

US EPA ARCHIVE DOCUMENT

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

PUBLIC HEARING ON EPA'S PROPOSED RULE ON
Hazardous and Solid Waste Management System;
Identification and Listing of Special Wastes;
Disposal of Coal Combustion Residuals from
Electric Utilities

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2 EPA Hearing Panel:

3 Morning Session:

4 ROBERT DELLINGER, Chair
5 Director of Materials Recovery and Waste
6 Management
7 Office of Resource Conservation and Recovery

8 LAURA CELESTE

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11 Afternoon Session:

12 FRANK BEHAN, Chair
13 Acting Chief of the Energy Recovery and Waste
14 Disposal Branch
15 Office of Resource Conservation and Recovery

16 STEVE SOUDERS

17 JIM KOHLER

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19 Evening Session:

20 ROBERT DELLINGER, Chair
21 Director of Materials Recovery and Waste
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1 P R O C E E D I N G S

2 (10:02 a.m.)

3 MR. DELLINGER: Good morning. Thank you
4 for attending today's public hearing on the
5 Environmental Protection Agency's proposed rule
6 regarding the regulation of coal ashes that are
7 disposed of in landfills and surface impoundments.
8 Before we begin, I would like to thank you for
9 taking time out from your busy schedules to
10 address our proposed rule, and we look forward to
11 receiving your comments.

12 This is the third of seven scheduled
13 public hearings that we will be conducting. We
14 had two very successful hearings last week in
15 Washington, D.C., and Denver. The remaining
16 hearings are scheduled in Charlotte, Chicago,
17 Pittsburgh, and Louisville.

18 My name is Bob Dellinger. I'm Director
19 of the Materials Recovery and Waste Management
20 Division of the EPA's Office of Resource
21 Conservation and Recovery. I will be chairing
22 this session of today's public hearing. With me

1 on the panel are Laurel Celeste from our Office of
2 General Counsel, Golam Mustafa from our Dallas
3 regional office, and Craig Dufficy who works with
4 me.

5 Before we begin the hearing, I would
6 like to provide you a brief description of the
7 proposed rule, as well as the logistics on how we
8 plan to run today's public hearing.

9 Coal combustion residuals, or CCRs, are
10 residues from the combustion of coal at electric
11 utilities, and include fly ash, bottom ash, boiler
12 slag, and flue gas desulfurization materials.
13 Coal combustion residuals contain problematic
14 contaminants such as mercury, cadmium, selenium,
15 and arsenic.

16 In 2008, 136 million tons of coal
17 combustion residuals were generated by electric
18 utilities and independent power producers. Of
19 that total, approximately 46 million tons were
20 landfilled, 30 million tons were disposed in
21 surface impoundments, 50 million tons were
22 beneficially used, and 11 million tons were used

1 in minefill operations. EPA estimates that there
2 are approximately 300 landfills and more than 600
3 surface impoundments where coal combustion
4 residuals are disposed.

5 We have proposed to regulate these coal
6 combustion residuals to ensure their safe
7 management when they are disposed in landfills and
8 surface impoundments. Without proper protections,
9 the contaminants in these residuals can leach into
10 groundwater and migrate to drinking water sources,
11 posing public health concerns.

12 In addition, the structural failure of a
13 surface impoundment at the Tennessee Valley
14 Authority's plant in Kingston, Tennessee, in
15 December of 2008 released more than 5 million
16 cubic yards of coal ash over approximately 300
17 acres of land and contaminated portions of the
18 Emory and Clinch Rivers.

19 With this proposal, EPA has opened a
20 national dialogue by calling for public comment on
21 two different regulatory approaches available
22 under the Resource Conservation and Recovery Act

1 for addressing the risks from the disposal of coal
2 combustion residuals. One option presented in
3 that proposed rule draws from the authorities
4 available under the Subtitle C of RCRA. This
5 would create a comprehensive program of federally
6 enforceable requirements for waste management and
7 disposal.

8 The other option is based on the
9 authorities under Subtitle D of RCRA, which gives
10 the EPA authority to set minimum federal criteria
11 for waste management facilities that would be
12 enforced through citizens. Under this scenario,
13 states would be considered the same as citizens.

14 EPA decided to co-propose these two rule
15 options to encourage a robust dialogue on how to
16 address the human health concerns and structural
17 integrity issues associated with disposal of coal
18 combustion residuals in landfills and surface
19 impoundments.

20 EPA wants to ensure that our ultimate
21 decision is based on the best available data, and
22 is made with the substantial input from all

1 stakeholders. Therefore, we ask that you provide
2 us your comments not only at today's hearing, but
3 any other comments and supporting information that
4 you want to provide.

5 I would also like to say a few words
6 about beneficial use of coal combustion residuals.
7 The proposed rule maintains the Bevill exemption
8 for coal combustion residuals that are
9 beneficially used and, therefore, would not alter
10 the regulatory status of these residuals when used
11 in this manner. EPA continues to strongly support
12 the safe and protective beneficial use of CCRs.

13 However, the proposal also indicates
14 that concerns have been raised with some uses of
15 coal combustion residuals, particularly when used
16 in an unencapsulated form. Therefore, we request
17 comments, information, and data on specific
18 aspects of beneficial use, particularly those
19 activities that deal with unencapsulated
20 applications.

21 We also make clear in the proposal that
22 coal combustion residuals that are placed in sand

1 and gravel pits, quarries, and other large-scale
2 fill operations are not examples of beneficial
3 use. EPA views this placement as akin to disposal
4 and would regulate these sites as disposal sites
5 under either of these regulatory options.

6 Now I'll cover the logistics for the
7 comment portion of today's public hearing.
8 Today's public hearing will work as follows.

9 Speakers, if you were preregistered, you were
10 given a 15-minute time slot when you are scheduled
11 to give your three minutes of testimony. To
12 guarantee that slot, we have asked that you sign
13 in 10 minutes before your 15-minute slot at the
14 registration desk.

15 All speakers, those that are
16 preregistered and walk-ins, were given a number
17 when you signed in today and this is the order in
18 which you will speak. I will call speakers to the
19 front row over here near the podium, by number,
20 four or five at a time, depending on where we are
21 in the program.

22 When your number is called, please move

1 to the microphone and state your name and your
2 affiliation. We may ask you to spell your name
3 for the court reporter who is transcribing your
4 comments for the official record.

5 Because there are many people who have
6 signed up to provide testimony today, and to be
7 fair to everybody, testimony is limited to three
8 minutes. We will be using an electronic
9 timekeeping system and will also hold up cards to
10 let you know when your time is getting low.

11 When we hold up the first card, this
12 means that you will have two minutes left. When
13 we hold up the second card, that means you have
14 one minute left. When the third card is held up,
15 you have 30 seconds left. When the red card is
16 held up, you are out of time and should not
17 continue with your remarks. Remember, you can
18 provide any written material to our court
19 reporter, and the material will be entered into
20 the record.

21 We will not be answering questions on
22 the proposal. However, from time to time, any of

1 us on the hearing panel may ask questions to
2 clarify your testimony.

3 As I just mentioned, if you have brought
4 a written copy of the comments that you're giving
5 today, please leave a copy in the box by our court
6 reporter, who is on my left, your right. If you
7 are submitting written comments today, please put
8 those in the box by the registration desk. If you
9 have additional comments after today, please
10 follow the instructions in the yellow handout and
11 submit comments to the EPA by November 19, 2010.

12 Our goal is to ensure that everyone who
13 has come today to present testimony is given an
14 opportunity to provide comment. To the extent
15 allowable by time constraints, we will do our best
16 to accommodate speakers that have not
17 preregistered. Today's hearing is scheduled to
18 close at 9:00 p.m., but we will stay later if
19 necessary.

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

1 statement in lieu of oral testimony. These
2 written statements will be collected and entered
3 into the docket for the proposed rule and will be
4 considered the same as if you presented them
5 orally at today's hearing.

6 If you would like to testify but have
7 not yet registered to do so, please sign up at the
8 registration table. We are likely to take
9 occasional breaks, but we're prepared to eliminate
10 or shorten the breaks in order to allow as many
11 people as possible to provide their oral testimony
12 today.

13 Finally, if you have a cell phone, we'd
14 appreciate it if you would turn it off or turn it
15 to vibrate. If you need to use your phone at any
16 time during the hearing, please move to the lobby.
17 We ask for your patience as we proceed. We may
18 need to make some minor adjustments as the day
19 progresses.

20 Thanks again for participating today.
21 Let's get started. I'm calling up Numbers 1, 75,
22 3, and 4. Number 1.

1 SPEAKER: Thank you. Good morning. My
2 name is Mike Nasi, and I represent the Texas Coal
3 Combustion Products Coalition, which is comprised
4 of owners and operators of coal-fired power plants
5 across Texas that have a long history of
6 responsibly managing CCRs.

7 Although we are confident that the
8 existing industry practice and environmental
9 regulatory framework is adequate without the need
10 for federal intervention, we would support the
11 EPA's efforts to establish national criterion on
12 two conditions.

13 First, that the criteria be developed
14 with Subtitle D, not Subtitle C; and second, that
15 that Subtitle D criteria be implemented by states,
16 and states be afforded the leading role. We would
17 suggest the states be afforded the role that they
18 played in municipal solid waste regulatory
19 limitations, which has been successful.

20 Rather than engage in science by sound
21 bite with the limited time we have, we will defer
22 to our written comments to set the record straight

1 to refute many of the unsubstantiated claims and
2 alleged damage cases in Texas.

3 I'll spend the time that I have today
4 imploring EPA to remember and look beyond the PR
5 campaign, the negative PR campaign of the day, and
6 remember that coal ash recycling is, in fact, one
7 of the great American environmental success
8 stories, a success story and gains that all could
9 be lost if the wrong approach is taken with this
10 rule making.

11 Back in the early 1990s, Texas had the
12 regulatory foresight to develop a framework that
13 responsibly managed the disposal of CCBs while at
14 the same time expanding the markets for CCP
15 recycling. That leadership led to an increased
16 recycle rate of 15 percent in 1992, all the way to
17 70 percent in 2005, successes that were recognized
18 by EPA when it commissioned a study in 2005 to
19 identify and describe Texas as a model state.

20 In that report, I quote, this report
21 said: "Other states with less successful CCP
22 utilization can learn from what Texas has done

1 right and implement similar activities in their
2 own states."

3 That report identified as a direct
4 threat to continued successful recycling the
5 stigma that would result from Subtitle C
6 regulation. There are many that would suggest
7 that stigma is not real. We would submit to you
8 that that 2005 report establishes that it's real.
9 The federal agencies that have commented to EPA
10 already on the rule establishes that it's real.
11 You will hear from many today who spent the large
12 part of their adult lives successfully recycling
13 CCPs, who believe and are convinced that the
14 stigma is real.

15 I'll go ahead and wrap up. I would just
16 ask that we proceed with the Subtitle D as opposed
17 to a Subtitle C approach. We will fully document
18 all of our positions in writing. Thank you for
19 the time to address you here today.

20 MR. DELLINGER: Number 3.

21 SPEAKER: My name is John Ward. I'm
22 chairman of Citizens for Recycling First, an

1 organization of more than 1,500 individuals who
2 believe that the best way to solve coal ash
3 disposal problems is to quit throwing coal ash
4 away. Thank you for this opportunity to write
5 comments to the agency and for the opportunity to
6 interact with others who are concerned about
7 regulations for coal ash disposal.

8 At the first two public hearings in
9 Washington, D.C., and Denver, I've had numerous
10 opportunities to converse with people who belong
11 to organizations that are committed to reducing
12 greenhouse gas emission linked to climate change.
13 Most of these people had no idea that coal ash is
14 used to replace portland cement in the production
15 of concrete, an activity that reduces greenhouse
16 gas emissions from cement productions by more than
17 12 million tons every year.

18 It's not surprising that people don't
19 know this. The major environmental activist
20 organizations that favor a hazardous waste
21 designation for coal ash never mention that ash
22 can be recycled safely with environmental

1 benefits. The Environmental Protection Agency has
2 further contributed to this lack of understanding
3 by removing its Coal Combustion Products
4 Partnership Web site from the Internet just when
5 the need for information about coal ash recycling
6 is at its greatest.

7 Many people in this room would like to
8 see the use of coal disappear altogether. However
9 worthy that goal is, it won't happen overnight.
10 Nearly half of America's electricity is generated
11 by burning coal, and Americans keep using more
12 electricity every year. Like it or not, coal will
13 continue to be burned in significant quantities
14 for many years to come. So the question remains:
15 What should we do with the ash that is left over?

16 Recycling coal ash keeps it out of
17 landfills and ponds where it can cause the kind of
18 problems we will hear much about during today's
19 hearings. Recycling it in applications such as
20 concrete production produce additional benefits
21 like greenhouse gas emissions reductions that are
22 important to everyone in this room.

1 There are two regulatory options before
2 us for comment today, the Subtitle C hazardous and
3 Subtitle D non-hazardous. Under both proposals,
4 new landfill engineering standards are essentially
5 the same. Landfills won't be any stronger or
6 better under Subtitle C, but coal ash recyclers
7 will be saddled with a hazardous waste sigma that
8 will make continued recycling of this resource
9 difficult or impossible.

10 For those who deny the existence of
11 stigma, I would ask just two questions. First, if
12 the EPA is right and a hazardous waste designation
13 would motivate people to recycle more, then why
14 are the people who make their livings as recyclers
15 unanimously opposed to it? Wouldn't they be in
16 favor of something that would help them make more
17 money? Perhaps it is because the people who
18 recycle ash every day are well aware of the
19 response you and your neighbors would give to the
20 second question: Would you want something that is
21 classified as hazardous waste in your home,
22 school, or workplace?

1 The EPA should enact tougher coal ash
2 disposal regulations, but it should do so without
3 unnecessarily classifying coal ash as a hazardous
4 waste and risking the destruction of a recycling
5 effort that helps accomplish everyone's goal of a
6 cleaner environment. Thank you.

7 MR. DELLINGER: Number 4.

8 (Discussion off the record)

9 MR. DELLINGER: Excuse me. Do you have
10 the first half of your statement in writing?

11 SPEAKER: This one?

12 MR. DELLINGER: Yes.

13 SPEAKER: Yes.

14 MR. DELLINGER: Okay. So we'll be able
15 to capture that.

16 SPEAKER: Yes.

17 MR. DELLINGER: You should start over,
18 then. We can't hear you.

19 SPEAKER: You want me to start over?

20 MR. DELLINGER: Yes.

21 SPEAKER: For more than six years I've
22 been directly impacted by the dumping of the fly

1 ash from the AES Shady Point coal-burning power
2 plant. The trucks drive directly in front of my
3 house and they dump it in the Making Money Having
4 Fun fly ash pit located about a mile from my home.
5 During the past two years, I've become very
6 knowledgeable about the state agencies that
7 regulate the fly ash pit.

8 My message to you today is that the
9 state regulatory system in Oklahoma has failed.
10 The responsibility for regulating the Making Money
11 Having Fun fly ash pit is divided between three
12 agencies in Oklahoma: The Corporation Commission,
13 Department of Environmental Quality, and the
14 Department of Mines.

15 I'm sure everybody here knows what a
16 shell game is. It's a game played with three
17 shells and a pea, and it's referred to as a short
18 con because it's really easy to pull off. The
19 agencies have used the division of jurisdiction to
20 play a shell game with us.

21 We know that Making Money Having Fun is
22 breaking the law, but we have to find out which

1 agency is responsible for which laws. If we want
2 to get the laws enforced, we have to find out
3 which agency is responsible for enforcement.

4 Like a con man, the agencies explain
5 that finding a violation of a law is very easy.
6 They say the law is clear. They say they are
7 experts at enforcing the law and they are here to
8 protect us. At first, we believe them and play
9 their game. We would call in a violation and they
10 would say, sorry, no violation here. We have
11 played this game for a long time, maybe due to the
12 investment of time, money, commitment, and
13 sacrifice.

14 I'm pleased to report we've figured out
15 the game. We keep finding the pea. We have
16 exposed seven years of violations of the Clean Air
17 Act; we've exposed Clean Water Act violations; and
18 we're exposing the fact that this is not a mine
19 reclamation project, but instead a surface
20 impoundment that towers over the surrounding land.

21 We keep finding the pea in the shell
22 game, but like a con man who has your money, the

1 Corporation Commission, the Department of Mines,
2 and the Department of Environmental Quality keep
3 wanting to play the game again and again. Their
4 goal seems to be to keep dumping fly ash in
5 Bokoshe, Oklahoma, and we are sick of playing the
6 shell game.

7 Our state agencies, as well as our state
8 and U.S. senators and representatives have
9 determined that tiny Bokoshe, in rural Oklahoma,
10 is politically inconsequential. As long as the
11 enforcement of fly ash regulations are subject to
12 politics, this environmental injustice will
13 continue.

14 We need to replace the vague,
15 subjective, and virtually unenforceable state
16 regulations with a strict, well-established,
17 enforceable regulation. In order to end this
18 game, we ask the EPA to adopt Subtitle C
19 regulations and impose strict and enforceable
20 regulations. Thank you.

21 MR. DELLINGER: Thank you. Number 75.
22 While he's moving to the microphone, could we have

1 Numbers 5, 6, 7, 98, and 200 move up.

2 SPEAKER: Good morning. My name is Earl
3 Lott. I'm the director of the Waste Permits
4 Division of the Texas Commission on Environmental
5 Quality, and I'm providing comments today on
6 behalf of our executive director in regards to
7 EPA's proposed coal combustion by-products rule.

8 Texas has one of the highest number of
9 coal facilities in the United States and
10 consequently the largest producer of coal
11 combustion residuals in the nation. We believe
12 that Texas has adequate and effective regulations
13 to safely manage coal combustion residuals. Texas
14 has promulgated effective legislation and has been
15 at the forefront of recycling initiatives for the
16 use of coal combustion by-products in the
17 industry. Coal combustion recycling rates in
18 Texas are as high as 60 to 70 percent.

19 EPA has acknowledged that Texas has been
20 a model state on this issue, and that was
21 recognized in the early '90s. Recycling rates
22 have dramatically improved in Texas, from around

1 20 to 25 percent in the early '90s to the rate of
2 60 to 70 percent today. We've done this --
3 achieved this through progressive legislation, by
4 diligent work with -- cooperating with state
5 agencies like the Texas Department of
6 Transportation, as well as working with industry
7 groups and utilities on building these markets.
8 Also, Texas coal-fired facilities generally
9 produce high-quality coal combustion residuals
10 that are appropriate for a number of beneficial
11 use applications in highway construction building
12 products and infrastructure building materials.
13 In most areas of the state, Texas has developed a
14 fly-ash-based concrete market producing
15 high-quality products.

16 We believe that the EPA's proposed
17 options to regulate coal combustion residuals
18 under the Subtitle C of RCRA threatens the great
19 strides that Texas has made in dramatically
20 improving the coal combustion recycling rates in
21 Texas. The TCEQ has effective regulations in
22 place to safely manage coal combustion residuals.

1 Even though permits are currently not required, we
2 do require registrations and monitoring of the
3 material, which also provides safeguards in
4 preventing the impacts to health and the
5 environment. Texas regulations require the
6 characterization, classification, and submittal of
7 that notification of the waste prior to disposal.

8 In summary, TCEQ requests the EPA
9 carefully consider the impact of coal combustion
10 residual regulations on beneficial use, and the
11 TCEQ would like to reiterate the EPA should
12 determine -- if the EPA should determine that
13 federal regulations are necessary, we prefer the
14 Subtitle D option rather than the Subtitle C. A
15 regulation under C could potentially cause
16 negative impact on the current business in these
17 markets. Thank you for your time.

18 MR. DELLINGER: Thank you. Number 5.

19 SPEAKER: Good morning. I am Tim
20 Tanksley of Bokoshe, Oklahoma. One of the biggest
21 problems with state regulations of fly ash in
22 Bokoshe, Oklahoma, is that they call the mounds of

1 fly ash mine reclamation. I personally own a
2 tract of land that has been stripped and
3 reclaimed. It takes an experienced eye to see
4 that the land was ever disturbed.

5 Mine reclamation is certainly not what
6 is happening at Making Money Having Fun's site.
7 They have created a permanent mound of fly ash
8 rising 55 feet above the surrounding land. This
9 mound covers more than 20 acres. On this mountain
10 of fly ash, Making Money Having Fun has been
11 permitted to dump oil and gas wastewater.

12 After we showed the Oklahoma Department
13 of Environmental Quality that this water was
14 running off the side, the ODEQ called the EPA.
15 Last December, the EPA issued a cease and desist
16 order because of illegal discharges, violating the
17 Clean Water Act.

18 We later learned that Senator James
19 Inhofe's staff contacted EPA to find out when the
20 MMHF could resume operation of its so-called mine
21 reclamation.

22 I became concerned that Senator Inhofe

1 had been misinformed. I went to Washington, D.C.,
2 and met with Senator Inhofe's staff and explained
3 that MMHF was creating a toxic mix of fly ash and
4 oil and gas wastewater to build a mountain a fly
5 ash. Senator Inhofe had his staff investigate the
6 matter. He then sent me a letter stating the fly
7 ash mound is temporary and will disappear.

8 I understand that Senator Inhofe once
9 said that global warming is the greatest hoax ever
10 pulled on the American people. The biggest hoax
11 pulled on the people of Bokeshe, Oklahoma, is
12 telling them that this mountain of fly ash is
13 temporary and will disappear.

14 Fly ash and oil and gas wastewater
15 create a toxic mixture, but there is another toxic
16 mixture in Bokeshe and everywhere else that fly
17 ash is dumped. That is the mixture of politics
18 and law enforcement. We need to face the fact
19 that pollution is a problem. As long as we let
20 politics influence law enforcement, the
21 environmental injustice in Bokeshe will continue.

22 The only way to eliminate this

1 environmental injustice for the people of Bokoshe,
2 Oklahoma, is for the EPA to regulate fly ash under
3 Subtitle C. Thank you.

4 MR. DELLINGER: Thank you. Number 6.

5 SPEAKER: Good morning. I'm Sharon
6 Tanksley from Bokoshe, Oklahoma.

7 In 2000, people from Bokoshe protested
8 the issuance of a permit to mine shale and clay
9 and to dispose of fly ash in a proposed pit. One
10 of our concerns was the potential of dust from
11 this pit.

12 To address these concerns, Making Money
13 Having Fun sent a letter stating -- and I quote --
14 "Clean air laws, like clean water laws, of our
15 land are very specific and enforceable, especially
16 for mining operations in Oklahoma. Since the
17 airborne dust is fly ash, they use a skimming
18 operation. MMHS LLC will use for its proposed
19 operation new water slurry techniques. This new
20 technology has minimized the escape of dump fly
21 ash into the air and prevents most of the nuisance
22 air pollution from drifting on adjacent property

1 owners." End quote.

2 This simply isn't true. For seven years
3 it looked like this, every time they dumped. When
4 people from Bokoshe complained of fly ash covering
5 their town, the Oklahoma Department of Mines and
6 the Oklahoma Department of Environmental Quality
7 said that Making Money Having Fun was doing
8 everything required by law.

9 This was not true. These state agencies
10 ignored Bokoshe's complaints until April 15, 2009.
11 On that day, we went to a meeting of the Air
12 Quality Advisory Council, which is part of the
13 Oklahoma Department of Environmental Quality.

14 The staff questioned why we were there
15 and they explained that the council did not deal
16 with enforcement issues. The staff debated among
17 themselves whether or not they would even let us
18 speak. When it was mentioned that a reporter from
19 the Tulsa World was covering the meeting, it was
20 decided that the people from Bokoshe should be
21 allowed to speak, and the Tulsa World reported on
22 Bokoshe's presentation.

1 The exposure of the information from
2 Bokoshe was so compelling that the ODEQ
3 immediately sent a team of staff members to
4 Bokoshe. On May 1st, 15 days after the meeting,
5 the team reported on their investigation. They
6 found that MMHF had been committing five separate
7 violations of the Clean Air Act for seven years.

8 It is clear that ODEQ acted only because
9 the public exposure created enough political
10 pressure to force ODEQ to take action. It may be
11 more accurate to say that for that two-week
12 period, from April 15th to May 1st, 2009, the ODEQ
13 staff was permitted to do their job. But that
14 ended quickly.

15 For the next nine months, MMHF lobbied
16 the ODEQ behind closed doors. Although the staff
17 found seven years of Clean Air Act violations,
18 ODEQ entered a consent order with no fines, no
19 penalties, and no findings of violations.

20 ODEQ made MMHF agree to get the permit
21 for its fly ash pit. ODEQ refuses to enforce laws
22 until public exposure forces it to act, but once

1 it is away from the public eye, law enforcement
2 stops.

3 Today, I am asking you to regulate fly
4 ash under Subtitle C and to impose a strict and
5 enforceable rule on the handling of fly ash.
6 Thank you.

7 MR. DELLINGER: Number 7.

8 SPEAKER: I am Suella Hudson from
9 Bokoshe, Oklahoma, and I thank you for this
10 opportunity this morning.

11 In 1992, the AES coal-burning plant was
12 opened, and in 1994 the Smith Daniel pit, one mile
13 southwest of my house, was opened. From this pit
14 the wind -- the wind blew from the south; it blew
15 across the yard and into my house.

16 In 2002 a company called Making Money
17 Having Fun opened another strip pit a mile
18 southwest of my home. Since then, we've been
19 plagued with fly ash blowing across the yard into
20 the house, and since I live on the highway used by
21 the fly ash truck, I also get all the fly ash
22 blowing off of these trucks. There are eight of

1 them running ten loads each day back and forth
2 from the AES plant to the fly ash dump and back.

3 At first, we were told that there was
4 nothing harmful in fly ash; it was just limestone.
5 And we believed them. Since that time, we've had
6 to accept this as our way of life. We have
7 tolerated the fly ash blowing into our houses and
8 in the air we breathe.

9 We put up with this until the AES plant
10 filed a petition to build a second plant, larger
11 than the first one, right next door to the one
12 they had. We then realized that we could not
13 tolerate that much more fly ash in our area. So
14 we went to this protest meeting, and when we got
15 through listening to the talk down there, we came
16 home and we realized that we did not know any more
17 about fly ash than we did before we went to the
18 meeting.

19 My youngest daughter, a graphic artist
20 and a whiz on the Internet, and I got together and
21 we researched fly ash and educated ourselves, and
22 from that the Bokoshe Environmental Group was

1 born, and it's all because -- because it's in the
2 air we breathe.

3 My daughter, Charlie, lived next door to
4 me from 1994 to 2004, when she suddenly became
5 sick. I took her to the emergency room. We
6 thought it was just a bronchial infection. She
7 was diagnosed with third-stage cancer, and she
8 died 17 days later.

9 We didn't get concerned about the fly
10 ash at that point. We didn't even connect the
11 dots. But then we learned that of the 20 families
12 living closest to the fly ash pit, 14 of them have
13 cancer in their family and some of them have died.
14 We recently met a gentleman and sat with him; his
15 wife had died. And he had compiled a list that's
16 three pages long, double-spaced, double-column, of
17 people who have died with cancer in our area.

18 And we're asking today that you please
19 adopt Subtitle C that classifies fly ash as
20 hazardous. Thank you.

21 MR. DELLINGER: Number 98.

22 SPEAKER: Good morning. I'm Jim Roewer,

1 executive director of the Utility Solid Waste
2 Activities Group, or USWAG, an association of over
3 100 electric utilities and trade associations
4 that's been working with the EPA for nearly three
5 decades regarding the agency's implementation of
6 the Bevill Amendment for coal combustion
7 residuals, or CCRs. I appreciate the opportunity
8 to speak today to debunk some myths about CCRs.

9 I'll leave it to others directly engaged
10 in ash utilization to shatter the myth that
11 Subtitle C hazardous waste regulation will
12 actually increase beneficial use.

13 The first myth I want to dispel is that
14 industry wants to preserve the status quo. This
15 is not correct. In fact, we support the
16 development of federally enforceable regulations
17 under RCRA's Subtitle D non-hazardous waste
18 program.

19 The second myth is that EPA's Subtitle D
20 option is only guidance. This is not correct.
21 Under the Subtitle D option, EPA would issue
22 federal regulations specifically designed for CCR

1 disposal units. These regulations would be
2 directly enforceable by the states and the public,
3 and violators would be subject to significant
4 civil penalties. These are real regulations with
5 teeth, and it is misleading to suggest otherwise.

6 Some of the myths floating around are
7 just plain silly, especially that exposure to coal
8 ash is riskier than smoking cigarettes. This
9 claim is based on bad science and is misleading
10 for the following reasons: First, the coal ash
11 risks cited in this analogy are greatly
12 exaggerated. In fact, there is a 90 percent
13 probability that the risk is lower.

14 If we use a more realistic coal ash risk
15 level, one that has an equal chance of being
16 higher or lower -- a middle estimate, if you will
17 -- the cancer risk from coal ash exposure is
18 actually lower than the cancer risk from drinking
19 water meeting the current federal drinking water
20 standard for arsenic, and lower than the
21 comparison's incorrect and greatly underestimated
22 lifetime cancer smoking risk. Second, the analogy

1 is comparing apples and oranges. It is
2 inappropriate to compare the prevalence of cancer
3 from smoking that reflect the actual number of
4 cancers caused by smoking with hypothetical
5 lifetime cancer risks from coal ash that are based
6 on greatly exaggerated conservative assumptions.

7 The comparison also greatly
8 underestimates the actual risk from smoking in an
9 attempt to make the risks from coal ash appear so
10 much greater. In fact, the actual lifetime risk
11 of lung cancer from smoking is greater than 10,000
12 per 100,000 smokers, more than 10 percent. This
13 risk is more than 1,000 times greater than the
14 hypothetical risk from coal ash.

15 We have to base any regulatory decision
16 on sound science and not trumped-up or inaccurate
17 charges. The truth is that the actual risks from
18 CCRs can be properly addressed by federal
19 non-hazardous Subtitle D regulations.

20 There is simply no reason for the EPA to
21 pursue the Subtitle C approach when it can develop
22 federally enforceable rules under the less

1 controversial, yet equally protective, Subtitle D
2 non-hazardous waste program. Thank you.

3 MR. DELLINGER: Thank you. Number 200.

4 SPEAKER: Good morning. My name is Tom
5 Shaw. I am with Harsco Corporation, a global
6 industrial services company with over 22,000
7 employees. We have multiple operations in Texas,
8 two of which are dedicated to processing coal slag
9 as an abrasive blasting grit or roofing granule.

10 Since the 1930s we have been a green
11 recycler of boiler slag. Boiler slag is formed
12 when extremely hot molten coal ash is quenched
13 with cold water, and the coal ash immediately
14 becomes a vitrified, amorphous solid, glassy
15 matrix known as boiler slag.

16 Vitrification renders the material
17 inert. In a chemical process using heat, it
18 transforms the mixture into a soluble liquid which
19 solidifies when cooling. Because slag is
20 vitrified, it is very durable and an
21 environmentally stable material that permanently
22 immobilizes its chemical constituents in a glassy

1 amorphous which remains stable, even when broken
2 in small fragments during abrasive blasting, as
3 evidenced by x-ray diffraction and TCLP data.

4 Because it is beneficially reused,
5 boiler slag is not commonly stored in surface
6 impoundments. We regularly test our boiler slag
7 and it has always passed TCLP testing and has
8 never exhibited any hazardous waste
9 characteristics. Our testing of pre- and
10 post-blast boiler slag, an EPA standard TCLP test,
11 has confirmed that the resulting leachate meets
12 drinking water standards.

13 The scientific information about boiler
14 slag and its physical properties have not changed
15 since we began our operations more than 70 years
16 ago. Regulating boiler slag destined for disposal
17 as a special waste under Subtitle C would unfairly
18 stigmatize beneficially reused boiler slag, as is
19 already evident by competitor actions. We have
20 seen no evidence that boiler slag meets any
21 threshold or regulation under Subtitle C, and we
22 are not aware of any environmental problems linked

1 to our products.

2 As an abrasive, we are the primary
3 alternative to silica sand, an abrasive that
4 presents serious worker health concerns. We
5 recognize the need for proper environmentally
6 sound standards regulating the small percentage of
7 boiler slag that is discarded rather than
8 beneficially reused.

9 Accordingly, consistent with the amounts
10 used of nearly 30 states and EPA's two previous
11 determinations evaluating proper management of
12 coal combustion by-products, we support
13 appropriate and reasonable disposal standards for
14 any waste boiler slag under Subtitle D of RCRA.
15 Thank you.

16 MR. DELLINGER: Thank you. Would
17 Numbers 9, 10, 11, 12, and 13 please come forward.
18 Number 9.

19 SPEAKER: Good morning, panel. My name
20 is John Rath. I'm a dad. I'm a citizen in this
21 local area. I'm an environmental activist. And
22 I'm honored to be a member of the Lone Star Sierra

1 Club chapter which covers Texas and surrounding
2 states. I represent about 30,000 members, six to
3 7,000 of those being in the Dallas-Fort Worth
4 area. I want to thank you for being here, for
5 listening to us, and for the leadership that
6 you've shown on a number of environmental issues
7 over the past couple years.

8 The Sierra Club strongly, strongly
9 supports Subtitle C of RCRA for coal ash regulations, I
10 think, for the following reasons. Number one, the
11 categorization, on a national level, consistent
12 across all states, being hazardous waste; the
13 federally enforceable standards that are
14 consistent across the United States; the coal ash
15 pond phaseout; the national minimum standards
16 addressing contamination from oil drums; and
17 cradle-to-grave management. Those are things that
18 are very, very important, in our opinion, to
19 properly regulate coal ash, which is toxic.

20 I love to hear all the statistics being
21 thrown at you. I'll let you be the judge of
22 whether or not they're toxic. I think with your

1 energy and initiatives to prioritizing the safety
2 of our citizens, I have no doubt that our safety
3 will be guarded by your decisions. Thank you very
4 much. Again, please -- please adopt Subchapter C.
5 Thank you.

6 MR. DELLINGER: Thank you. Number 10.

7 SPEAKER: Good morning, and thank you
8 for the opportunity to address this important
9 issue. My name is Michael Brune. I'm the
10 executive director of the Sierra Club, the
11 nation's largest and oldest grassroots
12 environmental organization. I'm here today to
13 urge EPA to approve the rule that will ensure that
14 the by-products of burning coal is handled like
15 the toxic substance that it is.

16 Toxic coal ash poses serious risks to
17 human health and the environment. Given the
18 severity of these risks, enforceable federal
19 safeguards, not suggested state guidelines, are
20 necessary to protect our communities. Both EPA
21 and the National Academy of Sciences have years
22 of research showing that toxic coal ash is

1 becoming increasingly toxic. The hundreds of
2 toxic coal waste dumpsites across the country pose
3 very real threats to the health of millions of
4 people living in communities near those sites.

5 For decades, the coal industry has told
6 the American people that coal ash is safe, just
7 like tobacco executives told Americans that
8 cigarettes don't cause cancer, just like the auto
9 industry told us that installing catalytic
10 converters would wreck the industry.

11 If these examples and the BP oil
12 disaster and the Tennessee coal ash disaster have
13 taught us anything, it's just that we can't take
14 polluters' word for granted anymore. Coal ash
15 contains a long list of dangerous toxins,
16 including arsenic, selenium, lead, and mercury.
17 These heavy metals have been linked to organ
18 disease, cancer, respiratory illness, neurological
19 damage, and developmental problems. Do we really
20 want these chemicals in our water supply?

21 Despite coal ash's dangerous
22 characteristics, it is currently less strictly

1 controlled than household garbage. That's right.
2 Coal ash is contaminated with dozens of chemicals
3 known to cause serious harm to people and the
4 environment, and it's treated with no more care
5 than an empty bag of pretzels.

6 Clearly, our current state standards are
7 inadequate. This is why we're here today. It's
8 why there are hundreds of people turning out at
9 every hearing on this issue across the country.
10 That's why you will receive hundreds of thousands
11 of comments over the next several months.

12 We need EPA, we're counting on EPA, to
13 protect the quality of our air, our water, and our
14 communities. Effective coal ash regulations must
15 require basic protections for communities, such as
16 composite liners, water runoff chemicals,
17 groundwater monitoring, and financial assurance
18 that companies pay to clean up what they pollute.

19 Again, I want to thank you for the
20 opportunity to speak about this issue. I just
21 wanted to say that coal ash is toxic. It's
22 hazardous. It's poisonous. Please regulate it as

1 such. Please adopt Subtitle C. Thank you.

2 MR. DELLINGER: Number 11.

3 SPEAKER: Good morning. My name is
4 Kevin Walgenbach. I'm the director of Government
5 Affairs for the National Ready Mixed Concrete
6 Association. On behalf of NRMCA, I would like to
7 thank the EPA for conducting this listening
8 session on this very important issue.

9 As a matter of scale, ready mixed
10 concrete consumes 75 percent of all portland
11 cement used in this country. We represent over
12 1,500 concrete producers and 50 state-affiliated
13 organizations. Concrete is the most widely used
14 construction material in the world and is produced
15 and consumed in every congressional district in
16 our country.

17 With regard to fly ash, a major portion
18 of coal combustion residuals, the ready mixed
19 concrete industry is the largest beneficial user.
20 Surveys of ready mixed concrete producers show
21 that over 55 percent of all ready mixed concrete
22 contains fly ash.

1 Fly ash is used in combination with
2 portland cement to impart the following benefits
3 to concrete: Increased durability and service
4 life of structures; reduction in waste sent to
5 landfills; reduction in raw materials extracted,
6 energy for production, and air emissions,
7 including CO₂; and lower concrete material cost.

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

15 Based on the concrete industry's
16 extensive use of and reliance on fly ash in
17 concrete, and after examining EPA's proposed rule,
18 NRMCA has determined the RCRA Subtitle C
19 designation for CCRs bound for disposal, while
20 retaining exemptions for beneficial use, will lead
21 to the following unintended consequences for the
22 concrete industry: One, an increase in production

1 costs and the cost of construction; two, an
2 increase in potential liability for concrete
3 producers.

4 Currently, the regulatory status of
5 small amounts of fly ash in waste streams from
6 concrete production and construction is unclear.
7 Any proposed rule should explicitly state that
8 such small waste streams from the concrete
9 industry are exempt and not subject to such
10 regulations. There will also be litigation which
11 will target existing structures built with fly ash
12 concrete.

13 Three, potentially stricter state laws
14 impacting beneficial use. For example, a proposed
15 rule in the state of Maryland states that any
16 product containing fly ash is to be disposed of in
17 a special facility authorized to accept fly ash.
18 More states will inevitably establish similar
19 laws.

20 Four, the potential elimination of fly
21 ash concrete. Hazardous waste stigma and fear of
22 liability will drive specifying engineers,

1 architects, and end users to disallow the use of
2 fly ash in concrete. For example, the Los Angeles
3 Unified School District has banned the use of fly
4 ash until the EPA has finalized its decision.

5 Lastly, five, there will be a drastic
6 reduction in the durability of our nation's
7 infrastructure if fly ash in concrete is
8 disallowed. Thank you for hearing my concerns on
9 behalf of the ready mixed concrete industry.

10 MR. DELLINGER: Thank you. Number 12.

11 SPEAKER: Good morning. I'm Rose Mary
12 Crawford from Shawnee, Oklahoma. In February of
13 2009, I agreed to assist the residents of Bokoshe
14 with finding their voice and having it heard, so
15 that people would be educated to the conditions
16 that they're living in in Bokoshe.

17 When Making Money Having Fun proposed a
18 fly ash pit, Bokoshe residents were very concerned
19 about the impact that the fly ash pit would have
20 on their water. Making Money Having Fun sent a
21 letter saying that federal and state laws were
22 very clear as to the prevention of the

1 contamination of groundwater and surface water and
2 the runoff entering into the natural streams.

3 That seemed to not be true, because in
4 2004 the Department of Mines and the Oklahoma
5 Corporation Commission let the Making Money Having
6 Fun company deposit water from oil and gas wells
7 into the fly ash pit. The conditions were that
8 the water was running off the fly ash pit
9 continuously, yet the Oklahoma Department of Mines
10 inspector went out, month after month, and
11 reported that there was no water leaving the site,
12 which wasn't true.

13 The state agencies ignored us until
14 October of 2009. We went to a public meeting of
15 the Water Quality Advisory Council, which is part
16 of the ODEQ. They met us at the door and they
17 stated to us, "We know who you are, we know what
18 you want, and we can't help you." However, we had
19 a local TV station coming to report on what we
20 were to say to -- Bokoshe residents were going to
21 say to the ODEQ. So they decided that they could
22 speak. The good part of that is that they did

1 listen.

2 The next morning they had a meeting.
3 The executive director had a meeting with the head
4 of the water department, and they made a decision
5 that what they could do for Bokoshe is call the
6 EPA, which they did.

7 And Kent Sanborn did come out, he did an
8 investigation, and he did find that Making Money
9 Having Fun was violating the Clean Water Act.
10 December 10, 2010, the EPA issued a cease and
11 desist order.

12 We have -- our law enforcement's calling
13 you, and we need help. That's one of the reasons
14 why we're asking. Our system seems to be so
15 broken that even our regulators call for you.

16 So we're asking you to pass Subtitle C
17 and to quickly move forward to regulation to --
18 regulations for disposal of fly ash in lime pits.
19 Thank you very much.

20 MR. DELLINGER: Thank you. Number 14.

21 SPEAKER: I'm Jean McMahon. I live in
22 Fort Gibson, Oklahoma. I want to thank the EPA

1 for being here.

2 In listening to the industry talk, I
3 think Ms. Jackson's got a hard time ahead of her
4 because it sounds like James Inhofe talking about
5 CO2. He's got all kinds of scientists, like two,
6 who will say greenhouse gases don't cause global
7 warming, but that's all the media will play.
8 There are like 3,000 scientists who can prove
9 otherwise. So it's a problem with the media and
10 who's got the power. So I'm glad you're listening
11 to the people. I hope that you decide to make --
12 to rule that coal ash is a hazardous substance, so
13 it will be more -- so it will be monitored, at
14 least.

15 My first concern with the coal ash was
16 back when I went through Tennessee and I saw -- I
17 had heard and seen about the rivers of
18 coal-polluted ash going through the countryside.
19 When I drove, I saw little spots of, looks like
20 ash, and I said, oh, I guess that's how they get
21 rid of it. You think, okay, now the government's
22 going to do something; we're going to take care of

1 this stuff; this isn't going to happen again. And
2 nothing's happened.

3 Then, in my hometown of Fort Gibson,
4 they had a newspaper article, "Expert: Fly Ash
5 Dump Could Be a Problem." There is a cement
6 company who takes the coal ash from Muskogee coal
7 plant by -- and that plant's really old. It's
8 been there since 1930. So I went there. This is
9 some of the junk that comes down from the -- they
10 put the waste in these caves, and it's elevated.
11 It's elevated, and it goes into the river. And
12 the river is where Fort Gibson gets their water.

13 It's one thing when you hear about it,
14 but when it happens to you, you say somebody is
15 there watching out. But guess what? Nobody is.
16 Oklahoma is not going to do it. You can't do it
17 state by state. Oklahoma won't regulate mercury.
18 They're waiting for the feds to do it.

19 All our lakes have a problem with
20 mercury contamination, and people -- pregnant
21 women don't know that. There are a lot of
22 children with mental disabilities. Mercury causes

1 that. Thank you.

2 MR. DELLINGER: Number 14.

3 SPEAKER: My name is Harlan Hentges.

4 I'm a lawyer for the town of Bokoshe, population
5 450. Please hear today two messages from Bokoshe.
6 The first message is that state regulation has
7 failed due to dishonesty. With regard to Bokoshe,
8 state regulators say no fly ash or water can be
9 seen leaving the site, when, in fact, fly ash and
10 water are obviously leaving the site. Regulators
11 say, this is mine reclamation, when clearly, this
12 is fly ash disposal. This is a surface
13 impoundment.

14 These dishonest statements give state
15 agency directors an excuse to allow the illegal
16 dumping to continue. They let the dumping
17 continue due to pressure from elected officials.
18 And the elected officials apply that pressure to
19 satisfy industry campaign donors.

20 The regulation of fly ash has become a
21 matter of politics. This situation has created a
22 deeply personal, difficult, and uphill battle for

1 the people of Bokoshe. Frankly, you can't do much
2 to help.

3 But the one thing EPA can do is treat
4 fly ash the same as it treats other hazardous
5 waste. Apply the well-established regulations of
6 Subtitle C and do not leave us with subjective,
7 vague, and virtually unenforceable state
8 regulations that we have now.

9 The second message from Bokoshe is do
10 not let beneficial use become an exception that
11 swallows the rule. In Bokoshe, we know how
12 industry misuses the term "beneficial use." When
13 industry talks about beneficial use in Bokoshe, it
14 means dumping oil and gas wastewater into fly ash
15 and building a 20-acre mound of fly ash 55 feet
16 high. This is what industry means in Bokoshe when
17 it says beneficial use.

18 Now, we know there are legitimate uses
19 of fly ash, but recognizing that fly ash is
20 hazardous won't change those uses. The energy
21 industry specializes in selling extraordinarily
22 dangerous products directly to consumers.

1 Electricity, natural gas, and gasoline can
2 accidentally kill you in an instant in a ball of
3 fire.

4 In contrast, fly ash only has the
5 potential to kill you slowly over a long period of
6 time. The energy industry should not have a
7 problem selling fly ash as a product, even if EPA
8 requires that fly ash be disposed of properly when
9 it is a waste -- a hazardous waste.

10 On behalf of the town of Bokoshe and its
11 450 residents, we strongly urge EPA to strictly
12 define beneficial use and apply Subtitle C
13 regulations. Thank you.

14 MR. DELLINGER: Thank you. Number 15.

15 SPEAKER: Good morning. My name is
16 David Miller. And I'm a manager in the
17 environmental services division of American
18 Electric Power. AEP ranks among the nation's
19 largest generators of electricity, owning nearly
20 38,000 megawatts of generating capacity in the
21 U.S. and serving approximately 5.2 million
22 customers throughout AEP's eleven states service

1 territory. AEP operates a significant number of
2 CCR disposal facilities in a manner that we
3 strongly believe is protective of both public
4 safety and the environment. AEP and our customers
5 will be directly impacted by the final CCR rules.

6 AEP supports the development of federal
7 regulations for CCRs under RCRA's Subtitle D
8 non-hazardous waste program. AEP believes the
9 Subtitle D prime option, if revised appropriately,
10 would be the best path forward and establishes an
11 environmentally protective program without
12 destroying CCR beneficial use and imposing
13 unnecessary regulatory cost on power plants,
14 threatening jobs, and increasing electricity costs
15 for our customers.

16 The Subtitle D prime option is preferred
17 because it would not require automatic closure of
18 CCR service impoundments that are operating in a
19 manner that is fully protective of human health
20 and the environment. AEP agrees that disposal
21 units that are not fully protective must either be
22 upgraded or closed. However, there are many CCR

1 service impoundments which are perfectly safe and
2 protective of the environment. There is no reason
3 why these units should not be allowed to continue
4 operating.

5 AEP strongly opposes the regulation of
6 CCRs as hazardous waste under Subtitle C of RCRA.
7 Even though CCRs would be labeled special wastes
8 as proposed, EPA openly admits that CCRs special
9 waste would be subject to full hazardous waste
10 controls just like any other listed waste. AEP
11 believes regulating CCRs as a hazardous waste
12 would essentially end CCR beneficial reuse.

13 In a letter to the EPA administrator
14 dated December 22nd, 2009, ASTM International
15 stated, we strongly encourage the EPA to consider
16 the negative implications of classifying fly ash
17 as a hazardous waste under Subtitle C of Resource
18 Conservation Recovery Act. Designation of fly ash
19 as a hazardous waste will require the ASTM
20 standard for use of fly ash in concrete be revised
21 to reflect this classification.

22 A hazardous waste designation, even with

1 an exclusion for beneficial use, would cause the
2 ASTM standard for fly ash to be removed from
3 project specifications due to concerns for legal
4 exposure, product liability, and public
5 perception. This will likely result in little or
6 no fly ash being used for beneficial use in
7 concrete or other applications that supports the
8 sustainability objectives, end of quote.

9 In addition, AEP has ash disposal
10 facilities that do not meet the current siting
11 criteria for hazardous waste disposal facilities
12 and, therefore, would not be able to continue to
13 receive CCR should EPA choose to regulate CCRs as
14 a hazardous waste under Subtitle C of RCRA. The
15 power plants that these facilities serve would
16 have to transport CCRs great distances to
17 locations that meet the hazardous waste disposal
18 facility siting criteria or commercial facilities.
19 There is much concern that sufficient commercial
20 hazardous waste landfill capacity wouldn't be
21 available and be depleted quickly. This would
22 dramatically increase disposal costs in our

1 customers' electricity rates without environmental
2 benefit. Thank you.

3 MR. DELLINGER: Thank you. Number 16.

4 SPEAKER: Good morning. I'm Linda
5 Whelan, senior director of energy and
6 environmental policy for Dynegy. Dynegy produces
7 and sells electric energy in the Midwest,
8 Northeast, and West Coast. Dynegy's power
9 generation portfolio includes over 3,650 megawatts
10 of coal-fired generation, which we -- which will be
11 subject to EPA's final CCR rule. Dynegy supports
12 the federal regulation of CCRs, and urges EPA to
13 adopt a rule that will be protective of human
14 health and the environment and that does not
15 unduly burden the economy or threaten jobs in
16 electrical liability.

17 EPA proposed just such an approach in
18 either the proposed RCRA Subtitle D or D prime
19 non-hazardous programs. Dynegy's concern is that
20 EPA has also proposed a very burdensome and costly
21 approach that the agency appears to favor, mainly
22 RCRA Subtitle C regulation as hazardous waste.

1 Dynegy opposes Subtitle C's regulation of CCRs.

2 EPA itself has publicly stated there is
3 no difference in the storage and disposal
4 requirements under proposed Subtitle D
5 non-hazardous and proposed Subtitle C hazardous
6 waste approaches, yet EPA continues to advocate
7 the Subtitle C approach, even though it will have
8 the negative consequences of imposing tremendous
9 additional costs upon the industry, increasing the
10 cost of power to consumers, causing significant
11 job losses, and destroying the beneficial use of
12 coal ash through the stigma and liability concerns
13 of regulating CCRs as hazardous.

14 The EPA stated reason for favoring the
15 Subtitle C hazardous approach is concern regarding
16 enforcement capabilities, yet federal regulation
17 of CCRs as non-hazardous provides extensive
18 enforcement avenues. First, most states already
19 have robust regulatory programs that apply to CCR
20 management. Many states are likely to adopt
21 Subtitle D requirements. Even in the absence of a
22 state program, CCR facilities must meet Subtitle D

1 requirements. They are not optional,
2 unenforceable guidelines.

3 Two, RCRA Section 7002 requires that any
4 person, including states, can bring a civil
5 enforcement action against any facility for
6 violating any Subtitle D requirement. EPA has
7 also proposed the extensive public release of CCR
8 inspection and monitoring data to further enable
9 this provision.

10 Three, under RCRA 7003, EPA can also
11 enforce Subtitle D requirements whenever a CCR
12 facility may present an imminent and substantial
13 danger to health or the environment. The
14 threshold for EPA to abuse this authority is low
15 as the courts have interpreted RCRA 7003 broadly.

16 And four, to ensure compliance of CCR
17 operations, EPA also has separate enforcement
18 authority under the federal Clean Water Act, as
19 does the office of surface mining under the
20 federal Surface Mining and Reclamation Enforcement
21 Act.

22 In closing, Dynegy supports the federal

1 regulation of CCRs as non-hazardous waste. Thank
2 you.

3 MR. DELLINGER: Thank you. Number 17.

4 SPEAKER: Good morning, ladies and
5 gentlemen. My name is Matt Skinner with GSE
6 Lining Technology, a company based in Houston,
7 Texas. Today I'm representing the Geosynthetics
8 Materials Association, a trade group of 80
9 companies that manufacture, distribute, and
10 install geosynthetic materials, including liner
11 systems. The industry employs 12,000 people
12 throughout the United States.

13 Our comment to EPA is very simple. We
14 request that EPA mandate the geosynthetic lining
15 of coal ash storage facilities using composite
16 liner systems. In the shortest terms, use liners,
17 specifically composite liners. Why? Because they
18 work. Concerns of safety regarding CCRs are
19 mitigated if the landfill storage sites are lined
20 with a composite liner system of a geomembrane and
21 a geosynthetic clay liner. A composite liner
22 system prevents the leachate from entering the

1 environment. Safety concerns regarding surface
2 impoundments are also mitigated if the
3 impoundments are lined with a composite liner
4 system.

5 The American Society of Civil Engineers
6 does a regular report card on America's
7 infrastructure. For the last three report cards
8 representing over a decade, solid waste has

9 received the highest grade of any category. My
10 industry does a great job of taking America's --
11 treating America's waste, taking care of it
12 properly and storing it, and protecting the
13 environment. The materials, technology, and
14 people exist. The engineers, engineering
15 techniques, and standards the general contractors
16 and installers who can build the proper
17 facilities, and the regulators and inspectors who
18 assure the work is done correctly. We urge EPA to
19 use what exists and what is working today.

20 Further, our industry has continuously
21 improved over time, and EPA has been a significant
22 part of that effort. Over the years, EPA has

1 commissioned nearly 80 studies of the design and
2 performance of lining systems. We specifically
3 call your attention to a 2002 study titled:
4 Assessment and Recommendations for Optimal

5 Performance of Waste Containment Systems. That
6 study contains a great deal of pertinent
7 information on how to construct containment
8 systems. Most illustrative for today is a graph,
9 which I'll provide for your review, charting the
10 leakage rate of different designs over the life
11 cycle of nearly 200 facilities. The composite
12 liner system of a geomembrane and geosynthetic
13 clay liner was demonstrated to have the lowest
14 leakage rate over all life cycle stages including
15 a near zero leakage rate after the facilities were
16 closed and final cover placed. Our materials
17 work.

18 Use of composite liner system will
19 achieve the EPA's mission to protect human health
20 and environment for all Americans. A brief word
21 on the hazardous versus non-hazardous question.
22 While coal ash does contain heavy metals, it lacks

1 the traditional characteristics of hazardous
2 materials, radioactivity, or the presence of
3 infectious medical waste, et cetera. In the
4 opinion of our trade organization, coal ash can be
5 properly stored using Subtitle D regulations, a
6 non-hazardous solid waste designation with
7 composite liner systems. Thank you.

8 MR. DELLINGER: Thank you. Number 18.
9 And while Number 18 is moving to the podium, could
10 Numbers 19, 109, 201, and 22 move forward.

11 SPEAKER: Good morning. My name is
12 Edward Kahl. And I'm a general executive, coal
13 combustion products for Ameren Corporation.
14 Ameren will be directly impacted by the final coal
15 combustion residual rule and very much appreciates
16 the opportunity to be here today and speak on this
17 proposal. Ameren is an investor-owned utility
18 based in St. Louis, Missouri that operates eleven
19 coal-fired power plants in the states of Missouri
20 and Illinois. And as a consequence, generates
21 over two million tons of coal combustion products
22 each year. Ameren is a member of the Utility

1 Solid Waste Group and American Coal Ash
2 Association. And we support the comments provided
3 by both of those organizations.

4 I have direct experience, knowledge, and
5 responsibility in the beneficial utilization of
6 coal combustion products. Over the past ten
7 years, Ameren has developed a robust CCP recycling
8 program. For example, we found so many uses in
9 the years 2007 and 2008 that we were able to
10 beneficially recycle more than 100 percent of what
11 we produced. This was only possible because we
12 were able to reclaim past production and use it.

13 In 2009, the amount of ash recycled
14 dropped to 70 percent. And the projections for
15 2010 is around 42 percent. Certainly, the
16 reduction in our ability to recycle CCPs
17 beneficially is a reflection of the poor state of
18 the economy.

19 However, since the issuance of the EPA's
20 proposed rule that seeks to regulate CCRs, I have
21 fielded a number of phone calls from current users
22 questioning the ability to use CCPs. I witnessed

1 anxious citizens challenging the permitting of a
2 state-of-the-art landfill for CCPs. And I
3 attended a Corps of Engineers public meeting where
4 citizens groups refuted the Corps of Engineers'
5 ability to use encapsulated CCPs to strengthen a
6 levee system. The stigma created by the EPA
7 proposed rule and threat of a hazardous
8 classification has already created serious
9 negative business implications. This stigma is
10 real for me.

11 Further, I want to state our strong
12 opposition to the Subtitle C opposite -- option.
13 I agree with the views of a bi-partisan group
14 comprised of 165 members of Congress, 45 U.S.
15 Senators, virtually all the states, other federal
16 agencies, municipal and local governments, CCP
17 marketers, beneficial users, unions, state
18 agencies, and many third-parties which have
19 maintained that regulating CCPs under RCRA's
20 hazardous waste program is simply regulatory
21 overkill that would severely cripple the CCP
22 beneficial use industry.

1 After reviewing the eight Bevill study
2 factors, I have concluded that there is simply no
3 reason to -- to pursue this approach when other,
4 better options offer the same degree of protection
5 without the fears that result from regulating CCPs
6 under Subtitle C. Thank you very much.

7 MR. DELLINGER: Thank you. Number 20.
8 I'm sorry. 109. Excuse me, Number 109. No 109.
9 Number 201.

10 SPEAKER: Good morning. My name is Tom
11 Zorenda. And a lot has already been said --
12 probably most of it has been said -- but I drove
13 over here in this rain, and I'm going to get my
14 words in.

15 I just want to say that I'm a husband
16 and father of two, chemical engineer, and worked
17 in the hazardous waste industry for ten years.
18 And I have a lot of sympathy for the people of
19 Kingston, Tennessee, and also what we heard this
20 morning in Oklahoma. I think it's an illustration
21 that there has been some negligence from a
22 standpoint of storage of this material. And I

1 believe that the agency is working very well to
2 provide two good options to -- to address that
3 issue.

4 But my concern is that we may throw the
5 baby out with the bath water. And there are some
6 facts that people should know who are sitting here
7 today that the EPA has very stringent testing on
8 determining whether material is hazardous or not.
9 And there's characteristic waste and there are
10 listed waste. And now we're in a new area called
11 special waste. I'm not sure what that means. But
12 for people not familiar with that, this -- these
13 materials are not classified as hazardous or
14 toxic. We've heard people say that. These are --
15 these are non-hazardous materials, but when
16 they're not stored properly, you can see what
17 happens. So we do need to do something
18 differently on storage.

19 And I believe that the Subtitle D option
20 really addresses what the country needs from a
21 standpoint of making sure these materials are
22 safely stored, but not creating a hazardous stigma

1 which will really undo much of the good that's
2 been done in having these materials used usefully
3 back in industry.

4 And we heard about the Bevill amendment.
5 And while that's still going to be intact, it
6 doesn't do enough. And you know, we're a
7 litigious society. We've got a lot of lawyers out
8 there. And you know what's going to happen if we
9 try to use in beneficial uses a non-haz material
10 that's being called hazardous by our government,
11 we're going to -- we're going to see a lot of
12 people just back away. The producers of this
13 material are going to say, you know what, it's
14 just going to be a lot cheaper if we don't let the
15 recycling happen. We don't want that material to
16 get back into the system. So we have to be very
17 careful in creating this stigma.

18 So what I would recommend is that we go
19 ahead with the Subtitle D option, which ensures --
20 as we heard from our commercialized guy back there
21 with the liner -- put them in the proper landfill
22 so it's not dusting and it's properly captured.

1 But still, let the material go back into reuse
2 which has been, like somebody mentioned, a really
3 good example of how when industry puts their mind
4 to it, we can recycle materials. A very good
5 program. So thank you for your time. And thank
6 you for this opportunity, I really appreciate it.

7 MR. DELLINGER: Thank you. Number 19.
8 Number 19.

9 SPEAKER: I'm Ed Watson, senior vice
10 president of production for Acme Brick Company.
11 Acme is based in Fort Worth, Texas, and has clay
12 brick and concrete manufacturing facilities
13 located in seven states, most in the south central
14 United States. Acme has direct sales distribution
15 in four additional states. Our total employee
16 head count exceeds 3,000 during normal economic
17 times. I appreciate this opportunity to address
18 this public hearing and to provide comments
19 regarding Acme's utilization of coal combustion
20 residuals in our manufacturing process.

21 Acme has successfully incorporated
22 bottom ash and fly ash as a substitute for other

1 raw materials in the body of our finished product
2 for over 25 years. In the case of clay brick
3 manufacturing, we've utilized bottom ash produced
4 at four different coal-fired generation plants, as
5 a substitute for raw clay at six of our 24 brick
6 plants. Bottom ash is an excellent body additive
7 that helps to stabilize the shrinkage of the brick
8 body and assist in the -- in the drying and firing
9 stages of the brick manufacturing process. And it
10 helps to lower the consumption of fuel used to
11 fire the brick.

12 One of our largest plants, which employs
13 close to 100 employees, has successfully -- was
14 unsuccessful in making a durable fired brick until
15 we incorporated bottom ash in 1986. If bottom ash
16 were not available, we'd be required to mine
17 additional raw clay and fire it in a rotary kiln
18 to produce a calcined material for use. Over the
19 course of the past 24 years, a single Acme plant
20 has produced over 2 billion face brick; thereby --
21 and has consumed approximately 640,000 cubic yards
22 of bottom ash; thereby conserving that same volume

1 of virgin raw materials and millions of cubic feet
2 of natural gas. Our utilization of this raw
3 material also means that the power company is not
4 required to dispose of the same volume in a
5 landfill.

6 In addition to the preceding example,
7 Acme consumes significant volumes of bottom ash
8 and fly ash at our seven concrete block plants.
9 Bottom ash can be used as a replacement for other
10 virgin raw materials, such as sand, gravel, or
11 exposed -- or expanded lightweight aggregate. And
12 fly ash can be substituted for a high percentage
13 of portland cement used in manufacturing of CMUs.
14 During the -- the process, CCRs are incapsulated
15 in the body of the product. We're not aware of
16 any issues with brick or block containing CCRs
17 having any hazardous characteristics. This means
18 that there are no known hazards associated with
19 the use of products which have been manufactured
20 using CCR.

21 We're supportive of the adoption of
22 Subtitle D for this regulation. If industry were

1 able to utilize CCRs and overcome potential market
2 impacts associated with using waste designated

3 under Subtitle C, would likely require consumers
4 to implement stringent controls, governing
5 disposal, transportation, and so forth of this
6 material. The actual planning and direct
7 implementation of solid waste programs under
8 Subtitle D remains a state and local function.
9 This approach allows states to devise programs to
10 deal with site-specific conditions and needs.
11 Acme believes this arrangement is preferred over
12 stronger federally controlled programs that cannot
13 effectively deal with the matters specific to
14 state and local conditions. Thank you for hearing
15 my comments.

16 MR. DELLINGER: Thank you. Number 22.
17 Is Number 109 in the room? Can you come forward,
18 please?

19 SPEAKER: Good morning. My name is Mike
20 Kezar. I'm the general manager of San Miguel
21 Electric Cooperative, a rural electric cooperative
22 generation facility located in south Texas. San

1 Miguel generates power for the benefit of its
2 member cooperatives who serve approximately
3 570,000 end user member owners in 114 Texas
4 counties. The San Miguel facilities were
5 constructed in the late 1970's during a time when
6 public policy favored the use of coal for
7 generating electricity. And San Miguel's members
8 invested significant resources into the generating
9 plant and related facilities, including the
10 adjacent surface mine.

11 As a not-for-profit cooperative, those
12 member owners bear all of the costs of owning and
13 operating the San Miguel facilities, including the
14 costs associated with regulations such as the CCR
15 rule currently proposed by the EPA. San Miguel is
16 willing to support the development of federal
17 regulations for CCRs under RCRA's Subtitle D
18 non-hazardous waste program. Furthermore, we
19 believe that the Subtitle D prime option is the
20 best -- best pass forward. And the states should
21 be allowed to take the lead in the implementation
22 of the program.

1 San Miguel is opposed to using the
2 Subtitle C approach. Proposed controls for CCRs
3 are virtually identical under the C and D
4 approaches, and they would be expected to provide
5 the same levels of protection. However,
6 regulating coal ash under the hazardous waste
7 rules, would impose unnecessary regulatory costs
8 on power plants like San Miguel, threatening jobs
9 and increasing electricity rates.

10 As previously stated, San Miguel's
11 member owners, the predominantly rural end of the
12 line users of electricity, bear the cost of owning
13 and operating the facilities. And any increase in
14 a regulatory cost will go directly to the rates
15 they pay for electricity.

16 In conclusion, we agree with the many
17 others who are already on record as opposing the
18 Subtitle C approach. We have maintained that
19 regulating CR -- CCRs under RCRA's hazardous waste
20 program is simply regulatory overkill. There is
21 just no reason to pursue this approach when the
22 Subtitle D prime option in coordination with state

1 programs offers the same degree of protection
2 without the attendant risks and burdens of
3 Subtitle C. Thank you.

4 MR. DELLINGER: Thank you. Numbers 23,
5 24, 25, 202 and 27 come forward. Number 23,
6 please.

7 SPEAKER: I am Diane Reece. I teach
8 kindergarten in the morning, fifth and sixth grade
9 science in the afternoon at Bokoshe. In 2000, I
10 took a petition around our town protesting the
11 dumping of fly ash in our community. The pit was
12 just one-half mile from my home and 1.5 miles from
13 our school. I was concerned about the dust and
14 the potential health problems. I exercise by

15 riding a bike and walking the same path that the
16 treks (sic?) would take.

17 Despite our protest, the Department of
18 Mines issued the permit. I decided to trust them
19 to protect us and I thought that fly ash was safe.
20 I was so very wrong. For the next eight years,
21 plumes of fly ash were visible for miles, and the
22 Department of Mines did nothing. The Department

1 of Mines has not assessed the health risk created
2 by the fly ash. In 2002, I was diagnosed with
3 colon cancer. I had one-third of my colon
4 removed. My neighbor who rode bikes with me died
5 of breast cancer. I continued to exercise. I was
6 diagnosed with breast cancer in 2007. I had a
7 lumpectomy, chemo, and 25 treatments of radiation.
8 Two years ago, a friend who walked with me died of
9 lung cancer. And last year, my next-door neighbor
10 was diagnosed with non-Hodgkin's lymphoma. Last
11 week, I heard about another neighbor that had
12 breast cancer. There are fifteen with serious
13 health problems within a mile of that pit.

14 At school, 9 out of my 17 sixth graders
15 have asthma. Since kindergarten, these children
16 have attended school 1.5 miles from the fly ash
17 pit. Bokoshe has a child fighting for his life
18 with leukemia and his second bone marrow
19 transplant right here in Texas. He has asked his
20 mother if he is going to die. He's only 7 years
21 old.

22 There are 450 people in the town of

1 Bokoshe. The number of health problems is
2 unusually high. And when the Department of Mines
3 approved the fly ash pit, I thought they would
4 take care of us and tell us if fly ash was causing
5 a problem. I've learned over the last 8 years
6 that the Department of Mines does not have any
7 idea what fly ash is doing to Bokoshe. The state
8 regulatory agencies have failed us. And as a
9 two-time cancer survivor, I can't afford much more
10 failure.

11 On behalf of myself, my students, and my
12 community, I'm asking you to regulate fly ash
13 under Subtitle C and impose strict and enforceable
14 rules on the handling of this dangerous waste.
15 Thank you.

16 MR. DELLINGER: Thank you. Number 24.

17 SPEAKER: Hi, I'm Molly Rooke. And I'm
18 representing the Sierra Club. I live here in
19 Dallas. And I will be providing some additional
20 talking -- some additional remarks, and I have
21 some additional personal remarks that I will
22 provide in writing later.

1 The Sierra Club applauds the stronger
2 Subtitle C option for the regulation of coal ash
3 because we need strong federally enforceable
4 standards, not state guidelines. In Texas, we
5 would especially be in fear of any weak state
6 guidelines because that would be the best we could
7 ever hope for. We need to protect our health and
8 communities from the very real and environmental
9 risks posed by toxic coal ash.

10 Both the EPA and the National Academy of
11 Sciences have years of research showing that coal
12 ash is becoming increasingly toxic. And it's
13 clear that we also can't take the polluter's word
14 that they will protect us and the environment from
15 harm. Strong federal safeguards need to be issued
16 quickly before more communities are exposed.
17 Continuing to ignore scientific and safety
18 concerns could come at a very high cost. And
19 we've seen the high cost that's already being paid
20 by people who live near coal ash. Effective coal
21 ash regulations must require basic protections for
22 communities such as composite liners, water runoff

1 controls, groundwater monitoring, and financial
2 assurance that companies pay to clean up what they
3 pollute.

4 Improved testing methods reveal that
5 coal ash is significantly more toxic than
6 originally thought, and has an increased risk of
7 leaking into waterways. The levels of pollution
8 like arsenic seeping from coal ash were found to
9 be significantly higher than what is considered
10 safe for drinking water. Concentration of metals
11 and chemicals in coal ash have been found at
12 levels many times higher than what is considered
13 hazardous -- currently considered hazardous waste.

14 Living near a coal ash site is
15 significantly more dangerous than smoking a pack
16 of cigarettes a day, according to risk assessment
17 done by EPA. People living near unlined coal ash
18 ponds have an extremely high 1 in 50 risk of
19 cancer. That's more than 22,000 times higher than
20 what EPA considers acceptable. And the toxins
21 found in coal ash have been linked to organ
22 disease, cancer, respiratory illnesses,

1 neurological damage and developmental problems.
2 Children are more susceptible to the health impact
3 of coal ash, a disturbing fact since the EPA has
4 found that millions of children live near coal
5 sites.

6 And we're -- we're -- we are definitely
7 not in favor of the weak status quo option, which
8 is Subtitle D. Thank you. And I will be
9 submitting further comments.

10 MR. DELLINGER: Thank you. Number 25.

11 SPEAKER: Hi, my name is Lloyd French.
12 I'm with Waukesha Pearce Industries, and we are a
13 construction mining equipment provider. Waukesha
14 Pearce Industries is very concerned about a
15 potential environmental protection agency ruling
16 pertaining to the regulation of fly ash, a coal
17 combustion product, as a hazardous waste product.

18 Our company has been providing heavy
19 construction, mining equipment, and services to
20 this industry for over 26 years. We are concerned
21 about the labeling of coal ash and its byproducts
22 as hazardous material in any form. Our current

1 MSDS sheets and environmental evaluation of coal
2 ash handled by our equipment indicate no levels of
3 toxicity above the regulations required for the
4 public health and safety.

5 Our company believes that attaching any
6 hazardous label to coal ash byproducts will
7 drastically reduce the ability of our industry to
8 continue perhaps the best, safest, and most
9 responsible reuse of coal ash currently known. If
10 the EPA attaches a hazardous label to coal ash
11 byproducts, the industries that we supply
12 equipment to will be forced out of business and
13 greatly reduce our ability to remain competitive,
14 along with countless jobs being lost. We feel
15 very strong about the positive economic benefit
16 this product has for our infrastructure. This
17 decision, in our minds, will have a very negative
18 impact on the economy as a whole, especially
19 during these tough times. We strongly encourage
20 your department to please review and reconsider
21 the consequences of this ruling. Thank you.

22 MR. DELLINGER: Thank you. Number 26.

1 SPEAKER: Good morning. My name is
2 Chris Lechner. I'm executive director of the
3 Precast Concrete Manufacturers Association of
4 Texas. I represent twelve Texas manufacturers of
5 prestressed, precast concrete products. Those
6 products are used in most of Texas bridges and
7 buildings, as well.

8 There are three reasons for my
9 opposition. Number one is concern regarding the
10 future availability of fly ash, a useful
11 ingredient in precast and prestressed concrete.
12 Number two is simply to question why are we
13 considering a move that adds to the waste stream
14 when we have a viable proven method of recycling
15 this resource. And three, cost is an underlying
16 implication of my comments.

17 The precast, prestressed concrete
18 industry relies on high early strength concrete.
19 Fly ash actually slows our turnaround time. But
20 it's added benefits currently outweigh the time
21 factor; important benefits such as reduced water
22 usage, improved concrete resistance to chemical

1 attack, improved concrete strength and durability.
2 Fly ash works well with Texas aggregates, rock,
3 stone, and sand, and increases the use of locally
4 available materials. The Texas Department of
5 Transportation mandates its use in precast and
6 prestressed concrete products, as well as other
7 concrete applications because of its contribution
8 to durability.

9 Currently, there is no word if they plan
10 to change their specification to exclude fly ash
11 if the classification changes. Either way, that
12 decision could leave precast manufacturers in a
13 precarious position if it is relabeled.
14 Relabeling disposal is really an all-or-nothing
15 proposal. The burden of a hazardous label by
16 association penalizes sound reuse practices and
17 puts up roadblocks to future innovation.

18 In managing the resource, we have to
19 continue to take advantage of all available
20 options for responsible disposal and use.
21 Engineers and architects rule my world. From
22 concept through construction, they are part of

1 everything we make. Just the fact that this is
2 being discussed has raised -- raised concerns of
3 availability, liability, and cost. All of a
4 sudden, an accepted and proven ingredient is
5 simply relabeled.

6 A hazardous label will twist supply and
7 demand. The label will compel producers to
8 reconsider their sales of ash products, and costs
9 will go up, supplies will dry up. Engineers and
10 manufacturers will lose its benefits and be made
11 to switch to more expensive chemical additives.

12 Maybe more oversight is warranted, but a
13 hazard tag is not a solution. It is an
14 impediment. This is a product that is needed and
15 has a manageable life cycle. Disposal issues can
16 be dealt with in a responsible manner that relies
17 on science and not fear. Thank you.

18 MR. DELLINGER: Thank you. Number 202.

19 SPEAKER: My name is David Orr. I'm the
20 chair of the Ozark Headwaters Group of Sierra Club
21 in Arkansas. And I am also founder of Arkansans
22 Against Ash Dumping. We appreciate the

1 opportunity today to support the proposed Subtitle
2 C rule that would regulate coal fly ash as a
3 hazardous waste material. In our state, the --
4 the regulatory framework is considered by many to
5 be one of the weakest in the United States. Our
6 Department of Environmental Quality has little
7 authority to take enforcement actions of any
8 significance under the Clean Water Act and other
9 -- and other environmental laws. We need help
10 from EPA and from the federal government generally
11 to put additional pressure on our state and on the
12 Arkansas Department of Environmental Quality to
13 take its responsibilities under federal
14 environmental law more seriously or else take
15 enforcement over from ADEQ and the other agencies
16 that are failing in their responsibilities.

17 And while we have concerns with failure
18 to enforce existing laws, we are here today to
19 bring to your attention a growing threat to
20 groundwater and aquifers in our state, and to our
21 streams and soils, as well. The unregulated
22 dumping of coal ash is polluting our state,

1 especially now in areas where drilling for natural
2 gas is occurring. We have the Fayetteville shale
3 formation where hydraulic fracking techniques are
4 used that cause extensive damage to aquifers,
5 streams, and soils.

6 This fracking technology uses massive
7 amounts of clean water from groundwater supplies
8 and surface water supplies in fracturing
9 underground gas-bearing rock. Water is mixed with
10 toxic drill muds, organic chemicals including
11 benzene and toluene and other heavy metals. These
12 pollutants are either left in place or pumped out
13 of the drill holes and dumped in open pits or
14 pumped down other holes and ponds, such as is done
15 in Bokoshe, Oklahoma, just across our western
16 border near Fort Smith.

17 We are now informed that fly ash is
18 being pumped into abandoned drill holes where it
19 may be leaching into adjacent groundwater
20 supplies. Because there is no regulation of ash
21 today, we have no idea how much ash is being
22 dumped into wells, nor do we know how much

1 leachate has migrated or will migrate into
2 aquifers. We have learned that Oklahoma ash is
3 being hauled into Arkansas for dumping and vice
4 versa. Clearly, there is now an interstate
5 commerce in fly ash. We must have federal
6 intervention and regulation to control the
7 proliferation of these shipments.

8 And I will have additional comments to
9 submit in written form. Thank you very much for
10 your time.

11 MR. DELLINGER: Thank you. Number 27.

12 SPEAKER: My name is Ben Franklin. I'm
13 here representing Headwaters Resources, of which
14 I'm director of technical services. Headwaters
15 Resources markets CC products for over 100 plants
16 in the U.S., marketing the materials, the ready
17 mixed cement wallboard, roofing shingles,
18 manufacturers, et cetera.

19 The use of fly ash is prevalent in most
20 all state and federal infrastructure projects.
21 It's used because it enhances the durability and
22 lowers the initial cost of the highway paving,

1 bridge decks, and all other concrete structures.
2 The use of fly ash significantly impacts the life
3 cycle cost of the infrastructure in the U.S.

4 TxDOT has a significant problem with
5 making concrete that will last, due to the poor
6 stone and sands available. These aggregates may
7 be expansive when exposed to highly alkaline
8 cements and sulfated soils or groundwater. The
9 best way to mitigate this issue at the lowest cost
10 is by using fly ash. Without the fly ash in the
11 state concrete mixes, the cost to the state
12 taxpayer to pave a mile of roadway or build any
13 concrete structure will likely double or triple.

14 In 2008, almost 12 million tons of ash
15 was recycled and used for beneficial use

16 applications. Because of the use of ash, the
17 following was saved or reduced: 15 million tons
18 of CO2 reduced from our atmosphere, 32 billion
19 gallons of water was saved, 159 trillion BTU's of
20 energy, and approximately \$5 to \$7 billion. You
21 must keep in mind before ruling that you can only
22 impose regulation of the sale of the CCPs. You

1 cannot, however, force the companies to sell CCPs.
2 I understand there are some people in the room
3 that would like that avenue.

4 But keep this in mind, due to perceived
5 liability, many of the nation's power plants are
6 considering not selling CCPs at all, which is
7 counterintuitive to what we're trying to
8 accomplish here. You must consider that if the
9 utilities choose not to sell CCPs, anyone that
10 uses concrete will then be using significantly
11 more portland cement. And of course, that will
12 mean more O2 produce -- CO2 produced and polluted
13 into the atmosphere.

14 There are other substitutes for fly ash,
15 but they're small in quantity and all of them are
16 double or triple in price. Coal ash and other
17 CCPs are recognized as a beneficial and
18 environmentally sound material by organizations
19 such as U.S. Green Building Council, ACI, and AS
20 -- ASTM.

21 If the EPA promulgates CCPs under
22 Subtitle C, it opens to the door to liability and

1 stigma, some of which is already occurring. The
2 EPA's unwillingness to come out to -- in all media
3 forms and state that CCPs are not toxic nor
4 hazardous when beneficially used is already
5 crippling the beneficial use of these materials.
6 The EPA has promoted the use of CCPs through the
7 C2P2 partnership, and has extensively studied C2
8 -- CCPs, reporting that they are not hazardous nor
9 toxic.

10 We encourage the EPA to reinstate the
11 C2P2 program fully and to make a public statement
12 stating that CCPs are not toxic nor hazardous when
13 beneficially used -- when utilized. Lastly, we
14 implore the EPA to make the correct and sensible
15 ruling, that of the Subtitle D option. Thank you.

16 MR. DELLINGER: Thank you. Can Numbers
17 28, 29, 30, 31, and 203 move forward? Number 28.

18 SPEAKER: Hello, I'm Dr. Karen Lewis.
19 I'm a Dallas area pediatrician and a member of
20 Physicians For Social Responsibility. As a
21 physician, I'm here today to strongly encourage
22 the EPA to assume regulation of coal ash disposal

1 under Subtitle C of the Resource Conservation and
2 Recovery Act. Coal ash, the residue left over
3 after coal is burned, contains some of the world's
4 deadliest toxins, arsenic, lead, mercury, cadmium,
5 selenium, and many others. This ash is disposed
6 at nearly a thousand sites across the nation.

7 Currently, toxic elements escape from
8 many of those sites, contaminating the
9 environment, killing fish, entering underground
10 aquifers, and poisoning drinking water wells.
11 This ash is a major threat to the health of Texas
12 residents. If eaten, drunk, or inhaled, these
13 toxins can cause significant health problems,
14 especially cancer, heart and lung damage, kidney
15 damage, cognitive deficits, developmental delays,
16 and behavioral problems.

17 These aren't little known toxins.
18 Arsenic is a deadly poison historically used for
19 murder. The EPA has found that if you live near
20 an unlined wet ash pond and you get drinking water
21 from a well near there, you may have as much as a
22 one in fifty chance of getting cancer from

1 drinking that water.

2 Lead is a heavy metal so toxic that we
3 doctors routinely screen young children as they
4 may have eaten lead-based paint chips. If
5 poisoned, they need immediate treatment to attempt
6 to prevent permanent learning and behavioral
7 disorders. No safe threshold for lead has been
8 discovered.

9 Mercury is another heavy metal well
10 known for its brain damaging effects, especially
11 on fetuses and young children. Doctors recommend
12 that pregnant women not eat large fish and limit
13 their intake of small fish to no more than twice a
14 week. But why is there mercury in the water in
15 the first place? According to the EPA's toxic
16 release inventory, over 75 percent of the mercury
17 pollution in Texas comes from coal plants. This
18 is a big problem.

19 The EPA estimated that 140 million tons
20 of coal ash are generated annually, making it the
21 second largest industrial waste stream in the
22 United States. The current coal ash disposal

1 sites are inadequate, especially with wet surface
2 impoundments accounting for about a fifth of them.
3 Federal regulation is essential to ensure that
4 coal ash disposal sites adequately protect human
5 health.

6 These efforts may be difficult for
7 businesses in the current economy, but cancer,
8 brain damage, and death are difficult, too.
9 Shouldn't human health come first? As fellow PSR
10 member Barb Gottlieb said, if coal ash is going to
11 bear a stigma, let it be the stigma of lives that
12 are lost, not jobs.

13 Along with many other doctors from
14 Physicians for Social Responsibility, I strongly
15 urge the EPA to assume regulation of coal ash
16 disposal.

17 MR. DELLINGER: Thank you. Number 29.

18 SPEAKER: My name is Bob Sparacino. I'm
19 a father and a concerned citizen that has been in
20 the -- in the coal combustion products industry
21 for 25 years and supports a family of -- of three
22 through my coal combustion products marketing

1 efforts.

2 I worry that this reclassification will
3 have a devastating effect on my ability to support
4 my family. I do support regulations for coal ash
5 disposal that protects health of humans and the
6 environment while encouraging additional recycling
7 of the materials. This cannot happen if the EPA
8 designates coal ash as a hazardous special waste
9 under Subtitle C.

10 In my line of work, I deal with many
11 engineers that have express -- that have expressed
12 concerns over the risks associated with specifying
13 materials into the projects they design that are
14 considered hazardous when in a landfill, nor will
15 the public want these materials in their homes and
16 schools. I also work with a tremendous number of
17 end users that are in the process of exploring
18 other expensive options when this re --
19 reclassification is made, to avoid any risk of
20 liability by using coal combustion products.

21 When the beneficial uses are lost under
22 this reclassification, we will also lose the

1 environmental benefits associated with recycling
2 coal combustion products, including landfill space
3 and natural resources, as well as avoiding
4 millions of tons of greenhouse gases by avoiding
5 the manufacturing of materials that coal ash
6 replaces.

7 The EPA can and should enact new
8 regulations while encouraging additional safe --
9 additional and safe recycling of coal combustion
10 products as a more desirable alternative. The EPA
11 must not designate coal ash as a hazardous special
12 waste. Thank you.

13 MR. DELLINGER: Thank you. Number 30.

14 SPEAKER: I would like to thank the EPA
15 for the opportunity to speak today. My name is
16 Bill Gehrman. I'm the president of Headwaters
17 Resources, the largest marketer of coal combustion
18 products in the United States.

19 The EPA and speakers at the Arlington
20 and Denver hearings have stated that they feel a
21 Subtitle C hazardous waste designation would
22 incentivize the industry particularly utilities to

1 increase recycling. Waste oil and electric arc
2 furnace dust have been used as examples where
3 Subtitle C designation has lead to increases in
4 recycling.

5 However, there are substantial
6 differences when you compare these examples to
7 coal ash. Disposal cost including treatment for
8 these two wastes are much higher than those for
9 coal ash. Under the proposed regulations for
10 Subtitles C and D, coal ash does not require any
11 treatment prior to being land-filled. When truly
12 recycled, oil is typically sold at prices similar
13 to those of new oil, the product it competes with.
14 In fact, most recycled waste oil is actually
15 burned or incinerated as fuel. Electric arc
16 furnace dust recycling typically results in the
17 sales of extracted metals, bringing the same
18 values as virgin metals. These values coupled
19 with much higher disposal costs incentivize the
20 recycling.

21 Fly ash, on the other hand, the coal ash
22 with the highest beneficial use value typically

1 sells for 30 to 50 percent of the price of
2 portland cement. The substantial pricing
3 incentive is already there. Approximately 44
4 percent of coal ash is currently recycled. The
5 theory that the additional pricing incentives will
6 lead to more beneficial use in an already mature
7 recycling market does not make sense. No one
8 disagrees with the fact that under either
9 proposal, disposal costs will go up.

10 The utility industry has the ability to
11 pass these increased costs through to us, the rate
12 payers. When a utility weighs a potential
13 liability to beneficial use under Subtitle C
14 designation, many will minimize risk by sending
15 all of their coal ash to the landfill. It is a
16 logical decision when they can minimize their risk
17 and have increased -- increased cost of disposal
18 covered by the rate payer.

19 This is not the case for companies
20 dealing with waste oil and electric arc furnace
21 dust. You've already heard that the stigma of the
22 Subtitle C hazardous waste designation isn't

1 negatively impacting beneficial use. There should
2 be no doubt in anyone's mind that the risk
3 assessment decisions made by utilities specifiers
4 and beneficial users under Subtitle C will result
5 in more coal ash going into landfills.

6 As the administrator has said, it is
7 time for a commonsense approach. The proposed
8 engineering standards are essentially the same
9 under both the proposed regulations for Subtitles
10 C and D. Enactment will happen faster under
11 Subtitle D. Don't do it under Subtitle C. Don't
12 send more coal ash to the landfill. Thank you.

13 MR. DELLINGER: Number 31.

14 SPEAKER: Good morning. Thank you for
15 the opportunity to voice my position on this
16 important issue. My name is Gary Shelton, and I
17 am with Boral Material Technologies. Our
18 company's principle business is coal combustion
19 products marketing and management. We have been
20 involved with these activities for over 50 years.
21 And certainly, we are supportive of the effort to
22 protect the environment and human health. There's

1 no doubt about that. We believe that this goal
2 can be accomplished by regulating coal combustion
3 products under a Subtitle D classification and
4 that a Subtitle C classification will be harmful
5 to the continued and ongoing use of these
6 products.

7 The event at Kingston and any other
8 events are disposal and material management
9 issues. They were not caused by the material
10 itself and certainly not a hazardous material
11 problem.

12 Currently, one of the largest and most
13 successful uses of coal combustion products is the
14 use of fly ash in the production of concrete,
15 which you've heard here today. This type of use
16 has a proven 50-year record of successful use that
17 is safe and productive. Increased use of all of
18 these types of recovered resources in safe and
19 appropriate markets is also occurring in other
20 segments such as the uses as a mineral filler.

21 These developments are accomplished in a
22 judicious manner after extensive evaluations of

1 material performance, safety and environmental
2 impacts, and the economics of the intended use.
3 Any type of hazardous classification will
4 negatively impact usage.

5 The -- the reality is the stigma issue
6 is real. I have firsthand experience with
7 concrete producers, the engineering community, and
8 various agencies who report that a hazardous
9 classification will at a very minimum cause these
10 users -- these CCP users to reevaluate their
11 practices. A Subtitle C regulation will only harm
12 the beneficial use of CCPs. The overall effect
13 will be -- will result in increase of virgin mine
14 raw materials. CCPs have a proven -- have proven
15 to be a valuable recovered resource that has been
16 long recognized by the EPA for its benefits to the
17 environment and society for many years.

18 Coal combustion products should be
19 handled, managed, and stored according to sound
20 engineering procedures. This should be
21 accomplished at the plant sites where these
22 materials are produced in the correct manner.

1 This goal can be -- can be accomplished without
2 the risk of decreasing the ongoing and growing
3 application of these products in a constructive
4 method.

5 I encourage the people -- the EPA to use
6 sound scientific evidence as it makes the final
7 determination on classification. Such evidence
8 does strongly suggest that the correct material
9 classification is Subtitle D. We oppose the
10 regulation of CCPs as a Subtitle -- Subtitle C or
11 any hybrid classification. Thank you for your
12 opportunity.

13 MR. DELLINGER: Thank you. Number 203.
14 Is Number 203 here? 204? 205?

15 SPEAKER: My name is Robert Walker. I'm
16 from Arkansas. Thank you for the opportunity to
17 speak. I am -- I believe that these warnings from
18 the concrete producers is a red herring. My
19 example is lead paint. The lead in household
20 paints was banned in 1978. You couldn't buy it
21 anymore to be used in houses. However, paint is
22 -- lead is still used in the paint for highways

1 and bridges because it is not so much a danger
2 there, and it is -- it has good qualities. I
3 believe that the regulations will allow the use --
4 the concrete products the use of fly ash. In
5 Arkansas, the fly ash is being dumped, it's
6 getting into the water, it's ruining water wells.
7 I think it's open and shut that it should be
8 regulated. And I recommend you use the C
9 approach, the Charlie. Thank you.

10 MR. DELLINGER: Thank you. Can we have
11 Numbers 32, 33, 35, 36, and 206 move forward.
12 Number 32. Is Number 32 in the room? Number 33?
13 Number 35?

14 SPEAKER: Good morning. I'm David
15 Ditta. And I work for Boral Material
16 Technologies. Boral's primary business is in coal
17 combustion byproduct management and recycling. We
18 specialize in marketing coal fly ash to the ready
19 mixed concrete and concrete product industries.
20 Our organization has been marketing coal
21 combustion byproducts for over five decades.

22 We support the EPA's efforts to protect

1 the welfare of citizens and of our environment.
2 However, we recommend a sensible approach when it
3 comes to the regulation of coal combustion
4 byproducts. We feel that a Subtitle C hazardous
5 regulation will negatively impact the future
6 success of fly ash in the construction industry.
7 The harshly label of material that has been used
8 for decades in concrete is supplementary
9 cementitious material will undoubtedly have
10 equally harsh consequences on our nation's
11 infrastructure, concrete durability, electricity
12 consumers, and finally the U.S. economy.

13 The stigma attached with a Subtitle C
14 designation will grow exponentially. Project
15 owners, specifiers, architects, engineers,
16 municipalities, and state department of
17 transportations will refuse to allow fly ash in
18 their projects for fear of exposure to future
19 legal liabilities. The EPA should recognize the
20 successful utilization of coal ash in the United
21 States and avoid a path that would negatively
22 effect the future success of this material.

1 Accordingly -- according to EPA, when
2 fly ash is used in concrete, it significantly
3 reduces the amount of greenhouse gases produced.
4 The Electric Power Research Institute estimates
5 that through beneficial uses coal combustion
6 byproducts reduce CO2 production by 11 million
7 tons annually. They also estimate that by using
8 these products, we save over 51 million cubic
9 yards of landfill space in the U.S. The U.S.
10 Green Building Council recognizes that fly ash in
11 concrete contributes to the recycled materials
12 content in the lead rating system at the same time
13 as being kept from disposal and landfills.

14 Finally, we support recycling coal ash
15 as a safe, environmentally preferable alternative
16 to disposal. Therefore, we recommend the EPA
17 regulate coal combustion byproducts under the
18 Resource Conservation and Recovery Act Subtitle D and
19 avoid any reference to these byproducts as a
20 hazardous waste. Thank you.

21 MR. DELLINGER: Number 33.

22 SPEAKER: I'm Rel Corbin from Little

1 Rock, Arkansas. Substituting fly ash for portland
2 cement creates concrete that is -- has pretty good
3 compressive strength, but it does not have good
4 tensile strength to support a load like over a
5 span. So our highways start crumbling within 15
6 or 20 years, and that's releasing the dust right
7 then.

8 Now, properly -- the properly built
9 retaining walls may last a long time like beside
10 the -- where the freeways going through town.
11 Cinder blocks, you can use fly ash for cinders in
12 -- in concrete blocks. And they're okay if
13 they're -- if the design is right and properly
14 reinforced. But the construction industry has
15 been using fly ash in cinders all along, decades
16 -- at least decades. And I don't think they need
17 that much more. So we're back to storing fly ash
18 and cinders in heaps or in -- I guess it's sludge
19 in ponds. Now, if you don't keep those heaps
20 moistened, dust is going to blow off. That -- all
21 the toxins from coal dust are going to blow out.
22 If you moisten it, you're creating a leachate that

1 is going to leak -- leak and get into water and --
2 and ground. If you store it as sludge, wet -- and
3 even if you've got a liner under these ash heaps
4 or under the ponds, those liners aren't going to
5 last forever. They're going to disintegrate. And
6 that poison is going to go into the groundwater or
7 out under the surface water. So I don't see a
8 practical way to deal with coal -- byproducts that
9 coal can -- con -- coal residuals. So I think we
10 need to really be pushing for other sources of
11 energy, passive types -- because we have to get
12 away from coal. There's no solution to dealing
13 with the coal residuals. Thank you very much.

14 MR. DELLINGER: I'm sorry. I may have
15 lost count. Are you Number 36?

16 SPEAKER: I'm 36.

17 MR. DELLINGER: Okay. Then I didn't
18 lose count.

19 SPEAKER: No, you didn't. My name is
20 Terry Henrickson. And I am a citizen, and I
21 oppose Subtitle C. I've been in the concrete and
22 related business now for some 30 years. I believe

1 this scare turning fly ash into a hazardous
2 material has already stopped requests for the
3 seminars that I've been giving for the last few
4 years on the use of fly ash in concrete. These
5 seminars were numerous up to the last six, eight
6 months, when these hearings started. They have
7 since stopped. I think there's a scare out there
8 that they're worried about designing concrete or
9 buildings with fly ash in them.

10 I've also been informed by most, if not
11 all, of the ready mixed concrete producers in
12 North Texas and Oklahoma that if the stigma comes
13 in of fly ash, they will be forced to take it out
14 of their concrete. They're afraid of it. This
15 scare is real to them. It would be easier to take
16 it out of their concrete than to fight the stigma
17 that -- that will arise from it.

18 There is no doubt in my mind that they
19 will stop using ash if Subtitle C is put into
20 place. Like utilities that -- will be forced to
21 raise our electrical cost to dispose of this ash,
22 concrete companies will have to charge more for a

1 less quality product without fly ash. This will
2 affect all of us.

3 The Corps of Engineers across this
4 region are working on air force bases such as
5 Tinker, Altus, Sheppard Air Force bases. Their
6 concrete problems they've seen have stemmed from a
7 lack of a design concrete that they think can be
8 fixed by the use of fly ash. This is either a
9 spalling issue, an ASR issue. They will be using
10 a lot of fly ash, but those general contractors
11 doing these jobs are going to be asking the same
12 question our local producers are going to be
13 asked, and that is the stigma and are they going
14 to be wanting to do it. Is the EPA or the federal
15 government ready to handle these questions from
16 these general contractors doing jobs on these
17 federal properties.

18 These are but a few of the examples that
19 I bring to you today. And I ask you to remember
20 that there is a lot of reasons why we use it. We
21 understand what are -- the other concerns are.
22 But Subtitle D is still the way we need to go with

1 this. Again, I thank you. Have a good day.

2 MR. DELLINGER: Is Number 206 here?

3 SPEAKER: Hi. My name is John Ridell.

4 I'm a local resident here. I had no idea that I
5 was going to be speaking today or anything like
6 that. I came here for an extra-credit opportunity
7 from my instructor and my teacher at the college.
8 He told me that I should come up here and talk
9 about this, and I figured why not.

10 Really, I've heard a lot of good
11 arguments on both sides. I personally think that
12 Subtitle C would be the best way to go because
13 although, you know, there have been new proposals
14 about making concrete so that it'll work better
15 with the coal ash and stuff like that, if you do
16 not put any regulations on this problem, then it
17 will continue to be a problem.

18 Yes, companies can say they try to do
19 stuff, but there are many who -- many times we
20 have seen problems with this. You know, I mean,
21 you'll see trucks driving with it, you'll see the
22 coal ash flying right out because they don't have

1 their trucks covered or anything like that.

2 It's a main problem that a lot of people
3 have suffered from. There have been cases in
4 Tennessee and many other places where people and
5 children have been injured. Imagine your children
6 growing up with this problem, with piles of coal
7 ash building up everywhere, contaminating water,
8 contaminating everything.

9 There is a main problem. It is a
10 really, really big problem, and a lot of people
11 just overlook it and think it's not a big deal.
12 Coal ash is a problem. It should be dealt with.
13 I don't want to grow up, I don't want my children
14 to grow up, with this problem, with contamination.

15 Arsenic is a very, very dangerous
16 substance, as well as mercury and the other
17 contaminants that are in coal ash. And, you know,
18 one of my projects a while ago was a really
19 detailed study with arsenic. And I'll tell you
20 what, it's something you do not want to mess with.

21 It is in coal ash, and it's been
22 contaminating our water supplies. It is being put

1 into big lakes of water. When the lake waters dry
2 up, it goes up into the air. Being airborne is a
3 big problem. People have become sick from it, and
4 they will, if you do not take care of this. Thank
5 you.

6 MR. DELLINGER: Is there anyone in the
7 room with a number lower than 36 that has not
8 spoken? Okay. We'll move on to Numbers 37, 38,
9 39, and 40. Number 37. Number 38.

10 SPEAKER: Good afternoon. My name is
11 Becky Williams, and I'm here from Little Rock,
12 Arkansas. There's a bunch of us here from
13 Arkansas.

14 I speak from several perspectives. One
15 is I'm a small business owner, and I've had a
16 small business for about 15 years. Before that, I
17 worked in public health for 17 years. I'm also a
18 mother who has a 25-year-old daughter who is
19 married, and my son-in-law just got back from 15
20 months in Iraq. I feel very blessed that he came
21 back alive, and I guess part of what I feel your
22 responsibility is is to make sure that he and his

1 wife have clean water to drink so they don't -- he
2 doesn't now die back here in the United States
3 from contaminated water.

4 I feel like -- you know, I worked in
5 public health for a long time, and I've seen what
6 can happen with prevention and how we save money,
7 much, much more money with prevention than we do
8 after the fact. My first job was in the intensive
9 care nursery at University Medical Center. That
10 was very much after the fact. I saw babies die
11 because the moms didn't get prenatal care.

12 And I guess that's what we're talking
13 about here is prevention. We're talking about
14 what is a way to make sure that our water is clean
15 to drink and that we can help prevent on down the
16 line those deadly, seriously, terrifically
17 expensive diseases that we can be exposed to.

18 The last person that I speak for is
19 myself as an individual. I just love our earth,
20 and I see -- we are the people that are here to
21 take care of it. You know, I'm politically
22 active. I voted for this administration, hoping

1 that the EPA would be here to protect us.

2 And I just -- I thank you for these
3 hearings. I thank you for the opportunity to have
4 an alternative where you will be here to protect
5 us. Thank you.

6 MR. DELLINGER: Thank you. Number 39.

7 SPEAKER: My name is Gary Harron. I'm
8 representing Tarrant Concrete in Fort Worth.

9 Rather than echo most of the speakers
10 here, I'll start by saying I don't think there is
11 anybody in this room that doesn't believe and
12 agree that there needs to be some type of a trump.
13 I've been in this business well over three decades
14 now. I was one of the handful that realized the
15 benefits that coal ash had in our industry from an
16 early start.

17 It's been a long road. We -- we have
18 years of credible -- and I emphasize the word
19 "credible" -- research and development relative to
20 the benefits of coal ash in our concrete in terms
21 of durability, increased durability, control,
22 strength gains, and service life.

1 I heard a gentleman a while ago talking
2 about roads crumbling and all of that. We are
3 designing concrete now, performance concrete, with
4 a service life of 100 years, and that's in part
5 due to the performance-based specifications, coal
6 ash being a big part of that.

7 What I wanted to focus on is maybe the
8 impact of labeling this as a hazardous material.
9 I've heard -- all things mention, you know, the
10 negative impact it would have with the engineers,
11 the associations, all involved with the concrete
12 industry, but what I haven't heard that anybody
13 has considered is what about the structures that
14 we have that are in place. What's to stop the
15 humongous litigation that we're hooking ourselves
16 up to for existing structures if this product is
17 labeled as a hazardous material? Thank you for
18 listening.

19 MR. DELLINGER: Number 40.

20 SPEAKER: Hi. My name is Walt Baum, and
21 I am testifying today on behalf of the Association
22 of Electric Companies of Texas, or AECT. We are

1 an industry trade association representing the
2 different electric companies in the state. Our
3 AECT members have a general interest in EPA's coal
4 combustion residuals proposed rule as our members
5 own and operate electric-generating plants that
6 are impacted by this rule. I'm here today
7 representing our members that own coal plants in
8 Texas.

9 Texas contains the largest electric
10 market in the country. We generate 80 percent
11 more electricity here than in any other state, and
12 we're different from other states because about 80
13 percent of our electric load is contained within
14 ERCOT, our own intrastate electric grid, and we
15 have very limited connection with the Eastern and
16 the Western interconnects.

17 We truly are an island, and we're
18 responsible for generating the electricity that
19 our growing population needs, and we aim to
20 maintain a very diverse fuel mix, using coal,
21 natural gas, nuclear and wind, where we lead the
22 country in renewables, to allow the state to hedge

1 the benefits and challenges inherent in each of
2 these fuel sources.

3 Baseload coal generation accounts for
4 about 38 percent of the electricity generated in
5 Texas. According to studies done by the noted
6 economist, Ray Perryman, coal production and use
7 in Texas creates over 33,000 jobs and contributes
8 over \$10.5 billion to the Texas economy.

9 Regulation of CCRs as a hazardous
10 material potentially would threaten electric
11 liability and it would increase electricity prices
12 for consumers and businesses due to the
13 significant compliance costs on generators.

14 In some cases, these costs would be
15 sufficiently high to render certain fuels, such as
16 Texas lignite, uneconomic, and result in power
17 plant and/or mine closures that would cost Texas
18 jobs and tax revenue at a time when both are in
19 short supply and at a time when Texas, unlike many
20 regions of the country, is experiencing record
21 electricity demand and sustained growth.

22 Across the industry, the proposal for

1 regulation of CCRs as a hazardous material under
2 Subtitle C would strip the states of the ability
3 to cost-effectively regulate CCR disposal
4 practices and would impede the beneficial reuse of
5 CCRs. On four separate occasions, most recently
6 in 2000, EPA made a regulatory determination that
7 concluded that Subtitle C of RCRA is not the
8 appropriate regulatory regime for regulating CCRs
9 and that regulation as non-hazardous waste by the
10 states is the appropriate option for ensuring the
11 safe management of these materials while
12 preserving recycling.

13 The Texas Commission on Environmental
14 Quality oversees the design, construction,
15 monitoring, reporting, and final closure of all
16 CCR disposal facilities. TCEQ's robust state
17 regulatory program ensures the disposal and reuse
18 of CCRs are conducted in a manner that is
19 protective of human health and the environment.

20 In summary, AECT strongly opposes the
21 regulation of CCRs as a hazardous material and
22 believes that Texas has a protective program that

1 does not need a new federal program. Thank you.

2 MR. DELLINGER: Numbers 42, 117, 44, 45,
3 and 207. Number 42.

4 SPEAKER: My name is Bob Folser, and I'm
5 here as chairman of the Texas Concrete Pipe
6 Association, representing the precast concrete
7 industries in Texas, 12 companies in 31 locations,
8 with over 12,000 employees. I am here to express
9 our concern about the potential EPA ruling
10 pertaining to the regulation of fly ash, a coal
11 combustion product, as a hazardous waste material.

12 The Texas DOT and many Texas
13 municipalities encourage the use of fly ash for
14 various reasons. Among the numerous benefits
15 derived from using fly ash in concrete are
16 improved longevity, increased strength and
17 enhanced durability, all of which cannot be fully
18 replaced by alternate means. Increasing the
19 longevity of our infrastructure alone has huge
20 positive implications for natural resource
21 conservation and energy savings.

22 We believe that regulating fly ash as a

1 hazardous waste would have significant negative
2 consequences that could potentially undo years of
3 advancement in concrete durability. We believe
4 that the fly ash market would virtually stop
5 existing if the EPA designates fly ash as a
6 hazardous waste, even if there is in place a
7 beneficial reuse exemption.

8 Perceptions of fly ash will be
9 negatively impacted. When material is deemed
10 hazardous, there is no worse designation in the
11 public's mind. Granting an exemption will not
12 remove the emotional and mental stigma attached to
13 the material.

14 We believe fly ash storage by concrete
15 producers would be affected. We anticipate that
16 concrete producers will be faced with issues such
17 as added expenses to install special silos and
18 handling practices to store and use fly ash in
19 concrete.

20 The present or future use of fly ash, if
21 classified as a hazardous waste, could expose
22 federal, state and local agencies, as well as the

1 concrete industry, to significant legal
2 liabilities if linked to safety exposures. In
3 fact, because of the potential exposure and
4 liability issues, fly ash generators may cease the
5 beneficial reuse of fly ash and choose to landfill
6 all that is generated.

7 For the reasons stated above, the Texas
8 Concrete Pipe Association respectfully requests
9 that the EPA considers these impacts to our
10 operations and deems that CCRs be regulated under
11 Subtitle D, non-hazardous material with beneficial
12 reuse capabilities. Thank you.

13 MR. DELLINGER: Thank you. Number 43.
14 Number 44.

15 SPEAKER: Good afternoon. My name is
16 Bobby McNeeley. I am the chemical environmental
17 supervisor at Luminant's Big Brown Power Plant in
18 Freestone County. Thank you for the opportunity
19 to provide a statement today.

20 As part of my responsibilities to Big
21 Brown, I ensure that our power plant complies with
22 Texas Commission on Environmental Quality's coal

1 combustion residuals handling and disposal
2 regulations. These regulations are comprehensive
3 and effective. As a whole, Luminant is in
4 compliance with TCEQ's CCR regulations, and we
5 have never experienced a failure at any of our
6 facilities.

7 I take my work very seriously, as do my
8 fellow co-workers. We live in the communities
9 where CCRs are stored and disposed, so we owe it
10 to our employees, our communities, and the
11 environment to manage CCRs safely and responsibly.

12 And in my 30 years with the company,
13 I've seen great benefits from the recycling and
14 reuse of CCRs. By actively pursuing opportunities
15 to recycle CCRs, Luminant has helped decrease
16 energy costs, reduce emissions, save landfill
17 space, and use less natural resources.

18 Since 1993, Luminant has sold nearly 40
19 billion pounds of CCRs, including 2.2 billion
20 pounds in the last year alone. These products
21 have been used by the roofing and concrete
22 industries, as you heard, as well as in oilfield

1 projects and for road paving.

2 There is a long list of projects across
3 our state that have benefitted from the reuse of
4 CCRs from Big Brown and other power plants --
5 Luminant power plants. Here are just a few:
6 Dallas's High Five Interchange, DFW Airport, State
7 Highway 121, Radio Shack's corporate office in
8 Downtown Fort Worth, City of Dallas Fire Station
9 Number 40.

10 As you can see, not just industry
11 benefits from the reuse of CCRs. Our communities
12 and our neighbors do, when they commute to work,
13 catch a flight, or depend on emergency services.

14 Designating CCRs as hazardous would have
15 a devastating effect on the recycling of this
16 by-product, leading to higher costs and job losses
17 across many industries. A hazardous
18 classification would destroy a viable and
19 environmentally beneficial market. And it's
20 important to note that on four separate occasions,
21 most recently in 2000, EPA determined that the
22 regulation of CCRs was not warranted.

1 As such, Luminant, in addition to over
2 200 members of the U.S. Congress, 43 states, and
3 numerous federal agencies, strongly opposes the
4 regulation of CCRs as a hazardous material under
5 the RCRA Subtitle C hazardous waste program and
6 recommends that EPA continue to allow states to
7 run their own programs. Thank you.

8 MR. DELLINGER: Thank you. Number 45.

9 SPEAKER: Hi. My name is Allison Sliva.
10 I'm from Bay City, Texas, and I run a county on
11 the Texas Gulf Coast. I'm not a paid spokesman.
12 I'm here on my own time. I represent a group in
13 our county called No Coal Coalition, and we are
14 fighting a plant that wants to come into our
15 county called White Stallion Energy Center, and
16 I'm proud to say we're now 800 members strong.

17 We definitely support regulating coal
18 ash as a special waste and treating it as a
19 hazardous substance, and this under the Resource
20 Conservation and Recovery Act of Subtitle C.

21 We all know coal ash contains lead,
22 mercury, arsenic, selenium, cadmium, boron,

1 sulfate, and a whole bunch of other things I can't
2 even pronounce. This stuff is poison. There are
3 no acceptable levels of exposure to mercury and
4 lead. The toxicity of these is measured in
5 micrograms. I find it a little bit unnerving that
6 we're talking about concrete and I'm talking about
7 people.

8 These toxins, these poisons, are
9 leaching into our water. I come from a rural
10 county. No one really pays attention to us. We
11 have no independent monitoring of our air or
12 water. In fact, you can put our county three
13 times into Texas Memorial Stadium in Austin.
14 We're a small county. No one's paying attention
15 to us.

16 But we have farmers. We have ranchers.
17 We're an ag community. We have fishing. We have
18 shrimping. What the heck is this going to do to
19 our water? This coal pit that wants to move into
20 our county, its ash site, its disposal site, is on
21 the Colorado River.

22 We evacuated for Ike. We evacuated for

1 Rita. You notice we're having a little weather
2 event right now. What's going to happen when all
3 that water hits this ash and it leaches into our
4 river? We're just upriver from Matagorda Bay and
5 the Gulf of Mexico.

6 I have no faith in the Texas Commission
7 on Environmental Quality. If you look at the
8 recently posted proposed air quality standards for
9 the state of Texas, it shows 75 percent of Texans
10 will be breathing, are breathing, dirty air. If
11 TCEQ were doing its job, 75 percent of Texans
12 should be breathing clean air.

13 I'm tired of us talking about wealth
14 over health, and I beg the EPA to step in and
15 protect our communities and our families. I voted
16 for this administration for just -- one of the
17 very reasons I voted for you guys and this
18 administration, and I hope you will regulate toxic
19 coal ash. Thank you.

20 MR. DELLINGER: Number 178.

21 SPEAKER: Hello. I heard that
22 passionate speech. My name is Mike Malone. I

1 work for CPS Energy in San Antonio. We are
2 municipally owned. We're the largest municipally
3 owned power electric and gas company in the United
4 States. We recycle over 97 percent of our coal
5 residuals. We recycled approximately over 300,000
6 tons last year. Essentially that amounts to about
7 300,000 cubic yards of material diverted from
8 landfills. Since the early '90s, we recycled over
9 6 million tons of CCRs.

10 Recycling CCRs is a beneficial use. It
11 lowers the cost to rate payers. We anticipate
12 that this could cost up to over \$100 million in
13 annual transportation to local landfills. CPS
14 Energy expects to generate approximately 600,000
15 cubic yards of CCRs per year over the next 20 years,
16 totaling 25 million cubic yards over the next 50
17 years.

18 CPS Energy believes that a Subtitle C
19 designation would be counterproductive by
20 increasing the amount of CCRs landfilled and
21 impounded nationally because of the stigma that
22 will be placed on CCRs. The failure of the 2008

1 Kingston power plant ash impoundment was an
2 engineering issue and failure, not a material
3 classification issue.

4 The increase in landfill impoundment of
5 CCRs would only increase the chance of another
6 Kingston-type failure, not reduce it. Thank you.

7 MR. DELLINGER: Number 41, 43, 207, 208,
8 and 209.

9 SPEAKER: My name is Jacob George. I
10 was a sergeant in the Army. I did three tours in
11 Operation Enduring Freedom. I am now a homeless
12 veteran by choice. I wrote a poem for the EPA
13 that I want to read today. It's called "Dear EPA,
14 Please Do Your Job."

15 Have you seen Arkansas sandstone? This
16 rock is breathtaking. This rock is my home. Home
17 used to be creeks and lakes where anybody could
18 swim. Now the water tables are contaminated for
19 cheap change. Trust me, I understand having too
20 much to do. I did three tours in Afghanistan to
21 protect you. But I did my job and now I'm home.
22 It's your turn. Protect our water and protect my

1 Arkansas sandstone. Thank you.

2 MR. DELLINGER: Number 41.

3 SPEAKER: Good afternoon. My name is
4 Donald B. Thomas. I have been selling fly ash,
5 marketing fly ash, for over 22 years. I began
6 working for a small, family-owned business and
7 have marketed material in seven different states.
8 Currently I cover an area of four states in the
9 Southeast and have hundreds of customers.

10 Like many other people said today,
11 pointed out the quality and benefits that fly ash
12 can add to concrete, workability, increase in
13 strength, and most importantly, improving
14 durability, which can extend the life of concrete
15 structures and reduce maintenance costs.

16 But I'm of the opinion that the strength
17 requirements proposed by Subtitle C would
18 significantly impact the longevity of our concrete
19 structures, including roads, bridges, and
20 buildings, and the stigma attached to this
21 classification of fly ash as a hazardous waste
22 under Subtitle C will affect the amount of fly ash

1 produced.

2 To me, whether you're a salty old
3 politician that's been running for office for 40
4 years, or a junior high or high school student, to
5 have a label that's unfair -- we all know what
6 labels can do. And I think by classifying or
7 labeling fly ash as a toxic hazardous waste, it's
8 a label that will take, you know, years to
9 overcome, and all the promotion in the world is,
10 you know, going to be affected by that label.

11 In a day and age when sustainability is
12 of paramount importance to our environment, I
13 believe that classifying fly ash under Subtitle C
14 would be devastating to our future. I'm concerned
15 about the cost of living, the restrictions imposed
16 on my family and I, and the increased cost of
17 electricity, the increased cost of building a
18 home, the increased cost to stabilize and pave
19 roads that we use every day. Fly ash reduces
20 construction cost, it reduces CO2 emissions, and
21 it improves sustainability.

22 I strongly urge you to prevent the

1 regulation of fly ash under Subtitle C and not
2 label that negatively. Thank you.

3 SPEAKER: Thank you for allowing me to
4 testify. My name is Oneal Couvillion. I come
5 from Walker, Louisiana. I'm here today to ask you
6 to put stronger regulations on coal ash.

7 This is an article that tells about coal
8 ash, what it is, what it contains, your arsenic,
9 and stuff like that. It pollutes the air, water,
10 and soil. Where is the positive? Thirty-four
11 percent into landfills, 22 percent in surface
12 impoundments, 37 in construction, 8 percent in
13 mines. This is what happens when 1 billion tons
14 -- 1 billion tons of coal ash destroys a town and
15 environment.

16 This is an article from Scientific
17 American dated December 13, '07, that states coal
18 ash is more radioactive than nuclear waste because
19 of what's burned. It concentrates it.

20 Now, I have this that says, "Do I Live
21 Near Coal Ash?" This is for Louisiana residents.
22 And my answer is, yes, I do. Okay. Big Cajun

1 Number 2 Power Plant, New Roads, Louisiana.

2 Now, the reason I say that is because --
3 let me get there -- Waste Management -- this is a
4 copy of an industrial waste code that's used by
5 Waste Management given by DEQ. They get 2,839.93
6 tons of ash -- that was last year -- and 16,832.3
7 tons of carbon/carbon black/coke/coal. This was
8 last year.

9 It's a shame. People who live around
10 there really know what the dangers of coal ash is.
11 Thank you very much.

12 MR. DELLINGER: I'm going to ask for
13 Numbers 203, 204 or 208 here. And 210, 211, and
14 212. Number 203.

15 SPEAKER: Good afternoon. My name is
16 Nicholas Parnell. I'm a student at Southeastern
17 Louisiana University. I'd like to thank you for
18 the opportunity to express my concerns regarding
19 the regulation of coal ash.

20 Like most of those offering testimony
21 this week, I'm concerned about how easy it is for
22 coal ash to enter into and contaminate our

1 environment. The fact that toxic heavy metals
2 that are associated with coal ash can cause
3 nervous system diseases and disorders strikes a
4 personal chord with me.

5 When I was a child, I was diagnosed with
6 a rare and deadly nervous system disorder called
7 thermonuceria, which means that my body is unable
8 to naturally regulate its own internal
9 temperature. There is no treatment or cure. The
10 only way to ensure one's safety is to severely
11 limit physical activity and exposure to heat, just
12 as a diabetic has to monitor their sugar
13 consumption.

14 Mild reactions can include itching,
15 rashes, temporary loss of sensation of touch, or
16 sporadic, painful shocking sensations throughout
17 the body. Severe situations can lead to seizures,
18 fainting and death even in environments where a
19 person with a normally functioning regulatory
20 system would feel only mildly uncomfortable.

21 As a child, when other kids ran and
22 played at recess, I had to sit in the classroom

1 alone or near a teacher. When my siblings went to
2 pick berries or go fishing or build a fort in the
3 woods, I had to stay home alone. I grew up
4 detached from society, bitter to all those who
5 didn't have to live with the limitations I have.
6 Having such minimal interactions with others means
7 that today, as a college student, I'm still
8 developing social skills that my peers acquired
9 decades ago.

10 Although as an adult I now have greater
11 control over my reactions, my disorder has been a
12 hindrance in my career. I have had to pass up
13 promotions and other opportunities that require
14 working in an unprotected environment.

15 By strictly regulating coal ash, the EPA
16 will be protecting all citizens from exposure to
17 toxic chemicals associated with it and thus
18 substantially reducing their chances of developing
19 medical disorders like mine or even something
20 worse.

21 Our only hope is that the EPA will fight
22 to protect us, as the energy companies have used

1 their overwhelming power to force us, ordinary
2 citizens, into a non-consenting, damaging
3 relationship, just as pedophiles seek to victimize
4 those who are weaker and unable to defend
5 themselves. The proposals of Subtitle C are our
6 only real protection from such environmental
7 molestations. Thank you.

8 MR. DELLINGER: Number 210.

9 SPEAKER: Good afternoon. My name is
10 David Griggs, from Dallas. I am an attorney and
11 an adjunct professor of government at Brookhaven
12 College. I'm also a former federal civil
13 prosecutor with the FTC. Today, I am mostly here
14 as a concerned citizen. Thank you for the
15 opportunity to make some brief remarks during the
16 comment period of the coal ash ruling.

17 As a former government employee, I'm
18 certainly familiar with the regulatory process. I
19 actually worked for a regulatory agency. I
20 applaud you for the willingness to make this an
21 open process and public, freely accessible. Thank
22 you for that.

1 I want to commend you also for
2 recognizing the very real health and environmental
3 risks posed by the toxic coal ash. Against the
4 seriousness of these risks, enforceable federal
5 safeguards, not suggested state guidelines, are
6 necessary to protect our communities.

7 From what I have learned, improved
8 testing methods reveal that coal ash is
9 significantly more toxic than originally thought
10 and has an increased risk of leaking into our
11 waterways. The levels of pollution, like arsenic,
12 seeping from coal ash have been found to be
13 significantly higher than what is considered safe
14 for drinking water.

15 Therefore, I support Subtitle C of your
16 choices, which would impose federal safeguards --
17 excuse me -- federal standards for regulating coal
18 ash as a special waste, requiring permitting,
19 monitoring, standards of transport, phasing out
20 wet ponds and so forth, while allowing for
21 beneficial use.

22 I would also encourage you to include

1 that coal ash be in cessation until a government
2 study has proven that the uses are not harmful in
3 the immediate or long term to our public health
4 and safety.

5 The status quo of state guidelines is
6 not substantially different from what we have now.
7 Few, if any, changes would be accomplished by
8 that. State regulation is not enough. Despite
9 the known toxicity of coal ash, a vast majority of
10 states do not even require monitoring to see if
11 coal ash is polluting the water.

12 That's why the federal government must
13 act. Now is the time. If not, when? So don't
14 miss this opportunity. For the sake of our health
15 and safety, I urge you to adopt Subtitle C in your
16 rule-making process. Thank you for the time.

17 MR. DELLINGER: Number 208.

18 SPEAKER: Hello. Thank you for allowing
19 me to speak today. I have a note from my
20 landlord. "I worked power plants for 26 years,
21 coal burners. Fly ash is unhealthy for humans."
22 That puts it really simply. This note was written

1 by, William Faddis, my neighbor in North Arkansas
2 who couldn't be here today. He tells me often of
3 his fellow boiler makers who are dead or dying
4 because of coal ash. To say it is unhealthy is an
5 understatement, and he would like for you to
6 declare coal ash a hazardous waste. Thank you.

7 MR. DELLINGER: Number 211.

8 SPEAKER: Hi. My name is Jacob
9 Delahoussage, and I'm from Lafayette, Louisiana.
10 I'm here as a citizen. Thank you for the
11 opportunity to speak.

12 I used to think that the movement to
13 protect our environment was about stopping the
14 clear-cutting of forests and the violent
15 destruction of mountains using dangerous
16 explosions. As I got more involved, I realized
17 that it isn't just the mountains and the trees
18 that can't speak up for themselves. We also need
19 protecting because we don't always have the
20 opportunity to speak up for ourselves.

21 Today, I'm here to speak for all those
22 whose well water has been contaminated by toxins

1 like arsenic, mercury, lead, selenium, from coal
2 ash. Coal ash needs to be regulated. It is a
3 toxic, dangerous substance, and Subtitle C is the
4 correct choice because it puts regulation in the
5 hands of the federal government. It protects us.

6 I understand that this will likely
7 increase cost for cement production, but I am more
8 concerned with the health of my family, my
9 community, and the future generations. Money is
10 not the important issue here right now. Health
11 is. Thank you.

12 MR. DELLINGER: Number 212.

13 SPEAKER: Thank you. My name is Ilan
14 Levin. I'm senior attorney with the nonprofit
15 Environmental Integrity Project. The
16 Environmental Integrity Project's mission is to
17 promote strict enforcement of the nation's
18 anti-pollution laws. I want to thank you for the
19 opportunity to let us speak today.

20 About halfway between Austin and Houston
21 is a large coal-fired power plant. It's in
22 Fayette County, Texas. It's called the Fayette

1 Power Plant. It's operated by the Lower Colorado
2 River Authority. Groundwater sampling on the site
3 shows levels of selenium, cobalt, and molybdenum
4 that exceed drinking water standards.

5 The Texas Commission on Environmental
6 Quality has notified a couple of neighboring
7 landowners that their wells may be contaminated.
8 But that's just the tip of the iceberg. The real
9 issue and the real concern today is what we don't
10 know because of the remarkable lack of groundwater
11 monitoring in Texas and across the country.

12 The threat to public health and the
13 damage to the environment that is documented by
14 EPA and others in recent reports is mounting
15 evidence of the accumulating harm from poorly
16 regulated coal combustion waste disposal sites.
17 The quantum leap in coal ash sites with documented
18 contamination from the seven sites identified by
19 EPA in its report to Congress in 1999, to about
20 137 sites that we know about today, demonstrate
21 that whenever we look, whenever we do groundwater
22 monitoring, onsite or offsite, we invariably find

1 contamination at virtually every coal ash pond and
2 landfill currently operating.

3 The Electric Power Research Institute,
4 EPRI, and some state agencies stubbornly insist
5 that coal ash is safe because it passes the EPA's
6 toxicity leaching test, but the National Research
7 Council warned in 2006 that the leach test was not
8 an accurate method for measuring the leaching
9 potential for toxic metals.

10 In closing, let me say that
11 contamination of the environment and water
12 supplies with toxic levels of arsenic, lead, and
13 other chemicals is a pervasive reality at
14 America's coal ash disposal sites because states
15 are not preventing it.

16 The case for a national recommendation
17 setting common-sense safeguards for states to
18 meet, such as liners, monitoring, cleanup
19 standards, could not be more persuasive, and the
20 need for direct EPA involvement is clear. Thank
21 you very much.

22 MR. DELLINGER: Numbers 213, 214, 215

1 and 216. Numbers 217, 218, 219, and 220. Numbers
2 221, 222, 223, 224. Whoever has the lowest number
3 come forward. It looks like 217.

4 SPEAKER: Hello. I'm John Gray, from
5 Fayetteville, Arkansas, actually a little town
6 called Greenland, which is a suburb of
7 Fayetteville.

8 I'm a member of Clean Air Arkansas, who
9 work for clean air; also a member of the Ozark
10 Headwaters -- a member of the Ozark Headwaters
11 organization, and I work to clean up the waterway
12 of the White River that feeds into the lake that
13 is our water supply up there.

14 So I'm very concerned that we do
15 anything technically feasible to minimize any
16 pollution that enters into our groundwater system.
17 We have a lot of (inaudible) oils up there. Water
18 leaches things into our water table and our
19 drinking water very, very easily. So,
20 consequently, any kind of a dump site or -- any
21 kind of a dump site or contaminating process is of
22 great interest to us.

1 One of the things that -- I'm glad I'm
2 not on this panel up here because their decision
3 -- they're faced with Option C, which, as I listen
4 to this, will end the world as we know it, and
5 Option D, which basically, according to my
6 mentors, has little or no inspection capability.

7 One of my teachers was a guy named
8 Edward Deningham. He taught that if you don't
9 have frequent, random inspections by an
10 independent party, with real teeth in it, you only
11 have an illusion of quality control. That seems
12 to be the fundamental flaw of Option D.
13 Consequently, it is kind of a Hobson's choice, a
14 very difficult decision the panel faces.

15 It's too bad there is not a third option
16 where perhaps the recycling uses could be given a
17 healthy title. Go ahead and use them and go ahead
18 and provide this crutch to allow what looks to me
19 like a dying industry, because burning ancient
20 sunlight obviously will come to an end one day.

21 Any crutch that allows it to go too far
22 into the future will work against converting to

1 safe alternatives that do not pollute. Thank you.

2 MR. DELLINGER: 218.

3 SPEAKER: Good morning. My name is
4 Larry Ivy. I live near Fairfield, Texas. I've
5 lived in the Fairfield area for the past 22 years
6 and since my retirement in 1999, I have had the
7 opportunity to have a little political stint as
8 city councilman and mayor of Fairfield, but I've
9 also had a small cattle operation on a 65-acre
10 tract of land about 3 miles from the Big Brown
11 Power Plant. I have two neighboring landowners
12 who are physicians and live on their ranch near
13 the power plant. Also, my only daughter and her
14 only two children live on a ranch near Fairfield.

15 So I have a particular interest in this
16 goings-on, over a period of several years, as to
17 exactly what was going on. None of us have ever
18 seen any evidence that any person or environment
19 has suffered any ill effect caused by the
20 operation of the Big Brown Plant and Mine.

21 I'll not try to address the technical
22 determination of whether a substance, in this

1 case, coal combustion by-products, should be
2 classified as a hazardous waste. But from what
3 I've read, the EPA has studied this matter
4 extensively over the past several years and has
5 repeatedly determined that regulation of such
6 products as a hazardous substance is not
7 warranted. I've not seen any evidence that the
8 chemical makeup of the by-products has changed
9 through the years, and yet there are those who
10 want to arbitrarily change the classification to
11 that of a hazardous substance.

12 I would like to address the impact that
13 an unwarranted reversal in this determination
14 could have on my community in Fairfield and on
15 Freestone County. The Big Brown Plant and Mine
16 are the primary industry and provider of jobs in
17 our county. The added cost of a hazardous
18 substance regulation could possibly force the
19 plant and mine out of business along with the
20 company that markets the ash for beneficial use,
21 which would be devastating to our local economy.
22 At the very least, it's apparent that the cost of

1 all electricity -- all electric energy, not just
2 that produced by coal-burning plants, would
3 increase unnecessarily.

4 I ask you not to let a few isolated
5 instances of improper handling or management
6 result in regulations that punish those companies,
7 communities, and states that are doing a good job
8 of regulating, managing, and utilizing these
9 by-products. It can be done properly and safely
10 without the hazardous substance designation. I
11 thank you.

12 MR. DELLINGER: Who has the lower number
13 over there now? Can you show me that? 220.

14 SPEAKER: First of all, I would like to
15 thank you for giving me the time to weigh in on
16 this incredibly important issue. I feel very
17 privileged as an ordinary Louisiana citizen to be
18 able to take the time out of my week to travel to
19 Dallas in order to exercise my civic duty.

20 I do find it unfortunate --

21 MR. DELLINGER: Can you state your name?

22 SPEAKER: Oh, I'm sorry. My name is

1 Jordan Bantuelle, and I'm from Louisiana.

2 MR. DELLINGER: Thank you.

3 SPEAKER: I do find it unfortunate that
4 the federal government does not have the time, the
5 resources, and the manpower to travel to New
6 Roads, Louisiana, to ask each and every resident
7 how they feel about the fact that the toxic,
8 sometimes lethal amount of selenium has been found
9 to exceed federal standards in their drinking
10 water due to coal ash ponds.

11 It is unfortunate that we cannot all
12 travel to Mansfield, Louisiana, and ask the
13 residents how they feel about the fact that the
14 coal ash storage contaminated four district
15 groundwaters and groundwater monitoring has
16 documented exceedances for lead and arsenic and
17 selenium.

18 It is too bad that the good people from
19 (inaudible) Louisiana could not all make it up
20 here today to let us know how they feel about the
21 fact that their groundwater has been contaminated
22 with arsenic, to almost six times the maximum

1 level, and lead exceeding the maximum contaminant
2 level.

3 All of these people could not make it
4 here today. Perhaps they are at work. Perhaps
5 they are working so that they can feed their
6 families, as well as paying their medical bills.
7 But I could make it here, so I hope it is not too
8 presumptuous if I say a few words on behalf of the
9 citizens of Louisiana.

10 People that live within one mile of an
11 unlined coal ash pond have a 1 in 50 chance of
12 getting cancer. That is 2,000 times higher than
13 the EPA's acceptable level, while the people of
14 Louisiana don't like having an unacceptable chance
15 of getting cancer.

16 According to the EPA, living near a wet
17 coal ash storage mine has health risks amounting
18 to almost smoking as many as 20 packs of
19 cigarettes a day. The people of Louisiana do not
20 want to smoke 20 packs of cigarettes a day.

21 The toxins found in coal ash have been
22 linked to numerous health problems, but we don't

1 want organ disease or cancer. We don't want
2 respiratory illness or neurological damage. And
3 perhaps most of all, we don't want our children to
4 grow up with developmental problems.

5 When I was in grade school, I learned
6 that the executive branch of our government
7 enforces the laws and protects the citizens of
8 America. Well, today, may democracy and common
9 decency prevail over the power of profits. Please
10 enact Subtitle C to regulate coal ash. Thank you
11 very much.

12 MR. DELLINGER: 221.

13 SPEAKER: My name is Mike Griffith. I'm
14 with the Port of Bay City in Matagorda County.

15 As technology improves with lower air
16 emissions, the waste ash becomes even more toxic.
17 Federal regulation is needed. We constantly learn
18 of new contamination of rivers, streams, and
19 groundwater. I am personally familiar with the
20 proposed new plant in Matagorda County, Texas. It
21 will produce 3 million pounds of ash each year
22 that's going to be stored offsite.

1 This location is within the 100-year
2 floodplain, it's in a hurricane zone, and it's
3 adjacent to the Colorado River. This river
4 provides freshwater to the second-largest nursery
5 bay on the Texas Gulf Coast. It's home to the
6 largest shrimping fleet on the Texas Coast as
7 well.

8 There are not adequate rules or
9 regulations to cover this waste ash disposal.
10 This bay supports commercial shrimping, fishing,
11 oystering, as well as recreational fishing. The
12 fish bioaccumulate these toxins, and people eat
13 the fish. Contamination will be devastating to
14 the estuaries, commercial and recreational
15 fisheries, and human health.

16 The EPA needs to follow Subtitle C to
17 protect the environment and the citizens. Thank
18 you.

19 MR. DELLINGER: Please state your name.

20 SPEAKER: My name is Eddie Pevehouse.
21 Sorry. I'm here today representing Citizens
22 Opposed to Power Plants. And I live in southern

1 Navarro County on a ranch that has been in my
2 family for 137 years. I operate that ranch. And
3 I hope that we can keep our -- our water and --
4 and air clean enough for my chil -- my sons and my
5 grandchildren to live on and operate that ranch
6 someday.

7 The people of Navarro County have been
8 increasingly approached by companies wanting to
9 build both coal-fired and gas-fired power plants.
10 We are already negatively affected by Big Brown
11 and other large power plants to our south. Also,
12 Navarro County is the home of Richland-Chambers
13 Reservoir. It's a big fishing lake, but it also
14 is the source of Tarrant County's water supply.
15 And we cannot afford to have that water supply
16 polluted and contaminated. Also, Richland Creek
17 and Pin Oak Creek receive water from -- from that
18 lake. And Pin Oak Creek runs across the back of
19 my ranch.

20 I guess what I want to urge the EPA to
21 do is to -- no, I don't guess. I know. Sorry
22 about that. I want to urge the EPA to regulate

1 the coal ash as special waste. And I believe that
2 would fall under Provision C of -- of the Clean
3 Air Act. Thank you very much.

4 MR. DELLINGER: Thank you.

5 SPEAKER: My name is Diana Rawlins. And
6 I am here from Navarro County, Texas. People
7 United for the Environment in Navarro County would
8 urge the EPA to regulate coal ash as special
9 waste. It is a hazardous substance and should be
10 strictly regulated. Much of Texas depends on
11 water from little of Texas.

12 No issue is more relevant to the future
13 of the state and its people and livestock than the
14 preservation of non-polluted water sources. Coal
15 ash management will have a major impact on water
16 sources in Texas. The air issues in this area are
17 well-known. The SIP, the State Implemented Clean
18 Air Area, is directly impacted by pollution from
19 the south because of our wind patterns. Yet TCEQ
20 is permitting more and more power plants south of
21 Dallas. Ellis County, south of Dallas, is already
22 included in the non-attainment air area. Power

1 plants in Navarro would be located less than 30
2 miles -- less than 30 miles from Ellis County.
3 Affects of coal ash also affect air quality.
4 Every attempt to use a strict standard of coal ash
5 control should be used. We support the adoption
6 of Subtitle C.

7 And on my personal behalf, I will
8 mention to you that there is a place across the
9 ocean called Europe. And a long, long time ago, a
10 lot of men called Romans went there. And they
11 made a lot of structures including Hadrian's Wall.
12 And they built these structures with concrete. A
13 lot of those structures are still there, some of
14 them are still usable. And you know, there isn't
15 any fly ash in any of that concrete.

16 MR. DELLINGER: Thank you. We're going
17 to take a 10-minute break. And we'll continue at
18 1:15.

19 (Whereupon, at 1:05 p.m., a
20 luncheon recess was taken.)
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1 that are arriving for the afternoon session missed
2 the introduction this morning. Speakers, if you
3 are pre-registered, you were given a 15-minute
4 time slot when you are scheduled to give your
5 three minutes of testimony. To guarantee that
6 slot, we have asked that you sign in ten minutes
7 before your 15-minute slot at the registration
8 desk, which is just outside the doors. All
9 speakers, those that have pre- registered and
10 those that are walk-ins were given a number when
11 you signed in today, and this is the order in
12 which you will speak. I will call speakers to the
13 front of the room, and I'll ask that they sit over
14 in those chairs behind the podium. When your
15 number is called, I'll ask that you move up to the
16 speaker's podium and state your name and
17 affiliation. And at that point, you can give your
18 oral testimony.

19 Because there are many people today that
20 have signed up to provide testimony, and to be
21 fair to everyone, testimony is limited to three
22 minutes. We will be using an electronic

1 timekeeping system, which is located at the
2 speaker's podium and controlled up from our panel
3 area. And we will also hold up cards to let you
4 know when time is getting low. When we hold up
5 the first card, this means that you have two
6 minutes left. The second card means that you have
7 one minute left. The third card, you will have 30
8 seconds left. When the fourth card is held up,
9 your time is up and we ask that you wrap up your
10 testimony. When -- when you have completed
11 speaking, please return to your seat behind the
12 podium against the wall and remain there until all
13 speakers in your group have completed their
14 testimony.

15 If you have a copy of your written -- or
16 of your oral testimony that you put on a piece of
17 paper, please place that in the box by the court
18 reporters. We will not be answering questions on
19 the proposal. However, from time to time, any of
20 us in the hearing panel may ask questions of you
21 to clarify your testimony.

22 So as -- so as I just mentioned, if you

1 have brought a written copy of your comments that
2 you are giving today, please leave a copy in the
3 box by the court reporter. If you are only
4 submitting written comments today, please put
5 those in a box by the registration desk. If you
6 have additional comments after today, please
7 follow the instructions on the yellow handout and
8 submit comments by November 19th, 2010.

9 Our goal is to ensure that everyone who
10 has come today to present testimony is given an
11 opportunity to provide comment. To the extent
12 allowable by time constraints, we do -- we will do
13 our best to accommodate speakers who have not
14 pre-registered. Today's hearing is scheduled to
15 close at 9:00 p.m., but we will stay later, if
16 necessary.

17 If, however, time does not allow you to
18 present your comments orally, we have prepared a
19 table in the lobby where you can provide a written
20 statement in lieu of oral testimony. These
21 written statements will be collected and entered
22 into the docket for the proposed rule, and will be

1 considered the same as if you presented them
2 orally.

3 If you would like to testify but not yet
4 -- but have not registered to do so, please sign
5 up at the registration table. We are likely to
6 take a few occasional breaks, but we are prepared
7 to eliminate or shorten the breaks in order to
8 allow as many people as possible to provide their
9 testimony.

10 Finally, if you have a cell phone, we
11 would appreciate it if you would turn it off or
12 turn it onto vibrate. If you need to use your
13 phone at any time during the hearing, please move
14 to the lobby or somewhere outside the hearing
15 room. We ask for your patience as we proceed. We
16 may need to make some minor adjustments this
17 afternoon. And we thank you for participating
18 today.

19 And at this time, we're going to go
20 ahead and continue with the -- the oral testimony.
21 And I'd like to call Numbers 43, 46, 47, and 48 up
22 to the chairs to my right. And Number 49, also.

1 Number 43.

2 SPEAKER: Good afternoon. My name is
3 Rick Wicker. I'm with the -- I'm from Oklahoma
4 City, Oklahoma. Today, I'd like to speak in favor
5 of Subtitle C, making coal ash a hazardous
6 material.

7 I first became aware of this issue in
8 April when I took a trip to Bokoshe, Oklahoma,
9 which is located about a mile and a half from a
10 coal -- coal fly ash pit. It is run by a company
11 called Making Money Having Fun.

12 I think the issue here is social justice
13 because most of the coal fly ash pits are located
14 in rural America and very small towns. This
15 particular coal ash pit is a mile and a half south
16 of the town of Bokoshe in the direction of the
17 prevailing winds. So whenever a truck goes
18 through town and then dumps at the pit, the plume
19 of ash goes up into the air and is carried north
20 toward the town.

21 There are -- according to some of the
22 locals, which we talked to, approximately 12 of 15

1 families located within a mile of the pit are
2 suffering from different forms of cancer. The pit
3 has been there for eight years. The pit is a
4 reclamation project. They used to mine coal from
5 that area and -- but now the pit is no longer a
6 pit. It's a -- it's a mountain of -- 50 feet high
7 of solidified coal ash.

8 Below the pit is a pond that has an
9 electric blue color, which if you're from
10 Oklahoma, you know that we don't have any electric
11 blue ponds up there. So from that pit, there's
12 also two -- two streams that flow out of that area
13 that go downstream. One of the farmers downstream
14 has reported that a lot of his cows were
15 stillborn, that drink water from one of those
16 streams.

17 The issue here is that the pit is not
18 lined. It's -- it's exposed to the groundwater.
19 The surface water downstream of the pit is -- is
20 more likely contaminated. But there is no state
21 agency that's involved in monitoring or looking
22 into the groundwater, the surface water, or the

1 air. And my main point is that the states are not
2 going to take care of this problem until it's
3 declared a hazardous material. And so that's the
4 way it is. Thank you. Thank you very much.

5 MR. BEHAN: Thank you, sir. Number 46.

6 SPEAKER: Good afternoon. I'm Gerald
7 Butcher. I'm with Western Farmers Electric
8 Cooperative. Western Farmers serves rural
9 Oklahoma, and we've done that for over 69 years.
10 As a non-profit wholesale power supplier of
11 electricity, Western Farmers provides power to
12 nineteen member co-ops who distribute that to
13 two-thirds the state of Oklahoma. This powers
14 small towns, communities and farms, and people in
15 rural areas of Oklahoma.

16 There's an old painting hanging in
17 Western Farmers headquarters that shows the joy on
18 the faces of a rural family when they first
19 receive electricity in their rural farmhouse. And
20 the caption comes from an old Tennessee farmer,
21 who said in the '40's, "Brothers and sisters, I
22 want to tell you this, The greatest thing on earth

1 is to have God in your heart. And the next
2 greatest thing is to have electricity in your
3 house." This painting is more than a sentiment.
4 It depicts the impact of electricity on those
5 people in rural areas that rely on cheap
6 electricity.

7 During the 1930's and '40's, parts of
8 rural Oklahoma did not have electricity in rural
9 areas. That changed when rural electric
10 cooperatives were formed. It was an unbelievable
11 blessing to rural areas in small towns and
12 communities who now had power. It opened a world
13 to them by providing power for radios, telephones,
14 and new farming techniques.

15 As a third generation of Oklahoma, I can
16 clearly recall my elderly family telling stories
17 of the challenges of rural life during the Great
18 Depression and how that finally changed when
19 electric power was supplied to them. In short,
20 the cheap power my grandfather and others received
21 made them a real part of the world.

22 Today, Western Farmers is able to

1 provide low cost electric power in parts -- in
2 part due to a coal-fired power plant, one unit --
3 it's a 450 megawatt unit at Fort Towson, Oklahoma.
4 It generates approximately 90,000 tons of CCR
5 annually. Over 70 percent of this is reused for
6 road beds, concrete, dry wall, and other everyday
7 products. The remaining CCR is disposed on site,
8 which is monitored by a groundwater monitoring
9 system. No leaching or environmental incidents
10 have ever occurred in 30 years of this plant's
11 operation.

12 If the EPA decides to regulate CCR more
13 stringently, there will be several consequences.
14 First, the cost of compliance will increase.
15 Second, Western Farmers sells CCR to other
16 companies who put it to beneficial use. With the
17 stigma attached to hazardous waste label, this is
18 going to change and prohibit reuse. And finally,
19 co-op systems are relatively small and are
20 prohibited from maintaining large capital
21 reserves. When the costs for running their
22 businesses suddenly increase, like they would if

1 CCR is more stringently regulated, there's little
2 or no cushion to mitigate the increased costs, so
3 rates or borrowing money as -- as necessary for
4 these cooperatives.

5 In conclusion, Western Farmers
6 respectfully requests that EPA maintain the Bevill
7 amendment and regulate the disposal of CCR under
8 Subtitle D. Thank you.

9 MR. BEHAN: Thank you. Number 47.

10 SPEAKER: Good afternoon. Welcome to
11 Dallas. Thank you for being here and thank you
12 for providing this opportunity for us to provide
13 comments into the docket. My name is Usha Turner.
14 I'm the director of environmental policy and
15 reporting for Luminant, headquartered here in
16 Dallas. Luminant generates electricity in Texas
17 with over 18,300 megawatts of electric generation,
18 including over 8,000 megawatts of base load
19 coal-fueled electric generation, using native
20 Texas lignite and western sub-bituminous coal.
21 This makes Luminant one of the nation's largest
22 coal based generators. Luminant's commitment to

1 environmental excellence in Texas is
2 well-demonstrated. And with strong encouragement
3 from EPA and others, Luminant has invested
4 significant efforts in recycling nearly 40 billion
5 pounds of coal combustion residues, or CCRs, to
6 date, with 2.2 billion pounds in 2009 alone.

7 This has allowed other industries to
8 beneficially reuse the CCRs, such as the
9 construction industry's use in concrete for
10 roadways, among many other applications that
11 you've heard here today. As you've also heard
12 here today and as you know, on four separate
13 occasions, most recently in the year 2000, EPA
14 made a regulatory determination that concluded
15 that Subtitle C of RCRA is not the appropriate
16 regulatory regime for regulating CCRs. And that
17 regulation as non-hazardous waste by the states is
18 the appropriate option for ensuring the safe
19 management of these materials while preserving
20 reuse.

21 The state of Texas, through the Texas
22 Commission on Environmental Quality, already has a

1 comprehensive regulatory program for the storage,
2 the disposal of CCRs, that oversees the design,
3 construction, monitoring, reporting, and final
4 closure of all CCR disposal facilities.

5 The regulation of CCRs under Subtitle C
6 would not only strip states of the ability to cost
7 effectively regulate CCR disposal practices and
8 potentially cost utilities like Luminant hundreds
9 of millions of dollars, but would also eliminate
10 the use of CCRs and the businesses that utilize
11 them, again, as you've heard here today several
12 times.

13 Any hazardous waste-like program that
14 directly -- excuse me. Any hazardous waste-like
15 program would directly or indirectly result in the
16 elimination of the recycling markets for CCRs,
17 increase the use of virgin natural resources,
18 contribute to negative environmental benefits, job
19 losses, and increase in electricity cost and
20 energy use.

21 In summary, Luminant, in addition to
22 over 200 members of the U.S. Congress, 43 states,

1 and numerous federal agencies strongly oppose the
2 regulation of CCRs as a hazardous material, and
3 recommends that EPA continue to allow states to
4 run their own programs like the model state of
5 Texas that you've heard about here today. Thank
6 you for this.

7 MR. BEHAN: Thank you. Number 48.

8 SPEAKER: Good afternoon. My name is
9 Paul Rolke. I own a 2,300-acre ranch about
10 halfway between Dallas and Houston. I'm also the
11 president of Robertson County: Our Land, Our
12 Lives, a group of concerned citizens which tried
13 to get the TCEQ to reduce the pollution from the
14 proposed and now constructed Oak Grove lignite
15 burning power plant, which our previous speaker
16 works for that company.

17 It is clear that the disposition of coal
18 ash needs additional regulation. The science
19 speaks for itself. The question is, are
20 enforceable federal rules necessary, or will
21 federal guidelines be sufficient to protect Texans
22 from harmful pollution? I believe my experience

1 with the coal plants in my county provides
2 guidance as to whether the State of Texas and the
3 TCEQ will do their job without enforceable federal
4 standards.

5 Our experience with the Oak Grove plant
6 permitting process, upon review of the PSD permit
7 for Oak Grove, EPA Region 5 sent letters to the T
8 -- TCEQ expressing concerns about specific aspects
9 of the permit. The TCEQ took no action respecting
10 these concerns. Likewise, regarding an amendment
11 to the water permit, TCEQ was nonresponsive to EPA
12 concerns and even refused to hold off on approving
13 the permit to allow the EPA to submit further
14 information. The TCEQ appears to be in the habit
15 of simply ignoring the feedback from the EPA when
16 we have a circumstance that at least with the PSD,
17 the tech -- the EPA is allowing TCEQ to administer
18 the regulations that are EPA's.

19 At a broader level, new regulations
20 continually lag behind the science. There's a
21 cycle in which the science reflects a need for
22 more stringent regulations to adequately protect

1 the public. The EPA goes through the rule-making
2 process for a couple of years, a compromise is
3 made, and the rules are enacted. Then sooner or
4 later, better scientific research again shows the
5 need for stricter regulation. And the cycle
6 repeats.

7 The scientists who did the research
8 often find the final regulations less stringent
9 than what the science demands. So in a
10 circumstance where many feel the EPA regulations
11 fall short of what is needed out of the myriad of
12 federal regulations, is there one example that the
13 TCEQ deciding on their own initiative that federal
14 regulations are not stringent enough to protect
15 the citizens of this great state and taking action
16 on their own initiative to implement a more
17 protective rule. There may be. I can't find one.

18 I believe that if you consult with your
19 co-workers in Region 5 (sic?), they will tell you that we
20 can barely make them enforce the existing
21 enforceable rules. Guidelines will not lead to
22 acceptable regulation. I would also ask them, if

1 I were you, do they think the TCEQ is
2 constitutionally capable of creating and strictly
3 enforcing rules to protect the public and
4 environment.

5 My experience with the, quote,
6 beneficial use of coal ash in my county -- a
7 little less than ten years ago, the county added
8 truckloads of coal ash to the dirt road that leads
9 to my ranch. All of the silica works great as a
10 stabilizer when it rains. On the other hand, I
11 have no way of knowing what the health risks are.
12 I can speculate. I know that a coal boiler cooks
13 elements down to a particulate size that in the
14 natural world, only a volcano will do at that
15 scale. And I know that those tiny particles are
16 far less likely to be captured by my internal
17 filtration system than the dust I would normally
18 inhale.

19 The net -- net is -- the --
20 notwithstanding what you just heard, as far as I
21 can tell, this position of coal ash waste is not
22 regulated in the state. Fly ash is regulated in

1 the air permits. But the ash itself, they can
2 pretty much do whatever they want to with it.
3 Thank you very much. Sorry to run long.

4 MR. BEHAN: Thank you. Number 49. Is
5 Number 49 here?

6 SPEAKER: Hi, good afternoon. My name
7 is Jody Harlan. I'm from Yukon, Oklahoma. I'm
8 the communications director at a state agency that
9 serves people with disabilities. And I took off
10 work today to talk with you about this important
11 issue.

12 I would like for the EPA to recognize
13 the public health and environmental hazards caused
14 by coal ash and the impact on the communities in
15 Oklahoma. And ask you to regulate it under
16 federal guidelines Subtitle C of the RCRA. This
17 is the only option that establishes federally
18 enforceable standards needed for oversight and
19 protection of the citizens and -- and the water.

20 In Oklahoma, state regulation and
21 enforcement are notoriously weak or nonexistent.
22 The Oklahoma Department of Environmental Quality,

1 the Water Resources Board, and the Oklahoma
2 Department of Mines each insist that the other is
3 responsible for regulation. And to regulate under
4 Subtitle C would be following EPA's own
5 guidelines.

6 A 2008 EPA report found that coal ash
7 contains significant carcinogens and retains heavy
8 metals in far higher concentrations than those
9 found in coal. An EPA risk assessment said -- as
10 I think you've heard here already today -- that
11 living near a coal ash site is more dangerous than
12 smoking a pack of cigarettes each day. Coal ash
13 has been linked to organ disease, respiratory
14 illness, neurological damage, and developmental
15 disabilities.

16 And we're here today -- at least one of
17 the reasons the federal regulation process
18 started, from what I understand, because of the 1
19 billion gallons of sludge that spilled onto
20 adjacent properties in Kingston, Tennessee at
21 Christmas in December 2008. So what I want to ask
22 is that you consider the Subtitle C provisions.

1 And my research of this really big bill
2 under Subtitle C: Coal ash sites would get
3 mandatory permits and take basic safety
4 precautions. Wet coal ash ponds would be phased
5 out. Companies operating coal ash sites when the
6 rules go into effect would have to assume
7 liability for the damage that they do -- the harm
8 that their facilities cause in our communities in
9 Oklahoma. And existing dams would be subject to
10 increased inspection by certified engineers.
11 Finally, coal dumped into the fill sites, like the
12 one in Bokoshe, would be regulated as landfills,
13 not allowed to masquerade as recycling.

14 So thank you for being in Texas today.
15 This is the first time I've ever done anything
16 like this. I'm sure that's true of others. Thank
17 you very much for listening.

18 MR. BEHAN: Thank you. Numbers 50, 51,
19 52, 53, 54, if you could come up and take a seat
20 in the chairs. 121 and 204, if you could come up.
21 Number 50.

22 SPEAKER: Good afternoon. My name is

1 Lonnie Johnston, and I'm a concerned citizen. I
2 live in Bossier City, Louisiana. I've been in the
3 construction industry for 28 years and have
4 extensive experience with coal combustion
5 products, or as we call them, fly ash. I worked
6 for one of the largest concrete companies for 22
7 years. I assisted in the installation and testing
8 of the first fly ash silo in our area. I was part
9 of the approval process in our district for the
10 Louisiana Department of Transportation, along with
11 the introduction of its beneficial use to our
12 commercial and residential customers.

13 I have extensive experience in the use
14 of fly ash in concrete, and have been personally
15 involved in creating mixed designs for beneficial
16 use. As a manager in the concrete industry, I was
17 also involved with the day-to-day policy and
18 procedures and compliance with all safety and
19 health hazards. While dealing with many issues
20 over 22 years, I cannot recall having one safety
21 or health issue related to fly ash during
22 beneficial use.

1 In 2004, I went to work for one of the
2 largest marketers of fly ash in the country as a
3 technical sales representative. It was a perfect
4 fit for me since I knew the material and its many
5 uses. Knowing most of the concrete producers in
6 the state of Louisiana and their uses was also a
7 plus. For the last six years, I have dealt
8 directly with all the users of fly ash in the
9 state of Louisiana and their many different
10 beneficial uses of ash and do not recall a single
11 safety or health issue, which brings me to my
12 point.

13 As you can see, I've experience and
14 knowledge of the beneficial use of ash. Also, I
15 have firsthand experience in how companies will
16 react to the reclassification of fly ash as a
17 Subtitle C hazardous material. Your intentions
18 may be to regulate CCPs at the landfill area,
19 when, in fact, you will be impacting the
20 beneficial use of the recycled and reusable
21 product. I have many concrete producers in this
22 state that will -- that have stated that in the

1 event the EPA classifies fly ash as a Subtitle C
2 hazardous material, they will discontinue the use
3 of fly ash in their concrete plants.

4 Your actions will decide whether we will
5 continue using fly ash beneficially or whether we
6 will double the landfills at our power plants and
7 increase our cost of electricity, effectively
8 bringing the use of one of the most beneficial
9 recycled products to an end. I strongly urge you
10 to classify coal combustion products under
11 Subtitle D, so we can continue to use them
12 beneficially.

13 MR. BEHAN: Thank you. Was 51 here?
14 52?

15 SPEAKER: In 1990, the Texas Coal Ash
16 Utilization Group was formed by marketers,
17 academia, and local Texas utilities to promote the
18 beneficial reuse of coal combustion products.
19 Through our outreach with the TCEQ, a guidance
20 letter was issued in 1995 that it recognized CCPs
21 as the materials and not considered a solid waste.
22 This letter was instituted as an agency rule in

1 '01 and has been a key to the overwhelming success
2 of CCP utilization year after year.

3 Prior to this rule, the use of CCPs in
4 Texas was 20 to 30 percent of annual production.
5 This low utilization rate was contributed to the
6 reporting guidelines that were in place. But more
7 importantly, there was a stigma in the market
8 because CCPs were treated as a solid waste and not
9 a product. The current EPA Option 1 proposal for
10 managing CCPs under the RCRA C program would set
11 our industry back in Texas as it was prior to the
12 TCEQ recognizing CCPs as a product and not a solid
13 waste. Since the new guidelines have been in
14 place by the TCEQ, Texas has recycled more CCPs
15 than any other state. And now the utilization is
16 60 to 70 percent of utilization -- of production
17 annually.

18 From prior public statements, EPA
19 clearly does not believe that a stigma exists or
20 potentially would come into play if the RCRA C
21 proposed option becomes regulation. However, in
22 '05, the EPA has a report, Review of Texas

1 Regulation, Standards, and Practices to the Use of
2 CCPs, states this stigma effect has a potential
3 threat that could impact future CCP utilization in
4 Texas.

5 In regards to liability, utilities are
6 highly considering not allowing CCPs to leave the
7 site for fear of future litigation. The same
8 concern is being reserved -- observed from end
9 users, as well. The potential of future
10 litigation is too much at risk for some CCP -- CCP
11 producers and utilizations.

12 Technical and cost savings. Specific to
13 Texas, the aggregates that are used for the
14 production of concrete are highly reactive. ASR
15 is a material related distress that has resulted
16 in premature deterioration of concrete. Texas DOT
17 highly relies on the use of fly ash for the
18 mitigation of ASR. If the Texas -- if TxDOT does
19 not have these materials at hand, they will have
20 an increase of 12.7 million tons annually a year.

21 In regards to the economic assessment,
22 last, in EPA's economic assessment, EPA determined

1 that CCP utilization would actually increase under
2 the RCRA C proposal option. The assessment by EPA
3 assumes utilities will be motivated to have CCP
4 utilized rather than go to their onsite landfills
5 due to increased cost. This thought by EPA
6 assumes that there is no cap on the amount of tons
7 that can be utilized, especially in concrete. EPA
8 did not consider the fact that there are technical
9 limitations to the utilization of CCPs.

10 TxDOT has limitations at 35 percent
11 maximum replacement, for example. This is a
12 significant oversight by EPA in their assessment
13 and needs to be reconsidered. The fact is, there
14 is a cap on what can be utilized; and that is
15 dependent on the annual concrete market and a
16 percentage replacement limitations.

17 I encourage the EPA to assess this item
18 -- of increased utilization that has been publicly
19 stated. In summary, TCAUG strongly supports and
20 encourages the EPA to elect the RCRA D proposal
21 option to manage CC -- CCPs per our comments
22 addressed to the EPA panel this afternoon. Thank

1 you.

2 MR. BEHAN: Thank you. Sir, could you
3 state your name for the record?

4 SPEAKER: My name is Mike Silvertooth.
5 I'm president of TCAUG.

6 MR. BEHAN: Great. Thank you, sir.
7 Number 53.

8 SPEAKER: Good afternoon. My name is
9 Ryan Rittenhouse. I work with Public Citizen
10 Texas, based out of Austin. We are a national
11 consumer interest organization. Thank you for
12 giving us this opportunity to speak today.

13 You're the EPA. You're the
14 Environmental Protection Agency. Your job is to
15 protect public health and the environment. Your
16 job is not to ensure that coal companies can not
17 irresponsibly increase their profits at the
18 expense of public health and the environment. So
19 we are calling on you to adopt the most stringent
20 regulation possible, which is in this instance
21 Subtitle C.

22 I would also go further to say that

1 Subtitle C isn't good enough. That's the bare
2 minimum of what should be done right now. For
3 instance, as -- it's not looking at coal ash waste
4 as being deposited back into mine-mouth areas.
5 And many of the sites in Texas -- not all of them,
6 but a lot of them -- are these mine-mouth
7 reclamation sites where they're dumping the coal
8 ash right back -- excuse me -- into the mine once
9 they're done with it. This is also lignite coal,
10 which is the dirtiest coal, and has some of the
11 worst and highest levels of these contaminants.
12 So this is a really big problem right here in
13 Texas.

14 And even Subtitle C won't address all of
15 the -- these issues. So we need more than just
16 Subtitle C. And Subtitle C should definitely be
17 what you adopt now. And you should be looking
18 towards the future to take into account all these
19 other ones, as well.

20 Now, we have a lot of coal plants in
21 Texas. You've probably seen this report already.
22 I'll leave this with you as well, though. This is

1 the report that EIP just put out, In a Harm's Way,
2 Lack of Federal Coal Ash Regulations Endangers
3 Americans and Their Environment. In this report,
4 it -- they studied coal plants all around the
5 country and saw that almost all of them, if not
6 all of them, showed elevated levels of many of the
7 toxic carcinogens and other contaminants that are
8 in coal waste, leaching into the groundwater and
9 leaching into the nearby areas.

10 The only one they had data for on Texas
11 was the Fayette coal plant, and that was only
12 because Fayette -- because of a settlement had had
13 to do special monitoring. And that was the only
14 reason TCEQ had that data. They didn't have data
15 for EIP, for the other 18 coal plants in Texas.
16 There is nothing going on. We don't know what's
17 out there. And we don't know what danger we're
18 facing. And it's one more example -- as I'm sure
19 you've heard in a long list of examples -- of how
20 TCEQ has been utterly failing the people of Texas.

21 We need EPA to come in, and we need them
22 to set federally enforceable regulations that all

1 of these facilities will have to comply with. If
2 not, it's just business as usual, and you may as
3 well not do anything. Adopting Subtitle D will do
4 little, if anything, to improve this problem. So
5 with that, I highly encourage you to adopt
6 Subtitle C. I would further encourage you to
7 adopt something stricter if possible. And thank
8 you for your time.

9 MR. BEHAN: Thank you. Number 54.

10 SPEAKER: My name is Thomas Adams. I'm
11 the executive director of the American Coal Ash
12 Association. I want to thank you for the
13 opportunity to participate here today.

14 In the EPA proposal of June 22nd, the
15 agency raises concerns over the use of flue gas
16 desulfurization gypsum, also known as FGD gypsum,
17 for agricultural applications. FGD gypsum is not
18 an ash. Rather, the material is a synthetic form
19 of gypsum that is produced by scrubbers that are
20 installed on coal-fired plants to control SOX and
21 NOX air emissions. This form of gypsum is
22 slightly more pure than mined gypsum.

1 Research by the U.S. Department of
2 Agriculture in numerous academic institutions has
3 shown that FGD gypsum is safe and beneficial for
4 use on farms which grow our food. The USDA is in
5 the middle of an extensive risk assessment
6 scheduled for completion in 2012. None of the
7 research to date has given the USDA, academic
8 institutions of the agricultural community cause
9 for concern.

10 The EPA itself has been a supporter of
11 the use of FGD gypsum up to now. As recently as
12 November of 2009, the EPA has supported workshops
13 to help promote the use of FGD gypsum by farmers.
14 Farmers have found this material to be a valuable
15 resource in chall -- in the challenges of no-till
16 farming, soil erosion, and -- and water runoff,
17 and enhancing crop growth and maturity.

18 However, the June 21 proposal cast doubt
19 on the future of the use of FGD gypsum on our
20 farms due to concern over, quote, excessive
21 quantities; that is, field applications of FGD
22 gypsum in amounts that exceeds scientifically

1 supported quantities required for enhancing soil
2 properties and/or crop yields, end quote. The
3 source of this concern is somewhat curious. What
4 farmer is going to apply excessive amounts of any
5 material that would poison the soil and crops that
6 provide his livelihood. Such action would be akin
7 to committing financial suicide.

8 Reports from those who market FGD gypsum
9 indicate the stigma of any kind of hazardous waste
10 regulation for disposal of CCRs under Subtitle C
11 would result in a rapid declivity in the use of
12 FGD gypsum. Farmers are careful to use materials
13 that are effective economically and most
14 importantly safe. Markets purchasing the crops
15 must be satisfied that those crops are not tainted
16 in any way. Continued use of a product that may
17 be considered a hazardous waste under certain
18 circumstances is totally unacceptable to farmers.

19 In addition, there's a great concern
20 among those currently using FGD gypsum, that their
21 property may become tainted by a hazard waste --
22 hazardous waste stigma, which may render that

1 acreage of little or no value in resale. Farmers
2 will not take time or make the effort to peel back
3 the intentions or EPA exceptions of the new
4 regulations. Hazardous means hazardous. And the
5 stigma is real.

6 The EPA has made a commitment to work
7 with the Office of Surface Mines on the use of
8 CCRs for mine fill applications. We applaud and
9 encourage this effort. And we urge the EPA to
10 take a similar approach with the use of FGD
11 gypsum, and set aside this beneficial use for a
12 joint effort with the U.S. Department of
13 Agriculture. USDA has the science. We urge you
14 to turn to the experts in your sister agency and
15 use their work in consideration of the beneficial
16 use of FGD gypsum on the farms of America.
17 However, first and foremost, you must avoid a
18 Subtitle C regulation of any kind to keep the
19 stain of a hazardous waste rule off of the food we
20 eat. Thank you.

21 MR. BEHAN: Thank you. Number 204.

22 SPEAKER: My name is Bill Saunders. And

1 I'm a Sierra Club volunteer from Little Rock. The
2 coal ash that we're talking about is a huge
3 problem. To give us an idea of its magnitude,
4 three days ago in a New York Times editorial, they
5 said, quote, America's power plants produce 130
6 million tons of this stuff each year. That's
7 enough to fill a train of boxcars stretching from
8 Washington, D.C. to Australia.

9 There are a lot of myths and
10 misinformation put out by the special interest
11 about coal ash. A primary one is that it's just
12 about like dirt. Well, that's not the case at
13 all. With the latest techniques of EPA testing,
14 they have found commonly in the monitoring that's
15 been done that arsenic can run up to 1,800 times
16 the federal drinking water standard, and that
17 selenium can be 580 times the standard, and that
18 household garbage is regulated more than the patch
19 work of the states on coal ash.

20 Other points about this myth is that
21 coal ash toxins can now leach into water at levels
22 that were -- that are much higher than originally

1 understood. The levels of arsenic can be 1,000
2 times higher than what is safe for drinking water.
3 The -- an EPA conducted study shows that living
4 near a wet coal ash storage pond is more dangerous
5 than smoking a pack of cigarettes each day.

6 Finally, there's a myth that the
7 proposed regulations by the EPA would kill the
8 industry. Well, this is the same scare tactic
9 that we so often hear without substance that has
10 been disproven many times. For examples, the EPA
11 now has regulations for electric arc furnace dust.
12 And we need the federal regulations to protect the
13 people. Thank you.

14 MR. BEHAN: Thank you. Numbers 55, 56,
15 57, and 59.

16 SPEAKER: Good afternoon. My name is
17 Kyle Crake. I'm the president of PMI Ash
18 Technologies. PMI Ash is a small business with 21
19 employees. It's a clean technology company that
20 focuses on fly ash beneficiation processes. We
21 have developed three different ash recycling
22 technologies.

1 Our technologies currently have a
2 capacity to produce 1 million tons of marketable
3 fly ash per year for use as a replacement for
4 portland cement in concrete. PMI has been awarded
5 greenhouse gas emission credits through the
6 Massachusetts Greenhouse Gas Initiative. We have
7 won technical and environmental recognition from
8 the EPA Southeastern Electric Exchange, the DOE,
9 Commonwealth of Virginia, and the State of North
10 Carolina.

11 PMI Ash supports EPA's management of
12 CCRs under RCRA's Subtitle D non-hazardous waste
13 program. This would provide uniform rules and
14 higher standards for the utility and CCR
15 industries. Implementation of the Subtitle D
16 option will protect human health and the
17 environment with the same standards and without
18 the negative impacts caused by Subtitle C.

19 The only issue is whether the standards
20 can be enforced uniformly. Rather than a three-
21 to four-year implementation as proposed by EPA's
22 Subtitle D option, we suggest that they be able to

1 be enforced more quickly via a legislative
2 solution that would give the EPA full authority to
3 regulate CCRs similar to municipal solid waste.

4 PMI Ash supports strong standards via
5 Subtitle D of RCRA by enacting federal enforcement
6 authority such as recommended by the congressional
7 Research Service entitled "Regulating Coal
8 Combustion Waste Disposal: Issues for Congress."

9 PMI Ash is firmly against the
10 classification of CCRs as special waste under
11 RCRA's Subtitle C hazardous waste program. EPA
12 has overreached with its Subtitle C proposal.
13 EPA's approach will cost this country jobs, all
14 for the purposes of obtaining enforcement
15 authority. There are better ways that exist to
16 obtain enforcement authority which allow U.S. jobs
17 to grow.

18 The CCR recycling industry has noted to
19 the EPA that the Subtitle C classification will
20 produce a stigma that will negatively impact the
21 nation's best recycling story. The industry has
22 supplied specific advertisements, bidding

1 packages, delayed or deferred projects showing
2 that the stigma does exist. EPA continues to ask
3 for evidence, while all the same ignoring the
4 evidence given.

5 PMI has seen the impact of the stigma.
6 PMI has actively pursued several potential
7 beneficiation projects. We have heard from
8 prospective customers that they will not consider
9 a project until a final rule is out and it is
10 non-hazardous, due to the potential tort liability
11 that could be associated with the sale of fly ash
12 under Subtitle C. We have also been talking with
13 companies about raising capital for projects.
14 While the companies like our CCP recycling
15 business, they are not willing to invest with the
16 exposure to a Subtitle C classification.

17 EPA's own scenarios that incorporate
18 health, environmental, and commercial factors show
19 that the downside in both recycled volume and
20 economic value is significantly greater than the
21 upside. The upside scenario is an 11 percent gain
22 in sales for \$84 billion in value. The stigma

1 scenario is an 18 percent loss in sales for a \$233
2 billion decrease in economic value.

3 In conclusion, the cost of Subtitle C
4 implementation, plus the associated loss of
5 recycling, is too great a tradeoff for EPA
6 enforcement authority, especially when it can be
7 obtained on a legislative basis. Thank you.

8 MR. BEHAN: 56, 57. This is 57.

9 SPEAKER: My name is Jordan Macha. I am
10 a Louisiana resident and a representative of the
11 Sierra Club.

12 For the past four months, Louisiana has
13 faced an environmental disaster of enormous
14 magnitude in the Gulf. One of the primary reasons
15 for the disaster was the lack of strong federal
16 regulation and oversight of the oil and gas
17 industry. Like the TVA coal ash spill in December
18 of 2008, our communities and residents are paying
19 a price for a man-made disaster that is greatly
20 affecting the livelihood of our citizens.

21 We need the EPA to step up and federally
22 regulate coal ash. Louisiana has been a fossil

1 fuel dumping ground for our nation for far too
2 long. Our state agencies have not done the
3 appropriate job at managing industries, and the
4 administration must take action.

5 I ask that the EPA adopt Subtitle C and
6 hold the industry accountable for costs incurred
7 to public health. In Louisiana alone, we have 11
8 coal ash landfills that are polluting surrounding
9 water sources, including two major river sources
10 for the state. Please don't put profits over the
11 health and welfare of our communities.

12 It has been argued today that coal ash
13 is safe and can be recycled into products that are
14 publicly used. Several decades ago, asbestos was
15 considered safe and was utilized in public
16 projects. Now those communities are facing the
17 consequences when their only crime is living in
18 their community.

19 We don't yet know the long-term effects
20 of these actions. Please don't put our citizens
21 at risk without knowing the real facts of the
22 industry's actions. Thank you.

1 MR. BEHAN: 79.

2 SPEAKER: Good afternoon. I'm Rogers
3 Dennis, a retired electrical engineer, from
4 Abilene, Texas. I'm a member of the Sierra Club,
5 the Multi-County Coalition Environment Group, and
6 Abilenians Against Tenaska. I appreciate the
7 opportunity to speak with you for the regulation
8 of coal ash disposal and storage.

9 We know about by-products from coal
10 combustion such as arsenic, lead, boron, selenium,
11 mercury, cadmium, thallium, and many other
12 pollutants at levels that put humans and animals
13 at risk. Coal ash dumped in unlined or clay-lined
14 ponds and landfills pose the greatest danger.
15 When coal ash is deposited in landfills or
16 impoundment structures, coal ash can be leached
17 into the groundwater.

18 In West Texas, it can be blown by the
19 wind throughout the watersheds and end up being
20 washed into our surface water reservoirs when it
21 rains. Whereas, underground water is scarce to
22 nonexistent in West Texas, safe surface water from

1 limited rainfall becomes extremely important to
2 all life, including humans, animals, birds, and
3 fish.

4 At least 23 states have poisoned surface
5 water and groundwater supplies caused by improper
6 disposal and storage of coal ash. Texas is second
7 in the nation in coal ash generation. There are
8 no leachate collection systems in Texas, and there
9 is no groundwater monitoring. New
10 Earthjustice/EIP, Environmental Integrity Project,
11 show additional coal ash contamination in our
12 state and the entire country.

13 According to the EPA damage case
14 assessment, proven damage cases in Texas include
15 Brandy Branch coal ash dump in Harrison County,
16 Southwestern Electric Power Company coal ash dump
17 in Titus County, and unpermitted discharges in
18 Texas Utilities Electric Martin Lake Reservoir in
19 Rusk County. All three have leaked dangerous
20 levels of selenium.

21 Coal ash is inexcusably considered
22 exempt waste under an amendment of the Resource

1 Conservation and Recovery Act, RCRA. This is not
2 acceptable. Industry is so diverse that it cannot
3 regulate itself and consequently needs to be
4 regulated with standards that protect the public
5 as well as itself.

6 Regulations have been unsuccessful in
7 Texas and many other states. Regulation needs to
8 be on a national level to include protective
9 regulation of all states. The EPA must regulate
10 coal ash to address the risks from the disposal
11 and storage of the wastes generated by electric
12 utilities.

13 The EPA needs to support the RCRA
14 Subtitle C designation to classify coal as a
15 hazardous waste. Thank you, gentlemen. Thank you
16 for your time and effort to carefully consider
17 today's efforts and comments from concerned
18 citizens from near and far. I wish you a good
19 day. I'm Rogers Dennis, and I thank you.

20 MR. BEHAN: We're going to make a quick
21 switch on the panel. Let the record show that
22 Elaine Eby is leaving the panel, and Golam Mustafa

1 from EPA's Dallas region, is now on the panel.

2 Can I have Numbers 60, 62, 63, 68, and
3 132 come forward, please, and 61. Go ahead.

4 SPEAKER: I am Bridget Wood, from
5 Bartlesville, Oklahoma, and I would like to tell
6 you a story. Mrs. Reese teaches sixth grade. Her
7 students have been in school for eight years, pre
8 K through sixth grade. There are 17 sixth graders
9 in Mrs. Reese's class, and nine of them have
10 asthma. You should know about their educational
11 environment for the past eight years.

12 It is 1,000 miles from Disney World to
13 Bokoshe, Oklahoma. It is 1,000 miles from Disney
14 World to Dallas, Texas. It is 1,000 miles from
15 Disney World to New York City.

16 Imagine a train 1,000 miles long. It
17 would have 80,000 cars and hold 8 million tons of
18 coal. AES burned 8 million tons of coal in eight
19 years. AES generated 3.2 million tons of fly ash.
20 It filled 80,000 trucks carrying the legal maximum
21 of 40 tons. Eighty thousand trucks bumper to
22 bumper would stretch for 1,000 miles. That is how

1 much fly ash has been dumped in the fly ash pit
2 1.5 miles south of the school in Bokoshe,
3 Oklahoma.

4 The pit is operated by a company called
5 Making Money Having Fun. On average, it dumps one
6 truck every 12 minutes, eight hours a day, five
7 days a week, 50 weeks a year. One thousand miles
8 of train cars full of coal, 1,000 miles of trucks
9 full of fly ash dumped 1.5 miles from the school,
10 every 12 minutes, for eight years.

11 This is the environment in which Mrs.
12 Reese teaches the sixth grade. This is the
13 environment in which her children have learned
14 since they were in preschool. This is Making
15 Money Having Fun, and it is criminal.

16 I come before you today to ask that you
17 adopt Subtitle C for strict regulations of fly
18 ash. Thank you.

19 MR. BEHAN: 61.

20 SPEAKER: Good afternoon. I'm Joe
21 Starkey. I am a landowner next to the proposed
22 Tenaska Trailblazer. Obviously, I'm against it.

1 I have a couple of points I would like to make.

2 First of all, they're talking about
3 selling fly ash to use in drywall and in roadways.
4 If anybody's ever done a remodeling project, you
5 know you get dust and you get it breathed in. The
6 mercury and arsenic that go in that drywall would
7 go in people's lungs.

8 Right now at Fort Bragg, North Carolina,
9 they are investigating the deaths of ten infants
10 over the last two years because of toxins in the
11 drywall which they bought from China. They're not
12 sure exactly which of the toxins that are in that
13 drywall are causing these deaths. But they are
14 dying.

15 We should make sure that fly ash in
16 construction is not the new asbestos. It took us
17 many years to figure out that asbestos was killing
18 people. It's taken us many more to get rid of it;
19 we're still not there. Let's not do that again.

20 The Tenaska permit asks to store their
21 fly ash in an open pit and keep it down with
22 sprinkled water. If you look at this rain that we

1 have right now, which is going to cause flooding,
2 has caused flooding, two days after it ends Texas
3 will be dry as a bone.

4 They can't keep that fly ash in that
5 pit. It will go across the country. And this pit
6 is located in the head of the watershed for many
7 of the big country cities. We don't need the
8 arsenic and mercury in our drinking water.

9 I brought up to Mr. Greg Kunkle that
10 there will be this stuff in the air and it's going
11 to come down on my property, which will damage us
12 and be a trespass. His response was, "If you can
13 prove it, sue us." You need to regulate him so
14 that he does not damage people for profit.

15 My last point is one that's been made
16 before here; and that is, profit at the cost of
17 lives and health should not be allowed. Thank you
18 for your time. Please regulate these people.

19 MR. BEHAN: Thank you. Number 62.

20 SPEAKER: My name is Whitney Root, and
21 I'm here representing the Multi-County Coalition,
22 a nonprofit organization based in Sweetwater,

1 Texas, that is working to stop construction of the
2 proposed Tenaska Trailblazer Energy Center. Along
3 with about 700 individuals throughout the Big
4 Country area, the City of Trent, the City of
5 Hawley, and the Texas Farmers Union are also
6 members of our organization. My residence
7 property extends to within a mile and a half of
8 the site of the proposed coal plant.

9 We are at a point in history where
10 debate over coal products should no longer be an
11 issue. Study upon study confirms that coal ash
12 contains any number of poisonous materials,
13 including, but not limited to, mercury, cadmium,
14 arsenic, cobalt, and lead. Mercury is one of the
15 deadliest elements on the planet. Arsenic is a
16 potent poison. Cobalt is a carcinogen.

17 Inasmuch as science provides proof
18 beyond question, there should be no hesitation for
19 the Environmental Protection Agency to regulate
20 this waste for what it is: Hazardous. Any
21 further debate over the issue simply stalls, once
22 again, the day of reckoning when the truth be

1 told.

2 Coal products and by-products are
3 threatening to human life and therefore, by
4 definition, hazardous. It is high time for the
5 Environmental Protection Agency to do what its
6 title suggests that it do: Protect American
7 citizenry against hazards such as coal ash.
8 Failure to do so would only constitute a further
9 cynical delay of doing what is right and just.

10 For well over a century, energy
11 companies have reaped enormous profits because
12 they've been able to ignore environmental and
13 human concerns. It is time for the pendulum to
14 swing back, partway at least, to we, the people,
15 the inhabitants of this environment. It is the
16 only environment we have, and it must be
17 protected. That, my friends, is your job.

18 Ansel Adams was quoted as saying, "It is
19 horrifying that we have to fight our own
20 government to save the environment." Please don't
21 hesitate to do what you know is right, what is
22 right for the American people. Coal ash must be

1 regulated under the strictest standards available.
2 It is a hazardous waste, and it must be treated as
3 such. Thank you.

4 MR. BEHAN: Thank you. Number 63.

5 SPEAKER: Good afternoon. My name is
6 Jimmy Lambert, and I am here today as a concerned
7 citizen.

8 Although not affiliated with any
9 environmental group, I do strive to support
10 efforts to be a good steward of the environment.
11 That being said, I am concerned that the EPA and
12 environmental axis have taken on the
13 administrative agenda to kill coal, when coal ash
14 is recognized as a safe and environmentally
15 friendly alternative to disposal.

16 It is apparent that the federally owned
17 corporation TVAs like Kingston served as a
18 catalyst to promote the environmental agenda.
19 However, I would question their design,
20 maintenance, and location, in lieu of an acting
21 national rule, that destroyed one of the most
22 valuable recycling efforts in recent history.

1 The EPA will narrow the corrective
2 action to the extent that it applies, taking the
3 appropriate precautions and not to the detriment
4 of the flourishing recycling effort. According to
5 decades of research and evaluation, the EPA has
6 stated, by their own admission, that coal
7 combustion by-products are non-hazardous and safe
8 to use. Furthermore, toxicity levels of CCPs are
9 similar to the products they replace in recycling
10 applications, and fail to justify a change from
11 existing standards.

12 It is my understanding that the EPA's
13 proposed designation of CCPs as a special waste
14 scenario to promote reuse is ambiguous, when, in
15 fact, the Subtitle C approach, by definition, will
16 be considered hazardous. Many companies are
17 fearful of economic losses posed by CCP
18 alternatives, future liabilities and competitive
19 disadvantages generated from fear tactics.

20 The aforementioned stigma will kill
21 beneficial use and set back the environmental
22 progress made over the last 20 years, resulting in

1 a loss of recycling industry that consumes 50
2 million tons annually and provides offsets to CO2
3 on a one-for-one basis.

4 With the depletion of virgin materials,
5 we need to take full advantage of the benefits
6 provided by recycling. Even though the EPA boasts
7 of wanting to support beneficial reuse, their
8 stealthy approach to the systematic and strategic
9 demise of the C2P2 program are valid proof that
10 the EPA is misleading the public. We are seeing
11 the immediate decay of an otherwise growing
12 recycling effort.

13 With over 50 percent of the power in the
14 U.S. Generated from coal, we must maintain
15 empowerment tactics, which includes economic and
16 environmental systems. Further limitations on
17 coal will worsen the economy and cause millions to
18 lose their jobs, and we'll be faced with enormous
19 financial burdens.

20 This unnecessary course correction is
21 without merit and poses to inflict economic
22 hardship on the industry and families across the

1 nation. Simply put, a Subtitle C ruling would
2 qualify as a jurisdictional power grab over
3 states' rights.

4 I ask that the EPA consider realistic
5 data from industry and issue a ruling in favor
6 of Subtitle D. Thank you.

7 MR. BEHAN: Number 68.

8 SPEAKER: My name is Julie Prejean, and
9 I am the chemical environmental supervisor at
10 Luminant's Oak Grove Power Plant in Robertson
11 County, Texas. I am also a toxicology major.

12 As a plant employee and local resident,
13 I have seen firsthand Luminant's commitment to the
14 safe and responsible handling of coal combustion
15 residuals.

16 With TCEQ's oversight, Luminant's
17 coal-fueled power plants, such as Oak Grove, make
18 it a priority to routinely inspect and maintain
19 our CCR landfills and surface impoundments. An
20 annual critical impoundment inspection is
21 conducted by a registered professional engineer on
22 surface impoundments that contain CCRs. These

1 reports are kept onsite for a minimum of three
2 years as a part of the company's impoundment
3 inspection program. All of our managed ash
4 disposal areas are also inspected by the TCEQ
5 periodically to ensure compliance with all
6 applicable state and federal regulations.

7 TCEQ has a comprehensive regulatory
8 program to safely regulate CCR disposal practices.
9 Environmental risk is dependent in part upon
10 site-specific factors such as depth to
11 groundwater, annual rainfall, and the amount of
12 clay present in the soil. Imposing a hazardous
13 waste designation would result in an attempt to
14 regulate using a one-size-fits-all approach, which
15 is not appropriate or warranted.

16 It would also simultaneously destroy the
17 recycling market. Since 1993, Luminant has sold
18 nearly 40 billion pounds of CCRs. In 2009 alone,
19 we recycled more than 2.2 billion pounds. In
20 fact, a variety of road projects currently
21 underway right here in North Texas are utilizing
22 recycled coal ash from Luminant facilities.

1 Finally, regulations of CCRs as a
2 hazardous waste would also increase compliance
3 costs to the point that they could render certain
4 fuels, such as Texas lignite, uneconomic. EPRI
5 estimates that each regulation would be so
6 uneconomical that it could result in a closure of
7 coal-fueled power plants that are needed to
8 produce affordable and reliable electricity to a
9 state that has an increasing demand for
10 electricity as witnessed this summer with new
11 record consumptions.

12 In summary, Luminant strongly opposes
13 the regulation of CCRs as a hazardous material
14 under the RCRA Subtitle C hazardous waste program
15 and recommends that EPA continue to allow states
16 to run their own programs. Thank you for the
17 opportunity to comment.

18 MR. BEHAN: Thank you.

19 SPEAKER: My name is Bill Hale. I'm a
20 rancher and county commissioner in Rusk County,
21 Texas. Good afternoon, and thank you for allowing
22 me to testify today.

1 On four different occasions during both
2 the Republican and Democrat administrations, the
3 EPA determined that the regulation of coal
4 combustion residuals, CCRs, as hazardous
5 substances was not warranted and that regulation
6 as non-hazardous waste by the state is the
7 appropriate option for ensuring the safe
8 management of these materials, while preserving
9 recycling.

10 Texas Commission on Environmental
11 Quality's comprehensive CCR handling and disposal
12 regulations have proven effective. As a result,
13 there have been no catastrophic failures at any
14 facilities in our state.

15 Power generation companies actively
16 pursue opportunities to recycle CCRs, thereby
17 decreasing energy costs, reducing emissions,
18 saving landfill space, and using less natural
19 resources. These residuals are used by the
20 roofing, concrete, and carpet industries, as well
21 as in oilfield projects and road paving.
22 Minneapolis, Minnesota's I-35 bridge collapsed in

1 2007 and was rebuilt using high-performance
2 concrete containing silica fume and fly ash.

3 It is a certainty that a hazardous waste
4 designation for CCRs would sharply increase
5 production costs and therefore raise electricity
6 prices for consumers. Facility and/or mine
7 closures would cost Texas jobs and tax revenue at
8 a time when both are in short supply.

9 States are in the best position to
10 regulate CCR disposal practices since the safe and
11 responsible management of CCRs depends heavily on
12 local climate, geology, and other site-specific
13 factors. A one-size-fits-all federal approach is
14 not the right answer.

15 Job creation and the protection of
16 current jobs are vital to economic viability in
17 Texas and across America. I don't think anyone
18 will argue the point that we are in hard economic
19 times in our country. Many men and women have
20 lost their jobs and in some cases their homes.
21 Many others are hanging by a thread to keep their
22 homes and pay their bills. With this in mind, why

1 would we consider any unnecessary regulations that
2 could and would increase the electricity costs to
3 our most vulnerable citizens?

4 One of the most respected presidents
5 that served our great nation was Ronald Reagan.
6 He once said -- and I paraphrase -- government
7 cannot legislate a prosperous and growing economy.
8 It does, however, have a choice whether to aid or
9 burden that economy. High taxes and unnecessary
10 government regulations are the burdens that
11 destroy a healthy economy and keep a slow economy
12 from recovering.

13 Thank you very much for your attention.

14 MR. BEHAN: Thank you. Sixty-four, 65,
15 66, and 67. Sixty-four.

16 SPEAKER: Good afternoon. Thank you for
17 the opportunity to bring information to you
18 concerning this.

19 Basically, we've heard a lot about the
20 fact that the industry does a lot to recycle.
21 We've learned that they've got a lot of ways that
22 they want to do that. They feel like that the

1 best way to control this is at the city, the
2 county, and the state level. As a matter of fact,
3 back in 1999, the Western Regional Ash Group
4 testified before the EPA to that exact fact.

5 If we look at the Tenaska plant that's
6 proposed for Nolan County, Texas, that's being
7 built in a county that has just over 14,000 people
8 for the population. The largest city within a
9 25-mile radius of this proposed plant is the city
10 of Sweetwater. It comes in at just over 11,000
11 people.

12 Once you take that 11,000 people from
13 the city of Sweetwater out of the county numbers,
14 you're basically looking at a little over 1,000
15 people. And we're expecting county commissioners,
16 because the city is not going to be regulating it
17 -- the plant's not being built in the city -- and
18 we're going to expect county commissioners, who
19 are ill-equipped and undereducated, to deal with a
20 \$3.5-plus billion industry's waste, trash.
21 They're not able to do that.

22 That bumps us up to the next level,

1 which is the state. We've heard numerous people
2 testify here today that TCEQ does a wonderful job.
3 There was actually a bill introduced in the
4 legislature last session, House Bill Number 1450.
5 This bill was up before the Environmental
6 Regulation Committee.

7 One of the aspects of this regulation,
8 or this bill, was to require the coal plants, when
9 they do do the test for metals and determine that
10 the water has been contaminated, that they simply
11 let the residents around the plant know, hey, your
12 water may be contaminated, because we found
13 contamination in the water. This bill was heavily
14 opposed by the coal industry. It ended up dying
15 in committee.

16 TCEQ doesn't regulate the coal trash,
17 the coal waste. It's time for the EPA to step up
18 and deal with the coal waste as the hazardous
19 waste that it is, and to actually do that under
20 the Subtitle C. As Ryan Rittenhouse said earlier,
21 that's a minimum. As an Environmental Protection
22 Agency, we should be doing much more.

1 MR. BEHAN: Sir, could you state your
2 name.

3 SPEAKER: My name is Jimmy Headstream,
4 Sweetwater, Texas, member of the Multi-County
5 Coalition.

6 MR. BEHAN: Thank you, sir.

7 SPEAKER: Good afternoon. My name is
8 Jerry Smith, and I've been in the business of
9 recycling coal ash for the last 12 years.

10 During that time, I have repeatedly
11 bragged to my family and friends about being part
12 of the greatest recycling success story in the
13 history of this country. I consider myself an
14 environmentalist, and I believe that beneficial
15 reuse of resources is critical to the history of
16 this planet.

17 I have witnessed the growth of the coal
18 ash reuse industry. It has grown from most people
19 seeing coal ash as an unwanted, costly waste
20 product to becoming a very valuable resource with
21 many uses, including use in concrete, concrete
22 products, masonry products, soil stabilization

1 agents, wallboard, and the list goes on and on.

2 Today, our industry, our success story,
3 is in jeopardy, not because the EPA doesn't
4 support beneficial use, because I believe you do,
5 as you have shown in the past by sponsoring the
6 C2P2 program, but because there is a very real
7 risk of assigning a stigma to these products that
8 would be extremely detrimental to our efforts.

9 There are many anticipated and
10 unanticipated legal liabilities that await all of
11 us if coal ash is stigmatized with a RCRA Subtitle
12 C hazardous designation. As you know, and due in
13 part to the EPA's encouragement and support, coal
14 ash usage is very widespread, and thousands of
15 people handle it every day. Can you imagine the
16 lawsuits that will result from coal ash being
17 handled two different ways? One by highly trained
18 workers treating coal ash as hazardous as it's
19 disposed of and one by those treating it as a
20 non-hazardous product.

21 A handful of highly publicized lawsuits
22 -- and they will be highly publicized -- will end

1 coal ash usage as we know it today. For many
2 utilities, end users, DOTs, small businesses and
3 big businesses, it will not be worth the risk.
4 You can do everything possible to encourage reuse
5 of coal ash, but you cannot protect these entities
6 from lawsuits.

7 Everyone at this meeting will agree that
8 disposal practices of coal ash can and should be
9 improved. So I ask you today to rule in favor of
10 the Subtitle D solid waste option and not the
11 Subtitle C hazardous designation. The disposal
12 options that you have proposed provide essentially
13 the same level of protection for the environment.
14 We have to avoid the stigma associated with the
15 Subtitle C designation.

16 Prior to getting involved in this
17 industry 12 years ago, I was in the hazardous
18 waste remediation disposal industry. I agree with
19 the EPA's previous determination that there is
20 nothing about coal ash that warrants a RCRA
21 Subtitle C hazardous designation. Thank you for
22 your time.

1 MR. BEHAN: Thank you.

2 SPEAKER: My name is Barbara Lawrence,
3 and I live in Freestone County, Texas. I
4 represent the citizens group COPPS For Clean Air,
5 Freestone County chapter.

6 My husband and I moved to Freestone
7 County when we retired, for the peace and quiet of
8 the country, the clean air, and the outdoor
9 lifestyle. What a surprise greeted us. Freestone
10 County is home to a very old and very dirty
11 coal-fired power plant: Big Brown. And just
12 across the county line is another of the dirtiest
13 in the country: Energy Limestone.

14 There is a local legend that when you
15 get cancer and go to Houston, to MD Anderson
16 Cancer Center, they say to you, "Oh, you're from
17 Freestone County; you must live near that coal
18 plant." I can't say that it's true, but then
19 again, I heard say a lot.

20 We also have a high incidence of autism,
21 thought to be related to mercury. I don't know
22 the statistics, but I do know that in a county

1 with a population of under 20,000, the incidence
2 is high enough that they are raising money to
3 build their own school for autistic children. For
4 me, that fact seems astonishing.

5 Since we moved to Freestone County, my
6 husband sleeps with an oxygen tank and has a home
7 breathing machine. Remember that outdoor
8 lifestyle I mentioned? Well, he can't spend too
9 much time outside because the air quality is
10 frequently very unfriendly. Many of my neighbors
11 are retirees, and many experience health problems
12 similar to my husband's.

13 I understand the concern of many I've
14 heard here today in support of Big Brown. It's
15 their livelihood. But our health is more
16 important, and Big Brown isn't going out of
17 business, so let's weigh our options here: Death
18 and disease, more corporate profits. To me, it's
19 just not a contest.

20 I just learned about coal ash and the
21 possible contamination of our groundwater. Big
22 Brown has been burying coal ash in the ground

1 without strict regulation and they've been doing
2 it for nearly 40 years.

3 The lake on which I live, which is only
4 a few miles from Big Brown, is the third largest
5 in the state of Texas and is a reservoir for
6 Tarrant County. That's potentially a lot of
7 contaminated water affecting a lot of people.

8 Given the high incidence of cancer and
9 autism in Freestone County, the poor air quality,
10 and the fact that we have multiple recreational
11 lakes that risk contamination, I implore the EPA
12 to strictly regulate coal ash disposal. Thank
13 you.

14 MR. BEHAN: Thank you.

15 SPEAKER: Good afternoon. My name is
16 Barry Boswell. I'm a director of generation at
17 Luminant.

18 Luminant has more than 18,300 megawatts
19 of generation in Texas, including 8,000 megawatts
20 fueled by coal. We operate five baseload
21 coal-fueled power plants which help to meet the
22 ongoing power needs of the power market on an

1 almost continuous basis. Our plants are fueled by
2 Texas lignite that we mine. At some facilities we
3 also use western coal.

4 Today, I speak for thousands of Luminant
5 employees across Texas to say that we genuinely
6 care about our communities' and employees' safety
7 and our legacy of environmental stewardship. We
8 take personal responsibility for running our
9 plants and processes in the absolute best way
10 possible. We are committed to complying with all
11 relevant rules, regulations, and laws governing
12 our generating plants.

13 Finally, we hold the highest standards
14 to not only protect the environment, but also the
15 public's health. We live in these communities, as
16 do our families, our neighbors, and our friends.

17 We have been committed partners to our
18 surrounding communities and counties for decades.
19 We are an important part of the local communities,
20 with jobs and local spending. In 2009 alone, our
21 lignite plants and mines paid nearly \$64 million
22 in tax contributions to surrounding counties and

1 school districts, which have been used to
2 construct modern public facilities and provide
3 needed services.

4 As one of the largest power generators
5 in the state, we are acutely aware of our
6 environmental responsibilities. My company has
7 spent hundreds of millions of dollars voluntarily
8 on new environmental controls across our fleet.

9 When it comes to coal combustion
10 by-products, we are just as committed to doing the
11 right thing for the state. We are in full
12 compliance with the Texas Commission on
13 Environmental Quality's comprehensive coal
14 combustion residual handling and disposal
15 regulations. We make it a priority to inspect and
16 maintain our CCR landfills at all facilities
17 through routine observations and detailed surface
18 impoundment inspections. All of this is a
19 responsibility we take very seriously.

20 Unnecessary additional regulations of
21 coal ash as a hazardous waste would have a
22 significant impact on countless businesses and

1 employees who depend on these products for their
2 commerce and livelihood.

3 The coal combustion by-products from our
4 plants have been an integral part of construction
5 for many roads across Texas, many of which are
6 located right here in the Dallas area. This
7 includes the Dallas High Five Interchange, Dallas
8 North Tollway, the George Bush Tollway, and State
9 Highway 121.

10 In summary, Luminant strongly opposes
11 the regulation of CCRs as a hazardous material
12 under the RCRA Subtitle C hazardous waste program
13 and recommends that EPA continue to allow states
14 to run their own programs. Thank you for the
15 opportunity to comment.

16 MR. BEHAN: Thank you. Numbers 69, 70,
17 71, and 72.

18 SPEAKER: I'm Charles Morgan, registered
19 professional engineer in Texas. I represent
20 Citizens For Environmental Clean-Up in Fairfield,
21 Texas.

22 Freestone County is the home of Big

1 Brown I and II, the 23rd dirtiest, most polluting
2 power plant in the United States, the most
3 polluting power plant in Texas. They generate
4 about 86,000 tons per year of sulphur dioxide
5 alone, not to mention all the nitrogen oxides, but
6 they also generate about 300,000 tons per year of
7 coal ash waste.

8 Citizens For Environmental Clean-Up
9 request that Subtitle C be the preferred method of
10 control of the coal ash combustion residuals due
11 to the hazardous elements found to exist in the
12 CCRs, such as mercury, selenium, thallium,
13 arsenic, and others. These wastes must be
14 periodically tested to determine concentration of
15 toxic elements, and not just a one-time test.

16 Reuse of CCR waste must be such that
17 these wastes are totally encapsulated. If that's
18 used in concrete, fine. But use on roadways, even
19 onsite, must not be allowed because there is so
20 much coal traffic carrying the coal from the site,
21 the mining site, to the plant that these wastes
22 become airborne and they contaminate areas all

1 around the mining area, plus the water streams,
2 like Fairfield Lake and the Trinity River. These
3 CCRs must not be allowed to be buried under or
4 with the reclamation materials during the land
5 reclamation processes after the coal removal, and
6 then all of the outfalls in coal ash ponds must
7 have elements specified for testing in that
8 outfall effluent.

9 We must protect our environment from
10 contamination and hazardous waste contained in the
11 CCRs. The EPA table showing cost and benefit
12 ratios shows a higher cost for the Subtitle C
13 method of control, but the table also shows a
14 greater benefit, many times greater benefit than
15 the cost, and a much greater benefit than the
16 Subtitle D proposal.

17 Therefore, the CEC request Subtitle C be
18 used as the method of CCR control. Our people are
19 our greatest asset. Our families must be
20 protected. Thank you.

21 MR. BEHAN: Thank you.

22 SPEAKER: Good afternoon. Thank you for

1 the opportunity to provide my input regarding the
2 proposed CCR disposal rules. My name is Eric
3 Pastor. I'm a licensed professional engineer in
4 11 states including Texas. I've been an
5 independent consulting environmental engineer in
6 private practice for 26 years.

7 I've never previously provided formal
8 comment on an EPA regulation, but after reviewing
9 the proposed CCR rules and, more importantly,
10 reading comments that characterize state
11 regulatory agencies as not adequately monitoring
12 CCR disposal sites and having refused to do their
13 jobs, I felt compelled to set the record straight
14 for Texas, based on my firsthand experience.

15 In my opinion, the rules and guidance of
16 the Texas CCR management program as administered
17 by the TCEQ are sound, and the TCEQ program staff
18 are dedicated and competent. To support this
19 conclusion, let me first start with a brief review
20 of the process that must be followed before a CCR
21 disposal facility can be used.

22 Under Rule 335.6 of Title 30 of the TAC,

1 a person that intends to store, process, or
2 dispose of industrial solid waste such as CCR must
3 provide 90 days' prior notice to the TCEQ.
4 Elements of this notification, which we often
5 refer to as a registration package, include
6 information regarding waste composition, waste
7 management methods, facility engineering plans and
8 specifications, and the hydrogeologic setting of
9 the proposed disposal facility.

10 The registration packages that we
11 produce in my firm usually include the groundwater
12 monitoring plan, closure plan, and a post-closure
13 inspection and maintenance plan. Once submitted,
14 registration packages are reviewed by TCEQ Waste
15 Permits Division. I have found these reviews to
16 be thorough, detailed, and comprehensive.

17 Comments that we have received on
18 registration packages have ranged from request for
19 justification and monitoring well locations and
20 statistical groundwater data valuation procedures
21 to details on waste-handling methods.

22 These regulations are supported by a

1 series of technical guidance documents that cover
2 topics ranging from site selection to landfill
3 design, construction and groundwater monitoring.
4 These documents, which were first developed in the
5 1970s, are regularly reviewed and updated by TCEQ
6 staff to ensure they are current.

7 Potential releases from CCR disposal
8 facilities do not go unchecked but are managed
9 underneath a well-established Texas risk reduction
10 program which has a nearly 15-year track record of
11 success in directing the investigation and
12 remediation of environmental releases, and is
13 supported by more than two dozen guidance
14 documents.

15 Last, I would like to note that in my
16 frequent interactions with the engineers and
17 scientists of the TCEQ programs, although I have
18 not always been in complete agreement on all
19 technical issues, I have found them to be solid
20 professionals who take their mission of protecting
21 health and the environment very seriously. Thank
22 you for the opportunity to provide these comments.

1 MR. BEHAN: Thank you.

2 SPEAKER: Good afternoon. My name is
3 Frank Johnson. I've been in the concrete
4 aggregate business for 47 years. I'm vice
5 president of Hallett Materials, the Texas
6 division, and the chairman of the Texas Aggregates
7 and Concrete Association. TACA has been in Texas
8 for 50 years and it is a statewide organization
9 that represents over 350 producer companies. In
10 Texas alone, the cement industry and related
11 construction industry contribute more than 75,000
12 jobs to the state economy.

13 Our members use and rely on coal ash
14 products, particularly fly ash, in production of
15 materials. With the help of the EPA and a Coal
16 Combustion Products Partnership, or C2P2, our
17 members have expanded our use of coal ash in
18 various products.

19 EPA's rule and proposal highlights
20 increase the beneficial use of coal ash, not
21 including mine filling, from 23 percent in 1995 to
22 37 percent in 2008. Environmental benefit to this

1 increase is great. Ash should not be thrown away.
2 Instead, it should be recycled, being used in
3 proven safe products that we (inaudible). Based
4 on EPA's old numbers, 13.7 million tons of coal
5 ash were recycled and used in place of portland
6 cement in 2007. This energy savings is equal to
7 the energy used in 676,000 homes. It also reduced
8 greenhouse gas missions equal to taking 2.3
9 million cars off the road.

10 Recycling coal ash is something TACA
11 members are proud of, but we're afraid that all
12 the beneficial reuse will come to an end if EPA
13 finalizes Subtitle C regulatory option. Calling
14 coal ash a special waste does not eliminate
15 liability, the stigma. In the marketplace there
16 are other market concerns.

17 The EPA discussing the hazardous waste
18 regulations and holding these hearings makes it
19 hard to recycle coal ash and use it in
20 construction material products. The stigma is
21 real. Coal-fired power plants have already said
22 they will be very unlikely to buy coal ash from

1 our members out of fear of liability. Even if our
2 members can obtain coal ash, they will be inclined
3 to look for other products.

4 We do not want to deal with the
5 potential liability of operational requirements
6 for handling coal ash classified as a hazardous
7 waste when not beneficially used. Also, buyers of
8 our products that contain coal ash will look for
9 other options because consumers do not want to buy
10 materials stigmatized as hazardous waste.

11 Our members provide a valuable resource
12 found in countless products which will literally
13 serve as the foundation to allow our economy to
14 recover. A hazardous waste regulation and
15 accompanying stigma will destroy the beneficial
16 sector of our industry. This will increase costs
17 while we are all struggling in the economy and
18 also several member companies already operating a
19 small (inaudible).

20 To protect the beneficial use, protect
21 our environment, and protect our members, on
22 behalf of the Texas Aggregates and Concrete

1 Association, I ask that you not regulate coal ash
2 as a hazardous waste, but if you determine that
3 more regulation is even necessary, instead
4 regulate it as a non-hazardous waste. Thank you.

5 MR. BEHAN: Thank you. Number 72.

6 SPEAKER: I appreciate this opportunity
7 to address the critical issue of coal fly ash. My
8 name is Susan Schmidt. I'm a concerned citizen
9 from Oklahoma City. I have been studying coal
10 pollution issues for the last year and a half.

11 About 70 percent of the planet is
12 covered in oceans. Ninety-eight percent of all
13 the water on the earth is in those oceans and
14 therefore undrinkable due to salt. That leaves
15 about 2 percent freshwater. Most of that, 1.6
16 percent, is locked up in the polar ice caps and
17 glaciers, which will be added to the oceans when
18 they melt. There is some water in the air. So
19 that leaves less than half of 1 percent left in
20 the groundwater aquifers, wells, and in our lakes
21 and rivers.

22 That one-half of a percent is, quote,

1 freshwater. But freshwater does not mean it's
2 safe to drink or available where it is needed.

3 In August, I RV camped in New Mexico's
4 Carson National Forest. The water pump in camp
5 was not working. The local ski resort began
6 charging 25 cents a gallon for water out of their
7 garden hose. In less than a week, they went up to
8 a dollar a gallon. It wasn't due to a lack of
9 water. Like today, the unusual summer rains were
10 overflowing the creeks. There was plenty of water
11 but not enough that was safe to drink.

12 Mark Twain is attributed with the quote,
13 "Whiskey is for drinking; water is for fighting
14 over."

15 I bring up this recent and personal
16 experience because coal ash threatens the quality
17 of the tiny percent of freshwater that is
18 available to all life forms from amphibians and
19 fish, up the food chain to us.

20 This past July, the Oklahoma Department
21 of Environmental Quality issued a warning.
22 Sixteen lakes in the state of Oklahoma contain

1 species of fish with mercury levels that are
2 unsafe for unlimited consumption. Two of the
3 lakes have fish that are unsafe to eat at any
4 levels by anybody.

5 In researching the symptoms of mercury
6 poisoning, I found an EPA quote that puts any
7 human-caused mercury poisoning into perspective.
8 Quote, "A little mercury is all that humans need
9 to do away with themselves, quietly, slowly, and
10 surely," unquote.

11 As you know, a large part of mercury
12 pollution comes from coal-fired power plants. The
13 mercury and other harmful by-products that go up
14 the smokestack end up in the fly ash, and the fly
15 ash is trucked and dumped not far from where it's
16 burned.

17 I took a map of the 16 lakes with
18 mercury contamination and overlapped a map of
19 coal-fired power plants which, by association,
20 includes fly ash disposal sites. They cover the
21 same three-fourths of the state of Oklahoma. Only
22 the northwest corner of Oklahoma did not have any

1 lakes included in the mercury warnings, and only
2 the northwest corner of Oklahoma does not have any
3 coal-fired power plants.

4 The citizens of Bokoshe, Oklahoma, have
5 testified to the hazards of fly ash in their
6 community. Sadly, their story is not unique. It
7 is obvious to me the EPA must protect our nation's
8 precious drinking water supply from fly ash
9 contamination with Subtitle C. Thank you.

10 MR. BEHAN: We're going to have a panel
11 change right now. Let the record reflect that
12 Craig Dufficy, U.S. EPA, is returning to the panel
13 to replace Jim Kohler.

14 Numbers 73, 74, 76, 77. Is there anyone
15 in the room who has not spoken who has a number
16 less than 75? 222.

17 SPEAKER: Good afternoon. My name is
18 Mark Bowles, and I appreciate the opportunity to
19 speak before you today. I am the environmental
20 support manager for Entergy Services, and I'm
21 speaking today on behalf of Entergy Corporation.

22 Let me begin by first stating that

1 Entergy is supportive of federal regulations for
2 CCRs under RCRA Subtitle D non-hazardous waste
3 rules, though, as I'll discuss, any Subtitle D
4 program must recognize and allow the proper role
5 of the states in administering these rules.

6 Entergy Corporation is an integrated
7 energy company engaged primarily in electric power
8 production and retail distribution operations.
9 Entergy, along with its utility group members and
10 various trade associations, has worked closely
11 with the EPA and both the Arkansas and Louisiana
12 Departments of Environmental Quality to ensure
13 that the management of CCRs is done in such a way
14 that it protects the environment, complies with
15 regulations, and ensures the continued beneficial
16 reuse of CCRs.

17 Entergy's three coal plants located in
18 Arkansas and Louisiana have historically reused
19 over 75 percent of their CCRs on an annual basis.
20 We strongly believe that any regulation that adds
21 a hazardous waste designation for this material,
22 such as the Subtitle C option in the current

1 proposal, would be counterproductive and present a
2 sigma on CCR beneficial reuse, thereby seriously
3 undermining future recycling efforts.

4 The three coal plants that Entergy
5 operates are permitted by the Arkansas and
6 Louisiana Departments of Environmental Quality.
7 Both state programs require that landfills be
8 constructed with compacted clay or geosynthetic
9 liners, meet stringent design criteria, conform to
10 standardized operational requirements, conduct
11 groundwater monitoring, and comply with closure
12 and post-closure criteria as well as provide
13 financial assurance. Arkansas and Louisiana are
14 two states that have demonstrated that states can
15 manage CCR disposal and should be the
16 administrators of any Subtitle D option.

17 Entergy has evaluated the alternatives
18 contained in EPA's proposed rule and believes that
19 the Subtitle D Prime option is the best solution.
20 Unlike the Subtitle C approach, D Prime will
21 establish a robust and environmentally protective
22 program for coal ash storage and disposal units

1 without crippling coal ash beneficial use and
2 imposing unnecessary regulatory costs on power
3 plants, threatening jobs and increasing
4 electricity costs. The Subtitle D Prime option
5 recognizes that existing CCR impoundments with
6 sound performance should be allowed to continue to
7 operate.

8 However, Entergy feels that the Subtitle
9 D Prime option, as written, requires improvements,
10 including allowing for administration of the
11 federal Subtitle D rules for CCRs by state
12 regulatory programs, to avoid duplication of
13 federal and state efforts. This would also allow
14 states to enforce compliance through a traditional
15 permitting framework.

16 Entergy also believes that this option
17 does not limit EPA's enforcement authority since
18 4010(c) of RCRA and similar provisions clearly
19 allow the EPA to oversee state rules regulating
20 solid waste. EPA already does this with municipal
21 solid waste landfills and non-municipal solid
22 waste landfills that may receive conditionally

1 exempt small quantity generator hazardous waste.

2 For these reasons, we ask the EPA to
3 select the Subtitle D Prime option in its final
4 rule. Thank you.

5 MR. BEHAN: Thank you.

6 SPEAKER: Good afternoon, and thank you
7 for this time today. My name is Gloria Tedrick,
8 and I'm a citizen of the state of Oklahoma and
9 Washington County.

10 Being born at the end of World War II, I
11 have lived through the Cold War, bomb shelters,
12 the Bay of Pigs, Vietnam, Desert Storm, and our
13 war with Iraq. I worried about Kruschev, but I
14 never worried about breathing the air and the
15 water I drank, until living close to a coal-fueled
16 power plant.

17 Exposure to air and water pollution and
18 poisons can have permanent health effects with a
19 range of diseases from asthma to cancer. We know
20 that fly ash contains substantial amounts of lead,
21 mercury, arsenic, and other carcinogens.

22 We must have both existing landfills and

1 existing surface impoundments to be listed as
2 special waste subject to the regulation under
3 Subtitle C. We need Subtitle C because our
4 state's regulators refuse to enforce the law while
5 companies like AES and Making Money Having Fun
6 create another disaster like Picher, Oklahoma, or
7 Kingston, Tennessee.

8 The EPA's actions must ultimately be
9 protective of human health and the environment. A
10 failure to regulate this toxic material would be a
11 failure to each citizen who breathes the air and
12 utilizes the water.

13 I strongly request the EPA to determine
14 that the disposal of coal combustion waste
15 warrants regulation under Subtitle C as a
16 hazardous waste. Thank you very much.

17 MR. BEHAN: Thank you.

18 SPEAKER: Good afternoon. Thank you for
19 letting me speak. My name is John Tedrick. I'm
20 from Washington County, Oklahoma. I'm a
21 mechanical engineer by profession. I am troubled
22 by the manner in which fly ash is handled and

1 regulated in Oklahoma. I strongly request the EPA
2 to regulate coal ash, and I'm here to add my voice
3 to the support of the Subtitle C option.

4 Nationwide, states lack the incentive to
5 regulate coal combustion waste. They are failing
6 to take the responsibility of regulating fly ash
7 in a safe manner. There is a great social
8 injustice done to the communities in rural
9 Oklahoma. They have become the dumping grounds
10 for industrial waste products.

11 With your help, we can have federally
12 enforced safeguards for the management of coal
13 ash. There is no way to guarantee the American
14 people that a disaster like Kingston, Tennessee,
15 will never happen again. But if coal combustion
16 wastes are listed as special waste under Subtitle
17 C of the Resource Conservation and Recovery Act,
18 we'll be much better protected.

19 Because of all the toxic chemicals in
20 coal ash such as mercury, lead, and arsenic, it is
21 completely unreasonable to treat coal ash the same
22 way as household garbage. Coal ash is hazardous,

1 and it should be regulated that way.

2 Please select the Subtitle C option and
3 regulate coal ash as a special hazardous waste.
4 Thank you.

5 MR. BEHAN: Thank you.

6 SPEAKER: Okay. Thank you. My name is
7 Hal Suter. That's for the benefit of your court
8 reporters. S-U-T-E-R. That -- that last name is
9 spelled a variety of different ways. I am the
10 chair of the Lone Star Chapter of the Sierra Club.
11 I know a number of people from the organization
12 have come up here and spoke on the issue, and you
13 probably have some people who come here before.
14 About all I can basically say is that ditto to
15 what they've said. We want -- we support the
16 regulation under Subtitle C.

17 I've heard a variety of people talking
18 about, let's have the states regulate this on
19 their own. And I guess in theory, that sounds
20 like a pretty good idea; to have the government,
21 you know, closer to the people and that they will
22 be able to do a better job. Unfortunately, when

1 you get out there in the real world and
2 particularly in issues such as this, you're going
3 to need to have someone oversee -- not necessarily
4 regulate, but oversee -- who is less susceptible
5 to political pressure. And I think that you will
6 find that at the state level, you are going to
7 find much more political pressure than you will at
8 the federal level.

9 I was kind of ashamed in a way listening
10 to some of my brothers and sisters from Oklahoma
11 and Louisiana and Arkansas, talking about the
12 division of all theses various agencies and all
13 the problems they have. And I was sitting there
14 -- well, hallelujah, Texas is not alone. We have
15 here with the Texas Com -- quote, Texas Commission
16 on Environmental Quality, unquote, that supposedly
17 regulates a variety of things (unintelligible.)
18 You could fill this room, every ballroom in
19 downtown Dallas, with people who have had
20 experiences with the, quote, TCEQ, unquote, and
21 are still bleeding.

22 I think with -- the name should be

1 changed, instead of TCEQ, to T-I-P-A, TIPA, Texas
2 Industrial Permitting Agency. They do very --
3 they do very little in the way of looking for the
4 individual common citizen first. Whether it's
5 about a statutory, things that's kind of the
6 legislature, whether it's by the agen -- by the
7 pressures of the industry itself, they do not do
8 the job that they should.

9 While in theory I would like it to stay
10 closer to the people and the -- and leave it up to
11 the individual states, in reality, if we're going
12 to do something about this problem, it's going to
13 have to be done by your agency, the EPA. So I'll
14 just reiterate the support for -- put it under
15 Subtitle C. Thank you very much.

16 MR. BEHAN: Thank you. Number 78,
17 Number 81. Are 79 and 80 here? 109, 121, 225,
18 226. Go ahead, sir.

19 SPEAKER: Good afternoon. My name is
20 Mike Altavilla. And my present position is the
21 environmental compliance superintendent for Texas
22 Westmoreland Coal Company. And I'm here today as

1 chairman of the Texas Mining and Reclamation
2 Association, TMRA's Lignite Committee. TMRA
3 appreciates the opportunity to present its
4 comments here today.

5 TMRA is a Texas nonprofit trade
6 organization comprised of approximately 100 mining
7 electric utility and supplier members. We support
8 coordinated, rational, and consistent federal,
9 state, and local policies to assure the economic
10 recovery and use of this state's mineable
11 resources in an environmentally sound and
12 responsible manner. TMRA's members play a vital
13 role in the Texas economy.

14 The -- the Texas lignite mining industry
15 alone spends in excess of \$100 million each year
16 on land reclamation and protection of water, air,
17 and other environmental resources. Texas contains
18 the largest electric market in the country,
19 generating 80 percent more electricity than any
20 other state. Baseload coal generation accounts
21 for about 38 percent of this amount. And 37
22 million tons of Texas lignite was mined in 2009.

1 Coal production and use in Texas creates over
2 33,000 jobs.

3 Recycling and the beneficial use of coal
4 ash is something TMRA members strongly support.
5 Whether beneficially used in coal mining
6 reclamation or recycled and used in a number of
7 construction materials, these uses should be
8 encouraged. Beneficial use reduces greenhouse
9 gases, emissions, and also reduces disposal needs.
10 Our members are concerned that the beneficial use
11 of CCRs will halt or severely be restricted if EPA
12 finalizes the Subtitle C regulatory option.

13 TMRA supports EPA's exclusion of mine
14 filling from the rule proposals, specifically as
15 it relates to the placement or use of CCRs and
16 Texas surface mine reclamation. Consider the
17 following: There is no evidence suggesting any
18 negative effects from using CCRs in mine
19 reclamation and this land is highly valued and in
20 demand when it is released. A hazardous
21 designation would also raise the cost of
22 reclamation, increase energy use in emissions, and

1 could delay timely reclamation. The Texas program
2 through the environmental and surface mining
3 regulators in Texas is protecting human health and
4 the environment, and there is no need for
5 additional federal regulation.

6 Moreover, EPA's proposal for the
7 regulation of CCR's as a hazardous material under
8 Subtitle C, which strips states of the ability to
9 cost effectively regulate CCR disposal practices
10 and would impede the beneficial reuse of CCRs. In
11 summary, TMRA opposes any regulation of CCRs as a
12 hazardous material under the RCRA Subtitle C
13 hazardous waste program. Texas already has
14 in place a program protective of the public and the
15 environment. A new one-size-fits-all federal
16 program for Texas is not needed. Thank you for
17 this opportunity to provide comment.

18 MR. BEHAN: Thank you.

19 SPEAKER: My name is Samuel Wilcher.
20 I'm from Baton Rouge, Louisiana. And I want to
21 thank the panel for giving me an opportunity to
22 discuss my -- my reservations about the regulation

1 that you're about to undergo -- the regulation and
2 concerns you're about to undergo. The need for
3 tougher regulations on coal ash is now. We in the
4 state of Louisiana have been dealt a
5 well-documented mix of manmade disasters that stem
6 from lax regulations and oversight. What kind of
7 message are we sending to our children if profits
8 are put ahead of the air we breathe and the water
9 we drink and the soil that sustains us?

10 In my home city of Baton Rouge, we are
11 affected by pollution from the Big Cajun II Power
12 Plant. This contamination affects the mighty
13 Mississippi River, as well as other water sources
14 in the area. In Hurricane Katrina, profits were
15 put ahead of the safety of our community. Due to
16 this manmade disaster, I lost my home. My health
17 should not be put at risk due to industry
18 shortcomings.

19 In New Orleans, Charlie -- Chinese
20 drywall has been labeled as hazardous, yet we see
21 that activists such as Brad Pitt and the Make It
22 Right Foundation and Wendall Pierce with the

1 Pontchartrain Park Foundation have proven that
2 sustainable design can be achieved if we allow for
3 innovation.

4 The "P" in EPA stands for protection,
5 not profits. I'm calling on the administration
6 and Congress to enact laws on coal ash. Today, my
7 colleagues and I believe in a sustainable future.
8 And this vision can only be achieved by the
9 administration and Congress working together. I
10 am pleading with this panel to -- to please not
11 bury your heads in the sand, especially if that
12 beach is anywhere near a coal ash landfill or
13 power plant. Thank you.

14 MR. BEHAN: Thank you.

15 SPEAKER: Good afternoon. I'm David
16 Schanbacher. I'm with the Office of the Texas
17 Comptroller of Public Accounts. EPA's proposed
18 rules to regulate coal ash are not the best way to
19 address this issue and will unnecessarily harm
20 both the economy and the environment. According
21 to EPA's Web site, the -- the proposed rules are
22 intended to address potential environmental

1 problems at coal ash disposal facilities, such as
2 landfills and impoundments. We've all heard about
3 the regrettable event in Tennessee that showed
4 that disposal facilities at some sites need to be
5 improved.

6 But recycling coal ash is good for the
7 environment and good for the economy. Quoting
8 from EPA's own Web site, industrial materials such
9 as coal ash are valuable products of industrial
10 processes. Putting these commodities into
11 productive use saves resources and contributes to
12 a sustainable future.

13 Even though EPA has attempted to allow
14 the continued recycling of coal ash, these rules,
15 if adopted, will have the unintended consequence
16 of discouraging it. In a December 22nd letter to
17 EPA Administrator Jackson, ASTM International said
18 that designation of fly ash as a hazardous waste,
19 even with an exclusion for beneficial use, will
20 likely result in little or no fly ash being -- re
21 -- being used in beneficial -- excuse me -- being
22 used beneficially in concrete or other

1 applications that supports sustainability options
2 -- objectives.

3 The Texas state economy will suffer if
4 the beneficial use of coal ash is eliminated.
5 Since 2005, the Texas Department of Transportation
6 has used about 185,000 to 275,000 tons of coal ash
7 per year as a concrete additive. The coal ash
8 additive reduces the incidence of ASR distress and
9 the costly repairs to structures such as bridges.
10 The elimination of coal ash as a concrete additive
11 will require the use of more costly and sometimes
12 less effective substitutes.

13 The previously recycled coal ash must
14 now be disposed; the very activity that EPA's Web
15 site says is causing the environmental concerns.
16 The coal ash waste will soon exceed the capacity
17 of current disposal resources and will likely
18 cause operational regulatory issues for coal-fired
19 power plants. These power plants generate over 37
20 percent of Texas' electricity. Any -- any
21 disruption to this reliable baseline power could
22 raise electricity prices, jeopardize the electric

1 grid, and further strain already struggling state
2 economies.

3 A review of Texas regulations,
4 standards, and practices related to the use of
5 coal ash conducted for the EPA by the Energy and
6 Environment Research Center concluded that Texas
7 has a successful program to encourage the
8 beneficial use of coal ash. One of the keys to
9 Texas' success is the flexibility TCEQ has to
10 allow beneficial use of coal ash while retaining
11 the regulatory option to correct any problems that
12 arise. Further, the report says that one of the
13 threats that could hinder recycling in the future
14 is the very action that EPA is proposing with
15 these rules.

16 In short, proper regulation at the state
17 level is a more effective vehicle for coal ash reg
18 -- coal ash regulation than a one-size-fits-all
19 national program. The nation's economy should not
20 be made to pay for the mistakes at a single site.
21 Thank you.

22 MR. BEHAN: Thank you. 225.

1 SPEAKER: Greetings. My name is Gary
2 Stuard. And I am the founder and executive
3 director of the Interfaith Environmental Alliance,
4 or IEA, an organization whose mission is to assist
5 congregations in greening themselves and also to
6 formate -- or create local alliances of faith
7 communities throughout the state of Texas to
8 address local environmental issues, as well as
9 through non-partisan but political action advocate
10 for progressive environmental policies at the
11 state and national level.

12 As an alliance of people of faith, IEA
13 -- or the Interfaith Environmental Alliance -- is
14 naturally concerned about truth, including
15 scientific truth; the love of God, however we
16 define god; and the love of neighbor; and the
17 advancement of the common good. As people of
18 faith, we accept the scientific evidence that
19 shows conclusively that coal ash is highly toxic
20 and hazardous to humans and ecosystems, as being
21 shown by what has been happening to our water
22 resources being contaminated with mercury, lead,

1 and other toxins. For example, the state of Texas
2 has sixteen lakes heavily contaminated from coal
3 waste. People's lives are being harmed, and that
4 is a religious issue.

5 Since all faith traditions stress that
6 we cannot love God -- however we understand God --
7 without loving and caring, protecting our
8 neighbor, IEA urges EPA to quickly establish
9 aggressively progressive regulations on coal ash.
10 It's become clear that there's no such thing as
11 clean coal energy and that for the sake of the
12 Earth's ecosystems and the welfare of human
13 communities, everything must be done at all levels
14 to rapidly reduce and ultimately eliminate our
15 nation's dependence on coal and other coal-based
16 fuels.

17 Increased coal waste disposal costs will
18 give companies an incentive to move beyond the use
19 of coal byproducts. IEA also encourages EPA to do
20 what it can to have criminal investigations
21 initiated and criminal prosecutions pursued
22 against TCEQ, the Railroad -- Texas Railroad

1 Commission, Governor Rick Perry, energy
2 corporations, and other governmental corporate
3 bodies or individuals who have undermined,
4 thwarted, or violated environmental laws here in
5 the state of Texas, and who have criminally
6 exposed Texas public to environmental risks that
7 undermine public health.

8 In religious tradition, we call that
9 sin. According to all faith traditions, one
10 cannot both serve -- love and serve God or the
11 moral good and money or profit. As Jesus of
12 Nazareth put it, you will either love the one and
13 hate the other, or you will hate the one and love
14 the other. Please remember, EPA, that
15 environmental justice and the ecological common
16 good in the eyes of God trumps always corporate
17 profit. Thank you, and God bless.

18 MR. BEHAN: Thank you. 226.

19 SPEAKER: Good afternoon. My name is
20 Lev Guter. And I am a concerned citizen coming to
21 you today from Arkansas. I live in Little Rock.
22 I just want to make three quick points. The first

1 one is to give some examples of contamination that
2 is happening right now in Arkansas from coal ash.
3 The second point I'd like to make is just to
4 really touch on the regulatory state climate of
5 what's the Arkansas Department of Environmental
6 Quality, ADEQ -- sort of what their culture is
7 when it comes to coal ash. And then the third
8 point that I would like to make is to highlight
9 one of the reasons why Subtitle C is a much better
10 option than Subtitle D.

11 So the contamination that's happening
12 right now -- I'm sure you've heard it before
13 today, this report cited -- but it's In Harm's
14 Way, and it was done by the Environmental
15 Integrity Project. And the first two cases are
16 from Arkansas. The -- the first one is the
17 Independence Coal Plant. And the contamination of
18 the 34 monitoring wells have been documented for
19 widespread groundwater contamination. And we're
20 talking heavy metals, mercury. That's 34 wells.
21 That's -- that's drinking wells that people are
22 consuming every day.

1 And the second problematic coal ash site
2 that was documented in the report is from Flint
3 Creek. And that's another coal ash site where
4 there has been demonstrated damage to groundwater
5 360 feet away from the actual site. So this water
6 is -- it's moving, and people are drinking it.

7 Just quickly, the Arkansas Department of
8 Environmental Quality follows, in general, the
9 minimum standards that the federal regulations
10 impose. There are really smart people,
11 hardworking people at ADEQ, but we hear time and
12 again, you know, the regulations aren't there. If
13 you want us to have stricter regulations, change
14 the regulations. Well, that's why we're here
15 today.

16 And the third point that I'd like to
17 make is, this is an environmental justice issue.
18 Because of Subtitle D, my understanding is that a
19 large portion would be regulated by citizen suits.
20 And the poor communities, a lot of them are
21 communities of color, they don't have the
22 resources to hire lawyers to enforce safe drinking

1 water. And that is something that they should be
2 entitled to. They shouldn't have to fight for
3 clean drinking water. That is something that the
4 federal government should make sure all citizens
5 have. Thank you.

6 MR. BEHAN: Thank you. Number 82,
7 Number 84, 227, 228. 228? 229. We're a little
8 ahead of schedule, so I'm going to take some of
9 the walk-ins right now. So that's the 200 series.
10 Okay. What was the -- what number do you have,
11 ma'am?

12 SPEAKER: 82.

13 SPEAKER: 108.

14 MR. BEHAN: Okay. Go ahead, ma'am.

15 SPEAKER: Okay. My name is Victoria
16 Tamayo. And to all of my students, I'm Ms.
17 Tamayo. Teaching in New Orleans is the most
18 unique experience for me, and I absolutely love
19 it. I adore my students. And my students and I
20 share -- we share our lives together. And every
21 day I see them, they just share more and more.

22 When I became aware of the coal ash

1 issue and how close to our home it is, the most
2 important thing to me is knowing that my students
3 are at the very least environmentally safe and
4 educated. Because sometimes when they go home,
5 their homes are empty or not altogether and they
6 need to know that the water they drink and the
7 streets that they play on are safe for them.

8 When my fourth graders ask me about
9 their neighborhoods, they need to know they're
10 safe and that the status -- their status as
11 Louisiana residents and United States citizens
12 grants them the right to know policymakers have
13 their well-being in mind.

14 This is about prevention, not about the
15 gravity of change. The gravity lies with the lack
16 of change. As a native of the most culturally
17 rich and diverse city, New Orleans, I refuse to
18 let myself or my students be environmental
19 refugees again. Adopt Subtitle C. Thank you.

20 MR. BEHAN: Thank you. 84.

21 SPEAKER: Thank you for this opportunity
22 to discuss. My name is James Hicks, Executive

1 Vice President of Research and Development of
2 Ceratech, Incorporated. Ceratech provides cements
3 made specifically from coal combustion products or
4 CCPs. Ceratech supplies fly ash-based cements and
5 products made from those cements to many
6 municipalities, state departments of
7 transportation, the federal government, and the
8 U.S. military in stateside and theater of war
9 zones for critical needed high-performance
10 products.

11 Ceratech will be put out of business if
12 CCPs are classified as hazardous. Classifying
13 CCPs as special will evoke the connotation of some
14 variety of sort of hazardous or probably
15 hazardous. Further, beneficial use of CCPs can be
16 linked under EPA guidelines to any other
17 classification of CCPs.

18 I support coal ash disposal regulations
19 that protect human health and the environment while
20 encouraging greater recycling of fly ash and CCPs.
21 These goals cannot be both accomplished if the
22 Environmental Protection Agency designates coal

1 ash as hazardous or special waste.

2 People do not want a material in their
3 homes, schools, or neighborhoods if it is
4 considered hazardous in a landfill. Businesses
5 will not want to risk being sued for using a
6 material that is considered hazardous in a
7 landfill or risk losing the environmental benefits
8 that come with recycling millions of tons of this
9 material, including conserving landfill space and
10 natural resources, as well as avoiding the
11 emissions of millions of tons of greenhouse gases
12 for manufacturing the materials that recycled coal
13 ash replaces.

14 There is no good reason for destroying
15 coal ash recycling. Characteristic waste, which
16 exhibit one or more of the characteristics defined
17 in 40 CFR Subpart C, are ignitability,
18 corrosivity, reactivity, and toxicity. Coal
19 combustion products meet none of these category
20 designations.

21 Further, a solid waste as defined in
22 261.2 is a hazardous waste if it exhibits any of

1 those characteristics. CCPs do not have any of
2 those characteristics. The stigma associated with
3 CCP if classified as any form of Subtitle C or
4 special waste is untenable. Whether disposed or
5 used, the fact that it could be either and the
6 beneficially used CCR and the disposed CCR come from
7 the same source can be shown to be linked under
8 EPA guidelines. Your consideration to avoid
9 reclassification of CCPs as any form of Subtitle C
10 or special is appreciated.

11 MR. BEHAN: Thank you. 227.

12 SPEAKER: Hi, I'm Jeffrey Davis,
13 environmental manager for NRG Energy,
14 Incorporated. NRG owns and operates one of the
15 country's largest power generation portfolios,
16 including coal plants in Texas, Louisiana, New
17 York, and Delaware. NRG supports the development
18 of federal regulations for coal combustion
19 residuals under RCRA's Subtitle D non-hazardous
20 waste program. We believe that a non-hazardous
21 program is the best path forward because it will
22 enable EPA to establish a program that protects

1 the environment while not impacting beneficial use
2 or the economy. NRG will provide written comments
3 before the November 19th deadline. We support the
4 comments made by the Texas Coal Combustion
5 Products Coalition and the Utilities Solid Waste
6 Activities Group.

7 Texas has a strong solid waste disposal
8 program, and it has successfully managed disposal
9 of CCRs under this program for decades. The
10 program in Texas provides the regulatory oversight
11 necessary to ensure that management of CCRs is
12 protective of human health and environment. NRG
13 requests that EPA work with the states and develop
14 a program that recognizes the role of each state
15 to develop their own regulatory programs to ensure
16 compliance with the newly adopted federal
17 criteria.

18 Most of the coal combustion byproducts
19 produced at our Texas plants are beneficially
20 used, primarily in the manufacture of cement
21 products. EPA has publicly stated that a
22 hazardous program would result in an increase in

1 recycling. We believe that a federal program that
2 labeled a product that had been safely used for
3 decades as hazardous will have the opposite effect
4 and will severely impact our recycling efforts
5 because of the stigma associated with a hazardous
6 designation.

7 Our coal ash users and recyclers have
8 indicated that any hazardous waste label on coal
9 ash could end beneficial use practices due to --
10 to liability and marketing concerns. This would
11 result in greater volumes of coal ash generated at
12 the NRG plants having to be managed and
13 unnecessarily fill up landfill space rather than
14 sold for beneficial use. In addition, the cement
15 industry will have to make up for the loss of
16 recycled coal ash resulting in a net increase of
17 carbon dioxide emissions.

18 In closing, NRG supports the regulations
19 of CCRs as a non-hazardous waste. There is simply
20 no reason for EPA to pursue a hazardous waste
21 regulation when a non-hazardous program offers the
22 same level of protection without crippling

1 beneficial use and imposing unnecessary cost on
2 electric power sector. I thank the EPA for the
3 opportunity to present these comments.

4 MR. BEHAN: Thank you. 229.

5 SPEAKER: Good afternoon. My name is
6 Shane Strelsky. And I'm a site manager for Harsco
7 Minerals, a division of the Harsco Corporation. I
8 work at Harsco's Rockdale, Texas location, and I
9 manage four regional plants located in Texas,
10 Kansas, and Missouri. I have been working in the
11 boiler slag processing field for 20 years. The
12 plants I manage employ 39 workers, many of them
13 have been working in the boiler slag processing
14 industry for 10 to 39 years.

15 We produce mainly abrasives and granules
16 for roofing shingles from boiler slag. Boiler
17 slag is one of the listed coal combustion
18 byproducts included in this proposed regulation.

19 Harsco takes employees' health safety
20 very seriously. We have participated in
21 industrial hygiene surveys, we conduct -- we
22 conduct regular safety meetings. And safety is an

1 important part of how we do our business every
2 day. Environmental permit compliance is also an
3 important part of the way we conduct our business.
4 In 20 years of operations, I do not know of any
5 environmental issues caused by the boiler slag
6 process by my facilities.

7 I am in support of regulating boiler
8 slag under Subtitle D. Some facts that
9 demonstrate that there is no reasonable basis for
10 subjecting boiler slag to regulation under
11 Subtitle C are as follows: When extremely hot
12 molten coal ash is quenched with cold water, the
13 coal ash is vitrified and becomes a solid glassy
14 matrix known boiler slag. Because boiler slag is
15 vitrified, it is a very durable and
16 environmentally stable material that effectively
17 immobilizes its chemical constituents.

18 Historically, boiler slag has always
19 passed the TLC -- TCLP testing and has never
20 exhibited any hazardous waste characteristics. I
21 am not aware of any environmental issues brought
22 forth by any of my customers. Any and all TCLP

1 testing requested by any of my customers has never
2 indicated any issues. Boiler slag makes up only 2
3 percent of total coal combustion byproducts, and
4 98 percent of it is recycled into valuable
5 reusable products. Boiler slag has been
6 beneficially used since the 1930's as an abrasive.
7 Boiler slag is not commonly stored in surface
8 impoundments. Harsco does not store any of our
9 products, raw or processed, in any surface
10 impoundments.

11 Regulating boiler slag destined for
12 disposal as a special waste under Subtitle C would
13 unfairly stigmatize beneficially reused boiler
14 slag that I have been processing for many years.
15 My customers will be confused and concerned about
16 purchasing products that are seen to be
17 essentially the same as Subtitle C waste.

18 I recognize the need for proper and
19 environmentally sound standards for regulating the
20 2 percent of boiler slag that is discarded rather
21 than beneficially reuse. However, I feel that the
22 associated stigma that will be associated with

1 Subtitle C will adversely impact my business. I
2 am for Subtitle D. Thank you.

3 MR. BEHAN: Thank you. 108.

4 SPEAKER: Good afternoon. My name is
5 Carol Okstel. And I'm a supporter of
6 Earthjustice, the Sierra Club, and Defenders of
7 Wildlife. I want to thank you for holding these
8 hearings and for your full attention.

9 The EPA already knows, as does the coal
10 electric industry, that coal ash is an awful
11 arsenal of toxic pollutants that are implicated in
12 cancers, organ disease, respiratory illness,
13 neurological damage, and reproductive and
14 developmental problems. The EPA already knows, as
15 does the coal electric industry, that the toxic
16 contaminates in billions upon billions of gallons
17 of coal ash in dump sites and waste ponds across
18 the country have wrecked poisonous devastation
19 upon the environment, upon ecosystems, marine
20 life, wildlife, the air we breathe, our sources of
21 drinking water, and the physical and economic
22 health of human beings and the communities

1 afflicted. Yet the coal electric industry in an
2 amazing theater of the absurd is pressuring and
3 maneuvering the EPA to accept and abet some of the
4 indust -- industry's most unconscionable practices
5 and assertions of coal ash's harmlessness.

6 But the industry does concede if coal
7 ash actually must be regulated, it should
8 certainly fall under RCRA's Subtitle D, the
9 non-hazardous designation, or in other words, it's
10 nothing more harmful than coffee grounds. Let's
11 call this what it really is, criminal deceit and
12 recklessness in the name of profit, responsible
13 for a swath of sickness, death, and ruination
14 across the United States.

15 Well, in the name of all on the planet
16 that has been afflicted by this scourge and
17 through the power of genuine human and divine
18 justice, if ever an industry and its toxic product
19 residual needed stringent regulation and the EPA
20 needed to live up to its mandate, coal ash is it.

21 Nothing short of Subtitle C is
22 acceptable with the designation of special waste,

1 the regulation's strongest protections, federally
2 enforceable safeguards, and the phaseout of all
3 perilous waste ponds. Anything less would be
4 tantamount to federally sanctioned genocide across
5 species because we all know that coal ash sickens,
6 devastates, and kills. Thank you again for your
7 attention.

8 MR. BEHAN: Thank you. Number 87, 88,
9 89, and 90, could you come forward. Number 230,
10 Number 87, if you could come to the podium.

11 SPEAKER: My name is Bruce Haslerud. I
12 am one of the employee owners of Black Diamond
13 Granules, a company located in St. Paul,
14 Minnesota, which is about 1,000 miles north of
15 here. Our company processes boiler slag granules
16 into roofing granules and abrasives. As an owner
17 of a profitable, surviving Minnesota business, I
18 came here to ask EPA to consider scientific data,
19 as well as the practical implications of
20 regulating boiler slag as a Subtitle C hazardous
21 waste.

22 I believe that as a matter of sound

1 science and avoiding a potentially devastating
2 economic impact that EPA determine coal slag to be
3 regulated as a Subtitle D material. Although we
4 are a small company, we have recycled over 3 point
5 million -- 3.1 million tons of boiler slag
6 granules into useable products during our
7 existence.

8 At EPA's Arlington, Virginia public
9 meeting on August 30th, there were several
10 allegations made by a competitor selling a
11 competing product that unencapsulated boiler slag
12 is a danger and threat to human health. It was
13 also alleged that coal slag abrasives release
14 hazardous airborne pollutants.

15 I am compelled to share with you and for
16 the public record the results of an independent,
17 third-party laboratory analysis on my slag fines.
18 The study was conducted by Pace Analytical, and it
19 analyzed particulate fines from my plant, which
20 are even finer than the slag granule residue from
21 an abrasive blasting job. The data show that any
22 metals in the slag granules maintain their

1 encapsulated status and are not harmful. The data
2 show that the particulate fines are similar in
3 nature to soil in your backyard. I strongly
4 encourage EPA to review this laboratory study and
5 technical data.

6 As you may know, 80 percent of all
7 shingles contain boiler slag. If EPA declares
8 boiler slag to be a special waste under Subtitle C
9 because -- besides the cost of roof repairs going
10 up, homeowner's insurance would also increase.
11 This is because of the stigma of Subtitle C
12 classification.

13 Finally, the State of Minnesota
14 currently encourages recycling of old shingles by
15 allowing asphalt for state roadways to include a
16 percentage of recycled shingles, but Minnesota
17 does not permit hazardous waste to be recycled.
18 If boiler slag is declared a special waste under
19 Subtitle C, EPA will be gutting a program that
20 allows for 100 percent recycling, undercutting its
21 own mission to reduce, reuse, recycle. Thank you
22 for your consideration.

1 MR. BEHAN: Thank you. Number 88.

2 SPEAKER: Hello, my name is Devin
3 Martin, from Lafayette, Louisiana. I'm here
4 representing myself, the people of the great state
5 of Louisiana, as well as the Sierra Club Delta
6 Chapter. Thank you for the opportunity to speak
7 today.

8 The Sierra Club Delta Chapter is made up
9 of over 3,000 members and thousands of more
10 volunteers, some of whom you've already heard from
11 today who are from places as far as Shreveport and
12 the Kisatchie Forest, all the way down to the
13 mouth of the Mississippi River in Venice.

14 Like Texas, the people of Louisiana are
15 proud. We're proud of our history. We're proud
16 of our unique and diverse heritage. And we're
17 proud of our environment that has helped to shape
18 who we are as a people. We have pride in the idea
19 of being a sportsman's paradise.

20 And one of the reasons I'm urging you
21 today to consider coal ash as a Subtitle C
22 hazardous material is because we're afraid that

1 heavy metals from coal ash might leach into our
2 environments and get into the wildlife and
3 fisheries that we are so dependent upon and proud
4 of as part of who we are as Louisiana citizens.
5 Because of bio accumulation, any heavy metals that
6 escape into the environment can be concentrated in
7 the body of a fish or plants that people use and
8 consume, especially hunters and fishers. So we
9 need to be extra careful when dealing with an area
10 like Louisiana where so many people are hunters
11 and fishers.

12 Also, you know, we're not proud of
13 everything that we have in Louisiana. We're not
14 proud of being an environmental sacrifice zone for
15 energy companies and being a resource colony for
16 other areas. We're not proud of the failure of
17 our state government to protect our own people and
18 our people's interest and the interest of future
19 generations. And we're not proud of the lies that
20 are constantly told to us by corporate executives
21 and politicians. Lies like I'm hearing today.

22 Coal ash is toxic. There is no other --

1 there's no getting around it. Coal is dirty.
2 There is no clean coal. And there is no clean
3 coal ash. Those who would try to say that we
4 shouldn't regulate coal as a hazardous material
5 because of an -- because of economic reasons or
6 because of a stigma that might come with it, shame
7 on you. Shame on you.

8 Coal is a hazardous material. The
9 stigma that goes with it is deserved, so you need
10 to live with this. You need to live with the
11 realization that we can't always have things both
12 ways. These companies who are afraid of the
13 stigma are trying to keep consumers from the
14 truth, from learning that what is in their
15 products may be harmful. So I urge the EPA today
16 to except and recommend using Subtitle C as
17 regulating coal ash as a hazardous material.
18 Thank you.

19 MR. BEHAN: Thank you. Number 89.

20 SPEAKER: Good afternoon. My name is
21 Terry Peterson. I'm the president of Boral
22 Material Technologies, a small ash marketing

1 company based out of Roswell, Georgia. I've been
2 in the CCP industry since 1983. And during my
3 career, I've been involved with all facets of CCP
4 management. Those include beneficial use,
5 primarily. I've also been involved in landfill
6 design and construction. An important part of our
7 business has been research and development and
8 looking for opportunities for additional
9 beneficial uses of CCPs. And also involved in
10 engineering of ash handling systems. Today, I'd
11 like to focus my comments on the stigma associated
12 with Subtitle C designation for CCRs. Excuse me.

13 Since 1983, I've observed and
14 experienced the challenges associated with
15 matching CCR production to CCP demand. Generally
16 speaking, the imbalance that in -- inevitably
17 occurs between the two results in excess CCPs
18 being placed in landfills. Effectively, this
19 excess fly ash disposed has the exact same
20 characteristics as the fly ash being sold to end
21 users for beneficial use. Designating fly ash
22 being sold or beneficially used as acceptable and

1 then classifying that same material as hazardous
2 waste when land-filled under Subtitle C confuses
3 end users since the fly ash is the same
4 regardless. This confusion leads to concerns
5 around future liability for our end user
6 customers, as well as CCP producers. And in many
7 cases, eliminates their desire to purchase or sell
8 CCPs for beneficial use.

9 Another significant challenge to the CCP
10 industry resulting from the stigma of Subtitle C
11 is tracting -- is attracting private investment to
12 develop technologies or products that will promote
13 beneficial use of CCPs. Even if every cubic yard
14 of concrete in the U.S. contains optimized volumes
15 of CCPs, there would still be a substantial amount
16 of CCRs remaining available. New technologies and
17 products will be critical to continue to expand
18 beneficial uses beyond conquering (sic ?). Investors will
19 not move forward if there are any concern as to
20 the future classification of CCPs under Subtitle
21 C.

22 The overall impact of Subtitle C could

1 effectively reverse the successful beneficial uses
2 currently in place, as well as eliminate the
3 future investment required to sustain beneficial
4 uses. This reversal will eliminate the
5 substantial benefit of avoiding 15 million tons of
6 annual CO2 emissions, require extraction of
7 non-renewable resources to fill the void left when
8 users not -- opt not to use CCPs and obviously
9 consume a large amount of landfill space.

10 We are convinced that the EPA can both
11 fulfill their obligation to protect citizens by
12 reinstating Subtitle D designation for CCRs while
13 also promoting responsible beneficial uses, which
14 will show us -- allow us to maintain our natural
15 resources, as well as the clean air benefit
16 associated with CCP reuse. Thank you very much.

17 MR. BEHAN: Thank you. Number 90.

18 SPEAKER: Good afternoon. My name is
19 James Birkhead. I'm the environmental supervisor
20 at Luminant's Three Oaks Mines, which are located
21 in Lee and Bastrop Counties of Texas. I
22 appreciate the opportunity to provide my statement

1 today.

2 Across Luminant's mines, coal combustion
3 residuals play a very important role in our
4 reclamation practices. As a standard practice,
5 they have been effectively used for mine fill and
6 contouring across the state for many years with no
7 proven adverse environmental impacts. Even before
8 federal and state laws were written, Luminant
9 demonstrated a strong commitment to responsible
10 land reclamation and management. We ensure the
11 quality of our reclaimed land, its groundwater,
12 and soil through rigorous and extensive
13 monitoring. We have never experienced any issues
14 with our groundwater from using CCRs for mine fill
15 and contouring.

16 We take great pride in our reclamation
17 program, and for good reason. We've received
18 nearly 90 awards for reclamation excellence
19 throughout the years. Most notably, in 2009, we
20 received the U.S. Department of the Interior
21 Office of Surface Mining Director's Award. And
22 this was for an unprecedented fifth time. This

1 was also the second consecutive year Luminant
2 received OSM's highest distinction.

3 The primary goal of our reclamation
4 program is to return mine lands to a productive
5 post-mine use and to achieve full release of all
6 regulatory obligations. To that end, we've
7 reclaimed more than 66,000 acres, and we've
8 secured the successful release of bond liability
9 on over 29,000 acres. Our attention to the
10 development of quality post-mine soil is the
11 cornerstone of our successful mine reclamation
12 program.

13 We've also significantly increased prime
14 farmland in our post-mine soils. Prime farmland
15 soils are those that have been -- that have the
16 best combination of physical and chemical
17 characteristics for producing food, feed, forage,
18 fiber and oilseed crops. Our land is known for
19 its quality and it's in high demand when it's
20 released for sale back to the public. Using CCRs
21 as mine fill and for contouring has contributed to
22 this success.

1 In summary, Luminant, in addition to
2 over 200 members of the U.S. Congress, 43 states,
3 and numerous federal agencies strongly oppose the
4 regulation of CCRs as a hazardous material under
5 RCRA Subtitle C hazardous waste program. And we
6 recommend that the EPA continue to allow states to
7 run their own program. Thank you for this
8 opportunity to comment.

9 MR. BEHAN: Thank you. 230.

10 SPEAKER: Good afternoon. My name is
11 Jeff Haseltine. I live in Abilene, a West Texas
12 city of -- of over 100,000 people. I'm a
13 university administrator and a member of a very
14 conservative local church.

15 This past Sunday, a university colleague
16 came up to me and said, well, how's Tenaska doing?
17 Have they gone away yet? He was referring to the
18 Nebraska energy company, Tenaska, a huge privately
19 owned energy company, which having made lots of
20 money in the natural gas energy business, is now
21 trying to get into the coal burning business.
22 This colleague knows that I'm one of the many

1 local people trying to stop Tenaska from building
2 a coal-fired plant in our area. I told him, no,
3 Tenaska hasn't gone away. They're still scouring
4 the region, looking for water after Abilene told
5 them, we weren't going to give it to them.

6 My colleague said simply, man needs to
7 learn to stop fouling his own nest. Even the
8 birds know better than to do that. And that made
9 me think. That's absolutely true. We need to
10 stop fouling our own nest. But the problem with
11 our local issue, the Tenaska plant will crank out
12 27 truckloads of ash per day, every day, over its
13 50-year lifespan. The problem is that Tenaska is
14 not going to foul their own nest. Their nest is
15 Omaha, Nebraska, over 600 miles away. The problem
16 isn't that man needs to learn to stop fouling his
17 own nest, it's that man needs to be prevented from
18 fouling somebody else's nest.

19 Now, we've asked our own state agency,
20 the Texas Commission on Environmental Quality, to
21 do just that. But the TCEQ has a history of
22 simply rubber stamping whatever these huge energy

1 companies plop down on their desk. The result is
2 that the local people, trying to maintain the
3 quality of our own area nest, have no effective
4 means of preventing some giant corporate Tenaska
5 bird from flying in on the wings of three and a
6 half billion dollars of borrowed money and fouling
7 our nest for half a century.

8 That's why even reluctantly from the
9 standpoint of many conservatives we ask the EPA to
10 step in on a federal level and to enact some tough
11 laws regarding coal ash. If you can help us shoo
12 away the big birds, that would be wonderful. But
13 at the very least, we ask you to make them clean
14 up after themselves. Enact Subtitle C, please.
15 Thank you.

16 MR. BEHAN: Thank you. Numbers 92, 93,
17 94. If 91 has arrived, you can come up, too.
18 231, 232, come on up. Number 92. Go ahead when
19 you're ready.

20 SPEAKER: Good afternoon. My name is
21 Matthew Smith. And I'm currently employed by
22 Separation Technologies, a company which processes

1 and markets fly ash.

2 We've heard some great arguments today
3 for both Subtitle C and Subtitle D. After hearing
4 these arguments, I formed the opinion that we
5 could distill most of these discussions down to
6 one question. Which is better for the human
7 health, environment, and the economy, placing CCRs
8 in landfills or encapsulating them in concrete.

9 I believe encapsulation is far better,
10 and also believe Subtitle D supports this option
11 while Subtitle -- Subtitle E -- C eliminates it.
12 I support cleaner production of electricity, but
13 until that becomes a reality, we have to do
14 something with the CCRs. Recycling them is the
15 best option. That's why I support Subtitle D.
16 Thank you.

17 MR. BEHAN: Thank you. Number 93.

18 SPEAKER: Good afternoon. I'm Joey
19 Craft. I'm also with Separation Technologies from
20 Mississippi. I also oversee all safety procedures
21 and assure that they are followed according to
22 OSHA and EPA standards.

1 Our company handles the process of fly
2 ash that is supplied to concrete companies
3 throughout Mississippi, Alabama, and Louisiana.
4 Our ash has helped in the rebuilding process of
5 all -- of some bridges and businesses after
6 Hurricane Katrina five years ago. That's why I'm
7 opposed to the Subtitle C regulation on fly ash
8 because of the impact that it would take on our
9 economy. There is a lot of people that would work
10 in this field and industry that could lose a job
11 and not be able to support their families. As a
12 family man, I -- I need my job to provide for my
13 wife and my -- my daughters.

14 So with that being said, I'm here to
15 protect my job, my family, my coworkers, and my
16 company from any regulations that would cost us
17 our business. I believe we need to pay more
18 attention to the oil spill in -- that happened in
19 the coast than -- than the problems that you would
20 think fly ash is doing to our environment right
21 now.

22 So in closing, my question to everyone

1 here today, would we be here having these meetings
2 if the Tennessee or Oklahoma incident ever
3 occurred? Thank you.

4 MR. BEHAN: Thank you. Number 94.

5 SPEAKER: I'd like to thank you all for
6 the opportunity to speak today and for giving the
7 public a chance to express their concerns and
8 their opinions on the issues concerning fly ash.
9 My name is Frank Cooper. I'm also with Separation
10 Technologies. Our company is in the business of
11 recycling fly ash. We have a process of
12 separation that separates the carbon particles out
13 of the ash. We're able to take these carbon
14 particles, send them back to the power plant to be
15 recycled through the burner once again. The
16 mineral particles, as we call it, are used in
17 block roadwork, bridgework -- a lot of other
18 beneficial things that they're used for to keep
19 them out of landfills.

20 Unfortunately, I know with every bad
21 thing, something good can come out of it; but
22 also, with every good thing, something bad could

1 come out of it. If currently it's labeled under
2 Subtitle C, then a company like ours would go
3 away, and what you'd be left with is more and more
4 material ending up in landfills instead of being
5 recycled. And eventually, power companies,
6 they're still going to burn coal to produce power
7 as long as we still turn these lights on and we
8 still use this AC system. So what's going to
9 happen is you're going to have more material being
10 produced with no place to go.

11 And people talk about landfills.
12 Eventually, power companies will have to scout new
13 locations for landfills. And if we don't have a
14 plan in effect for that, then eventually one day,
15 all of us may be living next to a landfill. So I
16 vote for Subtitle D, please. Thank you.

17 MR. BEHAN: Thank you. 231.

18 SPEAKER: Good afternoon. It's been a
19 long hearing, and I appreciate your -- your
20 continued attention. My name is Jim Cook. And I
21 live in Abilene, Texas, which is 40 miles from the
22 proposed Tenaska coal-fired electric generation

1 plant. And I thank you for listening to me. I
2 support Subtitle C proposal.

3 Coal ash is toxic and hazardous. The
4 externalities of coal-fired electric generation
5 must be considered. Action like the one being
6 considered here today is much too important to be
7 based solely on economic issues. It's unfortunate
8 that a threat like a coal-fired plant in your back
9 yard must be personal in order to motivate us to
10 act.

11 I speak for myself and those who have
12 not yet discovered that coal ash is a personal
13 threat to them also. Clean coal is a myth. Clean
14 renewable energy is a reality. If the coal
15 industry cannot adapt to the proposed regulation,
16 then perhaps the coal industry should fail.
17 Renewable energy will succeed no matter what the
18 level of regulation.

19 Coal burning is bad for the environment
20 and, therefore, bad for people. Currently, it
21 seems to be good for the industry. What's the
22 name of that company? Make Money -- Making Money

1 Having Fun. It's our health being sold for their
2 wealth.

3 I encourage the EPA to fulfill its
4 purpose of protecting the environment and the
5 lives of the citizens that depend on the clean
6 healthy surroundings. Push back on the industry
7 on my behalf. Our future must be clean, healthy,
8 and sustainable. Please assume the responsibility
9 to regulate coal ash and adopt Subtitle C.

10 If I may add a comment, as an
11 environmental science teacher, I take issue with
12 using the term "recycling" in reference to coal
13 ash. This is greenwashing at its best. The term
14 suggests sustainable activities. The term
15 "recycling" is being co-opted to refer to further
16 distribution of a material which degrades the air,
17 the water, and human health. Thank you.

18 MR. BEHAN: Thank you.

19 SPEAKER: Hello, my name is Bonnie Mai.
20 And I'm a student from Hammond, Louisiana. And
21 I'm concerned about coal ash pollution and the
22 health of the environment and people today, as

1 well as generations from now. A lot of my
2 professors actually encouraged me to come here
3 today instead of attending their classes because
4 they said that this coal ash hearing is far more
5 important than their classes. I speak for them,
6 as well as many other students who could not be
7 here today. I don't know how many I speak --
8 people I speak for, but I know that personally, a
9 lot of people have come up to me and told me to
10 speak for them and their children and all the
11 other pairs of lungs that couldn't be here today.
12 So I'm speaking for them.

13 And we know that the bottom line for
14 industry is money. I know that many people in the
15 coal industry are worried about money and jobs.
16 But we, the people, are already paying the true
17 cost of coal through our health care costs, our
18 water treatment costs, and cleaning up major
19 environmental and health disasters, such as the
20 Tennessee coal spill. I think that many people
21 came here today and many people who are unable to
22 -- to come here today are ready to face the

1 reality and show what the true cost of coal is and
2 hope that we may gradually transition to using
3 renewable, sustainable, clean energy.

4 I support Option C because honestly I
5 don't trust the states to regulate coal ash safely
6 and to take their citizens' health into
7 consideration. Option D would not change
8 anything. Not regulating this dangerous substance
9 will cost us more in the long run.

10 In closing, I would like to say that I
11 support the Seven Generation Law of Sustainability
12 that the Iroquois Native Americans use in all of
13 their decision-making. When you make laws,
14 consider how not -- how it won't just benefit you,
15 but also the next seven generations. I urge you
16 to consider what is best for humanity today, as
17 well as the next seven generations. And thank you
18 for allowing us to comment on this crucial issue.
19 Thank you.

20 MR. BEHAN: Thank you. 233, 234, 235,
21 236, 237, 238, 239, 240, 241, 242, 243, 244, 245,
22 246, 247. Go ahead.

1 SPEAKER: My name is Lily Stagg. I'm
2 from Lafayette, Louisiana. I'm a member of the
3 Sierra Club. I'd like to start off by saying that
4 I'm hugely honored to have the opportunity to
5 speak for the concerned citizens of Louisiana.

6 As Americans, we have been blessed with
7 both beautiful, natural surroundings, including
8 abundant natural resources, and a thriving
9 industrial economy. However, to whom much is
10 given much is expected. We have the
11 responsibility of being stewards of our earth, and
12 we must keep this in mind when we take advantage
13 of these resources.

14 Unfortunately, too often big industries
15 shirk their responsibilities in order to make the
16 largest possible profit, as we've seen in the BP
17 oil spill, Tennessee coal ash spill, and many
18 other man-made disasters throughout American
19 history.

20 Industry's blatant disregard for
21 environmental and human well-being can also be
22 seen less dramatically in the improper disposal of

1 coal ash waste. Fly ash is carelessly dumped into
2 unlined landfills where it is leached into the
3 groundwater supply and also carried with the wind,
4 polluting the air we breathe.

5 The harmful minerals found in coal ash
6 cause cancer, birth defects, nervous and
7 reproductive system disorders, and countless other
8 serious health complications. Those opposed to
9 regulations and reform argue that it will cost too
10 much to take the steps necessary to ensure the
11 safety of our people and our environment.
12 However, we say that no amount of money is worth
13 even one human life, and if we destroy our planet
14 we cannot buy a new one.

15 Another important aspect less considered
16 is our global standing. We pride ourselves in
17 being one of the most advanced nations in the
18 world, yet people living in the area surrounding
19 coal ash dumps do not even have access to one of
20 life's most basic requirements: Clean water.
21 This is not acceptable.

22 The current system of coal ash waste is

1 not working. The regulations imposed by the
2 states are weak and fail to protect both mankind
3 and the environment. We demand clean air. We
4 demand clean water. Please don't let us down.
5 Thank you.

6 MR. BEHAN: Thank you.

7 SPEAKER: Thank you to everyone who
8 worked to make this hearing possible, and I thank
9 you for the opportunity to voice my concerns. I'm
10 Karen Keller, of Dallas, Texas, and I'm testifying
11 as a public citizen.

12 Various types of pollution are major
13 contributors to my medical problems. Since coal
14 ash contains many hazardous chemicals, I plead
15 with the people of the EPA to put strict
16 regulations on disposal of coal ash.

17 There is a cumulative effect from the
18 exposure to all toxins in our environment that has
19 caused my health to deteriorate to the point where
20 I'm not able to work.

21 My concerns about burning coal for power
22 and its impact on the environment have come about

1 through my long battle with some unusual health
2 problems. After years of suffering from a
3 worsening fatigue, seasonal sinus infections and a
4 decline in mental ability, I was finally diagnosed
5 with toxic metal poisoning.

6 People are generally treated according
7 to their symptoms, but often doctors don't
8 recognize that toxins are causing the problem, and
9 they are misdiagnosed and don't receive adequate
10 treatment.

11 Even though my reactions are infrequent
12 to allergens these days, they occur spontaneously.
13 I am still sensitive to products that are commonly
14 used when I am out in public or I commonly am
15 exposed to them. This makes me unstable and
16 uncertain about committing to full-time
17 employment.

18 My toxic metal test revealed elevated
19 levels of many of the chemicals that are found in
20 coal ash, and a filter is recommended for removing
21 these impurities from my drinking water, and it's
22 essential to detoxification. But there are many

1 people who can't afford this expensive equipment.

2 My research revealed that high levels of
3 these toxins are not adequately filtered from
4 bottled water, which many drink, and I have
5 concerns about children whose bodies are in
6 developmental stages. Hot water opens the pores,
7 causing us to absorb more toxins in our skin
8 during showers. Coal ash contaminants put all of
9 us at risk, creating a burden on our society in
10 many ways.

11 For 20 years, I have diligently searched
12 for solutions to my health problems. It has cost
13 me thousands of dollars from myself and insurance
14 companies. Toxic chemicals are silent killers.
15 Many people suffer from the effects and are
16 treated with drugs that add more toxins to their
17 systems.

18 Technology cannot eliminate all of these
19 toxins generated in coal production, and the
20 amount of exposure puts us all at risk for health
21 problems. I urge adopting the Subtitle C to
22 regulate coal ash as a hazardous waste. Thank

1 you.

2 MR. BEHAN: Thank you.

3 SPEAKER: I want to thank you for
4 listening to my comments today. I am Charles
5 Henderson, managing executive of the coal and ash
6 operations group for Ameren Energy Fuels and
7 Services, known as Ameren. We are an
8 investor-owned utility based in St. Louis,
9 Missouri, that operates 11 coal-fired plants.

10 Ameren and our 2.4 million electric
11 customers will be directly impacted by a final
12 coal combustion residuals rule. I have direct
13 responsibility and knowledge and experience with
14 beneficial use and management of CCP materials.

15 Over the past ten years, Ameren has
16 developed a very robust CCP management and
17 beneficial use program. Our CCP beneficial use
18 program has been impacted recently by not only the
19 poor state of the economy but also by the issuance
20 of the EPA's proposed rule seeking to regulate
21 CCRs.

22 We have intentionally delayed a

1 multi-year beneficial use project due to the
2 regulatory uncertainty created by the EPA's
3 proposed rule potentially labeling CCRs as a
4 hazardous waste. This project would have created
5 much-needed construction jobs in Missouri this
6 year, right now, provide long-term benefits to the
7 local economy during the construction phase and
8 long-term benefits to the project development due
9 to the cost effectiveness of utilizing CCP
10 materials.

11 Sadly, none of these benefits are being
12 realized, nor may ever be realized, as the result
13 of CCRs being labeled potentially as hazardous
14 materials, and the liability concerns already
15 created as a result of the EPA's proposed rule.
16 There is stigma, and the stigma is real and
17 already present.

18 I want to strongly state our opposition
19 to the Subtitle C option. Regulating CCPs under
20 RCRA's hazardous waste program is simply
21 regulatory overkill that would severely cripple
22 the CCP beneficial use industry and unnecessarily

1 raise the cost of power to our electric customers.

2 Significant government research and
3 demonstrations have supported CCP beneficial use
4 recycling for many years. Please reconsider the
5 effort to regulate CCPs under RCRA Subtitle C.
6 Instead, RCRA Subtitle D approach will accomplish
7 everything essentially necessary to properly
8 manage CCPs when storing, recycle, beneficially
9 use, or dispose.

10 Even the EPA has stated that there is no
11 significant difference in the level of
12 environmental protection between the proposed
13 Subtitle D non-hazardous waste approach and its
14 proposed Subtitle C hazardous waste approach.
15 There is just no sound reason to pursue the
16 Subtitle C approach when Subtitle D options offer
17 the same degree of protection without the
18 independent risk it burdens the economy, jobs, and
19 electric customers.

20 A Subtitle D approach is protective of
21 human health and the environment and is clearly
22 the correct regulatory approach. Thank you.

1 MR. BEHAN: Thank you.

2 SPEAKER: Good afternoon. My name is
3 Bob Franklin. I'm a professor of American
4 government at Collin College in Plano, and a
5 resident of Dallas.

6 I'm not here to discuss the science, the
7 chemistry, the health aspects. I think that's
8 been pretty eloquently laid out for you. I know
9 that your agency is charged with collecting all
10 that information, and I know that a lot of the
11 people that testified here have provided you with
12 a lot of that information.

13 I am here more to look at the political
14 considerations of Subtitle C and Subtitle D. I
15 understand the Administrative Procedures Act,
16 which is the act that you are under, and the
17 reason for this hearing.

18 I understand that you are charged with
19 coming up with a common-sense solution to a
20 problem that takes into account everybody's
21 position, business, private enterprise,
22 environmentalists. You have to come up with

1 middle ground that satisfies everybody, and I know
2 how tough that is.

3 You are here to consider all points of
4 view. There have been a lot of businesses that
5 have been here, and, understandably, they are
6 arguing to protect their interests. That's
7 understood. We need you to consider all points of
8 view.

9 Subtitle C seems to be the common-sense
10 approach to a serious problem. The opposition to
11 Subtitle C seems to be an accusation that the EPA
12 cannot come up with a common-sense solution to
13 something. I don't know about you but I would
14 feel pretty insulted by that. I think that you
15 have the ability, you've got the expertise, to
16 develop a common-sense solution to this problem,
17 and I think you have done that with Subtitle C.

18 The anti-regulatory position claims that
19 it has the best interests of people at heart. We
20 know some of those companies and other industries
21 from the past, names like Enron and BP and Lehman
22 Brothers, all of Wall Street and the banking

1 industry. It's pretty clear that these industries
2 need some sort of regulation; otherwise, they're
3 going to go off and protect their own interests.

4 I've heard a lot of talk about stigma
5 here, and that actually surprises me. If stigma
6 were going to kill an industry, I would think that
7 the pesticide industry and Monsanto would have
8 been out of business years ago. They seem to be
9 thriving very well. Why are they calling it a
10 stigma? Why not call it an opportunity to be
11 green and provide for a nice environment for the
12 rest of us?

13 Subtitle C makes common sense. The
14 proponents of Subtitle D, therefore, seem to want
15 to take a non-common-sense approach; and that
16 doesn't make any sense to me at all. Finally,
17 Subtitle D leaves the regulation to the individual
18 states. We have seen that doesn't work.

19 I strongly urge you to adopt Subtitle C.
20 Thank you.

21 SPEAKER: Hello. My name is Jacob
22 Pohlman, and I am from Lafayette-Monroe,

1 Louisiana. I'm a student. My major is renewable
2 resources. I'm also involved with an
3 environmental group on campus called SPEAK, and
4 I'm here with the Sierra Club. I would like to
5 thank the EPA for holding this hearing and
6 listening to all of the comments.

7 I am here today to speak about the issue
8 on the lack of regulation for coal ash and the
9 effect it has on the community around it. In
10 order to prevent another disaster like the
11 Tennessee spill, for example, we must put Subtitle
12 C into effect.

13 I understand the effects it will have on
14 coal-ash-related companies, but I feel we are in a
15 progressive era and we cannot keep doing the same
16 thing over and over. I feel if these companies
17 are resourceful and prepared for this change, then
18 they should be able to manage this change without
19 (inaudible). Again, I am for Subtitle C and more.
20 Thank you.

21 MR. BEHAN: Ninety-six, 97, 99. Go
22 ahead, sir.

1 SPEAKER: Good afternoon, and thank you
2 for allowing me the opportunity to appear before
3 you to express my concerns over EPA's proposed
4 rule regarding the designation of coal combustion
5 residuals as hazardous material. I am Sam
6 Russell. I'm county judge of Titus County, which
7 is located about 100 miles east of Dallas, on
8 Interstate 30.

9 Titus County is most fortunate to have
10 five coal-fired generating units in our county,
11 three of which are owned by Luminant and the other
12 two owned by SWEPCO. Neither of these companies
13 have foul nests in our area. In fact, Luminant
14 and SWEPCO have been responsible corporate
15 neighbors and citizens for many years, and we
16 certainly want to see that continue.

17 Designation of coal ash as hazardous
18 material could be detrimental to our local
19 economy. Not only could it cost us jobs in our
20 electric utilities industry, but also other local
21 jobs and services in our communities, county, and
22 state. Additionally, we could very well see

1 higher costs for consumers in electric rates and
2 even natural gas prices in our area.

3 Let me take a moment to explain the
4 economic benefits we currently enjoy with the
5 presence of these utility companies in our county.
6 These electric utility companies paid over \$25
7 million in property taxes in 2009, which benefited
8 not only our county, but our communities, schools,
9 community college, hospital, and other local
10 taxing entities.

11 These electric utility companies provide
12 over 700 jobs directly to our area, plus many
13 others that act in a support capacity to these
14 utility companies. Companies such as Boral are
15 located in Titus County and recycle coal ash
16 products.

17 Job creation and the protection of
18 current jobs are vital to our economy, not only in
19 Titus County but also in Texas. The recent
20 downturn in our economy, along with the recent
21 loss of many jobs due to changes in the poultry
22 industry and Pilgrim's Pride Corporation, cause us

1 great concern when other jobs could likely be
2 threatened by the proposed rule changes.

3 The TCEQ's comprehensive CCR handling
4 and disposal regulations has proven effective. As
5 a result, there have been no catastrophic failures
6 at any facilities in Texas.

7 We, along with the power generation
8 industry, support the continued designation and
9 regulation of CCRs as non-hazardous waste.
10 Regulation of CCRs as hazardous material would
11 strip states of the ability to cost effectively
12 regulate CCR disposal practices and would impede
13 the beneficial use of CCRs. This will impact
14 jobs, consumer costs, local and state government
15 revenues, coal mining jobs, and other things.

16 Thank you again for this opportunity.

17 MR. BEHAN: Is 97 here? Ninety-nine.

18 SPEAKER: Good afternoon. I'm Matt
19 Childs, president of the American Concrete Pipe
20 Association, a licensed professional engineer in
21 the state of Texas, and I have a master's degree
22 in environmental engineering from the University

1 of Texas at Arlington.

2 I grew up working in a concrete pipe
3 plant and paid for my college that way and have
4 actually been probably one of the few people here
5 who has held fly ash in their hands. And, yes, I
6 still have hands.

7 The American Concrete Pipe Association
8 is here today representing our 50 member companies
9 with 298 facilities located throughout the United
10 States. Our industry manufactures approximately
11 9.8 million tons of concrete drainage products
12 annually. That translates into 1.2 million tons
13 of cement and 400,000 tons of fly ash consumed.

14 If fly ash is ruled to be a hazardous
15 waste requiring special handling, it would become
16 cost prohibitive to use. Our members would be
17 forced to use only cement in the manufacturing of
18 their concrete pipe. Using only cement, rather
19 than fly ash, would result in an additional annual
20 cost to our industry of \$40 million. It would
21 also hurt our ability to compete with a product
22 that actually does hurt the environment: Plastic

1 pipe.

2 Four hundred thousand tons of fly ash
3 would not be encapsulated in concrete. Four
4 hundred thousand tons of additional cement would
5 need to be made using cement products. This, in
6 turn, would negatively affect the marketplace for
7 not only highway drainage products but for all
8 concrete structures.

9 The ACPA understands the need for the
10 EPA to craft an approach that protects the public
11 health and the environment to address the
12 shortcomings of the current regulations governing
13 impoundments, like those that failed and resulted
14 in the spill at the Kingston facility in 2008.
15 However, additional requirements burdening the
16 beneficial use of fly ash is not the answer.

17 The American Concrete Pipe Association
18 agrees with EPA's position that it should not
19 change the May 2000 regulatory determination for
20 beneficial use CCRs. The EPA has acknowledged
21 that it has seen no evidence of damages from the
22 beneficial uses of CCRs. It also believes that

1 such beneficial uses of CCRs offer significant
2 environmental benefits.

3 Although the EPA would list CCRs under
4 Subtitle C as a special waste by using Subtitle C
5 to regulate CCRs, the EPA would be branding CCRs
6 as a hazardous waste de facto.

7 Given the choice of the two proposed
8 alternatives by the EPA, the ACPA supports
9 Subtitle D as being better suited to improve the
10 safety of storing CCRs in impoundments, while not
11 burdening CCRs with the label of hazardous waste.
12 Thank you for your time today.

13 MR. BEHAN: One hundred, 101, 105, 106,
14 and 109, please.

15 SPEAKER: Thank you for this opportunity
16 to comment on the proposed CCR management rules.

17 My name is Craig Bennett. I'm a geologist with
18 Bullock, Bennett & Associates, a geoscience and
19 engineering firm located in Bertram, Texas.

20 I speak from 18 years of direct
21 firsthand experience with CCR projects in Texas.
22 These projects include CCR characterization,

1 landfill design, construction oversight, operation
2 support, risk assessment, facility closure,
3 groundwater modeling and monitoring, and recycling
4 support.

5 Despite the misinformation commonly
6 promulgated by many supporters of CCR regulation,
7 the current program in Texas does provide for such
8 common-sense safeguards as landfill liners,
9 groundwater monitoring, and cleanup standards.

10 CCR disposal facilities in Texas are
11 strictly constructed in accordance with TCEQ
12 Industrial and Hazardous Waste Technical Guidance
13 Number 3. Every design and construction of a CCR
14 landfill in Texas that I've been involved with
15 over the course of my career has met or exceeded
16 the technical requirements for liners listed in
17 Technical Guidance Number 3.

18 Groundwater monitoring is already
19 adequately addressed by TCEQ Guidance Document
20 Number 6, as well as many EPA RCRA guidance
21 documents. I personally manage groundwater
22 monitoring programs at six CCR landfills in Texas.

1 Again, groundwater at these facilities is
2 routinely monitored and evaluated, and to suggest
3 otherwise is wrong.

4 Non-hazardous CCR landfills are
5 remediated and closed in Texas under the TCEQ's
6 Texas Risk Reduction Program or the Risk Reduction
7 Standards. These programs explicitly require a
8 complete evaluation of soil and groundwater data
9 to ensure the facilities are closed so as to
10 remain protective of human health and the
11 environment. In addition, after closure, ongoing
12 groundwater monitoring, site inspection, and
13 maintenance is required to be documented and
14 submitted for TCEQ review.

15 In 18 years of environmental consulting
16 on CCR projects in Texas, I have never seen any
17 waste classification data to remotely suggest that
18 CCRs should be managed as a hazardous waste. To
19 regulate CCRs as hazardous is wasteful and
20 potentially detrimental to ongoing recycling
21 efforts.

22 If CCRs are not characteristically

1 hazardous, and the primary impetus for these new
2 proposed rules is the December 2008 Tennessee
3 Valley Authority dike failure, then shouldn't the
4 proposed rules be primarily focused on inspection
5 and maintenance of CCR facility dikes? By the
6 way, we also do that, too. Every CCR landfill
7 we're associated with is inspected twice per year
8 by a licensed professional engineer and maintained
9 accordingly.

10 Again, thank you for the opportunity to
11 speak here today.

12 MR. BEHAN: Thank you.

13 SPEAKER: My name is Reverend Dr. T.
14 Randall Smith, and I'm the president of the board
15 of directors of Texas Impact, a statewide
16 interfaith organization concerned with educating
17 faith communities in Texas and then enabling them
18 to make their voice heard on those public policy
19 issues which touch on their common teachings and
20 shared theological understandings.

21 The board I represent is composed of 45
22 members predominantly from the Jewish, Muslim, and

1 Christian communities of faith. Those 45 persons
2 represent Catholic, Lutheran, Presbyterian, United
3 Church of Christ, Society of Friends, United
4 Methodist, the Christian Life Commission of the
5 Baptist General Convention, and regional Jewish
6 and Muslim organizations. It is fair to say that
7 we provide resources on public policy to millions
8 of Texans in the interfaith community through our
9 membership.

10 We are deeply aware that the perspective
11 we bring to this hearing is somewhat unique,
12 representing as it does a word from the faith
13 communities to those with public responsibility
14 for caring for the good creation which we
15 received.

16 Within our faith communities, the
17 preponderance of theological reflection
18 understanding establishes that human beings have
19 been entrusted with a responsibility to give
20 care-filled oversight to God's creation, not in
21 order to exploit it without regard for the health
22 and safety of current and future generations, but

1 to ensure that creation is maintained and made
2 more bountiful for the good of each and every
3 generation.

4 To exploit the resources God has
5 provided humanity while damaging, or even laying
6 waste to, the regenerative power of creation with
7 which it has been endowed by divine creativity, is
8 more than criminal to our faith communities; it's
9 blasphemous, for it despoils that which God has
10 made and called good.

11 From the perspective of faith, human
12 beings are to mirror the gracious and loving
13 creativity of the Holy and Living One. If they do
14 not, they make false what God has declared: The
15 divinely-appointed vocation of human beings is to
16 exercise the sovereign, holy, loving kindness of
17 God for the sake of the land and the sea and all
18 the inhabitants thereof. What God has called good
19 and very good, we may not treat with wanton
20 disregard for its divine purpose.

21 It is our position that public policy
22 should be shaped by what is in the interest of the

1 best stewardship of the rich resources with which
2 we have been gifted. Efficiencies of scale and
3 cost must not exclude a concern for outcomes in
4 the lives of those immediately affected and of
5 those affected long-term by our policy decisions.

6 Economic considerations which do not
7 protect human life and the creation or which place
8 short-term profits for shareholders above the
9 needs of those who are God's primary concern --
10 the human and natural stakeholders in a
11 well-tended creation -- are not only short-sighted
12 economically.

13 Such considerations are, to put it in
14 blunt religious language, sinful. They defiantly
15 ignore God's intention for the divinely-wrought
16 creation and the creatures who inhabit that
17 creation. That's a perilous way to live and act
18 and have our being.

19 That is why the faith communities which
20 are our constituents want to say to you today that
21 we expect that you will take with utmost
22 seriousness the careful stewardship of the

1 resources of this part of God's creation. Thank
2 you.

3 SPEAKER: Good afternoon. My name is
4 Gary Gibbs, and I work for AEP Texas.

5 Back when I was getting my degree in
6 civil engineering at Texas A&M almost 37 years
7 ago, I worked in the environmental engineering
8 department there at A&M doing research on
9 coal-fired power generation and specifically on
10 coal ash. We knew that coal was going to become a
11 big deal in Texas, and A&M wanted to understand
12 that. They concluded that there was a very bright
13 future, for the record, for Texas, and I think
14 that future has been bright.

15 When I graduated, I went on to work for
16 the electric power industry, licensing and
17 building coal-fired power plants. I've been doing
18 that for more than three decades, working on coal
19 ash and management of coal ash. I can tell you
20 that it is one of the most studied and most
21 well-understood recycling materials. I can also
22 tell you that a tremendous amount of engineering

1 goes into the design of coal ash management
2 facilities here in Texas and that those are
3 well-regulated by the TCEQ.

4 Coal fly ash and portland cement have
5 remarkably similar properties. Fly ash is
6 commonly used in portland cement concrete to
7 improve the quality of concrete mix, making it
8 easier to pour and to pump. The end result is a
9 stronger, longer-life concrete that wouldn't
10 otherwise be possible. That's why the
11 much-respected American Society of Testing and
12 Materials has long had specifications for the use
13 of fly ash in concrete, and that's why the Texas
14 Department of Transportation specifies the use of
15 coal fly ash in concrete for its highway projects.

16 Those who were working in this area
17 early on remember clearly the waste stigma that
18 coal ash recycling efforts faced at that time. We
19 had a good story to tell, and we overcame that
20 stigma. Today, the use of coal ash in concrete
21 stands as one of the most successful recycling
22 stories.

1 Unfortunately, the EPA's proposed rule
2 could severely cripple this shining success and
3 have the resulting effect of driving up the cost
4 of concrete and causing fewer transportation
5 projects to be built across this country. Instead
6 of being recycled, this coal ash will instead go
7 into industrial landfills. Countless new, large
8 landfills will be required to bury this much ash.

9 I urge you to reconsider your approach
10 and not adopt the rules that would further
11 stigmatize coal ash. It's far too valuable of a
12 resource to simply bury.

13 MR. BEHAN: Thank you.

14 SPEAKER: Hi. My name is Erin Hickok,
15 and thank you so much for having this hearing here
16 today. I'm honored to be here.

17 I'm representing myself as a citizen
18 from Austin, Texas, and I'm representing myself as
19 an aunt of two nieces and a nephew. I represent
20 my two roommates who work in the solar industry at
21 home in Austin. I represent a group of people
22 who, despite the rain, came here wanting to give

1 their comments. About 15 of them had to leave a
2 little bit earlier today.

3 I also represent 200 -- actually, 449
4 people who have submitted both handwritten letters
5 and signed comments to the EPA asking for stronger
6 protections from toxic coal ash. So I'd like to
7 submit these to you today.

8 Perhaps the person -- the people that
9 I'm representing the most is our future, and I
10 just wanted to share this with you. This is a
11 picture that was collected. It was made by a
12 9-year-old and an 11-year-old. They created this
13 to give to the EPA as their comment.

14 I just wanted to share all those
15 comments that I brought with you today. They were
16 actually collected in just the past two days,
17 right here in Dallas, of just people knocking on
18 doors and saying, hey, what do you think about
19 coal ash? Just getting people's opinions, just
20 two days. Less than 20 people -- 15 people just
21 going out and knocking on doors. They took their
22 time to make handwritten letters because they

1 couldn't be here today.

2 I do want to thank you for having us. I
3 want to thank you for taking the comments. We
4 urge you strongly to provide the best protection
5 for our future, to really provide the best
6 opportunity for wind and solar power, and to make
7 sure that we're keeping our water and our air as
8 clean as possible. Thank you.

9 MR. BEHAN: Thank you. Number 97. Is
10 there anyone else in the room that has not spoken
11 that has a number of 100 or lower? 109, 111, come
12 on up. 114, 115, and 116, if you would come
13 forward, please.

14 SPEAKER: Hi. My name is Stephanie
15 Jordan, and I am a farmer from a small community
16 near Oklahoma City. As a farmer, I want to follow
17 up on some of the conversation that's been going
18 on about how farmers need access to the products
19 that are manufactured from fly ash. I gotta say
20 as a farmer, I wouldn't want this crap near my
21 food.

22 That being said, I've studied this issue

1 a lot. I'm an activist and it really has -- it
2 has struck a chord with me. In trying to boil
3 down something so complex that I feel really
4 passionate about into a three-minute argument, it
5 occurred to me, there are really only two elements
6 to this argument. There is health and there is
7 dollars. I don't know why in this country we keep
8 trying to barter those two things. To me, they're
9 not interchangeable. But since we're here and
10 that's what we're doing, let's just try on each
11 other's argument.

12 So everybody on the health side of this
13 argument, if you would take a moment to do an
14 experiment with me, and ask yourself what dollar
15 amount it would take for you to be willing to ask
16 your neighbor to live near an unregulated fly ash
17 dump. Whatever that dollar amount is, it's not
18 the dollar amount we're saving on our electric
19 bill by keeping things the way that they are. So
20 when you say health versus dollars, health wins.

21 Everybody on the dollar side of the
22 argument that are coming up here trying to tell us

1 that this product isn't unsafe, I'd like to ask
2 you to do me a favor. I'd like you to go home
3 tonight, take a tablespoon of fly ash, stir it
4 into a glass of Kool-Aid, and feed it to your
5 children, because that's what you're asking me to
6 do, and that's what the people in towns like
7 Bokoshe and the 900 other towns that live near a
8 fly ash dump, that's what they have to do every
9 night.

10 That's not a good choice. But we're
11 being asked to do that so people don't have to
12 change their business model. And I just want to
13 tell you, I'm not interested in drinking your
14 Kool-Aid, I'm not interested in my neighbors
15 drinking your Kool-Aid, and I hope that the EPA
16 isn't interested in drinking your Kool-Aid either.

17 I would really appreciate it if you
18 would consider implementing Subtitle C and making
19 that a good starting place. Thank you.

20 MR. BEHAN: Thank you.

21 SPEAKER: My name is Whitney Pearson,
22 and I'm a resident and concerned citizen of

1 Oklahoma.

2 If we were to move this country beyond
3 coal, we end the problem of coal ash; but until
4 America is ready to end its addiction to this
5 dirty fuel, those who burn it must be responsible
6 for the by-products.

7 At least two sites in Oklahoma show that
8 currently those who burn coal are being
9 irresponsible. The state regulatory agencies have
10 failed to act, and we need strict, clear,
11 enforceable regulations of Subtitle C.

12 In Oklahoma, three agencies regulate the
13 fly ash dump in Bokoshe, as you heard earlier.
14 For almost two years, citizens who are impacted
15 daily by the fly ash have called these agencies to
16 fix the problems in Bokoshe, a problem that these
17 agencies permitted to get out of hand.

18 Many of us in Oklahoma have called our
19 elected and appointed officials but only to find
20 out -- to ask them why they are not addressing the
21 situation in Bokoshe. They tell us that they
22 don't have the authority or they don't see any

1 violations or that it's someone else's
2 responsibility.

3 I've been to the fly ash pit in Bokoshe,
4 Oklahoma, and I've seen documentation of the
5 violations; and the failure of state agencies is
6 obvious. The failure of state agencies is also
7 apparent in Oologah, Oklahoma, where, for 30
8 years, the coal-fired power plant has disposed of
9 its fly ash in an unlined pit.

10 No one monitored the groundwater there
11 until 2008, and the data shows the contaminants
12 have leached into the groundwater and there are
13 heavy metals exceeding both federal and state
14 maximum containment levels in the groundwater.

15 The operator of the plant has
16 acknowledged that it has contaminated groundwater
17 beneath its facility, but unfortunately they claim
18 that there is no proof that contamination has
19 spread offsite.

20 Isn't it clear that groundwater
21 contamination doesn't confine itself within
22 property lines? Isn't it clear that if the

1 operator were acting responsibly, it would
2 determine the extent of the pollution instead of
3 denying its existence?

4 We know from the experience of Oologah
5 and Bokoshe, Oklahoma; Kingston, Tennessee; and
6 elsewhere that coal ash is hazardous. So why are
7 the regulations, if any, so weak? Why is the
8 health of so many put at risk? Mercury, lead,
9 cadmium, arsenic, selenium -- the list goes on and
10 on of heavy metals we know can cause organ
11 disease, cancer, respiratory illness, neurological
12 damage, developmental problems.

13 Living near a coal ash site is
14 significantly more dangerous than smoking a pack
15 of cigarettes a day, according to a risk
16 assessment done by you, the EPA. I also ask the
17 EPA to (inaudible) beneficial reuse of coal ash.
18 Industry has promoted the idea that dumping fly
19 ash on the ground is beneficial use. They claim
20 that farmers can use it as a soil amendment. This
21 is the same industry that determined you can
22 safely dump it in a pit in Oologah and didn't even

1 monitor the groundwater for 30 years.

2 We've seen that coal ash pollutants can
3 build up in plants and animals and these
4 pollutants can cause deformities and mutations and
5 thus possibly enter the human food chain.

6 We need the federal enforcement and
7 financial accountability that a Subtitle C
8 designation would provide. Coal ash should be
9 regulated from cradle to grave. Subtitle D is not
10 sufficient. Please adopt Subtitle C designation
11 and protect citizens and communities from toxic
12 coal ash. Thank you.

13 MR. BEHAN: Thank you. 114.

14 SPEAKER: My name is Chuck Gross. I'm
15 president of the Oklahoma Sustainability Network.
16 We're very familiar with the Bocoshe situation
17 which has not resulted in proper controls being
18 implemented by the permits which were properly
19 issued or were issued.

20 MR. BEHAN: Sir, could you speak into
21 the microphone or get a little closer, please.
22 Thank you.

1 SPEAKER: The choice is very clear, I
2 think. The environmental people are all for
3 Number C. The business people are pretty much for
4 the Proposal D.

5 Sustainability takes into account a
6 third component. These were the components that
7 were actually designed by EPA, and that is the
8 social justice area. For people such as those in
9 Bokoshe, there is no social justice that's really
10 covered by the Part D proposal.

11 Business is not just going to take care
12 of this by themselves. The publicity that
13 surrounded the Bokoshe fly ash operation, there
14 were articles and newspaper items published both
15 in Tulsa and Oklahoma City. Nobody stepped up
16 from the industry to say, hey, let's make sure
17 that that's resolved. The regulators who handled
18 the permitting had their hands tied and limited in
19 what they could do.

20 There is another component that's going
21 to make this more serious, I think. In the cement
22 industry, the controls of mercury have already

1 been established using maximum (inaudible) control
2 technology. This increases the mercury component
3 in fly ash. This is what seems to be headed
4 toward controls in the power plant industry. This
5 is going to make that a worse problem than what it
6 is now.

7 I hope that you will move to adopt the
8 Subtitle C proposals. Thank you for your time.
9 Thank you for taking the time to listen to us.

10 MR. BEHAN: Thank you. 115.

11 SPEAKER: Good afternoon. My name is
12 Edward Silva of Ronald Mark Associates, a company
13 based in New Jersey. Today, I'm representing the
14 Geosynthetic Materials Association, the trade
15 group of 80 companies that manufacture,
16 distribute, and install geosynthetic materials,
17 including liner systems. The industry employs
18 12,000 people throughout the United States.

19 Our comment to the EPA is very simple.
20 We request that EPA mandate the geosynthetic
21 lining of coal ash storage facilities using
22 composite lining systems. In the shortest terms:

1 Use liners, specifically composite liners.

2 Why? Because liners work. Concerns of
3 safety regarding CCRs are mitigated if the
4 landfill storage sites are lined with a composite
5 liner system of a geomembrane and a geosynthetic
6 clay liner. A composite liner system prevents the
7 leachate from entering the environment. Safety
8 concerns regarding surface impoundments are also
9 mitigated if the impoundments are lined with a
10 composite liner system.

11 The American Society of Civil Engineers
12 does a regular report card on America's
13 infrastructure. For the last three report cards
14 representing over a decade, solid waste has
15 received the highest grade of any category. My
16 industry does a good job of taking America's waste
17 and properly storing it to protect the
18 environment.

19 The materials, technology and people
20 exist, the engineers, engineering techniques and
21 standards, the general contractors and installers
22 who build the proper facilities and the regulators

1 and inspectors who assure the work is done
2 correctly. We urge EPA to use what exists and is
3 working today.

4 Further, our industry has continuously
5 improved over time, and EPA has been a part of
6 that effort. Over the years, EPA has commissioned
7 nearly 80 studies of the design and performance of
8 lining systems. We specifically call your
9 attention to a 2002 study titled "Assessment and
10 Recommendations for Optimal Performance of Waste
11 Containment Systems."

12 That study contains a great deal of
13 pertinent information on how to construct
14 containment systems. Most illustrative for today
15 is a graph charting the leakage rate of different
16 designs over the life cycle of nearly 200
17 facilities.

18 The composite liner system of a
19 geomembrane and a geosynthetic clay liner was
20 demonstrated to have the lowest leakage rate over
21 all life cycle stages, including a near zero
22 leakage rate after the facilities are closed and

1 final cover placed. Our materials work. Use of
2 composite liner systems will achieve the EPA
3 mission to protect human health and the
4 environment for all Americans.

5 A brief word on the hazardous or
6 non-hazardous question. While coal ash does
7 contain heavy metals, it lacks the traditional
8 characteristics of hazardous materials:
9 Radioactivity or the presence of infectious
10 medical waste.

11 In the opinion of our trade
12 organization, coal ash can be properly stored
13 using Subtitle D regulations, a non-hazardous
14 solid waste designation, with composite liner
15 systems. Thank you.

16 MR. BEHAN: Thank you.

17 SPEAKER: Good afternoon. My name is
18 Rita Beving. I am one of the representatives of
19 the Dallas Sierra Club, which has 4,500 members
20 here in the Dallas area. We happen to have, in
21 the Fort Worth club, 1,700 members. I'm here
22 today in support of Option C for the EPA in

1 regards to the regulation of coal ash.

2 In my 15 years in environmental
3 activism, I hear the same excuses from industry
4 when it comes to these sort of regulations being
5 developed and considered. One is jobs. No one
6 says there aren't jobs in developing a proper
7 landfill, monitoring and manifesting that
8 landfill. So you can create more jobs by having
9 better regulation.

10 The other thing I hear today is property
11 taxes. Nobody's going to deny industry paying
12 their property taxes, even after they get the
13 proper landfill for their coal ash.

14 The last thing I always hear is sound
15 science. Well, I believe the EPA has put these
16 rules out with sound science. And the sound
17 science that arsenic, cadmium, chromium, barium,
18 selenium are hazardous to your health is a
19 well-proven, documented medical fact. So the
20 sound science of the medical effects of hazardous
21 waste is there and undeniable and unrefutable.
22 So, therefore, we don't need any more incidents

1 like Tennessee to tell us that we need coal ash
2 monitored, regulated, with the proper landfills
3 and proper disposal.

4 The bottom line is, coal ash needs to be
5 monitored from cradle to grave, and Option D does
6 not have the teeth or the enforceable-type
7 regulations that we need with Option C.

8 Therefore, I urge the EPA to adopt Option C.

9 Thank you.

10 MR. BEHAN: Thank you. Numbers 118,
11 119, 248, 249, 250, 251, 213, 252, 253, 254. 118.

12 SPEAKER: My name is Tom Smith. I'm
13 better known as Smitty. I'm director of the
14 Public Citizen's Texas office, and we are here to
15 support Subtitle C, which would require far more
16 stringent regulation of coal combustion waste than
17 we have today in the United States and Texas.

18 There are a number of reasons why we
19 support this. We, along with others, have long
20 been concerned about the prevalence of mercury and
21 other contaminants in the fish and the lakes
22 around our power plants. I understand fully that

1 there are significant differences between the kind
2 of regulation the EPA does of coal combustion
3 wastes from the plants that burn in Texas, low
4 sulphur western coal which is imported, and those
5 that are regulated by Department of Energy and
6 Railroad Commission that actually mine coal onsite
7 and then deposit it back in their mines. We wish
8 these rules would also apply to those kinds of
9 wastes.

10 But what's clear in Texas is that we
11 have a significant level of contamination. I
12 think it's now up to 16 different lakes or bodies
13 of water, almost all of which are downgradient, as
14 opposed to downwind, from coal plants. The source
15 of this is mysterious to all of us. It could be
16 the emissions coming out the top of the stack or
17 it could be leachate coming out of the bottom.

18 The problem is we don't know. We don't
19 have adequate monitoring reported annually in ways
20 that are understandable to folks around the
21 plants, nor do we have federal supervision to make
22 sure the data we're getting are accurate and

1 adequate. We think there is a real advantage to
2 Subtitle C in that it does require federal
3 enforceability.

4 Another big issue that we see is that as
5 our pollution control devices have gotten better
6 over the years, the toxicity of the coal
7 combustion waste has gotten higher. Due to the
8 engineering of many people in this room and many
9 others, we're now able to pull 90 percent of the
10 toxins out of the smokestacks. That's the good
11 news.

12 The bad news is that the by-products,
13 the toxins, the ash, that is captured in the bag
14 houses and other pollution control devices is now
15 then put back into the coal combustion waste and
16 becomes far more toxic.

17 Things that may have been previously
18 inert and easily recyclable to use in road bases
19 and others that cause the contamination of the
20 various types of catalysts and reagents in the
21 atmosphere now have various toxic particles
22 associated with them as well.

1 So the question of what's recyclable is
2 not as easy or as clear as it was a generation
3 ago, before we had these pollution control
4 devices. The decisions you have before you carry
5 with them significant toxic consequences.

6 Coal combustion waste has been a
7 significantly covered-up problem for the last 35
8 years in this country; and the EPA, through the
9 previous administrations, hasn't had the courage
10 to do what's necessary or regulate it to protect
11 public health.

12 My time is up and we think that your
13 time is up now to regulate it and to do what's
14 necessary to enforce the rules uniformly across
15 the states. Had that been done by the state
16 agencies, we wouldn't have the mess we have today
17 across Texas and many other states. Thank you
18 very much for your time.

19 MR. BEHAN: Thank you. Number 119.

20 SPEAKER: Hello. I'm Richie
21 Benninghoven with USC Technologies out of Kansas
22 City, Missouri. I've come today to support

1 Subtitle D.

2 Our company -- we're a small business.

3 We have eight employees. We utilize

4 self-cementing, self-encapsulating fly ash to

5 backfill underground limestone mines to stabilize

6 them so that the surface can be put back to

7 productive use.

8 I just want to point out to the EPA that

9 the sites are different and ashes are different

10 all over the country. So to write a rule that --

11 I sympathize with you to write a rule to cover the

12 whole country. It's very difficult, with all the

13 different products and all the different uses that

14 we have for the material.

15 I've got a picture of an underground

16 limestone mine here. It's underneath the water

17 table. You can see it's dry. There is no water

18 coming through. That indicates its high

19 impermeability to water flow. The result of fly

20 ash in backfilling looks like this, after you

21 remove the berm, which is a lot different than

22 what we saw in Kingston. If this were the

1 Kingston ash, it would have flowed out. This
2 stands at a negative one-to-one slope. So it's
3 cemented up there. It's encapsulated all these
4 heavy metals that have been referred.

5 The result of that is over \$200 million
6 of surface development, such as this office
7 building, over the top of the mine that would be
8 not possible without the use of cementitious fly
9 ash to stabilize that underground mine.

10 I encourage the EPA to consider in the
11 rule an ash characterization, site
12 characterization, standard for mine fills, quarry
13 fills. There are -- I do recognize there are
14 situations where you do not want to put this
15 stuff, because of high groundwater flow and
16 potential for the heavy metals to leach out, but
17 there are instances where that's not the case. It
18 can be very protective and very beneficial to the
19 community and the environment and everybody's
20 health.

21 Thanks for your time.

22 MR. BEHAN: Thank you.

1 SPEAKER: Hi. My name is Kelly Elvton,
2 and I'm speaking as a citizen of Lafayette. I go
3 to UOL; I am majoring in (inaudible) sources. I'm
4 here with the Sierra Club because of SPEAK at
5 school, the environmental action club.

6 I'm speaking as a happy citizen of
7 Lafayette, Louisiana, and I'm honored to be here
8 on behalf of those affected negatively by coal ash
9 waste, and I'm happy because my drinking water and
10 air are not so polluted that I have to worry about
11 toxic and potentially lethal poisoning over time.
12 I'm also happy because I'm not living in a
13 community that has to suffer so that energy can be
14 cheap for everyone.

15 All the other cities like New Roads,
16 Mansfield, and Lena, Louisiana, that are home to
17 coal power plants and coal ash landfills and ash
18 ponds, in these communities residents have high
19 cancers of 1 in 50. It's because of the toxins in
20 the coal ash waste linked to all the cancer and
21 disease and respiratory illnesses. That is the
22 general diagnosis for what many people living near

1 the plant suffer with.

2 So, needless to say, on behalf of my
3 neighboring cities, I strongly support federal
4 regulation of coal ash, specifically Subtitle C,
5 because coal ash is a toxic by-product of the coal
6 industry and it is destroying communities. Thank
7 you for your time and concern.

8 MR. BEHAN: Thank you.

9 SPEAKER: Good afternoon. I am Roger
10 Grissette of Tulsa, Oklahoma. I am a retiree with
11 five granddaughters. I'm a life member of the
12 Sierra Club, but I'm here today as a private
13 citizen.

14 We need mandatory federal safeguards to
15 protect our environment from improper coal ash
16 disposal. Safeguards require clear and
17 unambiguous protections for surrounding
18 communities. Such safeguards should include
19 composite liners, water runoff controls,
20 groundwater monitoring, and assurance that
21 companies have the financial ability to pay to
22 clean up what they pollute.

1 One thing is clear, coal must be cleaned
2 up, and the industry cannot or will not clean
3 itself. EPA should choose the strongest of its
4 proposed federally enforceable safeguards to hold
5 this industry accountable and to speed the
6 transition to a clean energy economy.

7 People living near coal ash sites have a
8 staggering 1 in 50 chance of contracting cancer.
9 Both the EPA and the National Academy of Sciences
10 -- Science have years of research making it clear
11 that coal ash is toxic and a threat to human
12 health. I note the industry continues to argue
13 the contemplated changes would, quote, threaten
14 the steady, dependable flow of affordable energy
15 for American consumers and businesses. Most
16 critics of the power industry would argue just the
17 opposite. Taking these utilities off the hook
18 only allows them to further delay necessary
19 changes to modernize their generation.

20 In addition to the environmental impact,
21 aging power plants with older technology are less
22 dependable and place a huge stress on the

1 distribution grid when they fail. Please don't
2 provide this industry with another excuse to delay
3 necessary capital improvements needed.

4 Finally, all too often we see warning
5 flags of companies that pay -- play the system
6 through delaying tactics and appeals to your
7 directives. Although such procedures will -- are
8 legitimate, the recurrence often seems to
9 characterize a huge tragic event in the making.

10 I don't need to remind you that your
11 middle name is protection. I ask your special
12 attention to organizations that have repeating
13 problems. America can and should do better. We
14 promised the nation to protect our air, water,
15 forest, and wildlife. Please help ensure we don't
16 default on these promises.

17 Finally, I'd like to -- it's not my
18 first EPA hearing. I'd like to thank you for the
19 extra effort you made to include people, to in --
20 by rearranging things, and also by extending the
21 period. Appreciate it.

22 MR. BEHAN: Thank you. Number 102, 123,

1 124.

2 SPEAKER: Good afternoon. My name is
3 Amanda Robinson. I am coordinator of Texas
4 Interfaith Power and Light, the environmental
5 program of Texas Impact, Texas' oldest interfaith
6 public policy advocacy organization. I'm also a
7 second-year master's of divinity student at Austin
8 Presbyterian Theological Seminary. And I'm a mom.
9 Thank you for the opportunity to be here today.

10 There is a teaching in the Jewish
11 tradition from Rabbi Israel Meir ha'Kohen. He
12 said, When a group of people are sailing in a
13 boat, none of them has a right to bore a whole
14 under his own seat. This is a simple teaching
15 about basic care and concern for our neighbors,
16 about the responsibility we each have to the
17 larger community, and about the fundamental
18 reality that our lives here on earth are both
19 fragile and highly interconnected. When we allow
20 toxic substances to enter our environment, human
21 health suffers. It's a lot like drilling a hole
22 in our boat.

1 Of all the states, Texas generates the
2 second highest amount of coal ash, 12.9 million
3 tons every year, and yet we do not have adequate
4 regulations in place to protect human health or
5 the environment. Toxic coal ash, when not
6 properly disposed of, poses risks that include
7 elevated mercury and selenium in water and fish,
8 and increased cancer risks in people. Basic care
9 and concern for our neighbors calls us to do what
10 we can to keep people safe, especially the poor
11 and people of color, who often live in areas
12 subject to coal ash contamination.

13 The religious leaders and congregations
14 with whom I am honored to work, pray for a day
15 when all electricity will be generated from clean,
16 renewable sources. Until that day comes, we ask
17 that coal ash be tested to ensure safety before it
18 is allowed to be recycled. And we ask that
19 federal standards be put into place to ensure
20 protections for human health and the environment.
21 We support adoption of the Subtitle C option.

22 There is one more teaching that I'd like

1 to share with you today. In my tradition, human
2 beings are recognized as being different from the
3 rest of creation. This does not give us license
4 to exploit the natural world, though. On the
5 contrary, as Rabbi Howard Kushner explains, We
6 have a special responsibility precisely because we
7 are different, because we know what we are doing.
8 We know what we are doing. Now, we need to take
9 responsibility for it. Please adopt the Subtitle
10 C option. Thank you.

11 MR. BEHAN: Thank you. 123, 124, 129.
12 Is there anyone in the room that has a number that
13 begins with 100 that has not spoken? 254, 255,
14 256, 257. Is there anyone in the room -- if you
15 have a number in the room and you have not spoken,
16 could you just hold up your number or hold up your
17 hand? One, two, three, four. Why don't -- why
18 don't everyone who has a number come on up to the
19 front.

20 Go ahead, ma'am.

21 SPEAKER: Thank you. My name is Evelyn
22 Merz. I am the conservation chair of the Lone

1 Star Chapter of the Sierra Club. And I want to
2 thank you all for having this meeting here today.

3 Time has taught us that coal ash is not
4 benign, even though there are beneficial uses. It
5 is not benign when improperly stored. Coal ash
6 pollutes the groundwater. It is not benign when
7 impoundments break and the coal ash slurry escapes
8 to the neighboring streams.

9 There has to be an acknowledgment that
10 there are costs. There are costs to people and
11 the environment when a substance containing
12 arsenic, lead, mercury, cadmium -- and the list
13 goes on -- is improperly stored and unmonitored,
14 and occasionally and sometimes often essentially
15 unregulated.

16 We recommend that the EPA adopt Option
17 C, which will establish federally enforceable
18 standards for waste management and disposal. The
19 current system does not protect water or people or
20 the environment. Option D, which would rely upon
21 the states to enforce guidelines, is not adequate.
22 It certainly will not work in Texas where the

1 Texas Commission on Environmental Quality is
2 absolutely legendary for its lax enforcement of
3 air and water quality standards.

4 Thank you again. And I hope that you
5 take the comments you hear today to heart. And we
6 appreciate your attention. Thank you.

7 MR. BEHAN: Thank you. If the remaining
8 speakers could self-order from lowest to highest
9 and come up, that would be great.

10 SPEAKER: Good afternoon. I'm a
11 resident of West Houston. My name is V.J. Singal.
12 And I'm testifying as a member of the general
13 public. I might add, a member of the general
14 concerned public. Whenever I get a chance to
15 appear before a highly consequential governing
16 body such as yours, I like to invoke a key phrase
17 from the Abraham Lincoln Gettysburg Address. The
18 phrase, a government for the people, which
19 translated into today's issue at hand would mean
20 putting the clamps on any industrial activity that
21 is detrimental to the public's health, an activity
22 that is endangering the public's health.

1 Gentlemen, you have plenty of
2 incontrovertible evidence that coal ash is highly
3 toxic, that is -- that it is unquestionably
4 deleterious to the public's health. And you've
5 also got similarly irrefutable evidence that the
6 TCEQ has been utterly lax in monitoring and
7 implementing the Clean Air Act and other
8 environmental regulations. A case in point is the
9 Fayette plant outside Austin where coal ash has so
10 badly contaminated the water that it has been
11 rendered undrinkable. I would say a perfect
12 testimony to the TCEQ's apathy in matters
13 environmental.

14 And so if we -- if we are to adhere to
15 the maxim of government for the people, then I
16 think it's imperative and mandatory that the EPA,
17 which is after all the protector of last resort
18 for the American people -- when it comes to the
19 environment, that the EPA would have to take firm
20 and speedy steps to ensure new regulation, a
21 regulation that is tough, that is unambiguous, and
22 enforceable. And I believe that if you do that,

1 you will have every reason to feel truly ennobled.
2 I thank you for giving me this opportunity to
3 speak. Thanks.

4 MR. BEHAN: Thank you.

5 SPEAKER: Good afternoon. My name is
6 Eric Ball. I am a secondary educator from New
7 Orleans. My background is in biology.

8 A few years ago, I was fortunate enough
9 to do some ecology research in the Ecuadorian
10 Amazon. And while there, I witnessed firsthand
11 the irresponsible and unregulated activities of
12 humans in the form of oil exploration. I saw the
13 deleterious consequences that this had on the
14 indigenous communities and on the ecosystems.

15 And I am here testifying today because
16 coal ash similarly threatens these ecosystems,
17 which are networks of interrelatedness that --
18 through which life expresses itself. And they are
19 both unfathomably complex and amazingly delicate.
20 They have -- they have developed and persisted
21 over the course of millions of years.

22 Coal ash has already been demonstrated

1 scientifically to have deleterious effects on the
2 environment through leaching of heavy metals, as
3 well as toxic organic compounds. And many -- and
4 it's especially fragile because many of these
5 ecosystems throughout the country have already
6 been fractured by human activity. The only
7 responsibly acceptable option before us is the
8 adoption of Subtitle C, which gives a strong
9 federal regulation of the coal ash storage and
10 treatment.

11 Continuing to damage these ecosystems
12 would be an incalculable loss to ourselves and
13 future generations because through the knowledge
14 we gain by studying and examining the different
15 networks of life and the myriad expressions of it,
16 we can better and more fully understand ourselves.

17 In addition to the more direct effects
18 that the pollution has on the environment, there
19 are also more subtle effects because of our
20 inextricable relationship with the environment and
21 our reliance upon it. So destroying the -- these
22 ecosystems will have a hugely negative

1 consequence, many of which will be seen for a long
2 -- for many years to come and are potentially
3 irreversible.

4 So I urge the EPA to adopt Subtitle C
5 for stronger federal regulations. Thank you for
6 listening.

7 MR. BEHAN: Thank you.

8 SPEAKER: My name is Ari Guerrero. I'm
9 here representing citizens from Austin, Texas.
10 I'm really impressed and happy to be here. Today,
11 I have talked to many people who have traveled 6
12 to 12 hours in the rain, through flooding to be
13 here to tell you the message that I wish to
14 convey. And that is simply that it's time for you
15 to do the right thing.

16 I wear contact lenses. Without contact
17 lenses, I am legally blind. I would not be able
18 to see the paper in front of me. No one else in
19 my family wears glasses or has any vision
20 impairment. I never -- I didn't watch TV as a
21 child. And doctors tried to figure out why I of
22 my family had this problem. And it wasn't until I

1 was 15 that I was told it was because I eat tuna
2 fish. Tuna fish has mercury. Mercury comes from
3 coal plants. And I happen to like tuna. And as a
4 result, I cannot see.

5 I think it's human nature to not weigh
6 future consequence -- consequences of our actions.
7 We don't understand what will happen to -- to
8 people, to a six-year-old who lives in a town
9 nearby a coal plant. What effects will the
10 decisions that our government make have on
11 citizens -- on private citizens of these
12 communities surrounding these coal plants. I
13 think that it's time that we do what's right. And
14 I'm just asking you to pass Option C today. Thank
15 you.

16 MR. BEHAN: Thank you.

17 SPEAKER: My name is John Cooper, Austin
18 Lone Star Sierra Club member. I want to first and
19 foremost thank you and everyone who's been
20 responsible for the -- allowing the opportunity to
21 speak here today. But I -- in addition, I would
22 like to thank you for your attentiveness, your

1 level of attentiveness. You've really been
2 listening. I've been out there for a while,
3 listening myself, also. And this is an extremely
4 complex and -- and -- and has -- covers a lot of
5 ground, this issue. And -- and again, I
6 appreciate your attentiveness.

7 I would sit there and go, yeah, well, I
8 want -- I wanted to say that. And yeah, I was
9 going to say that. And then it was, like, oh,
10 well, I never really would have thought about that
11 angle. I really didn't even think about that.
12 It's been interesting to see some environmental
13 activists opposed to recycling come up here.
14 Well, let's end this recycling issue. Okay.
15 Okay. And then I've see some fine, outstanding,
16 hardworking American citizens up here defending
17 their job and the work that they've done,
18 sanctifying the work that they've done. So this
19 -- this is an extremely complex issue. And I'm
20 really not -- I'm really not -- oh, I'm not overly
21 concerned. And -- and I'm very supportive of
22 those people. I'm not at all afraid of those

1 people.

2 Well, what does, on a serious level, get
3 my attention -- what I'm afraid of is mercury,
4 arsenic, lead, and things like that. These
5 elements, components, compounds are inherent in
6 the usage of coal to give us our electricity. And
7 we need protection, environmental protection from
8 your agency to safeguard all of us. And that is
9 why I wholeheartedly bequeath you to support the
10 toxicity and recognize the toxic hazard of coal
11 ash.

12 Thank you again for your time. I
13 appreciate all the effort you're putting into
14 this. And thank you for everybody who's been in
15 attendance.

16 MR. BEHAN: Thank you.

17 SPEAKER: Hello, I'm Mary Sue Rose. I
18 -- I'm here with a group from the Sierra Club, but
19 I really want to bring to bear my growing up in
20 Charles -- in West Virginia. I had a coal miner
21 that lived behind my house in Montgomery. My
22 grandfather was a coal company doctor. My father

1 was born in -- in a coal community, a very small
2 town that's now a ghost town, Kaymoor. But he --
3 then after he got his degree, he went to work for
4 American Electric Power.

5 He worked for 42 years in the Canal
6 River plant on -- on the Canal River, of course.
7 And he was very proud that -- it's been over 50
8 years now. He sold fly ash to a company to make
9 it into cinder blocks. And I -- it was -- now, I
10 want to look back and see if he actually thought
11 up the idea or if he got on somebody's bandwagon.
12 But he was really pleased that because he -- he
13 thought he was getting -- having another purpose
14 for the waste material. So I wonder now, he --

15 I think a lot of people in what we call
16 the chemical valley along the Canal River had a
17 lot of health problems. And I feel like they were
18 related to the coal mining, the -- the electric
19 power, the chemicals that were all along that
20 river. And he's been gone quite a number of years
21 now. He had heart problems and lung cancer. And
22 I'm wondering if he would have the personal

1 courage to stand up and say there's something
2 wrong here and -- and acknowledge that there were
3 impurities and toxic waste in those cinder blocks.
4 If he would have been willing to look for another
5 way to isolate those -- those bad things and still
6 use the fly ash in a way that we could recycle
7 them.

8 So I thank you for listening. And I --
9 I really feel like we need to stand up and -- and
10 do something about the toxicity, so that other
11 people don't have health problems in their lives.
12 Thank you.

13 MR. BEHAN: Thank you.

14 SPEAKER: Good afternoon. My name is
15 Karen Hadden. And I'm the director of the
16 Sustainable Energy and Economic Development
17 Coalition here in Texas. And thank you for being
18 here.

19 You may know that Texas has some of the
20 most polluting coal plants in the nation. Five of
21 our coal-burning power plants have been at the top
22 ten for mercury emissions when you look at the

1 toxic release inventory. We have had problems
2 with coal ash and we are seeking rules that will
3 help protect in the future.

4 In the 1970's, coal ash ponds
5 overflowed. And this resulted in selenium getting
6 into Brandy Branch Reservoir and also around
7 Martin Creek Lake. And as a result, the selenium
8 levels went up in the fish, the health department
9 had to issue advisories against eating fish in
10 those reservoirs. And that has serious health
11 impacts. Many of the elements in this waste --
12 arsenic, cadmium, selenium, zinc, manganese,
13 chromium, nickel, thallium -- these have serious
14 health impacts. That's why I think Subtitle C is
15 the best way to go.

16 These rules need to be strengthened. We
17 need to prevent problems like this from happening
18 again. We need federally enforceable standards.
19 We need to phase out old ponds. We need to
20 establish minimum standards. And these sites need
21 to be monitored. State or federal issued permits,
22 they should -- they should be applying to all coal

1 ash dumps. And we do need cradle-to-grave
2 monitoring of all of these sites.

3 I thank you. And again, there is ample
4 scientific evidence, as well as plenty of
5 on-the-ground incidences that justify going for
6 stringent protection. Thank you.

7 MR. BEHAN: Thank you.

8 SPEAKER: Hi, I am Michael Nicodemus.
9 I'm a professor of environmental science at
10 Abilene Christian University. I'm not a member of
11 an environmental group. But there are a couple
12 things -- what I've been looking at this, teaching
13 my students about environmental law and policy,
14 that kind of struck me about this particular case.

15 One thing that I question is why this --
16 these wastes wouldn't be considered to be
17 characteristic wastes under the toxicity
18 characteristic in the -- in the regulations
19 already. From the EPA Web site, it says that
20 toxic wastes are harmful or fatal when ingested or
21 absorbed, e.g. containing mercury, lead, et
22 cetera. And it goes on. To me, it seems odd that

1 wastes that have been known to contain these
2 things wouldn't automatically fall under that
3 particular provision of the RCRA.

4 Some of the people from industry have
5 complained that -- and rightfully so -- that it
6 will be a stigmatization of their products if
7 they're considered to be toxic. And I think
8 that's a -- that's a sincere argument. But I
9 wonder if that may not be a bad idea, for things
10 to be stigmatized, if they are truly toxic. If
11 the drywall in my house can cause children to
12 become sick, it could cause me to become sick.
13 When you tear those things out of my wall, that
14 causes me to become sick, then it should probably
15 be stigmatized. It should probably be regulated,
16 as well.

17 I don't -- understand it's not under the
18 proviso of this particular hearing, but I think
19 also the stigma would also promote alternative
20 force -- forms of energy, which would help us to
21 provide for the future energy needs of this
22 country. I think, you know, if there is a stigma,

1 if there is added cost to these forms of
2 electricity, then we may look at other sources of
3 electricity.

4 The lady who talked a couple before me,
5 was from West Virginia. Actually, I'm also from
6 West Virginia. So it's good to know there's some
7 other -- some other hillbillies here. But I grew
8 up 12 miles from a coal-fired -- well, a steel
9 mill that used coal as part of the steel refining
10 process in Fallensby, West Virginia. And under
11 the Clean Air Act, they were grandfathered in, so
12 they didn't have to change the way that they were
13 releasing emissions. And it's one of the most
14 polluted towns in America because of that.

15 And I think if you use four -- the
16 Subtitle 4 -- I'm sorry -- D Prime provision that
17 grandfathers in these wastes, you'll have a lot of
18 the same kinds of problems. Places that are
19 obviously doing the wrong thing now that won't
20 change because the law won't force them to change.
21 And obviously the states are not going to make
22 them to change.

1 So -- and this is just my opinion, but I
2 think that obviously this should be regulated
3 under Subtitle C. I don't understand why it isn't
4 regulated that way already. Thank you.

5 MR. BEHAN: Thank you. Are there any
6 other people here that have not spoken and have a
7 number? Seeing no speakers, we will take a
8 10-minute break. Thank you.

9 (Recess)

10 MR. BEHAN: Good afternoon. We're going
11 to go ahead and continue with the public hearing.

12 Is Speaker Number 263 here? If that
13 person could come forward. 263? Is there anyone
14 else in the room that would like to speak that has
15 a number? 120? Sir, if you could come up to --
16 to the podium, that would be great. 128. Sir, if
17 you could state your name and affiliation. And
18 you can start when you like. Thank you.

19 SPEAKER: I'm Byron Ryder. I'm the Leon
20 County Judge. And I'm here on behalf of Leon
21 County, basically.

22 Again, my name is Judge Byron Ryder, the

1 current county judge of Leon County, Texas. We
2 have three coal power -- generating power plants
3 in the immediate area. And I want to go on record
4 as saying that I oppose the further regulation of
5 federal government in these -- in these power
6 plant.

7 Specifically, I'm referring to the
8 regulation of the CCR as a special listed waste
9 under Subtitle C of the -- of the Resource
10 Conservation and Recovery Act. The coal-generated
11 power plants provide an economic engine for our
12 area, as well as many other related companies that
13 use by -- the byproducts. The Subtitle C approach
14 is not supportable given the availability of
15 alternate, less burdensome regulative --
16 regulatory options under the RCRA's non-hazardous
17 material rules that provide an equal degree of
18 protection from the public health and environment.

19 In our area, we have been working with a
20 company that desires to locate near our Jewett,
21 Texas power plant, and would use our -- the ash
22 byproduct to provide manufacturing jobs to

1 approximately 100 people. These would be new jobs
2 with excellent pay scale and benefit plan. They
3 are awaiting your decision on whether or not to
4 build this new plant. In spite of assurances,
5 though, the administration that regul --
6 regulations of the CCRs under the Subtitle C would
7 have no negative impact on the beneficial reuse
8 market. The mere discussion of reg -- of
9 regulating CCRs under the RCRA's hazardous waste
10 program has already produced a negative effect.
11 Our economy needs this new plant and needs new
12 jobs.

13 Also, worth -- worthy of note is the
14 state environmental protection agencies from
15 around the nation have repeatedly cautioned the
16 EPA that the Subtitle C approach for CCRs will
17 overwhelm the existing hazardous material
18 capabilities and would -- in our landfills,
19 further straining the budgets and staff. It makes
20 no sense to impose adverse consequences on
21 existing hazardous material programs that the
22 materials -- material that the EPA has repeatedly

1 found does not warrant regulation under the C --
2 the RCRA Subtitle C.

3 We believe that the operations in our
4 area take appropriate actions and precautions in
5 handling the above-mentioned ash, and if they fail
6 to do so, they should be held accountable.
7 However, in light of the near unanimous opposition
8 from the states and certain -- certain -- and
9 concern expressed by other federal agencies that
10 would participate in the process, I urge the EPA
11 not to pursue the Subtitle C option, but the
12 Subtitle D non-hazardous waste material that
13 ensures the protection of human health and
14 resources.

15 Thank you for your time and
16 consideration. I look forward and -- to a quick
17 resolution and response to your -- in this matter
18 as a procedure for new jobs and industry in our
19 area. Thank you.

20 MR. BEHAN: Thank you. 263. Is there
21 any -- anyone here that would like to speak? Come
22 forward, sir.

1 SPEAKER: Hi, I'm Jason Faulk from
2 Lafayette, Louisiana. And to the EPA, I say,
3 let's get the price right on coal. You might ask
4 why isn't that price right. This price of this
5 coal exists in a fantasy land where the natural
6 laws of the ecosystem services and sustainability
7 are in absolute suspension. The true cost of coal
8 does not exist in our economy. It makes a whole
9 lot more sense in our economy to pollute my air
10 and your water and turn that damage into cash and
11 to preserve those resources.

12 It came as news to me that coal ash
13 waste was not covered by the EPA rules as a
14 hazardous waste, and that my city gets half of its
15 power from a coal plant 80 miles away that's
16 polluting the waters of someone else's community.
17 Talk about out of sight and out of mind.

18 Now, I grew up in south Louisiana
19 hearing story after story of all the contamination
20 that we have had. I suffer from childhood asthma
21 myself. And we can't eat the fish that we catch
22 because of mercury pollution. And we know where

1 that comes from. So I hear about coal ash, and
2 I'm pretty ticked off that my government's failure
3 at all levels to deal with this problem.

4 In Louisiana, we already have our fair
5 share of pollution. And in fact, we have a lion's
6 share, and we've had enough. I have two young
7 nieces now. And should they ever suffer and be
8 harmed as I was, I'll be outraged. They didn't
9 ask to be born in -- into a world and a state like
10 this. They should not have to demand that the
11 most powerful country in the world history honor
12 their inalienable human right to have as clean and
13 healthy an environment as any other little girls
14 anywhere else in this country or world.

15 Since 1970, our nation has cleaned up
16 pollution. Since 1990, we have set rules to guide
17 industry into preventing that pollution in the
18 first place and become more efficient so as to
19 reduce waste creation. And in the process,
20 preserve our health and that of our environment.
21 And these two are one in the same.

22 So again, why isn't the price of coal

1 right? I have my Pollution Prevention and Waste
2 Minimization textbook right here. And there's all
3 kind of talk about mining and tailings and
4 metalworking, glues, furniture, paint, and
5 petroleum, RCRA and FIFRA, TOSCA and CERCLA, EFA,
6 and all that. And there ain't one darn thing in
7 this book about coal ash. Nothing.

8 So for the EPA, let's get the price
9 right on coal and implement some rules under
10 Subtitle C that will ensure that power plant
11 operators conduct business as responsible
12 industrial parties. We must have Subtitle C rules
13 implemented on coal ash to send to the marketplace
14 a real signal on the true cost of making
15 electricity from coal burning. We must send a
16 real market signal on the price of coal-fired
17 electricity. And when we do, we're going to
18 stimulate our nation's effort to use electricity
19 frugally, to make investments in energy
20 efficiency, and employ the wide use of our
21 conserved natural resources above and below the
22 surface. As long as entitle ourselves to fantasy

1 land cheap coal, we're going to continue to waste
2 it. Thank you for your time, gentlemen.

3 MR. BEHAN: Thank you. Are there any
4 other speakers in the room? Not seeing any, we'll
5 take a break until 6:15. Thank you.

6 (Whereupon, at 5:54 p.m., an
7 afternoon recess was taken.)

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

2 (6:20 p.m.)

3 MR. DELLINGER: Good evening, and thank
4 you all for attending today's public hearing on
5 the Environmental Protection Agency's proposed
6 rule regarding the regulation of coal combustion
7 residuals that are disposed of in landfills and
8 surface impoundments. Before we begin, I'd like
9 to thank you for taking time out of your busy
10 schedules to address our proposed rule, and we
11 look forward to receiving your comments.

12 This is the third of seven scheduled
13 public hearings that will be conducted. We had
14 two very successful hearings last week in
15 Washington, D.C., and in Denver. The remaining
16 hearings that are scheduled are in Charlotte,
17 Chicago, Pittsburgh, and Louisville.

18 My name is Bob Dellinger. I'm the
19 director of Materials Recovery and Waste
20 Management Division in the EPA's Office of
21 Resource Conservation and Recovery. I'll be
22 chairing this evening's session of today's public

1 hearing. With me on the panel are Laurel Celeste
2 from our Office of General Counsel and Craig
3 Dufficy and Steve Souders, who work with me in the
4 Office of Resource Conservation and Recovery.

5 What I'm going to do now is go over the
6 rules of how this is going to work. Because there
7 are many people who have signed up to provide
8 testimony today, to be fair to everyone, testimony
9 is limited to three minutes. We'll be using an
10 electronic timekeeping system, and we'll also hold
11 up cards that let you know when your time is
12 getting low. When we hold up the first card, this
13 means that you have two minutes left. When we
14 hold up the second card, you have one minute left.
15 When the third card is held up, you have 30
16 seconds left. When the red card is held up,
17 you're out of time and should not continue with
18 your remarks.

19 Remember, you can provide any written
20 material to our court reporter and the material
21 will be entered into the record. We will not be
22 answering questions on the proposal. However,

1 from time to time, any of us on the hearing panel
2 may ask questions of you to clarify your
3 testimony.

4 Our goal is to ensure that everyone who
5 has come today to present testimony is given an
6 opportunity to provide comment. To the extent
7 allowable by time constraints, we'll do our best
8 to accommodate speakers that have not
9 preregistered. Today's hearing is scheduled to
10 close at 9:00 p.m. We will stay longer if a huge
11 horde of people come in demanding to speak. It
12 doesn't appear that's going to happen.

13 We are likely to take breaks to give
14 speakers that wanted to speak after dinner, you
15 know, and walk up to speak, so once we run out of
16 speakers in any given session, we'll take a
17 10-minute break and see if anybody else will be
18 coming in to talk.

19 We'll get started right now. I'd like
20 to call Numbers 263, 264, 265, and 125. We'll
21 start with 125 and then go in order with 263, 264,
22 and 265.

1 SPEAKER: I want to open by thanking you
2 for coming to Dallas. When the considerations
3 were made for the emissions of lead from
4 coal-fired plants, you didn't show up in Dallas.
5 So I applaud your recognition of our great state
6 of Texas and our ability to burn coal.

7 I have not heard any previous sessions,
8 but I assume that those people have been asking
9 you to clean up the water, clean up the downstream
10 pollution and the air problems that coal ash
11 contributes. Basically what they were trying to
12 ask you for was a conversion of the indirect costs
13 to direct costs to burn coal.

14 Now, we all know that when you burn
15 coal, you've got to go buy the land, dig the coal,
16 transport it, build a power plant, burn the coal,
17 collect the ash, dig another hole, put it in, and
18 so forth. Those are all the direct costs.

19 The indirect costs are represented by
20 groundwater pollution, health costs and increase
21 of people around, as well as the wildlife that has
22 got problems, and the life expectancy of both

1 people and animals goes down.

2 Basically, all we're asking you to do is
3 to level the playing field. Make sure that the
4 people who are in the business of providing energy
5 using coal are paying all the costs and at the end
6 of the day the environment and the society have
7 had negligible impacts made upon them from the
8 activities of that energy generation.

9 Now, basically what will happen when you
10 write those kinds of regulations, the indirect
11 costs will be converted to direct costs, and those
12 will be reflected in the cost of the electricity
13 that people will be buying, and then there will be
14 more -- the market will be better equipped to
15 determine which is the better energy source, coal
16 or some other alternative. It's really a simple
17 economic requirement or a simple economic
18 equation.

19 Without the EPA doing the good job that
20 I know you can do, it will continue to be borne by
21 the society and the environment. Thank you very
22 much.

1 MR.Dellinger: Number 263.

2 SPEAKER: Hello. My name is Eva
3 Hernandez. I work with the Sierra Club. I work
4 here in Texas for the Beyond Coal campaign.

5 When I talk to people about coal ash, a
6 lot of people, you know, right off the bat don't
7 know what it is, what that means. When I start to
8 explain what it is and how there is very little
9 state regulation and no federal regulation, people
10 have mixed reactions.

11 Some people are shocked. Some people
12 are -- some people take it personally because of
13 the impact it has on their own lives. Some people
14 are infuriated; they want to know what they can do
15 about it and how this seemingly -- you know,
16 something that's regulated just like household
17 garbage, that's a toxic waste, can be allowed to
18 go unregulated, and people want to know what they
19 can do about it.

20 That's why you see people who show up
21 today drive from Oklahoma, Arkansas, Louisiana,
22 and from around the state, to ask you to choose

1 Option C, the strong option, to really regulate
2 this as the hazardous waste that it is.

3 You know, this is really important for
4 us here in Texas. You know, it's a very important
5 issue around the country, but here in Texas we
6 have 17 coal plants around the state, some of the
7 dirtiest in the country, because our state agency,
8 the TCEQ, Texas Commission on Environmental
9 Quality, has done a pretty poor job of actually
10 protecting our health and well-being.

11 So it's really important that, you know,
12 people have come here today to ask you to choose
13 the strong option in regulating this toxic -- this
14 toxic waste, so that the coal industry is actually
15 paying for the true cost of operating and they're
16 actually paying to clean up some of their mess, so
17 that we're not the ones paying for that with our
18 health care costs and with dirty water and dirty
19 air, which is another external cost.

20 Now, we have 12 coal plants in various
21 stages of proposal and permitting around the state
22 of Texas. This is a bad idea. We already produce

1 more coal ash -- we burn more coal than any other
2 state in the country, coal and lignite, and we're
3 number two as far as states around the country in
4 the number and the amount of coal ash waste that's
5 produced. So the last thing that we need is a
6 dozen other coal plants around the state,
7 especially when you look at how poorly regulated
8 this industry really is.

9 We believe strongly that if the coal
10 industry had to really pay for the cost of
11 operating a coal plant, we wouldn't see these
12 dozen coal plants proposed around the state here.
13 We have people around the state that are fighting
14 these coal plants because of their health and
15 because of the impact it will have on their
16 livelihoods.

17 I ask that you choose the strong option,
18 the Option C, to really regulate this as the
19 hazardous waste that it is. Thank you.

20 MR. DELLINGER: Thank you. Number 264.
21 Please state your name.

22 SPEAKER: I'm Mark Peters, from Hurst,

1 Texas, and I call -- I'm actually here to speak
2 against the current status quo and ask that you do
3 as much as you possibly can to address coal ash
4 and regulate it as aggressively as you possibly
5 can.

6 Acceptance of coal ash is a moral crime
7 done by the many to the less many living in many
8 rural areas near these dumps. Let's be honest.
9 If these trucks were going down, say, Downtown
10 Dallas, New York City, Chicago, spewing ash off
11 the back of the truck, do you really think we
12 would be having this discussion at this time? We
13 would not. The problem would be fixed and fixed
14 very quickly.

15 For the same reason the coal plants are
16 put in remote locations and their waste is
17 obviously moved to other more remote locations, it
18 becomes, well, where there is less people, less
19 complaints. I think that it should be regulated
20 as the hazardous material that it is, for,
21 obviously, the pulmonary reasons, the water
22 contamination reasons.

1 One issue that I should touch on real
2 quickly, because I am a Texan, is that states,
3 particularly Texas, have exempted most or all coal
4 ash regulations. We have a long history of
5 questionable environmental regulation here in
6 Texas. I won't go into that given the time
7 constraints that we have.

8 Personally -- from my personal
9 perspective, I actually take out my wallet at the
10 end of the month and spend more for power, because
11 we have deregulated electricity here. So I have
12 100 percent pollution-free power. I do that
13 because this isn't a planet I own; I simply borrow
14 it from those that follow us.

15 When I take my wallet out and do that, I
16 do that because it's the right thing to do. I ask
17 that you guys and girls, as members of the
18 Environmental Protection Agency, do not what's
19 politically or economically expedient, but what is
20 right by future generations.

21 In closing, the EPA stands for
22 Environmental Protection Agency. Please, I beg

1 you, for those that can't come today but would be
2 here if they could, resist industry pressure,
3 stand up for the environment, and regulate coal
4 fly ash as the hazardous waste that it is. It is
5 the right and the moral thing to do.

6 Thank you for coming to Dallas-Fort
7 Worth and visiting us here and also asking for our
8 input. In many, many other countries this doesn't
9 happen. It just gets done; in terms of whatever
10 they want to build, gets built. So thanks for
11 taking the time with many, many hours, actually,
12 to listen to our comments. Appreciate it.

13 MR. DELLINGER: Thank you. Number 265.

14 SPEAKER: Hello. My name is Lydia
15 Avila. I am brand-new at the Sierra Club. I just
16 started working there. I actually moved from Los
17 Angeles, having never been in Texas before in my
18 entire life. I've been down here two months, and
19 quickly I've learned a lot about the coal
20 industry, which is not as much of a problem as it
21 is here in Texas -- in California.

22 One of the things that I have been

1 thinking about when I was thinking about the lack
2 of regulation of coal ash was the fact that I
3 remember when I was about 6 or 7 -- like 7 or 8
4 years old, there was this recall on a candy that
5 came from Mexico, because it had lead in it. My
6 mom was like, don't eat that anymore, never. She
7 scared me so much that to this day I don't eat it,
8 even though I don't think it has it anymore. To
9 this day, I still don't eat that candy. Back
10 then, it was like this big thing; they take it out
11 from all the stores.

12 I'm stopping now and thinking, if the
13 FDA can catch that and there is such a big deal
14 about getting that candy away from kids because
15 it's lead, it's bad for your body, and, you know,
16 a lot of problems that y'all have already heard of
17 all day today, then why haven't we done this with
18 coal ash? Why isn't this regulated? It's in the
19 coal ash, and there is many other things in there
20 that are poisonous to our body, and the fact that
21 we haven't yet addressed this, like, is a big flag
22 for me.

1 I think that -- you know, I get the
2 industry pressure, but I just think that it's
3 absurd that anybody could even argue it not being
4 regulated. Like, it just doesn't make sense to
5 me. I'm here today to ask you all to please, you
6 know, take that into consideration and, you know,
7 have it regulated under Subtitle C, because it
8 just seems like the very, very logical thing to
9 do.

10 Common sense will tell you that
11 something that has these elements, these chemicals
12 in it, these toxic chemicals in it, just shouldn't
13 be anywhere near kids' water, kids' air, anybody
14 really, not just kids. Anybody. That's pretty
15 much it. Thank you.

16 MR. DELLINGER: Thank you. Is there
17 anybody else here who has registered to speak?
18 We'll take a 10-minute break. We're going to be
19 here until 9:00.

20 (Recess)

21 MR. DELLINGER: We're going to start up
22 again. We have at least one speaker that I'm

1 aware of that has -- is in the room. Can -- is
2 there any -- is any -- is anybody here with a --
3 that has a number in their hand that wants to
4 speak? Okay. Number 266. Remember to state your
5 name.

6 SPEAKER: My name is Mark McCord. I'm a
7 member of Dallas Downriver Club. We're an outdoor
8 recreation club, primarily canoers and kayakers.
9 I've prepared some statements that I wanted to
10 make tonight. But in reading information that was
11 passed out here, I see something that just strikes
12 me as absolutely absurd. And I'd like to make a
13 comment on it and perhaps get somebody to think
14 about this.

15 I'm reading here, regarding the
16 approaches by -- proposed EPA that would leave in
17 place the Bevill exemption for beneficial uses of
18 coal ash and coal combustion residues as recycled
19 com -- as components of products instead of placed
20 in impoundments or landfills. And it states large
21 quantities of coal ash are in use today in
22 concrete, cement, wallboard and other contained

1 applications that should not involve any exposure
2 by the public to unsafe contaminants. Whoever
3 wrote that is an idiot. Anybody that knows
4 anything about construction knows that if you're
5 using wallboard, somebody is using a saw and
6 they're cutting that wallboard. And when they do,
7 it's presenting contaminants that float up into
8 the air that are going to be breathed by those
9 people who were cutting that. I cannot believe
10 that anybody at EPA would be so naive as not to
11 understand that.

12 We only have one environment. When it's
13 destroyed, we're history. We as a people are
14 gone. I don't understand why this meeting is
15 taking place for one reason. There's no question
16 that all these contaminants in coal ash are
17 unhealthy. Everybody knows that. Why should
18 there have to be a public discussion to debate
19 whether or not we need to regulate these things.
20 It seems to me that the EPA as a government body
21 -- that we're paying taxpayer dollars for salaries
22 -- should be taking the lead role and -- and going

1 after regulation on these things. They should not
2 be listening to lobbyist and other people from
3 industry who never give a truthful explanation for
4 anything but instead are involved only in one
5 thing, protecting shareholder equity and corporate
6 profits.

7 Now, it seems to me that the EPA needs
8 to take the bull by the horns and decide when you
9 have an issue that's as critical to safety of --
10 of everybody living in this country as
11 contamination of water, air, or soil that the EPA
12 ought to be taking an -- a proactive role and
13 going after everything necessary that they can do
14 to control these industries that profit from these
15 businesses they do, and make sure that they are
16 accountable 100 percent of the time for the things
17 they do. And that includes repayment to the
18 government of any expense incurred in enforcing
19 regulations or laws that are meant to protect the
20 public. I would ask the EPA to strongly consider
21 a pol -- a policy that in the future does not give
22 credence to the people who are in business, but

1 rather protects the citizens of this country.

2 Thank you.

3 MR. DELLINGER: Thank you. Does anybody
4 else have a number?

5 SPEAKER: I had one from 6:15. 124,
6 yeah. But I was signed in for the last session,
7 so --

8 MR. DELLINGER: That's no problem at
9 all.

10 SPEAKER: Thank you. My name is Bud
11 Scott from Oklahoma City, Oklahoma. I am the
12 director of the Oklahoma Sierra Club. And I want
13 to thank you all tonight for taking your time and
14 giving the public the opportunity to comment on
15 this very important issue, which is detrimental to
16 our public health, safety, and economic
17 development.

18 In Oklahoma, as you've heard throughout
19 the day, we've had several issues of contamination
20 related to coal combustion waste. This has been
21 documented by both our Oklahoma Department of
22 Environmental Quality and by some of our

1 independent folks from the Bokoshe community.
2 We've seen a massive impact on public health to
3 these areas. Not just with public health, but
4 also with groundwater contamination, surface water
5 contamination, and permanent surface
6 contamination, as well.

7 I urge you guys to adopt the Subsection
8 C option and classify coal combustion waste as a
9 hazardous substance. It's the best option that we
10 have. It's the most logical option. I highly
11 encourage the adoption of this through the EPA.
12 And thank you all for that consideration.

13 Another point that I really want to
14 point out is -- and it's been mentioned a few
15 times tonight. If we want to make a transition
16 into a true clean energy economy, it's absolutely
17 essential that we start to recognize the
18 externalized costs that are incurred with the coal
19 industry in the United States. Most of them are
20 paid on behalf of the taxpayer by public health
21 and our environment. As a proponent of
22 alternative energies such as wind, solar, biomass,

1 we're never going to have an even playing field
2 until all these costs are put on the table and it
3 represents the true cost of coal-fired generation.

4 So for those -- for those very reasons,
5 I hope that you adopt this rule and classify this
6 as a hazardous substance. And thank you for your
7 time.

8 MR. DELLINGER: Thank you. Anyone else?
9 We'll take another 10-minute break. And we'll
10 reconvene at -- we'll reconvene at, let's say,
11 7:10. That will be a 12-minute break.

12 (Recess)

13 MR. DELLINGER: The ten minutes is up.
14 Is any -- is -- does anybody have a number and
15 wants to speak? If not, we're going to do a
16 15-minute break this time.

17 (Recess)

18 MR. DELLINGER: The hearing is now
19 reconvened. Number 269. And if you -- if you can
20 state your name.

21 SPEAKER: My name is Carol Nash. And
22 I'm a citizen here in Dallas. And I work as a

1 teacher for Dallas ISD. And I just saw the --
2 kind of an amazing, shocking movie next door about
3 Oklahoma, the town of Bokipse, I think -- Bokipse
4 [sic]. I can't remember the name. And I didn't
5 really know too much about the issue coming up,
6 but we do have a lot of coal burning issues around
7 Dallas, Texas. But the whole fly -- the coal ash
8 things was something I'd never really thought
9 about.

10 But the movie was truly shocking and
11 horrifying. And so I would like to just add my
12 comments that we should definitely regulate this
13 as a toxic product. And that the people there are
14 just -- the health hazards, the water
15 contamination, air contamination, it was truly
16 shocking. So that's my comment.

17 MR. DELLINGER: Thank you. Any more
18 numbers? Another 15 -- another 15-minute break.
19 All right. We'll -- we will reconvene at 7:45.

20 (Recess)

21 MR. DELLINGER: Number 267.

22 SPEAKER: Hi, I -- sorry? Yes, my name

1 is Anne Mai. And I'm a student at UTA. I just
2 watched the video, and I thought it was really sad
3 that that stuff is happening. I'm sorry. I
4 didn't think I was going to get emotional.

5 Okay. Anyway, I watched it and I was
6 really shocked because I just started my major as
7 an environmental -- environmental engineering
8 major, and it really shocked me that they don't
9 regulate this stuff. Like, they regulate
10 household waste more than they regulate this
11 stuff.

12 So I think that it's -- it is just
13 really shocking to me because I haven't even taken
14 any environmental engineering classes yet. I just
15 started my basics and stuff. And I personally
16 feel that it's just common sense to label this as
17 hazardous. So I just -- I urge you to please
18 classify coal ash as hazardous under the Sub --
19 Subtitle C. And -- yeah, please do it. Thank
20 you.

21 MR. DELLINGER: Do we have another
22 speaker?

1 SPEAKER: Hello, my name is Electra
2 Thornburg. I'm with the Environmental Society at
3 the University of Texas at Arlington. And after
4 seeing the video, I was very, very, very surprised
5 that this coal ash is not labeled as hazardous
6 waste, which is -- which is just beyond
7 comprehension.

8 I feel it would be best that this is
9 regulated under Subtitle C and that the EPA makes
10 an example to show that the -- to show that they
11 can act and protect people's health and families
12 and communities. And that that -- that's what's
13 important, so please support Subtitle C. Thank
14 you.

15 MR. DELLINGER: Thank you. Any more
16 speakers?

17 We'll reconvene in 15 minutes, unless
18 some speakers come in sooner. Let's make it 7:50.

19 (Recess)

20 MR. DELLINGER: Does anybody want to --
21 does anybody want to speak? It's 7:50 right now,
22 so we're -- we reconvened. But if there are no

1 speakers, we will again do a 15-minute break.

2 So we will reconvene at -- let me see
3 here -- five minutes after 8:00.

4 (Recess)

5 MR. DELLINGER: Number 270. Remember to
6 state your name.

7 SPEAKER: My name is Jennifer Alig. And
8 I am here as a private citizen and an energy
9 consumer. I just wanted to talk with you guys for
10 a little bit about what I feel about the coal ash
11 dumps that -- that so many of us have heard about
12 recently.

13 I am very much in favor of a very strong
14 rule regulating coal ash dumps. I do think that
15 it's, you know -- it is -- it's something that is
16 obviously, you know, causing people that live near
17 these dumps some issues. You know, I -- I'm very
18 tired of hearing about possible cancer clusters in
19 people that live near some fly ash dumps. You
20 know, I -- I don't want to hear about people's
21 livestock dying, you know, as soon as they're
22 born. And, you know, basically, drinking out of

1 the ponds that are next to these dumps. That's --
2 it's something that's very important to me.

3 You know, as an energy consumer, I do
4 not want energy that I'm using at my home or at my
5 work to be subsidized by the health or even the
6 lives of people that live near coal ash dumps.
7 It's something that I'm willing to pay more for as
8 an energy consumer to have increased regulation.

9 And it's just -- it's something that I
10 very strongly support a very strong rule. I hope
11 that you guys will -- or I hope the EPA will
12 advocate for a very strong rule and write a strong
13 rule regulating fly ash dumps. That was all.

14 MR. DELLINGER: Thank you.

15 SPEAKER: Thank you so much. I
16 appreciate it.

17 MR. DELLINGER: Are there any more
18 speakers in the room? All right. We'll take
19 another break until somebody shows up.

20 (Recess)

21 MR. DELLINGER: Your number is 271?

22 SPEAKER: Okay.

1 MR. DELLINGER: Is that right?

2 SPEAKER: I don't know. They told me to
3 just walk in.

4 MR. DELLINGER: Did you sign in at the
5 desk?

6 SPEAKER: I just signed in, yes.

7 MR. DELLINGER: Okay. Thank you. And
8 please state your name.

9 SPEAKER: Sure. My name is Flavia De La
10 Fuente.

11 All right. My name is Flavia De La
12 Fuente. And I'm a resident of Austin, Texas. I'd
13 like to applaud the EPA for recognizing the very
14 real health and environmental risks posed by toxic
15 coal ash. Given the seriousness of these risks,
16 enforce -- enforceable federal safeguards, not
17 suggestive state guidelines are necessary to
18 protect our communities.

19 Both the EPA and the National Academy of
20 Sciences years of research showing that coal ash
21 is becoming increasingly toxic, which is why
22 strong federal safeguards need to be issued

1 quickly before more communities are exposed.
2 Effective regulations should require basic
3 protections for communities such as composite
4 liners, water runoff controls, groundwater
5 monitoring, and financial assurance that companies
6 pay to clean up what they pollute.

7 The Subtitle D status quo option, option
8 of suggested state guidelines, is not really
9 substantially different from current policies and
10 will definitely result in few, if any, changes in
11 the state of Texas. The commonsense steps
12 suggested in EPA guidelines are not new, neither
13 is the idea that the industry should be taking
14 these basic precautions. Knowing has not equaled
15 doing, and the State of Texas will probably not do
16 so without federal enforcements.

17 Under strong option Subtitle C,
18 recognizing that coal ash is substantially more
19 dangerous than household garbage and regulate it
20 -- regulating it like the toxic substance that it
21 is will benefit communities and environments
22 across the country. The commonsense guidelines

1 backed up by federal enforcement and financial
2 accountability provide much needed environmental
3 and public health safeguards.

4 As a citizen of Texas, I strongly urge
5 you to adopt strong option Subtitle C. Thank you.

6 MR. DELLINGER: Thank you.

7 (Recess)

8 MR. DELLINGER: The hearing is
9 officially closed.

10 (Whereupon, at 8:57 p.m., the
11 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

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

16 /s/Carleton J. Anderson, III

17

18

19 Notary Public in and for the

20 Commonwealth of Virginia

21 Commission No. 351998

22 Expires: November 30, 2012