



West Virginia Environmental Council's

GREEN Legislative Update

Published Weekly During West Virginia's Legislative Session

Volume: **21** Number: **1**

Date: **January 14, 2011**

Under the Dome

By Donald S. Garvin, Jr.

WVEC Legislative Coordinator

Week 1 – Gas Pains

As you will notice from other items in this *Update*, it appears now that the West Virginia Legislature will have at least two draft bills to use when it considers legislation regulating Marcellus Shale drilling during the 2011 Legislative Session.

The first is a draft bill prepared by legislative staff for the Interim Judiciary Subcommittee A, and is the result of more than two years of committee presentations on the subject, prepared by a wide variety of stakeholders, including environmentalists, landowners and industry. The Judiciary A bill draft creates a whole new article of Chapter 22 – Article §22-6A – and it applies only to the drilling of horizontal (Marcellus) wells.

The second is a draft bill prepared by the WV Department of Environmental Protection (DEP), and is the result of a programmatic review of the state's oil and gas regulatory program that was begun in April, 2010, and included input from the same wide variety of stakeholders.

In October DEP convened a nine-member workgroup of these stakeholders to further discuss the issues that might be included in a draft bill. I was appointed to the workgroup to represent the environmental community. Our good friend Dave McMahon was appointed to represent surface owners. Other members included a former Office of Oil and Gas Director who now represents large landowners, a coal industry lawyer, and five natural gas industry representatives.

The DEP bill draft, which resulted from all these meetings amends sections of Article 6 of Chapter 22 of West Virginia Code, the section of the code dealing with the Division of Oil and Gas, and regulating oil and gas well drilling generally. The DEP bill creates new language dealing with horizontal drilling, but also makes changes that affect conventional (shallow) drilling.

Both bill drafts are long (more than 100 pages long) and legally and technically complex. So what's in them, what's not, and how do they compare?

Let's begin by listing what's not in either bill.

Neither bill addresses air quality issues associated with Marcellus drilling operations.

Neither bill establishes a permit system for large water withdrawals.

And both bills continue to allow drilling pits to be buried on site.

The “water management plans” language in both bills is almost identical, and was lifted directly from last year’s bill, HB 4513, sponsored by Delegate Tim Manchin (D-Marion). While neither of the draft bills requires an actual water withdrawal permit, the DEP bill comes closest to doing that. It requires the operator to identify and report the location of proposed water withdrawals within forty-eight hours prior to the withdrawal.

More notice and consideration is given to surface owners in the Judiciary bill.

The DEP bill establishes a horizontal well drilling permit fee of \$10,000 per well. The Judiciary bill establishes a horizontal well drilling permit fee of \$15,000 per well, and includes an additional \$15,000 reclamation fee for each well.

These increased fees are essential to DEP’s oil and gas regulatory program, if the agency is to be able to hire inspectors and other staff necessary to implement the program.

There are a multitude of other provisions too numerous to go into here. There are things we like in both bills. There are things we’d like to see in a final bill that are not included in either of these two bills.

We obviously have our work cut out for us this session.

Winter is in full blast, so please remember our fine-feathered friends and keep your bird feeders full.

State of the State, or Chamber of Commerce Dinner?

By, Leslee McCarty, WVEC lobbyist

The whole time I was watching the State of the State address by acting Governor Tomblin, I kept thinking I was at one of those conventions at the Greenbrier for the Chamber of Commerce or the Coal or Oil and Gas Association. Nary a word about the environment was spoken, except for a reference to mining coal in an environmentally safe manner with regard to Carbon Capture and Storage. The only climate mentioned was the business climate.

So here we are at the Chamber dinner and who is there? All the seats are filled by oil and gas and coal minions and Macy’s and Toyota executives and the waiters are teachers (they got an \$800 tip for the whole year) and poor people and environmentalists (maybe the same folks) are outside looking in the windows at the feast. The crumb we got is a proposal to cut the food tax by 1%. Guess we had better start looking around for some cake to eat.

On Marcellus drilling, we were told to “embrace” the drilling with no mention of the state DEP’s efforts to regulate it through pending legislation. Somehow that conjures up for me the image of an arranged marriage of an underage girl to an old rich man for the sake of the family finances. “Now honey, you know we married off your sister to King Coal a while back and now it’s your turn. Embrace Marcellus. It’ll be alright. It’s for the family.”

And a new term emerged - “carbon friendly.” The acting governor wants us to do things to become more carbon friendly. I don’t know about you, but I feel pretty darn carbon friendly already. We have already sacrificed streams, air quality, miners’ lives, and communities’ health. I would like to see us become “planet friendly” before we lose our lease.

Come on, Acting Governor, let’s get some regulations in place for Marcellus shale drilling and quit pandering first to coal and now oil and gas. Let’s show some backbone and say, “If you are going to extract our resources, we have to make sure we protect our land and water and our people!”

Interim Committee Advances Marcellus Shale Legislation

By John Christensen, WVEC Lobbyist and Julie Archer, WVSORO Lobbyist

On Monday this week, Subcommittee A of the Interim Joint Judiciary Committee advanced a bill establishing a new regulatory program for gas wells utilizing horizontal drilling and hydraulic fracturing. Although the committee advanced the bill without a recommendation for passage by the full legislature, this keeps the bill alive.

At the meeting, WV Department of Environmental Protection (DEP) counsel Kristin Boggs told the committee that currently her agency has 12 inspectors for approximately 59,000 active wells and that the committee bill has funding for more inspectors.

Former Delegate Mike Ross (D-Randolph) (not a member of the committee) immediately spoke against the bill even though he will never have a chance to vote on it. He called the bill a “jobs bill in reverse” and that too much regulation will drive all the drilling up to Pennsylvania where he said the regulations aren’t as strict. Ross noted that West Virginia has a 5% severance tax on natural gas and that Pennsylvania does not have a severance tax on gas.

Not to be outdone, former Senator Frank Deem (R-Wood) called the forced “pooling and unitization” provisions contained in the bill a “taking” and was successful in getting the committee to amend those provisions out of the bill.

To his credit, committee co-chairman Delegate Mike Caputo (D-Marion) called on the need for the gas industry to develop the resource responsibly, and stressed the importance of moving the bill out of the subcommittee so that it could be worked on during the session.

So this means the Legislature will have two comprehensive Marcellus bills to consider. The DEP has finalized its own draft legislation and acting Governor Earl Ray Tomblin has signed off on the package (although it will not be a governor’s bill and Tomblin did not mention it in his State of the State address).

Both bills are aimed at regulating the Marcellus Shale gas well drilling occurring now in West Virginia, but would apply to all drilling using these new techniques. In addition, both bills would provide DEP with much needed funds to hire additional inspectors through an increase in permit fees. Although, each bill omits some things we want, (and the interim bill does some things better than the DEP bill and vice versa), both bills are a good start at protecting our land and water resources from destructive drilling practices.

WVEC Legislative Coordinator, Don Garvin, has prepared a detailed comparison of the two proposals and we’ll provide you with more particulars in future updates. In the meantime, visit www.wvsoro.org and check out our new slide show “The Industrialization of Rural West Virginia” to see why we urgently need to overhaul and modernize of its oversight of gas well drilling, and commit more resources to address the impacts of Marcellus Shale development.

Water Quality Standards Rule Advances

By Donald S. Garvin Jr.

WVEC Legislative Coordinator

The Joint Legislative Rulemaking Review Committee passed WV DEP’s proposed changes to the Water Quality Standards Rule (47CSR2) with no changes at its last Interim meeting Monday evening. It’s now ready for consideration by the full Legislature.

The rule contains a new water quality standard for Total Dissolved Solids (TDS) of 500 mg/l “in stream”, which is stricter than Pennsylvania’s standard of 500 mg/l at a public water supply intake. TDS is primarily chemical salts associated with mining and oil and gas activities.

When questioned by Senator Herb Snyder (D- Jefferson) that the proposed standard might be too high, DEP Office of Water and Waste Management Chief Scott Mandirola told the committee that it really ought to be 250 mg/l, which is what WVEC recommended in our comments on the rule.

The changes proposed in this rule are required by EPA under the Triennial Review provisions of the federal Clean Water Act.

Other changes proposed include new “narrative criteria” language, a permanent mixing zone for Weirton Steel, lowering the iron standard on waters designated as trout streams, and nutrient standards for the Greenbrier River.

Industry opposes most of the changes proposed in the rule. And WVEC, in fact, does not like some of the proposed changes.

This rule will be a battle for us this session.

Bill to Ban Coal Slurry Injection Advances

Interim Judiciary Subcommittee A on Monday passed out a bill that would permanently ban the injection of coal sludge into underground coal mines, with “recommendation” that it be passed by the full Legislature.

The bill contains tax incentive provisions for coal companies who upgrade to new technologies for dealing with the waste that results at coal prep plants.

On Tuesday the full Interim Joint Legislative Judiciary Committee passed the bill with the same recommendation. That means there will be both a House and Senate bill for the Legislature to consider during the regular session.

The Legislature should ban the underground injection of coal slurry. People in the coal fields are becoming seriously ill from drinking groundwater contaminated by this practice.

Environmental Protection Agency (EPA) Vetoes Spruce Mine Permit

On Thursday, January 13th it was announced that the U.S. Environmental Protection Agency vetoed the proposed Spruce No. 1 Mine. This veto of the U.S. Army Corps of Engineers’ approval of the mine proposed for the Blair area of Logan County, is for 2,300 acres, the largest single mountaintop removal permit in West Virginia history.

EPA officials said their agency is “acting under the law and using the best science available to protect water quality, wildlife and Appalachian communities who rely on clean waters for drinking, fishing and swimming.”

Staff writer Ken Ward, Jr. reports in the *Charleston Gazette* that “the move is part of an Obama administration crackdown aimed at reducing the effects of mountaintop removal coal-mining on the environment and on coalfield communities in Appalachia – impacts that scientists are increasingly finding to be pervasive and irreversible.”

Bayer to Phase Out MIC

Bayer CropScience announced Tuesday that it will stop making, storing and using the deadly chemical methyl isocyanate MIC at its Institute plant as part of a corporate restructuring that will also cost the plant 220 jobs.

Maya Nye, spokeswoman for the group People Concerned About MIC (and former WVEC board member) has issued a statement on the decision to supporters via email. Here are some excerpts:

“Today there was a victory on the MIC front. Bayer announced that there will cease production of MIC over the next 18 months and decommission the unit by 2012. While this is a victory for our group and all of those in harms way of the chemical, we still need to remain vigilant . . . MIC is not the what caused the August 2008 explosion, it is not what we believe causes the illnesses in our community, nor is it the only chemical of danger to us.

“While this is a monumental step in our 26-year campaign to keep our community safe . . . our hearts go out to the workers who, over the next several years, will be losing their jobs. Yet we must remember that these jobs were lost to them by a company that chose not to plan ahead, not to change to safer technologies, and not to ensure their future in our community.

“Next week, the Chemical Safety Board will be having their meeting to let the community know about their final investigation report and their recommendations to regulators and industry about how to make the our valley safer after the August 2008 explosion. I hope you will attend. It will be held at the WV State University Student Union in Institute on Jan. 20th at 6:30pm.

“At that meeting, I believe they will recommend (the adoption of) an Industrial Safety Ordinance (ISO) similar to that of the one in Contra Costa County, California which has drastically helped increase safety and minimize releases that greatly impact the communities surrounding their concentrated industrialized area. This is something I suggest we support. “Even though our threat will be greatly reduced without the presence of MIC, we still have MILLIONS of pounds of other deadly chemicals stockpiled in the valley (such as chlorine, ammonia, ethylene oxide) and other corporations . . . who have negligent safety practices and compromise the safety of our community. By implementing an ISO, the public will have access to information that will keep chemical companies vigilant in their safety practices and keep us in the know about what is happening in our community. This is a huge step.

In Memoriam - Judy Bonds

We wish to express our sorrow at the recent passing of Judy Bonds - friend, colleague, long time activist against mountaintop removal coal mining, and Executive Director of Coal River Mountain Watch.

Her memorial service will take place this Saturday, January 15, at the Tamarack Art Center in Beckley at 2 PM.

Judy was bestowed numerous honors in recognition of her dedication and effectiveness. In addition, WVEC is proud to have given our “Laura Forman Grassroots Activist” award to her in 2002, and the “Linda Schnautz Courage Award” will be awarded her posthumously on February 9.

So much has been expressed and written since her death January 3rd, as an outpouring of memories and praises have been shared among us. We’ve printed a portion of a tribute to her and details of her memorial service below:



Julia “Judy” Bonds, largely responsible for building resistance against mountaintop removal coal extraction from a local issue to a national movement, will be memorialized this Saturday, Jan. 15, at Tamarack in Beckley, WV at 2:00 p.m. Bonds passed away January 3 from cancer. She was laid to rest at a private funeral in Rock Creek, WV, on Jan. 5. The memorial service program includes singers Kathy Mattea, Shirley Stewart Burns, T. Paige Dalporto, Andy Mahler, and Jen Osha. Speakers include Bonds’ daughter Lisa Henderson, authors Denise Giardina (*Storming Heaven, The Unquiet Earth*) and Jeff Biggers (*The United States of Appalachia, Reckoning at Eagle Creek*), 2007 Goldman Environmental Prize winner Maria Gunnoe, and other prominent activists in the movement to end mountaintop removal. The public is invited to this celebration of Bonds’ life and work.

Known as Judy to her friends, she joined Coal River Mountain Watch to fight the mountaintop removal and sludge dams threatening her family and community, participating in demonstrations such as the 1999 reenactment of the march on Blair Mountain. Bonds would eventually become Executive Director of the group.

In 2003, she won the prestigious Goldman Environmental Prize. She has appeared in several documentaries, such as *Black Diamonds, Mountain Top Removal, Burning the Future, Coal Country*, and *On Coal River*; books such as *Coal River, Plundering Appalachia, Crimes against Nature, Mountain Justice* and *Something’s Rising*; and numerous magazines such as *People, Newsweek, Vanity Fair, Utne Reader*, and *O*. In 2009, *Utne Reader* named her as one of “50 Visionaries Who Are Changing Your World,” along with such influential people as the Dalai Lama.

Bonds was in constant demand as a speaker, and always eloquently and passionately told the story of her community’s struggle, whether to a handful of visitors, an academic convention, or an audience of thousands of young people. The story of her passing was covered across the country, from the *Washington Post* to the *Los Angeles Times*.

The family has asked that, instead of flowers, people donate to support the ongoing work of Coal River Mountain Watch, on the internet at www.crmw.net or by mail at P.O. Box 651, Whitesville, WV 25209. Details and directions are posted at www.judybondsmemorial.com.

2011 West Virginia Environmental Council Legislative Priorities

Here is a list of WVEC legislative priorities for 2011 as developed at our Annual Fall Conference, and approved by the Legislative Affairs Committee.

Oil & Gas Issues: Marcellus Shale Drilling Regulation

Coal Sludge Injection: Bill to Ban Slurry Injection

Water Quality Standards Rule: Changes proposed for narrative standard for water withdrawals, TDS criteria, lowering criteria for iron, nutrient standards, permanent mixing zone variance

Chesapeake Bay Restoration: Judiciary bill for funding sewage treatment plant upgrades

Energy Bills: Green Buildings Act

West Virginia Energy Efficiency Act

Renewable Portfolio Standard Act

Additional incentives for “renewables”

Coal Ash: Tightening Regulation of “Beneficial Use”

Coal Taxes: Eliminate tax “subsidies” for the production and burning of coal

On-Going Efforts: Bottle Bill/Recycling, Public Health Impact Assessment Bill, and Resolution calling for “accountability” of DEP and PSC

***Dominion Post* Calls for Strong Drilling Regulations**

(It is not often we find ourselves in agreement with the Morgantown *Dominion Post*. But for more than a year the newspaper has provided significant coverage of all the issues involved in drilling Marcellus Shale gas wells. And we find little to disagree with in the following editorial they published on January 13).

Dominion Post Editorial

Don't Just Scratch the Surface - Make Sure to Add Teeth When Chewing On Marcellus Shale Drilling Proposals

No one said this was going to be easy. Though there was a quorum of state senators this time around for a session on regulating the Marcellus shale gas industry, the only thing that got done was passing the buck. The proposal did advance to the legislative interim's joint Judiciary Committee and will be before the full Legislature on Monday, but without a recommendation for passage. Which, in legislative parlance, translates into this bill needs work.

Of course, you can look at it another way, too, as Delegate Mike Caputo, D-Marion, did. After initially moving to send the bill forward with a recommendation for passage, he took the position that this proposal serves best as a point of reference for what's to come.

One hold-up on this bill is the effort to mesh the legislative proposal with the state Department of Environmental Protection's proposed regulations. The DEP has drafted its own regulations for drilling into Marcellus shale. There's certainly good reason to review both these bills and integrate the best of both into regulations that address all concerns, including polluted waterways and truck damage to secondary roads. Landowner issues, including pooling, the process of compensating people for draining gas reserves they own by drilling nearby, appear headed for separate legislation.

One positive thing that has emerged in both proposals is that permit fees will increase substantially to cover the cost of hiring additional gas well inspectors. That's a start, however, we urge all legislators, especially our delegation from this region, to ensure that this bill have some teeth. A wishy-washy bill, like the one that died last year, will do little to protect our environment, our roads or our communities.

Yet, Caputo's right. It is important to start with a bill that gets everyone to the table and keeps them there to tap meaningful regulations. Regulations that require drillers to manage water resources used in the fracking process, and disclose the chemicals mixed with these high volumes of water. That includes the amounts of chemicals drillers use in addition to how they replace contaminated water. Drillers also should be required to post bonds to cover damages to roadways. And failure to conform to any of these measures should be subject to fines and legal action.

The environment and the economy are inseparable. The wealth of our state may be a mile below our feet, but we will need to do more than scratch the surface to regulate its extraction.

Think Renewable ...

Join Us for Citizen Lobby Days

Who? WV Chapter of the Sierra Club, WV Environmental Council, WV-SORO and others working to protect our land and water resources from destructive drilling practices

What? Citizen Lobby Days

When? Where? Each Wednesday (or any day*) during the 2011 Legislative Session (Starting January 19, 2011) at the State Capitol in Charleston

Why? To urge lawmakers to strengthen West Virginia's oil and gas drilling laws

Please call Chuck, Julie or Denise in advance so we can be sure to meet with you and maximize our time. Chuck Wyrostok, WV Sierra Club Outreach Coordinator, at (877)-252-0257 or wyro@appalight.com; Julie Archer at (304) 610-9094 or julie@wvsoro.org; or Denise Poole, WV Environmental Council at (304) 414-0143 or deniseap@earthlink.net

*A group of organizations working on these issues have picked Wednesdays as Citizen Lobby Days, however, with a little advance notice we'll be happy to meet you anytime you are available to come to Charleston. Please contact Chuck or Julie in advance to arrange a time and location to meet. We also recommend calling ahead to schedule an appointment with your legislators.

We hope you can join us!

Shameless Plea

Thanks everyone for the donations we've received so far in support of our lobbying efforts – keep em' coming! We want you to know how much we appreciate each and every dollar.

Of course, we have a long way to go to meet our lobbying budget. Please send WVEC whatever you are able to afford.

And, we hope you can support us in a few other ways too:

Join us this Wednesday (19th) as we come together to jump start the 2011 session with our "Kick Off Blast" benefit right here at our headquarters; Mark your calendars to be in Charleston Wednesday, February 9th for E-Day at the Capitol and E-Day Benefit Dinner & Award Ceremony; Become a Citizen Lobbyist on Wednesdays (and any other day you can) – See details below on all of these activities; Volunteer in the office; Artists needed for our "Artists for the Environment" project.

We also have a wish list of items the WVEC office can use: A couch (or two); Toaster Oven; Good working TV; DVD player; Nice items for upcoming auctions; Desk & Table lamps; Power strips & cords.

If you happen to have any of these items to spare, give us a call or e-mail Denise, deniseap@earthlink.net

Contributions to the WV Environmental Council are not tax-deductible.

**WVEC's Annual Legislative
"Kick Off Blast" Benefit
Wednesday, January 19th**

7:00 p.m. – 10:30 p.m.

WVEC Office - 2206 Washington St. East

Live music by Andy Park, Sara Fields and others

Refreshments served of course!

Donation: \$5 or whatever you can afford

**WVEC's Annual E-Day!
Wednesday, February 9th**

At the Capitol

9 a.m. till 3 p.m. – Senate Hall & Alcoves

Environmental Citizen Lobby Day - Exhibits

E-Day Benefit Dinner & Award Ceremony

Charleston Women's Club, 1600 Virginia Street East

6:00 p.m. - 9:00 p.m.

Soup & Salad Buffet

Award presentations: 7:15 p.m. – 8:00 p.m.

Cost: \$15 donation or \$25 couple

Legislative Session 2011 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.



Calendar of Events



January 15: Memorial Service for Judy Bonds. Tamarack Art Center, Beckley. 2 PM, with reception to follow. Well known WV natives and mountain defenders Denise Giardina and Kathy Mattea will be among those in attendance.

January 16: Community meeting regarding preservation efforts for Blair Mountain. To be held at the Logan Middle School, 14 Wildcat Way, Logan. From 1:00 – 4:00 PM.

January 18: 11th Annual IOF-WV (Industries of the Future) Day at the Capitol. Capitol Rotunda. Exhibits open from 8:30 AM – 3:30 PM.

For more information, contact Angela Shock, Angela.Shock@mail.wvu.edu or (304) 293-2867 ext. 5434

January 19: WVEC's annual "Legislative Kick Off Blast" Benefit. WVEC office, 2206 Washington Street East, Charleston. From 7:00 PM – 10:30 PM. Live music, refreshments, 2011 Lobby team, great friends! Donation: \$5 or whatever you can afford. Proceeds go in support of WVEC lobbying efforts.

January 20: Public meeting on fatal Bayer blast report. WV State University in the Multipurpose Room, Wilson Building (Institute, WV). 6:30 PM.

February 9: E-Day at the Capitol. Senate side hallways and rotunda alcoves. 9 AM – 3PM. Focus will be on Citizen lobbying and Exhibits (environmental groups, small green businesses).

For more information: deniseap@earthlink.net or a_clean_wv@yahoo.com

February 9: WVEC E-Day Benefit Dinner & Award Presentations. Woman's Club of Charleston – 1600 Virginia Street (corner of Elizabeth Street). 6 PM – 9 PM. Deluxe Soup & Salad bar.

Cost: \$15 per person / \$25 per couple.

March 12: Last day of session.

April 16: Annual WV Sustainable Fair – D&E College campus, Elkins.

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

We welcome letters, articles, and artwork from readers and reserve the right to edit or reject submissions. Please send materials to Denise Poole, *editor* at deniseap@earthlink.net