



**Testimony of Rena Steinzor,
President, Center for Progressive Reform
before the
Environmental Protection Agency
regarding**

**Hazardous and Solid Waste Management System
Identification and Listing of Special Wastes
Disposal of Coal Combustion Residuals from Electric Utilities
Proposed Rule**

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My name is Rena Steinzor. I am a law professor specializing in regulatory and environmental issues at the University of Maryland School of Law and the president of the Center for Progressive Reform, www.progressivereform.org. Thank you for the opportunity to testify here today.

We are all familiar with the psychological studies that have become a cottage industry at American universities. Consider this one. A presumably dead cockroach is “medically sterilized”—and I honestly do not know what that means—and then dipped into a glass of juice in front of a group of people. The purpose: to gauge the test subjects’ willingness to drink the juice after the cockroach is removed. To the researchers apparent surprise, the people—all victims of an irrational phenomenon known as “stigma effect”—would not drink the juice, although they were willing to take a sip if the cockroach was merely laid to rest peacefully beside the glass, as opposed to dunked inside it. As amazing, they refused to drink the dunker juice, even if it was placed in a freezer for one year or the cockroach was dipped in the juice very, very quickly. So, conclude the researchers, “while shunning may have evolved from an adaptive response to avoid contaminated food, it can be triggered in inappropriate circumstances.”

Now why on earth am I bringing up this bizarre experiment in the context of this perfectly staid hearing on a hyper-technical [EPA rulemaking proposal](#), which covers—count ‘em—138 pages in the Federal Register, leaving many supposedly more relevant points to be addressed by witnesses today? I am telling you the cockroach story because it is at the root of the reasons why the OMB Office of Information and Regulatory Affairs (OIRA) mangled this rulemaking, constructing a fanciful but deadly cost-benefit analysis that predicts *negative net benefits of as much as \$239 billion* if EPA regulates coal ash appropriately, as a special waste under subtitle C of the Resource Conservation and Recovery Act. Or, to put it more bluntly, electric utility executives who generate 136 million tons of coal ash annually will squander \$239

billion of the nation's resources over the next 50 years because, suffering from the stigma effect, they will send millions of tons of the stuff to lined landfills rather than dumping it in road beds and mine shafts.

You'll look in vain for the cockroach study in any of the official documents that emerged from OIRA on the coal ash rule, all of which discuss the stigma effect at length without citing any references supporting the effect's existence in the coal ash context. But the cockroach study is described at some length in an [EPA study on Superfund](#) that was cited at footnote 118 of the *original EPA cost-benefit analysis* on coal ash. And the study is a personal favorite of Cass Sunstein, director of OIRA, who has cited it in [law review articles](#) and his book *Laws of Fear*, which argues that irrational people who fear pollution must be saved from themselves.

Meanwhile, back at the ranch, consider the following facts, as opposed to fears:

- 31 percent of landfills and 62 percent of surface impoundments devoted to coal ash disposal lack liners to prevent leaching of heavy metals into groundwater
- 58 percent of such impoundments do not have any system for monitoring whether they are leaking;
- 186 of some 584 impoundments operating in the U.S. were not designed by a professional engineer;
- 56 of these dumps are older than 50 years, 96 are older than 40 years, and 340 are between 26-40 years old; and
- State regulators excused 80 percent of owners and operators from dealing with groundwater protection when they closed their impoundments and 88 percent from proving they have the financial wherewithal to deal with problems discovered later.

Irrational anxiety? I think not.

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