



West Virginia Environmental Council's

GREEN Legislative Update

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Under the Dome

*By Donald S. Garvin, Jr.
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Week 7 – Like a Three-Ring Circus

It would be an understatement to say that activity was “frantic” at the Legislature this week, as committees in both the House and Senate struggled to deal with legislation that would regulate the drilling of Marcellus Shale gas wells in the state.

It kept the WVEC Lobby Team, and our coalition of partners, scurrying from meeting to meeting and behind-the-scenes conferences, almost like it was the last night of the session.

It's been like a three-ring circus without a ringmaster!

In the first ring was the House Judiciary Committee. They had set up a subcommittee to consider “forced pooling” provisions early in the week. Then later in the week they were provided a huge new committee substitute for HB 2878 (the Judiciary bill) that basically combined everything from the DEP bill (HB 3042) into the committee substitute.

So the subcommittee met and amended out all the forced pooling provisions, and actually added some amendments that improved protections for water resources and for surface owners.

But then just yesterday, the full Judiciary Committee met and was presented with a new (and much slimmer) committee substitute bill (amounting to only 34 pages). This version of HB 2878 removed any changes to permit fees and other financial matters in order that the bill would not have to go to House Finance Committee for second reference.

The Judiciary Committee approved the bill, and it's now on first reading in the House.

The second ring got active about mid-week, when it was announced that the Senate Energy, Industry and Mining Committee would take up SB 424, the DEP bill. EIM sent the bill to a subcommittee on Wednesday.

Yesterday, EIM met again and the subcommittee reported out a much slimmer committee substitute for the DEP bill (about 60 pages long). This version also contains no forced pooling language. And it cuts in half the well permit fee that DEP was proposing.

The full EIM committee passed the committee substitute and forwarded it to the Senate Judiciary Committee for consideration. There is still time for the full Senate to approve SB 424.

The third ring under this circus tent involves SB 465, the Marcellus Gas and Manufacturing Development Act of 2011.

This is essentially Sen. Brooks McCabe's (D-Kanawha) corporate welfare act for the oil and gas and chemical industries. We will have more about this in a future *Legislative Update*, but it's important here only because of one of its provisions: it would allow about \$2 million in oil and gas severance taxes to be used by DEP for enforcement of its regulatory program.

SB 465 passed the Senate just today, and has now been sent to the House.

So there you have it.

And as tired as the WVEC Lobby Team and our coalition of lobbying partners are, this week may pale in comparison to what the next two weeks are going to look like.

Barnum and Bailey would be proud.

It is snowing as I sit writing this at my desk in Buckhannon, so please remember to keep your feeders full.

Marcellus Bills Advance in House and Senate

By Julie Archer, WV-SORO

Although our chances of passing legislation this session to address problems with both Marcellus Shale and other gas well drilling were starting to dim this week, as things currently stand there are two bills still in play.

After several strengthening amendments were adopted by a House Judiciary subcommittee, one version spent a couple of days being almost too good to be true. Unfortunately, many of the changes adopted by the subcommittee were not considered in the final version of the bill advanced by the full Judiciary Committee. As WV-SORO co-founder Dave McMahon told the Charleston Gazette, "It leaves out some important things, but it leaves in some important things, and we're glad it's moving." Some of the important provisions still included in HB 2878 are:

- A requirement that drillers give surface owners at least 30 days notice before coming onto the land to survey for proposed well sites, access roads or other work requiring disturbance of the surface.
- A requirement that drillers offer to meet with surface owners prior to surveying to explain their preference for locations of well sites, impoundments, access roads, pipelines.
- For horizontal wells, increasing the distance gas wells must be from dwellings and water wells from 200 to 1,000 feet.
- For horizontal wells, the presumption of water well contamination or loss is expanded from 1,000 feet to 2,500 feet and pre-drilling testing parameters are expanded to include chemicals known to commonly used in hydraulic fracturing.
- A requirement that drillers disclose the chemicals used in hydraulic fracturing.
- Detailed water management plans (including sources, volumes, transportation and disposal plans) are required for wells that use more than 210,000 gallons of water.

The bill's second reference to the House Finance Committee has been waived.

We are less enthusiastic about the pared down version of the DEP bill (SB 424) that was advanced by the Senate Energy, Industry and Mining Committee, especially with regard to surface owners' rights. However, it includes one important provision not included in the House bill – a one-year moratorium on drilling in karst formations in Greenbrier and Monroe counties. SB 424 is now headed to the Senate Judiciary Committee. And we are still reviewing it in order to compare it HB 2878.

The fact that there are two bills still alive, mean legislators are serious about passing something this session.

SB 510, Energy Code Upgrade, Alive and Moving

By John Christensen, WVEC Lobbyist

A bill that would require the use of the latest (2009) energy code standards for constructing buildings with state funds has been passed out of Senate Finance Committee and is now on second reading in the full Senate.

The purpose of this bill is to require new facility projects of public agencies and projects receiving state funds, to be designed and constructed complying with the International Code Council 2009 International Energy Conservation Code and the ANSI/ASHRAE/IESNA Standard 90.1-2007.

Senator John Unger (D-Berkeley) is the bill's sole sponsor, and it is the result of actions last year by the Rulemaking Review Committee that stripped the 2009 energy code standards from a rule submitted by the State Firemarshal's office. That action put into question the state's ability to utilize the renewable energy monies that were part of the stimulus funds offered by the Obama Administration to shore up the economy during the financial crisis.

The bill refers to its provisions as the "Green Building Act" and is written to encourage the construction of energy efficient public buildings to more efficiently spend public funds and protect the health and welfare of the West Virginia residents.

The bill's language would accommodate the many different energy building standards that are being used extensively in other states. LEED, Energy Star, and Green Globe are examples of the building standards that could be followed if this bill gets signed by the Acting Governor.

The companion bill in the house is HB 2957, and it was referred to the House Government Organization Committee, which has not taken it up.

Water Quality Standards Rule Gets Even Worse

By Donald S. Garvin, Jr.

WVEC Legislative Coordinator

As most of our readers are aware, the Senate Natural Resources Committee gutted the Water Quality Standards Rule proposed by the WV Department of Environmental Protection.

Amendments were approved by the committee to remove "excessive water withdrawals" from the rule's list of activities not allowed in state waters, to remove a new standard for phosphorous to prevent algae blooms in the Greenbrier River, and to remove a new standard for "total dissolved solids" which would have provided cleaner drinking water for most West Virginians.

You thought it couldn't get worse?

Well, just this week the Senate Judiciary Committee declined to restore the proposed standards. And the committee even added an amendment that would weaken the method for determining water quality standards for carcinogens for a section of the Ohio River!

The rule has now been "bundled" with all the rest of the DEP rules and sent to the House, where restoring DEP's proposed revisions will be opposed by the same industry lobbyists who succeeded in gutting it in the Senate.

So the fate of water quality in West Virginia is now in the hands of the House Judiciary Committee.

PATH Resolution, HCR 58, Sleeping in House Rules Committee

By John Christensen, WVEC Lobby team

HCR 58, a resolution to advise the WV PSC to consider the Dominion Alternative 1 with regards to the PATH application is “sleeping” in the House Rules Committee under the control of House Speaker Richard Thompson, and has had no significant movement since it was introduced several weeks ago.

The rumors we have been hearing are not conducive to a happy conclusion but after speaking with Speaker Thompson yesterday he indicated to me that this lull was only a “nap”, and not indicative of any trouble for the non-binding legislation.

WVEC has been following this issue with great interest as it underlies many problems our state has with exporting inefficient and dirty energy that the receiving states don't want or need. The PATH transmission line does nothing for the citizens of WV except raise their utility rates at a time when we should be passing energy efficiency measures and renewable energy bills.

Unfortunately that doesn't seem to be happening this session.

Another Really Bad Idea!

Sen. Mike Hall (R-Putnam) apparently does not like the way DEP decides if the water quality in a West Virginia stream is impaired.

So he is the sole sponsor of SB 547, which asks the West Virginia Water Research Institute to come up with a method “for assessing the state's narrative water quality standards and determining whether streams meet the federal Clean Water Act's designated use requirements.”

Here's a comment from our own Cindy Rank about this: “First the Legislature didn't like the Environmental Quality Board having this authority. Now they don't like the DEP having the authority!”

Luckily this bill is triple referenced, and hopefully it will not see the light of day.

SB 537 Makes a Late Run for the Compost Bin

By John Christensen, WVEC Lobbyist

Early in the week I had the pleasure of witnessing a good bill pass out of Senate Economic Development Committee which creates a tax credit for businesses that properly compost trash and unused food rather than use the normal means of dumping it into a non-composting dumpster.

SB 537 would go a long way to encourage the needed practice of composting which would ultimately reduce the amounts of garbage deposited in the state's 19 permitted landfills. The state has regulating authority and permits composters through the DEP, but unless there is an incentive for business to do the right thing, grocers and restaurants are reluctant to engage in this sustaining activity. The bill also would benefit composters as it would provide the much needed fuel for their operations.

There was a good discussion in committee and a committee substitute was introduced which changed the tax credit to make it even more lucrative than the \$2000 credit originally proposed. Time is growing short at this writing and it is hoped it will be taken up in Finance Committee before the deadline on Sunday.

The bill's authors, Senators Klempa and Browning, should be applauded for their foresight in offering this legislation.

Slurry Injection Bills Still Alive

By Stephanie Tyree, Sludge Safety Project

This was a critical week for SB 248 and HB 2850, the Alternative Coal Slurry Disposal Act.

On the House side, a de facto hearing was held Monday afternoon with speakers from the WV DEP, the Sludge Safety Project, WV Coal Association and Dr. Michael Wertz, a medical expert in the Rawl slurry case.

After discussing the issue for more than two hours, Delegate Woody Ireland introduced an amendment to strip the bill of the permit ban, including only a tax credit for the industry. This amendment was approved by the Committee, which effectively gutted the bill. Leaving only an open-ended tax credit for the industry to “explore” new technologies, this tax credit could be taken advantage of while continuing to inject slurry. HB 2850 passed out to House Finance.

Tuesday we held a Press Conference with speakers from affected communities, Acting Senate President Jeff Kessler, and Delegates Mike Manypenny, Barbara Fleischauer, and Danny Wells. The Press Conference was well attended, and received great press coverage.

Friday, in Senate Judiciary, the ban on injections was taken out and replaced with a ban on new injection permits (codifying the DEP moratorium). It requires the DEP and DHHR to do a joint study to examine the human health impacts of underground injections.

Senator Snyder added an amendment mandating that the agencies include the area of Prenter, WV in that study. The study must be concluded within one (1) year after the bill becomes a law. Only if both agencies determine that slurry injections are not harming human health can the DEP begin issuing new permits.

The Substitute Bill includes the tax credit for the industry to explore new slurry alternatives.

While the Senate Substitute Bill is certainly better than a tax credit-only bill, it does little more than preserve the status quo and mandate that the DEP and DHHR do *another* study on the impacts of slurry injections. These two agencies already resolutely failed to conduct such a study over a two year time period. It is worrisome that they are now required to do a second study on this issue in half the time.

Quotable quotes:

In the long hours we spend talking to and listening to our elected representatives here at the Capitol, sometimes things emerge that bear repeating.

Thursday on the House floor, Delegate Barbara Fleischauer stood up and reported to her colleagues about a Marcellus well fire and explosion in neighboring Pennsylvania which injured three workers and brought in fire and rescue crews from Pennsylvania and West Virginia.

When urging the House of Delegates to enact legislation regulating drilling here, she said, “We don’t have to ask permission from industry to protect the public. That is not our job. Our job is to protect the public.” We could not agree more!

And on the other hand, we have Senator Karen Facemyer’s musing about frack fluids. In asking whether someone could incur liability if a truck parked on their land spilled out fluid, she wondered, “Are there any harmful chemicals in the frack fluids?” Then again, how would we know if they haven’t had to tell us thus far?

Abundant Gratitude from The “E-Team”

We’d like to thank our friends and e-council supporters in Charleston for all the kindness extended to us during this session. We could not effectively spend so much time away from our “other lives” and homes without knowing we have places to stay, great company and help with numerous tasks.

Our “host families” who endure our crazy hours as we leave early, and often return quite late are: Barb Bayes, Mary Ellen O’Farrell, Robin Godfrey and Sally Swisher.

We appreciate all the “edible gifts” from Cindy Ellis and Libby (Charleston Bread Co.); the special dinners by Barb Bayes, Sally Swisher, and D.L. Hamilton.

Greg Carroll spends as much time as possible helping us with Friday’s Legislative Update and whatever else he can do to make things easier for us.

Wow - Marilyn George and John Smithson win the prize for “Citizen Lobbyists Extraordinaire”. Both have walked the halls on the Marcellus Gas bills and volunteered their time to this issue all session!

Bills We Are Tracking

Bill Number	Title	Committee
Senate Bills		
SB 12	Public health assessment of DEP rules (WVEC Bill)	Health
SB 24	Creating Green Buildings Act	Finance
SB 201	Energy Efficient Building Act	Passed Econ Dev, to Finance
SB 224	Repealing nuclear power plant ban (Perennial Terrible Bill)	EIM
SB 225	WV Innovation and Development Act	Passed Econ Dev, to Finance
SB 227	Creative Communities Development Pilot Program	Passed Senate, to House EIL
SB 244	Coalbed Methane Ownership (Interim Bill)	EIM
SB 245	Funding for Chesapeake Bay Watershed Restoration (Interim Bill)	On First Reading
SB 248	Banning Coal Slurry Injection (GREAT Interim Bill)	Judiciary
SB 258	Hydraulic Fracturing and Horizontal Drilling Gas Act (Interim Bill)	Judiciary
SB 314	Natural Gas Resources Transportation Road System	Transportation
SB 336	WV Energy Efficient Buildings Program Act	Gov Org
SB 353	Increasing tax on gas from Marcellus Shale	EIM
SB 360	Awarding of attorney fees by Surface Mine Board	Passed EIM, to Judiciary
SB 366	Underground Storage Tank Administrative Fund	On First Reading
SB 370	Assessing certain fees to coal mine operators	EIM
SB 372	Dedication of coalbed methane severance tax proceeds	EIM
SB 424	Regulating oil and gas wells (DEP Bill)	Passed EIM, to Judiciary
SB 445	Relating to forest fire seasons	Nat Res
SB 458	Updating Logging Sediment Control Act	On Third Reading
SB 460	Law Enforcement Practices for Division of Forestry	Passed Senate, to House Judiciary
SB 465	Marcellus Gas and Manufacturing Development Act	Passed to House
SB 468	Intrastate Coal and Use Act (Terrible Idea)	EIM
SB 480	Clarifying timber severance tax	Nat Res
SB 491	Creating WV Future Fund	Finance
SB 494	Additional protections from timbering operations on public lands	Nat Res
SB 510	Adopting 2009 Energy Code for building projects using state funds	On Second Reading
SB 531	Promulgating rules for environmental sampling	EIM
SB 537	Creating tax credit for businesses that compost	Passed Econ Dev, to Finance
SB 547	Developing method for assessing narrative water quality standards	Passed Nat Res, to Finance
SB 575	Energy Intensive Industrial Consumers Revitalization Tax Credit	EIM

House Bills

HB 2024 Green Buildings Act (WVEC Bill)	Gov Org
HB 2025 West Virginia Energy Efficiency Act (WVEC Bill)	Gov Org
HB 2056 West Virginia Renewable Energy Act (Great Bill)	EIL
HB 2135 Plug-in electric vehicle tax credit (Great Idea)	Transportation
HB 2136 Plastic Shopping Bag Excise Tax Act (Good Idea)	Finance
HB 2153 Requiring DEP to remediate waste tire piles	Passed Judiciary, to Finance
HB 2160 Incentives for energy conservation by electric utilities	EIL
HB 2170 Requiring DEP approve coal mine permits in six months (Perennial Bad Bill)	Judiciary
HB 2172 Requiring DEP to monitor litigation (Pro Industry Bill)	Nat Res
HB 2232 Planning and zoning restrictions for mining and manufacturing activities	EIL
HB 2352 Extending the alternative-fuel motor vehicle tax credit	Finance
HB 2401 Renewable Portfolio Standards Sustainable Energy Act (WVEC Bill)	EIL
HB 2404 Low Emission Vehicle Act	EIL
HB 2422 Creative Communities Development Act	EIL
HB 2448 Creative Communities Development Pilot Program	EIL
HB 2514 Honeybee-friendly strip mine reclamation	Passed EIL, to Judiciary
HB 2554 Intrastate Coal and Use Act (Ridiculously Bad Bill)	EIL
HB 2688 Adding a member from labor to Surface Mine Board (Bad Idea)	EIL
HB 2740 Banning covenants that restrict the installation or use of solar energy systems	Judiciary
HB 2741 Exempting solar energy systems from real and personal property taxation	Judiciary
HB 2776 Residential Renewable Energy Systems Tax Credit (Great Idea)	EIL
HB 2800 Creating the West Virginia Ski Resort Industry Commission	Gov Org
HB 2809 Stopping accelerated rate recovery and revising definition of need for power lines	EIL
HB 2810 Relating to interconnection and net-metering (WVEC Bill)	Judiciary
HB 2814 Bottle Bill (Great Bill Again)	Judiciary
HB 2842 Coalbed Methane Ownership (Interim Bill)	Judiciary
HB 2844 Funding for Chesapeake Bay Watershed Restoration (Interim Bill)	Judiciary
HB 2850 Banning Coal Slurry Injection (GREAT Interim Bill)	Gutted in Jud., to Finance
HB 2851 Surface owner's right to purchase mineral interests	EIL
HB 2878 Hydraulic Fracturing and Horizontal Drilling Gas Act (Interim Bill)	On First Reading
HB 2890 Energy Efficient Building Act	Passed EIL, to Finance
HB 2915 Repealing sections of the Alternative and Renewable Energy Portfolio Act	EIL
HB 2938 Tax credit for plug-in electric and compressed natural gas vehicles	Transportation
HB 2940 Requiring liners in all new surface coal-waste impoundments	EIL
HB 2953 Dedication of coalbed methane severance tax proceeds	On Second Reading
HB 2955 Assessing certain fees to coal mine operators	Passed EIL, to Finance
HB 2957 Requiring 2009 Energy Code for projects using state funds	Gov Org
HB 2960 Underground Storage Tank Administrative Fund	Judiciary
HB 2972 Intrastate Coal and Use Act (Terrible Idea)	EIL
HB 2974 Relating to Coopers Rock State Forest	Nat Res
HB 2979 Awarding of attorney fees by Surface Mine Board	Judiciary
HB 2985 Updating the Logging Sediment Control Act	On Second Reading
HB 2986 Relating to forest fire seasons	On Second Reading
HB 3026 Authorizing DOH contracts with oil and gas operators	Transportation
HB 3042 Regulating oil and gas wells (DEP Bill)	Judiciary
HB 3045 Forest Fairness Act	Nat Res
HB 3088 West Virginia Energy Efficiency Act	Gov Org
HB 3099 Marcellus Gas and Manufacturing Development Act	On First Reading
HB 3101 Clarifying timber severance tax	Finance
HB 3126 Requiring railroad company provide pesticide safety information	On Second Reading
HB 3129 WV Energy Expansion Fund	Gov Org
HB 3131 Ten-year moratorium on severance taxes from recovering waste coal	EIL
HB 3141 Requiring bonds for projects that impact state roads	Transportation
HB 3201 Increasing number of Public Service commissioners	Gov Org
HB 3204 Creating WV Enterprise Resource Planning Board	Finance
HB 3238 Allowing additional facilities built on the site of wind power facilities	Judiciary
HB 3240 Energy Intensive Industrial Consumers Revitalization Tax Credit	Finance
HB 3249 Creating independent Office of Environmental Advocate	Gov Org
HB 3254 Clarifying air quality regulation at oil and gas facilities	Judiciary
HB 3262 Reporting of Marcellus Shale workers' state of residency	Gov Org



Calendar of Events



March 2: FREE SCREENING – ‘Dirty Business - “Clean Coal” and the Battle for our Energy Future.’ West Virginia State Theater / The Cultural Center, Capitol Complex. Screening at 7:00 PM. Panel with filmmaker and other experts at 8:30 PM.

Please RSVP: <http://bit.ly/DirtyBusiness-RSVP>

March 8: Women on the Bridge. Southside Bridge, 12:00 noon. Celebrate 100th anniversary of International Women’s Day, and in support of women victims of war. Unites women, men and children all over the world – women building the bridges of peace and hope.

Visit: www.Progressivity.com/MeetMeOnTheBridge to sign up and participate.

March 12: Last day of legislative session.

March 16: Public Meeting: “Algae on the Greenbrier River”. New River Community & Technical College auditorium - 101 Church Street, Lewisburg WV, at 7 PM. James Summers and Dennis Stottlemeyer of the WV Department of Environmental Protection (DEP) will discuss the science behind algal growth and current regulations and efforts related to this issue. Concerned citizens and public officials are encouraged to attend. Sponsored by the Friends of the Lower Greenbrier River (FOLGR).

For more information: (304) 445-2005 or renee@lowergreenbrierriver.org

March 20: Spring Recreational Paddle – down the Greenbrier River. Meet at the FOLGR office (100 Monroe St., Alderson at 10 AM.

Cost is FREE. Register by Friday, March 18th.

For more information and to register: (304) 445-2005 or renee@lowergreenbrierriver.org

March 22: WVEC “Green Jam” Benefit with Kodac Harrison. To be held at the Empty Glass, 410 Elizabeth Street, Charleston. From 6 pm – 9 pm.

April 1-2: Citizen Enforcement Training. To be held at the Unitarian Universalist Congregation, Charleston. Participants will be trained in reading and understanding mine permits, identifying violations and more. This training is intended for coalfield residents, organizers and activists. Sponsored by Coal River Mountain Watch and Ohio Valley Environmental Coalition.

For more information and registration: William Levendis (304) 854-2182 or walevendis@gmail.com

April 2-6: 6th Annual “Week in Washington”. Organized by The Alliance for Appalachia. Opportunity to pass the Clean Water Protection Act and the Appalachia Restoration Act.

For more information and to register: www.ilovemountains.org or call (304) 546-8473

April 16: “A Sustainable Affair” – Celebration! Davis & Elkins College campus, Elkins WV. Sustainable Living for WV and the Center for Sustainability Studies of D&E celebrate over 10 years of sustainability initiatives and fairs. Beginning at 4:00 PM - Halliehurst Mansion: Wine Tasting, music, Group of 12 juried vendors (green energy, agriculture, local artisans); 6:00 PM – 8:30 PM - “Sustainable Feast” dinner. Join us at the “Ice House” on campus from 9:00 PM till Midnight with live music by Fox Hunt!

For more information: deniseap@earthlink.net

April 17: WVEC Board of Directors meeting. Elkins.

May 19-21: The New River Symposium, “Bridging the Gaps: Collaborations for Sustainability” – Concord University, Athens WV.

For more information contact: Dr. Roy Ramthun – rramthun@concord.edu

May 27-30: Heartwood’s 21st Annual Forest Council. To be held at Camp Ahistadi, Damascus, Virginia. Join Heartwood as they focus on Energy. Hosted by Southern Appalachian Mountain Stewards, The Clinch Coalition, Mountain Justice, The Alliance for Appalachia, Dogwood Alliance and Wild South.

For more information: katey.lauer@theallianceforappalachia.org or (304) 546-8473

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.

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

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