



# 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 – Rules, Rules, and More Rules

This was the week that all the “rules” were sent to the Legislature.

So it's time for my annual legislative tutorial.

The Legislature passes laws (or statutes), and then they pass rules (or regulations).

Generally speaking, the laws or statutes set out the broad guidelines for government actions, and the rules set out the specific details or regulations. Generally speaking, the laws establish the authority for the government to act and create an agency to implement the action. Generally speaking, the agency then develops (or “promulgates”) the individual rules needed to enforce the laws.

Agency rules are not proposed by individual legislators. They are developed annually by the specific agency and are then presented to the Legislative Rule-Making Review Committee during the Interim sessions.

Usually, the Legislative Rule-Making Review Committee then simply approves the rules for consideration by the full Legislature during the regular session. Amazingly enough, there was an exception to the routine this year, when the Legislative Rule-Making Review Committee actually voted NOT to recommend a DNR rule concerning “deer farming.” It seems there is a hot dispute between farmers and the DNR on that issue. But I digress.

So this week all the “rules” from the various agencies were sent to the Legislature. By my count there are 105 of these rules. If you look at the legislative web site, you will see a long list of bills in both the House and the Senate with titles like, “Authorizing Department of Administration to promulgate legislative rule relating to cannibalization of state property” (I'm not joking, folks – that's an actual rule title this year).

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## Net Metering Progress?

By Allan Tweddle, WVEC Lobbyist

### The Elephant is in the Tent

Joe Freeland, my colleague on the Public Energy Authority (PEA), likes to remind us all that we eat an elephant one bite at a time. When I introduced Renewable Energy into the agenda of the PEA, I suggested that the WV PSC had been sitting on the subject of net metering for several years. The WV PSC calls it “studying”.

The PEA Vice Chairman Stephanie Timmermeyer asked the PSC Chairman to come to the PEA meeting this week and give us a status report. Jon McKinney, PSC's Chairman introduced, and Earl Melton, Director of Engineering presented their status report. Here is some background and what we heard.

Net Metering is now available in 41 other States. While I would like to present what other states have adopted, it would take this entire newsletter just to print the 5 ½ pages of the chart of comparisons. You can see it at [www.irecusa.org/connect](http://www.irecusa.org/connect), or [www.dsireusa.org](http://www.dsireusa.org), titled *Interstate Renewable Energy Council (IREC) “Connection To The Grid” Project, State and Utility Net Metering Rules’ (Updated July 2005)*.

**The Federal PURPA (Public Utilities Regulatory and Policy Act) was created to encourage co-generation and small power producers. PURPA does require investor owned utilities to purchase electrical power from co-generators. But it had been up to the states, with no time deadline, to adopt a net metering policy. Recent Subtitle E amendments in effect require each State's governing PSC to adopt a plan for net metering within three years of passage - that is, by August 2007.**

Part of the requirements are to establish standards for the use of net metering and smart metering devices that are determined by the individual PSC's to be appropriate for

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# E-Day! at the Capitol

Tuesday, February 14th from 10 AM ~ 3 PM  
Lower Rotunda

## Participants to date Include:

Ohio Valley Environmental Coalition    WV Rivers Coalition  
Peoples Election Reform Coalition    WV Highlands Conservancy  
Coal River Mountain Watch    WV Citizen Action Group  
Deposit Day (bring your beverage containers!)  
Friends of Blackwater Canyon    Stanley Heirs Foundation  
Mountaineer Chapter, Trout Unlimited  
Trout Unlimited State Council - Back the Brookie Campaign  
Friends of the Mountains    Sludge Safety Project  
The Wilderness Coalition    Interfaith Global Climate Change Campaign

**To register your organization or sustainable business:**  
deniseap@earthlink.net or call the WVEC office, (304) 346-5905.



## E-Day Evening Valentine's Soiree' & Award Presentations ~

Perfater Law Office Lobby ~ 1311 Virginia Street East, Charleston  
6 pm ~ 10 pm. Music by Steve Himes

Donation of \$5. at the door ~ with buffet, \$10.

### Potato Bar Buffet Dinner:

Fresh mixed green salad  
Pasta salads and fresh bread  
Baked potatoes - with lots of toppings to choose from!  
Array of homemade desserts  
Coffee & Tea

### WVEC's 2006 award recipients:

Mother Jones ..... *Frank Young*  
Chuck Chambers Public Service ..... *Senator John Unger 11*  
Linda Schnautz Environmental Courage ..... *Phillip Gaujot*  
Laura Forman Grassroots Activist ..... *Dave Cooper*  
Green Entrepreneur ..... *William McGlinchey, AFV International, LLC*

## Legislative Session 2006 Information Sources:

### Legislative Reference & Information Center:

MB-27, Bld. 1 - State Capitol Complex, Charleston WV 25305

**WV Legislative web-site:** [www.legis.state.wv.us](http://www.legis.state.wv.us)

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

**To Call Toll Free:** 1-877-565-3447 or local Charleston area:  
(304) 347-4836

**WV Environmental Council Web-site:** [www.wvecouncil.org](http://www.wvecouncil.org)

**Ohio Valley Environmental Coalition:** If you want to easily get the latest news during the legislative session, check [www.ohvec.org/ovec\\_news.html](http://www.ohvec.org/ovec_news.html) and [www.ohvec.org/news\\_gen.html](http://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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[www.wvecouncil.org](http://www.wvecouncil.org)

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

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But you can't find out what's in these rules on the legislative web site. Each agency files its rules with the Secretary of State's office, and that's where you have to go to read them, unless you can get a copy from the specific agency. It's not a particularly citizen friendly arrangement.

When these agency rules are introduced they are assigned to committees in both houses. On the Senate side all of the rules from the Department of Environmental Protection are first assigned to the Energy, Industry and Mining Committee (EIM).

The committee chairman is Bill Sharpe (D – Lewis). I feel safe in saying that EIM never saw a pro-industry DEP rule that it didn't like. The chairman frequently refers to Bill Raney from the WV Coal Association as "Senator Raney," and almost always gives him free reign to address the committee.

This week was no exception, and when EIM met the committee whisked through approval of each rule . . . until it came to the last rule on the agenda – S.B. 326, "Authorizing DEP to promulgate legislative rule relating to requirements governing water quality standards."

Chairman Sharpe then asked Bill Raney to address the committee, and Raney asked that the committee "lay the bill over" for later consideration so that "some changes can be worked out." So that's what the committee did.

We only learned later that the Coal Association wants to jump the gun on DEP and add into this year's water quality standards package a provision that would permanently weaken the pollution limits for aluminum.

Fortunately for us, DEP realizes that any change in water quality standards requires a full public comment process under the provisions of the federal Clean Water Act. So they are opposed to the Coal Association proposal, at least this year.

Also fortunately, almost all DEP rules are double-referenced to the Senate Judiciary Committee, where they receive a more serious and even-handed treatment.

And on the Senate side, that's where we will wage our battle against two of the DEP rules that are seriously flawed: S.B. 316, which sets air quality standards for toxic mercury that do not protect human health, and S.B. 323, the "Environmental Excellence" rule, that is not environmentally excellent.

So that's the legislative tutorial for the week. My annual diatribe about allowing legislators to replace proposed agency rules by substituting totally new language will have to wait for another lesson.

Please keep your bird feeders full this week. It's the "rule."



their States. Failing to do so by the August 2007 deadline will automatically establish the PURPA standards as a baseline for the State.

Net metering as a concept is quite simple. If you have a qualified electric generating system installed on your house, commercial building, factory or institutional building, the local electric provider is required to purchase, *at some PSC established rate*, the surplus electricity that you generate. It's application has a myriad of complications in the details. Here are just a few of the challenges:

First, the system must be an approved design, using approved devices and should only be installed by a licensed electrician who is certified by the appropriate associations to work in this field. (Wind and solar installers have established their own self policing standards)

Secondly, the system must have protective devices so that in the event that a power line is shut down for maintenance or repairs, your system doesn't shock, hurt or even kill a lineman who assumes the power line is dead from the utility.

Third, can a net meter connected generating customer send a power surge to his neighbor, possibly causing damage to his devices?

While these technical issues are solvable quite readily, it seems it is the policy, rates and utility issues that are the primary drivers that our PSC is hung up on.

What should the utility allow as a percentage of their capacity to be net meter connected sources? What if we all decided to put a solar pv array on our houses, and all were able to generate excess capacity at times, and demanded that the utility buy it back? How reliable are these sources?

And at what rates? New Jersey has established a policy of rebating at retail. AEP does not want to offer more than their avoided costs... a small fraction of your rate.

"Time-of-Use-Pricing" has entered the debate, along with "Critical-Peak-Pricing", "Real-Time-Pricing" as well as large load customers "Credits".

For us as individuals considering a solar array on our houses with the hope of "helping" the local utility to buy our green surplus energy, the TUP, CPP and RTP pricing options are of real interest. The amendments to PURPA require that the States must investigate demand response and time based metering as apart of establishing a net metering policy for small consumers.

The bottom line is that there is confusing progress. The WV PSC now has deadlines for establishing a net metering policy, so we must continue to be part of the dialogue to insure that what ever plan is adopted , the consumer has a fair shake, and it is not just established for minimized impact and/or maximum benefits to the utilities at our expense.

Like a meter, time will tell. One bite at a time.

## Tax Rip-Offs

The Senate this week passed a bill (S.B. 371) to roll back severance taxes on timber from 3.22 percent to 1.22 percent. It would leave intact a 2005 timber tax earmarked for workers' compensation funding, resulting in an overall increase of 24 percent from 2004. Still, the bill would shave severance revenue by about \$3 million a year. The Senate passed the bill 31-1 with Sen. Jeff Kessler (D-Marshall) opposing.

The Senate also passed 32-0 S.B. 370, which exempts livestock and farm equipment from personal property taxes. Reportedly, the change would reduce revenue that mostly benefits county and local governments by \$850,000.

The House is considering similar legislation that also would eliminate a tax on natural gas and impose a tax on coal-bed methane gas.

At the Governor's request, legislators increased timber severance and natural gas taxes during the 2005 legislative session to help pay off workers' compensation debts. They tried to reverse the changes later, but Manchin vetoed that bill.

Industry lobbyists have fast-tracked these tax reduction bills, hoping to avoid vetoes by the Governor this year. However, Manchin says he is committed to a session later this year dealing with the overall tax system.

Just more corporate welfare in action, folks.

## Yum, Yum, Yum . . .

Thought you might be interested in two tidbits relating to nutrition found in the news this week.

An article about the explosion Thursday at the International Fiber Corporation plant in Nitro reported that, "The plant's main function is to grind paper into a fine pulp that is then used as a dietary fiber ingredient."

Hmmm . . .

Then there was the *L.A. Times* article reporting that Kenyan government officials issued a testy "thanks, but no thanks" to a New Zealand entrepreneur's offer to help stem hunger with a powdered formula similar to one she developed for dogs.

According to the article, the dog food company owner who made the offer insisted that the freeze-dried meat powder she wants to send is not dog food, but a new, separately manufactured nutritional supplement that can be mixed with water and tastes "yummy."

Wanna bet?

## Farm Bureau Members?

By Linda Frame, [linda@wvcag.org](mailto:linda@wvcag.org)

WV-CAG, WVEC and the WV Farm Bureau have been lobbying together for a WV Bottle Bill for the past several legislative sessions. **If you are a member of the WV Farm Bureau please call us.** Your membership in both organizations can help us increase support for SB 136 and HB 2330. Please contact me at [linda@wvcag.org](mailto:linda@wvcag.org) or 346-5891 or toll-free at 1-866-WVB-FAIR and I'll let you know some easy ways you can help.

WV-CAG, WVEC, the WV Farm Bureau and the WV Council of Churches met this week with other Bottle Bill "stakeholders." While the goal was to bring the group closer to some kind of consensus, the beverage industry appeared unwilling to move toward even the slightest compromise.

The American Beverage Association flew in an "expert" from MA who proposed a Comprehensive Litter Plan aimed at all roadside trash, not just beverage containers, to clean up our trash. He left out some key points, however, like the plan doesn't actually clean up litter in states that have it, like in NJ where their litter is above the national average. He told us that beverage containers make up just 9% of litter. This number just doesn't jive with litter surveys showing that Bottle Bills reduce overall litter by 40-60%. Take your own informal survey. Stroll down any WV road and see for yourself what causes the most litter. Ask a farmer, ask an Adopt-A-Highway volunteer or, since some in the room thought the problem is already taken care of by their free labor, ask our felons.

Probably the most interesting argument presented was that road side litter could best be reduced by public education campaigns. Apparently, if people just understood that open container laws do not apply to empty beer bottles in their cars, they would not throw those bottles out their cars to avoid the police. I'd like to see what advertising firm signs on to handle that campaign. **"Next time you drink and drive, keep those empties right inside – It's Legal!"**

**We anticipate that the Senate Judiciary Subcommittee, chaired by Senator Randy White, will take up SB 136 this week.**

We'll keep you posted!

**"Think Renewable Energy"**

# Talking Sludge

By Ted Boettner, WVEC Lobbyist

On Wednesday, more than 15 coalfield residents met with 13 legislators from both parties to discuss the safety of coal slurry impoundments and water contamination from slurry injection into abandoned mines. Residents gave poignant and revealing testimony about the unceasing adversity they face every day living near sludge ponds. From contaminated drinking water and chronic health problems, to living below the probability of ultimate doom, residents indicated how much they just wanted someone to care and take an interest in what's going in their daily lives.

At the close of the meeting, Del. Sally Susman (D-Raleigh) suggested we pursue a resolution calling for a study of impoundments instead of a bill authorizing a ban. Many of the residents and members of the Sludge Safety Project stressed that there have been enough studies and that the time for a bill is already past due. I agree.

In the wake of the recent tragedies at Sago, Aracoma and now Boone County, with mine safety a major policy priority in West Virginia and around the country, we feel coal slurry impoundments need to be part of the overall mine safety agenda.

Our goal is to get as many legislators as possible to sign on as co-sponsors to legislation that would ban the creation of new coal waste impoundments, as well as the practice of injecting coal sludge into underground mines.

In the meantime, we will continue to schedule meetings every week with legislators and the residents who are directly affected by coal slurry impoundments.

Mine safety must not end at the mine portal.

## "WV Water & Renewable Energy"

February 22, 2006 ~ 5:30 pm till 8:00 pm  
Zando's Restaurant ~ 241 Capitol Street, Chas.

**Keynote Speaker: Allan Tweddle**

### Menu:

Baby Garden Salad  
Fresh Baked Rolls & Butter  
Ginger Glazed Carrots  
Garlic Mashed Potatoes  
Spinach & Feta Stuffed Chicken Breast  
Roasted Vegetable Lasagna  
Fresh Baked Brownies & Cookies  
Sodas & Spring Water

*Reservations are required, as space is limited.*

Cost: \$25. per person  
Call WVEC office: (304) 346-5905

Sponsored by: WV Rivers Coalition & WVEC



Sludge Safety Project people descend upon the capitol

## WVEC Lobby Team Bio Pick of the Week: Allan Tweddle

By Allan Tweddle

Born...yes...in Toronto, 1932. High school drop out who eventually wised up, went back at age 23, finished high school and went on to Ann Arbor to get an Engineering degree Michigan '61. Worked in my native Canada, then California in industry and the design professions solving air pollution problems for 30 years.

Was on a national business promotional lecture circuit for two years teaching all about indoor air pollution...at a time when most folks said "indoor what???"

Tired of constant travel, in the mid 70's I entered the design professions eventually winding up as President of Theodore Barry and Associates Architectural Division in Los Angeles. Lots of Aerospace and Film/TV studios as clients, as well as the forward thinking, technology envelope pushing air quality agencies of California. (That's why I get so frustrated dealing with DEP).

Went back and got an MBA at age 50 from Pepperdine University's Presidential Key Executive Program. The best benefit from that for me was that I met my wife Barbara, who was getting the same degree.

Became a US citizen in 1986, was a Teddy Roosevelt Republican, (still am at heart) but am now registered Independent. I am somewhat choosy who I want to be identified with...and GWB isn't one of them.

I have three great and very accomplished adult children who have the best grandchildren alive..five of them

Life is great here in West Virginia... nice being in a smaller pond. Good people

I like being "FRIENDS OF PEOPLE" Together we can bring West Virginia into this Century and its exciting potential.



## Clean Elections ... Legislation on Track

By Julie Archer, WVEC/WV-CAG

We had hoped to be able to report that the Senate Judiciary Committee had passed the “WV Public Campaign Financing Act” (SB 124) but due to unexpected delays the bill has not been taken up. Despite the delay **your calls have been getting through to Senators, the bill is on track and we are optimistic that it will clear its first legislative hurdle of the 2006 session this coming week.** Thanks to everyone who took time to call Judiciary Committee members (especially our swing voters) about this much needed reform! With that said – additional calls of support can only help our cause, so if you haven’t contacted your Senator there’s still time. A list of Judiciary Committee members is available at <http://www.legis.state.wv.us/committees/senate/judiciary/sencomJUD.cfm>.

Not only is the bill on track, but State Treasurer John Perdue – a Clean Elections supporter has agreed to provide \$1 million from the sale of unclaimed property to help fund the program. This will provide the “seed money” to get the West Virginia’s program started and will likely be enough to provide public financing to those candidates who opt for and qualify for funds during the program’s first year. This is great news and we are extremely appreciative of the Treasurer’s support of our efforts to change the way campaigns are financed in the Mountain State.

Finally, the House companion to SB 124 was introduced this week. Sponsors of HB 4251 are Delegates Jon Amores (D-Kanawha), John Doyle (D-Jefferson), Mike Caputo (D-Marion), Bonnie Brown (D-Kanawha), Patrick Lane (R-Kanawha), Rick Staton (D-Wyoming), John Ellem (R-Wood), Don Perdue (D-Wayne), Richard Browning (D-Wyoming) and Cliff Moore (D-McDowell). Provided the Senate version maintains momentum it’s unlikely HB 4251 will be taken up, but it never hurts to thank our sponsors for their support.

**We hope to have more good news next week. Thanks again for your calls!** Check [www.wvoter-owned.org](http://www.wvoter-owned.org) for updates and resources. And, as always, feel free to call or e-mail me at [julie@wvcag.org](mailto:julie@wvcag.org) if you have questions or need more information.

## What Kind of Security is This??

It has come to our attention that the state’s Division of Homeland Security and Emergency Management (sic) has decided to eliminate from its budget the state’s portion of funding for West Virginia’s river gauge system.

The amount of money involved is \$125k, but removing this state money would also mean the loss of a similar amount of matching funds from USGS. It would result in the operational loss of about 28% of USGS’s real time river and rain gauges in the state.

This loss of won’t just eliminate USGS’s maintenance of these gauges, but also their data collection and record keeping that’s essential for modeling and forecasting.

How secure does this make you feel?

E ~ Day! at the Capitol  
February 14, 2006  
10 ~ 3 pm



### Shameless Plea

“Money, money, money, money, money, money, money . . . money makes the world go ‘round,” or so the song from *Cabaret* would have us believe.

But it’s true, you know. As your voice for the environment in the halls of the Capitol building, it takes money to keep the WVEC lobby team running.

So please help us out – help the environment out – today by renewing your membership and sending the E-Council whatever you can afford to keep the lobby team running. If you have already renewed, we thank you, and ask that you consider an additional donation if you can afford it.

Until we can take the money out of politics, you’re going to need the WVEC lobby team to fight the good fight. Thanks for your support.

Donald S. Garvin, Jr.  
WVEC Legislative Coordinator

# The Failure of Chemical Regulation: The Case of Mercury

By Peter Montague

From: *Rachel's Democracy & Health News* #840, Feb. 2, 2006

Mercury pollution offers us a well-lit window into the failed system of chemical regulation in the U.S.

Mercury was discovered harming humans in Japan starting in 1953 — 53 years ago. **Hundreds of people were affected by severe brain damage, blindness, and horrendous birth defects — all from eating fish heavily contaminated with mercury** dumped into Minimata Bay by the Chisso Corporation. Birds and cats were afflicted with the same symptoms.

Ten years later, researchers in Sweden were systematically scouring the countryside, finding dead birds with elevated mercury in their blood. This time the culprit was seeds treated with mercury-containing fungicides. In 1966 Swedish researchers held a conference in Stockholm to present their findings and issue warnings — mercury levels in the environment were rising ominously, partly because of the use of mercury in pesticides, and partly for reasons unknown. The U.S. government sent representatives to the Stockholm conference, but they returned home without making a peep.

In 1969, *Environment* magazine told the story of mercury in Japan and Sweden and openly speculated that mercury would be found throughout the environment of the U.S. if anyone took the time to look for it. No one did.

Then in February, 1970, the Huckleby family in Alamogordo, New Mexico was poisoned by a batch of mercury-treated seed that they had fed to their hogs, which provided the family's ham and bacon. Three Huckleby children were severely injured — one deafened, another was blinded, a third arriving at the hospital raving mad. The story made national news and within 24 hours the U.S. Department of Agriculture (USDA) wrapped up "10 years" of research on the dangers of mercury and declared mercury-containing pesticides an "imminent hazard." Within days USDA canceled the registration of mercury-containing pesticides and demanded that the manufacturer recall the product from store shelves.

A month later, Norvald Fimreite — a graduate student at Western Ontario University — revealed that fish in many lakes along the U.S.-Canada border were contaminated with mercury at high levels (7 parts per million, for example). Ohio closed its portion of Lake Erie to commercial fishing. **On June 18, 1970 Secretary of the Interior Walter Hickel declared mercury "an intolerable threat to the health and safety of the American**

**people"** — a statement so true and bold that it **remains the quintessential summary of the mercury problem 35 years later.**

Later that same year, 1970, a public interest research organization in Albuquerque, New Mexico — Southwest Research and Information Center (SRIC) — arranged to take samples from the stack gases emitted from the Four Corners coal-burning power plant and analyze them for mercury. SRIC's staff scientist, Charles Hyder, was convinced that burning coal was the major source of mercury in the natural environment. The Four Corners tests proved him right. The Associated Press reported the results — that burning coal releases enormous quantities of mercury — but no one with any authority raised an eyebrow, much less a finger. (Disclosure: I worked with Hyder on that project.)

Meanwhile, Norvald Fimreite's lonely work around the Great Lakes had aroused the world. Researchers began looking for mercury in fish everywhere. Soon everyone knew that big fish — fresh and saltwater, both — contain dangerous amounts of mercury: big walleye, big swordfish, big tuna, big grouper, big pike. Obviously, mercury was concentrating as it moved up the food chain. People began to realize that at the top of the food web you find big bears, large birds, and humans.

Soon the U.S. Food and Drug Administration established an "interim" standard, setting 0.5 parts per million (ppm) as the maximum allowable concentration for mercury in fish. It seemed as if science and good sense had prevailed to protect the public.

But then the U.S. regulatory system began to work just as it was designed to: in 1977, the nation's swordfish distributors took the FDA to court, demanding that FDA stop seizing swordfish that exceeded the 0.5 ppm limit. The trial lasted four days and when it was over a federal judge had effectively doubled the nation's allowable limit on mercury in fish, to 1.0 ppm.

Instead of building a scientific and precautionary case to protect the public, to prevent harm, the FDA caved in to the food distribution industry. In 1979, the FDA announced in the Federal Register that it was formally adopting 1.0 ppm as the new standard for mercury in fish, based in new data provided by the Commerce Department, showing that Americans didn't eat as much fish as the FDA had thought.

Relaxing the acceptable level of mercury in fish, the Commerce Department said (and the FDA repeated), would "provide a significant economic benefit to those industries most seriously affected" by the more stringent limit and "enhance the future development of a number of presently underutilized fisheries." Moreover, Commerce and FDA said, a less restrictive rule "would significantly increase consumer confidence in seafood."

As the public grew more health-conscious, the con-

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sumption of seafood steadily rose, and the FDA turned a blind eye to questions of safety. The FDA essentially went to sleep for 12 years until a report from the National Academy of Sciences embarrassed it again in 1991. At that point FDA began testing fish to see how much mercury they contained, and the agency repeatedly promised to revisit its 1.0 ppm limit on mercury in fish, but it never actually got around to it. That 1979 limit still holds today.

In 1997, U.S. EPA set a mercury limit in fish that was four times as strict as the FDA's, but EPA only had the power to inform consumers of the danger of eating mercury-contaminated fish. In 2000 the National Academy of Sciences endorsed EPA's findings. Once again, FDA was being shamed into reviewing its 1979 mercury limit. But again the food distributors had their tentacles deep inside FDA.

As Peter Waldman of the Wall Street Journal (WSJ) reported August 1, 2005, "When the FDA issued a revised mercury advisory in 2001, it urged women of childbearing age to shun four high-mercury species: swordfish, shark, king mackerel and tilefish from the Gulf of Mexico. It didn't mention tuna. Yet cumulatively, according to data provided by the EPA, the four species it urged avoiding account for less than 10% of Americans' mercury ingestion from fish, while canned tuna accounts for about 34% of it." And FDA concluded that it should stick with its 1979 recommendation, outlawing the sale of fish containing over 1.0 ppm of mercury.

Why did the FDA not mention canned tuna? The WSJ points out, "Food companies have long lobbied to mitigate any FDA action on canned tuna, one of the top-grossing supermarket items in revenue per unit of shelf space."

(\* **Editor's note: This is a very long article, so we are cutting out here a wonderful section that further describes in detail the rest of FDA's shameful shenanigans and much of the newest documented research into the serious health impacts of toxic mercury. We are posting this entire article on our website: [www.wvecouncil.org](http://www.wvecouncil.org).)**

...."Later, the FDA's Dr. Acheson (director of food safety and security) reiterated that point. He told the meeting the fish categories 'were arbitrarily chosen to put light tuna in the low category.' ...

"Says Maine's Dr. Rice: 'Here's the FDA making what are supposed to be scientific decisions on the basis of market share. What else is there to say?,' WSJ reported.

....In late 2005, the Chicago Tribune investigated FDA's history of work on mercury and concluded, "The Tribune's investigation reveals a decades-long pattern of the U.S. government knowingly allowing millions of Americans to eat seafood with unsafe levels of mercury."

.....The Tribune reported, "Many experts now believe that even tuna-fish sandwiches — a favorite of the Ameri-

can diet — can be risky for children.

"'The fact that we poisoned our air and our oceans to such an extent that we can't eat a damn tuna sandwich is just diabolical,' said Ayelet Waldman, a noted mystery author whose daughter was diagnosed with mercury poisoning at age 5 after frequently eating tuna." She was eating one tuna sandwich per week made from albacore tuna.

In the U.S. mercury contamination is widespread, just as Environment magazine predicted in 1969. In 2002, at least 43 states issued mercury warnings for fish covering 12 million acres of lakes and 400,000 miles of rivers.

Everyone now agrees with Charles Hyder that **the biggest single human-created source of mercury in the natural environment is coal-burning power plants, which emit 48 tons of mercury each year in the U.S.**

**Early in 2005, two researchers calculated that the average reduced IQs of U.S. babies caused by mercury in their mothers could be translated into dollars of lost earnings over their lifetimes: \$8.7 billion per year is the price tag on diminished IQs, they concluded.**

When EPA considered issuing new rules to force coal-burning power plants to reduce their mercury emissions, EPA hid the results of a study they had commissioned by Harvard University researchers. The Harvard study had concluded that reducing mercury emissions carried a huge public health benefit and therefore EPA would be justified in clamping down hard on the coal-burners. By hiding this study from the public, EPA tried to claim that the health benefits would be minimal and therefore the power industry shouldn't be required to spend large sums. When asked about all this by the Washington Post in early 2005, EPA officials simply lied, saying the Harvard study had arrived late and was flawed. Neither claim was true and EPA officials knew it at the time they said it.

EPA had said the cost to the coal-burners would be \$750 million per year, but the health benefit would be only \$5 million per year, so cleaning up mercury emissions from coal plants wouldn't be worth it. The Harvard crew calculated that the health benefit would be \$5 billion each year — making it well worth everyone's while to clamp down on mercury emissions from coal.

**Without apology, EPA and FDA continue to waffle, fudge and fake it — doing their best to protect the coal industry at the expense of the nation's children and the nation's future.** That's chemical regulation, U.S. style.

(Editor's note: *Rachel's* is the oldest and most respected environmental newsletter in the U.S. This article points out why DEP's proposed rule regulating mercury air pollution — which does NOT protect human health — is so important.)



# Calendar of Events



**February 10:** Kentucky author Erik Reece will be signing and reading from his new book about mountaintop removal coal mining in Kentucky, entitled "Lost Mountain: A Year in the Vanishing Wilderness - Radical Strip Mining and the Devastation of Appalachia" (Riverhead Books, 2006) at 7:00 - Communalty, 112 High Street in Lexington, KY This is a fundraiser for Mountain Justice Summer, a multi-state grassroots movement to stop mountaintop removal mining in Appalachia. A spaghetti dinner will be served and donations for Mountain Justice Summer 2006 are welcomed at the door (no one turned away).

**For more information contact:** Dave Cooper, (859) 299-5669

**February 11 and 12:** The West Virginia Energy Gathering for Students and Youth. This statewide summit meets Feb. 11 at St. John's Episcopal Church in Charleston, W.Va. Feb. 12 field trip to Kayford Mountain. Housing assistance is needed; please contact [abe@ohvec.org](mailto:abe@ohvec.org) if you can provide shelter to the youth.

Many non-student youth from around the state, and students from Shepherd, Marshall and WV Universities as well as Glenville State have committed to attend; students from Wheeling Jesuit, Bethany College and Fairmont and other higher education institutions have also expressed interest. Get your college or friends involved!

**For more information:** E-mail [abe@ohvec.org](mailto:abe@ohvec.org)

**February 14:** E-Day! at the Capitol! - 10 AM ~ 3 PM. Lower Rotunda. Featuring environmental organizations and sustainable business displays. Join WVEC to show how much you love WV's environment!

**For more information:** Call WVEC office, (304) 346-5905.

**February 14:** WVEC's E-Day Valentine Soiree & Award Presentations. Perfater Law building, 1311 Virginia Street East, Chas. 6 PM ~ 10 PM. Featuring music by Steve Himes and others; Potato Bar Buffet with yummy desserts. Donation of \$10 includes buffet. \$5. without buffet.

**For more information:** WVEC office - (304) 346-5905.

**February 22:** "WV's Water & Renewable Energy" - Zando's Restaurant, 241 Capitol Street, Charleston. 5:30 pm - 8:00 pm. Keynote address by Allan Tweddle; dinner catered by Zando's Restaurant. This event is sponsored by WV Rivers Coalition and WV Environmental Council.

**\*Reservations are required, as seating is limited. Cost is \$25. per person. (See page 5 for menu).**

**To make reservations, call WVEC office: (304) 346-5905.**

**Feb. 27:** Buffalo Creek Day at the State Capitol. Join members of the Sludge Safety Project (SSP) in Room 252 of the House Side of the State Capitol (Lewis McManus room). Legislators will be invited to attend and see clips of "Buffalo Creek – An Act of Man" and "Buffalo Creek Revisited". SSP members whose health and safety suffers because of coal sludge impoundments and coal slurry injection will be present to speak with the public and legislators.

**March 11:** Regular Legislative Session ends.

**March 11, 2006: 7 p.m.** West Virginia premiere of "Black Diamonds - Mountaintop removal and the fight for coalfield justice." The film screens at the LaBelle Theatre/Museum, 311 D Street, South Charleston. Documentary charts the escalating drama in Appalachia over the alarming increase in large mountaintop removal coal mining. Filmmakers Catherine and Ann Pancake were born and raised in West Virginia. Catherine has become an award-winning filmmaker and Ann is an award-winning author. Working for more than 4 years on this project, they have traveled throughout Appalachia to chronicle the unparalleled destruction. . See [www.blackdiamondsmovie.com/](http://www.blackdiamondsmovie.com/). and [www.geocities.com/scmuseum/](http://www.geocities.com/scmuseum/). Admission is a \$2.00 donation to the museum.

**April 29:** Greenbrier River Trail Association's 20th annual "Race of the River & Trail" - Marlinton, WV.

**For more information:** [www.greenbrierrivertrail.com](http://www.greenbrierrivertrail.com).

**May 19-21:** Annual Greenbrier Trail Bike Trek. Sponsored by the American Lung Association of WV. This three-day, 100 mile ride begins at the Inn of Snowshoe - and takes participants along the Trail through Pocahontas & Greenbrier counties - ending at Greenbrier County Youth Camp near Lewisburg.

**For more information, and to register:** Rachelle Beckner, (304) 342-6600 or visit [www.alawv.org](http://www.alawv.org)

**May 25-29:** The 16th annual Heartwood Forest Council and the 6th annual Summit for the Mountains, Cedar Lakes Conference Center, Ripley, WV (38 miles north of Charleston). Includes programs on Forests, Mountains, and Coal: the connections between them; their impact on air, water, and climate; their role in our history, economy, and culture; with a special focus on ending the devastation of Mountaintop Removal coal mining. Invited and confirmed speakers include: Granny D\*, Cynthia McKinney, David Orr\*, Jack Spadaro\*, Woody Harrelson, Judy Bonds, Maria Gunnoe\*, Larry Gibson\*, Willie Nelson, Bobbie Ann Mason, Erik Reece, Ed Wiley, and more.

\*confirmed

For more information & to register: Janet at (304) 522-0246.

[ohvec@ezwv.com](mailto:ohvec@ezwv.com) or Andy Mahler [atandy@blueriver.net](mailto:atandy@blueriver.net) (812) 723-2430.

**June 24:** 4th Annual Lavender & More Fair, "Livin' Easy". LaPaix Herb Farm, Alum Bridge WV. Featuring sustainable initiatives; workshops; presentations; wood walks; artisan, environmental & herb booths. Live music, gourmet food prepared by chef Dale Hawkins and so much more. Stay tuned for more detailed information. Please visit the website listed below.

**For more information & to register:** [lapaixherbfarm.com](http://lapaixherbfarm.com)

## Support the West Virginia Environmental Council

1324 Virginia Street East, Charleston WV 25301

Phone: (304) 346-5905

[www.wvecouncil.org](http://www.wvecouncil.org)

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\_\_\_\_\_ \$ 100 Sustaining

\_\_\_\_\_ \$ 250 Enviro Steward

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\_\_\_\_\_ \$ 1,000 Old Growth

Phone: \_\_\_\_\_ e-mail \_\_\_\_\_

\_\_\_\_\_ \$ Other

