



*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 3 – The Department of Environmental *What?***

This week the Department of Environmental ***Protection*** got West Virginia lawmakers to introduce a bill that would allow circuit courts or the Surface Mine Board to award attorney fees and costs in administrative proceedings arising under the West Virginia Surface Coal Mining and Reclamation Act – against plaintiffs who bring the action.

While the legislation says that the fees and costs can be levied against either party, it is clearly aimed at only one group – the plaintiffs. That's you and me, folks. Citizens.

The bill provides that the fees and costs can be levied upon “a finding that a claim was brought in bad faith or for the purposes of harassment.”

Well, you can recognize a threat when you see one, can't you?

Never mind that it flies directly in the face of the citizen suit provisions of the federal Surface Mining Control and Reclamation Act.

Were this legislation to pass, it would have a huge chilling effect on citizen groups and non-profit environmental organizations in opposing DEP's pro-industry permit decisions in court or at the appellate board.

But, of course, that is DEP's intent.

They have always seen themselves as the Department of Environmental ***Permitting***, instead of the Department of Environmental ***Protection***.

The bill number is HB 4283, and we expect to see a companion bill in the Senate any day now. We are told the bill has “no legs” to stand on in either the House or Senate. We hope that’s the case. But we are keeping our eyes on it, and have discovered we have additional allies if we need to try to kill it.

What with the mild weather we have been experiencing, you may not think it is still winter. But our fine-feathered friends know better, so please remember to keep your bird feeders full.

## **Landfills and Marcellus Waste**

*By Leslee McCarty, WVEC*

When is hazardous material not hazardous material? When the federal government says it isn’t! This was the first exemption that oil and gas got for their operations at the federal level. So now, we are dealing with waste, which might otherwise be considered hazardous being treated like “special waste” at our landfills. Of course, the industry scored big again by getting the “Halliburton Loophole” passed, which makes their industry exempt from the federal Clean Water Act.

It’s like the oil and gas industry is zipping around the racetrack in a Lamborghini and the public is out here in a beat-up old clunker, still trying to get information, pass rules and slow down the juggernaut. This past week, we managed to get a small victory, in that we stopped the DEP rules bill on solid waste from going through because of our concerns about Marcellus drill cutting going into our landfills and about new cells being constructed just for Marcellus waste.

Now we are meeting with DEP to express our concerns. We will update next week on how far we get, but at least we are asking for more transparency and a comprehensive statewide approach to dealing with any and all waste from Marcellus operations.

## **Update on Supreme Court Pilot Project**

*By Carol Warren, OVEC*

It’s been a tough year. The WV Supreme Court Public Campaign Financing Pilot Project, enacted by the Legislature in 2010, has seen its share of difficulties. In January 2011, advocates for the program, which is to provide a public financing option for the two Supreme Court seats to be contested in 2012, narrowly missed gaining additional funding in a last minute failure in Senate Finance Committee.

It was hoped that a larger pool of funds for the Pilot would give prospective candidates more certainty that there would be adequate matching funds if they were substantially outspent by non-participating opponents.

But in June, the concept of matching funds based on an opponent’s spending was ruled a violation of the opponent’s free speech in the Arizona *McComish vs Bennett* case. That put a wrench in the West Virginia program that has yet to be addressed, as the matching funds in the

state's Pilot Project are similarly structured. WV Citizens for Clean Elections immediately provided Secretary of State Natalie Tennant's staff with draft legislation for a possible new plan, which would allow candidates to continue raising small contributions after they qualify for the program.

Those contributions would be matched by the Public Financing Fund at a ratio of 3:1, removing any comparison to opponent spending. The Secretary of State's staff tried unsuccessfully to have the legislative fix included in the Call for one of the Special Sessions in 2011, hoping to have the matter resolved prior to the beginning of the qualifying period in September.

On January 6, several Clean Elections coalition members met with the Secretary and four members of her elections and legislative staff to talk about the future of the Pilot Project. All were in general agreement that between the demands of three "extraordinary" elections in 2010 and 2011, and the uncertainty caused by the *McComish* decision, the Pilot Project had truly not been able to proceed as planned.

Advocates asked the Secretary to consider introducing legislation in the 2012 Regular Session to fix the matching fund provision and to extend the Pilot to the next judicial election cycle in 2016. The Pilot is due to sunset at the end of 2012, and it would be unfortunate for the project not to be given as fair a chance of success as possible. The Secretary and her staff were supportive, and agreed to request the extension until 2016 immediately. They wished to wait until the end of the filing period (end of January 2012) to see if any candidate has qualified for the program in 2012 before deciding what course to adopt with regard to a fix of the matching fund provisions.

Coalition members checked with House and Senate allies, and found no one who was opposed to the idea of an extension, especially if requested by the Secretary of State's office, the agency in charge of the Pilot Project oversight. They recall that were good reasons for the legislation establishing the project. West Virginia received several black eyes due to the conduct of certain Supreme Court justices. Public financing was one possible solution recommended by then Governor Manchin's Independent Commission on Judicial Reform. All of these reasons are still operative in favor of giving the Pilot Project a fair shake.

## **Governor Signs "Cracker" Tax Break Bill**

HB 4086 sailed through both the House and Senate this week and was promptly signed by Governor Tomblin before he took off for Houston, Texas, to attempt to woo Shell Oil Company into building an ethane cracker plant in West Virginia.

The bill would allow cracker plants investments of \$2 billion or more to be assessed at their scrap value, or 5 percent of their actual value. The valuation would be in effect for 25 years, and should save plant owners more than \$25 million in property taxes in the first year alone, proponents say.

West Virginia is in competition with Ohio and Pennsylvania for one or more of the plants, which would convert ethane - a byproduct from Marcellus Shale natural gas drilling - to ethylene, an organic compound integral to production of a variety of chemicals and plastics.

On Tuesday, Commerce Secretary Keith Burdette told the Senate Finance Committee the state would benefit from chemical and plastics plants that will locate near the cracker plant, even if the plant itself ends up in Ohio or Pennsylvania. *(Compiled from Press Reports).*

## **Not Easy Being Green – In The Capitol Cafeteria**

*By Leslee McCarty, WVEC*

At first, I was happy to hear that the vendors who were in the tiny little sandwich shop in the capitol basement had gotten the contract for the whole Capitol's food service. They are very nice and hardworking and have good food. That was the good news.

Here is the bad. There are styrofoam clamshells on all grill sandwiches, plastic encasing all salads and ready made sandwiches and only Styrofoam cups, even for soft drinks!! AAARRGGHH! And no effort is being made to recycle any of the stuff that can be recycled.

Of course, this is unacceptable. How can the State not set a better example? I can't make myself eat there more than about once a week, and I need to eat something. So, I talked to the contractor, a client of my former employer, WV Vocational Rehabilitation. He said it was too expensive to be green. How can paper cost more than Styrofoam?!!

I could go on, but suffice it to say, we may have to have a bill to make them go green. Seems Rehab has a contract with a federal building, and they are forced to go green there, so it is possible. Since the contract is let for this year, we can only do what the contractor will do voluntarily, but I am thinking we may have to legislate to achieve this seemingly simple thing. Chant with me, folks, "Hey. Hey, Ho, Ho. Styrofoam has got to go!"

## **WVU to Compete in 2013 Solar Decathlon**

*By John Christensen, WVEC*

After months of preparation to submit a proposal to the U.S. Department of Energy, a team of students from West Virginia University (WVU) has been selected to participate in the "Solar Decathlon" in Irvine, California in the fall of 2013.

This is the first time a team from WVU attempted to get involved in the event. Only twenty colleges and universities are chosen to participate, so this is quite an honor. The student teams will compete to construct the most efficient solar-powered home.

The WVU student project will look like a log home, and will be able to be de-constructed, put in a shipping container and reassembled in California. Mountain View Solar in Berkeley Springs is assisting the students in the project.

## **Sludge Safety Update**

*By Mathew Louis-Rosenberg, Sludge Safety Project (SSP)*

The Sludge Safety Project had its annual Legislative Kickoff on Tuesday the 17th at the Capitol. Citizens from across southern West Virginia gathered to get training on how to lobby and talk to the media and get fired up about taking the fight to ban coal slurry injection to the Legislature for another year.

SSP started this Legislative Session with a bang. We held a press conference to release powerful new reports conclusively demonstrating that coal slurry contaminated citizens' wells in Boone County. Over two hundred residents of Prenter, WV have filed a lawsuit against Massey Energy (now Alpha Natural Resources) alleging that coal slurry, the waste from processing coal for market, was injected in abandoned underground mines and contaminated their drinking water. Several reports from hydro-geologists at Marshall University and Kent State University were just disclosed from the case making them publicly available. The reports state definitively that coal slurry migrated from the mines it had been injected into to residential wells, raising the amount of arsenic and other heavy metals to dangerous levels. These reports (and much more research on coal slurry) are available from SSP's brand new, redesigned website: [www.sludgesafety.org](http://www.sludgesafety.org).

Jennifer Hall-Massey, resident of Prenter, spoke powerfully at the press conference about the impacts this contamination has had on her community. Six of her neighbors were diagnosed with brain cancer, a disease effecting one in 7,000 Americans. Four have since died including Jennifer's younger brother and an 11 year old child. While she expressed gratitude that a municipal water line has reached some of the Prenter area, she pointed out that there is currently no funding to complete the water line and 50 to 75 families remain without safe drinking water. She also called on legislators to learn the lessons of the Prenter community and ban slurry injection.

Rev. Jim Lewis, outspoken Episcopal clergyperson and longtime activist, also spoke powerfully at the press conference. Rev. Lewis reminded everyone that this year is 40th anniversary of both the terrible slurry disaster at Buffalo Creek and the 40th anniversary of the passage of the Clean Water Act. Comparing these last 40 years to the 40 years the Jews wandered in the desert, he called for justice to flow down like a mighty river and for the legislators to act now to protect West Virginia citizens from toxic water.

The Sludge Safety Project will be holding a memorial service at the Capitol on February 25th, "Remembering 40 Years of Black Water: From Buffalo Creek to Today." We will be honoring the memory of everyone that has been affected by coal slurry over the last 40 years and inviting citizens to tell their stories. We encourage everyone who cares about coalfield communities to attend. For more information about this event and all of Sludge Safety Project's work to ban slurry injection in 2012, please visit [www.sludgesafety.org](http://www.sludgesafety.org) to find out how you can get involved with protecting the health and safety of West Virginians.

**UPDATE: Ban On Coal Slurry Injection Introduced in House**

HB 4316 was introduced on Thursday, and it would prohibit issuance of new permits, permit modifications or permit renewals for the underground injection of coal slurry. The bill was introduced Del. Mike Manypenny (D-Taylor).

### **DEP Releases Prenter Water Study**

On Tuesday the DEP released the results of a study of water wells in the Prenter community, saying they found only limited mining-related contamination of groundwater in the area.

DEP Secretary Randy Huffman said, “This was a thorough, comprehensive study.”

But then a day later, the agency had to issue a clarification of their statement because the study actually found a violation of federal drinking water limits for lead in one of the wells examined.

### **Industries of the Future Day at the Capitol**

*By John Christensen, WVEC*

One of the days I enjoy most at the Legislature each session came this week on Wednesday: Industries of the Future WV (IOF-WV) Day.

The hope for a more efficient and renewable energy future for WV is the scope of this annual event (at least that’s what it says in the program).

IOF-WV is a partnership program that works with energy-intensive industries to increase energy efficiency, reduce waste and promote competitive companies to locate and grow in our state. The program has been in operation for more than 12 years as a partnership between WVU, the WV Division Of Energy, WV Economic Development Office, and the U.S. Department of Energy.

Since it was started the program has grown to include energy assessments for commercial buildings, and projects and studies on renewable energy and policy issues.

The company I work for in my everyday life is Mountain View Solar, and they have made presentations during this conference for the past four years in the Senate Economic Development committee. This year was the best yet as Colin Williams, VP director of operations, was able to update the committee on the success of the company and thank them for passing key legislation last session that has helped the solar industry.

We were also able to take Sen. Mike Hall (R-Putnam) out to the company’s new vehicle parked next to the Governor’s mansion and show him the Chevy Volt, explain to him how the car works, as well as the tax credit opportunities for residents and businesses who purchase and install a solar energy system.

Now I am already looking forward to next year’s IOF Day.



## Bills We Are Tracking

Bill Number	Title	Committee
<b>Senate Bills</b>		
SB 15	Energy Efficient Building Act	Gov Org
SB 25	Public health assessment of DEP rules ( <i>WVEC Bill</i> )	Judiciary
SB 40	Composting tax credit	Judiciary
SB 57	Additional regulation of timbering on public lands ( <i>GREAT Bill</i> )	Nat Res
SB 76	Green Buildings Act ( <i>GREAT Bill</i> )	Gov Org
SB 88	Jobs Impact Statement Act ( <i>Devil in the Details</i> )	Econ Dev
SB 157	Dedicating portion of oil and gas severance tax to county of origin	EIM
SB 162	Requiring “least-cost” planning by electric utilities ( <i>EEWV Bill</i> )	Judiciary
SB 180	Granting surface owner right of first refusal to purchase mineral estate	EIM
SB 182	Creating West Virginia Future Fund	Econ Dev
SB 200	Eliminating timber severance tax for additional three years	EIM
SB 220	Management of Coopers Rock State Forest ( <i>GREAT Bill</i> )	Nat Res
SB 348	Quality Control Procedure for Agency Rules Act ( <i>Terrible Bill</i> )	Gov Org
SB 387	Requiring training of floodplain managers	Gov Org
SB 391	Reduced utility rates for low-income residential customers	Judiciary
SB 402	Streamlining legislative rule-making review process ( <i>Devil in the Details</i> )	Judiciary
<b>House Bills</b>		
HB 2024	Green Buildings Act ( <i>WVEC Bill</i> )	Gov Org
HB 2025	West Virginia Energy Efficiency Act ( <i>WVEC Bill</i> )	Gov Org
HB 2030	Additional severance tax for Surface Mine Reclamation Fund ( <i>Great Bill</i> )	EIL
HB 2056	West Virginia Renewable Energy Act ( <i>Great Bill</i> )	EIL
HB 2136	Plastic Shopping Bag Excise Tax Act ( <i>Good Idea</i> )	Finance
HB 2153	Requiring DEP to remediate waste tire piles ( <i>Failed Last Year</i> )	Judiciary
HB 2219	Verifiable Science Act ( <i>Perennial Terrible Bill</i> )	Gov Org
HB 2232	Allowing planning and zoning restrictions for mining and manufacturing activities	EIL
HB 2401	Renewable Portfolio Standards Sustainable Energy Act ( <i>WVEC Bill</i> )	EIL
HB 2740	Preventing covenants that restrict the use of solar energy systems ( <i>WVEC Bill</i> )	Judiciary
HB 2741	Exempting active solar energy systems from taxation ( <i>WVEC Bill</i> )	Judiciary
HB 2795	Jobs Impact Statement Act ( <i>Devil in the Details</i> )	EIL
HB 2814	Bottle Bill ( <i>Great Bill Again</i> )	Judiciary
HB 2851	Surface owner’s right to purchase mineral interests	EIL
HB 2940	Requiring liners in all new surface coal-waste impoundments	EIL
HB 3088	West Virginia Energy Efficiency Act	Gov Org
HB 3129	Creating Renewable Energy Expansion Fund	Gov Org
HB 4016	Supreme Court Public Campaign Financing Fund revenues	Judiciary
HB 4044	Tax credits for energy efficient buildings	Finance
HB 4049	Requiring DEP to maintain an Office of Internal Auditing	Finance
HB 4086	Governor’s ethane “cracker” plant tax credit bill	<b>Signed by Governor</b>
HB 4094	Eliminating timber severance tax for additional three years	Finance
HB 4265	Requiring flowback plans for all work on oil and gas wells ( <i>Manypenny</i> )	Judiciary
HB 4266	Posting of fracking fluid components on material data safety sheets ( <i>Manypenny</i> )	Judiciary
HB 4267	Study of environmental and health impacts of shale gas development ( <i>Manypenny</i> )	Judiciary
HB 4283	Awarding attorney fees and costs in mining permit appeals ( <i>Terrible DEP Bill</i> )	Judiciary
HB 4313	Requiring that the building code be the state building code	Pol Subdivisions
HB 4316	Prohibiting underground injection of coal slurry ( <i>Sludge Safety Project Bill</i> )	EIL

(NOTE: We are tracking all of the legislative rules bills separately).

## E-Day! - Wednesday, February 8<sup>th</sup>

### At the Capitol

9 a.m. till 3 p.m. – Senate & House Hallways & Upper Rotunda Alcoves  
Environmental Citizen Lobby Day & Exhibits  
Weaving a progressive future – more displays!

### **E-Day Benefit Dinner & Award Ceremony**

**Charleston Women's Club, 1600 Virginia Street East**

**6:00 p.m. – 9:00 p.m.**

**Soup & Salad Buffet Dinner, Cash Bar**

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

Mother Jones: *Leslee McCarty & Carol Warren*

Chuck Chambers Public Service: *Delegate Bonnie Brown & Delegate Mike Manypenny*

Green Entrepreneur: *Dale Hawkins (Fish Hawk Acres)*

Linda Schnautz Courage: *Maya Nye*

Laura Forman Grassroots Activist: *Kathy Cash*

Cost: \$15 donation

## Calendar of Events

**February 8:** E-Day At the Capitol. Environment Day - Senate & House hallways / Upper Rotunda area. Featuring displays, demonstrations, citizen lobbying & more. 9 am – 3 pm. Mark your calendar now, and join us for our annual environment day at the state capitol. Over 30 environmental organizations, green businesses, artisans, musicians and other progressive 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, 1600 Virginia Street East (corner of Elizabeth St. & Virginia St.), Charleston. From 6 PM – 9PM. Our annual dinner will follow a full day at the capitol - relax and help us celebrate as we bestow our 2012 awards to seven exceptional honorees this year! Dinner will include an array of homemade soups (vegan, vegetarian & meat based), salads, breads, desserts and beverages. Cash bar available.

Cost: A donation of \$15 per person.

**February 25:** Buffalo Creek Day. Commemorating the 40<sup>th</sup> Anniversary of the Buffalo Creek disaster. State Capitol Lower Rotunda. 2 pm – 5 pm. Speakers, music, press event & more.

**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

2206 Washington Street East, Charleston WV 25311

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