



West Virginia Environmental Council's

Green Legislative Update

Published Weekly During West Virginia's Legislative Session

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Under the Dome

*By Donald S. Garvin, Jr.
WVEC Legislative Coordinator*

Week 2 – Holy Cow!

This is personal.

For eight long years I have had to endure a relentless misinformation campaign by West Virginia Farm Bureau and West Virginia Forestry Association lobbyists against rules that would protect this state's cleanest streams from becoming dirty (the Tier system contained in the antidegradation rule).

All those years these lobbyists have railed and railed – erroneously – that the proposed rules would limit the number of cows they could have on their land, limit their ability to subdivide their acreage, or even prevent them from selling the land, on and on, ad nauseum.

As part of this propaganda campaign these lobbyists ginned up thousands of form letters from “farmers” and “landowners” regurgitating over and over this same misguided dis-information.

Then last night there appeared a “letter to the editor” in the *Charleston Daily Mail* that presented a totally different point of view. I almost had to pick myself up off the floor when I read it. So here it is in its entirety. It was titled, “Tier 2.5 Designation Protects Landowners.”

“To the Editor: I wonder when we started claiming ownership to the wind? And the water and the land? We do own certain deeds, but please remember: We are only temporary owners.

West Virginia trout waters are the finest, cleanest and coldest waters we have. Certain situations must exist for trout to live. If streams are degraded by any force,

..... continued on page 3

The Fleischauer Five

By Vickie Wolfe, WVEC Lobbyist

We try not to have “favorites” among those legislators who are our friends, but at the moment we must admit to being a bit partial to Delegate Barbara Evans Fleischauer (D-Monongalia). Why? Because she's introducing (count them!) FIVE pro-environment bills, all with some relationship to WVEC's Citizens' Energy Plan!

Here's a brief summary:

The “Green Buildings Act” (HB 4066) would mandate that “all major facility projects of public agencies,” including counties and municipalities, must be designed, constructed and certified to at least the LEED silver standard. This means the buildings must earn at least 33 out of 69 possible points based on six criteria: sustainable sites, water efficiency, energy and atmosphere, materials and resources, indoor environmental quality, and innovation and design process.

The Act also applies to public school facilities and any other major facility projects that receive state funding.

Delegate Fleischauer's second bill (HB 4083) would establish a renewable portfolio standard, which happens to be one of the suggestions in our Citizens' Energy Plan for increasing renewable electricity production in West Virginia. Fleischauer's bill would require that by 2020, 15 percent of West Virginia's electricity must come from renewable sources.

The third bill would require the DEP to implement Phase II of the California Low Emission Vehicle program in West Virginia, beginning with the 2011 model year. Other states have introduced similar legislation. And why *shouldn't* West Virginia and other states make their air cleaner by taking advantage of the fact that auto

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E~Day at the Capitol

Friday, February 22nd

House & Senate Halls / Upper Rotunda (well) area
WV State Capitol, Charleston WV

Citizen Lobbying - 9:00 a.m. Meet at the WVEC Lobby Information table near the Robert C. Byrd statue & Senate side of the well (center area between the two house halls).

Press Conference - Alcove area near the well. Approx. time: 10:15 a.m.

Displays to date - From 10:00 am until 2:00 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

WV Citizen Action Group

Sludge Safety Project

Clean Elections Coalition

WV Sierra Club

Sierra Club, Central Appalachian Environmental Justice

Friends of Blackwater Canyon

The Wilderness Coalition

Student Environmental Action Coalition (SEAC)



E-Day Benefit Reception

Women's Club - Corner of Virginia St. East &
Elizabeth St, Charleston

6:00 p.m. - 10:00 p.m. ~ \$15. per person at the door

Dinner buffet: Soup bar, including vegetarian black bean chilli, vegetarian potato, vegetarian broccoli & cheese, standard chilli; fresh bread, mixed salads, desserts, drinks & more.

Live Music from 6:30 - 7:30 and 8:30 - 10:00 p.m.

7:30 - 8:15 pm: WVEC's 2008 awards' presentation:

Laura Forman Grassroots Environmental Activist

Linda Schnautz Environmental Courage

Green Entrepreneur

Chuck Chambers Public Service

Mother Jones

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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 ... cont. from pg. 1

natural or man-made, we have lost a resource state that cannot be replaced without much effort and money.

To say our rights are being taken without just compensation is questionable. What is being taken – the right to degrade a stream to the point it will no longer sustain a native species of fish?

That is hardly something being taken.

Instead, the push for the Tier 2.5 designation is a huge help to private landowners. It protects your land by protecting what is above your land and waters also.

Your private ground could become a runoff dump from some disturbance - mining, logging or any earth-moving effort. Regardless of the cause, the outcome is not good.

Tier 2.5 designation is not a monster, but truly a landowners' friend. What exactly does someone want to do with their land that they would fight a regulation that would help them keep a good environment on their own land as well as others?

To fight this regulation would raise the question: Why is this regulation being opposed so in such a strong fashion? One guess would be the ability to degrade a stream for personal profit.

Industry is a necessary operation in our state, but one that can be done in synchronization with the environment instead of against the environment. We need industry in West Virginia.

Tier 2.5 designation is a good thing and does not fight industry in the least. The more streams placed on this list, the sharper West Virginia becomes. Hunters and fisherman alike should support this effort.

It is your rights that the Tier 2.5 designation is fighting to protect. Please support Tier 2.5 and all the streams Tier 2.5 can embrace."

This letter was written by one Gerard S. "Jerry" Andrews, who identified himself as owner and operator of Andrews on Pinch Mountain Timber & Logs in Moundsville.

Mr. Andrews further identified himself as a supporter of Senate Bill 124, introduced by Senator Jon Hunter (D-Monongalia). SB 124 would provide a 500-foot buffer zone from timbering operations on each side of every native brook trout stream.

Well, Jerry, your letter made my day. You truly are a breath of fresh air.

If you've been shivering this week, remember how our fine-feathered friends must be feeling. Keep those bird feeders full, folks.

Green Legislative Update

The Fleischauer Five ... cont. from pg. 1

manufacturers will be required by California to produce these low-emissions cars anyway?

A fourth bill would establish a commission to study the effects of climate change in West Virginia.

Delegate Fleischauer's fifth bill, called the West Virginia Clean Power Act, would decrease power plants' emissions of four pollutants: nitrogen oxides, sulfur oxides, mercury and (get ready) *carbon dioxide*, whose emissions would have to decrease to 1999 levels by 1/1/2014. In addition, DEP would be required to propose rules to increase efficiency of electricity and natural gas use, as well as electricity production.

We'll be following these bills and will keep you updated as they move through the process. In the meantime, be sure to express your appreciation to Delegate Fleischauer if you see her!

(**Note:** We just discovered a *sixth* energy bill sponsored by Del. Fleischauer, HB 4028, that would authorize counties and municipalities to enter into performance-based contracts with qualified providers of energy-conservation measures for the purpose of significantly reducing energy operating costs of county or municipal buildings. Current law only allows the state and its agencies to do this. The bill was amended and passed out of House Political Subdivisions Committee on Thursday, and is now pending in House Judiciary Committee).

WVEC Citizens' Energy Plan Presented at PEA Meeting

Six presentations were given at Thursday's Public Energy Authority (PEA) board meeting, most dealing with renewable energy. A request by PEA member Allan Tweddle resulted in the WVEC being placed on the Board's agenda to present our Citizens' Energy Plan. Our presentation generated more discussion than any other, and we received considerable positive feedback on it (even Bill Raney said it was well thought out!). We're now waiting to see whether elements of the Plan are incorporated into the DOE's "Energy Opportunities Document."

The other presentations included: *Gamesa*, on "Planned Wind Developments in WV;" WVU Tech, on "Concentrated Solar Power;" WVU Tech on "Net Metering Impact Study;" WVU's "Biomass Development Activities;" and Marshall University's "Energy Database Development."

Energy Proposal Falls Short: State Ignoring Sensible Solutions

By Bob Hamburg

With the recent signing of the Kyoto Protocols by Australia's new president, the United States of America remains the only major nation on earth unwilling to recognize that unrestrained human exploitation of fossil fuels is perhaps the major contribution to extreme weather events reportedly occurring at greater frequency and severity.

West Virginia Gov. Joe Manchin and his appointed Division of Energy and Public Energy Authority have presented the citizens of this state with an energy plan titled "West Virginia Energy Opportunities: A Blueprint for the Future." The Division of Energy held three Public Hearings on the Efficiency and Conservation, Renewables, and Fossil Fuels aspects of the first public plan.

There was a great deal of citizens' concern regarding:

- The importance of conservation and efficiency as the first priority and least expensive means of dealing with problems of climate chaos and peak oil.
- The potential for renewable energy sources of solar, wind and biofuels to provide more than adequate energy for a sustainable future.
- The importance of consideration of the true costs of coal exploitation, which must include social, health, environmental and atmospheric aspects.

Unfortunately, the "revised" plan ignores all of these concerns and thus remains basically a "Grayprint from the Past." It will assure mention of West Virginia in the history books as one of the last entities to recognize any responsibility for its carbon emissions. It will also assure that the huge employment and income potential from conservation, efficiency and renewables will not be realized by the citizens of this state any time soon.

The "plan" totally avoids any mention of the influence of fossil fuel exploitation upon our climate. It has been suggested that the scientific consensus around atmospheric carbon emissions is rivaled only by the consensus on gravity. It is increasingly recognized worldwide — and increasingly experienced locally — that humans are having significant, potentially dangerous effects on their atmospheric and hydrologic environment. We

must all make serious adjustments. Rather than going after 15 percent more coal, West Virginia needs to sign on to the Oil Depletion Protocol, which calls for a 2 percent a year reduction in carbon emissions through 2050.

The presenters of the current plan suggest it speaks to energy resources and "is not an environmental report." This is ludicrous! Our energy resources are totally embedded within our environment — as are we. Any discussion that does not specifically address social, health and environmental impacts of energy extraction, processing, production, distribution and use cannot be considered a viable energy plan.

The presenters suggest that the plan offers "Resources for Economic Growth and Energy Security." Here's just one security issue facing the current plan's reliance on fossil fuels. What happens when the rest of the world recognizes the CO2 emissions problem strongly enough to institute carbon taxes — of \$50 or \$100 a ton.

In seeking sustainable energy security during the necessary and ongoing fossil fuel-to-renewable transition, West Virginia, like any other state and nation, must emphasize maximization of conservation, efficiency and renewables rather than fossil fuels. The appropriate initiatives presented at the public hearings must be encouraged and expanded upon.

Coal, and the creeks, land, homes and ecosystems above it, is far too valuable a resource to squander for electrical energy, which can be generated sustainably through other means. In hopes of avoiding greatest global upset, fossil fuels must be recognized as a transition fuel for human development. They have allowed humans to experience some of the benefits of exploitation of fossil fuel energies. They have given us time to recognize the potential for living on solar income rather than squandering millions of years of interest. And hopefully they will power the beginnings of the transition to ecologically sound, sustainable sources of this power.

Some apparently prefer to view the upcoming transition from fossil fuels as portending Armageddon. I, in spite of oh so many signs and stonewalling recalcitrance on part of fossil fuels' vested interest, continue to hope and believe that we still have time to make the transition gently, without war, if we would only focus on conservation and sustainable possibilities.

Bob is a long-time WVEC member and this "op-ed" article appeared in the January 13 edition of the *Charleston Gazette* and is reprinted here with their permission.

Who Funds WVEC's Lobby Team?

By Frank Young, WVEC Treasurer

In this and other issues of WV Environmental Council's *Legislative Update*, you will read about the great work of WVEC's three person lobby team — Vickie Wolfe, John Christensen and Don Garvin – and WVEC program coordinator and newsletter editor extraordinaire, Denise Poole.

WVEC expends about seventy-five percent of its annual budgets during the first three months of each year. That is because our primary activity is lobbying state agencies and the state legislature. And it meets during January, February and March.

So you may well wonder, "Who pays for these lobbyists, and the costs of getting out the weekly *Legislative Update*, the office rent, the utilities, etc"?

Well, the WV Environmental Council is just what its name implies — a **council** of state environmental organizations. And the majority of WVEC's funding comes from our supporting member organizations. Without those groups, along with generous contributions from numerous individuals, WVEC simply could not function and would wither away. But in the flurry of ever-changing legislative activities and overworked and underpaid part time staff, we often fail to give credit to the generous contributors who make our work possible.

The **West Virginia Highlands Conservancy**, West Virginia's oldest totally independent environmental organization, has been a steady and dependable source of support since the birth of the WV Environmental Council almost two decades ago.

Other long-standing and generous organizational supporters include the **Ohio Valley Environmental Coalition** (OVEC), **WV Chapter Sierra Club**, the **WV Rivers Coalition**, and **Mountaineer Chapter of Trout Unlimited**.

More recent WVEC helpmates include the **Plateau Action Network** and the **Appalachian Center for the Economy and the Environment** (ACEE). **WV Citizen Action Group** (WV CAG) offers both strategic lobbying alliances on certain issues as well as modest financial support. And for WVEC's first decade of existence, WV CAG furnished office space and part time staffing to WVEC. WV CAG more or less "mothered" the WV E-Council until we got on our feet in the late 1990s.

Other groups and generous individual supporters have indicated a preference for a lower public profile while supporting WVEC, as so we honor their desire for discretion.

WV E-Council simply could not exist and function without the support of group members. To all of the above listed groups, and to those groups and generous individuals who prefer to be unlisted, we offer a giant WV E-Council SALUTE and many HUGS for your continuing support. **THANK YOU!**

Clean Elections Update

The Public Campaign Financing Act was introduced in both chambers this week! The House bill is HB 4050 and the Senate bill is SB 240.

Mark your calendars for a **very special event** being planned for February 28! Senator Jon Hunter, a dedicated Clean Elections supporter who unfortunately has decided not to run again this year, has agreed to join us for a reception honoring him and his work! The event will be held at the Charleston Women's Club, on the corner of Virginia and Elizabeth Streets from 6:00 to 8:00 PM. Mark your calendar now and plan to attend!

The event will be a fundraiser in support of our new Challenge Grant – a one-to-one matching grant if we can raise \$15,000 by March 1, 2008. These challenge grants are the main source of funding for our clean elections work, so meeting the goal is extremely important. **Your help would be greatly appreciated!** If you're unable to attend this exciting event, contributions may be sent to OVEC (P.O. Box 6753, Huntington, WV 25773) or WV Citizen Action (1500 Dixie St., Charleston, WV 25311).

"Clean Coal ...
is an oxymoron"



Save the Date!

By Linda Frame, linda@wvcag.org

On February 5 John Ferrari, President of NexCycle in California, will discuss Container Deposit Laws in the House Chambers at 3PM. Legislators, citizens, and others are encouraged to attend.

Last year this same company sent a representative from Maine to talk with our legislators and the media. Having an expert from a state which has had a successful bottle bill program for years was invaluable and we are thankful to have this opportunity again this year. NexCycle is a subsidiary of Strategic Materials, which is the largest glass recycler in the U.S. One of their most reliable streams of post-consumer glass supply is from deposit states.

Please plan to attend. Come early if you can to visit your legislators and let them know you support passing a Container Deposit Law in West Virginia so we can enjoy the same benefits of reduced litter and increased recycling that the 11 Bottle Bill states have had for decades.

John will also be stopping in Tennessee where local activists have started a Bottle Bill campaign and have introduced legislation.

Massey Slammed With E.P.A.'s Largest Civil Penalty Ever

The nation's fourth largest coal producer, Massey Energy Co., was hit Thursday with a \$20 million fine, the largest civil penalty ever levied by the federal government for a violation of this type under the Clean Water Act.

The fine was part of a \$30 million settlement with the government over allegations that the company violated water pollution permit limits at its mines and plants more than 4,500 times between January 2000 and December 2006. The government said Massey polluted and clogged hundreds of streams and rivers in Kentucky and West Virginia by releasing millions of pounds of metals, sediments and acid mine drainage into their waterways.

The settlement, which resolves a lawsuit filed by the federal Department of Justice and the Environmental Protection Agency in May 2007, requires the company to pay \$20 million in civil penalties and invest an additional \$10 million in pollution control improvements at its 44 mines and coal facilities in Virginia, West Virginia and Kentucky.

(from *The N.Y. Times*)

Green Legislative Update

Legislative Briefing on Tier 2.5

On Thursday lawmakers quizzed DEP Secretary Stephanie Timmermeyer for nearly 2 1/2 hours during an unusual legislative briefing held to try to diffuse continued opposition to providing strong protections for less than 4 percent of West Virginia's streams.

House Judiciary Committee chair Del. Carrie Webster (D-Kanawha) scheduled the afternoon briefing to try to clear up what she said were inaccurate characterizations of the legislation being spread by its opponents. The briefing, set up as a joint meeting of the two judiciary committees, was held in the House chamber.

During the meeting Secretary Timmermeyer briefed lawmakers on the complex layers of protections set up by the state's stream anti-degradation policy, a requirement of the federal Clean Water Act, and strongly defended the protections offered in the proposed Tier 2.5 stream list.

Timmermeyer said none of the complaints being voiced by opponents is accurate. "It does not take away landowner rights," Timmermeyer said. "It does not prohibit farming or other land uses, and it does not prevent economic growth."

The Legislature will not officially deliberate on the water quality rules until later in the session.

(based on a *Charleston Gazette* article by reporter Ken Ward)

Shameless Plea – Week 2

"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.



Calendar of Events



February 22: WVEC's annual E-Day at the Capitol. Located in the House & Senate halls and around the well. From 10:00 a.m. ~ 2:00 p.m. Environmental & sustainable business displays, citizen lobby day, press conference and more.

To reserve tables for your organization or sustainable business contact: Denise Poole, (304) 414-0143 or deniseap@earthlink.net.

February 22: WVEC's E-Day evening benefit reception. To be held at the Women's Club, located on the corner of Elizabeth Street & Virginia Street, Charleston. From 6:00 pm till 10:00 pm. Highlights include: 2008 Environmental awards bestowed; live music; delux soup & salad bar buffet dinner and more.

Cost: Donation of \$15 or above.

For more information: WVEC office, (304) 414-0143 or e-mail deniseap@earthlink.net.

February 26: Anniversary of Buffalo Creek disaster.

March 8: Last day of the 2008 regular Legislative Session. Join WVEC for an "Open House End of Session" gathering. To be held at our office, located at 2206 Washington Street East, Charleston. Bring your favorite dish and beverage! Let's celebrate our successes together - walk to and from the capitol as the clock nears midnight to watch the last bills passed for 2008 regular session.

April 18- 20: Sustainable Fair. Davis & Elkins College - Elkins, WV. Highlights include: Keynote address by Deborah Koons Garcia, "The Integrity of Food"; a "Taste of WV" buffet on Friday night, with live music to follow; a splendid "Sustainable Feast" dinner (reservations only) Saturday evening featuring chef Dale Hawkins; workshops, booths, and much more. Spearheaded by, Sustainable Living for West Virginia org. in association with Davis & Elkins college and a host of groups and green businesses.

For more information and to participate contact: Denise Poole, deniseap@earthlink.net or call (304) 617-7073

June 18: 5th 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: lapaixpeace@gmail.com or visit the website: www.lapaixherbfarmproducts.com

October: WV Environmental Council's annual Fall Conference. Join WVEC this fall as we set our 2009 agenda, offer workshops, recreation outings and more. Stay tuned for exact date, location and other details for our 19th annual Fall Conference.

Support the West Virginia Environmental Council

2206 Washington Street East, Charleston WV 25311

Phone: (304) 414-0143 www.wvecouncil.org

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Address: _____

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City, State, Zip: _____

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_____ \$ 100 Sustaining

_____ \$ 250 Enviro Steward

Phone: _____ e-mail _____

_____ \$ 500 Canopy

_____ \$ 1,000 Old Growth

_____ \$ Other

E~Day !

Friday, February 22nd

... see inside, page 2 for details

