Green Legislative Update

Published Weekly During West Virginia's Legislative Session

Volume: 18  Number: 7  Date: February 23, 2007

Under the Dome

by Donald S. Garvin, Jr., WVEC Legislative Coordinator

Week 7 – Whine, Whine, Whine

This award for whining this year (and possibly for the decade) has to go to the WV Farm Bureau and the WV Forestry Association.

Actually, they began their whining six years ago, immediately after the Legislature passed the antidegradation plan for protecting the water quality in our state’s most pristine streams – a compromise plan that they themselves had signed off on.

Nonetheless, these two groups almost immediately launched a truly massive public misinformation campaign aimed at inflaming the indignant passions of their members and other rural landowners.

They whined to farmers that if a stream running through their property were designated as a Tier 2.5 stream – “a water of special concern” – that they couldn’t add cattle to their herds, cut timber on their land, or subdivide the farm to pass down to their children.

They whined that their property would be so devalued that they probably couldn’t even sell the farm, simply because they would no longer be allowed to pollute the stream.

It was all propaganda, and it was all untrue.

The truth is that all those agricultural and timbering and extraction activities – all with the potential to cause non-point source pollution – are EXEMPT from antidegradation review.

No matter. Like any lie, if you repeat it often enough it becomes truth. And that’s what the Farm Bureau and the Forestry Association and the Chamber of Commerce want you to believe.

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Garbage Wars Revisited

by John B. Christensen, WVEC lobbyist

We heard rumors early in the session that a bill may be introduced drastically changing West Virginia's solid waste management policy.

This week, the rumors came true.

SB 701 appeared under the cover of darkness on the last day the Senate could introduce bills. It abolishes the local/county solid waste management authorities' control, mandating the creation of Regional solid waste authorities, and authorizing WV DEP to give final approval of the local solid waste plans.

We monitored the House and Senate bill lists daily, talked with WV DEP officials, made visits to legislators hoping this bad legislation would not appear. This is legislation of the bad, nasty kind.

We held our collective breaths that the rumors just weren’t going to amount to anything. Then it happened.

Our worst fears were realized….. a really bad garbage bill was introduced.

SB 701 was finally out of the cave and into the bill journal room in all its terrible splendor. There it was. All 116 pages of a bill that effectively does a major overhaul on our hard fought solid waste laws from the early nineties.

This amounted to a sneak attack, a Pearl Harbor event in the annals of solid waste battles in West Virginia. Recon was essential to turn this around.

SB 701 as introduced and sponsored by Sen. Brooks McCabe of Kanawha Co. with NO co-sponsors and does the following:

1) Abolishes the WV Solid Waste Management Board and transfers power to the WV DEP.
2) Abolishes county solid waste authorities and mandates the creation of Regional solid waste authorities.

...... continued on page 3
E~Day at the Capitol
Friday, March 2nd
House & Senate Halls / Upper Rotunda (well) area
W V State Capitol, Charleston W V

Citizen Lobbying - 9:00 a.m. Meet at the WVEC Lobby Information table near the Robert C. Byrd statue & Senate side of the well.
Press Conference - Begins at 11:30 a.m. in the Gov. Conference room, located through the Secretary of State’s office.
Displays - From 10:00 am until 3:00 pm:
- WVEC Environmental Council Information
- WVEC Citizen Lobby Information
- Ohio Valley Environmental Coalition
- WV Highlands Conservancy
- Mountaineer Chapter Trout Unlimited
- Coal River Mountain Watch
- WV Rivers Coalition
- Friends Of The Mountains
- WV Citizen Action Group
- Sludge Safety Project
- Medicine Song Crafts
- Clean Elections Coalition
- WV Sierra Club
- Sierra Club Central Appalachian Environmental Justice
- Bio Fuels/Green Fuelcrop Collaborative
- Friends of Blackwater Canyon
- Capon Valley Coalition
- The Wilderness Coalition
- Cleanbrier
- Lapaix Herb Farm
- Student Environmental Action Coalition (SEAC)

E-Day Reception & Benefit
Perfater's lobby - 311 Virginia St. East, Charleston
5:30 p.m. - 11:00 p.m. ~ $10. per person at the door

Dinner buffet: Salad, lasagna, fresh bread, mixed vegetables, dessert, drinks & more.  (Sponsors include:  Charleston Bread Company, Wellington's, Corey Brothers, U.S. Food Service, Kroger)

6:00 - 7:00 pm: Robin Godfrey on piano
7:30 - 8:15 pm: WVEC's 2007 awards' presentation:
- Laura Forman Grassroots Environmental Activist: Ed Wiley
- Linda Schnautz Environmental Courage: Drew Forrester
- Green Entrepreneur: WV Bio Fuels/Green Fuelcrop Collaborative
- Chuck Chambers Public Service: Clint Hogbin
- Mother Jones: Don Garvin

Friends of the Mountains present: "Out of the Blue" award:
To: Ann Porter - Accepting on Ann’s behalf: Bill Price

8:30 - 11:00 pm: The Bark-O-Loungers
(Michael Lipton, Ammed Solomen & Ted Harrison)

WV Environmental Council
2007 Board of Directors:
- Jim Kotcon, President
- Carol Warren, Vice President
- Denise Poole, Past President
- Danny Chiotos, Secretary
- Frank Young, Treasurer

- Myra Bonhage-Hale
- Greg Carroll
- John Christensen
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- Chelena McCoy
- Mary Ellen O’Farrell
- Cindy Rank
- Matthew Ivan Stiefel
- Chuck Wyrostok
- Gary Zuckett

Membership Organizations:
- Ohio Valley Environmental Coalition
- WV Highlands Conservancy
- WV Rivers Coalition
- WV Sierra Club
- WV Citizen Action Group
- Coal River Mountain Watch
- Plateau Action Network

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Legislative Update is published by the West Virginia Environmental Council (WVEC) - a statewide organization dedicated to facilitating communication and cooperation among citizens in promoting environmental protection in West Virginia. LegislativeUpdate, is published weekly during the Legislative Session.

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

- Denise Poole, editor
deniseap@earthlink.net
2206 Washington Street East
Charleston, WV  25311
(304) 414-0143
3) Grants the WV DEP final approval on siting of solid waste facilities (aka siting plan).
4) Grants the WV DEP the ability to create the size & make up of the Regional waste sheds.
5) Dedicates 50% of the tipping fee currently set up for local Solid Waste Authority (SWA) grants to be used instead by WV DEP to be granted to anyone or used for administrative costs.
6) Authorizes the WV DEP the ability to “supersede” all powers granted to solid waste authorities.
7) Authorizes the WV DEP the final approval of the local solid waste plan.
8) Takes the authority away from the Public Service Commission of WV to issue single hauling permits in each county. This may open up the counties to competition for hauling residential and commercial waste which is the only part of this legislation that some solid waste authorities in the state actually wanted.

My father always told me, "Son, if it ain't broke then don’t fix it!" That’s the main point to convey to Sen. McCabe (304 357-7990 Capitol office - or 1-877-565-3447) and WV DEP Cabinet Sec. Stephanie Timmermeyer. (1-800-654-5227)

The environmental community worked very diligently fifteen years ago to craft a bill that would turn back the onslaught of out of state garbage that threatened to bury the mountain state. The challenge was that it be within the confines of Interstate Commerce Clause of the US Constitution which prohibits states from regulating interstate commerce, and that includes garbage.

Former Sen. David Grubb was the principal author of our very progressive law that has stood the test of time and accomplished what it set out to do by limiting the size of landfills and mandating that proposed facilities demonstrate that there is a need for them. We wanted local control and a comprehensive recycling program.

This was accomplished by creating the certificate of need process within the PSC, county solid waste authorities and the state solid waste management board in Charleston.

This new bill offered up on the last day by only one Senator takes away local control and forces us to trust wholly in our WV DEP.

History tells us this is not in our best interest.
**Bottle Bill Dies Again This Session**

by Linda Frame, linda@wvcag.org

The WV Bottle Bill (HB 2773) is dead this session. We learned this week that there were not enough votes in House Judiciary to move the bill. This is disappointing news considering that five of the bill’s sponsors are on that committee, and that we were told by enough legislators that they would vote to move the bill to the Finance Committee. Unfortunately, committee leadership arrived at different numbers.

As the fate of bills is decided and the session wears on, we will be regrouping on important progressive issues. The task of educating legislators, with new ones coming in every election, is daunting, and it’s much easier for law makers to be scared into apathy by the vast coalition of businesses opposing our bills.

For instance, many legislators are still being told that retailers don’t want the burden of taking back the empty containers. This part of the law was removed years ago, yet is still being used to fire up retailers, convenience store owners and other businesses statewide. Legislators are also believing the falsehood that beverage containers make up just 9% of our litter problem. Even the lead lobbyist for the opposition can’t cite where that number comes from and doesn’t even believe it, yet it is still presented to legislators in letters, phone calls and personal meetings.

Many other states have had this same long, rocky path to travel when getting their bottle bills passed. Pro-Bottle-Bill Maine businessman Mike McCray confirmed this during a visit here this legislative session and has taken the time to write a recap of his thoughts on our bill (see www.wvcag.org to view).

Our two states are similar in many ways but the glaring difference is that Maine’s legislators had the political will to overcome the strong opposition and bring legislation to their state to fight the litter problem, increase recycling and virtually do away with highway clean-ups.

And, guess what? Maine lawmakers decided to make the producers of the beverage containers foot the costs of their bottle bill (unlike in our bill where we have tried futilely to dilute their opposition).

Perhaps we are building such a political will here in West Virginia, legislator by legislator, and some day West Virginia can pass progressive public policy in Appalachia without the required crisis, pass a bill that would create jobs, clean up our litter and save taxpayers money. What a concept.

**Committee Approves Slurry Injection Study**

After weeks of working on final language and lobbying senators for support, the Senate Energy, Industry and Mining Committee this week finally approved SCR 15, the resolution previously approved by the Joint Judiciary Interim Committee providing for a study of the impacts of the practice of injecting coal sludge into underground mines.

The resolution requires DEP to study the contents of coal slurry and the impacts on groundwater from disposing of it by injection into abandoned coal mine seams.

The resolution also calls for the Bureau of Public Health to consult with DEP on the design of the study, and to review the results for the potential of impacting the health of coalfield residents.

The resolution now goes to the Senate floor for passage.

**Clean Elections Stalled - Likely to Die this Weekend**

by Norm Steenstra, Clean Elections Coalition

By the time you read this, the fate of our Clean Elections bill will probably be decided. Senate Finance Chairman Walt Helmick continues to hold up the bill in legislative purgatory. Earlier this week he promised at different times that he would take up the bill to the Council of Churches, the AFL-CIO, Senator Brooks McCabe, and our clean elections lobbyists.

The bill is not on the Friday afternoon agenda. If the bill does not pass Helmick’s Committee by Saturday another years efforts to get Helmick to move the bill will be in vain.

Helmick will likely defend his inaction by saying “the committee just ran out of time” - yet late Friday afternoon he had time to move a bill that would permit millions of tons of out of state garbage find its final resting place in McDowell County.

Such is the system we must deal with. A system in which a very few powerful people oblivious and almost immune from public opinion can block progressive attempts to clean up the process. About all we can do yet this session is continue loudly to register a profound disgust of senate leadership’s dishonest treatment of Clean Elections. Again, if you haven’t done it yet, “spell check “Helmick” we wonder what the program writers knew.
Senate Committee Approves Greenhouse Gas Inventory Bill
by John B. Christensen, WVEC lobbyist

Just this afternoon, SB 337, the greenhouse gas inventory bill passed out of Senate Judiciary Committee. It now goes to the Senate floor for first reading.

It seems like we always bring you more bad news than good coming from the capitol. But this is a piece of progressive legislation that is making its way through the process and has a good chance of actually passing - finally after two previous attempts.

Coal lobbyists don’t like this bill. It attempts to establish: a voluntary program to inventory all emissions, reductions and carbon sequestrations of greenhouse gases; and to establish the baseline emission levels necessary when mandated by federal law.

The program will enable the WV Department of Environmental Protection to analyze the extent to which gross carbon emissions are offset by the rate of carbon sequestration by the state’s forests.

It has not yet been taken up in House Judiciary where it is single referenced and sponsored by Delegates Webster, Fleischauer, Hatfield and Guthrie.

We love it that WV DEP has sponsored a bill that actually acknowledges the words "greenhouse gas" in our code.

The coal industry would rather keep the blinders on however, so it should be no surprise that the committee this afternoon passed an amendment exempting coal from the requirements of this bill.

Bill Would Open the Door To Out of State Garbage
by Norm Steenstra, WV Citizen Action Group

A bill almost certain to pass the Senate next week would radically change solid waste management policy in our state. 16 years ago environmentalists led by then Senator David Grubb (WV-CAG Founder) carefully crafted a law that limited the size of landfills and made the cost of dumping quite expensive by imposing a fee of $8.25/ton.

The law has worked for the past decade and a half. The flood of Out-of-State Garbage has slowed to a trickle. The higher fees made for a modest increase in recycling and encouraged landfill avoidance. It also provided for millions of dollars in local recycling grants to towns and counties.

S.B.629 would change all that. The bill in its current form allows the McDowell landfill to increase its legal tonnage to 100,000 tons/month. Currently the state’s largest landfill accepts 30,000 tons of trash a month.

Almost all of the new garbage would arrive in coal cars from the Norfolk, Virginia area. The bill also exempts half of this new tonnage from the current $8.25 tipping fee and instead allows for a $4.00/ton payment to various McDowell government agencies. This set-up, in essence, grants a $2.4 million dollar tax break to the landfill’s owner at the expense of the DEP and the Solid Waste Authorities for 54 other counties.

Our real hope is that Speaker Thompson and the House leadership will stop this bill over the next two weeks. I believe if they feel the outrage it will give them the courage to stand up to the powerful Out of State garbage lobby. Call your Delegate early next week, as well as the Speaker’s office, and ask them not to radically change our solid waste laws. Ask them to oppose SB 629.

Another Shameless Plea

To those of you who have renewed your membership or sent in other contributions, our heartfelt thanks.

But WVEC needs much more financial support to get us through this session and the upcoming year.

If you have not renewed or made a contribution, please consider helping us out as best you can.

green Legislative Update
## Bills We Are Tracking

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<tr>
<th>Bill Number</th>
<th>Title</th>
<th>Committee</th>
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<tr>
<td><strong>Senate Bills</strong></td>
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<tr>
<td>SB 118</td>
<td>Creating WV Public Campaign Financing Act (<a href="#">Clean Elections</a>)</td>
<td>Stalled in Finance</td>
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<tr>
<td>SB 177</td>
<td>Creating Division of Energy</td>
<td>Passed Senate – H Gov Org</td>
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<tr>
<td>SB 337</td>
<td>Establishing greenhouse gases inventory program (<a href="#">DEP bill</a>)</td>
<td>Passed EIM to Judiciary</td>
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<tr>
<td>SB 370</td>
<td>Establishing returnable beverage container deposit program (<a href="#">Bottle Bill</a>)</td>
<td>Nat Res</td>
</tr>
<tr>
<td>SB 396</td>
<td>Exempting site-specific data on certain rare plant or animal species from disclosure</td>
<td>Passed Senate – H A&amp;N</td>
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<tr>
<td>SB 401</td>
<td>Requiring Public Service Commission promulgate wind power projects' rules</td>
<td>Judiciary</td>
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<tr>
<td>SB 440</td>
<td>Establishing Voluntary Wetland Protection Programs</td>
<td>Nat Res</td>
</tr>
<tr>
<td>SB 441</td>
<td>Relating to wind power projects tax treatment</td>
<td>Passed Finance – 1st Reading</td>
</tr>
<tr>
<td>SB 450</td>
<td>Use of Special Rec Funds for watershed improvement projects (<a href="#">bad DEP bill</a>)</td>
<td>Tabled in Judiciary</td>
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<tr>
<td>SB 460</td>
<td>Requiring DNR to promulgate rule applicable in Kanawha State Forest</td>
<td>Passed Senate – H Judiciary</td>
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<tr>
<td>SB 469</td>
<td>Relating to air pollution control permits (<a href="#">bad Chamber of Commerce bill</a>)</td>
<td>Judiciary</td>
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<tr>
<td>SB 509</td>
<td>Banning all-terrain vehicles from all paved roads</td>
<td>Passed Trans &amp; Infra – to Judiciary</td>
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<tr>
<td>SB 552</td>
<td>Modifying Water Pollution Control Act (<a href="#">bad DEP bill</a>)</td>
<td>Passed Nat Res – to Judiciary</td>
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<tr>
<td>SB 558</td>
<td>Requiring Public Health Impact Assessment (<a href="#">WVEC bill</a>)</td>
<td>Judiciary</td>
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<tr>
<td>SB 588</td>
<td>Removing tax exemption for coal syn fuel</td>
<td>Passed EIM – to Finance</td>
</tr>
<tr>
<td>SB 629</td>
<td>Creating McDowell County Mega-Landfill (<a href="#">terrible “local” bill</a>)</td>
<td>Passed Judiciary – to Finance</td>
</tr>
<tr>
<td>SB 678</td>
<td>Eliminating tax credit for coalbed methane gas</td>
<td>Passed EIM – to Finance</td>
</tr>
<tr>
<td>SB 679</td>
<td>Water Resource Protection and Management Act provisions</td>
<td>Passed Judiciary – 1st Reading</td>
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<tr>
<td>SB 683</td>
<td>Permitting oil and gas well drilling in state parks (<a href="#">terrible idea</a>)</td>
<td>Nat Res</td>
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<tr>
<td>SB 701</td>
<td>Abolishing State and County Solid Waste Management Boards (<a href="#">terrible DEP bill</a>)</td>
<td>Judiciary</td>
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<tr>
<td>SB 727</td>
<td>Creating brownfield economic development districts (<a href="#">DEP bill ??</a>)</td>
<td>Econ Dev</td>
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**Note:** *(SB 242 through SB 261 are the DEP “rules” bills).*

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<thead>
<tr>
<th><strong>House Bills</strong></th>
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<tbody>
<tr>
<td>HB 2367</td>
<td>Requiring DEP to remediate any waste tire pile with more than twenty-five tires</td>
<td>Passed Judiciary – to Finance</td>
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<tr>
<td>HB 2371</td>
<td>Creating WV Public Campaign Financing Act (<a href="#">Clean Elections</a>) (see SB 118)</td>
<td>Judiciary</td>
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<tr>
<td>HB 2399</td>
<td>DNR license fees that may be used for capital improvements and land purchases</td>
<td>Ag and Nat Res</td>
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<tr>
<td>HB 2407</td>
<td>Natural Gas severance taxes</td>
<td>Ag and Nat Res</td>
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<td>HB 2492</td>
<td>Defining “fill material” in the Water Pollution Control Act (<a href="#">bad Coal bill</a>)</td>
<td>Judiciary</td>
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<td>HB 2769</td>
<td>Establishing a program to inventory greenhouse gases (<a href="#">DEP bill</a>) (see SB 337)</td>
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<tr>
<td>HB 2773</td>
<td>Establishing a returnable beverage container deposit program (<a href="#">Bottle Bill</a>)</td>
<td>Judiciary</td>
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<tr>
<td>HB 2818</td>
<td>Wind Farm taxes (see SB 441)</td>
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<tr>
<td>HB 2821</td>
<td>Relating to air pollution control (<a href="#">bad Chamber of Commerce bill</a>)</td>
<td>Ag and Nat Res</td>
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<tr>
<td>HB 2848</td>
<td>Requiring DNR to promulgate rule applicable in Kanawha State Forest (see SB 460)</td>
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<td>HB 2898</td>
<td>Banning all-terrain vehicles from all paved roads (see SB 509)</td>
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<td>HB 2946</td>
<td>Eliminating tax credit for coalbed methane gas (see SB 678)</td>
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<td>HB 2953</td>
<td>Removing tax exemption for coal syn fuel (see SB 588)</td>
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<tr>
<td>HB 3104</td>
<td>Imposing severance tax on surface mined coal (<a href="#">great idea</a>)</td>
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<tr>
<td>HB 3120</td>
<td>Creating McDowell County Mega-Landfill (<a href="#">terrible “local” bill</a>) (see SB 629)</td>
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<tr>
<td>HB 3147</td>
<td>Use of Special Rec Funds for watershed improvement projects (<a href="#">bad DEP bill</a>) (see SB 450)</td>
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<tr>
<td>HB 3150</td>
<td>Requiring Public Health Impact Assessment (<a href="#">WVEC bill</a>)</td>
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<tr>
<td>HB 3154</td>
<td>Increasing timber severance taxes (<a href="#">great idea</a>)</td>
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<tr>
<td>HB 3214</td>
<td>Permitting oil and gas well drilling in state parks (<a href="#">terrible idea</a>)</td>
<td>Ag and Nat Res</td>
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</tbody>
</table>

**Note:** *(HB 2601 is the DEP “rules” bill bundle).*

We have removed from this list many of the bills that are “dead” because they will not meet the deadline for committee consideration. However, we are still watching those bills because they can still be originated in committee.)

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*Green Legislative Update*
Calendar of Events

February 26: Buffalo Creek Disaster Remembrance - State Capitol - 3:00 p.m., at the Upper Rotunda on the House Side. Join the Sludge Safety Project on this 25th anniversary of the 1972 Buffalo Creek disaster which left 4,000 homeless and caused 125 deaths. Invited speakers include: former Delegate Arley Johnson (a Buffalo Creek disaster survivor) and Rev. Dennis Sparks. The Bob Gates' film of the disaster is scheduled to be shown. Snacks provided. For more information: (304) 234-2618 or e-mail: info@sludgesafety.org

March 2: WVEC’s annual E-Day at the Capitol! Senate & House halls & upper rotunda area. 10:00 a.m. - 3:00 p.m. Displays by environmental organizations & sustainable businesses. This is YOUR day at the capitol! Visit your Senators and Delegates - we encourage citizen lobbying, and have scheduled a lobby group at 9:00 a.m. (meet at the WVEC lobby table). A press conference is scheduled at 11:30 a.m. For more information and to register your organization contact: Denise Poole at deniseap@earthlink.net or call the WVEC office: (304) 414-0143.

March 21: WV Environmental Education Association Conference: "Environmental Education Pathways: Gather, Share, & Collaborate." Jackson's Mill, Weston WV. From 8:00 a.m. - 4:00 p.m. Registration fee: $25 (Before March 2nd - $35 after March 2nd). Includes: all conference materials, breakfast, lunch, and breaks. Highlights: presentation on the National Project for Excellence in Environmental Education, Concurrent Sessions. For more information contact: Valerie Reed at vreed@oionline.com or (304) 242-6855.

March 23-24: “Yes Fest!”, St. Mary’s grade school - West Pike Street, Clarksburg, WV. Renewable energy issues as a focus. Presentations, booths and more. For more information contact: Sally Egan, (304) 842-9511

March 24: WV Environmental Council Board of Directors meeting. WVEC office, Charleston. 11:00 a.m. - 4:00 p.m.

June 22-24: WVEC Board of Directors June Retreat. Location to be announced.

June 30: 4th Annual “Lavender & More” Fair. La Paix Herb Farm, Alum Bridge WV (Lewis County). Highlights include: workshops, presentations, demonstrations, variety of booths, wood walks, garden tours, plants, gourmet lunch. Admission: $5. per person or $10. per family. For more information contact: Myra Bonhage-Hale, steward: lapaix@westvirginia.net or visit the website: www.lapaixherbfarmproducts.com

Mid to Late September: WV Environmental Council’s Fall Conference. Stay tuned for exact date, location and other details for our 19th annual Fall Conference, “Making A Difference - Creating A Sustainable World”.

April 2008: Sustainable Fair. Davis & Elkins College - Elkins, WV. Highlights include: workshops, presentations, booths, local organically grown food, music and much more. Stay tuned as plans develop for a wonderful event featuring renewable energy and many aspects of sustainable living. Sponsored by Sustainable Living for West Virginia org. For more information and to participate contact: Denise Poole, deniseap@earthlink.net or Myra Bonhage-Hale lapaix@westvirginia.net Co-Directors.

Support the West Virginia Environmental Council
2206 Washington Street East, Charleston WV 25311
Phone: (304) 414-0143 www.wvecouncil.org

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<tr>
<th>Renewed Membership</th>
<th>New Membership</th>
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<tr>
<td>Change of Address</td>
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Name: ____________________________________________

Address: ____________________________________________

City, State, Zip: ____________________________________________

Phone: __________________ e-mail___________________

Membership Levels

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<td>Other</td>
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E~Day at the Capitol

Friday, March 2nd
10 a.m. - 3:00 p.m. (at the capitol)
5:30 p.m. - 11:00 p.m. (evening reception)

See inside for details ...