



*West Virginia Environmental Council's*

# GREEN Legislative Update

*Published Weekly During West Virginia's Legislative Session*

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## **Under the Dome**

*By Donald S. Garvin, Jr.*

*WVEC Legislative Coordinator*

### **Week 1 – Different Visions**

There were some strikingly different visions of the future voiced this week by those in important leadership positions in the state, nation and world.

First, we had Governor Earl Ray Tomblin's "State of the State" address Wednesday night.

Like almost every other West Virginia governor in the last 25 or 30 years, Governor Tomblin's speech was all about jobs and fossil fuels and exploiting and exporting this state's natural resources.

"This is not Washington D.C.," the Governor said, "where the EPA and other governmental agencies engage in back-door policy making that threatens the very livelihood of so many of our fellow citizens."

"This is West Virginia, where we appreciate the need for reasonable, open environmental regulations but understand the fundamental need for jobs and for low cost, reliable energy developed right here in the United States of America."

"As long as I am Governor," he said, "I will continue to fight this administration's war on coal! . . . I will keep fighting until Washington recognizes that one of the keys to America's future is the use and promotion of our natural resources."

The Governor never mentioned the words "renewable energy."

His is the vision of the status quo.

That same day, Ban Ki-moon, Secretary General of the United Nations from South Korea, published a much different vision of the future in an "op-ed" in the *NY Times*.

He spoke of a new initiative that he calls "Sustainable Energy for All."

"My vision," he said, "is for a world with universal energy access coupled with significantly improved rates of energy efficiency and a doubling of renewable energy in our mix of fuel sources."

“The obstacles are not so much technical as human,” he said. “We need to raise sustainable energy to the top of the global agenda and focus our attention, ingenuity, resources, and investments to make it a reality.”

Then on Thursday Richard Trumka, president of the AFL-CIO and former president of the United Mine Workers, called for a “just transition” to a low-carbon emissions economic system and spoke of his own vision in a speech at the United Nations.

Trumka said that action is needed to reduce greenhouse emissions, citing scientific studies that “tell us we are headed ever more swiftly toward irreversible climate change -- with catastrophic consequences for human civilization.”

“We live on one planet, and we share a common humanity that requires respect for each others’ families and communities,” Trumka said. “In particular, we need dialogue between environmentalists and workers and communities about the future of coal.”

Well, Mr. Trumka, West Virginia coalfield residents and members of the environmental community are long past ready for that dialogue to begin.

You can read the rest of Ban Ki-moon’s article here:

<http://www.nytimes.com/2012/01/12/opinion/powering-sustainable-energy-for-all.html?src=recg>

And you can read the rest of Richard Trumka’s speech here:

<http://blogs.wvgazette.com/coalattoo/2012/01/12/afl-cios-trumka-calls-for-talk-about-future-of-coal/#more-21155>

We finally got a blast of winter today, so please remember our fine-feathered friends and keep your bird feeders full.

## **Legislature Passes Weak Marcellus Shale Bill in Special Session**

*By Donald S. Garvin, Jr.*

*WVEC Legislative Coordinator*

After more than three years of false starts, the West Virginia Legislature last month finally passed a bill regulating the drilling of Marcellus shale gas wells in West Virginia.

The final version of the legislation – HB 401 – virtually assures that streams will be muddied and private water wells and springs that provide drinking water in rural areas will be contaminated by horizontal drilling operations.

HB 401 was passed on Dec. 14, 2011, and signed by Governor Earl Ray Tomblin on Dec. 22, 2011, following a four-day “Extraordinary” Session called by the Governor.

The Governor “called” the special session after the Legislature’s Select Committee on Marcellus Shale Drilling reported out a bill at the end of the November Legislative Interim meetings.

The bill considered by the Legislature in the special session was a version of the Select Committee bill that was “tweaked” by the Governor to remove some of the industry’s objections to the bill. The Governor then lobbied leadership in both the House and Senate to accept his version of the bill.

While the final bill approved by the Legislature was weaker in several important ways from the Select Committee bill, it also contains some minimum provisions that will help protect the environment and surface owners from horizontal drilling operations.

So, what’s in the bill finally passed by the Legislature? Here’s a partial summary:

- **Inspectors:** The only sections of the new legislation that apply to the drilling of all oil and gas wells are the sections on DEP oil and gas inspectors. The Oil and Gas Inspector's Examining Board (which was virtually controlled by the industry) is eliminated, and replaced with a system of civil service employees, similar to how other DEP inspectors are hired.

New inspectors must still have at least two years' work experience in the oil and gas industry, provided that one year of the experience requirement may be satisfied by a relevant college degree or actual relevant environmental experience. This keeps the fox in charge of the hen house.

Salary levels for oil and gas inspectors are set at not less than \$35,000 per year, and not less than \$40,000 per year for supervising oil and gas inspectors.

**The new permit fees for drilling horizontal wells will enable the Office of Oil and Gas to hire approximately 17 additional employees, including 9 new inspectors, basically doubling the current staff size.**

- **New Article §22-6A -- Natural Gas Horizontal Well Control Act:** The bill establishes a new code section that applies “to any natural gas well . . . drilled using a horizontal drilling method, and which disturbs three acres or more of surface, **excluding pipelines, gathering lines and roads**, or utilizes more than two hundred ten thousand gallons of water in any thirty day period.”

The bill grandfathers in existing or pending horizontal well drilling permits. It does not apply to **horizontal** wells that disturb less acreage or use less water. It also does not apply to **vertical** Marcellus shale gas wells that might disturb three acres or more of surface or utilize more than two hundred ten thousand gallons of water.

- **Legislative Findings:** The “legislative findings” section of the new Act sets the tone for the *permissive nature* of the new legislation. For example, it states that the DEP Secretary “should have broad authority to condition” drilling permits in order to protect the safety of persons, prevent damage to publicly owned lands or resources, and to otherwise protect the environment. But it also states that the Secretary “should also have broad authority to waive certain minimum requirements” of the bill. The bill provides that the Secretary must submit annually a written report to the Legislature detailing the number of waivers granted. Similar permissive language exists throughout the bill, saying the “the Secretary *may*”, instead of “the Secretary *shall*.”

- **Authority to Regulate and Propose Rules:** The bill gives the DEP authority to propose necessary legislative rules to implement the provisions of the bill, and states that the Secretary “has sole and exclusive authority to regulate the permitting, location, spacing, drilling, fracturing, stimulation, well completion activities, operation, any and all other drilling and production processes, plugging and reclamation of oil and gas wells and production operations within the state.” This language is obviously aimed at preventing local authorities from attempting to regulate drilling operations. The bill also requires the Secretary to make a monthly written report to the Governor on how long it takes to issue drilling permits (an obvious industry provision).

- **Drilling Permit Applications:** Among other things, the bill requires every permit application to include: an erosion and sediment control plan certified by a registered professional

engineer; a site construction plan certified by a registered professional engineer; and a well site safety plan (with a copy provided to the emergency planning district in which the well work will occur at least seven days before commencement of well work).

In addition, “if the drilling, fracturing or stimulating of the horizontal well requires the use of water obtained by withdrawals from waters of this state in amounts that exceed two hundred ten thousand gallons during any thirty day period,” the permit application must include a water management plan. The water management plan provisions are basically the same as those spelled out in DEP’s Emergency Rule. The provisions in the bill do NOT require an operator to obtain an actual water withdrawal permit.

- **Ability to Deny or Condition Permits:** The bill says, “The permit *may* not be issued, or *may* be conditioned” if the Secretary determines that: the proposed well work will constitute a hazard to the safety of persons; the plan for soil erosion and sediment control is not adequate; damage would occur to publicly owned lands or resources; or the proposed well work fails to protect fresh water sources or supplies.

- **Public Notice and Comment Period:** The bill provides for public notice and a 30-day public comment period for each horizontal well drilling permit application. The Governor had removed this provision from the bill, but it was restored by a Senate amendment. However, the provision in the Select Committee bill to allow the Secretary of DEP to hold a public hearing on permit applications was removed from the bill. The bill also requires the DEP to develop a public web site containing detailed information on horizontal well drilling permits.

- **Drilling Permit Fees:** The bill sets drilling application permit fees at \$10,000 for the initial horizontal well drilled at a location and \$5,000 for each additional horizontal well drilled on a single well pad at the same location.

- **Performance Bonds:** The bill establishes a \$50,000 individual well bond to accompany the drilling permit. Unfortunately, it still provides for a \$250,000 “blanket” bond to cover all of a producer’s wells, which is totally inadequate to provide for reclamation of all those wells in the event a producer abandons its operations.

- **Drill Cuttings and Drilling Pits:** For horizontal wells, drill cuttings, drilling mud, and drilling pits must be disposed of in an approved solid waste facility and can no longer be buried on site without the landowner’s permission. This does not apply to conventional shallow wells, and does not address the legacy pollution problems caused by leaking pits that are allowed to be buried on site.

- **Well Location Restrictions:** *Horizontal wells* may ***not*** be drilled ***within two hundred fifty feet*** from any existing water well or developed spring used for human or domestic animal consumption. **The center of well pads** may ***not*** be located ***within six hundred twenty-five feet*** of an occupied dwelling or a building two thousand five hundred square feet or larger used to house or shelter dairy cattle or poultry husbandry. **These limitations may be waived by written consent of the surface owner, and the Secretary may grant the operator a variance to these provisions.** ***No well pad*** may be prepared or well drilled ***within one hundred feet*** measured horizontally from any ***perennial stream, natural or artificial lake, pond or reservoir, or a***

*wetland, or within three hundred feet of a naturally reproducing trout stream. No well pad may be located within one thousand feet of a surface or ground water intake of a public water supply.*

Almost all of the distance restrictions provided in this bill are weaker than those provided in the Select Committee bill. Because the distances are weakened and exclude pipelines and well roads from these setbacks, the bill virtually assures that streams will be muddied and private water wells and springs that provide drinking water in rural areas will be contaminated by horizontal drilling operations.

The bill removed an entire amendment from the Select Committee bill that provided the Secretary the additional authority to deny or condition drilling permits based on a variety of other circumstances.

- **Noise, Light, Dust and Volatile Organic Compounds Amendment:** The bill includes a House amendment requiring DEP to study the impacts of noise, light, dust and volatile organic compounds generated by the drilling of horizontal wells as they relate to the well location restrictions from occupied houses, and gives DEP the to propose additional legislative rules based on the study.

- **Casing and Cement Standards:** While the bill contains some minimum casing and cementing standards, it removes more than 20 pages of standards included in the Select Committee bill, and authorizes DEP to promulgate additional standards by rule.

- **Drilling in Karst:** The bill provides that the Secretary “**may require** additional safeguards to protect” karst geological formations and the groundwater in those formations. The bill requires the Secretary, in consultation with the state geologist, to propose **emergency and legislative rules** to establish designated geographic regions of the state that include “naturally occurring karst terrain” and to establish standards for drilling horizontal wells in those regions. The bill requires that such rules require “at a minimum” that operators perform pre-drilling testing “to identify the location of caves and other voids, faults and relevant features in the strata and the location of surface features prevalent in naturally occurring karst terrain such as sink holes”, and “**may** include baseline water testing within an established distance from a drilling site.” The bill’s language specifically states that nothing in the bill “**allows the department to prevent drilling in naturally occurring karst terrain.**”

- **Air Quality Regulation:** The bill removed the provisions in the Select Committee bill requiring DEP to regulate air emissions at drilling sites and other natural gas operations. Instead, the bill requires DEP to study air quality issues, including possible health impacts, and to promulgate legislative rules if “necessary.”

- **Impoundment and Pit Study:** The bill requires DEP to conduct a study of impoundment and pit safety, including the presence of radioactivity from naturally occurring radioactive materials, and to promulgate legislative rules if “necessary.”

There are many other provisions of this complex legislation, including important provisions for surface owners, which I have not detailed here. There were also many provisions

that WVEC and our expanded coalition of organizations concerned about Marcellus shale drilling felt should be included in the bill, but were not.

Lawmakers in both the House and Senate called the bill “a good first step,” but acknowledged that there is more work to do.

Whether or not legislators will “have the stomach” to revisit the bill in the upcoming legislative session is, of course, the big question.

## **Energy Efficiency Update**

*By Cathy Kunkle, Energy Efficient WV*

Energy efficiency got a strong start at the Legislature this session with a 3-hour discussion in the House Chamber during the final day of the legislative Interims, January 10<sup>th</sup>. (*See companion article below by John Christensen*). Organized by Del. Mike Manypenny (D-Taylor) and Sarah Halstead Boland of West Virginia GreenWorks, Inc., the meeting covered several proposals for energy efficiency-related legislation that likely will be introduced this year:

- ✦ **Improving West Virginia's building codes:** West Virginia's building energy code is based on the 2003 International Energy Conservation Code (IECC). Upgrading to the 2009 IECC code would result in new buildings being 15% more efficient than current code requires. An attempt was made to pass the 2009 IECC code two years ago, but was defeated in large part due to opposition from the Home Builders Association and the West Virginia Fire Commission (which enforces building codes). At this week's meeting, the president of the Greater Charleston Area Home Builders Association and the Chief Deputy State Fire Marshal spoke out in favor of the 2009 IECC code, making us hopeful that this legislation is in a stronger position to advance this year.
- ✦ **Improving residential, commercial, and industrial energy efficiency through utility programs:** With electric rates going up dramatically and West Virginia households using significantly more electricity than the national average, there is a real need for programs to help residents and small businesses afford to become more energy efficient. Utilities in other states are saving 1-2% of sales each year through energy efficiency programs like rebates for more efficient appliances, industrial energy audits, and home weatherization. Not only does this help customers directly save money on their bills, but all customers benefit from avoiding the need to invest in expensive new power plants. Mike Harman of [Energy Efficient West Virginia](#) spoke of the need for an Energy Efficiency Resource Standard to set long-term targets for our utilities to meet energy savings targets through 2025. Such standards in other states are creating jobs and saving citizens energy and money.
- ✦ **Requiring least-cost planning:** Professor [Jamie Van Nostrand](#) of WVU College of Law presented on the need for least-cost planning (also known as integrated resource planning) in West Virginia. This is a process by which utilities are required to submit long-term plans to the Public Service Commission evaluating the costs and benefits of a range of technologies – including energy efficiency – to determine the least-cost path for meeting future electricity demand. In states where this process is done rigorously, it

encourages investment in energy efficiency because it is far cheaper for utilities to invest in saving electricity than in building new power plants. On Friday Sen. Dan Foster (D-Kanawha) introduced **SB 162** to require least cost planning by utilities.

Presentations and videos from the meeting will soon be available on the West Virginia GreenWorks website, [www.wvgreenworks.com](http://www.wvgreenworks.com)

## **Stakeholders Meet To Discuss Energy Efficient Building**

*By John Christensen, WVEC lobbyist*

*(Also see “Energy Efficiency Update” article by Cathy Kunkle above)*

On Tuesday afternoon before the official start of the session an information-sharing discussion took place in the House Chamber on the advantages of building green to save energy and protect the environment.

The discussion included presentations by legislators, educators, homebuilders, inspectors, commercial designers, engineers, utility personnel, government agencies and consumers, assembled in one place for a meaningful dialog on all aspects of energy efficient building.

The theme repeated throughout the discussion was that West Virginia citizens want to live and work in more energy efficient homes and buildings and it’s up to the stakeholders (and the Legislature) to make it happen.

Ralph Peterson, an energy conservation inspector, noted that in the course of his work he has seen the benefits energy efficient homes can have for low-income families. “All of us need to work together and I believe we can, in order to improve the lives of the rest of us in West Virginia, we need an adoption of code enforcement in counties where there isn’t one.”

One of the bright spots in this discussion was the inclusion of the WV Home Builders Association into the conversation about upgrading our state’s energy code to 2009 levels.

HBA president Dale Oxley spoke at length about the fact that while WV leads the nation in home ownership they also have the highest number of “leaky houses” and that they use about 40% of energy in home heat.

Michelle Connor, Executive Director of Almost Heaven Habitat for Humanity spoke about building 14 new homes in WV this year that will meet Energy Star standards and how this will give the low income families more disposable income to meet other needs.

Thanks go out to WV GreenWorks director Sarah Halstead Boland and Del. Mike Manypenny (D-Taylor) for their efforts at organizing this important discussion.

## **Special Reclamation Fund Update**

On Monday DEP's Special Reclamation Advisory Council voted to recommend that the Legislature almost double the special reclamation fund tax on coal.

The Advisory Council voted to recommend an increase in the tax from 14.4 cents per ton to 27.9 cents per ton, with the entire 13.5 cents per ton earmarked for future water pollution treatment.

Monies in the Special Reclamation Fund are used for cleaning up coal mines abandoned since passage of the 1978 federal strip-mining law.

## **Interim Committee Nixes Change for Coopers Rock State Forest**

The Interim Parks, Recreation and Natural Resources Subcommittee voted Sunday against endorsing a draft proposal that would have placed the southern portion of Coopers Rock State Forest under the management of the Division of Natural Resources.

The proposal is similar to one adopted by the Legislature for Kanawha State Forest several years ago, and would prohibit commercial logging in the southern portion of Coopers Rock.

The draft bill was proposed by Del. Mike Manypenny (D-Taylor), on behalf of the Coopers Rock Foundation. In the Interim Committee, only Manypenny and Sen. Danny Wells (D-Kanawha) voted in favor of the proposal. Wells was strongly supportive of the previous change for Kanawha State Forest.

The subcommittee instead recommended an economic impact study, and to continue to study the issue in 2012.

Coopers Rock is West Virginia's largest state forest system, at about 12,750 acres. The rejected proposal aimed to allow DNR to develop more recreational offerings in the portion of Coopers Rock south of Interstate 68.

## **Think Renewable**

### **Bureau of Land Management Meeting Jan. 19**

The federal Office of Surface Mining Reclamation and Enforcement (OSM) and the Bureau of Land Management (BLM) will hold a meeting Thursday, January 19, 2012, in Charleston to solicit input on the proposed consolidation of OSM within BLM.

According to a BLM press release, "The outreach is part of an effort directed by Secretary of the Interior Ken Salazar to gather input from stakeholders on the proposal to combine the strengths of both bureaus to continue Interior's efforts to improve government. This is consistent with the Secretary's plan to not move forward with a potential consolidation without full coordination and input of employees, members of Congress, states, tribes, industry, representatives of communities affected by coal production and other interested parties."

"These meetings will include discussions on how best to maintain OSM's status as an independent bureau with regulatory responsibilities under the Surface Mining Control and Reclamation Act, while exploring ways to integrate some administrative functions of both entities."

The Charleston meeting will be held at the West Virginia National Guard Armory located at 1703 Coonskin Drive from 5:00 p.m. – 8:00 p.m.





## Another Earthquake in Frametown

A 2.8 magnitude earthquake shook the Frametown area in Braxton County on Tuesday, prompting WV DEP officials to look again at the connection between earthquakes and disposal of oil and gas liquid wastes through underground injection wells.

A number of small earthquakes struck in the same location in 2010. DEP spokeswoman Kathy Cosco said Thursday that regulators had worked with Chesapeake to reduce the amount of fluid the company was injecting after the 2010 quakes. The quakes stopped.

However, after the latest quake Cosco said, "It certainly makes it appear that there's some type of connection," to the underground disposal injections she said.

Read more at <http://www.dailymail.com/News/201201120119>

**WVEC "Legislative Kick Off Blast"**  
**Wednesday, January 18<sup>th</sup>**  
**WVEC office – 2206 Washington St. East, Charleston**  
**6 PM – 10 PM**

## Calendar of Events

**January 18:** WVEC's Annual "Legislative Kick Off Blast" Benefit. WVEC office (2206 Washington Street East, Charleston). From 6 PM – 10 PM. Join WVEC as we kick off the 2012 legislative session in our usual style, with great friends, live music, refreshments and fun! Featuring music by Andy Park & others. Donation of \$5 or whatever you can afford.

**February 8:** E-Day At the Capitol. Environment Day - Senate & House hallways / Upper Rotunda area. Featuring displays, demonstrations, citizen lobbying & more. Mark your calendar now, and join us for our annual environment day at the state capitol. Over 25 environmental organizations, green businesses, artisans and other groups representing a visionary future for WV will be on hand this year. For more information or to reserve a space: [deniseap@earthlink.net](mailto:deniseap@earthlink.net)

**February 8:** E-Day Awards & Benefit Dinner. Woman's Club of Charleston, corner of Elizabeth St. & Virginia St., Charleston. From 6 PM – 9PM. Gathering to follow a full day at the capitol - relax and help us celebrate as we bestow our 2012 awards to eight exceptional honorees this year! Dinner will include an array of homemade soups (vegan, vegetarian & meat based), salads, breads and desserts. Cost: A donation of \$15 per person.

**March 10:** Legislative Session ends.

## Legislative Session 2012 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](http://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](http://www.wvecouncil.org)

WVEC Office: (304) 414-0143

### Ohio Valley Environmental Coalition:

[www.ohvec.org/ovec\\_news.html](http://www.ohvec.org/ovec_news.html) and [www.ohvec.org/news\\_gen.html](http://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](mailto:deniseap@earthlink.net)

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## Support the West Virginia Environmental Council

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