



Green Legislative Wrap Up

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Under the Dome

By Donald S. Garvin, Jr.
WVEC Legislative Coordinator

The "Sleeper" Bill

It seems like every session there is a "sleeper" bill – a bill that slips past your radar screen until it's way too late to try to do anything about it.

This year's sleeper bill for me was SB 715, the "Chesapeake Bay Restoration Initiative."

The first inkling that there might be some type of bill dealing with West Virginia's contribution to the pollution of Chesapeake Bay came about a year ago, when several mayors in the Eastern Panhandle wrote letters to the Legislature asking for financial help in meeting new standards from EPA for treating nutrient pollution.

So the issue was assigned as a study topic to the Joint Legislative Oversight Commission on State Water Resources. And, with very short notice, I gave a presentation to that committee at the October Interim meetings, describing the national importance of Chesapeake Bay.

Chesapeake Bay is North America's largest estuary and the world's third largest. There are more than 100,000 streams, creeks, or rivers in the Chesapeake Bay watershed, including 150 major rivers. The Bay provides food, water, cover, and nesting or nursery areas to more than 3,600 migratory and resident wildlife species, including more than 300 fish species and 2,700 plant types; and approximately 17 million people live in the watershed.

I pointed out to the committee that the leading threat to the health of the Chesapeake Bay is excess

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The Session That Wouldn't Die

The 79th session of the West Virginia Legislature – the 2009 session – adjourned at around midnight on Saturday, April 11 (actually, the House of Delegates adjourned at 11:40 PM that evening, leaving a long list of bills still awaiting final action on its calendar).

The recent practice has been for both houses to reconvene the following week to take up the state budget. But this year they adjourned until May 26, when they will reconvene, apparently for about eleven days, to do the budget, and a host of other things.

The Legislature has already announced that an abbreviated May Interim Session will coincide with reconvening for the upcoming "Extended Budget Session." And the Governor has announced that he will call a Special Session to coincide with the extended session.

At this point, only a couple of the major bills affecting the environment have been signed by the Governor, and the Legislature is sending him small packets of bills for his approval, thereby nullifying the normal 15-day deadline for signing or vetoing a bill.

The Governor has already vetoed several bills for "technical" reasons, so it is likely the Legislature will attempt to fix those during the budget session; SB 297, the Governor's Alternative and Renewable Energy Portfolio Act could be among these.

And we fully expect at least one other of the Governor's energy bills to be on the "call" for the Special Session, probably SB 375, the Office of Coalfield Community Development Master Land Use Plan bill.

So hold on to your hats. It ain't over 'til the fat lady sings!



Maria Gunnoe Wins Goldman Award!

Long-time coalfield activist and Boone County native Maria Gunnoe was honored last month as one of seven winners of the annual Goldman Prize, a prestigious award given to grassroots environmental heroes from around the globe. "In the heart of Appalachia, where the coal industry wields enormous power over government and public opinion, lifelong resident Maria Gunnoe fights against environmentally devastating mountaintop removal mining and valley fill operations," the Goldman Prize said in a statement being released recently. The Goldman Environmental Prize, now in its 20th year, carries with it a cash prize of \$150,000. Maria is the third West



Virginian in the last dozen years to receive the Goldman Prize. In 2003, Raleigh County resident Judy Bonds received the award also for her work fighting mountaintop removal. And in 1997, Terri Swearingen of Chester was recognized for her work against construction of the WTI hazardous waste incinerator across the Ohio River in East Liverpool, Ohio. WVEC, of course, knows Maria well, and are delighted that others are giving her this well-deserved recognition.

Congratulations, Maria, from all of us. And thanks for your constant commitment, courage, and hard work.

The **20th Annual WV Environmental Council Fall Conference** is scheduled for September. Arrangements are in the works, so stay tuned for details soon. Please plan to join us and celebrate this remarkable milestone! Visit our website: www.wvecouncil.org and watch for other notices soon.

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.

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Under the Dome ... cont. from pg. 1

nitrogen and phosphorus pollution. West Virginia waters, including our headwater streams, are major contributors to Chesapeake Bay nutrient pollution.

These pollutants cause algae to grow out of control, and when the algae die off, the decaying process depletes oxygen in the water, causing “dead zones” – areas of the Bay unable to support life. In 2007, more than 80 percent of the Bay and its tidal rivers had too little oxygen to support aquatic life.

I pointed out to the committee that only about 25% of this nutrient pollution comes from wastewater treatment plants, while more than 40% comes from agricultural runoff. Commercial fertilizer and animal manure are the main sources.

And I told the committee that while WVEC would certainly support more funding for wastewater treatment plants, we could not support a restoration plan that did not adequately address agriculture’s contribution to Chesapeake Bay degradation.

Well, the committee took no further action on the study topic, and I assumed the issue was dead for now.

But then about half way into the session Senator Herb Snyder (D - Jefferson) called me and John Christensen into his office to tell us about SB 715, and to assure us that the bill was only about finding funding sources for upgrading sewage treatment plants in the Eastern Panhandle.

Well, that’s when I should have looked at the bill. But I didn’t. I only got around to reading the bill when, with about two weeks to go in the session, I noticed a lawyer/lobbyist (who was representing this group of Eastern Panhandle mayors) huddled in an empty room with a DEP official from the Office of Water and Waste Management. They were writing amendments to the bill.

And sure enough, when I read the bill I found it included all kinds of things other than funding sources for upgrading sewage treatment plants. It included a “nutrient trading and off-set program,” and allowed DEP to modify existing water discharge permits “as necessary.” Worse yet, it would have delayed implementing federal water quality standards for nitrogen and phosphorous until the year 2014.

Well, by that time in the session it was too late for us to do anything about it. The bill was being fast tracked, and SB 715 was passed in the last hour on the last night of the session.

Amazingly, Governor Manchin came to our rescue on this one and has vetoed the bill, noting that the bill would violate several provisions of the federal Clean Water Act.

Just this week President Obama signed an executive order that lays out a framework for the restoration of Chesapeake. You can read the order here: http://www.whitehouse.gov/the_press_office/Executive-Order-Chesapeake-Bay-Protection-and-Restoration/

Let’s hope that our West Virginia Legislature will now get on board with the federal restoration plan.

Summer is almost here and songbirds are in their brightest colors, so clean your bird feeders and keep them full and continue to enjoy the show.

**"Clean Coal" ...
is an Oxymoron**

A Shout Out To Our Volunteers!

Each legislative session we depend on extra hands, extra brain power, volunteers and members coming in to help with *Legislative Update* newsletter mailings, E-Day activities, benefits, playing music, citizen lobbying, and so much more.

This year was no different. Thanks to all of you who participated and helped us get through the 2009 session, and contributed so much.

Special gratitude to: Our Immediate Past President Jim Kotcon who served as an unofficial WVEC lobbyist, our current WVEC President Danny Chiotos, Vice President Chelena McCoy, Sec. Karen Grubb, Treas. Frank Young; WVEC Board members Vickie Wolfe, Mary Ellen O’Farrell, Chuck Wyrostok, Greg Carroll, Kevin Smith, Maya Nye. Other e-council members & volunteers include Treavor Swan, Rowan Zoeller, Lisa Diehl, Becky Young, Sally Swisher, Kim Baker, Beth Darby; Musicians Robin Godfrey, Dugan Carter, Chet Lowther, Maya Nye (again!), Andy Park, Page Delporto. See you in 2010?

*The WVEC 2009 Lobby Team:
Don, John, Leslee, Denise*

The Good, The Bad, and The Ugly

(Compiled by WVEC lobbyists Donald S. Garvin, Jr., John Christensen and Leslee McCarty)

According to the Legislature's web site **2,113** bills were introduced during the 2009 Session, with only **226** of those bills ultimately being passed by both the House and the Senate.

Here is a brief summary of some of the environmental bills that made it through the sausage-grinding process, and some that did not.

HB 2535, Solar Energy Tax Credit: vetoed by the Governor on 5/14/09, we hear for technical reasons. Hopefully this will be fixed in the upcoming extended session. The bill provides a state personal income tax credit of up to \$2,000 for the installation of a residential solar energy system, and would also require a "net metering" credit for any excess electricity generated. The bill was sponsored by Del. Bill Wooton (D-Raleigh), with a "same as" bill in the Senate sponsored by Sen. John Unger (D-Berkeley). WVEC lobby team member John Christensen worked hard in lobbying for passage of this bill.

SB 40, Repeal of WV Nuclear Power Ban: died early in Senate Energy, Industry and Mining Committee. The bill's chief sponsor was Sen. Brooks McCabe (D-Kanawha), who argued that new generation nuclear power was "safe" and that "nuclear power should be included in the state's energy mix." We felt otherwise, primarily because the federal government has not yet found a "safe" depository for radioactive wastes. However, look for this issue to be "studied" in upcoming Interims.

SB 600, Special Reclamation Fund Tax: approved by the Governor. As proposed, the bill would have extended for five years the 14.4-cent special reclamation tax imposed on each ton of coal mined. The tax is to be used for reclamation of coal mines abandoned after the passage of the federal Surface Mine Control and Reclamation Act. However, coal industry lobbyists were successful in limiting the tax extension for just two years. Everyone knows this fund is totally insufficient to deal with current and future needs.

SB 461, Extending Selenium Effluent Limits Compliance Time: approved by the Governor. This terrible bill gives the coal industry a more than two-year extension to comply with water quality standards for the toxic selenium they discharge from their mining operations,

in addition to the current 3-year extension already granted to the industry. Department of Environmental Protection Secretary Randy Huffman first said he opposed the bill, but then in the final week of the session changed his tune and said he supported it. Every committee that dealt with this bill was told by committee staff attorneys that the measure did not comply with provisions of both state and federal law for changes to water quality standards, and that the federal EPA would likely not approve the change. Apparently the Legislature was in no mood to consider such trivialities.

SB 45, Authorizing DEP Secretary to Sign NPDES Permits: died in House Judiciary Committee, primarily due to our opposition. WVEC has successfully opposed this perennial agency proposal for several years now. The federal Clean Water Act clearly states that NPDES permit authority rests with the head of the state water permitting division – the expert agency, in order to comply with conflict of interest provisions of the federal law.

SB 753, Limiting Land Development Ordinances: died (with our help) in House Judiciary Committee. This bill would have prevented counties and municipalities from adopting ordinances to regulate natural resource extraction (such as mining, oil and gas drilling, and timbering). WVEC lobby team member Leslee McCarty worked hard in lobbying against passage of this bill.

HB 2931, Removing Timber Severance Tax: approved by the Governor. This bill gives the timber industry a 3-year "holiday" from paying the timber severance tax. The severance tax provides about 25% of the annual revenue of the Division of Forestry. The fiscal note estimates removing the tax will result in the loss of **4.6 million dollars** to the Division over the four years. The Division of Forestry Fiscal Note for this bill concluded: "*Unless we receive general revenue to make up for the . . . severance tax funds, we will not be able to purchase any vehicles, we would have to shut down all the offices except the State Headquarters, and we would have to lay off 30 employees for the Logging and Sediment Control Act (LSCA) program and would no longer be able to regulate logging and water quality as required by WV Code.*" In a meeting with WVEC lobbyists, Senate Finance Committee chair Walt Helmick (D-Pocahontas) promised to replace the lost severance tax dollars with general revenue funds during the extended budget session. Well, we'll just have to wait and see.

HB 279, Industrial Accidents and Emergency Response Regulations: approved by the Governor. This

The Good, The Bad, and The Ugly

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bill is the Governor's response to the chaos that surrounded last summer's fatal explosion at the Bayer plant in Institute, when responsible officials could not be located, and Homeland Security officials weren't allowed on the site for more than two hours. To our eyes, the bill does not go far enough in setting deadlines for reporting an "event" and penalties for violations. Lobbying by Chamber-of-Commerce types further weakened the Governor's proposal. And the bill does not even address the most serious problem at the Bayer plant: the storage of tanks of methyl isocyanate on site (remember Bhopal?).

SB 715, Chesapeake Bay Restoration Act: the Governor **vetoed** this terrible bill, which should have been titled the "Delay of Chesapeake Bay Restoration Act." While purportedly attempting to find funding sources for Eastern Panhandle wastewater treatment plants, the bill actually was an attempt to extend compliance deadlines for those plants to meet federal water quality standards for nitrogen and phosphorous. In his veto message the Governor wrote: "The bill would require the Secretary of DEP to modify existing permits to grant permit holders a reasonable period of time to attain affordable compliance with any requirement related to the discharge of nitrogen and phosphorous into the Chesapeake Bay watershed. However, the federal Clean Water Act requires that compliance schedules for meeting new discharge requirements be established on an "as soon as possible" basis. Therefore, West Virginia NPDES permits may not be conditioned on affordability or the availability of funding, and such permits would not be approved by the Environmental Protection Agency." We totally agree, Governor, and wish you had applied the same logic to the selenium bill.

HB 2976, Requiring State Fire Commission Update State Building Code: approved by the Governor. This bill requires the State Fire Commission to update the energy efficiency provisions of the State Building Code. West Virginia currently is as much as six years behind in updating to the National Code. We lobbied hard in support of this bill, along side the Governor's staff! The WV Homebuilders Association lobbied hard against the bill. **We won!!**



Senate Bill 753 – A Terribly “Modest” Proposal

By Leslee McCarty, WVEC Lobbyist

SB 753 was so modest, it even flew under the WVEC radar for most of its short, happy life. The bill was introduced late in the session and was designed basically to tie the hands of counties and municipalities seeking to do Comprehensive Land Use Planning.

SB 753 would have added the following language to **Article §8A-4-6** of the Code of West Virginia: **“Provided that nothing in this chapter authorizes an ordinance, rule or regulation preventing the complete use of natural resources by the owner outside of urban areas.”**

When I asked the bill's sole sponsor, Senator Don Caruth (D-Mercer) about the bill, he said: "Oh yes, I put that in for Coal."

It was time to be afraid. Then we had a little discussion about mountaintop removal mining, and it was time to be angry.

Amazingly, the bill passed two committees and the full Senate with nary a "no" vote. So we went to a House Government Organization Committee meeting which did not have the bill on the published agenda, and lo and behold, there it was on the amended agenda. It was the last item on the agenda and holy cow, the Chairman Jim Morgan (D-Cabell) forgot to ask for discussion on the bill and then he told me that the Democratic "leadership" had asked for the bill to be brought up on the last day they met!

Time for full-blown panic! So we submitted a request for a public hearing in the House Judiciary Committee, last committee stop before sure passage by the House, hoping to slow down this tiny juggernaut, and continued to work on stopping this dreadful one-sentence bill.

We had been working to find allies among county commissioners and did, so with some last minute phone calls from influential commissioners and their organizations – and with no time left for the Judiciary Committee to grant us a public hearing – we saw the bill die.

And I have to admit that for a junior lobbyist like myself, it gave me lots of satisfaction when the coal boys said, "I heard you guys killed our bill!"

Score one more for David in the continuing match up with Goliath....

Energy Bills Falter

By Donald S. Garvin, Jr.
WVEC Legislative Coordinator

The Governor announced in his State of the State address a series of “major” energy initiatives. Four major bills were introduced. Only one of the four bills successfully passed both chambers. Here’s the current status of those bills.

SB 297, Alternative and Renewable Energy Portfolio Act: won final approval from the House on the last day of the session, but was sent back to the Senate without all of the House amendments attached. So it’s dead for now. The Governor’s bill created a phony “Renewable Portfolio Standard” that included lots of “clean coal” technologies and burning waste tires, and lacked any emphasis on implementing energy efficiency measures. It is likely that the Legislature will attempt to “fix” this bill in the upcoming extended budget session. Or, the Governor may put this bill on the “call” for the special session.

SB 375, Office of Coalfield Community Development Master Land Use Plans: died in the House on the final night (I am told it was held hostage over a bill dealing with Sunday liquor sales!). This was the Governor’s post-mining land use bill, and is basically another attempt to get around the “approximate original contour” provisions of SMCRA and to promote “clean coal” projects on mountaintop removal mine sites. The Governor has already announced that he will probably put this bill on the “call” for the special session.

HB 3000, Transmission Line Tax: died in the House on the last day for bills to pass out of the house of origin. The tax on electricity transmission proposed in this bill was the Governor’s excuse for not opposing the construction of the proposed huge Trail and PATH transmission lines. Imposition of this tax posed major constitutionality questions. From what we are hearing, it is unlikely that the Governor will put this bill on the “call” for the special session.

HB 2860, Regulating Sequestration and Storage Of Carbon Dioxide: passed both houses and was approved by the Governor. This bill sets up a beginning regulatory structure for the underground injection of carbon dioxide. It establishes a “carbon sequestration working group” under the supervision of the DEP to further develop the regulations and to tackle issues such ownership of the “pore space” where the CO₂ is to be stored and the long-term liability for the storage. WVEC was successful in getting several improving amendments adopted to this bill, including a seat for the environmental community on the working group.

WVEC Energy Bills

WVEC had four major energy proposals of our own, each sponsored by Del. Barbara Fleischauer (D-Monongalia):

HB 2891, the Renewable Portfolio Standard Act, offered a “real” renewable portfolio standard comparable to those already adopted in numerous other states. The bill mandated that by the year 2020 all in-state utilities must provide that 20% of the electricity sold in WV be from renewable sources including wind, solar, hydro, geothermal or biomass.

HB 2980, the West Virginia Energy Efficiency Act, pushed for reducing energy consumption in WV by 15% by the year 2015. This bill included a revenue sharing mechanism for utilities so that if the company can lower a consumer’s bill through reduced energy consumption then the utility can generate a higher profit rate

HB 2887, the PSC Siting Reforms Bill, contained several provisions drafted in response to inadequacies in the TrAILCo transmission line siting process. The bill would require utilities to: disclose both the direct and indirect environmental impacts of proposed transmission lines; analyze other alternatives, such as energy efficiency, as a means to avoid reliability problems on the grid; and give written notice to any affected landowner when an application is filed with the PSC. The bill would also prohibit any new lines within five miles of designated scenic locations.

The Green Buildings Act, which was actually three different bills that would require – in one fashion or another – that new state buildings be built to the Silver certification level of “green” standards under the LEED’s certification program. It was most disappointing that the Legislature failed to pass a Green Buildings Act, since a lot of groundwork had been laid during the 2008 Interim sessions.

The other WVEC bills were never taken up by the committees they were referred to. However, we tried hard to push the provisions of those bills into appropriate sections of the Governor’s bills; and in that process, WVEC lobbyist Leslee McCarty became known as the “Goddess” of Obama’s renewable energy stimulus funds! As it turns out, there is a big chunk of stimulus money out there for renewable energy projects, as long as the state can show that is making a serious attempt to reduce its carbon footprint through energy conservation and efficiency efforts. Leslee became a self-taught expert on Obama’s stimulus fund guidelines, which led to some very interesting discussions with the Governor’s “energy team.”

At the end of this session, it is almost certain that there will be more energy study topics for the Interim study committees to deal with.

The Long Odyssey of HB 2535

By John Christensen, WVEC Lobbyist

HB 2535, the Solar Energy Tax Credit bill, passed the West Virginia legislature at 11:19 PM on Saturday night, April 11, just minutes before the regular session adjourned. The bill gives WV taxpayers a state income tax credit of up to \$2,000.00 for the installation of residential solar energy systems beginning on July 1, 2009.

This bill will encourage solar energy installation in a state that depends far too much on coal for its electricity and hot water.

It's now up to Governor Manchin to complete the deal by signing off on this important legislation.

This bill was important to me, because I have urged WVEC for a couple of years to push for renewable energy incentive legislation. So I took the lead on this one in the Lobby Team and lobbied it hard. In the end we got a progressive, incentive-type bill passed, similar to what many other states have already adopted.

The many ups and downs in the legislative process this bill went through gave me that sinking feeling that it might not make it out right up until the last hour. When you follow a bill like this you feel like you are riding a roller coaster with no handrails or seat belts.

On the last night, when the bill was up for final adoption on the House side, a technical problem was discovered, and legislative staff had to run back to the Senate side for consultations. It got so discouraging for me that I couldn't watch it anymore from the gallery, and Don had to call me when it was over to give me the news.

This bill went down to the wire in almost every committee that dealt with it. It passed out of the House Energy, Industry and Labor committee on the last day for bills to pass out of the committee of origin. After initially passing the full House, the bill languished seemingly forever in the Senate Finance Committee.

The chair of that committee is Senator Walt Helmick (D-Pocahontas). So I made Sen. Helmick's office my own by spending countless hours there waiting to convince the chairman on the importance of passing this legislation. The senator had many questions about the bill and I tried my best to give him the answers. In the end the bill overcame most if not all his objections and Sen. Helmick got the bill passed out of his committee and out of the Senate with only a couple minor amendments.

That was no easy task. But ultimately the HB 2535 was passed out of Senate Finance on the last

possible day and the last meeting of that committee, just a couple of days before the end of the session.

The lead sponsor of HB 2535 was Delegate Bill Wooton (D-Raleigh). On the Senate side, Sen. John Unger was the lead sponsor of SB 608, which contained the exact same language as the House bill (we are still not sure how that happened, but suspect some shortcuts were taken in the bill drafting office).

In the end, Delegate Wooton deserves much credit for shepherding this bill through the legislative process.

And I personally want to thank Senator Helmick for working with us to get this bill done.

Clean Elections Wrap-up

By Carol Warren, WV Citizens for Clean Elections

This session was a bumpy ride for those of us working on the Public Campaign Financing bills! For some time, it seemed that nothing happened, then all of a sudden, some positive motion occurred. We had really hoped that the friendly Judiciary Subcommittee A would take up the legislative bill (HB 2764). However, that never happened. The House judicial bill for the Supreme Court candidates (HB 3309), in which there was considerable interest, was not introduced until the last minute on March 23.

Toward the end of the session on the Senate side, the Supreme Court Public Financing Pilot Project (SB 311), sponsored by Senator Jeff Kessler (D-Marshall) was taken up and passed out of Judiciary Committee as a Pilot Project to include the special election that will take place in 2010 due to the unexpected death of Justice Joseph Albright.

However, during the Senate Finance Committee meeting that was scheduled to discuss the bill, the bill was abruptly pulled from the agenda at the request of the Governor. Apparently, the Governor is forming a commission to deal with judicial elections, and thought this legislation might "interfere" with the commission's work.

We intend to explore ways to obtain representation on that commission. We currently are circulating a sign-on letter from coalition members to Governor Manchin, asking him to appoint long-time Clean Elections advocate Kathy Stoltz, of the League of Women Voters, to the Commission.

Our next coalition meeting will be Thursday, June 11 at 10:30 AM at the Catholic Diocesan Office, 1116 Kanawha Blvd, E. All are welcome to join us. Thank you so much for your support and help during the Legislative Session!

How Would We Know?

By Leslee McCarty, WVEC Lobbyist

Ok, you can come out of your fallout shelter now. The most dangerous two months of the year are past. They've gone home now, at least until they decide how the money will be spent. Their ideas about corralling marauding chickens and stopping counties from planning and making amusement parks on abandoned strip mines have either been passed into law, or will become next year's turkeys, as it were.

Oh yeah, and most of the good ideas never even saw the light of day, but hey, what did we think was going to happen? And for that matter, how would we know?

How would we know?

We can read articles in newspapers about less than 10% of the proposed legislation, or we can listen to Public Radio and talk shows, even receive the WVEC newsletter to see what is happening.

But how do we KNOW what they are really doing? We don't, folks, we just don't. And that is their secret weapon (emphasis on SECRET.)

In any nation, information is power, and sadly, we lack information about our representation. We need a way to pay attention and a context to put it in. Until we get that information and context, we are lost.

As of February 2009, live proceedings were available on the Internet from one or both legislative chambers in 47 states, the District of Columbia, Puerto Rico and the Virgin Islands. Many legislatures also are offering webcasts of all or selected committee hearings. About half the states also archive floor or committee proceedings. At least 27 states and D.C. broadcast some legislative proceedings on television.

Guess who has none? It's West Virginia! Even Puerto Rico, D.C. and the Virgin Islands are ahead of us, and they are not even states! And this year, WV Public Broadcasting even declined to televise the final night's proceedings.

We do have a website for the Legislature that offers very good bill tracking, but nothing beats being in a committee meeting and hearing comments and questions, or seeing and hearing live floor debate on an issue. Believe me, if people could see and hear the West Virginia legislative process, many heads would roll! And good legislators would be easily recognized.

At this point, I am not sure how to go about making this happen, but if anyone else is interested, drop me a line at leslee@mtnwaters.com. I promise to investigate how to bring us in to the democratic twenty-first century.

Maybe a junket to the Virgin Islands would be in order? Or perhaps Puerto Rico?

Green Legislative Update

Surface Owners' Bill of Rights (SORO)

By, Julie Archer, Dave McMahon, Norm Steenstra III & Gary Zuckett

We wish we had good news to report about the passage of the Surface Owners' Bill of Rights. Although we thought the odds were in our favor this session, unfortunately, the oil and gas industry managed to influence leadership in both houses to keep the bill off committee agendas. So, none of our versions or the committee versions were advanced.

Usually, it takes three or more years to get significant new legislation passed. It took that long to get our current notice and damage compensation requirements. We thought the examples of abuse and problems experienced by our membership across the state would convince lawmakers to pass the Surface Owners' Bill of Rights this year. Although the legislature failed to act, we all must continue to fight for the rights we deserve, and make sure the legislators know that we will not give up until they pass this needed legislation.

On the bright side, we were able to kill an industry-backed bill that would have made things even more difficult for West Virginia surface owners. Under SB 474, surface owners would potentially have to contend with even more well sites and access roads on their land.

The bill would have eliminated the basis for WV SORO's appeal on well spacing for wells drilled to the Marcellus Shale formation and there would be **no limit** on how close together the wells could be placed unless there is coal under the same land and the coal owner objects.

Although the bill is dead for this session, this issue will keep coming up. What is really needed is well spacing and royalty sharing (or "pooling and unitization") for all wells. Spacing gas wells means that fewer wells need to be drilled (on fewer surface owners) to drain gas from the same area. In the long run, fewer wells will *get more gas* from the same acreage (because the natural pressure that forces the gas out is not depleted as quickly). Drilling fewer wells to get more gas, costs less and benefits everyone - royalty owners, investors, responsible drillers *and* consumers. Fewer wells for the same gas also means less surface damage and less risk of groundwater pollution and other environmental problems.

For more information on well spacing and royalty sharing, and on WV SORO's appeal visit www.wvsoro.org.

Thanks again to WVEC and WVEC members for your support.

In The News . . .

Flooding Again in the Coalfields – Heavy rains caused flash-flooding Saturday (May 9) in southern West Virginia, closing many highways, forcing residents from their homes and prompting Gov. Joe Manchin to declare a state of emergency. Manchin’s declaration allows him to direct state resources to Boone, Logan, McDowell, Mingo, Raleigh and Wyoming counties. At least two mining operations in Mingo County have been cited by state inspectors for contributing to flooding over the weekend, DEP officials said. DEP Secretary Randy Huffman said his agency’s inspectors are in the field to examine citizen complaints about mining contributing to the weekend flooding, but he did not indicate any specific plans for a large-scale study of what role mountaintop removal or other extractive industries, such as logging, might have played in this round of coalfield flooding. Previous studies by federal officials and scientists have found that large-scale surface mining has the potential to make flooding more likely and to make flooding worse when it does happen.

DEP Approves Pond Lick Quarry Permit Modification – The WV Department of Environmental Protection sent notice on May 5 that it has approved an NPDES water pollution permit modification that will allow the JF Allen Company to use up *ALL* of the assimilative capacity for iron and aluminum as it discharges into an unnamed tributary of Shavers Fork at its limestone quarry near Elkins. DEP claims in the notice that the unnamed tributary is not a trout stream, and that the water quality of Shavers Fork, a Tier 2 high quality trout stream, will not be adversely impacted by the discharges into the unnamed tributary. The Bowden/Faulkner Citizens Protective Response organization officially opposed the permit modification, along with the Shavers Fork Coalition and the Mountaineer Chapter of Trout Unlimited. The WV Division of Natural Resources also officially opposed the modification. Affected parties now have 30 days to appeal the DEP decision to the Environmental Quality Board.

FutureGen Is Back!?! – According to a May 7 *New York Times* article, Obama Energy Secretary Steven Chu said he would probably reverse a Bush administration decision and restore funds for FutureGen, a program to build a power plant prototype. The plant would turn coal

into gas, separate out the carbon dioxide – a major contributor to greenhouse gases that cause global warming – and pump it underground. Then it would burn the hydrogen, which is nearly pollution-free. An international partnership had selected a site in Mattoon, Ill., for construction of the plant, but the Bush administration decided that the costs were too high and withdrew funding for the project. Secretary Chu also said the administration would also cut off funding for the development of cars powered by hydrogen fuel cells, since the vehicles would not be “practical” over the next 10 to 20 years.

WV Air Quality Gets Failing Grade – According to the American Lung Association’s tenth annual “State of the Air” report released April 29, more than 1.1 million West Virginians live in counties or cities that received failing grades in the group’s survey. Among the findings: six West Virginia counties – Cabell, Hancock, Kanawha, Monongalia, Ohio, and Wood – earned grades of “F” for ground-level ozone smog, while Berkeley and Greenbrier Counties, had passing marks of “D” and “C” respectively; Cabell, Kanawha, Marshall, Ohio and Wood counties posted their worst weighted average number of “bad air” days for short-term fine particle pollution since 2004; the Huntington-Ashland and Charleston metro areas, tied for 11 worst of 221 cities ranked nationwide for long-term particle pollution; and four counties – Cabell, Hancock, Kanawha, and Wood – were among only 37 counties nationwide failing all three air pollution measures covered in the report.

State Supreme Court Rejects Power Line Case – The WV Supreme Court decided April 29 not to interfere with plans to construct a high voltage power line across northern West Virginia despite arguments that the line would inflict environmental harm and higher utility rates on state residents, according to Associated Press reports. The justices voted 4-1, without comment, to let stand last August’s state Public Service Commission decision to endorse Allegheny Energy’s Trans-Allegheny Interstate Line, or TrAIL. Justice Margaret Workman voted to hear the case. The Sierra Club and Manassas, Va., resident Thomas Hildebrand challenged the PSC’s approval of the 500-kilovolt line between Pennsylvania and northern Virginia. The line would pass through Monongalia, Preston, Tucker, Grant, Hardy and Hampshire counties in West Virginia.



Lobbying Against Coal Sludge

By Natalie Vanderpool, SSP Legislative Coordinator

The 2009 Legislative Session was a hopeful time for the Sludge Safety Project. We made significant strides to further legislation and to raise awareness about the threat of coal sludge on our drinking water supplies and our communities.

This year two bills were introduced to ban coal slurry. First, Senator Randy White (D-Webster) introduced SB 568, which would have imposed a moratorium on underground coal slurry injection until it was proven safe. This bill was referred to the Energy, Industry and Mining committee, where it was never brought up for discussion. However, when the bill was first introduced Senator White gave a moving speech on the Senate floor and drank a bottle of brown, tainted water! Senator White told his fellow senators that if people in southern West Virginia have to drink water that looks awful and smells awful, then legislators at the Capitol should too! He gained publicity and helped us to educate legislators on the importance of the issue.

On the House side Delegate Mike Manypenny (D-Taylor) introduced HB 3279, which would have banned the construction of coal slurry impoundments and required companies to use the dry processing method for disposal of coal sludge. This bill was unfortunately introduced too late to give it a fair chance.

The fact that two bills were introduced banning coal slurry (one on each side of the legislature) put our issue back in the spotlight of media, legislators, and the public. Years ago legislators didn't even want to talk about coal slurry, but now we are seeing more of them take a stand against contaminated water and FOR public health.

We were also successful in keeping the heat on the DEP to finish the coal slurry impact study required by SCR 15. Due to our lobbying efforts, the legislature forced DEP Secretary Randy Huffman to give them a "preliminary report" on the status of the study. After missing three deadlines, Huffman was grilled by senators in the Senate Judiciary Committee. During this "preliminary report," Dr. Ben Stout from Wheeling Jesuit University was able to show the Judiciary Committee his own findings and a more truthful side of the story.

The Sludge Safety Citizen lobbyists provided education to lawmakers again this year. They made sure that all legislators knew of the dangers of sludge

contamination and that there are alternatives! Many times, we heard legislators quoting our own words when talking to DEP officials.

We held two successful press conferences this session, the first of which highlighted the release of our SSP Citizens' Report on Underground Sludge Injection. You can find a copy of the report at www.sludgesafety.org. Here, we compiled existing data, including the DEP's own data from the SCR 15 study that they have yet to release.

We are already working on planning our campaign for the 2010 legislative session. We refuse to give up. We will not tolerate contaminated water. We will continue to stand up for our water and our health and we will make sure we are heard.

Thank you to everyone who came out to lobby, made calls, wrote letters, forwarded emails, and offered encouragement.

Coal River Wind Farm Resolution Blows Up A Storm

By Don Garvin,
WVEC Legislative Coordinator

After a herculean lobbying effort by Coal River Mountain Watch (CRMW), forty-one members of the House of Delegates signed SCR 52, a resolution supporting the development of a wind farm on Coal River Mountain in southern West Virginia.

It is difficult to describe the controversy that arose when the coal industry discovered that so many delegates had signed on to the resolution.

One delegate actually surreptitiously made a copy of the list of sponsors being used by CRMW lobbyists, and was caught sharing that list with WV Coal Association lobbyist Bill Raney!

The coal boys were so upset with this resolution, that they began to put pressure on members who had signed on. On the last day of the session, five delegates went to the floor to ask that their names be withdrawn.

Rory McIlmoil and Lorelei Scarborough did an amazing job of lobbying this resolution! I owe them each a big dinner, whenever the opportunity arises.

**Think Renewable
Energy**



Calendar of Events



May 22-24: 33rd Annual Vandalia Gathering. Held at the Culture Center & State Capitol Grounds, Charleston. Old-Time music, Ethnic & Traditional dancing, food, arts & crafts, more.

May 22-25: 19th Annual Heartwood Forest Council, "Defending the Earth, Sustaining Ourselves". Located at Camp McKee, near Red River Gorge in Appalachian Kentucky, 7 miles south of Mt. Sterling. Features 800 acres of forests, trails, lake, workshops, discussions, keynote speakers, field trips - interspersed with ample time for socializing, leisure, music, dancing, great food.

For more information: Jeff Scheff, coordinator. (859) 756-3206 or 314) 971-4023 (cell). quercusstellata@gmail.com or visit www.kyheartwood.com

May 23-25: Seneca Creek Backpack. Daily mileage 8/8/7. Pre-register with Mike Juskelis: (410) 439-4964.

May 30: Kanawha Valley Connections: Creating Pathways to Sustainability Fair. Habitat for Humanity ReStore, 815 Young Street, Charleston. All day event from 10:00 AM - 5:00 PM. Sustainability themes showcased include, local foods, businesses & jobs, conservation, energy sources, recycling, health, economic development, culture, transportation, recreation. Organizers are seeking exhibitors with green or sustainable products, practices.
For more information: Will Taylor, (304) 382-1233.

June 13: JOBS (Just & Open Businesses That Are Sustainable) invites coalfield communities to our "Energy Independence Day" picnic. Williamson Community College. Workshops, live music, and plenty of food. 12-2 Food is served & 12-5 Live Music!

Workshops: Kids activities during workshops will be led by the Web of Life Ecology Center; 11:00 Energy Efficiency in schools by National Energy Education Development (NEED); 11:00 Building Greenhouses in schools by SunCatcher Design Group; 2:00 Community Ownership of Wind Farms by Windustry.

For more information: exotericeric@gmail.com

June 20: Day hike into Lower Otter Creek Wilderness. 11 AM - 5 PM.
For more information: Don Gasper, (304) 472-3704

June 27: 6th Annual Lavender Fair - "Just Keep Dancing!". LaPaix Herb Farm, Lewis County (just outside of Weston.) The farm is listed as a 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, gourmet food, live music and much more.

Admission: \$5/person, \$10/family (one car)
For more information: www.lapaixherbfarmproducts.com/lavender_fair_2009.htm

July 4-5: Annual Mountain Keepers Festival on Kayford Mountain. Live music, great food, speakers, and more.

For more information: Larry Gibson, (304) 542-1143 or (304) 549-3287.

July 6-10: 32nd Annual Herbs Workshop. Davis & Elkins College. Includes day trip to Dolly Sods. Conservation-oriented, wild herbs, multitude of garden herbs, daily herbal teas and snacks, one lunch, one dinner. Make many take-home items!

For more information: www.augustaheritage.com

July 11: WV Premier of "Coal Country" - a film by Mari-Lynn Evans. La Belle Theatre, South Charleston Museum. 7 PM.

For more information: www.sierraclub.org/scp/coalcountry.aspx.

July 18: WVEC Board of Directors Meeting. WVEC office, from 11 AM - 5 PM.

For more information: Danny Chiotos, danny@seac.org

July 18: WVEC Summer Blast - Capitol Region benefit. The Empty Glass, 410 Elizabeth Street, Charleston. 6 PM - 9 PM. Live Music, refreshments, auction, great friends!

For more information: Contact Greg Carroll at: greg.carroll@wvculture.org or call the WVEC office: (304) 414-0143.

July 25-28: Seneca Shadows Car Camping with 2 day hikes. The hikes will include a 10 mile shuttle hike across North Fork Mountain, and a 10 mile circuit in Dolly Sods North.

Pre-register with Mike Juskelis: (410) 439-4964.

mjuskelis@cablespeed.com

September: 20th Annual WVEC Fall Conference! Join us as we mark the 20th anniversary of the founding of WVEC. Reunite with old friends, meet new ones. Share stories and photographs. Includes workshops, 2010 legislative priorities, live music, hiking, children's activities, booths, traditional campfires and more.

Exact date and location to be announced. Stay tuned!



If you would like to have your event listed in the WVEC Calendar, please e-mail Denise Poole:
deniseap@earthlink.net or call: (304) 414-0143.



Support the West Virginia Environmental Council

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