



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 4 – Rules, Rules, Rules

Last Friday all the “rules” were introduced in both houses of the Legislature.

So it’s time for my annual legislative tutorial about “rules.”

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 and passes them on for consideration by the full Legislature during the regular session.

So last week all the “rules” from the various agencies were sent to the Legislature. There are normally more than a hundred 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 Commissioner of Agriculture promulgate legislative rule relating to frozen desserts and imitation frozen desserts” (that’s an actual rule title this year).
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New Wilderness Plan for Monongahela National Forest

Congressman Nick Rahall, D-W.Va., announced plans this week to introduce his “Wild Monongahela Act.” He’s billing the legislation as “A National Legacy for West Virginia’s Special Places.” Reps. Alan Mollohan, D-W.Va., and Shelley Moore Capito, R-W.Va., are expected to be co-sponsors. Sens. Robert C. Byrd and Jay Rockefeller, D-W.Va., are also expected to support the plan.

Rahall’s proposal would expand or add seven wilderness areas in the Mon, the first additions in West Virginia in nearly 25 years.

“This is a battle over the heart and soul of West Virginia,” said Rahall, chairman of the House Natural Resources Committee, which controls public lands legislation.

Under federal law, wilderness areas are those “where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain.”

A wilderness area is “undeveloped federal land retaining its primeval character and influence, without permanent improvements or human habitation.”

In general, the Wilderness Act prohibits commercial activities, motorized access and roads, structures and facilities. Hiking is allowed, but logging is prohibited.

“Our southern mountains have been yielding their coal for generations and our northern ridgelines are being targeted by the merchants of wind power,” Rahall said. “More development is coming and, in most cases, it is welcomed.

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WV Bottle Bill Presentation

Tuesday, February 5

WV Container Recycling & Litter Control Act - SB 135 / HB 2773
House Chambers, 3:00 p.m.

E~Day at the Capitol

Friday, February 22nd

House & Senate Halls / Upper Rotunda (well) area
WV State Capitol, Charleston WV
10 a.m. ~ 2 p.m.

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

Live music, soup & salad buffet

Award Presentations for:

Mother Jones

Chuck Chambers Public Service

Laura Forman Grassroots Activist

Linda Schnautz Environmental Courage

Green Entrepreneur

Citizen Lobbying at the Capitol Ready...Set...Go !

Your WVEC Lobby Team is ready to help you become an active "citizen lobbyist" during this legislative session. When voters show up in Charleston, legislators **listen**. When you show up, you become part of a real grassroots effort and participate in the legislative process. We hope you will be a part of it.

So, start thinking about when **you** might be able to visit your legislator in Charleston. We'll bring you the details in next week's *Legislative Update* and make your visit easy with talking points, guidance and support.

Contact Chuck Wyrostok at www.appalight.com for information.

Legislative Session 2008 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

CAPWIZ: <http://capwiz.com/catholicconferencewv/issues/alert/?alertid=10836991>

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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Chuck Wyrostok

Outreach Coordinator

wyro@appalight.com

Don Garvin

Legislative Coordinator

dsgjr@aol.com

Denise Poole

Program Coordinator

deniseap@earthlink.net

Don Alexander

Web Site Coordinator &

E-Mail Listserve Coordinator

paradox@spectrumz.com

www.wvecouncil.org

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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:

Denise Poole, editor

deniseap@earthlink.net

2206 Washington Street East

Charleston, WV 25311

(304) 414-0143

Under the Dome ... continued from pg. 1

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.

You can also find these rules on the Secretary of State's web site, but only if you know the correct section of the state's legal codes to look under. It's not a particularly citizen friendly arrangement.

When these agency rules are introduced they are assigned to committees in both houses. The normal practice is that they are "double referenced" for consideration by two committees. For some strange reason, for the past two years, more of the rules than usual have been "triple referenced," which will make it more difficult for them to reach final approval.

On the Senate side almost all of the rules from the Department of Environmental Protection are first assigned to the Energy, Industry and Mining Committee (there are 27 DEP rules this year).

At the beginning of this year's session, long-time EIM chairman Bill Sharpe (D – Lewis) announced his retirement due to health reasons. Senator Jon Hunter (D – Monongalia), who had been EIM vice chair, has now been elevated to the committee chairmanship. That should provide a little balance to this committee, which has traditionally been extremely "pro-industry" in its make-up.

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

Likewise, on the House side, almost all DEP rules are referred to the Judiciary Committee, where we are again fortunate to have Delegate Carrie Webster (D – Kanawha) as the committee chair.

What DEP rules are we concerned about this year?

The answer to that question is easy – ***exactly the same rules we were concerned about last year!*** That's right, folks. Because of the flap over the Tier 2.5 stream list, the Legislature did not pass ***ANY*** of the DEP rules last session.

So once again, the two rules we are most concerned about are the two important water quality rules: Rule 47-CSR-2 (Water Quality Standards – B2 Trout Stream List) and Rule 60-CSR-5 (Antidegradation – Tier 2.5 Stream List). These two rules, by the way, were not assigned to the Senate EIM committee, but have been first-referenced to Senate Natural Resources Committee.

Green Legislative Update

Fortunately, the Legislative Rule-Making Review Committee voted to restore the Tier 2.5 list to the 309 streams proposed in last year's rule. The committee also restored the antidegradation mandate for air quality in the Ambient Air Quality Standards Rule (45-CSR-8), and fixed some flaws in a new rule for Filtrate from Water Treatment Plants (33-CSR-9).

So we are not quite back to square one with all these rules, but the battle over protecting the state's highest quality rivers and streams is all but certain to dominate the last half of the session for legislators – and for us.

Well, that's the legislative tutorial for the week.

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

New Wilderness Plan ... cont. from pg. 1

"But as West Virginians, we are intimately connected to our land," he said. "We know that we will be judged by future generations on our stewardship of this land that is West Virginia.

"And so I believe it is of paramount importance that we, once again, set aside some of God's handiwork in our forests by preserving these federal lands in their pristine state," Rahall said.

Rahall's plan calls for expansion of three existing wilderness areas, Cranberry, Dolly Sods, and Dry Fork. It would also create four new wilderness areas: Big Draft, Cheat Mountain, Roaring Plains West and Spice Run.

By adding 47,000 acres to the Monongahela National Forest's 78,000 acres of wilderness, the plan would increase the forest's wilderness acreage by 60 percent.

The plan includes three additional areas covering nearly 20,000 more acres of wilderness than was proposed by the U.S. Forest Service in a plan issued in September 2006.

"These few areas that we are proposing to conserve in their natural state represent a significant national resource," Rahall said.

"But more importantly to us, they constitute a fundamental right of West Virginians to retain a vital link to our heritage, and to know that, forever more, these lands will remain in their natural state as our Creator forged them.

"We cherish this as nothing less and nothing more than our birthright as West Virginians."
(This is an excerpt from an article by Ken Ward Jr. that appeared in the *Charleston Gazette* on Sun., Jan. 20)

Why a Renewable Portfolio Standard?

By Vickie Wolfe, WVEC Lobbyist

House Bill 4083, introduced by Delegate Barbara Fleischauer (D-Monongalia), would establish a renewable portfolio standard (RPS) for West Virginia. It specifies that by 2020, 15 percent of West Virginia's electricity must be derived from renewable sources. Senate Bill 299, introduced by Senator Jon Hunter (D-Monongalia) is similar; it specifies 20 percent renewable electricity by 2020.

Some of the reasons an RPS is a good idea are obvious, like climate change and finite supplies of fossil fuels. Some others are not so obvious; one of those is a simple four-letter word: **JOBS**. *Engineering News Online* has reported that "a recent independent study on the employment potential of renewable energy in South Africa stated that, if 15% of South Africa's electricity came from renewable resources, 36,400 new direct jobs would be created. It also showed that about 506,000 direct jobs could be created if a portion of the country's energy needs were sourced from renewable energy technologies by 2020."

If the same proportion of the population were applied to West Virginia, the number of jobs created would be 1,400 and 19,600, respectively.

According to CNN, 250,000 jobs have been created in renewables in Germany. If that same proportion of the population were applied to West Virginia, it would translate to about 5500 jobs.

Our neighbor Pennsylvania is about to get the largest solar photovoltaic plant east of the Mississippi, financed and built by a German solar company called EPURON. Is West Virginia even attempting to lure such manufacturers?

Diversification of West Virginia's energy portfolio also makes sense because of fiscal concerns. Regulation of carbon emissions should be considered a certainty; in the U.S. Congress, five carbon-regulation bills have been submitted so far, and two additional ones have been drafted. Carbon-emission costs have been estimated to be at least \$35/ton CO₂ equivalent by 2026. The result will be a substantial increase in the cost of coal-fired electricity. Common sense therefore dictates that we shouldn't put all our eggs in one shovel, er, I mean, basket.



More than half the states already have adopted renewable portfolio standards. About 70 percent of the electricity produced in West Virginia is exported to other states. If West Virginia continues to derive about 99% of its electricity from coal, it may miss out on opportunities to export electricity to those states. I've heard this has already happened: i.e., that during the Wise administration, New York turned down an opportunity to buy West Virginia electricity because it was derived almost entirely from coal.

The renewable energy train is leaving the station. It is time for West Virginia to get on board.

Clean Elections Update

By Carol Warren, Clean Elections Coalition

On Tuesday, an unexpected debate took place on the Senate floor about public financing for judicial candidates. The fact that clean elections was mentioned as a possible solution shows that we are gaining attention and awareness!

The discussion was no doubt sparked by the negative publicity our state has been getting at the national level. First, we had the photos of Judge Maynard and Massey Energy's Don Blankenship in the *New York Times*. Then on NPR, John Grisham mentioned West Virginia as an example of a state having a situation like the plot in his new novel, in which an industrial magnate decides to "buy" himself a Judge. Sound familiar?

Although our bill currently does not include judicial offices, Senators obviously recognize that such a proposal could be crafted. We have supplied Senate Judiciary Committee Chairman Jeff Kessler (D-Marshall) with a copy of the North Carolina and Wisconsin judicial bills. Here's hoping the discussion invites legislators to take a closer look at our bills SB 240 and HB 4050.

Plans are proceeding for our fundraising event on February 28 to honor the work of Senator Jon Hunter. Invitations should be sent out soon. We will also send our supporters electronic copies of the invitation so you can share with your members and community. We are asking that people RSVP to WV-CAG (346-5891) so we have an idea how many attendees to expect.

"Clean Coal"
is an oxymoron

Public Comment Period for Water Quality Clean Up Plans

The West Virginia Department of Environmental Protection announced today that it has opened the public comment period for plans to improve water quality for the Greenbrier and James River watersheds, and for the Little Kanawha watershed as well.

Section 303(d) of the Clean Water Act requires states to identify waters that are not meeting water quality standards and develop TMDLs. A TMDL, or total maximum daily load, is a plan of action used to clean up streams not meeting water quality standards.

Draft TMDLs have been developed for more than 35 impaired waters in the Greenbrier Watershed. Draft TMDLs have also been developed for the South Fork of Potts Creek, Ray Fork and an unnamed tributary of Sweet Springs Creek in the James Watershed.

Draft TMDLs have also been developed for impaired waters in Duck Creek, Duskcamp Run, Lynch Run and Copen Run watersheds on the Little Kanawha.

According to DEP the draft TMDLs culminate an extensive data collection, modeling and pollutant allocation effort and will be finalized when they receive approval from the U.S. Environmental Protection Agency.

Public meetings have been scheduled for 6:30 p.m. on Feb. 11, at the Greenbrier County Public Library at 301 Courtney Drive in Lewisburg, and for 6:30 p.m. on Feb. 14, at the Gilmer County Library at 214 Walnut Street in Glenville, to explain TMDL conclusions and facilitate public comments and review.

A 30-day public comment period began on February 1st and runs through March 3, 2008, for both sets of proposed TMDLs. DEP will respond to comments in a responsiveness summary that will be a component of the submissions to EPA and will include comments received, resultant agency actions and the rationale of those actions.

Comments should be addressed to Steve Young, West Virginia Department of Environmental Protection, (Attn: Greenbrier and James TMDL or Attn: Little Kanawha TMDL), 301 57th Street, SE, Charleston, WV 25304 or may be faxed to (304) 926-0496.

For more information about the meeting or to obtain CD's, contact Steve Young at (304) 926-0495 or TTY/TDD (304) 926-0489 or e-mail syoung@wvdep.org. Information on TMDLs can be found at www.wvdep.org/wvtmdl.

Metal Detectors or Mental Awareness....that is the question.

By John Christensen, WVEC Lobbyist

I read in the Gazette last week that a certain delegate is concerned about security at the capitol complex. The delegate said a law was passed years ago - but never funded - that would allow for metal detectors to be placed at strategic locations.

Anyone working at the state capitol or just exercising their right to visit with legislators during the session, or for any reason throughout the year would first have to pass through the detectors.

Of course this was all in response to the 9-11 tragedy over six years ago, when our federal government created the Homeland Security Administration.

I have been working for WVEC assisting with our lobbying effort now going on two years and maybe I'm missing something here, but I fail to see a problem.

It's not like the Mountain State is under a code red for terrorist activity that I'm aware of. I question the need for metal detectors and the huge expenditure that it entails. Just think about the manpower wasted to monitor them!

I would like to offer a more cost effective proposal to address **real** security concerns for our state. How about installing "mental detectors" instead of metal detectors? Just think how much safer we would all be if lobbyists for coal, timber, the chamber of commerce, the farm bureau, oil & gas, and mega land fills were barred from the building!

It's as simple as this: a "mental" detector would prohibit you from entering the building if you were in a "destructive" frame of mind!

Can you imagine how safe and secure the mountain state would be as a result of **this** legislation? It would make our state untouchable to those interests who **continually** compromise the state's natural beauty, pollute our resources, endanger plant and animal species and put human health at risk.

New people and businesses from all over the world would be drawn to our state for the endless possibilities of a "Green state." Our DEP could actually perform its mission of protecting the environment.

Why spend the money on metal detectors when all we have to do is outlaw the practices of destructive special interests? I know one thing for sure, such a bill would have a tough time getting through the committee process.

Bills We Are Tracking

<u>Bill Number</u>	<u>Title</u>	<u>Committee</u>
Senate Bills		
SB 7	Establishing Flood Protection Planning Council	Passed Nat Res to Finance
SB 11	Reducing state vehicles' petroleum-based fuel consumption	Gov Org
SB 23	Public health assessment of DEP rules (WVEC Bill)	H&HR
SB 80	Requiring verification of notice to adjoining landowners of timbering operations	Nat Res
SB 88	Brownfield economic development	Econ Dev
SB 124	Prohibiting timbering operations near brook trout streams	Nat Res
SB 135	Establishing returnable beverage container deposit program (Bottle Bill)	Judiciary
SB 216	Eliminating coalbed methane tax exemption	EIM
SB 240	Creating WV Public Campaign Financing Act (Clean Elections)	Judiciary
SB 299	Creating Renewable Portfolio Standards Sustainable Energy Act	EIM
SB 300	Disallowing accelerated rate recovery for transmission lines	Judiciary
SB 302	Public comment process for Health & Human Resources rules	H&HR
SB 438	DNR rule on drilling in state forests	Nat Res
SB 466	Administration of Dam Safety Rehabilitation Revolving Fund Loan Program	Nat Res
SB 467	Reauthorizing Dam Safety Rehabilitation Revolving Fund PEND Senate	Nat Res
SB 474	Sales tax holiday for Energy Star appliances	Finance
SB 482	Oil and Gas Surface Owner's Bill of Rights	EIM
SB 487	Authorizing counties and cities to enter into energy-savings contracts	Gov Org
SB 499	Eliminating timber severance tax	Finance
SB 501	Transferring Stream Partners Fund from DNR to DEP	Judiciary
SB 503	Requiring fingerprinting of solid waste facility permit applicants	Judiciary
SB 517	Authorizing DEP Secretary to sign NPDES permits	EIM
House Bills		
HB 2083	Relating to drilling gas wells near active coal mines	Judiciary
HB 2184	Prohibiting solid waste authorities from competing with private recycling businesses	Judiciary
HB 2212	Requiring DEP to adopt federal surface coal mining regulations (Bad Bill)	Judiciary
HB 2321	Increasing the penalties for discarding trash on land and in streams	Judiciary
HB 2367	Requiring the DEP to remediate waste tire piles	Finance
HB 2385	Increasing DEP Advisory Council membership to nine members (Bad Bill)	Gov Org
HB 2492	Defining "fill material" in the Water Pollution Control Act (Terrible Bill)	Judiciary
HB 2773	Establishing returnable beverage container deposit program (Bottle Bill)	Judiciary
HB 2946	Removing the five year coalbed methane severance tax exemption	Finance
HB 3147	Allowing DEP to use portion of civil penalties collected for watershed projects	Finance
HB 3154	Increasing timber severance tax and eliminating exemptions from the tax	Ag & Nat Res
HB 4006	Including bicycle and pedestrian ways in planning and development of state roads	Roads & Trans
HB 4028	Authorizing counties and cities to enter into contracts for energy-savings	Passed Judiciary – on 3rd Reading
HB 4041	Eliminating coalbed methane tax exemption	Finance
HB 4050	Creating WV Public Campaign Financing Act (Clean Elections)	Judiciary
HB 4066	Green Buildings Act	Gov Org
HB 4083	Creating Renewable Portfolio Standards	Ag & Nat Res
HB 4095	Creating commission to study impact of global warming	Ag & Nat Res
HB 4133	Strengthening vehicle emission standards	Roads & Trans
HB 4161	Increasing number of Public Service Commission appointees	Gov Org
HB 4267	DNR rule on drilling in state forests	Passed Ag & Nat Res to Judiciary
HB 4286	Oil and Gas Surface Owner's Bill of Rights	Ind & Labor
HB 4305	Tax exemption for energy efficient products	Finance
HB 4323	Tax exemption for shredding and recycling of paper and paper products	Finance
HB 4342	Creating a State Trail Authority within West Virginia Development Office	Gov Org

(NOTE: We are tracking all the DEP rules. Senate bill numbers for these rules are SB 369 – SB 392 and SB 456. House bill numbers for these rules are HB 4179 – HB 4194, HB 4221 – HB 4230, and HB 4284).



Calendar of Events



February 5: Presentation on SB 135 and HB 2773 - WV Beverage Container Recycling & Litter Control Act (Bottle Bill). House Chambers, state capitol. Begins at 3:00 pm.

February 6: Surface Owner Rights Organization (SORO) Day at the capitol. 8 a.m. - 11 a.m. Press Conference at 10 a.m. - Sec. of State office Press Room. Lobbying from 11a.m. - 3 p.m.
For more information: (304) 346-5891.

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.
For display reservations 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!

April 18- 20: Sustainable Fair. Davis & Elkins College - Elkins, WV. Highlights include: Keynote, Deborah Koons Garcia, "The Integrity of Food"; a "Taste of WV" buffet on Friday night, with live music by *Public Outcry* 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 28: 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

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



E~Day !
Friday, February 22nd

See inside for details!

