



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 4 – It's Baaack!!

Like a very bad nightmare, Sen. Mike Ross' (D-Randolph) "**Flood Thy Neighbor**" bill is back again, and this time with a vengeance.

The good senator introduces this sorry piece of "recreational bulldozing" legislation each year. In the past, *fortunately*, it never even made it onto a committee agenda. This year, *unfortunately*, the new chairman of the senate judiciary committee, Sen. Jeff Kessler (D-Marshall), brought the bill up in committee Monday afternoon. The bill number is **SB 144**, and it has been assigned to a judiciary subcommittee, with Sen. Ross as chair.

We aptly dubbed **SB 144** as the "**Flood Thy Neighbor**" bill because it basically would allow landowners to indiscriminately run bulldozers up and down a river or stream without permits and with immunity from civil or criminal penalties — no matter that this is against federal law and regulation; and no matter that property downstream might be flooded as a result.

So since Sen. Kessler has decided to give life to "**Flood Thy Neighbor**", it's time we let him know that we are alive.

If you do nothing else this week, **call Sen. Kessler at 304-357-7880** and tell him that you strongly oppose **SB 144**. Tell him that running bulldozers willy-nilly up and down a stream will only make the next flooding worse. Tell him that landowners should be made to get the proper permit for removing stream debris. Tell him that West Virginia does not need its mountain streams dredged and channeled until they resemble nothing more than drainage ditches. **Please call.** We need the judiciary committee chairman to hear from as many of us as possible.

And remember to feed the birds this week.

Hey Kids, Check Out This Possible Gift !!

By Rick Eades

Abandon, blast, blowout, burn, bury, damage, denude, dewater, discharge, dispose, dump, dust, emit, flood, forfeit, inject, pollute, subside, and lay waste... and *set the bar for environmental and citizen protections at it's absolute lowest?*

Neuter states' rights? Revert to only federal level limits *on all WV environmental laws?*

Though there's no bill yet, people in the know told us this week that the coal industry may try to gut the all-encompassing provisions in WV environmental law that allow WV to apply *any* standard tougher than the federal standards.

Some Senators in the Energy, Industry and Mining Committee and Natural Resources Committee repeatedly challenged anything that 'went beyond federal standards' this week. Coach Coal was invited to the podium in EIM to lambaste WV environmental regulation and permitting. Ominous.

Never mind that:

- January 2002 WV databases showed over 370,000 acres of permitted surface mining – probably an all-time high.
- DEP approved 81 mining permits in 2002 (a significant increase over 70 in 2001).
- Large coal stockpiles on the ground and poor market conditions will likely result in more WV mine closings.
- The industry continues to glut its own market.

.....continued on page 3

Rewritten ATV Bill Moves In Senate

HB 2121, the all-terrain-vehicle bill passed two weeks ago by the House, was taken up this week by the Senate judiciary committee, where it was gutted, rewritten, stricken, inserted and amended!

The judiciary committee reported out a bill that requires helmets on all riders and operators under 18, limits the roads that can be used to those without a centerline. It gives the managers of state parks, forests, rail trails, wildlife management areas, etc., the authority to prohibit ATV use. And it gives cities and counties the option of further regulating (or even banning) ATVs in their jurisdictions.

Under the dome, some wags are saying that the Senate's stronger provisions will mean the death of any ATV safety bill this session. And here at WVEC, we are of mixed opinion about the bill: while some of us like the stronger safety provisions that have been sought for years, others of us are not happy that ATVs will be allowed on any public roads.

The bill should be voted on the full Senate next week. You can contact your senators toll-free by dialing 1-888-438-2731 to let them know how you feel about the bill.

One to Watch

Just imagine Sec. of Agriculture Gus Douglas and Department of Forestry Director Randy Dye being in a position where they could determine what WV water quality standards would be.

Well that's exactly what would happen under **SB 214**, another bill that Sen. Mike Ross (D-Randolph) is lead sponsor for (the companion bill in the House is **HB 2717**).

Water quality standards are currently established by the Environmental Quality Board. SB 214 would establish a new "water quality board" to set water quality standards. Members of this new 7-member board would include the secretary of the DEP, the commissioner of agriculture, the director of DNR, the department of transportation secretary, the director of forestry, the director of the office of economic and community development, and the director of the department of tourism.

What a joke! Wonder if the senator would like some input from the department of health? Surely not.

We're told this one is being pushed by the Farm Bureau and the Chamber of Commerce. We're watching closely, and hoping it has no legs.

"Bowling For Columbine"

A 2002 USA Documentary ~ *Directed by Michael Moore*
Capitol Theatre, 123 Summers Street in downtown Charleston
Tuesday, February 4, 2003

Two Show times: 6:30 & 9:00 pm \$6.00 admittance cost

"Bowling for Columbine" is a journey through America, and through our past, hoping to discover why our pursuit of happiness is so riddled with violence. Presented by: *The West Virginia International Film Festival*

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

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Timber....Timber

By Conni Gratop Lewis

Next week timber bills **supported by CORL** will be introduced in both houses of the legislature. The most important legislation requires adjoining landowners to be notified of a logging job before it starts. That way, property owners can look out for their trees and property values. **It is truly a property owner protection bill.**

How many people do you know who go to their property in the country and find trees gone and the soil bare? Whether it's theft or ignorance about where the property lines are, this bill is critical to dealing with some of the excesses of the logging industry.

If you have had timber taken from your property because you didn't know of a timber job at your neighbor's, please call or write your legislator with the details. If other bad logging practices have devalued your property, tell that story too. Send a copy to us as well, so that we can share the bad news with everyone that will listen.

Another bill will mandate the use of best management practices by loggers. It will be introduced in the Senate, probably the middle of the week. Our sponsors in the House include Delegates Manuel, Brown, Webster, Doyle, Mahan and Staton. Our lead Senate sponsor is Fanning.

Stay tuned for more details next week.

Note: CORL (Coalition On Responsible Logging) has many projects in the works to help promote responsible timbering in West Virginia. They are working on postcards, a slide show and other informational materials to aid in getting this important message out to the public and lawmakers.

They need photos of examples of bad timbering or the effects of bad timbering, such as flooding. If any of you have photos of this nature that you would like to let CORL use, please e-mail Josh Wiseman at: jwisemanwv@charter.net

Please include a description of what was in them and a location where the photo was taken.

Just Po' Folks

From CBS.MarketWatch.com (12:17 PM ET Jan. 31) — *Massey Energy shares fell more than 14 percent after the Richmond, Va., coal producer posted a loss of \$10.5 million, or 14 cents a share, for the fourth quarter . . . Massey said weak volumes and an operations disruption around the holidays hurt its performance in the period. Coal sales volume for the quarter slipped 4 percent to 10.4 million tons in 2002. For the first quarter, the company sees a loss of 10 to 25 cents per share.*

Green Legislative Update

A Win for Water and Tourism

And Giving Tom Degen His Due

By Rick Eades

The sandstone quarry for Browns Mountain in Pocahontas County was stopped again. The Surface Mine Board agreed with DEP and germane citizens' wishes to deny the permit. As proposed, the quarry would have too much impact on tourism, trout fishing in Knapps Creek, water supplies and future interests of the area.

Flashback. Among past warriors of the Legislature, Tom Degen stands out. After years of battling for quarry legislation, Tom helped deliver the 2000 law – the law that made this quarry permit denial possible. He wasn't alone. Hundreds of eastern panhandle, Hardy, Pendleton, Pocahontas and Wood County residents fought to protect water supplies and future interests like tourism and fishing.

The names Hamilton, Heinlein, Hemple, Henritz, Hogbin, Johns, McCarty, Pomerantz, Rose, Rice, Stump, Wagner, and Young who helped pave the way, were but a very few who sought protections during the 2000 lawmaking effort - protections that now have been effectively applied by DEP and Pocahontas Countians.

This quarry permit denial, when combined with some background on the 2000 quarry law creation, is a reminder of:

- why the West Virginia Environmental Council (and member organizations) lobby efforts are important,
- how our WVEC lobby team operates at its best only when potent coalitions and informed citizens exert their influence, and
- how meaningful environmental laws can actually protect community and economic interests like tourism, trout fishing, and water supplies.

Hats off to the many citizens of Pocahontas County who stood up, used the 2000 quarry law, and demonstrated how communities can protect their future interests.

Hey Kids, Check Out This Possible Gift *....continued from page 1*

- Coal prices, with supply outstripping demand. stay too low to provide for the multitude of residual costs from this taxpayer underwritten industry (roads, bridges, workers comp to name a few).

It forever seems that coal wants it all, they want more, and they want it now.

Feel free to let your legislators know what you think of this potential act of the coal industry. With many legislators inclined to sympathize with poor coal, it's definitely time to also **call Governor Wise's Office at 558-2000 and respectfully request he take a clear position opposing any such lowering of the bar.**

Winds of Change

By Chuck Wyrstok

Lord o' Mercy. Shrub came out for hydrogen-powered cars! He must be reading some of those environmental magazines I got him a subscription for. Or he figures it's a safe bet because the cars won't come on line for 15 years, giving him and his cronies plenty of time to drill, suck and sell enough oil to retire comfortably to their haciendas.

Maybe George will have an epiphany about some of the other startling events Mother Nature is bringing forth in reaction to our bad behavior...like rising sea levels, melting glaciers, shrinking forests, expanding deserts, and falling water tables.

C'mon, George, throw us more than a bone. You could be lookin' good here...Texas is one of the three states that the U.S. Department of Energy wind resources inventory lists as the most "wind rich" (others were North Dakota and Kansas). DOE says the three have enough harnessable wind energy *to satisfy national electricity needs*.

A quarter-acre of land leased to the local utility to site a large, advanced design wind turbine can easily yield a farmer or rancher \$2,000 in royalties per year while providing the community with \$100,000 worth of electricity. Surely, some of those family farms that your agribusiness buddies are puttin' the hurt on out west could use some extra income. Again, you could be lookin' good. Think about it...beatin' that war drum ain't gonna sound too good in the Heartland after awhile and there's an election comin' up.

Cheap electricity from wind farms could be used to electrolyze water and produce hydrogenoopsforgot about your oily connections. Your dinosaur-minded cronies would probably want to make that hydrogen from fossil fuel energy....sorry, I know... the haciendas and everything.

But, really, the farmers and ranchers who own most of the U.S. wind rights could one day supply not only most of the country's electricity, but also much of the fuel used in its automobiles.....OH, I GET IT! You're comin' at it from the other end of it. You'll have all those hydrogen-powered cars ready when this all happens. Dang! I gotta hand it to yuh! You got yur thinkin' cap on.....despite what they all say about you.

Well, at least hydrogen is a little easier to say than nuke-yuh-ler.



Maine "Ambassador For Clean Elections" To Visit West Virginia

By John Taylor

Boyd Marley, a second-term State Representative from Maine, will be in town Sunday, February 2, 2003 to discuss the Maine Clean Elections Act. He will be an honored guest of Citizens For Clean Elections at a public reception at the University of Charleston, Geary Student Union from 7:30 p.m. until 9:00 p.m. that evening.

Mr. Marley was recently re-elected to his second term in the Maine Legislature with 56% of the vote. He represents part of Portland, Maine's largest city. He was one of the first Clean Elections candidates nationally to be elected to public office. He is a special education teacher and serves on the Legislature's Transportation Committee. He has been honored for his work both as an educator and legislator. These awards include the 2002 Transportation Safety Champion Award, 2001 Legislator of the Year by the Maine Bicycle Coalition, and 1997 Teacher of the Year Community Recognition Award.

During his 2002 campaign Representative Marley was endorsed by The Maine League of Conservation Voters, Maine Council of Senior Citizens-Alliance of Retired Americans, Maine Education Association, MSEA-SEIU, Maine AFL-CIO, Maine People's Alliance, Maine NOW, Maine Credit Union League, Maine Bank PAC, the Portland Press Herald, Casco Bay Weekly and Portland Phoenix newspapers.

Mr. Marley has "Been there, Done That" when it comes to publicly financed Election Campaigns. The Maine Clean Elections Act is very similar to the West Virginia Clean Elections Act which has now been introduced as SB 158 and HB 2527. We can all learn a lot from him about his, and Maine's, experience, with the theory and practice of public financing of election campaigns.

"Clean Elections In Maine" Representative Boyd Marley (D), Maine

Sunday, February 2, 2003

7:30 p.m. ~ 9:00 p.m.

University of Charleston

Geary Student Union

2nd Floor Art Gallery

**2300 MacCorkle Avenue South East
Charleston, West Virginia**

Light Refreshments Will Be Served

Committee Testimony Promotes Conservation and “Turn It Off!”

By Allan S. Tweddle allantweddle@bigplanet.com

The wandering team of 'Eades and Tweddle' made a valiant attempt to plant some positive idea seeds in the minds of the members of Chairman Mezzatesta's House Education Committee Meeting on Thursday afternoon, January 16.

The meeting was called to consider the Governor's Bill (HB 2114), which seeks to freeze funding of the school districts to last year's operating funds. To a growing school system, or even to a non-growth system, this meant actual reduction in capabilities because it did not consider the higher costs of energy, diesel fuel and a myriad of other expenses that are not, and cannot be, frozen.

We accepted the challenge to emphasize energy conservation in our schools and promote our "Turn It Off" program for school buses as opportunities for immediate and real savings of cash expenditures.

After an introduction, I stated:

"We in the E-Council must express our opposition to H.B. 2114. It would adversely impact students. Whether it passes or not, we anticipate offering bills to save money immediately upon implementation." **The first will be a “Turn It Off” Bill!**

Current practice is to leave a school bus running while waiting for students to disembark in the morning or be let out of school in the afternoon...sometimes up to 45 minutes. Its an old and antiquated practice.

Save fuel, costs (and our children's lungs) by turning the bus off until it is to be moved.

We have information on where it is already working in other States. At the direction of the Chairman, I am in preliminary discussions with Wayne Clutter, Director of Transportation (for the State Department of Education). Mr. Clutter has shared this idea with Dr. Stewart, who has expressed genuine interest.

We hope H.B. 2114 does not pass...as it would adversely impact the students. However, even if this freeze should occur, we at E-Council would welcome allies for the "Turn It Off" program - a proven program with **no cost and real savings.**"

Rick discussed the real cost savings potential for an expanded energy conservation program in School districts. From some research that I was able to find (thanks to Toby Pierce of WVIGCCC in Shepherdstown), Rick reported the dramatic results in the Berkley County Schools. Here, under a rigorous energy conservation plan, they saved \$180,000 the first year, and reported to us this week that they may exceed \$1.0 Million dollars total accumulated savings at the end of the third year.

In his articulate way, Rick led the committee into thinking seriously about energy conservation as a tool to cut overhead, not teaching and education costs.

Rick followed up the meeting with AP reporter Larry Massina, who is interested in tracking our approach.

Conservation is a word we have not heard from our Governor or the legislature this year. We hope to make it a daily mindset. Addressing conservation in the schools is the tip of the iceberg. The governor should advocate a reduction in energy consumption throughout the state.

Warmups on Enviro Laws and Rules

By Rick Eades

Senate Natural Resource Committee passed out air rules with mostly minor or federally required changes, including: NOx trading (SB 223), stationary source permits (SB 224), new sources (SB 225), TSD facilities (SB 242), Nox trading for electric utilities (SB 243), operating permits (SB 244), acid rain (SB 245), and hazardous air pollutants (SB 246). Hazwaste management (SB 250), Hazwaste fees (SB 251), water pollution fees (SB 253, which now includes fees for previously exempt facilities of 1-3 acres), water quality standards (SB 257, extends Weirton Steel's exemption), licensing requirements regarding sediment control on timbering (SB 265), logger certification (SB 266) also moved – all unamended directly or eventually to land in Judiciary.

Land application of sewage sludge (SB 252), where DEP sought some standards tougher than federal limits (see cover story), was tabled.

Senate Energy, Industry & Mining (EIM) Committee passed out SB 247. Coal surprisingly agreed to DEP collecting penalties while appeals were pending, as they would be returned with interest should the operator win their appeal. EIM also passed SB 248, regarding new pipeline, spillway design, and emergency dewatering provisions for coal waste dams (slurry impoundments). Both go to Judiciary unamended.

The Farm Bureau expressed concerns about an oil and gas rule (SB 249) that allowed deep research gas wells to be drilled with little possibility for landowners to protect their rights, especially with notification not ensured. *Bless the farmers*, as SB 249 was laid over. We need landowner protections in this rule, which the farm community may be able to deliver.

A reminder, rules (= regulations), and they describe how laws (= code or statutes) are applied. Statutes are the big kahuna, rules or regs get amended often annually.

Very preliminary work in a **House Judiciary Subcommittee** occurred on 3 DEP statutes. Only 1 of 5 bills before that subcommittee had been introduced, so they were essentially seeking sponsors. We'll fill you in more next week.

4th Circuit Court Interpretation Shows Disregard for Valley Fill Scale

Dan Radmacher, Charleston Gazette

(Reprinted from Friday January 31, 2003)

THE DECISION by a federal appeals court to throw out U.S. District Judge Charles Haden's second attempt to limit mountaintop removal mining came as a surprise to no one, I imagine, not even the lawyers who brought the case.

The 4th U.S. Circuit Court of Appeals, one of the most conservative in the nation, hardly has a reputation as an advocate of the environment.

The only real question was whether the court would simply overturn the decision on procedural grounds or whether the court would address the substance of the decision.

The court did both. If found that Haden overreached when he enjoined the U.S. Army Corps of Engineers from permitting any valley fills unless they were necessary for construction or improvement and not just disposal of excess dirt and rock from mountaintop removal mining, rather than merely blocking the single permit plaintiffs objected to in the lawsuit

And it found the legal basis he used for that injunction was faulty.

Haden's ruling turned on the difference between "waste" and "fill" and how the federal Clean Water Act regulates the two.

The Corps had been issuing permits (known as 404 permits for the section of the Clean Water Act that gives the agency jurisdiction over dredge and fill permits) for valley fills for mountaintop removal operations. The permits allowed mining companies to dump "spoil"—dirt and rock that used to be mountaintop—into nearby valleys, burying miles of stream.

Plaintiffs in the case argued that 404 permits are only supposed to be issued for a constructive purpose: if dry land needs to be created or the elevation of a stream bottom needs to be changed in order to build something of lasting value. Such permits are not supposed to be issued simply to dispose of waste, they argued.

A fill designed merely to dispose of waste is, in essence, pollution, and should be permitted as waste under section 402 of the Clean Water Act. The U.S. Environmental Protection Agency handles those permits, which have far stricter guidelines.

Haden examined the law, regulations and the congressional record, and concluded that the plaintiffs were right. The Corps had been issuing illegal permits for years.

At this point, according to the 4th Circuit, Haden, having found that a longstanding, ongoing practice of a federal regulatory agency was illegal, should have done absolutely nothing to stop it, beyond halting one permit.

That makes absolutely no sense to me. Nor does the 4th Circuit finding that Haden misinterpreted the law. I'm not a lawyer, or a judge. But I can read. Haden's ruling makes far more sense to me than the 4th Circuit's interpretation.

The 4th Circuit ruled that Haden was wrong to limit 404 permits to "constructive purposes." The court tried to make a distinction between 402 and 404 permits based not on the difference between waste and fill, but on the volume of the material to be disposed. That's a dangerous road to start down.

The problem is a matter of scale. Essentially, the 4th

Circuit is saying that small amounts of sludge and debris that might leak from a sediment pond at the bottom of a valley fill should be regulated and limited by the EPA, but huge amounts of dirt and debris that actually bury and destroy a stream should not.

In his initial valley fill rule, Haden eloquently highlighted the absurdity of this position in light of the Clean Water Act's stated goal of maintaining the quality of the nation's water: "This argument ignores the reality that valley fills are waste disposal projects so enormous that, rather than the streams assimilating the waste, the waste assimilates the stream."

That sense of scale appears to have eluded the 4th Circuit. The plaintiffs may try to take their case to the Supreme Court. Though it's a long shot given the current makeup of the court, I hope the Supreme Court comes to a more rational conclusion.

Necessary Lawsuits 101

By Rick Eades

Consider but one aspect of the mining lawsuits presented before Judge Charles Haden. Had Joe Lovett, WV Highlands Conservancy and citizens not sued for egregious failures of the agencies to ensure things like post-mining land use in Federal Court (and, of course Kentuckians for the Commonwealth in the most recent effort), the coal industry and regulatory community might never have required or developed any measurable improvements to developing lands after they've been strip mined.

Federal law since 1977 said that "equal or better" post-mining land uses had to be part of the permit, if coal companies didn't replace the mountains to their approximate original contour.

For two decades, the coal industry and often-politicized regulatory agencies almost universally neglected this provision of federal law, leaving a wake of no opportunity especially in our southern coalfields.

Now the industry wants credit for some decent post-mining land use projects (airport, jail, aquaculture, orchard, golf course). Unfortunately, these represent a wee fraction of the lands coal has economically benefited from.

Meanwhile, coal operations like Marrowbone in Mingo County shut down, jobs are lost as market conditions dictate, and the intents of the 1977 mining laws - that might have allowed for a post-coal economy had those laws been adequately enforced throughout their history - have been so ridiculously violated that the affected areas are left in misery.

Instead of twenty years of post-mining economic development, we now have hell on earth. Thank God the lawsuits helped prompt changes, led to a meaningful consent decree, and woke up those parties who were complicit in taking from West Virginians and giving back less than the bare minimum as defined in federal law.

Moral of the story - Don't blame environmentalists for the sins of greedy coal barons or lax regulators, instead thank the plaintiffs and their attorneys for their daring efforts to improve things.



Calendar of Events



February 2: Maine Rep. Boyd Marley reception & discussion ~ "Clean Elections in Maine".
 University of Charleston Geary Student Union - 2nd floor Art Gallery. 7:30 pm ~ 9:00 pm
 Sponsored by: Citizens for Clean Elections.
For more information: Janet Fout - 522-0246

February 3: Blackwater Canyon Trail Logging Road Proposal public comment deadline! Allegheny Wood Products, owned by John Crites, has proposal to turn the canyon trail into a commercial logging road.
Send comments to: US Forest Service, 200 Sycamore Street, Elkins WV 26241
 Phone: 304 636-1800 Fax: 304 636-1875 or go to: <http://www.saveblackwater.org/>. Click on Action Alert.

February 4: WV International Film Festival showing of "Bowling for Columbine" - a film by Michael Moore. **Two showings: 6:30 pm & 9:00 pm.** Old Capitol Theatre ~ 123 Summers Street, Charleston WV.
 Admittance Cost: \$6.00

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 ~ 3:00. Organizations, groups, eco-friendly business displays and other activities planned. 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 & Ammed Solomen!
Donation: \$ 5.00 at the door.
For more information: Denise Poole, 346-5905 or deniseap@earthlink.net

February 27: Appalshop documentary "Coal Bucket Outlaw", by Tom Hansell. Begins 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 & directions contact: Larry Gibson, 542-1134

April 26: "Artists for the Environment" Fundraiser. Perfater Law Office lobby ~ 1311 Virginia Street East, Charleston. From 1:00 ~ 5:00. Artists from around the state are donating their talent in support of WVEC! Items for sale; Silent auction of artwork; Live music; Wine & Home Brewed beer; Refreshments; Raffle drawing for Mark Blumenstein sculpture! Join us for this post-Earthday event and support the WV E-Council's environmental efforts!
For more information and to participate contact: Denise Poole, 346-5905 or deniseap@earthlink.net.

Support the West Virginia Environmental Council

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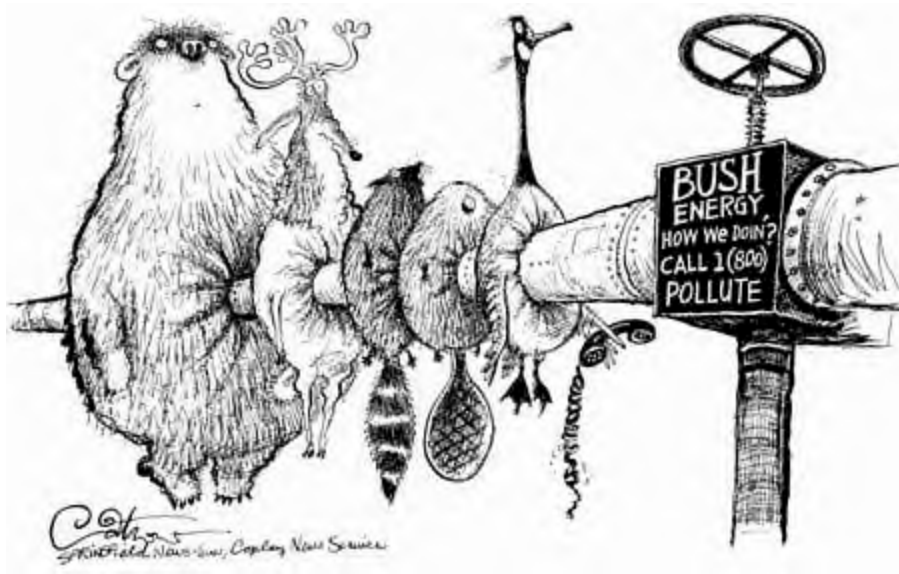
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- \$ 100 Sustaining
- \$ 250 Enviro Steward
- \$ 500 Canopy
- \$ 1,000 Old Growth
- \$ Other

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