

In The Matter Of:

*MARYLAND DEPARTMENT OF THE ENVIRONMENT
PUBLIC HEARING*

*IN RE: PROPOSED COAL COMBUSTION
BYPRODUCTS REG.'S; February 5, 2008*

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[7] PUBLIC HEARING
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[10] IN RE: PROPOSED COAL COMBUSTION
[11] BYPRODUCTS REGULATIONS
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[14] TUESDAY, FEBRUARY 5, 2008
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[16] 10:00 a.m.
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[19] MARYLAND DEPARTMENT OF THE ENVIRONMENT
[20] 1800 WASHINGTON BOULEVARD
[21] FIRST FLOOR AQUA & TERRA CONFERENCE ROOM
[22] BALTIMORE, MARYLAND

[1] to amend COMAR 26.04.07 and to adopt new regulations
[2] under COMAR 26.04.10, COMAR 26.20.24 and COMAR
[3] 26.21.04
[4] The purpose of this public hearing is to
[5] give the public and interested persons the opportunity
[6] to comment on these regulations.
[7] The proposed regulations appeared in the
[8] Maryland Register, Volume 34, Issue 26, beginning at
[9] page 2287 on December 21st, 2007.
[10] The hearing will proceed in the following
[11] order: First, Mr. Stephen Pattison, Assistant
[12] Secretary for MDE, will make a statement on behalf of
[13] MDE. After Mr. Pattison is finished, I will call on
[14] any elected officials or government officials who want
[15] to make a statement. Then I will call on those who
[16] have signed in on the sign-in sheet to see if that
[17] person would like to make a statement for the record.
[18] When giving your statement, please come to
[19] the front table, identify yourself and your
[20] affiliation, and please speak loudly and clearly. I
[21] reserve the right to limit the amount of time for
[22] testimony, if necessary. Written statements are

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PROCEEDINGS

[1]
[2]
[3] **MS. HART:** Good morning, if we could get
[4] started, please.
[5] On behalf of the Maryland Department of
[6] Environment, I would like to welcome you to this
[7] public hearing. My name is Katherine Hart, I'm the
[8] regulatory reform director for the Maryland Department
[9] of Environment and I will serve as the hearing officer
[10] for this public hearing.
[11] I would like to request that everyone who is
[12] in attendance, please sign up on the sign-in sheet,
[13] which is on the table up here, if you haven't done so
[14] already, so we can keep an accurate record of the
[15] persons who participated and attended this public
[16] hearing.
[17] Copies of the proposed regulations as
[18] published in the Maryland Register are available on
[19] the table for your information.
[20] This public hearing concerns proposed
[21] regulations related to the management of coal
[22] combustion byproducts. The Secretary of MDE proposes

[1] welcome and will be accepted for the record. We are
[2] compiling a record for these regulations, public
[3] hearing and other documents that will be appropriate
[4] to be in a public record.
[5] So, if we could start, Mr. Pattison will
[6] start off.
[7] **MR. PATTISON:** Good morning. My name is
[8] Stephen Pattison, I am the Assistant Secretary at the
[9] Maryland Department of Environment. This public
[10] hearing is being held in conformance with the State
[11] Administrative Procedure Act under the State
[12] Government Article beginning at section 10-101.
[13] Notice of this public hearing appeared in the Maryland
[14] Register on December 21st, 2007, and on MDE's website
[15] from November 19th, 2007 until today.
[16] The purpose of today's hearing is to give
[17] the public the opportunity to comment on the proposed
[18] regulations, which include amendments and additions to
[19] certain parts of COMAR, Title 26, regarding the
[20] management of coal combustion byproducts, or CCBs.
[21] The purpose of this action is to amend the
[22] provisions of COMAR 26.04.07, and adopt new

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[1] regulations under COMAR 26.04.10, 26.20.24 and
[2] 26.21.04, relating to requirements for the management
[3] of coal combustion byproducts.
[4] Based on widely available data that's known
[5] to the Department, including a recent damage case
[6] assessment released by the United States Environmental
[7] Protection Agency regarding environmental impacts by
[8] coal combustion byproduct disposal and use sites
[9] across the country, and site-specific information
[10] that's available to the Department through work done
[11] to assess CCB disposal and utilization sites by our
[12] Water Management Administration and the Department of
[13] Natural Resource Power Plant Siting Program, MDE has
[14] concluded that there is a potential for CCBs to impact
[15] air and water quality.
[16] Therefore, we propose the regulations under
[17] consideration today. This proposed action will
[18] establish standards for the management of CCBs and
[19] dedicated disposal units and their use in mine
[20] reclamation. These new management standards include
[21] permits for accepting a new solid waste acceptance
[22] facility for CCBs, Department authorization for

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[1] expanding an existing CCB disposal facility, and
[2] permit requirements for mine reclamation activities
[3] using CCBs.
[4] Definitions are provided for, among other
[5] things, CCBs, storage systems and beneficial use.
[6] Persons proposing to utilize CCBs in a surface coal
[7] mine reclamation operation, or in an abandoned mine or
[8] a non-coal surface mine will need to submit
[9] documentation to the Department for approval
[10] The proposed regulations specify
[11] requirements for characterizing CCBs, site monitoring
[12] closure, post-closure and reporting. The Department
[13] is proposing a new annual reporting requirement upon
[14] generators of CCBs. This annual report will include
[15] the process that generates the CCBs, annual volume
[16] generated over the last five years by type of CCB, and
[17] how the material was disposed or used. CCB generators
[18] will also be expected to report their planned use for
[19] disposal over the next five years.
[20] The Department will consider comments made
[21] at this public hearing before adoption of these
[22] proposed regulations. MDE recognizes the desire of

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[1] stakeholders for additional time to comment on the
[2] proposed coal combustion byproduct regulations. To
[3] give all stakeholders time for additional input, MDE
[4] is announcing today we will also extend the formal
[5] comment period on the regulations to February 26th,
[6] 2008. Written comments will be accepted until close
[7] of business on that date.
[8] I would also like to make comment to a
[9] separate but very related action the Department has
[10] taken in the same issue of the Maryland Register on
[11] December 21st, 2007, where this regulation was
[12] proposed, we have announced advanced notice of
[13] proposed action with the intent to regulate the
[14] beneficial use of CCBs. I would urge those here today
[15] to try to restrict their comments specific to the
[16] proposed regulations, and the Department will be
[17] holding a public meeting on February the 26th here at
[18] MDE at 10:00 a.m. to solicit input from all
[19] stakeholders as part of the regulatory development
[20] process on beneficial use.
[21] So, thank you, and that concludes my
[22] prepared remarks.

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[1] **MS. HART:** Thank you, Mr. Pattison.
[2] I see Ms. Phillips over there, would you
[3] like to come forward and present your testimony or
[4] what comments you would like to add.
[5] **MS. PHILLIPS:** Good morning, my name is Fran
[6] Phillips, Anne Arundel County Health Officer. My
[7] testimony today is on behalf of County Executive John
[8] R. Leopold. Mr. Leopold has been extremely actively
[9] involved in the issue of fly ash in Anne Arundel
[10] County for the past 18 months. He anticipates a
[11] second hearing on this topic in Anne Arundel County, a
[12] hearing that will be more accessible to the public in
[13] terms of location and date and time, and looks forward
[14] to the opportunity to again submit his thoughts and
[15] comments at that time.
[16] He has also submitted written comments on
[17] the regulations on February 1st, and I won't go
[18] through each one of those written comments, but I
[19] would like to take a minute and to characterize them
[20] in general.
[21] First of all, as you know, we are the county
[22] that has suffered the direct negative consequence of

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[1] unregulated fly ash deposition. We have many
[2] household and some commercial wells whose water has
[3] now been rendered unsafe as a result of contamination
[4] of byproducts from the fly ash. This poses both a
[5] public health and an environmental threat, and for
[6] that reason, the County Executive commends the
[7] Department for taking the step to recognize that this
[8] is not a material that could continue to be disposed
[9] of in an unregulated fashion

[10] So, along those lines, because of the
[11] serious consequences the county has experienced and
[12] potentially could be replicated around the State, the
[13] county executive urges that the Department immediately
[14] adopt the most protective regulation of this public
[15] health and environmental threat.

[16] In looking in general at this regulatory
[17] process, the Executive has four general comments to
[18] make: The first of which there are some deficiencies
[19] in the proposed regulations, and I will get to those,
[20] that material in a moment. Secondly is the matter of
[21] the so-called beneficial use, which is the subject of
[22] later hearing, and that's an extremely important

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[1] consideration, not — which is not spoken to in the
[2] current regulations.

[3] The reason that that is so important is that
[4] as the disposal of coal combustion waste becomes
[5] regulated in the State of Maryland, the industry will
[6] naturally move to alternative means of depositing of
[7] this very, very large industrial waste stream.

[8] Estimated to be two million — two million tons
[9] produced annually, now with at least another two
[10] million tons of flue gas desulfurization sludge set to
[11] enter the waste stream in the near future.

[12] So, it's an urgent matter that this — this
[13] definition and regulation of beneficial use be
[14] addressed in the State.

[15] Thirdly, the County Executive is concerned
[16] with a matter that is not subject to regulation, but
[17] rather must require legislative change, and that is
[18] the current cap in the statute with regard to the
[19] limit on a performance bond in a mining permit.
[20] Currently, that statutory limit is \$1,250 per acre,
[21] which is entirely inadequate for the potential
[22] exposure and risk.

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[1] So, therefore, the County Executive has
[2] introduced legislation in the General Assembly to
[3] remove that cap and to allow the Department to set
[4] based on its own judgment what the appropriate
[5] performance bond should be on a case-by-case basis.

[6] And fourthly, and most importantly,
[7] Mr. Leopold urges the Department to commit to
[8] assertively monitor and enforce the new CCW
[9] regulations, as well as all the existing regulation,
[10] because without vigorous oversight, the human health
[11] and environmental threats that we've seen in the past
[12] could continue, regardless of what rules are in place.

[13] So, I would like to turn now to the specific
[14] comments, and again, you have these written comments,
[15] line by line, with regard to the proposed regulations.
[16] In general, there are five areas of concern, which the
[17] Executive has pointed out: First, there are a number
[18] of areas where it is entirely appropriate that air
[19] quality protections be introduced and they are not.

[20] So, rather than go line by line through all
[21] of this, I could certainly make our comments available
[22] to anyone here that's interested, but in general,

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[1] there was a dearth of attention to air quality
[2] protections, as well as ongoing monitoring, and that
[3] is reflected in the county's comments.

[4] Secondly, there is a need for increased
[5] public notification in a variety of instances which
[6] the regulations address. For example, public
[7] notification should be required for any application
[8] for a variance from any of the provisions of the
[9] chapter, as well as public notification when the
[10] Department makes the decision with regard to that
[11] variance application.

[12] Also, it's requested that public
[13] notification be required in the event of exceedences
[14] with regard to Federal standards on groundwater
[15] monitoring. So that when those exceedences are
[16] detected, there are comments here that speak to the
[17] need to both issue a public notice, as well as to
[18] notify the local health department.

[19] Thirdly, in virtually every instance in the
[20] regulations that the term "laboratory" is used, the
[21] county has inserted a comment to require that this be
[22] a state-certified laboratory. We have had the

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[1] experience in the past where lab reports as required
[2] under a mining permit have been issued by the
[3] operator, but using the operator's laboratory, not a
[4] state-certified laboratory, and so we consider that as
[5] a significant gap and one that should be addressed in
[6] the regulations.

[7] There are some technical changes that we
[8] have proposed in the regulations; for example, the
[9] separation between the groundwater, let's see, between
[10] groundwater and the base of the deposition of the fly
[11] ash shall not be placed, as the regulations state,
[12] within three feet of the regional groundwater table,
[13] and our comment is to extend that separation by
[14] another foot to make that a four-foot separation

[15] Secondly, we are proposing that in the table
[16] that identifies the constituents for monitoring, that
[17] radionuclides be added to that table of groundwater
[18] constituents. That's based on the literature on
[19] evidence — I recall in New Jersey, maybe elsewhere —
[20] where there has been evidence of increases in
[21] radionuclides associated with coal combustion waste.

[22] There is a third area of technical change,

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[1] but that's in the comments, and I'm sorry, I can't put
[2] my hands on it right now.

[3] And then finally, the last major area that
[4] we are concerned about is post-closure. Post-closure
[5] monitoring, as well as the duration of that monitoring
[6] post-closure, in Anne Arundel County, we currently
[7] have a closed fly ash deposition site at Brandon
[8] Woods, and it is beginning, again, to be a public
[9] concern with regard to what environmental risks that
[10] site poses. That's not a question that, from a health
[11] department standpoint, we could answer. We don't have
[12] data on that.

[13] So, the requirement in the regulations, as
[14] proposed, would be for a monitoring of at least five
[15] years following closure of the site, and we are
[16] suggesting a much longer term of potential risks exist
[17] and propose to increase that to 30 years following
[18] closure of the site.

[19] Recognizing, then, that the permittee may
[20] not be around 30 years post closure, we are proposing
[21] a language change as far as actions in the future be
[22] taken on the — be compelling on the property owner

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[1] rather than the permittee to be required to fulfill
[2] those actions post-closure.

[3] And again, if there are exceedences
[4] post-closure, the county is requesting that the
[5] regulations be amended to assure that there is public
[6] notice as well as notice to the county health
[7] department.

[8] So, that concludes my oral testimony, I
[9] would be happy to take any questions, and again,
[10] commend the Department for taking this step forward to
[11] regulate what we now know to be not a beneficial, not
[12] a benign substance, but in fact a substance that
[13] imposes considerable environmental and human threat.

[14] Thank you.

[15] **MS. HART:** Thank you very much.

[16] Are there any other elected officials or
[17] government officials present?

[18] (No response.)

[19] **MS. HART:** Okay. Then I guess Mr Paugh.

[20] **MR. PAUGH:** Yes.

[21] **MS. HART:** Come forward, please.

[22] **MR. PAUGH:** Good morning. My name is Ronald

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[1] Paugh, and I'm employed by the NewPage Corporation's
[2] Luke Paper Company in the Environmental Services
[3] Department. I'm here to make comments on behalf of
[4] the Luke Paper Company regarding the proposed actions
[5] by the Maryland Department of the Environment

[6] We support the text in COMAR 26.04.07,
[7] allowing the exemptions of CCBs if being used in
[8] accordance with the new 26.04.10 regulations. Due to
[9] recent trends in the paper, pulp and paper industry,
[10] we feel this exemption could be expanded. Our
[11] industry is now frequently using alternative fuel such
[12] as wood, petcoke and tire derived fuels to fulfill our
[13] energy needs. These materials may be used alone or
[14] more often in combination with coal, fuel oil or
[15] natural gas.

[16] We request that the treatment of other
[17] combustible materials be considered for an exemption
[18] when merited in a similar fashion to CCBs. The
[19] inclusion of desulfurization sludge and the definition
[20] of CCBs in 26.04.10.2.B could be expanded to include
[21] other combustible materials

[22] Under 26.04.10.03, General Restrictions and

[1] Specifically Prohibited Acts, a person must not engage
[2] in various activities with CCBs in a manner that is
[3] likely to cause a discharge of pollutants to the
[4] waters of the State, unless they hold a valid
[5] discharge permit.

[6] We feel that since section .03 recognizes
[7] that water run-off from CCBs may be allowed if the
[8] activity is controlled by a permit, then regulation
[9] 26.04.10.05, Storage, should also allow for this
[10] exemption. Section .05.A could be adjusted to read "A
[11] person may not store CCBs, except in accordance with
[12] this regulation. The provisions of this regulation
[13] pertaining to controlling contaminated runoff,
[14] leachate, spilling, or any of the provisions designed
[15] to stop interaction of discharges of CCBs from
[16] entering waters of the State shall not apply if the
[17] Department has issued a valid permit controlling the
[18] discharge of these waters from CCB handling areas.

[19] In 26.04.10.08, Reporting, item .A.(8)
[20] requires information on CCBs to be reported for the
[21] previous five years. This item should be clarified to
[22] include a starting date whereby going forward

[1] information will be available for a smaller time frame
[2] until the five-year date is reached. The requested
[3] data may not always be available prior to the
[4] regulation

[5] In sections 26.20.24.08B and D, the
[6] regulations require analysis for alkaline coal
[7] combustion products, or ACCBs, specifically the text
[8] calls for determinations of net neutralization
[9] potential of five tons per thousand tons calcium
[10] carbonate equivalents, and maximum potential acidity
[11] in terms of tons per thousands of tons of material.
[12] These two items are not further defined, allowing for
[13] uncertain interpretation of their meanings. We
[14] request the definitions of these terms be expanded to
[15] include specific testing and calculation references or
[16] description

[17] Section 26.20.24.08, Utilization of Coal
[18] Combustion Byproducts narrows the potential for using
[19] CCBs in coal mine reclamation work by only allowing
[20] ACCBs to be used. The intention of the use of ACCBs
[21] for mining reclamation work is in part to provide some
[22] neutralization potential to offset the potential

[1] acidic run-off to these areas.

[2] By restricting the reclamation work on these
[3] sites to ACCBs, the Department is preventing the use
[4] of other strategies to accomplish the same goals.
[5] Some CCBs may not make the definition of ACCBs, but
[6] would be just as useful for reclamation work, if
[7] applied in conjunction with alkaline materials. For
[8] instance, due to the expense and difficulty in mixing,
[9] the CCBs could be used in conjunction with layered
[10] alkaline materials to provide the same or better
[11] levels of neutralization for the site.

[12] In section .08.C(1), we request adding a new
[13] item, which would read, "Applied in conjunction with
[14] alkaline materials to achieve a calculated net
[15] potential of ten tons per thousand tons CaCO₃
[16] equivalent or greater." Further, section .08.D(4)
[17] could read, "If applying CCBs and alkaline materials
[18] directly at the site, a description of the applicable
[19] application approach would be included in the
[20] utilization request. The descriptions will include
[21] layering strategies, application rates and any other
[22] information the Department requires to determine that

[1] the site will meet the conditions in section .08.C(1).

[2] In section 26.20.24.08D(4)(S), a narrative
[3] description of the potential hazards to workers and a
[4] protection plan to address these hazards are required.
[5] We feel that the issue of worker safety is already
[6] addressed through other agencies and regulations.
[7] MSDS sheets already specify both potential hazards and
[8] the potential safety equipment necessary to work with
[9] these materials. Further, as section (S) is written,
[10] to what extent should the description of potential
[11] hazards go? Should each constituent of the CCB be
[12] addressed and to what extent should each constituent
[13] be addressed in the plan? If section (S) remains in
[14] the regulation, further clarifications of its
[15] requirements would be needed.

[16] In summary, with the efforts of the Bureau
[17] of Mines and other agencies, we have put our CCBs into
[18] reclamation efforts to restore mining areas. This is
[19] performed using strategies which we are already
[20] improving the groundwater and surface ecologies in the
[21] wake of mining activities, especially those not
[22] reclaimed from previous decades.

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[1] We thank the Department for recognizing the
[2] beneficial efforts from the use of our CCBs by
[3] allowing the mining reclamation's options in these
[4] regulations. We support the proposed regulations if
[5] we can secure the few changes that we have suggested
[6] in these comments.

[7] Thank you for providing the time and
[8] opportunity to make the comments. Thank you.

[9] **MS. HART:** Thank you, Mr. Paugh.
[10] Mr. Henderson?

[11] **MR. HENDERSON:** Yes.

[12] Yes, my name is Tim Henderson, and represent
[13] BBSS, the property owner of the Gambrills Sand and
[14] Gravel Mine that has a portion of which has been
[15] reclaimed with coal combustion byproducts, CCBs. I'm
[16] not going to repeat the comments that I have filed.

[17] The main thrust is that we want to thank the
[18] Department for the opportunity to comment, and the
[19] effort that the Department has put into coming up with
[20] some clear criteria for future CCB beneficial use
[21] projects, or in the alternative, disposal.

[22] The thrust of our comments really are

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[1] seeking clarification of ambiguous terms and
[2] unintended consequences. We also want to make sure,
[3] and in the comments we've gone through a number of the
[4] provisions to make sure that they're consistent with
[5] the efforts and controls that have already been
[6] imposed, and are being required at the Gambrills site.
[7] That's a site that is no longer receiving CCBs and is
[8] in the process of closure.

[9] And then finally, there are some points that
[10] we make to ensure that the definitions being adopted,
[11] the regulations being adopted, are consistent with the
[12] MDE's current regulatory regimes and schemes under the
[13] Air Program, the Solid Waste Program.

[14] With that, those are my comments. And we
[15] will be filing supplemental comments for the February
[16] 26th date.

[17] **MS. HART:** Okay, thank you. I'm sorry, is
[18] anybody from Moran going to testify?

[19] **UNIDENTIFIED WOMAN:** No oral statements
[20] today, just written.

[21] **MS. HART:** Okay, thank you.
[22] Let's see, Robert E. Smith?

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[1] **MR. SMITH:** Hello, my name is Robert E
[2] Smith, I guess I'm a member of both Crofton First and
[3] I'm in the Maryland Green Party and Anne Arundel Green
[4] Party. My name is Robert E. Smith, I'm a member of
[5] both the Crofton First Community Group and the
[6] Maryland Green Party, but I'm basically not here as a
[7] representative for either of those groups, I'm just
[8] here as a concerned citizen to speak out or speak
[9] about this proposed legislation, or recommendation.

[10] I think the biggest concern for me right now
[11] is that for this legislation is an increased public
[12] notification of participation in the process. Of
[13] concern to me is that I think as the public we have a
[14] right to, one, to be aware of the dumping of this
[15] material. I know there is some dispute on the impacts
[16] of this material and both its health and environmental
[17] impacts, but because of that, I think the public
[18] should be fully aware, because I live not too far from
[19] this particular site, I live probably within a few
[20] miles of the site, and it seems that nobody was aware
[21] of the dumping of this material in our neighborhood
[22] until the recent groundwater levels had been detected,

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[1] and I think part of that goes into not just me as the
[2] general public and homeowners in that area, because a
[3] lot of us are now having not only are those homeowners
[4] that are impacted with the water quality issues and
[5] having to deal with that daily issue and in terms of
[6] cost of having to get bottled water, not bottled
[7] water, but the fact that we have to use bottled water
[8] and that inconvenience, but a lot of now are homes in
[9] that area our property values will probably be
[10] impacted because of this situation.

[11] And it's also because of the health
[12] concerns. I believe the public needs to be aware of
[13] when a particular product like this that does have
[14] some health issues attached to it that people should
[15] be aware of that, especially in an area like Crofton,
[16] and Gambrills, that have a large concentration of
[17] family homes and children.

[18] The other thing I would also like to add
[19] onto that, which seems in this process, is as a member
[20] of Anne Arundel County, it seems that my county
[21] government was not fully informed and brought into the
[22] process. This has been seemed to be handled mostly on

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[1] a state level, and I think what's unfair is my local
[2] government is going to be caused — it's going to — a
[3] lot of the burden of remediating this problem is going
[4] to be falling on my county government, which — and
[5] even in the consent decree, it seemed through — I
[6] attended our county council meeting, and there was
[7] some — when we had a discussion about the banning of
[8] fly ash, a lot of the seeming vexing the county
[9] council members there was the fact that they had
[10] pretty much been left out of the process of
[11] negotiating the consent decree, which I felt was a
[12] little disingenuous, in being that it was that level
[13] of government that was going to be dealing with the
[14] most — mostly with the problem of remediating this
[15] issue.

[16] And as obviously Fran Phillips has been up
[17] here talking about some of those points.

[18] The other issue, I guess I'm here really
[19] concerned about is the air pollution quality, and
[20] having the monitoring of that. Partly because just
[21] I'm not a scientist, but just being at the heavy
[22] metals that are associated with the fly ash, it's just

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[1] simple logic for me that if these heavy metals that
[2] come in contact with groundwater, leachate these —
[3] into the ground through the contact, the same thing
[4] was going to happen with my lungs, which does have a
[5] high water volume componentry inside of it, so it just
[6] faces me as kind of a common man's logic basically
[7] would seem to me that if I'm breathing enough of this
[8] in, I'm also going to have exposure to some of these
[9] heavy metals such as arsenic and so on.

[10] So, those are my two biggest concerns, there
[11] are obviously other issues dealing with the making
[12] sure there's adequate cap and liner thickness and
[13] verification and constant monitoring, and also I would
[14] have to agree with Fran Phillips on the issue of once
[15] these mines are closed, that there needs to be
[16] continual monitoring, because just because the site
[17] has been closed does not mean that the public safety
[18] aspect has diminished.

[19] These have to be continual, probably, until
[20] we actually determine the minimum or the problem
[21] minimizes away, which we're probably talking about
[22] decades if not centuries in terms of the exposure of

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[1] these metals to the public.

[2] So, I thank you for your time.

[3] **MS. HART:** Thank you, Mr. Smith.

[4] Jim Roewer? I hope I didn't butcher your
[5] name too much.

[6] **MR. ROEWER:** You didn't, thank you.

[7] Good morning, my name is Jim Roewer, I'm the
[8] Executive Director of the Utilities Solid Waste
[9] Activities Group. USWAG is an association of about 80
[10] utility companies, industry trade associations, all
[11] together representing about 85 percent of the electric
[12] generation in this country. USWAG members own or
[13] operate some 230,000 megawatts of coal fired capacity.

[14] USWAG members operating in the State of
[15] Maryland include AES, Allegheny Energy, Constellation
[16] Energy and Mirant Mid-Atlantic.

[17] USWAG has been involved with the issue of
[18] coal combustion product regulation since its forming
[19] in 1978, and we naturally take interest in the
[20] development of state regulations to govern the
[21] effective and proper management of these materials.

[22] In 2000, EPA issued a regulatory

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[1] determination that was based on nearly two decades of
[2] studies. The agency at that time concluded that these
[3] materials should not be regulated as hazardous waste
[4] and instead would be regulated under RCRA Subtitle D.
[5] When EPA made its regulatory finding back in 2000,
[6] they identified four major areas of concern that led
[7] them to conclude that they should be developing plans
[8] for National RCRA Subtitle D regulations for CCP
[9] disposal.

[10] These concerns were the composition of the
[11] waste could present a danger to human health and the
[12] environment under certain conditions, the agency
[13] identified 11 documented cases of damage resulting
[14] from the management of CCPs in landfills and surface
[15] contaminates. The agency said that there were
[16] insufficient controls in place under some disposal
[17] practices, in particular they were concerned with a
[18] fairly low incidence of groundwater monitoring at
[19] disposal sites, and the agency perceived some gaps in
[20] state regulatory oversight.

[21] EPA also made some findings, and I realize
[22] that the hearing on the 26th is speaking to beneficial

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[1] use, but I think it is applicable here, on beneficial
[2] use of coal combustion products. Except for the mine
[3] placement of coal combustion products, an issue that
[4] EPA deferred in their 2000 regulatory determination,
[5] EPA found no beneficial uses of CCPs that were likely
[6] to present significant risk to the human health and
[7] environment, and absolutely no documented cases of
[8] damage to human health and the environment from the
[9] use of coal combustion products.

[10] It's always been USWAG's position that coal
[11] combustion product regulations should primarily be a
[12] state responsibility, and we commend the agency for
[13] stepping up to the plate when it perceived a need for
[14] tighter regulatory controls. USWAG has a
[15] long-standing position calling for performance-based
[16] standards for coal combustion product disposal
[17] administered by the states.

[18] In many respects, the proposed regulations
[19] are well designed and consistent with the
[20] recommendations that we have made in the past for
[21] sound regulatory policy for CCP management. For
[22] instance, we support the use of industrial waste

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[1] permits for authorizing new facilities, for
[2] distinguishing between new facility requirements on
[3] the one hand and regulatory requirements for existing
[4] facilities, for allowing existing facilities to
[5] continue to operate under current authorizations,
[6] maintaining CCP disposal capacity is critical to the
[7] continued operation of coal-fired power plants that
[8] provide energy reliability.

[9] And we also support the establishment of
[10] environmental performance standard for CCP management.
[11] We do recommend some changes to the proposed
[12] regulations, however. We would encourage MDE to adopt
[13] the term, a widely accepted term for these materials
[14] that both EPA and their coal combustion products
[15] partnership, and ASTM international uses coal
[16] combustion products. That's what these materials are,
[17] they're products. EPA has committed itself in its
[18] strategic plan to achieving a goal of 50 percent
[19] beneficial use of the materials that are generated by
[20] 2011. Using terms like byproducts or waste, we feel,
[21] unfairly discourages the utilization of these
[22] materials by unnecessarily stigmatizing them.

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[1] There are a number of places in the proposed
[2] regulations when MDE would require the use of toxicity
[3] characteristics leaching procedure, a TCLP or test
[4] method 1311 to characterize CCPs for various
[5] applications. USWAG believes it's an inappropriate
[6] testimony for determining the environmental soundness
[7] of CCP applications.

[8] The TCLP is a test method that simulates the
[9] conditions in a municipal solid waste landfill. CCPs
[10] are rarely managed in municipal landfills and the
[11] proposed regulations are not setting standards for
[12] municipal landfilling with coal combustion products

[13] An alternative test such as a synthetic
[14] precipitation leaching procedure, or tests that would
[15] better predict CCP placement performance than the TCLP
[16] should be used. ASTM is in the process of developing
[17] a standard that would guide the appropriate use of a
[18] leaching procedure for various CCP applications. Just
[19] as an example.

[20] We also recommend MDE modify the definition
[21] of beneficial use. Specifically, it should be
[22] expanded. The way it's currently written in the

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[1] proposals, the use of CCPs in road-based, sub-base,
[2] highway embankments, a widely used application by
[3] state DOTs, would not be included. The use of CCPs in
[4] structural fills and in flowable fills would not be
[5] included, and importantly, mine placement, the use of
[6] CCPs for acid mine drainage mitigation, subsidence
[7] control and the use of CCPs for reclamation of surface
[8] mines, some examples of which have been successfully
[9] completed in Maryland, would be limited as well.

[10] We're concerned that the potential
[11] applications in a carbon constrained world where folks
[12] are worried about CO2 emissions reductions credit
[13] could be complicated if you restrict the definition of
[14] beneficial use of coal combustion products.

[15] We also recommend some changes in how MDE
[16] addresses the issue of mine placement of coal
[17] combustion products to exclude mine placement from the
[18] definition of beneficial use is inconsistent with
[19] sound science, and is incompatible with promoting
[20] environmental protection.

[21] In 2006, the National Academies of Sciences
[22] found that mine placement of coal combustion products

[1] has several advantages, such as assisting in meeting
[2] reclamation goals, including the remediation of
[3] abandoned minelands, and avoiding the need for
[4] additional landfill of surface impoundment sites at
[5] undisturbed locations
[6] There is nothing inherently wrong with mine
[7] placement of coal combustion products, so long as it's
[8] conducted in a manner that minimizes the risk to the
[9] environment.

[10] USWAG supports the office of Surface Mines
[11] plans for developing regulation under the Surface Mine
[12] Conservation and Recovery Act to govern CCP mine
[13] placement. OSM has already outlined some of its ideas
[14] for regulations in advance notice of proposed
[15] rulemaking that was issued early last year, and a
[16] formal proposal by OSM to amend SMCRA regulations is
[17] scheduled to be published later this year.

[18] We would recommend that MDE postpone action
[19] on regulating the mine placement of coal combustion
[20] products until the OSM rulemaking on this same subject
[21] is completed. We're concerned that if MDE were to
[22] jump ahead of OSM, the agency with a huge amount of

[1] expertise on mine reclamation, it might be wasteful
[2] and might require MDE to engage in a second rulemaking
[3] to conform its program to whatever requirements OSM
[4] promulgates.

[5] I would also point out one additional fact
[6] in closing about mine placement of coal combustion
[7] products: In addition to EPA not finding any damage
[8] cases associated with the mine placement of coal
[9] combustion products, the National Academies of
[10] Sciences report, in spite of holding hearings across
[11] the country and soliciting a huge amount of
[12] information, was not able to find any cases of damage
[13] from the mine placement of coal combustion products.
[14] We feel that it's an important process that should be
[15] encouraged, regulated properly, for environmental
[16] protection purposes

[17] Thank you

[18] **MS. HART:** Thank you. Excuse me, Bob, did
[19] anyone else sign up to testify?

[20] **BOB:** No, ma'am, I do not have anybody else
[21] signed up to testify

[22] **MS. HART:** Is there anybody else that would

[1] like to make comments? Otherwise, I don't see anybody
[2] else on the list that has actually signed up to
[3] testify.

[4] (No response.)

[5] **MS. HART:** If anybody has written comments
[6] that they want to submit, I'll take that, but if
[7] nobody else would like to testify, then this will
[8] conclude the public hearing regarding the proposed
[9] coal combustion byproducts regulations.

[10] Let the record reflect it is now quarter to
[11] 11:00, and that this public hearing is officially
[12] concluded. Thank you all for coming. We will be
[13] accepting written comments until the close of business
[14] on February 26th, or if you have them today, we would
[15] certainly take them today, also.

[16] (Whereupon, at 10:48 a.m., the public
[17] hearing was concluded.)

[1] CERTIFICATE OF REPORTER

[2]
[3]
[4] I, Sally Jo Bowling, do hereby certify that the
[5] foregoing proceedings were recorded by me via
[6] stenotype and reduced to typewriting under my
[7] supervision, that I am neither counsel for, related
[8] to, nor employed by any of the parties to the action
[9] in which these proceedings were transcribed, and
[10] further, that I am not a relative or employee of any
[11] attorney or counsel employed by the parties hereto,
[12] nor financially or otherwise interested in the outcome
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[19] SALLY JO BOWLING

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Lawyer's Notes

