



West Virginia Environmental Council's

Green

Legislative

Update

Published Weekly During West Virginia's Legislative Session

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Under the Dome

Donald S. Garvin, Jr.
WVEC Legislative Coordinator

Week 1 – Agreeing With Senator Ross

May lightning strike me dead, but I actually found myself agreeing with Senator Mike Ross this week!

Now those of you who know me know that my acquaintance with the “good” Senator from Coalton goes back to when I first moved to West Virginia and that there is almost nothing the Senator has to say about politics, government or the environment that I would agree with.

But this week, in an Interim Judiciary Subcommittee, Senator Ross, who is one of the largest independent oil and gas operators in the state, spoke in opposition to a DEP proposal to establish an “Environmental Excellence Program,” and had this to say:

“Mr. Chairman, I would oppose any provision that makes it look to the public like we are ‘buying’ our permits.”

I agree, Senator, even though I suspect you were actually more concerned about any additional fees DEP might impose than the appearance of influence peddling (like I said, I know the Senator well, and when it comes to money he is . . . well, let’s just be polite and say he is tight-fisted).

However, “buying” permits is not what concerns me most about DEP’s proposed “Environmental Excellence Program,” which would be voluntary and would not increase permit fees significantly. What concerns me most is the concept itself, and whatever new system of “incentives” it creates.

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Odyssey of the Water Protection Act

Conni Gratop Lewis

Giving you a brief history of the water quantity bill is like reducing *War and Peace* to one page. It’s really hard to explain what happened to a bill that everyone, including legislative leadership, claimed they wanted. But let’s have a go at it.

Rick Eades had spent years trying to educate West Virginians about the value of our water and the threats to it from beyond our borders. Few listened until West Virginia Water was sold to a foreign conglomerate. In response, Senator John Unger introduced a bill in the 2003 regular session to declare that the waters of the state belong to West Virginia. It died on the last night of the session only because the House wanted language that would prevent taxing waters and the Senate wanted to be silent on the issue.

But the issue didn’t die: a simple resolution to study a plan to protect the state’s water supply was extensively rewritten and made more comprehensive. It provided for a technical advisory group (which included yours truly and industry lobbyists, so it wasn’t *that* technical). A select legislative committee and the advisory group were established. Then Senator Unger went to Iraq for four months to do humanitarian work. He spent some of that time being shot at without having a weapon of his own. Good practice for what happened in the advisory group.

Delegate Nancy Huston, the select committee co-chair, carried on in his absence. During the summer, committee staff prepared a bill that would cover interbasin water transfers, among other provisions.

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Bills We Are Tracking

Senate Bills

Bill Number	Title	Committee
SB 39	Allowing landowners to remove debris to prevent flooding ("Flood Thy Neighbor")	JUD
SB 60	Transferring water quality standard rule-making authority to water quality board (eliminate EQB)	JUD
SB 63	Requiring verification of notice to adjoining landowners of timbering operations	NR
SB 89	Relating to beneficial use of water treatment plant sludge	JUD
SB 90	Regulating of all-terrain vehicles	TRANS
SB 153	Establishing All-Terrain Vehicle Safety Regulation Act	TRANS
SB 155	Creating environmental excellence program	EIM

House Bills

HB 4026	Establishing the water resources management act (Governor's water quantity bill)	JUD
HB 4027	Establishing a voluntary environmental excellence program	JUD
HB 4029	Establishing a program to report emissions of greenhouse gases	JUD

We will let you know each week the current bills we are tracking - and as usual, keep you informed on all the issues WVEC is working on during the session.

To Contact your Representatives on Issues:

Legislative Reference & Information Center
 MB-27, Building 1
 State Capitol Complex
 Charleston, WV 25305
 304 347-4836 toll free: 1 877 565-3447

On Line: www.legis.state.wv.us

We have listed in this newsletter a complete list of all the House of Delegates Representatives and Senators with their individual contact information. Please save this page and use it throughout the session!

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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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DEP considers this an innovative new approach to cleaning up our air, land and water. They want to create incentives to reward polluters for doing more than environmental laws and regulations require.

Apparently, cleaner air and cleaner water for our children and grandchildren is not enough incentive for DEP or the regulated community. So there need to be incentives to get industry to do the right thing, incentives like “more self-monitoring” and “regulatory flexibility.” Specifically, DEP is suggesting incentives like fewer inspections, “loosened” monitoring and reporting requirements, and “deferred civil enforcement.”

In programs like these, the devil is always in the details, and the details the DEP is proposing here give me heartburn. One of the incentives listed in the bill is to “authorize goal based approaches for achieving superior environmental performance.” What kind of gobbledygook is that?

So to my friends at DEP I say let’s take another look at this. And if reducing emissions of air and water pollutants further than the law requires is a good thing, how about considering stronger standards in the first place? Have you thought about that?

I know you will agree with me on that, won’t you, Senator Ross.

And to our readers, just a reminder to feed the birds this winter. It is an “environmentally excellent” thing to do.

Odyssey of the Water Protection Actcontinued from page 1

The Republicans on the select committee didn’t like it at all. So the next month, a more limited bill emerged. This pattern of introducing more limited draft bills continued through the year.

Meanwhile, West Virginia University law school students put on a symposium on water issues. Legal scholars came to share what other states are doing and pretty much stuffed the attendees with information. This seemed to change the dynamics as it became clear that West Virginia was so far behind the legal curve it’s scary.

During the fall it became apparent that the bill would include a declaration of policy and a comprehensive

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study of water use. This may not seem like much, but many industry lobbyists didn’t see the need for any study, or any legal changes. Lawyers would carry on and on about common law as though nothing could improve it. Sen. Unger would listen to the lawyers and then engage them in debate. He would ask simple questions like “if you’re against the study, what are you for?” — and get silence in response.

In December the draft bill was modified and strengthened. In early January, even after industry lobbyists finished nitpicking what had become a common law preservation bill (and not so much a water quantity resource preservation bill), it was still a decent bill that pointed the state in the right direction — toward the late 20th century.

Monday evening a public hearing was held in the Capitol. Supporters of the bill outnumbered opponents by at least two to one. The opponents mostly said, “We still have concerns,” not “This bill needs to disappear.” And we shouldn’t tax water (taxes were not part of the bill).

The select committee met the following morning and members, particularly from the House, proceeded to object to the bill. Delegate Mezzatesta stated that he opposed it. Apparently he had problems saving West Virginia’s water for its citizens and businesses. There was wrangling and arguing and pretty soon the meeting spun out of control. A motion was made to reconvene at 6:00 P.M. and the committee approved it. Unfortunately, all Interims bills had to be at the government and finance committee meeting by 4:00 P.M. So the select committee never reconvened and the bill died.

This may be a good thing. Leadership really wanted a decent bill, the public wants a decent bill and we may actually get one, thanks to recalcitrant industry lobbyists. Leadership intends to run the committee’s bill, we are hearing there may be stronger bills offered as well, the Attorney General’s office may offer a bill, and now the Governor has joined the issue and introduced a bill of his own.

So for the 2004 session of the legislature there may truly be “water bills, water bills, everywhere.”

(The WVEC Lobby Team wants to thank all our members who attended and spoke at the public hearing Monday night. We had an excellent showing and many eloquent statements were made in support of strong water quantity legislation. Some of you drove many hours to get here. You really made a difference.)

School Buses Breathing & E-Council ~ An Update

Allan Tweddle

Last year you will recall that the WVEC lobby team wrote a bill, HB2961, the "Turn It Off" school bus bill, and we shepherded it through the legislature until it passed on closing night. It was a positive bill that brought cost savings to the State by saving diesel fuel, while reducing the exposure of children to fumes and save their lungs. The bill required changes in the practices of our school bus drivers that led to reduced idling of school buses under certain conditions. Since then, the Department of Education has developed the regulations for drivers and schools to follow.

DEP has picked up the ball, and co-operating with the WV Interfaith Global Climate Change Committee, has developed a plan to teach the children about pollution using this new rule from HB2961 as the basis.

The entire issue of DEP's "Clean Air Forum" Bulletin, Winter 2003 issue, is dedicated to the HB2961 implementation program, to diesel fuel problems and alternatives. We have a few copies at the E-Council office, and they are available from DEP, and at the Capitol's information desk, lower rotunda. But get a copy...make sure your school is complying and participating in the follow on educational program.

It is an example of your E-Council at work...seeking positive results for West Virginia while achieving cleaner air, water and land.

(Never once in its publication does DEP give the West Virginia Environmental Council credit for originating this legislation, nor do they acknowledge all the hard work we did to get it passed. We will remember this the next time the agency asks us to acknowledge their good works!).

Dear Friends and Supporters of WV E-Council

Fred Sampson, WVEC President

We are just entering the 2004 Legislative Session and I am taking this opportunity to thank our many supporters!

We have had several membership renewals returned to the office - thank you - we are so proud of you for doing that and we know you are still committed to supporting WVEC goals. We simply couldn't

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continue without you!

We also received some very generous donations and financial support. You know who you are, and our appreciation knows no bounds.

For those of you who have not as yet responded to the recent fundraising letter and other shameless pleas, if you have forgotten, consider this a gentle reminder. We need considerably more funding to reach our goals for 2004.

WVEC recognizes that we are all having difficulty in stretching our budgets and tightening expenses to cover our own needs in this almost recession, not to mention the large loss of jobs in our Nation.

However when you look at the onslaught that WVEC and our state are facing with the roll back by the Federal Agencies on our Environmental regulations which affect our state, then you can better understand what WVEC is truly up against.

Please do what you are able and send in contributions that fit your budget! Every donation, large or moderate all adds up, and enables us to continue our important work during this legislative session and throughout the year.



Bring your Empties to E-Day!

Linda Mallet, WV-CAG

Want \$2.40 in free money? Got 24 empties sitting around your house?

On February 17, in conjunction with WVEC's annual E-Day! event, WV-CAG will host Deposit Day on the Capitol grounds. Deposit Day means we will take up to 24 of your empty beverage containers and give you a dime for each one. Your strong support that day will show legislators that we want a WV Bottle Bill.

So, take a break from the E-Day! festivities, come to the fountain area (outside between the House and Senate wings) and "redeem" your containers. Those 24 dimes could be used to purchase another beverage of your choice! More details to come!

Note: if you have any beverage container handling "experience", please lend us some time on Deposit Day to help us collect containers from others. You can contact Linda at 346-5891 or linda@wvcag.org for more info!

Water Quantity Bill Public Hearing

January 12, 2004

Comments by: Conni Gratop Lewis,
WVEC Interim Lobbyist

First, let me express my appreciation for all the work of the members of the advisory group during the year. And also to the Legislature for creating the work group in the study resolution. And to the chairs for their leadership.

The Water Quantity Resource Preservation Act, as proposed, is just the sort of legislation that will help West Virginia prepare for a future in which clean and ample water supplies are the most valuable resource we offer.

We are glad that the committee is working to establish, at long last, that the waters of the state belong to all of the citizens of the state and that they should be available for the benefit of the citizens.

The position of the West Virginia Environmental Council, and before that, the Citizen Action Group, is that the waters of the state are a resource worth protecting. This has been our position since the efforts of the 1980s to protect the state's groundwater.

They are worth protecting for many reasons: they are plentiful. It's not for nothing that this state is known as the birthplace of rivers. They are, for the most part, high quality. And plentiful rains keep the supply high.

Or so we hope. We don't really know the status of our waters. And we don't know who uses how much and whether it's consumptive or nonconsumptive use. So we really do need to do a study and the sooner the better. The rest of the East Coast finds its water in scant supply and growth is threatened. Even Kentucky has issued water conservation warnings to its residents.

Without a declaration of policy and without a study we can not begin to protect our waters.

There are those who state with certainty that common law riparian rights have worked well and there's no need to change that. This bill doesn't tamper with the legitimate right to use the water, if you are a riparian owner. And it doesn't tamper with the responsibility to not damage the water for the downstream user.

And neighboring states have modified common law and continue to prosper, while we cling to our legal traditions and stagnate.

Perhaps 70% of West Virginia's waters are underground, not surface and therefore not really acknowledged in common law. These are the best waters of the state and sustain many rural homeowners and farmers, as well as other businesses.

As Larry George said in one of our meetings: Riparian law has served us well in the past, but it's a lousy

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way to plan for the future. This bill is a way to acknowledge that one of the state's most respected lawyers on water issues is correct about our future.

Comments by: Allan Tweddle, *WVEC Lobbyist*

There is no reference in the WV Constitution or any other document defining or declaring the ownership of water in West Virginia. We are one of only a handful of states that has failed to do that.

Important? You bet! Today, like it or not, we are living in a global community...an economy not of old plodding trade merchants, but of globalization. And water is fast becoming one of the most scarce and important key elements in global economy.

It is also, next to air, the most vital element for life.

We in West Virginia are blessed. We have some of the most abundant and cleanest water in the world. There are out-of-state, even out-of-country, organizations eyeing it, and I doubt that they have our best interests at heart.

The World Trade Organization, WTO (over which we, the citizens of this state, our Senators and Delegates have absolutely no control whatsoever), is seeking to classify water as a commercial commodity—one to control without political interference or public interest.

Last year, we saw our local water company sold to a German conglomerate, who's English distributor is reputed to have the singular distinction in England of being the worst polluter of any corporation in the U.K. That conglomerate, headquartered in Germany, now owns our water. Incidentally, German law prohibits any foreign ownership of their water.

A water quantity protection bill would begin the process of identifying and inventorying our WV Water Resources. This is critical because, if we don't, our water will not be ours to protect.

The arguers against this bill claim that the Riparian laws and court decisions that have dominated water disputes in the past have been adequate since the 18th Century. However, the laws of the 18th Century were established in a mercantile society that does not exist today. If it did, these same global entities still would be riding horses and using their fingers to calculate their profits.

Senator Unger, Delegate Huston and their colleagues are right to develop a plan to survey the quantity and volume of water in WV, leading to responsible management if this vital resource...to protect and lay our rightful claim to our water for all citizens, corporate and private.

Industry Wages Major Assault on WV Water Quality Standards

Donald S. Garvin, Jr., WVEC Legislative Coordinator

On Tuesday, at the final Interim meeting of Legislative Rulemaking, the committee adopted four extremely harmful amendments to EQB's water quality standards package. While none of these amendments were prepared by members of the committee or even had official legislative sponsors, the committee adopted them none the less.

During the meeting Senator John Unger, a member of the committee, rightly identified each amendment as an industry proposal. Here's the list:

1. Manufacturer's Association Amendment — Eliminates the designation of state streams as public drinking water sources. It has been the policy of the state since 1967 that all waters of the state are designated as public drinking water sources. Industry's alternative would be to declare only the area around existing public water intakes as Category A, clean drinking water.

2. Chamber of Commerce Amendment — Removes proposed water quality standards for 75 new toxins. At least 70 of these toxins come directly from EPA's National Recommended Water Quality Criteria: 2002. The others include aldrin and arsenic. The Chamber wants EQB and DEP to independently verify the applicability of each standard with individual public notice and hearings for each parameter.

3. Independent Oil and Gas Association Amendment — Removes the designation of more than 440 streams as "trout waters." DNR diligently reviewed the streams of West Virginia to create this list and it has been through the complete public hearing and comment process. IOGA wants EQB to provide detailed proof that each stream is a trout water, with individual public notice and hearings for each stream.

4. WV Coal Association Amendments — Weakens the water quality standards for selenium, aluminum, and manganese. The coal industry that claims that it's impossible to meet the proposed standards, as our soils are naturally high in these elements. So it costs them too much to treat wastewater for these parameters, even if they are harmful to

human or aquatic life.

The committee also accepted an amendment by Senator Sarah Minear that removes the CURRENT trout stream list from the water quality rule! The result would be that, if passed, West Virginia's stream list would contain no trout waters.

The committee accepted all these amendments and passed the water quality standards package out with no recommendation for passage (we can be thankful for that much, at least).

Except for the trout stream list issue, these are all items that industry has been wanting for years. The trout stream list became an issue during the "antidegradation" battle a couple of years ago. It seems that trout are an indicator species – their presence in coldwater streams indicates the stream has high quality.

So, folks, the battle is on. You can start contacting your delegates and senators immediately. Simply tell them to oppose these attempts to weaken our water quality standards.

E~Day! at the Capitol Tuesday, February 17, 2004

State Capitol, Lower Rotunda

Enviro Organizational Booths
Sustainable Businesses
2004 WVEC Award Announcements
Lobby Your Representatives!
Meet Your Lobby Team!

Stick around and join us afterward for our annual Fundraiser:

Music
Award Presentations
Lots of Cheer!

To reserve a table/booth space contact:
Denise Poole, 304 346-5905 or
deniseap@earthlink.net



Calendar of Events



January 22-24: 2nd Annual Symposium, "Appalachian Opportunities: Medicinal & Aromatic Plants production, Business and Application" - Beckley, WV. Organized by Mountain State University and USDA-ARS.

For more information: Anthony Dunn, 304 929-1687 or awdunn@mountainstate.edu.

February 17: WVEC Annual E-Day! at the Capitol. Environmental Displays, 2004 Award announcements and best opportunity to join citizens from around the state to lobby your legislative representatives! Lots of help from current and past WVEC lobby team members. Mark your calendars immediately!! Now!

For more information: Does your group, sustainable business, or organization want to participate? **Contact:** Denise Poole at the WVEC office, or deniseap@earthlink.net

February 17: After E-Day! Fund-raising Party! Live music, refreshments, annual award presentation ceremony - join us half way through the session to honor our award recipients and support WVEC lobbying efforts. Much to do - many people to meet!

March 14: Last Day of Legislative Session.

April 17: Planning Your Herb Garden: What to Grow, Where and How. 10 am - 4 pm. La Paix Herb Farm, Alum Bridge. Preregistration required. \$55 includes complimentary lunch.

To register & more information: (304) 269-7681, lapaix@iolinc.net, www.lapaixherbfarm.com

April: 2nd Annual "Artists for the Environment" Spring Fund-raiser. Perfater Law office building lobby. Beautiful day with the arts! Visual arts, music, poetry, performance, and more. Booths, art auction, yummy edibles and drinks! *** *Exact date, artists, and times to be announced ~ stay tuned.*

For more information and to participate: Contact Denise Poole, deniseap@earthlink.net or call her at the WVEC office: (304) 346-5905.

June 19 & 20: Lavender & More Fair! La Paix Herb Farm, Alum Bridge, WV. Workshops, demonstrations, garden tours, lunch, music and slide shows. Admission \$5.

For more information: (304) 269-7681, lapaix@iolinc.net, www.lapaixherbfarm.com

July 17: Hydrosols, Essential Oils and Distillation Workshop. La Paix Herb Farm, Alum Bridge, WV. Complimentary Lunch. Cost is \$55, pre-registration required.

For more information and to register: (304) 269-7681 or lapaix@iolinc.net, www.lapaixherbfarm.com

Don't forget to make your plans now to attend E-Day! at the Capitol! Tuesday, February 17, 2004

Organizations & Green Businesses - reserve a table (or 2) now - contact Denise at 304 346-5905 or deniseap@earthlink.net

Support the West Virginia Environmental Council

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