



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 – Dirty Pool

In Week 1's issue of our *Legislative Update* we reported to you that DEP's proposed changes to the Oil and Gas Well Rule (35CSR4) passed out of the Joint Legislative Rule-Making Review Committee "**with no changes to the proposed rule.**"

We also mentioned that industry lobbyists were out in force, but no amendments were offered.

Well, late last week I discovered how wrong we were.

What actually happened was that we got "snookered" (to use a more polite term for what I am really feeling).

Here's what happened:

While the Rule-Making Review Committee was considering other rules, the Senate Chairman of the committee, Joe Minard (D-Harrison) went out in the hall and huddled together with industry lobbyists, and DEP staff.

They made a deal in the hall to change the language in the rule that requires all oil and gas well drilling pits and impoundments to use impermeable synthetic liners. They agreed to add the following language: "**except those pits and impoundments authorized by the Office, based on soil analysis from the operator.**"

DEP agreed to this new language as a "modification," so a committee amendment would not need to be offered (it's the agency's rule, so they can simply agree to the modification).

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House Committee Passes

Electric Vehicle Tax Credit Bill

By John Christensen
WVEC Lobbyist

The chairman of the House Roads and Transportation Committee, Del. Dale Martin (D-Putnam), responded quickly this week to HB 4246 – a bill introduced by Del. Manypenny (D-Taylor) that provides tax credits for plug-in electric vehicles – and placed the bill on the committee's agenda Wednesday.

During the committee deliberations, Del. Darrell Cowles (R-Morgan) asked a technical question concerning the motor fuel excise tax and if electricity was considered a "fuel" that was subject to the state excise tax. A representative of the State Tax Department told the committee that under state statutes electricity is not subject to the motor fuel excise tax.

Chairman Martin then asked for amendments to the bill, and this is where the bill took an unusual turn. Del Ray Canterbury (R-Greenbrier) asked to amend the bill to include vehicles that run on natural gas. His amendment was accepted unanimously with little discussion.

Shortly thereafter the committee voted unanimously to pass the bill as amended, and advanced the bill for consideration by the House Finance Committee.

WVEC strongly supports this bill, and the lobby team worked hard to get the bill passed out of Roads and Transportation. So now it is time for YOU to contact House Finance Chairman Harry Keith White and urge him to put the bill on the Finance Committee's agenda. You can call him at (304) 340-3230 or email him at hkwhite@mail.wvnet.edu.



WVEC's Annual E-Day!

Wednesday, February 24th

At the Capitol:

9 am till 3 pm - Lower Rotunda
Environmental Lobby Day - Booths & more
Buffalo Creek Disaster Remembered 2:00 PM

E-Day Benefit Dinner & Award Ceremony

Charleston Women's Club

5:30 pm - 8:30 pm

Soup, Salad & Desert Buffet

Cost: \$15 donation

E-Day After Party

The Empty Glass - 410 Elizabeth Street, Charleston

9:00 pm - 11:00

Live Music

Cost: \$5 donation



"We Are NOT For \$ale" Cassette Tapes Available

WVEC "We Are NOT For \$ale" cassette tapes recorded as a project in the early 1990's are available for \$6 each (plus \$4 S&H through the mail.)

Musicians: Mike Morningstar, Colleen Anderson, Stewed Mulligan, David Morris, Kate Long, Barney and the Bedrockers, Larry Groce, Ron Sowell, Mountain Thyme, and Tom Rodd.

Available in the e-council office, by mail, E-Day & events while they last:
WVEC, 2206 Washington St. E., Charleston, WV 25311

Legislative Session 2010 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

Listen Live: West Virginia Legislature page <http://www.legis.state.wv.us/> and click on "listen live."

WV Environmental Council Web-site: www.wvecouncil.org

WVEC Office: (304) 414-0143

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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Legislative Update welcomes letters, articles, and art work from readers and reserves the right to edit or reject submissions. Please send materials to:

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Under the Dome ... continued from page 1

When the full committee deliberated on the oil and gas rule, committee staff explained that the rule had been modified because a previous rule on marking gas pipelines at coalmine sites had to be combined with the new rule covering impoundments.

Committee members – and those of us in the audience – were never told that there was an additional modification, or what was in that modification.

Senator Minard then moved the rule “as modified,” and the committee voted unanimously to approve the rule.

Delegate Bonnie Brown (D-Kanawha), the House chair of the Joint Legislative Rule-Making Review Committee was not aware that a deal had been cut in the hallway, and never saw the modified language.

Senator Herb Snyder (D-Jefferson), the Senate vice-chair of the Joint Legislative Rule-Making Review Committee was not aware that a deal had been cut in the hallway, and never saw the modified language.

In fact, no one on the committee – other than Senator Minard – knew that a deal had been cut in the hallway and what the modified language was.

Certainly we didn't know. John and Leslee and I were sitting right there, along with Julie Archer from WV CAG. The public was never told that a deal had been cut in the hallway, and never saw the modified language.

On Wednesday this week the Senate Judiciary Committee took up the oil and gas rule and an amendment by Senator Clark Barnes (R-Randolph) was adopted that tightened up the modified language somewhat.

As it stands now the rule reads, “All pits and impoundments shall have an impermeable synthetic liner to prevent seepage or leakage, *except those pits and impoundments deemed to be suitable to prevent seepage or leakage based on soil analysis from the operator and standards developed and certified by a registered professional engineer and approved by the Office.*”

And as it stands now, it is no longer mandatory under the rule that *all* pits and impoundments use synthetic liners, as originally proposed by DEP's Office of Oil and Gas.

This is absolutely the worst breach of the legislative process I have witnessed in the years I have lobbied for WVEC.

I am totally disgusted.

And there are still almost five weeks of the Session remaining.

Meanwhile, I am taking solace that most of the legislators took off early this week to get home before the next winter storm hits. Maybe they will fill their bird feeders.

Don't you forget to fill yours.



Sausage Making at Its Best

By Leslee McCarty
WVEC Lobbyist

This week provided several examples of the truth of the old line about sausage and legislation. In the case of the state building code, we could also add Cool Hand Luke's, "What we have here is a failure to communicate."

What should have been a straightforward rules bill in Senate Government Organization Committee for the State Fire Marshall's office updating our building code to meet 2009 energy efficiency standards, and codifying last year's legislation, now has the Division of Energy scrambling to fix an amended to the rule which eliminates the change and maybe risks federal stimulus dollars to the state.

We are working with the WV Division of Energy to try and get this fixed, but it was certainly frightening to see the homebuilders have so much influence on the committee after a hard fight last session!

DEP to Rewrite Brine Water Land Application Permits

Following a bad experience at the Fernow Experimental Forest in Tucker County, U.S. Forest Service employees have found that the current permit conditions for land applications of gas industry drilling wastewater are inadequate.

“Concentration does not predict the effects as well as a dose would,” said Mary Beth Adams, a research soil scientist.

The Forest Service became concerned after a gas well was drilled at Fernow in 2008, and the water from the drilling pit was disposed by land application.

“It’s standard practice included within their permit ... the right to land apply the fracking fluid,” Adams said. “We were told there would be no impact and we identified an area where we thought any possible impacts might be relatively undetectable.”

The impacts turned out to be very detectable.

“Basically, there was too much of the fracking fluid,” she said. “About 80,000 gallons were put on an area that’s about a half acre. Trees started dying instantly, greenbrier died, everything died within this perimeter.”

That’s not typical, according to James Martin, chief of the DEP Office of Oil and Gas.

“It’s rare that the vegetation is impacted,” Martin said.

USFS employees found high concentrations of chlorides and other salts in the soil, and Adams said they inferred that those salts killed the vegetation. But, Adams pointed out, it’s not only the concentration but also the load — the combination of concentration times volume — that matters.

The FS observations . . . come as the Office of Oil and Gas at West Virginia DEP begins revising the General Water Pollution Control Permit GP-WV-1-88 that governs land application of wastewater generated during gas well drilling, reworking, treatment and plugging operations.

The current West Virginia general permit GP-WV-1-88 was issued in 2005 and expires July 31. Martin said the DEP would be revising the permit, although he did not say which aspects are under consideration for revision.

He did note that the Office of Oil and Gas has begun distinguishing in its rules between conventional drilling and completion operations that use water up to

5,000 barrels, or 210,000 gallons, and Marcellus operations that can use millions of gallons.

He said he expects to release the draft permit for public comment in time to incorporate changes into a new final permit before the current one expires.

(This article was adapted from a longer story by writer Pam Kasey for the *State Journal* that was posted on Feb. 4).

Become A Citizen Lobbyist

By Denise Poole
WVEC Lobby Team

Tuesdays & Wednesdays are now designated "Citizen Lobby Days" with WVEC throughout the last half of the session.

We encourage you to schedule a day (or more) in Charleston by calling the office: (304) 414-0143 and I'll coordinate your efforts.

Our WVEC lobbyists are going to be particularly busy from here on out, however they will be on hand as much as possible. I will be scheduling citizen lobby meetings with you to go over where we are on bills, what you'd like to accomplish, and a guided tour through the capitol building if you are unfamiliar.

If you cannot come to the capitol in person, you can still be a citizen lobbyist:

1) Write, call, even e-mail your representatives with your concerns, questions, support for or against specific bills this session.

2) Watch for our WVEC Action Alerts and weekly *Legislative Update* newsletter for specific actions you can take on bills as they move through committees.

3) Write letters to the editor in local newspapers.

Reminder: Join us for E-Day! at the Capitol Wednesday, February 24th - 9:00 am till 3:00 pm (also our Environmental Lobby Day).

We are gathering in the lower rotunda. The WVEC Information table will provide materials concerning bills, fact sheets, 2010 legislative books and more.

We have over 20 other groups, organizations and small businesses also participating in E-Day with displays and lobbying efforts this year. A Buffalo Creek Disaster Remembrance is scheduled from 2:00 - 3:00 pm.

It's a great idea to call ahead and let your senator and delegates know you are participating on E-Day, and you hope to meet with them.

"Go ye forth and lobby!"

Stimulus, Stimulus, Who's Got the Stimulus?

By Leslee McCarty
WVEC Lobbyist

Wednesday afternoon House Committee on Federal Stimulus Utilization met to hear how the money has been spent so far. Committee Chair, Nancy Guthrie (D-Kanawha) invited Danny Scalise from the Governor's Office to attend and brief the committee on State spending of the federal American Recovery and Reinvestment Act funds.

West Virginia's share so far has been \$1.3 Billion. Much of the spending (\$19.5 million) has been for infrastructure, such as water and sewer and road projects. Also, we have received \$19 million for public transportation, \$12.8 million for airports and \$309,000 for rail.

We received \$266 million for state and local education. The Division of Environmental Protection got \$4 million for water, air and leaking storage tanks, with a total of \$16 million going to DEP for all projects, while DHHR got \$400 million. The Division of Energy received \$43 million and Weatherization got \$37.5 million, mostly to community action programs.

The State reported that state agencies saved or added 1,445 full time equivalent jobs and the Governor's Office received \$10.6 million to spend at his discretion.

To see more of the seemingly endless statistics, we were advised to go to www.recovery.gov for more information and to see the West Virginia reports.

Delegates present asked how people in their communities, such as first responders needing vehicles, could access funds. Scalise replied that the funds received had little flexibility in how they could be spent and that towns and counties were going to have to ask for money directly from the federal government for such needs.

Delegate Guthrie commented on the weatherization program in particular and said that she understood that part of the hold up in spending weatherization funds was needing to train workers to do the work. She also mentioned her interest in renewable energy and in energy efficiency for state buildings.

At the next meeting of the committee, department heads will be invited to detail their departments' spending of stimulus funds.

WVEC is attempting to track state spending of stimulus funds because of our concern that although state

officials created the required renewable energy portfolio to receive funding from ARRA, their emphasis on what they term "alternative" energy (mostly so-called "clean coal" projects) is derailing any meaningful state initiatives that will free us from our dependence on coal and help create new "green" jobs for West Virginians.

Green Lumber!

The House Energy Industry and Labor Committee on Wednesday passed HB 4162, providing a tax credit for costs incurred in getting LEED and Green Globes certification for sawmills, timberland or tree farms, wood products manufacturers, and concentration yards in West Virginia. It now goes to House Finance.

There were a number of questions asked concerning the potential "cost" to the state from lost tax revenue (to be addressed in Finance) and the potential markets which might be opened up to producers. The bill passed by a large margin, with Delegate Craig Blair (R-Berkeley) casting the lone "no" vote.

There is no companion bill in the Senate at the moment. We believe this is a good bill and will be working to support it along with other green buildings legislation.

Think Renewable ...

Shameless Plea - Week Four

Here we are, almost half way through the session! The pace is intense, and your lobby team is working "full on" representing you at the state capitol.

We hope you are "living the legislative session vicariously" through the lobby team and our *Legislative Update* newsletters.

Once again we thank you for supporting the lobby team and e-council's agenda this session.

As you can see from this issue, the session is really heating up, and so much is at risk with West Virginia's environment.

Whatever you can afford to send in, we'll accept with gratitude.

We hope to see as many of you as possible on E-Day, February 24th.

WVEC Lobby Team

Bills We Are Tracking

Bill Number	Title	Committee
Senate Bills		
SB 12	Allow regional water and wastewater authorities set rates w/out PSC approval	Gov Org
SB 57	Require timber operators repair damaged roads and rights-of-way	Transportation
SB 69	Creating Energy Efficient Building Act (residential and commercial)	Transportation
SB 82	Requiring jobs impact statement for proposed legislation (<i>Perennial Bad Bill</i>)	Econ Dev
SB 85	Repealing nuclear power plant ban (<i>Perennial Terrible Bill</i>)	EIM
SB 156	Public health assessment of DEP rules (WVEC Bill)	H&HR
SB 181	Limiting land development ordinances (<i>Perennial Bad Bill</i>)	Econ Dev
SB 183	Limiting diesel vehicles' idling	Transportation
SB 184	Creating WV Energy Efficient Buildings Program (loan funds)	Transportation
SB 201	Limiting lawsuit punitive damages (<i>Bad Bill</i>)	Judiciary
SB 206	Friends of Coal license plate (<i>Stupid Bill</i>)	Passed Trans to Finance
SB 211	Creating Protection of Water Act (interesting private land bill)	Nat Resources
SB 233	Supreme Court Public Campaign Financing Pilot Program	Judiciary
SB 236	Creating Aquaculture Development Act	Agriculture
SB 235	Creative Communities Development Pilot Program	Econ Dev
SB 238	Allow Public Land Corporation to enter into mineral rights agreements	Judiciary
SB 350	Recategorizing recycled energy as renewable energy resource (<i>Ridiculous Bill</i>)	Econ Dev
SB 355	Extending expired terms of Oil and Gas Inspectors' Examining Board members	EIM
SB 357	Extending Hazardous Waste Management Fee	Finance
SB 432	Defining "renewable and recycled energy resource"	EIM
SB 441	Changes to solar energy tax credit	Finance
SB 474	Creating Green Buildings Act (WVEC Bill)	Transportation
SB 489	Determining status of recycling goals	Judiciary
SB 496	Allowing DEP Advisory Council certain rule-making authority (<i>Terrible Bill</i>)	EIM
House Bills		
HB 2321	Extending the alternative-fuel motor vehicle tax credit (<i>Great Bill</i>)	Finance
HB 2461	Creating a State Trail Authority	Gov Org
HB 2363	Jobs Impact Statement Act (<i>Perennial Bad Bill</i>)	EIL
HB 2375	Removes planning and zoning exemption for mining and manufacturing	EIL
HB 2499	Require DEP remediate waste tire piles consisting of more than twenty-five tires	Passed Jud, to Finance
HB 2514	Verifiable Science Act (<i>Perennial Bad Bill</i>)	Gov Org
HB 2640	Adding a member to the Surface Mine Board that represents the interest of labor	EIL
HB 2680	Increasing DEP advisory council to nine members (<i>Perennial Bad Bill</i>)	Gov Org
HB 3023	Relating to oil and gas surface owner's bill of rights (2009 Bill)	EIL
HB 3096	Providing tax credits for the sale of locally grown produce	Agriculture
HB 3279	Prohibiting permits for slurry injection and sludge impoundments (<i>Great Bill</i>)	EIL
HB 4008	Green Buildings Act (WVEC Bill)	Gov Org
HB 4001	Regulating Marcellus Shale Gas Well Drilling (<i>Great Bill</i>)	Gov Org
HB 4012	West Virginia Energy Efficiency Act (WVEC Bill)	Gov Org
HB 4130	Supreme Court Public Campaign Financing Pilot Program	Judiciary
HB 4162	Providing tax credit for certifications by US Green Building Council	EIL
HB 4187	Continuing hazardous waste management fee until 2015	Gov Org
HB 4193	Relating to the groundwater protection fund	Nat Res
HB 4218	Modifying the definitions of "shallow well" and "deep well"	Nat Res
HB 4246	Tax credit for electric plug-in vehicles (<i>Great Bill</i>)	Passed Roads and Trans to Finance
HB 4249	Requiring DOH to use recycled materials	Roads and Trans
HB 4250	Energy Efficient Building Act (residential and commercial) (<i>Great Bill</i>)	EIL
HB 4262	West Virginia Renewable Energy Act (WVEC Bill)	EIL
HB 4274	Residential Renewable Energy Systems Tax Credit (<i>Great Bill</i>)	EIL
HB 4276	Energy Efficient Building Act (residential and commercial) (<i>Great Bill</i>)	EIL
HB 4277	Authorizing DEP Secretary to sign NPDES permits (<i>Bad Bill</i>)	Judiciary
HB 4315	Changes to solar energy tax credit	EIL

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



Calendar of Events



February 13: Winter Bird Walk. White Grass - 10 am. Led by Refuge Wildlife Biologist Ken Sturm.

For more information: (304) 866-4114.

February 16: Environmental Film Festival. Warner Theatre, 147 High Street, Morgantown. \$8. in advance or \$10 at the door.

Hosted by WV Rivers Coalition.

For more information: (304) 637-7201

February 20: WV Go Green Convention. WV Wesleyan College, Rockefeller Gymnasium. 12:00 - 5:00 pm.

For more information: contact Shawn McPherson at (304) 669-8459; McPherson_sm@wvwc.edu

February 24: E-Day at the Capitol. 9 am till 3 pm. Lower Rotunda. This is our Environmental Lobbying Day - a perfect opportunity to "go ye out and lobby" for everyone. Booth displays, announcements, press conference, Buffalo Creek Disaster commemorated (2 - 3pm) and more are planned.

For more information, or for table/booth reservations: contact Kevin Smith, a_clean_wv@yahoo.com

February 24: E-Day Benefit Dinner & Awards Ceremony. Woman's Club of Charleston. 5:30 pm - 8:30 pm. Join us as we celebrate our achievements and honor recipients of our WVEC awards. Homemade Soup & Salad buffet. Admission is a donation of \$15 to WVEC. Cash bar.

February 24: E-Day After Party! Live music at the Empty Glass. 410 Elizabeth Street, Charleston. Admission donation of \$5. per person (or whatever you can afford).

February 26: Anniversary of Buffalo Creek Disaster. Attend a program commemorating this 1972 disaster during E-Day! at the Capitol, February 24th from 2 - 3pm. Lower Rotunda.

March 7-9: "Highland Problems & Downstream Connections: An Environmental Summit for the Mid-Atlantic Highlands" - Hosted by The Environmental Research Center at WVU and Canaan Valley Institute.

No registration fee, but space is limited. Registration is required.

To register and more information: Betty Michael, 800-922-3601, ext. 252 or betty.michael@canaanvi.org

March 13: Session concludes.

March 27: Vandalia Garden Festival. Cultural Center, Charleston.

For more information: contact Ann Nye, nyeann@ma.rr.com

April 16: WV CAG Spring Fundraiser. Charleston Women's Club.

Save this date - details to be announced.

April 16 & 17: WV Sustainable Fair. Davis & Elkins College Elkins, WV. Speakers & Workshops on Energy, WV Agriculture & Organic Foods, Community Gardening. Green Booths . " A Sustainable Feast" Benefit Dinner Friday evening. Live Music throughout the event, culminating with a Saturday evening concert from 7 PM - 10 PM. Musicians include Mike Morningstar, The Ginsangers and The Wild Rumpus. Stay tuned for more details.

For more information: contact Denise Poole at deniseap@earthlink.net

May 1: WV Herb Association Spring Conference. Beckley. Stay tuned for more details.

May 22: Kanawha Valley Sustainability Fair. Habitat for Humanity ReStore, 301 Piedmont Rd., Charleston. 10 am - 4 pm.

June 5: World Environment Day. Pittsburg, PA. (United Nations Environment Program's World Environment Day).

July 10-11: Lavender Day - at LaPaix Herb Farm. Alum Bridge - Lewis County. Limited to 100 participants only. Includes workshops, guided walks, booths, gourmet lunch by Chef Dale Hawkins. Attendance by reservation only.

For more information: www.lapaixherbfarmproducts.com

Support the West Virginia Environmental Council

2206 Washington Street East, Charleston WV 25311

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_____ Renewed Membership

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Membership Levels

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Name: _____

_____ \$ 10 Student / Senior

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_____ \$ 25 Regular

City, State, Zip: _____

_____ \$ 50 Seedling

_____ \$ 100 Sustaining

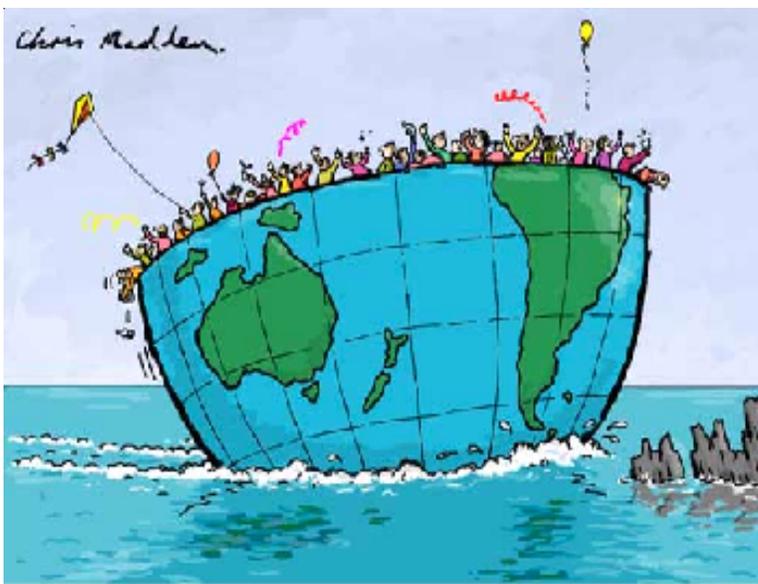
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_____ \$ 250 Enviro Steward

_____ \$ 500 Canopy

_____ \$ 1,000 Old Growth

_____ \$ Other



**THE SHIP OF FOOLS AND THE ROCKS OF
SHORT-TERM ECONOMIC PLANNING**

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