
19 By way of substantiation of my credentials, I've
20 worked for the EPA Region 5 for 21 years. I was a
21 radiation health physicist, and most of that time
22 I was either the regional radiation expert or the

1 superfund radiation export and I did risk
2 assessments for EPA. I received five bronze
3 medals and a gold medal for the work I did, three
4 of which were in the cleanup of a small town much
5 like Pines.
6 Last year on October, I did a radiation
7 survey in Pines to determine that there was
8 radioactive materials along their streets; there
9 was. It was statistically separate from
10 background so it was real, material. There is a
11 limited amount of data on the concentration of
12 radioactive materials from a landfill but when I
13 worked for EPA we cleaned up based on the uranium
14 mill tailing standards in 40 CFR 192. The level
15 for Pines would have been 5.6 picocuries per gram.
16 That's the radium plus the background levels. The
17 measured numbers that are present in the fly ash
18 in Pines is more like 24 picocuries per gram. So,
19 substantially above the levels we would have
20 cleaned up, too, when I was at EPA.
21 Also, I did a risk assessment trying to
22 determine how high that might be. Under the

1 Superfund Law and the National Contingency Plan,
2 the upper limit on acceptable risk is 1 x 10-4.
3 The risk that I computed for only one pathway for
4 Pines was 13 x 10-4. That involves the gamma
5 exposure. It doesn't include inhalation, doesn't
6 include ingestion, and does not include any other
7 radon aspects of it.
8 So, I think just from the radioactive
9 standpoint, you can see that coal ash is a
10 material that ought not to be going unregulated.
11 And I think the disposal of it, as in Pines, for
12 landfill along roadways is pretty ubiquitous. I
13 don't think Pines is at all unique. So, I think
14 you looked around the country, you'd find a lot
15 more problems like Pines and are indicative of a
16 much larger problem. And I think RCRA then needs
17 to be adjusted so that these coal ash materials
18 are controlled. Thank you.
19 MS. DEVLIN: Thank you. Number 3
20 please.
21 MR. WARD: My name is John Ward and I am
22 Chairman of Citizens for Recycling First, an

1 organization of more than 1,500 individuals who
2 believe that the best solution for coal ash
3 disposal problems is to quit throwing coal ash
4 away.
5 Today, I would like to make four key
6 points that address common misconceptions that
7 have been frequently stated at these series of
8 public hearings.
9 Number one: Coal ash does not qualify
10 as a hazardous waste based on its toxicity. This
11 is not an option. It is a fact that standardized
12 tests show that the levels of metals in coal ash
13 are below the amounts established for listing it
14 as a hazardous waste. In recycling settings, the
15 toxicity of coal ash is similar to the toxicity of
16 the materials it commonly replaces.
17 Number two: EPA's proposed Subtitle D
18 and Subtitle C regulatory approaches are both
19 protective of human health and the environment.
20 The landfill construction standards proposed are
21 essentially the same in both, and so EPA's
22 Subtitle C proposal is not "stronger." The key

1 differences between the proposals boil down to who
2 gets to enforce the new regulations that EPA
3 establishes, new regulations that are far from
4 "business as usual" in either option.
5 Number three: Stigma is real. Labeling
6 coal ash as hazardous waste when it is disposed
7 creates enormous barriers to recycling.
8 Producers, marketers and users of coal ash have
9 been unanimous in expressing this fact during the
10 public hearings. The only people claiming the
11 stigma is not real are people with no direct
12 involvement in the recycling effort.
13 And number four: Stigma is already
14 taking a toll on recycling just as a result of
15 this debate. Specifiers and users of coal ash are
16 already beginning to remove the material from
17 projects because of regulatory uncertainty and
18 fear of future liabilities. Manufacturers of
19 products that compete with coal ash are actively
20 using this forum to make false claims about
21 dangers of using coal ash. And we have seen
22 numerous witnesses at these very hearings express

1 fear regarding long established beneficial uses of
2 coal ash, proving the point that the drumbeat of
3 the terms "toxic" and "hazardous" dramatically
4 affects consumer behavior.
5 The people who work everyday to recycle
6 coal ash are extremely disheartened by this
7 debate. Many of them have devoted entire careers
8 to do something good for the environment. They
9 now feel betrayed by the Environmental Protection
10 Agency and by environmental groups who appear
11 resolved to ignore and sacrifice the benefits of
12 recycling in their single-minded push for federal
13 enforcement authority.
14 New coal ash disposal regulations under
15 Subtitle D will make meaningful improvements to
16 disposal practices and do it faster than Subtitle
17 C can. Subtitle D will protect human health and
18 the environment, and will avoid the creation of an
19 unnecessary and harmful hazardous waste stigma
20 that will wreck efforts to safely and responsibly
21 recycle millions of tons of material that
22 otherwise will find its way to landfills.

1 Subtitle D is the right choice for the
2 environment. Thank you very much.
3 MS. DEVLIN: Thank you. Number 4
4 please.
5 MS. OWEN: Good morning. My name is
6 Verena Owen. I'm the Chair of Sierra Club's
7 Beyond Coal Campaign. The Sierra Club is the
8 biggest and oldest environmental organization in
9 the United States. And the Beyond Coal Campaign
10 aims to move our economy towards a clean energy
11 future by stopping nuclear-fired power plants,
12 phasing out existing plants, and keeping coal in
13 the ground and on top of mountains.
14 My role as one of the lead volunteers in
15 the Sierra Club is to enable and empower our
16 grassroots and our members and our allies to work
17 on those issues that affect them, their lives,
18 their families, their communities and the
19 environment. I have also served for two and a
20 half years at an EPA task force and was part of a
21 hearing panel and we traveled all over the United
22 States and I'm a little bit familiar with what it

1 feels like on your side of the table.
2 It's a tough job. But even those
3 experiences in my years working on grassroots
4 issues and with grassroots people did not really
5 prepare me for the experience of having so many
6 people learning and working together and engaging
7 in this coal ash issue so quickly and so deeply.
8 You will hear from a good number of them today.
9 Many of them have traveled long distances to tell
10 their stories today, and thank you for giving that
11 opportunity.
12 Coal ash is the second largest waste
13 treatment in the country. Much of this is
14 discarded in dumps and wet ponds that lack even
15 basic safeguards. Coal ash toxins can leach out
16 and into the groundwater. You will hear
17 compelling testimony about places like Pines where
18 this has happened and what the health effects of
19 these toxins are.
20 Effective coal ash regulations must
21 require basic protection for communities. Coal
22 ash disposal sites should have construction and

1 operating permits; consistent standards for
2 transportation, storage and disposal; and require
3 owners to undertake corrective actions when
4 problems arise. EPA has to have the ability and
5 authority to enforce against polluters.
6 There are two options on the table. It
7 is clear that only the coal industry would benefit
8 from the basically status quo regulations under
9 Option D they are championing.
10 That option requires none of the
11 abovementioned safeguards. Industry will claim
12 that ensuring such proper safeguards under the
13 protective Subtitle C option of the proposed rule
14 is a costly proposal. But, folks, that cost is
15 already being paid--except it is being paid by the
16 wrong party. It is paid by the party, the people
17 affected by coal ash in our neighborhoods.
18 Coal is a dirty business through its
19 entire life cycle, from mining to burning to
20 disposal. The coal has been shielded for years,
21 for decades actually from the true cost of coal.
22 It is time that they are being held accountable,

and that means that there is an accounts payable column in their coal and for coal ash disposal in their books.

The rule offers two options -- can I finish? Thanks. EPA has two options for the coal ash rule, and in this case D is not a passing grade and C is the top of the class. Thank you for your time.

MS. DEVLIN: Thank you. Okay. Numbers 5, 6, 8, unless, is number 7 in the room? I don't have you, so 5, 6, 8, 62 and 208.

Are you number 5? Number 5, please go ahead. Go ahead please.

MS. BARKLEY: Good morning. My name is Traci Barkley. I work with the Prairie Rivers Network as a water resources scientist. Our organization works with and on behalf of Illinois citizens to protect clean water for people and wildlife.

I have two points to make: 1) Illinois officials have known that coal ash handling and disposal practices have been negligent and

1 threatening clean water and public health. We
2 have data from nearly 20 years ago showing as
3 much. What EPA needs to hear is that it wasn't
4 until the December 2008 impoundment failure in
5 Kingston, Tennessee that a state-wide review of
6 these ash impoundments was initiated. The
7 findings have been startling: I. Most coal ash
8 impoundments do not have liners or other
9 protective measures to contain waste and prevent
10 pollution of groundwater. Ii. Groundwater
11 monitoring was not required at most coal ash
12 impoundments. Iii. Groundwater is contaminated
13 at ten power plants, those that have been
14 investigated thus far; and iv. Dams creating the
15 impoundments at most sites are unpermitted and
16 have not been inspected for safety or stability.
17 In Illinois, we are missing what we so
18 desperately need to protect our people and
19 wildlife from coal ash contamination: liners,
20 monitoring, effective cleanup plans, dam safety
21 requirements, enforceable standards, which brings
22 me to my second point.

2) Now that we are openly aware of the problem, people are urgently wondering what we will do about it. Because they are threatened or already impacted. Because they are afraid. Because they might have made the phone calls, tried to get people to listen, and have been silenced through pressure, ridicule, or maybe co-opted through the promise of free water. These people want to be here and I'm proud that so many people are here, but there are many more at home and we need to hear and feel these stories so that we'll make sure the EPA stays true to their mission which is to "protect human health and to safeguard the natural environment, air, water, and land, upon which life depends."

There are four stories, and I'll be brief. An elderly woman living near the Ameren Hutsonville facility signed away her groundwater rights for herself and anyone wanting to purchase her home and farm in future years for ONE DOLLAR because she didn't know she had an option. And the folks drinking water from the nearby Wabash

1 River need to know that EPA will support closure
2 of these contamination sites past what our
3 Illinois EPA thinks is necessary for
4 cleanup--pumping the contaminated groundwater and
5 dumping it in the nearby river.
6 A woman living next to the Coffeen Power
7 Plant and whose husband has worked there for over
8 30 years fears that the levee might break and
9 smother her home just a quarter mile from the coal
10 ash. She is also concerned that the constant fly
11 ash "sparkle" on her home, car, and yard is also
12 in her lungs.
13 A gentleman I met last week in Douglas
14 County near a site where fly ash is being used to
15 "reclaim" an abandoned mine impoundment has
16 reported on coal ash contamination of air and
17 water to the Illinois EPA several times with no
18 response. He has witnessed coal ash clouds so
19 thick that cars have to stop on the road. And
20 when I was on site, there was a recent mussel kill
21 in the stream a half mile downstream where there's
22 fly ashes. All the fingernail clams were open and

1 dead. Fly ash coated the surface and banks.
2 Please, we ask you to stay true to your
3 mission, listen to your constituents and do the
4 right thing. Regulate coal ash with Subtitle C
5 and take the first step towards turning this bad
6 idea gone worse around. Thank you.
7 MS. DEVLIN: Thank you. Number 6
8 please.
9 MS. PARKS: Hello. My name is Mary
10 Parks and I'm a registered nurse and I'm currently
11 working on my Master's degree to become a nurse
12 practitioner. And I experienced this first-hand,
13 the coal ash coming down like snow on my home. I
14 have a sample of it here. When I contacted the
15 Illinois EPA, I got a runaround, I got lied to, I
16 was told it couldn't possibly happen because there
17 was an outage. When I told them I had a sample,
18 that changed their tune and, oh, it was an
19 emergency but no big deal.
20 If this happened as a result of another
21 country, this would be chemical terrorism. This
22 would be an act of war. And yet, when people do

1 it here in the United States, it's just a matter
2 of business. And yet the people that live there,
3 that experience this, that are poisoned day in and
4 day out, they are the victims of an act of war.
5 And I think we need to understand that this isn't
6 just business as usual. People are dying. People
7 are getting sick.
8 When this coal ash came down to my yard,
9 it was between rainshowers. It was just a scary,
10 scary thing. My husband is a captain on the local
11 fire department. He identified it immediately as
12 coal ash. We checked the weather patterns. We
13 live about a mile and a half from a coal burning
14 facility, and I mean it was very obvious where it
15 was coming from. And I just, I think it's time
16 that people understand that this isn't just a
17 small, small situation. This is going on and the
18 people in this area that are affected by this are
19 dying. And nothing is being done.
20 They need to clean it up. It lands on
21 our ground. My organic garden is gone. I was in
22 a snowstorm of toxic chemicals. I breathed it, I

1 touched it. Everyone around us did the same
2 thing. A lot of people didn't see it, it rained
3 shortly thereafter but it was there. It was in
4 our ground, it was in our water, it was in our
5 pools, it was in our food. It was there.
6 And it is chemical terrorism that's
7 ongoing every single day. It needs to stop
8 immediately. These people are dying. I see it as
9 a nurse. I've treated many people with very
10 strange cancers, COPD, many, many different
11 ailments and illnesses. And as a nurse, it's just
12 appalling to know that it could be stopped. It
13 doesn't have to keep going on. Thank you.
14 (Applause)
15 MS. DEVLIN: Thank you. Number 8
16 please.
17 MS. PAISLEY: My name is Lorna Paisley.
18 I'm with CARE, Citizens Against Ruining the
19 Environment, out of Lockport and Joliet. I am
20 here approaching you as a citizen though because I
21 am worried about the nation's water supply and the
22 health of its people. I do not want our water

1 supply to rank below that of a Third World
2 country. We already have dead zones at the mouth
3 of the Mississippi River and water that can't be
4 drank or fished in or played in.
5 The amount of toxins dumped into our
6 water is overwhelming, herbicides and pesticides
7 from lawns and farms; mercury from oil refineries;
8 chlorine plants; coal power plants; tritium from
9 nuclear plants; chemicals from industrial plants
10 along the river that think the solution to
11 pollution is dilution; contaminants pushed into
12 rivers and streams by mountaintop removal; and
13 toxins including organics from fracting for
14 natural gas. Do you wonder why allergies, asthma,
15 autism, autoimmune diseases and cancer, et cetera,
16 are on the rise? The human body can only repair
17 so much damage, but we are overwhelming it with
18 toxins.
19 We know that the aforementioned issues
20 cause problems and we know that heavy metals and
21 coal ash are dangerous, can cause cancer, nervous
22 system damage, lung disease, respiratory disease,

1 kidney disease, reproductive problems and more.

2 This info comes from the Physicians for Social
3 Responsibility.
4 Some of the information on Joliet 9 and
5 its Lincoln quarrying make me shake my head and
6 wonder whose side is the IEPA on. It is known
7 that the Des Plaines River is a major area of
8 discharge for the Silurian dolomite aquifer and
9 Midwest Generation found elevated concentrations
10 of contamination in their monitoring wells along
11 the river. How could they possibly deny that
12 these toxins are not going into the river?
13 Tests from 2007 showed cadmium to be 52
14 times higher than the Illinois Class 1 groundwater
15 standard and molybdenum was 34 times higher than
16 the Federal Lifetime Health Advisory value. Tests
17 from 2009 found arsenic at levels 83 times the
18 groundwater standards. According to MSDS sheets
19 and the PSR, these are toxic in high
20 concentrations, and some even in low
21 concentrations.
22 And then to help out Midwest Generation,

the IEPA eliminated ten parameters from the J2 list of the annual test. These included, the ones they eliminated, antimony, chromium, cobalt, cyanide, lead, mercury and nickel. Isn't that convenient for Midwest Generation? Only boron was tested in 2006 and the IEPA identifies the quarry as having a GMV designation which allows for offsite contamination. Does the IEPA call this protecting its citizens?

Lately, when I read about what we're doing to our land, air and water, I think the terrorists ought to just sit back and relax for a few more years. By then, we can sicken and destroy ourselves. There is a body out there that can help us prevent our destruction, it is you, the EPA. Step up and save us. Pass and enforce Subtitle C and coal ash should be regulated as hazardous waste. And thank you for hearing me out.

(Applause)

MS. DEVLIN: Thank you. Number 62 please.

1 MR. CURTIS: Thank you for your time.
2 My name is Ken Curtis. I'm a third-generation
3 farmer from Western Illinois. Plus, I'm president
4 of JLM, Incorporated which do consulting with
5 farmers to improve their soils.
6 I'm here to speak specifically about FGD
7 gypsum which is getting put in with all products.
8 This product is completely safe. I bring a
9 perspective, we've used it for 13 years and I have
10 marketed it, and it's very safe for the
11 environment.
12 I consider myself very green. I am a
13 no-till farmer for over 25 years. We do not
14 disturb our soils and we raise some of the top
15 yields in the State of Illinois.
16 I'm here to speak about the benefits
17 when you look at FGD gypsum as green, totally
18 renewable, win-win operation. When you look at
19 the product, when you put it on a field, we got
20 USDA research with Dr. Darren Norton that's funded
21 by the Government on Soil Erosion, anytime we stop
22 soil erosion, you're allowing less nutrients to

1 get into the streams, to the river and that the
2 epoxy that somebody was just talking about down in
3 the Gulf of Mexico. This product allows, is
4 basically calcium and sulfur, and it is sulfate
5 sulfur which is available to the plant. When we
6 put this on the soil, it allows us to use less
7 boughten fertilizer to bring on to the field which
8 is less opportunity to have to be washed off to
9 the stream.
10 So, we've seen real good benefits.
11 We've used it on all types of crops. I'm in a
12 corn-soybean operation myself. We're trying to be
13 sustainable. It's totally safe. Like I said, I'm
14 a third generation farmer and I've got another son
15 that's going to be taking over our operation and
16 we want to keep this farm sustainable. And most
17 agriculturists are very environmentally concerned
18 about how we're all applying these things. And
19 with this type of product, it's got some real
20 benefit and this is why we need to really consider
21 leaving FGD gypsum as a class D classification.
22 Thank you very much.

1 MS. DEVLIN: Thank you. Number 208?
2 MR. KARNAUSKAS: Good morning and thank
3 you. My name is Robert Karnauskas, I'm the
4 co-founder of Natural Resource Technology, an
5 environmental consulting firm based in Peewaukee,
6 Wisconsin.
7 I'm present at this hearing to urge EPA
8 to regulate coal combustion residues including
9 coal ash as non- hazardous waste under Subtitle D
10 of RCRA. Members of our environmental firm have
11 over 25 years experience with CCR related
12 projects. And our experience in this field, as
13 well as continuing education, provide a
14 substantial knowledge base on the properties of
15 CCRs and basic engineering principles that support
16 their proper management and beneficial use.
17 We support the Subtitle D approach
18 because, first, Subtitle D has been demonstrated
19 to be protective of human health and the
20 environment for managing various waste such as
21 municipal refuse, petroleum contaminants in soils
22 and -- Based on our experience, we believe

1 Subtitle D is also appropriate and protective for
2 CCRs. Our opinion is also supported by USEPA's
3 earlier findings in 2000 based on scientific
4 evaluations at that time that non-hazardous waste
5 regulation of CCRs is fully protective of human
6 health and the environment.
7 We are concerned that the proposed
8 Subtitle C designation, if implemented, would
9 adversely affect beneficial reuse of CCRs,
10 particularly encapsulated applications, if the
11 materials are perceived as having long- term
12 liability risk. A similar concern was recently
13 echoed in another editorial published in the
14 Milwaukee Journal Sentinel which is referenced in
15 our written comments. We're here to tell USEPA to
16 continue to rely on sound science in making their
17 decisions on this issue. Our experience as well
18 as USEPA's previous evaluations should lead to a
19 conclusion that designating CCRs as a hazardous
20 special waste will not achieve an economically
21 practicable regulatory result that is more
22 protective in the environment and the health of

energy consuming public. Thank you.

MS. DEVLIN: Thank you. Could I have numbers 9, 10, 11 and 12 please? Number 9 please?

MS. MARSHALL: Good morning. My name is Marcia Marshall. I support Subtitle C which would provide for a strong regulation of toxic coal.

I come to you today as a citizen. I'm a volunteer for Citizens Against Ruining the Environment which we have an Earth Day event to educate people in the public about reducing, reusing and recycling, and to create more awareness around Earth Day. I'm also a member of Helpers of Mother Earth where we go to various parks picking up trash and along roadsides. And I'm a member of Sierra Club.

Despite everything that I do, I feel that my efforts to reduce, reuse and recycle are useless unless we work together with large corporations to keep our environment clean. This hearing kind of reminds me of the movie "The Distinguished Gentleman" from 1992 with Eddie Murphy. However, that movie was produced 18 years

1 ago and yet we're still dealing with pollution
2 from coal ash. Granted, that movie was about
3 nuclear power plants and we're dealing with coal
4 ash, the concept remains the same.
5 Our waters are being polluted. Our air
6 is being polluted. Our land is being polluted.
7 And yet nobody seems to care. People are getting
8 sick.
9 As a citizen of Illinois, I don't need a
10 court order to tell me what to do, to recycle,
11 reuse. And I don't feel that it's, well, I guess
12 it is important that the Government has to step in
13 now because corporations have failed to protect
14 the citizens. If I purchase products that
15 contaminate our environment, it's too late because
16 the damage has already been done. I feel that
17 IEPA has failed to protect the people they serve.
18 Personally, I think that IEPA is a waste
19 of taxpayers' money because the Corporate America
20 should do the right thing without being told. But
21 that is why we're here today. Unfortunately, it
22 had to come down to this where we have to fight in

order to protect ourselves and our future generations. Thank you.

MS. DEVLIN: Thank you. Number 10?

MS. RENDULICH: My name is Ellen Rendulich. I'm a director with Citizens Against Ruining the Environment. And I'll try and keep this as brief as possible. We have several people from our community coming up to speak.

Citizens Against Ruining the Environment (CARE) says it's time that the coal industry take responsibility and start protecting our groundwaters from arsenic and toxic metals from coal waste. Coal waste must be designated as hazardous waste.

We have two polluting coal-fired power plants in Will County owned by Midwest Gen, Generation 1 in Romeoville and one in Joliet. They were both grandfathered from the Clean Air Act, and since 1996 the Joliet facility has been exempt from the Illinois Class 1 groundwater standards. Midwest Generation insists that they are not contaminating our groundwater or air, and

1 yet these facilities are ranked in the top 40 for
2 contaminated sites in the US for groundwater and
3 the top 10 for air pollution.
4 The report, "In Harm's Way," is
5 documents from the IEPA that Midwest Generation's
6 online quarry in Joliet has polluted our
7 groundwater. Let us not forget, for 15 years,
8 CARE has requested the same company abide by the
9 same Clear Air Act regulations as other industries
10 by adding pollution controls. We have also
11 provided enough evidence that we are breathing
12 poisonous toxins such as lead and arsenic from
13 fugitive dust that the USEPA is in litigation.
14 I live a mile and a half from the
15 Romeoville facility. I have coal dust in my yard
16 and in my driveway. My neighbors that live closer
17 to the facility call me on a regular basis to
18 complain about the coal in their driveways and on
19 their rooftops. And in the past I've submitted
20 photos. This is the same company that insists
21 they are not contaminating.
22 Human and animal lives are affected

through the food chain via air and groundwater. In '96, CARE protested an experimental coal tire burn in Romeoville. Midwest Generation had their toxic coal burn; it failed. What did the EPA do to protect us from the residual air toxins that contaminated our groundwater and air? Nothing. They did not even test our vegetable garden soil or our drinking water.

In '04, CARE learned that fish contaminated with mercury from coal was the leading cause of neurological damage in children and fetuses. We fought for pollution controls. As coal ash hearings have concluded in the US, we are hearing constantly that everyone is dealing with the same situation.

We request that there is Subtitle C and this is designated as hazardous waste.

(Applause)

MS. DEVLIN: Thank you. Number 11 please?

MS. THOMPSON: Hi, my name is Tammy Thompson. I have to say I'm really said to be

1 here today, that it's come down to us trying to
2 testify to get federal rules to protect our
3 children.
4 I'm one of the neighbors that used to
5 live next to Midwest Generation. We moved because
6 our family was getting so sick, we couldn't
7 survive anymore. We had doctors and professionals
8 drive out to our neighborhood to tell us get our
9 daughter out now, that all these kids need to be
10 tested routinely. In fact, my neighbors are
11 testing positive for mercury, arsenic, thallium
12 and lead. Babies are dying in our neighborhoods
13 everyday. Young mothers are becoming victims and
14 dying before they can even spend any time with
15 their children.
16 Whether I'm a neighbor down the street,
17 a neighbor in another neighborhood, or in another
18 state, this toxic coal ash is making it into our
19 water supplies. I would love to see the hands of
20 anybody that works for this industry and find out
21 exactly where they live and if this is going into
22 their water supply. This is absolutely insane to

1 think that this is acceptable to do this in our
2 communities.
3 My neighbor called me last night crying
4 because she wants to come and testify. Her
5 daughter is so sick, and the local town and the
6 local government, IEPA included, are all telling
7 her to get used to it and get over it. They are
8 this close to calling her, well, basically they
9 are, they are saying that she is stupid for moving
10 there in the first place when her and her family
11 was the one there to begin with. They promised
12 tax relief, these guys don't pay any taxes. They
13 get subsidized with millions and billions of
14 dollars, poison us and stand with our politicians
15 who vote on their side giving them our money in
16 front of cancer treatment centers. If that's not
17 adding insult to injury, I don't know what is.
18 The fact is we can survive without these
19 companies. They can't survive without us. We can
20 thrive without these companies. They cannot
21 survive without us. And if they're going to
22 continue to put this crap and ca-ca in our water

1 and in our air, then they need to have this pumped
2 on their families.
3 Let them bathe in the water and see the
4 sores that my daughter has all over her body. Let
5 them stand outside and walk in the house coughing
6 and gagging. Let them sit in their homes and from
7 Friday night to Monday morning be coughing and
8 gagging and see the nose-stained pillowcases
9 because you can't breathe because the EPA will not
10 take your calls on weekends. They are telling us
11 to stop bothering them.
12 What is wrong with the Illinois EPA and
13 who the heck do they work for? They've got some
14 nerve to allow our kids to have this continue to
15 happen. Blagojevich was having meetings in the
16 park by my house and it's getting worse. And
17 they're telling us, WEMA and AEMA is telling us to
18 get used to it and get over it? Where is their
19 water coming from? It's going into all our water
20 supply. It can be in public water.
21 The fish are floating dead. The river
22 is green and bubbling and the folks on Patterson

1 and Brandon Road, I went to the lab that the EPA
2 instructed me to go to, well, guess what? I spent
3 several hundred dollars on tests that was nothing
4 but garbage. I might as well have thrown it at
5 the casino for all that it is worth.
6 I urge everybody to take action. I
7 think all the moms should cut off all the fathers
8 from any kind of extracurricular evening activity
9 until they do the right thing by our kids.
10 MS. DEVLIN: Excuse me, ma'am. Your
11 time is up, thank you very much.
12 (Applause)
13 MS. DEVLIN: Number 12. Number 12
14 please?
15 MR. OLSTA: Ladies and gentlemen, my
16 name is Jim Olsta of CETCO. We're an
17 environmental product company based in Illinois.
18 Today I am also representing the Geosynthetic
19 Materials Association. It's a trade group of 80
20 companies that manufacture, distribute and install
21 geosynthetic materials including liner systems.
22 The industry employs 12,000 people throughout the

1 US.

2 Our comment to the EPA is simple. We

3 request that the EPA mandate the geosynthetic

4 lining of coal ash storage facilities using

5 composite lining systems, specifically

6 geomembranes and geosynthetic clay liners. Why?

7 Because "These liners work." Concerns of risk

8 regarding CCRs are mitigated if the landfill

9 storage sites are lined with a composite liner

10 system of a geomembrane and a geosynthetic clay

11 liner.

12 The American Society of Civil Engineers

13 does a regular report card on America's

14 infrastructure. For the last three report cards

15 representing over the last decade, coal ash waste

16 industry has gotten the highest grade of any

17 category. Since the enactment of Subtitle D, the

18 solid waste industry has done an excellent job of

19 taking America's waste and properly storing it

20 protect the environment. The materials, standards

21 and people exist, experienced engineers,

22 contractors and installers who can design and

1 build the proper facilities, and the regulators
2 and inspectors to assure the work is done
3 correctly. We urge EPA to "use what exists and is
4 working today."
5 Further, our industry has continually
6 improved over time and EPA has been a part of that
7 effort. Over the years, EPA has commissioned
8 nearly 80 studies of the design and performance of
9 lining systems. These studies contain a great
10 deal of pertinent information on how to construct
11 containment systems. We specifically call to your
12 attention the 2002 study titled "Assessment and
13 Recommendations for Optimal Performance of Waste
14 Containment Systems" (EPA 600/R-02/099). Most
15 illustrative for today is a graph charting the
16 leakage rate of different designs over the life
17 cycle of nearly 200 facilities. The composite
18 liner system of a geomembrane and a geosynthetic
19 clay liner was demonstrated to have the lowest
20 leakage rate over all life cycles including a near
21 zero leakage rate for facilities closed.
22 Additionally, CETCO and the University

1 of Wisconsin will be submitting technical
2 information that indicates that CCR leachate is
3 compatible with geosynthetic clay liners, and thus
4 should exhibit similar performance in CCR
5 composite liner systems to that noted in the
6 previous EPA study.
7 We note that in the proposed rule that
8 EPA solicits comments on whether alternative
9 liners should be allowed. Geosynthetic clay
10 liners would only be used if they're allowed as an
11 alternative to the prescriptive compacted clay
12 component of the composite liner in the rule.
13 Since GCLs are expected to contribute the lowest
14 leakage, lower than compacted clay, and can help
15 achieve EPA's mission to protect human health and
16 the environment, we recommend that geosynthetic
17 clay liners be allowed as an alternative liner
18 component.
19 Thank you.
20 MS. DEVLIN: Okay, thank you. Okay, I
21 have numbers 14, 15, 16 and 18 please. And did
22 number 7, is number 7 in the room? Okay. So,

1 number 14, will you please go to the podium?
2 MS. WALZ: Hello, I'm Kimberly Walz,
3 Deputy Chief of Staff for Congressman Mike Quigley
4 who apologizes he couldn't be here today. He's
5 still in Washington voting.
6 Thank you for taking the time to hold
7 this important public hearing on the proposed coal
8 ash regulations.
9 Colstrip, Montana is home to the second
10 largest coal plant west of the Mississippi. One
11 boxcar-full of coal is burned every five minutes.
12 The burning of coal creates sodium, thallium,
13 mercury, boron, aluminum and arsenic which is
14 pumped out of the factory and into the air. The
15 chemicals that aren't pumped into the air are
16 caught in the factory's scrubbers and then dumped
17 with the coal ash into giant settling ponds.
18 These ponds are shallow artificial lakes
19 of concentrated toxicity which leach this poison
20 into wells and aquifers. This sludge flows into
21 the surrounding towns and countryside, bubbling up
22 against foundations and floorings, cracking the

1 floor in Colstrip's local grocery store.
2 Ranchers in Eastern Montana are now
3 suing the plant for damages. Noxious water, they
4 cite, is the only liquid that fills their wells
5 and stock ponds. James Hansen, a renowned climate
6 scientist, says Colstrip will cause the extinction
7 of 400 species.
8 But still, Colstrip burns on. We are
9 poisoning our ecosystem and our animals.
10 But we are also poisoning our families,
11 our communities, our nation and our entire world.
12 Why? Because there are currently no federally
13 enforceable regulations specific to coal ash.
14 This lack of federally enforceable standards is
15 exactly what led to the disaster in Tennessee
16 where a dam holding more than one billion gallons
17 of toxic coal ash failed, destroying 300 acres,
18 dozens of homes, killed fish and other wildlife,
19 and poisoned the Emory and Clinch Rivers.
20 From Tennessee to Colstrip, the story is
21 the same. Living near an unlined coal ash waste
22 pond and drinking water contaminated with arsenic

1 can be more dangerous than smoking a pack of
2 cigarettes a day, according to a risk assessment
3 done by the EPA. People living near unlined coal
4 ash ponds where water is contaminated by arsenic
5 and ash is mixed with coal refuse, whether they're
6 in Tennessee or in Colstrip, have an extremely
7 high risk of cancer up to 1 in 50. This is 2,000
8 times greater than EPA's acceptable cancer risk.
9 As Al Gore wrote in 2005, "it is now
10 clear that we face a deepening global climate
11 crisis that requires us to act boldly, quickly and
12 wisely." Coal ash is a piece of the larger
13 climate crisis, a crisis that has a hefty
14 cost--the cost of carbon.
15 So, as we burn coal, creating sodium,
16 thallium, mercury, boron, aluminum and arsenic
17 which is pumped out of the factor and into the
18 air, we can continue to do that. We can blow the
19 tops off mountains, allowing streams of toxicity
20 to leach coal slurry poison into wells and
21 aquifers. We can send tar sands 1,700 miles
22 across our soil.

1 Or we can stop stripping our land,
2 polluting our air and water and do what's right.
3 The first step is to establish comprehensive,
4 federally enforceable standards that protect human
5 health, wildlife and the environment. Coal ash
6 must be regulated under Subtitle C of the Resource
7 Conservation and Recovery Act as special waste
8 with all the safeguards that apply. Thank you so
9 much.
10 (Applause)
11 MS. DEVLIN: Thank you. Number 15
12 please? Number 15? Thank you.
13 MS. COSTELLO: Hello, I'm Helen
14 Costello, this is my daughter Mia. I'm a
15 concerned citizen affiliated with the Sierra Club.
16 And I've read a little bit about this issue and
17 learned that coal ash contains chemicals that
18 cause cancer and nerve damage so its presence and
19 landfills and ash ponds is a public safety risk.
20 I thank EPA for proposing this rule to
21 protect our health and environment. I believe the
22 appropriate regulation for safe ash disposal

1 includes not guidelines but enforceable consistent
2 standards.
3 As for the opposition to this kind of
4 regulation, from what I have read, the economic
5 cost to power plants and landfills will neither
6 disrupt their operations nor cause any significant
7 rise in the cost they pass on to their customers.
8 Therefore, the extra cost does not constitute a
9 valid objection to a needed improvement in public
10 safety. Furthermore, the regulation will protect
11 those industries themselves from the expensive
12 lawsuits that follow a spill that is not detected
13 early.
14 I believe this is the right regulation
15 for all. I would like to also add that I
16 completely agree with the previous speaker's
17 comments about mining coal in general as being
18 disastrous for the environment. But this is an
19 excellent first step and I strongly support it.
20 Thank you.
21 (Applause)
22 MS. DEVLIN: Thank you. Number 16

please?

MR. SPOERRI: Good morning. I'm Robert Spoerri, I'm president of Beneficial Reuse Management. My company specializes in implementing projects utilizing materials such as bottom ash and fly ash as geotechnical material in construction projects in the Midwest. We've also been a pioneer in implementing beneficial use programs utilizing FGD gypsum from power plant emission scrubbers in agriculture. We employ 18 people directly and more than 50 subcontract employees.

Over the last 12 years, my company has implemented hundreds of beneficial use projects and programs involving millions of tons of materials including byproduct from coal combustion and emission scrubbing systems. We've successfully implemented every one of these programs under strict standards and controls without risk or damage to human health and then environment. We're a green company dedicated to serving our customers while improving the

environment. That's the reason why our employees chose to work here and the reason why we all feel so strongly that any actions by the EPA that will discourage beneficial use is a mistake.

Beneficial use conserves the natural resources, preserves scarce landfill space, reduces CO2 emissions, strengthens local economies. In the case of FGD gypsum, the use in agriculture has been demonstrated to be an important tool to reduce nutrient runoff into sensitive watersheds making its beneficial use a homerun for the environment.

We initially built our business in Wisconsin where strong effective regulations help define standards and procedures for safe beneficial use of byproduct materials. We follow these high standards in all the states where we now do business and believe such standards should be in place everywhere. We believe this can be done without labeling byproducts from coal combustion and emission scrubbing as hazardous or special waste under RCRA Subtitle C.

1 From our contact with all of the
2 participants in the beneficial use process, we
3 know for a fact that if EPA determines that these
4 materials are hazardous or special waste under
5 Subtitle C, it will spell the end of beneficial
6 use and of our company. Under a Subtitle C
7 outcome, utilities will not provide the materials
8 to us for beneficial use programs; state and local
9 regulators will not permit us to use them; and it
10 will be impossible to find project partners or
11 customers willing to accept the materials
12 regardless of how much EPA stresses their support
13 for beneficial use. As a result, millions of tons
14 of byproduct materials will unnecessarily end up
15 in landfills, and the multiple benefits to the
16 environment and the economy will be lost.
17 In this debate, we have engaged
18 repeatedly with environmental groups and others
19 concerned about the risks of coal ash. We have
20 conducted two educational workshops for
21 environmental groups on beneficial use and gained
22 an appreciation for their perspective. From this

1 dialogue, we believe there can be a successful
2 outcome from this rulemaking process, gaining
3 strict new controls over coal ash disposal while
4 preserving and encouraging beneficial use. This
5 can be done under RCRA Subtitle D with federal
6 enforcement powers or under some other auspices.
7 We strongly encourage you to consider
8 these alternatives to Subtitle C hazardous
9 designation for the sake of our company, of our
10 employees and of the environment. Thank you.
11 (Applause)
12 MS. DEVLIN: Thank you. Number 18
13 please.
14 MR. COVI: Good morning. My name is Art
15 Covi. I want to thank you for the opportunity to
16 address the issue of coal ash regulation here on
17 behalf of We Energies. I'm a professional
18 engineer with 30 years of experience in utility
19 operations and environmental programs. My group
20 has responsibility for managing more than 800,000
21 tons of CCPs per year. We use the term products
22 rather than residuals because we offer up these

1 materials for beneficial use in very high quality
2 construction materials and in enhancing
3 agricultural production.
4 We Energies is a Wisconsin utility
5 company with a long history of researching and
6 developing beneficial uses for CCPs in an
7 environmentally responsible manner. We have
8 collaborated with universities, consultants and
9 industry in developing beneficial uses of CCPs and
10 have worked closely with federal and state
11 agencies to ensure that our programs are
12 consistent with environmental prudency and good
13 engineering practice.
14 We have attempted to illustrate to EPA
15 the many environmental and economic advantages of
16 our own beneficial use program, and we share a
17 deep concern for maintaining the positive
18 integrity of our programs in Michigan and
19 Wisconsin under the very successful Department of
20 Natural Resources NR 538 program. The program is
21 a clear example of how state agencies can control
22 CCPs and has been recognized by EPA as an

1 excellent template for developing strong
2 regulations which provide environmental
3 protection. These regulations were developed in
4 Wisconsin with the participation of industry,
5 government and environmental groups over ten years
6 ago with the goal of minimizing waste and reducing
7 landfilling. It has been enormously successful,
8 and our own We Energies documented utilization
9 rate was 99 percent in 2009.
10 We strongly favor the implementation of
11 a Subtitle D non-hazardous approach to fill the
12 need for consistent national regulation for CCPs.
13 We are concerned that a Subtitle C hazardous
14 approach will introduce a regulatory barrier and
15 place a stigma on CCPs with our customers. In
16 fact, the stigma of a hazardous waste label on
17 CCPs would not encourage beneficial use.
18 Unfortunately, this issue has already had a
19 negative effect on some valuable beneficial uses.
20 Subtitle C rulemaking provisions are
21 over-reaching and a serious concern for We
22 Energies, especially in light of our long-term

1 commitment to develop a wide range of beneficial
2 uses. The Subtitle D approach will establish
3 national standards similar to those employed for
4 municipal waste. The EPA has the authority to
5 step in and manage noncompliant state programs and
6 take action under the endangerment provisions of
7 RCRA.
8 We emphasize the fact that CCPs have
9 been repeatedly reviewed for the purpose of
10 determining the proper way of regulating them and
11 have not been found to be a hazardous waste. We
12 believe that Subtitle C would be a mistake and
13 would compromise other environmental priorities
14 such as greenhouse gas reduction and resource
15 conservation. Thank you.
16 MS. DEVLIN: Thank you. Numbers 19, 20,
17 21 and 22 please? Thank you. Go ahead, number
18 19.
19 MR. DARLING: Good morning. My name is
20 Scott Darling. I'm the environmental engineering
21 manager for ALCOA Power Generating, Inc. water
22 power plant. Alcoa believes the use of the

1 Subtitle C approach for regulating CCRs is
2 unwarranted. The use of a modified TCLP to model
3 and then justify the designations of CCR is not
4 indicative of actual releases and certainly not
5 from the releases of the ashes generated by ALCOA.
6 Test data of our surface impoundments, both closed
7 and opened, do indicate that it is not a hazardous
8 material. This data was generated as part of a
9 comprehensive RCRA RFI and that RFI clearly shows
10 there is no detection of any contaminants of
11 concerns in the groundwater.
12 The use of CCRs in beneficial reuse will
13 be harmed by this designation. As we've heard,
14 there are a number of groups already calling for
15 post end-of-life use assessments of encapsulated
16 and unencapsulated materials. The potential for
17 litigation will harm the reuse of these materials.
18 ALCOA does agree with the Agency that
19 mine placement activities should continue to be
20 regulated under the Department of Interior.
21 ALCOA, however, believes that the inclusion of
22 historic mining that can be structurally enhanced

1 to ensure public safety should also continue to be
2 regulated under the Department of Interior.
3 As stated in the proposed rule, the
4 electric utilities are covered by this rule.
5 ALCOA requests that EPA clarify the distinction
6 between industrial and utility, perhaps looking at
7 definitions contained within the acid rain section
8 of the Clean Air Act.
9 ALCOA does agree that there is a need to
10 ensure that surface impoundments are safe in
11 catastrophic failure and we recommend that
12 inspections of surface impoundments by certified
13 professional engineers knowledgeable with dams and
14 ash ponds be conducted annually. Thank you.
15 MS. DEVLIN: Thank you. Number 20
16 please?
17 MR. STANISLAWCZYK: Thanks. My name is
18 Steve Stanislawczyk, I'm an environmental manager
19 for Harsco Minerals, a division of the Harsco
20 Corporation. I've been an environmental engineer
21 working in the manufacturing/processing industry
22 for about 15 years. Harsco Corporation,

1 headquartered in Pennsylvania, is an international
2 industrial services company employing 22,000
3 employees.
4 Harsco Minerals operates 15 boiler slag
5 processing facilities in the United States, 10 are
6 within 500 miles of Chicago.
7 Boiler slag is beneficially used into
8 abrasives and roofing granules and it has been
9 since the 1930's. Over one million tons of boiler
10 slag is processed each year by Harsco alone.
11 I am in support of regulating boiler
12 slag under RCRA Subtitle D. *Boiler slag is one
13 of the four Coal Combustion Byproducts (CCB)
14 listed in the proposed rule. *Boiler slag only
15 makes up 2 percent of the total volume and is
16 commonly overlooked, and the vast majority (over
17 90 percent) of boiler slag is beneficially used
18 and recycled. *Boiler slag is only processed with
19 special types of combustion boilers where the
20 molten material is quenched with water creating a
21 vitrified amorphous nonporous solid mass where any
22 metals are made into inert metal silicates.

1 Breaking the material into smaller sizes does not
2 alter the properties of the materials in any way,
3 and this is a large example of it. It is a solid
4 rock, a boiler slag.
5 Some other facts that demonstrate why
6 boiler slag should be regulated under D would be:
7 *Historically, boiler slag has always passed the
8 TCLP testing and has never exhibited any hazardous
9 waste characteristics. *Harsco also contracted an
10 accredited lab to subject boiler slag to the NEW
11 leaching test method referenced in the proposed
12 rule based on research conducted at Vanderbilt
13 University; the resultant boiler slag leachate
14 passed all leaching scenarios, digested at a high
15 pH of 12, low pH of 2, introduction of strong
16 chelating agents, and extended digestion times of
17 over eight days. It just fairly reinforces that
18 as a solid mass. *Harsco is not aware of any
19 referenced damage cases in the proposed rule that
20 was the result of mismanagement of boiler slag.
21 *Boiler slag is not stored in surface impoundments
22 and Harsco does not store any of our products (raw

1 or processed) in any surface impoundments.
2 *Regulating boiler slag destined for disposal as a
3 special waste under Subtitle C would unfairly
4 stigmatize beneficially used products such as
5 boiler slag.
6 And then, in summary, placing an
7 unneeded stigma on an inert product beneficially
8 used since the 1930's will add millions of EXTRA
9 tons of non-hazardous waste into our hazardous
10 waste landfills and significantly increase the
11 demand for virgin mined material to replace boiler
12 slag which has a far greater carbon footprint to
13 replace the recycled boiler slag. Thanks.
14 MS. DEVLIN: Thank you. Number 21
15 please?
16 MR. BOONE: Good morning. My name is
17 Nathan Boone. I'm vice president of Business
18 Development for Charah, Incorporated and I have 13
19 years of experience in the coal combustion
20 products management industry, the first three
21 years of which were as a laborer on an ash
22 landfill site where I came into daily contact with

1 these materials. My experience with these
2 materials on a daily basis over a long period of
3 time is not consistent with what you may have
4 heard from others this morning.
5 I am testifying today on behalf of
6 Charah. Charah is a 23-year-old company that
7 specializes in the management of coal combustion
8 residuals. Charah employs over 225 employees in
9 11 states along with multiple hundreds or so
10 contract employees. We are all dedicated to the
11 responsible management of CCRs. Our approach for
12 responsible management of CCRs has provided for
13 consistent company growth along with opportunities
14 for job creation within our organization
15 throughout our company's history. Our growth can
16 be attributed to a dedication to the responsible
17 management of CCRs which has culminated in our
18 pursuit of beneficial use opportunities that we
19 feel represent the best management practices for
20 CCR utilization. Our company is very active in
21 the recycling of coal combustion products that are
22 derived from coal ash and we are proud to be

1 associated with one of the most successful
2 recycling industries in the United States.
3 Charah supports EPA's effort to
4 implement regulations on the disposal of CCRs
5 under Subtitle D which would be consistent with
6 two previous decisions made by EPA concluding that
7 CCRs do not warrant classification as hazardous
8 materials. EPA's assumption that Subtitle C
9 regulation will result in an increase in
10 beneficial use is contrary to our experience as a
11 daily participant in the beneficial use
12 marketplace.
13 As a company, we see a significant
14 number of issues and exposures to unwarranted risk
15 that we feel will present themselves through the
16 handling of materials that are viewed as hazardous
17 in some applications yet exempt in others even
18 when they originated from a common process and
19 location. These concerns are relative not only to
20 the marketability and associated stigma but to the
21 general handling and operations required for
22 permitted disposal as well. Can you please advise

1 us how we will have to handle the concerns of two
2 truck drivers who are handling CCRs from a common
3 storage silo where the first drive is hauling raw
4 material to a concrete ready mix plant yet his
5 coworker sitting one truck-length away is equipped
6 to haul hazardous waste to an onsite disposal even
7 though the material they are handling comes from a
8 common source?
9 We do not feel that the approach for
10 regulating CCRs under Subtitle C while maintaining
11 their Bevill exemption status will be successful
12 in the beneficial use marketplace. The common
13 theme that is often heard from those in favor of
14 Subtitle C is that C is the only approach that
15 will protect our water resources. I believe that
16 we all support protection of our natural
17 resources. However, Subtitle D regulations will
18 provide the same engineering controls as Subtitle
19 C for accomplishing this goal. Thank you.
20 MS. DEVLIN: Thank you. Number 22
21 please?
22 MR. MEIERS: Good morning. My name is

1 Richard Meiers and I'm an environmental scientist
2 for Duke Energy.
3 Duke Energy supports the development of
4 federal regulations for CCR under RCRA Subtitle D
5 non-hazardous waste program. The question for
6 Duke is not whether to regulate but how to
7 regulate. Duke has evaluated the alternatives and
8 determined the Subtitle D Prime option with
9 appropriate adjustments is the best path forward.
10 Unlike Subtitle C approach, Subtitle D Prime will
11 enable EPA to establish an environmentally
12 protective program without crippling CCR
13 beneficial use and imposing unnecessary costs on
14 power plants, threatening jobs, and increasing
15 electricity costs.
16 Certain activist groups are alleging
17 dozens of new damage cases, including Duke Energy
18 facilities. In the final May 2000 Regulatory
19 Determination concluding the CCRs do not warrant
20 Subtitle C regulations, EPA was aware of 14 proven
21 damage cases and 36 potential damage cases. EPA
22 has since listed an additional 13 proven damage

1 cases and only 4 four more potential damage cases,
2 bringing the total to 27 proven damages and 40
3 potential damage cases, respectively.
4 A close examination of the facts reveals
5 many flaws in recent allegations made by activist
6 groups regarding additional damage cases. Many of
7 the assertions are based on extremely flimsy
8 evidence with unfounded conclusions. EPA cannot
9 rely on those assertions in any final rulemaking
10 without conducting its own factual, independent
11 review of the sites and allowing for public
12 comment on their findings.
13 An EPRI analysis, the Electric Power
14 Research Institute, of EPA damage case report in
15 the 2008 Notice of Data Availability (NODA) shows
16 only a handful of these cases actually involve
17 circumstances where there was an offsite
18 contamination of a primary drinking water standard
19 MCL occurred. Of the 54 proven or potential
20 damage cases cited by EPA in the NODA involving
21 groundwater contamination, only three of those
22 involved offsite contamination exceeding the

1 primary drinking water standards. The same is
2 likely true with the alleged new damage cases. In
3 fact, during their press conference, the activists
4 acknowledged that some of these damage cases do
5 not involve offsite contamination, but speculate
6 merely that damage may migrate offsite at some
7 point in the future.
8 If Duke determines an impact to
9 groundwater has occurred at one of its facilities,
10 the appropriate federal and state regulatory
11 agencies are notified. We work with these
12 regulators in determining the appropriate steps to
13 be taken to remediate the impact to groundwater.
14 Further --
15 MS. DEVLIN: I'm sorry, we have to stop
16 you.
17 MR. BOONE: Thank you.
18 MS. DEVLIN: Everything goes into the
19 record though. Thank you very much.
20 All right. Let me call numbers 23, 24,
21 25, 27. And I am told number 17 is now here, so
22 17 if you'd like to come through as well? 17 can

1 go first if that's fine. If 17 is here, 17 can
2 go. Thank you.
3 MS. WOOLUMS: Good morning. My name is
4 Cathy Woolums, I am the senior vice president of
5 Environmental Services for MidAmerican Energy
6 Holdings Company which is a global energy services
7 provider serving among 6.9 million customers
8 worldwide. I am here today on behalf of
9 MidAmerican Energy Company, one of MidAmerican's
10 business platforms, which serves electricity
11 customers in Iowa, Illinois and South Dakota,
12 supplied by wind, hydro, natural gas, nuclear and
13 coal-fueled resources.
14 On a personal note, my family and I live
15 within two miles of a coal-fired plant and I drink
16 the water from the river adjacent to an ash pond.
17 MidAmerican Energy supports the
18 development of federal regulations for coal
19 combustion residuals under RCRA Subtitle D
20 non-hazardous waste rules. The development of
21 rules under this approach will establish a federal
22 floor for all CCR facilities to meet. MidAmerican

1 strongly opposes the regulation of CRRs under RCRA
2 Subtitle C.
3 I urge EPA to consider the facts and
4 rely upon sound science when determining
5 appropriate regulatory scheme for coal combustion
6 residuals, not fear and rhetoric.
7 One of MidAmerican's facilities was
8 recently highlighted as a so-called new documented
9 damage site in a report entitled "In Harm's Way."
10 I think you all know the report. The report and
11 commentary provided during a press conference
12 suggested that MidAmerican's ash disposal
13 facilities are contaminating groundwater with
14 arsenic, and that we are "poisoning the workers at
15 the plant" with the drinking water supply.
16 Nothing could be farther from the truth.
17 Our sampling of surface water and drinking water
18 wells in the vicinity of the plant and the ash
19 disposal facilities demonstrate that levels of
20 arsenic were either not detectable or were well
21 below the federal drinking water standards.
22 Further, none of the plant drinking water sampling

results exceeded the drinking water standards for arsenic, and the levels in fact were not detectable.

MidAmerican has concerns about the thoroughness of the information being utilized to generate interest and concern in the regulatory docket and cautions EPA to reject a one-size-fits-all approach to what they believe would be an overly restrictive regulatory scheme without consideration of site-specific risks. Forcing companies to make a difficult choice of limiting their liability by disposing of materials offsite creates additional concerns. Existing permitted hazardous waste landfill capacity is extremely limited, particularly in the Midwest. There is only one known Subtitle C permitted facility in any state adjacent to Iowa. Based on information from the operator of that landfill, capacity at the facility, if it accepted coal combustion waste, would be consumed within six months to a year, an untenable situation as far as we're concerned. Thank you.

1 MS. DEVLIN: Thank you. Number 23
2 please.
3 MR. PIKE: Good morning. My name is
4 Paul Pike and I'm an environmental science
5 executive for the Ameren Corporation.
6 Ameren will be directly impacted by the
7 final Coal Combustion Residuals rule and very much
8 appreciates the opportunity to speak today on the
9 proposal. Ameren is an investor-owned utility
10 based in St. Louis, Missouri that operates 11
11 coal-fired power plants in Missouri and Illinois
12 and generates over 2,000,000 tons of coal
13 combustion residuals each year.
14 Ameren favors the development of federal
15 regulations for CCRs under the Subtitle D
16 non-hazardous waste program and believes that
17 actually the Subtitle D Prime is the best path
18 forward. Regulating CCRs under this option will
19 also allow for the sound science which the Agency
20 states is one of its principles in its ultimate
21 decision for coal ash disposal units. The other
22 proposed regulatory options assume that all

1 existing surface impoundments and landfills are
2 causing damage; yet in the preamble, the Agency
3 observes "that nearly all new CCR landfills and
4 surface impoundments are constructed with liners."
5 We agree that disposal units that are not fully
6 protective must either be upgraded or closed;
7 however, there are many CCR surface impoundments
8 which are perfectly safe. There is no reason why
9 these units should automatically be continued to
10 be closed and shouldn't be allowed to remain
11 operating provided they are still protecting the
12 environment and the populace at large.
13 Under the Subtitle D Prime option, EPA
14 would issue federal regulations specifically
15 designed for CCR disposal units. These
16 regulations would be directly enforceable by the
17 states and the public under RCRA's citizen suit
18 provision and violators would be subject to
19 significant civil penalties. EPA would also
20 retain its imminent and substantial endangerment
21 authority to take action against any CCR units
22 that posed a risk to human health or the

1 environment. However, there is currently no
2 mechanism for the states to step in and directly
3 administer these regulations.
4 We also believe that the Agency needs a
5 "State First" aspect so that where state
6 regulatory programs meet or exceed the proposed
7 standards, that these qualified state programs
8 would be allowed to administer them within the
9 existing requirements. Illinois and Missouri both
10 have regulatory programs that meet or exceed many
11 of the proposed requirements and should be allowed
12 to continue to administer their program without
13 the dual regulation of a federal program. Failure
14 in establishing a single source for requirements
15 would mean that the regulated community could have
16 conflicting requirements imposed on it leading to
17 potential noncompliance issues.
18 Finally, I want to state our strong
19 opposition to the Subtitle C option. Reviewing
20 the eight Bevill study factors, there is simply no
21 reason to pursue this approach when the Subtitle D
22 Prime option offers the same degree of protection

1 without the fear that results from regulating it
2 under Subtitle C. Regulating CCRs under Subtitle
3 D Prime is protective of human health and the
4 environment, and surface impoundments status would
5 be based on fact rather than a presumption. Thank
6 you very much.
7 MS. DEVLIN: Thank you. Number 24
8 please?
9 MR. NICHOLSON: Good morning. My name
10 is Michael Nicholson, Senior Vice President of
11 WeCare Technology Group out of Jordan, New York.
12 WeCare Organics is a privately held solid waste
13 management corporation. WeCare provides services
14 to the solid waste and wastewater industries in
15 the Northeast marketplace. WeCare specializes in
16 the beneficial use of wastewater treatment plant
17 biosolids, incorporating bioconversion
18 technologies including composting, alkaline
19 stabilization, drying and thermal gasification for
20 the conversion of biosolids into Class A
21 recognized as "exceptional quality" products under
22 40 CFR Part 503.

1 For over 20 years, I have been
2 associated with the commercialization of alkaline
3 pasteurization technology and the implementation
4 of over 60 biosolids management programs which
5 utilize coal ash in the
6 stabilization/pasteurization and beneficial use of
7 biosolids.
8 Our comments today are in support of
9 EPA's consideration to retain the Bevill Amendment
10 for the beneficial use of coal ash in agronomic
11 applications or reclamation applications where the
12 resulting combinations of coal ash and biosolids
13 are converted to products which meet or exceed the
14 40 CFR Part 503 requirements for land application
15 of residuals. WeCare would place emphasis on the
16 practice of following strict managerial practices
17 commensurate with 40 CFR Part 503 and appropriate
18 agronomic rate.
19 Based upon the discussion presented to
20 date by EPA, WeCare believes that EPA remains in
21 support of the agronomic and economic benefits
22 derived from the proper use of coal ash as an

1 agronomic commodity and believes that significant
2 documentation from land grant universities as well
3 as USDA confirms EPA's position.
4 WeCare is an end user of coal ash
5 material. WeCare typically is not a manager of
6 coal ash directly from utilities. We typically
7 purchase coal ash from coal ash managers or
8 brokers, so to that end WeCare's concerns are
9 focused upon the availability and ability to
10 beneficially utilize coal ash in agronomic use
11 applications.
12 WeCare is concerned about the final
13 outcome of the proposed rules as pertains to the
14 perception of "safety and liability" on the use of
15 coal ash materials in agriculture if they are
16 deemed or managed as hazardous materials (Subtitle
17 C) in applications. WeCare is not opposed to the
18 requirements similar to biosolids in management
19 practices required under 40 CFR Part 503.
20 WeCare offers this thought for
21 consideration. Public health, safety, and,
22 perhaps most importantly, liability, are obviously

1 the key concerns of EPA and the industry. WeCare,
2 under the current regulatory environment
3 (including 40 CFR Part 503), has been able to
4 secure products liability insurance for the
5 combined coal and biosolids products manufactured
6 and sold to the farming community. The ability to
7 secure such product liability has been a strong
8 indicator to our consumers that in fact WeCare has
9 taken the proactive step to insure the safety and
10 ultimate liability in utilizing these combined
11 materials.
12 In making its final determinations
13 regarding coal ash management, we ask that EPA
14 consider the impacts of its actions as it relates
15 to the insurance community and how the insurance
16 community would evaluate the practice in providing
17 products liability insurance. Thank you.
18 MS. DEVLIN: Thank you. Number 25
19 please?
20 MR. SAUDER: My name is Brian Sauder,
21 I'm the Central Illinois coordinator for Faith in
22 Place. I want to begin by thanking you for

1 holding this public hearing on the proposed EPA
2 rule for regulating coal ash. I've traveled three
3 hours by bus from Central Illinois this morning to
4 tell you that we in Central Illinois need to
5 regulate coal ash as a hazardous waste under
6 Subtitle C.
7 I work for Faith in Place, the Illinois
8 affiliate for Interfaith Power and Light as the
9 Central Illinois outreach coordinator. We work
10 with religious congregations in Illinois and
11 across the nation to help them better steward the
12 earth. As a part of my outreach, I have talked
13 with four pastors at churches in Oakwood,
14 Illinois, home of three coal ash impoundment sites
15 next to the Dynergy Coal Burning Power Plant, and
16 the Bunge North American, Incorporation coal ash
17 dump site located in the town of Oakwood. Oakwood
18 residents and the four coal ash sites are also
19 located next to the Middle Fork of the Vermillion
20 River, a designated National Wild and Scenic
21 River.
22 Illinois EPA testing around one of the

1 dump sites in Oakwood have found lead levels 3.5
2 to 4 times the Illinois standard for groundwater
3 as well as high level of boron, iron and
4 manganese, all tested above the state groundwater
5 standards.
6 The pastors, congregants and community
7 members in Oakwood all buy bottled water when they
8 can but rely on private wells for the majority of
9 their water use. Despite warnings from the
10 Illinois EPA, many homes continue to use their
11 water for no alternative source is given.
12 I recently talked to four pastors in
13 Oakwood, two of them together and two of them
14 independently. All of them, without me asking,
15 expressed that they had not seen such high levels
16 of cancer in their congregations since they moved
17 to Oakwood to take their pastoral positions. An
18 EPA draft risk assessment released in August 2007
19 shows that the cancer risk to exposure to coal ash
20 is 9 times higher than the cancer risk for smoking
21 a pack of cigarettes a day.
22 Coal ash in Oakwood, Illinois is

1 currently not handled in a way that regards the
2 health and safety of all the people of Oakwood.
3 As a person of faith and as one that works with
4 people of faith, we find in common a commandment
5 to love our neighbor, to treat one another as we
6 would desire to be treated. Often throughout our
7 faith histories, our traditions have failed in
8 loving our neighbors. By grace, we have worked to
9 denounce these unfortunate actions and we have
10 taken steps to repent and to reconcile.
11 The proposed Subtitle C by the EPA is a
12 move in the right direction for coal companies to
13 repent and to begin to reconcile for the cancer
14 and harmful health results of mishandled coal ash
15 on communities. Subtitle C is the option that
16 will begin this process in Oakwood and for the
17 communities around the country like Oakwood. As a
18 person of faith, I believe there is grace
19 available in categorizing coal ash as a hazardous
20 waste under Subtitle C as a necessary first step
21 for communities like Oakwood to recover from this
22 injustice. Thank you again for this hearing.

1 (Applause)

2 MS. DEVLIN: Thank you. Number 27

3 please?

4 MR. KYSEL: Good morning. My name is

5 Paul Kysel, I am a vice president of the PINES

6 Group which has served for the last five and a

7 half years as the TAP Grant recipient at a USEPA

8 Alternative Superfund Site known as Yard 520 in

9 the Town of Pines, Indiana.

10 I'm here today to voice strong support

11 for the classification of coal combustion waste as

12 hazardous under RCRA Subtitle C.

13 The historic ineffectiveness of RCRA

14 Subtitle D has been clearly illustrated in the

15 Town of Pines. The drinking water wells of the

16 entire Town of Pines, an EPA "proven damage case",

17 were poisoned by ash generated by the Michigan

18 City coal-fired power plant owned and operated by

19 Northern Indiana Public Service Company known as

20 NIPSCO. Levels of boron, molybdenum, arsenic as

21 well as a whole host of other heavy metals as well

22 as contaminants including radiation well above

1 health-based standards migrated from a nearby,
2 inadequately lined landfill owned and operated by
3 another entity, Brown, Incorporated, just south of
4 Indiana Highway 520 and US Highway 20 in the Town
5 of Pines, and from its use as "structural fill"
6 over much of the town as a so- called "beneficial
7 use" of this ash material.
8 Only after a federal lawsuit was filed
9 against NIPSCO, the only recourse available to
10 citizens under Subtitle D of RCRA, did the company
11 provide safe drinking water to some of the town
12 (there still are a significant number of residents
13 who are still dependent upon bottled drinking
14 water) through the EPA's involvement.
15 In April 2000, residents of the town
16 began noticing that their well-sourced drinking
17 water tasted unusual. So, they reported it to the
18 state, Indiana Department of Environmental
19 Management. Incredibly, IDEM knew for nearly 30
20 years that Yard 520 was leaking arsenic and other
21 contaminants to a nearby creek. In addition to
22 contaminating the groundwater of the Town of

1 Pines, the landfill also threatens protected
2 streams in the Indiana National Dunes Lakeshore
3 area. Contaminated groundwater from Yard 520
4 flows into Brown Ditch, a creek that flows along
5 the edge of the landfill and eventually into the
6 National Park before discharging into Lake
7 Michigan, two miles from the municipal water
8 source that brings the water back to the town of
9 the people where they lost their ability to drink
10 safely from their wells.
11 Downstream from the landfill, the creek
12 carries high levels of boron and molybdenum.
13 Indiana National Lakeshore is an especially
14 important feeding and resting area for migrating
15 land and water fowl. Fish, birds, mammals, all
16 harmed.
17 Our town's experience has clearly
18 demonstrated a need for strict regulation of coal
19 combustion waste as hazardous. We live in a time
20 when large corporations often view environmental
21 regulations as obstacles to greater profits and
22 regulatory fines as the cost of doing business.

1 Few can be trusted. We need federal action on
2 this now. Thank you.
3 (Applause)
4 MS. DEVLIN: Thank you. Okay. Can I
5 have numbers 26, 28, 29 and 31 please? Number 26,
6 please come to the mic. Thank you.
7 MS. FLEET: Good morning. My name is
8 Marge Fleet. I am a school board member of my
9 local grade school. And my concern is that
10 because we have a quarry next to our school and
11 that has changed the water pattern from the
12 Lincoln stone quarry, I'm concerned that it might
13 contaminate our school wells. I strongly urge
14 that the EPA adopt Subtitle C. Thank you.
15 (Applause)
16 MS. DEVLIN: Thank you. Number 28
17 please?
18 MS. MURRAY: Good morning. My name is
19 Cathi Murray. I live in the Town of Pines,
20 Indiana which is located about 60 miles southeast
21 of here. Currently, I serve as the Town Council
22 Board President. My family and I have lived there

1 for a little over 20 years. When we moved there,
2 we thought it was a great place to make as a home.
3 Little did we know our community was being
4 poisoned.
5 More than one and a half million tons of
6 coal combustion waste has been dumped in a
7 landfill that is partially unlined. More than
8 half of the waste dumped in the landfill lies on
9 top of an aquifer that residents in our town and
10 the surrounding community draw their drinking
11 water from. There is a stream that flows around
12 the dump, through the Town of Pines, into the
13 National Lakeshore, and eventually empties into
14 Lake Michigan, contaminating everything it
15 touches.
16 The Town of Pines has been devastated by
17 coal combustion waste contaminants. Our ground,
18 our water and air are so polluted with this waste
19 it remains to be seen if it will ever be
20 completely cleaned up.
21 Our lives have been contaminated with
22 the constant worry and the constant vigilance

1 required to protect ourselves and our community.
2 We have bullied our way through the entire
3 superfund process in an effort to avoid being
4 under-protected and under-represented. This has
5 taken time away from our families and jobs. It
6 has caused stress and anxiety. What effect
7 drinking, living and breathing in an air
8 contaminated with coal combustion waste will have
9 on people in our community is something we will
10 always wonder about, if the rare health issues my
11 children suffer are as a result of drinking
12 contaminated water or walking everyday I was
13 pregnant on a road constructed of coal combustion
14 waste. What ill effects will result from letting
15 my daughters pick up shiny black rocks on that
16 road?
17 A decade later, only two-thirds of our
18 contaminated community has safe water while a
19 third of our community is left to wonder if their
20 next drink of water or the next shower they take
21 will damage their health. Just two years after
22 the installation of municipal water, boron levels

1 skyrocketed. Molybdenum levels increased
2 dramatically. Yet our community is still not
3 protected. Nothing has been cleaned up.
4 Contaminants flowing and seeping from the landfill
5 have not stopped and coal combustion waste has not
6 yet been classified as a hazardous waste. So, the
7 fact that only two-thirds of our polluted
8 community has safe water is a very small bandage
9 on an open, enormous, seeping wound.
10 Take a look at our area in Northwest
11 Indiana: Grand Calumet River, contaminated; East
12 Chicago, two superfund sites; Gary, two superfund
13 sites; Westville, a superfund site; Michigan City,
14 a superfund site; Pines, Indiana, a superfund
15 site! One contaminated river, seven superfund
16 sites all in a range of 30 miles. IDEM has been
17 inept at protecting us.
18 Indiana is one of the top three
19 producers of coal combustion waste. I urge EPA to
20 adopt Subtitle C to regulate the management and
21 disposal of coal combustion waste. My family
22 needs protection, my community needs protection.

1 Northwest Indiana needs protection, the State of
2 Indiana needs the protection, and the good
3 citizens of our great nation need protection.
4 MS. DEVLIN: Excuse me. Excuse me,
5 ma'am, your time is up. Thank you. Thank you
6 very much.
7 (Applause)
8 MS. DEVLIN: Number 29 please?
9 MS. KOEBEL: My name is Beth Koebel. I
10 thank you for allowing us, the public, to comment
11 on this important subject. I would like to talk
12 to you about the health effects of one of the
13 toxic substances that is concentrated in coal ash.
14 This is arsenic.
15 There is approximately 4,601 tons of
16 arsenic in the coal ash that is produced here in
17 the United States annually. You may have heard of
18 arsenic that's in the seafood, but studies have
19 shown this type of arsenic which is organic
20 arsenic to have very low toxicity. It is the
21 inorganic arsenic that causes the problems.
22 Please allow me to sidetrack just a

1 little bit into human physiology. The main "power
2 currency" in the human body is ATP. The TP stands
3 for triple phosphate. And these triple phosphate
4 bonds are the very high energy sources that we
5 require, when they break they produce a high
6 energy amount, and that's what gives us our
7 energy, okay. Well, if the arsenic that replaces
8 those phosphate bonds with arsenic because they're
9 phosphate and thus you lose your high energy bonds
10 so you lose energy that way.
11 The classic gastrointestinal effect of
12 the arsenic poisoning is the increased probability
13 of small blood vessels. This leads to
14 hypotension, low blood pressure, and fluid loss.
15 There can also be an inflammation and necrosis of
16 the stomach wall which can lead to the perforation
17 of the gut wall or hemorrhagic gastroenteritis.
18 Arsenic can cause cardiogenic shock,
19 arrhythmias, hypertension and peripheral vascular
20 disease. It also causes gangrene, secondary to
21 the atherosclerotic processes it produces. There
22 are vasal spastic changes and thickening of the

1 small and medium size arteries.

2 Arsenic also has several neurological

3 effects. It causes peripheral neuropathy, typical

4 of a symmetrical stocking and glove distribution,

5 and other neurological problems that may arise, or

6 alterations in the vibrational and positional

7 sense along with encephalopathy.

8 The EPA has listed arsenic as a known

9 carcinogen, and arsenic is known to cause bladder,

10 kidney, lung, liver, prostate and skin cancers.

11 There was somebody up here earlier that said that

12 he has worked with this and he is fine, he's not

13 sick. Well, the latency period for these cancers

14 can be up to 30 to 40 years after the

15 contamination.

16 I thank you for letting us come up here

17 and talk to you.

18 (Applause)

19 MS. DEVLIN: Thank you. Number 31

20 please.

21 MR. MELLON: Good morning. My name is

22 Paul Mellon, President of Novetas Solutions.

1 We're a small company based in Philadelphia. We
2 manufacture recycled glass for blasting abrasives.
3 I'm here today to talk to the EPA
4 actually for the third time on this issue. What I
5 want to focus on today is the law of unintended
6 consequences when it comes to the beneficial use
7 program in using coal slag abrasives.
8 First of all, let me just start by
9 handing a couple of samples over. This is coal
10 slag abrasives. This is what it looks like when
11 you buy it. I think earlier there was a gentleman
12 from Harsco that brought up a boulder size rock
13 and was hitting it on the podium here. That's not
14 coal slag abrasives. This is what it looks like
15 in its virgin state. And when you use the product
16 as intended, you're blasting it against metal
17 substrates at about 150 psi creating tons of
18 airborne dust. In 1997, the EPA declared that
19 this dust in black beauty coal slag abrasives
20 manufactured by Harsco is a hazardous airborne
21 pollutant.
22 One of the things that I want to talk

about in regards to coal slag abrasives is that when this product is used after it's blasted, it falls on the ground, falls on wherever you're blasting but then it also winds up in the landfill. The landfill test, to allow it to get there, is called the TCLP, we've heard it talked about today a few times, the Toxicity Characteristic Leaching Procedure. It's a test that mimics what happens when you put products like that into a landfill and whether they leach into the groundwater. However, as I said, most times a lot of this product never makes it to a landfill. It falls on the ground, it falls in the air, falls on people's clothes.

The EPA has recognized this as an issue. Page 35150 of your federal proposed rule, "EPA also notes in this regard that recent research indicates that traditional leach procedures (e.g., TCLP and SPLP) may underestimate the actual leach rates of toxic constituents from CCRs under different field conditions." That's what I want to talk about today, a different field condition.

1 Last night when I got into Chicago, I stayed about
2 25 miles south of here in Elmwood, Illinois. I
3 had a chance to do a little shopping. I went to
4 the local Menards and had an opportunity to buy a
5 50-pound bag of coal slag abrasives for $8 a bag.
6 So, what we have is a situation here,
7 thanks to the Beneficial Use Program of 2000 which
8 thankfully looks like that's going to change
9 because I notice that abrasives are not in your
10 current rule, but we have a situation where
11 Menards, one of the largest retail chains in the
12 United States with over 1,000 stores are selling
13 coal slag abrasives to the general public, the
14 people of Chicago who are buying this everyday. I
15 would submit to you that the TCLP is not an
16 appropriate test when children are playing in
17 their backyard after Dad's gone blasting maybe the
18 fence or his, you know, antique car. This is the
19 effect that, you know, it's got to be stopped.
20 So, again, I would applaud the EPA for
21 removing coal slag abrasives from the proposed
22 rule. I would ask that you also seriously look at

1 lowering the TCLP limits. Thank you very much for
2 your time.
3 (Applause)
4 MS. DEVLIN: Thank you. We are running
5 a bit ahead of schedule and so I'm going to try to
6 accommodate a couple of speakers who have asked to
7 speak early. So, is number 104, number 235 and
8 numbers 99 and 100 in the room? If you would,
9 please come to the podium? Okay, number 104, if
10 you would come up?
11 MR. PURDUE: Good morning. My name is
12 Jeff Purdue. I'm from Madison County, Indiana and
13 I am a farmer. I have been farming our
14 multi-generational farm for 35 years. I don't
15 know if anybody on the panel is familiar with
16 farming, but farming is a way of life. It's not a
17 business, it's not a job, it's a way of life.
18 That's how come I'm so passionate for our family
19 farm.
20 And I'm here today to talk to you about
21 the product gypsum. Gypsum has become an
22 extremely important product for our farm. In the

1 last 35 years, our farm has progressed
2 tremendously on water quality, water runoff, water
3 infiltration. We're using a lot less of
4 commercial fertilizers because of the use of
5 gypsum. It has allowed our soil structure to
6 increase back to the type of soil that you can
7 grab in your hands and smell in your nose and
8 really know that you've got yourself a farm. And
9 that's what's really important on the family farm.
10 We have increased the ability of our
11 farm to hold back any type of chemical runoffs.
12 We have diked all our fertilize tanks. We have
13 diked all our fuel tanks. So, the farm of today
14 is so much different than the farm of 35 years
15 ago.
16 So, I'm here to ask you to take gypsum
17 into consideration as being an extremely important
18 part of our farming institution. We are using
19 that product to increase our soil structure and
20 also to try to improve in so many ways a lot of
21 the benefits that the EPA is trying to improve;
22 less commercial fertilizer, less runoff to go down

1 the Mississippi. We're all very familiar with
2 that product or that problem.
3 Our farm lays right in the watershed
4 that feeds Indianapolis water company, water for
5 the Indianapolis area. We are checked quite
6 regularly on water coming out of our open ditches
7 and out of our tiles. And we have gone to a total
8 no-till program. We have much, much less wind
9 erosion, much less water runoff. We've got grass
10 waterways along all our open ditches. We plant
11 trees along the open ditches. So, we are trying
12 to improve things in a lot of different ways.
13 The gypsum is an extremely important
14 product for us. Thank you.
15 (Applause)
16 MS. DEVLIN: Thank you. Number 235
17 please?
18 MR. SCHAFER: Good morning. My name is
19 Guy Schafer and I thank you for the opportunity to
20 be here.
21 I'm in a unique situation because I
22 manage an organic recycling facility for a farm.

At this facility, we have been producing compost for over 15 years. I have been involved with this from the beginning, and for the last five years have led our expansion into supplying agricultural gypsum.

In this program, we recycle drywall from new construction waste. This program allows builders the opportunity to gain more credits toward achieving a higher level with LEED projects, which are very important in growing.

I understand that FGD gypsum now supplies a third of the material for the production of new drywall. Because my operation cannot produce enough gypsum through the recycling program for the demand, I must rely on FGD gypsum that comes straight from the source. And I have personally handled over 15,000 tons since the beginning five years ago. This is not a hazardous material.

Not only does FGD gypsum benefit our renewable resources but it also improves the production of compost by stabilizing and retaining

1 the essential nutrients that are needed for a
2 sustainable future.
3 It comes down to this, we can divert
4 millions of tons annually of what would be waste
5 to be beneficially reused for a better tomorrow.
6 Again, I appreciate your time and thank
7 you.
8 (Applause)
9 MS. DEVLIN: Thank you. Number 100?
10 MR. MALONEY: Hi, my name is Jack
11 Maloney. I'm from Brownsburg, Indiana just west
12 of Indianapolis. My farm name is Little Ireland
13 Farm, Incorporated. This particular area was
14 settled by the Irish after all other land was
15 settled because it was wet. We have been in this
16 location since 1861 and will be celebrating our
17 150th anniversary next year. I am the fourth
18 generation steward of our family farm.
19 Our watershed feeds into Eagle Creek
20 reservoir that Indianapolis uses for their
21 drinking water. We have a continuing study that
22 is being done by the Center for Earth and

1 Environmental Science out of Indiana University
2 Purdue University at Indianapolis.
3 Preliminary studies of this subsurface
4 water system on our farm show reduced nitrates,
5 phosphates and potassium. Basically, the water
6 downstream is cleaner than upstream. So, that
7 tells me all the water running off my place is a
8 whole lot cleaner coming down from the topside.
9 I attribute this to the use of FGD
10 gypsum over a period of nine years now. We're
11 having better water infiltration, less ponding of
12 water, improved rooting of growing crops because
13 of better soil structure. Oxygen is found deeper
14 in the soil profile, thus better rooting and
15 energized soil biologies attained.
16 FGD gypsum is a great soil amendment
17 with far more attributes to explain about it in
18 these short minutes.
19 I would very much appreciate the
20 continued use of FGD gypsum on my farm. I would
21 like to avoid the labeling of flue gas
22 desulfurization gypsum as a hazardous waste and

1 not be regulated under Subtitle C of the Resource
2 Conservation Recovery Act. Thank you for your
3 time.
4 (Applause)
5 MS. DEVLIN: Thank you. Number 99
6 please?
7 MR. CHAMBERLAIN: Good afternoon. Good
8 morning actually I guess. Thank you for the
9 opportunity to hear my testimony.
10 My name is Ron Chamberlain and I would
11 like to address FGD gypsum. I've been working
12 with crops and soils now for 39 years and I have
13 been working for the past nine years with FGD
14 gypsum from power plants across the Midwest that
15 produce the material to exacting specifications
16 for use in agriculture.
17 I am a Certified Crop Advisor and
18 currently hold the position of Director of
19 Agronomy for Gypsoil, a small Midwestern business
20 with the goal of providing sustainable solutions
21 to American agriculture.
22 Gypsoil provides FGD gypsum to the

1 agriculture industry in order to improve the
2 quality of American farmland. FGD gypsum improves
3 soil structure and balance by providing valuable
4 calcium and sulfur which are both becoming
5 deficient in many of our soils.
6 Much of our agricultural land is
7 compacted, resulting in: *erosion of our soils
8 and nutrients, and *lower crop production
9 efficiency.
10 To solve the compaction problem, I have
11 been applying gypsum to thousands of acres of
12 Midwest farmland for the past nine years, and
13 during that time I have observed an array of
14 benefits for our farmers, their businesses and the
15 environment. For example: 1. Our compacted
16 soils have become garden mellow, rich and balanced
17 as the natural biology flourishes and provides
18 everything their crops need to grow and produce
19 high quality, safe food. 2. As a result, we have
20 reduced applications of chemical or petroleum
21 based fertilizers by up to 90 percent. 3. Water
22 from heavy rainfall no longer ponds or erods off

1 the fields; rather it is absorbed into the
2 sponge-like subsoil and then gently released into
3 our waterways without inflicting water damage to
4 our neighbors downstream. 4. Our watersheds are
5 cleaner as evidenced by a recent study conducted
6 by the Center for Earth and Environmental Science,
7 a joint project of Purdue and Indiana Universities
8 and others, where long-term use of FGD gypsum has
9 influenced a significant reduction in phosphorus
10 and nitrate loading into the Eagle Creek watershed
11 which supplies the water for the City of
12 Indianapolis. Adoption of FGD gypsum as a best
13 management practice in sensitive watersheds across
14 the country could clean up our waterways suffering
15 from runoff pollution, provide us with clean water
16 and make this a better world.
17 State level regulations require me to
18 analyze FGD gypsums regularly, and years of
19 results prove to me that it contains no ash or
20 other coal byproducts and is one of the cleanest
21 and safest of all materials applied to our soils.
22 Responsibly applied to agricultural

1 soils, FGD gypsum contributes significantly to: *
2 Improved, sustainable agriculture, and an improved
3 environment.
4 The hazardous designation of gypsum
5 would stop this beneficial use in American
6 agriculture, and thereby take away the opportunity
7 to help the environment in so many ways.
8 I ask you, please, avoid labeling FGD
9 gypsum as hazardous waste and avoid regulating it
10 under Subtitle C of RCRA. Thank you for your time
11 and consideration.
12 (Applause)
13 MS. DEVLIN: Thank you. Okay, numbers
14 32, 33, 34, and 36 please. Number 32, please
15 come. Please come.
16 MS. MOLINARO: Hi, I'm Helen Molinaro
17 and I've been with the PINES Group through its
18 inception. I am here because I care about what
19 happens in our town. I would like to see other
20 families who don't have city water to get it.
21 Yard 520 still has all the coal ash. And when we
22 were told that an EPA meeting by a rep, he said it

was capped. I ask did he do the capping or see it capped, his reply was no, I took their word for it, which I guess he was referring to IDEM. That was not good enough for me because I think if you have to see something, you should follow through with it.

Another thing I would say is the lacks in following through regarding the payment of our geologist who still is owed for his services. The rep from EPA admitted he did not follow through or explain to us, the PINES Group, or guide us on what the next steps would be to take. I am a bit perturbed because we look to him for guidance. By the way, we are a superfund site and the EPA rep never had experience at handling a superfund site, which explains why he did not follow through. Thank you.

(Applause)

MS. DEVLIN: Thank you. Number 33 please?

MR. DAVIS: Good morning. If you would allow me, I'm here on concerns and I come to speak

as a voice for the people from Joliet, Illinois and the community in which they live in. And if you allow me, those who have come to show their concerns and their support on behalf of that community, I'd like for them to stand now so you can see those who have come to support their concerns on what's happening in our community.

(Applause)

MS. DEVLIN: Thank you.

MR. DAVIS: These people have been living in that community for quite some years, where the dumping of Midwest Generation has been going on. Here recently we just find out the contamination that has been going on for the years in close proximity in which they live which is a mile or less that we live, our children play, and that we all grow up in this community. We also have a church in which we worship in the same community that is being contaminated.

Here recently we just find out that there's high levels of contaminants contaminating the ground, contaminating the water in which we

1 drink in. There is a high level of sicknesses
2 including cancer diseases of all types that has
3 been going on that nobody has been aware of. But
4 we have had conversations around that as to why so
5 many sicknesses has been coming up. Now we know
6 why. We find out that Midwest Generation has been
7 illegally dumping their waste, this coal ash that
8 has been seeping into the ground and into the
9 water that we drink.
10 And so, I'm here on behalf and in
11 support of Subtitle C regulation, that you would
12 do your job, that we depend on you to do to watch
13 for us, and then we find out you're not watching
14 for us and regulating Midwest Generation. So, we
15 are here today to ask you that you would get up on
16 top of this job, this must be taken care of in
17 short order. And we are here to voice our
18 concerns that this can't be allowed to go on.
19 Somebody has been looking the other way for far
20 too long and we ask that you would adopt Subtitle
21 C to regulate them to dump in a more safer way
22 that will protect our community from all the

hazards that it presents to us. Thank you.

(Applause)

MS. DEVLIN: Thank you. Sir? Excuse me, number 33, could you state your name for the court reporter?

MR. DAVIS: Oh, I'm sorry.

MS. DEVLIN: That's okay.

MR. DAVIS: My name is Robert Davis.

MS. DEVLIN: Okay, thank you so much.

MR. DAVIS: You're welcome.

MS. DEVLIN: Number 34 please.

MR. PRAST: Good afternoon. My name is James Prast. I live in the Town of Pines just east of here. I was also, I am the president of the group that's referred to as the PINES Group.

Years ago, I was on the town board. I was the president of the town board when Brown and NIPSCO came to our town and said we would like to allow you people to take this material, this fly ash and use it as a fill for your area. We can use it for our roads. We can fill our property with it, bring up the low areas, fill in any

1 swamps because back then you could do that type of
2 stuff. Any time you wanted to bring it up, we'll
3 give it to you at no cost.
4 We asked is this safe because as the
5 president of the town board that was my concern.
6 We had the health department come to our town
7 board meeting. We had people from NIPSCO and
8 other places who came in and said this is a very
9 safe ingredient, you can use it.
10 We used it. We okayed it. They started
11 bringing it in. And from day one, all we had was
12 complaints from our residents. It was coming in
13 to their houses. Brown said we'll take care of
14 that. We won't have it in the air. Our roads
15 were being filled with it. Our kids were playing
16 with it and they were bringing it in to the
17 houses.
18 Luckily, we were smart enough to know it
19 needs to stop. So, we stopped it. We still have
20 Yard 520 which is still being used at the time.
21 Over that period of time, I got married, I've had
22 kids, and eight years ago we found out that our

1 water level was contaminated, severely. So, we
2 had water brought in to a part of the town. We
3 said, well, what about the rest of the town? And
4 they said there is no possible way the rest of the
5 town could be contaminated.
6 Well, luckily, the PINES Group got
7 together and we tested individual's wells. And at
8 that time, we found out that my well and people
9 around me's wells were contaminated because of the
10 landfill, also because of the fly ash that was
11 used for road basis and to fill people's
12 backyards. Ever since then, my kids have stopped
13 drinking city water or well water. The only thing
14 they drink is bottled water and that is expensive.
15 And I would like everyone to support
16 Subtitle C so that no one else has to go through
17 what the Town of Pines and the PINES Group and the
18 people in our neighborhood have had to go through.
19 Thank you.
20 (Applause)
21 MS. DEVLIN: Thank you. Number 35
22 please?

1 MR. GEHRMANN: I would like to thank the
2 EPA for holding these hearings and giving me the
3 opportunity to speak today. My name is Bill
4 Gehrmann and I am the President of Headwaters
5 Resources.
6 In the EPA's May 4th, 2010 press
7 release, the Administrator calls for "common sense
8 national protections to ensure the safe disposal
9 of coal ash." In that same press release, the
10 Assistant Administrator states that
11 "environmentally sound beneficial uses of ash
12 conserve resources, reduce greenhouse gas
13 emissions, lessen the need for waste disposal
14 units, and provide significant domestic economic
15 benefits." Our industry agrees with both the
16 Administrator and Assistant Administrator.
17 With that being said, let's look at a
18 "common sense" approach to accomplishing these
19 goals.
20 Let's start with existing surface
21 impoundments. The spill at the federally owned
22 TVA's Kingston Plant was an example of an

1 engineering failure of a surface impoundment.
2 Both proposed regulations require a retrofit with
3 a liner within five years of the effective date.
4 New impoundments placed in service after the
5 effective date require a liner under both
6 proposals.
7 Now let's look at dry landfills.
8 Landfills built before the effective date are not
9 required to have a liner under either proposal.
10 Both proposals do require groundwater monitoring.
11 Landfills built after the effective date have
12 essentially the same engineering standards under
13 both proposals.
14 The effective date. Here is where we
15 start to differentiate between the two proposals.
16 Under Subtitle D, the effective date is six months
17 after the final rule is promulgated for most
18 provisions. However, for Subtitle C, the EPA
19 states that timing will vary. Each state must
20 adopt the rule individually which can take one to
21 two years or even more. Common sense tells us
22 that Subtitle D is the quicker path to

1 implementation of essentially the same engineering
2 standards.
3 Recycling. We need to continue to take
4 advantage of those benefits that the Assistant
5 Administrator mentioned in the May press release.
6 Effective recycling reduces the volumes of coal
7 ash placed in landfills. The stigma from a
8 Subtitle C designation will negatively impact the
9 volume of coal combustion products currently being
10 beneficially used. Common sense tells us that a
11 hazardous waste designation increases the
12 liability risks to everyone involved in the
13 beneficial use supply chain. All it takes is the
14 fear of these potential liabilities at any link in
15 this chain to jeopardize the benefits derived from
16 recycling. Why would the EPA take such a risk?
17 The EPA and speakers at these hearings
18 have stated that a Subtitle C ruling would
19 actually increase recycling. Common sense would
20 tell you that if that was the case, as the largest
21 marketer of coal combustion products in the
22 country, we would be in favor of Subtitle C. We

are not.

Use common sense. If federal jurisdiction is what you are after, find another solution. Don't jeopardize beneficial use and its engineering and environmental benefits by choosing a Subtitle C designation. Thank you.

(Applause)

MS. DEVLIN: Thank you. Number 36 please.

MR. WEISHAAR: My name is Weishaar, I'm Vice President of Stark Excavating in Bloomington, Illinois. Stark Excavating is a heavy civil contractor that is both a concrete producer and a road and bridge builder. Portland cement concrete is an integral part of our business. It is used in construction of PCC roadways, bridges, curb and gutters, foundations and driveways. We produce approximately 70,000 cubic yards of concrete annually in McLean County. We purchase another 70,000 cubic yards for operations in surrounding counties.

Coal ash plays an important part in the

1 concrete industry. Its benefits are many. Coal
2 ash used as a cement replacement is approximately
3 $49 per ton cheaper than the type 2 Portland
4 cement alternative. A standard concrete mix using
5 20 percent coal ash replacement results in a cost
6 savings of $1.35 a cubic yard. In our business
7 model, that is a cost savings to consumers of
8 $189,000. Keep in mind we are in a small market
9 and the impact nationwide is astronomical.
10 Other uses of coal ash are the
11 mitigation of ASR, alkali-silica reactivity. The
12 addition of coal ash in concrete mixes allows the
13 use of a wider array of coarse and fine aggregate
14 combinations. It allows the utilization of
15 locally produced materials. The end result here
16 is a substantial cost savings to the consumer.
17 The mitigation of ASR is critical to the long-term
18 durability of concrete pavements. There are many
19 other benefits to the use of coal ash in concrete
20 production.
21 In summary, you can see the critical
22 role that coal ash plays in concrete production.

1 Our firm is concerned about how our business
2 impacts the environment. It is a great concern of
3 ours. I have read articles, both for and against
4 the impact of coal ash in our environment. I
5 personally think that more research needs to be
6 completed including the impact to industries
7 dependent on this byproduct prior to any changes
8 in the disposal regulations. I look at the
9 construction industry as a partial solution to the
10 disposal of this renewable byproduct.
11 For these reasons, we ask the EPA to
12 reconsider any changes in its current regulatory
13 practice or develop an exemption for its use in
14 environmentally friendly ways. Thank you for the
15 opportunity to present my views on this matter.
16 MS. DEVLIN: Thank you. Okay, numbers
17 37, 38, 39 and 40 please? Go ahead.
18 MR. LANCASTER: Good afternoon. My name
19 is Richard Lancaster. I am Vice President,
20 Generation, with Great River Energy (GRE), a
21 not-for profit, member-owned rural electric
22 cooperative based in Minnesota which operates two

1 coal fired power plants.

2 GRE agrees with many other entities that

3 any development of federal regulations for coal

4 combustion residuals should be under RCRA Subtitle

5 D non-hazardous waste rules. GRE supports the EPA

6 Subtitle D Prime proposal. We strongly oppose

7 regulation of CCRs under the RCRA hazardous waste

8 program even if CCRs could be labeled "special

9 wastes."

10 GRE believes the beneficial use market

11 would be virtually eliminated even under the

12 "special waste" characterization. For us, that

13 would mean the loss of $40 million in revenue over

14 the next ten years which offsets our generation

15 cost to our members, and over $40 million in

16 stranded infrastructure cost for already installed

17 composite liners, beneficial use facilities, and

18 other equipment. This would leave us with no

19 option other than to drastically increase

20 electricity rates to our members.

21 Such rate increases will

22 disproportionately affect areas of the nation more

dependent on coal for power generation such as the Midwest. They will also be more pronounced for those consumers in rural areas typically supplied electricity by rural cooperatives which rely more on coal generation than do other utilities. Increases in electrical rates will mean higher cost for agriculture, manufacturing and small businesses in rural areas, more so than in more urban settings. This will place these rural businesses at an even greater competitive disadvantage.

In addition to the economic impacts, GRE feels those calling for regulation under a Subtitle C designation underestimate the environmental impacts of regulating a non-hazardous, large volume waste as thought it were hazardous. If CCRs were regulated as hazardous, greater energy use would be required by power plants to operate CCR control and disposal systems, and even more energy would be consumed in the extraction and processing of native materials CCRs currently replace. Not only would we lose

1 the greenhouse gas benefits of utilizing CCRs, but
2 we would actually increase CO2 emissions to supply
3 the greater amount of energy demanded by hazardous
4 waste control and disposal systems.
5 GRE operates in states with well
6 developed waste regulations and standards that
7 parallel, or are more stringent than, Subtitle D.
8 These states have beneficial use regulations or
9 standards that would not allow beneficial use if
10 CCRs were determined to be hazardous. We also
11 feel that those states with well developed
12 programs should be allowed to continue to
13 implement their Subtitle D compliant programs.
14 In conclusion, CCRs should be regulated
15 under Subtitle D. Thank you very much for the
16 opportunity to testify.
17 MS. DEVLIN: Thank you. Number 38
18 please?
19 MR. SHEPHERD: Greetings, my name is
20 Mark Shepherd. I'm the Environmental Health &
21 Safety Director for Prairie State Generating
22 Company. Prairie State Generating Company is

1 constructing two 1,600 megawatt, coal- fired,
2 supercritical steam electric generating facility
3 in Washington County, Illinois, approximately 60
4 miles southeast of St. Louis, Missouri. It is a
5 technologically advanced electric generation
6 facility, 95 percent owned by eight non-profit
7 utilities that are committed to providing clean,
8 reliable, and affordable baseload power to 2.5
9 million families in hundreds of local communities
10 in the Midwest and Mid-Atlantic regions covering
11 nine states (Missouri, Illinois, Indiana,
12 Kentucky, Ohio, Michigan, West Virginia,
13 Pennsylvania and Virginia) The construction of
14 the Prairie State Energy Campus has been an
15 important economic catalyst to the region,
16 creating thousands of high- paying constructions
17 jobs, and during operations it will create
18 hundreds of high-paying jobs for several decades.
19 Because of the advanced design
20 efficiency of the power plant, Prairie State
21 Energy Campus and similarly operated plants will
22 significantly improve our industry's environmental

1 profile by displacing existing, less efficient
2 power plants and reducing carbon dioxide by
3 millions of tons each year. A state of the art
4 air pollution control technology installed at the
5 plant includes wet and dry scrubbers that will
6 clean the plant's emissions to very low level,
7 while producing low-cost, reliable electricity for
8 our customers. The result of all of these
9 emission control processes is the production of
10 coal combustion residuals, consisting mainly of
11 fly ash and gypsum, along with much smaller
12 proportions of bottom ash. Managing these
13 residual products in an environmentally
14 responsible manner is part of Prairie State
15 Generating Company's commitment and mission.
16 Let me say at the outset that Prairie
17 State supports the development of federal
18 regulations for coal combustion residuals under
19 RCRA's Subtitle D non-hazardous waste program.
20 Proposed regulations to manage coal combustion
21 residuals as hazardous waste do not properly
22 address the risks posed by these CCRs, by

1 disposing of them, or the impact that proposed
2 regulations will have on coal combustion residuals
3 beneficial reuse. Environmental protections
4 achievable under Subtitle C are no stronger than
5 those under Subtitle D option and come at a much
6 higher cost to the consumer and taxpayer. Let me
7 go further to point out that the State of Illinois
8 design standards for construction and operation of
9 landfills for CCRs are more protective than either
10 option posed under the proposed Subtitle D
11 regulations and the Subtitle C regulations. The
12 proposed regulations thus offer no increased
13 benefit to justify the large impact of the cost.
14 We believe the state has an important
15 role to play in regulations of coal combustion
16 residuals and should take the lead on regulating
17 these materials. The belief that federal
18 enforceability under Subtitle D regulations is
19 inadequate is erroneous. As published, the
20 proposed rules also have numerous defects and
21 problems, even under the Subtitle D option.
22 We urge the EPA to withdraw the current

1 proposal and to work to propose regulations under
2 Subtitle D that recognize that CCRs can be managed
3 responsibly and safely.
4 MS. DEVLIN: Thank you. Number 39
5 please?
6 MR. LIU: Good afternoon. Thank you for
7 letting me come and speak. My name is Jerry Liu
8 and I am the President and CEO of Ecologic Tech.
9 My company is a small business that is trying to
10 take fly ash and reuse it as building materials,
11 for example, bricks and roofing tiles. We are
12 based in Missouri with a sales office here in
13 Chicago.
14 Ecologic Tech strongly believes that if
15 the EPA reclassifies fly ash under Subtitle C, it
16 will place a significant stigma on the substance
17 that will retard any growth in industries that
18 seek to utilize this waste material. I've been
19 told that the EPA models assume that there would
20 be little if any negative economic impact from any
21 proposed action. I can only speak for myself, but
22 in our case this is completely untrue.

1 As an environmental technology firm that
2 is dedicated to finding new ways to recycle fly
3 ash, Ecologic Tech is exactly the kind of clean
4 tech company you would think the EPA would want to
5 succeed. However, our company has already felt a
6 direct negative impact simply with EPA's decision
7 to consider this matter. One potential client in
8 Georgia backed out of a licensing discussion last
9 month due to his concern that he would have to
10 spend an unknown amount of additional capital to
11 educate the public on why his fly ash bricks would
12 be safe. We have another interested party in
13 North Carolina who cannot get local distributors
14 to support him because they fear that these bricks
15 will be unsellable.
16 These kinds of contracts are the
17 lifeblood of my company. A standard licensing
18 agreement has the potential of yielding millions
19 of dollars in revenue for our company. As a
20 result of these lost opportunities, I've had to
21 reduce staff and now must seek outside funding to
22 remain viable. I cannot believe that these are

1 kinds of results the EPA would want for businesses
2 it purports to nurture with the Bevill exemption.
3 It is true that under both options the
4 EPA touts and encourages beneficial reuse.
5 However, the negative halo of any Subtitle C
6 designation would make life very difficult for
7 those trying to find new ways to use fly ash. In
8 our case, well-financed clay brick competitors
9 could easily cripple a fly ash brick manufacturer
10 by using Subtitle C classification as a club to
11 scare off potential customers. All of our test
12 data showing the safety of fly ash bricks would be
13 useless in countering images of nuclear scenarios
14 where you have something like the Tennessee Valley
15 spill.
16 Look, I'm not here to downplay the
17 importance of diverting fly ash from landfills and
18 impoundment ponds. No one wants another incident
19 like what we had in Tennessee. But we must not
20 forget that fly ash is generally safe to handle
21 and store. Indeed, Ecologic Tech has been
22 researching and working with fly ash since our

1 inception in 2001 without incident. The move to
2 completely redefine fly ash waste is especially
3 disheartening because we firmly believe that
4 remediation is an issue that can be handled by
5 modifying existing rules and imposing stiffer
6 penalties for accidents.
7 So, if there is anything about what I
8 have said that I would want you to remember, it's
9 this, "Please don't throw the baby out with the
10 bathwater." Over 40 millions of tons of fly ash
11 go unused each year. Fly ash bricks and roofing
12 tiles could be a significant and safe avenue of
13 disposing this waste. But it won't happen if we
14 have to start with a source that the public views
15 on the same level as radioactive waste and
16 biohazardous material.
17 We strongly urge the continued
18 classification of fly ash under Subtitle D. Thank
19 you very much.
20 MS. DEVLIN: Thank you. Number 40
21 please?
22 MR. TURKEWITZ: Hello, my name is Aaron

1 Turkewitz and I'm speaking as a concerned citizen
2 and as a director of a research laboratory at the
3 University of Chicago. I'd like to begin by
4 saying I applaud the fact manifested in these
5 hearings that the EPA has come to recognize the
6 serious health and environmental risks posed by
7 coal ash.
8 The scientific findings including
9 studies from the preeminent body of US Science and
10 National Academy make it abundantly clear that the
11 residues concentrated in coal ash are capable of
12 degrading both human and environmental health. My
13 own laboratory has recently become involved in
14 developing new sensors to detect environmental
15 pollutants, particularly heavy metals like those
16 which leach from coal ash. One lesson I have
17 quickly absorbed is that it is vastly more
18 difficult and expensive to deal with pollutants
19 that are dispersed in the environment than it is
20 to take steps to prevent their dispersal in the
21 first place. Here I am not even talking about the
22 difficulty and cost of remediating environmental

1 damage but just the cost of detecting it to begin
2 with.
3 Given this reality, it is clear to me
4 that the EPA should and must adopt the strongest
5 possible regulations to contain the toxins in coal
6 ash. To begin with, coal ash should be regulated
7 from cradle to grave. Many of the conditions in
8 Subtitle D are inappropriate for dealing with
9 hazardous waste. Both logic and history argue
10 that it is unrealistic to expect an industry to
11 police itself.
12 Similarly, private citizen driven
13 lawsuits, to expect private citizen driven
14 lawsuits to be an effective counterbalance to
15 industry power is unrealistic. While David and
16 Goliath may be an appealing story, it's not a good
17 model for ensuring the changes that are required
18 to safeguard human and environmental health. For
19 this reason, the regulations and the enforcement
20 must come from the federal level.
21 The current patchwork of state
22 regulations are weak. Many states fail to require

1 even basic safeguards such as adequate monitoring.
2 State-based regulations and enforcement are also
3 inappropriate because unless rules are changed,
4 coal ash and coal ash polluted groundwater don't
5 actually respect state boundaries.
6 I want the environment in which I and my
7 neighbors live to be cleaner and healthier. I
8 want the environment that children inherit to be
9 cleaner still. The EPA is the right agency to
10 take the lead and I hope it will adopt provisions
11 at least as strong and binding as those in
12 Subtitle D with regard to coal ash. Thank you.
13 (Applause)
14 MS. DEVLIN: Thank you. May I have
15 numbers 42, 43, 44 and number 226 and 241? So,
16 number 42 please?
17 MR. FERBER: Thank you. My name is Don
18 Ferber, I live in Madison, Wisconsin. I volunteer
19 a lot of time with the Sierra Club on energy
20 issues.
21 When I was a boy of ten growing up in
22 Central Illinois, I had a great idea that I could

1 just commandeer candy from the grocery store
2 without paying for it. After the third time that
3 happened, I got caught and my mother took me back
4 to the grocery store to pay for it. That taught
5 me an important lesson. I was accountable for
6 what I did. I had to take responsibility for my
7 actions, and most of all I have to live with
8 integrity and honesty. And I look at what's
9 happening with the coal and the utility industry
10 and others who are not being held accountable and
11 not being asked to be honest about their actions
12 on the impacts of coal.
13 The government is here to protect the
14 public health, safety and welfare, whereas
15 business is primarily about money, not about the
16 equity that we need in our democracy of looking
17 out for our citizens. When did we allow our
18 government and regulatory agencies to be
19 promulgated by greed rather than the public
20 welfare? If I went out and just threw organic
21 waste on the block where I live, I'd probably get
22 a fine. Yet what we're talking about here is

1 highly toxic waste that is very hazardous to
2 health, it causes cancer and many other problems
3 and is very, very destructive. And we let this go
4 on.
5 For instance, in Appalachia with the
6 mountaintop removal, we know what happened to the
7 miners there, and yet I don't see anybody being
8 held personally accountable despite a company that
9 was violating rules consistently. They put the
10 coal slag in the valleys and it causes problems
11 where people can't even drink the water there. In
12 Wisconsin, we like to pride ourselves on our
13 environment and recreation opportunities, yet we
14 can't eat the fish from our waters that are laden
15 with mercury and are very unsafe and cause
16 numerous other problems. We have a coal plant in
17 Cheboygan, Wisconsin on Lake Michigan with a coal
18 pile sitting there where in winter I've seen
19 pictures of the snow that is black. There are
20 also sludge ponds that are by Lake Michigan that
21 are unlined. We know where that waste is going to
22 go.

1 The industry has told us lots of things
2 about that it's safe to use in a golf course in
3 Virginia. After the Tennessee spill, it was safe
4 there, too, initially. We heard, you know, all
5 sorts of problems and lies from the industry
6 including the Gulf oil fiasco we all know about.
7 I have to be held accountable, why
8 aren't they? The EPA's mission is to protect the
9 public, protect human health and to safeguard the
10 natural environment, air, water and land upon
11 which life depends. I want to know when the
12 industry will be held accountable for the toxic
13 materials they use and disperse. We prize
14 liberty; freedom without responsibility damages
15 other people's liberties. When will the industry
16 be asked to act responsibly towards environment
17 and health of our citizens? It's time for honesty
18 here and now.
19 I ask the EPA to promulgate the
20 strongest possible rules that I see under Section
21 C and to protect the environment of our planet and
22 the people who live upon it. Thank you.

(Applause)

MS. DEVLIN: Thank you. Number 43 please?

MR. ADEY: Hello, my name is George Adey. I'm a town councilman in the Town of the Pines, Northwest Indiana. And I appreciate the opportunity to speak before you today.

I would like for you to do the right thing for the people of the country here. While coal combustion produces smoke, the industry produces a smokescreen and we have all seen it here. The industry reps that have stood up here at this very podium have showed you exactly why they need to be regulated. They put profit before public safety, and we can't have that. The company that our town is dealing with, NIPSCO, they would rather spend $7 million to fight us at every turn trying to clean up our town than spend the million dollars to do the right thing.

(Applause)

MR. ADEY: And they're not going to do the right thing unless you regulate it and make

1 them do the right thing.
2 Now, we have all seen the clean coal
3 lobbyist commercial where our duly elected
4 President, a likeness of him was shown with face
5 paint. You want to see the face of clean coal?
6 Come visit our community. We have a dump right
7 outside our town limits. Our water is polluted.
8 We've got residents that are bathing, showering,
9 and using polluted water, and the utility does not
10 want to do anything about it.
11 So, I urge, for our town, for our
12 country, for public safety, please adopt Subtitle
13 C. Thank you.
14 (Applause)
15 MS. DEVLIN: Thank you. Number 44
16 please?
17 MS. BERZENSKI: Well, I guess it's
18 afternoon. My name is Sandy, good afternoon, my
19 name is Sandy Berzenski. I'm with the Citizens
20 Against Ruining the Environment (CARE) in Will
21 County.
22 I had many prepared statements coming up

here. A lot of things have been covered already so I don't want to go over the same old thing. And CARE will be submitting comments.

The one thing I did want to address is the Illinois EPA. For 16 years, CARE has worked on the situation with Midwest Gen amongst other different projects. But one thing we have come across, and the reason that you have to have some type of oversight or some type of the Unites States EPA involved is because as far as the Illinois EPA from my experience, I don't know who they're protecting but they are not protecting the communities. Regulations, enforcement and oversight, regulations, it's obvious from "In Harm's Way" and from any EPA monitoring well data that they've known of a problem but yet nobody is doing anything. These people are on private wells. You have a school within two miles with 300 children that is on a private well. Who is making sure that these children, that everything is fine?

The other thing is I say oversight.

1 Oversight, I call this the fox and the henhouse.
2 The majority of laws within the Illinois EPA are
3 basically left up to different entities,
4 industries. I know my time is running out but I
5 did also want to say, to ask you please, based on
6 all these big companies coming up here and using
7 the word beneficial, that should put you in the
8 right direction as far as adopting some type of
9 regulation because I don't know who this is
10 beneficial to because it's sure not beneficial to
11 the people, it's only beneficial to the companies
12 involved that are making money.
13 And I would also strongly recommend, at
14 the very least Subtitle C, but I would ask from me
15 being a director of CARE, that you adopt the coal
16 ash as hazardous waste. I thank you.
17 (Applause)
18 MS. DEVLIN: Thank you. Number 226?
19 Number 241?
20 MR. RILEY: My name is Randell Riley.
21 I'm a licensed professional engineer in Illinois
22 and Iowa and engineer for the Illinois Chapter of

1 the American Concrete Pavement Association. I
2 also serve as a consultant to Illinois Ready Mixed
3 Concrete Association.
4 To the residents of Illinois and the
5 City of Chicago, concrete is taken largely for
6 granted, but without it the skyline of Chicago
7 would be significantly different. Imagine the
8 skyline without the Sears Tower, the Hancock
9 Building or the Trump Hotel & Tower. And to
10 hopeful Bears fans, there would be no Soldier
11 Field. Indeed, life would be different in the
12 city without concrete.
13 To put into perspective the sheer size
14 of the industry, most of you in the Chicago area
15 have driven the Dan Ryan Expressway, built out of
16 concrete by the way. If you were to take the
17 average annual usage of concrete in Illinois for
18 the last five years and substitute ready mix
19 concrete trucks for all the traffic on the Dan
20 Ryan, it would equal the total traffic for about
21 ten days each year.
22 The vast majority of those trucks is a

consumer of fly ash, the lighter component of the coal ash stream. Those trucks on average use about one-half ton each of ash for a total of about one-half million tons annually, and that is likely to increase. At least it will increase if EPA leaves the current regulations unchanged.

Though perceived as a waste product, fly ash used in concrete makes it stronger, less permeable and more durable. In simple terms, it makes it last longer. Fly ash offers all of these benefits while also making the concrete less expensive since it replaces the more expensive Portland cement, the "glue" that holds concrete together.

Fly ash also makes concrete "greener" and more environmentally friendly. The CO2 footprint of the concrete industry in Illinois alone is reduced by roughly 450,000 tons by simple substitution in the concrete for Portland cement.

EPA is considering unwarranted changes in regulations that would reclassify fly ash as a hazardous waste under the Resource Conservation

1 Recovery Act Subtitle C approach. We believe this
2 is a knee-jerk reaction to the unfortunate failure
3 of the impoundment retaining wall in Kingston,
4 Tennessee.
5 Unfortunately, in the litigious society
6 in which we live, any label that would reclassify
7 fly ash as hazardous creates significant issues.
8 Specifiers will refuse to use it and suppliers
9 will refuse to supply it due to the hazardous
10 designation and what would be likely to happen in
11 the courts. The change will have unintended
12 consequences, one of which will be a significant
13 decrease in the use of fly ash in concrete.
14 Fly ash is not a hazardous waste based
15 on its toxicity, and when tied up beneficially in
16 concrete, it is rendered physically and chemically
17 inert. Classification of fly ash as a hazardous
18 material would be a significant step backward in
19 what is intended in the very name of the Resource
20 Conservation and Recovery Act.
21 For these reasons, we ask that EPA not
22 change from current regulatory practice. Thank

1 you for this opportunity.
2 (Applause)
3 MS. DEVLIN: Thank you. Numbers 46, 47,
4 48 and 49 please? Number 46?
5 MS. PIERCE: Good afternoon. My name is
6 Betty Pierce and I am with Restoring Eden, a
7 Christian environmental organization.
8 For some time now, I have had little or
9 no faith in the electoral process, knowing that
10 our elected officials pretty much represent
11 corporations first and the American people second.
12 I'm sure the coal industry and their funded
13 officials are doing their best to convince you
14 that federally enforceable strict regulations are
15 ridiculous, that coal ash is not responsible for
16 contaminated groundwater, cancer, birth defects,
17 mutilated and dying animals and more. In reality,
18 corporate rights versus American citizens' have
19 been impacting legislation for 200 years ever
20 since the Supreme Court granted corporations first
21 amendment rights which include commercial speech
22 as free speech.

1 But I am encouraged by the EPA's
2 willingness to schedule these meetings across the
3 United States to give a voice to its people and
4 seriously consider our opinions, our concerns
5 about the toxic repercussions of unregulated coal
6 ash disposal. Our constitution is written for the
7 people, by the people, not for the corporation by
8 the corporation or big business. Establishing a
9 first ever federal rule for responsible coal ash
10 disposal is a step in the right direction and is
11 way overdue. It is critical to the health and
12 welfare of the citizens for whom the Constitution
13 was written and to our God-given responsibility to
14 care for his perfect and beautiful natural
15 creation.
16 I applaud the EPA for proposing new
17 strict regulations, even in the face of some very
18 fierce opposition that will curb continued coal
19 ash regulation. Better yet, stop contamination
20 all together.
21 I strongly urge the EPA to continue to
22 do the right thing by adopting Subtitle C proposal

for coal ash regulation. And I also ask that regulations for a thorough cleanup of all past coal ash contamination will be expedited and that the EPA will increasingly take action toward a clean energy future. Thank you.

(Applause)

MS. DEVLIN: Thank you. Number 47 please?

MR. BILBREW: Good afternoon. My name is Ferry Leon Bilbrew. I live in Joliet, Illinois, kitty corner to the Lincoln stone quarry.

In the last couple of years, I've been hearing about the fly ash that's being dumped in there with the toxicity that it carries for the well, the ground, the underground well water in that area. My well is approximately about 300 to 350 feet from the corner of it, from the northeast corner of that quarry. I don't know if my water is contaminated or not. No one has been out to test it and I couldn't afford to have someone to come give it a test.

1 So, I'm hearing all kinds of
2 information, getting all kinds of data from tests
3 that have been done in that area, but I've never
4 seen the results of any tests. So, I urge the EPA
5 to adopt the Subtitle C, for that to be regulated,
6 and for the regular testing and for the
7 information to be released to the residents in
8 that area that is affected. We really need that
9 because I've never seen no kind of documentation
10 of the situation of the water in our area, the
11 wells in our area. Is it contaminated or not?
12 And I drink it and cook with it. And had it not
13 been for the Sierra Club and others and the
14 environmental network people, I would not have
15 known. I'd have been steadily going business as
16 usual. Thank you very much for your time.
17 (Applause)
18 MS. DEVLIN: Thank you. Number 48
19 please?
20 MS. SINGER: Hello, my name is Abigail
21 Singer. And this year, I have had the privilege
22 of working with the Little Village Environmental

1 Justice Organization on water issues here in
2 Chicago. As you may be aware, Chicago's Little
3 Village neighborhood is home to Midwest
4 Generation's Crawford coal-fired power plant, one
5 of two plants in the city that are located in
6 low-income communities of color. More people live
7 near these plants than any other coal plant in the
8 US.
9 When we talk about how to classify and
10 regulate coal waste, it is really crucial to
11 remember that these rules have a direct impact on
12 many people's lives, not to mention on the land
13 and the drinking water sources that all of us
14 depend on.
15 According to a health study that was
16 conducted by the Harvard School of Public Health,
17 the estimated impacts of Chicago's two coal-fired
18 power plants are about 500 emergency room visits
19 every year, 2,800 asthma attacks, and more than 40
20 premature deaths every year.
21 These are a result of airborne
22 pollution. They do not even take into account the

1 impacts of coal ash. Because coal ash is not well
2 regulated, we don't even know where this waste is
3 ending up or who is being impacted.
4 We do know that coal ash is toxic and
5 poses a real threat to public health and safe
6 drinking water. Coal ash contains unsafe levels
7 of contaminants like arsenic, mercury, selenium,
8 chromium and cadmium. These contaminants are
9 shown to cause cancer, neurological damage, and
10 damage to the kidneys, liver and nervous system.
11 Yet most coal ash surface impoundments in the US
12 are still unlined and thus pose a very real risk
13 of water contamination. Many states require no
14 groundwater monitoring at all at coal ash ponds.
15 This is unacceptable.
16 One of the more dramatic examples of the
17 dangers posed by unregulated coal ash is the TVA
18 spill in Kingston.
19 This was the largest industrial waste
20 spill in US history, dumping more than a billion
21 gallons of toxic coal ash into the surrounding
22 community and the Clinch and Emory Rivers.

1 According to the EPA, there are two coal
2 ash ponds in Illinois that are "high hazard" and
3 could result in a similar disaster. Again, these
4 are unacceptable risks.
5 People have a right to know what they're
6 being exposed to in their drinking water, in their
7 homes and at their workplaces. Coal ash is toxic
8 and carcinogenic and it should be treated as such.
9 I am particularly concerned with the
10 environmental racism that continues to play a part
11 in the siting of coal facilities and the storage
12 of coal waste. It is a problem that coal ash
13 being dredged from the TVA spill site was sent to
14 a high-poverty and largely African-American
15 community in Alabama. It is similarly
16 unacceptable that Chicago's Mexican-American
17 communities bear the brunt of the pollution from
18 Midwest Gen's Fisk and Crawford coal plants, and
19 that poor white communities in rural Appalachia
20 are having their health, homes, mountains and
21 livelihoods decimated by mountaintop removal.
22 Throughout the entire coal life cycle,

1 from mining to transportation to burning to waste
2 storage, low-income communities and communities of
3 color are exposed to disproportionate levels of
4 this toxic pollution.
5 As long as coal ash continues to pile up
6 at coal plants around the country, disposal will
7 be an issue. The real solution to the waste
8 problem is to move away from coal completely. It
9 is an outdated technology that we know is the
10 single biggest culprit for climate change and a
11 host of other health problems. Please adopt
12 Subtitle C.
13 MS. DEVLIN: Excuse me, ma'am, your time
14 is up. Thank you.
15 MS. SINGER: Thank you.
16 (Applause)
17 MS. DEVLIN: Thank you. Number 49?
18 Thank you.
19 MR. NILLES: Good afternoon. My name is
20 Bruce Nilles and I have the great pleasure of
21 working with Sierra Club, overseeing all of our
22 coal and clean energy work.

1 When President Obama and Lisa Jackson
2 took office, they promised that the day is now due
3 that science will guide regulation and we will end
4 the long-standing practice of letting the industry
5 regulate itself. This cannot come soon enough.
6 How many more TVA disasters do we need to have?
7 How many more BP oil spills do we need to have to
8 destroy the Gulf? How many more threats on the
9 Great Lakes from the likes of the Kalamazoo oil
10 spill must we have before EPA takes action?
11 For more than two decades, the industry
12 has been very successful at saying to study it a
13 little more. And indeed, for two decades EPA and
14 a whole host of other agencies have studied the
15 problem of coal ash. And every time the
16 conclusion comes the problem is actually worse
17 than we realized before. What are we waiting for?
18 The more we wait, the bigger the problem gets
19 because every year we are generating millions and
20 millions of tons of this waste, and it is today
21 being disposed of improperly as we know across
22 this country.

1 All we're saying is that there has to be
2 a level playing field for anybody who produces
3 hazardous waste. The industry, the coal industry
4 has carved out its exemption and for two decades
5 has been enjoying rules that nobody else gets to
6 comply with. Anybody else who generates hazardous
7 waste has to deal with it responsibly, and the sky
8 did not fall once you put in place the designation
9 of hazardous waste.
10 We're not asking for anything radical.
11 We're saying simply that you have to have a liner,
12 you have to have a collection system so that the
13 liquid that is collected is being safely disposed
14 of. You need to monitor so you actually know the
15 extent of the problem. And you need to make sure
16 that indeed there is financial insurance in place
17 so that at the end of the day if the company walks
18 away that in fact it will get cleaned up.
19 This Agency knows better than anyone the
20 legacy of hazardous waste. You have spent decades
21 cleaning up the mess of industrial problems under
22 superfund for many, many years and you spend a

1 very large amount of your resources cleaning up
2 past messes. At this point, you are allowing more
3 messes to be created by not putting in place
4 Subtitle C regulations as fast as humanly
5 possible. So, it is our next generation that is
6 going to spend all this time and effort cleaning
7 up the mess that we were not smart enough and
8 quick enough and powerful enough to actually
9 quickly get these regulations in place.
10 How much more study do we need? We have
11 137 sites in 34 states where we know there are
12 serious problems. And the more we look the more
13 we find. So, we have a very simple message.
14 You've been studying this problem for 25 years,
15 every year the problem gets worse. It's time to
16 say no. This industry will have to play by the
17 same rules that everyone else plays by. And all
18 we're saying is if you're going to burn coal in
19 the United States, then you need to make sure that
20 you're paying the full price of generating
21 electricity from coal and stop pawning off these
22 huge costs on the communities who are being

1 threatened with poisoned water today. Thank you
2 very much.
3 (Applause)
4 MS. DEVLIN: Thank you. Okay. I want
5 to do a quick check. Does anyone have a number
6 before 49 who has not had an opportunity to speak?
7 Who came in late? Okay.
8 And I'm going to do a couple of, we're a
9 little bit ahead, I'm going to do a couple of
10 fit-ins for folks who asked to speak earlier.
11 Numbers 308 and 311, are you in the room? If you
12 would come up please? As well as number 102, 108
13 and 98. And I do apologize for being out of order
14 but we're trying to fit in folks as we can.
15 So, you're number 308?
16 MS. BASKERVILLE: Yes.
17 MS. DEVLIN: Thank you.
18 MS. BASKERVILLE: Thank you very much.
19 My name is Mary Baskerville and I'm president of
20 the Will County Environmental Network, a
21 grassroots organization in Will County. We speak
22 today in strong support of federal regulation of

coal ash and point to the need for the regional impact to become part of the EPA review of coal ash projects.

We speak from experience. Several of our members have had wells impacted because water draw-down in the region was responsible for drawing boron offsite along Brandon Road and Joliet. We worked hard to prevent a clean construction debris disposal proposal from being granted because the dewatering of a spring-fed quarry at the proposed CCDD site would have created additional draw-down of water. Water modeling showed it would have resulted in additional draw-down and an additional pool of ash contaminants offsite leading to many residential well contaminations.

The network worked hard with the Illinois Environmental Protection Agency to have them take a forward position in looking outside the boundary of the CCDD application to take a look at what would happen if they allowed that quarry to be dewatered and the resulting pool of

1 contamination from a separate quarry. That change
2 prevented additional groundwater contamination and
3 points to the importance of the regional review of
4 projects. Network members urge that the regional
5 impact of each and every project coming before you
6 not only for ash fill but for additional purposes
7 and permitting become part of the review process.
8 We urge that EPA change past practices
9 at looking just within the boundaries of a project
10 and when deciding whether to permit it or not, and
11 take a look and see if it would have any regional
12 impacts, particularly in terms of groundwater
13 draw-down. Groundwater in our region in Will
14 County is being lowered and it's an important
15 piece of this puzzle in reviewing fly ash
16 regulations. Thank you very much.
17 (Applause)
18 MS. DEVLIN: Thank you. Number 311
19 please? Okay, 311 is not here. Number 102?
20 MR. TRUAX: Good afternoon. My name is
21 Hal Truax and thank you for allowing me to speak.
22 I'm a farmer from West Central Indiana. I've been

farming sustainable agriculture in this farm for 50 years. My farmer started with minimum tillage and then I did total no-till almost 30 years ago using cover crops as well in the system and integrated pest management.

This over the years has allowed us to use less chemicals and less fertilizers on our farm. It has also increased yields. Which brings me to FGD gypsum. I've incorporated that into my farm, too.

It is a very good product. It's very safe. It has allowed the soil to absorb water and also increase the water holding capacity of the soil. Along with that, it has also allowed nutrients in the soil to be released so that the crops can use it and so that the soil will be healthier and the crops will be healthier.

FGD gypsum is a very safe product. It is very, very healthy for the soil. I highly hope that you will not make it a hazardous waste because it will be detrimental to agriculture, not only mine but all agriculture. It will also help

in reducing these runoffs and waste and water infiltration and water holding capacity of soil so that we have healthier crops which will also help as a byproduct to reduce CO2 emissions. Thank you very much.

(Applause)

MS. DEVLIN: Thank you. Number 98? I'm sorry please? Go ahead then, 311. I called 311, it doesn't matter. You can do, 311 is okay. It doesn't matter. I was calling numbers.

MR. SPARKS: Good afternoon. Thank you for the opportunity to hear my testimony. My name is Jason Sparks and I live here in Chicago. I'm a licensed professional engineer in the State of Illinois and currently hold the position of Director of Operations at Beneficial Reuse Management. The company is a small business with 18 employees with over 50 subcontractors, offices in Indianapolis, Milwaukee and Chicago.

The reason I was so eager to join Beneficial Reuse Management and one of the reasons why I'm so enthusiastic to be here today was

1 because of the company's goal, which is simply
2 sustainable solutions. One of these solutions
3 that Beneficial Reuse Management provides is
4 utilizing coal ash as a structural or geotechnical
5 fill in construction projects. By providing the
6 technical expertise to supply this service, we are
7 in fact benefiting the environment in a number of
8 different ways. 1. We're utilizing coal ash in
9 preserving precious landfill space. 2. We're
10 reusing coal ash which reduces the demand for
11 virgin materials and preserves natural resources.
12 We reduce the need for additional quarries and
13 barrow pits that increasingly blight our nation's
14 landscape. 3. By reusing coal ash, we are able
15 to conserve energy and reduce greenhouse gas
16 emissions by decreasing the need to manufacture
17 new products or extract new materials to fulfill
18 the same end uses. Reusing coal ash oftentimes
19 results in the reduction of energy consumed in
20 greenhouse gases emitted by reducing long distance
21 transportation of newly manufactured or extracted
22 materials.

1 Local economies are benefited as a
2 result of the availability of lower cost
3 construction materials that frequently make an
4 otherwise unaffordable project feasible. These
5 benefits are extremely significant, but many
6 people ask, what is the downside to utilizing coal
7 ash for structural fill? Well, the downside is
8 simple. Structural or geotechnical fill projects
9 need to be designed and constructed according to
10 proper standards and regulated to ensure they are
11 completed correctly. Without proper standards in
12 place and regulations to ensure these standards
13 are followed, the concern for this type of use is
14 valid.
15 That is why I endorse a national
16 standard on the beneficial reuse of coal ash for
17 structural fill uses. The ASTM, American Society
18 of Testing Materials, has written a standard
19 called E2277-03. This standard provides the rules
20 to be followed to perform these types of projects
21 and ensures the protection of public health and
22 the environment. I am a member of ASTM and I work

1 on the committee responsible for this standard.
2 We believe the standard is the tool that is
3 required to utilize coal ash in construction
4 projects that will benefit this country and at the
5 same time significantly reduce the number of
6 landfills we'll need to construct in the future.
7 In closing, I ask that you please
8 consider small businesses such as Beneficial Reuse
9 Management that are helping to make our country a
10 more sustainable place to live by using sound
11 technical engineering standards. Labeling coal
12 ash as hazardous would be an unfortunate and
13 irreversible decision that will negatively impact
14 my business as well as businesses for generations
15 to come. Thanks.
16 (Applause)
17 MS. DEVLIN: Thank you. Number 311?
18 MS. BILBREW: Thank you. And thank you
19 to EPA for holding so many hearings. This is the
20 fifth of eight and we really appreciate it. And
21 as you can see, there are so many people who have
22 so much to say.

1 This particular hearing is a homecoming
2 for me. Almost ten years ago I went to the Town
3 of Pines, about an hour away, to help the
4 community in their fight for clean water when
5 their wells were poisoned by coal ash. As you
6 have heard, Pines is now a superfund site. It has
7 been ten years, but sadly the full extent of the
8 contamination in Pines is still not known, nor do
9 all residents have safe water. This is truly a
10 tragedy. One home had arsenic in their water 120
11 times the safe limit and a resident of that home
12 has died of cancer.
13 EPA, with all due respect, you need to
14 fix this problem. This has gone on too long.
15 Children I met in Pines have grown up and left for
16 college. But across the nation, other children in
17 other towns are still growing up, drinking
18 poisoned water as more and more communities are
19 plagued with coal ash contamination. Towns like
20 Joliet and Oak Brook, Illinois, Caledonia and
21 Genoa, Wisconsin, and East Mount Carmel.
22 The evidence just keeps building. This

1 morning, Physicians for Social Responsibility and
2 Earthjustice issued a report on the health impacts
3 of coal ash. There is nothing, absolutely nothing
4 more critical to this debate than physicians
5 describing the harm posed to our health by this
6 toxic waste. The lesson of the report is simple.
7 Doctor's orders to EPA, stop the contamination.
8 The public needs federal protection from
9 the hundreds of unlined, unstable and unmonitored
10 coal ash dumps. They are not protected because
11 the laws in many states are woefully inadequate.
12 For decades, states have failed to require the
13 most basic controls.
14 I'd like to see a show of hands of the
15 people who live in Illinois, Indiana, Iowa -- no,
16 everybody keep their hands up so you can see.
17 Ohio, Kansas, Minnesota. All of these states
18 failed to require truly indispensable safeguard
19 groundwater monitoring wells on all dangerous coal
20 ash ponds. Without monitoring wells, you'll never
21 know what chemicals are in your water or where
22 these toxins are flowing. These people need

1 protection. In fact, in Illinois only 28 of the
2 state's 83 ponds are monitored.
3 Industry favors a D Prime option. That
4 option is good for them because they know that in
5 these states, all the states I mentioned, those
6 states will not adopt the Subtitle D standards and
7 there will not be enforcement. That suits them
8 well but it does not suit this audience well and
9 it should not be accepted by EPA. The next time I
10 come to Chicago, I hope to celebrate with my
11 friends in PINES the fact that the Obama EPA did
12 what it could to protect them, their children and
13 all communities in every corner of this nation
14 from a serious but preventable harm. Thank you.
15 (Applause)
16 MS. DEVLIN: Thank you. Number 108?
17 MR. ULREY: Hello, my name is Jeff
18 Ulrey. And I want to thank you for giving me the
19 opportunity to voice my comments and opinions on
20 the new proposed coal ash regulations.
21 I am the Director of Coal Combustion
22 Products at Beneficial Reuse Management which

1 specializes in finding alternative homes for
2 industrial byproducts that would otherwise be land
3 filled. We specialize in FGD gypsum, foundry
4 sands and coal ash byproducts.
5 In May of this year, I finished my 20th
6 year in the coal ash business. In those 20 years
7 in the ash business, I have done almost every job
8 there is that deals with CCPs. I was a guy in the
9 trenches. I have been in operations,
10 testing/quality control, research and development,
11 sales, DOT specification committees, management,
12 and have worked with multiple state regulatory
13 agencies. I have run fly ash transfer stations,
14 loaded trucks, rail cars, and barges. I have
15 crushed it, screened it, washed it, spread it
16 agriculturally, built roads, parking lots,
17 embankments, stabilized soils and managed storage
18 pond operations. I have been around coal
19 combustion products literally and figuratively
20 just about all my life.
21 Today, I would like to urge you not to
22 have a long drawn out fight about these

1 regulations and rules. Let's get it done properly
2 so that we can move on.
3 Under both proposed alternatives,
4 impoundment ponds will go away, something which
5 can be accomplished and begin almost immediately
6 under Subtitle D of RCRA. There is no reason to
7 make a hazardous waste determination to accomplish
8 this same goal. We can get it done in
9 approximately three years rather than the ten
10 years it would take at the minimum with hazardous
11 waste permitting delays. Enforcement seems to be
12 a stumbling block that makes some folks call for a
13 hazardous determination. With legislation, we
14 should grant the power at the state or federal
15 level to enforcement capabilities without a
16 hazardous designation.
17 Shutting down beneficial reuse of coal
18 ash by adopting hazardous disposal regulations is
19 not the way to jumpstart the renewable energy
20 policy in this country and phase out coal power
21 generation. Let's take the good old American
22 ingenuity and be smarter, more creative, and more

1 efficient than the rest of the world. Don't
2 weaken this country. A hazardous waste
3 determination will only hurt the rate payer and
4 drive up the cost of goods and services if he has
5 to use virgin materials.
6 By definition, CCPs are not hazardous by
7 the criteria that the EPA has used for decades:
8 corrosivity, ignitability, reactivity and
9 toxicity. The definition of those four categories
10 can be found under 40 CFR 261 Subpart C. CCPs do
11 not qualify as a hazardous material by all the
12 same standard scientific practices used for years
13 to determine whether a material is hazardous or
14 not. So, we have to move on from this talk.
15 But whatever happens, don't let FGD
16 gypsum use in agriculture be swept away over the
17 fears about coal ash. Gypsum applications used to
18 improve soil structure and soil porosity could
19 quite possibly be the single greatest contribution
20 for improving water quality in this country. It
21 would be a great legacy for your children's
22 children that your generation had the most impact

on improving the quality of their water resources.

And as I end, imagine the positive impact to our water quality and the condition of our water resources if gypsum can be allowed to be used and further research can be expanded. That can't happen if included in a hazardous determination. Don't let it happen!

(Applause)

MS. DEVLIN: Thank you. Okay, I'm going to try to accommodate a few people who signed up this morning. Can I have numbers 301, 302, 303, 304? I can try to get to 306, are you 306? All right. Why don't I have -- say again please? Number 300? I'm not doing 68 yet. You're scheduled for after lunch. I'm trying to do a couple of walk-ins and we'll do it this way.

So, 300 is there? No. 301? 302? Okay, 300.

MR. MYERS: Thank you for the chance to speak here this afternoon. My name is Dave Myers and I live in Central Indiana and I work as a crop consultant. And with that, I work with a system.

1 And when the system is in place, what you'll get
2 is increased crop yields along with decreased
3 applied fertilizers and also increased farm
4 efficiencies.
5 We've had a little bit different
6 understanding of soils than most out there. We
7 believe that the soil is a living system, and in
8 that soil is microorganisms whose sole
9 responsibility is to release nutrients to the
10 crop. And with that, we definitely get increased
11 efficiencies from applied fertilizer and other
12 things.
13 These microorganisms have to have an
14 environment where they can thrive. And just like
15 you and I, if that environment is not there, then
16 they're going to have some problems on doing their
17 job that they're supposed to. And that job is
18 releasing nutrients to the plant.
19 We have seen up to 90 percent decreases
20 in applied fertilizer just from the use of FGD
21 gypsum and this system. Gypsum helps to change
22 soil structure, helps to change soil chemistry.

1 We see increased water infiltration rates,
2 increased oxygen rates flowing into those soils,
3 giving those biology the oxygen they need in order
4 to survive.
5 As you can see, gypsum is a major part
6 of our nutrient program. And if that is not in
7 place, we do see increased amounts of applied
8 nutrients which then ultimately will mean more
9 filled nutrients running off into our watersheds
10 and into the Gulf of Mexico. As growers of our
11 nation's food supply, we really can't afford to
12 rely on heavy amounts of applied fertilizer, and
13 if we can get better use of our parent materials
14 that are in our soil, the better off that we are
15 as a country and we can feed our country as well
16 as the world.
17 So, I ask you today to not consider FGD
18 gypsum as a hazardous substance but as a very
19 usable tool not only for agriculture but also for
20 the environment. Thank you.
21 (Applause)
22 MS. DEVLIN: Thank you. Number 301?

1 Not there. 302?

2 MR. MEIER: Good afternoon. My name is

3 Dana Meier and I'm the manager of Coal Combustion

4 Products at Indianapolis Power & Light. IPL is an

5 electric utility that serves approximately 465,000

6 in and around Indianapolis, Indiana.

7 First and foremost, I'd like to start by

8 stating that we're strongly opposed to the

9 regulation of CCRs under the RCRA Subtitle C

10 hazardous waste program. Subtitle C imposes

11 additional cost with no commensurate environmental

12 benefits. Regulating CCRs as a hazardous waste

13 will subject IPL and its customers to a major

14 expense, potentially several hundreds of millions

15 of dollars.

16 IPL favors the development of federal

17 regulations under RCRA's Subtitle D non-hazardous

18 waste program and specifically believes that D

19 Prime will establish an environmentally protective

20 program for disposal units without crippling

21 beneficial use and imposing unnecessary regulatory

22 cost and on power plants threatening jobs and

1 increasing cost. And D Prime would include
2 appropriate impoundment design, inspection and
3 maintenance requirements with groundwater
4 monitoring and performance standards that would
5 allow the continued use of existing ponds that are
6 environmentally protective while reducing the cost
7 of converting from ponds to landfills. Subtitle C
8 eliminates or greatly reduces beneficial use
9 options. IPL produces approximately a million and
10 a half tons of CCRs annually and utilizes 40 to 50
11 percent of that in a myriad of environmentally
12 friendly options including fly ash, bottom ash,
13 FGD gypsum as raw materials for producing
14 concrete, cement and wall board and in
15 agricultural applications.
16 There are significant environmental
17 benefits to these uses. First, utilization
18 reduces valuable landfill space that would
19 otherwise be needed for disposal. Also, using
20 CCRs as raw materials to replace mined natural
21 resources and manufactured products reduces CCR
22 user cost and conserves valuable resources. IPL

1 believes burdening CCRs with a hazardous label,
2 even if they are exempt under Bevill, would
3 drastically reduce the amount of CCRs that can be
4 used, commensurately increasing by double or more
5 the amount of CCRs that IPL would have to dispose
6 and commensurately reducing the attendant
7 environmental benefits.
8 EPA should develop a performance-based
9 federal program for CCRs under RCRA Subtitle D
10 which will ensure that CCRs are safely managed for
11 disposal while continuing to promote and expand
12 their beneficial use. Thank you.
13 MS. DEVLIN: Thank you. Number 303?
14 MR. HARRINGTON: Good afternoon. My
15 name is James Harrington, I'm the Executive
16 Director of the Illinois Environmental Regulatory
17 Group. The Illinois Environmental Regulatory
18 Group consists of 51 member companies in a variety
19 of major industries throughout the State of
20 Illinois including companies operating all of the
21 coal fired power plants within the state. IERG,
22 as it is sometimes called, represents its members

in environmental regulatory development in the State of Illinois with an emphasis on state rulemaking, although from time to time we participate in federal rulemaking such as this which we see impacting directly the industry within the state. IERG is an affiliate with and provides environmental policy guidance to the Illinois Chamber of Commerce.

IERG supports appropriate regulation of coal combustion residuals from coal fired generation to protect public health and safety, and believes that it is best regulated as a non-hazardous waste under Subtitle D of the Resource Conservation and Recovery Act rather than as a hazardous waste under Subtitle C. Regulation under Subtitle D will allow and encourage continued beneficial use of such materials where appropriate as well as protection of public health and safety without undue cost or burden on industry, the states or the public. IERG is concerned that creating sub-classification of "special" hazardous waste as is proposed under

1 Subtitle C will not alleviate the stigma that will
2 be placed on coal combustion byproducts will
3 greatly reduce the environmentally sound
4 beneficial use of such materials.
5 Under Subtitle D, regulations can more
6 easily be tailored to the individual circumstances
7 of each state, taking into account the geography
8 and geology and overall regulatory structure. It
9 can provide for appropriate construction and
10 location standards, monitoring and closure. As an
11 example, ash ponds located in the relatively flat
12 lands of Illinois may require a very different
13 design than ponds located in the hills and
14 mountains of other states. Similarly, depending
15 on geology, existing facilities may be allowed to
16 continue operation in some states with appropriate
17 monitoring where that would be inappropriate in
18 other locations. Requiring the closure of such
19 facilities before the end of their useful life
20 would be wasteful and not provide commensurate
21 benefit to public safety or the environment. In
22 such instances, IERG believes that the Subtitle D

1 option described in the USEPA proposal would be
2 appropriate.
3 I'll leave my written comments. In
4 conclusion, while IERG supports rules necessary to
5 protect the public health and safety, imposing
6 unnecessary costs and burdens should be avoided.
7 Regulating coal combustion residuals under
8 Subtitle D will provide all the necessary
9 protection. Thank you.
10 (Applause)
11 MS. DEVLIN: Thank you. Number 304.
12 Number 304? Number 305? Number 306 and number
13 307.
14 MR. BYANBSKI:: Hi, I'm Bob Byanbski.
15 The Navy had me in a scientific trade and that's
16 why I'm standing up here today.
17 I have been intimate with the coal
18 industry since I was about nine years old carrying
19 coal into the coal fired furnace in my father's
20 basement. When I went to college, I was given a
21 test tube in the chemical lab and I found out how
22 you skew, s-k-e-w, the scientific results. So, I

1 think I heard Archer Daniels, Midland and a few
2 other large companies but I didn't hear 3M. 3M
3 knows how to maintain their waste stream.
4 So, I'm asking our Environmental
5 Protection Agency that has done a pretty good job
6 with all the deck that has been stacked, but I'm
7 asking them to think outside the box of what
8 you're proposing for regulations, they are
9 hoodwinking you. And the way you can find out
10 whether you're being hoodwinked or not, there's
11 two words that I didn't hear today. I didn't hear
12 the Perch in Lake Michigan and I didn't hear Love
13 Canal. So, I hope the people at Love Canal that
14 weren't here today get a chance to speak to you
15 folks.
16 (Applause)
17 MS. DEVLIN: Thank you. Number 305.
18 Thank you.
19 MR. GARTNER: Good afternoon. And thank
20 you for the opportunity to hear the speakers speak
21 and allowing me to speak, and I think you for your
22 being here today as representatives of a

1 government agency which is to protect the
2 environment as it was written in the law when it
3 was established in 1970. And I ask you that you
4 consider your primary motivation to be to follow
5 the mandate of this law which is to protect the
6 environment, to protect the health of the people
7 and not to watch out for special interests.
8 My name is Rudy Gartner, I'm a Chicago
9 citizen. I come as a civilian student of
10 environmental policy. And listening to the
11 arguments today, I can hear many good points on
12 both sides actually. Of course I come biased, I
13 do come biased for the Rule C. I am always in
14 favor of, if something that can be proven that's
15 shown to be toxic and is harming human health,
16 that the primary responsibility is to regulate
17 whatever is causing it. But what I'm hearing is
18 I'm hearing different arguments.
19 Now, there are good sides on people who
20 are supporting D. I mean, these beneficial uses,
21 they sound practical, they sound good. There are
22 some very good, they score some very good points

1 in terms of conserving carbon, conserving
2 landfill. These are good points, especially for
3 FGD gypsum, what it's doing for American
4 agriculture. I mean these are very, very good
5 points and these actually come on the plus side of
6 the green score card.
7 Yet some of them point to 40 CFR saying
8 that it was not determined to be toxic by the EPA
9 apparently at some point. But we're hearing from
10 doctors that the ingredients in CCR products are
11 toxic. So, we have a conflict here. And I think
12 maybe we can learn something from both sides and
13 maybe both your rules are not sufficient. Maybe
14 we could take the best from both sides, craft a
15 third one perhaps. And I'm not telling you what
16 to do but I'm hearing contradictions that need to
17 be addressed because, I mean how can you say that
18 something is not toxic but when it leaches into
19 water the ingredients are toxic? I don't think
20 you can deny that.
21 You cannot deny the people talking from
22 Pines, Indiana or what happened to TVA and the

1 future health consequences of the people who were
2 exposed. We haven't even heard about that.
3 That's another thing, the media tends to hide
4 things after the first announcement.
5 So, anyhow, in conclusion, I would
6 respectfully submit a suggestion that you analyze
7 both of these very good, positive comments from
8 both sides and see whether you can come to a
9 mutually satisfying conclusion. For me, the main
10 problem is that one needs to contain this stuff
11 properly. I mean, the people who are supporting
12 Prime D, they cannot deny that when this stuff
13 slips out it harms. So, contain this stuff and
14 find a way to address their needs so their
15 businesses are not impacted but health is not
16 impacted and you stay true to your mandate. And I
17 wish you good luck and confidence in your task at
18 hand.
19 (Applause)
20 MS. DEVLIN: Thank you. With that, we
21 are going to take a short break and we will then
22 continue with speakers scheduled at 1:15. So,

1 again this will be just about a five-minute break.
2 Thank you.
3 (Whereupon, at 1:00 p.m., a
4 luncheon recess was taken.)
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1 A F T E R N O O N S E S S I O N

2 (1:15 p.m.)

3 MR. BEHAN: Good afternoon. Thank you

4 for attending today's public hearing on EPA's

5 proposed rule regarding the regulation of coal

6 combustion residuals that are disposed of in

7 landfills and surface impoundments.

8 My name is Frank Behan and I'm the

9 Acting Chief of the Energy Recovery and Waste

10 Disposal Branch in OSWER which is the Office of

11 Solid Waste and Emergency Response based out of

12 Washington, DC. I'll be chairing this afternoon's

13 session of the public hearing. And with me on the

14 panel is another individual that's from OSWER in

15 DC and that's the gentleman on the end, his name

16 is Alexander Livnat. I also have two individuals

17 from EPA's Chicago Regional Office. And to my

18 immediate right is Jerri Garl followed by Julie

19 Gevrenow.

20 Before we begin this afternoon session,

21 I would like to go over the logistics on how we

22 plan on running this meeting. I think many of who

1 you have been in the room for the morning have
2 seen how the process works, but in case there are
3 some folks that have showed up recently, we'll
4 just run through it real quick again.
5 Speakers, if you are pre-registered, you
6 were given a 15-minute time slot when you were
7 scheduled to give your three minutes of testimony.
8 To guarantee that slot, we have asked that you
9 sign in 10 minutes before your 15-minute slot at
10 the registration desk which is just outside these
11 doors. All speakers, those that have
12 pre-registered and walk-ins, were given a number
13 when you signed in today and this is the order in
14 which you will speak.
15 I will call speakers to the front of the
16 room by number four or five at a time. When your
17 number is called, please take a seat in those
18 chairs behind the speaker's podium over to your
19 left in the front of the room. When your
20 individual number is called, please move to the
21 microphone and state your name and affiliation.
22 We may ask you to spell your name for the court

1 reporter who is transcribing your comments for the
2 official record.
3 Because there are many people that have
4 signed up to provide testimony today, and to be
5 fair to everyone, testimony is limited to three
6 minutes. We will be using an electronic
7 timekeeping system and we will also hold up cards
8 to let you know when time is getting low. When we
9 hold up the first card which is green, this means
10 you have two minutes left. When we hold up the
11 second card, you will have one minute left. At
12 the third card, you will have 30 seconds left.
13 When the fourth card, which is red, is held up,
14 your time is up and we ask that you wrap up your
15 comments.
16 When you have completed speaking, please
17 return to your seat and remain there until all
18 speakers in your group have completed their
19 testimony. If you have a written copy of your
20 testimony, please place it in the box at the court
21 reporter's table, which is that box right in front
22 of me here. Please remember, if you did not get

1 to finish your remarks, your written comments will
2 be entered into the record just as if you had
3 provided them orally. If you did not get to
4 finish and wish to submit written comments today,
5 please see our staff at the registration table and
6 they will provide you forms for submitting written
7 comments. And also please remember that you may
8 submit additional written comments to us up until
9 November 19th, 2010.
10 We will not be answering questions on
11 the proposal; however, from time to time any of us
12 on the hearing panel may ask questions of you to
13 clarify your testimony. Our goal is to ensure
14 everyone who has come today to present testimony
15 is given an opportunity to provide comment. To
16 the extent allowable by time constraints, we will
17 do our best to accommodate speakers that have not
18 pre-registered.
19 Today's hearing is scheduled to close at
20 9:00 p.m. But we will stay later if necessary.
21 If, however, time does not allow you to present
22 your comments orally, we have prepared a table in

1 the lobby where you can provide a written
2 statement in lieu of oral testimony. These
3 written statements will be collected and entered
4 into the docket for the proposed rule and will be
5 considered the same as if you presented them
6 orally. If you would like to testify but have not
7 yet registered to do so, please sign up at the
8 registration table.
9 An agenda can be found in the packet
10 your received when you signed in today. Also
11 included is some material on the proposal as well
12 as instructions for submitting written comments.
13 We are likely to take occasional breaks but we are
14 prepared to eliminate or shorten the breaks in
15 order to allow as many people as possible to
16 provide their oral testimony. I think this
17 session is going to go to about at least 5:30 to
18 6:00. We're just going to go straight through
19 which is a little different from what's on the
20 agenda that you were given.
21 Finally, if you have a cell phone, we
22 would appreciate it if you would turn it off or

1 turn it to vibrate. If you need to use your phone
2 at any time during the hearing, please move to the
3 lobby or somewhere outside the hearing room. We
4 ask for your patience as we proceed. We may need
5 to make some minor adjustments as the day
6 progresses. Thanks again for participating today.
7 And with that, we will go ahead and get
8 started with the afternoon session. Could numbers
9 50, 51 and 53 please come forward and have a seat
10 in the chairs to the right? If 52 or 54 is here,
11 they can come up, too. I think 52 and 54 are not
12 here. I'm going to fit in their place number 95
13 and number 310 -- or 309. We're going to stay on
14 schedule.
15 Okay. Number 50, if you could come to
16 the podium? That would be great. Sir, when
17 you're ready you can start.
18 MR. KUTS: Okay. I'd like to say good
19 afternoon. My name is Ron Kuts, I'm the president
20 of the Village of Caledonia in Racine County.
21 It's about 15 miles south of Milwaukee.
22 About six months ago, we ended up having

1 some information given to us by We Energy
2 indicating that I have about 50 homes that have
3 high levels of molybdenum that are in the wells
4 which are contaminated. This brought definitely a
5 concern and emergency to our village. What has
6 happened is that at the time that We Energy went
7 out and did some testing, they indicated that they
8 checked some wells, they said yes, you do have a
9 problem. A little bit later on, they indicated to
10 us that, sorry, it's not our problem, it's yours.
11 This affects children, families and
12 homes and is a big safety issue in our community.
13 At this time, people in our community that are
14 affected are using bottled water for drinking and
15 cooking. This causes a lot of problems for our
16 community. As we look forward to try to take care
17 of this problem by ourselves, it looks like the
18 Caledonia has to come up with $6.5 million to put
19 municipal water into these areas. And again, this
20 is a rural setting.
21 As President Obama used to say, let's
22 live the American dream. I hate to tell you, I'm

1 living the American nightmare. It's time that the
2 EPA set high standards and make sure that well
3 testing is done, things are taken care of, and
4 protect the citizens of our community that are
5 affected with this. I think it's important and I
6 would definitely urge you to support Subtitle C
7 and let's keep on going. We need all the help we
8 can get. Thank you very much.
9 (Applause)
10 MR. BEHAN: Thank you for your comments.
11 Number 51?
12 MS. BLUMENSHINE: Good afternoon. My
13 name is Joyce Blumenshine. I live in Peoria,
14 Illinois, it's about 150 miles from this room
15 where we all are. And I want to thank each and
16 every member here from EPA and Administrator
17 Jackson. I want to tell you, as a volunteer
18 citizen advocate for the environment, it is hugely
19 significant to me to have this hearing here in
20 Illinois and for me to have the chance to talk to
21 you, because oftentimes in the many hearings I
22 have attended, industry has paid staff, paid

1 lobbyists, paid commenters. They have expense
2 accounts and they are on paid time, and that
3 hasn't happened for me. And I appreciate your
4 being here because I really think it's high time
5 for the citizens to get the coal ash regulations
6 covered by your Subtitle C regulations, and there
7 are many reasons why.
8 In my community of Peoria, we live by
9 the beautiful Illinois River Valley. And just a
10 few miles south of where I live is Bartonville,
11 and on the edge of the Illinois River is the ED
12 Edwards Ameren Power Plant. This is an old 1960's
13 power plant. There is an unlined ash pond. There
14 are no water monitors. And only a levee separates
15 that from the Illinois River which downstream many
16 communities use water from. Peoria myself takes
17 half of its water from the Illinois. If the New
18 Madrid fault has a rupture or there is some other
19 disaster, heaven forbid, what is going to happen
20 at that plant? It's right along the river.
21 And just a little farther south from
22 that, 40 some minutes from where I live is Havana,

1 Illinois. Havana is on your first list of most
2 hazardous impoundments in the entire nation. This
3 is a tiny community. There are huge environmental
4 justice issues there because I have an aerial
5 photo which I will turn in with my written
6 comments, and I wish everyone in the room could
7 see this. The ash pond there, total acres is 90
8 acres. That is larger than the ash pond at the
9 Kingston, Tennessee. This ash pond hazard plant,
10 drawn up thanks to you folks, a spill would go
11 five miles and dissipate in five miles. Well,
12 there's homes readily visible just at the edge of
13 this plant, ash pond. There's a church and
14 schools within two miles. That is just another
15 example.
16 Near where I live is also the Duck Creek
17 Ameren Power Plant near Canton. They have already
18 polluted their groundwater with boron. The
19 solution of the Illinois EPA is typical, dilution
20 is the solution. That boron contaminated water is
21 being metered out into the Illinois River. I am
22 worried about our fish, about the mussel beds, the

1 unique environment that was there that is now
2 further being unjustly impacted by power plants.
3 This has to stop. I urge your strongest
4 regulations. It is high time. There is no such
5 thing as a stigma that ever can balance the
6 cancers, the suffering of the public, the expenses
7 for health and the burdens upon society if these
8 regulations are not put in place. Thank you so
9 much.
10 (Applause)
11 MR. BEHAN: Thank you. Number 52?
12 MS. FOX: My name is Tracy Fox. I'm
13 also a community activist from Peoria, Illinois.
14 I work a lot with a group called Peoria Families
15 Against Toxic Waste, and we have dealt with more
16 traditional hazardous landfill issues. And when I
17 first got involved with RCRA regulations and
18 looking at them, I was somewhat uncomfortable
19 because they're complex and unwieldy. But then
20 when I learned about the TVA coal ash spill and I
21 learned how protective those regulations were in
22 comparison to coal ash, frankly I was outraged.

1 When I learned that sitting south of Peoria are
2 more than 600,000 tons of coal ash unlined,
3 unmonitored, on the banks of the Illinois River,
4 it made me want to throw up my hands and say why
5 bother?
6 I was elated when Administrator Jackson
7 came forward with a proposal to coal ash. And
8 although it might not be as stringent in places as
9 I would prefer, there are certainly many things to
10 recommend Option C. As a local activist, I feel
11 the first key for Option C is the permitting. I
12 feel that permitting is essential if communities
13 are to maintain control and determine the
14 character of their surroundings. I don't feel
15 that anything in the industry's voluntary
16 self-regulated Subtitle D option gives citizens
17 any input into the process as to where these coal
18 ash impoundments would be sited, how they would be
19 managed, and how they would fit in to the
20 cumulative pollution burden that any community is
21 going to bear.
22 The second reason why I think C is so

1 important is because it includes enforceable
2 corrective action, and I think that's a key
3 difference. As someone who has looked at the
4 numerous reports showing water quality violations,
5 well incursions and other monitoring problems, and
6 to realize that Subtitle D includes no enforceable
7 corrective action, all the self-imposed monitoring
8 and reporting in the world is worthless without
9 that.
10 Thirdly, I believe that the clearly
11 delineated post closure care and financial
12 responsibilities that are only included under
13 Subtitle C are critical. Otherwise, the long-term
14 maintenance of these sites is left in the hands of
15 the state which is understaffed and under-equipped
16 to deal with the existing superfund sites that we
17 have, let alone new ones. Only Subtitle C
18 includes the right tools to manage this deadly
19 coal ash waste.
20 Finally, I want to point out that I find
21 it so rich and so ironic that industry which
22 normally is so concerned about the threat of

1 lawsuits and the abuse of the courts is instead
2 standing up time after time today advocating an
3 option where the only recourse for citizens is to
4 push them into the courts. I find that ironic, I
5 find it sad because I'm someone who is involved in
6 legal action right now and I know what it's like
7 to talk about should we sell engraved casserole
8 pans or hold another bake sale so that we can file
9 with the Supreme Court to get the environmental
10 protections we need. Thank you.
11 (Applause)
12 MR. BEHAN: Thank you. Number 53?
13 MS. HARANT: My name is Joyce Harant and
14 I also am from Peoria, Illinois, part of Peoria
15 Families Against Toxic Waste. And I, too, thank
16 you for this opportunity to be here.
17 We do support the regulation by Subtitle
18 C of your options. I have three points that I
19 hope I will have time to make. When I read in
20 your website the description for Subtitle D option
21 regarding enforcement, Subtitle D enforcement
22 through citizen suits, states can act as citizens.

1 I had a quite visceral and negative reaction that
2 I will not share with you this afternoon. The
3 thought that my government who is proposing this
4 regulation because it knows that coal ash is not
5 currently being stored in a manner that protects
6 the public's health and safety, that you would
7 even offer us an option that we should rely on
8 citizen suits to protect us is ludicrous.
9 I'd like to ask you, have any of you
10 been involved in trying to promote environmental
11 safety as part of a grassroots citizens group? By
12 the way, have you documented just where these
13 citizen activists are located? Do we live in
14 every location that needs monitoring? Do these
15 regulations give us any authority to investigate
16 access to funds to monitor sites, any funds to
17 fight these wealthy corporations in court? I did
18 not see that in the regulations.
19 If you ever had to face these wealthy
20 corporations in public hearings and could not
21 afford the professional testimony that you need,
22 you would never suggest citizen enforcement. Have

1 you ever had to fight a wealthy corporation in
2 court without having government attorneys on your
3 side? Have you ever worked with seven other
4 people for six hours at 90 degrees at a ball game
5 selling hotdogs just to make $300 to pay your
6 attorney?
7 I am currently a plaintiff in a lawsuit
8 in the Third Appellate District in Illinois
9 regarding Electric Arc Furnace Test. I can tell
10 you that when our single, poorly paid but
11 dedicated attorney faced the five attorneys
12 supporting the hazardous waste company, you know
13 it's not a fair fight. So, I repeat, do not rely
14 on citizen suits for enforcement.
15 The idea of citizen enforcement is like
16 "don't ask don't tell." Don't ask don't tell the
17 coal ash producing companies because if there
18 doesn't happen to be a well educated, informed and
19 financed citizen activist in the community, we
20 surely know that the wealthy corporations won't
21 tell about their pollution.
22 I would also like to express caution in

1 how the coal ash is determined to be able to be
2 used in a so-called safe manner. In Peoria, we
3 have one of the highest lead contamination of
4 homes and lead poisoning in children. And we need
5 to make sure that any so-called safe use has
6 thorough testing and long-term testing so that
7 this is not coming out in dust into the water
8 after demolition of homes or however it is used.
9 And lastly, I believe we must have
10 universal rules throughout this country to control
11 coal ash waste. If I live in a progressive state,
12 it really doesn't matter because the state next
13 door can be inadequate and I'm still at risk.
14 Thank you very much.
15 (Applause)
16 MR. BEHAN: Thank you for your comments.
17 Is number 54 here? 95?
18 MR. ROEWER: I'm Jim Roewer, the
19 Executive Director of the Utility Solid Waste
20 Activities Group (USWAG), an association of
21 electric utilities and utility trade associations.
22 USWAG supports the development of

1 federal regulations for coal ash under RCRA's
2 Subtitle D non- hazardous waste program. Of the
3 three options that EPA has presented, the Subtitle
4 D Prime option with appropriate adjustments is the
5 best path forward. Unlike the Subtitle C
6 approach, D Prime which is directly enforceable by
7 the states and by citizens will enable EPA to
8 establish environmentally protective programs
9 across the states without crippling coal ash
10 beneficial use and imposing unnecessary
11 regulations on power plants, threatening jobs and
12 increasing electricity costs.
13 In fact, even EPA agreed that hazardous
14 waste regulation will result in excessive and
15 unnecessary regulation. In its final regulatory
16 determination in 2000, EPA concluded that
17 hazardous waste regulation was not warranted for
18 coal ash, and the Agency found that the inflexible
19 nature of the federal hazardous waste program
20 would result in excess costs and unduly burdensome
21 regulations for coal ash. Let me quote EPA on
22 this point: A Subtitle C system would require

1 coal combustion waste units to obtain a RCRA
2 Subtitle C permit (which would unnecessarily
3 duplicate existing State requirements) and would
4 establish a series of waste unit design and
5 operating requirements for those wastes, which
6 would generally be in excess of requirements to
7 protect human health and the environment...Since
8 [coal ash] sites vary widely in terms of
9 topographical, geological, climatological, and
10 hydrological characteristics (e.g., depth to
11 groundwater, annual rainfall, distance to drinking
12 water sources, soil type) and the wastes potential
13 to leach into the groundwater and travel to
14 exposure points is linked to such factors, it is
15 more appropriate for individual States to have the
16 flexibility necessary to tailor specific controls
17 to the site or region specific risks posed by
18 these waters.
19 Frankly, we couldn't have said it better
20 and nothing has changed since issuance of that
21 determination to alter this conclusion.
22 We agree that steps must be taken to

1 prevent accidents like that which occurred at
2 TVA's Kingston facility from happening again.
3 Even EPA has found that the coal ash being
4 recovered from that site can be safely disposed of
5 in a RCRA Subtitle D non-hazardous waste facility.
6 In other words, the coal ash from the accident
7 that really was the impetus for this rulemaking
8 is, with EPA's explicit approval, being safely
9 disposed of in a Subtitle D non-hazardous waste
10 facility.
11 USWAG supports the development of
12 federally enforceable Subtitle D regulations for
13 coal ash, regulations that would include
14 groundwater monitoring, groundwater protection
15 standards, and safety and dam integrity standards
16 to protect the environment and help ensure that
17 coal ash releases like that which occurred at TVA
18 don't happen again. The record is clear, Subtitle
19 C regulation of coal ash, the most burdensome and
20 costly option available to EPA, is simply neither
21 warranted or necessary. Thank you.
22 MR. BEHAN: Thank you. Numbers 55, 56,

57, 58, if you have that number, could you please come forward? If 55 could come to the podium that would be great.

MR. DeBOER: Hello, my name is Richard DeBoer. I'm a member of the National Ready Mixed Concrete Association. And on their behalf, I'd like to thank the Environmental Protection Agency for conducting this listening session.

As a matter of scale, the ready mixed concrete industry consumes 75 percent of all the Portland cement used in this country. We represent over 1,500 concrete manufacturers and 50 state affiliated organizations. Concrete is the most widely used construction material in the world and is produced and consumed in every congressional district in the country.

With regard to fly ash, the ready mixed concrete industry is the largest beneficial user. Surveys of ready mixed concrete producers show that over 55 percent of all ready mixed concrete contains fly ash.

Fly ash is used in combination with

1 Portland cement to impart the following benefits
2 to concrete: 1. Increased durability and service
3 life of structures; 2. Reduction in waste sent to
4 landfills' 3. Reduction in raw materials
5 extracted, energy for production, and air
6 emissions including CO2; and 4. Lower concrete
7 material costs.
8 While the concrete industry currently
9 uses about million tons of fly ash annually, it is
10 estimated that the concrete industry could
11 increase its current use to more than 30 million
12 tons per year by 2020, resulting in less fly ash
13 going to landfills and reducing the concrete
14 industry's carbon footprint by 20 percent.
15 Based on the concrete industry's
16 extensive use of and reliance on fly ash in
17 concrete, and after examining the EPA's proposed
18 rule, we have determined that RCRA Subtitle C
19 designation for CCRs bound for disposal while
20 retaining exemptions for beneficial use will lead
21 to the following unintended consequences for the
22 concrete industry: 1. An increase in production

1 costs and the cost of construction due to
2 increased regulations for handling fly ash. 2.
3 An increase in potential liability for concrete
4 producers. 3. Potentially stricter state laws
5 impacting beneficial use. 4. The potential
6 elimination of fly ash in concrete. Fear of
7 liability will drive specifying engineers,
8 architects and end users to disallow the use of
9 fly ash in concrete. 5. There will be a drastic
10 impact on the durability of our nation's
11 infrastructure. There is an increased service
12 life of roads, bridges and structures built with
13 concrete containing fly ash. Other economically
14 viable alternatives for durable concrete do not
15 exist.
16 Finally, as with the Subtitle C
17 proposal, NRMCA believes a Subtitle D proposal
18 will also dramatically affect fly ash use in
19 concrete unless the proposed rule explicitly
20 states that fly ash waste from ready mixed
21 concrete operations is exempt and not subject to
22 these regulations. Thank you for hearing my

1 concerns on behalf of the ready mixed concrete
2 industry.
3 MR. BEHAN: Thank you. Number 56?
4 MR. ADAMS: Good afternoon. My name is
5 Thomas Adams, I'm the Executive Director of the
6 American Coal Ash Association in Aurora, Colorado.
7 I'd like to thank you for the opportunity to
8 participate here today.
9 In an effort to create regulations for
10 disposal of coal combustion products, the EPA has
11 elected to question certain beneficial uses which
12 have accounted for millions of tons of avoided
13 disposal for decades. Specifically, the EPA has
14 questioned certain recycling efforts described as
15 "unencapsulated" beneficial use. The primary
16 target has been the use of coal combustion
17 products for geotechnical purposes; that is fill
18 projects where coal combustion products are used
19 in lieu of mined sand, gravel and other aggregates
20 for structural fills to support all kinds of
21 beneficial commercial development. The Agency has
22 expressed concerns for potential leaching of heavy

1 metals into groundwater, coincidentally the same
2 heavy metals found in the same levels in the
3 materials they are replacing. EPA has not asked
4 or answered the obvious question: If heavy metals
5 are detectable in sand, gravel, limestone and
6 other aggregates at similar levels to those found
7 in coal combustion products, is there a leaching
8 concern with the use of these materials? The
9 answer would be a resounding "NO".
10 We know this because we have decades of
11 experience which gives us anecdotal evidence to
12 support that answer. We have the same anecdotal
13 evidence when it comes to the use of coal
14 combustion products in geotechnical fill. ACAA
15 member contractors and geotechnical consultants
16 have used coal combustion products to reclaim and
17 improve sites for decades. In fact, in the
18 Arlington hearing on August 30th, a prominent
19 environmental group said that structural fills can
20 be done safely. Yet the EPA has chosen to go down
21 this road of questioning a very important
22 beneficial use.

1 The current proposal that is the subject
2 of public hearings such as today says that large
3 structural fills are not considered beneficial
4 uses by EPA. We strongly disagree. First, we ask
5 the EPA: What qualifies as "large"? We do not
6 have knowledge of many 5 million ton fill projects
7 such as the Gambrills, Maryland site, the primary
8 example cited by EPA as a basis for questioning
9 structural fills. The quantity and method of
10 deposit in this site are unique to that site.
11 Geotechnical fills rarely, if ever, approach even
12 half the quantity used at Gambrills. Secondly,
13 has the Agency attempted to discover how fills are
14 engineered and constructed and their history of
15 performance? And lastly, has the Agency evaluated
16 all the materials used for this application to
17 understand the commonalities and differences
18 between the materials? These answers are lacking
19 and are needed to conduct any meaningful
20 evaluation of the use of coal combustion products
21 for geotechnical fill.
22 The American Coal Ash Association

1 supports Subtitle D enforceable standards on a
2 federal level and opposes any form of Subtitle C
3 regulation. If we're going to continue the
4 recycling success story of the recent past, the
5 EPA must make a serious effort to understand the
6 engineering practices that support the decades of
7 safe and sustainable use of coal combustion
8 products in the geotechnical markets. The science
9 and track record is available if the EPA is truly
10 committed to real science, not political science.
11 Thank you.
12 MR. BEHAN: Thank you. Number 57?
13 MR. PATTERSEN: Thank you very much.
14 I'm Dr. Jeff Patterson, a physician and professor
15 at the University of Wisconsin School of Medicine
16 and President of Physicians for Social
17 Responsibility. PSR is an organization of 30,000
18 health professionals dedicated to preventing those
19 threats which we cannot cure since 1961 when we
20 were founded to work on the crucial issues of
21 nuclear weapons and nuclear war. Our work now
22 includes other environmental issues and toxics.

1 And coal ash falls squarely into this category.
2 Today, we have released this report, a
3 comprehensive report on the toxic and deadly
4 effects of coal ash. It's available our website,
5 www.psr.org. As this report points out, the
6 threat to public health from coal ash is already
7 both serious and widespread. Coal ash is disposed
8 of in approximately 2,000 dumpsites across the
9 nation. Coal ash toxicants have leached from
10 disposal sites in well over 100 locations carrying
11 toxic substances into aboveground and underground
12 waterways and, in many cases, drinking water
13 wells.
14 The impacts to health can be quite
15 severe. According to an EPA assessment report,
16 people who live near an unlined wet ash pond and
17 get their drinking water from a well have as much
18 as a 1 in 50 chance of getting cancer from
19 drinking water contaminated by arsenic.
20 Even when people are not drinking
21 contaminated water, their health may be threatened
22 if they eat fish taken from water sources

1 contaminated by coal ash toxicants. Coal ash is
2 also dangerous if inhaled, making fugitive dust
3 from coal ash dumps a serious health concern.
4 Unfortunately, those least able to protect
5 themselves from contamination, developing fetuses
6 and young children, are even more susceptible to
7 harm. Thus, the so-called safe levels of
8 toxicants which are developed for adults may be
9 far too high.
10 Finally, coal ash is persistent over
11 time, raising long-term concerns and challenges in
12 regards to health and in regards to the outcome of
13 these products. When coal ash contaminants leach
14 out of unlined surface impoundments, it may take
15 decades until they reach peak concentrations in
16 nearby well water: 74 years for selenium, 78 for
17 arsenic, 97 for cobalt. They don't disintegrate
18 or lose their toxicity.
19 The stigma is already there. It is the
20 stigma of the damage to the health of thousands
21 that the coal industry has already caused and will
22 continue to cause for many years to come. Coal

1 ash is a part of that damage. We must do our best
2 to prevent future damage. There is no cure, only
3 prevention.
4 For that reason, PSR calls on the EPA to
5 discharge its duty to protect the environment by
6 applying the strictest possible levels of control
7 over coal ash disposal. We must apply the
8 precautionary principle. We strongly support
9 Subtitle C as the only option currently on the
10 table that would adequately protect human health.
11 Federal regulations of coal ash disposal
12 are important. State efforts are inconsistent and
13 frequently too weak. We must phase out wet
14 storage. And finally, we must limit the recycling
15 of coal ash to uses where coal ash is not exposed
16 to water and where the ash is chemically bound.
17 On behalf of PSR, we support C and thank you very
18 much.
19 (Applause)
20 MR. BEHAN: Thank you. Is number 58
21 here?
22 MS. BUTTERFIELD: Good afternoon. I'm

1 Claire Butterfield, I'm the Executive Director of
2 Faith in Place. And I also want to thank you for
3 holding this hearing on the proposed EPA rule to
4 regulate coal ash. I'm very pleased that you've
5 decided that it's time to act on this serious
6 public health issue. I know you're hearing today
7 from experts in the fields of public health and
8 environmental science on how important this is.
9 I'm here today as a Unitarian Universalist
10 minister and as the director of the Illinois
11 Interfaith Power & Light campaign of Faith in
12 Place.
13 Faith in Place works with over 600
14 congregations in the state to help people of all
15 faiths become better stewards of creation because
16 our faiths teach us that we must take care of this
17 beautiful planet on which we have been placed.
18 Every faith teaches this in a different way but
19 they all speak to the need for us to be careful
20 stewards of this extraordinary gift of being here
21 at all.
22 I'm also here to speak to you as a human

being who spent her childhood among the farm fields of East Central Illinois. One of the coal ash impounds we've been learning about is just a few miles east of where I grew up in some of the richest farm country anywhere and in a place which slow and careful observation will disclose over time to be beautiful. We heard my colleague Brian Sauder this morning testify about the impound near the Vermillion River near Kickapoo State Park where a ravine was slowly filled up with coal ash with no oversight and no regulation. And people who live near that site have been told not to drink their water though no other source is available to them.

When I see the pictures of that place and when I think that the people who decided that it was acceptable to take a natural ravine near a river and fill it with hundreds of millions of gallons of a toxic substance, I think that if those people were churchgoers then the church also has failed here. It should never have been possible to think that this was an acceptable

1 thing to do. We should always have known and we
2 should always have taught that our love of our
3 neighbor includes care for his well water and that
4 our neighbor is not just the person next door but
5 the soil and the river and the animals who depend
6 on them for their lives, too.
7 And moreoever, when I see the pictures
8 of this place which may have been destroyed beyond
9 saving, I am profoundly sad. I know what the
10 human animal is. I am one myself. But my wish
11 for us is that we would always know to do better
12 than this. Left to our own, some of us have
13 chosen to value livelihood over life.
14 We have seen what happens without
15 regulation. Through the proposed Subtitle C
16 option, you ensure that it does not happen again.
17 Thank you.
18 (Applause)
19 MR. BEHAN: Thank you. To those persons
20 with numbers 59, 60, 61, 62 and 63, come forward
21 please. Could 59 come to the podium please?
22 MS. TREACY: Thank you very much for

1 allowing us to be here today. My name is Theresa
2 Treacy. I live in Southern Illinois and I'm an
3 environmental activist organizer. And in my work,
4 I have met dozens of people who have been
5 negatively impacted by the effects of coal ash.
6 I decided rather than giving my personal
7 comments today I would give those of a friend of
8 mine who I have met through this work who couldn't
9 be here today because he works 9:00 to 5:00,
10 Monday through Friday, and this was a very
11 inconvenient place for him to come. It's an
12 all-day trip. So, these comments actually come
13 from my friend, Dale Witowski who lives in
14 Marissa, Illinois.
15 Over 25 years ago, I moved my family to
16 a rural area to escape the pollution and other
17 perils of the city. I lived in this area in
18 harmony with the farming community, enjoying the
19 clean water and fresh air. Little did I know that
20 in 20 years a massive power plant would be built
21 that would destroy all of my reasons for rural
22 living. This huge facility is known as Prairie

1 State Generating Company in Lively Grove,
2 Illinois. I have followed every process for
3 permitting of this facility and we were assured
4 that outside of a temporary area within the power
5 plant facility no coal ash waste would be stored
6 offsite in this area of the county.
7 We were distraught, however, that old
8 strip pits were issued permits to store mounds of
9 coal ash that would be over 100 feet tall and
10 would be located just two or three miles from
11 populated areas such as the town of Marisa.
12 Things got worse recently when my neighbors and I
13 discovered that Prairie State is planning a
14 storage area offsite of their plant just a mile or
15 so from our homes. This will also be adjacent to
16 my neighbor's farmland and they are of course
17 worried about how the dust and water runoff
18 contaminated with arsenic, lead, selenium and
19 mercury will affect the health of our children,
20 not to mention how it will depress property
21 values. I am at my wit's end at how the local
22 agencies such as the Illinois Department of

1 Natural Resources and the Illinois Environmental
2 Protection Agency bend over backwards for any
3 company that mines or burns coal at the expense of
4 citizens that live in Southern Illinois. It is
5 this type of attitude that helped create the BP
6 oil atrocity and the coal ash tragedy in
7 Tennessee.
8 I am grateful that you are giving us an
9 opportunity to express our concerns about the
10 serious problems posed by toxic coal ash left from
11 burning coal. I urge you to stand up to industry
12 pressure and quickly issue strong, federally
13 enforceable safeguards under Subtitle C to protect
14 communities from toxic coal ash. Continuing to
15 ignore scientific and safety concerns comes at a
16 high cost to our families, our communities and our
17 economy. Thank you.
18 (Applause)
19 MR. BEHAN: Thank you. Is number 60
20 here? 61?
21 MR. KANE: Hello, my name is Bill Kane.
22 I'm with Headwaters Resources. I've spent the

1 last 29 years marketing coal combustion byproducts
2 to ready mixed producers, block manufacturers,
3 asphalt companies, pre- stress concrete companies,
4 and many other organizations and companies.
5 Subtitle C will harm and diminish ash
6 utilization in the United States. The stigma of
7 hazardous waste going into any product would harm
8 and diminish it. If you are going to buy your
9 child a toy and you had an option of two toys, one
10 made with plastic and one made with plastic and
11 hazardous waste, which one are you going to choose
12 for your child? It's I think pretty apparent that
13 labeling fly ash as a hazardous product, it is not
14 going to increase beneficial reuse.
15 Back in October of last year, 60 Minutes
16 aired the TVA Kingston disaster. Shortly after
17 that happened, the next day, one of our number one
18 ready mixed producers in Clarksburg, West Virginia
19 called and demanded all ash taken out of his
20 concrete that he was to receive that morning for
21 his new driveway.
22 I thought the EPA was supportive of

1 reusing fly ash into concrete because it was
2 encapsulated. But once again, if you go with
3 Subtitle C, it will diminish and I'm sure you will
4 hear ready mixed producers later on today tell you
5 that they will no longer use fly ash in concrete
6 if you go with Subtitle C.
7 The Kingston government owned, I don't
8 know if some people don't realize that TVA is I
9 think one of the only owned and operated utilities
10 owned by the United States Government. The
11 landfill was run by the United States Government
12 and it collapsed and it caused a lot of serious
13 environmental problem. So, your answer is to go
14 with Subtitle C, make fly ash hazardous and build
15 more landfills? Because that's what's going to
16 happen.
17 You make it Subtitle C, we're going to
18 be building landfills all over the place. I would
19 have to say you're going to ruin the largest
20 recycling program this country has ever seen.
21 And in conclusion, there is simply no
22 basis to pursue Subtitle C for CCBs. It will be

1 equally protective for the EPA to develop a
2 federal program for CCB disposal practices under
3 RCRA Subtitle D non-hazardous waste program that
4 ensures the protection of human health and
5 environment. I thank you for your time.
6 (Applause)
7 MR. BEHAN: Thank you. Are numbers 62
8 or 63 here? Okay, we'll move on to 64, 65, 66 and
9 67. Is number 64 here? Sir, number 65.
10 MR. GRIGSBY:: Thank you. Good
11 afternoon. My name is Derek Grigsby, I am the
12 Chairperson of the Detroit Green Party as well as
13 a board member of the Clean Water Network.
14 Now, a lot has been said so I'll be
15 brief then. Sorry about the redundancy but I'm
16 reading a little bit of a statement the Clean
17 Water Network has put out on this issue.
18 Every year, more than 136 million tons
19 of dangerous toxic coal combustion waste is
20 generated by coal burning power plants across the
21 United States. The coal ash contains highly toxic
22 chemicals that are a risk to public health and the

1 environment, including arsenic, boron, cadmium,
2 chromium, lead, mercury and selenium. Despite its
3 hazardous characteristics, coal ash is not subject
4 to federal regulations and the state laws that
5 regulate its disposal are generally weak or
6 nonexistent. Lack of federal regulations continue
7 to threaten the health and environment of millions
8 of people who live in communities that surround
9 coal burning power plants.
10 People who live near unlined ponds
11 containing coal ash and coal refuse who drink
12 groundwater have been found to have a 1 in 50
13 chance of developing cancer from arsenic. That
14 number is more than 2,000 times higher than what
15 the EPA considers an acceptable rate. In addition
16 to causing cancer, toxins from coal ash ponds have
17 been linked to organ disease, respiratory illness,
18 neurological damage and developmental problems.
19 The Clean Water Network, the largest
20 grassroots coalition in the country working to
21 protect our nation's water resources calls on the
22 United States Environmental Protection Agency to

1 promulgate strong federal regulations to govern
2 the management and safer disposal of coal ash. In
3 addition, CWN strongly recommends that coal ash be
4 regulated under all the requirements of Subtitle C
5 of the Resource Conservation and Recovery Act.
6 Also, issues that federal regulations must address
7 include: reducing coal ash contamination in waters
8 across United States; keeping coal ash
9 contamination out of private and public drinking
10 water sources; eliminating coal ash dumpsites that
11 leak toxic slurry into rivers and streams;
12 requiring groundwater monitoring; forcing power
13 companies responsible for coal ash pollutions to
14 clean up the contamination. That's a serious one
15 right there. Thank you very much.
16 (Applause)
17 MR. BEHAN: Thank you for your comments.
18 Number 66?
19 MR. DONNAN: My name is Doug Donnan, I'm
20 speaking as a citizen and as a member of Sierra
21 Club here in Illinois.
22 My story begins in an old rust belt city

1 in the Midwest about 20 years ago. I developed
2 bladder cancer, about the same time many women in
3 the same city were developing an increase in
4 breast cancer. Attempts were made to isolate the
5 causes, none were found. But the ladies met by
6 themselves and tried to find patterns that they
7 found common to them that might cause it. The
8 only common denominator among them that they could
9 find was the drinking water in this old, heavy
10 industrial manufacturing city.
11 As a result, I decided to start
12 distilling my water for drinking. I have done so
13 ever since for the last 20 years in the hopes it
14 will flush out my system and help keep my cancer
15 at bay. My third and most recent operation to
16 remove tumors was last year, and after the first
17 two being cancerous, the last one was benign.
18 Whether this is my reward for my efforts, I do not
19 know for sure, but my problem took almost 20 years
20 to see any progress. After reading reports about
21 the unclean industrial sites and toxins in the
22 water supply, I think I tend to believe that the

1 carcinogenic materials are there. To see the
2 pictures of the current crisis of coal ash causing
3 contamination in aquifers is a huge scare to
4 people who have to face this disease.
5 I think you have a means of finding a
6 solution. The cap and trade has obviously been a
7 very contentious thing, therefore, why not try
8 something different? How about taking all the
9 research costs and totaling them up and charging
10 the coal companies for the need to find it or make
11 it neutral or useful and add it as a surcharge to
12 the coal companies so that they will meet the real
13 costs of this contaminant and hopefully bring the
14 cost of coal up to its real value in real cost,
15 and thereby push us over into looking at other
16 alternatives of energy? So, I don't believe the
17 real cost of coal is included in the price and I
18 think you can do something about it and you can
19 find an option to the cap and trade solution which
20 has been stymied.
21 My final comment today is to develop an
22 insight into this issue along with highly

1 contentious, controversial and potentially
2 explosive emotional ones can be better handled.
3 Americans are incredibly angry. We are developing
4 a huge contentious society that's not helping us
5 solve these problems. And I would love, you know,
6 even choosing a TV station is becoming a political
7 decision instead of a decision to get information.
8 I am asking you, the EPA, to please do
9 what you can to make this discussion civil. Today
10 we heard many interesting viewpoints that a lot of
11 people here I'm sure have never heard before.
12 MR. BEHAN: Thank you, sir, your time is
13 up. Thank you.
14 (Applause)
15 MR. BEHAN: Could those with numbers 67,
16 68, 69, 70, 71 and 72 come forward? Could 67 come
17 to the podium please?
18 TYLER: All right. Well, my name is
19 Tyler, I'm a student at the University of
20 Missouri. I'd like to thank everybody for giving
21 me the opportunity to speak here. I'm a member of
22 the Sierra Club's Beyond Coal Campaign at the

1 University of Missouri.
2 And the reason I'm here speaking is
3 because coal ash has affected everyone here in
4 some way, shape or manner. Me, I'm an avid
5 snowskier. Love to snowski. It's my life. But
6 when it comes to mountaintop removal, I can't ski
7 without a mountaintop. And so, I want to come and
8 express my voice on why coal ash needs to be
9 declared toxic.
10 It's currently just destroying all the
11 landscape we're storing it in. And I really think
12 that, I probably should have formed my argument
13 better. Sorry, I'm a little late getting up here.
14 I just believe strongly that this is something
15 that needs to be done and it's a step for us to
16 take in making the United States a leader in going
17 carbon- free in our energy sources. Thank you.
18 (Applause)
19 MR. BEHAN: Thank you. Number 68?
20 MS. DAVIS: Hi, my name is Tammy Davis.
21 I'm representing my household as well as my
22 neighborhood. I just offered a sample of what our

1 wonderful water in our area is doing to things in
2 our homes. That is from my neighbor, Peggy
3 Richardson, it's only two years old, it's a dinner
4 knife and it has pitted ridiculously. It's doing
5 it to, you know, things in all of our households.
6 Our neighborhood is located slightly
7 southeast of Yard 520 in Pine Township, Indiana.
8 Yard 520 is not properly lined and has leached.
9 When I moved here ten and a half years ago, I
10 truly believed that there were issues with our
11 water then and chose not to drink or allow my
12 household or pets to do so. Water should not
13 contain the things that our water in our area
14 does. Our yards and streets and drives are full
15 of coal ash. My water and soil have both been
16 tested by EPA representatives and have both been
17 proven to contain unsafe toxic levels of
18 contaminants.
19 The American dream, or one of them, own
20 a home and have it increase in value. Between
21 2002 and 2001, we needed an appraisal of our
22 property be performed. The appraiser stated and

1 disclosed in our appraisal that they believe there
2 to be issues with our water then. The property
3 values in our neighborhood are in the proverbial
4 toilet, helping to ensure that we'll not only
5 suffer many probable health issues but take a very
6 substantial financial loss as well. You might as
7 well shoot us now. We have an escalated number of
8 Alzheimer's cases in our area as well as other
9 diseases.
10 And if any of you have ever had
11 first-hand experience with someone that has
12 Alzheimer's which we believe these contaminants
13 directly are related to, it's very devastating to
14 the family members as well as with the individual
15 with those.
16 Approximately eight plus years ago when
17 I attended my first meeting called by the EPA, my
18 suspicions were confirmed. At this meeting, a
19 question was put to each member of the panel
20 comprised of EPA, IDEM, ASTDR, et cetera. The
21 question: Would you drink, bathe, cook, play, or
22 use our water or allow your children or

1 grandchildren to do this without hesitation. Each
2 panel member emphatically responded no. So, why
3 are we expected to at this late date?
4 When I see what the water and steam
5 created from this water does to items in my home
6 on a daily basis, I am very fearful of what it is
7 doing to us and our children's bodies, both
8 physically and mentally, as we are in constant
9 contact on our skin surface and internally. We no
10 longer plant a garden. As avid hunters, we are
11 concerned with consuming wild game that inhabit
12 our area and the surrounding areas that the local
13 landfills have leached into.
14 Gee, a home with value, a garden, our
15 hunting and fishing heritage, parts of the
16 American dream, right? EPA, I put it to you: Are
17 you protecting our environment or the responsible
18 parties that they have found for our area? Thank
19 you.
20 (Applause)
21 MR. BEHAN: Thank you. Is number 69
22 here?

1 MR. RODOLFO: I am Kelvin Rodolfo,
2 Emeritus Geology Professor at the University of
3 Illinois at Chicago, a long-time landowner in the
4 Driftless area of Wisconsin and currently residing
5 in Viroqua. I speak for three grassroots
6 organizations: Harmony Opposing Pollution of the
7 Environment, Asbury Ridge Community for Hope, and
8 Valley Stewardship Network which monitors and
9 protects the water quality of the Kickapoo River
10 watershed. We unequivocally oppose Subsection D
11 and offer qualified support to Subsection C.
12 Last year, we prevented a local
13 coal-fired utility from establishing a landfill in
14 Vernon County to accommodate as much as 380,000
15 cubic yards per year of fly ash-lime scrubber
16 waste.
17 Our western Wisconsin upland is called
18 the "Driftless Area" because the glaciers skirted
19 it during the Pleistocene. Our counties are not
20 rich, and poor areas often are targets for
21 landfills. The area has not been adequately
22 studied geologically, but the entire region is

"karstic", underlain by soluble carbonate rocks with numerous vertical and horizontal fractures, sinkholes, caves, crevices, disappearing streams and springs. These features facilitate contamination of the underlying sandstone aquifers that provide virtually all our potable water.

In an 88 square mile study area in our county, 30 percent of all wells drilled since 1938 encountered caves and crevices. Even the most meticulously engineered landfill can be compromised by subterranean collapse of such cavities.

A landfill site would have taken up 600 acres of prime farmland, displacing 20 families that have lived and farmed there for generations. The one in Viroqua was justified by its proximity to the existing county landfill.

But the water well for that landfill had penetrated 109 feet of creviced dolomite. All proposed sites are heavily karstic, but the geologic consulting firm that documented no karst problems is a subsidiary of Alliant Energy which

1 also burns coal.

2 We urgently need the stringent federal

3 standards and regulations stipulated in Subtitle

4 C. But all landfills leak eventually, and water

5 monitoring can only report "so far so good" until

6 contamination is detected and an aquifer is ruined

7 forever.

8 EPA knows the increased health risks for

9 people who use wells near coal ash impoundments.

10 Wisconsin is the state with the most cases.

11 Clearly, our State Department of Natural Resources

12 cannot be relied upon to protect us.

13 Importantly, Subtitle C would prevent

14 individual states from imposing inadequate

15 standards, and would allow for more stringent

16 local control which we are currently denied. Our

17 state tends to let industries write the guidelines

18 they must follow. Neither Subtitle advocates

19 recycling of coal ash. The 130 million tons

20 America produces annually should all be used in

21 road or airport runway bases, or converted into

22 concrete, green brick, inert aggregate or plastics

that entrap and immobilize the toxic metals. The cost of an aggregate plant is comparable to that of a landfill.

But the ultimate solution is to stop burning coal altogether. Greenhouse CO2 output is not reduced by either Subtitle.

(Applause)

MR. BEHAN: Sir, could you wrap up your comments?

MR. RODOLFO: Carbon capture and sequestration is not the answer. Mining and burning one ton of coal carbon produces almost four tons of CO2. How can it be stuffed back into the ground?

MR. BEHAN: Sir, your time is up. Thank you.

MR. RODOLFO: Thank you.

(Applause)

MR. BEHAN: Is number 70 here?

MR. REINKE: Good afternoon. My name is Thomas Reinke. I am from Self Reliant Energy Company, not to be confused with Reliant Energy

1 Company. We don't burn coal. We put up renewable
2 energy equipment.
3 I'm speaking on behalf of Terry Miller
4 who is a member of the Lone Tree Council. I
5 support the Sierra Club, Progress Michigan,
6 National Wildlife Federation, and Great Lakes
7 Renewal Energy.
8 We're talking about the Saginaw Bay. In
9 2008, the grassroots group Lone Tree Council began
10 an investigation in handling the coal ash at
11 Consumer Energy's at two coal-fired plants at the
12 mouth of the river. Documents obtained from
13 Michigan Department of Environmental Quality
14 showed that the state knew that the Consumer
15 Energy's ash landfills were discharging arsenic,
16 boron, lithium and sulfate from coal ash leaching
17 into the Saginaw Bay as early as 2002.
18 There are two ash landfills, one is a
19 292 acre site, and the adjacent 172 acre site.
20 Both filled with fly ash and bottom ash slurry
21 bordering the Saginaw Bay. They were constructed
22 in the 1940's through the 1970's on bay and the

1 wetlands.

2 The landfills were originally supposed

3 to be isolated from the bay by walls keyed into

4 the clay bedrock, but according to the Michigan

5 Department of Natural Resources, the utility

6 failed to create a sealed barrier. Testing

7 ordered by the DEQ in 2002 showed levels of

8 arsenic leaching into the Saginaw Bay that

9 exceeded water quality standards for Michigan.

10 Mercury is also a concern.

11 The ash landfills over at least three

12 different state administrations were given a total

13 of 14 variances. These exempted the utility from,

14 among other things, staying 100 feet from the

15 shoreline, four feet clearance from groundwater,

16 and continuous supervision of unloading.

17 Also, because the ash was in liquid form

18 and had access to groundwater, the company in 1986

19 was exempted from getting a state groundwater

20 discharge permit. The company has recently

21 requested that they continue to be exempted from

22 getting a state groundwater permit.

1 We need help. I do believe that the
2 Department of Natural Resources is committed to
3 protecting the public but the state's arms are
4 tied by limitations of state law. We need the
5 EPA's help again. We need strong federal
6 safeguards against toxic ash. We need minimum
7 national standards for storage, transport and
8 disposal of this hazardous waste, required
9 corrective action, storage and management
10 requirements, regular inspections, closure and
11 post-closure requirements, reporting for locations
12 of past and present sites, and enforcement
13 guarantees.
14 We urge you to issue a strong rule. We
15 need help in Michigan, help only the resources of
16 the federal government can provide. Thank you
17 very much for the opportunity to speak today.
18 Thank you all for coming.
19 (Applause)
20 MR. BEHAN: Thank you. Number 71?
21 MR. KNOTT: Good afternoon and thank you
22 for holding this hearing. My name is Adam Knott

1 and I'm the Legislative Director of Michigan
2 Citizen Action. We have 11,000 members throughout
3 the State of Michigan.
4 We strongly support Subtitle C because
5 of the state and federal enforcement that would be
6 part of the rule, because private citizens cannot
7 bring a suit on their own, through their own
8 resources. The industry has the unlimited
9 checkbook and can outlast any citizen group.
10 Plus, there is no guarantee that the state, even
11 though it can be acting as a citizen, will
12 necessarily bring corrective action or bring
13 enforcement to the industry.
14 And also, we support the state and the
15 federal government's corrective actions under the
16 Subtitle because the industry, as much as they
17 have the good intentions of fixing their mistakes
18 and self regulating, don't always do that. I can
19 tell you as someone who lives 30 minutes from
20 Marshall, Michigan where 800,000 gallons of oil
21 were leaked into the Kalamazoo River where I get
22 my water from, that company had 350 areas of

1 concern and did not address them at all. So, we
2 strongly need both the state and the federal
3 government in there to enforce any corrective
4 action that is needed.
5 And lastly, Subtitle C will create
6 uniformity throughout the country, from cradle to
7 grave of coal ash and its regulation. And if
8 everyone knows the rules, everyone can act
9 accordingly and, you know, those that use, whether
10 it's cement makers or the coal industry, if they
11 know what the rules are, they can act accordingly
12 and offer the best service and the best product
13 and the landfills will not dry up overnight.
14 Every time a rule such as this is proposed, they
15 always say that they'll go out of business. Well,
16 we hear that from the regulation of industries
17 that have abused their positions regularly. If
18 it's not the coal industry, it's the insurance
19 industry, and not one of them has gone out of
20 business yet. So, we strongly support Subtitle C.
21 Thank you.
22 (Applause)

1 MR. BEHAN: Thank you. Number 72?
2 MS. SCHUBA: Good afternoon. My name is
3 Patricia Schuba and I came here from outside of
4 St. Louis, Missouri. It's a place called Labadie,
5 Missouri, a small rural town about 35 miles west
6 of St. Louis. And I want to share with you some
7 facts about the plant and our group that came
8 together to try to find more reasonable regulation
9 of a proposed coal combustion waste dry landfill
10 that AmerenUE wanted to put in the Missouri River
11 floodplain. It's a hundred-year floodplain. The
12 plant is there, it has operated for about 40
13 years. And we have two very large impoundments,
14 one unlined which is 154 acres, and one that is
15 lined that is 79 acres and is leaking and has been
16 leaking since 1993 to the amounts of 25.4 million
17 gallons per day with a maximum as high as 57.8
18 million gallons per day.
19 So, when I first came to looking at the
20 issue, I had concerns about what is in fly ash.
21 My background is biology and healthcare. We all
22 know and I don't need to repeat the implications

1 of some of these heavy metals being in the
2 environment and bio-accumulating.
3 But the concern for me was that I
4 assumed the EPA or our State DNR, or at the last
5 our local government would do something to monitor
6 and protect us from any unneeded leaching and
7 movement of materials toward the Missouri River.
8 And the Missouri River provides drinking water for
9 half of Missourians. And there is a huge
10 population just east of us. 50 miles down the
11 river is an intake for St. Louis County and then
12 St. Louis City. In our Metro St. Louis area, we
13 have four plants operating. The one in Labadie is
14 the largest, and the proposal is for up to a
15 1,100-acre dry landfill site. That's what's been
16 purchased.
17 So, not only are there issues with what
18 is happening at the impoundments that are very
19 disturbing, that I think the rule, if you decided
20 on Subtitle C, would help protect us because it
21 would at least establish guidelines for how to
22 manage the ponds, how to phase them out, to line

1 them, and to have some standards. But also, we
2 have grave concerns about the movement of the
3 materials in our community. Again, I had no idea
4 until we followed trucks, until we started asking
5 questions, and the materials are used readily on
6 the roads, exposed to air, exposed to being
7 compressed and turned into particulate matter on
8 the roads. And what I found out is this is
9 happening across Missouri.
10 So, what we're asking for is that you
11 consider the strictest measures as possible to
12 monitor, regulate and set standards at the federal
13 level, and someone point out earlier, that you can
14 go from state to state and know what is happening.
15 And also, we are all connected by our national
16 waterways. Again, the Missouri and the
17 Mississippi who touch Missouri are particularly
18 important. And I do have a lot of additional
19 facts, I think it's important for you to know
20 what's happening at the state level and on the
21 ground, so I'm going to leave those with you from
22 Washington University.

1 MR. BEHAN: Thank you, ma'am.
2 MS. SCHUBA: Thank you.
3 (Applause)
4 MR. BEHAN: Just to update the audience,
5 the next group that I'm going to be calling up is
6 part of the 2:30 to 2:45 group, and it looks like
7 we're right about on schedule for those that need
8 to see where you stand. Could numbers 73, 74, 75
9 and 76 come forward please? Number 73 please?
10 Thank you.
11 MS. BAIER: Hi, my name is Mary Ann
12 Baier, I'm from Dearborn, Michigan and I also
13 belong to the Sierra Club. And what I want to say
14 is I don't really believe that there is such thing
15 as a clean coal. I think that's a misnomer. And
16 coal is just not clean, it's dirty.
17 And there's three things wrong with
18 coal. The first thing that's wrong with coal is
19 the extraction. So, what that does is it destroys
20 the environment. It destroys the watersheds and
21 destroys people's lives.
22 The second thing is when you burn it,

1 you get all kinds of pollution and CO2 in the air.
2 So, you know, it causes asthma and medical
3 problems and pollutes the water again. And then
4 the third problem is disposal of the coal ash.
5 It's highly toxic and it's just like nuclear
6 waste. No one wants it, it can't go anywhere and
7 it can't be properly disposed of.
8 So, the conclusion I've come to is that
9 coal should not even be used. But I would be
10 willing to accept Subtitle for now and then what
11 we need to do is plan to use renewable resources
12 for our energy instead of coal. Thank you.
13 (Applause)
14 MR. BEHAN: Thank you. Number 74?
15 MR. ADAMS: My name is Mike Adams and I
16 work for Headwaters Resources, and I have been
17 recycling fly ash for the past 30 years. My
18 premise for my testimony is that stigma is real
19 and listing CCPs as a hazardous material for
20 disposal will effectively kill the most successful
21 recycling program in the US and increase
22 greenhouse gas production by millions of tons of

1 CO2 and requiring an additional 50 million cubic
2 yards of landfill space annually.
3 I have been at two hearings before this,
4 Arlington and Charlotte, and at both examples of
5 stigma are part of the testimony. A competing
6 blasting grit company gave testimony in how boiler
7 slag should not be used a blasting grit even
8 though there is absolutely no documentation of any
9 harm to people or the environment. They provided
10 this testimony for one reason, only to gain a
11 competitive advantage over companies using boiler
12 slag, not for their concern over the environment.
13 A lightweight aggregate company
14 cautioned against the use of bottom ash in the
15 production of concrete block, again with no
16 documentation of harm to the environment. In
17 fact, prior independent testing has shown very
18 little difference in testing between some
19 manufactured lightweight aggregates which by the
20 way produces significant greenhouse gases when
21 being produced and bottom ash. Again, this
22 testimony was given to gain a competitive

1 advantage over a competing CCP. These are both
2 examples of stigma.
3 So, in reviewing the testimony of these
4 public hearings, EPA will see examples of what
5 will happen in the marketplace. If companies will
6 use these EPA public hearings to gain an
7 advantage, you can exponentially imagine what
8 competitors will say about CCPs in the everyday
9 marketing of their product if CCPs are declared
10 hazardous in any way.
11 There has been significant testimony by
12 companies that use CCPs in their products
13 regarding possible nefarious lawsuits over the use
14 of CCPs. Our industry is unanimous in our opinion
15 that this fear is real and will ultimately lead to
16 the elimination of fly ash in concrete, synthetic
17 gypsum in wallboard, and synthetic gypsum as an
18 agriculture enhancer, and other encapsulated uses.
19 As an example of this, I'm aware of a company that
20 is being sued by an employee over an illness that
21 he claims was caused by CCPs even though there is
22 no evidence whatsoever that CCPs have caused this

1 illness. In fact, the employee's past lifestyle
2 have a direct link, tobacco, to this illness.
3 This is what will happen if CCPs are
4 declared hazardous under Subtitle C. Attorneys,
5 in their effort to make a big payday, will bring
6 forth suit after suit hoping for the pot at the
7 end of the rainbow. Thank you.
8 (Applause)
9 MR. BEHAN: Thank you. Number 75?
10 MR. KOZIAR: Good afternoon. My name is
11 Paul Koziar and I am speaking on behalf of myself
12 and my small business, Paul Koziar Consulting,
13 LLC. For the last five years, I have been
14 providing consulting services to clients that
15 beneficially use coal ash primarily for
16 geotechnical applications. Prior to starting this
17 business, I was the program manager for the
18 beneficial use program known as NR 538 at the
19 Wisconsin Department of Natural Resources from
20 2000 to 2006. This program is today viewed by
21 many as the standard for state regulation of
22 beneficial use.

1 The purpose of my testimony this
2 afternoon is to share insights on proper
3 beneficial use of coal ash materials from my
4 experience as a regulator and as a consultant. I
5 believe this unique experience could be useful to
6 EPA in their deliberations on the beneficial use
7 of coal ash.
8 EPA's Draft Rule seems to prefer
9 regulating the material under RCRA Subtitle C
10 which relies on strict and administratively
11 burdensome approach that is not required by the
12 level of risk posed by coal ash when beneficially
13 used. I believe this will discourage beneficial
14 use and believe proper regulations under RCRA
15 Subtitle D will be adequate.
16 Why do I say this? It has been my
17 experience as a regulator responsible for
18 implementing NR 538 that an effective program can
19 be developed to protect public health if it is
20 based on a simple and common sense and balanced
21 approach.
22 When NR 538 was originally designed and

1 adopted in 1998, it was done with the cooperation
2 of all stakeholders. The resulting program
3 included material assessment, locational criteria
4 to protect sensitive environments, public health,
5 and engineering criteria to ensure proper design
6 and construction, and post beneficial use
7 monitoring activities. It also provided
8 flexibility to try new and innovative approaches
9 while saving money and conserving natural
10 resources without risk to the public health and
11 the environment.
12 I believe NR 538 provides a successful
13 model that EPA should follow with regard to
14 beneficial use. One particular example of the
15 cooperative approach is the success story with our
16 Wisconsin Department of Transportation. They have
17 embraced the use of coal wherever possible for
18 structural fills, for roadways, bridges and
19 embankments. These projects have been implemented
20 according to the most strictest designs of
21 engineering and environmental protection.
22 However, in order to get contractors building

these projects and comfortable with the use of these materials, the Wisconsin legislature had passed a law in 2002 to limit the liability of the use of this ash under NR 538. This success in economically building public infrastructure in Wisconsin could not have occurred without these byproducts being designated as a hazardous waste.

The current EPA proposal to prohibit structural fills such as these transportation and infrastructure improvements will be a severe setback for projects that are critically needed. EPA should develop specific standards and criteria under Subtitle D that will enable these projects to continue to generate savings and benefits for the public.

In my experience, the private sector has embraced good engineering practice and safe environmental design. And I would encourage the EPA to use this rule process to improve the disposal of coal ash where needed and treat beneficial use of the materials as a resource, not as a threat. Thank you.

(Applause)

MR. BEHAN: Thank you. Number 76? Could numbers 77, 78, 79, 80 and 81 come forward please? Is number 77 --

Please? Could you go to the podium please? Thanks.

MR. SWARTZ: Hello, my name is Steve Swartz and I'm President of New Age Fastening Systems. We're a specialized welding company based out of Sewell, New Jersey, and we have a satellite position in Portage, Indiana.

I want to submit a more technical document, but from the verbal standpoint, I want to kind of make this simple. Earlier, there was a testimony from Harsco Corporation, an environmental engineer, and he spoke about that they have 15 sites within a 500 mile radius area. What they're producing is coal slag abrasives. I want to submit the, this is a picture of a facility that's literally ten miles from this position, over 20,000 to 30,000 tons of coal combustion waste on the ground. It's not in any

1 lined containers or any type of containment. This
2 is a typical site. They have 15 of these sites.
3 You're talking about a million tons of this a year
4 on the ground.
5 Next exhibit is Exhibit B. Now, this is
6 the same shot but it's a little farther shot. And
7 it gives you a good indication of where this plant
8 is in proximity to Lake Michigan, literally less
9 than four miles away. So, right now, I think it
10 was September 7th, the EPA, actually Lisa Jackson
11 had said that President Obama has made protecting
12 the Great Lakes a national priority. Now, when I
13 look at these pictures, we keep talking about
14 common sense, to me it doesn't seem like it's very
15 commonsensical that you would put all this
16 material near a treasured waterway.
17 You know, this is the second that I've
18 come to these hearings and I keep hearing the word
19 TCLP. Earlier, the engineer had spoken about TCLP
20 which is a testing means for leaching in a
21 landfill. Now, understand when you have 30,000
22 tons of material, okay, in a landfill, okay, I

1 need to do a little, I just need to explain this,
2 it's in a landfill. I understand the leaching
3 part of that. I don't totally agree with the test
4 but I understand that. But when you have the same
5 amount of material that's on the ground, what does
6 the TCLP have to do with that? I'm just, I don't
7 understand that. So, if someone could explain
8 that to me? It just, to me, it doesn't sound like
9 it's relevant.
10 In closing, July 19th, 2010, an
11 executive order was released from the White House
12 citing the immediate attention paid to the overall
13 stewardship of the oceans, coasts and the Great
14 Lakes. The true definition of stewardship is a
15 person using every talent and repeatedly
16 sacrificing desires to do the right thing. I
17 think at this point we just need to do the right
18 thing, and we trust that the EPA will do that.
19 Thank you.
20 (Applause)
21 MR. BEHAN: Thank you. Number 79?
22 MS. GRUBA: Thank you, EPA, for giving

1 us the opportunity to be heard. I am Carol Gruba,
2 a volunteer for the John Muir Chapter of the
3 Sierra Club. Can I hear some applause?
4 (Applause)
5 MS. GRUBA: I am from Madison, Wisconsin
6 and have made Wisconsin my home for a lifetime. I
7 have little time to speak. We as a country, as
8 the human race have little time to put into place
9 measures that protect life as we know it against a
10 set of ecological and climate tipping points that
11 are brightest climatologists and computer
12 scientists say are occurring and will occur with
13 greater severity unless we act quickly to change.
14 And here we are. Glad to have this
15 toehold in our fight against coal. Our three
16 minutes to say please tell us where they have been
17 burying the coal waste that poisons with
18 molybdenum, selenium, arsenic, lead and more.
19 Three minutes to say provide Choice C regulation
20 of coal ash. Please allow me a few non-regulatory
21 thoughts as well.
22 First, the earth and the life upon it is

1 part of my wealth, wealth that is stolen when
2 utilities spoil our water with unlined pits of
3 heavy metal laden ash. Second, the wealth of
4 nature is also a touchstone for my spirituality.
5 I do not live in beautiful Vernon County,
6 Wisconsin, but I am glad it is there. Vernon
7 County is where the citizens of Genoa and Lafarge,
8 Wisconsin successfully banded together to halt
9 turning a hill abutting a Class 1 trout stream
10 into a pit. And by the way, that almost pit is a
11 century dairy farm, a home that will pass into
12 future generations as a farm, not a pit, because
13 people from Wisconsin fought the Dairyland Power
14 Cooperative successfully.
15 It is too late for the residents of
16 Caledonia, Wisconsin who must drink bottled water.
17 Their wells are contaminated by molybdenum
18 leaching from coal ash deposits put there by the
19 utility We Energies.
20 Dear EPA, please wake up. Can I get
21 some applause please?
22 (Applause)

1 MS. GRUBA: Please wake up. Please wake
2 up. Regulate coal ash waste, offering the
3 strictest controls available. Protect us from
4 coal ash poison. I do not want encapsulated coal
5 ash in road embankments or in agricultural
6 applications. Please implement Subtitle C which
7 will achieve 100 percent compliance. Thank you
8 very much.
9 (Applause)
10 MR. BEHAN: Thank you. Number 80?
11 MR. MURTHA: Good afternoon. My name is
12 Mike Murtha. I am the President of the Florida
13 Concrete and Products Association. Somebody asked
14 me why I came to Chicago because actually from
15 Orlando it's the easiest access of all your
16 meetings, but we appreciate you having us.
17 I represent about somewhere in the
18 neighborhood of 75, depending on how the economy
19 is, individual companies. Beyond that, we have a
20 concrete coalition auxiliary of probably 150 other
21 companies. Some big, some small, some mom and
22 pops, you know, some of them are just family run.

1 Prior to that, for 20 some odd years, I
2 was a legislative aide and helped work on some of
3 the most progressive environmental law that
4 Florida did at the time.
5 When we crafted that legislation, we
6 knew a few things. The few things that we did is
7 that the issues had, that our final outcome with
8 the statutes had to be based on science, that it
9 couldn't be refutable anecdotal evidence, that it
10 couldn't be hearsay, that it couldn't be some sort
11 of arbitrary and capricious just hunch. We had to
12 go back to the numbers, we had to look at the
13 numbers, and they couldn't be numbers that had
14 some sort of self-fulfilling prophecy or they were
15 a means to an end.
16 Our companies have looked at the
17 numbers. We've looked at the data. We wouldn't
18 think not to look at the data because our
19 companies use fly ash for our products. We're
20 concerned about the health, safety and welfare of
21 our workers and employees and our communities.
22 And we do a good job with it. We've been good

1 corporate partners in our communities.
2 And so, we're at a point here now where
3 we believe that Subtitle D would be an outstanding
4 regulatory mechanism for the EPA to implement.
5 I'm here when I should be down in Florida trying
6 to get our businesses back online and firing
7 again. We have a 45 percent unemployment rate in
8 our industry down in Florida. Every single day
9 I'm laying off people and we're laying off people
10 and it's hard.
11 If you want to help us just get to that
12 recovery or at least no impede us, choose Subtitle
13 D so that we can all work together and have a
14 solution that is healthy for our communities and
15 healthy for our industry and healthy for our
16 economy. I appreciate your indulgence. I thank
17 everybody for coming out here. I know that
18 sitting in these long meetings is rough and thank
19 you very much.
20 (Applause)
21 MR. BEHAN: Thank you. Is number 81 in
22 the room? Could those with numbers 82, 83, 84 and

85 please come forward? Is 82 here? Ma'am, I guess 83.

MS. VON KANO: First, let me put this up. This is Save Our -- this is the Missouri River -- beautiful, beautiful. Do you know that the Missouri River is the longest river in the United States? I drove up this morning, I got up when it was dark and I brought something really special with me. And I'll be so glad when I can drink it. This is from my tap at home, this is Missouri River water. It's clean and safe.

AUDIENCE MEMBER: We can't hear you.

MS. VON KANO: This is Missouri River water from my tap at home in St. Louis County. I'm asking you to protect us like your Agency's name says. I worked in Washington for 20 years. I served on Capitol Hill and worked when there was a spill in the Ohio River when Doug Costa was the administrator. I saw what that did to the communities that took their water from that Carbon Tech spill.

I don't want to have to think every

1 morning when I pull out my toothbrush and, did you
2 know that they put coal ash, they put it in so
3 many things it's even in toothpaste. But I'm
4 asking you to please consider Subtitle C. I
5 wanted to inject a little humor in this, but
6 seriously, please don't take this for granted.
7 Please don't listen to people, I was going to
8 bring up a five-dollar bill or a couple of
9 one-dollar bills. I don't care if I have to pay
10 Ameren Electric more money each month, because
11 this is too precious to me.
12 I have way too many things in my life I
13 have to worry about. I lost a mother to kidney
14 cancer. I left my job in the Clinton
15 administration and came home and nursed her
16 through her radiation treatments. It's really
17 serious. I believe that right now all I have is
18 my little Britta water pitcher. This is what it
19 looks like after one week. That's pretty bad.
20 But if AmerenUE's plant in Labadie, if
21 they get to put the 400 acres of coal ash out
22 there, I don't trust the lining of the ponds.

1 I've heard too many of our scientists at our
2 universities say they are not. Also, I want you
3 to know that in 1993, that entire acreage was
4 under water in the flood of '93. And don't tell
5 me we'll wait another 500 years.
6 So, please classify this as hazardous.
7 This is too important to our families. I'm a
8 small businesswoman, I have a family. Besides my
9 Britta water pitcher, you and Administrator Lisa
10 Jackson are all that stands between me and feeling
11 that I won't be drinking arsenic, cadmium, et
12 cetera from my tap. Thank you very much.
13 (Applause)
14 MR. BEHAN: Ma'am? Ma'am, could you
15 state your name for the record please? Thank you.
16 MS. VON KANO: I'm sorry. Jane Von
17 Kano, and we have written testimony. The LEO, the
18 Labadie Environmental Organization has had so many
19 hearings and we have thousands of signatures.
20 Once people learn about what coal ash is and what
21 it could do, it's full of education. Thank you.
22 MR. BEHAN: Thank you.

1 (Applause)

2 MR. BEHAN: Is number 82 here? Okay.

3 MS. MOSHER: Hello, my name is Melissa

4 Mosher. I'm a resident of Cheboygan, Wisconsin.

5 When my husband and I began looking for a house in

6 Cheboygan, I knew that I did not want to live near

7 the coal plant. I knew that I was pregnant and

8 didn't want to be exposed to those chemicals that

9 leach into the air and we are exposed to in the

10 water as well. That was before I heard a

11 co-worker speak of a study indicating increased

12 health problems within a specific proximity of the

13 Cheboygan plant. This was before I learned of the

14 coal ash disposal in an unlined depository on the

15 shore of Lake Michigan in between Kohler Andrae

16 State Park and King Park where many families go to

17 recreate and swim.

18 Now that we are expecting our second

19 child, thankfully my first son Baron was born

20 healthy, I've learned of the unsafe coal ash

21 disposal and the unlined facility at Cheboygan.

22 I'm even more concerned about the mercury levels

in the fish as well as the lead and arsenic levels in the drinking water.

As Cheboygan learned with the river, years of contamination are hugely expensive to clean up after the fact. If we destroy our Great Lake, we destroy our recreation opportunities, our food sources, and our drinking water. I visited Lake Shore Park last night so that I could provide a visual witness and testimony about what I saw. And I saw clear visual evidence of the waste seepage in the black streaked sands. I started at Lake Shore Park and I walked south, and the streaks in the sand became more prevalent as I walked toward the power plant.

And we know that China is beginning to eliminate coal plants and invest in renewable energy. And I am depending on you to regulate these toxic chemicals for the sake of the health of my children and the citizens surrounding the Great Lakes. And I encourage you strongly to support Subtitle C. Thank you.

(Applause)

1 MR. BEHAN: Thank you. Number 84? 85?
2 MR. DIEDRICK: Good afternoon. I'm Dave
3 Diedrick, the Director of Cementitious Materials
4 for Lafarge North America, Lakes & Seaway Business
5 Unit. And I have a Bachelor of Science in
6 Construction Engineer and have been employed with
7 Lafarge for 21 years with the last 14 years
8 dedicated to fly ash and coal combustion residual
9 (CCR) marketing. I manage the fly ash contracts
10 for Lafarge in the Midwest and work
11 collaboratively with our utility partners to
12 beneficially reuse the products they generate in
13 the construction industry. On an annual basis,
14 Lafarge recycles over six million metric tons of
15 CCRs in North America, in a variety of
16 applications including as a Portland cement
17 replacement in concrete, raw material in the
18 production of Portland cement, to enhance the
19 engineering properties of soils and base materials
20 on construction sites, and in the production of
21 gypsum wallboard. In all these cases, these
22 materials replace either a manufactured product,

as is the case with Portland cement, or naturally occurring aggregates. It is always done in an environmentally responsible manner and professional manner working with specifiers and engineers in sustainable construction practices.

These applications are recycling in the purest form. Living in the Detroit area, my neighbors and friends are generally associated with the auto industry, almost all of them. They find what I do for Lafarge as unique, innovative, environmentally responsible in a CO2 constrained environment, and are all intrigued by the beneficial uses of CCRs, it makes sense to them, people with no knowledge of the industry. Fly ash reduces the amount of CO2 required to produce a cubic yard of concrete, the material that allows us to all stay warm and dry in our homes, drive our kids to soccer practice, and educate them in our community schools. We cannot take our infrastructure for granted, like the building we're in right now.

Fly ash is a valuable constituent in

1 concrete not only replacing Portland cement but as
2 an important ingredient in high performance
3 concrete resulting in higher strengths, thinner
4 sections, less permeable and more durable
5 concrete, ultimately giving it a longer life.
6 These attributes cannot be obtained by Portland
7 cement alone.
8 As the EPA contemplates a Subtitle C
9 Special Waste classification, or Subtitle D
10 classification of CCRs, as a result ultimately of
11 a dam engineering failure in Tennessee, it must
12 consider the consequences of such a decision. A
13 Subtitle C ruling, even as a "special waste" is
14 perceived as a hazardous material. Unfortunately,
15 perception is reality, and even with the rule in
16 the proposed stages, we have had customers move
17 away from fly ash and other CCRs due to liability
18 concerns. Quoting one of our precast customers
19 who ships products throughout the United States:
20 *"If fly ash is classified as hazardous, what will
21 happen to the projects that have been sold over
22 the past six years?" *"Will these products be

1 considered, too?" *"What other products do you
2 sell that can replace fly ash?"
3 Within the past four months, this
4 customer has removed fly ash from their operation
5 and is now using straight Portland cement,
6 resulting ultimately in a more expensive product
7 and in the generation of additional CO2. All of
8 this with no science to support such a
9 classification. Ultimately, what have we
10 accomplished? Thank you.
11 (Applause)
12 MR. BEHAN: Thank you. Is number 84 in
13 the room? Okay.
14 MS. JONES: My name is Cory Jones. I'm
15 a local volunteer, citizen activist as you may. I
16 care about clean air and clean water. That's why
17 I'm here today. And I have submitted some
18 comments in writing, but to be honest, I think
19 this comes down to somewhat of a common sense
20 issue. Again, fighting for clean air and clean
21 water, why do we have to fight for clean air and
22 clean water?

1 (Applause)

2 MS. JONES: And clean water is actually

3 one of the issues that coal ash directly affects.

4 Clean water. We take it for granted, clean water,

5 and being a Chicago resident, I love Lake

6 Michigan. Our drinking water comes from Lake

7 Michigan. And if you look at the satellite photos

8 of the retention ponds for coal ash along Western

9 Michigan, their coal retention ponds are adjacent,

10 directly adjacent to the beaches of Lake Michigan

11 which is the single source, by the way, of

12 Chicago's drinking water.

13 Now, this is not just a Chicago issue.

14 This is not just a Lake Michigan issue. This

15 isn't just an issue of myself, my family and my

16 friends having clean drinking water. This is a

17 national issue and I'm a little emotional about it

18 because I have friends who, their family who lives

19 in Western Michigan just tested positive for

20 arsenic. They live just a couple of miles from

21 the Port Sheldon coal ash retention pond. And

22 they just sold their house at about half of the

1 appraised value to get out there. And they're not
2 doing well, they have health problems.
3 If we wait until there is nothing but
4 indisputable evidence of the direct correlation
5 between the cause and effect of the hazards of
6 coal ash, it's going to be a regrettable,
7 regrettable situation. There are over 1,000
8 superfund sites still that are not cleaned up.
9 I'm sure those decisions were made with the best
10 of corporate intentions, with the best of promises
11 of safeguarding the communities. And where are we
12 today? Where was the EPA back then? What were
13 the decisions that were made back then? What were
14 the compromises that were made back then?
15 This is a common sense decision. This
16 is a decision for clean water. This is a decision
17 for the safety of our communities. And this is a
18 decision as to what legacy as part of the EPA you
19 want to leave. Do you want to make apologies to
20 your grandchildren that you would have, should
21 have, could have if you had only known? Or are
22 you going to take a proactive approach and help

1 the families like my friends in Western Michigan?
2 Thank you.
3 (Applause)
4 MR. BEHAN: Thank you. We're making a
5 panel switch for one member. Let the record
6 reflect that Laurel Celeste, EPA's Office of
7 General Counsel, is returning to the panel to
8 replace Jerri Garl.
9 Could the individuals with numbers 81,
10 87, 88 and please come forward? Could 81 come to
11 the podium please?
12 MR. PINEGAR: Good afternoon. My name
13 is Stan Pinegar. I'm the President of the Indiana
14 Energy Association, a trade association based in
15 Indianapolis whose members include five
16 investor-owned electric utilities. I very much
17 appreciate the opportunity to provide comments
18 today.
19 As you are aware, Indiana relies heavily
20 on coal fired generation to meet its electricity
21 needs. Approximately 96 percent of Indiana's
22 baseload generation is currently fueled by coal

with a capacity to produce almost 21,000 megawatts. Our members serve over 4,000,000 Hoosier customers.

The impact of this decision with regard to these proposed rules will certainly have a major impact on Indiana customers, generators, landfills and those engaged in substantial beneficial use of this product in Indiana.

The Indiana Energy Association submits that the appropriate route for USEPA is to regulate CCRs under Subtitle D Prime with modifications. Subtitle D Prime avoids many of the major flaws provided in the alternative Subtitle D option, including what we believe to be an arbitrary requirement to retrofit all surface impoundments regardless of the risk to the environment. Subtitle D Prime provides a framework for an appropriate platform for ensuring environmentally sound management of CCRs.

We do believe the Subtitle D Prime option needs to be improved to allow for administration of the requirements by state

1 regulatory agencies and through the traditional
2 permitting programs. In addition, the schedule
3 for closure of certain CCR disposal units must be
4 reasonably extended to reflect realistic
5 challenges of closing large units.
6 The prospects of regulating CCRs under
7 the Subtitle C option would have far-reaching
8 adverse impacts on Indiana. Despite notions to
9 the contrary, Subtitle C, even with an exemption
10 for beneficial use, will have a chilling effect on
11 productive use of the material. Indiana-produced
12 CCRs are used widely for the manufacturing of
13 concrete, construction materials, and by our State
14 Department of Transportation. The Subtitle C
15 option would drastically increase our members'
16 operating costs, raising the cost of power to
17 Indiana households, industry and commercial
18 operations. This isn't just the message from the
19 Indiana Energy Association. Our Indiana Utility
20 Regulatory Commission as well as our Office of
21 Consumer Counselor have both weighed in,
22 advocating against a Subtitle C determination.

1 The IEA strongly supports the federal
2 regulation of CCRs as non-hazardous waste,
3 Subtitle D Prime regulations, implemented and
4 enforced by the states. Thank you very much.
5 MR. BEHAN: Thank you. Number 87?
6 MR. IRVINE: Thanks for having me here
7 today. My name is Jim Irvine and I'm the
8 President of Fly Ash Direct. I have a small
9 business. We have some 35 employees. We're based
10 in Cincinnati, Ohio. We have offices throughout
11 the Midwest, mainly located at coal fired power
12 facilities.
13 I've spent the better part of my career
14 developing beneficial markets for fly ash. I've
15 been around fly ash, like I say, for over 20
16 years, and I've got many employees that live and
17 work, load trucks and support this industry.
18 My company and my industry has worked
19 very hard to develop what we're very proud to be
20 what we think is a great American success story
21 relative to recycling. Until now, the US
22 Government and the USEPA has always been a strong

1 supporter of ours, helping us. They seem to well
2 understand what we do for the environment.
3 And for this reason, you can probably
4 imagine I am a supporter of Subtitle D because
5 it's just one of two options that I see that are
6 out there. I do want people to know, I doubt
7 there are many environmentalists or special
8 interest groups or concerned citizens that like to
9 ski mountaintops more than myself or fish streams
10 or oceans or rivers, or hike or camp. I have
11 three small children. I have a tremendous
12 interest in their health and safety.
13 Because I sell fly ash and represent
14 utilities, you should not mistake that I'm as
15 concerned as everybody out there. For everybody
16 that stands at this podium, from the Sierra Club
17 or anywhere else, who claims to have a relative
18 that's suffering from cancer, well, I think there
19 are people from the utilities that can make that
20 same claim.
21 I think the problem here, as I listen to
22 this testimony both in Charlotte and here, is that

1 the EPA is pitting its citizens against each
2 other, asking us to come up here and debate each
3 other on something that we both want. I think we
4 need better options and I think that we need to go
5 back to the drawing table and you need to present
6 the public with a few more options that meet both
7 parties' interests. These utilities aren't
8 interested in muddying up the environment any more
9 than the Sierra Club is. And we need to come
10 together and we need to figure out an option that
11 works for both parties. So, thanks for having me
12 here today.
13 (Applause)
14 MR. BEHAN: Thank you. Number 88?
15 MS. ECCLES: Hello, my name is Courtney
16 Eccles. I'm the Assistant Director of Outreach
17 and Policy at Protestants for the Common Good.
18 PCG is a not-for-profit organization comprised of
19 individuals and churches from mainline Protestant
20 denominations across Illinois. Our work centers
21 around education and advocacy with people of faith
22 on a wide range of social justice issues including

1 the environment. And we work and communicate
2 directly with over 5,000 individuals and 500
3 congregations across the state.
4 I wanted to thank you for the
5 opportunity to speak today. I am here to express
6 our full support for EPA regulations under
7 Subtitle C of the Resource Conservation and
8 Recovery Act, which would categorize coal ash as a
9 hazardous waste. My intention today is to tell
10 you just how important this issue is to people of
11 faith.
12 Protestants for the Common Good has made
13 environmental issues a main concern of ours for
14 the past three years, and we have seen significant
15 and growing interest from faith communities on
16 local, state and national initiatives. And while
17 this is exciting and of course very necessary, we
18 realize that individual action and congregation
19 action cannot be the only answer. The EPA plays a
20 crucial role in protecting our land, water, air
21 and the health of all of those who live in this
22 country and on this planet through the regulation

1 of emissions and toxic substances, and coal ash
2 should be no exception.
3 We're particularly concerned about coal
4 ash because we consider it to be an environmental
5 issue, a health issue and a justice issue. Coal
6 ash sites can contaminate water sources with
7 dangerously high levels of arsenic, selenium,
8 mercury, cadmium and many other toxins. And these
9 toxins endanger the plants and animals located in
10 those waterways, not to mention contaminate
11 drinking water. For individuals that live near or
12 around dumping sites, there are grave health
13 concerns. According to an EPA risk assessment,
14 living near a coal ash site is more dangerous than
15 smoking a pack of cigarettes each day. The risk
16 of getting cancer can be as high as 1 in 50
17 individuals, and all of these health concerns are
18 even more grave for young children and infants.
19 Furthermore, those families or
20 individuals who live near coal ash sites probably
21 have no idea what the risks are. Many of them may
22 not even know that they live near a site. And for

1 those that do, they may very well not have the
2 economic ability to move elsewhere. And we
3 consider that a huge justice issue.
4 It's clear that the industry is not
5 doing enough on their own to solve these problems.
6 Not all sites are monitored. Nor do they provide
7 basic protections like composite liners, water
8 runoff controls, or the financial assurance that
9 they will cover the damage costs of leaks and
10 spills. More significant measures need to be
11 taken to protect our land and water and all of
12 those who live in the communities near these
13 sites. EPA regulations that require compliance
14 would ensure those types of protections.
15 So, with that, I thank you for the time
16 to speak and I strongly urge the implementation of
17 regulations under Subtitle C, labeling coal ash as
18 a hazardous substance that it so clearly is.
19 Thank you.
20 (Applause)
21 MR. BEHAN: Thank you. Is number 89
22 here? Number 90?

1 MS. HARLEY: Thank you so much for
2 listening to all of these compelling stories
3 today, and thank you for allowing me the
4 opportunity to testify. My name is Susan Harley
5 and I am here on behalf of Clean Water Action's
6 over 250,000 Michigan members and Clean Water
7 Action's national membership of 1.2 million. I'm
8 also speaking for the Clean Energy Now activists
9 here in the audience who are not speaking today
10 and for those following us on Twitter.
11 I am here today to urge you, the
12 Environmental Protection Agency, to stand up to
13 big coal interests who want to protect their
14 pocketbooks. Instead, you must ensure that the
15 American people are protected from toxic coal ash
16 pollution.
17 Clean Water Action's members know that
18 protection of water is vital; vital to our
19 economy, vital for habitat and recreation, vital
20 for life for the future of our children. The EPA
21 has the duty to protect all waters from pollution,
22 pollution like the toxic chemicals found in coal

1 ash, arsenic, lead, selenium, mercury, to name
2 just a few. Chemicals that cause cancer impede
3 neurological development and mutate fish.
4 You must put in place rules that truly
5 protect us from health damages, like shockingly
6 high cancer risks, as high as 1 in 50. The only
7 choice is Subtitle C regulation.
8 If states were adequately protecting us,
9 we wouldn't see hundreds of known leaking coal ash
10 sites and an unknown amount that are out there
11 poisoning our water that have not yet been
12 discovered. Subtitle D would mean nothing
13 improves, and we demand better.
14 I have vivid memories of growing up in
15 Lansing, Michigan. I and my friends played on the
16 banks of the Grand River, in an area that has
17 recently been exposed as an old coal ash dump.
18 What contaminants was I exposed to? And what
19 about the hundreds of kids playing there right
20 now? No one knows. We need public knowledge and
21 we need federally enforceable standards.
22 Will the special hazardous waste label

affect beneficial reuse? No. But if it is done, these recycling efforts must be safe. That means only allowing encapsulated forms if it is show that they won't leach.

Please, EPA, do your duty. Coal is a hazardous waste and it is time for it to be treated as such. The American people deserve it, our future deserves it. Thank you.

(Applause)

MR. BEHAN: Thank you. Is there anyone in the room that has a number lower than 90 that has not spoken today? Okay. Numbers 91, 92, 93 and 94. If 91 could come to the podium, that would be great.

MS. COAKLEY: Good afternoon. My name is Ann Coakley. I'm the Director for the Waste and Materials Management Program for the Wisconsin Department of Natural Resources. In Wisconsin, our solid waste program regulates disposal under the State's RCRA Subtitle D equivalent program and also allows for substantial beneficial use of CCR materials when appropriate. Our brief comments

1 today are on three main categories: the disposal
2 of CCR materials under Subtitle D, the successful
3 beneficial reuse of CCRs, and the potential
4 negative consequences of RCRA Subtitle C
5 regulation.
6 For disposal, Wisconsin fully
7 acknowledges that failure to properly manage CCR
8 materials can result in significant negative
9 effects on the environment and human health, so
10 they must be managed responsibly. We believe that
11 proper management practices for CCR materials that
12 cannot be beneficially reused is under an
13 effective Subtitle D waste management program. In
14 Wisconsin, we currently effectively regulate
15 disposal under the State's RCRA Subtitle D
16 equivalent program. We oversee landfill siting,
17 liner requirements, monitoring, capping and
18 financial responsibility. All active CCR
19 landfills in Wisconsin are engineer-lined
20 facilities that are routinely monitored.
21 We believe that Wisconsin and other
22 states have demonstrated that effective regulation

of CCR disposal sites already occurs under state authority and rules. We do not support the self-implementing RCRA Subtitle D alternative. We believe that it is essential that rules have sufficient flexibility to include site specific issues.

Beneficial use. Wisconsin's successful, nationally recognized and renowned program has resulted in Wisconsin utilities beneficially reusing up to 85 percent of coal ash each year. Some examples. FGD materials are used in wallboards, cement manufacturing, and in concrete products. Coal bottom ash is successfully used as geotechnical fill material in road construction. Approximately 10 million cubic yards of CCR materials have been beneficially used since our Beneficial Use Program was created in 1997, the equivalent of three to four landfills. The high level of reuse in Wisconsin greatly decrease the need for disposal, saves on landfill space, reduces need for virgin products, and reduces greenhouse gas production while protecting public

1 health and the environment.
2 The consequences of Sub C. We believe
3 regulation of CCR materials under Sub C would
4 negatively affect the successful programs that
5 Wisconsin has in place for beneficial use and
6 disposal. DNR does not believe these materials
7 have characteristics to be classified as hazardous
8 or special waste. Regulating these would severely
9 curtail or eliminate the successful beneficial
10 use. Wisconsin utilities produce a total of two
11 million tons of CCR materials each year. We
12 currently do not have any hazardous waste
13 landfills in the State of Wisconsin. If this is
14 passed under Subtitle C, we would need to site
15 several, probably up to ten hazardous waste
16 landfills in the state, or transport it out of
17 state at considerable expense.
18 In conclusion, of the options presented,
19 Wisconsin DNR only supports regulation of CCR
20 materials under the EPA Subtitle D option but with
21 state authority and rules. Thank you.
22 (Applause)

1 MR. BEHAN: Thank you. Number 92?
2 MR. TAYLOR: The State of Indiana is
3 home to a vast and diverse ecosystem, ranging from
4 the shores of Lake Michigan to the converging
5 Wabash and Ohio Rivers. Our environment is
6 constantly flourishing with the help of non-
7 profit organizations and volunteers from all
8 across our great state. Restoration projects have
9 an indefinite future in Indiana, projects that are
10 integral to the health and prosperity of our
11 state's environments and us Hoosiers.
12 Organizations such as the Nature
13 Conservancy, Sierra Club, Union of Concerned
14 Scientists and the Hoosier Environmental Council
15 have provided the people of Indiana with a
16 scientific and sustainable approach to combat and
17 reverse the destruction of our environment. Such
18 destruction have been caused by the misguided,
19 ignorant and often corrupt individuals from both
20 the food and energy industry as well as the
21 Indiana state government. I hear too often of
22 government officials and energy lobbyists

1 justifying the destructive actions to our
2 environment by proclaiming that those actions also
3 provide jobs. Job creation can never become a
4 justifiable reason to deteriorate the health of
5 our people and our environment. In relation, our
6 outlook on our health and the health of our
7 outdoors should never depend on the state of our
8 economy.
9 In 2005, Governor Mitch Daniels
10 appointed Tom Easterly to the Commissioner of the
11 Indiana Department of Environmental Management,
12 though the same person was in charge of Bethlehem
13 Steel's Environmental Services from 1994 to 2000.
14 Easterly has become our state's highest
15 environmental official in charge of enforcing
16 rules and regulations against his former Bethlehem
17 employer. Since 2005, the IDEM has slowly become
18 an economic development tool rather than an
19 environmental enforcement agency by relaxing, if
20 not eliminating, environmental guidelines for the
21 food and energy industries.
22 In 2007, Lake County Sheriff Roy

1 Dominguez questioned if the IDEM had been
2 adequately monitoring a landfill outside Lowell,
3 Indiana after his environmental enforcement team
4 had built four wells on site of the landfill. His
5 team had discovered deadly cyanide vapors leaking
6 from the landfill. The IDEM responded with a
7 statement that expressed the utmost safety of the
8 landfill and ordered the sheriff to close the
9 wells or face a $25,000 daily fine.
10 In December of 2008, the IDEM dissolved
11 their Office of Enforcement, and in May of this
12 year, Governor Daniels appointed David Joest, a
13 lobbyist for the world's largest coal company, as
14 Assistant Commissioner for the Office of Legal
15 Counsel for the IDEM. Three weeks ago, the newly
16 appointed Assistant Commissioner issued new rules
17 on how the state's employees should cite companies
18 for violating environmental laws. The Assistant
19 Commissioner wrote, "I would like to encourage you
20 to emphasize with your staff that it is not
21 necessary to cite every possible statue and
22 regulation that could be violated in a given

1 situation."

2 From this, I can only come to the

3 conclusion that our state's environmental policy,

4 or lack thereof, needs some correcting. I do not

5 believe that implementing Subtitle D would achieve

6 any environmental or personal health victory.

7 That is why I believe Subtitle C would be best

8 suited for the newly proposed rule regarding coal

9 combustion residues or coal fly ash. Thank you.

10 (Applause)

11 MR. BEHAN: Sir? Sir.

12 MR. TAYLOR: My name is Hans Taylor.

13 MR. BEHAN: Thank you. Number 93

14 please?

15 MS. KEELEY: Thank you. That was my

16 son, he's a student at Purdue. All right, at

17 ease. I'm Lieutenant Colonel Keeley, I'm a

18 retired US Army Officer. I spent 25 years serving

19 my country and fighting in three conflicts. And I

20 don't want applause for that because what I'm here

21 today for is to tell you where I live. And I live

22 in beautiful Indiana, my son and I are both

1 Hoosiers. But too long people have been coming
2 and just polluting our beautiful State of Indiana
3 and I'm tired of it. All right?
4 (Applause)
5 MS. KEELEY: Please, I only have like
6 less than three minutes, all right? So, give me
7 some time. Here is the deal. I've traveled the
8 world, you all know that, from being in the
9 military. But where did I choose to retire? I
10 chose five acres in Wheatfield, Indiana. It's so
11 beautiful there.
12 Now, I've been to hell and back, all
13 right? But my property is so beautiful. I've got
14 five wooded acres and I'm there with my dogs and I
15 walk my dogs. And I love to sit and watch my
16 trees blow in the wind. I got demons I fight.
17 All right? That's my sanctuary.
18 You can tell where my house is. I've
19 got a beautiful well, too, I forgot to tell you
20 about my well. When they put my well in, it's 60
21 feet down, and you can actually take a garden hose
22 and drink my water, it's so pure and beautiful.

1 This is what I dreamed about for 25 years, to
2 retire here.
3 But you know how you can find my house?
4 For 20 miles you can see the stacks of NIPSCO,
5 that's Northern Indiana Public Service Company.
6 For 20 miles at a distance, because if you're not
7 from, if you're from the city, okay, you'd get
8 lost if you tried to find my house. Just look for
9 the stacks, I tell people, I'm south of the stacks
10 by five miles.
11 See, I didn't know. I'm an intelligent
12 woman, kind of messed up now with TBI. (I know,
13 one more minute) But I'll tell you this, nobody
14 told me about that crap that's coming out of
15 NIPSCO, the coal ash. Do you know a train
16 everyday comes into NIPSCO and those smoke stacks
17 are blowing everyday. That's how you know whether
18 the wind is blowing because that wind that's
19 blowing my trees, it's blowing that coal ash.
20 And, EPA, I was around in 1963, that was
21 a civil rights movement. You were here and
22 enacted as an Environmental Protection Agency.

1 Protect us, that's why you were formed.
2 I served my country and I fought and
3 defended her. I shouldn't have to now fight and
4 defend my right to breathe. Thank you.
5 (Applause)
6 MR. BEHAN: Thank you. When you're
7 ready, sir?
8 MR. HILL: My name is Jarred Hill,
9 though many know me as Parson Brown, that's
10 probably because I talk quite a lot. Coal ash is
11 a hazardous substance. The woman that just spoke,
12 it's a story that sounds far too familiar to far
13 too many stories that I've heard as a
14 documentarian and as a film maker.
15 For the last six years, I have followed
16 not just the fight against mountaintop removal or
17 coal mining in Appalachia but also the fight
18 against coal and the destruction, devastation and
19 the poison that it is bestowing upon our people.
20 I have talked with people from all over the
21 country, from up and down Appalachia, here in
22 Chicago where they burn coal in our south side.

I've met with those in the south of Illinois where they are doing long wall mining and destroying our great farmland.

I knew nothing about coal until I learned that they were blowing up the mountains that I grew up just several hours away from. And I'm here to tell you I don't necessarily have the facts to throw at you right here right now. You've probably heard those all day. But what I have done for the last six years of my life is listen to people who have lived and breathed and bathed in this coal that is destroying us.

I have heard so many tales of despair. I have heard people that have everything, that have almost given up everyday but have continued to pull through because there is a group of people in our country, a huge group of people and more and more are becoming aware every single day that coal is old, coal is dirty, and we are going to move on and we have to move on.

And as the Environmental Protection Agency, I urge you, I don't just encourage you, I

1 plead, I DEMAND that we move past coal, coal ash,
2 coal burning, coal mining.
3 (Applause)
4 MR. HILL: And I testify today that
5 coal/coal ash, the mining process associated to
6 such mountaintop removal, underground mining, no
7 matter where we're getting it from, it's
8 destroying us. I testify that I am merely one of
9 a growing number who are becoming aware of this.
10 And I am not a coal field resident. I do not
11 directly breathe or drink coal ash every single
12 day. I am an American. I am an American citizen
13 demanding justice for my neighbors, my brothers
14 and sisters across the country and I testify today
15 in hopes that the Environmental Protection Agency
16 of the United States of America will accept its
17 responsibility to protect us.
18 (Applause)
19 MR. BEHAN: Thank you. A quick update
20 for the audience. The next group I'll be calling
21 up is the 3:45 to 4:00 o'clock group. It's about
22 3:30 right now so we're running a couple of

minutes ahead. If there are some people that are not here in those groups, I'm going to try to fit in some other walk-in speakers and other folks. Numbers 95, 96, 97, 98 and 99, if you would come forward, that would be great. Is number 95 here? 96?

MR. SCHMITT: Good afternoon. My name is Ed Schmitt, and I'm the President of Glass Recycling and Grinding USA located in Rockford, Illinois. Glass Recycling and Grinding USA is a small business that was formed three years ago to produce open air abrasive blast media from recycled glass. It's marketed under the brand name of New Age Blast Media. We also produce post-consumer glass fillers for various industries seeking to meet their post- consumer content requirements for their products. There are many businesses like ours across the country trying to compete in the abrasives market by offering products that are non-toxic and inert.

Our plant commenced operation in September of 2007 and we employ up to five people

at our plant running one shift. That could double if demand increased. Over the past three years, we've shipped thousands of tons of this New Age Blast Media to customers throughout the Midwest and nationwide as a safe, non-toxic alternative to coal slag and other metal laden slags currently being used widely across this country. Much of this recycled glass came directly from the Northern Illinois area, Wisconsin, and even the suburbs of Chicago.

The operation required an investment of hundreds of thousands of dollars in private funds and we have not sought and received any government assistance to build this facility. We have created new jobs in a green industry and recycled thousands of tons of glass annually. This glass would have been destined for a landfill and we have been able to work with companies and municipalities to prevent that. We have the capacity at our facility to manufacture 12,000 tons per year which would replace coal slag and other CCRs that the EPA and others recognize have

1 serious health and environmental issues.
2 The fact remains, however, that the
3 EPA's old Beneficial Use designation for coal slag
4 abrasives provides an advantage over our non-toxic
5 abrasives, and most companies and workers do not
6 understand the hazards that exist when blasting
7 with slag abrasives due to the past EPA Beneficial
8 Use designation. Because the blasting industry
9 has been allowed to handle spent coal slag as if
10 it were non-toxic, the blasting industry has
11 little reason to buy abrasives that are safer.
12 The past Beneficial Use designation also allowed
13 coal slag abrasives to be blasted on bridges and
14 ships over open water with little concern about
15 the environmental impact by most state agencies.
16 We hope that the EPA follows through with their
17 decision to remove coal slag abrasives from the
18 list of Beneficial Uses of CCRs.
19 We support the EPA's decision so that
20 coal slag abrasive industry can no longer use the
21 EPA to promote their product as a beneficial use
22 for open air blasting when it is clearly a hazard

1 if used in this manner. We are also asking that
2 spent slag abrasives found to be containing high
3 toxic levels of metal and other elements after
4 blasting should be handled as hazardous waste.
5 By accurately acknowledging the hazards
6 of spent blast media from slag abrasives, the EPA
7 will let the open marketplace determine how
8 effective the use of recycled glass abrasive media
9 can be versus other products on the market. We
10 fully believe that the EPA's recognition of
11 toxicity of spent slag abrasives will allow small
12 businesses like ours to continue to grow and
13 provide jobs. Thank you for allowing me to speak
14 on this topic.
15 (Applause)
16 MR. BEHAN: Thank you. Number 97?
17 MR. ROSENMERKEL: I'm Jim Rosenmerkel
18 representing Lafarge North America as its Great
19 Lakes Regional geotechnical engineer. I'm a
20 professional engineer with over 50 years
21 experience in construction of highway pavements,
22 commercial/industrial sites, commercial/industrial

1 buildings, and have become an advocate of
2 environmentally responsible construction
3 practices, one of which is the reuse of industrial
4 products, specifically coal ash, one of several
5 CCRs produced by coal plants in our region.
6 For nearly ten years, I've been
7 promoting the use of Class C fly ash from coal
8 fired power plants throughout Wisconsin and
9 Illinois. We have successfully used fly ash to
10 stabilize soft, unsuitable soils in highway
11 construction and to recycle hot mixed asphalt
12 pavements. We have experienced extraordinary
13 results by increasing the bearing strengths of
14 native soils over 20 times and we now have fly ash
15 owners that have hundreds of thousands of dollars
16 and reduced construction times by as much as 25
17 percent.
18 Four years ago, we stabilized the
19 existing soils under the new runway at Chicago's
20 O'Hare Airport. We used 110,000 tons of fly ash
21 and eliminated the need to export/import suitable
22 soils, saving hundreds of thousands of dollars in

1 both cost and time. We used fly ash to construct
2 a sand foundation under a new power plant in
3 Wausau recovering more than two months of lost
4 time using 15,000 tons of fly ash and saved the
5 utility company nearly eight million dollars.
6 A number of counties are now using full
7 depth reclamation, that's fly ash, to increase the
8 strength of pulverized pavement. Full depth
9 reclamation reuses all existing materials,
10 eliminates the need for new natural materials and
11 reduces the thickness of new asphalt pavements.
12 Total savings exceed 30 percent. Full depth
13 reclamation at the Waukesha County Airport in 2005
14 resulted in a $50,000 cost savings.
15 In my years of advising others on design
16 and construction with fly ash, we have used well
17 over three- quarters of a million tons of material
18 that would otherwise have gone to landfills, and
19 that's just in Wisconsin and Illinois. If EPA
20 imparts the stigma of classifying fly ash as a
21 hazardous material, no other contractor will risk
22 using it, owners will reject the method and

someone will need to find disposal sites for 65 million tons of this material each year in the future. EPA should adopt the Wisconsin administrative NR 538 as a national model for monitoring, encourage every state to enforce these rules, and continue with effective and environmentally sound construction practices.

I encourage EPA to continue to support beneficial reuse of CCRs, reinstitute the C2P2 partnership website and treat CCR as a solid waste. Keep C2P2 and the Green Highway initiative active. Thank you.

(Applause)

MR. BEHAN: Thank you. Is there anyone in the room that has a number 100 and lower that has not spoken today? Does anyone have a number 315 or lower, well, between 300 and 315 that has not spoken today? What number do you have? 313? 119? 183 and 160? 312?

MS. GORDON: Good afternoon. I've learned a lot today. I came to make a statement but what I ended up was with an education. This

is worse than I thought. I'm heartbroken.

I'm a little emotional. I'm going to use up my three minutes crying. I've learned what special interests really are and I also feel sorry for some of the industry, I suppose, that is trying to make a living recycling coal ash. But I don't know that it really, it's like cake or death. I'll go ahead with my statement.

My name is Sallie Gordon. I live in Pilsen, Chicago's 25th ward and six blocks from the Fisk Coal Plant. I've lived in this area for 25 years. Only in the last ten years have I fully realized the horrendous human and environmental effects of coal burning plants, despite undisputable evidence and increased national and global concern over the environment. I naively believed the rhetoric generated by local public officials, corporations, city and federal agencies that reassured us that Midwest Generation's coal burning plants are significantly reducing their emissions. I don't even know where the coal ash from Fisk and Crawford coal plants is dumped.

1 I am aware of the complex ongoing,
2 seemingly never-ending, legal political maze
3 fostered by corporate money, influence and profit
4 over the very air we breathe, the water we drink,
5 and the planet that we live on. And despite the
6 tireless efforts of informed and conscientious
7 residents, national and local organizations, the
8 pollution continues with very little significant
9 changes. Apologetically, I have had my head down
10 until a few years ago when I suddenly looked up
11 and realized that my neighborhood was the most
12 polluted place to live in the City of Chicago.
13 The collective apathy of many and my
14 sense of powerlessness were reinforced during the
15 eight years of the Bush administration. In July
16 2009, a handful of residents including myself
17 built an organic vegetable garden with the thought
18 of increasing environmental awareness and health.
19 This is in Pilsen's industrial corridor with a
20 long toxic history. I became aware then that this
21 land was already earmarked as an overdue,
22 politically motivated, greening gesture that had

been put aside for over ten years, apparently meant to divert our eyes from the shadow of the coal plant chimney that looms over this entire neighborhood.

I'll read my last statement since I spent my time. It's unnecessary for me to cite statistics and all. I just implore, IMPLORE the EPA in favor of the Subtitle C. And I would like to say one last statement. If one-third of the money and effort that is spent on debating was spent on building clean energy, can you imagine?

(Applause)

MR. BEHAN: Thank you. 119?

MR. FERRY: Good afternoon. My name is Jeff Ferry, Senior Director of Dynergy Government Affairs. I'm testifying today on behalf of Dynergy Midwest Generation. DMG produces and sells electricity in the Midwest. DMG's power generation portfolio includes over 3,100 megawatts of coal fire generation in Illinois which produces coal combustion byproducts that would be subject to the EPA's proposed CCR rule.

1 DMG believes that the EPA should resist
2 the temptation to use the berm failure at a
3 federally owned corporation to impose a hazardous
4 waste classification on coal ash and scrubber
5 sludge that are safely being stored and
6 beneficially reused by private industry. DMG
7 supports the dam safety integrity standards and
8 inspection provisions of the proposed rule even
9 though they are mostly duplicative of the existing
10 regulations enforced by the Illinois Department of
11 Natural Resources.
12 Throughout the CCR proposal, EPA has
13 stated its belief that regulating CCRs as a
14 hazardous waste would not create a stigma against
15 the use of fly ash for soil stabilization or as a
16 concrete additive. The evidence in Illinois
17 belies that. The Army Corps of Engineers has
18 proposed a project to strengthen the levees along
19 the Mississippi River. One of the Corps
20 alternatives involves an injection of lime and fly
21 ash grout into the levee side slope. The Corps
22 believes that this alternative would safely and

1 cost-effectively strengthen the levees. Even
2 though the EPA has not yet finalized its
3 rulemaking, several comments already oppose the
4 use of fly ash in this project through a
5 perception that the ash is toxic and the metals
6 will be released into the environment. If the EPA
7 designates CCR as hazardous, these arguments will
8 become commonplace whenever CCR is considered for
9 soil stabilization or reuse in other products.
10 DMG has a long history of selling coal
11 ash for reuse. Besides the economic benefits of
12 reuse, fly ash reuse in concrete reduces the
13 demand for natural resources, and each ton of fly
14 ash used in concrete reduces CO2 emissions
15 associated with cement production. Hazardous
16 waste under Subtitle C will drastically impact
17 these uses, increase the cost of construction
18 materials, and threaten the existence of companies
19 that market these byproducts.
20 On the other hand, a Subtitle D or D
21 Prime approach would create an environmentally
22 protective program for coal ash disposal without

destroying these beneficial reuse options or imposing unnecessary compliance cost upon power plant operators that will eventually appear as higher price for concrete, electricity, or other products. DMG opposes the Subtitle C option and agrees with others to support the Subtitle D or D Prime options that will provide environmental options without additional waste, increased cost, and the stigmas associated with hazardous ash.

MR. BEHAN: Thank you. 160?

MR. LeMAIRE: My name is Walter LeMaire, Director of Mineral Resource Technologies (MRT). MRT is a coal combustion product marketing and management company that promotes, manages and expands the developed beneficial applications for CCPs along with our sister companies. I would like to thank today's EPA panel for giving me time to address the recent proposal for the disposal of coal combustion residuals from electric utilities.

MRT and its parent company CEMEX use CCPs including fly ash, bottom ash and synthetic gypsum in its cement, construction products and

1 ready mixed concrete manufacturing operations and
2 we promote the beneficial use of CCPs to external
3 customers. We are continuously expanding the
4 applications where beneficial use of CCPs can add
5 value to and lower the environmental impact of the
6 construction materials industry, both internally
7 and for our external customers. Fly ash has been
8 extensively used in concrete throughout the United
9 States to enhance the plastic and hardened
10 properties which cannot be obtained from ordinary
11 Portland cement concrete.
12 The Freedom Towers project in New York
13 City was previously unable to obtain the required
14 specifications until they utilized concrete made
15 with fly ash. Fly ash has been used in interstate
16 highways since the early 1950's and its use was
17 encouraged by the Federal Highway Administration
18 beginning in 1974. There have been many other
19 organizations that support the beneficial use of
20 fly ash such as the American Concrete Institute,
21 the American Association of State Highway and
22 Transportation Officials, and State Departments of

1 Transportation.
2 MRT and CEMEX understand the importance
3 of sustainable development, and continually seek
4 ways to reduce the environmental impact of our
5 operations by balancing materials demand with a
6 commitment to environmental sustainability. The
7 beneficial use of CCPs saves virgin resources,
8 lowers the cost of electricity generation, reduces
9 energy consumption, lowers greenhouse gas
10 emissions, lowers the end user cost of concrete
11 products, reduces the need for landfill space
12 which further lowers the impact on the
13 environment. We conduct business with respect and
14 care for the environment as evidenced by our
15 Energy Star Partner of the Year awards in both
16 2009 and 2010. Another example is our
17 participation in the Coal Combustion Products
18 Partnership (C2P2) which is a joint government and
19 industry program to increase the beneficial use of
20 coal combustion products to reduce energy
21 consumption, greenhouse gas emissions and increase
22 industrial recycling. We are committed to

1 preserving and improving the ecologies in which we
2 operate and devote considerable resources to
3 environmental quality efforts.
4 MRT and CEMEX urge the EPA to manage
5 coal combustion products under the proposed RCRA
6 Subtitle D option. This option increase the
7 existing federal physical requirements and
8 management guidelines of coal combustion products
9 almost identically to the RCRA Subtitle C option,
10 but allows coal combustion products to remain
11 clearly classified as a non-hazardous material.
12 Should the EPA choose to reclassify coal
13 combustion products under RCRA Subtitle C, there
14 may be severe collateral damage to future
15 beneficial uses of CCPs and could cripple or
16 potentially eliminate a major strategy in the
17 reduction of greenhouse gases in our country.
18 I would like to thank the EPA panel for
19 allowing my company to address some of our
20 concerns.
21 (Applause)
22 MR. BEHAN: Thank you. 312?

1 MS. DOOLIN: Good afternoon. My name is
2 Cathy Doolin and I so thank you for having this
3 forum for us to voice our life's journey. I'm a
4 female so of course I am going to be emotional. I
5 don't want to put stats out there, we've heard
6 them all day long.
7 I'm here to tell you a story of what
8 this does. I don't want anyone to lose their job.
9 I want new jobs created and new controls put in
10 place.
11 (Applause)
12 MS. DOOLIN: I am a victim of coal ash.
13 It was mixed in my land while I was growing up. I
14 have never smoked or drank a day in my life and I
15 have COPD. I brought it in case someone didn't
16 believe me. I don't smoke but I have COPD.
17 In the land where I grew up, it was
18 mixed with the sand. And what do children do?
19 They go out and they build sandcastles. My
20 grandson now suffers with psoriasis and eczema
21 across his face all the time. He is ten now, this
22 is when he was three.

1 Not only am I physically affected, all
2 of my internal organs are dying, I was told that.
3 I have mercury, I have lead, I have all of these
4 chemicals that you have mentioned today. I don't
5 care, I don't want no more babies to suffer. We
6 are adults, we can change this. It is our
7 responsibility to change this. Only take the
8 toxins out of our waters.
9 I've heard from people, EPA people,
10 MOVE! I've been to five different homes. I've
11 been subjected to five superfunds and didn't know
12 until after I had my water tested. This is not a
13 small issue, this is a big issue. I do not want
14 jobs lost, I want jobs created. I want us to care
15 about each other and our water and our land
16 because it won't be here forever. It will be
17 destroyed if we don't take it into our hands and
18 cure it.
19 My lead, my mercuries can never be taken
20 away from me. They've gone to my children and to
21 my grandchildren. Do we want this cycle to
22 continue? NO! Thank you.

1 (Applause)

2 MR. BEHAN: Thank you. 183?

3 MR. WILK: Good afternoon. My name is

4 Charles Wilk. I am a former RCRA hazardous waste

5 management facility permit writer working at the

6 US Environmental Protection Agency here in Region

7 5. My comment today relates to the landfill

8 design for coal ash if it is managed under RCRA

9 Subtitle D.

10 The current proposal describing this

11 scenario requires a landfill liner system that is

12 not state of the art. The proposed rule under

13 Subtitle D's scenario as it is written now

14 excludes the use of geosynthetic clay liner.

15 Geosynthetic clay liner or GCL is part of the

16 state of the art landfill liner system. GCLs have

17 long been used and approved for both RCRA Subtitle

18 C hazardous waste landfills and Subtitle D solid

19 waste landfills.

20 By excluding GCL from the design of coal

21 ash landfills under the currently written Subtitle

22 D scenario, we are missing an opportunity to

provide the public with the most protective landfill liner system available. I suggest that EPA review the data and establish the use of GCL, and then promulgate a final rule that includes geosynthetic clay liner in the presumptive landfill liner design regardless if coal ash is classified as Subtitle D or Subtitle C. Thank you.

(Applause)

MR. BEHAN: Thank you. Numbers 110, 111, 114, 115, 116. 110, 111, 114, 115 and 116 please. 117? Could 110 come to the podium please? 111? Could the person with the lowest number come to the self select? Thank you.

MR. WARREN: 114?

MR. BEHAN: Excellent. Thank you, sir.

MR. WARREN: Hello, my name is Warren Dick. I am a professor of Soil and Environmental Science at the Ohio State University, home of the future national champion football Buckeyes. I grew up on a diversified small grain farm and animal production farm in North Dakota. My desire

1 was to farm with my dad, but with seven younger
2 brothers in waiting, I instead went to graduate
3 school in agriculture. Two of my brothers remain
4 on the family farm and we are all very much
5 concerned about the sustainability of such small
6 businesses.
7 Since approximately 1990, I have
8 conducted research on the beneficial land
9 application uses of coal combustion products. My
10 first projects were on the use of these materials
11 for reclamation of highly degraded abandoned mine
12 lands in Ohio. The use of coal combustion
13 products was found to be highly effective.
14 However, today I want to speak
15 specifically about the more extensive research I
16 have conducted on the beneficial agricultural uses
17 of flue gas desulfurization gypsum that is
18 produced when coal is burned and the sulfur
19 dioxide is removed from the flue gases. During
20 this process, a very high quality gypsum is
21 produced. Sulfur is a major nutrient and a
22 component of proteins and other molecules of life.

1 It is an essential element for good crop
2 production. With removal of sulfur from our
3 atmosphere due to scrubbing of flue gases, our
4 crops are increasing becoming deficient in sulfur
5 that must be added back to the soil. There is no
6 such thing as a free lunch. If we remove sulfur
7 from the soil via harvested plant products, this
8 sulfur must be replaced. We have found FGD gypsum
9 an excellent source of sulfur for improving crop
10 production.
11 FGD gypsum has many benefits for soil
12 and crops. In fact, our early country fathers,
13 George Washington and Benjamin Franklin, were
14 strong proponents of the use of gypsum in
15 agriculture. Some benefits of gypsum for
16 agriculture include: 1. Improving soils
17 negatively impacted by sodium 2. Overcoming
18 problems associated with subsoil acidity; 3.
19 Improving aeration of soils needed for good root
20 growth; 4. Improving water infiltration which is
21 important as our Midwest climate is often
22 deficient in rainfall during the months of July

and August; 5. Improving the efficiency of nitrogen fertilizers for crop production, thus reducing nitrogen fertilizer inputs and nitrate leaching into our water bodies; 6. Increasing the amount of land that can be farmed using no-tillage practices, thus reducing the farmer's use of fossil fuels and increasing the amount of carbon that is sequestered in soil; and 7. Decreasing the runoff concentrations of nitrate and phosphorus.

It is important that FGD gypsum not be labeled a hazardous material. It has been extensively studied and it can make a contribution to improving agricultural productivities in the United States. And it is important that this increased productivity continue to feed the increasing world population. Thank you.

MR. BEHAN: Thank you. 115?

MR. GONET: Hello, I'm Phil Gonet, President of the Illinois Coal Association. The Illinois Coal Association is a professional trade association that is composed of 20 coal producers

1 and coal reserve owners. The coal industry has a
2 significant impact, economic impact in the state
3 particularly in Central and Southern Illinois. We
4 appreciate the opportunity to comment on this
5 proposed rulemaking as some ICA members place coal
6 combustion residues, or CCRs, in their mines and
7 otherwise beneficially use CCRs in their
8 facilities.
9 The ICA strongly supports EPA's preamble
10 statement that the agency "..is...not proposing to
11 address placement of CCRs in mines, or
12 non-minefill uses of CCRs at coal mine sites in
13 this action."
14 In 2006, the National Academy of
15 Sciences recommended that the Office of Surface
16 Coal Mining and its state partners under the
17 Surface Mining Control and Reclamation Act "take
18 the lead in developing new national standards for
19 CCR use in mines because the framework is in place
20 to deal with mine-related issues." The ICA agrees
21 with the NAS and urges EPA to continue to defer to
22 OSM given its considerable expertise in mine

1 regulation.

2 However, the ICA is concerned that EPA's

3 intention to defer to OSM is not executed properly

4 in the proposed regulatory text. For example, the

5 definition of "minefill" in the preamble is vague

6 and does not adequately account for non-minefill

7 uses of CCRs which EPA states is not regulating

8 under this proposal.

9 In addition, only the proposed hazardous

10 waste regulations under Subtitle C specifically

11 exclude "minefilling operations." No definition

12 appears in the proposed regulations for the term

13 "minefilling." Although we believe that EPA's

14 intention was for the other non- minefill uses at

15 coal mines to be exempt, this point is left

16 unclear in the text and needs to be fixed.

17 To avoid significant confusion and

18 regulatory uncertainty, EPA must make it clear in

19 the preamble and in the final regulatory text that

20 placement of CCRs at mines and other non-minefill

21 uses of CCRs at underground and surface coal mines

22 are excluded from the rule's requirements.

1 The ICA strongly supports the EPA's
2 decision not to reverse the regulatory
3 determination for beneficial uses of CCRs, but is
4 concerned with EPA's discussion on unencapsulated
5 uses, a term not well defined in the proposed
6 rule. This term could be interpreted to encompass
7 certain uses of CCRs at mines, contradicting EPA's
8 stated intention.
9 CCRs serve a variety of important uses
10 at mine sites, and EPA's final rule should not put
11 these uses in peril by failing to appropriately
12 exclude them from disposal regulations for surface
13 impoundments and landfills. OSM is and should
14 continue to be the exclusive regulator of these
15 materials. Thank you.
16 MR. BEHAN: Thank you. Number 116?
17 DR. McDONALD: Good afternoon. My name
18 is Dr. David McDonald. I'm here on behalf of the
19 Concrete Reinforcing Steel Institute. I'm a
20 licensed professional engineer and a member of the
21 American Society of Civil Engineers. I'm also a
22 father who cares about a clean safe environment

1 for my son.

2 Concrete is an essential component of

3 the national infrastructure, and almost no

4 construction can be made without it. It is used

5 for buildings, bridges, schools, hospitals,

6 pipelines and dams. Many of these structures are

7 owned by the public and many already contain coal

8 combustion products.

9 The EPA has put forward two proposals.

10 Under both rulings, substantial improvements will

11 be made to the retention and storage of coal

12 combustion products. Thus, the issue of future

13 dam failures, like that in Kingston, Tennessee, is

14 being addressed by both proposals.

15 Under Subtitle C, fly ash will contain a

16 hazardous label. The implementation of Subtitle C

17 will result in less fly ash being used in concrete

18 and more material being stored, increasing the

19 risks to the public and reducing use of it in

20 concrete.

21 The benefits of using fly ash in

22 concrete have been well proven. The EPA itself

1 has stated that encapsulated coal combustion
2 products "do not raise concerns and offer
3 important environmental benefits." Our concern is
4 that the proposed regulations may result in the
5 disposal of coal ash that prevents users obtaining
6 these important environmental benefits and
7 increases the risk to public safety.
8 In 2008, approximately 12 million tons
9 of greenhouse gas emissions were avoided by using
10 coal combustion products in concrete. Through the
11 use of fly ash, federal projects avoided energy
12 use of approximately 25 billion megajoules; water
13 consumption of two billion liters; and avoided
14 carbon dioxide equivalent emissions of 3.8 million
15 metric tons.
16 Under Subtitle D, recycling coal ash in
17 concrete will be encouraged as a safe,
18 environmentally preferrable alternative to
19 disposal. Thus, the Concrete Reinforcing Steel
20 Institute strongly supports the implementation of
21 Subtitle D.
22 On behalf of the Concrete Reinforcing

1 Steel Institute, I would like to thank the EPA for
2 conducting this listening session on this very
3 important and complex issue. Thank you.
4 (Applause)
5 MR. THORPE: Good afternoon. My name is
6 Mike Thorpe and I'm a senior technical manager for
7 LifeTime Composites, LLC.
8 LifeTime Composites began with the
9 objective of creating a product that can serve as
10 a sustainable replacement for wood in any
11 nonstructural application in which wood is
12 deteriorated by the elements.
13 The result of our years of extensive
14 research and development and the product design is
15 LifeTime Lumber, an eco-friendly wood alternative
16 that uses up to 70 percent recycled fly ash.
17 The fly ash is used as an engineered
18 filler which is bound and encapsulated within a
19 polyurethane matrix in a proprietary process. The
20 resulting composite provides a unique combination
21 of weight, strength, hardness, flexibility and
22 resistance to water absorption.

1 LifeTime Composites is a member of the
2 US Green Building Council, certified by the
3 Scientific Certification Systems for material
4 manufactured with a minimum of 60 percent recycled
5 content, and complies with the requirements for
6 LEED 4.1 and 4.2 credits.
7 Currently, LifeTime Composites is
8 beginning a national launch of various product
9 lines which include privacy fencing, equestrian
10 fencing, decking, docks, pergolas and arbors.
11 So far in 2010, LifeTime Composites has
12 safely recycled one million pounds of fly ash
13 within its products.
14 2011 forecasts anticipate the beneficial
15 use of five million pounds of fly ash. This
16 equates to over 76,000 cubic feet of landfill
17 space.
18 LifeTime Composites directly employs 34
19 hardworking individuals.
20 Our engineering and development group
21 has evaluated the toxicity characteristic leaching
22 procedure analysis for the fly ash in our products

1 and concluded our products are safe to use in the
2 applications we are marketing.
3 The composite lumber industry is very
4 competitive and if fly ash has the association as
5 a hazardous material, the negative connotation
6 would seriously affect the sale and the use of
7 products in our industry.
8 Our marketing group has surveyed that a
9 hazardous designation would significantly degrade
10 the public opinion of fly ash in any products that
11 are manufactured with recycled fly ash.
12 Should the EPA rule coal combustion
13 residuals including fly ash as hazardous, it would
14 mean redeveloping a new engineered filler that has
15 taken over ten years and millions of dollars to
16 develop.
17 This would seriously threaten the
18 business of LifeTime Composites in the United
19 States and could lead to the loss of 34 jobs, as
20 well as the end of recycling millions of pounds of
21 material each year. Thank you.
22 (Applause)

1 MR. BEHAN: Thank you. Could speakers
2 with numbers 119, 120, 121, 122 and 243 come
3 forward please? While those folks are coming
4 forward, is there anyone in the room that has a
5 number between 300 and 321? What number do you
6 have? 314? Okay, you'll be in the next group.
7 Could 119 come to the podium please? 120?
8 MR. PETERSON: Good afternoon. My name
9 is Terry Peterson. I've been working in the coal
10 combustion product industry for 27 years. I
11 currently work for a company called Boral Material
12 Technologies. Boral is a small ash management
13 business based out of Roswell, Georgia. We have
14 161 people working at 22 power plants selling
15 material in 18 states. Just a couple of comments
16 on what's happening and what I've been hearing the
17 last couple of hearings I've attended is one of
18 the things that's been very successful and led to
19 30 years of recycling of these products is EPA's
20 support and continuing support of Subtitle D
21 classification. We think that this is a very
22 important continuation of this classification, not

1 only because of the stigma you've heard in many
2 cases about marketing, but more importantly, we
3 need more investment money in this industry to try
4 to do more with these products. We're firm
5 believers that we'd rather recycle than landfill.
6 That takes care of two problems. But we also
7 recognize that there's landfill practices out
8 there that are not up to standard and agree that
9 something needs to be done.
10 So, in conclusion, we would encourage
11 the EPA to maintain a Subtitle D classification
12 for CCRs while also working with state regulators
13 to improve landfill management procedures. This
14 logical approach will provide the solution for
15 both sides of this debate. Thank you for your
16 time today.
17 MR. BEHAN: Thank you. 121?
18 MS. MICHETTI: Hello, I would like to
19 thank the USEPA for holding this public hearing on
20 coal ash. We need public hearings like this on
21 more issues.
22 Coal ash needs classification as a

1 listed toxic substance to be regulated under RCRA
2 Subtitle C with a comprehensive program with
3 federally enforceable requirements as a minimum,
4 not through citizen suits that require deep
5 pockets and will bring bankruptcy to those
6 citizens.
7 The coal industry outrageously brags
8 they meet the standards while contaminating the
9 drinking water in Wisconsin, so Caledonia has to
10 have bottled water. Since voluntary industry
11 self-regulation is beyond failed, industry
12 corporations must be held financially accountable
13 for all external cost including testing and
14 cleanup, not paid by individual victims of these
15 unfair, unethical externalities of their costs of
16 doing business.
17 Subtitle C as a comprehensive program of
18 federally enforceable requirements is the only
19 acceptable option with some corporate
20 accountability if adequate enforcement occurs and
21 if the cost of violating the rules isn't cheaper
22 than the right action. So, that's all part of the

1 picture.
2 The long-term, overdue, precautionary
3 principle must become part of this equation before
4 any real accountability shifts the industry
5 burdens and the costs back to their source instead
6 of unfairly on the victims. The victims are
7 getting sick and tired of being victimized by
8 everything we turn around everywhere we go in
9 every aspect of our lives.
10 And the Wisconsin DNR is a politically
11 driven agency. By definition, limited legal
12 liability of coal in Wisconsin indicates that
13 serious hazards and risks do exist for the public.
14 And so, I just don't even believe in all of the
15 reasons that they're giving for adopting Subtitle
16 D.
17 Coal ash concentrates the arsenic,
18 cadmium and mercury. It is not cheap. The costs
19 are transferred to the public through
20 environmental pollution, adverse health effects,
21 innocent victims are harmed, absorbed coals,
22 external and polluted cost of doing business.

1 Subtitle D option is unacceptable. It further
2 shifts the unfair cost of externalities of doing
3 business to the victims when it should be being
4 paid honestly as a cost of doing business.
5 Okay. I want to also say that people
6 are being tested for heavy metal poisoning and
7 people are being found positive with heavy metal
8 poisoning everywhere. Do you know that orthodox
9 medicine can do nothing clinically about it? They
10 can only help you if you have an acute problem,
11 not if it's chronic. It's up to you to figure it
12 out.
13 MR. BEHAN: Thank you, ma'am. Ma'am,
14 could you state your name for the record? I might
15 have missed it at the beginning.
16 MS. MICHETTI: My name is Susan
17 Michetti, I'm from Mount Horeb, Wisconsin.
18 MR. BEHAN: Thank you.
19 (Applause)
20 MR. BEHAN: 122?
21 MS. BURTON: Good afternoon. My name is
22 Kathy Burton and I am a Trustee for the Village of

1 Caledonia in the State of Wisconsin. Caledonia
2 has a problem. We have several families that
3 cannot drink the water from their wells because of
4 high levels of molybdenum. They are afraid, and
5 rightfully so.
6 Those that want to leave cannot because
7 no one wants to buy a home with a contaminated
8 water supply. Their homes are essentially
9 worthless. So, they remain day after day, having
10 to use bottled water for their drinking and
11 cooking.
12 As their representative, I feel that it
13 is my sworn duty to help these families find
14 relief. But that task has been extremely
15 frustrating. The suspect company denies that they
16 are the source of the contamination, and the DNR
17 claims that it could take up to five years to find
18 the source. Meanwhile, everyone is forced to just
19 sit and wait.
20 I find this situation absolutely
21 unacceptable. As a village, we must adhere to
22 regulations and time lines imposed on us by the

1 DNR, or face fines and penalties. Yet when the
2 village needs the DNR to be responsive and swift
3 because we have a safety situation, we have no
4 recourse and are expected to be patient with a
5 five-year time line.
6 This to me is not acceptable. America
7 has some of the highest standards in the world,
8 and the fact that there are places here in America
9 where people cannot drink their water is not
10 acceptable.
11 We need this regulation under Subtitle C
12 to help provide people with the basic need of
13 clean drinking water, to protect them by holding
14 these companies to a higher standard, and to seek
15 justice for them by holding them accountable when
16 they pollute. Thank you.
17 (Applause)
18 MR. BEHAN: Thank you. 243?
19 MR. CLARK: I'd like to thank the EPA
20 for taking the time to listen to this ruling. My
21 name is Jim Clark and I've worked in the concrete
22 industry for 30 years. I'm currently employed by

1 Prairie Material, the largest concrete supplier in
2 Chicago. Since 1948, Prairie Material has gone to
3 have 75 concrete plants throughout the Midwest in
4 which 98 percent of our plants use fly ash.
5 Prairie has been using fly ash for 30 plus years
6 and we have consumed over a million tons of fly
7 ash today.
8 As you know, concrete is the most
9 versatile, durable, economical construction
10 material in the world. Our industry along with
11 other governing agencies have spent millions of
12 dollars in research, years of research to fully
13 understand the beneficial use of concrete. We use
14 fly ash everyday on multiple projects. We use it
15 in the construction of homes, schools, hospitals,
16 water storage, water treatment, industrial and
17 commercial projects. Some of the more familiar
18 ones are the Trump Tower, the Aqua Building, and
19 the O'Hare expansion, just to name a few.
20 Besides the obvious benefit of being
21 less expensive than cement, it prevents CO2
22 emissions on a pound for pound basis. Fly ash is

a recycled, sustainable material; labeled hazardous, it would likely end up destroying this recyclable segment. Our industry has shown again and again that fly ash enhances the performance as well as the durability of concrete. The Federal Highway Administration and the Federal Aviation Administration are just two of the governing agencies that have long accepted its use.

When the truck hauling fly ash leaves the power plant, does it matter which way it turns, right or left? No. Society as a whole will not be able to differentiate between fly ash labeled as a hazardous material and the fly ash labeled as acceptable for use. The label of being hazardous has its own inherent meaning and it is not a good one for our industry. Engineers and architects alike will quit using it on their projects because of the stigma that goes along with the label. This proceeding alone has brought attention to concrete specifiers and they are very cautious to say the least.

Without the use of fly ash, the cost of

1 concrete will go up 10 to 15 percent. We will
2 have to use more costly, less sustainable
3 materials to replace it. The cost will be driven
4 directly to the consumers and those costs will
5 directly affect all construction projects that use
6 concrete.
7 If somehow we were able to use fly ash
8 after labeling it hazardous, the cost would still
9 go up because of additional insurance and OSHA
10 requirements needed to handle it. If you consider
11 this hazardous today, what was it yesterday?
12 You've just opened Pandora's box, you've bankrupt
13 the whole industry because the lawsuits would be
14 endless. We use fly ash everyday and we have not
15 had any medical issues related to it in the
16 concrete plants.
17 We are very concerned about the decision
18 of labeling of fly ash as it will directly affect
19 the way we do business. Thank you for your time.
20 (Applause)
21 MR. BEHAN: Thank you. 125, 126? Is
22 there anyone in the room that has a number below

126 that has not spoken today? 314? How about 317? Anyone have a number 322 or lower? Or between 300 and 322? How about between 324 and 328? Come up, sir. What number did you have? 328. How about 330 or 331? Come up, sir. 125, if you can come to the podium. 126?

MS. RACE: I'm Maria Race. I'm speaking today on behalf of Midwest Generation, owner and operator of a coal ash landfill which is part of our Joliet 9 Generating Station located in Joliet, Illinois. The Joliet 9 landfill was recently identified in the August 2010 publication entitled "In Harm's Way" prepared by certain environmental interest groups to support their claims that federal regulation of coal ash is needed and, in particular, regulation of coal ash as a hazardous waste.

I've been personally involved with the Joliet 9 landfill since 2001. The true story of Midwest Generation's Joliet 9 landfill does not support the claim that more federal regulation of coal ash landfills or regulation as a hazardous

1 waste is needed to protect the public health;
2 rather, it shows that current Illinois regulations
3 are protective of the environment and public
4 health.
5 So much of what is contained in the "In
6 Harm's Way" publication is false and misleading
7 that I will not have enough time today to identify
8 and correct all of its errors. However, I will
9 cover the most egregious of their false claims. *
10 In the "In Harm's Way" document, it claims that 18
11 nearby residential drinking water wells were
12 contaminated with boron from Midwest Generation,
13 and that is not true. * The document claims
14 that there is evidence of offsite contamination in
15 the direction of the Smiley subdivision, and that
16 is not true. * The document claims that there
17 was an enforcement action taken by the State of
18 Illinois, and that is not true.
19 Because the authors of "In Harm's Way"
20 elected not to discuss any of the contents of
21 their story with Midwest Generation before
22 publishing it, we did not have the opportunity to

correct these mistakes before they were published.

The Joliet 9 landfill has been subject to IEPA regulation since the 1970's. State regulations provide extensive requirements and protections against the outward migration of any impacted groundwater from the landfill. These requirements include quarterly monitoring and reporting for an extensive network of groundwater monitoring wells within the boundaries of the landfill for numerous constituents that are known to be associated with coal ash such as boron, arsenic and manganese.

The "In Harm's Way" document ignores these requirements and the fact that Midwest Generation has consistently complied with them. We have acted ethically with regard to the local communities. We've provided new wells in a deeper aquifer when modeling showed groundwater contamination could potentially reach these wells, although sampling of these wells showed that none of them were contaminated.

We submit that the true story of the

1 Joliet 9 landfill is not one which supports the
2 call for federal regulation of coal ash disposal
3 sites or regulation as a hazardous waste. Rather,
4 it shows that states can and do effectively
5 regulate and monitor the operations of coal ash
6 landfills. It also shows that in the operation of
7 its Joliet landfill, Midwest Generation has
8 consistently taken a responsible, proactive course
9 of action when dealing with the community so the
10 risks, whether real or not, are addressed. Thank
11 you.
12 MR. BEHAN: Thank you. 126? 314?
13 MR. VENCES: Hi, my name is Jose. And
14 in the summer camp that I go to, they took us
15 through a tour of all the places that pollute
16 Chicago. Out of all the places that are polluted
17 and that we saw, the two that concerned me the
18 most were Meyer Steel Drums and Crawford Coal
19 Plant. Meyer Steel Drums used to blow toxic ashes
20 through the neighborhood but they stopped now and
21 no one knows what they do with the ashes. Coal
22 companies do this thing called mountaintop removal

1 when they blow up the top of a mountain for coal.
2 When these companies do this, it's bad for the US
3 and the environment. They cause asthma and
4 cancer. Please shut down these places and make
5 more clean energy like solar power and wind
6 turbines.
7 (Applause)
8 MR. BEHAN: Thank you for your comment.
9 MS. GUZMAN: Dear EPA, when my summer
10 camp went to a field trip called the Toxic Tour,
11 at first I thought it was going to be boring. But
12 when it finished, I remember a lot of things about
13 Crawford Coal Power Plant. This company is bad
14 for the environment and the people around their
15 neighborhood because it could create asthma,
16 cancer and other disease. Please shut down this
17 place and build more clean energy. Sincerely,
18 Leslie Guzman.
19 (Applause)
20 MR. SEGURO: Hi, I'm Gustavo. Dear EPA,
21 do your job and make people stop polluting and
22 help clean the Gulf of Mexico. Animals are dying,

not to mention birds and turtles. Please close Meyer Steel Drum and Crawford Coal Power Plant in Chicago. Conclusion: Stop Polluting.

(Applause)

MS. ASEJAGA: Dear EPA, one of my family members has asthma. You should stop coal and the power plants because my cousin can get hurt. We need a good environment.

You should close the steel drums and Crawford coal power plant because they are polluting. Please use clean energy instead like solar and wind. These are better for the earth and people. Dyannara Asejaga.

(Applause)

MR. BEHAN: Thank you. 328 please?

MR. ZELLNER: Yes, my name is Ralph Zellner. I'm from the Green Bay, Wisconsin area. I think it's mandatory that you pass Subtitle C and here are some of the reasons.

My problem is they put one of these cancer pits right across the road from my house. First of all, we were never notified that this

thing was coming in or nothing. We had to follow the trucks back to the -- plant to find out that they were hauling this fly ash. They put this thing in there. They never did any borings to see if this was going to be a safe place to put this stuff or not. They had been dumping debris in there for probably 20 years.

Now, when that debris decomposes, the bottom of that liner, they only put in a clay liner, that's just going to fall right out. This stuff is going to get right in the water because we're on the Niagara Escarpment and it's total rock there so it won't hold nothing. The water was polluted there once before but it was not from this product, it was from TCE.

When we were told about the liability for this thing, Wisconsin has passed a law that the liability falls totally on the taxpayers. The guy who put the stuff in there or was paid for putting it in there will have no liability at all. So, we'll have bad water and there will be nobody to take care of it because with the TCE, all they

1 did was like the people down at Caledonia, they
2 brought them a water bottle or something, they put
3 a water tank up there, you go fill up your own
4 water jugs.
5 So, I think it's very essential that you
6 do something that this is mandatory and that we
7 have a law that pertains to everybody in this
8 country that they can't just go around changing
9 and putting their own regulations in place and it
10 all depends who is in political power and they get
11 done what they want and the people will have to
12 pay the price.
13 And the thing is about the fly ash,
14 they're always saying, well, we're going to have
15 to use a lot more landfills for it, I do not
16 believe we have to use any more landfills because
17 this fly ash can be put right back into train cars
18 that haul the coal and be hauled back to the
19 mountains where it came from.
20 (Applause)
21 MR. ZELLNER: And another thing, I
22 believe the stigma about the TVA or whatever, the

1 Tennessee Valley Association down there where they
2 had the big leak, I think it's just the stigma
3 being used by the industry or fly ash industry to
4 make it look like, you know, that we're putting
5 something up. But all I think is this was the
6 last straw that broke the camel's back. Thank
7 you.
8 (Applause)
9 MR. BEHAN: Thank you, sir. We're going
10 to make a one-member panel switch right now. Let
11 the record show that Jesse Miller, USEPA, is
12 returning to the panel to replace Julie Gevrenow.
13 I understand 118 is now here? Could 118
14 come forward? Or maybe not. 110? Is there
15 anyone in the room that has a number 120 or lower
16 that has not spoken today? Okay.
17 240, 188 and 139. When you're ready,
18 ma'am.
19 MS. WALLACE: Good afternoon. I'm
20 Katherine Wallace from the Topless America Project
21 which is an environmental, social justice and
22 media organization. In our last five years, I've

1 had the opportunity to go around the country
2 documenting and witnessing the effects of coal on
3 local communities. Unfortunately, our nation is
4 still dependent on coal. But the more we regulate
5 and enforce those regulations, the coal companies
6 will have a harder time capitalizing on the
7 devastation inflicted on their employees and
8 communities they infiltrate. And that would allow
9 more opportunity for cleaner, renewable energies
10 to compete against such a dirty industry as coal
11 which literally gets away with murder.
12 Coal ash and incidents like the TVA
13 spill in 2008 are just another example of how our
14 regulations don't harbor devastating destruction
15 on local communities. Sitting in your living room
16 shouldn't have toxic effects no matter where you
17 live. Arsenic, mercury, aluminum and titanium are
18 only a few examples of the chemicals and heavy
19 metals which poison unfortunate human beings who
20 live near to a toxic waste impoundment, a coal
21 plant or a mining site. Eventually, the
22 contamination will spread from these local

1 communities through spills, transportation on
2 trucks and trains, and will travel downwind and
3 upstream.
4 This is not only an issue for those who
5 are sick today. This is an issue for a whole
6 nation who will be poisoned by those
7 contaminations sooner or later.
8 I'm here to tell you that whether it is
9 coal ash or coal in general, this will only cause
10 destruction. Any way you try to disguise it,
11 through cement or containment ponds, it will
12 always seep through to the people.
13 So, I ask you, EPA, please protect your
14 citizens and your environment by regulating coal
15 ash as a Subtitle C as suggested.
16 (Applause)
17 MR. BEHAN: Thank you. 240?
18 MS. REILLY: Thank you for this
19 opportunity to comment on this important
20 rulemaking. My name is Michalene Reilly and I'm
21 the manager of Environmental Services for Hoosier
22 Energy Rural Electric Cooperative.

1 Hoosier Energy is a not-for-profit
2 generation and transmission cooperative serving
3 over 290,000 rural consumers at 48 Central and
4 Southern Indiana counties and 11 Southeastern
5 Illinois counties. As an Indiana utility, our
6 baseload portfolio is mainly coal, and as such,
7 our members will be disproportionately impacted by
8 a final coal combustion residue rule, particularly
9 one that regulates coal ash as hazardous waste. I
10 see nothing special in the euphemistic term of
11 "special waste" that is being used in the
12 regulation. In fact, despite numerous studies and
13 reports, including two EPA made to Congress
14 stating that coal ash does not exhibit
15 concentrations of leachable metals that would be
16 considered hazardous under current regulations,
17 political pressure from interest groups has led
18 the EPA to disregard their own scientific results
19 and propose a listed hazardous classification for
20 CCRs.
21 Hoosier Energy supports development of
22 federal regulations for CCRs under RCRA Subtitle D

1 non-hazardous waste program and believes that the
2 Subtitle D Prime provides substantial safety for
3 human health and the environment. In fact, the
4 standards for landfill design under the EPA
5 proposals are essentially equal under the Subtitle
6 D and Subtitle C options. Statements have been
7 made that Subtitle D or D Prime would be akin to
8 the design for a municipal solid waste landfill,
9 and Hooser Energy concurs with that assessment.
10 The fact is that municipal landfills are designed
11 to ensure that waste of all types thrown in the
12 trash by homeowners are protective. This includes
13 conditionally exempt wastes, mercury thermometers,
14 fluorescent light tubes, CFLs, lighting ballasts
15 and batteries. In fact, the design of municipal
16 landfills recognizes the disposal, with an
17 adequate safety factor, of materials from
18 households that would fail test for hazardous
19 characteristics. However, this is not the case
20 for CCRs as they do not exhibit the hazardous
21 waste levels for the same constituents.
22 In a time when jobs are scarce, when it

is difficult to make ends meet, and when the middle class is being squeezed by rising energy prices and decreases in pay, it would be irresponsible for EPA to over-regulate coal ash for the purpose of "equalizing the cost of power between coal and renewables." Administrator Jackson in her confirmation hearing testimony said that EPA would use science to dictate the direction of regulation. We call on EPA to let their own scientific studies and their previous determinations not to regulate ash as hazardous to guide the way to regulations that are protective but not excessive. Thank you.

(Applause)

MR. BEHAN: Thank you. 200, 175, 140, 210 and 312. Ma'am, you showed me your number. Was it 312? Oh, 320, okay. 320. 200 please?

MS. DeCLUE: Hello. My name is Mary Ellen DeClue. I'm from Litchfield, Illinois, Montgomery County. All around me are coal mines, Shay One to my west, Crown Three to the north, and Deer Run which is being constructed to my east.

1 South, I have a coal fired power plant, so I'm
2 pretty familiar with the coal situation.
3 The mine operators and the utility
4 operators, their job is to make money. And
5 they're good at it. The job of the EPA is to make
6 sure that when they make their money, that they
7 are also protecting the health and safety of
8 citizens. We desperately need national,
9 enforceable minimum standards. We have to have
10 that because basically there is quite a
11 variability within the states about how laws and
12 rules are enforced. And Illinois is very much a
13 pro-coal state.
14 I would like to establish the fact that
15 we've talked about toxic metals, arsenic, lead,
16 mercury. That's fine. No one has talked about
17 PAHs, that poly aromatic cyclic hydrocarbons.
18 These are semi-volatile chemicals that are
19 carcinogenic, are known to attach to particles
20 like fly ash or fluidized bed coal waste. And so,
21 basically if EPA could characterize, you know, we
22 see coal combustion waste or residue or

1 byproducts, I mean that's lumping very different
2 items together. You need to characterize, do
3 analyses, chemical analyses.
4 If those products are benign
5 environmentally, they're clean, I don't think any
6 of us care what we do with it. That would, if
7 anything, help beneficial use. I would be the
8 first, the first to say if it's not toxic, please
9 don't put it in a landfill, use it. Please use
10 it. But what we have to establish is minimum
11 standards and actually characterize what we're
12 talking about.
13 It's ironic that the utility companies
14 concentrated, they put on the anti-pollution, they
15 concentrated the chemicals, and now we have
16 allowed them to basically put those toxic
17 chemicals wherever. Especially what's egregious
18 is to put it in mine voids, where you're not
19 monitoring it, you can't see it, it affects the
20 groundwater. So, please, please consider Subtitle
21 C. The citizens will thank you for it. Thank
22 you.

1 (Applause)

2 MR. BEHAN: Thank you. 320?

3 MS. BOUDART: I'm Jan Boudart. I live

4 in Rogers Park, Chicago. I belong to the Rogers

5 Park Sustainable Food System and the Chicago

6 Conservation Corps. I am now active in Habitat

7 Restoration and am helping to create a Museum of

8 Native Plants on the shores of Lake Michigan in

9 Rogers Park. I wanted to thank the EPA for an

10 opportunity to speak to this issue of coal ash.

11 As a budding scientist in Salt Lake

12 City, I was exposed to coal smoke constantly,

13 including our own coal burning furnace that heated

14 our house. Periodically, someone would come by to

15 pick up the powder and clinkers, but there was

16 never any information as to whether they were safe

17 or where they were taken. But now we know, and we

18 are learning more everyday, mainly, that the more

19 we investigate, the more realize that the danger

20 is much greater than we realized last year, last

21 week or even yesterday.

22 The Bush administration refused to take

1 action against arsenic in water even after its
2 danger was understood. But now we have an
3 administration that not only believes in science
4 but also believes in protecting its most important
5 resource-its people. And about 40 years ago,
6 European governments took action against their
7 citizens' exposure to lead as soon as its dangers
8 were known. But in the United States, the
9 influence of paint manufacturers and corporations
10 prevented action to the great suffering of many
11 Americans.
12 Regulating coal ash will have a minor
13 effect on industrial uses. As has been pointed
14 out, industry always claims that it is doom for
15 their industry to regulate it. But you will
16 notice that we have heard from several sheet rock
17 manufacturers and the representatives from their
18 associations and coalitions. Did you notice who
19 we're not hearing from? The laborers and workers
20 who deal with the raw materials of sheet rock and
21 Portland cement. They have not been mentioned as
22 victims of unregulated handling of fly ash and

clinkers.

(Applause)

MS. BOUDART: Regulating coal ash will have an effect on the industrial uses but it's much better to regulate it and protect citizens than it is to allow, it's going to cost a lot more, a lot of sick people and sick parents with alienated children, et cetera. Now we have another opportunity to place coal ash in a special category under Subtitle C of the Resource Conservation and Recovery Act. We must act decisively to protect our born and unborn children and all the citizens of our country. Thank you.

(Applause)

MR. BEHAN: Thank you, ma'am. Are numbers 127, 128, 129, 130 and 131 here? If so, could you come forward?

132, 133, 134, 135, 136?

AUDIENCE MEMBER: 132 would like to speak later.

MR. BEHAN: Okay, that's fine. Okay, all numbers below 136 were scheduled to speak

1 before our dinner break. Seeing that there are no
2 speakers at that time, I'm going to go ahead and
3 use the rest of the time now between now and 6:00
4 to call all those people that are here. So, I'm
5 going to start calling some numbers that I know
6 that are in the room or might be here. 158, 165?
7 I can't read numbers. 140? I can't read these
8 numbers. Okay, hold on, hold on. 351, 139, okay.
9 That's enough for now, thank you.
10 If those individuals could self order
11 over there and announce their number when they
12 come up to the podium, that would be great. Thank
13 you.
14 MR. MILLER: I'm 158. My name is John
15 Miller. I've worked in the fly ash industry for
16 Headwaters Resources for seven years. But I come
17 before you today as a private citizen.
18 I've always been a supporter of the EPA
19 in the job they have before them. I believe very
20 strongly in protecting our environment. I'm a
21 proud father, grandfather and husband. My
22 13-year-old son and I spend every second that we

1 can in the outdoors, enjoying it with everything
2 that we have. But I believe the goal of the EPA
3 should be to protect the environment based upon
4 science and not politics. I believe that a large
5 part of this is a political effort to gain control
6 over the coal industry.
7 There are a few points I'd like to make
8 concerning the proposed Subtitle C regulation.
9 How would we pay for the increased cost of power
10 generation this will result in? What if we are
11 wrong as we heard people testify that the Subtitle
12 C designation would impact and destroy the
13 beneficial use of fly ash? I talk to users
14 everyday and I truly believe this will happen.
15 How many jobs are we willing to lose if this
16 industry is destroyed? There are thousands of
17 jobs that could be impacted by this decision.
18 Any Subtitle C hazardous material
19 designation will impact this industry. Subtitle C
20 will destroy one of the most successful recycling
21 programs ever in the US. It will have allowed
22 millions of tons of CO2 to be entered into the

1 atmosphere in a year. It will have put thousands
2 of people out of work and will increase the cost
3 of power generations. There is options for both
4 the utility and end users of fly ash. They do not
5 have to use this product.
6 There is basically no difference between
7 Subtitle C and Subtitle D in terms of protecting
8 the environment. With Subtitle D, there is no
9 doubt that this recycling will continue to grow.
10 There will be less materials and landfill around
11 the country. There will be millions of tons less
12 of CO2 and we will have improved the disposal
13 methods for CCPs in wet impoundments.
14 I agree, wet impoundments need to be
15 regulated. I agree, more stringent regulations,
16 putting liners, groundwater testing and monitoring
17 needs to be done as outlined in your Subtitle D
18 proposal. The part I have a concern is whether
19 EPA would support the continued beneficial use of
20 the fly ash through a proposal of regulation that
21 would impact and possibly destroy it.
22 If we go forward with a Subtitle C

regulation, we will impact the environment by destroying one of the most successful recycling programs. We will place, as I stated earlier, millions of tons of CO2 in the environment every year. Subtitle C will greatly increase the amount of tons in landfill every year.

The carbon footprint to dispose of CCPs is massive. Thousands of machines will be operating daily to be able to do this. I ask the EPA to do the right thing and to protect the environment and to choose the Subtitle D proposal for the regulation of coal ash. Thank you for your time.

MR. BEHAN: Thank you.

MS. ZEMAN: 165. My name is Christine Zeman, Regulatory Affairs Manager for City Water, Light & Power, the municipal utility of the City of Springfield, Illinois. Thank you for the opportunity to express why we oppose regulation of ash under Subtitle C and under Subtitle D of RCRA except potentially under Subtitle D Prime.

Illinois has long regulated the

1 integrity of structures like ash structures, has
2 strict groundwater standards, has strict landfill
3 regulations that already meet Subtitle D, and
4 strictly limits the beneficial uses of coal ash,
5 protecting the environment while also encouraging
6 their reuse. Further, Illinois recently
7 established strict closure requirements for
8 specific ash ponds.
9 In some ways, this regulation is
10 premature. USEPA recently sent two different
11 teams of consultants into our site to inspect and
12 investigate our ash handling system as well as our
13 ash ponds and their integrity. And we are in the
14 middle of doing an extensive ICR. We just now put
15 the information into the mail to USEPA. It seems
16 like USEPA should have the benefit of those
17 observations, analyses and details before
18 proceeding further on this rule. We haven't seen
19 the results of either of the site inspections.
20 CWLP currently operates four coal
21 combustion units burning Illinois coal from a
22 local mine, having installed scrubbers as early as

1980. Last year, we began commercial operation of a new unit, Dallman 4, which won accolades from engineering and environmental groups alike, including for our unique agreement with the Sierra Club. While the new unit was constructed utilizing dry ash, the older three sluice ash to our ash ponds. Converting the existing units to dry ash was studied but deemed not feasible or exorbitantly expensive.

Our ash ponds are low risk. The ash ponds are near the city's public water supply system which has consistently met drinking water standards and has seen no influence from the ash ponds. We seek but cannot always find beneficial uses for our ash and often must pay for its reuse, especially in the present economy. The increased risk associated with its classification as hazardous will increase the cost for its reuse as we've already heard today, and will dissuade many recyclers from accepting it due to CERCLA strict liability scheme.

At the request of the League of Cities

and the Conference of Mayors, CWLP estimated that under current prices, the cost to dispose of our ash as hazardous would increase by $8 to $20 million annually, which for our small municipality is an exorbitant cost that would be passed directly onto our customers, the citizens of Springfield and businesses when they can least afford it. That doesn't include the increased cost of disposal that is likely to arise because of the increased competition for disposal capacity.

For these reasons, we do encourage regulation of ash under Subtitle D Prime if at all. Thank you very much.

MR. BEHAN: Thank you.

MR. FLENNER: My name is Sam Flenner, I'm from Indianapolis. I do outreach work for Environmental Integrity Project. I do want to say, after listening to the hearing so far, I do applaud those in the reuse industry who are doing their very best to adequately encapsulate a hazardous waste into products so that they don't

1 leach and affect people's health. And I also want
2 to applaud the EPA for doing their best to try to
3 juggle this very difficult issue and come up with
4 adequate responses for both sides.
5 I also want to say that just last week I
6 spoke with people in Sullivan, Indiana who have
7 had a total home remodeling project paid for by
8 Hoosier Energy because the coal ash that came off
9 of their dry landfill site totally ruined their
10 home. And so, I do believe there is nothing that
11 you could do when you're encapsulating this stuff
12 about the stuff that is not being encapsulated,
13 and that's where the problem is and that
14 absolutely must be handled under Subtitle C. The
15 EPA absolutely must have authority because the
16 state regulatory agencies are doing absolutely
17 nothing to help these people and this type of
18 example right here is not an isolated example.
19 It's very common.
20 In fact, there are some
21 misinterpretations about determinations about coal
22 ash in the past. In 1993, when the EPA made a

1 determination for Subtitle D, they did state that
2 the current disposal practices at the time could
3 cause health and environmental problems in the
4 future, and they have. In 2000, the
5 determination, the press release from the EPA,
6 there has been a whole drumbeat of letters talking
7 about how the EPA determines D, EPA determined
8 that. But here I'll take a quote from what they
9 determined in the year 2000 and the quote is from
10 their press release. Their press release states
11 that "If the states and industry do not take steps
12 to address these wastes adequately in a reasonable
13 amount of time, and if the EPA identifies
14 additional risk to public health, EPA will revisit
15 this decision," and this revisiting of the
16 decision is not any bit too soon.
17 Since then, there have been a number of
18 EPA recognized damage cases which has increased
19 from 6 to 67. Even if the recently released
20 non-profit reports are not factored in, that's a
21 tenfold increase in damage cases which merits more
22 investigation. And this type of investigation as

1 voluntary under Subtitle D is absolutely not going
2 to happen. Anything that gets landfilled needs to
3 go to Subtitle C. Thank you.
4 (Applause)
5 MR. BEHAN: Thank you. Next speaker?
6 MR. NIEBERGALL: 251. Everybody hear
7 me? Hi, I have good news for you today. I am not
8 here to help you guys decide whether you're going
9 to go C or D. I'm here as your guy on the street,
10 okay? I own five businesses. I'm very familiar
11 with regulation.
12 One of the businesses I own is a
13 sandblasting abrasives company, okay? Now, here
14 is the problem. You know, I would not normally be
15 up here, I would not normally be the guy up here.
16 I'm not a big environmental guy. But when I heard
17 about these hearings and I've watched the way the
18 industry has changed over the last number of
19 years, I was in it back when they sandblasted with
20 sand. Great abrasive, works awesome. Small
21 problem, the stuff hits the wall, atomizes,
22 becomes unencapsulated, people breathe it in, they

1 get silicosis. The government says uh-uh, we
2 don't want no more of that because, you know, if
3 you're dead you can't pay taxes, that whole thing.
4 So, they decided, you know what, no more sand,
5 we're going to come out with something called
6 Black Beauty, coal slag.
7 Well, one problem. It's black but it's
8 not beautiful. You know, in the 1997, EPA called
9 it a hazardous airborne pollutant, okay? So, now
10 that's been established. But the problem is it's
11 like the elephant in the middle of the room. What
12 do you do? You put a doily on it, you put a nice
13 lamp on it? Everybody knows it but nobody wants
14 to do anything about it, okay?
15 So, on June 21st in your new release,
16 you said that you were going to pull it from the
17 Beneficial Use Program. Here is my problem, okay?
18 I sell recycled glass, New Age Blast Media. Okay,
19 I'm out there trying to talk to big businesses and
20 trying to talk to the sandblasters and trying to
21 get them to use our product which I know is EPA
22 compliant, OSHA compliant, carbon compliant, US

1 Military compliant, all the acronyms, it's
2 compliant to. But I have, and I submit to you
3 this, the May 4th article on the JPCL, okay, where
4 a big business and Harsco and Black Beauty say
5 "The EPA Draft Proposal released May 4th...
6 strongly supports beneficial reuse of coal
7 combustion byproducts and is not seeking to
8 regulate beneficial uses." Okay, that's their
9 words.
10 Now, this has been their mantra all
11 summer. They're lying, okay, they are constantly
12 jumping through the hoop. This is what we're
13 asking of you. If you're going to come down on
14 the side of the fence, be stern. Tell them, look,
15 we do not support this, we do not support
16 unencapsulated use, okay? That's the problem. If
17 you're going to say something, say it, be stern
18 about it and let the hammer come down and let it
19 be right. That's what we're asking for. Thank
20 you.
21 (Applause)
22 MR. BEHAN: Thank you. Next speaker

1 please.

2 MR. BARGAHEISER: My name is Keith

3 Bargaheiser. I'm the National Manager of CCP

4 Utilization. 30 years ago I did my Master's

5 thesis on the utilization of coal combustion

6 products.

7 My issues today address the stigma

8 associated with the proposed rule and a suggestion

9 for compromise. I was involved in a therapeutic

10 riding program in Ohio which aided disabled

11 children, and on rainy damp days these children

12 were unable to go riding due to the fact that it

13 was dangerous. Coal combustion products, bottom

14 ash, was looked at being utilized for the project,

15 and at the very end the owners decided to not do

16 this due to the fact of what happened in the TVA,

17 and all the conversations about toxicity and being

18 a hazardous material, they felt the liability was

19 too high. We showed them that there's many

20 materials that we utilize today such as shampoos,

21 foods, animal foods, bibs for our children and

22 fillings in our teeth that have more toxic

1 chemicals than what bottom ash had, but it didn't
2 matter.
3 It is recognized from your draft
4 proposal that you do not believe that this is a
5 beneficial use. However, I would ask you, how can
6 this not be when so much good could have come out
7 of this? We could have avoided landfilling of
8 waste material, virgin material would have been
9 spared, the impact of our carbon footprint would
10 have been reduced, and both the kids and animals
11 would have been safer. There is a stigma here.
12 We need to reach deep within ourselves,
13 and that's both industry, EPA and
14 environmentalists, and put aside our differences
15 to find out what the real answers are, because the
16 right answers for our nation, environment and in
17 common are very important. Under the existing
18 draft rule, there will be no winners. There will
19 only be lawsuits and years of confrontation as we
20 exist right now.
21 I ask you to look for a compromise and
22 comprise a committee of the stakeholders here.

1 And take this opportunity to utilize their
2 knowledge and come to a consensus and a decision
3 on this rather than going one way or the other. I
4 thank you.
5 (Applause)
6 MR. BEHAN: Thank you. 357?
7 MS. NOWAK: My name is Josephine Nowak
8 and I'm a Loyola nursing student who is currently
9 doing my clinical rotation at Loyola Medical
10 Center -- I'm sorry.
11 I'm Josephine Nowak, I'm a Loyola
12 nursing student and I'm currently doing my
13 pediatric rotation at Loyola Medical Center in
14 Maywood. And in my rotation I have seen numerous
15 children come in with asthma exacerbations, and
16 these children who do come are mainly of Hispanic
17 and African American backgrounds which, as we
18 know, the coal plants are located in those
19 communities. And I just wanted to say that
20 besides seeing these children with asthma
21 exacerbations and the whole issue of them not
22 having insurance and all of that with the

healthcare system, I'm not going into that, the coal ash is a huge problem that is not being regulated. It's contaminating water supplies elsewhere and not just affecting the air, you know, in this area. And we need strong regulations to help keep people safe and healthy from both in this area and wherever this ash is being disposed. And I want enforcement fines high enough to deter strategic violations for profits. And I'm in strong support of Subtitle C.

(Applause)

MR. BEHAN: Thank you. Could numbers 321, 170, 186 and 231 come forward please? 321?

MR. SHOCK: My name is Dennis Shock, I'm a retired clergyman from Carmel, Indiana. And thank you for the opportunity to be here. It's been a long day, I've learned a lot.

But as a clergyman, I came today out of a deep concern for caring for creation. It's my belief and that of many people of faith that one of the purposes of our being here on earth is to be stewards, good stewards of the earth. Many of

1 us are alarmed at the unregulated tons of coal ash
2 being accumulated in Indiana and in our nation.
3 As I've listened today, some people seem
4 to speak almost as if regulation is a dirty word,
5 but we regulate many things for good purposes, for
6 the public good. Coal ash contains many toxins,
7 and in my mind that makes it hazardous. It is
8 common sense.
9 And so, I bring today a brief statement
10 endorsed by 17 members of faith, most of them
11 clergy, and I'm going to read that statement now
12 and then I'll turn that in:
13 "As people of faith, we consider the
14 unregulated accumulation of coal ash in Indiana to
15 be dangerous to people's health, and therefore, a
16 moral as well as a legal issue. Coal ash contains
17 many toxins that threaten to contaminate our
18 groundwater and should be regulated as a hazardous
19 waste. We, therefore, support strong public
20 safeguards under Subtitle C. Thank you."
21 And that's signed by 17 of us, most of
22 them clergy and then lay people as well. Thank

1 you.

2 (Applause)

3 MR. BEHAN: Thank you. 170?

4 MR. ZIMMERMAN: Good afternoon. My name

5 is Tom Zimmerman, I'm with Boral Composites, Inc.

6 We're a new startup business, a wholly owned

7 subsidiary of Boral US. We're focused on the

8 manufacture of green building products. As a

9 startup, we're just now getting underway with our

10 first commercial facility. We broke ground last

11 week. We're building a LEED facility in North

12 Carolina. A large part of our product utilizes a

13 specific coal combustion residue or CCR. This

14 offers our product an enhanced performance as well

15 as a green content. We utilize the CCRs as

16 rapidly renewable materials and recycled content.

17 Our customers are not typically

18 scientists or environmental policy makers. They

19 will likely not be aware that the EPA has formally

20 encouraged the use of CCRs since 1983, or that the

21 EPA has twice ruled that CCRs are non- hazardous,

22 going so far as to form the Coal Combustion

1 Products Partnership in 2003, or that the USGBC,
2 US Green Building Council, American Society for
3 Testing and Materials (ASTM) or the American
4 Concrete Institute all endorse and encourage the
5 use of CCRs. Unfortunately, our customers are
6 more likely to hear inaccurate information about
7 CCRs and that their beneficial uses are from
8 uninformed or biased media sources, negative
9 stigmas that will not only exacerbate with
10 unwarranted changes -- I hate speaking in public
11 -- designated Subtitle C.
12 We currently support the EPA's effort to
13 protect human health and the environment. We
14 further believe that CCR disposal should be done
15 in a responsible manner to avoid ash spills like
16 the tragic storage failure at the TVA's Kingston,
17 Tennessee plant in December 2008. However, poor
18 storage facilities or mishandling of designated
19 non- hazardous materials should not be grounds for
20 changing the classification of the material
21 itself, therefore jeopardizing one of the most
22 successful recycling programs in the US history.

1 Boral Composites is only a small startup
2 business but a great example of green-tech,
3 advanced manufacturing opportunities that our
4 economy desperately needs. As I mentioned, last
5 Thursday we broke ground on our LEED facility
6 going into North Carolina. It's a $13 million
7 investment on close to four acres of land. This
8 facility will create 25 jobs when completely built
9 out, in addition to supporting another 25 sales
10 shops across the country.
11 The decision that the EPA makes around
12 CCR classification will directly impact this new
13 green-tech business, these new job opportunities
14 and future job opportunities that this business
15 would create. The negative stigma associated with
16 hazardous classification through Subtitle C is
17 real and will virtually eliminate demand for these
18 products and our business overnight. We want to
19 find a more responsible way to deal with CCR
20 storage and storage issues that the Kingston,
21 Tennessee plant has brought to light. Subtitle C
22 is not the answer. Thank you.

MR. BEHAN: Thank you. 186?

MR. DOUGLAS: My name is Mark Douglas and I'm President of the Iowa Utility Association which is a state organization of investor-owned electric, natural gas and transmission companies with energy facilities in Iowa. I am here on behalf of our association members and principally on behalf of two of our member electric companies, MidAmerican Energy and Alliant Energy. I would also like the record to note that my comments also have the support of Iowa's generation and transmission cooperative members of the Iowa Association of Electric Cooperatives.

I'd like the panel to note that our state is second among all US states in the amount of installed wind generation. We also have been long-time leaders in the United States as far as energy efficiency programs. I say this because as our companies make further investments in these areas, coal fire generation remains a very important part of course of providing baseload generation to Iowans.

1 We are supportive of the development of
2 federal regulations of CCR under a Subtitle D
3 Prime non-hazardous waste rule. We would,
4 however, express our opposition to regulation of
5 CCRs under the Subtitle C hazardous program.
6 In 2000, the EPA evaluated and resolved
7 the issues of whether CCR should be regulated as
8 hazardous waste. In the year 2000, the EPA issued
9 a final regulatory determination that CCR does not
10 warrant hazardous waste regulation, concluding
11 instead that Subtitle D regulations are "the most
12 appropriate mechanism for ensuring that these
13 wastes disposed of in landfills and surface
14 impoundments are managed safely."
15 This position is also supported by state
16 regulatory agencies that have to date weighed in
17 on this issue and oppose the regulation of CCR as
18 hazardous waste. These state agencies make the
19 compelling case that Subtitle C regulation of CCR
20 is unnecessary as CCR does not exhibit hazardous
21 waste characteristics and would draw limited state
22 resources away from more pressing environmental

1 health issues.

2 We would also submit that the regulation

3 of CCR as a hazardous waste would have devastating

4 impact on the beneficial use of these materials.

5 You already heard that from many businesses today.

6 Of particular concern to our state is

7 that the elimination of beneficial use

8 applications would clearly and quickly overwhelm

9 existing Subtitle C disposal capacity. There are

10 no existing hazardous waste landfills in Iowa and

11 only one in the six states that are contiguous to

12 Iowa. Our companies will be forced to transport

13 CCR great distances at great cost to just a few of

14 the permitted sites in the Midwest and the West.

15 Most certainly, the available capacity for

16 additional CCR at those sites would be quickly

17 overwhelmed.

18 In conclusion, we submit that the EPA

19 should regulate CCR under Subtitle D. This will

20 continue to ensure the protection of human health

21 and environment without adversely impacting its

22 beneficial use. Thank you.

1 MR. BEHAN: Thank you. 231?
2 MR. MUSSELMAN: Good afternoon. My name
3 is Michael Musselman and I work specifically in
4 the ag industry, working with farmers who grow
5 food on the precious soil that we have here in
6 Illinois. I specifically work in the Central
7 Illinois area and I have a gentleman here today
8 that also uses the FGD gypsum on his own farm.
9 So, my comments specifically today are regarding
10 FGD gypsum and its agricultural and the
11 classification of that.
12 My comments would be to avoid labeling
13 FGD gypsum as a hazardous waste and avoid
14 regulating it under Subtitle C. And I want to
15 echo the comments the gentleman from Ohio, the
16 professor gave the beneficial uses of gypsum for
17 what it can do for the environment, improving the
18 soils and so forth. We are getting the product
19 out of the Springfield power plant which currently
20 has ag use, and the potential there is for
21 hundreds of thousands of tons of this material to
22 be used in a beneficial manner. And I would echo

1 the comments from the lady from Litchfield that it
2 would be good in any type of regulation that you
3 specifically don't broad brush the situation but
4 go to each level of what material is being used.
5 If FGD gypsum was classified as a
6 hazardous material, it would probably pretty much
7 do away with the use for ag use because you're not
8 going to get a farmer to put hazardous material on
9 his soil to grow a crop that someone is going to
10 use as food. So, I want to be very cautious or
11 caution you that it is very important to be
12 specific and I think that toxic material should be
13 regulated. Everyone would agree with that. So,
14 it's the appropriate regulation, the appropriate
15 classification and ethical consideration first.
16 And people will pay more for a product if they
17 know it's been ethically taken care of and done.
18 So, I'll again echo, FGD gypsum should
19 not be a hazardous waste, it has beneficial use,
20 and I would avoid regulating it under the Subtitle
21 C. Thank you.
22 MR. BEHAN: Thank you. Could numbers

128, 131, 232, 330 and 359 come forward please? If 128 could come to the podium?

MR. MONK: Good afternoon. My name is James Monk. I'm President of the Illinois Energy Association which is a trade association representing investor-owned electricity and natural gas utilities and electricity generators here in the State of Illinois. Thank you for providing the opportunity to present testimony on behalf of the state's energy industry on this vital and important topic.

Members of the energy association or generators I think will also be providing testimony, so the main focus of my testimony is going to be from the perspective of the local distribution utilities, electric utilities. The two main utilities in our state are Commonwealth Edison that serves Chicago and the northern part of the state, and the Ameren Illinois Utilities which serves basically the lower two-thirds of the state.

Our state has a competitive electricity

industry where generation and distribution entities are separated by function. Our local distribution electric utilities do not own or control generation facilities such as those which produce coal ash. However, our distribution companies do purchase electricity generated by those facilities and deliver that electricity to industrial, commercial and residential end users. The rates for distributing electricity are set by our state utility regulatory commission but the cost of the commodity itself is determined by the competitive market.

We believe that regulating coal combustion residuals as hazardous waste would have an extremely negative effect on the cost of electricity in Illinois and our competitive marketplace. In some instances, generation companies would be required to spend enormous sums of money to make the infrastructure changes in the power plants necessary to comply with the regulation. And in other situations, on a plant by plant economic analysis, plants might in fact

be shut down rather than make those types of infrastructure investments.

The additional cost of compliance will certainly find their way into the price of electricity. In our competitive system, those price increases would be figured in to the procurement of electricity to supply our customers, either directly by the State of Illinois which procures power on behalf of what we call default customers, or indirectly through third party brokers who purchase power and then resell it to mostly our industrial and commercial customers. So, in this situation, we feel that there would be, if the ash was regulated as a hazardous waste, in our competitive system the increased cost to comply with that regulation would in fact have a negative economic effect on our business as electric utilities and certainly on the customers who have to pay the cost of that electricity.

For those reasons, we would certainly urge a decision to not regulate as a hazardous

waste but instead to regulate under D or D Prime. Thank you.

MR. BEHAN: Thank you. Number 131?

MS. BAYLESS-MICKLES: Good afternoon. My name is Felecia Bayless-Mickles, I'm a social worker with the State of Illinois. But I don't come under that capacity, I come to speak as a child that was raised in the Joliet area off of Brandon Road within the area of ComEd and now Midwest Generation and Exelon Company. At our home, our water was filthy. It came out with smells. It came out smelling like rotten eggs. Sometimes it came out brown. Sometimes it came out black and looked like coal ash, or I'm not saying coal ash but the things that I put in my fireplace. It came out in the water.

I had a father who died within six months of cancer in that area. I have two brothers who are suffering from cancer as well. We lived in that area for over 50 years. We bought the house there in 1954, we sold the house in 2006. We as a family lived this nightmare. We

1 suffered this nightmare.
2 Our wells were contaminated. Actually,
3 the water, we could not drink. It has hard to
4 bathe in. We had to go to what we called the
5 Flowing Well in Pilcher Park in Joliet to get
6 water. We suffered an impact. It wasn't
7 regulated at that time.
8 I read a study that was presented to us
9 at our church by Jeffrey Stant. It said since
10 1962 that that coal ash in our water ran back into
11 where I lived. I believe it, it did occur. We
12 had the impact and we of course, we were an
13 African-American community where that was the only
14 place we could live in Joliet based on the time
15 and the culture and the discrimination that was
16 going on at that time.
17 I'm here to tell you, there is an
18 impact. I do support Subtitle C. I am a living
19 witness that something has happened and I was
20 appalled, I was hurt. I come here to support not
21 only Subtitle C but my family of ten that has
22 suffered a real grave impact because of this,

1 asthma, skin diseases, cancer, death.
2 Please do the right thing. We at the
3 time didn't really have even the rights to
4 probably stand up and say much, but I do today.
5 So, please do the right thing. And I definitely
6 support Subtitle C. Thank you.
7 (Applause)
8 MR. BEHAN: Thank you. Number 232?
9 MR. SHANKLIN: Good afternoon and thank
10 you for giving me the opportunity to give my
11 testimony. My name is Brooks Shanklin. As a
12 farmer and steward of the soil and as a food
13 producer, I speak with sincerity to all. Each
14 cropping season, I take time to consider how to
15 grow a better yielding and quality crop to deliver
16 in the market and how I can make myself and my
17 operation better.
18 A systems approach is important. For
19 years, I've been using FGD gypsum as a component
20 of this system. It has helped improve my
21 profitability and improve and amend my soils.
22 FGD gypsum is a wonderful byproduct of

the coal industry. It is not a waste, nor should it be classified as such. It is a nutrient soil amendment that has a broad spectrum of positive benefits when applied in agricultural use to the soils.

My growing crop needs both calcium and sulfur, and this product helps supply those two key nutrients. It is not toxic to my soil. It is actually improving my soil's ability to grow healthier plants for food by supplying nutrients and helping manage air and water movement within the soil profile.

A measurable result I also have seen is much less water runoff on my fields as compared to my neighbors, even after a one to two inches of rain in a given shower. When water moves off of my field from surface drainage, what goes with it? Nitrogen, phosphorus, soil organic material and other nutrients.

By applying FGD gypsum to my fields, the runoff is greatly reduced, and so is the misplacement of nutrient material and soil

1 particles. It is my belief that this is good for
2 the environment. Less soil and nutrient erosion
3 aids in improving water quality downstream.
4 So, the hazardous designation of gypsum
5 would stop its beneficial use in American
6 agriculture and thereby take away the opportunity
7 to help the environment in so many ways.
8 I ask you to: * Avoid labeling FGD
9 gypsum as hazardous waste, and * Avoid
10 regulating it under Subtitle C of RCRA.
11 Thank you for your time and
12 consideration.
13 (Applause)
14 MR. BEHAN: Thank you. 330?
15 MR. MOORE: Hi, I'm Bill Moore from
16 Southeast Wisconsin. First of all, I'm a little
17 confused by some of the owners of concrete cement,
18 wallboard and other contained applications who
19 have spoken today when it says in your handout
20 that under both approaches proposed by the EPA
21 that the Agency would leave in place the exemption
22 for beneficial uses of coal ash and that these

1 uses would not be impacted by today's proposal.
2 Not only that, but it would ensure that safe and
3 beneficial uses are not restricted and in fact are
4 encouraged. Just wanted to bring that up.
5 I myself am lucky. I haven't lived long
6 near a coal fired power plant. I'm 67 years old
7 but relatively healthy because I've been able to
8 live most of my life in safe neighborhoods, drink
9 clean water and breathe clean air. But not all of
10 us are or can be so lucky.
11 I have visited Beijing, China where the
12 average visibility is four miles, and Xian where
13 the visibility average is a mile and a half, both
14 affected by the burning of coal. I have visited
15 citizens downwind of power plants who have
16 contracted asthma. I have hiked mountains and
17 forests threatened by mountaintop removal for coal
18 mining. And I understand the effects of coal ash
19 on our land and water.
20 My message to you is simple. I live in
21 a suburb where the majority of the citizens have
22 escaped the inner city and tried to close the door

1 behind them, including opposing workforce housing.
2 They even were successful in opposing a natural
3 gas fired plant in the community. But they are
4 not ashamed to use as much power as they want from
5 that coal fired power plant many miles away just
6 so they can stay far away from it.
7 But not everybody has the wherewithal to
8 move away to the suburbs. Some have to accept the
9 lower property values and cheaper living where
10 their lives may be affected by pollution. But
11 isn't that a message in itself? Is it fair that
12 those who take flight turn their backs on those
13 who can't escape the pollution?
14 So, that's why I'm here, to say that
15 there are many people not directly affected by
16 coal ash and power plant pollution who care. I
17 say regulate coal ash and the pollutants it
18 carries. I say make me pay higher rates by
19 enacting Subtitle C if that's what it takes. I
20 say government must protect us all, even those who
21 live near coal plants and work to promote clean
22 energy and move coal minors into clean energy

jobs. Help us all be lucky and healthy. Strongly regulate coal ash.

(Applause)

MR. BEHAN: Thank you. Is number 359 in the room? 359? I see a couple of folks with numbers. If you're in the room and you have not spoken today and you have a number, if you could come to the front of the room, that would be great.

Okay. 118?

MR. BENNINGHOVEN: My name is Richie Benninghoven. I'm the President of the UC Technologies based out of Kansas City, Missouri. We're a small company that uses self- cementing, self-encapsulating fly ash to stabilize underground limestone mines to provide structural support to make the surface safe. If this work is not done, here is what can happen. Collapse of the road made it impassable.

These limestone mines, even though they are below the water table, are very restrictive to groundwater flow with permeabilities of 10-7 to

10-8 centimeters per second. We have had groundwater monitoring wells in place at one particular project for over 14 years. Test results showed no increase in heavy metal concentrations in the groundwater since ash placement began. This confirms the very protective situation of using self-encapsulating fly ash and being surrounded by very impermeable bedrock.

Here is a picture of the underground limestone mine before being backfilled. And here is what it looks like after it's backfilled. These are all the fly ash layers. That's actually, we dug out a berm and it's standing at a negative one to one slope. So, it's very well cemented in there and strong.

The stabilization of fly ash over this site has resulted in nearly $200 million of development on the surface such as this Class A office building.

I urge the EPA to handle non-coal quarry applications in large scale fills such as ours

similar to coal mine applications that would most likely use an ash characterization and site characterization approach to determine that an application is safe.

Finally, on a personal note, I have a niece named Ashley. I don't run around calling her Rachel, I call her Ashley. So, let's not call coal ash hazardous when it doesn't meet any of the characteristics of hazardous waste. EPA has outlined identical engineered protections under both Subtitle D and Subtitle C. Subtitle D will protect all of us and not risk the safe recycling of coal ash due to stigma. We should all be focusing on making these materials recyclable rather than talking about disposing of them. Thank you.

MR. BEHAN: Thank you. 155?

MR. GLASSCOCK: My name is John Glasscock. I'm with the company Synthetic Materials. We are a charter member of C2P2, a program that the EPA established to benefit the recycling of coal combustion products. Our

1 primary product is synthetic gypsum. We process,
2 transport and deliver this to the end users,
3 primarily wallboard companies, Portland cement
4 companies, fillers and agriculture.
5 I think, from what I've heard people
6 talk about today, there are a lot of things that
7 we all have in common or common thoughts. One is
8 that the TVA Kingston environmental disaster was
9 just that, it was an environmental disaster. It
10 was preventable, it was a civil engineering
11 failure. Recycling and beneficial reuse are good.
12 And then public health and safety should not be
13 compromised for economic gain.
14 And I think if we look at each one of
15 these and what's happened since then and the
16 impact of your regulations, since TVA Kingston,
17 TVA has been very clear on first of all putting
18 their money out. So, they're going to spend over
19 a billion dollars to try to mitigate the situation
20 at Kingston. I mean that doesn't make it any less
21 disastrous, what occurred, and its impact is
22 serious. The EPA has gone out and done site

1 assessments for those critical impoundments.
2 And TVA has said that they are moving
3 away from wet disposal of all byproducts. So,
4 they are already getting there. And you know,
5 we're reacting to a situation that was a civil
6 engineering failure. And when I look at your
7 comparison of the key differences between Subtitle
8 C and Subtitle D proposals, when you get down to
9 surface impoundments, landfills, they're basically
10 the same. So, we're getting away from the wet
11 disposal to the dry, monitored, controlled
12 disposal of these products.
13 What we are seeing now, and this isn't
14 if it goes C or D, but what we are seeing now is
15 because of the uncertainty of the environment.
16 You have utilities and end users that are not
17 using synthetic gypsum which is by any definition
18 a non-hazardous product. So, we have projects
19 that are not going forward, so you have material
20 that would have been beneficially reused that is
21 now having to go into landfills.
22 So, we strongly support regulation under

1 Subtitle D. The stigma is real. It's happening
2 now. And basically, you're risking 12 million
3 tons of synthetic gypsum or FGD gypsum that is
4 currently being beneficially reused that will then
5 have to go into landfills. So, thank you for your
6 opportunity to speak.
7 MR. BEHAN: 168?
8 MR. VUKAS: Thank you and good
9 afternoon. My name is Jason Vukas and I represent
10 US Minerals. We're one of eight companies in the
11 United States, many of which are small businesses
12 engaged in the processing of boiler slag for
13 beneficial reuse in a variety of industrial and
14 commercial applications.
15 There are eight different categories of
16 coal combustion byproducts. Boiler slag
17 represents the smallest of these categories in
18 terms of the volume generated. It's about one
19 percent of the 135 million tons of CCBs generated
20 annually. However, it has the highest percentage
21 of reuse historically. Virtually 100 percent of
22 boiler slag generated goes into beneficial reuse

applications. Why is this and what does it mean as it pertains to the proposed regulations on coal combustion byproducts?

First, boiler slag is non-hazardous by any definition. It has no hazardous properties and it has no hazardous characteristics. It is generated through a process called vitrification which creates a hard angular granule with a smooth glassy surface. The granules are non- leaching and chemically inert. The chemical properties do not change as the material breaks down.

These characteristics make the granules suitable for a wide variety of applications and products. Again, this means that virtually 100 percent of boiler slag is currently beneficially reused. There is no long-term storage of this material which means there is no need for impoundments.

Uses of boiler slag include air blast abrasive products used in surface preparation. Coal slag abrasives meet the stringent requirements of the US Navy, the California Air

1 Resources Board, and several other certifying
2 bodies. Contrary to statements made at this
3 public meeting and others by a company with a
4 competing product, the chemical properties of
5 boiler slag do not change as the material breaks
6 down. They are among the cleanest, safest and
7 most cost effective abrasives on the market. This
8 is a fact and it has been for over 70 years.
9 Also, 80 percent of all asphalt
10 residential roofing shingles in the United States
11 currently contain coal slag granules on at least
12 one portion of the shingle. Other uses for boiler
13 slag includes snow and ice control on roadways.
14 It's an ingredient in glass bottle manufacturing,
15 water filtration media, seal coating, anti-skid
16 and non-slip surfaces, aquarium rock, and other
17 products and uses are currently in development.
18 Further regulation could severely
19 minimize the historical levels of beneficial reuse
20 or even eliminate it all together. Many states
21 strictly prohibit materials classified as Subtitle
22 C waste from their beneficial reuse programs. As

1 I stated earlier, competing companies are eager to
2 seize on the stigma associated with Subtitle C
3 regulation. No known information exists to
4 support classification of boiler slag as a
5 hazardous waste. And there are no known damage
6 cases or any adverse environmental impacts
7 associated with boiler slag.
8 We ask EPA to consider the science and
9 the facts, and allow for continued unrestricted
10 use of boiler slag.
11 MR. BEHAN: Thank you. 209?
12 MR. THIEM: Thank you. My name is Dave
13 Thiem and I am from the Cincinnati area. I'm a
14 retired electric utility employee. I spent 12
15 years in the ash handling area and ash management.
16 I want to talk a little bit today about
17 my association as I became educated in recycling
18 and reuse of coal combustion products. I was
19 asked to speak at that time 15 years ago to our
20 local city council because of my knowledge about
21 curbside recycling. And it was an easy out for
22 the town council members to say it's easier to

1 landfill the waste of general recycling. I
2 continued to speak to junior high school and
3 vocation school students at that time. And coal
4 combustion reuse was the most illustrative,
5 understood and accepted example that was used in
6 my presentations.
7 As we discuss today the possibility of
8 reclassifying CCPs, the term hazardous material
9 will no doubt cause all future potential
10 development to cease. And the term "special
11 waste" will not change the public view. It will
12 view it as hazardous also.
13 The young people today as far as
14 research and development want quick results. It
15 took many years in research and development to get
16 where we are with CCP reuse and recycling, and
17 they do not want to put that kind of effort in.
18 In talking to these young people over the years,
19 they want quick returns financially.
20 And so, as we move down this path, I ask
21 you not to go backwards in our partnership of
22 reuse and recycling but to move forward. An easy

way out for waste products is to landfill it, whether it be hazardous waste fills or municipal waste landfills, we only have so much space. We see pictures today, not today but we have seen it where there's barges of garbage out in the waters. So, we know we have limited space to put this product, so don't dampen the reuse and recycling efforts. I ask you to consider that and don't risk sending a message that would damage all other recycling efforts. Thank you.

MR. BEHAN: Thank you. Sir, what was your number again? 202? Okay. You can come to the podium.

MR. DAVIS: Hi, my name is Larry Davis. I'm from Indiana, from Hebron, Indiana. I'm on the board of directors for Save the Dunes Council. I'm also on the executive committee of the Sierra Club Hoosier Chapter. And I've been a steel worker for 32 years.

And I hear the talk here about please don't regulate this under Subtitle C, that we need to regulate it under Subtitle D. It ought to be

very apparent to everyone by now that over the last 30 years the state regulation in Subtitle D has been a complete fiasco. I'd like to read my written statement.

The United States Environmental Protection Agency has an opportunity to correct a grievous error concerning the exemption of toxic coal combustion waste from regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA) which dates back to the Reagan administration. In 1980, the so-called Bevill exemption in RCRA provided the mining industry what was supposed to be a temporary exclusion for certain large volume wastes from the extraction, benefaction and processing of ores and minerals including coal combustion waste, or as you call them coal combustion residuals.

After 30 years of accumulating damage from wastes exempt under the Bevill amendment, the time has come to regulate toxic coal combustion waste under RCRA Subtitle C as a hazardous waste based on the long-term impacts to human health and

1 our environment. Under the new EPA leach test, it
2 is clear that many of these coal combustion wastes
3 do in fact test as hazardous constituents.
4 The USEPA must also consider RCRA
5 Subtitle C regulation on many other toxic Bevill
6 exempt wastes disposed in a similar fashion in
7 sensitive locations. For example, the millions of
8 tons of steel mill waste along the shores of Lake
9 Michigan that similarly threaten additional
10 contamination of our fresh water supply with
11 dissolved solids and heavy metals. And heavy
12 metals are elements, they are neither created nor
13 destroyed and they bio- accumulate.
14 In Indiana, the deleterious impacts of
15 toxic coal combustion waste may readily be found
16 anywhere anyone seriously investigates the dumping
17 of these exempted wastes. From residential yards,
18 town roads and landfills in Pines, Indiana to the
19 coal mines themselves in Southern Indiana, toxic
20 coal combustion waste disposal sites exist in some
21 of the worst situations you can find concerning
22 human health in our environment. Toxic coal

1 combustion wastes have been discarded, disposed of
2 and dumped in bridge embankments, impoundments,
3 lagoons, landfills, mines both active and
4 abandoned, roads, piles, ponds, et cetera, and
5 locations that have little or no monitoring and
6 poor containment for the toxic elements and
7 radioactive constituents present in these wastes.
8 MR. BEHAN: Sir, can you wrap up your
9 comments?
10 MR. DAVIS: I'm sorry?
11 MR. BEHAN: Can you wrap up your
12 comments?
13 MR. DAVIS: Yes, I just have two more
14 paragraphs here.
15 As early as 1978, the National Park
16 Service Scientists at the Indiana Dunes National
17 Lakeshore --
18 MR. BEHAN: Excuse me, sir, you can take
19 your comments in the box and they'll be
20 considered.
21 MR. DAVIS: Okay. Can I finish this
22 last sentence here? At an Indiana Dunes National

1 Lakeshore discovered the impact of one million
2 gallons per day of fly ash sluice water seeping
3 into the 8,000 year-old National Natural Landmark
4 called Cowles Bog. And there's more.
5 MR. BEHAN: Thank you.
6 (Applause)
7 MR. BEHAN: Ma'am?
8 MS. SLONE: Good afternoon. Thank you
9 all for your patience. My name is Ricca Slone. I
10 am a resident of Chicago, I'm a former Illinois
11 legislator from downstate, however, and an
12 environmental attorney.
13 I apologize because I have not been here
14 most of the day so I hope I won't be repeating
15 things that other people have said, but just to
16 reemphasize, we have all seen just recently with
17 the BP oil spill the unintended consequences and
18 the incredible damage to the public, both the
19 economy and the health of the public and to the
20 environment. The Tennessee coal ash spill from
21 2008 similarly on a smaller scale has caused
22 tremendous damage that can't really fully be

compensated for after the fact. Everybody pays for these disasters when they occur and it makes a lot better sense to adopt something like Subtitle D regulations that will have everyone pay a smaller price up front to avoid these very, very serious problems, and in this case to encourage dry storage and prevent huge damage to human health, the water supply and the environment later on. Thank you very much.

(Applause)

MR. BEHAN: Thank you. 133? Is there anyone else in the room with a number that has not spoken? 130? 193? Sir, when you're ready?

MR. REYES: Okay. My name is Hector Reyes. I am a chemical engineer with a PhD from the University of Wisconsin-Madison. And I teach chemistry at the Harold Washington College here in Downtown Chicago.

I typically teach basic science courses in which I tell my students that they need to, if they never take any other science course again, at least they need to take from my course that they

1 need to be informed citizens, that they, even if
2 they are not experts they should have sufficient
3 science understanding to be able to look up what
4 are the issues that are being debated hotly in
5 society and be able to make an informed judgment
6 about whether or not what is currently happening
7 or what is contemplated to be changed is actually
8 beneficial or not to their health and to the
9 health of the planet.
10 So, today I am here to do as I tell
11 them. And today I am here to favor, to join the
12 big number of people that want actually to have
13 coal ash or coal residual after combustion to be
14 regulated as a hazardous material because the
15 truth is that the EPA has been sitting for years
16 on their huge amount of data that tells that it is
17 hazardous, that it is actually very harmful, that
18 coal ash has actually all sorts of heavy metals
19 inside of it. Selenium, it has manganese, it has
20 mercury. You can go through the whole list and
21 you'll realize that when you put these materials
22 especially in contact with water, those heavy

1 metals are going to be leaching out of those
2 solids. And if they are not being contained by a
3 proper containment system that indicates that you
4 would have a synthetic lining as opposed to having
5 just clay, that you are going to have those heavy
6 metals leaching into the water tables.
7 So, the EPA has listed on its own 67
8 sites of groundwater that has been contaminated by
9 this means and there has been other groups that
10 have put together 137. The EPA knows that there
11 are 600 sites where, you know, coal ash is being
12 accumulated in this country. And the result of
13 all this is that unless the EPA acts to regulate
14 this thing as a hazardous material that it is, we
15 are just going to continue to perpetrate a crime,
16 a crime of poisoning the wells, of poisoning the
17 children, of poisoning the people and the
18 environment of this country. We cannot allow it.
19 The EPA has all the information; all it needs to
20 do is act against those economic interests that
21 want to prevent it from doing so. Thank you.
22 (Applause)

1 MR. BEHAN: Thank you. 130?
2 MR. DUBA: My name is Jason Duba. Thank
3 you, Environmental Protection Agency, for this
4 opportunity to share my testimony with you
5 regarding proposed plans to regulate coal ash. I
6 advocate for Subtitle C.
7 I am an organizer for Restoring Eden, a
8 national ministry that seeks to help Christians,
9 love, serve and protect God's creation. My wife
10 Emily and I just moved to Chicago from Spokane,
11 Washington. In the Pacific Northwest, most of our
12 electricity comes from hydroelectric power plants
13 which have their own issues. But coal ash is not
14 something that we have to worry about there. In
15 fact, before moving here, I was rather ignorant
16 about all the problems associated with coal ash.
17 It was not something I had to think about, and no
18 one should.
19 As a citizen of the United States of
20 America, I am appalled that circumstances of
21 geography can have such a profoundly negative
22 impact on our living conditions. I believe that

1 everyone in our nation, no matter where they live,
2 should have equal access to safe drinking water,
3 clean air to breathe, and freedom from fear that a
4 coal ash dam could break and bury their home in
5 toxic sludge.
6 My Lutheran Christian faith leads me to
7 believe that God's love, grace and care are for
8 all people, no exceptions. And if everyone is
9 endowed with dignity by the Creator of the
10 Universe, everyone is most certainly worthy of
11 living conditions that make life possible, most
12 fundamentally, clean drinking water free of toxic
13 contaminants from coal ash. To say otherwise, to
14 say that some people must bear the burden of our
15 industrial society more than others is not only
16 unjust, it is in opposition to the gospel of Jesus
17 Christ. Thank you.
18 (Applause)
19 MR. BEHAN: Thank you. 193?
20 MS. BOOKWALTER: Thank you and good
21 afternoon. I'm very fortunate to be able to
22 follow experts I cannot assume to be, a chemical

1 engineer and a humanist and a believer. My name
2 is Mary Bookwalter, I am from Indianapolis and I'm
3 here today to support the only regulation,
4 Subsection C, that can begin to establish equal
5 protection under the law for all citizens exposed
6 to the damages of improperly stored coal
7 combustion waste.
8 For 30 years, so-called guidelines have
9 not worked. The power industry, the federal
10 government, and the states governments have billed
11 us and taxed us and in turn given us electricity
12 and excessive toxicity. They have permitted us to
13 suffer the damages of cadmium, arsenic, molybdenum
14 and boron and so on and so on.
15 The State of Indiana which does no coal
16 ash dispersal site monitoring allows coal
17 operators to fill depleted mines with our own coal
18 ash waste and further invite it and profit from
19 the waste from other states in the Midwest, to
20 eight million more tons a year I've understood.
21 That's perhaps how we have earned the sobriquet
22 "Indiana: Paid Toilet of the Midwest" or "Ash

1 Hole of America." These go often into karst
2 formations and there really is no bottom or any
3 ending to them.
4 If this is cheap energy and this is what
5 we need in Indiana and we would be driving away
6 business to earn it, I doubt that. I personally
7 would be happy to pay a few dollars more as should
8 my Indiana Power & Light and Duke Energy to
9 protect us adequately. We have had cheap energy,
10 so to speak, for 30 years. And without regulated
11 protection, that perhaps is why we rank 49th in
12 environmental quality among states in the union
13 according to a Harvard study.
14 We also, without regulated protection,
15 each of us as consumers also continue to be
16 perpetrators of iniquities and inequities on our
17 fellow Americans every time we turn on a switch.
18 Someone suffers somewhere. Protect us from our
19 spotty states industry. And I won't say the
20 federal government is a cure-all, please don't
21 mistake that, but we don't enjoy the protections
22 that Wisconsin does, it's a relatively lovely

place to live, ours is not.

I would gladly -- I'm sorry, please regulate this and enforce this hazardous waste and call it that, that's what it is, coal combustion waste, as a byproduct under Section C and give us all in America, as the other young man put it, equal protection under the law. Thank you.

(Applause)

MR. BEHAN: Thank you. 361? Is there anyone else in the room with a number that has not spoken that would like to speak now? 196? Come forward. If you could take a seat over along the wall there, that would be great, behind the podium.

MS. HRILJAC: Thank you for giving us the opportunity. My name is Donna Hriljac. I'm a citizen who lives in Niles, Illinois and who drinks Chicago water from the tap.

I know that many experts have given their advice on the ways to deal with fly ash. Well, I'm not an expert so I'm not going to try to. I have a list of constituents that may be

1 included in fly ash that I don't want to eat and
2 drink.
3 I ask you, the Environmental Protection
4 Agency, to please protect our drinking water. I
5 know impoundments are usually safe, but with
6 floods getting stronger and more numerous, the
7 safety of impoundments are easily compromised. We
8 are all aware of many examples of this. And I ask
9 you again, please do not put down any coal ash any
10 place where it can leach into the water. Thank
11 you.
12 (Applause)
13 MR. BEHAN: 196?
14 MS. WASSERMAN-NIETO: First, I'd like to
15 thank the USEPA's Office of Resource Conservation
16 and Recovery for creating several opportunities
17 across the public to comment on its proposed
18 rulemaking on the regulation of coal combustion
19 waste. I'd like to note that I'm also a council
20 member on the EPA's National Environmental Justice
21 Advisory Council though I am not speaking in my
22 capacity as a NEJAC member today. I am speaking

as the executive director of the Little Village Environmental Justice Organization, and as a member of the Little Village community on the southwest side of Chicago.

Why I'm here today is because our community sits in the shadow of one of two coal power plants within the city limits of Chicago. For the last eight years, we have fought to clean up these outdated plants, and in our struggle we have learned a lot about coal and its byproducts. From what we have verified with other partner organizations as of yesterday is that the Illinois EPA does not know where the coal ash of the two plants in our communities goes. All they know and all we know is that it's shipped offsite.

This means that none of our regulatory agencies know where all this stuff goes. This is a very scary thought, and even scarier when accidents like the largest industrial waste spill at the Kingston Power Plant in Rome County Tennessee takes place. We are fortunate in Chicago not to have dealt with an issue like that.

1 But not knowing how, when and where the ash from
2 our plants is being stored is even worse to a
3 certain extent, especially given cases from around
4 the United States of coal combustion waste sites
5 contaminating drinking water and giving off
6 harmful clouds of airborne coal ash.
7 The myth with this rule is the belief
8 that you can beneficially reuse toxic ash and fill
9 cement asphalt and with this reuse the coal ash
10 doesn't need to be regulated under RCRA. However,
11 for all the reasons mentioned above, we need rules
12 keeping track of this toxic waste. Our
13 communities and the EPA have spent way too long
14 responding to spills and accidents. The reality
15 is coal ash is a hazardous substance which is why
16 this is not a green industry just because it
17 recycles and reuses.
18 Communities and the environment cannot
19 afford to have this hazardous substance
20 green-washed. There is a link between adverse
21 impacts on EJ communities and proposed rules that
22 would only increase the disproportionate impact of

1 pollution sources on environment justice and
2 low-income communities. In NEJAC, we were tasked
3 to plan how to incorporate environmental justice
4 early and often into the EPA rulemaking processes.
5 However, rolling out rule after rule will not stem
6 environmental justice communities' exposures to
7 pollution sources or provide enhanced protection
8 from pollution.
9 For these reasons and so many more, coal
10 ash must be regulated under RCRA Subtitle C as
11 special waste by the USEPA with all attenuated
12 safeguards that it requires.
13 MR. BEHAN: Thank you. Could you state
14 your name for the record?
15 MS. WASSERMAN-NIETO: Sure, I'm sorry.
16 It's Kimberly Wasserman-Nieto.
17 MR. BEHAN: Great, thank you.
18 MS. WASSERMAN-NIETO: Thank you.
19 (Applause)
20 MR. BEHAN: Sir, what number do you
21 have?
22 MR. NOWICKI: 242.

1 MR. BEHAN: Okay, you can come to the
2 podium if you'd like to speak now.
3 MR. NOWICKI: My name is Mitch Nowicki,
4 I'm with Lafarge North America. As an
5 environmental scientist with 35 years experience
6 in the beneficial use and disposal of CCBs, I am
7 perhaps uniquely qualified to comment in this
8 proceeding. I came to the CCB industry in 1975 as
9 an employee of Chicago Fly Ash Company, the
10 company that pioneered beneficial use beginning in
11 1946. I was privileged to purchase the company
12 from its founders and operated for 15 years
13 employing over 100 people. I address you today,
14 therefore, as an environmentalist, CCB
15 practitioner, and former small business owner.
16 I understand the need to protect
17 groundwater resources and support appropriate
18 regulation to that end. I have reviewed numerous
19 evaluations of CCBs and understand that these
20 materials are not inert, and hence require
21 appropriate management. I have always believed
22 that hydraulic placement into ponds was often

1 unacceptable due to structural instability related
2 to any super saturated silt such as fly ash and
3 the potential for groundwater impact.
4 The USEPA draft appears to convey a bias
5 toward listing CCPs as hazardous or special wastes
6 and I find nothing appropriate in this bias. The
7 fact that CCBs are not inert is no basis for the
8 listing. Hazardous waste determinations are most
9 commonly made based on the measured toxicity of
10 leachable constituents. Laboratory tests have
11 been employed for decades to measure leaching
12 potentials and attendant environmental risk. As a
13 whole, CCB's test results demonstrate this risk to
14 be low.
15 While debate continues over test
16 methods, I call your attention to a real world
17 demonstration of CCB leaching characteristics at
18 Lafarge's Lewis University Airport project near
19 Romeoville, Illinois. This seven-year project
20 utilized 1.6 million tons of CCBs to provide the
21 structure upon which a 6,300 foot runway has been
22 constructed. A double liner of leachate

1 collection system were incorporated into the site
2 design. Leachate analyses from this facility
3 demonstrate compliance with Class 1 groundwater
4 standards for nearly all tested parameters with
5 the exceptions limited to boron, dissolved solids
6 and sulfates. These are not reflective of
7 hazardous materials.
8 Without question, the greatest damage
9 from listing would be experienced in the dramatic
10 reduction in the beneficial use of CCBs. A
11 listing would convey to the public and business
12 communities that there are inherent environmental
13 and occupational risks related to CCB use. CCBs
14 are simply not essential ingredients to the
15 products in which they are used. The primary
16 drivers cost reduction. This, while significant,
17 will not justify the risk of long- term
18 environmental or occupational liabilities that a
19 hazardous or a special listing would communicate
20 to the corporate boardrooms particularly when
21 production alternatives are abundant.
22 If the listing of CCBs is just one

1 battlefront in the war on coal, I believe it is
2 misguided. I implore the USEPA to objectively
3 assess the risks based on the facts, to recognize
4 the adequacy of Subtitle D standards, and to avoid
5 destroying 64 years of technically and
6 environmentally successful CCB utilization. Thank
7 you for the opportunity to comment.
8 MR. BEHAN: Thank you. We're going to
9 be taking a 15-minute break from 6:00 to 6:15. I
10 think we can get a couple more people in before
11 the break. Is there anyone in the room that has a
12 number that hasn't spoken today? 171. Anyone
13 else? Okay, we'll take the break after this
14 gentleman speaks.
15 MR. ESCOBAR: Hello, good afternoon.
16 I'm here to read a letter from Dr. George Everett
17 Lundgren. He'd like to say:
18 Dear Administrator Jackson: This short
19 note asks that you help prevent arsenic, cadmium
20 and other wastes from coal burning from harming
21 our people. As you know, the EPA has decreased
22 acceptable levels of arsenic from 50 parts per

1 billion to 10 parts per billion in 2002 based on
2 the known increase in cancer risk from arsenic
3 poisoning. With no regulations, sudden and
4 gradual contamination of our waters would kill and
5 harm many of our people. There is no good
6 treatment for arsenic poisoning.
7 Please help prevent harm to our people.
8 Please support regulations to contain the poisons
9 in coal wastes. Thank you sincerely, Dr. George
10 Everett Lundgren, MD. Thank you.
11 MR. BEHAN: Sir, could you state your
12 name for the record?
13 MR. ESCOBAR: My name is Michael
14 Escobar.
15 MR. BEHAN: Great. Thank you, sir.
16 MR. ESCOBAR: Thank you.
17 (Applause)
18 MR. BEHAN: We're going to take a break
19 for about to 20 minutes. We will reconvene at
20 6:15. Thank you.
21 (Whereupon, at 5:55 p.m., an
22 afternoon recess was taken.)

1 E V E N I N G S E S S I O N

2 (6:15 p.m.)

3 MS. DEVLIN: Okay. I think we're going

4 to get started again. I am Betsy Devlin, the

5 Associate Director of the Materials Recovery and

6 Waste Management Division in ORCR's Resource

7 Conservation and Recovery. I will chair this

8 evening's panel. And with me on the panel tonight

9 are Laurel Celeste, Susan Mooney and Jim Kohler.

10 All of us are from EPA.

11 I want to start very briefly by giving

12 an overview again of the logistics for how we're

13 going to conduct tonight's hearing just for those

14 of you who maybe weren't here this morning.

15 Speakers, if you pre-registered, you were given a

16 15-minute slot when you were scheduled to give

17 your three minutes of testimony and we had asked

18 that you sign in ten minutes before your 15-minute

19 slot at the registration desk. All speakers,

20 those that pre-registered and walk-ins, were given

21 a number when you signed in today. That is the

22 order in which you will speak. I will call

1 speakers to the front of the room by number four
2 or five at a time. And when your number is
3 called, I'm going to ask that you move to the
4 front of the room and then move to the microphone
5 or the podium when you are called.
6 Again, we are going to limit testimony
7 to three minutes and we'll be using an electronic
8 timekeeping system as well as hold up cards to let
9 you know when your time is getting low. When we
10 hold up the first card, it means you have two
11 minutes left. When we hold up the second card,
12 you have one minute left. When the third card is
13 held up, you have 30 seconds left. And when the
14 red card is held up, you are out of time and we
15 ask that you conclude your remarks.
16 And again, remember, you can provide any
17 written material to the court reporter and the
18 material will be entered into the rulemaking
19 record and considered the same as if you had given
20 us your testimony orally. Again, if you have
21 brought a copy, a written copy of your testimony,
22 you can leave it in the box in front of our court

1 reporter. And if you are only submitting written
2 comments, we ask you to put them in the box by the
3 registration desk. We welcome additional comments
4 so that if you have additional comments after
5 tonight, please follow the instructions on the
6 yellow handout and submit your comments to the
7 docket, but that would have to be by November
8 19th, 2010.
9 Again, our goal is to ensure that
10 everyone who has come today this evening to
11 present testimony is given an opportunity to
12 provide those comments. And we are going to do
13 our best to accommodate everyone. If you have any
14 questions or concerns, we ask that you consult our
15 staff out at the registration table. And again, I
16 may go out of order, again that's to accommodate
17 numbers and people who are here. So, don't worry
18 if all of a sudden we're jumping around. We're
19 just trying to get everybody covered.
20 Again, if you have a cell phone, we'd
21 appreciate it if you turned it off or turned it to
22 vibrate. And if you need to use your phone during

1 the hearing, we'd ask that you move out into the
2 lobby. And again, I want to thank everybody for
3 coming and for participating in this hearing.
4 And I'm going to get started. And with
5 that, numbers, I'm going to ask for numbers 127,
6 132, 138, 145 and 147. Are you here? If people
7 with those numbers would come to the front of the
8 room? Number 127, will you go to the mic please?
9 All right, you're not here. Okay, of those
10 numbers, what number do you have? 138, why don't
11 you go ahead?
12 MR. BAROT: Do I have to press anything?
13 MS. DEVLIN: No, just go ahead. Just
14 state your name for the court reporter and start.
15 You're good.
16 MR. BAROT: Okay. My name is Suhail
17 Barot. I'm a graduate student from the University
18 of Illinois at Urbana- Champaign. And at that
19 campus, I chair the committee that manages our
20 Student Greenpeace. One of the things that I
21 wanted to bring up about the regulations that are
22 being considered is that as far as I have read,

1 both of them exempt wastes from college and
2 university power plants, and from similar small
3 scale sources. And I don't think that's right.
4 I know for our students that have been
5 working on getting our university to stop burning
6 coal for the past year, this is something
7 extremely important to us. We may be a small
8 campus coal fired power plant, but we do go
9 through 100,000 tons of coal every year. And our
10 stream of coal ash that is produced is more than
11 either the waste we landfill or the waste we
12 recycle. We produce a lot of this stuff.
13 We have been unable to figure out where
14 it goes. We've tried to FOIA our campus and they
15 have claimed that the location of where our coal
16 ash goes is exempt for reasons beyond our
17 understanding. And this is something that we care
18 a great deal about.
19 We have worked for the past year to get
20 our campus to start burning natural gas and
21 substitute away from coal.
22 And one of the reasons that we have had

1 difficulty doing that is because costs like these
2 are dealing with coal ash in a safe manner,
3 treating it as the hazardous material that it is
4 are not accounted for by the system, by the
5 regulatory system as it is right now. And we hope
6 to see EPA use strong Subtitle C regulations, to
7 extend them to cover small sources including all
8 colleges and universities which are at the
9 forefront today of moving beyond coal.
10 And we look forward to support from EPA
11 in achieving this on behalf of students from
12 dozens of campuses that are here, and that have
13 come here today that have worked to get their
14 campuses to commit to moving beyond coal, that
15 have worked to get their campuses to sign the
16 American colleges and universities presidents'
17 climate commitment. And we hope that you will
18 help us in this effort. Thank you.
19 (Applause)
20 MS. DEVLIN: Thank you. Number 145?
21 Number 147?
22 MS. FASTNER: Hi, my name is Shirley

1 Fastner and I'm here for Sierra Club. First of
2 all, we applaud the EPA for recognizing these
3 health hazards. It seems that federal enforceable
4 laws are the only safeguards that work. These
5 patchwork state laws that are apparently in place
6 don't seem to be enough. We have two coal plants
7 here in Chicago, Fisk and Crawford. And we don't
8 know where the coal ash is going, they won't tell
9 us. I myself own a great apartment near Fisk and
10 the air smelled so bad in the area and this
11 apartment was probably at least three-quarters of
12 a mile away that there was no way I could live
13 there. So, it's really upsetting that they won't
14 tell us where it's going.
15 I think anything less than the Subtitle
16 C seems to be unacceptable. Living near coal ash,
17 we know it's significantly, I mean apparently
18 there is a study by the EPA that it's more
19 dangerous to live near a coal ash site than
20 smoking a pack of cigarettes a day. That's a
21 pretty strong statement to me. This is according,
22 I'm told, according to a risk assessment done by

1 the EPA.

2 The toxins, I think you know the toxins

3 found in coal ash have been linked to organ

4 disease, cancer, respiratory illness, neurological

5 damage and developmental problems. And I'm

6 probably not telling anything that probably hasn't

7 already been said probably a hundred times today.

8 I feel very strongly about this. I'd do

9 everything in my power to be the healthiest person

10 I can be. I don't put any toxins in my body, but

11 I choose to live in Chicago and I would like to

12 remain here and, well, wherever else I might

13 choose to live. And I think that there is just

14 too much unknown, there's too much, you know, we

15 know that it's really toxic, we know that the

16 levels of pollution, the arsenic seeping from coal

17 ash were found to be significantly higher than

18 what is considered safe for drinking water. I

19 mean, recycling, it's not going to help. I think

20 we need to go for the Subtitle C and, you know, we

21 need to do a lot more for the environment as we

22 know, and I'm grateful that you are having this

hearing for us. Thank you very much.

(Applause)

MS. DEVLIN: Okay, thank you. Can I have numbers 130, 169, 192, 197 and 198? Number 130, can you go to the podium? Okay, no number 130? 169?

MS. RICHART: That would be me. I just walked in and I misplaced my number. Do you need that?

MS. DEVLIN: No, that's okay. As long as -- that's fine. Thank you.

MS. RICHART: Deep breath on my part. Good evening. My name is Pam Richart, I'm a co-director of a non-profit called Eco-Justice Collaborative. And over the past several years, my organization has been raising awareness in Chicago about the true cost of coal. And we've done this through delegations to West Virginia and the coal fields of Illinois.

We recently launched a campaign to clean up the two old, polluting coal fired plants here in Chicago. And in this process, we've learned

that it's the people who live in the coal fields or under the shadow of a coal fired power plant who bear the brunt of the impacts from coal extraction, combustion and waste disposal. And here in Chicago, the combustion of coal makes children sick and claims over 40 lives each year. But as we looked, and we looked really hard at the life cycle of coal in our community, Chicago, we learned that the Illinois EPA does not know what happens to the coal ash generated from those two coal fired power plants. All they know is that it's shipped offsite.

We all know coal ash is toxic, and because it's not regulated it's poisoning families, entire communities and our environment. And that's why I'm here to urge the EPA to do the right thing, to adopt Subtitle C of the Resource Conservation and Recovery Act. We need those rules that keep track of and regulate toxic waste. We need standards for generations, storage, distribution, transport and disposal. And we need to require every disposal facility to obtain a

1 permit. We need to phase out the coal ash ponds
2 and we need to require those operators to put cash
3 up front to assure effective cleanup in case there
4 is contamination.
5 But I'm here also to ask the EPA to
6 regulate the practice of mine filling, beneficial
7 use and coal ash generated from non-utilities.
8 Coal gas companies are now dumping coal ash waste
9 into abandoned mines without liners or federal
10 oversight. And unless mine filling is regulated,
11 I think EPA is allowing a loophole that will
12 actually encourage the dumping of coal ash into
13 abandoned mines as other options hopefully become
14 more regulated. And beneficial use represents
15 nearly 45 percent of all coal combustion waste
16 generated. And coal ash applied to crops may
17 increase yields, but it also produces high levels
18 of arsenic in our food.
19 So, what I'm really here to say again is
20 we want you to regulate all coal ash, not just
21 some of it. So, please, please, please, please
22 adopt Subtitle C. It's the right thing to do for

1 our families, for our kids, for the future of this
2 planet. And thanks for giving me the opportunity
3 to speak.
4 (Applause)
5 MS. DEVLIN: Thank you. Number 192?
6 MR. RICHART: Good evening. My name is
7 Lan Richart. I am also a co-director of the
8 Eco-Justice Collaborative in Chicago. First, I
9 want to thank you for making this opportunity to
10 present this testimony.
11 I want to state my unequivocal support
12 for the USEPA's regulation of coal ash under
13 Subtitle C of their Resource Conservation and
14 Recovery Act. Numerous reports by the USEPA have
15 clearly documented that the toxic chemicals
16 inherently contained in coal ash can and often do
17 pose a significant threat to human health and
18 natural environment. The enormous volumes of
19 these materials generated each year, their
20 potential environmental toxicity and their largely
21 unregulated management disposal call for stricter
22 regulation.

The USEPA's formally stated mission statement is to protect human health and to safeguard the natural environment, air, water and land. This is from the website of the EPA. One of its stated purposes is to ensure that all Americans are protected from significant risk to human health and the environment where they live, learn and work.

I believe that by adopting the Subtitle D option, the USEPA would be abdicating its legal responsibility to the people of the United States, and that the management of these potentially toxic materials would be left to the discretion of states in a patchwork of inconsistent and largely ineffective controls. For example, we recently learned that for our own city where we have two of the nation's oldest coal fired power plants, the Illinois EPA does not have a record of the ultimate destination of coal ash disposed of by these facilities. I think this is unacceptable.

Secondly, I'd like to go on record of supporting a strong program of monitoring and

1 regulating the disposition of coal ash through
2 so-called beneficial uses. While certain uses may
3 offer pragmatic and even safe solutions to the
4 disposal of waste products, many others currently
5 in practice do not. Neither Subtitle C nor
6 Subtitle D will regulate the use of toxic coal ash
7 for purposes of agriculture, construction fill or
8 disposal in abandoned mines.
9 Specifically, where coal combustion
10 residuals remain unencapsulated and/or are
11 transferred to beneficial uses, applications of
12 products that may return toxic chemicals to the
13 ambient environment, the disposition of these
14 wastes should be monitored and regulated as the
15 hazardous chemicals that they are.
16 The generation of enormous volumes of
17 coal ash is a direct result of a reliance of on an
18 unsustainable source of fossil fuel energy. We
19 are told by those in the coal- related industries
20 that the price of that energy will go up if we
21 regulate the hazardous byproducts of their
22 businesses. Yet each day we are paying an

enormous price, sacrificing the health and safety of ourselves and those of future generations.

I urge you to regulate coal ash under Subtitle C as well as expand the monitoring and regulation of beneficial uses. Thank you.

(Applause)

MS. DEVLIN: Thank you. Number 197?

MR. AILEY: Good evening. My name is John Ailey, A-i-l-e-y. I am also from Chicago. I'm a member of the Pilsen Environmental Rights and Reform Organization as well as active in the Green Party. By coincidence perhaps, I work closely with Lan and Pam who just spoke on the effort to force the two coal fired power plants in the City of Chicago to clean up. I happen to live in the Little Village neighborhood which is close to the Crawford coal fired power plant.

I consider that I would second the comments that Pam and Lan just made. I am not an expert on coal ash issue but it is clear that this is another dangerous aspect of using coal for producing electricity in this country, that the

1 coal ash is quite toxic and needs to be
2 controlled, regulated.
3 It is clear that this Subtitle C that
4 people are suggesting is the way that we need to
5 go at a minimum. We definitely need to pay
6 attention to what happens to this material. It
7 has, as well documented, a lot of hazardous
8 components to it and we don't want them getting
9 into our water and we don't want them getting into
10 our food supply, we don't want them poisoning
11 people.
12 These coal fired power plants in Chicago
13 poison people through the emissions that they put
14 out into the air. And they may not be poisoning
15 people in Chicago directly with the products of
16 their combustion, but as has been pointed out we
17 don't really know what happens to that material.
18 And it's quite possible that other people in other
19 parts of the country are being poisoned by this.
20 And as a matter of common human decency, we
21 shouldn't be doing this. We should be regulating
22 and controlling this hazardous substance.

1 So, I thank you for your consideration
2 and I hope you will go as far as you can in
3 regulating this toxic product. Thank you.
4 (Applause)
5 MS. DEVLIN: Thank you. Number 198
6 please?
7 MR. ORRIS: Thank you. My name is Peter
8 Orris. I'm Chief of Occupational and
9 Environmental Medicine at the University of
10 Illinois Medical Center here in Chicago, but I
11 speak today as a private citizen. I'm presenting
12 testimony for the Chicago Chapter of Physicians
13 for Social Responsibility. We have delivered the
14 very brief written comments that we have, and
15 given the hour I'm going to make only two points.
16 One is that we believe clearly the coal
17 ash should be regulated under Subtitle C. We
18 believe that such regulation will allow the EPA to
19 intervene and reduce the XX cancers that the
20 literature already documents are occurring related
21 to this toxic exposure of people living in and
22 around these coal ash ponds.

1 So, we support strongly that regulation
2 as a special waste, and we thank you very much for
3 having us here today and for holding the hearings.
4 Thank you.
5 (Applause)
6 MS. DEVLIN: Thank you. Will numbers
7 145, 154, 180 and 184 come up please? Number 148
8 also, if you're here please, if you would --
9 MR. GREISCH: My name is Edward Greisch.
10 I'm not with any organization, just by myself.
11 Coal contains uranium, arsenic, lead, mercury,
12 antimony, cobalt, nickel, copper, selenium,
13 barium, fluorine, silver, beryllium, iron, sulfur,
14 boron, titanium, cadmium, magnesium, thorium,
15 calcium, manganese, vanadium, chlorine, aluminum,
16 chromium, molybdenum and zinc. And I'd like to
17 talk about two of those, one is the uranium and
18 the other is the thorium. Both are potential
19 fuels for nuclear power plants.
20 Average coal in this country contains
21 one or two parts per million uranium and about two
22 and a half times as much thorium. If you multiply

one part per million by the four million tons of coal that a 1,000 megawatt power plant burns, you get four tons of uranium and two and a half times as much thorium. Illinois coal contains up to 103 parts per million uranium, and if you multiply 103 by the four million tons, you get 412 tons of uranium. Just the one or two parts per million uranium times the four million tons of coal is sufficient to fuel a nuclear power plant the way we do it these days once through fully for the same amount of time and produce the same amount of electricity.

There is no such thing as a beneficial use of coal ash. It is low level radioactive waste and it should be treated the same as low level radioactive waste from a nuclear power plant.

And I have uploaded to your website lots of documentation. The paper I -- here, I'll give you these, the paper I have referenced in one of these and also the paper for the url on the other one, plus some other material. So, thank you.

1 (Applause)

2 MS. DEVLIN: Thank you very much.

3 Number 148, are you up there?

4 MS. DUBA: My name is Mary Emily Duba.

5 I testify today as a concerned citizen and as a

6 Lutheran Christian. In the Lutheran tradition,

7 there are a set of tenets by which we may guide

8 our ethical decision making. Two of these tenets

9 in particular compel me to testify today in

10 support of Subtitle C. The first is a radical

11 commitment to truth-telling. In other words, we

12 must call a thing what it is. Since coal ash

13 leaches toxic chemicals at hazardous levels, we

14 must call it a hazardous material and treat it as

15 such.

16 In the testimonies this morning, I heard

17 concerned farmers and producers of so-called

18 beneficial use products expressing concern that

19 labeling coal ash a hazardous material would

20 create a stigma around their products. The only

21 acceptable solution is to remain radically

22 committed to truth-telling. Since coal ash is

1 hazardous, it is dishonest to intentionally avoid
2 the hazardous material label in order to protect
3 business. It is true that we have limited
4 landfill space. The solution to this problem is
5 to produce less coal combustion waste, not to be
6 dishonest about its toxicity.
7 (Applause)
8 MS. DUBA: The second guiding tenet that
9 compels me to speak is a radical commitment to the
10 protection of the vulnerable. Subtitle D would
11 leave enforcement up to citizen lawsuits. This
12 means that the most vulnerable in our society, the
13 sick, the afflicted, children and the environment
14 are left to defend themselves. My faith
15 commitment to the protection of the vulnerable
16 compels me to advocate for Subtitle C which gives
17 state and federal government the right and the
18 responsibility to protect our fragile environment
19 and our vulnerable citizens.
20 In conclusion, I ask you, EPA, to speak
21 truthfully, to call a thing what it is, that is,
22 to name and treat coal ash as a hazardous material

and to go out of your way to protect the vulnerable, those living near coal plants and disposal sites. In short, I ask you to support Subtitle C and I thank you.

(Applause)

MS. DEVLIN: Thank you. Number 154 please?

MR. RUSTICUS: Hello, my name is Jeremy Rusticus and I work for Ozinga Ready Mix Concrete. On behalf of Ozinga, I would like to thank the USEPA for conducting this public hearing on this very important issue.

Ozinga is a ready mix concrete company with operations throughout Metropolitan Chicago, Northwest Indiana, and Southwest Michigan. Our company has been in existence for 82 years and we employ over 650 people. We have learned that the EPA is considering classifying coal combustion products such as fly ash as a hazardous waste. We use a significant amount of fly ash as a raw material in our concrete production and wish to offer our objections to classifying fly ash as a

1 hazardous waste.

2 Fly ash has a fundamental relationship

3 with concrete. They can be used both as a cement

4 substitute and in addition to cement to enhance

5 concrete. Using fly ash in concrete produces a

6 higher performance and more durable product. It

7 improves concrete in both fresh and hardened

8 conditions. In the fresh state, fly ash improves

9 its workability, pumpability and finishability.

10 In the hardened state, it improves the durability

11 as it relates to sulfate attack and alkali

12 reactivity. Without fly ash, we cannot achieve

13 the ultimate strengths that our customers require.

14 In addition, the Green and LEED benefits

15 of utilizing CCPs are a key strategic lever for

16 our business. Fly ash is a cement substitute and

17 the use of one ton of fly ash replaces one ton of

18 cement. The Green and LEED benefits of fly ash

19 use are interrelated. Fly ash is a product that

20 is considered waste by the coal power industry.

21 By using it in concrete production, a party

22 eliminates the need for fly ash to be disposed of

in a landfill, use of fly ash in concrete production is a form of recycling. Because of this, fly ash is considered a Green product that can enable a user to achieve LEED points.

The classification of fly ash as a hazardous waste would be very unfortunate since it would most likely stop many if not most users of CCPs from continuing to use them including Ozinga. We would have to seriously consider whether we could take the risk of using a material that the EPA had officially labeled a hazardous waste.

We suspect other users concerned about its liabilities would have to do the same. Without the use of fly ash, our concrete would not be as durable or able to achieve high performance standards. Such a classification may well impede our ability to create and retain jobs due to the higher production costs we would incur.

We understand the EPA is considering language in proposed regulations stating that CCPs used in certain applications would not be deemed a hazardous waste. We do not think this would be

1 helpful since the permitted uses of CCPs would be
2 the use of the very same material that would be
3 classified as a hazardous waste.
4 We urge you to seriously consider this
5 impact on our business and industry. We trust
6 that the EPA can avoid this unfortunate result so
7 we can continue to beneficially use CCPs. Thank
8 you.
9 MS. DEVLIN: Thank you. Number 180?
10 MS. HILL: Hi, my name is Nancy Hill and
11 I am testifying here tonight as a private
12 concerned citizen, parent and neighbor. In
13 January 2009, I happened upon an article in the
14 Smithsonian by John McQuaid titled "Mining the
15 Mountains." I read with horror about how we are
16 permitting the decapitation of our Appalachian
17 Mountains, and the subsequent devastation of the
18 entire surrounding areas. Flooding, poisoning of
19 the water and air, all types of illnesses,
20 upsetting the most bio-diverse hardwood forests we
21 have, it has kept me up at night.
22 How can this be true, I thought? What

1 do we tell our children when they ask, "Mommy,
2 where are the mountains?" How can this even be
3 allowed here in the United States?
4 Well, this summer, I had to go with a
5 group to see the devastation for myself and meet
6 the people that live there. I spent time with
7 widows, veterans, grandfathers and mothers whose
8 lives have been turned into a living hell by the
9 coal companies. They now spend their time
10 fighting to gain back clean air and water and
11 protect what is left of their home.
12 Is this what Choice D would leave us to
13 look forward to? The aftermath of toxic coal ash
14 ruining where we live and making us sick? Coal,
15 oil, the energy companies cannot be trusted to do
16 the right thing. They will do the cheap thing now
17 and we will all pay for the mess in one way or
18 another later.
19 We know coal ash is toxic. Therefore, I
20 am 100 percent in favor of Subtitle C. By passing
21 this, at least you can know you've done something
22 to help protect us. If D passes and we are left

on our own to police these companies, we will pay with our health, our time and energy, and potentially our lives.

It was just published in the Chicago Tribune that Chicago is number three in the nation in pollution. We are all becoming more aware. We are not a small discrete population. Not even one of us is. So, I am counting on you to please adopt Subtitle C of the Resource Conservation and Recovery Act. Thank you.

(Applause)

MS. DEVLIN: Thank you. Number 184 please?

MR. DICK: Hi, my name is Joe Dick. I'm a concerned citizen and neighbor, too. I'm here actually going to testify for our neighbors down in Southern Illinois.

In the heart of the coal mining country in Randolph County at Peabody's Gateway Coulterville mine. Coal combustion waste is being trucked in from a power plant from Southern Illinois University. It's placed in an open pit

with the coal mine waste. The locals in the Coulterville area have a rate of breast cancer and neurological disease that is three times the national average.

Gretchen, a photographer and journalist there has MS. Carol Lind has breast cancer and MS. Laura and Tony have small children and worry about their health and future. Suzanne has serious health issues. And Leonard and Jeanette are farmers that had to move their cattle off their land because their pastures are next to a leaking gob and ash pile of coal ash waste. And Mike is a farmer down there, he's concerned about the coal ash and wants to know if it's gotten into his well. And an elderly couple has already moved away from there because their well was contaminated.

Thank you.

(Applause)

MS. DEVLIN: Thank you. May I have numbers 146, 149, 150, 151 and 152 please?

MS. SITKO: Shall I go ahead and start?

1 MS. DEVLIN: Yes, please. Thank you.
2 Number 146, thank you.
3 MS. SITKO: Thanks. My name is Edyta
4 Sitko. I work as the Midwest organizer for
5 Greenpeace based here in Chicago. Thank you so
6 much for being here this evening.
7 Over the past six years, I have worked
8 with coal affected communities in Maryland,
9 Virginia, West Virginia, Tennessee, Kentucky,
10 Indiana, and now Illinois. I had just started
11 working in Tennessee in December of 2008 when I
12 heard the report that one billion gallons of coal
13 ash sludge had broken out of the TVA Kingston
14 plant in Eastern Tennessee and covered over 400
15 acres of countryside and homes. From colleagues
16 and partner organizations, I heard the horrific
17 stories of families scrambling to recover their
18 earthly possessions three days before Christmas
19 under three to five feet of toxic coal ash sludge.
20 Even more worrying were the reports of coughing up
21 blood, other lung irritations, and skin burns from
22 workers working to clean up and contain the spill.

1 They weren't wearing their protective gear or
2 masks because the coal industry claimed that the
3 sludge wasn't toxic. And also, there was no
4 enforcement to force them to have their workers
5 wear the gear.
6 And that brings me to my point.
7 Throughout today, I have listened to excuse after
8 excuse from coal industry officials claiming that
9 they need to be able to do business. Well, for
10 years, the coal industry has reaped record-
11 breaking profits providing "cheap" energy at the
12 expense of the communities they destroy. There is
13 nothing cheap about toxic drinking water or cancer
14 clusters caused by coal ash contamination. The
15 cost is simply borne by the communities,
16 individuals and state agencies rather than the
17 companies that are producing this toxic substance.
18 I urge you today to do the right thing
19 and protect our communities and our future
20 generations by passing Subtitle C. Thank you.
21 (Applause)
22 MS. DEVLIN: Thank you. Number 149

1 please?

2 MS. BARNARD: Hi, my name is Sandy

3 Barnard. I am a high school student at Kenwood

4 Academy. I have lived on the south side of

5 Chicago for my entire life. And as a young

6 person, the issue of coal ash is of course

7 important to me. This is a problem for my

8 generation. I'm likely to live another good 70

9 years whereas the people trying to stop regulation

10 on coal ash maybe not.

11 I don't have cancer or MS or any of the

12 other health problems caused by coal. But I

13 easily could. I'm sure you've heard many stories

14 this evening about people with health problems

15 because of coal ash and I don't want that to be my

16 future. The best way to accomplish that is to end

17 our reliance on coal and to regulate coal ash with

18 Subtitle C. That regulation is exactly what I'm

19 asking for tonight. Thank you.

20 (Applause)

21 MS. DEVLIN: Thank you. Number 150?

22 MR. DIMEO: Hi, my name is Dan Dimeo.

1 I'm a student at Roosevelt University and an
2 active member of the Sierra Club.
3 I'm here to voice my support for the
4 EPA's regulation of coal combustion waste under
5 Subtitle C of RCRA. Again, the EPA has a duty
6 under the Clean Water Act to ensure safe drinking
7 water and that includes all Americans. Merely
8 offering suggestions or suggested guidelines for
9 disposal of coal combustion waste does not
10 sufficiently accomplish this.
11 In addition, I hope the EPA will review
12 its definition of beneficial use in regards to the
13 repurposing of coal combustion waste, particularly
14 for soil amendment which can be more detrimental
15 to the soil than beneficial, and mine filling
16 which is essentially the dumping of coal in low
17 elevations close to groundwater. Repurposing is
18 good, if it is done in a responsible manner, and
19 again if the products being repurposed are not
20 toxic to our health.
21 I thank the panel for hearing and I
22 applaud the steps being taken by Administrator

1 Jackson and the EPA working towards a clean energy
2 future. Thank you.
3 (Applause)
4 MS. DEVLIN: Thank you. Number 151
5 please? 151. Okay, number 152.
6 MR. DEAL: My name is Brian Deal. I am
7 a professor of Urban and Regional Planning at the
8 University of Illinois in Champaign. And I have a
9 couple of questions.
10 First, clearly Subtitle C is the only
11 real choice to consider. When communities in our
12 state and in our country start to plan for the
13 future, they have several assumptions that they
14 start with. One is that they have access to clean
15 air, clean water and other generally, into
16 generally a healthy environment. And we should
17 all start from that first basic assumption.
18 And whose responsibility would it be to
19 ensure those assumptions, whose responsibility
20 would it be to make sure that we're protected from
21 single-minded economic interests such as we've
22 heard already this evening? Clearly, these are

1 federal regulatory assignments. These are
2 necessary for the federal government to ensure
3 these environments.
4 How long can we continue to subsidize
5 ancient and archaic energy technology and continue
6 to suppress cleaner and newer technologies as we
7 do now? What are the true costs of extraction, of
8 inefficient burning, and of disposal of these
9 ancient technologies? And how can they be
10 replaced in short order?
11 It really seems to be a little question
12 but isn't it the explicit role of the EPA to
13 protect us from ourselves and from economic
14 interests in general? Thank you.
15 (Applause)
16 MS. DEVLIN: Thank you. At this time,
17 I'd like to ask if there is anyone with a number
18 below 150 in the audience who has not spoken and
19 would like to speak. Could you please come
20 forward? And also, the numbers 153 and 154.
21 MS. ALLEN: Good evening, ladies and
22 gentlemen. My name is Amy Allen and I'm a student

at the University of Illinois. I thank you for the opportunity to speak tonight.

I am here because I want power plants to be held responsible for the toxic consequences of burning coal. Events of the past several years have highlighted the many disastrous consequences of our fossil fuel addiction from the mining tragedy in Virginia to the BP oil spill to the coal ash disaster in Tennessee. Coal ash is a silent and stealthy threat. No authority in Illinois is keeping track of the dumping sites where power plants send coal ash.

This toxic waste can contain hundreds of times the levels of contaminants that set the threshold for being hazardous by the EPA. Coal ash presents over ten times the health risk that the EPA considers acceptable. There is no doubt that coal ash presents a serious hazard to all health and communities.

Coal companies have benefited from billions of dollars of government subsidies, all while escaping the cost of pollution, healthcare,

1 and disposal of coal combustion waste that they
2 produce. The Tennessee Valley Authority coal ash
3 disaster is now expected to cost over $1.2 billion
4 to remediate while it would have cost less than
5 five percent of that to properly secure the waste
6 in the first place. Government policies until
7 this point have made coal inexpensive for power
8 plants to burn. However, coal is extremely costly
9 to taxpayers and our society in terms of
10 healthcare, pollution and human lives.
11 Power plants should be responsible for
12 paying those costs. And that starts with
13 regulation of coal combustion waste under Subtitle
14 C.
15 (Applause)
16 MS. DEVLIN: Thank you. Number 153?
17 154? 132? 144 is fine. Again, let me, anyone
18 with a number of under 150 who wishes to speak, if
19 you would come forward? Whenever you're ready,
20 sir. Thank you.
21 MR. FULLER: Sure, thank you. Good
22 evening. My name is Tony Fuller. I'm a volunteer

with the Sierra Club. And I'm here tonight because I want the Environmental Protection Agency to do its job. And its job is to protect us from the hazards of coal ash waste.

Coal ash waste is toxic. If I took a bottle of arsenic and took it over to the Chicago River and just threw it in, I think that would be seen as wrong. And why, you know, coal companies can just do that and not even say what they've done with the ash is definitely wrong, especially when you're talking about the tons and tons of waste that's going out there.

So, this is about doing what's right. Wrong is not right. There is just no, I guess no way to mix up between the two.

I do not want arsenic in my drinking water or anyone else's drinking water. Why should the coal companies be able to do that? They should be responsible for that waste. They are getting paid to basically create that waste, they should be responsible for maintaining the waste's safe disposal.

Regulations that treat the waste as hazardous waste under Subtitle C is a great first step. Basically, we need the Environmental Protection Agency to represent those that can't protect themselves, people who live by coal power plants especially, and we have two in Chicago, are especially vulnerable and they cannot do this on their own. That is why we have the Agency.

And so, I ask you to protect us and regulate this waste as hazardous waste or special waste and to protect the environment. Thank you.

(Applause)

MS. DEVLIN: Thank you.

MR. STANT: Hello, I'm Jeff Stant with the Environmental Integrity Project. And we've already testified that we strongly favor a C regulation for coal combustion waste so I won't belabor that point.

I want to respond to some of the statements that were made today assailing the statements made by citizens from Joliet about the contamination at that site, first of all. We,

1 Environmental Integrity Project, did a report
2 which I'll turn in on that site as part of its "In
3 Harm's Way" report, we examined that site.
4 There is no question that there were 18
5 wells at that site that were contaminated with
6 boron. They were offsite drinking water wells.
7 The concentrations were between 1 and 2 parts per
8 million in those wells. To Midwest Generation's
9 credit, they either bought those people out or
10 took them off their wells, but they were
11 contaminated with boron.
12 The natural background for the shallow
13 carbon rock aquifer in that area for boron is
14 around 0.3. The boron was between 1 and 2 at all
15 of those wells. The claim they made that the
16 offsite groundwater is not moving into the Smiley
17 Subdivision is a claim that we were just repeating
18 from the consultant of Midwest Energy that was
19 simply saying that if you allow the quarries
20 neighboring the site to be pumped down to the
21 east, you'll have groundwater moving into the
22 Smiley Subdivision within a period of time at that

1 1 to 2 parts per million level. So, they are the
2 ones, we got that from their documents.
3 The enforcement action they said was
4 never taken. Look, we can't help it if we FOIA
5 IEPA and IEPA finally sends us a notice of
6 violation dated August 31, 2009 citing 50
7 violations of the groundwater standard at the
8 site, and then when we call them to get them to
9 explain it further, they never respond to repeated
10 phone calls. We have this NOV. And if their
11 defense about how they're doing a good job is,
12 hey, we've never taken any actions at that site so
13 don't accuse us of having done so, I find that a
14 funny defense for arguing that they're doing their
15 job at a site where 22 offsite wells have been
16 contaminated.
17 And finally, I just point out that the
18 boundary monitoring wells, the ones closest to the
19 wells which are south and southeast of the site,
20 not in the Smiley Subdivision but the drinking
21 water wells to the south, those have arsenic in
22 them at up to 10 times over the drinking water

standard, molybdenum 72 times over the health standard, boron up to 5 times over the Illinois standard. So, they know they have a problem, Illinois EPA does, at the boundary of that site. Their documents indicate they can see there's a problem. It's not our fault that IEPA hasn't even seen fit to do one bit of sampling then farther offsite, and it's a statement that they're not doing their job there.

Thank you very much. I'll turn in the Joliet report here and save my response on the structural fills and the gypsum until the next hearing. Thank you.

(Applause)

MS. DEVLIN: Thank you. Number 137, I believe you're in the room. Let me try again. 151, 153? Okay.

MS. PASTIN: Hi, my name is Sue Pastin. I'm just here as an individual American citizen. We need to trust our government to protect our public health, to protect the public. It seems like the government has just been eviscerated by

1 corporate lobbyists, by corporate control. It's
2 like corporations have way too much power. You're
3 endangering public health. We count on the EPA to
4 protect the environment.
5 I'm a federal employee. I try and do my
6 job. I try and serve my customers which are the
7 public, okay? Your customers are the public, too.
8 You balance obviously but the public health has to
9 take precedence. And if there is arsenic in
10 wells, then you've got to go with the strict
11 standard and you've got to regulate coal ash as
12 hazardous waste. Thanks.
13 (Applause)
14 MS. DEVLIN: Thank you. Can I have
15 numbers 362, 363, 364, 365 and 366 please? Okay,
16 number 362?
17 MS. OEHLSEN: Hi, I'm 365 as we're
18 waiting for people to come up.
19 MS. DEVLIN: Okay, that's fine.
20 MS. OEHLEN: My name is Nadia Oehlsen.
21 I'm unaffiliated, just a concerned citizen. And
22 when I heard about the coal ash hearings and the

1 fact that something that contains mercury, cadmium
2 and so on isn't really regulated in my state or in
3 many other states, I was like, huh, that sounds
4 kind of 19th century to me or modern China to me.
5 And I'm not an expert on this stuff but it just, I
6 agree, I expect the EPA to protect me. And I know
7 that the EPA faces a lot of cost-cutting, a lot of
8 politics from whatever administration is in
9 charge.
10 But I think that this is an important,
11 an important opportunity for the EPA to take
12 charge. I support Subtitle C. As a consumer, I
13 know people often mention cost, that we can't do
14 this because it might cost more. I understand.
15 Every time I turn on the lights, I know there is a
16 cost to that. And if protecting the environment,
17 protecting human health means that I have to pay
18 more as a consumer, that's okay with me. That's
19 my responsibility as well. Thanks.
20 (Applause)
21 MS. DEVLIN: Thank you. Number 362, are
22 you here? No. 63?

1 MS. KURTZ: My name is Molly Kurtz, and
2 I want to share with you what my neighbors in
3 Marion, Illinois are facing. At the Southern
4 Illinois Power Cooperative Lake of Egypt plant
5 near Marion, Illinois, toxic coal ash and sludge
6 have been placed in six unlined ponds, one unlined
7 landfill, and one lined pond since 1963. The
8 landfill was built in the floodplain between the
9 confluence of Saline Creek and South Fork Saline
10 Creek. Groundwater monitoring has been required
11 in the vicinity of the landfill and ponds only
12 since 1994. And high concentrations of the toxic
13 heavy metal cadmium were first detected in 1997.
14 In the wake of the 2008 Kingston,
15 Tennessee disaster, Illinois conducted a statewide
16 review of ash impoundments. Illinois EPA found
17 elevated boron, cadmium, and iron above Illinois
18 Class 1 groundwater standards at the Marion site.
19 The little Saline Creek is now contaminated.
20 Does this affect people? Gene who is a
21 farmer worries about the leachate from this dump
22 contaminating his cattle pasture. Sue who works

1 at a nearby federal prison worries about the
2 groundwater pollution and the high rate of cancer
3 among her co-workers. Other people are worried,
4 too, but they're afraid to speak up. Those that
5 live at the Lake of Egypt feel intimidated by
6 Southern Illinois Power because the company owns
7 the lake they live on.
8 (Applause)
9 MS. DEVLIN: Thank you. Number 364?
10 MS. FARRY: Good evening. I'm Sister
11 Gwen Farry from 8th Day Center for Justice. And I
12 am here today to speak for those who are not able
13 to speak for themselves.
14 Earlier this summer, I was privileged to
15 accompany the Eco-Justice Collaborative delegation
16 to West Virginia where we met people and spoke
17 with people who are most affected by the
18 mountaintop removal there. Last year, I had the
19 opportunity to participate in a toxic tour of
20 Little Village and saw people whose families are
21 affected by asthma and many other health issues.
22 I also want to speak for people in

1 Southern Illinois on the Ohio River where there is
2 Electric Energy, Incorporated in Joppa, Illinois.
3 Conveniently located right next door is Lafarge
4 Cement which uses coal waste in the production of
5 cement. When Lafarge has more fly ash than they
6 need, they have been known to get rid of it by
7 giving it to the nearby counties to spread onto
8 gravel county roads. Dilbert and his sister and
9 brother-in-law lived on such a road, and with each
10 passing vehicle clouds of toxic dust permeated
11 their lives. They all eventually developed
12 cancer. Dilbert's brother-in-law has since died.
13 So, I'm here to speak in the stead of
14 all of these folks and just beg you to have more
15 regulations.
16 (Applause)
17 MS. DEVLIN: Thank you. Thank you.
18 Number 366 please?
19 MS. FINKEL: Hi, my name is Sarah
20 Finkel. Thank you for having this public hearing.
21 I am a resident of Chicago. I live in Pilsen and
22 I'm a volunteer member of the Pilsen Environmental

1 Rights and Reform Organization which means that
2 this issue means so much to me that I volunteer my
3 time outside of work to come and really hope that
4 at least the EPA could do their part in regulating
5 whatever toxins the coal companies are putting
6 into our drinking water and into our environment.
7 You know, I'm not an expert either, but
8 if the evidence is there that this coal ash is
9 this toxic, causing cancer, asthma, and other
10 respiratory and health problems, then the first
11 thing to do is to just regulate it. I mean that's
12 all that we're asking is to regulate it. You
13 know, ultimately, hopefully we can go beyond that
14 to conservation, and that is, you know, my goal.
15 But this is the first step, you know. And I don't
16 think it's that much to ask. Thanks.
17 (Applause)
18 MS. DEVLIN: Thank you. Numbers 156,
19 163, 344, 367 and 368.
20 MS. CONRAD: I'm Geraldine Conrad. I'm
21 a public policy person since graduate school. I
22 do consulting and I call myself policy and

1 persuasion. And I hope I'm successful in
2 persuading you to regulate coal ash as hazardous
3 waste.
4 Coal is dirty, ash is dirty. Put them
5 together, you have double dirty. I find it
6 reprehensible that companies come before you and
7 tell you they cannot afford to do their duty, to
8 do what they are paid to do. They are supposed to
9 put out a product and do it cleanly and safely and
10 not do harm to other people. I find their
11 attitude reprehensible, immature, selfish, and
12 they want us to pay for their salaries, their
13 benefits, and let them take the success and leave
14 us with the coal ash.
15 And I think it's about time, again, that
16 we have government step up to the plate and do for
17 the entire country what individuals are not able
18 to do themselves. That in fact is the role of
19 government. We can't individually build bridges
20 or tunnels or pass out polio vaccine when there is
21 an epidemic. This is the responsibility of the
22 government. It's the responsibility of EPA and I

1 applaud you for taking this seriously. And I hope
2 you stick it to them. Thank you.
3 (Applause)
4 MS. DEVLIN: Thank you. Number 163?
5 MS. RICHARDSON: Thank you, EPA, for
6 having this hearing for us all today. And my name
7 is Erin Richardson. I am here from the University
8 of Missouri-Columbia as a concerned youth. I am
9 part of the campus' Beyond Coal Campaign sponsored
10 by the Sierra Club.
11 I'm here to say that the main concern
12 here is not the regurgitating of a bunch of facts
13 to you. I mean, I'm not an expert, I'm a
14 sociology major. I'm here to tell you that I'm
15 worried and concerned about the health of me, my
16 friends, my family, my planet and our future.
17 I don't know how we could have gone this
18 long without any sort of regulation on something
19 as knowingly dangerous and toxic as coal ash. We
20 are maybe not purposely causing harm to people,
21 but without action we are doing harm. Why would
22 we not just regulate something as dangerous as

1 coal ash when we can regulate things like being
2 too loud in our own home (sound pollution) or even
3 running around naked in the streets (indecent
4 exposure). Yes, this is humorous examples. They
5 do not actually cause any physical harm or death
6 like coal ash, yet they are regulated and coal ash
7 is not.
8 We need Subtitle C. We are asking you
9 to help us. We need you to protect all of us and
10 our future. Thank you.
11 (Applause)
12 MS. DEVLIN: Thank you. Number 344?
13 Thank you.
14 DR. CHAMBERLAIN: My name is Dr. Lora
15 Chamberlain and I am here in support of the
16 regulation of coal ash under Subtitle C. And I'm
17 a family physician here in Chicago and coal ash,
18 even a brief cursory discovery on the internet and
19 other periodicals, has been proven to be a
20 hazardous waste. The toxins include mercury, a
21 known neural toxin causing developmental defects
22 and decreased intellectual functioning; chromium,

1 the ingestion of which causes multiple
2 gastrointestinal cancers, the inhalation which
3 causes asthma or respiratory disease, lung cancer;
4 selenium causes neurological effects; lead causing
5 effects really on every system in the body;
6 arsenic, also almost every system in the body; and
7 on and on and on.
8 Now, I am here to talk to you about the
9 so-called beneficial uses of coal ash. I'm
10 really, really concerned. I was going to actually
11 testify about something else but I was in the
12 audience and I was listening to all of this talk
13 about putting coal ash or gypsum on our crops.
14 And so, I ran down to FedEx and I did a, you know,
15 research on what has been investigated with the
16 use of gypsums. And there has been very, very few
17 studies done on the post-application of gypsum. I
18 looked up one of your own reports, the
19 characterization of coal combustion residues from
20 electric utilities leaching and characterization
21 data, and even your own report shows that there
22 are vast toxicities, toxic levels with the use of

1 FGD gypsums. And I am really concerned that we're
2 not investigating this in a post- application
3 basis a little bit more.
4 Just an example on one issue, and that
5 is selenium was found to have, in some of your
6 studies, in some of your samples, was found to
7 have 16 times the hazard level to human health in
8 the gypsum samples. So, if gypsum is okay for our
9 crops and it is not toxic, I want to encourage
10 everyone to do what the doctor who testified in
11 the congressional, Dr. Donald McGraw, and that is
12 to put coal ash on your morning cereal. You don't
13 have to do it if you don't want to but, you know,
14 unless we study it, we really don't know the
15 effects of it.
16 (Applause)
17 DR. CHAMBERLAIN: Do some further study.
18 Thank you. And pass the Subtitle C. Thank you.
19 (Applause)
20 MS. DEVLIN: Thank you. Numbers 367 and
21 368, are you in the room? Okay. Number 159, 203,
22 and 369 please? Please come forward.

1 DR. SKVUKRUD: That was quick. I just
2 walked into the room and I was thinking I would be
3 able to listen to what folks had to say for a
4 while, but happy to have a chance to speak.
5 I'm Dr. Cindy Skvukrud. I'm the clean
6 water advocate for the Illinois Chapter of the
7 Sierra Club. And so, I work with folks throughout
8 Illinois who are concerned about the impacts of
9 coal ash on their communities. They want clean
10 water, they want clean streams, they want clean
11 groundwater.
12 So, as I'm sure you've probably heard
13 from many other Sierra Club members today that we
14 support the strong option Subtitle C. And I've
15 heard from my colleagues that were here earlier in
16 the day that there has been a lot of concerns
17 raised by folks who use coal combustion products
18 for what are called beneficial uses, and they were
19 worried that by classifying coal ash as hazardous
20 it would put a stigma on their beneficial use of
21 those materials.
22 I think people, you know, certainly as

1 you just heard, people are concerned about what
2 we're putting on our farm fields, what goes into
3 our walls. But I think people would feel
4 comfortable if those uses were required to have
5 good testing. So, I think that's the key thing is
6 if we're going to use these materials for
7 beneficial use, then we need to properly test
8 them.
9 And so, I wanted to just stress that I
10 know that the EPA has recently released some
11 recommendations for new improved testing methods
12 that better measure how coal combustion products
13 will potentially leach in the environment. So,
14 those that are tested at different pH's, it would
15 just better reflect and give people more
16 assurances that if something is going to be used
17 for "beneficial use" that truly the water will be
18 protected, people's home will be protected and
19 their health.
20 So, thank you for the chance to speak
21 and thank you for today.
22 (Applause)

MS. DEVLIN: Thank you. Number 159 please?

MS. STOJAN-RUCCOLO: Good evening. Thank you for holding this hearing today and for being here late into the evening to hear what the public has to say about this important issue. I am Erin Stojan-Ruccolo, senior policy associate with Fresh Energy in St. Paul, Minnesota.

Fresh Energy is a 20-year-old non-profit energy policy advocacy organization that works for adoption and implementation of clean energy policy on the state, regional and national levels. I am here today to urge you to adopt the rule to govern coal combustion residuals that clearly reflects the extreme potential for serious damage to human health and the environment from these wastes. I urge you to regulate coal combustion residues under Subtitle C of RCRA.

Perhaps more than 30 years ago when RCRA was adopted and implemented, it might have been okay to apply Subtitle D solid waste regulations to coal ash as an experiment until more was known,

1 and to see if a complete network of state
2 regulations and enforcement would have been
3 developed. It's too late for that.
4 We have another 30 years of knowledge
5 about the potential for harm from coal ash, about
6 how the present extremely scattered and seriously
7 incomplete patchwork of state regulations and
8 enforcement are letting us down across the
9 country, and about how to develop and implement
10 economically efficient waste regulation. In
11 addition, we have too much knowledge about large
12 and small disasters caused by poor coal ash
13 management.
14 Nothing prevented the states from
15 adopting adequate coal waste regulations over the
16 past 30 years. They simply did not do so, or at
17 least not enough of them did. Waiting more years
18 for states to step up while more impoundments fail
19 and hazardous and toxic substances continue to
20 leach or flood into rivers, lakes and groundwater
21 is untenable.
22 Every other industry as well as every

individual waste generator in this room and elsewhere in every household must manage its waste responsibly under a complete network of federal and state waste regulation. There is no reason to continue the unconscionable exception for coal ash which increasingly contains truly hazardous and toxic substances and to which best management practices are not uniformly applied.

If in fact reasonably responsible management of coal ash makes some coal fired power plants economically infeasible, those coal plants should be retired and probably should have been retired many years ago. We have better alternatives for generating electricity that do not threaten our air, land, water and our climate.

This is especially critical in the Midwest where we are so heavily reliant on coal to make electricity and generate huge amounts of coal ash usually near or even in the midst of waterways.

In addition, please carefully craft any beneficial use exceptions to ensure we stop

1 producing materials using coal ash from which
2 hazardous and toxic substances may leach into our
3 homes, schools, businesses and the natural
4 environment.
5 Please adopt coal combustion residue
6 regulations under Subtitle C of RCRA. Thank you
7 for your attention.
8 (Applause)
9 MS. DEVLIN: Thank you. Number 203
10 please?
11 MR. SZOLLOSI: Good evening. My name is
12 Frank Szollosi, I'm an energy policy analyst with
13 the National Wildlife Federation's Great Lakes
14 office in Ann Arbor, Michigan. On behalf of NWF,
15 our 47 state affiliates and our four million
16 members coast to coast, we thank you for the
17 opportunity to provide comments tonight. And we
18 urge you very strongly to determine that coal ash
19 should be classified as a special waste under
20 Subtitle C of the Resource Conservation and
21 Recovery Act (RCRA).
22 Although I work in Michigan, I live in

1 Toledo, Ohio. Ohio was one of 29 states that do
2 not require coal ash landfills and wet ponds to be
3 monitored. This is unacceptable. Despite the
4 litany of documented impacts of coal ash
5 contamination on human health, water and wildlife,
6 currently there is no meaningful federal
7 regulation of this waste. Although the industry
8 claims that state regulations are adequate and
9 coal ash disposal landfills and ponds are safe,
10 the reality is that every year hundreds of
11 thousands of gallons of toxic substances leak into
12 the ground and surface water and leach into the
13 soil.
14 No community in America should have its
15 drinking water threatened by arsenic, lead,
16 mercury or other toxic substances. Yet Ohio has
17 several high hazard potential coal ash storage
18 sites identified by the USEPA, threatening
19 wildlife and habitat along the Ohio River, and 695
20 families in a town called Brilliant, Ohio, 93
21 families in Cheshire, Ohio, and almost 4,000
22 people in Waterford. USEPA has identified threats

1 to communities from coal ash across the Midwest
2 including Pennsylvania, West Virginia, Kentucky,
3 Indiana and Illinois, totaling 67 across the
4 country. An independent study has identified 39
5 additional coal ash disposal sites in 21 states,
6 and documents leaks of toxic substances that raise
7 water pollution to levels in excess of federal
8 law.
9 Impacts of coal ash contamination on
10 communities, water and wildlife, and the failure
11 of states to adopt and implement effective
12 regulations underscores the need for the USEPA to
13 regulate coal ash under Subtitle C of RCRA. Under
14 Subtitle D, there would be little change in how
15 states handle these problems. Think of the
16 families in Brilliant. Think of the families in
17 Cheshire. They deserve the same safe drinking
18 water that we're all enjoying tonight here in
19 Chicago. Thank you very much.
20 (Applause)
21 MS. DEVLIN: Thank you. Before I call
22 the next speakers, we're going to have a

one-member change on the panel. Ms. Susan Mooney is leaving and is being replaced by Mr. Frank Behan, also from EPA. So, thank you.

With that, may I have speakers numbers 164, 167, 225, 370 and 371? 225? Thank you, please go ahead.

MR. JORDISON: Hello, everyone. My name is Graham Jordison, and I drove here from Ames, Iowa today. I'm really, really excited to see that the EPA is finally doing something about coal combustion waste.

I work for the Sierra Student Coalition in Iowa. And before I knew about the Sierra Student Coalition or the Beyond Coal Campaign, I actually knew about coal waste. I was involved with an environmental group on my campus and one of the members said, hey, Graham, you know there's a coal plant on campus? And I said yes, and she said to me, well, do you know where they're dumping the waste? And I said no, I'm not sure where they are dumping the waste.

Well, we did a little research and we

1 found out that in the 80's and 90's they were
2 dumping the waste in the Des Moines River. And we
3 actually met some people that lived right next to
4 the dump site and they weren't too happy with
5 that. But now, in the last decade, they are
6 actually dumping the coal waste in an unlined
7 quarry in Waterloo, Iowa. BMC Aggregates owns
8 that quarry. And it was unmonitored until a group
9 of students went outside of the library the first
10 day of school a year ago, and they held signs and
11 they actually forced the school to install a water
12 monitoring station near the site.
13 And the reason it wasn't being monitored
14 is because the DNR actually gave the schools a
15 beneficial use waiver. And apparently they were
16 doing this quite often. They're destroying the
17 ground, mining materials out of it and they're
18 filling it up with toxic coal ash. And we haven't
19 found out the results of that groundwater
20 monitoring station that they put in there. But
21 the schools decided to wait and they decided to
22 wait on the EPA to come out with regulations that

1 will force them to do something about that site.
2 This was a year and a half ago when we
3 met with them, and they finally, they said this to
4 me. But you know, on behalf of the students in
5 Iowa, for the health of the Iowans, we ask that
6 you do something as soon as possible because just
7 recently in the Des Moines register there were
8 three dumpsites that were labeled hazardous. And
9 again we have this dumpsite in Iowa, we don't know
10 what's going on there. We don't know if it's
11 leaching in the groundwater or not. And the DNR
12 is not regulating this stuff enough.
13 So, we're really happy that you're here
14 today. And we really hope you take, you know,
15 what's going on in Iowa into consideration and I
16 ask that you please consider Subtitle 3, you make
17 that a priority and you do something for Iowans.
18 So, thank you very much.
19 (Applause)
20 MS. DEVLIN: Thank you. Number 164?
21 164? 167?
22 MR. MILLER: Good evening. My name is

1 Nathan Miller and I work for the Midwest Regional
2 Office of the National Parks Conservation
3 Association. Thank you for the opportunity to
4 speak today.
5 Since 1919, the nonpartisan National
6 Parks Conservation Association (NPCA) has been the
7 leading voice of the American people in protecting
8 our national parks. Our mission is to protect and
9 enhance our national parks today for our children
10 and grandchildren tomorrow. With 325,000 members
11 and supporters, NPCA is the largest independent
12 membership based organization dedicated to
13 protecting the natural, cultural and historic
14 treasures of our national park system. NPCA's
15 members live, work and recreate in all the
16 national parks, including several that we are
17 concerned have been or will be negatively impacted
18 by coal combustion waste. We are likewise
19 concerned that most of the impacts of coal waste
20 have yet to be known or felt by national park
21 resources.
22 In the absence of strong federal

1 regulation, these natural resources, they suffer
2 irreparable damage. In order to avoid future harm
3 and mitigate existing harm to national park
4 resources, the disposal of coal combustion
5 residuals from electric utilities must be
6 regulated as special waste under Subtitle C of
7 RCRA. Regulating coal waste under Subtitle C will
8 provide the technological safeguards and
9 regulatory structure necessary to ensure much
10 needed transparency and industry and agency
11 accountability. Such regulation would include
12 requirements for disposal permits, groundwater
13 monitoring systems, liners and leachate collection
14 systems necessary to protect people and their
15 parks.
16 Without permits and monitoring systems,
17 we will not be able to identify those areas most
18 threatened by coal waste exposure, nor will we be
19 able to protect national park resources from
20 related risks. We are concerned that coal waste
21 sites adjacent to national parks across the
22 country have or will suffer impacts from coal

1 waste contamination. These include nearby Indiana
2 Dunes National Lakeshore, Congaree National Park
3 in South Carolina, and Lake Mead in Nevada. In
4 order for the National Park Service and advocacy
5 groups like ours to determine risk and options for
6 mitigation or avoidance of harm, this information
7 is critical.
8 In the absence of mandated, installed
9 liners and leachate collection systems, toxins in
10 coal waste have the ability to seep from landfills
11 and waste ponds, thereby contaminating or
12 threatening to contaminate rivers, lakes and
13 streams that fish and other wildlife depend on.
14 An example of this is selenium. This and other
15 toxins prevalent in coal combustion waste threaten
16 the health of aquatic and terrestrial animal,
17 plants and their ecosystems. These toxins make
18 fish, for example, unsafe for people to consume.
19 To further our mission, NPCA works to
20 strengthen and enforce laws that protect the
21 national pars and their wildlife, resources and
22 visitors. We are here today to urge EPA to

1 regulate coal combustion waste as special waste
2 under Subtitle C, and to issue a finalized rule as
3 soon as possible to protect our country's
4 treasured park resources and the people that enjoy
5 them. Thank you.
6 (Applause)
7 MS. DEVLIN: Thank you. Number 370?
8 MS. HARTNELL: Hello, and thank you very
9 much for this opportunity. You can tell by my
10 lovely T-shirt which direction I'm leaning on
11 this. I'm Emily Hartnell, member of Sierra Club,
12 citizen of Illinois, citizen of the United States,
13 citizen and child of the earth. I wholeheartedly
14 support Option C of the proposed regulations
15 regarding coal ash management.
16 I believe it is incumbent on each and
17 every one of us to care and enjoy all aspects of
18 the earth. It was and is a gift to us. It is not
19 a plaything. It supports, thrills, energizes and
20 calls upon us to relate responsibly.
21 It has power over us and we over it. We
22 need to have faith and fully employ our

1 considerable creativity and skills to develop and
2 employ alternatives to defacing and poisoning the
3 only home we have. Thank you.
4 (Applause)
5 MS. DEVLIN: Thank you. Number 371
6 please?
7 MS. SIPIORA: Hi, I'm Alexandra Sipiora
8 and I'm from El Paso, Texas. It was really
9 heavily polluted. So, my medical background
10 includes lead and mercury poisoning, so I think
11 eventually coal should be phased out all together.
12 (Applause)
13 MS. DEVLIN: Thank you. I'd like to ask
14 at this point, is there anybody in the room who
15 has a number below 170 that I have not called that
16 would like to speak? Okay.
17 Is there any -- okay, number 172 I am
18 told is in the room? Thank you.
19 MS. MARTY: Hi, my name is Elsa Marty
20 and I am a student at the University of
21 Chicago-Divinity School. I'm also a member of
22 Augustana and Lutheran Church of Hyde Park. And I

1 am seeking ordination in the Evangelical Lutheran
2 Church in America and I hope to be a pastor
3 someday.
4 I am here to testify in favor of
5 Subtitle C. I'm not a scientist but I can easily
6 understand the clear evidence that coal ash has
7 harmful effects on the health of our communities
8 and our environment. Thus, as a future faith
9 leader, I feel that it is my duty to speak out on
10 this issue and call us to reflect on our values
11 and our moral responsibilities.
12 I want to read a passage from scripture
13 from the prophet Ezekiel. "Is it not enough for
14 you to feed on the good pasture? Must you also
15 trample the rest of your pasture with your feet?
16 Is it not enough for you to drink clear water?
17 Must you also muddy the rest with your feet? Must
18 my flock feed on what you have trampled and drink
19 what you have muddled with your feet?" The
20 prophet Ezekiel here is talking about the powerful
21 few who ruin the earth for everyone else. And
22 coal companies are doing much more than just

1 muddying the water. They are dumping toxic waste
2 in sites where it can leach into our drinking
3 water and cause cancer, organ disease, respiratory
4 illnesses, and neurological and other
5 developmental problems, especially in children.
6 I speak as a Christian, but I know that
7 people of other religious traditions feel the
8 same. We have a responsibility, a moral
9 responsibility to put the interests of the most
10 vulnerable first. I encourage you to adopt
11 Subtitle C. Thank you.
12 (Applause)
13 MS. DEVLIN: Thank you. At this time, I
14 am going to ask, is there anyone in the room who
15 has a number whom I have not called who would like
16 to speak? Please, number 368, please come
17 forward. I'm sorry, sir, yes, you, sorry, number
18 187? Thank you, if you would come forward? 350,
19 okay, 3-5-0, please come forward. 188? Thank
20 you, if you would please come forward, that would
21 be great. 210, please come forward. That gives
22 us five. Thank you very much. Thank you, sir.

1 MR. JONES: Thank you. My name is Boise
2 Jones. I'm from Minneapolis, Minnesota. I am the
3 former chair of the Environmental Justice
4 Advocates of Minnesota. I serve on multiple
5 environmental policy commissions and was appointed
6 by the governor of the state to serve on the
7 Climate Change Advisory Group. I currently work
8 as a renewable energy specialist, and it is from
9 this perspective that I offer my comments today.
10 Firstly, I would like to express my
11 gratitude to the EPA for holding these hearings.
12 Only a few weeks ago I had the pleasure of meeting
13 Administrator Jackson in Minneapolis. It was
14 there that I heard her express her commitment to
15 Executive Order 12898, and my confidence in this
16 Agency has been restored.
17 It seems I was just here not long ago
18 testifying on the ills of mercury. At that time,
19 there was an obvious hostility the former
20 administration held for my and my cohorts' views.
21 I feel there is a window of opportunity to have
22 heard our concerns on coal ash. There are and

1 have been many people interestingly weighing in on
2 this topic. I fear there is very little I can say
3 relative to the science or the adverse social and
4 environmental impact that you have not already
5 heard.
6 Therefore, I will spend my remaining
7 time urging and imploring you to consider the
8 following. The EPA should adopt federally
9 enforceable regulations governing coal ash
10 disposal. Remembering Kingston, Tennessee and
11 Wilsonville, Alabama, try not to continue this
12 policy of catastrophic concern and only responding
13 when calamity befalls us. Barium, selenium,
14 arsenic, mercury, cadmium and other byproducts of
15 coal residue produce for poor people some very
16 serious problems, and we would like for you to be
17 mindful of that.
18 Some have asked the question, "How much
19 longer can we continue to have crisis management
20 determine our energy and environmental policies?"
21 Today, I, too, ask that question.
22 Coal ash impacts our water, soil and

1 food. Coal ash contaminated wet ponds should be
2 labeled hazardous waste and regulated by the EPA
3 accordingly. In short, I ask that the EPA adopt
4 Subtitle C designating coal ash as a hazardous
5 waste and proceed to reduce adverse impacts on our
6 community. There is an old Hebrew saying that
7 says "In the struggle of the two elephants, it is
8 the grass that suffers." We hope that between
9 these policies and harm, that you guys will make a
10 good decision. Thank you.
11 (Applause)
12 MS. DEVLIN: Thank you. I kind of lost
13 track of your number, so if you could come up and
14 tell me your number, it would be helpful.
15 MR. SWANSEN: I'm number 188.
16 MS. DEVLIN: Thank you.
17 MR. SWANSEN: My name is Christopher
18 Swansen. I'd really like to thank you for hosting
19 this, I guess comment period. I drove in from
20 Minneapolis also, seven hours away. I'm a junior
21 at the University of Minnesota, studying
22 Environmental Policy and Law. And again, I

1 really, really want to push the support for
2 Subtitle C. You've already seen how, if we leave
3 it to the states, how they react and how they
4 regulate coal ash. And I do not want that in the
5 future.
6 I'm also here on account of there's two
7 elderly people that sent us a letter and I'm here
8 to read it for them.
9 Dear Administrators: Thank you for
10 recognizing the serious problem posed by toxic
11 coal ash left from the burning of coal. I'd like
12 to share with you how We Energy expansion has
13 affected me, my wife and my family's life. We
14 Energy has been testing our water for years. In
15 August 2009, report from the DNR showed an
16 increase in some unsafe metals. Within one month,
17 We Energy has purchased two of our neighbors'
18 homes and one family relocated immediately. It
19 just so happened those were the very vocal
20 neighbors from the community.
21 Shortly thereafter, we spoke with the We
22 Energy's representative and were told they were

1 coming up with a plan for the remainder of the
2 homeowners but they were getting rid of the people
3 with children first. Some months later, we were
4 told that they were not purchasing homes any more
5 and they never bought out the two other
6 homeowners. Instead, we were given, free of
7 charge, a water cooler and free water until We
8 Energy could come up with a more sustainable
9 solution.
10 At that time, we were told of the
11 possibilities of getting city water. I'll come
12 back to that later. We were told not to drink our
13 well water or to use the water and that they would
14 provide water for everything from drinking and to
15 cooking. My wife and I are elderly and we both
16 have physical conditions. It is extremely
17 difficult for my wife and I to put the water up on
18 the unit. We opted for the three-gallon container
19 as it was the smallest one we could get, and still
20 it was a very hard struggle.
21 Our only concern is using our well water
22 to shower and brush our teeth. It is not safe to

1 drink, it is certainly not safe to clean ourselves
2 with. Also, we've had our own garden for many,
3 many years, and we no longer believe it is safe to
4 eat the vegetables and anything from it. We also
5 had a swimming pool for over 20 years but we had
6 it removed because we were afraid of the dangers
7 that it posed to us and our families.
8 Our home has depreciated in value, not
9 to mention we will be unable to sell it. Who
10 would buy a house that doesn't have water? From
11 the expansion, our house has a lot of dust on it.
12 I don't know if it's from burning coal ash,
13 construction dust or both, but there's a lot of
14 dust on it.
15 My grandchildren used to come over all
16 the time overnight. It was such a joy for me and
17 my wife. We are no longer comfortable having them
18 over. They may shower, they may brush their
19 teeth, they may use the water. They are not
20 toddlers but when they come to visit we have to
21 keep our eyes on them to make sure they don't open
22 the tap.

We Energy advised that they were looking into long-term solutions of having the homeowners go to the city water. Are you kidding me? We have never had a water bill. Now, not only do they want the homeowners to have plumbing installed but they want us to pay for the water that they screwed up. And it's all because they contaminated the water in the first place.

Please protect our family and our communities. Please support Subtitle C. Thank you very much.

(Applause)

MS. DEVLIN: Thank you. May I have the next speaker please?

MS. BLAINE: I'm number 210.

MS. DEVLIN: Thank you.

MS. BLAINE: My name is Sue Blaine, I'm a resident of River Forest, Illinois. I'm also a chemical engineer with over 30 years experience in various manufacturing industries. My mother and two of my sisters are currently the third and fourth generations of our family living on the

1 family farm, part of which was acquired by
2 AmerenUE in the 1960's to construct the power
3 plant in Labadie, Missouri.
4 I would encourage the EPA to adopt the
5 Subtitle C option regarding coal combustion
6 residues for several reasons. First, while I
7 strongly support recycling CCRs when they are
8 encapsulated, it is well documented that they pose
9 a threat to both air and water quality when in
10 powder or liquid form. Monitoring as proposed in
11 the Subtitle C option is essential to assure that
12 these materials do not contaminate the air we
13 breathe and the water we drink. Concentration
14 limits must be established with stiff penalties to
15 discourage noncompliance as a cost saving
16 strategy.
17 Second, specifying storage requirements
18 for CCRs will help assure that the solution
19 adopted today works both now and in the future.
20 We don't want to create an environmental problem
21 for future generations to clean up.
22 Managing CCRs effectively requires

capturing the materials as they are generated and maintaining control until they are finally either recycled or permanently stored. In keeping with this concept, I would suggest two restrictions.

One, after seeing the Labadie plant totally surrounded by water when the Missouri River flooded in 1993, I would strongly encourage prohibiting construction of landfills containing CCRs within a floodplain. Levees and berms can and do fail as observed in both Tennessee and New Orleans. Building a levee to create an island within a floodplain should not remove floodplain classification.

Two, transporting CCRs in either liquid or powder form should be regulated and minimized. Coal ash was illegally dumped on a Labadie neighbor's property, killing bushes and trees within the first year, and fish in adjacent ponds several years later. The Missouri Department of Conservation confirmed that the dumped material was coal ash and was also responsible for the environmental damage.

In closing, I would like to relate a conversation my mother had with one of Ameren's representatives at an open forum earlier this year regarding their proposed landfill at the Labadie plant in the floodplain. She asked if the Ameren representative would be willing to live with his family in the Labadie community given what he knew about the proposed landfill. His response, I don't think so. If Ameren's representatives do not feel safe living next door to the landfill they are creating, it is not safe and should not be allowed. Clearly, specific regulations are needed from the EPA to maximize responsible reuse while also ensuring that CCRs that are not recycled are safely disposed of and that people, plants and animals everywhere in the country are protected. Thank you very much.

(Applause)

MS. DEVLIN: Thank you.

MS. HAWKINS: Hi, thank you for coming and spending the time listening to us. My name is Savannah Hawkins and I'm voting for Subtitle C

1 because all the companies who came up here to
2 speak spoke only about short- term profits and
3 short-term employee employment. They are not
4 thinking seven generations down even about their
5 own children. I don't think it matters what my
6 affiliations are, I'm just a person.
7 My health is affected because I use
8 energy through mountaintop removal. So, it seems
9 to me, I've always been curious, why do all these
10 companies spend thousands and millions of dollars
11 fighting their customers instead of listening to
12 them and having them have a long life, full of
13 health, and then having more business than they'd
14 know what to do with. So, I'm confused. Why
15 would they do the opposite?
16 And I've been part of mountaintop
17 removal. The EPA is an agency to protect the
18 environment. How could 500 mountaintops be blown
19 off if you're protecting the environment? Those
20 are dead zones. Nothing will grow there, nothing
21 can live there. That water impacts me, it's in my
22 food, it's in my air, it impacts me. And now I

1 understand you've given a number of permits for
2 people to pack up after they destroyed Appalachia
3 and come and destroy Illinois into dead zones.
4 You're supposed to protect the resources
5 of every citizen in this country, not just a few
6 people who think about short-term profits. There
7 have been many, many scandals where business and
8 people have denied what was going on, and 30 or 40
9 years later admitted it. Why should we pay for
10 that? We shouldn't have to pay for that. These
11 people should be out of business. Thank you.
12 (Applause)
13 MS. DEVLIN: Thank you.
14 MR. HORVAT: I'm number 368.
15 MS. DEVLIN: Thank you.
16 MR. HORVAT: My name is Sabi Horvat and
17 I would like to offer my perspective on jobs
18 affected by Subtitle C or D. I'm a Chicago
19 resident and a US citizen. This May, I graduated
20 with a Master's degree in Engineering from a top
21 engineering school. But more importantly, I have
22 a respect for the environment, our environment.

1 I have a job but I'm still looking to
2 make my career. I would very much be excited to
3 work in renewable energies, but coal and other
4 fossil fuels are subsidized and the true costs are
5 hidden, making it unfairly cheaper. The
6 communities absorb the costs because companies do
7 not have to pay many of the environmental costs
8 themselves.
9 This is hindering me and many others
10 from this competitive field. I can tell you my
11 experience, that I have seen more dirty jobs
12 available to me than renewable ones. Passing
13 Subtitle C would not only be better for our
14 environment, but it would also help enable the
15 jobs that my generation wants and needs. Please
16 consider Subtitle C to level the business playing
17 field. Thank you.
18 (Applause)
19 MS. DEVLIN: Thank you. May I have
20 numbers 173, 174, 175 and 230 please? Okay. You
21 are -- okay.
22 MR. REYNOLDS: Thank you. I'm number

230.

MS. DEVLIN: That's fine, thank you.

MR. REYNOLDS: My name is Will Reynolds, I'm from Springfield, Illinois. I would like to talk a little bit about the legacy of the coal industry. I hear about the legacy of the coal industry in Illinois often in Central Illinois because there are so many so-called clean coal projects proposed there. And I think there is an existing clean coal project somewhere already built next to Santa's workshop, somewhere in Never Never Land. Of course, Santa had to move from the North Pole because it's melting.

Now, I hear these proponents talk about the legacy of coal in Illinois, to talk about jobs, but I often think of another part of coal's deep legacy in Illinois. I think about my great, great, great grandfather Michael Gleason who died in an Illinois coal mine explosion in 1893. And like many similar accidents, it could have been prevented with better safety regulations. And you know, back in that time, it was more common to

1 blame all accidents on the miners themselves
2 rather than the company taking responsibility for
3 it. And that still does happen today, especially
4 if you listen to Don Blakenship talk about what's
5 happening in West Virginia, there is always that
6 blame game going on.
7 Now, tens of thousands of more miners
8 would have to die in Illinois because strong
9 regulations were passed at the federal level. The
10 legacy of coal is needless death and illness
11 because the industry refused to accept
12 responsibility for their actions and state
13 government refused to act decisively. The legacy
14 of coal is weak regulation, watered down by
15 subservient politicians and state agencies filled
16 with industry insiders. And we see that legacy
17 continue to this day.
18 You'll hear arguments today and you have
19 heard arguments that this should be left up to the
20 states. And we've all heard states rights
21 arguments before, I think I know what that means
22 and I think I know how that will turn out. I know

1 that there are members of Congress who have signed
2 on to a congressional letter with falsehoods
3 questioning the need to have coal ash regulation.
4 Now, if I can't trust politicians in my state to
5 refute industry propaganda, then how can I trust
6 them to regulate coal ash? Do some states deserve
7 to be less safe because they're managed by
8 political cronies of King Coal?
9 I believe all people have an equal right
10 to clean air and water that doesn't give them
11 cancer. I urge the EPA to take a stand for strong
12 regulation that's national, that protects all
13 Americans equally. Thank you.
14 (Applause)
15 MS. DEVLIN: Thank you. Number 174
16 please?
17 MR. NEELY: Hello, my name is Todd
18 Neely. I'm President of Nano Improved. There is
19 a lot of coal ash, and recycling it or the stuff
20 that isn't, 50 percent, is disposed. Disposal has
21 to be done as hazardous waste.
22 There's four other things in the part of

1 the EPA ruling that I think have to be addressed.
2 You're by law prevented from a couple of them, you
3 have to get this close to regulating as possible.
4 One is the loose coal ash being dumped into
5 abandoned coal mines, that's very dangerous.
6 You're not allowed to stop that but you can stop
7 it at the gate to prevent the trucks from getting
8 in. That is very bad.
9 You are not taking extreme weather on
10 the surface impoundment dams. That was the
11 problem with TVA and the way they did the cleanup.
12 They put the people at risk. There was extreme
13 weather.
14 Number three is there's a lot of power
15 stations that are not addressed in the rule. One
16 is the TVA itself that caused the uproar right now
17 as well as small utilities, small producers. And
18 the other is that the surface impoundment dams
19 that under both things are allowed to stay too
20 long. Those are not being regulated. Those are
21 where the major problems are coming, especially
22 when you get to the 44 that are hazardous. Those

should be phased out immediately.

The other thing is that the accelerated particle technology that the utilities have tested and have shown that that can be used to turn the loose granular fly ash into new rock, that should be forced on them in the disposal because it locks the toxins and heavy metals into the new rock. Thank you.

(Applause)

MS. DEVLIN: Thank you. Number 175? Number 176?

MS. GOLDSTEIN: Hello, my name is Rachel Goldstein. I'm a resident of Chicago. I'm here to testify today as a private citizen because we already know that coal ash is very hazardous waste indeed. We need to act on this knowledge now to protect our communities and environment from further coal ash contamination.

I've been concerned about toxic contaminants in our environment for a long time, but I became a lot more concerned when I was diagnosed with a rare malignancy of the bone

1 marrow two months ago. An awful lot of people in
2 this country have cancer, and usually we don't
3 know why. Yet we are all taking part in a sort of
4 experiment in which we ingest or inhale a large
5 variety of toxins in our daily lives which
6 accumulate and combine in our bodies with possibly
7 deadly results. We don't really know. Do we want
8 to continue this experiment on our country's
9 children?
10 We have thousands of coal ash dumps and
11 we have seen that most current storage methods for
12 coal ash don't work too well. Unlined ponds and
13 landfills allow toxic metals such as arsenic,
14 mercury and selenium to leach from the ash into
15 groundwater supplies. They also contaminate
16 rivers and streams and make the fish poisonous to
17 eat. Dry ash in surface impoundments can become
18 airborne and people and animals can inhale it and
19 become ill that way. These unsafe disposal
20 practices must end.
21 I urge the EPA to regulate coal ash as a
22 special waste under Subtitle C of the Resource

1 Conservation and Recovery Act. Coal ash is
2 unquestionably hazardous for both human health and
3 wildlife. The toxins in coal ash have been linked
4 to cancer, neurological damage, respiratory
5 illness, reproductive problems and more. Failing
6 to designate coal ash as a special waste will
7 allow polluters to save time and money, but the
8 rest of us will pay with our health and possibly
9 with our lives.
10 The December 2008 disaster in Tennessee
11 along with the continuing leaching from dumpsites
12 have proved that we cannot simply trust the coal
13 industry to dispose of coal ash safely. We need
14 strong regulations with vigorous federal
15 enforcement to keep us safe and healthy. Thank
16 you.
17 (Applause)
18 MS. DEVLIN: Thank you. Sir, you're
19 number 173? Thank you. Sorry I skipped over you.
20 MR. KANFER: Oh, I thought I might have
21 been tardy.
22 MS. DEVLIN: Thank you.

1 MR. KANFER: Well, my name is Nahi
2 Kanfer, I'm from the State of Ohio. I usually say
3 the Great State of Ohio, but in this case I'm not
4 going to say the Great State of Ohio, and that's
5 because we have a problem in Ohio. We have a
6 problem of certain state agencies who have very
7 primitive ways of looking at the world. Sometimes
8 I think that if the USEPA were to promulgate a
9 rule prohibiting the combustion of kittens in
10 power plants, the Ohio EPA would submit comments
11 about why that was, you know, bad for industry.
12 For the record, I would support a rule prohibiting
13 the combustion of kittens in power plants.
14 But you know, there is an Aesop's fable
15 that I like a lot. I'm going to tell it very
16 briefly because I don't have that much time. But
17 you know, there was a man and a boy who went to
18 market to buy a donkey, an ass. And they walked
19 back from the market and the boy was riding on the
20 donkey and a man said, well, you know, why are you
21 making your old father walk? You know, you should
22 let him ride. So, the man got on the donkey and

1 the boy walked. Another passerby said, look at
2 that poor boy you're mistreating there, you know,
3 so both of them got off and they both got on the
4 donkey. And an animal rights activist came and
5 said, that poor donkey, you're overloading the
6 donkey. So, what ended up happening is the man
7 and the boy carried the ass over their heads.
8 And sometimes I think that this is what
9 the USEPA is trying to do with asses like the Ohio
10 EPA. They're trying to hold them over their heads
11 in some misguided perception, this is the way they
12 need to be treated, they need to be treated with
13 kid gloves. And it's because Ohio is a
14 politically important state. Ohio is a state
15 that's struggling right now with the economy.
16 But the fact is that the science is
17 clear on this issue. People in Ohio are living
18 near coal ash impoundments. They are living with
19 wells that have been impacted by coal ash
20 impoundments. And the Ohio EPA has no freaking
21 clue where the coal ash impoundments are, how bad
22 the contamination is, or even if they want to do

anything about it. And they're telling the USEPA, we're doing a good job, just leave it to the states, and if citizens are concerned, they can go find a lawyer and sue.

That's not really what the USEPA is about, right? You guys do a good job. There are coal plants in Ohio that are cleaning up their SOx emissions and their NOx emissions have been reduced 90 percent because of NSR cases that you guys have enforced, that you guys have litigated in Ohio, that the Ohio EPA has not paid attention to. And I want you guys protecting the citizens of Ohio from coal ash, not the Ohio EPA. Thanks.

(Applause)

MS. DEVLIN: Thank you. Is there anyone in the audience with a number below 180 that I haven't called? Okay. Is there anyone in the audience who has a number who would like to speak at this point? Could you please come forward? Thank you.

MS. KOLLES: Hello, my number is 353. Hello, my name is Samantha Kolles. I am from

1 Shore View, Minnesota. In Minnesota, we have 18
2 coal ash ponds. Two of these ponds have been
3 rated significantly hazardous. We know these
4 ponds are being polluted and polluting our
5 groundwater.
6 The time has come for stronger coal ash
7 regulations. Close to 1,000 Minnesotans have
8 signed postcards demanding stronger regulations on
9 coal and coal ash disposal. On behalf of all of
10 these residents, I urge you to protect our
11 communities and adopt enforceable safeguards for
12 toxic coal ash. Thank you.
13 (Applause)
14 MS. DEVLIN: Thank you.
15 MR. WROBEL: Hi, everyone. My name is
16 Nick Wrobel. I am a senior at Luther Colleges
17 here in Northern Iowa and I'm originally from
18 Minnesota.
19 I'm here supporting strong regulation
20 for coal ash under Subtitle C, but I was
21 approached earlier to deliver a testimony for a
22 very energetic and passionate elderly woman who is

1 unable to be here to deliver her own testimony.
2 So, I will be doing that for her. Her name is Jan
3 Nona and she is from the Town of Pines in Indiana
4 and she is the founder of People in Need of
5 Environmental Safety. And this is what she had to
6 say:
7 This is a dollar bill. Think about it.
8 I'm from the Town of Pines, Indiana. Many years
9 ago, our local utility spent a whole bunch of
10 these dollar bills dumping coal combustion waste
11 into a very large wetland. Whoops, bad move!
12 Leachate from the CCW landfill started
13 getting into our groundwater. So, the Indiana
14 Department of Environmental Management and the EPA
15 sent many of these dollar bills to find out, yep,
16 our groundwater was being contaminated. Another
17 whoops! It's getting into our private wells.
18 So, eventually, after spending many more
19 of these dollar bills looking around and testing,
20 the responsible party spent more of them to
21 provide municipal water to some of the residents.
22 Then we were declared an alternative superfund

1 site. This alternative designation meant the
2 responsible parties would pay for a feasibility
3 study and risk assessment. Well, since they were
4 paying so many of these dollar bills for this,
5 they could call the shots. The shots were not too
6 great, a lot of misinformation being supplied,
7 which we as a small grassroots organization
8 couldn't begin to understand.
9 You understand where I'm going here?
10 Hey, EPA, about five to seven million of these
11 dollar bills have been spent on one little town of
12 approximately 325 homes and 900 people. How many
13 more of these towns are out there? Almost weekly,
14 I'm getting information telling me of a new site
15 being located. It is being made known by finding
16 contaminated private wells.
17 Groundwater is being contaminated.
18 Ponds, rivers and lakes are being contaminated.
19 What is the EPA protecting? American citizens or
20 the coal and utility industries?
21 Unfortunately, coal combustion waste is
22 not a nice byproduct of the utility industry as

they would have you believe. Usually using the term beneficial use, the industry is getting rid of millions of tons of this CCW. Somewhere down the road, we are all going to be paying a hefty price for this stuff. Many of the utility and coal industry is spending so much money on lobbyists and public relations. Why not spend it to find a solution for the safe, responsible disposal of this CCW?

With the technology we have today, surely there must be something out there that will work. Let's find a responsible solution. Thank you.

(Applause)

MS. DEVLIN: Thank you.

MR. HAWES: Hi, my name is Philip Hawes and I'm from Minneapolis, Minnesota. I don't have a whole lot to say but I think because it's obvious that currently the states are not doing a good job of regulating coal ash, so I think it's unrealistic to expect them to do that going forward. And it's also unrealistic to expect us

1 people as private citizens to be able to enforce
2 this through lawsuits because people just simply
3 don't have the time or money to be able to do
4 that. And also, when you rely on that, then
5 you're waiting for a problem to happen before you
6 react to it instead of eliminating the problem
7 from the beginning. So, I think it's a bad idea
8 to rely on lawsuits to regulate this.
9 So, I think that Subtitle C is the best
10 option. And I think, you know, I'm not going to
11 talk about, you know, the problems with coal ash.
12 I think a lot of people have already talked about
13 that. And I think it's obvious, I mean when you
14 find out what's in coal ash, it's impossible to
15 think that that would be good for you. I mean, we
16 know scientifically that those things are bad for
17 you.
18 And the argument that many people seem
19 to be making is that it may hurt industry profits
20 and that sort of thing. And I think that you've
21 seen a lot of people here today that are directly
22 impacted by this in their lives and their health

1 is impacted and their safety. And there are
2 thousands of more people out there in the country
3 whose safety is at risk because of coal ash. And
4 it's the duty of the EPA and the federal
5 government to protect those people and give them a
6 safe environment to live in. And it's not the
7 EPA's job to make sure that companies are making
8 money, it's your job to protect people's health.
9 So, please pass the Subtitle C option.
10 Thank you.
11 (Applause)
12 MS. DEVLIN: Thank you. With that,
13 again, is there anyone in the room who has been
14 assigned a number who would like to speak? Thank
15 you. You are number 373? Thank you. Number 201,
16 please come -- that's fine, 199. Go ahead.
17 MR. DeRITA: Good evening. Thank you
18 for staying so late to hear so many of us speak.
19 I, like you, have been here since 9:00 in the
20 morning and I've heard almost every testimony all
21 in this room. And I would just like to say that
22 we've been keeping track and now there has been

1 over twice as many people speaking in favor of
2 Regulation C as D.
3 I'll add my vote to Regulation C because
4 I think it's the clear choice for the future of
5 America. I mean, I've been talking to people all
6 day from all over the country and so many stories
7 of suffering, and it's just, it's really hard to
8 imagine that this has taken so long to get this
9 much attention, that it took a tragedy like the
10 TVA disaster in December 2008 to get the EPA's
11 attention to this.
12 Coal ash is the second largest
13 industrial waste stream in the country, and these
14 companies are being paid for the waste. I spoke
15 to the man from Duke Energy earlier and he said
16 the difference between recycling coal ash and
17 throwing it away is spending $12 a ton and $15 a
18 ton. That's not a whole lot of money for these
19 companies who reap billions of dollars in profits
20 every year.
21 And honestly, they're running scared
22 because they know that they're going to end up

1 having to pay for their trash eventually. They
2 know that people are paying more attention to the
3 issues and the damages that this waste causes.
4 And honestly, I really don't think that it's so
5 unreasonable that people have to throw away what
6 they produce. I mean, I pay to throw out my trash
7 in San Francisco every week. It costs money to
8 throw stuff away. That's just how this works.
9 And the fact that it's taken, you know,
10 something like the TVA disaster to get the EPA's
11 attention to this I think says a lot about the
12 power of industry in our government. And I think
13 it's a big step forward for the EPA to really be
14 taking on this challenge because it is a
15 nationwide challenge. There's thousands of these
16 sites. These are some of the richest companies in
17 the company and they don't want to, you know, they
18 play hardball and they really don't want to be
19 told what to do. And I really, I'm very
20 encouraged by the steps that the EPA has taken to
21 address this issue and I hope that you'll
22 eventually make the right choice and support

1 Subtitle C and stronger regulations to get America
2 off coal. Thank you.
3 (Applause)
4 MS. DEVLIN: Thank you. Number 199?
5 I'm trying to read your number, sorry. Thank you,
6 sir.
7 MR. MULCAHY: Hi, my name is Dion
8 Mulcahy. I'm plant superintendent for Harsco
9 Minerals, a division of the Harsco Corporation. I
10 work at the Harsco's Gary boiler slag processing
11 facility. I've been working in boiler slag
12 processing for eight years now. The plant I
13 manage employs 22 workers and many of them have
14 been there for over 30 years. We produce mainly
15 abrasives and granules for roofing from boiler
16 slag. Boiler slag is one of the four listed coal
17 combustion byproducts included in the proposed
18 regulation.
19 I support Subtitle D. We take employee
20 health and safety very seriously. We participate
21 in industrial hygiene surveys. We conduct regular
22 safety meetings. And I'm not aware of any health

1 issues from any of my employees that work for us.
2 As I said earlier, some of them have been there
3 over 30 years. I have five that have been there
4 for 35 years plus. So, environmental permit
5 compliance is also an important part of the way we
6 conduct our business. In our many years of
7 operation, I do not know of any environmental
8 issues caused by the boiler slag process at the
9 facility I work at. Some facts demonstrate that
10 there is no reasonable basis for subjecting boiler
11 slag under Subtitle C. When extremely hot molten
12 coal ash is quenched with coal water, the coal ash
13 is vitrified and becomes a glassy solid known as
14 boiler slag.
15 When boiler slag is vitrified, it's very
16 durable, environmentally stable material that
17 effectively immobilizes its chemical constituents
18 by transforming any metals into inert metal
19 silicates. Historically, boiler slag has always
20 passed the TCLP testing and has never exhibited
21 any hazardous waste characteristics. I recognize
22 the need for proper and environmentally sound

1 standards for regulating the two percent of boiler
2 slag that is discarded rather than beneficially
3 reused. However, I feel that the associated
4 stigma that will be associated with Subtitle C
5 will adversely impact my business. Thank you for
6 your time.
7 MS. DEVLIN: Thank you. Number 201
8 please?
9 MR. CARR: Good evening. My name is
10 Galen Carr. I am employed by Harsco Minerals
11 formerly known as Reed Minerals. I'm a regional
12 manager over several facilities. I've been
13 working in the boiler slag processing field for 25
14 years. Many of the employees that I also manage
15 have been in the industry for 30 years or more.
16 We produce abrasive media and roofing granules for
17 shingles.
18 Boiler slag is one of the four listed
19 coal combustion byproducts included in the
20 proposed legislation. I am in support of
21 regulating boiler slag under RCRA Subtitle D.
22 Prior to becoming a regional manager, I

1 was the director of research and development and
2 quality control. An important part of this
3 position was to evaluate new sources of boiler
4 slag. In my entire experience evaluating new
5 boiler slag sources, I've never had any boiler
6 slag fail the TCLP test. And I'm not aware of any
7 groundwater issues associated with the
8 mismanagement of boiler slag.
9 Boiler slag makes up only two percent of
10 total coal combustion byproducts and over 90
11 percent of that is recycled into valuable,
12 reusable products. Boiler slag has been
13 beneficially used since the 1930's as an abrasive.
14 We are always looking for new sources of boiler
15 slag and looking for new opportunities to
16 beneficially reuse this wonderful inert product.
17 The markets for boiler slag are strong and
18 continue to grow. That will change if boiler slag
19 is regulated under Subpart C.
20 The beneficial use of boiler slag
21 reduces the carbon footprint of mining and
22 processing of virgin materials. Regulating boiler

slag destined for disposal as a special waste under Subtitle C would unfairly stigmatize beneficially reused boiler slag that I've been processing for many years. My customers will be confused and concerned about purchasing products that seem to be essentially the same as a Subtitle C waste. This confusion can slow down development of new recycling opportunities.

I recognize the need for proper environmentally sound standards for regulating the coal slag. Thank you for the opportunity and the time to comment.

MS. DEVLIN: Thank you. May I have number 182 and numbers 372, 374 and 375 please?

MS. SANCHEZ: I'm number 375. My name is Andrea Sanchez and I'm here to support Subtitle C. I'm actually originally from California and I count myself very lucky to come from a state that doesn't have any coal plants, doesn't have any coal ash ponds. But today I'm living in Minnesota and I hear all these stories about people getting sick and losing their homes to contamination.

1 I consider myself a very healthy person.
2 I try to eat the right foods. I stay away from
3 soda. But none of these habits are going to keep
4 me healthy if the water that I drink every single
5 day is contaminated.
6 Is it too much to ask for liners on
7 these coal ash ponds in order to protect not just
8 my health but the healthy of my family and of the
9 kids I'm going to have someday? Maybe if the coal
10 industry actually paid the health bills of all the
11 people that do get sick, they would rethink their
12 position on Subtitle D. Thank you very much.
13 (Applause)
14 MS. DEVLIN: Thank you. I'm going to
15 ask one more time, is there anyone in the room
16 with a number who would like to speak? Come
17 forward. And let's see, are you number 372?
18 MR. HARLAN-MARKS: 377.
19 MS. DEVLIN: 7, okay, fine. If you
20 could --
21 MR. HARLAN-MARKS: Excellent. Thank you
22 so much. Again, everyone has been saying it but

1 thank you so much for having this hearing and
2 taking the time to hear from people about this
3 really important issue.
4 My name is Tim Harlan-Marks. I as well
5 drove in today from Minneapolis, Minnesota and I'm
6 exhausted. I was just writing down notes for what
7 I was going to say but I appreciate having the
8 opportunity to speak so I'm just going to wing it.
9 So, we've heard a lot from many industry
10 representatives who are concerned about the
11 challenges of moving away from business as usual.
12 And I understand that making change is difficult.
13 It was difficult for me to decide to start biking
14 to work sometimes and to really institute that
15 change in my life. And so, I understand that.
16 But as we've heard from a lot of other people, the
17 facts are really clear and that coal ash is
18 dangerous and that it is irresponsible and we
19 can't continue to dispose of it, transport it and
20 handle it the way that we have been.
21 And what I've been thinking about a lot
22 recently is while these changes are difficult to

1 make, we have a history of recognizing when a
2 problem is created that we can't continue with
3 business as usual. We don't put lead in paint
4 anymore. We don't put asbestos in homes anymore.
5 Coca Cola used to have cocaine in it. It did,
6 right? But these choices are irresponsible and we
7 know better. And we also know better about toxic
8 coal ash. And so, I would urge you to support a
9 regulation on Subtitle C. Thank you.
10 (Applause)
11 MS. DEVLIN: Thank you. If there are no
12 other speakers in the audience, we will take about
13 a ten-minute break at this point. So, we will
14 reconvene, by my watch, at about 25 minutes to
15 9:00. Thank you.
16 (Whereupon, at 9:15 p.m., an
17 evening recess was taken.)
18
19
20
21
22

1 N I G H T S E S S I O N

2 (9:25 p.m.)

3 MS. DEVLIN: I'd like to get started

4 again. And we've had a couple of changes on the

5 panel, so I'd like to reintroduce the panel. I am

6 Betsy Devlin. Also on the panel with me, we have

7 Laurel Celeste, Alex Livnat and Jesse Miller. And

8 again, all of us are from EPA.

9 I'd like to begin by calling folks

10 number 187, 188, 192? Okay, you guys aren't here.

11 How about walk-in numbers 378, 379, 376? Come

12 forward please.

13 MS. MELTON: Is this close enough? Can

14 everyone hear me? All right. Good evening

15 everyone, and thank you for giving me the

16 opportunity to speak on behalf of myself and my

17 company who couldn't be here this evening.

18 My name is Caroline Melton and I work

19 for Rock Solid Stabilization and Reclamation.

20 We're a local contractor. We also travel across

21 the country.

22 I'm here today to talk about the

1 benefits and my experiences with fly ash. As a
2 stabilization contractor, we rely on its
3 availability. It is used in the stabilization
4 process designed by civil engineers for building
5 the sub- base for highways, roadways, parking
6 lots, building pads for municipalities, retail
7 centers, hospitals. It's also used for building
8 airport runways, inter-modal facilities and the
9 access roads to wind farms.
10 Some of the benefits are the cost
11 savings to our customers. We use it to dry down
12 soils to keep the construction projects going. It
13 is used in remediation projects for oil spills
14 much like the one that we have in the Romeoville
15 area. Because it is a byproduct, it is an
16 approved material for obtaining LEED credits.
17 Contractors like ourselves keep this byproduct
18 from ending up in landfills or worse.
19 I like to think that by utilizing this
20 byproduct, we are helping to stimulate the economy
21 by providing jobs and keeping the costs of these
22 construction projects down. If our company and

other companies like ourselves could not use fly ash, this would be detrimental to our livelihood, forcing layoffs, increasing the unemployment rate.

And then, how do I tell over 100 individuals that their years of services would no longer be needed? I hope I never have to do that. Thank you.

MS. DEVLIN: Thank you. Number 378 please? Thank you.

MS. TATRO: Hi, my name is Jessica Tatro and I drove over from Minnesota this morning very early. And I just wanted to show my support for Subtitle C. I have been working with folks across the State of Minnesota for the last year or so, working in the communities to address the pollution from coal. Overall, I think one of the most challenging parts, thanks to the work that the EPA has done, we now know a lot about the waste ponds in our communities, and in many cases especially at the larger public utilities, the landfills, but especially the smaller municipal plants. We really, folks in the communities don't

1 really know what is happening there.
2 And part of that, you know, even in
3 Minnesota we have a pretty good track record of
4 testing our waters and putting liners in most of
5 our landfills. And so, you know, I think we're
6 luckier than many states. But finding out the
7 information of which waterways are being tested or
8 what groundwater is being tested, what that
9 information is, is very hard to find for an
10 average citizen, and again, especially when you're
11 talking about the smaller municipal coal plants.
12 And that is something that I think would be easier
13 to find, easier and manageable if there were
14 federally enforceable standards because there
15 would have to be some sort of federal record of
16 what is happening. In particular, I think that
17 it's very important that we make sure to be
18 testing the groundwater around the storage
19 facilities to make sure that our communities are
20 protected.
21 So, thank so much for your time and have
22 a good night.

(Applause)

MS. DEVLIN: Thank you. Okay, I'm going to try again. Can I have numbers 187, 188, 192, 195, 199? Okay, 195 please.

MR. MEAD-LUCERO: Hi, my name is Jerry Mead-Lucero. I'm with the organization called PERRO, Pilsen Environmental Rights and Reform Organization. And we're from the Pilsen neighborhood in Chicago which is basically an immigrant neighborhood, a working class neighborhood of mostly Mexican immigrants. Like a lot of communities unfortunately around the States that are working class communities of color, we are impacted by a variety of pollution sources.

For years, we've been working on trying to clean up the Fisk and Crawford coal fired power plants in Chicago.

Fisk is located right in my neighborhood, right next to a school, right next to a park and so on. So, we've been working on this issue for a long time. Sad to say, we were not aware even of the coal ash issue up until

1 really this year. Even though we've been working
2 since 2003 on trying to clean up Fisk and
3 Crawford, we weren't even aware of the coal ash
4 problem until it was brought to our attention this
5 year. So, this has added a whole another level of
6 dimension to our concern.
7 Once we were made aware that there was
8 this issue of coal ash, one of the first questions
9 we had was how is it being dealt with or stored in
10 regards to Fisk and Crawford? We inquired with
11 the EPA about that and the only response we've
12 gotten so far is, well, you know, we know that
13 Crawford keeps them onsite, we know that it's a
14 transfer from those facilities somewhere but we
15 really don't know where it goes and that kind of
16 thing. So, that's not a very satisfactory answer
17 to know what's going on with this coal ash. So,
18 number one would be we'd like to have a better
19 handle of that.
20 But certainly we'd like the toughest
21 regulations possible on coal ash as well. Both
22 these plants are located in dense urban areas.

1 Obviously if it's being stored onsite, that's a
2 serious concern. Both plants are accessed by the
3 Chicago River. We know that's where they bring in
4 the coal supplies in Fisk plant and I'm assuming
5 that's probably where they're transferred out. In
6 some cases there's two which is a concern.
7 So, obviously for the health and safety
8 of the community residents, it's bad enough that
9 we have two plants that are located right next to
10 residential buildings, right next to schools,
11 right next to parks, but now to find out they also
12 may be storing large amounts of toxic waste
13 materials as well is a very big concern. So,
14 thank you.
15 (Applause)
16 MS. DEVLIN: Thank you. Numbers 379,
17 380, 381 and 382 please?
18 MS. IRVIN: Hi, I'm 379. My name is
19 Elizabeth Irvin. I'm originally from Cleveland,
20 Ohio and I am now located in Washington, DC with
21 the Sierra Club. And I have been sitting in the
22 corner tallying all the -- thank you again for

1 being here all day and then listening to all this
2 testimony.
3 I really don't think I can say much that
4 hasn't already been covered by someone here. But
5 I just wanted you to know you all have my support
6 for a strong coal ash regulation as -- Subtitle C.
7 You've heard from university people all day long,
8 students, doctors, engineers, business owners,
9 mothers, grandparents, all these people coming and
10 asking the EPA to do their job to regulate coal
11 ash. And every time someone from -- it's the same
12 arguments over and over again.
13 I think it's time that we've moved past
14 these desperate attempts to retain this polluting
15 status quo. It's time to move past coal.
16 (Applause)
17 MS. DEVLIN: Thank you. Number 380
18 please?
19 MS. ANCEL: Hi, my name is Sari Ancel
20 and I flew in from -- we really appreciate you
21 listening to all of our comments. And so, I just
22 graduated from college and I majored in

1 environmental engineering. And I took a class
2 last semester called Solving Hazardous Waste
3 Management and we had a day when -- from the EPA -
4 and healthcare to protect US citizens and our land
5 from pollution and hazardous materials. And I
6 really have a lot of faith in the organization.
7 And sitting here all day and hearing all these
8 people from different communities come in and tell
9 us how their families and all their friends are
10 dying from cancers and other lung diseases because
11 their water is polluted and their air is polluted
12 from coal ash really is hard to take.
13 And so, it's really apparent to me that
14 the EPA needs to create stronger regulations and
15 adopt Subtitle C so this doesn't happen anymore.
16 Thank you.
17 (Applause)
18 MS. DEVLIN: Thank you. Number 381
19 please?
20 MS. KORDICK: Hi, my name is Jenny
21 Kordick and I'm just going to be brief because I
22 know you've been here a long time. But I am

1 originally from St. Charles, Iowa and I just
2 graduated from College of Law and now I work for
3 the -- And one thing when I graduated there, I
4 wanted to work in the environmental field helping
5 to protect our lands and wildlife. And that's
6 something that I really prided myself on and
7 actually I think that's one thing the
8 Environmental Protection Agency should pride
9 themselves on too is the fact that they can make a
10 difference in this country. And I do have faith
11 in the organization, too, that they will.
12 So, I just hope that you'll make the
13 right decision and support strong regulation of
14 coal ash and adopt Subtitle C. Thank you.
15 (Applause)
16 MS. DEVLIN: Thank you. Number 382
17 please?
18 MR. WOJTASZEK: Hello, my name is Luke
19 Wojtaszek. Thank you again for being here so
20 long. I actually just came here not that long
21 ago, so I wasn't here for the whole day but I'm
22 sure it was a long day.

1 I just heard about this actually not
2 that long ago on the whole coal ash issue and
3 about all the things surrounding it. And I guess
4 to me it seems obvious that it should be
5 classified under Subtitle C because of the, you
6 know, mercury, arsenic, selenium, cadmium,
7 chromium and all that stuff that's in there. And
8 the disaster that happened in Tennessee, it's
9 pretty clear that it is poisonous to the water and
10 to the people around that have to live around it.
11 So, I'm not going to take too much of
12 your time. I do support Subtitle C and I hope you
13 guys make the right decision. Thank you.
14 (Applause)
15 MS. DEVLIN: Thank you very much. Okay.
16 Do I have any pre-registered speaker who has a
17 number of 200 or below? Do I have any
18 pre-registered speaker who has a number of 200 or
19 above who would like to speak? Do I have any
20 other speaker who has signed in who has a number
21 who would like to speak at this point?
22 All right. Okay.

1 AUDIENCE MEMBER: I've been driving
2 around out there trying to find a place to park
3 and about ten minutes ago -- she's not here and I
4 know she wanted to speak, and her family did want
5 to relay this but she's not able to speak, so at
6 this point I don't know what else to do.
7 MS. DEVLIN: We're here. If she gets
8 here, we will be here. So, we will hear her
9 testify. It's okay.
10 Well, again, at this moment since there
11 are no speakers, we will again take about a
12 ten-minute break.
13 AUDIENCE MEMBER: -- she's just coming
14 here.
15 MS. DEVLIN: Fine, thank you. Thank
16 you. Yes, please take your time.
17 (Slight pause)
18 MS. DEVLIN: While we're waiting, number
19 383 if you would like to speak?
20 MR. HARRIS: Hi, my name is Robert
21 Harris and I'm an architect here in Chicago. I
22 also live in the Pilsen neighborhood near the Fisk

coal plant. And I wasn't planning on speaking so I don't really have anything prepared other that I'd just like to say that I support the increased regulation of the waste proposed in Article C. And I'd also, I've been here and I've heard a couple of comments from industry supporters that claim that it will somehow negatively affect their ability to recycle materials and coal ash. As an architect, I recognize that it's a building material that is widely used, but reading through your own documentation here, I'd just like to point out that this wouldn't affect recycled materials, and as such their arguments seem baseless.

And I think that in terms of waste management, that's something that won't affect, won't cause hundreds of people to lose their jobs. It's just requiring higher standards of disposal and storage and landfills. And I don't see any argument against that.

And again, I support the article. Thank you.

1 (Applause)

2 MS. DEVLIN: Thank you very much.

3 MS. GOMEZ: Hi, my name is Rose Gomez

4 and I'm here in order to support Article C despite

5 the fact that earlier today someone broke into my

6 mother's house. And my mother right now, she was

7 left startled and they broke in and they got in

8 through the window. And so, now the window has to

9 be replaced and in the meantime during the night,

10 that's going to be some sort of issue because it's

11 accessible if somebody maybe wants to consider

12 coming back.

13 But despite that fact, I'm here because

14 this is important enough for me to be here,

15 specifically because I have an investment in the

16 future which is my son and, as everyone here,

17 we're here to say that the time to act is now. We

18 have the knowledge, we have the technology to move

19 forward and work towards using energy that is

20 more, in which these companies can be held

21 accountable for all the toxic wastes that they

22 create. And I'm here for that reason because I

1 would give all my worldly possessions if my son
2 can inherit clean air, clean water to drink.
3 There is nothing that is more important
4 than that. Why would you want to have anything
5 else to compensate knowing that you had the
6 ability to act today to make a difference in our
7 children's future? And unfortunately, we're
8 paying the cost now with all the tragedies that
9 are happening like the flooding and I want to say
10 that I of course support Article C. And I hope
11 that we do the right thing and not wait any
12 longer.
13 (Applause)
14 MS. DEVLIN: Thank you. Is number 383
15 in the room? That was, okay, good. Well, thank
16 you. Is there anyone else in the room right now
17 with a number who would like to speak?
18 Okay. With that, we will take about
19 another ten- minute break and resume about 9:10.
20 Thank you.
21 (Short recess)
22 MS. DEVLIN: Number 384? 206? 206 and

384 please. You can go to speak -- oh, I'm sorry.

MR. CARROLL: Good evening, and thank you for allowing me the opportunity to speak this evening. My name is Kevin Carroll and I live here in Chicago. Actually, what I'd like to speak about today is where I grew up in Western Pennsylvania. It's in the Allegheny Valley right next to about 20 miles outside of Pittsburgh. There was a power plant there when I was growing up in the 1960's. It was Duchesne Light Power Company in Cheswick, Pennsylvania. It's now run by Reliant Energy. And I just want to come and talk about the experiences I had as a child growing up there.

I can't say exactly when the year was but I was in grade school so it would have probably been in the early to mid 60's they began dumping coal ash pretty much right next door to where I grew up. I have a Google map here of my house and where the field is now. And what happened then was they used to take the coal ash and open their dump trucks and then haul it up the

1 hill. Just to give you an idea, the power plant
2 was sitting on the Allegheny River. We lived up
3 on top of the hill in the Allegheny River Valley.
4 They used to haul that ash up, again in open-bed
5 dump trucks. The dust was blown everywhere, and
6 they dumped that probably a couple of hundred
7 yards from my house and the houses of a lot of
8 people there.
9 For the record, I lived and my mother
10 still lives at, the address is 409 Marion Avenue,
11 it's in Springdale, Pennsylvania. Ironically,
12 that's the same street where Rachel Carson lived.
13 So, anyway, there was no regulation there. We
14 used to go out and play in that ash, in that coal
15 ash. We had no idea and I don't think anybody
16 ever said anything. And the only reason I think
17 they ever covered that up, I'm not really sure why
18 they did but eventually they put in, they covered
19 the coal ash. But when they used to dump it in
20 the field, it would just sit out there in the
21 open. We lived to the east of it and the west
22 wind would blow that dust over the whole

neighborhood.

I'm just arguing in favor of Title C because, you know, I'm sure nothing like that can happen again, but you know, if there's no strong regulations, really what is to prevent that from going on? So, thank you.

(Applause)

MS. DEVLIN: Thank you very much. Number 384 please?

MS. NGUYEN: Hi, my name is Tudeyen Nguyen, I live in Chicago and particularly in Pilsen. So, I know about the coal plants there and I can see it from my house and know the dangers of having a coal plant. But I did not know that coal ash is as dangerous as it is as well as toxic and hazardous. So, I'm here to say to support Title C and hope that EPA can do its job in protecting families, waterways, and mostly people. Thank you.

(Applause)

MS. DEVLIN: Thank you very much. Is there anyone in the audience with a speaker number

of 210 or below that hasn't spoken that would like to speak? Is there anyone in the audience who is registered who has a number who would like to speak at this moment? 221. Thank you.

MR. BOROWSKI: Hi, my name is Brian Borowski. I'm a technical service engineer for Lafarge North America. I'm very grateful for the opportunity to speak to you regarding the EPA proposal for disposal of coal combustion products.

I've been involved with beneficial reuse of coal combustion products for the past 25 years. During those 25 years, I have always viewed the use of these products like Portland cement to be beneficial to the environment. I view any proposal that would restrict or eliminate the beneficial use of coal combustion products as unwarranted and not in the best interest of the American public.

It is appropriate that the EPA hold one of their hearings for the proposal here in Chicago. Beginning in the 1940's, fly ash was shipped from the City of Chicago to Montana for

use in the production of the concrete use on the Hungry Horse Dam. The fly ash from Chicago was crucial to that project and was used based on research done by the Army Corps of Engineers. In the 1970's, fly ash played a key role in the development use of high strength concrete here in Chicago.

Unfortunately, the EPA proposal has put forward an option that will decimate the beneficial reuse of fly ash that has been a great benefit to the American public for more than 60 years. If coal combustion products are listed and regulated under Subtitle C of RCRA, I am convinced that the beneficial use of coal combustion products will cease. Let me give three reasons for my belief. 1. The Portland cement concrete industry does not have to use fly ash to make their products. There are alternatives. 2. Under Subtitle C, it will never be sufficiently clear when coal combustion products must be handled as hazardous waste and when beneficial reuse is not bound by Subtitle C requirements. 3.

1 EPA has, without any rational basis, suspended the
2 Coal Combustion Products Partnership, thereby
3 sending a powerful false and damaging signal to
4 the American public that coal combustion products
5 are hazardous.
6 The creation of a hazardous stigma
7 blanketing all beneficial uses of coal combustion
8 products is all too real and will decimate uses
9 that are demonstrably and verifiably beneficial to
10 the environment. Beneficial reuse of these
11 products reduces disposal by tens of millions of
12 tons every year. Fly ash used in the manufacture
13 of Portland cement reduces CO2 emissions by
14 millions of tons every year. Fly ash is also
15 crucial to the production of concrete that is
16 sustainable by increasing the life cycle of
17 concrete.
18 I hope that it is clear to the EPA that
19 listing and regulating coal combustion products
20 under Subtitle C would be damaging to our
21 environment, damaging to the beneficial reuse
22 industry, and damaging to the interests of the

American public. Thank you very much.

MS. DEVLIN: Thank you. Will numbers 385 and 386 come forward please? Yes, please, thank you.

MR. HEADINGTON: Hello, my number is 385. I am Vince Headington, a resident of Burr Ridge, Illinois. I live in the western suburbs. By profession I'm a healthcare attorney focusing on a lot of regulatory and transactional contract work. However, the town that I live in has been affected by air and water pollution from coal fired power plants which brings me to this hearing. And while I can't comment on the science of coal ash, I do know that it is dangerously toxic and I can't imagine how a substance that contains heavy metals can be permitted to affect our groundwater and our air.

I think that as with any kind of byproduct of burning coal, that it needs to be disposed of in a safe way and that there is a cost to everything. And I am sure that today you've heard about the costs of dealing with this from

1 the coal and electricity industry, and I am not
2 anti- industry, on the other hand industry has to
3 be responsible. And in my view, this cost that
4 I'm talking about, the cost to industry is one
5 thing and the cost that they would pass on to the
6 consumer is another thing, too.
7 On the other hand, who is going to pay
8 the cost? Who is going to pay the healthcare
9 costs? Who is going to pay the cost of the
10 employers who lose their employees to days off
11 because of illness? Who is going to pay for the
12 cost and the aggravation and the hurt to the
13 families that endure the illness that is caused by
14 this kind of pollution?
15 So, I really thank you for this
16 opportunity to give you my view of these things
17 and I hope that something can be done that is
18 beneficial to the public. Thank you.
19 MS. DEVLIN: Thank you. Number 386
20 please.
21 MS. HEADINGTON: My name is Maureen
22 Headington, Vince's wife. Most people know me as

1 Mo. Moving to the western suburbs was our dream
2 to our dream home that we had saved years for. I
3 had no idea that I should have checked EPA's score
4 card and put in the zip code before we moved.
5 What I set myself up for were a litany of sinus
6 infections that I discovered that my neighbors
7 suffered from as well. I became involved in
8 environmental issues.
9 I had retired from 20 years of teaching
10 in the Chicago public schools inner city and
11 decided something had to be done about it and
12 started working on a number of different projects
13 that I felt were of impact; toxic waste
14 incinerators, hospital incinerators, and the coal
15 fired power plants. I ended up on the board of
16 the Illinois Environmental Council and I created
17 an organization called the Stand Up Save Lives
18 Campaign of which I'm the president -- unpaid
19 volunteer work.
20 We are willing to pay for electricity
21 but not with our lives. It's been said that the
22 greatness of a nation is measured by how it treats

its most vulnerable. In 1996, EPA Administrator Carol Browner emphasized the heightened impact on children and seniors of air pollution and water pollution. This nation's children are being destined in record numbers to lives of disease, dismay and despair. That is deplorable.

These youngest members of our society cannot vote. They can only breathe the air and drink the water that is given them by you. What can you tell these youngest of victims? That they have the misfortune of having been born in a village, a city, a town, a county, a state, a country where their lives are less important than polluter profits?

I started in doing the Stand Up Save Lives Campaign of doing presentations before these very entities, towns, villages, county boards, and, in so doing, accumulated resolutions on behalf of their residents. And I am submitting for the record the list of resolutions that are seeking to end the toxins that are associated with coal fired power plants. The list includes

1 Addison, Antioch, Aurora, Barrington,
2 Bloomingdale, Bridgeview, Brookfield, Burbank,
3 Burr Ridge, Carpentersville, Cary, Chicago
4 Heights, Chicago Ridge, Cicero, Clarendon Hills,
5 Countryside, Darien, Deerfield, Des Plains,
6 Downers Grove, Elmhurst, Elmwood Park, Evanston,
7 Evergreen Park, Flossmoor, Forest Park, Glen
8 Ellyn, Glendale Heights, Glenview, Grayslake,
9 Hanover Park, Harvey, Harwood Heights, Hawthorn
10 Woods, Hickory Hills, Highland Park, Hinsdale,
11 Homewood, Hometown, Indian Head Park, Justice,
12 LaGrange -- whoops, we're halfway through the
13 list. Pardon?
14 We'll say and many others as well as
15 five county boards, three townships. May I
16 conclude by just saying that when will the public
17 stop taking a backseat to corporate greed in this
18 nation? This public is tired, sick and tired.
19 It's high time, past time to seek demand, receive
20 justice. Call it environmental justice because in
21 most cases that's precisely what it is, and
22 prohibit the highly toxic coal ash from being

disposed of in any way shape or form that will come in contact with our land and our water and our air. Thank you.

(Applause)

MS. DEVLIN: Thank you.

MS. HEADINGTON: I can submit this list. Nine years of my work.

MS. DEVLIN: Yes. Please do, yes. Thank you. Do we have numbers 213, 215, 216 and 217? Okay. Do I have any registered speaker with a number of under 220 whom I have not called? Do I have any person in the audience who would like to speak, who has a number and would like to speak? I'll just make you number, what number are we on? You're number 387. We'll take care of it afterwards. We'll work that out.

MR. ROSENSTEIN: My name is Bob Rosenstein. I'm a member of the Sierra Club and the Union of Concerned Scientists. I didn't come here planning to speak, but as I listen to this testimony I recalled that the Supreme Court gave the EPA a right to regulate coal on the grounds of

1 the greenhouse gas emissions CO2. As bad as this
2 coal ash is and I respect what our previous
3 speaker said, the release of the greenhouse gas
4 CO2 in the coal combustion is the worst I think
5 offender of all. And the Supreme Court gave the
6 EPA power to regulate coal under this.
7 We know that the climate crisis is
8 terribly serious. I don't need to necessarily
9 repeat what has been said by Jim Hansen or other
10 people. But I think civilization is in danger and
11 I think the EPA should, in a supplemental way, use
12 its authority by the Supreme Court to regulate
13 very stringently coal combustion on the grounds
14 that it really is decimating the resiliency of the
15 climate and will cause terrible havocs in the next
16 generation.
17 I have a son and I do not want to see
18 him and his generation have to grow up in an epic
19 of unstable climate. So, I think the EPA can help
20 us move forward by invoking its right to regulate
21 coal combustion and facilitate the necessary
22 transition in this country from a fossil fuel

1 economy to one predicated on carbon neutral
2 renewables. So, I think this can be a valuable
3 tool that can be used in conjunction with the
4 regulation of a particulate matter which has
5 certainly been documented to cause terrible
6 environmental impact. But the environmental
7 impact of the greenhouse gas emissions will be
8 even far more severe.
9 So, let's move forward to this
10 transition, which we need to, to renewables and
11 leave King Coal in the ground where it belongs.
12 (Applause)
13 MS. DEVLIN: Thank you very much. Do we
14 have any other registered speakers in the
15 audience?
16 Okay. With that, we will take another,
17 say 10, 15-minute break and we will reconvene at
18 that point. Thank you.
19 (Short recess)
20 MS. DEVLIN: Okay, good evening,
21 everyone. We'd like to get started. Again, will
22 number 238 come to the podium please?

1 MR. STUCKEY: Are you ready?
2 MS. DEVLIN: We are, thank you.
3 MR. STUCKEY: Good evening, everybody.
4 My name is Richard Stuckey. I'm a member of the
5 Sierra Club, Friends of the Earth and several
6 other environmental organizations. I strongly
7 what they said to you earlier on today, I was here
8 a long time ago and heard a lot of that. However,
9 I do want to point out that I'm here now strictly
10 as a private citizen on behalf of myself and my
11 family and the interest of my friends and
12 neighbors.
13 I commend the EPA very much indeed for
14 holding these important hearings, and admire the
15 seriousness with which you have approached the
16 subject as evidenced by the fact that you are
17 still here and it's almost midnight. I appreciate
18 that. And I appreciate also that I'm probably the
19 last thing standing between you and a good night's
20 sleep so I shall be as brief as possible.
21 You're considering two alternatives
22 regulating coal ash. One of these known as

1 Subtitle C: * designates coal ash as a "special
2 waste," a subset of hazardous waste * provides
3 appropriate regulations, as you know, that are
4 federally enforceable * requires phase out of
5 waste ponds * establishes minimum federal
6 regulations for coal ash disposal and allows
7 states to adopt them or develop ever more
8 stringent regulations * requires monitoring of
9 all existing coal ash dumps whether active or
10 inactive, to determine if the dumps are leaking *
11 requires permits for all coal ash dumps and lets
12 the host communities have a say in the siting and
13 operation of these disposal units * provides
14 cradle to grave management of coal ash.
15 The other alternative, known as Subtitle
16 D, has none of these protections. It has been
17 supported by every industry group you've heard
18 from today as far as I know. It's essentially a
19 continuation of the status quo or laissez faire.
20 It relies upon the goodwill and common sense of
21 industry to manage coal waste safely.
22 However, scientific evidence shows

1 beyond a shadow of doubt that coal waste is
2 extremely toxic. You heard today from
3 representatives of Pines, from Joliet and other
4 towns near to coal ash impoundments how their
5 lives and their health have been destroyed by the
6 toxicity of coal ash and its leachings.
7 And scientific evidence shows us that
8 coal ash contains many toxic substances that have
9 the potential to affect all the major organ
10 systems, damage physical health and development
11 and contribute to increased mortality. Recent
12 evidences show -- okay, I will get right to the
13 point.
14 If you do accept the fact that coal ash
15 is toxic, I believe you have no choice but to go
16 with the Subtitle C solution. And once you accept
17 that it is a toxic substance, then you have again
18 no choice but to enforce the other parts that go
19 with Subtitle C. They're absolutely essential
20 given that the stuff is toxic waste and I believe
21 we absolutely have to do that. Okay? Thank you
22 very much.

1 MS. DEVLIN: Thank you very much. Do we
2 have any other speakers in the room? Okay. With
3 that, we will take another about 15-minute break
4 or so. Thank you.
5 (Short recess)
6 MS. DEVLIN: We're resuming the public
7 hearing. And so, if you would please continue?
8 State your name for the court reporter.
9 MR. LIVELY: Sure. James Lively.
10 MS. DEVLIN: Okay, whenever you're
11 ready.
12 MR. LIVELY: Okay. As I said, my name
13 is James Lively and I have worked for the last 15
14 years for a firm which supplies various types of
15 reagents to stabilize a wide range of industrial
16 waste streams that contain heavy metals. And
17 because of that experience, I feel like I'm
18 speaking from a credible platform when it comes to
19 the mobility of inorganic constituents, namely,
20 heavy metals. And since the early 90's, our firm
21 has successfully stabilized over a million tons of
22 heavy metal waste.

1 The reason for my presence here today is
2 to provide probably a different perspective than
3 perhaps what you guys have heard from some of the
4 other stakeholders on the constituents found on
5 boiler slag specifically which is one type of CCP.
6 It's important to understand from my perspective
7 how boiler slag is produced. Boiler slag is a
8 byproduct of burning coal to produce energy where
9 the particulate that is produced encounters very
10 high temperatures. These elevated temperatures
11 create a molten coal ash matrix that is quenched
12 with water for cooling. This quenching transforms
13 the molten waste into a vitrified mass with
14 limited permeability.
15 Vitrification as a successful waste
16 treatment process for heavy metals is well
17 supported by EPA. EPA has published many
18 documents on this, two of which, "Vitrification
19 Technologies for Treatment of Hazardous Waste," as
20 well as SITE Emerging Technologies Project. These
21 documents chronicle the history of successful use
22 of this approach to immobilize heavy metals inside

1 a vitrified matrix, like we have for boiler slag.
2 Because of the general acceptance of
3 this EPA endorsed technology in immobilizing heavy
4 metals, it seems in my opinion wholly logical that
5 a waste which is vitrified, as is the case for
6 boiler slag, should not require onerous Subtitle C
7 regulation when it consistently complies with
8 mandated leaching tests. Further, if these
9 materials were classified as Subtitle C, the
10 materials would be shipped to a hazardous waste
11 treatment facility at a significant additional
12 cost where an encapsulation or chemical fixation
13 reagent would be added to the material to limit
14 the permeability of the boiler slag. This seems
15 to be redundant and unnecessary for the following
16 reasons: the metals that are present are "locked
17 up" in the vitrified matrix that has no or very
18 low permeability.
19 Additionally, regulating boiler slag
20 that is not destined for beneficial reuse under
21 Subtitle C will only create additional confusion.
22 Consumers will place a hazardous stigma of the

1 Subtitle C regulations for the portions of boiler
2 slag not reused on all of the CCP waste including
3 boiler slag used as an abrasive. This will create
4 a negative perception and potentially decrease the
5 safe, beneficial reuse of boiler slag as an
6 abrasive product. This would cost the power
7 industry, the painting industry, and the supply
8 industry significant sums of money as the negative
9 perception may cause more boiler slag not to be
10 reused which would force more boiler slag under
11 the unnecessary Subtitle C regulations.
12 As a result, I strongly encourage you to
13 consider regulating boiler slag destined for
14 disposal as Subtitle D and retain the exemption
15 for boiler slag that is destined for reuse. Thank
16 you.
17 MS. DEVLIN: Thank you very much.
18 That's it, thank you. If you want to leave your
19 written comments, you can leave them in the box.
20 Thank you for coming.
21 Seeing no more speakers, we will again
22 take a break.

1 (Short recess)

2 MR. KOHLER: My name is Jim Kohler with

3 the EPA ORCR. The date is September 16th,

4 Thursday, 2010. The time is 11:04. And as we

5 have no speakers, we are officially closing the

6 public hearing on the Coal Combustion Residual

7 Proposed Rulemaking. I now officially close this

8 hearing. Thank you and good night.

9 (Whereupon, at 11:04 p.m., the

10 PROCEEDINGS were adjourned)

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1 CERTIFICATE OF NOTARY PUBLIC

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

16 /s/Carleton J. Anderson, III

17

18

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