

US EPA ARCHIVE DOCUMENT

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

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

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2 EPA Hearing Panel:  
3 Morning Session:  
4 ROBERT DELLINGER, Chair  
5 Director of Materials Recovery and Waste  
6 Management  
7 Office of Resource Conservation and Recovery  
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9 LAUREL CELESTE  
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15 Afternoon Session:  
16  
17 BETSY DEVLIN, Chair  
18 Associate Director of Materials Recovery and Waste  
19 Management  
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22 FRANK BEHAN  
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24 MARY HUNT  
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26 JESSE MILLER  
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28 Evening Session:  
29  
30 ROBERT DELLINGER, Chair  
31 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 the coal combustion  
7 residuals that are disposed of in landfills and  
8 surface impoundments.

9 Before we begin, I'd like to thank you  
10 for taking the time out from your busy schedules  
11 to address our proposed rule, and we look forward  
12 to receiving your comments.

13 This is the sixth of eight public  
14 hearings that we will be conducting. We've had  
15 five very successful hearings in Washington, DC,  
16 Denver, Dallas, Charlotte and Chicago. The  
17 remaining hearings are scheduled for Louisville  
18 and Knoxville, Tennessee.

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

1 session of today's public hearing.

2 With me on the panel are Laurel Celeste,  
3 to my right of the EPA's Office of General  
4 Counsel; and to her right are Steve Souders and  
5 Craig Dufficy, who both work with me.

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

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

1 operations.

2 EPA estimates that there are  
3 approximately 300 landfills and more than 600  
4 surface impoundments where coal ash residuals are  
5 disposed. We have proposed to regulate these coal  
6 ash residuals to ensure their safe management when  
7 they are disposed in landfills and surface  
8 impoundments.

9 Without proper protections, the  
10 contaminants in these residuals can leach into  
11 ground water and migrate to drinking water  
12 sources, posing public health concerns.

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

20 With this proposal, the EPA has opened a  
21 national dialogue by calling for public comment on  
22 two different regulatory approaches available

1 under the Resource Conservation and Recovery Act  
2 for addressing the risks from the disposal of coal  
3 combustion residuals.

4 One item presented in the proposed rule  
5 draws from the authorities available under  
6 Subtitle C of the Resource Conservation and  
7 Recovery Act. This will create a comprehensive  
8 program of federally enforceable requirements for  
9 Waste Management of these residuals.

10 The other option is based on the  
11 authorities of Subtitle D of the Resource of  
12 Conservation Recovery Act, which gives EPA the  
13 authority to set national minimum federal criteria  
14 for Waste Management facilities that must be met  
15 under a schedule established in the regulation for  
16 it to be finalized. The regulation would be  
17 enforced through citizen suits, and under this  
18 scenario, states would qualify as citizens.

19 EPA decided to co-propose these two rule  
20 options to encourage a robust dialogue on how to  
21 address the human health concerns and structural  
22 integrity issues associated with the disposal of

1 coal combustion residuals and landfills and  
2 surface impoundments.

3 EPA wants to ensure that our ultimate  
4 decision is based on the best available data and  
5 is made with substantial input from all state  
6 levels; therefore, we ask that you provide your  
7 comments not only at today's hearing, but any  
8 other comments that support the information that  
9 you'll want to provide in writing.

10 I'd also like to say a few words about  
11 the beneficial use of coal combustion residuals.

12 The EPA continues to strongly support  
13 the safe protective beneficial use of coal  
14 combustion residuals; however, the proposal also  
15 indicates the concerns have been raised with some  
16 uses of coal combustion residuals, particularly  
17 when used in an unencapsulated form. Therefore,  
18 we request comments, information, and data on  
19 specific aspects of beneficial use, particularly  
20 those activities that deal with unencapsulated  
21 applications.

22 We also make clear the proposal that

1 coal combustion residuals that are placed in sand and  
2 gravel pits and other large scale landfill  
3 operations are not examples of beneficial use.

4 Today's public hearing will work as  
5 follows: Speakers, if you've preregistered,  
6 you'll be given a 15-minute time slot when you are  
7 scheduled to give your testimony.

8 Again, we ask that you sign-in 10  
9 minutes before your 15-minute slot at the  
10 registration desk. All speakers, those who are  
11 preregistered and walk-ins, were given a number  
12 when you signed in today, and this is the order in  
13 which you will be speaking.

14 I'll call the speakers to the front of  
15 the room by number, four or five at a time. There  
16 are chairs for the speakers -- the upcoming  
17 speakers -- waiting to provide testimony behind  
18 the podium where the speaker of the -- of that  
19 time will be speaking.

20 When you're number is called, please  
21 move to the microphone and state your name and  
22 your affiliation. We may ask you to spell your

1 name for the court reporters, who are transcribing  
2 your comments for the official record.

3 Because there are many people who are  
4 signed up to provide testimony today, and to be  
5 fair to everybody, testimony is limited to three  
6 minutes.

7 We will be using an electronic  
8 timekeeping system and we'll also hold cards up to  
9 let you know when your time is getting low. When  
10 we hold up the first card, this means that you  
11 have two minutes left.

12 When we hold up the second card, that  
13 means you have one minute left. When the third  
14 card is held up, you have 30 seconds left, and  
15 when the red card is held up, you are out of time  
16 and should not continue with your remarks other  
17 than to do a very brief response.

18 Remember to provide any written material  
19 to our court reporters and the material will be  
20 entered into the rulemaking record.

21 We will not be answering questions on  
22 the proposal; however, from time to time any of us

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

3 As I just mentioned, if you brought a  
4 written copy of your testimony, please leave a  
5 copy in the box by our court reporters. The box  
6 is up here in the front table where the court  
7 reporters are, and it's on my left here and your  
8 right.

9 If you are only submitting written  
10 comments today, please put those in the box by 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 of 2010.

15 Our goal is to make sure that everyone  
16 who has come today to present testimony is given  
17 an opportunity to provide comments.

18 To the extent allowable by time  
19 constraints, we'll do our best to accommodate the  
20 speakers who have not preregistered.

21 Today's hearing is scheduled to close at  
22 9 p.m., but we'll stay later if necessary. If,

1       however, time is not allowed to present your  
2       comments orally, we have prepared a table in the  
3       lobby where you can provide a written statement in  
4       lieu of oral testimony. These written statements  
5       will be collected and entered into the docket for  
6       the proposed rule, and they'll be considered the  
7       same as if you presented them orally.

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

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

22              Thanks again for participating today,

1 and we'll start the hearing right now.

2           Could numbers 1, 2, 3 and 4 step  
3 forward. Number 1.

4           MR. ROEWER: Good morning. My name is  
5 Jim Roewer, I'm the Executive Director of the  
6 Utility Solid Waste Activities Group or USWAG.  
7 USWAG is an association of .

8           This is the fourth public hearing that  
9 I've attended, and I have listened carefully to  
10 the testimony of citizen activists.

11           I've heard them call for groundwater  
12 monitoring of ash disposal sites -- and we agree.  
13 For groundwater protection standards -- we agree;  
14 that corrective measures be taken to address  
15 environmental impacts -- we agree.

16           For liners for disposal units -- in  
17 fact, the overwhelming majority of the new  
18 facilities have monitors because of state  
19 regulations. For dam safety and inspection  
20 standards -- we agree; and generally for  
21 protection of human of the environment -- and we  
22 agree.

1           In fact, all of these protections can be  
2           obtained through the implementation of Subtitle D  
3           regulations. Most importantly, Subtitle D  
4           regulations will be implemented sooner, many years  
5           sooner than Subtitle C standards. D regulations  
6           will not have a devastating impact on beneficial  
7           use. They will not have an unnecessarily  
8           burdensome impact on power plant operations,  
9           raising energy costs, and threatening an already  
10          tenuous jobs recovery; and they will build on  
11          existing state regulations, strengthening those  
12          regulatory programs, rather than requiring  
13          implementation of an entirely new regulatory  
14          program, duplicating existing regulations and  
15          imposing significant burdens on already strained  
16          state governmental resources.

17                 Subtitle D regulation of coal ash will  
18                 be protective of human health and the environment,  
19                 can be implemented sooner and will not create the  
20                 adverse impacts that hazardous waste regulations  
21                 will have. USWAG supports federally-enforceable  
22                 Subtitle D controls for coal ash, including the

1 integrity standards, to help prevent future coal  
2 ash releases like that which occurred at TVA. And  
3 we believe federally enforceable Subtitle D  
4 regulations for coal ash can be developed under  
5 the same authorities EPA used when they developed  
6 federally enforceable Subtitle D rules for  
7 municipal solid waste landfills.

8           Given the above, and the fact that even  
9 EPA has recognized that the inflexible nature of  
10 the federal hazardous waste program would result  
11 in excess costs and unduly burdensome regulations  
12 for coal ash, the answer is clear that Subtitle C  
13 regulation of coal ash, the most burdensome and  
14 costly option available to EPA under federal law,  
15 simply is not warranted. Thank you.

16           MR. DELLINGER: Thank you. Number 2.

17           MS. GRAVES: My name is Lisa Graves  
18 Marcucci, and I'm here as a resident of  
19 Pennsylvania. I'm surrounded by coal ash.

20           Currently, busloads of people living  
21 near coal ash impoundments in Pennsylvania, Ohio  
22 and West Virginia are making their way to this

1 hearing. They will be sharing what it's really  
2 like not the mythical version told by companies  
3 and the Pennsylvania DEP.

4 Their personal stories represent  
5 something far more valuable than money, human  
6 health. Industry worries about a stigma on their  
7 product -- these people, including myself, worry  
8 about their very lives.

9 The EPA risk assessment details  
10 extremely high cancer risks to communities living  
11 near unlined coal ash impoundments -- particularly  
12 those on groundwater, like Greene Township,  
13 Pennsylvania, home to the Little Blue Run ash  
14 impoundment.

15 There is nothing little about Little  
16 Blue. It is one of nation's largest coal ash  
17 impoundments. It stretches from Pennsylvania into  
18 Chester, West Virginia, and faces East Liverpool,  
19 Ohio.

20 Pennsylvania DEP files reveal  
21 contamination problems existed at Little Blue for  
22 over a decade; however, the DEP has not issued any

1 fines, corrective actions, or remediation  
2 directives. Even with contamination problems, the  
3 Pennsylvania DEP authorized an expansion in 2005  
4 under a Demonstration or experimental status,  
5 offering even less protection to the communities.

6           Currently, First Energy is seeking more  
7 land for ash disposal. Residents have been asked  
8 to sign company waivers, removing the state  
9 required buffer, protection setbacks to private  
10 wells and residences.

11           The DEP and First Energy officials deny  
12 arsenic problems at Little Blue; however,  
13 documents show elevated arsenic in ten monitoring  
14 wells, and shockingly, the public was never told  
15 until we obtained company documents from the state  
16 files.

17           Twenty-two private wells have been  
18 contaminated with a variety of pollutant found  
19 arsenic. The DEP is doing nothing to contain the  
20 toxic plume, protect drinking water or the humans  
21 consuming it.

22           We believe that cancer rates among folks

1 living near Little Blue are reflected by cancer  
2 rates modeled in the US EPA's risk assessment.

3 Little Blue represents a real-world  
4 example of why federal rules are needed. The DEP  
5 has become an advocate for industry's toxic waste.  
6 They are not holding First Energy or any other  
7 company accountable for problems at ash  
8 impoundments.

9 Industry and the PA DEP contend there is  
10 no evidence of ground or surface water  
11 contamination from coal ash. PA DEP public files  
12 prove otherwise. Industry and PA DEP are  
13 deliberately ignoring the facts, and misleading  
14 you and the public; coal ash has contaminated  
15 water sources. Something needs to be done to  
16 protect the people who are literally in harm's  
17 way. Thank you.

18 MR. DELLINGER: Thank you. Number 3.

19 MS. BRAVERMAN: I'm Beverly Braverman,  
20 Executive Director of the Mountain Watershed  
21 Association, a grass roots community based group  
22 located here in southwestern Pennsylvania.

1           I urge you to accept C not D. A  
2       recently released report entitled Coal Ash, the  
3       Toxic Threat to our Health and Our Environment,  
4       states with certainty that casual disposal of coal  
5       ash as a benign substance has already had a  
6       frightening impact on human health and the  
7       environment.

8           I'm appending it to my comments and I'm  
9       urging you to take the time to read them.

10           The most frightening statement in this  
11       report is, quote, given the high toxicity of coal  
12       ash's constituents, the growing number of proven  
13       and potential damage cases and the prospect of more  
14       damage cases emerging as toxicants reaches peak  
15       concentration in the coming years. The magnitude  
16       of coal ash as a threat to human health is likely  
17       only beginning to emerge.

18           It's time to accept reality. Coal ash  
19       must be regulated under Subtitle C, a special  
20       waste falling within the characterization of  
21       hazardous waste.

22           Why should it be regulated as such? Why

1       should it be regulated under Subtitle C and not D?  
2       Because it is hazardous to human and environmental  
3       health, to our water and to our air. If the first  
4       gentleman's assertions are all true, that they  
5       could do these things and are already doing a lot  
6       of them, why are we seeing such impact, such  
7       negative impacts to our human health?

8                 Without federal minimum standards,  
9       Pennsylvania has become a dumping ground for coal  
10       ash in the name of mine filling, beneficial use,  
11       and any other justification for improper and  
12       inexpensive handling thought out by the coal and  
13       energy industries and embraced by our agencies.

14                For years coal communities have been  
15       used as science projects. Without sound science  
16       and without the controls, would normally implement  
17       for a well thought out experiment using lab rats.  
18       We are not lab rats, and we want protection.

19                Given the health impacts, treating CCW  
20       as a benign substance is not low cost. PA DEP  
21       recently issued the local summit mine fill permit,  
22       which is now being appealed in eastern PA's

1 Schuylkill County. They issued it without a  
2 baseline monitoring. They issued it without  
3 monitoring wells and peoples' drinking water  
4 wells. Those drinking water supplies are  
5 downgradient.

6 If this waste was designated a C waste,  
7 this irresponsible handling would end. Thank you  
8 very much.

9 MR. DELLINGER: Thank you. Number 4.  
10 And while number 4's moving forward, could we have  
11 numbers 5, 6, 7, and 8 move forward?

12 MS. TRITI: Hi. My name is Jennifer  
13 Triti, and I'm with a little citizens group out  
14 near the airport called Action for Change Today,  
15 and we're actually not really directly related to  
16 anything environmental, but I was kind of forced  
17 into it.

18 We're just a little band of citizens who  
19 get together and do volunteer work and try to  
20 better our community through doing local projects.

21 But we kind of got forced to pay  
22 attention to the issue of fly ash because there

1 was a proposed waste power plant out in our area  
2 called the Beech Hollow Energy Project, and so we  
3 were curious what it was and started doing some  
4 research, and some of my fellow members and I did  
5 a lot of reading on the 2006 National Academy of  
6 Sciences Report, a host of other research and  
7 we started learning quite a bit about the dangers  
8 and concerns with fly ash, and we became quite  
9 concerned about the Beech Hollow Energy  
10 Project because it was going to become one of the  
11 larger fly ash impoundments in the nation, and it  
12 would be in our community right adjacent to where  
13 some of our citizens live. So we became involved  
14 in it.

15 We spent an awful lot of time doing  
16 research, educating our fellow community members  
17 so that they were aware of what was going to be  
18 potentially happening in our community so that  
19 they could make their own judgment of whether it  
20 was something that was desirable or undesirable,  
21 and we were stunned to find that the proposal for  
22 mismanagement of this fly ash that was going to be

1 in our backyard didn't come close to any of the  
2 standards and regulations before the Act 2006  
3 National Academy of Science Report of public  
4 management and coal combustion waste residue.

5 So we were frightened by that point  
6 because it seemed like, why are we doing this  
7 research that suggests this is the proper  
8 management, and it wasn't being done that way. So  
9 the proposal didn't include that.

10 So we had to spend countless hours  
11 writing letters, doing research, knocking on  
12 doors, and I'm a mom, I'm an educational  
13 researcher, I don't have a lot of extra time, and  
14 that was true for all of the other folks that were  
15 involved in it.

16 And so I'm here today as a citizen very  
17 concerned about Subtitle D. My understanding is  
18 that Subtitle D, the enforcement would be largely  
19 left up to citizens.

20 And I can tell you as a citizen who  
21 might be involved, not the most efficient, and  
22 certainly not something that's highly durable for

1 most citizens, and so hopefully this the worst of  
2 the worst.

3 So I'm in very strong support of  
4 Subtitle C as a citizen because I think that only  
5 labeling it a hazardous waste is where we're going  
6 to get adequate protection for our health. Thank  
7 you.

8 MR. DELLINGER: Thank you. Number 6.

9 MS. FILIPPINI: Good morning and thank  
10 you for the opportunity to speak.

11 My name is Rachel Filippini, and I'm the  
12 Executive Director of the Group Against Smog and  
13 Pollution or GASP located here in Pittsburgh.

14 For the last 41 years we have worked  
15 tirelessly to improve air quality in southwestern,  
16 Pennsylvania, which has included advocating for  
17 scrubbers at local coal-fired power plants.  
18 Unfortunately, scrubbers and other air pollution  
19 control technologies which capture harmful coal  
20 pollutants that would go up the smokestack are  
21 shifting them from the air to toxic ash, and we do  
22 not accept this trade off.

1           The question of whether to regulate coal  
2 ash under Subtitle C as special waste, a subset of  
3 hazardous waste, or Subtitle D, non-hazardous  
4 solid waste is a no-brainer.

5           Clearly coal ash, which can contain some  
6 of the world's most toxic metals, such as arsenic,  
7 lead, mercury, cadmium, chromium, and selenium  
8 should be considered a hazardous waste. The  
9 toxicants in coal ash can cause cancer and  
10 neurological damage in humans as well as harm to  
11 wildlife, especially water-dwelling species.

12           With coal ash disposal sites in nearly  
13 every state, the threat to public health affects  
14 many communities. But low-income, countryside  
15 communities are disproportionately affected due to  
16 their close proximity to the many coal ash  
17 disposal sites that are located in rural areas,  
18 where land availability and lower land prices make  
19 it cheap to purchase the multi-acre sites  
20 necessary for ash ponds and landfills.

21           Take for instance the First Energy's  
22 Bruce Mansfield Plant in Shippingport, PA. The

1 Little Blue Run coal ash impoundment is one of the  
2 largest unlined coal ash impoundments in the  
3 United States.

4 The 1,000 acre unlined reservoir  
5 receives fly ash, bottom ash, boiler slag, flue  
6 gas emission control residuals, coal pile runoff,  
7 and boiler cleaning materials from the Bruce  
8 Mansfield Power Station. First Energy has  
9 admitted to several seeps in the Little Blue Run  
10 dam and in the surrounding hillsides.

11 According to First Energy, the seeps and  
12 their management is the subject of a Consent Order  
13 and Agreement between First Energy and PA DEP.  
14 This site was assigned a high hazardous potential  
15 rating by the Environmental Protection Agency. I  
16 believe it is imperative that EPA choose the  
17 Subtitle C option which would mandate that waste  
18 ponds be phased out 7 years after the effective  
19 date of the regulation. We can't afford for the  
20 trickle, or seep, to become a flood as it did in  
21 the Tennessee coal ash spill in December of 2008.

22 The U.S. EPA has known for quite

1 some time that coal combustion waste could pose  
2 risks to human health and environment if not  
3 properly managed but has backed away from  
4 regulating it. Now, a new testing method by the  
5 EPA reveals that pollutants such as arsenic,  
6 antimony, chromium, and selenium can leach from  
7 coal ash at levels dozens and sometimes hundreds  
8 of times greater than the federal drinking water  
9 standard.

10           Regulating coal ash waste should be  
11 federally enforceable as prescribed under the  
12 EPA's Subtitle C option. I urge you to finalize  
13 strong, federally enforceable coal ash safeguards  
14 that use the strongest limits of the law to  
15 protect the communities living near coal ash  
16 sites. Thank you.

17           MR. DELLINGER: Thank you. Number 7.

18           MR. SHAMORY: Good morning. I'm Craig  
19 Shamory, Environmental manager with PPL  
20 Corporation.

21           PPL has nearly 12,000 megawatts of  
22 merchant power generation in 5 states, including 4

1 coal plants in Pennsylvania and Montana.  
2 Annually, we generate about 3 million tons of coal  
3 combustion residuals -- CCRs -- and of that total  
4 we beneficially use about 2 million tons. CCRs  
5 from our Pennsylvania plants have been regulated  
6 effectively since 1992 as a non-hazardous waste  
7 under Pennsylvania's Residual Waste Regulations.  
8 Furthermore, Pennsylvania and Montana recognize  
9 that properly implemented beneficial uses are an  
10 environmentally responsible option for managing  
11 these materials.

12 A federal Subtitle D, non-hazardous  
13 waste regulation, along the lines of  
14 Pennsylvania's successful program, would support  
15 beneficial use of this large mineral resource.  
16 Conversely, federal Subtitle C hazardous waste  
17 regulation would severely limit -- and most likely  
18 eliminate -- beneficial uses, including cement  
19 industry applications and mine reclamation.  
20 Beneficial uses create thousands of jobs and  
21 provide their own significant environmental  
22 benefits.

1           The impact of beneficial uses from the  
2 stigma of labeling CCR's as hazardous waste is  
3 real and is already occurring.

4           One of PPL's largest marketers of coal  
5 ash for concrete products has had one of its main  
6 customers stop using coal ash. Why? Potential  
7 product liabilities if EPA actually regulates CCRs  
8 as a hazardous waste.

9           Furthermore, many companies have told  
10 our marketers that they will not use coal ash in  
11 their products if CCR's are classified as a  
12 hazardous waste regardless of any exclusions  
13 provided by the EPA. Why? They don't want their  
14 products to contain an ingredient that would  
15 otherwise be subject to hazardous waste  
16 regulation. Based on EPA's own economic analysis,  
17 if a subtitle C regulation eliminates beneficial  
18 uses, the financial impact on our struggling  
19 economy will be in the billions of dollars.

20           So if beneficial use is eliminated, we  
21 will be forced to dispose of all CCRs, which is  
22 very problematic, even if possible, under a

1 Subtitle C approach. Both Pennsylvania and  
2 Montana do not have any commercial Subtitle C  
3 landfills. Therefore, PPL would either have to  
4 permit on-site Subtitle C landfills -- which is an  
5 uncertain proposition -- or be forced to find,  
6 among the very small number of Subtitle C  
7 landfills nationwide, facilities that have the  
8 capacity and permits to accept such large volumes  
9 of waste -- another uncertain proposition.

10 PPL strongly opposes federal Subtitle C  
11 regulation, and instead requests that EPA regulate  
12 CCR's under the Subtitle D prime option, including  
13 a modification that integrates with current state  
14 regulatory programs such as Pennsylvania's  
15 Residual Waste and Dam Safety Regulations. This  
16 approach will create a reasonable and effective  
17 regulatory program that protects the environment,  
18 retains options for beneficial use, and preserves  
19 jobs, while not adversely impacting our economy.  
20 Thank you.

21 MR. DELLINGER: Thank you. Number 9.

22 REVEREND THWING: I'm No. 8.

1 MR. DELLINGER: Oh, I'm sorry, No 8. I  
2 called it wrong, sorry.

3 REVEREND THWING: My name is William  
4 Thwing. I am a United Church of Christ Pastor and  
5 am here today representing the Pennsylvania  
6 affiliate of Interfaith Power and Light, which  
7 consists of over 10,000 American faith  
8 congregations in 39 states working together to  
9 combat Climate Change. The burning of coal is one  
10 of the leading causes of Global Climate Change  
11 which threatens our national security and the  
12 stability of our civilization. The storage,  
13 transportation and disposal of the coal ash waste,  
14 poses an equal but different kind of threat  
15 transportation and disposal of the coal ash waste,  
16 poses an equal but different kind of threat to  
17 human and planetary health.

18 Deadly chemical toxins -- like Arsenic,  
19 Cadmium, Chromium, Lead, Mercury and Radium and  
20 others -- leach out of the coal ash into the water  
21 table, at levels often exceeding 100's of times  
22 our government standards for hazardous wastes.

1 This health threat demands federal regulation much  
2 more stringent than the laissez faire  
3 unenforceable guidelines of the Subtitle D option.

4 Pennsylvania Interfaith Power and Light  
5 therefore calls for EPA regulation of  
6 coal ash under the Subtitle C option and further  
7 calls for strict enforcement of the regulation of  
8 coal ash until it no longer poses a threat human  
9 health and the health of the ecosystem.

10 The Creation Story found in the Book of  
11 Genesis, which is common to the faith traditions  
12 of Judaism, Christianity and Islam, tells us that  
13 when God created the Earth, he gathered the dust  
14 of the earth and shaped humankind from it,  
15 breathed life into humankind, placed humankind in  
16 God's beautiful garden, and gave humankind the job  
17 of cultivating and protecting the Garden. The  
18 Environmental Protection Agency is in many ways  
19 humankind's instrument to accomplish this mission  
20 of protection of the garden -- God's beautiful  
21 garden -- the planet Earth. Humankind's destiny  
22 is tied to the Earth. If Earth and its

1 biodiversity suffers, humankind suffers. If Earth  
2 and its biodiversity dies, humankind dies.

3           According to the Center for  
4 Biodiversity, we are currently in the midst of the  
5 Earth's sixth and potentially worst mass  
6 extinction.

7           Harvard University Biologist, E.O.  
8 Wilson estimates that 30,000 species per year or  
9 approximately three per hour are being driven into  
10 extinction. One major reason for this Coal Ash  
11 Toxins leaching into our watersheds and flowing  
12 down stream into our oceans.

13           The Ocean Alliance recently released the  
14 results of its Whale Study -- finding incredibly  
15 high levels of deadly coal ash toxins in whale  
16 tissue. This could spell disaster not only for  
17 whales, but for all the species living in our  
18 oceans. Roger Payne, President of Ocean Alliance  
19 states, the entire ocean is loaded with  
20 contaminants most of which are released by human  
21 beings. These contaminants are threatening the  
22 human food supply and are arguably the single

1 greatest health threat that has ever faced the  
2 human species. Please, do the right thing. Do  
3 your job. Regulate coal ash under Subtitle C.  
4 Thank you.

5 MR. DELLINGER: Thank you. Will numbers  
6 10, 11, 12, and 13 come forward?

7 MS. MOSIER: Good morning everyone. I  
8 am Beverly Mosier. I am against the beneficial  
9 use and any use of coal ash in any and all forms.

10 When you decide to restrict coal ash to  
11 be contained and keep human life and early  
12 completely 100 percent safe and free from coal ash  
13 that is dangerous and also toxic.

14 When you mandate and enforce stricter  
15 regulations to keep coal ash contained, it will  
16 and it has brought forward more creative cleaner  
17 sources of energy.

18 There are plenty of jobs to come out  
19 with new construction and redirection towards  
20 clean energy. New clean useful beneficial wind  
21 power, solar-limiting waste and realistically  
22 eliminating the harm, fear, and death from toxic

1 waste from coal ash.

2 I have witnessed the landfill owners and  
3 operators to bulldoze and stop the natural flow of  
4 a nearby pristine creek that once flowed freely to  
5 the Great Lake Erie to now a stagnant, slow creepy  
6 swamp -- now overflowing from the Northside of  
7 Berry road to the Southside -- incoming source of  
8 this creek. This creek is now flowing down the  
9 ditch runoff for rain from the streets. Please  
10 good things can come from adversities. The spread  
11 and mismanagement of coal ash all over everyone's  
12 roads, fields, air, water, agriculture fields and  
13 livestock does affect you and I. I want you to  
14 feel confident to decide you will make a great  
15 move for many people.

16 MR. DELLINGER: Thank you. Next please,  
17 11.

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

1 away.

2 One of the justifications frequently  
3 cited for enacting new rules for coal ash disposal  
4 is that the material is less regulated than  
5 household waste. The implication of this  
6 statement is that coal ash is somehow more  
7 dangerous than household waste.

8 In fact, household solid waste commonly  
9 contains all of the metals that are frequently  
10 cited as concerns in coal ash. Additionally,  
11 household waste contains a wide variety of toxic,  
12 corrosive and poisonous materials that are not  
13 present in coal ash. Household waste is flammable  
14 and produces explosive gases such as methane.  
15 Coal ash does not. Household waste is  
16 biologically active. Coal ash is not. Household  
17 waste attracts birds and rodents that can  
18 transport pathogens offsite. Coal ash does not.

19 Despite its much greater hazard  
20 potential, household waste is successfully managed  
21 through RCRA Subtitle D, under which the federal  
22 EPA establishes national disposal standards that

1 are administered by the states. This success  
2 story shows that EPA can improve coal ash disposal  
3 regulations in the United States without going to  
4 the extreme of declaring coal ash a hazardous  
5 waste.

6 It is worth noting that the proposed  
7 landfill engineering standards are essentially the  
8 same in both of EPA's proposed regulatory  
9 approaches. The Subtitle D nonhazardous and  
10 Subtitle C hazardous approaches both call for  
11 single liner systems, groundwater monitoring and  
12 the effective elimination of wet impoundments.  
13 It's also worth noting that these standards are  
14 consistent with Subtitle D landfill engineering.

15 EPA's Subtitle D nonhazardous approach  
16 is fully protective of human health and the  
17 environment, can be implemented years sooner than  
18 the Subtitle C approach, and avoids the creation  
19 of a hazardous waste stigma that will devastate  
20 coal ash recycling.

21 Just as many parts of American's  
22 household waste stream can be safely recycled,

1 coal ash can be put to good use rather than  
2 disposed in landfills and impoundments. Using  
3 coal ash in a variety of building materials and  
4 construction and agricultural applications offers  
5 many benefits -- including reduced landfill  
6 construction, conservation of natural resources,  
7 and reductions in energy use and greenhouse gas  
8 emissions.

9           People will not want to keep using coal  
10 ash, however, if it is branded as hazardous waste  
11 when destined for a landfill. The coal ash that  
12 goes into concrete, for instance, is chemically  
13 and mechanically identical to coal ash that gets  
14 disposed. If EPA decides to regulate coal ash  
15 disposal as a hazardous waste, producers and  
16 consumers of products containing coal as will be  
17 confronted with using a material deemed hazardous  
18 in another setting. Ask many people who will  
19 testify at this hearing today whether they want  
20 hazardous waste in their home or school and you  
21 will see that stigma is a real factor that will  
22 devastate recycling efforts.

1           Citizens for Recycling First supports  
2           enactment of tougher coal ash disposal regulations  
3           that will protect human health and the  
4           environment. A Subtitle D approach can accomplish  
5           this goal without unnecessarily destroying coal  
6           ash recycling. We urge you to remember that the  
7           Resource Conservation and Recovery Act intended to  
8           put conservation and recovery first. A Subtitle C  
9           designation will only harm conservation and  
10          recovery by leading to the disposal of tens of  
11          millions of tons of material every year that could  
12          otherwise be safely put to good use. Thank you.

13                   MR. DELLINGER: Thank you. Number 12.

14                   MR. BIDEN: Good morning. My name is  
15           Doug Biden. I'm president of the Electric Power  
16           Generation Association.

17                   EPGA's members operate tens of thousands  
18           of megawatts of coal and waste coal generating  
19           capacity and have decades of experience managing  
20           and beneficially using millions of tons of coal  
21           combustion residuals, CCRs, annually in an  
22           environmentally responsible manner. Thank you for

1 the opportunity to express our views on the  
2 proposal.

3 On four prior occasions, the EPA  
4 concluded that CCRs should not be regulated as  
5 hazardous wastes. EPGA agrees with EPA's prior  
6 conclusions and supports the development of  
7 federal regulations for CCRs under RCRA's Subtitle  
8 D non-hazardous waste program. Such an approach  
9 should allow for EPA to work with the states in  
10 implementing regulations that are fully protective of  
11 human health and the environment without  
12 negatively impacting beneficial use and recycling  
13 of these materials or causing plant closures or  
14 unnecessary increases in electricity costs.

15 The issue of the stigma associated with  
16 regulating CCRs as a hazardous waste is clearly  
17 pivotal to any cost-benefit analysis of this  
18 proposal. EPA and others appear to believe that  
19 the dramatically higher costs imposed by hazardous  
20 waste disposal will incent greater beneficial use  
21 of CCRs.

22 We respectfully disagree with this view.

1 Generators produce coal combustion by-products  
2 that compete in a market place with other natural  
3 and recycled products that are not called toxic,  
4 hazardous or special wastes. Words and labels  
5 have meaning and, when all else is equal,  
6 non-hazardous is much better than hazardous when  
7 trying to sell product.

8           There is no question that the Subtitle C  
9 option will have a far-reaching adverse effect on  
10 beneficial use. EPA should not expect generators,  
11 marketers and users to readily accept the  
12 potential liability associated with use of a  
13 material that would otherwise be fully regulated  
14 as a hazardous waste. They are essentially the  
15 same materials, beneficially used or disposed.

16           EPGA's members are competitive  
17 generators, not state-regulated utilities. Our  
18 members compete in the competitive wholesale  
19 electricity markets, like PJM, that serve  
20 two-thirds of electricity consumers in the United  
21 States. EPA has heard many cost estimates  
22 attributable to the Subtitle C option, starting in

1 the tens of billions of dollars. Such costs will  
2 materially impact the economics of the coal fuel  
3 cycle. Many plants, particularly small coal  
4 plants and waste coal plants, will not be able to  
5 sort the cost of hazardous waste disposal and  
6 still remain competitive and will thus cease  
7 operations. The attendant lost jobs would be  
8 totally unnecessary.

9 For these and many other reasons, we  
10 will address in our written comments, EPGA  
11 supports the common sense approach of regulating  
12 CCRs as a non-hazardous waste under Subtitle D.  
13 Thank you.

14 MR. DELLINGER: And while No. 13's  
15 moving forward, can we have numbers 122, 162, 14  
16 and 15 move forward.

17 MR. MELLON: Good afternoon. My name is  
18 Paul Mellon, President of Novetas Solutions. Our  
19 company is a small business that markets  
20 industrial products from recycled glass. Our  
21 signature brand in New Age Blast Media an  
22 expendable abrasive approved by the US Navy for

1       grit blasting.

2                       This is the fourth time this year that I  
3       have had an opportunity to speak to the EPA about  
4       their decision to regulate Coal Combustion  
5       Residuals and the products listed in the  
6       Beneficial Use Program.

7                       Today, I would like to speak about why  
8       the EPA needs to insure that coal slag abrasives  
9       stay out of the New Beneficial Use Program as is  
10      currently the case in your June 21 Proposed Rule.  
11      In addition, the EPA must change the use of the  
12      Toxicity Characteristic Leaching Procedure. The  
13      test is fundamentally flawed for the proper  
  
14      measurement of toxic compounds contained in  
15      unencapsulated slag abrasives when they are used  
16      on the land as blasting grit.

17                      This is the definition of the TCLP  
18      according to the EPA: The Toxicity Characteristic  
19      Leaching Procedure, TCLP, is a test developed by  
20      the EPA in 1990 to monitor whether certain wastes  
21      when disposed of in a solid waste landfill would  
22      leach certain toxic metals into ground water. The

1 TCLP metal detection levels were therefore set at  
2 a level assuming the waste was actually located in  
3 a landfill.

4 Page 35150 Federal Register CCR Proposed  
5 Rule: EPA also notes in this regard that recent  
6 research indicates that traditional leach  
7 procedures may underestimate the actual leach  
8 rates of toxic constituents from CCRs under  
9 different field conditions.

10 Recent events also have demonstrated  
11 that, if not properly controlled, these wastes  
12 have caused greater damage to human health and the  
13 environment than EPA originally estimated in its  
14 risk assessments.

15 I want to share with the EPA and the  
16 public here in attendance the real threat to human  
17 health and the environment that is happening  
18 because of the actions of some major slag abrasive  
19 companies that are using the EPA as a marketing  
20 tool to mislead the surface preparation industry  
21 and the American public about the safety of coal  
22 slag abrasives.

1           I am submitting today a copy of the Ad  
2           that Harsco Corporation ran in the Journal of  
3           Protective Coatings and linings, JPCL, which is  
4           headquartered right here in Pittsburgh, PA. This  
5           publication sells itself as the Voice of the  
6           Society of Protective Coatings and has wide  
7           influence within the industry. The Harsco March  
8           Ad in the JPCL claimed that Black Beauty Abrasives  
9           pass the EPA drinking water test TCLP. The Ad has  
10          a large glass of drinking water and ends with the  
11          tag line cheers to your health. This is a totally  
12          misleading and irresponsible Ad by a 4 billion  
13          dollar company that claims it is one of the  
14          world's leading recyclers.

15                 The TCLP has nothing to do with the EPA  
16          drinking water test levels for toxic contaminants.  
17          In fact, the TCLP levels for some metals like  
18          Arsenic are 500 times higher for the TCLP versus  
19          the EPA standard for drinking water. How a  
20          company with Environmental Engineers on staff  
21          could run this type of Ad is astonishing. The  
22          fact the EPA and the JPCL blatantly allowed the Ad

1 to be run all summer in print and on websites is  
2 just as amazing.

3 Here is the actual comparison of the two  
4 tests. As you can see the levels of exposure are  
5 vastly different. The difference on the arsenic,  
6 cadmium and lead levels is extreme. In the case  
7 of the highly toxic Beryllium, the TCLP abrasive  
8 metal test does not even include it.

9 When this ad ran in March JPCL, I sent a  
10 copy of the ad to the editors of the JPCL and the  
11 EPA to ask how Harsco could possibly be allowed to  
12 run an ad which so flagrantly misleads the public  
13 about the hazards of blasting with coal slag,  
14 especially given the documented studies by the EPA  
15 and OSHA concerning the high levels of toxic  
16 metals in the coal slag dust which is  
17 unencapsulated after blasting.

18 I received no written response from the  
19 EPA or from the JPCL. The JPCL did verbally tell  
20 me that Harsco admitted the ad in March was  
21 misleading and would not run it again.

22 In May 2010, a mere 2 issues after the

1 March ad, Harsco again was allowed to run the  
2 exact same full page ad in the JPCL comparing the  
3 TCLP to the EPA's Water Drinking Standards.

4 The efforts to deny the facts do not  
5 stop with these misleading magazine or web ads.

6 Harsco Corporation has repeatedly stated  
7 the following at these very CCR public hearings  
8 and also on their own website that: EPA confirmed  
9 in 2000 and again in 2009 that there is no change  
10 in the science that requires the regulation of  
11 boiler slag therefore no scientific data exists to  
12 support reclassification of boiler slag as a  
13 listed hazardous waste.

14 Again this is a complete fabrication  
15 designed to confuse and mislead. Harsco also  
16 apparently does not think that scientific studies  
17 done by the EPA and OSHA are credible or accurate.  
18 Novetas has repeatedly cited several very recent  
19 scientific studies from both OSHA and the EPA that  
20 conclusively prove that coal slag abrasives, after  
21 blasting, are hazardous to human health and the  
22 environment.

1           The blatant ongoing slag industry  
2           disregard for the facts about coal slag abrasives  
3           demand that the EPA should immediately and  
4           publically announce that coal slag abrasives are  
5           no longer part of the new beneficial use program.  
6           This would prevent the coal slag industry from  
7           their almost fanatical portrayal of coal slag  
8           abrasives as still supported by the EPA and OSHA.  
9           Companies like the JPCL would then not feel  
10          obligated/intimidated to run misleading ads and  
11          blasting companies can make educated decisions on  
12          which abrasives to purchase based on the real  
13          facts.

14                 I would ask that the EPA follow Lisa  
15          Jackson's commitment to a common sense approach of  
16          handling coal combustion waste by revising the  
17          TCLP limits to lower levels and expanding the  
18          toxic compounds tested. Also please insure that  
19          coal slag abrasives stay out of the New Beneficial  
20          Use Program as currently proposed in the Federal  
21          Register. Thank you.

22                 MR. DELLINGER: Thank you. Number 162.

1           MR. BRADER: First I'd like to thank all  
2 the opportunities to speak to you today as a  
3 manager of Separation Technologies LLC's  
4 sustainability program. As I shall explore, I am  
5 adamantly opposed to the Subtitle C designation,  
6 or any connection between the words hazardous and  
7 fly ash within regulatory language.

8           We have heard the contextual  
9 implications between fly ash and negative health  
10 effects. In reality, the implications cited are  
11 no more evidence of causality than me saying,  
12 everyone I have ever known who has drunk water,  
13 has died.

14           While it is true, it does not mean that  
15 water kills everyone. We must look at facts,  
16 facts such as at Separation Technologies, LLC, we  
17 have over 10 years of operation with scores of  
18 employees working day in and day out with fly ash  
19 without a lost time accident or incidence of  
20 industrial disease related to exposure to fly ash.  
21 We must be careful that in dealing with isolated  
22 incidents of specific bad apples, we do not

1       discard the entire bushel, or in this case  
2       potentially cut down the entire orchard.

3               Stigma, is not my concern, it goes much  
4       deeper. My 5th grade son asked me during  
5       preparation for this speech why fly ash was going  
6       to be labeled hazardous.

7               I explained that there is discussion of  
8       labeling it hazardous if it is for landfill at  
9       point of generation but not for beneficial use.  
10       He looked at me oddly and asked point blank, but  
11       if its hazardous, its hazardous, I mean, it's  
  
12       something about that material that makes it  
13       hazardous, right? How can it be hazardous and not  
14       hazardous at the same time? And there he hit the  
15       nail on the head.

16               This cognitive dissonance will lead to  
17       scores of lawsuits seeking clarification, a pull  
18       back of generators who would rather not deal with  
19       potential issues and a disappearing customer base  
20       who will be concerned they can't sell their  
21       products if they have fly ash in it.

22               The impact will be real, the orchard cut

1 down. What does it look like when this happens?  
2 Impacts to the environment from an ST LLC  
3 perspective alone would be the loss of over 600K  
4 tons of CO2 emissions YTD. Additionally we will  
5 experience on a national level greatly increased  
6 landfill usage, increased CO2 emissions, scores of  
7 families unemployed at risk of becoming 99'ers in  
8 this economy, and increased power rates which will  
9 disproportionately hit the poor.

10 In short, in the name of improving the  
11 environment we will not only harm it in dramatic  
12 fashion, we will force many families into  
13 questions of electricity, food, medication, or  
14 Christmas. I challenge the naysayers to prove  
15 that they will prove that they will ensure these  
16 things will not happen.

17 In an age where we know sustainability  
18 is the key to our long term survival, there is no  
19 action that will be more unsustainable than to  
20 associate hazardous terminology with fly ash  
21 whether it is for beneficial use or not. In  
22 conclusion, I ask, let us not pave this orchard of

1 sustainability to put up a parking lot of  
2 punishment for all.

3 MR. DELLINGER: Thank you. Number 122.

4 MS. WEIR: Hi. My name is Anne Weir.  
5 I'm the executive director of the Association of  
6 Canadian Industries Recycling Coal Ash.

7 CIRCA is a Canadian, non-profit,  
8 association of Coal Combustion Product producers  
9 and marketers, here to provide a Canadian  
10 perspective on EPA's proposal for disposal of  
11 CCRs.

12 Use of Coal Ash is significant to our  
13 electric utility, materials and construction  
14 industries, just as it is to yours. Coal Ash use  
15 improves these industries' environmental, economic  
16 and technical performance on both sides of our  
17 shared border.

18 We know Coal Ash use reduces our  
19 environmental footprint: Coal Ash in concrete  
20 produces more sustainable, more durable  
21 structures. This is not academic, it's proven in  
22 practice to the extent that both our national

1 Green Building Councils enshrine Coal Ash in their  
2 leadership in energy efficient design criteria.

3 Both our governments quantify Coal Ash's  
4 CO2 emission reductions in 100s of 1000s of tons  
5 per year.

6 Canada's national building specification  
7 also cites Coal Ash as a means to reduce GHG  
8 emissions, and conserve energy and resources.

9 Our experts, like yours, work with  
10 national standards organizations to product specs  
11 that ensure coal ash's proper application to  
12 improve life-cycle performance of our  
13 infrastructures.

14 These benefits are in such demand that  
15 cross border trade of Coal Ash is considerable.  
16 This is in step with the international community,  
17 where global leaders address Coal Ash in policy,  
18 legislation and regulation:

19 The World Customs Organization defines  
20 it as mineral in origin. The International Energy  
21 Agency identifies it as key to reducing global  
22 emissions. The European Commission clarifies

1       legalities by distinguishing waste from  
2       by-products and products. Australian regulators  
3       work with their Ash industry to qualify Coal Ash  
4       for un-encapsulated uses.

5               Clearly a recyclable mineral resource,  
6       the international community values Coal Ash, and  
7       recognizes proper storage and management are key  
8       to its beneficial use. The waste of Coal Ash  
9       occurs with failures to capitalize on its value to  
10      end of useful life.

11              Canada doesn't classify CCP's hazardous.  
12      We're advised that Environment Canada has no  
13      intention to change that. Our capacity to recover  
14      Coal Ash from landfills must be safeguarded, to  
15      reduce environmental impacts and conserve  
16      resources. Rushing Coal Ash to an early grave is  
17      short-sighted.

18              Subtitle D and K options stipulate  
19      responsible management practices, promote  
20      responsible use of Ash, respond to market demand  
21      and enable the continuation of cross border trade.  
22      Subtitle C endangers cross-border trade and its

1 substantial environmental and economic benefit to  
2 both our nations. I implore you to reject  
3 Subtitle C. Thank you for this opportunity to  
4 comment.

5 MR. DELLINGER: Number 15. And while  
6 No. 15 is moving forward, can Nos. 16, 17, 18,  
7 200, and 201 move forward.

8 MR. ASHBY:: Good morning. My name is  
9 Jim Ashby, Manager of Environmental Affairs for  
10 Mettiki Coal, LLC, located in Garrett County,  
11 Maryland.

12 Over the past 30 years, Mettiki Coal,  
13 LLC, Mettiki, has invested tens of millions of  
14 dollars in six Maryland mines, reclaimed historic  
15 and current mined lands to productive uses, and  
16 paid over 9 million dollars in Abandoned Mine  
17 Lands fees to help reclaim legacy abandoned coal  
18 mines. Mettiki has over 16 years of experience in  
19 the beneficial use of alkaline coal combustion  
20 byproducts, CCB's, at mine sites in a state with  
21 stringent and effective CCB regulation, and for  
22 that reason is interested in this proposed rule.

1           Mettiki strongly supports EPA's preamble  
2           statement that the agency: Is not proposing to  
3           address the placement of CCRs in mines, or  
4           non-minefill uses of CCRs at coal mine sites in  
5           this action. Mettiki, and EPA as expressed in the  
6           preamble, agrees with the National Research  
7           Council that: OSM should take the lead in  
8           developing new national standards for CCR use in  
9           mines because the framework is in place to deal  
10          with mine-related issues.

11           However, Mettiki is concerned that the  
12          proposed regulatory text does not make clear EPA's  
13          intention to defer mine placement regulation to  
14          the non-minefill uses at SMCRA regulated surface  
15          facilities are not defined. The definition of CCR  
16          landfill appears to only exclude underground mine  
17          placement from coverage under the proposed rule  
18          and leaves silent any reference to treating acid  
19          mine drainage or surface mine reclamation.  
20          Indeed, surface mine reclamation could be  
21          construed to be large scale fills, another  
22          undefined term, and thereby unintentionally fold

1 SMCRA regulated surface mine placement into this  
2 regulation.

3 To avoid major confusion and unintended  
4 consequences, EPA must make it more clear in the  
5 preamble and in the final regulatory text that the  
6 placement of CCRs at SMCRA regulated mine sites  
7 under the guidance of the OSM, whether as minefill  
8 or other non-minefill uses at surface and  
9 underground mines, are excluded from the rules  
10 requirements.

11 Mettiki strongly supports EPA's decision  
12 not to reverse the Regulatory Determination for  
13 beneficial uses of CCRs but is concerned with EPAs  
14 discussion of unencapsulated uses; a term, like  
15 large scale fill and minefill above, not well  
16 defined in the proposal. This term could also be  
17 interpreted to encompass certain uses of CCRs at  
18 SMCRA regulated mine sites, contradicting EPA's  
19 stated intent to not regulate these uses under  
20 RCRA.

21 Certain CCRs serve a variety of  
22 important uses at mine sites, and EPA's final rule

1 should not put these uses in jeopardy by failing  
2 to appropriately exclude them from the disposal  
3 regulations for surface impoundments and  
4 landfills. OSM is and should continue to be the  
5 exclusive regulator of these materials at mine  
6 sites given their regulations are expressly  
7 designed to address environmental risks associated  
8 with coal mining activity on a site-specific  
9 basis.

10           Lastly, Mettiki strongly opposes EPA's  
11 proposal to reverse the 1993 and 2000 Beville  
12 Regulatory Determinations which correctly  
13 concluded that CCRs should be regulated as  
14 non-hazardous wastes. A reversal of this well  
15 reasoned determination would threaten the  
16 beneficial reuse industry and the jobs it  
17 supports. Mettiki also opposes listing CCRs as  
18 special wastes and subjecting these materials to  
19 hazardous waste regulation under Subtitle C of  
20 RCRA.

21           Mettiki plans to submit more detailed  
22 comments by the November 19 deadline.

1 MR. DELLINGER: Your time's up.

2 MR. ASHBY:: Thank you.

3 MR. DELLINGER: Number 16.

4 MS. BOWEN: Good morning. My name is  
5 Helen Bowen. I live on Red Dog Road, Georgetown.  
6 Thank you for giving me the opportunity to speak  
7 to you this morning.

8 We have a nearby neighbor, Little Blue.  
9 But before I talk about Little Blue, I want to  
10 tell you why we chose to live here.

11 My husband and I relocated from smoggy  
12 California in hopes of a healthier lifestyle. We  
13 searched for a long time to find the perfect  
14 location for our new home. We felt we had made a  
15 good investment for our future. We loved the  
16 green, rolling hills of Pennsylvania. Our home  
17 sits at the top of one of those hills, and we have  
18 a beautiful panoramic view of the countryside,  
19 Hookstown and the nearby valley. When we look out  
20 over that valley, we wonder -- what is in our  
21 future? Will it be the look of Little Blue?  
22 Bands of dead vegetation, gray unsightly land?

1                   We built our home with love and hard  
2 labor. Now we are concerned about contamination  
3 of our water and air from the Coal Ash.

4                   How long before our well is  
5 contaminated? How long before it seeps into our  
6 river and streams? Do I dare grow a garden and  
7 use this water? Do I serve this water to my  
8 family and friends? Who do we turn to for help?  
9 We are coming to you -- the EPA -- to help set  
10 standards that will protect the people, the land,  
11 the air, the waterways and our health. To  
12 establish one set of regulations and to identify  
13 coal ash as a hazardous waste.

14                   First Energy continues to purchase  
15 surrounding properties. I cannot blame the  
16 families for selling. Their properties must be in  
17 danger of contamination. But look, the Dairy Farm  
18 is now gone. We have neighbors and friends with  
19 old and even new homes that are now gone. All  
20 gone.

21                   The land use for Little Blue was  
22 presented originally as temporary. The people

1 were told it could be turned into a recreational  
2 area eventually. Now we know that cannot happen.

3 Our community has provided enough land  
4 for the utilities pollution dump and it has come  
5 at a high price to our families and to our  
6 economy. It is time to put a stop to an expansion  
7 of Little Blue, any new dry landfills and it is  
8 time for the EPA to assume the responsibility of  
9 protecting the people and to identify the coal ash  
10 as a hazardous waste under Subtitle C.

11 Please understand my comments come from  
12 the heart. Thank you again for the opportunity to  
13 present my concerns.

14 MR. DELLINGER: Thank you. Number 18.

15 MS. DIESS: My name is Barbara Diess and  
16 I lived in an area in Forward Township, Allegheny  
17 County, PA, where we had a fly ash slide in  
18 January of 2005. It was estimated thousands of  
19 tons of fly ash or CCW traveled through our small  
20 neighborhood.

21 The PA DEP promptly responded by telling  
22 us to clean it up. During the first week of

1 cleaning up, the residents were all sick. They  
2 had various ailments such as: Sore throat,  
3 nausea, vomiting, fever, headache, diarrhea, et  
4 cetera. After independent testing, it was found  
5 the fly ash had a very high content of arsenic and  
6 other toxic chemicals.

7           During this time, PA DEP never gave us  
8 any safety precautions. Scientists from Pitt gave  
9 us safety recommendations on how to clean our  
10 homes and how to live with the least exposure  
11 possible to the fly ash and arsenic in this  
12 situation.

13           When we discovered the high arsenic  
14 content, we discontinued cleaning it up ourselves  
15 and asked the PA DEP to do it. They said there was  
16 no money. They had our local volunteer fire  
17 company come in to hose the fly ash from the  
18 street into the creek which flows into the  
19 Monongahela River, which is drinking water for  
20 several communities towards Pittsburgh.

21           In May 2005, PA DEP did a cleanup of our  
22 properties. This cleanup left residual fly ash

1 around the areas cleaned, under grass, ground into  
2 the dirt, and created dust from the trucks  
3 dropping fly ash as they passed on the street.  
4 They had promised to keep the CCW wet. They did  
5 wet the street three times during the day. During  
6 the hot days of summer, it dried very quickly.

7 PA DEP is not doing another cleanup. In  
8 Pennsylvania Act 2 regulations mandate arsenic  
9 levels in soil not exceed 12 ppm in 2005. The Act  
10 2 site specific standard for this cleanup of  
11 arsenic today is 65.7 ppm.

12 Besides the high arsenic content on our  
13 properties, we found through the five years I  
14 lived there that the arsenic was also in the  
15 homes. We continued to experience sore throats,  
16 upper respiratory illnesses, dry mouth, rough  
17 voices, et cetera. Families who have moved have  
18 found symptoms to disappear. Now the Act 2 site  
19 specific for our residential area right now --  
20 thank you.

21 MR. DELLINGER: Thank you. Number 200.

22 MR. BRANKLEY: Good morning. My name's

1 Dave Brankley.

2 I'm the director of distribution for  
3 (inaudible) company. I'd like to thank you for  
4 giving me the time to speak this morning.

5 I'm here to advocate for the recycling  
6 and reduce of fly ash. I'm opposed to the  
7 Subtitle C and endorse Subtitle D as a more  
8 reasonable approach. Subtitle D would adequately  
9 protect the environment while (inaudible) which  
10 would be attached to Subtitle C.

11 We all know the beneficial use of ash  
12 conserves resources, beneficial use reduces  
13 greenhouse gas emissions, beneficial use provides  
14 other domestic benefits. Subtitle C would reduce  
15 the intensity of fly ash in the country. Subtitle  
16 C would mitigate beneficial use and recycling. You  
17 should not endorse Subtitle C if you're an  
18 advocate of beneficial use and recycling. Thank  
19 you.

20 MR. DELLINGER: Thank you. Number 201.

21 MR. MARSHMAN: I'd like to thank you  
22 everyone who have come to this hearing today, and

1 I'd like to thank the commission, which is  
2 overseeing this committee. I represent utilities  
3 workers, and we are asking for a mandate of funds  
4 from the revenue of the reuse of fly ash. The  
5 safeguard, the public and maintained health  
6 benefits contribution for employees that are  
7 directly and indirectly exposed to fly ash on a  
8 daily basis.

9           At the facility where I work in  
10 Shippingport, the employer is First Energy, and  
11 there has been an increase in cancer, heart, and  
12 respiratory illness. We breathe, we walk in it,  
13 it's on our clothes, it's on our body, hair, and  
14 even on our cars parked in the parking lot.

15           Over 10 percent of our workforce have  
16 had cancer or died of cancer. We cannot  
17 contribute 100 percent to the working conditions  
18 nor can we rule out the fact that a certain  
19 percentage of the heart disease and respiratory  
20 and cancer is our contribute to our conditions.

21           As a compromise between workers'  
22 compensation and the healthcare contribution at

1 the time when companies like First Energy is  
2 reducing their healthcare, especially for retirees  
3 with a mandatory three-year contribution after  
4 that you have to pay 100 percent for your  
5 healthcare. We came to negotiating a fairly  
6 decent pension to offset the cost of our  
7 healthcare. So what a retiree will be facing is a  
8 memo of three years coverage, 100 percent, taken  
9 out of the very minimum pension that he would  
10 receive to pay for him and more than likely his  
11 spouse to continue under a quality of life.

12 In closing I'd like to say that everyone  
13 is responsible, the EPA, the DEP, the community,  
14 the employers of these utilities. I'm not asking  
15 either/or, all I'm asking is responsibility. I  
16 want everyone to make it the right decision and  
17 proposal to mandate the regulation for fly ash.  
18 We all understand that it does have heavy metals  
19 in it so that's not to be disputed between no one.  
20 We have need to address the concerns and issue.  
21 Thank you.

22 MR. DELLINGER: Thank you. No. 21, 139,

1 23, 24 and 25.

2 MS. WRIGHT: My name is Sandra Wright.  
3 I live along Little Old Blue Road in Greene  
4 Township, Beaver County, Pennsylvania.

5 The perimeter of the Little Blue Run fly  
6 ash impoundment is just over one mile from my  
7 home. Since the impoundment's construction in the  
8 early 1970s, the promises to our community by the  
9 owners have fallen by the wayside. Our citizens  
10 and elected officials were shown presentations of  
11 a recreational facility, complete with sailboats,  
12 that would be given over to the community upon  
13 completion of Little Blue.

14 Now the utility claims it can't let that  
15 happen, as they hold the liability of the stored  
16 material even after reclamation. While it is said  
17 to be the largest unlined fly ash impoundment east  
18 of the Mississippi, with the highest manmade  
19 earthen dam in America, Pennsylvania's DEP has  
20 allowed this facility to be classified as a  
21 demonstration project. That affords the utility  
22 the luxury of bypassing many state regulations for

1 waste disposal, making us in effect guinea pigs.  
2 At the same time, private citizens cannot dispose  
3 of residential sewage unless we follow the  
4 strictest letter of the law, lest we pollute the  
5 waters of the Commonwealth.

6 In addition to hosting this unlined wet  
7 fly ash disposal site, and constantly fearing that  
8 our wells and springs are, or will be,  
9 contaminated by this facility, our community  
10 suffers from air pollution generated in  
11 neighboring states. Pennsylvania's environmental  
12 watchdogs do not stand guard at our borders,  
13 protecting us from this fugitive dust, and does  
14 not take that pollution into consideration when  
15 reviewing applications for new potential  
16 pollution-generating facilities.

17 My main goal for testifying today is to  
18 make our federal government aware of the fact that  
19 while my community is still dealing with the  
20 effects of an unlined wet disposal facility, it's  
21 owner is preparing to submit an application to  
22 create a dry coal combustion byproduct disposal

1 site adjacent to it.

2 Our state does not consider the fact  
3 that a community which is at risk, from either  
4 pollution elements generated in state or out of  
5 state, should be eliminated as a potential site  
6 for yet another pollution generating facility.  
7 Federal regulations are not only needed to make  
8 utilities totally responsible for proper disposal  
9 of coal combustion byproducts, but they are also  
10 greatly needed to protect communities with  
11 existing environmental threats from being further  
12 endangered.

13 I urge you to take our health seriously,  
14 and ask yourself if you would want to live next to  
15 a fly ash facility that is not regulated by  
16 federal standards?

17 Would you care if your children or  
18 grandchildren were in another state, knowing that  
19 another state's opinion of what is safe for those  
20 children is totally different than that of your  
21 own state? A healthy environment should be  
22 determined by our federal government, and should

1 be equal across our nation, from sea to shining  
2 sea. The standards that establish a healthy  
3 environment should include safeguards that ensure  
4 that no at-risk community should ever be  
5 considered as a potential site for more  
6 environmental risks. Thank you for your  
7 attention. Thank you.

8 MR. DELLINGER: Thank you. Will numbers  
9 22, 26, 27, 28, move forward.

10 MR. OSBORNE: Hi. I'm Joe Osborne and  
11 I'm the legal director of the Group Against Smog  
12 and Pollution. I'm speaking today to encourage  
13 the EPA to regulate coal ash as a special waste  
14 under RCRA Subtitle C.

15 While it's my job to study issues like  
16 coal ash disposal and speak at hearings like this,  
17 this issue is of particular concern for me. I  
18 grew up in Northwest Indiana, near Chicago. I  
19 know you held a hearing in Chicago last week. So  
20 you may have heard enough about the Town of Pines,  
21 but I'm going to mention it again.

22 When I lived in Indiana, I'd often go to

1 a nearby town, Michigan City, Indiana, the home of  
2 a coal-fired power plant operated by the Northern  
3 Indiana Public Service Company. Michigan City's  
4 skyline is dominated by a massive parabolic  
5 cooling tower for this plant. Visiting Michigan  
6 City you can't help but be reminded of the  
7 overhead shot of Springfield in the Simpsons. I  
8 think most people would look at that scene -- a  
9 massive cooling tower looming over a residential  
10 area -- and feel instinctively uneasy about it.

11 In this case, that instinct would be  
12 accurate. That's because for years NIPSCO had  
13 been dumping coal combustion waste from this  
14 facility in an unlined landfill near the Indiana  
15 Dunes national Lakeshore and the Town of Pines,  
16 Indiana.

17 Over the years, contaminants from that  
18 waste have leached into the groundwater. As a  
19 result, so far at least 55 residential wells in the  
20 Town of Pines are contaminated. These people now  
21 rely on bottled water supplied by NIPSCO. This  
22 isn't a problem unique to Northwest Indiana, there

1 are similar cases of groundwater contamination  
2 linked to coal combustion waste disposal all over  
3 the country, including the Little Blue Run surface  
4 impoundment here in Pennsylvania.

5           It's apparent from cases like the Town  
6 of Pines that the existing system is not working.  
7 Some states do a better job of regulating coal ash  
8 than others -- to give Pennsylvania DEP some  
9 credit, their new coal ash disposal rules are a  
10 big improvement -- but it's the states that are  
11 failing to proactively regulate this practice  
12 where the problem most needs to be addressed.

13           In Texas, no coal ash disposal permits  
14 are required if the coal ash is disposed of on  
15 property owned or leased by the generator within  
16 50 miles of the power plant that produced it,  
17 Illinois exempts coal ash disposed of at the  
18 generation site. And last I checked, Alabama had  
19 no coal ash disposal regulations at all. States  
20 that won't take steps to ensure safe disposal on  
21 their own initiative are the states least likely  
22 to adopt and effectively enforce Subtitle D

1 guidelines.

2 Coal ash disposal has been a problem for  
3 years; meanwhile, coal ash has grown more  
4 hazardous as power plants install more effective  
5 air pollution controls. The Clean Air Transport  
6 Rule and the Boiler MACT rule will do much to  
7 improve our air quality.

8 I'm looking forward to it. But we also  
9 need strong coal ash disposal rules to ensure we  
10 aren't simply transferring our pollution problem  
11 from one environmental medium to another.

12 MR. DELLINGER: Number 22.

13 MS. ERICKSON: Good morning. My name is  
14 Jackie Erickson. I'm the district director for  
15 U.S. Senator Bob Casey. The Senator could not be  
16 here today, but I will be speaking on his behalf.

17 I want to thank EPA for adding  
18 Pittsburgh to the list of locations where it is  
19 holding these public hearings on the proposed  
20 regulation of the byproducts from coal combustion.  
21 And I want to thank the agency for providing me  
22 the opportunity to speak to you this morning about

1 this issue that is important to Pennsylvanians.

2 It is imperative that EPA move forward  
3 with a regulation that protects the environment  
4 and protects the health and welfare of the  
5 residents of Pennsylvania.

6 It is also critical that such a  
7 regulation does not place unnecessary burdens on  
8 the continued use of coal. I believe both of these  
9 goals can be accomplished. More than half of  
10 Pennsylvania's electricity comes from coal. Our  
11 electric utilities burn coal in plants equipped  
12 with state-of-the-art pollution control equipment  
13 such as electrostatic precipitators and flue gas  
14 scrubbers that capture particulate matter and  
15 sulfur dioxide emissions.

16 The solid materials captured in these  
17 devices, along with bottom ash and boiler slag,  
18 make up of the majority of coal combustion  
19 byproducts, called CCBs, that are the subject of  
20 today's hearing. Pennsylvania's electric  
21 utilities produced around 11 million tons of CCBs  
22 each year. Of this 11 million tons, nearly 65

1 percent is used for a myriad of beneficial  
2 applications. This beneficial reuse includes the  
3 remediation of acid drainage from coal mines, the  
4 production of concrete, and the manufacture of  
5 building materials such as roof shingles and  
6 wallboard. In fact, just a few miles down the  
7 Ohio River from Pittsburgh, First Energy's Bruce  
8 Mansfield power plants supplies more than 400,000  
9 tons a year of synthetic gypsum from its scrubbers  
10 to National Gypsum to produce wallboard. This  
11 represents one of the largest recycling operation  
12 in the United States.

13           The beneficial use of CCBs means that we  
14 avoid the need to dispose over 700,000 tons of  
15 this materials each year in landfills and  
16 impoundments in the state. And for each ton of  
17 fly ash used to replace Portland cement in  
18 concrete the release of nearly one ton of the  
19 greenhouse gas carbon dioxide is avoided.

20           However, the many benefits of reusing  
21 these materials would be severely challenged by  
22 one of the regulatory options under consideration

1 by EPA.

2 This option would regulate CCBs as  
3 hazardous wastes under Subtitle C of the Resources  
4 Conservation and Recovery Act if placed in an  
5 impoundment or landfill. The other option would  
6 continue to regulate CCBs as nonhazardous under  
7 Subtitle D of RCRA.

8 I believe that the second option is the  
9 correct approach for EPA to take based on the  
10 scientific data the agency has collected. EPA has  
11 evaluated the reuse and disposal of CCBs on a  
12 number of occasions over the past several decades.

13 Each time the agency has made a  
14 regulatory determination that these materials are  
15 not hazardous wastes as defined by RCRA. I  
16 believe this is the correct conclusion and that  
17 CCBs should continue to be regulated as  
18 nonhazardous under Subtitle D of RCRA. Let me  
19 take a moment to comment on the option to regulate  
20 CCBs as hazardous if they are disposed in a  
21 landfill or impoundment.

22 Some have argued this would promote the

1 greater reuse of CCBs as utilities would expand  
2 existing reuse markets and seek out other  
3 opportunities to beneficially use the materials to  
4 avoid the expense of placing them in hazardous  
5 waste landfills.

6           However, I believe this approach would  
7 have the opposite effect and would actually result  
8 in the reduction in the reuse of these materials.  
9 I have heard from numerous businesses who are  
10 already feeling the chilling effect of a potential  
11 hazardous labeling on their ability to reuse CCBs.  
12 For example, a local Pittsburgh company has had  
13 financing for a new CCB recycling project  
14 withdrawn because of concerns about the potential  
15 legal exposure should the material be regulated as  
16 a hazardous waste.

17           What this chilling effect means is that  
18 more coal combustion byproducts would have to be  
19 disposed. This in turn would require more of  
20 Pennsylvania's land being converted into hazardous  
21 waste landfills. I have conveyed to EPA's  
22 administrator, the Honorable Lisa Jackson, my

1 concerns about the possibility that the agency  
2 will regulate CCBs as hazardous wastes.

3           And what this would mean to the  
4 beneficial reuse of these materials, what it would  
5 mean to cost of generating electricity from coal  
6 in Pennsylvania, what it would mean to the  
7 environment, and what it would mean to jobs. I  
8 believe, and have recommended to EPA, that CCBs  
9 continue to be regulated as non-hazardous,  
10 regardless of whether they are beneficially  
11 re-used or placed in a landfill or impoundment.

12           I am not advocating that changes in the  
13 regulation of CCBs are not needed. The events in  
14 Kingston, Tennessee in 2008 have clearly shown the  
15 need for stringent federal guidelines in how CCB  
16 landfills and impoundments are designed,  
17 engineered, constructed, and managed.

18           As such, I have also recommended to EPA  
19 that the agency develop a set of strict,  
20 enforceable federal design and engineering  
21 requirements under RCRA's nonhazardous waste  
22 program for CCB landfills and impoundments.

1           And that these requirements include  
2           specific protocols for surface and ground water  
3           monitoring. I believe that the continued  
4           regulation of coal combustion byproducts as  
5           non-hazardous under RCRA's Subtitle D nonhazardous  
6           waste program is the most appropriate course of  
7           action for the agency to take.

8           Coupled with the development and  
9           promulgation of federally enforceable requirements  
10          for the storage and monitoring of these materials  
11          under Subtitle D, this will ensure the protection  
12          of Pennsylvania's environment and the public  
13          health of our citizens.

14          While allowing Pennsylvania to continue  
15          to accrue the employment, economic, and  
16          environmental benefits of reusing these materials.  
17          Thank you.

18                 MR. DELLINGER: Thank you. Number 26.

19                 MR. BOGI: Good morning, and thank you  
20          for the opportunity to provide comments on this  
21          proposed rulemaking.

22                 My name is Jamin Bogi. I work for the

1 Group Against Smog and Pollution, or GASP, a  
2 nonprofit environmental organization based here in  
3 Pittsburgh. GASP strongly supports regulating  
4 coal combustion residuals under Subtitle C of the  
5 Resource Conservation and Recovery Act. CCRs are  
6 currently exempt under an amendment to RCRA, but  
7 EPA's new leach tests show that current storage  
8 methods of CCRs often lead to their leaching in  
9 concentrations that exceed hazardous waste  
10 thresholds many times over. It makes no sense to  
11 weakly regulate such toxic material.

12 Human beings did not create coal. We  
13 did not choose its chemical makeup. We have to  
14 take what Mother Nature has given us.  
15 Unfortunately, she saw fit to include arsenic,  
16 exposure to which causes nausea, arrhythmias,  
17 several types of cancer, cardiovascular disease,  
18 and even death at high-enough doses. EPA's 2009  
19 study report of leachate found arsenic levels  
20 1,800 times higher than the federal drinking water  
21 standard, and three times the level of the  
22 hazardous waste standard.

1                   Nature has put selenium in coal as well.  
2           Selenium over-exposure in animals leads to  
3           impaired vision, paralysis, and death. Selenium  
4           bioaccumulates and causes deformations in fish and  
5           amphibians. It has wiped out entire fish  
6           populations in some locations. The EPA's report  
7           found selenium in leachate at levels 29 times the  
8           hazardous waste threshold. 29 times.

9                   I'll stop my chemical analysis here,  
10          because I know that nothing that I could possibly  
11          say would be news to you. The EPA has conducted  
12          such an impressive amount of research on this  
13          topic that one could spend a decade or two  
14          mastering it.

15                  GASP works mainly to clean pollution  
16          from the air. By scrubbing emissions from  
17          coal-fired power plants, the air is indeed  
18          cleaner, but the toxins do not disappear. They  
19          concentrate. And when stored improperly, they  
20          leach. GASP supports reducing the threats that  
21          coal burning produces, not just kicking the ashcan  
22          down the road.

1                   GASP supports Subtitle C because it  
2                   establishes minimum national standards for  
3                   disposal. Subtitle D does not. This race to the  
4                   bottom would help no one.

5                   GASP supports Subtitle C because it  
6                   creates federally-enforced regulations instead of  
7                   just good advice. GASP supports Subtitle C,  
8                   because we believe that hazardous waste should be  
9                   treated as hazardous waste, no matter how powerful  
10                  the industry is that produces it. Thank you.

11                  MR. DELLINGER: Thank you. Number 27.

12                  MS. NELSON: My name is Kathy Nelson,  
13                  but I'm not here representing myself. I'm here  
14                  representing David Sulkowski. I'm not a chemist,  
15                  an engineer, or attorney, as most of you in this  
16                  are not.

17                  I'm not dying from exposure to coal fly  
18                  ash, as most of you in this room I hope are not,  
19                  but I am as most of you surely are, a regular  
20                  citizen of a great country with goals, and family  
21                  that consume my entire reason for existence.

22                  My name is David Sulkowski, and I live

1 within one mile of First Energy's Little Blue Run  
2 Fly Ash Impoundment, a 1,300 acre dump site in  
3 Greene Township, Beaver County.

4           Myself, my wife and our six children  
5 built our home here by ourselves, on 57 beautiful  
6 acres. It was to be our final place to reside.  
7 After serving 23 years in the U.S. Navy, we  
8 decided to build in Green Township because of the  
9 beautiful countryside, outstanding community  
10 members, and a fantastic school system. It took  
11 us ten years to build our home. We are very proud  
12 of the fact that we have been able to provide our  
13 six children and fourteen grandchildren a place  
14 where they can come and enjoy the special things  
15 this township offers, fresh air, open spaces; a  
16 feeling of the freedom this country represents.

17           When we began our project in 1981, we  
18 had no knowledge of the fly ash dump site at  
19 Little Blue Run. As the years progressed, we  
20 became acutely aware of the presence of this  
21 charming crystal blue lake that was promised, in  
22 years to come, to be a source of recreation by the

1 First Energy Corporation. Then as time further  
2 moved on, this changed dramatically.

3 We had a dry spell in 1993. First  
4 Energy employees knocked on our door and told us  
5 to make sure we washed the vegetables from our  
6 garden and to stay indoors as much as possible.  
7 It seemed that because of the dry, cold weather  
8 and low water level in the impoundment, the fly  
9 ash, normally in a wet slurry form, had dried to a  
10 fine powder and blown through the air covering  
11 Hookstown and Georgetown in a layer of dust. We  
12 were frightened to say the least.

13 As for our well water, Hookstown and  
14 Georgetown does not have a public water system.  
15 We have been carrying water for all purposes for  
16 the last 14 years. The smell and color of our  
17 ground water is not something you would want to  
18 expose yourself to. Still, we carried on, loving  
19 and protecting our home for our family's present  
20 and future.

21 Regardless of my township's zoning  
22 regulations, First Energy continues to purchase

1 more properties in and around their original dump  
2 site for the purpose of creating a new  
3 impoundment. They have approached the family  
4 directly across from me to purchase their property  
5 and have purchased a 100 acre farm directly beside  
6 me. My property value is down the tubes as they  
7 put it. Would you buy my lovely home?

8 My wife and I worked so very hard to  
9 create a safe and financially secure home. We are  
10 proud of our accomplishment. We do not want to  
11 move, nor can we afford to. But now, every day,  
12 instead of enjoying the fruits of our efforts, we  
13 worry about our health, water and air pollution  
14 and a dramatically decreasing property value.

15 Please classify coal combustion fly ash  
16 as a hazardous waste. Make it a C. Our township  
17 has ordinances against that also. Maybe with two  
18 hurtles to overcome, this endeavor by this huge  
19 power company will decrease and Greene Township  
20 can continue to grow and remain a place where you  
21 all would be happy to call home.

22 Thank you for hearing my story.

1                   MR. DELLINGER: Thank you. While number  
2 28 is moving forward, can numbers 29, 30, 31, 32  
3 and 33 move forward.

4                   MS. HAVEN: I was born and raised in  
5 Chester, West Virginia. And have lived here all  
6 my life. When I was about 14 years old, my dad  
7 said to me, hop in the truck and let's take a  
8 ride. My parents owned a lot of businesses in  
9 Chester and property in Lawrenceville.

10                   We rode around for a while and he said,  
11 of all we own, what can I give you? I thought for  
12 a while as we passed different properties, I said,  
13 stop here, this is what I want, one acre on  
14 Pyramus Road so that some day when I get married,  
15 I want to build a home and have children and  
16 grandchildren. It sort of looked like Green Acres  
17 to a city girl. It wasn't a big thing to me then,  
18 but when I met Curt and we got married June 20,  
19 1970, my dad walked me down the aisle of the  
20 church I was raised in and in November 1970 he  
21 passed away from a heart attack.

22                   My life has never been the same since.

1 I miss him everyday. He would be right here  
2 beside me fighting Little Blue. No one said life  
3 would be fair and that is a true statement in many  
4 areas of my life today.

5 After Curt was discharged from the Navy  
6 in 1973, we came home, bought a mobile home and  
7 had a healthy baby boy, Jasen Blaine, named after  
8 my dad. One day while getting Jasen dressed, a  
9 man knocked on our door. I said, come in. He  
10 laid a really nice brochure on our table and  
11 started telling me what all Little Blue was going  
12 to be -- like a resort, he said.

13 There will be swimming, boating, walking  
14 and bike trails, a place my family could spend  
15 time together. I'm sorry, sir, but I have a hard  
16 time believing that and you need to leave now.  
17 That was the one and only time anyone from the  
18 power plant came to our door.

19 We built our home in 1979, we had  
20 another precious boy Joshua. What have I done by  
21 raising them here all their lives; do you have any  
22 idea how much worry and guilt I carry about their

1 health and of ours? It's not Green Acres anymore.

2           They have grown, married and have given  
3 us four wonderful grandchildren, and I'd rather  
4 them play in our home instead of outside under the  
5 ash of Little Blue. I don't know what all  
6 unhealthy chemicals are in that dam -- nor do you.

7           Yes, they may be in compliance with  
8 their rules but your job as the federal EPA needs  
9 to look a lot closer at what is being pumped into  
10 our backyard.

11           I have a nodule on my thyroid and my  
12 husband has had his thyroid removed because of  
13 cancer and our endocrinologist keeps a close eye  
14 on each of us. She said, high levels of arsenic  
15 will harm the thyroid. No one in either of our  
16 families have thyroid problems; makes you think?

17           I also in the last five years developed  
18 COPD and asthma, neither are present in my family.  
19 I have a nebulizer machine to inhale medicine from  
20 a puffer that I carry at all times. I take pills  
21 everyday for my breathing plus I have oxygen at  
22 home just in case I need it. Trust me, it isn't

1 fun when you feel your lungs constricting and you  
2 can't breathe, and no I don't smoke.

3 But do you think the sulfur and rotten  
4 egg smell could have anything to do with my  
5 breathing? I have full body tremors and suffer  
6 with depression and anxiety. The definition of  
7 these problems are, loss of interest in things you  
8 use to enjoy, fatigue, difficulty sleeping,  
9 sadness, excessive worry, feeling helpless and  
10 shake all over.

11 Do you think it could be neurological?  
12 Dah. I've also had three benign tumors on my left  
13 breast. A lot different from the pretty brochure  
14 36 years ago. Remember me and my spirit. God  
15 isn't making anymore dirt. So we all have to take  
16 better care of it and remember a banana is not a  
17 hazardous waste but fly ash is. Vote for C.

18 MR. DELLINGER: Number 30.

19 MR. SCHOEDEL: Good morning. My name is  
20 Tony Schoedel. I work for Alcoa here in  
21 Pittsburgh. I came here to repeat the comments  
22 from our environmental manager at Alcoa operations

1 outside of Bettsville, Indiana, you probably heard  
2 last week or earlier this month in Chicago. Alcoa  
3 would like to address five points real briefly.

4 One, Alcoa believes that the use of  
5 Subtitle C is an approach to regulate CCR's higher  
6 than warranted. The use of modified TCLP to model  
7 and justify the destination of CCR's are  
8 hazardous, we believe misuses that test method as  
9 it does not accurately model the actual releases  
10 from many aspects, most specially developers out  
11 in the midwest. As ours when it comes in  
12 contact with water becomes alkaline not acidic.  
13 The test data from our fly ash surface  
14 impoundments both open and closed indicate that  
15 our ash is nonhazardous. The material has  
16 exhibited that for the last 20 years, if not more.  
17 The data we derived from our groundwater testing  
18 as part of our Electro Facility Investigation and  
19 the RFI, public knowledge, our fly ash shows no  
20 detection of any chemicals of concern in the  
21 groundwater.

22 Alcoa believes that the EPA has

1 exhaustedly researched the toxicity of CCRs in the  
2 past, and has at least once affirmed the  
3 exclusion, under the Bevill Exclusion from the  
4 management of hazardous waste, and we encourage  
5 you to continue that designation. As such, we  
6 really see no technical scientific basis for  
7 changing that designation now.

8           Two, the use of CCRs and the beneficial  
9 uses, that you've heard many times here in the  
10 previous public comments, will be harmed by the  
11 designation, we believe, under Subtitle C  
12 designation. Already in public comments as I  
13 mentioned, calling for further regulation of CCRs  
14 usually capsulated, capsulated forms at the end of  
15 life. The potential for litigation will harm the  
16 use of these materials and, as you've heard also,  
17 applying this stigma to the long use material will  
18 have the impact of stifling this use and will have more  
19 of an impact to the landfills not less and just  
20 exacerbating the existing problems.

21           Three, Alcoa, agrees with the agency,  
22 that mine filling activity should be regulated

1 within the department of interior. However, Alcoa also  
2 feels that the inclusion of the historical mining  
3 areas that can be structurally filled will enhance  
4 public safety by eliminating fatalities, drowning  
5 and that type of thing. Also, to sit outside the  
6 scope of this whole opinion and regulate it also  
7 under the department of interior.

8 Four, as stated in the proposed rule,  
9 industrial facilities like Alcoa are exempt from  
10 this rule. Alcoa requests EPA clarify the  
11 distinction between industrial and utility  
12 utilizing the definitions contained in the Green  
13 Subtitle of the Clean Air Act.

14 Five, Alcoa agrees with the need to  
15 ensure surface impoundments to be safe from  
16 catastrophic failure as we've seen down in  
17 Tennessee and many other places. As such, we  
18 recommend inspections of surface impoundments by  
19 certified engineers who, as you know, what they  
20 are getting at. Thank you for your time.

21 MR. DELLINGER: Number 31.

22 MS. REED: My name is Barbara Reed. My

1 husband and I built our home when we were  
2 teenagers in a small rural community of Greene  
3 Township, Pennsylvania, with the thoughts of  
4 raising our children in a safe and healthy  
5 environment. We are now in our 50's and our not  
6 so friendly neighbor is the Little Blue wet fly  
7 ash dump. We carry 15-20 gallons of water a week  
8 to drink and cook with, because our water tastes  
9 like salt and at times smells like rotten eggs.  
10 We can't wash our vehicles because the water  
11 leaves a white filmy residue on them. The water  
12 holding tank on our toilet forms a nasty, globby  
13 jell unless we put swimming pool chlorinating tab  
14 in it. The water corrodes the faucets, hot water  
15 tank elements and pipes causing leaks, so they  
16 have to be fixed or replaced every couple years.

17 We have wind and rainstorms that leave a  
18 thick dust on everything including our motorcycle.  
19 This dust caused the chrome to pit and rust, so  
20 what is this toxic dust doing to our skin and  
21 lungs? My entire family has respiratory  
22 allergies.

1           My son's home and well is approximately  
2           1,000 yards from the Little Blue compound. He had  
3           his water tested. It showed to have an arsenic  
4           level of 14.60 UGL's, which is higher than the  
5           maximum containment level contained in the  
6           national primary drinking regulations of 10 UGL's.  
7           It also showed levels of mercury, thallium,  
8           manganese and aluminum. First Energy has done  
9           nothing about either well other than testing and  
10          sending the results with a letter stating, If you  
11          have any questions regarding the domestic use of  
12          this water source please contact the Pennsylvania  
13          Department of Environmental Protection. The DEP's  
14          letter states, Please note that Pennsylvania does  
15          not have requirements or regulations for private  
16          water systems, therefore, these levels are listed  
17          as recommendations for comparison. Is he supposed  
18          to use this water that is full of toxins because  
19          there are no enforceable rules to protect him? He  
20          now lives with us because of the containments in  
21          his well, but still has to make a monthly mortgage  
22          payment and can't live in this home that he bought

1 to start his life of independence in.

2 We believe that First Energy unlined wet  
3 fly ash dump has leaked hazardous wastes into our  
4 wells and caused a higher number of cancers and  
5 other illnesses in our community and many  
6 financial burdens. Some say move, but our  
7 property values are down and who would want to buy  
8 a home with toxic water?

9 So, when each of you sit down and decide  
10 on Subtitle C or D, please ask yourself, if Little  
11 Blue were your neighbor and your loved ones had to  
12 drink the water and breath the air, like we do,  
13 wouldn't you want the enforceable regulations of  
14 Subtitle C to protect them? Just remember we  
15 can't choose our neighbors, but you can protect us  
16 from them with Subtitle C. Thank you.

17 MR. DELLINGER: Thank you. Number 32.

18 MR. JUNKER: Good morning. My name is  
19 Kirk Junker. I was litigation counsel to Joe  
20 Pizarchik's very own Pennsylvania Department of  
21 Environmental Resources for ten years. I now hold  
22 a joint appointment as Professor of Environmental

1 Law and Director of Environmental Science Programs  
2 at the University of Cologne in Germany and  
3 Duquesne University School of Law here in  
4 Pittsburgh. I would like to take this opportunity  
5 to speak with you from the perspective both of  
6 environmental legal practice and policy making, as  
7 well as from the perspectives both of Germany and  
8 Pennsylvania.

9 I will make three points in my allotted  
10 time. Before, I do, let me note that I applaud  
11 the EPA's willingness to hold these hearings and  
12 to have added hearings such as this one, in  
13 reconsideration of the seriousness, the extent and  
14 the degree of citizen concern that it raises.  
15 That brings me to my first point, the perspective  
16 from citizens in other parts of the world. One of  
17 the strengths of environmental law is that it is  
18 as much driven by nature as it is by culture.  
19 Thus how other cultures react to the same forces  
20 of nature is relevant. The European Union in  
21 general, like the United States, has wrestled with  
22 the notion of whether coal fly ash is hazardous.

1 Like the United States, driven by the laws of  
2 nature and science, it has arrived at the  
3 conclusion that coal fly ash can be hazardous  
4 depending upon, among other things, the nature and  
5 quality of the coal burned and the storage and  
6 disposal methods of the fly ash after combustion.

7 Coal is not uniform in content; rather,  
8 the chemical makeup of coal depends on a great  
9 variety of factors. Thus, ash produced in  
10 combustion can include many different contaminants  
11 including cadmium, chromium and mercury. When it  
12 does, it is hazardous and should be treated as  
13 such.

14 The key here is that if we are not going  
15 to monitor and characterize the coal batch by  
16 batch to determine when a coal source does or does  
17 not reduce to hazardous components after  
18 combustion, then in order to protect the public,  
19 we must assume that the coal used in a continuous  
20 source feed has the most hazardous  
21 characteristics. Pursuant to the provisions of  
22 NEPA, only when regulatory decisions minimize

1 environmental impacts to the fullest extent  
2 possible are beneficial uses to be considered, and  
3 even then, only beneficial uses without  
4 degradation of health or safety risks, or other  
5 undesirable and unintended consequences. Creating  
6 and now attempting to expand an unlined  
7 impoundment of over 1,600 acres, as has been done  
8 in nearby Beaver County at the First Energy  
9 impoundment, does not meet the legal or scientific  
10 conditions placed on any claim to beneficial use.

11           The conundrum of whether to label all  
12 fly ash as hazardous was solved by Europe by  
13 treating it all as hazardous for shipping, until  
14 and unless someone starts monitoring the coal  
15 source batches, so that we can know the chemical  
16 composition of the ash. It is a sound example of  
17 the precautionary principle. Let the producers  
18 and shippers demonstrate batch by batch that is  
19 not hazardous rather than forcing the government  
20 or the citizens to prove that it is. This brings  
21 me to my second point, the method by which the  
22 producers and shippers could meet that burden of

1 proof known as federal permitting.

2           The timeframe for consideration of the  
3 hazardous properties of coal fly ash in Europe is  
4 also roughly parallel to the US. In March of  
5 1999, the EPA examined the classification of fly  
6 ash waste determining that it does not necessitate  
7 regulation as a hazardous waste under Subtitle C  
8 because of adequate state regulation. Just one  
9 year later, the European Commission also  
10 classified coal fly ash as nonhazardous in the  
11 European Commission Decision of May 3, 2000.  
12 However, and this is a big however, European  
13 Commission Regulation 1013 explicitly prohibits  
14 the shipment of coal-fired power plant fly ash in  
15 compliance with the Basel Convention.

16           MR. DELLINGER: Thank you.

17           MR. JUNKER: Thank you for your time.

18           MR. DELLINGER: Number 33.

19           MR. ROBINSON: Good afternoon. My name  
20 is Mike Robinson. I work for a very reputable  
21 company who directly or through our predecessor  
22 companies has been involved in the utilization of

1 coal ash for well over the 20 years that I have  
2 been with our company.

3 Because of my long-term intimate  
4 associations with not only our management people,  
5 but also our technical staff, I can tell you our  
6 commitment is not only to the utilization of coal  
7 ash, but also the environment, but, in fact, it is  
8 our intention to increase safe utilization of ash  
9 and decrease ash going to landfills, which  
10 ultimately provides sustainable benefits to our  
11 environment. For these reasons and others I will  
12 touch on, I oppose classifying ash as a hazardous  
13 material under any circumstances.

14 Our company and our competitors, along  
15 with the utilities and a host of other companies  
16 and agencies, have dedicated a tremendous amount  
17 of time and effort over the years to create one of  
18 the most successful recycling programs in history.  
19 On an annual basis, over 20 million tons, yes  
20 tons, of coal ash get recycled into everyday  
21 products like concrete, blocks, roads, pre-cast,  
22 etc. However, if coal ash is designated as a

1 hazardous material, even for disposal, the stigma  
2 attached to coal ash will negatively affect, if  
3 not decimate, this recycling program that many  
4 companies, agencies and individuals have taken  
5 great pains to successfully build over the years.

6           If you label coal ash as hazardous  
7 material for any reason, many utilities will stop  
8 recycling their ash products and instead will more  
9 likely just dispose of them, many architects and  
10 engineers who specify the use of coal ash in  
11 products and projects will most likely cease to do  
12 so for fear of risk of association with products  
13 that could be potentially hazardous and products  
14 that compete with coal ash will attack coal ash as  
15 a hazardous material and not fit for reuse. If  
16 you label ash as hazardous for any reason, end  
17 users who have used coal ash in the past will stop  
18 doing so for fear of being liable for their  
19 products end use, even if the products are  
20 completely safe. Overall, labeling ash as  
21 hazardous for any reason will negate one of the  
22 most beneficial recycling programs ever developed

1 and this is troubling.

2           So, I urge the EPA to think long and  
3 hard before finalizing any coal ash  
4 classification. In fact, it might prove wise for  
5 the EPA to work closely with the companies,  
6 agencies and individuals who built the coal ash  
7 recycling programs in place today. In the 20  
8 years with the company, I do not know of any cases  
9 where exposure to coal ash has caused any illness  
10 to employees. So, I don't think we need to be in  
11 a hurry to do anything unless it is the right  
12 thing.

13           Thank you for your time and the  
14 opportunity to speak.

15           MR. DELLINGER: Can numbers 36, 37, 38,  
16 and 39 move forward? Number 36.

17           MR. ANDERSON: Good afternoon. My name  
18 is Gary Anderson. I am a Representative of  
19 Ebensburg Power Company and as President of  
20 ARIPPA, my comments today represent the voice of  
21 over 10,000 citizens who are directly or  
22 indirectly employed by our industry who live and

1 work where CFB coal ash is and has been generated  
2 and beneficially used for over two decades.  
3 Ebensburg Power Company is an alternative energy  
4 generating plant utilizing gob materials. The  
5 resultant CFB coal ash product that we produce is  
6 utilized to reclaim the existing gob piles located  
7 around the Cambria County area. One of our sites,  
8 the Red Block Site, we removed over three million  
9 tons of material, restored five miles of stream  
10 from a low esthetic PH of 2.2 to a PH of 7  
11 supporting aquatic life.

12 The ARIPPA organizations promote the  
13 National Academy of Science study. While EPA  
14 sites the NRC-NAS Study concerning ash in its  
15 preamble it ignores its scientifically based  
16 factual findings, which include enforceable  
17 federal standards should be established to ensure  
18 that states have specific authority and implement  
19 adequate safeguards. Primary regulatory  
20 mechanisms that should be used to develop  
21 enforceable standards are SMCRA, joint OSM-EPA, or  
22 RCRA-D rules. Beneficial use of ash should be

1 strongly encouraged. Government agencies should  
2 examine ways in which they can promote ash use of  
3 remove impediments to its use. Placement of ash  
4 in mines should be based on an integrated process  
5 of ash characterization, site characterization,  
6 management and engineering design of placement  
7 activities, design and implementation of  
8 monitoring.

9           Since 1985, Pennsylvania DEP has  
10 provided oversight on the beneficial use of coal  
11 ash for mine reclamation and other uses. PA DEP's  
12 25 year scientific technical findings include  
13 allegations that ash causes pollution are  
14 seriously flawed, ash placement has not caused  
15 water quality degradation. In fact, in some  
16 instances, significant improvements have occurred.

17           EPA should consider the negative  
18 implications of classifying all coal ash as  
19 hazardous. CFB ash will not likely meet  
20 encapsulation recycling/reuse standards. Industry  
21 ash management costs will increase by more than 31  
22 times exceeding revenue by \$40 to \$50 per megawatt

1 per hour. Our industry would operate at a loss,  
2 accordingly it would cease to exist. Thousands of  
3 workers will become unemployed, 10 percent of our  
4 region's electric energy will be gone and tax free  
5 reclamation benefits that to date includes 1,000's  
6 of acres of land and hundreds of stream miles will  
7 vanish.

8 In summary, we are aware that certain  
9 special interest groups have lobbied their opinion  
10 that classifying coal ash as hazardous will  
11 increase beneficial reuse. Nothing could be  
12 further from the truth. Industry, governors and  
13 environmental departments from a majority of  
14 affected states have written to the EPA stating  
15 that ash should not be improperly declared  
16 hazardous. In ARIPPA's case, it would end our  
17 industry's beneficial use of ash and likely  
18 eliminate our industry.

19 The regulation of ash as hazardous under  
20 ARIPPA Subtitle D would protect human health and  
21 the environment. Thank you.

22 MR. DELLINGER: Thank you. Number 37.

1                   MR. GLANDER: Good Afternoon. Thanks  
2 for the opportunity to speak. My name is Greg  
3 Glander with Boral Composites. Boral Composites,  
4 Inc. is a new, start-up business focused on the  
5 manufacture of green building products. As a new  
6 start up, we are just now commercializing our  
7 first product line, which has been engineered to  
8 be roughly 80 percent recycled and bio-based,  
9 rapidly renewable content. A critical component  
10 in our product is a particular type of coal  
11 combustion residual, which not only offers  
12 improved performance, but also helps to provide  
13 this exceptionally high level of green content.  
14 Our business is based on selling green building  
15 products to both the construction industry and the  
16 consumer. As such, we are extremely concerned  
17 about the EPA's proposed regulations for  
18 re-labeling CCRs as hazardous through a RCRA  
19 Subtitle C designation and the negative stigma  
20 that would create within our customer base, the  
21 homebuilders, contractors, installers and  
22 homeowners.

1           Our customers are not scientist,  
2           environmental policy makers or lawyers. They will  
3           likely not be aware that the EPA has formally  
4           encouraged the use of CCRs since 1983, or that the  
5           EPA has previously ruled that CCRs are  
6           nonhazardous, going as far as to form the Coal  
7           Combustion Products Partnership program in 2003.  
8           Or that the US Green Building Council, American  
9           Society for Testing and Materials and the American  
10          Concrete Institute all endorse and encourage the  
11          use of CCRs. Or that the beneficial use of CCRs  
12          diverts approximately 60 million tons of CCRs from  
13          landfills annually and has reduced Greenhouse Gas  
14          Emissions by approximately 117 million tons since  
15          the year 2000. Unfortunately, our customers are  
16          more likely to hear inaccurate information about  
  
17          CCRs and their beneficial uses from uninformed  
18          and/or biased media sources; negative stigmas that  
19          will only be exacerbated with an unwarranted  
20          change in designation to RCRA Subtitle C.

21                   We certainly support the EPA's efforts  
22                   to protect human health and our environment. We

1 further believe that CCR disposal should be done  
2 in a responsible manner to avoid ash spills like  
3 the tragic storage failure at TVA's Kingston,  
4 Tennessee Plant in December of 2008. However,  
5 poor storage practices or mishandling of a  
6 designated nonhazardous material should not be  
7 grounds for changing the classification of the  
8 material itself and thereby jeopardizing one of  
9 the most successful recycling programs in US  
10 history.

11 Boral Composites is only a small,  
12 start-up business; but it is a great example of the  
13 green-tech, advanced manufacturing opportunities  
14 that our economy desperately needs. On Thursday,  
15 September 9th, we celebrated the groundbreaking  
16 for our first commercial full scale manufacturing  
17 facility being built in East Spencer, North  
18 Carolina. A \$13 million, 3.7 acre, Leadership in  
19 Energy and Environmental Design certified project  
20 that will create 25 jobs when fully operational,  
21 as well as another 20 in sales and support  
22 throughout the country. We are also on the

1       forefront of building product sustainability, with  
2       our exterior trim product about to receive the  
3       prestigious Cradle to Cradle Certification. The  
4       decision that the EPA makes around CCR  
5       classification will directly impact this new  
6       green-tech business, these new job opportunities  
7       and the future job opportunities that this  
8       business would create. The negative stigma  
9       associated with a hazardous classification through  
10      Subtitle C is real and will virtually eliminate  
11      the demand for our products and our business  
12      overnight. Thank you.

13                 MR. DELLINGER: Thank you. Number 38.  
14      Number 39. While number 39 is coming up, would  
15      numbers 41, 42 and 43 come forward?

16                 MR. COLLINS: My name is con Thomas  
17      Collins. I'm with Separations Technologies. I am  
18      a northeast sales rep. I would like to thank the  
19      EPA for the opportunity to issue a comment today,  
20      and state that I am opposed to Subtitle C.

21                         Separation Technologies process and  
22      markets fly ash are up in the Northeast in the

1 Eastern United State and is utilized by the  
2 concrete industry. Because of ST's proprietary  
3 technology, this fly ash would previously be bound  
4 for a landfill and now it can be used and recycled  
5 for concrete products.

6 This year, and you've heard this before,  
7 15 million tons of fly ash will be recycled in  
8 concrete. I visit with concrete producers each  
9 and every day and a vast majority of them fear the  
10 negative impact that Subtitle C would have on  
11 their industry, specifically to the hazardous  
12 designation. Even with the beneficial use  
13 included, they still fear that.

14 As a gentleman said before, let me  
15 assure the negative stigma surrounding or  
16 hazardous designation of Subtitle C is real. Many  
17 of my producers say they will stop using it just  
18 on the liability standpoint. I really feel you  
19 should consider that for finalizing the  
20 regulations.

21 Secondly, concrete producers utilize fly  
22 ash for a number of reasons, specifically, to

1       reduce cost and to improve overall performance.  
2       Also, fly ash is a vital construction material.  
3       It will not only increase construction costs, but  
4       will impact the durability of our infrastructure.  
5       Thank you and please know that I am opposed to  
6       Subtitle C.

7                   MR. DELLINGER:   Number 41.

8                   MR. WILSON:   Good afternoon.  My name is  
9       Darrell Wilson.  I have been marketing fly ash for  
10      28 years.  I oppose Subtitle C designation because  
11      it will negatively affect beneficial use.  You  
12      have heard people here today and for the past 3  
13      weeks say that there will not be stigma assigned  
14      to fly ash and that other products that are  
15      labeled hazardous are successfully recycled.  It  
16      is easy to say when you are not the one that could  
17      possibly lose your job if it is labeled Subtitle  
18      C, as I may.

19                   Bayshore Concrete Products of Cape  
20      Charles, Virginia is best known for producing the  
21      concrete piers and segments that created the  
22      Chesapeake Bay Bridge Tunnel.  They have stated to

1 me, beyond a doubt, if fly ash is labeled under  
2 Subtitle C, a hazardous material, they will cease  
3 to use this material in their concrete products.  
4 Capital Concrete of Norfolk, Virginia has also  
5 said they will likely to stop using fly ash in all  
6 of their concrete if it is labeled under Subtitle  
7 C. They are a small family business. They are  
8 afraid of the liabilities and they cannot afford  
9 the risk associated with this. This is just two  
10 of my customers in a relatively small area of the  
11 country that said they will stop using fly ash  
12 under Subtitle C.

13 Capital Concrete has also spoken to  
14 three engineering firms in the Norfolk area. They  
15 have all said that should fly ash be labeled under  
16 Subtitle C, they will cease to specify in their  
17 projects. Others we have spoken to have not yet  
18 decided if they will continue to specify fly ash,  
19 but they have expressed concerns. If they do not  
20 specify fly ash in their projects, then I do not  
21 recycle it and it goes into a landfill. Those are  
22 facts not opinions.

1           The Congressional Research Service has a  
2 report title "Regulating Coal Combustion Waste  
3 Disposal: Issues for Congress," dated August 9,  
4 2010. One recommendation they make is to amend  
5 RCRA to create a new Subtitle C that would  
6 specifically address issues unique to the  
7 management of coal combustion waste. It seems to  
8 me that the two options being presented by EPA are  
9 like a round hole and a square hole. Coal  
10 Combustion Waste is hexagon shaped. We are trying  
11 to put that hexagon into a square hole or round  
12 hole. Let's take this opportunity to create a  
13 proper guideline for CCWs. Instead of trying to  
14 patchwork together existing regulations, let's do  
15 what is correct and make something that works for  
16 everyone. Thank you.

17           MR. DELLINGER: Thank you. Number 42.

18           MR. PETERSON: Good afternoon. My name  
19 is Terry Peterson. I have been employed in the  
20 Coal Combustion Product Industry for the past 27  
21 years. I work for Boral Material Technologies,  
22 which is an Ash Management company that is focused

1 on environmentally acceptable beneficial re-use of  
2 Coal Combustion Products.

3 As well as, providing compliance  
4 landfill management services to utilities. BMTI  
5 has 161 employees working at 22 sites scattered  
6 across 18 states.

7 I would like to open my statement by  
8 commending the EPA for supporting and maintaining  
9 a Subtitle D classification for CCRs since the  
10 enactment of the Beville Amendment in 1980. That  
11 support has underpinned the establishment and  
12 development of arguably the most successful  
13 recycling program in U.S. History. BMTI alone,  
14 with this support, has been able to place in  
15 excess of 53 million tons of coal combustion  
16 products into beneficial uses over the past 20  
17 years. Obviously, that's 53 million tons of  
18 avoided landfill space, but just as significantly,  
19 represents a corresponding offset of 53 million  
20 tons of CO2 emissions that would have resulted if  
21 natural materials had been used in lieu of coal  
22 combustion products.

1           The further benefit of EPA's support of  
2     Subtitle D is reflected in the BMTI's R&D program.  
3     Over the past 10 years, we have invested over \$30  
4     million developing three new coal combustion  
5     products applications outside of ready-mix and  
6     cement. Just as importantly, we developed three  
7     beneficiation processes that enable coal  
8     combustion products to meet performance  
9     specifications if those products are compromised  
10    when power plant modifications necessary to reduce  
11    NOx, SOx and mercury are installed. These  
12    investments would not have occurred if CCRs were  
13    classified under Subtitle C.

14           I recognize during these hearings the  
15    undercurrent associated with not wanting to burn  
16    coal and citizen concern over state regulation.  
17    Obviously, coal has been an integral part of U.S.  
18    society for many years and will remain that way  
19    for some time to come as alternate fuel sources  
20    develop.

21           I suggest that as long as we are burning  
22    coal, the right thing to do is encourage the

1 continuation and expansion of current recycling  
2 efforts. Supporting Subtitle D is the way to  
3 maintain this momentum.

4 Just as importantly, creating confidence  
5 amongst citizens that government agencies whether  
6 federal or state, are protecting their interest is  
7 critical. I am confident that we can gain public  
8 confidence and achieve the necessary safe guards  
9 for properly landfilling CCRs through cooperation  
10 between the EPA and state regulators using a  
11 Subtitle D classification.

12 In closing, I recommend that the best  
13 option going forward for U.S. citizen is fro the  
14 EPA to continue its support of a Subtitle D  
15 classification for CCRs. Thank you for your time.

16 MR. DELLINGER: Thank you. Number 43.

17 MR. WELSH: Good afternoon. My name is  
18 Michael Welsh. I am an International  
19 Representative for the IBEW, International  
20 Brotherhood of Electrical Workers. I am here to  
21 voice our opposition to the proposed Environmental  
22 Protection Agency proposal for regulating coal

1 combustion residuals, commonly known as coal or  
2 fly ash, under Subtitle C of the Resource  
3 Conservation and Recovery Act.

4           The IBEW represent thousands of workers  
5 in Pennsylvania and throughout the country that  
6 work at coal fired generation stations or have  
7 jobs directly tied to the generating stations, and  
8 to classify coal ash as a hazard material could  
9 put many of those jobs at risk. The increased cost  
10 that would be created due to a hazard material  
11 classification could force the early shut down of  
12 many of the smaller generating stations. Even  
13 though coal ash would be called special waste, it  
14 still would be listed with the hazardous material  
15 and there would be a reluctance to recycle coal  
16 ash.

17           As you know, much of the coal combustion  
18 residuals are now recycled for various uses. They  
19 have been used for decades to enhance concrete,  
20 for wallboard construction and anti-skid control  
21 on icy roads to name a few. As with recycling  
22 other materials, by using fly ash, greenhouse

1 gases are reduced and other natural resources are  
2 saved. If the coal ash is not recycled, there  
3 would be the need for additional landfills.

4 We agree and support the EPA's second  
5 proposal that would regulate coal ash under  
6 Subtitle D, which is the section for nonhazardous  
7 waste. In prior EPA regulatory determinations the  
8 EPA determined that coal ash did not need  
9 regulation as a hazardous waste and in general  
10 does not pose a human health risk. It also found  
11 that if it did treat coal ash as a hazardous  
12 material, there may be counterproductive  
13 consequences.

14 Even if the EPA classifies fly ash as  
15 nonhazardous, EPA would still establish national  
16 criteria to ensure safe disposal of coal ash and  
17 other Coal Combustion Products. Facilities  
18 handling coal ash would be subject to location  
19 standards and composite liner requirements.  
20 Existing ash ponds without liners would have to  
21 retrofit within five years or close and  
22 groundwater would be monitored for contaminants.

1 Post-closure care requirements would be issued to  
2 address the long-term stability of ash ponds.

3 Once again, we urge you not to regulate  
4 coal ash under Subtitle C of the Resource  
5 Conservation and Recovery Act, but go with the  
6 second proposal and regulate it under Subtitle D.  
7 Thank you.

8 MR. DELLINGER: Thank you. Is there  
9 anybody in the room who has a number lower than 43  
10 that has not spoken yet? Please come with  
11 forward. I was told number 40 was in the room.

12 Okay. We'll take some walk in people.  
13 Numbers 202, 203, 204, and 205. Please show us  
14 your number as we come forward because we need it.

15 MR. MASTROPAOLO: I'm Walter  
16 Mastropaolo. I am a citizen and electricity  
17 consumer as we all are. A September 2009 National  
18 Academy of Science report concluded that the price  
19 of coal would be 50 percent higher if all the  
20 costs of mining, transporting and burning are  
21 included in the price. This study did not take  
22 into account environmental costs that are not

1 stringently quantified in dollars. The decision  
2 whether or not to regulate coal waste fly ash as a  
3 toxic or nontoxic material should only be based on  
4 the best science, not that it will put coal at an  
5 economic disadvantage compared to the other means  
6 of electrical generation.

7 The statements today about whether it's  
8 a stigma, call it toxic or nontoxic, is a totally  
9 irrelevant because it is either toxic or it isn't.  
10 The more you lie about it, the more the stigma  
11 will persist. It is time that this massive  
12 subsidy to the coal industry at the public's  
13 expense end. As a consumer of electricity, I  
14 should have the privilege of paying the true cost  
15 of electricity. Thank you.

16 MR. DELLINGER: Thank you. Number 205.

17 MS. HUGHES: Hello, my name is Marcy  
18 Hughes. I live in Greene Township approximately  
19 one and a half miles from Little Blue. I'm here  
20 to ask the EPA panel to pass Subtitle C  
21 regulations for all coal ash facilities in the  
22 United States. The health concerns surrounding

1 these areas is of the utmost importance.

2 My daughter was 19 years old, she was  
3 ready to begin her second semester of her  
4 sophomore year in college, when she was diagnosed  
5 with Hodgkin's stage 2B. She dropped out of  
6 college for one semester, had surgery and  
7 radiation treatments of which she has received her  
8 lifetime dose. During this time, she ate very  
9 little and lost a lot of weight approximately 40  
10 pounds. I will never forget the one night, I was  
11 sitting behind her brushing her hair. Her hair  
12 was now coming out in large amounts. She turned  
13 around and said, Mom, will you still love me if  
14 I'm bald? Of course, my answer was I will always  
15 love you no matter what.

16 In 2001, she was diagnosed with thyroid  
17 cancer, had surgery and was treated each year for  
18 two years, and due to the treatments the radiation  
19 oncologist said if we continued with treatments  
20 she would probably wind up with leukemia. The  
21 treatments were then stopped.

22 In 2003, she was diagnosed with breast

1 cancer, had bilateral mastectomy, followed by a  
2 hysterectomy and several complications. Following  
3 the surgery, she received chemo therapy during  
4 which time she lost her hair, her fingernails and  
5 her toenails.

6 In 2006, the doctors were concerned she  
7 had pancreatic cancer. However, the surgery was  
8 done and it was negative. Thank God. She has  
9 endured wound infections, which at times had to be  
10 packed with gauze measuring 22 inches.

11 Today, she has very little saliva due to  
12 her treatments and has difficulty eating and  
13 swallowing. Every time she says, I don't feel  
14 well, my heart drops to my toes.

15 To the EPA panel, please pass Subtitle  
16 C. It is a matter of life and death. To First  
17 Energy, since you feel there are no health issues  
18 at Little Blue, I want to invite those in charge  
19 to come to our area and live with the fear of my  
20 story and those which hasn't been told. We don't  
21 want or need another Kingston, Tennessee. Thank  
22 you.

1                   MR. DELLINGER: Thank you. Numbers 206,  
2                   207, 208, 209.

3                   Numbers 103, 106, 112, 123, 95. Whoever  
4                   has the lowest number. You can arrange  
5                   yourselves. Number 95.

6                   MR. CHAMBERLAIN: Good afternoon. Thank  
7                   you for the opportunity to give my testimony. My  
8                   name is Ron Chamberlain. I would like to address  
9                   FGD Gypsum. I've been working with crops and  
10                  soils for 39 years, and I've been working for the  
11                  last nine years with FGD Gypsum from power plants  
12                  across the midwest that produce the materials for  
13                  exempting specifications for use in agriculture.

14                  I'm a certified crop advisor and  
15                  currently hold the position of director of economy  
16                  for the Gypsoil Company, a small midwest business  
17                  with a goal of providing sustainable solutions to  
18                  American agriculture. Gypsoil provides FGD Gypsum  
19                  to the agriculture industry in order to improve  
20                  quality American farmland. FGD Gypsum  
21                  improves soil structure and balance by providing  
22                  valuable calcium and sulfur, which are both

1 becoming insufficient in our current farm soils.

2           Much of our agricultural land is  
3 compacted resulting in erosion of our soils,  
4 nutrients and lower the production of efficiency.  
5 To solve the compaction problem, I've been  
6 applying Gypsum to thousands of acres of  
7 negligence farmland for the past nine years, and  
8 during that time, I have observed an array of  
9 benefits for our farmers, their businesses and the  
10 environment. For example, our compacted soil can  
11 become very garden, mellow, rich and balanced as a  
12 natural soil biology flourishes, and provides  
13 everything that crops need to grow and produce  
14 high quality safe food. As a result, we have  
15 reduced applications of chemicals and  
16 petroleum-based fertilizers by up to 90 percent.  
17 Water from heavy rainfall no longer ponds or  
18 erodes off of the fields, rather it is absorbed  
19 into the spongelike subsoil and then gently  
20 released into our waterways without inflecting  
21 water damage to our neighbors downstream. Our  
22 Gypsum farmer customers are enjoying more

1 efficiency from their land laboring inputs. Our  
2 watersheds are clearer as evidenced by the recent  
3 study conducted by Center for Earth and  
4 Environmental Science, a joint project from Purdue  
5 University and Indiana University, where long term  
6 use of FGD Gypsum has influenced a significant  
7 reduction in phosphorus and nitrate coating to the  
8 Eagle Creek Watershed, which supplies water to the  
9 City of Indianapolis, Indiana. Adoption of FGD  
10 Gypsum is the best management practice in  
11 sensitive watersheds across the country to clean  
12 up our waterways suffering from runoff pollution  
13 provides us with clean water and make this a  
14 better world.

15 In conclusion, responsibly applied to  
16 agriculture soil FGD Gypsum contributes  
17 significantly to improve sustainable agriculture  
18 and improvement in the environment. A hazardous  
19 designation of Gypsum would stop this beneficial  
20 use in American agriculture and, therefore, take  
21 away the opportunity to help the environment in so  
22 many ways. I ask you, first of all, to avoid

1 labeling FGD Gypsum as a hazardous waste, and  
2 secondly, to avoid regulating under the Subtitle C  
3 or RCRA. Thank you for your time and  
4 consideration.

5 MR. DELLINGER: Thank you. Whoever has  
6 the next lowest number.

7 MR. JUSTICE: Good morning or afternoon.  
8 I'm not sure what time it is. My name is Ken  
9 Justice. I'm a Professional Engineer with the  
10 Portland Cement Association. I'm, also, an owner  
11 of my own consulting firm. I specialize in  
12 pavements.

13 I'm going to go in a different direction  
14 here to make my point real quick. I want to state  
15 a few facts about pavements. There's only two  
16 realistic materials that we use for highways and  
17 roads, asphalt or concrete. They're both made the  
18 same. It's rock, sand and glue. It's the  
19 difference in the glue that separates the asphalt  
20 from the concrete. Asphalt is made by using  
21 basically refined oil and what's left at the  
22 bottom of the barrel, so to speak, is that sticky

1 black stuff what we know as liquid asphalt.  
2 Concrete is made by taking powdered cement and we  
3 also add cementitious products called pozzolans,  
4 such as fly ash. By using fly ash, not only are  
5 we recycling the material, but we are also -- fly  
6 ash has actually been used since the Ancient  
7 Romans -- fly ash and concrete is what gives it  
8 that superior strength, to be used for bridge  
9 piers or columns, to give us roadways that meet  
10 the PSI, pounds per square inch, requirements that  
11 we ask for in our roads to keep them more durable,  
12 make them safe and make them more resistant to  
13 chemical attacks.

14           The beneficial use of fly ash means  
15 instead of putting in a landfill, we are using it  
16 to better our society. In addition to that, by  
17 using the concrete with fly ash in it, we are in  
18 effect using resources that we're generating here  
19 in America as opposed to oil, and we all know  
20 about what oil can do, and also our dependence on  
21 foreign oil, which our current administration is  
22 trying to get away from.

1           In effect, what we're saying is the more  
2 we can help use concrete, the more we can actually  
3 stay away continuing to depend on oil the way we  
4 did in the past. I urge you to consider these  
5 points when you're considering this new  
6 regulation. Thank you.

7           MR. DELLINGER: Thank you. Next. Can  
8 you indicated your number and your affiliation.

9           MR. STAUFFER: 123.

10          MR. DELLINGER: Thank you.

11          MR. STAUFFER: Good Afternoon. I would  
12 like to thank the U.S. Environmental Protection  
13 Agency for the opportunity to provide testimony  
14 relating of the disposal of coal combustion  
15 residuals. I live at 1349 Pennscott Drive,  
16 Landisville, PA, this is on the outskirts of  
17 Lancaster. I am employed by Pennsy Supply, a  
18 Ready-mix Concrete Producer. We are part of the  
19 Old Castle Materials Family, which supplies ready  
20 mix concrete throughout the United States.

21                 Pennsy Supply felt strongly enough about  
22 the issue being discussed today, it warranted

1 sending me here from Lancaster to provide the  
2 following testimony. Pennsy Supply uses fly ash  
3 in approximately 80 percent of all the concrete we  
4 produce. Currently, our mix designs use fly ash  
5 to replace 20 percent of the cement in all of that  
6 concrete. Our efforts along with all the other  
7 concrete producers across the country have saved  
8 12 million tons of greenhouse gas in 2008 alone.

9 Ready-mix concrete plants for most part  
10 are in a permanent in getting deliveries of raw  
11 materials on an ongoing basis. Fly ash is  
12 delivered, mixed in concrete and delivered to job  
13 sites throughout the country. Where landfills are  
14 full, a new location must be opened and hopefully  
15 constructed properly.

16 To label fly ash Subtitle C Hazardous  
17 would in essence eliminate any responsible use for  
18 it and also push off the inevitable question, what  
19 do we do with it now, if we don't put it in the  
20 concrete. Our dependence for fossil fueled is not  
21 going to go away in the near future.

22 It's easy to say, call it hazardous

1 because it is. If we subscribe to that  
2 philosophy, where do we stop? Beaches have sand  
3 and airborne particles can cause silicosis.  
4 Lancaster County's air quality shows pollen from  
5 farmers' fields, do we say stop farming? Yes, I  
6 did question my sanity as I wrote that last night.  
7 Your challenge is to provide a useful and a  
8 realistic reason to get rid of and dispose of fly  
9 ash. What should be labeled as a success story is  
10 being labeled in essence as a failure anything  
11 other than the C designation.

12 Finally, for all the above reasons I and  
13 Pennsy Supply feel a Subtitle C Hazardous approach  
14 would eliminate a sound use for fly ash and to  
15 force future generations to live with an issue  
16 that could have been eliminated today.

17 MR. DELLINGER: Can you state your name?

18 MR. STAUFFER: I'm sorry. Jeff  
19 Stauffer.

20 MR. DELLINGER: 207.

21 MS. NEVERLY: My name is Cid Neverly.  
22 Eight years ago, my husband and I bought an acre

1 of ground with a mobile home and a two car garage  
2 in Lawrenceville area in Chester just over the  
3 hill from Little Blue. We loved this area, it's a  
4 little bit country not too far from town or work,  
5 and thought it'd be a great place to live the rest  
6 of our days at. We were planning to build a new  
7 home in a few years. We were told the Blue Lake,  
8 even though I wondered about the beautiful  
9 blueness of the water. It was very abnormal for  
10 our area, but we were told it was safe. A couple  
11 years later, and the houses on the West Virginia  
12 lake side of Little Blue are being bought up and  
13 tore down by First Energy, we started hearing of  
14 water and ground contamination.

15 The cancer rate in our area has greatly  
16 increased. Some of the cancers are typed as rare  
17 type of cancers. My brother-in-law, who also  
18 lived in the area all of his life, worked at  
19 National Church Supply for 28 years, at the age of  
20 47 got cancer. It was typed as a rare type  
21 usually found in Asian women. He was a white  
22 male. Everyone I've talk to either has cancer or

1 knows someone with cancer. If it's not cancer,  
2 it's respiratory problems and allergy problems.  
3 All ages are being affected. My 7 year old  
4 grandson has had allergies, mostly sinus and ear  
5 allergies, almost all of his life. Even his  
6 hearing has been affected. He's 7 and we have  
7 lived in our home for 8 years. He used to spend a  
8 lot of time at my house, but now I'm afraid to let  
9 him go outside and play, so I usually take him out  
10 of town to spend time with him or don't let him  
11 outside.

12 We planned on living here for the rest  
13 of our days. Now, we don't know what to do. Our  
14 property value is decreasing. We are getting old.  
15 The economy is bad. We can't afford to buy  
16 another home without selling ours. No one will  
17 buy it because of the issues our neighborhood is  
18 having with marshy spots and ground shifting  
19 because of the seepage of Little Blue. Trees are  
20 dying left and right. The gardens, we're afraid  
21 to plant or to eat from. We can't even sit  
22 outside in the evening because the mosquitos,

1 gnats and the smell is so bad at times it makes me  
2 sick.

3 First Energy has already ruined hundreds  
4 of acres of beautiful, prime land. How much more  
5 do they want to ruin? How many more lives are  
6 going to be put at risk? What's in the future for  
7 us, our kids and our grand kids? I'm a very  
8 concerned citizen, and I hope you vote for Section  
9 C. Thank you for your time listening to my story.

10 MR. DELLINGER: Thank you.

11 MS. FINEMAN: My name is Sharon Fineman.  
12 I live in Chester, West Virginia. I want to thank  
13 EPA for the opportunity to express my concerns for  
14 guiding the disposal of coal ash at Little Blue.  
15 I moved to Chester seven years ago, when the Blue  
16 Lake was blue. I live within walking distance and  
17 I can tell you, it is not blue anymore. It looks  
18 more like some desolate landscape from a nuclear  
19 disaster horror show. Like nuclear fallout, I am  
20 deeply worried about the health hazards associated  
21 with coal ash. I worry when my grandchildren  
22 visit about what they are breathing, what they

1 might be walking through when playing in our yard.  
2 My neighborhood has wet, slushy, standing water in  
3 all different areas, and nobody can tell us what  
4 is in the water. Nobody will eat the vegetables  
5 that is grown in their gardens.

6           Before the effects of the Blue Lake coal  
7 ash became better known, we had to install a  
8 french drain to redirect water in our backyard.  
9 First Energy wanted access to my property to  
10 install another drainage system that would  
11 supposedly help my neighbor. When questioned  
12 about what the measurable results would be, and  
13 what environmental reports indicated as to the  
14 pollutants in the water, they all of a sudden  
15 found they didn't need access to my property.

16           My doctor cannot tell me that this coal  
17 ash caused or contributed to my sudden onset of  
18 severe rheumatoid arthritis, but knows it is bad  
19 for you.

20           Promises of resort like activities on  
21 Blue Lake, i.e, boating, fishing, new homes were  
22 superficial attempts of conning the local

1 residents into what First Energy wanted. We are  
2 not as gullible as we once were. We are not  
3 buying into your attempts to appease our concerns  
4 regarding coal ash disposal. You must come clean  
5 with all the details and information. First  
6 Energy has proven with their actions or lack of  
7 actions, they do not respect their neighbors in PA  
8 and West Virginia. They have been very poor  
9 corporate citizens. Guidelines are not enough, we  
10 need a much stricter mandatory federal regulations  
11 regarding the disposal of coal ash. Thank you.

12 MR. DELLINGER: Thank you. Is there  
13 anybody in the room with a number 43 or lower?  
14 Please come forward. Numbers 103, 106, 123.  
15 Anybody with those numbers in the room? You can  
16 move forward. Number 35.

17 MS. KINCAID: Number 35.

18 MR. DELLINGER: State your name and  
19 affiliation.

20 MS. KINCAID: My name is Emily Kincaid.  
21 I'm a citizen who has been affected by fly ash.  
22 Today I'm here to speak on behalf of my dad,

1 Robert Kincaid, Jr., my mom, Amy, and my brother,  
2 Taylor. My dad lost his life after a four year  
3 battle with melanoma cancer. The melanoma cancer  
4 my dad had started underneath his fingernail on  
5 his index finger. What a strange place to have  
6 sun cancer we thought. We found out from his  
7 melanoma specialist that this melanoma cancer my  
8 dad had was not caused from the sun. He informed  
9 my family that 5 percent of all melanoma cases are  
10 caused from other factors other than the sun.  
11 What luck, we thought. Though we cannot prove  
12 that my dad got this disease from working in the  
13 power plant, but after working in such a dangerous  
14 and hazardous place, like the Bruce Mansfield  
15 plant for 30 years, we felt strongly as a family  
16 that this is most likely where the problem  
17 originated. He, also, thought the same thing.  
18 What a tragic thought, to think the place you have  
19 dedicated the majority of your life to, so you  
20 could support your family has brought you to the  
21 your deathbed. My dad was a trooper though and  
22 continued to work as much as possible through

1 those four long years. The cancer finally  
2 metastasized throughout his body and he end up  
3 with 11 brain tumors. This is when my dad lost  
4 his hard fought battle to this horrible disease on  
5 December 14, 2005.

6 It was the most horrible thing I'm sure  
7 I'll ever experience. Now that almost five years  
8 have passed, I am madder than ever. It has really  
9 hit my brother and I hard that we have no dad. I  
10 feel that something that most likely could have  
11 been prevented ripped my dad away from me and my  
12 family. Not only did my mom and I lose my dad,  
13 but he also left behind a ten-year-old son, a son  
14 that did not get a chance to know his dad. When  
15 our dad got sick my brother, Taylor, was only in  
16 first grade, a young child. I was just beginning  
17 my college years. I was geared up and ready to  
18 start a new fun chapter of my life and training to  
19 play volleyball when my parents had to break the  
20 news to me that my dad had cancer. What a life  
21 changer. It has not fair and nothing will ever  
22 make it better.

1           My brother is getting ready to turn 16  
2           and me 27. Taylor is playing high school sports,  
3           golf with a set of custom made clubs that were  
4           originally made for my dad, basketball, which my  
5           dad played in high school and college and  
6           baseball. He practices every day with no dad to  
7           help and support. He plays in the gym and on the  
8           field with no dad in the stands. He has been  
9           robbed of one of the most important people of his  
10          life. Sadly, he told my mom and me the other day  
11          that we sure talk about his dad a lot, but he  
12          really does not know who the man we speak about so  
13          often. He doesn't really remember him. He was  
14          too in the years, I am sure he does remember he  
15          watched our dad slowly die.

16                 I graduated from college from my dad's  
17          alma mater and he never got to witness it. I  
18          bought my first car on my own and my own house.  
19          Neither of which he could be a part of, but what  
20          makes me most sad is that I will be walking down  
21          the isle next summer with no dad to give me away.  
22          He will never see my kids and they will never get

1 to meet the great man he was.

2 I could go on and on for hours, but  
3 since I only have a few minutes of your time I  
4 hope that I have painted the picture of what my  
5 family and I has endured the last few years of our  
6 lives, our lives that have been changed forever.  
7 I also hope that you have seen a small glimpse of  
8 what my dad had to suffer through for four years  
9 because of the negligence of the power plant where  
10 he made his living for 30 years. I hope something  
11 positive can be done to correct these issues of  
12 unsafe working environments and that no other  
13 family has to experience what my family does every  
14 day. Thank you for your time.

15 MR. DELLINGER: Thank you. Are numbers  
16 44, 45, an 48 here? If you move forward.

17 MR. WALDRON: My name the Dennis  
18 Waldron. I am President of the Utility Workers of  
19 America Local 457. We are the employees of the  
20 W.H. Sammins plant in Stratton, Ohio. It's a  
21 power plant of the First Energy Corporation with  
22 seven coal fire generation units. I have worked

1       there for almost 30 years and have seen a number  
2       of issues that caused the reductions in the  
3       workforce. These range from updated pollution  
4       guidelines, deregulation and the recent economy  
5       issues. None of these have had the devastating  
6       effect we will see if the coal combustion  
7       residuals are designated as hazardous.

8                 First Energy currently spends  
9       approximately 33 million dollars a year on  
10      disposal of CCRs. If this proposal is enacted  
11      this cost will increase to about one and a quarter  
12      billion dollars at today's disposal rates. First  
13      Energy currently generates about two million  
14      dollars per year in revenue from selling ash,  
15      Gypsum and bottom ash to outside entities. This  
16      revenue would cease if CCRs were deemed hazardous  
17      mostly because of the stigma attached to it. At  
18      the same time, the benefit to these other  
19      companies would also go away causing economic  
20      troubles for them. As we all know, CCRs are used  
21      in a wide variety of uses from toothpaste, cement,  
22      wallboard and agriculture to name just a few.

1           The bottom line is by regulating CCRs as  
2           a hazardous waste, there will be thousands of jobs  
3           lost across the country. These job loses will not  
4           just occur in the utility industry, but also among  
5           other industries that rely on CCRs to keep the cost  
6           of their project down. Utility bills undoubtedly  
7           will rise due to the increased disposal costs along  
8           with the cost of additional training that would be  
9           required. This would be especially painful given  
10          the present economy and the uncertain economy in  
11          the foreseeable future.

12           As a union, we stand side by side with  
13          First Energy in the belief that deeming CCRs as  
14          hazardous would significantly increase the cost to  
15          produce electricity and reduce or totally  
16          eliminate the beneficial use of coal combustion  
17          byproducts. We do agree with and support the  
18          development of federal regulations for coal  
19          combustion residuals to make the rules uniform  
20          across the country and we support the increase of  
21          recycling of coal ash as opposed to just throwing  
22          something away that can ultimately benefit all of

1 us. Thank you.

2 MR. DELLINGER: Thank you. Number 45.

3 MS. KAMPMEYER: My name is Rhonda  
4 Kampmeyer, Community Organizer for Citizens  
5 Against Coal Ash of Greene Township, PA hose  
6 municipality to Little Blue Coal Ash Disposal  
7 Site, owned and operated by First Energy. I am  
8 here today representing the citizens of the  
9 communities surrounding the impound; the  
10 approximately 20,000 residents of PA, West  
11 Virginia and Ohio who have lived with the coal  
12 combustion and its storage of its byproducts for  
13 almost 40 years. While I realize the EPA is  
14 considering fly ash regulation for nationwide  
15 applications, the hazards of fly ash impoundments  
16 are not just a generalized abstraction, they are  
17 real and concrete. With that said I will speak to  
18 one formidable example known as cancer alley by  
19 the medical field for being the fifth largest in  
20 the nation for cancer. The Ohio Valley's health  
21 issues do not stop there. Very high rates of  
22 thyroid disease, respiratory and cardiac problems

1 plague the communities. Coal combustion and  
2 fugitive coal ash is all some of these residents  
3 have ever breathed in their lives. They may well  
4 be drinking and eating it.

5 An additional 35,000 lives are in danger  
6 should Little Blue, the largest earth dam of it's  
7 kind in the United States, and the 1,694 acres of  
8 slurry that it holds back and ranked as a high  
9 hazard dam by the EPA, should breach in the manner  
10 similar to that of TVA in Tennessee. I would  
11 like to call your attention to the Upper Ohio  
12 Watershed and Little Blue's location almost  
13 directly in the middle of it. This watershed  
14 provides water to ten states along its path. It  
15 is the backbone of this area's ecosystem as well.  
16 Because Little Blue operates under an expired  
17 demonstration project, it has permitted discharges  
18 that run directly into the Ohio River that lead to  
19 the drinking water of large populations.  
20 Regulations proposed under Subtitle C to cease  
21 continued use and to correct existing conditions  
22 at the disposal site are critical. While it is

1 not the job of the EPA directly to prevent First  
2 Energy from expanding its so-called demonstration  
3 project, it is the job of the EPA to protect the  
4 health of citizens and the quality of the natural  
5 environment. Science tells us unequivocally that  
6 unlined impoundments, such as First Energy's  
7 Little Blue Run, are in fact health and  
8 environmental dangers. Why should that be  
9 permitted to expand? First Energy's proposed  
10 expansion of Little Blue Run to a dry ash disposal  
11 site, under the same unregulated demonstration  
12 project, whether regulated by Subtitle C or not,  
13 is an abomination.

14           When fly ash impoundments are discussed,  
15 one often hears about the so called beneficial  
16 use. Houses located on properties in the same  
17 area, owned by First Energy, are left abandoned,  
18 unsecured, poorly maintained and blighted as high  
19 grass is harbored to rodents and pestilents, and  
20 unsecured properties are open to vagrants and  
21 vandalism. This is not a beneficial use to the  
22 citizens. The economy in the Ohio Valley began to

1 decline in the late seventies and has never  
2 recovered --

3 MR. DUFFICY: Your time is up.

4 MS. KAMPMEYER: Thanks.

5 MR. DELLINGER: Thank you. You can  
6 place all of your testimony in the box and they  
7 will be put on the record. Number 48.

8 MR. AHO: My name is Andrew Aho. I am  
9 the Managing Director of the Geosynthetic  
10 Materials Association, a trade group of 80  
11 companies that manufacture, distribute and install  
12 geosynthetic materials, including lining systems.  
13 The industry employs 12,000 people throughout the  
14 United States.

15 Our comment to the EPA is very simple.  
16 We request that the EPA mandate that geosynthetic  
17 lining of coal ash storage facilities using  
18 composite lining systems. In the shortest terms,  
19 use liners, specifically composite liners.

20 Why? Because liners work. Concerns of  
21 safety regarding CCRs are mitigated if the  
22 landfill storage sites are lined with composite

1 liner systems of geomembrane and a geosynthetic  
2 clay liner. A composite liner system prevents the  
3 leachate from entering the environment. Safety  
4 concerns regarding surface impoundments are also  
5 mitigated if the impoundments are lined with  
6 composite liner systems.

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

22           Further, our industry has continuously

1 improved over time and the EPA has been a part of  
2 that effort. Over the years, the EPA has  
3 commissioned nearly 80 studies of the design and  
4 performance of lining systems. We specially call  
5 your attention to a 2002 study titled "Assessment  
6 and Recommendations for Optimal Performance of  
7 Waste Containment Systems." That study contains a  
8 great deal of pertinent information about how to  
9 construct containment systems. Most illustrative  
10 is a graph charting the leakage rate of different  
11 designs over the life cycle of nearly 200  
12 facilities. The composite liner system of a  
13 geomembrane and a geosynthetic clay liner was  
14 demonstrated to have the lowest leakage rate over  
15 all life cycle stages including a near zero  
16 leakage rate after the facilities are closed and  
17 the final cover is placed. Our materials worked.

18 A brief word on the  
19 hazardous/non-hazardous question. Coal ash lacks  
20 the tradition characteristics of the tradition  
21 hazardous materials; radioactivity, or the  
22 presence of infectious medical waste. In our

1 opinion of our trade organization, coal ash can be  
2 properly stored using Subtitle D regulations, a  
3 nonhazardous solid waste designation with  
4 composite liner systems. Thank you.

5 MR. DELLINGER: Thank you. We're going  
6 to call a recess for about 15 minutes and we will  
7 resume the hearing. We are switching panels right  
8 now. There will be a new panel up here at about  
9 1:15. Thank you.

10 (Whereupon, at 1:04 p.m., a  
11 luncheon recess was taken.)  
12  
13  
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22



1 today and that is the order in which you will  
2 speak.

3 I will be calling speakers to the front  
4 of the room by number by four or five at a time.  
5 When I call your number, we ask you to sit over to  
6 my right, your left and then bring your numbers  
7 when called. We ask that you move to the  
8 podium, and please remember when you start your  
9 testimony to state your name and your affiliation  
10 for our court reporter, who is transcribing this  
11 for the record.

12 There are many people who have signed up  
13 today and because of that we are limiting  
14 testimony to three minutes and we will be stopping  
15 you at the end of three minutes. We are using an  
16 automatic timekeeping system and we will be  
17 holding up cards to let you know when your time is  
18 getting low. When we can hold up the first card,  
19 the green card, you have two minutes left. When  
20 we hold up to second card, which is yellow, you  
21 have one minute left. When the third card, the  
22 orange card is held up, you have 30 seconds left.

1 When the red card is held up, your time is up, and  
2 we ask that you not continue with your remarks.  
3 You can give a concluding statement, that's it.  
4 You can provide any written material for the  
5 record. The material will be entered into the  
6 record just as if you provided the testimony  
7 orally.

8 We will not be answering any questions  
9 on the proposal today, but from time to time  
10 someone on the panel may ask a question to clarify  
11 your testimony.

12 As I mentioned, if you have a written  
13 copy of your statement, we ask you put it in the  
14 box in front of our court reporter's table. If  
15 you're only submitting written comments today, we  
16 have a box in the lobby in front of the  
17 registration table to put your comments in. If  
18 you have any additional comments after today's  
19 hearing, you can follow the instructions on the  
20 yellow piece of paper, on the yellow handout, and  
21 submit them by November 19, 2010, which is the end  
22 of the official comment period of this proposed

1 rule.

2 Our goal this afternoon, as it is all  
3 the time, is to give everyone the opportunity to  
4 provide a comment, and to the extent of our  
5 allowable time constraints, we are going to do our  
6 best to accommodate the speakers who have not  
7 preregistered. Our hearing is technically  
8 scheduled was to close at 9 p.m., but we will stay if  
9 necessary to allow as many as possible to provide  
10 testimony, but if for some reason time doesn't  
11 allow you to present your comments orally, again,  
12 we have paper, you can write your comments down  
13 and submit them to us or you can submit them  
14 later. Again, all comments whether they are oral  
15 or written will be entered into the record and  
16 considered just as it would have orally.

17 If you're here and you decide you want  
18 to testify, but not have registered to do so, see  
19 your registration table, they will give you a  
20 number and get you in to testify. If during the  
21 hearing you have any questions or concerns, see  
22 our folks at the registration desk.

1           We may take some occasional breaks very  
2 briefly, but, again, we will shorten them to  
3 accommodate as many people as possible.

4           Again, if you have a cell phone, we do  
5 ask you to turn it off or to vibrate. If you do  
6 need to use the phone at any time during the  
7 hearing or have a discussion, we ask you to move  
8 outside of the hearing room in the lobby, there is  
9 plenty of room out there, again, just so everyone  
10 can hear. We ask everyone to be patient as we  
11 proceed. We will make adjustments as we go along.

12           With that I would like to start this  
13 afternoon. I'm going to call numbers 47, 49, 50,  
14 51 and 52. If you all would please come forward,  
15 and if 47 come to the microphone, please.

16           MR. RIGNEY: Good afternoon. My name is  
17 Peter Rigney. I am the Plant Manager at the  
18 Scrubgrass Generating Plant located in Kennerdell,  
19 Pennsylvania. Scrubgrass Generating is a  
20 circulating fluidized-bed boiler. Primarily, our  
21 fuel supply is waste coal piles. We have been in  
22 operation for 17 years. We sell power under a

1 long term contract.

2 I come here today to voice my opinion  
3 that our analysis, and we participate in the  
4 Pennsylvania Beneficial Ash Use Program, we do a  
5 composite sample of all of our ash. We combine  
6 our ash and bottom together. In our quota, we mix  
7 25 percent limestone with the fuel, so our ash is  
8 cementitious. When pugged or mixed with water, it  
9 will set up like concrete. It has a PH of around  
10 12 to 12.5, so it neutralises everything. It is  
11 mainly used in the reclamation of mine sites in  
12 surface mines.

13 Our analysis in the Pennsylvania Program  
14 is for leachate testing that we've done, is one  
15 half -- the program is about one half of the EPA  
16 table 1, 40 CFR261 lists for hazard use materials.  
17 Our results are 20 times less than that, so we do  
18 not exhibit any characteristics of the leachate  
19 of a hazardous material. If EPA pursues the RCRA  
20 C classification for our ash because we're a waste  
21 fill plant and our heat content of our fuel is so  
22 low, it will require us to shut down. We just

1       could not afford -- the cost of disposal would  
2       exceed our cost of fuel.

3               This ash is beneficially used. We are  
4       looking at other opportunities to use this ash.  
5       Should this be classified as a hazardous waste,  
6       then the liabilities will increase. We will also  
7       be required to -- you know, just the stigma  
8       attached to it will end any future opportunities,  
9       and there are many opportunities we are looking at  
10      now for everything from fertilizers to mixing it  
11      with sludges to take care of the solid sludge  
12      waste problem that a lot of cities face. We are  
13      looking at that as a fuel process using our ash.  
14      If it's declared hazardous, that is completely in  
15      jeopardy. Thank you very much.

16              MS. DEVLIN: Thank you. 49 please.

17              MS. ENGLAND: My name is Jennifer  
18      England. I am a resident of Pittsburgh. I am not  
19      personally directly affected by this, but I'm  
20      here to volunteer to give testimony for folks that  
21      could not actually be here today. I'm reading  
22      testimony from Richard Hart of Chester, West

1 Virginia. This is his photograph.

2 To whom it may concern. This is my  
3 story. I live on Johnsonville Road below the  
4 Little Blue impoundment. Up until the last month  
5 my yard in certain spaces was like a swamp. The  
6 drought of last month has finally dried some of  
7 it, but not all. Before it dried, I had ruts made  
8 by my mower in several places in my yard. I feel  
9 that if I dug down just a little, I could still  
10 find to water. This problem never existed until  
11 the past three or four years. I also get a bad  
12 odor that is just like that of the impoundment.

13 I have a crawl space under my house, and  
14 feel that the impoundment is leaking through the  
15 ground and surfacing in different places around my  
16 yard and under my home. I no longer eat the  
17 fruits I grow or bother to put in a garden because  
18 of Little Blue.

19 Lastly, and it may be hard to believe,  
20 but I know my land, and I know it is ever so  
21 slowly moving. I've lived here for 30 years and  
22 the problems have showed up in the last three to

1 five years. Why? The answer is Little Blue.

2 Richard Hart. Johnsonville Road,  
3 Chester, West Virginia.

4 MS. DEVLIN: Thank you. Number 50,  
5 please.

6 MR. CERULLO: Good afternoon. I'm Tom  
7 Cerullo with Separation Technologies. I'm here  
8 today to oppose Subtitle C regulations because of  
9 the detrimental effects that it will have on the fly  
10 ash recycling industry.

11 Separation Technologies has a patented,  
12 proprietary process, which can get coal burning  
13 power plants out of the landfill business. We can  
14 take fly ash of poor quality, which normally would  
15 be disposed of in a landfill, send it through our  
16 equipment, and recycle 100 percent of it into  
17 concrete. Not only can we do this, we in fact do  
18 this, every single day. We're recycled over 8  
19 million tons of fly ash so far.

20 Now, a key component of our business is  
21 convincing the coal power plants to get out of the  
22 landfill business and to do business with

1 Separation Technologies. If landfilling is too  
2 easy, power plants are less compelled to do  
3 business with us, and they will continue to go  
4 down the path of least resistance and dispose of  
5 their ash. The more burdensome it is for power  
6 companies to landfill their ash, the better it  
7 actually is for Separation Technologies. Stricter  
8 landfill regulations, more expensive disposal  
9 situations, drive power companies to make an  
10 investment in Separation Technologies as an  
11 alternative to costly and burdensome disposal.

12 As one of the people responsible for  
13 signing up power companies to make investments in  
14 our recycling technology, you would think my  
15 position would be to encourage EPA to regulate ash  
16 disposal all you want. The more rules the better.  
17 The tougher you make it to landfill, the more  
18 likely it is that power companies will seek out  
19 our company to get them out of the disposal  
20 business and into recycling. You would think that  
21 would be my position, but it's not.

22 Subtitle C regulations, even with the

1 exemption for beneficial use, will create two  
2 conditions that will have a deep, negative impact  
3 on the recycling industry.

4           One, many power companies will not want  
5 to put ash into beneficial uses because they  
6 cannot and will not tolerate the liability of  
7 having ash make a left turn out of their property  
8 and be designated a hazardous material, while that  
9 same hazardous material is making a right turn out  
10 of their property is being placed in concrete  
11 sidewalks, home basements and driveways. The risk  
12 at this point is too close for comfort, and power  
13 companies will take the safe route and dispose of  
14 all their ash.

15           Two, users of concrete with recycled fly  
16 ash will be unwilling to draw a distinction  
17 between the nonhazardous material that they are  
18 receiving and the exact same material that is  
19 going to the hazardous landfill. In the  
20 consumer's mind, it's all hazardous and they will  
21 not buy the fly ash product.

22           My company works with power companies

1 every day. We sell recycled fly ash to concrete  
2 producers every day. We know this industry. We  
3 want to grow our business, but Subtitle C  
4 regulations as proposed by EPA will create a  
5 stigma, profoundly damage the use of fly ash in  
6 concrete and drive power companies away from  
7 recycling. I urge you to reject Subtitle C and  
8 give every consideration to Subtitle D. Thank you  
9 for your time.

10 MS. DEVLIN: Thank you. Number 51,  
11 please.

12 MS. ILLYN: Hello, my name is Alexis  
13 Illyn. I work with Restoring Eden. Restoring  
14 Eden is a national ministry that encourages  
15 Christians to love, serve and protect God's  
16 creation and all who depend on it.

17 I'm here today representing a growing  
18 number of young Christians, the future  
19 leaders of our church, who are concerned for the  
20 health of families and communities all across the  
21 nation, who are being poisoned because of toxic  
22 coal ash. We are deeply encouraged that the EPA

1 is taking this issue seriously and has opened up  
2 the proposal to hear from the public, so thank  
3 you.

4 As Christ followers, our faith is more  
5 than the individual spiritual journey, but one  
6 where we strive to live in a way, so our daily  
7 actions and our choices reflect in what God called  
8 us to do, to love kindness, to walk humbly with  
9 God and to do justice. We see this call for  
10 justice is not only a call to love our neighbor,  
11 but also our biblical responsibility to care for  
12 God's creation. We want to see these values and  
13 ethics forming a cornerstone of our leadership,  
14 which we hope in turn shall be the betterment of  
15 all members of society. Unfortunately, as a  
16 society, we have failed in our ignorance and our  
17 mistreatment of toxic coal ash waste. For too  
18 long we have sat back and quietly watched as coal  
19 ash has damaged God's creation and the health and  
20 livelihood of our neighbors.

21 We're saddened when we hear that  
22 communities, especially young children, living

1 near these sites are facing an increased risk of  
2 cancer, of learning disabilities, birth defects  
3 and other illnesses as arsenic, lead and mercury  
4 are getting into their water.

5           We don't have to be scientists nor do we  
6 have to be experts to know that this is wrong, but  
7 despite all of the known hazards of coal ash, we  
8 still have not seen any national regulations and  
9 little to no state regulations. This has to  
10 change. The coal industry and individual  
11 coal-fired power plants have the means to properly  
12 dispose the toxic coal ash waste. Expecting the  
13 coal industry to be a good neighborhood, one that  
14 does no harm to their fellow neighbors, is not  
15 outrageous, but is reasonable cost of doing  
16 business. Making a profit is fine, but causing  
17 others to suffer and bear the harmful costs as a  
18 result is wrong.

19           I hope that we are not past repentance  
20 that there can be new life that can emerge from  
21 this coal ash. We know this stuff is toxic, we  
22 know it's poisoning families, communities and our

1 environment and it is time it is treated as  
2 hazardous waste. I encourage you all to pass  
3 Subtitle C because it's time that we treat coal  
4 ash -- or to treat the earth, excuse me, as if our  
5 life depends on it. Thank you.

6 MS. DEVLIN: Thank you. Is number 52 in  
7 the room, please? Number 52, would you come  
8 forward? While he is making his way forward,  
9 could we have numbers 53, 54, 55, and 56 come  
10 forward and take a seat over here, please? Thank  
11 you.

12 MR. DAWES: I would like to thank you  
13 for giving me the opportunity to come down here  
14 and speak on behalf of my hometown, which is  
15 Snagdale, Pennsylvania, we have a normal coal ash  
16 dump up there. My family lives out there, my  
17 grandson lives out there, all of my friends, and  
18 other relatives live out there.

19 My name is LaMont Byrd. I am a  
20 51-year-old coal miner. I work for Consol Energy  
21 at numerous mines that they own. I want to know  
22 why I had to come down, I couldn't spend quality

1 time with my grandchildren today, or quality time  
2 out fishing or hunting in order to come down here  
3 to tell you something we already know. These  
4 people are dumping hazardous waste in the  
5 backyards of America. It's making people sick and  
6 killing people. You people already know this.

7           These people who come in and advocate  
8 Subtitle D, they represent these big coal  
9 operators or represent these big utilities, they  
10 are no friends of mine. They are no friends of  
11 anybody in here. They have more of a threat on my  
12 personal welfare, my personal health and the  
13 health of my grandchildren more than Osama bin  
14 Laden will ever be. They say somewhere in the  
15 preamble says the government is supposed to be of  
16 the people, by the people and for the people.  
17 Well, if you are for me, then you'll be applicant  
18 of Subtitle C also. These people need to be  
19 regulated and they need to be monitored to make  
20 sure they are dumping these hazardous materials  
21 that is safe to the environment, safe to the  
22 wildlife and safe to the population. That's all I

1 need to say.

2 MS. DEVLIN: Thank you. There's 53.

3 MR. DULANEY: Thank you. My name is  
4 Brian Dulaney. I'm from Separation Technologies,  
5 but more importantly I'm here representing myself  
6 as well. I am truly thankful for the opportunity  
7 to speak to you guys today considering this very  
8 serious issue.

9 I have spent the last two years  
10 diligently working to increase market acceptance  
11 of fly ash in the concrete industry. Because of  
12 this daily activity, I am strongly opposed to the  
13 Subtitle C designation.

14 Let me assure you that the stigma of a  
15 hazardous label is very real. I have daily  
16 conversations with customers and specifying  
17 engineers and without fail this is a pressing  
18 concern. On too many occasions, this conversation  
19 concludes with I don't know if I will be able to  
20 continue to use fly ash if they call it hazardous.  
21 I'm not prepared to, I guess, wager the future on  
22 the unknown, not while I am still able to speak

1 and share my concerns.

2 I have chosen my profession. I'm very  
3 proud of what I do. My views are not driven by  
4 professional self-preservation, it's driven to  
5 preserve my ability to make a difference and  
6 continue the most successful recycling program  
7 I've ever been a part of. I encourage the EPA to  
8 continue its efforts in monitoring the safe  
9 disposal of CCBs and to follow its own published  
10 endorsements of beneficial uses of CCBs. By  
11 staying consistent with these views, I know that  
12 you will make the logical decision and support  
13 Subtitle D. Thank you for your time.

14 MS. DEVLIN: Thank you. Number 54,  
15 please.

16 MS. BYERS:: I'm Jeraldine Byers. I  
17 live 163 Doberman Drive, Chester, West Virginia,  
18 the tip of the northern panhandle. It's also  
19 1,056 feet from the edge of Little Blue Run.

20 My problems started about eight years  
21 ago as the PA EPA had renewed the permit for First  
22 Energy to resume using the ash pond for coal ash

1 waste. During the years just before that, our end  
2 had dried up and developed huge cracks formed in  
3 the ground and hill. When dumping on the compound  
4 resumed, the water came through those cracks and  
5 through the hill into our property. Where I once  
6 could take a riding mower, as of a year ago in  
7 June, I sank almost to my knees. The backyard is  
8 so wet now that to push a push mower gets bogged  
9 in. I can't enjoy my deck because the misquotes  
10 will eat you alive.

11           The ice is so bad that seven years ago,  
12 I had to take the back storm door off the back of  
13 the trailer because it froze up and jammed the  
14 door shut. Now, every time I have hard rain, my  
15 hall floors get flooded.

16           One morning I left to go to work, the  
17 sod in the back slid forward and looked like  
18 someone had folded it over a huge carpet.

19           I had to have a ditch dug in an effort  
20 to redirect the water away from my home. It  
21 didn't work. I can't count the times I've slipped  
22 and fell trying to cut my grass. Once, I slid

1 head first and stopped just inches from splitting  
2 my head open against the deck post. The soil  
3 slides from under my feet from just pushing a  
4 mower handle.

5 Last year, I had to have my propane tank  
6 lifted up because it had sunk down in the soft  
7 ground and was sitting in three or four inches of  
8 water.

9 The ice has busted up my driveway that  
10 was blacktopped. Now, it's a deep rutted  
11 nightmare. A wash board would seem like a smooth  
12 highway in comparison.

13 There are three more seepages coming  
14 closer to my home. I'm worried that the current  
15 rate the seepages are forming that there will be  
16 one coming up under my mobile home and cause it to  
17 buckle.

18 Also, all of these containments in all  
19 of the water, how does it affect my health? I'm  
20 walking in it every time I cut my grass. I want  
21 my home to be safe. I want my neighbors and my  
22 community to be safe. I want my health not to be

1 a big question every time I walk in my own yard.  
2 If I get sick from containments from this, who is  
3 going to pay for my health care and my bills? I  
4 do house cleaning for a living. I'm single and  
5 have no other means of income. I can't afford  
6 health insurance.

7 I'd like to invite anyone from the  
8 federal EPA to come to my home and community to  
9 see firsthand what these seepages have caused in  
10 the whole area, not just my property. Thank you  
11 for your time and patience.

12 MS. DEVLIN: Thank you. Number 55,  
13 please. Number 55.

14 MR. KUKLISH: To the EPA panel members  
15 in Pittsburgh, Pennsylvania on Tuesday, September  
16 21, 2010. My name is Gary J. Kuklish. I am a  
17 54-year-old resident of Luzerne Township, Fayette  
18 County, Pennsylvania. I live 60 miles from  
19 Pittsburgh, Pennsylvania. I live about 0.4 tenths  
20 of a mile from a coal refuse site, which contains  
21 old coal mine refuse and power plant coal waste  
22 known to us as fly ash or bottom ash.

1           It is not a pleasant experience living  
2 near one of these sites in which on a daily basis,  
3 you can see dust in the air, water quality being  
4 affected, not only for human consumption, but for  
5 all the wildlife and all aquatic life that we all  
6 had around here at one time was clean air. We  
7 didn't have these kind of problems before.

8           Within the last ten years, I've seen  
9 approximately a dozen people pass away from  
10 cancer. Slowly, but surely these types of sites  
11 are indeed poisoning us every day in my community  
12 and, in fact, for sure over the last ten years, I  
13 have seen the cancer rate soar beyond rates that  
14 are unbelievable. In the state of Pennsylvania  
15 alone -- I'm sorry. Excuse me. In Fayette  
16 County, Pennsylvania, where I live, there are 42  
17 municipalities in our county, and Luzerne Township  
18 rates fourth highest rate in cancer rates per one  
19 hundred.

20           We all have enough troubles around here  
21 with all the gas drilling operations. This  
22 commission today has a lot to build upon not only

1 from all the coal and power plant side by creating  
2 or destroying jobs. This is not what this is  
3 about.

4 I just want you people to sit back and  
5 listen to the human side of the story. You don't  
6 have to listen to my story, but you should be  
7 compassionate enough to listen to a lot of these  
8 people out here. Listen from your heart from how  
9 they are telling you and what's going on. Again,  
10 I want to thank you guys for come to Pittsburgh,  
11 Pennsylvania for your time and effort. I hope we  
12 had a chance to change history from this day on.  
13 Thank you.

14 MS. DEVLIN: Thank you. Number 56,  
15 please.

16 MS. GASKEY: Good afternoon. My name is  
17 Josie Gaskey. I'm Director of Regulatory and  
18 Technical Affairs for the Pennsylvania Coal  
19 Association.

20 PCA is the principal trade organization  
21 representing bituminous coal operators, as well as  
22 other associated companies whose businesses relay

1 on the thriving coal economy. In 2009, our member  
2 companies produced over 80 percent of the  
3 bituminous coal mined in Pennsylvania, which  
4 totaled over 60 million tons. PA is the fourth  
5 leading coal producing state and the mining  
6 industry is a major source of employment and tax  
7 revenue. Latest data shows the industry created  
8 41,500 direct and indirect jobs with more than  
9 \$7.5 billion in economic input in PA.

10 PCA opposes the regulation of CCRs as  
11 hazardous waste under RCRA Subtitle C. Our members  
12 utilize CCRs in their mines and beneficially use  
13 CCRs at their facilities and will be directly  
14 impacted by this rulemaking. CCRs serve a variety  
15 of important uses at mine sites and EPA's final  
16 rule should not jeopardize these uses. For  
17 Pennsylvania, the use of CCRs in mine land  
18 reclamation has been successful and mine land that  
19 would not be reclaimed under the federal Abandoned  
20 Mine Land Program is being reclaimed with CCRs.  
21 We agree with the 2006 National Academy of  
22 Sciences' recommendation that OSM and its state

1 partners under SMCRA that the lead in developing  
2 national standards of CCR use in mine. OSM  
3 already has the regulatory structure in place and  
4 considerable expertise in mine regulation.

5 Like EPA and many states including  
6 Pennsylvania, we believe beneficial use of CCRs  
7 from power plants with appropriate health and  
8 water quality safeguards is a good environmental  
9 solution. We're concerned that regulating them as  
10 hazardous waste is unnecessary and regulatory  
11 overkill, and will limit or possibly eliminate the  
12 options for beneficial uses without providing a  
13 corresponding environmental or health benefit.  
14 Given the current regulatory climate, permitting  
15 on-site facilities of power companies present  
16 substantial, uncertain hurdles, and in many cases  
17 impossible hurdles based on Pennsylvania's  
18 approved hazardous waste regulatory program. The  
19 carbon footprint needed for transporting this  
20 material would generate increased greenhouse gas  
21 emissions. We believe the best management option  
22 is under Subtitle D.

1            Pennsylvania has some of the strictest  
2            and most effective regulations in the country for  
3            mining, management and disposal of CCRs and has an  
4            effective regulatory infrastructure in place to  
5            ensure the safe management of these materials. We  
6            support the regulation of CCRs that allows for  
7            continued beneficial uses for construction,  
8            manufacturing and other purposes, as well as  
9            integration with the current Pennsylvania  
10           regulatory program.

11           The regulation of CCRs as nonhazardous  
12           waste is supported by past progressive  
13           improvements in PA DEP's management of coal ash  
14           and recommendations from state regulatory and  
15           environmental officials including the Pennsylvania  
16           Public Utility Commission. While we recognize  
17           that regulating CCRs as a nonhazardous waste will  
18           impose significant costs on the power industry, we  
19           are concerned that regulating CCRs as a hazardous  
20           waste will lead to significantly higher cost  
21           increases and subsequent increased electricity  
22           prices. We appreciate the opportunity to comment

1 and will be submitting more detailed written  
2 comments by the November 19 deadline.

3 MS. DEVLIN: Thank you. May I have  
4 numbers 57, 58, 103, 106, and 123 please?

5 Number 57 come to the podium.

6 MS. ATKINSON: Okay. I'm Mary Agnes  
7 Coil Atkinson. I was born in Lawrenceville, it's  
8 Chester, West Virginia now. Little Blue, when I  
9 was a child, we would take bike rides. It was a  
10 beautiful land. We had produce stands to buy  
11 apples, get water out of the spring to drink and  
12 now they closed it up. What are they doing with  
13 our beautiful, country road? It's beautiful. We  
14 look at it now. My son said, he is 32 years old,  
15 Mom, that water's beautiful. I said, it didn't  
16 used to looked like that. There a lot of dead  
17 trees. It's like a horror movie and zombies are  
18 coming out of it.

19 Now, I have breathing problems. They  
20 say it's allergies in spring and fall. I have  
21 breathing problems all year round now. I'm  
22 concerned about it being in the air, and what

1 affects the fly ash has on my health.

2 My mother, Ruth Coil, she lived on Locus  
3 Hill. The farm house is still there, 186 acres.  
4 It's been our home since the 1800's, multiple  
5 generations coming. How did this happen? It's  
6 like we put the recreation. The recreation's  
7 already there. The bike riding, the beautiful  
8 trees, the running creek through there was  
9 beautiful, minnows and my mom, she raised us four  
10 kids in the same house I lived in now. She never  
11 drank, smoked or put anything harmful in her body.  
12 She died cancer of the pancreas at 89.

13 What I'm concerned about is even the  
14 fruits, when I was a child, we would pick them  
15 right out of a bag. We would take it right out,  
16 brush it off with out t-shirt and we would eat it.  
17 Now, you have to go to the sink and scrub it like  
18 we do with potatoes.

19 Come on now, let's get our economy back.  
20 It's God's country. In God we Trust. I'm  
21 concerned about my well-being and everyone else's  
22 lives around the fly ash dumping because it might

1 not be in their area of the nation, but for God  
2 sakes, let's come back as a nation, support what's  
3 going on here and stop it. Thank you very much  
4 for your time. I'm Mary Anges Coil Atkinson. I'm  
5 still living where I'm at.

6 MS. DEVLIN: Thank you. Number 58,  
7 please.

8 MR. HANEY: My name is Gary Haney. I am  
9 the President of the Midwest Coal Ash Association.  
10 We are a regional trade association representing  
11 coal ash generators, marketers, users, engineering  
12 firms, government agencies and academia.

13 Our primary purpose is to promote the  
14 general welfare of the coal ash industry through  
15 the socially beneficial, technically sound and  
16 environmentally safe utilization of coal ash.

17 We understand that a significant driver  
18 in the proposed regulatory action was the failed  
19 dike at TVA that allowed water, soil and coal ash  
20 to flow unimpeded down river, covering virtually  
21 everything in their path. We do not understand  
22 why the failure of a poorly designed or poorly

1 maintained dike would prompt a reconsideration of  
2 the waste classification of coal ash. The  
3 toxicity of the coal ash that was released had  
4 absolutely nothing to do with the damage caused.  
5 Similar damage could have resulted if the dike had  
6 been holding back water.

7           We favor the development of federal  
8 regulations of coal ash under Subtitle D, and  
9 specifically believe that the Subtitle D Prime  
10 option is the best choice. Unlike Subtitle C, D  
11 Prime will establish an environmentally protective  
12 program for coal ash disposal units without  
13 crippling beneficial use and imposing unnecessary  
14 regulatory costs on power plants, threatening jobs  
15 and increasing electricity costs. The Prime D  
16 option will include impoundment design, inspection  
17 and maintenance requirements that should prevent  
18 any future TVA type failures.

19           The crippling effect to beneficial use  
20 from a hazardous approach is real. In 1994, DOE  
21 reported to Congress that institutional and  
22 regulatory barriers to increased use exist when

1 fly ash is regulated as a solid waste and  
2 designated by EPA RCRA as a solid waste, even when  
3 they are utilized rather than disposed. They also  
4 reported that environmental liability becomes a  
5 strong deterrent to use of any byproduct that is  
6 designated and regulated as a solid waste. Yet  
7 EPA is considering designation as a hazardous  
8 waste and they believe that this will not create a  
9 barrier on this use.

10           Letters to EPA from generators,  
11 marketers, state regulators and users on the  
12 potential reclassification of coal ash as  
13 hazardous mention: Additional costs to manage,  
14 increases in insurance costs, hazmat training  
15 requirements, ready-mix and cement plants being  
16 designated hazardous waste facilities, increased  
17 toxic tort exposures, etc. None of these suggest a  
18 willingness or encouragement to use more.

19           EPA should develop a performance-based  
20 federal program for coal ash under RCRA D, which  
21 will ensure that it is safely managed for  
22 disposal, while continuing to promote and expand

1 its beneficial use. Thank you.

2 MS. DEVLIN: Thank you. Number 103.

3 MR. DAWES: Good afternoon. Thank you  
4 for the opportunity to testify at today's hearing.  
5 My name is R. John Dawes and today I'm testify  
6 before the panel as a Pennsylvania resident, a  
7 prospective applied economics graduate student  
8 and, most importantly, a whitewater kayaker. I  
9 grew up on an angus beef farm located in  
10 Alexandria, Pennsylvania. I learned how to roll  
11 and paddle class one and two whitewater on the  
12 pristine Little Juniata, located approximately 15  
13 minutes from my farm. As my paddling ability  
14 progressed, I did what every Pennsylvania paddler  
15 does and that is venture west, to Johnstown, PA,  
16 to tackle some of the state's best whitewater.  
17 What I didn't know is that these runs are among  
18 the country's most polluted rivers.

19 Shiny Waves, on the Conemaugh River just  
20 downstream of Bolivar, PA, has one of the best  
21 Class Three rapids in the state to learn  
22 intermediate boat control, as well as a style of

1 whitewater kayaking known as play boating. The  
2 access to this location of the river is easy and  
3 well maintained to encourage local citizens to  
4 come down the river bank, socialize and enjoy the  
5 communal resource. Unfortunately, upstream of  
6 this location are the Seward and Conemaugh Steam  
7 Plants and their unlined coal ash landfills and  
8 minefills. On a constant basis, these coal ash  
9 landfills are leaching heavy metals, many of which  
10 are carcinogenic, into rivers utilized by  
11 Pennsylvania citizens. As a result of the high  
12 levels of toxic heavy metals in the Conemaugh  
13 River, my dad would only let me paddle it once a  
14 year. This river could be a premier recreational  
15 area and a significant source of revenue for  
16 Western Pennsylvania, but people's fears of  
17 recreating in toxic waters, an actual stigma, has  
18 completely obliterated this potential regional  
19 economic driver. Industry wants you to ignore  
20 human health and the environment to prevent the  
21 fictional stigma that they claim will come along  
22 with a Subtitle C designation. I urge EPA to be

1       guided by the stigma that already exists, the fear  
2       of using Pennsylvania's coal ash polluted rivers  
3       and adopt Subtitle C.

4               I am also a prospective applied  
5       economics grad student, and I support Subtitle C  
6       regulations for coal ash disposal because the  
7       environmental and economic costs under loose  
8       Subtitle D regulations are too high. For example,  
9       in 2005, PPL's Martin Creek's coal ash impoundment  
10      failed, dumping 100 million gallons of toxic coal  
11      ash into the Delaware River costing 37 million  
12      dollars to clean up. In 2008, a similar failure  
13      in Tennessee released over a billion gallons of  
14      coal ash into the Clinch and Emory River, and  
15      TVA's clean up price tag has already exceeded 1.2  
16      billion dollars, not including litigation costs.  
17      That's 1 billion 237 million dollars in clean up  
18      costs that could have been prevented at only two  
19      sites, and there are 49 high hazard sites in the  
20      nation.

21              I ask you, Environmental Protection  
22      Agency, to consider not just the costs that might be

1 incurred to the coal and beneficial reuse industry  
2 from lining their pockets at the expense of those  
3 living near coal ash landfills, but also the  
4 outdoor enthusiasts and hard working Pennsylvania  
5 citizens whose recreational waters and even  
6 drinking waters are being contaminated with heavy  
7 metals. Please support the less costly, moral and  
8 pro-American Subtitle C regulation for coal ash  
9 disposal. Thank you.

10 MS. DEVLIN: Thank you. Number 106.

11 MS. DEVLIN: Thank you. Number 13. Is  
12 No. 13 in the room?

13 (No response.)

14 MS. DEVLIN: Okay. May I have numbers  
15 60, 61, 62, 63, and 64 please.

16 Please come forward 61 through 64. Take  
17 a seat over there.

18 MR. JENNINGS: Well good afternoon.

19 Thank you for the opportunity to speak in  
20 opposition of the proposed rule concerning coal  
21 combustion.

22 My name is Shawn Jennings with American

1 Bituminous Power Partners, AMBIT. I'm employed as  
2 the Environmental Engineer for the small 80  
3 megawatt circulating fluidized bed power plant we  
4 currently operate in Grant Town, West Virginia.  
5 Our plant's primary source of fuel is waste coal  
6 from abandoned coal mining sites in the north  
7 central area of West Virginia. I would like to  
8 explain the environmental benefits this facility  
9 has made to the surrounding community in the 17  
10 years it has existed.

11           The Grant Town power plant was built on  
12 the refuse site of the former federal number one  
13 mine. The area before our project started was an  
14 environmental disaster. There were huge areas of  
15 waste coal exposed with orange water running into  
16 Paw Paw stream, a tributary to the Monongahela  
17 River which meets the Ohio not far from here. The  
18 stream was virtually dead to aquatic life. With 1  
19 million tons of high sulfur waste gob and silt  
20 leaching into the stream the prospect of this area  
21 of West Virginia ever benefiting society  
22 ecologically or economically were not realistic.

1 Then with the invention and development of CFB  
2 technology AMBIT came into the picture.

3 AMBIT has transposed the federal and  
4 mine site and other similar sites in the area into  
5 green areas. Today, Paw Paw stream is not only a  
6 healthy stream but a West Virginia DNR trout  
7 stocked stream. The coal combustion byproducts  
8 that we generate are used not only on the gob and  
9 silt reclamation sites but on other strip mining  
10 sites to reclaim the land to the original contour.  
11 The ash is used as a fill and to seal in the coal  
12 seams with a highly alkaline material. Today,  
13 very little of our ash goes to our on-site storage  
14 facility. At present, over 90 percent of AMBIT's  
15 ash is utilized for beneficial use as directed by  
16 the WV DEP.

17 We are currently in the process of  
18 reclaiming coal waste sites in Barrackville and  
19 Farmington, West Virginia. These two sites are  
20 environmental debacles that AMBIT is cleaning up  
21 at no cost to the taxpayers. If the EPA takes  
22 away the beneficial use classification of our ash

1 the viability of our project will be in jeopardy.  
2 As Ambit goes so will the prospects of these sites  
3 and future sites similar being returned to green  
4 ecological areas.

5 It makes sense from an economical as  
6 well as an environmental perspective to maintain  
7 the existing course in regards to regulating coal  
8 combustion byproducts. Our plant as well as the  
9 many other ARIPPA plants in this region are  
10 cleaning up a mess that our parents and  
11 grandparents made. Why not let us continue to  
12 work to clean up the environment. Thank you.

13 MS. DEVLIN: Thank you. Number 61,  
14 please.

15 MR. ORENCHUK: Good afternoon. My name  
16 is Steven Orenchuk and I have a degree in Civil  
17 Engineering with a specialization in Environmental  
18 Engineering from the Ohio State University.  
19 Currently I work as an engineer in the  
20 Environmental Services Division of American  
21 Electric Power, AEP. AEP is one of the nation's  
22 largest producers of coal fired electric

1 generation and as a result is responsible for  
2 managing one of the nation's largest coal  
3 combustion residual waste streams.

4 In 2009, this included approximately 8.5  
5 million tons of fly ash, bottom ash, boiler slag,  
6 FGD material, and gypsum.

7 The majority of my time working for AEP  
8 is spent ensuring that AEP is in compliance with  
9 the applicable state regulations regarding CCRs.  
10 Specifically, this includes the construction of  
11 landfills and the groundwater monitoring and  
12 analyses associated with these landfills as well  
13 as surface impoundments. It is my professional  
14 opinion that the US EPA's proposed regulation of  
15 CCRs under the RCRA Subtitle C hazardous waste  
16 rules is excessive and unwarranted. The correct  
17 approach for US EPA to take is to regulate CCRs  
18 under the Subtitle D Prime option.

19 Regulation of CCRs under the RCRA  
20 Subtitle C hazardous waste rules is not worth the  
21 incremental environmental gain versus the extreme  
22 financial costs which will accompany this level of

1 regulation. It is necessary that in any type of  
2 rulemaking, U.S. EPA is cognizant of the broad  
3 economic impacts which there will be in response  
4 to such an undertaking. Protection of human  
5 health and the environment from the disposal of  
6 CCRs regulated under the Subtitle D Prime option  
7 is more than acceptable considering the potential  
8 threat that these materials pose. In addition to  
9 providing the necessary protection of human health  
10 and the environment, the Subtitle D Prime option  
11 will bear the least cost on the end user of  
12 coal-fired electric generation, i.e. customers  
13 like you and I.

14           Since the promulgation of CCR  
15 regulations under the Subtitle D Prime option  
16 affords the necessary level of protection of human  
17 health and the environment without imposing the  
18 unnecessary costs associated with over regulation,  
19 how can U.S. EPA in good conscience propose a set  
20 of regulations as irresponsible as the Subtitle C  
21 hazardous waste regulations for managing CCR  
22 disposal? This type of action is illogical and

1 represents the wasteful allocation of the American  
2 public's financial resources.

3 In addition to the increased and  
4 unnecessary financial costs associated with  
5 implementation of Subtitle C hazardous waste  
6 regulations for CCR disposal, there should be no  
7 doubt that such regulation will play a significant  
8 role in the premature closure of coal-fired  
9 generating units across the nation. Ironically  
10 these closures will be at least partly due to an  
11 overbearing set of regulations intended to prevent  
12 a hypothetical problem which is largely  
13 non-existent. Jobs will be lost as a result of  
14 these plant closures. Unnecessary environmental  
15 regulation which ultimately leads to the loss of  
16 jobs is wrong.

17 In closing, I would like to thank you  
18 for the opportunity to comment on the proposed CCR  
19 Rule. I hope that U.S. EPA does the right thing  
20 by taking a sensible approach to this rulemaking  
21 and enacts the Subtitle D Prime option.  
22 Regulation of CCFs under Subtitle C hazardous

1 waste rules is excessive and will require  
2 unnecessary financial costs without providing any  
3 meaningful environmental protection. Thank you.

4 MS. DEVLIN: Thank you. Number 63.

5 MR. SEYMOUR: Hello. My name is Keith  
6 Seymour and I'm a technical sales representative  
7 with Headwaters Resources.

8 Definition: Stigma means to shame,  
9 disgrace or dishonor. This is what is happening  
10 to our industry with this crazy notion that fly  
11 ash is a hazardous waste. Public perception of  
12 what they see and hear is very powerful and this  
13 is a major part of our stigma problem today.  
14 Innocent until proven guilty is what I grew up  
15 thinking but maybe I was wrong or at least in this  
16 matter. The extreme propaganda and misinformation  
17 about this matter is ridiculous. I have been in  
18 this industry for over 25 years and have watched  
19 the use of CCP's increase dramatically.

20 Thousands of studies by colleges,  
21 universities, and our own federal government  
22 agencies, especially yours, the EPA have shown

1       there is no reason to classify fly ash as a  
2       hazardous waste.

3                       That's why are we here today? Because  
4       freedom of speech is another great thing we can  
5       have in our country. Although the information  
6       being spoken is not always correct, you still have  
7       the right to be heard. Environmentalist groups in  
8       large numbers have spoken on this matter, and my  
9       question is where is there proof that fly ash is a  
10      hazardous waste. Are there studies that have been  
11      done that we are not aware of that back what they  
12      are saying?

13                      The economic fallout if fly ash is  
14      considered a hazardous waste would be  
15      astronomical. With a struggling economy, can we  
16      afford to lose hundreds of thousands of jobs,  
17      watch utility cost sky rocket and watch landfills  
18      increase in size because we are being bad stewards  
19      to our environment?

20                      Did you know that using fly ash to  
21      replace Portland Cement in Ready Mix concrete and  
22      other applications is saving our ozone layer? For

1 every ton of cement produced, there is 1 ton of  
2 carbon dioxide being released into our atmosphere.  
3 The beneficial use of fly ash in concrete  
4 production reduced U.S. greenhouse emissions by as  
5 much as 15 million tons alone in 2007.

6 Furthermore, using CCP's saves the  
7 energy needed to extract and process other  
8 materials for the same uses. Coal ash has been  
9 studied extensively for decades by universities  
10 and government regulatory agencies. Designating  
11 coal ash as hazardous waste is counter to  
12 scientific evidence and would seriously limit the  
13 widespread use of CCP's as we know them today.

14 The beneficial use of CCP's has  
15 increased steadily since the 1960's and  
16 contributes to economic growth. Beneficial use  
17 has almost doubled from 22 percent in 1989 to 43  
18 percent in 2007, which contributes more than 4  
19 billion dollars to the U.S. economy and provides  
20 jobs for thousands of workers. Coal ash that is  
21 beneficially used does not need to be disposed in  
22 landfills thus reducing the need for new or

1 expanded disposal facilities while at the same  
2 time conserving natural resources for other uses.  
3 Go Subtitle D not C.

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

6 MR. FICHTELMAN: My name's Jim  
7 Fichtelman, and I'm the design engineer for Arrow  
8 Concrete right here in Pittsburgh. I'm here just  
9 to explain some of the facts about this. For  
10 every action, there is a reaction. Arrow Concrete  
11 purchases on a normal year 25,000 ton of fly ash  
12 in perspective think about 1,000 tanker fully  
13 loaded semis end to end, that's what we purchase  
14 in a normal year. That does not go to landfills.  
15 We send that concrete out.

16 I went through like some of the  
17 specification things about Pittsburgh and I'll run  
18 this by you. Right now the green movement, thank  
19 the LEEDS programs, the green movement towards  
20 building is exploding. Now is not the time to  
21 shut that down.

22 I have here the Phipps Conservatory

1 right here in Pittsburgh, they require 40 percent  
2 portland cement replacement with fly ash. They  
3 require that right here. I'm sure some of you  
4 have heard of this. It is the Pittsburgh public  
5 school district requires 40 percent fly ash for  
6 the cement replacement.

7 And the last one that I bought in  
8 Pittsburgh is this one here State College. Penn  
9 State University, again, requires 40 percent  
10 portland cement replacement. Now the Ohio State  
11 University, we start that job next month. It's  
12 going to use 1,100 ton of fly ash to support their  
13 new hospital they're building.

14 This is not just some run-in-the-mill  
15 thing, this is ongoing. If we do not use the fly  
16 ash, if that ash is not available for us, we will  
17 still produce your concrete. That hospital will  
18 still have it. These products will still happen.  
19 It will be portland cement. And what'll happen at  
20 that point is that the emissions into the air will  
21 actually accelerate global warming.

22 I'm owned by an equipment company. They

1 do not want to do that. The global warming  
2 project is what I'm asking you to think of.

3 If you're going to solve one problem,  
4 for God sake, don't cause another. Thanks.

5 MS. DEVLIN: Thank you. May I have No.  
6 65, 66, 67, and 68, please. Number 65, please.

7 MR. PITTENGER: My name is Rick  
8 Pittenger. I work for D. W. Dickey Corporation in  
9 Ohio, and we're a concrete door supply company.

10 We use fly ash in our concrete. And we  
11 just did a big project down at power plant near  
12 Straton, Ohio. Just a couple years ago we did  
13 probably about 70,000 yards with 15 percent fly  
14 ash in most of it.

15 When I think about the use of fly ash as  
16 I'm reading material, I understand there's like 43  
17 percent of fly ash that's produced by the coal  
18 burning power plants that gets used in recycling.

19 Part of that's in the concrete industry.  
20 Part of it's in wallboard in Shippingport,  
21 Pennsylvania, and if you didn't have that 43  
22 percent going into being recycled into the green

1 use, you'd have that in a landfill somewhere.

2 The landfills are what seem to be  
3 causing the problem. So, you know, we need to not  
4 do that. We need to find good uses for them like  
5 wallboard, like concrete, and I'm sure there's  
6 many other uses, too.

7 So, you know, please, don't use it or  
8 designate it to hazardous waste. I do support it.  
9 It is -- if it needs to be taken care and if  
10 there's something that is harmful, then that needs  
11 to be disposed of in the right way. So if it's  
12 turned to hazardous waste, that will slow  
13 everything down, that will -- it won't be handled  
14 any different as far as the landfills are  
15 concerned if it's termed hazardous waste or not.

16 So why do that, why not just do it the  
17 same way, and give us a proposition that supports  
18 the recycling, thank you.

19 MS. DEVLIN: Thank you. Number 66,  
20 please.

21 MR. BROWN: Hello. My name is Phil  
22 Brown. I'm here for Rumble R/M. I produce

1 concrete and produce concrete structures. We are  
2 located in Charleston, West Virginia, and we  
3 employ around 105 employees. We just use fly ash  
4 every day in our products we produce. I do not  
5 consider fly ash as a hazardous waste.

6 I've been using fly ash for 20 years,  
7 and unlike Arrow, I use probably three to four  
8 thousand tons a year. Fly ash creates business in  
9 our concrete industry. It makes our concrete  
10 stronger. It helps with workability. Fly ash  
11 also helps produce the production of CO2 gas in  
12 the atmosphere from the manufacturing of the --  
13 one of the most important facts that fly ash  
14 concrete reduces the cost and the way our economy  
15 is today, we can't afford to treat fly ash as a  
16 hazardous waste.

17 I do not want to see the bills in our  
18 construction costs go up. I believe classifying  
19 fly ash as a hazardous waste is a big mistake,  
20 thank you.

21 MS. DEVLIN: Thank you. We're running a  
22 few minutes ahead of schedule, so I'm going to try

1 to handle some of the walk-ins. It's numbers 203,  
2 204, 209, 210 and 211, if you all would come  
3 forward. Thank you. I called No. 211.

4 Are you in the room, No. 211?

5 MR. ULERY: Good afternoon everybody.  
6 My name is Jeremy Ulery. I'm from Pennsylvania,  
7 where we have one of the new fly ash sites that  
8 are currently developing and brewing.

9 And first I want to thank the panel for  
10 giving us tell us opportunity to speak here today  
11 and to be heard. As you should be aware but I  
12 don't think really everybody knows, in our area,  
13 it seems as if our fly ash dump that's being  
14 facilitated right now is running its own operation  
15 in my eyes. I really don't feel that everybody is  
16 completely aware of what we're dealing with on a  
17 day-to-day basis.

18 My community's dealing with major issues  
19 right now, numerous people are becoming sick,  
20 cancer, respiratory problems, skin problems, you  
21 name it, and it seems like as the months go on,  
22 more, more, and more and more of this is

1 occurring.

2 I'm not saying that the DEP's not doing  
3 their job appropriately, but I think what's going  
4 on is whenever this company does find out that  
5 there is going to be a random test, of course just  
6 like anybody, if you know you're going to have a  
7 test, you're going to study.

8 They make sure that they make everything  
9 look like everything's okay, but as soon as that  
10 test is over with, it's back to the way they want  
11 to do things.

12 And I hope you as the panel as the  
13 people that need to open their eyes and really see  
14 what is going on and what my family, what my  
15 community is dealing with.

16 I would like to state that I feel that  
17 there's just not enough regulation or oversight  
18 currently being done, and ensure the safety of the  
19 current residents of this area.

20 The last point that I really want to  
21 stress and have you guys take home is this: I  
22 chose to move back to my hometown. I moved away,

1 I went to college, I got my degree, and I could  
2 have come right down here to Pittsburgh and lived  
3 while I worked through my career, but I chose to  
4 move back home.

5 Since then, I've had two small children.  
6 Both of them have been diagnosed with severe  
7 eczema and severe allergies. I've taken them to  
8 pediatric specialists, dermatologists, and they  
9 all have told me that it's the environment and the  
10 surroundings that aren't helping their situation.

11 But the way I look at it like this, I  
12 should be just as entitled to anybody else around  
13 here. I could have lived in Pittsburgh and then  
14 maybe things would have been better.

15 Again, we're not a statistic, we're  
16 human beings. Thank you again for the opportunity  
17 to speak today.

18 MS. DEVLIN: Thank you. Now we're a  
19 little bit out of the order because everybody  
20 hasn't checked in. Numbers 71, 75, 76, 77, and  
21 No. 96.

22 SPEAKER: What about 73?

1 SPEAKER: 72?

2 MS. DEVLIN: I didn't know that you guys  
3 have checked in.

4 SPEAKER: We did this morning.

5 MS. DEVLIN: Okay. Okay, let me do this  
6 again. Anybody with the numbers 70 through 75  
7 come forward. 76, I'll get you in a minute.

8 MS. DEVLIN: Numbers 70, 71. 71, please  
9 come.

10 MR. THOMAS: Hello. My name is David  
11 Thomas, and I'm a control manager for Golden  
12 Triangle Construction. I've been in the  
13 construction industry since 1976, and we use --  
14 we've used fly ash in concrete, and I want to  
15 thank the EPA for the opportunity to issue a  
16 comment today about fly ash and state that I'm  
17 opposed to RCRA Subtitle C, and we've used fly ash  
18 in the concrete we produce for the Pennsylvania  
19 Department of Transportation. For alkalizing  
20 cement, we use 15 percent fly ash which is quite  
21 somewhere around 88 pounds per cubic yard.

22 And we've used fly ash for FAA at the

1 airports, Pittsburgh International Airport.  
2 They're concerned about alkalized reactivity. So  
3 we use fly ash in concrete that we produce before  
4 the Pittsburgh International Airport to offset the  
5 alkalized cylinder reactivity because they  
6 recommend roughly 20 to 30 percent of fly ash,  
7 which imports to somewhere around 40 to 100 pounds  
8 to 120 pounds per cubic yard. So when we make mix  
9 designs for our concrete, you know, we have to  
10 handle small amounts of the material making mix  
11 designs so if they -- if you would classify fly  
12 ash as hazardous, we bring that material in  
13 tankers roughly about 25 tons of material are  
14 brought into the tankers to our plants. And that  
15 tanker then is emptied, and if you would classify  
16 fly ash as hazardous, you know, our -- we wouldn't  
17 want the liability to bring that material into our  
18 plant, expose our people with that material.

19           You know, fly ash is used on road,  
20 highways, bridges and bridge construction,  
21 airports, runways.

22           And I thank you for the opportunity to

1 speak, and I hope we can continue to use fly ash  
2 in our company.

3 MS. DEVLIN: Thank you. Number 72,  
4 please.

5 MR. ADAMS: Hi. My name is Mike Adams  
6 and I have recycled fly ash for the past 30 years,  
7 the last 11 years as the VP for Headwaters  
8 Resources the largest marketer of fly ash in North  
9 America.

10 My premise for my testimony is that  
11 stigma is real and listing CCPs as a hazardous  
12 material for disposal will effectively kill the  
13 most successful recycling program in the U.S. and  
14 increase Greenhouse Gas production by millions of  
15 tons of CO2 and while requiring an additional 50  
16 million cubic yards of landfill space annually.

17 There have been speakers disputing my  
18 claim of stigma citing past history with other  
19 waste products that have been listed and the  
20 subsequent increase in their recycling. We do not  
21 believe that these examples are indicators of what  
22 will happen to CCPs if they're declared hazardous for

1 two reasons.

2 Most if not all of these products were  
3 either recycled back into the process they  
4 originated from or were processed themselves to  
5 reduce their toxicity. Neither of these options  
6 work for CCPs. None of these products were  
7 recycled into new materials that are used in every  
8 day products such as the example of fly in  
9 concrete.

10 We in the coal ash recycling business  
11 believe that stigma will occur. In fact, I have  
12 heard testimony at these hearings that are  
13 examples as to how stigma will be used against  
14 CCPs.

15 A competing blasting grit company gave  
16 testimony on how boiler slag should not be used as  
17 blasting grit even though there is absolutely no  
18 documentation of any harm to people or the  
19 environment. They provided this testimony for one  
20 reason only to gain a competitive advantage over  
21 companies using boiler slag not for their concern  
22 over the environment.

1           A lightweight aggregate company  
2           cautioned against the use of bottom ash in the  
3           production of concrete block again with no  
4           documentation of harm to the environment. In  
5           fact, prior independent testing has shown very  
6           little difference in testing between some  
7           manufactured lightweight aggregates, which by the  
8           way produces significant greenhouse gases when  
9           produced, and bottom ash.

10           Again, this testimony was given to gain  
11           a competitive advantage over a competing CCP.

12           So in reviewing the testimony from these  
13           public hearings, EPA will see examples of what  
14           will happen in the market place. If companies  
15           will use these EPA public hearings to gain an  
16           advantage, you can exponentially imagine what  
17           competitors will say about CCPs in the everyday  
18           marketing of their products if CCPs are declared  
19           hazardous in any way.

20           The two regulatory options before us  
21           comment today -- the Subtitle C hazardous approach  
22           and the Subtitle D non-hazardous approach -- both

1 propose new landfill engineering standards that  
2 are essentially the same. Landfills won't be any  
3 stronger or better under Subtitle C, but coal ash  
4 recyclers will be saddled with a hazardous waste  
5 stigma that will make continued recycling of this  
6 resource difficult or impossible. I repeat, as  
7 the stated examples show, stigma is real.

8 MS. DEVLIN: Thank you. Number 73.

9 MS. HOFNER: I am not No. 73. My name  
10 is Diane Hofner, and I am speaking for Harriet  
11 Tower who is in poor health and unable to travel  
12 today.

13 I am Harriet Lane Tower from Dunkirk,  
14 New York, a small depressed city on the shores of  
15 Lake Erie under the shadow of NRG's coal burning  
16 electric plant, one of the largest polluters along  
17 the East Coast.

18 I testify today because it is blatantly  
19 clear that the coal industry at every level of  
20 production operates outside the limits of concern  
21 for human health and environmental integrity. It  
22 is equally clear that our governmental agencies

1 are not performing in manners that protect the  
2 well being of our people, our land and our water.

3 The USA rejects children's jewelry from  
4 China that contains cadmium, yet we let cadmium  
5 from coal ash permeate our land and water. We  
6 have implemented strict restrictions on lead in  
7 all buildings to avoid neurological damage and  
8 developmental delay in our children and others,  
9 yet we allow lead from coal ash to be distributed  
10 liberally.

11 Does this not damage our children? We  
12 prosecute people who poison others with arsenic  
13 and we have forbidden continued use of treated  
14 wood due to arsenic yet that, too, is part of coal  
15 ash and the EPA ignores the dangers as you form  
16 alliances with the coal industry to make profit  
17 from its use. We can no longer eat fish safely  
18 due to high mercury levels already confirmed, yet  
19 you do not stop the seepage of mercury into our  
20 waterways.

21 I want to address Lisa Jackson directly  
22 here. I saw you weep over the devastation of your

1       hometown of New Orleans. You were not in a  
2       position to prevent that disaster, but we now know  
3       this was, in part, a manmade disaster with neglect  
4       and incompetence leading to the collapse of the  
5       levees. You are in a position to stop widespread  
6       damages in 46 states where coal ash is generated  
7       and so poorly disposed of.

8                 If you take the responsibility to  
9       regulate coal ash honestly, you will have managed  
10      a second largest waste stream in the USA. Now  
11      that is an accomplishment.

12                Do not allow yourselves to be bought out  
13      by the coal industry. Please, do your job, and  
14      protect the people, the wildlife, the land, and  
15      the precious water of planet. Thank you.

16                MS. DEVLIN: No. 35, please.

17                MS. KINCAID: Good afternoon ladies and  
18      gentlemen. My name is Emily Kincaid, and today I  
19      am here to speak on behalf of my dad, Robert  
20      Kincaid, Jr., my mom, Amy, and my brother, Taylor.  
21      My dad lost his life after a four-year battle with  
22      melanoma cancer. The melanoma cancer my dad had

1 started underneath his fingernail on his index  
2 finger. What a strange place to have sun cancer  
3 we thought.

4 We found out from his melanoma  
5 specialist that this melanoma cancer my dad had  
6 was not caused from the sun. He informed my  
7 family that 5 percent of all melanoma cases are  
8 caused from other factors other than the sun.  
9 What luck?

10 Though we cannot prove that my dad got  
11 this disease from working in the power plant, but  
12 after working in such dangerous and hazardous  
13 place, like the Bruce Mansfield plant for 30  
14 years, we felt strongly as a family that this most  
15 likely is where the problem originated. He also  
16 thought the same thing. What a tragic thought:  
17 To think the place you have dedicated the majority  
18 of your life to so you could support your family  
19 has brought you to your deathbed. My dad was a  
20 trooper though and continued to work as much as  
21 possible through those four long years. The  
22 cancer finally metastasized throughout his body

1 and he ended up with 11 brain tumors. This is  
2 when my dad lost his hard fought battle to this  
3 horrible disease on December 14, 2005.

4           It was the most horrible thing I am sure  
5 I will ever experience. Now that almost five  
6 years have passed, I am madder than ever. It has  
7 really hit my brother and I hard that we have no  
8 dad. I feel that something that most likely could  
9 have been prevented ripped my dad away from my  
10 family and me. Not only did my mom and I lose my  
11 dad, but he also left behind a 10-year-old son, a  
12 son that did not get the chance to get to know his  
13 dad.

14           When our dad got sick, my brother,  
15 Taylor, was only in first grade, a young child. I  
16 was just beginning my college years. I was geared  
17 up and ready to start a new fun chapter of my life  
18 and training to play college volleyball when my  
19 parents had to break the news to me that my dad  
20 had cancer. What a life changer. It was not fair  
21 and nothing will ever make it better.

22           My brother is now getting ready to turn

1 16 and me 27. Taylor is playing high school  
2 sports: Golf with a set of custom made clubs that  
3 were originally made for my dad, basketball, which  
4 my dad played in high school and college, and  
5 baseball. He practices these sports every day  
6 with no dad to help and support. He plays in the  
7 gym and on the field with no dad in the stands.  
8 He has been robbed of one of the most important  
9 people in this life. Sadly, he told my mom and me  
10 the other day that we sure talk about his dad a  
11 lot but he really does not know that man we speak  
12 about so often. He doesn't really remember him.  
13 He was too young and the years I am sure he does  
14 remember he watched our dad slowly die.

15 I graduated college from my dad's alma  
16 mater, and he never got to witness it. I have  
17 bought my first car on my own and my first house.  
18 Neither of which he could be a part of. But what  
19 makes me most sad is that I will be walking down  
20 the isle next summer with no dad to give me away,  
21 every daddy's girl's dream. He will never see my  
22 kids and they will never get to meet the great man

1 that he was.

2 I could go on and on for hours, but  
3 since I only have a few minutes of your time, I  
4 hope that I have painted the picture of what my  
5 family and I has endured the last few years of our  
6 lives, our lives that have been changed forever.

7 I also hope that you have seen a small  
8 glimpse of what my dad had to suffer through for  
9 four years because of the negligence of the power  
10 plant where he made his living for 30 years.

11 I hope something positive can be done to  
12 correct these issues of unsafe working  
13 environments and that no other family has to  
14 experience what my family does everyday.

15 Thanks.

16 MS. DEVLIN: Thank you. Number 76.

17 MR. EVANS: Good afternoon. I'm Ray  
18 Evans, director of First Energy's Environmental  
19 Department.

20 Our company owns and operates 7,400  
21 megawatts of coal -- based generating plants in  
22 Ohio and Pennsylvania. These facilities comprise

1 roughly half of our total generation portfolio,  
2 including low, and non-emitting resources such as  
3 nuclear, natural gas, wind and hydro. We have  
4 over 13,000 employees including 6,500 union  
5 members.

6 I'm here today to express our company's  
7 concerns about regulation of coal combustion  
8 residue, CCR, as hazardous waste -- a change that  
9 would do more environmental harm than good while  
10 undermining the jobs and businesses related to the  
11 beneficial recycling of CCRs.

12 About 30 percent of combustion  
13 byproducts from our coal-based facilities are  
14 utilized annually in recycling applications,  
15 including the manufacture of gypsum wallboard and  
16 concrete. These efforts support hundreds of  
17 businesses and thousands of jobs while reducing  
18 the need for additional landfill space.

19 We developed and operate one of the  
20 world's largest gypsum recycling facilities at our  
21 Bruce Mansfield Plant. Each year, we provide  
22 nearly half a million tons of gypsum to National

1 Gypsum for wallboard manufacturing. This  
2 world-class operation, built in 1999, specifically  
3 diverts CCRs from disposal while providing needed  
4 local jobs in the Shippingport, PA, area.

5 First Energy supports U.S. EPA's  
6 regulation of CCRs as non-hazardous waste, which  
7 provides for consistent regulation across the  
8 nation. And we are committed to the safe and  
9 environmentally sound reuse and disposal of this  
10 material.

11 With ash recycling and disposal  
12 facilities in Pennsylvania and Ohio, we work  
13 closely with highly trained professionals at  
14 federal and state regulatory agencies to ensure we  
15 meet all current standards. Our CCR recycling and  
16 disposal operations are routinely inspected by  
17 regulators and independent engineers, and daily by  
18 our staff. Additionally, we are in the process of  
19 siting a dry storage facility to replace our only  
20 existing wet store facility for CCRs.

21 We agree with U.S. EPA that  
22 environmentally sound beneficial use of ash

1 conserves resources, reduces greenhouse gas  
2 emissions, lessens the need for waste disposal  
3 units and provides significant domestic economic  
4 benefits. In fact, over the past 30 years, the  
5 U.S. EPA has continually identified non-hazardous  
6 waste regulation as the preferred approach for  
7 ensuring the safe recycling and disposal of CCRs.

8           Regulation of this material as hazardous  
9 waste has the potential to divert recyclable  
10 materials into disposal facilities, and eliminate  
11 the many benefits of recycling CCRs. In  
12 facilities, which could drive up costs for  
13 everyone while undermining generating reliability,  
14 as these facilities are necessary for the  
15 operation of coal-based power plants.

16           All of this translates into increased  
17 costs compared to the non-hazardous option,  
18 without any commensurate benefit to the  
19 environment.

20           Let me add that U.S. EPA's proposed  
21 hazardous waste option is already having a  
22 negative impact on the beneficial use of CCFs

1 marketed by First Energy. Concern about product  
2 liability lawsuits has reduced interest in  
3 products such as ash and gypsum.

4 In closing, let me reiterate that a  
5 non-hazardous regulatory framework will improve  
6 environmental conditions across the country while  
7 preserving the jobs and economic growth related to  
8 the beneficial use of ash. In contrast,  
9 regulation of CCRs as hazardous waste would lead  
10 to higher costs and divert more of this material  
11 to landfills, without achieving any meaningful  
12 environmental improvement.

13 Thank you for your attention.

14 MS. DEVLIN: Thank you. Numbers 78, 96,  
15 119, 150, and 155.

16 MR. BLACK: My name is Jim Black, and  
17 I'm the government affairs director for the Clean  
18 Air Council.

19 The Clean Air Council is a nonprofit  
20 group based in Philadelphia, and we work in  
21 Pennsylvania, Delaware, and New Jersey.

22 I have written comments that I will be

1 submitting, but what I'd like to talk about today  
2 is something a little more personal.

3           When I was growing up back in the '60s,  
4 there was a coal burning heat and power plant that  
5 was just two miles from my home, and as a kid we  
6 used to ride over there on bicycles and play in  
7 the ash piles. I mean, it was like having our own  
8 beach. These doons of ash that we played in. We  
9 didn't know that they were dangerous.

10           We were warned by our parents and people who  
11 worked at the plant not to go down by the tracks  
12 and get near the trains because that's dangerous.  
13 But there was something there that was a little  
14 more acidious and it's not something that kills  
15 anybody right away, but of the three of us, 20  
16 years later, we're all working in the same bike  
17 shop or athletes, or cyclists, don't smoke. We  
18 don't have any of these what you would consider  
19 risk factors for cancer.

20           Well, two of my buddies at 36-years-old  
21 with young families, died of cancer. Now, I  
22 didn't think anything of it, but now 20 years

1 after that, I realize that, well, maybe the fact  
2 that we spent so many hours playing in those ash  
3 piles might have had something to do with the fact  
4 that my two friends died young. Now, while I'm  
5 healthy, I don't know. But they're dead of  
6 cancer. They've left children without fathers.  
7 Now these children are now grown. They're in  
8 college, and they're doing okay, but they don't  
9 remember their dads. And this is something that  
10 we need to do.

11 We need to make sure that the EPA does  
12 whatever is necessary to keep other children from  
13 losing their parents because of the toxins that  
14 are in the coal ash. We need to keep it out of  
15 contact with children especially but with getting  
16 in contact with anybody.

17 So thank you very much for your time  
18 today and thank you for holding these hearings,  
19 and I will submit the written comments. Thank  
20 you.

21 MS. DEVLIN: Thank you. Number 96,  
22 please.

1                   MR. FARNSWORTH: Good afternoon. My  
2 name is Adam Farnsworth, and I am the human  
3 resource representative for Separation  
4 Technologies. I'm here today to explain to you  
5 why I'm against the Subtitle D designation.

6                   Two years ago I was hired in my current  
7 position after graduating from college. Honestly,  
8 I applied to that job and never really heard of  
9 fly ash and I didn't know there was a difference  
10 between cement and concrete and never actually  
11 seen the power plants except outside of my car  
12 window.

13                  All of these things I do think to be  
14 rather typical of many people outside of our  
15 industry. When I was researching the company I  
16 work for now, I kept trying to imagine what fly  
17 ash was, and I couldn't really wrap my head around  
18 it.

19                  I was in for a shock when I interviewed  
20 directly on site at one of our power plants. They  
21 weren't lying, there was really ashes and hundreds  
22 of thousands of this stuff was going through our

1 machinery each year.

2           Needless to say though, my lack of  
3 knowledge on the entire subject actually kind of  
4 spurred me on to ask more questions during the  
5 interview and eventually take the job. I  
6 wondered, where does all this stuff go? How do we  
7 use this? There is a difference between cement  
8 and concrete, and how many tons of this stuff do  
9 people actually make?

10           What I ultimately learned is that  
11 without companies like the one I work for, this  
12 fly ash goes into the landfills, but I also  
13 learned that as when separated properly and as it  
14 cements, our product actually makes it more  
15 durable and stronger, and to top it off, when you  
16 calculate it, it poses no significant or  
17 environmental health risks.

18           On the contrary, I have learned though  
19 that when not properly handled, the landfill, fly  
20 ash can create potential health problems and  
21 environmental problems.

22           If the overall role is to limit the

1 impact fly ash had on the environment, it only  
2 makes sense for us to explore all.

3 It's a fact that coal generates 50  
4 percent of U.S. power, thus fly ash be reduced for  
5 a while. It's my opinion that the Subtitle C  
6 Hazardous Material Designation will actually  
7 increase the amount of landfill. It took me a  
8 while and a long time to really understand our  
9 industry and how things and the beneficiation  
10 process worked.

11 The average individual, including myself  
12 two years ago out of college, would not have  
13 wanted anything to do with the material labeled  
14 hazardous sometimes. The hazardous sometimes  
15 stigma will drive businesses away from utilizing.  
16 To this day, we beneficiated almost 7 million tons  
17 of ash. That 7.7 million tons of landfill and in  
18 fact sitting in roads, bridges, and structures  
19 that we all used has come through the door in our  
20 everyday lives.

21 I would ask everyone to not vote for the  
22 Subtitle C and to vote for Subtitle D. Thank you.

1 MS. DEVLIN: Thank you. Number 119.

2 MR. ARIGONI: Hello. My name is Ray  
3 Arigoni, and I'm a plant supervisor for Harsco  
4 Minerals, a division of the Harsco Corporation. I  
5 work at Harsco's Moundsville boiler slag  
6 processing facility. I have been working in the  
7 boiler slag processing field for 8 years. The  
8 plant I manage employs 10 workers, many of them  
9 have been working at Moundsville in the boiler  
10 slag processing industry over 30 years. We  
11 produce mainly abrasives and granules for roofing  
12 shingles from boiler slag; boiler slag is one of  
13 the four listed coal combustion byproducts  
14 included in this proposed regulation.

15 I am in support of regulating boiler  
16 slag under RCRA Subtitle D.

17 Harsco takes employee health and safety  
18 very seriously; it has been 7 years since a lost  
19 workday case. We have participated in industrial  
20 hygiene surveys. We conduct regular safety  
21 meetings, and safety is an important part of how  
22 we do business every day. I am not aware of any

1 health issues from any of my employees associated  
2 with exposure to boiler slag at my facility.

3 Environmental permit compliance is also  
4 an important part of the way we conduct our  
5 business. In our many years of operation I do not  
6 know of any environmental issues caused by the  
7 boiler slag processed by my facility.

8 Some facts that demonstrate that there  
9 is not reasonable basis for subjecting boiler slag  
10 to regulation under RCRA Subtitle C are as  
11 follows:

12 When extremely hot, molten coal ash is  
13 quenched with cold water, the coal ash is  
14 vitrified and becomes the solid, glassy solid  
15 known as boiler slag.

16 Because boiler slag is vitrified, it is  
17 a very durable and environmentally stable material  
18 that effectively immobilizes its chemical  
19 constituents by transforming any metals into inert  
20 metal silicates.

21 Historically, boiler slag has always  
22 passed the TCLP testing and has never exhibited

1 any hazardous waste characteristics.

2 Boiler slag is not commonly stored in  
3 surface impoundments. I do not store any of my  
4 boiler slag products, raw or processed, in any  
5 surface impoundments.

6 Regulating boiler slag destined for  
7 disposal as a special waste under Subtitle C would  
8 unfairly stigmatize beneficially reused boiler  
9 slag that my employees have been processing for  
10 many years. My customers will be confused and  
11 concerned about purchasing products that are seen  
12 to be essentially the same as a Subtitle C waste,  
13 even with a special waste designation.

14 I recognize the need for proper and  
15 environmentally sound standards for regulating the  
16 2 percent of boiler slag that is discarded, rather  
17 than beneficially reused, however, I feel the  
18 associated stigma that will be associated with  
19 Subtitle C will adversely impact my business.  
20 Thank you.

21 MS. DEVLIN: Thank you. Number 155, go  
22 ahead while 150 comes up.

1           MR. CIERRA: Hello. Thank you for this  
2 opportunity to speak on this proposed ash  
3 regulation. I am Craig Cierra, the administrative  
4 supervisor at the Grant Town Power Plant in Grant  
5 Town, West Virginia. I have been employed at the  
6 plant for 16 years. The Grant Town Power Plant is  
7 wholly owned by American Bituminous Power  
8 Partners, L.P. or AMBIT for short.

9           The Grant Town Power Plant is built on  
10 the site of the former Federal No. 1 Mine Site;  
11 essentially on the Bituminous refuse pile that was  
12 left behind. It is an 80 Megawatt Electric  
13 Generating Facility. It has one Turbine and two  
14 Circulating Fluidized Bed Boilers. Construction  
15 began in May 1990 with Commercial Operation  
16 starting June 1993. It is a qualifying facility  
17 under PURPA with a 42 year power purchase  
18 agreement with Allegheny Power, the local utility.  
19 It was financed through a 150 million dollar bond  
20 issue through the Marion County West Virginia  
21 Solid Waste Authority.

22           The Power Plant takes bituminous waste

1 coal or refuge at abandoned mine sites and turns  
2 it into energy. It uses multiple sites all over  
3 north central West Virginia. The facility then  
4 reclaims the mine sites. It does this primarily  
5 by backfilling with ash from the power plant to  
6 replace the waste coal removed. The State of West  
7 Virginia has deemed ash from circulating fluidized  
8 bed boilers like Grant Town as a beneficial use  
9 product. It mitigates acid mine drainage from the  
10 old waste sites. It does this due to the high  
11 calcium content in the ash which neutralizes the  
12 acid in the drainage from the waste site. Deeming  
13 our ash as hazardous would eliminate AMBIT's  
14 ability to reclaim waste bituminous coal sites.  
15 The site has reclaimed 200 acres to date, and has  
16 at least that much land currently slated to reclaim  
17 over the next 10 years.

18 The Grant Town Power Plant annually  
19 provides property taxes of a half million dollars.  
20 It pays state B and O taxes in the amount of  
21 300,000 dollars. It pays another 120,000 dollars  
22 in other state and local taxes. Ambit pays almost

1 a million dollars a year in taxes.

2 The plant provides 66 direct full time  
3 positions. It also creates 221 spin off or  
4 indirect jobs. The power plant has a 4 and a half  
5 million dollar impact to the state and local  
6 economy in products and services outside of the  
7 jobs it creates.

8 AMBIT is a marginal fiscal project. We  
9 receive a rate for our energy that offsets the  
10 local utilities cost to create energy. We are net  
11 neutral to the ratepayers of West Virginia. Our  
12 power purchase agreement does not allow us to  
13 recover or pass on the cost of ash as a hazardous  
14 material. The conservative estimate is our costs  
15 will raise 50 times what they currently are or 40  
16 million dollars. This would be equal to our  
17 current budget in all other areas combined.

18 This regulation would be detrimental to  
19 the Grant Town Power Plant. The plant would no  
20 longer run. The jobs would go away. The money to  
21 business in West Virginia would be gone. Taxes no  
22 longer paid. Reclamation of abandoned mine sites

1 would be the responsibility of the people of West  
2 Virginia.

3 This proposed regulation would be bad  
4 for the Grant Town Power Plant, bad for Marion  
5 County, and bad for the state of West Virginia.  
6 Thank you for your time.

7 MS. DEVLIN: Thank you. Number 150, and  
8 while 150's coming forward, can I have numbers 79,  
9 80, 81, and 126.

10 MR. HOFFMAN: Sorry about that. I  
11 thought you said 160.

12 But my name's Tom Hoffman. And I'm the  
13 Western Pennsylvania Director for Clean Water  
14 Action. Clean Water Action is a national  
15 organization of 1.2 million members working to  
16 empower people to take action to protect America's  
17 waters, protect the air that we all breathe, build  
18 healthy communities and to make democracy work for  
19 all of us. 150,000 of those members live in  
20 Pennsylvania.

21 For 38 years Clean Water Action has  
22 succeeded in winning some of the nation's most

1 important environmental protections through  
2 grassroots organizing, expert policy research and  
3 political advocacy focused on holding elected  
4 officials accountable to the public. Here in  
5 Pennsylvania we have been very active on reducing  
6 diesel pollution, advocating for reductions of  
7 PM2.5 pollution, protecting citizens from the  
8 environmental dangers of drilling for natural gas  
9 in the marcellus shale and helping clean up our  
10 three rivers by reducing stormwater runoff.

11 In fact, many of our members are in  
12 Harrisburg today lobbying for strict oversight of  
13 the marcellus shale drilling industry.

14 Coal ash is a growing problem across the  
15 nation. The EPA and the National Academy of  
16 Sciences research show that coal ash is toxic, and  
17 threatens human health. Studies have shown that  
18 these coal ash sites are so toxic that they can  
19 increase cancer risk to a staggering 1 in 50.  
20 That needs to stop now. Americans deserve clean,  
21 safe energy, not another assault on the health of  
22 hard-working families.

1           We applaud the EPA for recognizing the  
2 very real health and environmental risks posed by  
3 toxic coal ash. Given these risks, enforceable  
4 federal safeguards -- not state guidelines -- are  
5 necessary to protect our state's families.

6           It is our understanding that the EPA has  
7 two proposed regulatory options for coal ash -  
8 Plan C and Plan D. Clean Water Action is  
9 supporting the Strong Option, Plan C, that would  
10 provide basic environmental and public health  
11 safeguards backed up with federal enforcement and  
12 financial accountability. We need protection from  
13 coal ash cradle to grave and the Subtitle C option  
14 gives us that. We do not support the status quo  
15 option that relies on citizen suits or possible  
16 state regulations for enforcement.

17           Pennsylvania is a resource rich state,  
18 but our residents have and will continue to pay a  
19 high price for that. Streams that are no longer  
20 life sustaining. Air that sends kids to the  
21 hospital with asthma at four times the national  
22 rate. Flammable drinking water in peoples' homes.



1 on groundwater wells.

2 Robinson Township is also home to the  
3 Champion Processing Incorporated waste coal pile.  
4 This pile is the largest east of the Mississippi  
5 River. In the late '80s, residents were  
6 introduced to coal ash. Champion Processing's  
7 owners, lawyers, DEP and state representatives  
8 urged township residents to accept coal ash  
9 dumping. They called the substance benign, inert,  
10 harmless.

11 In 2005, these same people returned to  
12 reiterate their claims about coal ash dumping with  
13 a larger proposal. They intend to dump roughly 87  
14 million tons at the Champion site. Now coal ash  
15 dumping was described as beneficial.

16 Former Secretary of PA DEP, Kathleen  
17 McGinty, even went as far as to rush permits to  
18 pave the way for this project. She named it one of  
19 the gang of four that she had the agency rushing  
20 to beat EPA's tougher pollutant restrictions.  
21 Perhaps she did this because the owner of the  
22 project was a board of director for Pennsylvania's

1 Energy Development Authority in 2005.

2 We also noticed in 2005 that the former  
3 heads of the air, water, and mining divisions of  
4 PA DEP became consultants for industry and urged  
5 coal ash dumping. Why not, they know all the ways  
6 to get around regulations. Oh, that's right, coal  
7 ash dumping is not regulated.

8 In fact, Pennsylvania allows coal ash  
9 application to reach beyond mine filling. It is  
10 dumped and spread into our fields where crops  
11 grow, getting into the food chain.

12 It is made into our drywall and placed  
13 in home across the nation. Western states place  
14 coal ash in cattle feed lots. Ash is spread as  
15 anti-skid material on our roads which then  
16 dissolves into the water, leading to our creeks  
17 and streams.

18 It is spread as a trail surface for  
19 Pennsylvania Rails to Trails by the DOE's National  
20 Energy Technology Laboratory. They say, CCBs are  
21 often used as roadway fill, but applications like  
22 community walking trails are especially important

1 for public acceptance.

2 It's no wonder so many of us get cancer.

3 In December 2008, the nation learned what a  
4 surface impoundment is and what coal ash really  
5 contains when the TVA disaster occurred. The  
6 truth was out. Coal ash contains heavy metals.  
7 Recycling, it does not take that danger away.

8 Now in 2010 we gather to decide if coal  
9 ash should be regulated and how. How stupid is  
10 that? We know darn well that coal ash is toxic  
11 and some of us will be drinking it. Yet, we still  
12 wonder if we should allow a toxic substance to be  
13 dumped without regulations and oversight?  
14 Ridiculous.

15 EPA should regulate coal ash as a  
16 hazardous waste. It should not be considered,  
17 benign nor beneficial. EPA should set national  
18 standards and enforce it. This will protect all  
19 communities including towns like mine in  
20 Pennsylvania. Coal ash is not benign, inert or  
21 harmless. It is toxic. It should be termed a  
22 hazardous waste and clearly states cannot be left

1 to manage it on their own.

2 Thank you.

3 MS. DEVLIN: Thank you. No. 81, please.

4 MS. BOWEN: Hello. My name is Helen  
5 Bowen, and I would like to introduce Charles  
6 Martienssen who could not be here today. Thank  
7 you for allowing us to speak on this subject.

8 Charles Martienssen, he lives in West  
9 Hazleton, Luzerne County, Pennsylvania.

10 One of my concerns is for the health of  
11 the residents of northeast Pennsylvania. A good  
12 friend of my wife and I live about 2 miles from an  
13 ash disposal site. She is a victim of asthma.  
14 Since the dumping, when she leaves her home in her  
15 car, she must keep the windows closed and while  
16 the air conditioning is on, keep a moist rag on  
17 her face. She said the air quality around her  
18 home is horrible. She is unable to be outdoors  
19 for more than a few minutes.

20 I am also concerned about the mounting  
21 rate of cancer in our area. I am aware of the  
22 cancer causing materials present in the ash. One

1 of the sites we have been to is located by the  
2 Boroughs watery supply wells. Just recently, the  
3 borough and to discontinue the use of one of their  
4 wells because it was contaminated with arsenic.

5 A demonstration project called Big  
6 Gorilla was completed in 2004. The project used  
7 coal ash to fill a 120 million gallon water filled  
8 pit left over from previous mining. The pit was  
9 1,400 feet long, 400 feet wide and 90feet deep.  
10 Several residents in a nearby village at the base  
11 of the mountain located next to the pit have  
12 passed away with Polycythemia vera, a rare blood  
13 disease in which the body makes too much red blood  
14 cells and many more are afflicted with the  
15 disease.

16 At last count there were 133 cases  
17 within a 40-mile radius from my home. There are  
18 six FBC coal generators in the same radius.

19 In reference to the Big Gorilla Site,  
20 the coal ash placement has caused the PH of the  
21 rain charged mine lake to increase from 3.2 to  
22 constantly above 12.0, the latter being lethal to

1 all life.

2 A staff member of the PA DEP has  
3 co-authored a publication on the site, so there is  
4 no doubt of the department's understanding and  
5 awareness of the case.

6 The lake discharges as groundwater, but  
7 the path of migration has yet to be identified, so  
8 groundwater impacts are unknown. So does Big  
9 Gorilla leach down the mountain to the PV  
10 patients, we may never know. Thank you.

11 MS. DEVLIN: Thank you. Number 126 and  
12 while No. 126 is coming up, I'm going to try to  
13 fit in a number of walk-ins because we're running  
14 ahead of schedule. Numbers 209, 212, 214, 215,  
15 and 216. If any of you are in this room, please  
16 come forward. Go ahead 126.

17 MS. BRYAN: My name is Beulah Bryan. I  
18 live at 265 Liberty Avenue, Chester, West  
19 Virginia. I live about half a mile away from the  
20 Little Blue Dam. I have a well, my only source of  
21 water.

22 I am concerned, since I live below the

1 dam, that water may be seeping into my well from  
2 it. My well is being tested by West Virginia  
3 Department of Health. They advised me that even  
4 if the test comes negative, I may want to have it  
5 tested again in a few months because things can  
6 change.

7 I have lived here since 1962. When I  
8 first moved here, it was a very beautiful place,  
9 with blackberries and fruit trees everywhere. Now  
10 there is nothing but grass and weeds. You rarely  
11 ever heard of anyone having allergies. Now almost  
12 everyone has allergies.

13 My husband passed away about three years  
14 ago with lung cancer, colon cancer, and kidney  
15 cancer. He also had allergies and other breathing  
16 problems.

17 I live a few houses away from my  
18 daughter. Her whole family has allergies, and her  
19 three kids have asthma.

20 I have another daughter who lives a road  
21 down from mine, her whole family has severe  
22 allergies also. There is a smell we get from time

1 to time, that makes it impossible to leave your  
2 windows open for very long. I notice the smell  
3 after a rain in the spring and at night.

4 When I first came here, the air was  
5 fresh and clean. I worry about my grandchildren,  
6 what future will there be for them. I also worry  
7 that the Little Blue Dam, since it is an earthen  
8 dam, will break.

9 Since we live below it, what will happen  
10 to us? Who would buy our land? There is no way  
11 to get away from these potential hazards. We are  
12 forced to live with them.

13 I feel we need legislation to protect us  
14 from these environmental hazards. That's why I  
15 support Section C. Sincerely submitted, thank  
16 you.

17 MS. DEVLIN: Thank you.

18 MS. POLINSKY: Hi. My name is Linda  
19 Polinsky, and I am reading this on behalf of  
20 Teresa Cooper from Chester, West Virginia.

21 My name is Teresa Cooper and I live on  
22 an 18-acre farm just two miles from the Little

1 Blue Run fly ash impoundment in Greene Township,  
2 Beaver County, PA.

3 My daughter, son-in-law, and my new  
4 grandbaby live on a home located on my property.  
5 We have lived in the shadow of the coal combustion  
6 fly ash impoundment since the site's inception in  
7 1975. Current publicity regarding the safety of  
8 living so close to a potentially toxic site such  
9 as Little Blue Run and being a new grandmother has  
10 spurred much concern in my life.

11 My small farm provides me and my  
12 extended family most of their vegetables from my  
13 garden, and all of our beef from the cattle I  
14 raise. This has been my lifestyle for over 20  
15 years.

16 My concerns are simple yet not so  
17 simple. Not having a public water supply, is my  
18 water safe? Yes, I have had my water tested by  
19 the owner of the dump site, First Energy  
20 Corporation, and by private testing facilities.  
21 All tests show safe levels of unsafe metals. No  
22 such metals were present when I first purchased

1 the property. But truly, what is a safe level of  
2 an unsafe substance? Neighbors within walking  
3 distance of my property have had their water  
4 tested also. Their results of unsafe metals in  
5 their drinking water were higher than the levels  
6 in my water; but, according to First Energy's  
7 results, still within the safe level. It would  
8 appear to me that I am on the borderline of toxic  
9 water, but I am no chemist.

10 I am, however, an extremely concerned  
11 citizen faced with a potentially dangerous  
12 situation. My farm is my life's financial  
13 investment, meant to be passed on to my family.  
14 My value of investment, as you can imagine, is  
15 going down rapidly, and with rumors of dump site  
16 expansion, it will only continue to plummet.

17 Is this truly a just and fair situation  
18 for my family? My life's work reduced to  
19 virtually nothing for the financial advancement of  
20 huge power companies is not the American way.

21 Please make coal combustion fly ash a  
22 Title C situation so that concerns for people's

1 safety can be addressed in the manner in which  
2 they should. Thank you.

3 MS. DEVLIN: Thank you. Number 212.  
4 212's not here? 214.

5 MR. HEFFNER: My name is Andrew Heffner  
6 and I work with a small Christian environmental  
7 called Restoring Eden. I appreciate the EPA  
8 holding these hearings, particularly this one in  
9 my hometown of Pittsburgh, and I hope they will  
10 adopt Subtitle C regulations so that we can really  
11 begin to address the real cost and impact of coal  
12 ash.

13 In my work, I come into contact with  
14 Christians all over the country and one of the  
15 strongest held beliefs that all of us hold is to  
16 care for God's creation and all the people who  
17 live in it. In Micah 6:8, we are called to act  
18 justly, love mercy, and walk humbly, and I believe  
19 this passage speaks not only to caring for the  
20 creation, but to care for our neighbors. We have  
21 heard stories and statistics all day about people  
22 who have struggled with health problems, cancer,

1 respiratory illnesses, et cetera, all sorts of  
2 problems just because they live in close proximity  
3 to coal ash and those stories are much more  
4 compelling than my own.

5 I believe as a person of faith that we  
6 have a responsibility to care for all people who  
7 suffer. And particularly I'm here today to speak  
8 for those people who we've heard from and those  
9 who I see all around the country.

10 Aside from the issue of who will be  
11 reciting coal ash well and who's not doing a good  
12 job of it and what the stigma might be that would  
13 damage business, I think at the core we know that  
14 coal ash is a hazardous material. We know that  
15 it's made up of mercury and lead and cadmium and  
16 chromium and others, and for that reason I don't  
17 think it makes any difference to classify this as  
18 household garbage.

19 I don't have any argument with companies  
20 making a profit. I only ask that that they be  
21 responsible for the true cost of their business.  
22 There should be justice in the way that I think

1 God intended it, and Subtitle C is the right and  
2 faithful way for the EPA to move forward. Thank  
3 you.

4 MS. DEVLIN: Thank you. Number 215  
5 please.

6 MR. RATLIFF: My name is George Ratliff.  
7 I've come here to just listen to the testimony  
8 today, but I couldn't resist the temptation to say  
9 something that I thought would have been said by  
10 now. No one has mentioned the obvious solution.  
11 There's no reason to have coal fire power plants.  
12 Natural gas is so cheap today that coal fire power  
13 plants are switching to natural gas. It  
14 eliminates all fly ash. It eliminates 20 percent  
15 of the carbon dioxide. It eliminates the arsenic.  
16 And yet and there's still another of value natural  
17 gas. That is the only way we can get to renewable  
18 energy solutions for the problem. You cannot have  
19 energy without a backup power system, which has to  
20 be natural gas.

21 This is the logical way to get there,  
22 and I thank the EPA for having this hearing, and I

1 hope you will switch us to natural gas. Thank  
2 you.

3 MS. DEVLIN: Thank you. Number 216  
4 please.

5 MS. COPENHAVER: Good day. My name is  
6 Teresa Copenhaver, and I am testifying on behalf  
7 of Sunbury Generation, a small 420 megawatt  
8 coal-fired power plant that was commissioned in  
9 1949. The plant is located in Shamokin Dam,  
10 Snyder County, Pennsylvania. Corona Power  
11 purchased the plant in 2006 making significant  
12 financial investments in the plant in order to  
13 keep it operational and to comply with state and  
14 federal environmental regulations.

15 Sunbury generation has a team of 125  
16 direct employees and another 200 contractors,  
17 vendors and suppliers rely on the plant being  
18 operational. These are all well paying jobs for  
19 Pennsylvania citizens.

20 In all, Sunbury employs some 300 people  
21 injecting 30 million dollars annually into the  
22 local economy and 75 million dollars annually into

1 the Pennsylvania economy in salaries, supplies,  
2 and services.

3 Sunbury sends nearly 250,000 tons of  
4 coal ash a year to vendors who use it in concrete  
5 and road construction as well as mine reclamation  
6 sites, thereby preventing acid mine drainage,  
7 protecting the waterways and reclaiming abandoned  
8 mine lands.

9 As one of its motives in proposing that  
10 coal ash be deemed a hazardous waste, the EPA  
11 claims proven damage cases citing two ash  
12 impoundment accidents at Kingston, Tennessee, and  
13 Martins Creek, Pennsylvania.

14 This is in spite of the fact that  
15 thorough studies of both accidents found no  
16 adverse impacts to the river, wildlife or human  
17 health.

18 These findings combined with the history  
19 of safe management of the vast majority of ash  
20 sites and the record of successful beneficial use  
21 seem to indicate that the EPA is not basing its  
22 findings upon scientific fact and at the same time

1 seems to ignore proven beneficial use.

2 The EPA's proposals for change to any  
3 rules should be based on scientific fact not on  
4 political, media, or antifossil fuel groups'  
5 appeasement. An ash accident may be a legitimate  
6 reason for EPA to propose regulatory improvements  
7 pertaining to wet ash disposal impoundments;  
8 however, it is unreasonable to propose rules that  
9 declare all ash hazardous and drastically limit  
10 its many current beneficial uses.

11 In summary, we are aware that some  
12 groups believe that the increased cost in disposal  
13 of cal ash as a hazardous waste would increase the  
14 beneficial uses of coal ash. We do not agree and,  
15 in fact, governors and environmental departments  
16 from a majority of the affected states  
17 representing millions of citizens and jobs have  
18 written to the EPA stating that ash should not be  
19 declared hazardous.

20 In Subury's case, it would end our  
21 beneficial use of ash and add significant cost to  
22 our operations and ultimately to the Pennsylvania

1 households we serve. The effect of this decision  
2 would be disastrous to the economy of our  
3 community if such an unreasonable rule causes us  
4 to go out of business.

5 Regulation of coal ash as hazardous  
6 waste would prevent many current beneficial uses  
7 due to the potential liability, handling and  
8 transportation costs, as well as the stigma of  
9 using a hazardous waste.

10 The regulation of coal ash as  
11 non-hazardous waste under RCRA Subtitle D will  
12 ensure protection of human health and the  
13 environment without unnecessarily stigmatizing  
14 coal ash that has a safe beneficial use as a  
15 preferred alternative to disposal. This approach  
16 will ensure that ash is safely managed while  
17 continuing to promote and expand its beneficial  
18 use. Thank you.

19 MS. DEVLIN: May have I have numbers 84,  
20 85, 86, 88, and 89, please.

21 MR. MASULLO: Good afternoon. My name  
22 is Angelo Masullo, and I'm a professional engineer

1 with civil and environmental consultants in  
2 Pittsburgh, PA.

3 I've been involved with the design  
4 construction operation of dozens of waste disposal  
5 facilities in the 30 years that I've been  
6 practicing that involve municipal solid waste,  
7 coal ash, hazardous waste, and other residual  
8 waste.

9 During that time landfills have  
10 progressed from opened dumps to simple engineer  
11 facilities with synthetic liners and casts and  
12 comprehensive groundwater plumbery systems.

13 Many of the Pennsylvania facilities that  
14 I've been involved with recently would be  
15 considered the equivalent of retro Subtitle D  
16 landfills.

17 I've also briefly worked for a company  
18 -- one of the few companies in the country -- that  
19 operate a RCRA Subtitle C landfill.

20 In the state of Pennsylvania, coal ash  
21 is considered to be a residual waste, and its  
22 disposal is currently governed by regulations that

1 control the location, size, and design,  
2 construction, operation and closure of the  
3 landfills.

4 Landfill siting regulations do take  
5 where landfills can go and how closely they can be  
6 to residents. Facilities are protective in the  
7 environment and are fully capable of preventing  
8 groundwater contamination below and around the  
9 disposal facility.

10 My professional opinion is that the  
11 level of environmental protection provided by  
12 Subtitle D facilities, such as Pennsylvania's  
13 Class 1 residual waste landfills, is almost the  
14 same as that provided by Subtitle C landfills.

15 Subjecting coal ash management disposal  
16 at the requirement associated with Subtitle C will  
17 break the increase for difficulty in managing coal  
18 ash without providing significantly greater degree  
19 of environmental protection.

20 I ask that the ultimate decision on  
21 managing of coal ash and its regulation be based  
22 on (inaudible.) Thank you.

1 MS. DEVLIN: Thank you. Number 84,  
2 please.

3 MS. CANDAL: Hi. My name is Sarah  
4 Candal, and I am here on behalf of Murrell Byard  
5 from Johnsonville Road, Chester, West Virginia.  
6 And I'll read her testimony.

7 First I'd like to tell you that I have  
8 lived on Johnsonville Road for 33 years. So you  
9 see I know my land.

10 I have no city water at my shop. I use  
11 the water from my spring. That is until they told  
12 me if I used it, it would put me down. So what  
13 am I suppose to do, buy water when I have spring  
14 water right here? Why?

15 Then I was told not to eat anything out  
16 of a garden. Why? Is there something in the  
17 ground I don't know about. What.

18 Next, what about all the wet spots that  
19 are showing up. Places that have always been dry.  
20 Oh, they came around and said they would fix it so  
21 the ground would dry up. How?

22 They are going to reroute the water,

1 which means in time, it will end up in the Ohio  
2 River. I don't think that would be good. Do you?

3 I think this all from the Little Blue  
4 Lake. So they should make it right. I'm not  
5 suppose to drink my spring water or eat from a  
6 garden. Why? You tell me.

7 So the next time you're on Johnsonville  
8 Road, stop, I'll give you a cup of coffee, made  
9 from fresh spring water. Murrell Byard.

10 MS. DEVLIN: Number 80, please.

11 MS. KOLE: Hi. My name is Allison Kole,  
12 and I am a representative of Greenpeace. I would  
13 like to thank the EPA for conducting these series  
14 of hearings and for choosing Pittsburgh, my  
15 hometown, as an important site for this  
16 discussion. Pittsburgh is not coal country, as  
17 some might suggest, it is a city that long ago  
18 through leadership of elected officials, citizens,  
19 and administrators decided to confront a serious  
20 problem of pollution and the poisoning of its  
21 population. The steel city is now an economy  
22 based on healthcare, education, and technology and

1 was even the host of this year's UN World  
2 Environment Day.

3 Like Pittsburgh, problem of smog and  
4 pollution, the toxic coal ash problem requires the  
5 cooperation of the EPA and communities to solve.  
6 The first step is to treat coal as special waste  
7 under Subtitle C of the Resource Conservation and  
8 Recovery Act. State by state enforcement is not  
9 enough, and we need to ensure that hazardous coal  
10 ash is not shipped to areas or states with the  
11 most lax regulatory scheme. The EPA needs to make  
12 sure that the health of one community is not less  
13 valued than the health of another. Sound science  
14 supports the special waste designation. Coal ash  
15 contains toxic chemicals and metals that are known  
16 causes of cancer, organ disease, or neurological  
17 damage. Already there are over 130 clearly  
18 documented damage cases of the affects of coal  
19 ash.

20 Every year our country produces more  
21 coal ash from coal fired power plants, at the  
22 moment, approximately 140 million tons. Current

1       safeguards, with industry self-regulating under  
2       various state directives has failed. It has  
3       representatives of local communities here today  
4       and it failed at Kingston TVA in Tennessee.

5                We are sitting close to the world's  
6       first Gold LEED certified convention center, a  
7       positive legacy of a local administration that  
8       wanted change, a healthier life for its community.  
9       I ask the U.S. Administration to embrace this  
10      necessary change: That the best available science  
11      be used in setting federally enforceable  
12      safeguards for coal ash, and that coal ash be  
13      regulated under Subtitle C. Every citizen of this  
14      country deserves to live in a health community  
15      with air and water free of the toxic legacy of  
16      coal.

17               MS. DEVLIN: Thank you. Numbers 89, 90,  
18      97, 98, and 115; 89.

19               SPEAKER: 91?

20               MS. DEVLIN: I'm sorry, 91, please come  
21      forward; 90.

22               MR. BITTNER: My name is Jim Bittner. I

1 am vice president of technology for Separation  
2 Technologies. I am here today to support the safe  
3 and environmentally sound disposal of coal ash. I  
4 am here to speak out against the Subtitle C  
5 hazardous approach and for the Subtitle D  
6 non-hazardous approach.

7 Separation Technologies separates  
8 unburned carbon from fly ash and sells the low  
9 carbon ash to concrete producers as a cement  
10 replacement. ST's ash recycling business has many  
11 environmental and economic benefits:

12 Over the last 10 years, more than 10  
13 million tons of ash have been sold for use in  
14 concrete and not been disposed in landfills.

15 Consequently, cement production and CO2  
16 emissions have been reduced by more than 10  
17 million tons. In addition, more than 100  
18 well-paying jobs have been created.

19 Since 2000 when the EPA issued its final  
20 regulatory determination that coal ash does not  
21 warrant regulation as a hazardous waste, ST has  
22 invested more than 100 million dollars in its fly

1 ash recycling business.

2 In 2008, ST was planning to invest  
3 another 35 to 40 million dollars in ash recycling  
4 plants creating another 25 to 30 well-paying jobs.  
5 However, since March 2009 when the EPA reopened  
6 the issue of regulating ash as a hazardous waste,  
7 my company and our utility partners have stopped  
8 all investments in ash recycling.

9 Our utility partners will not risk the  
10 potential liabilities of their ash being used in  
11 concrete if ash is regulated under the Subtitle C  
12 hazardous option.

13 Our concrete producer customers are  
14 becoming wary of ash because our competitors who  
15 are selling imported slag are warning of the  
16 potential liabilities associated with using ash.  
17 Thus, this proposed regulation has already become  
18 a job killer at a time when the US economy is in  
19 dire need of good jobs.

20 What is driving the EPA towards a  
21 Subtitle C hazardous regulation? Based on its  
22 toxicity, coal ash does not qualify as a hazardous

1 waste. During 15 years of recycling ash, ST has  
2 never found a coal ash that failed the TCLP test,  
3 which would classify it as hazardous.

4 Legitimately, EPA has a concern about  
5 the way coal ash has been disposed in the past.  
6 The Subtitle C hazardous option would give the EPA  
7 more direct enforcement authority than a  
8 Subtitle D nonhazardous option, which would give  
9 the states the direct enforcement authority. In  
10 both cases, engineering and operating standards  
11 for disposal facilities would be the same and set  
12 by the federal government.

13 However, the stigma of a Subtitle C  
14 hazardous approach will reduce the amount of ash  
15 recycled and increase the amount of ash disposed  
16 in landfills. Just the consideration of the  
17 Subtitle C option has already stopped investment  
18 and job growth in our industry.

19 I respectfully request that the EPA not  
20 destroy coal ash recycling and its many benefits  
21 to the environment and the economy. Please select  
22 the Subtitle D non-hazardous approach. Thank you.

1 MS. DEVLIN: Thank you. Number 91.

2 MR. GASIOROWSKI: Good afternoon. My  
3 name is Stephen Gasiorowski. I hold a Ph.D. in  
4 Analytical Chemistry with specialization in  
5 characterization and utilization of powder  
6 materials. I have spent the last 15 years working  
7 with coal fly ash processing and utilization.  
8 Such utilization has had tremendous environmental  
9 benefit by displacing other manufactured  
10 materials, most significantly cement in the  
11 production of concrete. This has resulted in  
12 improved quality and durability and cost of  
13 buildings and highway infrastructures. I consider  
14 this practice one of the major successes of  
15 utilization industrial so-called waste for benefit  
16 of the public good.

17 The proposed regulation of fly ash and  
18 other coal combustion residues under RCRA Subtitle  
19 C seriously jeopardizes this success. While the  
20 proposed regulations exempt beneficially used fly  
21 ash from Subtitle C regulation, it will result in  
22 one pile of ash will require handling as hazardous

1 while another pile from the same source will not.  
2 Faced with this apparent self-contradictory  
3 designation, most producers, specifiers and users  
4 of fly ash, will choose to stop dealing with  
5 beneficial use of the material to avoid any  
6 potential liability.

7 As discussed in the preamble of the  
8 proposed regulations, the vast majority of fly ash  
9 does not exhibit toxic characteristics. While  
10 coal fly ash contains arsenic, lead, and other  
11 potentially toxic constituents, extremely few fly  
12 ashes exhibit leachable toxic materials at greater  
13 than 10 percent of regulatory levels. The tiny  
14 proportion of ashes that exhibit such toxic  
15 characterizations are already regulated under RCRA  
16 Subtitle C. Utilization of fly ash in concrete  
17 production of other products that result in  
18 encapsulation of the fly ash dramatically reduces  
19 even this small potential for release of toxic  
20 materials. The measured leachability of fly ash  
21 containing concrete is so low that such concrete  
22 has easily met criteria to be used in direct

1 exposure to municipal drinking water supplies.

2 Documented damage cases from disposal of  
3 fly ash leading to surface or ground water  
4 contamination have resulted from already  
5 discredited practices, clear mismanagement, or  
6 will be phased out under either proposed Subtitle  
7 C and D designation of CCRs. Thus, a Subtitle C  
8 designation will only impose an onerous stigma on  
9 the material, drastically reducing beneficial use  
10 without materially affecting the handling and  
11 disposal practices.

12 Based on these facts, regulation of coal  
13 fly ash under RCRA Subtitle C is unwarranted. To  
14 do so will serious impact the beneficial use of  
15 the material, to the detriment of the construction  
16 industry and public infrastructure. Thank you  
17 very much.

18 MS. DEVLIN: Thank you. Number 97,  
19 please.

20 MR. ROSEBOROUGH: My name is Rob  
21 Roseborough, and I have worked with fly ash for  
22 over 15 years. I am a civil engineer with a

1 degree from Bucknell University. I have many  
2 years of hands-on experience with fly ash in  
3 laboratory setting as well as out in the field.

4 I support Subtitle D and the recycling  
5 of fly ash. It has value in the construction  
6 industry for its ability to improve existing  
7 products while reducing impact on the environment.  
8 The changing of fly ash from a recyclable material  
9 into a hazardous waste will have significant  
10 consequences.

11 By classifying fly ash as a hazardous  
12 waste under Subtitle C, it not only renders it  
13 useless as a recyclable material, it also  
14 generates a significant amount of waste.  
15 Approximately 90 million tons of fly ash is  
16 recycled annually.

17 If fly ash is classified as a hazardous  
18 waste, it will be placed in landfills throughout  
19 the country. This will create a need for new  
20 landfills. There will be a substantial increase  
21 in the number of landfills required in the United  
22 States to handle all the fly ash generated today.

1 The landfills will need to be constructed so that  
2 they can handle millions of tons of ash and have  
3 available space for years. They will not be small  
4 landfills.

5 When fly ash is recycled, it is  
6 transported to an end-user, where it is utilized  
7 in construction and in the process, reduces  
8 greenhouse emissions by millions of tons annually.

9 If fly ash is placed in a landfill, tons  
10 of unnecessary pollutants are introduced into the  
11 atmosphere on an annual basis from the exhaust of  
12 trucks, dozers, rollers, excavators, backhoes, and  
13 water trucks. All heavy equipment necessary to  
14 construct the landfill, haul the fly ash to the  
15 landfill, place the ash in the landfill, and close  
16 out the landfill.

17 Landfills cost millions of dollars to  
18 construct, build, and maintain. The utility  
19 companies will have no choice but to pass these  
20 costs onto the consumer. In the United States,  
21 coal is used to produce over 50 percent of our  
22 electricity needs. Electricity prices will

1 increase. The price of everything produced with  
2 electricity will increase. We, the consumer, will  
3 have to pay these additional costs out of our  
4 pockets.

5           These consequences can be avoided if we  
6 continue to responsibly recycle fly ash in  
7 beneficial ways. This can only happen if the  
8 stigma related to fly ash as a hazardous waste is  
9 eliminated. I have already experienced firsthand  
10 the negative impact hazardous waste has produced  
11 towards fly ash. Currently, I have facilities  
12 that do not want to use fly ash because it may  
13 become hazardous. I have clients who will not  
14 risk litigation if fly ash is classified Subtitle  
15 C, and will ban recycling of fly ash from their  
16 facilities altogether. If the negative stigma on  
17 fly ash continues, the recycling program will be  
18 harmed permanently.

19           I support the continued use of fly ash  
20 in the recycling market and its classification  
21 under Subtitle D. The benefits are good for both  
22 the economy and the environment.

1 Thank you for your time.

2 MS. DEVLIN: Number 98, please.

3 MS. JEFFERY: My name is Sue Jeffery. I  
4 have worked in the Coal Combustion Byproduct  
5 Industry for over 30 years. In my opinion, it is  
6 far better to recycle and reuse coal ash rather  
7 than to dispose of it. Coal ash should be  
8 considered a resource, rather than a waste.

9 Of the two proposed EPA regulations, the  
10 Subtitle C hazardous approach will be detrimental  
11 to the beneficial reuse applications by creating a  
12 stigma of unwarranted fears. If labeled hazardous,  
13 this perception could prevent it from being  
14 specified in many applications that could be a  
15 benefit to the environment. Other products will  
16 be chosen where coal ash could have and should  
17 have been used.

18 For example, when coal ash is used to  
19 replace a portion of Portland cement in ready-mix  
20 cement, the greenhouse gas emissions created from  
21 the cement production are reduced by more than 12  
22 million tons every year. Not only that, the

1 additional coal ash makes the cement and more  
2 durable of an end product.

3 Data shows between 2000 and 2008, a  
4 nearly 50 percent increase in recycling rate of  
5 coal ash. This can be attributed to when the EPA  
6 issued its final regulatory determination in 2000  
7 that coal ash does not warrant regulation as a  
8 hazardous waster. Now, recent activity by this  
9 same agency, such as terminating the C2P2 web  
10 page, has began to undermine those advances.

11 I agree that tougher disposal  
12 regulations should be enforced. The landfill  
13 engineering standards proposed by both approaches  
14 are essentially the same. The difference being,  
15 Subtitle D, a nonhazardous approach will bring the  
16 regulations to the state and local government  
17 levels where it needs to be, while at the same  
18 time not contribute to the stigma of fear created  
19 by a label. Thank you for the opportunity to  
20 voice my opinion.

21 MS. DEVLIN: Thank you. Number 115,  
22 please.

1 MS. FALLON: Hi, my name is Myriam  
2 Fallon. I am here today as a resident of  
3 Philadelphia, as well as the Pennsylvania field  
4 organizer for Greenpeace. I want to commend the  
5 EPA for conducting public hearings on its two  
6 vastly different proposals concerning public and  
7 environmental safety standards for the disposal of  
8 toxic waste from coal-burning power plants.

9 In spite of the hazards, the disposal  
10 and reuse toxic coal ash waste has received little  
11 to no oversight so far in many states. It has  
12 only been recently that the number of known  
13 contamination sites has escalated as a result of  
14 research by citizens, public interest groups and  
15 state agencies. It may, in fact, be the  
16 proverbial tip of the iceberg.

17 Pennsylvania ranks fourth in the country  
18 for coal ash generation, representing an aspect of  
19 coal's legacy often discounted in the pursuit of  
20 so-called cheap energy. There is nothing cheap  
21 about toxic drinking water or cancer clusters  
22 caused by coal ash contamination. It is just that

1 the cost is borne by the community and individual  
2 citizens rather than corporations producing these  
3 toxic substances. Until now, a blind eye has been  
4 turned toward the public impacts of this toxic  
5 waste stream. It has been acceptable somehow to  
6 simply overlook the several impoundments and  
7 landfills that are unlined right here in  
8 Pennsylvania.

9           It is the current regulation that  
10 allowed the release of an estimated 100 million  
11 gallons of fly ash over 10 acres from PPL Martins  
12 Creek Station. According to the EPA, this case  
13 resulted coal ash contaminated water being  
14 released into the Delaware River, as well as the  
15 pollution of nearby groundwater.

16           Responding to pressure from the coal  
17 industry, prior administrations have allowed the  
18 industry to self-regulate under a patchwork of  
19 state directive leading to the extensive  
20 contamination of water and land by toxic heavy  
21 materials, such as arsenic and mercury, in largely  
22 low income and otherwise disenfranchised

1 communities. This is exactly why the EPA should  
2 regulate coal ash under Subtitle C of the RCRA.

3 Business as usual clearly isn't working.  
4 Federal and state regulators were looking the  
5 other way when the retention pond wall collapsed  
6 at TVA's Kingston plant in Tennessee and released  
7 more than an estimated billion gallons of toxic  
8 coal ash and waste into the countryside in 2008.  
9 The EPA and the administration must oversee the  
10 coal industry in a manner that will protect public  
11 health against the conflicting interests of the  
12 coal executives' profits. Thank you.

13 MS. DEVLIN: Thank you. May I have  
14 numbers 92, 93, 94, 99 and 100.

15 At the same time number of 100 or less,  
16 who has not been called, they would also come  
17 forward please.

18 MR. ISA: First of all, thank you for  
19 giving me the opportunity to talk tonight. My  
20 name is Ulber Isa. I am the Operations Manager of  
21 the Essex Cement Plant located in Port Newark, New  
22 Jersey. I'm here to oppose the EPA ruling on fly

1 ash as a hazardous material.

2 Given that I don't have too much  
3 time to go into the details, I'll just go briefly ask  
4 the question of what are the benefits of recycling  
5 fly ash, are there any benefits, and how will the  
6 regulations effect those benefits?

7 I'm going to start with some numbers.  
8 In the 2000, we have recycled 48,000 tons of fly  
9 ash. By 2008, we increased to 60 millions ton of  
10 fly ash, which is an increase of 33 percent or 20  
11 million tons more consumed. The reason for the  
12 increase is because the cement industry is finally  
13 realizing that fly ash has benefits and use the  
14 fly ash in concrete, which is economical. It is  
15 less expensive than cement, so therefore, it  
16 reduces the liquidity of the concrete. There area  
17 also quality benefits. It improves concrete  
18 performances and increases the durability of the  
19 structure and gives better workability.

20 I'm here to talk about the environment,  
21 and how recycling of fly ash effects the  
22 environment. By using more fly ash in recycle,

1 you reduce the CO2 emissions. For each ton of fly  
2 ash, we save a ton of CO2 emission into the  
3 environment. In 2008 alone, we save 12 million  
4 tons of CO2. Since 2000, we have saved 1017  
5 millions tons of CO2. It also reduces the  
6 electricity amount because the substitution of  
7 cement uses less power usage, so the electricity  
8 is less.

9           Since 2008 alone, we saved 169 trillion  
10 BTUs. This data was gathered by a Electrical  
11 Power Research company. It also saves more usage.  
12 The more usage when we use fly ash and mixes, it  
13 requires more water. Again, the data in 2008 we  
14 have saved 28 million gallons of water.

15           After all, there's two ways of disposing  
16 fly ash. It's either putting it landfills or  
17 recycling, so the choice is yours. If you do not  
18 recycle fly ash in 2008, just by recycling you  
19 saved 1 million cubic yards of landfill space or  
20 2.9 billion disposal, so obviously the question is  
21 what happens if EPA rules fly ash is a hazardous  
22 material and the benefits will just go away? The

1 question we keeping asking now is are we helping  
2 the environment by increasing the CO2 emissions?  
3 Are we helping the environment by increasing the  
4 power usage? Are we helping the environment by  
5 dumping all the fly ash in the landfill? Those  
6 are the questions that I have to answer to my  
7 kids, which I have two, also, to my grand kids.  
8 I'm urging you to use your common sense and rule  
9 fly as a nonhazardous material. Thank you.

10 MS. DEVLIN: Thank you. Number 93,  
11 please.

12 MR. CAHILL: Good afternoon. My name is  
13 Jonathan Cahill, and I work for Separation  
14 Technologies. I thank you for the opportunity to  
15 talk to you today concerning the issue of the  
16 waste classification of fly ash and the reasons  
17 why I oppose fly ash regulation under Subtitle C.

18 I do work in the fly ash business, and  
19 one of the reasons I like what I do is getting the  
20 opportunity to tell and acquaintances about what  
21 it is I do. I usually start telling them that my  
22 company works at coal power plants, which where I

1 live is often met by a bit of apprehension, but  
2 then I go on to tell them about the byproduct of  
3 fly ash, and how my company has a beneficiation  
4 process by which we turn this waste into a useable  
5 product for concrete. I inform them how over a  
6 million tons of waste every year, and my company  
7 redirects it from landfills into concrete. How  
8 each one of those tons is a ton less of CO2 is  
9 emitted into the atmosphere. In addition, the  
10 concrete is actually a stronger and more durable  
11 product with fly ash added. It is fun to watch  
12 their face as they express an interest as they  
13 hear how we use a waste is to improve our world.

14 Recently, there was a terrible and  
15 unacceptable fly ash spill in Tennessee, and I  
16 fully agree that something needs to be done to  
17 ensure this does not happen again. I'm glad the  
18 EPA is coming and it is going to enact regulations  
19 to ensure that our neighbors and our environment  
20 are safe, but, I believe there is a great risk in  
21 labeling fly ash as hazardous under Subtitle C.  
22 The perception and stigma that would follow this

1 labeling would likely have far reaching effects on  
2 the use of fly ash in concrete. The average  
3 person won't take the time to understand how fly  
4 ash could be hazardous waste if it is away in a  
5 landfill some place, but it is perfectly safe when  
6 it is made in concrete in the basement where their  
7 children play. Many architects and builders do  
8 not want to risk to perceive the potential  
9 liability of specifying fly ash into the concrete.  
10 The EPA has long held based on extensive testing,  
11 the safest place for fly ash is in concrete, so  
12 the travesty for fly ash to cease to be used in  
13 that application. All of the regulations, which  
14 are so needed, can be achieved through RCRA  
15 Subtitle D without the great negative impact on  
16 our environment that would come through Subtitle C  
17 classification.

18 My job is a source of great pride to me  
19 because of the impact I can have on the  
20 environment. I ask that in order to ensure the  
21 positive environmental impact of fly ash will  
22 continue, I ask that you decide not to regulate

1 fly ash under Subtitle C. Thank you.

2 MS. DEVLIN: Number 94, please.

3 MR. FLYNN: Hello, my name is Kyle  
4 Flynn, and I am here speaking on behalf of  
5 Separation Technologies. I am arguing against the  
6 proposed Subtitle C hazardous waste designation.

7 It is difficult to think of a commodity  
8 more central to modern life than electricity. The  
9 abundance of relatively cheap electricity has, for  
10 many years, allowed the United States to develop  
11 its economy and improve its standard of living.  
12 According to the Department of Energy, 45 percent  
13 of US electricity generation was provided by coal  
14 in 2009. With 250 billion tons of proven  
15 recoverable reserves, coal will continue to  
16 provide a major source of the nation's energy now  
17 and into the future.

18 As the rate of coal-fired power  
19 generation, and thus volume of coal combustion  
20 byproducts has grown, so has the industry to  
21 safely beneficiated this material. Separation  
22 Technologies, and many others, have developed

1 processes to convert coal ash into a product that  
2 can be safely used in concrete production. Once  
3 coal ash has been recycled into concrete, no  
4 danger of ash spills or heavy metal leaching  
5 exists. In short, this process is safe. The  
6 avoidance of coal ash entering a landfill, and the  
7 carbon dioxide emissions offset from the cement  
8 replacement are tangible benefits as well.

9           Unfortunately, EPA's proposed Subtitle C  
10 hazardous waste designation would hamper efforts  
11 to sustainably recycle fly ash into concrete.  
12 Utility companies, fearful of future litigation,  
13 will not allow anything bearing the title of  
14 hazardous waste to be moved off the facility for  
15 beneficial use. Instead of being recycled, this  
16 material will be sent to a landfill, an expensive  
17 and unnecessary cost that will ultimately be  
18 carried by electricity consumers.

19           Allowing coal ash to accumulate in  
20 landfills across the country is not only costly,  
21 but unwarranted. In numerous documents, including  
22 testimony given to Congress as recently as 2008,

1 the EPA has asserted that the risks associated  
2 with the reuse of coal ash in concrete are, quote,  
3 likely to be insignificant. In 2000, the EPA  
4 concluded that national regulation under the  
5 Resource Conservation and Recovery ACT, RCRA, is not  
6 warranted. The science behind coal ash has not  
7 changed since these statements were issued, only  
8 the politics.

9 In summary, I urge the EPA to carefully  
10 consider the effects of the proposed Subtitle C  
11 regulatory approach, and the unintended  
12 consequences that would follow in its wake. Coal  
13 ash does not meet the qualifications for hazardous  
14 waste, and should not be labeled as such. Such a  
15 stigma would limit its beneficial reuse and  
16 increase the volume of coal ash landfilled each  
17 year. The environmentally responsible thing to do  
18 is support beneficial as a means of reducing  
19 coal ash waste. Thank you for allowing me the  
20 opportunity to speak here today.

21 MS. DEVLIN: Thank you. Number 99,  
22 please.

1 MS. MARTIN: Hi, my name is Rachel  
2 Martin. I live in Wilkinsburg, Pennsylvania in  
3 Allegheny County. At first, I would just like to  
4 state my strong support for heavily and forceable  
5 regulations to protect our community from toxic  
6 coal ash under Subtitle C of the RCRA. I would  
7 like to read testimony from Jerry Tylka, a life  
8 long resident of LaBelle, Pennsylvania, who was  
9 unable to be here today.

10 As a young boy, I watched a pristine  
11 farm transform into a large slate dump. A farm,  
12 as a boy, where I enjoyed hunting for rabbits,  
13 quail, rings neck, pheasant and deer. A farm that  
14 in the spring, we would pick puffball mushrooms,  
15 in the summer, blackberries and in the fall black  
16 walnuts. Before the school year ended Maxwell  
17 Elementary School would take the entire school on  
18 a picnic on this farm known as the Dellarose Farm.

19 Today, we have a large waste dump with  
20 three ponds being incased by fly ask, fly ash that  
21 is loaded with many carcinogenic elements. The  
22 ponds are loaded with settlement from the coal

1 washing process and now runoffs from the fly ash.  
2 These ponds, after a rain, overflow and pollute  
3 the nearby stream known as Big Meadow Run, which  
4 flows into the Monongahela River. Fly ash, coal  
5 ash, that is now impounded on a waste dump  
6 leaching into our groundwater and three ponds  
7 located on the landfill. Not only are the  
8 concerns of the leaching into the groundwater,  
9 but, also, the concern of the structural failures  
10 of the impoundments like that which occurred at  
11 the Tennessee Valley Authority's plant in  
12 Kingston, Tennessee.

13 The fly ash produces a dust that  
14 contaminate the air around us. Dust, which is  
15 loaded with carcinogenic elements. The very air  
16 we breathe could be causing many of the ailments  
17 that many of the residents of the LaBelle,  
18 Maxwell, Melrose and Luzerne areas have concerns  
19 with. The very air we are breathing may be  
20 causing ailments, such as asthma, cancer, eczema  
21 and numerous stomach problems. In my family of  
22 six that live in this area, four of us have been

1 diagnosed with some type of lung disease: My wife  
2 and granddaughter with asthma, daughter and wife  
3 with a chronic cough and myself with chronic  
4 obstructive pulmonary disease. As proof of the  
5 pollution, I can show you the residue in my pool  
6 in the summer and on the pool cover in the winter  
7 or spring and on the siding of my home.

8 Stricter laws need to be passed and  
9 enforced. How many lives do we need to lose  
10 before something is done? We are rural people  
11 that need help in controlling our environment. We  
12 do not ask for much, but we would like our area to  
13 be cleaned up with the help of new and stricter  
14 laws. Give us back our clean air and water. Stop  
15 killing our neighbors. Give our youth the  
16 enjoyment that I enjoyed when I was a young person  
17 growing up in a rural area. Give us back our  
18 wildlife that we enjoyed when we were young.  
19 Clean up our streams, so we can enjoy the fresh  
20 water that once ran down the valleys in the  
21 Monongahela River. Make our drinking water  
22 contaminated free. Remove the arsenic, lead and

1 magnesium from our river, source of our drinking  
2 water.

3 Please include fossil fuel combustion  
4 waste in the Subtitle C of the Resource  
5 Conservation and Recovery act. Thank you.

6 MS. DEVLIN: Thank you. Again, we are  
7 running ahead of schedule, so I will be calling  
8 numbers of walk-ins. Number 100, number 110, 112,  
9 117 and 131. Number 117. Thank you.

10 MR. SOWKO: Good evening. I would like  
11 to thank you for this opportunity to speak  
12 tonight. My name is Michael Sowko. I am employed  
13 by RRI Energy as a Senior Instrumentation and  
14 Electrical Technician at the Elrama Power Plant.  
15 I also serve as an elected officer in the position  
16 of Executive Board Chairman for the International  
17 Brotherhood of Electrical Workers Local 29 right  
18 from here in Pittsburgh. I represent 129 members  
19 that operate and maintain the Elrama, Cheswick and  
20 Brunot Island generation facilities. Both Elrama  
21 and Cheswick are coal-fired plants that utilize  
22 scrubber technology for SO2 removal, catalyst and

1 SNCR technologies for NOX control.

2 My members want it known that they are  
3 dedicated to performing their duties of operating  
4 and maintaining these plants in the most safe and  
5 professional manner to provide a product that is  
6 reliable and cost efficient while maintaining  
7 environmental compliance in all aspects of  
8 production. We devote our time, talents and  
9 energies toward family and civic obligations. We  
10 live in the Greater Pittsburgh, Mon-Valley and  
11 Allegheny Valley neighborhoods. We are raising  
12 families and contributing to our local tax base.  
13 We, most of all, understand what it means to carry  
14 the responsibility of being environmental stewards  
15 for the benefit of the future of our children and  
16 grandchildren. That's why I come before you  
17 tonight with support of my membership to go on  
18 record supporting regulation of coal combustion  
19 residuals under Subtitle D of Resource  
20 Conservation and Recovery Act.

21 This proposal would permit the  
22 beneficial use of coal ash without the stigma

1 associated with classifying CCRs under the same  
2 regulations that regulate hazardous waste. We  
3 support the need to establish safety requirements  
4 to address structural integrity at CCR sites in  
5 order to prevent another incident like the one at  
6 the Tennessee Valley Authority's Kingston Fossil  
7 Plant in Tennessee. In addition, the IBEW fully  
8 supports the other requirements under Subtitle D  
9 that are protective of human health and the  
10 environment. Continued use of CCRs for beneficial  
11 use projects provides sales revenues, avoids  
12 landfill disposal costs and, very importantly,  
13 maximizes existing landfill capacity. Being able  
14 to pursue beneficial use projects and marketing of  
15 CCRs within the intent of the Subtitle D  
16 regulations will help to maintain the four to one  
17 ratio cost advantage that exists in generating  
18 with coal verses using gas and oil. The added  
19 costs associated with a reclassification of CCRs  
20 under Subtitle C would severely impact many plants  
21 throughout the industry resulting in premature  
22 plant closures with more individuals being added

1 to the unemployment numbers at a time when the  
2 country can ill afford any more.

3 Placing CCRs under Subtitle C will  
4 greatly setback, if not destroy beneficial use  
5 efforts. Major projects that have or are  
6 currently taking place locally utilizing ash  
7 products from Cheswick and Elrama are as follows:  
8 Rostraver Airport runway safety area expansion. A  
9 total of 662,000 tons of material was beneficially  
10 used in a safe manner.

11 The IBEW fully supports regulation of  
12 coal combustion residuals under Subtitle D of the  
13 Resource Conservation Recovery Act. Thank you.

14 MS. DEVLIN: You very much. Do I have  
15 anybody with a number between 100 and 110 whom I  
16 have not called in the audience and would like to  
17 speak? Please come forward.

18 MR. GOOD: Number 101.

19 MS. DEVLIN: 101.

20 MR. GOOD: My name is Ed Good, and I'm  
21 representing The Utility Workers of America. Good  
22 Afternoon. My name is Ed Good. I am a proud

1 member of The Utility Workers Union of America  
2 Local 350 having worked at the First Energy R.E.  
3 Burger Plant for 32 years. I am also President of  
4 the Belmont-Monroe-Guernesy Counties Central Labor  
5 Council AFL-CIO, as well as a township trustee in  
6 Mead Township, Belmont County, Ohio wherein the  
7 Burger Plant is located.

8 For us, and the other 6,500 union  
9 workers at First Energy, jobs are the most  
10 important issue regarding any new coal ash rules  
11 established by the U.S. EPA. We believe coal ash  
12 can be safely disposed of under regulations that  
13 classify it as nonhazardous.

14 We fear that reclassifying coal as a  
15 hazardous waste could significantly reduce, if not  
16 eliminate, the potential to recycle and  
17 beneficially reuse what we call coal combustion  
18 residue, or CCRs. As a result, jobs could be lost  
19 at power plants and at facilities that currently  
20 use recycled coal ash.

21 For example, speaking as a First Energy  
22 employee, we have develop and operate one of the

1 world's largest gypsum recycling facilities at our  
2 Bruce Mansfield Plant. Each year nearly  
3 half-a-millions tons of gypsum is supplied at  
4 National Gypsum for wallboard manufacturing. This  
5 world-class operation, built in 1999, specifically  
6 diverts CCRs from disposal while providing needed  
7 local jobs in the Shippingport, Pennsylvania area.  
8 As a labor leader and local government official, I  
9 fear classifying CCRs as hazardous could effect  
10 this and other operations like her across the  
11 country.

12 We support U.S. EPA's regulation of CCRs  
13 as a nonhazardous waste, which provides for  
14 consistent regulation across the nation. I also  
15 know First Energy is committed to the safe and  
16 environmentally sound reuse and disposal of this  
17 material.

18 Approximately, 30 percent of CCRs from  
19 First Energy's coal-based facilities are utilized  
20 annually in recycling applications, including the  
21 wallboard I just mentioned, or in concrete and  
22 other construction material. These efforts

1 support hundreds of local businesses and thousands  
2 of jobs while reducing the need for additional  
3 landfill space. Any change in classification  
4 could put these jobs at risk at a time when our  
5 economy cannot afford this type of negative  
6 impact.

7 Over the last 30 years, the U.S. EPA has  
8 continually identified nonhazardous waste  
9 regulation as the preferred approach for ensuring  
10 the safe recycling and disposal of CCRs. We don't  
11 think anything needs to be changed this time  
12 around either.

13 Regulation of this material as hazardous  
14 waste has the potential to divert recyclable  
15 materials into disposal facilities and eliminate  
16 the many benefits of recycling CCRs. All of this  
17 translates into increased costs compared to the  
18 nonhazardous option without any commensurate  
19 benefit to the environment. Thank you for your  
20 attention.

21 MS. DEVLIN: Thank you. Next speaker  
22 can you come forward and tell us your number.

1 MS. NICHOLS: 102.

2 MS. DEVLIN: 102. Thank you very much.

3 MS. NICHOLS: My name is Lauren Nichols.

4 I'm from LaBelle, Fayette County, a concerned  
5 citizen. I'm 23 years old, recently married and  
6 moved to the area. My husband grew up in LaBelle,  
7 so even before we bought our house, I was still  
8 around the area.

9 Our front porch is so dirty every day  
10 from this grayish dark powder, could this be the  
11 poisonous fly ash that enters our lungs every time  
12 we breathe? Not only is it on everything outside,  
13 the inside of the house has it, too. Fortunately,  
14 my husband and I have no serious medical  
15 conditions, but we both suffer from allergies.  
16 The main allergy that I have is dust, so living  
17 near this fly ash dump really doesn't help my  
18 condition.

19 The trucks that go up and down the dump  
20 never have covers on them, so you can watch the  
21 dust fly off as they drive up and down the street.  
22 Obviously, this can't be safe for us to be

1       inhaling.

2                   Moving on to my drinking water. How  
3 safe can it be when the water company is getting  
4 the water from the river that the creeks and  
5 streams pour in to. Obviously, not all the water  
6 is coming from the LeBelle side, but there are a  
7 few large creeks that do, in fact, come from the  
8 dump and go right into the river. As if this  
9 wasn't bad enough, the fly ash comes up on barges.  
10 In my opinion, there's probably fly ash dropped  
11 into the river from the barges. Our drinking  
12 water has been tested, and even though it's obvious  
13 that there's fly ash somehow making its way into  
14 the water, we still have to drink it.

15                   In my opinion, something needs done  
16 about this dump. I'm young and have a long life  
17 ahead of me. At 23, I shouldn't have to worry if  
18 what I'm drinking and inhaling is going to cause  
19 me cancer. I support Subtitle C. Thank you your  
20 time.

21                   MS. DEVLIN: Thank you. Number?

22                   MS. SHIMKO: 105.

1 MS. DEVLIN: Number 105. Thank you.

2 MS. SHIMKO: My name is Shannon Shimko,  
3 and I just recently moved to the area of LaBelle,  
4 PA in Luzerne Township. Today, I have come before  
5 you to express my concerns with the water in my  
6 community. Lately, the fly ash dump has been  
7 releasing the fly ash into the streams around  
8 river around us. They have released enough of  
9 this byproduct causing our water to be  
10 contaminated. The fly ash has several harmful  
11 chemicals that over time can be harmful for  
12 adults, but can harm our children more quickly.  
13 Some of the chemicals include silicon dioxide,  
14 aluminum oxide, iron oxide, arsenic, lead and  
15 mercury, which these companies do not understand  
16 is how dangerous this combination is to humans.  
17 Some of the following are health risks linked to  
18 the different chemicals found in our water that  
19 was contaminated by the fly ash: Arsenic has been  
20 linked to diabetes, cancer and other health  
21 related issues in adults, the aluminum has been  
22 linking to Alzheimer's in older adults and the

1 mercury has been linked to autism in children.  
2 Lastly, lead has been linked to behavior problems,  
3 hearing problems, learning problems and slowed  
4 growth in children. In adults, it can cause  
5 serious health problems, such as high blood  
6 pressure, damage to the brain, nervous system,  
7 stomach and kidneys.

8 My number one concern is for the  
9 children who are drinking this water. As a mother  
10 of three, I encourage my children to drink water  
11 instead of juices and other drinks with additives.  
12 My children can access the water from the system  
13 on the fridge at any time, but they are not able  
14 to see if there is something wrong or if it tastes  
15 funny. There is a school where children get water  
16 out of the fountain. How much of these chemicals  
17 are our children receiving daily? The affect of  
18 these chemicals are the worst on infants and  
19 children ranging from the ages of newborn to 3  
20 years of age. If the toxic exposure levels are  
21 high enough during the critical growth stages of  
22 developing, the body systems of children, they can

1       sustain permanent and/or death. What this company  
2       and many other do not realize is for every infant  
3       that takes a bottle alone, there are four to five  
4       chemicals in every bottle.

5                I feel we need to take immediate action  
6       toward this issue because I know a lot of you have  
7       small children, grandchildren, nieces and nephews  
8       that you all love and care about just as I do. In  
9       addition to what I mentioned earlier, I have three  
10      children ages 5, 2 and 8 months old who drink this  
11      water everyday. This company is putting my  
12      children at risk, and I think someone needs to put  
13      a stop to it. I am sure you would feel the same  
14      way I do if your family was in danger.

15               Please take into account these children  
16      can't tell you if something hurts, and you may not  
17      know if they are poisoned until it is too late.

18      Thank you.

19               MS. DEVLIN: Thank you.

20               MS. RIPPEL: 100.

21               MS. DEVLIN: 100. Thank you.

22               MS. RIPPEL: Hello, my name is Raina

1 Rippel. I am speaking on behalf of the Center for  
2 Coalfield Justice to provide testimony for today's  
3 hearing on coal ash. As a coalfield justice  
4 organization, we are well aware that coalfield  
5 citizens suffer the consequences of many of our  
6 most unjust and inadequate regulations when it  
7 comes to resource extraction, energy use and waste  
8 disposal.

9 Coal ash represents one of the last  
10 steps in a process that begins with mining, and  
11 pollutes through every stage of coal cycle, from  
12 extraction to burning to disposal of waste.  
13 Coming from our air, our water and our land,  
14 citizens in the coalfields are bearing the brunt  
15 of a heavy pollution load. To call massive mine  
16 sites filled with toxic coal ash beneficial, as is  
17 done in Pennsylvania, is adding insult to injury.

18 As coal-fired power plants are  
19 increasingly regulated for their release of toxic  
20 air emissions, cleaning up the stacks means that  
21 more concentration of hazardous materials and  
22 heavy metals are found in coal ash. There is no

1 medical doubt that high levels of arsenic and  
2 other pollutants, such as lead and mercury found  
3 in coal ash are detrimental to human health. The  
4 stories we have heard from local residents living  
5 downstream or downwind from disposal sites today  
6 are shocking, and represent a serious public  
7 health concern for Pennsylvania citizens.

8 We are specifically urging the U.S. EPA  
9 to include minefilling projects under new proposed  
10 federal rules, designation C. These mine  
11 reclamation projects amount to open dumping and  
12 should be federally regulated. Listing coal ash  
13 under Subtitle D as a nonhazardous wastes leaves  
14 the door open for inadequate enforcement, improper  
15 reuse and insufficient monitoring of this  
16 demonstrably hazardous substance.

17 Within our state, the Pennsylvania DEP  
18 regulations represent a lack of state regulatory  
19 oversight and enforcement, because PA's DEP  
20 advocates coal ash is beneficial. Given the known  
21 or suspected health consequences of major coal ash  
22 repositories, such as Little Blue, and probability

1 that minefilling may leach into groundwater, such  
2 a beneficial use designation, is downright  
3 dangerous, and serves only to pander to industry's  
4 need for reuse or improper disposal of this toxic  
5 substance.

6 Pennsylvania has suffered for decades  
7 from both the historical and modern-day impacts of  
8 the coal cycle, and our most important resource to  
9 protect must always be the health and well-being  
10 of our citizens and our communities. Please take  
11 into account the testimony you have heard today  
12 from citizens across the state in setting the  
13 appropriate federal rules for regulating coal ash.  
14 Thank you.

15 MS. DEVLIN: Thank you. Numbers 110,  
16 131, 145, 146 and 217. Are any of those numbers  
17 in the room? While those people are coming, in  
18 addition, is there anybody that is in the room  
19 that has a number of 120 or below that has not  
20 been called? Thank you. Number 145.

21 MR. HALERRUD: My name is Bruce  
22 Halerrud. I am one of the employee owners of

1 Black Diamond Granules. The company is located in  
2 Saint Paul, Minnesota, which is about 1,000 miles  
3 northwest of here.

4 Our company processes boiler slag  
5 granules into working granules and abrasives. As  
6 an owner of a popular Minnesota business, I came  
7 here to ask the EPA to consider scientific data,  
8 as well as the practical implications of  
9 regulating boiler slag. I believe that as a  
10 matter of sound science and avoiding a potentially  
11 devastating economical impact, that EPA determine  
12 coal slag to be regulated as a Subtitle D  
13 material, not a Subtitle C hazardous waste.

14 Boiler slag is one of the byproducts of  
15 burning coal to produce electricity. Coal is  
16 burned at high temperatures producing a molten  
17 coal ash that is quenched with water for cooling.  
18 The quench transforms the molten ash into a  
19 vitrified mass with limited permeability. Any and  
20 all heavy metals of the boiler slag are locked up  
21 in the vitrified matrix. Vitrification is a  
22 successful waste treatment process while supported

1 by the EPA.

2           The data show that any metal in the slag  
3 granules maintain their encapsulated status are  
4 not harmful and, in fact, are similar in nature to  
5 the soil in your backyard. We have previously  
6 supplied EPA with independent testing data of our  
7 Finance Vitrification Granules that support this  
8 conclusion. This data reconfirms EPA's own  
9 studies previously conducted declared boiler slag  
10 to be unarmful. As you know, 80 percent of all  
11 shingles contain boiler slag. If EPA declares  
12 boiler slag to be a special waste under Subtitle  
13 C, homeowners all across the USA would see the  
14 cost of roofing repairs going up to 30 to 50  
15 percent, and homeowner's insurance rates  
16 increasing by 20 to 30 percent because of the  
17 stigma of the Subtitle C classification. That is  
18 not a situation that you need to be the homeowners  
19 of this country in.

20           It does not seem logical that a  
21 nonhazardous material should be regulated under  
22 Subtitle C because there are low levels of metals

1 present in the boiler slag to begin with and the  
2 metals that aren't present are locked up in a  
3 vitrified matrix that has very low permeability.  
4 I thank the EPA for their time and consideration.

5 MS. DEVLIN: Thank you. Number 146.  
6 Thank you.

7 MR. RAAD: Good afternoon. My name is  
8 Russell Raad. I am one of the employee owners of  
9 Abrasives Incorporated, a company located in Glen  
10 Uilin, North Dakota about 1,350 miles northwest of  
11 here. Abrasives Incorporated has been in business  
12 since 1991 recycling boiler slag into roofing  
13 granules for shingles and blasting abrasives.

14 As an owner of a profitable, surviving  
15 North Dakota business, I came here to ask EPA to  
16 consider scientific data, as well as the practical  
17 implications of regulating boiler slag not as a  
18 Subtitle C hazardous waste.

19 I believe that as a matter of sound  
20 science, boiler slag does not meet the definition  
21 of a hazardous material, thus should not be  
22 defined as a hazardous waste. My question to the

1 EPA is, by definition what identifies boiler slag  
2 chemically or scientifically as a hazardous  
3 material or waste in the CFR40? Does it have the  
4 definition characteristics of ignitability,  
5 corrosivity, reactivity, or toxicity? My research  
6 says no.

7 At EPA's Arlington, Virginia public  
8 meeting on August 30th, there were several  
9 allegations made by a competitor selling a  
10 competing product that unencapsulated boiler slag  
11 is a danger and threat to human health. It was  
12 also alleged that coal slag abrasives release  
13 hazardous airborne pollutants.

14 I'm compelled to share with you today  
15 and for the public, the results of an independent,  
16 third party laboratory analysis of my slag fines.  
17 This study was conducted by Minnesota Valley  
18 Testing Laboratories of Bismarck, North Dakota and  
19 it analyzed particulate fines from my plant, which  
20 are even finer than slag residue from an abrasive  
21 blasting job. The data shows that any metals in  
22 the slag granules maintain their encapsulated

1 state and are not harmful or hazardous. The data  
2 also indicates that the material is in its worst  
3 case is less than one tenth of the action levels  
4 that would classify the material as a hazardous  
5 substance. These results refute the speakers in  
6 Arlington, Virginia and Charlotte, South Carolina,  
7 who spoke of erroneous claims that boiler slag  
8 abrasives release hazardous waste pollutant and  
9 dangerous when used as abrasives. The data  
10 confirms EPA's previous studies that declared  
11 boiler slag to be inert, unarmful and  
12 nonhazardous.

13 Finally, we ask that the EPA continue  
14 unrestricted recycling of boiler slag as it does  
15 not meet the definition of a hazardous material or  
16 waste. To continue associating boiler slag as a  
17 hazardous waste increases the negative stigma  
18 among the public, industry and inviting  
19 competition to jump on the negative bandwagon  
20 although scientifically proven within the specs of  
21 a safe material. I support Subtitle D. Thank  
22 you.

1 MS. DEVLIN: Thank you. Does anyone in  
2 the room have a number and would like to speak?  
3 Please come forward and sit along the front in the  
4 chairs. Thank you. You guys can do any order,  
5 just tell us what your number is.

6 MR. POMYKALA: My name is Ron Pomykala.  
7 I grew up in Glassport, Pennysvlania. I am  
8 married to a girl that grew up in McKeesport,  
9 Pennsylvania, so we're familiar with environment  
10 here in the Mon Valley.

11 I would like to thank the EPA for  
12 letting me speak. I'm Senior Manager for a  
13 company in Cleveland right now called the Kish  
14 Company. The Kish Company manufactures and  
15 markets industrial minerals, extenders, and  
16 additives to the plastics, paint, rubber, ink,  
17 adhesives, sealants and construction industries.  
18 We recycle a CCP Cenosphere. I have sold products  
19 for years, and I've been involved in numerous new  
20 product development products.

21 Our President Obama talks about RMD (R&D?), a  
22 lot of these ways, and one way to substitute and

1 stimulate our economy. One key piece of  
2 information for RMD products, and work at the  
3 beginning, is an MSDS sheet on those products. As  
4 you know, an MSDS lists the individual components  
5 of the product that make up greater than 1 percent  
6 of the total compound. This lists the components  
7 of the product associated with risks involved with  
8 those components and the precautions needed to be  
9 taken to handle the material including disposal.  
10 Each MSDS lists the environmental, health and  
11 safety review. In many of these markets, even  
12 though there is a small fraction component of the  
13 material that is categorized as hazardous, that  
14 material is automatically disqualified. It cannot  
15 be considered in any new formulations because of  
16 cost, benefits, or potential quality improvements.  
17 It can't even get in the front door.

18 The EPA is considering Cenospheres as a  
19 Subtitle C waste. If a company will disqualify a  
20 material because there is a small component of  
21 hazardous, they will clearly disqualify an entire  
22 product that is listed as Subtitle C hazardous

1 waste. Calling it a special waste will make no  
2 difference as requirements for Aileen are the  
3 same. The EPA and the environmental groups has  
4 stated that they believe the amount of material  
5 recycled will increase with a Subtitle C  
6 designation. Let me tell you from the fill, not a  
7 desk jockey, but from an average Joe, this isn't  
8 true. If EPA stigmatizes Cenospheres with a  
9 Subtitle C designation, the resource will be  
10 disqualified from many new formulations from  
11 industry. We can't force for of this material  
12 into the marketplace if the people who use it  
13 refuse to test it.

14 The Subtitle D option has virtually the  
15 same environmental protection as Subtitle C. We  
16 fully support the EPA's efforts to protect  
17 families from heavy metal contamination related to  
18 the improper disposals of CCRs. Strong Subtitle D  
19 regulations would be the best solution. It will  
20 protect these families without needlessly  
21 destroying jobs. Thank you for your attention.

22 MS. DEVLIN: Thank you. Number 138.

1 Thank you.

2 MR. FORBECK: Thank you for having a  
3 chance to testify on EPA's proposed regulatory  
4 schemes. I'm Mike Forbeck. I'm the Waste Program  
5 Manager for the Pennsylvania Department of  
6 Environmental Protection. I am here representing  
7 the Commonwealth of Pennsylvania.

8 Pennsylvania has more than 30 years of  
9 experience with CCR management. Of the 20  
10 millions ton of CCRs generated per year, 11  
11 million tons are beneficially used and the  
12 remaining 8 to 9 millions tons are landfilled.  
13 Pennsylvania has residual waste regulations in  
14 place that govern the transportation, storage and  
15 disposal of CCR. Their regulations are similar to  
16 the Commonwealth's RCRA Subtitle D authorized  
17 municipal waste regulations and have been in  
18 effect since 1992. CCR landfills that have been  
19 designed and operated in accordance with these  
20 regulations have not resulted in pollution to  
21 groundwater, surface water or air, and these are  
22 the same residual waste regulations that were used

1 as a template for EPA's existing Guide for  
2 Industrial Waste Management. Pennsylvania's  
3 successful management of CCRs including tracking  
4 of historical waste analysis data generated over  
5 the last 30 years, does not indicate in any way  
6 the need for hazardous waste designation EPA is  
7 proposing.

8           According to EPA, the design and  
9 performance standards for the proposed regulations  
10 will likely be the same no matter what regulatory  
11 scheme is chosen. The major differences are that  
12 EPA asserts such a designation is necessary for it  
13 to retain and exercise appropriate enforcement  
14 authority and EPA cannot require states to permit  
15 landfills under Subtitle D proposal. Pennsylvania  
16 regulations already require performance standards  
17 that exceed those outlined in the Subtitle C or D  
18 proposal. By current regulations, Pennsylvania  
19 also requires facilities to be permitted or  
20 authorized to manage CCRs.

21           As to the need for the EPA enforcement,  
22 Pennsylvania's Solid Waste Management Act

1 authorizes the utilization of state enforcement  
2 authority is warranted. The use of this approach  
3 has been successful for Pennsylvania, as evidence  
4 by the 96 percent compliance rate. In addition,  
5 EPA already has broad 7003 enforcement authority  
6 and, therefore, does not need the additional  
7 authority under Subtitle C.

8           The detrimental effects of Subtitle C  
9 management are substantial and could effect  
10 beneficial use, cost and the capacity concerns for  
11 the disposal of this material. Pennsylvania  
12 continues to improve its regulations and, in fact,  
13 new regulations regarding the Pennsylvania use of  
14 CCRs are expected to be finalized later this year  
15 that incorporates recommendations from the  
16 National Academy of Sciences, which provides  
17 further evidence of the efficacy of Pennsylvania's  
18 current program.

19           Pennsylvania does not believe that  
20 additional regulations for the management of coal  
21 ash beyond RCRA Subtitle D are warranted.  
22 Classifying coal combustion residues under RCRA

1 Subtitle C would create unnecessary burdens to  
2 current management practices without producing any  
3 greater degree of environmental or public health  
4 protection. The Commonwealth opposes the  
5 rulemaking for Subtitle C, and is in support of a  
6 Subtitle D proposal with implementation  
7 authorization continuing with the states. Thank  
8 you.

9 MS. DEVLIN: Thank you. Number 217.

10 MR. REGAR: Good afternoon, everyone.  
11 I'd like to start by saying thank you to the  
12 Environmental Protection Agency for hosting this  
13 public hearing and listening to all the concerned  
14 citizens.

15 My name is James Regar. Although, I  
16 speak as an individual, I'd like to note that I'm  
17 President of the Student Government Association at  
18 Duquense University and also Chairperson of  
19 Pittsburgh Student Government Council. I know  
20 that my voice resonates among students and young  
21 professions across the city.

22 Just as the students and youth of

1 America today are very concerned with the  
2 environment. We are consistently at arms trying  
3 to protect and make sure regulation is put in  
4 charge. In fact, the third of this month, an  
5 entirely student lead initiative helped form the  
6 2010 Pittsburgh Energy Forum at Duquesne  
7 University. This forum was geared towards  
8 listening to and hearing from industry, federal  
9 and local officials about energy policy and the  
10 future of energy regulation across the state and  
11 on the federal level.

12           With that said, I would just like to say  
13 that environmental protection in the United States  
14 has come a long way throughout U.S. history, and  
15 that the industries have all -- I urge you today  
16 that please don't be swayed by industries'  
17 arguments to continue with lax regulation. You  
18 can't put a price to America's health and safety,  
19 but I think that needs to become less important.  
20 If I could choose between a higher energy bill and  
21 safe drinking water, I think that choice would be  
22 clear. Cool ash is choking our waterways around

1 the region and must be controlled.

2 In conclusion, I would just like to say  
3 that please listen to your heart and please place  
4 coal ash under Federal Regulation Subtitle C. I  
5 urge the Environment Protection Agency to work  
6 with Congress and President Obama's administration  
7 to end the coal industry and even work towards  
8 alternative energy sources across America. Thank  
9 you very much for your time.

10 MS. DEVLIN: Thank you. Number 152.

11 MR. BONNE: Thank you. I thank you for  
12 the opportunity to speak before you, council.  
13 Good afternoon. My name is Mark Bonne. I'm the  
14 Technology Manager for Sphere One, Incorporated.  
15 Sphere One is a domestic based supplier of  
16 speciality filters. The Cenospheres we supply are  
17 a byproduct of coal combustion that we market for  
18 specific industrial applications.

19 Cenospheres are inert lightweight  
20 aluminum silicate microspheres that are used in a  
21 variety of industrial applications, such as  
22 construction, refractory, recreation, and energy

1 service industries.

2 EPA has stated that a Subtitle C  
3 regulation will not create a disincentive for  
4 domestic based industries to use fly ash based  
5 products. Sphere One has reviewed the upcoming  
6 regulation with key customers and the majority of  
7 them have expressed their intentions to remove all  
8 forms of fly ash from their compounds if Subtitle  
9 C becomes law. Most of the alternative materials  
10 being considered carry additional cost and are  
11 lower performing. American industries will be at  
12 a competitive disadvantage to products made  
13 outside the U.S. using fly ash not subject to  
14 Subtitle C.

15 Our refractory customers will be  
16 especially hard hit by the loss of availability of  
17 these unique materials for which viable  
18 alternative yet to be developed. Cenosphere have  
19 become invaluable for specialty compounds used in  
20 the casting of aluminium and steel compounds. The  
21 most likely outcome for the multi-national  
22 companies will be to move the manufacturing jobs

1 off U.S. soil even the plants in EU, Canada and  
2 South America.

3 I support the EPA's need to protect the  
4 American public from heavy metal contamination,  
5 which were improperly stored. The heavy metals  
6 found in Cenospheres are fused into aluminum  
7 silicate shell offer no health risk. These  
8 materials are then encapsulated in cement or a  
9 polymeric matrix, which makes them biologically  
10 insoluble. If the EPA designates CCRs as  
11 hazardous waste when being disposed of, the  
12 American public will consider it hazardous  
13 materials in all cases and won't let their use in  
14 their homes. Subtitle D regulations with strong  
15 enforcement will allow American industries find  
16 suitable extended service life applications for  
17 fly ash products. This is a much better option  
18 than landfilling them under Subtitle C.

19 It isn't economically advantageous to  
20 landfill all these products and it's just  
21 transfers the problem from the power plant to the  
22 landfill. I agree that the proposed legislation

1 creates an incentive coal power to find  
2 applications for fly ash, but unfortunately, it  
3 make the materials unusable by private industry.  
4 If the EPA's intent is to assure that these  
5 materials be rendered environmentally inert, then  
6 Subtitle D is the best regulation. Thank you.

7 MS. DEVLIN: Thank you. Again, I'm  
8 going to is there anyone has been assigned a  
9 number, would like to come forward and speak at  
10 this time? Please come forward.

11 MS. ALBRIGHT: I just came in, so if  
12 there any protocol?

13 MS. DEVLIN: Just state your name for  
14 the court reporter and you have three minutes. We  
15 will keep your time.

16 MS. ALBRIGHT: My name is Eda Albright.  
17 I'm from Crescent, Pennsylvania, that's between  
18 Altoona and Johnstown. I'm here to speak as a  
19 grandparent. I am very fearful for my  
20 grandchildren. In case you haven't seen this map  
21 of Lawrenceville and this Little Blue, that they  
22 are talking about my grandchildren are right here

1 (indicating). Do you think I have something to  
2 worry about?

3 I don't know if you have ever heard of  
4 Johnstown, Pennsylvania, but there was a tragic,  
5 tragic flood there in 1989. The industrialists  
6 said it won't break. Two thousand people died.  
7 Do you think I have something to worry about?  
8 History tells us that industries does not have a  
9 moral compass. The only compass that they have  
10 are the laws that they have to answer to. They  
11 have nothing to lose if the EPA has the very  
12 accountability structure for these toxic  
13 chemicals. We need to quite guilty war house  
14 bills and ask why are we sick? Why are so many  
15 children sick? If you look at this situation, and  
16 you see that all ranges of arsenic in local water  
17 supplies and people are bailing out. We don't  
18 need much more evidence.

19 If anything have happens to my  
20 grandchildren because of this, God for bid. God  
21 for bid. We are counting on the EPA to do its  
22 part because yes indeed, we have a partnership. A

1 partnership of consumer, citizens, business  
2 industry, government and the spirit that moves it.  
3 That spirit that moves it -- I hear these words  
4 economics, which is nothing but money.  
5 Economically feasible. Don't tell me economically  
6 feasible when you're talking about my  
7 grandchildren. Thank you.

8 MS. DEVLIN: Please come forward. Your  
9 number, please.

10 MS. GOURLEY: Number 114.

11 MS. DEVLIN: I'm sorry?

12 MS. GOURLEY: Number 114.

13 MS. DEVLIN: Thank you. Number 114. I  
14 understand that 144 and 148 are here. If you  
15 would please come forward and sit.

16 MS. GOURLEY: Good afternoon. My name  
17 is Deborah Gourley. I live in Hookstown,  
18 Pennsylvania near Little Blue Run, which is a coal  
19 ash impoundment in Greene Township, Beaver County,  
20 Pennsylvania. Thank you for the opportunity to  
21 speak to you today regarding this important issue,  
22 regulations that cover coal ash pits. I represent

1 my family and those who could not be here today to  
2 ask the EPA to enforce stuffer rules and  
3 regulations when it comes to the disposal of ash  
4 from coal-fired power plants. We all enjoy the  
5 light that electricity brings to our lives, but we  
6 must not forget the dark side of coal-fired power  
7 plants.

8 First Energy Corporation, the owner of  
9 Little Blue Run coal ash impoundment, has claimed  
10 to be a good neighbor to the residents of Greene  
11 Township, Beaver County, Pennsylvania. I know  
12 that many Greene Township residents have been here  
13 today to tell their stories, and I am sure that  
14 good neighbor was not an adjective used to  
15 describe First Energy Corp. Good neighbors do not  
16 dump their trash in your backyard. This is what  
17 First Energy is doing with Little Blue. Not only  
18 are they dumping their trash, but the trash is a  
19 slurry of ash mixed with water that contains high  
20 levels of toxic chemicals, heavy metals and  
21 elements. They now want to expand their trash  
22 dump. They continue to purchase land from

1 existing homeowners that surround Little Blue in  
2 hope that Greene Township residents, as a whole,  
3 will be willing to let the expansion of Little  
4 Blue happen. First Energy moves about our  
5 community intimidating homeowners into signing  
6 documents allowing them to overstep state  
7 boundaries when it comes to property lines that  
8 border Little Blue coal ash impoundment. First  
9 Energy moves about as if they have no one to  
10 answer to, do they? The majority of Greene  
11 Township residents have told First Energy to go  
12 away. We are no longer drinking the Kool-aid.

13 Today, 18 percent of Greene Township is  
14 Little Blue Run coal ash impoundment. Eighteen  
15 percent. Isn't that enough? You have seen the  
16 faces of people from Greene Township today. There  
17 is a human side to this coal ash disposal. We are  
18 living it. People in our community are sick.  
19 Many of our residents have cancer. We believe the  
20 reason that our community has a high rate of  
21 cancer is due to the lack of EPA regulations for  
22 coal ash disposal. It's toxic.

1           I'll get to my point because I'm running  
2 low on time. EPA, it's time for you to take the  
3 bull by its horns. You step up and do the right  
4 thing. Stand up to the power companies that argue  
5 that the current regulations are enough. It's  
6 obvious that current regulations are not enough  
7 and that's why we are here today. Thank you.

8           MS. DEVLIN: Thank you. Number 144.

9           MR. CAREY: My name is Mike Carey. I am  
10 President of the Ohio Coal Association. I am here  
11 to testify today on behalf of the more than 90  
12 coal collection companies and associated members  
13 in Ohio.

14           I'm here today to send a clear message  
15 to Lisa Jackson, EPA Administrator. That her  
16 efforts to destroy the Appalachian Coal Industry  
17 are not going unnoticed. This administration is  
18 engaged in a litany of efforts to destroy coal and  
19 the electricity generating industries of this  
20 country. This proposed coal ash rule is only one  
21 of the more recent and extreme EPA rumors twisting  
22 the Congressional mandate in an intent and

1 ignoring statutory boundaries.

2           Coal accounts for more than half of the  
3 nations electricity and in Ohio almost 90 percent.  
4 Our industry employs thousands of hardworking men  
5 and women. Coal is the backbone of the fuel that  
6 fuels our nation and what has built our nation.  
7 Despite the economic condition this nation is  
8 facing, the EPA, under Administrator Jackson, has  
9 sacrificed economic development jobs and reliable  
10 electricity on the alter of irrational fear.

11           It is this proposed rule that the EPA is  
12 unable to decide how best to cripple an industry  
13 that millions of Americans rely on has put forward  
14 two potential options. Either is acceptable.  
15 Mandating coal ash as a hazardous waste is  
16 ridiculous. Doing so will not result in  
17 environmental protection, but only more owners'  
18 regulatory burden.

19           Further, the nation's existing hazardous  
20 waste landfills are not designed to deal with the  
21 characterization of coal ash as hazardous. The  
22 sheer product of coal ash, which is swamp, the

1 limited capacity of the nation's landfill and  
2 properly, safely managing each of its hazardous  
3 waste facilities.

4 The new proposed rule is aimed at  
5 exactly that. Making coal-fired power and  
6 manufacturing coal impossible because of the high  
7 cost of the regulatory burden. Each dollar going  
8 towards the cost of the unnecessary regulation is  
9 a dollar that will not be spent on the employees  
10 and the communities of the future.

11 The EPA's new proposed rule is a  
12 reactionary response to isolated incidents and is  
13 nothing more than another attempt to put coal,  
14 only with the companies and individuals that we  
15 represent, out of business. The efforts to  
16 destroy the Appalachian coal industry is simply  
17 not going unnoticed. Thank you for your time.

18 MS. DEVLIN: Thank you. Number 147,  
19 please.

20 MR. JAMISON: I'm D. Michael Jamison of  
21 Rosebud Mining Company in Cadiz, Ohio. Rosebud's  
22 a Pennsylvania corporation with headquarters in

1 Kittanning. Rosebud's primary business is  
2 producing coal for the electric utility industry  
3 and also for the steel industry. We have a  
4 secondary business in Ohio, which is operating two  
5 ash disposal landfills.

6 I've worked for several coal companies  
7 and supplied coal to electric utilities since June  
8 of 1969. For 41 years, I've been involved in  
9 production of sales, consumption of coal by  
10 utilities for electrical generation. I'm very  
11 familiar with the way power plants operate, how  
12 expose of ash and the entire cycle of producing  
13 electricity.

14 Since 1970, I've noticed an  
15 increasingly-cumbersome regulatory environment  
16 related to the production, consumption of coal and  
17 handling coal combustion residuals, CCR. Every  
18 year has brought more and more stringent  
19 regulation related to the use of coal and CCRs.  
20 The federal government has expanded its reach from  
21 Washington, D.C. over all states and impinged upon  
22 the sovereignty of the states.

1                   Currently, the State of Ohio regulates  
2 the handling of CCR under law and regulation. The  
3 Ohio Environmental Protection Agency issues  
4 permits and makes sure they are complied with  
5 local and all of our operations are in full  
6 compliance with the regulations.

7                   In May of 2000, after eight years of  
8 President Clinton's USEPA oversight, the USEPA  
9 issued a regulatory determination on wastes from  
10 the combustion of fossil fuels, which conveyed  
11 USEPA's determination that CCR did not warrant  
12 regulation as hazardous waste under Subtitle C of  
13 the Resource and Conservation Recovery Act, RCRA.  
14 However, our current administration takes issue  
15 with that ruling and, and since taking office, the  
16 Obama Administration's offensive against coal is  
17 well documented.

18                   Through Administrator Jackson's actions,  
19 they have gone and put on the website that she and  
20 her staff of more than 17,000 professionals are  
21 working across the nation to usher in a so-called  
22 green economy, and as such has interfered with

1 coal permits by interfering with the Section 404  
2 permitting process by abolishing of the Nationwide  
3 Permits 21, and the issue of endangerment finding  
4 of December 2009 and announced their going to  
5 regulate greenhouse gases now under regulatory  
6 fiat.

7 Making CCRs a classified hazardous waste  
8 is nonsensical, unnecessary and harmful to our  
9 economy. It will add millions of dollars in  
10 additional costs to our electric bills without any  
11 environmental benefit.

12 Rosebud Mining opposes these proposed  
13 rules and will do everything to oppose them. We  
14 feel that the United States is different than  
15 Europe; we don't need European policies in the  
16 United States. Thank you.

17 MS. DEVLIN: Again, is there anyone in  
18 the audience who has a number and would like  
19 speak? I understand that perhaps numbers 158,  
20 163, and 219 are here, but anyone else is also  
21 welcome. Number 219. Thank you very much.

22 MS. SCHROEDER: Hi. My name is Rebecca

1 Schroeder. I am a student of the University of  
2 Pittsburgh. I don't come speaking for a company  
3 or even a town, but for humanity. I have been  
4 sitting here for a while now and intended to just  
5 listen, but after hearing some people speak, I  
6 felt compelled to speak.

7           One of the main differences between  
8 Subtitle C and D is that C calls for a state and  
9 federal regulation in areas where D is  
10 self-implementing. Self-regulation among  
11 companies that deal with coal ash will not work as  
12 long as coal ash remains an economic commodity.  
13 It is your job to protect the environment and it  
14 is theirs to make a profit, and there is no reason  
15 to assume that while federal monitoring is to do  
16 anything, but profits. After all how many people  
17 don't follow the speed limit until there is a cop  
18 around?

19           One of the main things that I've been  
20 hearing today is that classification of coal ash  
21 as a hazardous waste would create a stigma that  
22 would decrease its recyclable use in cement and

1 wallboard. As the EPA, I would like to see you  
2 care for the environment, not for the pocketbooks  
3 of those companies. Classifying something that is  
4 clearly affects human health as hazardous is a  
5 very good thing to do, but that's a huge process  
6 in that attempt. There is to need dress a lion up  
7 like a lamb when members of the industry should  
8 know that you can still tame a lion and you can  
9 still use coal ash perfectly even under Subtitle  
10 C.

11           Lastly, countless people have stood up  
12 here and said that using fly ash in concrete as  
13 opposed to pure concrete decreases CO2 emission,  
14 and thus, do to the increase of production of  
15 concrete, which would be the effect of the  
16 proposed stigma, if there was one, there would be  
17 an increase of CO2 emissions, which would then  
18 work on the problem of global warming. If we  
19 really wanted to significantly react on the  
20 problem of global warming, there wouldn't be any  
21 byproducts of coal plants because there wouldn't  
22 be any coal plants.

1           I stand here to encourage the EPA to  
2 look beyond coal and towards the wind and the sun,  
3 the renewable energy sources of the future. I  
4 encourage you to choose option C for the health of  
5 the communities near the coal ash disposal sites,  
6 and then choose the pathways of coal altogether  
7 for the health of the earth. Thank you.

8           MS. DEVLIN: Thank you very much. Is  
9 there anyone in the audience who has been assigned  
10 a number and would like to speak?

11           Hearing none, we will take approximately  
12 a 15-minute break at this time. We will reconvene  
13 in about 15 minutes. Thank you.

14                           (Whereupon, at 5:05 p.m., an  
15                           afternoon recess was taken.)

16  
17  
18  
19  
20  
21  
22



1 You can move forward. Just show us what your  
2 numbers are. 158.

3 We've got a place for anyone who wants  
4 to speak right now to sit up here next to the  
5 speaker. Number 158, you can start.

6 MR. WINBERG: I'm Steven Winberg, Vice  
7 President of Research and Development at Consol  
8 Energy.

9 Consol employs over 8,200 people with an  
10 annual payroll of almost \$1.6 billion dollars, 96  
11 percent of which is paid in this region.

12 Annually, we produce almost 60 million tons of  
13 coal and over 142 billion cubic feet of natural  
14 gas; the vast majority of which is also produced  
15 in this region.

16 Consol has four concerns we want to  
17 address today. Our first concern relates to  
18 regulation of CCR at coal mine sites. The EPA  
19 heard testimony from the National Mining  
20 Association on this concern at the August 30,  
21 Arlington, public hearing. Rather than repeat  
22 these concerns, I will just state that Consol

1 agrees with NMA's uses will continue to be  
2 regulated by the Office of Surface Mining under  
3 the Surface Mining Control and Reclamation Act.

4 Our second concern, voiced by numerous  
5 others, relates to EPA's consideration that CCRs  
6 be regulated as a special waste under Subtitle C  
7 of the Resource Conservation and Recovery Act.  
8 EPA has reviewed this issue in 1993 and again in  
9 2000, and EPA should continue to follow its final  
10 2000 regulatory determination that Subtitle D of  
11 RCRA could be fully protective of human health and  
12 the environment.

13 Our third concern is EPA's proposed  
14 Subtitle D regulations to require closure of  
15 existing impoundments or retrofitting of liners in  
16 existing impoundments as a condition of their  
17 continued use. Many existing impounds have  
18 significant remaining useful life, but already  
19 contains significant volumes of CCR that would  
20 make it environmentally and economically  
21 infeasible to remove the CCR to install a liner.  
22 EPA's proposed D Prime option would allow

1 continued use of existing impoundments for the  
2 remainder of their useful lives. The D Prime  
3 option will enable a smoother transition to new  
4 facilities and reduce disturbances of green field  
5 areas.

6 Our fourth and final concern relates to  
7 the 44 percent of CCRs recycled into beneficial  
8 uses including road construction material,  
9 replacement for Portland cement and construction  
10 grade wallboard. These beneficial use industries  
11 employ about 4,000 people. Also, it's worth  
12 noting that for every ton of Portland cement  
13 avoided by using CCR, one ton of CO<sub>2</sub> is also  
14 avoided. If CCRs become regulated as hazardous  
15 waste under RCRA Subtitle C, even if CCRs for  
16 beneficial use are excluded, the use of CCRs will  
17 drop dramatically because of the long-term  
18 potential liability. The consequence of this will  
19 include loss of employment, increased cost of  
20 electricity due to higher disposal costs, more  
21 hazardous waste site development and an overall  
22 greater drain on natural resources needed to

1 replace these CCRs.

2 Thank you for giving Consol the  
3 opportunity to present our views.

4 MR. DELLINGER: Thank you. Next your  
5 number is.

6 MR. CODY: 121.

7 MR. DELLINGER: 121.

8 MR. CODY: Good afternoon. My name is  
9 Bruce Cody. I'm with the Pennsylvania Aggregates  
10 and Concrete Association. Our association  
11 represents over 200 member companies in the  
12 aggregated and concrete industry in the  
13 Commonwealth of Pennsylvania.

14 I'm sure you've heard a lot of speakers.  
15 The ready-mix concrete industry is the largest  
16 beneficial user of fly ash and over 55 percent of  
17 concrete contains fly ash. We are diverting fly  
18 ash from landfills with our usage.

19 We oppose Subtitle C designation for the  
20 following reasons: An increase of production  
21 costs and the cost of construction. Recently, our  
22 governor tried the common law asking for our

1 support for additional transportation funding for  
2 our failing infrastructure. Adding additional  
3 costs to the construction projects is not what was  
4 asked of us. We need to keep the cost as low as  
5 possible to replace the hundreds of the  
6 structurally sufficient roads and bridges across  
7 the state. The increase on potential liability  
8 for concrete producers. We have a concern there  
9 will only be litigation targeting existing  
10 structures built with fly ash.

11 Potentially stricter state laws. We  
12 feel this will snowball into more state laws, such  
13 as the one proposed in Maryland regarding the  
14 disposal of any product containing fly ash must be  
15 done in a special facility. Our industry has done  
16 its part to recycle and reuse our product. Our  
17 producers have gone to great expense installing  
18 recycling equipment in their facilities. This  
19 could be all for nothing should Subtitle C lead  
20 into additional laws regulating the disposal of  
21 products containing fly ash.

22 Last, but not least, the negative stigma

1 Subtitle C will create. I work with architects  
2 and engineers every day and I know they will not  
3 specify the use of fly ash in ready-mix concrete  
4 with the hazardous waste designation.

5 Pennsylvania has become one of the  
6 leaders in the green building movement. The  
7 benefits that fly ash brings to concrete are not  
8 only beneficial to our product, but to our  
9 environment by keeping fly ash out of landfills  
10 and reducing the concrete industries' overall  
11 footprint. For these reasons we oppose Subtitle C  
12 designation. Thank you.

13 MR. DELLINGER: Thank you. Anyone else  
14 in the room that wants to speak now.

15 MR. CONNOLLY: 118.

16 MR. DELLINGER: 118.

17 MR. CONNOLLY: Good evening. My name is  
18 Brad Connolly. I work for a company in  
19 Louisville, Kentucky named Charah, Incorporated.

20 I am testifying as an employee in the  
21 Coal Ash Management and Recycling Industry. I  
22 support coal ash disposal regulations that protect

1 the human health and the environment without  
2 compromising greater recycling capabilities of  
3 coal ash. Both of the these goals cannot be  
4 accomplished if the EPA designates coal ash as a  
5 hazardous special waste under Subtitle C. This  
6 classification would bring an uncertainty or  
7 stigma to the general population and would be  
8 detrimental to the recycling efforts.

9 Residential and commercial development  
10 would steer away form utilizing this material if  
11 it's deemed hazardous in a landfill. Businesses  
12 will want to avoid any lawsuits using a material  
13 that is considered hazardous in a landfill. The  
14 recycling of coal ash has many environmental  
15 benefits, such as the conservation of our natural  
16 resources and landfill space, while also avoiding  
17 the rise of greenhouse gas emissions during the  
18 manufacturing of alternative materials that would  
19 replace coal ash.

20 Coal ash recycling with its many  
21 environmental benefits need to be preserved. This  
22 recycling cannot risk being destroyed by the

1 hazardous special waste classification. Under the  
2 EPA's own rule, new landfill engineering practices  
3 would essentially be the same whether it's  
4 regulated as a hazardous or the nonhazardous  
5 classification. In addition, new landfill  
6 engineering standards will be adopted more  
7 expediently if the nonhazardous classification is  
8 implemented.

9 The EPA should endorse improved coal ash  
10 disposal regulations. However, this should be  
11 done without characterizing coal ash as a  
12 hazardous waste and risking the destruction of  
13 recycling effort, which helps accomplish  
14 everyone's goal of a cleaner environment. To do  
15 so, EPA must not designate coal ash as a hazardous  
16 special waste. Thank you for the opportunity to  
17 speak.

18 MR. DELLINGER: Thank you. Is there  
19 anyone else in the room that would like to speak  
20 now?

21 We'll call a recess for 20 minutes. Let  
22 me give a time for us to reconvene. Let's make it

1 5:50. That's 18 minutes from now.

2 (Recess)

3 MR. DELLINGER: We are going to  
4 reconvene now. It's 5:50. Is there anybody else  
5 that would like to speak at this time? Come  
6 forward. Show us your number. Number 134.

7 MR. SCHARDING: Well, I'm sorry there  
8 aren't many people here right now, but I'm Keith  
9 Scharding. I'm from Pittsburgh and I'm a native  
10 Pittsburgher. My family has been involved in coal  
11 mining and power for maybe 150 years. I am very  
12 king coal is dead whether we want to admit it to  
13 ourselves or not.

14 Friends, EPA officials and fellow  
15 Americas, whether you know this or not, our  
16 country if not the whole world has entered a new  
17 millennium. A day is a thousand years and a  
18 thousand years is one day. The millennium  
19 generation of which we are all apart of are the  
20 children who were in grade school in the 1990s and  
21 now schooling in businesses is what they call the  
22 millenniums. I'm not a millennium. I'm much

1 older than that. They can appreciate this because  
2 of the power of our computing industries,  
3 networking, global networking and all of these  
4 things they experience on a daily basis.

5           Petroleum as a fuel for transportation  
6 is also obsolete, and we're finding that it will  
7 probably will be replaced by water. Fly ash  
8 should be diminishing as coal becomes replaced by  
9 much more powerful technologies for generating  
10 electricity. We will use much more pervasively  
11 than any other means of power. I believe that the  
12 EPA is now working on new technical aspect of the  
13 mediation of coal fly ash, so I would say they  
14 have the strictest standards that you can hold the  
15 industry to are proper and inappropriate. People  
16 will not lose their jobs. They will keep their  
17 job. Their jobs will be safer. The materials  
18 that now fall apart and collapse under the on slot  
19 of changing weather in the world will become  
20 stronger as the new technology is used in the  
21 mediation process.

22           Coal fly ash should be -- the

1 implementation of these rules should be tied to  
2 some kind of industry upgrade in the technology  
3 secondary. For one who has worked in the  
4 environmental deal for many, many years and saw a  
5 solution to these problems itself, I'm glad to see  
6 that the millenniums have come along and now we  
7 have a -- it's not a brave new world, but a much  
8 better vision to the future, and I think we should  
9 put them into effect. Thank you.

10 MR. DELLINGER: Thank you. Number 220.

11 MR. WALSH: My name is Gerald Walsh.  
12 I'll be brief. Coal companies have operated for  
13 many years without consideration of the full cost  
14 of coal. By not taking full responsibility for  
15 all health and environmental costs, such as would  
16 be achieved by their defeat of Subsection C,  
17 alternative energies are made to appear less  
18 viable than they truly are. As other countries  
19 continue to outpace our efforts in alternative  
20 energies, we will find ourselves in an  
21 increasingly untenable and greatly weakened  
22 position as a country.

1           Many of the speakers here talked about  
2           the economic costs of Subsection C, but all talk  
3           of economics is irrelevant to the issue of whether  
4           coal ash is truly a hazardous substance, and  
5           whether further regulation, such as exists in  
6           Subsection C, should be implemented. The health  
7           costs results from their existing procedures are  
8           part and parcel of the hidden costs involved in  
9           coal production. The potential for heavy metal  
10          contamination, especially when used in products  
11          that may leach into our environment is  
12          unacceptable, as it leaves the issues of clean up  
13          to our children and grandchildren. I would ask  
14          the coal companies to no longer abrogate their  
15          responsibilities to the health and welfare of our  
16          country and take on the necessary burden of  
17          assuring not merely existing energy demands, but  
18          also our future welfare. Thank you.

19                 MR. DELLINGER: Thank you. Is there  
20                 anyone else that hasn't spoken that wants to speak  
21                 now? We are going to take a break until 6:30.  
22                 That's 34 minutes from now. We will reconvene and

1 hopefully we'll have more speakers here.

2 (Recess)

3 MR. DELLINGER: We're back in business.

4 The hearing is now called to order again.

5 We have, I think, four speakers. I'm  
6 going to call numbers 125, 140, 221, and 222 to  
7 move forward. 143, you can move forward as well.

8 Okay, we're having a little feedback  
9 issue here.

10 MR. SNYDER: Good afternoon. I am Mark  
11 Snyder, vice president of the Pennsylvania Chapter  
12 of the American Concrete Pavement Association.  
13 The ACPA is a national trade association for the  
14 concrete pavement industry with 21 chapters that  
15 represent about 425 paving contractors, cement  
16 companies, materials suppliers, equipment  
17 manufacturers and engineering consultants. Our  
18 purpose is to expand the use and improve the  
19 quality of concrete pavement. I am also president  
20 of the International Society for Concrete  
21 Pavements, an organization with members in more  
22 than 20 countries that is dedicated to furthering

1 education, scientific investigation, and research  
2 in all areas related to concrete pavements.

3           Concrete paving comprises a major  
4 portion of our nation's transportation  
5 infrastructure. In 2009, nearly 70 million square  
6 yards of concrete pavement were placed in the U.S.  
7 That is almost enough to build a four-lane  
8 concrete highway from coast to coast. Most of  
9 that concrete contained fly ash as a partial  
10 replacement for cement, in amounts from typically  
11 20 to 25 percent. Why? Because fly ash makes the  
12 concrete better -- it chemically combines with  
13 cement hydration products to make it stronger and  
14 more durable so that concrete pavements can carry  
15 more and heavier loads while requiring less  
16 frequent repairs. Fly ash is also less expensive  
17 than cement, so it saves taxpayer and owner  
18 dollars. And it makes concrete greener -- more  
19 sustainable -- by providing a high-value use for a  
20 waste product that might otherwise end up in  
21 landfills.

22           Typically 92 percent of concrete by

1 volume is comprised of materials that have a low  
2 CO2 footprint. By substituting fly ash for  
3 cement, we reduce the carbon footprint of concrete  
4 by reducing the volume of cement used in the  
5 production of concrete.

6 There is a great deal of federally  
7 produced literature documenting the many benefits  
8 and advocating for the use of fly ash in concrete.  
9 One notable example is titled Using Coal Ash in  
10 Highway Construction: A Guide to Benefits and  
11 Impacts, and it was published by the EPA in April  
12 2005. With the help and support of the EPA and  
13 the Federal Highway Administration, huge  
14 advancements have been made to maximize the  
15 utilization of fly ash in concrete in recent  
16 years.

17 The American Concrete Pavement  
18 Association is greatly concerned about a potential  
19 EPA reclassification of fly ash as a hazardous  
20 waste under RCRA Subtitle C. We believe that such  
21 reclassification would have significant unintended  
22 negative consequences -- even if exclusions were

1 provided for certain uses. The stigma and  
2 potential legal exposure of incorporating a  
3 hazardous waste into concrete would have a  
4 crippling effect on its use, and might even make  
5 problematic the future disposal and repair of  
6 existing concrete containing fly ash. This  
7 reclassification has the potential to undo decades  
8 of advancement in pavement performance and would  
9 also result in a significant decrease in the  
10 sustainability of concrete materials for all  
11 applications, pavements, buildings, foundations,  
12 et cetera.

13 The dike rupture at the TVA facility in  
14 November 2008 was tragic and steps should be taken  
15 to reduce the likelihood of another such  
16 catastrophic release. Labeling fly ash as a  
17 hazardous waste is not one of them. The potential  
18 negativity of the unintended consequences of such  
19 a ruling is enormous and is probably not fully  
20 appreciated.

21 Thank you very much for your time and  
22 consideration.

1 MR. DELLINGER: Thank you. Number 221.  
2 Number 222.

3 MR. MOORE: Hello. My name is Andrew  
4 Moore. Coal ash is absolutely a hazardous waste.  
5 It is terribly toxic and something must be done  
6 about all of this pollution. At the very least,  
7 we must define coal ash as hazardous waste.

8 Also, mountaintop removal coal mining is  
9 horrible; must be stopped immediately. The valley  
10 fills must be redefined, again, as toxic waste and  
11 must be stopped.

12 I will now read George Markish's  
13 comments for the board.

14 My name is George Markish. I am a  
15 resident in Labelle, PA, Fayette County. I have  
16 lived here for 20 years. I am a cancer survivor.  
17 I go outside and apples are pitted on properties  
18 close to the dump and a few hundred yards away.  
19 You can't imagine what the inside of our homes  
20 look like, the dust and residue is terrible. I  
21 don't mind and invite any organization to come to  
22 my home. Thank you.

1                   MR. DELLINGER: Any other speakers? 143  
2 and 148 next and then 221 after that.

3                   MR. COLVIN: My name is Gregory Colvin.  
4 I'm the president and executive director of the  
5 Ohio Ready Mixed Concrete Association. I would  
6 like to thank you for the opportunity to speak to  
7 you and the subcommittee today on a very important  
8 issue for our members. Our organization  
9 represents ready mixed concrete producers and  
10 contractors throughout the state of Ohio. We also  
11 have associate members that include material  
12 suppliers, equipment suppliers, and testing  
13 agencies, as well as architects and engineers.

14                   We encourage our members to be  
15 environmentally responsible in all facets of their  
16 business, and continuously promote and educate the  
17 industry on sustainability.

18                   Our industry believes that using as many  
19 recycled materials as possible helps to preserve  
20 our natural resources, and protect the  
21 environment.

22                   We recycle water, sand, stone, and even

1 concrete itself. For many years, the most widely  
2 recycled product used in the concrete industry has  
3 been fly ash.

4 Fly ash is a fine powder-like material  
5 generated from the coal burning electric power  
6 plants. Fly ash, by nature, is high in silicates,  
7 making it a valuable raw material in the  
8 manufacturing of many concrete products, including  
9 ready mix concrete, concrete block, and precast  
10 concrete. It is known as a supplementary  
11 cementitious material or SCM. Fly ash is used to  
12 substitute a portion of the Portland cement  
13 required to manufacture concrete. Fly ash  
14 enhances the strength and long term durability of  
15 concrete.

16 Concrete is the most widely used and  
17 versatile product in the construction industry.  
18 The production of Portland cement results in CO<sub>2</sub>  
19 being emitted into the atmosphere. Using fly ash  
20 as a substitute for a portion of the Portland  
21 cement required to manufacture concrete, reduces  
22 the amount of CO<sub>2</sub> emitted.

1           The 2008 production and use survey  
2 revealed that approximately 14 million tons of fly  
3 ash was used in concrete products. Survey have  
4 shown that for each ton of Portland cement  
5 produced, we are reducing the greenhouse gases  
6 emitted, and helping our environment. Therefore,  
7 we need to increase the amount of fly ash used in  
8 our industry, not reduce it. Reducing the amount  
9 of fly ash used in the production of concrete  
10 products would inevitably increase the amount that  
11 would have to be land filled, further harming our  
12 environment.

13           Recently the U.S. Environmental  
14 Protection Agency has proposed reclassifying fly  
15 ash as a hazardous material when destined for  
16 disposal under Subtitle C of the Resource  
17 Conservation and Recovery Act of 1976.

18           I understand that the EPA prefers this  
19 option since it would provide them with the  
20 authority to enforce disposal regulations.  
21 Disposal under Subtitle D of the RCRA places the  
22 enforcement authority with the individual states.

1 Although this is a more practical option, it is  
2 still not a viable solution. The EPA also  
3 suggested that fly ash could be exempted from  
4 hazardous waste regulation.

5 The problem is that although it may well  
6 be exempted from regulation, it would still have  
7 the negative stigma of a hazardous waste.

8 In discussing this issue with our  
9 membership, I found that most members would  
10 refrain from using fly ash in concrete, from fear  
11 of the liability factor of using a hazardous  
12 material in the production of their products.  
13 They do not agree with the EPA's assertion that  
14 the exemption would provide all the protection  
15 needed. Lawyers would have a field day with the  
16 idea of concrete producers using hazardous  
17 materials to produce concrete. Competitors of the  
18 concrete industry would also use the stigma  
19 against our industry.

20 In summary, the reclassification of fly  
21 ash as a hazardous material, whether exempt from  
22 regulation or not, would cast a negative stigma on

1 the product. It would significantly reduce the  
2 amount being used in concrete, if not end its use  
3 altogether. Fly ash has been reviewed and  
4 classified as non-hazardous by the EPA in the  
5 past. This product has not changed since that  
6 review. The use of fly ash in concrete products  
7 is a win-win scenario. It not only enhances the  
8 strength and long term durability of the concrete,  
9 it helps protect the environment. Therefore, the  
10 Ohio Ready Mixed Concrete Association strongly  
11 urges the EPA not to reclassify this product as a  
12 hazardous material.

13 Thank you for allowing me this  
14 opportunity to speak, and I will answer any  
15 questions you might have.

16 MR. DELLINGER: Thank you. Your number  
17 again.

18 MS. SABL: 148.

19 MR. DELLINGER: Thank you.

20 MS. SABL: As a Biologist and a  
21 Physicist, I do not loosely estimate the  
22 importance of labeling a liquid substance a as

1 hazardous waste. I know a hazardous waste has to  
2 be processed and I agree it is a significant  
3 burden.

4           However, we are currently presenting a  
5 lot of instruments to address a rather complex  
6 problem. The way that coal ash has been dealt  
7 with in practical terms, including some of the  
8 so-called beneficial applications including  
9 surface applications online, have lead to  
10 decontamination of water. Other applications,  
11 such as some of the concrete aggregates  
12 applications are far less upsetting.

13           I would prefer that Option C is the one  
14 that you choose. I also understand perhaps you  
15 will revisit some of these ideas and perhaps you  
16 can even combine them. I would say that the EPA,  
17 in fact, can facilitate the coal ash in a way  
18 that's stable through geological kind. I'm not  
19 talking so much about as cement board, and I can  
20 tell perhaps that does deserve an exemption, but I  
21 do not like the idea that the public's stigma is  
22 such that we should not label coal ash as toxic

1 when, in fact, it is. Again, as a physicist, I do  
2 think we should bear our personal images rather  
3 than our concentration in coal ash and that has  
4 only increased with the efforts to produce  
5 coscostaphene and coal by burning it in such a way  
6 to keep those continuants out of the atmosphere.  
7 Therefore, you have a toxic substance, perhaps you  
8 should label it as a toxic substance and then  
9 provide exemptions where appropriate.

10 Please support Option C in an open  
11 minded and an easily ornate manner. I believe the  
12 coal industry shall indeed continue in the United  
13 States and properties shall continue to be made,  
14 but I'd hope it does not, in fact, involve digging  
15 up more beaches and using up more sand. It is a  
16 fine use for fly ash, but at the same time the ash  
17 itself in the form of ash should be labeled as  
18 what it is, which is a hazardous waste. Thank you  
19 very much.

20 MR. DELLINGER: Could you state your  
21 name and affiliation?

22 MS. SABL: Yes. Joy F. Sabl. Last name

1 is S-A-B-L. I am a concerned citizen with work  
2 accurately produced for purposes.

3 MR. DELLINGER: Thank you. Number 221.

4 MS. LANDINI: My name is Sarah Landini.  
5 I'm here today because I'm a Christian, which I  
6 don't think is something that is heard very often  
7 on environmental issues and that's the reason I  
8 care.

9 I was also a theology major and one of  
10 the things that I remember learning in my class  
11 had to do with an atom, and how the word atoms in  
12 Hebrew means of the red earth. The word in Hebrew  
13 for red earth is atoma, so we are the people --  
14 how I understood that to mean is we are the people  
15 of the red earth and because all humans are called  
16 atoms. I think everyone in this room today  
17 probably agrees that we rely on the earth for our  
18 substance and our livelihood. We all know it's  
19 true -- we all know that if we decided stop  
20 breathing and depending on the earth to live and  
21 the atmosphere that we'll die, so we depend on our  
22 earth for our very lives.

1           I don't think anyone here disagrees that  
2 we need to protect our environment. There's a  
3 disagreement in terms of how. It's just been  
4 really weird to watch everybody today because it's  
5 like an exercise in missing the point. There's  
6 two sides talking to each other, but they are not  
7 meeting anywhere that is solid. I've heard the  
8 industries say that the more regulations mean that  
9 we can't do this any more. No, it doesn't. It  
10 doesn't mean anything like that. It just means  
11 doing it in a way that is safer.

12           I just took a class on how to do  
13 lead-safe remodeling work and the EPA changed the  
14 rules of how that happens in houses. Now,  
15 contractors are pretty pissed off about it, but  
16 they know they have to do it. There is a choice  
17 between do we let our families and the little kids  
18 in the house we are remodeling, do they let them  
19 get sick or do we do this better? Let's do this  
20 better. All it is, is expecting the  
21 responsibility. You got a neighbor, you're going  
22 to live there for 70 years, are you going to be

1 friends with them or are you going to be rude to  
2 them for rest of your life? This is the world  
3 that we're in. I think we've caused a lot of  
4 problems.

5 I know I'm evading public policy when I  
6 try to think about the world as it ought to be  
7 instead of the world as it is. The world as it  
8 is, is that we need a lot of energy. We build  
9 things using concrete. You can still do that.  
10 Just cover the bloody trucks up when they are  
11 flying down the road. Just clean up after  
12 yourselves. That's all I'm asking is that people  
13 do your own dishes. With that nothing find the  
14 roots, but I would love about scientific study  
15 that proves there is a stigma and that people  
16 aren't going to use this stuff. Based on the  
17 conversation of some people from the industry,  
18 there is no study. They don't know that. It's  
19 just conjecture. Thank you.

20 MR. DELLINGER: Thank you. Is there any  
21 other people that want to speak?

22 Number 110.

1 MS. ANCEL: Hi. My name is Saci Ancel.  
2 I'm here from San Francisco. I actually spoke to  
3 you guys in Chicago last week. I urge you to  
4 classify coal ash under Subtitle C. Since then,  
5 I've had more time to reflect on the issue, and  
6 I'd like to add some points to my argument.

7 I personally haven't been affected by  
8 coal ash nor do I work in an industry that profits  
9 from coal ash, but I've been given an unique  
10 opportunity to observe and speak with people on  
11 both sides of this argument for two weeks now.  
12 What I found is that the people testifying on both  
13 sides of the argument are in support of improving  
14 our society. The people with a strong argument  
15 that support Subtitle D are people who are  
16 producing coal ash by recycling it in materials.  
17 People in support of Subtitle C want to reduce the  
18 dangerous substances that are destroying their  
19 communities.

20 What I feel is the most basic difference  
21 between the two arguments are that those in  
22 support of Subtitle C are literally fighting for

1 their lives and the lives of their children, and  
2 continued lax regulations of coal ash is getting  
3 in the way of their fundamental rights of clean  
4 air and clean water. The people in support of  
5 Subtitle D, on the other hand, are fighting for  
6 their pocketbooks.

7           After speaking with some members of the  
8 industry who spoke earlier today, I also learned a  
9 few things. Even classifying coal ash as  
10 hazardous waste may produce some stigma around the  
11 material, coal ash is still the cheapest option  
12 that they will have, and I'm not convinced and  
13 either were they, after I talked to them, this  
14 will limit the amount they can and will be  
15 recycling.

16           The EPA needs to make a stand and make a  
17 difference that's most important. You need to  
18 protect the members for the communities around the  
19 country that have been ignored for years and  
20 concluded in very aspects of their lives. The EPA  
21 cannot allow the industries to get away by putting  
22 profits before the public problem, and they must

1 classify coal ash as Subtitle C. Thank you.

2 MR. DELLINGER: Thank you. Number?

3 MR. SCHLOEMER: 159.

4 MR. DELLINGER: Number 159.

5 MR. SCHLOEMER: Good evening. My name  
6 is Bill Schloemer. I am the Director of Strategic  
7 Project for Alpha Natural Resources. Alpha is the  
8 third largest coal producer in the country with  
9 over 60 mines and 14 preparation plants producing  
10 90 million tons of coal per year with 6,400  
11 employees.

12 We are strongly opposed to the  
13 regulation of coal combustion residuals or CCRs  
14 under Subtitle C. Although, we have some  
15 reservations, we are in favor of regulation of  
16 CCRs under the option of Subtitle D.

17 Our corporation and industry is  
18 concerned with additional needless regulation that  
19 drive up the cost of coal and puts mining  
20 investments and thus jobs at risk, especially at a  
21 time when our nation needs all forms of reliable  
22 and clean energy to drive the economy, create and

1 sustain jobs well into the future.

2           Decades of study from the EPA indicate  
3 the regulation of CCRs under the option of  
4 Subtitle C, and thus a hazardous waste  
5 classification, is not warranted. We believe the  
6 option of regulating CCRs under Subtitle D would  
7 provide an adequate protection of human health and  
8 the environment. Subtitle C would provide an  
9 undue financial burden on the electric generation  
10 industry that would be passed on to the consumers  
11 resulting in higher electric bills. Some  
12 estimates indicate the additional annualized cost  
13 of Subtitle C verses D to be \$12 billion. These  
14 types of uncertain government regulations and  
15 associated costs that add risk to mining ventures  
16 and make the likelihood of the huge capital  
17 investment and potential jobs to be created less  
18 certain.

19           Furthermore, while it is understood that  
20 the EPA recognizes the importance of beneficial  
21 uses of CCR, we are very concerned that selecting  
22 the option of Subtitle C could negatively effect

1 and provide disincentives to the beneficial use  
2 industry. Approximately 45 percent of CCRs are  
3 used in the beneficial use industry, for instance,  
4 one of our large mining operations in Greene  
5 County, PA provides significant volume of coal to  
6 Pennsylvania Power Generator, who sends much of  
7 its CCRs to a wallboard plant that make almost a  
8 million square feet of wallboard per year  
9 preventing the material from being placed in  
10 landfills and providing low cost building  
11 materials. With a hazardous waste classification,  
12 this process and thus coal contracts could be  
13 jeopardized. Thousands of jobs in this industry  
14 could be at stake and the onus of hazardous waste  
15 classifications that Subtitle C could put on the  
16 CCR.

17 Common beneficial uses expand well  
18 beyond this example and include mine void filling,  
19 grouting, subsidence control, mine sealing,  
20 stabilization and treating acid mine drainage.  
21 All of these have very positive uses that help the  
22 environment. Yet, it's unfortunate these

1       beneficial uses have been ignored during this  
2       review process. It is clear these are indeed  
3       beneficial uses and, in fact, allows some seams to  
4       be mined in an environmentally acceptable manner  
5       that otherwise could not be mined.

6                 In conclusion, we hope that you consider  
7       all aspects and impacts of your regulation before  
8       you make a final ruling on this matter. We feel  
9       that the controls offered by option of Subtitle D  
10      are adequate to protect human health and the  
11      environment. Thank you.

12                MR. DELLINGER: Thank you. Are there  
13      any more speakers in the room? You can come  
14      forward.

15                MR. KOTAN: My name is James Kotan. I'm  
16      from Morgantown, West Virginia. I am the Chair of  
17      the Energy Committee for the West Virginia Chapter  
18      of the Sierra Club.

19                I'm here tonight because for many years  
20      we've known that this stuff is hazardous waste.  
21      The question is why are not regulating hazardous  
22      waste if it is hazardous waste? I think it is

1 important that we do that.

2 I first become active in this issue  
3 about a year ago when the Kammer Landfill was  
4 approaching a non-modification water condition  
5 permit because their discharge was exceeding PH  
6 levels. They wanted to add sulfuric acid to the  
7 Ohio River. In West Virginia, we have enough acid  
8 mine fields that we know we don't need to add more  
9 sulfuric acid to the water, but yet this is what  
10 this state approves and they treat it for this  
11 facility.

12 Second, the beneficial use loopholes.  
13 We need to close those. You do not need to act  
14 like everything is okay and that it's doing its  
15 job. We are currently in a process of reviewing a  
16 mining permit near Morgantown, West Virginia. If  
17 you drive down I-79, you'll see it there on the  
18 right side of the road just as you across the  
19 state line. They are dumping 10 thousand tons of  
20 fly ash on this site. They have no records of  
21 where this stuff has been going for last 20 years.  
22 They do not have active monitoring. There are no

1 enforceable witness on the amount of toxic that is  
2 discharged. I am all for utilizing boundaries,  
3 but we don't need to add arsenic to the water or  
4 lead or selenium and that is not a beneficial  
5 use. For your information, the water flows  
6 downstream and is probably in that pitcher in  
7 front of you.

8           There's another thing being proposed  
9 nearby. The legislative permit. That is to take  
10 the fly ash and they call it a beneficial use to  
11 put it in a landfill. It's beneficial because it  
12 mixes with another hazardous material. If you  
13 take two hazardous materials and you mix them  
14 together, some people think it is beneficial. I  
15 don't know think that's correct. I urge you to do  
16 something about it that.

17           The final request that I'm going to make  
18 is move quickly. These rulings were supposed to  
19 be out a year ago. Every day that it is delayed  
20 is another thousand truck loads of this stuff  
21 being dumped on the ground with no regulation, no  
22 controls. There's more fly ash being dumped into

1 landfills with no mind of how bad it could lead  
2 to. Do not be misled by the claims that the state  
3 is doing its job. In West Virginia, we know that  
4 is not true, and there are a lot of examples of  
5 that. We urge you to implement the Subtitle C  
6 option to close the loopholes of beneficial use,  
7 and please do it quickly. We need that help now.

8 MR. DELLINGER: Anymore people in the  
9 audience that want to spoke?

10 MS. BROWN: Hello, my name is Meredith  
11 Brown. I'm a member of the West Virginia  
12 University Sierra Student Coalition. I'm a  
13 Political Science major at WVU. I'm an  
14 out-of-state student who moved to Morgantown two  
15 years ago and fell in love with this beautiful  
16 state, and I intend staying there for the rest of  
17 my life.

18 I am very concerned with the coal ash  
19 disposal. There are 80 sites between Marion,  
20 Preston and Monongalia counties alone in West  
21 Virginia. As for coal ash, these ponds have been  
22 known to contain dangerous chemicals that can

1       contaminate the water and the air. I feel it is  
2       absolutely necessary to have strict, enforceable  
3       coal ash regulations that would face severe  
4       penalties if these safeguards were not met. In  
5       other words, I really want you to enforce severe  
6       regulations. I encourage you to put protections  
7       in every single coal ash pond across the country,  
8       no matter how small the pond may seem. I would  
9       hope that the EPA and the local governments would  
10      take every step possible to ensure that the public  
11      is protected from chemicals that can leach out of  
12      the ponds.

13                To me, coal ash is dangerous enough to  
14      be considered hazardous waste. I totally  
15      encourage you to consider regulating coal ash  
16      under Subtitle C of RCRA. Subtitle C would be the  
17      only way to make sure that coal ash is regulated  
18      and the people are protected from its harmful  
19      effects. Subtitle D, on the other hand, would  
20      downplay the toxicity of coal ash. It would allow  
21      the ash to be classified under nonhazardous waste,  
22      and it would just lead to lax regulations that

1 wouldn't protect anyone.

2           It has been stated and documented that  
3 coal ash contains harmful chemicals like arsenic,  
4 lead and selenium. These chemicals have been  
5 known to cause severe health risks. They kill  
6 people. They can also leak into ponds and destroy  
7 wildlife habitat. They definitely contaminate the  
8 water and get into streams. It also gets into our  
9 drinking water. Please consider the health and  
10 safety of us who live near and around these  
11 disposal ponds.

12           The TVA disaster in Tennessee in  
13 December 2008 showed the country just how harmful  
14 and dangerous this coal ash can be. The accident  
15 was the direct result of lax regulations and  
16 standards. Please do not let that happen again.  
17 Use Subtitle C to regulate the coal ash, and make  
18 sure that the people are protected from this  
19 dangerous substance. Don't allow easygoing  
20 regulations destroy our home and environment.  
21 Thank you very much for listening to my comment.

22           MR. DELLINGER: Thank you. Anybody that

1 wants to speak should move forward now and sit  
2 behind the podium there. Number 133.

3 MR. GORMAN: My name is Joseph Gorman.  
4 I live in Morgantown, West Virginia. I am the  
5 Operator of the West Virginia University Sierra  
6 Student Coalition.

7 I have friends who have been working on  
8 coal ash issues around Morgantown for a long time.  
9 One day one of them was sitting up in the  
10 University library, looked at a map and just  
11 looked horrified to see there was one right there.  
12 He looked out the window and could see the top of  
13 the dam. Later, they found out that it was  
14 classified as a high hazardous dam by the EPA,  
15 which means that when it fails, people will die,  
16 and all dams eventually fail. I had the  
17 opportunity to go out and see the site, and it's a  
18 bare and awful looking wasteland. I mean, it's  
19 coal ash as far as you could see.

20 What I was surprised by is that, first  
21 of all, there is a community right underneath of  
22 it, right downwind of it. People go ahead and use

1 this site for recreational purposes. People ride  
2 their ATV's around on it, and kids are riding  
3 bicycles there. Those all really concern me.  
4 They are kicking up dust. It's not safe to  
5 breathe, obviously, it is a hazardous waste. I am  
6 just hoping that the EPA will find ways to better  
7 regulate coal ash as a hazardous waste. I support  
8 regulation under Subtitle C. Thank you.

9 MR. DELLINGER: Thank you. You can move  
10 forward. Number 223. I have word that there is  
11 another person with number 224 in the room.

12 MR. PRICE: My name is Bill Price. I am  
13 with the Sierra Club Environmental Justice  
14 Program. However, I am reading testimony into the  
15 record for Steven Smith who lives in Chester, West  
16 Virginia. He could not be here today, but he did  
17 write this up. I want to read it and present you  
18 a copy of it.

19 I have watched as the Little Blue Lake  
20 slowly consumed hundreds of acres of wooded forest  
21 that was once heavily populated with game, and  
22 watched its lifeless water poison fertile streams

1 and lakes that once teamed with aquatic life.  
2 Now, Little Blue Lake continues to encroach upon  
3 the residents that live near its border.

4           The residents of this area were told how  
5 beautiful the lake would be years down the road  
6 and that it would be a recreation area for all to  
7 use, but look at it now. The area is nothing, but  
8 a rotting cesspool of filth and pollution. One  
9 cannot drive or walk around the lake's borders  
10 without smelling the stench that it emits. Those  
11 that live on the Leeward side of the lake deal  
12 with this stench on a daily basis.

13           I live just over four tenths of a mile  
14 west of the lake's previous waterline. The  
15 outline of the lake's western border is now filled  
16 with silt from the fly ash residue that was pumped  
17 into its depths. Rain water and other runoff  
18 waters that land on the surface of the lake now  
19 seep through the fly ash into the water table  
20 below. The lake is on a plateau above most of the  
21 neighboring community and any water that runs off  
22 from the lake travels downhill to the residents

1 below. The water flows through resident's yards  
2 and gardens exposing inhabitants to even more of  
3 this toxic soup.

4 My own water supply lies about 150 to  
5 200 feet below the bed of the lake. We have all  
6 heard that cliché of what rolls downhill. Water  
7 rolls downhill too. That water leaches into my  
8 water table and it is this water that I bathe in  
9 daily. I quit drinking the water over 10 years  
10 ago due to my own concerns, and although, I know  
11 of several instances where First Energy has  
12 compensated some for damage to their wells, I have  
13 heard nothing from First Energy concerning that.  
14 The water has damaged appliances in the home, and  
15 quite possibly me, as I had cancer at the age of  
16 45, when I did not drink or smoke. I have always  
17 been assured that my drinking water that was  
18 tested was safe, but now I hear that First Energy  
19 has to remove the silt/fill from the lake and  
20 install a liner. Why should they have to install  
21 a liner if everything is safe? First Energy has  
22 been feeding us a pile of lies from the get go.

1 Congress or the proper institution, in this care  
2 the EPA, needs to make First Energy accountable  
3 for what they have exposed this community to and  
4 make full restitution to all.

5 This is a letter in support and I  
6 support of coal ash regulation Subtitle C. Thank  
7 you.

8 MR. DELLINGER: 224.

9 MR. SMITH: Hi. My name is Robert  
10 Smith. I'm a resident of Mount Lebanon,  
11 Pennsylvania. I do not have any firsthand  
12 experience of contamination to my water supply  
13 since I live fairly close to the City of  
14 Pittsburgh. However, I read about issues with  
15 coal ash and noted the disaster of the impoundment  
16 breaking in Tennessee. This was a year ago.

17 My concern is that coal ash appears to  
18 be more dangerous than most of the stuff going  
19 into the landfills like garbage and trash. At the  
20 same time, I also hear that coal ash is regulated  
21 no more than the garbage going into our landfills,  
22 even though it is much more dangerous.

1           I just request that the EPA and if we  
2           can get Congress enact any laws to protect us from  
3           dangers of coal ash. Thank you.

4           MR. DELLINGER: Thank you. Are there  
5           anymore people with a number who want to speak?

6           MR. GAGIN: 142. Good evening, my name  
7           is Christopher Gagin. I am Director and Staff to  
8           Councilman Charles Wilson of Ohio's Sixth  
9           District. I have letters here from -- actually  
10          they were signed by 122 members of Congress to the  
11          Administrator Jackson, as well as the letter that  
12          was sent to President Barack Obama. The  
13          President's letter March 25, 2010 and the letter  
14          to Administrator Jackson was dated July 29, 2010.  
15          I know the panel has been here since early this  
16          morning, so in courteous since there is already a  
17          statement on record, I would just like to simply  
18          admit those into the record for further review.  
19          Thank you.

20          MR. DELLINGER: Number 225. Maybe they  
21          haven't reached the room yet.

22          MR. NICHOLS: I believe he went to

1 restroom. I am traveling with him. I could go  
2 ahead.

3 MR. DELLINGER: That's fine.

4 MR. NICHOLS: I can do that.

5 MR. DELLINGER: Sure.

6 MR. NICHOLS: 154. Thank you very much  
7 and we appreciate this opportunity to come up  
8 here. I am from Morgantown, West Virginia. My  
9 name is Duane Nichols. I am appearing here today  
10 on behalf of the Fort Martin Community  
11 Association, where we are have two coal-fired  
12 power plants.

13 Fort Martin Power Plant has been in  
14 existence for over 20 years. It has been  
15 generating approximately 1200 megawatts. A brand  
16 new power plant costing \$2 million, is the largest  
17 project in the state history of West Virginia, is  
18 under construction and will be completed to  
19 operate next year. The waste from these two power  
20 plants is to be placed on the same land. It's  
21 going to be stacked until it can't be stacked  
22 anymore. The streams that drain this pond are

1 already running at PH's around three and half, so  
2 the acidity there is incredible.

3           We have surface mines nearby there that  
4 also are adding to the acidity. The PBS (TDS?), that's  
5 coming from all of these operations is combined is  
6 feeding into the Monongahela River in such a  
7 matter that for the last three years, the exceeded  
8 the drinking water standard of 500 parts per  
9 million. Can you believe that Pittsburgh is being  
10 supplied with water from West Virginia that is  
11 already five or six times a year exceeding 500  
12 parts per million? Again, it's being proposed to  
13 continue to add additional waste that are  
14 contributing to the PBS. As you may know, we have  
15 all of these other components to think about too,  
16 but PBS is already above the drinking water  
17 standard. It is hazardous in a crisis low. I'm  
18 from West Virginia, but the problem is with you  
19 folks in Pennsylvania with that respect. These  
20 power plants need cooling water. If you put PBS  
21 into the cooling towers, it crystalizes in there  
22 and causes problems that will be affecting them.

1                   Finally, let me tell you that the Coke  
2 Works -- the Clairton Coke Works that's being  
3 historically providing coke to the Pittsburgh  
4 Steel Industry has to use quench water for their  
5 coke and that is coming from the Mon River and  
6 they can't use this PBS water, so there is a  
7 crisis there. It's not just the drinking water.  
8 It's industrial water that's being affected, so  
9 plea for understanding that continuing to increase  
10 the PBS in the Mon River is a problem for everyone  
11 in this crisis. Thank you very much.

12                   MR. DELLINGER: Any others in the room  
13 that have numbers and want to speak? Everybody  
14 who does can move forward. We have six chairs  
15 over here. You can figure who has the lowest  
16 number and that person can step forward. Number  
17 141.

18                   MS. Donne: Hi, my name is Cathleen  
19 Donne. I am a concerned citizen and also a member  
20 of Ashes for Change today. I live in Oakdale,  
21 Pennsylvania, which is close to the Pittsburgh  
22 airport.

1           Prior to 2006, I was an uninformed user  
2 of electricity. Yes, I knew that coal was king in  
3 Pennsylvania, and I also knew that coal emissions  
4 were toxic and life threatening, but I also  
5 naively believed that the PA Department of  
6 Environmental Protection was doing its job,  
7 protecting the environment and the citizens who  
8 live in this state. It wasn't until 2006 that I  
9 became fully aware of the toxicity and danger of  
10 coal's devil offspring, coal combustion waste. It  
11 was at that time that I heard about, and  
12 subsequently became involved in, a battle to stop  
13 the construction of a waste coal-fired plant on  
14 the site of one of the largest gob piles east of  
15 the Mississippi, which happens to be only four  
16 miles from my front door and three miles from my  
17 daughter's schoolyard. I thought the scariest  
18 part of the plant would be the stack emissions,  
19 but I was wrong.

20           As the summer wore on and the hearings  
21 dragged on into the nights, after listening to  
22 expert testimony by respected scientists and

1 researchers, it became apparent to me that the  
2 sole intended use and purpose of that plant was  
3 not to burn the gob for electricity, but to simply  
4 use that site to become the largest coal ash dump  
5 east of the Mississippi. The more I heard, the  
6 more frightened I became. Unregulated, toxic,  
7 hazardous, waste-coal ash dumped in unlined pits,  
8 poured into abandoned mines, piled up and sculpted  
9 so that it may, over time, according to the  
10 developer, become cementitious. Inadequate and  
11 insufficient monitoring of toxic leachates,  
12 contamination of groundwater and streams, no  
13 contingency plans for material stabilization,  
14 dozens of trucks a day truck ash in from other  
15 coal plants, adding to the millions upon millions  
16 of tons that are already there. That was the  
17 nightmare that kept me awake at night.

18 Sure, I thought, the PA DEP would step  
19 in and require more regulations, require more  
20 monitoring, establish safety precautions to  
21 prevent the destruction of property and natural  
22 resources, and require that this developer operate

1 at the safest levels possible in the interest of  
2 our children's health and well-being. Surely, I  
3 must have been delusional.

4 The more research that was conducted on  
5 the PA DEP's own shoddy records and half-hearted  
6 permitting processes, the more obvious it became  
7 that the state agency charged with environment  
8 protection had a different mission altogether,  
9 promote and enable the coal industry. The  
10 residents of this state cannot rely on the PA DEP  
11 to do its job, because its job is not  
12 environmental protection, and we certainly cannot  
13 rely on industry to police and regulate itself,  
14 not when there are mine operators, like the  
15 developer of Beech Hollow, who have for decades  
16 and decades been hit with hundreds of mining  
17 violations, fines and cease and desists orders,  
18 but are still allowed to continue their operations  
19 without regard to public safety and without any  
20 real oversight from the state. Thank you.

21 MR. FRANCISCO: Hi, my name is Randy  
22 Franciso. I work for the Sierra Club from

1 Pennsylvania. Today I willing reading a testimony  
2 from a concerned citizen in Chester, West  
3 Virginia. I work with communities throughout the  
4 State of Pennsylvania many of whom you heard from  
5 today. I am really proud to be reading this to  
6 you. I'll just read it as it's written.

7 My name is Betty Smith. I live about  
8 four tenths of a mile from First Energy's western  
9 property line. Although, I cannot be at this  
10 meeting, I still wish to voice my concerns.

11 Many people lost their homes and  
12 properties of many years to First Energy. First  
13 Energy said how nice it would be when their  
14 project was finished. There was going to be a  
15 lake that was going to be used for recreation. It  
16 was supposed to be something to add to the beauty  
17 of the Lawrenceville area. We were lied to. What  
18 we got instead of a recreational lake was a swamp  
19 looking area with a foul smell coming from it.  
20 Now the lake had dried up. Where did the water  
21 go? It has seeped into our springs and wells  
22 ruining the drinking water. It has made swampy

1 places in many yards, which has resulted in  
2 shifting soil that has caused property damage.

3 First Energy had straw brought in from  
4 the south to mulch the lake's surface. The straw  
5 contained bugs that caused the deer to get sick  
6 and die. Mosquitoes and gnats have been so bad in  
7 the area that it makes it impossible to sit on  
8 your porch in the evenings. Now the lake is a  
9 dried up eyesore. I refer to the area as it  
10 because I don't know what to call this place. It  
11 is just there and it still smells.

12 Our property values are down, and who  
13 knows if it is causing illnesses as there are a  
14 lot of people in this area with cancer. We still  
15 have to breath this air, and the water evaporates  
16 and comes back in rain on our gardens. Ask  
17 yourself, is this safe? Would you like to drink  
18 our water, and would you want your children to be  
19 around this? What about our future generations?  
20 Are they going to suffer from what is in the  
21 ground now? We would like First Energy to stand  
22 up and be honest and give us the real truth. That

1 is from Betty Smith, 307 Sayre Lane, Chester, West  
2 Virginia. Thank you very much.

3 MR. DELLINGER: Thank you.

4 MS. JAEGER: Hello and thank you. My  
5 name is Betsy Jaeger. I am a homeowner. There  
6 are two soon to be three coal-fired coal stations  
7 in Morgantown, West Virginia, where I live. They  
8 generate a lot of fly ash and need a place to dump  
9 it. There are a lot of strip mines north and west  
10 of Morgantown. They generate a lot of acid run  
11 off and need a way to utilize it, so the power  
12 plants and strip mining companies formed an unholy  
13 alliance, which they call a win-win situation.  
14 For those of us who live north and west of  
15 Morgantown and for all future generations who will  
16 live there, it is a loss-loss situation. Strip  
17 mines are full of corn (coal?) toxic waste. Fly ash  
18 neutralizes the acid, but also adds lead, arsenic  
19 and selenium to the air and water.

20 For 20 years, I have seen the happily  
21 named salvage trucks carrying the fly ash from the  
22 downtown power plant uncovered with fly ash

1 blowing over everything in their way to the  
2 patriot strip mines along Route 7. Every day a  
3 steady stream of these trucks beats up and down  
4 the road. Everything between the power plant and  
5 the strip mine is covered with fly ash. After a  
6 heavy rain, it washes down into the creeks and  
7 into the Monongahela and eventually here to  
8 Pittsburgh.

9           So many tests have been done on the  
10 effects of lead on children's brains. How can fly  
11 ash not be considered toxic waste? As long there  
12 are strip mines to dump the fly ash, it can always  
13 use the beneficial use loophole to avoid being  
14 classified as a toxic waste, so we must watch as  
15 the strip mining creeps closer to our fence line.  
16 In a few years, we may be strip mining refugees  
17 too.

18           Strip mining trumps all of the rights of  
19 homeowners in our area. I would need a lot more  
20 than three minutes to describe the destructive  
21 effects of constant blasting, all night noise,  
22 tearing up roads, excessive dust, and worst of

1 all, the permanent loss of our landscape. If we  
2 complain about the construction, we are accused of  
3 trying to take jobs away from strip miners.  
4 Apparently, an entire community has to suffer, so  
5 a handful strip miners can have jobs. I expect  
6 the stripping companies can operate with robots  
7 and do away with jobs in an instant.

8 We are told that we all use electricity,  
9 and where do we think it comes from anyway? Every  
10 month our electric bill is never more than \$20.  
11 We know where our electricity comes from, and we  
12 are very careful not to waste it. We know the real  
13 cost of coal energy. The fly ash soot mine  
14 relationship is destroying our communities and  
15 forcing people, who don't live under the coal  
16 scene, own the coal that is under them, and don't  
17 want to sell out to live in substance polluted  
18 environments or to move away. The fly ash trucks  
19 run along Route 7. I only hope the EPA will  
20 protect us from the most toxic effects by at least  
21 controlling fly ash. Thank you.

22 MR. DELLINGER: Thank you. Can you tell

1 me what number you are?

2 MS. JAEGER: 156.

3 MR. DELLINGER: Thank you.

4 MR. KANFER: Good evening. My name is  
5 Nahaliel Kanfer. I work for the Sierra Club in  
6 Columbus, Ohio. Thank you for the opportunity to  
7 testify. I appreciate it. I'm going to read  
8 testimony from someone that couldn't make it  
9 tonight his name is John Wright with a W.

10 As a former Supervisor of Greene  
11 Township, Beaver County, Pennsylvania, I have  
12 first-hand experience with the Little Blue Run Fly  
13 Ash Impoundment located in our township. This  
14 huge facility, currently owned and operated by  
15 First Energy, was built for Penn Power, their  
16 predecessor. The original proposal says that the  
17 facility, quote, will be kept in such a manner  
18 that it can be closed on any given day and  
19 returned to its original state, end quote. It is  
20 now an ugly blight on our community with decaying  
21 trees being flooded by the liquid slurry, which  
22 gives off noxious odors. This is definitely not a

1 good neighbor within a beautiful pristine  
2 agricultural area.

3           When I became a Supervisor, the facility  
4 had already been constructed. However, it was  
5 under the oversight of the Pennsylvania's  
6 Department of Environmental Protection. We, the  
7 elected officials, were responsible for the well  
8 being of our residents, were continually the last  
9 ones to know when the utility had violated the PA  
10 State Code that governed the placement of fly ash.  
11 It became evident to me that our environmental  
12 watchdogs were systematically allowing the utility  
13 to ignore the regulations, and all the promises  
14 made about the operation of this huge unlined  
15 facility. We would only be notified about  
16 violations when they reached the point of levying  
17 fines against the utility. These fines, of  
18 course, are paid to the Commonwealth of  
19 Pennsylvania, and not to the community that is  
20 continually violated.

21           State regulation of fly ash is a no-win  
22 situation for the citizens who are forced to live

1 near disposal facilities. The state is not  
2 willing to bend their own rules can be threatened  
3 with the loss of that utility's job-generating  
4 power stations to other states with looser  
5 regulation of fly ash disposal. This leads to  
6 state legislators putting pressure on their  
7 environmental agency to give them a break. State  
8 regulation can ultimately create competition  
9 between neighboring states, whose legislators are  
10 willing to accept health risks for their citizens  
11 in exchange for economic development.

12 I happen to live within a mile of the  
13 perimeter of the Little Blue Run Fly Ash Disposal  
14 Impoundment. Many of my neighbors have passed away  
15 from unexplained unusual cancers and lung or  
16 neurological diseases. Our homes are along a  
17 valley that comes off the Ohio River. This Ohio  
18 River valley is a conduit for pollution created by  
19 fugitive fly ash dust created at the Sammis Coal  
20 Fired Power Station in Toronto, Ohio, a few miles  
21 south of our community. Pennsylvania has never  
22 researched the air quality to tell us what we are

1 breathing that is generated in, and regulated by  
2 another state. I personally do not feel that  
3 either state has my family's health as a primary  
4 concern.

5 I pray that our federal government  
6 finally steps up and takes over the regulation of  
7 this dangerous practice of the disposal of coal  
8 combustion byproducts by passing Subtitle C.  
9 Subtitle C is the only thing that will create a  
10 level playing field for the citizens of  
11 neighboring states, whose officials are now able  
12 to choose economic advantages over the public  
13 health risk. Please remove this temptation to  
14 allow defenseless citizen' health to be sacrificed  
15 for the benefit of the politicians and the  
16 shareholders. Thank you.

17 MR. DELLINGER: Thank you.

18 MR. JAMISON: Good evening, EPA. My  
19 name is Jarrett Jamison. I live on the farmland  
20 community in Fort Martin, West Virginia, 26541.  
21 Currently, there are five coal combustion waste  
22 sites and once in the making.

1           I would like to see the EPA to require  
2 liners to CCW sites with continuous monitors on  
3 wells at different elevations within the wells and  
4 only the EPA would have access to these sites, not  
5 the incompetent West Virginia DEP. This  
6 department will give out permits to pollute more  
7 than what's already polluted. All four streams in  
8 Fort Martin and Madsville, West Virginia areas  
9 are polluted by coal combustion waste and among  
10 other dumping.

11           I am requesting the EPA enforcement team  
12 and the Department of Justice to come to Fort  
13 Martin, West Virginia community to see clean coal  
14 technology and beneficial use of coal ash in the  
15 works. You will see coal slop on the highways,  
16 dust clouds of coal dust, fly ash blowing in the  
17 wind and being regurgitating by 50 coal ash trucks  
18 per hour on the highway. This is uncalled for. I  
19 have called and wrote numerous letters to the West  
20 Virginia DEP with no response or actions. I  
21 believe the EPA needs to relieve this region of  
22 states of their so-called authority over coal

1 combustion waste sites because all I see in West  
2 Virginia is incompetence and polluted waterways  
3 and if you come to Fort Martin, West Virginia, you  
4 will see it too.

5 The time is ripe for a federal crackdown  
6 in West Virginia over these coal combustion sites  
7 with their chemicals, fuel gas desulfurization,  
8 pyrite waste, gypsum waste among other things.  
9 Thank you for your time, and also I have six  
10 pictures of the Fort Martin fly ash dump.

11 MR. DELLINGER: Thank you. Will you be  
12 putting those into the record? Is there anybody  
13 else in the room that has a number and wants to  
14 speak?

15 SPEAKER: There is a gentleman that is  
16 just coming in now.

17 MR. DELLINGER: We'll give him time.

18 SPEAKER: Okay.

19 MR. DELLINGER: You can take your time.  
20 You don't have to be in a hurry.

21 MR. SHEPARD: My name is Christopher  
22 Shepard. I am a concerned citizen. My number is

1 227. I would like to read testimony from Robert  
2 Gadinski of Ashland, Pennsylvania.

3 The Pennsylvania Coal Combustion Waste  
4 Program is a program of expedience rather than  
5 real science as demonstrated by the following  
6 examples:

7 One, The Bark Camp Demonstration  
8 Project. This project has been touted as an  
9 example the wastes can be effectively used in mine  
10 reclamation. The results of this project have  
11 been effectively challenged by R.A. Gadinski,  
12 M.Ed, P.G. Despite these concerns detailed in the  
13 expert reports, they were totally ignored by both  
14 the PA DEP and the federal OSM. It should be  
15 noted that the report may have been changed on the  
16 DEP website to mitigate the concerns contained in  
17 said reports. Furthermore, the Bark Camp Report  
18 was written by an individual not licensed in PA as  
19 either a geologist or engineer as required by PA  
20 DEP/PA statue.

21 Two, Cause verse PA DEP and HCP  
22 Decision. In this decision, the PA Environmental

1 Hearing Board remanded back to the DEP an approved  
2 groundwater, monitoring plan by the DEP for the  
3 HCP site in Hazelton, PA. In this case, the DEP  
4 approved groundwater, monitoring plan consisting  
5 of dry wells. How protective of the public and  
6 the environment is a groundwater monitoring plan  
7 approved by a regulatory agency that consists of  
8 dry wells rather than functional wells. See  
9 attached that will be entered into the record.

10 This is a perfect example of an abuse of  
11 discretion and a failed regulatory program  
12 resulting from the lack of national regulations.

13 Westwood Decision 177 IBLA 373. In this  
14 decision rendered in June of 2009, the IBLA Board  
15 determined that the DEP/OSM decision and  
16 conclusions were not supported by available data.  
17 Therefore, this case was also remanded back to the  
18 DEP and OSM, but despite more than a year  
19 transpiring since the decision, nothing has been  
20 done to resolve the monitoring difficulties and  
21 questions as brought forth by the plaintiff.

22 Locust Summit Appeal. The issuance of

1       this permit was challenged on the grounds that the  
2       DEP violated and ignored its own policies and  
3       regulations in the issuance of this permit,  
4       despite the fact that the plaintiff had standing  
5       and was a commenter on the application package.

6                 In each of the above matter, the DEP  
7       violated its own policies and regulations to  
8       attain a mutually desired outcome with the coal  
9       industry and that is the unimpeded disposal of CCW  
10       in Pennsylvania. This collusion is most apparent  
11       in the IBLA 373 decision in which the federal OSM  
12       and DEP contrived conclusion and rendered a very  
13       questionable decision to the plaintiff that was  
14       successfully challenged by the plaintiff. It is  
15       now time to implement national regulations that  
16       are meaningful and capable of protecting the  
17       public health and the environment, not smoke and  
18       mirrors that now exists. This was Robert A.  
19       Gadinski, 105 Main Street, Ashland, Pennsylvania.  
20       Thank you.

21                 MR. DELLINGER: Thank you. Is there  
22       anybody else in the room that has a number and

1 wants to speak? I've got 7:38 right now. Let's  
2 sit for about five minutes and if anybody comes  
3 in, if not we'll declare another recess.

4 (Recess)

5 MR. DELLINGER: The five minutes is up.  
6 Maybe a little bit more. We had another speaker  
7 that came into the room. Number 157.

8 MS. KIRKPATRICK: Thank you. My name is  
9 Claudia Kirkpatrick. I am the Chair of the  
10 Allegheny Group Sierra Club. I live at 3763  
11 Orpwood Street in Pittsburgh, 15213.

12 All today you've been hearing corporate  
13 speakers are whining that fixing the serious  
14 problems caused by inadequate coal combustion  
15 waste disposal would decimate their industries.  
16 We've heard that before, but we were successful in  
17 getting lead out of our automobiles, gasoline out  
18 of our paint and asbestos out of our insulation.  
19 People are still driving cars, painting their  
20 houses and insulting their attics - all much more  
21 safely than before.

22 The people of the United States matter.

1 We vote, we pay taxes and we pay our electric  
2 bills. The people who live near Bruce Mansfield  
3 and Hatfield's Ferry here in Western Pennsylvania  
4 and near the other dangerously-polluting disposal  
5 sites nationally have a right to clean water.

6 Expert speakers throughout the day have  
7 meticulously documented the problems that toxic  
8 coal ash can cause. At least 1.5 million children  
9 live near a toxic coal ash site. We all have an  
10 obligation to treat our country as a precious  
11 resource for our children, our grandchildren and  
12 our great grandchildren. We have no right to  
13 destroy its resources for our own short-term gain.

14 We in the Sierra Club, therefore, call  
15 on the EPA to adopt the strongest safeguards, and  
16 to make sure that these safeguards are rigorously  
17 enforced. Not to do so would violate every  
18 obligation we have as citizens of the United  
19 States and as human beings. Thank you.

20 MR. DELLINGER: Anybody else in the room  
21 with a number and a desire to speak? It's 7:48.  
22 We'll start up at 8:05 and see if anyone has come

1 in. We'll reconvene at 8:05.

2 (Recess)

3 MR. DELLINGER: I'm calling the hearing  
4 back in session. It's 8:05.

5 Any other speakers?

6 (No response.)

7 MR. DELLINGER: We'll take a 20 minute  
8 break and reconvene at 8:30.

9 (Recess)

10 MR. DELLINGER: This hearing is back in  
11 session. Do we have any speakers with numbers  
12 that want to speak right now.

13 MS. VANECK: Yes.

14 MR. DELLINGER: Number 228.

15 MS. VANECK: Do I use the microphone.

16 MR. DELLINGER: Yes. If you would state  
17 your name and affiliation that would be great.

18 MS. VANECK: Sure. Do I need to use the  
19 microphone.

20 MR. DELLINGER: Yes.

21 MS. VANECK: My name is Kara Vaneck. I  
22 am a citizen. The reason I'm here is because I

1 work for a company that we make refractory bricks,  
2 Ceramic Engineer. I've been assigned to work on a  
3 project for coal gassification. In my work, I've  
4 been doing research to see how coal power is  
5 growing basically, and it seems like we are going  
6 to have a lot more coal gassification plants. My  
7 concern is as I'm working on making bricks for  
8 this gas fires, all I can think about is am I  
9 doing something detrimental to the environment? I  
10 think that with all of these new coal technologies  
11 being put into places, and having heard the lab  
12 for energy and technology in Morgantown, and I  
13 think the affiliate is somewhere to Morgan, having  
14 received plans to build more of these power  
15 plants.

16 A lot of my friends are concerned  
17 engineering research related to coal products. It  
18 just seems it's growing. These are the things we  
19 are going to be have to deal with although coal  
20 classification will result in less waste and it's  
21 just going to grow. If we don't implement  
22 legislation now, it is going to put safeguards and

1       classifying fly ash and other types of heavy  
2       metals as hazardous waste if we don't get control  
3       over it and have no way of knowing how much is  
4       getting out there.

5                       Just on a personal note, I have concerns  
6       about working on a project that is detrimental to  
7       the environment. I hope that you guys will pass  
8       the legislation to at least put safeguards on the  
9       disposal of these wastes. Thank you.

10                      MR. DELLINGER: Thank you.

11                      MR. SOUDERS: I'd like to go on the  
12       record of closing today's hearing. Thank you very  
13       much.

14                               (Whereupon, at 8:45 p.m., the  
15       PROCEEDINGS were adjourned.)

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\* \* \* \* \*

## 1 CERTIFICATE OF NOTARY PUBLIC

2 I, Carleton J. Anderson, III do hereby  
3 certify that the witness whose testimony appears  
4 in the foregoing hearing was duly sworn by me;  
5 that the testimony of said witness was taken by me  
6 and thereafter reduced to print under my  
7 direction; that said deposition is a true record  
8 of the testimony given by said witness; that I am  
9 neither counsel for, related to, nor employed by  
10 any of the parties to the action in which these  
11 proceedings were taken; and, furthermore, that I  
12 am neither a relative or employee of any attorney  
13 or counsel employed by the parties hereto, nor  
14 financially or otherwise interested in the outcome  
15 of this action.

16 /s/Carleton J. Anderson, III

17

18

19 Notary Public in and for the

20 Commonwealth of Virginia

21 Commission No. 351998

22 Expires: November 30, 2012