



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, dsgjr@aol.com

Week 2: EQB: Adding Insult to Injury

After two or three years of incessant bombardment from industry, it appears that the Environmental Quality Board is throwing in the towel in the battle to retain the board's rulemaking authority.

In the final weeks of the 2004 Interim sessions we learned that the board is considering hiring a former industry lobbyist as their new technical advisor.

What a joke! But this is no laughing matter.

For those of you who are unfamiliar with this issue, here is a little background:

Under state law West Virginia's water quality standards are promulgated by the Environmental Quality Board. Currently, this independent board consists of five members, all of whom must have "expertise in water husbandry," they are appointed by the governor, only three can be of the same political party, and *none can work for any company that gets NPDES permits from the DEP.*

The Farm Bureau, and other business and industry groups, including coal, have basically been upset with EQB since the antidegradation battle four years ago. So for two years the "regulated community" fought hard in the legislature to replace EQB with a new and highly politicized board that they could more easily control. They failed.

But the "dirty water" folks succeeded in getting the legislature to turn up the heat on the EQB during last year's regular session by throwing out the entire EQB

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Green Legislative Update

Clean Elections Pilot Project Heads to Full House

Please Contact Your Delegates!

By Julie Archer, WV Citizen Action Group

On Thursday, the House Judiciary Committee passed by a vote of 12 to 10, HB 2486, the WV Public Campaign Financing Pilot Project. The bill would establish a pilot project Clean Elections pilot project in two Senate and three House races in the 2006 elections.

While this is great news, given the closeness of the committee vote we have our work cut out for us as this bill heads to the House floor. Most opposition came from the Republicans, who we learned at the last minute were uniting against the bill. Joining the Republicans in voting against reporting the bill were Delegates Mahan (Summers), Hrutkay (Logan), Pethtel (Wetzel) and Stemple (Calhoun). A detailed account of the committee vote will be forthcoming.

In the meantime, we expect the bill to be up for a vote before the full House on Tuesday. **Please take a few minutes to contact your Delegates and ask them to give this demonstration of voter-owned, publicly-financed elections a try by supporting HB 2486, the WV Public Campaign Financing Pilot Project.**

Tell them that based on its success in states like Maine and Arizona, where it is now the political norm to run for office free from direct dependence on private donations, this voluntary alternative to special interest driven campaigns deserves a trial run in West Virginia. More information on Clean Elections is available at the new Citizens for Clean Elections webpage www.wvoter-owned.org.

Thanks for your continued support — we wouldn't have gotten this far without you! We hope to have more good news to report next week!

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E ~ Day! at The Capitol

March 30, 2005

 10:00 am till 3:00 pm 

Senate & House Hallways

Make this day your own 'citizens lobby day' and join us for our annual trek to the capitol. Approx. 30 organizations and sustainable businesses will have displays with loads of information and the latest news on bills of interest circulating throughout the Senate and House. Lets let our representatives know we care! Lets make this year the biggest turn out yet!!!

To register your group, organization or business contact:

Denise Poole, (304) 346-5905 or deniseap@earthlink.net

E~Day! Reception from 5:30 till 9:30 pm

This is our annual WVEC Awards Dinner & Reception.

We will bestow environmental awards to our 2005 recipients who have inspired us with their outstanding work and commitment to protecting West Virginia's environment.

Help us show our appreciation to our Mother Jones, Laura Forman Grassroots Activist, Linda Snautz Environmental Courage, Green Entrepreneur and Chuck Chambers Public Service award recipients! Don't miss it! Live music!

*The names of this years awardees will be announced in the February 25th (issue 3) **Legislative Update** next week!*

Location to be announced ...

Legislative Session 2005 Information Sources:

WV Legislative web-site: www.legis.state.wv.us

For bill tracking, bulletin board (journals), legislators' e-mails.

To Call: 1-877-565-3447

Ohio Valley Environmental Coalition: If you want to easily get the latest news during the legislative session, check www.ohvec.org/ovec_news.html and www.ohvec.org/news_gen.html daily.

Every morning, OVEC checks scores of news sources and post links to make it easier for you to stay informed.

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water quality standards package and replacing some of the proposed rules with looser standards proposed by industry.

They followed up in this year's Interim sessions with constant (and unnecessary) demands for the board to explain its decisions before the joint legislative rulemaking committee. These sessions amounted to not much more than public attacks on the work of EQB's technical and legal staff, while EQB board members sat back and offered little defense or support.

Meanwhile, the Division of Environmental Protection jumped into the fray. DEP, it ends up, really does want to transfer EQB's rulemaking authority over to themselves, so they don't have to worry about enforcing water quality standards that industry doesn't like.

While they couldn't make this happen legislatively last year, DEP adopted another tactic: they basically eliminated the funding in their budget necessary for EQB to operate.

Ultimately, this constant and undefended assault got to be too much to take for some of the excellent and dedicated staff at EQB. This Fall both the technical and legal advisors to the board resigned.

And that brings us to the ridiculous situation we now face: EQB board members thinking about hiring a former industry lobbyist as the board's technical advisor.

Not just *any* industry lobbyist, mind you, but one who has actively and recently lobbied the board on behalf of a client who had NPDES permits.

Not just *any* industry lobbyist, mind you, but one who has stated publicly that acid rain and global warming don't exist.

Not just *any* industry lobbyist, mind you, but one who has stated publicly that acid mine drainage is merely "background" pollution.

Talk about adding insult to injury.

How can the EQB defend this and still claim to be an independent and fair arbiter of the state's water quality standards?

They can't. And neither can I.

Until next week, remember it's still winter out there so keep your bird feeders full.



EQB Public Hearing on Manganese

When: Wednesday, 2/23/05, 6:30 P.M.

Where: DEP Building, 601 57th St., SE, in Kanawha City

Written comments will be accepted through 3/24/05 to clerk@wvaqbeqb.org, or WV Environmental Quality Board, 601 57th St., SE, Charleston, WV 25304

The EQB will hold a public hearing next Wednesday evening on their proposal to lower the water quality pollutant standards for manganese.

The revision would add the following language: "The manganese human health criterion shall only apply within the five-mile zone immediately upstream above a known public or private water supply used for human consumption."

Currently the manganese human health criterion is applied to all waters of the state.

The WV Rivers Coalition and the Appalachian Center for the Economy and the Environment have provided the following brief comments in opposition to the proposed change:

- 1) The after-the-fact public hearing and comment period does not comply with the requirements of the federal Clean Water Act;
- 2) EPA has recently disapproved a similar action when it addressed an earlier proposed change to the manganese criterion.
- 3) No scientific rationale exists that supports the proposed five-mile provision or justifies treating manganese differently than other Category A (drinking water use designation) parameters,
- 4) The criterion is a thinly veiled attempt to remove the Category A use relative to manganese without doing a use attainability analysis,
- 5) Existing drinking water uses and human health will not be protected.

If you are interested in seeing more detailed comments after the hearing date, or if you need interpretation of any of these talking points before the public hearing, please contact Evan Hansen, (304) 291-8205, or via e-mail at either ehansen@downstreamstrategies.com, or ehansen@wvrivers.org.

Toxic Lakes of Goo and You

By Vivian Stockman, OVEC project coordinator

Members of Coal River Mountain Watch, concerned coalfield residents and the Ohio Valley Environmental Coalition are working together on a “Sludge Safety Project,” www.sludgesafety.org. The Mary Reynolds Babcock Foundation is funding the initiative.

The project’s goals are to seek state policy changes that will better protect coalfield residents and people living further downstream coal sludge impoundments—there are hundreds in Appalachia.

Near their mining operations, often at the heads of hollows, coal companies construct dams from mine refuse. Behind the dam, they create slurry or sludge lakes, which store the liquid waste leftover from washing and processing coal. The companies say the slurry contains mostly water, rocks and mud.

But we know otherwise. The sludge contains a witch’s brew of carcinogenic chemicals used in coal washing and processing. Slurry also likely contains arsenic, mercury, chromium, cadmium, boron, selenium, nickel, and other elements that are present in coal.

Today’s impoundments aren’t likely to suffer catastrophic failure of the dam face as happened in the 1972 Buffalo Creek disaster, which killed 125 people. People still rightly worry about impoundments, though. In October 2000, a partial failure of the bottom of a Massey Energy impoundment near Inez, Ky., spewed 306 million gallons of sludge into two creeks, smothering aquatic life in about 75 miles of stream. The EPA called it the Southeast’s worst environmental disaster. Across the coalfields, smaller “blackwater” spills occur frequently, fouling both streams and groundwater.

In 2003, Senator Robert Byrd (D-W.Va.) said, “Breaks in coal slurry impoundments can threaten the lives and health of area residents, destroy homes and businesses and contaminate water supplies. This dangerous potential looms over coal mining regions in West Virginia and throughout Appalachia.”

Coal sludge impoundments are not necessary. Some coal companies are already using alternative, dry methods to dispose of coal waste. These methods are currently more expensive than sludge “ponds.” However, if you live in the shadows of these massive impoundments or if you drink water, the extra cost is more than worth it when compared to the costs of water contamination and potential disasters.

We hope you will join the Sludge Safety Project in educating policy makers about the dangers of and alternatives to coal sludge impoundments. Visit www.sludgesafety.org or call 304-522-0246 to find out how you can help.

Green Legislative Update

Coal Sludge Spills into Pines Creek; 40,000 Gallons Blacken miles of water; Resident Wants Stiffer Fines

By Jessica Farrish, Beckley Register-Herald Reporter
Feb. 18, 2005

Mike Holshouser’s Bell Mason jars weren’t filled with canned peaches or apple butter Thursday. Nor did a moonshine brew of Appalachian folklore dance inside the jars.

“It’s coal sludge,” the Josephine man said of the black, gritty liquid sloshing inside two canning jars.

“I’m worried what it’s going to do to the animals - not just my livestock, but wild animals and people’s pets that drink out of the creek.”

Holshouser, a Raleigh County school bus driver, lives along Pines Creek and downstream from a coal sludge pond at a mine site owned by White Mountain Mining.

When an excavator ripped a hole in a pump line at the pond Wednesday, around 40,000 gallons of coal sludge spilled into Pines Creek, Department of Environmental Protection spokeswoman Jessica Greathouse said Thursday.

The sludge entered Stone Coal Creek and blackened streams as far as 20 miles away to about 31/2 miles below Mullens in Wyoming County, Greathouse and residents reported.

Greathouse said mining officials notified DEP of the line break about 4:30 p.m. Wednesday and an investigator arrived at the site immediately.

It was unclear Thursday whether all the sludge water had spilled from the pond. It was also unclear whether chemicals were released into the creek along with coal sediment.

Evergreen - a chemical spill cleanup company - was building a filter at the intersection of Pines and Stone Coal creeks Thursday in an effort to catch and confine the coal sediment.

Greathouse said there had been no reported fish kills and that no public drinking water intakes were located along the affected waterways.

DEP issued a cessation order at the mine site until the problem is corrected, she said.

Security guards posted at the mine site were instructed by White Mountain officials not to allow media to enter company property.

Holshouser said the water in Pines Creek had cleared slightly Thursday. He said he believes that stiffer fines should be leveled against coal companies when sludge is spilled into streams.

“I’ve been on the phone with legislators down in Charleston and told them we need some laws here to really slap them hard to get them to understand they’re doing wrong,” Holshouser reported.

“One legislator flat out told me that’s like trying to kill somebody - ‘you ain’t supposed to do that in Charleston.’”

Developer May Back Off Part of Gorge Plan: *Company would drop plan to build within park*

By Ken Ward Jr., Charleston Gazette Staff writer
Reprinted by permission from February 18 article

An Atlanta company may drop a controversial part of its plan to build a 2,200-acre housing development along the rim of the New River Gorge National River.

Officials from Land Resource Companies may back off their proposal to put 613 acres of their development within the boundary of the river's national park.

Earlier this week, Land Resource officials told National Park Service representatives that they were looking at eliminating that part of their project.

"They have talked about the possibility of not developing the 613 acres, and selling that property to the park service," New River park superintendent Cal Hite said Thursday.

Hite said that Land Resource officials did not make any promises, but asked to meet again with park officials about the subject.

"There's nothing in writing," Hite said. "It was just their verbal statement that that was something they were thinking about doing."

Scott Barfield, sales manager for Land Resources, declined to answer questions this week.

"I'm not at liberty to talk much right now," Barfield said Wednesday. "I do want to talk to you all. I'm a big fan of you all, but I'm just not ready to talk right now."

Paul Beidel, vice president of acquisitions and development at Land Resource, did not return a phone call.

If Land Resource dropped the portion of their project within park boundaries, it might help them avoid a fight with Rep. Nick J. Rahall.

Last week, Rahall, D-W.Va., vowed to oppose any construction of the company's Roaring River development within the park.

In November 1978, Rahall won approval for legislation that created the New River Gorge National River. Since then, Rahall three times won congressional approval to expand the park's official boundary.

In Washington, Rahall is the ranking Democrat on House Resources Committee, which oversees the park service and public land and resource agencies.

Over the last dozen years, Rahall has at least twice fought off development plans that he felt would mar the national park.

In 1992, Rahall helped scuttle plans by American Electric Power to build a huge power line across the river by having that part of the river studied for national Wild and Scenic protection status.

In 2002, Rahall got legislation passed that expanded the park boundary from the New River Gorge Bridge to Hawks Nest State Park, as part of a move to block a natural gas pipeline proposed by Dominion Resources from intruding on the river.

Land Resource Companies wants to put a 2,200-home development along a 10-mile stretch of the scenic Fayette County gorge.

The company wants county officials to rezone the area to allow construction of the 4,300-acre project on the west side of the gorge between Thurmond and Kaymoor.

Hearings before the local zoning board and the County Commission are scheduled for Tuesday and February 25.

The County Commission is also expected to discuss the project during its regular meeting today.


Under the company's plan, homes would be built on 613 acres of Rush Creek Land property that is within the legal boundary of the park, but not yet owned by the National Park Service.

Developers would also like to buy adjacent property from Philadelphia-based Berwind Land Co. That area is also within the park boundary, but has not yet been purchased.

Congress sets boundaries of national parks. But then, park officials must obtain money and agreements from local landowners to actually buy property within those boundaries.

Nationally, about 4.3 million acres of the 83.6 million-acre national park system — or about 5 percent — is still privately owned. At the New River, about 15,000 acres of the 72,000-acre park, or about one-fifth, is still privately owned.

E ~ Day! March 30, 2005

~ 10:00 am till 3:00 pm ~ 
Senate & House Hallways ~ *State Capitol*

Reception to Follow, 5:30 till 9:30 pm

DEP Should Pursue Reporting of Greenhouse Gas

By Allan Tweddle, WVEC Lobbyist
alantweddle@msn.com

The recent report in The Charleston Gazette that Governor Manchin instructed DEP Secretary Stephanie Timmermeyer to pull back the successor to last year's Senate Bill 141, Measurement of Greenhouse Gases (GHG) is, we are informed by a source close to the Secretary, not the case. We hope so.

SB 141 was intended to require the reporting of GHG emissions so we can address the problem and take corrective action. But folks in certain quarters do not want West Virginians to know the facts and take responsible action to solve the problem.

We are not sure who or what is behind the purported erroneous instruction by the governor to kill last year's SB 141. Who would not want that truth to be known? Who?

It is ironic that this report came out in the week that the Kyoto Protocols went into effect all around the world . . . that is, everywhere in the Western and thinking world *except* the one led by the Bush administration. There's no doubt that Kyoto is far from perfect. Show me a piece of legislation that is. Even the wonderful US Constitution, that brilliant group of laws, has had to be revised over time.

We all know that, like any good oil man, President Bush is "waiting for more definitive science" about Global Warming. *In spite of overwhelming evidence of an exponential climb in temperature that coincidentally statistically matches the increased use of fossil fuels*, Bush wants to know more.

So do we. We want to know how much the sources of GHG's in West Virginia contribute to Global Warming so the legislature can take action. Scientists are warning us that the situation is approaching a crisis stage. They say that we cannot sit around and wait, but should be, indeed must be, making every effort to reverse the climb of temperature. It's a fifty year flywheel — stop emitting GHG's tomorrow and it will take 50 years to achieve a reversal. A wait and see attitude is unacceptable.

The economic harm to the US economy is a myth. Many independent studies show that a realistic commitment and switch to alternative clean energies would create jobs here in the US. In fact, the University of California at Davis studied these studies to find flaws, erroneous

assumptions, whatever mistakes in conclusions that they could find, and concluded that the results were sound.

In a recent publication, the Confederation of British Industry (CBI) insisted that business deserved recognition for making considerable efforts to help tackle environmental problems. (CBI is Britain's National Chamber of Commerce and National Manufacturer's Association). John Cridland, CBI deputy director-general, said too many environmental campaigners want to blame business for problems outside the control of companies.

"British business has done more than anybody else to tackle climate change," he said. "It is business that is responsible for the innovative policy ideas that have a fighting chance of helping solve the problem." In Europe, Canada and Asia, industry is realizing that taking action to fight global warming by reversing the emission of GHG's is actually a profitable policy.

The ocean *is* rising. Importantly, the potential for continued rising will be exponential, not linear. The tundra in the Canadian and Alaskan North, which contains frozen CO₂, is beginning to thaw to a degree (pun intended) never before seen or recorded. As it thaws from the global warming caused by the release of man-made CO₂, natural warming will accelerate as the tundra releases far more CO₂ than we can generate.

Coastal towns in Alaska and in the Pacific are watching their land disappear under the surf. The native Inuits (more commonly, but erroneously known as Eskimos) are trying to come up with words to describe animals that they have never seen before in the Arctic . . . like robins and salmon. Polar bears are disappearing because their habitat, the rapidly receding polar ice, is disappearing. Even the oil companies will tell you that the thawing is so bad that having their heavy drilling equipment in the tundra-laden Arctic regions is now restricted to a few weeks, rather than 6 months just 10 years ago.

What to do about it here in West Virginia now, this year? We need the truth to be reported. We need answers. Reporting the facts about what GHG's we are emitting is vital to an informed discussion and informed debate. Are we exacerbating the problem? It is well documented that, in West Virginia, coal fired power plants are the biggest source — but certainly not the only one — of GHG's.

We urge the DEP to pursue passage of a bill similar to last year's SB 141. WVEC is committed to bringing that information reporting requirement forward and legislated. We hope that the governor will use his position to pass this bill and make the already available data on GHG emissions open to the public.





Calendar of Events



February 26: Music Concert featuring The Bluegills, at Appalachian Folklife Center - Frankie Ramsey Dining Hall (county). From 8:00 till 10:00 pm. Suggested donation of \$5.00.

For more information: www.folklifecenter.org or call (304) 466-0626.

March 3 & 8th: Music Concert featuring Doug Harper and Friends, at Appalachian Folklife Center. Begins at 8:00 pm.

For more information: www.folklifecenter.org or call (304) 466-0626.

March 30: E-Day! at the Capitol. From 10:00 am ~ 3:00 pm. 2nd level house & senate hallways. Make this day your own 'citizens lobby day' and join us for our annual trek to the capitol. Approx. 30 organizations and sustainable businesses will have displays with loads of information and the latest news on bills of interest circulating throughout the Senate and House. Lets let our representatives know we care! Lets make this year the biggest turn out yet.

To register your group, organization or business contact: Denise Poole, (304) 346-5905 or deniseap@earthlink.net

March 30: E-Day! Reception and Award Presentation. (Location to be determined - please stay tuned.) From 5:30 pm ~ 9:30 pm. Join WVEC as we honor our 2005 award recipients. A wonderful evening to unwind after E-Day! at the Capitol. Enjoy dinner,

music, enviro friends - and help us show our appreciation to our Mother Jones, Grassroots Activist, Enviro Courage, Green Entrepreneur and Public Service award recipients.

For more information contact: WVEC office, (304) 346-5905 or check our website: www.wvecouncil.org.

April 1: The National Public Broadcasting Service (PBS) airs the first hour of the four hour documentary, The Appalachians. Check local listings for times. The documentary includes interviews with Ohio Valley Environmental Coalition (OVEC) staff and other mountaintop removal opponents.

April 9: Last day of the legislative session.

April 22: Earth Day! Stay tuned for list of events from around the state and region.

April 23: Earth Day Celebration. Join WVEC, and other environmental organizations, artists, sustainable small business to celebrate Earth Day. Location and exact times for this event to be announced.

To participate & information contact: Denise Poole, deniseap@earthlink.net.

June 25: Third Annual Lavender Fair. La Paix Herb Farm, Alum Bridge, WV (Lewis County.) Workshops, Walks, Booths, Culinary Delights and much more!

For more information: Myra Bonhage-Hale, lapaix1@westvirginia.net or (304) 269-7681.

Support the West Virginia Environmental Council

1324 Virginia Street East, Charleston WV 25301

Phone: 304-346-5905 www.wvecouncil.org

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