



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

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

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SB 240, which would have repealed the ban on construction of nuclear power plants in West Virginia, is dead!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

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E~Day at the Capitol

"Renewable Energy - For A Sustainable Economy"

Wednesday, March 11th ~ 9 AM - 3 PM

Lower Rotunda - WV State Capitol, Charleston WV

> Exhibits by Environmental Groups & Businesses

> Grassroots / Citizen Lobbying Day

> **Press Conference** (noon - immediately following floor session)

Speakers include: Delegate Barbara Fleischauer, Beth Ann Boyd (WV Citizens Against PATH), Don Garvin (WVEC) & Others

> Skit "Nothing To Worry About" by Kanawha Co. Students

E-Day Benefit Dinner

The Women's Club of Charleston

1600 Virginia St. East ~ 6:00 PM - 9:30 PM

Deluxe Soup & Salad Dinner

Live music by Robin Godfrey & Dugan Carter

2009 WVEC Awards For:

Mother Jones: *Denise Poole*

Chuck Chambers Public Service:

Speaker of the House of Delegates, Richard Thompson

Laura Forman Grassroots Activist: *Beth Little*

Linda Schnautz Environmental Courage: *Lorelei Scarbro*

Linda Schnautz Environmental Courage: *Rory McIlmoil*

Green Entrepreneur: *Ken Auvil, Green Building*

Youth Activism: *Heather Sprouse*

Admission: \$15 a person - \$25 per couple

**WV Environmental Council
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WV Rivers Coalition

Ohio Valley Environmental Coalition

WV Citizen Action Group

WV Sierra Club

Coal River Mountain Watch

Plateau Action Network

Mountain State Education &

Research Foundation

Mon Valley Clean Air Coalition

Upper Monongahela River Assn.

Sustainable Living for WV

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

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:

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.

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

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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

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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, but 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 ... *cont. from page 1*

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

Sludge Safety "Lobby Thursday"

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.

**"Clean Coal ...
Is An Oxymoron"**

STOP PATH On E-Day!

by Frank Young

As you recall from last week's Legislative Update, WV Citizens Against PATH (*Potomac-Allegheny Transmission Highline*) will be in Charleston for E-Day at the Capitol, and at the Women's Club of Charleston that afternoon for a rally and informational meeting from 3:30 till 5:00 PM.

Strong local citizen opposition to PATH has developed over several months, with STOP PATH rallies and informational meetings held or soon to be held in almost every county through which PATH would pass.

So if you would like to learn how to effectively work to STOP PATH, get a STOP PATH yard sign, or just learn more about PATH, then attend the STOP PATH rally at 3:30 Wednesday. We will talk about things like petitions against PATH, writing letters to the WV Public Service Commission (PSC) about PATH, and about how individuals and / or organizations can become an actual legally opposing party, called an intervener, once the PATH application is actually filed at the PSC.

Citizens Against PATH will have a STOP PATH informational table in the capital building rotunda on E-day, with maps, signature petitions against PATH and other information.

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.

Editor's note: Please refer to last weeks Legislative Update February 27th, issue 3, page 4 "Stop PATH" article for details on this proposed transmission line.

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.

Sub-committee Weakens 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 amended 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

Bill Number	Title	Committee
Senate Bills		
SB 14	Requiring jobs impact statement for proposed legislation (<i>Perennial Bad Bill</i>)	Passed Econ Dev to Judiciary
SB 28	Public health assessment of DEP rules (WVEC Bill)	H&HR
SB 45	Authorizing DEP Secretary to sign NPDES permits (<i>Bad Bill</i>)	EIM
SB 79	Requiring PSC promulgate wind power project rules	Judiciary
SB 92	Eliminating timber severance tax	Finance
SB 234	Exempting fish farm sludge from DEP sludge management requirements (<i>Bad Bill</i>)	Agriculture
SB 237	Establishing returnable beverage container deposit program (Bottle Bill)	Nat Resources
SB 240	Repealing nuclear power plant ban (<i>Terrible Bill</i>)	Died
SB 241	Creating WV Public Campaign Financing Act (Clean Elections)	Judiciary
SB 279	Industrial accidents and emergency response regulations (think MIC)	Passed EIM to Judiciary
SB 297	Alternative and Renewable Energy Portfolio Act (Governor's Bill)	Judiciary
SB 301	Creating Green Buildings Act (WVEC Bill)	Transportation
SB 311	Supreme Court Public Campaign Financing Pilot Program	Judiciary
SB 325	Creating WV Energy Efficient Buildings Program Act	Transportation
SB 371	Creating Energy Efficient Building Act	Transportation
SB 372	Natural gas and oil severance taxes	EIM
SB 374	Creating Oil and Gas Surface Owner's Bill of Rights (SORO Bill)	EIM
SB 375	Relating to Office of Coalfield Community Development	Econ Dev
SB 396	Regulating carbon dioxide sequestration and storage (Governor's Bill)	EIM
SB 461	Extending selenium effluent limits compliance time (<i>Terrible Bill</i>)	EIM
SB 478	Creating Surface Owners Protection Act (Committee Bill)	EIM
SB 482	Prohibiting mining on cemetery land	EIM
House Bills		
HB 2098	Prohibiting oil and gas operators from daylighting	EIL
HB 2133	Increasing the penalties for discarding trash on land and in streams	Passed Nat Res, to Judiciary
HB 2314	Surface mining severance taxes	EIL
HB 2321	Extending the alternative-fuel motor vehicle tax credit (<i>Great Bill</i>)	Finance
HB 2328	Increasing PSC appointees	Gov Org
HB 2363	Jobs Impact Statement Act (<i>Perennial Bad Bill</i>)	EIL
HB 2474	Exempting fish farm sludge from DEP sludge management requirements (<i>Bad Bill</i>)	Passed Ag, to Judiciary
HB 2499	Requiring DEP remediate waste tire piles consisting of more than twenty-five tires	Passed Jud, to Finance
HB 2511	Valuation of managed timberland	Nat Res
HB 2514	Verifiable Science Act (<i>Perennial Bad Bill</i>)	Gov Org
HB 2535	Creating a tax credit for certain solar energy systems (<i>Great Bill</i>)	EIL
HB 2565	Industrial accidents and emergency response regulations (think MIC)	EIL
HB 2602	Establishing a returnable beverage container deposit program (Bottle Bill)	EIL
HB 2680	Increasing DEP advisory council to nine members (<i>Perennial Bad Bill</i>)	Gov Org
HB 2682	Alternative and Renewable Energy Portfolio Act (Governor's Bill)	EIL
HB 2764	West Virginia Public Campaign Financing Act (Clean Elections)	Judiciary
HB 2781	Tax credit to sawmills for LEED's certification	EIL
HB 2833	Clarifying the taxation of natural gas and oil	EIL
HB 2835	Relating to the Office of Coalfield Community Development and master land use plans	Pol Sub
HB 2860	Regulating the sequestration and storage of carbon dioxide (Governor's Bill)	Judiciary
HB 2863	Relating to construction of state utility projects	Pol Sub
HB 2872	Allowing county school boards to enter into energy-saving contracts	Education
HB 2887	PSC Reforms Act (WVEC Bill)	Judiciary
HB 2891	Renewable Portfolio Standards Sustainable Energy Act (WVEC Bill)	EIL
HB 2892	Increasing just compensation for eminent domain takings	Judiciary
HB 2936	Restoring or keeping intact scenic views by coal and timber operators	Nat Res
HB 2948	Green Buildings Act (Interim Committee Bill)	Gov Org
HB 2960	Marcellus Shale water pollution control (WVEC Bill)	Gov Org
HB 2980	"West Virginia Energy Efficiency Act" (WVEC Bill)	Gov Org

(NOTE: All agency rules bills have been introduced sporadically in both houses. WVEC is tracking those separately).



Calendar of Events



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 young@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 Sen\$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



Support the West Virginia Environmental Council

2206 Washington Street East, Charleston WV 25311

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

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

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