



West Virginia Environmental Council's

# Green Legislative Update

Published Weekly During West Virginia's Legislative Session

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## Under the Dome

By Donald S. Garvin, Jr.  
WVEC Legislative Coordinator

### Week 3 — Baby, It's Cold Outside!!

We watched from behind the scenes last week as rumors about Division of Environmental Protection Secretary Mike Callaghan grew like an icicle each day. Finally, last Friday, the icicle came crashing to the ground and Callaghan announced he was resigning his position at DEP.

We had an inkling that something was up at a pre-session meeting we had arranged with Callaghan to discuss the DEP legislative agenda. When we arrived we were greeted by Stephanie Timmermeyer, director of the Division of Air Quality Protection. Other than Callaghan, Timmermeyer was the only other DEP official in the room, and she took lots of notes. Something was definitely up, and we weren't surprised when she was named acting secretary last week.

In her previous brief professional career (she graduated from WVU law school in 2001) Miss Timmermeyer was a lawyer with the firm Spilman Thomas and Battle, which handles mostly industry clients. So now we are back to a DEP run by someone primarily from an industry background. **Brrr . . .**

In a press release, Governor Wise praised Callaghan for turning around an essentially "dysfunctional agency." One can only imagine how that made long-time DEP staffers feel. **Brrr . . .**

I, for one, am sorry to see Mike Callaghan go. The agency really was becoming a "different DEP" under his leadership. And we won't know the full impact of the loss of his leadership for some time.

In the meantime, *survive* the winter weather. And make sure you feed the birds. **Brrr . . .**

*Green Legislative Update*

## Money, Mania and Mining Inc

By Rick Eades

Legislators are waking up in cold sweats with Worker's Comp nightmares:

- 2000 Underwood dunce-or-liar (?) estimates - \$100 Million downside.
- 2001 Coal cheaters settle a \$100 Mil lawsuit for \$12 Mil – the Affiliated Construction Trades bulldogged these good neighbors or that 12 cents/dollar would be gone too.
- 2002 Wise estimates actual red ink for coming year around \$240 Million.
- 2003 Senate Finance, Brooks McCabe now reports ONLY the next four years' needs at \$1.5 BILLION!
- And that may not touch the overall \$2.4 BILLION unfounded liability.

Don't even guess at the laundry bills....

Maybe it's OK that the West Virginia House cut Advanced Placement class funding, as our math genius is clearly established. And, we apparently don't need any scientists who could look into the next item either.

The US Senate 50-46 vote last week allows new coal fired power plants to escape some (NSPS) air monitoring requirements. Coal interests win another license to pollute. But those 46 votes tell me some folks aren't swallowing Bush's prescribed dose of Lead Supplements. **Byrd and Rockefeller voted for the health of future generations and deserve big thanks.** OVEC worked this issue big time.

Lots of activity awaits on WV mining and environmental bills and rules (regulations).

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# ATV "Regulation" Bill?

By Connii Graytop Lewis

The ATV "regulation" bill that emerged from Senate Transportation this week is not going to regulate or protect anything or anyone.

It permits ATVS on any public road without a yellow center line. That's about 3/4 of the public roads in the state.

It only requires helmets on operators under the age of 18. They are required to have a drivers license, but that doesn't mean much. It doesn't prevent multiple passengers. It doesn't require helmets when children operate ATVS.

In its current form, the bill is opposed by the medical association, the social workers, the children's coalition and even the ATV manufacturers.

## *Amazing but true.*

It does however permit facilities under Chapter 20 of the code to regulate ATV use. That means that ATV use can be prohibited in state parks and forests. Thanks to Julian Martin and his e-mail legions for generating the calls that allowed Sen. Rowe to get that provision in the bill.

## WVEC ATV Action Alert

**The All Terrain Vehicle bill, Com Sub 2121, needs serious help! CONTACT YOUR SENATORS now and ask them to support the following changes to the bill:**

1. *There should be NO use allowed of ATVs on public roads – period. The yellow center line language opens up 3/4 of the state's roads to legalized ATV use.*
2. *Protect the ability of managers of public facilities such as state parks and forests to prohibit ATV use. Do you really want ATVs roaring through campgrounds?*
3. *Require helmets on all operators (and passengers) under the age of 18. A significant percentage of the deaths and disabling injuries occurs among youngsters.*
4. *Don't allow passengers on ATVs designed for one person. This should be self-evident.*

*This is not a bill about over-regulating private activities on private property. This is about protecting our public lands and our children.*

**Legislative Services can provide all Senator or Delegate numbers:  
Toll Free: 1-877-565-3447 - Local Charleston: 347-4836**

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# Sharks in Our Water?

## Water Use Law, If Not Now, When?

by Rick Eades

When I testified in November, on the Kentucky-American Water sale to RWE/Thames, a University of Kentucky professor testified first. We were the only two experts that dared to question conditions of the water sale at that time. A coalition of The KY Attorney General, Counties, and Bluegrass FLOW invited the two of us to this party.

The legal team that represented RWE's German/English mega-conglomerate (that just bought WV-American Water, and **holdings in 26 states!**) immediately sliced up the UK professor's affidavit and testimony. Picture a heart-strong hemophiliac standing in the face of a tidal wave of razor blades.

After witnessing that Quentin Tarrantino like dissection, I knew I had to buy time in my testimony, and bridge questions to get materials on the record without getting dismembered. Despite surviving as a tenor, it was unnerving to see over 40-plus SuperPower suits on the RWE side of the aisle.

What resources can RWE/Thames apply to say rate hikes, dodging ramifications from short-changing our infrastructure, or explaining failures in terms of delivering safe drinking water - while maximizing their profits?

Consider their last witness as exhibit one. A potently experienced international (contract/corporate) lawyer, he testified that **his firm specializes in international law and had 650 full-time attorneys**. Aka, SuperPower suit no. 1.

I wonder if coal, railroad, oil & gas, timber and the combined extraction corporations in our state's history have entered the WV business arena with an arsenal to match RWE/Thames.

Hence, conditions on the sale that Attorney General Darrell McGraw and his able team negotiated are critical - denying RWE/Thames from invoking international treaties or exporting our water. None of the other 25 states got these conditions to my knowledge. So critics of the AG agreement need get informed, rethink their positions, and send big Thank You Cards to the AG.

Meanwhile, back at the Legislature. Buried in fiscal nightmares like Workers Compensation (another good neighbor legacy of Coal Barons?), water use law is still not on the agenda. Why would it be?

As previously noted, Billy Jack Gregg (PSC Consumer Advocate) already testified in Senate Finance that we have Z-E-R-O laws in WV to prevent export and sale of our water.

### But, maybe legislators don't know about:

- Perrier buying out 75 U.S. water or spring water companies in one year.
- French based Vivendi buying the largest water corporation in our nation's history, US Filter for the sum of \$12 Billion (RWE only paid \$4.6 Billion for American Water).
- Corporate water raiders like Bechtel and Sun Belt, who have lawsuits against Bolivia (\$25 million) and British Columbia (\$10.5 Billion), respectively – for challenging contract water sales.
- China and South Africa being forced by the World Bank and/or the US Agency for International Development to sell out to European monstrosities or be denied money.
- That the top 2 European mega-conglomerates, Vivendi and Suez, who RWE is competing with, own water holdings in an estimated 120 countries today.

Maybe our legislators don't know beans about international law and have a blind spot the size of a dragline regarding the voracious corporate feeding frenzy on water.

*Maybe while our legislators try to stop the hemorrhaging from so many fiscally flawed programs, we are neglecting the largest economic interest in our state's history.*

Maybe they haven't seen the leaked document I introduced in my Kentucky testimony, and that the WV AG saw as it crafted conditions on our sale.

In April last year, the European Union *secretly* invited 29 countries including the U.S. for a little favor. They want President (champion of the little guy) Bush to redefine water as a "service" under the Global Agreement on Trades and Services. And, the Rootin Tootin Corporate Cowboy's decision is due in March *this year*.

Water protection laws for West Virginia? If not now, when?

# Money, Mania and Mining Inc

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**Big thanks to Mike Callaghan (out), Stephanie Timmermeyer (in), and Joe Dawley** (on point for DEP at the Legislature) for responding to our requests for advance copies of the DEP legislative agenda, bills, and briefings on regulations. Now the hard part begins, as the rules (regulations) were agreed to by coal and DEP in interim legislature meetings.

ALL the DEP statutes (NOT rules) will be moved to a **House Judiciary Subcommittee**. Heavy lifting for Subcom Chair Kevin Craig and committee members Tim Armstead, Bonnie Brown, Mike Caputo, Lidella Hrutkay, James Morgan, and Jody Smirl.

DEP may ask for sane and **fiscally responsible statutory help** to:

- allow *lab certification fees* to be paid directly to DEP,
- require *solid waste generators fees* for shipping waste out of state,
- provide DEP a legal mechanism for *cost recovery in Circuit Court* (we appear to be getting royally screwed on the Martin County Coal sludge disaster), and
- get *strict liability for groundwater contamination by land owners*.

At first reading, DEP has put a lot of energy and thought into their “Sustainable Business” awards and fast-tracking of permits bill, but initial review (thanks Jim Kotcon) shows numerous pitfalls, some quite deep. These bills haven’t been introduced yet, so we’ll see.

As for DEP rules (regulations), nearly 18 months after the July 2001 floods, the **new rules on valley fills** are coming. Originally, DEP pushed for *compacted*, bottom-up valley fill construction. Coal brought their agenda and now these dumps will just be modified dumps. Numerous reasonable provisions do exist in the rule to DEP’s credit (no runoff on the face, a “no-increased runoff” provision from pre-mining baselines, a landing of Erosion Protection Zone to catch the slides if they occur, new lateral drain and contemporaneous reclamation items).

At the gracious valley fill presentations by the agency this week, one item jumped out. Years of denial by coal industry representatives was revealed as hooey. DEP’s Matt Crum noted they had **49 washouts of valley fills in the past 5 years**. Guess a few of those engineered dumps haven’t worked to perfection as advertised. Did they tell you about those on your tour of the Lyburn community, Coach Nehlen?

## What A Blast!!!

by Denise Poole

Our "2003 Session Kick Off Blast" fund-raiser was exactly that - *a Blast!*

Last Friday the **VooDoo Katz** band kept the 150 folks who braved winters' chill and ice "toasty" with their jammin' sound. Original tunes such as *Funga Alafia*, *Monpong Market*, *Thinkin' Bout The Now*, *Lonely Old Night* were performed by this talented ensemble of six (Mark Davis, Kai Haynes, Deron Sodaro, Ammed Solomen, Andy Park, Derrick Kirk).

This was such a wonderful, uplifting and successful event for the E-Council. Generous donations, auction bidding and In-Kind support from WVEC board members & the lobby team added up to the highest revenue yet for a fund-raising effort.

Special appreciation goes out to all the VooDoo Katz band members; Paul Perfater who has the most aesthetically pleasing location - and his continual generosity in sharing it; Greg Carroll whose seemingly endless energy spreads like crazy; the unyielding generous hearts and hands of Mary Ellen O’Farrell, Don Garvin, Dot Henry, Norb Federspiel, Chuck Wyrostok, Rick Eades, Julie Archer, Linda Mallet, John Taylor, Barbara Smith, and Larry Gibson.

If you missed this event, see our Calendar of Events section for future endeavors - and to catch the VooDoo Katz, the next "gig" is Saturday, January 25 at Mulligan's, 101 Capitol Street, Charleston. To order their CD or to be added to the contact list, call Deron Sodaro at 552-2416.

New support came from Valley Gardens, Inc., a locally owned Garden Center in Charleston. Valley Gardens is located at 1109 Piedmont Road.....hey, stop by this small business when you are in town! They offer landscape design, contracting & maintenance, and have a nice array of plants, soils, tools and more!

**For more information, contact Joe Greenwood, manager at: 342-4636.**

## Don't Forget E-Day! at the Capitol!!!

**Tuesday, February 25, 2003  
10 am ~ 3 pm**

**Fundraiser to follow at:  
The Brick Cellar ~ 5pm till 9pm  
1604 Washington Street East, Charleston**

# SUV's....DID WE MAKE A WRONG TURN?.... or what!?!?

By Chuck Wyrstok

A few years ago I owned a battle-worn Isuzu Trooper SUV (Shortsighted/Unsafe/Voracious).

I guess it was a passing fancy of sorts. It got me out of the hollow in snow, hauled everything from dogs to logs and almost scared the life out of me a few times. Being top heavy, but begging to have stuff rigged on top, it swayed so badly in a wind one time I dreamed I was on an amusement ride. Mercifully, it rusted out so badly that I replaced it.....with a pick-up. At least now I could haul manure without folding down the rear seat.

Since then, the auto industry has worked hard to make these behemoths seem sexy...cool. Inside the industry, the philosophy was simple. Harry Pearce of General Motors said, "If pigs are big and popular, then we'll make pigs".

## But consider these uncool aspects:

- If everyone in the US drove an average-sized car instead of an SUV, we could eliminate Middle-East oil imports altogether. (Union of Concerned Scientists)
- Fuel efficiency could be increased by at least 25% with existing technology. (National Academy of Sciences 2001 report) (Hmmm, wonder why they don't do that?) Raising the fuel-economy standards for SUV's and light trucks to equal that of cars would save one million barrels of oil a day.
- Driving a 13mpg SUV for one year rather than an average 22mpg car will waste more energy than if you:
  - Left your refrigerator door open for 6 years
  - Left your color TV turned on for 28 years
- And, tragically, the occupant death rate per million SUV's is 8% higher than the occupant death rate per million cars. (Insurance Institute for Highway Safety)

Now, the elected leader (neither is true) in our White House would like to bring you your daily dose of smirky "screw you" news. The administration's economic plan would increase by 50% or more the deductions that small-business owners can take right away on the biggest SUV's and pickups.

This means you could immediately deduct the entire price of SUV's like the Hummer H2 or a Lincoln Navigator. So now, this proposal "makes a glitch in the

tax code much worse and it benefits rich businessmen who want to buy massive SUV's," said Aileen Roder, program director for Taxpayers for Common Sense. "In essence we're buying these vehicles for their businesses."

So...I wonder...if, as it's been said, oil is the life blood of terrorism, would this now mean "if you pay taxes, you support terrorism?" Momma said there'd be days like this. Jeez!

OK. Enough of that. Drive small. Carpool. Walk more. Take the train. Sail a boat. Support mass transportation. Be sensible. Breathe easier.

## New Developments In Clean Elections Act

By John Taylor

SB 158, The West Virginia Clean Elections Act, has now been introduced and has been reviewed by the Senate Judiciary Committee. Judiciary appointed an Elections Sub-Committee to further study the Act. Senator Oliverio was appointed Chairman, and other Sub-Committee members are Senators Hunter, White, Jenkins and McKenzie.

*Thursday, January 23: the Clean Elections Act was introduced into the House of Delegates as HR 2527. It was referred to the House Judiciary Committee and then referred to the House Elections Sub-Committee. Members of the Sub-Committee are Delegates Mahan, Chairperson, Fleischauer, Schadler, Pethel, Palumbo, Pino and Faircloth.*

## Visitor From Maine

On Sunday February 3, Boyd Marley, a second term Maine house member, will visit us at the State capital to describe how the Maine Clean Elections Act worked in 2000, and to assess the results of their greatly changed election process. His visit will end the evening of Monday, February 4. Mr. Marley's visit is sponsored by Citizens For Clean Elections. Several gatherings and events are planned including a press conference, a public reception, and meetings with the respective Judiciary Committees and their Election Sub-Committees.

Thus, the Legislative machinery is in place and ready for the enactment of the West Virginia Clean Elections Act. Passage of this law will make this 2003 Legislature, and all of its members, respected and admired in West Virginia political history books for many, many years in the future.

C'mon! Let's do this!

# DEP Announces Reorganization

From a DEP press release sent January 23, 2003

DEP Acting Cabinet Secretary Stephanie R. Timmermeyer announced Wednesday changes to the Department of Environmental Protection's divisions.

Seven existing DEP programs will now fall under a single unit, the Division of Land Restoration. Ken Ellison, current director for the Division of Waste Management, will now oversee three offices under the new Division of Land Restoration. The offices include abandoned mine lands and reclamation; environmental remediation and special reclamation. The OER administers multiple cleanup programs including brownfields, leaking underground storage tanks, hazardous waste, landfill closure and assistance, pollution prevention and open dump, and voluntary remediation.

In addition to the creation of the new Land Restoration division, the divisions of Water Resources and Waste Management will be combined, creating the new Division of Water and Waste Management. The division will be headed by current Division of Water Resources Director Allyn Turner. Turner will oversee the programs that currently make up the Division of Water Resources, as well as the hazardous waste and solid waste programs.

Earlier this month, DEP officials announced that all administrative personnel within the agency would fall under the DEP's Office of Administration.

## Overweight Coal Truck Bill

By Julie Archer, WV-CAG

Delegate Mike Caputo's bill to provide increased weight enforcement of coal trucks was introduced this week. HB 2493 would increase fines and penalties for violation of weight limits by trucks hauling coal, and would hold coal shippers and receivers subject to the same fines and penalties.

The bill is the amended version of the Governor's proposal that passed by one vote during a special session last July. It would place enforcement of all laws of the road under the Public Service Commission. HB 2493 is co-sponsored by Delegates A. James Manchin, Tom Coleman, Earnie Kuhn, Don Perdue, Bobbie Hatfield and Bonnie Brown.

Two other bills relating to commercial vehicles were also introduced this week. **HB 2458**, sponsored by Delegates Dale Manuel and Greg Butcher provides for mandatory covering of any vehicle hauling coal, gravel, wood chips or other similar materials. **HB 2462**, sponsored by Delegate Sally Susman, would require commercial trucks to prominently display to name company name.

We will have more information on these bills next week.

*Green Legislative Update*

## WVU Law Student and PIA Member Wins Public Interest Fellowship

**Equal Justice Works**, formerly the National Association for Public Interest Law, has selected Wendy Radcliff to serve as an Equal Justice Fellow.

Wendy, a third-year student at the College of Law, a former president of the PIA, and currently a member of the board of the West Virginia Fund for Law in the Public Interest, will serve as an Equal Justice Fellow with the Appalachian Center for the Economy and the Environment. Through litigation, organizing and advocacy, Wendy's work will focus on eliminating harmful air pollution generated by coal-fired power plants. Her fellowship term is two years.

Equal Justice Works, began offering fellowships in 1992 after two federal judges awarded NAPIL over \$3.1 million in unclaimed funds from two class-action settlements. NAPIL used the money to create a post-graduate Equal Justice Fellowship program. Over the years, the program has expanded to include diverse sponsors including law firms, corporations, foundations, and individuals. Wendy's fellowship is underwritten for Equal Justice Works by the Friends and Family of Philip Stern.

Equal Justice Works fellows receive an annual salary of \$37,500 and \$6,000 in loan forgiveness for each year of the fellowship. Applications for the two-year fellowships are submitted in September and October of the year prior to the beginning of the fellowship.

PIA members who wish to learn more about this fellowship program can contact Wendy Radcliff at radclifffinn@charter.net.

*(This information was sent to us by Nathan Fetty, aka WVEC lobby team's "Boy Wonder", who is now himself in law school at WVU. Wendy is a WVEC member and was the first to serve in the Environmental Advocate's position at DEP. Congratulations, Wendy!).*



## Calendar of Events

**February 8:** West Virginia Music Conference. Taylor Books, 226 Capitol Street, Charleston. Music begins at 3:00 p.m.

**For more information:** 342-1461

**February 25:** WVEC Annual E-Day! at the Capitol, Senate & House halls, state capitol, Charleston WV. 10:00 till 3:00. Organizations, groups, eco-friendly business displays and other activities planned. Mark your calendar now, and join us! Lobby your legislative representatives!

**For more information and to reserve display area contact:** Denise Poole, 346-5905 or deniseap@earthlink.net.

**February 25:** Annual E-Day! WVEC Fundraiser. The Brick Cellar, 1604 Washington Street East, Charleston. From 5:00 pm till 9:00 pm. Stop by after E-Day! at the Capitol.....Buffet, Auction, and music provided by Steve Hill and Ammed Solomon!

*Stay tuned for more details.*

**For more information:** Denise Poole, 346-5905 or deniseap@earthlink.net

**February 27:** Appalshop documentary "Coal Bucket Outlaw", by Tom Hansell. At 7 pm in the John W. Eye Conference Center - Mountain State University, Beckley, WV. Free Screening - Discussion to follow.

**March 8:** Last Day of Legislative Session. Stay tuned for details of End of Session Gathering.

**April 19 & 20:** Stanley Heir's 14th Year Easter Kick-Off Celebration! Kayford Mountain. Public Invited.

**For more information:** Larry Gibson, 542-1134

**April 26:** Artists for the Environment Fundraiser. Perfater Law Office lobby, 1311 Virginia Street East. Items for sale; Silent auction of visual artwork; live music; wine & cheese and raffle drawing for Mark Blumenstein sculpture. Join us for this lovely evening and support the environmental efforts in West Virginia!

**For more information and to participate contact:** Denise Poole, 346-5905 or deniseap@earthlink.net.



If you are planning an event or have other calendar items, action alerts, press conferences, public hearing notices you would like us to post, please send all information to:

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## Support the West Virginia Environmental Council

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