

US EPA ARCHIVE DOCUMENT

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

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

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5 Director of Materials Recovery and Waste
6 Management Division
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11 Afternoon Session:

12 BETSY DEVLIN, Chair
13 Associate Director of Materials Recovery and Waste
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18 STEVE SOUDERS

19 Evening Session:

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21 Director of Materials Recovery and Waste
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1 P R O C E E D I N G S

2 (10:00 a.m.)

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

12 This is the last of eight public
13 hearings that we will be conducted -- conducting.
14 We had seven very successful hearings in
15 Washington D.C., Denver, Dallas, Charlotte,
16 Chicago, Pittsburgh, and Louisville. Well over a
17 thousand people provided testimony.

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

1 With me on the panel, to my right in order, Laurel
2 Celeste of our Office of General -- General
3 Counsel, Frank Nay of our Atlanta regional office,
4 and Steve Hoffman who works with me at EPA
5 headquarters.

6 Before we begin the public hearing, I'd
7 like to provide a brief description of the
8 proposed rule, as well as the -- describe the
9 logistics on how we plan to run today's public
10 hearing. Coal combustion residuals, or CCRs, are
11 residues from the combustion of coal at electric
12 utilities and include fly ash, bottom ash, boiler
13 slag and flue gas desulphurization materials.
14 Coal combustion residuals contain problematic
15 contaminants such as mercury, cadmium, selenium,
16 and arsenic.

17 In 2008, 136 million tons of coal
18 combustion residuals were generated by electric
19 utilities and independent power producers.

20 Of that total, approximately 46 million
21 tons were landfilled, 30 million tons were
22 disposed in surface impoundments, 50 million tons

1 were beneficially used, and 11 million tons were
2 used in mine fill operations. EPA estimates that
3 there are approximately 300 landfills and more
4 than 600 surface impoundments where coal
5 combustion residuals are placed.

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

14 In addition, the structural failure of a
15 surface impoundment in -- at the Tennessee Valley
16 Authority's plant in Kingston, Tennessee in
17 December 2008 released more than 5 million cubic
18 yards of coal -- coal ash over approximately 300
19 acres of land and contaminated portions of the
20 Emory and Clinch Rivers. With this proposal, EPA
21 has opened a national dialogue by calling for
22 public comment on two different regulatory

1 approaches available under the Resource
2 Conservation and Recovery Act that would address
3 the risks from disposal of CCRs.

4 One option presented in the proposed
5 rule draws from the authorities available under
6 Subtitle C of RCRA. This will create a
7 comprehensive program of federally-enforceable
8 cradle to grave requirements for waste management
9 and disposal. The other option is based on the
10 authorities of Subtitle D of RCRA which gives the
11 EPA the authority to set minimum federal criteria
12 for waste management facilities that must be met
13 under a schedule established in the regulation
14 where it can be finalized. The regulation would
15 be enforced through citizen suits. Under this
16 scenario, states qualify as citizens.

17 The EPA decided to co-propose these two
18 rules to encourage a robust dialogue on how to
19 address the human health concerns and structural
20 integrity associated with the disposal of coal
21 combustion residuals in landfills and surface
22 impoundments. EPA wants to ensure that our

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

7 I'd like to say a few words about the
8 beneficial use of coal combustion residuals. The
9 proposed rule maintains the Bevill exemption for
10 coal combustion residuals that are beneficially
11 used, and therefore, would not alter the
12 regulatory status of these residuals when used
13 properly. The EPA continues to strongly support
14 the safe and protective beneficial use of CCRs.
15 However, the proposal also indicates that concerns
16 have been raised with some coal combustion
17 residuals, particularly when used in an
18 unencapsulated form. Therefore, we request
19 comments, information and data on specific aspects
20 of beneficial use, particularly those activities
21 that deal with unencapsulated applications.

22 We also make clear in the proposal that

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

7 Now I'm going to switch over to covering
8 some logistics for the comment portion of today's
9 public hearing. Today's public hearing will work
10 as follows: Speakers, if you pre-registered, you
11 were given a 15-minute slot -- time slot when you
12 were scheduled to give your three minutes of
13 testimony. To guarantee that slot, we have asked
14 that you sign in 10 minutes before your 15-minute
15 slot at the registration desk.

16 All speakers who have pre-registered and
17 walk-ins were given a number when you signed in
18 today, and this is the order in which you will
19 speak: I will call speakers to the front of the
20 room by number four or five at a time. There are
21 chairs behind the speaker's podium for those
22 speakers who are waiting to provide testimony.

1 And that's over on my right side of the room, your
2 left side of the room.

3 When your number is called, please move
4 to the microphone and state your name and your
5 affiliation. We may ask you to spell your name
6 for the court reporters who are transcribing your
7 comments for the official record. Because there
8 are many people who have signed up to provide
9 testimony today and to be fair to every one,
10 testimony is limited to three minutes.

11 We will be using an electronic
12 timekeeping system and will also hold up cards to
13 let you know when your time is getting low. When
14 we hold up the first cards, this means that you
15 have two minutes left. When we hold up the second
16 card, you will have one minute left. When the
17 third card is held up, you have 30 seconds left.
18 And when the red card is held up, you're out of
19 time and you should not continue with your
20 remarks.

21 Remember you can provide any written
22 material to our court reporters and the material

1 will be entered into the rule-making record. We
2 will not be answering questions on the proposal;
3 however, from time to time, any of us on the
4 hearing panel may ask questions of you to clarify
5 your testimony.

6 As I just mentioned, if you have brought
7 a written copy of your testimony, please leave a
8 copy in the box by our court reporters on my left,
9 your right. If you are only submitting written
10 comments today, please put those in the box at the
11 registration desk. If you have additional
12 comments after today, please follow the
13 instructions on the yellow handout and submit
14 comments by November 19th, 2010, which is the
15 close of the comment period.

16 Our goal is to ensure that everyone who
17 was come today to present testimony is given an
18 opportunity to provide comment. To the extent
19 allowable by time constraints, we'll do our best
20 to accommodate speakers who have not pre-
21 registered.

22 Today's hearing is scheduled to close at

1 10:00 p.m., but we will stay later if necessary.
2 If, however, time does not allow you to present
3 your comments orally, we have prepared a table in
4 the lobby where you can provide a written
5 statement in lieu of oral testimony. These
6 written statements will be collected and entered
7 into the docket for the proposed rule and will be
8 considered the same as if you presented them
9 orally. If you would like to testify but have not
10 registered to do so, please sign up at the
11 registration table.

12 We are likely to take occasional breaks,
13 but we are prepared to eliminate or shorten the
14 breaks in order to allow as many people as
15 possible to provide their oral testimony.
16 Finally, if you have a cell phone, we would
17 appreciate it if you would turn it off or turn it
18 to vibrate. If you need to use your phone at any
19 time during the hearing, please move to the lobby.

20 We ask for your patience as we proceed.
21 We may need to make some minor adjustments as the
22 day progresses. Thanks again for participating

1 today. Let's get started.

2 And with that, I'd like to call Numbers
3 1, 2, 3, 4, and 5 to the front. Go ahead.

4 MR. SCARBOROUGH: My name is Steve
5 Scarborough. I live in Roane County, Tennessee.

6 First, I want to thank the folks at the
7 Environmental Protection Agency for having this
8 meeting and taking comments on the results of
9 their hard work. The work they produced has
10 produced a regulation that is reasonable and
11 effective in handling coal waste. And you guys
12 have scheduled a 13-hour meeting today and, you
13 know, that's a tough job. I appreciate it.

14 As I read the proposed regulations, one
15 thought kept coming back to me. Why is anyone
16 opposed to this? Particularly after the disaster
17 that we in Roane County are suffering through and
18 are trying to recover from. It's a result of
19 improperly handled and stored coal ash.

20 Why would anyone not want -- an industry
21 not want a level playing field for all of the
22 businesses that make money from coal and coal ash?

1 Why would these corporations and their lobbyists
2 not willingly accept oversight that would
3 guarantee to the public that they are operating
4 safely and that the health and welfare of the
5 people living near coal sites is being watched out
6 for?

7 This army of hired corporate spokesmen
8 has come before you and whined that adequately
9 protecting the public will cost too much or cost
10 jobs or make coal ash seem like a bad -- bad
11 thing. We even heard the word "stigma" on coal
12 ash as a result of this regulation. Well, if you
13 want to see stigma, just come out to Roane County
14 and see what it's like trying to put your life,
15 business and property values back together when --
16 after you get hit by the mother of all stigmas.

17 All of their testimony against doing the
18 right thing will boil down to five words: It will
19 cost too much. The corporations opposed to Option
20 C argue against having solid federal oversight
21 saying they can be trusted to do the right thing.
22 They can't.

1 I come here to speak as strongly as I
2 can for Option C. The -- when I read the EPA cost
3 benefit analysis, I thought, of course. Why not?
4 Why is anyone opposed to this? The reason it is
5 is that it makes the people who make the money
6 creating coal ash waste and processing coal ash
7 waste will have to pay more of the true cost of
8 coal power instead of as it is now, they shift it
9 to the people who live on the shores of Watts Bar
10 Lake in rural Alabama, and even in your personal
11 neighborhood. Nobody in this room or anywhere in
12 America can escape the consequences of this
13 decision. This stuff is everywhere.

14 Roane County is my home. It's the most
15 beautiful part of America. And it's also the
16 site of the largest disaster -- coal disaster in
17 American history. This disaster was caused by
18 incompetency, willful negligence at mul --
19 multiple levels, but mainly in the financial
20 decisions of a corporate bureaucracy focusing on
21 short-sided cost savings and a complicit state
22 agency that allowed it to operate a massive coal

1 storage facility without adequate oversight.

2 For a savings of \$20 million, they now
3 have a 1.2 billion-dollar clean-up mess. And the
4 people in -- in our area can never be made whole.
5 They have taken 2 to 7 years out of their lives,
6 200 hundred homes plus sit empty. But this --

7 MR. HOFFMAN: Excuse me. Your -- your
8 time is up.

9 MR. SCARBOROUGH: I'm sorry. Thank you.

10 MR. DELLINGER: Thank you.

11 MR. SMITH: Good morning. My name is
12 Steven Smith, and I'm the executive director of
13 the Southern Alliance for Clean Energy. And I
14 wanted to first thank you all for coming and
15 having the meeting here in Knoxville. We were
16 very pleased that you-all decided to come close to
17 where the largest coal ash disaster has ever been
18 and actually hear from the people in the area.

19 Back in December of 2008 as I was
20 getting ready for Christmas with my -- my family,
21 and as untold other people in our area were, we
22 experienced the largest coal ash disaster and one

1 of the largest disasters in the history of the
2 United States out in Harriman County (sic) in
3 Kingston. When I came out there and saw the
4 devastation that was unleashed on the communities
5 out there, it was -- it was devastating. It was
6 really quite -- quite amazing what had happened.
7 And it -- it reminded me that we have got to
8 protect human health and the environment first and
9 foremost, and that is -- should be our highest
10 priority in this country. We should not allow
11 this kind of devastation to be unleashed.

12 So what we did was we engaged -- I was
13 asked to come up and speak before the
14 Environmental Public Works Committee the first
15 week of January. Talking to that committee, we --
16 and the chairman, Chairman Barbara Boxer, she
17 basically said, "Look, Lisa Jackson is going to be
18 up. We're going to talk to her during her
19 confirmation hearing." And sure enough, two weeks
20 later she was up there, made a commitment to
21 actually do something about coal ash once and for
22 all.

1 And it's been long in coming, because we
2 came very close to regulating coal ash back in the
3 late 1990s. And O & B, at that time, held it up.
4 O & B this time has delayed the proceedings now
5 for over six months as they've wrangled with and
6 been lobbied by those who have a financial
7 interest and are willing to put that financial
8 interest above and beyond the health and -- and
9 safety of citizens.

10 So what we did was, now that the new ash
11 rules are out, we've actually written a report
12 where we've taken a look at what the state of
13 Tennessee, which has basically been ground zero
14 for coal ash. And what we did was we saw, what
15 are they doing in the regulations. I want to
16 submit this as part of the record. But the bottom
17 line is that under Subtitle D, you defer
18 tremendously to the states. And what we're seeing
19 is the states aren't stepping up.

20 EPA has a role, has a responsibility to
21 be a backstop. And that's why we are strongly in
22 support of Subtitle C, because we need that

1 backstop, we need that agency to make sure that
2 the rules are enforced. And if they're not
3 enforced, then what -- what we see is we see these
4 kind of devastation that we saw in Oak Ridge -- I
5 mean, in Harriman.

6 So we'll submit this as part of the
7 record. My colleague Josh Galperin is going to
8 get into the specifics on the report, but I'm here
9 to strongly encourage that Subtitle C be the
10 course. That is the only way that we can protect
11 public health and the environment. That's the
12 only way that we can assure that the kind of
13 accidents that happened in Harriman will not
14 happen again. And I appreciate your time and
15 opportunity to speak. Thank you very much.

16 MR. DELLINGER: Thank you.

17 MR. GALPERIN: Thank you, ladies and
18 gentlemen. My name is Josh Galperin and I am a,
19 as Dr. Smith said, a policy analyst and research
20 attorney with the Southern Alliance for Clean
21 Energy.

22 The Southern Alliance for Clean Energy

1 strongly supports Subtitle C as the means of
2 regulating coal ash because the fed --
3 federally-enforceable backstop provided by the
4 special waste designation is the only way to
5 assure that people and the environment are
6 protected from the physical and toxic dangers of
7 coal ash.

8 Now, as Dr. Smith said, we've compiled
9 this report on the state of coal ash regulation in
10 Tennessee. It's important to understand how
11 states regulate coal ash in order to understand
12 the differences between what will happen --
13 whether Subtitle C or Subtitle D is ultimately
14 promulgated.

15 This report shows a surprising lack of
16 oversight in Tennessee, a state that should be
17 very proactive on coal ash regulation because of
18 the Kingston disaster. So I want to just point
19 out a few specifics that I've found in researching
20 Tennessee's laws in some depth.

21 First, the laws only specifically
22 address coal ash in two instances. The first

1 instance happens to also be the only -- the one
2 and only change that has been made to Tennessee's
3 coal ash regulations since the Kingston disaster.
4 And as it happens, this particular change has
5 nothing to do with the disaster itself.

6 The change that I'm talking about, the
7 first time that coal ash is mentioned in
8 Kingston's law -- excuse me, in Tennessee's laws
9 is a provision in the solid waste laws which
10 requires a liner and final cap on coal ash
11 landfills. Sounds great. It's a very important
12 provision, except unlike much of the rest of the
13 solid waste laws, the exemptions contained therein
14 swallow the entire rule. The liner and cap is not
15 required for structural fill; it's not required
16 for agricultural uses or engineered uses; and most
17 importantly, the "new safeguard" -- I'm putting
18 quotes around that for the record -- the "new
19 safeguard" doesn't apply to surface impoundments,
20 which are the type of ash storage that is clearly
21 the most dangerous.

22 The second specific mention of coal ash

1 in Tennessee's law is with regards to permits by
2 rule. Certain uses of coal ash are allowed
3 without a true permit in Tennessee, without being
4 subject to public scrutiny, and without the more
5 stringent provisions of the normal permit by
6 application process. So this is two instances
7 only where Tennessee's laws actually address coal
8 ash specifically, and both provide for broad
9 exemptions over permissive uses of coal ash
10 without substantial safeguards.

11 Moreover, Tennessee does not regulate
12 ash at all when it's stored in surface
13 impoundments. So, to be clear, surface
14 impoundments like the one in Kingston, the ash
15 that's stored in those impoundments and those
16 impoundments themselves are completely
17 unregulated. The Safe Dam Act does not regulate
18 these impoundments, the solid waste laws exempt
19 impoundments, and NPDES permits only regulate the
20 discharges of wastewater from those impoundments.

21 So there is no requirement for
22 structural stability, groundwater monitoring, unit

1 citing, leachate collection, closure, post-closure
2 care, financial assurances on impoundments like
3 the one at Kingston.

4 So, rather than going into further
5 details, Dr. Smith submitted a copy of this
6 report. If you have any further questions on it,
7 please feel free to contact me at the Southern
8 Alliance for Clean Energy. And please understand
9 that --

10 MR. HOFFMAN: Your time is up.

11 MR. GALPERIN: -- Subtitle C is the only
12 effective option. Thank you.

13 MR. DELLINGER: Thank you.

14 MR. WARD: Good morning. My name is
15 John Ward, and I'm chairman of Citizens for
16 Recycling First, an organization of more than 1500
17 individuals who believe that the best solution for
18 coal ash disposal problems is to quit throwing
19 coal ash away.

20 I've attended all eight of EPA public
21 hearings on the proposed coal ash disposal
22 regulations, and I'd like to thank EPA for

1 providing such ample opportunity for citizens to
2 speak out. In all of these hearings, one point of
3 consensus stands out. Coal ash disposal
4 regulations should be improved and incidents like
5 the Kingston coal ash spill should never be
6 allowed to happen again.

7 Beyond that, the citizen comments have
8 been divided. One group of citizens has been
9 vocal in calling for Subtitle C, hazardous waste
10 designation for coal ash. This group, for the
11 most part, has gained its knowledge of coal ash
12 from large, well-funded anti-coal environmental
13 groups. These well-meaning citizens end up being
14 only partially informed, because those major
15 environmental groups completely ignore options for
16 the safe and responsible recycling of coal ash. I
17 challenge you to find even a mention of coal ash
18 recycling in any of their publications.

19 The other group of citizens you've heard
20 from is comprised of people who have spent decades
21 doing what's right for the environment creating
22 safe and environmentally beneficial uses for coal

1 ash that keep it out of landfills in the first
2 place. These people are recyclers, architects,
3 engineers, concrete producers, farmers, and more.
4 Most of them are small business people, and all of
5 them consider themselves to be environmentalists,
6 too, because they're working every day to conserve
7 energy and materials and reduce greenhouse gas
8 emissions.

9 This group of citizens has been
10 unanimous in stating that Subtitle C hazardous
11 designation for coal ash will wreck recycling of
12 the material in this country, and possibly
13 worldwide. I urge you to remember these facts:
14 Coal ash does not qualify as a hazardous waste
15 based on its toxicity. And its toxicity is
16 similar to that of the materials it replaces when
17 it's recycled.

18 The landfill engineering standards being
19 proposed by EPA are essentially the same under
20 both EPA's hazardous and non-hazardous approaches.
21 So you're not giving the environment more
22 protection with a hazardous label.

1 Finally, EPA's non-hazard approach can
2 be implemented years sooner giving greater
3 protection to our environment now instead of
4 later. It is absurd to state that people will
5 want to use more of a material in their homes and
6 communities if EPA considers it's hazardous waste
7 on the property of the people who produced it.

8 Hundreds of citizens who actually work
9 to recycle coal ash have told you at these
10 hearings that Subtitle C will not work. Please
11 listen to the citizens who have working knowledge
12 of this subject and remember that they care about
13 environmental protection just as much as people
14 who issue scary press releases and fundraising
15 appeals that improperly label coal ash as toxic
16 waste. Thank you.

17 (Applause)

18 MR. DELLINGER: Thank you. While
19 speaker Number 5 is moving forward, could Speakers
20 6, 7, 8, 9, and 10 move forward?

21 MR. MELLON: Good morning. My name is
22 Paul Mellon. I'm with Novetas Solutions. We

1 manufacture new age blast media, which is an
2 industrial abrasive for grit blasting.

3 This is the fourth time I've had the
4 opportunity to come to these EPA hearings, in
5 addition to a meeting that I had in January in
6 Washington D.C. And much of my comments have
7 centered around the beneficial use program and
8 specifically that the beneficial use program,
9 while it has many merits, unfortunately contains
10 products that, in fact, do not meet the criteria
11 of the EPA and should not be included in the
12 program. I've tried to lay -- lay out a factual
13 documented case as to why that is.

14 In coming to this meeting today, I
15 intended to recap Novetas' position on the
16 beneficial use program and why coal slag abrasives
17 should not be in it. But ironically, two weeks
18 ago today the Office of Inspector General of the
19 EPA issued an early warning report which in many
20 ways mirrors almost exactly our arguments about
21 the beneficial use program and how it has been
22 misused by certain companies with their products

1 in the program.

2 Specifically, the OIG found two major
3 issues with the C2P website, which is the
4 partnership program between the coal industry and
5 the EPA to come up with the beneficial use
6 program. The report basically states that the
7 website contained an incomplete picture regarding
8 potential damage as a result of unencapsulated
9 coal slag prod -- coal -- coal products.

10 And secondly, that you cannot use the
11 logo or the seal of the EPA to promote commercial
12 products. Specifically you see on Page 3 of the
13 report the OIG talks about the -- the hazards of
14 unencapsulated uses and how these unencapsulated
15 uses can leach contaminants into the groundwater,
16 drinking water, and obviously are not good for
17 human health or the environment.

18 Well, if you look at the next page, you
19 can see that Harsco Corporation is currently, as
20 of this Monday, on their website sending chain
21 e-mails, or they're asking people to click on
22 e-mails to send to the EPA.

1 And then one of the e-mails makes a very
2 curious statement. It says that the EPA has
3 confirmed in 2000 and 2009 no change in the
4 science -- that there is no change in the science
5 that would require boiler slag regulation, no
6 scientific data exists. Well, the fact is that
7 the EPA in 1997 has already labeled Black Beauty
8 Abrasives as a hazardous airborne pollutant.
9 There are several studies by OSHA and NIOSH that
10 all say that these products are in fact hazardous.

11 Second major issue is the EPA logo.
12 Again, I'll quickly kind of get through this.
13 Specifically it says the EPA logo is prohibited to
14 be used to sell commercial products. Well, again,
15 on the same Harsco website that you can click on
16 today, you can see that they have the prominently
17 seal of the EPA next to Black Beauty Abrasives and
18 they're basically allowing people to think that
19 the EPA is, in fact, promoting Black Beauty
20 Abrasives.

21 I guess the question is: If the EPA
22 cannot stop Harsco Corporation after the OIG told

1 you that you can't allow companies to use the logo
2 to sell products, what kind of faith are people
3 going to have in the beneficial use program when
4 you finally issue your -- your -- your public
5 ruling? Do the right thing. Tell companies that
6 they can't use your logo to -- to sell products.
7 And I appreciate the opportunity to talk to you
8 today.

9 MR. HOFFMAN: Time is up.

10 MR. WARD: Thanks.

11 MR. WALLACE: My name is Craig Wallace.
12 I'm a fly ash marketer.

13 The best coal ash plan for the
14 environment is recycling, keeping coal ash out of
15 the landfills. The EPA and others have studied
16 coal ash for 30 years determining a hazardous
17 waste designation is not warranted. A hazardous
18 waste designation unnecessarily puts all coal ash
19 recycling at great risk.

20 In 2008, 144 million tons of coal ash
21 was produced. 44% of the coal ash was used safely
22 in beneficial applications equating the 63 million

1 tons of coal ash recycled.

2 There are 495 coal-burning power plants
3 depositing coal ash into 194 landfills and 161
4 ponds. According to the National Science Academy
5 and the EPA, only 24 landfills are problematic or
6 proven to compromise water supplies. This is only
7 6.7% of the landfills currently accepting coal
8 ash.

9 The majority of the problematic coal ash
10 ponds -- or coal ash sites are ponds, which are
11 being phased out with Subtitle D. Under Subtitle
12 D, the EPA will specify and design criteria and
13 standards for all coal ash storage in the U.S.
14 Any state not in compliance with Subtitle D
15 standards will be subject to litigation. Clearly,
16 Subtitle D addresses the engineering failures of
17 problematic coal ash deposit sites and gives the
18 federal government the teeth to enforce the new
19 standards.

20 Coal ash recycling is the number one
21 recycling success program in the U.S.
22 Stigmatizing coal ash as a hazardous material will

1 expose everyone using the product to liabilities
2 from less than ethical attorneys. We are already
3 experiencing the stigma as a result of these
4 hearings. In addition, the mere cost of defending
5 oneself in court is enough to discourage future
6 beneficial use of coal ash.

7 This discussion is not about burning
8 coal or the toxicity of coal ash. This discussion
9 has determined the best way to engineer and
10 standardize coal ash landfills to protect the
11 public safety. Subtitle D accomplishes this end
12 goal without putting coal ash beneficial use at
13 risk. If it did not address the issue, the Office
14 of Management and Budget would not state it has a
15 coal equal option to Subtitle C. Thank you.

16 (Applause)

17 MR. SCOGGAN: Thank you for this
18 opportunity to address the EPA. My name is John
19 Scoggan. I work for Boral Material Technologies
20 where I've been employed for 29 years. We manage
21 coal combustion products, principally fly ash for
22 use in concrete and have been in business for over

1 50 years.

2 We support the EPA's effort to protect
3 the human health and the environment. We don't
4 want another disaster like TVA Kingston spill. We
5 support regulation to ensure responsible disposal,
6 but don't want to kill recycling in the process.
7 Therefore, we support EPA's ruling for RCRA
8 Subtitle D. The Kingston problem was a result of
9 an engineering failure that can be addressed with
10 a Subtitle D non-hazardous regulation.

11 Fly ash has been used in concrete since
12 the 1920s. The federal government and the EPA
13 have encouraged and supported the use of fly ash
14 in concrete for over two decades. The
15 environmental benefits of using fly ash in
16 concrete have been detailed by others at previous
17 hearings and include: the reduction of CO2
18 estimated to be 11 million tons annually; the
19 reduction of waste placed in landfills estimated
20 to be 51 million cubic yards of landfill space
21 saved annually; the red -- reduce requirement for
22 excavation or quarrying of an equal amount of

1 virgin raw material. Other benefits include
2 substantial water and energy savings.

3 The recycling of coal combustion
4 products is a suc -- is a success story with
5 utilization growing from 30% in the year 2000 to
6 44% in 2008, representing the use of over 60
7 million tons of material annually. The EPA's
8 strategic plan calls for a further increase of
9 beneficial use of coal combustion products up to
10 50% by the year 2015.

11 The EPA has already reviewed coal waste
12 several times and in 1993 and 2000 formed a
13 conclusion that it did not warrant a hazardous
14 label. Nothing has changed. The EPA believes
15 that recycling won't be hurt with a Subtitle C for
16 disposal and that there is no stigma. We believe
17 the EPA is wrong in this assumption.

18 A significant number of speakers
19 presenting at previous hearings have indicated
20 that coal ash was responsible for health issues,
21 disease and even death. If engaged people feel
22 this way, imagine how uninformed the general

1 public will react to having a product labeled by
2 the EPA as hazardous in their homes, schools,
3 churches, and offices. The stigma is real and
4 will cripple the recycling of coal ash.

5 The EPA's own scientific data shows that
6 coal ash is non -- non-hazardous. By EPA's own
7 admission, a RCRA Subtitle D non-hazardous
8 designation will provide an equal amount of
9 protection to the public health and the
10 environment. Please regulate coal combustion
11 waste under RCRA Subtitle D and avoid any
12 reference to a hazardous waste. Thank you for
13 your time.

14 MR. DELLINGER: Thank you.

15 (Applause)

16 MR. PETERSON: Good morning. My name is
17 Terry Peterson. I also work for Boral Material
18 Technologies. I've been employed in the coal
19 combustion product industry for the past 27 years.

20 BMTI is a company dedicated to finding
21 environmentally-acceptable beneficial reuses for
22 coal combustion products, as well as proper

1 landfill management services. We have 161
2 employees working at 22 sites across 18 states.

3 I'd like to open my statement by
4 commending the EPA for maintaining their position
5 concerning CCRs since enactment of the Bevill
6 amendment in 1980 and reconfirming that position
7 through regulatory determinations of 1993 and
8 2000. EPA's longstanding position has underpinned
9 the establishment and development of arguably the
10 most successful recycling program in U.S. history.

11 BMTI alone has been able to place in
12 excess of 53 million tons of coal combustion
13 products into beneficial uses over at the past 20
14 years. Obviously, that's 53 million tons that
15 avoided landfills. But, just as importantly,
16 that's 53 million tons of CO2 emissions that would
17 have resulted if natural materials had been used
18 in lieu of CCPs. I argue that this would never
19 have occurred if CCRs were classified as hazardous
20 or under Subtitle C.

21 Further benefit of the EPA's
22 longstanding position is reflected in BMTI's R & D

1 program. For the past ten years, we've invested
2 in excess of \$30 million developing new coal
3 combustion product applications outside of Ready
4 Mix and cement. Additionally, we've developed
5 three beneficiation processes that enable coal
6 combustion products to meet performance
7 specification when environmental modifications to
8 plants are put in place for clean air.

9 This is important, and the only reason
10 it did take place is because it is not -- it is
11 classified as a non-hazardous material. If it
12 were classified as hazardous or under Subtitle C,
13 I argue again that these investments would never
14 take place. Again, I speak just on behalf of
15 BMTI, but obviously, there are many other people
16 in this room who have had the same -- have the
17 same success stories.

18 I recognize during these hearings the
19 undercurrent associated with generating power
20 without burning coal as well as citizens' concern
21 over inadequate state regulation. Obviously,
22 generating power by burning coal has been an

1 integral part of U.S. society and will remain so
2 for many years. So I think it's important that we
3 deal with this process by maintaining or recycling
4 efforts in coal combustion residues. I suggest
5 that as long as we are burning coal, the right
6 thing to do is to encourage continuation and
7 expansion of current recycling efforts.
8 Supporting Subtitle D is a way to maintain this
9 momentum.

10 Just importantly, creating confidence
11 among citizens that government agencies, whether
12 federal or state, are protecting their interests
13 is critical. I suggest that we can gain public
14 confidence and achieve the necessary safeguards
15 for proper landfilling -- properly landfilling
16 CCRs through cooperation between the EPA and state
17 regulators using a Subtitle D classification.

18 In closing, I recommend that the best
19 option going forward for U.S. citizens is for the
20 EPA to continue support by designating CCRs under
21 a Subtitle D classification. Thank you.

22 (Applause)

1 MR. DELLINGER: Thank you.

2 MR. ADAMS: Good morning. My name is
3 Thomas Adams. I'm the executive director of the
4 American Coal Ash Association of Rural Colorado.
5 I want to thank you for the opportunity to
6 participate in today's hearing.

7 The Environmental Protection Agency's
8 proposal for regulating the coal -- disposal of
9 coal combustion products, or CCP, provides two
10 basic paths creating rules which will improve the
11 protection of human health and the environment.
12 Under the provisions of the Resource Conservation and
13 Recovery Act, the agency has suggested that CCP be
14 regulated as a hazardous waste under Subtitle C,
15 or as a non-hazardous waste under Subtitle D.

16 The level of protection provided under
17 either disposal scenario is virtually identical.
18 The distinction between describing CCP as
19 hazardous waste or non-hazardous waste has very
20 serious implications for the continued beneficial
21 use. The stigma of being associated with
22 hazardous waste is real and is already affecting

1 markets. The safe recycling of CCP is a major
2 environmental success story that is in serious
3 jeopardy with a looming threat of a Subtitle C
4 rule.

5 When faced with the choice of purchasing
6 a product containing a hazardous waste or
7 purchasing a product without this stigma
8 associated with it, the rational consumer will
9 choose the non-hazardous option. The EPA claims
10 it can construct a rule exempting favored
11 beneficial uses, and under this construct,
12 recycling will actually increase. After all, the
13 agency has 13 examples of such a scheme
14 demonstrating this result.

15 We've continually pointed to the
16 difference between these 13 processed industrial
17 materials and the unprocessed CCP used in consumer
18 products such as carpet, wallboards, shingles,
19 concrete foundations, and concrete slabs.
20 Hazardous waste is not something consumers invite
21 into their homes, schools, healthcare facilities,
22 or workplaces. In an effort to regulate disposal,

1 the EPA is threatening to destroy an industry
2 which provides the only rational solution to
3 disposal, which is recycling.

4 I'd like to pose a final question for
5 your consideration. What if you are wrong about
6 beneficial use under Subtitle C regulation? The
7 following are some of the outcomes: Millions of
8 tons of coal combustion products currently safely

9 consumed in a broad range of applications will be
10 diverted to disposal. Since the year 2000 alone,
11 over 400 million tons of CCP have been recycled.
12 Current landfills will have to be expanded where
13 possible, and new landfills will be required where
14 capacity cannot be increased.

15 Another impact, 15,000 green jobs will
16 be eliminated. The vast majority of these jobs
17 are in small businesses, not large utilities.
18 Another impact would be the industry which
19 contributes as much as \$25 billion directly and
20 indirectly to the U.S. economy will be lost, and
21 millions of tons of greenhouse gas emissions
22 currently being avoided through the use of fly ash

1 in concrete mixtures will be released into the
2 atmosphere. Since the year 2000, this beneficial
3 use has accounted for over 125 million tons of
4 greenhouse gas avoidance.

5 These are just some of the impacts of a
6 Subtitle C hazardous waste rule in the continued
7 recycling of CCP. So I repeat the question: What
8 if you're wrong about beneficial use under
9 Subtitle C rules? How do you restore decades of
10 recycling success? How do you remediate the
11 environmental damage of increased disposal? How
12 do you remediate the damage of millions of tons --

13 MR. HOFFMAN: Sorry. Your time is up.

14 MR. ADAMS: -- of greenhouse gas
15 reduction? The citizens deserve a -- a
16 responsible and thoughtful answer.

17 (Applause)

18 MR. DELLINGER: Thank you.

19 MR. HOFFMAN: Thank you.

20 MR. BROWNHILL: Good morning. My name
21 is Ryan Brownhill, operations manager for Sphere
22 One, Incorporated. We are the largest marketer of

1 domestically sourced cenospheres in the United
2 States.

3 I work in an industry that is based
4 solely on taking a waste stream that would
5 otherwise go to a landfill, reduces the need for
6 other natural resources, lowers CO2 emissions,
7 create jobs, and makes the products that we go
8 into better. I'm proud to work in an industry
9 that does all that. That seems like the kind of
10 industry that the EPA and environmental groups
11 would support.

12 This hearing is not about whether coal
13 should or should not be used to generate power.
14 The reality is that coal is used to generate power
15 and will be for the foreseeable future. The
16 question in front of us is: How can the waste
17 best be handled?

18 If the 76 million tons of ash that is
19 currently landfilled is as big a problem as is
20 advertised, do we really want to landfill 136
21 million tons annually? And what about the 12
22 million tons of CO2 emissions that are avoided by

1 the use of fly ash? Does anyone here really
2 support a proposal that could increase the amount
3 of landfilled material by 60 million tons and CO2
4 emissions by 12 million tons annually?

5 I have attached letters from several of
6 our customers expressing their concerns in laying
7 out their plans to evaluate other materials. I've
8 talked to numerous other customers saying the same
9 thing. Every company that is involved in
10 recycling these byproducts has said that a
11 Subtitle C ruling would be extremely detrimental
12 to continued recycling. Why would we lie about
13 that? If there's no potential impact on our
14 business, we wouldn't spend the time and money to
15 be here. We're here because we are very concerned
16 about the huge negative economic and environmental
17 impact of a Subtitle C ruling.

18 We're not arguing against new
19 engineering standards. My heart goes out to the
20 people whose lives and health have been affected
21 by the improper storage of CCRs. The EPA must
22 take action to protect them and the environment.

1 The fact is that the engineering requirements for
2 Subtitle D and Subtitle C are the same. So the
3 protections provided to those people would be the
4 same. The states all have programs that are
5 effective in hand -- handling solid waste and
6 monitoring solid waste landfills which have
7 significantly higher concentrations of known
8 carcinogens than CCRs.

9 Once we acknowledge that coal ash is
10 going to be generated, what's the best way to make
11 sure that people aren't harmed? Recycle
12 everything we can. If we could recycle 100% of
13 the ash that is generated, no one would ever have
14 to worry about how a landfill might affect their
15 health. I know a Subtitle C ruling will seriously
16 diminish recycling. I have the letters from our
17 customers telling us exactly that. If you don't
18 want to listen to me, listen to them.

19 A Subtitle D ruling protects people in
20 the same way as Subtitle C. A Subtitle D ruling
21 will have no effect on the continued efforts to
22 find new, innovative, safe uses for CCRs. The

1 protections are the same. The ability to recycle
2 as much of this waste stream as possible is only
3 viable with a Subtitle D ruling.

4 I'm proud to work in an industry that
5 recycles, conserves natural resources, reduces CO2
6 emissions, and create jobs. My sincere hope is
7 that the EP -- EPA does exactly what it has set
8 out to do: protect people from improper storage of
9 CCRs and maintain the beneficial use that exists
10 today. Subtitle D is the only solution that does
11 both. Thank you for your time.

12 (Applause)

13 MR. DELLINGER: What --

14 MS. CELESTE: Sir?

15 MR. DELLINGER: We're -- we've got out
16 of order here. Tom Adams must have spoken for
17 Bill Gehrman, Number 9. Is that right? And then
18 --

19 MR. BROWNHILL: For Melissa Hendricks.

20 MR. DELLINGER: Okay. And your name --
21 I missed your name at the beginning.

22 MR. BROWNHILL: My name is Ryan, R-y-

1 a-n --

2 MR. DELLINGER: Okay.

3 MR. BROWNHILL: -- Brownhill.

4 MR. DELLINGER: All right. Thank you.

5 All right. Could we have Numbers 11, 12, 13, 14,
6 and 15 to come to the front, please?

7 MR. EDENS: My name is Tom Edens. I am
8 the administrative Coal Combustion Products
9 Utilization at Santee Cooper, South Carolina's
10 state-owned electric and water utility serving
11 over 2 million South Carolinians. Santee Cooper's
12 most successful environmental stewardship program
13 has been the marketing of coal combustion
14 byproducts.

15 The Subtitle C option represents the
16 most extreme, costly and burdensome option without
17 proportional environmental benefit. Regulating
18 CCRs under RCRA hazardous waste controls would
19 have an impact on beneficial use. FGD gypsum,
20 which is predominantly calcium sulfate, can be
21 safely used in production of drywall and indust --
22 and in agricultural soil amendment.

1 Gypsum does not meet the criteria set
2 forth under RCRA as being a hazardous waste. Why
3 should an environmental friendly recycling program
4 be unfairly stigmatized? Santee Cooper also
5 successfully recycles coal ash, both fly ash and
6 bottom ash to minimize the use of ash ponds and
7 landfills as much as possible. When ash is
8 encapsulated in concrete, it is one of the most
9 responsible reuse programs.

10 EPA awarded Santee Cooper under the
11 EPA's Coal Combustion Partnership Enhanced
12 Utilization Award in 2006. Despite of the rules
13 claiming to the contrary, the labeling gypsum and
14 other CCRs as a hazardous waste will impact sales.
15 Negative results have already been seen as
16 lightweight aggregate market -- market is already
17 touting their prod -- product as non-hazardous.

18 The Subtitle C option would overwhelm
19 existing Subtitle C disposal facilities,
20 especially in South Carolina where there are no
21 facilities. This would cause an undue economic
22 burden without beneficial use. It will impact the

1 cost of power, and this cost will be transferred
2 to those customers who buy electricity.

3 The Subtitle D option appears to be the
4 most reasonable way to reduce the cost burden
5 while still being protective of the environment.
6 We request EPA to consider the comments from
7 industry in regard to the actual pro --
8 projections of cost. South Carolina DHEC has a re
9 -- robust program that is protective of the
10 environment. They already require groundwater
11 monitoring around our ponds and our ash landfills,
12 groundwater is monitored by Santee Cooper by a
13 professional geologist and analysis are sent to
14 DHEC semi-annually.

15 Santee Cooper urges EPA to consider the
16 Subtitle D option. and we appreciate the
17 opportunity we had to speak. Thank you very much.

18 MR. DELLINGER: Thank you.

19 (Applause)

20 MR. JOHNSON: Good morning. My name is
21 Kris Johnson, owner of AspenGold Consulting
22 Company out of Woodland Park, Colorado. Our

1 company specializes in assisting utilities and
2 research -- for the research and implementation of
3 beneficial uses in programs for all coal
4 combustion products: fly ash, bottom ash and FGD
5 gypsum.

6 I oppose any form of Subtitle C
7 designation for coal combustion products. I've
8 been in the CCP industry for 21 years and been re
9 -- and been responsible for the successful
10 completion of a multitude of beneficial projects
11 constructed entirely of CCPs. All these projects
12 utilize millions of tons of CCPs diverting them
13 from municipal landfill disposal. All these
14 projects I have been involved in and numerous
15 other mentions today and at other public hearings
16 across the country would not have been possible
17 without the current regulations allowing industry
18 to recycle CCPs and beneficial in many -- many
19 methods.

20 Subtitle D, as it stands today, allows
21 industry to willingly participate in beneficial
22 projects as a way of diverting portions of their

1 CCPs into projects which contribute significantly
2 to the reduction of greenhouse gas emissions and
3 the preservation of our natural resources by
4 conserving virgin materials otherwise used for
5 construction and other product purposes. Any
6 change to the -- to the current CCP regulation
7 such as a proposal for Subtitle C designation will
8 cripple the CCP industry by eliminating the useful
9 and beneficial utilization of CCPs in many
10 applications.

11 During my career, I've been involved in
12 the marketing of CCPs, explaining their benefits,
13 their engineering properties, and the actual
14 dollar savings compared to other construction
15 materials on the market. With the designation of
16 Subtitle C, hazardous waste, or even a special
17 waste designation, the marketing of these CCPs
18 will be extremely difficult, if not next to
19 impossible.

20 In my business, I have seen utilities
21 delay or cease specific CCP projects for fear the
22 Subtitle C designation becoming implemented. My

1 clients are holding back projects where CCPs would
2 be beneficially used outside of their property due
3 to the possibilities of long-term litigation from
4 customers who have used CCPs in beneficial
5 projects only to find out the material that they
6 purchased is now designated as a hazardous waste
7 under Subtitle C. The stigma could be
8 insurmountable to maximize utilities of CCPs.

9 Some have said Subtitle C designation
10 will increase the utilization of CCPs, forcing
11 utilities to increase their utilization efforts
12 due to the increased cost of disposal. Those of
13 us who market CCPs daily disagree and see the
14 demand decreased to a point where utilization will
15 cease. Utilities will have little incentive to
16 release CCPs into beneficial applications
17 incurring -- incurring the increased disposal
18 costs and passing this cost on to the consumer,
19 you and me. Currently, the United States has
20 insuf -- insufficient hazardous waste landfill
21 space to accommodate the amounts of CCPs generated
22 on an annual basis.

1 I sincerely hope the EPA will digest the
2 science which has been presented to it by
3 industry, academia, government, and even the EPA's
4 own staff finding Subtitle C as inappropriate for
5 future promotion and beneficial utilization of
6 CCPs. Thank you for this opportunity.

7 MR. DELLINGER: Thank you.

8 MR. RHODES: Good morning. I'd like to
9 thank you for the time you've allotted us to
10 convey our position on the subtitle change for
11 coal ash this morning. For the record, my name is
12 Doug Rhodes. I've worked with -- I've worked in
13 research and development for Headwaters Resources
14 for the past 16 years.

15 And I wanted to take the time allotted
16 me to discuss the positive effects of fly ash as a
17 replacement for Portland cement in concrete. The

18 beneficial use will be negatively impacted, as
19 you've been informed by the stigma already
20 occurring. The belief that fly ash can have a
21 dual designation as hazardous for disposal and
22 non- hazardous for beneficial use is absolutely

1 untrue. Years of work has gone into establishing
2 the technical data, relationships, distribution
3 and product development that validates beneficial
4 use.

5 The stigma of hazardous designation
6 would simply destroy the marketability of the
7 environmental, financial and technical use of fly
8 ash in concrete. The positive technical
9 attributes of fly ash in concrete construction are
10 very well documented by private industry,
11 universities, as well as local and federal
12 agencies.

13 The beneficial use of fly ash in
14 concrete construction has been used in the United
15 States since the early 30s. The use of fly ash
16 as a cement replacement in concrete has benefit to
17 both the fresh and hardened properties. The fly
18 ash affects the fresh properties of concrete by
19 improving workability, reducing water demand,
20 reducing segregation and bleeding, and lowering
21 heat of hydration.

22 Fly ash increases strength -- excuse me.

1 Fly ash in -- fly ash increases strength, reduces
2 permeability, reduces corrosion of reinforcing
3 steel, increases sulfate resistance, and reduces
4 alkali aggregate reaction. The only solution for
5 the concrete producer will be to increase the use
6 of cement and chemical add mixtures to fill the
7 beneficial void that -- which will be left by the
8 absence of fly ash.

9 Not only does fly ash improve the
10 performance and quality of concrete, it offers
11 environmental advantages. Just the use of 1 ton
12 of fly ash in concrete conserves enough landfill
13 space for 455 days of solid waste for the average
14 American, reduces a -- reduction of CO2 emissions
15 is equal two months of emissions from an
16 automobile, energy savings is enough to provide
17 electricity to the average American home for 24
18 days.

19 The stigma placed on fly ash by
20 hazardous designation will negate the use and this
21 benefit will be lost. I will take this
22 opportunity to remind you of the negative impacts

1 on marketing, technical, financial, and the legal
2 implications for the beneficial use of fly ash.

3 So, in closing, I urge you to maintain
4 the past technical findings that CCR regulation
5 under Subtitle C is unnecessary and unwarranted.
6 Thank you for your time and attention.

7 MR. DELLINGER: Thank you.

8 (Applause)

9 MR. BLEVINS: Morning. I'm John Blevins
10 with Sphere One. I've been there about 29 years
11 in maintenance at the Chattanooga plant. And we
12 process the cen -- the sale of cenospheres for the
13 entire time I've worked there. I've had -- I've
14 worked -- I've come to work and been around
15 cenospheres every day, tell -- and I've been
16 regularly tested over the years and around
17 hazardous materials.

18 Like I say, I've worked in there --
19 material for 29 years and I don't have any medical
20 problems that the EPA has talked about. The stuff
21 is -- if the stuff is so bad as the EPA says it
22 is, how come I'm not sick?

1 I also have enough common sense to know
2 that if the -- that if it's called hazardous
3 waste, no one is going to buy it. Our products go
4 -- go into a lot of building materials. Who is
5 going to put something in their house that the EPA
6 says is hazardous?

7 As far as I can tell, the biggest
8 problem with the coal ash is the storage. The
9 spill at the Kingston plant is about -- is a prime
10 case of the problem with storage. These questions
11 is: Why should I lose my job because of a failure
12 at an ash pond? Just because the dock failed
13 doesn't make the material automatically hazardous.

14 We will continue to sell our products
15 like it is -- have for the 29 years. The people
16 have live near the storage sites get the same
17 protection in either case. So I will ask again:
18 Why should I lose my job so the EPA can have
19 control over the sites?

20 Thank you for letting me speak today.

21 (Applause)

22 MR. BARGAHEISER: My name is Keith

1 Bargaheiser. I'm with Headwaters Resources.

2 And my comments today are related to the
3 observations while reading the document and its
4 definitions. One has to be puzzled as to why the
5 EPA has created the term "coal combustion
6 residue." By EPA's definition, the CCR means
7 bottom ash, fly ash, boiler slag and flue gas
8 desulphurization materials that are destined for
9 disposal. CCRs are also known as coal combustion
10 waste and fossil fuel combustion waste when
11 destined for disposal.

12 The commonly accepted terms of CCWs and
13 FFC definitions are clear and concise on what is
14 happening to the material and have existed for
15 many years. So, again I ask: Why add to the
16 confusion with this new term?

17 By the EPA's definition, the term "coal
18 combustion products" means fly ash, bottom ash,
19 boiler slag and flue gas desulphurization
20 materials that are beneficially used. This def --
21 this definition is in no way interchangeable with
22 the term "CCR."

1 As I reviewed the EPA document, it
2 became clear the writers of the document did not
3 grasp the meaning of the CCR, for throughout they
4 used the term "CCR" for both beneficial use and
5 disposal. The EPA has stated they have seen no
6 evidence of damages from beneficial uses of CCRs.
7 I ask you: How am I to characterize the term
8 "CCR" in this sentence?

9 If we use the EPA's definition
10 previously discussed, then the CCRs are destined
11 for disposal and beneficial use cannot occur. The
12 correct terminology would be "CCPs" rather than
13 "CCRs." This is just one example of the confusion
14 caused by the misuse of terms within this
15 documentation.

16 If recycling is truly the national
17 priority, I challenge you to embrace the use of
18 CCPs for what they are: a national resource. We
19 can start by opening a dialogue between the EPA,
20 environmentalists and industry with a committee of
21 stakeholders to resolve the issues. Under the
22 existing draft, there will be no winners. We can

1 only expect lawsuits and years of confrontation.

2 If preventing disposal of CCPs and
3 elimination of landfill ashes, everyone's goal,
4 this can be done. Today technologies exist where
5 we can take landfill ash and process it for
6 beneficial use. With everyone's cooperation, our
7 tomorrows can be giving back these sites to the
8 public so they can enjoy it as nature intended it.

9 The only true sustainable answer to this
10 issue is Subtitle D. Thank you.

11 MR. DELLINGER: Thank you.

12 (Applause)

13 MR. DELLINGER: Could we have Numbers

14 215, 17, 18, 19, and 20 come forward?

15 If you have written notes, can you put
16 them in the -- in the box over here? Thank you.
17 Number 215.

18 MS. EVANS: Thank you for this
19 opportunity. My name is Barbara Evans. I
20 represent a group of people that live right in the
21 mouth of the Perry County dump, the Black Belt
22 Citizens Fighting for Health and Justice. I'm a

1 community organizer that lives one county over in
2 Lownsdes County. I'm the deputy coroner. I
3 brought the respirator, because you're killing us
4 with the coal ash.

5 We are poor people. And we tried to get
6 you- all to have the hearing where we could get to
7 it. But -- because our folks are -- are -- are
8 poor, they've got a bunch of part-time jobs, they
9 could not afford to come here today, so I'm
10 representing them. I'm representing the vast
11 majority of the people that live all around this
12 landfill in Perry County that's taken the coal ash
13 from the Tennessee spill.

14 They have small houses and trailers on
15 the road that surrounds that dump. Most of them
16 get their acreage, they got it from family. It's
17 all they own. And now it's worthless. They plant
18 gardens for survival and fruit trees. And they're
19 afraid to eat the crops now because coal ash is
20 everywhere. It covers the -- the cars, and it
21 covers their little houses. It's everywhere.
22 Children are kept away from the fruit trees, and

1 grandparents worry that the people will -- that
2 the kids will cross the road to the dump, because
3 that dump is as close to a residential area as
4 that wall over there.

5 You know, these are good people. They
6 -- they work hard to survive and they have strong
7 faith. The only thing they have is their land.
8 And this is the area where people fought and died
9 to give all Americans the right to vote and the
10 civil rights movement. And even that is being
11 jeopardized by the huge amount of absentee ballots
12 manipulated by the power structure, the same power
13 structure that invited this coal ash in. You
14 can't even have a fair election in the black belt.

15 Local county government, the ones that
16 begged for the coal ash to get the money, is run
17 like a gang. If you cross them, none of your
18 family and friends will ever get a job in Perry
19 County. If you cross them, you'll get ostracized.
20 If you cross them, you can bet the police
21 departments will be on your back. People are
22 afraid, and I can tell you it's with good reason.

1 People are threatened with arrest if they speak
2 out even at public meetings. And right now it's
3 being litigated because the Perry County
4 Commission has violated the Alabama Open Meetings
5 Act.

6 The state -- the Alabama Department of
7 Environmental Management is weak and underfunded.
8 It's a permit machine. It's political. They
9 never should have issued a permit for that
10 landfill in the first place. Already the landfill
11 owners have filed for bankruptcy. Already there's
12 been illegal dumping of the leachate. We can't
13 count on them.

14 And so what I'm saying to you today,
15 like -- just like in the civil rights movement, we
16 need --

17 MR. HOFFMAN: Sorry, ma'am, your time is
18 up.

19 MS. EVANS: -- federal intervention.
20 Thank you.

21 (Applause)

22 MR. CROSSLIN: Good morning. And I

1 thank you for the opportunity to come this morning
2 and speak on behalf of recycling.

3 Recycling, what would this country be
4 and what kind of shape would it be in if we didn't
5 have recycling?

6 MR. DELLINGER: Could you state your
7 name and affiliation, please?

8 MR. CROSSLIN: Yes. My name is Jerry
9 Crosslin, and I'm an employee at Sphere One,
10 Incorporated in Chattanooga, Tennessee. We
11 manufacture by a product -- a byproduct from the
12 coal-fired power plants that we sell to our
13 customers.

14 Currently, we're buying products, the
15 floating ash off the ponds at the power plants.
16 And if the Environmental Protection Agency
17 classifies what we call the cenosphere as a
18 hazardous material, we will lose our customers
19 because they have said that they will not use a
20 hazardous product in their products. So they will
21 write out their formulas and not use the
22 cenospheres.

1 We will be forced to shut our doors, our
2 jobs will be lost. And this is not just the
3 company that I work for, that I have been working
4 with in this company for 30 years, working with
5 the floating ash off of these ponds. I do not
6 have health problems. I have not been to the
7 doctor for any problems concerning fly ash,
8 cenospheres. I've been to the power plants, I've
9 worked at the power plants, and I've got 30 years
10 in the plant with this floating ash. So, if this
11 -- this would also force us to cut back
12 economically, lose our jobs, and none of us can
13 afford to lose our jobs in this day and time.

14 But recycling is a benefit to the whole
15 world. It -- it makes money. It helps keep the
16 environment going. The EPA has to have rules and
17 regulations. They have to make these rules and
18 regulations for me and you to go by. But some of
19 them does not need to be classified as a hazardous
20 product.

21 So let me urge upon you today, please do
22 not classify this as a hazardous product, because

1 it's going to cost jobs. And like I say, I've
2 been in this business daily for 30 years and the
3 doctors say that my lungs are good, I'm good -- in
4 good health and have no health problems at all.
5 Thank you.

6 MR. DELLINGER: Thank you.

7 (Applause)

8 MR. MINKARA: Good morning. My name is
9 Rafic Minkara. I'm an environmental engineer. My
10 past experience includes hazardous waste
11 treatment, disposal and remediation. In the last
12 18 years, I've been involved in almost all aspects
13 of CCP management from generation to disposal and
14 beneficial use at Headwaters.

15 The TVA at Kingston spill was a bad
16 event that caused damage to property and the
17 environment. It is unacceptable. I applaud EPA
18 response to the spill and the prompt survey of
19 other ash impoundments. I also understand the
20 need to do something to prevent similar spills.
21 Hazardous waste designation is not the answer.
22 Good engineering practices are.

1 Even prior to regulatory changes, some
2 utilities have taken notice of the risks and
3 potential liabilities involved in operating a
4 Kingston-like ash management operation. Utilities
5 are risk averse. Many are planning dry
6 conversation projects and to do away with ponds.
7 The EPA should work with the utilities and the
8 beneficial use industry to increase utilization.

9 C2P2 was a good start. EPA and the
10 federal government can do more, a lot more to
11 increase beneficial use. For example, power
12 plants air regulation should minimize the impact
13 on CCP quality. Another example, Congress can
14 provide tax and other financial incentives for
15 resource conservation and recovery. Carrots are
16 more effective than sticks.

17 In my review of the regulatory impact
18 analysis, I noticed that EPA has not taken the
19 impact of stigma too seriously. EPA's own
20 analysis show the impact of the stigma at 51%
21 reduction in beneficial use in 2012. This is the
22 wrong time to wipe out half of an industry as we

1 try to recover from this near depression.

2 Regaining beneficial use volume is not
3 as simple as driving the ash delivery truck an
4 extra hundred miles to the next town. EPA's logic
5 on increased beneficial use under RCRA C is
6 archaic. It is obvious that industry expert was
7 not involved on this part of the analysis.

8 The analogy to waste oil is also
9 irrelevant. When waste oil is burnt, the stigma
10 goes up in smoke. In the case of fly ash, the
11 stigma stays in that concrete driveway and home
12 carpeting. There's also the real risk of consumer
13 product liability lawsuits that would discourage
14 the use of CCPs.

15 RCRA C will destroy an indus -- an
16 industry that should be applauded by EPA for
17 making a real difference in reducing the amount of
18 CCPs going to landfills and proving durability of
19 infrastructures and reducing the amount of
20 manufactured Portland cement with its related
21 environmental impact. RCRA C makes no scientific
22 or engineering sense. Subtitle D will provide the

1 same level of protection as C.

2 (Applause)

3 MR. MCCAMEY: Good morning and thank
4 you. My name is Wayne McCamey, and in the Ready
5 Mix concrete business, producer in Morristown,
6 Tennessee.

7 I started working this industry in the
8 early 70s, and at that time in this part of the
9 country not too people used fly ash. Not too many
10 knew very much about the product at all.

11 In today's market, almost everybody uses
12 fly ash. My question is: Why? And that's pretty
13 easy. Fly ash makes our products better, makes it
14 more durable, easier to place, whether we're doing
15 so physically or with a concrete pump or any other
16 mechanical method.

17 Concrete with fly ash has better
18 workability, it's easier to pump, it's easier to
19 get in place, and we can make far higher strength
20 concrete when fly ash is used. Yes, all this can
21 be done with fly ash, and every yard of concrete
22 containing fly ash is produced at a cost savings

1 of approximately 2 to \$3 a cubic yard compared to
2 a lower quality non-fly ash mix.

3 The Tennessee Department of
4 Transportation, as well as the Federal Highway
5 Authority, they saw the benefits and began
6 incorporating fly ash into their concrete they
7 were using. In fact, fly ash today is used in
8 about 98% of the concrete being used in this area
9 of the country.

10 In a normal year, about 7 million cubic
11 yards of concrete is produced in Tennessee.
12 That's about 525,000 tons of fly ash being used in
13 concrete in Tennessee alone. That equates to
14 about 21,000 tractor-trailer loads of ash that
15 never goes to a landfill anywhere.

16 If fly ash receives a designation as
17 hazardous, can our companies assume the
18 responsibility of hauling, handling and using this
19 product? Could our em -- could our employees who
20 develop cancer, the same cancer that they received
21 50 years ago, could that be tied to a problem of
22 us using a hazardous material? Our customers

1 could start saying, "Your concrete contains
2 hazardous waste and has made me sick." Is it
3 possible lawyers looking or pursuing business
4 would go after a case such as this?

5 I'm concerned that my company will be
6 forced to stop using fly ash if it is labeled
7 hazardous. Technology in our industry would back
8 up 30 years. Yes, it's a problem to dispose of
9 fly ash. Kingston is a perfect example. I
10 suggest we learn how to properly store and keep
11 our landfills intact and put regulations in place
12 to make this happen.

13 But please do not pass regulations that
14 will be extremely detrimental to our industry, as
15 well as the coal industry and utilities across the
16 nation. How much more will all of us be paying
17 for electricity when coal cannot be burned? Thank
18 you.

19 (Applause)

20 MR. DELLINGER: Thank you. While Number
21 20 -- while Number 20 is coming to the microphone,
22 could we have Numbers 21, 22, 24, 250, and 251

1 move forward?

2 MR. CLAYTON: My name Kip Clayton, and I
3 have worked in the byproducts industry for -- as a
4 marketer of ash, basically cenospheres, for over
5 eight years.

6 I would like to address the issues of
7 stigma impact and give a statement regarding what
8 I really feel like is going on. A quote from
9 Politico: "I do very much believe that it's time
10 for us to get past this tired dance where folks
11 inside this beltway get paid a lot of money to say
12 things that aren't true about public health
13 initiatives that this agency is charged by law
14 with undertaking."

15 This quote bothers me because we keep
16 seeing propaganda touting that these materials are
17 hazardous but with no scientific data to back it
18 up. We are an industry keep taking -- we, as an
19 industry, keep taking it on the chin by scare
20 tactics that these materials will kill you. Like
21 many things, plain old mud can kill you. I do
22 think better regulations on impoundments are

1 necessary, but don't slate it hazardous material
2 because of engineering issues and inspection
3 issues. Fix the problem, not the sum of it.

4 The second quote, EPA spokesman Brandon
5 Gilfillan said, "Jackson's comment to open this
6 compares particularly well to the lack of
7 transparency during the previous administration."
8 Well, for years the EPA was working well in
9 utilization of byproducts, even creating a
10 website-based group called C2P2 which promoted the
11 use of these materials. They even gave out awards
12 for innovations for usage in projects that were a
13 tremendous success. Then one day the site was
14 taken down without any notice to -- to its members
15 whatsoever.

16 The science has not changed, the
17 material is the same, and when we work together on
18 recycling these materials, it's better for
19 everybody. Just by shutting down the site, it has
20 caused stigma among -- amongst the industry.
21 Because of my time in the industry, I have seen
22 many impoundment ponds and I have marketed this

1 material across the U.S. and abroad. One of the
2 things I look at is how our neighbors are
3 handling such issues. It appears that most of the
4 countries that are next to us and -- and aboard
5 market this material and market it well.

6 I work in all sectors of the industry
7 that market materials from coal-fired plants. We
8 take waste material and utilize it in various
9 products. It is the des -- if it's designated as
10 hazardous waste and it's assigned to our material,
11 it will kill the marketability, it will increase
12 and have more taxing effect on our natural
13 resources, and by doing this, will have an adverse
14 effect on the carbon footprint just by the
15 equipment used to mine these natural resources.
16 All this is simply an attack on coal in general,
17 and by doing this, will only hurt the common rate
18 payer and probably do more damage to the
19 environment than what is taking place now.

20 As we move forward to alternative power
21 solutions, we will still need coal to power us.
22 Let's be good stewards and reuse as much of the

1 material as we can regulated on a state level, and
2 let us recycle the material without a stigma of
3 hazardous waste. Thank you.

4 (Applause)

5 MR. DELLINGER: Number 21.

6 MR. WALTERS: My name is Nick Walters,
7 and I work for the Choctaw County Mississippi
8 Economic Development Foundation, and we're here to
9 talk about the disastrous effects that could
10 happen with this rule change.

11 Many of you probably will never have the
12 opportunity to meet Ms. Willie May Guidry. Ms.
13 Willie May is a person who dreamed for the longest
14 time of owning her own business. And recently
15 this -- earlier this year our foundation and the
16 local county NAACP sponsored a small and
17 minority-owned business seminar to help small
18 business people learn how to start their own
19 business.

20 Ms. Willie May attended, and now has not
21 only this dream been realized, but she's starting
22 to employ more people. She actually has figured

1 out a way to produce some very tasty meals that
2 help diabetics and so that diabetics can come to
3 conferences and to events and to meetings and be
4 able to eat a meal that is good for them and does
5 not harm them in their -- in their cases with
6 diabetes. Because of what she learned at our
7 conference and because of what she learned about
8 how to market herself -- she didn't know how to
9 fill out an invoice, she didn't know how to create
10 one, she didn't know how to participate in these
11 -- in these projects like this and how to do
12 things that most business people know how to do.

13 She now has a contract with the
14 Mississippi State Department of Health to provide
15 meals in a 15-county area for diabetics. This
16 would not have happened if she had not come to our
17 seminar. We are able to keep our doors open at
18 our foundation because of the sale of this very
19 productive use of fly ash. And fly ash enables us
20 to do many things in our county, many things in
21 our community that we would not be able to do
22 otherwise.

1 So Ms. -- Ms. Willie May is not part of
2 the power industry, Ms. Willie May is not -- does
3 not work for the coal industry, Ms. Willie May
4 does not work for the fly ash industry. Ms.
5 Willie May works for herself. And she is able to
6 work for herself and be able to provide a valuable
7 service because of things that we at our
8 foundation are able to do. We are able to keep
9 our lights on and be able to provide services for
10 people like Ms. Willie May because of the
11 revenues that we generate by the great use of fly
12 ash.

13 So, when you take into consideration
14 changing things of regulations like this, you're
15 not just only hurting the direct jobs and the rate
16 payers and other entities like this, you're
17 hurting people like Ms. Willie May. And we hope
18 that you will give that strong consideration as
19 you deliberate on this. Thank you.

20 (Applause)

21 MR. BERGMAN: Good morning. I'm Robert
22 Bergman. I'm a chemist, and I'm concerned because

1 I've analyzed a lot of samples of coal combustion
2 materials.

3 And I want to ask the audience today:
4 Who here wants to have coal combustion residuals
5 regulated in a lined landfill with groundwater
6 monitoring?

7 (Applause)

8 MR. BERGMAN: Okay. Who wants to have
9 the CCRs landfilled starting tomorrow? Okay.
10 Well, who wants a new Subtitle C waste landfill
11 next to their property? I don't think anybody
12 does.

13 Those of you who are asking for CCRs to
14 be disposed in Subtitle C think the battle just to
15 get CCRs in a lined landfill has been difficult,
16 just wait until the power companies have to
17 acquire permits to dispose of one of the largest
18 industrial waste streams in America. And the
19 groups represented here today will gladly take up
20 your battle with your money.

21 According to the EPA, the amount of all
22 listed and characteristic hazardous waste disposed

1 across the country in 2007 was just under 50
2 million tons. How much CCRs are produced each
3 year? Two and a half times that amount, over 125
4 million tons annually.

5 Imagine what is going to have to happen
6 to dispose of all that material? Not only will
7 land be -- have to be permitted, but the material
8 may have to be transported on highways and
9 railways through your towns in order to get to a
10 qualified landfill. Do you want to start
11 tomorrow?

12 Even EPA admits that qualifications for
13 permitting a Subtitle C landfill will take at
14 least twice as long or longer to complete than it
15 would a Subtitle D landfill which is constructed
16 to the same liner and groundwater monitoring
17 standards. The difference between -- the
18 difference being the cost that power companies
19 will pass on to you in order to meet whatever
20 requirements the EPA puts on them.

21 You say industry is not listening.
22 Industry is listening. Industry is asking for the

1 same construction standards as a Subtitle C
2 landfill. They are just asking for administration
3 of the program that will not use the same language
4 that is applied to hazardous waste.

5 Industry is just money -- money hungry?
6 Every person here works to make a profit to live.
7 Polluting our lands. Every coal ash marketer here
8 considers themselves an environmentalist because
9 their business is keeping coal ash out of
10 landfills and into durable, sustainable products
11 that are used every day.

12 I'm asking everyone here today to take
13 the opportunity to educate yourselves on what
14 industry is asking the EPA for and why it believes
15 that Subtitle D is the best option. Please visit
16 the hospitality room for the American Coal Ash
17 Association and Citizens for Recycling First which
18 is located behind the conference room down the
19 hallway to learn how your desires for a safe
20 landfill can be met --

21 MR. HOFFMAN: Your time is up.

22 MR. BERGMAN: -- in a quicker fashion by

1 asking for Subtitle D.

2 (Applause)

3 MR. DELLINGER: Number 24.

4 MR. HUNT: Good morning. I'm Reverend
5 Douglas Hunt, executive director of Tennessee
6 Interfaith Power and Light. We work with
7 congregations across the state of Tennessee on
8 issues of faith and sustainability. I want to
9 thank EPA for being here and being such good hosts
10 for this hearing.

11 I'm really pleased to be here to support
12 implem -- implementation of Subtitle C of the
13 proposed regulations as a critical first step to
14 meet our moral and ethical responsibilities to
15 protect people and our planet from the hazardous
16 contents of coal ash. I'm here this morning not
17 to talk about technical issues, not to talk about
18 economic issues, but to talk about moral and
19 justice issues that have to do with disposal of
20 this product.

21 The Kingston spill itself was a grave
22 injustice to the people of Roane County and

1 surrounding communities. The people of Perry
2 County, Alabama where 30% of residents live below
3 the poverty line are now recipients of this toxic
4 laden mess. This disaster and dramatically
5 expanding -- expanding the issues of justice and
6 morality that surround the disaster.

7 People of all faiths have always been
8 among the first to respond to a disaster such as
9 created by the Kingston spill and its relocation
10 to Alabama. We are also called to speak loudly
11 and clearly on the moral, ethical and justice
12 issues raised by the decisions which led to the
13 ash being transported and stored in ways that led
14 to this tragedy and will probably continue without
15 Subtitle C.

16 Children, family and nature are at the
17 center of spiritual teachings around the world.
18 They are what people value most. The handling of
19 coal ash as a non-hazardous waste puts all of
20 these at terrible risk needing implementation of
21 Subtitle C as a first step to protect these.

22 Regarding the issue of stigma, those

1 from Muslim, Jewish and Christian traditions know
2 the story of the two sons of Adam. But like Cain,
3 if the coal industry bears a stigma, it is one
4 marking lives lost, futures destroyed and creation
5 poisoned. People of faith also know how important
6 it is to name what we encounter. The people of
7 Kingston and elsewhere know that "hazardous" is
8 the name for coal ash.

9 What we can do now is to treat coal
10 combustion residues and the wastes they contain as
11 the hazard they are to people's lives and futures.
12 Subtitle C is a first and critical step to making
13 policy reflect our values and meeting our moral
14 and ethical responsibilities to protect the people
15 and our planet --

16 MR. HOFFMAN: Your --

17 MR. HUNT: -- from more coal ash
18 disasters. Thank you so much.

19 MR. DELLINGER: Thank you.

20 (Applause)

21 MR. DELLINGER: Number 250.

22 MR. HARDIN: My name is Chris Hardin.

1 I'm from North Carolina -- Huntersville, North
2 Carolina. I'm a private citizen and part-time
3 sustainable ag farmer from Huntersville.

4 I'm a registered professional engineer
5 in the states of North Carolina, Tennessee, and
6 five of the neighboring state. I work full time
7 as an engineer for Haley & Aldrich, and I'm
8 provide my comments on behalf of Haley & Aldrich,
9 as well as myself, a technically-minded engineer,
10 common sense sustainable ag farmer, and a
11 concerned citizen.

12 Haley & Aldrich supports development of
13 federal regulations for CCRs. And that's defined
14 as coal combustion residuals, or in many cases
15 products, under RCRA Subtitle D, non-hazardous
16 waste program. We agree with the EPA substantive
17 standards in Subtitle D and Subtitle C are
18 essentially the same. They both provide for safe
19 management of coal ash through the use of liner
20 systems, groundwater monitoring and corrective
21 action.

22 However, Subtitle D will provide a

1 regulatory platform that would accomplish these
2 goals without severely impacting CCR beneficial
3 reuse, threatening jobs, and increasing
4 electricity costs for customers by imposing
5 unnecessary costs on the utility industry.

6 We agree with the EPA that CCR units
7 that are not fully protected must be updated,
8 upgraded, or closed. However, CCR impoundments
9 that can be demonstrated to be safe and protective
10 of the environment should be allowed to continue
11 operating. We believe that the Subtitle D prime
12 option with appropriate adjustments is the best
13 pass forward and will enable EPA to establish an
14 environmentally-protective program that meets the
15 objectives of EPA, namely enforceable standards of
16 CCRs, that are protective of human health and the
17 environment.

18 We oppose the Subtitle C option, a
19 position which we believe is consistent with the
20 views of virtually all states and the regulatory
21 agencies, CCR marketers, beneficial users who feel
22 that regulating CCRs under a record hazardous

1 waste program does not provide the additional
2 protection to human health and the environment
3 than a Subtitle D option. In fact, Subtitle C
4 regulations would cripple the CCR reuse industry
5 that already has a strong track record of
6 successfully recycling coal combustion products
7 for beneficial reuse.

8 In closing, Haley & Aldrich and this
9 common sense sustainable ag farmer, and concerned
10 citizen feels that a reasonable and protective
11 path forward for the EPA is to move forward with a
12 Subtitle D option that ensures the safe disposal
13 of CCPs and CCRs that is protective of human
14 health and the environment. Thank you.

15 MR. DELLINGER: Thank you.

16 (Applause)

17 MR. DELLINGER: While Number 251 is
18 moving forward, could we have Numbers 26, 27, 29,
19 30, and 121?

20 MR. TODD: My name is Sean Todd. I'm
21 speaking on behalf of the Boiler Slag Consortium,
22 and this is my fourth EPA meeting. I'd like to

1 thank you for the opportunity.

2 It's very heartening, Mr. Dellinger, to
3 hear you open up each meeting by saying the EPA
4 will consider the best available data in making
5 its rule -- in determining its rule-making,
6 because science is the best friend that boiler
7 slag has in this process.

8 It is essential for EPA and others to
9 understand that there are different types of coal
10 combustion residuals. Boiler slag is only one of
11 them. It is, however, only 1% by volume of CCRs,
12 but over 90% is reused and recycled. Over 90% is
13 used in abrasive applications, roofing shingles,
14 roads, and building materials.

15 No slag is stored in impoundment ponds
16 such as the one in Kingston that was breached in
17 that terrible tragedy. Boiler slag is collected
18 and used in the economy, over 90%. How is it
19 made? Boiler slag is made at the bottom of the
20 furnace in wet bottom ash boilers. It's vitrified
21 when it's quashed with water. So it's bound at
22 the molecular level. All of it is inert material

1 -- it is inert, environmentally benign material.

2 Again, those heavy metals are bound at the
3 molecular level.

4 We have three third-party laboratory
5 independent analytical studies which we have been
6 submitted for the record. By way of example,
7 mercury has found to have in our finds the
8 smallest particle size, less than .01 milligram per
9 liter mercury concentration. The threshold level
10 for -- or action level for EPA action is .1
11 milligram per liter. So that's an order of
12 magnitude lower than your threshold level. That's
13 just from mercury.

14 So our science is our best friend in
15 this rule-making for boiler slag. We're being
16 lumped in with other types of CCRs. We believe
17 that, you know, for structural integrity and
18 engineering requirements -- are a good thing for
19 impoundment ponds. Our product is not in any
20 impoundment ponds. But the chemical constituents
21 and the physical characteristics of boiler slag do
22 not require at le -- in the least, Subtitle C RCRA

1 regulation. In fact, boiler slag should be exempt
2 as a protective status for -- for its beneficial
3 reuse.

4 This is an apples and oranges case.
5 Good public policy uses the right and appropriate
6 tool for its goals and objectives. Do not use a
7 sledgehammer when a surgical knife is -- is a
8 better tool. Thank you for your time. Thank you
9 for the extensive opportunities for comments.
10 And we do encourage the protective status
11 exemption for boiler slag for beneficial reuse.
12 Thank you.

13 MR. DELLINGER: Thank you. Number 26.

14 MS. BIRD: My name is Cathie Bird. I am
15 chair of the Energy, Ecology and Environmental
16 Justice Committee of Statewide Organizing for
17 Community Empowerment.

18 Coal ash is a dangerous, toxic material
19 that should be regulated under Subtitle C of RCRA
20 as a special waste with all safeguards that apply.
21 Since many qualified people will testify to the
22 scientific and the legal and technical data that

1 support this claim, I'd like to speak more to coal
2 ash as a matter of human experience and
3 environmental justice for those who live near coal
4 mines and near power plants and ash dumps.

5 From mountaintop removal mining to
6 disposal of coal ash, power generated from coal
7 exacts a terrible price in terms of the
8 environmental integrity, human health, and the
9 unspeakable psychological loss that happens when
10 the natural bond between people and a place on
11 earth that is meaningful to them is broken. When
12 we experience the disruption that such events
13 bring into personal and community life, most of us
14 do whatever we need to heal and get our lives back
15 in order. But in some cases, this process may
16 take years. In other cases, we may enjoy brief
17 success only to be re-traumatized by new projects,
18 chronic pollution, or discoveries that toxic
19 material has moved beyond the boundaries of safe
20 containment.

21 For me it's been unbelievably hard to
22 see friends, neighbors and colleagues getting

1 tired, getting sick, giving up, or moving away
2 from their homes. I'll never forget the first
3 time I heard a friend describing her experience of
4 life near a mountaintop removal mine with the same
5 words that people from other countries use to tell
6 what it's like living in a war zone. That's when
7 it really hit me that mountaintop removal mines at
8 one end and coal ash dumps at the other end of
9 power generation represent nothing less than a
10 breach of homeland security aimed at the very
11 infrastructure of land, air and water on which
12 human life depends.

13 So would corporate spokespeople offer to
14 drink water from a coal ash pond or say it's okay
15 to sprinkle coal ash on their Cheerios or
16 otherwise assure us that coal ash is harmless?
17 We're not fooled. When people start to feel like
18 they're collateral damage, their community is
19 becoming a national sacrifice zone, it's harder to
20 sell the idea that there's really such a thing as
21 an acceptable level of poison.

22 I'm very grateful that the EPA is

1 looking at environmental justice. What we need,
2 though, right now is to see some evidence that
3 you're hearing what we say. And I think your
4 decision to regulate coal ash as a hazardous waste
5 might be a welcome sign that we're finally being
6 heard. Thanks.

7 (Applause)

8 MR. DELLINGER: Thank you.

9 MS. MILLER: I'm Cheri Miller with
10 Gypsum Parameters. I'm also the proud recipient
11 of a 2008 C2P2 lifetime achievement award from EPA
12 recognizing my 30 years of work in coal combustion
13 product recycling.

14 My company, Gypsum Parameters, is a
15 small woman-owned business which specializes in
16 working with electric utilities that produce FGD
17 gypsum and ash and with manufacturers such as
18 wallboard and cement companies that use these
19 materials in their manufacturing processes. Since
20 EPA published its proposed rule-making earlier
21 this year, I've seen my business significantly
22 decline as the stigma of a potential hazardous

1 waste determination has caused clients to delay or
2 cancel projects.

3 You will no doubt hear many passionate
4 but ill-informed testimonials at these hearings
5 urging you to regulate these materials as
6 hazardous wastes. EPA administrator Lisa Jackson
7 has repeatedly stated that it is EPA's policy to
8 make, quote, "science-based decisions," unquote.
9 I challenge you now to do that.

10 These materials are neither toxic nor
11 hazardous, which is the conclusion that EPA itself
12 has reached in all of its previous regulatory
13 determinations. Please do the right thing and
14 stand by your own past analyses of the sound
15 science surrounding these materials which should
16 be regulated as Subtitle D. Thank you.

17 (Applause)

18 MR. SCHMALTZ: Thank you for the
19 opportunity to address you today. My name is Tom
20 Schmaltz. I'm the environmental director of
21 Headwaters, Incorporated, the largest manager of
22 coal combustion products in the United States.

1 Today EPA is asking whether coal
2 combustion residual wastes should be regulated as
3 Subtitle C, hazardous waste, or Subtitle D,
4 non-hazardous waste. Over the past 30 years, this
5 question has been answered by the federal
6 government over and over again. First it was
7 answered by Congress with the Bevill amendment to
8 RCRA in 1980. For a second and third time it was
9 answered by EPA in 1993 and 2000 with a regulatory
10 determination stating that coal ash wastes do not
11 warrant Subtitle C regulation.

12 The question has been answered thousands
13 of times by the results of EPA tests that
14 routinely show that CCRs failed to meet the
15 hazardous waste toxicity thresholds established by
16 EPA. There's little question then, based on the
17 instincts of Congress, based on previous EPA
18 determinations, and based on EPA tests, that CCRs
19 destined for disposal should be a Subtitle D
20 waste.

21 But we can't ignore the damage cases
22 that EPA cites as a potential need for Subtitle C

1 regulation. No one can downplay the tragedy of
2 the Kingston impoundment failure. But the
3 Kingston impoundment failure and other damage
4 cases cited are engineering failures, and we must
5 distinguish between engineering failures and the
6 nature of a waste. This is particularly true
7 since the current Subtitle D disposal facility
8 standards can be just as protective of the
9 environmental as Subtitle C standards.

10 It seems counterproductive to mislabel a
11 waste in order to gain enforcement and permitting
12 authority no matter how convenient. Such an
13 action for convenience sets a dangerous precedent
14 and may be considered an unwise use of EPA's
15 authority. It prepares a slippery slope towards
16 negative outcomes and unintended consequences,
17 especially in creating a stigma towards CCP
18 utilizations.

19 The chasm between hazardous waste
20 designation and encouraging beneficial use only
21 creates this stigma -- not only creates this
22 stigma but also raises uncertainty and confusion

1 around issues of worker safety, transportation,
2 liability, public perception, sustainability
3 goals, alleged -- allied industry jobs, product
4 quality, the list goes on. EPA's asking the wrong
5 question. If it wishes to gain enforcement and
6 permit authority -- permitting authority under
7 Subtitle D, why doesn't it ask Congress to change
8 RCRA?

9 We need to feel confident that our
10 federal agencies wield their authority properly
11 under well-crafted laws. We need
12 properly-engineered landfills, we need to
13 encourage safe utilization, and all this can be
14 done under Subtitle D.

15 MR. DELLINGER: Your -- your time is up.
16 Thank you.

17 (Applause)

18 MR. REYNOLDS: Good morning. My name is
19 Rob Reynolds. I am responsible for management of
20 coal byproducts for Progress Energy, an
21 investor-owned electric utility holding company
22 headquartered in Raleigh, North Carolina.

1 Progress Energy owns and operates nine
2 facilities located in North Carolina, South
3 Carolina and Florida. We have a combined electric
4 power generating capacity of over 7400 megawatts
5 that would be impacted by the proposed
6 regulations. In our service territories, we
7 provide retail service to over 3 million customers
8 who could see their monthly electric bills
9 adversely affected by the costs incurred as -- as
10 a result of this proposed regulation.

11 Progress Energy supports the development
12 of federal regulations for CCRs under Subtitle D.
13 The development of rules under this approach will
14 establish a federal standard for all CCR
15 facilities to meet. Many states already have
16 effective solid waste statutes and regulatory
17 programs that will provide an additional layer of
18 regulatory oversight for management, reuse and
19 disposal of CCRs.

20 Progress Energy strongly opposes the
21 regulations of CCRs under Subtitle C. The
22 comparatively stringent and costly Subtitle C

1 program is not necessary to manage the relatively
2 low toxicity of CCRs. An important aspect of the
3 CCR regulation issue in terms of both cost and
4 effective disposal is the availability of adequate
5 infrastructure, specifically landfills that can
6 and will accept hazardous waste.

7 There are 21 commercial hazardous waste
8 landfills currently operating nationwide and the
9 last one was permitted many years ago. The
10 remaining capacity of these facilities would
11 quickly be consumed if use of such a landfill was
12 required. In addition, transportation and
13 infrastructure requirements would see unparalleled
14 changes due to increased volumes of material
15 movement to such facilities.

16 Nonetheless, reliable and nearby
17 hazardous waste landfills must be available if
18 Subtitle C is applied to CCRs. The EPA's proposal
19 to not regulate CCRs that are beneficially used is
20 appropriate for a regulatory program under
21 Subtitle D. Most utilities endeavor to market as
22 much of their CCRs as possible. This is better

1 for the environment than land or pond disposal and
2 provides unique and valued materials for many
3 manufactured products, including high quality
4 cement and wallboard.

5 The EPA should be aware that the
6 beneficial use market for CCRs is susceptible to
7 market variations which limit reliance on
8 beneficial uses. Today the supply for fly ash for
9 cement and concrete and the supply of synthetic
10 gypsum for wallboard far exceeds market demand.
11 We need to find ways to increase the consumption
12 of CCRs in these markets. Over the past couple of
13 decades, CCR uses in markets other than these have
14 been key drivers to increasing reuse volumes.

15 In 2008, over 30% of the nearly 61
16 million tons of CCRs used were in other market
17 applications.

18 MR. HOFFMAN: I'm sorry. Your time is
19 up.

20 MR. REYNOLDS: Thank you.

21 (Applause)

22 MR. REYNOLDS: With the proper

1 engineering design, controls and quality assurance
2 programs in place, Progress Energy supports other
3 market applications. While we are working
4 diligently to beneficially use CCRs, there will
5 remain a significant quantity of CCRs that must be
6 disposed of in landfills. It should be considered
7 that even with strong efforts to beneficially use
8 CCRs, a permanent disposal option at a reasonable
9 cost will still be needed.

10 MR. RAMSEY: Ladies and gentlemen, my
11 name is Boyd Ramsey of GSE Lining Technology, LLC,
12 a company based in Houston, Texas.

13 Today I am representing the Geosynthetic
14 Materials Association, a trade group of 80
15 companies that manufactures, distributes and
16 installs geosynthetic materials, including liner
17 systems. We're the liner guys. Our industry
18 employs about 12,000 people throughout the United
19 States.

20 Our comment to the EPA is very simple.
21 We request that EPA mandate the geosynthetic
22 lining of coal ash facilities using composite

1 lining systems. In the shortest terms, use liners
2 because they work. The concerns of safety
3 regarding coal combustion residuals are mitigated
4 if landfill storage sites are lined with a
5 composite liner system consisting of a geomembrane
6 and a geosynthetic clay liner.

7 The American Society of Civil Engineers
8 does a regular report card on America's
9 infrastructure. The last three report cards
10 represent over a decade and solid waste has
11 received the highest grade of any category. My
12 industry does a good job of taking care of
13 America's waste and properly storing it to protect
14 the environment. The materials, technology and
15 people exist, the engineers, engineering
16 techniques and standards, general contractors and
17 installers that can build the proper facilities,
18 and regulators and inspectors to ensure that the
19 work is done correctly. We urge EPA to use what
20 exists and is working today.

21 Further, our industry has continually
22 improved over time, and EPA has been a part of

1 that effort. Over the years, EPA has commissioned
2 nearly 80 studies in the design and performance of
3 lining systems. We call your attention to a 2002
4 EPA study titled "Assessment and Recommendations
5 for Optimal Performance of Waste Containment
6 Systems."

7 Most illustrated for today is a graph
8 from that study illustrating the leakage rate of
9 different designs over the life cycle of nearly
10 200 facilities. The composite system of
11 geomembrane and geosynthetic clay liner was
12 demonstrated to have the lowest leakage rate over
13 all life cycles, including a near zero leakage
14 rate after the facilities are closed and final
15 cover placed. Our materials work. The use of
16 composite liners will achieve the EPA mission to
17 protect human health and environment for all
18 Americans.

19 A brief word on the hazardous,
20 non-hazardous question. While coal ash does
21 contain heavy metals, it lacks the traditional
22 characteristics of hazardous materials,

1 radioactivity, the presence of infectious medical
2 waste, et cetera. In the opinion of our trade
3 organization, coal ash can be properly stored
4 using Subtitle D regulations, a non- hazardous
5 solid waste with composite lining systems.

6 I've done four of these, folks. I'm
7 going to add a personal note. As a result of my
8 career path, I arguably know more about our
9 country's waste than almost anyone. The Kingston
10 coal ash spill was tragic. However, the potential
11 for far more serious and more damaging incidents
12 at dozens of Superfund sites contaminated with
13 truly hazardous materials that are currently
14 seeing zero mitigation activity is a gross error
15 in our collective national judgement. Thank you,
16 sir.

17 (Applause)

18 MR. DELLINGER: Can Numbers 31, 32, 33,
19 34, and 252 come forward?

20 MR. KNOWLES: Hello. My name is Jimmy
21 Knowles. I am the vice president of research and
22 market development for the SEFA Group. We are a

1 small family-owned and operated business with 154
2 employees operating in Tennessee and throughout
3 the southeast and mid Atlantic states.

4 Managing and marketing coal combustion
5 residues is our only business. We market over 1
6 million tons of coal fly ash annually which
7 recycle into concrete. We analyze and
8 characterize fly ash in a number of different
9 ways, including the quantification of trace
10 elements and the determination of toxicity
11 characteristics.

12 Over the last 33 years, I have developed
13 an intimate understanding of coal fly ash. The
14 facts are clear. Fly ash is not hazardous, and
15 therefore, the disposal of fly ash should not be
16 regulated under Subtitle C. Fly ash is very
17 similar to other competitive materials. It is not
18 more hazardous than these other materials.

19 Listing and regulating the disposal of fly ash
20 under Subtitle C will reduce the volume of fly ash
21 that is beneficially used in the United States.

22 Now I'm going to give three examples of

1 -- of how this is -- the Subtitle C proposal is
2 currently damaging our -- our -- our industry.
3 And I'm just going to summarize them. They're in
4 -- the full information is in my written comments
5 that I'll submit.

6 But first off, I want to mention that
7 importation of coal ash into the United States is
8 actually increasing and people are beefing up
9 their infrastructure to import more coal ash to
10 the United States. Now, specifically, this is
11 high value functional fillers that would be used
12 in plastics, paints, rubbers, and other
13 composites. And it's typically being done by
14 mineral processing companies.

15 So they'll take coal ash, in the example
16 one company prominent in the industry right now
17 from the United Kingdom, they're processing the
18 ash over in the United Kingdom and then importing
19 it to the United States for these markets. And
20 they recognize that the companies that have
21 traditionally done this type of thing in the
22 United States are backing off. They recognize

1 that Subtitle C is going to hurt their opportunity
2 to continue being competitive in the marketplace,
3 mainly not due to stigma, because most people
4 don't even know that coal ash is being in these
5 products already, but because of the legal
6 liability associated with it.

7 Funding for that research came from U.S.
8 Taxpayers, and it does -- also, I would mention
9 that our company, our in-house R & D has atrophied
10 to practically non-existent. But thirdly, I'd
11 like to mention that some interesting research at
12 Pacific Northwest Laboratories, which our company
13 and another other U.S. companies co- funded along
14 with DOE money and other federal money that went
15 into the research, but basically what they came up
16 with is taking ash and they got -- through
17 carbothermal nitridation of the fly ash, they were
18 able to make a slow-release fertilizer that is
19 very environmentally-friendly relative to the
20 other -- more -- more environmentally-friendly
21 than the other fertilizers that are being used.

22 Basically, the bottom line is American

1 companies are not going to do that. However,
2 other companies, Australia specifically, is trying
3 to take that research and continue funding it with
4 federal money from the United States at Pacific
5 Northwest Laboratories to --

6 MR. HOFFMAN: Your time -- I'm sorry.
7 Your time is up.

8 MR. RAMSEY: Oh, okay. I only had 30
9 seconds. All right. Thank you.

10 MR. DELLINGER: Thank you.

11 (Applause)

12 MR. SIMON: My name is Don Simon. I
13 retired and moved to Tennessee approximately five
14 years ago.

15 I'm not here to thank the EPA. I'm
16 basically here to chastise them. I would like
17 them to give our community -- our -- our community
18 back our natural resources. But their oversight
19 has let the -- the largest natural disaster before
20 the Gulf oil spill and other situations.

21 My concern is the trust and confidence
22 in the EPA. The river -- the river dredging

1 information, there's no 3 million cubic yards came
2 out of that river. That's a combination of dirt
3 and ash. How much ash is left in that river yet
4 today? There's an arbitrary figure arrived at by
5 the EPA. Tell us from zero to how many cubic
6 yards is left in that river. The quantity dredged
7 from the river which I said is not complete,
8 that's because they had three different mapping
9 systems. Each time it's another lip service
10 excuse why it's not accurate.

11 In communication or trying to
12 communicate with EPA officials, Lisa Jackson snuck
13 in here, had a quick meeting, said she didn't want
14 to meet with the press, she wanted to meet with us
15 as residents. After calling her five times and
16 being told I had to call another number so I could
17 be put on a list so she would call me back, I
18 haven't heard from her.

19 Stanley Meiberg never returned a phone
20 call, three calls. The only one that called me
21 back was Franklin Hill from the Superfund. Dana
22 Tulis, whoever she is, transferred or no response.

1 Debbie Dietrich, no response or transferred.

2 You know, it -- it -- it's really
3 surprising. At your home, you don't put gas next
4 to your furnace. We're sitting here today, some
5 are going to go dry ash, we're going to go gypsum,
6 we're going to put the gypsum next to the Clinch
7 River. That's like putting gas next to a fire.
8 They've already had a leak they call a storm water
9 retention pond. They learned that they must line
10 it after it leaked.

11 It gets a little disappointing. I'm
12 living in that valley of the spill. It's Russian
13 roulette leaving my neighborhood every day. The
14 errors are so numerous, if I tried to repeat how
15 many things have been so poorly handled by the
16 EPA, it would be shocking to you people, the
17 newspapers articles that EPA doesn't regulate the
18 stuff properly.

19 The different examples across the United
20 States of EPA results is an absolute tragedy for
21 the people we pay to do the job for us. I don't
22 have the expertise. I have no business

1 relationship whatsoever. I'm just a citizen that
2 wants my community back. Thank you.

3 (Applause)

4 MR. DELLINGER: 252.

5 MR. LAUDEMAN: I'm Paul Laudeman. I
6 live here in Knoxville.

7 The billions of tons of ash that spilled
8 and now goes in landfills is not being recycled.
9 It poses a huge environmental and economic danger.
10 The spill in Roane County destroyed tourism jobs.

11 This economic damage is personal to me.
12 I grew up swimming, boating and hiking in Roane
13 County, and I will not do any of these things
14 until the -- the dust from this spill settles. In
15 Knoxville, the University of Tennessee heats its
16 buildings with a coal-fired plant. The ash is
17 thrown in the dumpster with the garbage. It is
18 not recycled.

19 If profit and money were the highest
20 good to Anderson County where I grew up in the
21 shadow of the dangerous Bull Run steam plant,
22 Roane County, Perry County and other sites of coal

1 plants and ash ponds would all be economically
2 stable. They are not. The longstanding failure
3 of industry and government to safely deal with
4 this ash requires decisive action by the EPA to
5 prevent further damages.

6 The proposed Title C is a start, but it
7 is inadequate because it does not require rapid
8 closure of dangerous ash ponds such as the one in
9 Roane County. It does not require timely
10 investigation of all toxic coal ash dumps. Title
11 C does not require clean-up of all contaminated
12 coal ash sites. It does not require polluters to
13 ensure the healthy air and water of communities
14 such as Roane County near coal ash ponds.

15 I ask the EPA to regulate coal ash more
16 strongly than Title C and require more oversight.
17 Thank you.

18 (Applause)

19 MR. DELLINGER: We -- we had called
20 Numbers 32 and 33 to come forward. Have they? 32
21 and 33, are they in the room?

22 MR. HOFFMAN: Are they coming up right

1 now?

2 MR. DELLINGER: Okay. You can start --

3 MR. HOFFMAN: Okay. Thank you.

4 MR. DELLINGER: -- and -- so we don't
5 lose any more time.

6 MS. LEAGUE: Okay. Thank you. My name
7 is Ann League. I represent Statewide Organizing
8 for Community Empowerment, a 2500 member statewide
9 organization in Tennessee. I also represent the
10 Alliance for Appalachia, which has approximately
11 14,000 members across central Appalachia.

12 And I would like to thank the EPA for
13 finally coming to Knoxville and having a public
14 hearing on the coal ash. I also want to say that
15 three minutes is not a long time to discuss an
16 issue that can have an impact on people and
17 communities for a lifetime.

18 I would like to ask that the EPA
19 remember Executive Order 12898 from 1984,
20 President Clinton, that to take the environmental
21 justice concerns into all accounts and to all of
22 the EPA's considerations. I would also to say --

1 like to say that this is about people and
2 communities. It's about protecting families from
3 the present and future impacts of a material that
4 is composed of toxic heavy metals and that sound
5 science has said these heavy metals are very
6 dangerous when they accumulate.

7 I'd also like to address some of the
8 things that industry has said and to let -- ask
9 people to remember what the lead paint industry
10 said when we were -- they were trying to take lead
11 paint off the market. They said the paint
12 industry was going to die. But I'd like to say
13 now that the paint industry is one of the fourth
14 bearers going on and getting sustainable
15 emission-free products, and the paint industry is
16 going strong.

17 I'll make it very quick. I would like
18 you to choose Subtitle C, but please, it needs to
19 be made stronger. And please take people,
20 families and communities into account. This is an
21 environmental justice issue. And please take the
22 sound science into account. Thank you.

1 (Applause)

2 MR. DELLINGER: Number 32.

3 MS. GEPPI: Hi. My name is Erica Geppi,
4 and I'm regional conservation organizer for the
5 Sierra Club.

6 As a native east Tennessean, I would
7 like to thank the EPA for adding this eighth and
8 final hearing here in Knoxville, Tennessee. It
9 seems only fitting that we stand here today
10 discussing the need for stronger regulations that
11 will protect our communities from the impacts of
12 toxic coal ash in a town just miles away from
13 ground zero for coal ash, the site of the 2008 TVA
14 coal ash spill in Roane County.

15 After seeing close family, friends have
16 their homes destroyed, their health threatened,
17 and their lives changed forever, coal ash became
18 an issue on the forefront of everyone's minds in
19 this region and across the country. While the
20 Harriman community affected by the catastrophic
21 spill will never be the same, we can look ahead to
22 the future to ensure that safeguards and

1 regulations are put in place to address the
2 threats that toxic coal ash pose all around the
3 country. If the BP oil disaster and the Tennessee
4 coal ash tragedy have taught us anything, it is
5 that we cannot just take the polluter's word for
6 it anymore.

7 At the seven previous hearings, and
8 undoubtedly throughout the day today, you will
9 hear comments from various industry
10 representatives and lobbyists that will speak to
11 the stigmas created by designating coal ash as a
12 hazardous or special waste and how it might hurt
13 their bottom line. I strongly urge you to have
14 the courage to do the right thing by regulating
15 coal ash based on what it truly is, a hazardous
16 waste. In a state with over 17 unlined ponds and
17 over 3.8 million -- million tons of coal ash
18 generated each year, it is of particular interest
19 that strong regulations are put in place to
20 regulate coal ash from cradle to grave.

21 On behalf of the over 1.2 million
22 members and supporters of the Sierra Club, we

1 realize that coal ash is an issue that impacts us
2 all. The public hearings and public comment
3 period on these proposed regulations have allowed
4 hundreds of thousands of people across the country
5 to make their voices heard on this pivotal issue.

6 On behalf of the Sierra Club and over
7 6,000 concerned citizens, I would like to present
8 the EPA with these boxes of over 6,000 public
9 comments in support of Subtitle C, Subtitle C to
10 regulate coal ash as a hazardous toxic waste, and
11 please protect our communities from the threats
12 that it presents. Thank you so much.

13 (Applause)

14 MS. MOSELEY: My name is Lyndsay
15 Moseley, and I am also speaking on behalf of the
16 1.2 million members and supporters of Sierra Club.
17 I also speak as a native Tennessean who grew up
18 not far from the community devastated by coal ash
19 in December 2008.

20 Coal ash disposal sites across the
21 country pose a clear and increasing threat to
22 communities around them. The risk of cancer from

1 arsenic alone, which is only one of the many heavy
2 metals in coal ash, can be as high as 1 in 50 for
3 people living near an unlined coal ash pond. We
4 join with citizens from more than 30 states who
5 have traveled to public hearings to urge you to
6 adopt Subtitle C safeguards. We also urge you to
7 resist pressure to weaken the rule any further.

8 You've heard concerns from coal ash
9 recyclers worried that a hazardous designation
10 would create a stigma on their products. These
11 continuing claims are actually puzzling to me,
12 because they deny or are ignorant of steps that
13 EPA has already taken to protect coal ash
14 recycling.

15 Before the rule was even proposed, EPA
16 eliminated the option to designate coal ash as a
17 hazardous waste and instead created a Subtitle C
18 special waste designation. More importantly, all
19 of the options in the proposed rule exempt coal
20 ash from regulation when it is recycled in
21 encapsulated uses like concrete, drywall, et
22 cetera. What more could they want? And if their

1 products are safe, what are they afraid of?

2 Sierra Club is not opposed to safe and
3 legitimate coal ash recycling when there's
4 scientific evidence to prove such practices are
5 safe, but it is critically important that EPA keep
6 in mind the vast majority of the 140 million tons
7 of coal ash generated every year don't end up as a
8 replacement for Portland cement in concrete or in
9 bricks or roofing materials, but as a dangerous
10 threat to drinking water because of lax state
11 regulations across the country that allow coal ash
12 to be dumped or reused carelessly in communities.
13 This must end.

14 Sierra Club supports EPA -- the EPA
15 proposal to permanently phase out wet storage
16 impoundments, to require groundwater monitoring at
17 all landfills -- existing landfills so that
18 communities can be confident that they're not
19 exposed to heavy metals in their water. We
20 support federally-enforceable safeguards at every
21 new site. Safeguards like composite liners to
22 prevent coal ash contamination in the first place,

1 leachate collection systems to capture toxic
2 runoff, groundwater monitoring to detect problems
3 early, and financial assurance to ensure polluters
4 clean up in the case of accidents.

5 We urge you to adopt these safeguards,
6 we urge you to hold polluters accountable and
7 protect people living near coal ash disposal
8 sites. This will take courage and leadership and
9 commitment to the people. Please don't let the
10 people down. Thank you.

11 (Applause)

12 MR. DELLINGER: Thank you. Can Numbers
13 37, 46, 48, 49, and 51 come forward? That's 37,
14 46, 48, 49, and 51.

15 MR. HOFFMAN: 49. That's 49.

16 MR. DELLINGER: All right. Number 49 is
17 speaking now.

18 MR. HOFFMAN: Okay.

19 MR. ENGLAND: Thank you for this
20 opportunity to address the EPA. My name is Gary
21 England. I'm a concerned citizen and a utility
22 rate payer.

1 I would like to address a couple of
2 issues that have been presented and discussed in
3 public hearings prior to this. The first is
4 whether or not coal ash can even be considered a
5 hazardous waste and be regulated as such. Since
6 the Kingston accident, coal ash is continually
7 referred to as a toxic waste.

8 The metals that are consistently
9 referred to that many feel make coal ash toxic are
10 also present in most everyday products that we all
11 use. We have arsenic in treated lumber. Mercury
12 is in lightbulbs and in fillings in our teeth.
13 Selenium is in a multivitamin that most of us
14 probably took this morning.

15 Under the toxicity characteristic
16 leaching procedure, or more commonly referred to
17 as the TCLP test, which is the standard tests that
18 EPA uses to determine whether a substance is toxic
19 or not, coal ash does not meet that toxic material
20 classification. EPA does not claim that coal ash
21 is tox -- qualifies as a hazardous waste based
22 upon its toxicity. Their justification for a

1 hazardous waste regulatory approach is based upon
2 damage cases related to failed disposal
3 impoundments, not on the toxic nature of the
4 material.

5 There have been other catastrophic
6 failures in releases of material that have
7 resulted in much greater damage and death than
8 those experienced at Kingston, but the EPA never
9 considered to labeling material released as
10 hazardous based upon damage claims. In 1976, the
11 Teton Dam failed and killed 11 and damaged most of
12 the town of Rexburg -- Rexburg, Idaho. The water
13 that -- that was behind the dam was never
14 considered hazardous.

15 In 1919, a storage tank containing 2.3
16 million tons of molasses ruptured in Boston. It
17 claimed 21 lives and destroyed an entire portion
18 of lower Boston. The EPA never considered making
19 molasses a hazardous waste. These are extreme
20 illustrations, and I don't want to in any way
21 discount or minimize the impact of the Kingston ac
22 -- Kingston accident. My point is: Let's address

1 the disposal standards, not the material.

2 In 2008, the industry recycled over 10
3 million tons of coal ash, reducing over 10 million
4 tons of CO2, saving almost 160 trillion BTUs of
5 energy, and generating over \$7 billion in economic
6 benefit. If coal ash is classified as a hazardous
7 waste, these benefits will be lost.

8 The unified school district of Los
9 Angeles has already removed coal ash from many of
10 their projects. A major block manufacturer is
11 advertising their block as 100% free of coal ash.
12 The stigma is real, and a hazardous classification
13 will stop most of the beneficial use of coal ash.

14 So there's no question that we need to
15 protect --

16 MR. HOFFMAN: Excuse me. Your time --
17 your time is up. I'm sorry.

18 MR. ENGLAND: Thank you.

19 (Applause)

20 MR. HOFFMAN: 46.

21 MR. DELLINGER: This is Number 46?

22 MR. HOFFMAN: Yes. One -- one moment.

1 MR. COMPTON: My name is Randy Compton,
2 and I'm a resident of -- a lifelong resident of
3 Knoxville, Tennessee, and I've been in the CCR
4 management and marketing for over 30 years. I'm
5 currently the vice president of Charah, a
6 Louisville-based company.

7 It is my honest opinion both as a
8 concerned citizen, as an informed material
9 marketer that regulation of CCRs as hazardous
10 would cause great harm to the years of progress
11 made in one of the most successful recycling
12 programs in the world. The term "special waste"
13 will carry a stigma impact to the construction
14 industry that will be impossible to overcome. And
15 I live with that every day. Ever since this came
16 out, I've had customers that used to be big
17 supporters and big users of coal combustion
18 byproducts are no using because of the threat of
19 lawsuits with the word "hazardous" attached to it.

20 When the EPA came in and took over the
21 clean-up at Kingston, which is physically a
22 catastrophic event no doubt, that's when the word

1 started getting synonymous when -- when coal ash
2 was used, it was "toxic" and "hazardous" were the
3 two words that followed it, right behind it, every
4 letter I've -- every article that I've ever seen.

5 The EPA position that if they -- if they
6 make it punitive enough to the utilities or cost
7 them enough, they'll find a way to get away with
8 or get rid of the coal ash in some form, shape, or
9 fashion by recycling. It's flawed. That won't
10 work. That is truly not what the market's going
11 to do. It will not be accepted.

12 There's no good reason to risk
13 destroying this recycling, as I said before,
14 because the EPA's own proposed rules acknowledge
15 that the landfill standards between C and D are
16 basically the same. The Portland cement industry,
17 the American concrete industry have both embraced
18 and used and recognized the use of CCRs in
19 concrete as it makes their product less permeable,
20 more dense, less heat of hydration, and requires
21 less water to make stronger products.

22 The Tennessee DOT supports the use of

1 fly ash in all the concrete, all the concrete here
2 and the James White area and all that all had fly
3 ash in that particular concrete. If CCRs are
4 labeled hazardous or special waste, we risk losing
5 the environmental impacts and environmental
6 benefits that come from recycling millions of tons
7 of this material and driving up costs of
8 construction, the costs to the utility industry,
9 and ultimately, the rate payers. Not to mention
10 the millions of tons of greenhouse gases that will
11 be generated by virgin products to replace the
12 loss of CCPs to market.

13 EPA can -- EPA can enact new regulations
14 while encouraging the safe recycling of CCRs as a
15 preferred alternative to disposal. Do not use the
16 C with a special waste because that stigma will
17 basically kill the recycling business. Thank you.

18 MR. DELLINGER: Thank you.

19 (Applause)

20 MR. DELLINGER: 51.

21 MR. NUNN: My name is Burt Nunn. I've
22 worked for the SEFA Group since 1991. The SEFA

1 Group is a small, family-owned and operated
2 business with 154 employees. We're located in the
3 Carolinas, and we operate throughout the southeast
4 and mid Atlantic states.

5 Managing and marketing coal combustion
6 products is our only business. We market over a
7 million tons of environmentally-friendly fly ash
8 which are recycled into concrete products and
9 structures each year. I've worked in and around
10 fly ash for nearly 20 years, and in that time, our
11 company has recycled literally -- literally
12 millions of tons of coal ash. And I have never
13 witnessed, nor heard of anyone claiming to have
14 gotten sick nor suffered any negative effects as a
15 -- as a result of exposure to fly ash.

16 Fly ash has been recognized by the U.S.
17 EPA, the U.S. Green Building Council, and LEEDS,
18 the internationally recognized Green Building
19 certification system, as a beneficial
20 post-industrial recycled environmentally-friendly
21 green product. So it strikes me as odd that fly
22 ash would be considered to be classified under

1 Subtitle C as hazardous waste for the sole purpose
2 of giving the federal government control over
3 regulating the disposal of the material.

4 Our industry is
5 environmentally-friendly, and while some
6 environmental extremists seem to be in favor of
7 this Subtitle C designation, they fail to realize
8 that if fly ash is designated as hazardous, we'll
9 be creating an environmental problem, not
10 eliminating one. The millions of tons of coal
11 combustion products that are currently being
12 recycled and used beneficially in concrete
13 products will be redirected to landfills and
14 storage sites that are already overstressed.

15 Most of the concrete produced will not
16 have fly ash as a constituent if the material is
17 designated as hazardous for disposal, even if the
18 EPA says that beneficial use is exempt from that
19 designation. Concrete producers say that the
20 potential for lawsuits and negative press is not
21 worth the risk of using fly ash in their products.
22 Their legal counsel and insurance company have

1 already advised against using fly ash because of
2 the negative stigma and potential for litigation.

3 I urge you to please consider the
4 science behind the material. By the EPA's own
5 definition, fly ash is not hazardous. In fact,
6 the trace amounts of heavy metals found in fly ash
7 are not dissimilar from what we find in our own
8 backyards and -- and waterways naturally.

9 In summary -- in summary, fly ash is not
10 hazardous; and therefore, the disposal of fly ash
11 should not be regulated under Subtitle C. Listing
12 and regulated fly ash under Subtitle C will create
13 a tremendous reduction in the volume of fly ash
14 and -- that is beneficially used and redirect
15 millions of tons to landfills instead of away from
16 overstressed landfills.

17 I implore the EPA to implement an
18 alternative to Subtitle C if it deems Subtitle D
19 --

20 MR. HOFFMAN: Excuse me. Your time is
21 up.

22 MR. NUNN: -- to be inadequate.

1 MR. DELLINGER: Thank you.

2 (Applause)

3 MR. DELLINGER: Is there anybody in the
4 audience with a number between 37 and 42?

5 MR. LANDON: Yes.

6 MR. DELLINGER: All right. Come
7 forward, please.

8 MR. HOFFMAN: This is 37.

9 MR. DELLINGER: 37 to 42.

10 MR. LANDON: Yes. My name is Matt
11 Landon, and I'm a volunteer with the United
12 Mountain Defense based here in Knoxville,
13 Tennessee. I was one of the first responders that
14 showed up at the TVA coal ash disaster on December
15 22nd of 2008.

16 You know, there's a lot of people
17 talking in here about beneficial use and recycling
18 and stuff. That's all money. But, you know, the
19 thing that nobody's -- that very few people are
20 acknowledging are the people that are directly
21 impacted, the people that are stuck down there in
22 Roane County and stuck down there in Perry County

1 and across all -- around all these coal fly ash
2 dumps around the entire country.

3 Coal fly ash is toxic based on the heavy
4 metals and various constituents, the silica and
5 the particle size. And I'm going to ask that the
6 EPA at least go with Subtitle C, and if not, go
7 with Subtitle C prime.

8 Also, a lot of folks have been talking
9 about the -- the Oak Ridge Associated University
10 study, health study, the long-term health study
11 that showed that there's not going to be any
12 long-term health impacts from this coal fly ash.
13 And I would say that this study is completely
14 flawed and it's based on falsely -- you know,
15 falsely scientific -- scientifically manipulated
16 data and collection tactics.

17 On January 3rd of 2009, there was a
18 public meeting where 220 residents of Roane County
19 and Swan Pond area specifically attended. 100% of
20 those residents had emotional stress from this
21 disaster. 100%. Roughly, 60% of those people had
22 respiratory issues. The reason -- one of the

1 reasons that the study is flawed is because many
2 of the directly affected people didn't actually
3 participate in the study, so you had a lot of
4 people that either moved out of the area or, you
5 know, did not participate because of fears for,
6 you know, retribution and stuff like that.

7 I'd also like to say that worker safety
8 has been a major problem that's occurring at the
9 TVA disaster site, according to TVA's own MSDS
10 sheet that, you know, you should be wearing
11 respirators during a spill. And, you know, the
12 fact that nobody is wearing respirators down there
13 is pretty ridiculous.

14 Also, safety precautions that are being
15 taken in Kingston by -- and being enforced by the
16 EPA are not being enforced down at -- down in
17 Alabama. And this is definitely a problem. I
18 would like to definitely say shame on the EPA for
19 telling the folks of Perry County that coal fly
20 ash was safe, and I'd like to call for an
21 investigation into the actions of the EPA in
22 Alabama.

1 Also, the person that had the bag of
2 coal fly ash and dipped their finger in it, well,
3 here's a real test for you. Open that bag up, put
4 your face in there, take a real deep breath, and
5 just think, that's what the folks in, you know,
6 Roane County and Perry County are having to do.

7 MR. HOFFMAN: I'm sorry. Your time is
8 up.

9 (Applause)

10 MR. HOFFMAN: This is 38.

11 MR. ROBINSON: I'm Jason Robinson, and
12 I'm a graduate student at the University of
13 Tennessee.

14 I'd like to urge EPA to adopt C prime
15 and take a position of scientific skepticism.
16 There's been a lot of industry claims here today
17 and all across the board about the innocuous
18 properties of fly ash. And I'd just say that we
19 really don't know that much about fly ash in order
20 to say this sort of thing.

21 We know that the constituent elements,
22 that we can find heavy -- heavy metals, the

1 silica, we know those things have health issues
2 for folks. We don't know that they are. There's
3 been -- we just -- I'm urging that we study this
4 more carefully.

5 And in the meantime, in the interim
6 while we're trying to find out whether or not
7 there are these health issues, whether they're
8 human health or ecological health, that we treat
9 this thing as if it were a hazardous waste. That
10 may cause some industries to have to readjust
11 their relationships with insurance and litigation.
12 That's fine. That happens all the time. We can
13 even look at that as job creation if you want to.
14 But what we don't need to do is spread this
15 problem out to low impact -- to poor communities,
16 to places like Kingston.

17 In my own neighborhoods where I grew up
18 there's a coal ash pond, and the people there have
19 complained for years about the team fears blowing
20 over onto their property from there. And I
21 realize that, you know, this is a big mess. We
22 don't know what happens when we burn coal.

1 TVA is moving away from coal. So it
2 could see at some point in the future we are going
3 to have a bunch of landfills that are inactive.
4 Why not make them inactive now? Study this. Stop
5 giving handouts to -- in the name of recycling.

6 Well, maybe it is -- maybe you guys are
7 right. Maybe this recycling thing is a good deal.
8 It's saving money. We should study that a little
9 more carefully than just across the board saying
10 it's innocuous waste. And I'd like to --
11 solidarity for Kingston. Thank you.

12 (Applause)

13 MR. DELLINGER: Thank you.

14 MR. HOFFMAN: 41.

15 MR. DELLINGER: 41.

16 MR. WILSON: My name is William Wilson.
17 I'm not getting paid to do this. I'm just
18 concerned.

19 I'm just going to jump right into this.
20 The state of Tennessee has no effective
21 regulations in place to protect our communities
22 from the danger of coal ash. And the evidence is

1 seen in the Kingston coal ash disaster. It's
2 documented that Tennessee has no laws designed
3 specifically to address the dangers of coal ash.
4 Because of this lack of state regulation,
5 obviously, Subtitle D is not acceptable.

6 In fact, Subtitle C in its current form
7 is not strong enough to deal with the dangers of
8 coal ash. Subtitle C does not require rapid
9 closure of dangerous ash ponds; it does not
10 require a timely investigation of all toxic coal
11 ash dumps; it does not require immediate clean up
12 of all contaminated coal ash sites, despite the
13 threat to health and the environment from toxic
14 waste; and Subtitle C does not require polluters
15 to ensure the healthy air and water of communities
16 near dumps or fill sites.

17 I demand that the EPA does its job to
18 protect the health of Americans and take swift
19 and decisive action before we see another Kingston
20 disaster. Therefore, I demand the EPA to require
21 under Subtitle C without delay that polluters:
22 Immediately shut down all coal ash ponds and

1 unlined landfills; immediately investigate all
2 coal ash dump sites; immediately clean up all
3 sites contaminated by coal ash when contamination
4 is discovered; immediately determine the nature
5 and extent of exposure of human populations to the
6 toxic materials in coal ash, including instituting
7 medical monitoring when the contamination is
8 discovered; immediately provide safe drinking
9 water to all impacted communities when
10 contamination threatens water supplies;
11 immediately identify all past coal ash dump sites
12 and fill sites and investigate these sites for
13 contamination; immediately commence monitoring at
14 all former and operating coal ash disposal sites
15 and fill sites; and publicly disclose all
16 monitoring data; install composite liners for all
17 expanded and new landfills; eliminate fugitive
18 dust by immediately employing daily cover for all
19 coal ash landfills; immediately comply with
20 hazardous material transportation requirements for
21 all shipments; immediately cease use of coal ash
22 as fill; test fly ash, bottom ash, slag, bottom

1 ash, FGD sludge using EPA's new leach test.

2 And finally, regarding the beneficial
3 use part of the Subtitle C, there should be a
4 comprehensive investigation of how coal ash is
5 being reused. People can say it's safe all day
6 long, but we do not know the potential long-term
7 effects of leaching from wallboard and concrete,
8 bricks. These uses that are environmentally
9 benign should continue. Those that pose a threat
10 should be reviewed to determine any and all
11 potential risks to our health.

12 And I'm going to just tell people if
13 anybody is looking for more information from the
14 other side, you can go up to the Andrew Jackson
15 Room on the first floor. The Citizens for
16 Responsible Coal Ash Regulation have some
17 information up there. And that's it.

18 (Applause)

19 MR. DELLINGER: This is Number 40.

20 MS. MCCOIN: I'm not a professional
21 speaker at all. I'm a little nervous, so please
22 forgive me for that. My name is Sarah McCain. I

1 am probably one of two people in this room that
2 might have been here even as of this morning that
3 actually resides in Harriman, Tennessee
4 approximately -- I live approximately one and a
5 half miles from the disaster zone. I am from the
6 Kingston fossil plant.

7 I am a ninth generation living on the
8 farm. Interesting enough, I just moved here back
9 home, June of 2008, just a few months before the
10 coal ash spill. And where I moved from is near
11 Labadie, Missouri. And I'd like to address both
12 of those issues this morning.

13 Before I do so, I would like to hand you
14 all this committee report from Roane County.
15 Before we found out that there was going to be an
16 EPA hearing, we had our own hearing.

17 (Applause)

18 MS. MCCOIN: So let me get started
19 because I need to talk fast. Household garbage is
20 not classification coal ash. It's different. And
21 I challenge any of you that have household garbage
22 in your home, would you like for that to be coal

1 ash? Bet not.

2 On the evening on December 22nd, our
3 lives changed forever. Basically, the periodic
4 table was dumped into our rivers unexpectedly.
5 And let me preface all of this by saying that I am
6 not an environmentalist extremist. In fact, I'm
7 embarrassed to say that I didn't even recycle
8 before this happened.

9 My property, my family's property, my
10 relatives, over 800 acres of property around my
11 home has been purchased by TVA as a result of the
12 TVA ash spill. There are some of us that still
13 remain. It washed six miles upstream to my
14 backyard along the Emory River. Six miles. And
15 there was denial that it was there until this past
16 summer when they finally dredged nearly a year and
17 a half later.

18 We were told it was a mudslide and it
19 would take, by Tom Kilgore's words, six to eight
20 weeks to clean it up. We are going on year number
21 two. 300 acres of our water has been -- riverways
22 has been filled with what looks like a moonscape.

1 Tons and tons of coal ash.

2 Where did the lakes go? Where did the
3 wildlife go? Where did the birds go? Where did
4 the people go? They're gone. Why? No one wants
5 to live around this type of household garbage
6 classified D.

7 Now, my prior home near Labadie,
8 Missouri where I lived for years, I just have
9 recently learned -- it's along the Missouri River,
10 it floods constantly, and actually the Ameren UE
11 plant is in the flood zone. We get our corn, our
12 wheat. Nobody lives there because it's in the
13 flood plain. But now Ameren UE would like to
14 build a hundred foot retaining wall to hold their
15 coal ash.

16 And it also sits on the New Madrid
17 fault. So, no matter how strong you build the
18 thing --

19 MR. HOFFMAN: Ma'am, I'm sorry. Your
20 time is up.

21 MS. MCCOIN: Thank you.

22 (Applause)

1 MS. MCCOIN: Without protection thru
2 classification of Coal Ash as "Level C," Labadie,
3 Missouri, the Missouri River, the farm lands,
4 wildlife, humans will soon be exposed to exactly
5 what we in my community have experienced... the
6 "oh, it will never be harmful or damaging."

7 Would you like to live next to me?
8 Would you like to live by my friends in Missouri
9 or anyplace else who has experienced Class D
10 household garbage at its finest?

11 Please classify Coal Ash as a hazardous
12 material to protect your/our environment.

13 We have only one earth, we have only one
14 life, let us leave our environment in a better
15 state for our children for our environmental
16 future. Thank you.

17 MR. DELLINGER: Let's -- let's try
18 Numbers 42 through 45. Anybody here with Numbers
19 42 through 45?

20 MR. HOFFMAN: Okay. This is Number 45
21 about to speak. Go ahead.

22 MR. STORMS: Thank you for allowing me

1 to come and speak today. My name is Carl Storms.
2 I'm with Concrete Materials in Morristown,
3 Tennessee.

4 I've listened to some of these speakers
5 this morning already. The problem in Kingston is
6 a problem of storage and disposal. It had nothing
7 to do with it being hazardous. The concrete
8 industry and the recycling industry has plenty of
9 uses for fly ash.

10 My company uses fly ash every day. It
11 improves the quality of our concrete, makes it
12 stronger, more durable. Without fly ash, the
13 price of the concrete we rise at least 10%, if not
14 more. We need to make sure that the industry can
15 continue to use fly ash, and declaring it a
16 hazardous material would almost eliminate that
17 possibility because the increased cost would make
18 it uneconomical.

19 We do need to address the fact that ash
20 needs to be kept safe as it is being stored. It
21 needs to be disposed of properly. I will not
22 argue with that. But we do need to recycle it.

1 We need to reuse it so that there is not as much
2 to be stored and disposed of.

3 Fly ash is one of the materials that is
4 used in bricks now to make bricks. There are many
5 other products being research to use the fly ash.
6 Some day I hope that we do eliminate fly ash
7 totally by going to some other form of energy, but
8 that day is a long way off. And until that time,
9 we need to reuse as much of the ash as we possibly
10 can. And classifying it a hazardous material
11 would not help that, it would hurt that effort and
12 only cause there to be more ash to be stored and
13 disposed of. Thank you very much.

14 MR. DELLINGER: Thank you.

15 (Applause)

16 MR. HOFFMAN: 44.

17 MR. GRAY: Good morning. My name is
18 Danny Gray. I'm executive vice president of
19 Charah, Incorporated.

20 And my comments are based on over three
21 decades of experience in the compliance, recycling
22 and management of coal combustion residues. My

1 comments today are directed at a crucial base
2 assumption that EPA made in calculating the
3 perceived impacts for implementing Subtitle C
4 program as opposed to the more logical Subtitle D
5 approach.

6 I believe that the base assumption in
7 the regulatory impact analysis, RIA, is incorrect
8 and contrary to what actual experience has been in
9 the marketplace. Specifically, when EPA prepares
10 -- the EPA did prepare multiple analysis on the
11 regulation impacts on recycling. It states that
12 -- that, based on its past experience, it is
13 likely that the recycling rates will increase
14 under a C approach. Apparently, the assumption is
15 that Subtitle C will drive up disposal costs which
16 will induce utilities to take steps to increase
17 utilization.

18 Of the total benefits that EPA
19 calculates, 83 to 97% of the -- of calculated
20 benefits are attributable to one basic false
21 assumption in our opinion, that recycling will
22 increase as disposal costs increase. Our

1 experience is different in contrary. We know that
2 there are technical limitations on util --
3 utilities to drive utilization of coal combustion
4 byproducts regardless of what the disposal costs
5 are.

6 The mere association with hazardous
7 terminology in consumer products -- products is
8 problematic and invalidates this base assumption.
9 We have already seen the negative impacts of the
10 association of a C option. Currently, there are
11 many companies in the industry that are removing
12 coal ash from their product manufacturing process
13 just because of the public debate and the
14 potential ruling.

15 Other companies are aggressively
16 marketing competing products while using the
17 reference to hazardous or toxic as a sales tactic
18 to scare users of CCRs. Ironically, many of the
19 competing products that are replacing coal
20 combustion products actually cause harm to the
21 environment through their manufacturing processes.
22 To assure that recycling of CCRs will increase as

1 a result of Subtitle C is simply not consistent
2 with our experience since December 2008.

3 Our company has, along with others, CCP
4 recycling industry have invested substantial
5 capital and expanding the use. If -- if the CCRs
6 are regulated under a Subtitle C approach, our
7 efforts, our recycling programs will be harmed.

8 We support the EPA's effort -- efforts
9 to strengthen the -- the management regulations,
10 but we support it under a Subtitle D only
11 approach. Thank you.

12 (Applause)

13 MR. DELLINGER: Could Numbers 52, 55,
14 56, 57, and 58 move forward? And 47 can come
15 forward, too.

16 MR. HOFFMAN: This is 47 speaking.

17 MR. BISHOP: Hello. First of all, I'd
18 like to thank you for the time today to convey my
19 position on proposed subtitle change for coal ash.
20 For the record, my name is Shane Bishop. I've
21 worked for Quality Assurance at Headwaters
22 Resources for over eight years.

1 I would like to use this time to discuss
2 the inescapably negative impression the beneficial
3 use of fly ash will be consumed by if Title -- if
4 Subtitle C is adopted. Fly ash has been reviewed
5 for Subtitle C designation and found non-hazardous
6 many times before. In cases, naturally-occurring
7 top soils aren't even as safe as fly ash is. With
8 this recent move by the EPA to change to Subtitle
9 C, numerous technical bodies such as the American
10 Association of State Highway and Transportation
11 officials, National Ready Mix Concrete
12 Association, the American Society for Testing and
13 Materials, the American Concrete Institute, and
14 the Portland Cement Association have confirmed the
15 hazardous designation is neither warranted or
16 needed.

17 The EPA and the states have consistently
18 recognized that regulating coal combustion
19 products as a hazardous waste under Subtitle C
20 would have an adverse impact to the beneficial
21 use. Such a result would not be consistent with
22 the RCRA's directive that EPA considers such

1 beneficial uses in evaluating CCP regulatory
2 options. The regulation of CCRs under RCRA
3 Subtitle D would not adversely impact CCP
4 beneficial use, while at the same time it would
5 allow for the development of federal regulations
6 that would ensure that CCRs are managed in a
7 manner protective of human health and environment.

8 Additionally, we now live in a litigious
9 society that would seize every opportunity to
10 initiate an in -- insurmountable amount for
11 lawsuits, the cost defending nugatory lawsuits and
12 the increased riddance cost passed directly to the
13 consumers of power utilities, which will be you
14 and I. With the threats of lawsuits, utility
15 companies will have no further alternative but to
16 completely halt the beneficial use of all fly ash.
17 This will increase the need for larger amounts of
18 landfill with the amount of fly ash being produced
19 at 120 million tons per year. That would increase
20 the hazardous waste directly into the landfill by
21 250%.

22 I would like to take this opportunity to

1 inspire you to consider the negative impacts on
2 marketing, technical, financial, and legal
3 implications for the beneficial use of fly ash.
4 So, in closing, I urge you to maintain the past
5 technical findings of CCRs regulation under
6 Subtitle C is unnecessary, and again, unwarranted.
7 Thank you for your time and attention.

8 MR. DELLINGER: Thank you.

9 (Applause)

10 MR. HOFFMAN: 52?

11 SPEAKER: 48.

12 MR. HOFFMAN: 48, you want to take 48
13 now?

14 MR. DELLINGER: Yes, that would be fine.

15 MR. HOFFMAN: Okay.

16 MR. CARSON: My name is Hartwell Carson.
17 I'm the French Broad Riverkeeper. I work for the
18 Western North Carolina Alliance.

19 And I previously submitted comments
20 about how toxic coal ash next to the French Broad
21 River is polluting groundwater, dumping toxic
22 metals into the French Broad River, and toxic ash

1 is blowing into the neighborhood next to these
2 ponds. I recently took a sample of that ash from
3 a person's windowsill that showed that this --
4 this ash had arsenic at over a hundred times the
5 safe level provided by the EPA. So we can't say
6 that this is the same as dirt. It's significantly
7 higher than the levels of background dirt in our
8 area.

9 However, that's not what I wanted to
10 come here to talk to you about today. Many other
11 people will tell you about the harm that toxic
12 coal ash is having on our communities and our
13 environment. I want to address the issue of
14 stigma, because we've continually heard that over
15 and over again about the hypothetical impact that
16 hazardous waste regulation will have on coal ash
17 recycling. That has been repeated over and over
18 again, but the only problem with these statements
19 is that history has shown -- has repeatedly shown
20 these to be false.

21 EPA has provided us several examples of
22 where hazardous waste materials have not only

1 decreased when they were regulated as a hazardous
2 waste, but have actually increased. These include
3 electroplating waste, furnace dust, used oil, as
4 well as many others.

5 And for anyone who doubts whether people
6 will be willing to use a pocket that contains
7 hazardous waste, you can reach into your pocket or
8 into your purse and pull out your cell phone,
9 which contains numerous hazardous metals, as well
10 as your computer contains similar metals, as well
11 as a lot of the lightbulbs that are now in our
12 homes, the compact fluorescent bulbs that contain
13 mercury. People have shown that they will use
14 these products if they are safe. If they're not
15 safe, by all means, it should have a stigma.

16 Does anyone still argue that cigarettes
17 should not have a stigma attached to them or a
18 warning label? So we need to understand what
19 recycling products are safe. Products like
20 putting in cement seems like a very good idea.
21 Products like spreading it out on our agricultural
22 fields might not be a good idea and should have a

1 stigma attached to them.

2 So I've personally taken samples that
3 showed coal ash is a hazardous waste, and it
4 should be regulated as such, despite the false
5 claims that were repeated about a stigma. Thank
6 you.

7 (Applause)

8 MR. DELLINGER: Thank you.

9 MR. HOFFMAN: 52.

10 MR. RUSS: Hi. My name is Abel Russ,
11 and I'm an attorney with the Environmental
12 Integrity Project.

13 And we support Subtitle T -- Subtitle C
14 for a number of reasons, including gaps in state
15 regulatory regimes. But I used to be a
16 toxicologist and a risk assessor, so I'm going to
17 narrow my comments to that issue.

18 I believe that the risk assessment
19 that's in the docket and that's in the preamble to
20 the proposed rule underestimates the risks of coal
21 ash, specifically groundwater-based risks. And I
22 think that the benefits in the regulatory impact

1 analysis also underestimate the benefits of -- the
2 health protective benefits of regulating coal ash.

3 The risk assessment, like all risk
4 assessments, includes a number of assumptions, and
5 some of them are health protective. Others are
6 seriously underestimating the risk. And
7 specifically, there are combined risks to
8 exposures of multiple contaminants that were not
9 accounted for. Although the risk assessment
10 states, for example, that arsenic is the only
11 carcinogen in coal ash, there are, in fact,
12 several constituents that are likely to be
13 carcinogenic, including cadmium, lead, fluoride,
14 and chromium, and others that we don't know enough
15 about.

16 The risk assessment also failed to
17 account for possible additive or synergistic
18 non-cancer risks. For example, as noted in the
19 preamble, cobalt and antimony are both linked to
20 heart and lung effects and both are among the
21 constituents of concern in the final full-scale
22 analysis. There are also at least four

1 neurotoxins present in coal ash, only two of which
2 are modeled in the full-scale analysis.

3 Although the combined effects of these
4 neurotoxins, for example, on children's developing
5 brains could be substantial, these weren't
6 accounted for in the risk assessment.
7 Additionally, at the level of individual
8 chemicals, not all routes of exposure were
9 accounted for. And this means, for example, the
10 total arsenic or selenium exposure was not
11 captured in risk assessment.

12 All of this means that many risks were
13 unaccounted for, and I'm not saying that the risk
14 assessment was flawed. I think it was pretty good
15 given the limited information that we have
16 available. But it would be a mistake to
17 characterize it as inherently health protective
18 when, in fact, it may have seriously
19 underestimated risks.

20 And all these things are even more true
21 of the regulatory impact analysis which limited
22 its analysis to arsenic and the cancer risks of

1 arsenic. Not only did it lack the health
2 protective assumptions of the risk assessment, it
3 also neglected, for example, neurotoxicity, the
4 ecological risk of selenium, and everything other
5 than the cancer risk of arsenic. And I'll leave
6 it there. Thanks.

7 MR. DELLINGER: Thank you.

8 (Applause)

9 MR. HOFFMAN: 55.

10 MR. UNDERWOOD: I'd like to thank the
11 EPA for giving me an opportunity to speak on an
12 important topic such as this. My name is Dennie
13 Underwood.

14 I am employed by Blalock Ready Mix, a
15 local concrete producer in the Sevierville area.
16 We're a part of the Blalock Company, one of the
17 largest road builders in the state of Tennessee.
18 We employ upwards to 7- to 800 people during busy
19 times of the year.

20 Blalock has provided approximately
21 225,000 cubic yards annually to the public and
22 private sectors in our service area. Of those

1 225,000 yards, 85% of it used fly ash as a
2 supplemental material. Our concern is that if EPA
3 decides to designate fly ash under Subtitle C of
4 the Resource Conservation Recovery Act, it will
5 hinder not -- it will hinder, if not eliminate the
6 use of fly ash in concrete all together.

7 If fly ash is classified under Subtitle
8 C, we would be forced to eliminate it from our
9 concrete production. This would be due to
10 potential litigation for using a, quote,
11 "hazardous waste product" in our concrete. The
12 designers that we use would not design concrete
13 with fly ash because of their liability that they
14 would incur if they specify. It also causes us to
15 reclassify all our drivers if we use fly ash
16 because they'd be potentially hauling a hazardous
17 material.

18 If we have to stop using fly ash as a
19 supplemental product, then our costs would --
20 would increase by approximately half a million
21 dollars. This 15 to 20% increase would pass on to
22 the consumer, further decreasing the demand of our

1 product due to higher costs. The higher cost
2 would also reduce the available funds for road and
3 infrastructure maintenance, loss of jobs.

4 The stigma of a hazardous waste would
5 effectively end the use of fly ash as a
6 supplemental product in concrete. Better
7 suggestion would be along the lines of -- of the
8 Congressional Research Service has proposed a new
9 Subtitle K, the federal waste law, which would
10 give the EPA enforcement authority over coal waste
11 rules without declaring the hazardous waste and to
12 regulate the use -- reuse of coal ash.

13 Concrete is the most versatile building
14 product in the world and is one of the best
15 avenues for recycling fly ash available. And I
16 challenge anyone in this room today to show me a
17 building product that can be esthetic, structural,
18 durable, and if properly placed, last a hundred
19 plus years while recycling a waste product that,
20 if classified a hazardous product, would otherwise
21 have to be stored. Thank you.

22 MR. DELLINGER: Thank you.

1 (Applause)

2 MR. HOFFMAN: It's Number 58.

3 MR. MARTIN: My name is Mark Martin.

4 I'm with Tennessee Riverkeeper. I'm an attorney
5 for that organization.

6 The problem with coal ash is obviously
7 that there's just so darn much of it. The -- it
8 extends from the use of coal. Coal is hazardous
9 when it's mined environmentally, it's hazardous
10 when it's burned, and it's hazardous when it's
11 disposed of. The ultimate solution is to do away
12 with the use of coal. Obviously, that's not going
13 to happen right away, so we need to do something
14 with coal ash in the meantime.

15 There's no question that ash is
16 hazardous. These poisons should be properly
17 regulated in a Subchapter C landfill. There
18 should be composite liners, there should be cradle
19 -- cradle to grave protection. Beneficial uses
20 sounds like a good idea. It takes some -- a good
21 bit of this material out of landfills. It's good
22 in theory only for encapsulated uses. It

1 shouldn't be used as land -- landfill material.

2 It shouldn't be used to build golf courses.

3 But it -- really the -- its use even in
4 concrete and drywell hasn't been properly studied.
5 At least, in a landfill you know where the stuff
6 is, you know where it's going to be. Now, drywall
7 and concrete eventually will be in a C and D
8 landfill. Currently -- that's the current
9 practice. They're unlined.

10 Now, does the material leach out of
11 drywall and concrete into the ground, into
12 groundwater? Are we just taking a problem that we
13 have today and putting it off on our children and
14 our grandchildren? We really don't know. The
15 studies haven't been done. They should be done.
16 It should have been an ongoing study.

17 So, in sum, we -- we need Subtitle C
18 protection, and we need scientific studies on
19 beneficial uses. Thank you.

20 (Applause)

21 MR. DELLINGER: I was told that 56 and
22 57 had signed in to speak. Are they in the room

1 at this time? 56 and 57? Let's go to Number 256
2 and 257, 258 and 259. Are they in the room at
3 this time?

4 Number 50, you can move to the -- you
5 can move over to those chairs and speak.

6 MR. HOFFMAN: We're starting with 257.

7 MR. STONE: My name is Jamie Stone. I'd
8 like to talk to you about a part of fly ash that
9 hasn't gotten a lot of attention but would be
10 adversely affected if EPA decides to reclassify
11 coal-fired byproducts as hazardous waste under
12 Subtitle C, hazardous waste. Cenospheres are
13 lightweight, inert, hollow spheres comprised
14 largely of silica and alumina glass. I'll come
15 back to that statement in a minute.

16 Cenospheres float to the top of ash
17 disposal ponds where they are collected,
18 transported and later recycled as lightweight
19 fillers for various plastics and concrete
20 applications. I work for a company that has been
21 actively and aggressively harvesting recycling,
22 selling cenospheres for the past 38 years. I've

1 been working with cenospheres for 25 of those
2 years. We've sold cenospheres for use in bowling
3 balls, various building products, specialty
4 concretes, automobile brake pads, and many other
5 applications.

6 Back to my earlier statement.

7 Cenospheres are lightweight, inert, hollow
8 spheres comprised largely of silica and alumina
9 glass. This is from Page 5 from the EPA
10 publication pertaining to the proposed rule change
11 titled "Hazardous and Solid Waste Management
12 Systems; Identification and Listing of Special
13 Waste; Disposal of Coal Combustion Residuals from
14 Electric Utilities."

15 Webster's dictionary defines "inert" as
16 deficient in active properties; lacking a usual or
17 anticipated chemical or biological action. By
18 extension, cenospheres are not active.

19 Cenospheres are lacking anticipated chemical and
20 biological action. In other words, cenospheres do
21 not leach out hazardous chemicals. They are not
22 considered hazardous. No scientific study exists

1 contradicting this fact.

2 The EPA is now considering reclassifying
3 cenospheres as an inert substance by EPA's own
4 definition as a hazardous waste product under
5 Subtitle C, hazardous waste. Where is the
6 objective data supporting this reclassification?

7 Now for it's -- a comment on CCPs in
8 general. In 2008, the U.S. produced more than 136
9 million tons of coal combustion byproducts, or
10 CCPs. The second largest industrial byproduct
11 string. 60 million tons were utilized into
12 beneficial use. If the EPA successfully
13 reclassifies CCPs under -- under Subtitle C, that
14 market will essentially dry up. Where will they
15 go then? Hazardous waste landfills? There's 21
16 of those categorized as Subtitle C.

17 The only option would be to either send
18 it to those existing landfills overtaxing their
19 capacity or build new landfills. This is a bad
20 decision. Go with the facts.

21 MR. DELLINGER: Thank you.

22 (Applause)

1 MR. HOFFMAN: 258.

2 MR. CARIBA PHOENIX: How are you?

3 Members of the EPA, I know that your organization
4 has a very long and storied history. And given
5 how all of you have worked with the EPA for a very
6 long time, you probably know that laws such as
7 this are not solely about regulation. They are
8 about the message that these regulations sent.

9 And unfortunately, there was, before
10 Kingston coal ash spill, a culture of impunity at
11 most of the coal ash plants in Tennessee run by
12 TVA and a culture of impunity at Massey Energy.
13 It was this culture of impunity that led TVA to
14 knowingly not repair their landfill even though
15 they had reports that it was being broken or that
16 it was buckling, and it was this culture of
17 impunity that allowed TVA to arrest members of the
18 United Mountain Defense for committing the God
19 awful crime of walking on public land to make sure
20 that water was actually clean.

21 Now, if you were to change this to
22 Subtitle C, I'd say you would send a very

1 different message saying, no, coal ash is toxic.
2 Yes, you have a responsibility to clean it up.
3 And yes, you have a responsibility to make sure
4 that harm does not come to people in affected
5 communities. Subtitle D would not send that
6 message because it would basically not declare
7 coal ash any toxic.

8 And in response to the previous speaker,
9 there is a report published by the Sierra Club and
10 Mountain Justice called "In Harm's Way," and that
11 report spelled out very clearly that, yes, this
12 stuff is toxic. Tens of times the safe level of
13 arsenic, phormium, cadmium, lithium, and other
14 heavy metals, too.

15 And again, it's like I know there are
16 some industry reps who might be a little bit sad
17 that we can't use a substance because it's
18 declared toxic. Boo-hoo. If it's declared toxic,
19 maybe it should not be used in the first place.
20 And if I may also say to the EPA, you know, you
21 probably know better than anyone else that it's
22 not just a question of what these laws are, it's

1 how they are enforced that often gets the message
2 across.

3 I'd say please change this to Subtitle C
4 and then enforce the laws strictly. TVA and
5 Massey Energy should not escape having to face
6 either heavy fines, lawsuits, or jail time for
7 essentially what was a deep water horizon spill
8 multiplied by six, or Exxon Valdez multiplied by
9 101, because that was the volume of the coal ash
10 that was released in to the perfectly decent
11 residents of Harriman, Tennessee who honestly just
12 want clean water and clean air. Thank you very
13 much.

14 MR. DELLINGER: Thank you.

15 (Applause)

16 MR. DELLINGER: I have it. It's Jon
17 Cariba-Phoenix.

18 MR. HOFFMAN: Okay. This is Number 50.
19 Go ahead.

20 MR. WILLIAMS: I'm Chuck Williams, and
21 even though I'm running for the state senate, I'm
22 basically here for the people in our district, but

1 also as a citizen myself.

2 TVA has proven, as other major
3 utilities, they don't care. The bottom line to
4 them is the dollars. They didn't listen to their
5 own engineers when they let them know it was
6 unsafe as to what they were doing, they didn't
7 care about the environment, and now they have the
8 audacity to have passed on their gross negligence,
9 which is a crime, to us. I know my KUB bill went
10 up about \$25.

11 We do need Subtitle C. We need the
12 states and the EPA, the federal government to be
13 able to overlook and monitor what they're doing
14 and to ensure that they do do it. And we do also
15 need where they cannot pass on the costs of their
16 gross negligence to the consumers. And that's
17 basically the bottom line.

18 Subtitle C is the way we have to go.
19 Thank you.

20 (Applause)

21 MR. DELLINGER: Thank you.

22 MR. HOFFMAN: That's 56.

1 MR. DAVIS: Good morning. My name is
2 Vernon Davis. I live in Lake City, Tennessee.
3 I'd like to thank you for the opportunity to come
4 here before you today.

5 I would like to voice my opposition to
6 the regulation of coal combustion residuals under
7 Subtitle C of the Resource Conservation and
8 Recovery Act. I've been actively involved and --
9 and employed in the ash management industry for
10 over 35 years. That is, for the last 35 years,
11 for every working day I have been working on
12 construction projects that utilize coal ash,
13 operated ash landfills, or provided oversight to
14 such projects. I can honestly say that I don't
15 know of any illness or medical condition that can
16 be attributed to ash exposure that has occurred
17 among any of my employees or myself.

18 I've seen many regulatory changes in the
19 coal ash rules over the years in several states.
20 None of them have resulted in the loss of jobs to
21 the industry. Subtitle C regulation would
22 devastate this industry with job losses, as well

1 as cause drastic increase in the costs to
2 consumers. The price for electricity will be
3 driven up and jobs will be needlessly lost. These
4 costs will be borne by us, the consumers and
5 workers if ash is wrongfully declared a hazardous
6 waste.

7 This is all being driven by an accident
8 that happened not far from here. What contained
9 the ash was the issue. But there are those who
10 are trying to turn this into what the ash
11 contains. Yes, we need good engineering. Yes, we
12 need protective rules. Yes, there needs to be
13 adequate oversight. All of this can be
14 accomplished under Subtitle D regulation and
15 well-written laws.

16 We, in our industry, are just as
17 concerned with the environment as anyone. We take
18 great pains to abide by the regulations we set for
19 -- that are set forth by the regulatory agencies.
20 We also take great pride in the way we manage
21 these sites. We try to be good stewards of the
22 environment. Nothing will change in our

1 commitment regarding the way we do our jobs,
2 regardless of the rules being debated today. But
3 if coal ash is regulated under Subtitle C, the
4 losses to the coal combustion products industry
5 and the cost to consumers will be staggering.
6 Thank you.

7 MR. DELLINGER: Thank you.

8 (Applause)

9 MR. DELLINGER: Numbers 57, 59, 60. Is
10 there anyone in the room with a number under 60?
11 Is -- and also, are Number 256, 259, or 260 in the
12 room? And is Number 98 in the room? Number 98?

13 MR. POWELL: Good afternoon. My name is
14 Matt Powell, and I'm an environmental specialist
15 for American Electric Power, AEP. AEP provides
16 electricity to 5.2 million customers in 11 states
17 and is one of the largest generators of
18 electricity in the U.S. with, roughly, 38,000
19 megawatts of generating capacity.

20 AEP agrees with the views of the
21 bipartisan group of 165 members of Congress, 45
22 U.S. Senators, majority of states, multiple

1 federal agencies, municipal and local governments,
2 CCR marketers, and beneficial users, and many
3 other third parties which have maintained that
4 regulating CCRs under RCRA's hazardous waste
5 program is simply regulatory overkill. AEP
6 supports regulation of CCR under RCRA's
7 non-hazardous waste Subtitle D program, and
8 specifically under the Subtitle D option.

9 The difference between the Subtitle D
10 proposal and D prime is that the latter will not
11 require the closure of surface impoundments that
12 are being operated with no significant adverse
13 effect on human health and the environment. The
14 closure of surface impoundments, and hence, the
15 conversion of the generating units to dry
16 handling, and construction of landfills is a major
17 cost associated with the proposal, and minimizing
18 this cost by allowing environmentally protective
19 surface impoundments to continue to operate
20 throughout their operating life would present the
21 least cost impact to our customers.

22 Regulation of CCRs under the RCRA

1 Subtitle C hazardous waste rules is simply not
2 warranted due to the minimal environmental gain
3 versus the significant financial costs that will
4 accompany Subtitle C regulation. Extensive
5 studies by EPRI and others have demonstrated that
6 CCRs do not exhibit hazardous waste
7 characteristics, and the EPA has previously
8 reported to Congress that CCRs do not warrant
9 Subtitle C regulation.

10 Let us hope that the development of CCR
11 rules will be based upon reason, scientific data,
12 as has been done in previous EPA determinations.
13 Thank you.

14 MR. DELLINGER: Thank you.

15 (Applause)

16 MR. DEARTH: Good morning. My name is
17 Vern Dearth, and I'm a concerned citizen.

18 I just want to talk about the unintended
19 consequences of ruling CCRs hazardous. We've
20 heard from numerous people in the industry, and
21 likewise, that if the EPA rules this as a Subtitle
22 C, they'll probably discontinue use of these

1 materials.

2 Approximately, 60 million tons are
3 reused annually in this year -- in this country.
4 If CCR ends in the industry, that means natural
5 materials will have to be mined to replace the
6 loss of the CCRs. This will result in mining that
7 will create annually an excavation, or a hole in
8 the ground, if all put in one area approximately 5
9 miles long, 1 mile wide, and 90 foot deep.

10 Imagine if this activity occurred at one
11 place for five years. We'd have a hole 25 miles
12 long, 5 miles wide, and over 90 foot deep. The
13 resulting area almost as big as Knoxville. This
14 would also increase mining activity in other areas
15 is because the equipment infrastructure would have
16 to be built to do this mining. That would
17 increase the use of energy to build the equipment,
18 mine the materials, and the processing of these
19 materials.

20 As a substantial amount of our
21 electricity is generated using coal, there will be
22 an in -- a need to increase the amount of coal

1 mined to generate the electricity which is needed
2 to prepare the mining of these other materials.
3 We would also increase the output of CCRs which
4 now the EPA would like to declare as a Subtitle C.

5 How much will declaring CCRs hazardous
6 cost the average U.S. household? Is it going to
7 be a thousand dollars a year, \$2,000 a year?
8 We've heard many industry officials say there will
9 be an increase in the cost of their production
10 which is going to be passed on to all of us. We
11 should all remember sometimes decisions have
12 long-term, unintended consequences for which we
13 all pay the price and are unprepared to face.

14 It's my wish that Subtitle D be the
15 ruling for CCRs by the EPA. Thank you.

16 (Applause)

17 MR. HOFFMAN: 259.

18 MR. BONNE: Good morning. My name is
19 Mark Bonne. I am the technology manager at Sphere
20 One. Sphere One is the largest domestic marketer
21 of lightweight ceramic microspheres known as
22 cenospheres.

1 Our product -- products are used in many
2 industries, concretes, paints, refractory
3 compounds. Cenospheres are a coal combustion
4 recyclate, C -- CCR. As a technology manager, I
5 work with our customers to find beneficial uses
6 for CCRs to prevent them from ending up in
7 landfills. It's small businesses like Sphere One
8 and our customers that have put to use -- to
9 beneficial use 43% of the CCRs generated in this
10 customers -- in this country.

11 Our customers, most of which are members
12 of organizations for environmental stewardship
13 like the ACC Responsible Care and LEEDS, have
14 reviewed with us the concerns over the upcoming
15 legislation put forth by the EPA to classify CC --
16 CCRs as hazardous waste under Subtitle C. If --
17 if the EPA classifies CCRs as -- as a Subtitle C
18 hazardous waste, the majority of our customers
19 will discontinue the use of these materials.

20 The -- the waste that -- special waste
21 designation is poorly written, and they have --
22 and they have the following concerns: If CCRs are

1 classified as hazardous waste under Subtitle C,
2 the additional cost in time and money to manage
3 these materials will make them cost prohibitive to
4 our customers. Under the EPA's proposal, Subtitle
5 C waste is -- is regulated by a set of standards.
6 There are standards for transport, standards for
7 generation, standards for permitting, standards
8 for treatment, storage and disposal.

9 In Subtitle C regulations, the use of --
10 of wordings to classify materials as hazardous --
11 hazardous like materials derived from or mixtures
12 leaving open a future date any products that
13 contain CCRs to be classified as hazardous, no
14 manager would expose their -- its company to the
15 potential future liability. Our customers are
16 concerned that mixtures spilled on the floor of
17 their -- of their plants, if swept up, thrown in a
18 dumpster, classify the entire dumpster as a
19 hazardous material.

20 Subtitle C is a very -- is a far better
21 option to properly manage the disposal of these
22 useful byproducts if they cannot be reused or

1 recycled. Without hazard -- the hazardous waste
2 stigma attached to the materials by Subtitle C,
3 com -- companies like Sphere One and our customers
4 can find beneficial reuses for CCRs. If the tag
5 "hazardous waste" is attached, the products then,
6 most likely, will be dropped from formulation.

7 I believe recycling, reusing CCRs is a
8 much better option than landfilling them. Thanks.

9 (Applause)

10 MR. DELLINGER: Thank you. Number 53.

11 MR. HOFFMAN: No, it's updated. 260.

12 MR. DELLINGER: Number 53. I can't --

13 MR. HOFFMAN: Come up -- just come up
14 and say it. We'll -- we'll call you right...

15 MS. ALLEN: Good afternoon. I'm --

16 MR. DELLINGER: What number is that?

17 MR. HOFFMAN: 53.

18 MS. ALLEN: 53.

19 MR. HOFFMAN: Sorry about that. 5-3;
20 right?

21 MS. ALLEN: Yes.

22 MR. HOFFMAN: It's 53. Go ahead.

1 MS. ALLEN: Hello. I'm -- I'm Marsha
2 Allen, and I'll be speaking on behalf of Restoring
3 Eden, a Christian environmental group.

4 Coal ash dumping has to be stopped right
5 now. It's destroying the earth that God's made
6 and poisoning the people He's made. Coal ash
7 should be treated as the hazardous waste that it
8 is. And it's time that coal companies become
9 better neighbors by making sure that the way they
10 do business doesn't endanger the lives of those
11 around them.

12 I strongly urge the EPA to adopt the
13 Subtitle C proposal for coal ash dumping. Jesus
14 Christ calls us to love our neighbor, and I don't
15 see how any of us could love our neighbor if we
16 don't consider the air they breathe and the water
17 that they drink.

18 There are approximately 130 sites found
19 where our drinking water has been contaminated by
20 dangerous materials such as lead, arsenic and
21 mercury, and even one site is too many. People
22 living near unlined coal ash ponds or waters

1 contaminated by arsenic have an extremely high
2 risk of cancer, 1 in 50, which is 2,000 times
3 greater than the EPA's acceptable cancer risk.

4 Children are at an even greater risk of
5 becoming sick because of coal ash. And this is
6 terrible, because the EPA has found that 1.54
7 million children live near coal sites. Christ
8 calls us to care for the least of these, and this
9 compels me to speak up for the families and the
10 children who will pay the cost of coal ash dumping
11 with their health.

12 We know that coal ash is toxic, we know
13 it's poisoning the families and the earth God has
14 created, and it's not classified as hazardous.
15 Until it is, coal companies can keep dumping it.
16 So we need federal regulations. Because of the
17 toxic chemicals found in coal, coal ash like
18 mercury, lead, cadmium, chromium, and others, it's
19 completely unreasonable to treat it like normal
20 household garbage. I urge you to adopt the
21 Subtitle C proposal for coal ash regulation.

22 (Applause)

1 MS. ALLEN: Do you have any questions?

2 MR. HOFFMAN: No, that's okay. Thank
3 you.

4 MS. ALLEN: Thanks.

5 MR. DELLINGER: You were 260; right?

6 MR. HOFFMAN: Right; 260.

7 MR. DELLINGER: Okay.

8 MR. WHITESIDE: Thank you very much for
9 letting us speak to you all today on this
10 important issue. My name is David Whiteside. I'm
11 your Tennessee Riverkeeper. We protect -- we're a
12 non-profit organization that protects the
13 Tennessee River and its tributaries.

14 We are here to ask the EPA to regulate
15 coal ash as hazardous waste under the Federal
16 Resource Conservation Recovery Act, Subtitle C.
17 Coal ash can be very hazardous. It can contain
18 arsenic, mercury, lead, cadmium, chromium, as well
19 as polyaromatic hydrocarbons, and ur -- and it can
20 contain radioactive elements such as uranium.

21 The Tennessee River starts near
22 Knoxville where we are today and flows through

1 Alabama before it returns to Tennessee.
2 Currently, in the states of Tennessee and Alabama,
3 we have conflicting standards. In Kingston,
4 Tennessee where the TVA's coal ash disaster was,
5 coal ash waste is being treated as hazardous and
6 extremely dangerous where -- to the point where
7 the trucks that leave the facility have to go to
8 great lengths to make sure that this material is
9 washed off of them.

10 Once it's trucked down to Uniontown in
11 Perry County, Alabama, it has a different set of
12 standards. It is not treated as a dangerous
13 material down there. It is treated much more
14 haphazardly. And one of the things we're asking
15 the EPA to do in -- in regulating this as
16 hazardous waste will be to come up with uniform
17 federal standards that the states could abide by
18 to give a consistency between Tennessee and
19 Alabama.

20 Right now it's just not fair that one
21 state can consider it a toxic substance and the
22 other state is not as concerned about it. I --

1 that's extremely conflicting and we need guidance
2 from the government to provide some sort of
3 consistency among the states.

4 Currently, Tennessee Riverkeeper has an
5 online petition that has been signed by over 1,000
6 citizens that agree with Tennessee Riverkeeper
7 that they want to see coal ash regulated as
8 hazardous waste. We've also produced a three-
9 minute educational video explaining this issue,
10 and that's been viewed by over a thousand people
11 in the past few months.

12 So, in conclusion, we are -- we are
13 begging the U.S. EPA to regulate coal ash as
14 hazardous waste under the Resource Conservation
15 Recovery Act, Subtitle C. Today you've heard from
16 citizens of Tennessee whose homes and lives were
17 ruined by the TVA's coal ash disaster in Kingston.
18 You've also heard from environmentalists who are
19 concerned -- environmental leaders who are
20 concerned about the air and water quality in their
21 states.

22 On the other side, you've heard from the

1 -- the construction industry and many in the
2 mining industry, industrial biostitutes who are
3 only concerned with their bottom line and are not
4 concerned with -- with the well-being and public
5 health of the citizens.

6 So we ask, please side with the public
7 and do the right thing for the benefit of the
8 citizens and not to safeguard the bottom line of
9 these small, private companies who are concerned
10 only with their pocketbooks. So, please, please,
11 do the right thing --

12 MR. HOFFMAN: Your time is up.

13 MR. WHITESIDE: -- and regulate this as
14 hazardous waste. Thank you very much for this
15 opportunity to speak.

16 (Applause)

17 MR. DELLINGER: Is there anyone in the
18 room with Number sixty -- 62 or lower that hasn't
19 spoken? Anybody? Come forward. Please come
20 forward.

21 SPEAKER: 57.

22 SPEAKER: 57.

1 SPEAKER: That work?

2 MR. DELLINGER: That works.

3 MR. KAZICH: My name is Bruce Kazich.

4 I'm the national sales manager of Trans Ash,
5 Incorporated.

6 Trans Ash is a small, family-owned
7 company that was founded in 1960. We specialize
8 in CCP management. We currently market boiler
9 slag products and manage CCP landfills and
10 impoundments at 18 different coal-fired facilities
11 in 9 states and Canada. We employ approximately
12 150 people, many of whom have over 20 years of
13 service.

14 We understand that a significant driver
15 in the proposed regulatory action was the failed
16 dike at TVA Kingston. We do not understand why a
17 structural failure would prompt a reconsideration
18 for the waste classification of coal ash.
19 Subtitle D clearly creates much needed new
20 landfill and surface impoundment standards. These
21 regulations should be tougher but should not
22 stigmatize the possible beneficial use of CCPs.

1 And yes, the stigma is real.

2 Trans Ash was a charter member of the
3 EPA's C2P2 program which promoted environmental
4 stewardship and beneficial use of CCPs. Isn't the
5 suspension of that program the ultimate proof of
6 stigma? The C2P2 program suspension certainly
7 sends conflict -- conflicting signals from the
8 agency, especially when the environmental benefit
9 from the utilization of CCPs is well documented
10 and acknowledged by the EPA.

11 In their memo of May 4th, 2010, the EPA
12 clearly states, "Environmentally sound beneficial
13 reuses of ash conserves resources, reduces
14 greenhouse gas emissions, lessens the need for
15 waste disposal units, and provides significant
16 domestic economic benefits."

17 The EPA claims a Subtitle C designation
18 will actually increase the beneficial use of CCPs.
19 This contention is certainly not supported by our
20 customers. They have legitimate legal liability
21 concerns. They've clearly stated they will stop
22 using CCPs if they are classified in any way as a

1 Subtitle C waste.

2 In our litigious society, they're simply
3 not willing to take the risk. Therefore, the CCPs
4 that have been safely recycled for decades will
5 now be landfilled, creating higher energy costs,
6 higher costs for utilities, and therefore, higher
7 energy costs for all citizens. Users will replace
8 CCPs with naturally mined or manufactured
9 materials utilizing more energy, including fossil
10 fuels, natural gas and electricity further
11 increasing our carbon footprint.

12 Let us also consider the economic impact
13 of a Subtitle C designation. The American Coal
14 Council estimates an economic impact between 6 and
15 \$11 billion. Additionally, between 130,000 and
16 240,000 green jobs would be in jeopardy. With the
17 current economic crisis and no significant
18 recovery in sight, how can we justify a Subtitle C
19 designation when Subtitle D clearly provides for
20 the same level of environmental safety?

21 The environment can and will be
22 protected with strong regulations under Subtitle

1 D. The EPA should develop a performance-based
2 federal program for CCPs under RCRA D which will
3 insure that disposal is safely managed while
4 continuing to promote and expand beneficial use.
5 Thank you.

6 MR. DELLINGER: Thank you.

7 (Applause)

8 MR. DELLINGER: Right now it's about
9 12:15, and we've gone through everybody in the
10 room who's either a walk-in person or someone who
11 has -- was expecting to speak sometime before
12 12:45. If there are people in the room that would
13 like to provide testimony at this time, regardless
14 of your -- of your numbers if you've
15 pre-registered.

16 So let's start with Number 70 through
17 63. 63 through 70 to see if there are any -- any
18 people in here with those numbers that would like
19 to testify now? Nobody with those numbers.

20 How about 80 through 71? Well, how many
21 people have pre-registered and have a number right
22 now? All right. Let's have all those people come

1 forward and -- and provide your testimony.

2 MR. HOFFMAN: 99 to start.

3 MR. LAWRENCE: Good morning. I'm David
4 Lawrence, and I have been in the fly ash and
5 bottom ash industry for 30 years, the last 20 with
6 Headwaters Resources.

7 We have seen the stigma effect, we --
8 and we know its exists. And we've seen the
9 expanded clay and shale people speak out against
10 bottom ash. We have explained their motive has
11 been monetary. They're greedy. They want our
12 market -- marketplace.

13 I have a document from a third party lab
14 that actually gives TCLP results that compare the
15 expanded clay and shale and bottom ash. Guess
16 what? The expanded clay and shale exceeds bottom
17 ash in several heavy metal areas. Imagine that.
18 So much for their argument. It's simply more of
19 the marketplace.

20 Let's discuss for a moment who will pay
21 for the fly ash and bottom ash going to a Class C
22 landfill or additional on-site landfill costs.

1 Look around. We will pay. We will pay additional
2 attorney costs. And the poor will pay. The very
3 people that can't afford additional costs, they're
4 going to pay.

5 So, please, let's keep fly ash and
6 bottom ash in non-hazardous material. Thank you
7 for your time.

8 MR. DELLINGER: Number 93.

9 MR. CRITCHFIELD: Thank you for allowing
10 me to speak today, and good afternoon. My name is
11 Steve Critchfield, vice president of Full Circle
12 Solutions.

13 We are a small business that provides
14 beneficial use of coal combustion products, CCPs,
15 for power plants and other industries in the
16 southeast and the Midwest. We safely recycle CCPs
17 into mulches, potting soils, masonry blocks, soil
18 amendments, and geotechnical fills.

19 Our power-producing plants are mostly
20 independent power producers that do not you have
21 their own ash basins or landfills. Therefore, our
22 efforts have been beneficial to local communities

1 by saving over 10 million cubic yards of MSW
2 landfill space. We have also benefitted these
3 communities by developing industrial properties
4 which have provided hundreds of jobs and millions
5 of dollars in investments.

6 My comments today concern geotechnical
7 fills. EPA has stated that they do not believe
8 large volume geotechnical fills constitute
9 beneficial reuse and they intend to prohibit such
10 fills under either Subtitle C or Subtitle D of
11 RCRA. The EPA reached this decision without
12 giving adequate consideration to the issue. The
13 EPA has not given consideration to the benefits
14 given to communities where CCPs have been used
15 safely.

16 The EPA should also consider the benefit
17 of geotechnical fills that have given to many
18 communities across the country the use of CCPs and
19 geotechnical fills, save valuable landfill space,
20 prevent the need of additional borrow pits, and
21 provides industrial and commercial property for
22 economic development and job descriptions.

1 Most of the land upon which we build
2 could not be used for economic development. The
3 earthwork required to develop these properties
4 would otherwise be cost-prohibitive. Two examples
5 of communities which have benefitted from our work
6 are the city of Petersburg and the town of South
7 Boston, both in Virginia.

8 Petersburg has been economically
9 depressed for many years. It had no available
10 property to develop new industries and create
11 jobs. Using CCPs, we constructed an in --
12 industrial park with approximately 150 acres
13 that's now available for the city to use in its
14 economic development plans. If the city of
15 Petersburg had undertaken this project, the
16 earthwork alone would cost over \$4 million.

17 In South Boston, we partnered with the
18 city and built Houghton Industrial Park. A
19 property designated by the town for their
20 industrial park was mostly rolling hills and would
21 require over -- thank you.

22 MR. DELLINGER: Thank you. 74?

1 MR. HOFFMAN: 74.

2 MR. SHAW: My name is Tom Shaw. I am
3 with Harsco Corporation, a global industrial
4 services company with almost 20,000 employees. We
5 have operations in Tennessee, South Carolina,
6 Alabama, and Kentucky, and I am here today to
7 represent those employees. We operate a plant in
8 Memphis dedicated to processing boiler slag as
9 abrasive -- abrasive blasting grit and roofing
10 granules.

11 Since the 1930s, we have been a green
12 recycler of boiler slag, one of the four major
13 types of coal combustion byproducts. Boiler slag
14 is formed when extremely hot molten coal ash is
15 quenched with cold water and the coal ash
16 immediately becomes a vitrified amorphous solid,
17 glassy matrix soil known as boiler slag.
18 Vitrification renders a material inert in a
19 chemical process using heat. It transforms a
20 mixture into a soluble liquid which solidifies on
21 cooling, essentially encapsulation by nature.

22 Because boiler slag is vitrified, it is

1 a very durable and environmentally stable material
2 that permanently immobilizes its chemical
3 constituents in a glassy amorphous structure which
4 remains stable even when broken into small
5 fragments during abrasive blasting as evident by
6 x-ray diffraction and TCLP data.

7 Because it is beneficially reused,
8 boiler slag is not commonly stored in surface
9 impoundments. We regularly test our boiler slag,
10 and it has always passed the TCLP testing and has
11 never exhibited any hazardous waste
12 characteristics. This includes both pre and post
13 blast abrasive grit.

14 The scientific information about boiler
15 slag and its physical properties have not changed
16 since we began our operations over 70 years ago.
17 We have also tested our material using the
18 recently developed Vanderbilt leaching procedure
19 which is designed to reflect real world
20 conditions, and the results confirm the absence of
21 any hazardous waste characteristics.

22 Regulating boiler slag destined for

1 disposal as a special waste under Subtitle C would
2 unfairly stigmatize beneficially reused boiler
3 slag, as is already evident by competitive
4 actions. We have seen no evidence that boiler
5 slag meets any threshold for regulation under
6 Subtitle C. We are not aware of any environmental
7 problems linked to our products.

8 As an abrasive, we are the primary
9 alternative to silica sand, an abrasive that
10 presents serious worker health concerns. We
11 recognize the need for proper and environmentally
12 sound standards for regulating the small
13 percentage of boiler slag that is discarded rather
14 than beneficially reused.

15 Accordingly, consistent with the
16 announced views of nearly 30 states and EPA's 2
17 previous determinations evaluating proper
18 management of coal combustion byproducts, we
19 support appropriate and reasonable disposal
20 standards for any waste boiler slag under Subtitle
21 D of RCRA. Thank you.

22 (Applause)

1 MR. DELLINGER: 81.

2 MR. RAIA: Good afternoon. My name is
3 Bobby Raia, and I'm here today to voice my support
4 of the EPA to regulate coal ash under the proposed
5 Subtitle D non-hazardous approach. Thanks for the
6 opportunity.

7 I'm a civil engineer currently working
8 within the coal ash management business that
9 specialize -- that we specializes in recycling
10 coal combustion residuals. Currently,
11 approximately 50% of all electricity within the
12 United States is generated by the use of coal with
13 its -- with its uses expected to increase by nine
14 -- by 19% by 2030, as suggested by the United
15 States Department of Energy.

16 Of all the coal used to generate
17 electricity, 44% of its residuals, or CCRs, are
18 currently beneficially recycled in such items as
19 concrete, brick, mortar, wallboard, drywall, green
20 fill projects, pavement, and blocks. A hazardous
21 classification under Subtitle C would have a
22 crippling effect on the numerous CCR recycling

1 programs, programs that I participated in,
2 programs that work.

3 There is no doubt in my mind that a
4 hazardous classification would give coal ash and
5 its recycling programs an unwarranted stigma. The
6 industry has already felt the effects due to
7 negative spin and the looming potential of a
8 hazardous classification.

9 Engineers, architects and contractors
10 will be unlikely to specify the use of these
11 products in fear of professional liability,
12 forcing them to use alternate, more expensive
13 natural resources. If the industry is already
14 feeling the impact, what is the future of the coal
15 ash recycling industry should the EPA classify
16 coal ash as hazardous? Will there even be an
17 industry? How will this affect the jobs in the
18 industry? How will this affect my job?

19 What seems to be forgotten is that
20 between the current stigma and the potential
21 industry extinction, CCRs will continue to be
22 generated. And as CCRs continue to be generated,

1 if they aren't being recycled, then they'll have
2 to be landfilled. But classifying coal ash --
3 sorry. Classifying coal ash as a hazardous waste,
4 40% percent (sic) of the coal ash that is
5 currently recycled will be sent to landfills for
6 disposal.

7 And if these landfills are going to be
8 required to accommodate the added quantity, their
9 life will be shortened by nearly half, forcing
10 utility companies to expand or construct new
11 landfills to accommodate the added quantities.
12 And these costs are going to be reflected on your
13 monthly bill.

14 With landfills being expanded and
15 constructed, the EPA, through these proposals, has
16 attempted to standardize and strengthen the
17 engineering standards and protective features
18 associated with these expansions and new
19 construction. However, both the Subtitle C and D
20 proposals are essentially the same with the EPA
21 actually stating that the new disposal regulations
22 will take effect quicker under the Subtitle D,

1 non-hazardous approach.

2 I'll conclude my speech with this. I
3 strongly believe the EPA should regulate coal ash
4 under the proposed Subtitle D, non-hazardous
5 approach. Subtitle -- this approach protects the
6 environment and human health with its standards
7 for landfills, yet it reinforces the values and
8 goals of recycling by promoting the use of coal
9 ash in a variety of materials. Thanks again for
10 the opportunity.

11 MR. DELLINGER: Thank you. 64.

12 MS. STOKES: Hi. My name is Katherine
13 Stokes. I live and work in Knoxville. I work at
14 the Southern Alliance for Clean Energy. I'm also
15 a graduate of the University of Tennessee civil
16 engineering department.

17 In college, I studied concrete strength.
18 We had a lab where we would make our own concrete
19 for testing, mixing aggregate with cement and
20 water and sometimes adding fly ash. The fly ash
21 came as a dry dust. We scooped it out of a bag.
22 You wouldn't want to breathe in the particles, but

1 the ash was well contained.

2 This dry, treated and bagged version of
3 coal ash is more similar to a household chemical
4 waste that is suggested in EPA Subtitle D.
5 However, this is not the type of coal ash we're
6 talking about today. In fact, under Subtitle C,
7 coal ash that is recycled for other uses such as
8 concrete is exempt from the regulations.

9 What we're talking about today are the
10 wet impoundment ponds or the huge dry landfills of
11 coal ash, the type that flooded the land, houses
12 and river of our neighbors in Roane County,
13 Tennessee. This type of coal ash that is stored
14 in impoundment ponds or landfills should be
15 regulated by EPA's proposed Subtitle C. This ash
16 hasn't been treated and is not your regular
17 household waste as Subtitle D would suggest that
18 it is.

19 As we witnessed with the TVA coal ash
20 spill, coal ash is not effectively regulated by
21 the state of Tennessee. As we've learned from
22 this disaster, the siding and structural stability

1 of these coal ash storage impoundments are not
2 regulated. Neither is the potential for these
3 chemicals to penetrate groundwater.

4 As we've witnessed, we know the
5 regulations are made as suggestions or guidelines
6 rather than enforced, as they would be in Subtitle
7 D, that they are also not followed. EPA estimates
8 Subtitle C could cause a 0.8% increase in our
9 electricity bills. We need to spend a little bit
10 of money now to regulate coal ash as insurance so
11 that we won't see another very expensive,
12 life-destroying and very preventable accident like
13 we saw almost two years ago here in Tennessee.

14 Our electricity providers aren't afraid
15 of taking risks because the cost is sent down to
16 the customers. We are the ones that carry the
17 burden. We're the ones who paid for the clean-up
18 of the Kingston coal ash spill, and we need
19 federal backing so that this doesn't happen to us
20 again.

21 EPA Sub -- suggested Subtitle C is the
22 best choice for Tennessee's safety, health and

1 wallets. It will save us money and distress in
2 the long-run by helping us avoid another disaster.
3 Thank you.

4 (Applause)

5 MR. RIEDINGER: Good afternoon. My name
6 is Dan Riedinger of the Washington D.C.- based
7 Edison Electric Institute. EEI is the association
8 of U.S. shareholder-owned electric companies
9 representing about 70% of the U.S. Power sector.

10 I would like to begin by thanking the
11 EPA for holding these eight public hearings giving
12 so many individuals and stakeholder groups from
13 around the country the opportunity to comment on
14 the agency's proposals for regulating coal
15 combustion residuals, or coal ash. Many different
16 voices have weighed in, including those of large
17 industry groups, small businesses, environmental
18 organizations, religious leaders, state
19 regulators, politicians, and concerned citizens.

20 And you've been asked to consider many
21 different concerns: the desire for binding coal
22 ash management standards that are federally

1 enforceable; the imperative of maintaining coal
2 ash beneficial use, one of the largest and most
3 successful U.S. recycling efforts and the huge
4 number of associated jobs; and the goal of
5 avoiding sharp electricity rate increases; and the
6 need to ensure protection of public health and the
7 environment. All of these issues can be addressed
8 through federal regulation of coal ash as a non-
9 hazardous waste.

10 EEI has supported this approach since
11 the initiation of this rule-making proceeding.
12 This approach is consistent with the agency's 2000
13 determination that coal ash does not warrant
14 regulation as a hazardous waste because it does
15 not exhibit the characteristics of hazardous
16 waste.

17 Over the past decade, the
18 characteristics of coal ash have not changed, nor
19 has the scientific foundation on which EPA
20 determined that coal ash could safely be managed
21 as non-hazardous waste. What has changed is a
22 level of public awareness, interest and concern.

1 EPA now must try to address
2 stakeholders' varied concerns. The solution isn't
3 simply to impose the most burdensome regulation
4 possible on utilities whose customers would bear
5 the brunt of these costs. In fact, regulating
6 coal ash as hazardous would not have prevented the
7 December 2008 spill at the nearby Kingston
8 facility.

9 Instead, we urge EPA to adopt a strong,
10 measured response that effectively targets
11 legitimate coal ash management issues. This can
12 be done by devising federal requirements for
13 managing coal ash as a non-hazardous waste. This
14 approach would provide the same level of public
15 protection, as would hazardous waste regulation,
16 but without the extra \$12 billion in annual costs.

17 Both approaches would require
18 installation of liners to prevent leaching, and
19 both would require groundwater monitoring. These
20 requirements would be enforceable through citizen
21 and state lawsuits, and if the agency chooses, by
22 EPA itself under the same authority as the agency

1 used to develop federally enforceable
2 non-hazardous waste rules for municipal solid
3 waste.

4 In addition, EEI supports adoption of
5 federal dam safety standards that would help
6 ensure the structural integrity of coal ash
7 impoundments such as that used at the Kingston
8 facility. Everyone here wants federal regulation
9 with teeth, but we don't need regulation that
10 imposes huge costs on consumers without
11 commensurate public health benefits, threatens to
12 eliminate the many beneficial uses of coal ash,
13 and that puts U.S. Jobs at risk. Thank you.

14 MR. DELLINGER: Thank you.

15 MR. IVEY: Good evening. My name is
16 Shaun Ivey. I work for Headwaters Resources.

17 I have worked in the coal combustion
18 byproducts for 23 years. I have constructed ash
19 management sales all through the southeast part of
20 the United States without a failure. We do
21 groundwater testing every quarter without a
22 failure. Before the Kingston site, no one here

1 has -- most of the people hadn't even heard of
2 coal combustion byproducts.

3 I strongly encourage the EPA to keep
4 Subtitle D. It will encourage a lot of costs to
5 go to Subtitle C. Thank you very much.

6 MR. DELLINGER: We're going to take a
7 break now, and we'll -- it will probably be about
8 15 minutes, and we'll impanel a new panel. And
9 we'll start up probably within about 15 minutes.

10 (Whereupon, a luncheon recess was
11 taken.)

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

2 MS. DEVLIN: We will begin the hearings
3 of this afternoon's session.

4 Again, good afternoon. I thank you for
5 attending today's public hearing on the EPA's
6 proposed rule regarding the regulation of coal-
7 combustion residuals.

8 Again, before -- before we begin, I'd
9 like to again express our thanks to all of you for
10 taking time out of your schedules -- your busy
11 schedules to come here. We look forward to
12 hearing all your comments.

13 This is the eighth public hearing we've
14 had on this rule. We have had previous, very
15 successful hearings in Washington, D.C.; Denver;
16 Dallas; Charlotte; Chicago; Pittsburgh;
17 Louisville; and now here. And we've over 2,000
18 people at these hearing. And again, we thank you
19 all for your comments and your participation in
20 the hearing.

21 My name is Betsy Devlin. I am the
22 Associate Director of the Materials Recovery and

1 Waste Management Division at EPA, and I will be
2 chairing this afternoon's session of this hearing.

3 With me on the panel this afternoon are
4 Rich Kinch, Bonnie Robinson, and Steve Souders.
5 We are all from our EPA headquarters Office of
6 Resource Conservation and Recovery.

7 Before we begin the hearing this
8 afternoon, I'm just going to go over some of the
9 logistics of how we will conduct the hearing this
10 afternoon. Speakers, if you preregistered, you
11 were given a 15-minute slot in which you're
12 scheduled to present testimony. And to guarantee
13 that slot, we ask that you sign in at our
14 registration desk out in the lobby at least 15
15 minutes before you're scheduled to speak.

16 All speakers, whether you preregistered
17 or whether you signed up to speak when you got
18 here today, were given a number. That is the
19 order in which you will speak.

20 I will call speakers up to the podium by
21 number. I will call them generally in groups of
22 four or five. And when your number is called, we

1 ask that you walk to the microphone; please state
2 your name; and we, again, may ask you to spell
3 your name for the court reporter, but it's
4 important that we get your name and your
5 affiliation.

6 And because there are so many people who
7 have signed up to speak today, and to be fair to
8 everyone, testimony is limited to three minutes.
9 We will be using an electronic timekeeping system,
10 but we will also hold up cards to let you know
11 when your time is getting low.

12 When we hold up the first card, which is
13 a green card, you will have two minutes left. We
14 hold up the second card, it is a yellow card, you
15 will have one minute left. The third card is an
16 orange card, and that shows you have 30 seconds
17 left. And when your time is up, we're going to
18 hold up a red card; and that does mean we're going
19 to ask you to stop speaking right then. Your time
20 is up.

21 But please remember, if you have not
22 completed your remarks and you have other

1 comments, you can submit them either in front of
2 the court reporter -- in the box in front of the
3 court reporter if you've brought a written copy
4 with you; or, if not, you can write them and
5 submit them outside at our registration desk. Any
6 comments that you don't get to say in -- say
7 orally but you give us in writing will be
8 considered just as if you had said them at the
9 hearing.

10 We will not be asking -- answering any
11 questions today on the proposal; but from time to
12 time, a member of the panel may ask you a question
13 to clarify some of your testimony.

14 If you have brought a written copy of
15 your testimony, we will ask that you leave a -- a
16 copy in the box by our court reporter that's right
17 in front of me here. And if you are only
18 submitting written comments, please put them in
19 the box by the registration desk.

20 And again, if you have additional
21 comments after today, we ask that you follow the
22 instructions on the yellow handout sheet. And you

1 can get that yellow handout sheet at our
2 registration desk and submit your -- any comments
3 that you have by November 19th. November 19th is
4 the close of the comment period on this
5 regulation.

6 Again, our goal is to ensure that
7 everyone who has come today to present testimony
8 is given that opportunity. And to the extent
9 allowable, we will try to accommodate any of those
10 who have not preregistered, and we'll -- we will
11 also try to accommodate those who've asked to
12 speak earlier due to an airline flight or other
13 transportation issues. So if it looks like I'm
14 calling people out of order, don't worry. I'm
15 trying to fit everyone in.

16 Our hearing today is scheduled to close
17 at 10:00, but we will stay later, if necessary, to
18 allow as many of you as possible to provide your
19 testimony. Again, if for some reason the time
20 doesn't allow you to present your testimony,
21 please leave your written comments in the box out
22 by our registration desk.

1 And again, those written comments will
2 be collected. They will be entered into the
3 docket. They will be considered just as though
4 you had presented them orally.

5 If you would like to testify today, but
6 have not yet done so, please sign up at the
7 registration desk out in -- out in the -- in the
8 lobby. And again, during the hearing, if you have
9 any questions at all about what's going on, just
10 please contact our staff out at the registration
11 desk. They can assist you.

12 We are likely to take some occasional
13 breaks, but we will eliminate or shorten those
14 breaks to, again, allow as many people as possible
15 to testify.

16 Finally, if you do have a -- a cell
17 phone or a BlackBerry, we ask that you either turn
18 it off or turn it to vibrate. And if you need to
19 use your phone at any time during the hearing,
20 just please step out into the lobby.

21 Again, we ask for your patience. As we
22 get through this, we might need to make some minor

1 adjustments, but I think this morning went
2 smoothly, so I hope this afternoon will go just as
3 well.

4 So with that, I'd like to start by
5 making sure -- is there anyone in the audience
6 with the number of 62 or below who did not get to
7 testify this morning? Okay. And your number,
8 please, ma'am?

9 MS. SMITHYMAN: 61.

10 MS. DEVLIN: Okay. If you would -- if
11 you would come to the podium, Number 61 would step
12 forward? And also, Numbers 63, 65, and 66? Thank
13 you.

14 Number 61, please, go ahead.

15 MS. SMITHYMAN: My name is Linda
16 Smithyman. It's S-m-i-t-h-y-m-a-n. I'm a
17 resident of Knox County, and I was here when the
18 Kingston coal ash spill occurred.

19 I'm affiliated with a number of
20 environmental groups. And it had to take the
21 Kingston spill to shed new light on coal ash. I
22 mean, this is happening in our backyard, folks.

1 Someone told me, and I believe what they
2 said, that there were folks driving into the
3 facility down at Kingston that made phone calls to
4 TVA to tell them that there was a leak time and
5 time again, and yet it seemed that nothing was
6 done about it. And what happened? How many homes
7 were destroyed? How much land was contaminated?
8 How many people had to get drinking water for
9 their daily needs?

10 If the Kingston spill had actually
11 happened upriver from Knoxville and affected our
12 daily water supply, there would have been even
13 greater uproar about the cleanup and the future of
14 coal ash plants.

15 In 2000, the EPA deemed coal ash a
16 nonhazardous material and, thus, it did not fall
17 under federal regulations or inspections.
18 Inspections are left up to state regulators.

19 Since 2000, there's been improved
20 pollution controls to keep more and more toxins
21 from leaving smoke stacks, thus increasing the
22 amount of toxins in coal ash. Classifying the

1 coal ash as hazardous would almost certainly
2 affect how the waste is recycled.

3 Environmentalists have concerns. The
4 tests have shown that the dangerous toxins, such
5 as arsenic, lead, chromium, manganese, and barium
6 have been linked to serious health conditions,
7 such as cancer, liver damage, and neurological
8 complications.

9 Ash ponds are located in 35 states, and
10 the majority of dump sites are over three decades
11 old. There are many toxins in the waste.
12 According to an EPA report, many of the ash ponds
13 in Kentucky were not designed or constructed by
14 engineers, bringing into question whether or not
15 ash is properly contained at the sites.

16 Several Kentucky utilities, LG&E's
17 ponds, fall into this category. I used to live in
18 Kentucky for a little while. These ash-disposal
19 sites also leak their toxic cargo into ground
20 water or discharge it directly into rivers,
21 creeks, and lakes as runoff or through permitted
22 outfalls.

1 Until the EPA takes action, there are no
2 federal rules setting standards for the safe
3 disposal of ash or limiting the discharge of toxic
4 ash, leachate, into our waterways. We need
5 comprehensive federally-enforceable safeguards to
6 protect human health, wildlife, and the
7 environment.

8 Coal ash must be regulated under
9 Subtitle C of the Resource Conservation and
10 Recovery Act as special waste with all the
11 safeguards that apply. Coal ash should not be
12 regulated under the much weaker --

13 MR. SOUDERS: Sorry.

14 MS. SMITHYMAN: Okay.

15 MS. DEVLIN: Okay. Thank you very much.

16 MS. SMITHYMAN: -- and less protective
17 standards provided by a Subtitle D designation, as
18 nonhazardous waste.

19 Regulating coal ash under Subtitle D or
20 RCRA is a busted and broken approach that
21 essentially keeps the status quo of voluntary and
22 patchwork protections. Subtitle D guidelines

1 cannot guarantee all citizens adequate protections
2 from toxic ash because Subtitle D does not require
3 states to adopt federal guidelines.

4 There are currently no
5 federally-enforceable regulations specific to coal
6 ash, and contamination from coal ash landfills and
7 wasteponds is already poisoning drinking water
8 supplies and damaging wildlife. such as fish and
9 birds, at locations across the country. The last
10 of federally-enforceable safeguards is exactly
11 what led to the disaster in Tennessee, which a dam
12 holding more than 1 billion gallons of toxic coal
13 ash failed, destroying 300 acres, dozens of homes,
14 killed fish and other wildlife, and poisoned the
15 Emory and Clinch Rivers.

16 Coal ash is contaminating our drinking
17 water supplied, and it is only getting worse as
18 the waste stream grows in volume and toxicity.
19 The failure to safely dispose of coal ash
20 transfers the pollutants captured by Clean Air Act
21 regulations to the nation's waters.

22 Living near an unlined coal ash waste

1 pond and drinking water contaminated with arsenic
2 can be more dangerous than smoking a pack of
3 cigarettes a day, according to a risk assessment
4 done by the EPA. Lax state regulations will
5 continue to place communities at risk from high-
6 hazard dams and leaking dumps until federal
7 minimum standards under Subtitle C of RCRA are
8 established.

9 Coal ash must be regulated as a "special
10 waste" under Subtitle C of the Resource
11 Conservation and Recovery Act (RCRA). The Obama
12 administration needs to rely on the best available
13 science in setting federally-enforceable
14 safeguards for coal ash. Regulating coal ash as a
15 special waste gets rid of dangerous coal ash waste
16 ponds and ensures another community will not have
17 to experience a disastrous spill such as the one
18 that happened in December 2008 at the Tennessee
19 Valley Authority waste pond; we don't want another
20 TVA accident.

21 Federally-enforceable safeguards must
22 ensure coal ash dumps and waste ponds have all the

1 protections presently required at household waste
2 landfills, including solid waste permits, liners,
3 monitoring systems, leachate collection systems,
4 corrective action, financial assurance, fugitive
5 dust, suppression, transport controls, et cetera.

6 Only Subtitle C regulations can
7 guarantee the full panoply of needed protections
8 and the phase- out of dangerous waste ponds. Lax
9 "guidelines," such as those that would be applied
10 under weaker Subtitle D regulations, will fail to
11 fix the problem as EPA expects that a substantial
12 number of coal ash dumps and waste ponds -
13 representing approximately 50% of the coal ash in
14 the U.S. - will not clean up under this plan.
15 Regulation of coal ash under Subtitle C will
16 increase disposal costs and, thus, provide an
17 incentive for greater ash recycling. The costs
18 passed onto the general public will be higher,
19 unfortunately.

20 Strong, federally-enforceable standards
21 ensure much greater compliance and, thus, much
22 greater likelihood that future spills and

1 disasters - and the costs associated with their
2 cleanup - will be avoided.

3 Through research, EPA must determine
4 which reuses of coal ash are safe and beneficial,
5 and must prohibit reuses that constitute dumping
6 and expose people and the environment to hazardous
7 chemicals. Failure to regulate coal ash dumped in
8 mines is a dangerous omission, and EPA should not
9 exempt this practice from regulation.

10 MS. DEVLIN: Number 63, please?

11 MS. GOTTLIEB: Hello. I am Barbara
12 Gottlieb, Deputy Director for Environment and
13 Health at Physicians for Social Responsibility,
14 our national organization of physicians and other
15 health professionals. We're 50,000 members in 25
16 chapters.

17 Some industry representatives whom we've
18 heard from today have suggested that coal ash is
19 not toxic, and that the TVA Kingston spill was
20 somehow not of much consequence to hu -- human
21 health. On behalf PSR, I would like to correct
22 that mischaracterization.

1 It may be that coal ash is bound at the
2 molecular level in some recycling uses rendering
3 it inert and ho -- harmless. We certainly hope
4 so. But that is not what we are dealing with in
5 coal ash in some 2,000 storage sites around the
6 country. What leaches, blows, and spills out of
7 storage sites includes arsenic, selenium, cadmium,
8 chroni -- chromium, molybdenum, and a long list of
9 other clearly toxic heavy metals. The
10 contamination of people's drinking water wells
11 from coal ash waste, as is scientifically
12 documented in the EPAs listing of damage cases,
13 proves in scientific terms that coal ash is toxic.

14 What I'd like to go focus on today,
15 though, is that the EPA's assessment of coal-ash
16 toxicity is actually hindered by errors of
17 methodology and of assumptions. I'd like to raise
18 five issues that actually lead the EPA to
19 underestimate coal-ash toxicity.

20 First, the EPA's test for measuring
21 leaching is inadequate. The EPA's own Science
22 Advisory Board and no less than the National

1 Academy of Sciences have both called on the EPA to
2 replace its leaching test with a more modern, more
3 accurate version. When, in 2009, the EPA used a
4 test that accounted for additional factors, such
5 as the pH of the ash and field conditions where
6 leaching might take place, leaching was shown to
7 be dramatically higher than previously believed.

8 Second, the EPA failed to consider the
9 potential for harm from simu -- simultaneous
10 exposure to multiple heavy metals. Exposure to
11 several contaminants concurrently can cause
12 synergistic interactions that result in a greater
13 risk to health. Concurrent exposures may
14 intensify existing health effects or may give rise
15 to new health effects.

16 This can happen where different
17 contaminants op -- contaminants operate by a
18 common mechanism of toxicity; it can also happen
19 where different contaminants affect the same body
20 organ or system. Both scenarios occur with
21 coal-ash toxicants. Unfortunately, the EPA does
22 not take multiple exposures into account.

1 The EPA doesn't consider the greater
2 threat to children. The EPA disregards long
3 latency periods. Harm to health from coal ash may
4 take years to become evident. This is
5 particularly true of cancer which results from
6 damage to cell DNA and mutations in genes.

7 Two years, as the case with the TVA
8 spill, is too short a time for this damage to
9 manifest; and thus, it's too soon to declare that
10 no such harm was done by the pill.

11 Finally, the EPA overlooks the transfer
12 of the problem from Tennessee to Alabama. A full
13 assessment of health impacts must consider impacts
14 where the coal ash is eventually disposed.

15 For these reasons, PSR strongly supports
16 Subtitle C. Thank you.

17 MS. DEVLIN: Thank you. Number 66,
18 please?

19 MR. SWARTZ: Hello. My name is Steve
20 Swartz, and I am co-owner of New Age Fastening
21 Systems, the developer of expendable abrasive New
22 Age Blast Media.

1 Earlier, my colleague spoke about what
2 we felt was the misuse of the EPA logo, and today
3 I'd like to talk about the beneficial-use program,
4 as -- as well as what we feel is a misuse of the
5 EPA endorsement.

6 Now, everybody in this room, for the
7 most part, has heard of the Creature from the
8 Black Lagoon. Today, what I bring to you,
9 courtesy of the Harsco Corporation, is what we
10 call beauty from the black lagoon. What you have
11 here is an ad. Black beauty abrasives speaks
12 about passing the TCLP test. Obviously, you have a
13 woman that's immersed in what only appears to be a
14 black lagoon, and -- it's ads like this that we
15 feel are very misleading. We feel like -- that
16 the EPA has -- is in the position to do something
17 about an ad like this.

18 You know, when it comes to the -- the
19 beneficial uses for coal combustion waste, we feel
20 like -- that this is not a beneficial use, and
21 this -- this ad is very misleading. It --
22 continue to -- to tie their ads to the TCLP, which

1 we feel is a futile attempt at linking the TCLP
2 standards to those drinking water standards.

3 You know, if -- you know, in layman's
4 terms, we just feel like this -- this ad is almost
5 like the beneficial-use program gone wild. It's
6 -- you know, a -- a picture speaks a thousand
7 words, and we just feel like -- that -- that this
8 -- this just speaks of misuse of coal combustion
9 waste. Thank you very much.

10 MS. DEVLIN: Thank you. May I have
11 numbers 67, 68, 69, and 70, please? Number 67?
12 Thank you.

13 MR. BRYANT: Good afternoon. My name is
14 Mark Bryant. I come to -- before you today on
15 behalf of the 150-plus members of the American
16 Coal Ash Association.

17 The netagi -- negative stigma created by
18 EPA's proposal is growing. The regulatory effect
19 appears weighted towards placing -- excuse me -- a
20 hazardous special waste on a nonhazardous
21 material, and has resulted in uncertainty,
22 misinformation, and anxiety in an otherwise normal

1 commodity market. The damage to CCR markets is
2 real, and the people that use, manage, and trade
3 them are being harmed.

4 Additional examples of the negative are
5 available today that EPA needs to be aware of.
6 EPA's proposal is -- hurts hard-working and
7 honest, small businessmen and women and their
8 employees.

9 All this harm and suffering because EPA
10 wants federal jurisdiction for a nonhazardous
11 material, nonhazardous by any test or criteria. A
12 federal or a state-led RCRA Subtitle D program
13 will be more than adequate for everyone's
14 protection and safety.

15 At previous meetings, EPA has heard test
16 -- testimony from competitors of some of these
17 small recycling businesses, most recently blasting
18 grit, in favor of a Subtitle C determination for
19 what appears the sole purpose of gaining a
20 business advantage and a financial gain. Using
21 the negative stigma, the competing market knows
22 what it means.

1 We are now learning of incidents where
2 small businesses are having operating loans denied
3 because collateral property improved by CCRs that
4 secured the loans in the past are failing
5 inspection, and falling victim to misinformation
6 and ambiguity. The stigma is real. Companies and
7 jobs are being lost.

8 We are in possession of public and
9 private construction project documents that
10 specifically state fly ash will not be used in
11 ready mix anywhere on the site. The stigma is
12 real and growing.

13 We have just received advertising
14 materials for concrete products manufacturers that
15 warrant that all of their products to be free of
16 coal ash because it is currently under
17 investigation by U.S. EPA as a possible
18 hazardous waste. The stigma EPA created is real.

19 Finally, we have asked EPA to consider
20 the unique contracts and language used in this
21 industry. We have shared this language with EPA,
22 and asked EPA to consider the implosion and

1 beneficial use in recycling that will occur when
2 cancellation or forced majeure clauses kick in
3 because EPA chosen to list CCRs as a hazardous
4 waste. This will be a huge hit to the recycling
5 industry that EPA has supported for many years.
6 So far, EPA has chosen to ignore this impending
7 situation.

8 RCRA works. According to RCRA, CCRs are
9 not hazardous. Government-funded research and
10 demonstration has supported beneficial use and
11 recycling for years. This industry is based on
12 good science.

13 Subtitle D is technically sufficient,
14 and all the good people will be protected and not
15 harmed any further. Thank you.

16 (Applause)

17 MS. DEVLIN: Thank you. Number 68,
18 please?

19 MR. ADAMS: My name is Mike Adams, and I
20 have recycled fly ash for the past 30 years, the
21 last 11 years as a v -- vice president for
22 Headwaters Resources, the largest marketer of fly

1 ash in North America.

2 My premise for my testimony is that was
3 EPA's assertion that a hazardous designation will
4 increase CCP's utilization is flawed, and that the
5 stigma of a hazardous-waste designation is real.
6 The listing of CCPs as a hazardous material for
7 disposal will effectively kill the most successful
8 recycling program in the U.S., increase
9 greenhouse-gas production by millions of tons of
10 CO2, and require an additional 50-million cubic
11 yards of landfill space annually.

12 The following is an example of that
13 stigma that is now taking place even before any
14 rule has been issued. I have here a price sheet
15 from a concrete block producer that is affiliated
16 with the nation's largest concrete block producer.
17 This price sheet was issued within the last couple
18 of months.

19 It includes their standard pricing and
20 the following warrant in bold print. Blank
21 company -- I will leave the name -- them nameless
22 at this time -- warrants all concrete masonry

1 units to be free of any coal ash. Coal ash is
2 currently under investigation by the EPA to be
3 classified as hazardous waste.

4 Why are they making this warranty? It
5 can be for one reason and one reason only. They
6 are concerned with the possible liability of coal
7 ash even though there is no -- and I repeat, no
8 scientific evidence that the use of coal ash in
9 the production of concrete products is harmful to
10 people or animals or the environment. Their
11 concern is the future liability associated with
12 unscrupulous attorneys and possible class-action
13 suits.

14 This is an example of how sti --
15 significant stigma will be. In the EPA's positive
16 economic justification for a hazardous designation
17 of coal ash, which is required for any such
18 ruling, they have assumed that beneficial reuse
19 will -- will significantly increase due to the
20 hazardous designation.

21 Without this assumption, the hazardous
22 designation is a huge economic loss to the

1 electric con -- consumers of the country. Stigma
2 will cause this.

3 This and other examples of stigma prove
4 the EPA assumption is wrong, and a hazard
5 designation will not increase any coal ash sales.
6 It will effectively kill very successful and
7 environmentally-positive recycling program.

8 The true regulatory options before us
9 for comment today, the Subtitle C hazardous
10 approach and the Subtitle D nonhazardous approach
11 both propose new landfill engineering standards
12 that are essentially the same. Landfills won't be
13 any stronger or better under Subtitle C, but coal
14 recyclers will be saddled with a hazardous-waste
15 stigma that will make continued recycling of this
16 re -- resource difficult or impossible.

17 MR. GENTILE: Thank you.

18 (Applause)

19 MS. DEVLIN: Number 69, please?

20 MR. SILVERTOOTH: My name is Mike
21 Silvertooth with Mineral Resource Technologies,
22 Inc., a Cemex company. We are a full service coal

1 combustion products company and marketing
2 management in North America. I want to thank the
3 EPA panel for giving us this opportunity to
4 address the disposal of CCRs from electric
5 utilities.

6 Besides being one of the full ser --
7 besides being a full-service marketing and
8 management company of CCPs, MRT's key role is to
9 supply our parent company, Cemex, with fly ash,
10 bottom ash, and synthetic gypsum for the
11 production of ready mix, concrete pipe, and cement
12 in the U.S.

13 Our company was recognized by EPA in
14 regards to the C2P2 reward with the enhanced
15 utilization of CCPs in 2008. Specifically, EPA
16 recognized us for internally consuming 2.1 million
17 tons of CCPs annually in our various products. We
18 continue to be the single largest beneficial user
19 of CCPs in the U.S.

20 EPA named Cemex USA Energy Start Partner
21 of the year for outstanding energy management and
22 reduction in greenhouse gases (sic) emissions for

1 the second year in a row in 2009 and 2010.
2 Locally, our Knoxville cement plant received the
3 Energy Star rating in 2008 and 2009 from the U.S.
4 EPA in regards for demonstrating the ability to
5 reduce energy use and protect the environment
6 through energy efficiency.

7 As you can see, our company is dedicated
8 to operating in a sustainable manner that
9 minimized the impact to the environment. The
10 reduction of greenhouse gas is a top priority of
11 EPA, and is also a top priority of our company, as
12 well.

13 The utilization of CCPs is a major
14 portion of our in -- internal efforts to minimize
15 greenhouse gases, and could very well be the
16 single largest source or reducing CO2 year over
17 year. With the utilization of fly ash in our
18 concrete operations alone, we have reduced CO2 by
19 up to 1.6 million tons annually while, at the same
20 time, improving the quality and useful-service
21 life of our concrete.

22 Also, we continue to use CCPs as

1 raw-feed replacement for mined virgin materials
2 for the production of Portland cement. By
3 utilizing CCPs in our cement operations, Cemex sib
4 -- substitutes a portion of the mined raw
5 materials, such as clay, shell, and natural
6 gypsum. This enables us to re -- conserve natural
7 resources, for (sic) land disturbances, and reduce
8 CO2 for mining operations. At the same time, this
9 reduces the amount of CCPs disposed at power
10 plants and avoids the CO2s generated from the
11 disposal activities.

12 Prior to utilize -- utilizing any CCP
13 for raw feed, the material must be tested for
14 total minerals, TCLP metals, and, in some cases,
15 TCLP organic. The test results must conform to
16 all federal and/or state regulations in order to
17 be used in our operations. No material defined as
18 hazardous waste in Title 40, Code of Federal
19 Regulations, Subtitle 261 can be used in any
20 manner.

21 Cemex urges EPA to elect man --
22 management of CCPs under RCRA Subtitle D. This

1 option allows CCPs to be managed under the same
2 similar guidelines proposed under the RCRA
3 Subtitle C option, but allows CCPs to remain
4 classified as a nonhazardous material.

5 Should CCPs fall under RCRA Subtitle C
6 management, there are too many negative variable
7 that will hamper the beneficial use of CCPs and
8 will cripple a large avenue in the reduction of
9 greenhouse gases in our country.

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

12 MS. DEVLIN: Thank you. Number 70,
13 please?

14 MR. WALDROP: Good afternoon. My name
15 is Bob Waldrop, president of Full Circle
16 Solutions. We're a small business that provides
17 beneficial use of coal-combustion products for
18 power plants and other industries in the Southeast
19 and Midwest. We safely recycle CCPs into mulches,
20 potting soils, masonry block, soil amendments, and
21 geotechnical fills.

22 My comments today concern the issue of

1 stigma. The stigma associated with the regulation
2 of CCPs as hazardous waste is real and here with
3 us today.

4 First, our clients that produce masonry
5 block have stated that they will no longer use
6 bottom ash if it becomes labeled as hazardous.
7 They are already seeing competitors advertise that
8 they do not use hazardous materials in their
9 block.

10 Our clients are concerned that any
11 lawsuit will turn into a public -- public
12 spectacle. The mere mention of "hazardous
13 materials" will force them to defend using what
14 has been a safe and effective material for years.
15 No one can possibly think that attorneys will not
16 attack block manufacturers that use what has been
17 labeled "hazardous."

18 Second, we have lost two major
19 construction projects due to a hazardous label.
20 The first was a development in eastern Virginia
21 that would have enhanced property values and the
22 tax base of a small rural county. County

1 officials stated that they liked the project and
2 want to approve without the use of CCPs; however,
3 if CCPs were used, they would deny approval
4 because they did not want to get involved with a
5 hazardous project.

6 The second project, an industrial park,
7 also in eastern Virginia, would have provided land
8 ready for an industry to build upon, even though
9 we proved the environmental safety of a properly-
10 constructed geotechnical fill, the owners backed
11 away because, in their words, EPA thinks this may
12 be hazardous.

13 More recently, standard ways of
14 conducting any business have changed for the CCP
15 industry. This is the result of the negative
16 stigma from EPA's proposal to regulate CCPs as a
17 hazardous waste.

18 One of our business loans was up for
19 renewal, and the loan was collateralized with the
20 industrial and commercial properties developed
21 with CCPs. As part of the refinance, the bank
22 ordered Phase I Environmental Assessments. These

1 properties have had several Phase I assessments
2 performed in the past. They have always been
3 clean.

4 However, this time, due to the presence
5 of CCPs, the environmental consultant directed the
6 bank to have a Phase II study done. When
7 challenged with the facts, including years of
8 groundwater and surface water monitoring data
9 which proved these sites are clean, the con --
10 consultant could only say that since EPA is
11 considering these -- regulating the CCPs as
12 hazardous, then it must be bad.

13 The bank has decided they will not renew
14 the loan. If they call that loan, good people are
15 going to lose their jobs.

16 The stigma issue is real. It's
17 affecting CCP companies today. Therefore, we urge
18 EPA to make an informed decision on the regulation
19 of CCPs and ben -- and beneficial recycling of
20 these valuable materials. If EPA truly supports
21 recycling, Subtitle D is the answer. Thank you.

22 (Applause)

1 MR. GENTILE: Thank you. May I have
2 Numbers, 71, 73, 75, and 92 and 98. And again,
3 we've bit -- a bit out of order on those two, just
4 trying to fit some people in. So Number 71,
5 please? Thank you.

6 MR. FARRAR: Good afternoon. My name is
7 Tyler Farrar. I'm the agricultural marketing
8 specialist for Full Circle Solutions, Inc.

9 It is my job to educate farmers on all
10 the wonderful benefits of CCRs, specifically with
11 FGD gypsum. Some of the benefits are increased
12 crop yields, improved soil quality, control of
13 erosion from soil runoff, and the limited movement
14 of fertilizers and chemicals into nearby streams.

15 The chemical constituents of CCRs are
16 commonly found in many everyday products and
17 natural materials, such as soil, rock, and other
18 parts of the earth's crust. Agriculture
19 represents the largest untapped potential market
20 for beneficial uses of this valuable resource.

21 I have two specific issues I would like
22 to address. The first one is the extensive

1 research that the USDA, EPA, and state
2 universities have done with CCRs and FGD gypsum.
3 Decades -- decades of research has been done to
4 show the functional benefits of FGD gypsum.

5 FGD gypsum substitutes for the use of
6 virgin materials. It is applied at appropriate
7 agronomic rates, and the use of which meets
8 applicable standards.

9 Designating CCRs as hazardous or toxic
10 is counter to scientific evidence, and would
11 seriously limit the current use of these
12 materials. EPA and other governing bodies have
13 determined that they are nonhazardous, and
14 regulation under Subtitle C is unwarranted.

15 The second issue is stigma. I'm a
16 fifth-generation farmer. We spend our lifetime
17 being stewards of the land, typically living where
18 we farm. Farmers would not take the risk of
19 damaging their livelihood by applying materials to
20 the land that is designated as a hazardous
21 substance. Our farms are passed down through the
22 generations. And the EP -- EPA proposed Subtitle

1 C or D labeled a special waste would damage the
2 productive capacity or value of the land for
3 future generations.

4 In our grain and reusable society, it is
5 in our best interest to continue to reuse
6 products, such as CCRs, that help us live more
7 productive and enjoyable lives. CCRs directly and
8 directly contribute over \$4.5 billion annually to
9 the United States economy and thousands of jobs.
10 In the current state of our economic situation, a
11 Subtitle C classification would devastate small
12 businesses and individual towns that depend on our
13 industry for survival.

14 Many people pride themselves on efforts
15 to recycle paper, glass, cans, and cardboard.
16 These recycle strategies are employed widely in
17 the United States to help cut down the need for
18 landfills and conserve limited reser -- sources.

19 Please allow us to continue this
20 tradition by keeping CCRs as Subtitle D. Thank
21 you.

22 (Applause)

1 MS. DEVLIN: Thank you. Number 73,
2 please? 73? Not here. 75? Thank you.

3 MS. AMYX: Hello. My name is Alison
4 Amyx, and I'm the communications and outreach
5 director of Georgia Interfaith Power & Light,
6 which is an organization dedicated to helping
7 communities of faith care for God's creation.

8 I'm here today to voice my support for
9 EPA regulations that would treat coal ash as a
10 special waste under Subtitle C of the Resource
11 Conservation and Recovery Act. I urge the EPA to
12 adopt enforceable federal safeguards to protect
13 our ecosystem from the pollutants in coal ash.

14 As it stands, communities across the
15 country are being exposed to heavy metals, such as
16 arsenic, lead, and mercury. These heavy metals
17 seep from coal ash storage sites into our drinking
18 waters, rivers, and streams.

19 As a person of faith, I believe that
20 this is unacceptable. God created the world and
21 called it good, and we are called to be stewards
22 of God's creation to keep it clean so that

1 generations to come will also have a chance to
2 enjoy it.

3 Unfortunately, as we all know, burn
4 coaling is a dirty business, and the coal ash
5 waste has to be stored somewhere. Regulating its
6 disposal and ensuring that it's stored properly
7 are just a couple of ways that we can lessen our
8 impact on the created world. We have a moral
9 obligation to ensure that all citizens have access
10 to clean water and a clean environment.

11 There are faith communities all over the
12 state of Georgia and across the country who are
13 working to reduce their dependance on fossil
14 fuels. But even as we do all we can in our
15 congregations and we can in our personal lives,
16 and even as we invest in clean-energy
17 alternatives, we must work to mitigate the
18 consequences of burning coal in the meantime.

19 So in conclusion, I urge the EPA to
20 regulate coal ash under Subtitle C so that we can
21 protect the creative world and ensure that we
22 leave the gift of a clean world to future

1 generations. Thank you.

2 (Applause)

3 MS. DEVLIN: Thank you. Number 92?

4 MR. SILVER: Good afternoon. My name is
5 Derrick Silver, manager of Full Circle Solutions,
6 Petersburg Virginia Operations.

7 Over the past 20 years, I have helped
8 construct dozens of geotechnical fill projects with
9 coal combustion products. In compliance with
10 existing state regulations, these fills have al --
11 always been constructed in a manner that protects
12 both groundwater and surface waters.

13 Before starting a field, we carefully
14 examine the environmental setting. Qualified
15 professionals identify the extent of groundwater,
16 surface waters, and wetlands. The project is then
17 de -- designed to give many forms of protection to
18 these valuable resources.

19 Setbacks are put in place to allow for
20 large buffer areas. The buffer areas allow for
21 soil attenuation of vegetation screening. Before
22 placement of CCPs begin, sedimentation basins,

1 soil berms, silt fencing, runoff and runoff
2 ditches and other storm water control devices are
3 installed. These measures ensure that CCPs do not
4 enter any surface water.

5 The first CCP placed in is bottom ash.
6 We placed one foot of bottom ash at the bottom of
7 every CCP fill to allow for drainage and any rain
8 water that comes through -- through the field.
9 Water in the drainage layer is routed to sub --
10 sub -- excuse me, sediment basins where it's
11 contained (sic) with storm water. This water is
12 then recycled for dust control and proper
13 compaction.

14 Placement of CCPs is done with method
15 far exceeds those from earth fills -- earthen
16 fills. Properly compacted fills prevent storm
17 water infiltration. We test compaction ten times
18 more than normal for the earthen fills.

19 Sloping also provides for positive
20 drainage, unlike earthen fills. A top slope, at
21 least 2%, is constructed. Phasing of CCP fills
22 also limits water infiltration, will limit the

1 amount of CCP fill area an inactive at any given
2 time.

3 As soon as each phase has been
4 completed; we cover the CCPs. The proper cover
5 placed over a CCP fill also helps prevent any
6 storm water intrusion. We replace a minimum of
7 two feet of dirt over CCPs. We don't use any --
8 just any dirt. We make sure that the dirt placed
9 on the fill is compatible, suiting the growth of
10 grasses and other vegetation.

11 Grassing is then completed and just not
12 imported, it's maintained. We periodically reseed
13 anything in areas to mow, as well as to keep it
14 healthy. These are but a few of the controls we
15 design and build for any CCP geotechnical fills.

16 Though participation in the state
17 regulation process, we have made certain that
18 these and other controls have been written in
19 Subtitle D, solid waste regulations. I'm sorry.
20 Thank you.

21 MS. DEVLIN: Thank you.

22 (Applause)

1 MS. DEVLIN: May I have Numbers, 76, 77,
2 78, and 96? Number 76, please?

3 MR. DONAHUE: Good. afternoon. My name
4 is -- my name is Bob Donahue. I'm the power wise
5 program director for Georgia Interfaith Power &
6 Light.

7 Alison just talked about our
8 organization, so I won't repeat that. But my role
9 is to work with the faith-based community in
10 implementing energy efficiency programs throughout
11 churches, synagogues in Georgia. I wish to thank
12 you for the opportunity to speak on this important
13 issue today.

14 Over the years, I've seen the results of
15 sel -- self-regulation and minimal regulation by
16 industry. The record is not good: Climate
17 change, Gulf oil spill disaster, Tennessee coal
18 ash spill, mercury throughout the food chain just
19 about everywhere you go.

20 In a previous career, I was director of
21 site assessment operations in its superfund
22 hazardous ranking system program within U.S.

1 corporation. There I had seen 30-foot high slag
2 piles filled with chromium and arsenic directly
3 across the street from elementary schools, and
4 also on the banks of the Anclote River in Tarpon
5 Springs, Florida. I also witnessed and
6 investigated toxins in the public water supply for
7 2 million people in Miami originating from
8 industrial septic tanks permitted with minimal
9 standards.

10 So after 40 years of working for
11 government and business on environmental problems
12 throughout the southeast, I do not have confidence
13 at all in industries self-regulation or minimal
14 regulation. So the question before us today:
15 Should we have stricter environmental regulations
16 and safeguards for 130 million tons of coal ash
17 laced with chromium, arsenic, lead, and mercury,
18 many of which contain contaminant levels in excess
19 of those found at the nation's most dangerous
20 superfund hazardous waste sites?

21 My initial reaction is "Duh." My
22 professional reaction is "Yes, I strong --

1 strongly recommend EPA institute Subtitle C
2 regulations for storage of coal ash." I want to
3 thank you for the time to speak here today on this
4 important topic. Thank you.

5 (Applause)

6 MS. DEVLIN: Thank you. Number 77,
7 please? State your name.

8 MS. GRIFFITH: We've not welcomed you.
9 Thanks for coming.

10 MR. GENTILE: Thank you.

11 MS. GRIFFITH: My name is Gloria
12 Griffin, and I'm a Tennessee Sierra Water
13 Sentinel.

14 EPA's own research has documented dozens
15 of cases of pollution that has escaped coal ash
16 sites. The EPA must classify coal ash as a
17 hazardous waste, which would provide a strong
18 oversight vehicle for the 141 million tons of
19 toxic coal ash produced in the U.S. each year.

20 Coal ash is a dangerous mixture of
21 arsenic, lead, mercury; selenium, accumulative
22 toxic brew. When improperly disposed of, it

1 contaminates drinking water supplies, surface
2 waters, and our communities.

3 There are thousands of these
4 poorly-managed and poorly-maintained coal ash
5 sites across the United States. Coal ash is
6 hazardous and must be regulated under the most
7 protective provisions of the U.S. hazardous waste
8 laws.

9 The true cost of coal ash will never be
10 known, might never be known, but Tennessee knows.
11 Tennessee knows the water quality in the Emory
12 River at the site of the TV coal ash disaster has
13 been impaired, and the aquatic habitat has been
14 destroyed.

15 The true cost of coal ash may never be
16 known; but Tennessee knows that the health re --
17 assessment report did not gave a clean bill of
18 health to the impacts of this disaster. It
19 concedes that the Kingston ash is dangerous,
20 containing levels of arsenic well above the
21 background arsenic in the area.

22 Coal ash -- the true cost of coal ash

1 may never be known, but Tennessee knows that a
2 hydrogeological investigation has not been done in
3 the disaster area and, therefore, the health
4 assessment could not effectively ascertain impacts
5 to human health from contaminated drinking water.

6 Tennessee knows coal ash cannot be left
7 to the state monitoring. Tennessee will never
8 regulate coal ash. They never have and they never
9 will.

10 Tennessee knows. Tennessee knows
11 communities all over the country currently near
12 coal ash storage -- storage sites are in sacrifice
13 zones.

14 The EPA knows coal ash is a poison-laced
15 concoction. I ask EPA only to believe in its own
16 findings on this issue and do the right thing by
17 protecting people, not coal-industry profits. I
18 urge EPA to adopt the stronger regulation, Option
19 C, to protect ground and surface water, ensuring
20 safe and healthy communities. Thank you.

21 (Applause)

22 MS. DEVLIN: Thank you. Number 78,

1 please?

2 MR. WHITWORTH: I'm Dean Whitworth. And
3 the combustion of coal releases a number of toxic
4 substances, substances that have been sequestered
5 in the earth for millions of years. And when we
6 burn coal, we release many of these substances
7 into the atmosphere. And ultimately, I end up
8 breathing, drinking, and eating them. The
9 remainder of these materials are in the ash.

10 Therefore, it is entirely appropriate
11 and prudent that we do everything technologically
12 feasible to prevent this portion from escaping
13 into our environment. Therefore, I request, I
14 expect, and I demand that combustion residuals
15 from electric utilities be regulated under
16 Subtitle C.

17 (Applause)

18 MS. DEVLIN: Thank you. Number 96?

19 MR. LEMAIRE: My name is Walter LeMaire,
20 director of Mineral Resource Technologies, MRT.
21 MRT is a coal combustion product marketing and
22 management company that promotes, manages, and

1 expands the developed beneficial applications for
2 CCPs along with our sister companies.

3 I would like to thank today's EPA panel
4 for giving me the time to addresses the recent
5 proposal for the disposal of coal combustion
6 residuals from electric utilities.

7 MRT and its parent company, Cemex, use
8 CCPs, including fly ash, bottom ash, and synthetic
9 gypsum in its cement construction products,
10 concrete pipe, ready mix con -- ready mix concrete
11 manufacturing operations, and we promote the
12 beneficial use of CCPs to external customers. We
13 are continually expanding the applications where
14 beneficial use of CCPs can add value to and lower
15 the environmental impact of the construction-
16 materials industry, both internally and for our
17 external customers.

18 The beneficial use of CCPs saves virgin
19 resources, lowers the cost of electricity
20 generation, reduces energy consumption, lowers
21 greenhouse gas emissions, lowers the end-user cost
22 of concrete products, and reduces the need for

1 landfill space which further lowers the impact on
2 the environment.

3 MRT and Cemex understand the importance
4 of sustainable development, and continually seek
5 ways to reduce the environmental impact of our
6 operations by balancing materials demand with a
7 commitment to environmental sustainability. We
8 conduct business with respect and care for the
9 environment as evidenced by our consecutive Energy
10 Star Partner of the Year awards in 2009 and 2010.

11 Another example is our participation in
12 the Coal Combustion Products Partnership, C2P2,
13 which is a joint government and industry program
14 to increase the beneficial use of coal combustion
15 products and to reduce energy consumption,
16 greenhouse gas emissions, and to increase
17 industrial recycling. We're committed to
18 preserving and improving ecologies in which we
19 operate and devote considerable resources to
20 environmental quality efforts.

21 MRT fully supports the EPS's proposes
22 RCRA Subtitle D option to manage CCPs. This

1 option increases the existing physical
2 requirements and management guidelines of CCPs on
3 a federal level almost identical to RCRA Subtitle
4 C option, but allows CCPs to remain clearly
5 classified as a nonhazardous material.

6 Should the EPA choose to reclassify CCPs
7 under RCRA Subtitle C, the encapsulated beneficial
8 uses supported by the EPA could be severely
9 limited or potentially eliminated due to
10 end-consumer returns.

11 I would like to thank EPA panel for
12 allowing my company to address some of our
13 concerns.

14 (Applause)

15 MS. DEVLIN: Thank you. May I have
16 Numbers 80, 82, 83, 109, and 125. Are you Number
17 80? Please come forward.

18 MR. BRUCKER: (coughs) Excuse me. My
19 name's Gerry Brucker, and I've worked in the coal
20 reclamation industry now for the past 9 years.
21 I've worked with heavy equipment now for the past
22 28 years.

1 I've been involved in numerous
2 beneficial reuse projects in -- in -- over three
3 states, and have seen firsthand the positive
4 impact to both the industry and the communities in
5 which the projects were completed. In each case,
6 both the local communities and the businesses are
7 able to expand and provide jobs for local
8 citizens, as well expanding their infrastructure.

9 I've al -- I've also seen in the pa --
10 in the past few months the reduction in the number
11 of these types of projects, not only due to the
12 economic slowdown, but also because of the
13 negative publicity of the coal ash controversy. I
14 strongly disagree with the need to label coal ash
15 as a hazard -- hazardous material, and believe
16 that the negative stigma attached to the coal ash
17 by this label is -- will completely halt the
18 beneficial reuse programs that have been
19 established for the past between 20-years plus.

20 I find the concept that the labeling of
21 this material is hazardous in order to
22 artificially increase the disposal costs of the

1 coal ash in order to promote its reuse as being
2 totally without merit or basis. Those of us in
3 the ash recycling community understand that the
4 vast majority of coal ash reuse is in the
5 construction area, and that the construction
6 market will totally turn away from ash reuse due
7 to the stigma attached with laz -- labeling it as
8 hazardous.

9 I strongly ask you to leave it as it is,
10 Subtitle D.

11 (Applause)

12 MS. DEVLIN: Thank you. Number 82,
13 please?

14 MR. WALLS: For the record, my name is
15 Jeremy Walls.

16 Good afternoon. I would like to thank
17 you for the time today to con -- convey my
18 position on this proposed subtitle change for coal
19 fly ash.

20 I have worked for the Headwaters
21 Resources for 11 years, and I wanted to use the
22 time allotted to me to discuss the topic of

1 discontinued use and the inev -- inevitable stigma
2 which is going to be placed on the beneficial use
3 of fly ash if Subtitle C is adopted.

4 From the beginning of time, we have been
5 harvesting the earth's resources for its energy
6 and beneficial use. We have taken resources from
7 the earth to create products and processes to --
8 to benefit man in some way, form, or fashion, for
9 instance, the use of wood and stone for use for
10 fire and heat, also for making weapons to obtain
11 food. So just look how far we have come since
12 then.

13 Over thousands of years, man has
14 continually been discovering new and innovative
15 ways to use the natural resources and improve the
16 processes by which they are used. We are blessed
17 to have these resources for our continued use.

18 Today we are still using materials that
19 keep us evolving into a people of great
20 achievement and innovation. The use of coal for
21 power generation has been strictly regulated for
22 years, and continues to improve.

1 Yes, there are alternatives; however,
2 they are costly and years from being able to
3 replace coals from -- coal's role from power
4 generation. So the continued use of coal power,
5 without the ability of beneficial use of fly ash,
6 lacks logic. In my opinion, designating coal
7 combustion byproducts as a hazardous waste would
8 inhibit power- generation innovation and, in turn,
9 set us back for years to come.

10 I'll take this opportunity to remind you
11 of a long-term implication of the designation
12 change. This is a step back -- this is a step
13 back for the continued use of our natural
14 resources in a responsible manner. The disposable
15 -- disposal of a beneficial re-useable material
16 that is going to wear the label "hazardous," such
17 as a rapist, a thief, or a murderer, once
18 convicted, you will always be just that and no
19 longer a use to society but a burden.

20 (Applause)

21 MS. DEVLIN: Number 83, please?

22 MR. DOLES: Good afternoon. My name is

1 Jim Doles, and I've worked for Headwaters for 12
2 years in engineering and research and development.

3 Previously, fly ash has been reviewed by
4 the EPA and found nonhazardous. Scientists are --
5 scientific research supports this outcome. The
6 recent failure of the ash impoundment in Kingston,
7 Tennessee has -- which has brought the spotlight
8 on ash, was related to a civil-engineering
9 failure, not a failure of the product being
10 contained.

11 Regulating the use of CCPs as hazardous
12 will give it -- have a neg -- negative impact on
13 beneficial use, therefore creating need for more
14 land fills. And people don't like land fills,
15 either.

16 Wind and solar power are clean, but with
17 the fraction of power that they supply and the
18 many years it will take to build their
19 infrastructure, EPA should not phase out coal so
20 quickly. The dependence on coal can and won't --
21 can't and won't go away soon. These regulations
22 will raise power bills and just be transferred to

1 the general public.

2 Beneficial use of ash has been around
3 for years with the environmentally-friendly state
4 of California requiring the highest Portland
5 cement replacements with fly ash. The impact even
6 by the media on oil spills and ash pond problems
7 are negative. Positive things don't get news
8 attention.

9 Let's try to utilize several hundred
10 years of coal reserves to keep jobs in America. I
11 ask the EPA to continue regulating CCPs as
12 Subtitle D, encouraging its continued beneficial
13 use in building materials and other
14 environmentally- friendly products. Thank you.

15 (Applause)

16 MS. DEVLIN: Okay. We're running a bit
17 ahead of schedule, so I'd like to try to fit in
18 some people who registered today. Numbers 261,
19 262, 263, and 264, are you in the audience? Thank
20 you. Thank you. You're Number 261?

21 MR. MOREHEAD: Yes, ma'am.

22 MS. DEVLIN: Thank you.

1 MR. MOREHEAD: Good afternoon. My name
2 is Tupper Morehead, and I am a Franciscan serving
3 in the Episcopal diocese of East Tennessee. And I
4 live in Norris, Tennessee.

5 I'm also a recently retired physician.
6 I served as a state public health officer for six
7 current and former coal mining counties in east
8 Tennessee: Anderson, Campbell, Claiborne, Morgan,
9 Scott, and Union Counties. I am knowledgeable
10 about the toxic and hazardous adverse effects of
11 coal ash.

12 I refer you to the website of Physicians
13 for social Responsibility, www.psr.org, of which I
14 am a member. I am also a senior fellow and member
15 of the American College of Obstetricians and
16 Gynecologists; thus, I am vocationally and
17 professionally very interested in the metabolic
18 and teratological effects of the elemental and
19 chemical components of coal waste upon pregnant
20 women, the developing fetus, and young children.

21 It is clear to me that EPA should adopt
22 Subtitle C as a first step in stringently

1 regulating the coal industry for the well-being
2 and health of American people. It is the -- the
3 role of the EPA to protect the environment. Its
4 mission is not to create jobs or prevent job loss.
5 Its role is not to protect corporations,
6 lobbyists, the powerful, the affluent, or
7 investors.

8 The EPA was created for one single
9 purpose: Protect the environment. Protect the
10 sacramentality of creation and all of its
11 creatures. I urge you to adopt Subtitle C. Thank
12 you.

13 (Applause)

14 MS. DEVLIN: Thank you. Number 262?

15 MS. MCWHERTER: My name is Lisa
16 McWherter, and I'm a resident of Asheville, North
17 Carolina, and a -- a member of Sierra Club, and
18 also a physical therapist practicing in Asheville,
19 North Carolina.

20 And again, I have concerns about the
21 health -- and as far as economics goes, when you
22 look at the economics of being able to recycle

1 these coal ash products as opposed to the
2 economics of all the healthcare issues that we, as
3 taxpayers, are going to be paying that burden from
4 all these healthcare issues, as far as just
5 economics, it just doesn't make sense to not
6 regulate these things that are known as toxins, to
7 regulate them as toxic substances. So I -- again,
8 I would urge you to adopt Subtitle C.

9 Another issue is that in our Progress
10 Energy steam power plant in Arden, North Carolina,
11 there's been some groundwater pollution and
12 there's been some -- the -- the -- the coal ash
13 ponds spill directly into the French Broad River
14 there, and there have been high levels of arsenic
15 in the fish. 35% of the fish in -- in one study
16 were found at arsenic levels higher than what is
17 considered safe for human consumption.

18 And I have great concern about that.
19 And I know that these coal ash ponds are all over
20 the country, and I'm concerned about regulating
21 them.

22 I'm also concerned with the, quote,

1 "beneficial uses" of the coal ash in solid
2 materials as far as the safety of that. I would
3 not want to eat out of dishes that had glaze on
4 them with lead, which leaches out. And I have
5 great concern about leaching from these concrete
6 and other solid materials that are used -- that
7 are taken from the coal ash.

8 And concrete is not made in -- made as a
9 permanent substance. It does break down, it
10 crumbles, and it makes dust.

11 So I think there, again, we should look
12 at that as a toxic waste, and definitely consider
13 where we're using it and how we dispose of it.
14 Thank you.

15 (Applause)

16 MS. DEVLIN: Thank you. Number 263,
17 please?

18 MS. PIRAINO: Hi. My name is Laura
19 Piraino. Thank you for hosting this meeting and
20 listening to our regional community.

21 I am deeply concerned about the impact
22 of coal ash in western North Carolina. North

1 Carolina has 12 high-hazard coal ash dumps, more
2 than any other state. These include Progress
3 Energy's Asheville plant 1964 and 1982 ponds in
4 Arden, which are about 10 miles from my house in
5 Asheville. In -- in October 2009, Appalachian
6 Voices study revealed that all of these
7 high-hazard dumps in our state are contaminating
8 groundwater with toxic pollutants.

9 Last year, high levels of arsenic were
10 discovered in water and sediment samples collected
11 downstream from the Asheville plant on the French
12 Broad River. I do not feel that the state
13 agencies or the coal companies are going to
14 protect me, my two children, or my neighbors from
15 this unacceptable health risk.

16 Like many Asheville residents and
17 visitors, I have a lifestyle that centers around
18 outdoor recreation. The larger French Broad River
19 watershed, trout and small mouth bass fishing are
20 very popular, as are kayaking, rafting, tubing,
21 cycling and camping. Many local recreation
22 companies feature river-based activities,

1 including float trips leaving directly from the
2 Biltmore estate.

3 Contamination not only threatens our
4 water supply, but also threatens our unique
5 culture and outdoor recreation tourist industry.
6 The visitors attracted to our area include many
7 scientists due to the incredible biodiversity
8 found in western North Carolina, which supports so
9 much flora and fauna, it hasn't even been fully
10 catalogued yet.

11 A large-scale spill, more likely without
12 federal regulation, would be disastrous to this
13 ecosystem of international importance to the
14 scientific community. Contained air, soil, and
15 water negatively affect our strong local foods
16 movement, threatening the progress we have made in
17 local food security. Our restaurants in Asheville
18 are nationally renowned for featuring
19 farm-to-table dishes, including the local cow --
20 trout caught in that river and raised in this
21 watershed.

22 Much of the strength of our housing

1 market relies on marketing our pristine mountain
2 air, water, and land; yet our state allows coal
3 ash to be used as construction fill, requiring no
4 groundwater monitoring, no regular inspections, no
5 permits, and no liners. Continued discovery of
6 toxic contamination will have a profoundly
7 negative effect on our property values already
8 threatened by the current recession.

9 We need enforceable federal protections
10 for this dangerous toxic material. A strong
11 federal rule can ensure 100% compliance, prevent
12 these health problems, avoid costly water
13 cleanups, and prevent massive disasters like the
14 Tennessee spill.

15 I support the EPA's plan to regulate
16 coal ash as special waste under Subtitle C. Thank
17 you very much for your time.

18 (Applause)

19 MS. DEVLIN: Thank you. May I have
20 Numbers 88, 91, 94, 95, and 98. Number 88? Thank
21 you.

22 MS. PRESTON: Good afternoon. My name

1 is Katie Preston, and I am the operations director
2 and south Georgia director for Georgia Interfaith
3 Power & Light.

4 Our mission is to engage communities of
5 faith in stewardship of God's creation as a direct
6 reflection of our faithfulness through worship,
7 education, and the sustainable generation and
8 efficient use of energy.

9 I am here to ask the EPA to support
10 Subtitle C and to regulate coal ash as a hazardous
11 waste. As a citizen of Georgia, I am appalled to
12 know that none of Georgia Power's 11 power plants
13 with coal ash surface impoundments are properly
14 regulated. Without regulation like that found in
15 Subtitle C, these impoundments are leaching deadly
16 chemicals into our environment. Chemicals like
17 mercury and arsenic, which can cause death, should
18 not be allowed to stream unregulated into our
19 environment.

20 As stewards of creation, we are called
21 to stand up and speak out against such atrocities.
22 God created this world for us as a gift and as a

1 life force to support us. And instead of
2 respecting that gift and feeling a sense of awe
3 for all that is within the world, we are
4 destroying it with our need to consume.

5 Georgia Power, a subsidiary of the
6 Southern Company, lives to consume our natural
7 resource of coal, and produces large amounts of
8 unregula -- unregulated coal ash in the state of
9 Georgia. They say that we do not need regulation,
10 and that we cannot afford the regulation because
11 they will pass the costs on us, the consumers.
12 But what we cannot afford is the unregulation of
13 coal ash and the destruction of our environment.

14 Southern Company has had serious
15 problems with its unregulated coal ash
16 impoundments in the past. And in 2002, before
17 anyone heard about the TVA Kingston spill, a
18 sinkhole opened up in impound -- impoundment at
19 Georgia Power's Plant Bowen in Bartow County,
20 George, eventually covering 4 acres and reaching
21 30 feet in depth. No one heard about it. The
22 structure's failure released 2.25 million gallons

1 of water and a coal ash mix into a tributary that
2 fed into the Etowah River, which in turn provides
3 drinking water downstream.

4 Contamination of the environment and
5 water supplies with toxic levels of arsenic, lead,
6 and chemicals is a pervasive reality at America's
7 coal ash disposal sites because states do not
8 regulate it. The case for a national regulation
9 setting commonsense safeguards for states to meet,
10 such as liners, monitoring, and cleanup standards,
11 could not be more persuasive. It is time for the
12 EPA to join us in our call to be stewards of
13 creation, and to stand with us to regulate coal
14 ash.

15 I urge the EPA to adopt Subtitle C and
16 to put an end to the destruction of God's gift of
17 creation. Thank you.

18 (Applause)

19 MS. DEVLIN: Thank you. Number 91,
20 please?

21 MS. MCCLURE: My name is Matt McClure,
22 and I'm a professional engineer in JEA's

1 environmental permitting and assessment's
2 department. JEA is a municipally-owned nonprofit
3 utility providing water, sewer, and electric
4 services -- services for a three-county region in
5 northeast Florida.

6 From the regulatory options on the table
7 at this point, JEA urges EPA to pursue the
8 Subtitle D prime approach. JEA believes that CCRs
9 do not rise to the level of hazardous wastes, and
10 that regulating them as such would provide
11 marginal environmental benefit at a great cost.

12 As a utility in Florida, a Subtitle C
13 regulatory framework would not be practical.
14 Florida has a statutory prohibition against the
15 permitting of hazardous waste landfills, as well
16 as a prohibition against considering byproducts
17 for reuse if they are otherwise hazardous waste.

18 JEA would be forced to send its CCRs to
19 other states for disposal as hazardous, and EPA
20 has already highlighted the lack of capacity
21 associated with such an outcome in its preamble.
22 State statutory changes needed to accommodate this

1 hazardous-waste listing would be expected to have
2 a low probability of -- of success for obvious
3 reasons.

4 The cost to JEA of managing its CCRs as
5 hazardous waste would be prohibitive, and would
6 come at a time when we have already been forced to
7 enact a series of rate hikes due to adverse
8 business conditions. A subtitle C approach,
9 combined with a multitude of other environmental
10 initiatives simultaneously being pursued by EPA at
11 this time, would place JEA and its owners, the
12 citizens of northeast Florida, in a bind.

13 Regarding the Subtitle D or D prime
14 approaches, JEA would point that the one size fits
15 all national standards being proposed do not allow
16 enough flexibility for utilities to operate
17 efficiently; and using corporate websites as an
18 enforcement tool would seem to be a path toward
19 unproductive litigation. More flexibility is
20 needed in the framework of the regulations for
21 equally protective but different liner systems,
22 including dual-synthetic membrane systems;

1 alternative groundwater monitoring programs in
2 zones of discharges; and processing practices,
3 such as slurry systems, where the CCRs react and
4 solidify within a short time of conveyance.

5 Additionally, the Subtitle D approach
6 should not penalize states like Florida that are
7 already regulating the beneficial use of CCRs, as
8 well as the disposal CCRs at new facilities under
9 a qua -- quasi Subtitle D approach already.

10 JEA urges EPA to more carefully consider
11 a statutory path toward a regulatory framework
12 tailored specifically to CCRs to follow neither
13 Subtitles C nor D. JEA believes that rather than
14 in using a somewhat overreaching approach, there
15 would be congressional support to provide EPA the
16 authority to approve state programs that meet EPA
17 parameters, allowing states like Florida to manage
18 the issue in a way that best serves its citizens
19 while retaining enforcement authority for those
20 states that do not.

21 And I thank you for allowing me to
22 address the audience.

1 (Applause)

2 MS. DEVLIN: Thank you. Number 94,
3 please?

4 MS. HAMPTON: Good afternoon. My name
5 is Shanda Hampton of Full Circle Solutions. We
6 specialize in the safe and effective recycling of
7 coal combustion products.

8 Working in our company's accounting
9 department has allowed me to see how EPA's
10 regularity proposal has already affected our
11 company. The negative stigma coming from the
12 EPA's regulatory has hit us hard. The loss of the
13 projects considered to be hazardous has forced us
14 into more expensive ways to handle the CCPs with
15 no additional revenue.

16 To remain a viable company, we have had
17 to lay off a number of employees, reduce pay and
18 benefits for the remaining employees, and find
19 many other cost reductions. Negative stigma is
20 real, and is already hurting real people.

21 Personally, I am greatly concerned about
22 EPA's proposal. With this failing economy, my

1 husband has not been able to find full-time work
2 in over two years. We have three young children to
3 support on my reduced salary alone.

4 A decision by EPA to unnecessarily
5 regulate CCPs as a hazardous waste may very well
6 cost me my job. Putting more families on welfare
7 is not what this country needs.

8 Therefore, I urge EPA to make the right
9 decision: Regular CCPs under Subtitle D. Thank
10 you.

11 (Applause)

12 MS. DEVLIN: Thank you. Number 95,
13 please?

14 MS. SALTER: Good afternoon. My name is
15 Tabitha Salter with Full Circle Solutions.

16 In my position as human resource
17 manager, I have the opportunity to work with every
18 employee in our company both professionally and
19 personally. Even though environmental regulations
20 are not an area of my strength for me, I have seen
21 the effects of the EPA's proposal and what it has
22 already done to our employees. Jobs have been

1 affected.

2 Soon after the EPA began considering
3 regulating coal combustion products as a hazardous
4 waste, our company lost two key projects. These
5 were structural fill projects that would have been
6 very beneficial to the communities in which they
7 were to be built. However, due to the stigma
8 associated with what might be called as "hazardous
9 material," they were turned down and we were
10 forced to seek other ways to manage our client's
11 coal combustion product.

12 As a result, we lost over 15% of our
13 workforce. This included employees at every level
14 of company. We lost managers, truck drivers,
15 equipment operators, and laborers. These were
16 good employees who had been with our company for
17 many years. They did not deserve to lose their
18 jobs as a result of this neg -- negative stigma.

19 As a human resource manager, I also work
20 with our employees' health issues. I understand
21 that many people who are not familiar with coal
22 combustion products have commented on their

1 concerns over the effects exposure to coal
2 combustion products may have on their health or
3 the health of their families.

4 Our employees have direct exposure with
5 coal combustion products every day. We monitor
6 their exposure and review any potential impacts
7 that ex -- exposure may cause on their health. In
8 over 20 years of operations, we have never had any
9 employee's health negative -- negatively affected
10 by the exposure of coal combustion products.

11 Negative stigma is the real issue here,
12 not health effects. Therefore, we urge the
13 Environmental Protection Agency to make the right
14 deci -- decision and re -- regulate coal
15 combustion products, including beneficial
16 structural fills, under Subtitle D. Thank you.

17 MS. DEVLIN: Thank you.

18 (Applause)

19 MS. DEVLIN: Okay. Okay. May I have
20 Numbers 85, 87, 98, 100, and 211? I know I'm
21 jumping around a bit, but -- but we're doing it as
22 the order -- as -- as I know people have signed

1 in. So don't worry if I seem to skip over you. I
2 -- I will get back to all of the numbers. So
3 Number 85, please?

4 MR. GILBERT: Good afternoon. My name
5 is Steven Gilbert, and I'm here to speak in
6 support of designating coal ash as a special waste
7 and regulated by Subtitle C.

8 I have a Ph.D. in toxicology, and I'm a
9 diplomat in the American Board of Toxicology, and
10 found and director of the Institute for
11 Neurotoxicology and Neurological Disorders, and an
12 affiliate professor at the University of
13 Washington Development of Environmental and
14 Occupational Health Sciences.

15 I am here to -- today representing the
16 Physicians for Social Responsibility. I am
17 president of the board of the Washington
18 Physicians for Social Responsibility and on the
19 national board of the Washington Physicians for
20 Social Responsibility, and a grandfather deeply
21 concerned about future generations.

22 The coal ash spill that inundated

1 Tennessee occurred at a time that caused the least
2 acute effects on human health, as in no was
3 killed. Everyone was very lucky, except the
4 economical damage was enormous and there was
5 serious consequences for many families.

6 While I commend the emergency response
7 and subsequent monitoring by the EPA and the
8 report by the Tennessee Department of Health, the
9 broader is one of protecting human and
10 environmental health from coal ash waste. Coal
11 combustion waste with its many contaminants is the
12 second largest industrial waste treatment in the
13 United States.

14 We have an ethical responsibility to
15 protect the most vulnerable among us from exposure
16 to arsenic, mercury, and other coal ash
17 contaminants in the air we breathe, the water we
18 drink, and the dirt we play in. This is
19 particularly important for children who are not
20 little adults as they eat -- eat more, drink more,
21 breathe more than adults are more vulnerable to
22 the health effects from asthma to cancer to

1 neurological disorders. All clean-up standards
2 and disposal management standards must be set to
3 protect children.

4 I find that the current RFDs and MRLs
5 for arsenic and mercury to be inadequate. In
6 addition, our procedures for assessing health
7 impacts of multiple chemical exposure are grossly
8 inadequate.

9 The standard is to do a risk assessment
10 one chemical at a time, but no one is exposed to
11 one chemical at a time. To addresses these
12 inadequacies and ensure healthy and sustainable --
13 sorry, environment, a precautionary approach is
14 recommended that we classify coal ash as a special
15 waste.

16 The EP -- the FDA takes a very
17 precautionary approach to introducing new drugs
18 into the marketplace by requiring companies to
19 demonstrate efficacy and safety of their products.
20 Producers of coal ash waste should assume the
21 burden of -- demonstrating safety. The public
22 should not have to assume the burden of proving

1 harm.

2 Aldo Leopold said, "A thing is right
3 when it tends to preserve the integrity,
4 stability, and beauty of the biotic community. It
5 is wrong when it attends otherwise." Not
6 adequately regulating coal ash and accepting the
7 true cost of ener -- energy production is wrong.

8 We have an ethical responsibility to
9 ensure that our children can reach and maintain
10 their full potential free from exposure to
11 contaminants in coal ash. We have the knowledge,
12 and we must take action and stop externalizing the
13 health costs and environmental costs onto children
14 and future generations.

15 I refer you to the PSR Coal Ash Report
16 for details on health and environmental concerns,
17 and a list of detailed recommendations. Thank you
18 very much.

19 (Applause)

20 MS. DEVLIN: Thank you. Number 87,
21 please? Is Number 87 here? Okay. 98?

22 MR. HAYEK: Good afternoon. My name is

1 Rick Hayek. I'm with American Electric Power, and
2 I'm the manager of our ash and gypsum marketing.

3 I'm also a veteran of the Armed
4 Services, and I want to thank you for this
5 opportunity to have the freedom to speak. It's
6 good to hear both pros and cons. In a lot of
7 countries, we wouldn't get this opportunity. So I
8 thank you for this opportunity.

9 Your responsibility is tremendous
10 because of this freedom that we have to share
11 opposing opinions, and I want to offer my
12 perspective on the continued beneficial use of
13 ash.

14 I've been in the -- in the marketing end
15 of ash and in the coal business for 32 years with
16 American Electric Power. We recently had a
17 downsizing, where we lost 20% of our workforce.
18 And I've -- over the 32 years, I've met many
19 people that have worked their entire life with
20 ash; people that have walked in it, bathed in it,
21 ate it, drank it, because it was part of their
22 job.

1 Going around to these retirement parties
2 over the past year, never once has anybody said,
3 "Well, so and so died as a result of his exposure
4 to ash or residuals." Maybe they died from
5 smoking or something of that nature, but nothing
6 has ever been brought to my attention that, "Hey,
7 we need to re-look at this because it's a result
8 of them and their work environment."

9 As a marketer, it's my responsibility
10 that before this ash goes out into the public,
11 what we do is we give samples of all of these
12 ashes, whether it's fly ash, bottom ash, boiler
13 slag, gypsum, whatever -- and we sell millions and
14 millions of tons of this stuff. We give a sample
15 to them to take to a lab, and they test it. We
16 have our own lab, and we test it.

17 And never once have we had to come out
18 and say, "We can't market this to you because a
19 TCLP test, a heavy metal exceeds a -- a safe
20 rating." We've always been within the right
21 parameters. Many times our -- in our ash the
22 heavy metals don't even become traceable. There's

1 no trace of them.

2 Therefore, we recommend a Subtitle D
3 prime approach and the continued beneficial use.
4 And if there's problems with engineering, which is
5 the real cause of what happened at TVA was an
6 engineering fault with the dam, address that. But
7 my experience and my social responsibility as a
8 marketer for ash, I can sleep very good at night
9 knowing that we're putting a safe product out into
10 the market. Thank you very much.

11 (Applause)

12 MS. DEVLIN: Thank you. Number 100,
13 please? 211?

14 MR. MILLIKEN: My name is Eric Milliken.
15 I've been in the recycle business with the coal
16 combustion products for 14 years. I manager
17 operations and conduct sales for Synthetic
18 Materials, the largest processor and marketer of
19 flue gas gypsum in the United States.

20 We currently process and market for
21 beneficial reuse over 4 million tons of FTD. My
22 efforts have been more with the synthetic gypsum

1 created by a process in the scrubber system from
2 the coal-burning fossil plants.

3 Synthetic gypsum is used in many
4 applications, 90% which is wallboard, 6% cement,
5 and the rest in your ag and fillers. It provides
6 a low-cost byproduct generated from coal fossil
7 plants to all of these industries.

8 The EPA has proposed regulation Subtitle
9 C that could pro -- prove unworkable and even
10 environmentally counterproductive. Although the
11 EP -- the EPA proposal specifically encourages and
12 does not restrict beneficial uses of CCRs, the EPA
13 proposed regulatory options could restrict or even
14 prevent altogether its various beneficial uses.

15 This has already been demonstrated with
16 customers, as well as suppliers, refusing to move
17 forward with commitments due to the real
18 liabilities that come with an unnecessary
19 hazardous waste classification of coal combustion
20 products. The EPA regulatory agenda will subject
21 -- would subject manufacturers to an avalanche of
22 new permitting requirements, re -- new permitting

1 requirements and stifle job creations. More
2 regulations will only hinu -- hinder a
3 manufacturer's ability to continue to lead a
4 nation out of the steepest recession since the
5 30s.

6 By the label of hazardous waste, we are
7 increasing the needs of mining and increase the
8 need of even more impoundments, wets or dry.

9 My family and I, we live within two
10 miles of one of the largest coal-fired plants in
11 the U.S., and that's TVA Cumberland. A wallboard
12 plant is right next door to the -- to the TVA
13 utility. What happens if the gypsum the wallboard
14 received from the utility as hazardous waste?
15 What happens to all of the newly cost-efficient
16 wallboard plants that are not on the seaboard?
17 The low-cost byproduct material available to them
18 is no wall avail -- no longer available. If this
19 -- it is not feasible for these plants to receive
20 natural gypsum.

21 A hazardous waste classification affects
22 more than just my job or the utilities. It has an

1 enormous trickle-down effect on the economy.
2 Utility costs go up, manufacturing costs go up,
3 sending back cost -- sending the costs back to the
4 consumer, increased unemployment. They have less
5 resources. Consumers build smaller houses. The
6 economy does not grow as robust as you would
7 expect.

8 The appropriate response to this
9 proposed Subtitle D classification, the reason for
10 these discussions entirely, was a re -- failed
11 retention pond, not a hazardous waste material.
12 Thank you for your time.

13 (Applause)

14 MS. DEVLIN: Thank you. Sir, I'm sorry.
15 I forgot your number. Please come forward. 89?
16 Please come.

17 MR. HOLLAND: Hi. My name is Richmond
18 Holland. I represent the Tennessee Paper Council
19 and the American Forest and Products Association.
20 This is a trade association of the forest products
21 pulp and paper industry.

22 We supped the EPA's decision, first, not

1 to include coal combustion byproducts from the
2 manufacturing sector in this rule making. We
3 believe our management of coal ash differs
4 somewhat from that of the electric utilities.

5 Pulp and paper mills use a variety of
6 fuels in addition to coal. As a result, we -- our
7 mills frequently co-manage coal ash and with ash
8 generated from other fuels, including biomass. We
9 believe that our ash-management units are
10 significantly different from that of the utility
11 sector.

12 We do support the decision reached by
13 the Clinton administration in 2000 that coal ash
14 should be regulated under Subtitle D, the
15 nonhazardous waste provision of RCRA. We believe
16 that much of the additional information developed
17 by EPA subsequent to that determination does not
18 support the need for applying hazardous waste
19 regulations to coal byproducts.

20 Appropriate management standards and
21 engineering design would have avoided the
22 catastrophic failure of the TVA surface

1 impoundment, which can be achieved through
2 nonhazardous waste requirement.

3 If EPA promulgates hazardous waste
4 regulations for coal combustion byproducts, those
5 materials may be disposed rather than reused.
6 This is not only inconsistent with years of U.S.
7 Policy to support recycling and reuse, but is a
8 waste of resources, and is inconsistent with the
9 goals of the Resource Conservation Recovery Act.

10 Our members are very concerned that EPA
11 did not evaluate the economic impact of the
12 proposed rule in the manufacturing sector,
13 particularly if the Subtitle C rules are
14 promulgated. We believe that our byproducts could
15 have to be managed as -- as -- as hazardous waste
16 materials even though it's not required under
17 regulation, but we would have to do that, anyway.

18 And that's -- we also believe that EPA
19 should consider the additional costs of
20 electricity that will result from the promulgation
21 of regulations designating coal combustion product
22 -- byproducts as -- as hazardous. And for those

1 of yous -- us that use a lot of electricity,
2 that's not a trivial issue.

3 And our last point is if EPA were to
4 regulate coal combustion byproducts as hazardous
5 waste, it is unlikely that our members would be
6 unable to manage their hazardous waste any other
7 way even if the rules do not apply to them. This
8 additional cost was certainly considered by EPA,
9 but it would be yet another cost to us.

10 We work in a global marketplace where no
11 other country considers coal combustion byproducts
12 to be hazardous materials. The EPA has the
13 opportunity to keep jobs in the U.S. by keeping
14 manufacturing costs competitive and not
15 promulgating hazardous waste regulations for coal
16 combustion byproducts. Thank you.

17 (Applause)

18 MS. DEVLIN: Thank you. Sir, you're
19 Number 87? Please come forward.

20 MR. RINGE: My name is Axel Ringe. I am
21 the water quality chair for the Tennessee chapter
22 of the Sierra Club. I appreciate your holding

1 this hearing in Tennessee, even though it was,
2 perhaps, precipitated by public pressure.

3 I would like to point out, first, that
4 coal ash is a national problem. There are coal
5 ash landfills scattered all over this country.
6 This is not just a Tennessee problem, even though
7 what bro -- led up to this situation was a coal
8 ash failure in Kingston.

9 Coal ash contains toxins. Your own
10 research confirms that. It includes arsenic,
11 cadmium, chromium, lead, selenium, thallium, some
12 of which are bioaccumulators. These toxins have
13 been linked to cancers, to organ diseases,
14 respiratory illnesses, neurological damage,
15 reproductive and development products -- problems.

16 EPA science has indicated that there --
17 occur at very high levels of some of these heavy
18 metals, and that they leach from coal ash. These
19 leachates contaminate rivers, lakes, and streams
20 that fish and other wildlife rely upon, including
21 people who utilize these wildlife for consumption.

22 We would urge the EPA to regulate coal

1 ash as a special waste under Subtitle C of RCRA.
2 It requires federally-enforceable stan --
3 safeguards.

4 If you leave it up to the states, it's
5 not going to happen. I testify that here, in
6 Tennessee, there is no control over what the power
7 plants do with their coal ash. Power plants
8 generally tend to be located on lakes or rivers,
9 and they situate their coal ash dump sites
10 adjacent to them. So that any leachates coming
11 off of that go directly into the water bodies and
12 into the ground water.

13 And I would just close by saying that
14 the failure to regulate coal ash dumped in mines
15 is a dangerous omission from the proposed
16 regulations, and we believe that EPA should not
17 exempt this practice from regulation. Thank you.

18 (Applause)

19 MS. DEVLIN: Thank you. I'd like to do
20 a quick check. Is there anyone in the audience
21 with a Number 100 or below whom I haven't called?
22 Okay. Is there anyone who registered today who

1 has a number between 250 and 264 who has not
2 spoken?

3 Okay. Good. Okay. Then may I have Numbers 101, 102,
4 103, 104, and 105? 101, please.

5 MR. CHANCE: Hello, and thank you for
6 the opportunity to speak today. My name is Eric
7 Chance, and I'm the water quality associate for
8 Appalachian Voices and the Watauga Riverkeeper, a
9 North Carolina-based environmental nonprofit. Our
10 work includes studying the effects of coal
11 combustion waste on the environment.

12 In North Carolina, a review of voluntary
13 groundwater monitoring data revealed that every
14 coal ash pond for which data was available is
15 leaching heavy metals and other pollutants into
16 groundwater. Equally as alarming is the
17 prevalence of this contamination; is the fact that
18 at all of these sites, the levels of contamination
19 were very high.

20 The monitoring showed 681 exceedances of
21 North Carolina state groundwater standards,
22 including arsenic levels up to 8.8 times the state

1 standard, boron levels up to 16.6 times the state
2 standard, chromium levels up to twice the state
3 standard, iron levels up to 380 times the state
4 standard, lead levels up to three times the state
5 standard, and manganese levels up to 200 times the
6 state standard.

7 This contamination not only has the
8 potential to damage nearby waterways, but it also
9 can contaminate drinking water of nearby
10 residents. The extent and degree of this off-site
11 contamination is largely unknown because it has
12 not been studied, and there is no legal
13 requirement for the companies responsible for it
14 to do so under the current regulatory framework.

15 And at only 1 of the 13 ash ponds
16 reviewed in this study did the North Carolina
17 Department of Environmental and Natural Resources
18 require any sort of clean up.

19 In Tennessee, Appalachian Voices has
20 also partnered in research in the wake of the
21 Kingston coal ash spill. Research has been
22 ongoing since the spill, and has shown levels of

1 arsenic, barium, cadmium, lead, selenium in the
2 Emory River in exceedance of drinking water and
3 aquatic life criteria.

4 Although water quality has returned to a
5 more normal states, ash and ash laden river
6 sediments with high levels of arsenic have washed
7 far downstream from the spill site. Also,
8 selenium levels in fish downstream from the site
9 continue to rise, and have exceeded threshold
10 levels for reproduction and growth.

11 Our research clearly shows that coal
12 combustion waste has significant impacts on
13 groundwater, surface water, and aquatic organisms.
14 The current regulatory framework has not
15 adequately addressed the tox -- toxicity of coal
16 ash, and has allowed this contamination to go on
17 for too long. We believe that it should be
18 regulated under Subtitle C. Thank you.

19 (Applause)

20 MS. DEVLIN: Thank you. Number 102,
21 please? 102? 103?

22 MS. LARSON: My name is Jean Larson.

1 I'm a resident of Lester, North Carolina. That's
2 in western North Carolina.

3 I saw an interesting quote the other
4 day. "We don't see things as they are. We see
5 things as we are."

6 I am a retired RN. During my career, I
7 worked as a neurological nurse, a public health
8 nurse, and a school nurse. I'm focusing this
9 testimony about the handling coal ash on the heavy
10 metals that it contains.

11 Heavy metals are elements. They don't
12 break down. The more that you have of them, the
13 more they accumulate. They are toxic.

14 According to the Center for Disease
15 Control, the National Institute for Health, health
16 effects from individual heavy metals include
17 cancer, neurological, respiratory, and renal
18 problems. They may take years to develop from the
19 time of exposure.

20 Heavy metals cause health problems from
21 years of mild exposure or from one large exposure.
22 We do not understand the effects of multiple --

1 exposure to multiple different heavy metals.

2 Children are more susceptible to
3 exposure to any type of a toxin. And one of the
4 issues with children and heavy metals is learning
5 disabilities. As a school nurse, I can tell you,
6 there are a lot of issues with children these days
7 that I just don't remember when I was young in the
8 1950s.

9 Wet coal ash can seep into the
10 groundwater. Dry coal ash can be fine
11 particulates that we will breathe in.

12 I see coal ash as a public health hazard
13 that should be carefully monitored, and I support
14 is the Option Subtitle C. Thank you for having
15 these hearings.

16 (Applause)

17 MS. DEVLIN: Thank you. Number 105?
18 105? 104? 104.

19 MR. CASEY: Good afternoon. I would
20 first like to thank the EPA for giving me the
21 opportunity to speak on such an important issue.

22 My name is Mark Casey, and I am employed

1 by the SEFA Group, a coal combustion product com
2 -- product marketing company based near Columbia,
3 South Carolina. I reside in northeast Tennessee
4 just outside of Knoxville in the small town of
5 Norris.

6 My marketing territory stretches from
7 Chattanooga, Tennessee, into southeast Kentucky,
8 and into southwest Virginia. In recent years, due
9 to the current recession, the construction
10 industry, and specifically the concrete industry,
11 has fallen off a bit. But in 2006, I personally
12 helped recycle nearly 150,000 tons of fly ash
13 generated by one of the Tennessee Valley
14 Authority's coal-fired steam plants for the use as
15 a cement substitute in concrete.

16 My concern is that if E -- if EPA
17 decides to designated fly ash under Subtitle C for
18 the Resource Conservation Recovery Act, it will
19 hinder, if not eliminate, the use of fly ash in
20 concrete altogether. My customers, the ready mix
21 concrete producers, have indicated to me that if
22 fly ash is listed under the haz -- under the

1 hazardous waste Subtitle C of -- of the RCRA, they
2 will be forced to eliminate it from their concrete
3 mix designs altogether for fear of litigation.

4 I understand that the EPA has clearly
5 stated that it does not want to disrupt current
6 recycling efforts, and that they believe that
7 designating coal combustion products as a special
8 waste under the Subtitle C category will actually
9 increase CT -- CCPs use. If the EPA's assumption
10 is correct, then my company and I may benefit
11 financially. So then why am I here today arguing
12 against my own personal financial interests?
13 Obviously, I disagree with EPA's assumption.

14 Under EPA's special waste proposal, two
15 trucks leave a power plant loaded with coal
16 combustion products. One truck will turn left
17 destined for disposal as hazardous waste, while,
18 at the same time, the second truck with the same
19 exact material on board will turn right and travel
20 to my customer's plant with absolutely no
21 restrictions outside those imposed by normal DOT.
22 It is very difficult business. It is difficult

1 for business owners and their attorneys to
2 reconcile this concept.

3 There's no doubt that this issue has bum
4 -- become political, and politics is about
5 compromise. Just recently the Congressional
6 Reacher -- Research Service has suggested that
7 Congress add a new Subtitle K to federal waste law
8 to give EPA enforcement authority over coal waste
9 rules without declaring the waste hazardous and to
10 regulate beneficial reuse of coal ash. That would
11 be a compromise.

12 This new proposal, as well as Subtitle
13 D, would take away the stigma associated with the
14 hazardous label, and help preserve one of
15 America's greatest all-time recycling success --
16 success stories. Thank you for your time.

17 (Applause)

18 MS. DEVLIN: Thank you. 105, 106, 107,
19 109, and 127? Okay. What's your -- what's your
20 number? You are Number 106 -- 107? 107, come up.

21 MR. TURNER: Good afternoon. My name's
22 Kenneth Turner. I'm the general manager of Bell

1 Concrete Industries located in Middlesboro,
2 Kentucky. We're a manufacturer of packaged
3 cement-based mixes, as well as precast concrete
4 products. We've use Class F fly ash in our
5 products for close to 30 years.

6 There's a few points that I think that a
7 lot of people agree on, and that is that we need
8 to do whatever's possible to prevent a
9 reoccurrence of failure such as the one the
10 Kingston fossil plant. Containment ponds are --
11 are -- were a bad idea, are a bad idea, and should
12 be phased out. Either Subtitle C or D seems to
13 adequately address that.

14 Another point that most people agree on
15 is that the use of fly ash as a replacement for
16 cement and concrete is a win-win. The ash doesn't
17 go to landfill. Additional cement doesn't have to
18 be produced. The quality of the concrete's
19 improved, and the cost of the concrete to the end
20 user is reduced.

21 A Subtitle D classification will
22 preserve all that. Phasing out of containment

1 ponds will not affect the beneficial uses of the
2 fly ash.

3 If fly ash is moved to subtitle C
4 classification, we expect specifying -- the
5 specifying community will outright ban the use of
6 fly ash in their products. We would also expect
7 to see insurance companies exclude coverage for
8 any claims that may arise from the use of fly ash
9 in concrete.

10 Power companies may even refuse to sell
11 fly ash if it's classified as hazardous. They
12 would be faced with disposing of a larger volume
13 of material that's now considered hazardous. The
14 cost of power would go up. Without fly ash,
15 quality concrete would not be as good but would
16 cost more. Cement costs two and a half times that
17 of fly ash. In short, we all would pay more.

18 Ten years ago, the EPA determined fly
19 ash to be nonhazardous. If not for the failure at
20 Kingston, we wouldn't be here today. That is --
21 that is a containment issue, not a classification
22 issue.

1 We ask that you confirm the findings
2 from 2000 and leave fly ash under Subtitle D.
3 Thank you.

4 (Applause)

5 MS. DEVLIN: Thank you. Number 109?

6 MR. VAN HAM: Thank you for giving me
7 the opportunity to talk. My name is John Van Ham,
8 and I'm a chemist with Headwaters Incorporated.
9 I've been characterizing fly ash as nonhazardous
10 for over three years now. As a scientist, I use
11 logic, reason, and factual evidence when analyzing
12 problems, whether it is at work or in other
13 aspects of my day-to-day life.

14 There are a number of incontrovertible
15 facts that must be discussed if coal ash is
16 regulated Subtitle C. Designating coal ash as
17 special waste that can also be use beneficially
18 will destroy any kind of potential use of the ash
19 due to stigma, which is already taking place. No
20 one will want to utilize materials that are
21 somehow considered both hazardous and
22 nonhazardous. It's too confusing and obfuscates

1 the fact that coal ash does, indeed, have a myriad
2 of beneficial uses.

3 Subtitle C regulation will affect
4 everyone who turns on a light switch. There will
5 be large increases to power bills due to the cost
6 of building numerous hazardous landfills and the
7 loss of selling ash for beneficial use or
8 sustainable construction. Considering the dire
9 economic situation most Americans are in these
10 days, rebranding coal ash as hazardous will put a
11 huge dent in all of our pocketbooks, guarantee it.
12 Additionally, no other country in the world
13 considers it a hazardous material.

14 What happened here at Kingston was a
15 tragedy, to be sure. However, this tragedy was
16 not due to the potential toxicity of fly ash. It
17 was an engineering accident and should be
18 addressed as such.

19 Coal is what we have to produce
20 electricity. It is still by far the most
21 dependable and widely- used source for power.
22 Each and every one of us uses it every day. And

1 we have in fly ash the beneficial byproduct. We
2 all take advantage of this benefit daily in the
3 roads that we travel on, in the drywall and
4 foundations of our homes, and our everyday lives.

5 I urge you not to react, as most
6 everyone seems to do in this day and age, with
7 shrill and quick emotion. We have been using fly
8 ash in con -- in concrete and construction
9 reliably since the 1930s in the United States.

10 Current science proves that the material
11 is nonhazardous by your own standards. The eight
12 heavy metals that we test for may be present in
13 ash, but not in the levels that would classify
14 them as hazardous.

15 In fact, these same chemicals are found
16 in native soil and rock. It's the same exact
17 metals that are already found in the soil all
18 around us.

19 So in closing, I urge you to maintain
20 the past technical findings, that coal ash's
21 regulation under Subtitle C is unnecessary and
22 unwarranted. Thanks.

1 (Applause)

2 MS. DEVLIN: Thank you. We're running
3 quite a bit ahead of schedule. I want to make a
4 -- an -- an announcement. Do I have anyone with a
5 number of 110 or below who hasn't spoken? Okay.
6 I understand Numbers 112, 114, and 189 are here.
7 If you would come forward? You are number --
8 okay, 112, 114, 189? 112?

9 MR. QUARLES: Hello. My name is Mark
10 Quarles. I'm an environmental consultant with
11 about 25 years experience. I live new Nashville,
12 Tennessee, and I'm a licenced, professional
13 geologist in Tennessee.

14 I've personally investigated
15 approximately 40 coal combustion waste sites in 12
16 states within the last ten months. Based on my
17 research of actual data and state files, I support
18 the Subtitle C determination proposed by EPA.

19 My work was recently published in three
20 damage case reports coauthored by the
21 Environmental Integrity Project, Sierra Club,
22 Earth Justice, and other technical members and

1 their staff. Subtitle C designation is needed
2 because the approach proposed by Subtitle D has
3 not worked.

4 My research of those 40 sites where
5 states had discretion on design and operational
6 standards and groundwater and surface water
7 indicates a failed policy. Of the approximately
8 40 sites that I've investigated, all but one had
9 obvious evidence of groundwater contamination.
10 Clear evidence of contamination exists at these
11 sites regardless of the sites being lined or wet
12 -- lined or not, wet or dry, and even composite
13 lined dry landfills.

14 The industry argues that no harm exists,
15 and that contaminants are not mobile. My
16 experience is there is no scientific basis for
17 that conclusion. They base the argument on their
18 belief that no migration occurs.

19 Well, they're able to make that argument
20 because states rarely, if ever, require that
21 off-site monitoring even be performed even when
22 severe contamination exists at the property line.

1 Industry solution is to simply buy the property
2 instead of initiating corrective actions.

3 The industry also argues that
4 contaminants are not toxic. My experience is that
5 cannot be further from the truth. Coal combustion
6 waste in recycled byproducts contain heavy metals,
7 some of which are known carcinogens.

8 They make the argument of no toxicity
9 because states oftentimes do not require
10 monitoring programs to even include metals. In
11 fact, monitoring programs in the 1980s and '90s
12 were even more stringent than they are today,
13 including metals that don't exist in many sites
14 today. Instead, they require secondary standards
15 with no human toxicity standards to make the claim
16 of no toxicity.

17 The industry argues that the waste is
18 inert. It couldn't be further from the truth.
19 They base it on laboratory methods that the EPA's
20 recognized since 2003 does not work.

21 In summary, I support the Subtitle C
22 designation because the risks of waste require

1 that designation. State-delegated programs have
2 been unsuccessful in regulating coal waste and
3 beneficial reuse. We need uniform standards that
4 states must meet or exceed.

5 We need closer existing pilements and
6 landfills that are not compose lined within two
7 years. All disposal facilities should be required
8 to initiate groundwater and surface water
9 monitoring, and also be subjected to rigorous
10 design and corrective actions. Thank you for your
11 time.

12 (Applause)

13 MS. DEVLIN: Thank you. Number 114,
14 please?

15 MR. FAIR: Hello. My name is Henry
16 Fair, and I'm an artist that looks at toxic sites.

17 I've looked at a number of coal ash
18 sites in the United States and around the world,
19 and I'd like to point out, first, that the reason
20 the United States is addressing this issue is
21 precisely the -- because we've had a catastrophic
22 event.

1 There are over 100 cases of groundwater
2 contamination, and those are only ones we know.
3 There are over 44, according to the EPA report,
4 cases of high-hazard impoundments. And again,
5 those are just the ones that we know. There's coal
6 ash stored in many places we don't know.

7 I would argue that it is the role of the
8 federal government to protect its citizens and not
9 to protect the fiduciary interests of
10 manufacturers in an industry. I think that
11 Subtitle C is probably not enough.

12 I think that all sites should be
13 monitored for groundwater contamination. I think
14 that all sites should have a liner. And I think
15 that all sites should be capped so that windblown
16 dust is not a problem. Thank you for your time.
17 And I'd like to thank the EPA for -- for
18 considering this issue.

19 (Applause)

20 MS. DEVLIN: Thank you. Again, we're --
21 we're running a -- a bit ahead of schedule. Does
22 anyone in the audience -- has anyone registered

1 and have -- has a number to speak and -- and I
2 have not called them?

3 Okay. Number 125 and 189, please come forward.

4 Great. Number 125, thank you.

5 MR. MARSHALL: Thank you. My name --
6 name is David Marshall of Headwaters Resources.

7 You're here today to discuss our
8 concerns about the potential changes of reg -- of
9 regulating coal ash disposal. But we are here
10 today because a U.S. government-owned utility
11 failed to heed repeated warnings of pending
12 failure at a utility at the -- in this state, a
13 failure of engineering and management practices,
14 not a men -- a failure of materials.

15 Fortunately, this failure did not harm
16 any individuals directly, but lives were affected.
17 And now the EPA, in typical knee-jerk reaction, is
18 looking to impose standards that have been obvious
19 and in place for all other operators of power
20 plants across the U.S.

21 As an individual who understands science
22 and scientific process, the most disturbing charge

1 against the Bush Administration was its
2 willingness to allow science to be suppressed in
3 favor of politically-favorable actions. The Obama
4 Administration was elected partially in response
5 to this type of behavior.

6 It's a science based on the standards
7 set by the EPA. It's clear that coal ash poses no
8 greater harm to human health than any other
9 building materials we use today.

10 There are those in the audience today
11 who will tell us that great harm is being done,
12 but they have no hard specific evidence to
13 document that. These charges have been thoroughly
14 investigated and demi -- dismissed multiple times.

15 And now we see the EPA, as an act of
16 expedience, is putting on this show to allow
17 people to express their opinions. The EPA has
18 continued to dismiss the science that demonstrates
19 clearly the effective use of coal ash is not
20 harmful and is beneficial when 42% of the coal ash
21 generated is used in this country.

22 The administration is doing exactly what

1 the Bush generation was --was doing, ignoring the
2 facts and the science, and allowing a political
3 popular sideshow to occur, and ignoring those of
4 who have dedicated our lives to making use of
5 byproducts because we know and believe in what we
6 are doing.

7 It's popular to attack coal through this
8 backdoor method of product regulation, to attempt
9 to eliminate coal, but that is not sufficient for
10 those in the -- in the market. They want to use
11 coal to stop use -- now -- coal use to stop now
12 and completely.

13 They are convinced that sufficient power
14 can be generated from solar and wind and other
15 reuseable. Those people have no stake in the
16 game, did not understand the needs of meeting the
17 long-term and continual supply of energy that is
18 every day in our -- expected every day by our
19 citizens.

20 The people who do have a stake in the
21 game, the generators and distributors of
22 electricity that power everything around us do

1 understand that they are expected to be there when
2 the light switch is turned on, when the iPod is
3 plugged in. And while advances have made -- been
4 made, energies from renewable is not there nor can
5 be it -- can it be soon.

6 Major utilities are not ignoring these
7 potential sources of energy generation. They all
8 have programs developing the grids, the
9 technologies, and the processes to integrate all
10 means of power generation to meet the needs in the
11 U.S. and beyond its borders.

12 Coal ash is not toxic. The science does
13 not support that term. That adjective has begun
14 to be attached to just about everything that the
15 press reports on. Yet the term "toxic" has
16 specific meanings. It has definitions outlined by
17 the EPA guidelines.

18 To regulate the EPA under a label -- by
19 the EPA under a label of "special waste" is to
20 deny what the EPA has supported and promoted for
21 over 30 years, and would require the EPA to deny
22 their own truth, their own science, and enable

1 political expedience. Thank you.

2 MR. GENTILE: Thank you.

3 (Applause)

4 MS. DEVLIN: Number 189, please?

5 MR. LINEBERGER: Hi. My name is Ed
6 Lineberger. I'm not a scientist or work for any
7 company. I'm a local resident in Kingston. I
8 grew up right here in Knoxville.

9 I moved down to Kingston, unfortunately,
10 about six months before the spill happened. I
11 live within a mile and a half of the spill. The
12 river's right straight across the street from my
13 home.

14 After the spill occurred, I got on the
15 Internet and just did any own research on coal ash
16 and its ingredients, and I noticed about the heavy
17 metals. I took it upon myself to have my family
18 tested, and our blood work came back from the Mayo
19 Clinic.

20 Me, my wife, and both my children came
21 back positive three times the normal levels for
22 several metals. And as a prudent person, that

1 would cause anyone grave concern, especially with
2 our children.

3 When I think about the waste, you know,
4 and -- and what is in the -- the ingredients and
5 the heavy metals that are in this ash, I think
6 back about the early '80s. From 1980 to '82, I
7 worked right here at the University of Tennessee.
8 I was a pipefitter. We were exposed to asbestos.

9 And then about 1981, they came along,
10 the EPA said, "Well, now you've got to wear a suit
11 and a respirator and gloves, and you've got to wet
12 this pipe insulation down. You've got to double
13 bag it and store it so we can come and pick it
14 up." Well, you know, that happened along about
15 1981. Well, now, how many people are dying from
16 asbestos-related cancers?

17 Sometimes it takes many, many, many
18 years to determine what these chemicals will do to
19 the human body. And what I don't want to see
20 happen is 30 or 40 years from now our children and
21 grandchildren are in the same type of meeting and
22 the EPA is saying, "Well, sorry, we -- maybe we

1 should have regulated that a little bit better
2 back then. We're sorry we've made you sick."

3 And you know, if we're not sure -- I've
4 not -- I've been to all the local meeting down in
5 the Kingston area. I have not had any true
6 evidence that it's not hazardous. You know, when
7 I see "arsenic" and some of these other ken -- you
8 know, products that are in the ash, I know that's
9 something we shouldn't have in our bodies, and we
10 should not be exposed to it.

11 So you know, the EPA needs to come up.
12 I mean, last summer, you know, I was so confused
13 at these meetings. On day -- one meeting they're
14 saying it's okay; don't worry about it. Then the
15 next meeting, they shut the river down and said,
16 "No human contact. No swimming. No tubing," you
17 know, and I'm a recreational person.

18 So you know, to me, that tells me
19 they're just really not sure what this will do to
20 us, just like they didn't know what would happen,
21 you know, with asbestos and some of these other
22 chemicals from years past.

1 So I think it's a good idea that they do
2 regulate this, and find a proper way to store it.
3 Thank you very much.

4 (Applause)

5 MS. DEVLIN: Thank you. Okay. Numbers
6 141, 152, and 212 -- 212. Okay. In -- and in
7 addition, we have some walks-ins, Numbers 265,
8 266, 267. So -- okay. Since those numbers are
9 out of order, I'll -- I'll repeat them again:
10 141, 152, 212, and 265, 266, and 267. Okay.
11 Number 141? All right. 152? 152.

12 MR. SCHULTZ: My name's Scott Schultz.
13 I'm the director of byproduct services for JEA, a
14 municipally-owned electric water and sewer utility
15 owned by the City of Jacksonville, Florida.

16 JEA is one of a handful of utilities
17 that processes and manages its CCRs internally.
18 JEA considers the recycling of its CCRs the right
19 thing to do and an integral part of our
20 environmental- sustain -- sustainability
21 initiatives.

22 I'm going to be spece -- speaking to

1 only recycling and not the storage of CCRs.
2 Recycling of CCRs is one of the few forms of
3 recycling that requires no government subsidy and
4 provides renewable and cost benefits that both the
5 producer and the consumer. In addition to the
6 environmental benefits of recycling our CCRs, it
7 saves our rate payers over \$10 million per year.

8 The consideration by the EPA of
9 classifying CCRs as hazardous waste has already
10 negatively affect (sic) our recycling efforts.
11 The classification of CCRs under Subtitle C,
12 regardless of exemptions, will cease our CCR
13 recycling program.

14 We do need to remember that almost all
15 environmental issues surrounding CCRs are not
16 associated with the recycling but storage,
17 including the tragedy at Kingston. Thank you.

18 (Applause)

19 MS. DEVLIN: Thank you. Number 212?
20 212?

21 MR. FOSTER: Rick Foster. I'm just
22 going to be one more person in support of

1 regulation of coal combustion residues and wastes.

2 They are hazardous wastes. They contain
3 poisonous elements and compounds in dangerous
4 concentration. The world is "poison," like the
5 band.

6 Call a spade a spade. For example,
7 arsenic and mercury are two of the poisonous
8 elements in coal. Compounds can be destroyed.
9 Elements are permanent.

10 Poisonous ones have to be kept out of
11 circulation. The more they are immobilized, the
12 better.

13 Everyone should know that by now. But
14 while people keep avoiding even the word "poison,"
15 the facts may need repeating.

16 We know that the current storage methods
17 have problems. This hearing exists because people
18 had to stop pretending otherwise. TVA is still
19 working on their token clean up of the Kingston
20 collapse.

21 You can tell it's token because they
22 used hydraulic dredging for water-soluble poisons.

1 Folks, hydraulic dredging literally sucks. It
2 rinses everything it picks up. Anything that
3 could be carried away in the water got there,
4 spreading it around making more waste. Anyone who
5 knows how hydraulic dredging works knew what would
6 happen, but no one stopped it.

7 TVA could have re-channeled the Emory
8 around the spill, lowered the reservoir, and
9 bulldozed instead, but doing a good job of clean
10 up was not their priority.

11 I support capture and isolation of coal
12 residues. Capture is better than putting poisons
13 into the air and water, but it doesn't actually
14 get rid of them. Any dump exposed to the weather
15 will have a leaching problem. It -- dealing that
16 -- with that problem means fixing the residues
17 with pavement and spreading them all over the
18 state and calling it a beneficial use, that should
19 at least slow down their entry into the water.

20 Remember, these things came out of the
21 ground in the first place. Leaching will happen
22 anyway. It'll just take longer, depending on how

1 well the highway is maintained.

2 "Beneficial use" is a dodgy term. It
3 more or less means hiding the waste in plain
4 sight. It may still be better than dumping coal
5 residues back into the mines the coal came from.
6 Just because the poisons stayed put while they
7 were a part of the coal doesn't mean they'll stay
8 put afterward, not even in the same place.

9 Think of coal as a sort of natural
10 carbon filter. You need solid carbon to hold on
11 to the poisons. Burn the carbon, and you've not
12 only burned your only economical place to keep it,
13 but you've lost the stability of all those other
14 elements, too.

15 Lately, even carbon dioxide has been
16 declared a problem under the EPA's jurisdiction.
17 Despite hype, large-scale capture and
18 immobilization of it can't be practical. There is
19 just too much of it to put it all back underground
20 and make it stay.

21 I support implementation of both
22 Subtitle C and D of RCRA. Subtitle C would be

1 more thorough, while D gets moving faster.

2 (Applause)

3 MS. DEVLIN: Thank you. Number 265?
4 266?

5 MR. GRACE: Thank you for holding this
6 public hearing. I'm David Grace, a student at
7 Warren Wilson College, and I'm speaking in favor
8 of the Subtitle C option.

9 I want to speak for those in my
10 generation who no longer have the hope to speak,
11 for those who know the damage and are
12 disillusioned with the process established to
13 protect it.

14 Like many, I've lived unaware of the
15 danger of coal and its byproducts. I was raised
16 with the assurance that as long as I did my best,
17 everything would fall into place for me. And I
18 would be healthy, happy, and able to share this
19 with others. However, now I am aware of the
20 toxicity of coal -- coal ash, and realize that
21 health is not guaranteed or even possible for
22 everyone.

1 For some, doing their best will not make
2 any difference. For those people whose water is
3 polluted by coal ash, their best will not prevent
4 cancer. For those species in the water of this
5 state, when toxic coal slurry rushed into the
6 rivers, their best did not save their lives. For
7 the generation that I was born into, we inherit
8 the -- the grief that comes from these deaths.

9 We are born with a hope that can't
10 support itself. For every poisoned fish and
11 everyone that eats poisoned fish or drink poisoned
12 water, there's a proportionate death in our
13 capacity to experience the wonder of living.
14 Every generation of every species should be able
15 to express their potential to -- to the fullest
16 within the shared limits of their respective
17 ecosystem, not the imposed ineq -- inequitable
18 limits associated with coal ash.

19 Without adequate regulation of coal ash,
20 there's an unacceptable, unnecessary loss of -- of
21 life in human and nonhuman communities in terms of
22 physical death and the emotional death of the

1 living.

2 (Applause)

3 MS. DEVLIN: Thank you. Number 267,
4 please?

5 MS. MONROE: My name is Hannah Monroe.
6 Thank you for having this public hearing.

7 I'm an environmental education major at
8 Warren Wilson College in Asheville, North
9 Carolina. I am a Quaker, and I've believed in
10 protecting people, animals, and the environment
11 from exploitation. I strongly support Subtitle C.

12 I am speaking for the animals who suffer
13 from pollution of hazardous waste. What give us
14 the right to destroy the habitat of animals who
15 play a crucial role in our ecosystem and who have
16 done nothing to cause this destruction? All
17 beings have inherent value and deserve to live in
18 clean environments that are not contaminated by
19 hazardous waste such as coal ash. That's why I
20 support the regulation of coal ash under Subtitle
21 C. Thank you.

22 (Applause)

1 MS. DEVLIN: Thank you. Numbers 128 and
2 172? And is there anyone else in the audience
3 with a number whom I have not called? 105, please
4 come forward.

5 MS. MCCULLOUGH: 171.

6 MS. DEVLIN: Please come forward.
7 That's great. Okay. So I think the first number
8 is 105. Thank you.

9 MR. HOHNE: My name is Alex Hohne, and I
10 am here to speaking for Synthetic Materials.

11 I was raised on a farm in middle
12 Tennessee. I've backpacked and hiked many of the
13 hills and mountains in the state of Tennessee, as
14 well as many ne -- neighboring states. I've
15 kayaked, rapid and canoed many of the river --
16 streams, rivers, and lakes.

17 From this background, I've come to
18 appreciate all of the opportunities and resources
19 that are available for our use. I've also
20 realized that we have to live in harmony with the
21 earth or we'll -- or risk extinction.

22 I have for many years been involved in a

1 number of innovative recycling processes involving
2 everything from municipal solid waste to metal
3 recycling to industrial minerals. Sensible
4 recycling of reuse certain -- or re-purposing of
5 materials reduces the strain in our natural
6 resources.

7 For instance, recycling metals
8 eliminates the necessity to mine additional
9 material -- raw materials and process those to
10 create new metals. Recycling municipal solid
11 waste results in lower emissions in the
12 manufacture of new products, and reduces both
13 emissions and impact on the depletion of the
14 environment while reducing a necessity for
15 landfills.

16 Upcycling old clothes to make stylish
17 handbags reduces the impact to landfills and
18 reduces emissions from manufacturing cloth
19 materials while providing a useful accessory is
20 environmentally sound to the public. No matter
21 how small, every effort to recycle, reuse, or
22 re-purpose is a worthwhile effort if done in an

1 appropriate and responsible manner.

2 One of the most successful recycling
3 efforts in history has been the recycling and
4 reuse of coal combustion products. In 2008,
5 greater than 44% of all coal combustion products
6 were either recycled or beneficially used. Use of
7 these products have resulted in the reduction of
8 environmental impact cement production, production
9 in mining of gypsum rock for the production of
10 wallboard, the production of aggregates for a
11 number of different applications, the reclamation
12 of land after mining operations have ceased, and
13 significant reduction of the impacts of landfills
14 for the storage of these products.

15 In December 2008, a disaster occurred at
16 Kingston. To call it anything than a disaster
17 would be a travesty. The disaster was caused,
18 however, by the structural failure of an
19 impoundment that resulted in release of thousands
20 of tons of coal ash residuals. The clean-up
21 effort has been huge, long, expensive, and
22 complicated.

1 While this incident had very unfortunate
2 consequences to the immediate area, the failure of
3 the impoundment structure does not render the
4 impounded material as hazardous any more than the
5 July 24th failure of the Lake Delhi dam in Iowa
6 renders water as a hazardous substance. While
7 these products may contain various constituents
8 listed as toxic substances, so does the dirt
9 that's native to the area.

10 Increased responsible reuse and
11 recycling of these products will not only reduce
12 the need for mining and other manufacturing
13 operations necessary to produce the products they
14 replace, but it will reduce a likelihood of a
15 similar occurrence since less material will be
16 stored in landfills or impoundments. Thank you.

17 MR. GENTILE: Thank you.

18 (Applause)

19 MS. DEVLIN: Number 128?

20 MR. DENHAM: My name is John Denham, and
21 I work within the coal ash industry.

22 I came here today to voice my opinion

1 and express my concerns against the prop --
2 proposed regulation to classify coal ash as a
3 hazardous material and regulate ash disposal under
4 Subtitle C.

5 Based on my experience, coal ash does
6 not qualify as a hazardous waste by chemical
7 composition make its classification as a hazardous
8 material unwarranted. Since almost all
9 electricity generation of the United States is
10 from coal-burning power facilities, it is
11 essential that we are able to recycle the ash
12 byproducts.

13 A hazardous material label for ash would
14 be detrimental to all current and future recycling
15 efforts. Without recycling, we would impact our
16 environment in negative way, substantially drive
17 up cost to both businesses and individuals alike.
18 These dramatic cost increases would hit everyone
19 across the country, not just in coal areas or
20 coal-producing states.

21 Since protective features, the landfill
22 designs will be the same under both C and D. The

1 additional harm of Subtitle C approach does not
2 seem logical, and recycling will be damaged and
3 all the benefits of ash recycling lost.

4 I believe that there are some
5 misunderstandings in this debate over the future
6 of fly ash regulations. Over the past several
7 months, I've been reading and hearing that the
8 main concern the parties against fly ash are the
9 -- they want this industry to more regulated and
10 monitored. The fly ash in -- dispose industry can
11 implement and comply with the stricter guidelines
12 in monitoring and regulations. Most landfills
13 built in the last 20 years have these design and
14 operation features already.

15 Subtitle D program implemented under
16 state control will provide the necessary
17 protection. However, these regulation
18 classifications should be based on factual
19 information and solid scientific data.

20 The EPA assumes that the hazardous
21 regulation approach will drive up recycling. I do
22 not agree with this assumption based on my

1 firsthand experience within the industry.

2 In conclusion, I hope and respectfully
3 request the EPA will make the decision not to
4 classify coal ash as a hazardous material under
5 Subtitle C, and continue to allow recycling of
6 this multi-use and beneficial byproduct and
7 disposal regulation under Subtitle D. Thank you.

8 MS. DEVLIN: Thank you. Number 171?

9 MS. MCCULLOUGH: I am Leah McCullough, a
10 minister in the United Church of Christ, who holds
11 a -- who serves as campus minister in Asheville,
12 North Carolina. And I want to thank the EPA for
13 holding these hearings.

14 I strongly support the regulation as
15 proposed under Subtitle C of the Resource
16 Conservation and Recovery Act. My support for
17 Subtitle C is ground in moral and ethical values
18 instilled in me by my faith tradition: To love my
19 neighbor, to do justice, and to care for creation.

20 Jesus taught that the greatest
21 Commandments are to love God with all one's heart,
22 soul, mind, and strength, and to love one's

1 neighbor as oneself. In Romans, we are reminded:
2 Love does no wrong to one's neighbor.

3 In Micah, we are called to love
4 kindness, do justice, and walk humbly with God.
5 And in Genesis, the first divine words spoken by
6 God to human beings were about their relationship
7 to the earth and not to God. God says, "Have
8 dominion over the fish of the sea, and birds of
9 the air, and every living thing that moves upon
10 the earth." The Hebrew verb for "have dominion"
11 must be understood as care giving and nurturing
12 and not exploitation.

13 Created in God's image, humans are to
14 care for the earth as God cares for all of
15 creation. Are we loving our neighbors and doing
16 no harm when we allow coal companies to
17 contaminate our drinking water with toxic metals
18 and do nothing to stop it? Are we doing justice
19 when we allow an industry's business practices to
20 cause higher risk of cancer, respiratory diseases,
21 and neurological damage in people living in
22 proximity to their plants?

1 Is it a more egregious injustice that --
2 that the communities -- that these communities are
3 often minority, low-income, or indigenous
4 populations? Are we caring for and nurturing the
5 earth when we allow hazardous metals to leach into
6 soil and groundwater, polluting our streams and
7 rivers, and poisoning fish and wildlife?

8 Am I loving my neighbor, doing justice,
9 and caring for creation if I remain silent about
10 these issues? I don't think so, and that is why
11 I'm here today. I am willing to do my part, and I
12 expect you to do your part.

13 You, the EPA, have conducted the
14 research and produced the result -- reports that
15 give solid evidence of the devastating effects of
16 coal ash on human health and the environment. You
17 are aware of the crisis, and now you have the
18 opportunity to do something about these wrongs and
19 to rectify the problems for future generations. I
20 pray that, given what you know, you will do what
21 is morally right for humanity and the environment.

22 The words offered to the people of

1 Israel, when they are renewing their covenant with
2 God, have echoed in my head and heart as I have
3 been preparing for this hearing. In closing, I
4 offer them to you. "I call heaven and earth to
5 witness against you today that I have set before
6 you life and death, blessings and curses. Choose
7 life so that you and your descendants may live."
8 Thank you.

9 (Applause)

10 MS. DEVLIN: Thank you. Number 172,
11 please?

12 DR. BUTTON: My name is Dr. Gregory
13 Button.

14 As an environmental health researcher
15 who has conducted over three decades of academic
16 research on environmental hazards and disasters,
17 including the 2008 TVA ash spill in Kingston,
18 Tennessee fo -- fossil fuel plant, I strongly
19 support the EPA's decision to regulate coal ash
20 and urge the EPA to adopt Subtitle C option.

21 There can be no dispute that coal ash is
22 hazardous and contains numerous toxic chemicals,

1 including mercury and lead, as well as other
2 harmful substances. Only junk science would
3 propose otherwise. While the coal industry would
4 have us endorse junk science, robust scientific
5 evidence strongly suggests that such claims are
6 erroneous.

7 Unless the EPA adopts the
8 above-mentioned option, our nation's citizens and
9 our environment will continue to remain vulnerable
10 to the toxicity of coal ash. The TVA ash spill has
11 dramatically and tragically demonstrated the
12 failures of relying on a patchwork of state
13 regulation.

14 It is imperative that the EPA have
15 direct oversight over the generation of storage,
16 transportation, and the disposal of coal ash in
17 order to safeguard the public and the environment.
18 Subtitle D would continue to rely on a
19 state-by-state patchwork of regulations, which
20 time and time again has proven to be inadequate.

21 In my 30 years of research conducting
22 disaster research, which includes the Exxon-

1 Valdez oil spill, Hurricane Katrina, and most
2 recently BP oil spill in the Gulf, I would have to
3 say that the TVA spill was among the most
4 horrendous disasters that I have investigated.
5 The tragedy of the ash spill is that it was
6 totally preventable.

7 If federal regulatory guidelines, such
8 as though proposed in Subtitle C, were in place,
9 it probably would not have occurred; or, if it did
10 occur, the deleterious damage that it inflicted
11 would have been severely curtailed.

12 If the EPA were to adopt Subtitle D as
13 written by the coal industry, our nation's
14 communities and our lands will continue to be
15 vulnerable to the insidious harm of coal ash
16 waste. Equally disturbing, one of the nation's
17 most revered regulatory agencies, the EPA, will
18 have failed to uphold the vital mission assigned
19 to it by Congress, that of protecting our
20 citizenry and our environmental heritage from
21 polluters. Thank you.

22 (Applause)

1 MS. DEVLIN: Thank you. May I have
2 Numbers 110, 113? And is there anyone else in the
3 room who has a number whom I have not called?

4 MR. GENTILE: Okay. No, if -- ma'am, if
5 you have number, come forward. It's okay. 141,
6 please take a seat. 122. Okay.

7 MS. MASTIN: Okay. I'm Mary Mastin. I
8 am chair of the Upper Cumberland Group of the
9 Sierra Club, and I am on the board, board
10 secretary of the Tennessee Environmental Council.
11 I'm making these comments on behalf of both
12 organizations.

13 Ever since the Kingston disaster, I
14 started paying a whole lot of attention to what
15 was happening with the coal ash cleanup, what was
16 happening in the state legislature, and with the
17 Tennessee Environmental -- Department of
18 Environment and Conservation on regulation of coal
19 ash.

20 One of the main reasons that I got so
21 concerned, other than the environmental
22 organizations that I represent, was I've got

1 grandchildren who fish and swim in the Chickamauga
2 Lake, just north of Chattanooga and downstream
3 from Kingston, and I got very concerned about the
4 water quality in the Tennessee River.

5 Now, I have been at briefings by EPA,
6 TVA, and TDEC both in Kingston and at the
7 legislature. I have been -- attended almost every
8 hearing in the legislature last year -- or for the
9 past two years dealing with the disaster or with
10 the regulation of coal ash. I have attended
11 private meetings with TDEC officials, and with the
12 leading aquatic biologists on the effects of
13 selenium on fish.

14 I had studied and made comments on the
15 NPDS permits dealing with water quality but -- for
16 both Kingston and Johnsonville. And I have become
17 aware of the situation with the other fossil
18 plants -- TVAs six other plants in Tennessee.

19 I am strongly convinced that Tennessee
20 law and agencies are not capable of protecting
21 Tennessee citizens from the dangers of coal ash
22 and the -- and -- dangers of coal ash in our

1 waters. And I strongly ask EPA to adopt the
2 regulations under Subse -- Subsection C to handle
3 coal ash as a hazardous waste.

4 What I saw in the legislature was that
5 TDEC's failure to get the law through removing the
6 exemption from waste water impoundments from the
7 -- the Dam Safety Act, I've read the Attorney
8 General's -- the TVA Inspector General's report,
9 and TDEC's lessons learned. I drafted a
10 resolution to the state legislature to require
11 annual reports from TDEC about TVA's progress on
12 this. Thank you very much.

13 MS. DEVLIN: Thank you.

14 (Applause)

15 MS. DEVLIN: Number 113, please?

16 MR. PADDOCK: My name is Brian Paddock.
17 I'm an attorney. I live in Jackson County in
18 middle Tennessee, a rural county.

19 I was asked to be here today by the
20 Solar Valley Coalition. I have worked with a
21 number of groups advocating clean energy, and must
22 say, to start out with, that there's new -- no

1 such thing as either clean coal or clean nuclear.

2 In 2009, I became aware of a pollution
3 from the Trans-ash landfill (sic) called the
4 Bevins landfill. And without going into the
5 history of that landfill, I would like to submit
6 in aid of this comment a -- a dir -- a
7 commission's order directed to the operators of
8 that monofill coal ash landfill.

9 It lays out the history in which a
10 permit by rule permit for the first section of a
11 -- of coal ash dumping in a -- essentially unlined
12 gravel pit was permitted for the Johnsonville TVA
13 plant's ash. The edges -- apparently, the
14 vertical walls were lined, but the bottom was not.
15 And the installation was simply not done as set up
16 by the permit. Ultimately, the commissioner's
17 order I've handed in was given out.

18 The -- there has since then been a Phase
19 2. And as TVA admitted in the environmental
20 assessment for Phase 2, they said, well, a lot of
21 leachate came out of that, even though we didn't
22 expect any. Essentially, we expected it to all

1 leak into the ground, but it started coming out in
2 a pool. So we've had to collect it up and pump
3 it, and take it over -- back over to the plant,
4 where we pit it in ponds that essentially leak
5 back into the Tennessee River. So that's the
6 state of -- of that.

7 And I'm going to give as Web page here
8 that has the complete environmental assessment --
9 the complete environmental assessment links for
10 TVA's analysis of what went wrong with Phase 1,
11 and what they're going to do in Phase 2.

12 Originally, Phase 2 was requested again
13 as a permit by rule. And in fact, after the
14 public hearing, someone discovered a page of
15 exemptions that were being requested of the
16 commissioner to essentially strip away most of the
17 protections in the standards for containment.
18 Ultimately, the department found its courage and
19 said that this was going to have to be a full
20 Class 2.

21 I spent earlier this year for three
22 solid months, along with others, trying to get

1 modern coal ash containment legislation passed in
2 Tennessee. We had complete agreement by the time
3 we'd finished negotiations with the state
4 department.

5 What happened was that the afternoon
6 before the first committee hearing, the Chamber of
7 Commerce lobbyist made two phone calls, and the
8 bill never even got a motion the next day. With
9 that kind of opposition from powerful interests,
10 the inability of the state agency and the
11 legislature to protect us is evident.

12 Thank you. We would ask that you put
13 coal ash under Subtitle C.

14 (Applause)

15 MS. DEVLIN: Thank you. Number 122,
16 please?

17 MS. STOGSDILL: Hello. My name is
18 Mickayla Stogsdill, and I'm an eighth grader at
19 Farragut Middle School here in Knoxville.

20 I believe that Subtitle C is the better
21 choice for the well-being of our environment. It
22 states that coal ash will be considered a

1 hazardous waste, and will be treated was one;
2 whereas Subtitle D labels coal ash as mere
3 household waste.

4 I asked my dad if we had arsenic in our
5 trash can usually, and he looked at me like I was
6 the craziest girl he'd ever seen.

7 Considering coal ash as household waste
8 means it would be treated like your everyday
9 household trash even though it contains arsenic, a
10 poisonous substance, in addition to radioactive
11 material and selenium. These waste products raise
12 the risk of danger to the liver, kidney, and
13 lungs. They also have the potential to cause
14 major respiratory problems.

15 In addition, coal ash is also another
16 environmental -- in addition, coal ash is also
17 extremely flammable. If a landfill were to catch
18 on fire, any coal ash contained therein would
19 create another environmental problem and podent --
20 and potential danger to the public.

21 True, Subtitle D will cost less
22 initially, but if catastrophe strikes, it would be

1 the citizens' responsibility to recourse, as well
2 in -- as funded. The government would not be
3 required to fix the problem nor pay for the
4 repair. In these dire economic times, what
5 average citizen has the funds to bankroll any
6 legal action in the wake of catastrophic loss?

7 I'm reminded of the story of the little
8 Dutch boy. He found a hole in the dike of his
9 town, which he plugged up with his finger.
10 However, the problem was never really repaired,
11 and the town flooded in the end.

12 Subtitle D seems dangerously similar.
13 It doesn't really fix the problem long-term. A
14 well- executed effort now will save time later.

15 Even though Subtitle C is more expensive
16 to implement, it would be better to spend more up
17 front than to spend half that much now only to
18 have -- have to redo the repair again and again in
19 the future. Subtitle C will ensure the total
20 remaking of the environment that was covered by
21 5.4 million cubic yards of coal ash. After all, a
22 stitch in time will save nine.

1 Every year, a company makes a toy that
2 every kid wants; then another company reproduces a
3 similar product. It's a little cheaper, has more
4 health risks, and may be recalled when tested. In
5 my opinion, Subtitle C is that brand-new toy, and
6 Subtitle D is like a cheaper version of it.

7 Subtitle D won't last. Subtitle C will.
8 Subtitle D will crumble. Subtitle C will not.
9 Subtitle C will not fail.

10 I thank you for your time, and I
11 appreciate you listening to our concerns. Thank
12 you.

13 (Applause)

14 MR. GENTILE: Number 141, please? 141?

15 MR. HARPOLE: Thank you. My name is
16 Chad Harpole, and I'm the director of public
17 affairs for the Kentucky Chamber of Commerce.

18 On behalf of our -- of the Kentucky
19 Chamber and our 2700-member companies across
20 Kentucky, we appreciate the time to come to
21 Knoxville to express our concern in opposition to
22 the proposed regulation of the coal combustion

1 residual rule, Subtitle C hazardous waste, under
2 the Resource Conservation and Recovery Act.

3 The Kentucky Chamber believes regulating
4 fly ash under Subtitle C option will impose
5 significant costs on power-plant operations, and
6 ultimately result in additional utility cost
7 increases for businesses and consumers. Kentucky
8 is proud to be the fifth leading producer of
9 energy in the country, driving significant
10 manufacturing in our state, including automotive
11 production and aluminum production.

12 We enjoy these low-cost utility rates
13 thanks to the availability and proximity of
14 Kentucky coal. Without a doubt, Kentucky's coal
15 industry will be impacted under the Class C plan
16 due to the potential for utilities to cut back
17 production at coal-fired electric generation
18 plants.

19 If this occurs, we feel classifying coal
20 ash as Class C waste will significantly threaten
21 electric reliability to businesses and consumers
22 in our state, and significantly affect local

1 economies through the reduction in payroll taxes
2 and employment numbers. Increased energy costs
3 and decreased electric reliability will have a
4 significant, adverse impact on all sectors of the
5 business community, and could potentially force
6 Kentucky businesses to relocate out of our state.

7 We strongly feel, under Subtitle C,
8 could end the beneficial use of recycling coal
9 ash into products like cement and drywall.
10 Regulation under Subtitle C will harm one of best
11 and oldest recycling industries, and drive up
12 costs for the construction and home-building
13 industries, industries that are already struggling
14 in the current economic climate.

15 We also are concerned with the amount of
16 potential litigation that could be created due to
17 products manufactured or constructed in the past
18 if coal ash is retroactively ruled as Class C
19 hazardous waste.

20 In closing, the Chamber urges USEPA to
21 develop nonhazardous waste regulations for coal
22 ash under Subtitle D of RCRA. Such an approach

1 would allow USEPA to work with states in
2 implementing regulations that are fully protective
3 of human health and our environment without
4 negatively impacting coal ash's beneficial use and
5 causing an increase in energy prices at a time
6 when our country can least afford it. Thank you
7 for your time.

8 (Applause)

9 MS. DEVLIN: Thank you. Your number,
10 please?

11 MR. HYFANTIS: 117.

12 MS. DEVLIN: Thank you.

13 MR. HYFANTIS: 117, yes, ma'am. Thank
14 you. My name is George Hyfantis, and I speak here
15 today as an engineer, an educator, and a private
16 citizen. First, I'd like to thank EPA for
17 extending the comment period on your proposed
18 regulations, and adding Knoxville to your pub --
19 your list of public meetings.

20 By way of background, I'm a practicing
21 engineer, and an adjunct professor at the
22 University of Tennessee, where I teach civil

1 engineering. I teach graduate-level courses in
2 solid and hazardous waste management.

3 The emphasis of this class now and for
4 the last 30 years has been teaching engineers how
5 to characterize waste and to design landfills.
6 For these last 30 years or so, I've been perplexed
7 about the decision to allow coal combustion
8 residuals, CCRs, to be disposed of in ponds along
9 the side of rivers.

10 The standard technique for determining
11 whether or not a waste is hazardous has been and,
12 to my knowledge, continues to be the toxicity
13 characteristic's leaching procedure. And I'll use
14 TCLP. There exists abundant data in the
15 literature concerning the chemical characteristics
16 of CCRs, and similarly, there exists abundant data
17 concerning the concentrations of contaminants in
18 TCLP extracts.

19 Analytical results for both the total
20 CCR concentrations and TCLPs vary significantly,
21 and are based on the coal source, the combustion
22 technology, and the pollution-control technology,

1 among other things.

2 The point of this limited discussion is
3 that most of the CCRs are nonhazardous according
4 to the TCLP, but sometimes they are. Our
5 regulatory strategy ought to err on the side of
6 safe disposal. The challenge for EPA is choosing
7 between your two options, and choosing between
8 your two options is balancing the need to handle
9 the CCRs in an environmentally-protective manner
10 while still allowing the beneficial use of these
11 wastes to continue without chemically analyzing
12 every single batch of waste produced.

13 In my professional opinion, we cannot
14 continue to allow CCRs to be disposed of in ponds
15 or piles along rivers. CCRs should be disposed of
16 in lined landfills with leachate collection
17 systems using the design standards of Subtitle D.

18 The siting of these landfills would
19 similarly follow the siting requirements of
20 Subtitle D, which means they should not be near
21 rivers and away from population centers.

22 The disposal of CCRs must come under

1 regulatory authority of EPA and the states. In
2 order to accomplish this, your options suggest
3 that the regulatory framework of RCRA under
4 Subtitle C is necessary. This is the regulatory
5 framework chosen.

6 I believe that EPA should designate CCRs
7 as a special waste. A special waste designation
8 would allow for the continued beneficial use of
9 CCRs, and will allow for the remaining material be
10 to -- to be disposed of Subtitle D landfills.
11 This requirement for a double liner and leachate
12 collection system would be overkill for CCRs.
13 Thank you for your time.

14 MS. DEVLIN: Thank you.

15 MR. HYFANTIS: The requirement for a
16 double liner and leachate collection system would
17 be "overkill" for CCRs while a single liner and
18 leachate collection system would provide adequate
19 environmental protection.

20 Further, it is my recommendation that
21 EPA consider working closely with the Department
22 of Interior's Office of Surface Mining to develop

1 a joint program that allows the disposal of CCRs
2 at abandoned and active surface mine sites using
3 the same design criteria for RCRA Subtitle D
4 landfills.

5 The National Academy of Sciences
6 published a comprehensive study of the viability
7 of this very idea. Their report entitled
8 "managing Coal Combustion Residues in Mines" was
9 published in 2006. Proper disposal at abandoned
10 surface mine sites provides an opportunity for
11 land reclamation and reuse. I suggest making this
12 report a part of your comment record.

13 The Knoxville Field Office of the Office
14 of Surface Mining has developed an innovated
15 program for surface mine closure called the
16 Appalachian Regional Reforestation Initiative.
17 This very successful program has been used to
18 restore recently closed surface mines to
19 productive forests.

20 This technique can be combined with the
21 design requirements for an RCRA Subtitle D
22 Landfill cap. Using this combined technique would

1 allow a formerly-mined area to be reforested as
2 opposed to becoming a large grassy field in the
3 mountains. I have included a concept design with
4 these comments for your consideration. Again,
5 thank you for extending your comment period.

6 MS. DEVLIN: Is there anyone in the
7 audience with a number of 120 or below who has not
8 spoken? Okay. I understand that Number 166 is in
9 the audience and would like to speak? Please --
10 thank you. And I also understand that Number 268,
11 uh-huh, you registered today? Okay. If you two
12 would come forward, please? So 166 and 268.

13 MR. SIMMERS: Good afternoon. My name
14 is Dennis Simmers, and I live in Cambria Township,
15 Cambria County, Pennsylvania.

16 I have read many reports on today's
17 issues, ranging from Earth Justice's "Waste Deep"
18 to "Fate and Transport" by the Anthracite Region
19 Independent Power Producers Association, and
20 others. And I am here to testify in my opinion on
21 the wide view of my community's perspective.

22 I represent the sixth generation of my

1 family to live in Cambrai County. Through three
2 successive generations, and now four with my
3 children, we have been subjected to the hazards
4 and detrimental consequences of discarding waste
5 bituminous coal on the surface of the earth. The
6 effect is well known. Acid mine drainage,
7 contaminated surface and groundwater, hundreds of
8 acres of unfit property, public nuisances, and
9 life-threatening terrain, as well as air quality
10 issues.

11 The Revlon waste coal pile was a perfect
12 all- in-one example to me of these detrimental
13 effects. From my earliest recollection until I
14 was 30, I can clearly recall the acrid rotten-egg
15 stench and contaminated water around this pile.

16 Approximately 20 years ago, we witnessed
17 the arrival of the first of three waste coal-fired
18 electric generating stations in Cambria Township.
19 By historic standards, it seemed like the coal
20 piles was being eliminated in no time. What took
21 the mining industry 100 years to create was
22 quickly being taken away. It was done safely, and

1 actually there are -- there's approximately 30
2 years of research on this removal technique that
3 does not bear out hazardous consequences to the
4 ash being replaced in these areas.

5 I would like to close my comments with a
6 request as a local resident with children. I have
7 witnessed the arrival of a substantial solution to
8 our problem.

9 The waste coal power industry is in the
10 process of safely remediating what I consider to
11 be Pennsylvania's Number 1 environmental
12 catastrophe.

13 I urge the EPA to keep the waste coal
14 power industry's unique position in cleaning up
15 the environment and -- in mind during your
16 consideration of ash beneficial use. I do not
17 live in Boston, Washington, Philadelphia, or
18 Seattle and visit the area once in a while. I
19 live in the community 100% of the time.

20 In my opinion, waste coal fired power
21 ash is the very definition of beneficial use. It
22 should be encouraged, and not made to be even

1 slightly more financially burdensome or punitive.

2 Thank you.

3 MS. DEVLIN: Thank you. Number 268,
4 please.

5 MR. MORALES: Thank you. My name is
6 Patrick Morales. I speak on -- on behalf as -- as
7 a member of We May Be Back, an organization of
8 backpackers, hikers, and active environmentalists
9 or -- not necessarily environmentalists, but
10 active in the con -- the condition of our
11 environment for survival.

12 I live in east Tennessee and in the
13 vicinity of this most recent 2008 disaster at
14 Kingston. And if that wasn't lesson enough, I
15 don't know what was. I -- but I -- but I won't go
16 there. I just want to know that -- let you know
17 that I do and we, as We May Be Back, support
18 Subtitle C.

19 And I have problems, as a person, with
20 self- implementation and self-regulation. I've
21 tried it myself, whe -- whether it be not eating a
22 certain food or what have you, some personal

1 discipline. And it didn't work until the
2 consequences got too bad and the problem had to be
3 addressed. And I think that's where we're at with
4 this coal ash.

5 If -- if -- if we're trying to determine
6 if it's a toxic chemical, I guess we need to test
7 for that. And I've understood that sometimes the
8 testing and the determination methods of -- for
9 determining whether coal ash is toxic or deadly or
10 not are not necessarily measuring for those
11 things, those chemicals.

12 There's just one question. I -- I don't
13 want to -- you-all, I'm sure you-all have heard a
14 bunch of good stuff and a bunch of good evidence
15 pro and con. I just want to ask all those who
16 support Subtitle D, do you or anyone you know live
17 near a coal impoundment or a sludge pond? And if
18 not, move your vacation home real to one and see
19 how you like it. Thank you.

20 (Applause)

21 MS. DEVLIN: Thank you. At this time,
22 do -- do we have anyone in the audience who has a

1 number and who has not yet spoken?

2 Okay. Seeing not, and the fact that we are running a
3 bit ahead of schedule, we are going to take
4 approximately a 15-minute break. So by my watch,
5 that'll get us back at five past 4. Oh. I'm sorry,
6 sir?

7 Please come forward now. Yes, that would
8 be fine. Okay. And you are Number 265?

9 MR. GOLDEN: Yes.

10 MS. DEVLIN: Great. Thank you. Thank
11 you.

12 MR. GOLDEN: My name is Jim Golden. I
13 live here in Knoxville, Tennessee.

14 Back in the 1970s, Jean Heise of Oak
15 Ridge National Laboratories began pushing TVA to
16 use a technology called high-intensity magnetic
17 separation for removal of toxic materials from
18 coal. This involved crushing coal into a fine
19 powder, which we already knew to enhance
20 combustion efficiency; then passing the coal
21 through a high-intensity magnetic field which
22 separates the elements, allowing for easy removal

1 of potential toxins.

2 Also under development at Oak Ridge
3 National Laboratories was a radically different
4 combustion or furnace technology called fluidized
5 bed combustion that had higher efficiency and
6 provided cleaner combustion, first discovered in
7 the 1920s but never developed to its full
8 potential. Fluidized bed combustion not only
9 allows for high-efficient burning of clean fuels,
10 but also for the high- efficient burning of
11 low-quality or dirty fuels, wet fuels, coal mine
12 tailings, toxic fuels, and even allows for the
13 better handling or concentration of nuclear waste.

14 You see, most fires are horribly
15 inefficient, creating smoke, plus the high
16 temperature drives molecules together in an
17 unnatural form that are pollution. Fluidized bed
18 combustion operates below the temperature that
19 fuses molecules unnaturally and below the
20 temperature that fuses ash into the clinkers with
21 other potentially toxic substances.

22 Both of these useful technologies were

1 withheld from the 1982 Energy world's Fair by TVA
2 Oak Ridge National Laboratories and University of
3 Tennessee. When TVA took public comment for their
4 nineteen -- for their Energy Vision 2020, TVA
5 changed our comments concerning fluidized bed
6 combustion so as to keep the public in the dark.

7 TVA has a fluidized bed project, but it
8 appears to be designed for failure. Please see
9 United States Patent Number 4,580,505 for a
10 fluidized bed design that shut down an \$800
11 million project slated for Anderson County, and
12 caused a reorganization of Oak Ridge National
13 Laboratories.

14 This furnace, with a quadruple expander,
15 is said to be more efficient than Bull Run Steam
16 Plant, which is Oak Ridge's -- which is TVA's most
17 efficient steam plant according to TVA engineers.
18 Thank you.

19 (Applause)

20 MS. DEVLIN: Thank you. I noticed some
21 people came in, and I don't know exactly what your
22 numbers are. So 136, 137, 126, and 210, if

1 you-all would please come up. Thank you. Just
2 you -- take your seats at the side, and you can
3 just go in order.

4 MS. ENNIS: Can I go ahead first?

5 MS. DEVLIN: Yes.

6 MS. ENNIS: Good afternoon. My name is
7 Chelsea Ennis, and I'm a student at the University
8 of Tennessee, Knoxville. I'm a member of sud --
9 SPEAK, Students Promoting Environmental Action in
10 Knoxville.

11 Not only is allowing coal ash to go
12 unregulated an environmental issue, but it is also
13 a human rights violation. I find it absolutely
14 absurd that such toxic materials are not wet yet
15 -- not yet regulated.

16 This leads me to believe one of -- of
17 two things. Either the EPA does not have
18 knowledge of the dangers of coal ash, or the EPA
19 does not care about the detrimental and deadly
20 effects that coal hash -- coal ash has on the
21 environment and the people of Appalachia.

22 Because of the jo -- because the job of

1 the EPA is to pretect -- protect, I deeply hope
2 that the reason is not a lack of care for people
3 and the environment, so I'm choosing to believe
4 that the EPA is unaware of the effects of coal
5 ash, so I will tell you.

6 Coal ash con -- contains heavy metals,
7 such as lead, mercury, selenium, and arsenic.
8 Disturbingly, people living near unlined coal ash
9 ponds where water is contaminated have an
10 extremely high risk of cancer, up to 1 in 50.
11 This is 2,000 times greater than EPs -- EPA's;
12 acceptable cancer risk.

13 Because of this serious environmental
14 destruction and human rights violation, I asked
15 the EPA to regular coal ash under Subtitle C of
16 the RCRA as special waste. I'm doing to end with
17 a quote, "Not only when the last tree has died and
18 the last river has been poisoned and last fish has
19 been caught will we realize we cannot eat money."

20 (Applause)

21 MS. DEVLIN: Number 136.

22 MS. GERHARD: My name is Danielle

1 Gerhard, and I'm also a student at the University
2 of Tennessee Knoxville and a member of the student
3 organization SPEAK, Students Promoting
4 Environmental Action in Knoxville.

5 Over half of the coal plants in the
6 country are surrounded by populations that exceed
7 state averages in terms of low-income individuals.
8 We are exploiting these low-income communities to
9 fulfill the American dream. And how do we repay
10 them? The coal companies are allowed to dispose
11 of this toxic waste back into the lands of these
12 communities. Coal ash consists of heavy metals,
13 like mercury, lead and arsenic and don't belong in
14 drinking water.

15 In my college chemistry class, I have
16 learned to dispose of certain solutions in a
17 heavy-metals container instead of the sink, and I
18 expect these coal industries to be smarter than an
19 entry-level chemistry class. However, they appear
20 not to be and, therefore, I encourage the EPA to
21 choose Subtitle C of the RCRA because coal ash is
22 toxic and should be treated as such. Furthermore,

1 my generation should not have to deal with your
2 generation's mistakes.

3 I will leave you with a quote by the
4 philosopher Aldo Leopold. "Obligations have no
5 meaning without conscience." Thank you.

6 (Applause)

7 MS. DEVLIN: Thank you. Number 137.

8 MS. FLOWER: Hi, my name is Sarah
9 Flower, and I'm also a student at UT and a member
10 of SPEAK, Students Promoting Environmental Action
11 in Knoxville.

12 Coal ash is toxic. It contains heavy
13 metals, including arsenic, mercury, lead, selenium
14 and beryllium, all of which are toxic to our
15 rivers and, more importantly, our communities.
16 For me, it is hard to believe that these coal
17 companies are taking shortcuts and, therefore,
18 risking the lives of the thousands of people
19 living in Appalachia.

20 Coal ash needs to be regulated, and not
21 just as garbage. It needs to be recognized as the
22 hazardous waste it truly is. Choosing Subtitle C

1 is the only way to ensure, not only the health and
2 safety of the people living in these currently
3 contaminated areas now, but for the future
4 generations, as well. Thank you.

5 (Applause)

6 MS. DEVLIN: Thank you. Number 210,
7 please.

8 MR. PINSKY: Good afternoon. My name is
9 David Pinsky, and I'm a student organizer for
10 Greenpeace USA, representing hundreds of students
11 appalled by the crimes that dirty and dangerous
12 coal has inflicted on people and our planet. I'm
13 here, also, to have support your efforts to create
14 a federal minimum coal ash disposal standard,
15 treating coal ash as hazardous under subtitle C of
16 RCRA.

17 Nearly two years ago, over one billion
18 gallons of toxic coal ash gushed from the TVA
19 Kingston impoundment, devastating Roane County.
20 As a native from Kentucky and someone who has seen
21 the impacts of dirty coal, I was grief-stricken.
22 This is not about industry profits. It's about

1 people's lives.

2 It's about Steve Scarborough of Roane
3 County. Nearly two years later, Steve is still
4 shocked to find six-foot piles of coal ash sitting
5 in once pristine waterways. He has personally
6 lost hundreds of thousands of dollars from his
7 property values plummeting. The coal industry
8 tells residents that it will be cleaned up in five
9 years. Do you think Steve has five years to wait
10 when his community is still polluted with toxic
11 coal ash?

12 It's about Barbara Evans of Lownsdes
13 County, Alabama. She drove eight hours by herself
14 to speak on behalf of Perry County residents.
15 This impoverished, African-American community is
16 the current dump site for TVA's Kingston plant,
17 and has drinking-water levels with arsenic
18 contamination 80 times the safe-drinking-water
19 standards. Folks are fearful of speaking out
20 because of intimidation by the coal industry.
21 Barbara said this to me: Quote, "After a life of
22 hard work, Perry County residents are being

1 reduced to sickness and death from coal ash. They
2 are trapped, and they need the EPA's help."

3 The industry reps you hear today are
4 concerned about money, not human life. This makes
5 me sick. Show me the non-industry-funded research
6 proving that heavy metals, carcinogens and known
7 neurotoxins are safe for human consumption. The
8 EPA needs to adopt Subtitle C.

9 However, I want to be very clear.
10 Subtitle C is a good start, but the EPA must taken
11 even stronger action. The EPA must immediately
12 shut down high hazardous impoundment sites. The
13 EPA must do everything necessary to immediately
14 inspect all sites and protect our communities from
15 toxic coal ash. Please stand up to the heavy
16 lobbying efforts of the billionaires of the coal
17 industry. If you will not protect us, who will?

18 It is a sad day for all Americans when
19 our Environmental Protection Agency fails to act
20 with swift and immediate action on this issue.
21 You have the opportunity to save lives,
22 communities, children, grandmothers, students, our

1 planet. You have the opportunity to stop this
2 madness. Now, all I ask is for you to stand up,
3 be bold, do what science tells us and what is
4 ethically and morally right: Regulate coal ash
5 under Subtitle C of RCRA and take whatever means
6 necessary to protect our people, not the polluting
7 coal industry.

8 Now, let's get to work. Thank you.

9 (Applause)

10 MS. DEVLIN: Thank you. Okay. May I
11 have Numbers 146, 147, 148 and 149, please.

12 If you're waiting, if you would sit on
13 the side. And, Number 146, if you would just go
14 to the podium and...

15 MR. HARRISON: Good afternoon.

16 MS. DEVLIN: Thank you.

17 MR. HARRISON: Thank you for allowing me
18 this opportunity to speak. My name is Gary
19 Harrison, and I'm the CEO/General Manager for
20 Dixie Electric Cooperative, which is a non-profit
21 rural electric cooperative serving about 22,000
22 members in seven counties located in east central

1 Alabama. I also serve as Vice-Chairman of
2 PowerSouth Electric Cooperative, which is a
3 generation and power supplier cooperative for 12
4 distribution cooperatives and 4 municipals in
5 south Alabama, as well as 4 cooperatives in
6 southwest (sic) Florida. This year, in Alabama,
7 we experienced an unusually cold winter followed
8 by an extended hot summer. The extreme
9 temperatures caused a tremendous increase in
10 kilowatt hour usage for our members. With many of
11 them being low-income families living in
12 substandard housing, this weather further
13 magnified their already high usage patterns.
14 Dealing with the effects of the recession, high
15 unemployment and the increased electric costs
16 inflicted a financial stress on many of our
17 members. This has been the same throughout south
18 Alabama and northwest Florida.

19 Therefore, on behalf of our members, I'd
20 like ask that you do not make any changes that
21 could significantly increase the cost of
22 production of electricity to our members.

1 PowerSouth's coal-fired units were built
2 in 70s, in a time where electric generation was
3 greatly needed. At a time where coal, to a large
4 extent, was the only fuel available to the
5 cooperative generation to use because of the Fuel
6 Use Act and prevailing economic conditions. As a
7 result of our dependence -- as a result of the
8 dependency on generation from these coal-fired
9 units, our cooperative, as well as other
10 PowerSouth members, will be directly affected by
11 the final CCR rule.

12 We understand the need for the
13 development of federal regulations that assure the
14 safe disposal of CCRs, and we feel that the
15 subtitle D prime option will meet this objective.
16 On the other hand, we strongly oppose using the
17 subtitle C approval. EPA can obtain a high level
18 of protection for the environment and human health
19 without resorting to the unnecessary and extreme
20 measures of regulating CCRs under RCRA's
21 hazardous-waste rules.

22 PowerSouth has always worked with each

1 of our members since it was organized in 1951 to
2 be environmentally conscious, and we've always
3 taken care of our fly ash in a way that has --
4 that we have produced over 30 years. From the
5 information I obtained, the ash spill at TVA's
6 Kingston plant was the result of safety issue with
7 a dam, a pond dam. All we ask is that you use the
8 appropriate government agency to regulate the dam
9 safety.

10 And in conclusion, with almost 60% of
11 our generation of electricity produced by
12 PowerSouth generated by coal, we feel that change
13 with increased regulatory costs would cost our
14 members financially and affect their current
15 lifestyle.

16 MS. DEVLIN: Thank you. Number 147,
17 please.

18 MR. MOORE: Good afternoon. My name is
19 Ronald Moore. I'm the current president the
20 International Brotherhood of Electrical Workers,
21 Local 2298, in Washington County, Alabama. I'm
22 here to represent more than 130 families in this

1 area who live in Clarke and Washington Counties.

2 I have been an employee for PowerSouth
3 Energy for 32 years. I was hired in 1978 with the
4 construction of Units 2 and 3 at Charles R.
5 Lowman power plant in Leroy, Alabama.

6 The Lowman plant produces more than 500
7 megawatts of coal-fired electricity. I have been
8 an operator at this plant for -- since 1981. The
9 plant has safely disposed of its coal ash for more
10 than 30 years. In fact, much of the coal
11 combustion residue from Lowman plant is used
12 beneficially in concrete, road construction,
13 agriculture and wall board.

14 CCRs have been used for decades to
15 enhance concrete and wall-board construction.
16 CCRs have been used in construction of the Hoover
17 Dam, San Francisco Oakland Bridge and the I-35
18 Bridge in Minneapolis, Minnesota. Concrete made
19 with fly ash extends the life of construction
20 projects by decades, minimizing the environmental
21 impact of rebuilding.

22 The nature of the CCRs does not warrant

1 its regulation as a hazardous waste. Such
2 regulation would destroy the very successful
3 recycle programs that greatly reduce the need for
4 cost of disposal.

5 Now, working at this plant, the Lowman
6 plant, has provided me and my family and many of
7 my friends well-paying jobs, benefits so we can
8 enjoy a good standard of living. PowerSouth's
9 average wage for its bargaining-unit employees is
10 \$60,000 per year, plus benefits. And most of this
11 stays in the community.

12 The coal combustion residual rule oppose
13 -- proposed by the EPA and the subject of the
14 today's hearing will ultimately have a significant
15 impact on me, personally, and the people I am here
16 to represent. So, please, make sure that the
17 benefits of the decision you make about coal
18 residue outweigh the costs of those decisions. If
19 there's a problem with how some utilities store
20 coal combustion residue, fix the storage problem,
21 not by declaring coal ash as hazardous, but by
22 regulating the dams and containment used to store

1 it.

2 I'd like to thank you for your
3 consideration on this issue and determine that
4 coal combustion residue should not be regulated as
5 hazardous. There are more than 130 families in
6 Clarke and Washington County that are depending on
7 you to make the right decision.

8 MS. DEVLIN: Thank you. Number 148,
9 please.

10 MR. SINGLETON: Good afternoon, ladies
11 and gentlemen. Thank you for allowing me to
12 address you this afternoon.

13 My name is Charles Singleton. I am the
14 probate judge and chairman of the county
15 commission of Washington County, Alabama. I
16 retired after 35 years of service from the United
17 States Army as rank of command sergeant major
18 before I took this job.

19 Washington County is the oldest county
20 in the State of Alabama. We presently encompass a
21 1,081 square miles. We have 18,000 residents. So
22 that makes us a very large and sparsely populated

1 county in rural Alabama adjoining what is known
2 nationally as the black belt. We had -- we were
3 the first capital of the State of Alabama. We had
4 the first school in the State of Alabama. We had
5 the first bank in the State of Alabama. Today we
6 enjoy a standard of living that is about the
7 national average. We consider ourselves to be
8 about-average Americans.

9 We have in our county BASF, Olin,
10 PowerSouth and Bay Gas as our prime employers.
11 PowerSouth has been a tax-paying resident of my
12 county since the 1960s, when they built their
13 first coal-fired generator in the little town of
14 Leroy. They have since added on several times.
15 They now employ about 190 people. They are the
16 largest single taxpayer for revenue in my county.
17 The tax that they pay goes for schools, for roads,
18 for bridges, for hospitals, for fire protection.
19 The moneys that they pay to their employees, which
20 they are a good-paying employer, is turned over
21 five times before it leaves my county, so they
22 make a significant contribution to my county.

1 PowerSouth has safely disposed of its
2 ash since the 1960s. They continue to do so
3 today. My only request of you is that you take
4 into considerations the benefits versus the
5 dangers. Regulate what needs to be regulated.
6 Don't go too far as, sometimes, government
7 agencies are prone to do.

8 Thank you. The citizens of Washington
9 thank you. And let's fix the problem, just don't
10 damage the whole industry. Thank you.

11 MS. DEVLIN: Thank you. Number 149,
12 please.

13 MR. MITCHELL: Thank you. Good
14 afternoon. My name is Terry Mitchell, and I serve
15 on the Board of Trustees of Central Alabama
16 Electric Cooperative in Prattville, Alabama. I'm
17 elected by my peers to oversee and govern a
18 32,000-member cooperative providing electric
19 service to 10 counties in the State of Alabama.

20 I am also the probate judge of a rural
21 county in Alabama, and I see people struggling on
22 a daily basis in good times. I see them really

1 struggling under the current economic conditions
2 that we're going through today.

3 On behalf of the Board of Central
4 Alabama Electric Cooperatives, I ask you not to
5 make changes that would significantly impact the
6 cost to produce electricity to the folks who are
7 in need in Alabama.

8 Electricity is the fuel of the
9 Information Age, and coal accounts for more than
10 half of the electricity produced in the United
11 States. Over the past 30 years, utilities and
12 specialty companies have found ways to increase
13 the ability to recover coal residue. And I know
14 for a fact that that is true, for my -- over a
15 decade, my father fed, clothed and educated his
16 family by working for a company that's an -- that
17 -- that collected the fly ash in Wilsonville,
18 Alabama.

19 I can look each of you in the eye today
20 and tell you that I have touched fly ash. I have
21 washed it from my father's truck, and I have seen
22 it on the clothes of my father when he came home

1 from work. I can tell you that fly ash is not and
2 does not need to be considered a hazardous waste.

3 For every ton of fly ash that is used is
4 a ton that doesn't go into a landfill that we have
5 to back up with our federal moneys and our local
6 moneys. You know, using fly ash in something as
7 simple as concrete is a great way to Build Green
8 without sacrificing quality or cost.

9 Central Alabama, as you've already
10 heard, is a member of PowerSouth. It's an energy
11 cooperative that, since 1941, has been able to
12 handle its own fly ash and has done an outstanding
13 job with it.

14 But I ask each of you to think about
15 Winfred and Mable Grogan, an older couple that
16 lives close to my home. They have a modest home
17 and they live on a fixed income. Seventy cents
18 out of every dollar they pay for retail power --
19 for purchase power, 60% of that comes from coal.
20 They are the members who remember when the lights
21 came on. They are not the type of people who
22 would ask for help. In fact, they would forgo

1 medical treatment just to keep their power on.

2 You know, from the information that I
3 have obtained, the TVA Kingston ash spill was a
4 dam safety issue, a pond failure. I ask you to
5 fix the problem, allow the proper governmental
6 agency to -- to govern the safety of the pond. It
7 was the -- it was the container, ladies and
8 gentlemen, not the product that caused the
9 problem.

10 So on behalf of Central Alabama, the
11 Board of Trustees and its management, its
12 employees and the 32,000 people, I ask you to --
13 to not declare fly ash as a hazardous waste.
14 Thank you.

15 (Applause)

16 MS. DEVLIN: Thank you. Number 145.

17 MR. STEPHENS: Good afternoon. My name
18 is Keith Stephens. I'm the environmental services
19 manager at PowerSouth Energy Cooperative.
20 PowerSouth is a non-profit electric generation
21 transmission cooperative that serves 20
22 distribution systems in Alabama and northwest

1 Florida who, in turn, provide electric service to
2 more than one million customers in mostly rural
3 areas.

4 PowerSouth recognizes public concern
5 over the handling and disposal of coal combustion
6 residuals, or CCRs, and the EPA's obligation to
7 protect the environment. However, the issue of
8 whether CCR should be regulated as a hazardous
9 waste has been thoroughly evaluated and resolved.
10 In its 2000 regulatory determination, the EPA
11 found that coal ash does not warrant hazardous-
12 waste regulation, concluding instead that the most
13 appropriate mechanism for regulation would be
14 under subtitle D, non-hazardous waste regulations.
15 There's no basis or need for -- to regulate under
16 subtitle C, so the final course of action that the
17 EPA chooses must be carefully considered to avoid
18 unintended counterproductive consequences that
19 would jeopardize beneficial uses and increase
20 energy costs with no real environmental benefit.

21 PowerSouth owns and operates the Charles
22 R. Lowman power plant in Leroy. The Lowman plant

1 produces about 125,000 tons of coal ash annually.
2 75% of that is in beneficially used in the cement
3 industry. Furthermore, the Lowman plant uses --
4 produces 78,000 tons of gypsum annually, of which
5 100% is beneficially used. That's over 172,000
6 tons of material that did not end up in a
7 landfill.

8 PowerSouth disagrees with the EPA's
9 supposition that regulation under subtitle C will
10 spur additional beneficial uses of CCR and, in
11 fact, that regulation would exactly have the
12 opposite effect. By dissuading CCR customers from
13 using this so-called hazardous material, utilities
14 like us who are, even now, directing CCR to
15 beneficial uses would be forced to begin
16 landfilling all that material.

17 PowerSouth is also concerned that EPA's
18 proposed definition of CCR surface impoundments
19 may inappropriately affect the impoundments that
20 are not designed to receive solid waste. None of
21 the Lowman plant CCR impoundments discharge
22 directly into the river, but they're routed

1 through another surface impoundment before
2 discharge. And our plant consistently meets all
3 of its water- quality discharge requirements.
4 Since the power plant operation requires water for
5 various purposes, any adverse consequences would
6 cripple essential power plant operations with no
7 associated environmental benefits.

8 For all these reasons, PowerSouth
9 strongly opposes Subtitle C regulation of CCRs.
10 Instead, the EPA should strongly consider
11 addressing public concerns first with impoundment
12 dam safety rules. And, furthermore, if the EPA
13 determined that the regulation of landfills is
14 needed, Subtitle D prime option should be pursued
15 since it would provide equivalent environmental
16 protection while still holding down costs, keeping
17 beneficial use options available, and allow
18 PowerSouth to continue to provide reliable,
19 reasonably-priced power to its member owners.
20 Thanks.

21 MS. DEVLIN: One note to the -- to the
22 speakers who just spoke: If you would leave a

1 copy of your written comments in the box over here
2 by our court reporter, we'd appreciate it.

3 Number 123 and Number 142, if I haven't
4 gotten this .

5 MS. GOSS: Thank you. My name is Sandra
6 Goss. I'm the executive director of Tennessee
7 Citizens for Wilderness Planning.

8 Tennessee Citizens for Wilderness
9 Planning is a statewide environmental advocacy
10 group that's based in Oak Ridge. I speak on
11 behalf of our members across the State.

12 Regarding coal ash, there are currently
13 no federally enforceable regulations specific to
14 coal ash. And it should not be regulated under
15 the weak protective standards provided by a
16 Subtitle D designation. It is a hazardous waste,
17 and it should be regulated as such. Therefore, I
18 urge that coal ash be regulated under Subtitle C
19 of the Resource Conservation and Recovery Act as
20 special waste. Subtitle D falls short of the
21 regulatory rigor and enforcement needed.

22 Please adopt Subtitle C and regulate

1 coal ash like the hazardous waste that it is.
2 Thank you, and thank you for coming to Knoxville
3 to hear our comments.

4 (Applause)

5 MS. DEVLIN: Thank you. Number 142,
6 please.

7 MR. BROWN: My name is Doug Brown. I'm
8 employed by Harrison Construction Company in
9 Alcoa, Tennessee. I've worked for Harrison's for
10 the last 31 years.

11 Old Castle Material owns our company.
12 We're one of the largest Ready Mixed concrete
13 producers in the nation. We've had lots of
14 employees in the last 30 years come and go, and
15 I've never known of one of our employees that had
16 any issue working with or around fly ash. No
17 health issues, nothing has ever come up from that.

18 We've used in con -- fly ash in concrete
19 for the past 25 years. We've produced hundreds of
20 thousands of yards of concrete containing fly ash,
21 which, by using it in the concrete, we've -- have
22 not had to put it into any landfills anywhere.

1 All the used tons of fly ash that would have been
2 and the fly ash that are in place, most of it on
3 government jobs who always specify the use of fly
4 ash.

5 If fly ash is classified as a hazardous
6 waste, we'll be forced to stop using it in our
7 daily operations. We will not take the risk of
8 having to handle or store in our many sites
9 hazardous material. By us and other producers
10 like us stopping the use of fly ash, the price of
11 concrete will increase, which will, in turn, drive
12 up the building cost, not to mention the amount of
13 fly ash that we turned away from concrete plants
14 and sent to landfills.

15 As we go forward in our industry, we're
16 constantly being asked to Go Green. We have many
17 projects that are asking for increased use of fly
18 ash, some as much as 40% as a replacement of
19 cement instead of the customary 20 -- 20 to 25%.
20 If fly ash is classified as a hazardous material,
21 the use of fly ash going to the landfill will be
22 increased much, much more than that. Thank you.

1 (Applause)

2 MS. DEVLIN: Thank you. May I have
3 Numbers 169, 264 and 269.
4 169, thank you.

5 MR. GARDINER: Good afternoon. My name
6 is Robert Gardiner, and I'm a Global Warming
7 campaigner for Greenpeace USA, here today to
8 support your efforts to create a federal minimum
9 coal ash disposal standard; however, I do want to
10 say that this is a floor and not a ceiling. We
11 must do more.

12 Coal ash should be treated as a special
13 waste under subtitle C of RCRA. With that said,
14 sound science dictates that we immediately shut
15 down all coal ash ponds and unlined landfills
16 until best available science is utilized to test
17 the toxicity of these sites; immediately
18 investigate all coal ash dump sites for potential
19 leaching and other structural issues; immediately
20 clean up all sites contaminated by coal ash when
21 such contamination is discovered; immediately test
22 fly ash, bottom ash, slag and Flue gas

1 desulfurization sludge using EPA's -- your LEAF
2 test to determine the toxicity of each waste and
3 disclose publicly all test results.

4 We need stricter enforcement because
5 subtitle C does not require the investigation or
6 rapid closure of dangerous ash ponds. Subtitle C
7 does not require immediate clean-up of all
8 contaminated coal ash sites. Subtitles C does not
9 require polluters to ensure the healthy air and
10 water of communities near dumps or fill sites. We
11 needs you to make sure it is not just shipped to
12 the community where there is more lax standards.
13 Ask the people of Perry County about that.

14 That said, I do want to talk a little
15 bit about the dreaded stigma effect. And it is
16 ultimately a red herring to continue to burn coal
17 unabated. The EPA's inspector general faulted the
18 Coal Combustion Products Partnership with -- for
19 ethics violations, including not containing
20 general risk information concerning large-scale
21 fill operations, including materials giving the
22 appearance that you endorse the commercial coal

1 ash products. C2P2 is made up almost entirely of
2 industry and must be dissolved absent any
3 meaningful scientific or environmental presence.

4 The stigma tech is -- the stigma effect
5 is speculative at best, while the health effects
6 of spreading coal are real, verifiable and are
7 being witnessed throughout our country. I've
8 spoken with people around the country with arsenic
9 poisoning, cancer and asthma that are directly
10 attributable to coal ash. We need a comprehensive
11 reexamination of how these products are being
12 utilized to make sure there are no environmental
13 threats to health or welfare of society.

14 That said, we have discovered that there
15 -- there have been meetings between the OMB
16 between October 2009 and April 2010, at least four
17 months before these public hearings were
18 announced, in which the industry representatives
19 held 33 meetings. 33 meetings. That's more than
20 three times environmental or scientists had on
21 this -- this particular rule.

22 We challenge the EPA to demonstrate that

1 this public hearing is not a sham, and that
2 industry can't just gum up the gears of the OMB
3 when regulating coal ash. It's clearly within
4 your mandate. You must do what is right, and
5 designate coal ash for what it is: Hazardous.
6 Thanks.

7 (Applause)

8 MS. DEVLIN: Thank you. Number 264,
9 please.

10 MS. PERRY: I'm Tori Perry, and I'm a
11 Tennessee resident as well as an active high
12 school student. Although I'm young, the issues we
13 face today will be affecting my generation. And I
14 will have to face those along with them, you know.
15 And coal ash is a very serious issue. And over
16 140 million tons of coal ash is produced every
17 year.

18 Some have different views, but the
19 bottom line is coal ash is hazardous. Toxins such
20 as arsenic, lead and chromium are present, and
21 many who have been affected by coal ash have been
22 devastated by its results: Cancer, respiratory

1 problems, and as far as nerve damage.

2 I myself have not personally been
3 affected, but this is a major crisis affecting
4 many communities across the United States. The
5 TVA Kingston spill is just one example and should
6 not go unnoticed. The EPA Subtitle prime C
7 regulations means more money, but the coal
8 industry does not want to fork out their -- fork
9 out their wallets.

10 With regulations do come more money, but
11 money to our people, money to help them recover
12 from many things that have been taken from them
13 due to coal ash, money to make sure incidents like
14 this don't happen again. Does money really mean
15 more than the health of our people?

16 EPA, you were the -- you are supposed to
17 be there to feel us for our protection (sic).
18 Protect our environment and pass Subtitle C prime.

19 Thank you.

20 (Applause)

21 MS. DEVLIN: Is Number 269 in the room?

22 Again, we're running ahead of schedule.

1 Does anyone have a number that I have not called?

2 Please come forward. 129. Thank you.

3 MR. BYRNE:: My name is Russell Byrne.

4 I'm in the fly ash business. I actually have some
5 of it on my boots. I've just come from work. I
6 don't have a speech. I figured I'd just wing it.

7 I handle fly ash every day. You know,
8 we put it in a landfill. It's dry fly ash. It's
9 not slushed ash like the Kingston. That was a
10 problem in itself. It pays my bills. I've got
11 two kids in college, pays their tuition; it pays
12 the taxes and all that other stuff.

13 Is that not on? Sorry. Like I said, it
14 pays my bills. I got two kids in college. It
15 pays their tuition. I actually had a house there
16 in Kingston when that spill occurred. I still own
17 the house. I don't live there, but...

18 I'm a bass fisherman. I fished that
19 lake before and after so, you know, I don't see
20 any dead fish floating around, if the -- if the
21 stuff is so poisonous. You know, the birds there
22 are. I know where there's a bald eagle nest right

1 there off of Caney Creek. If that eagle was
2 having trouble catching fish, he wouldn't be
3 hanging around still, so...

4 You know, use your eyes. Get out there
5 in a boat and go around the lake. Hell, I don't
6 see nothing dead floating around. I certainly
7 haven't heard any head-counts of dead fish or
8 anything to that nature. I mean, we're talking
9 about five million yards -- cubic yards, they
10 said, spilled in there. Well, by God, if it was
11 that toxic, you'd show effects of it in the
12 wildlife around the area. And get in a boat and
13 go look. I just don't see it. Thanks.

14 MS. DEVLIN: Thank you. Number 139.

15 MR. MCAMIS: Good afternoon. My name's
16 Sam McAmis. I work for a Ready Mixed concrete
17 producer here in east Tennessee. We have five
18 locations from the Lowden County area down to the
19 Hamilton County area along I-75. I'm the regional
20 sales coordinator, but part of my job is to design
21 the mixes that we use to make the buildings that
22 we have around in this area. I'm also a certified

1 mix-design technician for the State of Tennessee,
2 so I deal with our roadways and bridge decks when
3 we're designing concrete to withstand the
4 traveling that we're going to be doing over them
5 with our vehicles.

6 In the course of dealing with concrete,
7 I do have some beneficial uses for how we design
8 our concrete using the fly ash, on a road surface
9 especially. The State of Tennessee allows us to
10 use 25% replacement by volume of Portland cement
11 with the dry ash. This is not the wet ash like at
12 Kingston. This is a dry facility like they're
13 running in Cumberland.

14 We wouldn't have had the problem if we
15 were allowed to use the ash their producing at the
16 Kingston site. Speaking with the representatives
17 who sell the coal ash to me, type F, is at least
18 90% of the material produced at Kingston would be
19 used by local vendors here in the Knoxville area.
20 I would like to think that we, when making the
21 concrete, offer a solution for recycling the coal
22 ash material, which I'm sure you-guys have looked

1 into. I would -- I just want to let you know the
2 impact it will have on my industry, as far as the
3 designing for the construction projects we have
4 and also how it will affect the people that work
5 at my place of business.

6 If we get into severe regulation of the
7 ash where I have to take particular precautions at
8 my site, over and above what we already have
9 permitted in our air permitting that we run
10 through the State of Tennessee anyway, I'm
11 guessing that we will lose at least three jobs and
12 possibly five in the transportation of material.
13 And -- and then, as far as being able to recycle
14 the coal ash material, I'm not sure there's a
15 better way to recycle than encapsulating it in the
16 concrete. It helps us gain credits in lead
17 projects, which I help design and give the
18 builders credit on their leads course to help
19 build nice and green.

20 I'm a fly fisherman. I fly-fish the
21 waters in this area around here, and I, of course,
22 don't want to see anything happen like happened in

1 Kingston. So if you're going to push for
2 something, please push for these coal facilities
3 to switch to dry so that we can use the concrete
4 up and encapsulate it and recycle it.

5 I thank you for your time, and good
6 luck. Appreciate it.

7 MS. DEVLIN: Thank you. Again, does
8 anyone in the audience have a number 102 and 269?
9 Okay.

10 MR. CARRIGAN: All right. Members of
11 the EPA, I know you've been here all day. You're
12 probably a little bit bored, so I'll try to make
13 this entertaining for you.

14 You've heard a lot of coal-industry
15 people come through here. They are set up
16 upstairs in the Carolina Room. What generally
17 happens is that they're given a little script to
18 fill out; they say it, and it becomes a very
19 boring affair. However, after watching the coal
20 industry's -- the coal-industry representatives, I
21 believe I have gotten down their script down talk
22 science.

1 A, thank the EPA. B, say who you are.
2 C, mention family. D, mention somebody else's
3 family. E, mention a poor family that will
4 clearly be negatively impacted by Subtitle C. F,
5 use absolutely no evidence to back up your claims.
6 G, squint decisively into space. D -- or whatever
7 letter comes next, calls Kingston a mistake. I,
8 mention recycle. J, mention recycle again; helps
9 make the point even clearer. And finally, end by
10 thanking the EPA after you have said virtually
11 nothing of substance. Seriously, that has been
12 pretty much what every single coal-industry
13 representative has said over the last several
14 hours.

15 Here's what they won't say. They will
16 not say anything about the health effects of coal
17 ash. In fact, that's another part of their
18 script: Ignore any and all health effects
19 regardless of the scientific evidence. And yes,
20 true, a lot of them have said that there's
21 absolutely no claim that coal ash is toxic. Well,
22 here's the claim right here. It's a wonderful

1 little report called, "In Harm's Way: Lack of
2 Federal Coal Ash Regulations Endangers Americans
3 and Their Environment."

4 Here's some of the juicy bits. Okay.
5 This is from the executive summary. Alpha
6 particles, arsenic, beryllium, cadmium, chromium,
7 lead, selenium and thallium in one, two, three,
8 four, five, six, seven, eight different sites in
9 about as many states, all posting severely,
10 severely high levels of all of these metals. Far
11 higher than what they ought to be allowed.

12 And again, the use of language is
13 interesting here. We call coal ash "ash" because
14 that's what it actually is. They call it CCR, an
15 attempt to basically ignore the true nature of the
16 substance. We call Kingston not an accident, but
17 a catastrophe, because that's what it very much
18 was. Homes being carted away literally by tons
19 and tons of coal ash which, today, still has not
20 been picked up.

21 Again, I know that you are going to have
22 a lot of speakers here, and I know you were

1 probably maybe going to listen to some, maybe not
2 listen to others, but please, I do hope that you
3 will focus on the facts and ignore scripted,
4 canned speeches for what they really are:
5 Scripted, canned pieces of idiocy.

6 Thank you very much.

7 (Applause)

8 MS. DEVLIN: Thank you. Number 102,
9 please.

10 MS. LISEBY:: Well, ladies and
11 gentlemen, after that, I don't want to speak from
12 a script for sure. So my name is Donna Lisenby,
13 the Watauga Riverkeeper.

14 The Watauga River flows from Grandfather
15 Mountain in North Carolina over to Johnson and
16 Carter County, Tennessee. It crosses two states.
17 And coal ash is treated very differently in North
18 Carolina than it is in Tennessee. You've already
19 heard our Tennessee Riverkeeper comment about need
20 for federal regulations that balance and create a
21 level playing field. I don't want to repeat
22 those.

1 What I want to do today is talk to you
2 from my role as a board member of Waterkeeper
3 Alliance and from the perspective of all the
4 waterkeepers. So let me just run through a few of
5 the waterkeepers that have direct experience with
6 coal ash ponds in their watershed, testing
7 sediment, water and fish. Real direct live
8 experience with it.

9 That would be David Merryman on Catawba
10 River, finding high levels of arsenics from Duke
11 Power's discharges now and it's confirmed by
12 government agencies. Hartwell Carson, the French
13 Broad Riverkeeper, also testing and finding really
14 high levels of metals in the water that discharges
15 from the coal ash ponds of Progress Energy in
16 Asheville, North Carolina. Kemp Burdette, the
17 Cape Fear Riverkeeper, who worked the coal ash
18 pond breach in the Cape Fear watershed near
19 Wilmington two, three weeks ago, tried to get on
20 site to see if that breach of that second coal ash
21 pond had contaminated the Cape Fear River. Also
22 has tests that are pending, not ready yet, but

1 will be soon, David Whiteside, the Tennessee
2 Riverkeeper you heard from today. Dean Naujoks,
3 the -- the Yadkin Pee Dee waterkeeper. Also
4 testing, Ed Merrifield, the Potomac Riverkeeper.
5 Via -- Maya van Rossum, the Delaware Riverkeeper.

6 So let me just summarize our experience
7 in our watersheds on our waterbodies' testing.
8 Coal ash is toxic. It's putting heavy metals in
9 our waterways repeatedly. It's poisoning our
10 watersheds and our communities, period. It's our
11 consistent experience. Not only is that area
12 experienced, but three of us have been threatened
13 with lawsuits and arrest by the coal companies for
14 being on public navigable waterways and conducting
15 lawful and legal tests of the United States
16 waters.

17 So I am tired of the coal industry
18 harassing the hell out of us public advocates for
19 trying to just find out the truth, test the waters
20 and tell our communities what's in them. I want
21 you-all to do your job. And the waterkeepers want
22 you to do your job. Coal ash is poisoning our

1 waterways and our communities. You need to treat
2 it as hazardous waste, regulate it, create a level
3 playing field and remember: This is about people
4 and communities being poisoned by heavy metals.
5 This is not about profit for greedy corporations.
6 It's about people. Do your job.

7 (Applause)

8 MS. DEVLIN: Thank you. May I have
9 Numbers 158, 159, 160, 161 and 139.

10 If you-all would please come forward,
11 and 158 would come to the podium and the others
12 would take a seat at the side.

13 Thank you. You're number 158?

14 MS. KELLY: Yes, I'm Number 158.

15 MS. DEVLIN: Thank you.

16 MS. KELLY: My name is Mary Ellen
17 Kelley, and I live in Wise, Virginia. And I'm
18 here to advocate for coal ash to be declared
19 hazardous waste.

20 There is currently -- I guess, we're
21 going to be one of the most affected because we
22 have a waste-burning coal plant that is going to

1 be in our area, so we're going to have a huge coal
2 ash dump. And like the lady said, you know,
3 somebody needs to be doing their job.

4 My water -- and I've got pictures, which
5 I will leave out there in the comment box -- my
6 water has been completely destroyed. I've been
7 denied my rights to a formal hearing so far. I've
8 been denied rights to public information. I have
9 gone -- even though I've been crippled and very
10 sick lately, I've gone and checked the files and
11 nothing in the Department of Mines and Minerals
12 and the OSM files are correct. They are showing
13 roads going over high walls, through sludge ponds,
14 and I actually had one friend that actually went
15 over that and he came to my house all bloody.

16 And about 20 coal companies used my home
17 site and my neighbors', which is a residential
18 area, as a strip mine, active strip mine. And I
19 have a picture here from Department of Mines and
20 Minerals which shows a small bit of pond left, and
21 that actually dried up. And the poor mud turtles,
22 one I stepped on thinking it was a rock, came out

1 of that thing cloaked in mud. And my young
2 grandson and I had to get water and pour on the
3 turtles so they could see to get somewhere else.

4 So that is what's happening. I've got a
5 picture of the water that was actually taken from
6 the pond, even though I had a difficult time
7 getting it. It's on file. So as I say, I've been
8 affected tremendously, and I have a little story
9 here, which I was going to leave with you, so
10 you'll understand. And I do appreciate the
11 opportunity to come here. And I tell you, we, in
12 Wise, County in southwest Virginia and also in my
13 native home of Kentucky need support and help.

14 Thank you so much.

15 (Applause)

16 MS. DEVLIN: Thank you. Number 159,
17 please. 159?

18 MS. TAULBEE: My name is Dorothy
19 Taulbee, and I was a former resident of 15709
20 Stone Eagle Road, which my home is buried by the
21 slurry pond now. I put up with that six and a
22 half years, three strip jobs blasted my house

1 clean before it. I got pictures and newspapers.
2 And then I got lung cancer from it, and my right
3 lung had to have the whole top of it removed.

4 And I breathed this. You should see, I
5 have jars of it at home, where I took it out of my
6 bedroom, off of my porches. Me and my son had put
7 double-paned windows in their house and it even
8 come through that. And what I was going to tell
9 you-all: Slurry is what -- where they washed the
10 coal, and then, when they burn the coal, we have
11 the fly ash. All of it is poison and toxic
12 because they blast these mountains with that
13 dynamite, and you know what dynamite's got in it.

14 But what I was going to say: I'm so
15 glad you- all give us opportunities to speak out
16 against this, because of what we're leaving for
17 our grandchildren and great-grandchildren. I have
18 about 15 great-grandchildren, and one of my
19 great-grandbabies was up there with me, and I
20 worry about her because she breathed this all the
21 time. I about raised her. And slurry and stuff
22 and this fly ash is poison to the people. They're

1 poisoning our water and us, and now we have the
2 millions built the coal power plant in Virginia
3 City. And when they get it up and running, they
4 say it's going to use 500 coal trucks a day and a
5 million gallons of water. We don't have water,
6 people, like that in Virginia over there, over and
7 -- where it's at.

8 And they will be wanting to take the
9 people's drinking water. You know, this is
10 terrible. You know, God said, "Do unto others as
11 you would have them unto you." This is his
12 creation. When you blow a mountain away, we can't
13 put it back, can we? And they're making people
14 poorer and poorer and wanting to close their
15 schools down over there to get coal. Pound in
16 Appalachia schools.

17 Well, it's just trouble. We're voting
18 for this -- this to be done away with. We don't
19 need fly ash, and we don't need these slurry
20 ponds. Yeah, my home was buried with a slurry
21 pond today. You should see, and the whole big,
22 beautiful mountain that was there is gone. And

1 they burned the trees they got off that land. And
2 you should see what a huge mountain and what
3 little bit of coal they got. It's crazy.

4 And we appreciate you-all that we do
5 need help and we need this stopped, and vote for
6 the C to control this, because we don't need this.
7 And I appreciate you-all.

8 (Applause)

9 MS. DEVLIN: Thank you. Number 160,
10 please. 1-6-0.

11 MR. RAMEY: Good evening. My name is
12 Carl Pete Ramey, and I want to thank the EPA for
13 allowing me, as a concerned citizen from Wise
14 County, Virginia, where perhaps the source of fly
15 ash begun, to speak on the serious threat of both
16 fly ash and slurry ponds or to our air we breathe,
17 the water we drink and to the health of our
18 people. We, as a community, state and nation
19 should be considered slow learners if we haven't
20 learned a valuable lesson from all the
21 environmental disasters.

22 I want to mention a few tragedies that

1 have often been repeated due to the lack of
2 regulations and enforcement. Number one, West
3 Virginia Buffalo Creek happened in 1972 when a
4 coal slurry dam burst, unleashing approximately
5 132 million gallons of black waste over 30-foot
6 high and killed 125 people, injured 1,121 and left
7 4,000 homeless. There were 507 houses destroyed,
8 in addition to 44 mobile homes and 30 businesses.

9 Number two, the Appalachian power plant
10 in Russell County, Virginia had a coal ash pond
11 burst in the 1960s and contaminated the Clinch
12 River, killing aquatic life for many miles.

13 Number three, on October the 11th, 2000,
14 Martin County, Kentucky had a 68-acre holding pond
15 burst, sending goo washing through an underground
16 and into two creeks. The 306 million gallons of
17 sludge blackened 100 miles of waterway, polluted
18 the water supplies of more than a dozen
19 communities and killed aquatic life before it
20 reached the Ohio River.

21 Number four, this country's most recent
22 sludge pond disaster happened December 22nd, 2008,

1 when a fly ash dike broke at TVA Kingston fossil
2 plant, erupted and released 1.1 billion gallons of
3 coal fly ash into the Clinch and Henry rivers,
4 tributaries of the Tennessee River. It was the
5 largest fly ash released in the history. How long
6 must tragedy speak before we pass and enforce laws
7 to control these disasters?

8 Of the two options EPA has proposed, I
9 support and recommended Subtitle C, that it be
10 backed by strong federal enforcements. You know,
11 we might as well put lead back in paint and
12 asbestos back in insulation if we continue to
13 ignore these disasters that are a crime against
14 nature and a sin against humanity. Poison is
15 poison in liquid or dry form. Thank you very
16 much.

17 (Applause)

18 MS. DEVLIN: Thank you. Number 161,
19 please.

20 MR. BUSH: Did you say 161?

21 MS. DEVLIN: Yes please.

22 MR. BUSH: Afternoon. My name's Larry

1 Bush, and I live in Appalachia, Virginia.

2 THE REPORTER: I'm sorry. Can you move
3 the microphone so I...

4 MR. BUSH: Can you hear me now?

5 THE REPORTER: Yes.

6 MR. BUSH: Did you get my name?

7 THE REPORTER: No, sir.

8 MR. BUSH: Larry Bush, and I live in
9 Appalachia, Virginia. And I don't need to -- I
10 mean, your own studies show the poisons that's in
11 this stuff that's dumped from these coal-burning
12 power plants. I mean, EPA, I mean, I've got stuff
13 here that's from your own studies, shows the
14 poison that's in there: The mercury, lead,
15 selenium, cadmium, thallium, antimony, mercury,
16 boron, sulfate and other toxins exceeding
17 drinking- water standards in 26 of 31 sites.
18 These are your own studies. I mean, you -- you
19 people know this already.

20 They're destroying -- these -- these
21 ponds and dumps are destroying waterways. It's
22 leaching into our -- our own -- our very own water

1 supplies in these Appalachian states that are, I
2 guess, central to the coal-mining area in our
3 area, I guess. And it's -- it's a shame that --
4 that it's not treated as it is, a toxic waste, and
5 treated with whatever means possible, such as
6 treated the same way, you know, a landfill would
7 be, with liners and everything else that -- that
8 it -- you know, it's not been done before. That
9 -- but this needs -- it's -- I mean, people can
10 talk about, you know, industry. They can talk
11 about conservationists, environmentalists; call
12 us, you know, whatever you want, I mean, as far as
13 people.

14 But it -- it -- what it boils down to is
15 people. It's about people being -- homes and
16 waterways and our kids growing up in this -- this
17 filth and breathing this -- this toxic material,
18 and people having to live in this. I mean, live
19 right in -- in the heart of this area that's being
20 -- that's being contaminated with these -- with
21 these pollutants.

22 And what it comes down to is people, and

1 I think you need to, first and foremost, think of
2 people and think about the poison that -- that's
3 being heaped on us and our -- our future and what
4 -- what is being left for our children and
5 grandchildren and their children to try to recover
6 from, and not only recover, but try to repair it,
7 if that's possible, the damage that's being done
8 by these -- these dumps. And -- and the poison
9 that's being dumped into our waterways and, you
10 know, what's leaching in old and -- old and new
11 dump sites are -- are leaching into our waterways.

12 I worked in a coal mine for 13 years,
13 and I was a coal-mine inspector for 13 years. And
14 I've seen this everywhere, and it -- it's no good
15 anywhere it -- anywhere it's at. So I appreciate
16 your giving me the opportunity to speak, and I
17 appreciate your -- your help. Like I say, you've
18 got studies of your own. Just ask on them and --
19 and let's stop this problem before it, you know,
20 gets to -- to the point that we can't. And our
21 kids -- like I say, our kids and grandkids and
22 their kids are going to be the ones to suffer most

1 from it if something's not done. I appreciate it.

2 (Applause)

3 MS. DEVLIN: Thank you. Numbers 139 and
4 156, please. Okay.

5 Say again, please?

6 SPEAKER: I'm 156.

7 MS. DEVLIN: Please come forward.

8 MS. SELVAGE: My name is Kathy Selvage,
9 and I live in Wise County, Virginia, where
10 approximately 23% of our households are under the
11 federal poverty level and more than 25% of our
12 entire land surface in the county has been
13 sacrificed for the energy needs of this country.
14 A map is attached, and I will leave it for you.
15 The problem we come here today to discuss begins
16 in our backyard with the explosion and the
17 obliteration of the mountains we once called home.
18 Thank you for the opportunity to speak to you
19 today.

20 We produce somewhere between 100 and 136
21 million tons of this hazardous waste every year,
22 and much of it is buried in coal ash dumps of the

1 east. You should regulate it as it is, as a
2 hazardous waste. While Subtitle C is not perfect,
3 it is our best choice. I really wonder just how
4 safe this toxic soup we lock up in the materials
5 through beneficial use is. What happens if the
6 key is turned and it is unlocked in some disaster?
7 Perhaps even more frightful is the insertion of
8 coal ash and sludge in hollowed-out mines where it
9 is very likely to foul, poison and pollute
10 underground aquifers.

11 We simply cannot afford to delude
12 ourselves any longer. It is hazardous and
13 extremely dangerous to human health. The
14 pollutants are linked, I'm sure you-all know, to
15 numerous health problems. We are playing Russian
16 roulette with our own lives and those of our
17 future generations. Until such time as coal
18 disappears, we must regulate coal ash on a federal
19 level and recognize that it is dangerous to our
20 environment and to our all-important drinking
21 water.

22 Many examples can be chosen, but none is

1 more blatant for us in the Commonwealth than the
2 Chesapeake, Virginia golf course, made of coal
3 ash. Housing sprang up around it, with private
4 water supplies that are now fouled, and Dominion
5 is being sued collectively for one billion
6 dollars. That is the same Dominion coming to Wise
7 County with a new coal-fired plant. Too many of
8 the pieces are attached, and these will illuminate
9 why states cannot be charged -- in charge of
10 regulation.

11 History will judge us, and our future
12 generations will long remember what we do here.
13 Right choices are very often not easy ones, but we
14 must be determined to make them. If coal ash was
15 appreciated as an art form or, indeed, was
16 beneficial, we would likely see it floating in the
17 reflecting pool between the Washington Monument
18 and the Lincoln Memorial.

19 And I thank you for your time.

20 MS. DEVLIN: Thank you.

21 (Applause)

22 MS. DEVLIN: Do we have any folks in the

1 audience who have numbers? Okay. We have been
2 running a bit ahead of schedule, so at this point,
3 I'm going to try taking about a 15-minute break.
4 And so, by my watch, it's 5 to 5. We'll reconvene
5 at 10 minutes past 5. Thank you.

6 (Recess)

7 MS. DEVLIN: Okay. Ladies and
8 gentlemen, I think we're going to get started
9 again.

10 I want to announce we've had a couple of
11 membership changes on our panel. We now have with
12 me on the panel Frank Ney from our Region 4
13 Office, and Region 4 is EPA's Office in Atlanta,
14 Georgia; we also have Alexander Livnat and Steve
15 Hoffman, and Alex and Steve both work with me in
16 headquarters in Washington, DC.

17 So we'll get started again. And we have
18 a number of -- of folks who've signed in. Number
19 135, Number 201, and we have a number of walk-
20 ins, Numbers 270, 271, and 272. If I've called
21 your number, if you could come up to the chairs on
22 the side and -- and then get up.

1 AUDIENCE: Okay.

2 SPEAKER: Yep.

3 MR. CLARK: Both hands .

4 MS. DEVLIN: So 135?

5 MR. HOFFMAN: You're 135?

6 MR. CLARK: That's me.

7 MS. DEVLIN: Okay.

8 MR. CLARK: Yeah. Let's see if I can
9 get -- I didn't even have time to print my notes
10 off here.

11 MR. HOFFMAN: Do you want someone else
12 to speak; give you some more time?

13 MR. CLARK: No. I mean, I can read from
14 them (laughs). Give me a few minutes to get
15 composed here. Okay.

16 Perry County, Alabama, is a poor,
17 majority black community; it's rural and I don't
18 look like the average Perry Countian (sic). But
19 very few of them can afford to take two days off
20 work and drive 700 miles just to talk to you-all
21 for three minutes, so I'm who you get.

22 A lot of Perry Countians have spent a

1 lot of time fighting against the shipments of coal
2 ash from the Kingston disaster to private
3 municipal solid waste landfill in the south end of
4 our county. And I couldn't get anybody interested
5 in to come up here with me today because most of
6 them have given up the fight. It's hard to see --
7 or it's not hard to see why. At are first meeting
8 with EPA, before the shipments even started
9 coming, and -- and actually before we even knew we
10 were the place that was getting the coal ash, a
11 representative met with some concerned citizens,
12 I'd say about 100, and told us that while he
13 appreciated us coming, he wanted us to understand
14 he wasn't here to ask for our permission to -- to
15 ship the coal ash here because he didn't need it.
16 And there's nothing I can say here today that will
17 change that fact.

18 But as editor of the local newspaper,
19 I've watched a lot of disconcerting things happen
20 out of that Subtitle D landfill, handing coal ash.
21 We've published on the front page photographs of
22 80-foot high mounds of coal ash, uncovered,

1 against regulations, rising up out of flat prairie
2 farmland, which is just a -- a massive change to
3 -- to that landscape.

4 We've published photographs of electric
5 -- electric pumps set up to pump what was pretty
6 clearly sludgy rain water that was contaminated
7 with coal ash offsite and into the ditches around
8 the property.

9 If coal ash were regulated more firmly,
10 we wouldn't have situations like we have in Perry
11 County with potentially toxic heavy metals getting
12 released into our groundwater by a shoddily run,
13 poorly overseen Subtitle D landfill.

14 And so I'm here to ask on behalf of the
15 11,000 souls in Perry County that the EPA consider
16 changing that regulation.

17 Thank you.

18 MS. DEVLIN: Thank you. Sir?

19 (Applause)

20 MS. DEVLIN: Sir? Sir?

21 MR. CLARK: Yes, ma'am.

22 MS. DEVLIN: Could you come and state

1 your name and affiliation for the record?

2 MR. CLARK: Oh, Lord, I'm sorry.

3 MS. DEVLIN: That's okay.

4 MR. CLARK: John Alan Clark, and I'm
5 publisher and editor of the Perry County Herald in
6 Marion, Alabama.

7 MS. DEVLIN: Thank you so much.

8 MR. CLARK: Thank you.

9 MS. DEVLIN: Number 201? No? 270, 271.
10 271.

11 MR. HOFFMAN: 271.

12 MS. DEVLIN: 271. Thank you.

13 MR. MCKINNEY: My name is Carson
14 McKinney. I'm a freshman at the University of
15 Tennessee, and I'll keep this short.

16 I think the choice between jobs and
17 coal, when it comes to regulation is a false
18 choice. I think in order to protect our future,
19 environmentally, we need to regulate the dangers
20 -- the dangerous coal ash, which is unregulated
21 right -- or -- and I think that we need to
22 regulate coal ash.

1 Thank you.

2 (Applause)

3 MS. DEVLIN: Thank you. Number 272?

4 MR. MCQUEEN: Hello. My name is Matt
5 McQueen. I am a freshman at the University of
6 Tennessee here Knoxville.

7 My generation is faced with finding
8 solutions to the problems developed by past
9 generations. Sustainability of our world -- world
10 is a moral movement, not simply social. This is
11 why I plead the EPA to enacted and enforce the
12 highest amount of regulations on the coal industry
13 for the good of my health and our environment. If
14 these regulation are not strongly enforced, the
15 current presiding generation, yours, will have the
16 legacy of putting heavy metals into our public's
17 drinking water and further highering (sic) the
18 density of air pollution. Your generation will
19 have the legacy of doing nothing but promoting the
20 failing health of our public and the environment.

21 Support Subtitle C to it's fullest
22 potential. Thank you.

1 (Applause)

2 MS. DEVLIN: Thank you. Is there anyone
3 in the audience who has a number? Number 132
4 please come forward. Is there anyone else in the
5 audience who has a number whom I have not called?
6 Okay. There's anyone in the audience who has number
7 132? Come forward. There's anyone else in the lower
8 who has a number that I have not called?

9 MR. FRANKLIN: My name is Ben Franklin.
10 I'm a concerned citizen, and I have 15 years in
11 the coal combustion product industry.

12 When I heard on the news of the spill
13 that had happened in the Kingston -- the Kingston
14 spill, my ni -- initial rec -- re -- reaction was,
15 I hope everyone is okay. But then I got to
16 thinking, Well, there's 500 million tons of these
17 combustion residues spilled. It's obvious TVA had
18 a major problem marketing this material and taking
19 it offsite.

20 Perhaps this spill will bring the issue
21 to the forefront, and the EPA and congress will
22 figure out a way to utilize more of these CCRs to

1 keep them out of the ponds and the landfills.
2 After all, the EPA, since the mid 70s, has been
3 encouraging my industry to utilize as much of the
4 CCRs as possible. And why would the EPA not
5 encourage CCR's utilization? The EPA is on record
6 as considering CCRs as a non-hazardous and
7 beneficial use material, recognizing that CCRs
8 reduce CO2 by reducing Portland cement consumption
9 and reducing pressure on other natural building
10 materials, such as stone, sand and water.

11 As I have sat through the last three EPA
12 hearings, I have heard citizen after citizen
13 complain that they are worried about the ponds of
14 CCRs stored onsite at their local power plant.
15 And they suggest the EPA rule in favor of Subtitle
16 C.

17 To be frank, I, too, am worried about
18 the tons of ash stored on these plant sites, but I
19 am also worried greatly about the EPA ruling in
20 favor of Subtitle C. Why? Because if the EPA
21 rules in favor of Subtitle C, the ruling will
22 inadvertently cause more ash to be stored on site.

1 The reason is simple. The passing of Subtitle C
2 will create liability and stigma for the
3 industry; it creates liability for the power plant
4 that we contract with to market these materials;
5 and it creates liability for companies such as
6 mine when we sell the materials to the end-user;
7 Ready Mix concrete, shingle, tile companies, et
8 cetera.

9 I've personally spoken with a number of
10 these companies and they all tell me they will not
11 continue to use these CCRs in production of their
12 products if we go with Subtitle C. Further, I've
13 been told by a large majority of the power
14 companies that they will not allow companies such
15 as mine to market the ash. So that in and of
16 itself creates more and larger ponds of CCRs in
17 the future, which is counterintuitive to what both
18 my industry, the EPA, and the citizens of this
19 country are trying to accomplish.

20 Let's be clear, even though we all love
21 wind, solar and hydroelectricity, coal-fired power
22 -- power plants are not going away for another 20

1 years in my opinion, which means that there will
2 be CCRs left over. We do not have the land to
3 bury it all. And when faced with liability, the
4 EPA cannot make the building industry use the
5 CCRs, and the EPA cannot make the power companies
6 sell these CCRs.

7 For proof of stigma, I have attached a
8 copy of an invoice from a company that produces
9 concrete block and is warranting their block to be
10 free of coal ash, as coal ash is currently under
11 investigation by the EPA to be classified as a
12 hazardous waste, as they've placed on their
13 invoice. And if that's not stigma, I don't know
14 what is.

15 Subtitle D is the only option.

16 MS. DEVLIN: Thank you.

17 MR. FRANKLIN: Thank you.

18 MS. DEVLIN: Is there anyone else in the
19 audience who has a number who wishes to speak at
20 this time? Okay. Again, we're running ahead of
21 schedule, and we have a great number of speakers
22 who are signed up to speak at 6:00 or after. And

1 so given that, I am going to take a break. This
2 time we'll take it for a half an hour. So we will
3 con -- reconvene in this room at 6:00.

4 Thank you.

5 (Whereupon, an afternoon recess was
6 taken.)

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

2 MR. DELLINGER: We're calling the
3 hearing to order again.

4 And we'd like to call Numbers 173, 174
5 and Numbers 273 and 274 to the podium.

6 Is there anyone else in the room that
7 has a number?

8 MR. NEY: 274.

9 MR. DELLINGER: Okay. Number 274.

10 MS. MURPHY: Hi. Well, my name is Polly
11 Murphy, and I'm a member of SOCM, which is
12 Statewide Organizing for Community eMpowerment.
13 I'm also -- have been a resident of Tennessee for
14 over 40 years. And I --

15 SPEAKER: Can you put the microphone
16 down a little?

17 MS. MURPHY: I should be short (laughs).
18 It's Polly Murphy; it's with SOCM, Statewide
19 Organizing for Community eMpowerment. And I've
20 also been a teacher and lived in Tennessee for
21 over 40 years.

22 And I really strongly urge EPA to choose

1 option to have the coal ash to be a special
2 hazardous waste. It's the health of people; it's
3 extremely important for the groundwater. We've
4 got mountaintop removal; we've got lots and lots
5 of problems keeping our water clean. I mean, it's
6 one of many threatening things and it's something
7 that we can -- we can do something about right
8 now.

9 So I'm urging, it's for our whole
10 environment and for everybody that's living in it.
11 I urge you all to go with Subtitle C. And please,
12 please take care of this for us.

13 Thank you so much.

14 MR. DELLINGER: Thank you.

15 Number 274.

16 MR. SHELTON: I'm 273.

17 MR. DELLINGER: Okay.

18 MR. HOFFMAN: Close enough.

19 MR. DELLINGER: 273.

20 MR. HOFFMAN: Whenever you're ready.

21 MR. SHELTON: Okay. My name is Todd
22 Shelton, and I live in Knox County.

1 I want to thank the EPA for adjusting
2 your schedule and having a hearing here close to
3 the spill in Harriman. We appreciate that.

4 And I am hoping and asking the EPA to
5 approve Subtitle C of the Resource Conservation
6 Recovery Act (sic). And it would designate the
7 coal ash as a toxic waste as far as its content
8 and whatnot and how it's stored and managed and
9 regulated. I just feel like this has been a long
10 time coming.

11 The facts are certainly there as far as
12 the heavy metals are involved and the threat that
13 can happen, as we've seen in Harriman when there
14 was a spill not only in liquid form, but then in
15 -- in -- in the air itself. It's also brought to
16 life, as you-all were probably very aware of but I
17 wasn't, ab -- about how many places there are like
18 this and -- and how poorly they are stored.

19 So the Subtitle C is not as strong as I
20 would like it to be, and I would encourage EPA to
21 continue to look at the testing that they've done
22 recently that has shown the sot of toxins that are

1 there, and -- and consider the reuse and the
2 recycling of the ash, as I understand does happen,
3 for instance, in Sheetrock.

4 I'm a builder; not a large builder, but
5 I certainly don't want to be handling that sort of
6 thing. And I certainly don't want to breathe the
7 dust. I don't want my customers to then have to
8 find out later that we have to tear out entire
9 rooms in their house.

10 So I'm hoping EPA will think about
11 strengthening those regulations on the recycling,
12 and be concerned that most of these -- so many of
13 these waste collection areas are in minority and
14 poor neighborhoods.

15 So, once again, I am supporting Subtitle
16 C. And I want to thank all of the -- the group
17 that came together to put some pressure
18 politically on EPA, and I knew to get you-all down
19 here.

20 Thank you.

21 MR. DELLINGER: Thank you.

22 (Applause)

1 MR. DELLINGER: Number 151.

2 Please state your name and affiliation.

3 MS. HAYES: My name is Meredith Hayes,

4 and I'm with Students Promoting Environmental

5 Action at Knoxville. I'm a UT student as well.

6 And, first of all, I just want to thank

7 you-all for coming out. You-all are taking the

8 first step in wanting to protect America's

9 citizens by having this hearing for us to come out

10 and tell you why we think that you-all should vote

11 on Subtitle C.

12 I mean, I guess when it comes down to

13 it, it's a matter of corporate dollars and

14 people's lives and their health. And I think that

15 the answer to that question, it's pretty obvious.

16 You've heard, probably, from many people

17 today about the heavy metals that are in the coal

18 ash and they are very toxic. They seep into the

19 groundwater, and these families are drinking them.

20 And it's just very, very, very hazardous to their

21 health.

22 So I just want to ask you-all today to

1 please decide on Subtitle C -- on Subtitle C, just
2 put in a lining and make sure that this doesn't
3 get into the groundwater.

4 Thank you again.

5 MR. DELLINGER: Thank you.

6 (Applause)

7 MR. DELLINGER: Is anyone else in the
8 room that has a number?

9 All right. 174?

10 MS. MCCUE: That was easy .

11 MR. DELLINGER: Well, you get to go
12 first then (laughs).

13 MS. MCCUE: That was easy. Thank you
14 for holding the hearing. My name is Maureen
15 McCue. I've worked in primary healthcare for the
16 last 30 years and in public health. The last 15
17 years I've worked international in global health,
18 teaching and working.

19 Today I'm speaking from my experience
20 both in global health and about my concerns about
21 the management of coal ash or coal combustion
22 waste in Iowa. I speak in support of Subtitle C

1 in the current effort to regulate coal ash as a
2 special hazardous waste. I believe this option
3 provides the greatest likelihood to protect human
4 health and the environment.

5 Due to a lack of national enforceable
6 standards in Iowa, we have large quantities of
7 coal ash we imported. With at least 43 surface
8 impoundments, we're second -- or rather, third
9 behind Kentucky.

10 Evaluation of downstream water sources
11 is not done routinely, but a recent evaluation
12 showed about 48% of our wells are co --
13 contaminated with arsenic. However, 8% are above
14 the safe water standards.

15 As the scrubbers capture and concentrate
16 more of the toxic by-products of burning coal,
17 they will continue to accumulate in the
18 environment.

19 Iowa has experienced two 500-year floods
20 in the last 15 years. That makes the risk of
21 these impoundments overflowing much graver.

22 I work also in Bangladesh, where the

1 devastating effects of arsenic poisoning from
2 chronic water pollution are readily seen. The
3 difference is, those people were effected
4 accidentally when wells were dropped into
5 arsenic-containing rock.

6 If we continue to do what we're doing,
7 it will be knowingly. And when our children and
8 our families manifest these effects, we will have
9 not done it by accident but knowingly.

10 The health hazards posed by the toxic
11 elements contained in the coal ash are well
12 documented. Do we have to wait until we manifest
13 the effects or can we do something now to protect
14 our population? I think Subtitle C is at least a
15 good beginning.

16 Thank you.

17 MR. DELLINGER: Thank you.

18 (Applause)

19 MR. DELLINGER: 174?

20 DR. RACHOW: Good after evening (sic).

21 My name is Dr. John Rachow. I'm speaking on
22 behalf of the Physicians for Social Responsibility

1 in my capacity as president-elect of the
2 organization. And I'm here to voice Physicians
3 for Social Responsibility's report -- support for
4 Subtitle T -- Subsi -- Subtitle C as it has been
5 proposed.

6 I hold a doctorate in chemical
7 engineering, and I'm a medical doctor with
8 specialties in internal medicine, rheumatology and
9 geriatrics. In these capacities, I am also
10 deeply, personally concerned about the toxic
11 threat to the health of us all posed by the
12 failure to date to safely manage coal combustion
13 wastes.

14 We now live in an age of consequences.
15 Previous clean air regulations effectively shifted
16 some coal combustion products from stack emissions
17 to create a poorly anticipated toxic waste
18 disposal problem. Missing were the companion
19 regulations to stipulate safe management of what
20 has become a huge stream of wet and dry toxic coal
21 ash.

22 Business as usual will guarantee that

1 within a century or two, last century plus this
2 century, most of heavy metals in accessible coal
3 reserves on the planet will be permanently
4 released into the thin veneer of life that we term
5 the "biosphere."

6 Heavy metal toxicity to humans is a
7 (sic) established medical fact. And there is
8 ample evidence of the mechanisms by which toxic
9 heavy metals move from dumped coal ash into our
10 soil and water to be taken up directly or, in more
11 concentrated form, via the food chain.

12 Current management practices vary
13 markedly from state to state resulting in the dis
14 -- disturbing interstate transport of coal ash to
15 states where dumping is less strongly regulated.

16 I am from Iowa, a state where -- with --
17 that has become an importer of coal ash for
18 disposal, often in open dump sites that were
19 exposed to the two 500-year floods that we've
20 recently had, in Iowa, just 15 years apart.
21 Run-off enriched in leached heavy metals,
22 certainly makes Iowa a leading contributor to the

1 toxic burden on the Mississippi River Watershed to
2 the Dead -- Dead Zone in the Delta and to the
3 invaluable Gulf fisheries.

4 The cheapest, easiest methods of
5 disposal are chosen by industry. In fact,
6 industry even touts the beneficial uses of coal
7 ash where benefits accrue to the industry, but at
8 the same time, failing to accept responsibility.

9 The health costs of mishandling of coal
10 ash are clear. The safety of so-called beneficial
11 uses of coal ash are unproved.

12 Coal ash does not pose a -- a health
13 risk in just an individual state, it is not just
14 an interstate health issue, it is a grave national
15 problem. Failure to safely, responsibly manage
16 coal ash with the obvious consequences for human
17 health is a growing national threat that requires
18 federal regulation.

19 Thank you.

20 MR. DELLINGER: Thank you.

21 (Applause)

22 MR. DELLINGER: Number 167?

1 SPEAKER: That's you.

2 MR. HOCH: I'm sorry, 167?

3 MR. DELLINGER: 167.

4 MR. HOCH: Thanks. Should I just start?

5 MR. DELLINGER: Sure.

6 MR. HOCH: My name is Dave Hoch. I'm a
7 member of both SOCM and United Mountain Defense,
8 and I'm from Nashville, meaning the big coal would
9 have my remarks dismissed as meaningless because I
10 am an outsider, even though over half the mineral
11 leases in central Appalachia are held and
12 exploited by corporations outside the region.

13 The issue before us tonight is not the
14 ostensible question of whether coal ash is a
15 hazardous or special waste, which everyone,
16 including the EPA, and the coal industry already
17 know it to be, based on long since documented
18 scientific evidence, but whether the Obama EPA
19 will fulfill its statutory mandate or continue the
20 Bush-era sellout of both science and the public
21 welfare to the coal industry.

22 The agency is now at a momentous

1 crossroad with an opportunity to move beyond the
2 anti-regulatory darkness of the Bush years and
3 protect our lands, air, and water as is its legal
4 and moral charge to do. But the Obama EPA has
5 thus far shown political and regulatory
6 ambivalence as evidenced by its failure to
7 schedule a public hearing in Tennessee, in spite
8 of the fact that the worse coal ash spill in
9 history occurred in Kingston 35 miles from
10 Knoxville. Only an ex officio citizen's hearing
11 and pressure from Senator Lamar Alexander led to
12 today's inquiry.

13 So the public is understandably unsure
14 of the EPA's future intentions; protect the people
15 or protect corporate profits? Let us remember
16 that all EPA personnel, including Administrator
17 Jackson, are our employees. They work for us.
18 Not the coal industry.

19 Now is the time to regulate coal ash as
20 the dangerously toxic hazardous and special waste
21 that it is. The unconscionably lax D Prime
22 designation being peddled by big coal and the

1 almost equally poor D designation, neither of
2 which require federally enforceable regulations,
3 are both clearly insufficient standards by which
4 to effectively regulate coal ash.

5 A C designation may show bona fide
6 desire to curb egregious coal industry abuses, but
7 even that designation is too lax. It fails to
8 require rapid closure of dangerous ash ponds,
9 timely investigation of all toxic coal ash dumps,
10 and immediate cleanup of all toxic coal ash sites.

11 It is far past time, scientifically,
12 legally, ecologically, and ethically for the EPA
13 to promulgate and vigilantly enforce stringent
14 coal ash regulations pursuant to adoption of the
15 only standard that can provide for efficacious
16 regulation, that standard being a C Prime or
17 "Super C" designation.

18 Thank you.

19 (Applause)

20 MR. DELLINGER: Thank you.

21 Is there anybody else in the room that
22 has a number? You can come forward.

1 MR. WOOD: Okay.

2 MR. DELLINGER: State your name and
3 affiliation.

4 MR. WOOD: Hello. My name is Bruce
5 Wood, and I'm the president of -- of -- elected
6 president of BURNT, a Nashville Citizens Group.
7 I'm an elected member of the executive committee
8 of the Nashville Branch of the NAACP. I'm the N
9 doub -- State NAACP Liaison to Dickson County
10 Landfill. And I'm also a two-year member of SOCM,
11 which I very much appreciate.

12 I'd like to say, first, I know there's
13 very many nice and capable people who work for TVA
14 and E -- EPA.

15 I'd like to say, I think TVA has failed
16 abysmally in one of their key goals, which is the
17 economic development of the south. They have a
18 mistaken belief that putting a ma -- a marina on a
19 man-made lake that's destroyed property of people
20 so that white males can go boating is economic
21 development. Ye -- 40 years after TVA started, 70
22 years after EPA started, look at the states that

1 are served by EPA to see that they se -- are -- at
2 the bottom of every economic measure of hea -- in
3 health measure in the state -- in -- in -- in the
4 United States, and actually the world.

5 We have to understand we are a very
6 unhealthy country. We have a long -- life
7 longevity; we're ranked 50th among all countries.
8 And that's because of coal ash. That's because of
9 the solid waste.

10 I'd like to say, I certainly come here
11 to talk in favor of Subtitle D and a stringent
12 regulation of coal ash is possible. I think we
13 have blown solid waste and landfill. We have a
14 necklace of landfills across the country that
15 leaking just like cavities and infected rooted
16 canals.

17 Dickson County is a 75-acre landfill
18 that's now polluted, 12 square miles of water.
19 And people are dying.

20 I think individual states should have
21 very little control over permitting and regulating
22 landfill solid waste and coal waste. It's just to

1 dangerous, the chemicals in our food and our
2 consumer goods.

3 We -- again, we have to recognize the
4 basic poor health of our country and where that
5 comes from. That comes from what we eat and it
6 comes from how we dispose our waste.

7 And I've submitted, this is, again, an
8 argument against state regulation, and the title
9 of this is "How State Enforcement and Cover-Up
10 Contributed Death in Dickson County." That's a
11 liquid hazardous waste dump site. And they
12 invented a whole new term to sidestep federal
13 regulation, "Groundwater Protection Plan," and
14 there's no such term in the federal or state
15 regulations.

16 Thank you very much.

17 MR. DELLINGER: Could you --

18 (Applause)

19 MR. DELLINGER: -- could you tell me
20 what your number was? The number that --

21 MR. WOOD: Excuse me?

22 MR. DELLINGER: The number that you had?

1 MR. WOOD: Yes.

2 MR. DELLINGER: I'm just trying to keep

3 --

4 MR. WOOD: 192.

5 MR. DELLINGER: Okay. Thank you very
6 much.

7 MR. WOOD: Yes. Thank you.

8 MR. DELLINGER: Is there anyone else in
9 the room that has a number? Betsy, is there
10 anybody out in the -- at the table?

11 We'll call a 15-minute break in the proceedings, and
12 we'll -- let me check my... Let's make it 6:50,
13 that'll be a 17-minute break. We'll reconvene in --
14 in -- at -- what did I say (laughs)? Six -- 6:50.

15 (Recess)

16 MR. DELLINGER: I'll call the hearing to
17 order.

18 I'm going to go over the rules. We have
19 a -- a (sic) influx of people who I don't think
20 have heard the -- the logistics of the -- the way
21 we operate.

22 You get three minutes to speak. What

1 I'll do is call numbers in order. And -- and I'll
2 usual -- usually do it for or five at a time. The
3 spe -- those speakers would go over to those
4 chairs to my right, your left, and then -- and
5 then come to the podium in order. And then you
6 would state your name and your affiliation. And
7 -- and then what we -- we do is to remind you, we
8 hold up cards; one at two minutes, one at one
9 minute, one at 30 seconds, and then one -- when
10 you get the red card you're supposed to quit
11 talking -- or, you know, quit testifying. So
12 that's -- that's pretty much the way it works.

13 And we're going to get started right
14 away. I'm starting with pre-registered people
15 right now. That would be 116, 153, 202, and 208.

16 The other thing is, is that if you have
17 -- if you have written notes, it would be useful
18 to -- to -- to us to have copies of those. And so
19 there's a box that says "Written Comments" over
20 here on my left, your right, and that makes it
21 easier for us to make sure that we've captured
22 your testimony as close to verbatim as possible.

1 116? 202?

2 MS. KUEBBING: Okay. My name is Sara
3 Kuebbing. I'm a resident here of Knoxville,
4 Tennessee, so I'm coming to speak as a citizen.

5 Thank you guys for coming down here. I
6 really appreciate you giving me the opportunity to
7 speak right here in my hometown.

8 I've done a little research today and I
9 was looking on Source Watch. And I realize I've
10 lived -- I just recently moved to Knoxville,
11 Tennessee. And I've lived in five different
12 states along the eastern seaboard. And except for
13 about four years when I lived in Vermont, the -- I
14 have always lived within 40 miles of a coal plant,
15 and I've also lived in a watershed that has a coal
16 plant upstream of me. So it's a little fact that
17 I figured out today, and it's something that
18 interests me, and it sort of links in.

19 When I moved to Knoxville about a
20 year-and- a-half ago, there were two things that
21 people up in Vermont said to me. The first was,
22 "Hope you like the color orange because they

1 really like their football down there," and,
2 second thing they said to me was, "Isn't that
3 where that big coal ash spill was there? And
4 isn't there a problem with the water?" And it's a
5 really interesting perspective that the two things
6 that people think about Knoxville are (a) the
7 football team, which may be a good thing, but (b)
8 is something that's -- that's pretty negative.

9 So I'm here just as a repre -- as a
10 citizen to tell you as I've drank 27 years of
11 water from the east coast and all my five states,
12 and I breathed the air, that I would like to you
13 regulate coal ash. And I would like to you
14 regulated it by using Subtitle C, because your
15 mission as the EPA is to protect human health and
16 protect the environment. And I see Subtitle (sic)
17 C doing that. So as someone who has paid her
18 taxes and supports the EPA's mission, I'd like you
19 to continue to do your job to do that, and I
20 support you in picking Subtitle C.

21 So thank you guys for having us here
22 today, and I hope you pick Subtitle C.

1 MR. DELLINGER: Thank you.

2 (Applause)

3 MR. DELLINGER: Number 153.

4 MS. JUDY: Hi. I'm Carol Judy, and I
5 live up in Clear Fork Valley in Tennessee, it's
6 the northeast corner up from here.

7 I've raised my children there and now my
8 children are raising their children and my
9 great-grandchildren there. On one side of my
10 family we've been there for generations and on the
11 other side not quite so many generations.

12 What's it like living near where the
13 coal ash is in your yard? Well, I burn coal and
14 wood. And I always have to think about every
15 winter what we're going to do with that coal and
16 wood. Now, mind you, we're just a small
17 household, so I can't imagine what these coal ash
18 disasters are having to deal with. It's mega
19 households, I imagine, hot garbage.

20 But I do know that when we think about
21 it at home, we make sure that the wood ashes go
22 near where we can do gardening or things like

1 that. And when it's coal ashes, we try not to
2 burn it because it has "clankers" in it. You-all
3 know what clankers are? It's them heavy pieces
4 that will not burn and they'll cut you because
5 they're so sharp when you dig them out. You can
6 use them to build -- fill in holes in the road,
7 long as you put something else on top because you
8 don't want to cut your tires.

9 And anything -- you know, and you can
10 use a little of that in your flowerbeds. But the
11 one thing I guarantee you is, we are not going to
12 put a whole lot of coal ash in our garden spots or
13 near where the water is. Because we may not know
14 the right names of what's in it, but we dadgum
15 sure know we don't want it in us within a few
16 years.

17 I live on the other side of the spectrum
18 when it comes to disasters in environments and
19 things like that because years ago, before there
20 was some regulations, the mountains were left a
21 disaster from strip-mining. We've had 40 years of
22 figuring that out with government assistance. And

1 I would say that if we ha -- could turn back the
2 hands of time, we would have implemented that from
3 the beginning. I urge you to look at until coal
4 ash disaster as an opportunity to work with folks
5 who have been living with something very similar
6 to that and benefit from some generational
7 knowledge.

8 I also am part of the Clear Fork
9 Community Institute. In remodeling our building,
10 we chose to go with geothermal. That place is a
11 \$500 a month debt burden on us and we accept it,
12 because I have no idea what would -- we would do
13 with coal ash if we were trying to heat with coal
14 and wood because electricity is unaffordable, both
15 for the bock -- pocketbook and for the
16 environment.

17 SPEAKER: Yeah.

18 MS. JUDY: So I don't know what else to
19 tell you except to say that we would be pleased to
20 work with anyone who wants to work on the
21 proactive.

22 MR. HOFFMAN: Time.

1 MS. JUDY: Thank you.

2 (Applause)

3 MR. DELLINGER: Number 208.

4 MR. MINCY: Hello. My name is Grant
5 Mincy, and I am a graduate student at the
6 University of Tennessee. I'm also a member of
7 United Mountain Defense. I'm in the Earth and
8 Planetary Sciences Department, and by training I'm
9 an environmental geologist.

10 And coal ash contains concentrations of
11 -- of heavy metals that are -- have been linked to
12 lung disease, heart disease, cancer, things like
13 that. And I know that the industry continues to
14 claim that coal ash is neither toxic nor poisonous
15 and has no concern to the public. But there have
16 been a lot of scientific studies done on -- done
17 on this and -- and it's been proven false. The
18 scientific community greatly believes that coal
19 ash is of a toxic threat to -- to people.

20 So, I mean, there's -- there's great
21 threats posed to human health and -- and to the
22 environment from decades of dumping toxic coal ash

1 and -- and this must end.

2 The 30-year failure of state and federal
3 governments to ensure safe disposal of coal ash
4 requires swift and decisive action by the EPA to
5 prevent future damage.

6 Those whose health is at risk from coal
7 ash and whose communities are threatened by -- by
8 the next catastrophic collapse of a toxic pile and
9 can't wait any longer.

10 I believe that coal ash deserves a C
11 Prime status and that there needs to be rapid
12 closure of dangerous coal ash ponds, timely
13 investigation of all toxic coal ash dumps,
14 immediate cleanup of all contaminated coal ash.
15 And because there is a great threat to the health
16 of the environment from toxic waste and -- and,
17 you know, right now there is no requirement of
18 pollut -- the polluters to ensure the healthy air
19 and water of communities. And I -- I believe this
20 needs to be fixed.

21 Thank you.

22 (Applause)

1 MR. DELLINGER: Thank you.

2 Numbers 275, 276, 277, 278, and 279.

3 MS. FARNSWORTH: My name is Evan

4 Farnsworth, and I'm here with Students Promoting

5 Environmental Action in Knoxville. I'm also a

6 student of UT.

7 And like everyone else, I want to thank

8 you for coming here because, obviously, this issue

9 is very important to Knoxville specifically.

10 I want to ask you to support Subtitle C

11 for many reasons. One is because I have

12 respiratory problems, and I don't live in

13 Knoxville except for when I attend college here.

14 And my problems kind of worsen whenever I'm here

15 and it's very noticeable. And because of that, I

16 think it's -- like if there are noticeable things

17 like that happening, it would be important to

18 recognize that things like coal ash are like a

19 reason for that happening here.

20 And I just want to ask you to support

21 that. And that would be wonderful. And I

22 appreciate your time here.

1 Thank you.

2 (Applause)

3 MR. DELLINGER: Thank you.

4 MR. SMITH: First, I'd like to thank you
5 for providing me the opportunity to speak here
6 tonight.

7 My name is Ryan Smith and I'm a student
8 from Asheville, North Carolina. And I'm here to
9 speak in favor of the regulation proposed under
10 Subtitle C of the Resources Conservation and
11 Recovery Act, which will provide the minimum
12 standards and levels of enforcement we need for
13 the storage of coal combustion residuals.

14 Both the EPA and the Academy of Natural
15 Sciences have years of research showing that coal
16 is becoming increasingly toxic. The sou -- the --
17 the thousands of toxic coal waste dump sites
18 across the country pose serious threats to our
19 heath. Improved testing methods reveal that coal
20 ash toxins lead -- leach into waters at
21 significantly higher rates than originally
22 understood. Concentrations of metals and

1 chemicals in coal ash have been found at levels
2 many times higher than what is currently
3 considered hazardous wastes.

4 The toxins found in coal ash have been
5 linked to organ disease, cancer, respiratory
6 illnesses. I have asthma, and so this affects me
7 personally. People living with one mi -- within
8 one mile of coal ash ponds have been found to have
9 at least a 1 in 50 chance of developing cancer.
10 And there's an estim -- or the EPA has -- has
11 found out that there is ov -- are almost 2 million
12 children living near coal ash sites.

13 The environment -- en -- environmental
14 impacts of currently unregulated coal ash are dire
15 as well. Much of the toxins end up in rivers.
16 And it's been proven to kill plants and animals,
17 lower birth rates, cause tissue damage and slow
18 development in organisms, unbalancing wildlife
19 populations and destruct -- disrupting ecosystems.
20 The toxins can accumulate to very high
21 concentrations in animals as they pass through the
22 food chain.

1 We find the need for coal ash to be
2 regulated unquestionable. However, recognizing
3 that the options proposed under Subtitle D,
4 relying on suggested state guidelines is not
5 substantially different from current policies and
6 will re -- result in few, if any, changes.

7 We support the changes proposed under
8 Subtitle C. The common sense guidelines backed by
9 federal en -- enforcement and financial
10 accountability provide much needed environmental
11 and public safeguards.

12 Despite the known toxicity of coal ash,
13 a vast majority of states do not even recognize --
14 or do no -- do not even require monitoring to see
15 if coal ash is polluting drinking water.

16 Coal ash is not only toxic when put in a
17 pond or landfill; it needs to be regulated from
18 the cradle to the grave. If the recent BPA (sic)
19 Oil disaster and the Tennessee TVA coal ash
20 tragedy has taught us anything, is that we just
21 can't believe the polluters words anymore. It's
22 time for the federal government to step in.

1 For our future, regulate core ash --
2 coal ash according to Subtitle C.

3 (Applause)

4 MR. DELLINGER: Thank you.

5 MR. WILLIAMS: Good evening. My name is
6 Rhys Brydon-Williams and I am currently a student
7 in Asheville, North Carolina.

8 As a youth in Louisville, Kentucky, I
9 spent much time involved with the citizen advocacy
10 group, Kentuckians for the Commonwealth. During
11 this time, we received testimonials from citizens
12 on the outskirts of town in the Fern Creek area
13 who had to live by a coal ash pond. The -- those
14 stories we heard were sometimes tragic and
15 sometimes quite infuriating. People described
16 respiratory illnesses, sometimes new, sometimes
17 old ones aggravated from the ash. So as other
18 problems resultant from the poisons leached from
19 the pond to their soil.

20 I remember seeing that people had rashes
21 occasionally that I would pop up. Sometimes
22 family pets took ill by drinking water. The

1 health of the community was decreased multi-fold
2 since the pond had been installed. And the metals
3 derived from coal ash appeared to be poisoning the
4 population. The situation was grim and only
5 seemed to be worsening as the residents became
6 irate over their illness.

7 Is this what we want to have acc --
8 across the nation, sick, angry citizens having to
9 campaign simply to maintain their health? I think
10 not.

11 Thus, I urge you to pass Subtitle C,
12 even though it does not require timely
13 investigation or immediate cleanup of coal ash
14 ponds. Even a little safety, a little increased
15 safety for our citizens is better than letting
16 them suffering like this.

17 When economic interests come before the
18 health of our citizens, we can know that the
19 American spinguish -- spirit has been
20 extinguished. Let's make sure that never happens.

21 Thank you for your time.

22 (Applause)

1 MR. DELLINGER: Thank you.

2 MS. SHOHADAE: My name is Roxanne
3 Shohadae and I am a member of Students Promoting
4 Environmental Action in Knoxville. I'm a student
5 and I'm a young person. And I am here to tell you
6 thank you for coming, for op -- giving us the
7 opportunity to speak to you.

8 It's your job. You are the environmen
9 -- you are members of the Environmental Protection
10 Agency and it's your job to protect the
11 environment. And our environment is being
12 polluted. Our lives are being polluted. And this
13 is -- this has heavy metals that is -- that are
14 poisoning the people. And it's -- it doesn't
15 matter if you don't live here to ha -- you don't
16 have to live here to see what's happening.

17 And eventually you will experience it
18 because in our lifetimes -- if it's not in your
19 lifetime, it's in your children's lifetimes.
20 There -- our water is going to be such a scarce
21 resource. And our Highland Watersheds are being
22 polluted. They're being polluted. And -- and we

1 -- we can't continue to have people in this region
2 having children, living, and these children are --
3 are -- are being poisoned from the minute that
4 they're born. I ju -- it's not fair that we have
5 to come and tell you. I mean, I appreciate that
6 you're here. I appreciate so much that you're
7 trying.

8 And I think that Option C is a good
9 start. But I think you need to do more than that.
10 I think things happen -- need to happen
11 immediately.

12 A lot of the ash that was -- that
13 spilled in Kingston is being shipped down to Ala
14 -- was being -- wa -- was shipped down to Alabama
15 to these poor communities. And it does -- it's
16 not fair that they have to continue, just because
17 they're already a poor community, to -- to have to
18 be poisoned more.

19 And it's -- and it's just -- I don't
20 know. I'm shaking because I'm so furious and sad
21 at the same time. But I just hope that you can
22 hear us. And I hope that you can hear that each

1 of us here are speaking for all of the people who
2 don't know, who don't know about this, who don't
3 know how horrible this is. And (cries) we have to
4 tell you so that you can do something. (cries)
5 And I hope that you do something (cries).

6 MR. DELLINGER: Thank you.

7 (Applause)

8 MR. VARGAS: My name is Michael Vargas,
9 and I came here to tell you the truth today.

10 I'm no expert in just about anything
11 really. And I didn't even really even plan on
12 coming out here today, to tell you the truth. My
13 girlfriend told me about it for community service
14 hours. And so I was standing outside and there
15 was this reoccurring theme of people telling me
16 coal was bad. And, at first, to tell you the
17 truth, I didn't have a stance, really, on it
18 because I knew nothing about it.

19 But they gave me a sheet of paper here
20 outside, and it has lots of just common facts, I
21 guess you would say. It's a -- common questions
22 about coal. And, well, looking over it, it just

1 -- now, mind you, I don't know too much about the
2 subject, but it convinced me instantly to realize
3 that there's a problem situate -- or there's a
4 problem that we're all being situated with, and
5 that there's coal being -- coal ash being
6 unregulated in Tennessee.

7 And, you know, I -- I've always heard
8 that Knoxville has bad pollution. But it really
9 didn't like affect me at first, other than I would
10 have to wipe my glasses down a little bit more for
11 the -- the pollution in the air in -- compared to
12 Nashville where I'm from.

13 But what I've been convinced of so far
14 today is that there's Subtitle C and that a lot of
15 people here that know a lot more than me are
16 advocates of it, and they've done their research,
17 and they have their information. And that if they
18 put this much effort and time into it to come up
19 with a decision to support Subtitle C, I will also
20 stand by them and say that Subtitle C is what you
21 should vote for.

22 Thank you and have a nice day.

1 (Applause)

2 MR. DELLINGER: Numbers 116, 182, 175,
3 179, and 198.

4 MR. MOTTLEY: My name's Don Mottley.
5 I'm spokesperson for a group called Save Our
6 Rivers from southwest Indiana.

7 MR. DELLINGER: What number are you?

8 MR. MOTTLEY: 116.

9 MR. DELLINGER: Thank you.

10 MR. MOTTLEY: I want to read a
11 resolution. Resolution Number 210-01 (sic), Town
12 of Somerville.

13 WHEREAS, the Town Council of the Town of
14 Somerville has established under Subtitle C of the
15 Resource Conservation Recovery Act (sic), RCRA,
16 would effectively regulate coal ash as hazardous
17 waste with associated safeguards for storage,
18 handling, transport, and disposal; and

19 WHEREAS, Subtitle D would not establish
20 any uniform, federally enforceable standards,
21 leaving us with inadequate state regulations that
22 have already failed us; and

1 WHEREAS, Subtitle C establishes
2 requirements for our state through the Federal
3 Enforcement Authority of the US EPA; and

4 WHEREAS, Somerville is a town in Gibson
5 County, Indiana, that has seen groundwater and
6 dust issues in the coal combustion waste/fly ash
7 at the Duke Energy Gibson Generating Station, and
8 sees the need for federal regulation of coal
9 combustion waste.

10 THEREFORE, BE IT RESOLVED, by the Town
11 Council of Somerville on September the 20th, 2010,
12 adopts said resolution to the US EPA Docket Number
13 EPA HQ 2090640 (sic) in support of Subtitle C.

14 Bill Huttchison, president, Mary A.
15 Dyer, clerk treasurer; Rex O'Neal, and Tommy
16 Carney.

17 And I would like to submit that for the
18 record.

19 (Applause)

20 MR. DELLINGER: Thank you very much.
21 Number 182?

22 MS. SCHANER: Hi. I'm Jes. I'm from

1 Ohio.

2 I know you guys are probably tired. But
3 I just want -- thank you for listening what I have
4 to say.

5 Future generations will look back on our
6 culture as the most destructive to ever exist. We
7 believe we can infinitely burn non-renewable
8 resources and fill the ground with toxins and
9 somehow technology will fix everything. We live
10 in a reality that doesn't exist.

11 How many of you know someone who has
12 cancer? Did you know cancer is the result of the
13 total toxification of the environment?

14 I am here for my grandpa, who worked in
15 the coal mines, that is now dying of bone cancer.
16 I want an environment free of intentionally
17 released toxins.

18 There is no waste in nature. And if we
19 want to live on this planet, we must imitate it.
20 I will not stand by as we continue to poison
21 ourselves and all other life forms.

22 If you really care about the

1 environment, you wouldn't just regulate coal ash;
2 you would ban the burning of coal altogether.

3 We can do better than Subtitle C.

4 (Applause)

5 MR. DELLINGER: Number 175.

6 MS. HART: Hi. My name is Patricia
7 Hart, and I'd like to thank you for coming to
8 Knoxville to hear us.

9 For over 32 years I've lived next to the
10 Emory River in Roane County, a little over one
11 mile downstream from the site of the ash spill
12 disaster. My husband and I raised two sons here,
13 and every summer our lives revolved around the
14 lake.

15 My older son bought a home on the river,
16 upstream from the spill a few miles. He had
17 planned to raise his family here, too, and enjoy
18 the life just like we had. All that changed
19 December the 22nd, 2008.

20 Thousands of people's lives have been
21 changed by this spill. Tens of thousands of God's
22 creatures were killed by the spill. Most of them

1 buried alive or choked to death by the millions
2 of cubic yards of coal ash muck that walked o --
3 washed over the land and clogged the waterways.
4 Homes were destroyed, and for almost two years the
5 people left behind have had to endure living in
6 the wake of the spill.

7 Seeing the devastation caused by the ash
8 spill has been heartbreaking, and our lives have
9 changed forever. We used to look forward to the
10 spring and knowing that it was almost time to
11 enjoy the lake again. Our families would come to
12 visit us and we were proud to live here. Not
13 anymore. Now when I look at the water, I can
14 still see the swirls of the cenospheres floating
15 among the leaves. And it's the ro -- reminder of
16 all of the cubic -- thousands of cubic yards that
17 are still in the river waiting to be removed, but
18 they never will be.

19 A trip up the Emory River to the site of
20 the spill is even sadder. The beautiful white
21 farmhouse, the poster child of the spill, is gone.
22 The homes purchased by TVA sitting along the

1 shores of the Emory River are ghost homes telling
2 the story of how lives used to be before the
3 spill. There are no families, no children playing
4 in the yards or the water (cries). The tall trees
5 that lined the edge of the Emory, hiding the
6 growing mountain of coal ash are gone, violently
7 uprooted by the tsunami of the coal ash sludge.

8 I only think of the "if onlys." If
9 only regulations had been in place, that would
10 have prevented TVA's ash mountain to grow so big
11 that it eventually bust through the dikes to
12 devastate over 400 acres of land and create an
13 environmental disaster that will never be cleaned
14 up, even though over a billion dollars has been
15 spent.

16 If only there had been regulations,
17 homes and lives would not have been destroyed.

18 And now, if only EPA will put in place
19 regulations so this type of disaster will never
20 happen again, we would all be grateful.

21 I urge the EPA to adopt Subtitle C to
22 ensure the safe and proper storage of fly ash.

1 Thank you.

2 (Applause)

3 MR. DELLINGER: Thank you.

4 Number 179.

5 MS. ENDERLE: Hi, there. My name is
6 Emily Enderle. I work at Earthjustice in
7 Washington, DC.

8 First, I want to thank the EPA for
9 hosting this hearing as well as the other hearings
10 across the country. I know it's been a long
11 process for you guys as well as activists, public
12 interest folks, and regular citizens across the
13 country.

14 Basically, I wanted to get up here and
15 say a lot of things that are very wonky and very
16 technical. But actually it's been really
17 inspirational to see so many young people come out
18 and talk about this particular issue and why it
19 matters to them. And why, I think, really it's
20 evident that their generation shouldn't be the one
21 that has to finally deal with this mess. We're at
22 a point in time where we can actually deal with

1 coal ash in a way that's going to protect people
2 across the country. And there's no better place,
3 I think, to end this particular circuit than in
4 Knoxville, Tennessee.

5 And I say this because I spent several
6 hours this weekend at about 1200 feet above a lot
7 of Tennessee, looking at coal ash impoundment
8 sites and coal-fired power plants across the
9 country.

10 And what I don't think is clear to a lot
11 of people is these dams are enormous. The dam
12 that broke at the TVA site is -- was 60 feet high.
13 There are facilities across the country; some are
14 as high or expected to be as high as 100 feet.
15 There are facilities, dozens of them, that if they
16 were to break, they would result in the loss of
17 live. I think it's a miracle that nobody died in
18 this case, and that there haven't been more losses
19 of life.

20 And we're at a point right now with
21 regulations being proposed under C and D where we
22 can actually regulate this in a way that will

1 protect not only the people that are dealing with
2 it now but also generations to come, including the
3 folks in this room.

4 I did want to pass out just some of the
5 pictures that were taken from aerial views. What
6 I think they show is that houses are literally
7 across the river way from these impoundment sites.
8 If they were to break, they would knock out those
9 beautiful homes; they would knock out those nice
10 boats and docks; they would contaminate those
11 river ways; and they potentially kill people. And
12 that's absolutely evident from these sites across
13 Tennessee. And there are multiple. So I just
14 wanted to pass these out for you guys to check
15 out.

16 One point I also wanted to make is we --
17 I don't think we've talked a lot about arsenic.
18 Arsenic is a known carcinogen. We all know that.
19 Science is coming out regularly that says that
20 even small even smaller doses are contaminating
21 people and leading to possible cancer across the
22 country.

1 This is one particular contaminant of
2 many that are in coal ash, and one that's been
3 contaminating groundwater across the country.
4 There are more than 100 proven damage cases either
5 by the EPA or by public interest groups
6 demonstrating that either the environment or
7 public health has been compromised across the
8 country.

9 And here in Tennessee we've seen that
10 not only one community has been devastated by this
11 but two. If you look at Perry County and what
12 they've been dealing with in terms of this ash
13 being taken down there, the Arrowhead Landfill
14 declaring bankruptcy, all of the things that
15 they've had to deal with.

16 So I just want to say thank you for opp
17 -- providing the opportunity to so many people
18 here in Knoxville to talk and for all of you young
19 people for caring.

20 Thanks.

21 (Applause)

22 MR. DELLINGER: Number 198. Is 198 in

1 the room?

2 MS. BICKNESE: Hi. My name is Erin
3 Bicknese. I'm a citizen of Knoxville.

4 I grew up in Nashville, Tennessee. And
5 one of the most important parts of my childhood
6 was being able to play in the water and streams
7 around my house. I don't have kids but I hope to
8 in the next ten years. And I know that the world
9 I live in right now is really different than the
10 one my parents lived in in terms of what they
11 could do outside, what water they could drink when
12 they were hiking. And I know that it already is
13 going to be vastly different for the children that
14 I have. But I hope they live in a place where
15 they're not poisoned by the air that's around them
16 everyday and by the water that comes out of their
17 tap and by the places that they'd like to be.

18 I'm a young person right now. That's
19 going to change. But I hope that the world I live
20 in now and tomorrow and in the future is protected
21 by the laws that we have.

22 Subtitle C is going to be a great step,

1 but it concerns me that there are a lot of things
2 that won't be done, a lot of things that won't be
3 stopped. There's a lot of poison right now that
4 could danger (sic) people from coal ash. And
5 that's really care try to me.

6 Thanks so much for coming here and
7 listening.

8 (Applause)

9 MR. DELLINGER: Thank you.
10 Numbers 280, 281, 282, 283, and 284.

11 MS. GILMORE: Hello, there. My name's
12 Sara Gilmore, and I'm a student at the University
13 of Tennessee.

14 I'm thankful to be here today and talk
15 to you, but at the same time I can't believe that
16 it's necessary to be here, that this is even a
17 (sic) issue of controversy. Because we have here
18 this few facts about coal ash and the problems of
19 it, and logically looking at it, it's undeniable
20 that something has to be done about this.

21 Picture, like, I have myself a
22 9-year-old nephew, and if you have any kids, your

1 wife, your -- or children that you love dearly,
2 you wouldn't want to submit (sic) them to drinking
3 water which is supposed to sustain them, that
4 could slowly kill them. You wouldn't do that to
5 someone you love, so why make other people have to
6 do that to their children.

7 If we just think about it logically, the
8 stuff on this sheet is evidence enough to us. And
9 I think Subtitle C is step in the right direction,
10 as many have said. But more needs to be done.
11 And I hope you guys realize that and see it.

12 Thank you.

13 (Applause)

14 MR. HOFFMAN: 281.

15 MS. MCKEE: Hi. My name is Freesia
16 Mckee, and I'm a student. And I would just like
17 to thank you for sitting here this long day and
18 listening to all of us speak.

19 I'd like to ask everybody in the room:
20 How many of you have asthma or other -- some other
21 kind of respiratory problem? Raise your hand.

22 AUDIENCE: (show of hands)

1 MS. MCKEE: How many of you have a loved
2 one who has asthma or some other kind of
3 respiratory problem?

4 AUDIENCE: (show of hands)

5 MS. MCKEE: There's a lot of people
6 here. And while not all of us are coming from
7 this, a lot of us are even coming from racial and
8 economic and geographic privilege and still have
9 people who have asthma or other respiratory
10 problems.

11 So I'm asking you today: Do you know
12 what asthma is? And do you know what it is to
13 wake up coughing or crying because you can't
14 breathe or wanting to pull open your chest for
15 some air or a breath or driving to the hospital
16 for a breath or laying on the ground hoping for a
17 breath with air machines and inhalers and masks
18 and tests for a breath or plastic and chemicals on
19 your 10-year- old face for a breath? Or you wake
20 up in the hospital with dad praying over you and
21 your mom crying because you need a breath? And
22 all I wanted my whole childhood was a breath. I

1 have asthma. All I had was asthma.

2 So I'm ste -- I'm asking you today --
3 I'm telling you that it's in your hands. And it's
4 in your lungs, the words that -- that you breathe
5 out to choose Subtitle C so that you can give
6 people like me a breath of fresh and clean air.
7 So I'm asking you to make right decisions for kids
8 who want to play sports outside, for kids who want
9 to play outside, for kids who want to be healthy.

10 Thank you.

11 (Applause)

12 MR. HOFFMAN: 282.

13 MS. GOSNEY: Hi. I'm Jessica Gosney.
14 I'm a student here at Knoxville.

15 I've only lived in Knoxville a couple of
16 years, but I really love it, and I worry a lot
17 about the pollution here. Today I went on a -- a
18 run by Three Rivers Creek, which is hugely
19 polluted. And you just -- you can't -- you can't
20 ever like get a full, deep, clear breath. And
21 that worries me.

22 And I also think that Subtitle C is not

1 quite enough. And I would just like to ask you
2 guys to please do your job and protect the
3 environment.

4 (Applause)

5 MR. HOFFMAN: 284.

6 MR. PETSCHUBAT: My name test Sam
7 Petschubats, and I'm also a student here in
8 Knoxville.

9 I'd -- I -- like everyone else, I'd,
10 first, like to thank you guys for coming and just
11 listening to all of our comments.

12 But we live in a capitalist society here
13 in the United States. People are basically free
14 to do what they want. And in that society the
15 government's role is, essentially, to keep us all
16 from killing each other for money. Because, Lord
17 knows we would do it if we could. That's why you
18 guys have jobs, because we need a government to
19 keep us from killing each other for profits. This
20 is literally happening --

21 (Applause)

22 MR. PETSCHUBAT: -- every single day.

1 People living near unlined coal ash ponds have a
2 risk of 1 in -- 1 in 50 -- the risk of cancer is 1
3 in 50, which is 2000 times the EPA's standards,
4 your standards.

5 So something clearly needs to be done to
6 -- to prevent this from happening. This needs to
7 stop.

8 And C is a start. A lot of people have
9 been saying that C doesn't go far enough, it's not
10 quite strong enough. But it's what we have right
11 now. It's the best option. So for that reason,
12 if nothing else, you -- it deserves your support,
13 at least as a beginning point.

14 A lot of the criticisms of C; I heard a
15 guy argue earlier that he doesn't want Option C
16 because he makes his living off coal ash; he's in
17 the concrete industry. And he's paying his kids'
18 college tuitions with the money he's making due to
19 the deregulation. But that's not a good excuse.

20 I mean, if he was an arms dealer, if he
21 was a syndicated mobster or crime syndicate, would
22 that be an equally valid excuse that he's doing

1 those things to support himself and his family and
2 to send his col -- his kids through -- to college?
3 It wouldn't be. And he would still go to jail.
4 He would still face the repercussions that his
5 actions were having on other people.

6 People are also arguing that this will
7 raise utilities costs and people that can't afford
8 -- can barely pay their bills as it is, it's going
9 to raise their electricity bills. But money is a
10 short-term thing. Money is something that can be
11 replaced. It's something -- if people lose money,
12 they're resourceful. They go out, they find new
13 ways to make money. If you lose your job due to
14 your coal company that you work for is expense is
15 rising, you'll be able to find a new job. But if
16 your family member is killed by cancer from one of
17 these ash deposits, there's no undoing that. It's
18 completely permanent and irrevocable.

19 And for that reason, I would encourage
20 all of you to support Option C today.

21 (Applause)

22 MR. SMITH: My name is William Smith.

1 I'm from Murfreesboro, Tennessee. But I have a
2 lot of family in the Appalachian area, in east
3 Tennessee and Virginia and North Carolina and
4 South Carolina, and their water supply, as the
5 years go by is getting more and more toxic.

6 As has been made very obvious by the
7 Harriman County spill, current regulation on coal
8 ash storage is not enough. We need tighter
9 regulation.

10 But I see a worse problem. And I would
11 even go as far as to call it a crime. And that is
12 an environmental justice problem. Nearly half of
13 the high azard -- high hazard ash ponds in the
14 southeast are described by the EPA as high hazard
15 are in low-income areas.

16 Another environmental crime I see is
17 that the ash from the Harriman County spill is
18 being moved to Per -- Perry County, Alabama, which
19 is another low income and predominantly
20 African-American community. The water in that
21 community is so full of arsenic that it contains
22 80 times the safe amount for drinking water.

1 Cancer, COPD, other respiratory
2 illnesses, neurological damage, reproductive
3 problems are the legacy that we're leaving our
4 children right now. I'm a young person and I care
5 about my future. I don't want to leave that
6 legacy.

7 So support Subtitle C.

8 (Applause)

9 MR. DELLINGER: Numbers 285, 286, 287,
10 288, and 298.

11 MR. NORTON: My name is Jordan Norton,
12 and I come from the increasingly low-income area,
13 the low-income town of Greeneville, Tennessee.
14 Last time I checked we had about 15% unemployment
15 rated and more and more manufacturing jobs are
16 moving out and more people are losing their jobs
17 every day. I bring this up because I know that
18 unle -- that these coal -- this coal ash is
19 shipped to low-income areas. It's a (sic)
20 economic fact. If you're going to store it
21 cheaper, you ship it to low-income communities.

22 So this is what makes me afraid for my

1 community back home. I've lived there for 20
2 years. Hopefully, I'll live there in the future
3 sometime.

4 But I just -- I would have it regulated
5 so that we can avoid the types of things that go
6 on in these communities where our wa -- our well
7 water or our tap water is just contaminated beyond
8 all belief, people have respiratory problems,
9 cancer problems, things like that.

10 So I'd ask you to support Subtitle C to
11 su -- to help us in our future of these small
12 communities.

13 Thank you.

14 (Applause)

15 MS. DELHEIMER: Hi. My name is Sara
16 Delheimer and I'm a student at UT.

17 First, I want to thank you for coming
18 here and holding this hearing and give us all the
19 opportunity to speak.

20 Coal ash is a health issue; it's a
21 social issue, an environmental issue. As we've
22 seen, it can be a disaster. It's an emergency.

1 And so I would strongly encourage you to listen to
2 the voices of all the young people here today
3 whose futures you can help protect, and all the
4 locals who are being directly affected by this
5 toxic waste.

6 So please, please regulate coal ash as a
7 hazardous waste, protect lives and the
8 environment, and please support Subtitle C.

9 (Applause)

10 MS. LAVONE: Hi. My name is Michelle
11 Lavone. I'm a junior at University of Tennessee.
12 I'm here with SPEAK, Students Promoting
13 Environmental Action Knoxville. I'm a science
14 communications journalist at the university, and I
15 just want to bring in this tiny little story.

16 After one of my classes, after the
17 Harriman ash spill, I went and I interviewed a
18 couple of organic farmers, and I wanted to figure
19 out, you know, how they were affected by the toxic
20 ash. And they told me that what they do for
21 organic farming is, they don't use conventional
22 chickenfeed. They actually use fish, and they

1 ground up the fish and they feed their chicken
2 (sic) the fish, which gives them the nutrition,
3 because the eggs are nutrition. And then people
4 eat the eggs and gain that nutrition from the
5 eggs.

6 And what's happening with the fish
7 populations is the selenium is destroying the
8 reproductive organs of the fish. And so basically
9 what happens is that, you know, you don't have as
10 many fish and the chicken (sic) don't get fed the
11 nutrition.

12 And so the point is, basically, that the
13 people who are eating these chicken eggs, you
14 know, have the potential to be eating this
15 hazardous waste, this hazardous crap, basically,
16 that's in the eggs. And nobody wants that.

17 And so basically I just -- I'm asking
18 you to regulate the coal ash under Subtitle C
19 because it is hazardous, and it has been linked,
20 as many people have said, to asthma and cancer and
21 things like that. So I'm here to support that.

22 Thank you.

1 (Applause)

2 MR. DELLINGER: Thank you.

3 MS. NEGRETE: Hi. My name is Jackie
4 Negrete and I'm a student.

5 And I was going to come up here and read
6 all these facts and stuff to you guys, but this is
7 your job. You're in the EPA, so you guys probably
8 already know all this stuff already or I'd like to
9 think, you know, you've spent all this time being
10 in the EPA, you know, you're going to get -- come
11 about this information. So you guys know, you
12 know, what's good and what's right.

13 And I urge you guys to -- okay, you guys
14 were given -- you guys are in a position of power;
15 right. And with this power, you know, you have a
16 responsibility and you were entrusted with this,
17 you know, that you guys would do the right thing.

18 So I'm just asking you, you know, to use
19 your brains, because you guys are like smart
20 people, and to do what you know is right and
21 responsible because we're taking responsibility
22 right now saying, you know, how we feel, that this

1 is wrong and coal ash is polluted. And you guys
2 know it's polluted.

3 So I urge you guys to do, you know -- do
4 what's in your hearts. And you guys are, you
5 know, getting up there in years and you have a
6 legacy. And are you going to look back and say,
7 Yeah, this is all I did, you know. Like you have
8 to answer to yourselves ultimately. And you guys
9 -- I urge you to take responsibility and use your
10 brains and create something positive. Please do
11 something for us. Because we -- we've done our
12 part and now it's your turn, you know. This is
13 your responsibility from now on. I'm putting it
14 on you guys.

15 So thank you.

16 (Applause)

17 MR. DELLINGER: Number 289, 290, 291,
18 292, and 293.

19 MS. PETERS: Hi. My name is Elyse
20 Peters. I'm a sophomore at the University of
21 Alabama, and I come today not only as a concerned
22 student but to take a stand to protect my future.

1 I come here in solidarity with the families in
2 Kingston and Perry County in Coal River Valley to
3 force the EPA, the industry, and America to look
4 at this problem straight in the eye.

5 Founded on the principles of John Locke,
6 we Americans believe it is our right to liberty,
7 to life, and to property. Our possessions are
8 being -- our possessions (sic) of these rights is
9 deeply engraved in the American psyche. It is --
10 that is why it is shocking to me to see how
11 Americans, specifically the government, an
12 instituted cre -- an institution created for the
13 sole purpose of protecting and promoting these
14 rights can allow for the coal industry to strip us
15 of these rights and justly do it.

16 It is cheaper for companies to break the
17 law than it is to follow it. Lax regulations of
18 the coal industry have continued to show direct
19 ramifications on local communities. Coal ash
20 communities need water brought because their
21 groundwater has such high level of heavy metals.
22 There are increased health problems, such as high

1 cancer and asthma due to the chronic exposure of
2 these toxins. Their ability to live promised by
3 our society is destroyed.

4 Subtitle D will do more than harm,
5 giving the states the rights to regulate these
6 companies. ADEM, the Alabama Department of
7 Environmental Management is currently under review
8 by the EPA due to its continual violation of the
9 Clean Water Act. How can the government think
10 about granting such power to a state agency that
11 is already not following its regulation?

12 Currently there is a proposed strip mine
13 at Shepherd's Bend on the Black Warrior River in
14 Alabama. The -- the waste is allowed by a permit
15 passed by ADEM to be dumped into the Black Warrior
16 River. Birmingham Water Works Board issued a
17 letter stating the proximity of the disposal site
18 only 800 feet in regards to one of its main water
19 intakes was incompatible and unprecedented. It
20 takes -- it -- this intake provides water to over
21 200,000 residents in Birmingham, the city's -- the
22 state's largest city.

1 If we continue to allow local
2 communities to expire in the name of industry, we
3 will continue to show the degradation of our
4 American morals. Stricter regulations will
5 illustrate to our society the government's care
6 and consideration for the values its people hold
7 so dear.

8 It is in our -- it's -- we are in a
9 state of reaction. That is why newer, stronger,
10 more scientifically based regulations, ones even
11 stronger than those proposed by Subtitle C, must
12 be enforced. The immoral acts of the ind -- of
13 the oil -- of the coal industry must be called
14 out. EPA's recognition of that co -- of coal ash
15 as a hazardous waste is the first step to
16 rebuilding a just, moral society that our Founding
17 Fathers has en -- have envisioned for us.

18 Thank you.

19 (Applause)

20 MS. OWENS: Hi. My name is Sabrina
21 Owens. I'm a student. I come from Murfreesboro,
22 Tennessee.

1 I could stand up here and just tell you
2 everything that everyone else has told you, that
3 you've heard at least a million times just said
4 differently.

5 I think Subtitle C is a good step, but
6 it's really not enough. You know, I -- I might
7 have kids in the future. I know all of you are
8 probably going to have families. And you guys
9 have grandkids, kids.

10 Our water, our natural resources are
11 greatly affected by coal ash. We need to work
12 like the earth works and learn how to use natural
13 -- I mean, like something more natural than -- and
14 coal ash is -- is polluting our earth and it's not
15 really giving us anything back.

16 So I just want to point out a few
17 things. Subtitle C does not require rapid closure
18 of the ash in the ponds and it does not require
19 investigation of all toxins a -- in coal ash
20 dumps. Immediate clean up of contaminated coal
21 ash site deposit, which is a threat to health and
22 environment from toxic waste, this is not required

1 as well. Like, you know, this stuff is important.

2 So we really need to just fin -- I know
3 -- and I understand coal ash workers also need a
4 job as well. So we need to think of other ideas
5 rather than just saying, "Oh, hey, by the way, you
6 can't work here anymore because of this." So we
7 need to think there, too.

8 We also just need to work together to
9 figure out how we can clean up our environment. I
10 don't know where to start but, you know, there's
11 group of people in here that are all working
12 towards the same thing. And I think if we all put
13 our heads together, including you guys, we can
14 come up with something really good. So that's all
15 I have to say.

16 Thank you very much.

17 (Applause)

18 MR. DELLINGER: Thank you.

19 MS. HASHOP: My name is Macy Hashop, and
20 I'm a student at UTC.

21 Okay. Well, I wanted to start off by
22 saying that I really care about my health. I try

1 not to -- well, I do not smoke, I do not drink, I
2 regularly exercise and I don't know what that's --
3 what the point of that if it -- if the water that
4 I'm drinking is polluted and the air that I'm
5 breathing is polluted.

6 Even though I live in Chattanooga and
7 this is Knoxville. I know that water and wind
8 travels and it's circulates. And I have pet fish,
9 and the water in my in tanks, even though I put
10 the -- sorry, I'm nervous. I don't speak publicly
11 but I'm doing this because I feel it's an
12 important thing.

13 (Applause)

14 MS. HASHOP: But -- but my fish -- I
15 first really realized it when I was drinking the
16 water and I noticed that it tasted funny. And no
17 matter how much water I drink, I don't feel
18 quenched. I feel like -- almost like it's acidic,
19 like I'm being dried out or something.

20 So my fish, I noticed them. I put the
21 drops in there that are supposed to get rid of the
22 chemicals and get rid of the chlorine and help,

1 but they still -- I had four fish already that
2 have died. And I don't know what's going on. But
3 I know that I want to be healthy. I care about
4 our environment. I care about our animals. I
5 care about you. I care about myself. And I just
6 want some changes to be made so that we can be
7 healthy and -- and we can all support a healthy
8 environment in the community.

9 So thanks for listening.

10 (Applause)

11 MS. RICHMOND: Hi. My name is Reagan
12 Richmond. I'm a recent graduate of the University
13 of Tennessee. Go Vols.

14 And thank you, first, for allowing us to
15 take this time to speak.

16 I will say that I'm with other people
17 and not surprised anymore, but should be, that we
18 do have to have this hearing to decide whether we
19 should regulate coal ash or not. We have a very,
20 very real event that has happened here in Kingston
21 that shows us that coal ash is dangerous, that
22 it's not being taken care of correctly by the

1 states, and it's certainly not being taken care of
2 correctly by the industries that are supposed to
3 be doing it.

4 So I won't bore with you all that. I
5 also won't call you old. I apologize.

6 But I will let you know that as a young
7 person, I care very much about the legacy. It --
8 well, one, about just my life, but the quality of
9 life that I'm going to have moving forward, also
10 about the legacy that is left. And many young
11 people in this room are with me on this, too.

12 You've seen several of us with crazy
13 costumes, face paint -- I'm sorry I don't have
14 mine on -- but we were outside and we want to let
15 knew that we were saying coal ash is scary. We
16 had a big rally. It was really fun. And -- but
17 it's true, we're not just having fun with this.
18 Coal ash is a scary thing for our future, thinking
19 about having to deal with this toxic waste in
20 just, you know, any old impoundment or being
21 stored somewhere and not properly being regulated.
22 That's not right. And that -- that makes me

1 fearful about like the communities that I live in
2 or have the -- the drinking water that we have.
3 It's just -- it's a scary thing to think about
4 this hazardous waste not actually being regulated.
5 You-all know what impacts there are.

6 So with that, I'll just say, so we have
7 Option C. You guys have put this on the table.
8 And Option is C is good, but it's not good enough.

9 I've always been taught my whole life to
10 never settle for the least. That -- that's what
11 it's about. It's about reaching for the stars;
12 right. Doing the best that you can. So that's
13 what I'm really pushing for. C is great; please
14 adopt it, at minimum. But let's do more.

15 I have worked with young people across
16 this country, across the region. I have done
17 everything I can possibly do. When I first found
18 out about our issues, I was really sad. And then
19 I got really angry. But now I'm just really
20 active. I have done everything I can from going
21 to -- and picking up trash to meeting at the UN.
22 Everything you could possibly want me to do. I

1 regularly engage in conference calls with the EPA
2 administrators and with the White House. I have
3 the privilege to do that. Not everyone in the
4 room has that privilege.

5 So I'm asking you, please, step up, do
6 what is right for my generation and for our
7 future, regulate. At minimum C. But let's do
8 better. We know we can.

9 (Applause)

10 MR. DELLINGER: Number 185, 201, 188,
11 and is 292 in the room?

12 AUDIENCE: No response.

13 MS. HOPKINS: I'm Flo Hopkins. Thank
14 you guys for listening. You must be really tired.
15 So I'm going to tell and you little story, a
16 personal story.

17 My husband and I have been fighting a
18 coal ash landfill for about a year-and-a-half. We
19 retired to Tennessee because we wanted to live in
20 the country in Cumberland County and build a house
21 there. Well, as soon as we decided to build, we
22 discovered that there was a coal ash landfill

1 being proposed on our mountain.

2 Because there are no regulations in
3 Tennessee in regard to coal ash, we had to suspend
4 our plans for retirement and building and active --
5 actively engage in educating ourselves about what
6 coal ash was, what -- what -- and what our rights
7 were in regard to it and what our responsibilities
8 to our community were in regard to it.

9 Some of the first things we learned is
10 that there are no regulations in regard to
11 transportation of coal ash. What was proposed on
12 our mountain was 5- to 600 trucks of coal ash
13 coming up and down our eight narrow winding miles
14 of mountain roads during all daylight hours, six
15 days a week for years without end. There were no
16 transportation requirements for safety, for road
17 width, for -- there was no protection for airborne
18 coal ash, for covering the coal ash and transport.
19 There was no protection for us because there are
20 no regulations. If there had been a spill on the
21 roads, going up there to clean up the spill or to
22 -- or -- or for liability for taking care of

1 financial responsibility for the spills because
2 there were independent truckers involved, there
3 was no consistent -- there was go -- no sig --
4 consistent financial assurances that anyone would
5 be responsible for the mess.

6 On thing we did res -- discover from all
7 our interaction with coal ash and with local
8 politics is that you guys at EPA may very well
9 have studied a lot and have a lot of science
10 behind you on the constituents of coal ash and the
11 effects of it, but you don't know nearly as much
12 as my community does. There's an expert on every
13 corner. And everyone is either sure that it's
14 entirely hazardous and toxic or else that you can
15 put it on your breakfast cereal.

16 And what we want is for the EPA to use
17 the -- the science and the expertise that you have
18 to protect us and pro -- provide the citizens some
19 consistency so that we can live our lives with
20 more predictability.

21 And thank you for stepping up to that
22 responsibility.

1 (Applause)

2 MR. DELLINGER: Thank you.

3 MR. HOFFMAN: 201.

4 MS. SCARANO: Hi. My name is Rachael
5 Scarano. I'm from Asheville, North Carolina. I'm
6 a student out there. Thanks for calling my
7 number.

8 I go to Warren Wilson College. We're
9 about 15 or so miles from two coal ash ponds that
10 have been rated poor, and if they broke, they
11 would spill into the French Broad River.

12 And I'm here to state my support of
13 classifying coal ash under Subtitle C as a
14 hazardous waste. As a young person, I'm concerned
15 with the health of both the planet and myself as
16 we move into the future.

17 Regulations under Subtitle C will
18 require safer containment of coal ash protecting
19 the surrounding environment from contamination.
20 And this is in direct contrast to the unlined
21 ponds of today, basically holes in the ground
22 where they keep the coal ash, where toxic metals

1 are able to leach straight into the ground,
2 eventually reaching the groundwater.

3 So I believe that it makes sense to
4 label something that has already been determined
5 as hazardous waste as hazardous waste, regardless
6 of the ramifications, economic or otherwise. For
7 I don't understand how we could place a dollar
8 value on human health or environmental health.
9 And I hope you, the EPA, will remember that you're
10 acronym doesn't stand for the "Economy Protection
11 Agency," and that you'll do your job to protect
12 the environment, the Environmental Protection
13 Agency, and its people by classifying coal ash as
14 the hazardous waste that you, the EPA, has already
15 told us that it is.

16 Thank you.

17 (Applause)

18 MR. DELLINGER: Number 185, 188, 178. I
19 -- I thought I just -- I called 185; right?

20 SPEAKER: Yep.

21 MR. DELLINGER: All right.

22 SPEAKER: You got it?

1 MR. DELLINGER: Yeah. I'm sorry. I
2 didn't see -- I didn't -- I didn't check the box.
3 You're -- you're fine. Here's 185.

4 MR. HOFFMAN: 178.

5 MR. MORTIMER: Hello. First of all,
6 thanks for coming down to Tennessee today and
7 adding this to your regular schedule programs.

8 My name is Samuel Mortimer. I'm a
9 recent graduate of the University of Tennessee, a
10 20-year resident of the state, and an architect in
11 the Knoxville area.

12 I'll keep this relatively short. But
13 the good people of Tennessee have suffered enough
14 from the affects of coal. I would ask you to
15 please classify fly ash as a toxic waste and make
16 every effort to ensure that disasters -- and let's
17 not kid anyone, it was a disaster -- at (sic) the
18 Kingston spill never happen again. This is
19 certainly an issue of protecting the environment
20 and not the bottom line.

21 Thank you.

22 (Applause)

1 MR. HOFFMAN: What number are you?

2 MS. CHEELY: 188.

3 MR. DELLINGER: What was --

4 MS. CHEELY: I'm Jean Cheely.

5 MR. DELLINGER: What was -- what was the
6 last person's number? One --

7 MS. CHEELY: He was --

8 MR. DELLINGER: -- seventy --

9 MS. CHEELY: -- walk-in.

10 MR. DELLINGER: -- eight.

11 MS. CHEELY: He was 178.

12 MR. DELLINGER: All right. Thank you.

13 MS. CHEELY: Yeah. Okay. I'm a member
14 of SOCM, previously Save Our Cumberland Mountains.
15 I was a previous resident of Kingston for ten
16 years; presently live in Cumberland County. I'm
17 one of the authorities on coal ash. We've been
18 working against having that coal ash landfill
19 brought up to our mountain at the -- our headwater
20 streams. I also grew up in Clinton, Tennessee.

21 And the points I would like to raise
22 with you, I'm going to address -- even though I've

1 been fighting the Cumberland County coal ash
2 landfill for two years now, I was dismayed to find
3 that in my hometown of Clinton on the Clinch River
4 there's a legendary coal ash fill that was unlined
5 called Lost Ridge.

6 In our many forays with EPA and TDEC and
7 O -- OSM during this last two-year event I got
8 some of the records from the Clinton coal ash
9 landfill. That was a 44-acre landfill that was
10 done permit by rule, and that there was no public
11 input into creating that site.

12 In Tennessee we have a lovely law called
13 the "Jackson Law," which gives communities the
14 opportunity to say "yes" or "no" to having any
15 sort of a landfill. Permit by rule circumvents
16 this opportunity for the public to speak out.

17 Let me regress and say that I do support
18 Subtitle C and let it be stronger. I would like
19 it to address the site selection and that no
20 permits by rule be granted. The public process in
21 a community needs to be present and utilized.
22 Transportation considerations need to be addressed

1 and regulated. Legacy sites that have been closed
2 need continuous monitoring.

3 The site -- the Clinch River was one of
4 the top eight clear bodies of water in the world.
5 Today this site, the hydrological reports, which I
6 will submit, from TDEC before this site was built
7 showed that there was a stream running through
8 there, there were springs, that this was one of
9 the worse possible sites you could put a landfill.
10 For some reason, it was placed there. It's been
11 reclaimed, and now it's been granted to the City
12 of Clinton, if they want to build a recreational
13 park there for their children to play.

14 There's a large culvert going directly
15 into the Clinch River that drains a steady stream
16 of water even during dry weather. There is not
17 ongoing monitoring of this culvert.

18 MR. HOFFMAN: Your time is up.

19 MS. CHEELY: Okay. I just want to say
20 that EPA has -- ha -- has refused -- they said, We
21 are monitoring the Clinch River downstream.

22 And so this culvert of water coming from

1 this landfill, it's -- has not been tested. I
2 went to my congressional member, who finally got
3 DOE to do a testing. We haven't gotten the
4 results in yet. But the legacy landfills need to
5 be addressed as well.

6 Thank you.

7 (Applause)

8 MR. DELLINGER: Numbers 294 and 295.

9 MS. GRANT: 295. Do you want me to go
10 ahead?

11 MR. HOFFMAN: What number? 295?

12 MS. GRANT: My name is Anna and I'm a
13 student outside Asheville, North Carolina. I just
14 moved there from Philadelphia, Pennsylvania, where
15 I worked with advocacy groups to pressure Region 3
16 EPA to deny permits for mountaintop removal coal
17 mining and valley fills in Virginia, and West
18 Virginia.

19 I learned a lot about the process of
20 coal production throughout this work, and I see
21 the decision to regulate coal ash, a known hazard
22 to human and ecological health as a simple choice.

1 Tennessee residents remember the TVA to
2 -- atrocity that was the coal ash flood that led
3 to horrific property destruction and severe
4 ecological di -- damage.

5 I implore the industry and EPA to learn
6 from the past and act now to regulate coal ash as
7 a hazardous waste through Subtitle C. Subtitle C
8 means accountability of the industry that local
9 communities are in great need of. Subtitle C
10 means that drinking water will be taken into
11 account and monitored, which is crucial to
12 positive community growth.

13 I strongly urge the EPA to reject
14 Subtitle D because arsenic and selenium are not
15 household wastes; they are known carcinogens. To
16 reject the research that shows people who are --
17 who live within one mile of the coal ash ponds
18 have a 1 in 50 chance of developing cancer is
19 simply unethical.

20 EPA, please review the statistic that
21 you published and please protect the environment,
22 not the polluting industries.

1 Thank you for your time.

2 (Applause)

3 MR. DELLINGER: Thank you.

4 MR. HOFFMAN: 294.

5 MR. MARSHMAN: My name is Herman
6 Marshman. I'm the president of IBEW Local 272,
7 that's in Shippingport, Pennsylvania.

8 I'm here today to address several
9 issues, and one of the issue (sic) is in regards
10 to the regulation of fly ash. I have 30 years
11 experience working with fly ash. I have worked in
12 the power industry for FirstEnergy Corporation in
13 the collection and removal of fly ash. Before fly
14 ash is seen by anyone in the public, I see it
15 first. I see it when it's hot. I see it when
16 it's in the -- the finest raw form. Am I afraid
17 of fly ash? No. Is it hazardous waste? Yes.
18 Okay. Everyone knows that fly ash has heavy
19 metals in it. Under OSHA regulations, I must wear
20 a respirator and protective clothing to work with
21 fly ash because of the hazards.

22 Now I'm not here to debate, and that's

1 for the EPA to decide, which regulation, C or D.
2 It's doesn't matter. It's still hazardous.

3 My issue is the workers. Individuals
4 like myself who have spent 30 years in the power
5 industry. Companies now are taking away our
6 health benefits. And I'm proposing any mandate
7 under the new regulation that there be provisions
8 that the profits from the reuse of fly ash goes
9 for the safeguard of the public and the
10 environment and maintain healthcare coverage for
11 the workers that are directly and indirectly
12 exposed to fly ash.

13 Thank you.

14 (Applause)

15 MS. CERULEAN: Hello. I'm Jeannie
16 Cerulean and I'm from Chattanooga, Tennessee.

17 And being down river from that spill,
18 you know, caused a lot of people in Chattanooga to
19 want to know what's in our water. And so I was
20 really thankful that there were labs that were
21 doing independent testing, that felt really good
22 to us to have you guys, TVA, and some independent

1 labs. And I know that a lot of people raised, you
2 know, some money to make sure that those test
3 results could be in. So I just really want those
4 test results to also be considered.

5 And speaking of -- we just heard about
6 like profits from what you turn the fly ash into.
7 Well, what you rule on and how toxic you say it
8 is, then they're going to put in certain things,
9 like sidewalks in Nashville. Well, what about
10 playgrounds? So what you classify this fly ash
11 as, will it go into landfills? Will they be
12 lined? You the classification of it becomes the
13 protection so that you don't have like more
14 problems down the line. And I would just like to
15 see us, like, front load that whole thing, not
16 have to pay at the end so much. But to pay at the
17 front so that we're figuring out like how it's
18 connected, where it's going, what we're doing.

19 And if we're going to mine coal, then,
20 you know, make sure that those coal miners are
21 protected and, you know, that their -- they don't
22 have really bad working conditions because their

1 union has suffered. And then stop blowing up the
2 top; right. So that means less coal. So like
3 slow it down. You know, maybe that energy should
4 be used to build renewables. That's energy
5 intensive. And I -- you know, what are we going
6 to do with that power? Could we use it to make a
7 front loaded energy system?

8 And when you identify what the true cost
9 of coal, what is the real cost to these people and
10 to our mountains and our streams and the people
11 directly affected who don't have clean drinking
12 water, you get to decide.

13 And I'm so glad that you've listened to
14 all of us today about it. And it's a big wait.
15 But we want our shirt clean, all right?

16 Thank you.

17 (Applause)

18 MR. DELLINGER: Numbers 168, 181, 133
19 and 186.

20 MR. FORTNER: My name is Larry Fortner
21 from Mount Carmel, Illinois.

22 And the only reason why I'm here is to

1 my brother is sick all the time. And as soon as
2 they move him north to go to a hospital, he gets
3 well. Soon as he gets back home, he's sick a --
4 again.

5 And the people was -- is sick all the
6 time around here. And people's got to wash cars
7 and stuff.

8 And my wife has -- has got hay fever all
9 the time. While she's in the house, she's okay.
10 Soon as she goes out of the house, she's sick.
11 And it just -- you've got to do something about
12 this ash flying around in the air all the time.
13 And we -- soon as we get this ash problem took
14 care of and get the rules changed everybody will
15 be well.

16 Thank you.

17 (Applause)

18 MR. DELLINGER: Do you -- do you
19 remember what number, 168?

20 MR. HOFFMAN: Let me look .

21 MR. DELLINGER: 198?

22 MR. HOFFMAN: Yeah.

1 MR. DELLINGER: No. It looks like 168.

2 MR. HOFFMAN: We're okay? Okay. His --
3 his number is 181.

4 MR. BAILEY: My name is Emanuel Bailey,
5 and I'm here today to speak as a concerned
6 citizen, an engineer, a person with a
7 technological orientation and perspective, a
8 former TVA employee, a rate payer who was affected
9 by the spill, a member of the Tennessee Renewable
10 Energy and Economic Development Council, who's
11 concerned about the environment, technology, and
12 the economy.

13 Through my testimony, I intend to urge
14 EPA to develop rules and incentives which advocate
15 the application of existing remediation
16 neutralization technologies to reduce future costs
17 of risks associated with not addressing fly ash
18 issues now. I suggest that EPA fund
19 demonstrations and partner in the development of
20 funding mechanisms to demonstrate and apply
21 applicable technologies to troubled fly ash sites.

22 The -- TREDC is an organization which is

1 -- basically supports renewable technology, and
2 its membership is open to the mayors and other
3 entities in the State of Tennessee across the
4 state. It's got representatives from industry and
5 technology. We were instrumental in working with
6 the mayors around Kingston, Harriman, and Roane
7 County with the original spill. We designed --
8 developed facilitation services to assist the
9 community. But as a part of our work also, we
10 worked with a firm in west Tennessee that -- that
11 develops green technologies and independently to
12 try and verify -- validate those green technologies
13 that they market.

14 One of the -- one of the things that
15 they market are inorganic hazardous waste
16 treatment reagents.

17 When we started working with this
18 organization, we became aware of the experience
19 that this firm and some of its founders have had
20 in working with some of the most hazardous sites
21 around -- around the country. They have been
22 involved in neutralizing waste at those sites.

1 They've work on solidification stabilization
2 techniques, and they have worked to try to do
3 this. This is a technology that EPA says is safe
4 and has validated as a way of microencapsulating
5 the waste and can be used right on site with
6 applications.

7 Part of what we do is, we're trying to
8 urge you to, in fact, incentivize the development
9 and application of these kind of technologies --

10 MR. HOFFMAN: I'm sorry.

11 MR. BAILEY: -- because they can be --

12 MR. HOFFMAN: You're out of time.

13 MR. BAILEY: Okay. Thank you.

14 MR. DELLINGER: Thank you.

15 (Applause)

16 MR. DELLINGER: 133 or 186.

17 MS. THEW: I have 186.

18 MR. DELLINGER: Okay.

19 MS. THEW: I'm Margaret Thew. I have
20 severe asthma, and we live about two blocks away
21 from the ash spill in Roane County. TVA said that
22 we lived too far from the steam plant to get help.

1 They had us file a claim and I spoke to
2 Tennessee's chief public health doctor. He told
3 me that they were waiting to see what the EPA
4 would do under a new administration. He referred
5 me to TDEC.

6 TDEC sent a letter saying that they
7 couldn't see any fly ash hanging off those trucks.

8 Air quality, locally, is measured with
9 industrial standards. At a meeting Tom Kilgore
10 said that TVA wasn't transporting fly ash off TVA
11 property and that the public hadn't been exposed
12 to fly ash before the spill.

13 We took a picture of a truck on a
14 Harriman Road with fly ash along the top. And we
15 watched as the dike went up and saw plenty of
16 exposed fly ash. My family has seen moving train
17 cars with exposed fly ash.

18 My pulmonologist has found more density
19 and blood in my lungs than a year ago. I deal
20 with daily airway inflammation, almost daily sinus
21 pressure and headaches, coughing up stuff daily,
22 and frequent hoarseness.

1 TVA is calling themselves a branch of
2 government and trying to get lawsuits dismissed.

3 The EPA sent us flyer saying that the
4 ash spill was almost cleaned up. No, it isn't.

5 The EPA says EPA's mission is to protect
6 human health and to safeguard the natural
7 environment, air, water, and land, upon which life
8 depends.

9 So if government branches are all busy
10 cooperating with each other and patting each other
11 on the back for a job well done, then who is
12 protecting our health and our children's and
13 grandchildren's future.

14 Thank you.

15 (Applause)

16 MR. DELLINGER: 133.

17 MR. BARTLEY: Good evening. Thank you
18 for the opportunity of speaking tonight. I am
19 Gary Bartley. I am from Sullivan, Indiana.

20 My family and I are adjacent landowners
21 to Hoosier Energy's Merom Station power plant. We
22 have a serious problem with airborne coal ash from

1 their open landfill.

2 We have neighbors and friends that won't
3 allow their children out to play anymore because
4 their toys are coated with coal ash. Several of
5 those children recently have been have been tested
6 and diagnosed with high lead. We have tests to
7 prove that.

8 We cannot open the windows on our new
9 house, because on a windy day the coal ash fogs
10 in.

11 My 13-year-old son is having respiratory
12 and intestinal problems, as well as my wife and
13 myself. Our neighbors are also complaining of
14 intestinal problems, respiratory problems, and
15 aches and pains that didn't start until the coal
16 ash at Hoosier Energy got high enough to blow in
17 the wind everyday.

18 I can watch this from my back door.
19 Every time they dump a load, there is a big plume
20 of coal ash that goes up that can be seen for two
21 miles away.

22 On October 18th, 2010 the Sullivan

1 County Commissioners met at their annual meeting
2 with five representatives from Hoosier Energy.
3 These representatives were asked to pay for half
4 of the tests on adjoining properties and to see
5 what kind of toxins we actually have. Hoosier
6 Energy's employees, their lawyer and their
7 environmentalist, after 15 minutes of discussion,
8 said, no, they would not participate with the
9 county commissioners to do this testing.

10 At that point the county commissioners
11 passed the resolution to ask for Subtitle C to be
12 adopted. One commissioner did recli -- or did
13 decline to vote because he is an employee of
14 Hoosier Energy.

15 My family and I also raise national
16 champion show sheep and pigs. We are seeing in
17 the last five years an extremely high rate of
18 birth defects. In 2008, we had lambs with crooked
19 backs; we had pigs with no ears. In 2009, we had
20 a lamb born with five legs. In 2010, we had a
21 lamb born with nine ears, five on one side, four
22 on the other. I'm sure as most of you know, this

1 is not normal. It never started until Hoosier
2 Energy went wild dumping the coal ash.

3 My 13-year-old son asked me a month ago
4 to get involved. And he said, "Dad, how many of
5 my baby pig and baby lambs this winter are going
6 to be deformed?"

7 Please protect us. Help us get through
8 this. Adopt Subtitle C so that we are safe.

9 Thank you.

10 (Applause)

11 MR. DELLINGER: I've run out of numbers.
12 Is there anybody in the room that has a number?
13 Oh. I actually didn't run out. I do have your
14 number here, 296. Sorry.

15 MR. FLENNER: Thank you. My name is Sam
16 Flenner.

17 I do grassroots outreach work with
18 Environmental Integrity Project. I've been
19 working in southwest Indiana. I have testified in
20 Chicago. I testified in Louisville. I really
21 wasn't planning to testify here but I'm just going
22 to sort of wing it because there's just one thing

1 that I think needs to be made very clear. The
2 people that came and testified from the Mount
3 Carmel area, including people from east Mount
4 Carmel or Princeton area, Duke Energy ran
5 municipal water out to a number of people because
6 it was clear that they contaminated their wells.
7 They had to stop fishing in the pond that they
8 had, and that's when they started the dry
9 landfill.

10 There are several other neighbors down
11 the highway from where they ran water to, their
12 wells are, we believe, contaminated. We don't
13 have the means to do the testing at this point in
14 time. We're trying to raise the means so that we
15 can make this further than hearsay.

16 This is the reason why we need Subtitle
17 C. We need somebody other than the Indiana state
18 regulatory regulators who will not do anything
19 about this.

20 Duke will not do anything about this.
21 And, in fact, one person who had a lawsuit and
22 dropped it against Duke, who owns a bait shop that

1 is in east Mount Carmel, has constantly told us,
2 as we've asked him to testify, "You can't beat
3 Duke. Duke's got the politicians bought." And,
4 you know -- and this is just they way people are.
5 The apathy is just absolutely terrible.

6 Now we go to Mount Carmel, across the
7 river, to look for some support. Larry here, his
8 wife was ill today, she was going to come and
9 speak. She speaks a little bit better. But he
10 just handed in 250 petitions from people in Mount
11 Carmel who asked their city council to pass a
12 resolution and -- endorsing Subtitle C. And they
13 didn't. And I've heard rumors as to why they
14 didn't but it's hearsay, so I really can't testify
15 to it with any accuracy.

16 But, you know, one person who told us he
17 was going to come here and then didn't come here,
18 though, told us the -- that Duke's outreach is
19 very, very and deep.

20 And so we had somebody here who told us
21 he was going testify, then for some reason,
22 because of Duke's influence in the area there,

1 decided not to testify.

2 So, this is -- this is why I'm
3 testifying today. I know there's just a little
4 bit of time left. But without Subtitle C, without
5 federal enforceability, without the federal
6 government being able to say, yes, you will go out
7 and see that these, you know -- that you will do
8 the testing, that you will document and make --
9 and -- and make explicit or transparent what's
10 going on, thi -- it's not going to happen. And
11 the Indiana's regulatory commission, they're not
12 going to do anything. If the EPA doesn't do it,
13 then the number of damage cases will continue to
14 rise.

15 There's a huge cancer cluster in Mount
16 Carmel right now. And, again, we have to get more
17 documentation. It's there. It's just going to
18 take some time.

19 Thank you.

20 (Applause)

21 MS. SWINFORD: EPA, I'd like to thank
22 you for choosing to hold a coal ash hearing here

1 in the State of Tennessee. I'd also like to
2 remind you that there was a citizen's coal ash
3 hearing that was held about a month ago. And this
4 morning Sara McCain submitted comments from that
5 hearing. And I would ask that you consider those
6 comments as closely as you would consider comments
7 of anyone that was able to attend the hearing
8 today.

9 My name is Bonnie Swinford. I'm a
10 volunteer with United Mountain Defense, which is a
11 non- profit based here in Knoxville, Tennessee.
12 I'm also a schoolteacher by training.

13 I used to be an environmental educator
14 at a place called John Knox River Ridge
15 Environmental Education Center, which is a place
16 that's located just a few miles downstream from
17 the TVA disaster site.

18 Later, after this job, I became a
19 teacher in Knoxville, Tennessee. And each fall I
20 would travel with my students to go back to River
21 Ridge, where my students -- you know, would enjoy
22 this place as a special place to learn about

1 science and nature. And it saddens me that --
2 that this watershed has been degraded and that my
3 students will no longer swim in the water or be
4 able to experience hand (sic) on learning about
5 lake ecology in the same way as did previously.

6 Directly after the disaster I began
7 organizing with the Roane County community as a
8 volunteer with United Mountain Defense. I went
9 door-to-door and met survivors and became
10 intimately acquainted with their concerns, their
11 fears, and the devastation that this catastrophic
12 event created in their lives.

13 I met terrified families who were
14 evacuated from their homes in the middle of the
15 night. I met children who could no longer play
16 outside and who were suffering from breathing
17 issues, families who were worried about the dust
18 settling in their homes and who were suffering
19 from headaches and stress and other related
20 illness. I cannot even begin to speak to you
21 about all of the stress and concerns faced by this
22 community in the aftermath of the disaster.

1 Many Roane County community members
2 could not be at this hearing tonight because they
3 have been faced with the hard choice of either
4 selling their home to TVA and signing a contract
5 which will not allow them to speak about that
6 issue any longer, or they continue to be silenced
7 by the fear that's involved in their pending
8 lawsuits against the Tennessee Valley Authority.

9 So, EPA, it is your job to protect other
10 communities from disasters like this one.
11 Subtitle C will provide inadequate protection
12 because of its unreasonably long time lines and
13 limited scope. Therefore, I want the EPA to adopt
14 the stronger option of Subtitle C Prime, or Super
15 C, which is outlined in my written comments.

16 (Applause)

17 MS. OVERTON: Hello. Thanks for letting
18 me speak today.

19 My name is Cornelia Overton, and I'm a
20 student at UT, but I've also lived in this region
21 my entire life. And my family has lived here for
22 generations. And I love this region and I care a

1 lot about it. And -- and I want to be able to
2 know that I can live on the farm that my great,
3 great, great, great grandparents lived on, and be
4 able to swim in the water and drink from the well
5 and grow things. And so that's why I would like
6 you-all to please regulate coal ash as a hazardous
7 waste.

8 Thank you.

9 (Applause)

10 MR. DELLINGER: 297.

11 MR. BRYANT: Thank you for coming. My
12 name is Adam Bryant, and I'm a resident of
13 Tennessee. And I just came up to say that I
14 encourage you to adopt Subtitle C.

15 Thank you.

16 (Applause)

17 MR. DELLINGER: 207.

18 MR. CASTLEMAN: Hi. My name is John
19 Castleman. I'm with -- I'm a process engineer
20 with the SEFA Group, and I develop technologies to
21 utilize fly ash for the clean, safe, and
22 non-hazardous applications.

1 Based on my experience, fly ash in and
2 of itself is not a hazardous material, and the
3 disposable of fly ash should not be regulated
4 under Subtitle C. To do so will significantly
5 reduce, or possibly even eliminate, the beneficial
6 use of ash.

7 EPA is proposing to label coal fly ash a
8 "special waste" under Subtitle C, the hazardous
9 waste section of the law, because it is, in EPA's
10 words, "capable of posing a potential hazard to
11 human health when improperly disposed of or ma --
12 or managed." The EPA position is that fly ash
13 could pose a potential hazard if it is mismanaged.
14 I do not disagree with this assessment. And
15 further, I agree with EPA that the disposal of fly
16 ash should be properly regulated in such a way to
17 prevent mismanagement. However, coal a -- go --
18 coal fly ash does not need to be listed and
19 regulated under the hazardous waste section of the
20 law.

21 Of critical concern is that listing and
22 regulating fly ash under Subtitle C will reduce

1 the amount of fly ash that can be beneficially
2 used. If the EPA lists coal fly ash as a "special
3 waste" under Subtitle C, then it will be
4 considered a hazardous waste by the general
5 public. The potential for litigation is enormous.
6 The failure of any concrete structure will be
7 blamed on the hazardous waste used in the
8 construction, even though the failure was not do
9 to the fly ash in the concrete. Just the threat
10 of such litigation will pres -- prevent any fly
11 ash use on an industrial project.

12 Fly ash has been used beneficially in
13 construction applications for thousands of years.
14 These applications have demonstrated the safe,
15 reliable use of fly ash and the lack of any
16 hazardous issues associated with the applications.
17 Beneficial use of fly ash results in lower costs
18 of production, reduced raw materials, reduced
19 greenhouse gases, increased quality of projects --
20 products, among many other benefits. If fly ash
21 is regulated under Subtitle C under any name, this
22 use and these benefits will be eliminated.

1 Thank you.

2 (Applause)

3 MR. DELLINGER: Thank you.

4 199.

5 MR. CUMMINGS: My name is Matt Cummings.

6 I'm from Knoxville, Tennessee.

7 As student in a religious institution
8 and a future leader of a religious community, I
9 heed these words of wisdom and advisement towards
10 choosing Subtitle C as the legislation for coal
11 combustion. In Christianity, the least of these
12 in society are given preferial (sic) treatment and
13 an elevated status throughout the narrative of
14 Jesus.

15 Islam teaches that a moment of justice
16 is better than 70 years of worship.

17 The Dalai Lama states that there's no
18 basis for human hope if there's no justice.

19 In (sic) the New York Times, on
20 September 12th, 2009, ran a (sic) article about
21 how clean water laws were being neglected and were
22 creating harmful circumstances for residents in

1 these areas.

2 In Pines, Indiana -- and I'm a native
3 Hoosier -- it's a community living next to a coal
4 ash landfill, watched as children were being born
5 with hearing impairments and rare bowel diseases.

6 Locally, as we have all in Tennessee
7 have seen, the TVA spill has destroyed ecosystems
8 and caused loss in property values for the peoples
9 in affected areas.

10 NPR has reported that the clean up
11 located in predominately poor African-American
12 community in Alabama, where the landfills are
13 being located, amounts to environmental racism.

14 So the question from a religious
15 perspective is: How will the EPA's policy affect
16 the least of these in society?

17 Recent events from the TVA spill to the
18 BP incident show that corporate businesses do not
19 always have the interest of creation or the poor
20 as part of their policy. And it's left to the
21 government regulations, such as Si -- Subtitle C
22 to help establish some form of justice for the

1 voiceless.

2 I depart these with the words of
3 Christian theologian, Jacques Ellul, he says, in
4 the 1960s: We know the implications of pollution,
5 but we go on calming polluting the air, the rivers
6 and the oceans. We know the dangers of pesticides
7 and chemical fertilizers, but we continue to use
8 them in increasingly massive doses. We know all
9 this, but we are like the masochist who knows
10 others have put a little arsenic in each bowl of
11 soup he eats but who goes on eating it day after
12 day as -- as though impelled by an irresistible
13 force. We cannot build a just society by unjust
14 means.

15 Thank you.

16 (Applause)

17 MR. DELLINGER: Thank you.

18 Is there anybody else in the room that
19 has a number? We'll take a short break to -- to
20 double-check and see if there is another crowd
21 that is seeking to speak here at the hearing. And
22 if -- if -- if that's not the case, we'll lengthen

1 the break for a few minutes.

2 We'll -- we'll sta -- we'll do it for
3 ten minutes and then may ha -- may elongate the --

4 SPEAKER: May I make a quick point? Why
5 do we have so much light in this room? That's the
6 problem. In this room, in this hotel, in the
7 world, we are wasting energy.

8 Thank you.

9 (Applause)

10 MR. DELLINGER: We'll reconvene at --
11 we'll reconvene at 8:40 and then decide what we're
12 going to do next.

13 (Recess)

14 MR. DELLINGER: We're going to reconvene
15 the public hearing.

16 We have two (sic) speakers. Number 298,
17 Number 214 and Number 216.

18 MS. HENDERSON: Good evening. Good
19 evening, everybody. Thanks for -- for being here.
20 I appreciate that.

21 My name is Ash-Lee Woodard Henderson. I
22 was born and raised in the Tennessee Valley. And

1 I'm a student at east Tennessee State University,
2 a member of the Initiative for Clean Energy
3 Mountain Justice and United Mountain Defense.

4 I -- I really wasn't going to speak, but
5 I feel called to because I have met folks from
6 Harriman, Tennessee. I've seen the rashes on
7 their hands from the water. I've heard
8 15-year-olds talk about not being able to have
9 kids that aren't going to be affected by heavy
10 metals because of the coal ash disaster.

11 And, as a person of color, I'm also very
12 concerned about the health impacts for people
13 Perry County, who mostly look like me, and are
14 going to have to deal with having ash sent to
15 them, which not many of them are asking for, from
16 my understanding.

17 So I really, really want to compel you
18 to take all of the really awesome information that
19 the young activists here have shared with you and
20 that the amazing scientist who spent a long of
21 time researching these issues and like the health
22 impacts that -- that people are having because of

1 this coal ash.

2 And I'm especially begging you to take
3 into consideration that people of color
4 communities and poorer working class communities
5 are the ones that take the most impacts from our
6 environmental decisions. And this upcoming
7 decision that you're going to have to make is one
8 that's going to affect us, and to -- to seriously
9 take into account the fact that we're already
10 taking the brunt of a lot of the environmental
11 impacts that are happening in the world.

12 So we appreciate you for being here and
13 -- and look forward to you making the right
14 decision.

15 (Applause)

16 MR. DELLINGER: Thank you.

17 (Applause)

18 MR. HOFFMAN: 216.

19 MR. DELLINGER: 216?

20 MR. HOFFMAN: Yeah, 216.

21 MS. ROSALES: My name is Maria Rosales.

22 I'm a senior in Environmental Studies at the

1 University of Tennessee.

2 First, I want to thank you for holding
3 the hearing here in Knoxville. Only three days
4 before Christmas in 2008, east Tennessee
5 experienced the largest and worst coal ash spill
6 in the history of the United States. Therefore,
7 it is very important for the people and students
8 to be part of this hearing.

9 As a resident and -- and a student of
10 Knoxville, I want to be part of a generation who
11 refuses to settle for anything less than strong
12 regulation. I care about future generations and I
13 believe that toxic coal ash is scary. I recognize
14 that we'll be facing new transitions and
15 challenges so it is time to take action.

16 As a minority, I am aware that there is
17 an environmental injustice when it comes to coal.
18 The ash that devastated Roane County, Tennessee,
19 after TVA's Kingston coal ash pond failure is now
20 being shipped to Perry County, Alabama, a largely
21 minority group community where arsenic
22 contamination has risen to levels 80 times the

1 safe drinking water standards.

2 Coal ash contamination
3 disproportionately impacts the poorest
4 communities. Almost half of the EPA high hazard
5 ash ponds in the southeast are low-income areas.

6 Finally, as a Christian I believe in a
7 holy God who created all the heavens and the earth
8 to be perfect and good, yet we have exploited them
9 through our greed, selfishness, and pride. We are
10 called to be good stewards in the environment
11 because He has entrusted us with the earth and we
12 are to glorify Him by caring for his creation.

13 Although the EPA's strongest legislation
14 Subtitle C is a good start, it is not enough.
15 Subtitle C does not require rapid closure of
16 dangerous ash ponds, it does not require immediate
17 cleanup, despite the threat to health and the
18 environment from toxic waste, and it does not
19 require polluters to ensure healthy air and water.
20 That is why I support a stronger Subtitle C Plus
21 in which the N -- EPA should immediately shutdown
22 all ca -- coal ash ponds and unlined landfills,

1 investigate all coal ash dump sites, and clean up
2 all contaminated sites.

3 In addition, the EPA needs to determine
4 the nature and extent of exposure to human -- of
5 human and to the toxic material in coal ash,
6 including instituting medical monitoring, when co
7 -- contamination is discovered.

8 Moreover, all shipments of coal ash
9 should also comply with hazardous material
10 transportation requirements and it should require
11 all fly ash, bottom ash, slag, and FGD sludge to
12 be tested under the EPA's new leach test, LEAF, to
13 determine toxicity.

14 Finally, we should immediately cease use
15 of coal ash as fill and install composite liners
16 for all -- for all expanded and new landfills.

17 Thank you for your time.

18 (Applause)

19 MS. WHITE: Good evening. My name is --
20 you have me listed as Patricia White, but I prefer
21 to be called Naeema, so I'm going to introduce
22 myself as Naeema Muhammad. I'm with the North

1 Carolina Environmental Justice Network. I live in
2 Rocky Mountain, North Carolina.

3 And I am here to night because in 1999,
4 when Hurricane Floyd tore up eastern North
5 Carolina, there was a group of citizens out of a
6 little town called Princeville, North Carolina,
7 who was underwater for seven days. As a result of
8 the Hurricane Floyd many, many people in eastern
9 North Carolina had to be placed in temporary
10 housing sites. And as a result of that, in
11 October of 1999, FEMA, the Federal Emer --
12 Emergency Management Agency, along with some state
13 agencies out of North Carolina and the local
14 government of Edgecombe County, North Carolina, ta
15 -- took the citizens from Princeville, brought
16 them over to Rocky Mount and put them in indust --
17 and set up their housing at an industrial landfill
18 site that had been receiving coal ash right up
19 until the day of the flood.

20 And the problem with that, they did not
21 inform people that this had been a coal ash site,
22 which was a basic denial of peoples right to know,

1 as well as, you know, a denial of peoples human
2 rights to clean air and clean water.

3 And when the citizens found out about
4 this site, one of the things that happened was --
5 I'm a -- I'm a community organizer, first of all.
6 As a community organizer, I was working with the
7 Hurricane Floyd survivors and trying to get them
8 through the recovery process, which was very
9 discriminating at the time. And so people were
10 sent to Rocky Mount, placed on this coal ash
11 landfill without being informed that this had been
12 a coal ash landfill.

13 When they brought the trailers to the to
14 site, they had to tear up the ground and stuff.
15 So that means they were uncovering the ash that
16 had been being placed there for many, many years.
17 And the industry that was dumping there was right
18 across the street from this site that was -- that
19 citizen (sic) were placed on. So they put them
20 there, they didn't tell them. And when the
21 citizens we -- some of the workers -- there is a
22 prison right back there as well. And some of the

1 workers from the prison came over to the site and
2 told us -- you know, reminded us that that had
3 been a landfill site and they had seen numerous
4 trucks constantly coming in and out of that site
5 dumping -- dumping stuff. And so they were
6 concerned about what exactly was there.

7 So as we began to investigate, that's
8 when we found out about the coal ash. And we went
9 to our local government of Edgecombe County and
10 they would not talk to us. We talked to FEMA,
11 they would not talk to us. The state would not
12 talk to us.

13 So the citizens --

14 MR. HOFFMAN: Your time is up.

15 MS. WHITE: It's up already?

16 SPEAKER: M-hm.

17 MS. WHITE: No. That's not fair. Okay.
18 Well, anyway, to make a long story short, they did
19 nothing about it. And the citizens were never
20 informed and they -- to this date, we still don't
21 know what kind of impact that coal ash had on the
22 citizens of Princeville.

1 We do support Subtitle C and -- even
2 though we believe it could be stronger than it is.
3 And -- and the last thing I will say is,
4 because I've been wanting to tell you this all
5 day, we have a broken regulatory system in this
6 country. And I'm not sure how it's going to be
7 fixed. I -- sometimes I say, I think we can't fix
8 it. But we have to take some greater steps than
9 this.

10 (Applause)

12 Is there anyone else in the room who has
13 a number? Let me check my watch. We'll take a
14 break until 9:15.

18 MR. HOFFMAN: Just put your -- your name
19 on it and put them -- it right here.

22 MR. HOFFMAN: Do you -- do you have your

1 name on it so -- that?

2 MS. WHITE: Yes, I do.

3 MR. DELLINGER: Thank you very much.

4 So we'll -- we'll reconvene at 9:15.

5 (Recess)

6 MR. DELLINGER: We're reconvening and --

7 long enough for me to ask if there are anymore

8 people who ha -- are in the room that have

9 numbers.

10 So we are now going to un-reconvene and

11 -- for -- for -- we'll recon -- re -- we'll

12 reconvene at 9:30.

13 (Recess)

14 MR. DELLINGER: Is there anybody in the

15 room that has a number and hasn't spoken? We're

16 going to -- we're going to stay around for another

17 10 or 15 minutes in case somebody comes in. But

18 it's not going to be a full panel. We're going to

19 let -- we're going to let people go so they can

20 get some dinner right now before the restaurants

21 close. But we'll wait here until 9:45. And --

22 that's when people are supposed to have been here

1 for the -- for the last group of -- of speakers.

2 (Recess)

3 MR. DELLINGER: We're reconvening. We
4 have a -- a new speaker. A -- and so I'm calling
5 Number 213.

6 What you -- what you would do is state
7 your name and your affiliation. And we'll -- you
8 have three minutes to speak. And we'll -- we'll
9 kind of coach you along with that, you'll have --
10 you'll have a warning -- well, you'll -- at --
11 you'll have a two -- one -- one card will at -- at
12 two minutes, one at one minute, another one at 30
13 seconds and then the red one means you summarize
14 real, real quick, if you haven't finished.

15 MR. NEY: Ready?

16 MR. DELLINGER: Sure.

17 MR. NEY: Ready?

18 MR. ZUGER: Good evening. Yes, I am
19 ready. Thank you.

20 My name is Ed Zuger. I am a
21 Kentucky-licensed environmental attorney and a
22 volunteer member of the Sierra Club, Cumberland

1 Chapter's Energy Committee. And I am here today
2 and submitting my comment in order to express my
3 overarching comment that is in support of the US
4 EPA's proposal to regular CCR under Subtitle C.

5 CCR should no longer be considered
6 exempt waste because the exemption promotes
7 illegal industry practices, it ignores the ethical
8 duties of the US EPA and SIP-state regulators, and
9 demonstrates a blind-eyed model of regulation.

10 Ongoing business concerns must make
11 decisions that satisfy portfolio managers and, you
12 know, foreign investors, and employees. And most
13 firms also consider locally impacted economies,
14 social and health issues, and even environmental
15 results of their activities.

16 However, without the legal obligations
17 that Subtitle C would impose, where do these
18 competing interests -- interests fall along the
19 continuum? Kingston maybe illustrates the answer
20 to that.

21 Right now the decades-old ponds and
22 landfills regularly leach CCR, and even without a

1 glaring example of Kingston, show how pervasive
2 the problem has become. Of course -- because
3 only, for example, US EPA presents the resources
4 and the knowledge and impartiality to force the
5 industry to stop causing the destruction of
6 precious assets through CCR mismanagement. We
7 need to rely on you USPE -- EPA and -- and Subchap
8 -- Subtitle C to control the waste.

9 The industry, of course, is not so
10 beholden to our rights. That's a good thing. But
11 things need to be regulated in order to
12 reintroduce the protection we need.

13 Regulating CCR as an exempt waste flies
14 in the face of both language and logic. Exempt,
15 as a status, implies that, at least conceptually,
16 everybody knows that the subject of the exemption
17 would not have become exempt but for some forces,
18 outside forces. CCR is not harmless, and we know
19 that in spades. Rather, CCR is hazardous. And a
20 lesson equally understood by living near a coal
21 processing facility or observing water quality in
22 the region.

1 So just in closing, I want to point out
2 that, despite the US EPA's administrative status
3 as opposed to the dem -- democratic process of
4 legislative elections, the EPA must see how
5 heavily weighted the public has been toward
6 Subtitle C throughout these hearings from all over
7 the region. Families, scientists, experts,
8 educators, lawyers, doctors, we've all expressed
9 our favor of Subtitle C.

10 I urge you to make the legal, ethical
11 and logical choice of regulating CCR under
12 Subtitle C of RCRA.

13 Thank you very much.

14 MR. DELLINGER: Thank you.

15 (Applause)

16 MR. DELLINGER: Hang on. We have to
17 ask. We have to ask.

18 Is there anywell -- anyone else in the
19 room who ha -- who has a number and wants to
20 speak? Going once. Going twice. Going three
21 times.

22 SPEAKER: Sold.

1 MR. DELLINGER: Steve, you're the --

2 MR. HOFFMAN: I am Stephen D. Hoffman,

3 US EPA. I'm officially closing this hearing.

4 (Whereupon, at 9:45 p.m., the

5 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 STATE OF KENTUCKY

3 I, ROSE MARY KITHCART, notary public in
4 and for the State of Kentucky, do hereby certify
5 that the forgoing PROCEEDING was duly recorded and
6 thereafter reduced to print under my direction;
7 that the witnesses were sworn to tell the truth
8 under penalty of perjury; that said transcript is a
9 true record of the testimony given by witnesses;
10 that I am neither counsel for, related to, nor
11 employed by any of the parties to the action in
12 which this proceeding was called; and, furthermore,
13 that I am not a relative or employee of any
14 attorney or counsel employed by the parties hereto,
15 nor financially or otherwise interested in the
16 outcome of this action.

17

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20 Notary Public ID: 402347

21 My Commission Expires: August 27, 2013

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