

Table of Contents

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Committee on Environment
and Public Works Washington, D.C.

| STATEMENT OF: | PAGE: |
|--|-------|
| THE HONORABLE JAMES M. INHOFE, A UNITED STATES SENATOR FROM THE STATE OF OKLAHOMA | 3 |
| THE HONORABLE BARBARA BOXER, A UNITED STATES SENATOR FROM THE STATE OF CALIFORNIA | 7 |
| THE HONORABLE CORY GARDNER, A UNITED STATES SENATOR FROM THE STATE OF COLORADO | 12 |
| THE HONORABLE MICHAEL F. BENNET, A UNITED STATES SENATOR FROM THE STATE OF COLORADO | 19 |
| THE HONORABLE JOHN HOEVEN, A UNITED STATES SENATOR FROM THE STATE OF NORTH DAKOTA | 23 |
| THE HONORABLE JOE MANCHIN III, A UNITED STATES SENATOR FROM THE STATE OF WEST VIRGINIA | 30 |
| JENNIFER KRILL, EXECUTIVE DIRECTOR, EARTHWORKS | 40 |
| FRANK HOLLEMAN, SENIOR ATTORNEY, SOUTHERN ENVIRONMENTAL LAW CENTER | 45 |
| STEVE MOYER, VICE PRESIDENT FOR GOVERNMENT AFFAIRS, TROUT UNLIMITED | 50 |
| CHIP MERRIAM, VICE PRESIDENT, LEGISLATIVE, REGULATORY & COMPLIANCE, ORLANDO UTILITIES COMMISSION, ON BEHALF OF THE AMERICAN PUBLIC POWER ASSOCIATION | 55 |
| PATRICK KIRBY, DIRECTOR, NORTHERN WEST VIRGINIA BROWNFIELDS ASSISTANCE CENTER | 61 |

HEARING ON ECONOMIC OPPORTUNITIES FROM LAND CLEANUP PROGRAMS AND
A LEGISLATIVE HEARING ON S. 1479, BROWNFIELDS UTILIZATION,
INVESTMENT, AND LOCAL DEVELOPMENT ACT OF 2015, S. 2446,
IMPROVING COAL COMBUSTION RESIDUALS REGULATION ACT OF 2016 AND
DISCUSSION DRAFT OF GOOD SAMARITAN CLEANUP OF ORPHAN MINES ACT
OF 2016

Wednesday, March 2, 2016

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 10:32 a.m. in
room 406, Dirksen Senate Office Building, the Honorable James
Inhofe [chairman of the committee] presiding.

Present: Senators Inhofe, Boxer, Barrasso, Capito, Crapo,
Wicker, Fischer, Rounds, Cardin and Markey.

STATEMENT OF THE HONORABLE JAMES M. INHOFE, A UNITED STATES
SENATOR FROM THE STATE OF OKLAHOMA

Senator Inhofe. Okay, our meeting will come to order. What we are going to do today is, Barbara and I will each give our opening statement, then we will hear from the Senators who are sponsors of the legislation that we are going to be looking at today, any comments that they want to make so that they can then get up and leave if they so desire.

In my years as chairman and ranking member of this Environment and Public Works Committee, I have worked to promote common sense solutions to clean up the environment, while also promoting economic development and jobs in our States and local communities. The topic of today's hearing will examine three pieces of bipartisan legislation that fit this description and address longstanding priorities of mine.

The first bill on the agenda is S. 1479, the Brownfields Utilization, Investment, and Local Development Act, known as the BUILD Act. The original brownfields law was enacted in 2002 to address liability concerns and to provide grant money to clean up abandoned and contaminated properties. The brownfields program is a conservative program. EPA estimates that for every \$1 of Federal grant money awarded, almost \$18 in additional funding is leveraged from local and private sources.

This reauthorization draws from our experience and will

make an already successful brownfields program even better for small rural communities and urban areas alike. An earlier version passed out of the committee in the 113th Congress on a voice vote. This bill was introduced last summer by Senator Markey and myself, along with Ranking Members Boxer, Rounds, Crapo, and Booker as original cosponsors. You can't get more bipartisan than that.

Although the BUILD Act was recently added by voice vote as an amendment to the Senate energy bill, it is unclear just what is going to happen to that bill, so we are going to go ahead and move as a standalone bill.

The second bill is a discussion draft of Good Samaritan legislation released in January by Senator Gardner and Senator Bennet, both from Colorado. There are hundreds of thousands of abandoned mine sites across the Country, many of which date back to the 1800s. Local watershed groups and other Good Samaritans want to clean up these sites but are afraid of taking on Superfund and Clean Water Act liability.

It is interesting that modern environmental laws are hindering the restoration of these waterways. This was certainly never the intent. Good Samaritan legislation is not a rollback of these laws or a violation of the polluter pays principle, as some suggest. Opponents of the Good Samaritan legislation also argue the EPA simply needs more money to do

these cleanups. As the recent blowout at Gold King Mine caused by the EPA shows, that is not the answer.

In 2006, when I was chairman of the EPW Committee, we held an oversight hearing on this problem and approved a bill based in part on bipartisan legislation by Senators Allard and Salazar that would have addressed liability concerns through the State Good Samaritan permitting programs. I am encouraged that the current Senators from Colorado are trying to find a common ground as well.

As a veteran of the earlier efforts, I think it is important that we not allow the perfect to be the enemy of the good. Good Samaritan legislation should encourage cleanups in a responsible way, but not impose unnecessary burdens that would deter anyone from stepping forward. Good Samaritans are, like brownfields, redevelopers; they did not cause the environmental problems they are trying to address, so it is appropriate to protect them from environmental liability when they are trying to improve the environment and create economic opportunity.

The third and final bill on the agenda is S. 2446, the Improving Coal Combustion Residuals Regulation Act, which is sponsored by Senators Hoeven and Manchin. EPA has extensively studied the safety of coal ash, which is a critical ingredient in concrete used for roads and bridges.

In a final rule issued in December of 2014, EPA correctly

determined that coal ash should be regarded as a non-hazardous waste under RCRA. However, as the EPW Committee heard at a June 2015 oversight hearing, EPA has limited authority under RCRA and there are significant concerns by States and regulatory entities with how that rule would be implemented, so we are attempting to correct that problem.

Senator Boxer?

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF THE HONORABLE BARBARA BOXER, A UNITED STATES
SENATOR FROM THE STATE OF CALIFORNIA

Senator Boxer. Thank you, my friend.

Today the Committee will be discussing three bills, a brownfields bill, a coal ash bill, and a Good Samaritan bill. I believe the brownfields bill is certainly ready to move forward, I believe the coal ash bill weakens protections and should not move forward, and I believe we can work together to get that Good Samaritan bill into a very good place, and I am really excited about doing that.

The BUILD Act, which is the reauthorization of EPA's brownfields program, is so important because here we have these polluted sites, they are certainly not Superfund sites; they can be cleaned up "pretty easily" and then those acres can remain in productive use. Very important for our communities, and I am excited to say that we are in full agreement on that one.

The second bill, S. 2446, would significantly weaken the protections in EPA's recently finalized coal ash rule. The new rule contains important protections for communities near coal ash disposal sites, and we are going to get our hands on a photo just to remind us of what happens to communities. This one was in Tennessee, where the coal ash just slid right into the waterways and destroyed communities. So I don't want to see us weaken the coal ash rule.

Coal ash is dangerous. It contains many toxins such as mercury, arsenic, and lead. When you hear the words mercury, arsenic, and lead, you know that these are cancer-causing elements and toxins, and they harm particularly children. Coal ash is often stored in impoundments that are unlined; they are located adjacent to rivers and lakes, where the toxics leach into the groundwater and surface water. So in Kingston, Tennessee and in the Dan River in North Carolina, these impoundments could fail, spreading toxic waste through communities and waterways.

We always look at what is happening in Flint to underscore the importance of being wise about these things. We have heard disturbing reports of children poisoned by contaminated drinking water, so Congress should be doing more to protect the American people from polluted water, not less. And this is the Environment Committee. It is so important to remember this is the community that has that sacred responsibility to protect our people from lead, from arsenic, from other poisons.

So I think it is disappointing but, frankly, not surprising given the differences the chairman and I have on the issue of the environment, that this Committee is actually considering a bill that would in fact overturn this rule, amend this rule; and I believe we should implement the rule quickly so we can clean up millions of tons of coal ash around the Country.

So the third bill is a discussion draft proposed by our Colorado Senators Bennet and Gardner. I am very pleased to see them here, my friends. It would encourage Good Samaritan cleanups of abandoned hardrock mines. The bill would allow individuals who are not responsible for the contamination at a mine site to conduct a voluntary cleanup of an abandoned mine and be shielded from liability under the Clean Water Act and Superfund.

Abandoned hardrock mines pose a serious threat to the waterways that people use for recreation and that provide drinking water, again, to our children, to our families. Mine waste frequently contains high levels of those heavy metals, including, again, mercury, lead and arsenic.

So I want to encourage these cleanups, but what we learned from the failed EPA cleanup, where a long-term contractor in the private sector hired by the EPA caused a major and terrible leak, we know about that, we have had testimony about that, from an abandoned mine. So we know these are difficult to clean up.

But I do think, even though it does raise other issues, we don't want the polluter to get off the hook, that is number one. So we want to make sure whatever bill we pass doesn't get the original polluter off the hook if there is a way to get into a polluter's pockets who caused the problem. We know cleanup costs could be as high as \$50 billion, so that is why it is

great if we can come up with a Good Samaritan plan here that works out that doesn't put taxpayers on the hook.

I do comment the Colorado Senators and I am working with both of them, and I hope before we get to the markup we will have an agreement.

In closing, I will show you this photo of that coal ash spill. You can see that coal ash just contaminating the whole area. And this is what happened to people because of the coal ash spill. We can't fool around with this, folks, these are real problems, especially in the south of our Country, where we have so much of this coal ash just stored in unlined containers. Crazy. We can't have it.

So we have work to do, but I am ever optimistic, Mr. Chairman.

[The prepared statement of Senator Boxer follows:]

Senator Inhofe. Yes. You have come to the right place.

Gentlemen, if it is all right with you, we will go ahead and start with Colorado in the hopes that Senator Manchin will be here so you can do that all right, is that all right? All right, Senator Gardner.

STATEMENT OF THE HONORABLE CORY GARDNER, A UNITED STATES SENATOR
FROM THE STATE OF COLORADO

Senator Gardner. Thank you, Mr. Chairman, and thank you, Ranking Member Boxer, for your words of encouragement on this legislation, and thanks to all of you for holding this hearing today on the Good Samaritan Cleanup of Orphan Mines Act of 2016.

Senator Bennet and I, along with Congressman Scott Tipton from Colorado, have been working for years together on this issue. The mine was located in Scott Tipton's congressional district, which is on the western slope of Colorado, which is the location of many abandoned hardrock mines with acid mine drainage.

We have also received a significant amount of stakeholder feedback, and I think that is what is remarkable about this draft discussion, the ability to hear back from the Colorado governor, our attorney general's office, and many of the private sector and public-private partners that have been participants in this discussion is truly appreciated. Our goal is to introduce a bill that works on the ground for our State and constituents and betters the environment.

So, Mr. Chairman, I do appreciate the chance to make a statement here and to talk about what we can do to get this not just talked about in the future, but enacted into law.

Last fall, this Committee, and I am grateful for your

actions, had an oversight hearing to examine the spill that took place at the Gold King Mine in Southwest Colorado. A bipartisan group of colleagues and I testified then on the impact the spill had on our constituencies, including Senator Heinrich from New Mexico.

We are all still feeling the effects of the spill, including lost property, lost economic opportunity, lost business opportunity, and monitoring the EPA's reimbursement process. In fact, just two weeks ago I was meeting with councilmembers of the Mountain Ute and the Southern Ute Tribes to discuss the Good Samaritan legislation and the impact that this bill had on their livelihoods and their properties.

Today I come before the Committee to advocate the need to move forward with this legislation that would allow Good Samaritans like the mining industry, State agencies, local governments, nonprofits, and other groups and organizations the ability to clean up the environment and improve water quality conditions in and around abandoned mines.

The Government Accountability Office estimates that more than 160,000 abandoned hardrock mines exist in the United States today, and at least 33,000, 33,000 of these mines pose environmental or safety concerns. We have hundreds, if not thousands, of them in Colorado. One of the immediate actions we can do in Congress to address abandoned mines is to pass Good

Samaritan legislation. It is a concept that has been around for decades, with nearly every stakeholder over time advocating and remaining true to their opinions on the concept. I respect all stakeholder positions, but it is time that we take a small step towards facilitating cleanup to prove that this idea will actually work.

And when the legislation sunsets in 10 years, I fully support a comprehensive review of what concepts worked and what could be done better in terms of the Good Samaritan cleanup. If we can move this bill forward now, we will have the knowledge and the facts necessary to make the Good Samaritan program even stronger in the future.

The Gold King Mine spill, as terrible as it was, helped shine a light on the need for remediation of abandoned hardrock mines. As the situation currently stands regarding cleanup of abandoned mines, there aren't enough Federal or State resources to properly remediate these mines. During the Gold King Mine remediation, the Federal Government also demonstrated a lack of expertise in the remediation process. Further, while the EPA has guidance on the remediation of mines by Good Samaritans, this guidance has done little to incentivize Good Samaritans to enter these sites and to begin the cleanup.

There are willing and able Good Samaritans that wish to address safety concerns and improve water quality at abandoned

mines, as you will hear this morning, you will hear from Trout Unlimited. But the fear of incurring liability for meeting all Federal standards during cleanup is too great, and these sites continue polluting the environment and our waters as we wait and debate.

There has been broad bipartisan support for passing Good Samaritan legislation in the past. Mr. Chairman, under your leadership, the Committee, as you stated, in 2006, reported out a bipartisan bill from Colorado Senators Ken Salazar and Wayne Allard. Ten years later my Democratic colleague, Senator Bennet, and I are advocating for the same type of approach of Good Samaritan. The time has come for Congress to move forward with this legislation to get this done for Colorado and any other State or Tribe that wishes to participate in a Good Samaritan program. We must improve the environmental and safety issues related to these abandoned mines.

The draft legislation before the Committee is designed to allow Good Samaritans the opportunity to apply for a permit under a State or Indian Tribe program or EPA's program to assist in the environmental cleanup of abandoned mines. The State or Indian Tribe or the EPA, as the permitting agency that approves or denies the Good Samaritan permit, monitors the cleanup for the duration of the permit. The approved permit allows the Good Samaritan to improve the environment and water quality while

receiving limited liability relief from only those provisions necessary under the Acts, the Clean Water Act and Comprehensive Environmental Response Compensation and Liability Act of 1980.

A criticism of the past bills was that liability relief was too broad. So we have tailored this bill to only include those provisions that we believe are necessary to facilitate the cleanup. This draft holds Good Samaritans liable if they fail to comply with the terms of the Act, but it provides an exemption if the failure results in only minor impacts.

The draft includes that any action done by a Good Samaritan must improve the environment and improve the water quality standards to the maximum extent practical under the circumstances. In a final note, the draft sunsets in 10 years, giving us a chance to make sure that the process worked.

Mr. Chairman, I have a letter from Colorado Governor John Hickenlooper expressing support for the bipartisan effort we have undertaken in the Colorado delegation, and I would respectfully request that the letter be included as part of my testimony for today's hearing, along with Colorado Senate Joint Memorial 16, which is a resolution from our State legislature in support of this legislation.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Gardner. Mr. Chairman, we have talked about this for decades, Senator Domenici, Senator Campbell, Congressman Heffley, Senator Allard, Senator Salazar, but I think what is important about this legislation is simply this, that under the Acts of this legislation the environment will be better than it is today, and that is an important step that we can make for Colorado, the West, and this Country.

Mr. Chairman, I thank you so much for this opportunity.

[The prepared statement of Senator Gardner follows:]

Senator Inhofe. Thank you, Senator Gardner.

Senator Bennet.

STATEMENT OF THE HONORABLE MICHAEL F. BENNET, A UNITED STATES
SENATOR FROM THE STATE OF COLORADO

Senator Bennet. Thank you, Mr. Chairman. I want to thank you and the Ranking Member for allowing Senator Gardner and I to speak this morning.

And I want to thank Senator Gardner for his leadership and for his partnership. As he said, this issue has been before us for decades, and I think this bill represents the broadest coalition that there has ever been because of the urgent need that is out there, and we appreciate very much, on behalf of the citizens of Colorado and the West, the bipartisan approach that you are taking on this bill, and whatever it is we can do to help, we will do. So please call on us.

As Senator Gardner said, the blowout at the Gold King was an environmental and economic disaster for communities throughout Southwest Colorado, and it was a stark reminder to all of us that abandoned mines are a constant source of pollution and threat to watersheds across the West. The Gold King Mine blowout released 3 million gallons of acid mine drainage all at once. But this same amount of polluted water was already being released from the Gold King Mine every single week, and there are thousands of other abandoned mines in Colorado and across the West.

We need solutions to address the acid mine drainage coming

from all these old abandoned mines. That is why I introduced a separate bill with my colleagues from New Mexico to reform the 1872 mining law. But it is also why Senator Gardner and I have come together, along with Representative Tipton, to release the draft Good Samaritan bill that the Committee will consider today.

This draft represents the hard work of many people across our State, including the State of Colorado, elected officials, local Tribes, mining companies, nonprofits, and environmental groups. We would not have been able to craft this draft without people like today's witnesses, Steve Moyer from Trout Unlimited and Jennifer Krill from Earthworks.

I am the first to admit that there are still things we need to work on in this draft bill, but I think it represents a very important step forward and a positive compromise. The bill will encourage States, local governments, nonprofits, and companies to clean up abandoned mines.

As Senator Gardner said, it gives Good Samaritans who had no part in the creation of mine pollution the opportunity to apply for a permit to improve water quality. This bill exempts Good Samaritans from liability only under the necessary provisions of the Clean Water Act and CERCLA, and it ensures that Good Samaritans will be held liable if they fail to comply with the terms of the permit. Although it is extremely unlikely

that a Good Samaritan would cause a disaster like the Gold King spill, this bill makes sure that communities are protected if an accident does occur.

I remain hopeful that we can reach a consensus on outstanding issues, including citizen enforcement language; and we are still getting input from Colorado that will help improve the draft.

Thank you again to all of the Coloradans who worked with us on this effort, today's witnesses for their input, and to the Committee for holding this hearing. As Senator Gardner said, there is no time like the present to get this legislation moving, and we are very optimistic that we will be able to do it. Thank you, Mr. Chairman.

[The prepared statement of Senator Bennet follows:]

Senator Inhofe. Excellent statements. You may be excused, but if you would like to stay, of course, feel free to do so.

Senator Boxer. I am sure you would love to stay.

[Laughter.]

Senator Inhofe. All right, Senator Hoeven, you were the first one here. I am sorry we didn't get to you first, but you are recognized.

STATEMENT OF THE HONORABLE JOHN HOEVEN, A UNITED STATES SENATOR
FROM THE STATE OF NORTH DAKOTA

Senator Hoeven. Thank you, Mr. Chairman. Thanks to both you and to the Ranking Member. It is good to be with you. Appreciate you holding a hearing on a bill recently introduced by myself and Senator Manchin, the Improving Coal Combustion Residuals Regulation Act of 2016.

This legislation, which builds on our past efforts to find a bicameral, bipartisan approach to coal ash, both ensures there is safe disposal of coal ash and provides greater certainty for its recycling. Coal ash is a byproduct of coal-based electric generation, and it has been safely recycled for buildings, for roads, for bridges, and other infrastructure for years.

In fact, I would like to invite the Ranking Member to come to Bismarck, North Dakota, where we have recently built a new heritage center for somewhere between \$50 billion and \$60 million out of recycled coal ash, a non-hazardous, non-toxic substance. I think she would find it a remarkably beautiful heritage center on our State capitol grounds. I would also take her over to Bismarck State University where we have a national energy center of excellence that was also built out of non-hazardous, recycled coal ash on our campus, and it is a tremendous resource for our students. I would certainly like to show her both beautiful buildings made from recycled coal ash.

In fact, I think it is important to take note of the environmental and fiscal benefits of coal ash recycling. Over 60 million tons of coal ash were beneficially used in 2014, including over 14 million tons in concrete. It has been calculated that taxpayers save \$5.2 billion per year thanks to the use of coal ash in federally-funded roads and bridge construction.

Products made with coal ash are often stronger and more durable, and coal ash reduces the need to manufacture cement, resulting in greenhouse gas emission reductions of 13 million tons in 2014. So I would also want to make sure that the Ranking Member is aware that recycling coal ash and using it actually reduces greenhouse gas emissions.

So coal ash is an important resource for our economy, and it is imperative that coal ash that isn't recycled is disposed of and stored responsibly and safely. That is the other thing this legislation does, it makes sure that we do impoundment safely, something that I know is a concern for the Ranking Member, as well. As a matter of fact, looking at those pictures, this legislation will make sure that that exactly is what we prevent from happening. So I appreciate her showing those pictures so that we can make the very strong point that this is the legislation that will actually make sure that we don't have an accident like she showed in those pictures.

In December 2014, the EPA put forth new legislation for the management of coal ash. The regulation made clear, at least for the time being, that coal ash would continue to be regulated as a non-hazardous waste, so again EPA coming back and saying non-hazardous waste, consistent with EPA's earlier findings.

But the regulation has major flaws. It relies solely on citizen suits for enforcement. What this means is that neither the EPA nor the States, neither the EPA nor the States can directly enforce the rule through a permit program with which owners and operators of coal ash disposal sites must comply. It means that the regulation does not create the constructive regulatory guidance and oversight necessary to ensure the proper management of coal ash.

Instead, the EPA regulation has created a situation where the only enforcement mechanism for the rule is that an operator of a coal ash site can be sued for not meeting EPA's new Federal regulatory standards. Those subject to this regulation, those responsible for keeping the lights on for families, for farmers, and job creators are themselves left in the dark about how EPA's standards will be defined in various court cases across the Nation. Instead of direct oversight, we will have lawsuits brought by those who want to shut down coal production.

Now, here is the analogy I want to make, and I hope that the Committee would consider. This is what we are dealing with

under this regulation and why this law provides better certainty and better protection both for recycling and for impoundment. But here is how the regulation works. Imagine building an addition to your house and there being no building permit process to go through with your local government. You call the city or the county and they say that you should just read the rules, and if you violate those rules, just know that you can be sued at any time by anyone who thinks you didn't build that addition according to the law.

This process would leave you without any sort of assurance that you are complying with the law. You would get no inspection, no guidance, nothing. And, worse, you would have the threat of litigation hanging over your head. Doesn't make any sense, right? Sound terrible. We would never do that to people trying to build buildings or build houses.

Well, that is how the EPA coal ash regulations would be implemented and enforced, and that is why this Committee needs to consider this legislation and do something that makes sense. You would never do that to somebody building a house or building a building or doing any kind of construction. Why in the world would you do it to somebody who is trying to safely recycle coal ash or impound it safely so that we don't have accidents?

Our bill would directly address this problem by taking the EPA's rule standards for coal ash disposal and incorporating all

of them in EPA-approved State permit programs. The State would have direct oversight over disposal sites design and operation, including inspections, air criteria, run-on and run-off control, closure and post-closure care, and a requirement not in EPA's rule, financial assurance. We add financial assurance.

Meanwhile, we offer State regulators the same flexibility for implementing the groundwater monitoring and corrective action standards that are currently provided under both existing municipal solid waste and hazardous waste regulation, allowing State regulators to make tailored site-specific adjustments.

And we have been listening to issues the EPA has brought up about our previous versions of the legislation. In fact, we have updated the bill to include a more traditional EPA application process for the State permit programs. If the EPA finds a State's permit program deficient, then the EPA can take direct control over that State's permit program. And if a State doesn't want to have its own permit program, then the EPA steps in to run that State's permit program. That is a pretty important point when we are talking about the kind of protection that I know the Ranking Member wants to see. So we have made modifications to this law that greatly strengthens it.

Mr. Chairman, some groups have claimed that our bill undermines the EPA's coal ash rule, when in fact the truth is this legislation utilizes the expertise in State government to

add real oversight and enforcement to the EPA's coal ash disposal standards. This bill is about responsible regulation. It is about certainty for recyclers and for the American public who will know that State and Federal regulators are proactively overseeing and working with energy producers to ensure safe disposal of coal ash. And I hope my colleagues will take a good hard look at this common sense legislation and work with us to pass it.

Thank you.

[The prepared statement of Senator Hoeven follows:]

Senator Inhofe. We will do that. Thank you very much,
Senator Hoeven.

Senator Manchin.

STATEMENT OF THE HONORABLE JOE MANCHIN III, A UNITED STATES
SENATOR FROM THE STATE OF WEST VIRGINIA

Senator Manchin. Mr. Chairman, Ranking Member, and my fellow colleague from West Virginia, Senator Capito, it is good to be with you all and I really appreciate you all allowing us to come present before you.

Senator Bill 2446, the Improving Coal Combustion Residuals Regulation Act of 2016, Senator Hoeven and I introduced this legislation in January, continuing our efforts to find a common sense approach to ensuring safe disposal of coal ash, while also preserving the economic opportunities and benefits associated with the reuse of coal ash. The American Coal Council notes that beneficial use and reuse of this material is a means of ensuring billions of dollars of economic benefits, supporting the creating and maintenance of hundreds of thousands of jobs across many industries, and multiple environmental benefits including GHG, greenhouse gas, reductions, reduce water use, and improve energy efficiency.

Coal ash and other combustion byproducts are used for a wide range of economically beneficial activities, including the manufacturing of materials such as wallboard, concrete, roofing materials and bricks. I think Senator Hoeven went over some of the things we are using it for now. The coal ash is actually bound into these products.

I want to offer an example in my State and Senator Capito's, our State of West Virginia. We have a gypsum wallboard plant in Moundsville, West Virginia. When I was governor, I cut the ribbon on it, and it is her home where she was born and raised, her home area. Anyway, in 2008, CertainTeed, a large manufacturer of building products such as vinyl siding, roofing, and insulation, opened a plant in Marshall County, West Virginia. The plant would have never been opened if it had not been for the Mitchell Power Plant.

Mitchell Power Plant basically went to scrubbers. Scrubbers are meant to take SO₂ out of the air, no emissions of SO₂, which it does. The way it takes it out is using an injection of limestone with water that basically is sprayed in as coal is being burned, and it knocks out the sulfur. It creates a limestone base and that base basically is taken over across the road to the gypsum board plant. They compress this and make wallboard that you have drywall used in your homes. It is a tremendous product and it is a better recycled product and it is an added value product, and we are very proud of that. Flue-gas desulphurization scrubbers were installed on power plants allowing synthetic gypsum to be produced.

The project was \$150 million. In some States that might not be a big investment. In the State of West Virginia that is a tremendous investment; it really helps a lot of people have a

good job, and that is really what it has done. It was a product that was known as a waste product before and, as John had mentioned, there is so much being used for this product. We build blocks, we have block factories that use it. We have road manufacturers, road builders that use this product. So it is a tremendous byproduct with added value.

The other thing that is not talked about much is basically when you have a scrubbed utility plant, you have a high alkalinity of ash. That is used in backfilling and mining that basically mitigated the water problems that we have, and that is a tremendous, tremendous asset for us, to be used in mining States.

Other innovative uses of coal ash continue to be developed, such as wastewater treatment, wastewater treatment because of coal ash. Basically, when you think about it, carbon filters, what do you think carbon filters are? Carbon filters are basically coal. And it is used for so many other different benefits.

It is calculated that taxpayers save \$5.2 billion per year thanks to the use of coal as in federally-funded infrastructure projects. And although the EPA appropriately designated coal ash as non-hazardous, they had a ruling on that, we waited for quite some time to get their ruling, it is non-hazardous, but its rule misses the mark on two fronts: it does not provide

certainty to recycles of coal ash and it does not establish an effective enforcement mechanism for the disposal of coal ash. And I think Senator Hoeven went into that in detail of why we need certainty in this.

Our bill seeks to resolve these issues by establishing a State permitting program. The State permitting program in West Virginia, anybody that basically disposes of coal ash has to have water monitoring first. Their sites are inspected regularly, routinely by the DEP. And if the State fails to do that, this piece of legislation puts the EPA back in control. If we don't have a plan that is approved, then the EPA steps in. But at least they have to acknowledge the Tenth Amendment to the Constitution. Let us do our job in the States. That is all we ask for.

Senate bill 2446 also offers the States first approach to recycling of coal ash that prevents harmful effects of EPA over regulation, which would threaten vital industries and nearly cost my home State of West Virginia and the Nation more jobs. All we are saying is there should be a proper use, and if you have a disposal and you can use this as added value, that should be the plan the States put in place. If not, then it is basically disposal. Disposal has to be regulated, and if the States don't do it, again, the Feds step in.

It allows each State to use existing EPA health and

environmental regulations to set up their own permitting programs. These programs will allow industry to continue to recycle and reuse coal ash. This approach protects jobs and our economy while giving families and businesses the certainty they need and be able to continue to produce the products that we use.

I encourage you to support and pass this legislation. I think it is most needed. It gives us certainty of how we move forward and it basically creates a protective environment that we all desire. So I want to thank you, Mr. Chairman, and thank Ranking Member Senator Boxer, my colleague, Senator Capito. She knows this issue as well as I know it. Thank you.

[The prepared statement of Senator Manchin follows:]

Senator Inhofe. Both are excellent statements. I appreciate it very much.

Senator Boxer has requested to respond to a couple of things and get a little bit of a dialogue going. I think that is very appropriate.

Senator Boxer?

Senator Boxer. Thanks, Senator.

First of all, thanks, my friends. I know you are trying hard to get that balance between protecting the people and protecting coal ash and using it. I want to make a couple of points. I am going to put something in the record and hope that you will respond to it; not now, but when you get a chance, because it is a complicated, long letter.

First of all, as you know, people like me were hoping that this coal ash would be classified as a hazardous, so you know that I already think what the EPA did was not strong enough to protect the people who suffered this kind of a terrible nightmare in their homes from this coal ash. So you know where I am coming from.

Senator Manchin. Madam Chairman, was that the TVA?

Senator Boxer. That was Tennessee.

Senator Manchin. And that was Government controlled.

Senator Boxer. Yes. The way we store the coal ash

Senator Manchin. The Government doesn't do its job as well

as it should.

Senator Boxer. Well, that is exactly why we have the rule, because you are absolutely right, these are terrible. And for years 40 of these ponds were listed as hazardous.

I don't have any skin in the game in California because we don't have coal ash stored, but we had people from your States, from particularly your southern States come before us. Let me go because I know my colleague wants to move on.

So, first of all, I think there is a misunderstanding because recycling of coal ash is absolutely allowed under the EPA rule. So if you and I could talk about why you feel the rule is too restrictive, and maybe we can find some common ground on that.

Also, what I really want you to do is we have received a letter from 38 organizations and 38 States, and they come up with 15 reasons as to why this bill is very, very dangerous, your bill. So rather than go through what they said and give you the list, some of them are very surprising like Girl Scout troops and others, unusual, send a letter. I want to get this to you, and if we could talk together about whether you agree that this criticism is in any way right, if you could fix your bill to respond to it, or if you just think this criticism is off the mark, I would love to know.

But I am very fond of both of you. I want to find some

common ground. I don't know if we can with coal ash, but we will try. We will try.

Senator Inhofe. Thank you, Senator Boxer. I would comment that Senator Hoeven made the comment that those pictures that were used, that is the whole purpose of doing this, so that that won't happen again.

Senator Boxer. That is the purpose of the rule that you are weakening with this bill.

Senator Manchin. If I could respond.

Senator Inhofe. Okay, just very shortly.

Senator Manchin. Very shortly on that. I really respect and Senator Boxer and I have spoken about this before. Basically, it gets back to the people who don't want any fossil burnt whatsoever, because the residual of fossil is coal ash, depending on what type and how you burn it, whether you have alkaline based for sulfur, taking SO₂ out of the atmosphere, and then you have a byproduct.

We are trying to find ways to use all of these products because they get impounded. The impoundment, the Federal Government did a poor job in monitoring that, and we have had this, as well as our colleagues from Colorado talked about just the blowout that they had. These things can be prevented and they should be prevented if they could. This bill will give us more certainty.

If the States aren't doing their job, the Feds have all the oversight and control of it. That is all we are saying. But it gives us some certainty to try to use a product in a valued way.

Senator Inhofe. Thank you, Senator Manchin.

Any brief response, Senator Hoeven? Then we are going to have to get to our panel.

Senator Hoeven. Well, I would like to respond directly to the points that the Ranking Member brought up. We have actually, and I will enter into the record, a response to the letter that you brought up.

Senator Boxer. Get it to me.

Senator Hoeven. We will. We have it. And if you want additional information, we will provide that as well. We would like to work with you and we have worked with the EPA on this.

The only other point that I would like to make is that we don't weaken the rule; we create certainty for the rule. In the same way we regulate other energy and other emissions where you have a State implemented program pursuant to EPA requirements, and as Senator Manchin said, the EPA still has oversight. So we are not weakening the rule; we are providing certainty so that the companies know what they have to do, rather than trying to guess on the basis of a potential lawsuit.

Senator Boxer. Well, that is what happened in Flint; they let the State do it, and look what happened.

Senator Inhofe. All right. Well, we will excuse the two of you and ask the panel to come forward.

[Pause.]

Senator Inhofe. Let me welcome our panel. I am sorry that we are a little bit late getting started with you guys, but we will make up for it. I would like to have the opening statement from each one. We will start with this side, with you, Ms. Krill, and ask you to try to keep it within the time that you were told, the five minutes, if you don't mind. Ms. Krill.

STATEMENT OF JENNIFER KRILL, EXECUTIVE DIRECTOR, EARTHWORKS

Ms. Krill. Thank you, Chairman Inhofe, Ranking Member Senator Boxer from my home State of California, and members of the Committee. Thank you for the opportunity to testify before you on the discussion draft of the Good Samaritan Cleanup of Orphan Mines Act of 2016. My name is Jennifer Krill. I am the Executive Director of Earthworks.

For over a quarter century, Earthworks has worked closely with a broad coalition of local governments, Native American citizen groups, and other conservation organizations to improve the policies governing hardrock mining, including abandoned mine reclamation. In the wake of the August 5th, Gold King Mine disaster that the Senators from Colorado were discussing earlier that spilled millions of gallons of acid mine drainage into a tributary of Colorado's Animas River, communities who live with the threat of old mines have demanded solutions.

Sadly, this pollution problem is not limited to the Gold King Mine; it is nationwide and it is focused on the West. This pollution harms western waters and the communities that rely on them for agriculture, recreation, tourism, and drinking water.

The Animas River running orange is a stark reminder, but does not adequately represent the hundreds of thousands of abandoned mines that litter the West, polluting water in more subtle, yet no less destructive, ways. There are many other

ticking time bombs like the Gold King Mine, messy, complicated, and incredibly expensive to clean up, that cannot be solved by Good Samaritans alone.

According to the EPA, the estimated cleanup cost for abandoned hardrock mines total approximately \$50 billion. Tackling this largescale problem requires a largescale solution: 1872 Mining Law reform. If the hardrock mining industry had been subject to a less antiquated law similar to the surfacing mining law that governs the coal industry, the Gold King Mine spill likely would not have happened. An independent, dedicated funding source for hardrock abandoned mine cleanup similar to the SMCRA program for coal cleanup is long overdue, and communities are suffering for it.

Incentivizing the work of Good Samaritans can be one part of our Nation's response to the problem of old hardrock mines, but, frankly, it is nowhere near enough. Earthworks has supported several legislative proposals in past Congresses that create narrow exemptions from Clean Water Act liability. Given the scope and scale of the problem and the technical complications at many old and inactive mines sites, it is important to carefully word any Good Samaritan legislation to adequately protect communities and water supplies.

Good Samaritan permits must be reserved for true Good Samaritans, those entities that did not contribute to the

pollution and are not interested in profiting from the reclamation. Any monies from reprocessing of tailings at cleanup sites must be used only to offset the cost of the project. True Good Samaritans are not concerned about monetary gain, and Earthworks opposes any legislation that includes re-mining for profit.

This legislation must include provisions to hold Good Samaritans accountable for mistakes where water quality onsite becomes worse than before reclamation began.

Citizen suits provide accountability and ensure that agencies and permittees follow the intent and letter of the law. If something goes wrong, as had happened with the Gold King Mine, nearby communities must have access to the courts to adequately enforce all of our most important environmental laws.

Earthworks applauds Senator Bennet and Senator Gardner for their work on the discussion draft this far, and we are happy to see some of our key issues have been addressed. Our written testimony includes more detail regarding key improvements to protect communities and the water resources that they depend on.

We also look forward to moving beyond the Good Samaritan debate to get to the heart of the problem: a lack of funding for cleanup of these abandoned mines across the West. Good Samaritan initiatives that do not include a dedicated and significant funding source cannot solve the problem facing

western communities and water resources. If this discussion draft becomes law, Good Samaritans will tackle a few reclamation projects, but the scope of the problem will dwarf their best efforts.

Several legislative proposals have been introduced to update the 1872 mining law, including S. 2275, the Hardrock Mining and Reclamation Act of 2015. Senators Udall, Bennet, Heinrich, Markey, and Wickersham's legislation would bring us closer to ensuring that the Animas mine disaster does not happen again. This legislation would facilitate the cleanup of abandoned hardrock mines while creating tens of thousands of reclamation jobs across the West far into the future.

Thank you for the opportunity to present the views of Earthworks on this discussion draft, and we look forward to working closer with the co-sponsors and the Committee to solve the problem that abandoned mine sites pose to air, water, farmland, and public safety in western States.

[The prepared statement of Ms. Krill follows:]

Senator Inhofe. Thank you, Ms. Krill.

Mr. Holleman, you are recognized.

STATEMENT OF FRANK HOLLEMAN, SENIOR ATTORNEY, SOUTHERN
ENVIRONMENTAL LAW CENTER

Mr. Holleman. Thank you, Mr. Chairman and Senator Boxer, for having me here. My name is Frank Holleman. I live in Greenville, South Carolina and I now work at the Southern Environmental Law Center.

I am here on behalf of the communities of the Southeast to ask you please protect us from coal ash pollution by upholding the EPA coal ash rule and not adopting the proposed Senate legislation.

The proposed Senate bill would gut minimum standard protections for our drinking water supplies that were put in place, at long last, by the EPA coal ash rule. Right at the beginning I would like to address two points.

The EPA rule and strong coal ash regulation promotes recycling because it encourages the utilities to get this ash out of these unlined pits and do something with it. In fact, the recyclers have come to us to get us to help them get the recalcitrant utilities to act. That is one point.

The second point is the EPA and strong coal ash regulation promotes jobs and economic development, and coal ash pollution hurts it. Let me give you specific examples. In South Carolina we have a new \$40 million coal ash recycling plant purely because we forced Sandy Cooper to remove the ash from a coal ash

lagoon. In North Carolina we produce jobs for everybody from the day laborer to the truck driver to the PAG geohydrologist in cleaning up coal ash.

On the other side of the coin, I met the other evening with over 100 families whose houses are around a coal ash site, and they can't sell the house, they are not allowed to drink their water, and the real estate market in that area is dead.

So if you want to promote economic development and you want to promote coal ash recycling, the EPA rule and strong enforcement is the way to go.

Here is the problem: Our utilities, and others, I believe, have stored millions of tons of industrial waste containing arsenic and lead in unlined pits next to drinking water supplies, held back by dikes made of earth that leak. It is hard to believe, but it is true. Our groundwater has been contaminated. You have seen the pictures about how sites have collapsed into our rivers, and we have had river pollution, as well as damage to drinking water supplies.

We have seen catastrophes in Kingston and on the Dan River in both North Carolina and Virginia, and we in the Southeast, Mr. Chairman, we have learned some hard lessons, and I have learned them. I didn't know these lessons a few years ago. First, and this is a true statement, we cannot count on our State agencies and our utilities to protect us. I wouldn't have

believed this, but I will tell you why it is true. In North Carolina, Duke Energy refused to spend a few thousand dollars to inspect the pipe that broke at Dan River, even though its own staff asked for the money to do it and dam inspectors had warned them, and the State agency never made them do it.

In North Carolina, while Duke Energy's companies pleaded guilty 18 times to 9 Federal coal ash crimes, a United States District Court found that the State agency, which this bill would leave us at the mercy of, had done "little, if anything" to pursue a State enforcement action against Duke. In fact, and this is hard to believe, too, but it also is true, just 17 days after the Duke Energy companies pleaded guilty to coal ash crimes and were placed on criminal probation, their executives were hosted at a private dinner at the governor's mansion with the State's chief environmental law enforcement officer.

In Virginia, the State agency refuses to adopt protections that are even in place in South Carolina, and even the State of Maryland is litigating with the State of Virginia in Virginia's own State courts.

In Tennessee, the State administrator said he brought suit against TVA when the citizens wanted to pursue enforcement because he thought "TVA would rather be dealing with us than a Federal judge."

The bottom line is this: This Senate bill would take power

from the people and give it to State bureaucracies, and these are State bureaucracies which have failed us over and over and over again. The beauty of the EPA rule is that it gives us, the people in these communities, in Anderson County, South Carolina, in Pickens County, South Carolina, in Wilmington, North Carolina, the ability to protect ourselves.

Your Honor, Mr. Chairman, Senator Boxer pointed out the problem in Flint, and we have learned from Flint what happens when government does not take effective action to protect our water supplies. I can tell you I traveled all over the Southeast. There is not one person in the Southeast and the Carolinas who is asking this Congress give us less protection from coal ash pollution. And this is everybody from the Tea Party to no party.

Thank you.

[The prepared statement of Mr. Holleman follows:]

Senator Inhofe. Thank you, Mr. Holleman. You don't very often hear people say that they are more concerned about the big bureaucracy at the State level than at the Federal level.

Mr. Moyer?

STATEMENT OF STEVE MOYER, VICE PRESIDENT FOR GOVERNMENT AFFAIRS,
TROUT UNLIMITED

Mr. Moyer. Mr. Chairman, Ms. Boxer, thank you very much for the opportunity to testify today on the Good Samaritan draft bill. We deeply appreciate the honor to be before the Committee and do that.

I am here on behalf of Trout Unlimited and its 150,000 members nationwide. Our members hunt and fish and recreate and live in communities across the Country that are affected adversely by abandoned mines, so we have seen firsthand the devastation that abandoned mine pollution can cause to watersheds and communities. But, as a Good Samaritan, we have also experienced firsthand the opportunity for recovery at these same locations.

TU has been a good Sam and has worked to restore streams and rivers damaged by abandoned mine pollution from the Appalachian coalfields in Pennsylvania to the hardrock mines in the Rocky Mountain States, so we are informed by these experiences and our message today is really simple: abandoned mine pollution is a widespread problem and we need to be more aggressive in addressing it. But the good news is that much of the problem is fixable, and this draft bill is a good step towards solving some of these problems.

We are grateful for the impressive draft bill accomplished

through the hard work of its authors. It is a thoughtful blending of the past legislative approaches into a workable new model. There may be room for improvement in some areas, but we regard the overall draft as a significant bipartisan breakthrough, and we urge the Committee to give the draft strong consideration and eventual approval.

We face some daunting challenges on abandoned mine cleanup. The Gold King accident, which has been mentioned several times already, last August reminded us of those challenges. But while Gold King received extensive media coverage, what is less well known is that there are thousands of similar, smaller scale abandoned mines that pollute our rivers and streams every single day. Cleaning up abandoned mines is challenging and expensive, we agree with that, but that does not make it any less imperative.

According to the EPA, abandoned hardrock mines affect about 40 percent of the headwaters in the Western United States. But also in the East pollution from abandoned coal mines continues to damage thousands of miles of streams and rivers, over 10,000 miles just within Pennsylvania and West Virginia alone.

We and others have developed a number of model abandoned mine cleanup projects that can be easily replicated. In Pennsylvania, aided by sound State-based Good Sam policy, watershed groups, including Trout Unlimited, are working with

State agencies, communities, and other partners to conduct more than 250 abandoned coal mine pollution control projects. Kettle Creek Watershed, in north central Pennsylvania, being just one example, has seen dramatic water quality and fisheries restoration through this work.

In Colorado, the western leader in abandoned mine cleanup work, TU, again in partnership with State and Federal agencies and private landowners, has used the limited Good Samaritan tools afforded by EPA under current law to good effect in restoring Kerber Creek in Colorado.

Both these projects are described more fully in my written testimony.

Despite this progress, the lack of dedicated funding sources and burdensome liability risks for would-be Good Sams has hindered abandoned hardrock mine cleanups. In particular, as I mentioned, two of our best environmental laws, CERCLA and the Clean Water Act, produce barriers to this work.

So that is why we are here. We need the legislation to support Good Sam cleanup, and it is really needed today to allow some good projects to go forward.

Just a few words about the draft bill. It deals narrowly and appropriately with CERCLA and the Clean Water Act; it would allow Good Sam projects to be eligible for Clean Water Act Section 319 funding; it would allow approved States and Tribes

to run the program; it provides protection from future liability from the two laws once Good Sams have successfully completed their permitted work activities; and just lastly, another consideration as the bill goes through the legislative process, we urge the Committee to consider fine-tuning enhancements to the permit mechanism in the bill that might diminish the permit burden for some low environmental risk, low complexity projects.

The draft does not address Good Sam policies for abandoned coal mine pollution, and we fully understand the reasons for not including coal Good Sam provisions, but coal Good Sam legislation is needed, but we really urge all stakeholders to seek ways to address coal Good Sam policy without undermining this really promising effort that we are talking about today.

So just to conclude, we really appreciate the Committee's focus on these issues and we urge the Committee to continue to work with us and the States and EPA and other stakeholders to help provide a really badly needed tool to facilitate these cleanups.

Thank you very much again for the opportunity.

[The prepared statement of Mr. Moyer follows:]

Senator Inhofe. Thank you, Mr. Moyer.

Mr. Merriam.

STATEMENT OF CHIP MERRIAM, VICE PRESIDENT, LEGISLATIVE,
REGULATORY & COMPLIANCE, ORLANDO UTILITIES COMMISSION, ON BEHALF
OF THE AMERICAN PUBLIC POWER ASSOCIATION

Mr. Merriam. Mr. Chairman and Ranking Member Boxer, thanks very much for allowing me to speak today. My name is Chip Merriam. I am the Vice President of the Legislative and Regulatory Compliance area of the Orlando Utilities Commission. We call ourselves OUC, the Reliable One.

We are the second largest municipal utility in Florida and the fourteenth largest in the Nation. We provide affordable, reliable, and sustainable energy to more than 234,000 meters in the City of Orlando, the City of St. Cloud, and in unincorporated areas Orange and Osceola Counties.

One of the things we wrestle with, we are now again at the recession of a growing area. But 40 percent of our ratepayers still today earn less than \$35,000 annually. So the cost of implementing regulatory programs and meeting those requirements is something that is very important to us.

OUC is a member of, and today testifying on behalf of, the American Public Power Association, a national service organization representing the interests of over 2,000 community-owned, not-for-profit electric utilities that actually provide electricity to over 48 million Americans. We are your neighborhood utilities.

OUC operates two coal plants and we are currently constructing a solar farm right now on the footprint of a 90-acre coal ash landfill. We do not impound coal ash; we actually do a landfill process, similar to a municipal storage waste system.

And had the Environmental Protection Agency not classified into this river rule that CCRs are hazardous, we may not have been able to do what we are doing today, which is actually on the top of this closed landfill installing many megawatts of solar energy.

Additionally, we understand the impact of a carbon-constrained environment at this point in time. We are looking at an additional expansion for a coal pile which we are turning into another solar field at this particular point in time as we look to the future. Our industry is changing. We recognize that.

However, constructing in Florida coal residual landfills is very complex. Because the facilities are going to be operated and used for many decades, one of the things we actually like to see in the State regulations, which our State does a very good job at, is governing the construction, the operation, the monitoring, and even the closures, and they do it on the engineering basis and on a science basis to make sure that these are protective of the environment. Having rules that are

conflicting, like this particular rule will provide for our organization to deal with, gets us into a position of a very impossible to meet compliance requirement.

We just provided a 30-acre expansion of our landfill. It is lined. It is overbuilt. It goes beyond the requirements of municipal waste storage. For the 30-acre expansion it was \$15 million for these same people that I just described as our ratepayers. My written testimony actually describes what was required by our State in order to do this.

Our ratepayers and our governing body insist that we manage all the surrounding resources in a manner that are responsible, visionary, and affordable. In fact, when we built our power plant in the 1980s, it was a long way outside of town. Today we are surrounded on one side by a county landfill, but on the other side by golf course communities. So that is the type of infill that has been created near our particular power plant.

As Senator Hoeven and Senator Manchin described, Subtitle D is self-implementing. One of the difficulties for us in this industry is trying to read between the lines of what the risk is and what it looks like, and trying to make sure we are building something that is compliant and we are not going to be spending time in court defending what we believe was the correct thing to do.

We actually believe in the State's regulatory program and

we think that it is very thorough. Our facilities, when these types of rules come forward, are confronted with conflicting Federal and State requirements. We believe, as we read this particular bill, bill 2446, that this actually takes away the conflict we have to deal with; it does make, as the two Senators said, give us more direction and even raise the power a little bit on the regulatory process.

We do not see a loss in our particular State, as an example, of citizens' input; we actually see an addition. In our State process there is an administrative procedure process that is actually part of your permit. You can challenge my permit any time I make a change in it. Further, you can go forward and you can challenge it civilly if you don't get the answer you want from the State, and you can challenge these in the process on the EPA side.

I was a former regulator for 20 years. I was also responsible for water quality and most of the Everglades restoration projects. There is no value in destroying the environment that surrounds the product that you are dealing with, trying to provide benefit for this, your ratepayers. I took great pride in every regulation I made, every rule I made, and every permit I issued that it was balanced, it protected the unique environment of Florida, and that I stood by the decisions I made and made sure that those were implemented correctly and

there was no risk to the environment or those who were complying with the rules.

Mr. Chairman, I will end at that point in time.

[The prepared statement of Mr. Merriam follows:]

Senator Inhofe. All right, right on five minutes. Thank
you.

Mr. Kirby.

STATEMENT OF PATRICK KIRBY, DIRECTOR, NORTHERN WEST VIRGINIA
BROWNFIELDS ASSISTANCE CENTER

Mr. Kirby. Thank you, Mr. Chairman and Ranking Member Boxer and the Committee members for the opportunity to be here today. I am Patrick Kirby. I am the Director of the Brownfields Assistant Center at West Virginia University. I am here to talk about how the funding and support provided by the U.S. EPA brownfields program would be enhanced through the BUILD Act.

Brownfield projects across rural West Virginia and the thousands more across the Country would benefit from the expanded brownfield assistance provided in the BUILD Act. In terms of an example to begin the process of how that would happen would be the kind of project that could benefit would be the Taylor, Smith & Taylor site in Chester, West Virginia, which is home to the world's largest teapot. If you haven't been there, you should; it is quite the site to see.

The TS&T site is an 8.65 acre former pottery manufacturing site closed in 1982 after 80 years of manufacturing the famous Taylor, Smith & Taylor ceramics and fine pottery.

This brownfield site is still the first image travelers see when crossing from the Ohio River into West Virginia. The site sat vacant for more than 30 years, until it was purchased by a local economic development authority in 2011. Now, that was a

challenging process, just structuring the deal with Federal regulators, State regulators, a private property owner. It was a massive undertaking that also involved specifically the community. There was a project task force put together where the community met every month for over five years; they are still meeting now.

The site was assessed and cleaned up using EPA brownfield grants, and the economic development authority is still currently working with the task force completing remediation of the river bank as the last phase of the cleanup to prepare building a \$2 million building that is going to be leased by a job-creating prospect, which is actually funded privately.

The BUILD Act would have helped this project in three distinct ways: a multipurpose brownfield grant, which is proposed in the BUILD Act, would have reduced the project time by as much as three years, which would have brought jobs and public health benefits to the community sooner, while maintaining the same high environmental safety standard. The project would have also significantly benefitted from a higher maximum cleanup grant proposed by the BUILD Act. Currently, the remediation grants are topped at \$200,000 and would be expanded under the BUILD Act.

While this is also a highly visible project being viewed by motorists both within West Virginia, coming from Ohio through

West Virginia to Pennsylvania and vice versa, the village of Chester is a rural community of 2,551 people, and they could have really utilized the proposed technical assistance grants that are in the BUILD Act, as well as the removal of the prohibition of administrative costs that are currently in the grant.

While that seems like a small change, as we have all heard today, the process of going through managing Federal grants and managing Federal programs is challenging, especially for the rural communities.

So the projects that will be impacted by the BUILD Act are not hypothetical. There are major opportunities for environmental remediation and economic redevelopment that exist in communities across all of rural America, and they are in need of additional assistance the legislation would provide.

The Brownfields Assistance Center at West Virginia University partners with the West Virginia Department of Environmental Protection and the West Virginia Development Office to help communities access these Federal resources and help with revitalization efforts to move forward for appropriate site reuses. We have worked on over 150 brownfield projects since our creation in the last 10 years from former glass, pottery, and steel factories to former gas stations, foundries, and maintenance facilities, creating community assets and sites

ready for job-creating facilities.

We are currently working on over 60 specific projects in 32 West Virginia communities spanning 23 counties. Through our work with communities and through the EPA brownfields program, we have used \$13 million in brownfield grants to leverage over \$62 million in private and local investment.

With 7.4 jobs being leveraged for every 100,000 of EPA's investment in West Virginia, we safely estimated the creation or retention of 1,000 jobs due to brownfield redevelopment. That is progress, but there are more sites to reclaim, there are more jobs to create, and there are more communities to revitalize. With 391 communities with less than 15,000 in West Virginia alone, there are many more potential projects for the BUILD Act to impact and improve the rural landscape across the Country.

In conclusion, brownfields redevelopment improves local economies, increased municipal budgets, creates jobs, spurs private investment, and protects public health and the environment.

I thank you for the opportunity to be at this hearing and to share the positive impacts the BUILD Act would have on rural West Virginia and all over the Country.

[The prepared statement of Mr. Kirby follows:]

Senator Inhofe. Thank you, Mr. Kirby. Excellent statement.

I agree with the EPA's decision that coal ash is a non-hazardous waste, and I can assure you, in case you are wondering, that there are not 60 votes in the United States Senate that would change that ruling, so Congress should amend RCRA to authorize the State permitting programs for coal ash. The President supports it.

As Ranking Member Boxer noted at last year's hearing on EPA's coal ash regulation, authorizing State permitting programs "is really not that different from so many other laws. If you want to talk about permitting, I would be happy to work with you to make that fix, if necessary.'" Now, I agree. I see no reason why coal ash should not be regulated through the EPA's approved State permitting programs, just like air, water, and hazardous waste.

I have served in different capacities, Mr. Holleman. I have served as mayor of a major city; I have served in the State legislature; I have served in Congress; and I have served in the Senate. It has been my experience that the closer you get to the people, the more local, the more responsible the decisions are, because they can find you. You can hide up here; you can't hide when you're in a city council. So I reject the idea that you can't count on, and I am quoting now, I think, Mr. Holleman,

you can't count on States to protect us. I don't agree with that at all.

Mr. Merriam, the President supports Congress amending RCRA to establish State permitting programs. S. 2446 establishes State permitting programs. Now, if we don't pass it, what enforces regulation for coal ash? What enforcement is out there if we do not pass this?

Mr. Merriam. Well, my belief, Mr. Chairman, is that we would be subject to the citizen lawsuits, and then we would actually be taken into a Federal court in order to determine the remedial action or the remedy for what is believed to have been an impact.

Senator Inhofe. And who benefits from the increase in lawsuits?

Mr. Merriam. Pardon me? I couldn't hear you.

Senator Inhofe. I will give you the answer: trial lawyers.

Mr. Merriam. Okay.

[Laughter.]

Senator Inhofe. What other environmental regulations are solely enforced by outside lawsuits by trial lawyers?

Mr. Merriam. Mr. Chairman, I have to tell you I have done this for a long time and, again, I was a regulator and dealt with some fairly significant laws.

Senator Inhofe. You mentioned you were a regulator for 20 years?

Mr. Merriam. For almost 20 years, 19 and a half years, yes, with the South Florida Water Management District. And in that I had never seen a rule that was self-implementing in this way from the Federal Government that actually had an outcome that I would be taken to a process that was in Federal court.

Now, I will also admit to you that it had happened under our numeric nutrient criteria on the clean water side. There was a citizens group that did challenge the State of Florida. We passed legislation in the State in order to make that still a State-owned product and work with EPA in that process.

Senator Inhofe. Mr. Holleman, is your opposition to setting up State regulatory programs for coal ash because it would undermine your business model for filing lawsuits and collecting attorney's fees?

Mr. Holleman. Certainly not, Mr. Chairman, as you must know by asking that question. I should tell you that until five years ago I was in a private law firm in Greenville, South Carolina that was probably one of the State's leading corporate law firms, until I decided to spend full time working to try to protect the environment. You should know we aren't trial lawyers; we don't sue for money; we don't sue for attorney's fees. We sue to protect communities and get them to clean up.

Senator Inhofe. I see.

Mr. Holleman. If I could respond to your statement to me. And I would emphasize this, Mr. Chairman. What is at stake are not lawyers. There hasn't been a lawsuit yet that I am aware of under this Act. In North Carolina, Duke Energy has already built a coal ash landfill and complied with the law. And I would expect they will, and we haven't challenged those. This is not about lawyers. We need to be clear about this.

Senator Inhofe. Well, okay.

Mr. Holleman. This is about the people I saw with my own eyes in Salisbury, North Carolina who cannot sell their homes, who are concerned about their families.

Senator Inhofe. Okay, you already had your opening statement.

Mr. Merriam, I am running out of time here. Would you like to respond to that? Mr. Holleman's testimony claims EPA's rule would limit citizen suits and gut ground waters for coal ash facilities. You want to clear the record in your opinion?

Mr. Merriam. The way I read the rule, as Senator Hoeven and Senator Manchin had brought into their discussion, it actually brings in the rule for the groundwater monitoring and those requirements into the Act. I have many on our site monitoring wells. We have to protect the groundwater in our systems and we have to protect it. Again, it is our backyard;

we drink the water also.

Senator Inhofe. Do you agree with my statement that, from my personal experience, the closer you get to the people, whether at the city level, the State level, as opposed to Federal level, the more responsible and responsive to the citizens results?

Mr. Merriam. Absolutely, Mr. Chairman. Like I said, I drink the same water we manufacture for potable water, I use the same energy and I live in the same neighborhoods as those people who pay salary.

Senator Inhofe. That makes a difference, doesn't it?

Senator Boxer?

Senator Boxer. Thanks.

I want to say, Mr. Merriam, it is good that you live in a State that cares. Unfortunately, not every State is as good as your State or my State. So you can't really be here and speak for the whole Country as much as you are trying to.

I learned from my dad, who was a lawyer, never ask a question you don't know the answer to. So, Mr. Holleman, that was a great question my colleague asked you, and you had a great response; and it says it all. It says it all. This isn't about lawyers.

What I love about my Republican friends, and I do love a lot about them, they attack lawyers all the time. But when they

need one, boy, they get the best one. We all do. So it depends what side of the fence you are on. And when you worked for corporations, I am sure my colleague was rah-rahing you all the way.

The bottom line is what happens to people. Now, my colleague quoted me saying I am happy to work about State permits. That is fine. But I want to say two things about that. There has to be Federal minimum standards. And the problem with the bill that Senators Hoeven and Manchin have, there is no Federal standard. So people aren't protected.

So I am not going to deal with that issue unless we have minimum protections. That is essential. Whether it is a TOSCA law or anything else, we have to make sure people are protected; there is some kind of floor. And then if the States want to do more, that is fine with me. The more the better to protect clean air and water. As I often say, no one has ever asked me, as you pointed out, please weaken our clean water rules; I really don't want to have sure pure air or water. Baloney. They want it better.

And the other thing that has shaken my view, I say to my friend, is the Flint story. Because I did say I am very willing to work with a bill that has minimum standards and then the States permit. But after seeing the corruption in Flint, the out-and-out corruption, and the corruption, Mr. Holleman, you

talked about. I am going to ask you to expand on that one more time. You pointed out not that you favor bureaucracy. I never heard you say that. That is what my colleague sort of put words in your mouth. You never even used the word bureaucracy. You said what you saw at the State level was out-and-out cronyism, to put it in the mildest form.

Would you repeat that you said about that?

Mr. Holleman. Well, what we saw, and I wouldn't have believed this, Mr. Chairman, I didn't expect this from my past life, frankly, but as soon as we began to enforce the law in North Carolina on behalf of local citizens, and I agree with you local communities need to maintain their ability to defend themselves. That is where the authority needs to be, in the people, not just in the government.

But as soon as we started enforcing the law, in my experience, when I grew up in Oconee County, South Carolina, when law-abiding people report law breaking to the law enforcement authorities, I expect the law enforcement authorities to communicate and work with the law-abiding people who reported it.

But what we discovered in official documents, almost as soon as these events were reported to the State and the utility, the utility's lobbyist and its lawyers immediately began meeting with the State law enforcement authorities. They weren't

meeting with us, they were meeting with them to come up with the strategy to do us in. And the very things we reported later formed the basis of the criminal guilty pleas to Federal crimes in response to charges brought by the United States Department of Justice.

And as I said before, 17 days after those Duke Energy companies pleaded guilty 18 times to 9 crimes, and were placed on Federal nationwide criminal probation, their executives were hosted at a private dinner at the governor's mansion with the State's chief environmental law enforcement officer, which had pending at that time a number of charges against Duke Energy.

Senator Boxer. Well, Mr. Holleman, I just want to say you are the best witness that I have ever had on my side of an issue, for many reasons. You are very articulate; you worked for the busy side of it; you see the picture; and you are motivated by doing what is right. And I hope that we will keep that in mind before we pass weakening amendments to the coal ash rule that would, without minimum standards, minimum standards, allow these State people, with all their cronyism, to move forward.

And, by the way, Federal agencies are not protected completely from this type of cronyism, but it is a little bit easier to monitor them from here.

Thank you.

Senator Inhofe. Senator Capito?

Senator Capito. Thank you, Mr. Chairman.

I want to thank all of our witnesses here today. I particularly want to thank Mr. Kirby from WVU for being here, and I want to recognize his two children who are in the audience, Wyatt and Katherine. If you all would stand up so we can say hello. There they are. Thank you. They are learning that government gets along, doesn't always agree, and it can be quite interesting at the same time. So thank you all and thanks for coming.

Mr. Kirby, you are doing great work on the brownfields issue in West Virginia, and I am glad to know that you agree that the BUILD Act will help you with that. I would like to know, in your experience, what are the challenges faced by small communities? You sort of addressed this in your opening statement, in competing for the brownfield grants.

For example, do they have the same experience and access to technical expertise? I am sure this is where you aid those local communities like Chester. What can we do to make sure that our local communities, rural communities, small communities, are able to get the technical expertise they need to access these grants?

Mr. Kirby. This is being seen in the BUILD Act with some technical assistance grants that were put in, but also we work a

lot with private foundations now, and they are recognizing the need for communities to have access to technical assistance even to apply for grants that everybody gets a fair shake, but when you walk into a city manager's office and you say here is an opportunity, it is a \$200,000 grant, it has a 56-page guideline. They already had their plate full that day and it is hard enough to understand what a brownfield is. So then they look at their projects and they say this is going to be a little overwhelming.

So with us able to work on 60 projects, when there are 10 times that many that we could be working on in the State, so the technical assistance grant within the BUILD Act, as well as building that local capacity, which we have been doing through some programs funded through private foundations.

Senator Capito. Great. Well, I want to thank you, too, I know you are working with the Town of Shepherdstown on their new public library brownfields project, so we look forward to that. I think the Ranking Member and the Chair, we could get them over there because that is a pretty close part of West Virginia to see. And also in the City of Charlestown, one of the first brownfields that I worked on was American Public University, which was an old Maytag, I think, factory and now I think there is 60 solar panels out there along with other wonderful educational opportunities. So I know we are doing good things there and I appreciate that.

I would like to say, since Senator Manchin has left, he is obviously my colleague, I have been on Capitol Hill for several years. We haven't quite found the answer to this. I went to a dam that was celebrating its 50 year anniversary of construction. We will go to just about anything at certain times of the year. And I was just amazed to realize that this dam, 50 years old, was built with coal ash. So it is a very durable product when it is recycled and used in construction. So I think we want to try to make sure that we retain that ability while maintaining the safety and security of our water supplies and all those issues.

So what I hear you saying, Mr. Merriam, is that you are not conflicted, but you feel like there are conflicts that exist in the law now that this coal ash bill would help to mediate. But at the same time you keep talking about the rule being self-implementing. So for people who don't really understand what a self-implementing regulation is, could you kind of explain that what means from your perspective?

Mr. Merriam. Thank you, Senator. From my perspective, typically, rules come and go through a very vetted process, public process, lots of comments. Rules go through periods of challenge and actually you have the ability to work with the agencies and the public gets to be active within that process also. We don't see that same level of activity when you have a

self-implementing rule, especially one that has limited access even for us to make further comments on.

We don't disagree with Ranking member Boxer that there needs to be minimums. We also agree that the State should strive and exist the minimums; however, we believe that the bill today does have minimums in there that is cited in the code of Federal requirements and so forth. So it is an unusual process having this type of process move forward. It is not one we had a lot of comment period in order to put our concerns online, and to build these things and to do them correctly. It is nice to know what the floor is so if we choose to go to the ceiling in meeting the regulations, we can do that without risk of additional lawsuits that may be because the Federal requirements are different than the State requirements and different from how we interpret the actual requirements in the rule.

Senator Capito. All right, thank you.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Capito.

Senator Barrasso?

Senator Barrasso. Thank you very much, Mr. Chairman.

I would first like to take a moment to speak on S. 2446, introduced by Senators Hoeven and Manchin. My home State of Wyoming is a coal State. The issue of regulating the byproduct of burning coal is a very important issue to my constituents.

The EPA decided, after public comment, that regulating this byproduct as hazardous was the wrong approach to storing coal ash. The EPA decided it was better to regulate it as a solid waste, and I agree. There is clearly need for legislation on this issue.

As written testimony before us today spells out, without legislation, there would likely be conflicts between State programs and the EPA rule. So I commend Senators Hoeven and Manchin for trying to solve this issue. As the bill continues to move forward, I want to ensure that States have the certainty that they need that the EPA won't move the goalposts or impose unnecessary criteria in the face of legitimate State plans that are based on sound science. So I am going to work with the bill sponsors, members of the Committee, and you, Mr. Chairman, to ensure that the States are adequately protected in this legislation.

Which leads me to my question for Mr. Merriam. In written testimony by some other witnesses here today and by outside groups who oppose the legislation, there is a constant theme that seems to be appearing. The theme is that somehow States aren't up to the task of protecting communities, and that by giving States more control over addressing coal ash storage we are somehow taking power away from local communities. I believe it was Mr. Holleman, who is shaking his head yes, who said in

his written testimony that this takes power away from local communities and gives it to State bureaucracies.

So my question is if we give EPA all the power to address coal ash, how does that not take power away from local communities and simply just give it to Washington?

Mr. Merriam. And I think the Chairman actually brought that point up, too, Senator. It is, in our particular situation, nice that we are responsible to the community that we serve. It is also important that we work with the State. It is a lot easier for the taxpayers and the citizens of Florida, as an example, to come to Downtown Orlando than it is to go to Tallahassee for public hearings and for some requirements, or to get to the Washington offices in order to make these, or even Atlanta for our Region 4. We very much listen to our citizens in our communities and it is a very important part of how we do business.

We also work very closely with the State as they do regulations so that there is not just consistency, but there is flexibility, which is a part of the preamble of this particular rule, but we work with the flexibility in that to make sure that those rules are applied with the flexibility on a site-by-site basis. Hydrology is not the same in every State, not within every State, and this allows us to write almost a prescriptive way to do the best we can to protect our resources.

Senator Barrasso. Thank you, Mr. Merriam.

Ms. Krill, I want to talk about the record of this Administration's EPA for a moment, especially as it relates to addressing the needs of local communities impacted by the Gold King Mine Animas River spill. Yesterday there was an opinion piece in a national paper written by Ryan Flynn, who is New Mexico's Secretary of the Environment, and he wrote about the EPA's response to the spill. The piece was entitled Downstream From a Slippery EPA. This is from the New Mexico Secretary of Environment, and he states, "About two weeks after the spill, the EPA released an environmental standard for the Gold King Mine sediment that was in order of magnitude weaker than those applied to other polluters."

So the EPA sets a standard for itself weaker than those applied to other polluters. He went on to say, "Even months later, although the EPA yellow water has passed, the EPA's data shows that storms have disturbed contaminated sediment, have pushed lead levels back above the tolerance for safe drinking water."

So as the Secretary of Environment of New Mexico points out, EPA persisted in claiming, in spite of that, that the watershed had returned to pre-spill conditions, and he said, look, "this has been a campaign of minimization and misdirection by the EPA." This is the Secretary of Environment for New

Mexico.

So as you mentioned in your written testimony, the EPA is responsible for the spill, and it appears that they are not protecting the local communities and the Tribes dependent on this water but are, instead, misinforming the public about the health hazards to protect themselves.

So my question is, what is your opinion of EPA's record with regard to this spill, and do you support empowering the States and others with the tools necessary to solve these and other environmental problems, rather than empowering the EPA that has this level, which to me seems irresponsible? That is the question regarding how they run things versus what they make others do.

Ms. Krill. Well, thank you for the question. I have not read the op-ed that you mentioned, so I can go back and review that later. We do support empowering the States through reforming the mining law of 1872, which would create a reclamation fee and a fund that would then be distributed by the States in order to manage cleanups of these technically complicated sites. If 1872 mining law reform had passed when it was first introduced in 1993, or any time subsequent from then, then the EPA wouldn't have been on site doing the job that it was doing in the headwaters of the Animas River.

Senator Barrasso. Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Barrasso.

I want to thank the panel. It is a very good panel. I do apologize you had to wait quite a while because we had members that were in here and, you know, Senators do sometimes talk a little bit longer than other people. But thank you very much for being here.

Senator Boxer. Speaking of that, could I make a closing statement of a minute?

Senator Inhofe. One minute. There we go.

Senator Boxer. I thank you.

Senator Inhofe. All right.

Senator Boxer. To the issue of minimum standards, Mr. Merriam, because I think we can work together here, the problem that we have in the bill that was introduced by my friends, Senators Hoeven and Manchin, is that it eliminates one, two, three, four, five, six, seven of the minimum standards in the rule, and it significantly delays one, two, three, four, five, six others, and it prohibits the EPA from enforcing in three circumstances. So, yes, there are some minimum requirements on process, but on protection of the people they are just not there.

I do think we can work together to try to get something accomplished, but I am with Mr. Holleman and Ms. Krill, and all of you who I know want to protect the people. Let's make sure

what we do doesn't lead to another Flint, Michigan. If there ever was a poster child for walking away from responsibilities and leaving it to folks and letting them decide what to do, that is the example.

And, Mr. Kirby, thank you. I think that this bill that my colleague, Senator Capito, lauded, I laud it as well. I think it is an occasion where we can all work together. Thank you very much.

Senator Inhofe. I would agree with that.

Without objection, I am going to make as part of the record the article that Senator Barrasso referred to.

[The referenced information follows:]

Senator Inhofe. Thank you very much. We are adjourned.

[Whereupon, at 11:03 a.m. the committee was adjourned.]