



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 8 – What a Week

It's weeks like this one when WVEC could use a 10-member lobby team!

So much to do, so little time.

And the pressure is always intensified the last two weeks of the session.

If you look at our Bill Tracking list this week, you will see a lot of "DEAD" wood. That's because those bills did not make it out of one committee or another in time to be taken up by the full body for passage over to the other body.

So this week saw WVEC lobbyist John Christensen frantically trying to craft a compromise to keep SB 614 alive so that our proposed siting reforms for high-voltage transmission lines would still be on the table.

This week saw WVEC lobbyist Leslee McCarty frantically trying to pull together stakeholders to salvage the 2009 International Energy Code provisions contained in the Fire Marshall's building code rules that were unwisely removed by the Legislative Rule-Making Review Committee.

This week saw WVEC lobby team member Denise Poole frantically getting out new fact sheets and covering committee meetings and floor sessions and trying to keep us all organized.

As for me, well I was frantically trying to fend off several really bad bills, and frantically trying to manage all our efforts on oil and gas issues.

..... continued on page 3

House Passes Marcellus Shale "Water Bill"!

On Wednesday the House of Delegates passed HB 4513, the Marcellus Shale "Water Bill". Wednesday was "cross over" day, the last day for either house to pass bills originated in that house.

The vote in favor of passage was an overwhelming 89 to 8. Voting against the bill were Delegates Andes, Armstead, Blair, Carmichael, Hartman, Schoen, Ross, and Walters.

This is a huge victory.

But there is much work left ahead.

The battle now moves to the Senate, where the bill has been referred both to the Natural Resources Committee and Energy, Industry and Mining (EIM) Committee. It will take a lot of effort to get this bill approved by both these committees.

Senate Natural Resources Committee Chairman John Pat Fanning has already announced that his committee will hold a public hearing on HB 4513 on Monday, March 8, at 1:00 PM in the Senate Judiciary Committee Room, Rm. 208 West.

We hope many of you will attend this hearing. (Please see our [Action Alert](#) on Page 2 - and [Reasons To Support 4513](#) on page 3.)

This bill was drafted by Delegate Tim Manchin (D-Marion), with input from both the WVEC and representatives from the oil and gas industry.

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.

WVEC Urgent Action Alert:
PUBLIC HEARING: Marcellus Shale "Water Bill"
Monday, March 8th - 1:00 PM - Room 208 West
Contact Your Senators Now!

The **Senate Natural Resources Committee** will hold a **PUBLIC HEARING** – Monday, March 8th at 1:00 PM on **HB 4513**, the Marcellus Shale Water Bill, in room 208 West.

The House of Delegates passed the bill Wednesday. It has been referred to both **Natural Resources Committee** and **Energy, Industry and Mining (EIM) Committee** in the **Senate**.

We hope many of you will attend the PUBLIC HEARING. And we ask all of you to contact your Senators on the Natural Resources Committee and ask them to SUPPORT this important bill.

HB 4513 was drafted with input from both the WV Environmental Council and representatives from the Oil & Gas industry.

Please see "Reasons to Support HB 4513 Protecting State Water Resources From Marcellus Gas Well Drilling" on page 3. These facts will help with your talking points when contacting your senators.

The best way to reach your Senators:

Call the capitol toll free: (877)-565-3447 – leave a message.

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

(Plug in your zip-code; click on contact to be taken directly to your Senators.)

To call capitol phone numbers for Senate Natural Resources:

Sen. John Pat Fanning (D-McDowell), Chair:	(304) 357-7867
Sen. William Laird (D-Fayette), Vice Chair:	(304) 357-7849
Sen. Edwin Bowman (D-Hancock):	(304) 357-7918
Sen. Larry Edgell (D-Wetzel):	(304) 357-7827
Sen. Douglas Facemire (D-Braxton):	(304) 357-7845
Sen. Walt Helmick (D-Pocahontas):	(304) 357-7980
Sen. Brooks McCabe (D-Kanawha):	(304) 357-7990
Sen. Roman Prezioso (D-Marion):	(304) 357-7961
Sen. John Unger (D-Berkeley):	(304) 357-7933
Sen. Randy White (D-Webster):	(304) 357-7906
Sen. Clark Barnes (R-Randolph):	(304) 357-7973
Sen. Frank Deem (R-Wood):	(304) 357-7970
Sen. Karen Facemyer (R-Jackson):	(304) 357-7855

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

One of the bad bills I was starting to get frantic about was SB 621 that, if adopted by the Legislature, would have provided a permanent “variance” from the state’s water quality standards for Weirton Steel.

I wrote about it in this column last week.

Well, late this week we were informed by the Secretary of State’s office that DEP had filed an emergency rule extending the current variance until the next official rule-making period. That’s the way this should have been handled in the first place.

So hopefully, SB 621 is now off the table, and there’s one less thing for the lobby team to deal with.

And we will have plenty to deal with next week, the final week of the session.

No snow storm this week. What a relief.

But keep those bird feeders full while our fine-feathered friends get ready for spring.

Oil and Gas Rule “Fixed” In House Judiciary

On Thursday the House Judiciary Committee amended DEP’s Oil and Gas Well Rule back to the original language submitted to the Legislative Rule-Making Review Committee by the Office of Oil and Gas.

So as it now stands, the rule requires that all drilling pits and impoundments have impermeable synthetic liners.

Del. Bonnie Brown (D-Kanawha) offered the amendment to restore the pit liners mandate. Del. Brown is the House chair of the Legislative Rule-Making Review Committee.

Her amendment was adopted by a voice vote, and it fixes the modification that was negotiated by Sen. Joe Minard (D-Harrison) between DEP and industry in the hall just before the session. Sen. Minard is the Senate chair of the Legislative Rule-Making Review Committee.

If you want to track the progress of this rule through the rest of the session, the DEP rules have all been bundled into a single bill, with a new number – SB 273.

This is the last issue of our *Legislative Update* for the session, ending March 13th. Please stay in touch via our website: www.wvecouncil.org and watch for e-mail Notices and Action Alerts.

Our GREEN Legislative Wrap Up issue will be published post session in April.

Reasons to Support HB 4513 Protecting State Water Resources From Marcellus Gas Well Drilling

HB 4513 establishes minimum reporting requirements for water use in the drilling and fracturing of Marcellus Shale gas wells. West Virginia lags far behind neighboring states in the Marcellus Shale region in protecting our water resources to be used in the drilling process. This bill assures minimal reporting and record keeping for Marcellus wells.

These requirements are necessary in order to protect rivers and streams from becoming dewatered by stream withdrawals or contaminated by disposal of wastewater produced in the drilling and fracturing process.

The bill would require that prior to drilling, fracturing or stimulating Marcellus Shale gas wells that use large volume fracs, operators must submit the following information to WV DEP’s Office of Oil and Gas:
Where: Type of water source (surface, underground or groundwater) and county of origin and GPS data for location of withdrawal.

How Much: Anticipated volume of each withdrawal

When: Anticipated months when water withdrawals will be made.

How: Planned management and/or disposition of wastewater.

Contents: Additives to frac fluids and material data safety sheets.

For surface water withdrawals, a water resources protection plan that includes the above information, and measures to be taken to allow the state to manage water quantity. The Plan must include the following:

- 1) Current designated and existing water uses, including public water intakes within one mile downstream.
- 2) Demonstration of sufficient in-stream flow immediately downstream.
- 3) Use of the DEP Water Use Guidance Tool as a measurement of flow.
- 4) Measures to protect fish.

Further, operators must keep records of their handling of frac water, including the quantity of flowback water, the quantity of produced water, and the method of disposal of flowback and produced water.

When they dispose of waste waters, operators must keep records of the quantity of all water transported to disposal facilities, the collection and disposal locations of all waste water, and the name of the water hauler.

End of an Era:

DEP has to live with the Clean Water Act for Coal Mining

By *Leslee McCarty*
WVEC Lobbyist

DEP Secretary Randy Huffman thinks water quality "is a good thing." Well, not if we are talking about water in a stream that has been valley-filled into extinction.

He and the few delegates gathered to hear his presentation to the House Select Committee on Coal Mining Permits all seem to think that streams near mountain top removal sites start at the end of pipes leading away from the sites and ignore the streams that have been filled in by "overburden."

Huffman and the members of this Select Committee are focused on the "injustice" perpetrated on the DEP by the federal Environmental Protection Agency, which insists on enforcing the Clean Water Act.

Echoing the coal industry's claims that the EPA is robbing the state of its sovereignty, he advocated that elected officials should be involved in the permitting process and complained that there was no dialogue with the state on permits, just negotiations between the coal companies and the EPA.

Like the coal companies, he believes the EPA is trying to shut down all permits for MTR in West Virginia. "EPA doesn't regulate coal mining, yet that is what is happening," he complained. He predicted that the Spruce Mine is going to be denied (by EPA) tomorrow. He also bitterly complained that Lisa Jackson, EPA Administrator, "wants to negotiate each individual permit without reference to other permits."

Unfortunately, under the last administration in Washington, the companies have been used to getting their permits from the Corps of Engineers as Nationwide permits, not individual ones, so of course they are upset!

For advocates for the environment, the fact that blanket permits were ever allowed is the problem, not the idea that the EPA is enforcing the Clean Water Act. Or as quoted by Secretary Huffman, the EPA administrator says "The state of West Virginia interprets certainty as doing what they have always been doing."

The Secretary asked for clarity from EPA, saying that uncertainty is the issue, "Just tell me no," he says to the EPA. He says the EPA is saying "Yes . . . but," and setting impossible moving targets. He says the EPA thinks streams should be pristine and there should be "no human activity impacting them."

Huffman stated, "It's easy to protect the environment if I just shut everything down." Huffman also said that the EPA mentions the social impacts of mining and touched on President Obama's using the term "environmental justice," but said that the EPA could not define the term.

Finally, Huffman said he must identify a protocol for a narrative standard to define water quality, adding that no other states have such a standard. He said he welcomes input from the public on this. After he gets that standard, he said, "I am going to go back to issuing permits and let the EPA do what it will do."

You can read more about this on Ken Ward's Coal Tattoo blog on the Charleston Gazette web site at <http://blogs.wvgazette.com/coalattoo/2010/03/03/wvdep-trying-to-head-off-epa-on-mining-limits/>

Senate Passes Bill to Legalize Stealing Urge Your Delegates to Oppose SB 369

By *WV SORO*

SB 369 would change the definition of a "shallow well" so that it applies to vertical Marcellus Shale wells. This would essentially legalize stealing of gas from neighboring mineral owners. Unlike wells defined as "deep wells," "shallow wells" are not subject to well spacing and royalty sharing laws which allow mineral owners whose natural gas is drained by wells on their neighbors to receive their share of the royalties.

If Marcellus wells aren't subject to those laws, gas drillers could drill on the edge of a neighboring mineral owners' land and drain gas from that tract without paying for it. One Marcellus Shale well could start out taking more than \$1,000 a day in royalties from a neighboring mineral owner.

This bill is also bad for surface owners because without well spacing, there can be more of these larger sites on the surface, with no limit on how close together they can be. The bill is also bad for the environment because it would result in more well sites, meaning more forest fragmentation, more soil erosion and stream sedimentation, and increased risks to groundwater.

SB 369 passed the Senate earlier this week and is now in the House of Delegates, assigned to House Judiciary Committee.

Please contact your Delegates and House Judiciary Committee members to urge them to **oppose SB 369**.

Call the Capitol toll free: (877) 565-3447 to leave a message for your delegates. To leave an e-mail: <http://www.legis.state.wv.us>

PSC “Siting Reforms” Survives in SB 614

*By John Christensen
WVEC Lobbyist*

It took a lot of hard work and behind the scenes meetings this week, but in the end at least some of the provisions in WVEC’s Public Service Commission Siting Reforms legislation survived in SB 614, which was passed by the Senate on Wednesday.

Last week we watched in dismay as HB 4403, WVEC’s full siting reform bill was not taken up by the House Judiciary Committee, after passing out of House Energy, Industry, and Labor Committee on E-Day.

So it was fortunate for us that Senator John Unger (D-Berkeley) had introduced SB 614 earlier in the session, even though it did not contain everything in HB 4403.

How SB 614 happened to be taken up by Senate Judiciary is another story altogether. But come up it did on Monday, in the form of a totally inadequate committee substitute for the bill that nobody, even the members of the committee, had seen before they voted it out.

What happened next was a whirlwind of behind the scene discussion and negotiations between Senators Unger, Herb Snyder (D-Jefferson), and Judiciary Chairman Jeff Kessler (D-Marshall). Lobbyists from the electric utility industry and WVEC and representatives of anti-PATH groups were also involved in the talks.

In the end, Senator Kessler introduced two amendments on the Senate floor Wednesday that restored two provisions to the committee substitute.

The first amendment restored and clarified that written notice to landowners be provided by utility companies proposing to build high-voltage transmission lines.

The second amendment mandates that the PSC include “written findings articulating how its decision is made in the best interest of West Virginia customers to meet the present and future needs and reliability of service for West Virginia customers” when considering approval of high-voltage transmission lines.

Both amendments were adopted and the bill was passed to the House.

We want to thank Senators Kessler, Unger and Snyder for working with us on this bill. And we really appreciate the special help of our anti-PATH friends, Patience Wait and Bill Howley, and all our members and member groups who made countless phone calls and sent numerous emails that helped keep this bill alive.

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The bill is now single referenced to House Judiciary Committee and should be on the agenda soon with a new title amendment, “relating to Public Service Commission approval of the construction of high voltage transmission lines.”

Race to the Bottom On Building Energy Codes

*By Leslee McCarty
WVEC Lobbyist*

Stick around and you will learn something even at the capitol, and here is what I learned this week. After being told in House Judiciary that West Virginia was using the 2003 IECC building codes to improve energy efficiency in our buildings, I found out Monday that we are not! Well, we are for commercial buildings, but not for our homes.

Guess who we have to thank for that? Our Homebuilders Association. They have succeeded in getting the international code replaced by our own homegrown standards that are much lower. No wonder they are fighting tooth and nail against following the international code! They have not ever had to follow it.

Because we do not build to current IECC standards, builders are intentionally building less efficient homes in West Virginia, passing off higher utility costs to homeowners and decreasing long-term home values. We are working hard with the Governor’s office and Sarah Halstead from “West Virginia GreenWorks” to get our facts before the Senate Judiciary Committee before they meet next week to consider the code.

Shameless Plea Running On Empty

Here we are, heading into the last week of the 2010 Legislative Session.

Here we are, struggling to keep our funding going and make it to the finish line and running on empty.

Here we are, shamelessly asking for your financial support one last time.

We are here, and will be here until midnight Saturday, March 13th and beyond - running on fumes even!.

If you are not running on empty, and have anything to donate to the WVEC lobbying effort, please send a little something our way this week if you can.

*The forever grateful WVEC Lobby Team,
Don, Denise, Leslee & John*

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Bills We Are Tracking

Bill Number	Title	Committee
Senate Bills		
SB 4	Friends of Coal license plate (<i>Stupid Bill</i>)	House Transportation
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)	Dead
SB 181	Limiting land development ordinances (<i>Perennial Bad Bill</i>)	Dead
SB 183	Limiting diesel vehicles' idling	House Transportation
SB 235	Creative Communities Development Pilot Program	House EIL
SB 350	Recategorizing recycled energy as renewable energy resource (<i>Terrible Bill</i>)	House Finance
SB 474	Creating Green Buildings Act (WVEC Bill)	Dead
SB 489	Determining status of recycling goals (Good Bill)	House Gov Org
SB 496	Allowing DEP Advisory Council certain rule-making authority (<i>Terrible Bill</i>)	House Judiciary
SB 502	Requiring DEP complete coalmine permits by certain date (<i>Terrible Bill</i>)	Dead
SB 505	Updating Logging Sediment Control Act (<i>Bad Bill Has Been Fixed</i>)	House Gov Org
SB 508	Transferring powers from DNR to Div. of Forestry (<i>Bad Bill Has Been Fixed</i>)	Dead
SB 509	Requiring DEP monitor certain litigation (<i>Terrible Bill</i>)	Dead
SB 518	Governor's Commission to Seize Future of Energy for America (<i>Coal is King Bill</i>)	House Finance
SB 529	Surface Owners' Rights Recognition Act (SORO Bill)	Dead
SB 590	Developing state coal educational campaign (<i>Terrible Bill</i>)	Dead
SB 614	PSC Siting Reforms Bill (WVEC Bill)	House Judiciary
SB 621	Permanent NPDES Variance for Weirton Steel (<i>Terrible Bill</i>)	House Judiciary
SB 643	Creating natural gas resources transportation road system	Dead
SB 655	Prohibiting new coal slurry injection permits (<i>Great Bill</i>)	Dead
SB 658	Marcellus Shale water protections bill (<i>Great Bill</i>)	Dead
House Bills		
HB 2499	Require DEP remediate waste tire piles consisting of more than twenty-five tires	Dead
HB 2948	Green Buildings Act (2009 Stakeholder Bill) (See HB 4008)	Dead
HB 3279	Prohibiting permits for slurry injection and sludge impoundments (<i>Great Bill</i>)	Dead
HB 4001	Regulating TDS and Marcellus Shale Gas Well Drilling (<i>Great Bill</i>)	Dead
HB 4008	Green Buildings Act (WVEC Bill) (<i>Terrible Amendment</i>)	Dead
HB 4012	West Virginia Energy Efficiency Act (WVEC Bill)	Dead
HB 4130	Supreme Court Public Campaign Financing Pilot Program	Senate Judiciary
HB 4162	Providing tax credit for certifications by US Green Building Council (<i>Great Bill</i>)	Senate Finance
HB 4187	Continuing hazardous waste management fee until 2015	Senate Finance
HB 4193	Relating to the groundwater protection fund	Dead
HB 4246	Tax credit for electric plug-in vehicles (<i>Great Bill</i>)	Dead
HB 4250	Energy Efficient Building Act (residential and commercial) (<i>Great Bill</i>)	Dead
HB 4262	West Virginia Renewable Energy Act (<i>Great Bill</i>)	Dead
HB 4274	Residential Renewable Energy Systems Tax Credit (<i>Great Bill</i>)	Dead
HB 4276	Energy Efficient Building Act (residential and commercial) (<i>Great Bill</i>)	Dead
HB 4277	Authorizing DEP Secretary to sign NPDES permits (<i>Terrible Bill</i>)	Senate EIM
HB 4391	Expanding Net-Metering for Renewable Energy (<i>Great Bill</i>)	Dead
HB 4403	PSC Siting Reforms Bill (WVEC Bill)	See SB 614
HB 4408	Surface Owners' Rights Recognition Act (SORO Bill)	Dead
HB 4457	Relating to the access to and protection of cemeteries	Senate EIM
HB 4492	Renewable Portfolio Standards Sustainable Energy Act (WVEC Bill)	Dead
HB 4494	Allowing DEP Advisory Council certain rule-making authority (<i>Terrible Bill</i>)	See SB 496
HB 4513	Marcellus Shale water protections bill (<i>Great Bill</i>)	Senate Nat Res, then EIM
HB 4547	Coal-to-Liquid Act of 2010 (<i>Perennial Terrible Bill</i>)	Dead
HB 4580	2010 Bottle Bill (<i>Great WV CAG Bill</i>)	Dead
HB 4605	Exempting state businesses from federal environmental law (<i>Crazy Bill</i>)	Dead
HB 4612	Imposing severance tax on wind power (<i>Terrible Bill</i>)	Dead
HB 4638	Low Emission Vehicle Act (<i>Great Bill</i>)	Dead
HB 4654	Limiting storage of methyl isocyanate (<i>Great Bill</i>)	Dead

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



Calendar of Events



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. Live music by the VooDoo Katz. Full buffet - \$30 per person. *Save this date - more 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 Ginsingers 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

To have your event placed in the WVEC Calendar contact: Denise Poole, editor - deniseap@earthlink.net



Support the West Virginia Environmental Council

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City, State, Zip: _____

_____ \$ 500 Canopy

_____ \$ 1,000 Old Growth

Phone: _____ e-mail _____

_____ \$ Other



Think Renewable

Clean Coal is an
oxymoron



This is the last issue of our WVEC *Legislative Update* newsletter for the session, ending March 13th.

The last week is always too hectic, and it is impossible to publish the last Friday.

Please stay in touch via our website: www.wvecouncil.org and watch for e-mail Notices and Action Alerts.

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