Week 4 – Rules, Rules, Rules

All the “rules” were introduced in both houses of the Legislature early this year.

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.

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).

But you can’t find out what’s in these rules on the legislative web site. Each agency files its rules with the... continued on page 3

Attempt To Repeal Nuke Ban Dies In Committee

by Denise Poole, WVEC

SB 240, which would have repealed the ban on construction of nuclear power plants in West Virginia, is dead!

A sub-committee of the full Senate Energy, Industry & Mining Committee (EIM) met on the Senate floor after Wednesday’s floor session and voted to recommend no action on the bill.

The subcommittee met for an hour Monday morning to begin what subcommittee chair Senator Evan Jenkins (D-Cabell) called a “discussion” about the issue of nuclear power in West Virginia.

During the sub-committee meeting, WVEC Legislative Coordinator Don Garvin spoke against the bill citing safety, disposal and cost issues as primary reasons for our legislature not to consider this bill. “Nuclear power is not the answer to our energy needs.” he said.

Senator Brooks McCabe (D-Kanawha), lead sponsor of the bill, brought a retired WVU professor, Leonard Nelson, to speak in favor of the bill.

Dr. Nelson told the committee he had “Four Facts” to make his case, but three of those were all about coal, coal, coal, and the problems with coal. Bottom line? Coal is dirty, costly and will run out eventually - but nuclear power is quote, “a clean and safe way to generate electricity - a safe experience . . . disregarding Chernobyl and Three Mile Island, which we over blew.” He focused on a recycling process that uses spent fuel that “by in large - gets rid of it, allowing for a shorter 1/2 life.”

As for renewable energy? According to Mr. Nelson, that doesn’t do it. “Wind nibbles at it - wind,... continued on page 3
Legislative Session 2009 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
WVEC Office:  (304) 414-0143

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

Ohio Valley Environmental Coalition:
Every morning, OVEC checks scores of news sources and posts links.
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 20 DEP rules this year). 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.

This year it was decided that the rules bills would first be taken up on the Senate side. They would then be “bundled” and sent as a group – under a new bill number – to the House. It really is quite confusing!

So what DEP rules are we concerned about this year?

Thankfully, not many.

The rule we were most concerned about this year was 47CSR2, which contained proposed changes to the Water Quality Standards Rule. The changes involved DEP’s long-standing policy of considering all waters of the state as drinking water sources. However, after receiving a lot of pressure from industry against the rule, DEP withdrew it.

That leaves only one rule that we really don’t like.

It’s an air quality rule – 45CSR13 – “Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation.”

This rule authorizes changes in the air-permitting program, reducing statutory timelines for permit issuance and adding an authorization to commence construction prior to receiving a permit.

This rule is the result House Bill 4438 which passed the Legislature last session. We fought that battle and lost. We’ll probably lose the battle to influence this rule as well, be we’re going to make the effort.

Well, that’s the legislative tutorial for the week. Please keep your bird feeders full this week. It’s the “rule.”

**Attempt To Repeal Nuke Ban Dies In Committee**

Solar and so forth are way out there. We need that nuclear stuff.” However, after the meeting, Dr. Nelson said in a discussion with us that in 20 - 25 years, we’d be using renewable energy entirely.

Senator Jenkins, in speaking of the sub-committee meeting to a reporter, said that, “We had met the other day and had a lot of substantial input from both the advocates and the opponents of this issue.”

“There doesn’t appear to be any nuclear facilities on the drawing board for development in West Virginia and the sub-committee’s sense is that we ought not to move hastily, that a lot more attention needs to be paid to this public policy consideration of lifting the ban,” Jenkins said.

Jenkins also told the reporter that he suspects that the full committee will consider a study resolution to be carried out during the interim months.

But at least for now West Virginia’s ban on nuclear power plants remains in tact.

**Think Renewable Energy**

Grassroots advocates with the Sludge Safety Project lobbied the legislature this week for a ban on sludge impoundments and slurry Injection.

Members of the group included Michael Morrison, Chuck Nelson, Joe Stanley, Luther Payne, Larry Gibson, Jim Ryner, Matt Noerpel and Carolyn van Zant.

These SSP citizen activists will be at the capitol every Thursday. In their bright yellow t-shirts with "No Slurry" logos - you can't miss them!
Bill Introduced to Address Marcellus Shale Issues

by John Christensen, WVEC Lobbyist

A couple of weeks ago I wrote about a strong resolution passed by the Morgantown City council that dealt with issues arising from drilling gas wells in the Marcellus Shale formation, and the impact to the water in our states rivers and streams.

HB 2960, with Delegate Barbara Fleischauer (D-Monongalia) as the lead sponsor, was introduced this week to deal with those problems.

The bill amends 22-11-4 of the Water Pollution Control Act (which dates back to 1931) and gives direction to the DEP director to develop comprehensive standards to control levels of total dissolved solids in the states’ rivers and streams to include:

- Information regarding water withdrawals including source, schedule and conditions
- Disclosure of all chemicals used in the make-up of frac fluids, especially hazardous ones, and the limit thereof
- Conditions for discharging of the frac fluids detailing treatment, location, and schedule
- Specifying penalties for non-compliance, including the revocation of a drilling permit
- Establishment of total dissolved solids (TDS) water quality standards at or below the Pennsylvania standard of 500 mg/liter
- And that all mining, drilling, and other discharges within any stream be in compliance with the TDS standard at all times throughout the year.

The bill allows our state to develop new standards and enforcement laws. We hope it will work its way through the process THIS session so the DEP can begin to address these serious problems.

Coal Boys Want Extension to Meet Selenium Limits

The coal industry wants until July 1, 2012 – more than three more years – to meet water quality based effluent limits for toxic selenium discharges into waters supporting aquatic life uses under existing NPDES permits.

That’s what they are asking for in SB 461. The bill was introduced just today, with twenty co-sponsors signed on, including the Senate President.

The fix is in, folks.

"Clean Coal ... Is An Oxymoron"

Editor's note: Please refer to last week's Legislative Update February 27th, issue 3, page 4 “Stop PATH” article for details on this proposed transmission line.
Sub-committee Weaken Emergency Reporting Bill
by Erica Peterson WV Public Broadcasting
(Reprinted here by permission)

On Wednesday, a Senate sub-committee submitted its recommendations on a bill proposed by the governor in response to an industrial accident.

Senate Bill 279 was patterned after mine safety legislation, put in place after the disaster at Sago. Just like the mine legislation, Gov. Manchin’s original bill called for all industrial accidents to be reported within 15 minutes. If not, a $100,000 fine would be imposed.

Senator Evan Jenkins is the sub-committee’s chairman. “This amendment clearly would provide a little more discretion to the director in considering whether or not a civil penalty should be waived,” he said.

The new language in the bill would allow the Director of the Division of Homeland Security and Emergency Management to impose a fine of up to $100,000 and to waive part of that fine if appropriate.

Karen Price is the president of the West Virginia Manufacturer’s Association. She says she thinks the amended bill may allow smaller plants to stay in business. “It gives the director some leeway on the civil penalties, which was something that was of concern to us, especially if you have some small companies. A $100,000 fine to a small company could devastate it. I think they’re really just trying to hone down and make sure if an incidence occurs that proper authorities are aware of it and they are notified in a timely fashion.”

Representatives from the West Virginia Environmental Council were not as pleased with the amendments however, which they say makes a weak bill even weaker.

John Christensen is one of their lobby team members. He says a local citizen group concerned with the storage of toxic chemicals at the Bayer plant isn’t pleased with the decision.

“They weren’t too happy about the governor’s bill,” he said. “They thought it was too vague; they thought that penalties were not high enough. They thought the notification was too long, and there were no criminal penalties assigned to this.

“If people are dying from a release of any gas, they should face the consequences, no differently than any criminal who robs a bank.”

The ammended bill was brought before the Energy, Industry and Mining committee, where it passed with little discussion.

Clean Elections In Sub-Committee (House of Delegates)
by Carol Warren, WV Citizens For Clean Elections

House Judiciary Chair Carrie Webster appointed Subcommittee A Wednesday, which will deal with election-related legislation. The subcommittee will be considering the legislative public financing bill, H2764.

Members of the subcommittee are Del. Barbara Fleischauer, Chair, Delegates Bonnie Brown, Mike Caputo, Patrick Lane and Patti Schoen.

Please contact them and ask for their support in getting the bill reported positively to the full committee.

Del. Barbara Fleischauer, Chair (D-Monongalia):
(304) 340-3169 barbaraf@mail.wvnet.edu
Del. Bonnie Brown (D-Kanawha)
(304) 340-3106 bbrown1@gmail.wvnet.edu
Del. Mike Caputo (D-Marion)
(304) 340-3249 no personal e-mail provided
Del. Patrick Lane (R-Kanawha)
(304) 720-1497 no personal e-mail provided
Del. Patti Schoen (R-Putnam)
(304) 760-0044 pschoen@mail.wvnet.edu

E-Day Participants Include:
WV Environmental Council info
Mountaineer Chapter ~ Trout Unlimited
WVEC Grassroots Citizen Lobby
Friends of Blackwater Canyon
WV Highlands Conservancy
Sustainable Living for West Virginia
WV Citizen Action Group
The Glass Amulet
Clean Elections Coalition
WV Green Building
Sludge Safety Project
Sierra Club Central Appal. Environmental Justice
WV Chapter, Sierra Club
Student Environmental Action Coalition (SEAC)
WV Rivers Coalition
WV Citizens Against PATH
Coal River Mountain Watch
Friends of the Mountains
Kanawha Valley Connections
Ohio Valley Environmental Coalition
Slow Food West Virginia
## Bills We Are Tracking

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<td>HB 2474</td>
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<td>Regulating the sequestration and storage of carbon dioxide <em>(Governor’s Bill)</em></td>
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<td>Renewable Portfolio Standards Sustainable Energy Act <em>(WVEC Bill)</em></td>
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<td>Increasing just compensation for eminent domain takings</td>
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<tr>
<td>HB 2980</td>
<td>“West Virginia Energy Efficiency Act” <em>(WVEC Bill)</em></td>
<td>Gov Org</td>
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*(NOTE: All agency rules bills have been introduced sporadically in both houses. WVEC is tracking those separately).*
March 11: **E-Day at the Capitol!** Lower Rotunda - State Capitol Complex, Charleston. Citizen / Grassroots Lobby Day! Environmental organizations and sustainable business exhibits from 9 AM - 3 PM. Join us this day for a full day of lobbying, press conference, program, visit exhibits and more. **For more information or to reserve a table**, contact Denise: deniseap@earthlink.net or call the WVEC office: (304) 414-0143.

March 11: **Citizens Against PATH Rally Day in Charleston.** A STOP PATH informational table will be in the capital building (Lower Rotunda) as a part of E-day. 9:00 AM until 3:00 PM - maps, signature petitions against PATH and other information available. STOP PATH rally will be held from 3:30 PM until 5:00 or 5:15 PM at the Women's Club of Charleston, 1600 Virginia St. East (just a few blocks from the capitol.) **For further information or to offer to help with the STOP PATH rally**, contact Frank Young, e-mail fyoung@mountain.net, or by telephone 304-372-3945.

March 11: **E-Day! Benefit Dinner Reception & Award Presentation Ceremony.** 6:00 PM - 9:30 PM. Women’s Club of Charleston 1600 Virginia Street East (corner of Elizabeth). Join us after E-Day at the Capitol to unwind, visit with friends, honor our award recipients and lobby team! Dinner will be served. Live music. Admission at the door: $ 15. **For more information**, call the WVEC office: (304) 414-0143.

March 14: **Winter Bird Walk.** Meet at the Canaan Valley National Wildlife Refuge Visitor Center at 8:00 AM. Led by Casey Rucker. **For more information:** (304) 866-3858.

March 15: **Hiking Trek - Cannan Valley.** Meet at Whitegrass Ski Touring Center at 10 AM. Canaan Valley Balsam Fir; visit a local balsam fir swamp and learn about this unique species of tree. Led by The Nature Conservancy’s Mike Powell. Free of charge. **For more information:** www.whitegrass.com or call (304) 866-4114.

April 17 & 18: **Annual WV Sustainable Fair 2009 - “Green Makes $en$e”**. Stonewall Resort, Roanoke WV. Jeffrey Barrie, noted filmmaker, serves as keynote speaker addressing “Kilowatt Ours - The Energy Conservation Solution”. Seminars, panel discussion, booths, demonstrations, art exhibit, alternative transportation and more. Admission only $5. at the door. Early reservations for “Taste of WV - Farmers and Their Chefs” Friday dinner and “Sustainable Feast” Saturday dinner available. **For more information:** deniseap@earthlink.net or call Denise, (304) 617-7073.

May 1: **WV Citizen Action Group’s Annual Spring Fundraiser.** Woman’s Club of Charleston - 1600 Virginia Street East. Great buffet, progressive friends, silent auction. More details soon! **For more information:** WV-CAG office, (304) 346-5891.

May 30: **Kanawha Valley Connections: Creating Pathways to Sustainability Fair.** Habitat for Humanity Restore, 815 Young Street, Charleston. All day event. Sustainability themes showcased include, local foods, businesses & jobs, conservation, energy sources, recycling, health, economic development, culture, transportation, recreation. Looking for more local area businesses, artists, environmental organization for booth displays. **For more information:** Will Taylor, (304) 382-1233.

June 27: **6th Annual Lavender Fair - “Just Keep Dancing!”.** LaPaix Herb Farm, Lewis County. National Historic Landmark (May/Kraus Homestead.) Workshops and talks on using herbs for crafts, culinary and medicinal purposes, organic wild edibles, etc. Demonstrations, interesting booths, wood walks, booths, gourmet food, live music and much more. Admission: $5/person, $10/family (one car) **For more information:** www.lapaixherbfarmproducts.com/lavender_fair_2009.htm
E-Day at the Capitol
"Renewable Energy - For A Sustainable Economy"
Wednesday, March 11th ~ 9 AM - 3 PM

E-Day Benefit Dinner
The Women's Club of Charleston
1600 Virginia St. East ~ 6:00 PM - 9:30 PM