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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

Denver, Colorado

Thursday, September 2, 2010, 2010

1 PARTICIPANTS:

2 EPA Hearing Panel:

3 Morning/Evening Session:

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

8 LAURA CELESTE
9 EPA Office of General Counsel

10 KENDRA MORRISON
11 EPA Denver Regional Office

12 ALEXANDER LIVNAT
13 Office of Resource Conservation and Recovery

14 Afternoon Session:

15 BETSY DEVLIN, Chair
16 Associate Director of Materials Recovery and Waste
17 Management
18 Office of Resource Conservation and Recovery

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20 EPA Office of General Counsel

21 STEVE HOFFMAN

22 JESSE MILLER

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

2 (9:00 a.m.)

3 MR. DELLINGER: We're ready to start the
4 hearing now. Good morning and thank you for
5 attending today's public hearing on the
6 Environmental Protection Agency's proposed rule
7 regarding the regulation of coal combustion
8 residuals that are disposed of in landfills and
9 surface impoundments.

10 Before we began, I'd like to thank you
11 for taking time out of your busy schedules to our
12 proposed rule, and we look forward to receiving
13 your comments.

14 This is the second of seven public
15 hearings that we will be conducting. We had a
16 very successful hearing in Washington, DC, on
17 Monday of this week. The remaining hearings after
18 this one will be in Dallas, Charlotte, Chicago,
19 Pittsburgh, and Louisville.

20 My name is Bob Dellinger. I am the
21 Director of Materials Recovery and Waste
22 Management Division in EPA's Office of Resource

1 Conservation and Recovery. I'll be chairing this
2 session of today's public hearing.

3 With me on the panel are Laura Celeste
4 from our Office of General Counsel, Kendra
5 Morrison from our Denver regional office, and
6 Alexander Livnat, who works with me in the Office
7 of Resource Conservation and Recovery.

8 Before we begin the public hearing, I
9 would like to provide you a brief description of
10 the proposed rule on which we're taking comments
11 today, as well as the logistics on how we plan to
12 run today's public hearing.

13 Coal combustion residuals, or CCRs, are
14 residues from the combustion of coal at electric
15 utilities and include fly ash, bottom ash, boiler
16 slag and flue gas desulfurization materials. Coal
17 combustion residuals contain contaminants such as
18 mercury, cadmium, selenium, and arsenic at various
19 levels.

20 In 2008, 136 million tons of coal
21 combustion residuals were generated by electric
22 utilities and independent power producers, and of

1 that total, approximately 46 million tons were
2 landfilled, 30 million tons were disposed in
3 surface impoundments, 50 million tons were
4 beneficially used, and 11 million tons were used
5 in mine fill operations.

6 That adds up to 137 due to round-off
7 error. So I just want to make sure that people
8 know I can add. In this instance, the numbers
9 were there.

10 The agency estimates that there are
11 approximately 300 landfills and more than 600
12 surface impoundments where coal combustion
13 residuals are disposed.

14 EPA has proposed to regulate these coal
15 combustion residuals to ensure their safe
16 management when they are disposed in landfills and
17 surface impoundments. Without proper protections,
18 the contaminants in these residuals can leach into
19 groundwater and migrate to drinking water sources,
20 posing public health concerns.

21 In addition, the structural failure of a
22 surface impoundment at the Tennessee Valley

1 Authority's plant in Kingston, Tennessee, in
2 December of 2008 released more than 5 million
3 cubic yards of coal ash over approximately 300
4 acres of land and contaminated portions of the
5 Emory and Clinch Rivers.

6 With this proposal, EPA has opened a
7 national dialogue by calling for public comment on
8 two different regulatory approaches available
9 under the Resource Conservation and Recovery Act
10 for addressing the risks from the disposal of
11 CCRs.

12 One option presented in the proposed
13 rule draws from the authorities available under
14 Subtitle C of RCRA. This would create a
15 comprehensive program of federally enforceable
16 requirements for waste that's being managed in
17 surface impoundments and landfills.

18 The other option is based on the
19 authorities of Subtitle D of RCRA, which gives EPA
20 the authority to set minimum national criteria for
21 waste management facilities that would be enforced
22 through citizen suits, and under this scenario,

1 states would qualify as citizens.

2 EPA decided to co-propose these two rule
3 options to encourage a robust dialogue on how to
4 address the human health concerns and structural
5 integrity issues associated with the disposal of
6 coal combustion residuals in landfills and surface
7 impoundments.

8 EPA wants to ensure that our ultimate
9 decision is based on the best available data and
10 is made with the substantial input of all
11 stakeholders. Therefore, we ask that you provide
12 us your comments not only at today's hearing but
13 any other comments and supporting information that
14 you want to provide in writing.

15 I'd like to say a few words about the
16 beneficial use of coal combustion residuals. The
17 proposed rule maintains the Bevill exemption for
18 coal combustion residuals that are beneficially
19 used and, therefore, would not alter the
20 regulatory status of these residuals when used in
21 this manner.

22 EPA continues to strongly support the

1 safe and protective beneficial use of CCRs.
2 However, the proposal also indicates that concerns
3 have been raised with the use of CCRs,
4 particularly when used in an unencapsulated form.

5 Therefore, we request comments,
6 information, and data on specific aspects of
7 beneficial use, particularly those activities that
8 deal with unencapsulated applications. We also
9 make clear in the proposal that coal combustion
10 residuals that are placed in sand and gravel pits,
11 quarries, or other large-scale fill operations are
12 not examples of beneficial use. EPA views this
13 placement as akin to disposal and would regulate
14 these sites as disposal sites under either of
15 these regulatory options.

16 Now I'll cover the logistics for the
17 comment portion of today's public hearing.
18 Today's public hearing will work as follows:
19 Speakers, if you preregistered, you were given a
20 15-minute time slot when you are scheduled to give
21 your three minutes of testimony. To guarantee
22 that slot, we've asked that you sign up 10 minutes

1 before your 15-minute slot at the registration
2 desk.

3 All speakers, those that are
4 preregistered and walk-ins, were given a number
5 when you signed in today and this is the order in
6 which you will speak. I will call speakers to the
7 front row over here to my right and your left by
8 number, four at a time. When your number is
9 called, please move to the -- to the microphone
10 and state your name and your affiliation.

11 We may ask you to spell your name for
12 the court reporter, who is transcribing your
13 comments for the official record.

14 Because there are many people who have
15 signed up to provide testimony today and to be
16 fair to everybody, testimony is limited to three
17 minutes. We will be using an electronic
18 timekeeping system and will also hold up cards to
19 let you know when your time is getting low.

20 When we hold up the first card, this
21 means that you have two minutes left. When we
22 hold up the second card, you will have one minute

1 left. When the third card is held up, you have 30
2 seconds left, and when the red card is held up,
3 you're out of time and should not continue with
4 your remarks.

5 When you have completed speaking, you
6 can provide any written material to our court
7 reporter, and the material will be entered into
8 the record.

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

13 As I just mentioned, if you have brought
14 a written copy of the comments you are giving
15 today, please leave a copy in the box by our court
16 reporter, and the box is right here to my left on
17 the floor.

18 If you're submitting written comments
19 today and you're not speaking, please put those in
20 the box by the registration desk. If you have
21 additional comments after today, please follow the
22 instructions on the yellow handout and submit

1 comments by November 19, 2010.

2 Our goal is to ensure that everyone who
3 has come today to present testimony is given an
4 opportunity to provide comment. To the extent
5 allowable by time constraints, we will do our best
6 to accommodate speakers that have not
7 preregistered. Today's hearing was scheduled to
8 close at 9 p.m., but we will stay later if
9 necessary.

10 If, however, time does not allow you to
11 present your comments orally, we've prepared a
12 table in the lobby where you can provide a written
13 statement in lieu of oral testimony. These
14 written statements will be collected and entered
15 into a docket for the proposed rule and will be
16 considered the same as if you presented them
17 orally.

18 If you would like to testify but have
19 not yet registered to do so, please sign up at the
20 registration table. An agenda will be found in
21 the packet you received when you signed in. Also
22 included is some material on the proposal as well

1 as instructions for submitting comments.

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

6 Finally, if you have a cell phone, we'd
7 appreciate it if you would turn it off or put it
8 on vibrate. We ask for your patience as we
9 proceed. We may need to make some minor
10 adjustments in the day as -- in the schedule as
11 the day progresses, and thanks again for
12 participating.

13 And let's get started. I'm going to be
14 calling up numbers 1, 2, 3, and 4.

15 MR. HUFFMAN: Good morning. My name is
16 Dan Huffman. I'm the vice president of national
17 resources for the National Ready Mixed Concrete
18 Association. Thanks to the EPA for conducting
19 this session today.

20 Material that is ready mixed concrete
21 consumes 75 of all portland cement used in this
22 country. In my organization, NRMCA, we represent

1 more than 1,500 concrete manufacturing companies
2 and 50 state-affiliated nonprofit organizations.

3 Concrete is the most widely used
4 construction material in the world and is produced
5 and consumed in every congressional district in
6 the United States.

7 As it relates to fly ash, the ready
8 mixed concrete industry is the largest beneficial
9 user, and over 55 percent of all ready mixed
10 concrete contained fly ash, and fly ash is used in
11 concrete with portland cement to impart the
12 following benefits to concrete: Increased
13 durability and service life of structures of all
14 types; a reduction waste sent to landfills; a
15 reduction in raw material extracted; a reduction
16 in energy for production; a reduction in air
17 emissions, including carbon dioxide; and fly ash
18 lowers concrete materials costs.

19 The concrete industry very beneficially
20 consumed about 15 million tons of fly ash
21 annually, but it is estimated that we could
22 consume more than 30 million tons by 2020

1 resulting in less fly ash going into landfills and
2 other places of concern and reducing the concrete
3 industry's carbon footprint by 20 percent.

4 After examining the EPA's proposed rule,
5 we've determined a RCRA Subtitle C designation for
6 CCRs bound for disposal, while remaining -- while
7 retaining exemptions for beneficial use, such will
8 lead to the following unintended consequences for
9 the concrete industry: Number 1, an increase in
10 production costs and the overall cost of
11 construction due to increased regulations for
12 handling fly ash and concrete during production
13 and construction; number 2, an increase in
14 potential liability for concrete producers.
15 Currently, the status of small amounts of fly ash
16 and waste streams from concrete production and
17 construction is unclear.

18 So any proposed rule should explicitly
19 state that such waste streams from concrete
20 production are exempt and not subject to such
21 regulations. There will also be litigation which
22 will target existing structures built with fly ash

1 concrete in the past.

2 Potentially stricter state laws
3 impacting beneficial use will also result. For
4 example, a state rule in the state of Maryland
5 says that any product containing fly ash must be
6 disposed of in a special facility authorized to
7 accept fly ash. And many other states will
8 establish similar laws that will further limit the
9 beneficial use of fly ash.

10 Number 4, the beneficial elimination of
11 all fly ash concrete. A hazardous waste stigma
12 and fear of liability will result from the
13 negative ruling that will drive specifying
14 engineers, architects, and end users to disallow
15 the use of fly ash concrete. For example, Los
16 Angeles Unified School District has banned the use
17 of fly ash until the EPA has finalized its
18 decision.

19 MR. LIVNAT: Your time is up. Thank you
20 very much.

21 MR. DELLINGER: State your name.

22 MR. BENNINGHOVEN: Richie Benninghoven.

1 MR. DELLINGER: You can start.

2 MR. BENNINGHOVEN: I'm Richie
3 Benninghoven with USC Technologies. We're a small
4 business, have eight employees. We backfill
5 underground limestone quarries with fly ash to
6 stabilize them so we can reuse the surface for
7 development or to stabilize city streets.

8 I'm commenting today on EPA's claim that
9 placement in sand and gravel pits, quarries, and
10 large- scale fill is not beneficial but it's
11 disposal. I respectfully disagree.

12 Ashes are different and sites are
13 different. Ashes such as we saw at Kingsington
14 that just float out in the river, it's not
15 self-cementing and it's not self-encapsulating.
16 We use an ash that's self-cementing and
17 self-encapsulating.

18 And the cites that EPA has referenced in
19 the preamble refers to a sand pit in Maryland and
20 Battlefield Golf Course in Virginia. The sand
21 pits are high -- high-flow situations. Sand is
22 very permeable. And same thing at the Battlefield

1 Golf Course. It was placed over sandy soils,
2 again, a high-flow potential situation.

3 Our limestone mine is completely
4 opposite. It's very low permeability. 10 to the
5 minus seven, 10 to the minus eight permeability.
6 Here's a picture of that mine, and even though
7 it's under the water table, there's no water.
8 There's no water dripping. There's no water
9 standing.

10 And what's the result of our
11 stabilization? Class A office building
12 development; \$12 million office building, \$6
13 million office building, \$14 million office
14 building. All built over the mine. \$50 million
15 office building, \$30 millions worth of retail
16 development.

17 A neighborhood home built over the mine.
18 \$24 million worth of condominiums. And currently
19 under construction 26 million of luxury
20 apartments. All built over the underground
21 limestone mine that you couldn't do without the
22 use of fly ash.

1 We also have a state highway going over
2 the mine, an interchange that if the mine wasn't
3 stabilized, could threaten to collapse, kind of
4 like what we saw in Minneapolis with the bridge
5 collapse. We don't want that.

6 Here's a city street that saw that
7 collapse. Two foot of subsidence. We went back
8 and stabilized this so it wouldn't collapse
9 anymore.

10 So I feel that there's no -- if there's
11 no benefit, I beg to defer. And here's a picture
12 of the ash in the mine, self-cemented,
13 self-encapsulated, standing at a negative
14 one-to-one slope. A lot different than what we
15 saw at Kingsington. Thank you very much.

16 MR. DELLINGER: Number 3.

17 MR. WARD: My name is John Ward, and I
18 am chairman of Citizens for Recycling First, an
19 organization of more than 1,500 individuals who
20 believe that the best way to solve coal ash
21 disposal problems is to quit throwing the coal ash
22 away.

1 In announcing the agency's proposed coal
2 ash disposal rule on May 4, EPA administrator Lisa
3 Jackson said, "The time has come for common-sense
4 national protections to ensure the safe disposal
5 of coal ash." Citizens for Recycling First agrees
6 with the administrator.

7 Common sense tells us that utilities
8 will be reluctant to allow a material classified
9 as hazardous waste on their own property to be
10 distributed for recycling at literally thousands
11 of locations all around the community. Common
12 sense tells us that architects and engineers who
13 are sworn to put human health and safety first
14 will be reluctant to require the use of material
15 that is classified as hazardous waste in another
16 location.

17 Common sense tells us that users of coal
18 ash will be reluctant to take on the potential
19 liabilities and additional operational
20 requirements that may come with using material
21 that is classified as hazardous waste in another
22 location.

1 And finally, common sense tells that
2 everyday citizens will be greatly alarmed if they
3 find out that a building material used in their
4 homes, school, office, and roadways is classified
5 as a hazardous waste in another location.

6 It is a fact that coal ash does not
7 qualify as hazardous waste based on its toxicity,
8 which is similar to the toxicity of other building
9 materials that it replaces when it's recycled.

10 It is also a fact the landfill
11 engineering standards EPA is proposing are
12 essentially the same under both the Subtitle C
13 hazardous and Subtitle D nonhazardous regulatory
14 options.

15 Designating coal ash as hazardous when
16 destined for disposal does not result in a greater
17 level of protection for the environment. It does
18 give the federal EPA a clearer path to enforcing
19 its new engineering standards rather than
20 delegating enforcement of EPA standards to the
21 states. But getting that enforcement authority
22 comes at a terrible price, the possible

1 destruction of a recycling industry that greatly
2 benefits our environment.

3 Common sense says that risking an entire
4 recycling industry over a regulatory turf battle
5 is a bad idea, and common sense says that new coal
6 ash disposal regulations should be enacted under
7 Subtitle D, and EPA should work to promote safe
8 and environmentally beneficial recycling as a
9 preferred alternative to disposal.

10 Thank you for this opportunity to
11 comment.

12 MR. DELLINGER: Number 4, and will
13 Numbers 5, 6, 7, and 8 proceed to the front of the
14 room.

15 MS. WOOLUMS: Good morning. My name is
16 Cathy Woolums. I'm the senior vice president of
17 environmental services for MidAmerican Energy
18 Holdings Company. MidAmerican is a global energy
19 services provider with almost 6.9 million
20 customers worldwide.

21 I'm here today on behalf of PacifiCorp,
22 one of MidAmerican's business platforms, which

1 serves over 1.7 million electricity customers in
2 California, Oregon, Idaho, Utah, Washington, and
3 Wyoming served by wind, hydro, national gas,
4 geothermal, and coal resources.

5 On a personal note, I live within two
6 miles of a coal plant. I drink the water from the
7 river right next to an ash pond. PacifiCorp
8 supports the development of federal regulations
9 for coal combustion residuals under RCRA Subtitle
10 D prime, nonhazardous waste.

11 The development of rules under this
12 approach will establish a federal floor for all
13 CCR facilities to meet. At the same time, for the
14 reasons detailed further in my testimony
15 PacifiCorp strongly opposes the regulation of CCRs
16 under the RCRA Subtitle C, hazardous waste
17 program.

18 Additionally, state regulatory agencies
19 support the same conclusion, that CCR does not
20 warrant hazardous waste regulation. To date every
21 individual state environmental regulatory agency
22 that's weighed in on this issue has opposed the

1 regulation of CCR as hazardous waste.

2 Further, a number of state utility
3 commissions and state departments of
4 transportation are likewise on record in
5 opposition to a hazardous waste designation. The
6 state agencies make a compelling case that
7 Subtitle C regulation is not necessary and CCR
8 does not merit hazardous waste characterization,
9 which would only draw state resources away from
10 more pressing environmental issues.

11 PacifiCorp's coal combustion byproducts
12 that are not beneficially reused are disposed of
13 in on-site landfills and in surface impoundments.
14 These surface impoundments and landfills are
15 assessed through an extensive groundwater
16 monitoring program. PacifiCorp's surface
17 impoundments routinely inspected and actively
18 managed to ensure integrity with oversight by the
19 appropriate state agency.

20 Our facilities are operated in
21 accordance with the utility solid waste activity
22 group industrial action plan for the management of

1 coal combustion products.

2 In conclusion, PacifiCorp believes that
3 EPA should reject a one-size-fits-all approach to
4 what we believe would be an overly restrictive
5 regulatory scheme without consideration of
6 site-specific risks and instead regulate CCR under
7 RCRA Subtitle D prime.

8 Though we recognize the sensitivity of
9 the Kingston situation, we believe the EPA's
10 proposed Subtitle D regulation goes too far.

11 Thank you for the opportunity.

12 MR. SHAW: I'm Tom Shaw with Harsco
13 Minerals, a Division of Harsco Corporation. We
14 have operations in Kansas and Missouri, and I am
15 here today to represent those plants and their
16 employees.

17 Since the 1930s we have been a green
18 recycler of boiler slag producing mainly abrasives
19 under the Black Beauty trademark and granules for
20 roofing shingles. The facts demonstrate there is
21 no reasonable basis for subjecting boiler slag to
22 regulation under RCRA Subtitle C, not even as a

1 special waste.

2 Boiler slag is formed when extremely hot
3 molten coal ash is quenched with cold water and
4 the coal ash immediately becomes a vitrified,
5 amorphous, solid, glassy matrix known as boiler
6 slag. Because boiler slag is vitrified, it is a
7 very durable and environmentally stable material
8 that permanently immobilizes its chemical
9 constituents into the glassy amorphous structure,
10 even when broken into small fragments during
11 abrasive blasting. This is confirmed by x-ray
12 defraction and TCLP data.

13 Because it is beneficially reused,
14 boiler slag is not commonly stored in surface
15 impoundments. We regularly test our boiler slag,
16 and it has always passed the TCLP testing and has
17 never exhibited any hazardous waste
18 characteristics. Our testing of pre- and
19 post-blast boiler using the TCLP has confirmed
20 that the resulting leachate meets drinking water
21 standards.

22 The scientific information about boiler

1 slag and the physical properties have not changed
2 since we began our operations more than 70 years
3 ago.

4 Regulating boiler slag destined for
5 disposal as special waste under Subtitle C will
6 unfairly stigmatize beneficial reused boiler that
7 is already evident by competitor actions. We have
8 seen no evidence that boiler slag meets any
9 threshold for regulation under Subtitle C, and
10 we're not aware of any environmental problems
11 linked to our products.

12 As an abrasive, we have a primary
13 alternative to silica sand, an abrasive that
14 presents serious worker concerns -- health
15 concerns. We recognize the need for proper
16 environmentally sound standards for regulating
17 that small percentage of boiler slag that is
18 discarded rather than beneficially reused.

19 Accordingly, consistent with the amounts
20 used in nearly 30 states and EPA's two previous
21 determinations evaluating proper management of
22 coal combustion byproducts, we support appropriate

1 and reasonable disposal standards for any waste
2 boiler slag under Subtitle D of RCRA.

3 This is important to our employees in
4 the central United States, and I thank you for
5 your time.

6 MR. DELLINGER: Thank you. Is Sue
7 Dickenson in the room now? Okay. Number 7.

8 MR. GILBREATH: Good morning. My name
9 is Chris Gilbreath. I am the water and waste
10 manager for Tri-State Generation and Transmission,
11 and I'm testifying today on behalf of Tri-State.

12 Tri-State is a not-for-profit, wholesale
13 electric power supply cooperative providing power
14 to 44 member distribution systems that serve
15 customers in a 250,000 square mile territory
16 including New Mexico, Colorado, Nebraska, and
17 Wyoming.

18 The mission of Tri-State is to provide
19 our member services a reliable, cost-based supply
20 of electricity while maintaining high
21 environmental standards. Tri-State provide
22 electricity to members based on a diverse mix of

1 generation sources including coal, natural gas,
2 hydroelectric, and wind power.

3 Tri-State owns and operates generation
4 plants in four states. These plants generate and
5 manage coal combustion byproducts in a dry form.
6 Tri-State's operations include coal ash handling,
7 storage, and disposal.

8 Our facilities are heavily regulated by
9 state and federal agencies, which include CDPHE,
10 NMED, Wyoming DEQ, Arizona DEQ, Army Corps of
11 Engineers, and Office of the State Engineer.

12 Tri-State facilities are routinely inspected and
13 have been deemed consistently compliant with the
14 numerous environmental regulations, including dam
15 safety, aquifer production, groundwater and solid
16 waste regulations.

17 In addition, the EPA has recently
18 inspected our surface impoundments and concurred
19 that they meet all applicable federal and state
20 dam safety requirements.

21 Tri-State approves -- supports the
22 continued reuse and recycling of coal combustion

1 byproducts and is a member of EPA's C2P2. Over
2 the past four years, approximately 37 percent of
3 the ash generated throughout our plants has been
4 beneficially reused.

5 Tri-State is opposed to the Subtitle C
6 option. We agree with the views of a bipartisan
7 group of 165 members of Congress, 45 U.S.
8 senators, virtually all the states, other federal
9 agencies, municipal and local governments, unions,
10 state public utility commissions, and many other
11 third parties which have maintained that
12 regulating coal combustion byproducts under RCRA's
13 hazardous waste program is overkill and, in fact,
14 would be counter-productive because it would
15 cripple the beneficial-use industry.

16 Our initial cost analysis indicates that
17 adoption of the Subtitle C approach under EPA's
18 proposal would result in initial capital costs of
19 over \$140 million and annual operating costs of
20 \$10 million for Tri-State facilities alone. These
21 costs must ultimately be passed directly to our
22 rate payers since Tri-State is a not-for-profit

1 wholesale power provider that is owned by the
2 consumers we serve.

3 It is our position that the monumental
4 costs associated with regulating ash as a
5 hazardous waste provides very little, if any,
6 health protection to human health and the
7 environment. There is simply no reason to pursue
8 this approach when the Subtitle D prime option
9 offers the same degree of protection without the
10 attendant risks and administrative burdens of
11 Subtitle C.

12 We have evaluated the alternatives and
13 believe that the Subtitle D prime option is the
14 best path forward. Unlike the C approach, D prime
15 will establish a robust and environmentally
16 protective program for coal ash disposal without
17 negatively impacting coal ash beneficial use,

18 imposing unnecessary regulatory costs, and
19 threatening jobs and increasing electricity costs.

20 Thank you.

21 MR. DELLINGER: Thank you. Number 8,
22 and could Number 113 please come forward.

1 MR. PETERS: My name is Sam Peters. I'm
2 a materials engineer practicing in Colorado for
3 about 25 years, concrete aggregates and more
4 recently fly ash the last few years. Would like
5 to make a few statements.

6 I've been impressed with how much fly
7 ash has been able to be beneficially used in
8 concrete. As a materials engineer, it makes
9 concrete a much better building material, as well
10 as being more cost- effective.

11 As a taxpayer when I see fly ash not
12 being able to be incorporated in the
13 infrastructure of this country, I think it's a
14 waste of tax dollars not to put to use a great
15 byproduct in a beneficial use. As a consumer of
16 electricity, I don't see an upside to increased
17 electrical costs to dispose of a nonhazardous
18 material just because it becomes classified as
19 hazardous.

20 Kingston was, in my opinion, very
21 unfortunate, but it was an impoundment issue. If
22 you think of there's been dam failures in this

1 country and the Bureau of Reclamation has never
2 considered stored water a hazardous material.
3 We've had bridge failures, building failures.

4 The way to deal with minimizing risks to
5 society is design, construction, maintenance, and
6 inspection. I think if we would look at the ways
7 that the hydraulic disposals have occurred -- and
8 that's where most of the failures have been. We
9 should look at the impoundment issues and the way
10 we dispose of ash if it can't be beneficially used
11 but not increase costs to society.

12 Thank you.

13 MR. DELLINGER: Thank you. Number 113.

14 MR. SHELTON: Thank you. Good morning.

15 My name is Gary Shelton, and I'm with Boiler
16 Material Technologies. Boiler Material
17 Technologies is one of the leading and largest
18 coal ash -- coal combustion products management
19 and marketing firms here in the U.S.

20 Our principal business is coal
21 combustion product management and marketing.
22 We've been doing that for over 50 years now, and

1 we employ about 180 people national, here in the
2 states.

3 Certainly on behalf of our company and
4 myself personally we do support the efforts to
5 protect the environment and human health. That's
6 unequivocal, and certainly we want the right thing
7 done in that regard. We believe and I believe
8 that that can be accomplished without a Subtitle C
9 classification.

10 It can be accomplished, on the other
11 hand, with a nonhazardous Subtitle D
12 classification. We've been doing that for a long
13 time. The industry has been doing that for a long
14 time, and the history is clear and conclusive that
15 it can be done.

16 Kingston and any other spill events are
17 disposal issues. There's no doubt about it. It
18 was not the product that caused the failure in
19 Kingston and the disaster that concluded in
20 Tennessee. So in -- in regard to that we believe
21 that if sound engineering and storage and
22 management practices had been in place that

1 disaster would have been averted.

2 Currently one of the largest consumers,
3 as we've already heard this morning, of CCPs is
4 use of fly ash in concrete. The evidence is
5 conclusive and clear in that regard as well.

6 There are many engineering characteristics that
7 are improved by the use of fly ash in concrete,
8 and the environmental benefits are also clear.

9 When you look at reduced CO2 emissions,
10 reduced use of natural and virgin resources used
11 to produce concrete, there's no doubt that the use
12 of CCPs is a variable option.

13 Other areas where we're seeing growth of
14 CCP usage is as a mineral filler and in hot-mixed
15 asphalt and other things, and we expect those uses
16 to continue as our nation tries to conserve our
17 valuable natural resources.

18 The stigma issue is real. There's no
19 doubt about it. I've heard firsthand from
20 concrete producers, contractors, engineers,
21 architects, and various agencies that it will
22 impact their view and their further use of coal

1 combustion products. So it is definitely a real
2 issue.

3 In any way, shape, or form a Subtitle C
4 classification will have at least at the very
5 minimum a nonpositive effect on the use of fly
6 ash.

7 So thank you for your time. Appreciate
8 you hearing my comments.

9 MR. DELLINGER: Numbers 9, 10, 11, and
10 12.

11 MS. NOBLE: Good morning. My name is
12 Annely Noble, and I am a citizen who is passionate
13 about recycling. Coal combustion residuals are
14 second only in volume to municipal solid waste,
15 and coal combustion residuals have been recycled
16 up to 45 percent to date, and this is one of the
17 most successful stories of our time.

18 I'm concerned about the implications
19 that an EPA RCRA Subtitle C ruling will have on
20 recycling of beneficial use of CCRs. The EPA
21 declared coal combustion residuals nonhazardous in
22 1993 and again in 2000. So I don't understand why

1 the EPA is once again revisiting this
2 classification. It just doesn't make sense.

3 I'm pleased that the rate of CRR
4 beneficial use has increased from approximately 15
5 percent in 1966 to approximately 45 percent in
6 2008. This currently means that annually more
7 than 40 percent of ash produced in the U.S. has
8 not been disposed in landfills or stored
9 containment ponds.

10 This also means that annually each ton
11 of CCR used in replacement of portland cement and
12 concrete has saved one ton of CO2 emissions from
13 our atmosphere.

14 Additionally this means that concrete
15 made with fly ash and used in construction has
16 produced stronger, longer lasting, and more
17 durable roads, bridges, and buildings. This also
18 means that FGD gypsum used in agriculture and
19 wallboard has replace natural occurring gypsum
20 eliminating the cost of mining virgin materials.

21 Although I understand that Subtitle C
22 may include an endorsement for beneficial use of

1 CCRs, I do not understand the logic that says a
2 product is hazardous for disposal yet nonhazardous
3 for recycling or beneficial use. It doesn't make
4 sense. Who would recycle material labeled
5 hazardous into the foundation and walls of a
6 school, a hospital, or a home?

7 I have already heard beneficial use of
8 coal ash has declined for fear of retroactive
9 litigation should EPA rule Subtitle C due to the
10 stigma. A hazardous label on any CCR will create
11 a stigma for all CCRs and will result in the
12 decline of CCP usage.

13 I strongly urge the EPA to regulate coal
14 combustion residuals as nonhazardous under RCRA's
15 Subtitle D, the requirements of which could be
16 implemented in a matter of months. Additionally,
17 I strongly urge the EPA to provide a federal
18 regulatory framework to make national ash
19 utilization, handling, and disposal consistent,
20 safe, and fair.

21 Thank you for the time.

22 MR. GOSS: Good morning. My name is

1 David Goss. I work for McDonald Farms Enterprises
2 in Longmont.

3 Established in 1966, we provide a wide
4 variety of transportation, resource recovery,
5 waste and industrial processing services including
6 ash management and beneficial-use projects for
7 several local utilities. We're very concerned
8 that changing the classification of coal ash from
9 nonhazardous to a special waste under Subtitle C
10 could have many costly impacts on our business.

11 Recently during negotiations with one
12 utility customer they proposed a new requirement
13 for us to carry environmental impairment liability
14 or contractors pollution liability insurance for
15 every beneficial-use project that we wanted to do.
16 They're asking for coverage of up to \$6 million in
17 order to protect them.

18 Furthermore, they're asking for
19 indemnification for any beneficial-use project
20 that releases them from any and all claims forever
21 whether known or unknown from the present to any
22 date in the future.

1 These new requirements will more than
2 triple our insurance costs and hold us liable for
3 any considerable claim in the future because they
4 believe the EPA will classify coal ash as a
5 hazardous material. Since beneficial use is
6 extremely sensitive to costs, these new
7 requirements will eliminate our ability to compete
8 against commercial products or native materials,
9 and we will be forced to cease any beneficial-use
10 projects.

11 Our attorneys urged us not to accept
12 these new requirements -- these proposed
13 conditions. However, we still see great benefit
14 in being able to use or recycle coal ash into such
15 applications as waste stabilization, flowable flow
16 mixes, and road construction. It's much better to
17 keep the ash out of landfills and instead place it
18 where it can safely perform to meet engineered
19 technical requirements.

20 With more than 40 years of experience,
21 we've never seen any evidence of adverse
22 environmental impact where we have used coal ash

1 in railroad embankments, structural fills,
2 flowable fills, or waste and soil stabilization.

3 For every project, we characterize the
4 native soils and determine local water conditions
5 before planning placement of ash. We sample and
6 analyze the ash we use to be sure there's no risk
7 to surrounding land or community. We find that
8 coal ash can be used safely presenting no more
9 risk to the environment than native soils.

10 In fact, most coal ash in Colorado has
11 lower levels of heavy metals than do the native
12 soils. In our very dry climate, managing storm
13 water and snow run-on and runoff is relatively
14 easy. However, if classified as a hazardous
15 material, we will no longer use coal ash because
16 of the potential risks that some of our clients
17 feel we need to ensure or indemnify.

18 We urge you not to classify coal ash as
19 a special waste under Subtitle C. Thank you.

20 MR. DELLINGER: Number 11.

21 MR. AHO: Thank you. My name is Andrew
22 Aho. I'm the managing director of the

1 Geosynthetic Materials Association, a trade group
2 of 80 manufacturers and distributors of
3 geosynthetic materials including lining systems.
4 The industry employs 12,000 people throughout
5 the U.S.

6 Our comments for the EPA is simple. We
7 request that the EPA mandate that geosynthetic
8 material lining of coal ash storage facilities
9 using composite lining systems. In the shortest
10 terms, use liners. Liners work, specifically
11 composite liners.

12 Concerns of safety regarding CCRs are
13 mitigated if the landfill storage sites are lined
14 with a composite system of a geomembrane and a
15 geosynthetic clay liner. The composite liner
16 system prevents the leachate from entering the
17 environment. Safety concerns regarding surface
18 impoundments are also mitigated if impoundments
19 are lined with a composite lining system.

20 The American Association of Civil
21 Engineers does a regular report card on America's
22 infrastructure. For the last three report cards

1 representing over a decade, soil waste has
2 received the highest grade of any category. My
3 industry does a good job of taking America's waste
4 and properly storing it to protect the
5 environment.

6 The materials, technology, and people
7 exist. The engineers, engineering techniques, and
8 standards, the general contractors and installers
9 who can build the proper facilities exist. The
10 regulators and inspectors who insure the work is
11 done properly -- done correctly also exist. We
12 urge the EPA to use what exists and is working
13 today.

14 Further, our industry has continuously
15 improved over time, and the EPA has been part of
16 that effort. Over the years the EPA has
17 commissioned nearly 80 studies of the design and
18 performance of lining system. We specifically
19 call your attention to a 2002 study title
20 Assessment and Recommendations for Optimal
21 Performance of Waste Containment Systems.

22 That study contains a great deal of

1 pertinent information on how to construct a
2 containment system. Most illustrative is a graph
3 charting the leakage rate of different designs
4 over the life cycle of nearly 200 facilities.

5 The composite liner system of a
6 geomembrane and geosynthetic clay liner is
7 demonstrated to have the lowest leakage rate over
8 all life cycle stages including near zero leakage
9 rate after the facilities are closed and the final
10 cover placed. Our materials work.

11 A brief word on the hazardous/non-
12 hazardous issue. We believe that coal ash lacks
13 the traditional characteristics of hazardous
14 materials. In the opinion of our trade
15 association, coal ash can be properly stored using
16 Subtitle D regulations, a nonhazardous solid waste
17 designation with a composite liner system.

18 Thank you.

19 MR. DELLINGER: Number 12.

20 MR. ADAMS: Yes. My name is Joby Adams.
21 I've been a practicing hydrogeologist for the past
22 24 years. Most of my work has been with --

1 focusing on groundwater investigations and
2 RCRA-related corrective actions.

3 In 1998, though, I was asked to evaluate
4 the feasibility of using coal ash to reclaim
5 flooded gravel quarries on the Front Range of
6 Colorado. This lead me to a number of short and
7 long-term leaching tests comparing various
8 combustion residues. I also did leaching tests
9 comparing materials considered inert such as
10 recycled asphalt and concrete.

11 The results of my bench-scaled testing
12 then lead to a field-scaled test where I buried
13 400 tons of coal ash beneath the water table in an
14 unlined pit. This was done under a Department of
15 Energy grant and permitted by the State of
16 Colorado.

17 At the end of our one-year monitoring
18 period, which we monitored the water qualities of
19 the coal ash and aquifer up- and downgradient, we
20 had violated no water quality standards as
21 established by the State.

22 When I became aware the EPA was

1 contemplating regulating CCRs under Subtitle C, it
2 reminded me of an article I read in 1991. The
3 name of this article is called New Measure of
4 Risk, and the premise of the article is that when
5 people do not understand the scientific processes
6 and trying to eliminate every risk that is
7 presented, the public resources are directed to
8 areas that are of little benefit and -- or come at
9 a staggering cost. I believe that if CCRs are
10 regulated under Subtitle C, this will be the case.

11 U.S. oil production has been decreasing
12 since 1972; world production since 2006. It is
13 estimated that the United States has one quarter
14 of all the world's coal reserves with an energy
15 equivalency of all the known oil reserves in the
16 world. It's a simple fact that for many decades
17 to come we will rely on coal ash for an energy
18 source.

19 I believe that the cost estimates
20 associated with the regulation of Subtitle C are
21 underestimated. I also believe that we must
22 advocate the beneficial reuse of the byproduct

1 from the energy source that we must use, and I
2 believe that if regulated under Subtitle C, the
3 beneficial-reuse programs will be curtailed or
4 possibly even eliminated to a substantial degree.

5 Thank you.

6 MR. DELLINGER: Thank you. Numbers 13,
7 14, 15, and 16.

8 MR. USSERY: I'm David Ussery,
9 U-S-S-E-R-Y, environmental services manager for
10 Platte River Power Authority in Fort Collins,
11 Colorado. Platte River is a municipally owned,
12 not-for-profit electric generation and
13 transmission company serving Estes Park, Fort
14 Collins, Loveland, and Longmont, Colorado.

15 Platte River is a political subdivision
16 and public corporation of the state of Colorado.
17 Platte River owns and operates the Rawhide Energy
18 Station consisting of one 280-megawatt coal-fired
19 generating units and five natural-gas-fired
20 combustion turbine generating units.

21 We generate approximately 67,000 tons
22 per year of fly ash and 10,000 tons per year of

1 bottom ash. We have annually sold up to 12,000
2 years -- 12,000 tons of fly ash.

3 Platte River prefers the development of
4 federal regulations for CCRs under RCRA Subtitle
5 D, nonhazardous waste rules. Additionally, EPA
6 should select the Subtitle D prime option as the
7 appropriate course to pursue within the Subtitle D
8 framework because it avoids the absolute
9 requirements to retrofit all surface impoundments
10 irrespective of their environmental performance.

11 This option correctly recognizes that
12 existing CCR impoundments should be allowed to
13 continue operating provided that these units meet
14 applicable groundwater monitoring and structural
15 standards and thus are operating in an
16 environmentally sound manner.

17 The State of Colorado must be given a
18 role in implementation of the Subtitle D option.
19 This will avoid duplication with existing state
20 programs and provide the Subtitle D option with
21 the direct permitting mechanism the EPA wants.

22 EPA already has authority under Section

1 4010(c) to issue federally enforceable rules under
2 Subtitle D for CCRs. The closure period under
3 Subtitle D option is too short. Five years is not
4 adequate time to close surface impoundments that
5 are currently in use according to logistic,
6 procedural, and operational concerns.

7 Clay liner systems should be an
8 acceptable alternative to the composite liner
9 system for existing facilities. Alternative liner
10 designs should be available based on a specific
11 performance standard.

12 Platte River strongly opposes regulation
13 of CCRs under RCRA hazardous waste program. Even
14 though CCRs would be labeled, quote, special
15 waste, unquote, EPA has stated that CCR special
16 waste would be subject to full hazardous waste
17 control just like any other hazardous waste. This
18 is despite the fact that most CCRs do not exhibit
19 characteristics classified as hazardous waste.

20 We currently operate our facility as a
21 small-quantity generator of hazardous waste. The
22 Subtitle C proposal would put us in a

1 large-quantity generator status.

2 Thank you very much.

3 MR. DELLINGER: Number 14.

4 MR. LITTLE: I'm Tom Little, marketing
5 and community relations manager from Platte River
6 Power Authority in Fort Collins. As the previous
7 speaker Dave Ussery stated, Platte River owns and
8 operates the Rawhide Energy Station, which
9 includes a 280-megawatt coal-fired generating
10 unit.

11 Since the utility's inception in 1973,
12 Platte River has demonstrated willingness to make
13 sizeable voluntary investments in systems that
14 reduce environmental impacts at its facilities.
15 Low-NOx burners and separated overfire air
16 technologies are employed at Rawhide, as is a dry
17 scrubber to remove the SO₂ from the plant's
18 exhaust stream.

19 The result, according to EPA data on NO_x
20 emission and SO₂ emission rates, Rawhide is among
21 the cleanest coal-fired generating units in the
22 country.

1 Approximately 67,000 tons of what is
2 often termed dry "flue gas desulfurization" or FGD
3 ash is produced annually at Rawhide. Dry FGD ash
4 is a mixture of fly ash, lime, and the sulfur
5 removed from the exhaust stream. One of my jobs
6 is to find beneficial uses for the FGD ash
7 produced at Rawhide.

8 If new regulations for CCRs are
9 required, Platte River prefers development of
10 these under RCRA Subtitle D nonhazardous waste
11 rules. Platte River strongly opposes CCRs under
12 the more costly Subtitle C waste rules.

13 Based on years of experience, in
14 particular we reject the EPA's cost benefit
15 scenario that assumes that increased future cost
16 of regulated CCR disposal will induce coal-fired
17 generating units to increase beneficial uses of
18 their CCRs.

19 With goals of avoiding disposal costs
20 and saving natural resources, Platte River has
21 worked diligently to gain industry acceptance of
22 Rawhide FGD ash for use in many existing

1 fly-ash-using applications.

2 After several rather frustrating years
3 of trying, we've achieved very limited success due
4 to changes in the chemical and reactive properties
5 of the ash caused by the sulfur that's mixed in
6 during the SO₂ removal process. We're are on pace
7 to sell only about 6 percent of our ash this year
8 at very nominal prices.

9 Industrial users of fly ash simply find
10 it more desirable to use non-sulfur-containing ash
11 from unscrubbed plants. I believe this has also
12 been the experience of utilities employing dry
13 scrubbers.

14 According to data from surveys conducted
15 by the American Coal Ash Association, only about
16 12 percent of dry FGD ash produced between 2003
17 and 2008 has been used for beneficial purposes.

18 In summary, I'd like to make it clear
19 that the motivation and ability to increase
20 beneficial use of dry FGD ash will definitely not
21 increase due to increased costs of CCR removal --
22 disposal as the EPA assumes. Beneficial use of

1 the ash will increase or decrease only as a result
2 of the industry's perceptions of the benefits and
3 risk involved.

4 Thank you very much.

5 MR. DELLINGER: Number 15.

6 MS. GOEBEL: My name is Betty Goebel,
7 and I'd like to thank you, the EPA, for
8 re-examining the whole issue of treatment of coal
9 ash. I'm the executive director of Colorado
10 Interfaith Power and Light.

11 Through our state organizations,
12 congregations of all faith traditions worked
13 together on energy and climate issues. Today I,
14 with other religious leaders who will speak later,
15 are asking the EPA to adopt Subtitle C.

16 All faith traditions share a concern for
17 the environment, the gift of creation. We're
18 concerned about the use of coal because of its
19 impact on global climate change, but today it's
20 about a different hazard, coal ash, which has a
21 long list of toxins which I will not repeat.

22 In addition to concern for the

1 environment, faith traditions also share a concern
2 for the poor. Today I speak for the poor who will
3 surely be under-represented here.

4 The EPA's own data shows that over half
5 of the coal ash storage locations are in areas
6 that are predominantly low income. Low income
7 areas have long been the dumping ground for toxic
8 waste, and the poor have been disproportionately
9 affected by the health problems.

10 Subtitle D lacks any meaningful
11 enforcement mechanism. The burden is on the
12 citizen to bring suit when the industry has not
13 adhered to recommended standards. This puts an
14 unacceptable burden on low-income victims of coal
15 ash health problems. These are the people who are
16 least likely to be able to mount a serious
17 challenge to the industry.

18 Low-income people are often less well
19 educated, have less access to PC and Internet
20 technology, less knowledge of how to access and
21 interpret environmental data, and the least likely
22 to have resources for a time-confusing legal

1 battle.

2 When you are working two to three jobs
3 to put food on the table, it's hard to muster the
4 energy you need to organize an effective challenge
5 to a powerful industry, even when you know that
6 something is making you, your children, and your
7 neighbors sick.

8 If the industry is looking for a group
9 of people least likely to challenge them, they
10 have the right population when their storage sites
11 are in low- income areas. There are instances of
12 contamination, not just Kingston, not just
13 Colstrip. This industry has been unable to
14 produce (sic) itself and neither have the state
15 governments.

16 I urge the EPA to adopt Subtitle C.
17 Education is the solution to stigma concerns, and
18 we do not oppose the use of encapsulated
19 beneficial reuse.

20 Thank you very much for your time.

21 MR. DELLINGER: Thank you. Could
22 numbers 201, 202, 203, and 204 come forward,

1 please.

2 MS. LEBER: My name is Tex Leber. I'm
3 with Nebraska Ash Company. We are a small
4 ash-handling company localized in Nebraska. We
5 handle the coal combustion residues for two
6 utilities in Nebraska, and we currently market
7 about 40 to 50 percent of the fly ash and bottom
8 ash that's produced.

9 We are in support of regulating under
10 Subtitle D but are opposed, of course, to and have
11 great concern if it were to be regulated under
12 Subtitle C.

13 A hazardous or special waste when CCRs
14 are disposed would cause great stigma reducing or
15 eliminating the beneficial uses of our products,
16 and we have a number of customers who have been
17 asking questions about it; questions such as what
18 happens if we have a spill of materials -- we have
19 a load of ash coming to the plant and we have a
20 spill? Are we then going to have to handle that
21 as a hazardous material for clean-up, and what
22 things will we have to go through in order to get

1 that cleaned up?

2 Another is, Why would I want my
3 employees handling a material that's considered
4 hazardous if it's disposed of. And another
5 question that's come up, If concrete containing
6 fly ash is removed, does it require special
7 handling and must it be taken to a hazardous
8 landfill?

9 And another question has been -- when
10 the concrete is first put in place and they're
11 sawing control joints in the concrete, what about
12 the dust that's created from that? Are we going
13 to have a special requirement because of the dust
14 that's contained in that?

15 And due to these concerns we've had a
16 number of them that are saying if -- if it is
17 determined that it's a hazardous or a special
18 waste material, we will more than likely go ahead
19 with using straight cement and not use the fly
20 ash, which, of course, is going to be a huge
21 problem for our company. And it's -- their
22 reasoning is because of the additional liability.

1 And one of the utilities that we market
2 for that we actually -- it's about 50 percent of
3 our product, they're saying if it's regulated
4 under Subtitle C that they're not going allow the
5 product to even go off-site; that due to the
6 liabilities, they wouldn't want it scattered over,
7 you know, a number of projects.

8 So that's -- that would leave our
9 company more than likely out of business, and even
10 though we are a small company, it would eliminate
11 a number of jobs.

12 Thank you for your time.

13 MR. DELLINGER: 201.

14 MS. KAY: My name is Melanie Kay, and
15 I'm an associate attorney for Earthjustice, a
16 nonprofit environmental law firm. Thank you for
17 the opportunity to speak today.

18 This rulemaking is of monumental
19 importance to the protection of health and the
20 environment. How we deal with enormous volumes of
21 coal ash will have vital implications for the
22 future health of our communities, and for this

1 reason it is imperative we properly regulate coal
2 ash via Subtitle C.

3 Today I'd like to focus on three points
4 particularly relevant to this hearing's location
5 in Denver. First, the current laws of western
6 states governing coal ash disposal are grossly
7 inadequate. Of the 10 states surrounding Colorado
8 that generate the largest volumes of ash, seven do
9 not require groundwater monitoring at coal ash
10 surface impoundments.

11 This single regulatory requirement is so
12 important that EPA uses it as a benchmark to
13 predict whether a state will adopt the proposed
14 Subtitle D guidelines. In other words, if a state
15 has not yet required its most dangerous waste
16 dumps to monitor the underlying groundwater, then
17 EPA assumes that these states will not enforce or
18 adopt new guidelines that are not mandatory.

19 Thus EPA believes that the west, with
20 its booming coal industry, is out of luck for the
21 Subtitle D scheme.

22 And the status quo of state regulations

1 is indeed dismal. In fact, Kansas, Montana, New
2 Mexico, and Utah exempt coal ash from their solid
3 waste regulations entirely. Consequently,
4 landfills and waste ponds are not required by law
5 in these four states to employ even the most basic
6 safeguards such as liners, monitoring, corrective
7 action, and financial assurance.

8 Second, the arid west presents unique
9 and serious problems associated with improper coal
10 ash disposal. Potable groundwater is a
11 particularly precious resource. Yet at numerous
12 sites near western plants, mismanagement of ash
13 has contaminated this scarce resource; for
14 example, at the Ried Gardner Generating Plant in
15 New Mexico, San Juan Generating Station and Four
16 Corners Power Plant in New Mexico, Northeastern
17 Station in Oklahoma, and Dave Johnston Plant in
18 Wyoming.

19 Further, fugitive dust at western coal
20 ash dumps is a fact of life in our climate.
21 Despite the likelihood of serious NAAQS
22 violations, many western states do not require

1 daily cover, including Arizona, North Dakota, New
2 Mexico, and Oklahoma. In fact, severe fugitive
3 dust problems are currently plaguing communities
4 in Fruitland, New Mexico, and Bokoshe, Oklahoma.

5 Third, in view of our proximity to the
6 headquarters of the American Coal Ash Association,
7 it is important to dispel a misconception asserted
8 repeatedly by the ACAA, that there are no damage
9 cases caused by coal ash reuse.

10 We ask both EPA and the ACAA to review
11 our report published last February, co-authored by
12 the Environmental Integrity Project, that
13 describes two sites where the use of ash as
14 structural fill contaminated groundwater.

15 In addition, EPA itself documented that
16 coal ash used as fill contaminated drinking water
17 in Pines, Indiana, and led, in part, to the town's
18 designation as a federal Superfund site.

19 In conclusion, nothing but federally
20 enforceable minimum standards under Subtitle C
21 will work for the west, and I therefore strongly
22 encourage the EPA to adopt these standards.

1 Thank you.

2 MR. DELLINGER: Number 202.

3 MR. HUNT: Yes. My name is R. G. Hunt,
4 and I'm from Waterflow, New Mexico. And the
5 reason why I come up here today is because I am a
6 victim of the coal combustion waste and the
7 nonsense that goes on.

8 And back in 1982 I damned near lost my
9 family due to the fact the power plant was dumping
10 untreated human waste and industrial toxic waste
11 down to our property. And the EPA and EID had
12 full knowledge my well was polluted, and they
13 never done nothing.

14 The kids' age is two to five, and this
15 is the kind of deal, I'm just new barely after 30
16 years can get up and talk about it. And they
17 killed 1,400 head of sheep and wouldn't even allow
18 to put city water in there for the poor bastards
19 to drink.

20 And if that coal combustion waste is so
21 good, I wish you guys would just come down there
22 where it goes across that Highway 6800 and have a

1 glass of it. Because I'll guarantee you one
2 thing, it'll make you want to puke.

3 And you know, on the 1,400 head of
4 sheep, those poor buggers, they would get
5 polioencephalomalacia, and they'd get white muscle
6 disease where they lay down and they couldn't even
7 get up, and watch them poor animals die like that.
8 There was no reason for it.

9 And what happened in New Mexico,
10 environmental department come in and said -- took
11 some tests on four of them after 13 months of
12 making them poor animals drink that water, and
13 they come back and said, Poor care killed them
14 animals. Where they said they was in good
15 nutritional condition. And I'm still being
16 retaliated against by the New Mexico environment
17 department.

18 And my kids, they was age 5 to 2, and
19 when the state epidemiologist came in and said due
20 to the fact this one family is not worth
21 investigating, the kids made a pact. They're
22 going to be better to their government than what

1 their government was to them.

2 And what they did, the only thing they
3 could do, is myself -- I've got an eighth grade
4 education. I suffer from ADHD. And them little
5 kids got a 52-year sentence.

6 I thank you.

7 MR. DELLINGER: Number 203. Is 204 in
8 the room? I've called you up to the mike. Thank
9 you.

10 MS. LOGAN: My name is Carla Logan. I'm
11 from Waterflow, New Mexico. I'm his wife. I am
12 not a scientist. I am not a recycling aficionado,
13 although I firmly believe that we need to use the
14 materials that God gave us in the very best
15 possible way instead of throwing them into the
16 landfill.

17 I am a mother, a wife, and a
18 grandmother. Between my husband and I, we have
19 eight children. We have 21 grandchildren, and we
20 live on a property that has been in his family for
21 over 50 years. We have extended family of
22 probably 200 people in that immediate area.

1 We live directly adjacent to San Juan
2 Generating Station to Waterflow, and one of the
3 waste sites that is being discussed here in New
4 Mexico goes through our property.

5 Up until the time the San Juan
6 Generating Station was located there, all of the
7 neighbors in the community around them used
8 groundwater wells and had used them for many
9 years. After San Juan Generating Station was
10 located there and they began to bury the fly ash
11 in unlined pits, it began to seep into the
12 groundwater wells.

13 I do not know all of the specifics of
14 the -- as far as the medical problems, as far as
15 the toxic materials, but I know that the children
16 got sick. His family alone has lost six family
17 members who were healthy, athletic as children,
18 and they have died at an early age, under 40, for
19 no apparent reason other than cancer, leukemia,
20 and major illnesses that the doctor say could be
21 attributed to heavy metal poisoning and to the
22 water.

1 Once that family went on to public water
2 rather than the groundwater, their health began to
3 improve, but my consideration -- my concern is
4 what are the long-term lasting effects of those
5 fly ash pits that are still there.

6 I do understand that there are
7 mitigating things. I do understand there are ways
8 to mitigate, but it will not bring back the people
9 who have died. It will not replace the health
10 that they have lost, and it will not give me the
11 assurance that I can have family reunions and
12 family picnics on our property in a place that the
13 kids used to love to play in the creek, that there
14 were frogs, toads, and fish, and now there is
15 nothing, because we have watched animals die.

16 Thank you.

17 MR. DELLINGER: Numbers 17, 18, 20, and
18 114 come forward, please.

19 MS. BROWN: Good morning. My name is
20 Elouise Brown. I'm the president of Dooda Desert
21 Rock. Dooda means absolutely no, absolutely not.
22 And Dooda Desert Rock is a Navajo grassroots group

1 and non-governmental organization that advocates
2 the interests of the Navajos in the face of the
3 excesses of the extractive industries in our area.

4 We live in the notorious national
5 sacrifice area of the Four Corners, and my people
6 have been the targets of energy development abuses
7 for decades.

8 We are glad that the regulation of the
9 coal combustion residuals, coal ash, is finally on
10 the regulatory radar of the Environmental
11 Protection Agency. I will be brief in stating the
12 problem, our primary concern, the rights involved
13 and our recommendations for regulatory action.

14 The problem. There are two producing
15 coal-burning power plants in the Four Corners
16 area; the San Juan Generating Station,
17 off-reservation to the west of Farmington, New
18 Mexico, and the on-reservation Four Corners Power
19 Plant within the Navajo Nation.

20 We do not know whether the power plant
21 is dumping coal -- we do not know where the power
22 plants are dumping their coal ash, and our

1 attorney was unable to get information from the
2 informant he met with recently on whether coal ash
3 is being dumped in Morgan Lake in our area.

4 A new proposed power plant, the
5 so-called Desert Rock Plant, is still undergoing
6 review for various permits, although there are
7 lingering questions about the existing plants.
8 One is, What is being done about the coal ash from
9 the San Juan Generating Power Plant?

10 The other one is, If anything -- if the
11 EPA is doing anything about the reports that
12 emissions from the two existing plants are hurting
13 Navajos.

14 When the Desert Rock clean air permit
15 was pending, the San Francisco office warned of a
16 report that pollution from the San Juan Generating
17 Station and the Four Corners Power Plant adversely
18 affects the health of the Navajos in the downwind
19 Shiprock area.

20 They are forced to seek medical
21 attention for respiratory complaints at five times
22 the rate of others, and children under 5 and

1 adults over 56 must get medical attention at 10
2 times the average rate.

3 The EPA warned the Bureau of Indian
4 Affairs that the reported situation had to be
5 addressed. It wasn't, although we warned the BIA
6 too.

7 Since then we have been unable to get
8 EPA to tell us the current situation or what is
9 being done about the problem. Our discrimination
10 complaint against the EPA was rejected by its
11 civil rights division, and our letters asking for
12 information about -- have been unanswered.

13 The problem is that when we do raise
14 concerns about health risks and regulatory
15 inaction, they're ignored -- they are ignored. We
16 want to change -- we want -- we want that to
17 change under the administration.

18 We are not just commenting on the coal
19 ash regulation. We are commenting on it in light
20 of the past EPA inaction about concerns.

21 And our primary concern is that we are
22 unaware -- we are aware that the United Nations

1 Committee on Elimination of Racial Discrimination
2 has faulted the United States for following (sic)
3 extractive industries to abuse indigenous rights
4 in the United States and abroad. The committee
5 recommended that the United States must pay
6 greater attention to extractive industries
7 activities.

8 MR. LIVNAT: Your time is up.

9 MS. BROWN: Thank you.

10 MR. DELLINGER: Number 17.

11 MR. CONNELL: Good morning. I'm Ken
12 Connell. I'm here in several different
13 capacities, but I only had one hat this morning.
14 First off, I'm here on behalf of the Sierra Club
15 as a member. I'm supporting the work of the EPA
16 in strengthening coal ash regulation and
17 monitoring.

18 I'm also here as a volunteer coordinator
19 for Denver Metro Council of MoveOn.org and our
20 almost 100,000 members and residents in the state
21 of Colorado.

22 Thirdly, I'd like to at least note that

1 I have an academic background in industrial and
2 organizational psychology, social psychology. So
3 I'm very much an advocate for your applying
4 contemporary scientific standards in evaluating
5 and justifying the kinds of remedies that are
6 proposed.

7 And while I'm sympathetic to the
8 beneficial uses, I have some cautions, because the
9 research literature that I have seen, limited that
10 it be, has been suggestive, at least, that some of
11 the so-called beneficial uses have hidden
12 consequences. And so I'd like that to be done on
13 a cautionary basis and as reviewed by current
14 scientific standards.

15 So overall full disclosure, get the
16 chemical analysis done so that we do, in fact,
17 have public disclosure of what is available in the
18 ground, what the liquids consist of as toxic coal
19 ash, and that the precautions be set up in a way
20 that we can continue to follow the state of the
21 science as well as the known consequences and
22 research.

1 I'm not unsympathetic to the industry.
2 We do have tremendous energy needs, and coal is
3 going to be a major player. It's simply that the
4 cost between industry and society and the human
5 consequences need to be rebalanced.

6 We have had for too long, going back to
7 even the 1812 Minerals Act, a situation where
8 industry was greatly encouraged to bring the
9 profit motive to the front.

10 And corporations, as we're finding with
11 this report decision on Citizens United, are
12 getting too strong in the society, and they're
13 going destroy the democracy on which we're based
14 because they have international interests, they
15 have profit-making interests and requirements, and
16 they are not chartered to fulfill the best
17 interest of our people and our country.

18 Thank you.

19 MR. DELLINGER: Number 18.

20 MR. FINLINSON: Good morning. I'm Jon
21 Finlinson. I'm with -- I'm the president and
22 chief operations officer of Intermountain Power

1 Service Corporation, and I'm testifying today on
2 behalf of the Intermountain Power agency and
3 Intermountain Power project, of IPP, in Utah.

4 IPP is a power provider for a 36-member
5 electric utilities municipalities and electric
6 associations located in Utah, Nevada, and
7 California. IPP's members will be directly
8 impacted by the final CCR rule due to increased
9 costs.

10 At IPP we take our environmental
11 responsibility seriously. Since the project's
12 inception, IPP has voluntarily put in place
13 disposal practices that are protective of the
14 environment, including lined engineered ponds for
15 bottom ash, dry handling systems for fly ash,
16 groundwater monitoring, acceptance of state
17 oversight permitting, and participation in both
18 EPA's C2P2 program and the USWAG voluntary CCP
19 action plan.

20 We are alarmed that EPA's actions in
21 this rule appears to ignore the efforts of IPP and
22 others and effectively penalizes the proactive

1 activities of the industry.

2 IPP favors the development of federal
3 regulations for CCRs under RCRA's Subtitle D
4 nonhazardous waste program. IPP shares EPA's
5 objective of having a federal regulatory program
6 that ensures the safe disposal of CCRs. The D
7 prime option will meet this objective without
8 crippling coal ash beneficial use and imposing
9 unnecessary regulatory costs on power plants,
10 threatening job and increasing electricity costs.

11 Regulation of CCRs should be applied
12 regionally and state by state to provide optimal
13 benefit on a case-by-case, site-by-site basis.
14 EPA should therefore consider a mechanism for the
15 states to administer the regulations.

16 Although a tragedy, the TVA Kingston
17 spill was not caused by the so-called toxicity or
18 any characteristic specific to CRR. Any bulk
19 material dammed in the same circumstance would
20 also fail. Poor dam design, construction, or
21 maintenance should not be the basis for
22 overreaching regulation.

1 One of the elements of the D prime
2 option that makes it the preferred option is that
3 it would not require the automatic closure of CCR
4 surface impoundments that are designed and
5 operating in a manner which is fully protective of
6 human health and the environment, such as at IPP.

7 We agree that disposal facilities that
8 are not fully protective must either be upgraded
9 or closed. However, there are many CCR surface
10 impoundments which are perfectly safe. There is
11 no reason why these units should not be allowed to
12 continue operating.

13 We firmly believe that a Subtitle C
14 designation will significantly reduce or halt the
15 sale of coal combustion byproducts as alternatives
16 to natural resources. Having the stigma of
17 hazardous will catch the attention of toxic tort
18 attorneys. In this litigious society, any
19 playground, school, or other arena where children
20 are present will be blamed for any ill that may
21 arise if that facility was built with products
22 containing CCR. Liability of this magnitude can

1 far outweigh any benefit of reuse.

2 Thank you.

3 MR. DELLINGER: Number 114.

4 MR. HERNANDEZ: Good morning. My name
5 is Doug Hernandez, and I'm the president of
6 Flashfill Services, a small business operating in
7 Denver, Colorado.

8 I must say that your determination of
9 the classification of coal fly ash is critical to
10 my future. For the past 15 years I've been
11 involved in manufacturing and production of coal
12 fly ash flowable fill, which is produced as a
13 desirable backfill material for use in utility
14 trenches, bedded pipelines, and other necessary
15 construction requirements.

16 Over the past few years our company's
17 average purchase and distribution of coal fly ash
18 is over 20,000 tons per year for beneficial use.
19 Our product has been a vital and intricate part of
20 assisting the construction industry with proper
21 placement of coal fly ash flowable backfill.

22 We predominantly service the numerous

1 water districts and other agencies involved in the
2 need for subsurface backfill, basically for
3 utility repairing and replacement.

4 Coal fly ash has a unique composition
5 which allows us to manufacture a very liquid and
6 flowable material with a fast curing ability. The
7 fast curing ability offers the immediate
8 encapsulation of the fly ash with an acceptable
9 bearing capacity for completion and restoration of
10 utility service allowing a quick return to public
11 access and/or the continuation of the construction
12 specified.

13 The advantages of the coal fly ash
14 backfill versus the traditional cement sand-based
15 backfill provides the contractor a fast,
16 economical, efficient, safe way to return a
17 project or repair to service.

18 Our advanced technology in dealing with
19 coal fly ash is such that the fly ash is
20 purchased, blended, and delivered safely. Once
21 manufactured, it is immediately hydrated, and due
22 to the inherent composition, the material

1 immediately solidifies into a totally encapsulated
2 material, ultimately obtaining 115 -- 150 to 1,500
3 PSI within 28 days.

4 If coal fly ash is classified as a
5 special waste requiring disposal as a hazardous
6 waste, I anticipate that due to the liability
7 associated with such classification, it would
8 force our suppliers and customers to discontinue
9 our business relationship.

10 I also anticipate that if we were able
11 to persuade our industry to continue the usage of
12 our product, we would no longer be able to provide
13 it economically due to the significant cost
14 associated with obtaining environment liability
15 insurance.

16 The stigma associated with such a
17 classification would escalate the cost of doing
18 business and could send all our potential
19 customers in other directions.

20 I truly appreciate your objective to
21 protect the welfare of the public, and I do have
22 financial reasons for my concerns. Nevertheless,

1 I believe that if you do, in fact, classify coal
2 fly ash as a hazardous material, you will be
3 creating a potentially larger problem due to the
4 fact that virtually all coal fly ash will wind up
5 being required to be disposed of in designated
6 landfills.

7 In the present ash industry, a major
8 portion of the material is being consumed for
9 beneficial use and offers the advantage of being
10 recycled. I truly believe that to recycle far
11 exceeds the advantage of changing the industry by
12 classifying coal fly ash as a hazardous material.

13 Thank you.

14 MR. DELLINGER: Number 20, and can
15 Numbers 21, 22, 23, and 24 move forward.

16 MR. HARRINGTON: Thank you for your time
17 this morning. My name is R.J. Harrington, and
18 I'm here today as an individual but also
19 representing the Colorado Solar Energy Industry
20 Association, also known as COSEIA. I'm the vice
21 president of the board of directors.

22 We've heard a great deal so far this

1 morning about reuse and recycling of CCRs. With
2 all due respect to businesses both large and small
3 that provide and profit from these reuse and
4 recycling services, COSEIA proudly focuses on the
5 first R, reduce.

6 COSEIA's members, predominantly small
7 businesses, provide the service of installation of
8 distributed solar generation which directly leads
9 to the reduction of CCRs from centralized fossil
10 fuel generation.

11 While I personally believe that CCRs be
12 regulated under Schedule C, because of reasons
13 outlined by Colorado Interfaith Power and Light
14 and the proud sheep rancher and his wife from New
15 Mexico, my relationship with COSEIA fortifies my
16 belief that our industry's efforts in providing
17 safe CCR-free energy will continue to reduce the
18 effects, be they positive or negative, of CCRs
19 under either Schedule C or D.

20 Thank you for the opportunity to speak
21 today.

22 MR. DELLINGER: Number 21.

1 MR. REYNOLDS: My name is Paul Reynolds.
2 I am the manager of generation and environment for
3 Sunflower Electric Power Corporation. We are a
4 regional wholesale power supplier who generates a
5 1,257 megawatt system of wind, gas, and coal-based
6 generation serving 400,000 customers in central
7 and western Kansas.

8 58 percent of our generation capacity is
9 powered by natural gas, 42 by coal, and 10 percent
10 comes from wind. We own and operate a single
11 362-megawatt coal-fired unit located near Holcomb,
12 Kansas. The unit has been in service nearly three
13 decades and annually generates approximately
14 100,000 tons of CCRs, a portion of which is put to
15 beneficial use each year and the remainder is
16 disposed of on-site in a dedicated landfill which
17 includes a groundwater monitoring system that has
18 been in service since day one and has confirmed
19 that no leaching or environmental (sic) has ever
20 occurred, and there is also a financial assure
21 mechanism in place with the State of Kansas.

22 Sunflower's Holcomb Station located --

1 is located in an arid area in western Kansas and
2 is one of eight CCR disposal facilities overseen
3 by the Kansas Department of Environmental Health.

4 I strongly encourage the EPA to maintain
5 the Bevill amendment and regulate the disposals of
6 CCRs under Subtitle D rather than as a special
7 hazardous waste under Subtitle C. We believe the
8 regulation under Subtitle C will create a stigma
9 for these wastes.

10 Of even greater significance to us and
11 the other Kansas utilities is a current Kansas
12 state law that prohibits landfill disposal of any
13 RCRA hazardous waste.

14 If CCRs are regulated as a hazardous
15 waste, even if EPA uses the term "special waste,"
16 it is the KDHE's interpretation that current state
17 law would prohibit landfill disposal and all
18 current permitted CCR disposal activities would
19 have to cease operation, and these wastes would
20 have to be transported out of state for disposal
21 and could end up affecting a low- income area
22 nearby. The costs and other environmental impacts

1 of such a change in CCR disposal practice is
2 staggering.

3 While a Subtitle D regulatory approach
4 is the preferred option, there's a need for some
5 tweaking. The proposed regulations do not provide
6 sufficient flexibility to consider alternative
7 liners, leachate management methods, or final
8 covers to accommodate variables in local
9 conditions such as soil types, depth to
10 groundwater, distance to surface water, and annual
11 precipitation. The prescriptive one-size-
12 fits-all approach unnecessarily ties the hands of
13 regulators.

14 We believe the best approach nationally
15 is to develop Subtitle D regulations, including a
16 required permitting program that can be
17 administered by states, with sufficient
18 flexibility to consider local conditions. While
19 this approach would likely require a supplemental
20 proposal, it will ensure EPA has enforcement
21 authority it desires while avoiding the
22 unnecessary and adverse implications of Subtitle

1 C.

2 Thank you.

3 MR. DELLINGER: 22.

4 MR. LEDGER: Good morning. My name is
5 Patrick Ledger. I'm chief operating officer of
6 Arizona Electric Power Cooperative, AEPCO, a
7 nonprofit generation transmission cooperative
8 which provides wholesale power to six rural
9 electric distribution co-ops serving customers in
10 Arizona, California, and New Mexico.

11 AEPCO owns and operates the Apache
12 Generation (sic) Station in Cochise, Arizona, a
13 sparsely populated area in southern --
14 southeastern Arizona. The Apache Station fleet
15 includes two coal-fired steam units and a number
16 of gas-generation units.

17 To support the coal-fired generation,
18 AEPCO operates a combined -- a coal combustion
19 waste disposal facility consisting of seven lined
20 impoundments covering 285 acres. The facility,
21 which became operational in 1995, was engineered
22 to contain all of Apache Station's CCRs. AEPCO

1 also collects and markets 90 percent of its fly
2 ash as beneficial-reuse products which has
3 extended the life expectancy of the combustion
4 waste disposal facility.

5 AEPCO's facility is regulated by the
6 Arizona Department of Water Resources, Dam Safety
7 and Flood Mitigation Division as well as by the
8 Arizona Department of Environmental Quality. Both
9 agencies maintain rigorous compliance programs and
10 conduct frequent inspections to ensure that
11 applicable maintenance and safety standards,
12 including groundwater monitoring, are followed.

13 The EPA also recently affirmed the
14 structural integrity and proper operation of the
15 impoundments through an independent assessment.

16 While we agree that the issue of unsafe
17 CCR surface impoundment facilities must be
18 addressed, lined properly engineered facilities
19 that are rigorously regulated under state programs
20 should not be placed in jeopardy by regulation
21 that overreaches beyond its intended purpose.

22 Imposing a new regulatory regime under

1 Subtitle C that would require rural rate payers,
2 already suffering disproportionately from the
3 effects of the recession, to pay millions more to
4 replace or abandon a remote lined impoundment
5 facility that operates in compliance with
6 effective standards is unreasonable.

7 For these reasons, Arizona Electric
8 Power Cooperative supports the development of CCR
9 regulation under the Subtitle D prime option. We
10 believe that this regulatory option will best
11 accomplish the objectives of ensuring that CCR
12 disposal facilities, like those at Apache Station,
13 will continue to be appropriately monitored to
14 ensure they are operated in a safe manner.

15 But unlike the Subtitle C approach, the
16 D prime option would establish comprehensive
17 environmentally sound regulations for coal ash
18 disposal without imposing unreasonable and
19 unnecessary costs on rural electric rate payers.

20 Thank you for the opportunity to speak.

21 MR. DELLINGER: Thank you. Number 23.

22 MR. LEVENTHAL: My name is Joel

1 Leventhal. I'm here as a citizen, but I'm also a
2 geochemist. I have a Ph.D. from the University of
3 Arizona and more than 30 years' experience as a
4 geochemist. I need to read some of this stuff,
5 unfortunately.

6 Coal averages about 10 percent ash. I'm
7 going to say a few sort of geochemical things, but
8 maybe it's time to say that. Coal ash is not dirt
9 or soil. Coal ash is quite varied. Although the
10 major and minor minerals are often similar to rock
11 or dirt, the trace minerals and trace elements are
12 not.

13 In addition to that, different coals are
14 different. Some coal ash is very -- is much
15 higher in trace elements than others. For
16 example, coals that are high in pyrite -- that's
17 iron pyrite or iron sulfide -- generally have
18 higher amounts of toxic elements than coals that
19 are low in pyrite.

20 Pyrite will often range from 1 to 3
21 percent. So with coal ash being 10 percent of
22 coal and pyrite being 1 to 3 percent of coal, you

1 can see that this is not normal soil or dirt.

2 The trace elements may differ in
3 abundance by a factor of 50 or more. So there's
4 good coal ash and bad coal ash. I mean, that's
5 sort of swinging it in funny ways. Elements such
6 as vanadium, molybdenum, and germanium are often
7 enriched in the coal organic matter whereas
8 elements such as iron, cadmium, zinc, mercury,
9 arsenic, and selenium are enriched in the pyrite.

10 When the coal is burned, the CO2 leaves,
11 but everything else stays behind. All those trace
12 elements are still there. So they don't go away.
13 They're around forever. The coal ash is then --
14 depending on what happens to it, some of the trace
15 elements are -- are subject to leaching, and some
16 of them could be detrimental to people and the
17 environment.

18 Not even all coal -- even coal ash is
19 not the same from the same coal. The bottom ash
20 and the fly ash are quite different chemically
21 often, and their trace and toxic elements are
22 different by a factor of at least 15 in some

1 cases. So, again, unfortunately, these things all
2 get mixed together and people just -- you just say
3 "coal ash."

4 Making one rule to fit all types of coal
5 ash, both fly ash and bottom ash, seems like a
6 gross over-simplification. One rule may not fit
7 all, but erring on the side of long-term public
8 health and environmental health is a reasonable
9 choice.

10 Because these chemical elements are
11 around forever and can be leached forever, if
12 they're near people and near water supplies,
13 you've got a problem. If they're far away,
14 they're not.

15 I'm certainly in favor of recycling, and
16 some coal ash that's clean enough and proves that
17 it's clean enough and can't be -- and can't have
18 elements leaching out of it should have some kind
19 of a waiver, but in general I'm -- I'm in favor of
20 Subtitle C so that we have, in general, good, real
21 regulation but some way for clean stuff to be
22 opted out and recycled.

1 Thank you.

2 MR. DELLINGER: Number 24, and could
3 Numbers 205, 26, 27, and 28 come forward.

4 MR. WEEDA: My name is John Weeda. I'm
5 the plant manager of Coal Creek Station at
6 Underwood, North Dakota. Our Great River Energy
7 is a nonprofit member-owned cooperative that
8 operates two coal-fired plants in North Dakota.

9 All of Great River Energy's generation
10 and transmission fleet are ISO 14001-registered,
11 which commits us to continual improvement of our
12 environmental practices. This continual
13 improvement process has driven our successful
14 efforts to increase beneficial use of fly ash up
15 to 92 percent and of bottom ash from our
16 coal-fired facilities.

17 Coal Creek Station, CCS, fly ash is
18 treated as a product of the station and is known
19 as some of the best in the industry for its
20 quality and consistency. It is used extensively
21 as replacement of portland cement in concrete. A
22 variety of fly ash mixes with high content of fly

1 ash has been utilized throughout the upper Midwest
2 for roads, bridges, structures, and parking lots.

3 The beneficial-use program has resulted
4 in an annual beneficial use of as much as 468,000
5 tons of fly ash from CCS, and here -- in the past
6 12 years decreased the demand for portland cement
7 by over 10 million tons, thus avoiding at least 8
8 million tons CO2 from that production.

9 GRE agrees that development of federal
10 regulations for CCRs should be under RCRA Subtitle
11 D. GRE strongly opposes regulation of CCRs under
12 RCRA hazardous waste program even if the CCRs are
13 labeled as special waste.

14 GRE believes that regulation of CCRs
15 under Subtitle C would destroy the progress that's
16 been made in making CCS ash a respected commodity
17 in the marketplace. Any indication that fly ash
18 is a hazardous waste under any circumstances would
19 bring a stigma of liability concerns that most
20 users would avoid and thus eliminate the use of
21 CCS ash.

22 In addition, there are liabilities

1 associated with a product that is deemed a
2 hazardous waste when disposed. The impact on CCS
3 fly ash alone is estimated to be 40 million over
4 the next 10 years in addition to a stranded
5 investment in excess of approximately \$20 million.

6 GRE fails to see the EPA's logic that a
7 Subtitle C classification would increase sales by
8 increasing disposal costs. There is no
9 correlation between the cost of disposal and the
10 demand for CCRs in the beneficial-use market.

11 GRE has participated in research and
12 contributed proactively to regulations
13 administered by the State of North Dakota Health
14 Department, provide proper design for disposal
15 facilities in North Dakota. These include lining
16 and effective management and monitoring of the
17 landfills, and this applies to our stations in
18 North Dakota.

19 We're also concerned about the
20 unintended consequences of employee safety of
21 utilizing a hazardous classification.

22 We support Subtitle D, and thank you for

1 your time.

2 MR. DELLINGER: Number 205.

3 MS. SOLIS: Hi. My name is Andrea
4 Solis, and I am a Ph.D. student at the University
5 of Colorado Denver, and my research is focusing on
6 the use -- co-benefits of high volume fly ash
7 concrete.

8 During my literature review of fly ash
9 concrete, I found that there's over 80 years of
10 published research indicating the beneficial use
11 of fly ash concrete. There has also been research
12 showing that there is a reduction of leaching of
13 heavy metals from fly ash if incorporated -- if
14 fly ash is incorporated in concrete.

15 But despite these 80 years of positive
16 research, only about 41 percent of the total fly
17 ash produced in the U.S. is used in fly ash
18 concrete or for flowable fill in other
19 applications.

20 So I bring the following concerns as a
21 concerned citizen and future engineer: Despite 80
22 years of positive research, what value would the

1 research have if -- under Subtitle C or what use
2 would it have in the future under Subtitle C.

3 Also I feel that EPA -- it would be
4 appreciative if EPA could provide a thorough
5 explanation as to how stricter regulations on
6 landfilling and hazardous material will prevent
7 any leaching disasters in the future.

8 And I thank you for your time.

9 MR. DELLINGER: Number 26.

10 MS. JAIMISON: My name is Joy Jamison.
11 I'm speaking for Colorado Interfaith Power and
12 Light. Our mission is to encourage diverse faith
13 communities to actively care for God's creation.
14 Thank you for the chance to comment today. We
15 support Subtitle C, which would treat coal ash as
16 hazardous waste.

17 This is a moral and eco-justice issue.
18 Coal ash disproportionately affects the poor.
19 Right here in Denver in the Elyria neighborhood
20 next to Xcel's Cherokee plant, Xcel parks railroad
21 cars full of coal ash right across the street from
22 private housing.

1 According to the EPA's own statistics,
2 52 percent of coal ash sites have higher than
3 average low-income families and 28 percent have
4 higher than average minority populations. If coal
5 ash is not regulated, the only recourse for
6 individuals in these communities is citizen suits.
7 No one there can afford to sue.

8 Another concern is unencapsulated
9 beneficial uses happening right now, such as using
10 coal ash particles as fill for golf courses,
11 playgrounds, and for fertilizer. Playgrounds
12 where children will be playing in coal ash?
13 Fertilizer, wind will blow it everywhere.

14 According to EPA statistics, excess
15 cancer risk for children drinking water
16 contaminated with arsenic is as high as 1 in 50.
17 Yet we're still storing coal ash with arsenic in
18 unlined ponds. There must be similar risks in
19 using coal ash for playgrounds and fertilizer.

20 I have heard comments today about the
21 costs of Subtitle C. In fact, if you do proceed
22 with Subtitle C, the electricity costs will

1 increase less than 1 percent.

2 If the misuse of coal ash is a moral
3 issue, a bigger one is the continued use of coal
4 itself. In 2006 coal provided 27 percent of the
5 CO2 spewing into the atmosphere and helping to
6 accelerate climate change.

7 Then there are the downstream costs of
8 burning coal that are not paid by industry; things
9 like the cost of air pollution, greenhouse gases,
10 water use, water quality, land use, energy
11 security, coal combustion and mining wastes, and
12 the accompanying health effects.

13 These are paid for by those individuals
14 primarily with low income, little education, and
15 little influence. Another moral and eco-justice
16 issue.

17 I do not support the ongoing
18 unencapsulated uses of coal ash. I do support
19 Subtitle C treating coal ash as hazardous waste.

20 Colorado Interfaith Power and Light
21 opposes unencapsulated beneficial uses without
22 significant additional research.

1 Thanks.

2 MR. DELLINGER: Thank you. Number 27.

3 MS. FRAINAGUIRRE: I am Frances
4 FrainAguirre. I live in northwest Denver. I'm
5 former president of the neighborhood association,
6 but I'm also here as an individual citizen.

7 I understand that the purpose of
8 government is to protect the common good. There
9 is no such thing as most companies policing
10 themselves. Since profit is the name of the game
11 in most businesses, or in all businesses for that
12 matter, we need protection for the health of the
13 common good.

14 I've seen the results of companies that
15 have made the almighty dollar their god without
16 any concern for individual persons. They will not
17 police themselves nor be transparent without
18 regulation.

19 I am here today to say that toxic coal
20 ash needs to be designated as a hazardous waste.
21 The EPA also needs to be transparent. I've worked
22 with the EPA before on cleaning up a toxic waste

1 site in my neighborhood, and I know how difficult
2 it was to work with the EPA; that it went push,
3 push, push, push, push to get something done. So
4 I also say that needs to happen.

5 I grew up in a steel mill neighborhood
6 in Chicago. I've seen the results of unregulated
7 soot that the people in those neighborhoods got to
8 breathe day in and day out.

9 My own brother has mesothelioma due to
10 General Mills' lack of provision and application
11 of safety standards. Two of my sisters have
12 cancer. In a generation where -- well, I'm saying
13 a prior generation had no cancer at all.

14 It seems that the bureaucratic red tape
15 that keeps the EPA from informing those concerned
16 about what's being done needs to be expedited.

17 I've seen the EPA clean up toxic waste
18 sites in northwest Denver, and I've known of their
19 work in Globeville in northwest Denver. So I hope
20 to see the EPA doing something with coal ash.

21 Thank you.

22 MR. DELLINGER: Number 28. And while

1 we're getting started with your testimony, could
2 Number 29 and Number 206 and 207 come forward, and
3 208.

4 MR. CAWLEY: Good morning. My name is
5 Bernie Cawley, and I represent the Colorado Ready
6 Mixed Concrete Association. We represent the
7 ready mixed concrete industry throughout the state
8 and have producing members in almost every
9 city/county area. We also have engineers and
10 architects that are also members.

11 Today you're going to hear from a number
12 of different interested parties and a myriad of
13 different topics that are going to be raised. I'd
14 like to touch on only two.

15 The specifying community, primarily
16 architects and engineers, are the ones who
17 typically make the decision on what building
18 materials are used. With concrete it's quite
19 common for these groups to specify the mix design.

20 Since the review of CCRs was announced,
21 our office has been deluged with calls from
22 different architects and engineers throughout the

1 state asking, Is it safe to use a CCR on their
2 projects.

3 Despite our positive approach towards
4 it, this whole group of specifiers is not doing it
5 because they're afraid of the stigma of it being a
6 hazardous material. They're also afraid of future
7 liability. When you add the additional cost of
8 trucking, handling, and storage of a hazardous
9 material, very few are going to specify a CCR due
10 to potential for the increased cost and primarily
11 that future liability.

12 The second topic is something called
13 alkali silica reaction or ASR. ASR is caused by
14 cement interacting with the silica, and many of
15 the aggregates that are found in the state of
16 Colorado -- almost all the aggregates here have
17 it.

18 The result is a rapid deterioration of
19 concrete. So you use CCRs as a mitigating factor
20 to stop this reaction. They're probably the most
21 prevalent and the best means to mitigate ASR.

22 So if it's labeled as a hazardous or

1 special material, it's doubtful the specifiers are
2 going to use it. This is going to result in a
3 number of different aggregates, another product
4 for mitigation, or a low alkali cement or all
5 three having to be shipped into Colorado from
6 another state.

7 This is going to result in a
8 skyrocketing of costs of concrete and also the
9 quality of concrete. So in this economy it's
10 probably going to result in a number of different
11 projects not being built; schools, roads, houses,
12 et cetera.

13 Thank you very much.

14 MR. DELLINGER: Number 29.

15 MR. AMME: Good morning. My name is
16 Robert Amme. I'm a research professor at the
17 University of Denver, and about 12 years ago we
18 recognized that what is really needed in the area
19 of sustainable development and sustainable growth
20 is a need for lots of research and development
21 activities, primarily research having to do with
22 what we call environmental materials. Those are

1 materials that existed in the environment, many
2 types of which are considered waste for
3 profit-making business purposes.

4 But we decided to take a hard look at a
5 number of granular materials, including just a --
6 fine materials coming from rock quarries, which
7 are being underutilized, how to make them into
8 useful products. And naturally we were led also
9 to the area of coal ashes.

10 Our laboratory is for the purpose of
11 investigating how coal ashes can be combined with
12 binders and made into useful products that can be
13 used in industry and building industries.

14 The R&D that we've done, most of the
15 research has been supported by a number of
16 entities, including the Department of Energy,
17 various agencies of the DOE, the Colorado Advanced
18 Materials Institute, the Public Service Company of
19 Colorado. Several other utilities as well.

20 We've made panels and slabs and blocks
21 and bricks, some of which have been coal-fired --
22 which have been fired to higher temperatures for

1 testing strength, and many of our materials then
2 go out to the commercial testing laboratories to
3 be sure that they will meet both strength and
4 toxicity characteristic leaching procedure
5 specifications.

6 The ashes we've used have been very good
7 in the sense that they're very low in contaminants
8 of any kind.

9 So my concern is principally that we
10 don't condemn all ashes to being considered
11 hazardous materials if one or two might be. We
12 need R&D, and we need lots of it, and
13 unfortunately, this is something that really needs
14 EPA's attention, and hopefully we can solve some
15 of the problems by -- economically, I should say,
16 by selecting those materials that are safe enough
17 to be used in the environment and to identify
18 those that are not.

19 Thank you.

20 MR. DELLINGER: Number 206.

21 MR. KINSEY: Good morning, and thank
22 you. My name is Robert Kensey. I'm a retired

1 United Church of Christ minister. I am a retired
2 high school teacher of economics and history, and
3 I am the Green Party candidate for United States
4 senate, and in the last election I received 50,000
5 votes showing support for Green Party positions,
6 and I speak for them today.

7 As a clergyman, I remember that our
8 famous ancestor Adam had the power to name things,
9 and when you name something like water, it has
10 three different forms; and steam can burn your
11 skin, ice can heal a wound, and water is essential
12 to our health -- clean water.

13 Hazardous waste, it seems to me, applied
14 to coal ash is applied in a certain form of that
15 coal ash, and you have allowed in Bevill exception
16 that it can be renamed to something else when it's
17 properly changed into that form. That's fine.

18 And that should solve all the problems concerning
19 the business interests in using coal ash in a
20 valuable recycled way.

21 Electricity production must be at full
22 cost pricing, and corporations prevent it from

1 privatizing profits and socializing costs. That
2 is their deadly destructive game often.

3 Arguments for continued coal burning are

4 grounded in its cost-effectiveness compared to
5 other forms of energy, but full priced -- full
6 cost pricing of -- all of a sudden makes
7 sustainable renewable energy much more attractive
8 both in terms of planetary health and in terms of
9 consumer cost.

10 Only when the cost of responsible,
11 long-term waste management is included can a true
12 picture of real cost emerge.

13 Subtitle C names the problem to be
14 managed and thus creates the leverage to build
15 full-cost pricing into electricity production.

16 I'd like you to take that economic
17 argument into consideration in your very valuable
18 Subtitle C.

19 Thank you very much.

20 MR. DELLINGER: Number 207. Number 208.
21 Is Number 207 in the room?

22 MS. GOODMAN: Hello. My name is Lori

1 Goodman, and I'm a member of the Navajo Nation on
2 the Navajo reservation, and I'm with the
3 organization Dine Citizens Against Ruining Our
4 Environment, and today I'm speaking for our
5 members that live next to the 90 to 95 million
6 tons of coal combustion waste in Fruitland, New
7 Mexico, making it one of the largest toxic
8 disposal in the U.S. This is from a report from
9 the U.S. EPA's site visit from 2001.

10 The way that -- you know, it blows in
11 the wind. It impacts our water. And the process
12 is, for those of you that don't know, after each
13 16-hour shift 85 tons of coal ash is dumped into a
14 mine pit. A foot of dirt is placed on it, and
15 there's no compaction. And so, you know, no
16 liners, no treatment system, and it's utilized to
17 prevent leaching.

18 According to National Research -- the
19 National Academy of Science, CCW contains a
20 mixture of heavy metal and other toxic
21 constituents that pose public health and
22 environmental concerns.

1 And in 2005 a preliminary evaluation of
2 the potential for surface water quality impacts
3 from CCW disposal at the Navajo mine was prepared
4 by science and engineering technology application
5 for submission to the National Academy of Science.

6 The resulting report concluded that
7 while available environmental monitoring data was
8 highly deficient, the limited available data
9 nonetheless demonstrated that water quality
10 parameters for pH total dissolved solids, sulfite
11 borium, selenium, and arsenic were at least three
12 times greater.

13 In 2000 the Navajo Nation EPA concerned
14 about the potential health threat posed by CCW on
15 the Navajo Nation requested that OSM impose
16 additional control on CCW disposal practices at
17 the Navajo mine. They requested control including
18 requiring liners, collection system, groundwater
19 monitoring, and fugitive dust control. OSM
20 rejected Navajo Nation EPA request.

21 So the health impacts is what we're
22 talking about. When the wind blows, you know, it

1 blows all over the place, and I would invite
2 mining people here, you know, to be -- to find
3 themselves in the situation where the coal dust is
4 blowing all over the place.

5 So the ending result, in November 2009,
6 the Chinle Indian Health Service received 110
7 Navajo elementary students for the purpose of
8 giving them the H1N1 shots. Only 40 of them were
9 eligible for shots as they had underlying asthma
10 and respiratory problems.

11 An elementary school, Ojo Amarillo, a
12 mile from the Four Corners Power Plant, children
13 suffer in alarming numbers from asthma and
14 neurological problems.

15 Thank you.

16 MR. DELLINGER: I'm going to take about
17 a minute to figure who's here and not here. Betsy
18 -- Number 30 and 31, and 32, are you here?

19 UNIDENTIFIED SPEAKER: Yes.

20 MR. DELLINGER: Okay. We're going to go
21 with Numbers 30, 31, 32, and 33. Number 30.

22 MR. BUSH: Thank you. My name is Ed

1 Bush, and I'm a lead accredited professional. As
2 a lead accredited professional, I spend a great
3 deal of my time working with design professionals
4 to help them find environmentally friendly
5 solutions to construction challenges.

6 The benefits of using fly ash in
7 concrete in Colorado are great. We substituted it
8 for cement. We're substituting a waste product
9 for a product that otherwise has to be
10 manufactured at a great expense. So it's not only
11 environmentally friendly because we're using a
12 recycled material and replacing a new material,
13 but it's cost-effective.

14 In Colorado the aggregates that we have
15 often react with leftover alkali in cement causing
16 an alkali silica reaction that decreases the
17 durability of concrete. Using fly ash in concrete
18 helps eliminate the alkali silica reaction making
19 concrete more durable.

20 The EPA's own study shows that if fly
21 ash is used to produce concrete, heavy metals such
22 as mercury can't be leached out of it. So it's a

1 safe use of fly ash.

2 If EPA decides to regulate fly ash as a
3 hazardous material, I haven't found a single
4 construction specifier who will be specifying
5 concrete that contains fly ash simply because of
6 liability reasons. Even if EPA says that concrete
7 is a beneficial use, if they're also saying that
8 it's hazardous material, construction specifiers
9 aren't willing to take on that liability.

10 In conclusion, if you want concrete to
11 remain the environmentally friendly, durable
12 product that it is today, please do not regulate
13 fly ash as a hazardous material.

14 Thank you.

15 MR. DELLINGER: Thank you. Number 31.

16 MR. KOSNETT: Good afternoon. My name
17 is Michael Kosnett. I'm a physician specializing
18 in occupational environmental medicine and medical
19 toxicology. I'm an associate clinical professor
20 at the University of Colorado Denver School of
21 Medicine, the division of clinical pharmacology
22 and toxicology. I'm also on the faculty of the

1 Colorado School of Public Health. However, I'm
2 appearing here today and my comments are not made
3 on behalf of those institutions. They're my
4 personal comments.

5 I have been involved in the study of the
6 hazards of arsenic for a number of years, and the
7 reason briefly that I want to address the group
8 today is that many of the health concerns and
9 drivers for regulation of coal combustion waste
10 emanate from the leading concern over the risk
11 posed by arsenic, particularly the risk of cancer
12 associated with the potential migration of arsenic
13 from coal combustion waste into drinking water.

14 A document that was released by EPA in
15 April of 2010, The Human and Ecological Risk
16 Assessment of Coal Combustion Wastes, identifying
17 the risk from arsenic as being one of the greatest
18 drivers or the most significant driver in
19 regulation.

20 I'd like to draw EPA's attention to the
21 fact that the risks identified by arsenic in that
22 document are, in fact, considerable underestimates

1 of the actual risks posed by arsenic. The key
2 issue is that the slope -- cancer slope factor
3 that was used in calculating the cancer risk was
4 based on the IRIS -- current IRIS document. That
5 document is based on the identification of arsenic
6 solely as a cause of skin cancer. It was
7 initially issued in 1984 and has not been
8 subsequently revised.

9 In issuing its revised arsenic and
10 drinking water standard in 2001, EPA explicitly
11 recognized that arsenic is a cause of lung cancer
12 and bladder cancer, and the National Research
13 Council recommended as well that arsenic should be
14 regulated as a lung cancer and a bladder cancer
15 risk.

16 Most importantly and most significantly,
17 the EPA science advisory panel issued a
18 recommended slope factor of 25.7, considerably
19 above 1.5, in its February 2010 final draft
20 toxicological review of inorganic arsenic. It is
21 absolutely essential that the risks in EPA's coal
22 combustion ash analysis be revised to reflect the

1 more up-to-date information which other branches
2 of EPA clearly recognize.

3 Thank you very much.

4 MR. DELLINGER: Number 32.

5 MR. CARROLL: Good afternoon. My name
6 is Cory Carroll. I just drove down from Fort
7 Collins. I'm a family doctor, board certified to
8 practice in that city.

9 I'm here supporting the more aggressive
10 Subtitle C in the regulation of coal ash. A large
11 part of my practice involve preventive medicine,
12 and I educate my patients in methods to enhance
13 their health and obviously avoid disease.

14 Health cornerstones; good nutrition,
15 clean air, clean water, of course, regular
16 exercise. With this foundation my patients have
17 the best opportunity to avoid disease and achieve
18 long and fulfilled lives.

19 Many parameters are the choice of the
20 individual and those behaviors obviously will
21 definitely impact health. However, an unhealthy
22 environment is beyond their control, and exposure

1 to pollutants including heavy metals and toxins is
2 extremely concerning to me as a medical physician.

3 Our bodies are extremely complicated
4 chemical plants. Microscopic chemicals, toxins
5 that invade our bodies, be it through our lungs,
6 gastrointestinal tract, or through the skin, will
7 adversely affect our health. Even mild exposure
8 of certain toxins, especially in young patients,
9 can do great harm.

10 As a physician I feel an absolute
11 obligation to make sure my patients' environment
12 is as clean as possible. This is critical not
13 only for my current patients but more so for
14 future generations.

15 Since coal ash contains arsenic, lead,
16 mercury cadmium, chromium, selenium, it is
17 imperative that these known toxins and carcinogens
18 are regulated and disposed of as safely as
19 possible to minimize exposures to humans as well
20 as the animals and other organs -- organisms that
21 we may consume.

22 Subtitle C will give the greatest

1 assurance of safe disposal of coal ash. Without
2 Subtitle C of the RCRA, violations in disposing of
3 the ash are very likely to occur, in my opinion.

4 Contamination of aquifers is my greatest
5 concern. Once this water, a very scarce resource
6 in Colorado, is contaminated, it will be very
7 difficult if not impossible to reclaim. It is
8 imperative that the EPA step up and recognize the
9 health of Americans will be best preserved with
10 more aggressive regulation, i.e., Subtitle C of
11 the coal ash disposal.

12 Thank you.

13 MR. DELLINGER: Thank you. Number 33.
14 And while Jim Roewer is moving forward, could we
15 have Numbers 209, 210, 211, and 212.

16 MR. ROEWER: I'm Jim Roewer, executive
17 director Utility Solid Waste Activities Group, or
18 USWAG, an association of over 100 electric
19 utilities and trade associations.

20 We've been working cooperatively with
21 EPA for nearly three decades supporting the
22 agency's implementation of the Bevill amendment

1 for CCRs, and I appreciate the opportunity to
2 speak today.

3 Let me say at the outset that USWAG
4 supports the development of federal regulation for
5 CCRs under RCRA's Subtitle D nonhazardous waste
6 program. The question is not whether to regulate
7 but now to regulate.

8 Having evaluated the alternatives
9 proposed, the Subtitle D prime option, with
10 appropriate adjustments, is the best path forward.
11 Unlike the Subtitle C approach, D prime will
12 enable EPA to establish an environmentally
13 protective program without crippling beneficial
14 use, imposing unnecessary costs on power plants,
15 threatening jobs, and increasing electricity
16 costs.

17 Opponents of the Subtitle D option
18 persist in incorrectly stating that this would
19 merely preserve the status quo under which the EPA
20 can only issue guidance. This is not correct.

21 Under the Subtitle D option, EPA would
22 issue federal regulations specifically designed

1 for CCR disposal units. These regulations would
2 be directly enforceable by the states and the
3 public under RCRA's citizen suit provision and
4 violators would be subject to significant civil
5 penalties.

6 EPA would also retain its imminent and
7 substantial endangerment authority to take action
8 against any CCR unit that poses a risk to human
9 health or the environment. Ask any utility that
10 has been the subject of a RCRA citizen suit, with
11 injunctive relief and civil penalties in the
12 balance, whether it views these regulations as
13 mere guidance. These are real regulations with
14 teeth, and it is misleading to suggest otherwise.

15 One of EPA's stated concerns with the
16 Subtitle D option is its perceived lack of federal
17 enforceability under this approach. However, EPA
18 does have the authority to issue federally
19 enforceable Subtitle D rules for CCRs; it simply
20 is not using that authority.

21 I refer EPA to the same RCRA provisions
22 under which it issued federally enforceable

1 Subtitle D rules for municipal solid waste
2 landfills. The first provision, Section 4010(c),
3 directs EPA to develop Subtitle standards for
4 facilities that may or may potentially receive
5 household or conditionally exempt small quantity
6 generator waste.

7 A related provision, Section 4005(c),
8 authorizes EPA to enforce these Subtitle D
9 regulations in states that fail to adopt and
10 implement the federal rules.

11 CCR disposal facilities fall within the
12 scope of EPA's authority under these provisions,
13 and without any question may or have the potential
14 to receive these wastes.

15 The development of Subtitle D
16 regulations under 4010 of RCRA offers a win-win
17 for EPA and the public. While this approach would
18 likely require supplemental proposals, it will
19 assure that the agency gets it right, providing
20 the agency with the enforcement authority it
21 desires while avoiding the unnecessary and adverse
22 implications of Subtitle C.

1 There is simply no reason for EPA to
2 pursue the Subtitle C approach when it can develop
3 federally enforceable rules under the less
4 controversial, yet equally protective, Subtitle D
5 nonhazardous waste program.

6 Thank you.

7 MR. DELLINGER: Number 209.

8 MS. FRAZIER: Good afternoon. Thank you
9 for allowing me to speak here at the hearing. My
10 name is Anna Marie Frazier, and I'm from Dilkon,
11 Arizona, from the Navajo Nation. I'm a member of
12 the Dine, indigenous peoples of this country.

13 It's time for our government -- our --
14 I'm getting lost here. It's time to make a
15 change. Our government -- the U.S. government and
16 the corporations who put money into the political
17 leaders, we need to make a change. They need to
18 make a change in the source of energy for our
19 country.

20 Fossil fuel development is hazardous to
21 our human health, to our environment. On our
22 native land within the four sacred mountains,

1 production of coal started in the 1950s and the
2 early 1960s. We have been living under a cloud of
3 pollution for the past 50 years.

4 And coal ash and pollution from the
5 power plants have been emitting CO2 NOx, selenium,
6 and mercury on our lands for all these years, and
7 there were about -- there are two large coal mines
8 on our Navajo land, and there were three large
9 power plants running daily.

10 And in the 19 -- early 1950s and 1960s
11 there were no illnesses on our lands such as
12 asthma, heart disease, and cancer and diabetes,
13 but after 50 years of fossil fuel development on
14 our land, the health impacts is now very evident.
15 We have asthma, and our children are not pulling
16 -- some of them are pulling oxygen tanks around,
17 and the elders are doing the same. And there are
18 many children that are being born with birth
19 defects.

20 People that have been living near the
21 coal mines and the power plants have lost many
22 livestock because of the runoffs from the

1 wastewater.

2 And how and why did EPA ignore the vast
3 contribution to health impacts caused by coal ash
4 all these years? It's time to change regulation,
5 to regulate stricter and more stringent monitoring
6 policies on coal ash.

7 Fossil fuel -- we are a living proof --
8 our land is living proof of what -- the hazardous
9 waste from fossil fuel development, and it's
10 hazardous to our health, to our -- to all living
11 beings and all the environment here in our
12 country.

13 Thank you.

14 MR. DELLINGER: Thank you. Number 210.

15 MS. BENALLY: Thank you, people, EPA,
16 Sierra Club, for allowing us to come here to bring
17 before you the problems that we live with. And in
18 my community of Black Mesa, Arizona, we have coal
19 mining that has been operating since 1967, and
20 there is no such thing as clean up or monitoring
21 the dump that we live in.

22 Our air quality is very, very bad, and

1 the health impacts of the community and the
2 environment is very bad. So I believe that
3 America needs to change its ways in energy
4 consumption because there is no such thing as
5 clean coal or uranium.

6 They are unsafe. They are
7 unpredictable, and as you know, the spill that has
8 been taking place, you know, in Tennessee and then
9 currently in the Gulf of Mexico, again this
10 morning, there is another explosion of the oil
11 well.

12 So you know, America's greed needs to
13 change, because the policy makers in Washington,
14 DC, and its regulatory agency really don't exist
15 in Indian country. So these things need to be
16 changed.

17 And with the Navajo Nation it allows all
18 the pollution to be unregulated and more energy
19 companies to come and destroy the land, and that's
20 not what we're about.

21 You know, the climate issue right now is
22 a big question, and why are we talking about what

1 are we going to do with the sludge from the coal.
2 There's no place to put it. Just like the
3 uranium. There's no plans in America where these
4 storage facilities will be.

5 You've been pushing these wastes on
6 communities that don't need it, like the brown
7 fields throughout the country, in Indian country
8 especially, we don't need that. We don't want it,
9 no more coal development across this nation
10 because of the climate issue.

11 So you have to change your remedies.
12 It's not all about your money only. It's not all
13 about your greed only. It's about the survival of
14 the planets. Do we want this planet or not, you
15 know. So you didn't buy America, America. You
16 just stole it from us. Now you're killing it, and
17 it needs to be stopped.

18 Thank you.

19 MR. DELLINGER: Number 211.

20 MR. WATAHAMIGIE: Good afternoon. I am
21 here to defend what I believe is wrong and to
22 protect what is right. I am here to represent the

1 Blue Star Kachinas. As a nationalism (sic)
2 received from its birthplace, so will the
3 unifactual capitalistic epicism that are aimed --
4 that are aimed at the indigenous country and its
5 land and its pristine waters.

6 We feel that if we are to make brown
7 laws (sic), that they are to make universal
8 indigenous laws to protect the stars, to protect
9 every elementary last matter that exists, to
10 sustain our survival.

11 We are based on anthropocentric beliefs
12 that are nature centered, that is God being, and
13 we believe that we can all together reliantly
14 create and cocreate a world that is clean, the
15 water that is clean, the soil that is clean from
16 which we were created.

17 And we are asking only that this world
18 needs to be loved just as I have loved the world,
19 and I am not going allow any more nuclear epicism,
20 any of the indigenous world.

21 Thank you.

22 MR. DELLINGER: Could you state your

1 name with the record?

2 MR. WATAHAMIGIE: My name is Bluestar
3 Watahamigie. I am from the Grand Canyon. Thank
4 you.

5 MR. DELLINGER: Thank you. Number 212,
6 and while Number 212 is coming up, can we have
7 Numbers 213, 214, and 216.

8 MR. TODD: Hi. I'm Sean Todd. I'm
9 speaking on behalf of the Boiler Slag Consortium.
10 All coal combustion residues are not created equal
11 or at least not environmentally equal. There is
12 flue gas desulfurization material, bottom ash, fly
13 ash, and boiler slag.

14 Boiler slag is created at the bottom of
15 the furnace and is quashed with water, making it
16 inert, very low leachability, a Mohs hardness of 6
17 plus, and environmentally benign.

18 Two of our speakers earlier today,
19 retired geochemist Ph.D., Dr. Joel Leventhal,
20 said, Don't lump all hazardous waste materials
21 into the same category. Another Ph.D. said don't
22 condemn all ashes to be hazardous if they are,

1 indeed, different.

2 Boiler slag is different. It has
3 different chemical and physical properties than
4 other coal combustion residues.

5 I would like to directly address some
6 allegations that were made at the Arlington,
7 Virginia, meeting on Monday, specifically
8 regarding unencapsulated use of boiler slag.

9 It was said there that the abrasive
10 application of boiler slag released harmful
11 hazardous waste airborne pollutants. We would
12 like to submit to the public docket, which we will
13 do in the Dallas meeting, an independent
14 third-party study that shows this to be factually
15 inaccurate. And we'd be happy to supply that to
16 the docket and to the -- to the written comments,
17 an independent third-party laboratory in
18 Minnesota.

19 I just encourage EPA to look hard at the
20 scientific data; that it doesn't make sense nor is
21 it effective public policy to lump in
22 environmentally benign boiler slag with other --

1 other material that may be or may not be hazardous
2 waste.

3 And we -- we just encourage you that
4 sometimes economic growth and protection of the
5 environment can work hand in hand in the case of
6 boiler slag, which is used in 80 percent of all
7 roofing shingles and road surface materials and in
8 abrasives.

9 Thank you.

10 MR. DELLINGER: Thank you. Number 213.

11 MR. BENZEL: Thank you. I'm the
12 reverend Cliff Benzel and a member of the board of
13 directors of Colorado Interfaith Power and Light,
14 an organization made up of members of faith
15 communities whose goal is to encourage behaviors
16 that enhance our ability to live healthy,
17 bountiful lives in an environmentally friendly
18 world.

19 We are here today to call to the
20 environmental EPA to exercise its policy and
21 regulatory responsibility to protect the health
22 and welfare of the public for the -- from the

1 polluting effects of coal ash.

2 We come as people of faith who believe
3 that the earth is the Lord's and the fullest
4 thereof. We have all been given the
5 responsibility to care for the earth as stewards
6 for the benefit of humankind both now and into the
7 future.

8 When environmental catastrophes do
9 strike, people of faith are always among the first
10 responders. Caring for and protecting creation
11 and vulnerable people is central to all of the
12 many faith traditions of our land.

13 But when is responsibility not enough?
14 Are these -- responding not enough? Are these
15 disasters that could have been prevented?
16 Congregations of many faiths are joining together
17 and demanding better stewardship of the
18 environment in the first place.

19 This often puts us in conflict with
20 those who use the earth as a dumping ground for
21 toxic materials, which are byproducts of our
22 modern society. The scientific evidence is clear

1 that coal ash is a dangerous substance. As long
2 as it is produced, it must be disposed of in ways
3 that eliminate any contact with humankind, whether
4 directly or through contamination of water
5 resources from leaching of toxic chemicals into
6 potential potable water or the general food
7 supply.

8 The proposed Subtitle C seems to us to
9 be the best option to move us towards reduction of
10 the hazardous waste impact of coal ash.

11 The coal industry will argue that we all
12 benefit from less costly energy, but they ignore
13 the human cost of poor health which is often --
14 with its often deadly results. Further, these
15 impacts fall more heavily on those who are least
16 able to mitigate against poor health; namely, poor
17 people and children.

18 We will never know the full cost -- cost
19 of these health concerns, but to ignore them in
20 the economics of coal-fired energy production is a
21 serious mistake.

22 People of faith across the land are

1 demanding better oversight of coal ash in America.
2 The Reverend Sally G. Bingham, canon for the
3 environment in the Episcopal Diocese of California
4 in San Francisco says, "We treat the environment
5 now and will define the kind energy we leave for
6 future generations."

7 We support Subtitle C.

8 MR. DELLINGER: Thank you. Number 214.

9 MS. HENDRICKS: My name is Melissa
10 Hendricks. I'm here representing the American
11 Coal Ash Association. The U.S. EPA created the
12 Resource Conservation Challenge. This program
13 made recycling byproducts a national priority.

14 More than 135 million tons of coal
15 combustion residuals were produced in 2008 making
16 these materials our second largest industrial
17 byproduct stream. Today 45 percent are recycled.

18 If coal ash is labeled a hazardous
19 waste, the EPA will destroy one of America's
20 greatest recycling success stories. With the
21 threat of Subtitle C regulation, the EPA appears
22 to have forgotten a national priority.

1 The EPA appears to have forgotten years
2 of productive partnership. The EPA appears to
3 have forgotten decades of sound scientific
4 research that has proven these materials are safe
5 when properly managed.

6 Any euphemism applied to the material
7 such as "special" does not make the stigma go
8 away. If it is legally hazardous, the negative
9 perception will remain. For a consumer making the
10 choice between a hazardous and nonhazardous
11 product, the choice is clear.

12 Markets for the materials will be
13 destroyed because of the fear of lawsuits, the
14 costs for managing the materials, and because of
15 the stigma.

16 The U.S. EPA reassures small businesses,
17 "We support recycling. We support you." Yet we
18 have witnessed firsthand how quickly the EPA's
19 commitments can change.

20 If recycling industrial materials is a
21 national priority, then why has the agency
22 forgotten decades of sound scientific research?

1 Why has the agency forgotten the significant
2 progress made toward recycling these materials?

3 The Region 9 EPA headquarters here in
4 Colorado were constructed use coal combustion
5 residuals. Has the agency forgotten the
6 environmental that come with recycling coal
7 combustion residuals?

8 We can all agree that the spill in
9 Tennessee is not acceptable. A Subtitle D
10 regulation will address the problem more quickly
11 than a Subtitle C regulation. The agency has
12 enforcement ability, even with a Subtitle D
13 regulation.

14 The EPA made a commitment. The EPA has
15 research to support its commitment. Please follow
16 through with your commitment. Please continue to
17 support recycling and coal combustion residuals.
18 Please do not enact a rule that will be hazardous
19 for Americas.

20 Thank you.

21 MR. DELLINGER: Number 215.

22 MR. HARVEY: My name is Kevin Harvey. I

1 am here as a citizen of Big Sur, California, and
2 for the support of my unborn child, which will
3 soon be a new generation here. I'm also in
4 support of Subtitle C, heavy regulation of coal
5 ash as a toxic waste.

6 There is a native American proverb that
7 we should consider the impact of every decision we
8 make on the next seven generations. We've seen an
9 inkling of the kind of disaster that can occur
10 with coal ash in Tennessee Valley, and we need to
11 prevent future disasters of toxic and carcinogenic
12 substances leaching into our environment.

13 We've also seen the effects of other
14 toxics like formaldehyde and such in Chinese
15 drywall. We don't need a repeat of any more toxic
16 chemicals leaching into our water and air from
17 untested uses of coal ash or flash in any public
18 uses, especially wallboard and concrete.

19 I agree with the quote from Lisa Jackson
20 at the EPA that the time has come for common sense
21 national protections to ensure the safe disposal
22 of coal ash.

1 We are proposing strong steps to address
2 the serious risk of groundwater contamination and
3 threats to drinking water, and we're also putting
4 in place stronger safeguards against structural
5 failures of coal ash impoundments. The health and
6 environment of all communities must be protected.

7 In addition these productions will
8 encourage further investment in renewable energy
9 which will benefit the physical and financial
10 health of our children and our environment for
11 future generations to come.

12 Thank you.

13 MR. DELLINGER: Number 216.

14 MS. HIRSCHMUGL: I'd like to start by
15 thanking you for allowing to us have a public say
16 in this matter. We really appreciate it. My name
17 is Sarah Hirschmugl. I'm in support of Subtitle
18 C, which is heavy regulation of coal ash as a
19 toxic substance. It would be best if it was not
20 produced altogether, but if so, I believe heavy
21 management is imperative.

22 As far as recycling coal ash goes, I do

1 believe that there are three Rs, as we learned
2 from elementary school, and they are reduce,
3 reuse, and recycle. So recycling is important,
4 but I believe that reduction is the first step in
5 that. And if we're able to regulate the coal ash,
6 we could focus more on the reduction than on the
7 recycling of a toxic material.

8 Solid matter is connected through
9 liquids and gases. We have this vague perception
10 that everything is separate, and not everything is
11 separate, and if we continue to put toxic
12 materials into the things that we live in and that
13 we create communities with, these toxic materials
14 will eventually affect us.

15 And it may not be right away. It may be
16 next generation or two generations. I think that
17 we've all seen it happen, and it's time to put the
18 facts that we know into our everyday lives and
19 take a step to begin doing the right thing.

20 Thank you.

21 MR. DELLINGER: We're going to take a
22 lunch break, and we'll reconvene at 1 -- I guess 1

1 o'clock, because we'll have the introduction then,
2 and then speakers will begin at 1:15. So we'll
3 reconvene at 1 o'clock. I believe we've captured
4 everybody who walked in for the morning session.

5 (Whereupon, at 12:31 p.m., a
6 luncheon recess was taken.)

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1 Management Division in EPA's Office of Research
2 Conservation and Recovery, and I will be chairing
3 this afternoon's session of the public hearing.
4 And with me this afternoon are Laurel Celeste,
5 Steve Hoffman, and Jesse Miller.

6 And before we begin the public hearing,
7 again, I am not going to give you the brief
8 description of the proposed rule because I think
9 everybody heard that this morning, but I would
10 like to go over some logistics of how we will run
11 the hearing this afternoon.

12 Speakers, if you preregistered, you were
13 given a 15-minute time slot in which you're
14 scheduled to give your three minutes of testimony,
15 and to guarantee that spot, we've asked that you
16 sign in 10 minutes before your slot and actually
17 be in the room 10 minutes before your slot.

18 Speakers, you were given a number when
19 you signed in, and this is the order in which you
20 will speak and the order in which I will call you.

21 I will call speakers to the front row on
22 my right, your left, and when your number is -- I

1 will call you four at a time, and when your
2 numbers are called, if you would move there, and
3 when your number is called, move directly to the
4 podium, and please state your name and affiliation
5 for our court reporters. And we might have to ask
6 you to spell your name if that's necessary.

7 And, again, because we have a large
8 number of folks signed up to provide testimony
9 today and to be fair to everyone, testimony is
10 limited to three minutes. We will be using an
11 electronic timekeeping system, and we'll also hold
12 up cards to let you know when your time is getting
13 low.

14 When we hold up the first card, you will
15 have two minutes left. We will hold up the second
16 card at one minute. When we hold up the third
17 card, you'll have 30 seconds left, and when the
18 fourth card is held up, your time is up, and we
19 really need you to stop speaking.

20 When you complete speaking, we'll ask
21 you to return to your seat and remain there until
22 all the members of your group have completed their

1 testimony.

2 If you have written comments, we'll ask
3 them, once your group is finished, we'll ask you
4 to place it in the box, which is in front of our
5 court reporters' cable.

6 We're not going to be answering
7 questions on the proposal today. However, from
8 time to time some of us on the hearing panel may
9 ask a question to clarify some of your testimony.
10 As I just mentioned, if you brought a written copy
11 of the comments you're giving, again the box on
12 the floor. If you are only submitting written
13 comments today, we ask that you put them in the
14 box by the registration desk.

15 And if you have additional comments,
16 please follow the instructions on the yellow form
17 and submit them to us by November 10, 2010.

18 Again, our goal is to ensure everyone
19 who's come today to present testimony is given an
20 opportunity to provide comment. To the extent
21 allowed by time constraints, we will do our best
22 to accommodate speakers who have not

1 preregistered, and at this morning's session, we
2 were able to accommodated all those who came. So
3 I'm hopeful we can do the same this afternoon.

4 Today's hearing is scheduled to close at
5 9:00, but we will stay later if necessary, but if
6 for some reason we don't have time to -- you don't
7 have time to present your comments, we have
8 comment sheets in the lobby, and we can -- you can
9 provide a written statement in lieu of oral
10 testimony, and the written statements will be
11 collected and entered into the docket on the
12 proposed rule just as if you had presented them
13 orally.

14 And if anyone in the room would like to
15 testify but has not registered, we ask you to go
16 out to the registration table and sign up to do
17 so. We are likely to take occasional breaks if
18 needed, but we will shorten or eliminate them in
19 order to accommodate as many folks as we can
20 today.

21 And again, if you have a cell phone, I'd
22 appreciate it if you'd turn it off or turn it to

1 vibrate, and if you need to step out of the room,
2 just step out of the room and take phone calls.

3 Again, we ask for your patience as we go
4 forward this afternoon. We might make some minor
5 adjustments as the day progresses. With that,
6 I'll try to get started.

7 And so I'm going to ask Numbers 34, 35,
8 36, and 37 to come to the seats up here. And
9 Number 34, please.

10 MR. ADAMS: My name is Thomas Adams.
11 I'm the executive director of the American Coal
12 Ash Associate headquartered here in the Denver
13 area. Thank you for the opportunity to
14 participate in today's hearing.

15 In its current co-proposals, the U.S.
16 EPA has expressed strong support for the continued
17 beneficial use of coal combustion products.
18 Inclusion in cement production, concrete mixtures,
19 wallboard, and various other products has been
20 excluded from the Subtitle C regulatory scheme for
21 disposal of coal combustion residues.

22 EPA has recognized, and rightly so, that

1 disposal of all CCR is not in the best interest of
2 our society. The more safe recycling that occurs
3 helps mitigate demand for disposal capacity and
4 the resources required to manage CCR disposal.

5 The American Coal Ash Association shares
6 this view. Since its founding in 1968, the ACAA
7 has been encouraging beneficial use of coal
8 combustion products in ways that are
9 environmentally safe, commercially competitive,
10 and contributing to a more sustainable society.

11 However, there is a fundamental problem
12 with the continued recycling of coal combustion
13 products under the Subtitle C proposal to call CCR
14 destined for disposals special waste. Subtitle C
15 is intended for management of hazardous waste.
16 Therefore, anything managed under Subtitle C is
17 actually a hazardous waste no matter what attempt
18 is made to relabel the waste.

19 We believe that markets will reject
20 products which include a material considered
21 hazardous waste.

22 Virtually all of the CCPs recycled into

1 beneficial use face competition from alterative
2 products which do not bear the stigma of being
3 regarded as a hazardous waste. The same delivery
4 truck that happens to bypass a concrete plant and
5 unload in a landfill is hauling a material with
6 identical chemical characteristics that make it
7 hazardous in the landfill but just fine in a batch
8 of concrete.

9 Marketers of the competitive products
10 are already taking advantage of this scenario to
11 gain market share at the expense of coal
12 combustion products today. The basic message is
13 the same. My products do not contain a hazardous
14 waste. Do yours?

15 EPA is continued -- says continued
16 beneficial use will not suffer under the Subtitle
17 C scheme. After all, the agency has listed 13
18 other wastes under Subtitle C and the listing has
19 not discouraged continued recycling of those
20 products.

21 In order to test this statement, I
22 checked around my home and asked colleagues to do

1 the same. It seems that we do not keep black
2 liquor pulping furnaces, spent sulfuric acid, coke
3 oven byproducts, dust from electric arc furnaces,
4 or any of the other listed wastes in our garages
5 or basement.

6 However, coal combustion products can be
7 found on the roofs and in the wallboard of our
8 homes, in the concrete foundations and slabs of
9 our homes, and in the carpet backing we walk on.
10 Clearly homeowners can reach out and touch
11 products containing CCPs unlike any of the listed
12 wastes that EPA cites as examples of consumer
13 behavior. Rational consumers will turn away from
14 anything containing a hazardous waste.

15 The stigma of a hazardous waste rule of
16 any kind is real and operative in markets today
17 before we even have a final rule.

18 We'd like to thank you today for the
19 opportunity and hope that EPA will make its
20 decision based on science, not political science
21 or science fiction.

22 MS. DEVLIN: Thank you. Number 35,

1 please.

2 MR. DAVIS: Good afternoon. My name is
3 Scott Davis. I'm the director of environmental
4 policy and programs for Arizona Public Service
5 Company. I'm also the chair of the Utility Solid
6 Waste Activity Group. APS is an investor-owned
7 utility with headquarters in Phoenix, Arizona. In
8 addition to nuclear, solar, wind, and gas-fired
9 generation, APS owns and operates two coal-fired
10 power plants, and thus will be directly impacted
11 by the final rule, and I appreciate the
12 opportunity to comment.

13 Let me begin by stating that APS
14 supports the development of federal regulations
15 for CCRs under RCRA's Subtitle D nonhazardous
16 waste program, and we believe that Subtitle D
17 prime is the appropriate option. Not only will
18 this approach create an environmentally protective
19 program for coal ash disposal, it will do so
20 without crippling beneficial use and imposing
21 unnecessarily -- unnecessary regulatory costs.

22 A concern we have about both Subtitle D

1 and D prime options, however, is the lack of any
2 mechanism for states to step in and administer the
3 regulations. Many states, including Arizona, have
4 regulatory programs in place that meet or exceed
5 the Subtitle D standards in EPA's proposal.

6 So rather than throw the proverbial baby
7 out with the bath water, APS encourages EPA to
8 allow qualified state programs to administer
9 federal Subtitle D rules.

10 In Arizona, coal ash disposal units are
11 regulated under the Department of Environmental
12 Quality Aquifer Protection Program and the
13 Department of Water Resources Dam Safety Program.
14 Working in tandem, these programs impose stringent
15 requirements to ensure the environment and public
16 safety are protected.

17 I'd also like to comment on our
18 opposition to the Subtitle C option and point out
19 that regulating CCRs as hazardous waste would have
20 a devastating impact on beneficial use, driving
21 more ash into hazardous waste landfills and very
22 quickly overwhelming existing disposal capacity.

1 There are currently no permitted
2 hazardous waste landfills in Arizona.
3 Consequently, a Subtitle C regulatory program
4 would place an enormous burden on the state to
5 permit adequate capacity to handle the volumes of
6 CCRs generated in meeting the state's energy
7 needs.

8 The last attempt to permit a hazardous
9 waste landfill in Arizona drew opposition, and the
10 landfill was never allowed to operate. If the
11 state is unable to permit new landfills, the
12 state's utilities would be forced to ship CCRs out
13 of state, assuming capacity was available
14 elsewhere.

15 In conclusion, there are simply no sound
16 environmental or economic reasons to pursue a
17 Subtitle C approach when the Subtitle D prime
18 option could be tailored to provide federal
19 enforceability under the same RCRA provisions EPA
20 used to establish the Subtitle D rules for
21 municipal solid waste landfills.

22 These rules, implemented by the states

1 and backed by direct EPA enforcement authority,
2 offer the same degree of protection without the
3 attendant regulatory and cost burdens associated
4 with Subtitle D.

5 Thank you for your consideration.

6 MS. DEVLIN: Thank you. Number 36,
7 please. Number 37.

8 MR. COSS: Good afternoon. My name is
9 Terry Coss. I'm the environmental director for
10 Xcel Energy responsible for coal ash management at
11 our four operating companies. I'm also a licensed
12 professional engineer.

13 Xcel Energy provides electric service to
14 3.4 million customers and eight western and
15 midwestern states including Minnesota and
16 Wisconsin, the Dakotas, Colorado, Texas, and New
17 Mexico. We have many concerns regarding EPA's
18 proposal, but I will focus on five issues today.

19 First, we strongly oppose regulation of
20 coal ash disposal on RCRA C. This approach is
21 unnecessary, and we believe EPA has seriously
22 under- estimated the negative consequences. We

1 support the more reasonable D prime option which,
2 with certain modifications, would allow
3 well-designed and well- operated surface
4 impoundments to remain in use.

5 Second, we urge EPA to recognize the
6 need for flexibility in liner designs. We operate
7 in states with very different climates and
8 geologies, such as Minnesota and Colorado. We've
9 demonstrated to our regulators that alternate
10 designs can provide effective protection at lower
11 costs. Any final rule should allow for the use of
12 alternate designs that meet applicable performance
13 standards.

14 Our third concern is that EPA's proposal
15 discounts the important role that many states play
16 today. Our states are very active in our landfill
17 and pond operations, with programs that include
18 permits and operating plans, inspections, and
19 requirements for closure. State engineers and
20 geologists and hydrologists are in the best
21 position to implement such programs.

22 To avoid duplication, we urge EPA to

1 allow states with effective programs to continue
2 to administer them under Subtitle D. Federal
3 efforts should focus on a few states that may need
4 improvement.

5 My fourth comment concerns the negative
6 impact of the RCRA C rule on utilization. We have
7 several power plants where almost all of the ash
8 is beneficially used. Under RCRA C rule, we could
9 see an immediate drop in market demand for this
10 ash due to increased liability concerns and the
11 stigma of a hazardous waste listing.

12 Indeed, we believe concern over a future
13 RCRA C rule has already caused fly ash utilization
14 at one plant to drop from a planned 100 percent to
15 zero. This ash now goes to a commercial landfill.

16 My final comment concerns the negative
17 impact of RCRA C rule on disposal capacity. The
18 commercial disposal facilities we rely on today
19 would no longer be able to accept our ash, and the
20 notion that anyone can quickly and easily build
21 new disposal capacity is simply not realistic.

22 In one case, we've been trying to build

1 a new ash landfill for over 10 years. Despite
2 having an approved environmental impact statement
3 from the state confirming that both the site and
4 design are safe, the project continues to be
5 delayed due to local opposition.

6 For these reasons and others, we urge
7 EPA not to regulate coal ash disposal under RCRA
8 C.

9 Thank you.

10 MS. DEVLIN: Thank you. Numbers 38, 39,
11 40, and 41, please.

12 MR. SCOTT: My name is Mike Scott, and
13 I'm here on behalf of the Montana Sierra Club, and
14 we strongly support the implementation of
15 regulations under Subtitle C.

16 In Montana, coal is exempt from
17 regulation. Our state has continually failed to
18 protect Montanans from the hazards -- the very
19 real hazards posed by coal ash. For 30 years the
20 ash ponds in PPL's Colstrip Power Plant have
21 leaked into the groundwater, and only after
22 citizens sued did our state entertain the idea to

1 take action.

2 Their proposal to mitigate the damages
3 essentially required more paperwork and does not
4 include actually fixing the leaking ash ponds.
5 PPL has said estimated cost of \$30 million to fix
6 the ash ponds is too much. But months before
7 making that statement, PPL donated \$20 million to
8 have a soccer stadium named after their company.

9 This simply demonstrates that public
10 relations is a far more justifiable expense to PPL
11 than keeping toxins out of an entire community's
12 water.

13 The JE Corette Power Plant in Billings
14 where I live has ash ponds at the banks of the
15 Yellowstone River. This river is a treasure to
16 our state that provides irrigation water, drinking
17 water, and recreation to thousands of people.

18 I've heard the industry representatives
19 today advocate for weak regulations, and while I
20 understand their responsibility to their companies
21 and to the bottom lines, I would ask who, who in
22 particular should be poisoned in order to boost

1 their profit margins? Who are these people? And
2 I would love to see the industry actually name
3 names.

4 Luckily, the EPA is not beholding to
5 shareholders and instead is beholding to citizens,
6 and we are here to ask for the protections offered
7 by the federally enforceable minimum standards
8 under Subtitle C.

9 For the sake of our health and welfare
10 and that of future generations, we ask you to
11 please adopt the regulations under Subtitle C.

12 Thank you.

13 MS. DEVLIN: Thank you. Number 39,
14 please.

15 MR. MALONEY: My name is Mike Maloney.
16 I'm the president and CEO of Novinda Corporation.
17 Novinda Corporation is a Colorado-based company
18 that provides a sorbent material for removing
19 mercury from coal-fired utilities.

20 Our product, Amended Silicates, was
21 actually developed with funds from EPA and U.S.
22 DOE. In 2000, EPA and DOE allocated funds for the

1 development of a noncarbon sorbent -- noncarbon,
2 concrete-compatible mercury sorbent specifically
3 to preserve the use of fly ash in concrete.
4 Amended Silicates is that product, a 100 percent
5 concrete- compatible mercury sorbent. We also
6 have evidence that Amended Silicates picks up
7 selenium and arsenic.

8 Amended Silicates chemically renders
9 flue gas mercury into a stable, inert, and
10 insoluble form so that it is permanently and
11 safely sequestered in concrete.

12 We understand that the TVA impoundment
13 failure in 2008 has raised concerns over the
14 regulation of fly ash. In that light, we ask
15 ourselves, What regulatory hole is EPA trying to
16 plug?

17 EPA's stated concerns regarding
18 regulation of CCRs borne out of the TVA spill are,
19 quote, pollution from impoundments and landfills
20 leaching into groundwater and structural failures
21 of impoundments. We agree with this concern.

22 It is apparent that TVA's issues were

1 twofold: That their containment structure was
2 inadequate, and that TVA did not have appropriate
3 incentives to avoid impoundment altogether and
4 move their fly ash into a beneficial use.

5 Regulating coal ash under Subtitle D
6 with increased engineering requirements for
7 landfills and impoundments effectively plugs this
8 regulatory gap.

9 More importantly, under Subtitle D, EPA
10 has the power to effectively alter the economics
11 of coal fly ash in favor of beneficial use thereby
12 -- by increasing the costs associated with
13 landfill disposal.

14 The alternative is to reclassify fly ash
15 as a hazardous waste under Subtitle C. This
16 approach risks undermining EPA's own goals. In
17 fact, EPA's own website states, quote, "CCR's
18 rarely reach RCRA hazardous waste characteristic
19 levels."

20 Debating whether or not Subtitle C
21 hazardous waste designation would stigmatize fly
22 ash misses the point in our opinion. The more

1 compelling question is, If regulating CCRs under
2 Subtitle D with increased requirements for
3 landfill disposal would not only have prevented
4 the TVA spill but also satisfies EPA's goals, why
5 would EPA even risk the stigmatization of CCRs
6 under Subtitle C?

7 If a Subtitle C regulation limits or
8 eliminates beneficial use of CCRs, up to an
9 additional 30 million tons per year of fly ash
10 would require land disposal. This is nearly
11 double the amount of CCRs disposed of today, or at
12 least fly ash.

13 The resulting filling of existing
14 landfills and subsequent need for additional land
15 dedicated to fly ash disposal would cause further
16 and unnecessary environmental stress.

17 Novinda strongly urges EPA to regulate
18 CCRs under Subtitle D and allow us to help EPA
19 accomplish its goals by safely sequestering
20 mercury, selenium, and arsenic in concrete.

21 Thank you.

22 MS. DEVLIN: Thank you. Number 40.

1 MR. BAUGHMAN: Good afternoon. My name
2 is Gary Baughman. I work for the State of
3 Colorado, but I'm speaking today as president of
4 the Association of State and Territorial Solid
5 Waste Management Officials.

6 Our members are responsible for
7 implementing the state solid and hazardous waste
8 management programs in our 50 states and six
9 territories. Needless to say, our members are
10 very interested and concerned about this proposal,
11 and while I can only mention some broad issues
12 here, ASTSWMO will be submitting extensive written
13 comments during the comment period.

14 The states overwhelmingly support the
15 Subtitle D option over the Subtitle C option. The
16 wastes do not meet the normal criteria to be
17 listed as a hazardous waste.

18 To regulate these wastes as a hazardous
19 waste will dilute our ability to focus our efforts
20 on programs that are already strained for the
21 proper management of hazardous waste.

22 The environmental damage sites the EPA

1 has analyzed are all instances where some, if not
2 all, of the disposal activity was conducted prior
3 to strengthening of the design requirements for
4 such activity during the 1990s.

5 We're concern about the impact the
6 regulation under Subtitle C would have on the
7 state's already strained resources to manage
8 hazardous waste, and the amount of coal combustion
9 residuals presently being land disposed is nearly
10 40 times as much as the amount of all other
11 hazardous waste currently be land disposed.

12 EPA has not collected information on and
13 the proposal does not recognize the strong state
14 solid waste enforcement authorities that are
15 routinely used around the country. We're also
16 very concerned about the impact listing this waste
17 under Subtitle C would have on the beneficial use
18 of this waste. The states strongly support
19 appropriate beneficial use rather than land
20 disposal of these wastes.

21 Over a third of the CCR currently
22 generated is presently being used beneficially.

1 We believe that amount would reduce significantly
2 if the waste were listed under Subtitle C.

3 I appreciate this opportunity to
4 comment.

5 MS. DEVLIN: Thank you. Number 41,
6 please.

7 MR. ENGLAND: Good afternoon. I'm Gary
8 England. I'm with Headwaters Resources.
9 Headwaters Resources is the largest
10 post-combustion product marketer and manager in
11 the nation.

12 And as the largest marketer and manager
13 of coal combustion products, we touch absolutely
14 every aspect of the beneficial use of this
15 material. And we are greatly concerned that if
16 the EPA classifies this as Subtitle C hazardous
17 waste, then all of that utilization and beneficial
18 use will end.

19 There's many reasons to continue to
20 utilized fly ash. We've heard several reports
21 today. The most obvious and compelling is the --
22 is the conservation of our natural resources. For

1 every pound of CCPs that go to concrete or
2 beneficial use, there's a natural resource that's
3 not utilized for that.

4 And on an annual basis those savings are
5 roughly 159 trillion BTUs of energy. We save over
6 12 million tons of CO2 production. Over 32
7 billion gallons of water are saved, and has saved
8 this country between 5 and 7 billion dollars a
9 year.

10 I don't believe there are many recycling
11 projects and materials that can save that kind of
12 -- that can see those kind of savings in our
13 country.

14 Not only do we see tremendous savings,
15 but also most of the products that you utilize,
16 coal combustion products are better. They're
17 stronger. When coal combustion products are used
18 in concrete production, it makes a stronger, more
19 durable concrete.

20 If we take the coal combustion products
21 out of that, then the taxpayers are going to be
22 placed with that burden. Most of our highway

1 infrastructure is concrete. That's going to be
2 expensive to construct. It's going to be more
3 expensive to maintain and certainly is going to
4 last -- is going to have a tremendous impact on
5 taxpayers.

6 Under the EPA's current guidelines,
7 Subtitle C/Subtitle D, the design and the
8 operation of the landfills is basically the same.
9 We strongly believe that under Subtitle D the
10 states have the ability and have shown that they
11 have the ability to be able to control the
12 disposal. We agree that disposal has to be
13 handled correctly. We believe under Subtitle D
14 that that is -- the states are capable of doing
15 that.

16 We strongly believe that if it is a
17 Subtitle C hazardous waste, it will not be
18 utilized in concrete. We have been formally
19 notified by Los Angeles Unified School District
20 that fly ash is to be taken out of any of their
21 projects at this point.

22 And we have been notified by several

1 utilities that they will simply cease to take on
2 that kind of liability and that potential
3 litigation.

4 We appreciate the opportunity to express
5 our concerns and certainly hope that EPA will look
6 at a Subtitle D classification.

7 MS. DEVLIN: Thank you. Could I have
8 Numbers 217, 218, 219 and 220, please.

9 217, please. Thank you.

10 MR. LONG: Thank you. My name is Kelvin
11 Long from Flagstaff, Arizona, and I'm just here to
12 state my concerns for just in general the use of
13 fossil fuels and the byproducts that are -- that
14 have and continue to cause a lot of irreparable
15 damage to our land, animals, air, human beings,
16 and plants.

17 And I want to encourage the EPA on this
18 issue -- specific issue to do more tribal
19 consultation. Obama has a tribal consultation
20 executive order, and before I chose which subtitle
21 I would support, I would like to request that the
22 EPA do more tribal consultation and make that

1 public as well as come out to the Navajo Nation
2 and do this public hearing as well there. That's
3 my request.

4 Thank you.

5 MS. DEVLIN: Thank you. Number 218,
6 please.

7 MR. GUSTIN: Good afternoon. My name is
8 Fred Gustin, and I negotiate and administer
9 contracts for the sales of coal combustion
10 products for Kansas City Power & Light Company of
11 Kansas City, Missouri.

12 Over the past 25 years I've worked for
13 the ash marketing subsidiary of a large cement
14 company, I've worked in engineering consulting,
15 and for two different utilities. So I've seen the
16 ash industry from many different angles.

17 I've spent the majority of my working
18 life developing CCP markets that are
19 environmentally safe, technically sound, and
20 economically viable.

21 As you probably know, our industry
22 prefers the term "coal combustion products" or

1 CCPs. If there's one thing that I have learned
2 over the past 25 years, it's that if you want to
3 get somebody to pay you money for something, it
4 helps if you don't refer to it as a waste.

5 Our industry recycles almost 45 percent
6 of production, and we'd like to do a lot better.
7 But how have we managed to get this far? We've
8 done the testing and the monitoring and the R&D
9 necessary to prove the environmental safety, and
10 we've learned about the chemical and physical
11 properties of these materials.

12 We've worked with state departments of
13 natural resources to allow the responsible use.
14 Very importantly, we worked in consensus
15 organization like ASDM and ACI to establish
16 standards and guidelines so these materials will
17 be used properly.

18 And finally, we worked with the
19 engineers and the contractors to teach them how to
20 use our materials properly and to get them written
21 in to the specifications for projects.

22 Some people believe that a hazardous

1 designation will increase recycling rates. I know
2 the opposite to be true. A hazardous designation
3 will place a stigma on these materials, and
4 potential users will shy away from their use and
5 instead buy virgin raw materials with few
6 complications.

7 In the event of a C designation, my
8 company and a lot of other utilities are going to
9 think long and hard about whether to continue
10 allowing the sale of CCPs, and customers are
11 concerned because of the possibility of toxic tort
12 suits by aggressive plaintiff attorneys.

13 Let me give you a real-life example.
14 When I was working for LaFarge Corporation in
15 Minnesota in the mid-1990s, we were selling a lot
16 of Class C fly ash to a large commercial property
17 developer that was using it to stabilize wet soils
18 on their construction sites.

19 In spite of our strict compliance with
20 the conditions of the Minnesota Pollution Control
21 Agency permit, and in spite of the volumes of data
22 that have been generated by the University of

1 Minnesota and the University of North Dakota on
2 our projects that demonstrated the environmental
3 safety of this practice, the developer abruptly
4 discontinued the use of fly ash on the advice of
5 their environmental attorneys.

6 One of their attorneys told me that
7 there was reluctance on the part of lending
8 institutions to finance projects because they were
9 afraid that some day they might need to do a
10 Superfund clean-up on a developed building site
11 and possibly tear the building down. In my
12 experience, the stigma factor is very real and
13 difficult to quantify.

14 To conclude, there have been many
15 challenges in gaining recognition and acceptance
16 of fly ash and other CCPs as valuable materials of
17 construction rather than as waste. We need all
18 the help that we can get.

19 Please do not regulate CCRs as -- under
20 Subtitle C, and please help us instead with a
21 Subtitle D designation.

22 Thank you very much.

1 MS. DEVLIN: Thank you. Number 219,
2 please.

3 MR. NELSON: I want to thank you for
4 this opportunity. My name is Rick Nelson. I'm
5 here in the capacity of a retired senior citizen
6 on a fixed income, and I'm concerned about this
7 action because the EPA has gone on record saying
8 under Subtitle C if this goes forward that
9 utilities rates could increase up to 10 percent.

10 By way of background, I've spent nearly
11 the last 40 years working in the transportation
12 industry, both for the railroads and the trucking
13 industry. I've worked with chemical companies.
14 I've worked with coal companies. I've worked with
15 cement companies.

16 I'm familiar with fly ash. I'm familiar
17 with the transportation of hazardous and
18 nonhazardous material. The landfill operators
19 that I have dealt with in the past, I have seen
20 tipping fees go from 20 to 30 dollars a ton up to
21 four or 500 dollars a ton because of the change in
22 the classification from nonhazardous to hazardous.

1 As an individual on a fixed income, I
2 guess my question is, if this action moves forward
3 and the rates exceed the 10 percent that the EPA
4 has suggested, is the government going to step up
5 and subsidize me on my utilities bills?

6 I doubt very seriously that they would
7 do that, and what guarantee do I have as a senior
8 citizen on a fixed income that I would be able to
9 afford my utility rates in the future if you go
10 forward with this action.

11 Thank you very much.

12 MS. DEVLIN: Thank you. Number 220,
13 please.

14 MR. SCHANTZ: Good afternoon. My name
15 is Mike Schantz, and I'm a professional civil
16 engineer and environmental engineer with over 20
17 years of experience dealing with these materials.
18 That being said, it's been over 10 years since I
19 worked for an ash marketer. So I'm here simply
20 because I care about this issue from a personal
21 perspective.

22 My paycheck doesn't come from a utility.

1 It doesn't come from an ash marketer. My
2 experience and, in fact, the data in the proposed
3 rules as well as comments that we've already heard
4 from the state solid waste regulatory officials
5 make it clear that these materials do not
6 generally exhibit hazardous characteristics.

7 It's important that people understand
8 that, i.e., they do not generally leach hazardous
9 levels of toxic constituents.

10 Now, that being said, I do think
11 regulations are warranted. One thing that I think
12 people need to understand is when materials are
13 landfilled, some leaching is inevitable.
14 Municipal solid waste, for instance, generally
15 exhibits leaching behaviors dramatically higher
16 than what you see out of these materials, but yet
17 they're very successfully managed under Subtitle
18 D.

19 I suggest to you that these materials
20 could be managed in that same fashion quite
21 effectively.

22 Unfortunately, it's clear that

1 irresponsible management of coal combustion
2 byproducts, residues, waste, call it what you
3 will, can have real environmental harm and create
4 the potential for human health impacts.

5 This was unfortunately demonstrated to
6 us at Kingston, but please remember this failure
7 was an engineering failure. It was largely driven
8 by an engineering failure of the embankment.

9 Now, I would suggest to you that the
10 environmental impacts and the potential human
11 health risk would have been similar had that
12 impoundment had, for instance, sea water in it.
13 Pretend that embankment had sea water behind it
14 and the embankment failed. Would we be sitting
15 here debating whether or not we call sea water
16 toxic and hazardous under Subtitle C.? I rather
17 doubt that would be the response.

18 In short, I think the responsible
19 approach clearly would be to regulate these
20 materials under Subtitle D so that they're
21 protective of human health and potential
22 environmental impacts.

1 I also don't want my utility rates to
2 increase as a result of overregulation.

3 So thanks for listening.

4 MS. DEVLIN: Thank you. Numbers 42, 43,
5 44, and 45, please.

6 MR. GUSTIN: This is a little
7 embarrassing. My first testimony was as a
8 citizen, and this is my prescheduled testimony
9 representing Kansas City Power & Light.

10 Once again, my name is Frederick Gustin,
11 and I'm the manager of coal combustion products
12 for KCP&L. We're based in Kansas City, Missouri.

13 I'm here today to express the support of
14 KCP&L for the Subtitle D prime option and to
15 express our strong opposition to any Subtitle C
16 designation for coal ash.

17 As we've seen from many years of testing
18 CCPs, and as EPA determined both in 1993 and in
19 2000, a Subtitle C determination is clearly not
20 warranted as long as these materials are managed
21 properly.

22 As you've seen, there's been a

1 groundswell of bipartisan opposition to Subtitle C
2 across the political regulatory spectrum. Why is
3 this?

4 We believe that it's because regulation
5 under Subtitle C would impose significant but
6 unnecessary costs on our customers of electricity
7 and on the taxpayers. EPA has stated that a
8 Subtitle D determination would provide the same
9 protections to the environment as would a Subtitle
10 C.

11 A Subtitle D prime would require
12 groundwater monitoring for ash ponds with
13 compliance enforced through the states permitting
14 frameworks. We do not agree that an
15 across-the-board closure of all ponds is
16 appropriate for those ponds that are performing in
17 an environmentally satisfactory manner.

18 Further, the states of Missouri and
19 Kansas have strong utility byproduct management
20 programs, and we encourage EPA to look closely at
21 them.

22 Regarding beneficial use of CCPs, there

1 are two points that I'd like to make. First, the
2 hazardous waste stigma is very real, and it has
3 already arrived. Lesley Stahl on the 60 Minutes
4 segment "Is Coal Ash Safe?" asked EPA
5 administrator Lisa Jackson if she thought that fly
6 ash in countertops and in carpeting used in
7 elementary schools was safe, and she asked the
8 question in a tone that indicated that she herself
9 did not feel it was safe. Yet the safety of CCPs
10 in products is an issue that has been addressed
11 over and over.

12 Second, EPA needs to allow and encourage
13 the development of uses for these valuable
14 materials in more applications than in just
15 concrete.

16 Approximately 50 percent of the fly ash
17 sold by our marketer goes into the production of
18 concrete. The balance is sold for use in soil
19 stabilization and application -- another
20 application that we are very excited about,
21 recycling old deteriorated county roads into new
22 roads.

1 In 2005, KCP&L won an award from the
2 EPA's C2P2 program for partnering with Jackson
3 County, Missouri, LaFarge Corporation, and the
4 University of Missouri-Kansas City to demonstrate
5 and document this innovative and valuable
6 application, and a case study was featured on the
7 C2P2 website until recently.

8 To conclude, there is simply not enough
9 concrete produced annually in the United States to
10 utilize 100 percent of fly ash production. That,
11 along with the fact that not all fly ash meets the
12 strict quality requirements for use in concrete
13 but may meet requirements for other uses, requires
14 that EPA both allow and encourage other uses for
15 these materials that can be shown to be safe.

16 Thank you very much.

17 MS. DEVLIN: Thank you. Number 43,
18 please.

19 MR. DOCTOR: Thank you. I'm Bob Doctor.
20 I manage Wyoming's solid waste permitting and
21 corrective action program and Wyoming DEQ. I'm
22 here with a written statement, so I'll try and be

1 quick here.

2 We regulate -- and I'm sorry. We use
3 the W word in Wyoming still -- coal combustion
4 waste, which is regulated as a Subtitle D waste
5 under rules that mirror EPA's Subtitle D
6 requirements for municipal solid waste. We
7 regulate it under three separate programs in the
8 DEQ in Wyoming. Surface impoundments are
9 regulated both by our water quality division as
10 wastewater ponds and under our state engineer's
11 office under dam regulations for the construction
12 of dams and dikes in the state engineer's office.

13 These two programs both require
14 permitting for all these impoundments. They have
15 various degrees of monitoring, engineer
16 certification, inspections a minimum once every
17 five years of these impoundments.

18 I can speak more to solid waste since
19 that's the program I manage. We permit these
20 things almost like we do municipal solid waste
21 landfills with virtually the same type of
22 requirements for public participation, liners,

1 other engineered containment systems such as caps,
2 leachate management.

3 We also require characterization of the
4 waste. We encourage especially that. We require
5 that for any beneficial use. We try to encourage
6 beneficial use through our solid waste rules and
7 regulations.

8 We also have requirements for monitoring
9 corrective action. Again, another public
10 requirement for participation if facilities must
11 go into public corrective action mode.

12 We also require closure and long-term
13 post-closure care for these facilities that
14 amounts to about the same 30 years of post-closure
15 care that you would give to a municipal landfill.

16 We believe that states are in a better
17 position to regulate coal combustion waste than
18 the EPA is. Most of these decisions, many are
19 site-specific conditions that require
20 site-specific knowledge of soils, groundwater,
21 waste type, that stuff. We've heard that not all
22 CCW is the same.

1 We think that states should regulate
2 under it Subtitle D rules and regulations. We're
3 already doing so for municipal solid waste, which
4 is characteristically a far greater threat to
5 human health and the environment than coal
6 combustion waste and doing a very good job of
7 that. We believe that we should continue under
8 that mode.

9 Thank you.

10 MS. DEVLIN: Thank you. Number 44,
11 please.

12 MR. MCRAE: Good afternoon. My name is
13 Clint McRae. My family and I ranch on Rosebud
14 Creek south of Colstrip, Montana. We run a
15 cow/calf operation and a yearling operation. My
16 family has lived on that -- on Rosebud Creek since
17 before Montana was a territory.

18 If there's one common denominator of why
19 my family is still there, one word is water. Both
20 quality and quantity.

21 I live in the shadows of four coal-fired
22 power plants in the town of Colstrip. We early on

1 questioned the ash disposal method of those
2 settling ponds, and we were assured by the State
3 of Montana that these ponds would be -- and I
4 quote -- completely sealed.

5 We were lied to. They're leaking like a
6 sieve. Any leaking in these ponds we were told by
7 the board of health at that time -- and this
8 individual's name was Dr. Will Clark. He said
9 that the leaking ash ponds would activate the
10 closing of the power plants. That's not going to
11 happen.

12 In the Armells Creek watershed in the
13 town of Colstrip there are two ponds. Both of
14 them over the years have leaked, contaminating
15 domestic wells in homes and businesses in the town
16 of Colstrip.

17 60-some homeowners filed a lawsuit
18 against PP&L Montana. They just settled a short
19 time ago for \$25 million in damages. In the
20 Rosebud watershed which I live, another ash pond
21 is leaking. This one is 400-and-some acres. It's
22 80 feet deep. It's been leaking since it was

1 built, for 30 years.

2 The monitoring wells below it have
3 become pump-back wells, and the plume has moved
4 nearly a one-mile radius around it. Again, the
5 law stated that this should be -- and I quote --
6 completely sealed, end quote.

7 A cousin and neighbor who was checking
8 water a year or so ago, this time of year in
9 August and September, realized that there was
10 water coming from the ground up into a reservoir,
11 which does not appear in that time of year.

12 He watched a deer come out of the timber
13 and go in the water up to her chest. She never
14 drank and went back to the timber. He tested that
15 water. It was extremely high in many things, one
16 of which is what I want to talk to you today
17 about, and that's sulfates as it impacts cattle.

18 The toxicity level for sulfates is 500
19 milligrams per liter. The sulfate levels in this
20 reservoir from the leaking ash ponds was 8,100,
21 nearly 16 times the toxic level of sulfates. If a
22 cow would drink this, she would die.

1 What is happening in my backyard is no
2 stigma. It's real. This is an agricultural
3 issue. It's a herd health issue.

4 The State of Montana, Department of
5 Environmental Quality, the only thing they have
6 done is produced a two-page flowchart, which I
7 will include with my comments today.

8 This toxic and poison water, as I said,
9 is a herd health issue, and the State of Montana
10 has done nothing to enforce the law. Subtitle D,
11 if chosen, will also do nothing and will continue
12 the process as is.

13 PP&L has done very little to stop the
14 leak, and I think it's time that they become a
15 good neighbor and work to protect us in the cow
16 business. It's time for federal oversight.

17 Please designate wet ash pond effluent
18 what it is. It's hazardous. And at the minimum,
19 please pick sub-standard -- C -- the C option.

20 Thank you very much for your time.

21 MS. DEVLIN: Thank you. Number 45,
22 please.

1 MR. MOUTAIN: Yes. My name is Jim
2 Moutain. I am an architect and land planner and
3 have been in the business about 40 years. Fly ash
4 in -- products have been used for a very long time
5 in the construction industry. They're used for
6 practically everything imaginable that you can do
7 building-wise. Used as a concrete and mortar and
8 wallboard blocks, bricks, shingles, and paint.

9 So it's quite a wide range of things
10 it's used in, and as a person who has to specify
11 these things, we're very much concerned about how
12 we accomplish this specification and how do we
13 feel -- prove the goods are there as anticipated.

14 The concern of contamination of this
15 environment is, of course, a big item for all of
16 us but is also something that, sounds like from
17 other speakers, can be investigated, can be
18 controlled.

19 And for that reason we are very much
20 interested in seeing it not being classified any
21 higher than it is.

22 I'm currently working with a client who

1 is developing a new concrete system which involves
2 the reuse of many recycled materials to create
3 wall systems and building systems which will be
4 environmentally friendly, will be of benefit to
5 the communities that we will be in.

6 And therefore, I am very much interested
7 in seeing it stay as open as it can while still
8 being safely controlled.

9 So I appreciate your time, and thank you
10 very much.

11 MS. DEVLIN: Thank you. Numbers 46, 47,
12 48, and 49, please.

13 MR. CARLSON: Thank you very much. My
14 name is Paul Carlson. I'm pastor at Our Savior's
15 Lutheran Church in Denver, Colorado. And I want
16 to thank you very much for hearing my testimony
17 today on this issue of dealing with coal ash,
18 which is, as I understand, toxic residue from
19 coal-fired power plants.

20 As I've been reading and learning about
21 coal ash, it apparently contains potential toxins;
22 mercury and cadmium and arsenic, which can and do

1 end up in our groundwater and can move to our
2 drinking water sources as well.

3 These substances have also been
4 associated with cancer. So one way or the other I
5 think we have to say that they pose a significant
6 public health risk that needs to be addressed.

7 Obviously I'm not a scientist. I'm not
8 a professional -- professionally conversant with
9 the business of coal-based energy and the negative
10 and beneficial contributions of coal ash, but it's
11 clear that once again we are faced with a
12 balancing act with business and commercial
13 interests on the one hand and environmental
14 integrity on the other.

15 And there's a bottom line here, but it
16 isn't financial. It's that the elements that make
17 up coal ash are poisonous clearly when released
18 into the environment. Remarkably this is not
19 recent information, and the term "hazardous" has
20 not been officially used to describe coal ash.

21 The EPA is thankfully moving on this
22 obvious point and taking positive action after a

1 long period of looking the other way.

2 I speak as a citizen and as a person of
3 faith who believes that we are called to be good
4 stewards and caretakers of creation and of one
5 another. The Judeo-Christian tradition, in spite
6 of some mistaken notions, views creation as having
7 its source in God and is therefore sacred.

8 It is a treasure to be cared for, not a
9 resource to be mined for all it can give. We are
10 on a relationship of trust with the earth and with
11 creation. That's fundamentally the Christian --
12 the Judeo- Christian attitude, one shared by other
13 faiths as well.

14 At the very least this requires that we
15 take an honest view of the results of coal ash
16 released into the environment and not fog the
17 obvious, which is that we are poisoning the earth
18 and the water and that we have put our heads in
19 the sand about this for years.

20 Business and commercial interests must
21 take second place to what amounts to our moral
22 failure to care for creation. That's the reality,

1 and that will be the reality as we move forward to
2 a world with increasing population and increasing
3 energy and other needs.

4 I do applaud the EPA for its efforts to
5 address this important environmental and public
6 health issue. This is merely an echo of a larger
7 problem, that is, how are we going to work out the
8 balance between the moral imperative to care for
9 creation versus the desire on the part of those
10 controlling our resources to make a profit on
11 them.

12 We all need the social benefits of
13 energy production, but they cannot come at the
14 price of carelessly treating the earth.

15 Whatever decision is finally made, I
16 hope it will take into account that the bottom
17 line is not financial but rather moral.

18 Thank you.

19 MS. DEVLIN: Thank you. Number 47,
20 please.

21 MS. YANKEE: Thank you. I'm Pastor Tina
22 Yankee, also connected to Our Savior's Lutheran,

1 as well as the director of a nonprofit. I thank
2 you for the opportunity to speak to this important
3 issue.

4 I've been reading a bit of materials
5 about coal ash, and I muse that I didn't take
6 chemistry and all of that in college. Instead I
7 studied stuff like psychology and philosophy and
8 business as well as theology.

9 So as a pastor I'm called to be in the
10 caring professions, and also I'm a businesswoman.
11 So I speak with those perspectives.

12 I understand the need to make money,
13 keep costs low, produce what is needed for
14 customers. I understand and respect that we have
15 energy -- electric bills at a reasonable price.

16 But I need to put people first, and I
17 note how God made each person very unique. And
18 the fact is, I have a set of fingerprints that
19 doesn't match anybody else here in this room or
20 around the world. So we are unique. And we're
21 holy in my understanding and part of God's
22 creation.

1 So I want to quickly tell you that I do
2 a ministry in the Denver County Jail working with
3 inmates, and with the inmates I work with people
4 in the federal and state correctional as well as
5 the county jail. I'm comfortable with people with
6 criminal offenses. And however, I'm not very
7 comfortable talking about this today.

8 But I do see a parallel, and that is
9 there was an experiment that happened a few years
10 ago in my life where I went to a table. It was a
11 long table. On one end of the table was a lot of
12 food, in the middle of the table was a little bit
13 of food, and the far end was some soupy-looking
14 stuff with unknown entities in it.

15 And so where did I get to sit at the
16 table? I was blessed because I got to sit with
17 two rich folks with all the great food down on
18 that end. But if you think about it, where we are
19 born, whether we're born rich or poor, whether we
20 are born around coal ash like the gentleman that
21 spoke earlier, whether you're born in that
22 environment it's like the luck of the draw, like

1 sitting at that table.

2 And so I want to say that my folks are
3 in jail or in bondage, if you will, and they
4 probably have done some things that got them
5 there, but what about those people who are born in
6 this environment living around coal and ash that
7 is very harmful in so many ways? We need to get
8 it, to understand it from their perspective of
9 being caught in this.

10 The cost of implementing Subtitle C is
11 estimated, according to the material I read, by 1
12 percent of electrical costs, and so I suggest that
13 we seriously consider that.

14 Thank you.

15 MS. DEVLIN: Thank you. Number 48,
16 please.

17 MS. BONOGOFISKY: Good afternoon. My
18 name is Alexis Bonogofsky, and I'm representing
19 the National Wildlife Federation. I live in
20 Billings, Montana, and I live two miles from PP&L
21 JE Corette plant right on the Yellowstone.

22 I would like to remind the EPA that your

1 mission is to protect health and our natural
2 resources, not profit margins of corporations. I
3 would also like to make the point that we are here
4 today because so far industry has been unable or
5 unwilling to take care of the problem that we have
6 with coal ash.

7 In Colstrip, Montana, this plume is
8 moving, like Clint McRae said, in a mile radius
9 around is moving toward the northern Cheyenne
10 Reservation. Nothing is being done except for
11 monitoring.

12 State oversight is stunningly casual or
13 absent, and states have already shown that they're
14 incapable at best and negligent at worst in taking
15 care of this problem.

16 NWF is strongly encouraging the EPA to
17 regulate CCRs under Subtitle C. Although we will
18 be submitting detailed comments about the effects
19 of coal ash on wildlife populations that we hope
20 the EPA considers under this issue, I really want
21 to talk about this process.

22 If we were truly looking at public input

1 in dealing with these problems, we would have
2 public hearings in Colstrip, Montana; Billings,
3 Montana, and of course, all of the numerous
4 smaller communities that have to deal with this
5 problem in rural America.

6 Instead we're sitting in a hotel in
7 Denver, Colorado, with a lot of paid people,
8 including myself, to be here to hopefully
9 represent people's interest. I hope you're really
10 listening to the people who are here today that
11 are unpaid. They come from these communities that
12 are experiencing contaminated aquifers, rare
13 cancers, sinking towns.

14 This is affecting people who don't have
15 the money to come here and testify. People had to
16 take -- a lot of people had to take time off work
17 to come here, spend their own money to come here,
18 and those are the people that we need to think
19 about when we're -- when we're looking at what we
20 should do here.

21 And I hope that this isn't just a check-
22 off-the-box of public input, because in 10 years

1 of working in the public process, my experience
2 has been the decision is already made, and this is
3 just a check- off-the-box before a decision is
4 made.

5 And I really hope that that box of
6 written comments, that someone actually spends
7 some time looking through them and really looking
8 at what people are saying.

9 And thank you very much.

10 MS. DEVLIN: Thank you. Number 49,
11 please.

12 MR. SAUER: Hello. My name is Brad
13 Sauer. I'm a carpenter, and I help run a family
14 ranch on the Rosebud Creek in southeast Montana.

15 I want to say that you've already heard
16 from one of my neighbors regarding many of the
17 issues with hazardous coal ash, but I'd also like
18 to say that two of my other neighbors are
19 currently in litigation regarding the hazardous
20 aspect of coal ash leaching into groundwater.

21 And they're considering settlements.
22 They may have already settled. I don't know, but

1 with those settlements comes a gag order. Clint
2 also forgot to mention that the people in Colstrip
3 that took the settlement with their houses, there
4 was a gag order placed on them.

5 As a carpenter I'm involved in
6 remodeling of older buildings. I regularly
7 encounter asbestos products. I have to address
8 them in a very specified way. The rules don't
9 often completely apply or make complete sense, but
10 I am very willing to do that because it makes my
11 workplace safer, and I believe it makes a better
12 home for the people.

13 Now, these rules were vigorously opposed
14 by the building industry; however, they have
15 adjusted. Their market has adjusted. The costs,
16 of course, are borne by the customer, but the
17 market has adjusted.

18 Coal ash is known to be hazardous in
19 many ways -- many instances. My state essentially
20 regards it as if it were no different than saw
21 dust.

22 As a small businessman, I'm willing to

1 do my part in keeping our living situations clean.
2 I would ask that the same thing be -- same
3 regulations that apply to asbestos, the same
4 concept be applied to coal ash in the form of your
5 Subtitle C regulation -- I'm not used to public
6 speaking. Excuse me -- because it takes a swing
7 back to -- in regulation to inspire innovation and
8 input and changes that are positive. It's just
9 the nature of humans and government.

10 My illustration of that point, and it
11 applies directly to the coal industry, is
12 reclamation. My predecessors on Rosebud Creek
13 were heavily involved in the development of
14 regulation ideas and rules with the advent of the
15 Colstrip power plant there. Those rules were
16 vigorously opposed by the coal industry, but it's
17 a very good idea, according to them.

18 Thank you.

19 MS. DEVLIN: Thank you. Numbers 50, 51,
20 52 and 53, please. You can go ahead.

21 MR. MIDYETT: My name is Michael
22 Midyett. I'm general manager for the Pavestone

1 Company. We have two manufacturing facilities
2 here in Colorado.

3 This is not a comment of the
4 nonenforcement of the existing rules and
5 regulations, but -- as it pertains to the
6 contamination, but it is a comment on the
7 designation as hazardous waste.

8 At Pavestone we manufacture products;
9 retaining walls, paving stones, and the like. We
10 have 18 facilities throughout the United States
11 and service over 40 states. We also service DOTs,
12 state, local, and federal government, distribution
13 of retail accounts. Our largest customers are
14 Wal-Mart and Home Depot.

15 In 2009 we purchased 45,000 tons of fly
16 ash product. Product is beneficial in increasing
17 performance, reducing efflorescence, and it
18 actually lowers our manufacturing costs.
19 Accordingly, it's provided us the ability to
20 provide consumers a high quality product at a low
21 margin. It also eliminated 45,000 tons of waste
22 product which otherwise would have been dumped.

1 While we understand the beneficial-use
2 designation of the product as these are not
3 considered a hazardous waste product, we're not
4 certain our customers are actually -- their
5 customers understand the difference.

6 The moment that the CCP is designated as
7 a hazardous waste is the moment the litigation
8 will occur. With litigation comes the inevitable
9 indemnification clauses and corresponding
10 insurance costs.

11 As is typical, these costs will be
12 transferred to our consumers and eventually to the
13 customers. So we can foresee future project
14 specifications allowing CCP provided we provide
15 the -- or we the manufacturer assume all
16 liability.

17 Or the other option is we choose not to
18 use the designated waste product or what -- the
19 product that has been designated as a waste
20 product despite the benefits, and instead we order
21 an additional 45,000 tons of cement product with
22 the corresponding greenhouse gases associated with

1 the manufacturing of the product.

2 Cement is almost 15 to -- can be up to
3 15 times the cost of what our fly ash is. We'll
4 share that concrete increased cost with the
5 consumer.

6 So in conclusion, we have an entire
7 concrete products industry currently incorporating
8 coal combustion products. It is a low-cost,
9 high-benefit material, but it's not integral to
10 manufacture a high quality product.

11 The designation of any part of CCP as a
12 hazardous waste will only increase the probability
13 of waste piles and slowly eliminate a recycling
14 avenue that has worked successfully for years.

15 Thank you.

16 MS. DEVLIN: Are numbers 52 and 53 in
17 the room?

18 MS. MCCORMACK: Good afternoon. I am
19 Maureen McCormack. I'm a sister of Loretto, one
20 of Loretto Earth network coordinators, and a
21 member of the Eco-Justice ministries board.

22 My thanks to the EPA for giving us this

1 opportunity for public comment about a very
2 serious problem, coal ash.

3 You may have heard it said that you know
4 you've had a bad day when a team from 60 Minutes
5 camps on your door step. Well, a team from 60
6 Minutes showed up at coal ash disposal sites not
7 once but twice. It was a bad day for the industry
8 and will be a bad day for ordinary citizens if we
9 let the problems associated with coal ash storage
10 and disposal go unchecked.

11 I have studied the two options for
12 regulation that the EPA proposes. I strongly
13 recommend the one under Subtitle C of the Resource
14 Conservation and Recovery Act. I only wish it was
15 stronger. For example, I have major concerns
16 about the exemption for beneficial uses and the
17 absence of regulations for mine fills. These seem
18 like large loopholes to me.

19 The suggested guidelines approach, as in
20 the Subtitle D option, is a very weak alternative.
21 We have enough contemporary examples of what
22 happens when industries police themselves or

1 states operate under suggested guidelines.

2 Ordinarily recycling is beneficial for
3 the planet. Not so when unregulated coal ash
4 which contains toxic elements is used in making
5 concrete, wallboard, asphalt, as fills for golf
6 courses, as cinders to provide traction on
7 highways, and in carpets and countertops. Coal is
8 not clean. Coal ash is not just harmless dirt.

9 When heavy metal such as arsenic, lead,
10 cadmium, and mercury seep into our drinking water,
11 our rivers, streams, and fragile ecosystems from
12 coal ash disposal sites, the results are increased
13 risks of cancer, learning disability, birth
14 defects, and other preventable conditions.

15 Not surprisingly, most of the coal ash
16 disposal sites are found in areas that are
17 disproportionately low income.

18 At a time in our history when there is
19 gridlock in Congress, I am counting on the EPA
20 under the able leadership of administrator Lisa
21 Jackson to exercise its authority and strongly
22 regulate the storage and disposal of coal ash.

1 The health of our communities depends on it.

2 Chose the Subtitle C option.

3 Thank you.

4 MS. DEVLIN: Thank you. Number 53,
5 please.

6 MS. KAISER: My name is Mary Kaiser.

7 Thank you for allowing me to speak in support of
8 Subtitle C. I am speaking not just for myself but
9 for the many disadvantaged people living near coal
10 ash dumping sites that pollute the drinking water
11 with arsenic, lead, mercury, and other heavy
12 metals found to increase cancer 900 times above
13 that which is defined as acceptable, and these
14 remain toxic for years.

15 About 129 million tons of coal ash is
16 generated by the U.S. each year, making it the
17 nation's second largest waste stream. The toxic
18 byproduct of coal combustion is disposed at
19 approximately 600 coal ash landfills and
20 industrial waste ponds nationwide.

21 At least 23 states have poisoned surface
22 or groundwater supplies as a result of improper

1 disposal of coal ash. The industry would like
2 people to believe that it is just dirt. It is
3 not. It is a hazardous waste posing serious
4 health risks to humans, wildlife, and the
5 environment. The industry has hundreds of
6 unregulated coal ash storage ponds located next to
7 rivers throughout the United States.

8 Environmental engineers at Duke and
9 Georgia Tech and medical researchers from Duke's
10 Comprehensive Cancer Center conducted a detailed
11 assessment of the spill at the Tennessee Valley
12 Authority's plant in Harriman, Tennessee. Their
13 analysis of the ash samples revealed that the
14 spilled sludge contained high levels of toxic
15 materials and radioactivity, including 75 parts
16 per million of arsenic, 150 parts per billion of
17 mercury, and 8 picocuries per gram of total
18 radium. A picocurie is a standard measure of
19 radioactivity.

20 Fine particulates, which are roughly the
21 same size as bacteria, are so small that they can
22 easily be inhaled into the deepest reaches of the

1 lungs. People with preexisting pulmonary disease
2 or infections would be more susceptible. Past
3 studies have shown that fine particulates can also
4 pose risks for people with diabetes or a
5 susceptibility to vascular disease.

6 According to the data collected in 1995,
7 more than 60 percent of the country's coal ash
8 disposal units are unlined or clay lined. The EPA
9 also found that these composite liners -- the use
10 of a composite liner system significantly reduces
11 the exposure to coal ash causing- and
12 health-threatening pollution to within acceptable
13 levels. If the federal -- but the federal
14 government and most states do not require such
15 protective measures.

16 I, therefore, encourage you to support
17 Subtitle C with monitoring by both the individual
18 states and the EPA who will set and enforce a
19 national standard. We cannot continue to put
20 those living storage locations at high risks of
21 health problems. We need enforceable standards.

22 Thank you for allowing me to speak in

1 support of Subtitle C.

2 MS. DEVLIN: Thank you. I'm going to go
3 a little bit out of order. Can I have Numbers
4 207, 221, 222, and Number 87, please.

5 MR. SPENDLEY: Hi. I'm Tanner Spendley.
6 I'm from Denver. Unlike most here, I'm not a paid
7 lobbyist. I took off the time because this is
8 something I'm concerned about.

9 For 30 years now the EPA has been
10 studying coal ash, at least they began, and for 10
11 years they've known they need to regulate it. The
12 time to act is now.

13 We've seen what happened when industry
14 leaders try to regulate themselves, and the
15 banking industry recently tried to do that, and
16 the financial system nearly collapsed. We cannot
17 put the health of the citizens to these people who
18 care nothing about the bottom line.

19 I'm concerned about the future. You
20 know, the EPA has long known that mercury,
21 cadmium, and lead are dangerous toxins and are
22 hazardous and cancerous. Individually you

1 regulate them, but when they're found in coal ash,
2 nothing is done.

3 We need comprehensive regulation through
4 the EPA by the federal government. States cannot
5 be left alone to regulate these companies. Texas,
6 Alabama, and a couple other places, quite frankly,
7 they just do not regulate these guys.

8 So should the citizens of those states
9 be left to the wills of these coal leaders? And
10 if you think there's such a thing as clean coal, I
11 recommend you guys go to the citizens of Harriman,
12 Tennessee, or Pines, Indiana, and ask them what
13 they think about clean coal really, this is the
14 chance. This is the chance for you guys to put
15 the public first. Rather than go to pocketbooks
16 of coal industry leaders, lobbyists, think about
17 the public health.

18 I ask that you vote for Subtitle C for
19 the benefit of citizens of America and for our
20 future generations.

21 Thank you very much for the time to
22 speak publicly. I appreciate it.

1 MS. DEVLIN: Thank you. Number 221.

2 MR. HARVEY: Thank you very much. My
3 name is Kevin Harvey. I too am unpaid. I took
4 the day off of work to come here and speak my
5 mind. I'm amending a statement from earlier.

6 Nearly all statements in favor of
7 Subtitle D have referred to the potential for coal
8 waste to be safe. The waste has even greater
9 potential to be dangerous and devastating causing
10 irreparable damage to the environment and to human
11 health.

12 Nearly all uses of coal waste have been
13 the result of necessity due to the massive amounts
14 of coal waste generated and the excess waste with
15 nowhere to dispose of if all.

16 Nearly all statements in favor of
17 Subtitle D have referred to coal waste disposal
18 methods as potentially safe and potentially
19 effective. This potential for safety is the
20 greatest reason for the Environmental Protect
21 Agency to regulate heavily the waste-produced
22 coal.

1 We cannot sacrifice human and
2 environmental safety for the fiscal benefit of
3 companies that are all aware of this potentiality.
4 It is time for the EPA to protect our environment
5 from those companies that are willing to put money
6 over the safety of our environment and our
7 citizens.

8 Fulfill your name sake and regulate by
9 passing Subtitle C to protect humans and the
10 environment from the financial interests of
11 corporations and their admitted potentiality for
12 safety.

13 Thank you.

14 MS. DEVLIN: Thank you. Number 222,
15 please.

16 MR. APT: Good afternoon. My name is
17 Allen Apt. I'm a local citizen. I live in
18 Nederland, Colorado. I want to thank you for the
19 opportunity to speak.

20 The coal ash tragedy in Tennessee is
21 proof that the coal industry and utilities cannot
22 be trusted. They are unable or unwilling to

1 consider public health and safety in their
2 practices. This is an industry that continues to
3 spew thousands of tons of known neurotoxins and
4 mercury into our air and water and still fights
5 regulation at every step. As you know, no fish is
6 safe to eat as a result.

7 I'd like to thank you for recognizing
8 the very serious health and safety risks posed by
9 toxic ash. Only regulation will prevent more
10 Superfund sites. As you know, Superfund sites are
11 paid for by you and I, taxpayers. This is unfair.

12 Coal ash is significantly more polluting
13 than originally thought. As you know, arsenic is
14 now seeping into our groundwater, and living near
15 coal ash is like smoking a pack of cigarettes
16 every day.

17 I strongly support option C, and I hope
18 you will too. It's the only way that we will get
19 the kind of protection we deserve, since storing
20 of wet coal ash ponds is highly dangerous, largely
21 unregulated.

22 I'm also skeptical about the recycling

1 of coal cash. While I'd like to think that it can
2 be done safely, I think it must be proven that
3 it's safe before it is done.

4 Cement is not indestructible. I think
5 you've all seen cement sidewalks, cement
6 driveways, all the other kinds of cement
7 crumbling. I'd like to know just how safe having
8 a toxin in something that is not completely stable
9 is before we start using it -- or continue using
10 it widely.

11 Thank you very much for your time.

12 MS. DEVLIN: Thank you. Number 87,
13 please.

14 MR. BYERS:: Thank you for this
15 opportunity to speak on this important topic. My
16 name is Bill Byers. I'm here representing Novinda
17 Corp. Today.

18 Novinda is a start-up company located
19 here in Denver. We are commercializing a sorbent
20 that captures mercury from the flue gas of
21 coal-fired power plants and other combustion
22 sources. Unlike other mercury sorbents, our

1 Amended Silicates product was specifically
2 developed to preserve the value of fly ash to the
3 cement industry.

4 As EPA has mentioned, both Subtitle C
5 and D options have similar engineering
6 requirements for impoundments and landfills.
7 Because EPA's concern with CCRs is the, quote,
8 pollution from impoundments and landfills leaching
9 into groundwater and the structural failure of
10 impoundments, unquote, either option can address
11 this concern.

12 Because EPA can meet the goals using
13 either option, it should not take the additional
14 risk that a hazardous waste designation will
15 create a stigma that will significantly reduce the
16 amount of ash designated for beneficial use.

17 Asking the market to consider a material
18 hazardous waste unless it is intended for
19 beneficial use is asking the CCR supply chain to
20 accept a striking contradiction. How will a
21 contractor react to the proposal that fly ash is a
22 hazardous waste unless you use it to build a

1 school?

2 The small increase in raw material costs
3 from using alternative materials will outweigh the
4 peace of mind from avoidance of litigation from
5 eliminating that liability.

6 The beneficial use of fly ash supports a
7 multi-billion-dollar economy of small businesses,
8 including Novinda, fly ash marketers, and
9 lightweight brick manufacturers among others.
10 That value, however, pales in comparison to the
11 total return of the utility industry. The value
12 represents less than one percent of the total
13 revenues from the electric power utilities.

14 If CCRs are designated a hazardous
15 waste, the power utilities are more likely to
16 landfill the CCRs than to place them into a
17 potentially litigious marketplace.

18 Regulating fly ash under Subtitle D
19 addresses EPA's concerns and satisfies the
20 agency's goals for CCRs by promoting beneficial
21 use and increasing the economic incentives for
22 industry to avoid landfilling by increasing

1 structural requirements for landfills and
2 impoundments.

3 I strongly urge you to go with the
4 Subtitle D route.

5 Thank you.

6 MS. DEVLIN: Thank you. Numbers 54, 55,
7 56, and 57, please.

8 MS. COYLE: Good afternoon. My name is
9 Mary Ann Coyle. I'm a member of the Loretto
10 community, and we have our offices in the metro
11 Denver area.

12 My educational background is in
13 chemistry, and while I began my career as a
14 research chemist, I left this area of study but
15 have never lost interest in environmental issues.

16 My major concern now is that we
17 recognize the ways in which our actions interfere
18 with the health of planet earth and that we set up
19 standards and policies which can correct the
20 damage done through corporate greed and poor
21 government regulation.

22 Today by virtue of various forms of news

1 media, we know very quickly about the extensive
2 damage coal ash sites are causing to our drinking
3 water.

4 An August 26, 2010, report states that
5 now nearly 140 coal ash sites have proven water
6 pollution problems. Earth Justice, the
7 Environmental Integrity Project, the Sierra Club
8 offer data that in 39 of the existing coal ash
9 dumps in 21 states, water is contaminated with
10 arsenic and other heavy metals.

11 The August report builds on a February
12 report that similar contamination was found in an
13 additional 31 coal ash dump sites by Earth Justice
14 EIP. That combined with what EPA has already
15 indicated in terms of water contamination, we end
16 up with nearly 140 sites in 34 states.

17 I am aware of the technological remedies
18 taken by corporations to scrub and concentrate the
19 coal ash and to bag it in a material resistant to
20 leaks, and I am aware that this is touted as a
21 solution to the environmental damage reported by
22 EPA and other groups.

1 I also observed firsthand the results of
2 mountaintop removal in Tennessee and the impact of
3 the spill of the wet ash into the Emory River near
4 Knoxville a new years back. Even though scrub
5 techniques have concentrated the ash, the effects
6 of leakage is too risky.

7 In my mind there's no such thing as
8 clean or cheap coal. The toll is too risky in
9 human terms and planetary destruction. Therefore,
10 I urge EPA to go for the very strongest
11 restrictions and to shape the legislation around
12 Subtitle C option that you have proposed. This is
13 a moral imperative as I see it.

14 Thank you.

15 MS. DEVLIN: Thank you. Number 55,
16 please.

17 MS. ORF: Thank you. My name is Dianna
18 Orf. I'm here representing the Colorado Mining
19 Association. Background on the Colorado Mining
20 Association can be found in our written comments.

21 CMA's statement today is limited in
22 scope. We plan to submit more detailed written

1 comments prior to the September (sic) 20th
2 deadline.

3 CMA supports EPA's preamble to the
4 proposed rule which states that it is not
5 proposing to address the placement of CCRs in
6 mines or in non-minefill uses of CCRs at coal mine
7 sites in the action.

8 We believe this is an appropriate
9 limitation and reflects prior findings of the
10 National Academy of Sciences which in 2006
11 recommended that the federal Office of Surface
12 Mining, or OSM, and its state partners under the
13 Surface Mining Control and Reclamation Act take
14 the lead in developing new national standards for
15 CCR use in mines because the framework is already
16 in place to deal with these mine- related issues.

17 CMA believes that the EPA should
18 continue to defer the issue of CCR placement in
19 mines to OSM because of OSM's unique expertise and
20 ongoing role in mine regulation.

21 CMA is concerned that the intention to
22 defer the issue to OSM requires clarification in

1 the text of the proposed regulation. The
2 definition of minefill in the preamble is vague
3 and does not adequately reflect non-minefill uses
4 of CCRs, which EPA states is not regulating in the
5 proposal.

6 Also, only in the proposed Subtitle C
7 regulations does it specifically exclude
8 minefilling operations. The regulations, however,
9 do not contain a definition for the term
10 "minefilling." It appears that EPA intends for
11 other non-minefilled uses at coal mines to be
12 exempt from the regulation; however, it's unclear
13 from the regulatory text.

14 There's no similar exclusions, although
15 there should be, under the proposed Subtitle D
16 nonhazardous waste regulations. Further, EPA's
17 definition of CCR landfill under both proposals
18 only expressly excludes underground mines and
19 fails to address surface mines.

20 Clarification is necessary in the
21 preamble and the final regulatory text that
22 placement of CCRs in mines and other non-minefill

1 uses of CCRs at both underground and surface mines
2 -- coal mines are all excluded from the rule
3 requirements in order to avoid confusion and
4 regulatory uncertainty.

5 We support the decision not to reverse
6 the regulatory determinations for beneficial uses
7 of CCRs, but we are concerned with EPA's
8 discussion of unencapsulated uses, which is not
9 defined in the current proposal.

10 Thank you very much for the opportunity
11 to talk.

12 MS. DEVLIN: Thank you. Number 56,
13 please.

14 MR. FIORE: Thank you for the
15 opportunity. My name is Mike Fiore. My family
16 owns and operates a real estate investment company
17 and general contracting company in the state of
18 Colorado that employs over 220 people in an Adams
19 County enterprise zone.

20 In the year 2010 these companies are
21 expected to purchase and recycle over one million
22 tons of coal combustion residuals, precipitated

1 calcium carbonate, concrete, asphalt, and clay
2 soils for beneficial uses such as structural fill,
3 road base aggregate, asphalt products, and cement
4 replacement.

5 Recycling of construction and industrial
6 residual materials such as those above reduce the
7 need for mining resources, reduces carbon
8 emissions resulting from transportation of newly
9 mined materials, and conserves landfill space.

10 Since December of '08 we've recycled
11 over 400,000 tons of CCRs and structural fill in
12 our industrial real estate developments. This
13 effort has resulted in a reduced -- reduced
14 transportation of over 137,000 miles, equivalent
15 fuel savings of over 27,000 gallons of diesel or
16 600,000 pounds of carbon emissions.

17 Additionally, over 400,000 cubic yards
18 of landfill space and natural resource mining has
19 been saved due to our use.

20 Background soil tests and daily test
21 results of the CCRs are submitted to the State of
22 Colorado and Adams County to identify the presence

1 of heavy metals, pesticides, and radionuclides.
2 In every case, concentration of these substances
3 within the CCRs has shown to be either nondetect
4 or less than native soils.

5 While we have never shown any
6 constituents that exceed background soils,
7 additional precautions are taken requiring that no
8 CCRs are placed in groundwater or within 50 feet
9 of any natural waterway.

10 As a contractor, property owner, and
11 citizen, I'm opposed to ruling CCRs as a hazardous
12 waste. The proper utilization of CCRs is proven
13 to reduce environment impact rather than
14 contribute to environmental damage.

15 Blanket regulation of all CCRs as
16 hazardous waste would drastically reduce if not
17 eliminate valid, responsible beneficial recycling
18 of these materials. Furthermore, sampling and
19 testing of the materials in this example has
20 perpetually shown that the use of CCRs as a
21 structural fill introduces no hazard greater than
22 that of background soils.

1 The evidence in this case and likely in
2 any others does not support the regulation of CCRs
3 as a hazardous waste. A ruling of this nature
4 will likely cause business owners to landfill
5 millions of tons of construction material and
6 increase the need for natural resources.

7 This new hazardous waste stigma has
8 caused an unnecessary stall in research of new
9 beneficial uses and a reluctance to pursue other
10 construction materials recycling by property
11 owners.

12 I encourage the EPA to be strongly
13 supportive of effective and responsible beneficial
14 uses of CCRs due to the significant environmental
15 benefits and the high volume of CCRs produced in
16 the United States.

17 Thank you.

18 MS. DEVLIN: Thank you. Number 57,
19 please.

20 MS. WIENS: Good afternoon. My name is
21 Kyla Wiens, and I'm here today representing the
22 Montana Environmental Information Center in

1 Helena, Montana.

2 MEIC strongly supports EPA's proposed
3 Subtitle C option. Based on our experience in
4 Montana, it is clear that only the Subtitle C
5 option will even come close to protecting public
6 health in Montana's pristine environment and the
7 devastating effects of this waste stream.

8 This is especially true now that
9 Montana's coal-fired power plants are required to
10 capture a portion of their mercury air emissions
11 which result in elevated levels of mercury in the
12 coal ash waste stream.

13 Many politicians hand-in-hand with the
14 coal industry argue that states should be allowed
15 to regulate coal ash, but we know the system will
16 fail because it has already failed in Montana. In
17 the early 1990s, Montana exempted coal ash from
18 state solid waste laws because the waste stream
19 was already regulated under another law.

20 A few years later, coal ash was exempted
21 from that law as well. Currently there is no law
22 in Montana that regulates coal ash. In 2005 and

1 again in 2007 MEIC supported bills to reinstate
2 coal combustion waste as a solid waste under
3 Montana the law.

4 In 2005, with extremely strong industry
5 opposition, the bill was killed on the House
6 floor. In 2007, it didn't even make it out of
7 committee. During that time, MEIC participated in
8 a working group formed by the state Department of
9 Environmental Quality.

10 DEQ's goal was to develop rules that
11 would put the coal industry at ease by allowing
12 them to help draft the regulations. This was a
13 great deal for industry, but they weren't
14 interested and prevented DEQ from moving forward
15 with any type of rulemaking, no matter how weak.

16 The bottom line is Montana does not have
17 the political will to regulate this waste stream.
18 Experience proves that any proposed state
19 regulations will be subject to intense political
20 lobbying resulting in meaningless rules at best or
21 in all likelihood, no rule at all. This
22 well-funded lobbying effort will occur in each

1 state, and the environment will lose.

2 Montana's groundwater is already being
3 contaminated under the failed state-driven
4 regulatory framework. The coal ash ponds at the
5 enormous Colstrip plants are leaking even though
6 they are supposedly regulated under Montana's
7 former regulatory framework.

8 The owners of the Colstrip and the state
9 DEQ have know the ash ponds are leaking since
10 2003. In fact, as the contamination spreads, they
11 simply turn monitoring wells into recovery wells.

12 In April 2010, DEQ and the Colstrip
13 operator reached a tentative agreement that would
14 let the operator continue to study the problem
15 without stopping further contamination. MEIC
16 objected to the proposed agreement. DEQ still
17 hasn't issued a final decision on what it will do
18 about these leaking ponds.

19 It's not fair to place the burden of
20 enacting and enforcing the law on the public in 50
21 different states. That is a solution that will
22 fail. Weak regulations have failed to protect

1 Montanans. I urge you to adopt the Subtitle C
2 option.

3 Thank you.

4 MS. DEVLIN: Thank you. Numbers 58, 59,
5 60, and 61, please.

6 MR. DATTEL: Hello. I'm Clinton Dattel.
7 I'm a private citizen here in Arvada, Colorado. I
8 do a lot of experimenting with fly ash, and
9 cements typically use 50 percent ash in a cement
10 mix for a new material.

11 I patent the accelerator for it.
12 Hopefully we're going to be building houses with
13 it. If this is deemed a hazardous material, it's
14 going to be very hard to sell a house if it has 50
15 percent waste material, and it's deemed hazardous.

16 For every ton of ash that's used in the
17 cement buildings, that's a ton of CO2 that is not
18 put into the air. So deeming it as a hazardous
19 material and we take that fly ash out of the snap
20 -- like I said, for every ton there's going to be
21 a ton more CO2 given out into the air. So there's
22 always a tradeoff.

1 That's about it for me. That's okay,
2 Boss.

3 MS. DEVLIN: Thank you. 59, please.

4 MR. SHULMAN: First of all, thank you
5 for letting me speak. My name is David Shulman.
6 I'm with Elite Aggregates. I hold six patents for
7 bottom ash, fly ash, and fly ash uses, and I hold
8 two patents that are specifically used for
9 enhancement of bottom ash to make a lightweight
10 synthetic aggregate.

11 I am touted throughout the United States
12 and the world as a keynote speaker for the use of
13 synthetic or engineered aggregates, and bottom ash
14 is a very important part of my process.

15 I'm going to talk, just like the
16 gentleman before, about the economics of it. If
17 we have fly ash today and bottom ash -- since my
18 main concern is the bottom ash -- part of it -- if
19 it meets TCLP and the RCRA standards as stated in
20 2009 standards for hazardous waste material, that
21 means that bottom ash becomes a nonhazardous waste
22 and beneficial-use material.

1 If we go and declare that as hazardous
2 waste material, then we cannot building any
3 building, any roads, use it in any concrete in the
4 United States as it stands today, because concrete
5 under -- cement under the patent of 1809 uses
6 bottom ash as 80 percent of its material use.

7 So if you're going to declare bottom ash
8 a hazardous waste material, then you're going to
9 declare cement as a hazardous waste material. And
10 if you're going to declare cement a hazardous
11 waste material, then you're going to consider
12 concrete as a hazardous waste material.

13 And then we can't build. We can't
14 drive. We can't walk. We can't have buildings.
15 We can't have the standard of living we have
16 today.

17 And then EPA has to go and do the
18 reclamation of the concrete because it's then
19 declared a hazardous waste material. So all of
20 our buildings and houses will be torn down.

21 Thank you very much.

22 MS. DEVLIN: Thank you. Number 60,

1 please.

2 MR. SMITH: Good afternoon. My name is
3 Roger Smith, Jr. I'm the president and CEO of
4 Salt River Materials Group. We have two entities
5 under our belt, Phoenix Cement Company and Salt
6 River Sand & Rock.

7 The company of Phoenix Cement Company
8 and Salt River Sand & Rock are business entities
9 -- or government entities -- or divisions of the
10 Salt River Pima-Maricopa Indian Community, a
11 federally recognized Indian tribe.

12 I would like to thank the U.S.
13 Environmental Protection Agency for holding this
14 very important public hearing to provide the
15 opportunity to comment on the EPA's proposed rule
16 which regulate the disposal of combustion
17 residues. I address the potential negative
18 impacts of the hazardous waste designation on our
19 company.

20 Phoenix Cement Company is a regional
21 supplier of coal combustion products, hydraulic
22 cement and gypsum, based in Scottsdale, Arizona.

1 Began operating in 1959.

2 In 1987 Phoenix Cement was purchased by
3 its current owners, Salt River Pima-Maricopa
4 Indian Community. Over the past five decade of
5 our existence our company has undergone many
6 changes. Upgrades in almost every phase of the
7 operations have led to not only great improvements
8 in quality, production, and safety but reduced
9 environmental impacts and exceptional energy
10 efficiency.

11 One of Phoenix Cement Company's
12 commitment to sustainability and environmental
13 improvement can be seen in the results of the
14 modernization of the Clarkdale facility. These
15 plants -- these plant modifications provided an
16 increase in production capacity and at the same
17 time significantly reduced energy consumption and
18 air emissions per ton of cement produced.

19 A long-term participant in the U.S.
20 Protection -- Environmental Protection Agency's
21 Energy Star program, Phoenix Cement has received
22 the Energy Star award for the past three years;

1 2007, '8, and '9.

2 Phoenix Cement has successfully
3 beneficially recycled more than 10 millions tons
4 of CCP, mostly into concrete applications.
5 Beneficial recycling of CCP of this magnitude
6 avoids significant disposal issues and saves CCP
7 from going into landfills, impoundments, and thus
8 avoiding potential for spillage, leaking,
9 contamination, or other -- which is a significant
10 benefit to the environment.

11 There is no good reason to risk
12 destroying coal ash recycling. EPA's own proposed
13 rule acknowledges the new landfill engineering
14 standards would be essentially the same whether
15 coal ash is labeled hazardous or not.
16 Furthermore, new landfill standard actually would
17 be put in place faster if the hazardous label is
18 not pursued.

19 EPA can and should enact new regulations
20 while encouraging the safe recycling of coal ash
21 as a preferred alternative to disposal. EPA must
22 not designate coal ash as --

1 MR. MILLER: Your time's up.

2 MR. SMITH: Thank you very much for your
3 time.

4 MS. DEVLIN: Thank you. Number 61,
5 please.

6 MS. WRANGHAM: Thank you for the
7 opportunity to offer public comment. My name is
8 Theresa Wrangham, and I live in Colorado. Today I
9 speak on behalf of Safe Minds, a nonprofit
10 organization dedicated to investigating the
11 connection between mercury exposure and
12 neurological disorders like autism.

13 Today America is -- faces a crisis of
14 epidemic proportions, one that threatens the
15 livelihood of our country and the core of our
16 future, and it involves our children. They are
17 sick.

18 Coal power burning -- coal-burning power
19 plants are the largest human-caused source of
20 mercury emissions to the air in the United States.
21 Coal combustion residues also contain mercury, a
22 known neurotoxin that affects human development.

1 Autism has increased dramatically from
2 one to two in 10,000 individuals to one to every
3 110 children today, costing our nation 200 to \$400
4 billion a year. Better recognition of the
5 disorder or diagnostic substitution fails to
6 explain this dramatic increase.

7 ADHD has also reached epidemic
8 proportions and currently affects approximately
9 3.5 million children. Asthma has increased 300
10 percent over the past two decades and kills 4,000
11 individuals a year. Allergies have increased 400
12 percent.

13 When you add up all the numbers, it
14 comes out to 20 million children or almost
15 one-third of American children are sick.

16 Genetics alone cannot explain --
17 genetics alone is not capable of causing such a
18 dramatic change in our children's health, and
19 scientists today agree that it must be a
20 combination of genetic susceptibility and
21 environmental factors causing our children to be
22 so sick.

1 While there is a cost savings in using
2 CCPs, there is also a cost that must be placed on
3 the sick children and the impacts and associations
4 of CCPs in that respect.

5 Recent research by the Arkansas
6 Children's Hospital Research Institute in 2009
7 documented children with neuro developmental
8 disorders like autism are more vulnerable to
9 environmental pollutants like mercury because they
10 have lower levels of glutathione, the body's
11 natural defense for excreting environmental
12 pollutants.

13 This finding is supported by a 2006
14 study from the University of Texas Health Science
15 Center which found that for every thousand pounds
16 of environmentally released mercury there was a 43
17 percent increase in the rate of special education
18 services and a 61 percent increase in the rate of
19 autism.

20 Environmental exposures like mercury, as
21 I have mentioned, known to be associated with
22 autism, can occur from coal ash. These exposures,

1 even in minute amounts, are especially damaging to
2 infants and children and can have lifelong adverse
3 neurological health effects.

4 As a parent of two children, one with
5 asthma and one with autism, and in representing
6 Safe Minds, we ask the EPA to please help us
7 protect our nation's most valuable resource, our
8 children. We would like you to regulate the
9 disposal of toxic coal ash in a manner consistent
10 with hazardous waste.

11 Thank you.

12 MS. DEVLIN: Can I have Numbers 223,
13 224, and 225, please.

14 MR. BENELY: My name is Delmar Benely.
15 I live here in Denver. I think that coal ash
16 ought to be -- ought to be regulated to the
17 strictest possible way it can. The lady before me
18 spoke very good, and I second that.

19 You know, we put that darn stuff in road
20 fill and fertilizer and all kinds of ways and
21 string it around all over, and God knows what --
22 what the results are. We need to regulate and

1 know what it's doing.

2 Thank you.

3 MS. DEVLIN: Thank you. Number 224,
4 please.

5 MS. PARKIN: Hello. My name is Micah
6 Parkin. I'm the Colorado and southwest regional
7 organizer of 1Sky, a national climate and clean
8 energy campaign. I'm also mother of two little
9 girls living within five miles of the Valmont Coal
10 Plant in Boulder, Colorado, and its own on-site
11 coal ash storage area, which reported a
12 25-cubic-yard spill into water reservoirs by the
13 plant in 2008.

14 First of all, I want to thank you so
15 much for proposing the first-ever national rules
16 to ensure the safe disposal and management of coal
17 ash from coal-fired power plants. I commend you
18 for your efforts to ensure the safe management of
19 coal ash.

20 As you note on your website, without
21 proper protections, the contaminants in coal can
22 leach into groundwater and often migrate to

1 drinking water sources posing significant health
2 public concerns -- public health concerns.

3 I'm here today to encourage you to pass
4 a rule treating toxic coal ash with greater
5 precaution under Subtitle C, creating a
6 comprehensive program of federally enforceable
7 requirements for waste management and disposal. I
8 believe this is the most appropriate action to
9 protect public health and the environment.

10 Coal ash, which is laden with mercury,
11 arsenic, lead, radioactive elements, and other
12 toxins, poses serious threats to our drinking
13 water and to the health of people who live near
14 the 40 storage sites in Colorado.

15 Those burning coal and storing the ash
16 should bear the responsibility of assuring the
17 public safety from these toxins. Communities in
18 which these facilities reside should not have to
19 live in fear of their drinking water being
20 contaminated, spills destroying their homes, and
21 making their communities unlivable, or wind-swept
22 ash poisoning their children. These communities

1 already bear the burden of the pollution existing
2 in the coal plant's towers.

3 For these reasons and on behalf of the
4 thousands of 1Sky members and families in this
5 region, I encourage you to regulate coal ash as
6 the hazardous waste that it is through Subtitle C.

7 Thank you very much.

8 MS. DEVLIN: Thank you. Number 225,
9 please.

10 MR. DUNCAN: Hi. My name is James
11 Duncan, a name given to me by my parents. It has
12 some cultural history and significance, but it's
13 just a symbol to represent me, an organism of the
14 earth.

15 As an organism, unlike my name, we have
16 a history that goes back as far as history itself.
17 How did we get here? Through naturally occurring
18 elements, pure water, good food. Not soft drinks,
19 coffee, or beer, but water. That's what got us
20 here, and for us to be irresponsible to affect or
21 terminate the lineage of any organism would be a
22 tragedy of grave proportions.

1 We are paving the road for our progeny.
2 The foundation they stand on are our shoulders,
3 level and strong.

4 A philosopher once said, "The wise man
5 knows he knows nothing." Perhaps it was Socrates
6 or Plato or Aristotle. I don't know.

7 Please be prudent in your decisions as
8 the ramifications reach far beyond what any of us
9 will ever know. My recommendation is to adopt
10 Subtitle C.

11 Thank you.

12 MS. DEVLIN: Thank you. Did Numbers 62
13 or 63 come into the room? Then could I please
14 have 64, 65, 66, and 67.

15 MS. SHOPE: Hi. My name is Nina Shope.
16 I'm here as a private citizen. I believe that
17 coal ash should be regulated under Subtitle C. It
18 makes perfect sense to consider coal ash as a
19 hazardous waste seeing as it's full of
20 carcinogens, toxic chemicals, and heavy metals.

21 And according to Scientific American, it
22 also contains high levels of radioactive uranium

1 and thorium, which can leach into soil and
2 groundwater.

3 We need the federal government to
4 regulate coal ash so that all states are required
5 to treat it and dispose of it in the same way. It
6 is the federal government's duty to protect people
7 against powerful money interests such as the coal,
8 oil, and gas lobbyists. It is our only means of
9 protection.

10 We've already seen states shirking their
11 responsibilities. Most states don't monitor --
12 don't require monitoring of drinking water near
13 coal ash waste sites. The few tests that have
14 been done show clear contamination of water with
15 arsenic, lead, and heavy metals. In Hatsfield
16 Ferry, Pennsylvania, the water tested at 341 times
17 the safe level of arsenic.

18 Coal ash poses clear dangers to human
19 health, wildlife, and water supplies. Clean
20 drinking water is a vanishing and precious
21 resource and will only become more so as climate
22 change progresses.

1 After the gas and oil industries got
2 exemptions from the Clean Air and Clean Water acts
3 in 2005, they have been steadily polluting. Water
4 is under assault from industry with practices like
5 hydro fracking poisoning entire watersheds and
6 systems.

7 When coal ash is improperly stored,
8 heavy rains and floods can easily spread the
9 contamination into groundwater supplies.
10 Regulating coal ash under Subtitle C would limit
11 where ash can be stored and would require industry
12 to acquire permits, which serve as crucial
13 enforcement tools.

14 Industry argues that regulating coal ash
15 under Subtitle C will cost the entire industry
16 more than a billion dollars, but one company alone
17 made \$1.2 billion in profits last year. Also, if
18 that's the true cost of doing business safely,
19 industry should pay for it.

20 The fact is, the more we cover up the
21 true cost of dealing with coal, including clean-up
22 and disposal costs, the less chance we have of

1 moving away from a coal-based economy.

2 Coal is promoted as a cheap energy, but
3 when you factor in the cost of proper disposal, it
4 isn't so cheap after all. People need to know the
5 real costs of coal, including the cost to public
6 health. Currently we are subsidizing an industry
7 that earns billions in profits and poisons the
8 environment.

9 The EPA also needs to monitor the
10 recycling of coal ash which threatens to become
11 just another profit-making venture for the oil and
12 gas industry. Coal ash is currently reused in
13 many products, and more needs to be done to study
14 the safety of such procedures.

15 Personally I believe all coal, oil, and
16 gas operations must be immediately brought under
17 EPA regulation and made to comply with Clean Air
18 and Clean Water acts. Industry has shown
19 repeatedly that its concern is profit, not safety.

20 The jobs created are not worth the
21 permanent damage done to drinking water supplies
22 and human health. With the industry pouring money

1 into misleading commercials and inundating the
2 public with false claims, Americans need to be
3 aware of the true costs of coal.

4 Thanks.

5 MS. DEVLIN: Thank you. Number 65,
6 please.

7 MR. SAWTELL: I'm Reverend Peter
8 Sawtell, the executive director of Eco-Justice
9 Ministries. Our agency works with Christian
10 churches across the United States to build
11 awareness, commitment, and action at the
12 intersection of social justice and ecological
13 sustainability.

14 I speak in favor of the option proposed
15 under Subtitle C which would provide the strongest
16 standards and the highest level of enforcement for
17 the storage of coal combustion residuals.

18 My support for proposal C is grounded in
19 two closely related moral principles:
20 Environmental justice and eco-justice.

21 Environmental justice does not allow
22 disproportionate impacts from pollution on

1 communities of color or that are low income.
2 Those unequal environmental impacts were first
3 documented in a 1987 study from the United Church
4 of Christ, Toxic Wastes and Race in the United
5 States. Church leaders are among those that have
6 decried the immoral practice of dumping hazardous
7 substances in disempowered communities.

8 In the case of toxic materials found in
9 coal ash, which can cause neurologic disruption
10 and cancer, the unjust damage to individual lives,
11 family, and communities is long-lasting and
12 utterly unacceptable.

13 Last spring's detailed coal ash report
14 from Earthjustice documents the environmental
15 justice factors of that pollution. A majority of
16 the 31 sites in their report are located in
17 low-income communities.

18 It is imperative that the strong
19 provisions of Subtitle C be implemented to address
20 environmental justice impacts.

21 I also support Subtitle C because of the
22 ethical principal at the heart of my agency's

1 name, Eco-Justice. Eco-Justice seeks the
2 well-being of all humankind on a thriving earth.
3 It holds together commitments to racial and
4 economic justice and ecological health.

5 From the perspective of Eco-Justice,
6 toxic waste is a moral problem even if the impacts
7 are not disproportionate. It is wrong to poison
8 anybody.

9 From the perspective of Eco-Justice, the
10 issue of toxic coal ash is not only a human
11 problem. The well-documented impacts on wildlife
12 and ecological systems are also a matter of moral
13 concern.

14 From the perspective of Eco-Justice, the
15 intergenerational impacts of coal ash are
16 important. Far into the future heavy metals will
17 persist in groundwater and stream sediments if
18 coal ash is not contain under rigorous standards
19 and enforcement.

20 Environmental justice demands protection
21 for people among us who have so often been
22 oppressed, excluded, and disempowered.

1 Eco-Justice demands the safe storage of coal ash
2 on behalf of all God's creations; humans and other
3 than human, now and into the future.

4 My agency's expertise is moral witness
5 about matters of ecological health and social
6 justice. The weak option under Subtitle D is
7 ethically deficient in preventing and protecting
8 communities from the hazards of coal ash.

9 I call for the implementation of the
10 strong Subtitle C option.

11 MS. DEVLIN: Thank you. Number 66,
12 please.

13 UNIDENTIFIED SPEAKER: As an attorney
14 retired from state government, I appreciate your
15 hosting this hearing. I know how difficult it is
16 to protect the public within the limiting legal
17 and political structures. Yet the public is in
18 danger and looks to you for protection. Subtitle
19 C is the stronger measure. Please adopt it.

20 As a mother, I urge you to protect the
21 health of my child and all children. There must
22 be enough water, good quality, safe water to

1 nourish families, and it's ever more rare.

2 I grew up in a fossil fuel industrial
3 town near the Gulf Coast. Our drinking supply was
4 groundwater. My youngest sister, a gifted campus
5 minister at the University of Houston, born in
6 1960, died in 1996 from cancer.

7 We cannot know what caused the cancer
8 that killed her. However, I do know that many
9 cancer- causing pollutants, some 100 times more
10 radioactive than emitted from a nuclear power
11 plant and producing the same amount of energy,
12 come from coal ash.

13 Take arsenic, for example. Even if its
14 concentration in drinking water meets United
15 States standards, it causes liver, lung, kidney,
16 or bladder cancer in more than 27,000 United
17 States citizens at any given time. Yet arsenic
18 leached from coal ash into water is found at
19 levels 1,800 times higher than federal drinking
20 water standards. Water-borne arsenic also
21 accumulates in freshwater plants and bivalves and
22 then into our food supply.

1 As a woman of faith, I recall the words
2 of Jesus, "Who among you, if a child asks for
3 bread, would give him a stone to eat?" I think he
4 would ask the EPA, "Who among you, if a child
5 asked for water, would give her arsenic to drink?"

6 And don't be fooled by the term
7 "beneficial use." Beneficial to whom? Should
8 this stuff be put on fields as fertilizer and end
9 up on our dinner tables or washed downstream into
10 our rivers to add further insult to the dead zone
11 at the mouth of the Mississippi River?

12 Finally, the earth is powered by the
13 sun. Instead of disrupting the carbon
14 sequestration of centuries in the form of buried
15 coal, instead of gobbling up precious water by
16 mining coal, the air by burning it, and our
17 children's health by drinking the water soaked
18 into its offal, we would get our power directly
19 from the sun.

20 I implore you to stop poisoning the
21 ground or surface water by unsafe, leaky, and
22 improperly monitored coal ash ponds or

1 unencapsulated beneficial use. Please adopt the
2 stronger of the two measures under consideration.
3 To protect the health of our children, enact
4 Subtitle C.

5 Thank you for listening.

6 MS. DEVLIN: Thank you. Number 67,
7 please.

8 MR. ROLDAN: My name is Vincente Roldan.
9 I am a member of the board of directors of the
10 Colorado Interfaith Power and Light. Colorado
11 Interfaith Power and Light is a project of the
12 Colorado Nonprofit Development Center, a 501(c)(3)
13 organization that provides fiscal sponsorship and
14 services and functions as a nonprofit incubator.

15 The mission of the Colorado Interfaith
16 Power and Light is to educate and energize
17 Colorado's diverse faith communities to care for
18 God's creation. We collaborate with other groups
19 working on environmental issues from a faith
20 context and the broader environmental arena.

21 I would like to thank the EPA for
22 selecting Denver as a site to hear public

1 testimony concerning coal ash as a hazardous waste
2 material and how coal ash should be regulated.

3 Colorado Interfaith Power and Light
4 supports Subtitle C. EPA efforts to clean up past
5 mistakes of the improper disposal of hazardous
6 waste materials are well noted in the Denver metro
7 area, such as Globeville, the former Lowry Air
8 Force Base, Buckley Field, Platte Park to mention
9 a few. Residents within the Denver metro area are
10 surrounded by these former and present dump sites.

11 Today we are specifically talking about
12 avoiding mistakes of the past and considering the
13 proper storage and disposal of coal ash, a well-
14 documented waste byproduct of the use of coal.
15 Carbon combustion residuals, CCR, is the second
16 highest waste stream in the United States, and
17 Colorado is no exception. Subtitle C is by far
18 and above the best possible way to regulate
19 storage and disposal of CCR from coal ash.

20 One specific area of concern, we ask the
21 EPA would take a closer look at the unencapsulated
22 beneficial use of coal ash as landfill for our

1 playgrounds, golf course, agriculture fertilizers,
2 and building construction fill material.

3 The health risks of the improper storage
4 and disposal of coal ash are well documented in a
5 variety of EPA studies and reports both past and
6 current.

7 Colorado Interfaith Power and Light
8 believes that caring for God's creation is caring
9 for both people and the planet. People and all of
10 God's other living creatures deserve clean air,
11 water, soil to sustain ourselves today and for
12 generations to come.

13 Yet rather than placing human health as
14 the highest priority of concern in dealing with
15 the storage and disposal of hazardous waste such
16 as coal ash, the highest priority is given to
17 financial costs. The production costs of the coal
18 providers, the energy providers are limited to
19 only a small portion of the total life-cycle
20 energy cost. These providers do not --

21 MS. DEVLIN: Sir, your time is up.

22 Thank you. Numbers 63 -- as I understand you're

1 here -- 68, 69, and Number 226, please.

2 MR. SQUILLACE: Good afternoon. My name
3 is Mark Squillace. I'm a professor of law and the
4 director of the Natural Resources Law Center at
5 the University of Colorado. I'm here, however,
6 just to speak for myself on this matter. I
7 appreciate time is short, and so let me try to
8 quickly get in three comments.

9 First, I want to make the point that EPA
10 really should think about the importance of
11 discouraging disposal at all, prohibiting disposal
12 unless someone can show that they've made a
13 good-faith reasonable effort to provide for
14 beneficial reuse.

15 Second, while I'm not particularly
16 concerned about whether these materials are
17 regulated and hazardous or not, I do believe that
18 it's necessary that EPA impose some form of
19 mandatory federal controls on the disposal of CCRs
20 if that's to happen.

21 And finally, if I have time, I'll try to
22 make a couple suggestions about improving the

1 rules.

2 I want to make a point that I think is
3 often lost in this debate about the reuse of these
4 CCR materials. The problem seems to me one of
5 market failure; that is, we have these materials
6 that are valuable for use in concrete and cement
7 and other materials that are usable in wallboard,
8 and yet more than half of these materials are now
9 simply disposed of in landfill or in impoundment.

10 That's a fundamental problem, and I
11 think that results from two things. One is that
12 we currently don't impose any controls in many
13 states on the disposal of these things, and so the
14 externalities associated with that disposal are
15 not captured by the marketplace. Hopefully these
16 rules will fix that problem.

17 But there's another really important
18 aspect that EPA really needs to consider here, and
19 that is the cost associated with mining virgin
20 limestone materials that will be used essentially
21 to substitute for concrete and for gypsum to the
22 extent that those materials will have to be mined

1 because they're replacing materials that otherwise
2 could have been used for this purpose.

3 I'd really like to suggest that -- since
4 my time is short, that EPA, think about working
5 with the Department of Transportation about coming
6 up with some minimum content standards for
7 federal-aid highways for fly ash.

8 It strikes me that there's a national
9 market that could easily be tapped and would
10 greatly increase demand for fly ash in a way that
11 would make it unnecessary to dispose of many of
12 these materials, and I think that would be sort of
13 a win-win for everybody.

14 I think something similar could be done
15 with gypsum in the context of federal construction
16 projects around the nation.

17 Just one last point about the -- because
18 I don't have much time -- about the standards that
19 you have now. I hope you'll look at the study
20 that was done several years ago. I was on a
21 national academies committee, a study called
22 "Managing Coal Combustion Residue in Mines."

1 There's are a couple things in that
2 study, recommendations about how to manage CCRs,
3 that are not included in the EPA recommendations,
4 including site characterization and waste
5 characterization. Those are important issues that
6 I hope you'll consider. And I know you're going
7 to tell me I'm out of time, so I'll stop.

8 Thank you.

9 MS. DEVLIN: Thank you. Number 68,
10 please.

11 MS. HOPKINS: Thank you. My name's
12 Joanna Hopkins. I represent Everist Materials.
13 We are a family-run company with over 100 years'
14 experience in the sand and gravel, ready mixed,
15 and asphalt industry. We have operations in Grand
16 County, Summit, Park, and Clear Creek counties,
17 and our market base is mainly the western slope of
18 Colorado.

19 We're very proud to offer a high recycle
20 content ready mix. We currently offer 20 percent
21 fly ash content. We are concerned about a stigma
22 that could come with a hazardous designation of

1 fly ash.

2 We do appreciate past events and
3 concerns. We have proper containment. We treat
4 our disposal -- we don't dispose. We recycling.
5 So it's all properly contained on-site. We do ask
6 that a hazardous designation is not put on fly
7 ash.

8 Thank you.

9 MS. DEVLIN: Thank you. Number 69,
10 please.

11 MR. ZABARTE: Good afternoon. My name
12 is Ian Zabarte. There's an error on the list of
13 who I represent. I am here as an individual. I
14 am Western Shoshone, and our concern is for our
15 past exposure from atmospheric weapons testing.

16 The radiation has affected our
17 communities, and when we consider that the west
18 coal that is used in the Valmy plant outside of
19 Reno, which is in Western Shoshone treaty
20 territory, and the technologically enhanced,
21 naturally occurring radioactive material can be up
22 to a hundred times greater.

1 And when we consider the biological
2 effects of ionizing radiation, 2006 report, the
3 BIER seven from the National Academy of Sciences,
4 we can not tolerate any increase risk of exposure
5 from any source including from coal-fired power
6 plants and the amounts of radiation that are
7 increased in that material.

8 So we hope that you will consider that
9 we've borne a disproportional burden for U.S.
10 nuclear development, and we don't think that we
11 should continue to bear the burden of risk of
12 generating electric industry from coal-fired power
13 plants as well.

14 Thank you.

15 MS. DEVLIN: Thank you. Is Number 226
16 in the room? Thank you.

17 MR. SHELDON: Thank you. My name is
18 Paul Sheldon. I'm the senior consultant with
19 Natural Capitalism Solutions, and I'm here to ask
20 you to frame this discussion under Subtitle C, not
21 Subtitle D.

22 We depend on the EPA to protect the

1 public health. You must retain that authority.
2 You can't simply leave this to citizen lawsuits
3 when it's found that beneficial uses are harmful,
4 and in that context if you approve beneficial uses
5 as is proposed, please subject them to the same
6 requirements of testing for landfilling.

7 How do you know that it's beneficial?
8 We thought thalidomide was beneficial. We thought
9 DDT was beneficial. We have assumed that some
10 uses of coal ash such as concrete are beneficial.
11 They may be; they may not be. How do you know?

12 Please subject beneficial uses to the
13 same testing as coal ash that goes into landfills,
14 and please use Subtitle C, which retains your
15 authority to protect the public health.

16 Thank you very much.

17 MS. DEVLIN: Thank you. We're going to
18 take about a five-minute break at this point. So
19 we'll resume in about five minutes. Thank you.

20 (Recess)

21 MS. DEVLIN: If we could have Numbers
22 72, 73, 74, 77 and 230. So I'm actually calling

1 five people this time. So Number 72, please.

2 MR. CHRISTIAN: Thank you. Hello. I'm
3 Steve Christian, environmental manager with PPL
4 Montana. We operate more than 2,000 megawatts of
5 generating capacity in Montana, including two
6 coal- fired power plants; the Corette plant in
7 Billings, Montana, and the Colstrip plant where
8 I've lived for 26 years.

9 Coal combustion residuals from these
10 plants have been regulated effectively since 1980
11 as a nonhazardous waste by the Montana Department
12 of Environmental Quality under Montana's Major
13 Facilities Siting Act.

14 Colstrip, a zero-discharge facility, has
15 some seepage from wastewater ponds. This was not
16 unexpected based on seepage control measures
17 implemented when the ponds were built. We've
18 invested tens of millions of dollars in upgrades
19 to wastewater facilities, including installation
20 of synthetic liners and implementation of an
21 innovative paving process that solidifies coal ash
22 scrubber sludge to help prevent future seepage.

1 Additionally we are capturing the pond
2 seepage and returning it to our wastewater system.
3 Recently PPL Montana agreed to enter into an
4 administrative order on consent with Montana DEQ
5 that establishes a comprehensive process to
6 investigate and remediate groundwater seepage from
7 wastewater facilities at the Colstrip plant.

8 I would like to point out that coal
9 combustion residuals from PPL Montana plants do
10 not meet EPA's criteria of toxicity used to define
11 hazardous waste. The level of metals is so low as
12 to be nondeductible.

13 Bottom line is that no impacts from
14 heavy metals have been found in drinking water
15 around the plant, and we continue to work with
16 Montana DEQ on seepage issues.

17 PPL Montana supports federal regulation
18 under the RCRA Subtitle D nonhazardous waste rule.
19 Subtitle D regulation will provide for
20 environmentally safe disposal and avoid
21 significant environmental costs that would result
22 from Subtitle C hazardous waste regulation.

1 Subtitle C regulation would severely
2 limit and most likely eliminate beneficial uses
3 that provide thousands of jobs and real
4 environmental benefits. Without beneficial-use
5 option, we will be forced to dispose of all CCRs.

6 The problem is that Montana has no
7 permanent -- permitted commercial Subtitle C
8 landfills, and that leaves us with only two
9 options; try to permit a hazardous landfill at our
10 site or find a Subtitle C landfill off-site which
11 would be out of state.

12 In addition, Subtitle C regulation may
13 require Colstrip to completely change its design
14 and operation. The plant is designed to reuse
15 wastewater and storm water and plant processes use
16 water ponds to contain the water. Regulation
17 under Subtitle C may not allow continued use of
18 ponds for wastewater storage.

19 In closing, PPL Montana strongly opposes
20 Subtitle C hazardous waste regulation and requests
21 EPA to regulate CCRs under Subtitle D prime option
22 that integrates with current state regulatory

1 programs.

2 This will create a reasonable and
3 effective regulatory program that protects the
4 environment, retains options for beneficial use,
5 allows companies like PPL Montana to provide
6 hundreds of good-paying, family-sustaining jobs.

7 Thank you.

8 MS. DEVLIN: Thank you. Number 73,
9 please.

10 MR. JOHNSON: Good afternoon. My name
11 is Kris Johnson, owner of AspenGold Consulting
12 located in Goodland Park, Colorado. My company
13 specializes in assisting utilities with research
14 implementation of beneficial uses and programs for
15 coal combustion products consisting of fly ash,
16 bottom ash, flue gas desulfurization, and FGD
17 gypsum.

18 I've been in the coal ash business --
19 coal combustion industry business since 1989 and
20 have been responsible for successful completion of
21 a multitude of coal combustion beneficial projects
22 ranging from large industrial park developments,

1 community improvement projects such as public
2 parks, playgrounds, and schools, county and state
3 roadway- improvement projects, construction
4 products, concrete and concrete block and brick
5 construction, agricultural products, agricultural
6 applications of CCPs and various recycling
7 programs.

8 All of these projects utilize millions
9 of tons of coal combustion product, diverting them
10 from municipal landfill disposal. All of these
11 projects I have been involved in and numerous
12 others mentioned today and at the other public
13 hearings across the country would not have been
14 possible without the current regulations allowing
15 industry to recycle CCPs in beneficial and
16 meaningful methods.

17 Subtitle D, as it stands today, allows
18 industry to willingly participate in beneficial
19 projects as a way of diverting portions of their
20 CCPs into projects which contribute significantly
21 to the reduction of the greenhouse gas emissions
22 and preservation of our natural resources by

1 conserving virgin materials otherwise used for
2 construction and product purposes.

3 Any change to the current CCP
4 regulation, such as the proposal for Subtitle C
5 designation, will cripple the CCP industry by
6 eliminating the useful and beneficial utilizations
7 of CCPs in many applications.

8 During my career, I have been involved
9 in marketing CCPs, explaining their benefits,
10 their engineering properties, and their actual
11 dollar savings compared to other construction
12 materials on the market today.

13 As in any attempt to market an industry
14 byproduct, the marketing of such is not always an
15 easy sale. With the designation of Subtitle C
16 hazardous waste or even a special waste
17 designation, this will make the marketing of CCPs
18 extremely difficult; and for many, if not all,
19 beneficial applications, marketing will be next to
20 impossible.

21 In my business I have already seen
22 utilities delay or cease specific CCP projects for

1 fear of Subtitle C designation becoming
2 implemented. My clients are holding back projects
3 where coal combustion product material would leave
4 the confines of their property for beneficial
5 applications. Their hesitancy is due to the
6 possibilities of long-term litigation from
7 customers.

8 The current Subtitle D classification
9 allows for beneficial utilization of CCPs in a
10 controlled manner and gives each state regulatory
11 authority to monitor the use of CCPs in bound or
12 unbound beneficial applications.

13 Thank you for your time.

14 MS. DEVLIN: Thank you. Number 74,
15 please.

16 MR. NAZARYK: Good afternoon. I'm Paul
17 Nazaryk, and I represent San Juan Coal Company,
18 which operates an underground coal mine in
19 northwest New Mexico, and we provide coal to the
20 nearby San Juan Generating Station. In return we
21 receive coal combustion residuals which we are
22 using to reclaim a former surface mine on the

1 property.

2 Our goal in this reclamation is to
3 utilize the principles of geomorphic reclamation
4 to restore the original site topography. And in
5 2009 we won a U.S. Office of Surface Mining award
6 for our reclamation in nearby La Plata Mine.

7 Now, in a previous position, I worked
8 for the State of Colorado enforcing the hazardous
9 waste regulations, and as such I have followed
10 developments in RCRA probably since the 1980s and
11 very interested in this proposal.

12 It's often forgotten that one of the
13 original goals of RCRA, along with protecting
14 human health and the environment, was actually to
15 encourage the reuse of the recoverable materials.

16 Currently, according to the American
17 Coal Ash Association, approximately 45 percent of
18 CCR material is recycled or reused in mined land
19 reclamation. In our view, the final rule should
20 encourage beneficial use while at the same time
21 protecting both the public and the environment.

22 We support the development of national

1 standards to manage CCR material under RCRA
2 Subtitle D. We concur with EPA's decision to
3 exclude the mine placement of CCR material from
4 this rulemaking. We also agree with EPA and the
5 2006 National Academy of Sciences study that the
6 use of CCR material in mined land reclamation
7 should be regulated by the U.S. Office of Surface
8 Mining and that these regulations should be
9 developed jointly by OSM and EPA.

10 We have a number of detailed comments
11 which I'll provide, but in the interest of
12 brevity, I'll just sort of highlight those
13 comments right now.

14 Number 1, we're opposed to efforts to
15 designate CCR material as a hazardous waste.
16 Management of this material as a hazardous waste
17 is clearly not justified given the level of risk
18 posed by the material. Such a designation would
19 only discourage its recycling beneficial use with
20 a stigma of a hazardous waste label.

21 Number 2, there's a great deal of
22 ambiguity in the actual language of the proposal

1 that needs to be addressed. For example, the
2 proposed definition of CCR landfill would exempt
3 the placement of CCR material in underground mines
4 but not its use in reclamation of the surface
5 mines.

6 Number 3, EPA has taken the position
7 that mine placement of CCR material is not a
8 beneficial use. We disagree with that assessment.
9 In our view, use of this material replaces our
10 need to disturb additional land to obtain fill
11 material to reclaim our surface mines.

12 And finally, we do not believe that
13 there's a need to regulate unencapsulated
14 beneficial uses of this material. This would only
15 work to discourage its current widespread use in
16 agriculture, road construction, as a building
17 material, and as an ingredient in concrete.

18 Thank you for the opportunity to comment
19 on this proposal.

20 MS. DEVLIN: Thank you. Number 77.

21 MS. LOVINS: My name is Hunter Lovins.
22 I am a professor of business Presidio School of

1 Management. I am here to support Subtitle C.

2 My grandfather was a coal mine operator.

3 I know the coal industry. I know that it is
4 dirty. It is dangerous. I know that it is
5 hazardous as coal. It is hazardous as smoke. It
6 is hazardous as fly ash.

7 Your job as the EPA is to protect the
8 public. Designating this for what it is, a
9 hazardous material, is what the public needs. It
10 is your job.

11 Coal ash is radioactive. It should be
12 tested as such. It should be handled as such.
13 The states have not done a good job of handling
14 this material, protecting the public. This is
15 your job. This is an interstate pollutant. It
16 doesn't stay put.

17 Please, those of us who depend upon the
18 federal government for our protection are here
19 today to ask you to designate this as Subtitle C.

20 Thank you very much.

21 MS. DEVLIN: Thank you. Number 230, are
22 you in the room? Number 75, 79, and 81. How

1 about Numbers 231, 232, and 233. Please come up.

2 MS. ROBERTS: Patricia Roberts, Golden,
3 Colorado. I just biked down from Lookout Mountain
4 where I live. I'm here to support more
5 regulations for coal ash. I think that the
6 stricter we can be, the better.

7 Who's paying for all the spills of coal
8 ash in the other states that have taken place in
9 the last few years? It's never the coal industry.
10 It's the public, the federal government, the local
11 and state governments.

12 Everybody always says coal is really
13 cheap, and that's why we need coal-fired
14 electricity, and I think coal should be really
15 expensive because it's not -- we're not paying the
16 true cost of coal- fired electricity.

17 And if regulation makes it more
18 expensive, then I think that's an -- not only do
19 we need the regulation for safety, but we need to
20 reflect the true cost of coal to our society, and
21 our health.

22 And I haven't heard the other speakers

1 all day. So I don't know if I'm repeating, but I
2 would like very tough regulation of coal ash.

3 Thank you.

4 MS. DEVLIN: Thank you. Number 233.

5 MR. HISLOP: I'm Alfred Hislop from
6 Golden, Colorado. I've noticed recently that
7 there are quite a few people who say that we
8 really can't afford to have tougher regulations.
9 It hurts the economy. And people are concerned
10 about the great debt that we may be piling up.

11 However, I think people do not realize
12 the great debt that we actually are piling up with
13 respect to pollution in the atmosphere and all
14 over the earth, and that debt is probably of more
15 concern than the economic debt. So I definitely
16 would like to see tougher regulation of coal ash.

17 Thank you.

18 MS. DEVLIN: Thank you. Are Numbers 79
19 and 81 in the audience? Is anybody in the
20 audience with a number under 80 who I have not
21 called, or any walk-in? All right.

22 Is there anyone in the audience --

1 anyone in the audience who's registered and has a
2 time to speak or wishes to speak? Okay. Could
3 you please come forward and give us your numbers?
4 Take a seat in the chairs. Unfortunately, I don't
5 have a list. I don't have a list if you signed
6 in.

7 MR. SCHIEFFELIN: Good afternoon. My
8 name's Joe Schieffelin. I'm manager of the solid
9 hazardous waste program in the hazardous materials
10 and waste management division within the Colorado
11 Department of Public Health and Environment.

12 My program is authorized by EPA to
13 implement all aspects of the hazardous waste
14 program, the RCRA Subtitle C program. We are
15 approved by EPA as having an equivalent solid
16 waste program to the national standards, same as
17 the RCRA Subtitle D program. Thank you for the
18 opportunity to share our perspectives on this
19 issue.

20 Our program opposes regulation of coal
21 combustion residuals under hazardous waste
22 authorities. Our program supports continued

1 regulation of coal combustion residuals under
2 state solid waste authorities.

3 We would prefer no changes to the
4 current regulator construct for coal combustion
5 residuals, but the three -- but of the three
6 options under consideration, we strongly prefer
7 the RCRA Subtitle D prime option.

8 As background, the solid and hazardous
9 waste program regulates all disposal and
10 beneficial reuse of coal combustion residuals in
11 Colorado. We have representative analytical data
12 on the coal combustion residuals produced in
13 Colorado, and no data has ever indicated levels of
14 contamination close to those that would make the
15 residuals hazardous waste.

16 We have groundwater monitoring data
17 around coal combustion residuals dewatering and
18 disposal areas, and no data indicates a release to
19 groundwater has occurred.

20 However, if a release were to occur, we
21 have enforcement authority to rapidly and
22 effectively deal with noncompliant situations,

1 including releases to soil, groundwater, surface
2 water, and exposures to people. This includes
3 administrative order authority with injunctive
4 relief, corrective action authority, and penalties
5 up to \$10,000 per day per violation. Colorado
6 actively uses these authorities in implementation
7 of the solid waste program.

8 Through this same regulatory construct,
9 we safely and effectively regulate municipal solid
10 waste every day, a waste stream with higher
11 hazards than coal combustion residuals because it
12 includes household hazardous waste, heavy metals,
13 and organics, acidic, and alkaline materials.

14 A unique aspect of coal combustion
15 residuals is the large amount that is never
16 landfilled but is beneficially reused. About 60
17 percent of the coal combustion residuals produced
18 in Colorado are beneficially reused.

19 We know that EPA is trying to avoid
20 impacts to this reuse, but the best way to do that
21 is to preserve the status quo, leaving coal
22 combustion residuals as solid waste. Designation

1 of coal combustion residuals as hazardous waste
2 will stigmatize these materials and raise
3 uncertainty and liability concerns with those who
4 currently reuse them.

5 Widespread reuse of a hazardous waste
6 somehow is difficult to reconcile with the word
7 "beneficial." EPA's assertion that a hazardous
8 waste designation of coal combustion residuals
9 will actually enhance the amount of beneficially
10 reused is, we believe, erroneously based on other
11 much smaller volume hazardous waste streams.

12 If beneficial reuse of coal combustion
13 residuals decreased --

14 MR. MILLER: Your time is up.

15 MR. SCHIEFFELIN: Okay. Thank you very
16 much.

17 MR. NEEL: My name is David Neel. I
18 work for Boral Material Technologies. Our company
19 manages coal combustion products, principally fly
20 ash in concrete. We certainly support the EPA's
21 effort to protect human health and the
22 environment. However, we do not want the EPA to

1 overreact by labeling fly ash as hazardous through
2 Subtitle C regulation.

3 A Subtitle C regulation will negatively
4 impact our industry and result in significant
5 damage to our environment, our employees, our
6 customers, and other fly ash marketing firms.
7 Also negatively impacted will be area-consumable
8 electricity due to increased costs.

9 The EPA should recognize the successful
10 history of fly ash utilization in the U.S. and
11 avoid taking actions that negatively affect the
12 future successful use of these materials within
13 the construction industry.

14 The combination of improved economics
15 and superior engineering properties have resulted
16 in the use of fly ash being accepted as a routine
17 material used in the daily production of ready
18 mixed concrete and concrete products. It should
19 be noted, there is no substitute produce for fly
20 ash that produced similar results at similar
21 costs.

22 Scientific data is clear. In 1993 and

1 again in 2000, EPA found coal ash did not warrant
2 management as a hazardous waste. Material has not
3 changed, and no new studies have revealed some
4 unknown harmful traits.

5 EPA is suggesting that regulating fly
6 ash disposal under Subtitle C, a hazardous waste,
7 with a nonhazardous label for coal ash recycled
8 for beneficial use, they don't believe a hazardous
9 label will have a negative impact on recycling of
10 these materials. We believe the EPA is not
11 correct in this assumption. The stigma impact is
12 real and already affected the beneficial reuse of
13 fly ash.

14 Owners, material specifiers, and
15 engineers will refuse to allow fly ash in their
16 projects due to concerns about future legal
17 liability exposure.

18 As an advocate for fly ash -- beneficial
19 use of fly ash, I request that the EPA only
20 regulate fly ash under Subtitle D to avoid any
21 reference to fly ash as a hazardous waste.

22 By the EPA's own admission, Subtitle D

1 nonhazardous waste rule will provide an equal
2 degree of protection to public health and the
3 environment. The U.S. environment will best be
4 served by continuing the fly ash success story of
5 beneficial use and recycling.

6 Thank you very much.

7 MS. DEVLIN: Thank you.

8 MR. EISENFELD: Good afternoon. My name
9 is Mike Eisenfel. I am the New Mexico energy
10 coordinator for the San Juan Citizens Alliance in
11 the Four Corners region. San Juan Citizens
12 Alliance is actively involved in oversight of
13 energy development and air quality and public
14 health issues.

15 Directly west of Farmington, New Mexico,
16 are two large coal-fired power plants: The San
17 Juan Generating Station and the Four Corners Power
18 Plant. These plants both border the San Juan
19 River, a primary tributary to the Colorado River.

20 These coal plants are 40 to 50 years old
21 and have a legacy of generating and dumping
22 enormous quantities of coal combustion waste,

1 including fly ash, scrubber sludge, and bottom
2 ash. These toxic wastes are backfilled in the San
3 Juan and Navajo mines, which also provide the coal
4 for the San Juan Generating Station and Four
5 Corners Power Plant.

6 The BHB Navajo Mine and San Juan Mine
7 are regulated by distinct entities that are
8 physically located 10 miles apart in
9 multi-jurisdictional boundary zones with
10 inadequate regulatory oversight.

11 CCW has historically been dumped along
12 the San Juan River in unlined pits with limited
13 reclamation becoming fugitive dust sources and
14 affecting groundwater and surface water resources.

15 Hydrologic studies and public health
16 analyses concerning the CCW dumping process in the
17 Four Corners region is incomplete. Citizens
18 continue to be exposed to these wastes.

19 A 2008 TRI chemical data form from a BHB
20 Navajo coal mine and posted on EPA's website shows
21 that BHB's Navajo Mine is one of the largest
22 polluters of toxic solid waste in the region.

1 Since 1991, BHB has been exposing the CCWs
2 backfill material from the Four Corners Power
3 Plant.

4 Scientific document of CCW content
5 includes dense concentrations of barium, arsenic,
6 lead, selenium, mercury, and radioactive
7 materials. BHB continues to accept approximately
8 1.9 million cubic yards of CCW from the Four
9 Corners Power Plant annually.

10 As of the year 2000, BHB has disposed of
11 50 to 55 million tons of CCW in the Navajo mine
12 pits covering approximately 230 acres. It appears
13 that this CCW at the Four Corners Power Plant is
14 now being dumped on the Four Corners Power Plant
15 lease site.

16 CCW toxicity adversely impacts the San
17 Juan Colorado River basin which provides drinking
18 water to million of citizens. Our organization
19 strongly urges EPA to classify CCW as a hazardous
20 waste stream to fully evaluate contamination of
21 CCW and treat it as the hazardous waste it is and
22 protect our communities from this harmful dumping

1 process.

2 Our region is relied on for energy
3 export. We need EPA to take firm action to
4 regulate the storage of CCW and recognize that
5 so-called clean coal technologies and control
6 technologies to reduce air pollution when burning
7 coal will result in even more toxic CCW being
8 generated.

9 We ask EPA to initiate tribal
10 consultations in our region on the CCW problem,
11 including environmental justice oversight
12 responsibilities.

13 We are vehemently opposed to the
14 self-regulation terms of Subtitle D and do not
15 think that the preferred Subtitle C is sufficient
16 to deal with the toxic legacy of CCW that projects
17 on --

18 MR. MILLER: Your time is up.

19 MR. EISENFELD: Thank you for the
20 opportunity to provide comments.

21 MS. DEVLIN: Thank you.

22 MR. BESSLER: Hello. My name is Andy

1 Bessler. I'm a representative of the Sierra Club
2 out of Flagstaff, Arizona. I'm speaking in
3 support of Subtitle C. The Sierra Club will be
4 submitting written comments and several other
5 representatives are here urging you to regulate
6 this hazardous waste.

7 The Sierra Club is currently involved in
8 a lawsuit against the owners of the San Juan Power
9 Generating Station in New Mexico and the adjacent
10 San Juan coal mine over pollution that we believe
11 is caused by the company's disposal of coal
12 combustion waste.

13 Several years ago, Squeak Hunt, who
14 testified earlier, who lives downstream of the
15 facility, saw 1,400 of his sheep drop dead after
16 drinking water from the Arroyo. Although this
17 form of coal combustion waste disposal at issue,
18 minefilling is not covered under either of the
19 proposed regulations. This case highlights the
20 dangers of unregulated disposal of coal combustion
21 waste and the high potential pollutants from this
22 waste to make their way into ground and surface

1 water.

2 We are concerned, obviously, about heavy
3 metals such as mercury and depleted uranium that
4 is found in this coal combustion waste. In a
5 desert watershed, pollution has an impact on
6 people's drinking water and is a threat to human
7 health.

8 Indeed, this also points to the legacy
9 of coal in the southwest at these big coal plants
10 like Navajo Generating Station and Four Corners
11 San Juan, and shows the reason why we really need
12 to transition to a clean energy economy and reduce
13 our dependence on coal.

14 I've heard a lot of talk about the
15 stigma of coal ash as a potential threat there.
16 The reality is it's a hazardous waste, and the
17 responsibility of the EPA is to protect human
18 health from hazardous waste. And this is clearly
19 in the public interest to protect human health
20 from this hazardous waste that oftentimes is more
21 radioactive than depleted uranium and can poison
22 with heavy metals.

1 Thank you for your time, and I urge you
2 to support Subtitle C in your actions. Thank you
3 for the hearing.

4 MS. DEVLIN: Thank you.

5 MS. TEWA: Good afternoon. My name is
6 Marilyn Tewa. I'm from the Hopi tribe. I also
7 sit on the -- board member for the Black Mesa
8 Trust, and I'm very sorry and sad that this type
9 of hearing is not held on our reservations where
10 we are affected by the coal mining.

11 35 years ago Hopi tribal council entered
12 into a lease agreement with Peabody. Little did
13 they know at that time that it would change our
14 lives. Today we are faced with many ill effects
15 because of the coal mining. Our waters have high
16 level (sic) of arsenic. People -- we have high
17 level -- high rate of cancer people, respiratory
18 problems, and anything that's associated with coal
19 mining.

20 I strongly urge -- I'm only one person
21 from Hopi. There are 10,000 people that would
22 like to have you come to our country, to our

1 reservations and hold these type of hearings.

2 In your federal register you seek for
3 scientific information as to the effects of the
4 coal ash. On Hopi you will find that. I
5 guarantee you will. So I strongly urge that you
6 come to our reservation. We are the living proof
7 of what coal mining has done to us.

8 Thank you.

9 MS. DEVLIN: Thank you. I'm going to go
10 back a little bit. Are Numbers 75 and 76 in the
11 audience? Please come forward. Also 234 and 235,
12 are you in the audience?

13 MS. BUSHNELL: Hello. My name is Helen
14 Bushnell, and I live in Lakewood, Colorado, and I
15 agree that when you have hearings, you should have
16 communities that are affected by coal mining and
17 other resource industries.

18 I think people who live in the cities
19 don't -- a lot of people have never seen a coal
20 mine. They've never seen an oil well, and they
21 don't have a good perspective on -- on the
22 industry.

1 I also think the EPA should really look
2 at the science and should avoid exemptions as much
3 as possible. I think -- yeah. I really think if
4 the law says that something is supposed to be
5 regulated, you should be very, very careful about
6 giving exemptions.

7 I think the coal ash bills that have
8 happened are very serious. People have lost their
9 homes and their jobs and their lives. They can't
10 live the same way, and I -- you know -- okay.

11 I really -- so I really think that the
12 EPA should be strict in how it applies the law.
13 It should look at science, and it should -- when
14 EPA holds public hearings, I think it would be a
15 good idea to go to places like the Hopi
16 reservation where people have seen the coal mines.

17 Go as much as possible to the
18 communities in Kentucky and Tennessee where people
19 have lived with these things, and talk to people
20 who both work in the coal mines and also talk to
21 people who have lost other kinds of economic
22 activity because of the coal mines.

1 Thank you very much.

2 MS. DEVLIN: Thank you. Number 234.

3 MS. GOEBEL: This one is going to be
4 short. My name is Betty Goebel, and I'm with
5 Colorado Interfaith Power and Light, and I am
6 double-dipping. This is the second time I've
7 spoken.

8 I've been here almost since the
9 beginning of the day, and I think I've heard the
10 word "stigma" over 100 times. So I'd like to
11 speak to the issue of stigma as it relates to
12 Subtitle C.

13 When I spoke earlier, I expressed a
14 concern about needing more research to demonstrate
15 that beneficial uses are, in fact, beneficial for
16 somebody other than the people making money off of
17 them, and I still hold to that.

18 We need to be able to do research on the
19 beneficial uses, particularly unencapsulated coal
20 ash. We haven't had much discussion of that
21 today, but we've had a lot of discussion about
22 stigma.

1 Now, assuming that those beneficial uses
2 can be demonstrated to be safe, then I think the
3 stigma issue is really a red herring, and we
4 should just acknowledge it as such.

5 You are the EPA. You are a federal
6 bureaucracy, and I don't mean that -- no offense
7 intended. If what's causing us from being able to
8 reach something that allows for both beneficial
9 uses and safe regulation, then maybe we need
10 another category.

11 Maybe we could call it C minus one. I
12 understand there's a D prime. Maybe what we need
13 is a D double prime. But it's important that
14 there be regulations that are enforceable for the
15 disposal of coal ash, and if that conflicts with
16 demonstratively safe beneficial uses, then we need
17 something creative going on in the bureaucracy to
18 be able to accommodate both of those needs.

19 It should be possible -- it's not
20 appropriate to allow that to become -- those two
21 options to become mutually exclusive.

22 Thank you very much.

1 MS. DEVLIN: Thank you. Number 235,
2 please.

3 MR. ROBERTSON: Good afternoon. My name
4 is Jonathan Robertson. I represent Navajo
5 FlexCrete.

6 Navajo FlexCrete is a manufacturer of
7 green building products, a business wholly
8 Navajo-owned and operated in Page, Arizona. NFBS
9 products fit into the beneficial-use category of
10 coal combustion residuals. We recycle or utilize
11 recycled fly ash to produce fiber-reinforced
12 aerated concrete.

13 We brand as an environmentally sensitive
14 and energy-efficient alternative to timber
15 construction -- timber frame construction. NFBS
16 primarily produces fiber-reinforced aerated
17 concrete block for the construction of homes for
18 the Navajo people, as a sustainable means of
19 driving the economy as well as providing
20 energy-efficient homes for the people.

21 We employ Navajo community members who
22 manufacture the material, market, and promote and

1 assist other native-owned construction companies
2 to install the product. Additionally, our
3 marketing is also successfully marketed -- our
4 product material is successfully marketed
5 throughout the southwest for custom home
6 development as well.

7 We are now entering the stage of our
8 commercial marketing phase, and our company relies
9 heavily on the successful branding of our product
10 image.

11 The proposed regulations involving
12 labeling fly ash as a hazardous waste with special
13 handling requirements will certainly place a
14 tremendous barrier on our ability to successfully
15 market our product.

16 Although the Environmental Protection
17 Agency supports the legitimate beneficial use of
18 coal combustion residuals, our product, along with
19 the other environmental sound beneficial-use
20 products, will clearly suffer from the stigma
21 attached to labeling fly ash as a hazardous waste.

22 Since the announcement of the EPA

1 proposed regulations, we already have seen an
2 impact of the proposed regulations with potential
3 clients such as architects, engineers, and
4 homeowners who do not want to specify our product
5 on their projects for fear of the liability
6 associated with the hazardous waste label.

7 We urge the EPA's panel oversight --
8 overseeing the public hearings for coal ash to
9 greatly consider the impacts to the small
10 businesses and economies that have been created by
11 the beneficial-use categories of the fly ash.
12 Labeling fly ash as hazardous waste will certainly
13 close the doors of this manufacturer of green
14 building products.

15 Thank you for the opportunity to
16 comment.

17 MS. DEVLIN: Thank you. Numbers 78, 79,
18 80, and 81.

19 MR. WERNER: My name is Orville Werner.
20 I am a materials engineer. I'm employed by CTL
21 Thompson in Denver, Colorado. I have conducted
22 research on concrete. I have written

1 specifications for concrete construction, and
2 tested materials used in concrete production
3 through my 40-year career.

4 I'm an elected fellow of the American
5 Concrete Institute and a registered professional
6 engineer in the State of Colorado.

7 Concrete is the foundation of the
8 infrastructure of our society. Fly ash makes
9 concrete more durable. It significantly decreases
10 the cost of the amount of portland cement it
11 replaces, and it lessens the amount of fly ash
12 that has to be stockpiled or otherwise
13 indefinitely stored. The benefits of fly ash in
14 concrete are substantial for our environment.

15 Improving the durability of concrete
16 means that we don't have to rebuild the
17 infrastructure as often, which means we have less
18 waste debris to recycle or stockpile, and we don't
19 use more portland cement in rebuilding.

20 The use of fly ash to replace portland
21 cement greatly reduces the amount of CO₂ that is
22 generated to build a moderately sized facility.

1 Testing of fly ash to be used in
2 construction is a small part of what CTL Thompson
3 does.

4 My primary interest in speaking today is
5 not so much its impact on my business but rather
6 it's my personal and professional concern for the
7 impact proposed legislation may have on the
8 environment, the construction industry, the
9 economy, the cost of energy and infrastructure
10 that is paid for by the citizens of this great
11 country.

12 If fly ash is classified as a hazardous
13 material, it will make it economically impossible
14 to use it in concrete construction. Thus, we will
15 increase the amount of stored waste, increase the
16 cost of storing that waste, increase the amount of
17 CO2 that is emitted into the atmosphere.

18 If, as proposed, fly ash is given a dual
19 classification where on the right hand it's not
20 hazardous when used for beneficial use or on the
21 left hand it is otherwise hazardous, then the
22 power companies, the truckers, the concrete

1 producers, the contractors, and the owners of the
2 projects will all be burdened with an extreme and
3 unneeded liability.

4 Hazardous materials in our labs and on
5 job sites would be a storage-handling and disposal
6 nightmare. It may be cheaper to exclude its use.

7 Any material in excess can be
8 devastating to our environment. This was
9 certainly the case when a mountain of saturated
10 coal ash breached a dam and went into the river.
11 The situation was similar when Teton Dam failed on
12 June 5, 1976, destroying much land in Rexburg,
13 Idaho.

14 Do what we must to assure that we store
15 waste fly ash and other byproducts safely, but
16 don't make the situation worse for the environment
17 by classing it as hazardous.

18 I appreciate the concern that all
19 citizens here have for the protection of our
20 environment. It is with the same concern that I
21 tell you that we are endangering our environment
22 by classifying fly ash as hazardous material.

1 And by the way, in my 40 years, I can't
2 recall anyone getting sick from using it in
3 construction.

4 Thank you very much.

5 MS. DEVLIN: Thank you. Number 79.
6 Number 80. 81.

7 MR. GARDNER: My name is Robert Gardner,
8 and I am Greenpeace's Coalition and Partnership
9 representative. I'm here today to support your
10 efforts to create a federal minimum coal ash
11 disposal standard.

12 I am here representing our millions of
13 members worldwide saying that coal ash is
14 hazardous and a state-by-state enforcement is just
15 not enough.

16 It's clear that coal ash must be treated
17 as a hazardous waste under Subtitle C of RCRA. We
18 need federal regulation to ensure that dangerous
19 coal ash isn't just shipped to the state with the
20 most lax regulatory scheme.

21 Sound science supports the special waste
22 designation. Coal ash waste contains arsenic,

1 cadmium, chromium, lead, mercury, selenium, and
2 thallium among other toxic metals. These
3 dangerous toxic elements cause cancer, organ
4 disease, respiratory illness, neurological damage,
5 and reproductive and developmental problems.

6 There are over 130 damage cases that
7 have been clearly documented. This is an ongoing
8 health care catastrophe and requires redress
9 immediately.

10 Business as usual will not protect the
11 health and welfare of the American people. In
12 responding to pressure from the utility industry,
13 prior administrations have allowed the industry to
14 police itself or self-regulate under a patchwork
15 of state directives leading to the extensive
16 contamination of water and land by toxic heavy
17 metals. This approach has not and will not
18 protect streams, ponds, rivers, lakes, and human
19 health.

20 Everyone in this room remembers the
21 Kingston TVA spill in Harriman, Tennessee, and the
22 failure of the sludge impoundment which released

1 over one billion gallons of toxic coal ash sludge
2 over 300 acres poisoning everything in its path.

3 Response, it is being cleaned up by
4 shipping it over to Perry County, Alabama, which
5 currently has no regulations regarding disposal of
6 coal ash. This is unacceptable.

7 Not only is coal ash hazardous, but the
8 problem is enormous. Approximately 140 million
9 tons of this mix is generated every year. That's
10 every year.

11 A hazardous waste designation under
12 Subtitle C of RCRA would ensure that coal ash
13 dumps and waste ponds have all the protections
14 currently required at waste landfills. Solid
15 waste permitting -- permits, liners, monitoring
16 systems, and leachate collection system make
17 sense, are readily available technologies, and can
18 help prevent disproportionately poor communities
19 from being at risk from high hazard dams and
20 leaking dumps.

21 Lax guidelines such as those that would
22 be applied under the weaker Subtitle D regulations

1 will fail to fix the problems as the EPA expects
2 that approximately 50 percent of coal ash dumps
3 and waste will not clean up under this plan.

4 This is exacerbated even worse under the
5 Subtitle D prime option which would not even apply
6 to some of the worst, most dangerous dumps and
7 waste ponds in the country.

8 I commend the EPA for conducting these
9 hearings on its two vastly different proposals
10 concerning public and environmental safety
11 standards for the disposal of toxic waste from
12 coal-fired power plants, and know that given the
13 readily available science that you will make the
14 right choice.

15 Thank you very much.

16 MS. DEVLIN: Thank you. Number 84, if
17 you're in the room. 227, 228, 229, 230, 231.
18 231. Thank you.

19 MR. DELASHMIT: Hi. My name is Zack
20 Delashmit. I support a designation of coal ash as
21 a Class C hazardous waste. As seen in Appalachia,
22 coal ash is a public health issue as well as an

1 environmental issue. Each of these issues should
2 be taken into consideration when regulating coal
3 ash. I support the decision to designate coal ash
4 as Subtitle C hazardous waste.

5 Thanks.

6 MS. DEVLIN: Thank you. At this point I
7 have concluded all the speakers who are registered
8 and have signed in. So I will ask one more time.
9 Is there anyone with a number or who is registered
10 to speak or would like to speak? Okay.

11 We will take a 10-minute break at this
12 point, and we'll reconvene in 10 minutes and see
13 if there are any other registered speakers. If
14 not, we will then take a dinner break.

15 Thank you.

16 (Recess)

17 MS. DEVLIN: I wanted to give one more
18 opportunity. Is there anyone who signed in who
19 has a number who would like to speak to us this
20 afternoon? Okay.

21 Hearing no one, we're going to take a
22 break until 6 o'clock. We will reconvene starting

1 at 6:00 at this room. We do have a number of
2 speakers signed up for this evening. So we
3 encourage everyone to come back a couple minutes
4 before 6:00. We will start at 6:00.

5 Thank you. Go out and enjoy a little
6 bit of the weather.

7 (Whereupon, at 4:33 p.m., an
8 afternoon recess was taken.)

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

2 (6:02 p.m.)

3 MR. DELLINGER: All right. We're going
4 to start the evening session. Good evening, and
5 thank you for attending today's public hearing on
6 the Environmental Protection Agency's proposed
7 rule regarding the regulation of coal combustion
8 residuals that are disposed of in landfills and
9 surface impoundments.

10 Before we begin, I would like to thank
11 you for taking the time out from your busy
12 schedules to address the proposed rule, and we
13 look forward to receiving your comments. This is
14 the second of seven public hearings that we'll be
15 conducting. We had a successful hearing in
16 Washington, DC, on Monday of this week. The
17 remaining hearings are scheduled for Dallas,
18 Charlotte, Chicago, Pittsburgh, and Louisville.

19 My name is Bob Dellinger. I am the
20 Director of the Materials Recovery and Waste
21 Management Division in EPA's office of Resource
22 Conservation and Recovery. I'll be chairing this

1 session of today's public hearing.

2 With me on the panel are Laurel Celeste
3 from our Office of General Counsel; Kendra
4 Morrison from your Denver regional office; and
5 Alex Livnat, who works with me.

6 Before you begin the hearing, I would
7 like to -- I'd like to go over the ground rules
8 for the comment portion of today's public hearing.
9 The way it will work is, speakers, if you're
10 preregistered, you'll be given a 15-minute time
11 slot when you're scheduled to give your three
12 minutes of testimony.

13 To guarantee that slot, we've asked that
14 you sign in 10 minutes before your 15-minute slot
15 at the registration desk. All speakers 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.

19 I will call speakers to the front row
20 over here on my right, your left, four at a time.
21 When your number is called, please move to the
22 microphone and state your name and your

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

4 Because there are many people who have
5 signed up to provide testimony and to be fair to
6 everyone, testimony is limited to three minutes.

7 We'll be using an electronic timekeeping
8 system, and we'll also hold up cards to let you
9 know when your time is getting low. When we hold
10 up the first card, you'll have two minutes left.
11 When we hold up the second card, that means you'll
12 have one minute left. When we hold up the third
13 card, you have 30 seconds left. And when the red
14 card is held up, you're out of time and should not
15 continue with your testimony.

16 Remember that you can provide any
17 written material to our court reporter, and
18 material will be entered into the record. We will
19 not be answering questions on the proposal.
20 However, we may ask questions of you if we don't
21 understand or need clarification on something that
22 you stated in your testimony.

1 As I just mentioned, if you have brought
2 a written copy of the comments you're giving
3 today, please leave a copy in the box by our court
4 reporter, and that box is right here to my left,
5 your right, and then if you are only submitting
6 written comments today, please put those in the
7 box by the registration desk.

8 If you have additional comments after
9 today, please follow the instructions in the -- on
10 the yellow handout and submit comments by November
11 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'll do our best
16 to accommodate speakers that have not
17 preregistered. I don't think that's going to be a
18 problem. I hope not.

19 Today's hearing is scheduled to close at
20 9 p.m., but we will stay later if necessary. If,
21 however, time does not allow you to present your
22 comments orally, we have prepared a table in the

1 lobby where you can provide written statements in
2 lieu of oral testimony.

3 These written statements will be
4 collected and entered into the docket for the
5 proposed rule and will be considered as if you
6 presented them orally.

7 If you'd like to testify but have not
8 registered, please sign up at the registration
9 table. An agenda can be found in the packet you
10 received when you signed in today. Also included
11 is some material on the proposal as well as
12 instructions for submitting comments.

13 We're likely to take occasional breaks.
14 You know, if some people that we think have signed
15 in had to, you know, leave the building or leave,
16 you know, this part of the building anyway, you
17 know, to give them time to get back if there are
18 no other speakers that are around at that
19 particular time.

20 And finally, if you have a cell phone,
21 we'd appreciate it if you could turn it off or
22 turn it to vibrate. And if you need your phone at

1 any time during the hearing, please move to the
2 lobby or somewhere outside the hearing room.

3 Thanks for participating today. And
4 we'll get started right now.

5 I'd like to call Numbers 91, 94, 95, and
6 97 to the front of the room.

7 MR. HUDSON: Good evening. My name is
8 Mark Hudson. I am a replacement speaker for
9 Charles Norris, who was unable to be here tonight
10 and had to be out of town. I do have some files
11 that Charles sent to me, and I'll put those in the
12 box as soon as I'm done.

13 Included on the disk are some reports
14 that Charles has authored and the text of his
15 testimony to a subcommittee of Congress from a
16 year ago or so on these same topics.

17 Charles and I have been involved with
18 coal ash issues for several years now. We are
19 consultants to a citizens' group from the small
20 town of Pines, Indiana. Pines has the unfortunate
21 history of being one of the towns in America where
22 CCW, coal combustion waste, has impacted the

1 groundwater supply.

2 The BRPs have been required to replace
3 the private water wells and extend the use of the
4 water system, and the site continues to be under
5 investigation in Region 5.

6 It's my opinion that regulation under
7 Subtitle D would not and was not sufficient to
8 protect the citizens of Pines -- we're talking
9 about hundreds of people here -- from being
10 receptors to coal combustion waste contaminants.
11 I think it's going to take Subtitle C to really
12 protect the public.

13 Since I'm running out of time real
14 quickly here, I see, I will just say that no
15 matter which way EPA decides to go in the end on
16 the regulations, I'd like to see EPA take a long,
17 hard look at the so-called beneficial use of coal
18 combustion waste in mines.

19 We have done lots of recent looking at
20 data from mine sites, and SMCRA regulations are
21 insufficient. They don't provide the kind or
22 level of groundwater monitoring necessary to even

1 be able to detect impacts from CCW disposal in
2 mine sites.

3 MR. DELLINGER: Thank you. Number 94.

4 MR. MARTINEZ: Excuse me. Is that water
5 over there for the speakers? I could probably use
6 a quick drink to clear the vocal cords. Hope
7 you're not timing this.

8 MR. LIVNAT: No, we're not. It won't
9 count. I promise.

10 MR. MARTINEZ: Good evening, ladies and
11 gentlemen. My name is Randy James Martinez, and I
12 represent the Sierra Club.

13 The time has come for tougher
14 regulations for coal-fired electrical plants that
15 not only emit toxic carbon emissions into the air
16 that each and every one of us breathes, but more
17 importantly the coal combustion residuals that are
18 left behind to poison the drinking water, destroy
19 our ecosystems, not to mention environmental
20 damages that are unsightly and hazardous for the
21 American citizens who are so unfortunate enough to
22 have to live near these man-made calamities.

1 This is -- these are unnecessary in this
2 day and age of innovation, and green technology
3 that is at our disposal with proper and long
4 awaited legislation hampered by corporate lobbyist
5 firms.

6 CCRs are the carcinogens that when
7 placed in the unlined or clay-line ponds have the
8 potential to leak into groundwater. Consequently,
9 this contaminated water is consumed by residents
10 in the vicinity of each unlined pond and possibly
11 clay-lined ponds in which 60 percent of all ponds
12 in the United States are either clay lined or
13 unlined according to data collected by you, the
14 EPA, in the year of 1995.

15 Also according to your data, composite
16 liners can dramatically reduce exposure to
17 carcinogens and toxic pollutants in the parameters
18 of acceptability. However, the federal government
19 and most states do not require any such protective
20 measures.

21 Why have decades passed behind us while
22 we have placed CCRs in clay-lined or unlined ponds

1 that kill, not to mention leave long-term damages
2 for us and our children, also wildlife and
3 environmental disasters for the future generations
4 to deal with?

5 The failed climate legislation may set
6 us behind for decades yet to come. You have the
7 power to stop this insanity by proposing
8 regulations that will ensure each and every CCR
9 pond is contained in a composite-lined apparatus.

10 Why are we producing about 129 million
11 tons of coal ash each year and have 600 coal ash
12 dumps and waste ponds nationwide with at least 23
13 states who have contaminated surface water and
14 groundwater due to clay-line or unlined ponds?

15 Are we not the leaders of this free
16 world? Should we not lead by example and not by
17 hypocrisy?

18 I plead with you on behalf of all who
19 breathe air, drink water, stop these atrocities and
20 make and enforce strict regulations for CCRs to
21 save this generation and one to come (sic). This
22 is your job to protect us. Do it now.

1 Thank you for telling -- thank you for
2 allowing me to speak.

3 MR. DELLINGER: Thank you. Number 95.

4 MR. MARSH: I made a few notes on the
5 subject here. My name is Greg Marsh. I'm the
6 last elected president the Rocky Flats clean-up
7 commission and administered TAG from EPA, Region
8 8, until it was totally illegally defunded because
9 it was done in a totally arbitrary and capricious
10 way.

11 And the reason for this is simple. They
12 didn't want technically competent people
13 commenting, pointing out errors, and so forth, on
14 the Rocky Flats Plant mess, which we won. It's
15 gone.

16 Sadly EPA, as other regulatory agencies
17 with the Shaddock chemical mess on the banks -- in
18 an unlined mess of the banks of the South Platte
19 River, the uncharacterized nature of what's left
20 of Rocky Flats -- which you can almost see from
21 here, I believe -- and other big messes, not the
22 least of which is Rocky Mountain Arsenal, we're

1 still messing with those decades and decades after
2 they started.

3 We need to have serious clean-up in
4 these existing messes, and we cannot have policies
5 that allow corporate America to do anything it
6 wants. This -- these kinds of messes are
7 inexcusable.

8 Why are the citizens drug down here into
9 this toxic, poison city full of parking Gestapo
10 when it could be held out at suburbia, for
11 example, to testify, beg, grovel, whatever you
12 want call it, for the same things that corporate
13 executives and their sleazy corporate attorneys
14 would never allow on their property?

15 This is crazy, and we're supposed to be
16 a civilized society.

17 Thank you very much.

18 MR. DELLINGER: Is Number 97 here?

19 Okay. 96.

20 MS. DUVIVIER: My name is K.K. DuVivier.
21 I'm a full tenured professor at the University of
22 Denver Sturm College of Law. I teach mining and

1 energy law.

2 I am not anti-development, but I want to
3 make three points today that will help explain my
4 support for Subtitle C regulation of CCRs.

5 First of all, I think that it's
6 important that any solution that we do does not
7 impact human health. So we know that we're doing
8 some tradeoffs; we have taken scrubbers so that we
9 take the CCRs out of the air, but what we've
10 essentially done is shifted them to our ground and
11 the groundwater.

12 So we need to do -- whatever regulation
13 we do needs to make sure that groundwater is
14 protected. So I think that actually protection --
15 or Subtitle D does not protect groundwater enough,
16 and that's part of the problem. Just doesn't have
17 enough teeth in it.

18 Second, I think that Subtitle D fails on
19 the true cost test. I know that there are some
20 estimates that it will cost significantly more to
21 have the Subtitle C regulations, but those are
22 short-term benefits. And so often in the area of

1 energy regulation, we haven't looked at the true
2 cost of what particular source creates.

3 And so one of the things that we've seen
4 with the TVA disaster, the toxic tsunami as some
5 called it, was that there are a lot of costs down
6 the road. And that EPA has estimated that they
7 save \$7.4 billion a year with Subtitle C
8 regulation and that that would be a price increase
9 of less than 1 percent for utilities, for
10 customers across the country.

11 Finally, I think Subtitle C is better
12 because it will actually encourage the beneficial
13 use of the CCRs; that some say it may hurt
14 recycling, but the recycling that's being done is
15 not being responsibly done. So having that
16 regulated along the way and actually increasing
17 the costs of disposal will create new incentives
18 for recycling.

19 So I want to thank you for all of the
20 effort put into this and the opportunity to talk
21 to you. Thank you.

22 MR. DELLINGER: Thank you. Is Number 97

1 here? How about 99, 101, 102, and 103?

2 MS. ZAHNISER: Hi. Thanks for letting
3 me speak. My name is Julie Zahniser. I'm from
4 Boulder, Colorado. I've been a speech pathologist
5 for about 35 years. I live approximately three
6 miles south of the Valmont Coal Plant and work as
7 a speech pathologist evaluating birth defects in
8 five-year-old children less than half a mile south
9 -- directly south of the Valmont cooling ponds.

10 I evaluate children who exhibit speech
11 and language delays and disorders directly
12 resulting from neurologic damage. I know you have
13 heard testimony about the many toxic elements
14 coming from the coal plants that exist in fly ash,
15 that exist in the cooling ponds.

16 I'm obviously here because of my concern
17 for the children who might be affected by those.
18 These cooling ponds in the Valmont area are right
19 in the middle of a huge riparian area, which means
20 it's characterized by water; water in the ground,
21 water everywhere.

22 These ponds were built between 1924 and

1 1973, I believe, and I read a report from PSCo,
2 Public Service Colorado, in May of 2009 saying
3 that when the ponds were built, there was no
4 documentation of engineer inspection. This does
5 not give a person a lot of confidence that the
6 ponds are properly lined.

7 First, I wanted to mention about those
8 -- that inspection, and secondly, I would like --
9 I would like to say -- speak about the fact that
10 the coal ash is transported on conveyor belts to
11 an area -- a large area about less than a mile
12 from where I work in an area where we have average
13 wind speed of approximately nine miles per hour
14 throughout the year and the high throughout the
15 year ranges between 60 and 73 miles per hour.

16 We're talking about ash, and this is a
17 serious problem for people who live downwind,
18 which would be a huge part of Boulder County.

19 I know these plants are old; that you
20 can't do anything about the past, but we can do
21 something about the present and the future. I'm
22 here to represent the people who are little and

1 who can't speak for themselves and who are not
2 born and the one in eight young woman who have
3 toxic levels of mercury in their bodies now.

4 We need to help these people and protect
5 our future. We need to have strong legislation.
6 We need to inspect these places, clean them up,
7 and I urge you to take the strongest possible
8 measure with section (sic) C. Thank you.

9 MR. DELLINGER: Is Number 101 here?
10 Number 98.

11 MS. SEEMAN: Hi. My name is Joan
12 Seeman, and I am the Sierra Club's Rocky Mountain
13 chapter toxic waste chair.

14 Several years ago a family that was
15 living next to a coal power plant in Colorado
16 phoned the Sierra Club. They needed our help
17 urgently, they said. They had just been polluted
18 by coal fly ash.

19 They learned that the power plant had an
20 upset condition and blew coal fly ash into their
21 air, on their land, into their home. It
22 contaminated the inside of their house, their

1 appliances, their furniture, and worst of all,
2 they could hardly breathe for about 20 minutes of
3 this upset emission.

4 We contacted the Colorado Department of
5 Health and set up a meeting at the family's home,
6 and we were all present. The state health
7 department had concluded there was nothing they
8 could do for this family. The coal plant could
9 legally operate next to their home, they said,
10 with upset conditions.

11 The state said that a power plant's
12 location is not considered in the permit approval
13 process. Other states nationwide do consider what
14 is termed "toxic hot spots" for pollution, which
15 is what that situation was.

16 The family believed that Colorado should
17 be concerned about their health and safety next to
18 this polluter. They decided to videotape this
19 power plant that included continued upsets, the
20 coal ash piles blowing in the wind, the trains and
21 trucks that were coming in that were not covered,
22 the liquid impoundments that kept growing and

1 seemed to get larger, and the plumes of gas that
2 somehow blocked the sun.

3 They began to educate themselves about
4 what is toxic coal ash. They asked the power
5 plant a lot of questions, and eventually the power
6 plant paid them to move and relocate.

7 Today U.S. EPA offers two potential
8 regulating opportunities. I think that's
9 commendable, but I would like to also inject that
10 radioactive waste is in fly ash, and I'm pretty
11 appalled that we have not had any distribution of
12 any information to let the public know about the
13 radioactivity in the fly ash.

14 EPA is currently trying to regulate coal
15 ash through teamwork regulations that have been on
16 the table I believe for a long time, and you still
17 have not done anything about that.

18 Right now in the combustion process it
19 says -- U.S. Geological Survey in Colorado said
20 between 1,000 and 4,000 parts per billion are
21 being generated, and right now Colorado has a
22 standard of 30 parts per billion.

1 So if that coal ash hits our groundwater
2 and it's being stockpiled in coal ash mountains,
3 the surface water will be impacted. And the DOE
4 also says that it's up to 10,000 parts per billion
5 of uranium, but there's also radium.

6 Thank you all very much, and we really
7 appreciate this opportunity to be able to speak to
8 this issue, and please regulate it as hazardous
9 radioactive waste, and thank you very much.

10 My kids want no mercury in their fish,
11 by the way. They asked me to bring that up.
12 Thank you all very, very much.

13 MR. DELLINGER: Let's see. Is Number
14 90, 92, or 93 here? Okay. We'll go on. Let's do
15 101, 227, 228, and 230.

16 MR. ROSKE-MARTINEZ: Hi. My name is
17 Xiuhtezcatl. I'm a 10-year-boy from the Boulder
18 Earth Guardians Youth Group. We came to Denver
19 today to speak out on the dangerous coal ash here
20 in our communities. This is a very serious issue
21 that affects my future and the health of our
22 communities.

1 Right now more than 150 million tons of
2 toxic ash is generated each year by burning coal
3 for electricity. This toxic ash is filled with
4 many toxins such as arsenic, lead, and mercury,
5 and now they're finding levels of these chemicals
6 in our water systems, in our air, and our land
7 miles away from where these coal ash sites are.

8 This is pretty scary news considering
9 that there's a coal ash storage site right here in
10 Denver and in Boulder.

11 We as youth know what's happening to our
12 Mother Earth, and it is not okay. We are out of
13 balance. Glaciers are melting, weather patterns
14 are changing, oil spills are destroying our oceans
15 and wetlands, and issues with coal ash are
16 threatening our future.

17 We are the ones who will be most
18 affected by these issues if nothing is done now.
19 I ask you, Do I matter? Do your children matter?
20 Our voices need to be heard.

21 We are the ones who will be here when
22 you are gone that will have to deal with cleaning

1 up this mess. So please think of us, the
2 children, when you are deciding on how to deal
3 with things like coal ash and remember on how it
4 will affect our future.

5 Thank you.

6 MR. DELLINGER: Thank you. That was
7 Number 101; is that right?

8 UNIDENTIFIED SPEAKER: Yes.

9 MR. DELLINGER: Okay. Number 227. 228.

10 UNIDENTIFIED SPEAKER: Hi. I'm speaking
11 as a college student who drove 15 hours from
12 Tempe, Arizona, to have my voice heard. My
13 generation, my friends and -- my friends and I are
14 not largely responsible for our country's current
15 state environmental protection. However, soon we
16 will be passed the reins of our country's economy
17 and environment.

18 And it will be our children that you
19 have committed to growing up in a world where
20 arsenic and selenium are considered appropriate
21 substances for our infrastructure.

22 I ask the EPA to regulate coal ash as

1 hazardous waste under Subtitle C RCRA so this
2 country won't pass along toxic chemicals to those
3 who aren't here in this room but will suffer
4 nonetheless if further action is not taken.

5 Thank you.

6 MR. DELLINGER: Number 230. Number 236.
7 I'll come back to 107.

8 MS. REETZ: Good evening. My name is
9 Pauline Reetz. I'm the conservation chairman for
10 the Audubon Society of Greater Denver, a local
11 grassroots organization with about 3,000 members
12 in the Denver metro area.

13 And we're here tonight because we
14 support the regulation of coal ash as a hazardous
15 waste under Subtitle C of RCRA, and we're taking
16 this position because we believe that any waste
17 containing the kind of heavy metals that this
18 stuff does should be regulation -- regulated as
19 hazardous.

20 And we're particularly concerned with it
21 leaching into surface and groundwater with
22 substantial negative impacts to both humans and to

1 the environment, particularly wildlife and
2 particularly to our major interest, which is
3 birds.

4 The toxins in surface water, of course,
5 can be taken up by such organisms as mussels or
6 insect larva or snails, which in turn are eaten by
7 fish, birds, and animals. Again, birds are right
8 in there. Mutual impacts will include destruction
9 of food chains and destruction of animal
10 communities and eventually I think the destruction
11 of plant assembly and ecosystem disruption, which
12 eventually, of course, hits us, humans.

13 We also feel that in the face of global
14 climate change, global climate disruption, it's
15 extremely important to safeguard all our ground
16 and surface water supplies from possible
17 contamination.

18 I just have a couple more observations.
19 One is that we think the federal regulation is
20 necessary because although some states do a good
21 job of regulation of hazardous waste, others do
22 not. And there's a patchwork of regulations that

1 leads to contamination in many cases.

2 On the same principle, we passed the
3 Clean Water Act and the Clean Air Act back in the
4 1970s, and we think that you should take action so
5 that all U.S. citizens have the same freedom from
6 pollution, not just the ones in states with
7 stronger regulation.

8 Secondly, it's our observation that when
9 an industry is faced with a new regulation, its
10 members always moan and groan and predict
11 disaster, but it usually doesn't happen -- it
12 doesn't happen, and industry adapts and life goes
13 on. So we think you can go right ahead with this.

14 Thirdly, just the observation,
15 prevention is always cheaper than patching up
16 after the fact. That completes my comments.

17 Thank you very much for this opportunity
18 to present our views.

19 MR. DELLINGER: Numbers 100, 102, 103,
20 and 104. Are those people here? All right.
21 We'll go 105, 106, 107, and 108.

22 MR. ROSKE-MARTINEZ: Hi. My name is

1 Itzcuauhtli. I'm a seven-year-old Earth Guardian
2 from Boulder, and we have been working really hard
3 in Boulder to get our community safer.

4 And that's -- and I came to Denver to
5 remind you that my future is in your hands. We
6 are doing our part to help because we know when
7 you are gone we are going to clean up a big --
8 we're going to have to clean up a big mess, and
9 that job will be much easier if you help us now by
10 getting rid of those big piles of coal ash that's
11 poisoning us.

12 Thank you.

13 MR. FOREMAN: Okay. I guess I'm on the
14 clock. My name is John Foreman. I live just a
15 couple miles from here. I didn't drive 1,800
16 miles or go to great lengths to get here.

17 I am speaking in favor of Subtitle C of
18 the proposal. Thankfully I do not live near a
19 coal ash impoundment pond. I speak as one who
20 treasures our natural environment and does not
21 want the land and water of Colorado or anywhere
22 polluted by deadly toxins.

1 As we all know, there are a number of
2 residual waste products called CCRs that are
3 created when coal is burned. The coal companies
4 and electric utilities would have us believe that
5 coal ash is harmless like dirt.

6 And while the bulk of the material, fly
7 ash, bottom ash, boiler slag, and FGD material,
8 actually has beneficial industrial uses, it also
9 contains high levels of deadly toxins, including
10 arsenic, selenium, cadmium, lead, and mercury.

11 The industry bases its claim that coal
12 ash is safe on a test called the Toxicity
13 Characteristic Leaching Procedure, or TCLP. Yet
14 the EPA's advisory board and the National Academy
15 of Sciences has determined that the TCLP does not
16 accurately predict the toxicity in coal ash.

17 When tested with EPA's new, more
18 accurate test, the coal ash leached up to 18,000
19 parts per billion, which is 1,800 times the
20 federal drinking water standard. Selenium leached
21 from one pond at up to 29,000 parts billion, which
22 is 580 times the drinking water standard.

1 It's not a matter of some ponds being
2 safe and some not. If a pond has coal ash in it,
3 it also contains toxic poisons. In fact, a new
4 report by the Environmental Integrity Project,
5 Earthjustice, and the Sierra Club, released
6 October 26, identifies 39 additional coal ash dump
7 sites in 21 states that are contaminating drinking
8 water or surface water with arsenic and heavy
9 metals.

10 These sites are in addition to the 67
11 EPA-acknowledged sites, bringing the total number
12 to 137 in 34 states.

13 I'm not going to be able to finish this,
14 but I'll try.

15 In Colorado there are 40 coal ash ponds
16 at 10 plants. 26 of the ponds are over 30 years
17 old. 13 are over 40 years old. The age of these
18 ponds means it's unlikely they have safeguards
19 like liners and leachate collection systems.

20 People living near unlined coal ash
21 ponds can have a one in 50 risk of cancer. That's
22 more than 2,000 times higher than what the U.S.

1 EPA considers acceptable. The toxins in coal ash
2 have also been linked to organ disease,
3 respiratory illness, neurological damage, and
4 developmental problems.

5 Two ponds in Colorado; one in Comanche
6 and one Valmont, had spills in 2000 and 2008
7 respectively. Do we really want to rely on the
8 coal industry to make coal ash ponds safe?

9 Please do not -- please do the right
10 thing and regulate these dangerous materials.

11 MR. DELLINGER: 106.

12 UNIDENTIFIED SPEAKER: Kind of missed my
13 turn.

14 MR. DELLINGER: We'll catch you in a
15 minute.

16 MS. JOHNSON: Good evening. My name is
17 Candice Johnson, and I'm a pediatrician, and I'm
18 here to talk about the medical aspects of coal ash
19 tonight. I also want to support coal ash disposal
20 under Subtitle C rather than Subtitle D.

21 The reason is toxic metals, which are --
22 especially lead, which is a neurotoxic, are

1 abundant in coal ash. I'm a pediatrician with 33
2 years of experience since medical school, and 20
3 of those years were spent in Cleveland, Ohio,
4 which is a hot spot for lead poisoning.

5 I personally treated dozens of children,
6 usually toddlers and babies, who had lead
7 toxicity, and it's really a scary thing to see
8 because those children have lost IQ points. In
9 fact, some of them are mentally retarded. I've
10 seen children who have crossed eyes. The
11 neurotoxicity of lead is prodium. It comes in
12 many different flavors.

13 Coal ash is heavily contaminated with
14 lead as well as cadmium and arsenic. I believe
15 you've heard testimony about that today. But
16 tonight I'm addressing only lead.

17 There are three ways that lead enters
18 into the human body. It enters through the air we
19 breathe. It enters through the water we drink in
20 our homes and essentially through wells. And
21 thirdly, it enters through the dirt which children
22 and adults get on their hands and on their feet.

1 The fourth way, which was the eating of lead
2 paint, thank goodness is becoming much more rare
3 because we no longer have lead in paints.

4 We also have eliminated lead in
5 gasoline, as you all know, and because of that,
6 modern doctors are seeing less and less lead
7 poisoning, and in Colorado it's actually a rather
8 small problem. But it is not a problem which has
9 gone away because if we have more coal ash being
10 disposed of improperly, we can get it back into
11 the water supply and into the air we breathe.

12 Coal ash is placed in so-called ponds,
13 which are really just pits which are usually
14 unlined, can leach into the groundwater. The ash
15 can blow out of dry landfills, and we can breathe
16 it in just by living in a city that's near a
17 landfill.

18 Now, it really doesn't take a whole lot
19 lot of lead to cause toxicity. The amounts of lead
20 are so minuscule that scientists debated for years
21 whether or not the loss of IQ points was really
22 occurring from them or whether it was similarly an

1 accident that had something to do with living in
2 poverty.

3 Well, it does occur to people living in
4 poverty because those were the ones who had homes
5 with the chipping paint, had proximity to
6 interstate highways where there was lead being
7 given off the leaded gasoline, but it wasn't
8 poverty. It was the lead.

9 We know conclusively that even very low
10 levels of lead in children's blood can cause
11 learning disabilities, hyperactivity, and mental
12 retardation.

13 So it is my professional opinion that we
14 need to treat coal ash as a dangerous byproduct,
15 and we need to phase out the aerosolization and
16 cover the dry landfills.

17 Thank you very much for allowing me to
18 speak tonight.

19 MR. DELLINGER: Thank you. Number 108.

20 MS. CARTER: Hi. My name is Trinity.
21 I'm also an Earth Guardian in Boulder. I came
22 today because I wanted to make a difference.

1 I was really shy, but when I got into
2 Earth Guardian and started learning about the
3 planet we were being handed, I knew I had to do
4 something. I had to find the courage to stand up
5 and speak out, and that is why I'm here.

6 I want to ask you to find the same
7 courage to stand up for our future and put an end
8 to toxic coal ash problems that are left outside.

9 It doesn't seem very smart just to put
10 it outside when tons of it just blows away and
11 puts our health at risk.

12 Thank you.

13 MR. DELLINGER: Number 104.

14 MR. DVORAK: Good evening. My name is
15 Bill Dvorak. I'm a river outfitter from Nathrop,
16 Colorado.

17 I grew up on a small ranch between
18 Sheridan, Wyoming, and Billing, Montana. So I'm
19 very aware of the effects of fossil fuel
20 contaminants on folks who live adjacent to those
21 kinds of facilities.

22 You've already heard enough about the

1 identification of a number of new contaminants
2 that came out in 39 dump sites in 21 states
3 bringing the total to 237 in 34 states, and we
4 have 40 of those sites here in Colorado, and
5 fortunately we haven't had any of them spill yet.

6 And I think what I want to do today is
7 talk about something besides people's health, and
8 that's wildlife. And one of the things that we
9 can equate that to is back in 2002 we had a
10 serious fire season here in Colorado, and during
11 that time the word got out that the entire state
12 was on fire even though only 1 percent of the
13 state was actually burning.

14 And due to that, one of the things that
15 happened was the industry that I am mostly
16 involved in, which is recreation and tourism,
17 hunting and fishing, was severely impacted.
18 There's about almost 600,000 sportsman in
19 Colorado, and they generate about \$1.2 billion in
20 direct economic impact and about 2.1 billion with
21 a multiplier.

22 We also have a number of people who come

1 to Colorado for wildlife viewing. That generates
2 about 1.4 billion. The total outdoor recreation
3 economic impact to the state is well over 10
4 billion, and that's one of the largest economic
5 drivers in the state, larger than any of the
6 fossil fuel industries.

7 When that fire came and we had basically
8 the word going out that whole state was on fire,
9 we saw about a 40 to 50 percent downturn in that
10 economy, and there are areas that still have not
11 recovered because of the siltation and the other
12 things that happened after the fire burned.

13 And these are the kind of things that I
14 think would happen if we had some sort of a coal
15 ash dump spill similar to the one that happened in
16 Tennessee a while ago.

17 For this reason I think it's very
18 important that you guys identify this as a toxic
19 substance and go ahead and regulate it, and I
20 would recommend Subtitle C for that reason.

21 Thank you for your time.

22 MR. DELLINGER: 237, 238, 239, and 241.

1 Please come forward.

2 MS. MAR: Hi. Thank you for letting me
3 speak this evening. My name is Connie Mar, and I
4 live in Lakewood. I also do not live near a toxic
5 waste dump or coal ash pond, but I do strongly
6 support Subtitle C, and I ask that you reconsider
7 leaving in place the Bevill exemption for
8 beneficial uses of coal ash. I find that a bit of
9 a misnomer.

10 Using coal ash in concrete cement or
11 wallboard will create future exposure to the coal
12 ash when these materials are disturbed. And it's
13 easy to think, well, that will never happen.
14 Concrete is durable. It's strong. It's not
15 porous. That is not true.

16 So for instance, we are in a remodeling
17 landscaping project, and we are going to be
18 removing our patio block. Do I need to worry
19 about coal ash being in that cement when we take
20 it apart? Do I need to worry about coal ash in
21 the dust?

22 There was a time when we thought

1 asbestos was safe, and we were told tobacco was
2 safe. We learned the hard way that that is not
3 true.

4 We already know that coal ash is toxic.
5 It contains 24 elements that are extremely
6 poisonous to us. We don't want to be exposed to
7 that. So we ask that you protect us, protect our
8 environment.

9 And the companies that claim that they
10 will be under hardship with these regulations,
11 they're spending hundreds of millions of dollars a
12 year trying to convince us that coal and coal ash
13 is not dirty, it's not dangerous. They can spend
14 their hundreds of millions of dollars by taking
15 care of toxic waste dumps.

16 Thank you.

17 MS. JIN: My name is Shirley Jin, and
18 I'm a citizen of Colorado -- Boulder, Colorado.

19 And the role of the EPA is to protect
20 the environment and protect the citizens of the
21 U.S. From toxic materials. Now, the EPA has
22 determined that many of the toxins that are

1 contained in coal ash are hazardous and actually
2 regulates those toxins when they are released in
3 certain cases.

4 These hazardous toxins are not regulated
5 when they're in coal ash even though the EPA
6 understands that the coal ash will leach into the
7 groundwaters often and it will go into the
8 surrounding soil. In fact, the EPA has found that
9 people living within these coal ash storage areas
10 have health hazards.

11 This really makes no sense. If the EPA
12 understands the dangers, the EPA needs to regulate
13 the problem.

14 U.S. power plants produce 130 million
15 tons of coal ash each year. It's the second
16 largest waste stream in the U.S. after household
17 waste. Therefore, it's a huge problem.

18 And we need federal legislation that
19 will regulate coal ash because it has these toxic
20 materials that are leaching into the water and
21 soil and that will -- by basic environmental and
22 public health safeguard. The EPA should not

1 compromise just because the problem is so large,
2 because we don't even need to burn coal. We need
3 renewable energy sources, and we have them.

4 MS. ENGLISH: Good evening. My name is
5 Becky English, and I'm a sustainability
6 consultant, and I chair the energy committee for
7 Sierra Club in the state of Colorado.

8 Sierra Club members and I are taking the
9 time to submit testimony before you today to urge
10 you to adopt the proposed RCRA Subtitle C rather
11 than the Subtitle D provision under consideration.

12 The reason is that EPA must consider the
13 mountain of scientific evidence that the
14 substances contained in coal combustion wastes are
15 harmful to humans and other life forms.

16 I'm going to leave it to others to
17 continue the litany of the terrible substances and
18 effects on health, but I wanted to bring your
19 attention to a study that was released just last
20 week by the Environmental Integrity Project. I
21 will leave you a link to that study.

22 This study identifies 39 additional

1 sites in 21 states besides those already known to
2 be contaminating drinking water and surface water.
3 So the report, which included folks from Sierra
4 Club in the activity, documents that state
5 governments are not adequately monitoring coal
6 combustion waste disposal sites.

7 This is certainly true right here in
8 Colorado where budgetary constraints are often
9 cited by the Colorado Department of Public Health
10 and Environment for inadequate monitoring.

11 The report shows that every one of the
12 coal ash dump sites equipped with groundwater
13 monitoring wells, concentrations of heavy metals
14 such as arsenic and lead exceed federal
15 health-base standards for drinking water. Some
16 contaminations are as high as 341 times the
17 federal standard for arsenic.

18 Clearly the conclusion is that EPA must
19 take robust steps to protect the environment from
20 the toxins associated with coal combustion waste.

21 I'd like to point out that EPA standards
22 are created with only human health in mind, and

1 that, of course, there's untold and probably much
2 more devastating havoc being wreaked on so-called
3 lower or simpler forms of animal and plant life.

4 EPA has many other opportunities for
5 scientific and sociologic input on its decision,
6 but I urge you to adopt regulations under RCRA
7 Subtitle C for another very good reason, and
8 that's the wisdom of the precautionary principle,
9 which states that if an action or policy has a
10 suspected risk of causing harm to the public or to
11 the environment in the absence of scientific
12 consensus that the action -- lost my place -- that
13 the action or policy is harmful, the burden of
14 proof that it's not harmful falls on those taking
15 the action, in this case, power providers who use
16 coal.

17 This principle allows policy makers such
18 as you to make discretionary decisions in
19 situations where there's the possibility of harm
20 for taking a particular course or making certain
21 decisions when there's extensive scientific
22 knowledge on the matter that's lacking.

1 So please act responsibly and adopt
2 regulations pursuant to RCRA Subtitle C treating
3 coal combustion waste as the hazardous substance
4 that it most certainly is.

5 Thank you very much.

6 MR. DELLINGER: Number 241.

7 MR. THOMAS: Hi. My name's Rob Thomas.
8 I feel a little out of place. I moved out here
9 from New York. I don't live in Boulder, and I
10 didn't even know what the Sierra Club was until a
11 week ago.

12 And a friend of mine asked me if I had
13 any interest to come here and speak today. I
14 don't know a lot about coal ash or fumes or
15 poisons or toxicities or -- but I was thinking
16 what could I talk about.

17 So I spent about five minutes on-line
18 last night, and I found some numbers. I don't
19 know what kind of effect the EPA can have on these
20 numbers. I don't know.

21 Over the last six years, Congress has
22 accepted \$104.7 million in campaign contributions

1 from fossil fuel companies. In return, they have
2 paid those same fossil fuel companies \$70.2
3 billion.

4 I'm not an accountant, but that's either
5 a 670 percent return on your money or a 670,000
6 percent return. I'm not sure if I got the decimal
7 right. So I wonder with that kind of stuff going
8 on, how can I effectively get any regulation
9 passed to protect myself and my community.

10 I have a little graph here, and it shows
11 the money that goes to fossil fuel companies and
12 the money that goes to green technology currently
13 in subsidies, and it's so disproportionate that I
14 don't know what I can do about that problem.

15 So if there's anything that the EPA can
16 do to help us not pay the fossil fuel companies to
17 continue to destroy our planet, that would be kind
18 of cool.

19 And that's really all I've got. Thank
20 you so much for your time. I appreciate it.

21 MR. DELLINGER: Number 242, 243, 244,
22 and 245.

1 MR. HOFFMAN: Good evening. Thank you
2 for this hearing. My name is Roger Hoffman, and I
3 live in Loveland, Colorado, and I'll leave alone
4 the issues related to greenhouse gas emissions and
5 whether we should be coal and the spoiling of
6 mountaintops in West Virginia and all sorts of
7 other issues, just to focus on the health
8 implications and the question before you of
9 whether you should -- whether EPA should adopt
10 these rules to protect communities and people from
11 what we'll call coal ash.

12 And the answer from my perspective is a
13 resounding yes. If the TVA, Tennessee Valley
14 Authority, impoundment leak and other like
15 disasters and the whole history of mining and mine
16 waste management in this county have taught us
17 anything, it's that any delay in the effective
18 regulation and enforcement of management practices
19 is critical for such materials, and it always
20 costs us, the taxpayer, far more for any delays,
21 and it costs human health and suffering.

22 I know whereof I speak. Seeking the

1 cause of a mystifying medical condition years ago,
2 my physician ordered a heavy metal screen.
3 Subsequently it showed extremely elevated levels
4 of both mercury and lead in my system. I'm very
5 happy to have gotten that bad information or that
6 bad news because it allowed me to finally treat
7 the issue at hand.

8 Subsequently my wife was also tested,
9 and she showed high levels, though not quite as
10 high as mine, both in the unsafe ranges. That led
11 us to wonder how much would this population here
12 and the people around us -- how many of them would
13 show such levels.

14 Well, we can't tell where the exposure
15 path was. We don't know. There's no way of
16 tracking this. We didn't have any occupational
17 exposures. We grew up and worked in different
18 parts of the country as desk jockeys.

19 But the point is this: There's way too
20 much of this stuff out there. People are
21 suffering. Chronic illnesses in this country are
22 on the rise, and they're bankrupting the nation.

1 I beseech you to do all you can to put effective
2 controls in place and get this stuff out of the
3 environment.

4 Thank you very much.

5 MR. DELLINGER: Number 243.

6 MS. MILOFSKY: Hi. My name's Jacque
7 Milofsky, and I live just south of Denver. I'm
8 not a scientist. I'm just a citizen. But I know
9 you guys employ scientists, and I hope that under
10 this administration you will use good science to
11 make the decisions. It sounds like a lot of
12 science has been done.

13 And you know, the kids aren't the only
14 ones who are concerned about the future. I have a
15 daughter. I hope to have a grandchild soon and so
16 forth and so on.

17 And I don't have millions of dollars
18 like the Coke brothers to buy elections or buy the
19 Tea Party or, you know, influence legislation, and
20 that's why I'm glad that I have you guys to stand
21 up for us, because we need somebody who is not
22 motivated by profit but is motivated by what is

1 right for people and for this earth and for our
2 future.

3 My son-in-law thinks we're going to
4 settle Mars, but I'm counting on that. I think we
5 can't just, you know, leave the room a mess and
6 move on. We've got to clean up our mess. This is
7 vitally important.

8 Thank you.

9 MR. DELLINGER: Number 244. And is
10 Number 245 here? Could you raise your hand if
11 you're here? Is that 245? Yeah. You should be
12 up here.

13 MR. ESREY: Hi. My name is Jack Esrey,
14 and I'm nine years old, and I am an Earth
15 Guardian. I live in Boulder, and I came tonight
16 because I didn't want toxic coal ash in our air
17 and water.

18 We a saw picture in -- I saw a picture
19 in National Geographic Magazine of one of the ice
20 caps with dust on top. The magazine said coal ash
21 blows up there as soot, which is black, and makes
22 ice caps melt faster.

1 We have a coal-fired electric plant in
2 Boulder. We need clean energy now so that the
3 children of today can live on a healthy planet
4 earth. Please support Subtitle C.

5 Thank you.

6 MR. DELLINGER: Number 245.

7 MR. DAVIS: Hello. My name is Brandon
8 Davis. I'm here because I think coal ash should
9 be regulated to the fullest extent. It's full of
10 lots of toxic chemicals, and I really don't think
11 any of these should have the possibility of ending
12 up in drinking water or in communities or in
13 playgrounds, and things like arsenic have no place
14 in a children's (sic) life.

15 Actually, talked on the street today --
16 on campus there with a woman who came here from
17 Las Vegas to go to National Jewish, which is a
18 hospital here that pretty much specializes in
19 lungs and, you know, diseases of the lungs. She
20 got a disease, cancer, from living in a building
21 with toxic materials in it, and if there were
22 regulations, she wouldn't have had that.

1 If she comes, she should never be able
2 to live in Denver because it affects her lungs so
3 much. It's partially because Denver has so much,
4 you know, pollution. We need to be able to
5 regulate this pollution downstream and in our air,
6 and it should be regulated to the full extent.

7 People are going to live in the middle
8 of nowhere, a desert in Nevada, to try and get
9 away from this stuff. Seems kind of awful, to be
10 honest. And I would not like to live drinking
11 coal ash. So I would really like to see it
12 regulated to the fullest extent.

13 Thank you.

14 MR. DELLINGER: Numbers -- I'll ask, is
15 Number 97, 100, 102, or 103 here? Okay. 97.

16 UNIDENTIFIED SPEAKER: 103.

17 MR. DELLINGER: 103. Is 100 or 102
18 here? Okay. So we'll go to 109 and 110.

19 MR. AVAR: Hi. My name is Harper, and I
20 and an Earth Guardian from Boulder. We are all
21 here for the same issue, coal ash. Coal ash is a
22 toxic substance that is piling up here in

1 Colorado.

2 Already there have been multiple spills
3 from sludge ponds in Pueblo and Boulder. The
4 decision makers are letting arsenic, lead, and
5 mercury into our bodies. People near coal ash
6 dump sites have a one in 50 cancer rate.

7 What I would like to say to those in
8 power, Stop telling yourself that these crises
9 won't affect you. Do you even care enough about
10 future generations enough to change this?

11 If the coal ash spills, it will get into
12 your body. If we pollute our world, we pollute
13 ourselves, and when kids take over, we will have
14 all of this pollution to clean up, and we didn't
15 get ourselves into this mess. We simply inherited
16 it. So I'm asking all of you to clean up your act
17 right now.

18 Thank you.

19 MS. BACHILLERI: Hi. My name is Carl
20 Bachilleri, and I'm a 10-year-old Earth Guardian,
21 and I'm here today because I heard that there was
22 piles of coal ashes building up around our world

1 and around where I live, and that kind of worried
2 me because I know that it goes in our water and it
3 can get, like, everywhere that --

4 I walk around barefoot most of the time,
5 and I'm worried that I'm going to get myself
6 really sick, and you guys have heard all the facts
7 about what this whole (sic) can do, and I just
8 want to say that, like Harper said, my generation
9 is going to be the one that's going to have to
10 clean it up, and it's just another one of those
11 subjects that we're going to have to take care of.

12 So if you guys can help us now by making
13 a change, I would really appreciate it.

14 Thank you.

15 MR. DELLINGER: 103.

16 MS. AMERMAN: Good evening. My name is
17 Laila Amerman. I'm a student at CU Boulder, and I
18 am a coordinator for the Sierra Student Coalition
19 at CU, and first of all we would like to applaud
20 the EPA for looking into the issue of regulating
21 coal ash. It's awesome that you guys are
22 considering it.

1 It's unfortunate that since TVA happened
2 and that that was what brought all the attention
3 to it, but that seems to be a recurring theme.
4 When it comes to big companies, they seem to just
5 create all this waste and not care about where it
6 goes and what's in it.

7 And that's overall the message that I'm
8 taking away from all this is that we're asking to
9 make sure everyone understands what's in our waste
10 and where it's going and whether or not it can
11 affect our communities and our ecosystems and the
12 environment on which we depend and our health, our
13 bodies on which we need in order to be able to be
14 a productive society.

15 I think everyone here has talked about
16 spills and negative facts and all of those sorts
17 things, so I don't want to dwell (sic) into that,
18 but I appreciate that you guys are looking into
19 it, and I do hope that you support Subtitle C.

20 MR. DELLINGER: Thank you. Number 97.
21 I'm sorry I missed you earlier.

22 MS. RICHARDSON: Hello. My name is Dr.

1 Roberta Richardson. I'm a practicing physician
2 here in Colorado, and I'm also the president of
3 the Colorado Chapter of Physicians for Social
4 Responsibility.

5 I came with my prepared remarks to read,
6 but it's clear that you've been hearing that same
7 stuff all day. So I'll just use my time to make a
8 few additional points.

9 One is that I was really alarmed to read
10 about some modeling studies that the EPA have done
11 about how long it actually takes for some of these
12 toxic elements to migrate through the soils into
13 the drinking water sources. And it turns out that
14 it takes 75 to 100 years or so for some of more
15 notorious things to reach their peak
16 concentrations in wells from the time they leave
17 the coal ash.

18 And as some of the children have been
19 pointing out, it's just unconscionable really to
20 think about us saying that we're more concerned
21 about money and the robustness of the coal and
22 energy industry than what kinds of illnesses will

1 be heaped upon our children 75 to 100 years from
2 now.

3 I think it's kind of natural. I'm a
4 psychiatrist, and because it's down the road, we
5 tend to focus more on what's right in front of us
6 and the immediate sorts of rewards.

7 So I'm asking the EPA on behalf of
8 physicians who would really very much rather
9 prevent things than have to try to cure cancers
10 and deal with the myriad kinds of chronic
11 illnesses that we really didn't do much about, to
12 think about those future generations and do what's
13 necessary now.

14 And just one more brief comment. I know
15 that one of the major complaints from the industry
16 who wants Subtitle D instead of Subtitle C is that
17 if you designate coal ash as a hazardous waste
18 that that will put a stigma on coal ash and
19 interfere with the ability of the industry to sell
20 and to reuse in so-called beneficial uses.

21 Well, I'd just like you to think about
22 the stigma attached to coal ash when people are

1 sick and dying. That seems a little more
2 stigmatizing to me.

3 So thank you very much for the
4 opportunity to talk tonight.

5 MR. DELLINGER: Thank you. 111, 112,
6 246, and 247. Are Number 111 or Number 112 here?
7 Okay. 246. All right.

8 MR. SULLIVAN: Hello. I'm John
9 Sullivan. I want to say thank you, first of all,
10 for letting us speak. Also I want to say I'm
11 definitely opposed to D, big time. I support C
12 because it's the only option.

13 But I would like to agree with some of
14 what people have said that coal -- I don't even
15 know why we are using coal today. It's an archaic
16 form of energy. We're in the 21st century.
17 There's absolutely no need for it. The coal
18 industry has had a free ride since the industrial
19 revolution. There's absolutely no need for it to
20 continue. Enough is enough.

21 I am a teacher -- a high school teacher,
22 and I was teaching about the progressive unit

1 these past couple weeks. We've been looking at
2 primary source documents of New York City and
3 Chicago tenement housing, the living conditions,
4 looking at work conditions that people worked in
5 factories.

6 And I say, Look at these conditions.
7 These are horrendous. This can never happen
8 again. You know, the owner -- and I say, This
9 will never happen again because we have government
10 regulation. There are people that fought to
11 protect us.

12 The same thing back then, the owners of
13 the tenement houses, the owners of the factories
14 said legislation will kill us. You can legislate
15 this. This will kill us. We can't provide clean
16 living conditions for immigrants. We can't
17 provide clean working conditions and still expect
18 to make a profit.

19 Yet what has happened? We can do it,
20 and it's the same argument that's been used over
21 and over and over again. And I sit here and I am
22 furious that we even have to talk about this, and

1 I'm so sick of reading about private interests
2 winning out over the health benefit of society.

3 As the gentleman before spoke about the
4 rivers that he works on, think about the
5 billion-dollar industry of tourism for outdoor
6 recreation. Why aren't those private -- why
7 aren't those individual businesses considered?

8 In the United States, you know, we talk
9 about how we are so proud of our small business
10 and the entrepreneurial spirit of America.
11 However, we don't care. Our government only cares
12 about supporting the corporate Goliath, and it
13 sickens me.

14 So also, I don't know if I can ask
15 questions, but did the EPA come up with option D?
16 And if they did, I don't know how you guys can
17 consider yourself a protection agency of the
18 environment because D looks like it was written by
19 a lump of coal.

20 I mean, I don't even get that. I was
21 laughing, but not because I thought it was funny,
22 but because I didn't know what else to do.

1 So please do C. And thank you for your
2 time.

3 MS. SEGAL: Hi. Lynn Segal from
4 Boulder. Hi, Alexander, Kendra, Laurel, Bob.
5 Funny that we meet here this way; that we're all
6 here in this time and space.

7 You're all the experts, and still the
8 most expert person is still unknowledgeable. I
9 don't envy your decision, you know, your having to
10 be in this position.

11 My mom died of leukemia. We lived in
12 Salt Lake City. There was above-ground testing.
13 We were drinking skim -- you know, powdered milk,
14 you know. I can never prove, you know, why my mom
15 died. I need my mom now more than I ever needed
16 my mom, you know, in this economic depression.

17 When -- when we can put solar -- you
18 know, my shirt here. I'm working for this issue
19 to be in Boulder where we're trying to negotiate a
20 clean energy future outside of Xcel possibility.
21 You know, how do you choose these tradeoffs, you
22 know.

1 How many lives -- in war how many lives?
2 You know, we all know this stuff, but it's hard to
3 see people having to die and having to make
4 choices. One life, you know -- even one life
5 matters so much.

6 I can't echo what Becky English said.
7 It was on my list, and I'm so glad she said it
8 about the precautionary principle and the hope for
9 the future of this world that we can do.

10 We can put our money instead of fueling
11 a cycle of, you know, places where these benefits
12 can happen for coal ash; that we can instead fuel
13 that money towards battery technology for storage,
14 for utility-grade storage, you know, for --

15 I go to every renewable -- I live in a
16 university town, and I go to every renewal energy
17 thing I can think of.

18 You know, I'm not a professional. I'm
19 an ultrasound technologist. I've been unemployed
20 for a couple years in this economy, but I see so
21 much possibility and so much future in what can be
22 done and ideas that we don't even have yet and in

1 all the people, in all stratified parts of our
2 economy that need to be included that can't be
3 discounted because of lead paint and poverty, you
4 know.

5 The hope and the future of this economy,
6 as people have spoken about, tourism and
7 everything, is in the area of renewables, and
8 we're going to have enough trouble determining
9 certain toxic effects of that without this too.
10 So the pathway is C.

11 Thank you for listening, and I'm not
12 sorry I'm crying.

13 MR. DELLINGER: Thank you very much.
14 Number 248 and 249.

15 MS. GRIFFIN: Hi. My name is Mildred
16 Griffin, and I'm with the Sierra Club, and I live
17 in Adams County, and my mother too died of
18 leukemia, and she lived in Virginia, and there's a
19 lot of coal mines there.

20 But anyway, I am so in favor of you
21 regulating, and I'm so in favor of Subtitle C. We
22 need the regulation. Our air, our water. I'm a

1 parent. I'm a grandparent. I'd like my children
2 to live in a clean atmosphere. I'd like the whole
3 world to live in a clean atmosphere.

4 We just don't need the hazardous waste.
5 I think we've all said it here today. I feel very
6 strongly about it.

7 Thank you very much for letting me talk.

8 MR. DELLINGER: Thank you.

9 MR. FRENCH: Hello. My name's Keith
10 French. I live in Denver. I'm a member of the
11 Sierra Club, and really I'm coming as a concerned
12 citizen.

13 I mean, from all the comments we've
14 heard, I mean, it certainly sounds like, you know,
15 Subtitle C is kind of the way to go, but I guess
16 one thing that hasn't been talked about at all is
17 the costs of what this -- what impact this is
18 going to have on the cost of coal, and my point
19 being that here again is an effect of coal or a
20 fossil fuel or anything that is not incorporated
21 into the price of the product.

22 I mean, we talked about, well, how

1 renewable energies are more expensive, they're not
2 competitive. So we have to keep burning coal or
3 oil or whatever.

4 But the problem is that, you know,
5 whether it's not taking care of coal ash properly,
6 whether it's not taking care of mountaintop
7 removal or, you know, filling in valleys in West
8 Virginia, whatever. These costs are not truly
9 accounted for in the price of product.

10 So is this going to cost something? You
11 bet it is. Taking care of the coal ash, should it
12 be passed on to the consumer? I say yes,
13 absolutely, because when you add in all these
14 costs, all of a sudden the economics change and
15 other types of energy become more -- more -- you
16 know, more desirable or cost-effective.

17 So that's all I have to say, but I'm
18 speaking in favor of Subtitle C.

19 MR. DELLINGER: Thank you. Numbers 111,
20 250, and 251.

21 MR. LEWIS: Good evening. My name's
22 Dale Lewis. I live in Adams County, and I wanted

1 to speak about the regulations that are -- you all
2 are considering.

3 I support Subtitle C marking this as
4 hazardous waste. I just want to make a few
5 comments on some studies that I have found
6 regarding this. I know that some of the coal
7 industry is using coal ash in the burn-off in
8 another industry.

9 It's starting to be used in drywall, dry
10 board. It's being used as -- in concrete, what
11 they call portland cement.

12 And I found a study that was done at
13 North Dakota State University, it's called Coal
14 Combustion Byproduct Diagnostics Number 2, and it
15 talks about how the industry says, Well, to have
16 the coal ash burn off and cause any mercury to
17 come out of it, you have to burn at it 170, and we
18 don't even come close to burning at 170 degrees to
19 get what we want.

20 Well, the two -- well, there's actually
21 seven scientists in the Department of Chemistry at
22 North Dakota State University that got mercury to

1 come out of coal ash burning at 140 degrees, and
2 it was above acceptable levels.

3 And there's also another study that was
4 done by the University of North Dakota in which
5 they talk about the different methods that are
6 used, and it talks about the fact that the
7 preferred method, not only when they're trying to
8 make portland cement, they tested it, and within
9 four years the cement was degrading to the point
10 that it was putting off hazardous waste.

11 So the coal industry decided, well,
12 we'll just add fly ash to it, and fly ash, when
13 they use it, puts off arsenic, uranium, and
14 mercury.

15 So I think this needs to be tested and
16 not by the industry, because I truly believe
17 industry is operating under the assumption that
18 they have to make a profit and that they only
19 answer to shareholders.

20 And if it's not regulated and you let
21 them regulate themselves, it won't work because
22 they have no financial interest to do so. And you

1 can't convince them of something when it's not in
2 their financial interest to do so. So I would ask
3 that you do Subtitle C.

4 Thank you.

5 MR. DELLINGER: 250. Okay. 251. Is
6 Number 250 in the room?

7 MS. THOMPSON: Hi. My name is Sarah
8 Thompson, and I'm a resident of Denver.

9 I believe that we need to harshly
10 regulate coal ash disposal. This is a time for us
11 to stand up for a better future, not just for
12 ourselves but those that will come after us.

13 It's quite obvious that the toxins in
14 coal ash are detrimental to our health and
15 wildlife and, of course, our waterways. But
16 beyond that, as the Environmental Protection
17 Agency you shouldn't be catering to industry.

18 And rather than considering Subtitle D
19 and discussing proper ways of dealing with toxic
20 waste from archaic energy sources, we should be on
21 the way to implementing clean, renewable energy
22 such as wind, photovoltaic, GEOS, solar, thermal,

1 waste energy, and biomass.

2 They are solutions to the issues at
3 hand. Stand up today for our future and the
4 future of our loved ones, and take this baby step.
5 Vote in favor of Subtitle C.

6 Thank you.

7 MR. DELLINGER: Thank you.

8 MS. HARDIN: Hello. I'm Gina Hardin,
9 and I'm an attorney in Denver, and I appreciate
10 this public process, and hopefully you will
11 understand the gravity of the situation and not
12 just listen but don't take action as appropriate.

13 You know, all of this controversy about
14 coal ash, about the mountaintop removal, and about
15 our subsidies of coal, it's really about an
16 industry whose time has come to end, to transition
17 to clean, renewable energy, and the industry's
18 attempt and the government's attempts to support
19 that industry for fear of losing the jobs that are
20 associated with coal.

21 But the -- it is clear from numerous
22 studies that energy efficiency is -- it provides

1 more jobs than coal. Wherever mountaintop removal
2 is, there's less employment, more poverty than
3 other areas.

4 The whole premise of the necessity to
5 continue to rely upon coal is based -- is a false
6 premise, and it's time to transition to a clean
7 energy process, and let's get on with it.

8 Thank you.

9 MR. DELLINGER: Thank you. Now I want
10 to make sure that -- we've gone through all the
11 numbers a bunch of times, but I want to make sure
12 that anybody who wants to speak will have the
13 opportunity to speak.

14 So is there anybody else in the room
15 right now who has signed in and is ready to speak?

16 UNIDENTIFIED SPEAKER: Life's short.

17 MR. DELLINGER: All right. What are
18 your numbers? Come on. If you've got numbers,
19 that will be great.

20 UNIDENTIFIED SPEAKER: I have a number,
21 but I do --

22 MR. DELLINGER: Go sign in real quick

1 while they're speaking, and then we'll get you on.

2 UNIDENTIFIED SPEAKER: Hi. Thank you
3 guys so much for giving us the opportunity to
4 speak. I know it's been a long day, so I'll keep
5 this short.

6 I'm basically just here to ask you guys
7 to do the right thing. This really isn't that
8 hard of a choice. We can either protect families
9 around the country from arsenic and lead and
10 radioactive compounds, or we can let the coal
11 industry continue to force normal people to bear
12 the costs of burning coal with their lives and
13 with their health and with their well being.

14 We're so much better than this, and no
15 one should have to worry about their lives because
16 the coal industry doesn't want to clean up their
17 act. No one should have to worry about their
18 health or their family's health because a few
19 people are worried that labeling a clearly toxic
20 substance toxic is going to impact their bottom
21 line.

22 I know you guys want to do the right

1 thing. No one wants poison in our water. So
2 please support Subtitle C, and thanks again for
3 giving us time to speak.

4 MR. DELLINGER: Thank you.

5 MS. BEST: Thank you again for allowing
6 us to speak here, and I know it's been a long day.
7 So thanks. My name is Diana Best. I'm a resident
8 of Denver, Colorado. I'm also -- I work for
9 Greenpeace. I represent the voices of over 8,000
10 members in the Colorado state alone and many more
11 across this region.

12 I recently had the privilege of speaking
13 with several people from Appalachia, many of whom
14 can't drink the water coming out of their own
15 faucets. And while these stories are shocking,
16 they're not unique to Appalachia.

17 Whether you live in an area recovering
18 from the Tennessee coal ash spill or really you
19 live anywhere else in this country, coal ash is a
20 serious threat to our health and to our quality of
21 life. The consequences could be devastating, and
22 they already are, in fact.

1 Time and time again industry has proven
2 that it will put profits over the health and well
3 being of the public, and to presume that industry
4 can or will ever regulate itself is absurd.

5 It's the responsibility and the mission
6 of the EPA to protect the citizens of this country
7 from abuse and exploitation of entities driven by
8 profit. We look to you and we depend on you to
9 protect our interests, our health, and our
10 collective environment.

11 Subtitle C is the only option that will
12 truly enforce the safe handling and disposal of
13 coal ash and support the people affected by toxic
14 coal ash by keeping it out of our rivers and out
15 of our drinking water and out of our community,
16 period. Coal ash has proven toxic. The public
17 should not be exposed to it, period.

18 Thank you so much.

19 MR. DELLINGER: Thank you. Number 252.

20 MR. HOFFMAN: Thank you. My name is
21 Chris Hoffman. I am a citizen of Colorado, and
22 I'd like to add for your deliberation an image.

1 You've heard the statistics. You've
2 heard the data, the toxicology of coal ash. The
3 image I'd like to give you is an image in the
4 mountains. I was hiking with a friend on a road
5 that goes up to the top of Mount Evans, and we
6 found a pile of coal, a small -- maybe 8 feet in
7 diameter that was probably left over when they
8 built that road in the early part of the last
9 century.

10 And there we were surrounded by this
11 beautiful mountain meadow, and there was nothing
12 growing on the coal. It was sterile. It was
13 toxic. And if that's what we're dealing with,
14 then I think we need to keep that out of our
15 environment.

16 We need to keep it out of our drinking
17 water. We need to keep it out of our air because
18 nothing grows. Just visualize that black coal --
19 potential coal ash and all this beauty around it
20 and nothing's growing there and nothing had grown
21 through for the last almost 100 years.

22 Thanks.

1 MR. DELLINGER: Thank you. Number 253.

2 MS. REED: Hi. My name is Sarah Reed,
3 and I'm a citizen of Colorado, and I didn't sign
4 up because I wasn't going to speak because I'm
5 shy, but I -- other people's talks reminded me
6 that we really have this opportunity to express
7 opinions in a way that may affect policy. So
8 thank you for this opportunity.

9 And I don't think I can repeat too much
10 except that I support regulation under Subtitle C,
11 and I feel that I represent myself but also
12 friends and family who couldn't be here today,
13 didn't know this kind of thing is happening, but I
14 know they share my opinion.

15 And I guess one thing that occurs to me
16 that has been mentioned a little bit, but I just
17 wanted to reiterate, is I didn't have health
18 insurance earlier this year, and it occurs to me
19 that the relationship between people who have
20 access to good health care and people who are
21 exposed to these kinds of toxic chemicals tend to
22 kind of go hand-in-hand.

1 And it really flies in the face of a lot
2 of values and qualities that I think we hold very
3 dearly in this country, and I wanted to make that
4 point.

5 So that's about it, and thank you so
6 much for your time.

7 MR. DELLINGER: Thank you. Are there
8 any registered speakers in the room right now that
9 would like to speak? We're -- I'm going to
10 declare a 10-minute break, and we'll wait here and
11 see if any other people end up coming to the
12 hearing within that 10-minute period, and we'll
13 wait around longer if -- you know, just to make
14 sure.

15 (Recess)

16 MR. DELLINGER: We're going to start up
17 again, and now I'll call Numbers 254, 255, and
18 256.

19 MR. ASPREY: Hi. My name is Tom Asprey,
20 Boulder, Colorado. I wasn't going to speak
21 tonight because I'm pretty much exhausted and a
22 little brain-dead, but I really thank you for

1 coming here to let us -- to hear our words and to
2 hear us.

3 I have to admit, I have no faith in
4 Subtitle D doing anything. Industry -- you know,
5 we see repeated failures. I wish to voice my
6 support for Subtitle C.

7 I'd like to point out that if industry
8 wants to claim that this is just dirt, then let's
9 see them use it in their family's garden; let's
10 see them drink water from watersheds that's have
11 been polluted with this industrial toxic waste.
12 Would you expose your children or your family to
13 this stuff? I wouldn't.

14 Coal ash is a cost of using an outmoded
15 technology. The industry doesn't want to pay for
16 its use of this outmoded technology, but they
17 should. It's unfairly shifting the burden to
18 other businesses, people, wildlife, society.
19 Future generations will have to pay these costs.
20 We need to stop this.

21 Thank you.

22 MR. DELLINGER: Thank you.

1 MS. RAE: Hi. I also wasn't planning on
2 speaking tonight, so gathering my thoughts. My
3 name is Leila Rae, and I'm from the Four Corners
4 area.

5 And I don't know if you've been down
6 there, but they're trying to build a third
7 coal-fired power plant in, like, a five-mile
8 radius, which is crazy. The air there is already
9 super clogged.

10 And I really just -- I think it's a joke
11 if anybody thinks that the industry is ever going
12 to do anything to, like, make coal mining and
13 coal-fired power plants not a complete
14 environmental abomination under their own free
15 will, because all they care about is giving cheap
16 to consumers and making the most money possible.

17 And I also -- I spent some time in West
18 Virginia last year. I don't know if you've been
19 there, but it's pretty much an environmental
20 apocalypse. Over 500 mountains have been
21 destroyed in the past few decades as mountaintop
22 removal has been happening, and it's one of the

1 poorest regions in the nation.

2 And so I also have little faith that --
3 in the EPA to do very much because there hasn't
4 been very much environmental protection from the
5 EPA. Like, mountaintop removal mining happens.
6 Like, how the heck are you protecting the
7 environment? Like, that's craziness to me.
8 Really, like -- and I also --

9 We have to do what we can to, like,
10 prevent another disaster like what happened in the
11 Tennessee Valley Authority in 2008 from happening
12 again. It wasn't the first time that's happened,
13 and what's weird is there was really not very much
14 press coverage about it, which is, like, something
15 I don't get. It's one of the hugest (sic)
16 environmental disasters that we've seen in the
17 United States.

18 And so we need to move away from coal in
19 general, but while we're still using this
20 disgusting crap that's full of, like -- the ash is
21 full of mercury and arsenic, and if that's not
22 toxic, I don't know what is.

1 So in the meantime while we're still
2 using this stuff, like, let's do something to keep
3 it from poisoning the environment and poisoning
4 people.

5 In West Virginia cancer is an epidemic.
6 People there are dying like crazy rates.
7 Communities, almost every person has multiple
8 people in their family who've died of cancer.
9 That's, like -- yeah.

10 Let's do something. You know, get it
11 together. Protect our environment, please,
12 because, like, we need it for the future. I care
13 about my grandchildren, and I care about their
14 children, and I care about this planet, and I care
15 about humans. So let's do it.

16 MR. DELLINGER: Thank you.

17 MR. ROYSTER: Good evening. My name is
18 Matt Royster, and you know, many years ago we --
19 the discovery of coal caused us or allowed to us
20 do some pretty great things in this country, from
21 heating homes to doing more things with metal to
22 moving locomotives across the country, and all

1 those were good. So coals's earned its right --
2 its place in history, I believe.

3 But now it's time for it to be part of
4 our history and not -- not our present. We have
5 so many other opportunities that are clean, that
6 do not have all of the bad stuff that coal brings
7 to us.

8 I was just riding up Light Rail just a
9 few minutes to go to come here tonight, and two
10 120-car trains of coal were heading south and
11 full, and two 120-car trains of coal were heading
12 back to Wyoming to reload, and I -- my
13 understanding is that these trains that are --

14 Again, 120 cars full of coal. I've
15 counted four of them. They keep the average
16 coal-fired power plant going for only 24 hours.
17 I'm sure that you're aware that over a billion
18 tons of coal get burned up every year just so we
19 can flip on lights, et cetera, et cetera.

20 But not at my house. I'm fortunate to
21 have some photovoltaic and backup device of wind.
22 But I really think we can all go there, and I

1 really hope that you can help us do that.

2 I very much support Subtitle C. I think
3 it is much more the better of the two
4 opportunities here, C and D. So I support C and
5 really need you all to be able to oversee what's
6 going on, and so please know that, because between
7 burning of coal and all the mining, it is our
8 largest waste stream.

9 I'm hoping that with the lining of
10 future ponds, we can also take a look at the ponds
11 that are already there, some of which have broken
12 with incredible awful results, take a look at
13 those and see if we can somehow get that material
14 into lining just to take care of what we've done
15 in the past.

16 And I'm trying to hurry. This morning I
17 was at my weekly toastmaster meeting, and
18 obviously I'm not very good at toastmastering yet,
19 but I'm working on it.

20 And my friend Cathy walked in. I hadn't
21 seen Cathy for six months because six months ago
22 she called one of the leaders in the group and

1 said, Hey, my son has cancer, and I won't be
2 attending for --

3 MR. LIVNAT: Your time is up.

4 MR. ROYSTER: May I talk just a little
5 bit longer since we're at the end? Thank you,
6 sir.

7 MR. LIVNAT: We're at the end.

8 MR. ROYSTER: I'll hurry. I'll wrap it
9 up.

10 Anyway, so I hadn't seen her for six
11 months, and during the six-month multiple times I
12 thought, I need to call my friend and see how her
13 son's doing, how she's doing, how's the family,
14 e-mail her, at least do something. Well, I didn't
15 do anything for the last six months, and I'm
16 embarrassed to tell you that.

17 I take two things away from this story.
18 One is that I believe there is a cancer, a big
19 cancer, one of several in this country, and that
20 cancer's name is coal. The second thing is that
21 -- that I -- you all are the Environmental
22 Protection Agency. Number one, I want to come to

1 work for you.

2 The work you all do is so important to
3 protect all of us, all over 300 million of us, and
4 especially tonight I'm thinking of my four
5 wonderful, amazing granddaughters and what kind of
6 future we leave for them.

7 So I ask you to not be like me. Don't
8 -- don't not make the call, or don't, you know --
9 don't do what I did and ignore what is so
10 important, even though I thought of doing
11 something about it. I ask you to please to be
12 bold, be brave, set a new agenda for us out there,
13 and help us get off coal and move forward in this
14 great nation.

15 Thank you very much.

16 MR. DELLINGER: Thank you. Any other
17 speakers?

18 MS. KELLY: My name is Sunny Kelly, and
19 so you want to know what people think about how
20 the EPA should treat coal ash? With greater
21 precautions as hazardous waste under enforceable
22 federal standards, which would be Subtitle C,

1 which I believe is the right choice since coal ash
2 contains mercury, arsenic, chromium, lead,
3 radioactive elements, and so forth. Or should it
4 be treated with no federal enforcement standard in
5 the same way you've always treated it?

6 Well, I want all people in these United
7 States, no matter where they live, no matter their
8 economic status, to be safe with safe drinking
9 water. I'm sure that you do as well.

10 Doesn't it follow that coal ash should
11 be kept well away from people and where it cannot
12 contaminate the drinking water and fragile
13 ecosystems since it is toxic, and since the state
14 regulation has been insufficient, it's kind of a
15 "duh" moment.

16 Do the right thing by the people.
17 Protect the people and name coal ash for what it
18 is, hazardous waste.

19 When business or state government is not
20 doing the right thing to protect the people from
21 hazardous waste and processes such as coal
22 production, you're our hope. Our tax dollars pay

1 you as sort of our earthly angels, if you will,
2 watching over us, protecting us by regulating and,
3 yes, dictating to business what it can and cannot
4 do.

5 Coal ash is and has always been
6 hazardous waste and should be regulated as such by
7 federal enforcement standards, and it should not
8 matter what business wants. Business has its
9 priority, profits. You have your priority, the
10 safety of the people.

11 So whether it's one of the 40 toxic
12 sludge ponds here in Colorado or one in Tennessee
13 like Harriman, yes, regulate coal ash as a toxic
14 waste substance.

15 Thank you for listening to the cry of
16 the people for federal regulations, and thank you
17 for everything you do to protect all the people of
18 this nation.

19 MR. DELLINGER: Thank you. Do we have
20 any other -- any other registered speakers? Any
21 unregistered speakers who want to go register and
22 come back and talk? We're going to be -- we have

1 to be here until -- oh, okay.

2 We have to be here until 9 o'clock, so
3 -- at least most of -- some of us anyway.

4 UNIDENTIFIED SPEAKER: Is there any way
5 that you can tell us about what's going on with
6 EPA, what some future plans are with regard to
7 energy?

8 MR. LIVNAT: Regarding this proposal?

9 UNIDENTIFIED SPEAKER: This or anything
10 else. I'd love to hear about it.

11 MR. DELLINGER: We're doing mostly coal
12 ash.

13 UNIDENTIFIED SPEAKER: Okay. Fair
14 enough.

15 MR. KELLY: My name is Rich Kelly from
16 Denver, Colorado, and I apologize for the lax
17 decision to speak.

18 I was reading through the proposals
19 here. It says under both approaches proposed, the
20 agency would leave the Bevill exemption for
21 beneficial uses in coal ash. So what I was
22 thinking is that neither of these approaches

1 really force the hand of going to an alternative
2 power source to get away from coal because both
3 approaches allow us to use -- reuse the coal ash.

4 A third alternative I felt would be one
5 that would allow the use of the coal until we
6 could get away from it, but a bill for storage for
7 using the coal, say, like a cubic foot costs some
8 odd cents. That would force the hand to get away
9 from coal if we agree that coal is something that
10 we want to -- if we truly agree that we want to go
11 to an alternative source of power. So that is
12 what I was thinking about and felt I should speak
13 about.

14 Thank you.

15 MR. DELLINGER: Thank you. Number 257.

16 MR. LIVNAT: Just spoke.

17 MR. DELLINGER: All right. I didn't
18 have a name. And Number 90.

19 MS. GLUSTROM: Good evening. I just
20 walked in. I'm not so familiar with your
21 procedures, but I wanted to thank you all very
22 much. It's been a long day. I just walked in,

1 and I know you've been at it all day. So thank
2 you very much.

3 My name is Leslie Glustrom. I live in
4 Colorado, biochemist by training, but I now work
5 almost full-time on energy issues and the
6 transition. So again, I want to thank you for the
7 hearing. I want to register strong support for
8 the subpart C option.

9 And you've heard a lot of stories today.
10 I'll just add one more. I don't live near a coal
11 ash repository, but I -- like everyone else, I pay
12 a utility bill, and when you pay that utility
13 bill, as you come to understand these issues, you
14 also understand that you're implicated in the
15 decisions that are made.

16 And so we live in Colorado here where
17 Xcel is about 60 to 65 percent coal. One of their
18 large coal plants is here in north Denver, the
19 Cherokee Coal Plant, and I went on on tour of that
20 coal plant about -- I think it was about two years
21 ago now, and as we stood up on one of those kind
22 of high, lookout places, we saw truck after truck

1 after truck -- big long semitrucks -- it felt like
2 about every 30 seconds. I didn't actually time
3 it. But I assume they are coal ash.

4 So I asked the very nice worker who was
5 there and obviously a very dedicated fellow and
6 hardworking and in a sense proud of his work. I
7 said, Is that coal ash? He said, Yeah. And I
8 said, Well, you know, what do you know about its
9 composition? Thinking about the arsenic and
10 mercury and the lead and all this. And he goes,
11 Huh?

12 They really don't understand. It's not
13 the worker's issue, but it is our job to
14 understand what heavy metals do and to take every
15 precaution and to no longer treat this as though
16 it's something actually even less than household
17 waste.

18 And in your positions, I would just
19 really ask you to have the courage to move this
20 forward. We know that once it goes into landfills
21 or impoundments, sooner or later, maybe our
22 lifetime, maybe our children's generation or

1 grandchildren, but sooner or later those heavy
2 metals are going to be in our water.

3 It's really just a matter of kinetics
4 how fast that happens. There's no avoiding that.
5 When they're in coal in the ground, they're well
6 sequestered. So once we've turn them into coal
7 ash, they're much more mobilized.

8 And I just really want to encourage you
9 to stay with the subpart C regulations, to have
10 that courage, and to thank EPA. I wasn't here for
11 your introduction. So I'm not sure where this
12 fits. I want to thank EPA for moving this
13 forward. It is very long overdue.

14 So thank you very much.

15 MR. DELLINGER: Thank you. We're going
16 to break for 10 minutes to see if any more
17 speakers come along.

18 (Recess)

19 MR. HOFFMAN: This is Steve Hoffman,
20 U.S. EPA. It's now 9 o'clock. We're officially
21 closing the hearing in Denver, Colorado.

22 (Whereupon, at 9:05 p.m., the

1 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

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19 Notary Public in and for the

20 Commonwealth of Virginia

21 Commission No. 351998

22 Expires: November 30, 2012