



*West Virginia Environmental Council's*

# GREEN Legislative Wrap Up

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## Under the Dome

*By Donald S. Garvin, Jr.  
WVEC Legislative Coordinator*

### **Dismal Session for the Environment**

At midnight on March 12, when the gavel came down ending the 2011 West Virginia Legislative Session, the Legislature had: failed to pass any bill regulating Marcellus shale drilling in the state; gutted the Water Quality Standards Rule; killed legislation ending the injection of coal slurry into underground mines; and simply refused to consider numerous proposals on energy efficiency and renewable energy that could have benefited every citizen of the state.

In large measure this was a session marked (or marred, depending on your perspective) by legislative leaders jockeying to become our next Governor.

But any way you look at it, this was a dismal session for the environment.

**Marcellus shale legislation** was probably doomed to failure from the “get-go”, when two different huge “comprehensive” bills were introduced, one developed by an Interim subcommittee of the Legislature, the other by the Department of Environmental Protection. Each of these bills took a couple of weeks to come up from bill drafting.

The House preferred the Interim subcommittee bill; the Senate preferred the DEP bill.

The Acting Governor took no position on either bill.

While both of these bills contained the basic water reporting provisions from last year's failed Marcellus legislation, they stopped way short of providing real protections for human health and the environment necessary due to the huge scope of the industrial activity resulting from Marcellus Shale drilling.

Late in the session the Senate passed a greatly pared down version of the DEP bill (SB 424). And with just three days left in the session, the House Judiciary Committee passed an amended version of the Senate bill and sent it to House Finance Committee. With just two days remaining in the session, the House Finance Committee passed the amended version and sent it to the full House.

That's where the bill died. The Speaker and the House Rules Committee never brought the bill to the House floor for a vote.

And to add insult to injury, also on the last day of the Session, the Legislature passed (and the Governor has signed) SB 465, the **Marcellus Gas and Manufacturing Development Act**, which gives tax breaks for economic development projects related Marcellus shale gas.

The end result is new tax incentives but no new regulatory framework for the drilling of Marcellus shale gas wells, and no new funding for DEP to hire the inspectors necessary to oversee this activity.

As for the **Water Quality Standards Rule** (47CSR2), the Legislature passed SB 121 that contained a gutted version of the rule as originally proposed by DEP. Earlier in the session the Senate Natural Resources Committee approved amendments to the rule that removed “excessive water withdrawals” from the rule’s list of activities not allowed in state waters, removed a new standard for phosphorous to prevent algae blooms in the Greenbrier River, and removed a new standard for “total dissolved solids” which would have provided cleaner drinking water for most West Virginians.

The Senate Judiciary Committee declined to restore the proposed standards, and even added an amendment that weakens the method for determining water quality standards for carcinogens (**pollutants that are linked to cancer**) for a section of the Ohio River.

An attempt to restore the original provisions of the rule failed in the House Judiciary Committee.

Industry lobbyists combined forces in opposition to the rule. And they won.

The “**Alternative Coal Slurry Disposal Act**” also went down to defeat. The Judiciary Committees in both houses gutted the provisions of the bill, which had been recommended for passage by the Interim Judiciary Committee. This bill would have prohibited new permits for the underground injection of coal slurry and phased out existing coal slurry injection operations. The bill also would have provided a tax credit to industry to assist in the transition to new technology to reduce and/or eliminate coal slurry.

Both versions of the bill died in the respective House and Senate Finance Committees.

On a positive note, the Legislature did pass (and the Governor has signed) an amended version of SB 245, to provide **a funding mechanism for upgrading wastewater treatment plants to reduce nutrient pollution in the Chesapeake Bay watershed**. The amended version includes funding for upgrades to treatment plants in the Greenbrier River watershed.

It should be noted, however, that this bill would never have been considered were it not for pressure from the federal “Chesapeake Bay Restoration Initiative.”

Following in this Wrap Up edition of our *GREEN Legislative Update* you will find more details about some of these bills and other legislation introduced this session.

Finally, I want to acknowledge the Herculean effort put forth by the other members of the WVEC lobby team this session in my absence on the ground. While I am mending and should be back on my feet soon, I just cannot say enough about the extra effort put forth by **Denise Poole, John Christensen** and **Leslee McCarty**. We all owe them, big time.

And while the weatherman is still trying to decide if it’s Spring yet, keep your bird feeders full and enjoy the not-so-dismal show of our song bird friends.

## **Marcellus Dies From A Thousand Cuts**

*By Leslee McCarty, WVEC Lobbyist*

In Shakespeare’s Julius Caesar, after Brutus stabs Caesar to death, Cassius wonders:

“How many ages hence  
Shall this our lofty scene be acted over,  
In states unborn and accents yet unknown!”

Amen to that, brother Cassius.

Simply put, I think Marcellus regulation died from a combination of over-inflated egos, turf wars and self-interest, leavened with campaign contributions and political ambition and topped off by uncertainty as to our “leaders” position one year hence.

What died (instead of the Emperor) was a chance for West Virginians to protect their land and water resources from the unbridled gold rush to develop the Marcellus Shale “play.” I still hate that term, seeing that one person’s play is another’s pain and suffering. And who killed it? Pick your Brutus. Was it:

- A. The legislative and DEP leaders who ended up introducing two 180 page bills?
- B. The little drillers (IOGA) who allegedly didn’t see what all the fuss was about?
- C. The big drillers (WVONGA) who really only wanted forced pooling?
- D. The Acting Governor who showed no leadership?
- E. House Speaker Rick Thompson who finally killed the bill?
- F. Senate President Jeff Kessler who let the DEP bill get chopped up in EIM Committee?
- G. Environmentalists who supposedly wanted too much?
- H. Delegates involved with the gas industry who proposed 20 last-minute amendments?
- I. Dick Cheney, who got the oil and gas industry exempt from federal regulations?
- J. The CIA (Seriously, how would we know? There were a lot of slick operators around.)?

Absent the Governor’s race, this should have been the year for Marcellus regs to pass. Certainly we never had citizen involvement and awareness equaling this year’s. We had newspapers editorializing, great reporters covering us, people volunteering to lobby, a public hearing with amazing horror stories, two press conferences, and unparalleled support from a majority of Senators and Delegates from both parties. Surely this was the year. But no, foiled again.

So where do we look for answers? Leadership – lack of.

This brings me to the Governor’s race. Time is short. Please quiz candidates about their stance on Marcellus drilling regulations. We need to be at candidates forums, spaghetti suppers – wherever they are, we should be. We should ask them, “What did you do to protect our land, air and water? Where are the regulations and inspectors we need? Do you think it is OK for drilling to take place 200 feet from our homes? How will you fix this? How will you protect us?”

We must have leadership, and I didn’t see much from those who were in leadership positions this session. On the contrary, I will be narrowing my choice for Governor to those who were not acting like our friends while killing us this past few months. “Et tu, Brutus?”

## Think Renewable

(The following is an excerpt from a wrap-up article by Charleston Gazette reporters Phil Kabler and Alison Knezevich dated March 12, and reprinted here with permission. It can be linked on-line at <http://www.wvgazette.com/News/201103121278>)

### Bill To Regulate Marcellus Shale Drilling Dies

CHARLESTON, WV.... Angry words flew at the Capitol on Saturday night as lawmakers ended their 60-day session without passing anything to regulate Marcellus Shale natural gas drilling.

Members of the House of Delegates and Senate blamed each other for the demise of legislation (SB424) that would have addressed environmental regulations, permit fees, protections for property owners and other issues related to development of one of the world's richest natural gas basins.

Senators had passed the bill earlier this month, but the House -- which favored stronger protections for the environment and landowners -- never voted on it. Among other things, the two sides disagreed on notice to property owners, the distances operators can drill from West Virginians' homes and water wells, and the hiring of gas well inspectors.

In a floor speech, Sen. Mike Green, D-Raleigh, called the House's failure to act on the bill "shameful."

"It makes us wonder what the commitment of the House leadership was to get this job done," said Green, who plans to ask state Senate President Earl Ray Tomblin, who is acting as governor, to adjust his budget proposal so the state can hire more inspectors.

But House Judiciary Chairman Tim Miley, D-Harrison, said the Senate was not willing to compromise.

In a meeting Saturday afternoon, Miley said, Green "resorted to talking about how we can't do anything because it's too late, and expressed no interest in trying to work out the differences."

Later in the day, Senate staff again told delegates that the Senate wouldn't budge, Miley said.

"I'm embarrassed for him, and it's a shameless attempt to try to cast dispersion on the House of Delegates," Miley said of Green's floor speech.

Lawmakers signed off on a proposal (SB 465) to give tax breaks to the natural gas and manufacturing industries in hopes of luring a facility that converts ethane -- a natural gas byproduct -- into ethylene, which is used by chemical manufacturers and is a key ingredient in the plastics industry.

Delegate Bonnie Brown, D-Kanawha, questioned why legislators would approve these incentives without completing Marcellus regulation proposals.

"So we're just giving them a tax break before we even regulate the industry?" she asked.

Late Saturday night, Delegate Mike Manypenny, a Taylor County Democrat who has pushed for stronger drilling regulations, was collecting signatures from colleagues for a letter to the state Department of Environmental Protection. He wants the agency to use emergency powers to issue a moratorium on new Marcellus drilling permits.

Some lawmakers believe there could now be a special session called to craft Marcellus regulations.

DEP Secretary Randy Huffman said he is confident his agency will be able to regulate the drilling without changes in the law, at least for now.

"We don't have a crisis in the short term," he said. As far as the legislation, "I think it was a lot to expect to get so many issues and so many interests dealt with adequately in such a short period of time."

Delegate Sam Cann, who works in the industry and is a former president of the Independent Oil and Gas Association of West Virginia, called the legislative process for the measure "a train wreck."

"I think they never really defined the problems they wanted to work on," said Cann, a Harrison County Democrat. "And all the interest groups thought they could get the whole boat."

Dave McMahan of the West Virginia Surface Owners' Rights Organization questioned why the bill languished in the final hours of the session Saturday.

Without new regulations, McMahan said, the state "should not be giving out any more permits than they can review and inspect."

## **Special Session? Moratorium?**

With the failure of the Legislature for the second straight year to pass legislation regulating Marcellus shale drilling in the state, there have arisen calls for a Special Session and a moratorium on issuing new permits from a variety of sources.

According to news reports, both the Speaker of the House and the Acting Senate President say they are in favor of a Special Session. The Acting Governor says he is not.

The City of Lewisburg has passed a resolution calling for a Special Session and a moratorium, and the Morgantown *Dominion Post* has printed an editorial calling for the same. However, on Tuesday night April 5 the Morgantown City Council passed a resolution calling for a Special Session, but defeated versions of a resolution calling for a moratorium.

Several environmental groups are likewise calling for a moratorium on issuing new Marcellus drilling permits until a Special Session passes adequate regulations and funding for inspectors and enforcement.

A group of 23 members of the House of Delegates is also calling for a moratorium and a Special Session, as detailed in the following “Op Ed” published in the *Charleston Gazette* on March 30. (<http://www.wvgazette.com/Opinion/OpEdCommentaries/201103300523>).

## **Think Before Drilling**

*By Del. Barbara Fleischauer (D-Monongalia) and Del. Mike Manypenny (D-Taylor)*

CHARLESTON, WV.... Everyone in our state will soon be affected in some way by Marcellus shale gas drilling. Stacey Haney’s experiences tell what can happen if we don’t get gas regulations right.

When she leased her gas last year, the operator showed her pretty pictures and told her everything would be fine. It wasn’t.

First, local roads were destroyed. She and her family became ill and animals started dying – two dogs, a horse and the children’s goat. She began to suspect their water and the fumes from the nearby chemical waste pond and compressors were poisoning them. Her son edged toward liver failure. After testing, their blood showed high levels of toxic chemicals including arsenic, toluene and benzene.

Haney’s story convinced us we were right to ask the state Department of Environmental Protection to stop issuing new Marcellus drilling permits until a new law is passed. We are very pleased that the city of Lewisburg and the Morgantown Dominion Post have joined in our request for a moratorium on new permits.

To be absolutely clear, we are not asking for a moratorium on all gas drilling. The Marcellus gas shale industry represents enormous possibilities for our citizens and our state. But it must be done responsibly.

It is physically impossible for 15 field inspectors to monitor 59,000 permitted wells – of which more than 900 were granted for Marcellus shale drilling in the past two years. The DEP desperately needs funding for new inspectors, which should come from the regulated industry.

Why were we unsuccessful in passing legislation in the 2011 regular session? Primarily because the industry lost interest when both chambers of the Legislature refused to include “forced pooling,” which means that even if you have not leased your gas, you must participate in the drilling if a majority of your neighbors do.

Another complication was the upcoming gubernatorial primary, with the acting governor, acting Senate president and speaker of the House all running for governor.

Along with the two of us, the following bi-partisan group of delegates signed onto our letter requesting a moratorium on new Marcellus gas well permits: Linda Longstreth, D- Marion; Larry Barker, D-Boone; Bonnie Brown, D-Kanawha; Danny Wells, D-Kanawha; Anthony Barill, D-Monongalia; Dale Martin, D-Putnam; Don Perdue, D-Wayne; Mary Poling, D-Barbour; Clif Moore, D-McDowell; Harold Pete Sigler, R-Nicholas; Margaret Staggers, D-Fayette; Joe Talbott, D-Webster; John Doyle, D-Jefferson; Ray Canterbury, D- Greenbrier; Virginia Mahan, D-Summers; Nancy Guthrie, D-Kanawha; Dan Poling, D-Wood; Barbara Hatfield, D-Kanawha; Ruth Rowan, R-Hampshire; Rick Snuffer, R-Raleigh; and Roger Romine, R-Tyler.

We call on our fellow leaders in the Legislature to hammer out an agreement on Marcellus legislation. Once agreement is reached, we urge the acting governor to call a special session after the gubernatorial primary.

Please encourage other delegates and senators to join our request for a new permit moratorium and ask gubernatorial candidates where they stand on a new permit moratorium and a special session.

And don't forget to vote. The primary vote for governor is May 14, and the election is on October 4.

## **Our OWN Marcellus Shale Coalition**

*By Donald S. Garvin, Jr.*

*WVEC Legislative Coordinator*

For several months now the natural gas industry has trotted out its "Marcellus Shale Coalition" dog and pony show across the region.

Well, this legislative session we had our OWN – expanded – Marcellus Shale Coalition working hard to educate legislators about the need for regulating this industry.

WVEC was joined in this effort by WV Surface Rights Organization, WV Citizen Action Group, WV Highlands Conservancy, WV Rivers Coalition, WV Sierra Club, OVEC, the WV Council of Churches, and the Mountaineer Chapter of Trout Unlimited.

Our coalition included union groups such as WV ACT Foundation and the WV AFL-CIO; and watershed groups such as Friends of the Cheat, Friends of Deckers Creek, and the Upper Monongahela River Watershed Compact.

In addition, during the session we were joined by literally hundreds of "citizen lobbyists" from across the state, too numerous to mention individually here. In that regard, special recognition and "thanks" should go to WVEC board member Chuck Wyrostok who, while working for the Sierra Club, scheduled and coordinated the Citizen Lobby Days each week.

My personal "thanks" goes out to everyone who worked so hard and spent endless hours in this effort, while I was relegated to being there "in spirit" – and on the phone!

In all the years I have served as WVEC Legislative Coordinator, this was the largest and most effective "umbrella" coalition we have assembled on any particular issue.

It was what the West Virginia Environmental Council was meant to be.

## **Legislature Passes Corporate Welfare Bill for Marcellus Industry**

*By Donald S. Garvin, Jr. WVEC Legislative Coordinator*

*And John Christensen, WVEC Lobbyist*

While this Legislature found it impossible to pass a bill regulating the drilling of Marcellus shale gas wells, it found little opposition to passing a bill full of tax incentives for the use of that gas.

The bill was SB 465, the "Marcellus Gas and Manufacturing Development Act." While the final version passed the Senate just before midnight on the last night, this bill was "greased" for passage and had been worked on since early in the session. And while it appeared that House leadership was holding up passage of the bill as leverage to get the Senate to agree on Marcellus shale regulation, that apparently was not the case.

The bill's lead sponsor was Sen. Brooks McCabe (D-Kanawha), who told the press early on that he intended to push for the legislation, "which encourages and facilitates the development of oil and gas wells and the downstream uses of natural gas in this state and economic development in this state associated with production and various downstream uses."

Other sponsors of the original bill included acting Senate President Kessler (D-Marshall), and Senators Browning (D-Wyoming), Unger (D-Berkeley), Snyder (D-Jefferson), Stollings (D-

Boone), Plymale (D-Wayne), Wells (D-Kanawha), Palumbo (D-Kanawha), Beach (D-Monongalia), Klempa (D-Ohio), Yost (D-Brooke), and Foster (D-Kanawha).

In talking about the bill Sen. McCabe made it clear that he hoped that the tax breaks to the natural gas and manufacturing industries in the bill would facilitate the construction of a facility in Kanawha County to convert ethane - a natural gas by-product - into ethylene, which is used by chemical manufacturers and the plastics industry in the county.

This bill represents a windfall to the after market gas industry and its so-called “downstream businesses”, but nevertheless it has to do with alternative fuel manufacturing development after the gas has been produced. The huge credits for companies interested in developing the gas byproducts are staggering in scope and amounts and will be beneficial over a ten-year period beginning Jan 1, 2011.

One bright note is that the bill reinstates the alternative fuel motor vehicle tax credit. WVEC has been pushing for that since the credit expired in 2006. It includes tax credits for the purchase and or conversion of alternatively fueled vehicles both large and small which utilize compressed and liquefied natural gas, derivatives thereof, hydrogen, coal derived liquid fuels, electricity powered vehicles including those powered by solar energy and they can be bi-fueled and run on gas or diesel and still qualify for the credit. The bill also gives a tax credit for building the infrastructure for those vehicle facilities both commercially and domestically.

The bill also specifies that any manufacturer’s investment tax credit with a value of \$500,000.00 or more must include the hiring of local workers at a rate of 75% of total hired in order to qualify.

Unfortunately, the House Finance Committee removed a provision in the bill that would have provided the Department of Environmental Protection with two million dollars from excess severance tax monies in order to hire more inspectors to help regulate the new horizontal hydraulic fracturing industry.

It is no surprise that the Acting Governor has already signed this bill.

## **Renewable Energy and Energy Efficiency Bills Get the Shaft**

An impressive number of bills relating to renewable energy and energy efficiency were introduced and “on the table” this session, but not one of them was passed out of committee in either house, and most of them never appeared on a committee agenda.

Most promising among all the bills introduced was HB 3088, the “West Virginia Energy Efficiency Act.” This was an improved version of HB 2025, WVEC’s original bill dealing with mandating that electric utilities reduce user demand by providing energy efficiency programs. WVEC worked on this bill with members of “Energy Efficiency West Virginia” (EEWV), a new group formed under the WV CAG umbrella.

Also promising was HB 3129, the “WV Energy Expansion Trust Fund.” This bill would have established a new trust fund to encourage the development and use of renewable forms of energy and energy efficiency programs, projects, and enterprises.

Both of these bills were assigned to the House Government Organization Committee, but were never taken up for consideration. Other energy related bills faced the same fate in the House Energy, Industry and Labor Committee.

Most disappointing was that the momentum we had established in previous sessions to get a state “Green Buildings Act” adopted, was also lost.

Obviously, we have a lot of “education” to do with legislators on these subjects.



## **HCR 149 Passes in the Last Hour of the Session**

*By John Christensen, WVEC Lobbyist*

One of the few bright spots of this session was the passage of House Concurrent Resolution (HCR) 149 by both chambers on the final night of the session.

Earlier in the session we had been working in the House on HCR 58, which requested the West Virginia Public Service Commission to halt consideration of the Potomac Appalachian Transmission Highline transmission project (PATH) until full consideration was given to Dominion Virginia Power's "Alternative One" proposal for meeting the region's electricity needs.

However, about two-thirds of the way through the session it was announced that PJM, the huge corporation in charge of the transmission needs of 13 states in our region, had requested a "suspension" of the PATH project in West Virginia, citing the criteria for the need to build the project had not been met.

But that didn't mean the PATH project was totally dead.

So we got behind the new resolution, HCR 149, "urging the West Virginia Public Service Commission act to review the condition of the Pruntytown to Mt. Storm 500kV transmission line owned by Monongahela Power, a subsidiary of FirstEnergy, and order the rebuilding and reconductoring of that transmission line as soon as is practical" -- Dominion Virginia Power's "Alternative One."

Del. Mike Manypenny (D-Taylor) was the lead sponsor of the new resolution, and he worked closely on the language of the resolution with House Speaker Richard Thompson (D-Wayne), Majority Leader Brent Boggs (D-Braxton), and Bill Howley, one of the citizens opposed to the PATH line.

When HCR 149 got to the Senate side, Acting Senate President Jeff Kessler (D-Marshall), Majority Leader John Unger (D-Berkeley), and Judiciary Chair Sen. Corey Palumbo (D-Kanawha) were instrumental in its passage. The resolution passed in the final hour of the session by voice vote.

In order for the future transmission needs of WV electricity customers to be reliably met in the future, the experts have known all along that the Pruntytown to Mt. Storm 500kV transmission line must be upgraded and rebuilt.

With the passage of HCR 149, the Legislature has now asked the PSC to do that.

And, of course, we thank all of the "Anti-Path" citizen group members who made numerous phone calls and sent countless e-mails in support of the resolution.

Your voice was heard.

## **New Public Lands Bills Worth Noting**

Late in the session two new bills relating to public lands were introduced, but were never taken up by the Natural Resources Committees in their house of origin. However, they are worth noting here.

The first was **HB 2974**, "Relating to Coopers Rock State Forest." This bill would have transferred the supervisory and jurisdictional responsibilities of Coopers Rock State Forest from the Division of Forestry to the Division of Natural Resources, similar to what has been done with Kanawha State Forest. That transfer would have placed additional limits on timbering in Coopers Rock State Forest. Sponsors of the bill were Delegates Fleischauer (D-Monongalia), Marshall (D-Monongalia), Barill (D-Monongalia), Manypenny (D-Taylor), Ellem (R-Wood), Staggers (D-Fayette), Butcher (D-Logan), Jones (D-Hancock), Hatfield (D-Kanawha), and Stephens (D-Cabell).



The second was **SB 494**, which would have provided “additional protections from timbering operations for state forests and other public lands.” It mandated that the Division of Forestry require timber operators to use “best management practices,” including structural or nonstructural sediment control measures, watershed protection measures and endangered species protection measures to reduce or eliminate disturbances associated with commercial timber harvesting. And it would have required “a minimum ‘no cut buffer’ of three hundred feet adjacent to all trails, campgrounds, public facilities, forest roads, scenic points of interest, playgrounds, riparian zones, known endangered species habitats and historical value areas.” The bill’s sponsors were Senators Beach (D-Monongalia) and Klempa (D-Ohio).

Hopefully, these bills will be considered next session.

## **Enviro News Briefs . . .**

### **Bayer Gives Up Fight to Restart Institute MIC Unit**

Bayer CropScience announced on March 18 it would not resume production of methyl isocyanate at its Institute plant, ending a quarter-century fight that had boiled down to a flurry of legal maneuvers and financial decisions made over the past five weeks.

This is a huge victory for our friends at People Concerned about MIC!!

<http://www.wvgazette.com/News/201103181523>

### **DEP Ordered to Add Discharge Limits for Conductivity**

The West Virginia DEP was ordered March 10 to add new limits to a strip-mining permit, forcing them for the first time to regulate conductivity pollution scientists say is causing widespread water quality damage downstream from coal-mining operations.

The state Environmental Quality Board sided with the Sierra Club, which sought the new permit conditions in its appeal of an International Coal Group operation authorized by the Department of Environmental Protection.

Board members unanimously sent the permit back to DEP, with instructions that the agency determine appropriate discharge limits for conductivity, sulfates and total dissolved solids and write those limits into the company's water pollution permit.

<http://www.wvgazette.com/News/MiningtheMountains/201103101044>

### **CONSOL Fined \$5.5 Million for Dunkard Creek Pollution**

CONSOL Energy Inc. will pay \$5.5 million in fines and build a \$200 million treatment system to resolve water quality violations federal regulators believe led to a massive fish kill along the West Virginia-Pennsylvania border, officials announced March 14.

Pittsburgh-based CONSOL will also pay \$500,000 to the state of West Virginia for “natural resource damages” to Dunkard Creek in Monongalia County, where all fish, mussels, salamanders and other aquatic life were killed in the fall of 2009.

West Virginia regulators and CONSOL blamed the fish kill on non-native algae, but federal investigators said coal company discharges that were extremely high in salts created conditions that allowed the algae growth. <http://www.wvgazette.com/News/201103140432>

### **Court Reverses Removal of Flying Squirrel from Endangered List**

A federal judge has reversed the U.S. Interior Department’s decision in 2008 to take the West Virginia northern flying squirrel off the endangered species list.

U.S. District Judge Emmett G. Sullivan, in Washington, D.C., ruled that agency officials tried to essentially rewrite their own recovery plan for the squirrel without subjecting such changes to required public review and comment.

In a 30-page decision issued March 25, Sullivan sided with the Friends of Blackwater and other groups that filed suit in 2009 over the delisting decision made by the U.S. Fish and Wildlife Service. <http://www.wvgazette.com/Outdoors/201103281496>

### **DEP Schedules “After the Fact” Public Hearing**

On April 1 the WV Department of Environmental Protection announced it has scheduled a public hearing and comment period pertaining to 2011 legislative revisions to 47CSR2, “Requirements Governing Water Quality Standards” – *that the Legislature has already approved!*

The hearing and comment period specifically apply to an amendment added to the rule by the Legislature that weakens the method for determining water quality standards for carcinogens (**pollutants that are linked to cancer**) for a two-mile section of the Ohio River.

The federal Clean Water Act requires that a 45-day public hearing and comment period be held for any change in water quality standards.

The hearing will take place on May 3 at 6 p.m. at WV DEP headquarters, at 601 57th Street S.E., Charleston, WV, in the Coopers Rock Training Room. The agency will also accept written comments at any time up to the conclusion of the public hearing.

Written comments may be submitted to the following address: Gloria Shaffer, Water Quality Standards Program, WV DEP, 601 57th Street SE, Charleston, WV 25304

Comments may also be e-mailed to [dep.comments@wv.gov](mailto:dep.comments@wv.gov). Comments will be made a part of the rulemaking record. The 2011 legislative revised rule can be found on the agency website [www.dep.wv.gov/wqs](http://www.dep.wv.gov/wqs).

### **Judge Allows Selenium Cases to Proceed**

On March 31 a federal judge paved the way for environmental groups to continue two lawsuits aimed at forcing coal operators to comply with state pollution limits for toxic selenium runoff from their mines. U.S. District Judge Robert C. Chambers allowed the Ohio Valley Environmental Coalition and three other groups to continue lawsuits against certain operations of Arch Coal Inc. and Massey Energy.

The environmental groups filed citizen lawsuits under the federal Clean Water Act, asking Chambers to order the companies to install appropriate treatment systems to end selenium violations from eight water-discharge permits.

In a 50-page ruling, Chambers rejected arguments from the companies that a stay of their appeal of a related state permit case blocked the citizens from bringing their federal court lawsuits.

Selenium, a naturally occurring element found in many rocks and soils, is an antioxidant needed in very small amounts for good health. In slightly larger amounts, selenium can be toxic. Selenium impacts the reproductive system of many aquatic species, can impair the development and survival of fish, and can damage gills and other organs of aquatic organisms subject to prolonged exposure. <http://wvgazette.com/News/201103311288>

### **Blair Mountain March Planned for June 6**

A group that wants to preserve Blair Mountain will re-create a historic march by thousands of coal miners from Marmet to the Logan County mountain this summer.

The march will begin June 6, almost 90 years after nearly 10,000 United Mine Workers members marched from Marmet down into Logan County to organize non-union coal miners. The Battle of Blair Mountain, fought between Aug. 25 and Sept. 4, 1921, was the largest armed confrontation in U.S. labor history. Federal troops eventually helped force the miners to return home.

This summer's march, organized by the Friends of Blair Mountain, will demand preservation of Blair Mountain, now threatened by coal companies, including Massey Energy and Arch Coal, that hope to begin mountaintop removal mining operations on the historic site. Marchers say they will also support an end to mountaintop removal mining and increased rights for the labor movement. <http://www.wvgazette.com/News/201103090600>

## Session "Out Takes!"

### BP Comes to Capitol Cafeteria

Unfortunately, the state capitol cafeteria has gone the way of styrofoam and plastic. Since the cafeteria re-opened last year, there is not even a stainless steel fork to be found! We do not like the plastic ware. We do not – not even on a dare!

Offered here, is Leslee McCarty's poem dated June 2010:

I will not eat from yucky trays,  
I will not use them any days.  
I will not touch them in a house.  
I would not give them to a louse.  
I will not throw them in a fill.  
I never, never, never will.

I will not use the plastic forks.  
The plastic forks are used by dorks.  
The plastic spoons are horrid, too.  
They fill the landfill up with goo.  
The awful trays, the boxes, too,  
Must go because we need them to!

### "Lunch Provided by **DOMINION** And **WVONGA**"

This was a sign posted above an array of food in the House Finance Committee room on the last day and night of the session .... while the Marcellus Bill died ... and SB 465 passed giving tax incentives to the gas industry. Just a way to say "thank you"?

### Foster, The Dog

This year we had the pleasure of a mascot – the friendly pup belonging to lobby team member Leslee McCarty. Foster was here every single day, guarding the office! We will publish a photo of Foster in our next GREEN newsletter.

### Way To Go Everyone!

The WVEC Lobby Team would like to give a shout out to all the great groups with "boots on the ground" during the session. They lobbied extensively to better our state, fielded volunteers and advocated for citizens rights, the environment, election reform, surface owners, and a host of progressive issues. This year all of us had an increased presence and our efforts were noted at the capitol. Way to go WV Sierra Club, Surface Owners' Rights Organization (SORO), WV Citizen Action Group, WV Highlands Conservancy, WV Free, Friends of Blackwater Canyon, OVEC, WV Rivers Coalition.

And a special shout out from the team to our own **Frank Young**, for all the extra work he has to do as WVEC's Treasurer during the session!



## Calendar of Events



**April 16:** Annual WV Sustainable Fair - "A Sustainable Affair"! Davis & Elkins College, Elkins WV. Activities begin at 10 AM: Rain Barrel Making Workshop – Hermanson Plaza; 11 AM – 3 PM: Electronic Recycling – Hermanson Plaza Parking Lot. 4 PM – 8 PM: Vendors, Exhibits, Wine & Beer Tasting, Live Music – Halliehurst Mansion Porch. 6 PM – 8:30 PM: "A Sustainable Feast" Benefit Dinner featuring local organic food prepared by local Chefs – Halliehurst Mansion. 9 PM – 12 Midnight: Benefit Concert with "The Fox Hunt" at the Ice House, D&E campus pub!

Hosted by D&E College, and sponsored by Sustainable Living for WV and the Center for Sustainability Studies of D&E.

For more information: [deniseap@earthlink.net](mailto:deniseap@earthlink.net)

**April 17:** WVEC Board of Directors meeting. Elkins, from 11 AM – 3PM.

**April 21:** Earth Day Celebration in Huntington. 9 AM – 2 PM: Big Sandy Superstore Arena Conference Center – Adult workshops on everything sustainable & healthy living. 4 PM – 7 PM: The Barnett Center, 1524 10<sup>th</sup> Ave. with exhibits, music, art, children's activities and more. 7 PM – 10:30 PM: Activities and Environmental Movies at Ritter Park.

**April 22:** Friends of Deckers Creek "Spring Meltdown" Benefit. Morgantown Brewing Company. 7 PM – 1:30 AM. Dinner, silent & live auction, Live music with The New Relics". Admission is \$10 and supports DODC VISTA worker.

**April 22-23:** 4<sup>th</sup> Annual Wild & Scenic Film Festival at the Historic Fayette Theater. On Friday (22<sup>nd</sup>) a Social at 5 PM at the Cathedral Café prior the film showing with beer from Bridge Brew Works, and Burrito Buffet. Hosted by Plateau Action Network.

Cost is \$5 at the door. For more information: [pan.action@gmail.com](mailto:pan.action@gmail.com)

**April 29:** WV Citizen Action Group's Annual Spring Extravaganza. Charleston Woman's Club (corner of Elizabeth & Virginia St.). 5:30 PM. Italian Dinner, Music by "600 Lbs of Sin", Silent Auction and Awards Presentation: "Si Galprin in Defense of Democracy" to Delegate Mike Manypenny and the "Thomas K. Knight Excalibur" to Cindy Rank.

Cost is \$35 per person. Call (304) 346-5891 or [Linda@wvcag.org](mailto:Linda@wvcag.org)

**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](mailto:rramthun@concord.edu)

**May 27-30:** Heartwood's 21<sup>st</sup> 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](mailto:katey.lauer@theallianceforappalachia.org) or (304) 546-8473

**June 6:** March on Blair Mountain. Organized by Friends of Blair Mountain, with actual events spanning from June 5 – 11<sup>th</sup>. This is a re-creation of the historic march by thousands of coal miners in 1921, and will begin in Marmet and end in Logan County at Blair Mountain.

To register: [www.friendsofblairmountain.org](http://www.friendsofblairmountain.org)

*Legislative Wrap Up* 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 Wrap Up* is published at the conclusion of 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](mailto:deniseap@earthlink.net)

## Ways You Can Support the WV Environmental Council

- Please consider making a monetary donation whenever you can afford a few extra dollars. Proceeds go in support of WVEC and to sustain our organizational goals.
- Visit our website: [www.wvecouncil.org](http://www.wvecouncil.org) to donate directly through Pay-Pal, or to join our monthly donation program.
- Volunteer! We are always seeking volunteers to help with numerous activities.
- Host a Fundraiser in your area. Get creative! There are many types of benefits that can help increase awareness about WVEC and raise much needed funds. We are always looking for new members and membership groups with like-minded values. We can put you in touch with our Regional representative on our board of directors to help brainstorm and organize an event.
- Are you an artist who would be interested in joining our “Artists For the Environment” project? If so, give us a call or send us an e-mail!
- Donate items for our Silent and Live Auctions. Artwork, gift certificates, books, jewelry, antiques, bikes, and small furniture pieces are just a few ideas ... nothing is too small or large!
- Donate items still on our ‘wish list’ for the office: television, couch, stuffed chair, table lamps, and a computer printer.
- For more information contact Denise Poole, our Program Coordinator at [deniseap@earthlink.net](mailto:deniseap@earthlink.net) or call the WVEC office: (304) 414-0143.

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### Support the West Virginia Environmental Council

2206 Washington Street East, Charleston WV 25311

Phone: (304) 414-0143 [www.wvecouncil.org](http://www.wvecouncil.org)

\_\_\_\_\_ Renewed Membership      \_\_\_\_\_ New Membership  
\_\_\_\_\_ Change of Address      \_\_\_\_\_ Donation

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

County: \_\_\_\_\_

Phone: \_\_\_\_\_ e-mail: \_\_\_\_\_

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