



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 7 – Getting Around The Law

One way to avoid living up to the provisions of a law is to pass another law.

Polluters are particularly fond of this tactic.

Take for example the coal industry, who went to EPA to change the definition of “fill material” under the federal Clean Water Act so it could continue (and expand) the illegal practice of mountaintop removal mining.

Well, another perfect example of this arose in the West Virginia Legislature just this week. The bill is SB 621 and, if adopted by the Legislature, it would provide a permanent “variance” from the state’s water quality standards for Weirton Steel.

The issue here is not the variance. Weirton Steel already has the variance from meeting the “Category A” public drinking water standards for iron, which is the pollutant in question. And they already have a “mixing zone” that enables them to keep that variance.

They have been granted that variance every three years by properly going through the established water quality standards rule making process. And the federal EPA, which has ultimate authority over a state’s water quality standards, has always approved those variances.

The issue here is that they want to avoid the rule making process altogether. They want the Legislature to make the variance permanent by statute, thereby eliminating the public notice and public comment provisions afforded under rule making.

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Action Needed!

Marcellus Shale Gas Well Bill HB 4513 to House Floor

By Leslee McCarty,
WVEC Lobbyist

Hard work and teamwork paid off in House Judiciary this week as HB 4513 was passed to the House floor by voice vote. Labor, SORO, WV Citizen Action Group, the faith community and your lobby team worked with bill sponsor Delegate Tim Manchin (D-Marion) to lobby our bill over the top.

The protections included in the bill include requiring reporting on water withdrawals and contents of frac water and on disposal of the water used in the process. While it is not all we would have wanted, it is much more than is currently required. DEP also favored the bill, so we hope it will make it into law. This is not the time to let up on our efforts, though, as the fight moves to the House floor and then to the Senate.

Talking points to use when contacting your Delegates as soon as possible should include the fact the West Virginia has no real requirements for Marcellus, and the threat to our waters is very real, either from potential dewatering of streams or from contamination from brine and other contents of frac fluids.

The best way to reach your Delegate(s):

1) Call the capitol toll free: (877)-565-3447 – leave a voice mail message for your particular delegate.

2) Capitol website: <http://www.legis.state.wv.us>

You can locate your Delegate(s) easily, and leave your e-mail message for them.

(If you do not know which Delegates are your representatives, simply: plug in your zip-code; click on [contact](#).)

Buffalo Creek Disaster 38th Anniversary

As we go to press this Friday, February 26th, we pause in memory of the 1972 Buffalo Creek disaster.

On this day 38 years ago, coal sludge spilled from an impoundment at the head of Buffalo Creek. Over 132 million gallons of water and mud hit 17 little towns along Buffalo Creek. The devastation it brought included 125 deaths, swallowed 500 homes and permanently changed the lives of everyone in the area. And was a huge warning that these impoundments are not safe.

Then governor Arch Moore (and others) called this "an act of God."

As we continue the struggle to end coal slurry impoundments, we also note the many other spills into our waterways over the years, bringing toxic chemicals along with it.

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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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WVEC Action Alert: Marcellus Shale "Water Bill" Contact Your Delegates Now!

HB 4513 – The Marcellus Shale "water bill" – was passed out of House Judiciary Committee Thursday, and will be up for House passage as early as Monday, March 1st. So now is the time to contact your Delegates and ask them to vote in favor of this important bill.

It's a good start at regulating withdrawal of water for drilling and fracturing these Marcellus shale wells. The bill also contains regulations requiring identification of the contents of frac fluids – and sets up a system for tracking the disposal of those fluids.

Please contact members of the House of Delegates, expressing your support for this bill.

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Visit the capitol website: <http://www.legis.state.wv.us>

Simply: plug in your zip-code; click on contact to be taken directly to your Delegate.

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.

Under the Dome ... *continued from page 1*

Representatives from the West Virginia Department of Environmental Protection told members of the Senate Judiciary Committee this week that they opposed the bill, although they seemed to have a great deal of difficulty in articulating their opposition to the committee.

DEP explained that they are preparing an emergency rule to cover the variance (they are doing the emergency rule because Weirton was delinquent in preparing its request for the variance!).

And legislative staff counsel explained to the committee that because SB 621 changes a water quality standard without going through the public notice and comment provisions of rule making, EPA would likely NOT approve of the changes made by this legislation.

No matter.

The Senate Judiciary Committee made a minor amendment to the bill and passed it by voice vote. The bill is now on third reading in the full Senate.

Late last week I got a “courtesy” phone call from Weirton’s lead lobbyist on this bill, just so I “would not be caught by surprise” when I saw it. (Weirton has hired a whole team of top-notch lawyers and lobbyists to push the bill).

Well, thanks. I appreciate the courtesy.

But, no thanks. We can’t support the bill.

Water quality standards – and variances from those standards – should be done through the rule making process.

That’s the law.

Another week, another snow storm. Our fine-feathered friends must be feeling like they are under assault.

So please help them out and keep your bird feeders full.

Another Shameless Plea

Time is running out at the legislature, and so are our funds.

So now is the perfect time to renew your membership if you haven't already, or to dig down deep in your pockets and help us with whatever you can afford.

You'll make Frank Young much less nervous when he signs our paychecks.

Don Garvin, Legislative Coordinator

Renewable Bills Stall in Legislature

*By John Christensen
WVEC Lobbyist*

What started as an optimistic looking session with respect to renewable energy proposals is beginning to wane into the abyss as legislative deadlines approach. The last day to pass a bill out of committee in the house of origin to ensure three full days for readings is Feb. 28th, which is Sunday, therefore many of our renewable bills may be dead in the water.

The WV Renewable Energy Act, HB 4262 which was introduced by Del. Nancy Guthrie (D-Kanawha) almost got on the agenda of its originating committee but stalled and died in EIL.

HB 4391, expanding net metering for renewable energy stalled in house judiciary after being single referenced. We think it died due to pressure by the electric utility industry against the bill. We have been talking with the power boys (AEP and Allegheny) about a possible Interims study for next year.

HB 4274, expanded renewable energy tax credits to include passive solar, wind, hydro, bio-mass energy, and geo-thermal and increased the dollar amount of the credit to \$3000. The bill proved to be too progressive and too taxpayer friendly, and is probably dead in House EIL.

However, the residential solar energy tax credit rule for the solar tax credit bill passed last year seem to be proceeding without any difficulty.

Too bad we didn't have the same result with our other renewable bills...maybe next year.

Manypenny Offers “GMO” Bills

Delegate Mike Manypenny (D-Taylor) introduced three bills this week to address the issue of “genetically modified” foods.

HB 4624 would create the “Genetically Engineered Food Right to Know Act.” HB 4625 would create the “Genetically Engineered Organism Liability Act.” And HB 4626 would create the “Genetically Engineered Crop and Animal Farmer Protection Act.”

All three bills were assigned to the House Agriculture Committee, but will likely not be taken up at this stage of the session.

Lawmakers Vote to Uphold Nuclear Power Plant Ban

By Walt Williams,
The State Journal (Reprinted here with permission)

With one lawmaker declaring West Virginia a “coal and natural gas state,” the Senate Judiciary Committee voted down a bill that would have lifted a state ban on the construction of nuclear power plants Thursday.

Senate Bill 85 by Sen. Brooks McCabe, D-Kanawha, would’ve deleted language in state code preventing the construction of nuclear power plants until a safe place is created to store nuclear waste. Given that no such place has been identified, no plants can be built in West Virginia.

The bill passed the state Senate Energy and Infrastructure Committee Feb. 17 but was rejected by a majority of judiciary committee members during a voice vote Thursday.

Committee members spent a good portion of the roughly 45-minute debate grilling lobbyist Don Garvin of the West Virginia Environmental Council for his organization’s opposition to lifting the band and for its stand on coal mining. But in the end, one of the senators who had asked some of the most pointed questions, Sen. Richard Browning, D-Wyoming, sided with Garvin in rejecting the bill.

“We are a coal and natural gas state,” Browning said. “We need to develop our technologies to do what we can to use coal more efficiently, burn it cleaner, so we can produce the power and produce it here.”

The ban was enacted in 1996 and was largely a symbolic gesture, given most of the energy produced in the state comes from coal and none from nuclear power plants. But the West Virginia Environmental Council saw it as an important step, believing the technology did not exist for companies to safely operate nuclear power plants or dispose of their radioactive waste.

That was not a view shared by Sen. Dan Foster, D-Kanawha, who said that nuclear power already accounts for 20 percent of electricity produced in the U.S. and 80 percent in France. He also pointed to new technologies that make nuclear energy safer and cleaner than in the past.

McCabe is seeking the bill because he believes West Virginia must show it’s open to all alternatives if it wants to lead the nation as an energy state. But Garvin

said that no energy companies are seeking to build a plant in West Virginia, and he doubted most West Virginians would want one.

“Who among you today wants to go home and tell your constituents that you are bringing a nuclear power plant to your district?” he asked committee members.

Thursday’s vote likely means the bill is dead unless the committee reconsiders its action. A similar bill failed to clear the Legislature during the 2009 session.

MIC Bill Appears Dead

HB 4654, a bill that would have limited the on-site storage of the deadly chemical methyl isocyanate to no more than five thousand pounds at any facility in West Virginia, failed to be considered by the House Health and Human Resources Committee this week. The bill also had a second reference to Judiciary.

The bill was sponsored by Delegates Brown, Guthrie, Hatfield, Hunt, Poore, Skaff, Spencer, Wells, Armstead, Lane and Walters – almost all of the Kanawha Valley legislative delegation.

We are sure this group of legislators is disappointed that the bill was not taken up. Methyl isocyanate is the same chemical that killed thousands of people in Bhopal, India in 1984.

Another Successful E-Day !

WVEC members from across the state gathered to celebrate E-Day! at the capitol on Wednesday.

During the day they lobbied their legislators in support of good environmental bills and also gave them an earful on the terrible bills.

During the evening we all gathered for a wonderful dinner and award ceremony, with more than 150 friends in attendance. Some of us even partied later at the Empty Glass!

At the capitol there were displays from our various member groups and small businesses who also attended.

Special thanks go out to everyone - way too numerous to name here - who helped make this years E-Day one of the best ever.

Look for photos and more details in our Legislative Wrap up issue.



Energy Efficient Building Codes Get the Shaft in House Committee

By Leslee McCarty
WVEC Lobbyist

Last year, we worked hard in concert with the Governor's office to make sure West Virginia was in good position to receive federal stimulus dollars targeted to energy conservation programs. In order to receive these monies, the governor had to assure the federal government that we were going to implement the most recent International Building Efficiency Codes, and a new building codes statute for the state was passed.

Great, right?

As far as last year, fine. As far as rules are concerned, not so great.

The West Virginia Homebuilders Association entered this session with a plan to change the law by changing the rules, so they got the Rule Making Review Committee to amend the building code rule and all of a sudden, we were back to the 2003 code that is now in effect.

So we had to go to House Judiciary last week on short notice and we lost the vote. Even with the "help" of the testimony of West Virginia Division of Energy chief Jeff Herholdt, Delegates Doug Skaff (D-Kanawha), Kelly Sobonya (R-Cabell) and others managed to defeat an attempt by Delegates Barbara Fleischauer (D-Monongalia) and Bill Wooton (D-Raleigh) to put the code back to the most recent version.

Now the Governor's office is working to remedy this problem in Senate Judiciary, but it is not clear what the outcome will be.

What is clear is that West Virginia will probably lose future federal energy efficiency grants because we let the Homebuilders rewrite the rules for laws the Legislature passed last year!!

And it is also clear to us that many of our legislators do not understand what "green buildings" are and that they save taxpayers and homeowners money and help reduce our carbon emissions by lowering heating and cooling costs.

This is "penny wise and pound foolish" government at its best, and very sad to see.

Think Renewable

CONSOL Could Face Suit Over Dunkard Creek Pollution

West Virginia environmentalists have filed a notice of intent to sue CONSOL Energy to try to stop ongoing water pollution violations that have already been blamed for a massive fish kill that left Dunkard Creek in Monongalia County lifeless.

The Sierra Club and the West Virginia Highlands Conservancy sent CONSOL President J. Brett Harvey a formal notice of intent to sue, citing the company's plans to continue discharging up to six times the legal limit of chlorides into the stream.

In their 14-page letter, the groups say compliance orders issued by the state Department of Environmental Protection do not free CONSOL of its obligation to comply with existing water quality standards approved by the U.S. Environmental Protection Agency.

"CONSOL has been given one extension after another to comply with the Clean Water Act, and it appears that WVDEP is more concerned with protecting the industry than with protecting the environment," said Jim Kotcon, energy chairman of the West Virginia chapter of the Sierra Club.

Last September, almost all fish, mussels and other aquatic life were wiped out in Dunkard Creek, a scenic stream that runs along the West Virginia-Pennsylvania border north of Morgantown. Regulators later blamed the fish kill on exotic algae, but conceded the algae only flourished because of the high conductivity of the stream.

CONSOL has active and inactive deep mines in the area along Dunkard Creek, and also operates treatment plants used to clean up acid drainage from water pumped out of those underground mines to protect workers. But the water pumped and treated at those sites ends up with dangerously high levels of chlorides — a problem that CONSOL and DEP have been slow to try to solve.

Since at least 2002, the DEP has listed Dunkard Creek and several tributaries as "biologically impaired," in part because of chlorides violations. At least three times in the last decade, the DEP gave CONSOL time extensions to stop violating its permit limits for chlorides. And last year, the DEP issued a clean-up plan for Dunkard Creek that included no remedy for these problems.

In a news release, the citizen groups warned that coal-mining has polluted other West Virginia streams with high levels of chlorides and other pollutants that increase conductivity and can harm aquatic life.

(From a longer Feb.25 article by Charleston Gazette reporter Ken Ward Jr.).

Bills We Are Tracking

Bill Number	Title	Committee
Senate Bills		
SB 4	Friends of Coal license plate (<i>Stupid Bill</i>)	On 1st Reading
SB 85	Repealing nuclear power plant ban (<i>Perennial Terrible Bill</i>)	KILLED IN JUDICIARY
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 Subcommittee
SB 183	Limiting diesel vehicles' idling	Passed Trans, to Judiciary
SB 233	Supreme Court Public Campaign Financing Pilot Program	Judiciary
SB 235	Creative Communities Development Pilot Program	On 2nd Reading
SB 350	Recategorizing recycled energy as renewable energy resource (<i>Terrible Bill</i>)	Passed Senate, to House EIL
SB 474	Creating Green Buildings Act (WVEC Bill)	Passed Trans, to Finance
SB 489	Determining status of recycling goals (Good Bill)	On 2nd Reading
SB 496	Allowing DEP Advisory Council certain rule-making authority (<i>Terrible Bill</i>)	Passed EIM, to Judiciary
SB 502	Requiring DEP complete coalmine permits by certain date (<i>Terrible Bill</i>)	EIM
SB 505	Updating Logging Sediment Control Act (<i>Bad Bill Has Been Fixed</i>)	On 2nd Reading
SB 508	Transferring powers from DNR to Div. of Forestry (<i>Bad Bill Has Been Fixed</i>)	Passed Nat Resources, to Finance
SB 509	Requiring DEP monitor certain litigation (<i>Terrible Bill</i>)	EIM
SB 518	Governor's Commission to Seize Future of Energy for America (<i>Coal is King Bill</i>)	On 2nd Reading
SB 529	Surface Owners' Rights Recognition Act (SORO Bill)	EIM
SB 590	Developing state coal educational campaign (<i>Terrible Bill</i>)	EIM
SB 614	PSC Siting Reforms Bill (WVEC Bill)	Judiciary
SB 621	Permanent NPDES Variance for Weirton Steel (<i>Terrible Bill</i>)	On 3rd Reading
SB 643	Creating natural gas resources transportation road system	Transportation
SB 655	Prohibiting new coal slurry injection permits (Great Bill)	EIM
SB 658	Marcellus Shale water protections bill (Great Bill)	Nat Resources
House Bills		
HB 2499	Require DEP remediate waste tire piles consisting of more than twenty-five tires	Passed Jud, to Finance
HB 2948	Green Buildings Act (2009 Stakeholder Bill) (See HB 4008)	Gov Org
HB 3279	Prohibiting permits for slurry injection and sludge impoundments (Great Bill)	EIL
HB 4001	Regulating Marcellus Shale Gas Well Drilling (Great Bill)	Gov Org
HB 4008	Green Buildings Act (WVEC Bill) (<i>Terrible Amendment</i>)	Passed Gov Org, to Finance
HB 4012	West Virginia Energy Efficiency Act (WVEC Bill)	Gov Org
HB 4130	Supreme Court Public Campaign Financing Pilot Program	On 1st Reading
HB 4162	Providing tax credit for certifications by US Green Building Council (Great Bill)	Passed House, to Senate
HB 4187	Continuing hazardous waste management fee until 2015	Senate Finance
HB 4193	Relating to the groundwater protection fund	Passed Nat Res, to Judiciary
HB 4246	Tax credit for electric plug-in vehicles (Great Bill)	Passed Roads and Trans, to Finance
HB 4250	Energy Efficient Building Act (residential and commercial) (Great Bill)	EIL
HB 4262	West Virginia Renewable Energy Act (Great Bill)	EIL
HB 4274	Residential Renewable Energy Systems Tax Credit (Great Bill)	EIL
HB 4276	Energy Efficient Building Act (residential and commercial) (Great Bill)	EIL
HB 4277	Authorizing DEP Secretary to sign NPDES permits (<i>Terrible Bill</i>)	Senate EIM
HB 4391	Expanding Net-Metering for Renewable Energy (Great Bill)	Judiciary
HB 4403	PSC Siting Reforms Bill (WVEC Bill)	Passed EIL, to Judiciary
HB 4408	Surface Owners' Rights Recognition Act (SORO Bill)	Judiciary
HB 4457	Relating to the access to and protection of cemeteries	Senate EIM
HB 4492	Renewable Portfolio Standards Sustainable Energy Act (WVEC Bill)	EIL
HB 4494	Allowing DEP Advisory Council certain rule-making authority (<i>Terrible Bill</i>)	EIL
HB 4513	Marcellus Shale water protections bill (Great Bill)	On 1st Reading
HB 4547	Coal-to-Liquid Act of 2010 (<i>Perennial Terrible Bill</i>)	EIL
HB 4580	2010 Bottle Bill (Great WV CAG Bill)	Judiciary
HB 4605	Exempting state businesses from federal environmental law (<i>Crazy Bill</i>)	EIL
HB 4612	Imposing severance tax on wind power (<i>Terrible Bill</i>)	EIL
HB 4638	Low Emission Vehicle Act (Great Bill)	EIL
HB 4654	Limiting storage of methyl isocyanate (Great Bill)	H&HR

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



Calendar of Events



March 1: Winter Blues Market. Lakeside Resort - Cheat Lake, from 4pm - 7pm. Indoor farmers market featuring farmers from all over WV and PA. Plenty of wonderful things to eat for sale.
For more information: www.morgantownfarmers.org

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

March 9: Rally For Reform (Big Insurance Protest in D.C.) Show Congress the American people still back health care reform, and are willing to stand up to get it! Group transportation is available
For more information: (304) 346-5892 / www.wvcag.org

March 13: Session concludes.

March 13: Winter Bird Walk. Wildlife Refuge Visitor Center. 8 am. Led by Casey Rucker.
For more information: (304) 866-3858.

March 27: Vandalia Garden Festival. Cultural Center, Charleston.
For more information: contact Ann Nye, nyeann@ma.rr.com

April 16: WV Citizen Action Group 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, Demonstrations, Booths on Energy, WV Agriculture & Organic Foods, Community Gardening & much more. "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: Denise Poole, deniseap@earthlink.net

April 24: Earthday Celebration. The Appalachian Folklife Center, Pipestem WV. 12 noon - till ? Music, panel discussion, crafts, children's theater. Camping and dorm rooms available.
For more information: www.folklifecenter.org or (304) 466-0626

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. 10am - 4pm.

May 29-31: Cranberry Backcountry Backpack. 26 mile moderate circuit. Daily mileage: 8/12/6.
Pre-registration required. Mike Juskelis, (410) 439-4964 or mjuskelis@cablespeed.com

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

July 10-12: Cranberry Wilderness Backpack. Hike in 5 miles, camp at Big Beechy Falls. Hiking continues day 2 and 3. 18 miles total.
Pre-registration required. Contact Mike Juskelis at (410) 439-4964 or mjuskelis@cablespeed.com



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- _____ \$ Other

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