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

PUBLIC HEARING ON EPA'S PROPOSED RULE ON

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

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1 PARTICIPANTS:

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
6
ROB STACHOWIAK
7
FRANK NEY
8
CRAIG DUFFICY
9
Afternoon Session:
10
Laura Gentile, Chair
11 Chief of Communications Office
Office of Resource Conservation and Recovery
12
FRANK BEHAN
13
STEVE HOFFMAN
14
STEVE SOUDERS
15
Evening Session:
16
FRANK BEHAN, Chair
17
STEVE HOFFMAN
18
STEVE SOUDERS
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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,

4 everyone. I think we'd like to get started.

5 Good morning, and thank you for

6 attending today's public hearing on the

7 Environmental Protection Agency's proposed rule

8 regarding the regulation of coal combustion

9 residuals that are disposed of in landfills and

10 surface impoundments.

11 Before we begin, I'd like to thank

12 everyone for taking time out of their busy

13 schedules to address our proposed rule, and we

14 look forward to receiving everyone's comments. I

15 also realize that a number of you have traveled a

16 great distance today and we appreciate you being

17 here.

18 This is the seventh of eight public

19 hearings we're conducting. We have already

20 conducted hearings in Washington, DC; Denver,

21 Colorado; Dallas, Texas; Charlotte, North

22 Carolina; Chicago, Illinois; and Pittsburgh,

1 Pennsylvania. Our final hearing will be in
2 Knoxville, Tennessee, towards the end of October.
3 My name is Betsy Devlin, and I am the
4 Associate Director of the Materials Recovery and
5 Waste Management Division in EPA's office of
6 Resource Conservation and Recovery. I will be
7 chairing this morning's session of this hearing.
8 With me on the panel today are Rob
9 Stachowiak, Frank Ney and Craig Dufficy. All of
10 us are from EPA.
11 Before we begin the hearing, I'd like to
12 provide a brief description of the proposed rule
13 as well as some logistics on how we will conduct
14 today's hearing.
15 Coal combustion residuals, or CCRs, are
16 residues from the combustion of coal at electric
17 utilities and include fly ash, bottom ash, boiler
18 slag, and flue gas desulfurization materials.
19 Coal combustion residuals contain problematic
20 contaminants such as mercury, cadmium, selenium,
21 and arsenic.
22 In 2008, 136 million tons of coal

1 combustion residuals were generated by electric
2 utilities and independent power producers. Of
3 that total, approximately 46 million tons were
4 landfilled, 30 million tons were disposed of in
5 surface impoundments, 50 million tons were
6 beneficially used, and 11 million tons were used
7 in minefill operations.
8 EPA estimates that there are
9 approximately 300 landfills and more than 600
10 surface impoundments where coal combustion
11 residuals are disposed.
12 We have proposed to regulate coal
13 combustion residuals to ensure their safe
14 management when they are disposed in landfills and
15 surface impoundments. Without proper protection,
16 the contaminants in the residuals can leach into
17 groundwater and migrate to drinking water sources
18 posing public health concerns.
19 In addition, the structural failure of a
20 surface impoundment at the Tennessee Valley
21 Authority's plant in Kingston, Tennessee, in
22 December 2008, released more than 5 million cubic

1 yards of coal ash over approximately 300 acres of
2 land and contaminated portions of the Emory and
3 Clinch Rivers.
4 With this proposal, EPA has opened a
5 national dialogue by calling for public comment on
6 two different regulatory approaches available
7 under the Resource Conservation and Recovery Act
8 for addressing risks from the disposal of CCRs.
9 One option presented in our proposed
10 draws on the authorities available under Subtitle
11 C of RCRA. This would create a comprehensive
12 program of federally enforceable requirements for
13 waste management and disposal.
14 The other option is based on the
15 authorities of Subtitle D of RCRA, which gives the
16 EPA the authority to set national minimum federal
17 criteria for waste management facilities that must
18 be met under a schedule established in the
19 regulation. The regulation would be enforced
20 through citizen suits, and under this scenario
21 states qualify as citizens.
22 EPA decided to propose these two options

1 to encourage a robust dialogue on how to address
2 the human health concerns and structural integrity
3 issues associated with the disposal of coal
4 combustion residuals in landfills and surface
5 impoundments.
6 EPA wants to ensure that our ultimate
7 decision is based on the best available data and
8 made with the substantial input of all stake
9 holders. Therefore, we ask that you provide us
10 your comments not only at today's hearing but any
11 other comments and supporting information that you
12 want to provide us in writing.
13 I'd also like to say a few words about
14 the beneficial use of coal combustion residuals.
15 The proposed rule maintains the Bevill Exemption
16 for coal combustion residuals that are
17 beneficially used and, therefore, would not alter
18 the regulatory status of residuals when used in
19 this manner.
20 EPA continues to strongly support the
21 safe and protective beneficial use of CCRs.
22 However, the proposal also indicates that concerns

1 have been raised with some uses of coal combustion
2 residuals, particularly when used in an
3 unencapsulated form. Therefore, we have requested
4 comments, information and data on specific aspects
5 of beneficial use, particularly those activities
6 that deal with unencapsulated applications.
7 We also make clear in our proposal that
8 coal combustion residuals that are placed in sand
9 and gravel pits, quarries, and other large-scale
10 fill operations are not examples of beneficial
11 use. EPA views this placement as akin to disposal
12 and would regulate these sites as disposal sites
13 under either of the two regulatory options.
14 Now let me cover some logistics for the
15 comment portion of today's hearing. We'll --
16 we'll wor -- work this as follows. Speakers, if
17 you were -- if you pre-registered, you were given
18 a 15-minute time slot when you're scheduled to
19 give your 3 minutes of testimony. To guarantee
20 that slot, we've ask that you sign in 10 minutes
21 before your 15-minute slot, and please sign in at
22 our registration desk.

1 All speakers, those pre-registered or if
2 you walked in today, were given a number when you
3 signed in. And this is the order in which I will
4 call you to speak.
5 And I will call speakers to the front of
6 the room four or five at a time. And I'll ask
7 that when your numbers are called, you move to the
8 chairs that are on my right and sit there. And
9 then when I call your number individually, please
10 go to the microphone at the podium and state your
11 name and affiliation. And we may ask you to spell
12 your name for our court reporters who are
13 transcribing all the comments for the fi -- for
14 the official record.
15 Again, because there are many people
16 who've signed up to give testimony today, and to
17 be fair to everyone, testimony is limited to three
18 minutes. We will be using an electronic
19 timekeeping system, and we will also hold up cards
20 to indicate when your time is getting low. When
21 we hold up the first card, which is a green card,
22 it means you have two minutes left. When you hold

1 up the se -- when we hold up the second card, it's
2 a yellow card, you have one minute left. When the
3 third card is held up, it's orange, you have 30
4 seconds. When the red card is held up, you're out
5 of time, and we're going to ask you to conclude
6 your remarks right then. And remember, you can
7 provide -- if you don't finish, you can provide us
8 any written material, you can provide it to the
9 court reporter, and that will be entered into the
10 record just as if you had presented it orally.
11 We will not be answering questions today
12 on the proposal. However, from time to time a
13 member of the panel may ask one of you a question
14 to clarify your testimony.
15 If you have brought a written copy of
16 your testimony, we ask that you leave it in the
17 box in front of our court reporter's station. If
18 you are only submitting written comments today, if
19 you would please put them in a box -- in the box
20 by the registration desk. And if you have any
21 additional comments after today, please follow the
22 instructions on the yellow handout sheet for

1 submitting official comments to the docket, and
2 they need to be in by November 19th.
3 Again, our goal today is to ensure that
4 everyone who has come today to prevent (sic)
5 testimony is given an opportunity to do that. To
6 the extent allowable by time constraints, we will
7 do our best to accommodate all of you who have --
8 did not pre-register. We will also try to
9 accommodate people who have asked to switch their
10 times to speak earlier or to speak later.
11 Today's hearing is technically scheduled
12 to close at 9, but we will stay later to allow as
13 many people as possible to provide their
14 testimony.
15 If, for some reason, however, you
16 (laughs) -- time doesn't allow to you preve --
17 present your comments orally, there is the box at
18 the speak -- at the registration desk in the
19 lobby. You can provide a written statement; you
20 put your comments there. And again, these
21 statements will be collected, they will pu -- be
22 put into the record and considered just the same

1 as if you had made them orally.
2 If you have not -- if you would like to
3 speak but have not registered, please sign up at
4 the registration desk outside this room. And
5 during the hearing, if you have any questions or
6 concerns, if you would see our staff at the desk
7 they will be able to answer your questions or they
8 will be able to give us a note so we can address
9 your comments.
10 We're likely to take some brief breaks,
11 but we could eliminate or shorten them totally in
12 order to accommodate people. So -- so we will do
13 as -- our best on that.
14 Finally, if you have a cell phone or a
15 Blackberry, we're going to ask that you turn it
16 off and not just vibrate, off. Unfortunately, it
17 interferes with the audio feed, and -- and we need
18 to make sure our court reporters can -- can hear
19 everything clearly. And the -- so if you need to
20 use your phone or your Blackberry at any time
21 during the hearing, we'd just ask that you step
22 out and into the lobby out by the registration

1 desk; that'll be fine.

2 And we do ask for your patience today as

3 we proceed. We may make some minor adjustments to

4 this in order to get everybody in.

5 And, with that, I'm going to try to get

6 started. So can I have Numbers 1, 2, 3 and 4,

7 please.

8 MS. DEVLIN: And, Number 1, if you would

9 come to the podium.

10 Good morning. Yeah. Go -- please

11 start.

12 MR. ADAMS: Good morning. I'm Thomas

13 Adams. I'm the Executive Director of the American

14 Coal Ash Association of Aurora, Colorado. I thank

15 you for the opportunity to participate here today.

16 The EPA has emphatically expressed its

17 support for beneficial use of coal combustion

18 products as part of the rulemaking for disposal of

19 these materials, and the rational analysis of the

20 disposal supports this EPA position. The best way

21 to minimize disposal problems is to recycle these

22 materials in ways that are environmentally safe,

1 technically appropriate, commercially competitive,
2 and supportive of a more sustainable society. The
3 American Coal Ash Association agrees and stands
4 ready to work with the agency to increase the safe
5 beneficial use of CCPs.
6 However, the EPA suggests that
7 beneficial use will increase under a Subsi --
8 Subtitle C hazardous waste rule. While industry
9 has warned of the effects of the stigma of the
10 hazardous waste label for disposed CCP, the EPA
11 says markets will ignore that stigma. The EPA
12 also suggests that generators will be motivated to
13 invest more than they currently do when recycling
14 CCPs rather than sending the material to disposal.
15 Under this scenario, the ACAA and its members
16 should be ecstatic over a Subtitle C option and
17 providing full support to EPA's desire to use
18 Subtitle C. Sadly, the reality tells us that the
19 agency's predictive talents are lacking in this
20 matter.
21 CCPs com -- compete with other materials
22 in virtually all beneficial use markets. Users and

1 consumers have other choices. And competitive
2 material suppliers are already begun to use the
3 hazardous waste stigma as a marketing tool.
4 Some owners have backed away from
5 allowing CCP use as the cloud of EPA rulemaking
6 casts doubt on the safety of these materials.
7 Since they bear the brunt of potential litigation,
8 owners are taking a "better safe than sorry"
9 approach.
10 Utilities that are uncertain of it --
11 their liability exposure have considered how to
12 approach beneficial use going forward. Some have
13 attempted to download all liability on the small
14 businesses that manage and market CCPs, others
15 have considered retaining cut -- custody of all
16 CCP, sending 100% to disposal.
17 So we ask the question today: What if
18 you're wrong about beneficial use under a Subtitle
19 C rule? If you're wrong and markets reject
20 continued recycling of CCP and disposal increases
21 dramatically. For example, since the year 2000,
22 we'd have almost a half million tons of more CCP

1 disposed of with successful beneficial use.
2 If you're wrong, greenhouse gas
3 emissions go up, as -- as the use of fly ash in
4 Portland cement, concrete mixtures decreases.
5 Since 2000, 120 million tons of avoided GHG
6 emissions have been accomplished by the use of fly
7 ash in concrete.
8 If -- if you're wrong, jobs are affect,
9 as the beneficial use industry accounts for over
10 15,000 green jobs.
11 If you're wrong, the economy is
12 affected. According to the EPA, the CCP recycling
13 accounts for about $25 billion of e -- economic
14 activity a year. And while that may be a rounding
15 error in Washington, it's serious money out here.
16 It's taken several decades of hard work
17 to get to the 44% recycling rate of 2008. Is it
18 really worth jeopardizing one of the great
19 environmental success stories of recent history
20 just to get a Subtitle C rule. We tell you today
21 that Subtitle C will devastate the beneficial use
22 industry.

1 Thank you.

2 MS. DEVLIN: Thank you. Number 2,

3 please.

4 MR. RIEDINGER: Good morning. My name

5 is Dan Riedinger, R-i-e-d-i-n-g-e-r, of the Edison

6 Electric Institute in Washington, DC, and I'm

7 prede -- presenting testimony this morning on

8 behalf the Utility Solid Waste Activities Group,

9 or USWAG, an association of electric utilities and

10 trade associations.

11 As USWAG has testified the last six

12 hearings, the question for us is not whether to

13 regulate CCRs but how. We continue to believe,

14 after listening to all testimony, that the

15 Subtitle D Prime option, with appropriate

16 adjustments, is the best fast forward.

17 USWAG appreciates that there are major

18 differences of opinion regarding the rulemaking,

19 but we're concerned that unless EPA is able to

20 forge a consensus position, the question of

21 whether and how to regulate CCRs will become a

22 protracted battle in Congress and perhaps the

1 courts. USWAG continues to believe, however, that
2 a consensus position can be reached that meets the
3 fundamental objectives of EPA and the varying
4 stakeholders; that is, the development of
5 federally enforceable standards for CCRs that are
6 protective of human health and the environment.
7 As the EPA has pointed out, the
8 substantive standards between the Subtitle C and D
9 approaches are essentially identical. Both would
10 provide for the safe management of coal ash
11 through the use of liner systems, groundwater
12 monitoring and corrective action.
13 Despite the similarities between the two
14 options, opponents of Subtitle D are concerned
15 that the states will not vigorously enforce the
16 Subtitle D regulations, thus, they want EPA
17 enforcement authority.
18 Opponents of Subtitle C, including
19 USWAG, are concerned that subjecting CCRs to
20 hazardous waste regulation will result in
21 excessive regulation, drive up energy costs and
22 cripple beneficial use.

1 USWAG believes that there is a path
2 forward that would address the concerns of most of
3 the views reflected in this room, and most
4 importantly, will ensure the successful
5 implementation of a protective CCR regulatory
6 program in a timely manner. Specifically, we
7 continue to believe that EPA can develop federally
8 enforceable Subtitle D controls for CCRs under the
9 same authorities that it has used to develop
10 federally enforceable Subtitle D controls for
11 municipal and solid wastes. We believe that EPA
12 can use its authorities under the combination of
13 RCRA Sections 4010 and 4005 to direct the states
14 to establish Subtitle D controls and permit
15 requirements for CCR disposal facilities and to
16 step in and directly enforce those Subtitle D
17 regulations if the states fail to do so. This
18 approach also would be implemented on a much
19 quicker time schedule than would any Subtitle C
20 option. It makes no sense to risk the downsides
21 of Subtitle C when EPA can achieve essentially the
22 same results without those risks under federally

1 enforceable Subtitle D option.

2 This rulemaking is too important for EPA

3 not to get it right. Therefore, we urge the

4 agency to be creative in using its existing

5 authorities in Subtitle D to issue federally

6 enforceable Subtitle D rules for CCRs. Such a

7 result would be a win-win for all involved.

8 Thank you.

9 MS. DEVLIN: Thank you. Number 3,

10 please.

11 MR. DARST: Tim Darst, D-a-r-s-t,

12 Kentucky Interfaith Power & Light.

13 Good morning. You will hil -- hear a

14 lot of testimony today from a lot of different

15 people. They will make pleas for the status quo

16 and pleas for change. Their reasons will vary and

17 their bases for these reasons will vary as well.

18 I'm speaking to you today as the

19 Executive Director of Kentucky Interfaith Power &

20 Light on behalf of our 1200 members from

21 congregations from around the State of Kentucky.

22 Today I am speaking from a moral standpoint.

1 The majority of the people you will hear
2 today will be industry folks. They will speak of
3 jobs and the importance that coal is to our
4 economy. Many of them will be brought here by
5 their employers as a part of their workday to
6 testify for the industry.
7 By contrast, many of the people of faith
8 that I represent are not being paid by their
9 employers to come testify. They had to go to
10 work, and instead, they have sent me as their
11 representative.
12 Industry representatives will tell you
13 that we cannot afford to classify coal ash as a
14 hazardous waste under Subtitle C. But really, we
15 cannot afford not to. The true cost of coal ash
16 to our health and environment may never be known.
17 A recent EPA report found that unlimited (sic)
18 coal ash waste ponds pose a cancer risk 900 times
19 above what is defined as "acceptable" and remain
20 toxic for years. Subtitle C's common sense safety
21 standards will protect our health, our
22 communities, and the ecosystems on which we

1 depend, and it will hold polluters accountable.
2 Faith communities are often first
3 responders to help victims of environmental
4 disasters, like the one in Kingston, Tennessee.
5 We are now learning coal ash disasters can be bre
6 -- prevented with proper safety standards.
7 Prevention through responsible stewardship must be
8 our first priority. Care and responsibility for
9 the least of these among us is central to faith
10 traditions and has a direct connection to
11 environmental issues.
12 The impact of the environmental
13 degradation falls most heavily on the people of
14 our state that are least able to mitigate these
15 impacts, the poor and vulnerable populations.
16 Toxic coal ash has been silently
17 accumulating for 30 to 40 years in our
18 communities. The large industrial polluters have
19 known the dangers but they have led us to believe
20 that it is harmless as dirt. Adopting anything
21 other than Subtitle C will, in essence, be
22 entrusting our health and safety of our

1 communities to a deceptive industry. It would be
2 like trusting tobacco companies to make safe
3 cigarettes.
4 Please classify coal ash under Subtitle
5 C for the health and protection of the people of
6 Kentucky.
7 Thank you for your time.
8 (Applause)
9 MS. DEVLIN: Thank you. Number 4,
10 please.
11 MS. BELZ: My name is Rachel Belz,
12 B-e-l-z. I'm here today representing 80,000
13 members of Ohio Citizen Action, Ohio's largest
14 environmental organization.
15 I'm here to strongly urge you to adopt
16 the strictest possible standards for coal ash.
17 There's good reason that you'll hear that Subtitle
18 C is favored by most citizens and environmental
19 groups, including Ohio Citizen Action. It
20 classifies coal ash as a hazardous waste, it
21 requires operating permits, closes down dangerous
22 wetponds and contains minimum standards that are

1 federally enforceable. You may or may not be
2 familiar but the Ohio EPA is not exactly known for
3 enforcement. So in a state like Ohio Subtitle C
4 is something we -- we desperately need.
5 Of course, Subtitle D is favored by
6 industry. Basically, it's the status quo. It
7 would be absolutely inadequate for you to choose
8 Subtitle D. It categorizes coal ash as
9 non-hazardous and provides guidelines that are not
10 enforceable and completely voluntary.
11 I live in Cincinnati, Ohio. At least
12 15, probably more, of your -- the 44 U.S. EPAs
13 high hazard sites for coal ash are in my Ohio
14 River Valley. Five million people get our (sic)
15 drinking water from the Ohio River. And this
16 water could be contaminated if the ponds leak or
17 the manmade dams break. Not to mention the
18 breathing problems that result from the fly ash
19 coming off the miles long conveyor belts or dry ash
20 landfills like those in south east Ohio.
21 There are a number of things that you
22 may have missed in both of these proposals

1 however. Of course, you mentioned it doesn't even
2 begin to address the beneficial use or reuse
3 that's so prevalent in products like drywall,
4 bowling balls, cosmetics and even toothpaste. I
5 think that's disgusting. And how could this have
6 happened? Well, probably because it isn't
7 regulated. And anything that isn't regulated
8 seems like it takes off in this country.
9 I've included a short video that Ohio
10 Citizen Action produced in August 2010 called,
11 "Coal Ash in Ohio," with my testimony. It
12 highlights the many problems with coal ash in our
13 state and in the Ohio River Valley. It was
14 unbelievable to see these large coal ash landfills
15 and wet ponds from an aerial fly over we were
16 given by an organization called South Wings. We
17 attempted to see these landfills and ponds from
18 the ground, but they're hidden from the public and
19 we didn't want to trespass.
20 It's truly unbelievable to me that even
21 after the dev -- devastation at the TVA plant in
22 December 2008 that the U.S. EPA is just now

1 getting ready to propose regulations. These
2 regulations need to be strict; they need to be
3 enforceable; they need to start now.
4 And thank you for holding a hearing here
5 in Louisville.
6 (Applause)
7 MS. DEVLIN: Thank you. Can I have
8 Numbers 5, 6, 7 and 8, please.
9 MR. BURKE: Good morning. My name is
10 Dwayne Burke, and I'm the Director of
11 Environmental Affairs for Indianapolis Power &
12 Light.
13 IPL is an electric utility serving
14 Marion County, Indiana, and we have about 465,000
15 customers. More importantly, in 2009, about 99%
16 of our generation was coal-based. So we have a
17 strong interest in the development of fair and
18 equitable rules.
19 First, I'd like to point out that not
20 only am I representing IPL but also I'm the chair
21 of the Indiana Energy Association, so my comments
22 are reflective of those. Finally, we -- we are

1 also members of the Utility Solid Waste Activities
2 Group and the American Coal Ash Association. So
3 I'll just summarize some of the highlights that --
4 that they presented.
5 First, we strongly suppor -- we strongly
6 oppose Subtitle C regulation, rather, for -- for
7 four primary reasons. First is, additional costs
8 with no commensurate benefit. In our case we were
9 looking at several hundred millions of dollars to
10 close ash ponds, build new landfills, con --
11 consert -- convert existing activities from wet to
12 dry and install new water treatment facilities.
13 Those kind of activities. So we're looking at
14 several hundred million dollars for our customers.
15 Second is, we agree with the ACAA and
16 others that -- that there are several issues
17 related to beneficial use. I know you indicated
18 you'll be taking a closer look at that, and we
19 support that. There's the stigma and the product
20 liability you'll hear a lot about so I won't
21 repeat those -- those issues.
22 Thirdly, one end -- item that has not

1 been brought up, at least today, is, in Indiana,
2 for example, there is no hazardous waste landfill
3 space. We have one hazardous waste landfill in
4 the State of Indiana. There are great questions
5 whether you could site another one. And then
6 you're getting into the out of state hazardous
7 waste issue, which would be very problematic we
8 believe.
9 Fourth, another concern is that, we
10 believe there's been a long successful history of
11 regulation under the current regulation, starting
12 with the Bevill Amendment in 80 that the EPA has
13 looked at in 88, 93 and 2000. And you'll hear a
14 lot of comments from -- from both sides, whether
15 its environmentalists and -- and industry, as far
16 as the, you know, pros and cons those kinds of
17 things. But what I urge you to take a look at is
18 state regulatory agencies. To my knowledge, 48 of
19 50 have suggested Subtitle D or D Prime as the way
20 to go. The only two states that I'm aware of that
21 have recommended Subtitle C are California, which
22 has no coal, and I believe Iowa is the other

1 state.

2 We'll be submitting comments prior to

3 the November deadline as it relates to our -- what

4 we do support, which is Subtitle D Prime.

5 Thank you very much.

6 MS. DEVLIN: Thank you. Number 6,

7 please.

8 MR. WARD: My name is John Ward, and I

9 am Chairman of Citizens for Recycling First, an

10 organization of more than 1500 individuals who

11 believe the best solution for coal ash disposal

12 problems is to quit throwing coal ash away.

13 I have attended all of the EPA public

14 hearings on coal ash disposal so far and have

15 listened as many people have challenged you to get

16 tough with coal ash and inflict the most draconian

17 regulation possible.

18 Today, I would like to give you a

19 different challenge, the challenge to do the best

20 thing for the environment.

21 The proposed regulations we're talking

22 about today are under the authority of the

1 Resource Conservation and Recovery Act. The EPA
2 office conducting these hearings has "conservation
3 and recovery" in its name. Unfortunately, there
4 is little or no focus on conservation and recovery
5 in this regulatory proposal or by this
6 administration's EPA in general.
7 Previous EPAs under both Democrat and
8 Republican administrations have concluded that
9 coal ash does not warrant regulation as a
10 hazardous waste. Furthermore, EPAs under both
11 Democrat and Republican administrations previously
12 worked to put conservation and recovery first
13 through programs like Comprehensive Procurement
14 Guidelines and the Coal Combustion Products
15 Partnership, also known as the C2P2 program. All
16 of these efforts recognize that coal ash is a
17 valuable resource that can be recovered and used
18 rather than disposed in landfills and
19 impoundments, a handful of which have performed
20 inadequately and brought us here today.
21 EPA Administrator Lisa Jackson has
22 called for common sense coal ash disposal

1 regulations. Well, common sense says it's better
2 to safely use something instead of throwing it
3 away. Common sense says it's better to conserve
4 natural resources by using a recovered material
5 rather than mining or manufacturing new ones.
6 Common sense says conserving energy and reducing
7 greenhouse gas emissions by millions of tons each
8 year are environmental benefits worth protecting.
9 And common sense says people will not want to use
10 a material on their own property if it is
11 considered hazardous waste on the property of the
12 person who made it.
13 For those who want to saddle coal ash
14 with a hazardous waste label, here are some
15 inconvenient truths: Coal ash does not qualify as
16 a hazardous waste based on its toxicity and its
17 toxicity is similar to that of the materials it
18 replaces when it's recycled.
19 The landfill regu -- engineering
20 standards being proposed by EPA are essentially
21 the same under both EPA's hazardous and
22 non-hazardous approaches. So you're not going to

1 be giving the environment more protection with a
2 hazardous label.
3 Finally, EPA's non-hazardous proach --
4 approach can be implemented years sooner, getting
5 greater protection for our environment now instead
6 of later.
7 Common sense and the spirit of
8 conservation demand the Subtitle D non-hazardous
9 approach. It will improve coal ash disposal
10 standards faster and it will do it without re --
11 destroying recycling efforts with an unnecessary
12 hazardous stigma.
13 Thank you for the opportunity to
14 testify.
15 MS. DEVLIN: Thank you. Number 7,
16 please.
17 MR. KAZICH: My name is Bruce Kazich.
18 I'm the sales manager of Gibbco, Incorporated.
19 Gibbco is a small family-owned company
20 that was founded in 1964 by the late Ed Gibbons.
21 Mr. Gibbons was a recycling pioneer. He
22 established Gibbco to process boiler slag for

1 roofing granules -- roofing shingle granules and
2 blasting abrasives. He later expanded Gibbco's
3 recycling efforts by starting a plastics recycling
4 company and developed a portable machine for
5 grinding used tires into a reusable material.
6 Today Gibbco continues to follow our recycling
7 roots by beneficially using CCPs. We currently
8 employ seven people at our facility in Indiana.
9 We understand that a significant driver
10 in the proposed regulatory action was the failed
11 dike at TVA at Kingston. What we do not
12 understand is why a structural failure would
13 prompt the reconsideration for the waste
14 classification of coal ash.
15 Subtitle D clearly creates much needed
16 new landfill -- landfill and surface impoundment
17 regulations. These regulations should be tougher
18 but should not stigmatize the possible beneficial
19 use of CCPs.
20 And yes, the stigma is real. Our
21 customers have serious, legal liability concerns.
22 We speak with them on a weekly basis and they've

1 clearly stated they will stop the use of boiler
2 slag should CCPs be classified, in any way, as a
3 subtitle C waste. In our litigious society, they
4 are simply not willing to take the risk, despite
5 having successfully and safely use boiler slag for
6 decades.
7 Additionally, I have provided a copy of
8 my written testimony of an Internet advertising by
9 a supplier of an alternative material. Their
10 website features videos and links that clearly
11 attack boiler slag and CCPs. Many of the links
12 have, frankly, nothing to do with either boiler
13 slag or blasting abrasives. This is truly
14 fear-based advertising, attempting to further
15 stigmatize the beneficial use of CCPs.
16 Our employees have worked very hard to
17 create and maintain a thriving business des --
18 despite the current economic crisis our country is
19 facing. A Subtitle C designation will certainly
20 destroy that business. The immediate loss of our
21 existing customer base and the loss of our raw
22 material supply will not allow us to continue a

1 viable operation. Our seven employees will then
2 be unemployed, placing a serious financial
3 hardship on their families. That hardship will
4 also trickle down to our 20 suppliers in the form
5 of lost revenue.
6 The boiler slag that had been safely
7 recycled for decades will now be landfilled,
8 creating higher costs for utilities and therefore
9 higher energy costs for all citizens. Our
10 customers will replace boiler slag with naturally
11 mined minerals, utilizing more energy, including
12 fossil fuels, natural gas and electricity, further
13 increasing our carbon footprint.
14 We encourage EPA to develop a
15 performance-based federal program for CCPs under
16 RCRA D, which will ensure that disposal is safely
17 managed, while continuing to promote and expand
18 beneficial use.
19 Thank you.
20 MS. DEVLIN: Thank you. Number 8,
21 please.
22 MR. PUCKETT: My name is Paul Puckett.

1 I am here to speak today as a private citizen
2 regarding EPA's proposal to regulate coal
3 combustion residues, CCRs, published recently in
4 the Federal Register.
5 I'm a 20-year environmental engineer
6 with two graduate level degrees and I hold a
7 professional registration. I know a lot about the
8 fly ash, bottom ash, and flue gas desulfurization
9 products like gypsum that EPA is proposing to
10 regulate.
11 Ash and gypsum are benign materials with
12 characteristics that are similar to soil.
13 According to EPA publications, more than 99.5% of
14 coal ash is comprised of silicon, aluminum, iron,
15 calcium, magnesium, potassium, and sodium. These
16 compounds are found in the sand in which our
17 children play, the cans from which we drink, pots
18 and pans used to cook, chalk we used in school,
19 daily vitamins, and the salt we use for seasoning.
20 The concerned voice today is about the
21 traces of heavy metals that are present in ash and
22 gypsum. Everyone should understand that the mere

1 presence of heavy metals does not in itself pose a
2 threat to us or our families. These metals are
3 elements which occur naturally and are present in
4 foods that we eat.
5 EPA has proposed this regulation because
6 these metals -- because of these metals and
7 suggest that ash and gypsum are hazardous wastes.
8 This proposal contradicts the evaluations that EPA
9 published previously in reports to Congress in
10 which they concluded CCRs are rare -- CCRs rarely
11 have any characteristic of a hazardous waste.
12 Moreover, on September 24, 2010, EPA
13 provided another contradiction in a notice that it
14 intends to exclude ash generated by a large
15 chemical companies' incineration process from
16 hazardous waste regulations. EPA concluded that
17 the ash did not have hazardous constituents, was
18 not acutely toxic, and posed little threat of
19 bioaccumulation or migration.
20 The beneficial reuses of CCRs in
21 construction materials like wallboard, concrete --
22 wallboard and concrete, materials commonly used to

1 build homes and offices has previously been
2 promoted by EPA.
3 Additionally, EPA has funded
4 university-level research and presentation or
5 forums that promoted the use of CCRs as an
6 agricultural amendment through their C2P2 program.
7 To be specific, gypsum, and some types
8 of ash, can be placed on farm fields, resulting in
9 soil improvements, hardier vegetation, added crop
10 yields, and increases in pro -- and increases in
11 product shelf life. Other benefits include a
12 decreased use of fertilizers, increased drought
13 resistance, improved soil workability, and
14 diminished chemical runoff. These types of
15 applications were meticulously studied and
16 research determined that there were no significant
17 concerns associated with them.
18 In conclusion, I would like EP -- I
19 would like to -- I would suggest that EPA's
20 proposal to regulate coal combustion residues as
21 hazardous waste is not supported by their own
22 analytical data or research, and it conflicts with

1 common sense.
2 This proposal does not deserve the
3 support of the state governments, manufacturing
4 and construction, the utilities, or the people.
5 This proposed regulation should be withdrawn and a
6 more well-conceived regulatory proposal should be
7 developed that is consistent with the nature of
8 CCRs, a large volume, virtually no hazard resource
9 with many beneficial reuse possibilities.
10 Thank you.
11 MS. DEVLIN: Thank you. May I have
12 Numbers 10, 11, 12, 13, and 14, please.
13 MR. PEARCE: Hello. My name is Thomas
14 Pearce. And I want to thank you very much for
15 taking the time to hear our feelings and our
16 thoughts and the facts on -- on coal ash today.
17 I'm a Sierra Club organizer from -- with Beyond
18 Coal campaign.
19 I want to point out that I'm also a
20 lifelong resident of Jefferson County, and I spent
21 -- spent the first ten years of my life living
22 about two miles from the Can Run plant.

1 Coal ash is poisoning Kentucky's waters
2 and streams. Coal ash is leaking into the Ohio
3 River. It's in our groundwater. It's leaking
4 mercury, selenium, arsenic and lead. Those are
5 proven facts, if you'd refer to the Sierra Club's
6 Slow Motion Spill Report and some of the EPA's own
7 recommendations that have found that the sites
8 here in Jefferson County are ha -- high hazardous
9 sites. It's destroying the health of men, women
10 and children of our communities.
11 Kentucky will never ro -- regulate coal
12 ash. It will never happen. We need you to
13 regulate coal ash. Nothing is going to save our
14 communities from coal ash but federal oversight.
15 It's the only way. Kentucky has never regulated
16 coal ash and it never will.
17 Schedule C does -- I mean, proposal C
18 does not affect beneficial reuse. And we already
19 know that. So I don't know why it keeps getting
20 hammered and hammered over again. I knock doors
21 (sic) every day and work with communities that are
22 besieged and buried in coal ash.

1 I think of Mr. Cunningham, who's a
2 45-year-old man, who lives across the street from
3 the Cane Run containment, who has a pacemaker at
4 the age of 45, who has the beginnings of pulmonary
5 fibrosis. The coal ash containment is 50 yards
6 from his house. The berm is 50 yards from this
7 house. And as of two weeks ago, the coal ash was
8 20 feet in the air towering above the berm. With
9 no rain, high winds, how can we say that's -- that
10 is beneficial or good for his family.
11 A lot of people -- last week our mayor
12 had replied to a resident, "Maybe you should sell
13 your home. Maybe you should get out."
14 Nobody will buy their homes. The values
15 of their homes have gone through the floor, way
16 more than the rest of the general population. So
17 they can't move. So is LG&E going to buy their
18 homes?
19 And lastly, our entire community needs
20 clean water.
21 Thank you very much.
22 MS. DEVLIN: Thank you.

1 (Applause)

2 MS. DEVLIN: Number 11, please.

3 MR. WALLACE: My name is Craig Wallace.

4 I'm a fly ash marketer. I'd like to thank the EPA

5 for this forum.

6 Both options presented are essentially

7 the same regulatory approaches for coal ash

8 disposal. Both options are designed to improve

9 and federally standardize landfill practices to

10 protect the public and our environment. Neither

11 approach, C or D, is business as usual. Both

12 options dramatically reduce public risk as

13 compared to the status quo.

14 Personally, I'm glad the EPA is out --

15 looking out for my safety. However, I do have a

16 problem labeling a material that reduces our

17 demand for energy intensive cement, reduces

18 greenhouse gases, improves concrete

19 infrastructures and reduces concrete consumer

20 costs as a hazardous material.

21 The toxicity of coal ash does not meet

22 EPA's defined requirements for hazardous

1 materials. Coal ash is an industrial waste and it
2 should remain so.
3 We've heard today, and we're going to
4 continue to hear, that coal ash is a toxic
5 hazardous material. The reason we're hearing this
6 is because coal ash is already stigmatized.
7 Putting emotions aside and looking at the facts,
8 the term "toxic hazardous waste" used in
9 conjunction with coal ash is a misnomer.
10 Coal is not going away anytime soon.
11 Population growth is increasing our demand for
12 affordable energy. So the best thing to do is to
13 safely recycle as much coal ash as possible until
14 renewable energies are competitive in a free
15 market.
16 Subtitle D allows us to continue to
17 promote coal ash beneficial use. EPA support for
18 coal ash recycling has been invaluable in changing
19 people's skepticisms and perceptions. It is
20 disheartening to see the EPA and other
21 knowledgeable people who know the truth about coal
22 ash toxicity push Subtitle C at great risks to

1 future coal ash beneficial uses.
2 The goal for most in this room is to
3 improve coal ash disposal methods, to improve our
4 public safety and protect our environment. Let's
5 fix the problem without destroying an industry
6 that offers numerous benefits to society, and most
7 of all keeps coal ash from being disposed of in a
8 landfill in the first place. Subtitle D is the
9 right choice for the environment.
10 Thank you.
11 MS. DEVLIN: Thank you. Number 12,
12 please.
13 MS. MANN: Thank you for the opportunity
14 to comment. My name is Robin Mann. I live in
15 Rosemont, Pennsylvania. I serve as President of
16 the Board of Directors of the Sierra Club.
17 I am attending this hearing in
18 Louisville in -- in order to hear firsthand from
19 our members and others in their communities about
20 the risks and impacts imposed on their health and
21 the environment by the reckless handling of toxic
22 coal combustion waste and to show solidarity with

1 their demands on EPA to fulfill, at long last, its
2 obligation to protect public health and the
3 environment by properly regulating toxic coal
4 combustion waste.
5 Only one of the two proposed options
6 will meet EPA's obligation; that is, recognizing
7 coal combustion waste for what it is, hazardous
8 waste; and requiring that its disposal in
9 landfills and surface impoundments be regulated
10 effectively, under RCRA Subtitle C.
11 Three fundamental considerations should
12 guide EPA in reaching its decision on the proper
13 regulatory course. First, there is more than
14 sufficient evidence of damage, potential damage
15 and risks to public health and the environment
16 resulting from current disposal practices.
17 Secondly, state-level regulation has failed to
18 ensure adequate protection of public health and
19 the environment. And third, the risks to public
20 health and the environment are growing.
21 As to the first point, the catastrophic
22 spill in Kingston may have been what prompted the

1 EPA to act but the extent of the problem goes far
2 beyond the risks of additional failures of the
3 hundreds of surface impoundments across the
4 country. EPA's data, supplementary expert-
5 generation -- generated data, indicate that
6 groundwater contamination by arsenic, lead and
7 other toxic metals leaching from coal combustion
8 waste disposal sites and fugitive releases
9 represent widespread risks to the public health
10 and the environment.
11 Secondly, EPA's approach, to date,
12 relying on states to eff -- effectively oversee,
13 manage and monitor wa -- the waste has failed.
14 Kentucky is a prime example, as demonstrated in
15 the Sierra Club Kentucky Waterways Alliance and
16 Global Environmental report.
17 The Kentucky Division of Waste
18 Management has not only failed to require
19 sufficient controls on coal combustion waste
20 disposal to prevent groundwater contamination but
21 has actually reduced its monitoring of our -- of
22 the contamination as it has mounted. What is

1 needed is a federal floor of protection, federally
2 enforced.
3 Thirdly, the problem is worsening, as
4 the volume of toxic ash accumulates in landfills
5 and ponds that are leaking, while new and expanded
6 disposal sites are being approved without ess --
7 without essential controls.
8 The people of Kentucky, my home state of
9 Pennsylvania and in communities all across the
10 country deserve to be protected from being
11 poisoned and having their vir -- environment
12 spoiled by toxic coal combustion waste. EPA must
13 choose the proper course to regulate coal
14 combustion waste as hazardous, and subject to
15 enforceable provisions under RCRA Subtitle C.
16 Thank you.
17 (Applause)
18 MS. DEVLIN: Thank you. Number 13,
19 please.
20 MR. ADAMS: My name is Mike Adams and
21 I'm Senior Vice President for Headwaters
22 Resources, the largest coal ash marketer in the

1 United States.

2 The premise of my talk is that a

3 Subtitle C ruling will create a stigma that is

4 real, and Subtitle C will eliminate recycling of

5 coal ash.

6 At these public hearings, the EPA has

7 heard from a -- from hundreds of people who have

8 -- are actively involved in the recycling of coal

9 ash to produce significant environmental benefits,

10 including over 15 million tons of annual

11 reductions of greenhouse gas emissions. These

12 people include producers, marketers and users of

13 coal ash, and they have unanimously testified that

14 designating coal ash as hazardous waste, when

15 destined for disposal, will create a stigma that

16 ruins recycling efforts in this country and

17 abroad.

18 A handful of witnesses, none of them

19 actually involved in recycling coal ash, has

20 stated that stigma is not real. They have said

21 that other hazardous materials get recycled and

22 that the higher costs of disposal that come with

1 the hazardous designation will incentivize people
2 to recycle more.
3 Today I would like to point out why
4 these -- those positions are just plain wrong.
5 First of all, examples of other hazardous
6 materials that get recycled are not comparable to
7 coal ash. Most examples ci -- cited by stigma
8 deniers are of materials that get reprocessed
9 before they are reused. Coal ash is not recy --
10 processed before it is recycled and is
11 mechanically and chemically identical to -- to
12 coal ash that is disposed. This opens the door
13 wide to litigation that will ask, "If it's
14 hazardous over there, why is it not hazardous over
15 here?"
16 As -- as example of this, I am aware of
17 a company that is being sued -- ironically this
18 suit was curiously initiated after the Kingston
19 incident -- by an employee over an illness that he
20 claims was caused by CCPs, even though there is no
21 evidence whatsoever that CCPs have caused this
22 illness. In fact, the employee's past lifestyle

1 chow -- choices, including tobacco, have a direct
2 link 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 pay day, will bring
6 forth suit after suit hoping for the pot at the
7 end of the rainbow.
8 Furthermore, most examples cited by
9 stigma deniers are of materials that are reused by
10 the very industries that produced them. Coal ash
11 is wildly (sic) dispersed to literally thousands
12 of locations in every community and is placed in
13 products that come in direct contact with everyday
14 citizens.
15 Finally, many examples cited by stigma
16 deniers are of materials that do not compete with
17 alternative products. Your gasoline-fueled car
18 cannot operate without gasoline. Concrete and
19 other products can be made without coal ash.
20 EPA has already heard testimony that
21 some manufacturers of competitive products are
22 already using this -- the prospect of a hazardous

1 waste designation to sow fa -- sow fear among coal
2 ash users.
3 Therefore, I urge the EPA to rule in
4 favor of Sub -- Subtitle D so as not ruin the most
5 successful recycling program in the United States.
6 (Applause)
7 MS. DEVLIN: Thank you. Number 14,
8 please.
9 MR. GRUBER: Hi. I'm Doug Gruber.
10 Interesting in being at these meetings because I
11 consider myself an environmentalist.
12 My wife and I have been lifelong members
13 of the Audubon Society, the Cousteau Society, and
14 Nature Conservancy. In our personal life, we love
15 birdwatching; we love nature; we spend our time
16 boating and enjoying the ocean life where we live
17 on the coast.
18 It's amazing to come to these meetings and
19 see the -- the opposing sides of this event.
20 You know, my wife's a science teacher,
21 and I work in the coal ash marketing business.
22 And the reason I enjoy working in that business

1 is because I'm continuing my personal lifestyle of
2 recycling more than I waste, to use and recycle
3 rather than dispose of and put in a landfill.
4 In that same regard, coal ash has a
5 beneficial reuse. It's beneficial in the use of
6 concrete; it's beneficial in the use of concrete
7 products; it's beneficial in the use of wallboard
8 and other products like that, not just as a place
9 to get rid of it, because it actually has
10 mechanically and physical property that enhance
11 the products. It's much better to recycle any
12 time you can, and this is an opportunity for us to
13 do that.
14 In the 12 years that I've worked in the
15 coal ash industry, it's been very rewarding for me
16 to see the acceptance and the growth of the use of
17 these products. And so this means that it's
18 architects and engineers and producers are seeing
19 the beneficial uses and increasing those uses
20 when replacing other natural resources rather than
21 mining new natural resources using those products
22 that we would have to put into a landfill. This

1 gives us the opportunity to recycle, and we should
2 always recycle rather than dispose when we have
3 that opportunity.
4 And so I abhor the EPA and what a
5 challenge you have. But I depend on organizations
6 like the EPA and the FDA to make sure that what I
7 have in my daily life is as safe as possible.
8 And through your very own regulations
9 already in place, and through the analysis you've
10 already done, it tells us that this product is not
11 hazardous. It's really simple. If you can read,
12 you can see it. It's all based on science.
13 And we depend on the EPA to base their
14 decision on science so that we can continue to
15 recycle and continue to replace and reuse these
16 products and not waste them in landfills and store
17 up valuable air space and landfills. Let's use
18 them more to the advantage of ourselves. And that
19 won't happen if we deem it as hazardous. Because
20 people will be afraid. People will be lead by
21 fear and not by science. So let's not put this in
22 Subtitle C. Let's not call this hazardous. Let's

1 take and use this product and make it a good thing
2 for our society and use it in beneficial reuse.
3 Thank you for your time.
4 (Applause)
5 MS. DEVLIN: Thank you. Numbers 15, 16,
6 17 and 18, please.
7 MR. FORD: My name is Leonard Ford, and
8 I work for Harsco Minerals, a division of the
9 Harsco Corporation.
10 I work at Harsco's Drakesboro, Kentucky,
11 location managing three regional plants located in
12 Kentucky and Illinois. I've been working the
13 boiler slag processing field for over 30 years.
14 The plants I manage employ 50 workers. Many of
15 them have been working in the boiler slag
16 processing industry for over 30 years. We produce
17 blasting abrasives and granules for roofing
18 shingles from boiler slag, which is one of the
19 listed coal combustion by-products included in
20 this proposed regulation.
21 Harsco takes employee health and safety
22 very seriously. We have participated in

1 industrial hygiene surveys, conducted regular
2 safety meetings, and safety is an important part
3 of the way we conduct business every day.
4 Environmental permit compliance is also
5 an important part of the way we conduct our
6 business. In 30 years of operation I do not know
7 of any environmental issues caused by the boiler
8 slag processing by our facilities.
9 I am in support of regulating boiler
10 slag under RCRA Subtitle D.
11 Some facts that -- that demonstrate that
12 there are no reasonable basis for subjecting
13 boiler slag to regulation under the RCRA Subtitle
14 C are as follows: When extremely hot, molten slag
15 ash is quenched with cold water, the coal ash is
16 vitrified and becomes a solid, glassy matrix known
17 as "boiler slag." Because the boiler slag is
18 vitrified, it is very durable and environmentally
19 stable material that effectively immobilizes its
20 chemical constituents.
21 Historically, boiler slag has always
22 passed TCLP testing and has never exhibited any

1 hazardous waste characteristics.
2 I'm not aware of any environmental
3 issues brought forth by any of my con --
4 customers, and all the TCLP testing requested by
5 any of the -- my customers has never indicated any
6 issues.
7 Boiler slag makes up only 2% of the coal
8 combustion by-products and 98% is recycled into
9 valuable re -- reusable products. Boiler slag has
10 been beneficially used since the 1930s as an
11 abrasive. Beneficially used boiler slag replaces
12 material mined from virgin material. Beneficial
13 use of boiler slag reduces the carbon footprint of
14 mining and processing of virgin materials. Boiler
15 slag is not commonly stored in surface
16 impoundments. Harsco does not store any of its
17 products in any surface impoundments.
18 Regulating boiler slag destined for
19 disposal has -- as a special waste under Subtitle
20 C would be unfairly stigmatized beneficial us --
21 reused boiler slag that I have been processing for
22 many years. My customers will be confused and

1 concerned about the purchasing products that are
2 seen to be essentially the same as Subtitle C
3 waste.
4 Thank you.
5 MS. DEVLIN: Thank you. Number 16,
6 please.
7 (Applause)
8 MR. EHLERS: Good morning. My name is
9 Ron Ehlers. I'm a senior engineer with Duke
10 Energy and I'm testifying today on behalf of Duke
11 Energy. And I appreciate the opportunity to speak
12 today on the proposal.
13 Duke Energy strongly supports developing
14 federal regulations for coal combustion residuals
15 under RCRA's Subtitle D non-hazardous waste
16 program. Opponents of Subtitle D say this option
17 is a free ride for utilities. However, the
18 reality is Subtitle D significantly raises the bar
19 in terms of retrofitting and closing CCR
20 impoundments, including accelerated closure
21 schedules that are impractical and not feasible
22 the way they are currently proposed. The Subtitle

1 D proposal requires that unlined impoundments no
2 longer be used five years after the rule is
3 finalized. It also requires that impoundments be
4 officially closed within 180 days after the
5 impoundment -- the closure begins. Both of these
6 time frames are unrealistic, and closing these
7 ponds safely, from an engineering perspective,
8 will be val -- very challenging.
9 The cost to comply with requirements to
10 install liners in existing unlined impoundments
11 will drive most plants with these types of
12 impoundments to either retire or convert to dry
13 CCR handling. New landfills will have to be
14 sited, designed and constructed prior to
15 beginning pond closure. Given the number of new
16 landfills that would be required, it is unlikely
17 that these could be readied in time.
18 If these were hazardous waste landfills,
19 as required under a Subtitle C hazardous waste
20 program, even more time would be needed, assuming
21 that a hazardous waste landfill could successfully
22 be sited and permitted.

1 Also, the immediate and significant
2 increase in demand for dry handling systems across
3 the country will result in lengthy procurement and
4 installation time frames. This makes the
5 five-year deadline impractical and would adversely
6 impact power plant availability.
7 The time needed to de-water the unit,
8 construct a cap, to install the necessary storm
9 water controls, while complying with our NPDES
10 permits, would also require more than 180 days.
11 The EPA should consider closure plans to start
12 within 30 days of the final receipt of waste, but
13 the implementation of the closure plans and
14 completion of construction should be determined by
15 best engineering practices.
16 The Subtitle D Prime option, with
17 appropriate adjustments, best balances clean
18 energy with affordability and reliability.
19 Adopting the Subtitle D Prime option will achieve
20 the same long-term environmental goals on a more
21 realistic time frame. With a reasonable,
22 science-based approach, we can design federal

1 regulations that ensure the safe management of
2 CCRs without significantly ra -- raising the cost
3 for customers and jeopardizing national electric
4 reliability.
5 Thank you.
6 MS. DEVLIN: Thank you. Number 17,
7 please.
8 (Applause)
9 MR. JONES: Good morning. My name is
10 Terry Jones; I'm a concrete producer and an active
11 member of our state Ready Mixed Concrete
12 Associations and the chairman of our Operations
13 Environmental Safety Committee for the National
14 Ready Mixed Concrete Association. I would like to
15 thank EPA for taking their time to listen to our
16 views.
17 I guess -- as you already heard from
18 other concrete producers across the United States
19 in these same type hearings, the ready-mixed
20 concrete industry is a large beneficial user of
21 fly ash and is widespread all across the United
22 States and has been for many years.

1 Our National Ready Mixed Concrete
2 Association's President, Robert Garbini, stated on
3 July twenty-sec -- July 22nd, 2010, before
4 Congress; in 2008 alone, the concrete industry
5 used 15.8 million tons of fly ash in the
6 manufacturing of concrete. Our family-owned
7 business used approximately 150,000 tons of fly
8 ash during this same time period. Please note, an
9 estimated 85% of its members are small businesses;
10 many of them are family-owned companies and
11 represent most of this industry.
12 An estimated 130- to 145,000 people
13 derive their livelihoods from the ready-mixed
14 concrete industry. The last thing we need during
15 these troubled times is overreaching federal
16 regulations that threaten hardworking American
17 jobs. Also, unemployment among small business
18 ready-mixed concrete producers are already at 20%,
19 and any increased costs will force some small
20 businesses to shed jobs and close doors entirely.
21 Fly ash is by far the most widely used
22 supplementary cementitious material used in

1 ready-mixed concrete. Without the use of re --
2 fly ash in concrete, the -- the cost could be
3 enormous to local consumers who are already
4 struggling and a healthy increase to jobs already
5 in -- in the process.
6 Environmental benefits of the use of fly
7 ash in ready-mixed concrete results in longer
8 lasting structures, reduced amounts of waste
9 materials sent to our landfills, (less) raw materials
10 are extracted, less energy required for production
11 and less air emissions, which include carbon dioxide.
12 Having fly ash, not being labeled as a
13 hazardous products (sic), hazardous product,
14 hazardous substance or hazardous waste allows the
15 overall carbon footprint of ready-mixed concrete to be
16 considerably reduced.
17 EPA's primary goal should be to reduce
18 the amount of fly ash wasted and to ensure that
19 whatever fly ash is wasted is managed properly.
20 We, along with our state and national
21 associations, believe that many states will
22 establish their own new laws that further limit

1 the beneficial use of fly ash. Here's an example:
2 Maryland's already proposed a new law requiring
3 any product containing fly ash to be disposed of
4 in a facility authorized to accept fly ash.
5 We should caution ourselves, if EPA
6 declares fly ash disposal as Subtitle C, then
7 states may change their regulations to force
8 concrete crushed after its service life,
9 demolition of -- of buildings and pavement, or
10 from waste streams of construction be handled in
11 this manner. This underni -- underlines --
12 undermines the primary goals. This entire idea
13 creates a Catch-22 situation that prevents
14 shedding of the hazardous waste designation
15 through reuse.
16 After decades of edu -- after decades
17 of education to convince engineers and architects
18 to specify fly ash in specific mixes in
19 construction, we suspect that the stigma and fear
20 --
21 It's done? Thanks for your time.
22 MS. DEVLIN: Thank you. And please

1 submit the rest of your comments for the record.
2 (Applause)
3 MR. JONES: After decades of education
4 to convince engineers and architects to specify
5 fly ash in specific mixes for construction, we
6 suspect that the stigma and fear of liability will
7 drive end users to disallow the use of fly ash
8 mixes in concrete.
9 As you can tell from my comments, my
10 company, which I represent, the state associations
11 I'm a member of, and the office of Chairman of the
12 Operations, Environmental and Safety Committee for
13 the National Ready Mixed Concrete Association, are
14 not in favor of either proposals, C or D.
15 Let's manage the resource that we have,
16 eliminating new rules changes and keep our hard
17 working people employed. New rules create
18 unneeded cost and unnecessary confusion.
19 I would like to thank you for your time
20 and consideration regarding this important issue.
21 MS. DEVLIN: Number 18, please. Thank
22 you.

1 MS. HOLMES: Good morning. My name is
2 Katie Holmes, and I am the Associate for
3 Environmental Ministries of the Presbyterian
4 Church (U.S.A.)
5 I am here this morning to speak on
6 behalf the Presbyterian Church (U.S.A.), which is
7 headquartered here in Louisville. PC(U.S.A.)
8 urges the EPA to adopt Subtitle C to ensure
9 greater protection for communities from the
10 hazards of coal ash.
11 The Presbyterian Church has long been
12 committed to protecting and restoring God's
13 creation. Protecting God's creation extends to
14 ensuring justice for God's people. PC(U.S.A.)
15 General Assembly policies have consistently
16 affirmed that as people of faith, we are to seek
17 environmental justice for low income communities
18 that are dishen -- disappor -- disproportionately
19 burdened by environmental hazards.
20 We see this connection clearly in the
21 case of coal ash. Not only does coal ash threaten
22 the health of communities around the country, it

1 disproportionately affects low income communities
2 and communities of color. More than 50% of coal
3 ash cites around the country are in low income
4 neighborhoods. And the coal ash cleaned up after
5 the 2008 spill in Kingston, Tennessee, was shipped
6 to a predominantly low income, predominantly
7 African-American community in Alabama.
8 The issue of coal ash is close to home
9 for Louisville communities. Residents of the
10 Riverside Gardens neighborhood live in the shadow
11 of the coal ash disposal sites from the Cane Run
12 power plant. Community organizers in Riverside
13 Gardens report high incidences of cancer and other
14 diseases that have been connected to coal ash
15 contaminants. With the Cane Run plant applying to
16 expand its coal ash pond, federal regulations on
17 coal ash would help protect this vulnerable
18 neighborhood.
19 Ultimately, our society needs to turn to
20 a clean energy economy and find solutions to the
21 selection of hazardous waste sites that are just.
22 In the meantime, it is imperative that we provide

1 greater protection from hazardous coal ash for all
2 people, especially the most vulnerable populations
3 that live closest to these sites.
4 The Presbyterian Church (U.S.A.) asks
5 that the EPA adopt Subtitle C, which designates
6 coal ash as a toxic substance and creates
7 federably (sic) enforceable regulations to ensure
8 greater protection for communities and water
9 supplies. With these stronger regulations, we
10 will be protecting all of God's creation from the
11 harmful effects of arsenic, lead, and other
12 chemicals found in coal ash.
13 Thank you for your time.
14 MS. DEVLIN: Thank you.
15 (Applause)
16 MS. DEVLIN: May I have Numbers 19, 20,
17 21, 23 and Number 120, who asked to speak early.
18 MS. DEVLIN: Thank you. Number 19,
19 would you care to go?
20 MR. DISNEY: Hi. My name is Phil
21 Disney. I'm an engineer. And my -- my statement
22 is both professional and personal.

1 As a registered PE, I've worked with
2 coal and coal combustion by-products for most of
3 my professional engineering career. I've worked
4 underground in the coal mines of Kentucky and West
5 Virginia, been certified as a coal miner. In 1992
6 I lived in California. I became certified as a
7 hazardous material and was trained as a Haz-Wa --
8 Wa technician.
9 In a capacity there in my work I
10 designed and built a mobile treatment unit for the
11 fixation of auto shredder waste, which also
12 contains heavy metals. I understand the nature of
13 heavy metal contamination and I successfully
14 treated and oversaw the fixation of auto shredder
15 wastes on a daily basis in California.
16 For the past eight years I have worked
17 for Synthetic Materials, managing a wide variety
18 of projects related to the recycling of FGD
19 gypsum. Coal combustion by-products or residues,
20 the heavy metal must be measured in parts per
21 million. The ul -- the utilization of FGD gypsum
22 and coal ash in cement or other pozzolanic

1 reactions, it's usually a level of heavy metal
2 fixation and allows permanent and safe utilization
3 of these valuable minerals -- minerals in a -- in
4 a structural purposes.
5 SYNMAT de-waters over 3 million tons of
6 gypsum annually, primarily for wallboard and the
7 cement industry. Millions of homes now contain
8 materials made out of FGD gypsum. Recycling of
9 these valuable minerals has reduced the cost of
10 homes and its construction and eliminated the need
11 for open -- opening new mines and landfills.
12 Recycling of FGD or other coal
13 combustion by-products as a hazardous material
14 would be an illogical and overreaction to the
15 presence of trace amounts of metals in the scru --
16 in the scrubber by-products.
17 FGD gypsum utilization continues to
18 expand in other areas, including agriculture.
19 Personally I've -- I've worked with coal and --
20 and coal combustion bry -- by-products for a long
21 time. For four generations I -- my family lived
22 in Harlan County, Kentucky, where, as a youth, I

1 carried coal to heat our house, and I carried the
2 ashes back out to put in the driveway to keep us
3 out of the mud.
4 My dad -- my father worked in the coal
5 mines, my grandfathers before them. My dad lived
6 40 years in a house heated by coal (laughs) and
7 carried the ashes out. He's 86 years old now.
8 The fact remains that the coal industry
9 is safer than ever. The air in Kentucky is
10 cleaner than at any time in my lifetime. The
11 thinly veiled attacks on the fossil fuel industry
12 are not based on science.
13 At SYNMAT we are committed to the
14 expanding recycling of coal combustion by-products
15 in new and environmentally compatible ways.
16 Thank you for your time.
17 MS. DEVLIN: Thank you. Number 20,
18 please.
19 (Applause)
20 MS. DEW: My name is Aloma Dew. I live
21 in Owensboro, Kentucky, and I'm a field organizer
22 with the Sierra Club Water Sentinels Program, and

1 I'm here -- here today to speak on behalf of the
2 more than 800 Water Sentinels in Kentucky who
3 regularly test the rivers and streams in our
4 watersheds.
5 Despite recognized dangers and coal ash
6 accidents, this waste is still largely
7 unregulated. We are here today to ask you to
8 classify coal ash waste as a hazardous material,
9 to adopt Subtitle C, and to pass strong,
10 enforceable federal regulations and then see that
11 they are enforced.
12 Your job is to protect the environment
13 and us, the citizens. Coal ash contains chemicals
14 that have been linked scientifically, to human
15 health problems, including cancer, respiratory
16 illnesses, neurological damage, reproductive and
17 developmental problems.
18 Here in Kentucky there are 44 coal ash
19 disposal ponds, including seven ponds rated as
20 high hazard and five rated as significant hazard.
21 I know of abandoned coal mine sites where coal ash
22 is being dumped on a daily basis and mountains of

1 coal ash on the Green River in Western Kentucky,
2 and it's just sitting there; it's not being
3 recycled.
4 We in the Commonwealth have the second
5 highest number of coal ash impoundments in the
6 nation, after Indiana, which has the highest
7 concentration. We wonder why we seem to be a
8 sacrifice zone, why our children's health is not
9 deemed worthy of the best protection. If it is
10 not safe enough to store across the street from
11 your offices and homes, then it's not safe enough
12 to put in our neighborhoods and along our river
13 banks.
14 We know that you want to do the right
15 thing, and we're here to give you that
16 encouragement and backing. Our children's health
17 is far more important than the profit margin of
18 industries who pile up this toxic waste. It's
19 time to get the arsenic, cadmium, chromium, lead,
20 selenium and other toxic chemicals away from our
21 drinking water sources, away from the air our
22 children breathe in the areas where they live and

1 play.

2 We hear a lot about cost. I haven't

3 heard much today about health cost.

4 We thank you for coming to Louisville to

5 hear our concerns and requests. Do the right

6 thing. Regulate coal ash as the hazardous

7 material it is. We need environmental protection.

8 Thank you.

9 (Applause)

10 MS. DEVLIN: Thank you. Number 21,

11 please.

12 MR. CAPPEL: My name is Jerry Cappel. I

13 am the Associate for Justice Ministries at St.

14 Matthews Episcopal Church in Louisville and the

15 President of Kentuckiana Interfaith Community.

16 I can't rightfully claim to push you one

17 direction or another for "C" or "D"; I don't know

18 the science well enough. You'll have to sort that

19 out. You're being hammered from all directions I

20 hear.

21 So I do come this morning to bring you a

22 word of encouragement, though, from the churches,

1 and to speak about a subtext that's present here
2 in these hearings. I can't speak to you from all
3 churches and communities of faith, but I can speak
4 from my experience of many of them. And I want
5 you to know this morning that there is a turning
6 happening in the churches. It's an awakening of a
7 current sort of application of a truth that has
8 always been deep in the bones of the churches, and
9 that is from the words of Jesus in Matthew 25,
10 when He said, Whatever you did for the least of
11 these, you do for me.
12 That has been applied for many, many
13 eons towards various and asundry applications of
14 justice. And the church is now wakening up to
15 environmental justice.
16 I say this to you now as a sermon but as
17 a word of encouragement. I want to say to you
18 that you can know that doing the right thing for
19 all citizens, children, wildlife, the elderly and
20 the voiceless, is what we really want. And thus
21 it will be recognized and affirmed by the
22 churches. That you can know that it is

1 increasingly understood in communities of faith
2 that our future is not really to be trusted to big
3 business and Wall Street and those who lobby for
4 them, it's being increasingly recognized that the
5 future lies with attention and care for those who
6 have, to date, been shoved aside for the sake of
7 development and sidelined for corporate profits,
8 cheap oil, agribusiness and the short-term gain of
9 the few. We are beginning to understand that to
10 care for the least is to care for all, actually,
11 rich and poor, strong and weak.
12 And so today you have before you one of
13 those choices that has a question of what kind of
14 society we are going to be. This is a choice that
15 is about values and priorities and wisdom and
16 justice. It's about choice about whom and what is
17 valued in our society. It's a choice about the
18 value of our children, our unborn, our health and
19 our wholeness.
20 John Paul -- the Pope John Paul II said,
21 "A society will be judged on the basis of how it
22 treats its weakest members and among the most

1 vulnerable are surely the unborn and the dying,"
2 And there are unborn at this hearing.
3 They are depending on others for their voice. They
4 are the children who will be some day drinking the
5 water, playing in the spaces, breathing the air
6 and eating the food on the planet that we leave to
7 them. There are also the dying, those who, today,
8 are telling you stories of toxins and sickness.
9 So I just want to let you know, the
10 churches are beginning to understand that the
11 business of America is not just business, it is
12 also the health and happiness of its citizens, and
13 to the best it can, to the world outside her
14 borders.
15 So I just ask you to do the wise thing,
16 the right thing, the good thing, and I dare say,
17 the Holy thing.
18 (Applause)
19 MS. DEVLIN: Thank you. Number 23,
20 please.
21 MR. VOYLES: Good morning. My name is
22 John Voyles; I am Vice President of Transmission

1 and Generation Services for E.ON U.S., the parent
2 company of Louisville Gas & Electric and Kentucky
3 Utilities Company. LG&E and UK operate seven
4 coal-fired power plants with a total generating
5 capacity of approximately 6,000 megawatts and
6 provide electricity to approximately 941,000
7 customers.
8 Let me begin by saying that safety and
9 responsible environmental stewardships are key
10 priorities for our company. We operate our
11 facilities in strict compliance with state
12 environmental regulations. We have never had a
13 significant spill from any of our CCR facilities,
14 nor have those facilities every posed a problem
15 for local water supplies.
16 We recognize that the Kingston event has
17 rightly focused scrutiny on the effectiveness of
18 current regulation of CCRs, While we support EPA's
19 objective of ensuring safe disposal of CCRs, we
20 urge EPA to avoid regulatory approaches that would
21 impose significant and unnecessary costs with
22 little environmental benefit. Such burdens are

1 ultimately borne by the utility customers who pay
2 the costs of environmental compliance. We
3 strongly oppose regulation of CCRs under Subtitle
4 C. Extensive study by the Electric Power Research
5 Institute and others has demonstrated that CCRs do
6 not have hazardous characteristics and EPA has
7 found in the past that CCRs do not warrant
8 regulation as a hazardous waste. The landfill
9 design standards are almost identical under both
10 the Subtitle C and Subtitle D options and
11 environmental benefits would be virtually the
12 same. However, compliance costs would be
13 substantially higher under the Subtitle C
14 hazardous waste option.
15 In addition, Subtitle C regulation would
16 raise potentially insurmountable obstacles to
17 continued beneficial reuse of CCRs. Our CCR
18 marketing partners have advised that some of their
19 CCR end- users have placed beneficial reuse
20 opportunities on hold pending a final regulatory
21 decision on CCRs. They have advised that
22 regulation of CCRs under the Subtitle C hazardous

1 waste program, regardless of whether they are
2 characterized as "special waste," would result in
3 a stigma that will cause some end-users to
4 discontinue use of CCRs.
5 With the regulatory uncertainty of the
6 past few years, our company's beneficial reuse has
7 dropped from almost 50% of our CCRs in 2008 to
8 about 32% of our CCRs in 2009. Our own experience
9 indicates that Subtitle C regulation will almost
10 certainly result in dramatic reduction in
11 beneficial reuse of CCRs and a corresponding
12 increase in land disposal.
13 We firmly believe that any federal
14 regulation of CCRs should be established under the
15 Subtitle D program. We specifically support the D
16 Prime option that would allow continued operation
17 of existing ash ponds that are operating in a
18 manner ensuring appropriate protection of public
19 health and the environment.
20 Thank you.
21 (Applause)
22 MS. DEVLIN: Thank you. Number 120.

1 MR. MARSHALL: Hi. I'm David Marshall
2 with Headwaters Resources. We're here today to
3 present testimony of a proposed regulating --
4 regulations regarding the coal ash disposal.
5 As a marketer of coal combustion
6 products for the past 22 years, I've been proud of
7 the amount of material that I've caused to be
8 recycled. By last count it was ex -- in excess of
9 6 million ton.
10 While we do operate disposal facilities
11 across the US, our company focus always has been
12 and will continue to be to develop an acceptable
13 means of utilizing materials wherever possible.
14 The EPA has stated they do not believe
15 that a Subtitle C special waste designation will
16 be harmful to recycling efforts. I am here to
17 tell you that we have already seen attacks on our
18 successful efforts at utilization targeted by our
19 customer -- competitor, even those -- those
20 competitors products test out the same as our coal
21 combustion products. Those competitors are using
22 this opportunity as a fear tactic, even before the

1 regulations are decided, to try to create a market
2 advantage for themselves. Many of our customers
3 know better and they recognize the effort for what
4 it is. But the proof of stigma is already here.
5 The fact we will hear today from people
6 who cry the danger of fly ask without really
7 knowing what the facts are is another dumo --
8 demonstrable example of stigmas beginning to
9 impact the potential for this effective recycling
10 program. It can only get worse.
11 Fly ash and bottom ash result from
12 burning coal in power plants. The Clean Air Act
13 efforts over the past 25 years has significantly
14 changed the amount and type of emissions allowed
15 from these plants and has caused the utilization
16 industry to adapt to the changes of products
17 generated. Many older plants have been closed,
18 technology to make unusable ash accept --
19 acceptable have been developed and the market for
20 this recycled material has grown significantly.
21 Coal ash is no mystery material, it is
22 simply the minerals that were trapped with plant

1 matter when the coal deposits were originally
2 formed. It is the prehistoric sands, silts and
3 clays of those times. When chemical analysis of
4 coal ash and soil from your own back yard are
5 compared, there is great similarity.
6 The EPA defines the standards for a
7 hazardous material and in no measure does the fly
8 ash, bottom ash or gypsum generated at these
9 plants meet the EPA standards for hazardous. To
10 list them as special under the hazardous
11 guidelines of Subtitle C is -- is disingenuous.
12 It would almost require that the EPA change their
13 definitions of hazardous, and they have not
14 indicated this is an issue.
15 Fear of the unknown is hard at work in
16 this public effort and we should all be cautioned.
17 Our industry works across many state
18 lines and a national standard of Subtitle D would
19 be welcomed so that each state will have standard
20 design and operating protocol to follow. And
21 Subtitle D can be implemented quickly, within six
22 months of final rules. Subtitle D is the standard

1 for household waste disposal and fly ash and
2 bottom ash do not contain the wide range of
3 potentially harmful chemicals thrown away
4 everyday.
5 Let's use some common sense, let's
6 understand the science at work, and let's move
7 forward with a non-hazardous label that will
8 support the largest recycling program in the U.S.
9 Thank you.
10 MS. DEVLIN: Thank you.
11 (Applause)
12 MS. DEVLIN: We're running a bit ahead
13 of schedule, so I'm going to call some numbers and
14 also try to fit in some people. So Numbers 25,
15 26, 124, 149 and 184, please.
16 MR. KANE: My name is Bill Kane. I work
17 for Headwaters Resources.
18 I've been in sales and marketing of coal
19 combustion products for over 29 years. In the 29
20 years I've seen the utilization and recycling of
21 CCPs increase dramatically. Not because everyone
22 jumped on the recycling band wagon, but because

1 company's realized what a great product fly ash is
2 when used in their concrete.
3 When using fly ash in concrete it will
4 produce a cost savings, not just to the ready
5 mixed producer but also to the customers. And --
6 and the -- the use of fly ash in concrete reduces
7 the use of natural resources, mainly water and
8 sand, but it also increases the strengths and the
9 durability of the concrete.
10 I strongly encourage the EPA not to
11 classify CCPs as a hazardous waste under Subtitle
12 C. I feel the EPA should follow its final 2000
13 Regulatory Determination in which the agency
14 determined that the regulation of CCPs under
15 Subtitle C of RCRA is not warranted. In that
16 determination the EPA also declared that RCRA
17 Subtitle D would fully protect human health and
18 the environment. The EPA went through decades of
19 su -- scientific analysis to conclude that CCPs do
20 not warrant hazardous regulations.
21 If the EPA follows through with Subtitle
22 C and classifies CCPs as a hazardous waste, it

1 would eliminate one of the greatest recycling
2 programs this country has ever participated in.
3 It would increase utility rates substantially and
4 destroy jobs.
5 In this current economic time we are
6 living in, I cannot see how the EPA would even
7 consider classifying CCPs hazardous. The cost
8 would be passed on to the American people and it
9 would be enormous cost for people on fixed
10 incomes, they could simply not afford this.
11 In closing, there is simply no basis to
12 pursue Subtitle C option for CCPs when there is a
13 more viable and cost effective alternative in
14 selecting Subtitle D non-hazardous waste. I
15 strongly encourage the EPA to select Subtitle D in
16 their final ruling.
17 Thank you.
18 MS. DEVLIN: Thank you.
19 (Applause)
20 MS. DEVLIN: Number 26, please.
21 MR. LAWRENCE: Good morning. I am David
22 Lawrence. I work for Headwaters Resources also,

1 been in the bottom ash, fly ash industry for over
2 30 years.
3 I want to speak a few minutes on stigma.
4 Webster defines "stigma" as an expressed
5 disapproval, blame, or censor. Webster also
6 defines "reproach" as to express disapproval,
7 blame, or censor. That's exactly what's happening
8 today. No matter what the final outcome of the
9 EPA's hearing, we are disgraced; we are blamed; we
10 are reproached.
11 The greatest example of this is right
12 here in these meetings. In the Charlotte hearing
13 you heard testimony from the expanded clay and
14 shell people highly critical of bottom ash. Why?
15 What were they critical of bottom ash? They have
16 no emotional ties. There's no -- they had no
17 toxic data. They have no cancer -- cancer stories to
18 share. Why? Economics. We have market share
19 they want. They can't outsell us; they can't out
20 market us. So the only way to grain the market
21 back is through you, the EPA and these hearings.
22 Yes, the stench has been smelled. The

1 buzzards are circling. Please do not allow this
2 to occur. We ask you to keep the status of fly
3 ash and bottom ash as non-hazardous.
4 Thank you for your time.
5 (Applause)
6 MS. DEVLIN: Thank you. Number 124,
7 please.
8 (No response)
9 MS. DEVLIN: 149.
10 (No response)
11 MS. DEVLIN: 184.
12 MR. SEYMOUR: My name is Keith Seymour
13 with Headwaters Resources and a concerned citizens
14 of the United States of America.
15 You've heard during public hearings that
16 fly ash causes cancer. My question is: Where's
17 the proof?
18 I personally contacted the Americ --
19 National Cancer Institute and asked them if they
20 had heard of any cases that were directly related
21 to fly ash as being the fau -- the cause of the
22 cancer, and the answer was "No."

1 There are thousands upon thousands of
2 employees working in coal ash landfills every day
3 throughout the United States. Have any of them
4 ever deported (sic) and believes (sic) that fly
5 ash was cause of cancer? The answer, again, is
6 "No."
7 I personally have worked in the industry
8 for 25 years and have not developed cancer from
9 being around fly ash, so the answer, again, is
10 "No."
11 I have children, too, and would not put
12 them -- would not put them in harm's way.
13 Fly ash is not a hazardous waste
14 according to the Environmental Protection Agency.
15 And this label is unwarranted. Coal ash does not
16 qualify as a hazardous waste based on its
17 toxicity. The toxicity of coal ash is similar to
18 that of materials re -- that replaces recycling
19 applications.
20 EPA has their own tests. The EPA tests
21 waste like coal ash like toxicity characteristics,
22 better known as TLC -- TCLP, Toxicity

1 Characteristic Lea -- Leachate Procedure to
2 determine if it should be considered a hazardous
3 waste versus a non- hazardous waste. Coal ash is
4 regularly tested and -- under the TCLP criteria,
5 and, therefore, has not, up to this point, been su
6 -- been considered a hazardous waste, in large
7 part due to scientific evidence.
8 Other organizations such as EPRI, the
9 Electric Power Research Institute, and as well as
10 many colleges, universities, along with state and
11 federal agencies have all come to the same
12 conclusion, that fly ash is not a hazardous waste.
13 The hazardous waste stigma is real. The
14 plants that produce coal ash are unlikely to dis
15 -- to disperse material at thousands of locations
16 in the countryside if it were con -- deemed
17 hazardous. Architects and engineers would not
18 specify this product in the same manner.
19 Products that compare with coal ash have
20 already begun to use the potential hazardous waste
21 designation to create fear and doubt in the coal
22 ash uses. American public or the users in

1 products produced with coal ash are highly succes
2 -- successful to the message created, fear and
3 doubt.
4 Lip service won't save recycling. EPA
5 uses the term "special waste" does not change the
6 fact that Subtitle C would legally des --
7 designate coal ash as a hazardous waste when
8 destined for disposal.
9 The EPA's unrelated and unannounced
10 suspension of the Coal Combustion Products
11 Partnership, C2P2, far outweighs the agency's
12 statements and news releases that the EPA supports
13 coal ash recycling. Therefore, Subtitle D
14 approach will do the same as Subtitle C but
15 without the hazardous waste label attached to it.
16 The Subtitle D non-hazardous approach
17 will let recycling efforts continue and keep less
18 coal ash in landfills, which is the whole matter
19 we're here today (sic).
20 Thank you.
21 (Applause)
22 MS. DEVLIN: Thank you. Again, as we're

1 running a bit ahead, I'm going to try to
2 accommodate some of our walk-in speakers. So are
3 -- Numbers 301, 302, 303, 304 and 305, if you
4 would come forward.
5 MR. ENGLAND: Good morning. My name is
6 Gary England, and I'm Vice President of Headwaters
7 Resources.
8 Headwaters Resources is the largest
9 manager of post-combustion materials in the
10 country. We currently operate in over 100 utility
11 sites across the country. And as the largest
12 manager of coal combustion products, we are
13 involved in all aspects of the utilization of this
14 valuable recycled product.
15 In 2008 the benefits realized by re --
16 utilizing fly ash in concrete and other beneficial
17 uses resulted in this country saving 159 trillion
18 BTUs of energy, 12 million tons of CO2 production,
19 32 billion gallons of water, and save between 5-
20 and $7 billion. I would hate to see these
21 benefits go away.
22 We have already been notified by several

1 customers and state agencies that if the EPA
2 designates fly ash as a Subtitle C waste, they
3 will not risk the liability and potential
4 litigation and will cease utilizing fly ash in
5 their products and applications. Many have
6 already ceased the use of fly ash until this
7 matter is resolved and the future litigation is
8 settled. The stigma is real.
9 Why classify fly ash as a Subtitle C
10 waste? Simply move jurisdiction from the states
11 and give it to the federal government. Fly ash,
12 in reality, does not qualify as a hazardous waste
13 based upon its toxicity. This isn't opinion; this
14 is science based on standardized tests that show
15 the metal levels are well below the EPA's own
16 standards established for the listing of a
17 hazardous waste.
18 I agree that human health and the
19 environment must be protected. What I don't feel
20 is that category -- categorizing fly ash Subtitle
21 C hazardous waste is the best way to do that. It
22 will take away from the benefits of utilizing fly

1 ash and reducing the CO2 produced from cement
2 manufacturing.
3 Under both of the EPA proposed
4 approaches, whether it is a Subtitle D or Subtitle
5 C, the landfill construction and design standards
6 are essentially the same, with Subtitle D being
7 enacted sooner than the Subtitle C approach. If
8 the goal is to protect the environment and human
9 health, does it not make sense to enact the
10 safeguard as quickly as possible. The Subtitle C
11 approach is not a stronger option, it simply
12 determines who has the regulatory enforcement.
13 We have heard in other hearings and
14 press releases that there are those that believe
15 that there is more stringent regulation of cost to
16 disposal increase than there would be more emphis
17 -- emphasis on beneficial use. Making disposal
18 more expensive will not increase utilization.
19 In 2000 utilization of fly ash was
20 approximately 30%; in 2008 that utilization is
21 44%, almost a 50% increase. This was not because
22 of more expensive disposal costs but through the

1 efforts of companies like ours that to continue
2 develop more and better uses. It was also because
3 in 2000 the EPA made the determination that fly
4 ash did not pose a health risk and did not warrant
5 being regulated as a waste.
6 It is our position that Subtitle D is
7 the only correct and prudent answer.
8 Thank you.
9 (Applause)
10 MS. DEVLIN: Thank you. All right.
11 Number 302.
12 (No response)
13 MS. DEVLIN: 303.
14 MR. MARSHMAN: Good morning. My name is
15 Herman Marshman, Jr. I am the president of IBEW
16 Local 272, and I would like to put a fa -- I would
17 like to put a face on fly ash.
18 In my many jobs at FirstEnergy power
19 plant in Shippingport, Pennsylvania, I have worked
20 directly with raw fly ash in the collection,
21 removal and transport. I know what it tastes
22 like. I have stood in the hot ash until it would

burn the rubber sole off your boots. Do I fear fly ash? No. Do I respect fly ash? Yes.

I was required to wear full, protective clothing and a respirator by the Department of OSHA and my employer. I'm here to speak for the employees who work directly and indirectly and is exposed to fly ash, and to ask in any regulation that the EPA mandate, that profits from the reuse of CCR be used to safeguard the public and environment, and would also like to see regulations that mandate companies provided 100% of cost for health benefits for their employees.

There is (sic) been a longstanding policy by companies, the government, to ignore the fact that utility workers are the new asbestos case. At some point in time you're going to have commercials on television, 10, 20 years from now, asking: Did you work at a power plant?

At our facility we have over 10% cancer rate; among men, prostate exceeds that. There is a (sic) issue there's a problem that needs to be addressed and we all need to be responsible.

1 Can we make regulation to safeguard fly
2 ash? Yes. My job, it's -- in sense, when I
3 worked with fly ask, I protected myself. There
4 were means to protect myself by a respirator, by
5 full clothing. And we can do and mandate things
6 legally to provide and safeguard the public and
7 environment, but it's going to take everyone here.
8 Thank you.
9 (Applause)
10 MS. DEVLIN: Thank you. Numbers 24 --
11 I'm told is here -- 30, 31 and 34. Number 24,
12 please.
13 MS. CROWE: Thank you. My name is
14 Elizabeth Crowe, and I'm the Director of the
15 Kentucky Environmental Foundation based in Berea,
16 Kentucky.
17 KEF is an organization dedicated to
18 promoting safe solutions to environmental health
19 and prob -- environmental and health problems that
20 we face, and I'm speaking right now on behalf of
21 the organization and of myself, a 19-year resident
22 of Kentucky, parent of a teenage girl, and one who

1 breathes air, drinks water, and eats food grown in
2 this state.
3 Today I urge EPA to select Subtitle C
4 for its Coal Combustion Residuals Rule,
5 designating coal ash as special waste to be
6 regulated as the hazardous waste that it is.
7 I have many reasons for why this
8 designation is appropriate but given time
9 constraints will list only a few: Mercury, lead,
10 chromium, selenium, arsenic, cadmium, thallium,
11 boron. These persistent toxic chemicals are
12 tearing away at the very fabric of life, affecting
13 our developmental systems, respiratory systems,
14 our vital and reproductive organs. If I had more
15 time -- time I would list the hundreds of
16 communities all over the U.S. living near coal ash
17 sites, and the tens of thousands of people who are
18 the faces of the 1-in-50 cancer risk statistic.
19 They all serve as compelling reasons for why EPA
20 must take decisive action to curb exposures.
21 Physicians are bound to uphold the
22 Hippocratic Oath, which states, first: Do no

1 harm. For the rest of us, the precautionary
2 principle applies: When an action is likely to
3 cause harm, it is best to act in a precautionary
4 manner to avoid it.
5 Coal ash has contributed to the high
6 rates of developmental disorders and physical
7 ailments that plague citizens in Kentucky and it
8 is past time for bold action from the federal
9 government to stop the destruction of our health
10 from coal ash exposure. Coal ash is an enormous
11 liability for public health, especially since we
12 are not exposed to toxic chemicals from coal ash
13 alone, but also all throughout the life cycle of
14 coal. It cannot be considered a true benefit to
15 society if it is linked so closely to so many
16 health impacts.
17 If EPA does not take responsibility for
18 protecting us from the harmful impacts of coal
19 ash, who will? Please take bold, definitive
20 action to regulate coal ash as a hazardous waste
21 under Subtitle C.
22 Thank you.

1 (Applause)

2 MS. DEVLIN: Thank you. Number 30,

3 please.

4 MR. MCMULLEN: Hi. I'm Wallace

5 McMullen. I live in the Louisville area. Thank

6 you for the opportunity to speak today.

7 I strongly urge the EPA to list coal

8 combustion waste, in its various forms, as special

9 waste subject to regulation under Subtitle C of

10 RCRA, when it is put in landfills or surface

11 impoundments.

12 In the June 21, 2010, Federal Register

13 announcement I read that the EPA is not, I repeat,

14 not, proposing to change the 2000 Regulatory

15 Determination for beneficially used coal

16 combustion waste, which is currently given an

17 exemption from the hazardous waste regulations

18 under Section 3001(b)(3)(A) of RCRA.

19 It seems to me that this exemption

20 should eliminate much of the controversies that

21 industry advocates have tried to raise up about

22 the proposed Subtitle C regulation. I'll come

1 back to that issue if I have time.
2 First, I want to talk about how coal ash
3 threatens all of us living in Louisville, due to
4 the situation at the Trimble power plant, a little
5 ways up the Ohio River from here. To put this in
6 context, Louisville gets all of its water supply
7 from the Ohio River. Louisville Gas & Electric
8 operates the Trimble power plant.
9 Now Trimble has a big bottom ash sludge
10 pond located about a quarter mile from the bank of
11 the Ohio River. This bottom ash sludge pond is in
12 the flood plain. The bottom ash sludge pond is
13 over half a mile long, so it holds a lot of coal
14 combustion residual garbage. The bottom of the
15 sludge pond is approximately 45 feet below natural
16 ground level, and it's contained by a dike that is
17 presently 40 to 75 feet above ground level. But
18 LG&E is in the process of using coal ash to build
19 the dikes up 30 feet higher around this big sludge
20 pond, up to a maximum of height of 100 feet. So
21 these piles of coal ash expanding the dikes are in
22 a flood plain, a short distance from the Ohio

1 River.

2 The reason LG&E is building up these

3 coal ash berms is so they can dump more mo -- coal

4 combustion waste into the sludge pond, raising the

5 sludge impoundment well above ground level.

6 There's every reason to believe the CCW with which

7 they're building up the dike berms is full of the

8 typical poisons in coal ash, mercury, cadmium,

9 chromium, chloride, lead, etc. And I think we can

10 be very sure that these toxins are contained in

11 the bottom ash sludge that is in the waste pond.

12 The groundwaller -- groundwater

13 monitoring wells, in fact, at the site are

14 currently showing exceedance of allowable levels

15 of multiple pollutants.

16 So if we have a severe flood at the

17 Trimble power plant, we will have flood waters up

18 against these coal ash berms, with the river water

19 leaching out the arsenic, mercury, lead, etc. from

20 the piles of coal ash. Even worse, if a flood

21 erodes the dike berm to the point where it fails,

22 then the entire toxic contents of sludge waste

1 that goes in that pond goes right into the Ohio
2 River.
3 The Ohio River is channelized between
4 Trimble and Louisville. So we're going to have
5 all this horrible coal ash sludge coming right
6 down the channelized river, straight into our
7 drinking water intakes just 40 miles below.
8 I think this is a terrible risk. It
9 scares the heck out of me.
10 We know that with the global climate
11 disruptions we've seen severe flooding in many
12 parts of the Midwest, news stories daily,
13 Wisconsin is the current victim this week.
14 Severe flooding in our part of the Ohio
15 River may be only the next rainstorm pattern away.
16 Against the risk of all that poisonous coal ash
17 and sludge in the Trimble impoundment, that scares
18 the heck out of me. If that impoundment fails, we
19 are the next Kingston, Tennessee, situation.
20 MR. DUFFICY: Your time --
21 MS. DEVLIN: Excuse me --
22 MR. DUFFICY: -- is up.

1 MS. DEVLIN: -- sir.
2 MR. MCMULLEN: The existing --
3 MS. DEVLIN: Your time is up.
4 MR. MCMULLEN: -- Kentucky --
5 MR. DUFFICY: Your time --
6 MR. MCMULLEN: -- regulations --
7 MS. DEVLIN: Your time is up.
8 MR. MCMULLEN: -- don't help us at all.
9 We --
10 (microphone cut off - exceeded time
11 limit)
12 MR. DUFFICY: Your time is up. Thank
13 you.
14 MR. MCMULLEN: We need strong action.
15 We need regulation under Part C.
16 Briefly, I do not see any reason why the
17 "beneficial reuse" of coal ash in pavement and
18 drywall is going to be at all affected. It has
19 the Section 3001 exemption. I hear industry
20 representatives arguing that if heaps of coal ash
21 are designated hazardous, their gypsum, fly ash,
22 and fill material will be so stigmatized that they

1 can not continue to sell it for reuse. I suggest
2 that the "stigmatized" argument is not sensible
3 and it is not supported by any factual
4 information. They are just presenting argument by
5 assertion, repeated over and over.
6 No one expects paving materials to be as
7 pure and cuddly as a baby's blanket. We all know
8 that gravel and dust go into making pavement.
9 Strong regulation of coal combustion waste dumps
10 will encourage the reuse of materials that
11 currently can be dumped almost anywhere with no
12 meaningful regulation.
13 In summary, coal ash is a major heath
14 risk for all who live near a coal power plant or
15 who live near the Ohio River. We badly need for
16 the EPA to classify coal ash as a hazardous waste
17 under Subtitle C, and to put strong, protective
18 regulations into effect.
19 Thank you.
20 MS. DEVLIN: Number 31, please.
21 (Applause)
22 MR. DUFFICY: Sub -- submit it into the

1 written document.

2 MS. LEININGER: Good morning. My name

3 is Kerri Leininger. I'm the Vice President of

4 Government Affairs and Political Activities for

5 the National Ready Mixed Concrete Association in

6 Washington, DC.

7 On behalf of NRMCA I would like to thank

8 the Environmental Protection Agengy for -- Agency

9 for conductin -- to con -- excuse me, conducting

10 this listening session.

11 As a matter of scale, ready-mixed

12 concrete consumes 75% of all Portland cement used

13 in this country. We represent over 1,500 concrete

14 manufacturers and 50 state-affiliated

15 organizations, including the Kentucky Ready Mixed

16 Concrete Association.

17 Concrete is the most widely used

18 construction material in the world and is produced

19 and consumed in every congressional district of

20 our country.

21 With regard to fly ash, a major portion

22 of coal combustion residuals, the ready-mixed

1 concrete industry is the largest beneficial user.
2 Surveys of ready-mixed concrete producers show
3 that over 55% of ready-mixed concrete contains fly
4 ash. Fly ash is used in combination with Portland
5 cement to impart the following beneficial
6 qualities to concrete: Increased durability and
7 service sli -- service life of structures,
8 reduction in waste sent to landfills, reduction in
9 raw materials extracted, energy for production,
10 and air emissions, including COT -- CO2, and lower
11 concrete material costs.
12 While the concrete industry currently
13 uses about 15 million tons of fly ash annually, it
14 is estimated that the concrete industry could
15 increase that current usage to more than 30
16 percent -- I'm sorry, 30 million tons per year by
17 2020, resulting in less fly ash going to
18 landfills, and reducing the concrete industry's
19 carbon footprint by 20%.
20 Based on the concrete industry's
21 extensive use of reliance on fly ash in concrete
22 and over examining EPA's proposed rule, we have

1 determined a RCRA Subtitle C designation for CCRs
2 bound for disposal, while retaining exemptions for
3 beneficial use, will lead to the following
4 unintended consequences for the concrete industry:
5 An increase in production costs and the cost of
6 construction, an increase in potential liability
7 for concrete producers.
8 Currently, the regulatory status of
9 small amounts of fly ash in waste streams for
10 concrete production and construction is unclear.
11 Any proposed rule sould -- should explicitly state
12 that such waste streams from the concrete industry
13 are exempt and not subject to such regulations.
14 There will also be litigation which will target
15 existing structures built with fly ash and
16 concrete.
17 Potentially stricter state laws
18 impacting beneficial use, for example, a proposed
19 rule in the State of Maryland states that any
20 product containing fly ash is to be disposed of in
21 a special facility authorized to accept fly ash.
22 More states will establish similar laws as a

1 result.

2 The potential elimination of fly ash in

3 -- in concrete. A hazardous waste stigma and fear

4 of liability will drive specifying engineers,

5 architects and end-users to disallow the use of

6 fly ash in concrete.

7 There will be a drastic impact upon the

8 durability of our nature's -- nature's -- nation's

9 infrastructure and the current re-authorization

10 legislation of SAFETEA-LU.

11 Thank you for hearing my concerns on

12 behalf of the ready-mixed concrete industry.

13 MS. DEVLIN: Thank you.

14 (Applause)

15 MS. DEVLIN: Number 34.

16 MR. SMITH: Good morning. My name is

17 Grant Smith. I'm representing two organizations

18 today; one is the CLEAN, which is a nationwide

19 network of environmental organizations coordinated

20 by the Civil Society Institute in Boston and the

21 Citizens Action Coalition of Indiana, where I am

22 employed.

1 I have a number of points. The first
2 one, that EPA should adopt the most stringent
3 standard presented today.
4 And secondly, to communicate the
5 following to the White House for adoption as
6 national policies: First of all, there should be
7 no cost recovery by utilities of an -- complying
8 with these regulations. They have made billions
9 of dollars off of the non- regulation of this
10 toxic waste for decades. And the ra -- rate --
11 captive rate payer should not be saddled with
12 those costs. And they've known this and there
13 have been op -- options for them that they have
14 not adopted to phase out some of these older
15 plants.
16 Next, is to close the recycling
17 loophole. Recycling loophole simply encourages
18 current investment patterns and waste generation.
19 And with coal you really can't do anything with
20 it, and that -- that leads me to the next point,
21 which is there's no pollution control system tight
22 enough to really stop the carnage of coal from its

1 mining its burning to the waste generated.
2 And, therefore, the administration
3 should call for the phase out of coal by 2050.
4 We've reached a technological and financial
5 tipping point whereby coal can be phased out over
6 that period of time without disrupting the economy
7 at all. It's -- quite simply put, it's cheaper to
8 phase out coal-fired power than it is to sustain
9 it, given the massive impacts it has
10 environmentally and on the public health.
11 And I'd like to submit this report
12 written -- com -- put together by Synapse Energy
13 Economics in Boston called "Beyond Business as
14 Usual" that describes that process.
15 Thank you.
16 MS. DEVLIN: Thank you.
17 (Applause)
18 MS. DEVLIN: Numbers 27, 29, 35, 36 and
19 37, please.
20 MR. SCOTT: My name is Bruce Scott. I'm
21 the Commissioner of the Kentucky Department of
22 Environmental Protection. Thank you for the

1 opportunity today.
2 The Commonwealth of Kentucky currently
3 has the responsibility to oversee the proper
4 management and beneficial reuse of coal combustion
5 residuals within the state. We believe that the
6 management of CCR is best handled at the local and
7 state level. Kentucky also recognizes that
8 appropriate additional controls are warranted for
9 the management of CCR.
10 Electrical generation in Kentucky uses
11 approximately 42 million tons per year.
12 Approximately 10 million tons per year of CCR is
13 generated in Kentucky.
14 EPA has previously declared in its
15 Report to Congress in 1988 and 1999 that coal
16 combustion waste are high volume and low hazard
17 and do not warrant regulation under Subtitle C.
18 EPA regulatory findings published in 1993 and 2000
19 indicated that these wastes do not warrant
20 regulation under Subtitle C as well. However,
21 EPA's proposed rule is not consistent with those
22 previous conclusions and the state does not see a

1 technical basis for EPA's change of course in this
2 proposed rule.
3 The Environmental Council of States, or
4 ECOS, in March 2010, reaffirmed a 2008 Resolution
5 on the regulation of coal combustion products that
6 recognized the previous findings of the EPA and
7 supports the beneficial reuse of CCR, and
8 regulation -- and that regulation under Subtitle C
9 would negatively impact the beneficial reuse of
10 CCR. The resolution affirms that the additional
11 level of oversight is unwarranted and dip --
12 duplicates the existing state regulatory programs,
13 and urged EPA to conclude that CCR should be
14 regulated under Subtitle D, and called upon the
15 EPA to collaborate with states to develop a
16 national framework for beneficial reuse of CCR.
17 Yet, this EPA administration has repeatedly
18 ignored the recommendations made by their state
19 counterparts in protecting human health and the
20 environment.
21 Simply put, it is not necessary or
22 appropriate to use Subtitle C to enhance or

1 improve the regulation of CCR. Regulation via an
2 appropriate Subtitle D approach would achieve the
3 same objectives without the unnecessary regulatory
4 complication, higher cost, and with no loss in
5 environmental protection.
6 In Kentucky alone, the amount of
7 hazardous waste that would have to be managed
8 under Subtitle C would increase from approximately
9 100,000 tons per year to approximately 10 million
10 tons per year, a 100-fold increase. We would
11 remind EPA that Kentucky currently has no
12 authorized hazardous waste land disposal
13 facilities. This proposal would create several
14 such facilities.
15 The event that initiated this additional
16 EPA scrutiny of how coal combustion residuals
17 should be managed was the TVA Kingston ash fill
18 failure which resulted in extensive physical
19 damage. Ironically, if CCR is regulated under
20 Subtitle C, due to the requirement to obtain a
21 hazardous waste permit for a new horizontal CCR
22 fill expansion, the substantial cost to transport

1 and manage CCR offsite, and unreasonable time
2 frames to make these changes, the result will be
3 EPA-created larger fill structures via vertical
4 expansion by utilities that would actually
5 increase the risk --
6 MR. DUFFICY: Sir, your time is up.
7 MR. SCOTT: -- of additional physical
8 failures.
9 One last thing.
10 MR. DUFFICY: Your time is up.
11 MR. SCOTT: Finally, the proposal -- the
12 --
13 MR. DUFFICY: Sir, your time is up.
14 MR. SCOTT: Thank you.
15 MS. DEVLIN: Thank you.
16 (Applause)
17 MR. SCOTT: Finally, by proposing two
18 primary approaches and an additional D Prime
19 proposal in one rule, EPA has substantially
20 complicated the rulemaking process by making it
21 nearly impossible to provide focused comments on
22 three different approaches simultaneously.

1 The Subtitle D and D Prime options
2 appear to be an EPA afterthought with few details
3 on either proposal. In light of this, EPA should
4 withdraw the proposed rule and re-propose one
5 approach so that all parties can provide
6 constructive comments on implementing appropriate
7 changes for the management of CCR.
8 The Commonwealth of Kentucky strongly
9 believes that approach should be a version under
10 Subtitle D. Implementation of clear federal
11 standards under Subtitle D that all states would
12 then implement would be a more effective and
13 appropriate approach for the management of CCR.
14 Thank you once again for the opportunity
15 to provide these comments. We look forward to
16 providing detailed written comments on the
17 proposed rule that will result in better
18 management of CCR via an appropriate regulatory
19 program.
20 MS. DEVLIN: Number 29, please.
21 MS. STRICKLEN: Hello. I'm Teresa
22 Stricklen. I am just a concerned citizen who

1 lives in the southern part of Louisville. And I'd
2 like to thank you for these hearings.
3 If you caught the premiere of Castle
4 last night, you found out that the person who was
5 murdered was murdered by selenium. Selenium is
6 just one of the metals that is in toxic coal ash.
7 Boron is another one, which those of you who have
8 battled roaches know you can use to kill roaches
9 organically by spreading borax around your house.
10 Boron is the purer form of this. And if it kills
11 roaches, I shutter to think what it might be doing
12 in our groundwater and our land. Arsenic,
13 minerals such as mercury, lead, these are just a
14 few of the minerals that are in toxic coal ash.
15 We don't exactly know what's at Cane
16 Ridge (sic) because LG&E won't provide that
17 information for us. We do know, however, that
18 there is a higher incidence of cancer and kidney
19 disease in the Riverside Gardens area. And there
20 may not be scientific studies, but it doesn't seem
21 to take a rocket scientist to figure that one out.
22 The founders of this country wanted a

1 government for the welfare of its people. I'm one
2 of those people. And I would like to see that we
3 have the welfare of the people in mind as we set
4 government regulations, not -- it's time for
5 government to be for the welfare of the people
6 instead of the welfare of big corporations who
7 seem to be exempt from telling us the truth. And
8 so I would like to see that there are regulations
9 in place for the welfare and the health of the
10 people.
11 Thank you for these hearings. I
12 encourage you to fulfill your responsibilities.
13 (Applause)
14 MS. DEVLIN: Thank you. Number 35,
15 please.
16 (No response)
17 MS. DEVLIN: 35.
18 MR. SKINNER: Ladies and gentlemen, my
19 name is Matt Skinner, with GSE Lining Technology,
20 a company based in Houston, Texas. Today I'm also
21 representing the Geosynthetic Materials
22 Association, the trade group of 80 companies that

1 manufacture, distribute and install geosynthetic
2 materials, including liners systems. The industry
3 employs 12,000 people throughout the United
4 States.
5 Our comment to EPA is very simple. We
6 request that EPA mandate the geosynthetic lining
7 of coal ash storage facilities using a composite
8 liner system. In the shortest terms, use liners,
9 specifically composite liners. Why? Because
10 liners work.
11 Concerns over safety regarding CCRs are
12 mitigated if the landfill storage sites are lined
13 with a composite liner system of a geomembrane and
14 a geosynthetic clay liner. A composite liner
15 system prevents the leachate from entering the
16 environment. Safety concerns regarding surface
17 impoundments are also mitigated if the
18 impoundments are lined with a composite liner
19 system.
20 The American Society of Civil Engineers
21 does a regular report card on America's
22 infrastructure. For the last three report cards,

1 representing over a decade, solid waste has
2 received the highest grade of any category. My
3 industry does a good job of taking America's waste
4 and properly storing it and protecting the
5 environment.
6 The materials, technology, engineers,
7 engineering techniques, the general contractors,
8 and installers who can build proper facilities and
9 the regulators and inspectors who assure that the
10 work is done correctly exist today. We urge EPA
11 to use what is currently available and working
12 presently.
13 Further, our industry has continued to
14 improve over time, and EPA has been a part of
15 that effort. Over the years, EPA has commissioned
16 nearly 80 studies on the design and performance of
17 lining systems. We specifically call your
18 attention to a 2002 study titled, "Assessment and
19 Recommendations for Optimal Performance of Waste
20 Containment Systems." This study contains a great
21 deal of pertinent information on how to construct
22 containment systems. Most illustrative for today

1 is a graph, which I will provide, charting the
2 leakage rate of different designs over the life
3 cycle of nearly 200 facilities. The -- the life
4 -- the -- the -- the composite liner systems of a
5 geomembrane and a geosynthetic clay liner was
6 demonstrated to have the lowest leakage rate over
7 all life cycles, including a near zero leakage
8 rate after the facilities were closed and final
9 cover placed. Our materials simply work.
10 A brief word on the
11 hazardous/non-hazardous question. While coal ash
12 does contain heavy metals, it lacks the
13 traditional characteristics of hazardous
14 materials, including radioactivity, the presence
15 of infectious medical waste, and other similar om
16 -- com -- compositions.
17 In the opinion of our trade
18 organization, coal ash can properly be stored
19 using Subtitle D regulations, a non-hazardous
20 solid waste designation, with composite liner
21 systems.
22 Thank you.

1 (Applause)

2 MS. DEVLIN: Thank you. Number 36,

3 please.

4 MR. COMPTON: My name's Randy Compton,

5 and I live down in Knoxville, Tennessee, a few

6 miles away from the Kingston steam facility.

7 I've been in the coal ash marketing

8 business for almost 30 years. I'm now vice

9 president of sales of a Kentucky corporation

10 that's been very successful in the storage and

11 management of CCBs.

12 It is my honest opinion, both a

13 concerned citizen and informed marketer, that

14 regulation of CCRs as hazardous would cause great

15 harm to the years of progress that we've made in

16 one of the most successful recycling programs

17 within the country.

18 The term "special waste" will carry a

19 stigma and it just really gripes and irritates me

20 that you -- that most folks don't understand the

21 business society in today (laughs). That will

22 carry a stigma that will basically kill the

1 industry. I don't care if you raise the cost up,
2 that's not what's going to drive the industry. It
3 will kill the recycling business. We have a very
4 litigious society today. And with all the poten
5 -- potential lawsuits that will be there, none of
6 the homeowners, none of the building owners, none
7 of the construction firms would at least use the
8 material.
9 It didn't become a hazardous or a toxic
10 waste until the informed press picked it up after
11 the EPA took over the cleanup at Kingston.
12 It's commonly known that all the heavy
13 metals and CCRs that we're using, it is well
14 documented, these chemical constituents are
15 commonly found in dirt, rock, and anything else
16 that's in your yards.
17 Recently the Tennessee Department of
18 Health released a study where they've been
19 tracking 200 people since that spill in Kingston
20 with no ill effects shown.
21 There's no good reason to risk
22 destroying CCR recycling. I know everybody's for

1 recycling. EPA's own aru -- rules acknowledges
2 that landfill engineering standards will be
3 essentially the same between C and D. The biggest
4 issue is the special waste thing.
5 The Portland Cement Association, the
6 concrete industry -- the com -- American Concrete
7 Industry have both recognized the use of CCCs
8 (sic) as a -- making the concrete much better,
9 less permeable, more dense, lower heat of
10 hydration and less water demand, which makes it
11 much better.
12 State DOTs readily accept the use of
13 CCRs, and they'll continue to support this
14 through the Federal Highway Works Administration
15 on the interstate projects.
16 If CCRs are labeled "hazardous" on the
17 Subtitle C, we risk losing the environmental
18 benefits that come with recycling these millions
19 of tons of this material, driving up costs of
20 construction, and -- and cost to the utilities and
21 ultimately rate payers, not to mention the
22 millions of tons of greenhouse gases that will be

1 generated making virgin products to replace the
2 loss of CCPs in the industry.
3 I urge you to rectify this and put this
4 under a Subtitle C.
5 Thank you.
6 (Applause)
7 MS. DEVLIN: Thank you. Number 37,
8 please.
9 MR. CLEWETT: I'm Rick Clewett from
10 Lexington, Kentucky.
11 It's important that EPA adopt the
12 Subtitle C proposal rather than Subtitle D or D
13 Prime proposal in order to deal adequately with
14 the health hazards currently created by coal
15 combustion waste generated by electric utilities
16 and independent power producers.
17 Under Pre -- Proposal D Prime, "existing
18 surface impoundments would not have to close or
19 install composite liners but could continue to
20 operate for their useful life," end quote. Given
21 that EPA has found that coal combustion waste
22 expose the public to various serious risk, it

1 would be unconscionable to allow existing coal
2 waste ponds to operate -- continue operating as
3 they have been.
4 Proposal D would not require, quotes,
5 "permits nor could EPA enforce the requirements.
6 Instead, states and citizens would en -- could
7 enforce the requirements under RCRA citizen
8 authority. The states could also enforce any
9 state regulation under their independent state
10 enforcement authority," quote. Leaving the burden
11 of in -- initiating enforcement actions to state
12 agencies and citizens would be an abrogation of
13 EPA's duty to protect the environment and the
14 public.
15 I will use the findings of
16 just-conducted study by the Sierra Club, Kentucky
17 Waterways Alliance and Global Environmental to
18 make this point. The study entitled, "Slow Motion
19 Spills: Coal Combustion Waste and Water in
20 Kentucky," found that the -- while 44 coal ash --
21 there are 44 coal ash ponds in Kentucky, anything
22 like adequate information was available for only

1 eight. In these eight cases, monitoring records
2 did not record all CCW contaminants. In some
3 cases, the division had even allowed sites whose
4 early records showed dangerous levels of toxici --
5 toxic heavy metals to stop monitoring those
6 pollutants."
7 Despite this disturbing failure of the
8 state to collect and archive adequate information
9 on water quality near coal ash facilities, the
10 study was able to reach three resounding
11 conclusions: (1) Existing data point -- data
12 point to groundwater contamination caused by coal
13 ash waste beneath every plant studied; (2)
14 Kentucky regulatory program is not properly
15 addressing this threat, instead, it's getting
16 weaker; and (3) Kentucky is not comprehensively
17 tracking where CCW contamination is going.
18 I'm not -- I'm sure that in many states
19 it is bad or worse. I -- this is -- I'm not out
20 to -- to get Kentucky. That's not the point. I
21 live here; my family lives here; many of my
22 friends live here. We care what's happening to

1 the people near the Cane Run facility, what's
2 happening to the people near the Spurlock facility
3 in eastern Kentucky.
4 I'll just reference another study, "In
5 Harm's Way: Lack of Federal Coal Ash Regulations
6 Endangers Americans and Their Environment." The
7 title says it all.
8 What we need is strong federal
9 regulation, federally enforced of coal combustion
10 waste. And EPA Subtitle III (sic) proposal is the
11 way to get it.
12 Thank you.
13 MS. DEVLIN: Thank you.
14 (Applause)
15 MS. DEVLIN: May I have Numbers 38, 40,
16 41, 42 and 43, please. Number 38, please go
17 ahead.
18 MR. VAUGHAN: Thank you. My name is
19 John Vaughan, Technical Service Director of Irving
20 Materials. We're one of the largest producers of
21 ready-mixed concrete in Indiana, Kentucky, and
22 Tennessee. Founded over 64 years ago, we have

1 concentrated over the last 40 years, our company,
2 and many other producers, in the beneficial use of
3 fly ash in concrete mix designs.
4 Both the concrete ready mixed industry
5 and the electric power industry have invested
6 several millions of dollars in capital to safely
7 produce, transport, and store fly ash for the
8 beneficial use in concrete products. This process
9 currently allows over 15 million tons of fly ash
10 to be recycled instead of becoming a waste product
11 of coal combustion. Indirectly, this use of fly
12 ash in concrete also provides for approximately a
13 15 million ton per year reduction in carbon
14 dioxide production. This reduction in carbon
15 dioxide is due to the fact that for approximately
16 every ton of fly ash used in concrete, we use one
17 less ton of virgin cement.
18 Fly ash in concrete is not just a filler
19 material. When used in concrete, the fly ash
20 becomes part of a cementitious matrix. The fly
21 ash reacts with the cement during the initial
22 hydration process to form combined cementitious

1 matrix superior to the matrix produced by using
2 only Portland cement. The combination of fly ash
3 and cement provide for easier placement, better
4 workability, along with increased durability and
5 service life for our -- our finished ready-mixed
6 concrete products.
7 As you are well aware, in June of this
8 year, EPA published proposed changes to
9 regulations that could result in fly ash being
10 designated as a hazardous waste. It is my belief
11 that a hazardous waste designation will create a
12 major decrease in the amount of fly ash being
13 beneficially used in concrete. If the fly ash is
14 not beneficially used, it will still be produced
15 and it will still be creating a problem in
16 impounded landfills, precisely the opposite of
17 what should be done.
18 Since the announcement of the proposed
19 change in classification, I personally have had to
20 field several phone calls from concerned customers
21 concerning the use of our fly ash in concrete,
22 indicating that any designation as a hazardous

1 waste would only create an increase in people
2 being concerned and no longer wanting to use
3 concrete products containing fly ash.
4 To date, we've already seen a negative
5 reaction on the -- on the use of fly ash in
6 concrete. Los Angeles Unified School District has
7 banned the use of fly ash until the EPA has
8 finalized their decision. And to go one step
9 further, as previously mentioned, the State
10 of Maryland has proposed a rule that any product
11 containing fly ash would have to disposed of in a
12 facility authorized to accept fly ash, thus
13 creating more waste having to be contained in
14 specialized landfills.
15 Thank you for your consideration.
16 (Applause)
17 MS. DEVLIN: Thank you. Number 40,
18 please.
19 MR. SCOGGAN: Thank you for this
20 opportunity to address the EPA. My name is John
21 Scoggan.
22 I work for a company called Boral

1 Material Technologies, where I've been employed
2 for 29 years. We manage coal combustion products,
3 principally, fly ash for concrete. We've been in
4 business for over 50 years. We support the EPA's
5 efforts to protect the human health and the
6 environment. We support regulation to ensure
7 responsible disposal but don't want to kill
8 recycling in the process. Therefore, we support
9 EPA's ruling for RCRA Subtitle D.
10 Fly ash been -- has been used in
11 concrete since the 1920s. The federal government
12 and the EPA have encouraged and supported the use
13 fly ash in concrete for over two decades.
14 The environmental benefits of using fly
15 ash in concrete include: Reduction of CO2 by
16 replacing cement in concrete. EPRI ep -- EPRI
17 estimates reduction of 11 million tons of CO2
18 annually; a reduction in landfill space, EPRI
19 estimates a savings equal to 51 million cubic
20 yards of space annual. Recycling reduces the
21 requirements for excavation and -- or quarrying of
22 equal amounts of raw virgin material. Other

1 benefits include substantial water and energy
2 savings as well.
3 Recycling coal combustion products has
4 also been supported by other government agencies,
5 the Department Ag -- of Agriculture, Department of
6 Energy, the Federal Highway Administration and
7 state DOTs. Others supporting this recycling
8 include trade and professional associations, the
9 American Coal Ash Association, the National Ready
10 Mixed Concrete Association, the American Society
11 for Testing and Materials, and the American
12 Concrete Institute.
13 The results of all this work, recycling
14 coal combustion products, has grown from 30% in
15 the year 2000 to 44% in 2008, 60 million tons.
16 None of these groups believes that -- that
17 hazardous waste regulations are warranted for coal
18 combustion residues.
19 Today, in America, perception is
20 reality; otherwise, we wouldn't be here. Coal is
21 perceived by the general public as hazardous, even
22 though the scientific data proves otherwise. The

1 EPA says there is no stigma. The American public
2 disagrees, as proved by what we have heard here
3 today from citizens and environmental groups.
4 Please help the coal combustion
5 recycling success story continue. Rule with the
6 RCRA Subtitle D.
7 Thank you for your time.
8 (Applause)
9 MS. DEVLIN: Thank you. Number 41.
10 MR. PETERSON: Good afternoon. My name
11 is Terry Peterson, and I have been employed in the
12 coal combustion product industry for the past 27
13 years.
14 I also work for Boral Material
15 Technologies, a company that employs 161 people
16 working at 22 locations across 18 states.
17 I'd like to open my statement today by
18 commending the EPA for maintaining their position
19 concerning CCRs since enactment of the Bevill
20 Amendment in 1980 and re-confirming that position
21 through regulatory determinations in 1993 and
22 2000. The EPA's longstanding position has

1 underpinned the establishment and development of,
2 arguably, the most successful recycling program in
3 U.S. history.
4 BMTI alone has been able to place in
5 excess of 53 million tons of coal combustion
6 products into beneficial uses over the past 20
7 years. Obviously, that's 53 million tons of
8 avoided landfill. But, just as importantly,
9 represents an avoidance of 53 million tons of CO2
10 emissions that would have bec -- resulted if
11 natural materials had been used. This type of
12 success would never occur if CCRs were classified
13 under Subtitle C.
14 Further benefit of EPA's longstanding
15 position is reflected in the BMTI R&D Program.
16 Over the past ten years, we have invested in
17 excess of $30 million developing new CCP applications
18 outside of ready mixed and cement. Additionally,
19 we developed three beneficiation processes that
20 enable CCPs to meet performance specifications, if
21 CCP quality is compromised if power plant
22 modifications to reduce NOX, SOX and mercury are

installed. None of these investments would have occurred if CCRs were classified under Subtitle C.

I recognize during these hearings the undercurrent associated with generating power without burning -- without burning coal, as well as citizens' concerns over inadequate state regulasa -- regulation. Obviously, generating power by burning coal has been an integral part of U.S. society for many years and will remain so until alternate fuel sources develop.

I suggest that as long as we are burning coal, the right thing to do is encourage the continuation and expansion of current recycling efforts. Supporting Subtitle D is the way to maintain this momentum. Just as importantly, creating confidence amongst citizens that government agencies, whether federal or state, are protecting their interest is critical. I suggest that we can gain public confidence, achieve the necessary safeguards for properly landfilling CCRs through cooperation between the EPA and state regulators using a Subtitle D classification.

1 In closing, I recommend that the best
2 option going forward for U.S. citizens is for EPA
3 to continue its support using a Subtitle D
4 classification for CCRs.
5 Thank you very much.
6 (Applause)
7 MS. DEVLIN: Thank you. Number 39, I
8 understand you're here?
9 (No response)
10 MS. DEVLIN: Number -- Number 39.
11 REV. LEWIS: Hi, you-all. Thanks for
12 letting me be here today. I am Rev. Bev Lewis,
13 Pastor of -- within the ranks of the United Church
14 of Christ, Pastor of Chapel Hill United Church of
15 Christ in the south end of Louisville.
16 You-all, I'm sick and I'm tired. I
17 moved here just five years ago, and since then
18 I've had two bouts of pneumonia. And now, if
19 there's an x-ray done on my lungs, no doctor
20 believes that I'm a non-smoker.
21 I'm tired of my people who live less
22 than five miles away from this thing, from this

1 stuff, from having high -- higher cancer rates
2 than anywhere else in the nation. I'm tired of
3 burying the people I love because they have
4 cancer. I'm tired of the women in my church
5 having miscarriages because they're so close to
6 this stuff.
7 You-all, we need some help. You know a
8 church can only do so much, but the government
9 supposed to be part of it, too. So I'm asking you
10 today, on behalf of the United Church of Christ,
11 on behalf of Chapel Hill, on behalf of the people
12 that surround me every single day, they need some
13 protection, and you can on -- you are the only
14 ones who could do that.
15 You know, there are times when it rains,
16 and it used to rain here, that I would have to put
17 my car inside, because every time it would rain, I
18 would have brown residue all over my car. Don't
19 tell me I'm not breathing in that stuff; I don't
20 believe it.
21 I'm tired of meeting people who live
22 much closer to Cane Run facility than I do,

they're just across the street, and they're dying; whole families are dying from all kinds of cancer.

You-all, we need some help. Life is sacred. There isn't a living organism in the Ohio River, a woman, child, or man, who doesn't deserve the right to live fully and completely and in peace. Help us. Help us save ourselves. Help us save the generations after us. Help us protect the Ohio River. What blows here goes away elsewhere.

I've seen those stacks turn black at sunset. I've seen the smoke traveling across the river into Indiana. And I don't want to see this toxic waste dump flowing into the Gulf of Mexico from the Mississippi. I don't want us to help kill the Gulf. Help us save ourselves. Help us save God's life in this place. It's sacred, you-all. You can't put a dollar mark on that.

Thank you very much.

(Applause)

MS. DEVLIN: Thank you. Number 42, please.

1 MR. PRICE: My name is Charles Price,
2 and I'm President and CEO of Charah.
3 I am testifying today on behalf of
4 Charah and its 250 employees in 11 states, who are
5 committed to recycling coal combustion by-products
6 and the benefits this recycling has on our
7 environment and the construction material
8 industry.
9 The EPA's assumption that Subtitle C
10 regulations will result in an increase in
11 beneficial use are not correct. Recycling will
12 decrease, if not end altogether, if the EPA
13 regulates CCRs under Subtitle C. Simply stating
14 that CCRs are exempt, if beneficially used, is not
15 sufficient to put the legal liability fears to
16 rest among the user community.
17 The protective features proposed by EPA
18 for CCR landfills under the Subtitle C and
19 Subtitle D alternates are essentially the same;
20 therefore, Subtitle D regulation -- regulatory
21 program, by your own description, will provide the
22 necessary protection and would avoid further

1 damage to the CCP recycling industry.
2 The Subtitle D approach is clearly the
3 appropriate regulatory mechanism that will protect
4 the environment and avoid damage to the recycling
5 industry.
6 I ask that you avoid damaging the best
7 recycling story in America and regulate under
8 Subtitle D.
9 (Applause)
10 MS. DEVLIN: Thank you. Number 43.
11 MR. BOONE: My name is Nathan Boone.
12 I'm Vice President of Business Development for
13 Charah, Incorporated, and I have 13 years of
14 experience in the coal combustion products
15 management industry.
16 The first six years of my work
17 experience involved daily work at coal combustion
18 landfill in a processing site. And my experience
19 with the product is contradictory to what you've
20 heard represented from the people in the vicinity
21 of the Cane Run facility. I want to stress that.
22 I am testifying today on behalf of Charah.

1 Charah is a 23-year-old company that
2 specializes in the management of coal combustion
3 residuals. We employ over 250 employees in 11
4 states plus over 100 additional subcontract
5 employees. We're all dedicated to the responsible
6 management of CCRs. Our approach for responsible
7 management of CCRs has provided for consistent
8 company growth, along with opportunities for job
9 creation within our organization throughout our
10 company's history. Our growth can be attributed
11 to a dedication to the responsible management of
12 CCRs which has culminated in our pursuit of
13 beneficial use opportunities that we feel
14 represent the best management practices for CCR
15 utilization. Our company is very active in the
16 recycling of coal combustion products that are
17 derived from coal ash and we are proud to be
18 associated with one of the most successful
19 recycling industries in the United States.
20 In accordance with our dedication to the
21 responsible management of CCRs, we support EPA's
22 effort to implement regulations on the disposal of

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

1 have to handle the concerns of two truck drivers
2 who are handling CCRs from a common storage silo,
3 where the first driver is hauling raw materials to
4 a concrete ready mixed plant, yet his co-worker
5 sitting one tren -- truck length away is equipped
6 to haul hazardous waste to an on-site disposal
7 cell, even though the material that they are
8 hauling is exactly the same and comes out of the
9 same silo?
10 A common theme that we've heard at these
11 hearings is that -- by those favoring Subtitle C
12 regulations is that C is the only approach that
13 will protect our water resources regardless of the
14 cost implications.
15 I believe that we all support protection
16 of our natural resources, however, Subtitle D
17 regulations will provide the same engineering
18 controls as Subtitle C for accomplishing this
19 goal. We do not believe there to be enough
20 difference between the environmental protective
21 features proposed in the Subtitle C and D options
22 to warrant risking the damage to the marketability

1 of CCRs that we re -- believe will accompany
2 Subtitle C.
3 Thank you.
4 MS. DEVLIN: Thank you.
5 (Applause)
6 MS. DEVLIN: Numbers 45, 46, 58, 63 and
7 75. Number 45, go ahead, please.
8 MR. GUILFOILE: Thank you. These
9 comments are made in part as Deputy Director of
10 the Sierra Club Water Sentinels Program. We have
11 51 programs and over 12,000 volunteers across the
12 United States documenting water quality in both
13 surface and groundwater. I am also making these
14 comments as a parent, and as someone who has
15 delivered pediatric health care for 30 years. As
16 a clinician in the pediatric intensive care unit
17 at Cincinnati Children's Hospital, the largest
18 clinical and research facility in the United
19 States, I have seen children die as a result of
20 industrial contamination of tap water.
21 Peer reviewed analyses of health-care
22 databases clearly demonstrate that the incidence

1 lung disease, kidney disease, premature birth,
2 birth defects, and many childhood developmental
3 disorders are statistically, significantly
4 increased in geographic areas surrounding coal ash
5 impoundments and other facilities that discharge
6 toxic pollutants. This has got to stop.
7 The argument that it is too expensive to
8 regulate coal ash as a hazardous waste is
9 untenable. Short-term acute care costs associated
10 with environmentally attributable childhood
11 diseases and disorders are in the magnitude of $258
12 billion per year. Costs associated with the adult
13 population exceed $600 billion per year.
14 Environmentally induced -- environmentally induced
15 chronic health-care costs today are well over $1
16 trillion and are expected to rise to nearly $6
17 trillion in 2050. Have you seen what health-care
18 premiums are doing this year? The fact is, we
19 cannot afford not to regulate coal ash as a hadar
20 -- hazardous waste.
21 We have a long history of denial and
22 disavowal. Remember the tobacco industry, Pacific

1 Gas & Electric, Beatrice, and most recently Bonner
2 & Associates who perjured themselves before
3 Congress on behalf of the American Coalition for
4 Clean Electricity. Unfortunately, there are many
5 other examples.
6 There is not one shred of scientific
7 economic or public opinion research demonstrating
8 -- that is peer reviewed -- demonstrating that
9 regulation of coal ash would impair the recycling
10 industry.
11 Utilities and other industries do not
12 have the entitlement to pollute just because they
13 cannot easily solve the problem. There is no free
14 pass.
15 I implore the Environmental Protection
16 Agency, on behalf of our children and the unborn
17 fetus, to make the decision to regulate coal ash
18 as a hazardous waste Subtitle C.
19 Thank you.
20 (Applause)
21 MS. DEVLIN: Thank you. Number 46,
22 please.

1 MR. WALSH: Good afternoon. My name is
2 Bryan Walsh, and I work for Duke Energy Indiana.
3 I'm the station manager at the Gallagher Station,
4 a 600 megawatt coal-fired power plant. I very much
5 appreciate the opportunity to speak with you
6 today.
7 Duke Energy Indiana supports the
8 Subtitle D Prime option, with appropriate
9 adjustments. This is because of the three options
10 presented by EPA, this is the one that best
11 balances clean energy with affordability and
12 reliability. Duke Energy shares EPA's objective
13 of having a federal regulatory program that
14 ensures the safe disposal of CCRs. The D Prime
15 option will meet this objective.
16 Opponents of the Subtitle D option
17 persist on incorrectly stating that it would
18 merely preserve the status quo under which EPA
19 could only issue guidance. This is not the case.
20 Under a Subtitle D option, EPA would issue federal
21 regulations specifically designed for CCR disposal
22 units. These regulations would be directly

1 enforceable by the states and the public under
2 RCRA's Citizen Act Provision. EPA would also
3 retain its imminent and substantial endangerment
4 authority to take action against any CCR unit that
5 posed a risk to human health or the environment.
6 We agree that the disposal units that
7 are not fully protective must be upgraded and must
8 be regulated. However, there are many CCR surface
9 impoundments which are perfectly safe. The D
10 Prime option will allow for development of a
11 regulatory program that meets both of these
12 objectives.
13 A major short-coming, however, of either
14 proposed Subtitle D approach is the lack of a
15 mechanism for the states to step in and administer
16 the regulation. Clearly, there are regulatory
17 programs that already meet or exceed the proposed
18 Subtitle D standards. States with qualified
19 programs should be given the option of
20 administering the federal Stub -- Subtitle D rules
21 if they so desire.
22 Additionally, I want to touch on briefly

1 our opposition to the Subtitle C option. Duke
2 agrees with the views of virtually all the states,
3 many federal agencies, municipal and local
4 governments, state public utility commissions, and
5 many other third parties that regulating CCRs
6 under RCRA's hazardous waste priv -- provision
7 does not provide significant additional protection
8 to human health or the environment. In fact, it
9 would be counterproductive to do so because the
10 Subtitle C regulation would cripple the CCR
11 beneficial use industry.
12 Finally, I would like to note that there
13 are many coal-fired power plants throughout this
14 country that are not base-load units. These could
15 potentially be driven towards retirement depending
16 on how coal ash is classified. This will have a
17 direct economic impact on the communities we live
18 in. For example, Gallagher Station is the largest
19 taxpayer in New Albany, makes enough power to
20 supply almost 200,000 homes, employs 77 full-time
21 Duke Energy employees, and also puts numerous
22 contractors to work on our site on any given day.

1 Gallagher is not unlike many other power plants
2 across the country. And a Subtitle C
3 classification could have a severe economic and
4 employment impact.
5 Thank you for your time.
6 (Applause)
7 MS. DEVLIN: Thank you. Number 58,
8 please.
9 MS. NISPEL: Good afternoon. My name is
10 Debbie Nispel. I'm an Environmental Scientist and
11 Manager of Midwest Generation Field Support with
12 Duke Energy.
13 Duke Energy supports the development of
14 federal regulations for CCRs under RCRA's Subtitle
15 D non-hazardous waste program. The question for
16 Duke is not whether to regulate, but how to
17 regulate. Duke has evaluated the alternatives and
18 determined that Subtitle D Prime option, with
19 appropriate adjustments, is the best path forward.
20 Unlike the Subtitle C approach, Subtitle D Prime
21 will enable EPA to establish an environmentally
22 protective program without crippling CCR

1 beneficial use and imposing unnecessary costs on
2 power plants, threatening jobs and increasing
3 electricity costs.
4 Certain activist groups are alleging
5 dozens of new damage cases, including some that
6 are at Duke Energy facilities. In its final May
7 2000 regulatory determination concluding that CCRs
8 do not warrant Subtitle C regulation, a close
9 examination of the facts reveals many flaws in the
10 recent allegations made by activist groups
11 regarding additional damage cases. Many of the
12 assertions are based on extremely flimsy evidence,
13 with unfounded conclusions. EPA cannot rely on
14 these assertions in any final rulemaking without
15 conducting its own factual, independent review of
16 the sites and following for -- and allowing for
17 public notice and comment on their findings.
18 An EPRI analysis of the EPA damage case
19 report in the 2008 Notice of Data Availability
20 shows only a handful of these cases actually
21 involve circumstances where offsite contamination
22 occurred of a primary drinking water standard,

1 also known as a primary MCL. Of the 54 proven or
2 potential damage cases cited by EPA in the NODA
3 involving groundwater contamination, only three
4 involved off-site contamination exceeding pre --
5 primary MCLs. The same is likely true with the
6 alleged new damage cases. In fact, during their
7 press conference, the activists acknowledged that
8 some of these cases do not involve offsite
9 contamination, but speculate merely that the
10 damage may mitigate -- may migrate offsite at some
11 point in the future.
12 Another significant flaw is that the
13 allegations have been made without prior
14 consultation with the very states whose programs
15 the groups allege are deficient. The states are
16 contesting this allegation and charging that
17 activat -- activist groups have improperly
18 characterized the effectiveness of their state
19 controls.
20 Duke Energy supports a Subtitle D
21 program that will involve groundwater monitoring
22 controls specifically designed to detect any

contamination from the CCR waste management units before contamination moves offsite. If Duke determines an impact to groundwater has occurred at one of if -- its facilities, the appropriate federal or state regulatory agencies are notified, and we work with those regulators in determining the appropriate steps to be taken to remediate the impact to groundwater.

Further, Duke has taken measures to reduce or eliminate any known risks for potential future impacts at the other Duke facilities.

Thank you.

(Applause)

MS. DEVLIN: Thank you. Number 63, please.

MR. FALLS: Thank you. My name's Alan Falls, and I'm with Headwaters Resources. I have a degree in Civil Engineering and I have been working in the CCP Marketing and Recycling business for over 27 years. This has been a very rewarding professional -- profession knowing that I have been part of the best recycling program in

1 the United States. Out of approximately 140
2 million tons of CCPs produced we've been able to
3 beneficially re-use about 44% or 60 million tons.
4 I'm requesting that you make CCPs a
5 Subtitle D and keep it listed as a non-hazardous
6 industrial waste. If this non-hazardous material
7 is listed through Subtitle C as a hazardous waste
8 just so you can regulate landfills, you'll be
9 doing a grave injustice to our country's most
10 successful recycling program. Local homeowners
11 that own the product that the CCPs are in them,
12 workers that produce concrete or other products
13 containing CCPs, the people that handle or work
14 with the products that are produced, using CCPs
15 will not be able to distinguish between real
16 hazardous products and ones that have been labeled
17 as such so the CCP program -- material going to
18 the landfill can be regulated by the EPA.
19 Because of this, people will start to be
20 afraid of using fly ash and this valuable
21 recycling program will fail. This will cost the
22 people of the United States billions of dollars in

1 increased electrical costs by increasing landfill
2 costs.
3 If CCPs are labeled Subtitle C and the
4 recycling program fails, over 30 million tons of
5 Portland Cement will have to be produced, which
6 will lead to an additional 30 million tons of CO2
7 gas being produced, greatly increasing the cost of
8 concrete and other construction materials, again
9 costing the people of the United States billions
10 of dollars in increased construction costs. Also,
11 if you are a believer in "global warming," the
12 additional 30 million tons of CO2 gas produced
13 will speed this process. The cost of this is
14 impossible to put a price tag on.
15 I understand that some people claim that
16 if you make CCPs a hazardous waste that you'll
17 actually increase the beneficial reuse program.
18 My question is here -- here is: Wouldn't you
19 think that the people that are currently marketing
20 fly ash would be promoting Subtitle C designation
21 if that were true?
22 I believe that I'm qualified to state,

1 honestly, that all ash marketing groups are
2 strongly opposed to Subtitle D -- Subtitle C
3 designation.
4 If the EPA fails -- feels that it must
5 regulate landfills, then I implore them to make
6 CCPs a Subtitle D and find another method of
7 regulating that won't jeopardize our country's
8 most successful recycling program.
9 Thank you.
10 (Applause)
11 MS. DEVLIN: Thank you. Number 75,
12 please.
13 MR. ANDERSON: Thank you for the
14 opportunity to comment on this proposed ruling
15 that we're here for today.
16 My name is Doug Anderson and I'm with
17 Headwaters. I have been marketing coal combustion
18 byproducts for 14 years.
19 My father retired from a coal-fired
20 power plant in northern Indiana; before that he
21 owned a small trucking company in southeastern
22 Kentucky that transported coal directly from the

1 coal mine. My grandfather was a retired coal
2 miner back in the 40s with little regulations. He
3 died -- he was 90 years old when he passed away
4 from natural causes. I think you can see the
5 theme here. This is an industry that is near and
6 dear to me. I grew up in this industry and have
7 seen it change over the years.
8 I have also seen the beneficial reuse
9 tonnages increase yearly as new programs have
10 developed, it is estimated we have utilized
11 between 50- and 60-million tons into beneficial
12 reuses here in the United States of America.
13 It is with great concern the EPA
14 regulate CCBs as a listed waste under the
15 hazardous waste authorities of Subtitle C of the
16 Ra -- of the Resource Con -- Conservation and
17 Recovery Act. If the Subtitle C option is passed,
18 all of these CCBs would have to be placed in a
19 landfill or a holding pond, which is how we
20 arrived here today.
21 If these tons were beneficially reused
22 in a responsible manner, the incident at the

1 Kingston landfill never takes place. I don't
2 understand why the EPA would want that situation
3 to exist. These 50- to 60-million tons would not
4 be recycled but landfilled.
5 Many people will be directly affected by
6 the Subtitle C ruling. Ready mixed concrete
7 producers who will not use CCBs will see their raw
8 material costs rise as well as some quality of
9 their concrete decrease; concrete prices will
10 increase; trucking companies will have insurance
11 costs rise; landfill costs would significantly
12 increase, which, in turn, raises our electricity
13 rates. Marketers of CCBs will lose jobs and
14 significant progress of beneficial reuses will be
15 lost.
16 Already some producers that I have seen
17 of CCBs will not release their material into
18 already approved uses in fear of this ruling and
19 the stigma of this ruling. The potential stigma
20 that will be associated by this ruling has caused
21 that.
22 One of the most positive and progressive

1 programs that has come into my industry has been
2 the Green Building & LEED's program. The
3 government has been behind this program.
4 Coal Combustion Byproducts is one of the
5 greenest materials you can find. This building we
6 are in today contains CCBs as does the sidewalk
7 outside and the street next to that.
8 It is my hope and request that you, the
9 EPA, try and develop a federal program for CCB
10 disposal under RCRA Subtitle D, Non-Hazardous
11 Waste Program, which provides virtually the same
12 safeguards to the public as does Subtitle C, so we
13 can keep American people working and developing
14 more beneficial reuses in this green building
15 environment.
16 Thank you, again, for letting me speak.
17 (Applause)
18 MS. DEVLIN: Thank you. Again, we're
19 running a bit ahead, so I'm going to try to
20 accommodate some -- some folks who've asked to
21 speak early. Number 146, are you in the room?
22 (No response)

1 MS. DEVLIN: Okay. And then walk-ins
2 Number 306, 307, 308, and 309, are you in the
3 room, please?
4 (No response)
5 MS. DEVLIN: If you would come forward.
6 Thank you. Just go ahead.
7 MR. BROWNHILL: Good Afternoon. My name
8 is Ryan Brownhill, Operations Manager for Sphere
9 One, Incorporated. We're the largest marketer of
10 domestically-sourced cenospheres in the United
11 States.
12 Cenospheres are inert, lightweight
13 microspheres that are used in an encapsulated
14 building, refractory, and recreational products.
15 We have marketed cenospheres since -- since 1981
16 from our Chattanooga plant. We have thoroughly
17 tested our products through the years and the
18 heavy metals encapsulated within cenospheres do
19 not leach out. In no way do cenospheres meet the
20 criteria of a RCRA Subtitle C waste and do not
21 deserve to be sig -- stigmatized by that
22 designation.

1 The EPA has stated that they are
2 committed to the beneficial use of CCPs and
3 acknowledge the huge reduction in greenhouse gas
4 emissions that are achieved by their use. They
5 have repeatedly stated that they don't believe a
6 Subtitle C regulation will create a stigma against
7 CCPs and may increase the amount of CCPs recycled.
8 Our business is almost solely comprised
9 of recycling CCPs. If what the EPA says is true,
10 then the industry that stands to benefit the most
11 from a Subtitle C designation is ours. We would
12 be leading the charge for Subtitle C. We're not,
13 because we know that the opposite is true.
14 Using the past history of increased ra
15 -- recycling in other industries to create a rule
16 is like saying "we have seen that freezing
17 temperatures in Florida is good for the heating
18 oil industry, so freezing temperatures will be
19 good for the orange growers as well." That sounds
20 ridiculous but it's basically the lar -- the logic
21 being used by the EPA.
22 It would be irresponsible for the EPA to

1 make the assumptions they have and not engage the
2 experts in these markets.
3 The actions of our suppliers and
4 customers continue to show that this stigma is
5 real. One contract at a major supplier has
6 recently expired. This supplier has refused to
7 enter into a contract renewal until the EPA makes
8 a final ruling and they see that it will not be a
9 Subtitle C regulation. A major building products
10 customer of ours has told us directly that a
11 Subtitle C regulation would deter them from using
12 cenospheres and have already begun to explore
13 alternative materials. Another customer has said
14 that they are very concerned with this stigma and
15 are slowing work in fly ash-related technologies
16 until they see the outcome, even though they have
17 extensively tested our material and have
18 independently determined that it is safe.
19 The negative stigma is already affecting
20 our business. It will only get worse if Subtitle
21 C is implemented. Based on our experience with
22 this market and all of our conversations with cuth

1 -- customers, we can't see how we will be able to
2 stay in business.
3 This is not an argument between groups
4 who want to protect families and those who don't.
5 I have two small children myself. I fully agree
6 that the EPA must protect people from contaminated
7 water due to improper storage of CCRs. No family
8 sould be -- should be subjected to that. But I
9 don't believe that anyone ne -- wants to
10 needlessly add to the unemployment problem in this
11 country either. We have roughly 45 families that
12 depend upon Spere -- Sphere One for food,
13 clothing, shelter, and health care. I want those
14 families to be protected from unintended
15 consequences of a bad ruling.
16 There's a solution that everyone in the
17 room can and should support. Subtitle D gives all
18 the same technical protections to the environment
19 that Subtitle C does with national standards and a
20 quicker implementation schedule. It carries
21 virtually no risk of devastating an entire
22 industry that is dedicated to recycling over 40

1 million tons of a waste stream that would be
2 otherwise landfilled.
3 Thank you.
4 (Applause)
5 MS. DEVLIN: Thank you. Number 306,
6 please.
7 MR. BOULDING: My name is Russell
8 Boulding, and I'm speaking as a scientist to
9 express my support for the proposed rules to
10 regulate coal combusted waste under Subtitle C.
11 I have been -- worked on environmental
12 problems related to coal since 1973 as a
13 contaminant hydrogeologist I have studied
14 groundwater contamination from improper disposal
15 of coal combustion waste since the late 1980s.
16 I am the author of 21 of the 70 new
17 damage cases identified by the Environmental
18 Integrity Project, Earthjustice, and the Sierra
19 Club in their two recently issued reports.
20 Three minutes is not nearly enough time
21 to address the misrepresentation and
22 misinformation that has been repeated over and

1 over by representatives from the coal industry and
2 the electric power industries to minimize concerns
3 created by the toxic characteristics of coal
4 combustion waste. Repetition does not make
5 distorted science any less distorted.
6 In Attachment A to my statement I
7 provide information that makes it clear that since
8 the mid-1980s the toxic characteristics of all
9 forms of fly ash have been well documented, as
10 well as the failure of leachate data from TCLP
11 tests to adequately measure the toxicity of coal
12 combustion waste.
13 In my limited remaining time I would
14 like to focus on new data to supplement the
15 December 2009 EPA report by Kosson and others, a
16 report which finally presented results of leaching
17 tests that more accurately reflect the potential
18 to contaminate groundwater.
19 Even with my familiarity with the
20 inadequacy of the TCLP and other leachate tests
21 that have been used to argue that coal combustion
22 waste is benign material, I was startled by the

1 results in this report that showed maximum
2 concentrations of arsenic, antimony, chromium and
3 selenium far above the maximum found in previously
4 reported tests.
5 The main point I would like to make here
6 is that even these more accurate leaching tests
7 underestimate the potential for lead contamination
8 for coal com -- from coal combustion waste.
9 In Attachment C I have provided a list
10 of nine disposal sites in the recent report by the
11 Environmental Integrity Project where measured
12 concentrations of lead in groundhouse --
13 groundwater were higher than the maximum reported
14 in the Kosson report.
15 One private drinking water well was 51
16 times higher than the highest leachate value in
17 that test.
18 The failure of the current patchwork
19 regulatory approach by states to control the harm
20 to human health and the environment has been
21 eloquently and abundantly shown by the testimony
22 of citizens who have been directly affected. And

1 as a scientist in talking with this damage cases
2 it was just -- it just brought it home to me in --
3 in a -- in a way that I'd never felt before.
4 The science is also clear that the
5 Subtitle C regulatory option is both appropriate
6 and necessary.
7 Thank you.
8 MS. DEVLIN: Thank you.
9 (Applause)
10 MS. DEVLIN: Number 307.
11 MR. KLAWITTER: Hello. My name is Sam
12 Klawitter. I'm speaking as a concerned citizen
13 and also a parent.
14 I would like to know what is in our
15 drinking water and what is in the materials from
16 which we build our homes.
17 Despite the fact that industry-connected
18 testimony suggests that coal waste is harmless,
19 there's strong scientific evidence to the
20 contrary, and I do not wish to take the risk that
21 the industry research is wrong with my children.
22 Coal ash must be regulated as a

1 hazardous waste. Therefore, I fully support
2 Subtitle C.
3 Thank you for your time and concern.
4 MS. DEVLIN: Thank you.
5 (Applause)
6 MS. DEVLIN: Number 308, please.
7 MS. COCHRAN: Hi. My name is Eboni Neal
8 Cochran, and I'm a member of REACT, Rubbertown
9 Emergency Action.
10 We're an all volunteer group of
11 residents living at the fence lines of 11
12 Rubbertown chemical plants. REACT primarily
13 focuses its work on air toxics. You might be
14 wondering why I'm here if the focus of our group
15 is centered around chemical plants. I'm here
16 because whether the contamination is in the water,
17 air, or soil, it is having a disastrous effect on
18 environmental justice communities.
19 I'm a member of REACT but also a
20 resident who lives in the Chickasaw neighborhood,
21 one of the many neighborhoods adjacent to 11
22 chemical plants and also affected by Duke Energy's

1 Gallagher Plant, which you can see black, thick
2 smoke sometimes coming across the river into my
3 neighborhood.
4 I wish more of my neighbors could be
5 here, but unfortunately, they are not paid to be
6 here like some of these industry folk.
7 I'm here because I'm opposed to the LG&E
8 coal ash pond expansion. And I'm here to let the
9 Environmental Protection Agency know that the
10 people want strong laws for the regulation of coal
11 ash. We support Subtitle C and we want effective
12 enforcement.
13 For far too long people in my
14 neighborhood have had to shoulder the burden of
15 toxic chemicals destroying their health and
16 quality of life. Our neighborhoods have the
17 highest rates of asthma, cancer and other
18 illnesses. Many of these illnesses are associated
19 with or aggravated by the numerous toxic chemicals
20 that are carelessly dumped into the air or leached
21 into our soil and rivers. The cumulative effect
22 of the various industries in the area are too much

1 for our communities to handle.
2 The current coal combustion waste pond
3 onsite at the Cane Run Power Station is one of the
4 44 classified by the U.S. EPA as "high hazard,"
5 meaning that a spill would result in significant
6 damage or loss of life. Why in the world would an
7 expansion be approved when the current pond proses
8 -- poses such a threat? Why in the world would
9 something considered high hazard not -- not be
10 subject to the most stringent of regulations?
11 Don't let these companies bamboozle you
12 into thinking tougher regulations will destroy
13 them economically. What about our household
14 economics destroyed because of illness, missed
15 work days, or the inability to work. We do not
16 have full protective gear like an employee talked
17 about earlier. Industry has money from its
18 profits to fight stigma. The people do not have
19 the money to fight illness.
20 We need strong laws because there is a
21 chance that our neighbors will be affected by coal
22 ash blowing in the wind into our homes and into

1 our lungs. We need strong laws because there is a
2 chance that inferior liners or even the best
3 liners could breach and leach toxic chemicals into
4 our soil and water, soil and water our children
5 play in. We need strong laws because the burden
6 of proof should be on the companies handling the
7 harmful substances not on the people who fall
8 victim to them. We need strong laws to encourage
9 companies to use safer chemicals and safer
10 technologies. We cannot go on using the same
11 antiquated technologies that pose a threat not
12 only to human life but to those necessities we
13 depend on for our survival, those necessities like
14 water and food.
15 The name of your agency implies that its
16 purpose is to protect the environment, people
17 living in e -- environmental justice communities
18 cannot and should not be expected to do your job.
19 Please take that action -- please take action that
20 is strong, that benefits those living near
21 facilities, and take action now.
22 Thank you.

1 MS. DEVLIN: Thank you.
2 (Applause)
3 MS. DEVLIN: Number 309, 310, 311, and
4 312, are any of you in the room?
5 (No response)
6 MS. DEVLIN: And 313. Come on up.
7 Please come forward. 312, right.
8 MR. HAYDEN: My name is Bill Hayden. I
9 live in Clarksville, Indiana, across the river.
10 And I lobbied for the Sierra Club and other
11 environmental groups in the Indi -- at the Indiana
12 Legislature for 15 years.
13 I -- it's long past time for the EPA to
14 be considering a rule to treat Coal Combustion
15 Residues as the hazardous waste that it really is.
16 The problems with the current management
17 of this hazardous waste are del -- well
18 documented. The past unwillingness of the federal
19 and state governments to properly regulate this
20 material has resulted in many illnesses and much
21 environmental destruction to our surface and
22 groundwater.

1 The State of Indiana has effectively
2 eliminated any legitimate claim but state's rights
3 should be respected in the matter of environmental
4 regulation. Federal statute and rules -- excuse
5 me, I lost my place. Okay.
6 Federal states -- federal statute and
7 rules are essentially the statute and rule of the
8 state of Indiana with regard to environmental
9 regulation. Since the legislature at the
10 insistence of the corporations has passed a
11 statute that requires that rulemaking can be no
12 more stringent than federal statute and
13 regulation.
14 Essentially, the Indiana legislature has
15 punted environmental policy making to the federal
16 government. If the federal government doesn't
17 require it to be regulated, then the Indiana
18 Department of Environmental Management -- not
19 "Protection," mind you -- and the Indiana
20 Department of Environ -- Natural Resources cannot
21 regulate it. And if the Federal government does
22 regulate it, Indiana regulatory agencies cannot

1 regulate it any more stringently than the Federal
2 agencies require.
3 This ongoing environmental disaster is
4 the result of the corporatocracy of our political
5 system -- that -- that -- that our political
6 system has become. Our state governments have not
7 governed for the benefit of the common good of the
8 citizens but rather for the electric utilities and
9 the coal companies that provide the coal fuel that
10 so many of the utilities use. They are not
11 concerned about the sal -- they are only concerned
12 about the salaries for management and profits for
13 their shareholders.
14 Indiana electric utilities and coal
15 companies have long been able to prevent the
16 Department of Environmental Management and Natural
17 Resources from regulating the CCR in an
18 environmentally responsible way. In a state that
19 has no real control on the amounts of money
20 utilities and coal companies can contribute to
21 politicians running for legislature and
22 gubernatorial positions, it has been too easy for

1 entrenched corporations to control the statute and
2 rulemaking functions of the state. Therefore, the
3 federal government is the citizens (sic) of
4 Indiana's only hope for protection from the
5 pollution resulting from the irresponsible
6 management (laughs) of CCR.
7 One sentence. EPA must pass this rule
8 under Subsection (sic) C to protect our health and
9 environment.
10 Thank you.
11 MS. DEVLIN: Thank you.
12 (Applause)
13 MS. DEVLIN: Number 313, please.
14 MR. SHAW: My name is Tom Shaw. I am
15 with Harsco Corporation, a global industrial
16 service company with almost 20,000 employees. We
17 have multiple operations in Kentucky, including a
18 plant dedicated to processing coal slag as
19 abrasive blasting grit and roofing granules.
20 Since the 1930s we have been a green
21 recycler of boiler slag, a coal combustion by-
22 product. Boiler slag is formed when extremely

1 hot, molten coal ash is quenched with cold water,
2 and the coal ash immediately becomes a vitrified
3 amorphous, solid, glassy matrix known as "boiler
4 slag." Vitrification renders a material inert in
5 a chemical process using heat to transform a
6 mixture into a soluble liquid which solidifies on
7 cooling.
8 Because boiler slag is vitrified, it is
9 very durable and environmentally stable material
10 that permanently immobilizes its chemical
11 constituents in a glassy amorphous structure,
12 which remains stable even when broken into small
13 fragments during abrasive blasting as evident by
14 x-ray diffraction and TCLP testing.
15 Because it is beneficially reused,
16 boiler slag is not commonly stored in surface
17 impoundments. We rig -- regularly test our boiler
18 slag. It has always passed the TCLP testing and
19 has never exhibited any hazardous waste
20 characteristics. This includes both pre- and
21 post-blast abrasive grit.
22 The scientific information about boiler

1 slag and its physical properties have not changed
2 since we began our operations 70 years ago.
3 Regulating boiler slag destined for
4 disposal as a special waste under Subtitle C would
5 unfairly stigmatize beneficially reused boiler
6 slag as is already evident by competitive actions.
7 We have seen no evidence that boiler slag meets
8 any threshold for regulation under Subtitle C, and
9 we are not aware of any environmental problems
10 linked to our products.
11 As an abrasive we are the primary
12 alternative to silica sand, an abrasive that
13 presents serious worker health concerns.
14 We recognize the need for proper and
15 environmentally sound standards for regulating the
16 small percentage of boiler slag that is discarded,
17 rather than beneficially reused. Accordingly,
18 consistent with the announced views of nearly 30
19 states and EPA's two previous determinations
20 evaluating proper management of coal combustion
21 byproducts, we support appropriate and reasonable
22 disposal standards for any waste boiler slag under

1 Subtitle D of RCRA.

2 Thank you.

3 MS. DEVLIN: Thank you very much.

4 (Applause)

5 MS. DEVLIN: With that, I am going to

6 suggest that we take about a ten-minute break. I

7 think we've covered most speakers for this

8 morning. We're going to take about a ten-minute

9 break. By my watch, the panel will reconvene at

10 1:00.

11 So tha -- thank you-all very much.

12 We'll see you at 1:00.

13 (Whereupon, at 12:50 p.m., a

14 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 (1:05 p.m.)

3 MS. GENTILE: Good afternoon, and

4 welcome to the afternoon part of the hearing for

5 the EPA's proposed rule on regulation of coal

6 combustion residuals.

7 My name is Laura Gentile. I'll be

8 chairing the afternoon portion of the hearing. I

9 am the branch chief of the communications office

10 at the EPA's Office of Resource Conservation and

11 Recovery. On the panel with me are Frank Behan,

12 Steve Hoffman, and Steve Souders.

13 I want to say a few words about

14 logistics for this afternoon so everyone knows

15 what to do. Speakers, if you are preregistered,

16 you were given a 15-minute time slot when you are

17 scheduled to give your testimony. To guarantee

18 that slot, we've asked that you sign in 10 minutes

19 before your 15- minute slot at the registration

20 desk out in the hallway.

21 All speakers, those that have

22 preregistered and walk-ins, were given a number

1 when you signed in today, and this is the order in
2 which you will speak. I will call speakers up to
3 the front of the room to the chairs on my right
4 and, I guess, your left over here by number four
5 or five at a time.
6 When your number is called, please move
7 to the microphone at the podium, and state your
8 name and your affiliation. We may ask you to
9 spell your name for the court reporter, who's
10 transcribing the comments for the official record.
11 Because there are many people who
12 registered to speak today, we'd like to be fair to
13 everybody. The testimony is limited to three
14 minutes per person. We're going to use an
15 electronic timing system, and we'll also hold up
16 cards to let you know when your time is getting
17 low.
18 When we hold up the first card, that
19 means you have 2 minutes left. When we hold up
20 the -- the second card, that means you have a
21 minute left. When the third card is held up, you
22 only have 30 seconds left. When the red card is

1 held up, you are now officially out of time and
2 should not continue speaking.
3 Remember, you can provide written
4 comments anytime today to the court reporter, and
5 the material will be entered into the rule-making
6 record, and is considered the same as if you had
7 given oral testimony. There's no difference.
8 We will not be answering any questions
9 today on the proposal; however, from time to time,
10 any of us on the panel may ask you questions to
11 clarify your testimony.
12 As I mentioned, if you have brought a
13 written copy of your comments, please leave a copy
14 in the box by our court reporter over to my left.
15 If you are only submitting written comments today,
16 please put those in the box by the registration
17 desk out in the hallway. If you have additional
18 comments after today, please follow the
19 instructions on the yellow handout and submit your
20 comments by November the 19th.
21 Our goal is to ensure that everybody ha
22 -- who has come today to present testimony is

1 given an opportunity to provide comment. To the
2 extent allowable by time constraints, we will do
3 our best to accommodate speakers who have not
4 preregistered.
5 Today's hearing is technically scheduled
6 to go to 9 p.m., and we'll stay as late as
7 necessary to allow as many speakers as -- as
8 possible to provide testimony. We'll also work in
9 walk-ins as time permits.
10 If time does not allow you to present
11 your comments orally, we have prepared a table of
12 the lobby where you can provide a written
13 statement in lieu of oral testimony. These
14 written statements will be collected and entered
15 into the docket for the proposed rule, and will be
16 the same as if you presented them orally.
17 If you want to testify today but have
18 not regist -- registered to do so, please sign up
19 in the hallway at the table. Also, during the
20 hearing, if you have any questions or concerns,
21 please see our staff at the table in the hallway.
22 We're likely to take occasional breaks,

1 but we like to keep them short in order to allow
2 as many people as possible to provide their oral
3 testimony today.
4 Finally, if you have a cell phone or
5 BlackBerry, please turn it off because it affer --
6 interferes with, apparently, our system up here.
7 We're going to hear background interference, and
8 want to make sure the court reporter is getting
9 all your testimony. If you have to use your phone
10 at any time, please step into the hallway to be
11 courteous to everybody else here.
12 We ask for your patience as we proceed,
13 and we might have to make some adjustments as we
14 go forward. Thanks again -- again for coming. We
15 look forward to hearing your comments.
16 Now we're going to call up the first
17 four people of the afternoon, Numbers 47, 48, 49,
18 and 50.
19 MR. SHEETS: Good afternoon. My name is
20 Dana Sheets, and I'm a principal engineer for
21 American Electric Power.
22 The AEP provides electricity to 5.2

1 million customers, and is one of the largest
2 generators of electricity in the nation with about
3 38,000 megawatts of generating capacity. This
4 rule is important, and it will directly impact the
5 cost of AEP operations and, hence, increase rates
6 to our customers.
7 Our goal is to minimize those increases
8 to the extent possible, while being protective of
9 human health and the environment. AEP supports
10 regulation of CCRs under RCRA's non-hazardous
11 waste Subtitle D program, and specifically under
12 the Subtitle D Prime option. The difference
13 between Subtitle D and D Prime is that the latter
14 will not require the closure of surface
15 impoundments that are being operated with no
16 significant adverse effect on human health and the
17 environment.
18 The closure of surface impoundments and,
19 hence, conversion of the generating units to dry
20 ash handling and construction of landfills is a
21 major cost associated with the proposal.
22 And minimizing this cost by allowing

environmentally-protective surface impoundments to continue to operate throughout their operating life will present the least-cost impact to our customers.

AEP does not support, nor does it think, that the science justifies, regulation of CCRs under the RCRA Subtitle C hazardous waste rules. The requirements for liners, groundwater monitoring, surface impoundment integrity, and corrective action are essentially the same under both Subtitle C and Subtitle D, thereby providing the same level of environmental protection.

It appears that the major hurdle for EPA concerning regulation under Subtitle D as opposed to Subtitle C is a perceived lack of federal enforcement authority under Subtitle D. The EPA already has Subtitle D enforcement authority through the provisions of RCRA Section 4010 and 4005, just as it did relative to the Subtitle D rules for Municipal Solid Waste Landfills.

Under this process, the states can be afforded the opportunity to operate the Subtitle D

1 program either by demonstrating that the state
2 rules already are as stringent as federal Subtitle
3 D rules or by adopting additional regulations that
4 include the minimum federal standards. If state
5 programs do not adopt the minimum federal
6 standards, the US EPA could step in with direct
7 enforcement authority.
8 This is a win-win situation for all
9 involved. The EPA has the Subtitle D enforcement
10 authority that it wants, and the states will be
11 afforded the opportunity to run the program.
12 In addition, the stigma and liabilities
13 associated with CCR reuse applications under the
14 hazardous waste Subtitle C option that would, in
15 effect, kill the ash-utilization industry, along
16 with the many thousands of associated jobs, would
17 be avoided.
18 Finally, under Subtitle D, cost impacts
19 to utility customers would be minimized while
20 protecting human health and the environment.
21 Thank you.
22 MS. GENTILE: Thank you, Mr. Sheets.

1 (Applause)

2 MS. GENTILE: Number 48, please, step to

3 the podium.

4 MS. RETHERFORD: Hello, my name is

5 Angila Retherford. And I am director of

6 environmental affairs and corporate sustainability

7 for Vectren Corporation.

8 Vectren will be directly impacted by a

9 final coal combustion residuals rule, and very

10 much appreciates the opportunity to speak today on

11 the proposal. Vectren is an investor-owned

12 utility- based in Evansville, Indiana that operates

13 two coal- fired power plants in southwestern

14 Indiana through its subsidiary, Southern Indiana

15 Gas & Electric Company.

16 As part of Vectren's commitment to

17 energy conservation and sustainability, a majority

18 of Vectren's CCRs are beneficially reused in

19 concrete and wallboard applications. Vectren

20 generates over 300,000 tons of coal-combustion

21 residuals each year. Of those 300,000 tons,

22 Vectren collects and markets nearly 100% of its

1 fly ash to a cement-production plant in St.
2 Genevieve, Missouri. That's 300,000 tons of fly
3 ash that's no longer back hauled to a surface coal
4 mine or placed in landfills. Vectren also
5 collects and markets over 50% of its scrubber
6 byproducts as synthetic gypsum.
7 Vectren believes that any regulation
8 that adds a hazardous waste designation for this
9 material, such as the Subtitle C option and the
10 current proposal, could be counterproductive and
11 present a potential stigma on beneficial reuse,
12 effectively undermining successful recycling
13 efforts such as those currently being undertaken
14 by Vectren.
15 Vectren applauds EPAs continued and
16 strong public support for the beneficial reuse of
17 CCRs. While Vectren agrees that increased
18 regulatory costs can incentivise beneficial reuse,
19 the unnecessary classification of this material as
20 hazardous waste will potentially have the opposite
21 effect than that intended by EPA due to the stigma
22 and negative perception of hazardous waste

classifications.

As with most sustainability projects, Vectren has found that its customers also benefit directly from the beneficial reuse of these materials due to significant reduced cost in ash handling and disposal cost. This is critical given the pressure on rate payers from increased cost to comply with the myriad of other regulatory compliance requirements recently imposed upon the coal-fired- electric-generating industry.

Vectren is a southwestern Indiana utility that relies on local Illinois basin coal for a vast majority of its electric generation. And Vectren's rate payers stand to be disproportionately impacted by the increasing regulatory pressure focused on coal-fired generation.

Vectren supports EPA's objective of having a federal regulatory program that ensures the safe disposal of CCRs. As a result, Vectren supports the Subtitle D Prime option with appropriate adjustments. Because of the three

1 options presented by EPA, this is the option that
2 best balances clean energy with affordability and
3 reliability.
4 We believe that this regulatory option
5 will best accomplish the objective of ensuring
6 that CCR disposal facilities will be appropriately
7 monitored to ensure that they're operated in a
8 safe and environmentally-sound manner, and
9 continue to fully support and incentivise the
10 beneficial reuse of CCRs. But unlike the Subtitle
11 C approach, the D Prime option would establish
12 comprehensive regulations for coal-ash disposal
13 without imposing unreasonable and unnecessary
14 costs on electric rate payers.
15 MS. GENTILE: Thank you, Ms.
16 Retherford. Number 49?
17 (Applause)
18 MR. O'FIELD: My name is Jeff O'Field,
19 and I'm here today with Restoring Eden.
20 Additionally, I represent many other people.
21 As a student of Asbury University, a
22 resident of Bullitt County, Kentucky, a member of

1 Restoring Eden, the grandson of a West Virginia
2 coal miner, one who has worked with children with
3 disabilities, and a young person not easily
4 deterred by false arguments, I cannot find a
5 better place to be today.
6 I'm encouraged by the EPA's commitment
7 to sound science, to community involvement, and
8 wise decision-making in protecting the environment
9 and, in turn, all those who depend upon it.
10 After learning about the tragedy in
11 Kingston that spurred this proposal, researching
12 the particular contaminates found in coal ash
13 waste, hearing about residents such as those
14 from Dixie Highway in Louisville who have been
15 affected, and that companies responsible for this
16 waste have the means to dispose of it in an
17 ethical way, I am appalled, and angered, yet
18 hopeful that a wise and just decision can be made.
19 For me, it is unacceptable that the
20 residents in lower-income areas face an increased
21 risk of coal-ash pollution. It is immoral that an
22 easily remedied source of contamination is causing

1 communities to raise more children with learning
2 disability and birth defects due to arsenic, lead,
3 and mercury poisoning. These are facts contrary
4 -- contrary to my understanding of a just and
5 moral society if that is, in fact, what we believe
6 America to be.
7 And further, if America is to truly po
8 -- prosper, it must take up the ethic of being a
9 good neighbor, of business -- businesses disposing
10 of waste as to not damage others, just as I am
11 held accountable as an individual citizen. This
12 should be a normal cost of doing business.
13 After talking to fellow students at
14 Asbury University about this issue, biology
15 majors, journalists, artists, political science
16 majors, and everyone who would listen, nearly each
17 and every one of them, hundreds of them, signed a
18 comment in favor of Subtitle C. Most were
19 outraged on the spot, and others were outraged in
20 doing their own research.
21 Their hearts poured out for the affected
22 residents near these sites, for those people they

had known to be affected at home, and for all of God's creation which is being soiled by the irresponsible dumping of coal ash waste; including a story of a friend in Pennsylvania near a community that has been contaminated by so-called recycling of coal ash waste. In fact, it poisoned the community.

And for all these reasons, I urge the US EPA to pass the Subtitle C proposal to regulate coal ash as the hazardous waste that it is. Thank you.

MS. GENTILE: Thank you, Jeff. Before you step down, can I get your spelling of your last name just for our record?

MR. O'FIELD: It's O-apostrophe-F-i-e-l-d. Thank you.

MS. GENTILE: Thanks.

(Applause)

MS. GENTILE: Number 50, please.

MS. KLAWITTER: Hello. Thanks for this opportunity to give some comment. My name is Kathy Klawitter, and I come from southern Indiana.

1 I represent both myself and Protect Our Woods,
2 which is a -- an environmental organization which
3 has been working to protect environmental quality
4 in southern Indiana for the last 20 or so years.
5 I have been a resident of southern
6 Indiana for about 35 years. And during that time,
7 I've mainly been concerned, other than being
8 involved with Protect Our Woods, to teaching small
9 children.
10 I'm a mom and I'm a grandma, and I'm
11 very concerned for the health and well-being of my
12 own grandchildren and children, generally. They
13 are the most vulnerable and face a wide variety of
14 pollutants.
15 These pollutants need to be considered
16 on their own, but also in terms of their
17 cumulative effects. Indiana has no regulation for
18 coal-ash disposal, and that poses serious threats
19 to water quality, especially in the fragile karst
20 topography that's exhibited in southern Indiana.
21 We know coal ash exhibits toxic
22 properties. Without the protections -- without

1 the protection of regulations under Subtitle C of
2 the Resource Conservation and Recovery Act, these
3 hazardous substances could pollute aquifers. Coal
4 ash could be disposed of with no requirement from
5 monitoring and, consequently, no corrective
6 actions taken, potentially resulting in widespread
7 degradation of water quality.
8 Please regulate fly ash under Subtitle C
9 in order to ensure a healthy environment for our
10 future, and to guarantee an environment that
11 promotes the health and all the human inhabitants
12 of our area.
13 I've listened to a lot of testimony
14 today, and I think there's no question that --
15 that coal ash exhibits properties that represent
16 toxic waste. And I think if it looks like a duck
17 and it quacks like a duck, it should be classified
18 as such. Thank you very much.
19 MS. GENTILE: Thank you, Ms. Klawitter.
20 (Applause)
21 MS. GENTILE: Okay. I want to call the
22 next four people up -- up to the -- up to the

1 front. Those are Numbers 51, 52, 53, and 54. 51,
2 please come to the podium when you get to the
3 front of the room. Thank you. Whenever you're
4 ready, sir. Thank you.
5 MR. KEPLINGER: Good afternoon. My name
6 is Brian Keplinger. I'm the operations manager for
7 Gibbco, Incorporated.
8 Gibbco is a recycling business located
9 in Lawrenceburg, Indiana, specializing in the
10 beneficial reuse of boiler slag. Gibbco has been
11 a part of the local Lawrenceburg community for
12 over 45 years. Gibbco's a small family-operated
13 business with seven employees, several of whom
14 have over ten years of service. I, along with my
15 seven employees, have worked very diligently to
16 foster and maintain a thriving business in a -- in
17 an economy that has been difficult, to say the
18 least.
19 At Gibbco, we recycle boiler slag into
20 beneficially reusable products that you may see on
21 a daily basis. The shingles on your roof,
22 beneficially reused boiler slag. The paint work

that you had done on your automobile, the repainting of your bridges and overpasses, abrasive blasting media, again, beneficially reused from boiler slag. The new black topping laid down on your roadways, the seal-coating applied to your asphalt driveway, both made with beneficially reused boiler slag.

Being the operations manager, I have a very close working relationship with both the customers that we serve as well as the vendors that serve us. Most all of the customers that I serve have a very close eye on the forthcoming ruling.

Regardless of the wording, a Subtitle C designation will force my customers away from the beneficial reuse of boiler-slag products on to naturally mined materials. Why? Stigma. Plain and simple stigma. In this litigious society that we live in today, my customers are not willing to risk utilizing a product that in one location is considered hazardous and in another not.

The trickle-down effect following this

will make it nearly impossible to maintain a viable business, therefore, resulting in the loss of jobs for my employees, as well as a loss of revenue and more jobs in the businesses that serve us.

What will the end result be? A Subtitle C designation will result in exactly the opposite result of what the EPA has stated in the memo dated May the 4th of 2010, stating environmentally-sound beneficial reuses of ash conserve resource, reduce greenhouse gas emissions, lessen the need for waste disposal units, and provide significant domestic economic benefits.

My customers will be forced away from beneficially reused CCPs and towards using mined natural resources requiring additional energy in the form of fossil fuels, natural gas, and electricity, furthering an increase in carbon footprint. These resources will have a greater cost associated with them, a cost that will be passed on to each of us as we use them.

1 While I applaud the EPA for their work
2 in safeguarding the environment, I have to
3 question how the structural failure of an ash
4 impoundment dike, while certainly a disaster and
5 not to be taken lightly, leads to the regulation
6 of CCPs as a hazardous waste. A Subtitle C
7 designation for the materials that I use every day
8 would have disastrous results for us. Thank you
9 for your time and consideration.
10 MS. GENTILE: Thank you, Mr. Keplinger.
11 (Applause)
12 MS. GENTILE: 52, 53, 54?
13 MR. HARPER: My name is Brian Harper.
14 I'm the president and director of technical
15 services for the Pearce Ready Mix Concrete
16 Company, which is a local Ready Mix Concrete
17 manufacturer.
18 For years, federal, state, and local
19 governments, along with various environmental
20 organizations, have stressed to businesses and
21 individuals the need for recycling and reusing
22 products' waste and materials. Based on their

educational efforts and scientific information, the entrepreneurial strength of our country and the world have built and evolved entire businesses to aid and assist with the reuse and recycling of many hundreds of different materials with coal fly ash being one of these products.

The ready mix Concrete industry is a user of coal fly ash. Most construction projects include ready mix concrete in buildings, homes, apartments, hospitals, schools, shopping centers, grocery stores, roads, bridges, and other items.

Ready mix concrete typically includes some percentage of fly ash. Using fly ash in ready mix concrete provides many benefits, not only the recycling of the fly ash material, but also to the quality, durability, and economy of all of the above-mentioned building projects. Professional designers who say fly ash has many benefits and cost effectiveness typically specific the use of fly ash in most construction projects.

I am concerned about the negative impacts that this public debate may have on the

1 perception of using of fly ash in any form. I
2 urge you to make decisions concerning whether to
3 label fly ash as a hazardous material based on
4 sound, scientific data and discussion and not on
5 emotion.
6 Labeling fly ash as a hazardous material
7 will stop most of the use of this product in any
8 type of capacity due to perceived liability
9 issues, and will currently add an additional 30
10 million tons of fly ash to existing or new
11 landfills, thus compounding problems with storage
12 that already exist.
13 I support the protection of human health
14 and the environment. I also sup -- support
15 responsible recycling of fly ash without creating
16 undue burdens or concerns in the user marketplace.
17 If the EPA designates fly ash as a special waste
18 or a hazardous material under Subsitle -- Subtitle
19 C, this would bring an uncertainty or stigma to
20 the product that will be detrimental to any and
21 all recycling efforts.
22 My company has used fly ash in ready mix

1 concrete for over 25 years. But if it were
2 re-labeled as a hazardous material, we would be
3 forced to no longer use this time-proven beneficial
4 material ingredient due to a simple change of
5 wording. Coal fly ash should not be labeled
6 hazardous if it can be controlled by non-hazardous
7 regulations. Thank you for allowing me to express
8 my opinion.
9 MS. GENTILE: Thank you, Mr. Harper.
10 (Applause)
11 MS. GENTILE: I'd like to call the
12 following four people to the front of the room:
13 Number 55, 57, 59, and 81. We're jumping around a
14 bit now.
15 And Number 81, please come to the podium
16 when you get to the front of the room. Is Number
17 81 -- whenever you're ready, sir.
18 MR. LAMAIRE: My name is Walter LaMaire,
19 director of Mineral Resource Technologies, MRT.
20 MRT is a coal-combustion marketing and
21 management company that promotes, manages, and
22 expands and developed -- the developed beneficial

1 applications for CCPs along with our sister
2 companies. I would like to thank today's EPA
3 panel for giving me the time to address the recent
4 proposal for the disposal of CCPs from electric
5 utilities.
6 In the proposal, the EPA has asked for
7 examples of the stigma claimed by many in the CCP
8 beneficial use industry. Although -- although the
9 full effect of its stigma cannot be realized until
10 the proposed rule making is finalized, there have
11 been some -- a few examples of how potential end
12 users will react to a Subtitle C hazardous
13 classification of fly ash.
14 In a letter from the Los Angeles Unified
15 School District dated April 27th, 2010 in
16 reference to the Design Procedure Clarification
17 Number 154, it states, quote, "Stop the use of fly
18 ash in LAUSD projects until the EPA confirms fly
19 ash to be a non-hazardous toxic waste," end quote,
20 and this is to be implemented to, quote, "All
21 projects," end quote.
22 The Marquette Board of Light and Power

is building a new dam at the Marquette Tourist Park. Traditionally, fly ash is used in large mass concrete pours, such as dams, to control the heat of hydration, prevent cracking, decrease permeability, and lengthen service life.

The owner's design engineers specified a concrete mix design that prohibited fly ash being of the po -- fly ash because of the potential hazardous classification by the EPA. Due to the exclusion of fly ash, the concrete required massive amounts of ice that increased the cost, degraded the permeability and long-term durability of the project.

The American Coad -- the American Concrete Institute, ACI, is a non-profit technical and education society organized in 1904, and is one of the world's leading authorities on concrete technology. ACI publishes reliable infloma -- information on concrete and its applications, conducts educational seminars, and provides a standard certification program for the industry.

They've conducted a survey to determine

1 how the specifiers and end users will use CCPs in
2 the future based on the proposed EPA ruling.
3 There have been 1211 respondents to date, and the
4 survey should be completed and compiled by the
5 close of public comments on November 19th, 2010.
6 Preliminary results indicate that among
7 producers and suppliers, only 3% would increase
8 and 52% would decrease or cease CCP use under a
9 Subtitle C designation, while 31% remain
10 uncertain. Among architects and engineers, only
11 4% would increase, and 43% would decrease or cease
12 CCP use under a Subtitle C regulation. Among
13 government entities and educators, only 6% would
14 increase and 19% would decrease or cease CCP use,
15 while 35% are uncertain under a Subtitle C
16 regulation.
17 MRT fully supports the A -- EPA's
18 proposed RCRA Subtitle D --
19 MS. GENTILE: Mr. LaMaier, your time is
20 up. Thank you for your comments.
21 (Applause)
22 MR. LAMAIRE: -- option to manage CCPs.

1 This option increases the existing physical
2 requirements and management guidelines of CCPs on
3 a federal level almost identically to the RCRA
4 Subtitle C option, but allows CCPs to remain
5 clearly classified as non-hazardous materials.
6 Should the EPA choose to reclassify CCPs under
7 RCRA Subtitle C, the encapsulated beneficial uses
8 supported by the EPA could be severely limited or
9 potentially eliminated due to end consumer
10 concerns.
11 I would like to thank the EPA Panel for
12 allowing my company to address some of our
13 concerns.
14 MS. GENTILE: 55?
15 MS. SCHROEDER: My name is Camilla
16 Schroeder, and I'm the president and owner of
17 Advance Ready Mix Concrete, a local concrete
18 manufacturer. As a company tied to the
19 construction materials industry and the local
20 economy, I welcome you to Louisville.
21 Our company, like most major ready mix
22 concrete producers, is a user of fly ash. Most of

1 the buildings, roadways, bridges, airports, and
2 concrete construction that you see has fly ash in
3 the mix design.
4 I see the benefits of recycling coal fly
5 ash brings to the concrete industry. I see the
6 improvements and the quality the fly ash provides
7 to our concrete. Our infrastructure lasts longer
8 because of the durability that fly ash adds to the
9 cured concrete. I choose to use fly ash because
10 it makes our products better and more cost
11 competitive.
12 EPA's act -- actions related to disposal
13 of fly ash will have a direct impact on our
14 company's commitment to use fly ash as an
15 ingredient. As a business owner, I am concerned
16 about the negative impacts that the public debate
17 on ash regulations as a hazard -- hazardous waste
18 is having on the image of fly ash. I am
19 comfortable about the safety of using fly ash in
20 concrete, and I am concerned about the public
21 perception associated with the labeling of ash as
22 a hazard.

1 I know it is not hazardous. The entire
2 concrete industry knows fly ash is not hazardous,
3 but the consuming public is confused. Even
4 engineers and specification writers who understand
5 the technical issues and spe -- specific data are
6 concerned about liabilities that would be
7 associated with specifying a product that is
8 called hazardous if disposed but not hazardous --
9 non-hazardous if recycled.
10 I support protection of human health and
11 environment. I also support reasonable recycling
12 of coal ash without creating undue concerns in the
13 user markets. I feel that disposal can be
14 regulated without compromising greater recycling
15 capabilities of coal ash.
16 Both of these goals cannot be
17 accomplished if the Environmental Protection
18 Agency designates coal as -- coal ash as a
19 hazardous special waste under Subtitle C. This
20 classification would bring an uncertainty or
21 stigma to the general population, and would be
22 detrimental to the recycling efforts.

1 Coal ash recycling and our company has a
2 long successful history, and the products have
3 proven value. Coal fly ash should not be labeled
4 hazardous if it can be controlled by non-hazardous
5 regulations. Coal ash recycling, with its many
6 environmental benefits, needs to be preserved.
7 States have demonstrated their ability to regulate
8 garbage waste, and coal ash can just as easily be
9 managed by states.
10 I encourage you to use science in your
11 decisions, and avoid handcuffing fly ash with a ha
12 -- a label as hazardous. Thank you for the
13 opportunity to speak.
14 MS. GENTILE: Thank you, Ms. Schroeder.
15 (Applause)
16 MS. GENTILE: 56?
17 MR. WEISS: Good afternoon. My name is
18 David Weiss. I'm director of energy and
19 environmental public affairs with Duke Energy,
20 Indiana, testifying today on behalf of Duke
21 Energy.
22 We believe that regulation under

1 Subtitle C is unwarranted both environmentally and
2 economically, but Duke Energy strongly supports
3 the development of reasonable federal regulations
4 for coal-combustion residuals under EPA's Subtitle
5 D non-hazardous waste program. And we are not the
6 only ones who think so. EPA's own previous studies
7 and past rule-makings also support this approach.
8 The development of Subtitle D
9 regulations would be appropriate outgrowth of
10 EPA's two reports to the Congress and two final
11 regulatory determinations under the Bevill
12 Amendment declaring that CCRs do not warrant
13 hazardous waste regulation under RCRA Subtitle C.
14 Throughout EPA's 20 years of study, it
15 has consistently found that Subtitle D approach
16 with active state involvement was the appropriate
17 regulatory course for CCRs. Various state and
18 federal agencies, universities, and others have
19 studied CCRs for nearly three decades. These
20 entities evaluated CCRs for toxicity levels and
21 found them to be well below the criteria that
22 would be a required hazardous waste designation.

1 First in its 1993 regulatory
2 determination, and then again in its second report
3 to Congress in 1999, and then again in 2000, EPA
4 concluded that Subtitle D is more appropriate for
5 addressing the limited human health and
6 environmental risk that may be associated with the
7 disposal of these wastes.
8 The factors that EPA used in reaching
9 its final determination that CCRs do not warrant
10 regulation as hazardous waste include (1) CCRs
11 rarely exhibit a hazardous waste classification;
12 (2) recent trends demonstrate CCR disposal and
13 utilization practices are improving; and (3) the
14 current and potential beneficial use of CCRs are
15 important advantages.
16 Since the initiation of this rule-making
17 effort, an over whelming number of government
18 entities have gone on record supporting a
19 non-hazardous waste designation, including more
20 than two dozen state environmental protection
21 agencies, a bipartisan group of 165 members of
22 Congress and 45 U.S. senators.

1 The Subtitle D option provides the only
2 reasonable and lawful regulatory approach for
3 these materials under RCRA. The characteristics
4 of CCRs have not changed since EPA's last
5 determination, and there's no new science to
6 support a federal hazardous designation.
7 Adoption of the Subtitle C Option will only
8 raise electric costs for consumers and jeopardize
9 CCR reuse without delivering additional health
10 benefits. Thank you.
11 MS. GENTILE: Thank you, Mr. Weiss.
12 (Applause)
13 MS. GENTILE: 59?
14 MR. KRAMER: Good afternoon. My name is
15 Bruce Kramer, and I'm executive C -- VP and CFO
16 for Charah, Inc.
17 Charah is a 23-year-old company with
18 250-plus employees in 11 states engaged in
19 recycling of coal combustion residuals. In
20 addition to direct employees, we contract for
21 haulers, lab services, and an assortment of
22 support jobs that are dependent on coal ash

1 recycling.
2 Coal ash is our core business, and
3 finding technology-blased -- based solutions to
4 expand recycling of coal ash is one of our
5 business focuses. Our approach for responsible
6 management of CCRs has provided for consistent
7 company growth, along with opportunities for job
8 creation within our organization and the
9 organizations with whom we contract.
10 Our company is very active in the
11 recycling of coal combustion products that are
12 derived from coal ash, and we are proud to be
13 associated with one of the most successful
14 recycling industries in the United States.
15 Many references have been made to the
16 TVA Kingston coal ash release in December of 2008
17 as justification for classifying CCRs as a
18 hazardous waste under Subtitle C. However, the
19 conclusions in the public assessment released by
20 the U.S. Department of Health and Human Services
21 on September 7th are inconsistent with that
22 position.

1 The U.S. Department of Health and Human
2 Services concluded, and I quote, "Based on
3 environmental test results, the Tennessee
4 Department of Health does not expect harm to
5 health from touching, eating, drinking, or
6 breathing the metals in coal fly ash." It goes on
7 to say, "Any exposures would have been very brief,
8 and any possible absorption of metals from the
9 coal ash would have been undetectable."
10 Charah supports the EPA's effort to
11 implement regulations on the disposal of CCPs,
12 under Subtitle D, which would be consistent with
13 two previous decisions made by the EPA, concluding
14 that CCPs do not warrant classification as
15 hazardous materials. The EPA's assumption that
16 the Subtitle C regulation will result in an
17 increase in beneficial use is contrary to our
18 experience as a daily participant in the
19 beneficial-use marketplace.
20 Further, our experience has already
21 demonstrated that the stigma impact is causing
22 users of ash to switch to other materials because

1 of fear of negative publicity associated with the
2 proposed rules and references in the media to
3 toxic or hazardous waste.
4 We do not feel the approach of
5 regulating CCR disposal under Subtitle C, while
6 maintaining their Bevill exception status for
7 recycling, will be successful in a beneficial-use
8 marketplace. We do not believe there to be enough
9 difference between the environmental protective
10 features proposed in the Subtitle C and D Options
11 to warrant risking damage to the marketability of
12 CCRs that we believe will accompany a Subtitle C
13 classification; nor do we believe the risk is
14 worth jeopardizing the hundreds of direct and
15 indirect jobs supported by Charah and our
16 recycling efforts. Thank you.
17 MS. GENTILE: Thank you.
18 (Applause)
19 MS. GENTILE: Folks, we're a little bit
20 ahead of schedule, so now I'm going to call some
21 of the numbers I have here of folks who had
22 registered today who did not register in advance.

1 So we're going to be going out of order, so listen
2 closely if your number gets called. 124 -- is 124
3 here? 149? Please come when you -- when I call
4 you, just come on and sit up here. We'll see how
5 many people we can -- we can squeeze in. 149,
6 317, 318, or 309? Anyone? 310?
7 Okay. 124, you can get started whenever
8 you're ready.
9 MR. EDWARDS: My name is Billy Edwards.
10 I'm from Winchester, Kentucky in small community
11 called Trapp where we are looking at, for the last
12 30 years, Eastern Kentucky Power has been trying
13 to build a coal-fired plant. And this is their
14 third attempt coming up.
15 My concern is -- is that your plan on
16 building a 236-acre landfill for the fly ash coal
17 ash that's going to be stored there, this, in 12
18 years, would be as much as ten stories tall. I'm
19 kind of encouraged by the recycling efforts that
20 people have stated in the concrete business and
21 everything, but I'm really discouraged about
22 building a 238-acre coal ash landfill that would

1 go ten stories hall with -- tall with plastic
2 liners that are good for many years, but my
3 problem is -- is what happens after those years.
4 Regulating coal ash into a landfill must
5 be done. Regulating coal ash that is being
6 recycled might be a whole new adventure, and that
7 should be kept open; but to store it for years and
8 years and years that can be compressed and
9 changed, the chemical makeup of it, and then
10 filter into the Kentucky River, which is less than
11 a mile away from where they propose to do that,
12 could impact the mu -- the water for Winchester as
13 well as Lexington for many years.
14 There's a 30-mile stretch from the
15 Kentucky River that has already the highest
16 mercury content in the country. By adding more
17 landfills for coal ash, most likely it will
18 increase that to a devastating area in our future
19 for our grandchildren. Let's not leave our
20 great-grandchildren and grandchildren something --
21 a mess from us that we caused to be cleaned up by
22 them. Thank you.

1 MS. GENTILE: Thank you, Mr. Edwards.
2 (Applause)
3 MS. GENTILE: 149? 318?
4 MS. KUHN: Good afternoon. My name is
5 Kelly Kuhn. I come here from Indianapolis,
6 Indiana.
7 And I just want to say I've been very
8 lucky that, in my personal life, I've not been
9 directly impacted by coal ash as many people who
10 have presented here today have been. However,
11 through my work with the Hoosier Environmental
12 Council, I have been very lucky to meet a lot of
13 wonderful residents around the state of Indiana
14 who, unfortunately, have had to watch their
15 family, friends, and neighbors deal with the
16 impact of contamination to their drinking water
17 and the air they breathe from coal ash.
18 I just want to say that the current lack
19 of regulation in public protection provided by the
20 state of Indiana is a clear sign that Subtitle D
21 will not work to protect our citizens. For -- for
22 that reason I support -- (clears throat) excuse me

1 -- Subtitle C and the protection of public health.
2 Thank you.
3 MS. GENTILE: Thank you.
4 (Applause)
5 MS. GENTILE: 317? 309?
6 MS. KASTNER: Hi. My name is Lauren
7 Kastner, and I'm a representative of the -- of the
8 Sierra Club and the Sierra Student Coalition and
9 the Beyond Coal Campaign at Indiana University in
10 Bloomington, Indiana.
11 But I can speak for the thousands of
12 students who are fighting coal issues on their
13 campuses nationwide, and are demanding that we can
14 no longer continue to ignore coal's devastating
15 effects from cradle to grave. In I -- at IU, we
16 burn 68,000 tons of coal every year in the middle
17 of our campus right behind the Number 1
18 environmental policy school and one of the best
19 business schools in the country, yet the EPA has
20 not made any incentive for these two centers of
21 intervention to be applied to coal issues.
22 Just two miles away, there's a coal ash

1 storage site that holds our central heating
2 plant's ash waste from the 1970. It was
3 discovered at the beginning of this summer that
4 the site is leaking into Griffy Lake, which
5 property jointly owned and managed by the
6 university and the City of Bloomington, and it has
7 been identified as a future drinking water source.
8 While our coal ash footprint extends as far as
9 Gibson County, Indiana, where IU's coal is mined
10 and is now dumped, the problem has now reached our
11 backyard.
12 In May of this year, the EPA wrote,
13 quote, "Maintaining a non-hazardous approach would
14 not be protective of human and the environment."
15 In my opinion, it seems obvious that, above all
16 else, human and the environmental protection would
17 be the only priority of any regulatory agency when
18 the facts are this clear.
19 I represent the generation that is
20 tasked with cleaning up the industry's mess and
21 picking up the pieces. The choice between
22 Subtitle C and Subtitle D as the choi -- is the

1 choice between protection and exploitation and
2 oftentimes life and death.
3 Any one of the hazards posed by coal ash
4 is reason enough to choose the stronger protection
5 under the law of Subtitle C, and anything less
6 than that would be blatant negligence and would,
7 therefore, be shirking your duties as the
8 Environmental Protection Agency.
9 As a young person, is this the world
10 that I'm meant to inherit, a world where the
11 profits of few are placed over the well-being of
12 many? At what point do we finally put people over
13 profits?
14 I am a part of the university system
15 that has left us out to dry on the issue of coal
16 ash waste management, and they have basically
17 taken a page out of the industry's book on this
18 one. And so we are looking to the EPA for the
19 strongest protection we can possibly get and
20 deserve. Thank you.
21 MS. GENTILE: Thank you, Ms. Kastner.
22 (Applause)

MS. GENTILE: 310?

MS. MOOD: Hi. My name's Aliya Mood. I also attend Indiana University and am a part of the Sierra Student Coalition's Beyond Coal campaign at IU.

I actually have come to speak here today -- I've foregone all my classes and exam, actually, to speak on this issue because it's something I feel very impassioned about. I'm also a member of the Bloomington community, as I was born and raised there all my life.

And I've spent many times at Griffy Lake, like Lauren was talking about, and have seen it's beauty in many ways, more than one. And it -- it frightens me to know that there is this coal ash site near Griffy Lake that is leaking into it, which is eventually a future drinking water. And it fear -- it scares me to think of all the other lakes across the country that this same thing is happening to.

Coal ash is bad, and it's morally -- it's just a moral issue. I don't want my children

1 to be drinking toxic water or to bre -- breathing
2 toxic air, living on a toxic earth. And that's
3 all I have to say. Thank you.
4 MS. GENTILE: Thank you.
5 (Applause)
6 MS. GENTILE: I want to call up Numbers
7 319, 60, 61, and 62. Again, 319, 60, 61, and 62.
8 Mr. Dew, whenever you're ready.
9 MR. DEW: Good afternoon. I had not
10 intended to speak. I do not have prepared -- my
11 notes, but I've been sitting listening to what's
12 been going on, and I'm struck with two ideas.
13 One is while coal ash may be being
14 recycled -- and I think that's a wonderful idea
15 and I congratulate the folks in that industry for
16 doing what they are doing -- I'm concerned that so
17 much coal ash is not being recycled. In the part
18 of Kentucky where I live around Owensboro,
19 Owensboro Municipal Utilities is dumping coal ash
20 into former coal mines in Hancock County, south of
21 Lewisburg.
22 Many truck loads per day are going into

1 this landfill, which has no lining, which has no
2 regulatory wells around it, and which is simply
3 going to be some day a -- a toxic dump site.
4 At Roberts, Kentucky, the Reed plant of
5 Kinergy has a huge ash pile, similar, not quite as
6 big, as the one here in southwestern Louisville,
7 but almost.
8 And so consequently, when we talk about
9 recycling coal ash, while possibly it is a good
10 thing, it is only dealing with a fraction of the
11 problem. Only a fraction. And there is so much
12 that is going on in Kentucky that is unregulated.
13 And I can speak specifically to
14 Kentucky. I'm the director of the
15 Tradewater-Lower Green River Watershed Watch and a
16 former director of the Western Kentucky Sierra
17 Club Water Sentinels. I have a Ph.D. degree, as
18 some people have cited earlier.
19 The director of the Kentucky Division of
20 Water has indicated that his conception of his
21 agency is as a permit-writing agency, not as a
22 regulatory agency. Given this attitude on the

1 part of state government in the Commonwealth of
2 Kentucky, Option D seems like an option for
3 anarchy. We cannot rely in the Commonwealth of
4 Kentucky on the -- for the state department -- for
5 the state agencies, either air or water, to
6 effectively, effectively, effectively regulate
7 anything. Thank you very much.
8 (Applause)
9 MS. GENTILE: Thank you very much, sir.
10 Okay. Let me try a few more walk-ins. Numbers
11 317, 311, 149. I know. Okay. 149? 149, as soon
12 as you're ready, get started. Thank you.
13 MR. MATHIS: Good afternoon. My name is
14 Ken Mathis, and I'm a resident of southwest
15 Jefferson County and Shively. I've lived there
16 all my life. I'm a member of the Sierra Club, the
17 National Audubon Society, the Rocky Mountain
18 Health Foundation, and the National Wildlife
19 Federation. I've been a hunter and a fisher, and
20 I've been a gardener all my life.
21 And without getting technical here, I
22 would like to ask you-all to ask yourselves some

1 questions. Would you take coal ash and spread it
2 on your garden, your flower garden? Would you
3 spread it on your vegetable garden to -- to loosen
4 the soil, like you do, and amend that soil? Would
5 you take coal ash and put it around the sandbox
6 that your grandkids play in? Put it under the
7 swing set, you know?
8 Would you kindly take a ride down Dixie
9 Highway before you leave here today or tomorrow
10 and take a look at the ash pile? Go down Cra --
11 Cane Run Road and look at the homes and riverside
12 gardens, and Lees Lane. Tell me you want to live
13 there. Tell me you want that coal ash blowing in
14 your house. Tell me that you want your kids
15 playing in that crud.
16 If you do, let the state of Kentucky
17 make suggestions and continue the way we have
18 been. If we want a clean, safe environment, let's
19 strictly regulate coal ash.
20 If it has beneficial purpose, like
21 wallboard or any other product that would be
22 useful, then let's test it to make sure that it

1 doesn't come out. Let's not get some insulation
2 and wallboard, like we got out of China, that we
3 -- it's full of chemicals and -- and problems that
4 has been used in Florida, that we have to tear
5 apart whole -- whole subdivisions to correct a
6 problem.
7 This is one of those pay me now or pay
8 me later deals. If this goes on and ash piling
9 continues and -- it's going to be a pay me later.
10 And our kids and grandkids are going to pay for
11 it, and your kids and grandkids are going to pay
12 for it. And it's going to come out of all of our
13 pockets sooner or later.
14 Profit is not a four-letter word. I'm
15 not opposed to profit. I'm a practicing attorney.
16 I work for industry, General Electric, and there's
17 nothing wrong with profit. Clean profit, clean
18 energy, and clean coal, there's no such thing.
19 Thank you.
20 MS. GENTILE: Thank you.
21 (Applause)
22 MS. GENTILE: 317? 311?

1 MR. GREVEN: My name is Nicholas Greven.
2 I'm a freshman in Indiana University in
3 Bloomington. I'm also a member of the Beyond Coal
4 Sierra Club campaign.
5 I'd like to voice my support for
6 category -- categorization of coal ash under
7 Subtitle C, recognize the -- recognizing the
8 potential for job loss within the CCR industry and
9 higher electricity prices that may result. As
10 painful as this is, I believe categorization under
11 Subtitle C is an imperative step in the direction
12 of requiring the coal industry to absorb the cost
13 of its environmentally-destructive practices, and
14 leveling the playing field for the clean energy
15 alternatives that must be the energy sources of
16 the future. That's it.
17 MS. GENTILE: Thank you.
18 (Applause)
19 MS. GENTILE: 60, 61, 62, and 63.
20 Number 60? Please come to the podium. Thank you.
21 MR. CAMPBELL: Good afternoon. My name
22 is Tyler Campbell, and I am with Commerce

1 Lexington in central Kentucky. And I represent
2 our 1800 members that are located throughout
3 central -- the central Kentucky region.
4 I'm here today just to make a few brief
5 comments. And thank you for allowing me the
6 opportunity to speak.
7 Commerce Lexington, Incorporated opposes
8 the regulation of coal combustion residuals under
9 RCRA Subtitle C hazardous waste rules. We would
10 urge EPA to develop federal non-hazardous waste
11 regulations for coal ash under Subtitle D of RCRA.
12 Several state environmental protections
13 agencies, members of Congress, ash marketers, and
14 industries that use coal ash for a myriad of
15 beneficial uses, and virtually every business
16 center that has contacted EPA on this matter,
17 would urge -- probably urge you to follow this
18 approach. A lot of these different groups have
19 indicated that this would allow EPA to work with
20 each of the states and -- implementing regulations
21 that are fully effective to protect health --
22 human health and the environment without

1 negatively impacting a coal-beneficial use.
2 Again, for -- for the members of my
3 organization, the -- we represent electric
4 utilities, power plants, and we also have a rep --
5 representation of ash marketers. The materials
6 that these are -- that coal ash used for, and --
7 and has been stated here today, include cement and
8 concrete applications. They're found in highway
9 constructions programs and wallboard
10 manufacturing, drywall. And all of this can be
11 used to reduce the volume of disposed waste
12 without endangering health and -- human health and
13 the environment.
14 The regulation of and the disposal CCRs
15 under RCRA's hazardous waste rules, even with an
16 exemption for beneficial use, could have a dedest
17 -- a devastating impact on CPR -- CCR beneficial
18 use because of the stigma associated with
19 regulating any CCRs under the hazardous waste
20 program.
21 Given the overwhelming economic
22 challenges confronting all sectors of the U.S.

1 economy, we honestly believe that it's absolutely
2 critical the EPA and the state come to a
3 resolution regulating coal ash under Subtitle D in
4 -- in an effort to work with the states, and not
5 impose unnecessary regulation and controls on the
6 electric power industry. And that would drive --
7 serve to drive up cost for the business community
8 and con -- and residential consumers. Thank you.
9 MS. GENTILE: Thank you, Mr. Campbell.
10 62?
11 MS. PAYNE: My name is Deborah Payne,
12 and I'm the energy and health coordinator for
13 Kentucky Environmental Foundation. Thank you for
14 hearing my comments on the health concerns
15 associated with the storage and secondary use of
16 coal ash.
17 While improved EPA regulations have
18 focused on reducing contaminants from our air by
19 placing scrubbers on smoke stacks, insufficient
20 emphasis has been placed on what happens to these
21 toxins once they've been removed and how they
22 affect us later in coal's life cycle as ash. Coal

ash, as we -- has been heard, contains lead, mercury, cadmium, ar -- arsenic, chromium, and other toxic metals.

If consumed through eating, drinking, or inhalation, these contaminants can affect the bladder, lungs, skin, kidneys, liver, and prostate; cause stomach pain, nausea, vomiting, partial paralysis, and blindness. They can affect the development of our children and lead to long-term damage of the brain. Stronger regulations ensure that our health is preserved, putting the cost up front to ensure millions are not spent later for the -- caring for those that suffer from cancer, organ damage, cognitive and developmental disorders down the line.

Heavy metals leach from the coal ash ponds like water poured through coffee grounds to make coffee. Once these toxic materials make it into the water supply, they do not break down as they are in their elemental form.

These metals can spread through the environment as runoff, seep into our ground water

1 supply, and move through the air as fine particles
2 and dust unchecked and un -- unregulated. The EPA
3 has found that if you live near an unlined coal
4 ash site and drink water from a well, that you are
5 at risk of getting a -- your risk of getting
6 cancer is as great as 1 in 50.
7 Select -- selecting Subtitle D would
8 allow coal ash to be used for secondary purposes.
9 Uses such as fill for the con -- contouring of
10 land on golf courses, grit for icy roadways, and
11 storage in abandoned mines have allowed toxic
12 metals to wash into our ground water.
13 The cost of health care are much greater
14 than the profits that would be made from
15 alternative uses. We know that exposure to coal
16 ash can cause disease. What we don't know is how
17 many lives may be impacted if coal is allowed to
18 continue to be used for secondary uses and stored in
19 insufficient containment ponds.
20 We need to shift this conversation from
21 economics to our health. Placing the decisions of
22 how a toxic metal is -- is managed into the hands

1 of those who produce it eliminates the opportunity
2 for those who are exposed to it to have a voice.
3 We know that elements of coal ash can
4 harm our health. It's time for the EPA to make
5 the right decision and select Subtitle C,
6 classifying coal ash as the toxic substance that
7 it is. By placing the burden of protection on
8 those generating the waste and ensuring that its
9 disposal is effectively regulated, we can pro --
10 work to protect the health of all of our citizens.
11 Thank you.
12 MS. GENTILE: Thank you, Ms. Payne.
13 (Applause)
14 MS. GENTILE: Now we'd like to call to
15 the front of the room Numbers 64. 65, 66, and 67.
16 Yeah, Number 64, please take your place at the
17 podium and start whenever you're ready.
18 MS. MERRITT: Hi. My name is Lauren
19 Merritt. I'm a student at the Southern Baptist
20 Theological Seminary here in Louisville.
21 I am not here because this has affected
22 me in any way, but I cannot study the word of God

1 and ignore what it says about issues like the one
2 that we face today. Among all people groups in
3 the world, there are similar moral codes. And
4 topping the human moral conscience is the idea
5 that you don't harm innocent people. Most
6 cultures find it exceedingly honorable to actively
7 help people, especially if you don't stand to
8 benefit.
9 In the gospel accounts of the Bible,
10 Jesus tells a story about a man walking down the
11 road who is attacked by robbers, stripped, beaten,
12 and left to die. Two men of high standing walk by
13 and pass far on the other side of the road. Then
14 a man from the enemy people group, a Samaritan,
15 sees the man and has compassion on him.
16 He treats his wounds, puts him on the
17 back of his own animal, and walks him to an inn;
18 where he pays the innkeeper, telling him to take
19 good care of the stranger; promising that whatever
20 he spends on top of that amount, he will pay
21 when he returns.
22 This story Jesus told to a man who

1 asked, "Who is my neighbor?" He wanted to know,
2 essentially, what is my responsibility toward
3 other people. "Who do I concern myself with?"
4 Through this story, Jesus answers, "Everyone," and
5 he tells the man, "You go and do likewise."
6 That demand is on us today. The problem
7 is we all love things other than God and more than
8 we love our neighbors. And the love of power or
9 status keeps us from acting in the way of the good
10 Samaritan.
11 These people, the first two men, walk
12 by, and they felt they couldn't condescend
13 themselves to care for a dying stranger. Often,
14 the love of the money holds us back more than
15 anything. The Samaritan could have thought, "I
16 can't" or "I won't pay to help this man who I owe
17 nothing," but this is the action that God demands
18 of us: To love our neighbor as ourselves.
19 What sort of fallen humanity comes up with
20 the idea that harming an innocent person is
21 acceptable as long it happens anonymously and
22 below a certain statistical threshold? This is

1 what is happening here with coal ash, which we
2 know is toxic and has the potential to cause harm.
3 And that's why I'm here, though this
4 does not affect me or my family, imploring those
5 with power to make changes in the right direction.
6 There are people who can speak more on the science
7 and the industrial aspects of this, but I'm simply
8 asking you to look in the face of the problem,
9 listen to these stories, and recognize these
10 people - these are my neighbors.
11 These are not strangers or statistics or
12 acceptable margins of toxic seepage. These are
13 people I'm supposed to care for when it is in my
14 power to do so, and it is.
15 Consider this: When you stand before
16 God, all your profit, savings, homes, cars, jobs,
17 employees, friends, and family gone and of no
18 significance, you will be held to account. One
19 day this economy will be no excuse. And to God, I
20 assure you, it is not.
21 Will you say, "I erred on the side of
22 profit, caused -- called this material

1 non-hazardous and let innocent men, women, and
2 children bear the cost," or will you say, "I erred
3 on the side of compassion and had regard for the
4 lives of my neighbors, though it came as a cost to
5 myself"? Thank you.
6 MS. GENTILE: Thank you, Ms. Merritt.
7 (Applause)
8 MS. GENTILE: Number 65.
9 MS. LOVE: Thank you. Good afternoon.
10 My name is Mary Love, and I am active member of
11 Kentuckians for the Commonwealth and a resident of
12 the greater Metro area.
13 I would first of all -- to thank you for
14 holding these hearings and allowing us to give our
15 input on this very important issue. And thank you
16 for what you've been doing the past two years to
17 enforce the Clean Water Act and the Clean Air Act.
18 It's giving us hope as we struggle to preserve our
19 beau -- beautiful Appalachian mountains and save
20 the lives of her people.
21 It's way past time for our nation to
22 face up to the true cost of coal, which, as you

1 know, is not a cheap source of energy; neither is
2 it clean, and never will be until the entire cycle
3 of coal, from extraction to disposal of byproducts
4 of burning is truly clean.
5 But today we're here to discuss coal ash
6 and its disposal. And I will disagree with the
7 woman who spoke previous to me. This is -- this
8 issue does affect her, even though she does not
9 realize it.
10 I grew up in the heart of TVA country,
11 Knoxville, Tennessee. For a time, my uncle lived
12 on the ridge overlooking the Kingston power plant,
13 and we visited him often.
14 So it was with great dread that I
15 watched on the Internet as the story of the coal
16 ash disaster unfolded almost two years ago. I
17 know what that area was like before and I know
18 what it is like now.
19 As a teenager at summer camp, I swam in
20 Watts Bar Lake, which is downstream from the
21 spill. Today I work, play, and go to church
22 downwind from the Cane Run and Mill Creek

1 impoundments, and I live seven miles southwest of
2 the Trimble Number 1 impoundment. These are dry
3 ash impoundments, of course, as you know, which
4 means that the ash is free to wash into the river
5 with rain and snow, and to be blown every day over
6 the Louisville Metro area.
7 We already know that our area has
8 extremely high rates of asthma and particulate
9 pollution. The people living near the
10 impoundments have high rates of respiratory
11 illnesses.
12 But I fear that maybe even the greatest
13 threat to our area comes from the Trimble County
14 impoundment upriver from us. When that
15 impoundment fails, and it sits on the riverbank
16 just like Cane Run and Mill Creek, it will pollute
17 the Ohio River above the water intakes for the
18 Louisville Water Company which serves the entire
19 Metro area. The water supply for hundreds of
20 thousands of people will be affected, much worse
21 than the relatively small number of people
22 affected by the Kingston spill.

1 I favor the implementation of the first
2 proposal, which would list coal ash as special
3 waste subject to regulation under Subtitle C.
4 Thank you for your time and attention, and thank
5 you very much for adding hearings here in
6 Louisville and particularly in Kingston. Thank
7 you.
8 MS. GENTILE: Thank you, Ms. Love.
9 (Applause)
10 MS. GENTILE: Number 66.
11 DR. GROPPO: Good afternoon. You are to
12 be commended for your stamina.
13 My name's Dr. Jack Groppo, and I'm a
14 senior engineer at the University of Kentucky
15 Center for Applied Energy Research in Lexington,
16 Kentucky. I've invested the past 15 years of my
17 career on research and development projects
18 focused on increasing the amount of coal
19 combustion byproducts recycled in construction and
20 consumer products.
21 As a result of these efforts, I'm the
22 proud recipient of two coal combustion partnership

1 achievement awards by EPA given for innovation and
2 education. This program was initiated by EPA to
3 recognize achievement for advancing the
4 environmental, economic, and performance benefits
5 of reusing and recycling coal combustion products.
6 Unfortunately, this program has been suspended
7 pending the outcome of the current classification
8 review.
9 It's my honest opinion as both a
10 concerned citizen and informed scientist that
11 change in the classification of fly ash from
12 non-hazardous -- to hazardous would cause irreparable
13 harm to the years of progress made by one of the
14 most successful recycling programs in the world.
15 The loss of utilization markets would be
16 devastating to the ash utilization industry,
17 resulting in the loss of hundreds of skilled jobs.
18 Additionally, the cost of concrete will
19 undoubtedly rise, and more expensive sources of
20 raw material will need to be used since the
21 concrete industry has already stated that it
22 simply will not use a material labeled as

1 hazardous.

2 Labeling coal combustion products as

3 hazardous would require EPA to reverse not one but

4 two previous informed decisions made in 1993 and

5 2000 after exhaustive technical evaluations. It's

6 all documented, that the chemical constituents of

7 coal ash are commonly found in many everyday

8 products and naturally occurring soils. As such,

9 reclassification as hazardous would be a decision

10 not based on any cri -- credible scientific

11 evidence whatsoever.

12 If coal ash was actually hazardous, why

13 would numerous countries throughout Europe and the

14 Middle East actually import thousands of tons

15 annually?

16 Tens of millions of dollars have already

17 been invested in commercial ash beneficiation

18 processes that transform ash into a variety of

19 high-quality -- quality recycled products for

20 which markets have already been developed.

21 Numerous other process installations are ready to

22 be initiated, but commercial -- commercialization

1 activities have been tabled awaiting a final
2 decision by EPA.
3 I urge you to consider the facts before
4 rendering a decision. Coal ash is a useful and
5 necessary material that is vital to sustainable
6 construction. And yes, it is -- I certainly use
7 it in my vegetable garden. The facts clearly show
8 that coal ash is not hazardous, and changing the
9 classification is not going to change the facts.
10 Thank you.
11 MS. GENTILE: Thank you, Mr. Groppo.
12 (Applause)
13 MS. GENTILE: 67.
14 MS. CHASE: My name is Alexis Chase, and
15 I'm the executive director of Georgia Interfaith
16 Power and Light, an organization dedicated to
17 helping communities of faith care for God's
18 creation.
19 I was also born in Kentucky, and my
20 family still lives here. So I very much
21 appreciate the opportunity to testify in favor of
22 classifying coal ash under Subtitle C. In Genesis

1 129 through 31, God said, "See, I have given you
2 every plant-yielding seed that is upon the face of
3 all the earth and every tree with seed in its
4 fruits. You shall have them for food. And to
5 every beast of the earth and to every bird in the
6 air and to everything that creeps on the earth,
7 everything that has the breath of life, I have
8 given every green plant for food. And so it was."
9 "God saw everything that God had made
10 and, indeed, it was very good. And there was
11 evening and there was morning on the sixth day."
12 So God breathed the breath of life into
13 all of creation, and after bringing all of
14 creation, the very next thing that God does is God
15 calls it good. And indeed, everything that God
16 created was good. As a person of faith, I take
17 scripture seriously, I take my theological
18 traditions seriously, and I take God very
19 seriously.
20 And because of this, I am encouraged
21 that at this moment in scripture, God looks around
22 that all God has created, and proclaims it good.

1 Because we have been given something good, and we
2 have been given the opportunity to care for
3 creation and to keep all that God has created
4 good. Because God continues to see all of us and
5 see all of creation, and God continues to see the
6 mountains we destroy, the coal we burn, the water
7 in the rivers we pollute, and the coal ash that we
8 dispose of, and it is not good.
9 We are not keeping all that God has
10 created good, because what is our responsibility
11 as people -- people of faith that take our faith
12 seriously, our scripture seriously, and our God
13 seriously. What should we do with the creation
14 that God has given us?
15 God requires us to keep all that God has
16 created and loves good. Subtitle C is a profound
17 and significant way for us right here and right
18 now to keep all that God has created good. To
19 adopt Subtitle C would pretext creation because it
20 names this waste for what it is, hazardous and
21 harmful, particularly to the children and other
22 innocence among our neighbors.

1 To adopt Subtitle C would allow the EPA
2 to do the job of protection, which is what you are
3 charged with doing. And to adopt Subtitle C
4 allows you to assume the leadership, power, and
5 authority given to you to protect creation and to
6 protect our neighbors' health and safety.
7 Subtitle C acknowledges that the mercury
8 and lead and arsenic in coal ash are indeed
9 hazardous to our neighbors.
10 For all these reasons, I strongly
11 encourage the EPA to adopt Subtitle C as an
12 important step towards protecting all that God has
13 created. Thank you.
14 MS. GENTILE: Thank you, Ms. Chase.
15 (Applause)
16 MS. GENTILE: Now we're going to be
17 calling numbers out of order again, so get ready.
18 Numbers 61, 321, 320, and 317, please come up to
19 the front of the room if you're in the room. Are
20 you one of the four numbers? Okay, you're on.
21 MS. ADKINS: Okay. Hello. My name
22 Sarah Adkins, and I want to welcome everybody, and

1 especially the EPA hearing members, to my hometown
2 of Louisville, Kentucky. I have lived here my
3 entire life with the exception of my four years
4 away at college.
5 My parents home in southwest Jefferson
6 County is only a few miles from the Louisville Gas
7 & Electric plant in a neighborhood called
8 Riverside Gardens. This neighborhood is like any
9 other except that it is rife of disease. Children
10 cannot play safely outside. You cannot grow
11 edible gardens. And family and neighbors with new
12 and recurring cancers are a daily part of life.
13 These people live next to a coal ash site, and
14 another is planned.
15 These people are tired of being dumped
16 on. But because of their economic status, the
17 power company finds it ethically acceptable to
18 exploit them. Words like consumers, markets, and
19 data are used to twist science and sanitize a
20 deadly business in order to make money at the cost
21 of human lives, and even make these abusive
22 industries look good while doing it.

1 Coal ash is a hazardous substance.
2 According to Scientific American, it is more
3 radioactive than nuclear waste in some instances.
4 And I highly doubt that anyone who speaks in its
5 favor lives in a place like Riverside Gardens or
6 would choose to move there currently. Americans,
7 rich or poor, executive or retail worker, are a
8 sovereign people and should be protected by our
9 representatives, and especially our EPA.
10 In closing, a friend of mine, a chemical
11 engineer, once told me that in business meetings
12 they often joke, "We corporations do what we do
13 because American consumers are stupid and we count
14 on it." As an educated young woman, I am here to
15 stand up for my neighbors in Riverside Gardens and
16 across the country. Good day and God bless
17 everyone.
18 MS. GENTILE: Thank you.
19 (Applause)
20 MS. GENTILE: Okay. Next I'd like to
21 call up Numbers 70, 72, 73, and 111. I think
22 you're up.

1 MS. MARSHALL: Good afternoon. My name
2 is Lucinda Marshall, and I've lived in Louisville,
3 Kentucky for more than 20 years.
4 And I'm appalled that it wasn't until
5 after the Tennessee coal ash disaster that I
6 became aware that we have toxic coal ash ponds
7 right here in Metropolitan Louisville. According
8 to the Sierra Club, in the Commonwealth of
9 Kentucky alone we have 44 ponds at 17 plants, 7 of
10 which are rated as high hazards and 5 as
11 significant hazards. This is unacceptable.
12 After the incredible damage caused by
13 the Tennessee pond breach, I am particularly
14 horrified that these things are located in the
15 middle of a large metropolitan center such as
16 Louisville. If such a disaster happened here, the
17 damage it would cause would be unimaginable and
18 far worse than -- than the Tennessee disaster.
19 Given that, I absolutely cannot
20 understand how the EPA can consider anything but
21 the most stringent guidelines for these facilities
22 with the ultimate goal of making them illegal. It

is beyond belief that these wastes are still considered exempt from such regulation.

There ha -- have -- has -- I'm sorry. There has been report after report documenting the highly negative impact that coal has on our environment, as well as on human health, and I am particularly concerned about the impact on pregnant women and children.

And all that talk about how coal is good for the economy? That sure hasn't worked out so well in Kentucky, which remains one the poorest, least educated, and least healthy states in this nation. And no amount of building golf courses on -- where amputated mountaintops used to stand will change that.

The people of Kentucky, the southeast, and the entire nation deserve the right to a clean environment that is not being poisoned because of corporate malfeasance and greed, and it is incumbent on the Environmental Protection Agency do what its name implies and stringently regulate coal ash disposal. Thank you.

1 (Applause)

2 MS. GENTILE: Thank you. Let me just

3 call again 70, 73, and 111? How about 320 and

4 321? 74, 76, 77, and 78? Just a reminder, if

5 anybody wants to speak here who has not

6 registered, please register outside because we

7 clearly have some space in the schedule to fit in

8 walk-ins at this point.

9 MR. MUELLER: Good afternoon. My name

10 is Chuck Mueller. I am vice president for

11 Brandeis Machinery & Supply Company. I've worked

12 in Brandies's coal division, Brandeis sales and

13 supports, construction and service mining

14 equipment in Kentucky and Indiana.

15 I have worked with the coal industry

16 division of Brandeis since 1989. I have been with

17 Brandeis since 1974.

18 I am not an expert on the subject at

19 hand, but I do know that this country continues to

20 ignore the value that coal can bring to this

21 nation. We will do so at our peril.

22 As one of the cheapest sources of

1 electricity in this nation, coal helps us compete
2 in the world and keep our standard of living high.
3 The environmentalists are working every day to
4 over-regulate this industry in order to shut it
5 down.
6 Here is another example of this. Sure,
7 we need to protect our environment. We all want
8 that. But how we get there could make a huge
9 difference. If America can produce goods for the
10 world through our efficient use of coal as far as
11 electricity, natural gas for our cars, we could
12 become an inde -- independent --
13 energy-independent country and, in the long run,
14 provide America with a cleaner world to live in
15 since we currently provide cleaner energy to
16 Americans than most countries around the world
17 provide to their citizens.
18 But to add unnecessary regulation to a
19 byproduct that has, to the best of my knowledge,
20 never caused a health risk to anyone doesn't make
21 any sense. Sure, we want and need to make sure
22 that impoundments are properly maintained, to

1 ensure that they do not fail in the future; but to
2 wipe out several industries that use this very
3 material to make many products, such as wallboard
4 and concrete blocks, just to name a few, seems to
5 be overkill.
6 If we continue to allow over-regulation
7 in this industry, we will only allow more and more
8 of our manufacturing jobs to be exported. Energy
9 cost is one of the highest input cost for any
10 manufacturing concern. We must find ways in this
11 country to take advantage of coal and the cheap
12 energy that it provides.
13 Auto plants moved south over the past
14 decades to take advantage of cheaper electric
15 rates. These cheaper rates are due to the
16 efficient use of our greatest natural resource in
17 the United States: Coal.
18 If we continue to make our energy costs
19 go up, it only leaves U.S. manufacturing one option:
20 To leave this country, go to a place where they
21 can get cheap electricity, and it will not be
22 America. Because in the Midwest, it's currently

1 the cheapest place in America for electrical cost
2 due to coal.
3 If we really want to save the planet, we
4 should be working real hard to keep as much
5 manufacturing in this country where the cleanest
6 electricity is produced. I think this should be
7 -- this is politically-driven and not based on
8 good science. Extreme regulation serves no
9 purpose but to reduce the standard of living that
10 we are -- in America --
11 MS. GENTILE: Mr. Mueller, I'm sorry,
12 but you're out of time.
13 MR. MUELLER: All right. Thank you.
14 MS. GENTILE: Thank you.
15 MR. MUELLER: Unnecessary regulation
16 only serves to add cost and does nothing to add
17 value. The end result is a standard of living in
18 this country that will go down. We owe it to our
19 children to produce energy to run our country in a
20 responsible way, but added regulation for the sake
21 of regulation will only serve to hurt out country.
22 I thank you for listening to my comments

on this subject, and I respectfully ask that you not reclassify fly ash as a hazardous material.

MR. IRVINE: Thanks for having me today. My name is Jim Irvine. I'm the president of a small recycling company named FlyAshDirect.

FlyAshDirect is based up the road in Cincinnati. We've been in business for over 20 years. We have offices scattered throughout the Midwest. We employ about 35 employees that are in the business of recycling fly ash as a beneficial ingredient to many cementitious products.

My company and the industry that I work within have worked very hard over several decades to get where we've gotten to develop -- we've developed a comprehensive list of markets and products that use coal residuals as beneficial construction materials. Several of my customers have spoken today.

These products are widely used, as you've been told, to manufacture products that we live, work, and play within. At no time in history, in my knowledge, have any of these

1 materials been determined as hazardous or harmful,
2 or at least that connection's never been made
3 between coal residuals in any of the products they
4 use to manufacture.
5 I'm also here today as a concerned
6 citizen, as a pro-environment person, as a father
7 of three, as somebody who wants to leave this planet
8 cleaner and greener for my children. I'm deeply
9 concerned about how this decision will affect the
10 environment if it's left for disposal, which, in
11 my opinion, if you classify it as hazardous, it's
12 certainly destined for that.
13 I'm confident that the environmental
14 groups and other concerned citizens do not support
15 increased disposal, and yet there's no doubt --
16 there's no doubt that you've heard over and over
17 that's exactly what will happen. I think we need
18 some more options to consider.
19 I think we're getting tongue twisted
20 over the -- the word "hazardous." I think we can
21 have federal regulation of this material and still
22 have the same safeguards without having to term

1 this material hazardous. And I implore you to
2 find a way or offer us more options that provide
3 the -- the public the federal protection they need
4 without having to call this material hazardous.
5 You've been warned that -- that that
6 terminology will affect our businesses, our -- our
7 -- our people, our employees. And I ask that you
8 explore whatever options you can that provide us
9 the safeguards of federal regulation along with a
10 non-hazardous designation. Thank you.
11 MS. GENTILE: Thank you, sir. Okay.
12 Let's go back a little bit in the numbering to see
13 who may have come by in the last few minutes.
14 Numbers 69, 70, 71, and 73, if you're here, come
15 on up. Begin whenever you're ready.
16 MS. OGLESBY:: Thank you. My name is
17 Carol Oglesby. I'm from Evansville, Indiana. I'm
18 here as a private citizen.
19 Basically, I'm asking the Environmental
20 Protection Agency that, as you weigh your options
21 for regulating the toxic coal ash produced from
22 the burning of coal, I hope you will consider the

1 harm that the heavy metals, such as arsenic,
2 mercury, and lead that are contained in this
3 waste, the harm that it presents to our drinking
4 water and our streams which threatens communities
5 and our wildlife. Additionally, coal ash is known
6 to contain chemicals which can cause birth defects
7 and premature deaths.
8 Every year 130 million tons of coal ash
9 containing arsenic, chromium, lead, and mercury is
10 treated by coal-fired power plant -- I'm sorry, is
11 created by coal-fired power plants. The toxins
12 contained in the coal ash seep into our ecosystem
13 and into our drinking water from unsafe storage in
14 waste ponds and other venues.
15 There are scientifically documented
16 instances of over 100, quote, "damage cases," end
17 quotes, which have been identified in over 1,000
18 coal ash disposal sites in the United States.
19 States with most of the coal ash also have the
20 weakest regulations.
21 That’s why it is critical that we set
22 federally-enforceable standards for coal ash

1 disposal, safeguard our environment, protect
2 public health, ensure that dirty coal properly
3 handles this toxic waste. I strongly support EPA
4 moving ahead with proposed federal regulations for
5 coal ash storage and handling, and not caving into
6 the coal industry by simply putting forth
7 suggested guidelines for states. I urge you to
8 support Subtitle C option for regulation of coal
9 ash.
10 I will borrow the following quote from
11 Russell Moore, author and administrator from the
12 Southern Baptist Theological Seminary. "When
13 government fails or refuses to protect its own
14 people, whether from nuclear attack or from toxic
15 waste spewing into our life-giving waters" --
16 MS. GENTILE: I'm sorry, Ms. Oglesby.
17 MS. OGLESBY:: -- "government has
18 failed."
19 MS. GENTILE: Your time is up.
20 MS. OGLESBY:: I hope you will make the
21 right choice.
22 MS. GENTILE: Thank you.

1 MS. OGLESBY:: Thank you very much.
2 (Applause)
3 MS. GENTILE: Next speaker.
4 MS. BARTLEY: I am Pam Bartley. I am a
5 bank manager of a small bank. I'm also a mother,
6 and that's why I am here.
7 Thank you for recognizing the serious
8 problems posed by toxic coal ash left from the
9 burning of coal. My family is a family that is
10 exposed to dust -- ash dust from the Hoosier
11 Energy Plant in Merom, Indiana. They are my
12 neighbors.
13 During the month of March, we started
14 noticing security guards going up and down our
15 road. That is the first thing that caught our
16 attention. We live on a road we're the only house
17 on, and Hoosier Energy does not own any property.
18 We stopped one of the cars patrolling,
19 and we asked them who they were with. And it was
20 with Hoosier Energy but, again, we still do not
21 understand why they were patrolling our road.
22 It was not until recently we began to

read and learn about the coal ash spills and the hazards. First off, we could not believe that the coal ash was less strictly regulated than household garbage. The pile close to us has about -- is about half a mile long, 100 feet tall.

Less than four -- 1/4 of a mile from our home, Hoosier Energy is proposing to build a land -- an ash fill twice the size of the one that you see in the distance here. And I just don't know what we are supposed to do when the -- one is right outside the -- our back door.

We have gone fishing at Hoosier Energy at the Turtle Creek Reservoir and saw deformed and crooked-spined fish. My husband and I did not understand what we were seeing, but we're -- our son wanted to go fishing.

So that has brought up a fear to my son who raises livestock, pigs and lambs. And he asked me currently, "Mom, what will all of this toxicity do possibly to my baby lambs and baby pigs when we've seen fish like that?" Again, I have no answer.

1 However, Hoosier Energy did purchase his
2 animal this year at the livestock auction, and
3 that's also hard to explain to him why they would
4 emit so many poisons and yet they turn around and
5 "buy your prized animal."
6 Again, my husband is asthmatic. My son
7 is taking medicine, also, for breathing issues.
8 And we feel that the only reason for this increase
9 of medication at this time is from our neighbor,
10 Hoosier Energy.
11 The EPA must adopt enforceable federal
12 safeguards, such as Subtitle C, not suggested sub
13 -- guidelines as Subtitle D, for states to protect
14 our community. Our federally --
15 MS. GENTILE: I'm sorry, Ms. Bartley.
16 Your time is up.
17 MS. BARTLEY: Again, I want to thank you
18 very much.
19 MS. GENTILE: Thank you very much.
20 (Applause)
21 MS. GENTILE: I'd like to ask if anyone
22 is out in the audience holding a card to speak

1 that is anywhere between 1 and 80. Anybody?
2 Okay. We can -- we can have you right now speak,
3 and then we'll move to 80 as soon as we're done.
4 What number are you, sir?
5 MR. HOOKER: 77.
6 MS. GENTILE: Great. Thank you.
7 MR. HOOKER: Hello. My name is Chris
8 Hooker. I'm speaking to this hearing as a very
9 concerned citizen.
10 I was raised in eastern Kentucky and
11 southern West Virginia while my father worked in
12 the coal industry throughout the 60s, 70s, and
13 80s. I now work in the coal industry; therefore,
14 I feel I have a firsthand knowledge of how
15 beneficial this industry is to our communities as
16 well as our nation.
17 We here in Kentucky are very lucky to
18 have one of the lowest-cost states in electricity.
19 The reason for this is because of coal. Coal is a
20 natural resource that we are very lucky to have.
21 I feel if we do not make a stand now and fight for
22 the coal industry, we will look up and be at the

1 mercy of other nations that do utilize their
2 natural resources.
3 Right now, there is no other energy
4 alternative. No one wants a nuclear plant built
5 in their community. Wind is not a solution.
6 Solar is not a solution. The only solution for
7 the demand of electricity being consumed in our
8 nation is coal.
9 If we continue to destroy the coal
10 industry, we will continue to move manufacturing
11 jobs to Mexico, China, or India. Coal allows us
12 to maintain low-cost electricity for our
13 manufacturing plants.
14 In closing, I would like to ask the EPA
15 not to make another mistake and make fly ash a
16 hazardous material. If it's not for coal, we will
17 be at the mercy of other nations, and we will be
18 in the dark. Thank you.
19 MS. GENTILE: Thank you, Mr. Hooker.
20 (Applause)
21 MS. GENTILE: Next speaker, Number 76?
22 MR. RANDOLPH: My name is Lynn Randolph.

1 I work in the coal ash management and recycling
2 industry.
3 I feel very strongly that if the
4 Environmental Protection Agency designates coal as
5 a hazardous or special waste, it will have a
6 catastrophic effect on the environment and will
7 destroy one of the most success -- successful
8 recycling programs in the country. Recycling of
9 coal ash needs to be preserved for the
10 conservation of our natural resources and
11 conservation of landfill space.
12 In addition, increased manufacturing of
13 alternative materials would need be -- would be
14 needed to replace the coal ash. This would result
15 in an increased greenhouse emission.
16 Even now, with the constant negative
17 publicity created by the EPA's suggestion that ash
18 from our products that are recycled may be
19 hazardous, there is confusion among our customers.
20 Some of them have already switched to alternative
21 materials. If EPA's mere suggested approach is
22 causing that much negative impact on our recycling

1 efforts, I fear what the rules will do if actually
2 implemented.
3 Residential and commercial development
4 would steer away from utilizing this material if
5 it is deemed hazardous. Businesses would
6 discontinue using a material that is considered
7 hazardous to avoid a potential for lawsuits.
8 I support EPA's efforts for improved
9 coal ash disposal regulations. Under their own
10 rule, new landfill engineering practices would
11 essentially be the same whether it's regulated
12 hazardous or non- hazardous.
13 So I ask the EPA to find a way to
14 control ash disposal through the non-hazardous
15 rules so that recycling with its many
16 environmental benefits, can be preserved. We
17 cannot risk the recycling being destroyed by
18 hazardous/special waste classification.
19 The EPA can and should enact new
20 regulations while encouraging the safe recycling
21 of being coal ash as a preferred alternative to
22 disposal. To do so, the EPA must not designate

1 coal ash as a hazardous or special waste. Thank
2 you for the opportunity to speak.
3 MS. GENTILE: Thank you, Mr. Randolph.
4 (Applause)
5 MS. GENTILE: I just want to ask one
6 more time if anybody is holding a card to speak
7 that's 80 or less, please come UP o the front row.
8 What numbers do you have? Okay. 79,
9 you're up.
10 MR. CHLEBOWY: Hello. My name is Bill
11 Chlebowy. I live in Lexington, Kentucky.
12 Coal ash should remain regulated under
13 Subtitle D regulations and not be regulated as a
14 hazard -- hazardous waste under Subtitle C.
15 Subtitle D regulations govern the -- the disposal
16 of household garbage. It makes no sense to adopt
17 more stringent regulations for coal ash than
18 garbage since garbage impacts the environment a great deal more
19 than coal ash.
20 Leachate, which is water that percolates
21 through a material, from a garbage landfill
22 contains more contaminants and undesirables than

1 leachate from a coal ash monofill or a landfill.
2 In many instances, leachate from a coal ash
3 landfill meets federal discharge standards that
4 requires no treatment. You can't say the same
5 about leachate from a garbage landfill.
6 Coal ash is a natural resource. After
7 you burn coal, about 10% of it remains as coal
8 ash. Coal comes from plants and trees, thick
9 swamps, and marshes that have decayed and been
10 subject to heat and pressure over millions of
11 years. Every ingredient in coal, and thus every
12 ingredient in coal ash is a natural material. In
13 fact, you can say coal ash is an organic material
14 per today's lingo.
15 The anti-coal ash crowd says coal ash
16 contains harmful constituents that can lead to
17 sickness and death, and for those reasons, coal
18 ash must remain regulated as a hazardous waste.
19 To prove their point, they point to contaminants
20 in coal ash such as arsenic, barium, cadmium,
21 copper, lead and mercury, nickel, selenium and
22 zinc. Guess what? These elements are present at

1 comparable levels in soil, sometimes at higher
2 levels than coal ash.
3 The anti-coal ash crowd says leachate
4 from coal ash can also cause sickness and death.
5 They imply that water passing through other
6 natural mediums is pure as the wind-driven snow.
7 The fact is that coal ash leachate may
8 be purer than water from natural impounds --
9 impoundments, such as those in eastern Kentucky
10 with prevalent New Albany shale formations. In
11 those impoundments, you'll find water with the pH
12 of 4, and the surface will have an oily sheet to
13 it. Test data does not support classifying coal
14 ash as hazardous.
15 Industry today recycles about 45% of
16 coal ash. Coal ash is used in concrete, concrete
17 blocks, wallboard, and other useful products.
18 Regulating coal ash as a hazardous material would
19 kill recycling industry and use of coal ash.
20 After all, who would want to risk a
21 lawsuit or undergo the stigma from having a
22 hazardous waste material in their product? Would

1 you build a house with drywall that has a
2 hazardous waste deemed by the EPA in it?
3 Companies would have to replace the coal
4 ash used in these products with another product.
5 It would have to utilize resources to mine,
6 transport --
7 MS. GENTILE: I'm sorry, sir. Your time
8 is up.
9 MR. CHLEBOWY: All right.
10 MS. GENTILE: Thank you.
11 MR. CHLEBOWY: -- and disturb the earth
12 in finding these substitute materials.
13 It takes 55 gallons of oil to produce
14 one ton of cement for concrete. If the 13
15 million tons of fly ash used in place of cement
16 per year cannot be used anymore and the industry
17 has to revert back to cement, oil equal to
18 approximately 35 Exxon Valdez oils spills or 4
19 Gulf oil spills per year would be needed to
20 produce the cement that is replaced with coal ash.
21 I'm sure it is in country's our (sic)
22 best interest to avoid using extra oil equivalent

1 to that of 4 Gulf oil spills every year if coal
2 ash cannot be beneficially used in concrete.
3 In conclusion, regulating coal ash under
4 hazardous waste rules is an overreach by the
5 federal government. It will raise the cost of
6 electricity, kill jobs, and kill the recycling
7 industry. The rule change doesn't make sense and
8 is not needed, especially as our country is trying
9 to climb out of a recession. Thank you.
10 MS. GENTILE: Next speaker? Whoever has
11 the lowest number. Thank you.
12 MS. WATKINS: Hello. My name is Angela
13 Watkins, and I stand in front of you as an
14 employee of a company that is heavily involved in
15 the cat -- coal ash processing and recycling as a
16 member of this community and as a resident of the
17 state of Kentucky where we are heavily dependent
18 upon the coal industry.
19 The recent proposals on coal ash are a
20 concern to me, and seem to be contradictory to the
21 direction that this country is headed. We hear a
22 lot of talk about going green, and I see ads all

1 over the place about recycling and concern --
2 conserving our energy and natural resources; yet
3 the EPA wants to halt what I would consider to be
4 a huge recycling effort.
5 I've read quite a bit of information, of
6 course, on the Internet from the coal ash
7 recycling efforts to the environmentalist groups
8 who want to call it a toxin, and what I have found
9 is there seems to be quite a bit of scientific
10 evidence that the ash itself is not a hazardous
11 material. I've also seen signs of evidence that
12 the coal ash being discussed is a natural resource
13 and has the same components as the dirt in your
14 own backyard.
15 There's a lot of concern around the ash
16 spill that took place in Kingston in 2008. And while
17 the incident was certainly a disaster for the
18 residents of that town and a huge cost to the
19 utility to clean and repair, I haven't seen any
20 evidence of harmful effects based solely on the
21 ash.
22 Something else that I read and found

1 interesting was, in 2005, the EPA launched this
2 C2P2 partnership. And this program partnered the
3 EPA, the American Coal Ash Associating, the
4 Department of Energy, Federal Highway
5 Administration, and the U.S. Department of
6 Agriculture in an effort to promote the beneficial
7 use of coal combustion byproducts.
8 Some of the examples that I found were
9 reducing greenhouse gases, reduce the utilization
10 of the virgin resources in stripping our earth,
11 reducing the cost associated -- associated with
12 the ash and slag disposal, and increased revenue
13 from the sale of CCPs. The list went on and on as
14 far as the uses. I'm sure you've heard this all
15 day long.
16 It goes back as far as 1942. It was
17 used to repair the Hoover Dam. There are
18 buildings in Washington, D.C. that have been built
19 with this product.
20 Regulating coal ash under Subtitle C
21 will put a stop to the recycling effort that's
22 currently underway. The minute you label it as

1 toxic, the builders and suppliers will be afraid
2 to use it, and they're going to be forced to use
3 manmade materials or go and strip the earth.
4 Please use the scientific data that is
5 out there and regulate this product as a
6 non-hazardous material that it is. Thank you.
7 MS. GENTILE: Thank you, Ms. Watkins.
8 (Applause)
9 MS. GENTILE: I'm going to make one more
10 call for anybody who is holding a number that's
11 less than 80 to please come to the front of row.
12 Okay. We're moving forward to the 80s
13 now. I want to call up Number 82, 83, 84, 85, and
14 86. Please come on up to the front.
15 Folks, actually, we just had a little
16 change on the panel, somebody who had to walk out
17 for an emergency. So if you don't mind, just hold
18 off and we're going to start in another minute
19 once he gets back.
20 Sorry about that folks. Okay. Number
21 82, whenever you're ready, feel free to get
22 started.

1 MR. TURLEY: Good afternoon. My name is
2 Floyd Turley, and I am here testifying as a
3 private citizen.
4 I happen to work in the coal ash -- ash
5 management industry as a role in the safety
6 department. I see the benefits of recycling ash
7 brings to us every day.
8 I am thankful and proud to be part of a
9 company that has added jobs in the past three
10 years, especially when most companies are
11 eliminating jobs. I see the negative impacts that
12 the public debate on ash regular -- regulations as
13 a hazardous waste is having on the re -- recycled
14 material sales. And I'm that the -- the direction
15 that the debate is going and that I -- and what it
16 means for my own job.
17 The material sales have been hurt by the
18 association of coal ash products and the potential
19 of hazardous labels. Lost sales means lost jobs
20 and loss of positive benefits that the coal ash
21 has on the environment.
22 I support coal ash disposal regulations

that protect human health and the environment without compromising greater recycling capabilities of coal ash. Both of these goals cannot be accomplished if the Environmental Protection Agency designates coal as -- coal ash as a had -- hazardous special waste under Subtitle C. This classification would bring an uncertainty or stigma to the general population, and would be a -- detrimental to -- and would be detrimental to the recycling efforts.

Coal ash re -- recycling has been a long, successful history, and has -- and the products have proven value. Subtitle C is not appropriate for coal ash regulation.

Residential and commercial development are al -- are already and will continue to steer away from utilizing CCPs if it is deemed hazardous in a landfill. Businesses will not want to -- will want to avoid any lawsuits using the material that is considered hazard -- hazardous in a landfill.

The recycling of coal ash has many

1 environmental benefits, such as the conservation
2 to our natural resources and landfill space, while
3 avoiding the rise of greenhouse gas emissions
4 during the manufacturing of alternative materials
5 that would replace coal ash.
6 Coal ash recycling is -- with its many
7 environmental benefits would be pre -- preserved.
8 This recycling cannot risk the -- or destroyed by
9 hazardous special waste classifications. Under
10 the EPA options, the new landfill engineering
11 practices would be essentially the same, whether
12 it is dictated as hazardous or non- hazardous
13 classification. In addition, new landfill
14 engineering standards will be adopted more quickly
15 if the hazardous classifications are not
16 determined.
17 Given that, the protective fe --
18 features are similar under both C and D, and the
19 co -- the choice is clear.
20 MS. GENTILE: I'm sorry, sir. Your time
21 is up.
22 MR. TURLEY: All right. Thank you.

1 MS. GENTILE: Thank you for your
2 comments.
3 MR. TURLEY: States have demonstrated
4 their ability to regulate garbage wastes and coal
5 ash can just as easily be managed by states.
6 The EPA should endorse reasonable coal
7 ash disposal regulations; however, this should be
8 done without characterizing coal ash as a
9 hazardous waste and risking the destruction of
10 recycling efforts which helps accomplish
11 everyone's goal of a cleaner environment. To do
12 so, EPA must not designate coal ash as a hazardous
13 special waste.
14 I ask that EPA regulate CCRs under some
15 form of Subtitle D and keep recycling alive.
16 Thank you for the opportunity to speak.
17 (Applause)
18 MS. GENTILE: Number 83.
19 MS. LINDOP: My name is Joan Lindop.
20 I'm speaking for the League of Women Voters of
21 Kentucky and of Louisville.
22 Scrubbers and electrostatic

1 precipitators have been installed at power plants
2 over the last 30 years to reduce air pollution.
3 Pollution concerns now move from air pollution to
4 water pollution.
5 As currently stored, this waste is
6 hazardous. The Clean Water Act specified that by
7 1985 all polluting discharges should end in our
8 waters. Chemicals leaching from CCW, coal
9 combustion waste, can cause organ damage and
10 cancer, and many are connected with brain damage
11 in children. Leakage from E.Ons Cane Run facility
12 was dramatically reported in the Louisville
13 Courier-Journal, "Ash Pond Enters Ohio River."
14 That was April 21 of this year.
15 The ash pond at Cane Run has no liner,
16 nor does the Mill Creek ash pond. Part of
17 Riverside Gardens community in Shively, Kentucky
18 is located within a block of 100-foot tall ash
19 pond. At an August meeting in the Shively
20 Community Center, Monica Burkhead spoke for
21 Riverside residents about the many cases of cancer
22 in that community.

1 A 2010 report by geologist Mark Quarles
2 states that there are 36 ash ponds in Kentucky
3 that have no water quality monitors. Several
4 Kentucky lo -- locations for coal waste have
5 exceeded maximum contaminant levels for ground
6 water. These plants all have residential
7 neighbors and even elementary schools where ground
8 contamination is dangerous.
9 E.On in Trimble County has just
10 completed construction of a second coal-fired
11 power plant on the banks of the Ohio River, and
12 it's requesting a permit for a second mountain of
13 coal ash; yet currently, there's no monitoring
14 there, and it is upstream from the Louisville
15 Water Company's wells where our city water comes
16 from.
17 Much of Kentucky is dotted with
18 limestone caves, which means that ground water
19 travels miles very quickly. It's very hard to
20 know where that ground water will end up once it
21 -- contaminated water is there. We know it will
22 go into the Ohio River. The League of Women

1 Voters urges EPA to take charge. Already, several
2 organizations in Kentucky have requested that the US
3 EPA take back primacy from the Kentucky Division
4 of Water. The failure of the Kentucky Division of
5 Water to enforce water quality standards in our
6 waterways has resulted in many miles of polluted
7 streams, streams that are not fishable or
8 swimmable, as Kentucky Department of Water was
9 required to report in the latest Kentucky Division
10 of Water Integrated Report.
11 The League of Women Voters urges the EPA
12 to adopt the proposed Subtitle C regulations that
13 classify coal ash as hazardous. Subtitle C must
14 not exempt deep and surface mining. Thank you.
15 MS. GENTILE: I'm sorry, ma'am. Your
16 time is up. Thank you.
17 MS. LINDOP: That's fine.
18 (Applause)
19 MS. GENTILE: Number 84.
20 MS. ABU-HUSSEIN: Hello. My name is
21 Hnadi Hussein. I live in Princeton, Indiana, just
22 near Duke Company. I would say it's, like, half a

1 mile away from the ash mountain.
2 It's just -- when I first came, it's
3 just so weird. I -- the water was a little bit
4 yellow, and then it start turning orange. And
5 it's hardened our skin. We do have eczema. And
6 we do have breathing problem. Myself go to Riley
7 Hospital for breathing, like, dust allergy. I do
8 have two kids with nerve damages, hearing damages.
9 So I wanted just -- like, I won't take
10 three minutes. I will say please, please, please
11 put this C regulation in place for us so our
12 children will have a better life. Thank you.
13 (Applause)
14 MS. GENTILE: Thank you, Ms. Hussein.
15 Number 85. 85, whenever you're ready, sir.
16 MR. POWERS: Thank you. My name's
17 Walter Powers, and I work at an active landfill
18 that did accept coal ash until a couple of months
19 ago. We were accepting coal ash from Sibec
20 Energies up in Mount Vernon, up to 200-plus tons a
21 day. And it would pile up. We were using it
22 for daily cover or we would mix it in with water

1 to solidify any liquids coming into the landfill.
2 And then I started getting sick a couple
3 years ago, and I start -- had a test just
4 recently. My arsenic level is 13.9. My hands go
5 numb all the time. My bladder's not working
6 right. When I have a bowel movement, I have to
7 keep wiping after each time.
8 This is from long-term exposure even in
9 a machine. My employer said I didn't need a dust
10 mask or a respirator in 95. Dust masks would
11 work.
12 I'd go to school -- or I'd come by a
13 school to go to work in the morning, and the
14 children are standing out waiting for the school
15 bus in a cloud of a fog, of dust, coming from our
16 site. I went in and raised seven kinds of cane
17 and -- and to no avail.
18 You know, now I'm sick. The other
19 employees -- he denied I even got sick. He said it
20 was because of my brother's dying of cancer, I'm
21 taking his chemo. That made me sick.
22 So everybody at the landfill went and

had their blood drawn from their private physician. They've all come back 10 or less with exposure of 0 to 13. Mine's 13.9. 1 or under is normal exposure for anybody.

The coal people can say what they like. It does need to be regulated at a landfill because, if it's not, it's going to go off site. I've seen it run down the side of the hill and get into a collection pond that -- we have -- we have a -- a -- a stream that goes through that property that was made by the Army Corps of Engineers that has got it in it. I can take someone out and show them everywhere.

So for these people to say that it doesn't need to be regulated when I work at a regulated landfill and things come in there all the time, I haven't seen an IDEM inspector in two years. We've got a wheel wash that hasn't worked in seven. Where -- where -- where is the regulation and the oversight?

I need help now. Who's going to help me? I've been poisoned by something from where I

1 work. And for these people that -- that have the
2 audacity to say it doesn't hurt them? Come on.
3 We need your help. You guys really need to look
4 into it because we need your help. I need your
5 help. Thank you.
6 MS. GENTILE: Thank you, Mr. Powers.
7 (Applause)
8 MS. GENTILE: Number 86?
9 MR. SEWELL: Good afternoon. My name is
10 Scott Sewell, and I'm a local Louisville resident,
11 father of two, and a concerned citizen.
12 Kentucky is my home, and I'm proud of
13 the values that my parents instilled in our family
14 and the values that I see in my hard-working
15 neighbors and colleagues. I value getting to the
16 truth regarding in issue that affects my family
17 and their health and their well-being.
18 In recent months, since the TVA ash pond
19 incident, I see a lot of attention in the media
20 focused on the issue of coal ash. I see headlines
21 referring to coal ash as hazardous or toxic, which
22 certainly catches the eye.

1 But also -- but I also see other
2 information usually not connected with the
3 dramatic headlines, that report scientific studies
4 saying that coal ash does not cause health
5 problems; specifically, the Public Health
6 Assessment prepared by the Tennessee Department of
7 Health dated September 7th, 2010.
8 I'm educated enough not to accept what
9 the media distributes to sell newspapers or ad
10 time as being all the facts. For my children, I
11 choose to invest my own time and efforts into
12 reading about the subject matter, and drawing my
13 own conclusions based on scientific science and
14 not dramatic news bylines. The truth of the
15 scientific studies is important to me and my
16 family. I observe -- I observe the Louisville
17 where we live, and I know that the air and the
18 water is cleaner today than -- than when my
19 grandparents raised my parents in this area. The
20 Ohio River that we enjoy today is cleaner than --
21 than the river that my grandparents saw.
22 I know the environmental regulations

1 based on solid science is a pri -- is the primary
2 reason. I expect and trust that our Kentucky
3 environmental agencies, with EPA guidance, will
4 make this area better for my children, including
5 issues related to coal ash management.
6 I support scientific-based coal ash
7 disposal regulations that protect the environment
8 and -- and human health. I also support recycling
9 and conservation or natural resources. I
10 understand that coal ash is recycled, probably
11 more than any other byproduct.
12 Based on what I read, it is scientific
13 -- scientifically documented that coal ash
14 recycling saves natural resources, avoids
15 greenhouse gas emissions, and saves landfill
16 capacity. This success story needs to be
17 continued.
18 And I am concerned about EPA's
19 suggestion that coal ash deserves to be labeled as
20 hazardous, when I read the scientific studies at
21 the TVA spill site do not show that ash is
22 hazardous or a health problem. I am concerned

1 that if the EPA designates coal ash as hazardous
2 special waste, it'll be detrimental to -- to our
3 recycling efforts.
4 I trust that the regulatory approach
5 that made today's environment better for my -- bet
6 -- better for me than my grandparents will also
7 use solid signs and commonsense to avoid harming
8 the recycling of coal ash. The Environmental
9 Protection Agency should develop better coal
10 ash disposal re -- disposal regulations, but this
11 should not be done by classifying coal ash as a
12 hazardous waste or regulating it under a
13 hazardous waste regulation. The non-hazardous
14 rules approach seems to be -- seems like the only
15 logical approach that matches the science.
16 As a concerned citizen, I ask you to
17 regulate coal combustion residuals under Subtitle
18 D --
19 MS. GENTILE: I'm sorry, Mr. Sewell.
20 Your time is up.
21 MR. SEWELL: -- and allow Kentuckians to
22 conserve natural resources by recycling more coal

1 --

2 MS. GENTILE: Your time is up, sir.

3 MR. SEWELL: Thank you.

4 MS. GENTILE: Thank you.

5 (Applause)

6 MS. GENTILE: We're ahead of schedule,

7 so I'm going to call a few of the walk-ins. I'm

8 starting with Number 111, 326, 325, 324. If

9 you're in the room, come on up to the front. 111?

10 MR. PINSKY: Good afternoon. Thank you

11 for hearing my comments today.

12 My name David Pinsky. I am a student

13 organizer with Greenpeace USA representing

14 hundreds of student leaders across the country who

15 know that coal is a dirty energy source, and that

16 we need strong, federally-enforceable regulatory

17 standards. I'm here to call for a federal minimum

18 coal ash disposal standard. Coal ash must be

19 treated as hazardous under Subtitle C of RCRA.

20 As a Kentucky native from Lexington and

21 a graduate from the University of Kentucky, I've

22 seen firsthand how the dirty coal industry

1 destroys communities and livelihoods of folks in
2 this state. Business as usual, frankly, will not
3 protect the health and welfare of Kentuckians or
4 the American people. Arsenic, boron, cadmium,
5 chromium, lead, mercury, selenium, thallium --
6 (laughs), approximately 140 million tons of toxic
7 coal ash are produced and dumped into landfills
8 and ash ponds each year, which are often unlined,
9 putting the ground water in people's drinking
10 water at risk.
11 The folks in Kingston, Tennessee will
12 not forget the December 2008 impoundment burst
13 where over 1 billion gallons of sludge poured out,
14 covering houses and rivers in toxic waste laden
15 with heavy metals, known neurotoxins, and
16 carcinogens like a slow, oozing death. Almost two
17 years later, the mess still isn't cleaned up.
18 We cannot expect the dirty coal
19 industry, driven by its shareholders and quarterly
20 reports, to care one ounce about the people,
21 communities, or environment it exploits. Just
22 look at these testimonies they've submitted today.

1 The EPA must establish federal standards
2 for coal ash that will protect people, not
3 polluters. And the time to start is now.
4 Louisville has an EPA high hazard
5 impoundment in its city limits, LG&E's Cane Run
6 impoundment, one of the 49 high-risk impoundments
7 in the nation. I suggest the panel take a visit
8 before leaving town and see why the panel approves
9 of operations on site.
10 There are six other EPA-identified high-
11 hazard impoundments in Kentucky, three in Ghent,
12 two in Harrodsburg, and one in Louisa.
13 Kentucky is world-renowned for its
14 horses, rolling hills, bourbon, and its
15 basketball. But is Kentucky proud of its coal
16 ash? Kentucky has 44 ash ponds, second-most in
17 the nation following Indiana, which, shockingly,
18 there is little regulation in these sites.
19 We can talk numbers all day, but what we
20 cannot talk our way out of is another coal ash
21 disaster. We cannot gamble with the lives of the
22 American people just to keep the lights on.

1 A hazardous waste designation under
2 Subtitle C of RCRA will ensure that coal ash dumps
3 and waste ponds have all the protections currently
4 required at waste landfills. We have the
5 technological means to prevent our communities
6 from being at risk due to coal ash. Now all we
7 need is the support of the EPA to do its job and
8 protect Americans from coal ash waste.
9 Please protect the American people, not
10 polluters. Please do this as an agency and as
11 human beings. Thank you for your time.
12 MS. GENTILE: Thank you, Mr. Pinsky.
13 (Applause)
14 MS. GENTILE: Number 326.
15 MR. GREEN: Good afternoon. I'm Jackie
16 Green. I'm Louisville's independent candidate for
17 mayor.
18 We fuel our lives just as the caveman
19 did, by burning material. The caveman burned
20 sticks and mammoth dung. We burn petroleum and
21 coal. We've not come very far (laughs).
22 Combustion residuals must be measured,

monitored, regulated, and controlled. Please help us with that. Because coal dependencies destroy mountains, their streams, and their people; because coal dependencies pollute our local air as we burn it; because coal dependencies pollute waters downstream from ash ponds; because coal dependencies are unacceptable; if elected mayor, Louisville will launch aggressive action to conserve energy, to reduce energy consumption, and to use renewable.

Combustion residuals must be measured, monitored, regulated, and controlled. Please help us with that. Thank you.

MS. GENTILE: Thank you, Mr. Green.

(Applause)

MS. GENTILE: Number 325?

MR. FLENNER: Thank you for going the extra yard and -- and conducting this hearing. My name is Sam Flexner. I do Outreach work with Environmental Integrity Project.

In 1999, the US EPA -- EPA Science Advisory Board determined that it was of single

1 most importance that EPA improve leach test
2 procedures, validate them in the field, and then
3 implement them. In 2006, the Natural Research
4 Council and the US EPA Science Advisory Board
5 determined that the -- that the test called TCLP,
6 for the antonym, used by most states to measure
7 the toxicity of coal ash is not accurate.
8 In December of 2009, EPA reported that a
9 new more-accurate leach test measured arsenic from
10 coal ash at over three times the hazardous waste
11 threshold, and selenium at 29 times the hazardous
12 waste threshold.
13 This means that all tests presently used
14 voluntarily under Subtitle D by coal ash disposal-
15 site operators and state regulars -- re --
16 regulators, to measure the toxicity of coal ash
17 leachate from the disposal sites are inaccurate.
18 This means that every time a coal utility or a
19 state legislature concludes that coal ash leachate
20 does not trigger hazardous waste thresholds, they
21 base their conclusion on a testing procedure that
22 they know is not accurate.

1 Recently, citizens of Madison, Indiana
2 were denied in-court access to monitoring
3 information which could help them determine if
4 preventive action might be necessary to protect
5 the aquifer which supplies their city's water from
6 coal ash leachate from the Clifty Creek plant
7 landfill. Voluntary Subtitle D means residents
8 near coal ash disposal sites will have no
9 guarantee that they will even have access to coal
10 ash toxicity information that can prevent
11 contamination, illness, birth defects, to go along
12 with the fact that they don't even have reliable,
13 accurate tests being conducted right now.
14 Numerous letters have been sent to the
15 EPA by state agencies, legislators, and so forth.
16 Indiana Department of Environmental Management
17 says none of their many years of -- of -- of --
18 years to date has indicated that the
19 characteristics of CCBs approaches the limits for
20 toxicity in the federal regulations to identify
21 havard -- hazardous waste. Of course not. The
22 test is inaccurate.

1 The DNR says that -- and I -- I quote --
2 "Indiana statute provides for the use of CCBs in
3 beneficial-use applications in the state of
4 Indiana so long as the material is used for
5 specific purposes and is not hazardous waste."
6 Well, in reality, if you take a look at Indiana
7 statute, the Indiana Solid Waste Management Board
8 is prohibited from even regulating coal ash.
9 And so we need Subtitle D. Subtitle --
10 or Subtitle C. Excuse me. We need Subtitle C
11 because after three years of self-policing under
12 Subtitle D, state regulators and the utilities
13 have proven --
14 MS. GENTILE: I'm sorry, sir. Your time
15 is up.
16 MR. FLENNER: Thank you very much.
17 MS. GENTILE: Thank you.
18 (Applause)
19 MS. GENTILE: 324.
20 MR. XING: Hello. My name is Yang Xing.
21 I'm from Columbus, Ohio.
22 And, oh, I just have the feeling we

1 really need the Subtitle C because, for individual
2 citizen, there is no way to have the appropriate
3 skill and the resource to monitor the big coal
4 plants. So it will be better for the state and
5 the government agency to test and monitor those.
6 And also, I encourage the recycle quest.
7 It's a good thing you recycle those things, and
8 great you can use a lot of those things for good
9 materials. But coal ash in the landfill and in
10 the water bodies are natural resource. They are
11 pollution.
12 And the heavy metal, you can recycle
13 them and use them as good resources. But if you
14 can put them in the natural environment, then that
15 will be toxic. So yeah, thank you.
16 MS. GENTILE: Thank you.
17 (Applause)
18 MS. GENTILE: Okay. I want to call the
19 following numbers: 87, 88, 89, and 90. Please
20 come onto the front of the room.
21 87, feel free to get started whenever
22 you're ready.

1 MS. ARMBRUSTER: My name is Debbie
2 Armbruster, and I work for a company that recycles
3 coal ash for beneficial use. I see firsthand the
4 success of our recycling efforts. And
5 unfortunately, I also see the misguided
6 information that is so prevalent in the news
7 media.
8 While I am in favor of regulating and
9 improving coal ash disposal, there are several
10 reasons why I am against the proposal to regulate
11 coal ash as a hazardous material. Regulating coal
12 ash as a hazardous waste, now touted by the EPA as
13 a positive move, would actually result in a
14 tremendous negative effect on recycling and the
15 environment.
16 One of the more successful recycling
17 stories would be history. Instead of its many
18 beneficial reuses, all of it would have to be
19 disposed of, which would create a whole new set of
20 problems, the least of which is landfill space.
21 Increased energy use and greater
22 depletion of natural resources would. Building

1 costs would soar as construction materials would
2 have to be mined or manufactured. Mining and
3 manufacturing these construction materials would
4 significantly increase greenhouse gas emissions.
5 The cost of electricity for all consumers would
6 greatly increase as the utilities will need to
7 pass on their additional costs for coal ash
8 disposal.
9 Recycling should continue and be
10 encouraged to accomplish everyone's main goal of a
11 cleaner environment. I ask the EPA to support
12 recycling of coal ash and save our natural
13 resources that coal ash replaces. As the need for
14 electricity continues to increase, greater
15 recycling and improved non- hazardous disposable
16 regulations are more important than ever.
17 Coal ash regulations can and should be
18 improved, and I feel this can be accomplished
19 without the hazardous approach. Thank you.
20 MS. GENTILE: Thank you.
21 (Applause)
22 MS. GENTILE: Number 88.

1 MR. BISSETT: Good afternoon. I'm Bill
2 Bissett, president of the Kentucky Coal
3 Association.
4 The Kentucky Coal Association is a
5 statewide trade association representing all
6 aspects of the coal-mining industry in Kentucky
7 and related- business interests. We also
8 represent the 17,000 men and women who depend on
9 coal mining for their jobs. For every one coal miner,
10 three other people depend on that coal miner for
11 their job.
12 The Kentucky Coal Association welcomes
13 the opportunity to comment on EPA's proposal to
14 list coal combustion residuals as a hazardous
15 waste under RCRA, because the association believes
16 that the proposal is wrong scientifically, is put
17 forward at the worst possible time from the
18 standpoint of the nation's economy, and is
19 motivated primarily by political rather than
20 environmental considerations.
21 The EPA has repeatedly studied the
22 public health implications of the management of

1 coal combustion residuals, and repeatedly
2 concluded that it did not pose a threat to public
3 health justifying regulations as a hazardous waste
4 under Subtitle C of R -- RCRA.
5 The science on this issue has not
6 changed, but the political landscape has, giving
7 rise to the current proposal. The Kentucky Coal
8 Association believes that scientific consideration
9 should always prevail over political
10 considerations, and that the current proposal
11 should be abandoned.
12 The KCA believes that this listing --
13 this listing proposal, if adopted and implemented,
14 would impose on Kentucky's energy producers and
15 fuel suppliers significant new costs that are
16 unnecessary to protect the environment. These
17 unnecessary costs would be borne by the citizens
18 of Kentucky who consume the electricity generated
19 by the combustion of Kentucky's coal resources.
20 It would be particularly unfortunate in
21 this era of national economic distress if the cost
22 of producing energy required for national economic

1 recovery was elevated by virtue of political
2 rather than environmental considerations.
3 The Kentucky Coal Association believes
4 that the rationale articulated by the EPA in
5 support of its proposal is wholly and without
6 merit. The EPA has suggested that this proposed
7 action is an appropriate response to the TVA's
8 release of coal combustion residuals from its
9 Kingston, Tennessee facility. The cited release
10 is a reflection of methodology used in
11 construction and operation of the facility rather
12 than the hazardous or non- hazardous nature of
13 coal combustion residuals, and provides no
14 legitimate basis for listing such materials as
15 hazardous waste under RCRA.
16 The EPA has also suggested that the
17 proposed listing is necessary in order to provide
18 the federal rather than state regulation of coal
19 combustion residuals. This suggestion is in
20 conflict with the basic concepts of federalism
21 upon which this nation's environmental programs
22 are premised, and represents an affront to the

1 state agencies that have effectively regulated
2 coal combustion residuals for so long.
3 Finally, the Kentucky Coal Association
4 is deeply concerned that the current proposals
5 represent a further effort of the EPA to
6 discourage the mining and combustion of coal by
7 imposing additional regulatory burdens on the use
8 of America's most abundant and low-cost source of
9 energy, coal. Thank you.
10 MS. GENTILE: Thank you, Mr. Bissett.
11 (Applause)
12 MS. GENTILE: 89.
13 MR. CLARK: Good afternoon. My name is
14 Philip Clark, and I work for a company that
15 recycles coal ash.
16 I see firsthand the benefits of
17 recycling coal ash. It does many great things,
18 like make concrete stronger, more durable, and
19 more workable, just to name a few.
20 While the use of coal ash not only
21 provides several advantages for construction
22 materials, it also reduces the demand for virgin

materials that may be energy intensive to create. The coal ash recycling industry is at the forefront of green technology and innovation.

I support the EPA in its efforts to regulate coal ash to protect human health and the environment, but I believe labeling coal ash as hazardous under Subtitle C is inaccurate and unnecessary. I believe that testing shows that coal ash is not hazardous.

A hazardous label on coal ash will hurt the recycling capa -- capabilities unnecessarily. You should avoid the unintended consequences and negative impacts to recycling as you regulate coal ash ponds and landfills.

I ask the EPA to find a way to control coal ash disposal through non-hazardous rules. Thank you.

MS. GENTILE: Thank you.

(Applause)

MS. GENTILE: Number 90.

MR. GARDNER: Afternoon. My name's Robert Gardner, and I'm Greenpeace USA's

1 Coalition representative.
2 I'm here today to support your efforts
3 to create a federal minimum coal ash disposal
4 standard. Coal ash must be treated as hazardous
5 under Subtitle C of RCRA.
6 I'm here representing our millions of
7 members worldwide saying that coal ash is
8 hazardous, and a state-by-state enforcement is
9 just not enough. We need federal guarantees to
10 ensure that dangerous coal ash isn't just shipped
11 to the state with the most lax regulatory scheme.
12 Sound science res -- supports the
13 special waste designation. Coal ash waste
14 contains arsenic, lead, and mercury, among other
15 toxic heavy metals. These dangerous elements
16 cause cancer, organ disease, respiratory illness,
17 and neurological damage.
18 There are over 130 damage cases that
19 have been clearly documented. This is an ongoing
20 national health catastrophe and requires redress
21 immediately.
22 Business as usual will not protect the

1 health and welfare of the American people.
2 Responding to pressure from Big Coal, prior
3 administrations have allowed the industry to
4 police itself or self- regulate under a patchwork
5 of state directives, leading to the extensive
6 contamination of water and land by toxic heavy
7 metals. This approach has not and will not
8 protect streams, ponds, rivers, lakes and other
9 waters.
10 Here in Kentucky, there are at least
11 three leaking impoundments. There are six
12 high-hazard impoundments. In the city of
13 Louisville, there's a high-hazard impoundment at
14 Cane Creek that they are trying to expand to about
15 5.7 million cubic yards of CCW on site. This
16 number of high-hazard impoundments places Kentucky
17 third behind North Carolina and Arizona in the
18 number of high-hazard ash impoundments nationwide.
19 A high-hazard impoundment that fails
20 will probably cause lo -- loss of life. Energy
21 should not cost lives, period. People living near
22 unlined coal ash ponds, where water contaminated

1 by arsenic and ash is mixed with coal refuse, have
2 an extremely high risk of cancer, up to 1 in 50,
3 2,000 times greater than EPA's acceptable cancer
4 risk.
5 If we can't mine coal without destroying
6 our mountains, we shouldn't mine it. If we can't
7 burn coal without destroying our air, we shouldn't
8 burn it. If we can't dispose of coal ash without
9 destroying our water, we shouldn't create it.
10 A hazardous waste designation under
11 Subtitle C of RCRA would ensure that coal ash
12 dumps and waste ponds have all the protections
13 currently required at waste land fi -- landfills.
14 This should be the option the EPA embraces to
15 protect people and not polluting industry. Thank
16 you very much.
17 MS. GENTILE: Thank you, Mr. Gardner.
18 (Applause)
19 MS. GENTILE: Next I'm going to call up
20 the following four numbers: Number 327, Number 91,
21 92, 93. Again 327, 91, 92 and 93. 327?
22 FATHER MITCHELL: Thank you. My name is

1 Joe Mitchell, and I'm a Catholic priest. I work
2 for an organization called the Earth and Spirit
3 Center.
4 I'd like to, first of all, admit and
5 clearly state that I'm not a scientist, so I don't
6 speak as a scientist; and I am not a -- involved
7 in any corporation or industry, so I don't speak
8 from that perspective. And I'm not going to speak
9 from a consumer, though I am.
10 But I'd like to speak as a cosmologist.
11 From a cosmological perspective is the -- is the
12 perspective I'd like to speak from, and here's my
13 story.
14 When I go out into a church and I say to
15 people, "Would you-all please come tonight?
16 Because I'd like to give a talk or have us have a
17 conversation about the environment," they
18 generally misunderstand what I'm going to be
19 talking about because, by and large, when I invite
20 people for a conversation about the environment,
21 they think that I'm going to talk about out how
22 the earth has become ruined in its forests; how it

1 has become desolate in the loss of species.
2 They think I'm going to talk about how
3 the earth has become diminished by the fertility
4 of our soil; become toxic in our atmosphere;
5 become polluted in our rivers; become threatened
6 with hazardous waste materials that we do not know
7 how to dispose of adequately.
8 And they're wrong. Because generally,
9 when I invite them to come and talk about the
10 environment from a cosmological perspective, I
11 said, "We're going to talk about you."
12 So I'd like to raise that as a concern.
13 The earth is not something out there. The earth is
14 not separate from us. The earth is not simply a
15 resource for our consumption or a garbage dump for
16 our waste that is inadequate and an inaccurate
17 cosmology. And we as human beings need to
18 understand what we do to the earth, we do to
19 ourselves.
20 And so that's the reason why I am for
21 regulating coal ash as a hazardous material.
22 Albert Einstein, one of the great scientists of

1 our times, said that a human being is part of a
2 whole called the universe. And not to understand
3 that, he said, is an optical delusion of
4 consciousness.
5 So these are two faulty assumptions we
6 need to address in this conversation. One is the
7 assumption that we, as humans, are -- suffer from
8 the earth and we can do whatever -- to the earth
9 whatever we want and it won't affect us. My
10 friends, if the earth becomes sick, we become
11 sick. You can't be a healthy human on a sick
12 planet.
13 But secondly, it also is about presuming
14 that the human economary -- economy is primary and
15 the earth economy is secondary. The hu -- the
16 earth economy is first. Human and the human
17 economy is derivative. And if we don't understand
18 that, we keep making exceptions for this because
19 we say it will hurt our economy, if it does, then
20 we are saying that our economy --
21 MS. GENTILE: I'm sorry, Father. Your
22 time's up.

1 FATHER MITCHELL: -- precedes the
2 earth's economy. So thank you for considering
3 these --
4 MS. GENTILE: Thank you for your comment.
5 (Applause)
6 MS. GENTILE: 91?
7 MR. BRYANT: Good morning -- or good
8 afternoon, and thank you for the opportunity to
9 testify. My name is Mark Bryant. I'm the chair
10 of the American Coal Ash Association Board of
11 Directors. This testimony today is on behalf of
12 that association, its 150 members, and the almost
13 $10 billion beneficial use and recycling industry.
14 In previous testimony, I have presented
15 real- world examples of negative stigma created by
16 the ambiguous, multi-optioned proposed rule making
17 that could result in managing CCRs under RCRA
18 Subtitle C as a hazardous waste. The stigma is
19 real. And the most recent example is these very
20 hearings where we are observing non-ash competing
21 commercial products supporting an RCRA Subtitle C
22 option for no other reason than to gain financial

1 advantage.
2 These competing products know the impact
3 that this will have on the market. It will be
4 devastating to CCRs.
5 Also in previous testimony, as a
6 scientist and engineer having worked in the
7 geotechnical environmental engineering fields, ash
8 management, landfill, and commodities industries,
9 my comments suggested that the appropriate model
10 to rectify this issue already exists before us,
11 that being the RCRA Subtitle D, non-hazardous
12 municipal solid waste landfill rules promulgated
13 in the late 80s and 90s.
14 Today I would like to address the facts
15 and data that this decision RCRA D or C, should be
16 based on. There is considerable information, good
17 science, generated over the last 20-plus years of
18 research and demonstration, much of which was
19 supported in partnership with honest and
20 hard-working regulators at EPA, both state and
21 federal. It has been proven that their charge of
22 adequately protective of human health and the

environment is best served by a RCRA Subtitle D solution.

Recently, almost daily, new information continues to emerge from various sources that supports a non-hazardous solution. While these works are new, none of being found invalid, and they are considered good science.

I believe that anyone in the room will support a call for a national standard for the safe management of these materials as a solid waste, but not hazardous. This would not be good science. It would not make for good public policy.

We have heard testimony that the goal of some of the environmental organizations represented in these hearings is to raise the cost of coal-fired generation to a level competitive with wind or solar. A fair goal, understandable, given their beliefs. But if this is to become public policy, it should be based on sound science, solid science, research, publication, and a scalding peer-review process, and then found

1 valid.

2 In your opening comments, it was

3 mentioned that the panel could ask questions. I

4 hope that I may ask a question and make a request:

5 That EPA, when considering all of the information

6 presented in these hearings, evaluate the

7 legitimacy and the validity of the science upon

8 which these decisions are based.

9 Remember, the beneficial use and

10 recycling industry is comprised of many small

11 businesses. In fact, based on information

12 available to the public, the largest ash

13 management firm is about a fraction of the Sierra

14 Club's annual revenue.

15 These are small businesses, and their

16 employees' futures hang in the balance of this

17 decision.

18 RCRA works. Trust the process. These

19 materials are not hazardous by any measure. We

20 simply need to strengthen the national --

21 MS. GENTILE: I'm sorry, Mr. Bryant.

22 Your time is up.

1 MR. BRYANT: Thank you.
2 MS. GENTILE: Thank you for your
3 comments.
4 MR. BRYANT: -- standard for storing and
5 for managing CCRs, while encouraging beneficial
6 use and recycling.
7 I urge you, on behalf of our membership,
8 to pursue a Subtitle C solution based on the
9 facts.
10 (Applause)
11 MS. GENTILE: I'd like to now call the
12 following four numbers: 322, 323, 95, and 97.
13 322, feel free to walk up to the podium whenever
14 you're ready and start your comments.
15 MR. TROKAN: Hi. My name is Matt
16 Trokan, and I'm from Cincinnati, Ohio.
17 I'd like to first start by thanking you
18 for allowing me to speak today, and I appreciate
19 your time. I'll try to keep my comments brief.
20 I believe that Option C is the clear choice. Coal
21 ash is a hazardous waste as it contains
22 concentrated amounts of many toxic heavy metals

1 which are associated with cancer and various other
2 health effects, but you don't need me to remind
3 you of that.
4 I applaud the decision of US EPA to
5 promote the safe disposal of coal ash. And I
6 think in order to protect the public and
7 environmental health, coal ash impoundments should
8 be permitted, financially-assured, monitored, and
9 meet federal and state requirements.
10 The responsibility to enforce regulation
11 should be that of the government, not individual
12 citizens. The US EPA should not ask the public to
13 trust that power companies will voluntarily comply
14 with regulations under Subtitle D. Given the
15 history of public environmental health abuses by
16 power companies, why should we?
17 The USP -- EPA states that coal ash
18 disposal is currently unsafe. Option C will
19 ensure that coal ash is regulated. Option D
20 leaves it up to chance.
21 We cannot afford to gamble with coal
22 ash. Our health and our environmental health

cannot afford that risk. Thank you.

MS. GENTILE: Thank you for your comments.

(Applause)

MS. GENTILE: 323.

MS. TINSLEY: My name is Mary Tinsley, and I live near the Gibson Generating Station in Mt. Carmel, Illinois.

The coal ash from the landfill flies across the river every day and lands on our cars and homes. I can -- cannot even open my windows because of that.

And I and my friends believe the ash is causing a large a -- amount of illnesses. We must wash our cars every day because of flying across the river from the landfill.

I personally have several friends who have developed illnesses cannot -- we cannot explain. Many people, young and old alike, have cancer.

My brother works on the bridge being built near the Gibson plant, and -- and is

1 suffering from kidney and coal and -- disorders.
2 I have lost a friend to cancer who lives in East
3 Mt. Carmel, where the well water was proven to be
4 contaminated by the coal ash from the plant.
5 Another friend could not make it because
6 she was just diagnosed with cancer. Another
7 friend could not make it because her daughter has
8 developed a skin condition, and the doctors don't
9 know what -- you know, said they -- was no cure
10 for it.
11 Duke energy has paid to have city water
12 run to several friends' homes in East Mt. Carmel.
13 I and others, other neighbors and friends, believe
14 that the water conne -- contamination is more
15 widespread.
16 We believe that we will never find out
17 the true cause of the illnesses because monitoring
18 and notification are not required of Duke, and
19 state of Indiana does not regulate the pollution
20 from the plant. We need help from the EPA, and
21 that's the only way that we're going to get it
22 done. Thank you.

1 MS. GENTILE: Thank you for your
2 comments.
3 (Applause)
4 MS. GENTILE: 95?
5 MS. HICKS: Good afternoon. My name is
6 Marsha Hicks. I work for a company that
7 specialized in the responsible management of coal
8 combustion residuals and recycling CCR into useful
9 products.
10 I support the regulation of coal ash
11 disposal in a way that protects human health and
12 the environment. At the same time, I think it is
13 important to encourage the safe recycling of coal
14 ash for beneficial use.
15 Recycling coal ash has a twofold
16 benefit. First, it reduces the amount of ash that
17 must be disposed of. Second, it preserves natural
18 resources that would otherwise be used for products
19 and eliminates additional carbon dioxide
20 emissions.
21 The United States depends on elect --
22 excuse me, electricity created by coal combustion.

1 The amount of electricity use in the United States
2 and, therefore, the amount of CCR produced
3 continues to increase each year, so management of
4 CCR is very important.
5 I support the EPA's effort to implement
6 regulations that are designed to avoid structural
7 failures of impoundments and require additional
8 safeguards for the design and operation of
9 receiving ponds and landfills. From what I have
10 learned about the two proposed alternive (sic)
11 regulations, I think the approach under Subtitle
12 D is the best.
13 As with the Subtitle C proposal,
14 Subtitle D will have engineering requirements to
15 protect the environment, such as liners and
16 ground-water monitoring; will provide stronger
17 oversight of structural integrity of impoundments.
18 Under Subtitle D, CCRs remain classified as a non-
19 hazardous waste. The recycling of CCRs is
20 important, and it's important to consider it non-
21 hazardous so that this recycling will remain as a
22 safe, environmentally-friendly alternative to

disposal.

It's my understanding that the Bevill exemption will remain in place for beneficial use of CCRs, so these regulations will not change requirements for beneficial use. However, if they are regulated as a hazardous waste, this will place a stigma on the materials that will damage the recycling industry and hinder the ability to market CCRs for recycling and recycled products.

The company I work for has already experienced the impact of negative publicity that refers to coal ash as hazardous. This has potential for a large negative impact on the environment, resulting in more coal ash being disposed of in impoundments and landfills.

In addition, other natural resources will be used for building and construction products. The alternative regulations under Subtitle D will add protections for the environment while preserving recycling efforts.

I appreciate this opportunity to voice my concerns about the alternatives, and urge the

1 EPA to address this under Subtitle D. Thank you.
2 MS. GENTILE: Thank you, Ms. Hicks.
3 (Applause)
4 MS. GENTILE: 97.
5 MR. VUCAS: Good afternoon, and thank
6 you for the opportunity to speak today. My name
7 is Jason Vucas, and I represent US Minerals, one
8 of eight companies in the United States engaged in
9 the processing of boiler slag for beneficial reuse
10 in a variety of industrial and commercial
11 applications.
12 There are eight different categories of
13 coal combustion byproducts. Boiler slag
14 represents the smallest of these categories. In
15 terms of volume, it is about 1% of the 135 million
16 tons of CCBs generated annually. However, it has
17 the highest percentage of reuse historically.
18 Virtually 100% of all boiler slag generated goes
19 into a beneficial reuse application.
20 Why is this and what does it mean as it
21 pertains to the proposed regulations on coal
22 combustion byproducts? First, boiler slag is non-

1 hazardous by any definition. It has no hazardous
2 properties and exhibits no hazardous
3 characteristics.
4 It is generated through a process called
5 vitrification, which creates a hard, angular
6 granule with a smooth, glassy surface. The
7 granules are non-leaching and chemically inert.
8 These characteristics make the granules
9 suitable for a wide variety of applications and
10 products. Again, this means that virtually 100%
11 of boiler slag is beneficially reused. There is
12 no long-term storage of this material, which means
13 there is no need for impoundments.
14 The uses of boiler slag include abrasive
15 products used in surface preparation. Boiler slag
16 abrasives meet the stringent requirements of the
17 U.S. Navy, the California Air Resources Board, and
18 several other certifying bodies.
19 Contrary to statements made at this
20 public meeting and others by a company with a
21 competing product, the chemical properties of
22 boiler slag do not change as the abrasive material

1 breaks down. They are among the cleanest, safest,
2 and most cost-effective abrasive products on the
3 market. This is a fact, and has been for over 70
4 years.
5 80% of all asphalt residential roofing
6 shingles in the United States contain boiler slag
7 granules on at least a portion of the shingle.
8 Boiler slag is also used for snow and ice
9 control on roadways. It is an ingredient in glass
10 bottle manufacturing, water-filtration media, seal
11 coating, anti-skid surfaces, and new uses and
12 applications are constantly being developed.
13 Further regulation could severally
14 minimize the historical levels of beneficial reuse
15 or even eliminate it altogether. Many states
16 strictly prohibit materials classified as Subtitle
17 C waste from their beneficial reuse programs. As
18 I stated earlier, competing companies are eager to
19 seize on the stigma associated with the Subtitle C
20 regulation.
21 No known information exists to -- to
22 support classification of boiler slag as a

1 hazardous waste, and there are no known damage
2 cases or any adverse envi -- environmental impacts
3 associated with the reuse of boiler slag.
4 I ask the EPA to consider the science and
5 the facts, and allow for Subtitle D and the
6 continued unrestricted use of boiler slag. Thank
7 you.
8 MS. GENTILE: Thank you, Mr. Vucas.
9 (Applause)
10 MS. GENTILE: The next four speakers are
11 Numbers 320, 321, 98, and 99. Come on up to the
12 front of the room. Number 320, you'll be the
13 first to start. So whenever you're ready, come on
14 up to the podium and start your comments.
15 MR. WEBER: My name is Tim Weber, and I
16 represent Synthetic Materials. We process
17 synthetic gypsum, which is a product of the
18 scrubber units.
19 A little about gypsum. It is a product
20 created by the chemical process in the FGD systems
21 or the scrubber units, more commonly known as the
22 scrubbers, in the coal power plants. It's created

1 by showering limestone down on the -- the flue
2 gas, which scrubs out the SO2 or sulphur dioxide.
3 Syn-gyp is a high quality and very pure
4 gypsum material. Chemically it is identical to
5 naturally-mined gypsum. This synthetic gypsum can
6 be used in many different applications, such as
7 the wallboard industry, agri -- agricultural
8 market, of filler materials, and in the making of
9 cement.
10 Synthetic Materials processes over 3
11 million tons of Syn -- Syn-gyp annually, primarily
12 for the wallboard and the cement industry.
13 Millions of homes now contain products made with
14 these coal combustion products.
15 The synthetic gypsum that we produce is
16 between 95 and 98% pure, and has a lower trace me
17 -- metals than what's typically found in
18 residential soil cleanup standards. Recycling of these
19 valuable minerals has reduced the cost of home
20 construction and eliminates the need to open more
21 mines and landfills.
22 Syn -- SYNMAT is committed to the

1 expanded recycling of coal combustion products in
2 new and envi -- vironmently compatible ways.
3 Thank you.
4 MS. GENTILE: Thank you for your
5 comments.
6 (Applause)
7 MS. GENTILE: 321.
8 MR. NOONAN: Hello. My name is Chris
9 Noonan. I work for SYNMAT, also. And it's gypsum
10 de-watering and sales company. I'm here today to
11 give you the many useful applications of synthetic
12 gypsum that keeps -- that results in fewer
13 landfills and helps keep the cost of these items
14 down. Some of these items that helps -- that they
15 produce with the gypsum are wallboard, structural
16 fill, mining applications, soil amendment,
17 synthetic soil components, plaster, agricultural,
18 glass making, and pigments.
19 SYNMAT is part of a successful
20 industrial effort to recycle coal combustion
21 byproducts in the ways beneficial to the economy
22 and environment. A redefinition to the hazardous

1 classification for this product can result in
2 greater problems. So I feel that Option D is the
3 right choice. Thank you.
4 MS. GENTILE: Thank you for your
5 comments, sir.
6 (Applause)
7 MS. GENTILE: 98? Number 98?
8 MR. MOTTLEY: My name's Don Mottley.
9 I'm the spokesperson for a group called Save Our
10 Rivers and I'm the spokesperson for Save Our Land
11 & Environment.
12 I'd like to invite you to southwest
13 Indiana. I'd like for you to come and smell and
14 drink the water that the people around East Mt.
15 Carmel and Dogpatch are drinking every day. It's
16 yellow. It's orange. The smell, you would not
17 believe it.
18 Yet not all of the people were
19 connected. Some were told, "Oh, the levels aren't
20 high enough, but, then, we tested once." They've
21 not tested again. We have studies that were done
22 in 2008, by an independent laboratory that says

boron, selenium, sulfates, magnesium are all in elevated levels in these wells.

You go to Merom. You've got a facility up there with a lake that they had an agreement with DNR, and it was a fish and wildlife area. And guess what? All of a sudden they shut it down. Why? Because some of the fish are deformed. Where did that come from? Selenium.

There was eight and a half tons of selenium fish destroyed at Cane Ridge, right next to Duke's plant. Where did the selenium come from? They first reported it came from the rock that lined their cooling lake. Come to find out it was fluting water from the ash ponds.

Well, when are we going to say enough and enough? I'm not saying you should keep the -- keep the industry from using it when it's encapsulated. Highway construction, autoclaved area -- aided concrete.

Vectren called the loans in on a company that was going to build a plant in southwest Indiana that would probably take all the fly ash

1 from three or four of the power plants. They
2 called in the loan and bankrupt the company. So
3 when they keep talking about reuse, why did the
4 utilities call in loans and shut down a company
5 that could provide safe encapsulated CCW? Thank
6 you.
7 MS. GENTILE: Thank you for your
8 comments, sir.
9 (Applause)
10 MS. GENTILE: 99.
11 MR. PORTA: Thank you for the
12 opportunity to speak to you today on why I believe
13 coal ash -- ash is not a hazardous material. My
14 name is Mark Porta, and I'm a vice president of
15 Whayne Supply Company, the Caterpillar dealer in
16 Kentucky and southern Indiana.
17 Our company has been -- been in business
18 since 1913, almost 100 years. We employ over 1250
19 employees, half of those in the coal and related
20 industry. And I have worked there for 30 years,
21 mostly serving the coal and associated industries.
22 I am not a scientist, so I will not -- I will

1 leave that debate to the professionals that are
2 here that are far more qualified. I be -- I
3 believe the science is clear on why coal ash is
4 not a hazardous material, and I am confident that
5 you have and continue to listen to the data that
6 supports that position.
7 What I can address is my experience with
8 this product and what I know would be the negative
9 impacts on our company and on the communities our
10 employees live and work here in Kentucky and
11 southern Indiana and where -- and where it would
12 go and where -- what -- what -- what might happen
13 if it goes against the scientific data if you were
14 to classify this material as hazardous.
15 Our equipment has worked in and around
16 this coal ash for many years. We do not make any
17 recommendations to change operations of our
18 equipment or adjust maintenance schedules because
19 they work in coal ash.
20 If coal ash were to adversely affect the
21 warranties of our equipment or lower machine life,
22 we would have seen this ask and instructed our

1 customers on this impact. To be clear, we have
2 seen no data that impacts negatively the life of
3 our machines.
4 While machine life is important, the
5 most important concern is our employees' health.
6 Again, for many years our employees have worked in
7 and around coal ash, and we have seen no adverse
8 impact on their health. We provide for yearly
9 physicals, and nothing has shown that indicates
10 this is -- this is hazardous. I realize this is
11 not a scientific study, but it is the world in
12 which I live.
13 The safety of our employees is our
14 Number 1 goal, and we can -- and we will not
15 subject them to any working environment where they
16 would be in danger. Our employees have the right
17 to refuse to work where they do not feel safe.
18 For our company, the impact of
19 classifying coal ash as hazardous would
20 significantly increase cost, which we would pass
21 on to the consumer. We do work in materials that
22 are considered -- considered hazardous, and the

1 cost to perform routine service and repairs can
2 easily be twice as much when working in those
3 conditions.
4 Working on those machines, transporting
5 those machines, hauling parts to the job site
6 would skyrocket our costs. There would be no
7 value of that unit when it -- when its useful life
8 is completed.
9 As an example, a machine that might sell
10 today to one of these producers might sell for
11 $400,000 and run for ten years. The trade value
12 at that time would probably be around $40,000.
13 Working in hazardous materials, the machine would
14 have -- be of zero worth. Many of these companies
15 today would not be able to stay in business.
16 Certainly, the handling of coal ash
17 needs to be done safely as any commodity when it
18 is ro -- when it's stored in large quantities.
19 The American consumer is very clear: They do not
20 want continued higher cost due to regulations
21 driven by a vocal minority.
22 The data is clear: Coal ash is not

1 hazardous, and making it so to satisfy a minority
2 that won't accept the science will only raise
3 costs in a slow and struggling economy. Thank
4 you.
5 MS. GENTILE: Thank you for your
6 comments, Mr. Porta.
7 (Applause)
8 MS. GENTILE: Okay. The next four
9 numbers I'd like to call up are 144, 168. 100, and
10 102. We'll start with 144.
11 MR. ROBL: My -- my name is Tom Robl.
12 I'm with the University of Kentucky Center for
13 Applied Energy Research. I spent most of my
14 professional career con -- conducting research on
15 the beneficial use of coal combustion products.
16 The issue that we face today is not
17 between two regulatory sources, C and D, but
18 rather what is not between regulation and
19 irregulation -- or non-regulation, but between two
20 regular -- regulatory choices, C and D. And our
21 options are two.
22 What we're trying to do is guarantee

environmental safety while maximizing environmental benefit from these materials. The long list of coal combustion products' uses range from familiar, such as high-performance concrete, to -- and gypsum-based wallboard, to new products, such as metal matrix composites and -- and polymer composite material.

The environmental benefit from ut -- utilization of coal combustion products is well documented. Based on 2007 data, the Electric Power Research Institute found that using coal products saved 159 trillion BTUs, conserved 32 million -- billion gallons of water, and reducedCO2 emissions by 11 million tons.

The US EPA, however, claims that classification of coal ash as a -- a C material under the dual system of management will actually increase the beneficial reuse of coal combustion products. This is simply not borne out by experience with other materials, nor from the response from the producers themselves, other consumers, or regulators.

1 To quote Mr. Paul Thompson, vice
2 president for Energy Services of E.On-US, who --
3 who stated if ash is -- who states, "If ash is
4 classified as a hazardous material, I would
5 consider it irresponsible on our part to allow it
6 be disposed of in any other way than in a properly
7 certified hazardous material repository."
8 Of -- of -- the agency has been warned
9 on the consumer side by expert organizations, such
10 as ASTM, ACI, and the National Ready Mix
11 Association, that prohibitions, the utilizations,
12 will occur as long-term liability uncertainties,
13 insurance, and handling restrictions become
14 important.
15 The critical part of this is that the
16 reduction of the CO2 from Portland Cement, which
17 is responsible for 5% of all manmade emission, is
18 one of the great environmental challenges our
19 time. Coal combustion products are critical for
20 their ability to displace Portland Cement in -- in
21 -- in concrete. This is of particular importance,
22 as I know of no other material that can do that.

1 The US EPA has now assumed authority
2 over regulating CO2 as a primary pollutant.
3 Adopting result -- adopting rules that result in
4 increased CO2 production which would make the
5 agency a -- a primary polluter.
6 I encourage the agency to accept
7 regulation under Subtitle D, which I believe will
8 give a -- a -- a balanced benefit.
9 MS. GENTILE: Thank you, Mr. Robl.
10 (Applause)
11 MS. GENTILE: 168? 100?
12 MR. BLAIR: Hello. My name is John
13 Blair. I'm here for the group Valley Watch.
14 We're located in southern Indiana, in Evansville.
15 I've changed my testimony a little bit
16 today because I've -- I've listened to all this
17 discussion about recycling today and for the last
18 30 years I've been involved in these issues. It's
19 -- it's just amazing to me how I've heard the term
20 "clean coal"for probably 35 years now, and, you
21 know, it just ain't so.
22 There's a small component of -- of this

1 combustion waste that's recycled, a small
2 component. But from where I sit -- and I fly over
3 all these -- all these power plants and their --
4 their impoundments and all this all the time. And
5 from where I sit, I see a growing problem.
6 Now, there are a few of them that are
7 recycling some of this stuff, and I -- you know,
8 I'm not smart enough scientifically to know if --
9 if it's a good idea for your kid to be sleeping in
10 a room that has drywall made of Syn-gyp that may
11 be radioactive because of the components that the
12 coal combustion caused.
13 But it seems to me that this industry as
14 a whole has a problem with trying to mislead the
15 public continually on things that aren't in
16 existence yet, whether it's carbon capture and
17 sequestration or trying to recycle coal combustion
18 waste. If I had just come into this room and
19 didn't have some direct knowledge about the way
20 things actually are, I would think that you're
21 about to take away the biggest recycling component
22 of anything that existed on earth. And it may be

1 97 or 98% of the coal combustion waste that's
2 being generated is being recycled, but it's just
3 not true.
4 Instead, we have toxic material that's
5 leaching out into my source of drinking water,
6 which is the Ohio River. This is the Cane Run
7 facility. This is becoming a mountain. This is
8 the Mill Creek facility. This is becoming a
9 mountain.
10 This is the Clifty Creek facility. This
11 is becoming a mountain. And the funny thing about
12 Clifty Creek is that they had to have something
13 they -- they went to a Subtitle C kind of regimen
14 and -- and they had to have something to prop up
15 the liner. What did they use to prop up the liner
16 to make it level? Coal combustion waste
17 underneath.
18 This is the Gallagher plant across the
19 river. This is not -- this is becoming a
20 mountain.
21 You know, we have a problem with
22 increasing volumes of this stuff that's not being

1 recycled, so don't be fooled by all this talk
2 about recycling because it's just not happening.
3 Thank you.
4 (Applause)
5 MS. GENTILE: Thank you for your
6 comments. Number 102, please.
7 MR. BILSLAND: Thank you for allowing me
8 to speak today. My name's Kirby Bilsland, and I
9 work for a coal combustion byproducts recycling
10 industry. And I'm speaking as a concerned
11 citizen.
12 I started my employment in the coal ash
13 recycling business about six months ago. And in
14 this economy, it's a good part of a -- it's good
15 to be part of an industry that is creating jobs
16 and, more importantly, green jobs.
17 The regulations proposed by the EPA will
18 impact the recycling coal ash, especially if the
19 approach adopted is under a hazardous waste label.
20 The EPA is underestimating the negative impact
21 that a hazardous waste association will have on
22 the work that I do.

1 Just the -- the suggestion that coal ash
2 may be called hazardous has caused our business to
3 be negatively impacted. I see a loss of volumes
4 in our product sales and the recycling industry,
5 and I hear our customers and haulers claim they
6 are confused by news coverage that labels our
7 product as a hazardous or toxic waste. If the
8 EPA's suggested approach can have this much
9 negative impact on recycling efforts, I fear what
10 the rules will do if actually implemented.
11 I ask that the EPA avoid regulating coal
12 ash under the same rules as hazardous -- hazardous
13 waste, and I ask the EPA to support recycling coal
14 ash and save our natural resources that coal ash
15 replaces. I ash that -- ask that coal ash be
16 regulated under Subtitle D for non-hazardous
17 materials.
18 Having not worked in this industry
19 before, I have learned and continue to learn of
20 the beneficial uses for coal ash. Being the
21 provider for my family, it's important to me that
22 I have job security. I work hard to provide a

1 good life for my wife and children, and by
2 regulating under Subtitle C, this will threaten to
3 change the life -- my life and the lives of many
4 others.
5 I am proud to work for a company which
6 does everything with employee, customer, and
7 public safety as their first priority. Integrity
8 is very important to me, which I have found is
9 also very important to my employer.
10 If you insist on hazardous waste-type
11 regulations of this byproduct of coal, it will
12 cause most certainly an increase in the cost
13 to use and have electricity. If the regulations
14 under both approaches will have similar protection
15 requirements for disposal, then why would we even
16 consider the hazardous label approach?
17 According to the American Coal Ash --
18 Ash Association, 136 million tons of ash were
19 produced in 2008. 44% of this was recycled into
20 usable products. More than 12 million tons of
21 greenhouse gas emissions were avoided by using ash
22 to replace cement.

1 It is projected by that 2030, the United
2 States will use 19% more electricity than we did
3 in 2007. As a nation, if we insist on using more
4 electricity, then coal ash will need to be
5 recycled. Who will want to use ash if it has a
6 hazardous waste label on it?
7 I'm afraid it will cause a ripple effect
8 on the cost to maintain one's utilities, and I
9 believe it is unnecessary to label a valuable
10 resource -- resource as hazardous, especially
11 since it will not improve the disposal
12 requirements in the field.
13 I ask you as a concerned citizen to
14 understand and look at it from the prospective of
15 a middle class American who wants to give his
16 family a good life and an affordable one. Don't
17 destroy the green jobs that recycling coal ash
18 represents. Thank you.
19 MS. GENTILE: Thank you for your
20 comments, sir.
21 (Applause)
22 MS. GENTILE: I'd like to call the

1 following four speakers down to the front of the
2 room: 328, 185, 139, and 172. Come on down.
3 328, feel free to start whenever you're ready.
4 MR. PRICE: My name is Charles Price.
5 And I work for a family business that has been
6 recycling coal combustion products for the last 15
7 years, and I'm strongly opposed to labeling coal
8 ash as a hazardous material under subtitle C.
9 Labeling coal ash as a hazardous
10 material will cripple the beneficial use, stifle
11 innovation, and impose unnecessarily burdensome
12 regulations on power plant operations. Coal
13 combustion products are a valuable resource to our
14 economy, and every effort should be taken to make
15 certain they are protected.
16 On numerous occasions, the EPA has
17 determined that coal ash does not warrant
18 regulations as a hazardous waste and, instead,
19 should be regulated under Subtitle D regulations.
20 Ash helps reduce the need for landfill space and
21 new landfills, and provides significant domestic
22 economic benefits. As I have heard others say, the

1 stigma is real. Labeling coal ash as a hazardous
2 waste, even if only when disposed, creates
3 enormous barriers to recycling.
4 Please listen carefully to what I am
5 saying, and remember that your decisions will have
6 tremendous implications on businesses nationwide.
7 Please choose to regulate coal ash under Subtitle
8 D.
9 MS. GENTILE: Thank you for your
10 comments.
11 (Applause)
12 MS. GENTILE: 185? 139?
13 MR. BOLEN: My name is Keith Bolen, and
14 I've worked in the coal ash management and the
15 recycling industry for many years.
16 I am against the EPA proposing to
17 regulate coal ash as a hazardous special waste
18 under Subtitle C. The negative impact would
19 result -- would be huge. Residential and
20 commercial builders would stop using this material
21 if it's deemed hazardous in landfills.
22 Road building and other infractures

1 (sic) would have to use alternate materials.
2 These alternate materials would do greater harm to
3 the environment since manufacturing them would
4 cause increased greenhouse gas emissions.
5 Coal ash recycling, on the other hand,
6 has many environmental benefits, such as
7 conservation of our natural resources and landfill
8 space. These benefits need to be preserved.
9 Under the EPA's own rule, new landfill
10 engineering practices would re -- essentially be
11 the same whether they be -- are dedicated with the
12 hazardous or non-hazardous classifications. In
13 addition, new landfill engineering standards would
14 have to be adopted faster if the hazardous class
15 -- classification is not determined.
16 I am for the E -- EPA endorsing more
17 stringent coal ash disposal regulations; however,
18 it needs to be done without characterizing coal
19 ash as hazardous waste and destroying everyone's
20 goal of a cleaner environment. To do so, EPA must
21 regulate under Subtitle D.
22 MS. GENTILE: Thank you, Mr. Bolen.

(Applause)

MS. GENTILE: 172.

MR. FRANKLIN: Thank you. My name is Ben Franklin. I'm a concerned citizen and a member of Citizens for Recycling First. I'm deeply concerned about the future of coal ash utilization. The EPA is proposing stricter regulations on CCP disposal while advocating a higher utilization of CCPs on items such as concretes, cement, and soil. While I commend you for wanting to use more of these materials, I cannot understand how you can believe that placing the CCPs under a hazardous designation would be beneficial to higher utilization.

Obviously, placing disposed ash under the hazardous designation will create stigma for the CCPs and the products that incorporate these valuable materials, such as fly ash. It will also create a huge liability, not only for the producer of the CCPs, but for the end user, as well.

I've read through both proposals and see very little difference in either one of them. The

1 main differences that jump out at me are -- are
2 that under Subtitle C, hazardous, the EPA will
3 have control over regulation of how these
4 materials are stored and how they are beneficially
5 used.
6 You would regulate the materials under a
7 hazardous guideline, but create a new subcategory
8 called special waste. I also understand it would
9 take close to five years for the EPA to implement
10 that Subtitle C plan.
11 Under Subtitle D, however, the
12 non-hazardous proposal, the individual state
13 would continue -- the individual states would
14 continue to regulate the materials as a solid
15 waste, as they currently do, but with federal
16 oversight. Again, the EPA has stated that with
17 the Subtitle D plan, it could be implemented in
18 less than two years, not in five.
19 When comparing the two proposals, all
20 else seems virtually the same. From what I've
21 read, both proposals are equally protective of
22 both humans and the environment, so why would the

1 EPA want to wait another three to implement
2 virtually the same plan, not to mention, risk
3 ruining the very thing you seek to accomplish,
4 which is keeping more of these CCPs from the
5 impoundments and landfills?
6 The EPA has looked at CCPs in the past
7 under both Democrat and Republican Congresses and
8 presidents, and every time the EPA has returned
9 with the verdict that there is no way that CCPs
10 can be considered hazardous and they should stay
11 exempt under the Bevill Amendment.
12 By creating stigma and liability under
13 Subtitle C, you will not only kill the recycling
14 of a beneficial material, but you will
15 inadvertently increase greenhouse gas emissions,
16 decrease landfill space, increase the mining of
17 virgin construction materials, and increase energy
18 use.
19 I'm asking you again to make the smart
20 decision and pick the new -- the right proposal
21 based on the facts and not on the politics of the
22 day. The right choice and the only choice is that

1 of Subtitle D, non-hazardous. Thank you.
2 MS. GENTILE: Thank you for your
3 comments, Mr. Franklin.
4 (Applause)
5 MS. GENTILE: Okay. The next four
6 speakers I want to call down are the following:
7 96, 132, 103, and 329. Again, 96, 132, 103, 329.
8 96, you can get started whenever you're ready.
9 MS. ROBERSON: My name is Teresa
10 Roberson, and I'm speaking as the wife of an
11 employee that depends on the coal combustion
12 byproduct recycling industry.
13 My entire life has been surrounded by
14 family members that have depended on coal or coal
15 byproducts as a method of financial support for
16 their families. Recent years, we have challenged
17 to serve -- to save energy, save landfill space,
18 be a better steward of our resources, and we pride
19 ourselves on the efforts to recycle items such as
20 paper, glass, cans, and other leftovers.
21 Reduce -- reduce, reuse, and recycle are
22 strategies widely employed in the United States to

1 help cut down on the needs for landfills and
2 conserve limited resources. This is where we
3 learned the terms "beneficial use" and "recycling
4 activities."
5 The coal ash recycling industry likewise
6 provides -- or prides themselves in the efforts to
7 recycle. Over the years, they have found a
8 variety of ways to put the pro -- the byproducts
9 of burning coal to productive, beneficial uses.
10 I understand that the beneficial use has
11 increased steadily and now constitutes nearly 50%
12 of all coal combustion byproducts produced. Even
13 the EPA has partnered with the industry and other
14 federal agencies in an effort to promote the reuse
15 of coal ash.
16 According to the American Coal Ash
17 Association, each ton recycled, space equivalent
18 to 455 days' worth of solid waste, is saved in a
19 landfill. Even the very office that houses the
20 headquarters of the EPA was constructed with
21 concrete containing coal ash.
22 The Subtitle C hazardous approse --

1 approach would seriously damage recycling by
2 creating an unnecessary hazardous waste stigma on
3 coal ash. I feel that coal ash disposal
4 regulations should be improved while encouraging
5 recycling coal ash as a safe,
6 environmentally-preferable alternative to
7 disposal.
8 Cold -- coal ash does not qualify as a
9 hazardous waste based on its toxicity, but
10 actually is similar to that of materials that
11 replaces in recycling applications. That being
12 said, a hazardous or toxic label given by the news
13 media and special-interest groups is unwarranted.
14 In conclusion, I feel that any form of
15 Subs -- Subtitle C ash disposal regulations will
16 hurt recycling by creating a hazardous waste
17 stigma for the coal ash. Thank you for the
18 opportunity to express my concerns in this matter.
19 MS. GENTILE: Thank you for your
20 comments.
21 (Applause)
22 MS. GENTILE: 132, please. 132?

1 Something has gone wrong at the desk, it sounds
2 like. We'll figure that out for you. Sorry. We
3 had a -- a blip in our process.
4 Could you just state your name for the
5 record so we have the right name on our record?
6 MR. ROBERSON: My name is Ron Roberson.
7 MS. GENTILE: We have you down here.
8 MR. ROBERSON: Okay. All right.
9 MS. GENTILE: Thank you.
10 MR. ROBERSON: As I stated, my name is
11 Ron Roberson. I am speaking as the director of
12 safety of a company that depends on coal
13 combustion byproducts and the recycling industry.
14 I have lived in the great Commonwealth
15 of Kentucky for my entire life. I was raised in
16 the coal fields of western Kentucky, working in
17 and around the coal and coal-mining industry my
18 entire life of over 35 years.
19 I have handled coal byproducts for the
20 past eight years, and we have seen a great
21 accomplishment through this time surrounding this
22 industry. And one the greatest is the use of coal

1 combustion byproducts as a recycled material.
2 I feel that the negative inaccurate data
3 that the coal ash receives by the news media and
4 special groups has jeopardized the continued
5 future use of recycled material. As I travel this
6 great country, I am encouraged with the recycling
7 efforts by the amount of coal ash used in concrete
8 that is placed in our cities bridges, in our
9 sidewalks, and airports where millions of people
10 step each day.
11 Looking at the great dams that hold back
12 our precious lakes and rivers, I applaud the
13 efforts in which the combining of the coal ash
14 with other natural resource to create a -- a
15 concrete structure to provide recreation, safe
16 drinking, and to protect our lands from flooding.
17 Furthermore, as the director of safety,
18 I must add that I found in recent statements
19 published by the United States Department of
20 Health and Human Services regarding the public
21 health assessment related to the TVA Kingston ash
22 spill very comforting. And their 274-page final

1 report, written by the Tennessee Valley -- or
2 excuse me, the Tennessee Department of Health,
3 they conclude, in Conclusion Number 3, that,
4 (reads) No harm to the community's -- the
5 community's health is expected from touching of coal
6 ash including children who might touch the ash
7 while playing.
8 In Conclusion Number 4, they state,
9 (reads) No harm to people's health expected from
10 accidental eating of small amounts of ash. Who
11 would want to?
12 And in Conclusion Number 6, it says,
13 (reads) Using municipal drinking water from the
14 Kingston Rockwood water treatment plants will not
15 harm people's health because of the raw finished
16 water remaining.
17 These samples were taken between
18 December the 23rd of 2008 and January the 5th of
19 2009 with over one full year of data. When I see
20 this type of data based on almost two years of
21 sampling and analysis regarding the Kingston
22 health assessment, I find it odd and without logic

1 that we would consider taking a chance of
2 destroying the best recycling industry in the
3 United States by labeling coal ash as a hazardous
4 substance.
5 I support coal ash disposal regulations
6 that protect human health and the environment only
7 if it merits the facts that support it, but I do
8 not see any way that a person or a group of people
9 can say that coal ash is harmful to the
10 environment.
11 As I close, I'd like to thank the panel
12 for the opportunity to voice, be heard, and my
13 voice is that the EPA not designate coal ash as a
14 hazardous substance. Thank you.
15 MS. GENTILE: Thank you for your
16 comments, Mr. Roberson.
17 (Applause)
18 MS. GENTILE: Okay. The next, Number
19 132? Can we get your name for the record since
20 clearly we have some --
21 MR. STANT: Yeah.
22 MS. GENTILE: -- problems up here?

1 MR. STANT: I'm Jeff Stant with the
2 Environmental Integrity Project.
3 MS. GENTILE: Okay. We have you down as
4 something else. Okay. Good enough.
5 MR. STANT: Okay.
6 MS. GENTILE: Cool. Thank you.
7 MR. STANT: We want there to be much
8 more recycling of coal ash in America, which is
9 precisely why we want the regulation of coal ash
10 to occur under Subtitle C of RCRA, and urge the
11 EPA to take that action.
12 I'm -- I'm here to talk -- to respond to
13 some -- a number of claims made previously about
14 the beneficial impacts and the lack of any adverse
15 impacts from the use of one component of coal
16 combustion waste, flue gas desulfurization gypsum,
17 a small component now, but it's a burgeoning part
18 of the -- of the CCW waste stream we expect in the
19 future.
20 We've heard no data presented in any of
21 these statements or even sum -- or summarized in
22 the Chicago hearing, where most of them were made,

to support these contentions, and have yet to see a single set of data that credibly demonstrates no adverse impacts to surface waters from the use of gypsum in agriculture, and are unaware of any that EPA has been reviewing.

We're aware of recent leaching test data on 20 FGD gypsums, on the other hand, evaluated by US EPA's Office of Research and Development in it -- in its report, where a -- a -- test method that -- with greatly improved capability to predict the leaching behavior of gypsum in the -- in the environment was -- was used on them.

When it was, these FGD gypsums were found to leach selenium at up to 1600 micrograms per liter. That's 16 times over the threshold for hazardous waste. They leached thallium at 1100 micrograms per liter. That's 550 times higher than the primary drinking water standard; cadmium at 375 micrograms per liter, 74 times higher than the primary drinking water standard; arsenic at up to 1200 micrograms per liter, 120 times higher than the primary drinking water standard; and

antimony at up to 330 micrograms per liter, 55 times higher than the primary drinking water standard.

They also leached molybdenum and boron at 45 times over their -- their federal health advisories for -- for those substances in drinking water.

The potential for FGD gypsum is to leach high concentrations of metals and other constituents at disposal sites ap -- is appearing to be also borne out by leachate and monitoring data at several CCW sites and the reports that we've presented to EPA this year.

Ground water under the gypsum storage area at the Big Ben plant in Tampa, Florida has had boron concentrations 40 times the state's standard; iron, 66 times the standard; manganese, 11 times; sulfate, 4 times; and TDS, 5 times. Arsenic and thallium under other FGD disposal units at that site are at 11 and 8 times higher than -- than their drinking water standards.

The Caledonia landfill in southeast

1 Wisconsin has had molybdenum at levels up to 375
2 times over the federal health advisory. You have
3 drinking water wells contaminated there with
4 molybdenum, as well.
5 Therefore, with this kind of evidence --
6 there's also two Kentucky sites that have gypsum
7 that have arsenic problems.
8 We would urge EPA not to -- to -- to
9 take gypsum out of this regulation and to
10 designate it as a -- a -- a special waste or a
11 hazardous waste under Subtitle C of RCRA. And --
12 and thank you very much.
13 MS. GENTILE: Thank you for your
14 comments.
15 (Applause)
16 MS. GENTILE: Number 103?
17 MR. BARR: Good afternoon. My name is
18 Jerry Barr. I'm a resident of Kentucky.
19 And as an individual who has worked in
20 the interconnected industries of power generation,
21 construction, and waste management for my entire
22 professional life, I am quite concerned with any

1 proposed governmental regulation affecting their
2 operation. It seems to me that incorrect or
3 misguided regulation could have unintentional and
4 potentially disastrous consequences. The coal-
5 fired power industry has been essential in the --
6 in the industrialization of the civilized world.
7 Most of the modern conveniences that we are
8 beneficiaries of would not exist without
9 coal-fired power.
10 Coal powered the industrial revolution.
11 It helped make America great. It empowered the
12 steel indus -- industry and all the manufacturing
13 giants of the American economy. It continues to
14 serve us all.
15 There are coal-fired power generating
16 facilities that are producing power for all of us
17 every minute of every day. We all expect there to
18 be light when we flip the switch. Without them,
19 we could not live our lives as we do today. Most
20 everything we do depends on electricity.
21 The combustion of coal produces fly ash,
22 which is a fine particulate, and bottom ash, which

is a coarse, hard substance. The matter of fact is that these substances have been used beneficially by the human race as far back as the time of the Roman Empire. The first recorded use of cement was -- was by the Romans. They used a mixture of ash and clay to construct aqueduct -- aqueducts, which are still -- still stand today. We still use ash in the same way and, in fact, many more beneficial ways. Gypsum is used to manufacture wallboard and is -- is nes -- a necessity in home building today.

These materials are necessary components of modern construction. Without them, we would not have the same quality homes, road structures, or structures that we have today.

If these materials are designated and treated -- treated as hazardous, it will have a devastating effect. First of all, we'll have dire quans -- consequences for the coal industry and coal-fired power generating facilities. If these by products are designated as hazardous, many small facilities will be forced to close, and the

1 re -- remaining facilities will be required to
2 construct landfills.
3 A Subtitle C approach will also result
4 in ash material no longer being used in beneficial
5 ways. The industry would not utilize materials to
6 be declared hazardous and -- in its building
7 products. Al -- alternate would be more
8 expensive. Virgin materials would have to be
9 identified.
10 The result of any regulation declaring
11 or classifying coal combustion products as
12 hazardous will mean the loss of potentially
13 thousands of jobs, a huge increase of cost in
14 commercial and residential construction.
15 I urge you to follow your own studies of
16 the past, and avoid regulating coal ash as
17 hazardous and regulate it under Subtitle D.
18 MS. GENTILE: Thank you, Mr. Barr. 329.
19 MR. WRIGHT: My name is Daniel Wright,
20 and I'm testifying as a concerned citizen. I
21 believe that we can all agree that the concept of
22 recycling is a great idea. But since nine --

since 2000, more than 360 million tons of coal combustion product have been recycled. That's 360 million tons that didn't -- didn't take up space in our landfills.

Coal ash is used in roadways, interstate highways, Portland cement and many other products. I feel if coal ash is classified under Subtitle C, many companies will quit using it in their products. This will, in turn, use up more of our natural resources and flood our landfills with recyclable materials.

I ask the EPA to find a way to regulate coal ash disposal under non-hazardous rules and avoid causing harm to the success of -- of the recycling business. Make the decision not to classify coal -- coal ash as hazardous or special waste under Subtitle C is the responsible thing to do for our future. Thank you.

MS. GENTILE: Thank you for your comments.

(Applause)

MS. GENTILE: At this time, the panel

1 will take a very short, approximately,
2 eight-minute break. We're going to come back and
3 resume the hearing at 4:30.
4 (Recess)
5 MS. GENTILE: Everybody, we're going to
6 resume the hearing in one minute. Good evening,
7 everybody. We're back. For those of you who have
8 just joined us, we're here for the public hearing
9 for the EPA's proposed rule for the regulation of
10 coal combustion residuals.
11 Logistics for the hearing, we would like
12 everyone to keep their comments to three minutes
13 or less. When we call your number, please come to
14 the chairs to the right of the panel.
15 I'd like to now call up the next four
16 speakers. 105, 106, 107, and 114. And please
17 take any of your conversations out into the
18 hallway, and make sure you please turn off your
19 Blackberries and cell phones. Thank you.
20 105, feel free to approach the podium
21 whenever you're ready.
22 MR. RAIA: Thank you. Good afternoon.

1 My name is Bobby Raia, and I'm a civil engineer
2 currently working within the coal ash industry,
3 and I'm here today to express my support of the
4 EPA to regulate coal ash under the proposed
5 Subtitle D, non-hazardous approach.
6 Recycling has become a way of life for
7 many of us, an obligation where we understand the
8 value and importance of using a product and then
9 finding another use for it where we're using that
10 very product to avoid the necessity to manufacture
11 new products using virgin materials. This concept
12 explains the logo recycling, the continuous circle
13 with no end.
14 As a believer in recycling, I am proud
15 to be part of the best recycling industry in
16 America. Yet we're here today at a crossroad
17 where the EPA has proposed Subtitle C, special
18 waste approach. To regulate coal ash threatens
19 the core values and ultimate objectives of
20 recycling by subjecting coal ash to a stigma that
21 would impact the coal ash recycling industry.
22 Coal ash is primarily recycling concrete

1 to enhance its strength, durability and resistance
2 to elements. Concrete is used in nearly all
3 infrastructure construction, including bridges,
4 buildings, houses, dams, and roads. However,
5 hazardous regulation of coal ash would create a
6 negative perspective for the use in this concrete
7 forcing engineers, architects and contractors to
8 use alternate and non-spec materials ultimately
9 resulting in higher infrastructure costs.
10 More importantly, a hazardous regulation
11 would impact the jobs related to the sales,
12 trucking and manufacturing of coal ash. If we say
13 "no" to the -- to the many coal ash recycling
14 programs, it will be disposed of in landfills,
15 which means additional, bigger, higher, and
16 quicker filled landfills in order to accommodate
17 the 44% that is recycled annually.
18 Under both the Subtitle D and Subtitle C
19 proposals, the EPA addresses the need to
20 standardize and strengthen the engineering
21 standards associated with landfills and the same
22 as under the Subtitle and Subtitle D approach. The

1 EPA actually saying in effect the disposal
2 regulation of the proposed Subtitle D would take
3 effect faster than the proposed Subtitle C.
4 In closing, I strongly urge the EPA to
5 regulate coal ash under the proposed Subtitle D,
6 non- hazardous approach. Coal ash is
7 non-hazardous, as stated by the EPA and recently
8 concluded by the Tennessee Department of Health in
9 their final assessment for coal ash release for
10 the Kingston Fossil Plant. I wouldn't be standing
11 here today if I didn't believe the same.
12 This approach protects the environment
13 and human health with the standard for landfill
14 and disposal, yet it reinforces the values and
15 objectives of recycling, not to mention the
16 preservation of many jobs associated with the coal
17 ash recycling industry, including mine. Thanks
18 for the opportunity.
19 MS. GENTILE: Thank you, Mr. Raia, for
20 your comments.
21 (Applause)
22 MS. GENTILE: Number 106.

1 MR. WEICKEL: Good afternoon. My name
2 is Vernon Weickel, and I'm speaking as an employee
3 of a company that depends on the coal combustion
4 byproducts recycling industry. I'm a procurement
5 manager and I spend my time at work purchasing and
6 coordinating equipment for our company.
7 I support coal ash disposal regulations
8 to protect human health and the environment
9 without compromising greater recycling
10 capabilities of coal ash. These goals cannot be
11 accomplish if the Environmental Protection Agency
12 designates coal ash as hazardous special waste
13 under Subtitle C. This classification would bring
14 an uncertainty to the general population and would
15 be detrimental to the recycling efforts.
16 If they read in the newspaper the
17 material is hazardous, they will fight the use of
18 it in every way. We must not make it difficult to
19 continue the best recycling program that we have
20 available in this country. Working in the
21 business, I take particular interest in the
22 statements recently published by the U.S.

1 Department of Health and Human Resour -- Human
2 Services, excuse me, regarding the public health
3 assessment related to the TVA Kingston ash spill.
4 In their final report, the Tennessee
5 Department of Health made the following statement:
6 They conclude that there was no harm to the
7 community's health. The conclusions of no harm of
8 people's health continue in the scientific study
9 performed by the EPA, U.S. Department of Health
10 and Tennessee Department of Health. I understand
11 a need for national standards on landfill design
12 but do not understand why we should label coal ash
13 as hazardous when the protective features of the
14 landfills will be similar under both C & D
15 regulations.
16 The benefits of Subtitle D approach far
17 exceed the negative impacts of Subtitle C
18 approach. The recycling of coal ash has many
19 environmental benefits that should be promoted by
20 the EPA. If beneficial uses are no longer
21 available, it will force power plants to landfill
22 all material and lead to the depletion of more

1 natural resources, increase in general greenhouse
2 gases, and ultimately increase costs of my
3 electric bill.
4 EPA must not designate coal ash has
5 hazardous special waste. In closing, I'd like to
6 thank you for the opportunity to voice my opinion.
7 MS. GENTILE: Thank you for your
8 comments, Mr. Weickel. Appreciate it.
9 (Applause)
10 MS. FACKLER: My name is Rosetta Fackler,
11 and I am the outreach director for Kentucky
12 Interfaith Power and Light, a non-profit
13 organization that seeks to work with communities of
14 faith to reduce their carbon footprint.
15 As a woman of faith, I amconcerned,
16 and quite frankly, appalled at the prospect of
17 adding another environmentally degradating site to
18 the already overcrowded and polluted areas of our
19 Commonwealth. The people who lived -- live in the
20 proposed permitted area of Louisville are those
21 who generally have no voice in the halls of power.
22 They have no lobbyists other than us. They have

1 no voice other than ours.
2 So I am here to ask you to hear about
3 their concerns for their health, their homes,
4 their children, and their future. Coal ash
5 contains toxins such as selenium, arsenic,
6 chromium, and lead. As the retired Nonpoint
7 source education coordinator for the Kentucky
8 Division of Water, I can speak to the condition of
9 water when pollutants are injected into our
10 groundwater.
11 Pre-SMCRA, the coal industry destroyed
12 -- destroyed the streams and much of our state.
13 The water runs red with iron oxide. This is a
14 perpetual clean-up. Since as long as water runs
15 from the mine sites, the water will be polluted
16 costing the Commonwealth, and indeed, the country
17 billions of dollars. Why would we want to further
18 compromise the quality of our groundwater by
19 allowing coal ash to drain unregulated into the
20 watertable through the leachate containing the
21 above toxins?
22 This will cost the people much more for

1 those without insurance, the poor health of the
2 next generation, and the loss of property values
3 than any possible rate increase over the cost of
4 regulation. Ladies and gentlemen, we simply
5 cannot allow this to happen.
6 We are constantly reminded that our
7 budget is overly burdened. Why add to it by
8 having to remediate the toxic effects of coal ash?
9 Why add the burden of health risk to the people
10 who have -- who live so close to the ash piles and
11 ponds? The proposed site in Louisville will be a
12 four-story pile of death for the people who live
13 nearby.
14 Here in Louisville we've gone so far as
15 to insult even the dead. The
16 euphemistically-named Riverview Cemetery has as
17 it's riverview an approximate three-story pile of
18 coal ash separated only by a wire fence. Would
19 you want your loved ones buried in such a place?
20 The people who live in Riverside Gardens
21 are plagued every day by the chemicals from the
22 Rubbertown Complex manufacturing plants that

1 produce a cocktail of air pollutants that result
2 in high cancer rates, the highest morbidity rate,
3 the highest asthma rate, and the worst odors
4 imaginable. The addition of yet another
5 unregulated coal ash site will only exacerbate
6 that condition.
7 Kentucky has the second highest number
8 of high-risk coal ash disposable sites -- disposal
9 sites in the nation. Today I heard that coal ash
10 is put into concrete and other recycled products.
11 It's exactly the same as the ash that is stored in
12 the ash ponds. I can't help but wonder --
13 MS. GENTILE: I'm sorry, Ms. Fackler,
14 your time is up.
15 MS. FACKLER: Thank you very much.
16 MS. GENTILE: Thank you for your
17 comments.
18 MS. FACKLER: M-hm. M-hm.
19 (Applause)
20 MS. GENTILE: 114.
21 MR. AUBREY: Hi. My name is Kenny
22 Aubrey.

1 I want to thank you for allowing me to
2 speak. I support the coal ash regulations that
3 protect the environmental, as well as protect
4 human health. I do not support the EPA's proposed
5 designation of coal ash as hazardous special waste
6 under Subtitle C. I am sure that it would
7 devastate the recycling efforts as we currently
8 know it.
9 I know in my own experience I've been --
10 have been involved in several million dollars
11 worth of projects that has saved our taxpayers and
12 state and municipal projects that this beneficial
13 reused product has been used. I have had several
14 experiences with coal ash recycling for 17 years,
15 and I have seen it shipped to local cement plants
16 for its minerals properties valuable to that
17 industry. I've been involved with it for highway
18 projects, I've been involved with it for municipal
19 infrastructure projects. Like I said, it's a
20 great value to our construction industry.
21 Coal ash recycling needs to be preserved
22 for its many benefits. The EPA should endorse

1 guidelines and work with ash management to ensure
2 that it is being handled within the goals of
3 recycling for our benefits of our state. I ask
4 the Environmental Protection Agency not to
5 designate coal ash as a hazardous special waste.
6 I'd like to be able to afford my electric.
7 Thanks for the opportunity to speak.
8 MS. GENTILE: Thank you, Mr. Aubrey.
9 (Applause)
10 MS. GENTILE: I'd like to now call the
11 following four people to the front of the room:
12 Number 330, 108, 109, and 110. Come on down.
13 Number 330, whenever you're ready.
14 MS. LEO: Hello. I'd like to thank
15 everyone that has come out today in support that
16 we, as a community, do not want a coal ash
17 mountain in our backyard. Thank you, EPA, for
18 listening.
19 It has been repeated over and over that
20 coal ash is toxic. Allowing this coal ash
21 mountain to be built will kill people. Statistics
22 don't lie.

1 My -- my name is Jennifer Leo, and my
2 husband and I bought 3-1/2 acres of property with
3 a 1922 house on it, 5154 and 5156 Cane Run Road,
4 the home to live in and the property to run our
5 business from. Our property will soon set at the
6 foot of this mountain. No barrier. Just us and
7 the mountain. When we purchased this property
8 three years ago, there was no proposed mountain
9 that will soon become a wall between us and the
10 river. Let it be known that my husband and I do
11 not want to breathe what blows off this mountain.
12 This is America, and we are in the pursuit of
13 happiness, and allowing this to be built will take
14 away our right to be happy and -- and free of
15 toxins in our groundwater and air.
16 It is the law in Louisville that people
17 cannot smoke in public places. This mountain for
18 my family is equivalent to smoking two packs of
19 cigarettes a day. Is there really a question of
20 whether or not it should be permitted? My plans
21 of using my well water to grow a garden is over.
22 Would you eat vegetables grown in contaminated

1 groundwater covered in soot?
2 Clearing the trees has been going on for
3 most of the summer. My guess is to make way for
4 the -- make way for the toxic mountain. Yet we
5 have been told that the permit has not been
6 granted as of yet. It doesn't seem like that is a
7 cause for concern for LG&E. They are so sure that
8 they will be permitted so they must get a
9 head-start on the clearing the way so that -- they
10 are so sure that they have in the bag the city
11 that is.
12 Is there some things not being told
13 here? Is there a mere formality to let us have a
14 voice in the matter? I beg the EPA to consider
15 our quality of life and -- and how this coal ash
16 toxin will affect our health. My husband and I
17 own a side company and we have to dispose probably
18 -- properly of all fluorescent lightbulbs that --
19 that contain mercury and are considered toxic
20 waste. The EPA does not want them in our
21 landfill.
22 Does it make sense to allow LG&E to

1 build a mountain or a pond that contains mercury?
2 Why do we -- why do we, Leo and Son Signworks,
3 have to adhere to a different set of disposal
4 rules? It's big corporations, big money, big
5 payoffs. Some win at what expense? Human life
6 and environmental disaster?
7 My understanding is that LG&E plant is
8 making less and less power every year. So what
9 happens when the company claims bankruptcy? Who
10 cleans up the mess when big business just throws
11 up their hands and walks away? I know I'm not
12 alone when I speak for myself and my neighbors.
13 We want you, the EPA, to know that LG&E
14 clean up the mess and already have created with
15 the ponds that are leaching toxic waste into our
16 underground water system, to clean up the mess
17 before ever being considered to -- to ever being
18 considered to build a mountain of toxic waste that
19 will obviously have no concern to keep safe
20 considering the blind eye they turn on falling
21 toxins. Force them. You are the EPA.
22 MS. GENTILE: I'm sorry, ma'am. Your

1 time is up.

2 MS. LEO: Thank you.

3 MS. GENTILE: Thank you for your

4 comments.

5 (Applause)

6 MS. GENTILE: 108, come on down.

7 MR. GRADDY: Good afternoon. My name is

8 Hank Graddy, and I -- these comments are submitted

9 by Betsy Bennett and myself as the comments of the

10 Cumberland Chapter of the Sierra Club.

11 These comments are about a regulation

12 that is going to consider under the first proposal

13 EPA would reverse the Bevill regulation

14 determinations regarding coal combustion residuals

15 and list these residuals as special waste subject

16 to regulation under Subtitle C of RCRA when they

17 are destined for disposal in landfills and surface

18 impoundments. And I want to emphasize the word

19 "destined" for disposal in impoundments.

20 When the creator of these products makes

21 the decision that they're going to dispose of them

22 as a waste product by putting them in the land,

1 the only responsible way to regulate them is as
2 under Subsection C as a special waste as you have
3 proposed. The alternative is status quo, business
4 as usual, continuing as we have been doing. And
5 the lesson is that what we've been doing does not
6 work.
7 My specific focus is on what EPA
8 identifies as the central issue, the adequacy of
9 the state programs. And based upon my experience,
10 the Kentucky program is woefully inadequate and
11 requires an EPA floor to sit so that Kentucky will
12 finally try to do what is right. I have cited the
13 slow motion spills as authority for the need for
14 this regulation.
15 They conclude Kentucky's regulatory
16 program is not properly addressing this threat.
17 Instead, it's getting weaker even as evidence of
18 contamination mounted in state files. Kentucky
19 reduced monitoring requirements, failed to
20 commence enforcement actions, and continued to
21 permit new ponds and landfills without proper
22 controls. That report, slow motion spills,

1 documents the magnitude of the problem, as far as
2 we know it, the inadequacy of the state, and the
3 fact that the problem is growing.
4 My particular focus is on the Trimble
5 facility where we submitted comments about the
6 adequacy of a particular permit. We asked for the
7 permit should regulate failures. The state
8 answered, we don't regulate failures. We said the
9 permit should regulate groundwater. They say, we
10 don't regulate groundwater. We said the permit
11 should regulate coal combustion waste futures.
12 They say, we don't do that under the KPDS. It's
13 time to learn the lesson.
14 We were tricked by the coal industry 33
15 years ago. This Congress was ready to outlaw
16 surface mining in the mountains. And the coal
17 industry convinced Congress that they could put
18 the mountain back to approximate original contour.
19 They lied to us. We were tricked. If they had
20 kept that promise, we wouldn't have the problem of
21 mountaintop removal.
22 Now we're being invited to continue

1 another coal hoax, and that is to ignore the
2 consequence --
3 MS. GENTILE: Mr. Graddy, your time is
4 up.
5 MR. GRADDY: Thank you very much.
6 MS. GENTILE: Thank you for your
7 comments.
8 (Applause)
9 MS. GENTILE: 109.
10 MR. MALONEY: Thank you for hosting the
11 hearing today. My name is Tim Maloney. I'm
12 representing the Hoosier Environmental Council
13 from the state of Indiana.
14 The council supports regulation of coal
15 combustion residuals under Subtitle C. We
16 believe there's ample evidence from around the
17 country, including the state of Indiana, evidence
18 that has demonstrated that coal combustion waste
19 leaches toxic metals causing significant water
20 contamination.
21 One compelling example of this evidence
22 is the town of Pines in Indiana, which has now

been designated a superfund site because of their groundwater contamination there.

Here's what the Agency for Toxic Substances and Disease Registry said about the water problems in Pines. And I quote, "The groundwater in town of Pines poses a significant threat to children's health." The Hoosier Environmental Council does support a limited exemption for beneficial use for encapsulated uses only, such as those uses described in concrete and other building products.

We believe, and in our experience, that there are many problems with allowing unencapsulated uses, and in many cases this is just a -- a case of disposal in disguise. In the state of Indiana, we've had either proposed or actual projects, structural fill projects on top of karst, geology and the fill in flood plain areas where the likelihood of exposure to water is great.

State performance has not been adequate in our view, and a prime example of that is the

1 state of Indiana. Indiana's regulatory program
2 has many weaknesses and includes inconsistent
3 regulation and enforcement. We currently have 53
4 surface impoundments at 16 plants. These
5 impoundments undergo minimal regulation at best.
6 There is no construction permitting required for
7 these impoundments and no inspection or monitoring
8 program conducted by the state of Indiana. Our
9 landfill regulations for coal combustion waste
10 are -- also have some weaknesses. One of those
11 we'd point out is the inadequate requirements for
12 groundwater monitoring. The EPA itself said that,
13 under Subtitle D, allowing the states to have
14 primacy and regulation, would result in only a 48%
15 compliance level compared to a nearly 100%
16 compliance level under Subtitle C.
17 To conclude, in here -- in the state of
18 Indiana just across the river, the state has given
19 no indication in the past or indication in the
20 future that they will properly regulate these
21 wastes which have introduced toxic substances to
22 our waters. And so we urge you to move ahead with

1 the Subtitle C option for regulation of coal
2 combustion waste. Thank you.
3 MS. GENTILE: Thank you, Mr. Maloney.
4 110.
5 (Applause)
6 MR. EMMICK: My name is Brandon Emmick,
7 and I'm speaking as an employee of a company that
8 depends on coal -- the coal combustion byproducts
9 recycling industry.
10 I'm a Safety Coordinator and spend 100%
11 of my time insuring the safety and well-being of
12 our employees. I support coal ash disposal
13 regulations to protect human health and the
14 environment without compromising greater recycling
15 capabilities of coal ash. Both of these goals
16 cannot be accomplished if the Environmental
17 Protection Agency designates coal ash as a
18 hazardous special waste under Subtitle C.
19 This classification would bring an
20 uncertainty to the gen -- to the general
21 population and would be detrimental to the
22 recycling efforts. Most of the population will

1 not research for themselves but will depend on
2 what the news media tells them. If they read in
3 the newspaper that a material is hazardous, they
4 will fight the use of it in every application. We
5 must not make it difficult to continue the best
6 recycling program that we have available in this
7 country.
8 Working in the safety side of the
9 business, I take particular interest in the
10 statements recently published by the U.S.
11 Department of Health and Human Services regarding
12 the Public Health Assessment related to the TVA -
13 Kingston ash spill. In their final report, the
14 Tennessee Department of Health makes the following
15 statements, and I will quote their language in the
16 conclusions. They "conclude that no harm to the
17 community's health is expected from touching the
18 coal ash, including children who might touch the
19 ash while playing.
20 Using well water or spring water within
21 four miles of the coal ash release will not harm
22 people's health from exposure to coal ash or

1 metals in the coal ash, because no evidence has
2 been found for groundwater contamination by coal
3 ash. These same conclusions of no harm to people's
4 health continue in a scientific study performed by
5 the EPA, U.S. Department of Health and Tennessee
6 Department of Health.
7 When I see these type statements based
8 on almost two years of sampling and analysis
9 regarding the Kingston Health Assessment, I find
10 it strange and without logic that we would
11 consider taking a chance on destroying the best
12 recycling industry in the U.S. by labeling coal
13 ash as hazardous. I understand the need for
14 national standards and landfill design, but it
15 escapes my logic as to why we should label coal
16 ash hazardous when the protective features of the
17 landfills will be similar under both C and D
18 regulations, a point that most of those against
19 coal ash have failed to mention.
20 The benefits of Subtitle D approach far
21 exceed the negative impacts of a Subtitle C
22 approach, especially when the protective features

are similar under both. The recycling of coal ash has many environmental benefits that should be promoted by EPA. If beneficial uses are no longer available, it will force power plants to landfill all material and lead to the pollution of more natural resources, increases in greenhouses -- greenhouse gases, and ultimately increase costs to my electric bill.

As someone working to provide for my wife and baby, the last thing I need is for another bill to increase because of an illogical regulation. The EPA should endorse prudent coal ash disposal regulations based on good engineering science. The regulations should be developed without characterizing coal ash as hazardous waste and risking the destruction of the best recycling program in the U.S. I ask the EPA to consider many families that depend on the recycling industry that would be negatively impacted by the Subtitle C ruling.

In closing, I would like to thank you for the opportunity to let my voice be heard.

1 MS. GENTILE: Thank you, Mr. Emmick.
2 (Applause)
3 MS. GENTILE: I'd like to now call the
4 following four people: Number 331, 115, 116, and
5 118. 331, as soon as you're ready to go, feel
6 free to start your comments.
7 MS. DAVIS: Hi. My name is Shelly
8 Davis, and I work for an ash management industry
9 and we recycle coal ash in making concrete blocks
10 and concrete.
11 When bottom ash or fly ash is used
12 instead of another natural resource, we are saving
13 and conserving natural resources, such as Portland
14 cement, oil and water for the future. I see
15 firsthand with my own eyes the success of our
16 recycling efforts. I read the available
17 scientific information about the ash that we
18 handle every day, and I also see the misguided
19 information that is published in the news media.
20 I feel confident the ash is not toxic or
21 hazardous, and I ask you to avoid labeling coal
22 ash as hazardous. Please do not harm the

1 recycling business that I and my fellow employees
2 depend on. Make your decision to support
3 recycling. Thank you for allowing me to speak
4 today.
5 MS. GENTILE: Thanks for your comments.
6 (Applause)
7 MS. GENTILE: 115.
8 MR. ESLINGER: My name is Michael
9 Eslinger. I live approximately a half mile east
10 of the Hoosier Energy Merom Power Plant Landfill
11 with my wife Kathryn and our two children, Rachel,
12 22 months and Olivia, 3 months.
13 My wife and I built our dream home four
14 years ago on our family's farm ground, which has
15 been in her family for over 100 years. The dust
16 from Hoosier Energy power plant has become
17 unbearable. On windy days it literally looks like
18 I live in downtown Los Angeles. I contacted
19 Mikaleen Riley who works for Hoosier Energy as
20 their environmental contact person. I advised her
21 that I was not interested in suing the power plant
22 or getting anything from the plant other than

1 cheerful cooperation.
2 Ms. Riley reassured me that Hoosier
3 would fix the problem with the fugitive dust and
4 be a good neighbor. I had to call her back on
5 several occasions and complain about the dust
6 blowing. She was polite and said that she would
7 take care of it. Her response was purely lip
8 service and nothing has been done in the two years
9 that I've been complaining.
10 My next complaint was filed with the
11 Indiana Department of Environmental Management,
12 specifically, Dan Hancock. IDEM told me that they
13 regularly inspect the plant. They had to witness
14 any violations firsthand. I told him that I could
15 provide videotape footage of the fugitive dust
16 clearly blowing off the top of the landfill, and I
17 was again told that IDEM had to witness the
18 violations firsthand. IDEM has been as useless in
19 this process as Hoosier Energy themselves have
20 been.
21 I've been forced to have chemical
22 testing done on my house, which is, again, less

than four years old, and I am horrified by the results of that testing. Lead, arsenic and other heavy metals are present at levels that are alarming. I learned that Hoosier Energy had applied for a permit for a new landfill that was bigger than the one that they currently can't handle just across from my house. I attended their informational meeting and was basically told by Hoosier -- Hoosier and IDEM that there was nothing we could do to stop the permit as long as the application was filled out correctly. I then hired an attorney to represent my family as I felt I had nowhere else to turn. I have since paid my attorney thousands of dollars of hard-earned money to try to help me reach the unthinkable freedom of breathing fresh air on our own farm.

Hoosier Energy has been so moved by the pressure that myself, my family, neighbors, and attorney have put on them, that I have still been unable to get a face-to-face meeting with any representative of their company, although I've made several attempts to do so.

1 In closing, my wife had complications
2 with both of our pregnancies. My youngest
3 daughter, Olivia, was born two months premature.
4 We keep our windows closed, and there are days
5 that I cannot take my children outside to play
6 because of the fugitive dust blowing from the
7 landfill and the blue plume coming from the stack.
8 My house is covered with dust from the
9 plant, my windows are black. I've tried
10 everything I know to do, including driving three
11 hours a day to beg the EPA to help us. For the
12 sake of my family's health, please help us. We
13 have nowhere else to turn. Please regulate this
14 hazardous waste in Subtitle C. Thank you.
15 MS. GENTILE: Thank you, Mr. Eslinger.
16 (Applause)
17 MS. GENTILE: 116.
18 MR. SPRINGER: I'm here speaking in
19 favor of and to urge EPA to adopt regulations that
20 would list coal combustion residual --
21 MS. GENTILE: Could you please state
22 your affiliation, sir, and your name just for the

record?

MR. SPRINGER: I was going to do that.

MS. GENTILE: I just want to make sure we have it down.

MR. SPRINGER: My name is Robert Springer, and I am speaking in favor of the EPA adopt regulations that would list coal combustion residuals as special waste subject to regulation under Subtitle C of RCARA when disposed of in landfills and surface impoundments.

I am the current sitting judge of the Sullivan Superior Court. Prior to that, I was 14 years elected prosecutor in Sullivan County. I've lived next to Hoosier Energy for 40 years, as long as they've been in existence. My family was there a hundred years before that. In the last two years, I've been totally convinced by Hoosier Energy that they have no interest in my health or that of my family.

Mike Eslinger is my son-in-law who just spoke. Those are my grandchildren, and they are the sixth generation to be living on this

1 property. What's it like to live next to Hoosier
2 Energy? Well, we paint our metals roofs every two
3 -- every three years instead of every seven to ten
4 years. It eats the paint off our cars if we leave
5 them out and don't take care of them. We have to
6 wash cars constantly, wash your windows
7 constantly. We haven't opened our windows for two
8 years.
9 We have two of these coal mountains that
10 they're talking about already and they're
11 permitting another one that's going to be bigger
12 than the other two combined. If they -- if they
13 keep this up, it's going to sun -- the sun is
14 going to set on our home at 3:00 in the afternoon.
15 The -- the dust is everywhere. Now that I found
16 out what's in this dust, I'm extremely concerned.
17 And frankly, it's gotten worse and worse. The
18 bigger the landfill, the worse it is. As I said,
19 in the last two years is when we've had this
20 miserable problem.
21 I think the main thing that I want to
22 tell you people is that you -- you are our only

hope. IDEM cannot or will not regulate these people. They will not talk us to. I'm not used to being ignored in my county. You might imagine if I call I get some attention. They won't talk to me. They won't talk to us. There's 14 of us that live out there on this family farm.

Mikaleen Riley, to be honest, is their spokesperson and she will tell you -- she will placate your -- whatever you want. You know, she -- she tells you what you want to hear. And honestly, I think her job is to keep people away from the people that can make a decision or that can help. As I said, it's a face -- faceless argument. Very hard to deal with somebody. As Mr. Eslinger said, we first tried very hard to get a face-to-face meeting to tell them to express our desires, to -- to tell them about this fugitive dust. And they had no -- no interest in -- in listening to us.

So, if nothing else, I'm going to leave you with that to -- that I -- I've got a new appreciation for being that voice that can't be

heard. It's not something I'm used to, as I said. And I hope -- and that you people are our only hope. Thank you.

MS. GENTILE: Thank you for your comments.

(Applause)

MS. GENTILE: 118.

MR. HUDGINS: Good evening. My name is Steven Hudgins. I'd like to thank you for the opportunity to speak here today.

My first exposure to coal ash was as a child while visiting my great-grandparent's modest home in rural Kentucky. Their home was heated by a coal-fired stove during the winter, and my great- grandmother cooked on a small coal-fired stove in the kitchen, as well. It was a cheap and efficient source of heat for them. The ashes from these two stoves were then taken to the family garden for disposal. This garden fed them and others for many years. Unfortunately, they're now deceased having lived a long and healthy life. They passed on quietly in their late 80s from

natural causes.

I'm a member of Beechland Baptist Church located in Louisville, Kentucky. In 1949, Beechland built a new sanctuary. Senior members talked about the construction and ordering coal ash to be used in the construction of the building for construction fill. This was ordered from the local power plant. That building still today serves the community very well.

In recent years, sanitary sewers have been installed in southwest Jefferson County, Kentucky. Residents of this working class community were required to connect at considerable cost to individual families. During the construction phase of this project, coal ash was used as aggregate in the project to help reduce the cost. The use of coal ash also prevented the need to mine materials for this project, reducing the use of fossil fuels for the mining process.

The beneficial uses of coal ash in current day applications ranged from construction fill, ready- mixed concrete, lightweight concrete

as a filler in plastic products, blasting grit, roofing shingles, and even in household products as kitchen countertops which qualify for leed certification points. High-profile projects such as Federal Bureau of Reclamation dams and the I-35 W bridge project have also used coal ash in the concrete in these projects.

Environmentally, the public benefits from the reduction in Greenhouse gases by using coal ash in these applications is a benefit to the community. On a matter of declaring coal ash a hazardous material, I would like to reference a study conducted by EPA in 1988 entitled "Waste from Combustion of Coal Electric Utility Power Plants." Findings of this study conclude that coal combustion projects should not be classified as hazardous waste. This was, again, in EPA reports in 93, '99, 2000, all the same conclusions. Here we are again today examining the same issue.

I would like to strongly, and I repeat strongly, urge you to not consider coal combustion

1 products as a hazardous waste. Please consider
2 them as a Subtitle D material and regulate them
3 accordingly. Thank you.
4 MS. GENTILE: Thank you, Mr. Hudgins.
5 (Applause)
6 MS. GENTILE: Okay. I'd like to now
7 call up the following four numbers: 117, 119, 121,
8 and 168. Come on down. Again, 117, 119, 121,
9 168. Okay. Looks like you're it. What number
10 are you, sir?
11 MR. BLANN: 121.
12 MS. GENTILE: Thank you.
13 MR. BLANN: I'm not a public speaker by
14 no means. Well, first, I'd like to thank you for
15 giving us the opportunity. I would like you to
16 know that not only that I am a nearby neighbor of
17 the power plant, I work for one and I have for
18 over 29 years. I have seen a lot.
19 It concerns me deeply to have to put
20 myself in this position today for reasons you can
21 only imagine. Why should I or my fellow neighbors
22 even have to be here today if, in fact, there

wasn't serious concerns for my family's, our health and well-being. I've personally seen over the years how the state has regulated and managed the plants in our backyard, and can honestly say without a doubt it's not working.

Our homes are not in big cities such as Indianapolis, Chicago, Louisville, or even Washington. Our homes are in the country, usually small farming communities with small populations that are seemingly unnoticed. Why should we, as honest, hardworking, country families be treated any different than those families that are in our larger cities? I honestly feel that today Subtitle C is needed so these regulations, standards and laws protect us all equally with fewer numbers and eyes and ears in our areas. Please help us protect our families and our neighbors. There must be equipment installed and maintained to help monitor the fugitive dust and the clouds of blue plume that crosses our property lines on a frequent basis. With the addition of this equipment, stronger and better laws that are

more vigorously enforced, we, as neighbors, should be protected even better after.

By enacting Subtitle C and the help of the federal government, these changes can only help these honest, hardworking country families. Subtitle C can only be valuable tools to that that helps power companies that are working hard to be good stewards and good neighbors. Please help change present laws so that companies, managers and supervisors have to handle these waste materials just like they would if they were stored in their own backyards in their own homes.

It is not hard for power companies today with the struggling economy, high unemployment to fall short on doing a good job managing landfills and taking care of related equipment. So much other associated equipment that pertains to direct production of landfill materials should also be carefully considered as far as condition, age and reliability and performance.

Why should you allow power companies that make landfill products not have a 24-hour a

1 day monitoring of the materials being put together
2 such as fly ash, use slurries that only who knows
3 what's in them with other chemicals, lime,
4 moisture contents and other things not be recorded
5 and reported to you the same way stack opacities
6 are? You must have these readings to produce
7 proper material to be placed in the land --
8 MS. GENTILE: I'm sorry, sir. Your time
9 is up.
10 MR. BLANN: I drove three hours. Can I
11 have 30 seconds?
12 MS. GENTILE: I'm sorry, sir. To be
13 fair to everybody, we can't. And can you please
14 state your name for the record? I don't think you
15 did that initially.
16 MR. BLANN: Michael.
17 MS. GENTILE: Michael Blann?
18 MR. BLANN: Blann.
19 MS. GENTILE: Thank you very much. If
20 you want to -- sir, if you want to submit your
21 written comments, we'll definitely put them in the
22 record. So feel free to do that, whatever you

1 didn't have a chance to say. Thank you.
2 Okay. Now I would like to call up 112,
3 113, 123, and 124.
4 MR. BOONE: My name is Jimmy Boone. I
5 am a site manager at a coal combustion producing
6 landfill in western Kentucky, and I have 20 years
7 experience in both coal preparation and coal
8 combustion production, management, and industry.
9 I am testifying today as someone who has
10 made a career based upon the daily handling of
11 coal and coal ash. The CCR landfill I currently
12 operate oversee and employ seven equipment
13 operators who are dedicated to the safety and
14 responsible management of CCRs.
15 I agree with the EPA's two previous con
16 -- conclusions that the CCR does not qualify as a
17 hazardous material. And I see evidence daily
18 which supports that this material are not
19 hazardous as they can be handled and managed with
20 no impact on the environment or those who work
21 with it. I support the EPA's effort to imp --
22 implement regulations on the disposal of CCRs

1 under Subtitle D. As a CCR landfill manager, I
2 see significant numbers of issues that I feel will
3 present themselves through the handling of
4 material that are viewed as hazardous in some
5 applications yet exempt in others, even when they
6 are -- originate from the common process and
7 location. As someone who comes in contact with
8 these materials daily, it does not make common
9 sense to me to have a different handling criteria
10 for the same material entirely based upon where it
11 ends up being stored or used, opposed to the
12 actual chemical make-up.
13 I do not see enough difference between
14 the Environmental Protection featured proposals in
15 the Subtitle C and D option to warranty taking on
16 the additional costs, risks that this would
17 accomplish -- accompany the handling of hazardous
18 material when it really is not necessary. Thank
19 you.
20 MS. GENTILE: Thank you very much for
21 your comments.
22 (Applause)

1 MR. HOUSE: Good afternoon. My name is
2 Daniel House, and I'm testifying as a private
3 citizen.
4 I support and encourage coal ash
5 disposal regulations that protect the health of
6 everyone and the environment. This cannot be
7 accomplished if the Environmental Protection
8 Agency deems coal ash hazardous.
9 The Coal Ash Association reported in
10 2008 45% of the materials used were proposed to
11 other uses, such as -- or such using including
12 concrete substitutes for cement, use for road
13 constructions, fer -- fertilizer substitute for
14 agriculture, and to help make plastics lighter and
15 stronger cenospheres seen floating in coal ash
16 ponds are used. Studies have also found that coal
17 ash has been safely used in products ranging from
18 bowling balls to carpets.
19 Many factors could contribute to the
20 possibility of considering coal ash green. Such
21 factors include the use of coal ash ultimately
22 lowers the cost of utilities and saves spaces in

1 landfills. More than 50 million tons of coal ash
2 have been recycled and turned into other products.
3 Not only does coal ash have all these
4 positive factors, it also helps control carbon
5 dioxide emissions. Therefore, with coal ash
6 having these mentioned and possible --
7 possibility, many other positive factors that we
8 use daily, I feel the EPA should not characterize
9 coal ash as hazardous.
10 Thank you for your opportunity to speak.
11 MS. GENTILE: Thank you, Mr. House.
12 (Applause)
13 MS. GENTILE: 123.
14 MR. DENHAM: Hello. My name is John
15 Denham. I work in the coal ash industry.
16 I came here today to voice my opinion,
17 express my concerns for the proposed regulations
18 classified coal ash as a hazardous material.
19 Since almost half the people in this country get
20 their electricity from coal burning facilities, it
21 is essential that we are able to recycle this
22 byproduct. The hazardous material rating for fly

1 ash would be detrimental to all current and future
2 recycling efforts.
3 Without recycling, we impact our
4 environment in a very negative way and
5 substantially drive up costs to businesses and
6 individuals. Not just in Kentucky, not just in
7 coal areas, not just in coal states, but in the
8 whole country. Hazard -- fly ash is -- is not --
9 is not -- does not qualify as a hazardous waste
10 based on chemical composition making
11 classification as a hazardous material
12 unwarranted.
13 I've been hearing today that parties
14 against fly ash want this in -- industry to be
15 more regulated and monitored. And I guess this is
16 where I believe that there is some confusion with
17 our industry and some misinformation. The fly ash
18 industry has no problem with stricter guidelines
19 with constant monitoring and regulations.
20 We're also for a clean environment. We
21 think there should be lined ponds, we think there
22 should be constant monitoring, we believe there

should be national standards. However, these guidelines should be based on factual data and not on mistruth and scare tactics and should permit recycling. In cl -- in conclusion, I hope and ask that the EPA will make the decision not to classify coal ash as a hazardous material and to continue to allow recycling of this multi-use and beneficial byproduct. Thank you.

MS. GENTILE: Thank you for your comments, Mr. Denham.

(Applause)

MS. GENTILE: Okay. The next four numbers are: 125, 126, 127, and 332. Come on down. Okay. 125? 126? Oh, you're 125?

MS. SPALDING: Sorry.

MS. GENTILE: That's okay.

MS. SPALDING: I apologize.

MS. GENTILE: No problem.

MS. SPALDING: Sorry. I'm having technical difficulties. I didn't count on being the first one in my group.

MS. GENTILE: Do you want to go -- you

1 can go -- you can go -- you can go --
2 MS. SPALDING: Do you want to go second?
3 MS. GENTILE: Sure. Yeah. Absolutely.
4 MS. SPALDING: Because I don't want to
5 waste time.
6 MS. GENTILE: No problem. 126.
7 MR. HUDGINS: Nathan Hudgins. I'd like
8 to thank you for the opportunity to speak before
9 this committee and those gathered here today.
10 Having read the proposed rule, I would like to
11 present personal observation, historical fact,
12 scientific study, and my personal opinion. After
13 hearing the heightened awareness of coal ash since
14 the unfortunate incident in Tennessee, my
15 curiosity was peaked.
16 Reading about the incident caused me to
17 wonder what the properties of this material are
18 and can they be recycled for beneficial use.
19 Today -- to my surprise, it is currently used in
20 many responsive ways. There's even an industry
21 association and an EPA-affiliated organization
22 Coal Combustion Product Partnership nicknamed

1 C2P2. This organization's members are all
2 dedicated to the beneficial use of these
3 materials. I felt this was a truly proactive
4 effort on the part of industry and government.
5 My wife works as an interior designer
6 for a major home improvement and building
7 materials chain. Over the years, they have
8 stocked products and sold them that contain coal
9 ash such as bagged, ready-mixed concrete and
10 shingles. A fairly new product in the line of cus
11 -- is a custom-made kitchen countertop that
12 contains coal ash. I'm holding a sample of this
13 in my hand right now. This material also
14 qualifies for leed credits from building a leed
15 certified building.
16 Coal ash is also used in aggregate in
17 many construction projects both public and
18 private. Many states approve the use of coal ash
19 in road construction. Even fairly-funded road
20 construction projects have used coal ash to reduce
21 their costs. This also saves on the use of virgin
22 resources for these products.

1 Over the years, the EPA has examined
2 this issue several times and conclusions have
3 always been the same. Coal ash is not a hazardous
4 material. I find it difficult to believe that the
5 properties of coal ash have changed. In a time
6 when our government is struggling financially and
7 many of our hardworking citizens are also
8 struggling to make ends meet, this effort appears
9 to be irresponsible. I fear that if coal ash is
10 declared a hazardous material, our government and
11 citizens will be more financially stressed as this
12 measure will cause energy costs to go sky high.
13 I strongly urge you not, and I repeat
14 not, to classify coal combustion products as a
15 Subtitle C or hazardous waste. Doing so would
16 place additional burdens on our country, our
17 government agency, businesses, and most
18 importantly, our hardworking citizens who foot the
19 bill for everything in this country, especially
20 when those citizens are the same ones that trying
21 to use every dollar count to and survive and care
22 for their families.

1 In conclusion, I strongly urge you to
2 classify coal combustion products as a Subtitle D
3 material, as they currently are. This is a
4 responsible approach and is supported by EPA's own
5 studies and scientific fact. Thank you for your
6 time.
7 MS. GENTILE: Thank you for your
8 comments, Mr. Hudgins.
9 (Applause)
10 MS. SPALDING: Good afternoon. My name
11 is RoseMary Spalding. I'm an attorney with
12 Spalding and Hilmes in Indianapolis. I've been
13 practicing in the area of environmental law for 25
14 years, over 25 years.
15 I represent a group of residents who
16 live near the Hoosier Energy Merom generating
17 station in Sullivan County, Indiana, including the
18 three individuals you just heard. I was retained
19 to help them in connection with Hoosier Energy's
20 permit application for a new solid waste landfill
21 for coal combustion waste. Hoosier Energy has a
22 current landfill that is near capacity and a

former landfill that is closed.

They contacted me because their primary concern was the horrible nuisance they experienced daily from coal ash dust coming from the operation of the current landfill. They wanted to be sure that the new larger landfill would not allow this nuisance to continue or get worse they were very frustrated because they naively trusted the Indiana Department of Environmental Management to adequately regulate the facility, enforce any vio -- and enforce any violations. And they naively believed that Hoosier Energy would operate in compliance with its permit and the law.

Now, these are not unreasonable people, they are not -- they don't suffer from a Nimby syndrome. They simply want Hoosier Energy to be -- be a good neighbor. They were absolutely horrified to learn the chemical constituents of coal ash, which, by the way, are hazardous, and the health risks associated with the particulate matter.

They had no idea that the coal ash where they

1 live is not just a nuisance but a health threat to
2 them and their children. It's my opinion, and I
3 strongly believe that to adequately protect people
4 like my clients, coal combustion waste must be
5 regulated as a hazardous waste under RCRA Subtitle
6 C.
7 From 1991 to 1995, I was general council
8 and deputy commissioner for legal affairs for the
9 Indiana Department of Environmental Management.
10 Through that position and through my private
11 practice, I'm very familiar with IDEM structure
12 and the regulatory framework governing disposable
13 -- disposal of solid waste. My opinion is based
14 on several factors regarding the need for Subtitle
15 C regulations.
16 First, given the nature of coal ash --
17 coal combustion waste, Indiana's laws governing
18 disposal of solid waste or even special waste are
19 not protective. As I reviewed Hoosiers Energy's
20 current permit and its permit application for the
21 new landfill, especially with respect to daily
22 cover requirements, it was clear to me that the

1 current state regulatory framework is simply
2 inadequate.
3 Second item, solid waste program lacks
4 either the will or resources to effectively
5 protect my clients. For example, I submitted a
6 letter last July asking them to invoke and enforce
7 specific provisions of their current -- of Hoosier
8 Energy's current permit, and to date, we've
9 received no response.
10 Lastly, I -- in my experience, RCRA
11 staff at IDEM is far different than solid waste
12 staff. They're more -- they're more
13 highly-trained, and with the EPA's authority to
14 back them up, IDEM's enforcement of RCRA are much
15 more effective. In sum, it's critical that EPA
16 have oversight authority under RCRA to ensure
17 effective implementation and enforcement of the
18 proposed regulations.
19 I have several exhibits that document my
20 comments and my clients' comments and I will leave
21 them with you today. And I really appreciate the
22 opportunity to express my opinion. Thank you.

1 MS. GENTILE: Thank you for your
2 comments, Ms. Spalding.
3 (Applause)
4 MS. GENTILE: Thank you. 127.
5 MR. HARPOLE: Thank you. My name is
6 Chad Harpole and I'm the director of public
7 affairs for the Kentucky Chamber of Commerce.
8 On behalf of the Kentucky Chamber and
9 our 2700 member companies across the state, we
10 appreciate the time to express our concern in
11 opposition with the proposed regulation of fly ash
12 as Subtitle C, hazardous waste under the Resource
13 Conservation and Recovery Act. The Kentucky Chamber
14 believes regulating fly ash under the Subtitle C
15 option will impose significant cost on power plant
16 operations and ultimately result in additional
17 utility cost increases for businesses and
18 consumers.
19 Kentucky is proud to be the fifth
20 leading producer of energy in the country, driving
21 significant manufacturing in our state, including
22 automotive production and aluminum. Most of this

1 is thanks to our coal industry, which is vital to
2 Kentucky's economy and threatened under the
3 Subtitle C proposal. The Chamber feels these
4 additional costs may cause some power plants to
5 close or significantly reduce production in our
6 state, thus threatening electricity reliability
7 and signif -- significantly affecting local
8 economies through the reduction in payroll taxes
9 and employment numbers.
10 Increased energy costs and decreased
11 electric liability will also have a significant
12 adverse effect on all sectors of the business
13 community and can potentially force Kentucky
14 businesses to relocate out of the state.
15 Additionally, we feel strongly that regulation
16 under Subtitle C could end the beneficial use of
17 recycling coal ash into products like cement and
18 Quikrete. Regulation under Subtitle C will harm
19 one of our best and oldest recycling industries
20 and drive up costs for the construction and home
21 building industries, industries that are already
22 struggling under the current economic climate.

1 In closing, the Chamber urges U.S. EPA
2 to develop federal non-hazardous waste regulation
3 for coal ash under Subtitle D of RCRA. Such an
4 approach will allow U.S. EPA to work with states
5 implementing regulations that are fully protective
6 of human health and the environment without
7 negatively impacting the coal ash beneficial use
8 and causing an increase in energy prices at a time
9 when the country can least afford it.
10 Thank you for your time.
11 MS. GENTILE: Thank you, Mr. Harpole.
12 (Applause)
13 MS. GENTILE: I'd like to now call the
14 following numbers: 117, 119, 168, 185, and 190.
15 Again, 117, 119, 168, 185, and 190.
16 MR. MARRS: My name is Brock Marrs, and
17 I'm here today representing NuForm Materials, LLC.
18 I greatly appreciate the opportunity to
19 express the views and concerns of our company.
20 NuForm Materials is a small business focused on
21 discovering new applications for coal ash, one of
22 the most underutilized commodities in this region.

1 We built this company from beneficiation
2 and classification technology that was developed
3 at the University of Kentucky with over 15 years
4 of support from the U.S. Department of Energy.
5 Over the past three years, with support from the
6 National Science Foundation, our company has
7 worked towards developing new metal matrix and
8 polymer composite materials that incorporate
9 ceramics recycled from discarded coal ash.
10 For example, we utilize these ceramics
11 as a means of making automotive parts manufactured
12 from aluminum harder and more wear-resistant so
13 that they can be used to replace heavier iron and
14 steel parts in cars and trucks. As a result, the
15 overall weight of the vehicle was decreased,
16 thereby, passively improving its fuel efficiency
17 and reducing carbon emissions.
18 In another project, we are incorporating
19 fly- ash in plastic foam panels that are used as
20 insulating materials in residential and commercial
21 buildings. The fly ash replaces the toxic flame
22 retardants currently used in the insulating foams.

1 This high-performance material is safe and cost
2 effective and would dramatically enhance the
3 energy efficiency of our nation's buildings.
4 The goals of our company are not unlike
5 the goals of most everyone here today. That is
6 we're striving to reduce the negative impact that
7 we, as citizens, have on our environment.
8 Unfortunately, our company does not share the same
9 vision as some who would support the labeling of
10 fly ash as hazardous under the Subtitle C
11 approach. Despite any effort to exempt beneficial
12 reuse from the hazardous label, we feel strongly
13 that the stigma associated would greatly hamper
14 our efforts for developing new recycling products.
15 Potential customers will turn away at
16 the thought of incorporating a hazardous material
17 into their products. Equally as important, the
18 utilities that generate fly ash are far less
19 likely to allow us to acc -- to allow us access to
20 process, remove and market a material that, if
21 left alone, would be labeled hazardous.
22 NuForm Materials is not opposed to new,

1 tougher regulations for coal ash disposal. But it
2 doesn't make sense to simultaneously negatively
3 impact recycling programs such as ours. Labeling
4 coal ash as a hazardous waste will do great harm
5 to our efforts of developing lighter car parts and
6 energy-efficient insulating materials.
7 Unlike a lot of the voices heard today
8 and throughout this public hearing process, we
9 view coal ash as having untapped product
10 potential, not as a waste material that should be
11 thrown away. Thanks.
12 MS. GENTILE: Thank you for your
13 comments.
14 (Applause)
15 MS. GENTILE: 168.
16 MR. WRIGHT: My name is Brian Wright. I'm
17 a board member for Citizens Coal Council.
18 I've spent over a thousand hours
19 reviewing permits, ground and surface monitoring
20 records, scientific studies, and state regulations
21 for coal combustion waste disposal sites. My
22 research has revealed a repeated pattern of

1 failure by states to address the risks posed to
2 human health and the environment by these wastes.
3 My own home state of Indiana, state
4 regulators and site operators ignored numerous
5 warning signs of contaminations at the R520
6 landfill and the Gibson power plant. As a result,
7 the communities of Mount Carmel and the town of
8 Pines lost their drinking water supply due to
9 contamination from these wastes.
10 Despite these two serious failures in
11 state regulations on CCW, the state has refused to
12 make any changes to their state rules on these
13 wastes. In fact, impoundments in Indiana remain
14 exempt from solid waste regulations. And it's not
15 just Indiana that has a bad track record when it
16 comes to these wastes.
17 In 1999, I did a state-by-state survey
18 of state regulations on coal ash, and what I found
19 is almost across the board for impoundments
20 failure to implement even the most basic
21 environmental safeguards, such as groundwater and
22 surface water monitoring for coal ash disposal

1 sites. Ten years later in 2009, I did the same
2 survey and I found no significant improvement in
3 regulations for these wastes, despite the mounting
4 record of damage.
5 People trust their state agencies to
6 protect the environment and their health. The
7 state agency repeatedly violated that trust when
8 it comes to CCW. Now they want to be entrusted
9 with implementing Subtitle D regulations when
10 their track record shows that doing so would be a
11 great disservice to the people living around these
12 facilities.
13 While I do support recycling in the
14 forums of en -- when it's encapsulated, used in
15 products such as concrete, I feel that Subtitle C
16 regulations are needed to adequately protect
17 human health and the environment and would point
18 out that, while there's been a lot of statements
19 today that it would harm recycling efforts to
20 regulate under Subtitle C, EPA's own website has
21 numerous examples of hazardous materials that are
22 recycled on a regular basis. Subtitle C

1 regulations must be implemented for these wastes.
2 Thank you.
3 MS. GENTILE: Thank you, Mr. Wright.
4 (Applause)
5 MS. GENTILE: I'd like to now call 181,
6 332 and 333. We'll start with 181.
7 MR. GRAY: Good afternoon. My name is
8 Danny Gray. I'm executive vice president of
9 Charah Incorporated, a Louisville-based company.
10 And I've worked in the coal combustion byproducts
11 industry for over 30 years.
12 Our company is very active in recycling
13 the CCRs, and we're very concerned that the
14 correct regulatory approach be selected without
15 damaging the recycling industry. We're proud of
16 the green jobs that our industry has created, and
17 we're thankful for the -- that our company has
18 been able to create green jobs right here in
19 Kentucky.
20 The coal ash beneficial use business is
21 one of the most successful recycling stories in
22 the United States. CCP recycling provides

1 long-term benefits for the environment and
2 improved quality for construction materials.
3 These are facts well-demonstrated over decades of
4 use and scientific study.
5 Our company's support of EP -- our
6 company does support EPA's effort to strength the
7 CCR disposal regulations. Since the protective
8 features of both proposals are similar, we support
9 Subtitle D. A Subtitle D approach with state
10 program management has been successful for
11 household solid waste landfills, and we believe
12 that national standards with state program
13 management will also be successful for CCR.
14 We also know that Subtitle D is -- is
15 the only choice that will avoid damage to the
16 recycling industry. Maintaining the success of
17 the recycling industry is in the best interest of
18 all parties. Recycling coal combustion residue is
19 good for the environment, good for the
20 construction materials industry.
21 We do not believe that regulation of CCR
22 under Subtitle C can occur without damage to our

1 recycling business and recycling industry. Our
2 experience already indicates that, while under
3 review that the Subtitle D of -- C approach
4 recycling has decreased in valuable resources are
5 already being disposed of instead of being saved
6 and replaced in virgin resources. Our customers
7 are concerned that the hazardous waste regulation
8 approach will cause them liabilities that are hard
9 to quantify and very difficult to manage.
10 Our sales have already seen negative
11 impacts of the ongoing debate primarily related to
12 the publicity around the toxicity and hazardous
13 labels that are related to it. We ask EPA to
14 regulate under -- to avoid regulating CCR as under
15 Subtitle C and prevent the continued damage to the
16 recycling industry.
17 In summary, we support EPA's effort to
18 standardize and strengthen the regulation of CCRs
19 under a Subtitle D approach. As the
20 recently-released government health assessment for
21 Kingston reaffirms, the characteristics of coal
22 ash do not warrant a Subtitle C label. States

1 have already demonstrated they can effectively
2 administer the type of controls that will evolve
3 under Subtitle D program. Taking the risk of
4 damage to the CCP beneficial use industry from a
5 Subtitle C approach is not warranted.
6 The protective measures are similar
7 under both approaches. A Subtitle D approach is
8 the only sensible choice. Thank you.
9 MS. GENTILE: Thank you for your
10 comments, sir. For the record, can we get your
11 name again? We want to make sure we have the
12 right name on file.
13 MR. GRAY: My name is Danny Gray, G-r-
14 a-y.
15 MS. GENTILE: Great. Thank you very
16 much.
17 (Applause)
18 MS. GENTILE: At this time, I'd ask if
19 anybody is holding a card to speak, please come
20 sit in the front row and we'll get you guys in
21 pretty quickly since we have a pretty small crowd
22 here. Anyone have a card -- holding a card to

speak, anybody at all? This kind of card. Anybody's holding a blue card with a number on it to speak or a white card.

Okay. We'll take the first four folks here starting on the right. Do you want to start? And what number -- what number are you, ma'am?

MS. SHELOR: 334.

MS. GENTILE: Thank you.

MS. SHELOR: My apologies for not having the paper testimony with me today. I have no idea how long you have been sitting here today, how much information you've absorbed, what specifics you are looking for to qualify or quantify the experience that we, as citizens, and every day livers, breathers, doers, experience.

But it's -- it's important that you understand that I come here just as plain as I can to you to express how it makes me feel to watch the continued legal conditions related to the work of the EPA and related to the work of industrial production. So, with that being said, hi, I'm Kristin. I'm with the Brickhouse Community

1 Center.

2 Gosh, why am I so nervous? I don't

3 know. I'm also very much of an activist

4 supporting other groups in our community. I

5 believe in community- minded actions and direct

6 action, as well as conscience -- oh, two minutes?

7 That's it?

8 MS. GENTILE: Three minutes, three

9 minutes total.

10 MS. SHELOR: Lord, have mercy. Well,

11 that's certainly not enough time to talk about the

12 lifetime that we'll be living with whatever it is

13 that might seep out or fall out of any kind of

14 coal ash production plant, okay, as far as the

15 amount of -- of worthy energy that is gathered

16 from the use of coal as a source of energy. I

17 believe it needs to be stopped all together; okay?

18 So, with that in mind, I believe that

19 whatever regulations you need to use to completely

20 limit and reduce the amount of exposure that we

21 can get from coal ash, such as arsenic, mercury

22 and other forms of contaminant which have a longer

1 shelf life than me and my grandchildren, what's
2 important for you to understand is do what you
3 can, do what you have to do. Okay.
4 I do not agree with the fact that right
5 now we're facing in our lifetime the reduction of
6 many life forms and sources of life such as water,
7 air, okay, nutritional resources that are being
8 blocked and limited and ruined when you have coal
9 ash get into water sources, when you have it get
10 leached into ground tables of water. Okay. I'm
11 very understanding of what the reality is when we
12 have any kind of coal ash product that gets into
13 our community where we live.
14 So, you know, if I only have one more
15 minute to live, it would be to say "stop this,"
16 and do not allow any sort of financial
17 consideration to limit the future of the nine
18 generations or the seven generations or this
19 person right here or your children; okay? So I
20 appreciate what you do, and if you can also take
21 into legal recompense every bit of action and
22 concept that needs to be applied to not only coal

1 industry but also the petroleum industry, then we
2 need to take back what is ours, what's left of
3 ours.
4 And if that means that we have to live a
5 different lifestyle, if it becomes a paradigm
6 shift where we use and consume and we treat as
7 though there is one of us, then let's do that.
8 Thanks.
9 MS. GENTILE: Thank you for your
10 comments. Next.
11 (Applause)
12 MS. GENTILE: And, sir, what is your --
13 what's your number?
14 MR. KASTNER: 333.
15 MS. GENTILE: Thank you.
16 MR. KASTNER: Thank you for your time.
17 My name is Barry Kastner. I live in Columbus,
18 Indiana, and I consume electricity that's sourced
19 95% from dirty coal.
20 And I receive that electricity at a
21 subsidized rate, as do all my neighbors, indeed,
22 as all citizens of the United States. It is

1 subsidized because we do not pay monetarily for
2 the full costs of coal. We do not pay monetarily
3 for the societal costs of coal, neither at
4 extraction, burning, or disposal of its hazardous
5 waste products.
6 Any polluting activity is effectively
7 subsidized and that subsidy is eventually paid for
8 through the degradation of the environment and
9 through adverse health effects and through -- and
10 the burden of these costs fall on all of us and on
11 future generations. Regulations like Section C
12 begin to properly remove the subsidies on these
13 external costs and internalize these real costs of
14 coal back into the economic ledger where it
15 belongs.
16 I want coal to cost more, far more than
17 it does today, in economic terms, so it does not
18 shift its costs insidiously onto society. Thank
19 you.
20 MS. GENTILE: Thank you for you
21 comments. Miss. Just let us know what number
22 you're holding, as well. Thank you. 135.

1 MS. MCKASSON: My name is Barbara
2 McKasson. I am here to support the regulation of
3 coal combustion residuals under Subtitle C of
4 RCRA.
5 What is happening in my state of
6 Illinois is a prime example of why we need the
7 U.S. EPA to implement regulations for coal
8 combustion waste. The state of Illinois has more
9 contaminated sites from the inappropriate disposal
10 of coal ash than any other state. A case in point
11 is the situation at the Southern Illinois Power
12 Cooperative, SIPC, at the Lake of Egypt south of
13 Marion, Illinois near where I live. The holding
14 ponds at SIPC are unlined and leaking into the
15 groundwater. The plumes of toxic water have now
16 spread off of SIPC's property and onto people's
17 private land.
18 According to a report on damaged cases
19 of contamination from improperly disposed coal
20 ash, monitoring wells by the SIPC power plant have
21 registered maximum concentrations of cadmium that
22 are 35 times higher than the federal acute water

1 quality standards and up to 352 times higher than
2 the federal chronic water quality standards.
3 Also, recent data on pond discharges to Saline
4 Creek show high concentrations of aluminum, boron
5 and manganese. This was documented in the report
6 "In Harms Way: Lack of Federal Coal Ash
7 Regulations Endangers Americans and their
8 Environment."
9 Actually, only cadmium, boron, iron, and
10 sulfate are being routinely monitored -- monitored
11 at the SIPC site. Other toxics that are found in
12 coal, such as arsenic, mercury, selenium and
13 chromium are not even being monitored at the SIPC
14 site.
15 In addition, people I know who live in
16 the subdivisions surrounding Lake of Egypt tell me
17 that there are at least 20 trucks a day carrying
18 coal ash from the power plant property to off-site
19 areas. One off-site area is an abandoned strip
20 mine north of Williamson County Airport where the
21 toxic coal ash is being dumped. There is no
22 monitoring well, there are no liner and no state

1 regulations to keep the toxic substances in this
2 ash from seeping into the groundwater and nearby
3 wells. Another concern is the decades-old coal
4 ash ponds by SIPC are right by Lake of Egypt,
5 which provides drinking water for about 10,000
6 people who live around Lake of Egypt. Local
7 citizens in another area by Joppa, Illinois
8 testified that coal ash waste is being dumped in
9 piles from another plant and blows into the air
10 when it dries. Citizens living close to the dump
11 site complained at the hearing at -- for permit
12 for chronic and acute respiratory problems that
13 they attribute to the coal ash blowing on their
14 property.
15 In December 2009, I attended a hearing
16 concerning NPDES water discharge permit for the
17 Met-South Coal Combustion Waste disposal facility
18 owned by Electric Energy, Inc. in Joppa, Illinois.
19 At this hearing, officials with Illinois EPA
20 explained that coal ash waste dump sites may
21 require a solid waste permit from the Bureau of
22 Land or they may be permit-exempt. In fact, the

IEPA official explained that the only requirement for a coal ash waste landfill in Illinois is that the operator must provide Illinois EPA with documentation that a public official has been notified of the forthcoming dump. There is no opportunity for public input or debate. So, even though there is threat of toxic chemicals leaching into the groundwater from a dump, there is no special environmental consideration given to coal waste landfills. In fact, in Illinois, coal ash landfill requirements are less stringent that (sic) municipal waste landfills. Local citizens at the Met-South hearing testified that coal ash waste is being dumped in piles, and blows into the air when it dries. Citizens living close to the dump site complained at the hearing of chronic and acute respiratory problems that they attribute to the coal ash blowing onto their property.

I have also been contacted by Wesley Logan, who grew up in Joppa, Illinois, and still has many relatives there. Wesley's father, Bobby Logan, sued LaFarge Cement Company and Electric

1 Energy, Inc. for putting coal ash on Liberty Ridge
2 Road by his house in Joppa, Illinois. Every time
3 a vehicle drove by on those roads, the ash would
4 fly up in the air, and spread to nearby yards and
5 houses. Bobby Logan, his wife and other people on
6 those roads got cancer, serious respiratory
7 problems and other health problems.
8 These threats to public health from
9 using coal combustion waste in ways that release
10 toxic chemicals into our air and water with
11 virtually no regulations to contain or filter the
12 toxins is totally unacceptable. According to the
13 investigative report titled "In Harms Way," done
14 by the Environmental Integrity Project, many state
15 governments have few or no safeguards to protect
16 the public from the spread of these toxins.
17 Illinois and other states that have lax
18 regulations or no regulations on coal combustion
19 waste are even taking waste from other states with
20 stricter standards. Thus, putting the people in
21 Illinois at greater risk from these toxins.
22 The U.S. EPA must implement Subtitle C

1 to stop this rapid spread of coal ash toxins into
2 our water, land and air that is endangering public
3 health.
4 (Discussion off the record)
5 MS. GENTILE: Thank you. After this
6 next speaker, we're going to take a short break.
7 What number are you holding?
8 MS. BOOKWALTER: 186.
9 MS. GENTILE: Thank you.
10 MS. BOOKWALTER: My name is Mary
11 Bookwalter, a citizen of Indianapolis, Indiana, No
12 Mean City.
13 I wondered if anyone was here from the
14 Indiana Department of Environmental Management. I
15 have not heard them today. I suspect they're out
16 permitting an unlined retention coal ash dump
17 somewhere in our watertable in Indiana.
18 I ask for my fellow citizens of Indiana
19 and Kentucky and 27 other states that do not have
20 this for equal protection under the law. We --
21 under Subtitle C of the Resource Conservation and
22 Recovery Act. We fought a great civil war for

1 this -- states' rights is not a solution
2 necessarily and should not be used as an argument
3 for good regulation under the law.
4 We have passed several constitutional
5 amendments guaranteeing equal rights under the law
6 for fellow citizens, African-Americans and women.
7 I would ask that you consider that for 30 years,
8 since the 1980 passage of RCRA the coal power
9 industry has enjoyed the benefits of a colossal
10 subsidy, as the other gentleman has pointed out.
11 These power companies, they used to be
12 small city utilities, have been gobbled up by huge
13 conglomerates, AEP, AES. They are not required to
14 clean up the messes they have made. No other
15 industry can do this with such aplomb, and they
16 are not responsible, apparently, for the human
17 costs they have inflicted.
18 They used to be the small industries,
19 little sleepy women's and or -- widows and orphans
20 stockholdings. Now their profits are squeezed and
21 we are treated as members of some third-world
22 society. I am still American, I ask for equal

1 protection under the law. My state environmental
2 regulators and their regulations do not do this.
3 A federal -- there are certainly problems with
4 that. But we need it, and I also support a valid
5 recycling of these things. I feel these arguments
6 against it, I think we can be educated and
7 understand that these are valid requirements.
8 I thank you for your attention. I did
9 take an oath to support and defend the
10 Constitution of the United States very much like
11 the Four administration's presidents that were
12 here before. And I expect to receive and I hope
13 to receive equal protection under the law under
14 Subtitle C of the Resource Recovery Act. Thank
15 you.
16 MS. GENTILE: Thank you for your
17 comments, Ms. Bookwalter.
18 (Applause)
19 MS. GENTILE: The panel will now take a
20 short break. We will resume the hearing at 6:10.
21 Thank you.
22 (Whereupon, at 5:55 p.m., an

1 afternoon recess was taken.)

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

2 (6:10 p.m.)

3 MR. BEHAN: Okay. We're going to go

4 ahead and get started again with the public

5 hearing. Good afternoon. My name is Frank Behan,

6 and I'll be chairing this session of the public

7 hearing.

8 And I'd like to call Numbers 129, 130,

9 165, 302, and 332 forward, please. If you'd come

10 up to the front, that would be great. We'll start

11 with Number 129.

12 MR. SMITH: Hello. My name's -- hello.

13 My name's Dave Smith. I'm from Riverside Gardens.

14 They -- they call us "Rubbertown." We're the most

15 polluted neighborhood in -- in Kentucky, that I

16 know of.

17 My concerns is about this ash pond

18 they're wanting to put in my backyard. I know you

19 guys wouldn't want it in your backyard. And we

20 got a -- you know, the pollution we're getting now

21 putting on us is terrible where we live. I've got

22 -- when I first moved in that neighborhood -- I've

1 been there 29 years, and -- and a lot of my
2 neighbors around me within a -- a block area died
3 of cancer. And I've got -- I go get MRIs done
4 where I've got tumors on the side of my brain, and
5 I've done probably had 13 seizures since I've
6 lived in that neighborhood.
7 And you get up and, you know, you take
8 your shower and you feel like you're clean but you
9 feel dirty constantly. I mean, we're -- we're
10 being constantly polluted on.
11 Just the other day we had been painting
12 my house and I'd painted one of my gutter boards
13 and I had painted it light gray. And I went and
14 went back out to put it back up after it dried and
15 there was little black specks everywhere. And I
16 went to touch the specks and it was like oil. And
17 then it had like little -- little -- I'd say a
18 1/16-inch fibers that looked like steel wool that
19 just shredded up and it was all sprinkled all over
20 the wood itself.
21 You know, and -- and if this stuff is
22 getting on our -- our homes, our cars, I mean,

it's ruined paint jobs on my car, and if it's getting on our stuff like that, then we're breathing it, you know, and it's getting into our lungs. And -- and we just want somebody -- you know, last time I -- I had EPA come out to the landfill, I've got a landfill in my backyard, too, and I had -- I had a chemical plant on my -- in the other part of my backyard.

And I took EPA out and I showed them rubber coming out of our landfill. Well, they looked at everything, they seen that there was frogs hopping around and the shrubs looked big and tall. Well, they said, well, that was fine. It looked like everything was healthy. But we all know you can spray chemicals on plants or chemical chemicals and they -- they do great, but people don't.

And we just need somebody to -- like big brother, you know, it's big brother. I'm tired of my mayor here in Louisville. He don't come to our neighborhood, he won't address our problems. I don't know who he's be -- befriending, but it

1 ain't us. You know, we -- we complain to him
2 constantly, our councilperson -- they say start
3 from the bottom and work your way up. Our
4 councilpersons, they don't even want to help us.
5 The mayor had a call-in show Monday. I
6 called him up, I told him my name, you know, who I
7 was, where I lived, and his eyebrows get all heavy
8 and, you know, he's a nervous wreck, just start
9 stuttering, getting all nervous, you know, when I
10 tell him about that -- all the problems I have,
11 and he tells me to put my house up for sale and
12 move away. Well, if I wasn't on disability living
13 on a limited income because of my -- my illness,
14 then I would -- I would move away. But I --
15 honestly, people don't need to live there in that
16 neighborhood.
17 MR. BEHAN: Thank you, sir.
18 MR. SMITH: Thank you for my time.
19 MR. BEHAN: Thank you.
20 (Applause)
21 MR. BEHAN: Number 130.
22 MS. BURKHEAD: Hello. My name is Monica

1 Burkhead. I'm a resident of Riverside Gardens
2 neighborhood. I've lived there for 35 years.
3 Through the years, I've come to realize
4 that we are a dumping ground for anything toxic.
5 Our neighborhood is in the middle of numerous
6 chemical plants and the Number 2 super fund site
7 known as the Lees Lane Landfill and the Cane Run
8 coal burning LG&E plant the EPA has already
9 classified as a high hazard.
10 We feel enough is enough, but yet again,
11 LG&E has applied for a permit to build a 62-acre
12 14-story tall ash landfill less than a mile from
13 my home and within two miles from an elementary
14 school and middle school where children run the
15 track and have cheerleading and football practice
16 in the afternoons. The residents of the nearby
17 neighborhood walk the track all the time for
18 exercise.
19 LG&E denies any problems with their
20 plan. I beg to differ. The residents of
21 Riverside Gardens have a pending lawsuit
22 against LG&E for the black particles and gray dust

all over our neighborhood. Our attorney has hired an environmental expert to test the fallout and the report said that it was coal ash and coal soot. LG&E refuses to take any responsibility for what they're doing.

I understand your concern for groundwater. What about the swimming pool water that the children play in all summer long? If the fallout's in the air, then it's in our children's swimming pools. They swim in it. When was the last time you saw a child swim with its mouth shut? If it's in the air, it's in the water. They drink it.

This is a couple of pictures of my granddaughter's swing set. It was cleaned earlier this spring, yet this is what it looks like now. This is what the children in the area are exposed to on a daily basis. We know the coal ash has numerous toxic chemicals in it, and in a report done by the federal EPA in 2009 they tested the coal ash and found that it has some extremely high levels of chemicals such as arsenic, 1800 times

1 the federal drinking water standard. Antimony,
2 1800 times the federal drinking water standard.
3 Selenium, 580 times the federal drinking water
4 standard and 29 times the hazardous waste
5 threshold.
6 It is my understanding that arsenic and
7 lead, just to name two of the toxic chemicals from
8 coal ash, can build up in your body over time and
9 your body doesn't expel them. They can cause
10 serious health problems or even de -- excuse me,
11 even death. Then just what kind of future are we
12 leaving for our children, if any at all?
13 This is just a few chemicals. There are
14 several chemicals in coal ash. You tested each --
15 for each chemical alone, but no one has tested to
16 see what the toxic soup or the effect of it is on
17 human life. If I'm to believe this report, what
18 will the quality of life be for the children that
19 are exposed to this daily?
20 They say it takes a village to raise a
21 child. Now is your opportunity to be a part of
22 that village. Place stricter regulations and

1 guidelines on coal ash. And for the sake of our
2 children and future generates to come, classify
3 coal ash as a high hazard classification C.
4 MR. BEHAN: Thank you, ma'am.
5 MS. BURKHEAD: Thank you for your time.
6 (Applause)
7 MR. BEHAN: Number 165.
8 MS. ANANDA: Thank everyone for being
9 here today. Thank you all.
10 I know you've heard a lot today, and I
11 just want to speak to you for a moment. This is
12 from my heart. I have family, including my
13 nephews, that live in Rubbertown. They constantly
14 have to have breathing treatments because of the
15 air quality there. They basically are living in a
16 scenario where they live in a bubble. They can't
17 go outside and play in the summer when Louisville
18 was Number 1 in the country for record heat
19 breaking days.
20 I ask us to just consider this gift
21 we've been given. For me, personally, this planet
22 is a gift that God has given to us. I feel we

1 have a -- a deep responsibility to protect it and
2 preserve it not only for the gift for ourselves
3 but also for our -- our children, our children's
4 children, for the people that live in this
5 community who have over and over again experienced
6 abuse from different polluting industries.
7 And it's not a good thing to put it
8 anywhere. And -- and I -- and that's when I ask
9 us to evaluate our -- our use of coal and -- and
10 any energy that is truly polluting in this country
11 and -- and ask us to, you know, consider that God
12 made this planet, that God loves the earth, God
13 loves creation, God loves humanity. And even
14 though God gave us the freedom to spin our
15 destiny, God does not want it to be trashed and
16 destroyed. God can open hearts and change
17 people's minds and attitudes. That's my prayer.
18 I think we have a tremendous privilege
19 to be here on this earth. And that also implies a
20 responsibility. I -- I just want us to be good
21 stewards of God's resources and examine how our
22 own addiction -- you know, we're -- we're all

1 responsible in our own ways for -- for how we use
2 energy.
3 I'd ask us to -- to pray about
4 protecting our neighbors and consider that this --
5 this earth is God's, it's a gift. Do unto others
6 as you would have them do unto you. And please
7 consider when you're making these decisions on
8 behalf of people who live there, who live around
9 there, who just exist on this planet to create and
10 preserve this gift.
11 And thank you very much for your time.
12 MR. BEHAN: Thank you.
13 (Applause)
14 MR. BEHAN: Ma'am. Excuse me, ma'am.
15 Ma'am. Ma'am, is -- is your name Megan? Yes.
16 MS. ANANDA: Renee.
17 MR. BEHAN: Oh, Renee. Oh, Renee --
18 MS. ANANDA: Ananda.
19 MR. BEHAN: Ananda. 165. Okay. 302,
20 please.
21 MR. LAGALY: All right. Appreciate your
22 time. I just have a -- a few brief points to

1 make. My name is Lance Lagaly, and my -- my
2 company is involved in the distribution of a
3 recycled product called "coal slag." It's -- it's
4 a byproduct of the process, as many of you may be
5 aware of.
6 If Subtitle C is approved, the coal slag
7 market for sandblasting will go away. And one
8 point I want to mention is an alternative to that
9 product are naturally mined materials that are
10 non-recyclable. So that is something to keep in
11 mind in your decision items, such as starblasts,
12 which are mined materials.
13 So that's one point I did want -- did
14 want to make. But the market for coal slag is
15 used on a widespread basis, and that market would
16 be gone should Subtitle C be -- be approved.
17 Secondly, we've been in the -- the market for
18 sandblasting for -- for many, many years, and
19 sandblasting and coal slag as a use, I know many
20 customers have never heard of any adverse health
21 effects whatsoever from our customers who use coal
22 slag in the sandblasting business.

1 Just a couple other brief points. You
2 know, at a time where -- you know, we -- we employ
3 people in the business specifically for coal slag
4 and jobs -- related jobs will be lost. And -- and
5 that is difficult in a time when one in ten of us
6 are unemployed. There are also rumors out there
7 already spreading in the industry for coal slag
8 regarding regulation which is having some
9 detrimental effects. I wanted to mention that.
10 And I think lastly, you know, my last
11 point is coal slag for sandblasting, again, it's a
12 beneficial use. It is a recycled product that no
13 one else would use under Subtitle C, and I think
14 that's a strong consideration. Jobs will be lost,
15 there is no question, relative to the industry. A
16 beneficial safe use will be gone. So we -- we
17 support Subtitle D as a valid choice.
18 Thank you for your time.
19 MR. BEHAN: Thank you. 332, please.
20 MS. SAMUELS: Hello. My name is
21 Brittany Samuels. I'm a resident of Louisville,
22 Kentucky.

1 I'm going to make this short and sweet
2 for you guys. I feel that the current regulatory
3 structure is not set up. The state is not doing
4 enough to protect us. Under the current setup,
5 the state is simply not doing enough. Proven
6 evidence of that is the TVA spill in Kingston,
7 Tennessee.
8 And after -- after that happened and a
9 lot of research started being done and more --
10 more reports started coming out about the current
11 setup of the landfills near the riverways and that
12 could cause -- possibly cause a catastrophic
13 event, we now know that there are many ponds that
14 are under stress right now, and if we don't do
15 something to stop the regulatory -- to change the
16 setup so that it will be able to stop these ponds
17 from being put near our waterways.
18 Thank you.
19 (Applause)
20 MR. BEHAN: Thank you. Could persons
21 with numbers 136, 137, 138, 142, and 143 come
22 forward? Is 136 here? Sir, you can come to the

podium. That would be great.

MR. WILKINS: My name is Steve Wilkins, and I thank the agency for coming to Kentucky to hear concerns about the management of coal combustion residues.

I'm here to urge the agency to adopt Subtitle C and regulate coal ash at the federal level. Before moving to Kentucky, I grew up in West Virginia near the banks of the Ohio River. When I was a boy, the water of the river was filthy with human waste visibly flowing on down towards Kentucky and Ohio. Cleaning the Ohio River seemed an almost insurmountable challenge in the '50s. Now the most visible pollutants have been minimized. However, we now know that arsenic, selenium, lead, mercury, and other carcinogens invisibly flow in the Kentucky, the Ohio and other waterways increasing our risk of cancer and other diseases and making local fish a health risk.

Kentucky has already demonstrated that it cannot be entrusted to oversee the handling of

1 coal ash. Your own agency has been critical of
2 the Kentucky Department for Environmental
3 Protection and its division of water. Kentucky
4 has been very protective of any potential threat
5 to the coal industry and that protection follows
6 coal throughout its life cycle. Coal, the
7 industry, is coddled while miners, mountains,
8 waterways, communities, whole regions are
9 sacrificed in pursuit of profits.
10 Without federal oversight, I fear that
11 Kentucky will do for coal ash what it has done
12 with 402 mining permits, favoring the coal life
13 cycle over the environment it is supposed to
14 protect. Do not allow Kentucky primacy in the
15 oversight of coal ash.
16 I ask the agency not only to adopt
17 Subtitle C but to make it stronger. Any handling
18 of coal combustion residuals that risks leaching
19 into groundwater should be prohibited. Use of
20 coal combustion residues for, quote, "structural
21 fill" should be forbidden unless composite lining
22 is first put in place. Dumping of coal ash into

1 service -- surface and deep mines should, also, be
2 prohibited since control of leachates cannot be
3 assured.
4 There are those who argue, and in some
5 cases inflate the cost of coal ash management
6 under Subtitle C. They wish to perpetuate the
7 illusion of inexpensive coal-fired electricity.
8 In reality, the health and welfare of those who
9 live in proximity to coal ash dumps has to be made
10 a part of the calculations. Factor in the health
11 costs and the financial impact between the two
12 options that are on the table become much more
13 equivalent.
14 The EPA must adopt Subtitle C and must
15 have primary oversight in Kentucky. Thank you.
16 MR. BEHAN: Thank you, sir.
17 (Applause)
18 MR. BEHAN: Is Number 137 here? 138?
19 142?
20 (Applause)
21 MR. BEHAN: Go ahead, sir.
22 MR. BERRY: My name is Wendell Berry. I

1 thank you for the chance to speak.
2 It may seem a little hard to ask for
3 government help when so many are angrily
4 protesting against big government, but the proper
5 function of government, as we all recognize at
6 least some of the time, is to do for us
7 collectively what we cannot do for ourselves as
8 individuals or local groups. Many, in fact, who
9 protest big government willingly tolerate a
10 massive military establishment and bureaucracy and
11 an im -- and immense expenditure of life and
12 wealth to protect us from actual or supposable
13 foreign threats.
14 We are here today to ask the federal
15 government by means of the EPA to spend a
16 comparatively small fraction of public money and
17 effort to protect us from an internal threat.
18 None of us individually or as citizens,
19 organizations, can protect ourselves against the
20 poisons released by great corporations which do
21 not accept any responsibility that they are not
22 forced to accept. The EPA knows that coal ash is

1 a poison. We ask you only to believe its own
2 findings and to do its duty.
3 Now, I want to add to that that I think
4 my side of this issue is at fault in permitting
5 this controversy to be construed as a contest
6 between health and jobs. I believe, and I think
7 my allies understand, that the future of the
8 Kentucky economy is not distinct from the future
9 of ecological health in this state. And we need
10 to be talking about a post-coal economy for
11 eastern Kentucky, and it needs to come from the
12 land and the people's intelligence in eastern
13 Kentucky.
14 Thank you.
15 (Applause)
16 MR. BEHAN: Thank you. 143.
17 MR. WINKLER: My name is Mike Winkler.
18 I'm the Environmental Manager for E.ON U.S., the
19 parent company of Louisville Gas and Electric and
20 Kentucky Utilities Company. I am responsible for
21 environmental compliance with our CCR landfills,
22 ash ponds and beneficial use projects.

1 In Kentucky we've had regulations
2 governing CCR landfills and beneficial reuse since
3 1992 and impoundment safety regulations for an
4 even longer period. LG&E and KU have CCR
5 management protocols in place that ensure
6 regulatory compliance and protection of public
7 health and the environment. The Kentucky
8 regulatory program works very well. There's never
9 been a significant spill from any LG&E or KU CCR
10 facility or any other CCR facility in Kentucky.
11 No LG&E or KU CCR facility has ever posed a
12 problem for local water supplies. Any federal
13 regulations should be adopted under the RCRA
14 Subtitle D program rather than a Subtitle C
15 hazardous waste program.
16 Regulation under Subtitle C would be
17 administratively burdensome, unnecessarily
18 expensive and provide little environment benefit.
19 Fundamental problems with the Subtitle C approach
20 are evident from the fact that virtually every
21 state and environmental agency in the nation
22 opposes regulation of CCRs as hazardous waste. L

1 -- LG&E and KU support the "D Prime" alternative
2 that would allow continued operation of existing
3 ash ponds that are operating in a manner insuring
4 appropriate protection of public health and the
5 environment.
6 The EPA should also avoid interfering
7 with continued beneficial reuse of CCRs either
8 through regulation under Subtitle C or potential
9 restrictions on structural fill or other
10 applications that involve placement of CCRs on the
11 land. LG&E and KU have extensive experience with
12 structural fill projects undertaken in the
13 environmentally responsible manner. The Kentucky
14 CCR regulations have appropriate restrictions
15 which include prohibitions on placement of CCRs
16 near streams or other sensitive areas.
17 Most structural fill projects involve
18 use of CCRs in the construction of buildings,
19 roadways and parking lots. As a practical matter,
20 pavement or the building structure itself
21 generally provides the level of encapsulation.
22 Considered -- considering the limited volumes of

1 CCRs generally used in such projects, they are
2 unlikely to pose significant risks to the
3 environment. Restricting beneficial reuse
4 involving structural fills would substantially
5 reduce beneficial reuse because the cement and
6 gypsum markets could not absorb the extra
7 quantities of CCRs.
8 In closing, beneficial reuse has played
9 a major role in our efforts to manage CCRs in the
10 most cost-effective manner possibly. Gutting the
11 environmental reuse program through Subtitle C
12 regulation or restriction on beneficial reuse
13 involving structural fill will result in
14 substantial cost for the utility customers of
15 Kentucky and other states while providing little
16 or no environmental benefits.
17 Thank you.
18 MR. BEHAN: Thank you.
19 (Applause)
20 MR. BEHAN: Is there anyone in the room
21 that has a number of 140 or lower that has not
22 spoken today? Come on up, ma'am. What -- what

number do you have? 138. Anyone -- anyone else with a number of 140 or lower?

MR. SPEAKER: I can wait a little bit longer.

MR. BEHAN: Okay. That's fine, sir. Could Numbers 335, 336, 337, and 338 also come forward?

If you want to wait, that's fine.

MS. SPEAKER: I didn't know I could. Thank you.

MR. BEHAN: That's fine. Is 335 here?

MS. LEASON: My name is Kathleen Leason, and I'm a 22-year resident of Columbus, Indiana.

While I do not live near a coal ash disposal site, to my knowledge, I still fear the toxic effects of coal ash disposal. With what I now know about the irresponsible handling of these materials, I fear drinking water anywhere in this country without a great deal of research into local water quality test results.

I do not trust the regulation of this hazardous waste to the state of Indiana. If they

1 could set aside economic interests to make
2 residents of Indiana safe from coal ash's
3 toxicity, they would have already done so.
4 Therefore, I support the strongest possible
5 regulation of coal ash under Subtitle C.
6 Thank you.
7 MR. BEHAN: Thank you, ma'am.
8 (Applause)
9 MR. BEHAN: 336.
10 MR. BAUTE: Thank you for your time.
11 I'm Dennis Baute from Indiana.
12 Although I may often prefer state
13 regulations instead of federal regulations because
14 of economic reasons, I feel that the regulation of
15 coal ash and other coal-related regulations are
16 too important to leave to the states. State
17 regulations and enforcement are often subject to
18 political shenanigans and budget cuts.
19 Unfortunately, states tend to react in
20 their own short-term interests at the expense of
21 the long-term interests of our nation as a whole.
22 I, therefore, very much prefer the Subtitle C

1 proposals instead of the Subtitle D proposals as a
2 way to protect our environment for future
3 generations.
4 Thank you.
5 MR. BEHAN: Thank you.
6 (Applause)
7 MR. BEHAN: Is 336 -- great.
8 MR. FORRESTER: Hello. My name is Whit.
9 I'm a resident of old Louisville right now.
10 I have eastern Kentucky connections. My
11 family is all from there. So I've definitely seen
12 what can happen on the upper end of coal when
13 you're mining it. There are nine, there are nine
14 dead babies behind my aunt's trailer that she gave
15 birth to that did not survive. The two that have
16 lived of the nine that she has -- I'm sorry. The
17 2 that have lived of the 11 that she has given
18 birth to were part of a quadruplet set, 1 of whom
19 was born without an eardrum, and the other has had
20 like more health problems than I can even tell you
21 about in two minutes.
22 I feel like a lot of people have done a

1 really good job of talking about the toxicity of
2 what we're talking about. And I'm curious to
3 bring up the fact that most of these things will
4 lead to learning defects and learning
5 disabilities.
6 And in a state that has some of the
7 largest disenfranchisement of people with felonies
8 and in a state where prison systems are designed
9 based on second grade reading levels of kids,
10 second grade levels, that this should be a larger
11 problem than just environmental aspects. There's
12 a social component here that's not been spoken
13 about that I think you need to seriously think on.
14 That's all I have to say.
15 MR. BEHAN: Thank you.
16 (Applause)
17 MR. BEHAN: Number 338. 338.
18 MS. WEINNCH: Thank you for your time.
19 My name is Morgan, and I'm a resident of
20 Louisville, Kentucky.
21 And I am also a Four Service volunteer
22 in eastern Kentucky. And as a student of law and

1 a citizen, I know that we have a constitutional
2 guarantee to equal protection under the law. And
3 as I understand, states along the Ohio seem to be
4 lacking in this decree. I request that you ensure
5 Subtitle C, make sure that it's adopted and
6 properly enforced by the federal government. And
7 really we need to be looking towards the future.
8 I understand that coal is very important right now
9 to our economy, but it's not going to last
10 forever. And we really need to be looking towards
11 other options and really look at the carrots and
12 not get so distracted by the sticks.
13 That -- especially as a -- speaking as a
14 young person, you know, I'm going to have to be on
15 this planet for a while, and I would really like
16 to see that when -- when I turn on the lights,
17 when I use anything that is going to need a
18 resource that we have worked as hard as we can
19 towards creating -- creating things that are going
20 to leave a positive -- leave a positive legacy.
21 And -- and then second -- seconding Mr.
22 Berry's sentiment, looking beyond coal and

1 striving towards those green jobs. And that's --
2 that's everything. Thank you very much.
3 MR. BEHAN: Thank you.
4 (Applause)
5 MR. BEHAN: Is there anyone that has a
6 number between 140 and 150 that would like to
7 speak now? Is there anyone that has a number
8 between 150 and 155 that would like to speak now?
9 155 and 160?
10 339, 340, 341. 339.
11 MR. MUDD: Thank you. Hello. My name
12 is Martin Mudd. I'm originally from Louisville,
13 Kentucky. I now live in Lexington, Kentucky.
14 I'm not going to take up much of your
15 time, because this issue is incredibly simple.
16 Coal ash, or coal combustion waste, or whatever
17 you want to call it is toxic waste. And the EPA
18 knows this. It contains heavy metals, it
19 contains, you know, any -- any number of
20 constituents. Arsenic -- well, that's a heavy
21 metal. It contains things that are toxic to the
22 human system, human anatomy. And, therefore, it

is toxic waste.

The reason being is that, even if, you know, a certain amount of it doesn't contain toxic content -- toxic concentration, when water runs into it and those things get washed out of the -- the rest of the ash, they get concentrated in the environment. They bioaccumulate in the -- in the tissues of animals, and some of those animals are humans.

If it's toxic waste, it should be treated as toxic waste. And the only reason it isn't is because that's going to cost these companies that burn these things, burn coal a whole lot of money that they would prefer to have as profit. Well, I say let's take -- you know, let's force them, and this is what the government ought to be doing, force them to treat this as toxic waste and pay the costs. And if that comes out of their profits, so be it. It shouldn't come out of the -- the -- the taxpayer's pockets. It should come out of the -- the customer's pockets. It should come out of their profits.

1 And let's see what else I wanted to say.
2 If it's toxic waste, treat it as toxic waste,
3 which it is. Thank you.
4 MR. BEHAN: Thank you.
5 (Applause)
6 MR. BEHAN: Number 340.
7 MR. ABSHER: My name is Brandon Absher.
8 I was born in Letcher County, Kentucky. I spent
9 the first nine years of my life there.
10 I've seen the effects of coal, I've seen
11 the effects of mountaintop removal, which is how
12 they're taking coal off these days. These are not
13 things that are -- I think we can support.
14 And I think -- I want to make just a
15 quick and maybe naive point, but it seems to me
16 that what we're discussing right now is whether
17 you can put a value on a person's life, whether
18 you can put a value on my family in eastern
19 Kentucky's lives, and whether you can put a value
20 on their health. And I think that, you know,
21 children know better than to think that you can do
22 that.

1 So it's really unfortunate that when
2 children know better than to think that human life
3 and human health is worth something in terms of
4 money, that it can be created as an externality
5 that we're here to discuss that question now.
6 Hopefully, we know better, and hopefully, we can
7 all sort of see that -- I don't think we can
8 debate whether or not this is a toxin. I think
9 the EPA is clear that it is.
10 Given that that's the case and we agree
11 that we can't put values on human life, we can't
12 say that, you're worth this much money, I think we
13 have to say that you can't just pollute our earth
14 in this way. Thank you.
15 MR. BEHAN: Thank you for your comments.
16 (Applause)
17 MR. BEHAN: Number 341.
18 MR. WAGNER: Hello. My name is Gregg
19 Wagner. First of all, I'd like to thank you all
20 for coming and listening to the people. You know,
21 the -- the -- the folks that we have in -- in
22 Frankfort, you know, they -- they are basically

1 bought and sold by the coal industry, but -- save
2 few. But I almost have a rhetorical question for
3 you-all instead of you-all listening to me.
4 I guess my question is: Why is it that
5 if -- if -- if this is deemed toxic, why is it
6 that everywhere that it is stored is poor
7 communities. Has anyone ever thought of that?
8 Whether it be -- whether it be in Appalachia --
9 (Applause)
10 MR. WAGNER: -- or whether it be in
11 certain areas of -- of main towns. Why is that?
12 If this is something that is not a threat, why not
13 have this in Prospect in Jefferson County? Why
14 not have it in -- why not have it in the wealthy
15 parts of Miami or right outside Washington D.C.
16 and -- and Virginia? There's a reason. Because
17 everyone feels people are disposable for some
18 reason which I don't understand. And that's the
19 EPA's responsibility to do those things. So I
20 don't -- I'm not all that great on the toxicity
21 and all that stuff. But I mean, if you -- we will
22 -- we've heard from folks that live in these

1 places and the conditions that they have to deal
2 with. You would -- you and your family wouldn't
3 want to deal with that. These are people. These
4 are lives. This is serious stuff that you're
5 dealing with, and you-all have a responsibility
6 here to listen to the people. And I -- I do trust
7 that you'll do better than -- than the folks that
8 we have in Frankfort.
9 So thank you.
10 (Applause)
11 MR. BEHAN: Thank you. Is there anyone
12 that has a number greater than 300 that has not
13 spoken that would like to speak now? Come on
14 forward. Ma'am, could you show me your number or
15 -- okay. Thanks.
16 MS. ROWAN: Hi. My name is Tonya Rowan,
17 and I'm a registered nurse. Therefore, I take
18 care of a lot of patients in Kentucky that -- that
19 do have cancer, as well as kidney disease and
20 heart disease.
21 As we know, these ponds do contain
22 arsenic and other things that do cause these

1 diseases, so I don't know why it's such a -- you
2 know, why we have to decide whether or not we need
3 to build up these ponds. We can't -- the state is
4 not upholding the inspections as evidenced by the
5 Trimble County pond where there were several
6 inspections that were missed.
7 And then we can look at the Kingston
8 pond in Tennessee which spilled, and they're still
9 cleaning that up after two years. So I don't see
10 why there would be any hesitation to not go
11 forward with the Subtitle C and prevent lead
12 poisoning and encephalitis that would occur to our
13 children. That the EPA has already researched
14 that within -- I think it's within a 50-mile
15 radius that 1 -- or -- or a certain radius 1 in
16 every 50 children would have lead poisoning.
17 And as evidenced by these other folks
18 that live close by, I think that it's pretty easy
19 to say that we need to pass that Subtitle C.
20 That's all I have to say.
21 MR. BEHAN: Thank you.
22 (Applause)

1 MR. BEHAN: Sir. 342.
2 MR. ALLMAN: Hi. My name is Seamus
3 Allman. I'm here in Louisville. Thanks for
4 coming and having this hearing today. Thanks for
5 spending the time to come to Louisville.
6 Coal ash is toxic and should be
7 federally regulated. State regulation is
8 insufficient. Ponds fail, as she said. They did
9 at Mill Creek, they did in Kingston, Tennessee.
10 It's just like the deep water horizon in -- in --
11 in the gulf. Like nothing is 100% secure, and
12 what are the risks associated with a failure.
13 And we saw what happened in the gulf and
14 how much death was brought by that on the
15 environment. And the same thing happens, the same
16 -- I mean, look at what happened in Tennessee.
17 That was an incredible disaster. And we don't
18 need anything like that happening in Kentucky.
19 The burden should be on the companies
20 that create the waste, not the taxpayers. If it's
21 too expensive to responsibly deal with the waste
22 of their business, coal companies should give

1 their corporate management a pay cut, treat their
2 -- treat their employees right, give them good
3 benefits, and then they should pay for the waste
4 that they create to be dealt with responsibly and
5 not to -- to externalize that cost on to the
6 health of the poor people in the poor communities
7 where the waste is stored. Toxic waste is toxic
8 waste.
9 Thank you.
10 MR. BEHAN: Thank you.
11 (Applause)
12 MR. BEHAN: Is there anyone in the room
13 with a number of 160 or lower that would like to
14 speak now? 140 or 138? Is there anyone else?
15 Come on forward, sir. Go ahead, ma'am.
16 MS. STEWART: Thank you. I'm Margaret
17 Stewart.
18 I want to use my one small voice and my
19 one few seconds here to try to speak for hundreds
20 and thousands and millions of others who are not
21 able to speak here, including those who are not
22 yet born, including voiceless creatures, and

1 including mother earth herself. Just as a rose by
2 any other name smells just the same, so toxins by
3 any other name called "non-hazardous," "special"
4 or "beneficial" remain the same. Toxins by any
5 other name are just as toxic.
6 You've heard it said ashes to ashes and
7 dust to dust. Well, to you, the EPA, I want to
8 say those of us for whom I am attempting to speak
9 right now are relying on you to do what we cannot
10 do for ourselves, to protect us in ways that we
11 cannot protect ourselves, to do the job that you
12 were created to do.
13 Regulate toxic coal ash as a toxin. Do
14 it effectively and immediately. Otherwise, we,
15 ourselves, shall all become dust and ashes before
16 our time.
17 MR. BEHAN: Thank you, ma'am.
18 (Applause)
19 MR. BEHAN: Sir, I think you have a --
20 would you like to speak?
21 MR. CLEMENT: Thank you. Thank you very
22 much. My name is Dave Clement, and I am speaking

as an owner of a company that depends on coal combustion byproducts recycling industry.

I own a construction equipment company that sells equipment in this industry. I support coal ash disposal regulations that protect human health and environment. If the EPA designates coal ash as a hazardous material under Subtitle C, it will bring an uncertainty to the general population and be detrimental to the recycling efforts.

If people hear from the media that a material is hazardous, they will fight its use in every way. It has a huge impact on numerous jobs surrounding the coal industry. I understand a need for national standards on landfill design, but I don't know why we should label coal ash as hazardous when the protective -- protective features of the landfills will be similar under both C and D regulations.

The benefits of Subtitle D approach far exceed the negative impacts of a Subtitle C approach. The recycling of coal ash has many

environmental benefits that should be promoted by the EPA. If beneficial uses are no longer available, it will force power plants to landfill all materials, which will ultimately increase every one of our electrical bills, our electric bills will go up.

I ask the EPA not to designate coal ash as a hazardous and special waste. Thank you very much.

MR. BEHAN: Thank you.

(Applause)

MR. BEHAN: Sir, did you want to speak? Number 159.

MR. SLAYMAKER: How are you doing? My name is Ronald Slaymaker. I'm testifying as a private citizen.

I, like most other people here at the meeting today, also want clean air and water, to support coal ash disposal regulations that protect and preserve clean air. I also support recycling any reused products and know that coal ash has a good record when it comes to recycling, probably

1 the best record of any recyclable material.
2 New regulations for disposal should not
3 compromise greater recycling opportunities for
4 coal ash. Increased recycling of coal ash cannot
5 be accomplished if the Environmental Protection
6 Agency designates coal ash as a hazardous special
7 waste under Subtitle C. The classification will
8 bring uncertainty and send the wrong signal to the
9 general population and will be detrimental to the
10 recycling efforts.
11 Residential and commercial development
12 will steer away from utilizing this material if
13 deemed hazardous in a landfill. Businesses will
14 want to avoid any lawsuits caused by their --
15 caused by their use of material that is considered
16 hazardous in landfills. The recycling of coal has
17 many environmental benefits such as conservation
18 of our natural resources and landfill space while
19 avoiding the rise of greenhouse gas emissions
20 during the manufacturing of all the materials that
21 would replace the coal ash. Coal recycling has
22 many environmental benefits that need to be

preserved and promoted. This recycling cannot be risked being destroyed by hazardous special waste classification. As I understand the proposed rules, EPA states that the new landfill engineering practice would essentially be the same whether it's labeled hazardous or non-hazardous classification. If the landfill design and protection features are the same, then only the reasonable and responsible approach is the non-hazardous regulation.

EPA should -- (coughs) excuse me. EPA should develop reasonable coal ash disposal regulations based on good science and avoid characterizing coal ash as a hazardous material. Why risk the destruction of recycling efforts which help accomplish everyone's goal of a cleaner environment. EPA must not designate coal ash a hazardous material special waste.

Thank you for your time.

MR. BEHAN: Thank you.

(Applause)

MR. BEHAN: Could those with Numbers

160, 164, 169, 177, and 179 come forward now if you would like to speak? 160. Okay. 177.

MR. BARR: Hello. My name is Ford Barr, and I'm a resident of Louisville, Kentucky.

My purpose in speaking here is to tell you that I believe that coal combustion waste, also known as coal ash, should be classified as a hazardous waste. It should be regulated by the federal government just as spent nuclear waste is.

Coal ash is known and has been proven in numerous cases to leach heavy metals such as arsenic and lead into groundwater. This groundwater is used by communities both large and small for public consumption. Our lives depend on clean drinking water.

Frankly, I feel that it is ridiculous we even have to come to meetings like this to plead for regulation. If the EPA was doing the job it was in theory created to do, they would scientifically investigate coal ash, find it to be hazardous, and regulate its storage and disposal. So why do we, the people, have to plead for

1 regulation? Because of a form of legalized
2 bribery known as lobbying.
3 Coal and power companies and numerous
4 other corporations spend millions of dollars on
5 lobbying to retain and create loopholes for
6 themselves. Why don't they just spend those
7 millions on cleaning up after themselves?
8 I'm going to close here now. Coal ash
9 is hazardous. Regulate it, monitor its storage
10 and disposal. No exemptions, no exceptions, no
11 excuses. Thank you.
12 MR. BEHAN: Thank you.
13 (Applause)
14 MR. BEHAN: 179.
15 MS. BUSH: Good evening. My name is
16 Virginia Bush, and I am speaking tonight as a
17 concerned citizen, a medical professional, and
18 also as a grandmother.
19 While I'm glad that the EPA is pursuing
20 federal regulation of coal combustion waste, a
21 cursory review of the two proposals highlights the
22 extreme difficulty, if not impossibility, of

1 assessing the potential risks of groundwater,
2 surface water and aquifer contamination by heavy
3 metals. These metals can leach or flood from coal
4 combustion waste disposal sites.
5 The World Health Organization, the EPA,
6 and the Agency for Toxic Substance and Disease
7 Registry all classify inorganic arsenic, a
8 constituent of coal combustion waste, as a Class A
9 carcinogen. Chronic low level exposure through
10 drinking water can lead to urinary, skin and blood
11 cancers. Risks from exposures through contact
12 with contaminated soil or inhalation of dust are
13 less understood.
14 Arsenic and mercury, another waste
15 constituent, are both known to cause neurologic
16 injury, including lowering of IQs and fetal
17 anomalies. These are the social costs that are --
18 that are externalized by the coal and power
19 corporations and borne by the public at
20 unquantifiable amounts in healthcare costs and
21 suffering.
22 Furthermore, the -- the coal ash sites

1 in this area are situated in mixed use industrial
2 and resident -- residential areas. So a proven
3 damage case is, in practicality, not possible
4 under the current criteria which requires health
5 effect to be directly related to the coal
6 combustion residuals in isolation from other
7 surrounding industrial waste.
8 The Cane Run site is in the middle of a
9 -- of a chemical complex called "Rubbertown." So
10 these -- so it's -- the burden of proof is put on
11 ill residents. Additionally, I would urge the EPA
12 to put a moratorium on deposition of coal
13 combustion residuals in non-landfill and
14 non-impoundment sites such as abandoned mines
15 until the risk of underground water and aquifer
16 contamination can be evaluated.
17 Finally, how could uniquely associated
18 waste such as precipitation runoff from a coal ash
19 pile be assessed? The coal ash piles in Kentucky,
20 like many states, are located on the banks or
21 proximate to the rivers, which are also the
22 water supply. In 2009, a U.S. climate change

1 report commissioned by the -- by President Bush in
2 2007, climatologists advised that an increase in
3 flooding and severe storms is probable.
4 2010 bore this out with record
5 torrential rainfall and flooding events in
6 Tennessee, Arkansas, Wisconsin, North Dakota,
7 Minnesota, Georgia, and Oklahoma. Could the
8 stability of a 14-story coal ash site close to the
9 Ohio River, as proposed by E.ON, be assured in a
10 500 or 1,000 year flood event? What would be the
11 incalculable health and environmental cost of
12 toxic exposure after the coal ash is redeposited
13 in and along the length of the Ohio River?
14 Following the December 2009 Kingston,
15 Tennessee impoundment failure, arsenic,
16 skyrocketed to 2,000 PPM in drinking water there.
17 When will that cost be added to a balance sheet?
18 Yes, I believe coal ash should be
19 regulated as a "Special Waste" under Subtitle C to
20 the Resource Conservation and Recovery Act, but
21 the long-term answer is for power providers to
22 move post haste to clean non-toxic and diversified

energy sources so that humans and the environment are no longer devastated on both ends of the coal waste stream -- from the extraction end where the coal slurry ponds flood, poison and kill to the post- consumption end where the coal ash impoundments flood, poison and kill. I call on the EPA to stand up and lead the way.

(Discussion off the record)

MR. BEHAN: 164.

MR. HUBBARD: My name is John Hubbard. I'm First Nations. My native name is Conghua. I've been a resident of the Ohio Valley for over 20 years, 2 decades.

And you my concern is not only about the environment, but about the people and the watertables. Because no one has studied what happens when this toxic waste, and it is regulated as toxic waste by the European union and Canada, when this combines with ag runoff and gets in our watertable. What happens? What happens to the animals that eat the grass that grow from that contaminated water? What happens to the people

1 that eat that meat?
2 Now, I've -- I've stood here and I've
3 listened to various industry people tell us
4 basically, let us continue to poison you or we're
5 going to raise your bills. Let us continue to
6 poison you or we're going to take away your jobs.
7 Well, I hate to tell eastern Kentucky, but there's
8 47% unemployment in the coal industry already. So
9 maybe they're riding a dead horse.
10 I ask you gentlemen to do your job and
11 regulate the polluters, protect the environment,
12 not the coal companies. Thank you.
13 MR. BEHAN: Thank you.
14 (Applause)
15 MR. BEHAN: 169.
16 MR. PADGETT: Thank you. And I
17 appreciate you all coming out and doing these long
18 hearings for us here in Kentucky, especially.
19 Call your friends in. Don't leave yet. You're
20 about to hear something you haven't heard yet. My
21 name is Bob Padgett. I've got degrees in biology
22 and chemistry and I'm a PG, a professional

1 geologist, here in Kentucky.
2 2006, I retired from the Kentucky
3 Department of Environmental Protection after 27
4 years with them. From 1998 to 2004, I was the
5 first-line supervisor for all fly ash landfills
6 east of I-65. They wouldn't let me get the other
7 ones because they knew what we were doing with
8 them in the east. We were trying to do it better.
9 In 2000, we started putting landfill
10 liners for the first time under fly ash landfills.
11 I couldn't swear for doing it anymore because they
12 took me out of my job in 2004 and buried me
13 somewhere in the back.
14 Frankly, I don't really care if you're
15 doing it as C or D. For you folks that don't
16 understand it, if they brought it up to Subtitle D
17 it would help out the state because we don't even
18 do Subtitle D level. We didn't have the political
19 will to even call it "solid waste." We call it
20 "special waste." It's got its own special -- it's
21 special.
22 So we've already shown the lack of

1 political will. I'm going to show you a couple
2 of quick facts of things I would support.
3 Beneficial reuse I hear a lot about, using it in
4 cement, gypsum wallboard, things like that,
5 wonderful. Using it as land disposal without
6 liners or structural fill, horrendous.
7 The state of Kentucky allows beneficial
8 reuse in the damnedest ways. You would not
9 believe the places we let -- guys will come in
10 from the farm, a guy -- "I've got a farm here and
11 I need to go over there. I'm going to build me a
12 landfill of ash in between the two." Sure.
13 Don't allow disposal in ponds. It's
14 already probably illegal under the Water Act, and
15 let's just call it what it is. You know the
16 chemistry is bad, you know the power of the coal
17 complex is big in this state. You've heard that
18 states can't regulate very well. Well, I'm here
19 to tell you that things are different. I know
20 that the state of Kentucky cannot regulate very
21 well. Couldn't regular its way out of a paper bag
22 about fly ash.

When they started the Solid Waste Board in 1990 and got primacy, and here's the thing I would really like to clue you-all in for future use, they had over 44 people on staff with the solid waste program in Kentucky, tens of PEs and PGs to regulate all the landfill construction. Now they have when I left, and you I don't even know if they have these guys anymore, two engineers, three jobs for all landfills, solid waste and special waste in Kentucky.

It's ridiculous. We have dwindled away to absolutely nothing. In my opinion, EPA, we don't even have a level of program that can do primacy as required by the federal regs.

Hang in there, folks. Good that everyone's out here with us. Please be assured that the -- with help from the feds that staff can get it together. There are a lot of good people at the EPA. They're just not allowed to think very much. We are a circus parade of the elephants. Our instructions are, follow the one in front of you, don't step out of line.

1 And so for those reasons --
2 MR. BEHAN: Thank you, sir.
3 MR. PADGETT: -- this state can't be
4 trusted. Bring on the feds.
5 (Applause)
6 MR. BEHAN: 137, 344, 189. Is there
7 anyone else in the room that has a number of 170
8 or lower that would like to speak now? 137.
9 MR. MAHLER: My name is Andy Mahler.
10 I'm an organizer with Heartwood Regional Forest
11 Protection Network active in the eastern United
12 States. Also, a member of the Sierra Club and
13 KFDC. Heartwood is people helping people protect
14 the place they love. I'm also losing my voice, so
15 I'm glad you've got this amplification here.
16 I also appreciate the opportunity you're
17 giving us here today for people to be heard and
18 seen to try to counter the obscene and absurd
19 influence of the coal industry in this state. I
20 would like to call -- support the EPA's regulating
21 coal ash under Subtitle C of RCRA, and also would
22 like to you take this opportunity to correct

1 misinformation that has been repeated throughout
2 the day with respect to the health assessment done
3 by the Tennessee Department of Health and the
4 Agency for Toxic Substances and Disease Registry
5 also known as ATSDR.
6 It was not a clean bill of health for
7 the Kingston coal ash disaster. In fact, quite
8 the opposite. The study concludes that the
9 Kingston coal ash is dangerous. It contains
10 arsenic levels that are concentrated well above
11 background levels in the surrounding area.
12 The study further concludes that had the
13 collapse occurred during a different time of day
14 when people were using the Emory River, it would
15 have resulted in numerous deaths. But because it
16 occurred at 1:00 in the morning, fortunately, many
17 people that otherwise would have been harmed were
18 -- were not harmed. The study further concluded
19 that short-term dangerous exposure was also
20 avoided because people were helped out of their
21 houses in a manner that minimized contact with the
22 ash and the impact there was quickly fenced off

1 keeping them from incurring further exposure.
2 Air exposure. Air exposure impacts were
3 reduced because of wet weather after the spill
4 reduced the ambient dust in the area. The study
5 concluded that the dust that was inhaled could
6 have caused adverse effects to people with heart
7 and respiratory conditions. In fact, 40% of the
8 respondents complained of headaches, wheezing,
9 coughing and shortness of health -- shortness of
10 breath, excuse me, after the spill.
11 The study further concludes that if dust
12 suppression measures are not kept in place, people
13 with heart or respiratory conditions could be
14 harmed. And in addition, there has been no
15 groundwater study completed in the area. So it
16 cannot conclude and it did not conclude that the
17 -- that there were no health impacts to water.
18 Finally, I would just like to ask you:
19 If this is a decision that is going to be made as
20 a political decision or a decision under law or a
21 decision to be based on science, the burden of
22 proof must be on the industry to prove that this

1 toxic residue is safe, which it can't because it
2 isn't. It is your responsibility and your mandate
3 to protect the air, soil and water of this nation
4 and the health of its citizens.
5 Thank you very much.
6 MR. BEHAN: Thank you.
7 (Applause)
8 MR. BEHAN: 344.
9 MS. DEIS: My name is Jessica Deis. I
10 am a mother of three and a professional
11 photographer.
12 I've -- since moving to Louisville,
13 Kentucky about two years ago, I've learned about
14 where my energy comes from. I had no idea when I
15 moved from eastern North Carolina. And it's kind
16 of shocking.
17 I drive on the Watterson every day to go
18 home and I see the Cane Run power plant and I see
19 the smokestacks and I know it can't be good. I've
20 driven out to the current landfill and it's --
21 knowing what-all is in it is pretty disturbing.
22 The air is really thick. When I leave there, my

1 lungs burn. I can only be there, you know, for
2 five or ten minutes. I can only imagine what it's
3 like to live right next to it.
4 I'm working on a coal documentary
5 project and I've spoken to people all around that
6 live in -- around coal in its various life stages.
7 In northern Indiana, there's a whole town built on
8 coal ash. And their water runs not clear and they
9 have lots of health problems. The people in
10 Tennessee that you've already heard about, you
11 know, you know about, obviously they aren't
12 completely healthy and it's not this pristine area
13 anymore, if it ever was.
14 As far as recycling coal ash, I -- I
15 don't know what the long-term effects are, if
16 anybody does. I had some sort of supplement for
17 my dogs that was supposed to help their skin, and
18 I was looking in the ingredients and it said ash.
19 And why does this need to be in something my dogs
20 are going to consume? I guess my dogs wouldn't
21 know and they wouldn't care. The concrete that my
22 husband uses to put the fence posts into the

1 ground makes dust when he's mixing it and I know
2 that there's probably coal ash in that. And how
3 is that you going to affect us? So I don't know
4 that recycling it is the best thing, and we still
5 have plenty of it left over, even though they are
6 recycling it currently. I'm not convinced that
7 this is the best way.
8 So as much regulation as possible would
9 be my ideal. Thank you for your time.
10 MR. BEHAN: Thank you.
11 (Applause)
12 MR. BEHAN: 189.
13 MS. WILLIAMS: Hello. My name is
14 Cherise Williams. I come to represent the members
15 of my community in Louisville, Kentucky.
16 I have to admit to you, I'm -- I'm
17 terrified to speak in public and I usually would
18 prepare some comments to stand before my audience
19 so I could stand up here and speak intelligently
20 about what we're here to talk about. But knowing
21 about chemicals is you-all's business. I don't
22 need to tell you about mercury and selenium and

1 cadmium and arsenic. You know all these things.
2 So I don't -- I don't need to -- to tell you about
3 these things; right?
4 But you come here to ask my community a
5 question: How do you feel? Please comment on how
6 you feel about having toxic ash dumped in your
7 community? How do you feel about that? And I'm
8 like, hmmm, that's -- that's a strange question.
9 And my question might be to you, the --
10 would be along the same lines, would be like:
11 What do you want for dinner? How would you like
12 to have some poop soup? Poop soup. Well, we
13 don't have to eat poop. We have other things to
14 eat.
15 We don't have to have these toxic
16 chemicals because we have alternative energies
17 that are just waiting to happen. We need to give
18 the subsides that coal companies receive for
19 research to renewable energy sources so that this
20 can become a reality and we don't have to have
21 toxic sludge in ponds and toxic ash in
22 neighborhoods and we don't have to eat poop for --

1 for dinner, for supper.
2 Thank you.
3 MR. BEHAN: Thank you.
4 (Applause)
5 MR. BEHAN: 178, 345. Is there anyone
6 else that has a number between 170 and 180 that
7 would like to talk now? 345.
8 MS. WHITE: Hi. I'm Vivian White. I'm
9 actually shocked this is going on here in
10 Louisville, Kentucky. I lived in Hinkley,
11 California when my children were young. So I
12 wanted to say that this sounds like the same crime
13 that was committed by the Hinkley versus PG&E case
14 in California. It is child abuse.
15 And LG&E/E.ON knows about the chemicals.
16 They know what's going on. And they're not doing
17 anything about it. It is a crime and it is child
18 abuse. My son was affected and that's exactly how
19 I felt. He was abused because we did not know
20 about it, he did not know about it, so we didn't
21 have a choice. And he does have a brain tumor.
22 Well, it's been removed now, but he was -- we were

about to lose his life. We had two weeks to get him surgery or the chances were of losing him.

So there are alternative ways. And I think the wind turbines in California are beautiful. It's something awesome that can be done. Thank you.

(Applause)

MR. BEHAN: 178, sir.

MR. HIGDON: My name is Greg Higdon, and I'm President and CEO of the Kentucky Association of Manufacturers. KAM is the Commonwealth's oldest industrial trade association. In fact, it will be a hundred years old next year.

The association mission is to raise the prosperity of all Kentuckians by protecting and growing the Commonwealth's economic engine, manufacturing, which is the largest contributor to Kentucky's gross state product. KAM appreciates the opportunity to submit the following comments: Kam opposes the regulation of coal combustion residuals under the Resource Conservation Recovery Act Subtitle C, hazardous waste rules.

1 Several states, including Kentucky,
2 already regulate coal combustion residuals in
3 conjunction with solid waste programs dealing with
4 non- hazardous waste. KAM believes that if it is
5 necessary to develop a national approach to the
6 regulation of coal combustion residuals, U.S. EPA
7 should do so under the auspices of RCRA Subtitle
8 D. Such an approach would allow EPA to work with
9 states in implementing regulations that are fully
10 protective of human health and the environment
11 without negatively impacting coal ash beneficial
12 use and causing an increase in energy prices at a
13 time when the economy can least afford it.
14 The regulation of coal combustion
15 residuals under RCRA's hazardous waste rules would
16 be regulatory overkill and not -- and would not be
17 economically practical. Coal combustion residuals
18 are industrial solid waste that are often
19 beneficially reused.
20 KAM is concerned that such heavy-handed
21 regulation with the stigma attached to regulating
22 under Subtitle C, even with an exemption for

1 beneficial reuse, would effectively eliminate the
2 beneficial reuse of coal ash. KAM is extremely
3 concerned about the resident (sic ?) significantly higher
4 cost increases for energy that would come from
5 regulation of CCRs under Subtitle C.
6 With manufacturers both large and small
7 struggling to survive in the current economy,
8 increased energy costs would certainly be an
9 additional burden that may mean the difference
10 between jobs remaining in the United States, going
11 to other countries, or not existing at all. KAM
12 considers this an unacceptable risk associated
13 with over-regulation.
14 Thank you for your consideration of
15 these comments.
16 MR. BEHAN: Thank you.
17 (Applause)
18 MR. BEHAN: Is there anyone in the room
19 that would like to speak now that has a number?
20 Sir, come on forward.
21 Anyone else? Sir, what number do you
22 have?

1 MR. OVERBEY: 185.

2 MR. BEHAN: 185.

3 MR. OVERBEY: Give me a break. My name

4 is David Overbey, and I am an assistant professor

5 of English at Bellarmine University.

6 I -- I want to say that -- that here in

7 the year 2010 that the greatest enemy and threat

8 that the United States faces is not terrorism and

9 it's not illegal immigration, it is ourselves. We

10 have become our own worst enemy.

11 What does it say about a nation and a

12 people that not only allows but glorifies the

13 destruction of its own land and the -- the

14 poisoning of the people who live on that land?

15 Mountaintop removal and the destruction of the

16 land and the people who live on that land is

17 unconscionable. And this is obvious. And it is

18 not debatable, and anyone who would debate it is

19 insane and dishonest.

20 One of the obstacles that those of us

21 who oppose the reckless practice of the coal

22 industry that -- that we have to face from the

1 government and the media and from speakers like
2 the one that we just heard is that the interest of
3 the economy always have to outweigh the interests
4 of the environment and the -- and the people and
5 the health and the well-being of our neighbors and
6 our children.
7 But the word "economy" and the word
8 "ecology" come from the same root, which is "eco,"
9 which means home. And any people that would
10 willingly destroy their own home have become their
11 own worst enemy.
12 So I would implore the federal
13 government and the EPA to enact an immediate and
14 permanent halt to mountaintop removal and the
15 imminent desecration that it visits on our land
16 and people.
17 MR. BEHAN: Thank you.
18 (Applause)
19 MR. BEHAN: Is there anyone else in the
20 room that would like to speak now that has a
21 number?
22 Seeing no speakers, we'll take a --

1 about a ten-minute recess. We'll reconvene at
2 7:40 and we'll see if we have some more speakers
3 at that time. Thank you.
4 (Recess)
5 MR. BEHAN: Okay. We're going to go
6 ahead and get started again. I know we have some
7 speakers out here.
8 Could Number -- could those persons with
9 Numbers 346, 347, 348, and 349 come forward,
10 please?
11 346. Go ahead, ma'am, when you're
12 ready.
13 MS. MITCHELL: Okay. My name is Linda
14 Mitchell, and I want to speak very shortly and
15 about one topic only. I grew up in Shively just
16 off of Cane Run Road.
17 And while in college, I developed
18 cancer, one of the lymphomas, Hodgkin's disease.
19 And I don't know the cause. There wasn't -- it
20 wasn't inherited. There wasn't any other cancers
21 in my family. So I don't really know what caused
22 it.

1 But what I do know is we need to do
2 everything in our power to prevent cancer. It has
3 caused some very, very horrible things in my life,
4 including more cancers, heart problems, lung
5 problems. And we need to stop cancer. And one of
6 the ways we can do that is to -- is through EPA,
7 is through that. We need to stop toxic waste. We
8 need to do everything we can. So I support
9 Subtitle C.
10 MR. BEHAN: Thank you.
11 (Applause)
12 MR. BEHAN: 347.
13 MS. MININGER: My name is Mary Mininger.
14 Thank you for listening to us. And I
15 appeal to you as human beings who have brains, who
16 have hearts. And actually, science has recently
17 proven that our hearts have as many brain waves as
18 our brain. This is called heart math. And what
19 it means is that we have an intelligence in our
20 hearts as well as our head. So I appeal to you to
21 consider the stories of the people who are
22 suffering at the hands of coal.

1 We do need jobs. We need them badly.
2 We don't need unregulated toxic things. And for
3 this hearing, that would be ash. I've been aghast
4 to find out how many there are in Indiana.
5 I've lived in Indiana for about 20
6 years, moved to southern Indiana, and found out
7 that there are in our Orange County the highest
8 collection of cancers in the state. This was
9 physician -- physician studied. They have a chart
10 where they put dots on the calendar -- I mean on
11 the -- I'm sorry, on the map with how many cancer
12 patients there are, as well as many, many other
13 things that are also because of environment.
14 I, myself, have an extremely high
15 mercury level because we have five stacks that
16 blow west -- blow north, north into our air. I
17 simply ask you to regulate. And especially in
18 this situation, I'm asking for regulation under
19 Subtitle C. It is not moral to allow ash ponds to
20 have absolutely no regulation. And at least that
21 we can put it above the watertable in Indiana,
22 because we have karst, which means that if

anything goes into the karst it goes within 50 or more miles, and that's what we drink. Please help us.

MR. BEHAN: Thank you.

(Applause)

MR. BEHAN: 348.

MR. FISCHER: Again, thank you all for coming. I know it's a long day for you. My name is Dr. Fred Fischer. I'm a licensed professional engineer in the state of Kentucky, Number 8915, civil engineer.

I've spent 44 years in the construction industry, built all the sewers and streets in the central business district here, supervised the foundation of a 41-story building, the First National Bank building, and have supervised over 1,000 home -- homes and apartments. So, when I read several months ago about the details of the acreage, the depth and the liner in the coal ash pond, I was amazed and appalled. I know that we can't, for instance, design flood walls for 500 years, but liners are -- they're -- it's going to

leak. It's only a matter of time before it gets punctured by something or it wears out.

So, that said, our west end -- and again, I -- I agree because the west end is where the poor people are, it's where industry has set up shop. Lot of us believe anecdotally that there's a lot more cancer in our west end than there is in the rest of the community, and we can't afford more.

Another citizen said something to the effect that Kentucky was bought and paid for by coal. I don't know about the whole state. I certainly know some politicians who aren't. I think the people who oversee the coal industry pretty well are. Because of that, I ask you to please institute Subtitle C. Let the feds do the job right, because Kentucky hasn't and won't. Thank you.

MR. BEHAN: Thank you.

(Applause)

MR. BEHAN: Number 349.

MR. TUCKER: Hello. My name is Drew

1 Tucker. I am a local resident here. I've lived
2 here for 30 years, my whole life, and I grew up in
3 the south end. And as -- for as long as I can
4 remember, the south end and the west end have
5 separate disproportionate levels of cancer and
6 sickness and disease.
7 I have a multitude of friends with many
8 of these symptoms and many of these diseases
9 themselves. I -- I had one friend in the last
10 year who passed away due to heart cancer with no
11 previous cancer in his family, no previous
12 sickness him -- himself.
13 And second of all, I used to work at a
14 local car wash called "Timmy's Auto Wash" locally
15 here in Louisville, Kentucky located on Dixie
16 Highway. And we had a contract specifically with
17 LG&E to clean the trucks after they would blow the
18 smokestacks, and the coal ash would cover the
19 trucks. And we used a chemical that is basically
20 acid that we could not touch with our hands to
21 clean these trucks and still they would not come
22 clean. And so it occurs to me that if I can't

1 touch a chemical to get the coal ash off of a
2 truck, that the coal ash itself must be a pretty
3 bad substance.
4 So I hope that you guys will do your job
5 and mandate some health regulation on this toxic
6 waste. Thank you.
7 MR. BEHAN: Thank you for your comments.
8 (Applause)
9 MR. BEHAN: Is there anyone that would
10 like to speak that has a number of 190 or lower?
11 MS. HUMPHREY: I have 160.
12 MR. BEHAN: 160. Sure. Is there anyone
13 else who has a number lower than 190 that would
14 like to speak?
15 Is there anyone that has a number that
16 begins with a 300, greater than 300? No? Okay.
17 160. Ma'am, when you're ready.
18 MS. HUMPHREY: Hello. My name is Terri
19 Humphrey, and I'm a resident of Riverside Gardens
20 in Louisville, Kentucky. I'm here today to speak
21 on behalf of myself, my family, and the residents
22 of Riverside Gardens concerning the dangers of

1 coal ash and the effects it has and has had on the
2 residents and the community.
3 LG&E's Cane Run facility is a few
4 hundred yards from my neighborhood. For years we
5 have had to endure the effects of coal ash and fly
6 ash covering everything from our homes, cars,
7 plants, pools, outdoor furniture, and the kids'
8 toys. We are breathing in coal ash every day and
9 this is affecting our health.
10 According to a report from the Sierra
11 Club, this facility is already leaching 1,200
12 pounds of sulfates into the Ohio River daily.
13 According to an EPA report, the current coal ash
14 pond at the facility is 1 out of 44 classified as
15 high hazard, meaning a spill would result in
16 significant damage and/or loss of life.
17 According to an Earth Justice report
18 which estimate risks to health and environment
19 from coal ash disposal by examining 181 coal ash
20 dump sites throughout the country, the report
21 found that unlined coal ash waste ponds pose a
22 cancer risk 900 times above what is defined as

1 acceptable. Now LG&E wants to put another coal
2 ash dump right next to our neighborhood. This
3 coal ash dump would be even larger, over 60 acres,
4 14 stories high with 5.7 million cubic yards of
5 coal ash.
6 Coal ash toxins have the potential to
7 injure all major organ systems, damage physical
8 health and development, and even contribute to
9 mortality. Coal ash contains concentrated toxic
10 pollutions such as arsenic, cadmium, chromium,
11 lead, mercury, and many others that are known to
12 cause cancers in humans. All of these and more
13 pose a dangerous health risk alone, but we also
14 have the health risk of the combination of these
15 toxic chemicals. As little is known about the
16 effects when these chemicals are mixed, it can
17 intensify existing effects or create new -- new
18 effects.
19 We have children out there in our
20 neighborhood that are dying with cancer. Young,
21 old, all ages. But the coal ash isn't our only
22 issue. We have several issues out there. We have

1 the chemical plants of Rubbertown, we have the
2 Lees Lane landfill which was on the super fund
3 act, it was Number 2.
4 We are tired of these large corporations
5 dumping their toxic waste on our properties and in
6 our bodies. We are tired of watching our family
7 members and friends and neighbors suffer and die
8 from the effects of these dangerous poisonous
9 chemicals.
10 These coal-burning industries want us to
11 trust them, that they will be in compliance and
12 keep us safe. We cannot trust them. From past
13 practice, they have shown us that we cannot trust
14 them. So we are asking you to put in place the
15 Class C to implement the stringent.
16 Thank you.
17 MR. BEHAN: Thank you, ma'am.
18 (Applause)
19 MR. BEHAN: Is 161 here? Would you like
20 to speak, ma'am?
21 Is there anyone else that would like to
22 speak now that has a number? 161.

1 MS. HOLTON: Hi. My name is Stephanie
2 Holton, and I'm currently the Youth Service Center
3 Coordinator at Western High School.
4 Western is approximately two miles from
5 where the coal ash impoundment is proposed by
6 LG&E. Many of the students that attend my school
7 live in that area, as well as the Cane Run power
8 plant. In fact, I even have a son that attends
9 Farnsley Middle School, which is also probably
10 less than two miles from the coal ash impoundment.
11 As a parent and a social worker, I'm concerned
12 about the health effects of coal ash on our
13 children. The site shows that the heavy metals
14 found in coal ash pose a public risk to us. Coal
15 ash has been shown to stunt lung development in
16 children and make asthma worse. And I feel like
17 until we have more scientific data, the EPA should
18 try to protect the public.
19 Many of my students that live in the
20 neighborhood adjacent to the power plant that
21 attend my school are on medications. I am the
22 person at the school responsible for keeping up

with their medical paperwork and their medications. Each year in the 16 years that I've been at Western High School, more and more students are taking asthma and upper respiratory medication along with other health issues such as diabetes and ADHD.

It is hard not to assume that our environment in which they live has some type of influence on it and the health conditions they suffer from. And when it comes to our children's education, we need to be cognizant of the non-academic barriers to learning that they must overcome.

It is my responsibility as a parent and a social worker to speak up. I urge the EPA to reclassify coal ash so that it's disposed of safely with the least amount of risk to the public and to our students and to not cause them any further harm.

Thank you.

MR. BEHAN: Thank you.

(Applause)

1 MR. BEHAN: Is there anyone else in the
2 room that would like to speak?
3 Seeing no speakers, I guess we'll take a
4 -- let's see. It's about five until 8. Let's
5 take a break until 8:10.
6 (Recess)
7 MR. BEHAN: Okay. We're going to go
8 ahead and get started again.
9 Is there anyone in the room that has a
10 number that would like to speak? Are there any
11 speakers here? No speakers? Okay.
12 Seeing no speakers, it's about 8:15 now,
13 let's go ahead and do another break. We'll take a
14 recess until 8:30. Thanks.
15 (Recess)
16 MR. BEHAN: Okay. We're going to go
17 ahead and get started again.
18 Are there any speakers in the room that
19 have a number of 190 or lower that would like to
20 speak now?
21 MS. GOODMAN: I believe I do.
22 MR. BEHAN: Okay. 183.

1 MS. GOODMAN: Yes. Good evening. My
2 name is Katherine Hope Goodman. I'm currently
3 living here in Louisville, Kentucky, and I'm a
4 member of Kentuckians for the Commonwealth, but I
5 -- I speak for myself.
6 And thank you for taking the time to
7 listen to our concerns and to my concerns, to my
8 community's concerns. I'm here to voice my
9 support for Subtitle C concerning the coal
10 combustion residuals proposed rule.
11 While I'm anxious that Subtitle C would
12 take longer to put into place than -- it is the
13 most comprehensive of the two and in the end will
14 provide the better protection to the public,
15 specifically federal regulation of CCRs or coal
16 ash and the numerous toxins it contains. It is a
17 must in order to best protect Kentuckians.
18 I have reason to doubt that our state
19 government will protect the public on this issue.
20 Big dollars wielded by king coal and associated
21 industries have a stronger sway over our
22 legislature than the concerns of the people.

1 Currently, the chair of the Natural Resources
2 Committee in the Kentucky legislature is the
3 brother of a major western Kentucky coal operator.
4 The EPA has also noticed the inequity of
5 the patchwork of state-to-state laws governing the
6 impoundment of CCRs. Subtitle C would rec --
7 would remedy the situation. Most ash ponds in
8 Kentucky are located adjacent to the rivers and
9 streams which feed the Ohio, which feed the
10 Mississippi.
11 This indicates a shared interest with
12 our neighbors in the importance of keeping
13 contaminants like mercury, cadmium, arsenic, lead,
14 selenium, boron, nitrate, and cobalt out of our
15 water sources. Considering these pollutants which
16 have already been proven to cause cancer and
17 non-cancer risk, of course, coal ash would --
18 should be treated with the greatest oversight
19 reasonably possible.
20 But on a more personal note, I have
21 rheumatoid arthritis. It's an autoimmune disease.
22 Basically, my immune system has decided to attack

1 my joints for no reason and declare war. The
2 cause of RA and other autoimmune diseases is
3 unknown. There is no cure for RA, only very
4 expensive treatment. I don't know the cause of my
5 RA.
6 I do know that I grew up in Roberts,
7 Kentucky in the shadow of the smokestacks of
8 Reid/Green/HMP&L Station 2, a coal-fired power
9 plant sitting on the banks of the Green River. I
10 lived less than one mile and its adjacent ash
11 ponds. When suspected in October of 2009, one of
12 these ash ponds was given a significant hazard
13 rating. It was also noted that the inspection
14 embankments of this pond seeped.
15 One of the toughest things the EPA is
16 charged with is the protecting the people in this
17 room from the unknown, protecting our children
18 from unseen dangers, and protecting our community
19 from what might happen. Again, I ask you to adopt
20 Subtitle C, because it provides the greater
21 protection from the unknown.
22 Thank you.

1 MR. BEHAN: Thank you.
2 (Applause)
3 MR. BEHAN: Is there anyone else in the
4 room that would like to speak now? Let's go ahead
5 and take another ten-minute break. We'll
6 reconvene at 8:45. Thanks.
7 (Recess)
8 MR. BEHAN: Good evening. We're going to
9 go -- we're going to go ahead and get started
10 again. We've got a couple of speakers in the
11 room.
12 Could those that have Numbers 174, 175
13 and 180 come forward?
14 (Discussion off the record)
15 MR. FITZGERALD: Thank you. I want to
16 express my appreciation to you all for being here,
17 for having added the Louisville venue to the list
18 of places where you're having public hearings.
19 And I also want to thank the very delightful young
20 lady in the fourth row who lent me her reading
21 glasses so that I can give you my testimony.
22 My name is Tom Fitzgerald. I'm Director

1 of the Kentucky Resources Council which is a
2 non-profit environmental advocacy group here in
3 the Commonwealth of Kentucky providing legal and
4 technical assistance on air, waste, water, mining,
5 utility policy, and energy policy issues. I am --
6 will be submitting more extensive legal and
7 technical comments but wanted to underscore a few
8 key points this evening.
9 The burning of coal produces large
10 amounts of fly ash, bottom ash, boiler slag and
11 flue gas desulfurization sludge that are
12 collectively called "coal combustion waste," or
13 CCW. Today it's the second largest industrial
14 waste stream in America, surpassed only by mining
15 waste.
16 As efforts to control pollutants in
17 emissions from coal combustion increase, so have
18 both the volume and the potential toxicity of CCW.
19 The volume of CCW produced nationally increased by
20 30 to 40% to approximately 130 million tons
21 annually in 2004 largely due to the use of flue
22 gas desulfurization devices in order to meet the

1 Clean Air Act requirements of 1990. Burning coal
2 today produces over 130 million tons annually of
3 CCW, and it's anticipated that by 2015 that volume
4 will rise to 175 million tons annually.
5 I'm going to skip down because I -- I
6 can't talk fast enough to -- to get through all
7 this.
8 Additional initiatives for controlling
9 power plant emissions, including proposed controls
10 on mercury are likely to increase total CCW
11 generation further with estimates of as much as 170
12 million tons being generated annually by 2015.
13 The disposal of CCW has caused a well-
14 documented variety of environmental problems
15 particularly to soils and waters, due to extremes
16 of pH and high concentrations of soluble salts,
17 trace metals and other pollutants that leach from
18 different CCWs. The National Academies of Science
19 acknowledged the threat posed by disposal of coal
20 ash in mines, landfills and surface impoundments.
21 According to the GAO, between 2000 and
22 2006, utilities reported depositing into

1 impoundments and landfills, 124 million pounds of
2 arsenic, chromium, lead, nickel, selenium and
3 thallium as components of the coal combustion
4 wastes.
5 As improvements continue to be achieved
6 in both pre- and post-combustion scrubbing and
7 capture of particulates and metals, we will of
8 necessity change the composition and increase the
9 potential toxicity of the wastes and leachate. As
10 noted by the GAO, in September of 2009 EPA noted a
11 need to revise the current effluent guidelines for
12 discharges to surface water because of the high
13 level of toxic-weighted pollutant discharges from
14 coal-fired power plants and the expectation that
15 these discharges will increase significantly in
16 the next few years due to new air pollution
17 control requirements.
18 The proper management of CCW is
19 essential for the protection of public health and the
20 environment. Adequate and comprehensive
21 safeguards will prevent the current situation,
22 which is trafficking in environmental

1 contamination by removing the incentive for those
2 more interested in currying market share in
3 short-term economic gain rather than long-term
4 public interest to undermanage their waste.
5 Adoption of a program of uniform,
6 comprehensive and appropriate minimum standards
7 for the characterization and the management of
8 coal combustion waste for reuse in disposal is the
9 best way, both to improve beneficial utilization
10 of CCW and to assure protection of public health
11 and the environment.
12 After much reflection, I've come to the
13 conclusion that only a hybrid Subpart C approach
14 will provide that framework. The current state of
15 regulation by the states, such as it is, is a
16 hodgepodge of rules that have allowed construction
17 of unlined ponds, unengineered or
18 poorly-engineered embankment impoundments, and
19 sham beneficial reuses of fly ash and other
20 combustion waste.
21 If the utility or coal industry can come
22 forward with a legal framework that assures a

1 minimum national floor of adequate regulation that
2 does not necessitate reliance on Subpart C, that
3 will be worthy of consideration. In the face of
4 the numerous natural resource and groundwater
5 contamination incidents that have occurred under
6 the current regulatory framework, more of the same
7 through issuance of Subpart D guidelines that the
8 states are not obligated to adopt or enforce
9 through permits, is an untenable outcome.
10 There are a couple of seconds I have
11 left. I want to make a couple of final points.
12 First is that adoption of a program of
13 uniform, comprehensive and appropriate minimum
14 standards for the characterization and management
15 of coal combustion wastes for reuse and disposal
16 is the best way to improve the beneficial
17 utilization of CCW and to assure protection of
18 public health and the environment.
19 Adoption of meaningful requirements for
20 management and disposal will likely increase
21 reliance on questionable and sham beneficial
22 uses.' It is essential that you create a

gatekeeper function that requires a demonstration that a proposed beneficial reuse is not a sham reuse that is in the nature of disposal, and that the waste streams be fully characterized using appropriate tests to determine the fate and transport mechanisms that might be associated with the end use or disposal scenario. Without a gatekeeper function, sham beneficial reuse that causes environmental damage will likely occur as it has here in Kentucky, where we grant "permits by rule" to beneficial reuses and require little or no advanced characterization.

Second, appropriate testing methods must be employed that will demonstrate that under the use or disposal scenario, human health and the environment will not be harmed. The widespread misuse of TCLP toxicity to characterize coal combustion wastes intended to be beneficially reused, or disposed of in other than mixed municipal waste landfills, results in cases where the long-term leaching of metals is underestimated. The EPA's Science Advisory Board

1 has criticized the TCLP protocol on the basis of
2 several technical considerations, including the
3 test's consideration of leaching kinetics,
4 liquid-to-solid ratio, pH, potential for colloid
5 formation, particle size reduction, aging,
6 volatile losses, and co-mingling of the tested
7 material with other wastes (i.e., co-disposal).
8 The literature suggests that TCLP
9 testing is generally insufficient to predict
10 short- and long- term leaching characteristics of
11 coal combustion fly and bottom ash. Because of
12 the limitations of TCLP testing, management
13 decisions are being made that may expose
14 generators, transporters, and re-users or
15 disposers of the CCW to residual liabilities.
16 Third, co-disposal of CCW in mine
17 workings should be discouraged, and allowed if at
18 all only after adoption of rigorous standards by
19 EPA commensurate with those for CCW landfills, as
20 recommended by the 2006 National Academy of
21 Sciences report on Managing Coal Combustion
22 Residues in Mines. A small but growing percentage

of coal combustion wastes are backhauled and disposed, or beneficially reused, in mine workings (including both underground mine voids and more commonly, in surface mine backfills or spoil/mine waste fills).

Such use and disposal occurs not only because such sites offer a hydrologically or geologically preferable location, but primarily because coal companies offer the backhauling and mine site disposal as a "service" or incentive in order to increase market share for their coal in an increasingly competitive marketplace. Co-disposal of coal combustion wastes at former or current mine sites represents perhaps the least appropriate place among options for disposal of such wastes because of several factors:

The increase in surface area available for leaching of elements resulting from fracturing of overburden and confining layers; (2) Higher total dissolved solids levels in mine spoils that compete for sorption sites on solids with toxic elements released from the buried ash; (3) Direct

1 communication between surface and underground mine
2 workings and aquifers through stress-relief
3 fracture systems and subsidence-induced fracture
4 flow; (4) The dependence of residents of coal-
5 bearing regions on private, groundwater supplies
6 and the significant potential for contamination of
7 those supplies; and (5) The presence of site
8 conditions conducive to creation of acid or toxic-
9 forming material that can solubilize constituents
10 of concern from the waste.
11 Finally, the use of embankment
12 impoundments for management of coal waste slurries
13 should be eliminated in favor of dry ash and
14 gypsum management, and existing slurry
15 impoundments closed unless it can be demonstrated
16 that they were designed, engineered and
17 constructed according to sound engineering
18 practice.
19 (Discussion off the record)
20 MR. BEHAN: Thank you.
21 (Applause)
22 MR. BEHAN: 175.

(Discussion off the record)

MS. CUNNINGHAM: Sarah Lynn Cunningham with the Louisville Climate Action Network.

I'm wearing three hats tonight. The first of which is I'm a licensed Professional Environmental Engineer. I've spent a lot of my career working in the waste water industry. And I'm here to tell you that I think that the appropriate thing to do for managing this waste would not be totally unlike how you manage biosolids. Some -- there's biosolids and there's biosolids just like there's coal combustion waste and there's coal combustion waste. Some is appropriate for beneficial reuse, some is not. I think we should set up a hierarchy of rules for what you can and can't do depending on the merits of the particular coal waste stream.

Speaking to you secondly as an activist. The Louisville Climate Action Network currently has 12 for profit businesses, 11 community group, 6 churches and religious institutions, and 2 educational institutions. We feel like the mantra

1 of cheap coal is often -- it's -- it's rarely,
2 including the reality that the reason it's so
3 cheap is that we have systemic externalized costs
4 that we're all bearing and they don't talk about
5 the literal direct subsidies that the government
6 pays -- Kentucky government lets industries take
7 in the way of tax rebates for burning coal.
8 And that's the reason it's cheap. We
9 think that's bogus; we think it's artificial; we
10 think it's pulling the rug out from under energy
11 efficiency work and renewable energy production.
12 It's an unfair synthetic or economic system that
13 is totally putting off the inevitable green
14 economy and all the green jobs we need.
15 The coal people will tell you that we
16 need those coal jobs in the coal fields. And in
17 this economy, you couldn't possibly reign this in.
18 I'm sorry. They've been saying that when the
19 economy was good, too. They're going to say
20 whatever it takes. They're going to pit -- you
21 know, whine and moan.
22 The reality of it is coal workers are

1 handy, they know how to use tools and do things.
2 They could easily be trained to insulate homes, to
3 install energy-efficient furnaces right there in
4 their own communities. We could transition better
5 than a lot of states if we just had a little bit
6 of leadership.
7 And lastly, I want to speak to you as a
8 former regulator myself. I have worked as a state
9 level environmental regulator and a local
10 environmental regulator. And I will tell you that
11 in general I think it's better to regulate at the
12 local level. I would so much rather be on-site
13 and look at the people I'm talking to. It cuts
14 out a lot of BS and a lot of the lies and excuses.
15 And yet, the politicians in this state are so
16 owned by the coal industry it's not appropriate to
17 think we're going to regulate this at the local or
18 state level.
19 So I beg of you to please regulate this
20 at the federal level and do what our local
21 politicians do not have the backbone to do to step
22 in and get this problem under control because it's

1 impacting our economic health, our environmental
2 health, our public health. And it's a lot of
3 permanent destruction that doesn't need to happen.
4 Thank you very much.
5 MR. BEHAN: Thank you for your comments.
6 (Applause)
7 MR. BEHAN: Is Number 180 here? Sir,
8 would you like to speak?
9 MR. COOPER: I'm Dave Cooper from
10 Lexington.
11 I would like to support the listing of
12 coal ash as a hazardous waste under Subtitle C of
13 RCRA. I know you've probably heard a lot of
14 anecdotes over the last month. I'll tell you one
15 more.
16 I used to work in Versailles, Kentucky,
17 which is about 20 minutes to the east -- or to the
18 west of my hometown of Lexington. I worked there
19 from 1990 to 1996. I was on the company softball
20 team. We used to go out and play softball once a
21 week at the Woodford County Municipal Park, which
22 is a park that has a swimming pool, there's ball

1 fields, kids playing and so on.
2 And I read back in 2007 about a proposal
3 for Kentucky Utilities to dump coal ash in this
4 city municipal park. I couldn't believe it when I
5 first read it. I thought that there would be a --
6 a huge outcry. But I think at that point in time
7 the Kingston spill had not happened and people
8 just didn't really know about coal ash at that
9 point.
10 But I went out and took this sample.
11 Here's coal ash that's been dumped in the Woodford
12 County Municipal Park by Kentucky Utilities. It's
13 from their Tyrone generating plant which is also
14 in Woodford County. And I noticed when I went out
15 there and took a sample there's a drainpipe that
16 goes underneath this coal ash dump and it's a
17 corrugated metal drainpipe. It's sort of in a
18 little swale and the drainage out the bottom.
19 It's got drainage going right through the middle
20 of the -- of this impoundment and they've covered
21 it over with a grass seed now.
22 And it makes me wonder, those corrugated

1 metal drainpipes are only good for 20 or 30 years
2 maybe at the most. What happens after the
3 drainpipe rusts? It -- it just doesn't make any
4 sense. But this is the kind of thing that's
5 happening because we don't have strict enough
6 regulations on the storage of coal ash.
7 It's -- it's crazy that they're putting
8 it in a public park where there's children playing
9 a hundred yards nearby, swimming in the swimming
10 pool in the city park. It's not right. That's
11 the kind of story -- and this is only one of I'm
12 sure thousands of examples nationwide where coal
13 ash is being put in places where it shouldn't be,
14 and we've just got to have stricter regulations.
15 Thank you.
16 MR. BEHAN: Thank you.
17 (Applause)
18 MR. BEHAN: Is there anyone else that
19 would like to speak?
20 MS. SPEAKER: Yes, sir, I believe so. I
21 know someone that wants to give testimony.
22 MR. BEHAN: Okay. Is that person in the

room?

MS. SPEAKER: (inaudible)

MR. BEHAN: Okay. Well, let's go ahead and take a five-minute break until 9:00 and we'll reconvene at that time.

(Recess)

MR. BEHAN: Okay. We're going to go ahead and get re -- we're going to restart.

Number 350.

MR. BREWSTER: Hello. I am Jarred Brewster from the Asbury College. I'm from Nicholasville, Kentucky.

I am here to remark on the obvious political ploy being utilized by the coal industry. Unable to argue that coal ash is not hazardous to human life and having no real solid ground to stand on in that respect the coal industry has taken a different approach and sought to sing the praises of this ambiguous beneficial use that we hear being thrown around knowing that's the only way for them to really make a case.

1 They tell us stories about how Subtitle
2 C would stigmatize any products that contain
3 hazardous wastes. If coal ash is indeed as
4 dangerous as we've heard, then perhaps such
5 products should be stigmatized. They go further
6 and kindly -- by kindly threatening us with
7 further loss of jobs in the industry. People who
8 are impoverished and who are -- who are suffering
9 under these conditions, often times they can't
10 stand up to -- to these -- these big corporate
11 giants. And so, basically, I'm calling for equal
12 representation under the law and defense of -- of
13 the little guy, of the people who are
14 impoverished. And, yeah, if -- if coal ash is
15 hazardous, call it hazardous waste. And that's
16 all.
17 MR. BEHAN: Thank you.
18 (Applause)
19 MR. BEHAN: Is there anyone else in the
20 room that would like to speak?
21 It's about 9:10 right now. We have two
22 speakers that are part of the 9:15 group. So why

1 don't we wait about five minutes to see if they
2 show up. If they do, then we'll hear their
3 testimony. But Jarred Brewster might have been
4 our last speaker of the day. And we'll reconvene
5 in about ten minutes. Thanks.
6 (Recess)
7 MR. HOFFMAN: Good -- good evening. Is
8 there anybody here that wishes to provide
9 testimony?
10 In that case, this is Steve Hoffman,
11 U.S. EPA. It is the 28th of September. It is now
12 9:16. We are officially closing this hearing.
13 (Whereupon, at 9:16 p.m., the
14 PROCEEDINGS were adjourned.)
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1 CERTIFICATE OF NOTARY PUBLIC

2 I, ROSE MARY KITHCART, Notary Public for
3 the State of Kentucky, do hereby certify that the
4 forgoing electronic file when originally
5 transmitted was reduced to text at my direction;
6 that said transcript is a true record of the
7 proceedings therein referenced; that I am neither
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9 the parties to the action in which these
10 proceedings were taken; and, furthermore, that I
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12 or counsel employed by the parties hereto, nor
13 financially or otherwise interested in the outcome
14 of this action.

15 /s/ROSE MARY KITHCART

16

17

18 Notary Public in and for the
19 State of Kentucky
20 Commission No. 402347
21 My Commission Expires: August 27, 2013

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