



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 8 – Down to the Wire on Water

With less than a week left in the 78th session of the West Virginia Legislature, the outcome of most of the critical environmental issues facing lawmakers remains up in the air.

I predicted early on that the fight over two Department of Environmental Protection rules providing water quality protections for the state's rivers and streams would be the biggest environmental battle of the session.

I take no pleasure in saying, "I told you so." It was a no brainer – the polluters have opposed both of these measures from the beginning, and they have strong political allies.

If you are a regular reader of our updates, you already know that the DEP proposed two sets of rules this year that will significantly impact clean water – for the *better* – in West Virginia if enacted by the Legislature.

The first of these is the water quality standards rule package, which contains the Category B2 trout stream list. Industry folks – particularly the WV Coal Association – hate this water quality category, because it preserves fishing as an "existing use" and gives trout streams higher protections than drinking water standards.

The second is the antidegradation rule, which protects the state's highest quality rivers and streams and contains the Tier 2.5 stream list. Industry folks – particularly the WV Farm Bureau and the WV Forestry Association – hate the Tier 2.5 designation because it limits their ability to degrade the state's most pristine waters.

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"Garbage Wars II"

McDowell County Landfill Seeks To Double Tonnage Accepted

By Ken Ward Jr., *Charleston Gazette* Staff writer
(Excerpts of Ward's February 25th article printed here
by permission.)

More than 15 years after lawmakers fought the "Garbage Wars," another battle is brewing at the state Capitol over West Virginia's solid-waste laws.

A proposal to haul millions of tons of out-of-state garbage into McDowell County is again at the center of the fight.

The West Virginia Senate is moving legislation to double the allowed tonnage at the McDowell dump, near Capels. The bill passed out of the Senate Finance Committee Friday afternoon.

At the same time, Sen. Brooks McCabe, D-Kanawha, has introduced a bill to consolidate power over landfill regulations and solid-waste planning in the hands of Environmental Protection Secretary Stephanie Timmermeyer.

Environmental groups oppose both bills, but are especially concerned about their ability to beat back the McDowell landfill legislation.

"Back in 1991, the Legislature, with a lot of input from citizens, crafted the solid-waste law that has withstood several court challenges," said Norm Steenstra, executive director of the West Virginia-Citizen Action Group. "Out-of-state garbage and the stigma of being the dumping ground of the East really resonated with West Virginians."

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WVEC Announcements & Notices

This will be the last **Legislative Update** issue until after the session, which ends Saturday March 10th at midnight. For those of you on line, please continue to check your in-boxes for any Action Alerts and notices we send out. The **Legislative Wrap Up** newsletter will be published by April 1st.

Thanks so much to everyone who helped the lobby team get our **Legislative Update** out each week: Sheila McEntee, Norb Federspiel, Rowan Zoeller, Mary Ellen O'Farrell, Greg Carroll, Norm Steenstra III, Frank Young.

A special thanks to our WVEC website / e-list guru Don Alexander!

From the entire grateful WVEC Lobby team,
Don Garvin, John Christensen, Dennis Cunningham, Denise Poole, Chuck Wyrostok and Dot Henry.

A PUBLIC HEARING was held today (Monday) at 4:00 p.m. on SB 629 in the House Chambers. The bill calls for increasing the McDowell County landfill to 100,000 tons per month. The hearing was well attended, with several McDowell County residents speaking against the bill.

Could Governor Manchin help efforts to defeat SB 629?

According to an article in Saturday's *Charleston Gazette* by staff writer Tom Searls, Governor Joe Manchin opposes the tipping fee reduction proposed for the McDowell County landfill contained in **SB 629**.

"Non-West Virginia garbage is not going to be dumped inside the Mountain State for less than state-produced garbage," Gov. Joe Manchin said in a warning to those supporting a super-sized landfill in McDowell County.

Unfortunately the same article quotes Lara Ramsburg, spokeswoman for Manchin, saying the governor does not strongly oppose the idea of allowing 100,000 tons of garbage dumped monthly into the Capels facility. "He doesn't believe out-of-state people should pay less than in-state," said Ramsburg.

Call Governor Joe Manchin at 1 888 438-2731 - or 1 (304) 558-2000 and tell him you oppose SB 629. This bill is not "good business" for McDowell County. Our current solid waste policy is working well, and has for the past 15 years.

Legislative Session 2007 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

(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

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 posts links to make it easier for you to stay informed.

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

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Under the Dome ... continued from page 1

Oil and gas industry lobbyists and the good folks at the WV Chamber of Commerce have also climbed on to the bandwagon and apparently detest both of these rules equally.

This "Dirty Water Coalition" has not had its usual easy-go-of-it. This year, it turns out, those of us who prefer clean water have strong political allies as well: the Speaker of the House, Richard Thompson, and the Chair of the House Judiciary Committee, Carrie Webster, are working hard to prevent these rules from being gutted.

In the last week or so, we have been included in "stakeholder" discussions with Speaker Thompson and Chairwoman Webster, along with a wall of industry lobbyists and DEP officials.

To its real credit, DEP Cabinet Secretary Stephanie Timmermeyer and the entire water resources staff have remained steadfast in their opposition to industry proposals to weaken the protections provided by these rules.

And to my amazement, the only compromise that industry lobbyists have proposed in these meetings is to ignore the mandates of the federal Clean Water Act and throw the lists out. There is not ONE stream in the state for which they would provide permanent protection!

I cannot predict the outcome of this battle. But I am betting that this one will go down to the wire, undecided until the final minute of the final hour next Saturday night.

Until then, it's a jungle out there.

Spring is just around the corner and our fine-feathered friends are returning and looking for sustenance, so please keep your bird feeders full, friends.

ATV Safety Bill Dead on Arrival

SB 509, the all-terrain vehicle safety bill, would have banned the machines from paved roads, limited riding on highway berms from 10 miles to 2 miles, but more importantly prohibited passengers on all but the few large ATVs made for more than one person to ride.

But the bill was killed last week in the Senate Rules Committee reportedly simply because Senate President Earl Ray Tomblin (D-Logan) and Senator Shirley Love (D-Fayette) enjoy taking wives and friends for rides on their four-wheelers.

Meanwhile, the press reported that a Mingo County resident, who had spoken against ATV safety legislation in a recent TV interview because he had no car and needed to ride his ATV on paved roads, was killed last week when his ATV rolled over on Jennies Creek Road near Crum.

Good grief.

Green Legislative Update

"Garbage Wars II" ... continued from pg.1

In the late 1980s and early 1990s, West Virginia was inundated with proposals to build huge landfills that would accept millions of tons of out-of-state trash. Local citizens resisted and demanded that state officials take action.

Lawmakers passed a series of laws that gave local communities more of a say over landfill siting decisions, limited landfill size, required better solid-waste planning and mandated recycling programs. Lawmakers also distributed authority over solid-waste regulation among a variety of state and local agencies, to build in layers of checks and balances over the issue.

The final bill, passed at the urging of then-Gov. Gaston Caperton, capped landfill size at 30,000 tons per month in 1991.

That law, though, included a loophole that allowed Philadelphia developer Jack T. Fugett of the land company Berwind to build a dump, with the approval of county voters, to take in up to 50,000 tons per month.

This sessions bill (SB 629) proposes ... that after it accepted 600,000 tons in any year, the landfill would be exempt from paying \$8.75 per ton in fees that other state dumps pay. The money is distributed among state and county agencies to be used in solid-waste programs.

....the McDowell dump would pay \$4 per ton for every ton above 600,000 tons that it accepts in any year ... and would distribute \$2.85 from every \$4 to the county commission for use on infrastructure projects....

...."It's probably going to be a big economic boon," Chafin said last week. "The economic benefit is going to be tremendous for all of the surrounding counties."

Chafin said he understands that some people might not like the idea that most of the McDowell dump's garbage would come from outside West Virginia.

"Nobody likes to have nuclear waste or any kind of trash, but you can operate these things so that they are environmentally OK," Chafin said. "Is this the only industry we can get? A lot of people think so."

Fugett, who pushed the original McDowell dump for Berwind, is back in West Virginia to promote the new proposal.

In mid-January, Fugett registered with the state Ethics Commission as a lobbyist for EnviroSolutions. He refused to be interviewed for this story Randy Cox, a lawyer with the firm Spilman, Thomas & Battle, also is registered to lobby for the landfill company. Cox did not return a phone call.

Group Pushing For Streams Protections

(Published with permission by the Beckley Register-Herald. Written by staff reporter Mannix Porterfield who attended WVEC's E-Day at the Capitol Friday March 2nd)

In the small, close-knit world of angling where Orvis is a household word, there is a growing fear that West Virginia could be spoiling one its bigger assets — some 1,500 miles of trout streams.

Concern is growing among Trout Unlimited over an anti-degradation proposal that has telescoped what once was a list of some 400 protected streams down to mere 39.

Which explains why TU, a group with 1,500 members distributed among half a dozen chapters, took its case directly to the Legislature last week.

Don Gasper is among the worried.

Gasper has been angling for trout fully three decades, and manned a booth just outside the House of Delegates chamber, making his case to anyone who stopped by.

“We’re here to protect water quality,” said Gasper, a retired 38-year veteran of the Division of Natural Resources.

All during the interview, Gasper, a member of the Clarksburg chapter of TU, kept his eyes riveted on the passing traffic, hoping to recognize a legislator.

“If I could get them to stop for a moment, I’d be telling them the same thing I’m telling you,” he said.

“We have a real interest in water quality because it’s our fish habitat. The brook trout, particularly. We think

there are 1,500 miles of brook trout streams in this state. They are the coolest, cleanest waters we have.”

At one time, West Virginia set aside some 400 streams with protected status, barring pollutants from being dumped into them.

“That was really good science, too,” Gasper said.

“They brought in a guy in charge of the state’s fisheries program. He said these are our brook trout streams. I don’t know what more anyone could ask.”

Before the Legislature was SB255, an anti-degradation bill that, while lodged in a committee beyond the Senate deadline for passing its bills, has been rolled into a rules bill.

Gasper and fellow anglers fear the Legislature will turn its back on the vast network of trout streams, ignoring its critical water quality, and, in turn, expose a major tourist attraction to potential doom.

As things stand now, he said, nine-tenths of the once-protected trout streams can be subjected to some pollution.

“Still, they can only be degraded by 10 percent, if there’s a really good reason,” the Buckhannon

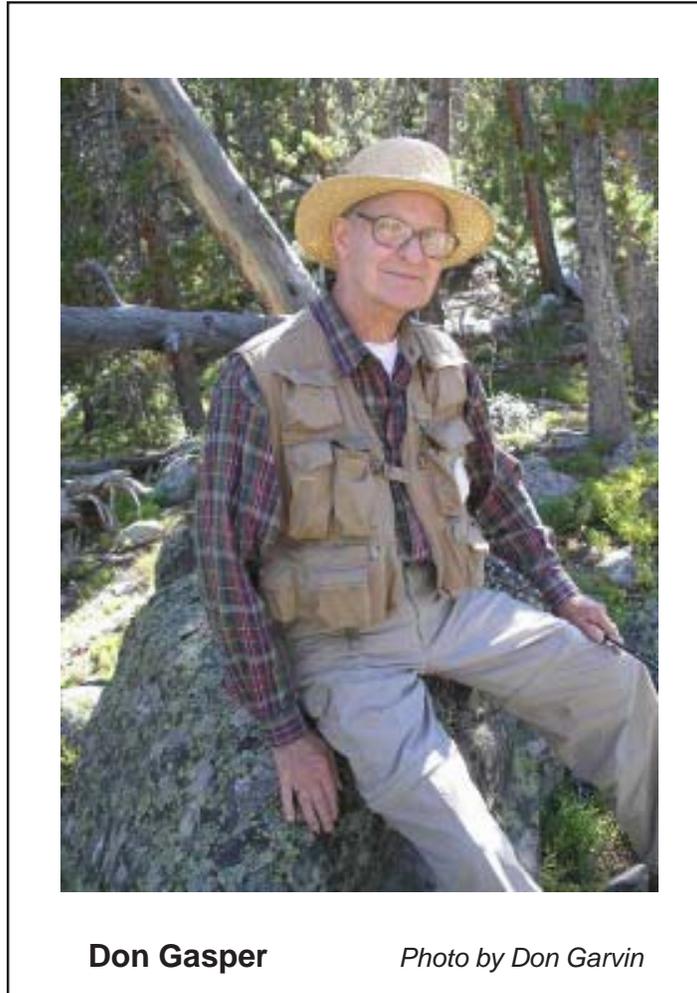
resident said. “I hope it won’t turn out that way.”

A pristine brook trout reflects the highest water quality available, he said

“If you move into an area on a farm that happens to have a brook trout stream on it, you know it’s pretty pristine,” he said.

“That’s a neat watershed. And your own well water is going to be just as good.”

Editors note: Don Gasper received WVEC's Linda Schnautz Environmental Courage Award in 2003 for his dedication to the environment.



Don Gasper

Photo by Don Garvin

Managing Our Streams

New Rule Will Give DEP A Better Chance To Continue Maintaining, Preserving State's Streams

Re-Printed by permission from the Beckley Register-Herald Editorial, February 24, 2007

Senate Bill 255 is continuing to work its way through the legislative process, and while plenty of the focus during this legislative session has been surrounding issues like referendums on table games and ATVs, this piece of legislation will also have a sizable impact on the state's future when it comes to water quality.

The anti-degradation measure would allow the Department of Environmental Protection to maintain, and elevate in some cases, the water quality standards for more than 1,000 miles of streams that either support, or have in the past, West Virginia's trout population.

It's a critical rule, and without it, the Mountain State would steadily begin to lose its international standing as a destination point for anglers. And we aren't even talking about the thousands of state residents who enjoy our fisheries, which is just as, if not more, important in our minds.

Should lawmakers opt not to grant the DEP this authority, you will see a decline in water quality because numerous industries throughout the state won't have to worry about guidelines being as strict when it comes to pollutant discharges into our waterways.

Abuse of West Virginia's streams has been going on since it was still considered to be part of Virginia. Only during the past few decades have difference-making efforts been started to help reverse the trend.

We cannot afford to step backwards again.

Our waterways are vital and will become an even more precious commodity as time goes forward. Protecting as many of our rivers and streams as we can is the only smart and right thing to do.

"How you imagine the world determines how you live in it."

David Suzuki

House Approves Slurry Injection Study

Last week the House of Delegates unanimously approved HCR 11, a resolution requiring the Department of Environmental Protection to study the contents of coal slurry and the impacts on groundwater from disposing of it by injection into abandoned coal mine seams.

The Senate Energy, Industry and Mining Committee previously approved a similar resolution, SCR 15, but added provisions which call 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 plan now is for the Senate to amend its version of the resolution into the House version. The House has already indicated it would accept the Senate amendments.

We are watching this closely, as this proposed legislation is the result of WVEC's hard work on this issue during the 2006 Interim sessions.

State Forest Protection Bill Moves to House Floor!

By Gary Zuckett, *WV Citizen Action Group*

The bill to make Oil and Gas drillers tread more lightly in our state forests took a big step Friday, also the WV Environmental Council's E-Day, when the House Judiciary Committee amended and passed the bill. It will now go to the full House for a vote and then back to the Senate for its approval of the House amendment.

The Progress of this legislation is due in great part to a concentrated effort by a concerned group of Kanawha State Forest users who banded together last fall to push for such protections after the abuse of their favorite forest. The Kanawha State Forest Coalition was also legislatively active several years ago when loggers were running rampant there.

As a result of their effort was a special ban on commercial logging in the forest.

The extra reporting and public notice requirements for oil and gas activities in this year's bill, which was originally drafted for just the Kanawha State Forest, would now apply to any state forest where the minerals are privately owned. Thank you, Kanawha State Forest Coalition, on behalf of all of our state forests.

The two bills mentioned last week to allow drilling in state parks expired on Wednesday as they were not taken up before the deadline. However, as stated last week, these things have a way of coming back to life in the last days of the session - stay tuned!

Bills We Are Tracking

| <u>Bill Number</u> | <u>Title</u> | <u>Committee</u> |
|---|--|--|
| Senate Bills | | |
| SB 118 | Creating WV Public Campaign Financing Act (Clean Elections) | Died in Finance |
| SB 177 | Creating Division of Energy | Passed Senate – H Finance |
| SB 337 | Establishing greenhouse gases inventory program (DEP bill) | Passed Senate – H Judiciary |
| SB 370 | Establishing returnable beverage container deposit program (Bottle Bill) | Dead |
| SB 396 | Exempting site-specific data on certain rare plant or animal species from FOIA | Passed Senate – H Judiciary |
| SB 401 | Requiring Public Service Commission promulgate wind power projects' rules | Dead |
| SB 440 | Establishing Voluntary Wetland Protection Programs | Dead |
| SB 441 | Relating to wind power projects tax treatment | Passed Senate – H Judiciary |
| SB 450 | Use of Special Rec Funds for watershed improvement projects (bad DEP bill) | Dead |
| SB 460 | Requiring DNR to promulgate rule applicable in Kanawha State Forest | Passed Senate – H 1 st Reading |
| SB 469 | Relating to air pollution control permits (bad Chamber of Commerce bill) | Dead |
| SB 509 | Banning all-terrain vehicles from all paved roads | Passed Jud., 2 nd Reading — Rules |
| SB 552 | Modifying Water Pollution Control Act (bad DEP bill) | Passed Senate – H Judiciary |
| SB 558 | Requiring Public Health Impact Assessment (WVEC bill) | Dead |
| SB 588 | Removing tax exemption for coal syn fuel | Passed Senate – H Finance |
| SB 629 | Creating McDowell County Mega-Landfill (terrible “local” bill) | Passed Senate – H Judiciary |
| SB 678 | Eliminating tax credit for coalbed methane gas | Passed Senate – H Finance |
| SB 679 | Water Resource Protection and Management Act provisions | Passed Senate – H Judiciary |
| SB 683 | Permitting oil and gas well drilling in state parks (terrible idea) | Dead |
| SB 701 | Abolishing State and County Solid Waste Management Boards (terrible DEP bill) | Dead |
| SB 727 | Creating brownfield economic development districts (DEP bill ??) | Dead |
| SCR 12 | Bottle Bill Interim Study Resolution | Judiciary |
| SCR 15 | Slurry Injection Study Resolution (WVEC bill) (see HCR 11) | Passed EIM & Judiciary to Rules |
| SCR 18 | Stormwater Runoff Interim Study Resolution | Judiciary |
| SCR 23 | High Allegheny National Park Study Resolution | Natural Resources |
| SCR 29 | Anti-Wilderness Resolution (annual awful attack against Wilderness) | Died in Natural Resources |
| SCR 46 | Funding for Land Conservation Study Resolution (great idea) (see HCR 48) | Natural Resources |
| SCR 54 | Sequestration of Greenhouse Gases Interim Study Resolution | On Unfinished Business |
| (SB 242 through SB 261 are the DEP “rules” bills). | | |

House Bills

| | | |
|--|--|------------------------------------|
| HB 2367 | Requiring DEP to remediate any waste tire pile with more than twenty-five tires | Dead |
| HB 2371 | Creating WV Public Campaign Financing Act (Clean Elections) (see SB 118) | Dead |
| HB 2399 | DNR license fees that may be used for capital improvements and land purchases | Dead |
| HB 2407 | Natural Gas severance taxes | Dead |
| HB 2492 | Defining “fill material” in the Water Pollution Control Act (bad Coal bill) | Dead |
| HB 2769 | Establishing a program to inventory greenhouse gases (DEP bill) (see SB 337) | SB 337 in H Judiciary |
| HB 2773 | Establishing a returnable beverage container deposit program (Bottle Bill) | Dead |
| HB 2818 | Wind Farm taxes (see SB 441) | SB 441 in H Judiciary |
| HB 2821 | Relating to air pollution control (bad Chamber of Commerce bill) | Dead |
| HB 2848 | Requiring DNR to promulgate rule applicable in Kanawha State Forest (see SB 460) | SB 460 — H 1 st Reading |
| HB 2898 | Banning all-terrain vehicles from all paved roads (see SB 509) | Same as SB 509 |
| HB 2946 | Eliminating tax credit for coalbed methane gas (see SB 678) | SB 678 – H Finance |
| HB 2953 | Removing tax exemption for coal syn fuel (see SB 588) | SB 588 – H Finance |
| HB 3104 | Imposing severance tax on surface mined coal (great idea) | Dead |
| HB 3120 | Creating McDowell County Mega-Landfill (terrible “local” bill) (see SB 629) | SB 629 – H Judiciary |
| HB 3147 | Use of Special Rec Funds for watershed improvement projects (bad DEP bill) (see SB 450) | Dead |
| HB 3150 | Requiring Public Health Impact Assessment (WVEC bill) | Dead |
| HB 3154 | Increasing timber severance taxes (great idea) | Dead |
| HB 3214 | Permitting oil and gas well drilling in state parks (terrible idea) | Dead |
| HCR 11 | Slurry Injection Study Resolution (WVEC bill) | Passed H – Sen. Rules |
| HCR 48 | Funding for Land Conservation Interim Study Resolution (great idea) | Passed House to Senate |
| <i>(HB 2601 is the DEP “rules” bill bundle).</i> | | |

(Note: 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).



Calendar of Events

**March 7: Film showing of "An Inconvenient Truth"**

Taylor Books, 226 Capitol St, Charleston. 5:30 p.m.
Sponsored by: WV Citizen Action Group and Patriots for Peace. Admission is free of charge.

For more information: (304) 343-9456. Or visit:

www.alternet.org/envirohealth/46318/

March 10: Last day of the 2007 regular Legislative Session.

March 10-18: Mountain Justice Spring Break. Join with college students and others to see mountaintop removal coal mining up close. A week of education and direct action based in Charleston, WV, to learn, to witness, and speak out against mountaintop removal coal mining. The week will include educational activities, workshops, speakers, a musical shindig, church service, poetry, letter writing, vigils, protest, a massive sit-in, & more! There's a sliding scale for those who cannot afford the suggested registration of \$200. You can register on-line and learn more by going to : <http://www.climateaction.net/> Click on Mountain Justice Spring Break.

March 21: WV Environmental Education Association Conference: "Environmental Education Pathways: Gather, Share, & Collaborate." Jackson's Mill, Weston WV. From 8:00 am - 4:00 pm.

Registration fee: \$25 (Before March 2nd) \$35 after March 2nd). Includes: all conference materials, breakfast, lunch, and breaks. Highlights include: 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. Marys grade school - W. 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's Board of Directors meeting. Will take place at the WVEC office, 2206 Washington Street East, Charleston. From 11:00 a.m. - 4:00 p.m.

April 27: WV Citizen Action's Annual Fundraising Dinner. Coonskin Park Clubhouse, Charleston, WV. 5:30PM. Welcome springtime join WV-CAG for a buffet dinner, refreshments, silent auction, great conversation ~ and all for a great cause!

For more information: WV-CAG office (304) 346-5891

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

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- _____ \$ 10 Student / Senior
- _____ \$ 25 Regular
- _____ \$ 50 Seedling
- _____ \$ 100 Sustaining
- _____ \$ 250 Enviro Steward
- _____ \$ 500 Canopy
- _____ \$ 1,000 Old Growth
- _____ \$ Other

Help! Let's save West Virginia's water!



Artwork by Toby Moore