



Green Legislative Update

Published Weekly During West Virginia's Legislative Session

Volume 13 Number 7

Date: March 1, 2002

Under the Dome

By Donald S. Garvin, Jr.
WVEC Legislative Coordinator

Week 8 – Life is now at a frantic pace “under the dome.” There are seven working days left in the session and bad things (or good) can happen at any moment. So here are a couple of tidbits from inside the whirlwind:

Think back to last week when I told you about S.B. 667, the bill that authorized the President of the Senate or the Speaker of the House to intervene “in any court of this state” in lawsuits against any state agency. Last week the bill was on the agenda to be heard in the Senate Judiciary Committee, but committee chairman Senator Bill Wooton (D-Raleigh) placed it on hold after hearing our concerns about the bill.

The bill appeared back on Judiciary’s agenda on Wednesday. In the hallway before the committee meeting Senator Wooton told me not to worry. He said that he had listened to our concerns, and that we would like what they had done with the bill. I was able to get a copy of the committee substitute for the bill just before the Judiciary meeting, scanned through it quickly, and, sure enough, all that language about legislative intervention had disappeared. It was no longer a “legislative intervention” bill at all, but instead seemed merely to address the ways in which state agencies respond to lawsuits, as well as the monetary awards that could be granted in such suits. The bill was passed out of the Judiciary Committee after only brief discussion.

Well, Thursday night after the session I ran into Dave McMahan, a lawyer and lobbyist we work with frequently, and he asked if I had seen S.B. 667. I told him I had only glanced at it and was happy with how it had been changed. He suggested I take another look at it. So I did, and here is what I found on page 6 of the bill:

Chapter 55-17-4-(b) Any plaintiff who files an action against a government agency may be liable for court costs and reasonable attorney’s fees if the government agency substantially prevails and the action or the plaintiff’s conduct during the litigation of the action was frivolous, unreasonable, without foundation or in bad faith.”

Good grief. The legislature won’t have to intervene in lawsuits against the state – there won’t be any! If this language remains, the environmental community will never be able to find an attorney willing to sue a state agency, pro bono or otherwise!

Good grief!

State Parks in the Division of Natural Resources had asked our help to draft language that would allow the Parks to sell timber that was cut down ONLY as a result of some construction or infrastructure improvement project, such as the building of a new lodge. The law apparently forbids them to sell such timber now. This seemed like a reasonable request even to the most ardent tree huggers among us.

But when the subcommittee of the Senate Natural Resources Committee reported the proposed bill back to the full committee, the language was not the same as DNR had drafted and contained a couple of clauses that appeared to me to cloud the issue.

Seeing the scowl on my face, Senator John Mitchell (D-Kanawha) asked if I had problems with the bill. I told the committee that while we agreed with the concept of the bill, I did have concerns with the precise language and suggested two different ways to fix the problem.

The committee tried twice to amend the language as I had suggested, but they just kept making it WORSE! Luckily for me, both attempts were rejected, leaving the “cloudy,” but still acceptable, version intact.

Lesson learned: sometimes best keep thy mouth shut. **Good grief . . .**

Clean Elections Bills Promoted

By Gary Zuckett

The WV Clean Election Act (SB654 & HB 4532) received positive exposure twice on Thursday. In a morning press conference, two Delegates and one Senate sponsor spoke on the need for public financing of state elections. "I hate begging for money to run a campaign," exclaimed Delegate Mary Pearl Compton, who is running against conservative Senator Leonard Anderson in the Democratic primary in the 10th Senate district. "More women can run under this bill. The 'boy' network gives its money to 'boys.' We need to set an example for the rest of the country like Maine and Arizona," Compton added.

Senator Jon Hunter (recipient of the 2002 WVEC Chuck Chambers – Good Government Award) praised the Bill as a much-needed reform. He then stumped for two more, which would limit lobbyists spending on legislators (SB699) and set up a redistricting commission (SB418) to take partisan politics out of the design of new political districts every ten years.

Citizen groups including WV Enviro Council, WV CAG, Common Cause, Ohio Valley Environmental Coalition, and others thanked the sponsors and explained the bill for the media at the event.

"Nothing has a more corrupting influence on environmental policy in this state and nation than the big money spent by corporations and industries to 'buy' elections, and political access..." commented Don Garvin, WVEC legislative coordinator. "Last year, for example, the fate of this state's new anti-degradation plan to protect our clean rivers and streams, was determined by a House committee where 23 of the 25 members had received contributions from members of the "Dirty Water Coalition."

Green Legislative Update

"Can we afford to put public dollars into state elections?" I asked with my WV Citizen Action hat on, "We can't afford NOT to when we add up all the tax giveaways bestowed every year upon special interests such as coal, timber, banks, insurance, and you-name-it. Clean money elections will save the taxpayers money in the long run."

Since today (Friday) is the deadline for bills to move from their originating house it's not possible for either of these bills to pass this year. However, in a supportive move, the Senate Judiciary Committee passed a resolution to "Conduct an interim study on campaign finance laws and in particular, to consider whether the WV Clean Elections Act should be enacted by the WV Legislature." This study proposal, if the House concurs, will allow the Legislature to take the next ten months of their interim process to evaluate the merits of public financing to our democratic process. I'm sure they'll like what they see.

Action on this would be to call your House of Delegates member(s) and ask them to support the interim study on the WV Clean Election Act.

We NEEEEED You

The session is about to wrap up, even though there may be a special session on over weight coal trucks as well. There's *still time for you to help us make our payroll and still have money to operate for the rest of the year.* We really do neeeeeed your financial support.

So, if you haven't renewed your membership to WVEC, please do so.... and if you have, but can find it in your heart and budget to send us an extra donation - we need it, and will greatly appreciate it.

I wish I could tell you this will be my final shameless plea....but you know me better than that! Thanks for your support.

Don Garvin
WVEC Legislative Coordinator

Flood Study Resolution

By Frank Young

Coalition for Responsible Logging

The State Senate has introduced (and will likely pass) a Flood Study resolution called SCR 37.

CORL has long associated unsound logging practices with fast runoff of water, resulting in more flooding and higher flood waters. The most basic of earth-water-plant life science tells us this.

Please call Senators on the Senate Rules Committee and ask them to support SCR 37.

Senators on the Senate Rules Committee are:

Leonard Anderson 357-7807
Edwin Bowman 357-7918
Truman Chafin 357-7808
Oshel Craigo 357-7980
Lloyd Jackson 457-7937
William Sharpe 357-7845
William Wooten 357-7880
Sarah Minear 357-7914
Vic Sprouse 357-7901

Legislative Update is published by the West Virginia Environmental Council (WVEC) a statewide organization dedicated to facilitating communication and cooperation among citizens in promoting environmental protection in West Virginia.

Legislative Update, is published weekly during the Legislative Session.

Legislative Update welcomes letters, articles, and art work from readers and reserves the right to edit or reject submissions. Please send materials (preferably on disk) to:

Legislative Update
Denise Poole, editor
deniseap@earthlink.net
1324 Virginia Street E.
Charleston, WV 25301
304-346-5905



photos by Vivian Stockman

Keynote Speaker Dave Peyton: "You Are The Balance"
E-Day, February 22, 2002

E-Day! 2002 Successful

Over one hundred environmentalists, and twenty-five organizations & green businesses participated in the 13th annual E-Day! held last Friday.....bringing our issues, concerns and solutions along with us.

Key-note Speaker Dave Peyton's speech entitled "You Are the Balance", reminded all of us how important and needed our environmental activism really is.

Some Awards "bitter sweet"

Two of our awards were given post-humously: the *Mother Jones*, to activist Laura Forman, and the *Linda Schnautz Courage* to Pauline Hanson.

Janet Fout, presenter of the *Mother Jones* award for Laura, noted how much of a "bitter-sweet" occasion this was. "Fate had something else in mind for Laura...fate, like Mother Jones, had important work for Laura to do."

Laura's husband Mike accepted on her behalf, saying, "This work really completed Laura, it truly completed her."

Pauline Hanson's son, Charlie accepted the *Linda Schnautz Courage* award on behalf of his mother. "My mother would be so proud and honored to receive this award, as am I proud to accept it for her."

Newly created *Green Entrepreneur* went to Susan & Don Sauter, of Flying Ewe Farm for their sustainable business. Susan accepted for the team stressing the importance of organically grown produce, and sustainable community development.

The *Grass Roots Environmental Activist* was awarded to Margaret Janes for her many years of devotion on issues such as water degradation. "Margret brings scientific expertise and committment to her work," noted presenter Don Garvin.

Senator Jon Hunter was the recipient of the *The Chuck Chambers Public Service* award. Jon is our consistant champion in the Legislature!

Green Legislative Update

Robert C. Byrd statue surrounded by MountaintopRemoval photos during E-Day! February 22, 2002

"Floods of Problems ~ Mountains of Solutions"



Hemp "grows" at the Capitol

By Chuck Wyrostok (chuckwyro@hotmail.com)

By now, many of you must be thinking these hemp stories from the past couple of weeks are some cruel hoax. Well, this is NOT a joke. But you should be grinning in amazement like we are, because Thursday the Senate passed the Industrial Hemp Act and it wasn't even close! 25 senators voted "Yes", 6 "No" and 3 were absent attending a rally for the steel industry in Washington, D.C. Senator Karen Facemyer (R-Jackson), the bill's sponsor, says those three absentees were guaranteed "yes" votes, too. So, it would have been 28 to 6!

When the hemp bill was introduced amid giggles and snickers a few weeks ago by a conservative Republican, our reaction bordered on disbelief. As I sit here at 5:45PM Thursday in the House of Delegates gallery, SB447 is introduced for the first time after passing in the Senate.

We will be back on Friday morning, passing out fact sheets to members of House Judiciary before their 9:30 meeting, trying to overcome the "cannabis" stigma the members fear if they vote "yes."

Success here would put SB447 out onto the House floor for a vote and that's when this weary lobby team will need help from you all out there. Watch for an alert from our e-mail mother Chris Hogbin. Go to www.votehemp.com for pertinent information.

Then help keep this dream alive by calling or e-mailing your delegate and telling him/her that it's time for West Virginia to take the lead (like we knew it always could) and pass this excellent, smart legislation. Remind them that the WV Department of Agriculture enthusiastically supports this jobs initiative and you, the constituents, support it, too.

Coal Trucks Expose Failure Of Leadership

By John Taylor

As I write this, outlaw coal companies appear to have killed a bill that would have regulated death-dealing overweight coal trucks.

The issue appears to be a legislative choice between two competing bills. On one side is the people's "Caputo" bill (HB 4014). On the other, is the "Industry Bill" (HB 4665).

But let's be plain. The *real* issues are the sanctity of human life versus corporate profit. Facts are indeed stubborn things, but they, nonetheless, must be dealt with. And it is a fact that overweight coal trucks on our highways have killed eleven people (11) in the past eighteen (18) months. The supporters of the "Caputo" bill have said this over and over and over again until our jaws are about worn out with it. But our hearts and minds are not worn out. We're not going to shut up and go away.

The issue was first faced in the House Judiciary Committee. Chairman Jon Amores bucked hard against releasing it out for a vote in Judiciary Committee. He released it after a good number of "Caputo bill" supporters jammed into his office and told him their opinions. UMWA member Donnie Samms made a good strong statement that House Judiciary is a key committee and for it to release the bill would make a strong leadership statement to the entire House of Delegates of support for it.

Jon Amores is a mediator by trade and is darned good at it. But mediation is based on the idea that both sides to a dispute have valid points and are equal in the dispute. This is a good approach in litigation, but not in the legislature. Both sides are not equal there. The mediation approach in the Coal Truck issue ignores power relationships in the legislature where the coal industry has much more power than average citizens and their organizations. Money is power in politics. To his credit Amores released the bill and it passed in his committee by a good margin.

In one of the early "coal truck" Judiciary Committee meetings, Delegate Lisa Smith stated that "Public Safety is the main duty of the Legislature." She spoke a deep truth. Let's all hope that Finance Chairman Michael already knows this, or will soon learn it, so that when he answers the question "Which side are you on?" he will be on the side of public safety on our highways—which all of us must share with coal trucks.

Coal Trucks & Coal Trucks & Coal Trucks - Oh My!

As we go to press, our coalition (of several hundred) are rallying at the state capitol! Coal Trucks are making a racket circling the capitol! Oh my, we are surrounded by a Coal Truck Wagon Train.....



Coal trucks driven by non-union drivers circled the state capitol grounds, horns blaring, but the cheer of the crowd inside, standing in front of the Governor's office, overpowered the trucks' horns.

The Governor did not appear to answer the crowd's question:
Whose side are you on?

Coal Truck Legislation Stalls in House Finance

By Julie Archer

On Monday House Judiciary Chairman Jon Amores was still insisting that he wouldn't put any coal truck legislation before the full committee unless a compromise was agreed upon. But after two meetings with coalfield residents and one with industry lobbyists he decided to put it on the agenda for the Tuesday afternoon meeting. The committee took up the industry bill and considered two amendments.

One amendment offered by Delegates Stemple and Faircloth would have raised the weight limit permanently to 120,000 pounds. Delegate Mike Caputo urged committee member to defeat the amendment calling it "smoke and mirrors." He said increasing the weight limit would send a message to law breakers that "if you have enough money and break the law long enough just come down to the West Virginia Legislature, they'll fix you up." The committee defeated the amendment 16 to 9. Voting for the amendment were Delegates Amores, Armstead, Spencer, Webb, Shadler, Stemple, Faircloth, Smirl and Riggs.

(See "Coal Truck Legislation" cont. on page 5)



Photos by Vivian Stockman

WV Coal Association president Bill Raney wasn't thrilled to be found in a House cubicle. Coalfield residents cornered him.

Airport Ping-Pong

By Greg Carroll

What's the latest word on the phony Regional Airport debate? No one even knows where this boondoggle should even be built - much less why it should be built! It's like playing ping-pong with a dead horse as your ball.

No one with any real sense of this issue claims that we actually need an airport. It's all just about "JOBS" now. The airlines don't want it, the taxpayers don't want it, the environmental community doesn't want it, but as long as the politicians, construction industry, and the real estate operators want it - this beast is still alive!

The AFL-CIO has thrown in their support because they would be for ANYTHING that might bring a few extra jobs here - despite the simple fact that it will be OHIO construction companies that will probably get the contracts!

Some state legislators now are trying to get Wheeling folks to give their support in trade for political and financial support from some of the southern politicians. Senator Mitchell even brought up the sensible suggestion that "Clarksburg would be a better site" because of its central location in West Virginia. But in the end, all this ping-pong will, hopefully, be for naught because the FAA will never give millions to a ridiculous pork project like this dead horse.

The environmental community must stand up and fight this exploitive project. If we do not, we may soon be faced with another corrupt corporate scheme that will lead to yet another huge environmental disaster!

Quote of the Week

DEP attorney (and former WVEC president) Perry McDaniel, commenting about a Surface Mine Board decision on an unrelated coal water treatment issue: "If we observed the standard of what is happening in the industry, then 120,000-pound coal trucks should be OK."

Green Legislative Update



Just say, "No!" to Over weight Coal Trucks!

Coal Truck Legislation...continued from page 4

The committee then considered an amendment offered by Delegate Caputo that would give enforcement officers access to scale records upon demand, provide reporting requirements for receivers, and NO WEIGHT INCREASE. The committee adopted several amendments offered by Delegate Hrutkay that strengthened the bill. The adopted amendments require loads to be covered with tarps, reduced speed limits for heavy trucks and quarterly safety inspections. The committee adopted Delegate Caputo's version with an 18 to 6 vote. Voting against the bill were Delegates Craig, Armstead, Webb, Schadler, Faircloth and Riggs. Delegate Ferrell was absent.

The new bill, HB 4665, is even stronger than HB 4014, which Delegate Caputo introduced earlier in the session. The fate of the bill is now in the hands of the House Finance Committee and things are not looking good, in fact by the time you read this, it may be dead. Finance Committee Chairman Harold Michael has said he is not going to place the bill on the committee's agenda because it doesn't have enough support. Considering the campaign contributions the coal industry has given members of the committee, he is probably right. According to the People's Election Reform Coalition, committee members received over \$70,000 from the coal industry during the 2000 election cycle. Delegates Kominar and Frederick, who introduced the industry bill that proposed to raise the weight limit to 132,000 pounds, are both members of the Finance Committee.

The bill may die, but public outrage won't. If the Legislature fails to crack down on overweight coal trucks, WV-CAG and other groups will be putting pressure on Governor Wise to call a special session. If this blatant violation of the law is allowed to continue, more lives will be lost and taxpayers will continue to subsidize the coal industry by paying for repairs to crushed roads and bridges.

Farmland Preservation in West Virginia

Clint Hogbin

Vice Chair, Berkeley County Farmland Protection Board

HB 4331 (funding through property transfer fees) is really in quite good shape. All corrective amendments are made and the legislation has passed all committees. It has passed first reading on the House Floor with an expected floor vote on Friday. Well done and congratulations to Delegate John Doyle!!

Thanks to the incredible aid of Senators Unger and Helmick, SB 498 (funding through property transfer fees) has survived two strong attempts to kill it. It has passed both the Senate Agriculture and Senate Finance Committees. Like HB 4331, it enables county commissions to enact funding through the property transfer tax but it also enables them to utilize the existing motel occupancy tax for the purpose of farmland preservation. Do to the lack of support, the latest version of SB 498 does not provide for funding for the State Authority.

SB 498 has passed first reading and a floor vote is expected on Friday.

PLEASE, PLEASE, PLEASE CALL OR E-MAIL YOUR SENATOR AND ASK THEM TO VOTE FOR SB 498!!!!

This vote may be close — please make the contact!!

Tier 2.5 Public Meeting

Here's a report from Doyle Coakley about the Webster Co. Tier 2.5 Public Meeting:

"About 100 attended, all hyped up by the Farm Bureau and the Forestry Association. Ron Fowler from the Farm Bureau came. Politicians and would be politicians were there in force. After the meeting, the County prosecutor and local news paper editor were heard making plans to prepare and publish an objection form letter next week, fill in your name, tax number and name of stream. It was a real dog and pony show."

Green Legislative Update

Tell the President to Keep Mining Waste Out of West Virginia's Waters!

West Virginia Rivers Coalition Action Alert:

The Bush administration wants to legalize large valley fills from mountaintop removal coal mining operations. You may remember that the Clinton administration tried to do the same thing a couple of years ago. Thanks to action from folks like you, we were able to keep that bad decision at bay. But now, the Bush administration is looking to legalize the dumping of mining waste in West Virginia's streams.

The rule change would modify the Army Corps of Engineers' definition of fill material, allowing the Army Corps of Engineers to permit filling of West Virginia's streams with mining waste from mountaintop removal operations. Because the Corps took public comment on a similar proposal two years ago, the Bush administration is planning to finalize the rule without any public notice that this rule change is under consideration or any additional opportunity for comment.

In West Virginia alone, there have been 1,000 miles of streams buried by valley fills. Because the administration is going forward with the new rule without opening a new comment period, we need to get a lot of messages to the President as quickly as possible!

When the Clinton administration proposed changing the definition of fill material to eliminate the waste exclusion, they did so to overturn federal Judge Charles Haden's decision that limits large valley fills from mountaintop removal operations. During the public comment period in the Spring of 2000, over 17,000 public comments were registered protesting the rule changes. In the face of this overwhelming opposition, the Clinton administration decided not to finalize the proposal. Unfortunately, the Bush administration is poised to reverse that decision.

ACTION: Send a letter to President Bush opposing the rule change! You can send your letter by e-mail to the President at president@whitehouse.gov or you can send an e-mail directly via Clean Water Network's Legislative Action Center at <http://capwiz.com/cwn/issues/alert/?alertid=102852&type=PR> Or even better, send your letter via snail mail to: President George W. Bush

The White House

1600 Pennsylvania Ave. NW

Washington, DC 20500

RE: Proposed Rule: FR Doc. 00-9940

If you have time, also call the White House comment line at 202-456-1414 and tell them: I am opposed to the administration's change to the definition of fill materials that would legalize large valley fills from mountaintop removal coal mines.

page 6

Calendar of Events

March 9: "Propagation of Lavender, Cultivation & Harvesting" workshop. LaPaix Herb Farm, Alum Bridge WV. 1:00 - 5:00 p.m. Cost: \$15. *For more information: Myra Bonhage-Hale, lapaix@iolinc.net*

March 9: Legislative Session 2002 ends at stroke of midnight! Stay in touch with WVEC Update and action alerts for all the up to the minute scoop on active bills.

March 22: OVEC's Annual "Tree Huggers Ball", Calamity Cafe' located on Hal Greer Blvd. & 3rd Ave., Huntington. 9:30 till ? Music by: Big Rock & The Candy Ass Mountain Boys and others. Cost is \$5.00 at the door. *For more information: 304-522-0246.*

March 26: UC Speakers Series: Erin Brockovich, speaker. University of Charleston - Geary Auditorium, 6:30 p.m. Free and open to the public.

April 13-14: West Virginia/Pennsylvania Wilderness and National Forest Planning Training & Volunteer Weekend. *For more information: contact Dave at WV Highlands Conservancy: 304-284-9548, or e-mail: daves@labyrinth.net.*

April 26: WV-CAG Annual Earth Day Fundraiser. Coonskin Park. Music, great food & drink and an auction. *To donate to the auction or for more information: Linda Mallet, 304-346-5891 or e-mail: linda@wvcag.org.*

April 29-30: Sustainable Tourism Conference. Flatwoods Days Inn. *Cost is \$30 for one day, or \$50 for both. For more information: Dave Bassage or Candice Shrewsbury - 304-926-3647.*

May 4: "Propagation of Culinary Herbs, Cultivation & Uses" workshop. LaPaix Herb Farm, Alum Bridge, WV. 1:00 - 5:00 p.m. Cost: \$15. *For more information: Myra Bonhage-Hale, lapaix@iolinc.net.*

May 11: Three Rivers Avian Center's 2002 "Migration Celebration." Winterplace Ski Resort, 10:00 a.m. - 9 p.m. Live Music & Dancing, Birds of Prey Program, Taste of Spring Chef Cookoff, Photography Workshop, Hiking, Local Artists, Silent Art Auction. *For more information and directions: 304-466-4683 or 800-721-5252.*

May 24: Dr. Kevin Danaher with Global Exchange, speaks about the global economy. Charleston Unitarian Univ. Church, 7:00 p.m. *For more info: Linda at WV-CAG, 304-346-5891.*

August 3: Sustainable Fair 2002, La Paix Herb Farm located in Lewis County. Demonstrations, green business/artisan booths, nature walks, music, art, auction and more. Cost: \$10.00 at the gate. Sponsored by, Sustainable Development for West Virginia. *For more information and directions, please visit: www.sustainabledevelopmentforwv.com*

September 8: WVU Transitional Farm Tour, and MSOGBA Organic Research Farm Day. *Details to be announced.*

Support the West Virginia Environmental Council

1324 Virginia Street East, Charleston WV 25301

Phone: 304-346-5905

_____ Renewed Membership

_____ New Membership

Membership Levels

_____ Change of Address

_____ Donation

Name: _____

_____ \$ 10 Student / Senior

Address: _____

_____ \$ 25 Regular

_____ \$ 50 Seedling

City, State, Zip: _____

_____ \$ 100 Sustaining

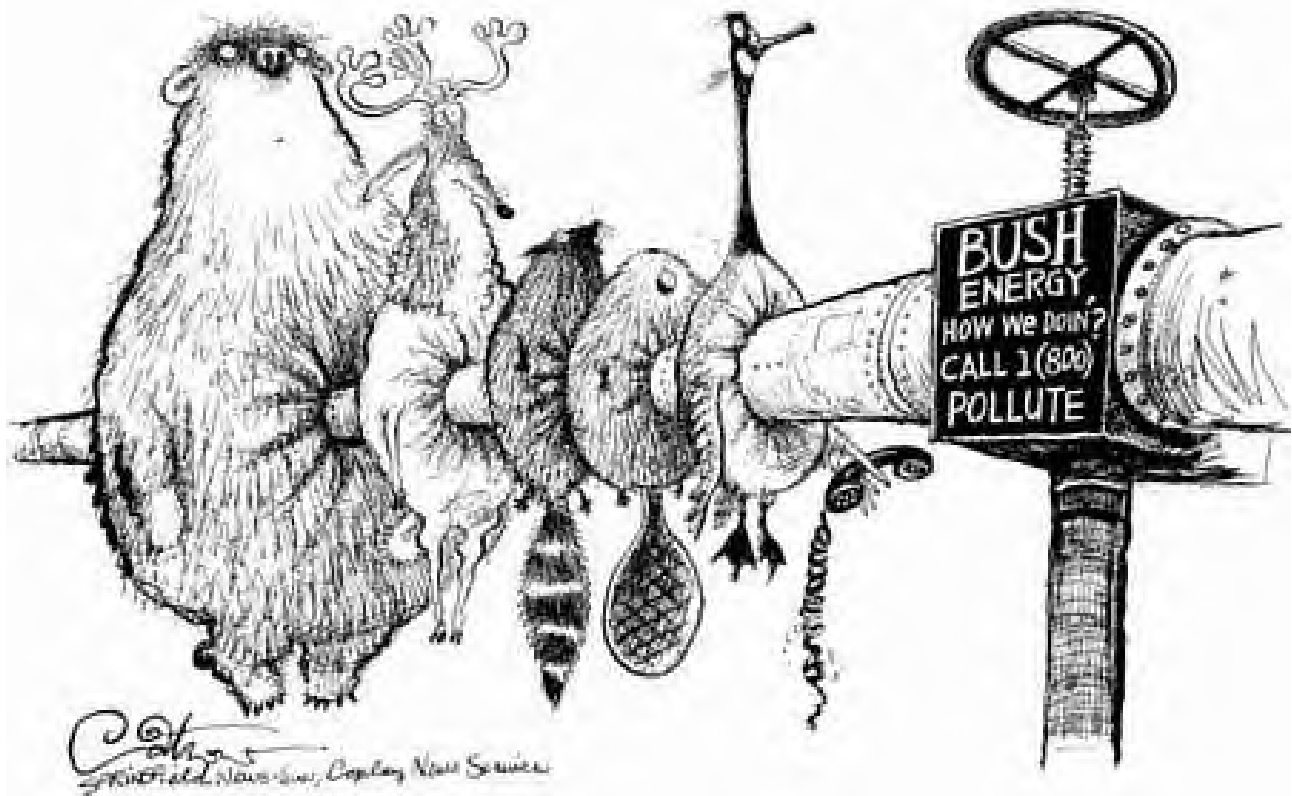
_____ \$ 250 Enviro Steward

Phone: _____ e-mail _____

_____ \$ 500 Canopy

_____ \$ 1,000 Old Growth

_____ \$ Other



*West Virginia Environmental Council
1324 Virginia St. East
Charleston, WV 25301*



**First Class
Time Sensitive
Please Rush
Thanks!**

www.wvecouncil.org