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H.R. 1391, THE "RECYCLING COAL COMBUSTION

RESIDUALS ACCESSIBILITY ACT OF 2011"

THURSDAY, APRIL 14, 2011

House of Representatives,

Subcommittee on Environment and Economy,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 9:34 a.m., in Room 2322, Rayburn House Office Building, Hon. John Shimkus, [chairman of the subcommittee] presiding.

Present: Representatives Shimkus, Murphy, Whitfield, Pitts, Bass, Latta, McMorris Rodgers, Harper, Cassidy, Gardner, Barton, Green, Barrow, Dingell, and Waxman (ex officio).

Staff Present: Charlotte Baker, Press Secretary; Jim Barnette, General Counsel; Michael Beckerman, Deputy Staff Director; Anita Bradley, Senior Policy Advisor to Chairman Emeritus; Jerry Couri, Professional Staff Member, Environment;

Cory Hicks, Policy Coordinator, Energy and Power; Heidi King, Chief Economist; Dave McCarthy, Chief Counsel, Environment and the Economy; Carly McWilliams, Legislative Clerk; Andrew Powaleny, Press Assistant; Tina Richards, Senior Policy Advisor to Chairman Emeritus; Chris Sarley, Policy Coordinator, Environment and the Economy; Jackie Cohen, Minority Counsel; Greg Dotson, Minority Energy and Environment Staff Director; and Caitlin Haberman, Minority Policy Analyst.

Mr. Shimkus. The hearing will now come to order. And we want to welcome everybody here today.

Before I recognize myself for 5 minutes for the purpose of making an opening statement, I would like to make two unanimous consent requests.

First, I ask unanimous consent that all members of the subcommittee may have 5 legislative days to submit their opening statements for the record.

[The prepared statements follow:]

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Mr. Shimkus. And, secondly, I would like to ask unanimous consent that both Representatives McKinley and Markey, both nonmembers of the subcommittee, be permitted to sit in and ask questions of the witnesses on our panel after all sitting members of the subcommittee have been afforded their opportunity to ask questions.

Without objection, so ordered.

And I will recognize myself for 5 minutes.

I have a prepared statement, but I am going to start by highlighting and passing around two books, one from the EPA and U.S. Department of Transportation, along with the Coal Ash Association, which talk about the beneficial uses of coal ash. Also, another booklet that is coauthored by the Federal Highway Administration, the Department of Energy, the EPA, also on the benefits of coal ash. And I will pass those around for my colleagues.

Also, as a former teacher, I am a hands-on-training-type guy. So I am going to also pass around -- now, if you are afraid of toxicity, don't touch. But if you are not, like me, you can see all of these beneficial uses of fly ash and coal ash in reclamation and in productions of stuff that you wouldn't even imagine -- countertops, shingles, gypsum.

So the concern today is, as the EPA moves forward, if they move in the wrong direction, they are going to do more harm than

good. Because all this stuff that is in homes will then be considered toxic, we will have a big issue, and the recover and recycling ability of what we have now will exponentially create larger problems in landfills throughout the country.

So, with that, if you would pass these around to my colleagues and friends, and we will get them over to your side, Gene, in a minute.

Mr. Green. I just want to know if that -- that wallboard is not from China, is it?

Mr. Shimkus. This is good American-made wallboard with fly ash from U.S. coal-fired power plants.

So today's legislative hearing is on 1391, to Prohibit the U.S. EPA from regulating fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal and other fossil fuels under subtitle C of the Solid Waste Disposal Act; or, in plain English, forbid EPA from designating coal combustion residue as hazardous waste under the Solid Waste Disposal Act.

[The bill follows:]

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Mr. Shimkus. It would come as no surprise to many Members that I am enormously skeptical of the efforts by the EPA to begin regulating coal combustion products as hazardous waste. My district is heavily reliant on coal for its electricity generation.

In the first hearing this subcommittee had this Congress, my constituent, the manager of a local rural electric cooperative -- that is a not-for-profit entity for those who are in the business -- and a former environmental officer at the Illinois Environmental Protection Agency testified that doing so would increase utility rates for, again, a not-for-profit electricity company by 25 percent.

With historical high unemployment when EPA first proposed this rule and persistently high unemployment while EPA takes its time considering it, now is not the time to send a dramatic negative signal to the economy that jobs are unimportant.

While I do not believe a regulatory dictate should change chemistry or make something harmful, I am also not unsympathetic to making sure items that are made safe simply because we as legislators say so. The question is not whether we need public health protections but, rather, what protections make the most sense and who is best capable to seamlessly handle this matter. I would note that the bill we are discussing today does not forbid any regulation of coal combustion residues.

Moreover, we should not use scare tactics, claiming the public is not protected unless the Feds are on the case. The States have a good story to tell, and we should understand its impact on this equation. Many thoughtful people, including 43 States, the State Environmental and Highway Officials, the Conference of Mayors, have publicly spoken out against EPA's proposal for subtitle C.

To fundamentally assess 1391, I believe two major proposals EPA has made on this subject, disposal and beneficial use, each must be examined with their own sets of questions.

First, the Bevill amendment required EPA to make a determination.

Second, EPA has twice ruled that coal combustion residues do not merit treatment as a hazardous waste under subtitle C. What has changed in the valid, verifiable science to support a change in position, or was it just an election that changed the position?

Third, what is so different about these proposals from a purely environmental protection standpoint? I am most concerned in distinguishing the differences from a safety concern as it relates to groundwater monitoring and landfill lining, as opposed to simply Federal versus State enforcement.

Fourth, what is the practical impact and what can history tell us about how people will respond to a hazardous-waste designation from an electric reliability and management perspective, which is where I talked about cost and then the cost

of dealing with the fly ash.

On the beneficial use side, we should first understand whether subtitle C will encourage recycling of coal combustion products or frighten investors and destroy jobs creating otherwise safe products. While EPA lips are saying, we support beneficial reuse, we need to explore whether encapsulation requirements for beneficial use increase recycling. If not, for those beneficial uses that remain, will the stigma of being labeled as "hazardous" limit opportunity and increase legal liability? I would say it will. Not to mention invite new parties into a morass known as the Superfund? Which I also believe it will.

Finally, what are the costs for our society for lost products, like long-lasting roads or needs for arduous, expensive new subtitle-C-compliant landfill capacity?

I look forward to answers on these questions and other questions. I want to welcome all the witnesses who joined us to bring their views and expertise to bear on this issue.

I also want to recognize the hard work that both Mr. Latta and Mr. McKinley have done on this issue.

I yield back the balance of my time and now recognize the ranking member of the subcommittee, Mr. Green, for 5 minutes.

[The prepared statement of Mr. Shimkus follows:]

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Mr. Green. Good morning. And thank you, Mr. Chairman, for holding this hearing today on the coal combustion and waste and H.R. 1391 legislation to prohibit the EPA from regulating fossil fuel combustion waste under subtitle C of the Solid Waste Disposal Act.

I would like to welcome not only our witness in the first panel but also our second panel.

The last hearing we had on coal combustion waste was in 2009, and this is the first hearing we have had on coal ash since the EPA has issued proposed regulations.

Coal generates approximately 45 percent of the power in our country. As we will hear from our witnesses today, coal ash can be recycled and converted into everyday materials. In 2008, 136 million tons of coal combustion waste was generated. Industry estimates indicate that 8 percent of it is disposed in mines as minefill; 37 percent is used in such capacities as concrete, cement, gypsum, wallboard, and structural and backfill that our chairman gave us some examples of.

Promoting recycling of coal combustion waste serves both an economic and environmental purpose. There are companies that specialize in producing recycled coal ash products, and this prevents coal ash from ending up in landfills. I don't think any one of us on this subcommittee wants to prohibit the recycling of coal combustion waste or, particularly, force companies that

recycle coal ash out of business. However, we must ensure that public safety and health is also taken into account as we consider legislation on this issue.

In 2008, the Tennessee Valley Authority's Kingston Tennessee plant released 1.1 billion gallons of coal ash slurry through a breach in an impoundment pond. The sludge discharged into nearby Emory and Clinch Rivers, filling a large area of the rivers and resulting in fish kills. Rightfully so, individuals are still concerned about lingering water contamination as a result of this breach, and the estimated cleanup costs will likely reach \$1.2 billion.

However, I firmly believe we can work to prevent disasters such as the Tennessee Valley incident and come to an agreement on how to promote the recycling of coal combustion waste. That is why this hearing is important today. And Congress needs to hear from all sides surrounding the coal ash, so we can make an educated decision on how to proceed.

And, again, I look forward to the testimony, Mr. Chairman, and our witnesses today. And thank you for having the hearing.

[The prepared statement of Mr. Green follows:]

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Mr. Shimkus. The gentleman yields back the time.

The chair now recognizes the gentleman from Pennsylvania, Mr. Murphy, for initially 3 minutes.

Mr. Murphy. Thank you, Mr. Chairman.

Here is the situation: Here is coal. We have lots of it in this country. Unfortunately, it is dirty to burn. Whoever figures out how to get us from about 37 percent of efficiency up to 90 or 100 percent and to not have emissions wins the Nobel Prize and probably becomes a multibillionaire.

But, in the meantime, one of the things that comes from burning coal is ash. And rather than have it float into the air, we have shifted to using the fly ash for recycling, which I prefer to just putting it into landfills, where it can have risks, as my friend Mr. Green pointed out. And, today, electric utilities recycle nearly half of the 136 million tons of fly ash in a wide variety of applications, as pointed out.

Now, no one disagrees that those who violate current regulations should be vigorously prosecuted and held fully accountable. That is why I support regulating coal ash as a nonhazardous waste. That would empower the Environmental Protection Agency to impose uniform Federal requirements for management in States where no such standards exist. This would give the EPA authority to go after any site presenting a danger to public health and the environment.

By the EPA's own admissions, as I understand it, whether the Agency chooses to regulate coal ash as a hazardous or nonhazardous issue, the EPA says it will be still protecting public health and environment.

Now, the issue before us is whether or not a new classification would have an impact upon the environment and the economy. Our concern is that regulating coal ash under subtitle C of the Resource Conservation and Recovery Act would kill jobs and raise electric rates in Pennsylvania and other States. So that is something we want to see as we review this today and so many other areas.

Those who are looking at this as a public health issue and lodged complaints about it in the air, we can now see recycled. So let's see what we can do about cleaning this up while also keeping it in a way so that we can manage this without shutting down the industries.

And, With that, Mr. Chairman, I yield back to you to yield my time to someone else.

[The prepared statement of Mr. Murphy follows:]

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Mr. Shimkus. The gentleman has 1 minute remaining. Does anyone like to seek 1 minute for an opening statement?

If not, quick timing. It doesn't happen here very often.

So I would like to recognize the Honorable Mr. Stanislaus from the Environmental Protection Agency.

We appreciate you coming, sir. And you can be recognized. Your full statement will be submitted for the record. You have 5 minutes. And, you know, if you go -- don't be pressed for time. This is an important issue.

So, you are recognized now.

**STATEMENT OF THE HON. MATHY STANISLAUS, ASSISTANT ADMINISTRATOR,
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Mr. Stanislaus. Good morning, Chairman Shimkus, Ranking Member Green, and other members of the committee. My name is Mathy Stanislaus. I am the assistant administrator for the EPA's Office of Solid Waste and Emergency Response. I have the responsibility with respect to the coal ash proposed rule. Thank you for the opportunity for me to testify today on coal combustion residuals and H.R. 1391.

Just a bit of background: Coal combustion residuals represent one of the largest waste streams generated in the United States, with approximately 134 million tons generated in 2009. Coal ash residuals contain contaminants such as arsenic, cadmium, and mercury, which can pose threats to public health and the environment if improperly managed. Thus, proper management of these waste streams is essential to protecting public health and the environment.

Just this week, I had the opportunity to meet with citizens from around the country to hear firsthand the impact a coal ash contaminant has had on their families and their communities. I heard about health impacts of windblown coal ash residual contaminants and instances of groundwater contamination caused by improperly designed and operated coal ash residual disposal units.

These problems could be addressed easily if disposal units were installed with proper liners, groundwater monitoring, and a few dust controls with an effective government oversight framework.

In addition, as discussed in the preamble to EPA's proposed rule regulating coal ash, we believe there are other issues that need to be addressed to ensure the protection of public health and the environment. This includes an effective oversight role to ensure that CCR regulations are properly implemented and enforced; a role in permitting programs so that all permits contain the necessary requirements to properly manage coal ash disposal units; and ensuring that cleanups associated with coal ash contamination are protected and that the costs of cleanup are not shifted to the general public.

As I mentioned, EPA has proposed regulations in June of last year for coal combustion residuals to address risks from the disposal of these wastes in landfills and service impoundments generated from the combustion of coal, electric utilities, and independent power producers.

I just want to underscore that the proposal is limited to the safe management of coal ash disposal, and it does not go beyond that. It does not seek to propose to regulate the beneficial use of coal ash in various other products.

We had public comments around the country, held numerous public hearings around the country. We heard from close to 15,000 people. We received 450,000 comments during the public comment

period, and we are in the middle of going through that.

Under the first regulatory alternative, EPA would reverse its May 2000 Bevill regulatory determination regarding coal combustion residuals and list these residuals, when destined for disposal in landfills or service impoundments, as special waste, subject to regulation under subtitle C of RCRA, which would create a comprehensive Federal program that is enforceable via a permit-based system.

Under the second alternative, EPA would leave the Bevill regulatory determination in place and regulate the disposal of coal ash under subtitle D of RCRA by issuing national criteria which would be narrow in scope and could only be enforced by States and private citizens.

Under both alternatives, EPA is proposing to establish dam safety requirements to address the structural integrity of service impoundments to prevent future catastrophic releases of coal combustion residuals.

Again, it is important to note that EPA did not propose to change the May 2000 regulatory determination to spread to coal ash residuals that are beneficially used. These residuals are currently exempt from hazardous waste regulation. EPA continues to believe that the Bevill exclusion should remain in place for coal combustion residuals that are beneficially used in an environmentally sound manner because of the important benefits to the economy and the environment.

Now, turning to H.R. 1391, H.R. 1391 would prohibit EPA from making the determination that coal combustion residuals should be regulated under subtitle C of RCRA. We think the better approach would be to consider all potential options based on the best science and data and what is best for the public health, while continuing economic growth. EPA will make this regulatory decision through a transparent rulemaking process based upon substantive data and records generated from extensive public comment.

I want to emphasize that an effective regulatory program must address the risk from mismanagement of coal ash disposal units and must include a comprehensive governmental oversight, require disposal units to install protective units, groundwater monitoring, dust control, ensure a permanent program for all the necessary requirements to properly manage coal ash disposal units.

I would also note that EPA plans to issue a notice of data availability in the next month or so to provide the public an opportunity to comment on certain information and data we have received during the public comment period.

Mr. Chairman, that concludes my remarks. Thank you again for the opportunity to appear here today. Thank you.

[The statement of Mr. Stanislaus follows:]

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Mr. Shimkus. I thank you very much for your testimony.

I now recognize myself for the first 5 minutes of questioning.

And, as I do that, I just -- you really put the debate in perspective. But our problem is your definition of beneficial use. If you label an emitent as a toxic, then there is no beneficial use anymore. Then you have a litigation nightmare for all these products that I pointed out, used all over the country. And that is part of the dilemma.

I want to put up a slide that I used with the administrator when she was appearing before us. In June 2010 -- I think it is coming sometime. Maybe it is not. And so, I am handing you a copy.

In June 2010, the proposed -- your coal ash rule, you said, "The regulatory impact assessment for this proposed rule does not include either qualitative or quantitative estimation of the potential effects on the proposed rule on economic productivity, economic growth, employment, job creation, international competitiveness."

Then the President, on January 2011, issued an Executive order which says, "Our regulatory system must protect public health, welfare, safety, and our environment, while promoting economic growth, innovation, competitiveness, and job creation."

And they are up on the screen now.

"It must take into account the benefits and costs, both quantitative and qualitative."

Doesn't the Executive order require you to go back and begin the kind of rigorous analysis, including job impact analysis, that he calls for before you propose any regulation in this area?

Mr. Stanislaus. Well, in the RIA, we did a comprehensive economic analysis --

Mr. Shimkus. No, you didn't. You state it right there. That is from your economic analysis. You say it doesn't. "Does not include either qualitative or quantitative estimation."

Mr. Stanislaus. Well, I mean, we did not do a jobs analysis, but we did do --

Mr. Shimkus. Okay. The President says in his Executive order you must do it.

Mr. Stanislaus. Well, if I could just explain what we did do. We did an economic analysis which looked at the various costs, including the cost on electricity, the cost to --

Mr. Shimkus. Wait, wait. But you say you didn't do it.

Mr. Stanislaus. Well --

Mr. Shimkus. I mean, my question is, do you have it? Can you forward us that information? Can you show us your analysis?

Mr. Stanislaus. Sure.

Mr. Shimkus. Because, based upon your statement in the report, you did not. And the President's Executive order says you must. So we are just trying to figure out if you have done it.

Mr. Stanislaus. Well, yes. I mean, we did do an economic --

Mr. Shimkus. Is it a part of the official submission of the report?

Mr. Stanislaus. In the proposed rule, we did submit an economic analysis. We looked at both the costs and benefits of the rule. And, again, in terms of -- we did receive a lot of data --

Mr. Shimkus. Okay. Well, let me put it this way. This will give us a great opportunity to hand this over to the O&I Subcommittee to do a proper investigation if we are hearing one thing and seeing another thing.

Mr. Stanislaus. Well --

Mr. Shimkus. So, all we can do is read what the EPA has produced for us. And we know what the President said. Part of our issue on jobs and the economy is, let's have science-based research, but let's make sure we understand the impacts on jobs.

Now, again, your statement says, for this proposed rule, "Does not include either qualitative or quantitative estimation of the potential effects of the proposed rule on the economic productivity, economic growth, employment, job creation, or international competitiveness."

Mr. Stanislaus. Yeah, we did not do a direct jobs analysis. What we did do is --

Mr. Shimkus. Well, okay, now, if you have not done a direct jobs analysis, are you not complying with the President's

Executive order? I would submit -- and I would check with your attorneys -- that you are not complying with the President's Executive order.

And I would also, then, request that we look at a way in which we can go back and use the instructions in which the President has asked to put that as part of the analysis of this. Because, as we see these recycled materials, if they do get labeled as -- it will have severe impact, and we will be importing gypsum from China, which may have -- and we already know it has environmental problems, versus our own gypsum-created wallboard.

So this is not a small thing. I mean, this is what has a lot of us concerned. When I had an electric co-op testify -- a lot of places in rural America are served by rural electric co-ops. They are not-for-profits. They are kind of what make rural America great. They projected their increase in electricity costs would be 25 percent to their consumers in small-town, rural America.

That is why many of us were pleased with the President when he did this Executive order. And we would hope that -- we will have this debate, but let's comply with the President's Executive order.

My time has expired. I yield to --

Mr. Stanislaus. Well, let me just quickly respond. I mean, we are looking at data submitted with respect to the economic impacts. But, in our analysis, we did also look at the beneficial-use industry. And --

Mr. Shimkus. No, I understand that. But I am just going based upon -- the President has changed course in January --

Mr. Stanislaus. Yes.

Mr. Shimkus. -- because of jobs, and said, we have to look at the jobs and economic impact.

Mr. Stanislaus. Yes.

Mr. Shimkus. And our concern is, that is not happening in the agencies yet.

Mr. Stanislaus. And my commitment is, all economic data has been submitted on the record.

Mr. Shimkus. Well, we will get --

Mr. Stanislaus. We will evaluate that --

Mr. Shimkus. We will get a chance to evaluate that.

I yield now to the ranking member for 5 minutes.

Mr. Green. I have a series of questions, but I really want to ask, is it -- since about 45 percent of coal ash now is used, whether it be minefill for 8 percent or about 37 percent in beneficial uses, would that be prohibited under EPA's ruling, considering this coal ash under RCRA?

Mr. Stanislaus. It would not be prohibited, nor are we seeking to regulate it. Although we are seeking comments on that.

Mr. Green. Because, frankly, I think for years we have tried to -- you know, it is great to be able to have beneficial uses. The Port of Houston, we found that the toxicity is not there so we can use it to build islands and bird islands and lots of things.

I would like to see us raise that percentage for coal ash to other things so we wouldn't have to worry about it.

Now let me get to my questions. The coal ash rule is a matter of great interest to the subcommittee and to our district. Unfortunately, the specific requirements of the proposed alternatives have not been clear. I appreciate the opportunity to hear directly from the agencies.

Some have said that the subtitle C regulation would require disposal in a hazardous-waste landfill. Is that true?

Mr. Stanislaus. Well --

Mr. Green. For coal ash?

Mr. Stanislaus. It would require a disposal under a disposal unit pursuant to the rule under subtitle C. That is right.

Mr. Green. Okay. What controls would be required for that? Of the over 50 percent that we can't use for beneficial uses, what controls would be required under subtitle C for coal ash?

Mr. Stanislaus. Well, the controls that we have identified are those that ensure to prevent the mismanagement, which have been documented in the rule -- things like a composite liner, things like groundwater monitoring, things like an effective government oversight to ensure that there is no mismanagement and, when there is contamination, there is cleanup of that contamination.

Mr. Green. I guess I am not familiar with coal ash, coming from -- but I have a lot of residue from some of our refineries.

We literally have mountains of carbon that we can't burn in our country, and we ship it overseas.

And would that be similar to what would be the residue from a refinery that is regulated? You know, I see the sprinklers, I see their control on it. Would that be similar, considering coal ash, what we have as a residue from our refinery?

Mr. Stanislaus. Well, I can't give a direct -- I mean, there are constituents involved, and I can't really directly answer that question.

Mr. Green. Oh, okay. Are these controls more burdensome than what is currently required under subtitle D?

Mr. Stanislaus. Well, our proposal envisions either a C or a D. And some of the differences include the ability for Federal enforcement, ability to have a permit program, and ability to have government oversight to ensure these are implemented in a safe way.

Mr. Green. So right now there is no Federal regulation?

Mr. Stanislaus. That is right.

Mr. Green. Okay. Some have said that the EPA, it finalizes a rule under subtitle C that the beneficial use would be prohibited. Is that correct?

Mr. Stanislaus. That is not correct.

Mr. Green. Okay. If subtitle C regulation is finalized, what requirements or restrictions on the materials that are beneficially reused -- would there be any requirements? Could we

not do, you know, FlexCrete, wallboard, gypsum, or mix it with gypsum or any of those products that was listed up here?

Mr. Stanislaus. We did not propose any restrictions on those kinds of uses.

Mr. Green. Can you describe -- I know you described the impact would be a lined facility and water monitoring. And do you require -- and, again, I am not familiar with coal ash -- would you require sprinkling to make sure it doesn't blow all over the place? Because I know that is what we have in other --

Mr. Stanislaus. Well, yeah, I mean, dust control is clearly something that we are evaluating, and we received a series of comments about that. So that is something we would consider.

Mr. Green. Well, fly ash or coal ash has a lot of good uses, and, like I said, hopefully, working with -- we can make those beneficial uses increase so we wouldn't have to landfill or dispose of it.

And I appreciate your testimony today.

Mr. Stanislaus. Yeah, and I would just underscore, you know, our interest is actually to ensure the maintenance, if not expansion, of the beneficials industry. And I have met with numerous of the companies and the trade associations. I mean, we are very much interested in ensuring that that business continues. But it is a multibillion-dollar business.

Mr. Green. Well, I have 20 seconds left. And the chairman provided an EPA brochure that is dated April of -- okay, EPA

approved this -- from 2005. Is this the process of re-evaluating EPA's previous work, I assume? And this might be dated then -- yeah, this says April of 2005.

Mr. Stanislaus. Yeah, we issued a series of documents, in partnership with industry, about various beneficial uses.

Mr. Green. Okay.

Thank you, Mr. Chairman.

Mr. Shimkus. Thank you.

And the chair now recognizes -- I want to go to Joe Barton, chairman emeritus, for 5 minutes.

Mr. Barton. Thank you, Mr. Chairman. I just got here. I would like to defer at this time.

Mr. Shimkus. Mr. Murphy will be recognized for 5 minutes.

Mr. Murphy. Thank you, Mr. Chairman.

I want to be sure, Mr. Stanislaus. So you are saying that, whether it is under subsection C or D, you can still deal with some regulation issues? Whether it is hazardous or nonhazardous, you would still have the authority to do some regulations?

Mr. Stanislaus. Well, propose regulation. I mean, some of the difference is, they do establish a criteria, and, you know, it is only enforceable by States and local citizens, where C, we would establish a comprehensive system that is federally enforceable to our permit program.

Mr. Murphy. One of the issues that is of concern is the cost of this. What do you believe is the cost of the increased impact

upon electricity development?

Mr. Stanislaus. Sure. So, we estimate for subtitle C an increase of about 0.1, about 0.2 percent under subtitle D option for electric rates nationally under subtitle D, about 0.8 percent nationally --

Mr. Murphy. What does that come out to in dollars per year for a family? Any idea?

Mr. Stanislaus. Yeah, I will get to that in a second. So, roughly, for subtitle C, it is about 8.84 cents per kilowatt hour. Which, if you break it down between residential, commercial, industrial: for residential, on a national average, about 64.4 cents per month; for commercial users, again, a national average, about \$4.4 per month; and for industrial --

Mr. Murphy. Per kilowatt?

Mr. Stanislaus. No, per month. On a monthly basis.

Mr. Murphy. Then it depends how much electricity they use.

Mr. Stanislaus. Yeah, it is based on energy information. It is kind of an average based on commercial users around the country.

Mr. Murphy. I want to make sure we understand that. I can't imagine that all that you are going to do is cost someone \$4 a month, a giant factory, whether they use things in the megawatts or watts for a light bulb. So I would appreciate if you could give us some accurate information.

Mr. Stanislaus. Sure.

Mr. Murphy. Thank you.

Another issue then comes up with -- a lot of small business say that regulating coal ash as a hazardous waste, versus a nonhazardous waste, has a big impact on public perception of those products. It is in drywall. I am sure there is lots in this building and other buildings, and countertops, et cetera. But they believe it is going to create a stigma, it is going to ruin efforts to do this.

So I am wondering, has EPA done a market analysis of what impact that would have upon purchasing or use of those products?

Mr. Stanislaus. Well, I mean, we have done a lot of things in the proposed rule, and we saw a lot of comments. One thing that we did is, to the extent that stigma could exist, that is why we proposed it to be a special waste, to kind of distinguish it from -- because we do kind of --

Mr. Murphy. To call it a special waste instead?

Mr. Stanislaus. I am sorry?

Mr. Murphy. So label it as a special waste?

Mr. Stanislaus. Yes. And -- well, I will just leave it at that.

Mr. Murphy. Okay. Because what I am concerned about here is that we already are aware that a lot of our coal is going to China and India and other countries. Products are made there in factories and in coal-fired power plants that have little or no emission controls. And that is already a concern.

Secondly, of course, the requirements for scrubbers has been an important way of removing emissions from the air. And I am concerned also about unstable landfills that could cause slides and disrupt communities, et cetera. But my concern overall is, how do we handle this the right way?

But let me ask this. How does the toxicity of fly ash compare with that of cement in producing concrete? Is there a different comparison analysis of that?

Mr. Stanislaus. Well, a lot of coal ash actually is used to make cement. And so one of the things that we look at in analyzing the risk of beneficial use is look at both how it is used but look at comparable constituents that the coal ash would displace.

And I should also note that there are numerous compounds which are listed under subtitle C that have, in fact, been recycled significantly. I can provide to you a list of all of those compounds.

Mr. Murphy. That is important. I mean, I want to make sure -- look, we are all concerned with clean air, land, and water. But I want to make sure that we have accurate information here and we are not simply exporting a problem to have it reimported in the air and in products. And this is where I really look to the EPA to be a solid science but also do a solid economic analysis for us, too, if we are just exporting and reimporting here.

Do you plan to seek a hazardous waste designation for municipal wet landfills, that there is also some of these products in landfills too?

Mr. Stanislaus. We are not pursuing that at the moment.

Mr. Murphy. Okay. With regard to this, do you think States are doing a good job? Or do you have some concerns about how the States are managing some of these issues now?

Mr. Stanislaus. Well, we clearly have identified in our proposal, there is a mismanagement in circumstances. There have been documented damages from that mismanagement, including documented damages to groundwater. So those are the reasons that we are pursuing this proposal.

Mr. Murphy. Well, were some of the ratings that you gave because they were unsafe, or does it have to do with some other engineering documentation required? I mean, I am curious what these ratings that you talk about are from.

Mr. Stanislaus. I am sorry --

Mr. Murphy. When you reviewed -- for example, there is a statement here: "The poor ratings were given because those units lacked some of the necessary engineering and documentation recording the assessments and not because the units are unsafe." This is from a release from the EPA, I believe.

Mr. Stanislaus. So there are two major risks that we are looking at. One is catastrophic failure. And so we have done --

Mr. Murphy. That is in the landfill and dams.

Mr. Stanislaus. That is the dams. And so, the Kingston is the most recent event. So we are trying to prevent catastrophic failures like that.

Separately, we are looking at leeching of various metals, arsenic, for example, from mismanaged coal ash impoundments.

Mr. Murphy. So the difference is the safety of dams and landfills versus recycled products. You are looking at those in a different way.

Mr. Stanislaus. Yeah. All we are seeking to do is ensuring, where it is disposed, that it is disposed safely. So, prevent catastrophic failure and prevent leeching of the various constituents found in coal ash.

Mr. Murphy. Thank you.

Thank you, Mr. Chairman.

Mr. Shimkus. Thank you.

The chair now recognizes the chairman emeritus, Mr. Dingell, for 5 minutes.

Mr. Dingell. Thank you, Mr. Chairman.

I would like to make a comment. It seems like we have a problem here, but it seems like we have the wrong cure.

I hope my colleagues were listening to the remarks made by my friend from Texas, Mr. Green, because I get the distinct impression that our problem here is whether we regulate under subtitle D or subtitle C. And it is clear that we have a problem that is going to require some sort of improvement in regulation.

Am I correct on that, Mr. Stanislaus?

Mr. Stanislaus. That is right.

Mr. Dingell. Okay. So do you have the authorities you need to regulate the ponds that seem to have brought us to this point? In other words, you had a great big break in a pond that flooded everybody out with a nasty mess. Do you have the power to regulate that?

Mr. Stanislaus. Well, I mean, we proposed a rule to do the best under the current legal framework --

Mr. Dingell. But the industry doesn't want this stuff classed as hazardous, because that will reduce the possibility of it being used for useful purposes like drywall and cement and plaster and other things that might be valuable. I think that is something to which we should look.

So if we gave the industry the authority that is needed to simply regulate the ponding, we would have pretty well abated the problem. Isn't that right?

Mr. Stanislaus. Well, I mean, clearly --

Mr. Dingell. Yes or no?

Mr. Stanislaus. -- the major issue is coal ash impoundments in landfills. So --

Mr. Dingell. Okay. But we don't want to landfill this because it is a waste of a valuable resource and uses space and all other manner of things. Am I correct in that?

Mr. Stanislaus. Yes.

Mr. Dingell. Okay. So I think, then, that if we don't have to change it to be either subtitle D or C, all we have to do is just give the EPA the authority to regulate the ponding. Is that right? And to do so in concert with the States, allowing the States to do so, but under EPA regulations. Does this make sense? Yes?

Mr. Stanislaus. Yes.

Mr. Dingell. Okay. Because the reporter doesn't have a "nod" button on her machine.

So I think, then, that you would say you agree and EPA generally agrees that we should simply address the question of ponding. Does that solve the environmental problems or does it solve the political problems that we find ourselves affronted with?

Mr. Stanislaus. Well, clearly, we need to identify the specific items we have identified in the proposed rule, things like --

Mr. Dingell. Your big problem is you have ponding that is not being well done; you have a potential large risk to the population, right?

Mr. Stanislaus. Yes.

Mr. Dingell. Okay. So if we control that, we have dealt with much of the problem. Is that right?

Mr. Stanislaus. That is right, the disposal that is a problem, yeah.

Mr. Dingell. So how much more needs to be done, other than addressing the ponding problem?

Mr. Stanislaus. Yeah, I mean, it is the disposal problem in providing us --

Mr. Dingell. I recognize that. But we are trying to sort out what the difficulty here is. And I find that there is a ponding problem. I don't see that we need to get into a fight over C or D, but I do see that we need to address that.

Now, what other things are there that we need to address in order to solve the problem and to get an agreement here in the committee that we can go forward with, that makes sense to us all?

Mr. Stanislaus. Well, it depends under what authority --

Mr. Dingell. Dear friend, you know, Harry Truman one time talked about he hoped he met a one-handed economist. And everybody said, why do you want to meet a one-handed economist? And he said, because the damned economists are always saying "on the right hand" or "on the left hand." All I want is an answer.

Now, what other things do we have to do here to resolve the problem? My time is running. I got 56 seconds. I am going to let you try to respond, but I hope you can do it within the 51 seconds that remains.

Mr. Stanislaus. Sure. To have an effective program, we need to have a permitting system, to have effective oversight, and some basic requirements like groundwater monitoring for that disposal.

Mr. Dingell. Traditionally, this committee has asked for

drafting service. Will you submit to us your specific recommendations on what we do to address this problem in a fashion that enables EPA to do the things that have to be done, so we can get this problem out of our hair, solve the difficulties of the people, let you folks do your business, make the States happy, and go about our business dealing with the other big problems?

And, Mr. Chairman, I want to commend you for having this hearing because this is a very useful exercise. And I appreciate your leadership on the matter.

Please get me the answers to those questions.

And thank you very much, Mr. Chairman.

Mr. Stanislaus. I will do so.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Shimkus. Thank you, Mr. Dingell. I look forward to working with you on this.

And now I would like to recognize Chairman Emeritus Barton for 5 minutes.

Mr. Barton. Thank you, Mr. Chairman. And I want to thank you also for allowing me to defer my questions, but I appreciate being able to do it now.

I want to associate myself with most of what Chairman Dingell said. I do substantively agree with his logic that we have a pond problem, perhaps, or impoundment problem. The coal ash itself I don't believe is a hazardous waste problem.

I do appreciate you being here. We have had a little trouble, apparently, getting the right telephone number or e-mail address at EPA. So somehow we got you to come, and we give you at least one star for showing up. That is a good thing.

Mr. Stanislaus. I only get one?

Mr. Barton. Well, depending on how you answer my question. Be lucky you are getting one. I don't give out many stars to the EPA.

Are you a policy maker at the EPA or a policy implementer at the EPA?

Mr. Stanislaus. I would say both.

Mr. Barton. Both. Okay. Good. I am told that Chairman Shimkus asked some questions about the economic analysis or

economic impact statements. You have seen this little handout that the EPA says that does not include either qualitative or quantitative estimation. And then, of course, the President's Executive order that says it must be taken into account.

There seems to be some confusion about just what, if anything, has been done in terms of an impact analysis. Do you have a work product that can be shown publicly?

Mr. Stanislaus. Sure. And I can just quickly go through the numbers. I will provide a more comprehensive information.

The economic analysis looked at both the impact of cost and the benefits. So, for example, the impacts on the utilities, impacts on the States, as well as the benefits from avoided groundwater impacts, avoided catastrophic failures. And I could quickly go through numbers of C and D, if you would like for me to do that right now.

Mr. Shimkus. Would the gentleman yield for just a second?

But my understanding on this analysis, there is nothing about jobs, effect on jobs. And I would encourage you to sit through the next panel and listen to the next panel testify about the impacts on jobs. You might be enlightened.

I yield back.

Mr. Barton. Well, point one is you say you have now done one, which seems to be a step forward. If you could just provide that to the committee staff on both sides, so we could take a look at it, and then we will probably have some follow-up questions.

I would assume the bottom line of that analysis is that this rule is the greatest thing since sliced bread and it needs to be implemented immediately to protect public health and safety, because if it doesn't, we are going to be inundated in a tsunami of coal ash waste.

Am I far off the mark on that?

Mr. Stanislaus. I mean, we do propose two options, and we identify the costs and benefits of both options in the rule. And we also received lots of economic data during the public comment period that we are sifting through now, and we are going to reanalyze it based on that and make the most informed judgment, balancing public health protection and economic consequences.

Mr. Barton. Well, do you, as an EPA official, agree with what Chairman Dingell said, that coal ash waste does have beneficial uses?

Mr. Stanislaus. Oh, absolutely.

Mr. Barton. Okay. And there are these products that we have been passing around, that they are useful. And so would you agree on the record that it would be a good thing if we could find our way clear to make sure that those types of uses continue to be an option?

Mr. Stanislaus. Oh, absolutely. And we would -- I have met with the industry numerous times, and we want to do it, separate from the rule, because we are not actually proposing to do anything with beneficial use, but also more proactively work with

the industry, as we have sought to do for many years.

Mr. Barton. Okay. Now, this is actually a legislative hearing, so we have a proposed Federal law. What is EPA's main objection to the pending bill?

Mr. Stanislaus. Well, it is that we want to make the most informed judgment based on all the data on the record, and ensuring that the rule that best provides public health protection as well as ensuring the economic benefits are maintained is done. And so, by this, it would remove that one option and not allow us to more fully make a decision based on all the data and all the 450,000 comments that we have received.

Mr. Barton. My time is about to expire. But going back to Chairman Dingell's original presentation, wouldn't it be better to work with the States to come up with a pond impoundment improvement program? Isn't that the problem? The problem is not the coal ash itself. The problem is that some companies apparently didn't maintain their impoundment mechanisms correctly and we had a failure. I mean, that is the primary problem. Don't you agree?

Mr. Stanislaus. Well, I agree. And I believe the States are a very strong partner and a lead regulator on this. And I think the intention is really to have a national framework for this to be done safely.

Mr. Barton. Okay. Thank you.

Thank you, Mr. Chairman.

Mr. Shimkus. Thank you.

The chair now recognizes Chairman Emeritus Mr. Waxman for 5 minutes.

Mr. Waxman. Thank you very much.

Mr. Stanislaus, I appreciate your being here today.

EPA has made two alternative proposals to address the safe disposal of coal ash. The Agency could regulate it under subtitle C of RCRA. Alternatively, they could act under subtitle D. The purpose of the legislation we are examining today is to ensure that EPA does not regulate the safe disposal of toxic coal ash under subtitle C. I would like to explore with you some of the differences between regulating these wastes under C as opposed to D.

If the EPA finalizes a regulation for coal ash under subtitle C, there would be a minimal standard for the safe disposal of toxic coal ash that would apply consistently in every State. The practice of coal ash impoundments would be discontinued and safe disposal would be federally enforceable. Is that correct?

Mr. Stanislaus. That is correct.

Mr. Waxman. If the EPA finalizes a regulation for coal ash under subtitle D, will States be required to adopt or implement those requirements?

Mr. Stanislaus. No.

Mr. Waxman. Would a regulation under subtitle D be federally enforceable?

Mr. Stanislaus. No.

Mr. Waxman. Would subtitle D regulation ensure that all States meet some minimal level of protection?

Mr. Stanislaus. No, the State would not have to pick up the requirements.

Mr. Waxman. Under subtitle D, there would be no required State action; there would be no federally enforceable requirements. States would have complete discretion to implement the requirements or not, as they see fit.

Can you explain to us how this approach to regulating coal ash under subtitle D would compare with the authority EPA has to regulate municipal solid waste under subtitle D?

Mr. Stanislaus. Yeah. The municipal authority would permit EPA, as it has in the past, to review and approve the municipal solid waste program. And we don't have that authority with respect to coal ash under, currently, D.

I should also note that, even under municipal solid waste, there is no enforcement authority by EPA.

Mr. Waxman. EPA has more authority to deal with municipal solid waste than it would for coal ash.

Mr. Stanislaus. Under D, that is correct.

Mr. Waxman. So if EPA acts under subtitle D, the EPA would have more authority over household garbage than it would have over coal ash?

Mr. Stanislaus. The way it is currently structured, that is

right.

Mr. Waxman. It is incorrect to consider subtitle D regulation as roughly equivalent to subtitle C regulation. It is not equivalent. It will not create Federal or State enforcement of necessary public health and environmental protections.

Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. Shimkus. And I thank you.

The chair now recognizes my colleague from Kentucky, Mr. Whitfield, for 5 minutes.

Mr. Whitfield. Thank you very much.

And thank you for being with us today.

How long have you served as assistant administrator of EPA for this area?

Mr. Stanislaus. I have been in the office since June 2009.

Mr. Whitfield. 2009. And where were you prior to that?

Mr. Stanislaus. Well, I was with a brownfield development organization in New York City.

Mr. Whitfield. Uh-huh. Since you have been at EPA, has there ever been a situation where, on a proposed regulation, the cost of the regulation exceeded the benefits of the regulation?

Mr. Stanislaus. Well, it is clearly something that we look at in all our rules before we even finalize that. So we would not propose a rule where the cost exceeds the benefits.

Mr. Whitfield. Could you give us a list of those regulations

that you have considered and have realized that the costs exceed the benefits?

Mr. Stanislaus. Yeah. I mean, I can't -- since my time, I can't think of one right -- we are in the middle of lots of rulemaking. I can't think of --

Mr. Whitfield. Can you think of one?

Mr. Stanislaus. Not right now, but I can get back to you.

Mr. Whitfield. Yeah, I would like for you to.

Mr. Stanislaus. Okay.

Mr. Whitfield. The reason I am asking the question, I recently read a Law Journal article on the formula being used determine costs versus benefits. And this Law Journal article, University of Michigan Law Journal article, is very critical of the analysis and it was so subjective in so many ways. So, we get the impression up here that it is very easy to show that benefits outweigh costs. And so I really would appreciate if you would get us an example of one regulation that you considered in which the benefits did not outweigh costs and you all decided not to implement it.

Mr. Stanislaus. During my time or just generally within EPA?

Mr. Whitfield. No, during your time. I want you to give me

--

Mr. Stanislaus. Okay. I am not sure. I will go check.

Mr. Whitfield. Okay. All right. But you are not aware of any.

Mr. Stanislaus. Yeah, I am not aware at this moment, yeah.

Mr. Whitfield. Okay. Now, under the Bevill amendment, I think you said 1993-2000, EPA determined that coal ash was not a hazardous waste. Is that correct?

Mr. Stanislaus. Yeah, that we would not regulate it under C at that time. Yeah.

Mr. Whitfield. All right. And now you decided that you should regulate it under C?

Mr. Stanislaus. No. We are still deliberating on that. We have co-proposed to regulate it under C or D.

Mr. Whitfield. Okay. But has your scientific evidence showed that it is a hazardous waste?

Mr. Stanislaus. Well, the evidence shows that there has been damages from the mismanagement of coal ash disposal.

Mr. Whitfield. Okay, there have been damages. But is it a hazardous waste, in and of itself?

Mr. Stanislaus. Well, I mean, we are still deliberating on that. And the differences is that, because of the various damages, what is the best tool to deal with the damages and ensure mismanagement doesn't happen? And that is what we are currently deliberating on.

C provides certain kinds of tools, like Federal standards, Federal enforceability of permit programs and oversight, that that is a tool that we need to examine, along with --

Mr. Whitfield. So you are focusing a lot of damages,

primarily.

Mr. Stanislaus. Well, the environmental impact, as well as the economic consequence of --

Mr. Whitfield. So, do damages have to be at a certain level for something to be classified as a hazardous waste?

Mr. Stanislaus. Well, again, we have not classified it as a hazardous waste, and I --

Mr. Whitfield. I am just asking theoretically. Do damages have to be considered to determine something as a hazardous waste?

Mr. Stanislaus. For consideration of subtitle C, absolutely, we have to look at the total damages, the science underneath that, the various constituents, the impact to public health.

Mr. Whitfield. Now, in your testimony, you said 130 million tons of waste is generated by coal-fired plants, correct?

Mr. Stanislaus. That is right.

Mr. Whitfield. Now, I read that 16,349 hazardous waste generators generated 47 million tons of hazardous waste last year. And the issue from some of the testimony of our other witnesses indicates that the capacity to take the amount of waste that would be having to be disposed of if you proceed with these regulations, that the capacity is not there to store it.

Mr. Stanislaus. Well, it is certainly something we are looking at, in terms of capacity and the States.

Mr. Whitfield. But, in your view, isn't the capacity there to take care of it?

Mr. Stanislaus. Clearly, new capacity is going to be necessary to comply with the rule.

Mr. Whitfield. How much new capacity?

Mr. Stanislaus. I will get back with the specific numbers. I will have to get back with you.

Mr. Whitfield. When do you anticipate you will make a final determination on this regulation?

Mr. Stanislaus. Certainly not this year. We are currently sifting through 450,000 comments. So sometime next year.

Mr. Whitfield. Okay, I see my time is about expired. Thank you.

Mr. Shimkus. The gentleman yields back his time.

The chair recognizes the gentleman from Georgia, Mr. Barrow. Waives.

The chair now recognizes the gentleman from Pennsylvania, Mr. Pitts, for 5 minutes.

Mr. Pitts. Thank you, Mr. Chairman.

Mr. Stanislaus, do you plan to seek a hazardous waste designation for municipal solid waste landfills?

Mr. Stanislaus. No, we are not pursuing that at the moment.

Mr. Pitts. Do you feel the States are doing a pretty good job of regulating municipal solid waste landfills?

Mr. Stanislaus. Yeah, I mean, we have reviewed the -- well, we previously approved their plans, and so -- but we are constantly engaged with the States on this issue.

Mr. Pitts. How do human health risks from municipal solid waste landfills compare to those with coal ash landfills?

Mr. Stanislaus. Well, I have not done a direct comparison. I am not sure we have that. But we have documented the specific risk from coal ash mismanagement and the need to address that.

Mr. Pitts. How does the toxicity of fly ash compare to that of Portland Cement, which it replaces in producing concrete, for instance?

Mr. Stanislaus. The direct toxicity? Again, I am going to have to get back to you on that.

Mr. Pitts. Do you have any opinion on the toxicity of synthetic gypsum compared to mined gypsum, which it replaces in manufactured wallboard?

Mr. Stanislaus. Well, I can get back to you on the specifics, but they are fairly comparable in terms of the constituents found in both, so -- in terms of what is contained in either mined or synthetic.

Mr. Pitts. How about the toxicity of coal ash compared to, say, household garbage?

Mr. Stanislaus. Well, again, I don't have a direct comparison. But, again, there are constituents in coal ash, if mismanaged, that do cause a risk. But if it is managed well, like beneficial use in a brick, for example, or wallboard, it can be done very safely.

Mr. Pitts. Okay. Back to landfills, do you disagree with

the States that landfill capacity will be wiped out in less than 2 years if EPA makes their subtitle C proposal final?

Mr. Stanislaus. I have not looked at that comment. I mean, I believe that is a comment on the record. We will look at that. I mean, we don't believe that specifically is the case, but we will look at -- we are looking at the capacity of C, disposal units in States.

Mr. Pitts. As head of the waste office, do you have any plans for streamlining permitting to ensure new landfill capacity, if you create the EPA's subtitle C designation?

Mr. Stanislaus. Well, clearly, our interest is to have a very streamlined program, not just within C but throughout. And as part of the President's regulatory review, we are looking at numerous opportunities to streamline and bring efficiencies to our programs.

Mr. Pitts. Okay. Another question on coal ash: Does coal ash qualify as a hazardous waste based on its toxicity pursuant to RCRA-mandated TCLP, the test?

RPTS SMITH

DCMN NORMAN

[10:35 a.m.]

Mr. Stanislaus. That is clearly something we are doing. And I should note that our proposal is to designate as a special waste, not a hazardous waste, because that distinguishes it from the disposal concern that we are seeking to address.

Mr. Pitts. Expand on that, please.

Mr. Stanislaus. Sure. One, there are other compounds because of the inherent nature that are listed as a hazardous waste. We felt in this case, both because if there is a perception of stigma, we wanted to kind of distinguish it from wastes that are inherently hazardous. So we are only seeking to address the disposal of it. So that is why we proposed to designate it as a special waste and to include all of the tools within C, like government oversight and permitting program. Does that answer your question?

Mr. Pitts. Yes.

Mr. Shimkus. [Presiding.] Will the gentleman yield?

Mr. Pitts. Yes.

Mr. Shimkus. So I hear you. I mean, I think that is kind of the direction a lot of us know that we need to go. But what you are not saying is when you identify it as a special waste, will that be under subtitle C as a toxic waste?

Mr. Stanislaus. It will definitely be under subtitle C.

Mr. Shimkus. Okay. Well, then we are not going that way.

Mr. Pitts. I yield back.

Mr. Shimkus. The chair now recognizes the gentleman from Louisiana, Mr. Cassidy, for 5 minutes.

Dr. Cassidy. Hello, Mr. Stanislaus.

Mr. Stanislaus. Hi.

Dr. Cassidy. I know just enough to be terribly confused, okay? And I am between two committee hearings, so I apologize if you have already answered some of this.

I gather that the principal problem is groundwater contamination with trace elements which are hazardous, selenium, cadmium, whatever. I also gather that this -- I think I have a CRS report here that says, that kind of describes the sort of lining that appears -- the composite liner, upper component of flexible membrane, 2 feet of compacted soil beneath that. And that truly seems effective at limiting groundwater contamination.

Mr. Stanislaus. That is what we propose, exactly.

Dr. Cassidy. So why not just do that under section D, subtitle D? I mean, if this is what is required, and we know this works, you can go out and inspect and make sure that it is working, do some groundwater pre-and post-testing. Why not just do that under subtitle D? I guess that is my confusion.

Mr. Stanislaus. Yeah, we did propose those technical requirements under D. There are some differences between D and C. As an example, a permit program and government oversight, so there

are some differences. I mean, D does not require States to pick it up. So States are not required to modify their program to be consistent with D. So the enforcement of D is either by States or by private citizens groups.

Dr. Cassidy. Now -- okay. Does D include groundwater testing?

Mr. Stanislaus. D would -- as a criteria, it would be one of the components of the criteria; that is right.

Dr. Cassidy. Of D.

Mr. Stanislaus. Of D and C.

Dr. Cassidy. So if we are really concerned about groundwater testing, I would like to think that States are responsible enough that they don't want cadmium, or whatever the trace element is, in their groundwater. And if we know that that testing would be in place, does EPA -- implicit in this is that EPA feels the States won't do a good enough job. Is that a fair statement.

Mr. Stanislaus. Well, no. I mean, we want to have a scheme that -- again, we have not made a determination of whether a C or D. We want to be -- and one of the sets of data that we have asked, and we have asked for the States, we are in constant engagements with the States, is what is the best framework for doing this. D set the criteria that is effective, but are the staffs implementing? So it is up to the companies to kind of implement that? And so the enforcement and oversight is a real kind of key component to ensure safe management of disposal.

Dr. Cassidy. And not just the companies to implement, but also puts a burden upon the States to ensure implementation, correct? I mean, the States, once they know it is a health hazard, theoretically States don't want their groundwater contaminated, so theoretically States are going to act in the best interest of their citizens, just as the Federal Government is going to, theoretically, act in the best interest. And as a Republican, of course, I would like to give more responsibility to the States than to the Federal Government.

But again, I go back to this implicit -- it seems as if you are a little concerned that the States may not be up to the responsibility.

Mr. Stanislaus. No. Either way the States would have lead responsibility under C or D.

Dr. Cassidy. Okay. But D -- but C would have a bigger role for EPA, if you will, the oversight of the States' oversight.

Mr. Stanislaus. Yeah. So EPA would ensure that the States comply with these requirements. But ultimately, the goal is to have the States run the program.

Dr. Cassidy. Okay. Now, allay my fears. My city, I represent the metropolitan area. Louisiana, Baton Rouge, has been under a nonattainment for quite some time. We can't build out our industry because we are under nonattainment, so we can't create jobs by plant expansion, if you will. We are under Region 6. And I am told by credible sources that they have been sitting on our

application for 3 or 4 years; that we are not getting our application to be under attainment processed in a quick way. Of course, the cost is jobs. No explanation given, just not processing.

So I guess my concern is that whenever the EPA is giving oversight, ultimately it means that they really control the process. Is it possible that -- of course, it is possible -- but how would you address the concern that once you have oversight of the oversight, and you have the ability to yank the permit or to grant the permit, that it would be that same sort of bureaucratic Kafkaesque scenario where jobs aren't being created, energy costs are going up merely because somebody in Region 6 has decided not to process an application?

Mr. Stanislaus. Clearly, that is not our interest. And the history of the C program is that we review, approve, and plan to get out of the way for the States to kind of execute that program. So while we retain oversight; but the real goal is to have the States execute the program, as we have done in other programs under C.

Mr. Shimkus. The gentleman's time has expired. Kafkaesque. That is pretty impressive for someone from Louisiana. The chair now recognizes the gentleman from Ohio for 5 minutes.

Mr. Latta. I thank the chairman. And Mr. Assistant Administrator, thanks for being with us today. As you can see, I represent the Fifth District in Ohio. And Ohio is dependent

heavily on coal for our generation. And I also -- I am going to throw in my friends, just to my west in Indiana, because my district runs down the Indiana line, so we have a lot of folks that work in Indiana, or vice versa, Indiana working in Ohio. So when we have over 80 percent of our power coming from coal, Indiana estimated over 90 percent is coal-generated.

My concerns go back to what the chairman was talking about a little bit earlier, especially on the jobs side. And I would like to ask you a couple of questions, if I may, first on how when EPA was looking at this, did you look at how high the electricity rates could rise for the States like Ohio and Indiana that are dependent on that coal for producing not only that electricity, but that is what turns on those machines at those factories that create those jobs and our States are retaining those jobs in our States?

Mr. Stanislaus. Yeah, we looked at all the costs. And I could break down again the electricity costs, but we did look at the potential impacts for electricity, assuming the utility passes on 100 percent of the cost to the utility customer. And I could provide on the record, I could go back over that. But we did look at both on a national average and individual State-by-State basis.

Mr. Latta. Okay. Do you have any of those statistics with you today?

Mr. Stanislaus. Yes. I could --

Mr. Latta. Like for Ohio, for instance; where would you see

those costs?

Mr. Stanislaus. Let me see if I can quickly find Ohio. I am going to have to get back to you on Ohio.

Mr. Shimkus. If the gentleman will yield just one second on that.

Mr. Latta. I yield.

Mr. Shimkus. The point being, rates will relatively stay unchanged, but you are not including the cost of the waste, new regulations under subtitle C, the disposal of now twice as much material. That is a burden of cost, and that is why that economic eval that the President has directed, that is why that is important, because it needs to be comprehensive, not just a basic thing of what happens to rates because -- anyway, I will yield back to my friend.

Mr. Stanislaus. Just to be clear, we did include all the costs --

Mr. Latta. Thank you very much, Mr. Chairman. Because under the Electric Power Research Institute, which is not an advocacy organization, it points out that a lot of the cost factors that EPA omitted from its electric rate impact analysis, the EPRA says the proposed coal ash disposal regulations will cost three to four times more than your estimate. And that goes back to what the chairman is saying. And, again, these costs that drive the businesses out of our States.

And I know how bad it is getting because in Ohio we are going

to lose two Members of Congress this time around, because we have got folks that are leaving the State, going to other States to find jobs, and our kids are leaving. And I think those are the things that we really need to know is just not the rate, but you know, all of the impact it is going to have on our States.

If I could move on to another question. In your testimony, just to make sure I understand, on page 4 and then also page 5, could you define "encapsulated" and "unencapsulated" because you say that encapsulated, you are talking about concrete or wall board. Now when you are talking about concrete, is that in the dry form or in the final form that it is actually after it has been made?

Mr. Stanislaus. Yeah, it is the final form.

Mr. Latta. Okay. So the powdered form would be the unencapsulated, correct?

Mr. Stanislaus. No. We got in addition to the final product, so there are some benefits to uses that are not essentially solid in its final form. So we do go through that distinction about certain stakeholders have raised concerns, and we are doing some research on certain unencapsulated that we are doing more research on. So we don't have concerns or insignificant concerns of like, for example, concrete; because these constituents are kind of embedded in that final form, and we don't believe there are issues that --

Mr. Latta. Okay, again, pardon me for interrupting. You are

referring then to concrete after it is set, not in the pallets. Okay. Because there are contexts that there are individuals, companies, et cetera, that aren't going to touch this anymore, because they are going to say, We don't want to to be held liable if all of a sudden down the road this is going to be held as something that is hazardous, and then all of sudden we are going to be responsible for tearing something up or being sued.

So I think it is very, very important on these definitional phrases when you are talking about encapsulated and unencapsulated, because if we are talking about concrete in two different forms, that is going to have a lot of people very, very concerned.

Mr. Stanislaus. Yeah. Just to be clear, we are not proposing to regulate beneficial use at all in the proposal. The proposal is limited to just disposal and kind of the impoundments and landfill scenarios. We did see comments on is there anything else that we should be doing. But we have not proposed to address any form of beneficial use at the moment.

Mr. Latta. Mr. Chairman, my time has expired and I yield back.

Mr. Shimkus. The gentleman yields back his time. The chair now recognizes the gentleman from Colorado, Mr. Gardner.

Mr. Gardner. Thank you, Mr. Chairman. Thank you for joining us today.

And I want to go back to a series of questions that you

answered with the chairman regarding economic analysis. You stated in later questioning that the EPA would not propose a rule where the costs exceed the benefits. Earlier though, you said that -- and you said that you did an economic analysis, but that economic analysis did not do a jobs analysis. Is it standard procedure for an economic analysis to ignore the impact on jobs?

Mr. Stanislaus. Well, we didn't do a direct analysis, and again we sought --

Mr. Gardner. So you did not do a direct economic analysis.

Mr. Stanislaus. No, no. We did a direct economic analysis of various potential costs that we have identified, which includes cost of compliance by the utility sector, the cost to the States, as well as various benefits

Mr. Gardner. But not a cost on jobs.

Mr. Stanislaus. Not directly.

Mr. Gardner. So you did do a cost on jobs, then, indirectly?

Mr. Stanislaus. Well, we just looked at the direct cost from complying with the rule

Mr. Gardner. So you did or you did not do jobs?

Mr. Stanislaus. Not. No

Mr. Gardner. So is it standard procedure, then, for an economic analysis to not include jobs?

Mr. Stanislaus. Well, I can get back to you on the specific details of how we do economic analysis. We do economic analysis based on the direct consequence of our rule

Mr. Gardner. So you don't think your rule would have direct consequences on jobs?

Mr. Stanislaus. Well, we did an analysis of various costs of that, and clearly we are cognizant of the economic consequence of our rule

Mr. Gardner. So it does have an economic consequence.

Mr. Stanislaus. Sure. But we looked at both the cost and benefits of the rule.

Mr. Gardner. But you didn't look at jobs.

Mr. Stanislaus. Not directly, no. So we looked at, for example, the impact on the utility industry.

Mr. Gardner. So there is no impact on the utility industry on jobs?

Mr. Stanislaus. Well, we didn't do that direct analysis. There is an impact on cost to the utility industry, and that translates to potential increase, as I had noted earlier, some rise in utility rates

Mr. Gardner. So do you believe, then, that an economic analysis that fails to show the full picture on jobs, is that an adequate economic analysis?

Mr. Stanislaus. Well, we think we did a comprehensive analysis of economic -- the total cost of economic, the cost and benefits. But clearly we received a lot of data on various forms of economic analysis that we are looking at it very hard right now.

Mr. Gardner. So let me just ask that question, then. I think it is a "yes" or "no" answer. Do you believe that an economic analysis that fails to show the impact on jobs, is that a complete economic analysis?

Mr. Stanislaus. Well, clearly we all, you know -- and the President has made that commitment. We have to look at job consequence for everything we do

Mr. Gardner. So then the answer is "no." It is an incomplete economic analysis.

Mr. Stanislaus. Well, I think the economic analysis as part of every rule is going to differ. And I can get back to you on the reasons.

Mr. Gardner. Well, I just would like to know. Is it the EPA's position that an economic analysis that fails to take into account jobs, is that a complete economic analysis? I mean, I don't see how you can talk about economic analysis without talking about jobs.

So I guess I would like to know -- and you said that you would not propose a rule where the costs exceed the benefits. But if you are not taking into account jobs, I just don't see how that goes. What other rules has your office or the EPA promulgated that hasn't focused on jobs or taken into account jobs?

Mr. Stanislaus. Well, I mean, I will get back to you on the rules.

Mr. Gardner. I would like to see a list of all the rules you

have proposed that haven't taken into account jobs. And then the executive order that was issued, will you ask for a review under the lookback provisions of the executive order so that it does take into account the effect on jobs?

Mr. Stanislaus. Well, clearly we would look at any job consequences.

Mr. Gardner. But you haven't. And you said you won't, and you didn't.

Mr. Stanislaus. Well, you know, as I explained earlier, we have to look at the direct consequence of the rule. And so to the extent that there are direct job consequences, we will take a look at that

Mr. Gardner. So you have taken a look at jobs.

Mr. Stanislaus. We have not directly taken a look at jobs.

Mr. Gardner. But your answer just then said that you would take a direct look at jobs. So you have or you haven't?

Mr. Stanislaus. Not directly in the rule, in the proposed rule.

Mr. Gardner. I guess I would like an explanation to know whether or not the EPA considers jobs in their analysis, whether you have, and whether or not the EPA's position is to consider jobs when it does an economic analysis.

Mr. Stanislaus. We definitely consider the consequence of jobs in our economic analysis. But the form of the economic analysis is really driven by the requirements of the rule.

Mr. Gardner. This sounds like an answer -- well, anyway, I think Yogi Berra could have some interesting comments on "we have," "we haven't." Is environmental justice considered in the economic analysis?

Mr. Stanislaus. I don't believe directly, no. We just look -- the primary amount of the benefit that we are trying to avoid is avoidance of contaminated drinking water

Mr. Gardner. So environmental justice was not a part of your --

Mr. Stanislaus. We did do an environmental justice analysis.

Mr. Gardner. But not jobs.

Mr. Stanislaus. In terms of the economic analysis, we looked at the benefits of avoiding, for example, drinking contaminated drinking water or avoiding catastrophic failures.

Mr. Gardner. What does "environmental justice" mean to you?

Mr. Stanislaus. Avoiding a disproportionate impact on certain communities.

Mr. Gardner. And that was considered under the rule.

Mr. Stanislaus. We considered -- we evaluated that.

Mr. Gardner. But disproportionate impact on the community does not include jobs.

Mr. Stanislaus. We certainly looked at the economic consequence of the rule.

Mr. Gardner. Well, I look forward to hearing back from you.

Mr. Stanislaus. And I can provide you with those details.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Shimkus. The gentleman's time has expired. The chair recognizes the gentleman from West Virginia, Mr. McKinley, for 5 minutes.

Mr. McKinley. Thank you, Mr. Chairman. And thank you for the committee allowing me to participate in this discussion.

Thank you for being here. I have got several questions. I don't know how I am going to get through them all in 5 minutes. But let me -- last week we had some testimony from Purdue University. Dr. Ridgeway came in and explained some of the differences between the costs of handling between the fly ash if it were considered a hazardous waste. And she was suggesting that it would rise from \$300,000 at a university to \$25 million.

Now, that is not a cost that can be absorbed by the taxpayers or the -- excuse me -- but it is going to be directly passed on to the consumers. And in that case you had indicated somewhere your analysis had been, I believe, \$4 a month or \$50 a year under a class C, subsection C classification. I heard you make that testimony earlier, whereas her number is closer to \$600 a year. Was she wrong?

Mr. Stanislaus. Yeah. I am not familiar with that. The previous number is more --

Mr. McKinley. We can get that for you then on that, but I think we need to take a look at that and the difference. Then you also talk about the beneficial use. And I heard testimony from

our colleague from California refer to it as toxic, toxic fly ash. I don't know that -- is the EPA saying it is toxic?

Mr. Stanislaus. We have --

Mr. McKinley. You agreed. I mean, you didn't correct him when he said toxic fly ash, and you sat there and accepted that. Is it toxic?

Mr. Stanislaus. Again, we are in the middle of a rulemaking, and whether it is on the COD is something that --

Mr. McKinley. Because if it is toxic, I think we should treat it a lot differently with it. I am not interested in trying to pass this thing off -- especially try to force it on the consumers if it is toxic. And if it is a hazardous material, we shouldn't do it.

You have referred to the studies in 1993 and the study in 2000 that both said it is not a hazardous material. The testimony is there. So I am concerned that the EPA is continuing this mantra that is going to stigmatize a by-product, an unavoidable by-product of burning coal. And the whole administration is concerned with what you are doing.

We have information here in this packet from OMB, the Army Corps of Engineers, Department of Energy, DOI, Department of the Interior, Transportation, TVA, USDA, are all saying this could have some serious consequences to the economy of this country if you proceed with classifying it as a hazardous material. Their own comments back in -- talk about the threat. What will

corporate liability lawyers tell companies about creating wall board for use in homes, hazardous material? Would you, if you allowed it to be considered a hazardous material, would you allow hazardous material, even though the comment toxic, to be used in drywall in our schools for our children? You are saying that is an okay beneficial use?

Mr. Stanislaus. Well, again, the only thing that we are identifying is the mismanagement of coal ash could result in impacts. There are lots of products containing constituents either maybe coal ash or not that --

Mr. McKinley. There are a lot of products that have toxic chemicals with it. You do understand Bitchem asphalt highways have nickle, vanadium, chromium, mercury, arsenic, selenium, but yet we have asphalt highways all across America. I am not sure I understand, since the concentration levels are quite similar between fly ash and asphalt, why we are singling out asphalt or singling out fly ash for this issue.

Do you also consider the amount of additional greenhouse gases that will be emitted by replacing this? We are going to do more damage to the environment with greenhouse gases if again, following the EPA's argument, if we substitute fly ash in other products, we are going to have to create more greenhouse gas. Which should we be more concerned with?

Mr. Stanislaus. Well, clearly, we very much acknowledge the greenhouse gas benefits among other benefits of beneficial use of

coal ash. I mean, the cement industry, for example, the concrete industry, tremendous benefits, greenhouse gas and otherwise.

With respect to highways, we fully support the use of coal ash in highways. In fact, we have worked with the private sector. We have worked with the Department of Transportation.

Mr. McKinley. You haven't included encapsulization as such. It is a surface. When you drive over it you are going to create dust. There is concrete dust. We all know that. I have designed plenty of highways in my days, and we all know that just simply using the highway, scraping it, the use of it is going to create more airborne debris. If you are going to call it a hazardous material, I think we have got problems.

I am afraid I have run over my time. But I look forward to hearing more from you in the days ahead.

Mr. Stanislaus. Sure. And just quickly, our perspective is safe handling, and we want to promote all the benefits.

Mr. McKinley. We all do

Mr. Shimkus. Thank you. We do appreciate your time, Mr. Stanislaus. I know it was a tough morning. But we do appreciate this. I think there are some areas of consensus and agreement. Legislation has moved to ensure that we don't go in a direction that we think is going to be harmful for the economy and not make much difference in the safety of our citizens. So -- make any difference.

There are some questions submitted to you for response. We

will leave the record open, and if you could reply in a timely manner, we would appreciate it.

[The information follows:]

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Mr. Shimkus. I would also just end by saying, you know, on the retaining ponds, you all have authority under the eminent hazard authority on containment ponds. The language is "may." So nothing is prohibiting EPA from doing containment ponds now under RCRA 7003 and Safe Water Drinking Act 1413. So I would draw that to your attention. And with that, I appreciate my colleagues for the first panel. Thank you, sir, for coming. And we will sit the second panel.

I would like to officially recognize the second panel, and the way I will do it is I will just kind of introduce you all right at the beginning and get that out of the way. It won't be in any great depth, and then we will just go to your 5-minute statements. The full statement is in the the record.

You can see it is a hearing that we have a lot of interest on, so we want to get to questions as soon as possible. So if we stay around 5 minutes that would be helpful.

And with that, in the order I have here, well, I will go to -- first of all, we have to my left Mr. Tom Adams, from the American Coal Ash Association, welcome.

Then we have Ms. Dawn Santoianni. Oh, you are over there. Is that close? Oh, I know why. And then we have Ms. Zdanowicz. Thank you. Good.

And then it looks like it is Ms. Lewis -- that is easy -- Ms. Evans and Mr. Havens.

STATEMENTS OF MARY ZDANOWICZ, EXECUTIVE DIRECTOR, ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS (ASTSWMO); THOMAS ADAMS, EXECUTIVE DIRECTOR, THE AMERICAN COAL ASH ASSOCIATION (ACAA); ARI LEWIS, SENIOR ENVIRONMENTAL TOXICOLOGIST, GRADIENT; DAWN SANTOIANNI, SENIOR QUALITY ENGINEER, VERITAS ECONOMIC CONSULTING LLC, CARY, NORTH CAROLINA; LISA EVANS, SENIOR ADMINISTRATIVE COUNSEL, EARTHJUSTICE; AND CURTIS HAVENS, CHESTER, WEST VIRGINIA

Mr. Shimkus. Mr. Havens, we want to welcome you here. And the opening statements are 5 minutes, as I said. So we will start with Mr. Adams to my left. You are recognized for 5 minutes, sir.

STATEMENT OF THOMAS ADAMS

Mr. Adams. Thank you, Mr. Chairman. We appreciate the opportunity to come and talk to you today and the committee about one of the great recycling stories of our time, and how that success is endangered by potential overreaching by the EPA in this effort to create proposals and regulations for disposal.

Our association was founded over 40 years ago to advance the management and use of coal combustion products in ways that are environmentally responsible, technically appropriate, commercially competitive, and supportive of a sustainable society. I would

like to emphasize that most of ACAA's members are small businesses comprised of people who are dedicated to the cause of recycling and improving the environment. It is these businesses that are being hurt most by this regulatory uncertainty over EPA's proposal whether to go hazardous waste or nonhazardous waste for disposal.

ACAA strongly endorses the bills that were recently filed to prohibit EPA from regulating coal ash as a hazardous waste. We would like to commend Mr. McKinley and Mr. Latta for their leadership in this issue. When EPA proposed a potential hazardous waste designation for coal ash over a year ago, the agency cast a cloud over our recycling efforts that has caused coal ash users across the country to decrease their specification and use of the resource. Now it appears that EPA will not come up with a final rule for quite some time. And Mr. Chairman, some of our members will not survive this delay.

The bills before the House right now would prevent EPA from regulating coal ash as a hazardous waste under subtitle C, thereby resolving the regulatory uncertainty hurting our members. However, the bills would not prevent EPA from creating rules which protect human health and the environment, as we need.

Our association was very clear last year when we went on the record passing a resolution of our board of directors, endorsing subtitle D rules for disposal, and opposing any form of subtitle C regulation.

Supporters of the hazardous waste designation say there is no

evidence of stigma associated with hazardous designation for coal combustion products. In fact, just the existence of EPA's proposal has created a stigma that has affected markets in three ways.

Number one, consumers of coal combustion products are beginning to remove materials from their specification because of uncertainty over safety, or the fear of potential liability from using it. Owners across the country, including the Los Angeles Unified School District, Anne Arundel County in Maryland, and even the Canadian province of Nova Scotia have removed the use of fly ash and concrete over fears of its potential safety concerns. ACAA members are in these markets daily, dealing with this stigma, and know it is a real problem for the industry.

Manufacturers of competitive products are currently using the potential for a hazardous waste rule as a marketing product for their materials. And we have seen it in blasting grit, brick manufacturing, lightweight aggregate production and concrete block manufacturing, all competitors using some form of the hazardous waste threat to market their products.

And thirdly, we see commercial liability policies from insurance companies coming up with exclusions for concrete products and fly ash and synthetic gypsum being used in projects.

So we have three very good examples of how the stigma is affecting markets today, even without a rule, with just the cloud of that rule. Supporters of hazardous waste designations say that

recycling rates will actually increase under hazardous waste designation.

Citing the experience of a handful of industrial by-products, EPA's evidence comes from material such as spent sulfuric acid, electric arc furnace dust, chat from lead and zinc mining and used oil. However, every one of the materials cited by EPA comes in small quantities which are heavily reprocessed before use and generally remain in the custody of the generators.

CCPs are markedly different. They come in large quantities, are not reprocessed before use, are not used by the generator, and are used in products in retail, commercial and institutional markets. Citizens in this country can literally reach out and touch products containing CCPs in their homes.

The coal ash recycling industry is worth protecting. The benefits of using coal ash rather than disposing of it are measured in the millions of tons annually, millions of tons of decreased landfill use, decreased natural resource use and decreased greenhouse gas emissions.

In the decade from 1999 to 2009, the period for which data is most recently available, our Nation successfully recycled 519 million tons of coal ash, some 38 percent of the 1.35 billion tons generated. We decreased greenhouse gases by 138 million tons during that same period through the use of fly ash and concrete products. In the process, we contributed 9- to \$10 billion annually to the economy and created over 4,000 green jobs.

Our highways are benefited and bridges are benefited by the use of coal ash. Our agricultural markets are benefited by it as well.

We urge you to support the bills that will resolve this regulatory uncertainty crippling the recycling effort in this country. Thank you.

Mr. Shimkus. Thank you, Mr. Adams.

[The prepared statement of Mr. Adams follows:]

***** INSERT 2-1 *****

Mr. Shimkus. Now we will recognize Ms. Mary Zdanowicz, Association of State and Territorial Solid Waste Management Officials. I wanted to get that on the record for the title. So you are recognized for 5 minutes.

STATEMENT OF MARY ZDANOWICZ

Ms. Zdanowicz. Chairman Shimkus, Ranking Member and members of the subcommittee, as the executive director of ASTSWMO, I won't say the whole name, I want to thank you for inviting us to testify today.

Members are experts, government experts in the management of hazardous and solid waste and representing 50 States, five territories and the District of Columbia. ASTSWMO supports the goal of H.R. 1391, to prevent regulation of coal ash as a subtitle C material.

The States have concerns, many concerns, but I am only going to address three today: One, CCRs are not a hazardous waste; the limited amount of capacity for hazardous waste; and the impact on State waste management programs.

First, the hazardous waste issue. There are three bases for regulating CCRs as a hazardous waste that the EPA has cited. First is the criticism of the test method used to determine whether it has characteristics of hazardous waste; the second are

damage cases; and the third is a draft risk assessment report.

The test is TCLP, and it is the only procedure that is approved by the EPA for determining if a material has characteristics of hazardous waste for purposes of disposal. There are other tests that can be used to determine if a waste is hazardous for purposes of exposure to the environment. And our members support other methods that can in fact simulate those other conditions and believe that those are beneficial for beneficial use determinations. However, there is no evidence that TCLP is not appropriate for determining hazardous waste for the purposes of landfill. And based on vast experience of our State members, coal ash rarely is found to be hazardous with the TCLP method.

The second issue is the risk assessment. And there is much to critique about that risk assessment. But the report itself really says it most succinctly, and that is the risk assessment was based on landfill methods that are outdated and that, using current landfill methods, the risk -- there is not the risk identified in the report.

And then the alleged damage cases. I can say the same thing for the 24 damage cases that EPA identified. And I say "alleged" because they are alleged to represent modern-day landfill construction and practices. In fact, they don't. Those 24 cases are from -- some of them, for example, are from before RCRA. There are only three that appear to be operated after 1990, and

for a short time. And those are times when the construction of landfills certainly were not what they are today. But, in fact, those cases, as well, are not really what I would call landfill practices, clearly not today. For example, some include gravel pits, quarries, and even a lake impoundment. That would never be considered disposal.

Now, not all sites that are called damage cases actually are. Recent nongovernmental reports name an additional 70 sites as damage cases. But the sites were identified by members of the public who reviewed records from State environmental offices. And our members contest the conclusions about those sites in their reports. They found the information to be incomplete, incorrect, and/or misleading. The bottom line, any evidence that is used to support subtitle C regulation of coal ash should be based on sound science and modern disposal practices.

The other issue I would like to address is disposal capacity. Using a very optimistic estimate, the amount of coal ash that will be produced for disposal is about 22 million tons a year. The States and EPA agree that there is less than 35 million tons of capacity for coal ash -- or, I am sorry, for hazardous waste currently. So that means in less than 2 years that capacity will be consumed and that has tremendous implications for State programs.

Mr. Shimkus. Thank you very much. The time is expired. Y'all both did great on 5 minutes.

[The prepared statement of Ms. Zdanowicz follows:]

***** INSERT 2-2 *****

Mr. Shimkus. Now we will see how Ms. Lewis does. Ms. Lewis is a toxicologist with Gradient. We welcome you and you are recognized for 5 minutes.

STATEMENT OF ARI LEWIS

Ms. Lewis. Good morning, everyone. I appreciate the opportunity to testify here today in front of this committee. My name is Ari Lewis, and I am a toxicologist and risk assessor, and I presently work in an environmental consulting company called Gradient. As far as my background goes, I have extensive expertise in metal toxicology and risk assessment, and over the past several years I have been actively involved in many different issues related to coal ash and public health.

Before I move on to my key points, I would just like to point out that most of my technical work related to coal ash risks has been performed under contract with the Electric Power Research Institute. However, I am here today as an independent agent, and the opinions that I am going to express are my own.

Today my testimony is focused on EPA's risk assessment and the regulatory impact analysis; and specifically, whether the health-based information contained in these documents supports the regulation of coal ash as hazardous waste. And just to get everyone oriented, I am going to sort of state my overall

conclusions first, and then I will provide some of the details.

So my overall conclusions are these: Number one, the results of the risk assessment actually demonstrate that under typical waste disposal practices, coal combustion residuals do not pose a public health concern. High-end risk estimates in EPA's risk assessments are uncertain and reflect more atypical exposure scenarios that do not necessarily reflect real-world conditions. As a result, the quantitative risk estimates that are presented in the risk assessment cannot be reliably used to distinguish among different regulatory options, mainly because the risks are likely to be severely overestimated.

And finally, the results of the regulatory impact analysis and considerations of the uncertainties in that analysis demonstrate that there is very little public health benefit to be derived from regulating coal combustion waste as hazardous waste.

So now I will just provide a little bit more background. I think, first, it should be recognized that the EPA risk assessment was a very complex undertaking that attempted to capture the full range of disposal scenarios under a wide range of environmental conditions and waste characteristics.

While this was a very comprehensive approach, examining risks in this way leads to two major issues. The first one is that this approach creates hypothetical waste management units that do not necessarily reflect real-world conditions.

And number two is that this kind of approach involves a large

number of assumptions that leads to a profound amount of uncertainty which often manifest as risk overestimates. When this uncertainty is not fully characterized, it leads to risks that can be overstated and lack reliability, particularly when you are estimating high-end or low-end risk. And for this reason it is most appropriate to use the EPA results qualitatively, for example, to understand which types of waste types or management units are associated with more risk. So the EPA risk assessment presents more typical risk and high-end risk.

As is typical of any risk assessment, both these estimates were developed using health protective perceptions that were meant to overestimate risk. And despite this health protective bent, the results of the risk assessment clearly showed that coal combustion waste does not pose a public health concern under typical waste management conditions.

Although risk targets were exceeded for arsenic under some of these more typical disposal scenarios, the risks are actually similar to what you would expect if you were exposed to naturally occurring arsenic in food, water, and soil. At the high end, arsenic risk from landfills were still similar to those from naturally occurring background sources of arsenic. But arsenic risk from service impoundments, ponds, were clearly elevated. These high-end risks reflect more improbable exposure scenarios and, as mentioned earlier, are highly uncertain and should not be used quantitatively to evaluate the need for hazardous waste

determination.

And finally, in regards to the RIA to determine if hazardous waste listing was justified, EPA conducted a cost-benefit analysis using the arsenic result from the risk estimate to estimate how many potential cancer cases would be avoided under different waste management options. As a result, the uncertainties in the arsenic risk assessment were perpetuated into the cost-benefit analysis. And then on top of this, the cost-benefit analysis itself contained several additional assumptions that led to overestimates.

The implications of this are that the number of cancer cases avoided under each disposal scenario, subtitle B versus subtitle C, are likely to be significantly overestimated. And if this factored into the analysis, the difference in the cancer cases avoided between hazardous and nonhazardous disposal is negligible. And in fact, given the potential magnitude of this overestimate, it is plausible that regulating coal combustion residue as hazardous versus nonhazardous waste offers no measurable public health benefit. Thank you very much.

Mr. Shimkus. I want to thank you.

[The prepared statement of Ms. Lewis follows:]

***** INSERT 2-3 *****

And I now recognize Ms. Santoianni for 5 minutes. She is with Veritas Economic Consulting.

STATEMENT OF DAWN SANTOIANNI

Ms. Santoianni. Good morning, Mr. Chairman, Members of Congress, and fellow panelists. Thank you for the opportunity to speak to you today.

My name is Dawn Santoianni. I am a senior engineer with Veritas Economic Consulting. I have over 19 years' experience in combustion science, air pollutant formation, and quality assurance reviews.

Veritas Economics is a small business that specializes in cost-benefit analysis, and assessing the energy production, economic implications, and electric reliability implications of proposed environmental policies.

Today I will be presenting the results of our cost analysis on EPA's proposed subtitle C option for the regulation of coal combustion residuals, or CCRs. This research was sponsored by the Electric Power Research Institute, but I am here representing myself and my company alone, and my views do not necessarily reflect EPRI's views.

The analysis we conducted quantifies the incremental costs for the additional requirements under the subtitle C option

compared to a baseline, or what the current operations are today. We collected site-specific information on CCR handling and the plant configuration through a survey of coal-fired generating unit owners. And these survey responses covered 561 units at 225 plants subject to the regulations.

Our cost of the industry report is available through the EPRI Web site. It is publicly available, and I have several copies with me if you are interested. Although the landfill design requirements and the groundwater monitoring requirements under subtitle D are identical to those under subtitle C, because CCRs under subtitle C would be regulated from cradle to grave or their point of generation, this imposes additional standards and costs. Our analysis quantified these costs, which are excluded by EPA from their IRA.

Under subtitle C, CCRs would be regulated from their point in generation, as I said, which requires retrofits and engineering upgrades in the plant for tanks, buildings, and conveyors that handle, process, or store CCRs. In addition, plants would also need wastewater treatment systems to replace the function currently provided by surface impoundments. Under subtitle C, EPA acknowledges surface impoundments would be effectively phased out.

The decision to where to dispose of CCRs is a function of many site-specific parameters and also some restrictions that include seismic restrictions, fault area restrictions, unstable topology, State-level restrictions, floodplain, watershed, land

availability. These restrictions may preclude some plants from having a landfill on-site for the disposal of their CCRs, and this was confirmed from our survey data. The amount of CCRs destined for disposal would be, obviously, impacted by any changes to beneficial use rates.

I will note that in the IRA and in their proposal, EPA specifically expresses concern about unencapsulated uses of CCRs. These uses include large-scale structure fill, road embankments, and sand and gravel pits, and even agricultural uses.

In the scenario where EPA examines stigma in the IRA, they assume an 80 percent reduction in these uses. It is entirely plausible that unencapsulated uses would completely go away, either due to direct regulation or stigma. Encapsulated uses, on the other hand, according to our calculations, represent only 31.5 percent of the total CCPs generated annually. So the bulk of the CCPs, regardless of what happens to products such as wall board and concrete, would end up still needing to be disposed.

I will acknowledge that although the EPA assumes this drop in unencapsulated uses, they do not quantify the increased disposal costs associated with that for that scenario, as well as the economic impacts to the beneficial use industry in the form of job losses or lost revenue.

Our analysis estimates that between 14.97 million and 20.55 million tons of CCRs each year would be sent to commercial hazardous waste landfills under the subtitle C option. This is

comparable to the ASTSWMO estimate that you heard about earlier, even though our figures were independently derived. This volume of waste, as you heard, would exceed the entire current capacity of the commercial hazardous waste market within 2 years.

Our analysis shows that the cost of the subtitle C regulation to the electric generating industry, including these upstream costs to comply with subtitle C, are between \$5.32 billion and \$7.62 billion annually over 20 years, and at a 7 percent discount rate the total incremental costs are \$55.3 billion to \$74.5 billion. This is significantly higher than EPA's estimate of \$20.35 billion.

I will make note, even though I am sorry I am running overtime, compliance with other environmental regulations such as the utility boiler max will increase the cost to comply with CCR rules beyond what we have estimated. A good example is the need to add scrubbers, which will increase the amount of CCRs generated and, thus, disposal cost.

Since there has been several questions about economic analysis and benefit-cost analysis posed by the Congressmen, I will note that an integrated analysis should include the impacts to energy supply, electricity prices, jobs, and local electric reliability from these concurrent regulations. And I would emphasize that an electric reliability analysis that only considers the generating capacity to shut down is a partial analysis and does not provide a complete picture of the

reliability impacts. Reliability analysis --

Mr. Shimkus. I am going to ask you, just for the respect of other panelists, we will stop there. You will get some few questions. As you know, we were focused on economic analysis quite a bit in the first panel.

[The prepared statement of Ms. Santoianni follows:]

***** INSERT 2-3 *****

Mr. Shimkus. So I would like to now recognize Ms. Evans, Lisa Evans from Earthjustice. You are recognized for 5 minutes, ma'am.

STATEMENT OF LISA EVANS

Ms. Evans. Chairman Shimkus, Ranking Member Green, and members of the subcommittee, I appreciate the opportunity today to address the threats posed to our Nation's health and environment and economy by coal ash in ponds and landfills. When mismanaged, this toxic waste harms Americans nationwide by poisoning our water and our air.

My name is Lisa Evans. I am senior administrative counsel for Earthjustice, a national nonprofit public interest law firm. I speak today for all those who are harmed by coal ash, some of whom are in the room this morning.

RPTS JURA

DCMN HOFSTAD

[11:30 a.m.]

Ms. Evans. I speak for those whose water is poisoned, whose air is filled with ash, whose homes have lost their value. I speak for those behind me from Illinois, West Virginia, Pennsylvania, Indiana, and Missouri, who fear for their children and their grandchildren and who came here for help.

However, the bill before this committee does not serve these citizens nor does it serve the Nation. H.R. 1391, whose purpose is to remove EPA's authority to establish federally enforceable regulations for coal ash, will cause great harm.

First, the bill strips EPA of its ability to consider science and public comments in its ongoing rulemaking. Second, the bill will perpetuate highly dangerous conditions at coal ash dumps across the country, wet and dry. Third, the bill will not increase recycling and, instead, will decrease the incentive for coal ash reuse. And, fourth, the bill passes on to future generations the enormous economic liability created by decades of ash mismanagement and ensures that this liability will grow ever larger in the absence of disposal and cleanup standards.

No, this bill does not serve the Nation. This bill focuses very narrowly on only one aspect of the Nation's enormous coal ash problem -- namely, the benefits of recycling a portion of the ash. In essence, the bill does try to divert a tsunami into a swimming

pool.

Please allow me to elaborate.

First, the bill is an unwise and wholly unwarranted interference in an ongoing rulemaking. In June 2010, EPA proposed two alternative coal ash regulations. The Agency held eight public hearings and received an unprecedented 450,000 comments. EPA must be permitted to consider these comments and to issue a final rule based on the best available science. Interference in EPA's ongoing technical and scientific deliberation is reckless and unjustifiable.

Second, by removing EPA's ability to regulate coal ash under subtitle C, the bill guarantees that coal ash disposal in States with inadequate or even nonexistent regulations will continue without essential controls on dangerous dumping. It must be understood that the great majority of States do not require essential controls; yet, the bill prevents EPA from filling this gap.

States that fail today to require composite liners, dust controls, monitoring, and financial assurance, like Illinois, Kentucky, Ohio, Oklahoma, Texas, and many more, can continue unchanged. The reality is that most States have been unwilling to impose restrictions on coal ash dumping for decades. These States simply are not going to change their programs based on voluntary guidelines.

In addition, if Federal standards are not made mandatory,

there will be a significant disproportional impact on low-income communities and communities of color -- our Nation's most vulnerable communities.

Further, ironically, the bill prevents EPA from phasing out the most dangerous form of coal ash dumping, wet disposal of ash in impoundments. This bill will make it impossible for EPA to once and for all phase out high-risk coal ash dumps like the one that collapsed in Kingston, Tennessee, in 2008.

Third, the bill will not increase recycling. Market analysis and our research of all the hazardous wastes that have been designated to be hazardous show that, when disposal of waste is regulated under subtitle C, there is far greater incentive to recycle because disposal costs increase. This bill will remove this incentive, and recycling cannot compete with a hole in the ground. Significant increases in real innovation in the reuse of fly ash and other combustion waste will occur only if disposal of coal ash is strictly regulated.

Lastly, the bill does nothing and, in fact, only increases the enormous existing liability posed by the Nation's existing coal ash dumps. This bill turns its back on the reality of the hundreds of aging, poorly constructed, and leaking dumps located throughout the U.S. Another costly disaster is inevitable if ash ponds are not phased out. It is also inevitable that the drinking water of more communities will be poisoned by arsenic and other chemicals if leaking dumps are not monitored and lined. Does this

Congress really want to direct EPA to ignore these deadly hazards?
And who will accept responsibility when this occurs?

Yes, this bill asks EPA to close its eyes and hope this immense and deadly problem goes away. Yet, the Resource Conservation Recovery Act requires EPA to carefully consider the best available science, health risks, and environmental damage in its hazardous waste determination. This process has worked well for 30 years. Tying EPA's hands now and removing science in the middle of an ongoing rulemaking is a reckless call that will have dire consequences for the Nation's health and economy. And it will have dire consequences for all those in this room and elsewhere who today are relying on the good sense, compassion, and foresight of this Congress.

Thank you.

[The prepared statement of Ms. Evans follows:]

***** INSERT 3-1 *****

Mr. Shimkus. Thank you.

Now I would like to recognize Mr. Havens for 5 minutes.

Welcome, sir.

STATEMENT OF CURTIS HAVENS

Mr. Havens. Thank you. Good morning, Mr. Chairman, members of the committee. My name is Curt Havens, and I live in Representative McKinley's First District in Hancock County in Chester, West Virginia. We live 1,584 feet from the nearest finger of Little Blue Run unlined coal ash impoundment. Our home is 100 feet below the elevation of the impoundment.

At this time, I would like to introduce my wife of 40 years. She is sitting behind me.

In 1974, a Bruce Mansfield representative knocked at our door and handed me and my wife a beautiful, laid-out plan of a recreational place that would have hiking, bike trails, fishing, and a place to spend time with my family. But, today, this same site is not a beautiful lake; it is a toxic waste dump called Little Blue.

The impoundment is 1,300 feet and 400 feet deep in some places. It has a high-hazard dam that, if breached, will cause loss of human life. We believe the land that God has given us to take care of is being destroyed by a coal ash impoundment since

1974. The smell of rotten egg and sulfur hangs in the air near our homes, and several of the neighbors are experiencing water gushes on their land and into their springs. Water gushes were not there before First Energy began filling the West Virginia site of the impoundment.

There is a fellow named Merle Beyer who has a vehicle repair shop on Johnsonville Road down from us. For years, he had used a spring on his land to make coffee. First Energy does the testing from the spring. The man that comes and does the collection of the water told Merle not to drink it because it will do you in.

First Energy did acknowledge a correlation between their impoundment and the offsite seeps when they met with West Virginia DEP on October 27, 2010. We already have problems and worry that First Energy plans to dump more toxic ash near our homes. First Energy will be stacking geotubes filled with toxic ash on the impoundment 62 feet high. We worry that this additional ash will push more water toward the seeps on the West Virginia side.

The seeps coming from Little Blue pond are contaminated. On August the 21st, 2010, the West Virginia DEP did two water tests on seeps and springs, and the end result is high levels of cadmium in both tests. As I understand it, cadmium appears to be the largest single contributor to thyroid disease.

I had thyroid cancer in 2001 and had my total thyroid removed. My wife, Debbie, has a lump on her thyroid that they found last year, and they are monitoring it and keeping an eye on

it. My neighbor, which is 30 years old, has thyroid trouble and a tumor on his spine. Another neighbor, 70 years old, had thyroid cancer and prostate cancer. My doctor told me in Pittsburgh, the surgeon said that thyroid is mostly in women, not men. There are three men within a half a block that had thyroid cancer.

We found out that there are 10 monitoring wells at Little Blue that have high levels of arsenic, and no one told us about them. We found that after reviewing public documents. Even more troubling is the fact that, on January 25th, 2006, the West Virginia DEP turned over the rights to Pennsylvania DEP. This is West Virginia land, not land in Pennsylvania. About one-third of the unlined coal ash impoundment is in West Virginia.

I have concerns about my wife's health. She has Type 1 diabetes. She has full body tremors. Her hand shakes. And the only thing -- she takes pills that control that, but someday them pills might stop working, and that wears her out. I have Type 1 diabetes. I have high blood pressure; as I said before, thyroid cancer. And I have poor circulation in my legs and feet.

I have grown a garden on my land for the past 34 years and have fed my children and my grandchildren from it. Two years ago, I had a garden with some nice red ripe tomatoes in it. My granddaughter, Sara, wanted to walk in my garden. She was 4 at that time. As we walked through the garden, I looked back and she had picked a tomato and took a bite out of it. I took it from her; I didn't want her to eat any more of it.

The next day, I destroyed my whole garden -- beans, tomatoes, peppers, cabbage. I cried like a baby. I enjoyed my garden. We need my soil tested for things that is in coal ash to see if it is hazardous. The grandkids -- we have, you know, two grandkids that live close to us, and they are always asking Grammy and Pappy to make -- Grammy to make chili and vegetable soup. They enjoy that. We can't use the stuff out of our garden because we are not sure what is in the soil.

I had been honored to serve my country as a Yeoman Third Class aboard the USS John S. McCain DDG-36 in the Navy. Now I come to Washington, D.C., this week to speak to Members of Congress and the administration, asking for a strong Federal protection of my family and community.

We are only on earth one time. Please help us keep it safe and make it a better place for us and our grandkids. We understand jobs are important, but no one should have to choose jobs or health. We need and deserve both.

We have friends that do work at First Energy and neighbors that work there. People say, why don't you just move? Well, who can afford to move? Who would buy our house? You know, the depreciation and the value is down. Who would live in an area that has risk of health reasons there? You know, we put in 31 years of hard work in our house to keep it up. So what we do? I retired 6 years ago from the U.S. Postal Service, so we have a nice, comfortable home to live in.

We met with Representative McKinley yesterday, and we would like to still invite him to our house sometime and come up and see the impoundment. And we would like to continue talking to you and keep in contact.

Thank you.

[The prepared statement of Mr. Havens follows:]

***** INSERT 3-2 *****

Mr. Shimkus. Thank you, sir. Thank you for your service. And the great thing about our Constitution is that it does give individuals the right to collectively organize to air their grievances, and you got the chance to do that today.

Mr. Havens. I am sorry about my voice.

Mr. Shimkus. No. We do appreciate you.

Now I recognize myself for the first 5 minutes of questioning.

Ms. Lewis, some of the panelists are testifying that having EPA regulate coal ash under subtitle D will dramatically increase the incidence of cancer cases. In your professional opinion as a toxicologist, do you agree with their point?

Ms. Lewis. No. I am not sure why people would say that. If you looked at the regulatory impact analysis, it wouldn't support that at all.

And then, based on my professional opinion, as I sort of mentioned in my comments here, those estimates that are in that analysis -- and I don't remember the exact numbers -- they would definitely overestimate the difference between subtitle C and subtitle D.

And I don't want to get into all the details because it would bore you people. But I think, you know, in a back-of-the-envelope calculation and the things I have looked at, I mean, it would really amount to, on a hypothetical basis, less -- well, well,

well under one excess cancer case per year. But it could be as low as zero. There is no way to tell because you are comparing hypotheticals. You are looking at hypothetical risks.

I mean, there is certainly no evidence that I am aware of that anyone has ever --

Mr. Shimkus. Can you explain the difference between toxicology and a public health assessment?

Ms. Lewis. Well, toxicology is looking at human health studies, looking at animal studies, looking at in vitro studies, and garnering information about the toxicity of the chemical, in and of itself, whereas a public health assessment more combines the toxicity information with the exposure information to understand how that may impact public health.

Now, it is very important -- this has come up a lot here, talking about the toxicity of something. In and of itself, that is not a very informative statement. You really need to understand how people are exposed and what amount they are exposed to, to really understand the public health impacts.

Mr. Shimkus. Great.

Mr. Adams, if you follow a lot of the opening statements, even Ms. Evans mentioned that when mismanaged -- my question is, you heard Mr. Dingell in his opening statement and his questions. Did you disagree with any of his line of thought, as far as really defining the problem and possible remedies?

Mr. Adams. Well, first off, the American Coal Ash

Association concentrates on the beneficial uses of coal combustion products, and we try to stay away from discussions of what is appropriate for disposal.

Having said that, what we are looking at here is a situation that was fired by the Tennessee Valley Authority problem at Kingston. That really coalesced people around creating rules for disposal.

So when we listen to a lot of the comments about damage cases and concerns about disposal, they seem to focus on the wet impoundments. So what Congressman Dingell was mentioning is perhaps we need to look at the impoundment problem and solve that problem as our most immediate concern. And then, if we need to move later on, I think it would make sense to take other action.

But in terms of the ACAA, we really just encourage any type of regulation other than a subtitle C hazardous waste --

Mr. Shimkus. Great. Let me move on because my time is limited.

Ms. Santojanni, obviously, the big debate was cost-benefit analysis, job creation. Wide disparities in the cost, compared to what EPA was sort of alluding to but obviously on record saying they never calculated job impact.

In an economic analysis, have you done a job impact?

Ms. Santojanni. No. We were not tasked to do a full economic analysis, so --

Mr. Shimkus. But let's, then, follow up on -- Mr. McKinley

talked about -- and she was here last week, one of the university professors from Purdue, dramatically talked about the huge increase in the cost to that university because they have a coal-fired power plant.

When you sat in on the first panel and I intervened with the EPA representative, was I correct in saying they are just talking about the electricity rate; they are not talking about the loss of revenue or the increased disposal cost of a new regulatory regime? Is that correct?

Ms. Santoianni. That is correct. With the subtitle C proposal, their estimation of cost is exactly the same regardless of what kind of stigma they examined. And they do not look at the increased cost of disposal. In fact, they assume the same disposal patterns as today, whereas subtitle C imposes a whole set of other requirements that would cause more to go offsite and commercial, at an increased cost, obviously.

Mr. Shimkus. Yeah, and let me go to Ms. Zdanowicz.

Does the history back up the testimony from Ms. Santoianni?

Ms. Zdanowicz. There is some history to rely on, and that is, in 1980, industries had much of their waste stored onsite. But later, when it became hazardous, those industries, rather than going for corrective action and subtitle C permits, went for offsite disposal. So, in fact, there is precedence for that.

Mr. Shimkus. And, actually, just the opposite of what some of the previous testimony said.

Ms. Zdanowicz. Yes.

Mr. Shimkus. So thank you.

My time has expired. I will now yield to the ranking member, Mr. Green, for 5 minutes.

Mr. Green. Thank you, Mr. Chairman.

I have a number of questions. But it sounds like the storage of the slurry is the problem. But would the industry, Mr. Adams or Ms. Zdanowicz, would they oppose lining not only slurry but also the lining requirements also for dry storage?

Mr. Adams. Our association supports subtitle D requirements. In the EPA proposals, the requirements, the engineering standards for either subtitle C or subtitle D landfills would be identical. So you are going to get the same level of protection; the difference is in who gets to enforce that protection.

Mr. Green. Yeah. Well, I understand that subtitle D is the State enforcement. But, you know, that is what we do here, is change the law. And if we gave EPA the authority to have these standards -- and, of course, they still could be forced just like EPA does with lots of other issues -- the States would have the first authority to enforce them. But if we required that lining for both dry storage and wet storage, is that a problem with the industry?

Mr. Adams. Not for the American Coal Ash Association and its members.

Mr. Green. Okay.

Mr. Havens, one, thank you for your service. Congratulations to you and your wife for 40 years. My wife and I celebrated 41 in January.

Mr. Havens. Congratulations.

Mr. Green. So, you know, for our wives to put up with us all these years, it is amazing.

Have you had a chance to test your garden with soil samples?

Mr. Havens. I have talked to the West Virginia DEP, and he is supposed to come up from Charleston or Fairmont and test it. They said they would test my soil for me.

Mr. Green. I know -- you know, I only grow peppers and tomatoes in my yard, but I know people test their soil all the time to have certain types of plants that are successful. You know, in Texas, those are azaleas or whatever. And, obviously, I would do that. That is why I was wondering, because living 100 feet -- and I sympathize with you.

I moved into my first house in 1971, and we were told this 15-acre tract was going to be a park. We didn't go bother to go check with the county to see if they had reserved that 15-acre tract. It turned out they were going to build multifamily there. We ended up having a school built and a community building. But it took a lot of political work to do that, because the developer, even though they told us something, we didn't check on it. It made me -- from then on, when I buy property, I look and see what the reserves are.

Mr. Havens. Our thing was we moved there in 1973 when I got out of the Navy. We was there before the dam was.

Mr. Green. Yeah. Well, and somebody owned that property, and they have the right to use that property. But even though you were told that, there was no guarantee for that for you.

Mr. Havens. Yeah.

Mr. Green. Ms. Evans, in your testimony, you state that market analysis shows that when the disposal of waste is regulated under subtitle C, there is a greater incentive to recycle because of the disposal cost increase.

That is interesting, because I want to -- obviously, we want to -- in EPA testimony, they want more recycling. And I think that is what we want.

And I am going to ask the rest of the panel, particularly from the industry, is that true? Because I know we have -- the percentage we have -- 37 percent now is recycled. And, you know, the cheapness of just slurry storage or dry storage doesn't encourage recycling. Is that correct?

Ms. Evans? And then I will ask the industry in my minute and 30 seconds.

Ms. Evans. It is absolutely correct. When you dump the ash in a pond or landfill, it can cost \$3 a ton; it can cost almost nothing. There is no incentive, with that kind of cheap disposal cost, to find other uses for it.

In my own home State of Massachusetts, when the Massachusetts

State government clamped down on two power plants, they were unable to keep using their unlined ponds. They ended up going to a re-burning system on their power plant, which now captures, at that one, at our biggest plant, about 100 percent of the ash, which is now used in concrete. That is the kind of success story when a company cannot just dump in a hole next to the plant.

Mr. Green. Mr. Adams, I know that is what your association does. Do you see that if the cost for wet storage or dry storage is so cheap, then it would discourage recycling?

Mr. Adams. No. That, in fact, is not the case. What is happening in the marketplace -- and, first off, as I mentioned earlier, we look at beneficial use. And, first, we look at environmental safety; secondly, we look at technical appropriate; third, it has to be commercially competitive. And our members have done a great job, as evidenced by the recycling rate today, of identifying how those products compete in the marketplace and the real value. Utilities have recognized that, too. And, over time, contracts between utilities and their marketing companies have changed to reflect that.

So we have currently many, many situations where, for example, in Wisconsin, if you look at the CCPs generated there, over 90 percent are used beneficially, with We Energies using 99 to 100 percent every year because they recognize it has value to market.

Mr. Green. Well, obviously, I think all of us would rather

have wallboard with coal ash in it than what we have got from China.

Mr. Adams. The wallboard you are looking at does not contain coal ash. It contains synthetic gypsum from the scrubbers in power plants. There is no ash in that wallboard. It is synthetic gypsum, about 35 percent of the wallboard.

Ms. Evans. But if I could respond to the Wisconsin situation, is that in Wisconsin there are better laws than average, which gives an incentive to the Wisconsin We Energies to the utilities to recycle. That same situation would not be true in Texas, in Alabama, in Illinois.

Mr. Green. We try not to have much coal ash.

Mr. Shimkus. The gentleman's time has expired.

Now the chair recognizes the chairman emeritus, Mr. Waxman, for 5 minutes.

Mr. Waxman. Thank you, Mr. Chairman.

I would like to set aside the debate over subtitle C versus subtitle D and focus on what protections should be established on the ground.

Mr. Adams seems to state that the American Coal Ash Association supports phasing out wet impoundments like the one that burst in Kingston, Tennessee, in 2008.

I would like to go down the line and ask all of the witnesses if they support phasing out wet impoundments. And please just give me a "yes" or "no" answer.

Mr. Adams?

Mr. Adams. Yes, if those impoundments are not providing environmental protection --

Mr. Waxman. "Yes" or "no." Because I have "yes" or "no" questions and want to get everybody in.

Ms. Zdanowicz?

Ms. Zdanowicz. Our association has not taken a position on that, so I can't say "yes" or "no."

Mr. Waxman. Okay.

Ms. Lewis?

Ms. Lewis. I don't have a position on that either. I would want to --

Mr. Waxman. Okay.

Ms. Santojanni. I don't have a position on that either.

Mr. Waxman. Okay.

Ms. Evans?

Ms. Evans. Yes.

Mr. Havens. Yes.

Mr. Waxman. Okay.

We have heard testimony about the need to ensure that the standards for dry landfill disposal are also improved. These standards would likely include the use of double liners, groundwater monitoring, dust control, and other necessary measures.

Would each of you please answer if they would support

improving the standards for dry landfill disposal?

Mr. Adams. Yes.

Ms. Zdanowicz. Many of our States are doing that already.

So, yes, we support.

Mr. Waxman. Okay.

Ms. Lewis. To the extent I think it would reduce risk, yes.

Ms. Santojanni. Yes, I would support that.

Ms. Evans. Yes.

Mr. Havens. Yes.

Mr. Waxman. Okay.

Let me ask each of the witnesses if improved coal ash disposal standards should be enforceable.

Mr. Adams?

Mr. Adams. Yes.

Ms. Zdanowicz. Yes. But if I might say, yes, by the States.

Ms. Lewis. There should be some oversight, you know. I don't have an opinion about who oversees that.

Ms. Santojanni. I don't have a position on who oversees it.

Mr. Waxman. I am not asking who. Do you think they ought to be enforceable?

Ms. Santojanni. Yes, there should be enforcement.

Ms. Evans. Yes.

Mr. Havens. Yes, uh-huh.

Mr. Waxman. Over the years, this committee has typically ensured that there is a minimum Federal floor for public health

and environmental protection. States are typically authorized to provide additional protections, but a Federal floor prevents a race to the bottom.

Would each of the witnesses state whether they support a minimal level of protection that would apply consistently to every State?

Mr. Adams?

Mr. Adams. We support regulation that is enforceable by the State. And it works for municipal solid waste --

Mr. Waxman. Would you agree with a Federal floor, no matter who enforced it?

Mr. Adams. Expressed in the subtitle D rule? Yes.

Ms. Zdanowicz. It would depend on what it is. But, yes. And many of the States actually go well beyond what is required. And even though there is no requirement for CCR, the vast majority of our States have permitting programs --

Mr. Waxman. I am not -- my only question, and I want a "yes" or "no," is: Do you think there ought to be a minimal level of protection that would apply to every State?

Ms. Zdanowicz. Yes.

Mr. Waxman. Okay.

Ms. Lewis. I would agree.

Ms. Santoianni. I don't have an opinion on that.

Mr. Waxman. Okay.

Ms. Lewis. Yes.

Mr. Havens. Yes.

Mr. Waxman. Okay.

If EPA acts under subtitle D instead of subtitle C, EPA believes that the only way to enforce minimum safety standards at a disposal site will be through citizen suit enforcement.

Will each of you state whether you support allowing impacted citizens to enforce requirements through the use of citizen suits? A "yes" or "no" on this.

Mr. Adams. That statement is incorrect. EPA would have authority under imminent endangerment to step in and enforce under subtitle D. So the premise of the statement is incorrect.

Mr. Waxman. If it is not an imminent danger and they want to enforce safety standards, would you think that they ought to be able to enforce them through citizen suits?

Mr. Adams. We trust the States with municipal solid waste; we trust them with this. So not at the Federal level.

Mr. Waxman. You don't want citizen suits at any level?

Mr. Adams. Citizen suits are -- yes. Entirely, yes.

Mr. Waxman. Okay.

Ms. Zdanowicz. Yes.

Ms. Lewis. Yes.

Ms. Santoianni. Yes.

Ms. Evans. Yes.

Mr. Havens. Yes.

Mr. Waxman. Okay.

I am concerned that if EPA acts under subtitle D, there would be no consistent national standards that would be consistently enforced. Instead, we would largely rely upon the States to ensure the public health and the environment are protected.

Mr. Havens, you have experience with coal ash regulation at the State level. Do you think that these important protections can be left to the States?

Mr. Havens. I think all agencies should protect us as citizens, our health and --

Mr. Waxman. Should it be left to the States, or should there be a Federal --

Mr. Havens. I think a Federal.

Mr. Waxman. Okay.

Perhaps all States would elect to require liners, groundwater monitoring, and dust control. But there is nothing in the legislation before us today that requires or encourages the finalization of EPA's subtitle D proposal or the adoption of those requirements by States.

Ms. Zdanowicz, you are here representing State regulators. Can you offer the committee an assurance or a commitment that States would adopt those requirements?

Ms. Zdanowicz. Based on prior experience, yes, when there is a Federal requirement, the States do adopt it.

Mr. Waxman. Okay.

Well, we all agree that there is a risk and that engineering

controls can mitigate that risk. If we take our commitment to protect human health and the environment seriously, we should also all agree that those necessary controls should be required.

And I thank you, Mr. Chairman.

Mr. Shimkus. I thank the chairman emeritus.

The chair now recognizes the gentleman from West Virginia, Mr. McKinley, for 5 minutes.

Mr. McKinley. Thank you again, Mr. Chairman, for allowing me to participate in this panel discussion.

Ms. Zdanowicz, I heard earlier in the testimony that Ms. Evans said that States are unwilling to regulate coal ash. Could you amplify on that a little bit or respond to that?

Ms. Zdanowicz. Yes. And I am glad that you asked me, because I disagree with that premise completely.

There are 42 States at which coal ash is disposed. The vast majority of those States have permitting programs, require composite liners or multiple liners, require groundwater monitoring, a number of the things that are protective and that EPA addressed in its proposal. In addition, at least 15 States are considering changing their regulations with regard to coal combustion waste.

So I don't agree that the States aren't doing anything, and, in fact, I would say just the opposite. I am continually impressed with our members and the extent that they go to to make sure the public is safe.

Mr. McKinley. Okay.

Tom Adams, could you amplify a little bit? There was also a comment that, if it becomes a hazardous material, that 1391, if 1391 is passed, Ms. Evans said it would decrease coal ash recycling.

I think, if I could preface this remark or this question, I think this whole argument today is over we are trying to remove the stigma to fly ash. That is really what it is all about. Is that not a fair statement?

Mr. Adams. Absolutely. What is happening in the marketplace now -- and EPA has projected some ideas about what is going to happen with marketing and that kind of thing. Our people live it day-in and day-out. They are hearing from the users, the owners, the specifiers, contractors, consultants. They are hearing what people's position will be under a hazardous waste rule.

This uncertainty, this regulatory uncertainty of are we going hazardous, are we going nonhazardous, is crippling the recycling industry. And each day that this goes on, more and more damage is happening to the recycling industry. And lot of these are small businesses, as I mentioned in my testimony, that will not survive long delay.

Mr. McKinley. I don't think any of your vendors or the people downstream disagree that if it is causing -- it is probably the way that the dams in the past, the impoundments in the past have been contained. This Little Blue, it was an old dam, an

impoundment built in the 1970s and didn't have the requirements that they have today.

But under the new requirements, whether it is a single liner or a double liner, I think anyone that is using fly ash is going to be concerned about they don't want that to leachate into the water. Is that not fair? I don't think anyone is intentionally trying to cut a corner and pollute the atmosphere or the environment.

Mr. Adams. Absolutely. And when I discuss this issue with experts on recycling, like Utility Solid Waste Activities Group, if you go back and look at the landfill and other disposal facilities that have been built in the last 15 to 20 years, you find these protections are built into virtually all these projects. As Ms. Zdanowicz indicated earlier, if you look at the damage cases closely, they are all on facilities that are 20-plus years old, some of them going back even 40 years.

Mr. McKinley. Let me go back. You may or may not have been in the room. In the last panel, there was an issue raised. This is a document from the administration: "Regulation of the CCR under subtitle C could have negative impacts on the reuse or beneficial use of these materials and may create liability concerns related to past reuse of these materials and applications, such as construction and agriculture. And these implications have not been fully explored by the EPA."

Now, that statement is supported by the USDA, the TVA, the

Department of Transportation, Department of Interior, Department of Education, the Corps of Engineers, CEQ, OMB. Are they wrong?

Mr. Adams. Those agencies all have experience with using these materials beneficially for different purposes. In the case of, as you cited, the USDA, they have completed a risk assessment on the use of synthetic gypsum in agriculture, but EPA will not even pick up the phone and call them and ask them for the data.

In the particular case of use of coal ash in minefill, EPA is committed to working with the Office of Surface Mines. We have encouraged the EPA to do the same on agricultural issues with USDA, but they don't seem to have that phone number.

Mr. McKinley. Okay. I just want to make sure, as long as we all understand what 1391 is to do, is to remove the stigma that can be associated with it. The idea of the States maintaining it -- and what I heard you say, Ms. Zdanowicz, is that the States will regulate it. And hopefully there will be the standards set, if it is a double one, a single one, whatever it is, to make sure that we don't have -- because none of us want to see anyone hurt. And to think about what the Havens have had to deal with, I am sorry. That was a past situation. I want to make sure that never happens again to another family in America.

I yield back my time. Thank you.

Mr. Shimkus. The gentleman yields back his time.

I ask unanimous consent that the following items be included in the record, and these have been pre-cleared: a letter to

Administrator Jackson dated November 14, 2010, from Drs. Cosnet, Smith, and Vadder; a letter to the subcommittee from the Edison Electric Institute and the Environment Council of the States, both dated April 13th, 2010; and two letters to residents from First Energy Generation Corp. dated October 22nd, 2010, and February 4th, 2011, regarding the Little Blue Run impoundment.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Shimkus. I would also like to thank the second panel and remind Members they have 10 days if they would like to submit additional questions.

And if they do so, if you would get those back to us, we would appreciate it. We know you took out time in your day to help us this morning. We do appreciate it.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Shimkus. And I call the hearing adjourned.

[Whereupon, at 12:04 p.m., the subcommittee was adjourned.]